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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR FALLING RUN DEVELOPMENT**

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR FALLING RUN DEVELOPMENT

CSF/Falling Run, Inc., a West Virginia corporation with an office at Capon Springs, West Virginia ("Declarant") does hereby submit the real property in Capon Magisterial District, Hampshire County, West Virginia, described in Schedule A-1, to the provisions of the Uniform Common Interest Ownership Act, West Virginia Code Section 36B-1-101, et seq. ("Act") for the purpose of creating Falling Run Development and making the improvements shown in the plat and plans attached as Schedules A-1 through A-10, and does hereby declare that the property described on Schedule A-1 shall be held and conveyed subject to the following terms, covenants, restrictions, and conditions:

ARTICLE I.
Definitions

Section 1.1 Affiliate of a Declarant. An affiliate of a Declarant means any person who controls, is controlled by, or is under common control with a Declarant, as provided under Section 1-103(1) of the Act.

Section 1.2 Act. The Uniform Common Interest Ownership Act, West Virginia Code Section 36B-1-101, et seq., as it may be amended from time to time.

Section 1.3 Allocated Interests. The undivided interest in the Common Elements, the Common Expense liability, and votes in the Association, allocated to Units in the Common Interest Community. The Allocated Interests are described in Article IX of this Declaration and shown on Schedule A-8.

Section 1.4 Articles. Articles of Incorporation of the Association.

Section 1.5 Association. Falling Run Unit Owners Association, Inc., a non-profit corporation organized under West Virginia Code Section 31-1-1, et seq. It is the Association of Unit owners pursuant to Section 3-101 of the Act.

Section 1.6 Bylaws. The Bylaws of the Association, as they may be amended from time to time.

Section 1.7 Common Elements. All real property in which the Association owns an interest for the common use and enjoyment of all the Unit Owners. Such interest may include, without limitation, estates in fee, for a term of years, or easements. Common elements shall also include each portion of the Common Interest Community other than a Unit.

Section 1.8 Common Expenses. The expenses or financial liabilities for the operation of the Common Interest Community. These include:

- (i) Expenses of administration, maintenance, repair, or replacement of the Common Elements;

- (ii) Expenses declared to be Common Expenses by the Documents or by the Act;
- (iii) Expenses agreed upon as Common Expenses by the Association; and
- (iv) Such reasonable reserves as may be established by the Association, whether held in trust or by the Association, for repair, replacement or addition to the Common Elements or any other real or personal property acquired or held by the Association.

Section 1.9 Common Interest Community. The real property described in Schedule A-1, subject to the Declaration of Covenants, Conditions and Restrictions of Falling Run Development.

Section 1.10 Construction. Any land disturbing activity, including surveying, excavating or digging, tree removal, or the building, installing, erecting, maintaining, remodeling, reconstructing, renovating, removing or destroying of any improvement.

Section 1.11 Declarant. Capon Springs and Farms, Inc., a West Virginia corporation, or its successor as defined in Sub-Section 1-103(12) of the Act.

Section 1.12 Design Development Guidelines. The design guidelines established by the Unit Owners Association for the design and construction of improvements on individual units.

Section 1.13 Development Rights. The rights reserved by the Declarant under Article VIII. of this Declaration to (i) add real estate to the Common Interest Community; (ii) create Units, or Common Elements within the Common Interest Community; (iii) subdivide Units or convert Units into Common Elements; or (iv) withdraw real estate from the Common Interest Community.

Section 1.14 Director. A member of the Executive Board.

Section 1.15 Documents. The Declaration, Plat and Plans recorded and filed pursuant to the provisions of the Act, the Bylaws, Articles and the Rules as they be amended from time to time. Any exhibit, schedule, or certification accompanying a Document is a part of that Document.

Section 1.16 Eligible Insurer. An insurer or guarantor of a first Security Interest in a Unit which has notified the Association in writing of its name and address and that it has insured or guaranteed a first Security Interest in a Unit. Such notice shall be deemed to include a request that the eligible insurer be given the notices and other rights described in Article XVI.

Section 1.17 Eligible Mortgagee. The holder of a first Security Interest in a Unit which has notified the Association, in writing, of its name and address, and that it holds a first Security Interest in a Unit. Such notice shall be deemed to include a request that the Eligible Mortgagee be given the notices and other rights described in Article XVI.

Section 1.18 Executive Board. The board of directors of the Association.

Section 1.19 Improvements. Any construction, structure, fixture or facilities of any kind of either a temporary or permanent nature, constructed above, at or below ground level, including, but not limited to, a house, garage, carport, shed, patio, terrace, deck, walk, tennis court, swimming pool,

antenna, TV satellite dish, fence, wall, driveway, or parking lot.

Section 1.20 Improvement to a Unit. This shall mean and include, without limitation: (a) the construction, installation, erection or expansion of any building, structure, or other improvements, including utility facilities; (b) the demolition or destruction, by voluntary action of any building, structure or other improvements; (c) the grading, excavation, filling or similar disturbance to the surface of the land including, without limitation, change of grade, change of ground level, change of drainage pattern or change of stream beds; (d) any fence, wall, signs, site paving, grading, parking, building additions, screen enclosures, porches and stoops, patios, decks, decorative structures, border landscaping and recreation facilities, including swimming pools; and (e) siting of any structure on any Unit with regard to location and elevation.

Section 1.21 Limited Common Elements. A portion of the Common Elements allocated by the Declaration or by operation of Section 2-102 (2) or (4) of the Act for the exclusive use of one or more but fewer than all of the Units.

Section 1.22 Limited Common Expense. A portion of the Common Expenses allocated by the Declaration to one or more but fewer than all of the Units.

Section 1.23 Majority or Majority of Unit Owners. The owners of more than 50% of the votes in the Association.

Section 1.24 Manager. A person, firm or corporation employed or engaged to perform management services for the Common Interest Community and the Association.

Section 1.25 Notice and Comment. The right of a Unit Owner to receive notice of an action proposed to be taken by or on behalf of the Association, and the right to comment thereon. The procedures for Notice and Comment are set forth in Section 22.1 of this Declaration.

Section 1.26 Notice and Hearing. The right of a Unit Owner to receive notice of an action proposed to be taken by or on behalf of the Association, and the right to be heard thereon. The procedures for Notice and Hearing are set forth in Section 22.2 of this Declaration.

Section 1.27 Person. An individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, government subdivision or agency, or other legal or commercial entity.

Section 1.28 Plans. The plans filed with this Declaration as Schedule A-10, as they may be amended from time to time.

Section 1.29 Plat. The plat filed with this Declaration as Schedule A-2, as it may be amended from time to time.

Section 1.30 Property. The land and all improvements, easements, rights, and appurtenances which have been submitted to the provisions of the Act by this Declaration.

Section 1.31 Public Offering Statement. The current document prepared pursuant to Section 4-103 through 4-107 of the Act as it may be amended from time to time, and provided to purchasers prior to the time of execution of a binding purchase agreement.

Section 1.32 Review Committee. The Falling Run Design

Section 1.33 Rules. Rules for the use of Units and Common Elements and for the conduct of persons within the Common Interest Community, as may be adopted by the Executive Board pursuant to this Declaration in addition to the restrictions contained in Article X hereof.

Section 1.34 Security Interest. An interest in real estate or personal property, created by contract or conveyance, which secures payment or performance of an obligation. The term includes a lien created by a mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, assignment of lease or rents intended as security, pledge of an ownership interest in an Association, and any other consensual lien or title retention contract intended as security for an obligation.

Section 1.35 Special Declarant Rights. Rights reserved for the benefit of a declarant to (i) complete improvements indicated on plats and plans filed with the Declaration; (ii) exercise any Development right; (iii) maintain sales offices, management offices, signs advertising the Common Interest Community, and models, including model homes and homesites; (iv) use easements through the Common Elements for the purpose of making improvements within the Common Interest Community or within real estate that may be added to the Common Interest Community; or (v) appoint or remove an officer of the Association or a master association or any Executive Board member during any period of Declarant control.

Section 1.36 Trustee. The entity which may be designated by the Executive Board as the Trustee for the receipt, administration, and disbursement of funds derived from insured losses, condemnation awards, special assessments for uninsured losses, and other like sources as defined in the Bylaws. If no Trustee has been designated, the Trustee will be the Executive Board from time to time constituted, acting by majority vote, as executed by the president and attested by the secretary.

Section 1.37 Unit. A physical portion of the Common Interest Community designated for separate ownership or occupancy, the boundaries of which are described in Section 4.2 of this Declaration.

Section 1.38 Unit Owner. The declarant or other Person who owns a Unit. Unit Owner does not include a Person having an interest in a Unit solely as security for an obligation. The Declarant is the initial owner of any Unit created by this Declaration.

ARTICLE II.

Name and Type of Common Interest Community and Association

Section 2.1 Common Interest Community. The name of the Common Interest Community is Falling Run Development. Falling Run Development is a planned community.

The objective of the Common Interest Community is to protect and enhance the value, desirability and rural nature of the real property, and the soil, water, air, plant and animal life which support it.

Section 2.2 Association. The name of the Association is Falling Run Unit Owners Association, Inc.

ARTICLE III.

The entire Common Interest Community is situated in the Capon Magisterial District, Hampshire County, West Virginia. A description of the real estate included in the Common Interest Community is contained in Schedule A-1.

ARTICLE IV.

Maximum Number of Units; Boundaries

Section 4.1 Maximum Number of Units. The Common Interest Community upon creation contains nine (9) Units. As each subdivision is added it shall contain the number of Units shown in the most current Schedule A-2. The Declarant reserves the right to create the maximum number of units that would be derived if put in fractional form the numerator of which is the total acreage of the additional acreage added to the subdivision, and the denominator of which is 5 acres.

Section 4.2 Boundaries. Boundaries of each Unit created by the Declaration are shown on Schedule A-2 as numbered lots, together with the ground beneath each such Unit and the airspace above each such Unit. The identifying number of each Unit is shown on Schedule A-2.

ARTICLE V.

Common Elements and Limited Common Elements

Section 5.1 - The portions of Common Elements on Schedule A-3 are Limited Common Elements and are assigned to the Units as stated therein.

Section 5.2 - The real estate which is or must become Common Elements is described in Schedule A-4.

ARTICLE VI.

Maintenance, Repair and Replacement

Section 6.1 Common Elements. The Association shall maintain, repair and replace all of the portions of the Common Elements which are required by this Declaration or the Act to be maintained, repaired or replaced by the Unit Owners.

Section 6.2 Units. Each Unit Owner shall maintain, repair and replace, at his or her own expense, all portions of his or her Unit, except the portions thereof required by the Declarant to be maintained, repaired or replaced by the Association.

Section 6.3 Limited Common Elements. Any common expense associated with the maintenance, repair, or replacement of the Limited Common Elements will be assessed against the Unit or Units to which the Limited Common Element is assigned, as shown on Schedule A-3. If any such Limited Common Element is assigned to more than one Unit, the Common Expenses attributable to the Limited Common Element will be assessed equally among the Units to which it is assigned.

Section 6.4 Access. Any person authorized by the Executive Board shall have the right of access to all portions of the Property for the purpose of correcting any condition threatening a Unit or the Common Elements, and for the purpose of performing installations, alterations or repairs, and for the purpose of reading, repairing, replacing utility meters and related pipes, valves, meters, wires and equipment, provided that requests for entry are made in advance and that any such entry at a time reasonably convenient to the affected Unit Owner. In case of an emergency, no such request or notice is required and such right of entry shall be immediate, and with

such force as is apparently necessary to gain entrance, whether or not the Unit Owner is present at the time.

Section 6.5 Repairs Resulting from Negligence. Each Unit Owner will reimburse the Association for any damages to the Common Elements caused intentionally, negligently, or by his or her failure to properly maintain, repair, or make replacements to his or her Unit. The Association will be responsible for damage to Units caused intentionally, negligently, or by its failure to maintain, repair, or make replacements to the Common Elements. If such expense is caused by misconduct, it will be assessed following notice and hearing. In cases where the Association has gained entrance to a unit in response to an emergency, the Association shall be responsible only for securing the premises following the emergency, and shall not be responsible to the Unit Owner for any damages caused to the Unit in gaining entrance to the Unit or in otherwise responding to the emergency. The Unit Owner shall be responsible for making all repairs to the Unit which result from the emergency and shall hold the Association harmless from any damages resulting therefrom.

ARTICLE VII.

Subsequently Allocated Limited Common Elements

Those portions of the Common Elements shown on Schedule A-5 may be subsequently allocated as Limited Common Elements in accordance with Subsection 8.1(b) and Article XII of this Declaration, or may be assigned by rule of the Executive Board.

ARTICLE VIII.

Development Rights and Other Special Declarant Rights

Section 8.1 Reservation of Development Rights. The Declarant reserves the following Development Rights:

- (a) The right by amendment to add real estate to the Common Interest Community. The real estate to which this development right applies is set forth in Schedule A-7.
- (b) The right by amendment to create Units, Common Elements, or Limited Common Elements within the Common Interest Community.
- (c) The right by amendment to subdivide and combine Units or convert Units into Common Elements.
- (d) The right by amendment to withdraw real estate from the Common Interest Community.
- (e) The real estate to which the Development Rights specified in Paragraphs (b) and (c) above is set forth in Schedule A-6. The real estate to which the Development Rights specified in Paragraph (d) apply is shown on Schedule A-9.

Section 8.2 Limitations on Development Rights. The Development Rights reserved in Section 8.1 must be exercised within fifteen (15) years after the recording of the initial Declaration.

Section 8.3 Phasing of Development Rights. Any of the Development Rights set forth in Section 8.1 above may be exercised with respect to different parcels of real estate within the Common Interest Community at different times. However, no assurances are made by the Declarant as to the portions where the Declarant will exercise its Development Rights or the order in which such portions, or all of the real estate, will be developed. The exercise of Development Rights

as to some portions will not obligate the Declarant to exercise them as to other portions of the real estate within the Common Interest Community.

Section 8.4 Special Declarant Rights. The Declarant reserves the following Special Declarant Rights, to the maximum extent permitted by law, which may be exercised, where applicable, anywhere within the Common Interest Community:

- (a) To complete Improvements indicated on Plats and Plans filed with the Declaration;
- (b) To exercise a Development Right reserved in the Declaration;
- (c) To maintain sales offices, management offices, signs advertising the Common Interest Community, and models;
- (d) To use easements through the Common Elements for the purpose of making Improvements within the Common Interest Community or within real estate which may be added to the Common Interest Community.
- (e) To appoint or remove an officer of the Association or an Executive Board member during a period of Declarant control subject to the provisions of Section 8.10 of this Declaration.
- (f) The real estate to which the special declarant rights specified in Sections (a) through (d) above is shown on Schedule A-6.

Section 8.5 Models, including model homes and homesites, Sales Offices and Management Offices. As long as the Declarant is a Unit Owner, the Declarant and its duly authorized agents, representatives and employees may maintain any Unit owned by the Declarant or any portion of the Common Elements as a model Unit or sales office or management office.

Section 8.6 Declarant's Easement. Subject to the provisions of this Declaration, a Declarant has an easement through the Common Elements as may be reasonably necessary for the purpose of discharging the Declarant's obligations or exercising Special Declarant Rights.

Section 8.7 Unit Owners' Easement. Unit Owners have an easement in the Common Elements for purposes of access to their Units and to use the Common Elements and all real estate that must become Common Elements for all other purposes.

Section 8.8 Signs and Marketing. The Declarant reserves the right to post signs and displays in the common Elements to promote sales of Units, and to conduct general sales, administrative and maintenance activities in a manner as will not unreasonably disturb the rights of Unit Owners.

Section 8.9 Declarant's Personal Property. The Declarant reserves the right to retain all personal property and equipment used in the sales, management, construction and maintenance of the premises that has not been represented as property of the Association. The Declarant reserves the right to remove from the property any and all goods and improvements used in development, marketing, construction and maintenance, whether or not they have become fixtures.

Section 8.10 Declarant Control of the Association.

- (a) Subject to Subsection 8.10(b), there shall be a

period of Declarant control of the Association, during which the Declarant, or persons designated by the Declarant, may appoint and remove the officers and members of the Executive Board. The period of Declarant control terminates no later than the earlier of:

- (i) sixty (60) days after conveyance of 75 percent of the Units that may be created to Unit Owners other than a Declarant;
- (ii) two years after all Declarants have ceased to offer Units for sale in the ordinary course of business; or
- (iii) two years after any right to add new Units was last exercised.

The Declarant may voluntarily surrender the right to appoint and remove officers and members of the Executive Board before termination of that period, but in that event the Declarant may require, for the duration of the period of Declarant control, that specified actions of the Association or Executive Board, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before they become effective.

- (b) Not later than 60 days after conveyance of 25 percent of the Units that may be created to Unit Owners other than a Declarant, at least one member and not less than 25 percent of the members of the Executive Board shall be elected by Unit Owners other than the Declarant. Not later than 60 days after conveyance of 50 percent of the Units that may be created to Unit Owners other than a Declarant, not less than 33-1/3 percent of the members of the Executive Board must be elected by Unit Owners other than the Declarant.
- (c) Not later than the termination of any period of Declarant control, the Unit Owners shall elect an Executive Board of at least three members, at least a majority of whom shall be Unit Owners. The Executive Board shall elect the officers. The Executive Board members and officers shall take office upon election.
- (d) Notwithstanding any provision of this Declaration or the Bylaws to the contrary, following notice under Section 3-109 of the Act, the Unit Owners, by a two-thirds vote of all persons present and entitled to vote at a meeting of the Unit Owners at which a quorum is present, may remove a member of the Executive Board with or without cause, other than a member appointed by the Declarant.

Section 8.11 Limitations on Special Declarant Rights.
Unless sooner terminated by an amendment to this Declaration executed by the Declarant, any Special Declarant Right may be exercised by the Declarant until the earlier of the following: so long as the Declarant (i) is obligated under any warranty or obligation, (ii) holds a Development Right to create additional Units or Common Elements, (iii) owns any Unit; or (iv) owns any Security Interest in any Units; or (v) for fifteen (15) years after recording this Declaration, whichever is earliest. Earlier termination of certain rights may occur by statute.

Section 8.12 Interference with Special Declarant Rights.

Neither the Association nor any Unit Owner may take any action or adopt any rule that will interfere with or diminish any Special Declarant Right without the prior written consent of the Declarant.

Section 8.13 Rights of Lenders to the Declarant. Additional limitations on the right of the Declarant to exercise Development Rights may be found in Section 16.5 of the Declaration.

ARTICLE IX. Allocated Interests

Section 9.1 Allocation of Interests. The table showing Unit numbers and their Allocated Interests is attached as Schedule A-8. These interests have been allocated in accordance with the formulas set out in this Article IX. These formulas are to be used in reallocating interests if Units are added to the Common Interest Community.

Section 9.2 Formulas for the Allocation of Interests. The Interests allocated to each Unit have been calculated on the following formulas:

- (a) Liability for the Common Expenses. A percentage of liability for Common Expenses allocated to each Unit is based on the number of Units listed on the most current Schedule A-2. Nothing contained in this Subsection shall prohibit certain Common Expenses from being apportioned to particular Units under Article XII or Article VI of this Declaration. The total amount of Common Expenses shall be divided by the number of Units listed in the most current Schedule A-2 to arrive at a proportional share of Common Expenses to be allocated to each Unit. Each Unit shall be allocated one share of Common Expenses so calculated. As Units are added to the Common Interest Community, the allocation of expenses shall be adjusted to reflect the total number of Units shown on the current Schedule A-2.
- (b) Votes. Each Unit in the Common Interest Community shall have one equal vote. Any specified percentage, portion or fraction of Unit Owners, unless otherwise stated in the documents, means the specified percentage, portion, or fraction of all the votes as allocated according to the number of Units listed in the most current Schedule A-2. As Units are added to the Common Interest Community, each Unit shall continue to have one equal vote.

Section 9.3 Assignment of Allocated Interests Upon Creation of Units Pursuant to Exercise of Development Rights. The effective date for assigning Allocated Interests to Units created pursuant to Section 8.1 of this Declaration shall be the date on which the amendment creating the Units is recorded on the Land Records of Hampshire County, West Virginia.

ARTICLE X. Restrictions on Use, Alienation and Occupancy

Section 10.1 Use and Occupancy Restrictions. Subject to the Special Declarant Rights reserved under Article VIII, the following Use and Occupancy Restrictions apply to all Units and, where applicable, to the Common Elements:

- (a) OCCUPANTS BOUND. All provisions of the

Declaration, Bylaws and of any rules and regulations or use restriction promulgated pursuant thereto which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all occupants, guests and invitees of any Unit. Every Owner shall cause all occupants of his or her Unit to comply with the Declaration, Bylaws and the rules and regulations adopted pursuant thereto, and shall be responsible for all violations and losses to the Common Areas caused by such occupants, notwithstanding the fact that such occupants of a Unit are fully liable and may be sanctioned for any violation of the Declaration, Bylaws and the rules and regulations adopted pursuant thereto.

(b) RESIDENTIAL USE. The use of each unit is restricted to that of a single family residence and accessory uses as permitted herein. Except for those activities conducted as a part of the marketing and development program of the Declarant, no industry, business, trade or commercial activities, (other than home professional pursuits without employees), public visits or nonresidential storage, mail or other use of a Unit, shall be conducted, maintained or permitted in any part of a Unit, nor shall any Unit be used or rented for transient hotel or motel purposes. A single family residence is defined as a single housekeeping unit, operating on a non-profit, non-commercial basis between its occupants, cooking and eating with a common kitchen and dining area, with no more overnight occupants than two per bedroom as designated on the plans on file with the Review Committee.

(c) SUBDIVISION OF UNITS. No Unit shall be divided, subdivided or partitioned in any way by sale, gift, devise, or other method of conveyance, except as hereinafter provided for minor boundary line adjustments. This covenant may not be waived or amended.

A Unit may be combined or merged with any other Unit provided that the Unit Owner has obtained the prior written approval and consent of the Falling Run Design Review and Covenants Committee (Review Committee) and has complied with the Hampshire County, West Virginia, land use ordinances in effect at that time.

(d) PROPERTY MAINTENANCE. (i) Each owner shall keep the property and improvements thereon in a safe, clean and neat condition, and shall comply with all applicable safety, health, police and fire department requirements. No trash, litter, junk, boxes, containers, bottles, cans, implements, machinery, lumber, or other building material shall be buried, dumped or permitted to remain exposed on any Unit except as necessary during the construction period. Rubbish, leaves, and trash shall not be disposed of on the property by burning in open fires or incinerators. All trash and garbage cans or receptacles shall be animal-proof and shall be stored out of view from neighboring Units, roads, or streets, except at times of scheduled garbage or trash pickup.

(ii) Dead timber may be cut for firewood for the unit owner's use; however, no live timber shall be cut or harvested for commercial purposes. Reasonable cutting of wood or timber for personal use or for land clearing is permitted. However, no cutting of wood for commercial purposes is allowed.

(e) NUISANCE. No noxious, illegal, hazardous, dangerous or offensive use, construction or activity shall be conducted on any Unit, nor shall anything be done thereon which may be or become an annoyance or nuisance to the owners, tenants or occupants of other Units within or adjacent to the property by reason of unsightliness, or the excessive emission of fumes, odors, glare, excessive heat, vibration, gases, vapors, chemicals, radiation, dust, liquid waste, smoke or

noise. No Unit shall be used in whole or in part for the storage of rubbish of any character whatsoever, nor for the planting or spreading of noxious weeds, nor for the storage of any property or thing that will cause such Unit to appear in an unclean or untidy condition or that will be obnoxious to the eye.

(f) FIREARMS. No hunting, target shooting or commercial trapping shall be allowed within the Property. The discharge of any weapon within the property is prohibited. The term "weapon" shall include, but not be limited to, pistols, rifles, firearms of any kind, bows and arrows, slingshots, "B-B" guns, pellet guns and any other weapon of any type, regardless of size.

(g) ANIMALS AND PETS. Only common domestic house pets (the kind and number of which may be regulated, permitted or prohibited from time to time by the Association Rules) shall be allowed on any Unit or the improvements thereon, provided they are not kept for any commercial purpose or bred nor subjected to any form of cruel and inhumane treatment. Pets shall not be allowed to roam at large. No farm animals, livestock or poultry of any kind or nature shall be kept, maintained or in any way allowed on any Unit; provided, however, that horses or ponies, not to exceed one (1) head per acre, shall be permitted per Unit. Grazing animals must be confined to a fenced enclosure. The Unit Owners Association shall have absolute authority to prohibit an animal from being kept on a Unit or in an improvement located thereon.

(h) PARKING. Except for temporary overflow parking from the garage and driveway of any unit, no parking shall be permitted on any street or road within the subdivision. No unit owner shall keep or maintain more than four (4) registered vehicles on the Unit, other than inside any improvement thereon, on a regular or continuing basis. Motor homes, recreational vehicles less than 20 feet in length, or boats on trailers may be parked or maintained on a Unit provided that they are kept in a garage or are otherwise shielded from view from other Units and streets in the subdivision. Otherwise, no recreational vehicle or motor home shall be parked or maintained on a unit or elsewhere in the subdivision for more than 48 hours without the prior written consent of the Association.

(i) UNREGISTERED VEHICLES. No unregistered vehicles of any kind, including, but not limited to, automobiles, trucks, pickups, buses, motorcycles, vans, motor homes, trailers, boats or recreational vehicles shall be parked, stored, or in any way maintained on any Unit, except in a garage or other covered enclosure on a Unit and appropriately screened from view from streets or rights of way and adjoining Units within the subdivision.

(j) TRAILBIKES, ETC. No motorized trailbikes, all terrain vehicles or other unlicensed vehicles shall be permitted to operate within the subdivision.

(k) COMMERCIAL VEHICLES, EQUIPMENT, ETC. Except during periods when construction is taking place on the property, no commercial vehicles, construction or like equipment or mobile or stationary trailers of any kind shall be permitted on any Unit.

(l) TRAILERS FOR CAMPING. No trailer (i.e., that which can be towed by an automobile), camper top or camper containing living or sleeping quarters may be placed on a unit, except to be used during the period of construction. Any such trailers, camper tops or campers must comply with applicable building setback requirements, and must not be visible from any

subdivision road. Any such trailers, camper tops or campers must have a fully self-contained sewage disposal system or must be connected to a sewage disposal system on the unit which complies with all Federal, state and local laws, ordinances and regulations.

(m) MOBILE HOMES. No mobile homes, including double-wide mobile homes) may be kept or installed on any unit, even if permanently mounted on a foundation. No geodesic domes may be installed on any lot.

(n) IMPROVEMENTS. No construction of any improvement on or to the property, including the development and installation of landscape plans, shall be done without the prior written approval and consent of the Review Committee, as further provided for and set forth herein. All improvements shall be designed, located and constructed in compliance with the Design Guidelines and according to the procedures set forth therein. Each improvement shall be maintained in accordance with the terms and conditions upon which it was approved. The construction of a residence must be completed within nine (9) months of the date construction is commenced.

(o) BUILDING SETBACK REQUIREMENTS. The minimum building setback line for all improvements constructed on any Unit shall be 100 feet from the front property line, 100 feet from the rear property line and 100 feet from any side property line of each Unit; provided, however, that side property setback lines shall not apply to a property line between lots in single ownership.

(p) CONSTRUCTION. During construction, property shall be kept free and clear of unnecessary and unsightly debris. All trash, rubbish and debris shall be cleaned from the property on a reasonably periodic basis during construction and all trash, rubbish and debris shall be promptly removed from the property after construction is completed.

Existing stormwater and runoff drainage patterns for each Unit shall be protected at all times both during and after construction. During construction, reasonable measures shall be taken to prevent erosion by wind and water, including the following:

1. Prior to any earth moving operations, appropriate soil and sediment control measures shall be installed for that phase of operation.
2. Following initial soil disturbance or redistribution, permanent or temporary stabilization shall be completed within:
 - (a) Seven calendar days as to the surface of all perimeter controls, dikes, swales, ditches, perimeter slopes, and all slopes greater than 3 horizontal to 1 vertical (3:1) and
 - (b) Fourteen days as to all other disturbed or graded areas on the project site.
3. All disturbed areas shall be stabilized by grass, gravel, pavement, crown vetch, etc. within 7 days after completion of earthwork operations.
4. Regular maintenance shall be provided to all sediment and erosion control measures and they shall be inspected after every rain.
5. These measures shall be revised, modified, or deleted as required by the Soil Conservation

District having jurisdiction over the location of construction.

(q) FLOOD PLAIN. No improvement shall be constructed by a Unit Owner within the boundaries of the 100 year flood plain shown on any plat of Falling Run Development.

(r) OUTDOOR LIGHTING. Outdoor lighting shall be of a type and installation such that no direct glare is visible from adjoining properties, and shall be in compliance with specific requirements of the Design Guidelines.

(s) STORAGE TANKS. All storage tanks for use in connection with any residence, including tanks for the storage of fuels, must be buried or walled sufficiently to conceal them from the view from neighboring Units, roads, or streets. All storage tanks shall comply with UL or other applicable standards of construction and manufacture, and shall be installed by those qualified to install the same.

(t) SIGNS. No signs of any character shall be erected, placed, permitted or maintained on any Unit or improvement except with the prior written approval and consent of the Review Committee. Nothing herein shall be construed to prevent the Declarant, its successors and/or assigns, from erecting, placing, or maintaining sign structures and offices as may be deemed necessary by it for the operation of the subdivision, including the sale of any Unit therein.

(u) ANTENNAS. Standard television antennas may be installed, but no other television, radio or microwave antennas, including but not limited to dish-type antennas for receiving signals transmitted by satellite, shall be located on any portion of the property where they would be visible from a road within the property.

(v) WATER AND SEWER. Each unit shall be served by an individual well and septic system which shall be installed in compliance with all Federal, state and local laws, ordinances and regulations.

(w) PROTECTION OF STREAMS AND RIVERS. To avoid damage to streams, springs and the riparium (ecology of stream banks) no improvements shall be constructed within one hundred (100) feet of the Cacapon River banks or within eighty (80) feet from the banks of any spring or stream. The construction of any road crossing a stream must be approved in advance by the Review Committee. No trash, sewage, garbage or any other debris shall be discharged into any stream, spring or the Cacapon River at any point within the community. The streams and springs to which this section applies shall be those designated on the plat of Falling Run.

No owner of any unit shall interfere with the natural drainage of surface water from such unit to the detriment of any other unit.

(x) QUARRIES, ETC. No quarrying, mining, drilling or dredging of any type or nature shall be done on any Unit.

(y) HAZARDOUS MATERIALS. Each Unit Owner shall comply with all federal, state and local statutes, regulations, ordinances or other rules intended to protect the public health and welfare as related to land, water, groundwater, air or other aspects of the natural environment (the "Environmental Laws"). Environmental Laws shall include, but are not limited to, those laws regulating the use, generation, storage or disposal of hazardous substances, wastes and materials (collectively, the "Hazardous Materials"). No Unit Owner shall knowingly use, generate, manufacture, store, release, dispose

of or knowingly permit to exist in, on, under or about any Unit, Common Element, Limited Common Element, or any portion of the Property, or transport to or from any portion of the Property any Hazardous Materials except in compliance with the Environmental Laws.

(2) EASEMENTS. No part of any Unit may be sold or used as a road or right-of-way to any land outside the Property without advance, written permission of Declarant and the Unit Owners' Association.

Electrical Utilities shall be provided by the Declarant to the boundary line of each unit. Within each unit, all utilities shall be installed underground at the expense of the owner(s) of that unit.

Section 10.2 Restrictions on Alienation. A Unit may not be conveyed pursuant to a time-sharing plan or similar program whereby the right to exclusive use of the Unit rotates among members of the program on a fixed or floating time schedule over a period of years.

A Unit may not be leased or rented for a term of less than 30 days nor for a term of more than three (3) years. No portion of a unit (less than the entire unit) may be leased for any period. All leases and rental agreements shall be in writing and subject to the requirements of the Documents and the Association.

All leases of a Unit shall be deemed to include a provision that the tenant will recognize and attorn to the Association as landlord, solely for the purpose of having the power to enforce a violation of the provisions of the Documents against the tenant, provided the Association gives the landlord notice of its intent to so enforce, and a reasonable opportunity to cure the violation directly, prior to the commencement of an enforcement action.

Section 10.3 Declarant's Rights. Notwithstanding the foregoing, as long as the Declarant is a Unit Owner, the Declarant and its duly authorized agents, representatives and employees may maintain any Unit owned by the Declarant or any portion of the Common Elements as a model unit or sales office. The Declarant may also maintain management offices and signs and displays advertising the Common Interest Community.

ARTICLE XI.

Easements, Rights-of-Way and Licenses

Section 11.1 General Provisions. The easements, rights-of-way or licenses to which the Common Interest Community is presently subject are those recited in Schedule A-1, Article X, Sections 8.6, 8.7, 11.2, 11.3, 11.4, 11.5, and 11.6 of this Declaration and those shown on the Final Plat of Falling Run Development, dated June, 1991, made by Green Engineering Office and recorded in the Office of the Clerk of the County Commission of Hampshire County, West Virginia, in Plat Book 6, at page 146. Map

Section 11.2 Easement for Access. Declarant reserves unto itself, its successors and/or assigns and invitees a perpetual and non-exclusive easement or right-of-way for ingress, egress and access of all kinds over and across all of the Common Elements and Limited Common Elements of the Common Interest Community to and from all points within the Common interest Community for all purposes. Declarant further reserves for itself, its successors and/or assigns a perpetual and non-exclusive easement for purposes of ingress and egress of all kinds between W.Va. Sec. Rt. 23/1 and the remaining property of the Declarant over, along, under and through the

Cline Road as shown on the aforesaid plat.

Section 11.3 Utility Easements. Declarant reserves unto itself, its successors and/or assigns, a perpetual and non-exclusive easement or right-of-way over, through and under the Common Elements and Limited Common Elements within the Common Interest Community for the purpose of constructing, installing, operating and maintaining utility lines, pipes, wires, ducts, conduits, and other facilities for the purpose of furnishing utility and related services within the Common Interest Community. The Declarant further reserves unto itself, its successors and/or assigns a perpetual and nonexclusive easement twenty (20) feet in uniform width along the inside of each front, rear and side Unit line and forty (40) feet along the southwestern boundary of the right of way of W.Va. Sec. Rt. 23/1 for the purpose of constructing, installing, operating and maintaining utility lines, pipes, wires, ducts, conduits, and other facilities for the purpose of furnishing utility and related services within the Common Interest Community. The Declarant further reserves unto itself, its successors and/or assigns, all those utility easements shown on the aforesaid plat for the purpose of constructing, installing, operating, and maintaining utility lines, pipes, wires, ducts, conduits, and other facilities for the purpose of furnishing utility and related services within the Common Interest Community. If the Declarant grants any such reserved easement or right-of-way to a utility company or other third party, Schedule A-1 will be amended to include any such easement or right-of-way, specifying the recording data for each. The term "utilities" as used in this paragraph includes, but is not limited to, gas, electric, telephone, water, sewer and cable television.

Section 11.4 Storm Drainage Easements. The Declarant reserves unto itself, its successors and/or assigns, those storm drainage easements shown on the aforesaid Final Plat of Falling Run Development for the purpose of maintaining proper storm water drainage within the Common Interest Community. No Unit Owner shall interfere with storm water drainage patterns within any such easement.

Section 11.5 Emergency Easement. A general easement is hereby granted to all police, sheriff, fire protection, ambulance and all other similar emergence agencies or persons to enter upon all streets, common elements and limited common elements in the proper performance of their duties.

ARTICLE XII.

Allocation and Reallocation of Limited Common Elements

Common Elements are allocated equally among all Units. A Common Element not previously allocated as a Limited Common Element may be so allocated only pursuant to the provisions of this Article XII. All allocations will be made by amendments to the Declaration specifying to which Unit or Units the Limited Common Element is located.

All amendments shall specify to which Unit or Units the Limited Common Element is allocated.

Such amendment shall require the approval of all holders of Security Interests in the affected Units, which approval shall be endorsed thereon. The person executing the amendment shall provide an executed copy thereof to the Association which, if the amendment complies with the provisions of this Declaration and the Act, shall record it. The amendment shall contain words of conveyance and must be recorded and indexed in the names of the parties and the Common Interest Community.

The parties executing the amendment shall be responsible for the preparation of the amendment and shall reimburse the

Association for its reasonable attorneys' fees in connection with the review of the amendment and for the recording costs.

ARTICLE XIII.

Relocation of Boundaries Between Adjoining Units

Section 13.1 Application and Amendment. Subject to other provisions of law, including land use and health regulations, the boundaries between adjoining Units may be relocated by an amendment to the Declaration upon application to the Association by the owners of the Units affected by the relocation. If the owners of the adjoining Units have specified a reallocation between their Units of their Allocated Interests, the application shall state the proposed reallocations. Unless the Executive Board determines, within 30 days after receipt of the application, that the reallocations are unreasonable, the Association shall consent to the reallocation and prepare an amendment that identifies the Units involved, states the reallocations and indicates the Association's consent. The amendment must be executed by those Unit Owners affected and contain words of conveyance between them, and the approval of all holders of Security Interests in the affected Units shall be endorsed thereon. On recordation, the amendment shall be indexed in the name of the grantor and the grantee, and in the grantee's index in the name of the Association.

Section 13.2 Recording Amendments. The Association shall prepare and record Plats or Plans necessary to show the altered boundaries between adjoining Units, and the Units' dimensions and identifying numbers.

The applicants shall pay for the costs of preparation of the amendment and its recording, and the reasonable consultant fees of the Association if the Executive Board deems it necessary to employ a consultant.

ARTICLE XIV.

Amendments to Declaration

Section 14.1 General. Except in cases of amendments that may be executed by the Declarant in the exercise of its Development Rights or by the Association under Article XII of this Declaration and § 1-107 of the Act, or by certain Unit Owners under Article XII and Section 13.1 of this Declaration and § 2-118 of the Act, and except as limited by Section 14.4 and Article XVI of this Declaration, this Declaration, including the Plat and Plans, may be amended only by vote or agreement of Unit Owners of Units to which at least sixty-seven percent (67%) of the votes in the Association are allocated. The procedure for amendment must follow the procedures of § 2-117 of the Act.

Section 14.2 Limitation of Challenges. An action to challenge the validity of an amendment adopted by the Association pursuant to this Article may not be brought more than one year after the amendment is recorded.

Section 14.3 Recordation of Amendments. Each amendment to the Declaration must be recorded in each recording district in which a portion of the Common Interest Community is located and the amendment is effective only upon recording. An amendment, except an amendment pursuant to Article XIII of this Declaration, must be indexed in the grantee's index in the name of the Common Interest Community and the Association and in the grantor's index in the name of the parties executing the amendment.

Section 14.4 When Unanimous Consent Required. Except to the extent expressly permitted or required by other provisions

of the Act, an amendment may not create or increase Special Declarant Rights, increase the number of Units, change the boundaries of a Unit, the Allocated Interests of a Unit, or the uses to which a Unit is restricted, in the absence of unanimous consent of the Unit Owners.

Section 14.5 Execution of Amendments. An amendment to the Declaration required by the Act to be recorded by the Association, which has been adopted in accordance with this Declaration and the Act, must be prepared, executed, recorded and certified on behalf of the Association by an officer of the Association designated for that purpose or, in the absence of designation, by the president of the Association.

Section 14.6 Special Declarant Rights. Provisions in this Declaration creating Special Declarant Rights may not be amended without the consent of the Declarant.

Section 14.7 Consent of Holders of Security Interests. Amendments are subject to the consent requirements of Article XVI.

Section 14.8 Amendments to Create Units. To exercise any Development Right reserved under Section 8.1 of this Declaration, the Declarant shall prepare, execute and record an amendment to the Declaration. The Declarant shall also record either new Plats and Plans necessary to conform to the requirements of Subsections (a), (b) and (d) of Section 2-109 of the Act or new certifications of Schedule A-1 previously recorded if the Schedule otherwise conforms to the requirements of those Subsections.

The amendment to the Declaration shall assign an identifying number to each new Unit created and reallocate the Allocated Interests among all Units. The amendment shall describe any Common Elements and any Limited Common Elements created thereby and designate the Unit to which each Limited Common Element is allocated to the extent required by Subsection 2-108(a) of the Act.

ARTICLE XV. Termination

Termination of the Common Interest Community may be accomplished only in accordance with § 2-118 of the Act.

ARTICLE XVI. Mortgagee Protection

Section 16.1 Introduction. This Article establishes certain standards and covenants which are for the benefit of the holders, insurers and guarantors of certain Security Interests. This Article is supplemental to, and not in substitution for, any other provisions of the Documents, but in the case of conflict, this Article shall control.

Section 16.2 Percentage of Eligible Mortgagees. Wherever in this Declaration the approval or consent of a specified percentage of Eligible Mortgagees is required, it shall mean the approval or consent of Eligible Mortgagees holding Security Interests in Units which in the aggregate have allocated to them such specified percentage of votes in the Association when compared to the total allocated to all Units then subject to Security Interests held by Eligible Mortgagees.

Section 16.3 Notice of Actions. The Association shall give prompt written notice to each Eligible Mortgagee and Eligible Insurer of:

- (a) Any condemnation loss or any casualty loss which

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affects a material portion of the Common Interest Community or any Unit in which there is a first Security Interest held, insured, or guaranteed by such Eligible Mortgagee or Eligible Insurer, as applicable;

- (b) Any delinquency in the payment of Common Expense assessments owed by a Unit Owner whose Unit is subject to a first Security Interest held, insured, or guaranteed, by such Eligible Mortgagee or Eligible Insurer, as applicable, which remains uncured for a period of sixty (60) days;
- (c) Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association;
- (d) Any proposed action which would require the consent of a specified percentage of Eligible Mortgagees as specified in Section 16.4 of the Declaration; and
- (e) Any judgment rendered against the Association.

Section 16.4 Consent Required.

- (a) Document Changes. Notwithstanding any lower requirement permitted by this Declaration or the Act, no amendment of any material provision of the Documents by the Association or Unit Owners described in this Subsection 16.4 (a) may be effective without the vote of at least sixty-seven percent (67%) of the Unit Owners (or any greater Unit Owner vote required in this Declaration or the Act) and until approved in writing by at least fifty-one percent (51%) of the Eligible Mortgagees (or any greater Eligible Mortgagee approval required by this Declaration). The foregoing approval requirements do not apply to amendments effected by the exercise of any Development Right. Material includes, but is not limited to, any provision affecting:
 - (i) Assessments, assessment liens or subordination of assessment liens;
 - (ii) Voting rights;
 - (iii) Reserves for maintenance, repair and replacement of Common Elements;
 - (iv) Responsibility for maintenance and repairs;
 - (v) Reallocation of interests in the Common Elements or Limited Common Elements except that when Limited Common Elements are reallocated by agreement between Unit Owners, only those Unit Owners and only the Eligible Mortgagees holding Security Interests in such Units must approve such action;
 - (vi) Rights to use Common Elements and Limited Common Elements;
 - (vii) Definitions of boundaries of Units except that when boundaries of only adjoining

- 370 Units are involved, then only those Unit Owners and the Eligible Mortgagees holding Security Interests in such Unit or Units must approve such action;
- (viii) Convertibility of Units into Common Elements or Common Elements into Units;
 - (ix) Expansion or contraction of the Common Interest Community, or the addition, annexation or withdrawal of property to or from the Common Interest Community;
 - (x) Insurance or fidelity bonds;
 - (xi) Leasing of Units;
 - (xii) Imposition of restrictions on a Unit Owner's right to sell or transfer his or her unit;
 - (xiii) Restoration or repair of the project after a hazard damage or partial condemnation in a manner other than that specified in the Documents;
 - (xiv) Termination of the Common Interest Community after occurrence of substantial destruction or condemnation; and
 - (xv) The benefits of mortgage holders, insurers or guarantors.
- (b) Actions. Notwithstanding any lower requirement permitted by this Declaration or the Act, the Association may not take any of the following actions other than rights reserved to the Declarant as Special Declarant Rights, without the approval of at least 51% of the Eligible Mortgagees:
- (i) Convey or encumber the Common Elements or any portion thereof, as to which an 80% Eligible Mortgagee approval is required. (The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Elements by the Common Interest Community will not be deemed a transfer within the meaning of this clause);
 - (ii) The establishment of self-management when professional management had been required previously by any Eligible Mortgagee;
 - (iii) The restoration or repair of the Property (after a hazard damage or partial condemnation) in a manner other than that specified in the Documents;
 - (iv) The termination of the Common Interest Community for reasons other than substantial destruction or condemnation, as to which a sixty-seven percent (67%) Eligible Mortgagee approval is required;
 - (v) The alteration of any partition or creation of any aperture between adjoining Units (when Unit boundaries are not otherwise being affected), in which case only the owners of Units affected and Eligible Mortgagees of

those Units need approve the action;

- (vi) The merger of this Common Interest Community with any other common interest community;
 - (vii) The granting of any easements, leases, licenses or concessions through or over the Common Elements (excluding, however, any utility easements serving or to serve the Common Interest Community and excluding any leases, licenses or concessions for no more than one year);
 - (viii) The assignment of the future income of the Association, including its right to receive Common Expense assessments; and
 - (ix) Any action taken not to repair or replace the Property.
- (c) The Association may not change the period for collection of regularly budgeted Common Expense assessments less frequently than annually without the consent of all Eligible Mortgagees.
 - (d) The failure of an Eligible Mortgagee to respond within thirty (30) days to any written request of the Association for approval of an addition or amendment to the Documents shall constitute an implied approval of the addition or amendment.

Section 16.5 Development Rights. No Development Rights may be exercised or voluntarily abandoned or terminated by the Declarant unless all persons holding Security Interests in the Development Rights consent to the exercise, abandonment, or termination.

Section 16.6 Inspection of Books. The Association shall permit any Eligible Mortgagee or Eligible Insurer to inspect the books and records of the Association during normal business hours.

Section 16.7 Financial Statements. The Association shall provide any Eligible Mortgagee or Eligible Insurer which submits a written request with a copy of an annual financial statement within ninety (90) days following the end of each fiscal year of the Association. Such financial statement shall be audited by an independent certified public accountant if:

- (a) the Common Interest Community contains fifty or more Units, in which case the cost of the audit shall be a Common Expense; or
- (b) any Eligible Mortgagee or Eligible Insurer requests it, in which case the Eligible Mortgagee or Eligible Insurer shall bear the cost of the audit.

Section 16.8 Enforcement. The provisions of this Article are for the benefit of Eligible Mortgagees and Eligible Insurers and their successors, and may be enforced by any of them by any available means, at law, or in equity.

Section 16.9 Attendance at Meetings. Any representative of an Eligible Mortgagee or Eligible Insurer may attend and address any meeting which a Unit Owner may attend.

Section 16.10 Appointment of Trustee. In the event of damage or destruction under Article XXI or condemnation of all or a portion of the Common Interest Community, any Eligible Mortgagee may require that such proceeds be payable to a

Trustee established pursuant to Section XXIII of this Declaration. Such Trustee may be required to be a corporate trustee licensed by the State of West Virginia. Proceeds will thereafter be distributed pursuant to Article XXI or pursuant to a condemnation award. Unless otherwise required, the members of the Executive Board acting by majority vote through the president may act as Trustee.

ARTICLE XVII.

Assessment and Collection of Common Expenses

Section 17.1 Apportionment of Common Expenses. Except as provided in Section 17.2, all Common Expenses shall be assessed against all Units in accordance with their percentage interest in the Common Expenses as shown on Schedule A-8 to this Declaration.

Section 17.2 Common Expenses Attributable to Fewer than all Units.

- (a) Any Common Expense associated with the maintenance, repair or replacement of a Limited Common Element shall be assessed against the Unit or Units to which the Limited Common Element is assigned. If any such Limited Common Element is assigned to more than one Unit, the Common Expenses attributable to the Limited Common Element shall be assessed equally among the Units to which it is assigned.
- (b) Any Common Expense for services provided by the Association to an individual Unit at the request of the Unit Owner shall be assessed against the Unit which benefits from such service.
- (c) Any insurance premium increase attributable to a particular Unit by virtue of activities in or construction of the Unit shall be assessed against that Unit.
- (d) An assessment to pay a judgment against the Association may be made only against the Units in the Common Interest Community at the time the judgment was entered, in proportion to their Common Expense liabilities.
- (e) If a Common Expense is caused by the misconduct of a Unit Owner, the Association may assess that expense exclusively against that Unit Owner's Unit.
- (f) Fees, charges, late charges, fines, collection costs, and interest charged against a Unit Owner pursuant to the Documents and the Act are enforceable as Common Expense assessments.

Section 17.4 Lien.

- (a) The Association has a lien on a Unit for an assessment levied against the Unit or fines imposed against its Unit Owner from the time the assessment or fine becomes due. Fees, charges, late charges, fines and interest charged pursuant to the Act and the Documents are enforceable as assessments under this Section. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment thereof becomes due.
- (b) A lien under this Section is prior to all other liens and encumbrances on a Unit except: (1) a

lien and encumbrances recorded before the recordation of the Declaration; (2) a Security Interest on the Unit recorded before the date on which the assessment sought to be enforced became delinquent; and (3) liens for real estate taxes and other governmental assessments or charges against the Unit. A lien under this Section is also prior to all Security Interests described in Subdivision (2) of this Subsection to the extent of the Common Expense assessments based on the periodic budget adopted by the Association pursuant to Section 17.5 of this Article which would have become due in the absence of acceleration during the six months immediately preceding institution of an action to enforce either the Association's lien or a Security Interest described in Subdivision (2) of this Subsection. This Subsection does not affect the priority of mechanics' or materialmen's liens, or the priority of a lien for other assessments made by the Association. A lien under this Section is not subject to the provision of West Virginia Code Section 38-9-3.

- (c) Recording of the Declaration constitutes record notice and perfection of the lien. Further recording of a claim of lien for assessment under this Section is not required.
- (d) A lien for an unpaid assessment is extinguished unless proceedings to enforce the lien are instituted within three years after the full amount of the assessment becomes due; provided, that if an Owner of a Unit subject to a lien under this Section files a petition for relief under the United States Bankruptcy Code, the period of time for instituting proceedings to enforce the Association's lien shall be tolled until thirty days after the automatic stay of proceedings under Section 362 of the Bankruptcy Code is lifted.
- (e) This Section does not prohibit an action to recover sums for which Subsection (a) of this Section creates a lien or prohibit the Association from taking a deed in lieu of foreclosure.
- (f) A judgment or decree in any action brought under this Section shall include costs and reasonable attorney's fees for the prevailing party.
- (g) A judgment or decree in an action brought under this Section is enforceable by execution under WV Code Sec. 38-4-1, et. seq.
- (h) The Association's lien must be foreclosed as a mortgage or deed of trust on real estate is foreclosed, or as a lien is foreclosed under West Virginia Code Sec. 38-5-1, et seq.
- (i) In any action by the Association to collect assessments or to foreclose a lien for unpaid assessments, the court may appoint a receiver of the Unit Owner to collect all sums alleged to be due from that Unit Owner prior to or during the pendency of the action. The court may order the receiver to pay any sums held by the receiver to the Association during the pendency of the

action to the extent of the Association's Common Expense assessments based on a periodic budget adopted by the Association pursuant to Section 17.5 of this Declaration.

- (j) If a holder of a first or second Security Interest in a Unit forecloses that Security Interest, the purchaser at the foreclosure sale is not liable for any unpaid assessments against that Unit which became due before the sale, other than the assessments which are prior to that Security Interest under Subsection 17.4 (b) of this Declaration. Any unpaid assessments not satisfied from the proceeds of sale become Common Expenses collectible from all the Unit Owners, including the purchaser.
- (k) In the case of foreclosure under West Virginia Code Section 38-5-1, *et seq.*, the Association shall give reasonable notice of its action to each lien holder of a Unit whose interest would be affected.
- (l) Any payments received by the Association in the discharge of a Unit Owner's obligation may be applied to the oldest balance due.

Section 17.5 Budget Adoption and Ratification. Within 30 days after adoption of a proposed budget for the Common Interest Community, the Executive Board shall provide a summary of the budget to each Unit Owner, and shall set a date for a meeting of the Unit Owners to consider ratification of the budget not less than 14 nor more than 30 days after mailing of the summary. Unless at that meeting a majority of all Unit Owners reject the budget, the budget is ratified, whether or not a quorum is present. If the proposed budget is rejected, the periodic budget last ratified by the Unit Owners continues until the Unit Owners ratify a budget proposed by the Executive Board.

Section 17.6 Ratification of Non-budgeted Common Expense Assessments. If the Executive Board votes to levy a Common Expense assessment not included in the current budget, other than one enumerated in Section 17.2 of this Declaration, in an amount greater than fifteen (15%) percent of the current annual operating budget, the Executive Board shall submit such Common Expense to the Unit Owners for ratification in the same manner as a budget under Section 17.5.

Section 17.7 Certificate of Payment of Common Expense Assessments. The Association upon written request shall furnish to a Unit Owner a statement in recordable form setting out the amount of unpaid assessments against the Unit. The statement must be furnished within [10] days after receipt of the request and is binding on the Association, the Executive Board and each Unit Owner.

Section 17.8 Acceleration of Common Expense Assessments. In the event of default for a period of thirty (30) days by any Unit Owner in the payment of any Common Expense assessment levied against his or her Unit, the Executive Board shall have the right, after Notice and Hearing, to declare all unpaid assessments for the pertinent fiscal year to be immediately due and payable.

Section 17.9 Commencement of Common Expense Assessments. Common Expense assessments shall begin on the first day of the month in which conveyance of the first Unit to a Unit Owner other than the Declarant occurs.

Section 17.10 No Waiver of Liability for Common Expenses.

No Unit Owner may exempt himself or herself from liability for payment of the Common Expenses by waiver of the use or enjoyment of the Common Elements or by abandonment of the Unit against which the assessments are made.

Section 17.11 Personal Liability of Unit Owners. The Unit Owner of a Unit at the time a Common Expense assessment or portion thereof is due and payable is personally liable for the assessment. Personal liability for the assessment shall not pass to a successor in title to the Unit unless he or she agrees to assume the obligation.

ARTICLE XVIII Right to Assign Future Income

The Association may assign its future income, including its right to receive Common Expense assessments, only by the affirmative vote of Unit Owners of Units to which at least fifty-one (51%) percent of the votes in the Association are allocated, at a meeting called for that purpose, and the Eligible Mortgagee consent described in Article XVI.

ARTICLE XIX Persons and Units Subject to Documents

Section 19.1 Compliance with Documents. All Unit Owners, tenants, mortgagees and occupants of Units shall comply with the Documents. The acceptance of a deed or the exercise of any incident of ownership or the entering into of a lease or the entering into occupancy of a Unit constitutes agreement that the provisions of the Documents are accepted and ratified by such Unit Owner, tenant, mortgagee or occupant, and all such provisions recorded on the Land Records of Hampshire County, West Virginia, are covenants running with the land and shall bind any Persons having at any time any interest or estate in such Unit.

Section 19.2 Adoption of the Rules. The Executive Board may adopt Rules regarding the use and occupancy of Units affecting the Common Elements and Limited Common Elements and the activities of occupants, subject to Notice and Comment.

ARTICLE XX Insurance

Section 20.1 Coverage. To the extent reasonably available, the Executive Board shall obtain and maintain insurance coverage as set forth in this Article. If such insurance is not reasonably available, and the Executive Board determines that any insurance described herein will not be maintained, the Executive Board shall cause notice of that fact to be hand-delivered or sent prepaid by United States mail to all Unit Owners and Eligible Mortgagees at their respective last known addresses.

Section 20.2 Property Insurance.

(a) Property insurance covering:

- (i) All Common Elements and property reserved to become Common Elements, but excluding land, excavations, foundations, and other items normally excluded from property policies; and
- (ii) All personal property owned by the Association.

- (b) Amounts. The Common Elements and reserved Common Elements equal to one hundred percent (100%) of their actual cash value at the time the insurance is purchased and at each renewal date. Personal

property owned by the Association for an amount equal to its actual cash value.

The Executive Board is authorized to obtain appraisals periodically for the purpose of establishing said replacement cost of the project facilities and the actual cash value of the personal property, and the cost of such appraisals shall be a Common Expense.

The maximum deductible for insurance policies shall be \$10,000.00 or one percent (1%) of the policy face amount. The policy deductible shall be a Common Expense of the Association.

- (c) Risks Insured Against. The insurance shall afford protection against "all risks" of direct physical loss commonly insured against.
- (d) Other provisions. Insurance policies required by this Section shall provide that:
 - (i) Each Unit Owner is an insured person under the policy with respect to liability arising out of his interest in the Common Elements or membership in the Association.
 - (ii) The insurer waives the right to subrogation under the policy against a Unit Owner or member of the household of a Unit Owner;
 - (iii) An act or omission by a Unit Owner, unless acting within the scope of the Unit Owner's authority on behalf of the Association, will void the policy or be a condition to recovery under the policy.
 - (iv) If, at the time of a loss under the policy, there is other insurance in the name of a Unit Owner covering the same risk covered by the policy, the policy of the Association provides primary insurance.
 - (v) Loss must be adjusted with the Association.
 - (vi) Insurance proceeds shall be paid to any insurance trustee designated in the policy for that purpose, and in the absence of such designation to the Association, in either case to be held in trust for each Unit Owner and such Unit Owner's mortgagee.
 - (vii) The insurer may not cancel or refuse to renew the policy until thirty (30) days after notice of the proposed cancellation or non-renewal has been mailed to the Association, each Unit Owner and each holder of a Security Interest to whom a certificate or memorandum of insurance has been issued, at their respective last known addresses.
 - (viii) The name of the insured shall be substantially as follows:

"Falling Run Unit Owners Association for the use and benefit of the individual Owners."

Section 20.3 Liability Insurance. Liability insurance, including medical payments insurance, in an amount determined

by the Executive Board but in no event less than \$1,000,000, covering all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Common Elements, and the activities of the Association.

- (a) Other Provisions. Insurance policies carried pursuant to this Section shall provide that:
- (i) Each Unit Owner is an insured person under the policy with respect to liability arising out of the Unit Owner's interest in the Common Elements or membership in the Association.
 - (ii) The insurer waives the right to subrogation under the policy against a Unit Owner or member of the household of a Unit Owner;
 - (iii) An act or omission by a Unit Owner, unless acting within the scope of the Unit Owner's authority on behalf of the Association, will not void the policy or be a condition to recovery under the policy.
 - (iv) If, at the time of a loss under the policy, there is other insurance in the name of a Unit Owner covering the same risk covered by the policy, the policy of the Association provides primary insurance.
 - (v) The insurer issuing the policy may not cancel or refuse to renew it until thirty (30) days after notice of the proposed cancellation or non-renewal has been mailed to the Association, each Unit Owner and each holder of a Security Interest to whom a certificate or memorandum of insurance has been issued at their last known addresses.

Section 20.4 Unit Owner Policies. An insurance policy issued to the Association does not prevent a Unit Owner from obtaining insurance for his or her own benefit.

Section 20.5 Workers' Compensation Insurance. The Executive Board shall obtain and maintain Worker's Compensation Insurance to meet the requirements of the laws of the State of West Virginia.

Section 20.6 Directors' and Officers' Liability Insurance. The Executive Board shall obtain and maintain Directors' and Officers' liability insurance, if available, covering all of the directors and officers of the Association in such limits as the Executive Board may, from time to time, determine.

Section 20.7 Other Insurance. The Association may carry other insurance which the Executive Board considers appropriate to protect the Association or the Unit Owners.

Section 20.8 Premiums. Insurance premiums shall be a Common Expense.

ARTICLE XXI. Damage To Or Destruction of Property

Section 21.1 Duty to Restore. A portion of the Common Interest Community for which insurance is required under Section 3-113 of the Act or for which insurance carried by the Association is in effect, whichever is more extensive, that is damaged or destroyed must be repaired or replaced promptly by

the Association unless:

- (a) The Common Interest Community is terminated;
- (b) Repair or replacement would be illegal under a state statute or municipal ordinance governing health or safety; or
- (c) Eighty percent (80%) of the Unit Owners, including each owner of a Unit or assigned Limited Common Element that will not be rebuilt, vote not to rebuild.

Section 21.2 Cost. The cost of repair or replacement in excess of insurance proceeds and reserves is a Common Expense.

Section 21.3 Plans. The Property must be repaired and restored in accordance with either the original plans and specifications or other plans and specifications which have been approved by the Executive Board, a majority of Unit Owners and fifty-one percent (51%) of Eligible Mortgagees.

Section 21.4 Replacement of Less Than Entire Property.

- (a) The insurance proceeds attributable to the damaged Common Elements shall be used to restore the damaged area to a condition compatible with the remainder of the Common Interest Community;
- (b) Except as to the extent that other persons will be distributees, (i) the insurable proceeds attributable to Units or Limited Common Elements that are not rebuilt must be distributed to the owners of the Units to which those Limited Common Elements were allocated, or to the lien holders, as their interests may appear, and (ii) the remainder of the proceeds must be distributed to each Unit Owner or lienholder, as their interests may appear, in proportion to the Common Elements of all the Units;

Section 21.5 Insurance Proceeds. The Trustee, or if there is no Trustee, then the Executive Board of the Association, acting by the President, shall hold any insurance proceeds in trust for the Association, Unit Owners and lien holders as their interests may appear. Subject to the provisions of Subsection 21.1 (a) through Subsection 21.1 (c) of this Declaration, the proceeds shall be disbursed first for the repair or restoration of the damaged Property, and the Association, Unit Owners and lien holders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored, or the Common Interest Community is terminated.

Section 21.6 Certificates by the Executive Board. The Trustee, if any, may rely on the following certifications in writing made by the Executive Board:

- (a) Whether or not damaged or destroyed Property is to be repaired or restored;
- (b) The amount or amounts to be paid for repairs or restoration and the names and addresses of the parties to whom such amounts are to be paid.

Section 21.7 Certificates by Attorneys or Title Insurance Companies. If payments are to be made to Unit Owners or mortgagees, the Executive Board, and the Trustee, if any, shall obtain and may rely on a title insurance company or attorney's

title certificate of title or a title insurance policy based on a search of the Land Records of Hampshire County, West Virginia, from the date of the recording of the original Declaration stating the names of the Unit Owners and the mortgagees.

ARTICLE XXII.
Rights to Notice and Comment;
Notice And Hearing; Appeals

Section 22.1 Right to Notice and Comment. Before the Executive Board amends the Bylaws or the Rules, whenever the Documents require that an action be taken after "Notice and Comment", and at any other time the Executive Board determines, the Unit Owners have the right to receive notice of the proposed action and the right to comment orally or in writing. Notice of the proposed action shall be given to each Unit Owner in writing and shall be delivered personally or by mail to all Unit Owners at such address as appears in the records of the Association, or published in a newsletter or similar publication which is routinely circulated to all Unit Owners. The notice shall be given not less than five (5) days before the proposed action is to be taken. It shall invite comment to the Executive Board orally or in writing before the scheduled time of the meeting. The right to Notice and Comment does not entitle a Unit Owner to be heard at a formally constituted meeting.

Section 22.2 Right to Notice and Hearing. Whenever the Documents require that an action be taken after "Notice and Hearing", the following procedure shall be observed: The party proposing to take the action (e.g., the Executive Board, a committee, an officer, the Manager, etc.) shall give written notice of the proposed action to all Unit Owners or occupants of Units whose interest would be significantly affected by the proposed action. The notice shall include a general statement of the proposed action and the date, time and place of the hearing. At the hearing, the affected person shall have the right, personally or by a representative, to give testimony orally, in writing or both (as specified in the notice), subject to reasonable rules of procedure established by the party conducting the meeting to assure a prompt and orderly resolution of the issues. Such evidence shall be considered in making the decision but shall not bind the decision makers. The affected person shall be notified of the decision in the same manner in which notice of the meeting was given.

Section 22.3 Appeals. Any Person having a right to Notice and Hearing shall have the right to appeal to the Executive Board from a decision of persons other than the Executive Board by filing a written notice of appeal with the Executive Board within ten (10) days after being notified of the decision. The Executive Board shall conduct a hearing within thirty (30) days, giving the same notice and observing the same procedures as were required for the original meeting.

ARTICLE XXIII.
Executive Board

Section 23.1 Minutes of Executive Board Meetings. The Executive Board shall permit any Unit Owner to inspect the minutes of Executive Board meetings during normal business hours. The minutes shall be available for inspection within fifteen (15) days after any such meeting.

Section 23.2 Powers and Duties. The Executive Board may act in all instances on behalf of the Association, except as provided in this Declaration, the Bylaws or the Act. The Executive Board shall have, subject to the limitations contained in this Declaration and the Act, the powers and

duties necessary for the administration of the affairs of the Association and of the Common Interest Community which shall include, but not be limited to, the following:

- (a) Adopt and amend Bylaws, Rules and regulations;
- (b) Adopt and amend budgets for revenues, expenditures and reserves;
- (c) Collect assessments for Common Expenses from Unit Owners;
- (d) Hire and discharge managing agents;
- (e) Hire and discharge employees and agents, other than managing agents, and independent contractors.
- (f) Institute, defend or intervene in litigation or administrative proceedings or seek injunctive relief for violation of the Declaration or the Association's Bylaws or Rules in the Association's name on behalf of the Association or two or more Unit Owners on matters affecting the Common Interest Community;
- (g) Make contracts and incur liabilities;
- (h) Regulate the use, maintenance, repair, replacement and modification of the Common Elements.
- (i) Cause additional improvements to be made as a part of the Common Elements;
- (j) Acquire, hold, encumber and convey in the Association's name any right, title or interest to real property or personal property, but Common Elements may be conveyed or subjected to a Security Interest only pursuant to § 3-112 of the Act;
- (k) Grant easements for any period of time including permanent easements, and leases, licenses and concessions for no more than one year, through or over the Common Elements;
- (l) Impose and receive a payment, fee or charge for the use, rental or operation of the Common Elements, other than Limited Common Elements described in Subsections (2) and (4) of § 2-102 of the Act, and for services provided to Unit Owners;
- (m) Impose a reasonable charge for late payment of assessments and, after Notice and Hearing, levy reasonable fines for violations of this Declaration, Bylaws, Rules and regulations of the Association;
- (n) Impose a reasonable charge for the preparation and recordation of amendments to this Declaration, resale certificates required by § 4-109 of the Act for a statement of unpaid assessments;
- (o) Provide for the indemnification of the Association's officers and Executive Board and maintain Directors' and officers' liability insurance;
- (p) Assign the Association's right to future income,

including the right to receive Common Expense assessments;

- (q) Exercise any other powers conferred by this Declaration or the Bylaws;
- (r) Exercise any other power that may be exercised in this state by legal entities of the same type as the Association;
- (s) Exercise any other power necessary and proper for the governance and operation of the Association; and
- (t) By resolution, establish committees of Directors, permanent and standing, to perform any of the above functions under specifically delegated administrative standards, as designated in the resolution establishing the committee. All committees must maintain and publish notice of their actions to Unit Owners and the Executive Board. However, actions taken by a committee may be appealed to the Executive Board by any Unit Owner within forty five (45) days of publication of such notice, and such committee action must be ratified, modified or rejected by the Executive Board at its next regular meeting.
- (u) Appoint a trustee for the receipt, administration, and disbursement of funds derived from insured losses, condemnation awards, special assessments for uninsured losses, and other like sources as defined in the Bylaws.

ARTICLE XXIV.

Falling Run Design Review and Covenants Committee

Section 24.1 Design Review and Covenants Committee. The Association shall establish the Falling Run Design Review and Covenants Committee (Review Committee) whose function it is to regulate the external appearance, use and maintenance of the units and common elements. The Design Review and Covenants Committee has the authority to prevent a unit owner from taking actions that are inconsistent with the general plan for design, appearance, use or maintenance of the units and common elements, and to grant variances as provided for in this Declaration. Decisions of the Design Review and Covenants Committee may be appealed to the Board of Directors. The Design Review and Covenants Committee may also interpret the common interest community instruments, Rules and Regulations, and resolutions when requested to do so.

Section 24.2 Membership. The Review Committee shall consist of three (3) members. One (1) member shall be appointed by Declarant, its successors or assigns. The remaining two (2) members shall be appointed by the Association.

Section 24.3 Quorum and Voting. A Quorum of two (2) members shall be required for any action taken by the Review Committee. Each member of the Review Committee shall be entitled to one vote. A majority of the Committee shall constitute the action of the Committee.

Section 24.4 Procedures and Guidelines. In its review of all plans for improvements and landscaping submitted by Unit Owners, the Review Committee shall apply the procedures and guidelines set forth in the Design Guidelines.

Section 24.5 Consent Required. The approval by the Review Committee shall be required prior to the commencement of any construction of any improvement to a Unit on any portion of Falling Run, except as prior approval may be waived or exempted under the written guidelines or rules promulgated by the Committee.

The Declarant or the Executive Board after the Declarant's development rights have terminated, shall have the authority and standing, on behalf of the Association, to enforce in courts of competent jurisdiction, decisions of the Design Review Committee. During the period of Declarant is exercising its development rights, the Declarant shall appoint members to this Committee.

Section 24.6 Power to Grant Variances. Subject to the provisions of any rights granted to any eligible insurer or eligible mortgagee, the Committee may authorize variances from compliance with any of the provisions of this Declaration, including restrictions upon size, height, floor area or placement of structures or similar restrictions, when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental considerations may require. Such variances must be evidenced in writing and shall become effective when signed by at least a majority of the members of the Committee or by its authorized representative. If any such variance is granted, no violation of the provisions of this Declaration shall be deemed to have occurred with respect to the matter for which the variance has been granted; provided, however, that no other provision of the Declaration shall be affected for any purpose except as to the particular property and particular provision covered by the variance, nor shall the granting of any variance affect the jurisdiction of the Committee, nor shall the granting of a variance affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting the property concerned, including, but not limited to, zoning ordinances and setback lines or other requirements imposed by any governmental authority having jurisdiction.

Section 24.7 Criteria for Approval. The Committee shall have the right to disapprove any proposed improvement to a unit which is not suitable or desirable in the Committee's opinion for aesthetic or other reasons, and in passing upon the improvement to a unit, the Committee shall have the right to take into consideration the suitability of the proposed improvement and of the materials of which it is to be built, the color scheme, the site upon which it is proposed to erect the improvement, the harmony thereof with the surroundings, the topography of the land and the effect of the improvement as planned on the outlook from the adjacent or neighboring property, and if it is in accordance with all of the provisions of this Declaration. The Committee may disapprove the proposed improvement if the plans are incomplete, or in the event the Committee deems the materials submitted to be contrary to the spirit or intent of the Community. The Committee may condition its approval of any proposed improvement to a unit upon the making of such changes thereon as the Committee may deem appropriate.

Section 24.8 Design Review Fee. The Committee may, in its guidelines or rules, provide for the payment of a reasonable fee to accompany each request for approval of any proposed improvement to a Unit. The Committee may provide that the amount of such fee shall be uniform for similar types of proposed improvements to a unit, or that the fee shall be determined in any other reasonable manner, such as the estimated cost of the proposed improvement to a Unit.

Section 24.9 Decision of the Committee. The decision of

the Committee shall be made within thirty days after receipt by the Committee of all materials required by the Committee unless such time period is extended by mutual agreement. The decision shall be in writing and, if the decision is not to approve a proposed improvement to Unit, the reasons therefor shall be stated. The decision of the Committee shall be promptly transmitted to the applicant at the address furnished the Committee by the applicant.

Section 24.10 Appeal to the Executive Board. If the Committee disapproves or imposes conditions on the approval of a proposed improvement to a Unit, the applicant may appeal to the Executive Board by giving written notice of such appeal to the Executive Board and the Committee within ten (10) days after notice of such disapproval or conditional approval is given to the applicant. The Executive Board shall hear the appeal with reasonable promptness after reasonable notice of such hearing to the applicant and the Committee, and shall decide with reasonable promptness whether the proposed improvement to the Unit or the conditions imposed by the Committee shall be approved, disapproved or modified.

If the Committee approves a proposed improvement to a Unit, any Owner may appeal the approval to the Executive Board by giving written notice of such appeal to the Executive Board and the Committee within ten (10) days after such approval. The Executive Board shall hear the appeal with reasonable promptness after reasonable notice of such hearing to the applicant, the appealing Owner and the Committee and shall decide with reasonable promptness whether the approval of the proposed improvement to the Unit shall be upheld.

Section 24.11 Address of the Committee. The address of the Committee shall be that of the principal office of the Association.

Section 24.12 Notice of Noncompliance. If, as a result of inspections or otherwise, the Committee finds that any improvement to a Unit has been done without obtaining the approval of the Committee, or was not done in substantial compliance with the description and materials furnished to, and any conditions imposed by, the Committee, or was not completed within nine (9) months after the date of the issuance of the approval for such improvement, the Committee shall notify the applicant in writing of the noncompliance, which notice shall be given, in any event within sixty (60) days after the Committee has inspected the improvement, but in no event no later than sixty (60) days after the Committee's receipt of such applicant's notice of completion. The Notice shall specify the particulars of the noncompliance and shall require the applicant to take such action as may be necessary to remedy the noncompliance.

Section 24.13 Failure of the Committee to Act After Completion. If, for any reason other than the applicant's act or neglect, the Committee fails to notify the applicant of any noncompliance within sixty (60) days after receipt by the Committee of written notice of completion from the applicant, the improvement to the Unit shall be deemed to be in compliance if the improvement to the Unit was completed as of the date of the notice of completion.

Section 24.14 Appeal to the Executive Board of Finding of Noncompliance. If the Committee gives any notice of noncompliance, the applicant may appeal to the Executive Board by giving written notice of such appeal to the Board and the Committee within ten (10) days after receipt by the applicant of the notice of noncompliance. If, after a notice of noncompliance, the applicant fails to commence diligently to remedy such noncompliance, the Committee shall request a

finding of noncompliance by the Board by giving written notice of such request to the Executive Board and the Applicant within thirty days after delivery to the applicant of a notice of noncompliance. In either event, the Executive Board after Notice and Hearing, shall decide, with reasonable promptness, whether there has been such noncompliance and, if so, the nature thereof.

Section 24.15 Correction of Noncompliance. If the Executive Board, or the Declarant, during Declarant's control, determines that a noncompliance exists, the applicant shall remedy or remove the same within a period of not more than thirty (30) days from the date of receipt by the applicant of the ruling of the Executive Board or the Declarant. If the applicant does not comply with the Board's ruling or the Declarant's ruling within such period, the Board or the Declarant, may, at its option, record a "Notice of Noncompliance" against the Unit on which the noncompliance exists, or may remove the noncomplying improvement to the unit or may otherwise remedy the noncompliance. The Executive Board may levy an Individual Assessment in accordance with Article XVII, Section 17.2 (a), hereof against the Owner of such Unit for such costs and expenses incurred. The right of the Executive Board or the Declarant to remedy or remove any noncompliance shall be in addition to all other rights and remedies which the Executive Board or the Declarant may have at law, in equity, or under this Declaration.

Section 24.16 No Implied Waiver or Estoppel. No action or failure to act by the Committee or the Executive Board or the Declarant shall constitute a waiver or estoppel with respect to future action by the Committee, the Executive Board or the Declarant. Specifically, the approval by the Committee or any improvement to a Unit shall not be deemed a waiver of any right or an estoppel to withhold approval or consent for any similar improvement to a Unit or similar proposals, plans, specifications or other materials submitted with respect to any other improvement to a Unit.

Section 24.17 Meetings of the Committee. The Committee shall meet from time to time as necessary to perform its duties hereunder.

Section 24.18 Records of Actions. The Committee shall report in writing to the Executive Board or Declarant all final actions of the Committee, and the Executive Board or Declarant shall keep a permanent record of such actions.

Section 24.19 No Liability for Committee Action. There shall be no liability imposed on the Committee, any member of the Committee, any authorized Committee representative, the Association, any member of the Executive Board or Declarant for any loss, damage or injury arising out of or in any way connected with the performance of the duties of the Committee, if such party acted in good faith and without malice. In reviewing any matter, the Committee shall not be responsible for passing on safety, whether structural or otherwise, or conformance with building codes or other governmental laws or regulations, nor shall its approval of an improvement to a Unit be deemed approval of such matters.

Section 24.20 Membership of the Committee After Declarant Terminates Its Development Rights. The Committee shall consist of three members, all of whom shall be appointed by the Executive Board. Members of the Committee may, but shall not necessarily be, members of the Association and may be removed at any time by the Executive Board for cause or without cause.

Section 24.21 Commencement and Completion. Once construction of any building or other improvement is commenced,

substantial work toward the completion of the improvement will be pursued diligently and the improvements completed within a reasonable period of time after commencement, but in no event shall that time exceed nine (9) months. If, for any reason, no substantial progress is made toward the completion of an improvement to a Unit for a period of ninety (90) days, the Declarant may invade the premises and take such action as it may deem appropriate to correct the undesirable appearance of a partially completed building and/or improvement, including the completion thereof, at the cost and expense of the Unit Owner. For purposes of the Declaration, sums owing to the Declarant by reason of the foregoing will be deemed to be an assessment against the Unit.

Section 24.22 Rules and Regulations. The Design Review Committee may publish such other rules and regulations as it deems appropriate.

Section 24.23 Additions, Alterations and Improvements by the Executive Board. Subject to the limitations of Sections 16.4 and 16.5 of this Declaration, the Executive Board may make any additions, alterations or improvements to the Common Elements which, in its judgment, it deems necessary.

ARTICLE XXV. Open Meetings

Section 25.1 Access. All meetings of the Executive Board, at which action is to be taken by vote will be open to the Unit Owners, except as hereafter provided.

Section 25.2 Notice. Notice of every such meeting will be given not less than 24 hours prior to the time set for such meeting, by posting such notice in a conspicuous location in the Common Interest Community, except that such notice will not be required if an emergency situation requires that the meeting be held without delay.

Section 25.3 Executive Sessions. Meetings of the Executive Board may be held in executive session, without giving notice and without the requirement that they be open to Unit Owners, in either of the following situations only:

- (a) No action is taken at the executive session requiring the affirmative vote of Directors; or
- (b) The action taken at the executive session involves personnel, pending litigation, contract negotiations, enforcement actions, or matters involving the invasion of privacy of individual unit owners, or matters which are to remain confidential by request of the affected parties and agreement of the Board.

ARTICLE XXVI. Condemnation

If part or all of the Common Interest Community is taken by any power having the authority of eminent domain, all compensation and damages for and on account of the taking shall be payable in accordance with §1-107 of the Act.

ARTICLE XXVII. Miscellaneous

Section 27.1 Captions. The captions contained in the Documents are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of the Documents nor the intent of any provision thereof.

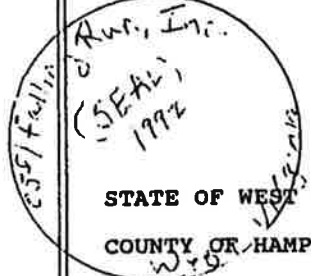
Section 27.2 Gender. The use of the masculine gender refers to the feminine and neuter genders and the use of the singular includes the plural, and vice versa, whenever the context of the Documents so require.

Section 27.3 Waiver. No provision contained in the Documents is abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

Section 27.4 Invalidity. The invalidity of any provision of the Documents does not impair or affect in any manner the validity, enforceability of effect of the remainder, and in such event, all of the other provisions of the Documents shall continue in full force and effect.

Section 27.5 Conflict. The Documents are intended to comply with the requirements of West Virginia Code Section 36(b)-1-101, et seq. In the event of any conflict between the Documents and the provisions of the code, the provisions of the code shall control. In the event of any conflict between this Declaration and any other Document, this Declaration shall control.

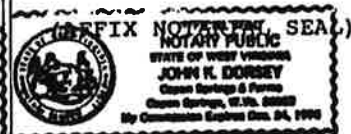
IN WITNESS WHEREOF, CSF/Falling Run, Inc., a West Virginia corporation, has executed this Declaration by causing its President to sign thereto its corporate name and its Secretary to affix its corporate seal, this 25th day of June, 1992, both being duly authorized by resolution of the Board of Directors of said corporation.



CSF/FALLING RUN, INC.,
a West Virginia corporation
By Lauren R. McKeown
Its President

STATE OF WEST VIRGINIA,
COUNTY OF HAMPSHIRE, to-wit:

The foregoing instrument was acknowledged before me this 25th day of June, 1992 by Lauren R. McKeown, President, who signed the name of CSF/FALLING RUN, INC., a West Virginia corporation, and acknowledged the same to be the act and deed of said corporation.



John K. Dorsey
NOTARY PUBLIC

My commission expires: December 24, 1996.

Prepared by:
John K. Dorsey
Attorney at Law
114 East Liberty Street
Charles Town, WV 25414

FRDECLAR.RE

Declaration of Covenants,
Conditions and Restrictions
for Falling Run Development
Schedule A-1
Page 1 of 2

DESCRIPTION OF REAL ESTATE INCLUDED IN
THE COMMON INTEREST COMMUNITY

1. The following described real estate located in the Capon District, Hampshire County, West Virginia is included within the Falling Run Development:

All that certain real estate being situate on the west side of the Old Milk Road, West Virginia County Route 23/1, approximately 1.0 miles southeast of the Village of Yellow Spring in Capon Magisterial District, Hampshire County, West Virginia, and being more particularly described as follows:

Beginning at a Catalpa tree on the west side of West Virginia County Route 23/1 near its intersection with West Virginia County Route 23/9 and corner to the M. Anderson Heirs, thence with Anderson S. 55°57'15" W. 179.02' to a 24' chestnut oak; thence N. 51°34'28" W. 905.97' to E, a rebar set; thence N. 51°34'24" W. 244.19' to a rebar set; thence N. 51°34'27" W. 759.42' to a rebar set; thence N. 51°34'27" W. 382.95' to a stone found, corner to Anderson and W. Frazier; thence N. 51°38'44" W. 560.06' to a rebar set; thence N. 50°01'47" W. 182.74' to a fence post; thence N. 52°50'22" W. 247.32' to a rebar set; thence S. 19°26'47" W. 222.76' to a rebar set; thence N. 53°53'14" W. 479.79' to a rebar set; thence S. 31°01'46" W. 514.06' to a stone found; thence N. 54°46'15" W. 317.24' to a 12' chestnut oak in the line of W. Orndorff; thence with Orndorff N. 41°09'30" E. 757.57' to a stone found; thence N. 51°38'44" W. 864.31' to a rebar set; thence S. 41°19'06" W. 309.35' to a triple maple, and corner to the remainder tract of Capon Springs and Farms, Inc.; thence with the Capon Springs and Farms, Inc., remainder N. 69°31'32" W. 179.96' to a 15" white oak; thence N. 60°39'51" W. 1405.24' to a point on or near the south bank of the Cacapon River; thence with the meanders of the Cacapon River the following seven courses and distances N. 40°12'28" E. 132.80'; N. 44°25'43" E. 345.35'; N. 30°00'54" E. 206.52'; N. 17°18'19" E. 122.85'; N. 20°00'15" E. 86.31'; N. 29°54'51" E. 135.93'; N. 25°57'52" W. 182.35'; thence leaving the Cacapon River N. 81°11'52" E. 313.50' to a rebar/pipe found in the line of W. Forrester; thence S. 52°03'07" E. 223.94' to a rebar set; thence S. 43°48'07" E. 110.65' to a rebar/pipe found; thence N. 86°25'26" E. 217.76' to a 36" black oak situate on the west side of West Virginia County Route 23/1; thence with the meanders of West Virginia County Route 23/1 S. 43°50'22" E. 555.95'; thence S. 51°02'22" E. 248.61'; thence S. 47°06'52" E. 366.97' to a point between a 6" white oak and a 5" black oak in the line of A. Boyce; thence with Boyce S. 44°47'51" W. 290.79' to a stone found; thence S. 71°26'27" E. 670.41' to a 10' maple in the western boundary line of West Virginia County Route 23/1; thence again with the meanders of West Virginia County Route 23/1 S. 70°22'47" E. 422.66' to a rebar set; thence S. 60°17'38" E. 956.76' to a rebar set; thence S. 61°14'43" E. 751.93' to a double ash; thence S. 40°13'53" E. 470.16' to a utility pole; thence S. 37°32'00" E. 600.53' to a triple cedar; thence S. 22°21'47" E. 693.75' to the center of a 40 feet wide easement area; thence S. 11°56'02" E. 560.69' to the point of beginning, containing 143.17 acres of land, more or less.

2. Easements and Rights of Way.

The Common Interest Community is subject to the following easements and rights of way. (It should be noted that certain of the easements and rights of way listed below were granted by previous owners of the property which is now included within the Common Interest Community. Due to the uncertainty of the descriptions of the location of certain of these easements or rights of way, it is not possible to determine their exact location. Some of the easements and rights of way listed below may not actually now affect the Common Interest Community):

A. Right of Way Agreement dated _____ between Capon Springs and Farms, Inc., and General Telephone Company of the Southeast, recorded in the Office of the Clerk of the County Commission of Hampshire County, West Virginia, in Deed Book _____, Page _____.

B. Right of Way Agreement dated _____ between Capon Springs and Farms, Inc., and Potomac Edison Company, recorded in the Office of the Clerk of the County Commission of Hampshire County, West Virginia, in Deed Book _____, Page _____.

C. Right of Way Agreement dated November 24, 1948, between Clarence N. Cline, et ux., and Northern Virginia Power Company, recorded in the Office of the Clerk of the County Commission of Hampshire County, West Virginia, in Deed Book 116, Page 343.

D. Right of Way Agreement dated August 15, 1950, between Clarence N. Cline, et ux., and Northern Virginia Power Company, recorded in the Office of the Clerk of the County Commission of Hampshire County, West Virginia, in Deed Book 119, Page 233.

E. Right of Way Agreement dated August 14, 1950, between Frank C. Spaid, et ux., and Northern Virginia Power Company, recorded in the Office of the Clerk of the County Commission of Hampshire County, West Virginia, in Deed Book 119, Page 242.

F. Right of Way Agreement dated August 14, 1950, between Rosa E. Boyce, widow, and Northern Virginia Power Company, recorded in the Office of the Clerk of the County Commission of Hampshire County, West Virginia, in Deed Book 119, Page 230.

G. Right of Way Agreement dated May 24, 1954, between Rosa E. Boyce, widow, and Harry L. Horton, recorded in the Office of the Clerk of the County Commission of Hampshire County, West Virginia, in Deed Book 128, Page 160.

H. Right of Way reserved by deed dated June 25, 1992, from Capon Springs and Farms, Inc., to CSF/Falling Run, Inc., recorded in the Office of the Clerk of the County Commission of Hampshire County, West Virginia, preceding this declaration.

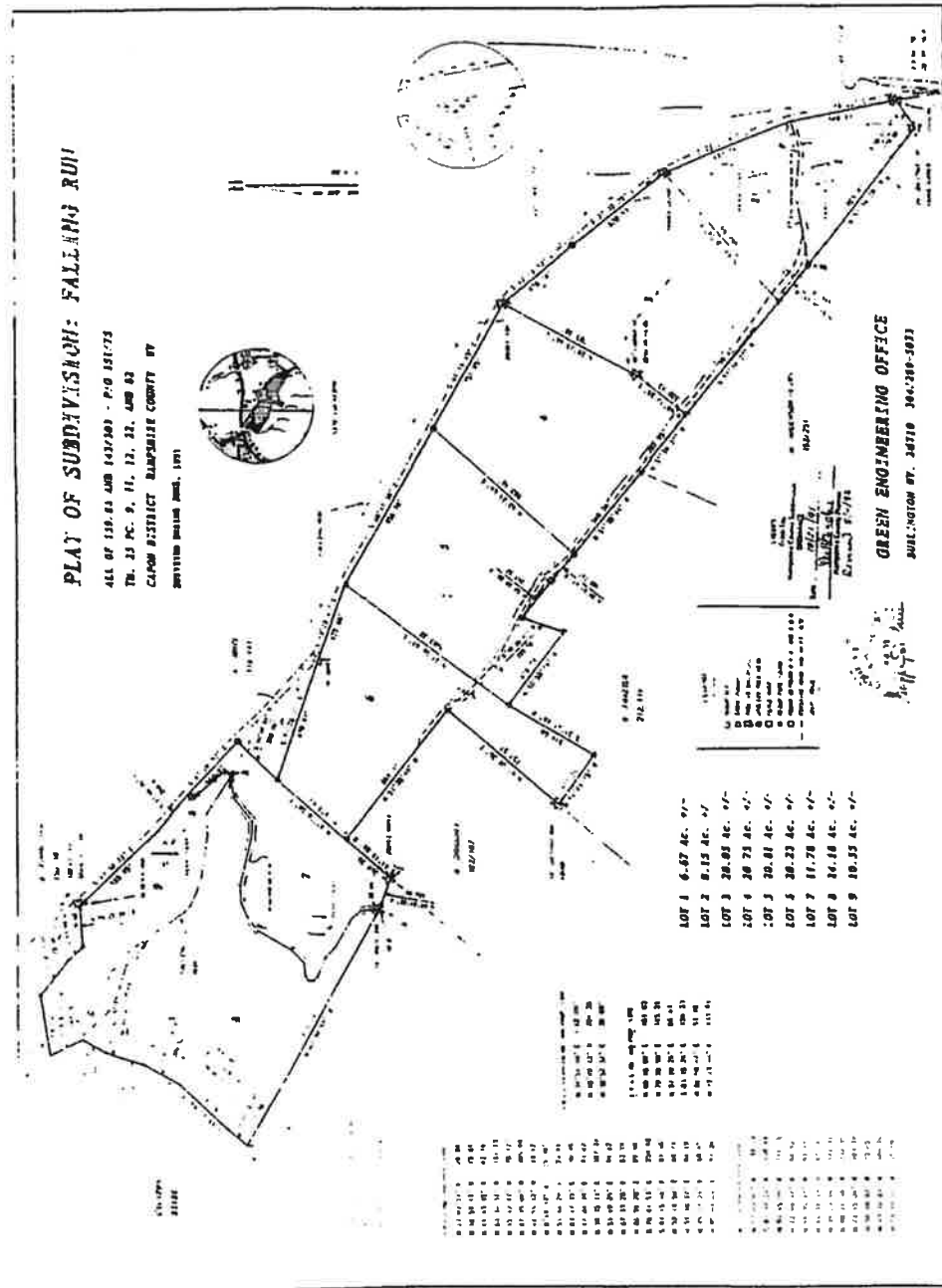
I. Right of Way Agreement dated June 25, 1992, between Capon Springs and Farms, Inc., and CSF/Falling Run, Inc., recorded in the Office of the Clerk of the County Commission of Hampshire County, West Virginia, immediately preceding this declaration.

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NUMBER OF UNITS, UNIT BOUNDARIES AND
DESCRIPTION OF UNITS WITHIN THE COMMON INTEREST COMMUNITY

Reference is hereby made to the Final Plat of Falling Run Development dated June, 1991, made by Green Engineering Office, and recorded in the Office of the Clerk of the County Commission of Hampshire County, West Virginia, in Map Book 6, Page 146, et seq., which plat is incorporated herein by reference as part of Schedule A-2, and to which plat reference is hereby made for a more particular description of the number of Units within the Common Interest Community, the boundaries of each such Unit, and the individual numbers of the Units. A reduced copy of relevant portions of said plat is attached hereto.

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LIMITED COMMON ELEMENTS

NONE.

REAL ESTATE WHICH IS OR MUST BECOME COMMON ELEMENTS

The real estate which is or must become Common Elements is all of that real estate within the Common Interest Community which is shown on the plat of Falling Run Development dated June, 1991, made by Green Engineering Office, and recorded in the Office of the Clerk of the County Commission of Hampshire County, West Virginia, in Map Book 6, Page 146, other than the individual Units shown on said plat and identified on Schedule A-2.

The following Improvements may be included within the real estate which is or must become Common Elements:

- (1) Streets and roads
- (2) Cluster mailboxes
- (3) School bus shelters
- (4) Street Signs
- (5) Entrance gates and signs

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PORTIONS OF COMMON ELEMENTS WHICH MAY SUBSEQUENTLY
BE ALLOCATED AS LIMITED COMMON ELEMENTS

Those portions of the Common Elements which may be subsequently allocated as Limited Common Elements are all those Common Elements described on Schedule A-4.

**REAL ESTATE TO WHICH DEVELOPMENT RIGHTS AND
SPECIAL DECLARANT RIGHTS APPLY**

The real estate to which development rights included in Section 8.1(b) and (c) and the special declarant rights included in Section 8.4(a) through (d) apply is all of that real estate described in Schedule A-1.

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THE DEVELOPMENT RIGHT TO ADD REAL ESTATE

The development right to add real estate to the Common Interest Community applies to the following described real estate located in the Capon District, Hampshire County, West Virginia, as the same is shown on the tax maps of the Hampshire County Assessor's Office for said District, as follows:

<u>TAX MAP</u>	<u>PARCEL</u>
25	6
25	10
25	22
25	23
25	25
25	34

ALLOCATION OF INTERESTS

The allocation of interests among Units within the Common Interest Community is as follows:

Units 1 through 9, inclusive: A $\frac{1}{9}$ th interest each.

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REAL ESTATE SUBJECT TO WITHDRAWAL

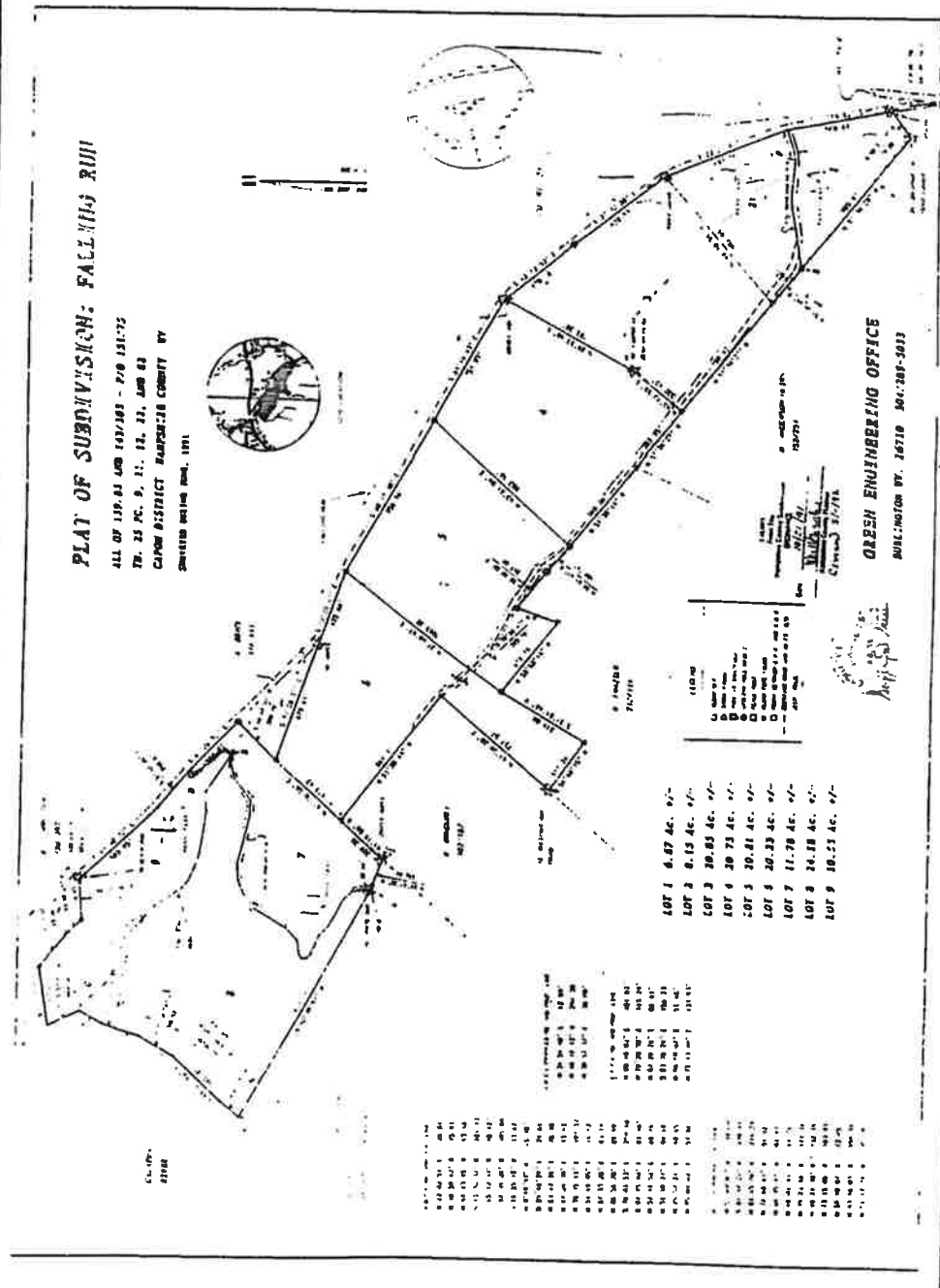
The development right to withdraw real estate from the Common Interest Community applies to the following real estate:

All of that real estate described in Schedule A-1, less and excepting therefrom, however, that real estate shown on the plat of Falling Run Development dated June, 1991, made by Green Engineering Office, and recorded in the Office of the Clerk of the County Commission of Hampshire County, West Virginia, in Map Book 6, Page 146.

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SKETCH OF THE ENTIRE COMMON INTEREST COMMUNITY



STATE OF WEST VIRGINIA, County of Hampshire, to-wit:
Be remembered that on the 26th day of June, 1992, at 7:12 P.
this Covenants was presented in the Clerk's Office of the County Commission of said County
and with the certificate thereof annexed, admitted to record.
Attest Nancy C. Feller Clerk
County Commission, Hampshire County, W. Va.