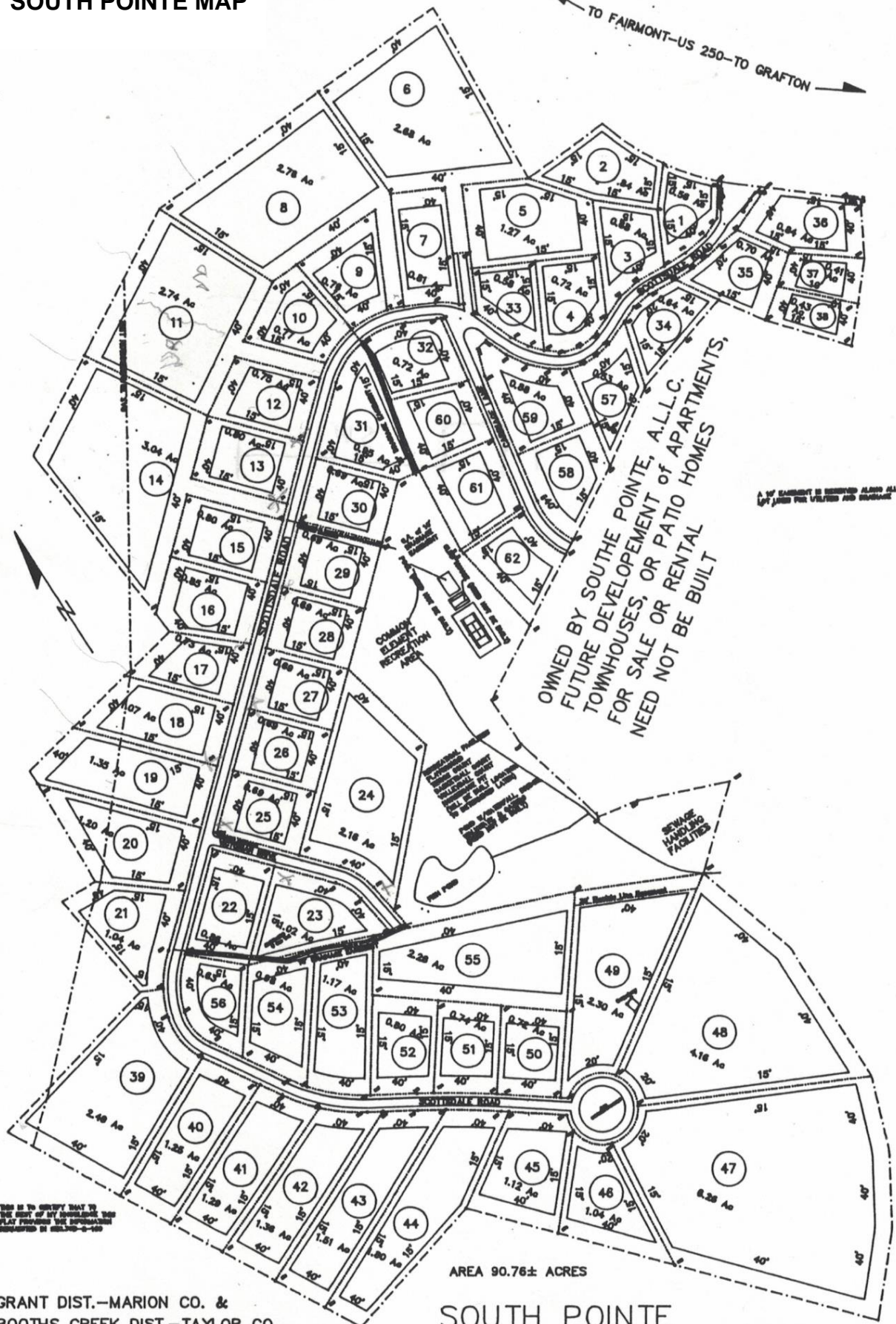
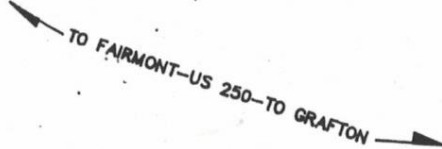


**DECLARATION OF
COMMON INTEREST COMMUNITY
INCLUDING RESTRICTIONS AND PROTECTIVE COVENANTS
FOR
SOUTH POINTE SUBDIVISION**

TABLE OF CONTENTS

SECTION	TITLE	PAGE
I.	SUBMISSION TO COMMON INTEREST COMMUNITY	8
II.	CIC NAME AND LOCATION	8
III.	THE LAND	8
IV.	DEFINITIONS	9
V.	THE ASSOCIATION	12
VI.	ASSESSMENT, LIENS AND RECORDS	21
VII.	PLATS	25
VIII.	THE UNITS - USE, TRANSFER AND OTHER RESTRICTIONS AND RIGHTS	25
IX.	WARRANTY OF QUALITY	34
X.	REMEDIES	35
XI.	AMENDMENTS	35
XII.	NOTICES	36
XIII.	SEVERABILITY	36
XIV.	PERPETUITIES AND RESTRAINTS ON ALIENATION	36
XV.	TERMINATION AND EMINENT DOMAIN	37
XVI.	SEPARATE TITLES AND TAXATION	39
XVII.	RIGHTS AND OBLIGATIONS OF GRANTEES	39
XVIII.	HEADINGS	39
XIX.	DESCRIPTION INCLUSIONS BY REFERENCE	39
XX.	SUBMISSION TO LAW	39
XXI.	RESERVATION OF USE OF AMENITIES FOR NON CIC OWNERS	39

SOUTH POINTE MAP



OWNED BY SOUTH POINTE, A.L.L.C.
 FUTURE DEVELOPMENT OF APARTMENTS,
 TOWNHOUSES, OR PATIO HOMES
 FOR SALE OR RENTAL
 NEED NOT BE BUILT

1/4" OF EASEMENT IS SHOWN ALONG ALL LOT LINES FOR UTILITIES AND DRAINAGE

THIS IS TO CERTIFY THAT TO THE BEST OF MY KNOWLEDGE THIS PLAN PROVIDES THE INFORMATION REQUESTED BY RES. 142-2-103

AREA 90.76± ACRES

GRANT DIST.-MARION CO. &
 BOOTH'S CREEK DIST.-TAYLOR CO.
 ENGINEERED BY
 FREELANCE TECHNICAL SERVICES
 FAIRMONT, WV

SOUTH POINTE DEVELOPMENT

SCALE 1"=100'
 REV. JANUARY 10, 1994

FIRST MODIFICATION TO DECLARATION OF THE COMMON INTEREST COMMUNITY

WHEREAS, the undersigned are all of the owners of lots in South Pointe Subdivision, a Common interest Community, situated both in Booths Creek District, Taylor County, West Virginia, and in Grant District, Marion County, West Virginia and,

WHEREAS, the parties hereto desire to modify the Declaration of Common interest Community dated the 11th day of January, 1994, and recorded in the office of the Clerk of the County Commission of Taylor County, West Virginia, in Deed Book No. 239, at Page 337, and recorded in the Office of the Clerk of the County Commission of Marion County, West Virginia, in Deed Book No. 915, at page 565.

NOW, THEREFORE, THIS MODIFICATION TO DECLARATION OF COMMON INTEREST COMMUNITY WITNESSETH:

That notwithstanding any other provision contained in the Declaration, with the written consent first obtained from the Building Control Committee, two or more units may be used as a single family residential building site, upon the granting of such right of construction the easements along the side of the Units as reserved in the Declaration and as may be designated upon the recorded plats of the CIC (now interior unit lines) shall be null and void so as a single family residential dwelling and attached appurtenances may be constructed across a unit boundary line; however, all exterior set back lines shall remain enforced. ***Further, the allocated undivided interest in the Common Elements and the Common Expenses shall be on a Unit basis as a unit is defined in the Declaration, and as designated upon the recorded plats of the CIC.*** The identifying number for each unit shall always be deemed to include all of that Unit's appurtenant ownership interest in all appurtenant rights, duties, covenants and restrictions herein set forth or referenced.

Except as herein modified, the Declaration shall remain unchanged.

DECLARATION

IV. DEFINITIONS:

P. UNIT A physical portion of the Common interest Community designated for separate ownership or occupancy (a lot), the boundaries of which are described. Each unit shall be deemed to contain as appurtenant to its ownership an undivided fractional interest in the common elements.

V. THE ASSOCIATION

F. Association Meetings:

The notice of any meeting must state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the Declaration or By-Laws, and budget changes and any proposal to remove an officer or member of the Board.

VI. ASSESSMENT, LIENS AND RECORDS

B. Assessments for Common Expenses:

(2) Except for assessments under subsection (3), (4) and (5), all Common Expenses ***must be assessed against each Unit*** in Accordance with allocations set forth in Article VIII F of this Declaration Any past due Common Expense Assessments or installment thereof bears interest at the rate established by the Association, not exceeding eighteen percent (18%) per year.

XI. AMENDMENT

(A) The provisions of this Declaration may be changed, modified or rescinded by an instrument in writing setting forth such change, modifications or rescission by vote or agreement of Unit Owners owning units to which not less than sixty seven per cent (67%) of the votes in the Association are allocated and prepared, executed, acknowledged and properly recorded for the Association by its President; provided, however, no change, modification or rescission may increase or create Special Declarant Rights, alter unit boundaries, except those lot splits already permitted under this Declaration, the allocated interest of a unit or the uses to which any unit is restricted, without the consent or agreement of all unit owners and of all lien holders unless otherwise specified in the Declaration. Any instrument changing, modifying or rescinding any provision of this Declaration with respect to such action shall be signed by all the Unit owners and all lien holders as required by this Declaration.

XVI. SEPARATE TITLES AND TAXATION

After conveyance by the Declarant, each Unit, together with its interest in the Common Elements, constitutes a separate parcel of real estate for all purposes. Each Unit so conveyed must be separately taxed and assessed.

ARTICLES OF INCORPORATION OF SOUTH POINTE PROPERTY OWNERS ASSOCIATION, INC.

5. Each year the Board of Directors of the Association shall consider the current maintenance needs and future needs of the Association and based upon its needs shall fix the amount of annual charge herein provided for which shall not be less than Fifty Dollars (\$50.00) in respect to each Unit and which shall be as the Board of Directors deems fair and equitable.

Article V. The Board of Directors

Clause 5.082: DUTIES

The duties of the Board of Directors shall include (but not limited to) the duty to fix, at least thirty (30) day prior to the first day of April each year, the amount of the annual charge that is to be made against each member of the association pursuant to the provisions for such a charge that are contained in the Articles of Incorporation, these By laws and in the Declaration of the Subdivision.

THE SOUTH POINTE PROPERTY OWNER'S ASSOCIATION

NOTICE OF CHANCE TO THE "DECLARATION OF COMMON INTEREST COMMUNITY FOR SOUTH POINTE SUBDIVISION"

THE FOLLOWING AMENDMENTS TO THE SOUTH POINTE PROPERTY OWNERS ASSOCIATION HAVE BEEN RATIFIED BY THE GENERAL MEMBERSHIP OF THE ASSOCIATION AS REQUIRED BY THE DECLARATION. PLACE THIS NOTICE PUBLIC OFFERING STATEMENT BOOK.

CHANGES ARE UNDERLINED

1 . SECTION VIII - THE UNITS - USE, TRANSFER AND OTHER RESTRICTIONS AND RIGHTS. TITLE B: USE AND OCCUPANCY RESTRICTIONS. PART 24 (found on page 26) : There will be no satellite dishes installed or constructed within the Subdivision unless prior approval is obtained from the Building Control Committee.

AMENDED TO: There will be no satellite dishes, except small digital type dishes, installed or constructed within the Subdivision unless prior approval is obtained from the Building Control Committee. AMENDED BY THE GENERAL MEMBERSHIP, JULY 1995 GENERAL MEETING.

2 . SECTION VII - THE UNITS - USE, TRANSFER AND OTHER RESTRICTIONS AND RIGHTS. TITLE B: USE AND OCCUPANCY RESTRICTIONS. PART 12 (FOUND ON PAGE 24): No commercial signs, including "For Rent", "For Sale" and other similar signs shall be erected or maintained on any Unit except with the Written permission of SPALLC or except as may be required by legal proceedings.

AMENDED TO: No commercial signs, including "For Rent", "For Sale" and other similar signs shall be erected or maintained on any unit except with the written permission of SPALLC or except as may be required by legal proceedings. "For Sale" may Be erected and maintained on units where houses have been erected or are under construction. AMENDED BY THE GENERAL MEMBERSHIP, APRIL 1996 GENERAL MEETING.

SOUTH POINTE PROPERTY OWNER'S ASSOCIATION

THE FOLLOWING IS AN AMENDMENT THAT WAS PASSED AT THE GENERAL MEETING ON MARCH 7, 1999. PLEASE ADD THIS TO YOUR HOMEOWNER'S MANUAL.

AMENDMENT:

Any dog, cat or other animal, which by frequent and habitual barking, howling, screeching, yelping, baying or in any way or manor injures or disturbs the quiet of any person or the community, or which disturbs the comfort, repose or health of persons, is hereby declared to be committing a nuisance. It shall not be permitted for any owner or person having custody of such an animal to harbor or permit it to commit such a nuisance. This applies to all lot and home owners with no grandfather clauses.

DECLARATION OF COMMON INTEREST COMMUNITY FOR

SOUTH POINTE SUBDIVISION

This DECLARATION, effective the 7th day of January, 1994 by SOUTH POINTE, a LIMITED LIABILITY company, (hereinafter referred to as "DECLARANT"), the owner of certain real estate and improvements thereon and appurtenances thereto, as designated on the plats attached hereto, as for DECLARANT, and DECLARANT'S grantees and assigns, hereby makes the following declaration:

I. SUBMISSION TO COMMON INTEREST COMMUNITY OWNERSHIP

DECLARANT does hereby submit as a Planned Community the real estate as described herein, together with all roadways, improvements and other permanent fixtures now and later situated thereon, and thereof and all rights and privileges pertaining thereto (hereinafter referred to as "SUBDIVISION") to the Common Interest Community (hereinafter referred to as "CIC") form of ownership in the manner provided for by Chapter 36B of the West Virginia Code, as amended to the date hereof (the "Uniform Common Interest Ownership Act").

II. CIC NAME AND LOCATION

The name of which this CIC is to be identified is SOUTH POINTE SUBDIVISION. The property is located in Booths Creek District, Taylor County, West Virginia and a small part being situate in Grant District, Marion County, West Virginia.

III. THE LAND

The land submitted to the CIC form of ownership by this instrument is to be known and designated as "SOUTH POINTE SUBDIVISION," (sometimes hereinafter referred to as "SOUTH POINTE" or "SUBDIVISION") as more fully shown on the plats recorded in the Office of the Clerk of the County Commission of Taylor County, West Virginia Deed Book 239 at page 280, and in the Clerk's office of the Marion County Court in File #1, Sleeve A-108, said plat references and any later amendments are the same parcel of real estate conveyed to the Declarant by virtue of a deed of conveyance from Ralph M. Raspa, a single and not married, dated the 4th day of August 1993, and of record in the Office of the Clerk of the County Commission of Taylor County in Deed Book 237, page 121 and Clerk's Office of Marion County in Deed Book 911, Page 1002. The legal description of the Subdivision real estate being as more fully set forth on the

aforesaid plats, and further delineated and described hereafter. (See Deed Books for descriptions)

IV. DEFINITIONS

Definitions of some common terms further defined and used herein and referred to in other related documents are as follows, unless as used elsewhere, the text or context in which such term is used indicates another definition:

A. ASSOCIATION:

South Pointe Property Owners Association, Inc., a non-profit corporation, and any wholly-owned subsidiary thereof, its successors and assigns, which Association of Unit Owner is organized as and shall be the governing body for the maintenance, repair, replacement, administration and operation of the CIC.

B. BOARD

The Board of Directors of the Association herein designated to act on behalf of the Association as the same are duly elected or appointed in accordance with the Articles of Incorporation and the By-Laws of the Association, neither the Articles nor the By-Laws may be inconsistent with this Declaration.

C. BUILDING CONTROL COMMITTEE:

The Committee appointed by the Board of Directors composed of three (3) members with Declarant or its designee(s) being at least one such member until date of relinquishment of Declarant control to the Association. The Committee shall approve or disapprove plans and specifications, including color, for all buildings, structures and improvements erected or placed on any Unit. The Committee shall also issue a Certificate of Occupancy prior to occupancy of any dwelling.

D. BY-LAWS:

The By-Laws of South Pointe Property Owners Association, Inc. as the same may be amended from time to time.

E. COMMON ELEMENTS:

All of the CIC property other than the Units, including, without limitations, the land and all the improvements and appurtenance thereto, central utilities and services, areas of common use, being ALL PORTIONS OF THE CIC EXCEPT THE INDIVIDUALS UNITS. References to "Common Elements" on the

plats are solely for general information, and do not define or limit the Common Elements.

F. COMMON EXPENSES:

Expenditures made by or financial liabilities of the Association, together with any allocations to reserves, a portion of which may be assessed to individual Unit Owners as set forth hereafter.

G. COMMON INTEREST COMMUNITY:

The real estate with respect to which a person, by virtue of his ownership of a unit, is obligated to pay for real estate taxes, insurance premiums, maintenance or improvements of other real estate described in this Declaration. "Ownership of a Unit" does not include holding leasehold interest of less than twenty (20) years including renewal options. Common Interest Community is often abbreviated as CIC.

H. DECLARANT:

SOUTH POINTE, A LIMITED LIABILITY COMPANY, its successors and assigns, excluding as successors and assigns all purchasers and lien holders of any Unit and their successors and assigns. Declarant has reserved Special Declarant Rights as set forth in Paragraph R and elsewhere herein.

I. DECLARATION:

This document and any amendments thereto, properly recorded in the Offices of the Clerk of the County Commission of Taylor County and Marion County, West Virginia. This Declaration, combined with other instruments described herein and amendments thereto, shall be deemed to create a CIC.

J. DEVELOPMENT RIGHTS:

Any rights or combination of rights reserved by Declarant in the Declaration to (1) add real estate to a Common Interest Community; (2) create Units, Common Elements within a CIC; (3) sub-divide Units or convert Units into Common Elements; or (4) withdraw real estate from the CIC; (5) change Common Elements into Units or part of a Unit; or (6) amend recorded plats to reflect the exercise of the above rights.

K. DISPOSE OR DISPOSITION:

A voluntary transfer to a purchaser of any legal or equitable interest in a Unit, but the term does not include the transfer or release of a security interest.

L. LIMITED COMMON ELEMENTS:

A portion of the Common Elements allocated by the Declaration for exclusive use of one or more but fewer than all the Units.

M. MEMBERS:

Any and every person or entity holding membership in the Association in accordance with Article V hereof.

N. MASTER ASSOCIATION:

An organization, either incorporated or unincorporated, formed for the purpose of joining with other common interest communities or other entities to provide for the orderly management and equitable pro-ration of expenses incurred by the common interest communities in the joint use of the Common Elements or either or both.

O. PLATS:

Those plats of survey and plans of the CIC heretofore described and recorded in the aforesaid Taylor County Clerk's Office in Deed Book 239, Page 280, and in File #1, Sleeve A-108, in the Office of the Clerk of the County Commission of Marion County, together with those plats of the CIC hereafter recorded in said Clerk's Office and any amendments thereto later filed of record in said Clerk's Office.

P. UNIT:

A physical portion of the Common Interest Community designated for separate ownership or occupancy (a lot), the boundaries of which are described. EACH UNIT SHALL BE DEEMED TO CONTAIN AS APPURTENANT TO ITS OWNERSHIP AN UNDIVIDED FRACTIONAL INTEREST IN THE COMMON ELEMENTS.

Q. UNIT OWNER:

Any and every record owner, whether one or more persons or entities, of a fee interest in any Unit, excluding those holding such interest merely as security for performance of an obligation, and including as a Unit Owner the Declarant, as to all unclosed and unsold Units.

R. SPECIAL DECLARANT RIGHTS:

Rights reserved for the benefit of the Declarant to (i) complete improvements indicated on plats and plans filed with the Declaration; (ii) exercise any development right; (iii) maintain sales office, management offices, signs advertising the CIC and models; (iv) use easements through the Common Elements for the purpose of making improvements within the CIC or within real estate that may be added to the CIC or for the development of adjacent property of Declarant; (v) make the CIC subject to a master association; (vi) merge or consolidate a CIC with another CIC of the same form of ownership; (vii) appoint or remove any officer of the Association or any master association or any Board of Directors member during any period of Declarant control or (viii) make minor adjustments in the location of the Common Elements to facilitate for construction of the Subdivision. Special Declarant Rights are freely transferable but the Declarant is not relieved of liability arising before the transfer and remains liable for warranty obligations imposed by the Uniform Common Interest Ownership Act.

V. THE ASSOCIATION

A. MEMBERSHIP:

Every person or entity who is an owner of a fee interest in any Unit, shall, by reason of ownership, automatically be a Member of the South Pointe Owners Association and be subject to the rules, regulations, covenants and restrictions of this Declaration and the Articles of Incorporation, the By-Laws of the Association, and further subject to rule and regulation by the Association in accordance with this Declaration. Ownership of a Unit is the sole qualification for membership in the Association. (In those situations where the "Ownership of a Unit" is established by a leasehold interest in excess of twenty (20) years, including renewal options, the lessee shall succeed to all the fee owners rights, privileges, and liabilities of membership in the Association.) Regardless of the foregoing, there is excluded from membership any person or entity having an interest in such a Unit merely as security for performance of any obligation. Following a termination of the CIC, Members of the Association shall be deemed to be all Unit Owners on the date of termination and shall be entitled to distribution of the proceeds hereunder. Membership as defined in the By-Laws shall not be inconsistent with the provision of this Article.

B. POWERS OF THE ASSOCIATION:

Subject to other provisions of the Declaration, the Association may:

- (1) Adopt and amend By-Laws and rules and regulations'

(2) Adopt and amend budgets for revenues, expenditures and reserves and collect Assessments for Common Expenses and Limited Common Expenses from Unit Owners;

(3) Hire and discharge managing agents and other employees, agents and independent contractors.

(4) Institute, defend or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more Unit Owners on matters affecting the CIC;

(5) Make contracts and incur liabilities;

(6) Regulate the use, maintenance, repair, replacement and modification of Common Elements and Limited Common Elements;

(7) Cause additional improvements to be made as a part of the Common Elements and Limited Common Elements;

(8) Acquire, hold, encumber and convey in its own name any right, title or interest to real estate or personal property, but Common Elements in the CIC maybe conveyed or subjected to a security interest only pursuant to the provisions of the Declaration;

(9) Grant easements, leases, licenses and concessions through or over the Common Elements;

(10) Impose and receive any payments, fees or charges for the use, rentals or operation of the Common Elements and for services provided to Unit Owners;

(11) Cause to be placed or kept in effect liability insurance on Common Elements;

(12) Impose charges for late payment of Assessments and, after notice and an opportunity to be heard, levy reasonable fines for violations of the Declarations, By-Laws and Rules and Regulations of the Association;

(13) Impose reasonable charges for the preparation and recordation of amendments to the Declaration or statement of unpaid Assessments;

(14) Provide for the indemnification of its officers and Board and maintain directors' and officers' liability insurance as desirable;

(15) Assign its right to future income, including the right to receive Common Expense Assessment, but only to the extent the Declaration expressly so provides;

(16) Exercise any other powers conferred by the Declaration, Articles or By-Laws;

(17) Exercise all other powers that may be exercised in this State by legal entities of the same type as the Association;

(18) Exercise any other powers necessary and proper for the governance and operation of the Association, and;

(19) Submit the CIC to a Master Association;

(20) Employ and retain such professionals and other experts whose services may be reasonably required to effectively perform those duties.

C. BOARD MEMBERS:

Subject to other provisions of the Declaration, the Board shall be generally empowered as follows:

(1) Except as otherwise provided in the Declaration, or the By-Laws, the Board may act in all instances on behalf of the Association. In the performance of their duties, the officers and members of the Board are required to exercise (i) if appointed by the Declarant, the care required of fiduciaries of the Unit Owners; and (ii) if elected by the Unit Owners, ordinary and reasonable care.

(2) The Board may not act on behalf of the Association to amend the Declaration, to terminate the CIC or to elect members of the Board or determine the qualifications, powers and duties, or terms of office of Board members, but the Board may fill vacancies in its membership for the unexpired portion of any term.

(3) Within thirty (30) days after adoption of any proposed budget for the CIC, the Board shall provide a summary of the budget to all the Unit Owners, and shall set a date for a budget, not less than fourteen (14) nor more than thirty (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. In the event the proposed budget is rejected, the periodic budget last ratified by the Unit Owners must be continued until such time as the Unit Owners ratify a subsequent budget proposed by the Board.

(4) Subject to subsection (E), there shall be an initial period of Declarant control of the Association during which Declarant or persons designated by it, may appoint and remove Association officers and members of the Board. The period of Declarant control terminated no later than the earlier of: (i) Sixty days after conveyance of seventy-five per cent (75%) of the Units that may be conveyed to Unit Owners other than Declarant; (ii) Two years after Declarant has ceased to offer Units for sale in the ordinary course of business; or (iii) Two years after any right to and new Units was last exercised. Declarant may voluntarily surrender the right to appoint and remove members of the Board before termination of that period, but in that event, Declarant may require for the duration of the period of Declarant control that specified actions of the Association or Board, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before becoming effective.

(5) Not later than sixty (60) days after conveyance of twenty-five per cent (25%) of the Units which may be conveyed to Unit Owners other than Declarant, at least one member and not less than twenty-five percent (25%) of the members of the Board must be elected by Unit Owners other than the Declarant. Not later than sixty (60) days after conveyance of fifty per cent (50%) of the Units which may be conveyed to Units Owners other than Declarant, not less than thirty-three and one-third percent (33 1/3%) of the members of the Board must be elected by Unit Owners other than the Declarant.

(6) Except as otherwise provided in this Declaration, not later than the termination of any period of Declarant of Declarant Control, the Unit Owners shall elect a Board of six (6) members, at least a majority of which must be Unit Owners. The Board shall elect all officers. The Board members and officers shall take office upon election.

(7) Notwithstanding any provision of the Declaration or the By-Laws to the contrary, the Unit Owners, by a two-thirds (2/3) vote of all persons present and entitled to vote at any meeting of the Unit Owners at which a quorum is present, may remove any member of the Board with or without cause, other than a member appointed by the Declarant.

(8) If entered into before the Board elected by the Unit Owners pursuant to subsection (G) takes office, (i) any management contract, employment contract or lease of recreational or parking areas or facilities; (ii) any other contract or lease between the Association and Declarant or an affiliate of a Declarant; or (iii) any contract or lease that is not bona fide or was unconscionable to the Unit Owners at the time entered into under the circumstances then prevailing, may be terminated without penalty by the Association at any time after the Board elected by the Unit Owners pursuant to subsection (G) takes office upon not less than ninety days' notice to the other party. This subsection does not apply to: (i) the termination of any lease which would terminate the CIC or reduce its size; or (ii) a proprietary lease.

(9) To submit the Association to the additional management and assessment by a Master Association. Due to future development, Common Elements of the Subdivision may be subjected to use by the public who are not Members of the Association. This use will cause additional wear and tear to the Common Elements requiring additional maintenance assessments. The Master Association will consist of representatives of the Board and representatives from other common interest communities, other property owners, or any other entity. The Master Association shall determine on an equitable basis the manner in which to assess for maintenance expenses for the additional wear and tear incurred.

(10) Unless the By-Laws or Declaration specify a larger percentage, a quorum is deemed present throughout any meeting of the Board if persons entitled to cast fifty per cent (50%) of the votes on that Board are present at the beginning of the meeting.

D. BY-LAWS:

The By-Laws of the Association, and all amendments thereof, in additions to other matters, provide and shall provide:

(1) That the number of members of the Board is to be three (3) in number until Declarant control is relinquished, then the Board shall consist of six (6) members;

(2) Election by the Board of a President, Treasurer, Secretary and other officers of the Association;

(3) The qualifications, powers and duties, terms of office and manner of electing and removing Board members and officers and filling of vacancies;

(4) The delegation by the Board or officers of duties to other persons or to a managing agent;

(5) The appointment of the proper officers to prepare, execute, certify and record Amendments to the Declaration on behalf of the Association; and,

(6) A method for amending the By-Laws.

(7) Authority to submit the Association to a Master Association.

E. CIC UPKEEP:

Except to the extent otherwise provided by the Declaration, the Association is responsible for maintenance, repair, replacement and upkeep of the Common Elements and Limited Common Elements. The Declarant alone is liable for all expenses in connection with real estate subject to the development rights. No other Unit Owner and no other portion of the CIC is subject to a claim for payment of those expenses. The Declarant agrees by the submission of this Declaration to pay all operating expenses of the Association until its first regularly scheduled meeting. The Association acting through its Board of Directors or the Declarant if control has not been relinquished to the Association may submit to a Master Association which will maintain specific CIC Common Elements used by non-Members. This Master Association may make separate assessments upon an equitable basis against Unit Owners for use of certain Common Elements.

F. ASSOCIATION MEETING:

A meeting of the Association shall be held at least once each year. Special meetings of the Association may be called by the President; a majority of the Board; or by Unit Owners having twenty per cent (20%) of the votes in the Association, not less than ten (10) nor more than (60) days in advance of any meeting. The Secretary or other officer specified in the By-Laws shall cause notice to be hand delivered or sent postage prepaid by United States Mail to the mailing address of each Unit or to any other mailing address designated in writing by the Unit Owner. The notice of any meeting must state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the Declaration or By-Laws, any budget changes and any proposal to remove an officer or member of the Board.

G. ASSOCIATION MEETING, QUORUM AND VOTING:

Unless the By-Laws or Declaration provide otherwise, a quorum is present throughout any meeting of the Association if persons entitled to cast twenty per cent (20%)of the votes that may be cast for election of the Board are present in person or by proxy at the beginning of the meeting. Voting at a meeting where quorum is present shall be cast as follows:

(1) Members of the Association shall be entitled to one vote for each Unit in which they may hold the interest required for membership. Allocation of votes is generally formulated upon the principle, "one vote for one unit."

(2) If only one of several owners of a Unit is present at a meeting of the Association, that owner is entitled to cast the vote allocated to that Unit. If more than one of the Owners are present, the vote allocated to that Unit may be

cast only in accordance with the agreement of a majority in interest of the Owners. There is majority agreement if any one of the Owners casts the vote allocated to that Unit without protest being made promptly to the person presiding over the meeting by any of the other owners of the Unit.

(3) The vote allocated to a Unit may be cast pursuant to a proxy duly executed by a Unit Owner. If a Unit is owned by more than one person, each owner of the Unit may vote or register protest to the casting of votes by the other owners of the Unit through a duly-executed proxy. A Unit owner may revoke a proxy given pursuant to this subsection only by actual notice of revocation to the person presiding over a meeting of the Association. A proxy is void if it is not dated or purports to be revocable without notice. A proxy terminates one year after its date, unless it specifies a shorter term.

(4) Any Unit held by the Association shall be entitled to vote. Voting rights of Members as set forth in the By-Laws may not be inconsistent with the provision in this Article.

(5) Only Members in good standing shall be entitled to vote. A Member shall lose his good standing status should any Association assessments or fines remain delinquent when due for a period of ninety (90) days.

H. TORT AND CONTRACT LIABILITY:

If an action alleging a wrong done by the Association and not against any Unit Owner, occurred during any period of Declarant control, and the Association gives Declarant reasonable notice of and an opportunity to defend against the action, Declarant is then liable to the Association or to any Unit Owner for (i) all other losses not covered by insurance suffered by the Association or that Unit Owner, and (ii) all costs that the Association would not have incurred but for a breach of contract or other wrongful act or omission. Whenever Declarant is liable to the Association under this section, Declarant is also liable for all expenses of litigation including reasonable attorney's fees incurred by the Association. Any Statute of Limitation affecting the Association's right of action under this section is tolled until the termination of Declarant control. A Unit Owner is not precluded from maintaining an action contemplated by this section because he is a Unit Owner, member or officer of the Association.

I. ASSOCIATION CONVEYANCE OR ENCUMBRANCE OF COMMON ELEMENTS:

(1) Portions of the Common Elements may be conveyed or subjected to a security interest by the Association if persons entitled to cast at least eighty per cent (80%) of the votes in the Association, including eighty per cent (80%) of the votes allocated to Units not owned by Declarant agree to that action.

(2) An agreement to convey Common Elements or to subject them to a security interest must be evidenced by the execution of an agreement or ratification thereof in the same manner as a deed, by the requisite number of the Unit Owners.

(3) The Association, on behalf of the Unit Owners, may contract to convey an interest in the Common Elements pursuant to Subsection I (1), but the contract is not enforceable against the Association until approved pursuant to subsection I (1) and I (2). Thereafter, the Association has all powers necessary and appropriate to effect the conveyance or encumbrance, including the power to execute deeds or other instruments.

(4) Unless made pursuant to this section, any purported conveyance, encumbrance, judicial sale or other voluntary transfer of Common Elements of the CIC is void.

(5) A conveyance or encumbrance of Common Elements pursuant to this section does not deprive any Unit of its rights of access or ingress, egress and regress across the roads and ways as designated upon the recorded plats of the Subdivision.

(6) A conveyance or encumbrance of Common Elements pursuant to this section does not affect the priority or validity of pre-existing encumbrances.

J. INSURANCE:

(1) Commencing not later than the time of the first conveyance of a Unit to a person other than Declarant, the Association shall maintain, to the extent reasonably available:

(a) Property insurance on the Common Elements against fire and extended coverage perils for undeveloped Units. The total amount of insurance after application of any deductibles must be not less than eighty per cent (80%) of the actual cash value of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavation, foundation and other items normally excluded from property policies; and,

(b) Liability insurance, including medical payments' insurance, in limits of \$300,000/\$1,000,000 and thereafter, in an amount determined by the Board so to cover 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.

(2) If the insurance described in subsection J (1) is not reasonably available, the Association shall promptly cause notice of that fact to be hand-delivered or sent postage prepaid by United States Mail to all Unit Owners. The Association may carry any other insurance it considers appropriate to protect the Association or the Unit Owners.

(3) Insurance policies carried pursuant to subsection J (1) must provide that:

(a) 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;

(b) The insurer waives its right to subrogation under the policy against any Unit Owner or member of his household;

(c) No act or omission by any Unit Owner, unless acting within the scope of his authority on behalf of the Association will void the policy or be a condition to recovery under the policy; and

(d) 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 Association's policy provides primary insurance.

(4) The Association shall hold any insurance proceeds in trust for the Association, Unit Owners and lien holders as their interests may appear. The proceeds must be disbursed first for the repair or restoration of the damaged property. 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 CIC is terminated.

(5) An insurance policy issued to the Association does not prevent a Unit Owner from obtaining insurance for his own benefit.

(6) An insurer which has issued an insurance policy under this section shall issue certificates or memoranda of insurance to the Association and, upon written request, to any Unit Owner or holder of a security interest. The insurer issuing the policy may not cancel or refuse it until thirty (30) days after notice of the proposed cancellation or non-renewal has been mailed to the Association and each holder of a security interest to whom a certificate or memorandum of insurance has been issued at their respective last-known address.

(7) Any portion of the CIC for which insurance is required under this section which is damaged or destroyed must be repaired or replaced promptly by the Association unless (i) the CIC is terminated; (ii) repair or replacement would be illegal under any state or local statute or ordinance governing health or safety; or (iii) eighty per cent (80%) of the Unit Owners vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves is a Common Expense. If the entire loss is not repaired or replaced, the insurance proceeds attributable to the damaged Common Elements must be used to restore the damaged area to a condition compatible with the remainder of the CIC. Any surplus insurance proceeds shall be credited to the Common Expenses for the benefit of the Unit Owners who were Members of the Association at the time of the loss.

VI. ASSESSMENT, LIENS AND RECORDS

A. INITIAL ASSESSMENT DEPOSITS:

The initial purchaser of any lot in Phase I and II in South Pointe Subdivision shall, on the date of purchase, pay to the Property Owners Association the sum of Three Hundred Dollars (\$300.00), as required by section 3.04 of the By-Laws of said Property Owners Association.

B. ASSESSMENTS FOR COMMON EXPENSES:

(1) Until the Association makes a Common Expenses Assessment, the Declarant shall pay all Common Expenses. After an assessment has been made by the Association, assessments must be made at least annually based on a budget adopted at least annually by the Association.

(2) Except for assessments under subsection (3), (4) and (5), all Common Expenses must be assessed against each Unit in accordance with allocations set forth in Article VIII F. of this Declaration. Any past due Common Expenses Assessments or installment thereof bears interest at the rate established by the Association not exceeding eighteen percent (18%) per year.

(3) It is further required that to the extent reasonably determinable:

(a) Any Common Expense or portion thereof benefiting fewer than all of the Units must be assessed exclusively against the Units benefited.

(b) Driveways used in common for access to Units resulting from subdivision by a Unit Owner (not Declarant) shall be maintained by the

Association as a limited common expense. Original paving of the driveway as provided elsewhere is the Unit Owner's responsibility.

(4) Assessments to pay judgments against the Association may be made only against the Units in the CIC at the time the judgment was entered, and in proportion to their Common Expense liability.

(5) If any Common Expense is caused by the misconduct of any Unit Owner, or his invitees, lessees or tenants, the Association may assess that expense exclusively against his Unit.

C. SURPLUS OF ASSESSMENT:

Any surplus funds of the Association remaining after payment of or provision for, Common Expenses and any pre-payment of reserves must be credited to the Unit Owners in proportion to their Common Expense liability assessed to them to reduce their future Common Expense Assessment.

D. LIEN FOR ASSESSMENT:

(1) The Association has a lien on a Unit for any Assessment levied against that Unit or fines imposed against its Unit Owner from the time the assessment or fines become due. If an Assessment is payable in installments, the full amount of the Assessments a lien from the time the first installment thereof becomes due.

(2) A lien under this section is prior to all other liens and encumbrances on a Unit except (i) liens and encumbrances recorded before the recordation of the Declaration; (ii) a first security interest on the Unit recorded before the date on which the Assessment sought to be enforced becomes delinquent and (iii) liens for real estate taxes and other governmental assessments or charges against the Unit. The lien is also prior to all security interests described in clause (ii) above to the extent of the Common Expenses Assessments based on the periodic budget adopted by the Association which would have become due in the absence of acceleration during the six months immediately preceding institution of an action to enforce the lien. This subsection does not affect the priority of liens for other assessments made by the Association. The lien under this section is not subject to the provisions of homestead, dower, courtesy or other like exemptions.

(3) A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three years after the full amount of the assessments becomes due.

(4) This section does not prohibit actions to recover sums for which subsection (1) creates a lien or prohibits the Association from taking a deed in lieu of foreclosure.

(5) A judgment or decree in any action brought under this section may include costs and reasonable attorney's fees for the prevailing party.

(6) The Association, upon written request, shall furnish to a Unit Owner a statement setting forth the amount of unpaid assessments against the Unit Owner's interest in real estate. The statement must be in recordable form and must be furnished within ten business days after receipt of the request and is binding on the Association, the Board and/or every Unit Owner.

(7) For the purpose of perfecting and preserving its lien, the Association shall give notice to the Unit Owner by registered or certified mail, return receipt requested, and in a form reasonably calculated to inform the owner of his liability for payment of the Assessment. The lien shall be discharged as to subsequent purchasers for value without notice unless the Association shall cause to be recorded a notice of the lien in the appropriate Office of the Clerk of the County Commission of Taylor or Marion County, West Virginia depending on the Unit's location. The notice shall contain:

(a) A legally-sufficient description of the Unit;

(b) The name or names of the Owners of the Unit;

(c) The amount of unpaid assessments due, together with the date when each became due; and,

(d) The date of recordation.

(8) The Clerk of the County Commission in whose office the notice is recorded shall index the notice in the appropriate lien books in the name of the Unit Owner as debtor and of the Association as creditor. The cost of recordation shall be assessed against any Unit Owner found to be delinquent.

(9) Upon payment of the Assessment, the Association shall execute a written release of the lien. This release shall be recorded at the expense and responsibility of the Unit Owner in the Office of the Clerk wherein the notice of the lien was filed.

E. OTHER LIENS:

(1) Except as provided in subsection (2), a judgment for money against the Association (if recorded) is not a lien on the Common Elements, but is a lien in favor of the judgment lien holder against all of the Units in the CIC at

the time the judgment was entered. No other property of a Unit Owner is subject to the claims of creditors of the Association.

(2) If the Association has granted a security interest in the Common Elements to a creditor of the Association pursuant to Article V, Section I, the holder of that security interest shall exercise its right against the Common Elements before its judgment lien on any Unit may be enforced.

(3) A judgment against the Association must be indexed in the name of the CIC and the Association; and when so indexed, provides notice of the lien against the Units.

F. ASSOCIATION RECORDS:

The Association shall keep financial records sufficient to comply with its duties of assessing, managing and dispersing CIC assets and to permit the Association to provide, upon request for a fee not to exceed Fifty Dollars (\$50.00) relative to each Unit, a Unit Resale Summary setting forth information required by a selling Unit Owner to lawfully reconvey his Unit pursuant to West Virginia Code Section 368-4-109, or as such requirements may, from time to time, be amended.

G. ASSESSMENT OF MASTER ASSOCIATION:

Future development of adjoining or other properties may result in the use of Subdivision Common Elements by individuals not Members (or Members' guests) of the Association. This use will result in wear and tear on Common Elements in excess of the wear and tear incurred by Member only (or their guests) use. This increased wear will necessitate additional upkeep and maintenance resulting in additional expense to the Association.

The Association, acting through its Board, is authorized to participate in the operation of a Master Association. This Master Association will be formed by representatives of the Association and representatives of other individuals or entities making use of the Subdivision Common Elements.

The Board is authorized to delegate such power to the Master Association as the Board deems appropriate to the proper operation of the Master Association.

The Master Association shall make assessments in an equitable fashion based upon proportionate usage of the Common Elements. This assessment shall be used exclusively for the purpose of maintaining the Common Elements subjected to the excessive wear and tear.

VII. THE PLATS

The Plats set forth the measurements, location and other required data with respect to (1) the Subdivision and its exterior boundaries, (2) the Common Elements and (3) the individual Units. Declarant reserves the right to and may cause to be recorded from time to time amended plats or plans showing the actual locations and dimensions of the boundaries of the CIC, for which amended plats or plans are completed after the data hereof. In this Declaration, whenever the terms "plats" or "plans" appear, they shall be deemed to include such amended plats or plans as may hereafter be recorded pursuant to this paragraph.

VIII. THE UNITS - USE, TRANSFER AND OTHER RESTRICTIONS AND RIGHTS

A. LEGAL DESCRIPTION

The description of each Unit is generally designated by the identifying number of such Unit as shown on the Plats of the CIC. No Unit Owner shall, by deed, plat, court decree or otherwise, sub-divide or in any other manner cause his unit to be separated into any tracts or parcels different from the whole Unit as shown on the Plat except that sub-dividing shall be permitted so long as none of the Units sold or retained contain an area of less than one (1) acre. Said privilege to sub-divide is further subject to the condition that both Units must comply with the terms and conditions of the Declaration, Articles of Incorporation, By-Laws of the Association and any other rules and regulations promulgated by the Association or the Building Control Committee. The identifying number for each Unit shall always be deemed to include all of that Units' APPURTENANT ownership interest in all appurtenant rights, duties, covenants and restrictions herein set forth or referenced.

B. USE AND OCCUPANCY RESTRICTIONS:

The following covenants, restrictions, limitations, regulations and agreements are hereby imposed upon Units in the CIC as shown on the Plat. Said Restrictions shall be binding upon all purchasers or other parties having interest therein, and are intended to be covenants running with the land;

(1) South Point, A Limited Liability Company may include in any contract or deed hereafter made, modification or additions to the restrictive covenants with respect to the Unit or Units thereby conveyed; provided, however, that such modification or additions in the covenants and restrictions shall be consistent with the tenor and integrity of those hereinbefore and hereinafter set

forth, and in no event shall modifications be made that would alter the residential character of South Pointe Subdivision.

(2) SUBJECT to the foregoing Special Declarant Rights, no dwelling shall be constructed upon any Unit in the Phases I and II which contains less than the specified square footage of finished living space, exclusive of basements, porches, decks and finished or unfinished garage(s). The minimum square feet of finished living area will be 2000 square feet in Phase I and Phase II. Except that Unit Nos. 37 & 38 in PHASE I have a square foot requirement of a minimum of 1000 square feet for approval for the construction of each sub-duplex unit in a duplex.

(3) Once the plans of a residential home have been approved by the Building Control Committee, as hereinafter set forth in detail, and construction of the residential dwelling is commenced on any Unit, the improvements must be substantially completed, including the exterior work, grading and landscaping in accordance with the plans and specification as approved, within (10) months, subject to weather conditions only.

(4) All sidewalks if any are to be paved with concrete and all driveways are to be paved with concrete or blacktop within ten (10) months of commencement of construction. Further, each dwelling shall have sufficient off street parking to service the dwelling; it being the intention of the Declarant to prohibit parking in or along streets in the Subdivision.

(5) There shall be no recreational vehicles, trailers, boats, boat trailers, or vehicles with a hauling capacity in excess of one (1) ton parked in driveways; all of same must be parked in garages.

(6) All structures constructed or placed on any Unit shall be built of new material or reconditioned material.

(7) A. Units adjoining Scottsdale Road, excluding however Units adjoining Scottsdale Road cul-de-sac, shall not locate the residence or any other building nearer than forty (40) feet to the front or rear lot nor nearer than fifteen (15) feet to an interior or side Unit line. Unit 34, 35 and 22 adjoining Scottsdale Road are excepted from the restrictions above stated and are subject instead to a twenty (20) foot building restriction line across the front of each Unit.

B. Units adjoining Scottsdale Road Cul-de-Sac shall observe a twenty (20) foot building restriction line.

C. Units adjoining Victorian Drive shall observe a forty (40) foot building restriction line.

D. Units adjoining Route 250 shall observe a fifteen (15) foot building restriction line from the westernmost right-of-way line of Route 250.

E. Unit 23 is a three (3) sided lot and shall have a forty (40) foot building restriction line along Victorian Drive and a fifteen (15) foot line along its other two (2) sides.

F. Unit 34 and 35 shall have twenty (20) foot front building restriction line and a fifteen (15) foot rear and side building restriction line.

For the purpose of this restriction, eaves, steps, balconies and open porches shall not be considered as part of the construction; provided, however, that this shall not be construed to merit any portion of a building on said part of ground to encroach upon any adjoining property. All of the above setbacks are subject to waiver and/or modification upon approval of the Building Control Committee of Southe Pointe Property Owners Association if approval is given in accordance with paragraph (D) variances hereinafter set forth. All other building restriction lines are shown on the Plat of the Subdivision.

(8) No structure of a temporary character, trailer, basement, tent, barn or garage shall be used at any time as a residence, either temporarily or permanently.

(9) No animals or livestock of any description, except the usual household pets, shall be kept on any Unit, and those pets that are kept upon any Unit shall not be permitted to run at large or cause damage or injury to other Unit Owners or their Unit property.

(10) There shall be no dog breeding or other commercial animal breeding activity allowed upon any Unit.

(11) No Unit or any building erected thereon shall be used at any time for the purpose of any trade, manufacture or business of any kind, and no junk or unlicensed cars or any noxious, offensive or illegal activities shall be carried on upon any Unit, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

(12) No commercial signs, including "For Rent", "For Sale" and other similar signs shall be erected or maintained on any Unit except with the written permission of SPALLC or except as may be required by legal proceedings.

(13) All Units, whether occupied or unoccupied, and any improvements thereon, shall be well maintained and no unattractive growth or accumulation of rubbish or debris shall be permitted.

(14) The exterior walls of all buildings, if of masonry construction, shall be of brick, stone or dryvet, or vinyl unless otherwise approved in Paragraph (D) Variances hereafter. No building shall have concrete or cinder blocks or concrete masonry exposed.

(15) All plumbing fixtures, dishwashers or toilets shall be connected to the sewerage system. Storm water shall not be connected to the sewerage system.

(16) No Unit Owner other than Declarant exercising its Special Declarant Rights may subdivide a Unit without the written consent of the Declarant or the Building Control Committee.

An exception to this restriction of sub-dividing shall be permitted in those circumstances where a Unit Owner or Declarant owns a parcel of sufficient size so that it may be subdivided and none of the resulting Units after subdivision shall contain less than one (1) acre. All Unit Owners of the Subdivision, shall obtain approval for the installation of all utilities including sewerage prior to the commencement of construction. Each resulting Unit, after subdivision shall have as appurtenant to their Unit a right-of-way for ingress, egress and regress to a Subdivision roadway. Said right-of-way, if one is necessary, shall be evidenced by a document recorded in the Office of the Clerk of the County Commission. Each roadway right-of-way made necessary by the Subdivision of Units shall be paved at the Unit Owner's expense. The resulting right-of-way driveways if used in common with other Unit Owners, shall be treated as a Limited Common Element by the Association. All resulting Units are subject to this Declaration, Articles of Incorporation, By-Laws, and rules and regulations of the Association. Said Units are likewise subject to the jurisdiction of the Building Control Committee. Since building restriction lines can not be placed upon the Plat prior to the subdivision, the Building Control Committee shall have broad discretion in determining the location of building restriction lines for the newly formed Units.

(17) No swimming pool shall be constructed within the CIC without the written consent of the Building Control Committee first received, except for the swimming pool that may be constructed within the Common Elements by Declarant. No above ground swimming pool shall be permitted with or without the consent of the Building Control Committee. Proper fencing, as approved by the Building Control Committee, for an around all permitted below ground swimming pools, shall be and except or to the prohibition of no fences in the CIC.

(18) No Unit Owner shall utilize aluminum or log home siding in the construction of a dwelling. The term aluminum siding shall not include within its definition "vinyl siding".

(19) No Building shall be erected, placed or altered on any Unit until the construction plans, specifications, and plot plan have been approved, in

writing, by the "Building Control Committee", as to the harmony of external designs and as to location with respect to topography and finished grade elevation. The approval or disapproval of said plans must be made in writing within a period of thirty (30) days from the date said plans are submitted to the Building Control Committee.

(20) All detached buildings and/or garages shall be constructed to match the residential dwellings and must further be reviewed and approved by the aforesaid Building Control Committee.

(21) There shall be no log homes or cabins constructed within the Subdivision.

(22) Each Unit Owner shall provide receptacles for garbage in a screened area or an area not visible from the road or neighboring Units in accordance with Health Department suggestions or reasonable standards as established by the Building Control Committee.

(23) The utility services provided by the Unit Owner servicing the Units of said Subdivision are to be constructed underground from the street rights of way to the residential dwellings.

(24) There shall be no satellite dishes installed or constructed within the Subdivision unless prior approval is obtained from the Building Control Committee.

(25) All areas of a Unit exposed by construction must be seeded, stabilized or otherwise protected against soil erosion at all times. The Unit shall be returned to grade and all landscaping shall be completed within thirty (30) days of the completion of construction.

(26) In the case of fire, casualty or other disaster, each owner covenants, at the minimum, to apply all insurance proceeds to the extent necessary to return the Unit to grade. If the Unit Owner chooses to reconstruct, the Owner shall restore all buildings and landscaping to substantially the same condition existing prior to the fire, casualty or other disaster within one year from the date of the fire, casualty or disaster.

(27) During the period of construction, the Unit owner shall take special measures to avoid damage to the blacktopped street and sidewalks, if any, upon which said lot fronts and shall assume responsibility for any damage done to said street and walks, if any during the period of construction and shall make repairs at their expense for any damage so done.

(28) Before commencing construction of a dwelling on said lot, the Unit Owner shall place a culvert across the driveway entrance to said lot, 15" in

diameter. A variance may be obtained from the Building Control Committee in the event a smaller culvert will adequately divert all storm water.

(29) No fence or hedge may be placed on any lot without prior written consent from the board.

(30) Declarant shall not be responsible for any soil movement. It is the responsibility of all Unit Owners at their own expense to inspect any/all soil conditions prior to the purchase of a Unit at the expense of the Unit Owner.

(31) No lot shall be used or maintained as a dumping ground for rubbish. All equipment used for the storage or disposal of trash, garbage or other waste, shall be kept in a clean and sanitary condition. No open burning of garbage is allowed.

(32) No building, buildings or material or refuse shall be placed or stored within thirty (30) feet of the property line of the common areas.

(33) No residence shall be occupied until the same has been substantially completed on the exterior, and a certificate of occupancy has been issued by the Building Control Committee.

(34) The Common Elements, including the roadways within the Subdivision, are subject to Special Declarant Rights which authorize SPALLC, during the period of Declarant control of the Association to make minor adjustments in the Common Elements to compensate for difficulties encountered during construction due to adverse topography or other adverse conditions. Any changes made by Declarant will not deny any Unit Owner full access to any and all Common Elements relocated. Declarant need not seek approval of the Association or any Unit Owner to make such changes.

(35) Unit Owners of Lots 39 through 48 are restricted to the installation of sewage facilities on the ground level floor and above only. Topography of these Units is such that below ground level sewer facilities are infeasible without additional expense to the Unit Owner. To properly service Lots 39 through 48 with sewage, a sewer lift station or grinder pump servicing those lots will be required. In that event, each Unit service, shall assume all expenses incurred for costs of installation and operation.

(36) With the exception of fences that may be consented to be constructed around in-ground swimming pool, no fence shall be constructed on an lot in the CIC.

(C) BUILDING CONTROL COMMITTEE:

(1) The Committee shall be composed of three (3) members to be appointed by the Board of Directors. Committee members shall be subject to removal by said Board of Directors and any vacancies from time to time existing shall be filled by appointment by the said Board of Directors.

(2) All buildings, structures and improvements, (including exterior color, roofing, siding, brick, stone, dryvet and accent colors) erected or placed on any Unit must be approved in writing by the Building Control Committee.

(3) There shall be submitted to the Committee a complete set of the final plans and specifications for any all proposed improvements, the erection or alteration of which is desired, and no structure or improvements (including exterior color, roofing siding, brick, stone, dryvet and accent colors) of any kind shall be erected, altered or maintained upon a Unit specifications therefore have received such approval as herein provided. Such plans shall include plot plans showing the location on the Unit of the building utility entrances, walls, or other structures proposed to be constructed, altered, placed or maintained, together with the proposed construction material and proposed landscape planting and off street parking.

(4) The Committee shall approve or disapprove plans, specifications and details within thirty (30) days from the receipt thereof. The Committee shall have the right to reasonably disapprove any plans, specifications or details submitted to it if the same are incomplete, not in accordance with any of the provisions of these restrictions or contrary to the interest, welfare or rights of all or any part of the real property subject thereto, or the owners thereof. The decisions of the Committee shall subject to appeal or review by the Board of Directors of said Association.

(5) Each Unit Owner shall pay the Declarant for the installation of uniform mailboxes within the Subdivision.

(D) VARIANCES:

The Building Control Committee may allow reasonable variances and adjustments of these restrictions in order to overcome practical difficulties and prevent unnecessary hardship in the application of the provisions contained herein; provided, however, that such is done in conformity with the interest and purposes of the general development scheme and will not be materially detrimental or injurious to other property or improvements in the Subdivision. The Association, Declarant, and all Unit Owners agree to submit to binding arbitration (as established by the American Arbitration Association) in those situations where an appeal of the matter before the Board of Directors is not resolved to the satisfaction of any interested party.

The Building Control Committee shall have specific authority to grant variances, in appropriate circumstances, to Unit Owners who desire to construct over or upon the 10 foot easement along each side of all boundary lines, porches, decks or other appurtenances non-integral to the primary residential structure. Any variance which the Building Control Committee may grant shall be based upon plans first submitted by the Unit Owner to the Committee.

The Unit Owner will bear the entire risk associated with the removal of the appurtenance in the event the Association must enter the easement for any purpose. The Association shall have no duty to repair, replace or otherwise compensate the Unit Owner for any damage incurred by any part of the appurtenance while working within the easement.

Prior to commencement of construction of the appurtenance, the Unit Owner shall execute and submit a waiver to the Association. The waiver shall state that the Unit Owner waives and releases any and all rights, claims and causes of action which the Owner has or may have against the Association for any and all damages sustained by an appurtenance encroaching upon the aforesaid 10-foot easement.

(E) EASEMENTS:

There is reserved for the Association, its successors and assigns, and for the use of the Declarant in the Development of this Subdivision, the following easements and rights-of-way incident to the development of this property:

(1) A ten (10) foot wide easement along each side of all road rights of way and along all other property boundary lines for the purpose of altering, adding, installing, operating and maintaining sewerage disposal lift stations, utility lines, mains, driveways, culverts, as well as other services; reserving also the right of ingress and egress to such areas for any of the aforesaid purposes, together with the right to trim, cut and remove any trees and/or brush located in said right of way.

(2) A thirty (30) foot wide electric line easement along the rear of Unit 49.

(3) A ten (10) foot wide drainage easement running from Scottsdale Road and between Lots 22 & 56, 23 and 53 and 54, and 55 and the recreational area.

(4) A fifteen (15) foot drainage easement between Scottsdale Road and Lots 31 and 32 and 60.

(5) A ten (10) foot wide walkway easement between lots 29 and 30.

(6) A ten (10) foot wide walkway easement between lots 61 and 62.

(7) The Units shall be burdened by such additional rights of way and easements as may be shown on the recorded maps or plats of said Subdivision, or as may be placed in any deeds of conveyance for each individual Unit.

(8) Declarant reserves unto itself, its partners, its successors and assigns, a perpetual, alienable and releasable easement and right to use the roads in the Subdivision, and the right on, over and under the cable, conduits, gas lines, sewers, water mains and other suitable equipment, for the conveyance and use of electricity, telephone equipment, gas, sewer, water and other public conveniences or utilities within the right of way of the roads and on such other reserved areas as shown on the recorded Plat of the Subdivision. Declarant may also cut drainways for surface water whenever and wherever such action may appear to Declarant to be necessary in order to maintain reasonable standards of health, safety and appearance. Such right may be exercised by any licensee of Declarant but this reservation shall not be considered an obligation of Declarant to provide or maintain any such utility or service.

(9) A perpetual easement over, across and through the streets and ways as shown upon the recorded Plats of the CIC as a means of ingress, regress and regress from the public ways to that part of the 106 acre parcel not committed to the CIC and designated on the Plats of the CIC "Owned by South Pointe, A Limited Liability Company - Future Development of Apartments, Townhouses, Condominiums or Patio Homes - Need Not be Built" said reservation being as appurtenant to said designated area.

(10) Declarant reserves the right to fix the grades and elevations of all streets within the Subdivision. Any top or other soil removed from any Unit within the Subdivision shall be deposited by the Unit Owner in such area of said Subdivision as may be determined by Declarant. In the event Declarant does not want the soil, it may then be deposited by the Unit Owner elsewhere.

(F) ALLOCATED INTEREST, USE AND ENJOYMENT OF COMMON ELEMENTS:

(1) Each Unit Owner shall be allocated an undivided interest in the Common Elements and perform the Common Expense of the Association, The Unit Owners' allocated interest will vary depending upon the ultimate number of Units created by Declarant in the Subdivision. THE TOTAL NUMBER OF LOTS

DEDICATED TO THE CIC HAS NOT BEEN CONCLUSIVELY DETERMINED. Should Declarant determine to create or eliminate Units or entire phases from the CIC, then the allocated interest in the CIC will vary accordingly. The Special Declarant Rights reserved permit Declarant to create or subdivide Units within a phase where no Units have been sold or eliminate an entire phase. Unit Owners can determine their allocated interest by the formula that an allocated interest through ownership of a Unit is equal to a fraction wherein the numerator is one (representing one Unit) and the denominator is a number equal to the number of lots within all dedicated phases. Unit Owners holding a fee simple interest in a Unit may have their allocated interest increased or reduced by an amount equal to the number of Units added or subtracted from the projections listed.

(G) MOTOR VEHICLES SPEED LIMITS:

(1) Speed limits for streets shall be set by the Board of Directors.

(2) No motor vehicle of any nature, except a duly licensed vehicle, shall be operated on any street and no such vehicle shall be operated except by a licensed operator.

(H) STREETS:

Declarant covenants the entrance way and streets as designated on the plats of South Pointe Subdivision will be paved on or before the 31st day of December, 1994. The paving of the entrance and the streets shall be of asphalt material. The streets shall be paved to a width of at least nineteen (19) feet and all paving shall be done in accordance with generally accepted paving standards as the same now exist in the Fairmont area.

(I) REPRESENTATIONS:

All Unit Owners herein, their heirs, successors and assigns by their acceptance and recordation of this instrument, acknowledge the conditions of the hereinbefore described Unit and accept the same as it is, fully understanding that the Declarant has made no representations whatsoever, either directly or impliedly, as to the fitness of the Unit for its use in any manner whatsoever.

IX. WARRANTY OF QUALITY

South Pointe Subdivision is a Common Interest Community created and designed for use as a residential community. Declarant makes no express or implied warranties of quality. It is understood that by purchasing a Unit, any and all Unit Owners accept, as excluded, expressed or implied warranties of quality. Units are being offered for sale by Declarant upon an "AS IS" basis.

All Purchasers shall execute a separate instrument attached hereto and marked "Agreement and Waiver." This Agreement and Waiver, by and between Declarant and Purchaser, waives Purchaser's statutory right to a six-year statute of limitation for the commencement of a legal action for breach of implied or expressed warranties of quality. In its place shall be substituted a statute of limitation requiring the commencement of any legal action by Purchaser for breach of warranty or representations within two years of the date the Purchaser enters into possession.

X. REMEDIES

In the event of any violation of the provisions of the Declaration, By-Laws or Rules and Regulations of the Board, Building Control Committee or Association, the Association or its successors or assigns, the Board or its agent, the Declarant, its successors or assigns or a Unit Owner shall have each and all of the rights and remedies which may be provided for in the West Virginia Acts to which this CIC is submitted, the Declaration, By-Laws, or Rules and Regulations, or other like source which may be available at law or in equity, and shall be decided by arbitration in accordance with the Construction Industry Rules of the American Arbitration Association then obtaining unless the parties mutually agree otherwise. This agreement to arbitrate shall be specifically enforceable under the prevailing arbitration law. The award rendered by the arbitrators shall be final and judgment may be entered upon it in accordance with applicable law. Notice of the demand for arbitration shall be filed in writing with the other party and with the American Arbitration Association. The demand for arbitration shall in all cases be made within a reasonable time after the claim, dispute or other matter in question has arisen. All expenses of the Board in connection with any subject actions or proceedings, including Court costs and attorneys' fees and any other fees and expenses and all damages, liquidated or otherwise, together with interest thereon at the rate of no more than eighteen percent (18%) per annum until paid, shall be charged to and assessed against such defaulting Unit Owner, and shall be added to and deemed a part of his respective share of the Common Expense. The Board acting on behalf of the Association shall have a lien for all of the same, as well as for nonpayment of a Unit Owner's respective share of the Common Expense upon the Unit and Ownership interest in the Common Elements of such defaulting Unit Owner and upon all of the additions and improvements thereto and upon all of the personality in, upon or located elsewhere on the property.

XI. AMENDMENT

(A) The provisions of this Declaration may be changed, modified or rescinded by an instrument in writing setting forth such change, modifications or rescission by vote or agreement of Unit Owners owning Units to which not less than sixty-seven per cent (67%) of the votes in the Association are allocated and prepared, executed, acknowledged and properly recorded for the Association by

its President; provided, however, no change, modification or rescission may increase or create Special Declarant Rights, alter Unit boundaries, except those lot splits already permitted under this Declaration, the allocated interest of a Unit or the uses to which any Unit is restricted, without the consent or agreement of all Unit Owners and of all lienholders unless otherwise specified in this Declaration. Any instrument changing, modifying or rescinding any provision of this Declaration with respect to such action shall be signed by all the Unit Owners and all lienholders as required by this Declaration.

(B) The change, modification or rescission whether accomplished under either of the provisions of the preceding paragraph, shall be effective upon recording of such instrument in the Offices of the Clerk of the County Commission of Marion and Taylor Counties, West Virginia.

XII. NOTICES

Notices provided for by the Act above said, Declaration or By-Laws shall be in writing and shall be addressed to the Association (in care of its Secretary), Board or any Unit Owner, as the case may be, at his Unit address provided. The Association or Board may designate a different address or addresses for notices to them, respectively, by giving written notice of such change of address for notice to the Association. Notices addressed as above shall be deemed delivered when mailed by United States registered or certified mail or when delivered in person with written acknowledgment of the receipt thereof. Upon written request to the Board setting forth its address, the holder of any recorded mortgage or trust deed encumbering any Unit shall be given a copy of all notices permitted or required by this Declaration or the By-Laws to be given to the Owner or Owners whose Unit is subject to such mortgage or deed of trust, and otherwise any required notice may be given by publication in a newspaper of general circulation in the absence of submission of a lienholder's address.

XIII. SEVERABILITY

If any provision of this Declaration or the By-Laws or any section, sentence, clause, phrase, word or the application thereof in any circumstances is held invalid, the validity of the remainder of the Declaration and the By-Laws and of the application of any such provision, section, sentence, clause, phrase or word in any other circumstances shall not be affected thereby and the remainder of this Declaration or the By-Laws shall be construed as if such invalid part were never included therein.

XIV. PERPETUITIES AND RESTRAINTS ON ALIENATION

If any provisions of the options, privileges, covenants or rights created by this Declaration shall be unlawful, void or voidable for violation of the

rule against perpetuities, then such provision shall continue only until twenty-one (21) years after the death of the last survivor of the now-living descendants of the President of the United States, Bill Clinton, and Governor of the State of West Virginia, Gaston Caperton.

XV. TERMINATION AND EMINENT DOMAIN

(A) TERMINATION:

The CIC (which includes all Units, Common Elements, rights and restrictions herein created) may be terminated only by agreement of Owners of Units to which at least eighty per cent (80%) of the votes in the Association are allocated. An agreement to terminate must be evidenced by: (1) the execution of a termination agreement; or (2) ratification of a termination agreement by the requisite number of Unit Owners. The termination agreement or individual ratifications thereof must: (i) be executed in the same manner as a deed; (ii) specify a date after which the agreement or ratification shall become void if not recorded before that date. No termination agreement shall be valid until recorded in the aforesaid County Clerk's Office within the time period specified on its face. It is further provided that:

(1) The termination agreement may provide that all of the Common Elements and the Units must be sold following termination. If any real estate is to be sold pursuant to the termination agreement, the agreement must set forth the minimum terms of sale.

(2) The Association, on behalf of the Unit Owners, may contract for the sale of real estate but the contract is not binding on the Unit Owners until approved pursuant to this section. Upon termination, if any real estate is to be sold following termination, title to that real estate vests in the Association as trustee of the holders of all interests in the Units. Thereafter, the Association has all powers, necessary and appropriate, to effectuate the sale. Until the sale has been concluded and proceeds thereof distributed, the Association continues in existence with all powers it had before termination. Proceeds from the sale must be distributed to Unit Owners and lienholders as their interest may appear, in accordance with this section. Unless otherwise specified in the termination agreement, so long as the Association holds title to the real estate, each Unit Owner and the Unit Owner's successors in interest have an exclusive right to occupancy of that portion of real estate that formerly constituted the Unit. During the period of that occupancy, each Unit Owner's successors in interest remain liable for all Assessments and other obligations imposed on Unit Owners by the Declaration.

3. Notwithstanding any provision to the contrary herein contained, Declarant may, by recording a Notice of Termination, terminate this Declaration

as to the entire Subdivision prior to the recordation of the first deed for a Unit from the entire Subdivision.

4. Foreclosure or enforcement of a lien or encumbrance against the entire CIC or any part thereof does not itself terminate the CIC or withdraw any part thereof from the CIC or from this Declaration and other related documents herein set forth.

5. The termination agreement may provide all of the Common Elements and the Units must be sold following termination. If any real estate is to be sold pursuant to the termination agreement, the agreement must set forth the minimum terms of sale.

B. EMINENT DOMAIN:

If a Unit is acquired by eminent domain or any part of a Unit is acquired by eminent domain leaving the Unit Owner with a remnant that may not practically or lawfully be used for any purpose permitted by the Declaration, the award must include compensation to the Unit Owner for that Unit and its allocated interest, whether or not any Common Elements are acquired. Upon acquisition, unless a decree provides otherwise, that Unit's allocated interest is automatically reallocated to the remaining Units in proportion to the respective allocated interest of that Unit before the taking and the Association shall promptly prepare, execute and record an amendment to the Declaration reflecting the relocations. Any remnant of a Unit remaining after part of a Unit is taken under this subsection that may not practically or lawfully be used for any purpose permitted by the Declaration is thereafter a Common Element.

Further:

(1) Except as provided above, if part of a Unit is acquired by eminent domain, the award must compensate the Unit Owner for the reduction in value of the Unit and its interest in the Common Elements, whether or not any Common Elements are acquired. Upon acquisition, unless a decree provides otherwise, (i) that Unit's allocated interest is reduced in proportion to the reduction in the size of the Unit; and (ii) the portion of the allocated interest divested from the partially acquired Unit is automatically reallocated to that Unit and to the remaining Units in proportion to the respective allocated interest of those units before the taking, with the partially acquired Unit participating in the reallocation on the basis of its reduced allocated interest.

(2) If part of the Common Elements is acquired by eminent domain, the portion of the award attributable to the Common Elements taken must be paid to the Association.

XVI. SEPARATE TITLES AND TAXATION

After conveyance by the Declarant, each Unit, together with its interest in the Common Elements, constitutes a separate parcel of real estate for all purposes. Each Unit so conveyed must be separately taxed and assessed.

XVII. RIGHTS AND OBLIGATIONS OF GRANTEES

Each Grantee of Declarant, by the acceptance of a deed of conveyance or of trust, accepts the same SUBJECT TO all restrictions, conditions, covenants, reservation, liens and other charges, the jurisdiction, rights and powers created or reserved herein and all matters set forth in this Declaration. All rights, benefits and privileges of every charter hereby imposed shall be deemed and taken to be covenants running with the land, and shall bind any person at any time having any interest or estate in said land, and shall inure to the benefit of such Grantee in a like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance or contract for conveyance.

XVIII. HEADINGS

The headings or paragraphs and sections in this Declaration or the By-Laws are for reference and convenience only and shall not in any way limit or define the content or substance of such paragraphs and sections.

XIX. DESCRIPTION INCLUSIONS BY REFERENCE

The legal description of the real estate submitted to the CIC form of ownership is set forth on the Plats heretofore referenced and are made a part hereof by reference.

XX. SUBMISSION TO LAW

The Declarant, as the legal title holder in fee simple of the parcel expressly intends to, and by recording of this Declaration, does hereby submit the parcel and the property to the provisions of the Uniform Common Interest Ownership Act of the Code of the State of West Virginia, as amended to the date hereof.

XXI. RESERVATION OF USE OF AMENITIES FOR NON CIC OWNERS

The Declarant does hereby reserve as appurtenant to that portion of the lands conveyed to it by Ralph Raspa, single, and not committed to the CIC, designated upon the aforesaid recorded Plats of the CIC as "owned by South Pointe, a Limited Liability Company - Future Development of Apartments, Townhouses, Condominiums, or Patio Homes for Sale or Rental - Need Not be

Built" the right of the present and future owners thereof and their tenants, guests and invitees to use and enjoy the amenities, if so constructed by Declarant, within that area of the CIC designated "Common Element Recreational Area". The cost of operating and maintaining said amenities shall be determined and allocated by and through a Master Association, herein provided for in this Declaration, to and among all users or using entities thereof.

THEREFORE IN EXECUTION AND SUBMISSION OF THE WITHIN DECLARATION, NOW WITNESSETH THE NAME, SEAL AND SIGNATURE OF THE DECLARANT, SOUTH POINTE, A LIMITED LIABILITY CO:

SOUTH POINTE,
A LIMITED LIABILITY COMPANY

BY: _____
FRANK J. CERVO
ITS: MANAGING MEMBER

STATE OF WEST VIRGINIA

COUNTY OF MONONGALIA, TO-WIT:

The foregoing instrument was acknowledge before me this 11th day of January, 1994, by FRANK J. CERVO, Managing Member of South Pointe, A Limited Liability Company, a West Virginia Company, for and on behalf of said Company.

My Commission Expires: _____

NOTARY PUBLIC