

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
POTOMAC RIDGE SUBDIVISION**

**THIS DECLARATION**, made on the date hereinafter set forth by Rattlesnake Run, Inc., a West Virginia Corporation, hereinafter referred to as "Declarant",

**W I T N E S S E T H:**

**WHEREAS**, Declarant is the owner of certain property in the County of Jefferson, State of West Virginia, which is more particularly described on the legal description attached hereto and made a part hereof as Exhibit "A".

**NOW, THEREFORE**, Declarant hereby declares that all of the Property described on Exhibit "A" hereto shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with the real property and be binding on all parties having any right, title or interest in the Property described on Exhibit "A" hereto, or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

**ARTICLE I  
DEFINITIONS**

Section 1. "Association" shall mean and refer to Potomac Ridge Homeowners Association, Inc., a non-stock, non-profit corporation, its successors and assigns.

Section 2. "Owner" shall mean and refer to the record owner, whether a homeowner or building contractor, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3: "Property" shall mean and refer to that certain real property described on Exhibit "A" hereto and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Common Area" shall mean all real property owned or to be owned by the Association for the common use and enjoyment of the Owners, including

private streets (designated on the plat of Potomac Ridge as Community Park with Preservation Easement and Open Space.)

Section 5. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision plat of the Property with the exception of the Common Area.

Section 6. "Declarant" shall mean and refer to Rattlesnake Run, Inc., a West Virginia Corporation, its successors and assigns, if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development, but only to the extent that any of the rights, reservations, easements, interests, exemptions, privileges and powers of the Declarant are specifically assigned or transferred to such successors or assigns.

Section 7. "Mortgagee" shall mean the holder of any recorded mortgage or the party secured or beneficiary of any recorded deed of trust, encumbering one or more of the Lots, "Mortgage", as used herein, shall include deeds of trust. "First Mortgage", as used herein, shall mean a mortgage with priority over other mortgages. As used in this Declaration, the term "Mortgagee" shall mean any mortgagee and shall not be limited to institutional mortgagees. As used in this Declaration, the term "institutional mortgagee" or "institutional holder" shall include banks, trust companies, insurance companies, mortgage insurance companies, savings and loan associations, trusts, mutual savings banks, credit unions, pension funds, mortgage companies, Federal National Mortgage Association ("FNMA"), Federal Home Loan Mortgage Corporation ("FHLMC"), all corporations and any agency or department of the United States Government or of any state or municipal government. As used in this Declaration, the term "holder" or "mortgagee" shall include the parties secured by any deed of trust or any beneficiary thereof.

## **ARTICLE II**

### **PROPERTY RIGHTS**

Section 1. Owner's Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area, including an easement for the use and enjoyment of the private streets and parking areas and walkways within the Common Area, which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

a) The right of the Association to suspend the voting rights of an Owner for any period during which an assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days from an infraction of its published rules and regulations;

b) The right of the Association to dedicate or transfer all or any part of the common areas or community facilities to any public or municipal agency, authority or utility for purposes consistent with the purpose of this Declaration and subject to such conditions as may be agreed to by the members and further subject to the then existing laws and applicable ordinances; provided, however, that no such dedication or transfer or determination as to the purposes or as to the conditions thereof, shall be effective unless two-thirds (2/3) of each class of the then voting members of the Association consent to such dedication, transfer, purpose and conditions, at any special meeting of the members duly called for such purpose;

c) The right of the Association to establish uniform rules and regulations pertaining to the use of the Common Area and the facilities thereon;

d) The right of the Declarant (and its sales agents and representatives) to the non-exclusive use of the Common Area for display and exhibit purposes, which right Declarant hereby reserves, provided, however, that such use shall not be for a period of more than two (2) year after the conveyance of the Common Area to the Association, or the sale of all the residential Lots within the Properties, whichever is the earlier; provided, further, that no such use by Declarant or its sales agents or representatives shall otherwise restrict the members in their use and enjoyment of the Common Area or facilities thereon;

e) The right of the association to charge reasonable admission and other fees for the use of any recreational facility which may be situated on the Common Area;

f) The right of the Association to regulate parking on the Common Area through the granting of easements or promulgation of rules and regulations;

g) The right of the Association, acting by and through its Board of Directors, to grant licenses, rights of way and easements for access or for the construction, reconstruction, maintenance and repair of any utility lines or appurtenances, whether public or private, to any municipal agency, public utility, the Declarant or any other person; provided, however, that no such licenses, rights of way or easements shall be unreasonably and permanently inconsistent with the rights of the members to the use and enjoyment of the common areas and community facilities; and

h) The right of the Association, acting by and through its Board of Directors, to enter into agreements whereby the Association acquires leaseholds, memberships or other possessory or use interests in real or personal property for the purpose of promoting the enjoyment, recreation or welfare of the members of the Association and to declare expenses incurred in connection therewith to be common expenses of the Association.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the Property.

**ARTICLE III**  
**MEMBERSHIP AND VOTING RIGHTS**

Section 1. Membership. Every Owner of a lot, whether homeowner or building contractor, which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 2. Voting Rights. The Association shall have two (2) classes of voting membership.

Class A. Class A members shall be all Owners with the exception of the Declarant and shall be entitled to one (1) vote for each Lot owned. When more than one (1) person holds an interest in any Lot, all persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

Class B. The Class B member shall be the Declarant and shall be entitled to two (2) votes for each Lot owned. The Class B membership shall cease and be converted to a Class A membership on the happening of either of the following events, whichever occurs earlier:

- (i) When the total votes outstanding in Class A membership equal or exceed the total votes outstanding in the Class B membership; or
- (ii) December 31, 2020.

Notwithstanding the foregoing, in the event of annexation of additional properties of Rattlesnake Run, Inc., membership shall be revived with respect to all lots owned by the Declarant on the Property, which Class B membership shall cease and be converted to Class A membership, on the happening of either of the following events, whichever occurs first:

- (i) When the total votes outstanding in the Class A memberships in the annexed property equal or exceed the total votes outstanding in the Class B membership in such annexed property, or

(ii) Five (5) years from the date of recordation of these Covenants, Conditions and Restrictions.

**ARTICLE IV**  
**COVENANT FOR MAINTENANCE ASSESSMENTS**

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Property, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the Lot (including all improvements thereon), and shall be a continuing lien upon the Property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Property and for the improvement and maintenance of the Common Area. In addition to the foregoing purposes, the Association will contribute Five Hundred Dollars (\$500.00) each calendar year to Shepherd University's Institute for Environmental Studies to defray the costs of supplied and laboratory equipment to enable monitoring of Rattlesnake Run in the subdivision, for at least five (5) years from the incorporation of the Association, and thereafter for as long as such a monitoring program continues to exist.

Section 3. Basis and Maximum of Annual Assessments. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be Five Hundred Dollars (\$500.00) for Class A members. The Class B member covenants and agrees to maintain the Common Area without cost to the Association and to fund any budget deficits until the Class B member (Declarant) has conveyed 50% of said Lots to Owners other than Declarant.

a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased by the Board of Directors of the Association, without a vote of the Class A

membership, by an amount equal to five percent (5%) of the maximum annual assessment for the preceding year plus the amount by which any ad valorem real estate taxes and insurance premiums payable by the Association have increased over amounts payable for the same or similar items for the previous year.

b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased by more than five percent (5%) by vote of at least two-thirds (2/3) of each class of members who are voting, in person or by proxy, at a meeting duly called for this purpose.

c) The Board of Directors may from time to time fix the annual assessment at an amount not in excess of the maximum.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area or roads and streets, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of at least two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum for any Action Authorized Under Section 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members not less than thirty (30) days nor more than fifty (50) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than fifty (50) days following the preceding month.

Section 6. Uniform Rate of Assessment. Except as otherwise provided in Section 3 of this Article IV, both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected in advance on a monthly or annual basis, at the option of the Owner.

Section 7. Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence as to all Lots on the first day of

the month following the first conveyance of a Lot to a Class A member. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer for the Association setting forth whether the assessments of a specified lot have been paid. A properly executed certificate of the Association with the status of assessments of the Lots shall be binding on the Association on the date of its issuance.

Section 8. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage or deed of trust. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage or deed of trust foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof. No amendment to this Section shall affect the rights of the holder of any first mortgage on any Lot (or the indebtedness secured thereby); recorded prior to recordation of such amendment unless the holder thereof (or the indebtedness secured thereby) shall join in the execution of such amendment.

Section 9. Exempt Property. The following property subject to this Declaration shall be exempt from the assessments created herein:

- a) All properties dedicated to and accepted by a local public authority; and
- b) All Common Areas

Section 10. Reserves for Replacements. The Association may establish and maintain a reserve fund for replacements of the Common Area by the allocation and payment monthly to such reserve fund of an amount to be designated from time to time by the Board of Directors. Such fund shall be conclusively deemed to be a common expense of the Association and may be deposited in any banking institution, the accounts of which are insured by any State or by any agency of the United States of America or may, in the discretion of the Board of Directors, be invested in obligations of, or fully guaranteed as to principal by, the United States of America. The reserve for replacements of the Common Areas and community facilities may be expended only for the purpose of effecting the replacement of the Common Areas, major repairs to any equipment replacement, and for start-up expenses and operating contingencies of a non-

recurring nature relating to the Common Areas and community facilities. The Association may establish such other reserves for such other purposes as the Board of Directors may from time to time consider to be necessary or appropriate. The proportional interest of any member in such reserves shall be considered an appurtenance of his Lot and shall not be separately withdrawn, assigned to transferred or otherwise separated from the Lot to which it appertains and shall be deemed to be transferred with such Lot.

## **ARTICLE V** **ARCHITECTURAL CONTROL**

Every residential dwelling shall be primarily of masonry, stone or real wood construction, with wood as trim or accent, but in no event shall concrete or cinder block be exposed or visible above finished grade. No metal, aluminum, or laminated siding of a T-1-11 nature shall be used in the construction of any residential dwelling or other structure.

No dwelling shall be commenced, erected or maintained upon the Property, nor shall any exterior addition to or change or alteration therein be made (including change in color) until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted in writing and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by any architectural committee composed of three (3) representatives appointed by the Board; provided, however, that until all of the Lots are sold, the Declarant shall appoint at least one (1) member to said architectural committee. In the event said Board, or its designated committee, fails to approve or disapprove such design and location in writing within thirty (30) days after said plans and specifications have been submitted to it in writing, approval will not be required and this Article V will be deemed to have been fully complied with. Notwithstanding any provision of this Declaration to the contrary, the provisions of this Article V shall not be applicable to the Declarant or any part of the Property owned by the Declarant, its successors or assigns.

No residential dwelling or other structure, or any part thereof, including garages and porches shall be erected on any lot closer than fifty (50) feet of the front property line, and fifty (50) feet of the rear property line or fifteen (15) feet from the side of the property lines. The front property line is defined as the property line fronting on the street from which access to the lot is provided. All entrances onto any street from any lot shall be in areas designated by the Declarant. No lot shall be used as an easement to service any property located outside of the Subdivision.

**ARTICLE VI**  
**USE RESTRICTIONS**

In addition to all other covenants contained herein, the use of the Property and each Lot therein is subject to the following:

Section 1. No lot shall be split, divided, or subdivided by sale, resale, gift devise, transfer or otherwise. No more than one dwelling unit may be erected on any one lot. The Lots shall be used for residential purposes exclusively, and no building shall be erected, altered, placed or permitted to remain on any such Lot other than one used as a single-family dwelling. Nothing contained in this Article VI or elsewhere in this Declaration shall be construed to prohibit the Declarant or its designee from the use of any Lot or dwelling, or improvement thereon, for promotional or display purposes, or as "model homes", a sales office, or the like.

Section 2. Except as may be permitted by Section 1 of this Article VI, no part of the Property shall ever be used or caused to be used or allowed or authorized in any way, directly or indirectly, for any business (including yard sales held on any Lot more than once in any 12 month period), commercial, manufacturing, mercantile, storing, vending or other such non-residential purposes, provided that, Declarant or its designee may use the Property for model home sites and display and sales offices during the construction and sales period. This section shall not apply to the Declarant or its officers and directors.

Section 3. No sign or billboard of any kind shall be displayed to the public view on any portion of the Property or any Lot, except one (1) sign for each building site, of not more than twenty-four inches (24") by twenty-four inches (24"), advertising the Property for sale or rent, except signs used by Declarant to advertise the Property during the construction and sales period. A name and address sign, the design of which has been approved by the Declarant, shall be permitted.

Section 4. No noxious or offensive activity shall be carried on upon any Lot or any part of the Property, nor shall anything be done thereupon which may be, or may become, an annoyance or nuisance to the neighborhood, or which shall in anyway unreasonably interfere with the quiet enjoyment of each of the Owners of his respective dwelling unit, or which shall in any way increase the rate of insurance.

Section 5. No structure other than a residential dwelling and one garage shall exist on any Lot. The garage may be attached or not attached to the residential dwelling, and be constructed of the identical architectural style and the identical exterior finish materials of the dwelling on said lot. The construction of a residential dwelling

(including the exterior grading, landscaping and driveway shall be completed within twelve (12) months after the beginning of construction. No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other out-building shall be used on any Lot at any time as a residence either temporarily or permanently. No trailer, RV, camper, boat or similar equipment shall be permitted to remain on any lot or portion of the Property, unless parked or stored in a garage and out of view from an adjoining lot or street. A stable, shed, shop or barn may only be constructed and maintained on a lot with the prior written consent of the Declarant and/or the Association.

Section 6. No motorized vehicle may be used or maintained on the yards of any Lot and no unlicensed vehicles are allowed on the Property. No motorized vehicles (with the exception of a vehicle used by a handicapped person) will be permitted in the common Areas. The Board of Directors shall have the right to tow any vehicle(s), the keeping or parking of which in the Common Area violates this Declaration, upon forty-eight (48) hours notice.

Section 7. No junk vehicle or other vehicle, whether motorized or self-propelled, on which current registration plates are not displayed, shall be kept within any Lot or on any part of the Common Area, nor shall the same be ridden upon any streets or roadways within the Property, nor upon any lot, open area or trail within the subdivision. The Board of Directors shall have the right to tow any vehicle(s), the keeping or parking of which in the Common Areas violates this Declaration, upon forty-eight (48) hours notice. The repair or extraordinary maintenance of automobiles or other vehicles shall not be carried out on any of the Lots or Common Areas. No motorbikes, trail bikes, motor scooter, go-carts, three wheelers, ATV's, four wheelers, or similar vehicle shall be operated on any lot or any part of the Subdivision.

Section 8. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other household pets may be kept on the Lot, subject to such rules and regulations as may be adopted by the Association and provided they are not kept, bred or maintained for any commercial purpose, or in unreasonable numbers. Notwithstanding the foregoing, no animals may be kept on the Property which result in an annoyance or are obnoxious to residents in the community.

Section 9. All rubbish, trash and garbage shall be regularly removed from the Property, and shall not be allowed to accumulate thereon. No burning of refuse and no open fires shall be permitted, excepting outdoor bar-b-ques used solely for the preparation of food. Any outdoor fireplaces shall be provided with fire screens. All clotheslines, refuse containers, firewood piles, storage areas and machinery and equipment shall be prohibited upon any Lot unless obscured from view of adjoining Lots and streets by an appropriate screen approved by the Architectural Committee. Nothing

herein shall be deemed to apply to the storage on the Property by Declarant of building materials during, and for use in, the construction of the improvements on the Property. However, during construction, properties 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.

Section 10. All utilities providing services to the aforesaid property (excepting utility lines in place on the date of the establishment of the Association), shall be underground and there shall be no overhead telephone, electric, cable or other wires. If satellite dishes are installed, it shall be done in such a manner as to screen the same from view from the front and sides of the lot. No radio or television receiving or transmitting antennae or external apparatus shall be installed on any Lot with the exception that small satellite television dishes are permitted, not to exceed 20" in diameter. Normal radio and television installations wholly within a building are excepted. All outdoor lighting shall be of a type and installation such that no direct glare is visible from adjoining properties.

Section 11. All Owners or occupants shall abide by the By-Laws and any rules and regulations adopted by the Association.

Section 12. Any lease agreement between a Lot Owner and a lessee shall provide that the terms of the lease are subject in all respects to the provisions of this Declaration, and the Articles of Incorporation and By-Laws of the Association, and that any failure by the lessee to comply with the terms of such documents shall be a default under the lease. All such leases shall be in writing and shall be for a term of not less than six (6) months.

Section 13. No garage shall be utilized for other than the purpose of storage of vehicles and other types of items normally stored in garages in first-class residential neighborhoods. Garages must be used primarily for vehicle storage

Section 14. Hunting, whether with firearms or bow hunting, and the discharge of fireworks or firearms generally is prohibited on any Lot or any Common Areas of the Subdivision.

Section 15. Installation of recreational equipment such as basketball boards, swing sets, and the like, shall be limited to rear yards only.

Section 16. When any dwelling structure shall be constructed on the property, the owner thereof shall cause that portion of such property owned by him and not

improved by said dwelling structure, other building, appurtenances or driveway to be seeded and suitably planted with grass, trees or shrubbery. Landscape designs including, but not limited, to fencing and non-native shrubbery shall be approved in writing by the Declarant and/or the Association prior to construction or installation; provided, however, that no fence or other enclosure shall be erected higher than six (6) feet, except as required by law.

Section 17. All storage tanks for use in connection with the property, including tanks for the storage of propane gas or other fuels used exclusively for residential purposes, must be buried.

Section 18. None of the foregoing restrictions shall be applicable to the activities of Declarant, its officers, employees, agents or assigns, in their development, marketing and sale of Lots or other parcels within the Property. The Declarant retains the unconditional right to alter, amend or modify any of the provisions contained in this Declaration until all of the lots of the subdivision are sold to individual Lot owners. Thereafter, any amendments hereto shall only be effected pursuant to Article IX Section 5 hereof.

Section 19. During reasonable hours at any time during construction activity, the Declarant, any member of the Architectural Committee, or member of the Board of Directors, or any other representative of any of them, shall have the right to enter upon and inspect any Lot for the purpose of ascertaining whether or not the provisions of these restrictions have been or are being complied with, and such persons shall not be deemed guilty of trespass by reason of such entry.

Section 20. All existing and designed storm water and runoff drainage patterns for each lot shall be protected at all times both during and after construction.

Section 21. Access to all Lots shall be by Potomac Ridge Road, which said use shall be non-exclusive and for the benefit of the Lot owners and the adjoining properties, the Declarant, its successors and assigns.

Section 22. When the sixth lot is sold, the Declarant will cause to be recorded a Deed of Dedication that dedicates the roads and all common areas in the subdivision to the Association; provided, however, that such dedication shall not inhibit convenient access to a Lot within the Subdivision, for the purpose of maintaining roads, traffic control, general planting within roadway areas, and all common community services of every kind and nature required and desired within said Subdivision for the general use and benefit of all Lot owners.

Section 23. Each Lot owner shall be responsible for the repairs of the Subdivision road that may be damaged by any building contractors that they employ, and if such repairs are not completed by the Lot owner, the Declarant or its successors may have the repairs performed, and shall have cause of action against the Lot owner for the cost of such repairs and improvements.

Section 24. Lot owners and Declarant or their invitees are to have a non-exclusive access to and use of area shown as "Recreational Reserve A" along the Potomac River as shown on the attached Potomac River Plat. This access and right to use is non-transferable. Owners cannot leave any vehicle or other property on the Recreational Reserve. All boat docks and/or projections placed in Potomac River must be approved by the Declarant or its successor and the State of Maryland.

Section 25. Lot owners and Declarant or their invitees are to have non-exclusive access to and use of area shown as "Recreational Area B" along Rattlesnake Run. The Recreational Area B access is non-transferable. Owners cannot leave any vehicle or other property on the Recreational Reserve. The Recreational Reserve B is for use by Potomac Ridge property owners and Declarant or their invitees only.

Section 26. Preservation Easements as required by the Jefferson County Subdivision Ordinance have been placed over portions of individual lots and community held lands as shown by Potomac Ridge Subdivision Record Plat. Such Preservation Easements shall be maintained in accordance with the requirements of the ordinance. Land placed within the Preservation Easement shall be maintained in a substantially natural undisturbed condition (no clearing, cutting or filling) as follows: a) No trees are to be removed from these areas except for fallen trees or as directed by a certified forester or arborist in consultation with the WV Division of Forestry b) No burning, mowing, cutting, dumping, excavation, tilling, filling is allowed within the Preservation Easement area except as may be needed to control erosion or to remove dead or damaged trees c) Any work done in the Preservation Easement area shall be done in consultation with a certified forester.

Section 27. Woodland Preservation Areas, as shown by Potomac Ridge Subdivision Record Plat are to be maintained as follows: a) No clear cutting is allowed except for the provision of the house, driveway, accessory buildings and recreational facilities (such as tennis court or swimming pool), b) Selective thinning of trees and vegetation and removal of dead and distressed vegetation is allowed, c) Healthy native trees over 12 inches in diameter may not be removed unless approved by the Association in order to create a view shed, d) Insect infested and diseased trees may be removed as well as invasive species such as Ailanthus (Bush of Heaven), Black Locust, etc. Prior to removing an insect infested tree, the Lot owner must consult with a certified forester or

arborist in consultation with the WV Division of Forestry to determine if tree is an invasive species. Upon removal of invasive species, habitat is to be restored using native plants.

Section 28. In all other areas of the Potomac Ridge Subdivision that are not in the Preservation Easement or the Woodland Preservation Areas, trees may be cut, removed, trimmed or pruned so as to effectively landscape the lot, but there shall be no clear-cutting or large-scale removal of trees.

Section 29. All natural drainage ways and stream banks are to be maintained in natural vegetation, excepting the following: a) Trees and vegetation may be removed if it causes backing up or flooding with a drainage way or within a stream. b) Dead trees, logs and similar fallen vegetation are to be removed from drainage ways and streams in order to allow free flow of water and storm drainage c) If natural drainage or stream banks are eroded, immediate steps must be taken to repair and replant with appropriate vegetation. Guidance is found in the Jefferson County Standards Detail WP 33 and WP 42.

Section 30. A 100 by 100 foot Helicopter Landing Zone will be maintained by the Association in the location identified on the Potomac Ridge Subdivision Plat. This Land Zone will be kept clear, level and mowed to allow for landing for a helicopter. An amount of \$5,000 will be kept in the Association bank account to pay for one Medevac trip to ensure that the Medevac helicopter is available if required for an emergency evacuation. The Declarant will fund (upon the sale of the first Lot) the initial \$5,000 amount. Thereafter, the Association will continue to maintain this account with at least \$5,000, to be funded by special assessments against the owners of Lots, on a pro rata basis.

Section 31. The Association is responsible for maintenance of all storm water facilities including any dry pond, berms or trapezoidal ditches with check dams; that such maintenance includes a periodic inspection (at least twice a year), clearing of debris or silt and the moving of ditches or other areas that may be required.

## **ARTICLE VII** **EXTERIOR MAINTENANCE**

Each owner shall keep each Lot owned by him, and all improvements therein or thereon, in good order and repair and free from debris, including, but not limited to, the maintenance of lawns and the painting (or other appropriate external care) of all dwellings all in a manner and with such frequency as is consistent with good property management. In the event an Owner of any Lot in the Property shall fail to maintain the

Lot and the improvements situated thereon, as provided in the By-Laws and approved by a vote of the Board of Directors, the Board of Directors or its agents shall have the right to enter upon said Lot to correct drainage and to repair, maintain and restore the Lot and the exterior of the buildings and any other improvements erected thereon. All costs related to such correction, repair or restoration shall become a lien upon such Lots and such lien may be enforced in the same manner as an annual assessment levied in accordance with Article IV hereof. Any such lien shall be subordinate to the lien of any first mortgage or deed of trust. Sale or transfer of any Lot shall not affect such lien. However, the sale or transfer of any Lot pursuant to mortgage or deed of trust foreclosure or any proceeding in lieu thereof, shall extinguish such lien as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof. No amendment to this Article VII shall affect the rights of the holder of any first mortgage on any Lot (of the indebtedness secured thereby) recorded prior to the recordation of such amendment unless the holder thereof (or the indebtedness secured thereby) shall join in the execution of such amendment.

## **ARTICLE VII** **MANAGEMENT**

Section 1. Management Agent. The Board of Directors may, but shall not be required to employ for the Association, the Declarant, or its assigns as management agent or manager (the "Management Agent") at a rate of compensation established by the Management Agent to perform such duties and services as the Board of Directors shall from time to time authorize in writing. The Declarant may decline to serve as Management Agent in its discretion.

Section 2. Duration of Management Agreement. The management agreement entered into by the Association shall provide inter alia that such agreement may be terminated for cause by the Management Agent on thirty (30) days written notice thereof to the Board of Directors and without cause on ninety (90) days written notice to the Board of Directors. The term of any such management agreement may be renewable for successive one (1) year periods.

Section 3. Limitation of Liability. The Association shall not be liable for any failure of any services to be obtained by the Association or paid for out of the common expense funds, or for injury or damage to person or property caused by the elements or resulting from water which may leak or flow from any portion of the Common Areas or community facilities, or from any wire, pipe, drain, conduit or the like. The Association shall not be liable to any member for loss or damage, by theft or otherwise, of articles which may be stored upon the Common Areas or community facilities. No diminution or

abatement of assessments, as herein elsewhere provided for, shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements to the Common Areas or community facilities, or from any action taken by the Association to comply with any of the provisions of this Declaration or with any law or ordinance or with the order or directive of any municipal or other governmental authority.

## **ARTICLE IX** **GENERAL PROVISIONS**

### Section 1. Nonpayment of Assessments.

#### Remedies of the Association.

(a) Notice of Default; Remedies. Any Assessment installment not paid within thirty (30) days after the due date shall be delinquent. Thereupon, the Association, or the managing agent at the request of the Board of Directors, shall provide Notice of such delinquency and may, at its option, (i) declare the entire balance of such Annual or Special Assessment due and payable in full; (ii) charge interest from the due date at a percent rate no greater than is permissible by law, such rate to be set by the Board of Directors for each assessment period; (iii) charge a late charge in an amount equal to five percent (5%) of the delinquent installment or such other amount as may be set by Board of Directors; (iv) give Notice to the Owner that in the event payment with accrued interest and penalties is not paid within thirty (30) days from the date of such Notice, then the expressed contractual lien provided for herein shall be filed or foreclosed, or both; and (v) upon Registered Notice to the Owner of the Lot, suspend the right of such owner to vote until the assessment, accrued interest, penalties and costs of collection are paid in full. Once perfected, the lien for assessments provided for herein shall be prior to all other subsequent liens and encumbrances except (i) real estate tax liens on the Lot, (ii) liens and encumbrances recorded prior to the recordation of this Declaration, and (iii) sums paid on and owing under any mortgage or deed of trust recorded prior to the perfection of said lien. The lien evidenced hereby shall bind the Lot(s) herein described in the hands of the then Owner thereof, his heirs, devisees, personal representatives, and the personal obligation of the Member to pay such assessment shall, in addition, remain his personal obligation for the statutory period.

(b) Remedies Cumulative. No remedy reserved to the Association herein is intended to be exclusive of any other remedy or remedies, and each and every remedy shall be cumulative, and shall be in addition to every other remedy given hereunder or now or hereafter existing at law, in equity or by statute.

(c) Collection Costs. If default is made in the payment of any assessment payable hereunder, then the Owner who is so delinquent shall pay to the Association, upon demand, all costs of collection, including the Association's attorney's fees, whether suit is brought or not.

(d) Prepayment. Any member may prepay one or more installments of any Annual Assessments levied by the Association, without penalty or interest.

Section 2. Enforcement. The Association, or any Owner, or any mortgagee of any Lot shall have the right to enforce, by any proceeding at law and/or in equity, all restrictions, conditions, covenants, reservations, liens, charges or other obligations or terms now or hereafter imposed by the provisions of this Declaration, or the Articles of Incorporation or By-Laws of the Association. Failure by the Association or by any Owner or by any mortgagee of any Lot to enforce any covenant or restriction herein contained or any provision of the By-Laws or Articles of Incorporation of the Association shall in no event be deemed a waiver of the right to do so thereafter. There shall be and there is hereby created and declared to be a conclusive presumption that any violation or breach or attempted violation or breach of any of the within covenants or restrictions or any provision of the By-Laws or Articles of Incorporation of the Association cannot be adequately remedied by action at law or exclusively by recovery of damages.

Section 3. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

Section 4. Duration. Except where permanent easements or other permanent rights or interest are herein created, the covenants and restrictions and any duly appointed amendments thereto of the Declaration shall run with and bind the land for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years each unless terminated by a vote of a majority of the members of the Association.

Section 5. Amendment. Subject to the other limitations set forth in this Declaration, this Declaration may be amended during the first twenty (20) year period after it is recorded only by an instrument executed and acknowledged by not less than ninety percent (90%) of Owners. After the first twenty (20) years, this Declaration may be amended by an instrument executed and acknowledged by not less than seventy-five percent (75%) of the Owners. The amendment instrument shall be recorded among the Land Records for the jurisdiction in which this Declaration is recorded. Unless a later date is specified in any such instrument, any amendment to this Declaration shall become effective on the date of recording; provided, however, that no amendment shall be

effective unless it is executed by at least one Class A Member, should there be any Class A members.

Section 6. FHA-VA Approvals. Provided that any Lot subject to the Declaration is then encumbered by a deed of trust or mortgage which is insured by the Federal Housing Administration or guaranteed by the Veterans Administration, and provided further, that there are then Class B memberships of the Association outstanding, neither the members, the Board of Directors nor the Association shall, by act or omission, take any of the following action without the prior written consent or approval of the Federal Housing Administration and the Veterans Administration, as the circumstances may require:

a) make any annexation or additions other than as provided for pursuant to Section 5 of Article IX of this Declaration; or

b) abandon, partition, dedicate, subdivide, encumber, sell or transfer any of the Common Areas or community facilities directly or indirectly owned by the Association; provided, however, that the granting of rights-of-way, easements and the like for public utilities or for any purposes consistent with the use of the Common Areas and community facilities by the members of the Association shall not be considered a transfer within the meaning of this Section 5; or

c) abandon or terminate this Declaration; or

d) modify or amend any provisions of this Declaration, the By-Laws or the Articles of Incorporation of the Association; or

e) merge or consolidate the Association with any other entity or sell, lease, exchange or otherwise transfer all or substantially all of the assets of the Association in any other entity.

Section 7. Consents by Lenders. Any other provision of this Declaration or the By-Laws or Articles of Incorporation of the Association to the contrary notwithstanding, neither the members, the Board of Directors nor the Association shall, by act or omission, take any of the following actions without the prior written consent and approval of not less than two-thirds (2/3) in number of the holders of the first mortgages of record on the Lots:

a) abandon, partition, alienate, release, hypothecate, dedicate, subdivide, encumber, sell or transfer any of the Common Areas or community facilities directly or indirectly owned by the Association; provided, however, that the granting of rights-of-

way, easements and the like for public utilities or for other purposes consistent with the use of the Common Areas and community facilities by the members of the Association shall not be considered a transfer within the meaning of this section 6; or

- b) abandon or terminate this Declaration; or
- c) modify or amend any substantive provision of this Declaration, or of the By-Laws or of the Articles of Incorporation of the Association; or
- d) merge or consolidate the Association with any other entity or sell, lease, exchange or otherwise transfer all or substantially all of the assets of the Association to any other entity; or
- e) substantially modify the method of determining and collecting assessments against an Owner or his Lot as provided in the Declaration; or
- f) waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearances of dwellings on the Lots, the maintenance of the Common Area walks and driveways, or the upkeep of lawns and plantings within the Property; or
- g) fail to maintain fire and extended coverage on insurance Association Common Area on property on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement cost); or
- h) use hazard insurance proceeds for losses to any Association Common Area or property for other than the repair, replacement or reconstruction of such Common Area or property.

Section 8. Casualty Losses. In the event of substantial damage or destruction to any of the Common Areas or community facilities, the Board of Directors of the Association shall give prompt written notice of such damage or destruction to the holders of all first mortgages of record on the Lots. No provision of the Declaration or the Articles of Incorporation or these By-Laws of the Association shall entitle any member to any priority over the holder of any first mortgage of record on his Lot with respect to the distribution to such member of any insurance proceeds paid or payable on account of any damage or destruction of any of the Common Areas or community facilities.

Section 9. Condemnation or Eminent Domain. In the event any part of the Common Areas and community facilities is made the subject matter of any condemnation

or eminent domain proceeding, or is otherwise sought to be acquired by any condemning authority, then the Board of Directors of the Association shall give prompt written notices of any such proceeding or proposed acquisition to the holders of all first mortgages of record on the Lots. No provision of this Declaration or the Articles of Incorporation or the By-Laws of the Association shall entitle any member to any priority over the holder of any first mortgage of record on his Lot with respect to the distribution to such member of the proceeds of any condemnation or settlement relating to a taking of any of the Common Areas and community facilities.

Section 10. Captions and Gender. The captions contained in this Declaration are for convenience only and are not a part of this Declaration and are not intended in anyway to limit or enlarge the terms and provisions of this Declaration. Whenever the context so requires, the male shall include all genders and the singular shall include the plural.

## **ARTICLE X** **COMMON AREAS**

Section 1. Availability of Facilities. All Owners shall have the right to utilize such Common Areas.

Section 2. Assessments. All Owners shall, as an incident of ownership, be obligated to pay a part of the total assessment for the Common Areas, as said assessments become due and payable. That portion of the annual assessment attributable to certain costs and expenses associated with the Common Areas shall be due and payable by all Owners regardless of whether or not the Owner utilizes the Common Areas.

Section 3. Operation and Management of Common Areas. The Board of Directors, or its duly appointed agent, shall promulgate rules applicable to the use and management of the Common Areas.

Section 4. Lessees of Owners. Owners may permit lessees of their homes to use the Common Areas upon notification in writing to the Board of Directors (or its duly appointed agent). In such event, persons in the lessee's family may then use the Common Areas in place of the lessor/Owner.

Section 5. Guests. Guests of Owners (and guests of lessees of Owners) may use the Common Areas subject to the limitations, guest fees and rules set forth by the Board of Directors, or its duly appointed agent.

Section 6. Liability. Owners (and lessees of Owners) are liable for property damaged by them, their family and their guests.

**ARTICLE XI**  
**EASEMENTS, ETC.**

Section 1. General Easement. Except as hereinafter specifically provided, the Declarant reserves the right and easement to the use of all areas owned or to be owned by the Association, and any Lot or any portion thereof, as may be needed for repair, maintenance or construction on such Lot or any Lot or on any Common Area.

Section 2. Crossover Easement. If the Owner (including the Declarant) of any Lot must, in order to make responsible repairs or improvements to a building on his Lot, enter or cross any area owned or to be owned by the Association, or a Lot of another Owner, such Owner shall have an easement to do so, provided that said Owner shall use the most direct, feasible route in entering and crossing over such an area and shall restore the surface so entered or crossed to its original condition, at the expense of the said Owner, and further provided that such easement shall not exist on the land of any other Lot Owner if the purpose for the entrance or crossing is one requiring, by virtue of Article V of this Declaration, approval of either the Board of Directors or the Architectural Committee of the Association, unless such approval has been given.

Section 3. Blanket Easement. In addition to the Preservation Easements and Driveway Easements shown on the plat of the Subdivision, an easement is hereby retained in favor of Declarant and the Association over the Lots and any area owned or to be owned by the Association for the construction of a common cable television system, a common sprinkler, or any other utilities or items for the common enjoyment and/or benefit of the Owners. An easement is further granted for the purpose of the repair and maintenance of any item so constructed. Any entry upon any Lot or any area owned or to be owned by the Association to effectuate the foregoing purposes shall not be deemed trespass. Each Owner covenants not to damage or destroy any portion of an item so constructed and shall hold the Association and/or Declarant harmless from the cost of repairing or replacing any portion damaged or destroyed by such Owner, his family, his guests or invitees. This Easement shall not apply to the area within ten (10) feet of the side and rear property lines of Lots 1 and 2.

Section 4. Easement and Right of Entry of Law Enforcement Officials, Etc. An easement and right of entry through and upon the Property is hereby granted to law enforcement officers, rescue squad personnel, fire fighting and other emergency personnel of the jurisdiction in which the Property is located, and to vehicles operated by said personnel while in the pursuit of their duties. Said emergency personnel shall also

have the right of enforcement of cleared emergency vehicle access on roadways and driveways on the Property.

Section 5. Utility Easements. Easements over the Property for the installation and maintenance of electric, telephone, cable television, water, gas, roof drains connected directly to storm sewer, drainage and sanitary sewer lines and facilities and the like are hereby reserved by Declarant, together with the right to enter onto the Common Area for the purpose of completing such improvements thereon, and on the Lots, and for the further purpose of correcting any defects in workmanship or materials on the Property or the improvements thereon. This Easement shall not apply to the area within ten (10) feet of the side and rear property lines of Lots 1 and 2.

The rights and duties with respect to sanitary sewer and water, cable television, electricity, gas and telephone lines and facilities in favor of the Association shall be governed by the following:

a) Whenever water, sanitary sewer, roof drains connected directly to storm sewer, electricity, gas, cable television or telephone connections, lines, cables or any portion thereof, are or have been installed within the Property, the Owner of any Lot, or the Association shall have the right, and are hereby granted an easement to the extent necessary thereof, to enter upon or have a utility company enter upon any portion of the Property in which said installations lie, to repair, replace and generally maintain said installations.

b) The right granted in Subparagraph (a) above shall be only to the extent necessary to entitle the Owner or Association serviced by said installation to its full and reasonable use and enjoyment and provided further that anyone exercising said right shall be responsible for restoring the surface of the easement area so used to its condition prior to such use.

c) In the event of a dispute between Owners with respect to the repair or rebuilding of said connections, or with respect to sharing of the cost thereof, upon written request of one of such Owners addressed to the Association, the matter shall be submitted to its Board of Directors, who shall decide the dispute and the decision of the Board shall be final and conclusive on the parties.

Section 6. Drainage Easement. Each Owner covenants to provide such easements for drainage and water flow as the contours of the Property and the arrangement of buildings by Declarant thereon requires. Declarant reserves an easement over all Lots and Common Area for the purpose of correcting any drainage deficiencies.

Section 7. Encroachment Easement. Each lot within the Property is hereby declared to have an easement, not exceeding one foot (1') in width, over all adjoining Lots for the purpose of accommodating any encroachment due to engineering errors, errors in original construction, settlement or shifting of the buildings, roof overhangs, gutters, architectural or other appendages, draining of rain water from roofs, or any other similar cause. There shall be valid easements for the maintenance of said encroachments so long as they shall exist, and the rights and obligations of Owners shall not be altered in any way by said encroachment, settlement or shifting; provided, however, that in no event shall a valid easement for encroachment be created in favor of an Owner or Owners if said encroachment occurred due to the willful misconduct of said Owner or Owners. In the event a structure on any Lot is partially or totally destroyed and then repaired or rebuilt, the Owners of each Lot agree that minor encroachments over adjoining Lots shall be permitted and that there shall be valid easements for the maintenance of said encroachments as long as they shall exist.

**ARTICLE XII**  
**DISSOLUTION OF ASSOCIATION**

The Owners of Lots shall not dissolve or disband the Association, nor shall the Association dispose of any common open space by sale, or otherwise, except to an organization conceived and organized to own and maintain the common open space, without first offering to dedicate the same to the jurisdiction in which the Property is located, or such other appropriate governmental agency.

**ARTICLE XIII**  
**APPLICABILITY TO THE**  
**UNIFORM COMMON INTEREST OWNERSHIP ACT**

The Potomac Ridge Subdivision planned community is not subject to the Uniform Common Interest Ownership Act pursuant to §36B-1-203 of the Official Code of West Virginia, 1931, as amended.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has executed this instrument on the \_\_\_\_\_ day of \_\_\_\_\_, 2006.

Rattlesnake Run, Inc.

BY: \_\_\_\_\_ (SEAL)  
Its President

BY: \_\_\_\_\_ (SEAL)  
Its Secretary

STATE OF WEST VIRGINIA  
COUNTY OF JEFFERSON, to wit:

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of January, 2006, by \_\_\_\_\_ President, and \_\_\_\_\_, Secretary of RATTLESNAKE RUN, INC., a West Virginia Corporation.

My commission expires:

\_\_\_\_\_  
(Affix Notary Seal)

\_\_\_\_\_  
Notary Public

HIS INSTRUMENT PREPARED BY: Peter L. Chakmakian, Attorney at Law, P.O. Box 547, Charles Town, WV 25414