

DECLARATION  
COVENANTS, CONDITIONS AND RESTRICTIONS  
CACAPON VILLAGE TOWN HOUSES

THIS DECLARATION, Made this 20<sup>th</sup> day of JUNE, 1998, by Charles E. Angle and Loretta J. Angle, (hereinafter called the "Declarants") pursuant to Chapter 36A of the West Virginia Code, as amended, is intended to submit the property described hereinafter, designated as Cacapon Village Town Houses, to the provisions of the West Virginia Code Chapter 36A. The property known as Cacapon Village Town Houses consists of ten (10) units described on a plat of survey prepared by Edwin J. Mayhew, Professional Surveyor, dated September 1997, recorded in the Hardy County Clerk's Office contemporaneously with the filing of this document. The property consists of ten (10) units and common elements as shown on the aforesaid plat. Each town house owner shall possess an undivided one-tenth (1/10th) interest in the common elements which surround the town house units and provide access thereto, which are shown on the aforesaid plat. The real estate was acquired by Charles E. and Loretta J. Angle by deed from Townshend dated April 29, 1997, recorded in the Hardy County Clerk's Office in Deed Book No. 242, at Page 670.

The aforesaid proportionate undivided interests in the common elements may be altered by the recording of an amendment duly executed by all unit owners affected thereby.

Each unit is intended for residential purposes only and is subject to certain covenants, conditions and restrictions recited hereinafter.

A Council shall make, alter, amend and repeal regulations relating to the management, operation and affairs of the property on behalf of the unit owners. The Council shall consist of three (3) members, and the initial council members are Charles E. Angle, Loretta J. Angle and Ernestine Jones.

The Council has the authority to make, alter, amend and repeal a Code of Regulations subject to the right of a majority of

the unit owners to change any such actions.

COVENANTS, CONDITIONS AND RESTRICTIONS

1. All lots and town houses shall be used for single-family residential purposes only. Each lot and town house will have a single car garage and ample parking area for a second car (20 feet of driveway). No lot and town house may be modified to provide for a second garage after such town house has been erected.

2. No boats, mobile homes, motor homes, campers, buses, trailers of any type, tractors, trucks or other motor vehicles (other than automobiles, motorcycles, pickup trucks and 3/4 ton- or less-vans) shall be permitted on any lot except during the course of construction. No motor vehicle or any part thereof which does not have a current inspection sticker and a current license plate shall be permitted on any lot.

3. No signs or advertising of any nature shall be erected or maintained on any lot, or upon any town house, except "For Sale" signs for said lot, and signs used by the Declarants to advertise the property during construction and sale. The signs shall not exceed six (6) square feet in area. No "For Rent" signs shall be allowed on any lot or on any town house.

4. No business of any type, nature or kind shall be conducted in any town house or upon any lot.

5. No animals of any kind (including livestock and poultry) shall be permitted on any lot, except that dogs, cats and other usual household pets may be kept, provided they are not kept, bred or maintained for commercial or charitable purposes, or in excessive numbers. No dog shall be permitted to run at large or without restraint. No dog may be tied and left unattended outdoors. No dog houses or dog runs shall be permitted on any lot.

6. No fence shall be constructed until the Council shall have approved it. There shall be no fencing or hedges in front of any town house. All fencing at the rear of any town house shall match the existing privacy fence, or be forty-two (42) inches high,

chain link, with a top rail.

7. No noxious or offensive activities shall be conducted in any town house or upon any lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance.

8. No trash, garbage or other waste shall be permitted upon any lot, but same shall be kept in sanitary containers. All trash and containers shall be kept inside or on the rear patio, except on the day of garbage pickup. All owners or occupants of town houses shall utilize the services of the local authorized trash collector.

9. The color of siding and of trim paint on the exterior of every building on each lot shall be the same as the original color.

10. No exterior clothesline or hanging device shall be allowed on any lot or town house.

11. No building, structure, addition, or external alteration (including basketball backboards, rims and nets), or improvements of any type, nature or kind shall be constructed upon any lot or town house.

12. No baby carriages, bicycles or other articles of personal property shall be deposited, allowed or permitted to remain outside of any town house except in the enclosed rear area or patio.

13. Each owner shall ensure that his/her lot and all improvements thereon are in good order and repair and free of debris, including, but not limited to the seeding, watering and mowing of all lawns, the pruning and cutting of all trees and shrubbery, and the painting (or other appropriate external care) of the town house, all in a manner and with such frequency as is consistent with good property management.

14. The general rules of law regarding party walls and liability for property damages due to negligence or willful acts or omissions shall apply. The cost of reasonable repair and

maintenance of a party wall shall be shared by the two adjoining owners, except to the extent the wall is not of use to one of the owners. If a party wall is destroyed or damaged by fire or other casualty, any owner who has use of the wall shall contribute to the cost of the restoration thereof in proportion to such use, without prejudice, however, to the right of any such owner(s) to call for a larger contribution from the other(s) under any rule of law regarding liability for negligence or for willful acts or omissions.

15. In the event that a town house is destroyed, the owner(s), within thirty (30) days from said destruction, shall clear away the remaining portion of the town house and maintain the lot in a neat and orderly condition. No structure other than a town house of at least the same dimensions and architectural design as the town house destroyed, shall be constructed in place of the original.

16. No unit owner shall do any work on any unit or the common elements which would jeopardize the soundness or safety of the property or impair any element or part thereof, without the unanimous consent of the unit owners affected thereby.

17. Each of the units shall be occupied only by the owner (or owners), his or her family, his or her servants and guests, or lessees.

18. Each unit owner is responsible for the actions of any lessee, as said actions would relate to the terms of this Declaration.

19. No immoral, improper, offensive or unlawful use shall be made of the property, or any part thereof, and there shall be no violation of laws, orders, rules, regulations or requirements of any governmental agency having jurisdiction thereof, relating to any portion of the property.

20. No portion of any unit, other than the entire unit, may be leased, and no unit may be leased for transients or hotel

purposes.

21. The invalidation of any one of the covenants or restrictions contained herein, by judgment or court order, shall in no way affect any of the other provisions, which shall remain in full force and effect. The failure of the Council or the Declarants herein to enforce any covenants or restrictions shall not be deemed to be a waiver of the right to do so thereafter, as to a default occurring prior or subsequent thereto.

22. The covenants, conditions and restrictions contained herein shall be deemed to be covenants running with the land and binding upon the owners thereof, their lessees, heirs, agents and assigns.

#### ARTICLE I

Section 1.1. Declarants, by executing and recording this Declaration, submit the land described herein, together with the buildings and the improvements created thereon, and all easements, rights and appurtenances belonging thereto, to the provisions of the West Virginia Code 36A.

Section 1.2. It is intended by the Declarants that certain land adjacent to the land herein described may become a part of the planned community known as Cacapon Village Town Houses. The Declarants reserve the right to submit such additional or adjacent property to the provisions of this Declaration.

Nothing herein contained shall be construed in any manner to require the Declarants to submit said adjacent lands to the terms and provisions of this Declaration, and it shall be at their sole discretion whether or not additional units are constructed and made subject to the terms and provisions of this Declaration. The Declarants may submit the addition of such additional land and improvements thereon to the effect of this Declaration by a document signed only by the Declarants, so long as same are in compliance with all of the terms and conditions of this Declaration.

ARTICLE II

Section 2.1. The Declarants shall cause to be created a Council for the purpose of providing management of the affairs of Cacapon Village Town Houses.

Section 2.2. No unit may be divided or subdivided after a residential building has been constructed thereon by any unit owner, including the Declarants, into a smaller unit, nor may any portion thereof less than the entire unit be sold or otherwise transferred. So long as a unit or lot is owned by the Declarants, the same may be subdivided in all or in part to accommodate development or construction changes necessitated by reason of geographical features of the land.

Section 2.3. Notwithstanding the ownership of the various portions of the common elements and units by virtue of the deeds to each unit, the units and common elements shall be maintained as follows:

- (a) It shall be the responsibility of the Council to maintain, repair or replace:
  - (1) All common elements; and
  - (2) All incidental damage caused by work done by direction of the Council on behalf of the unit owners.
- (b) It shall be the responsibility of each unit owner:
  - (1) To maintain, repair or replace, at the expense of the unit owner, all portions of the unit which may cause injury or damage to the other units or to the common elements; and
  - (2) To keep and maintain the unit in a neat and orderly manner and, generally, to prevent any condition of the unit to decrease the beauty of the property. If any unit owner fails to keep his or her unit in a good and attractive condition and repair, the Council shall have the option (after notice by mail and addressed to the unit owner providing for five (5)

days to effectuate the necessary repairs) to take whatever action it deems necessary or appropriate in order to keep the property attractive and in good condition and repair, and any such action shall be at the sole cost and expense of the unit owner, such costs to be paid to the Council upon demand therefor, together with interest thereon at the rate of 10% per annum. If not paid within ten (10) days after demand, such costs shall become a lien upon the unit affected, equal in priority to a lien created by the failure to pay an annual assessment as provided herein.

- (3) To paint and maintain the walls and roof, gutters, pipes and downspouts of the exterior of the unit;
- (4) To perform all such responsibilities in such a manner and at reasonable hours so as not to unnecessarily disturb the other unit owners; and
- (5) To refrain from repairing, altering, replacing, painting, decorating or changing the exterior of the unit or any exterior appendages whether exclusively used by the unit owner or otherwise, without obtaining the prior written consent of the Council.

#### ARTICLE III

Section 3.1. The Council shall have the power to make or cause to be made such alterations and improvements to the common elements as in its opinion may be beneficial, appropriate and necessary.

Section 3.2. The common elements of this property consist of the areas adjacent to the lots and extending to the public street, as set forth on the plat of Cacapon Village Town Houses. The common elements include:

- (a) All streets, rights-of-way, recreational or community facilities, if any, and parking spaces other than spaces, if any, contained within the lots or units;

- (b) Installation of all utility services such as power, light, telephone, gas, heating, television cable, and other utilities;
- (c) All apparatus and installations of service and maintenance facilities and spaces existing for common use;
- (d) All walkways;
- (e) All other parts and elements of the common area intended for the common use, or necessary or convenient to the existence, maintenance, management, operation and safety of the common elements.

ARTICLE IV

LEASE OF UNITS

Any lot or unit may be leased or subleased at any time and from time to time, subject to the following requirements:

- (a) No lot or unit may be leased or subleased for an initial term of less than six (6) months;
- (b) No lot or unit may be leased or subleased without a written lease or sublease;
- (c) A copy of such lease or sublease shall be furnished to the Council within ten (10) days after execution thereof;
- (d) Each lessee or sublessee shall be bound by the covenants, conditions and restrictions contained in this Declaration, and the regulations promulgated by the Council, and a default thereunder shall constitute a default under such lease or sublease; provided, however, that the foregoing shall not impose any direct liability on any lessee or sublessee of a unit to pay any assessments on behalf of the owner of that unit;
- (e) The liability of the unit owner under law, and under this Declaration and any regulations promulgated by the Council, shall continue during the tenancy or subtenancy of any lease or sublease.

ARTICLE VASSESSMENTS: LIABILITY OF UNIT OWNERS:

Section 5.1. Each unit owner shall be assessed the sum of one hundred (\$100.00) dollars per year as an assessment for maintenance and operation of the common elements. Declarants are exempt from this assessment inasmuch as it is their responsibility to operate and maintain the common areas until such time as three (3) units are sold. Upon the sale of the third (3rd) unit, the Council shall have full responsibility for the maintenance and management of the common elements; however, the Declarants shall continue to be exempt from the payment of the annual fee on the remaining unsold units.

Section 5.2. Each unit owner, by acceptance of the deed conveying the unit or units, whether it shall be so expressed in any such deed, is deemed to covenant and agree to pay the annual assessment. All such assessments, together with interest, costs and reasonable attorney fees, shall be separate, distinct and personal obligations of the person or entity who was the owner of the unit or units at the time when the assessment fell due, and shall bind his or its heirs, devisees, personal representatives, assigns, and any mortgagee who comes into possession of a unit by deed in lieu of foreclosure or assignment in lieu of foreclosure.

Upon any voluntary or involuntary conveyance of a unit, the new unit owner shall be jointly and severally liable with the previous unit owner for all unpaid annual assessments, up to the time the grant or conveyance was recorded, without prejudice to the right of the purchaser to collect on the seller therefor. However, any such purchaser shall be entitled to a statement from the Council or the manager, as the case might be, setting forth the amount of the unpaid assessments against the seller due the Council, and the purchaser shall not be liable for, nor shall the unit conveyed be liable for any unpaid assessments levied by the Council against the seller in excess of the amount set forth in

such statement; provided, however, that the purchaser shall be liable for any such assessment becoming due after the date of any such statement.

Section 5.3. Any assessment shall become delinquent if not paid on the due date as established by the Council. If the assessment is not paid within thirty (30) days after its due date, the Council, at its election, may require the delinquent unit owner to pay a reasonable late charge, together with interest at the maximum rate permitted by law on such delinquent sum, calculated from the date of the delinquency to and including the date full payment is received by the Council. If any assessment is not paid within sixty (60) days after its due date, the Council may mail a notice to the unit owner and to each first mortgagee of a unit, or lessee thereof, setting forth the fact that the assessment is delinquent; the action required to cure the default; and a date, not less than ten (10) days from the date of actual delivery of the notice to the owner of the unit or mailing of the notice to the owner of the unit, by which such default must be cured. If the delinquent assessment and any charges thereon are not paid in full on or before the date specified in the notice, the Council at its option may enforce the collection of the assessment and all charges thereon in any manner authorized by law. Costs and attorney fees incurred by the Council in and about the collection of said assessment, shall be collectible from, and an obligation of, the delinquent unit owner.

ARTICLE VI

LIMITATION OF LIABILITY

The Council and its members, in their capacity of voluntary officers, shall not be personally liable for injury or damage to persons or property occurring on the common elements or in, on or about any unit, unless in each such instance such injury or damage has been caused by the willful misconduct or gross negligence of the Council or its members. Additionally, the Council shall not

be personally liable to the unit owners as a result of the performance of its duties, for any mistake of judgment, negligent or otherwise, except for the Council members' own willful misconduct or gross negligence. Additionally, the Council members shall have no personal liability to a unit owner or a unit owner's tenants, employees, agents, customers or guests, for loss or damage caused by theft of or damage to personal property left by such lot or unit owner or his tenants, employees, agents, customers or guests in or on a unit or on the common elements, except for the Council members' own willful misconduct or gross negligence. A Council member shall have no personal liability in tort to a unit owner or any other person, direct or imputed, by virtue of acts performed by or for them, except for damages resulting from willful misconduct or gross negligence in the performance of their duties.

#### ARTICLE VII

##### TRANSFER OF CONTROL

Section 7.1. Declarants have initially appointed the three members of the Council and shall retain the right to appoint successors thereto until control of the Council has been completely transferred to the unit owners.

Section 7.2. Upon the sale of the 5th unit and lot by the Declarants, a special meeting of the unit owners shall be held for the purpose of electing members of the Council to replace those members of the Council appointed by the Declarants, and which newly appointed members shall serve until the next annual meeting of the unit owners.

#### ARTICLE VIII

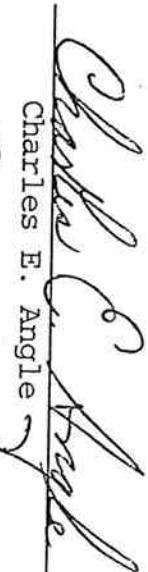
Section 8.1 Subject to the rights of the Declarants respecting the future development of adjacent land, as stated above, this Declaration may be amended from time to time by unanimous consent of the unit owners.


Section 8.2. If any amendment is necessary in the judgment

of the Council to cure any ambiguity or to correct or supplement any provision of this Declaration that is defective, missing or inconsistent with any other provision hereof, or with the statute, or if such amendment is otherwise necessary, the Council may effect an appropriate corrective amendment, without the approval of the unit owners, upon receipt by the Council of an opinion from independent legal counsel to the effect that the proposed amendment is permitted by the terms of this section. Each amendment of the type described in this section shall be effective upon the recording of an appropriate instrument setting forth the amendment, and its due adoption, which instrument has been executed and acknowledged by one or more or the Council.

Section 8.3. This Declaration shall become effective when it and the plat have been recorded in the aforesaid Clerk's Office.

IN WITNESS WHEREOF, Declarants have caused their names to be signed as of this 20<sup>th</sup> day of JUN<sup>e</sup>, 1998.


  
Charles E. Angle (SEAL)

  
Loretta J. Angle (SEAL)

STATE OF W. Va  
COUNTY OF Harvey, to-wit:

I, Leonard H Miller, a Notary Public in and for the County and State aforesaid, do hereby certify that Charles E. Angle and Loretta J. Angle, whose names are signed to the foregoing writing, bearing date the 20<sup>th</sup> day of JUN<sup>e</sup>, 1998, have this day acknowledged the same before me in my said County and State.

Given under my hand this 19 day of August, 1998.  
My commission expires Dec. 31, 2005.

  
Notary Public

ALTERS,  
KOPF & ROTH  
ATTORNEYS AT LAW  
MOOREFIELD  
WEST VIRGINIA



Witnessed by Howard E. Krauskopf  
Walter S. Krauskopf & Sons, Attorneys at Law,  
P. O. Box 119, Moorefield, WV 26836.

## CODE OF REGULATIONS

THIS CODE OF REGULATIONS, is made as of the 20th day of June, 1998, by and among the Council of Cacapon Village Town Houses, situate in the Town of Wardensville, Hardy County, West Virginia.

A plat of Cacapon Village Town Houses is recorded in the Hardy County Clerk's Office in Map Book 5, at Page 149.

There shall be an annual meeting of the unit owners of Cacapon Village Town Houses, and notice thereof shall be given in writing, by mail, to all unit owners, by the Council, no less than forty-five (45) days prior to said meeting.

The Council shall meet from time to time, as necessary, but not less than two (2) times annually, for purposes of managing the operation and affairs of the common property on behalf of the unit owners.

A quorum for the transaction of business at the unit owners meeting shall be no less than five (5), and at the Council meetings, no less than two (2). The Declaration for Cacapon Village Town Houses specifies that the Council shall consist of three members, and the initial Council was appointed by the Declarants of the said Declaration. Each subsequent council member shall serve a term having a duration of two (2) years, and subsequent appointments to the Council shall be made by a simple majority of unit owners.

The Council shall, each year, elect a president, secretary and treasurer.

The duties of the president shall be to conduct the council meetings; to see that the Council's obligations and responsibilities are properly carried out; and to perform such other functions as required by the Council.

The duties of the secretary shall be to keep records of the meetings and actions of the Council; take care of correspondence; and to perform such other functions as required by the Council.

The duties of the treasurer shall be to keep detailed records of all receipts and expenditures, including expenditures affecting the common elements, specifying and itemizing the maintenance, repair and replacement expenses of the common elements, and any other expenses incurred. Such records shall be available for examination by the unit owners. The treasurer shall keep an accurate record of assessments and the payment thereof by each unit owner.

No compensation shall be paid to the Council members.

A Council member may be removed from office and a replacement appointed by a simple majority of the unit owners. The Council's duties shall include the maintenance, repair and replacement of the common elements; the assessment and collection of the annual assessment from unit owners for common expenses and the payment of such common expenses; the adoption and amendment of the Code of Regulations and the promulgation, distribution and enforcement of rules governing the details of the use and operation of the property and the use of the common elements, subject to the right of a majority of the unit owners to change any such actions, and any other duties which may be set forth in the Declaration or this Code of Regulations.

This Code of Regulations and the rules governing the details of the use and operation of the property and the use of the common elements may be amended, from time to time, by the Council, in its sound discretion, or upon consideration of a request for such amendment by a majority of the unit owners.

The Council shall have the power to manage the operation and affairs of the property, and for such purposes to engage employees and appoint agents, and to define their duties and fix their compensation, enter into contracts and other written instruments or documents, and to authorize the execution thereof by officers elected by the Council, and shall have such incidental powers as may be appropriate to the performance of its duties.

The maintenance, repair and replacement of the common elements and the making of improvements or additions thereto, shall be carried on only as provided in this Code of Regulations.

The Council shall have an easement to enter any unit to maintain, repair or replace the common elements, as well as to make repairs to units if such repairs are reasonably necessary for public safety or to prevent damage to other units or to the common elements.

At any meeting of unit owners, each unit owner shall be entitled to the same number of votes as his/her/its percentage of ownership and the common elements assigned to their unit in the Declaration or in the deed for said unit.


Reasonable rules and regulations, not in conflict with the provisions of the Declaration, concerning the use and enjoyment of the property, may be promulgated from time to time by the Council, subject to the right of a majority of the unit owners to change such rules and regulations, and any amendment thereto shall be furnished to all unit owners by the Council promptly after the adoption of such rules and regulations or any amendments thereto.

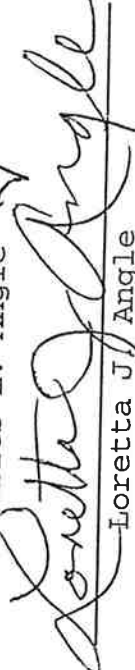
A copy of this Code of Regulations and the Declaration of Covenants, Conditions and Restrictions shall be provided to each unit owner at the time of purchase, and, upon request, from time to time thereafter.

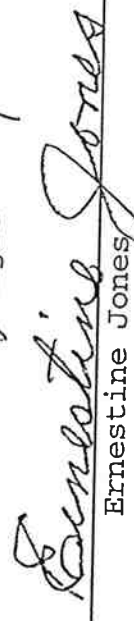
Enacted on the date first written above.

IN WITNESS WHEREOF, the Council of Cacapon Village Town Houses has caused their names to be signed:

WALTERS,  
RAUSKOPF & ROTH  
ATTORNEYS AT LAW  
MOOREFIELD  
WEST VIRGINIA

  
Charles E. Angle (SEAL)

  
Loretta J. Angle (SEAL)

  
Ernestine Jones (SEAL)

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

I, Howard L Miller, a Notary Public in  
and for the County and State aforesaid, do hereby certify that  
Charles E. Angle, Loretta J. Angle and Ernestine Jones, whose  
names are signed to the foregoing writing, bearing date the 20th  
day of June, 1998, have this day acknowledged the same before me  
in my said County and State.

Given under my hand this 19 day of <sup>Aug</sup>~~June~~, 1998.

My commission expires Dec - 26, 2006.

Howard L Miller  
Notary Public



This instrument prepared by Howard E. Krauskopf  
Walters, Krauskopf & Roth, Attorneys at Law,  
P.O. Box 119, Moorefield, WV 26836.

WALTERS,  
KOPF & ROTH  
ATTORNEYS AT LAW  
MOOREFIELD  
WEST VIRGINIA

STATE OF WEST VIRGINIA, Hardy County Commission Clerk's Office August 21, 1998 - 12:06 PM

The foregoing Instrument, together with the certificate of its acknowledgment, was this day presented in  
said office and admitted to record.

Teste [Signature] Clerk