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PUBLIC OFFERING STATEMENT
OF
ASHTON ESTATES

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INC.

PUBLIC OFFERING STATEMENT

OF ASHTON

ESTATES

A Common Interest Community situate in Clinton
District Monongalia County, West Virginia

1. NAME AND ADDRESS:

ASHTON ESTATES is a Common Interest Community of not more than one hundred ninety-seven (197) residential single family Units and appurtenant Common Elements being offered by JAMESTOWNE CONSTRUCTION, INC., (hereinafter sometimes JCI or Declarant), with local offices at:

JAMESTOWNE CONSTRUCTION, INC.

ROUTE 100 MAIDSVILLE (P.O. BOX 1080)

MORGANTOWN, WV 26505

2. GENERAL DESCRIPTION:

ASHTON ESTATES (hereinafter Subdivision) is a "Planned Community" which consists of approximately one hundred ninety-seven (197) residential single family Units, rights-of-way, easements and other Common Elements some of which are more specifically displayed and described in Exhibit 1 hereto. The Subdivision is located in Clinton District with access off State Route 73. The real estate are those certain tracts or parcels of land conveyed to the Declarant, JCI, by James L. Laurita and Beverly A. Laurita, husband and wife, by deed dated the 14th day of December, 1993, and recorded in the office of the Clerk of the County Commission of Monongalia County, West Virginia, in Deed

Book No. 1081, at Page 1, containing a total acreage of 83.91 acres.

3. TITLE TO LAND:

Title to the land which JCI submitted to the development of this Subdivision is held in FEE SIMPLE, subject to:

(a) Covenants and restrictions contained in the Declaration and its Restrictions and Protective Covenants, **Exhibit 2.**

(b) The Articles of Incorporation, By-Laws and other regulations promulgated by the Ashton Property Owners Association, Inc., **Exhibits 3 and 4.**

(c) Two deeds of trust more specifically described in Section 21 of this Public Offering Statement.

(d) One Valley Bank of Morgantown, Inc., and James L. Laurita and Beverly A. Laurita have agreed to execute releases of the liens of the deeds of trust set forth in (c) above, as they would apply to any individual Unit which is purchased, upon the payment of certain sums to One Valley Bank of Morgantown, Inc., and James L. Laurita and Beverly A. Laurita by JCI. JCI will cause such payments to be made upon delivery of the deed to purchasers of Units from JCI.

(e) All exceptions, reservations, rights-of-way, easements and other conditions as made and imposed upon the real estate as conveyed to JCI or its predecessors in title.

(f) All rights-of-way as shown on the Plats of record

Exhibit 1.

(g) A 10 foot wide easement along each side of all roadways and along all other property boundary lines of the property and each and every unit.

(h) All Common Elements as displayed on the Plats and Maps of Survey attached hereto as Exhibit 1.

(i) The prior conveyance of all of the Freeport coal and appurtenant mining rights as conveyed to S. B. Elkins by the following conveyances recorded in the office of the Clerk of the County Commission of Monongalia County, West Virginia:

(1) 25 acres, more or less, Braddock Hall and Emma Hall, his wife, by deed dated the 15th day of May, 1902, and recorded in the aforesaid Clerk's office in Deed Book 64, at Page 463.

(2) 33 acres, more or less, Martha J. Shoemaker and Levi Shoemaker, her husband, by deed dated the 15th day of May, 1902, and recorded in the aforesaid Clerk's office in Deed Book 64, at Page 461.

(3) Part of a 142 acre, more or less, tract by Edwain S. Kinsley, et al, by deed dated the 15th day of April, 1902, and recorded in the aforesaid Clerk's office in Deed Book 63, at Page 286.

(4) Part of a 67 acre, more or less, tract by John C. Price, et al, by deed dated the 15th day of March, 1902, and recorded in the aforesaid Clerk's office in Deed Book 63, at Page

284.

(j) That certain right-of-way for ingress and egress as granted by George W. Price and wife to William R. Morrison by agreement dated the 16th day of November, 1945, and recorded in said Clerk's office in Deed Book No. 373, at Page 261. All sales of Units in the Subdivision will provide for the transfer to the purchaser of a FEE SIMPLE interest in the Unit, subject to the foregoing.

4. DEFINITIONS:

Unless, as used elsewhere, the text or context in which such term is used indicates another definition, the following are definitions of common terms used herein and/or referred to in related documents:

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

B. Board: The Board of Directors of the Association herein designated to act on behalf of the Association as the directors are duly elected or appointed in accordance with the Articles of Incorporation and the By-Laws of the Association, none of which Articles or By-Laws may be inconsistent with the Declaration.

C. Building Control Committee: The Committee appointed by the Board of Directors and composed of three (3) members, with JCI or its designee as at least one or possibly all of such members. The Committee shall approve or disapprove plans and specifications, including color for all buildings, structures and improvements erected or placed on any Unit.

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

E. Common Elements: All of the Subdivision property other than the Units, including, without limitation, the land and all the improvements and appurtenances thereto, central utilities and services, and areas of common use, being ALL PORTIONS OF THE SUBDIVISION EXCEPT THE INDIVIDUAL 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, including any assessments due the Association or Master 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 the Declaration. "Ownership of a Unit" does not include holding a leasehold interest of less than twenty (20) years in a Unit, including renewal options.

H. Declarant: Jamestowne Construction, Inc., its successors and assigns, excluding as successors and assigns all purchasers and lienholders of any Unit and their successors and assigns. Declarant has reserved Special Declarant Rights as set forth elsewhere herein.

I. Declaration: Exhibit 2 attached hereto and any amendments thereto, properly recorded in the Office of the Clerk of the County Commission of Monongalia County, West Virginia. The Declaration, combined with other instruments described herein and amendments thereto, shall be deemed to create a Common Interest Community.

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 and Common Elements within a CIC; (3) subdivide Units or convert Units into Common Elements; (4) withdraw real estate from the CIC; or (5) withdraw Common Elements, or any part thereof, and develop the same into Units or add the same to Units.

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. Master Association: Ashton Estates and Ashton Townhouses Master Owners Association, a West Virginia non-profit corporation, formed and incorporated for the purpose of owning, operating and maintaining the waste water sewage treatment plant servicing the CIC and other properties and certain joint use easements in the CIC.

M. Member: Any and every person or entity holding membership in the Association.

N. Plats: The plat of survey and plan of the Common Interest Community heretofore described and recorded in the aforesaid Clerk's office in Map Cabinet No. 2, Envelope No. 451A, together with those additional plats of the Subdivision hereafter recorded in said Clerk's office, and any amendments thereto later filed of record in said Clerk's office.

O. Phase: A physical portion of the CIC designated for separate development by the Declarant and containing more than one unit but encompassing less than the entire CIC.

P. Unit: A physical portion of the Common Interest Community designated for separate ownership or occupancy, the boundaries of which are described (lot). 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 an interest merely as security for performance of an obligation, and including as a Unit Owner, in respect to all unsold units, the Declarant.

R. Special Declarant Rights: Rights expressly reserved for the benefit of a declarant to (i) complete improvements indicated on plats and plans filed with the Declaration; (ii) exercise any Development Right; (iii) maintain sales offices, management offices, and 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; (v) make the CIC subject to a Master Association; (vi) merge or consolidate a CIC with another CIC of the same form of ownership or merge the CIC with a Master Association; or (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) construct and develop the CIC in Phases and the recording of plats of each Phase as the same are being developed; and (ix) Declarant reserves unto itself, its successors and assigns, (a) the right to develop, as a townhouse project, for sale or rental, the aforesaid 9.50 acre parcel (the parcel of 9.50 acres shall contain no more than 100 townhouse units); and (b) the right to use the common road entrance ways as a means of ingress, egress and regress to the 9.50 acres.

5. SIGNIFICANT FEATURES:

ASHTON ESTATES, under a Declaration of Common Interest Community attached hereto as Exhibit 2, consists of one hundred ninety-seven (197) residential single family Units for residential use with roadways, parking, and other amenities described in the Declaration and set forth in Exhibit 2, to which prospective purchasers are referred. Units may be used by JCI as Sales Models during its offering of Units.

Exhibit 3 sets forth the Articles of Incorporation and Exhibit 4 the By-Laws of the Ashton Property Owners Association, Inc., a non-profit West Virginia corporation for owners of Units, (hereinafter sometimes the "Association"), which sets forth the rights of governance of members and their representatives over the Common Interest Community, including assessments of yearly maintenance fees, maintenance duties, and other matters subject to Declarant's reservation of control during an initial period of Unit sales.

Solely for the information of prospective purchasers copies of a proposed draft of a purchase agreement for a Unit is attached hereto as Exhibit 5, and a proposed draft of a deed for the same is attached hereto as Exhibit 6.

JCI has reserved to itself Special Declarant Rights which permit JCI to revoke or modify certain portions of the Declaration. Specifically, JCI has reserved the right to create, enlarge, modify, or subdivide Units within the

Subdivision. Further, JCI may withdraw entire Units from the Subdivision prior to the first Unit sale from the Phase within which it is located.

PROSPECTIVE PURCHASERS ARE URGED TO SEEK LEGAL ADVICE AND CONSULT THE DECLARATION, ASSOCIATION, ARTICLES OF INCORPORATION, ASSOCIATION BY-LAWS, AND ALL LEGAL DOCUMENTS APPENDED HERETO OR HEREINAFTER REFERENCED FOR A COMPLETE DESCRIPTION OF COMMON INTEREST COMMUNITY RIGHTS AND RESTRICTIONS AND OTHER MATTERS.

6. CURRENT BALANCES AND PROJECTED BUDGETS:

Ashton Property Owners Association, Inc., has a projected Unit Owners Association Budget, prepared by Declarant, a copy of which is set forth as Exhibit 2. BUDGETS MAY BE AMENDED OR UPDATED from time to time to reflect actual expenditures or alterations in future projections based on new information.

There has not been appended any current budget for the Association. The subdivision is in its initial stages of development and no current budget exists. JCI will take responsibility of all Association expenses prior to the first meeting of the Association which will occur no later than one (1) year after the sale of the first Unit from the Subdivision. JCI shall amend this Public Offering Statement and Exhibit 7 immediately upon the creation of the Association's budget.

7. SERVICES AND EXPENSES OF JCI:

Ashton Estates Units are being offered by JCI without the assumption by JCI of on-going Common Interest Community services or expenses, other than as to unsold Units prior to their conveyance, and as to the initial management of the Subdivision prior to the first meeting of the Association. JCI will assume all responsibility for the operating expenses of the Association prior to its first meeting. Thereafter, the Association will be responsible for maintaining the Common Elements and providing such other services as set forth in the Declaration and as may later become reasonably necessary.

8. INITIAL ASSOCIATION ASSESSMENT:

Due upon transfer of the deed from JCI to each purchaser shall be an "initial maintenance assessment" for the benefit of the Association of Two Hundred Dollars (\$200.00). This initial assessment shall be used by the Association for the maintenance, repair and replacement of the Common Elements as governed by the By-Laws of the Association set forth in Exhibit 4. This initial assessment shall apply to all purchasers from JCI regardless of the date of purchase.

9. MAINTENANCE ASSESSMENTS:

Ashton Estates Unit owners are subject to a yearly fee for maintenance and operation of the Subdivision. A budget prepared yearly by the Association determines the yearly projected budget, and the amount determined, divided by twelve (12) calendar months, divided by the number of lots plotted and

of record in the aforesaid Clerk's office, determines the fee to be paid monthly by the owner(s) of each Unit, all as more fully set forth in the Declaration and By-Laws attached hereto. Initially, a purchaser shall pay for the remaining portion of year in which a Unit was bought, that portion of the yearly assessment equal to the number of full months remaining in the calendar year after recordation of the deed, divided by twelve calendar months, multiplied by the then yearly fee assessed for each Unit, unless otherwise provided in the Purchase Agreement or other closing documents. The Unit Owners can expect that the assessment will consist of, but not be limited to, fees for snow removal, road maintenance, operation, and maintenance of sewage waste water treatment plants, real estate taxes on Common Elements in conjunction with any and all other maintenance expenses for the Common Elements and facilities.

10. WASTE WATER SEWAGE TREATMENT SERVICE:

The CIC is provided waste water sewage treatment service by and through a private waste water sewage treatment plant (the "Treatment Plant") situate adjacent to the CIC upon land owned by the Master Association. The Declarant has reserved in the Declaration the right to use the sanitary sewer lines and the Treatment Plant for services to the aforesaid 9.50 acres on which the Declarant may construct townhouses for rental or sale. Further, Declarant has conveyed to the Master Association a 2.75 acre parcel upon which the Treatment Plant is located and

appurtenant rights-of-way. The cost of operating and maintaining the Treatment Plant shall be by and through the Master Association and such costs shall be prorated among all users thereof on a per gallon cost predicated on users' water meter readings or otherwise as from time to time established by the Master Association. The Association, in conjunction with the owners association for the townhouse project, will be the members of the Master Association along with other unit or property owners association whose members' property is being serviced by the Treatment Plant.

11. MANAGEMENT OF THE SUBDIVISION:

JCI will manage the Subdivision and supervise the maintenance and operation of the Subdivision until such time as JCI transfers control of the Subdivision to the Association. The Association will hold its first meeting as soon as reasonably necessary but in no event more than one (1) year from the date of the sale of the first Unit.

Costs of management of the Subdivision are generally derived from annual assessments and charges levied upon the Owners. JCI has caused a non-profit corporation known as "Ashton Property Owners Association, Inc." to be formed to provide a managing entity and with power to levy and enforce collection of assessments and other charges. All Unit Owners shall automatically become members of the Association with the right to vote on matters before the Association and elect the

members of the Board of Directors. JCI has the right to retain control of the Association after a majority of the Units have been sold.

The Association may perform or contract for the performance of such acts as may be necessary in the reasonable, necessary and proper management of the Subdivision, Common Elements, amenities and facilities, included but not limited to:

- (a) Hire, pay and supervise all personnel;
- (b) Maintain and repair the Subdivision;
- (c) Enter into agreement for providing garbage removal;
- (d) Purchase equipment, tools, etc.;
- (e) Cause to be placed or kept in effect liability insurance on Common Elements;
- (f) Maintain the Association's financial record books, accounts, etc.;
- (g) Maintain records to describe the services rendered and to identify the source of all funds collected by the Association;
- (h) Prepare a proposed annual budget to be approved by the Association;
- (i) Collect common expenses and charges from members;
- (j) Maintain and utilize bank accounts;
- (k) Promulgate and enforce reasonable rules and regulations relative to use and occupancy;
- (l) Perform or cause to be performed, repairs, maintenance and alterations and/or additions to any Unit;

(m) Employ and retain such professional and other experts whose services may be reasonably required to effectively perform these duties;

(n) Assess and collect such assessments that may be due the Master Association from the Association resulting from the Association's members' use of the facilities of the Master Association.

12. BOARD OF DIRECTORS AND BUILDING CONTROL COMMITTEE:

The Association's operation shall be governed by the Declaration, Articles of Incorporation, and By-Laws. The Declaration creates two committees within the Association. The first is the Board of Directors, which manages the day to day business of operating the Association. The Directors are elected to the Board by the voting members of the Association. Each Unit Owner becomes a voting member in the Association by holding fee simple title to a Unit. Ownership of one Unit entitles that member to one vote. Since JCI will initially hold title to a majority of Units, JCI will have a majority of the votes in the Association. Purchasers are advised that JCI intends to use its majority status to control the make-up of the Board. This process is described in greater detail in paragraph 14.

The second committee established by the Declaration is the Building Control Committee. The members of this committee are appointed to their position by the Board of Directors. Because JCI will elect most or all of the Directors,

the Building Control Committee will be composed of individuals who are essentially JCI designees. The Building Control Committee must approve in writing all buildings, structures and improvements prior to their placement on the Unit. To accomplish this, all Unit Owners and prospective Unit Owners are required to submit all plans and/or specifications showing in detail all aspects of the construction (including, but not limited to, materials, elevations, proposed landscaping, driveways, retaining walls, fences, exterior material colors, building design, and a sediment control plan conforming to the rules and regulations as established by the West Virginia Department of Environmental Protection) to the Committee in order to obtain the Committee's written approval. The Declaration, attached as Exhibit 2, provides in greater detail the various functions of the Building Control Committee.

13. ASSOCIATION BY-LAWS:

The By-Laws of the Association set forth in their entirety in Exhibit 4 provide, in addition to other matters, as follows:

- (1) That the members of the Board are to be three (3) in number until JCI control is relinquished, thereafter 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) Which of its officers may prepare, execute, certify and record amendments to the Declaration on behalf of the Association; and,

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

14. CONTROL OF THE PROPERTY OWNERS ASSOCIATION:

JCI or its successors have the right to appoint all or a majority of the persons who will serve as members of the Board of Directors of the Association until the occurrence of certain designated events as set forth in Article V of the Declaration attached hereto as Exhibit 2. In accordance with the Declaration, Articles of Incorporation, and By-laws, the Board of Directors may act in all instances on behalf of the Association. In the performance of their duties, the officers of the Association and members of the Board of Directors 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.

JCI shall retain the ability and authority to elect, appoint and remove all members to the Board of Directors; however, (i) not later than sixty (60) days after conveyance of twenty-five (25%) of the Units that may be created within Ashton

Estates to Unit Owners other than JCI, at least one (1) member and not less than twenty five percent (25%) of the members of the Board of Directors must be elected by Unit Owners other than Declarant, and (ii) not later than sixty (60) days after conveyance of fifty percent (50%) of the Units that may be created within Ashton Estates to Unit Owners other than JCI, not less than thirty-three and one-third percent (33-1/3%) of the members of the Board of Directors must be elected by Unit Owners other than JCI.

15. RESTRICTIONS ON SALE, USE, OCCUPANCY OF COMMON ELEMENTS:

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

(2) Unless made pursuant to the Declaration, Exhibit 2, any purported conveyance, encumbrance, judicial sale or other voluntary transfer of Common Elements of the Subdivision is void.

(3) A conveyance or encumbrance of Common Elements pursuant to this section shall 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.

(4) JCI does not desire or intend that there be any restriction on the use or occupancy of the Common Elements except to reserve those areas for common use. It is possible, however,

that the Association at some time in the future would impose a user's fee on the usage of recreational areas, if any. That decision, if made during the period of JCI control of the Association, will be imposed for the purpose of reducing the assessment burden on all Unit Owners and transferring such burden to the Unit Owners using the services.

16. JCI'S SPECIAL RETAINED RIGHTS:

JCI has reserved the right, among other reserved rights, to complete improvements according to the schedule set forth in the Declaration, Exhibit 2. It is JCI's intention to abide by the schedule set forth therein; however, there can be no assurance, nor should a Unit Owner rely on the schedule in Exhibit 2 with regard to the time when such rights may be exercised or which rights, if any, will be exercised. JCI has no duty or responsibility to exercise any of its reserved rights. In the event JCI does exercise any right in any portion of the Subdivision, there is no assurance that Declarant will exercise that right in all or any other portion of the remainder of the CIC.

JCI reserves unto itself the right to withdraw entire Phases from the project prior to the sale from the Phase in question of any lots or to create or subdivide Units within any Phase prior to the time the first Unit sale is made from that Phase, but not thereafter. JCI has found it necessary to reserve these development rights because of unforeseeable future

economic conditions making it unfeasible to continue with the development of the CIC.

JCI also reserves unto itself the right to designate certain Units upon which construction is limited to slab houses, i.e., houses with pad foundations.

17. ALLOCATED INTEREST:

Each Unit Owner shall be allocated an interest in the Association of not less than 1/197th for each Unit held in Fee Simple. If JCI's decides to conduct the development of the Subdivision in two or more Phases, the Unit Owners' allocated interest will vary depending upon the ultimate number of Units created by JCI. The Special Declarant Rights reserved by JCI permit it to create or subdivide Units within a Phase where no Units have been sold or eliminate an entire Phase. Should JCI determine that it is in the best interest of the Subdivision to create or eliminate Units or entire Phases from the Subdivision, then the allocated interest of a Unit Owner will vary accordingly. Unit Owners can determine their allocated interest by the formula that an interest in the Association is equal to a fraction wherein the numerator is one (representing One Unit) and the denominator is a number equal to the total 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. The denominator is

subject to change due to the rights reserved in JCI to subdivide or create additional Units (lots) in any Phase or to delete entire Phases.

18. CONTINUITY AMONG PHASES:

It is JCI's intention to maintain a consistent approach to the development of the Phases of Ashton Estates. JCI intends to use the plats, Declaration, Articles of Incorporation and By-Laws of the Association, set forth in Exhibits 1-4 for each Phase. It is possible, however, that events unforeseen at the time of printing this Public Offering Statement may necessitate the revision of certain Exhibits; THEREFORE, NO ASSURANCES CAN BE GIVEN THAT ALL RESTRICTIONS OR PROTECTIVE COVENANTS WILL REMAIN CONSISTENT AMONG PHASES.

The Declaration creates a Building Control Committee within the Association. The Committee has been given the responsibility of enforcing the Restrictions and Protective Covenants and also the power to grant variances to the restrictions and covenants. Therefore, no assurance can be given that the Building Control Committee will not grant variances and thereby disrupt continuity within and among phases.

19. LOCATION LIMITATIONS ON IMPROVEMENTS:

JCI has established a building restriction line for each Phase as set forth in Article VIII (B) (1) (c) (8) of the Declaration, Exhibit 2. It is JCI's intention to maintain the building restriction line established within each Phase and

throughout the Subdivision. However, JCI has reserved developmental rights to create or subdivide Units in the event the topography of certain lots results in construction difficulties making adherence to the building restriction lines impractical.

The By-Laws of the Association, Exhibit 4, provide that the Building Control Committee may allow reasonable variances and adjustments on restrictions in order to overcome practical difficulties and prevent unnecessary hardship.

**THEREFORE, NO ASSURANCE CAN BE GIVEN THAT
LIMITATIONS ON LOCATIONS OF ANY BUILDING OR OTHER IMPROVEMENT WILL
REMAIN CONSISTENT WITHIN A PHASE DEVELOPMENT OR AMONG THE PHASES, OR
THROUGHOUT THE SUBDIVISION.**

20. DECLARANT RIGHTS AFFECTING USE, OCCUPANCY AND ALIENATION:

JCI has reserved certain rights of development as described previously. However, the rights reserved by JCI do not apply to the use, occupancy or alienation of the Units. All restrictions affecting use, occupancy or alienation of each Phase shall apply equally throughout the Subdivision.

21. LIENS AFFECTING TITLE:

Ashton Estates Subdivision lots are being offered subject to the following liens and encumbrances which shall be released as to each individual lot at closing.

(a) No unsatisfied judgments or pending suits exist against JCI.

(b) That certain Deed of Trust dated the 1st day of July, 1994, of record in the office of the Clerk of the County Commission of Monongalia County, West Virginia, in Trust Deed Book No. 751, at Page 534, granted by JCI to Phyllis H. Arnold and James L. Whytsell, as Trustees, conveying the real estate upon which Ashton Estates is situated, in trust to secure One Valley Bank of Morgantown, Inc., in the principal sum of \$1,300,000.00.

(c) That certain Deed of Trust as made by JCI to Stephen K. Shuman, Trustee, to secure James L. Laurita and Beverly A. Laurita the payment of a promissory note therein described, which Deed of Trust is dated the 7th day of January, 1994, and is recorded in the aforesaid Clerk's office in Trust Deed Book 734, at Page 231.

Ashton Estates Subdivision lots are additionally subject to possible liens from time to time, including, but not limited to:

(a) Lots shall be separately assessed for taxation purposes on the Land Books of Monongalia County, West Virginia, and any assessment for any lot constitutes a lien on that lot for real estate tax purposes until its payment.

(b) Unit Owners are subject to assessments and charges by the Association in accordance with the attached Declaration and other documents, and liens may accrue against individual Units for non-payment of the same.

22. FINANCING THROUGH DECLARANT:

JCI on an individual basis, and at its sole discretion, may offer financing for the purchase of individual residential lots to individuals as follows:

(i) A minimum of a twenty percent (20%) down payment of the purchase price, with the remaining balance amortized over a hypothetical fifteen (15) year term at a minimum interest rate of ten percent (10%) with a final balloon payment of the remaining principal and interest balance due and owing on or before three (3) years from the date of execution of the promissory note. This note shall be secured by a deed of trust on the subject lot for the benefit of Jamestowne Construction, Inc. JCI reserves the right to pledge or discount purchase money obligations generated by the sale of residential lots.

(ii) A purchaser under such financing circumstances shall pay to JCI, in regard to all finance transactions, a fee of One Hundred Dollars (\$100.00) for preparation of purchase money obligations.

Whether financing is provided by JCI, or not, no closing costs nor expenses shall be paid by JCI with the exception of:

- (a) Deed preparation
- (b) Transfer stamps
- (c) Pro-rata taxes
- (d) Realtor's commission, if any (amount to be negotiated by

Declarant)

(e) Release of liens

(f) Taxes on Unit where Unit is not separately taxed.

Whether financing is provided by JCI, or not, except as above provided, all purchasers shall be responsible for all closing costs and expenses, including, but not limited to:

(a) Title examination

(b) Recording fees

(c) Title insurance

(d) Purchase money obligations

(e) Taxes affecting the Unit.

If the purchaser arranges financing, whether in mortgage form or otherwise, through a source other than JCI, purchaser must pay all costs in connection therewith. A copy of the Unit Purchase Agreement is attached hereto as Exhibit 5.

23. JUDGMENTS OR PENDING SUITS:

There are no present judgments or pending lawsuits against Ashton Estates Homeowners Association, Inc., to the best of Declarant's knowledge.

24. EARNEST MONEY DEPOSITS:

All earnest money deposits for the prospective purchase of residential lots in Ashton Estates Subdivision shall be placed in an escrow account until time of closing. Said earnest money shall be applied to the purchase price when the sale is consummated or will be returned to the purchaser only if

the purchaser cancels the contract on or prior to fifteen (15) days after receiving this Public Offering Statement.

25. RESTRICTIONS UPON SALE, TRANSFER OR CONVEYANCE:

All Unit Owners are subject to the provisions of the Uniform Common Interest Ownership Act, West Virginia Code Chapter 36B-1-101 et seq. The Code enumerates in detail that prior to a conveyance of the Unit Owner's Unit, a purchaser must be furnished a copy of the Declaration (other than plats and plans), the By-Laws, the rules or regulations of the Association and a Certificate supplied by the Association containing various information on the judgments, liens, assessments, operations and workings of the Association.

ALL PROSPECTIVE PURCHASERS SHOULD OBTAIN LEGAL ADVICE AND CONSULT THE UNIFORM COMMON INTEREST OWNERSHIP ACT PRIOR TO THE PURCHASE OF ANY UNITS TO DETERMINE THEIR RESPONSIBILITIES UPON RESALE OF ANY UNIT IN THIS SUBDIVISION.

26. RESTRICTIONS ON USE:

Contained within the Declaration, Exhibit 2, is "Article VIII. The Units - Use, Transfer & Other Restrictions & Rights". These Restrictions and Protective Covenants impose upon the Subdivision extensive restrictions on the manner in which each Unit may be improved and used.

Every restriction will limit the manner in which a lot may be improved and used; however, restrictions on size of residence are one of the first considerations of any prospective

purchaser. Therefore, no dwellings shall be constructed upon any Unit in the hereinafter designated Phases, which contains less than the specified square footage of finished living space, exclusive of basements, porches, decks and finished or unfinished garage(s). ALL UNITS IN ALL PHASES ARE SUBJECT TO A 1.500 SQUARE FOOT MINIMUM

It is JCI's intention and desire that the restrictions will mutually benefit all Unit Owners by maintaining the integrity of the Subdivision for residential purposes and protecting their investment.

27. NO RESTRICTIONS OF SALE PRICE UPON RESALE:

It is not JCI's intention nor has JCI adopted any language in its Declaration, this Public Offering Statement or elsewhere that limits or prohibits the amount of consideration that a Unit Owner may receive upon sale and disposition of a Unit to a third person; however, such a transfer shall not void, terminate, or in anyway impinge the right of the Declarant to be the sole and exclusive builder or contractor of a residential dwelling on a Unit as provided for in Section XVI. of the Declaration, and more specifically set forth in Section 35 of this Public Offering Statement.

28. INSURANCE COVERAGE:

(a) JCI will provide insurance coverage for liability purposes on all Common Elements until the Association's first meeting in limits of coverage of not less than

\$300,000.00/\$1,000,000.00. Once the Association is operational, it shall be the responsibility of the Association to determine the extent and amount of insurance necessary to provide proper insurance coverage on the Common Elements. Neither JCI nor the Association will provide personal coverage on any of the Unit Owner's Units or its improvements.

(b) EACH UNIT OWNER IS SOLELY RESPONSIBLE FOR PROVIDING INSURANCE COVERAGE ON THEIR OWN UNIT AND ITS IMPROVEMENTS. Each Unit Owner shall maintain at all times a comprehensive insurance policy insuring his Unit and the improvements thereon against the risk of loss due to fire, casualty or other disaster in an amount equal to at least ninety per cent (90%) of the purchase price of the lot and improvements.

(c) 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 in which they existed prior to the fire, casualty or other disaster. Such restoration shall begin within thirty (30) days of the date of damage and shall be completed within one hundred twenty (120) days of commencement of restoration.

(d) Each Unit Owner covenants and agrees to carry a policy of liability insurance and to name therein the Association as an insured party.

29. SERVICES:

The following services will be obtained from the sources indicated:

- (1) Water - Clinton District Public Service District, a public utility.
- (2) Telephone - Bell Atlantic
- (3) Natural Gas - Hope Natural Gas Company, a public utility
- (4) Cable - Century Cable Company
- (5) Electric - Monongahela Power Company
- (6) Sewage - Private sewage treatment facility until service becomes available from a public service district, municipality or other satisfactory alternative.

30. ZONING REQUIREMENTS:

Ashton Estates Subdivision is situate in Clinton District, Monongalia County, West Virginia. There are no zoning laws or land use restrictions imposed upon the Subdivision by the County Commission of Monongalia County, the State of West Virginia or the United States of America. However, all prospective buyers must take notice that JCI has imposed Restrictions and Protective Covenants upon each Unit which limits the use and occupancy of the Unit and its improvements. All Units within the Subdivision are conveyed subject to the Restrictions and Protective Covenants and no use or occupancy in violation of those restrictions shall be tolerated. The

Association is vested with specific powers which permit it to institute legal action to enforce the various Restrictions and Protective Covenants. It is JCI's intention and desire that the Association, acting through the Building Control Committee, shall strictly enforce all Restrictions and Protective Covenants.

31. WARRANTIES DECLARATION:

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

All Purchasers shall execute a separate instrument attached hereto as Exhibit 8, "Agreement and Waiver." This Agreement and Waiver between JCI and Purchaser waives Purchaser's statutory right to a six-year statute of limitations for the commencement of legal action for breach of implied or expressed warranties of quality. In its place shall be substituted a statute of limitations requiring the commencement of any legal action by Purchasers for breach of warranty within two years of the date the Purchaser enters into possession. Purchasers should consult Exhibit 8 for more detailed information.

32. COMPLETION OF IMPROVEMENTS:

JCI is adequately financed through the aforementioned Deeds of Trust to complete the improvements shown on the plat of the Subdivision. HOWEVER, REGARDLESS OF HOW WELL FINANCED JCI IS, THERE CAN BE NO ASSURANCE THAT THE IMPROVEMENTS AS SHOWN WILL BE COMPLETED ACCORDING TO THE PLATS OR WILL BE COMPLETED AT ALL.

33. AMENDMENT OF THIS OFFERING STATEMENT:

JCI shall promptly amend this Public Offering Statement to report any material change in the information supplied, or any information not originally supplied, but subsequently determined to be material.

34. RIGHTS RESERVED BY DECLARANT FOR TOWNHOUSE DEVELOPMENT ON ADJOINING 9.50 ACRES:

(a) Declarant has excluded from the parent tract of which the CIC is being developed, 9.50 acres, more or less, for the creation, development and construction of a townhouse project, either rental or sales, (the "Project"). The Project may be a rental, sales or a mixture of rental and sales. As of the date of the preparation of this Public Offering Statement, Declarant has not made a final determination as to the specific nature of the Project, insofar as an election as to sales, rentals or mixed use is concerned.

(b) The Project and the CIC have joint use of the common entrance ways for access, ingress, egress and regress. All common expenses relating to the joint use of the common entrance

ways are controlled, established and assessed by the Master Association. Further, the sewer lines and sewage treatment plant servicing the CIC also provide service to the Project and common expenses associated therewith are controlled through the Master Association.

(c) The outer boundary lines of the Project are delineated on Exhibit 1 to this Public Offering Statement. The Declarant has designated on Exhibit 1 that the 9.50 acres, more or less, is dedicated to the Project. Declarant has not established a commencement date for the development of the Project. Further, the Project need not be built as is designated on Exhibit 1.

35. DECLARANT'S RESERVATION OF RIGHT TO CONSTRUCT ALL DWELLINGS ON UNITS IN THE CIC:

The Declarant has reserved in the Declaration and the Unit Purchase Agreement the sole and exclusive right to construct and build all residential dwellings, for a period of three years from the recording of a deed from Declarant to a Unit Owner; however, such sole and exclusive right may be waived in respect to any specific Unit in writing by the Declarant. The Declarant can waive its sole and exclusive right to be the builder of a residential dwelling on any Unit; however, such waiver shall be specified in the deed of conveyance for any particular Unit in respect to which such sole and exclusive right is to be waived or may be specified in a separate document which is in recordable form. All purchasers of a Unit should inquire

of the Declarant as to whether or not the Declarant intends to be the exclusive builder for a dwelling in respect to any purchased Unit. The right of the Declarant to be the sole and exclusive builder shall terminate upon the passage of three years from the date of the recording of a deed from the Declarant to a Unit purchaser. The right reserved by Declarant to be the sole and exclusive builder shall be an obligation running with the land for the afore-stated three year period. See Article XVI. of the Declaration.

36. PURCHASE DEPOSITS AND RIGHTS OF CANCELLATION:

Ashton Estates Subdivision Units are offered pursuant to this Public Offering Statement and Exhibits, as the same may be amended from time to time. Regarding purchase of a Unit:

(a) **WITHIN FIFTEEN (15) DAYS AFTER RECEIPT OF A PUBLIC OFFERING STATEMENT/ A PURCHASER, BEFORE CONVEYANCE, MAY CANCEL ANY CONTRACT FOR PURCHASE OF A UNIT FROM THE DECLARANT AND RECEIVE THE RETURN OF PURCHASER'S EARNEST MONEY DEPOSIT.**

(b) **IF DECLARANT FAILS TO PROVIDE A PUBLIC OFFERING STATEMENT TO A PURCHASER BEFORE CONVEYING A UNIT, THAT PURCHASER MAY RECOVER FROM JCI TEN PERCENT (10%) OF THE SALES PRICE OF THE UNIT, PLUS TEN PERCENT (10%) OF THE SHARE, PROPORTIONATE TO HIS COMMON EXPENSE LIABILITY, OF ANY INDEBTEDNESS OF THE ASSOCIATION SECURED BY SECURITY INTERESTS ENCUMBERING THE CIC; PROVIDED, THAT SUCH PURCHASER MUST SHOW THAT HE HAS BEEN ACTUALLY DAMAGED AS A**

RESULT OF HIS OR HER FAILURE TO RECEIVE SUCH PUBLIC OFFERING STATEMENT.

(c) IF A PURCHASER RECEIVES THIS PUBLIC OFFERING STATEMENT MORE THAN FIFTEEN (15) DAYS BEFORE SIGNING A CONTRACT OF SALE, SUCH CONTRACT IS VALID, ENFORCEABLE AND CANNOT BE CANCELLED BY SUCH PURCHASER.

(d) CANCELLATION SHALL BE MADE BY HAND-DELIVERING A NOTICE THEREOF TO JCI OR BY MAILING NOTICE THEREOF BY PREPAID U.S. MAIL TO JCI OR ITS AGENT FOR SERVICE OF PROCESS AT THAT ADDRESS GIVEN IN PARAGRAPH 1.

I RECEIVED THE ABOVE STATEMENT, WITH ATTACHMENTS ON THE _____ DAY

OF _____, 199____.

X: _____PURCHASER

X: _____PURCHASER

cs.2\ashton estates disk\ashton.pos

EXHIBIT 1



MAGNETIC DECLINATION
15.5° N
MONITOR ADJUSTMENTS
1988



LEGEND

- 1/2" REAR SET
- 5/8" REAR SET
- REAR FOUND
- POINT
- STONE FOUND
- FENCE POST
- RIGHT-OF-WAY MONUMENT
- PROPERTY LINE
- ADJOINING LINE
- RIGHT-OF-WAY LIMITS
- FENCE

DORA SQUIRES
587/496
TM.3 PC.13

B&O RAILROAD
100' R/W

EXISTING
ROAD

DONALD TEETS
435/160
TM.3 PC.7

DONALD TEETS
435/160
TM.3 PC.7

ILA ELLI
966/243
TM.3 PC.8

JAMES ELLI
821/634
TM.3 PC.8.1

ILA ELLI
966/243
TM.3 PC.8

JUNIOR SWISHER
569/494
TM.3 PC.3

STONE FOUND
100' OFFSET

CAROL MARTINELLI
844/88
TM.3 PC.4.1

CURVED	RADIUS	LENGTH	CHORD	CHORD BEARING
C1	400.00'	59.08'	59.08'	N 20°56.33' E
C2	229.66'	87.46'	86.93'	S 1°56.02' E
C3	229.66'	30.07'	30.05'	S 27°43.25' E

84.13 AC. +/-
REMAINDER

C/L PRICE RUN

84.19 AC. +/-
REMAINDER

COMMON AREA

C/L R/W	CHORD BEARING
N 24°40'23" E	48.30'
N 50°36'27" E	20.58'
N 30°11'37" E	129.85'
N 31°17'37" E	99.84'
N 30°23'28" E	148.85'
N 59°04'18" E	97.31'
N 61°00'45" E	136.36'
N 60°53'47" E	153.66'
N 62°43'30" E	77.12'
N 64°01'31" E	153.20'

C/L A-B

C/L R/W	CHORD BEARING
N 65°47'27" E	55.92'
N 72°14'42" E	40.34'
N 77°17'27" E	40.65'
N 80°53'23" E	181.63'
N 83°48'39" E	76.43'
N 83°27'39" E	31.30'
N 65°11'24" E	191.65'
RADIUS LENGTH	209.66'
CHORD BEARING	19.32° N 30°02'30" E

NOT PART OF CHC
RESERVED FOR FUTURE TOWNHOUSE DEVELOPMENT.
SALE / RENTAL - NEED NOT BE BUILT

PLAT OF ASHTON TOWNHOUSES

9.50 AC.

CLINTON DISTRICT
MONONGALIA COUNTY
WEST VIRGINIA

P/O DB, 784 PG. 183
P/O TM. 3 PC. 5.6,14,15,2,6,18,2

MFN 2309-J



EXHIBIT 2

DECLARATION OF COMMON INTEREST COMMUNITY FOR ASHTON ESTATES

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**DECLARATION OF COMMON INTEREST COMMUNITY
FOR
ASHTON ESTATES**

THIS DECLARATION, effective the 15th day of December, 1994, by JAMESTOWNE CONSTRUCTION, INC., a West Virginia corporation, (hereinafter referred to as "DECLARANT"), the owner of certain real estate and improvements thereon and appurtenances thereto, as designated on the plat 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 by which this CIC is to be identified is Ashton Estates. The property comprising the SUBDIVISION is located in Clinton District, Monongalia 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 "Ashton Estates Subdivision," (sometimes hereinafter referred to as "Ashton

Estates", "Subdivision" or "CIC") as more fully shown on the Plat recorded in the Office of the Clerk of the County Commission of Monongalia County, West Virginia, in Map Cabinet No. 2, Envelope No. 451-A. Said plat reference and any later additions, amendments and subsequent plats as may be from time to time recorded are hereby made a part for all pertinent purposes, and being part of the same parcel of real estate conveyed to the Declarant by a deed of conveyance from James L. Laurita and Beverly A. Laurita, husband and wife, dated the 14th day of December, 1993, and recorded in the aforesaid County Clerk's Office in Deed Book No. 1081, at Page 1. The legal description of the SUBDIVISION real estate being as more fully set forth on the aforesaid plats, and further delineated and described as follows:

All of the following described tract or parcel of real estate situate, lying and being in Clinton District, Monongalia County, West Virginia, and being more particularly bounded and described as follows:

BEGINNING at a point of intersection of the northern right-of-way line of West Virginia Route No. 73 with the western right-of-way line of U.S. Interstate Route No. 79; and thence with said State Route No. 73 right-of-way line, S. 58° 23' W. 2,600 feet, more or less, to a stake; thence N. 31° 44-1/2' E. 175.07 feet to a point which is a corner to a 36.35 acre parcel now or formerly of Denver Smith which is within this tract; thence with four lines of same, N. 44° 36' W. 1,813.60 feet to a stake; N. 50° 16-1/2' E. 652.92 feet to a stake; thence S. 60° 45' E. 1,144.52 feet to a stake; thence N. 42° 05' E. 213.87 feet to a stake which is a corner to a 7.75 acre parcel now or formerly of Shuttlesworth which is within this tract; thence with four lines of same, N. 58° 58-1/2' W. 366.15 feet to a stake; thence N. 73° 56-1/2' W. 163.26 feet to a stake; thence N. 14° 04' E. 181.51 feet to a stake; thence S. 70° 17' E. 669.19 feet to a stake; thence N. 19° 11' E. 645.60 feet, more or less, to a stake in a former old County Road; thence with the same and lands now or formerly of Wendell Elli, S. 38° 46' E. 119.14 feet; thence S. 25° 05' E. 144.54 feet; thence N. 26° 20' E. 412.60 feet to the southern right-of-way line of the Baltimore & Ohio Railroad Company; thence with said railroad right-of-way line, S. 82° 05' E. 1,014 feet, more or less, to the western right-of-way line of U.S. Interstate Route No. 79; thence with same, S. 1° 30' W. 1,000 feet, more or less, to the point and place of beginning, and containing 93.5 acres, more or less.

There is EXCEPTED AND RESERVED from the aforesaid parcel the hereinafter described 9.50 acres, (Townhouse Tract). and more particularly described as follows:

BEGINNING at a 1/2 inch rebar, set, in the northern limits of West Virginia Secondary Route 73 and the eastern limits of Road #1, a 40 foot right-of-way; thence leaving West Virginia Secondary Route 73 and with the eastern limits of Road #1, N. 24° 40' 25" W. 44.80 feet to a point; thence with a curve to the right having an arc length of 59.08 feet, a radius of 400.00 feet, and a chord bearing and distance of N. 20° 26' 33" E. 59.02 feet to a point in the center of Price Run, also a corner to Lot

#1; thence leaving the eastern limits of Road #1 and with Lot #1, N. 50° 48' 26" E. 175.69 feet to a 1/2 inch rebar, set, also a corner to Lot #2; thence leaving Lot #1 and with Lots #2, #3, #4, #5, #6, #7, and #8, N. 47° 06' 26" E. 588.20 feet to a 1/2 inch rebar, set, also a corner to Lot #8; thence with Lots #8, #9, #10, #11, #12, #13 and #14, N. 61° 29' 40" E. 635.76 feet to a 1/2 inch rebar, set, also a corner to Lot #14; thence with Lots #14, #15, #16 and #17, S. 83° 01' 32" E. 298.06 feet to a 1/2 inch rebar, set, also a corner to Lot #18; thence leaving Lot #17 and with Lot #18, S. 56° 35' 59" E. 105.86 feet to a 1/2 inch rebar, set, also a corner to Lot #19; thence leaving Lot #18 and with Lot #19, N. 62° 04' 41" E. 108.66 feet to a 1/2 inch rebar, set; thence N. 08° 24' 41" E. 82.86 feet to a 1/2 inch rebar, set, in the western limits of Road #7, a 40 foot right-of-way; thence leaving Lot #19 and with Road #7 and a curve to the left having an arc length of 122.85 feet, a radius of 229.66 feet, and a chord bearing and distance of S. 16° 50' 52" E. 121.39 feet to a 1/2 inch rebar, set, in the northern limits of West Virginia Secondary Route 73 from which a 5/8 inch rebar, found, in the boundary of the parent tract bears N. 63° 10' 28" E. at 161.69 feet; thence leaving Road #7 and with the northern limits of West Virginia Secondary Route 73, S. 63° 10' 28" W. 549.21 feet to a point; thence S. 26° 48' 31" E. 20.00 feet to a point; thence S. 63° 10' 29" W. 999.99 feet to a point; thence N. 26° 52' 21" W. 5.00 feet to a point; thence S. 63° 10' 27" W. 267.03 feet to the point of beginning, containing 9.50 acres, more or less. The 9.50 acres is designated on Exhibit I and has been designated for townhouse development or other uses.

Further, there is excepted and reserved the following 2.75 acre tract that will be conveyed to the Master Association upon which there is to be constructed a waste water sewage treatment plant, and said parcel is more particularly bounded and described as follows:

BEGINNING at a point which is N. 74° 56' 32" W. 491.52 feet from the Northeast corner of that certain 93.72 acre parcel owned by the Declarant, and running thence S. 15° 03' 28" W. 296.88

feet to a point on the Northern side of Monongalia County Route 73/7; thence N. 86° 18' 37" W. 60.35 feet to a point on the Northern right-of-way of said County Road; thence N. 46° 01' 34" W. 202.72 feet to a point; thence N. 66° 10' 30" W. 324.36 feet to a point; thence N. 31° 47' 21" E. 173.79 feet to a point; thence S. 73° 50' 37" E. 284.18 feet to a point; thence S. 74° 56' 32" E. 221.39 feet to the point and place of beginning, and containing 2.75 acres, more or less.

Further, there is excepted and reserved that certain nonexclusive easement for the construction, maintenance and repair of a sanitary sewage line, which easement is appurtenant to the aforesaid 2.75 acre parcel and the aforesaid townhouse parcel of 9.50 acres, and which easement is 20 feet in width and being 10 feet on each side of the following centerline:

BEGINNING at a point which is N. 86° 18' 37" W. 20.55 feet from the Southeastern corner of the aforesaid 2.75 acre parcel, and running thence S. 11° 06' 32" W. 41.25 feet to a point; thence S. 02° 52' 47" W. 191.79 feet to a point; thence S. 82° 42' 55" E. 218.94 feet to a point; S. 69° 29' 45" E. 129.53 feet to a point; thence S. 07° 13' 45" W. 402.54 feet to a point; S. 08° 54' 02" W. 193.05 feet to a point.

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:

Ashton Property Owners Association, Inc., a non-profit corporation, and any wholly-owned subsidiary thereof, its successors and assigns, which Association of Unit Owners 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 directors are duly elected or appointed in accordance with the Articles of Incorporation and the By-Laws of the Association, neither of which Articles or By-Laws may be inconsistent with

this Declaration.

C. Building Control Committee: The Committee appointed by the Board of Directors and composed of three (3) members with Declarant or its designee as at least one or possibly all of such members. The Committee shall approve or disapprove plans and specifications, including color, for all buildings, structures and improvements erected or placed on any Unit

D. By-Laws: The By-Laws of Ashton 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 limitation, the land and all the improvements and appurtenances thereto, central utilities and services, and areas of common use, being ALL PORTIONS OF THE CIC EXCEPT THE INDIVIDUAL UNITS. References to "Common Elements" on the Plat 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, including assessments due the Association or Master 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 a leasehold interest of less than twenty (20) years in a Unit, including renewal options.

H. Declarant: Jamestowne Construction, Inc., a West Virginia corporation, its successors and assigns, excluding as successors and assigns all purchasers and lienholders of any Unit and their successors and assigns. Declarant has reserved Special Declarant Rights as set forth in Article VIII B(1)(C), and elsewhere herein.

I. Declaration: This Document and any amendments thereto, properly recorded in the Office of the Clerk of the County Commission of Monongalia 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 and Common Elements within a CIC; (3) subdivide Units or convert Units into Common Elements; (4) withdraw real estate from the CIC, or (5) withdraw Common Elements, or any part thereof, and develop the same into Units or add the same to Units.

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. Master Assessment: A share of the funds required for the payment of common expenses which from time to time is assessed against all Members of the Master Association.

M. Master Association: Ashton Estates and Ashton Townhouse Master Owners Association, a West Virginia non-profit corporation, formed and incorporated for the purpose of owning, operating and maintaining the waster water sewage treatment plant servicing the CIC, Developer's townhouse project, Developer's other lands, and other properties and projects in the general vicinity of the CIC, and such other obligations and duties as to common maintenance and common expenses as provided for in this Declaration.

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

O. Plats: Those plats of survey and plans of the CIC heretofore described and recorded in the aforesaid Clerk's Office in Map Cabinet No. 2, Envelope No. 451-A, 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, the boundaries of which are described (Lot). EACH UNIT SHALL BE DEEMED TO CONTAIN AS APPURTENANT TO ITS OWNERSHIP AN UNDIVIDED FRACTIONAL INTEREST IN THE COMMON ELEMENTS, AS DETERMINED BY ARTICLE VIII B(1)(g).

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 an interest merely as security

for performance of an obligation, and including, in respect to all unsold Units, as a Unit Owner the Declarant.

R. Special Declarant Rights: Rights expressly reserved for the benefit of a Declarant to (i) complete improvements indicated on plats and plans filed with the Declaration; (ii) exercise any Development Right; (iii) maintain sales offices, management offices, and 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; (v) make the CIC subject to a Master Association; (vi) merge or consolidate a CIC with another CIC of the same form of ownership or merge the CIC with a Master Association; (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) construct and develop the CIC in Phases and the recording of plats of each Phase as the same are being developed; and (ix) Declarant reserves unto itself, its successors and assigns, (a) the right to develop, as a townhouse project, for sale or rental, the aforesaid 9.50 acre parcel (the parcel of 9.50 acres shall contain no more than 100 townhouse units); and (b) the right to use the common road entrance ways as a means of ingress, egress and regress to the 9.50 acres.

V. THE ASSOCIATION & MASTER ASSOCIATION

V.1. 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 Ashton Property

Owners Association, Inc., and be subject to the rules, regulations, covenants and restrictions of this Declaration and the Articles of Incorporation of the Association, the By-Laws of the Association, and further subject to all rules and regulations promulgated or adopted by the Association in accordance with this Declaration. Ownership of a Unit is the sole qualification for 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, all Members shall be deemed to be former Unit Owners entitled to distribution of proceeds hereunder. Membership as defined in the By-Laws shall not be inconsistent with the provisions 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 Master Assessments 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;

- (7) Cause additional improvements to be made as a part of the 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 may be conveyed or subjected to a security interest only pursuant to the provisions of this 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 Master Assessments and, after notice and an opportunity to be heard, levy reasonable fines for violations of the Declaration, By-Laws and Rules and Regulations of the Association;
- (13) Impose reasonable charges for the preparation and recordation of Amendments to the Declaration or statements of unpaid Assessments;
- (14) Provide for the indemnification of its officers and Board of Directors and maintain directors' and officers' liability insurance as desirable;
- (15) Assign its right to future income, including the right to receive Common Expense Assessments, but only to the extent this Declaration expressly so provides;
- (16) Exercise any other powers conferred by this

Declaration 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) Employ and retain such professionals and other experts whose services may be reasonably required to effectively perform these duties.

C. Board Members: Subject to other provisions of the Declaration, the Board of Directors (hereinafter "Board") shall be generally empowered as follows:

(1) Except as otherwise provided in this Declaration or the By-Laws, the Board may act in all instances on behalf of the Association. In the performance of their duties, the members of the Board are required to exercise (i) if appointed by the Declarant, the care required as 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 meeting

of the Unit Owners to consider ratification of the budget not less than fourteen (14) nor more than thirty (30) days after mailing of the summary. Unless at that meeting of Unit Owners 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 (5) , there shall be an initial period of Declarant control of the Association during which Declarant or persons designated by it, may appoint and remove any and all members of the Association's Board. The period of Declarant control terminates 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 add 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 it becomes 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 per cent (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 Unit Owners other than Declarant, not less than thirty-three and one-third per cent (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 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 this Declaration or 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 (6) 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 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 (6) takes office upon not less than ninety (90) 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) 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 addition to other matters, provide and shall provide:

(1) That the number of members of the Board is to be four (4) 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) Which of its officers may prepare, execute, certify and record Amendments to this Declaration on behalf of the Association; and,

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

E. CIC Upkeep: Except to the extent otherwise provided by this Declaration, the Association is responsible for maintenance, repair, replacement and upkeep of the Common Elements. The Master Association is responsible for the joint use access easement areas as the same are designated upon the plat of Ashton Estates as

recorded in Map Cabinet Envelope 2, Page 451-A. 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.

F. Association Meetings: 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 sixty (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 a 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 hold the interest required for membership. Allocation of votes is generally formulated on the principle of "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 that date, unless it specifies a shorter term.

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

may not be inconsistent with the provisions of 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: An action alleging a wrong done by the Association must be brought against the Association and not against any Unit Owner. If the wrong 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 subsections 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 preexisting 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, excavations, foundations 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 lienholders as their interests may appear. Subject to the provisions of subsection (7), the proceeds must be disbursed first for the repair or restoration of the damaged property and the Association, Unit Owners and lienholders 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 addresses.

(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, including every owner of a Unit, 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 Expense for the benefit of the Unit Owners who were members of the Association at the time of the loss.

V.2. Master Association:

A. Membership: Membership in the Master Association will initially be that of the Association and the Unit Owners' Association for Declarant's townhouse project on a 9.5 acre parcel adjacent to the CIC. Further, other Unit Owners' Associations shall become members upon the Master Association providing services to the Members of such Association.

B. Powers of the Master Association: The Master Association shall have those powers, duties, obligations, rights and privileges set forth in its Articles of Incorporation, By-Laws and as granted to it in this Declaration.

C. Master Association Assessments: Master

Assessments shall be included in the Association's yearly budget and collected as part of the Common Expenses chargeable and collectible from Unit Owners until such time that the Master Association elects to charge each Unit Owner separately for its sewage or the Master Association may elect to have part of the Master Assessment charges and expenses included in the Common Expense and the remaining portion thereof separately billed to Unit Owners.

D. Lien Rights: The Master Assessments may be collected by the Association or by the Master Association and the Master Association shall be entitled to file a lien against the Association for all unpaid Master Assessments which are contained within the Common Expense Assessment established by the Association.

VI. ASSESSMENTS, LIENS AND RECORDS

A. Initial Assessment Deposit:

The initial purchaser of any Unit in Ashton Estates Subdivision shall, on the date of purchase, pay to the Association the sum of Two Hundred Dollars (\$200.00), as required by Section 3.04 of the By-Laws of said Association.

B. Assessment for Common Expenses:

(1) Until the Association makes a Common Expense 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 subsections(3),(4)and (5), all Common Expenses must be assessed against all the Units

in accordance with allocations set forth in Article VIII B(1)(g) of this Declaration. Any past due Common Expense Assessment or installment thereof bears interest at the rate established by the Association not exceeding eighteen per cent (18%) per year.

(3) It is further required that to the extent reasonably determinable, any Common Expense or portion thereof benefiting fewer than all of the Units must be assessed exclusively against the Units benefited.

(4) Assessments to pay a judgment 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 such Unit Owner's 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 Assessments.

D. Lien for Assessments:

(1) The Association has a lien on a Unit for any Assessment or Master Assessment levied against that Unit or fines imposed against its Unit Owner from the time the Assessment, Master Assessment or fine becomes due. If an Assessment or Master

Assessment is payable in installments, the full amount of the Assessment is 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 Expense 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, curtesy 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. The statement 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 Office of the Clerk of the County Commission of Monongalia County, West Virginia. 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 names of the Unit Owners as debtors and in the name 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 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 lienholder 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 Fifty Dollars (\$50.00) fee relative to each Unit, a Unit Resale Summary setting forth information required to be submitted to a Purchaser by a Unit Owner to lawfully convey his Unit pursuant to West Virginia Code Section 36B-4-109, or as such requirements may, from time to time, be amended.

VII. THE PLATS

The Plats set forth the measurements, locations and other required data with respect to (1) the parcel and its exterior boundaries; and (2) the Common Elements. 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 date 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 legal 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 lots, tracts or parcels different from the whole Unit as shown on the Plat. Notwithstanding any other provision contained in this 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 contiguous sides of the Units, as reserved in this Declaration and as may be designated upon the recorded plats of the CIC, 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 in full effect and be fully 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 this 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.

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 any and all other parties having any interest therein, and are intended to be covenants running with the land:

(1) ALL UNITS SHALL ADDITIONALLY BE SUBJECT TO THE FOLLOWING RESTRICTIONS:

(a) These restrictions shall apply to all Units in the CIC, and any dwelling or appurtenance placed thereon shall only be used for personal residential purposes. These restrictions shall not be applicable to any other property of the Declarant but are restricted solely to the area set forth on the Plat of the Common Interest Community (see Exhibit 1), and any remaining acreage is specifically excluded and excepted from this Declaration and the restrictions set forth herein.

(b) Any structure or appurtenance placed upon a Unit in the CIC may be used solely for the purpose of a single family residence. Further, no more than one (1) dwelling shall be

erected or maintained on a Unit.

C. RESTRICTIVE AND PROTECTIVE COVENANTS:

(1) (a) Declarant reserves unto itself, its successors or assigns, the specific right to develop the Subdivision in five(5) separate phases with each such phase being designated upon a separate plat or plats of the Subdivision. This reservation shall remain valid and effective in Declarant and all persons claiming under it until 2010. The right may be renewed and extended for an unlimited number of successive periods of ten (10) years each, unless an instrument in writing signed by Declarant is delivered to the Association relinquishing Declarant's right; however, Declarant shall not be entitled to designate more than one hundred ninety-seven (197) Units within the Subdivision regardless of the manner in which the Units are allocated to each phase.

(b) Declarant reserves unto itself, its successors or assigns, prior to the transfer of title by deed of conveyance of the first Unit within a phase; (1) the right to revoke or modify all or any part of these restrictions and protective covenants as the same relate to Unit boundary sizes and dimensions, and/or minimum square footage requirements for finished living space of any dwelling constructed on a Unit in such phase; (2) the right to vacate and/or modify in size or location any and/or all of the streets, Common Elements, utility easements or drainage rights-of-way now designated on the recorded plat(s) of the Subdivision with respect to such phase.

(c) Declarant's reserved rights as aforementioned to revoke or modify shall apply only prospectively to phases from

which no lots have been sold and shall not apply retrospectively to phases from which sales have been made EXCEPT THAT Declarant reserves unto itself in perpetuity the right to (1) extend or enlarge roadways or easements/within the Common Elements into areas outside the CIC, (2) increase access for purposes of ingress to and egress from the CIC, (3) to permit others to use the utility rights-of-way for acquiring service, and (4) to withdraw Common Elements or parts thereof and convert the same into Units or parts of a Unit. Declarant, its successors or assigns, shall not be permitted to reduce the minimum square foot area requirement for finished living space per dwelling in the entire CIC to less than one thousand, five hundred (1,500) square feet, exclusive of basements, porches, decks and garages.

(d) Declarant, its successors or assigns shall not revoke or modify the restrictions and protective covenants or vacate, modify or relocate the streets or easements to such extent as would materially change the overall nature of the Subdivision without due cause.

SUBJECT to the foregoing reserved Declarant's rights, no dwelling shall be constructed upon any Unit in the CIC which contains less than 1,500 square footage of finished living space, exclusive of basements, porches, decks and finished or unfinished garage(s).

(2) Jamestowne Construction, Inc., may include in any contract or deed hereafter made, modifications or additions to the restrictive covenants with respect to the Unit or Units thereby conveyed; provided, however, that such modifications or

additions in the covenants and restrictions would 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 Ashton Estates.

(3) Once the plans of a residential dwelling 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 and grading and landscaping, in accordance with the plans and specifications as approved, within eight (8) months, subject to weather conditions only.

(4) All driveways are to be constructed of concrete or paved with asphalt, and all sidewalks, if required by Declarant, or the Building Control Committee, are to be constructed of concrete and are to be completed within twelve (12) months of commencement of construction. Further, each dwelling shall have sufficient off-street parking to service the dwelling, and the location and type of construction of all off street parking shall be approved by the Building Control Committee; it being the intention of Declarant to prohibit parking in or along streets in the Subdivision, on lawns or sidewalks.

(5) There shall be no commercial vehicles, recreational vehicles, trailers, boats or boat trailers parked in any driveway, streets of the subdivision or yards; all of same must be parked in garages.

(6) No residence shall be occupied until the same has been

substantially completed.

(7) All structures and improvements constructed or placed on any Unit shall be built of new material or approved reconditioned material.

(8) No dwelling or building shall be located nearer than twenty-five (25) feet to the front or rear line or nearer than fifteen (15) feet to an interior or side Unit line, unless set back lines for construction are otherwise designated on the plats of the CIC or otherwise modified by waiver of the Building Control Committee. However, if a side property line adjoins any street right-of-way, it shall have a (15) foot set back. For the purpose of this restriction, eaves, balconies and retaining walls 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. Covered porches may be restricted by the set back limits. The Building Control Committee must be consulted regarding size and location. (All of the above set backs are subject to waiver and/or modification upon approval of the Building Control Committee of Ashton Property Owners Association, Inc.)

(9) 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.

(10) The fuel used in the dwelling or other structures shall be of the smokeless-type; however, so-called fireplaces and/or wood stoves, in which wood is used as a fuel shall be

excepted from this provision.

(11) 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. No dog houses of any type are permitted upon the exterior of any unit. No dogs are permitted to be tied up on the exterior of any Unit. No dogs are permitted to be caged or fenced in on the exterior of any Unit. Dogs must be kept on the interior of dwellings or on leashes while accompanied by their owners.

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

(13) No Unit or any building (or portion thereof) erected thereon shall be used at any time for the purpose of any trade, manufacture or business of any kind or nature, and no junk 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.

(14) No commercial signs, including "For Rent", "For Sale" and other similar signs shall be erected, placed or maintained on any Unit or on any common area, except with the written permission of the Building Control Committee or except as may be required by legal proceedings. No signs of any type may be placed or displayed at or near the entrance of Ashton Estates. This includes "For Sale" or "For Rent" whether by a Unit Owner or by a Real Estate Agent.

(15) 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.

(16) The exterior walls of all buildings in the CIC shall be required to be of either masonry construction or wood. Masonry construction shall be limited to that of brick, drivet type material, stucco or stone. Attractive vinyl material will be permitted on exterior walls. No metal siding will be used for external wall covering. Aluminum may be used for soffit and fascia. No building shall have concrete or cinder blocks or concrete masonry exposed in any manner. All of the foregoing is subject to the rights of the Building Control Committee as specified in Paragraph (e) (variances).

(17) No outside toilet or individual water well shall be constructed on any numbered Unit. All plumbing fixtures, dishwashers or toilets shall be connected to the sanitary sewage system. Storm water shall not be allowed to flow into the sanitary sewage system.

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

(19) No dwelling of substantially identical architectural design shall be constructed on adjoining or opposite Units in Ashton Estates Subdivision.

(20) (a) No building shall be erected, placed or altered on any lot until the construction plans, specifications and plot plans have been approved in writing by the Declaration Building

Control Committee as to the harmony of the exterior design including: 1) type of construction materials and the color of the exterior material to be used, 2) site plan with respect to elevations, topography, finished grades, landscaping, location of structures, driveways, off-street parking, retaining walls, fences, and sedimentation control plan, which said plan, shall conform to the rules and regulations from time to time promulgated or adopted by the West Virginia Department of Environmental Protection, or its successor; (b) nor shall trees be cut down, or any lot excavated, graded or filled, including the movement, placement or removal of dirt. Approval or disapproval must be made in writing within thirty (30) days from the date said plans are submitted to Declarant or the Building Control Committee.

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

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

(23) All Unit owners shall use the sanitary sewer system constructed in said Subdivision by Declarant.

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

(25) Declarant shall provide appropriate easements for

water, gas, and electric services, if available, to each Unit Owner within ninety (90) days of application for same.

(26) 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.

(27) No fuel tanks or similar storage receptacles may be exposed to public view.

(28) There shall be no satellite dishes or antennas installed or constructed within the Subdivision, except that the Declarant may, at some future time, consent to the installation of 18" satellite dishes.

(29) All areas of a Unit exposed by construction must be seeded, stabilized or otherwise protected against soil erosion at all times and in accordance with the rules and regulations of the West Virginia Department of Environmental Protection, or its successor. The Unit shall be returned to grade and all landscaping shall be completed within thirty (30) days of the completion of construction.

(30) No above-ground swimming pools shall be allowed in the CIC.

(31) Each Unit Owner shall maintain at all times a comprehensive insurance policy insuring his Unit and the improvements thereon against the risk of loss due to fire, casualty or other disaster in an amount equal to at least ninety per cent (90%) of the purchase price of the lot and improvements.

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 in which they existed prior to the fire, casualty or other disaster.

Each Owner covenants and agrees to carry a policy of liability insurance and to name therein the Association as an insured party.

(32) All lawns must be well maintained (mowed and trimmed) at all times. Any Unit which is sold but not yet built upon must be well maintained and kept attractive by its Owner at all times. Special attention must be given to all those areas of vegetation which are visible from roadways. Any area along the roadways which has been seeded by the Declarant must be kept mowed and maintained to the road by the Unit Owner.

(33) Written plans and specifications regarding all fencing regardless of its size, location or purpose, must be submitted to the Declarant or Building Control Committee for its written approval or disapproval regarding size, height, color, location and type of construction. Under no circumstances shall any fence of any type be permitted anywhere in the Subdivision, except for around swimming pools, and the size, location, height, color and type of construction must be submitted to the Declarant or Building Control Committee for its written approval.

(34) Written plans and specifications regarding any wall, including retaining walls, regardless of size, location or purpose, must be submitted to the Declarant or Building Control

Committee for its written approval or disapproval regarding purpose, size, height, location and type of construction.

(35) No clothes lines of any type may be erected or placed upon any lot which is visible from the exterior which includes the streets, neighboring Units or neighboring lands.

(36) No junk or personal articles of any type shall be placed upon or stored upon any Unit which is visible from the exterior which includes the streets, neighboring Units or neighboring lands.

(37) Cars are not permitted to be parked on streets, yards or lawns.

(38) Prior to construction of driveways or sidewalks, the Unit Owner is responsible for seeing that a four (4") inch schedule 40 P.V.C. electrical conduit with caps on each end is buried under the portion of pavement which runs over top of the utility right of way, and the exact depth and location is to be designated by Monongahela Power Company, its successors or assigns. Prior to any digging in a utility area, Unit Owner or contractor shall call Miss Utility for the location of utility lines.

(39) Trees which measure ten (10") inches or greater in diameter at the base, which stand beyond a fifteen (15¹) foot perimeter of any structure or proposed structure shall remain, unless they create a hazard or potential hazard to any one or any property within Ashton Estates or adjoining lands. For the purpose of this paragraph, driveways, decks, walkways, patios and porches are to be considered as structures.

(40) There is a posted speed limit of 15 M.P.H. throughout the development. Any builder, contractor, supplier, employee, or agent who exceeds this limit may be made to leave the development and will be prohibited from returning for future work.

(41) The Association shall have the power to assess fines for violation of motor vehicle speed limits in accordance with a schedule of fines promulgated by the Association. Every such fine shall be paid promptly upon its being assessed; if it is not, the Association may add the amount of the fine to the annual charge made by the Association, and the amount of such fine shall be collectible by the same means as are prescribed for in the collection of delinquent annual charges of the Association or through the use of the sanctions prescribed in this Document.

(42) All construction sites must be kept neat, clean and free of any scattered debris and trash every day throughout the construction process. No trash or scrap piles are permitted to be in front of or along the side of any Unit where visible from any street within the development. However, such accumulations in small quantities may be kept towards the rear of the Unit or in a location upon the Unit as designated by the Declarant or the Building Control Committee.

(43) During construction, all Unit lines must be aggressively protected by ditching, bales of straw, silt fence or other acceptable means to prevent silt, dirt or mud from washing onto adjoining lots and more particularly into the storm sewers or roadways.

Any areas where the natural vegetation has been removed must be seeded and strawed immediately to prevent erosion

of the soil.

(44) No mobile homes are permitted within the CIC.

D. 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 design and construction materials) 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 and all proposed improvements, the erection or alteration of which is desired, and no structures or improvements of any kind shall be erected, altered, placed or maintained upon any Unit unless and until the final plans, elevations and specifications therefor have received such written 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, 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 be subject to appeal or review by the Board of Directors of said Association.

(5) The Committee shall select a uniform type of decorative mailbox and shall, at the time of the approval of the building and site plans for a Unit, provide the owner of a Unit or the Unit Owner's contractor, specifications as it has established for the uniform decorative mailboxes. The Committee shall, as part of its duties and obligations, establish an ongoing maintenance program for the continuous maintenance and painting of the uniform decorative mailboxes. The cost of the ongoing maintenance program shall be included in the Association's annual budget. Further, the Committee shall have the power and authority to remove any and all mailboxes not specifically approved by it.

E. 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 provided also, that in every instance such variance or adjustment will not be materially detrimental or injurious to other property or improvements in the Subdivision.

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 Building Control 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 the 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.

F. 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 sewage disposal lift stations, utility lines, mains, drainways, culverts, electric lines, cable television, water and sewer mains, 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 rights of way.

(2) 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.

(3) Declarant reserves unto itself, its stockholders, its Lessees and licensees, 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 cables, 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 are shown on the recorded plan 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. These easements and rights expressly include the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or to take any other similar action reasonably necessary to provide economical and safe utility installations and 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.

G. ALLOCATED INTEREST, USE AND ENJOYMENT OF COMMON ELEMENTS:

(1) Each Unit Owner shall be allocated an undivided interest in the Common Elements and perforce the Common Expense of the Association of not less than one-one hundred ninety-seventh (1/197th) for each Unit held in Fee Simple. THE TOTAL NUMBER OF LOTS DEDICATED TO THE CIC HAS NOT BEEN CONCLUSIVELY DETERMINED; however, Declarant shall not create more than one hundred ninety-seven (197) Units in the CIC. 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. Should Declarant determine to create or eliminate Units or entire phases from the CIC, then the allocated interest in the CIC will vary accordingly. Unit Owners can determine their allocated interests by the formula that an allocated interest is equal to a fraction wherein the numerator is one (representing one Unit) and the denominator is a number equal to the total number of lots within all dedicated phases. Unit Owners holding a fee 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. The denominator of each fraction is subject to change due to the rights reserved in Declarant to subdivide or create the lots in

any Phase or to delete entire Phases.

(2) Each of the streets in the Subdivision and the recreational facilities, if any, are dedicated to the use of and by members of the Association (subject to the Declarant's right of use) and shall be under the control and supervision of the Association. An easement for the use and enjoyment of each of said streets and areas designated as recreational, if any, is reserved to the Association, its successors and assigns; to the persons who are, from time to time, members of the Association, as provided for in the By-Laws of said Association; to the residents, tenants and occupants of any residential dwelling and to the invitees of all of the aforementioned persons, the use of which shall be subject to such rules and regulations as may be hereinafter set forth and as may, from time to time, be prescribed by the said Association.

(3) 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 that Declarant does not desire said soil, it may then be deposited by the Unit Owner elsewhere.

(4) Each Unit Owner shall be responsible for placing metal culverts, as designated by the West Virginia Department of Highways, Declarant, Building Control Committee or any Political Subdivision of the State of West Virginia, under sidewalks and/or driveways in order to facilitate the proper drainage of storm sewers along the streets of the Subdivision.

H. MOTOR VEHICLE SPEED LIMITS:

(1) Speed limits for streets and the rules governing the use of parks and recreational facilities within the Subdivision shall be promulgated from time to time by the Board of Directors of the Association. Appropriate postings of these speed limits shall be made. The Association shall have the power to assess fines for violation of motor speed limits in accordance with a schedule of fines promulgated by the Association. Every such fine shall be paid promptly upon its being assessed; if it is not, the Association may add the amount of the fine to the annual charge made by the Association, and the amount of such fine shall be collectible by the same means as are prescribed for the collection of delinquent annual charges of the Association or through the use of the sanctions prescribed in the Restrictions.

(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 duly licensed operator.

I. ASSOCIATION'S RIGHT TO PERFORM CERTAIN MAINTENANCE:

In the event any owner of any Unit shall fail to maintain the Unit premises and the improvements situated thereon in a manner satisfactory to the Board of Directors of the Association, notice shall be provided by the Board, in writing, to the owner to correct the condition and if after thirty (30) days the condition has not been corrected, the Association shall have the right, through its agents and employees to enter upon said Unit and repair, maintain and restore the Unit and the exterior of the buildings and any other improvements erected

thereon to the extent authorized by law. Such right shall not be exercised unless two-thirds (2/3) of such Board of Directors and sixty percent (60%) of the members at a duly called meeting for that purpose shall have voted in favor of its being exercised. The cost of such exterior maintenance and maintenance of the Unit shall be added to and become part of the annual charge to which such Unit is subject and until paid shall be a lien on said Unit and improvements thereon.

J. STREETS:

Declarant covenants that the entrance way and streets as designated on the plats of Ashton Estate will be paved on or before the 1st day of June, 1999. The paving of the entrance way and streets shall be of asphalt material. The completed streets shall be paved to a width of at least eighteen (18) feet and completed pavement shall consist of a total compacted thickness of two (2") inches of road base asphalt.

All Unit Owners who construct a dwelling on any of the Units of Ashton Estates Subdivision after the paving of the streets of said Subdivision has commenced, shall deposit with the Property Owners Association an amount equal to the sum of Three Thousand Dollars (\$3,000.00) or cash equivalency (as calculated on a U. S. Dollar value basis for the year 1994) to pay for the cost of any damage that might be done to the streets, flora or utilities by the owners or their contractor in the process of constructing and landscaping the Units. In the event that any damage is caused to the streets by said Unit Owners or their contractor, then the Association shall immediately repair said damage deducting the cost of such repair from said deposit and

shall refund the balance thereof to Unit Owners, if any.

K. 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 and fully understand that the Declarant has made no representations whatsoever, either direct or implied, as to the fitness of the Unit for its use in any manner whatsoever.

IX. WARRANTY OF QUALITY

Ashton Estates is a Common Interest Community created and designed for use as a single-family 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 and acknowledge that all expressed or implied warranties of quality are excluded. Units are being offered for sale by Declarant upon an "AS IS" basis.

All Purchasers shall execute a separate instrument attached hereto and marked as "Agreement and Waiver." This Agreement and Waiver, between Declarant and Purchaser, waives Purchaser's statutory right to a six-year statute of limitations 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 limitations requiring the commencement of any legal action by Purchaser for breach of warranty within two years of the date the Purchaser enters into possession. Purchasers should consult the Agreement and Waiver for more

detailed information.

X. REMEDIES

In the event of any violation of the provisions of this Declaration, Articles of Incorporation, By-Laws or Rules and Regulations of the Board or Association by any Unit Owner (either by his own conduct or by the conduct of any other occupant of his Unit), the Association, or its successors or assigns, or the Board, or its agent, 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, this Declaration, Articles of Incorporation, By-Laws or Rules and Regulations, or other like source which may be available at law or in equity, and may prosecute an action or other proceeding against such defaulting Unit Owner and/or others for enforcement of any lien or action and the appointment of a receiver for the Unit and ownership interest of such Unit Owner, or for damages, injunction or specific performance, or for judgment for payment of money and collection thereof, or the right to take possession of the Unit and to sell the same as provided hereafter in this paragraph or for any combination of remedies, or for any other relief. All expenses of the Board in connection with any subject actions or proceedings, including Court costs and reasonable 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 per cent (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 shall have a lien for all of the

same, as well as for non-payment of said defaulting Unit Owner's respective share of the Common Expenses 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 personalty 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, modification 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, increase the number of Units, alter Unit boundaries, increase the allocated interests 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 affirmatively voting 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 Office of the Clerk of the County Commission of Monongalia County, West Virginia; provided, however, that no provisions in this Declaration may be changed, modified or rescinded so as to conflict with the provisions of (the Acts to which the CIC is submitted, and **FURTHER PROVIDED** that the provisions in this Declaration may be changed, modified or rescinded solely upon a vote of the Association Board where alteration of the provisions hereof are made solely to bring this document into compliance with the Acts abovesaid, other existing law or to correct errors of scrivener, architect or surveyor with no notice to Unit Owners or lienholders as above said unless such change, modification or rescission directly affects an individual Unit Owner's or lienholder's interest in the real estate or appurtenances held as security.

XII. NOTICES

Notices provided for in the Act above said, Declaration, Articles of Incorporation, 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 the 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 to all Unit Owners. Any Unit Owner may designate a different address for notice to him by giving written 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 acknowledgement 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 mortgages 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 the Declaration, Articles of Incorporation, or By-Laws or any section, sentence, clause, phrase, word or the application thereof in any circumstance is held invalid, the validity of the remainder of this Declaration and the Articles of Incorporation and the By-Laws and of the application of any such provision, section, sentence, clause, phrase or word in any other circumstance shall not be affected thereby and the remainder of this Declaration or the By-Laws shall be construed as if such invalid part was never included therein.

XIV. PERPETUITIES AND RESTRAINTS ON ALIENATION

If any provision 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, William Clinton, and the 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) Notwithstanding any provision to the contrary herein contained, Declarant may, by recording a Notice of Termination, terminate this Declaration as to the entire Subdivision or any individual phase prior to the recordation of the first deed for a Unit from the entire Subdivision or within that particular phase but not as to any remaining phase.

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

(3) 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.

(4) 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 for 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 the proceeds thereof distributed, the Association continues in existence with all powers it had before termination. Proceeds of the sale must be distributed to Unit Owners and lienholders as their interests 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 the real estate that formerly constituted the Unit. During the period of that occupancy, each Unit Owner and the Unit Owner's successors in interest remain liable for all Assessments and other obligations imposed on Unit Owners by the Declaration.

(5) If a lien or encumbrance against a portion of real estate has priority over the Declaration and the lien or encumbrance has not been partially released, the parties foreclosing the lien or encumbrance, upon foreclosure may record

an instrument excluding the real estate subject to that lien or encumbrance from the CIC.

B. Eminent Domain: If a Unit is acquired by eminent domain or any part of any 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 interests, whether or not any Common Element are acquired. Upon acquisition, unless a decree provides otherwise, that Unit's allocated interests are automatically re-allocated to the remaining Units in proportion to the respective allocated interests of those Units before the taking and the Association shall promptly prepare, execute and record an amendment to the Declaration reflecting the reallocations. Any remnant of a Unit remaining after part of a Unit is taken under this subsection 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 interests are reduced in proportion to the reduction in the size of the Unit, and (ii) the portion of the allocated interests divested from the partially-acquired Unit are automatically reallocated to that Unit and to the remaining Units in proportion to the respective allocated interests of those Units before the taking, with the partially-acquired Unit

participating in the reallocation on the basis of its reduced allocated interests.

(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. DEVELOPER'S EXCLUSIVE RIGHT OF CONSTRUCTION

The Developer reserves the sole and exclusive right, for a period of three (3) years from the date of the recording of a deed in the Office of the Clerk of the County Commission of Monongalia County, West Virginia, from the Declarant as a grantor to a Unit Owner, to be the builder or contractor of any residential dwelling constructed or to be constructed on any and all Units so conveyed. The right of the Declarant as to the exclusivity of construction shall be a covenant running with the land for the aforesaid three (3) year period. The right of exclusivity as reserved to the Declarant, if waived by the Declarant prior to the conveyance of a Unit, shall be specified in each deed of conveyance for a Unit in the CIC. Further, such right can be waived by the Declarant at any subsequent time and such waiver shall only be effective if in writing and in recordable form. Upon the Declarant waiving its right of exclusivity of construction, Declarant shall retain the right to approve the contractor or builder of any residential dwelling constructed on any Unit in the CIC.

XVII. RIGHTS RESERVED BY DECLARANT FOR TOWNHOUSE DEVELOPMENT

ON ADJOINING 9.50 ACRES

(a) Declarant has excluded from the parent tract

of which the CIC is being developed, 9.50 acres, more or less, for the creation, development and construction of a townhouse project, either rental or sales, (the "Project"). The Project may be a rental, sales or a mixture of rental and sales. As of the date of the preparation of the Public Offering Statement, Declarant has not made a final determination as to the specific nature of the Project, insofar as an election as to sales, rentals or mixed use. Further, the Declarant has reserved the right not to construct the Project.

(b) The Project and the CIC have joint use of the common entrance ways for ingress, egress and regress. All common expenses relating to the joint use of the common entrance ways are controlled by the Master Association comprised of the Owners Association for the Project and the Owners Association for the CIC and such other Unit Owners' Associations that the Master Association may provide waste water sewage service to its members. Further, the sewer lines and sewage treatment plant servicing the CIC also provide service to the Project and common expenses associated therewith are controlled through the Master Association.

(c) The outer boundary lines of the Project are delineated on Exhibit 1 of the Public Offering Statement. The Declarant has designated on Exhibit 1 the 9.50 acres, more or less. Declarant has not established a commencement date for the development of the Project. Further, the Project need not be built.

XVIII. 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.

XIX. 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, reservations, liens and 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 character 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.

XX. HEADINGS

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

XXI. 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 is made a part hereof by reference.

XXII. SUBMISSION TO LAW

The Declarant, as the legal title holder in fee

simple of the parcel, expressly intends to, and by the recording of this Declaration, does hereby submit the parcel and the property to the provisions of the Uniform Common Interest Ownership Act of the West Virginia Code, as amended to the date hereof.

THEREFORE

IN EXECUTION AND SUBMISSION OF THE WITHIN
DECLARATION, NOW WITNESSETH THE NAME, SEAL AND SIGNATURE OF THE
DECLARANT, JAMESTOWNE CONSTRUCTION, INC., A WEST VIRGINIA
CORPORATION:

JAMESTOWNE CONSTRUCTION, INC.,

BY: James L. Laurita
James L. Laurita
Its: President

STATE OF WEST VIRGINIA,
COUNTY OF MONONGALIA, TO-WIT:

The foregoing instrument was acknowledged before
me this 15th day of December, 1994, by James L. Laurita, the
President of JAMESTOWNE CONSTRUCTION, INC., a West Virginia
Corporation, for and on behalf of said corporation.

My commission expires: July 16, 2000.

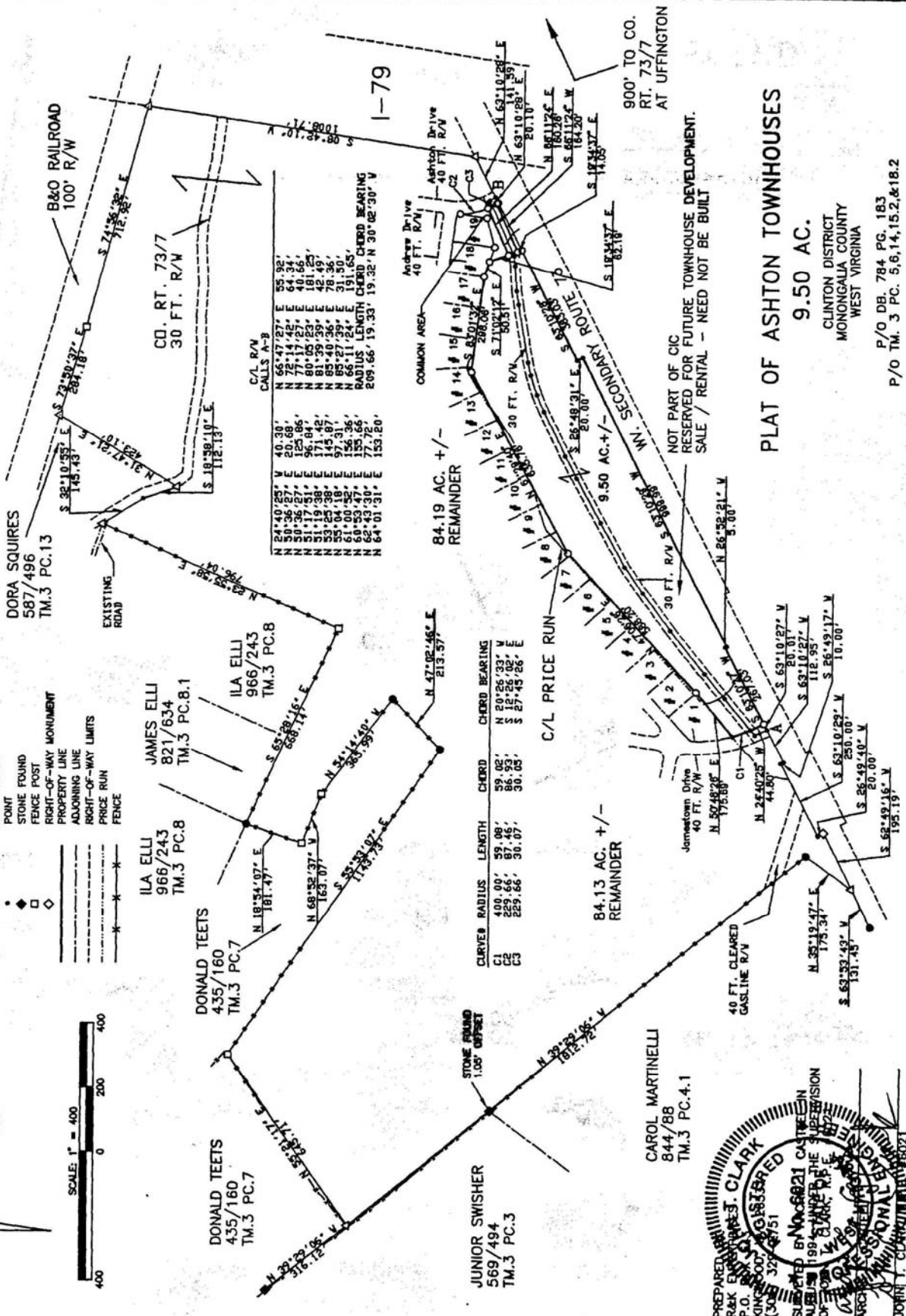
Pauline G. Woody
NOTARY PUBLIC

THIS INSTRUMENT PREPARED BY: John F. Wiley and Stephen K. Shuman
Attorneys at Law, Reeder, Shuman & Wiley, P. O. Box 842
256 High Street, Morgantown, WV 26507-0842
2\ashton estates disk\ashton.dec

LEGEND

- 1/2" REBAR SET
- 5/8" REBAR SET
- POINT
- STONE FOUND
- FENCE POST
- RIGHT-OF-WAY MONUMENT
- PROPERTY LINE
- ADJOINING LINE
- RIGHT-OF-WAY LIMITS
- PRICE RUN
- FENCE

MAGNETIC DECLINATION
7°35' W
MONUMENTS
1988



C/L R/W CALLS A-B

Curve	Radius	Length	Chord	Chord Bearing
C1	400.00'	59.08'	59.08'	N 20°26'33" E
C2	259.66'	87.46'	87.46'	S 12°26'02" E
C3	259.66'	30.07'	30.07'	S 27°45'26" E

C/L PRICE RUN

Curve	Radius	Length	Chord	Chord Bearing
C1	400.00'	59.08'	59.08'	N 20°26'33" E
C2	259.66'	87.46'	87.46'	S 12°26'02" E
C3	259.66'	30.07'	30.07'	S 27°45'26" E

PLAT OF ASHTON TOWNHOUSES

9.50 AC.

CLINTON DISTRICT
MONONGALIA COUNTY
WEST VIRGINIA

P/O DB. 784 PG. 183
P/O TM. 3 PC. 5, 6, 14, 15, 22, & 18.2

MFN 2309-J

PREPARED BY
CAROL MARTINELLI
844/88
TM.3 PC.4.1

RECORDED
NOV 21 1995
CLARK COUNTY
REGISTERED
327 4751

FILED BY
NOV 21 1995
CLARK COUNTY
REGISTERED
327 4751

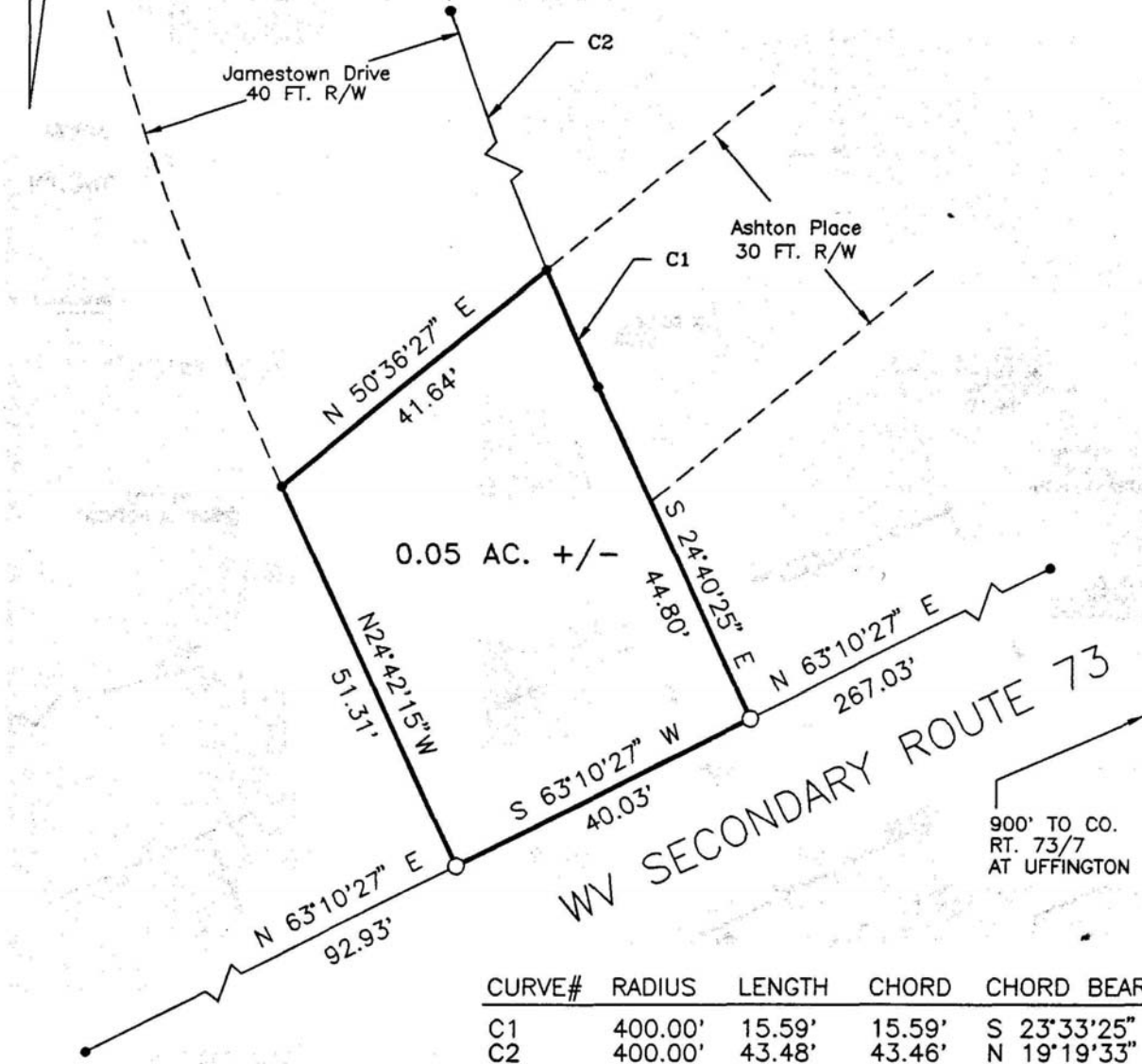
FILED BY
NOV 21 1995
CLARK COUNTY
REGISTERED
327 4751

MAGNETIC DECLINATION
7°36' W
KINGWOOD MONUMENTS
1986

SCALE: 1" = 20
20 0 10 20

LEGEND

○ 1/2" REBAR SET
• POINT
— PROPERTY LINE
- - - ADJOINING LINE
- - - RIGHT-OF-WAY LIMITS



PREPARED BY:
R&K ENTERPRISES
P.O. BOX
KINGWOOD
(304) 293-7634

SURVEYED BY ARCHIE L. CLARK IN
AUGUST 1994 UNDER THE SUPERVISION
OF JOHN T. CLARK, R.P.E. #6021

ARCHIE

JOHN T. CLARK, R.P.E. #6021

PLAT OF JOINT ACCESS EASEMENT / NON-EXCLUSIVE ENTRANCE A

0.05 AC.

CLINTON DISTRICT
MONONGALIA COUNTY
WEST VIRGINIA

P/O DB. 784 PG. 183
P/O TM. 3 PC. 14

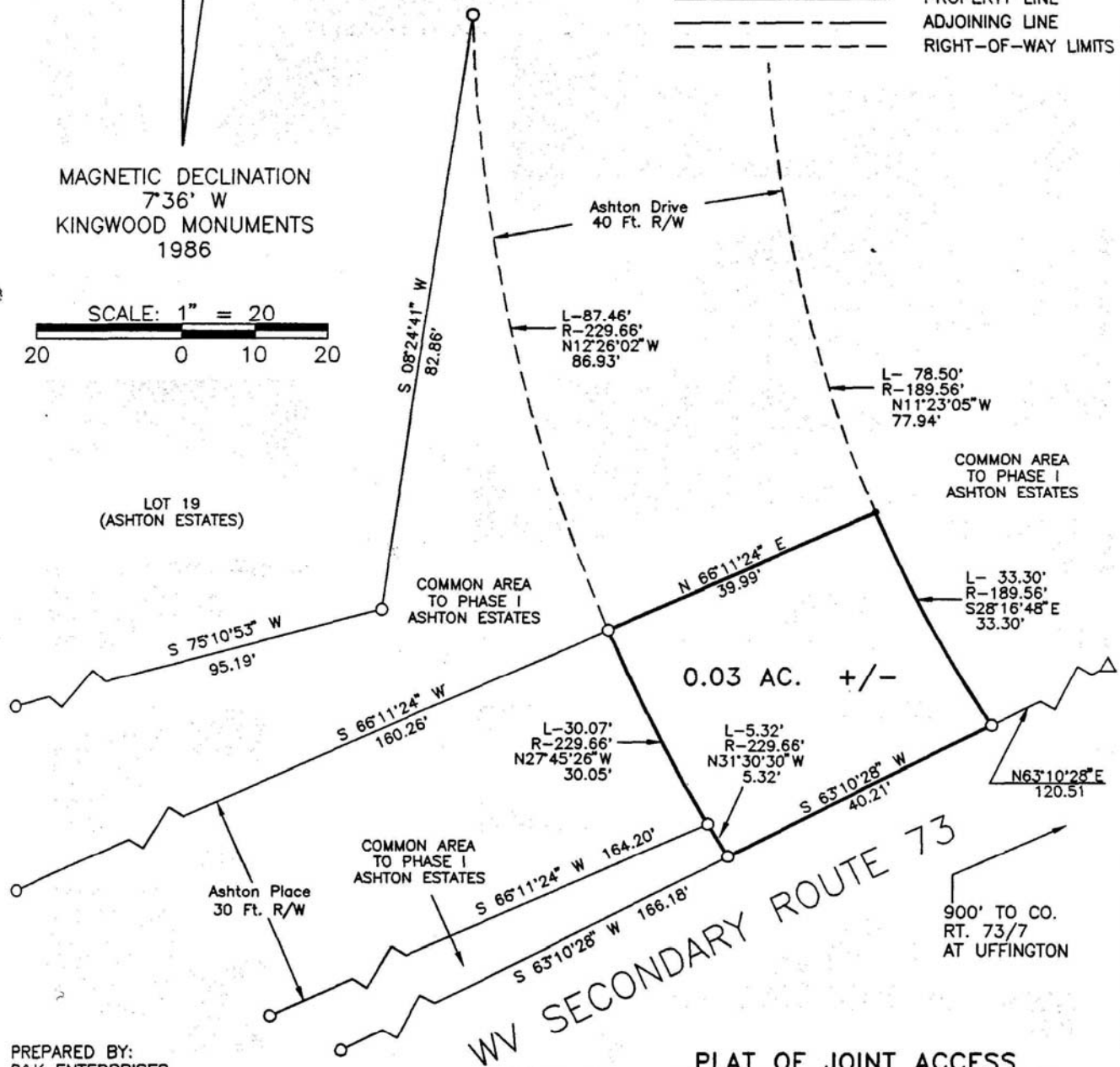
MFN - 2310-J

LEGEND

- 1/2" REBAR SET
- POINT
- △ 5/8" REBAR SET
- PROPERTY LINE
- - - - ADJOINING LINE
- - - - RIGHT-OF-WAY LIMITS

MAGNETIC DECLINATION
7°36' W
KINGWOOD MONUMENTS
1986

SCALE: 1" = 20
20 0 10 20



PREPARED BY:
R&K ENTERPRISES
P.O. BOX 543
KINGWOOD
(304) 332-1111

SURVEYED BY ARCHIE CASTLE IN
AUGUST 1994, UNDER THE SUPERVISION
OF JOHN T. CLARK, R.P.E. #6021

ARCHIE CASTLE
REGISTERED PROFESSIONAL ENGINEER
JOHN T. CLARK, R.P.E. #6021

PLAT OF JOINT ACCESS
EASEMENT / NON-EXCLUSIVE
ENTRANCE B

0.03 AC.

CLINTON DISTRICT
MONONGALIA COUNTY
WEST VIRGINIA

P/O DB. 784 PG. 183
P/O TM. 3 PC. 18.2

MFN - 2311-J

EXHIBIT 3



*I, Ken Heckler, Secretary of State of the
State of West Virginia, hereby certify that*

by the provisions of Chapter 31, Article 1, Sections 27 and 28 of the West Virginia
Code, the Articles of Incorporation of

ASHTON PROPERTY OWNERS ASSOCIATION, INC.

conform to law and are filed in my office. I therefore declare the organization to
be a Corporation for the purposes set forth in its Articles, with the right of perpetual
existence, and I issue this

CERTIFICATE OF INCORPORATION

to which I have attached a duplicate original of the Articles of Incorporation.



*Given under my hand and the
Great Seal of the State of
West Virginia, on this*

First _____ day of

March 19 94

Ken Heckler

Secretary of State.

FILED
MAR 01 1994
IN THE OFFICE OF
SECRETARY OF STATE
WEST VIRGINIA

ARTICLES OF INCORPORATION
OF

ASHTON PROPERTY OWNERS ASSOCIATION, INC.

The undersigned, acting as incorporators of a corporation under Section 27, Article 1, Chapter 31, of the Code of West Virginia, 1931, as amended, adopt the following Articles of Incorporation for such corporation:

(I) The undersigned agree to become a corporation by the name of Ashton Property Owners Association, Inc.

(II) The address of the principal office of said corporation will be located at P. O. Box 1080, Morgantown, County of Monongalia, State of West Virginia, 26507-1080.

(III) The purpose or purposes for which the corporation is formed are as follows:

(1) To promote the community welfare of property owners in the residential community located in Clinton District, Monongalia County, West Virginia, known as Ashton, hereinafter referred to as the "Subdivision", and to exercise the powers and functions granted to it in, or pursuant to, the Restrictive Covenants applicable to the Subdivision and any other restrictive covenants that may hereafter be recorded in respect to the Subdivision.

(2.) To maintain, repair, and rebuild all streets and roadways within the Subdivision; to build and maintain recreational areas in said Subdivision; and to maintain and replace sewage treatment plants and appurtenant lines.

(3) To provide for the payment of taxes and assessments, if any, that may be levied by governmental authority upon any area in the Subdivision .that may be conveyed to the Association.

(4) To enforce charges, assessments, restrictions, conditions, covenants and servitudes existing upon and created for the benefit of the property over which the Association may have jurisdiction; to pay all expenses incidental thereto; to enforce the decisions and rulings of the Association and to pay all expenses in connection therewith.

(5) To levy an annual charge upon the members of the Association; to ensue and collect any of such charges if not paid; to impose a lien against any real estate in the Subdivision that is owned by a delinquent member of the Association for any charge that is not paid within Ninety (90) days of being due and to foreclose any such lien. 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 the 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. Special assessments may be levied during each year if deemed necessary. Nothing contained in this paragraph 5 does or is intended to or shall be construed to create in the Association a power to levy or make any charge of any kind against Jamestowne Construction, Inc., the Developer of Ashton.

(6) To appoint such committees as may be needed by the Association in discharging the duties imposed upon it, including

but not limited to, a membership committee, a building control committee, a traffic control committee, a budget and dues assessment committee, a maintenance committee, an audit committee, and a rules committee.

(7) To acquire by gift, purchase, or other means, to own, hold, lease, operate, maintain, convey, sell, transfer, mortgage or otherwise encumber or dedicate for public use, real or personal property in connection with the .business of this Association.

(8) To borrow money and give security therefore, to expend money borrowed or collected by the Association from assessments or charges and other sums received by the Association for the payment and discharging of all proper costs, expenses and obligations incurred by the Association in carrying out all of the purposes for which the Association is formed.

(9) To do any and all lawful things and acts and to have any and all lawful powers which a corporation organized under West Virginia law may do and have, and, in general, to do all things necessary and proper to accomplish the foregoing purposes, including the specific power to appoint any person as its agent to collect or assess levies by the Association and to enforce the Association's liens for unpaid assessments and charges or any other lien owned by the Association.

(IV) Provisions for the regulation of the internal affairs of this corporation are:

(1) The membership of the Association shall be persons or corporations who are owners, legal or equitable, (except not to include equitable owners of a security interest) of lots within

the confines of the perimeters designated on the plat of Ashton, recorded as aforesaid.

Ownership of a lot automatically makes the owner or owners of said lot a member of the Association and such membership shall not be subject to the approval of the Board of Directors or other members of said corporation.

(2) Membership in said Association shall lapse and terminate when any member shall cease to be an owner of a lot in the Subdivision.

(3) Meetings of members, including both annual and special meetings, shall be held at such time and place, either within or outside of the State of West Virginia, as may be provided in the By-Laws of the Association.

(4) When title to a lot in said Subdivision is in the name of two or more persons, all of the joint owners shall automatically be members of the Association, but such ownership shall be limited to one vote for each lot jointly owned by them.

(5) No member may be expelled from membership in the Association for any reason whatsoever; provided, however, that the Board of Directors of the Association shall have the right to suspend the privileges and rights of a member to vote and to use the recreational facilities of the Association of any member (i) for any period during which any Association charge owed by the member remains unpaid and delinquent (ii) during the period of any continuing violation of the restrictive covenants of the Subdivision, after the existence of the violation shall have been declared by the Board of Directors of the Association; and (iii)

while any bill for sewer service, road repairs or other lawful charges owed by the member shall remain unpaid; however, when such delinquent unpaid charge or violation has been paid or corrected, the right of such member shall immediately be restored.

(6) There shall be no other preferences, limitations or restrictions with respect to the relative rights of the members.

(V) The Association is not authorized to issue any capital stock and shall not be conducted for profit. No part of the income of said Association shall inure to the benefit of any member, Director or officer of said Association, other than that indirectly resulting from the carrying out of the business of the Association. In the event of liquidation or dissolution of the corporation, whether voluntary or involuntary, no member, officer, or director of said Association shall be entitled to any distribution or division of its remaining property or its proceeds and the balance of all money and all property received by said Association, after payment of all debts and obligations, shall be applied to such public or charitable purposes as shall be determined by the Judge of the Circuit Court of Monongalia County, West Virginia, as provided by Chapter 31, Article 1, Section 27 of the West Virginia Code, 1931, as amended.

(VI) The full names and addresses of the incorporators are as follows:

James L. Laurita, Jr. Rt. 9, Box 86C Morgantown, WV 26505

Thomas A. Laurita Rt. 9, Box 86A Morgantown, WV 26505

Toni D. Dering 221 Dug Hill Road Morgantown, WV 26505

James L. Laurita 221 Dug Hill Road Morgantown, WV 26505

(VII) The existence of this corporation is to be perpetual.

(VIII) The name and address of the appointed person to whom notice of process may be sent is as follows:

James L. Laurita

P.O. Box 1080

Morgantown, WV 26507-1080

(IX) The number of directors constituting the initial Board of Directors of the corporation is four (4), and the names and addresses of the persons who are to serve as directors until the first annual meeting of members or until their successors are elected and shall qualify are as follows:

James L. Laurita

James L. Laurita, Jr.

Thomas A. Laurita

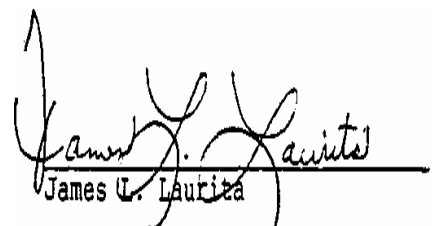
Toni D. Bering

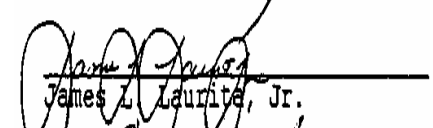
The Board of Directors of the Association shall have the power to adopt By-Laws of the Association not inconsistent with these Articles, the Declaration and attachments thereto, or with the laws of the State of West Virginia. Pursuant to the By-Laws, the Board of Directors may elect a President, one or two Vice Presidents, a Secretary and a Treasurer. The offices of Secretary and Treasurer may be filled by one person. The officers shall have such qualifications, power and duties and shall be elected in such manner, at such time and place, and shall serve for such terms as may be provided in the By-Laws of the Association.

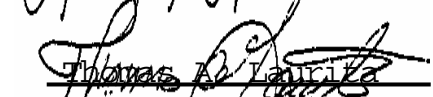
The Association shall indemnify any Director or officer against expenses actually and reasonably incurred by him in connection with the defense of any claim, action, suit or

proceeding against him by reason of being or having been such director or officer, except in relation to matters as to which he shall be finally adjudged in such action, suit or proceeding to be liable for negligence of misconduct in the performance of duty, and to compensate such Director or officer for actual expenses incurred by him in carrying out his duties and obligations as an officer and/or Director.(X) None of the provisions of these Articles of Incorporation may be altered or amended in whole or in part in such a way as to bring them into conflict with the restrictive covenants and deed restrictions now or hereafter made applicable to the Subdivision, nor during the first year of operation without the approval of the West Virginia State Department of Health. With the foregoing exception, these Articles may be freely amended by unanimous action of the Board of Directors or by two-thirds majority vote of all eligible voters.

WE, The undersigned, for the purpose of forming corporation under the laws of the State of West Virginia, do make and file this Articles of Incorporation, and we have accordingly hereunto set our respective hands this 14th day of February, 1994.


James G. Laurita


James L. Laurita, Jr.


Thomas B. Laurita

Toni D. Dering
Toni D. Dering

STATE OF WEST VIRGINIA,

COUNTY OF MONONGALIA, TO-WIT:

I, BRIAN M. OSBORN, a Notary Public in and for the County and State aforesaid, hereby certify that James L. Laurita, James L. Laurita, Jr., Thomas A. Laurita, and Toni D. Dering, whose names are signed to the foregoing Articles of Incorporation, bearing date the 14th day of February, 1994, this day personally appeared before me in my said County and severally acknowledge their signatures to be the same.

Given under my hand, this 14th day of February, 1994.

My commission expires FEBRUARY 5, 1996.

(NOTARIAL SEAL)

Brian M. Osborn
NOTARY PUBLIC



Articles of Incorporation Prepared By:
STEPHEN K. SHUMAN, ESQUIRE
Attorney at Law
P.O. Box 842, 256 High Street
Morgantown, WV 26507-0842

2\corps\ashtones.art

EXHIBIT 4

BY-LAWS
OF
ASHTON PROPERTY OWNERS ASSOCIATION, INC.

ARTICLE I.

DEFINITIONS

SECTION 1.01. The terra "Association" shall mean Ashton Property Owners Association, Inc.

SECTION 1.02. The term "Articles of Incorporation" shall mean the Articles of Incorporation, as amended from time to time.

SECTION 1.03. The term "Member" shall mean a person or corporation who is an owner, legal or equitable, of a Unit in the Subdivision.

SECTION 1.04. The term "Subdivision" shall mean the Subdivision known as Ashton Estates, which is situate in Clinton District, Monongalia County, West Virginia.

SECTION 1.05. The term "Declaration" shall mean the document prepared by Jamestowne Construction, Inc., which created the Common Interest Community known as Ashton Estates Subdivision and recorded in the office of the Clerk of the County Commission of Monongalia County, West Virginia, and all amendments thereto.

ARTICLE II.

IDENTIFICATION

SECTION 2.01. NAME. The name of the Association is Ashton Property Owners Association, Inc.

SECTION 2.02. SEAL. The seal of the Association shall be a disc inscribed with the name of the Corporation, the year, and the State in which it is incorporated.

SECTION 2.03. FISCAL YEAR. The fiscal year of the Association shall begin on the 1st day of January in each year and end on the last day of December in the next subsequent calendar year.

ARTICLES III.

MEMBERSHIP

SECTION 3.01. QUALIFICATION FOR MEMBERSHIP. The members of the Association shall be persons or corporations who are owners, legal or equitable, of lots in the Subdivision. Ownership of a lot shall automatically make the owner a member of the Association and such membership shall not be subject to the approval of the Board of Directors or other Members of this corporation; provided, however, that a beneficiary in a security instrument covering any of said real estate or a Vendor in a land contract shall not be entitled to membership. Further qualifications for membership, including associate membership in the Association, shall be those prescribed in the Articles of Incorporation.

SECTION 3.02. EVIDENCE OF MEMBERSHIP. The Board of Directors of the Association may cause the issuance of evidence of membership and associate membership in the Association to the members and associate members thereof in such form as the Board of Directors shall prescribe; however, failure to issue such evidence of membership shall in no way preclude or restrict persons or corporations from membership as herein otherwise provided.

SECTION 3.03. ANNUAL AND SPECIAL ASSESSMENT. The rights of membership are subject to the payment of annual dues, lift station assessments and special assessments levied by the Association, the obligation of which assessments is imposed against each owner and becomes a lien upon the property against which such assessments are made as provided in Article VI. of the Declaration to which the properties are subject and recorded in the office of the Clerk of the County Commission of Monongalia County, West Virginia, on the ____ day of _____, 1994, and contained in Deed Book No. _____, at Page ____.

SECTION 3.04. INITIAL ASSESSMENT DEPOSIT. The initial purchaser of any Unit in Ashton Estates Subdivision shall, on the date of purchase, deposit with the Association the sum of \$200.00 as an initial assessment.

SECTION 3.05. ANNUAL CHARGE. Each year commencing with the year 1995, the Board of Directors of the Association shall convene on or about the 1st day of March for the purpose of fixing the amount of the annual charge per lot or unit based upon the succeeding year, which shall be Fifty Dollars (\$50.00) or the actual needs of the Association per year, whichever is greater, for Association Expenses. The Board of Directors shall have the right to establish the annual charge for Associate membership as it deems fair and equitable. Special assessments may be levied by the Board of Directors during each

year if deemed necessary. In the event that the Board of Directors fails to establish an annual charge for any year, the annual charge for the last preceding year shall remain in effect.

SECTION 3.06. DUE DATE-OF ANNUAL ASSESSMENTS.

The annual assessments provided for herein shall become due and payable on the 1st day of April of each year. The Board of Directors of the Association may provide for the payment of annual and special assessments on a periodic basis. Notice in writing shall be given to each Member of the charged fixed for the annual and special assessments.

SECTION 3.07. LIEN FOR ASSESSMENT. The Association has a lien on a Unit from the time the Assessment or fines become due. If an Assessment is payable in installments, the full amount of the Assessment is a lien from the time the first installment thereof becomes due. The Assessment, whether payable annually or in installments, shall not be considered delinquent until it has been past due for ninety (90) days.

SECTION 3.08. CONFLICT AMONG BY-LAWS, CHARTER AND DECLARATION. In the event of any conflict as to the provisions contained in these By-Laws, the Corporate Charter of Ashton Property Owners Association, Inc., or the Declaration of Common Interest Community, the Declaration shall control the Articles of Incorporation and the By-Laws and the Articles of Incorporation shall control these By-Laws.

ARTICLE IV.

MEETING OF MEMBERS

SECTION 4.01. PLACE OF MEETINGS. Any meeting of the members of the Association shall be held at the site of the Subdivision or some other suitable place within Monongalia County, West Virginia, and the place at which a particular meeting is to be held shall be stated in the notice of that meeting.

SECTION 4.02. ANNUAL MEETING. The annual meeting of the members of the Association for the election of Directors whose terms have expired, and for the transaction of such other business as may properly come before the meeting shall be held at 7:00 o'clock p.m. on the second Saturday in April of each year, if that day shall not be a legal holiday; and, if it shall be a legal holiday, then on the first following day, exclusive of Sundays, that shall not be a legal holiday. Failure to hold the annual meeting at the designated time shall not work any forfeiture of the Charter, dissolution of the Association, or other rights, powers and duties of the Directors.

SECTION 4.03. SPECIAL MEETINGS. A special meeting of the Members of the Association may be called by the President, by a majority of the Board of Directors, or by a written petition signed by a person who has, or persons who have, the right to cast twenty percent (20%) of the votes in the Association on any question upon which the vote of the membership of the Association shall be required or desirable.

SECTION 4.04. NOTICE OF MEETINGS. A written or printed notice stating the place, day and hour of the meeting, and, in the case of a special meeting, the purpose for which such meeting shall have been called, shall be prepared and delivered or mailed to the last known post office address of each member (or group of persons constituting a joint tenancy or tenancy in common) not more than sixty (60) days nor less than ten (10) days before the date of the meeting.

SECTION 4.05. QUORUM. A quorum shall be deemed to be present at any annual or special meeting of the Members of the Association, if at the meeting the owners of not less than twenty per cent (20%) of the Units in the Subdivision are present. The owner of the Unit shall be deemed to be present at a meeting if any owner of that lot is present in person or by proxy or by attorney in fact, whether the tenant so present is a sole owner, a tenant in common or a joint tenant.

SECTION 4.06. VOTING AT MEETINGS.

Clause 4.061: VOTING RIGHTS. The voting rights of the members of the Association shall be as prescribed in these By-Laws, the Articles of Incorporation and the Declaration.

Clause 4.062: METHOD OF VOTING. A vote attributable to a lot in the Subdivision shall be cast as follows:

(a) If the Unit is owned by one person, the vote shall be cast by that person.

(b) If the Unit is owned by more than one person, either as joint tenants or tenants in common, the vote attributable thereto shall be deemed properly cast if cast by any one of the tenants in the absence of any objection, or contrary vote, by any other tenant. If two or more tenants desire the vote to be cast in different ways, or one of them desires that it not be cast, then the vote attributable thereto shall be deemed properly cast if cast by a majority in number of the tenants. However, in the event of fractional interests in one vote occurs, each owner shall be entitled to cast his fractional vote.

(c) Only those votes cast by Members in good standing will be included in a count of votes. A Member is not in

good standing so long as delinquent assessments on that Member's Unit remain unsatisfied.

Clause 4.063: PROXIES: Any person who is entitled to vote at any meeting of the Members of the Association may vote in person or by proxy executed in writing or by a duly authorized attorney in fact. No proxy shall be valid after twelve (12) months from the date of its execution or binding upon purchasers of property from the then grantor of the proxy.

Clause 4.064: ORDER OF BUSINESS. At all meetings of the Members, the order of business shall be as follows:

1. Election of a Chairman
2. Appointment and report of a committee to determine if a quorum is present.
3. Presentation of proofs of the due calling of meeting.
4. Reading, correction and approval of minutes of previous meetings.
5. Report of the Board of Directors, if an annual meeting.
6. Report of Officers.
7. Report of Committees.
8. Election of Directors, if annual meeting.
9. Unfinished business.
10. New business.
11. Charges against any Director or Officer.
12. Adjournment.

ARTICLE V.

THE BOARD OF DIRECTORS

SECTION 5.01. QUALIFICATION AND ELECTION. During the period of control of the Association by Jamestowne Construction, Inc., (sometimes hereinafter Jamestowne), the affairs of the Association shall be managed by a Board of four (4) Directors, each of whom shall be Members of the Association. Each Member of the first Board of Directors designated in the Articles of Incorporation shall serve until the first regular-scheduled meeting. Thereafter, upon relinquishment of control of the Association by Jamestowne, an entire Board of Directors shall be elected by the Members of the Association at each annual meeting of the Members and each of the six (6) Directors so elected shall serve for a term of one (1) year, but shall hold office until his successors shall have been chosen and qualified.

SECTION 5.02. VACANCIES. Any vacancy that shall occur in the Board of Directors by death, resignation or otherwise, shall be filled by a majority vote of the remaining" Directors, and the members of the Association or until the next annual meeting of the members of the Association or until such

time as his successor is chosen and elected by the Members of the Association.

SECTION 5.03. ANNUAL MEETING. The Board of Directors shall hold an annual meeting immediately after the annual meeting of the Members of the Association for the purpose of organization, election of officers, and taking action on any other business that properly may be brought before the meeting.

SECTION 5.04. SPECIAL MEETING. Special meetings of the Board of Directors shall be called at any time by the President or on the written request of any one (1) Director.

SECTION 5.05. NOTICE OF MEETINGS. A written or printed notice stating the place, day and hour of a special meeting shall be delivered or mailed by the Secretary to each Director at least three (3) days before the date of the Meeting. Notice of any meeting of Directors may be waived by any Director in a writing filed with the Secretary before the time of the meeting, or by attendance in person.

SECTION 5.06. PLACE. All meetings of the Board of Directors of the Association shall be held at such place as may be specified in the respective notices or waivers of notice thereof.

SECTION 5.07. QUORUM. A majority of the whole Board of Directors shall be necessary to constitute a quorum thereof, except for the filling of vacancies, which shall require a majority of the existing Directors for a quorum. The act of a majority of the existing Directors present at a meeting at which a quorum is present shall be the act of the Board of Directors.

SECTION 5.08. POWERS AND DUTIES OF DIRECTORS:

Clause 5.081: POWERS: The powers of the Board shall include, but not be limited to, the following:

(a) The power to adopt and publish rules and regulations governing the use of those parts of the Subdivision that are or will be owned by or are otherwise under the control of the Association; and

(b) The power to exercise for the Association all the powers and duties of the Association whose exercise is not reserved or committed to the membership of the Association by the By-Laws, the Articles of Incorporation or Declaration.

(c) The power to delegate those powers necessary for the appropriate operation of a Master Association. The Board shall appoint a Member to represent the Association at all Master Association meetings.

Clause 5.082: DUTIES. The duties of the Board of Directors shall include (but not be limited to) the duty to fix, at least thirty (30) days prior to the first day of April in 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 duty to carry out the management of the corporation and exercise all rights, powers and privileges bestowed upon it by the Charter, the Articles of Incorporation, the Declaration and these By-Laws.

SECTION 5.09. ADOPTION OF RULES AND REGULATIONS. The Board of Directors shall adopt rules and regulations relating to the use and enjoyment of the streets, sewage system, parks and any recreational area or facilities within the Subdivision that are owned by the Association, which rules shall include, but not be limited to, a schedule of fines for violations of speed limits established for the Subdivision.

SECTION 5.10. COMMITTEE. The Board of Directors may create such temporary and standing committees as it shall deem necessary and shall assign to each committee so created such duties as the Board of Directors shall consider proper for assignment to such committee. The Board of Directors shall choose committee members from the membership of the Association, and each such committee member shall serve at the pleasure of the Board of Directors.

SECTION 5.11. INFORMAL ACTION BY DIRECTORS. Any action required or permitted to be taken at any meeting of the Board may be taken without a meeting if the written consent of a majority of the Board is filed with the minutes of the Board.

ARTICLE VI.

THE OFFICERS OF THE ASSOCIATION

SECTION 6.01. NUMBER. The officers of the Association shall be a President, a Secretary and a Treasurer, and, in addition, the Directors may choose not more than two (2) Vice Presidents. Any person may hold two (2) offices at the same time, except the office of President and Secretary. No officer, except the President, need be a Director.

SECTION 6.02. ELECTION AND TERM OF OFFICE. The officers shall be chosen annually by the Board of Directors at the annual meeting of the Board of Directors. Each officer shall hold his office until a successor shall have been chosen and qualified, or until his death, resignation or removal.

SECTION 6.03. REMOVAL. Any officer may be removed with cause, at any time, by a vote of not less than two Directors while the Board is under the control of Jamestowne, thereafter when the Board increases to six (6) members, not less than three (3) Directors, at a special meeting of the Board of Directors called for the purpose of considering the removal. A Director against whom a charge for removal has been asserted may be represented at the hearing in the Special Meeting by counsel.

SECTION 6.04. VACANCIES. Any vacancy in any office because of death, resignation or removal, or otherwise caused, shall be filled for the unexpired portion of the term by a person chosen by the Board of Directors.

SECTION 6.05. THE PRESIDENT. The President, who shall be chosen from the Directors, shall have active executive management of the operation of the Association, subject, however, to the control of the Board of Directors. He shall, in general, perform duties as, from time to time, may be assigned to him by the Board of Directors.

SECTION 6.06. A VICE PRESIDENT. A Vice President shall have such powers and perform such duties as the Board of Directors may prescribe or as the President may delegate to him. In the case of absence or inability to act as President, a Vice President shall temporarily act in his place. In those situations where two Vice Presidents have been installed, it shall be the responsibility of the President to designate one of the Vice Presidents to assume the responsibility of the Presidency in the President's absence.

SECTION 6.07. SECRETARY. The Secretary shall keep, or cause to be kept, in a book that shall be provided for that purpose and shall remain in the Secretary's custody, the minutes of the meetings of the Members of the Association and of the Board of Directors; shall at all times keep at the registered office of the Association a complete and accurate list of the names and addresses of all Members of the Association; shall attend to the giving of all notices in accordance with the provisions of these By-Laws and as required by law; shall be the custodian of the records (except the financial records) of the Association and of any die or other instrument usable in affixing the seal of the Association to paper; shall affix the seal of the Association (by means of a die or by hand) to every document whose execution on behalf of the Association under its seal shall have been properly authorized; and shall, in general, perform all duties as from time to time may be assigned to him by the Board of Directors or the President.

SECTION 6.08. TREASURER. The treasurer shall be the financial officer of the Association; shall keep, or cause to

be kept, in books that shall be provided for the purpose and shall remain in the Treasurer's custody, complete books and records showing the financial condition of the Association and shall keep a separate financial account of each Member of the Association; shall have charge and custody of, and be responsible for, all funds of the Association and shall deposit all such funds in the depositories as shall be selected by the Board of Directors; shall receive and give receipts for monies due and payable to the Association from any source; shall disburse the funds of the Association in accordance with the instructions of the Board of Directors of the Association; shall render to the President, on request, an account of all his transactions as treasurer and of the financial condition of the Association; and shall in general, perform all the duties incidental to the office of treasurer and such other duties, as from time to time may be assigned to him by the Board of Directors or the President.

ARTICLE VII.

CORPORATE BOOKS AND RECORDS

SECTION 7.01. PLACE OF KEEPING, IN GENERAL. Except as otherwise provided by the law of the State of West Virginia or these By-Laws, the books and records of the Association may be kept at such place or places as the custodian thereof may select, but all of such books and records shall be open for inspection by any member of the Association for proper purposes at any reasonable time.

ARTICLE VIII.

EXECUTION OF CHECKS AND CONTRACTS

SECTION 8.01. EXECUTION OF CHECKS. Every check for the payment of money of the Association, and every promissory note of the Association, shall, unless otherwise ordered by the Board of Directors or required by law, be signed by the President and the Treasurer of the Association.

SECTION 8.02. EXECUTION OF CONTRACTS. Every contract (in addition to those mentioned above) to which the Association is a party, shall be executed by its President or a Vice President and attested to by its Secretary. The Secretary shall affix the seal of the Association to any such contracts. No contract of the Association shall be properly executed unless executed and ensealed as recited herein.

ARTICLE IX.

AMENDMENTS

SECTION 9.01. IN GENERAL. The power to add to, alter, amend or appeal (wholly or in part) these By-Laws is vested in the Board of Directors. Prior to the termination of Jamestowne Construction, Inc., control of the Association, the affirmative vote of two (2) Directors shall be necessary and upon relinquishment, the affirmative vote of three (3) Directors shall be necessary to effect any additions to, or alterations, amendment, or repeal. These By-Laws shall not be altered, amended or repealed at any time prior to January 1, _____.

Adopted this _____ day of _____, 1994.

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