

## DECLARATION OF COVENANTS AND RESTRICTIONS

This Declaration is made and executed this 23<sup>rd</sup> day of ~~August~~<sup>Sept</sup>, 2003, by Dan Ryan Builders Inc., hereinafter designated as Developer or Declarant.

WHEREAS, the Declarant is the owner of all of that certain lot or parcel of real estate situate in the Kabletown District, Jefferson County, West Virginia, known as the Spruce Hill South Subdivision, the first phase being 37 lots, which is designated and described on a plat made by Associates Engineering Sciences, Inc., dated July 2002 and recorded in the Office of the Clerk of the County Commission of Jefferson County, West Virginia in Plat Book 19, at Page 57, and

WHEREAS, the Declarant desires to provide for the preservation or enhancement, the property values, amenities and opportunities in said subdivision and for the maintenance of the properties and improvements thereon, and to this end desires to subject the hereinafter described real estate to the hereinafter described covenants, restrictions, easements, charges and liens for the benefit of said property and each owner thereof, and

NOW, THEREFORE, WITNESSETH: That the Developer declares the hereinafter described real estate is and shall be held, transferred, sold and conveyed and occupied subject to the covenants, restrictions, easements, charges and liens hereinafter set forth:

## ARTICLE I

## DEFINITIONS

1. "Declaration" shall mean the covenants, conditions and restrictions and all other provisions herein set forth in this entire document, as may from time to time be amended.
2. "Association" and "Homeowners Association" shall mean and refer to SPRUCE HILL SOUTH HOMEOWNERS ASSOCIATION, INC.
3. "Developer" or "Declarant" shall mean and refer to Dan Ryan Builders Inc.
4. "The Properties" shall mean and refer to all real property which is the subject of this Declaration as set forth in Article II.
5. "Common Properties" and "Common Facilities" and "Common Areas" are interchangeable terms shall mean and refer to those areas of land shown on any recorded subdivision plat of the properties and improvements thereon, which are devoted to the common use and enjoyment of the members, and includes, but is not limited to, streets, and roadways.
6. "Lot" shall mean and refer to any plot of land shown on the plat of Spruce Hill South Subdivision as hereinafter described.

7. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any lot, but excluding those having such interest merely as security for the performance of any obligation.

## ARTICLE II

### PROPERTIES SUBJECT TO THIS DECLARATION

The real estate which has and shall be held, transferred, sold conveyed and occupied subject to this declaration is located in the Kabletown District, Jefferson County, West Virginia and is situate on the south side of WV Route 13/3 (Huyett Road) and being more particularly bound and described as all of those 37 tracts or parcels of real estate situate in the Kabletown District, Jefferson County, West Virginia, and more particularly described as follows:

**BEING all of Lots 1-37 inclusive as the same are designated and described on a plat entitled "Final Plat Section One (Lots 1-37 & Residue)", made by Associates Engineering Sciences, Inc., dated July 2002 and recorded in the Office of the Clerk of the County Commission of Jefferson County, West Virginia, in Plat Book 19, at Page 57.**

**THE DEVLEOPER MAY, FROM TIME TO TIME, AS HEREINAFTER SET FORTH, SUBJECT ADDITIONAL REAL PROPERTY TO THE CONDITIONS, RESTRICTIONS, COVENANTS, RESERVATIONS, LIENS, ASSESSMENTS AND CHARGES HEREIN SET FORTH BY APPROPRIATE REFERENCES HERETO.**

## ARTICLE III

### MEMBERSHIP AND VOTING RIGHTS

Section 1. Members. Every person or entity who is a record owner of a fee or undivided fee interest in any lot which is subject to the covenants of record and to assessments by SPRUCE HILL SOUTH HOMEOWNERS ASSOCIATION, INC. shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation.

Section 2. Voting Rights. The Association shall have two classes of voting memberships:

Class A. Class A members shall be all owners with the exception of the Developer and shall be entitled to one vote for each lot owned. When more than one person holds an interest in any lot, all such persons shall be members. The vote of each lot shall be exercised as all of the owners of said lot shall among themselves determine, but in no event shall more than one vote be

cast with respect to any lot.

Class B. Class B member shall be the Developer, who shall be entitled to five (5) votes for each lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(a) When the total outstanding votes for Class B membership drops below twenty votes.

(b) January 1, 2007.

#### ARTICLE IV

##### PROPERTY RIGHTS IN THE COMMON PROPERTIES

Section 1. Members Easements of Enjoyment. Every member shall have a right and easement of enjoyment in and to the Common Properties and such easement shall be appurtenant to and shall pass with the title to every lot.

Section 2. Title to Common Properties. The Developer shall retain the legal title to the roads and other common facilities during development. After construction is complete, however, the Developer shall convey the legal title to all of these areas to the Association. The roads and other common facilities are dedicated to the use of the Association and shall be maintained by the Association upon the completion of roads and other common facility construction in the properties.

Section 3. Extent of Member's Easements. The rights and easements of enjoyment created hereby shall be subject to the right of the Association to dedicate or transfer all or any part of, or any interest in, the roads, and common facilities to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members, provided that no such dedication or transfer, or determination as to the purposes for or as to the conditions thereto, shall be effective unless an instrument agreement to such dedication, transfer, purpose or conditions, signed by members entitled to case two-thirds (2/3) of the votes of each class of membership, has been recorded, and unless written notice of the proposed agreement and action thereunder is sent to every member at least fifteen (15) days in advance of any action taken.

#### ARTICLE V

##### COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Annual Assessment. The Developer hereby covenants, and each owner of any lot by acceptance of deed thereof, whether or not it shall be so expressed in such deed, is deemed to covenant and agree that the Association may assess initially, for each lot One Hundred Fifty Dollars

(\$150.00) per year, for the use, upkeep and maintenance of rights of way in all sections of the said subdivision and such other common facilities as the said Developer may provide thereon subject to any increase provided hereafter. The assessment herein set forth is established subject to the exempt properties exception set forth in Section 7 of this Article.

Section 2. Creation of Lien. Any assessment made pursuant to this article, including late fee of \$25.00 and interest at the rate of ten percent per annum from the date of the delinquency and reasonable attorney's fees incurred in the collection thereof, shall constitute a lien on the property until paid and all owners do bind themselves, their heirs and successors in title, to this lien to the covenants herein. This lien is expressly inferior and subordinate to any mortgage or deed of trust encumbering the property affected by these covenants. In the event of a resale of one or more lots in the subdivision, the obligations shall NOT become the obligation of a new owner unless the Association has filed a lien pursuant to 36B-3-116.

Section 3. Rights, Obligations and Responsibilities of the Association. The Association shall have the right, obligation and responsibility for the collection of the moneys due under the lien assessment and for the maintenance and costs of maintenance of the streets, rights of way, street lights (if any installed by the Homeowners Association), amenities and common properties within the subdivision, and the costs of the insurance premiums to provide property, general liability, and directors and officers liability insurance coverage of at least \$1,000,000.00 in regard to said items. The Homeowners Association shall be operated as a non-profit organization.

(a) The amount of such assessment shall be charged or assessed in equal proportions against each lot within the property.

Section 4. Purpose of Assessments. The assessment levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety, and welfare of all of residents in the Properties and in particular for the improvements and maintenance of properties, services, and facilities devoted to this purpose and related to the use and enjoyment of the Common Properties and of the homes situate upon the Properties, including, but not limited to, the payment of taxes and insurance thereon and repair, replacement and additions thereto, and for the costs of labor, equipment, materials, management and supervision thereof.

Section 5. Establishment of Annual Assessment Rate. The Board of Directors of the Association may, after consideration of current maintenance costs, and future needs of the Association, fix the annual assessment in an amount below the original amount set forth in Section 1

hereof. The Board of Directors of the Association shall not increase the amount of the annual assessment more than ten percent (10%) per year without the written affirmative vote of two-thirds (2/3) of the members of the Association entitled to vote. No property owner who is in default of the payment of the annual assessment lien as of the first day of January of any year shall be entitled to vote. Until the year beginning January 1, 2004, the annual assessment shall be ONE HUNDRED FIFTY DOLLARS (\$150.00) per lot. From and after January 1, 2004, the annual assessment may be increased by a vote of the Board of Directors of the Association. The Board shall at least annually review current maintenance costs, and replacement costs including a reasonable depreciation reserve and insurance costs, including property, general liability and directors and officers liability, and the future needs of the Association and based on said review may increase or decrease the assessments PROVIDED, HOWEVER, that the annual average common expense liability of each lot, inclusive of optional user fees and any insurance premiums paid by the Association, shall not exceed the maximum as set forth in West Virginia Code 36B-2-203, as it maybe amended from time to time, as adjusted pursuant to Section 114, of Article 1 of Chapter 36B of the West Virginia Code, to-wit: Adjustment of dollar amounts under the West Virginia Uniform Common Interest Ownership Act. The amount of such assessment shall be charged and assessed in equal proportions against each lot within the property.

Section 6. Date of Commencement Assessment: Due Date. The annual assessment as to any lot shall commence on the first day of January, following the date of initial owner occupant occupies the home built on any lot. The contractor-builder constructing a home on any lot shall not be required to pay the annual assessment unless the contractor/builder becomes the owner occupant, in which case the annual assessment shall be payable in like manner as any other owner occupied lot. In the event a lot is conveyed prior to January 1, 2003, the annual assessment on the owner occupant of the lot will commence on January 1, 2003. The annual assessment is due and payable on the first day of January of each year, beginning January 1, 2003, and shall be considered delinquent if not paid by April 1, of each year. After January 1, 2003, the annual assessment shall be prorated at the time of purchase by the owner from the builder-contractor.

Section 7. Exempt Property. The following property subject to this Declaration shall be exempted from the annual assessment charges, and lien created herein:

CLASS "A" EXEMPT PROPERTIES:

- (a) All properties to the extent of any easement or other interest therein dedicated and

excepted by the local public authority and devoted to public use;

(b) All common areas, as defined in Article I hereof;

(c) All properties exempted from taxation by the laws of the State of West Virginia, upon the terms and to the extent of such legal exemption, provided, however, that property exempted from taxation by reason of the Homestead Exemption or because of a charitable designation or status, shall not be exempt from the assessments, charges, and lien created herein.

CLASS "B" EXEMPT PROPERTIES:

(a) All unimproved lots owned by the Developer within the area covered by this Declaration: provided that Class B Exemption shall cease as to any individual lot or lots owned by the Developer upon the date the Developer, Builder or its assigns shall receive a building permit for the erection of a single family residential unit upon said lot. This exemption shall terminate on or before January 1, 2007.

Section 8. Special Assessments for Capital Improvements. In addition to the annual assessments authorized by Section 1 and 5 hereof, the Association may levy in any assessment year a special assessment, applicable to not more than 8 years for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement including the necessary fixtures and personal property related thereto; PROVIDED THAT any such assessment shall have the assent of 60% of the Association Members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all members at least thirty days in advance and shall set forth the purpose of the meeting; AND FURTHER PROVIDED, that the annual average common expense liability of each lot, inclusive of special assessments, exclusive of optional user fees and any insurance premiums paid by the Association shall not exceed the maximum amount as set forth in West Virginia Code 36B-2-203 as adjusted pursuant to Section 114, of Article 1 of Chapter 36B of the West Virginia Code, to-wit: Adjustment of dollar amounts under the West Virginia Uniform Common Interest Ownership Act. The quorum required for any such action shall at the first meeting be the presence at the meeting of Members or of proxies entitled to cast sixty percent (60%) of the votes of the membership of the Association, and at any subsequent meeting called due to a lack of quorum at the first meeting, the quorum required for any such action shall be one-half of the required quorum at the first meeting. This Special Assessments for Capital Improvements Section is established subject to the exempt properties exception set forth in Section 7 of this Article.

## ARTICLE VI

## NOTICE OF MEETINGS

## CONSTITUTION OF A QUORUM

Section 1. Notices. Written notice of any meeting of this Association shall be sent to all members of at least fifteen (15) days in advance and shall set forth the purpose of the meeting.

Section 2. Quorum. For any action authorized under Article IV and Article V hereof the quorum shall be as follows:

(a) At the first meeting called the presence at the meeting of Members or of proxies entitled to cast sixty percent (60%) of all votes of each class of membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the notice requirement set forth in Section 1 above, and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting, provided that no such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

## ARTICLE VII

## REVISIONS

Section 1. Developer's Right. Developer, its successors and assigns, reserve the right to unilaterally modify these covenants and restrictions as to the properties held by the Developer, but such changes shall conform with the common scheme or plan as developed in this Declaration. Such changes initiated by the Developer shall not affect the covenants and restrictions on those lots owned by owners other than the Declarant. The Developer's right to unilaterally modify this Declaration shall terminate upon the termination of the Class B membership rights as stated herein.

## ARTICLE VIII

## RESTRICTIONS AND PROTECTIVE COVENANTS

Section 1. Residential Use. Except as hereafter specifically provided, all lots in the Subdivision shall be known and designated as single-family residential lots and shall not be used except for residential purposes. After sale and transfer of a lot by the Developer to another party, said lot sold or transferred may not be further subdivided, except for the purpose of making a nominal boundary line adjustment. The ground area of all single-level homes or residences shall contain a minimum area of One Thousand Six Hundred Fifty (1,650) square feet, exclusive of garage and porches, and the entire floor area of all homes or residences of more than one (1) level or story

shall contain a minimum area of One Thousand Eight Hundred (1,800) square feet, exclusive of garage and porches.

Section 2. Restriction Against Business Use.

(a) No commercial or business building shall be established upon or permitted upon any Lot and no commercial or business activity shall be established upon or permitted upon any lot.

(b) Neither this restriction nor any other restriction contained in this Declaration of Covenants and Restrictions shall be construed to prohibit the Developer or any other owner or builder, for either use as their personal residence or for purposes of profit and sale, from erecting, constructing and building any structure permitted by these Restrictions, on any Lot in the subdivision, nor prohibit the Developer from erecting, constructing, or building any streets or other common amenities within the subdivision. In addition, Developer, for itself and assigns, specifically reserves the right to and shall be permitted to operate a subdivision development and sales office out of a model home or homes or sales trailer, which may be located on any lot or lots within the subdivision.

Section 3. Restrictions as to Types of Construction, Prohibiting Mobile Homes and Modular Homes. No trailer, mobile home, double wide or similar type structure, which moves to a building site on wheels attached to its own carriage, tent, shack, garage, barn or other type outbuildings shall at any time be used as a residence temporarily or permanently, and no trailer, mobile home, double wide, tent, shack, garage, or barn shall be utilized as a main or single family dwelling unit on any lot. No modular or sectional homes shall be erected in the subdivision as a main dwelling. Modular homes prohibited are defined, by way of illustration and not limitations, as a dwelling structure constructed with one or more modules and hauled to the site as component parts of a proposed dwelling structure. Prefabricated parts of housing units and custom buildings shall be the only type construction that will be approved in the area.

Section 4. Approval of Plans and Specifications Required. No building, house, garage, fence, hedge, wall, sidewalk, swimming pool, deck, outbuilding, storage building, or any other structure shall be commenced, erected, grown or maintained upon the properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, design, shape, height, materials, color and location of the same shall have been submitted to and approved in writing as to the harmony of external design and location in relation to surrounding structures and topography by the Developer, or Board of Directors of the



Association, or by an Architectural Review Committee composed of three (3) or more representatives appointed by the Association, as hereinafter set forth. In the event the Developer, Association, or the Architectural Review Committee fail to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with. Members of the Architectural Review Committee shall be appointed by the Board of Directors for one year terms and shall be persons who are either lot owners in the subdivision or members of the Board of Directors.

Section 5. Setback Restrictions. Unless and except as otherwise shown and permitted on the recorded plat or plats of the properties, no building or any part thereof shall be erected on any lot in violation of the Jefferson County Zoning and Development Review Ordinance adopted July 7, 1998, and as the same has been amended from time to time. A waiver of this setback restriction by the county Board of Zoning Appeals shall not constitute approval to violate this setback requirement.

Section 6. Construction and Paving. Any residence erected upon any lot must be completed within one (1) year from the date the excavation of the lot is commenced. All driveways shall be blacktopped and all lawn seeding and landscaping shall be completed prior to occupation of the residence built on the lots or as soon after occupation as weather permits, and all driveways and other improvements shall be constructed and maintained so that water and debris shall not flow or be thrown onto the roadway, and each lot owner shall construct a galvanized steel culvert with a minimum size being fifteen (15) inches in diameter with end sections where required or necessary to so restrict and control the flow of water and debris.

Section 7. Easements and Utilities. In order to permit the practical and economical installation of utilities and amenities, easements for installation and maintenance of utilities over or under a strip of land ten (10) feet wide at any point along the front, rear or side lines of all of the lots in the subdivision are reserved unto the Developer, its successors and assigns, including the Homeowner's Association, together with the right of ingress and egress for the purpose of erecting and maintaining said utilities and amenities. In addition, easements for the installation and maintenance of said utilities and amenities are reserved as shown on the recorded plat of the Spruce Hill South Subdivision and any section thereof. Within these easements, no structure, planting or other materials shall be placed or permitted to remain which may damage or interfere with the

installation and maintenance of the utilities and amenities. The easement area of each lot and all improvements in it, except as hereinafter provided, shall be maintained continuously by the owner of the lot, except for those improvements for which a public authority, utility company, or the Homeowner's Association is responsible. The term utilities as used herein include, but is not limited to telephone, electrical power and cable television lines, pipes, wires, poles, conduits, pedestals, transformers, and equipment, and sewer, gas, water lines, drainage ditches, and all types of utility structures.

(a) The Association shall be responsible for the integrity of the drainage easements, that is, that the easements remain unobstructed and that the area of land within any drainage easement be and remain unobstructed by any structure or improvement. Individual lot owners shall be responsible for the maintenance, including mowing, weeding, and general upkeep of the drainage easement areas, and for the maintenance of any strips of land for the property which lie between each owner's front lot line and the paved surface of the streets. Electrical power, cable and telephone utility lines which have been installed prior to sale of any lot and which may exceed or lay outside of the ten (10) foot utility easement hereinbefore reserved, and insofar as said utility lines on said lots exceed said ten (10) foot easements on said lots, a right of way is hereby reserved for such previously installed electrical power, cable, and telephone lines at, upon, under, on and across said lots as said power, cable and telephone lines now lie. Within these easements, no structure, planting or other materials shall be placed or permitted to remain which may interfere with such drainage and the area shall be kept as lawn only.

(b) All utilities, utility lines, utility pipes, including but not limited to electrical, gas, telephone and television service, water and sewer service, shall be placed underground, and no poles, pipes or above ground wires or lines shall be permitted. No radio or television, aerial, antennae, tower or transmitting or receiving aerial, tower or support thereof shall be permitted or placed upon any lot unless it is placed adjacent to the rear/back wall of the home built on the lot and shall be placed as much out of view as reasonably possible. No satellite dish in excess of one (1) meter in width shall be placed on any lot or placed on any building located on any lot, and all satellite dishes, if placed on any building shall be placed on the rear half of the roof or on the rear half of the home and if placed on the ground, shall be placed in the back yard on the lot, behind the rear wall of the building, and shall be completely covered from view. No radio transmission towers shall be of a height in excess of six feet higher than the highest point of the roof of a home built on

the lot.

Section 8. Sale and Use of Property Restricted. No part of the real estate within the properties may be sold or used as a right of way to any property outside of the properties, with the sole exception that the Developer may use or sell any portion of the real estate within the properties as a right of way to any property outside of the properties. This right of the Developer and any rights established thereunder, may be sold or assigned by the Developer, in whole or in part at the Developer's unilateral option, to any person or party.

Section 9. Signs and Advertising Regulated. No signs, billboards, or advertising of any nature shall be erected, placed or maintained on the lots in said subdivision, nor upon any building erected thereon, except address identification signs, street signs, and normal and reasonable "For Sale" signs, and except for any signs to be erected by Developer or its assigns identifying the name of the development, and except for any temporary signs erected with permission of the Developer identifying any lending institution involved with financing the construction of the Spruce Hill South Subdivision and except for signs installed by builders to promote sales in the subdivision and to identify model homes, subdivision lots and sections, and to act as directional signs.

Section 10. Sanitation and Water Service. All lots within the subdivision shall be serviced by individual wells and individual septic/sewer systems. All such individual wells and individual septic/sewer systems must be approved by the West Virginia Health Department or such other regulatory agency as shall have jurisdiction over such matters. In the event public sewer service is made available to any lot by the appropriate governmental agency, then in that event the owner of the lot shall be required, at the individual lot owners costs and expense, to hook up to the public sewer service if and as provided and required by the rules and regulations of the West Virginia Public Service Commission and by the rules and regulations of the Jefferson County Public Service District installing said service, and in any event, no later than one (1) year after such public sewer system is made available to the home constructed on the lot.

Section 11. Nuisances. It shall be the responsibility of each owner to prevent the development of any unclean, unsightly, or unkept conditions of buildings or grounds upon a lot which shall tend to substantially decrease the beauty of the property as a whole, or the beauty of the specific area.

(a) No noxious or offensive activity shall be permitted upon any lot, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance, or nuisance to the

property. There shall not be maintained upon any lot any plant, animal, device or thing of any sort, the normal activities of which is in any way noxious, dangerous, unsightly, unpleasant or of such a nature as may diminish or destroy the enjoyment of the properties. Specifically included under this section is the prohibition against any livestock, swine, or poultry being kept on any lots or within the improvements located on any lot. The keeping of any non-domestic animals shall be deemed a nuisance per se under this section; but the keeping of domestic cats and dogs, or other traditional household pets, unless the activity of such pets is in any way noxious, dangerous, unsightly, or unpleasant, shall not be prohibited under this section. The keeping, breeding or caring for profit or remuneration of any animals, including domestic animals, including dogs, cats or other traditional household pets, or the maintaining of a kennel, shall be considered a commercial use of the lot and is prohibited under this section. No outside animal pens, runs, or yards shall be permitted on any lot.

(b) No junk motor vehicles nor unregistered motor vehicles nor non-operative motor vehicles shall be permitted on any of the lots or streets adjacent to any of the lots within the subdivision.

(c) No dump trucks, commercial road trucks, tractors or rigs normally used for pulling or hauling trailers, box-trailers, tank trailers, low-boys, flat beds or other similar vehicles, heavy trucks, truck-type tractors, or other similar vehicles with or without trailers, box-trailers, tank trailers, low-boys, flat beds, or other similar vehicles no matter how propelled or any pick-up trucks, van truck or similar vehicles having a carrying capacity in excess of one (1) ton, or any construction machinery, boats or boat trailers shall be placed, parked, stored, or permitted to remain upon any lot or street in the properties, except for temporary use during construction or repair of any residence or appurtenant structures, streets, utilities, or other common amenities or while actually being used in such construction or repair or for such temporary uses as moving or making deliveries. No motor homes, travel trailers, campers or trailers of any type shall be kept or parked on any lot except and unless stored and parked in an enclosed garage with walls and/or doors on all four sides of said enclosed garage.

(d) Vehicles permitted within the subdivision shall either be traveling on the subdivision streets or roadways or parked on the paved driveway or in the garage of a lot improved by a residence. No vehicles shall be parked along or upon the streets or roadways of the subdivision or in the yard or any unpaved area of any lot. This provision shall not apply to lots while homes are in the process of construction on said lots and not yet occupied.

Section 12. Fences. No lot shall be fenced in any manner except as follows:

(a) A fence may be installed to enclose a swimming pool provided the maximum height of the fence is six (6) feet or the minimum height required by the State of West Virginia or Jefferson County law, ordinance, statute, rule or regulation mandating the fencing of private swimming pools.

(b) A fence may be installed to border or enclose all or a portion of the back yard of any lot provided the fence is placed no closer to the front lot line of the lot than the rear wall of the residential building constructed on the lot, and further subject to the requirements that the height and color of the fence and the materials used to construct the fence will be subject to the written approval of the Developer, Association, Architectural Review Committee, or their successors or assigns. The Architectural Review Committee may institute a written policy specifying examples of standardized fences which will be permitted to be installed under the terms of this paragraph, the installation of which will not require further written approval of the Developer, Association, Architectural Review Committee, or their successors or assigns. Chain link fence may not be installed on any lot in regard to the matters set forth in this paragraph.

(c) The Developer, and its agents and assigns, may construct and install fencing along all or any part of the common areas, including but not limited to along streets, roads, highways, lakes, ponds, or any other bodies of water.

(d) Exception to the prohibition against installing and maintaining fences on any lot may be made by the Developer or by the Association, acting by and through the Architectural Review Committee in the same manner as provided by Article VIII, Section 4 of the Declaration of Covenants and Restrictions. Any such exception, including but not limited to approvals as to height, design, materials used to construct, color and location of the proposed fence must be made in writing if approved by the Developer, Association, Architectural Review Committee, or their successors or assigns.

Section 13. Storage Receptacles. No fuel tanks or similar storage receptacles may be exposed to view; but the same may be screened or installed within the main dwelling, or within any accessory building or buried underground.

Section 14. Sales of Alcoholic Beverages, Beer and Wine Prohibited. No beer, wine or other alcoholic beverages of any type or nature shall be sold or stored for sale on any lots.

Section 15. Swimming Pools. In-ground swimming pools are permitted, but above ground

swimming pools may not be constructed, erected or maintained on any lot within the subdivision.

Section 16. Contractors. Only West Virginia licensed contractors shall be permitted to construct buildings, homes, outbuildings, or improvements of any kind on lots in the subdivision. Developer shall have the unilateral and sole right to limit, approve and designate the number of and identity of contractors and builders permitted to build homes and construct improvements within the subdivision. Approval or disapproval of a contractor to perform construction on a lot within the subdivision shall be subject to the review, approval and disapproval provisions of Article VIII, Section 4 of this Declaration of Covenants and Restrictions.

Section 17. Recreational Vehicles, Motorcycles, Etc. Trail bikes, snow mobiles, all terrain vehicles, mini bikes and similar vehicles may be stored in a garage located on any lot, but none of such vehicles shall be otherwise placed, parked, used or permitted to remain upon any lot or road with the properties. No motorcycles shall be permitted in or on the properties, except a licensed motorcycle with a muffler may be used for ingress to and egress from a lot in the properties.

Section 18. Rental. Homes or lots shall not be rented by the owners thereof for transient or hotel purposes, which shall be defined as: (i) rental for any period less than 180 days, or (ii) any rental, if the occupants of the home are provided customary hotel services, such as (but not exclusively limited to) bed-and-breakfast, room service, laundry and linen services, except that any owner including a Developer or a contractor building a home within the subdivision may rent a home for a period of less than 180 days to a bona-fide contract purchaser. Other than the foregoing, an owner shall have the absolute right to lease a home as a non-transient residence for one household. Developer and any contractor building a home within the subdivision, however, shall have the right to rent any unsold homes without regard to the limitation aforesaid. No owner may lease less than an entire home. Lease of a home shall not relieve the owner from the duty to pay all assessments as provided herein. In the event a tenant fails to comply with the provisions of the Declaration, in addition to all other remedies it may have, the Homeowners Association or any owner may notify the owner of the leased home of such violation(s) and demand that the same be remedied within thirty (30) days after such notice. If such violation(s) is not remedied within said thirty (30) day period, then the owner shall immediately thereafter, at this own cost and expense, institute and diligently prosecute any eviction action against his tenant on account of such violation(s). In the event the owner fails to fulfill the foregoing obligation in a reasonable time and manner, then any other lot owner, or the Homeowners Association shall have the right, but not the

duty or obligations to institute and prosecute such action.

Section 19. Trash and Garbage. No lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers in a neat, clean and sanitary condition. All lots shall be free and clear of trash and rubbish at all times and shall be kept in an attractive, sightly manner. Trash receptacles shall be kept out of public view and inside the house, garage or an out building constructed on the lot (except for the day when trash pickup occurs).

Section 20. Clothes Lines, Clothing, Sheets, Blankets and Laundry. No lot owner shall cause or permit any clothes, sheets, blankets, or laundry of any kind or other articles to be hung or displayed on the outside of windows or placed on the outside window sills, walls, patios or balconies of any building, parking area or other portion of their lot. No outdoor clothes lines are permitted.

Section 21. Owner's Roster. In order to provide an orderly procedure in the case of title transfers, and to assist in the maintenance of a current, up-to-date roster of lot owners, each lot owner shall give the Homeowners Association timely notice of the sale of their lot.

Section 22. Garages. No garage shall be converted or renovated for any residential living purpose. All garages shall be kept usable as a garage for passenger motor vehicles or other permitted vehicles, subject to the following exception. The Developer or its assigns and agents are permitted to use the garage made part of the model homes as sales offices prior to the respective model home being sold to a purchaser who will occupy the home for residential purposes. Once the home is sold to the initial residential occupant the garage may no longer be used for a real estate sales office or any other business or commercial purpose. Detached garages are permitted up to three bays and not to exceed dimensions of 24' by 36'. All garages must connect to the driveway and must be of similar construction materials, color and style of the house built on the lot.

Section 23. Tree Removal. The removal of any living trees from any lot is prohibited unless such removal is first approved by the Developer, or the Association, or the Architectural Review Board as provided by Article VIII Section 4 of this Declaration.

Section 24. Exterior Burning. No open fires shall be permitted on any of the properties or common properties. All outdoor burning shall be in small, well built, attractive exterior fire places or barbeque grills.

Section 25. Discharge of Firearms. The discharge of firearms shall not be permitted within the properties or common properties.

Section 26. Catch Basins and Drainage Areas. Catch basins and drainage areas are for the purpose of the natural flow of water only. No obstruction or debris shall be placed in these areas. No person other than the Developer may change or rechannel the drainage flow after location and installation of drainage swales, storm sewers or other storm drains. Developer hereby preserves a perpetual easement across the Lots and Properties and Common Properties for the purpose of altering drainage and water flow.

Section 27. Landscaping at Street Intersections. All lots located at street intersections shall be landscaped so as to permit safe sight across the street corners. No fence, wall, hedge or shrub planting shall be placed or permitted to remain where it would create a traffic or sight problem.

Section 28. Outdoor Lighting. Outdoor lighting shall be of the type and installation such that no direct glare is visible from adjoining lots.

Section 29. Construction Debris. During construction, lots shall be kept free and clear of unnecessary and unsightly debris. All trash, rubbish, and debris shall be cleaned on a reasonable periodic basis during construction, and all trash, rubbish and debris shall be promptly removed from the lot after construction is completed. Existing storm water runoff drainage patterns for each lot shall be protected at all times both during and after construction. During construction, reasonable measures shall be taken to prevent erosion by wind and water.

Section 30. Signs, Lettering and Mail Boxes. The Developer shall determine the location, color, size, design, lettering, and all of the particulars of all mail or delivery boxes and the standards and brackets and name signs for the mail boxes in order that the mail and delivery boxes be of a similar character, but not necessarily uniform, in appearance with respect to those items. The Developer shall determine the location, color, size, design and lettering (including numbers) of any decorative features, items, plaques, words or numbers placed on the exterior of any house, garage or any other improvement placed or located on the lot. No free standing signs shall be allowed on any lot except as otherwise provided in this Declaration for identification of the subdivision or the model homes or bona-fide "For Sale" signs for the sale of any improved or unimproved lot, all of which freestanding signs may not be placed within the development until first approved by the Developer. The Developer may designate the Association or the Architectural Review Committee to act for it in the matters set forth in this paragraph.

Section 31. Ornaments. No vehicle tires of any type may be placed upon a lot, except when in use and connected to a motor vehicle. Seasonal ornaments celebrating holiday seasons may be



placed on a lot or the improvements thereon, but must be removed upon the expiration of the particular holiday season.

Section 32. Vegetable Gardens. No vegetable gardens or produce may be grown or located in the front yard of any lot, but may be grown or located in the rear of any lot. The rear of the lot is defined as the portion of the lot behind the back wall of the house located upon the lot.

Section 33. Outbuildings, Storage Buildings and Storage Barns. Outbuildings, storage buildings, and storage barns may be constructed on the lot provided they do not violate the setback provisions set forth in this Declaration of Covenants and Restrictions, provided they are located in the back yard of the lot, and provided they have a width no greater than twelve feet, a length no greater than twenty feet, walls (not including the roof) no taller than six feet, and provided they are constructed of wood and of a barn type design with a color matching that of the home on the same lot. No outbuildings, storage barns, or storage buildings made of metal shall be constructed, placed, or located upon any lot. No more than one outbuilding in addition to a detached garage shall be permitted on any lot (example: if no detached garage is located on a lot, then one outbuilding may be located on that lot. If a detached garage is located on a lot, then one additional outbuilding other than the detached garage may be located on the lot. If a house built on a lot includes a garage attached to the house, then a maximum of one detached garage and one outbuilding may also be placed on the lot).

## ARTICLE IX

### GENERAL PROVISIONS

Section 1. Duration and Amendments. The restrictions of this Declaration shall run with and bind the land, and shall inure the benefit of and be enforceable by the Association, or the Owners of any land subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of twenty (20) years from the date of this Declaration is recorded, after which time said Covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by the then owners of two-thirds (2/3) of the lots of the entire SPRUCE HILL SOUTH SUBDIVISION has been recorded, agreeing to change said covenants and restrictions in whole or in part. Provided, however, that no such agreement to change shall be effective unless made and recorded one (1) year in advance of the effective date of such change and unless written notice of the proposed agreement is sent to every Owner at least ninety (90) days in advance of any

such action taken.

Section 2. Notices. Any notice required to be sent to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postage paid to the last known address of the person who appears as Member or Owner on the records of the Association at that time of such mailing. It is the duty of the owner to keep the Association informed of the owner's current address.

Section 3. Remedies. The Association, or any Owner, shall have the right to enforce this Declaration and the Restrictions contained herein by any proceeding at law or in equity, against any person or persons violating or attempting to violate any provisions of this Declaration or any restrictions contained, to restrain violation, to require specific performance and/or to recover damages; and to proceed against any Lot to enforce any lien created by these Restrictions. The expense of enforcement by the Association shall be chargeable to the Owner of the Lot, including the costs of reasonable attorney's fees, in the event any legal action is taken by the Association, and such fees, approved by a court of competent jurisdiction, shall constitute a lien on the lot, collectible in the same manner as assessments hereunder.

Section 4. Non-waiver. Failure of the Developer or any Owner, or their respective legal representative, heirs, successors and assigns, to enforce any Restrictions contained in this Declaration shall in no event be considered a waiver of the right to do so thereafter, as to the same violation or breach or as to such violation or breach occurring prior or subsequent thereto.

Section 5. Assignability. The Developer, its successors and assigns, shall at all times have the right to fully transfer and assign any or all of its rights and powers under the Declaration, subject to the Developer's obligations hereunder.

Section 6. Construction and Interpretation. The Association, to the extent provided herein, may adopt and promulgate reasonable rules and regulations regarding the administration, and interpretation and the enforcement of the provision of this Declaration. In so adopting and promulgating such rules and regulations and in making any finding, determination, ruling or order or in carrying out any directive contained herein relating to the issuance of permits, authorizations, approvals, rules or regulations, the Association shall take into consideration the best interest of the Owners to the end that the Property shall be preserved and maintained as a viable community.

Section 7. Severability. All the covenants, conditions, restrictions, and reservations contained in this Declaration are hereby declared to be severable and the finding by any court of

competent jurisdiction that any of them or any clause or phrase thereof, is void, unlawful, or unenforceable shall not effect the validity or enforceability of any other covenants, conditions, restrictions, reservations, clause or phrase thereof.

Section 8. Non-liability. Nothing contained in this Declaration shall be construed in any manner as to impose upon the Association or the Developer, or their successors or assigns, any liability whatsoever for property damage and/or personal injury occurring to any person or persons whomsoever, or by reason of any use of any Common Areas, roadways or streets. Any and all persons using any such streets, roadways, Common Areas, or easements shall do so at their own risk and without any liability whatsoever on the part of the Association, the Developer or their respective successors or assigns, as the case may be.

Section 9. Applicability. All provisions of this Declaration which govern the conduct of lot owners shall also apply to all occupants, guests, agents, and invitees. Every lot owner shall cause all occupants of their lot to comply with this Declaration.

WITNESS, the following signatures and seals this 23<sup>rd</sup> day of September, 2003

DAN RYAN BUILDERS, INC.

By: \_\_\_\_\_

*[Signature]*  
Dan Ryan, President

David Deseff, Vice President

We hereby accept these covenants and agree that they shall be binding upon our property.

\_\_\_\_\_  
Sean Donovan

\_\_\_\_\_  
Nelly Donovan

STATE OF MARYLAND

COUNTY OF FREDERICK, to-wit:

The foregoing instrument was acknowledged before me this 23<sup>rd</sup> day of September, 2003, by  
David Doseff, Vice-  
Dan Ryan, President of Dan Ryan Builders, Inc. on behalf of the corporation.

My commission expires:

Cindy Anne Reynolds  
 Notary Public



CINDY ANNE REYNOLDS  
 Notary Public, State of Maryland  
 County of Frederick  
 My Commission Expires July 18, 2007

STATE OF WEST VIRGINIA

COUNTY OF JEFFERSON, to-wit:

The foregoing instrument was acknowledged before me this \_\_\_\_ day of September, 2003, by  
 Sean Donovan and Nelly Donovan .

My commission expires:

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

This document was prepared by: James B. Crawford, III, CRAWFORD & KELLER PLLC, P.O.  
 Box 266, Charles Town, WV 25414

JEFFERSON COUNTY, WV  
 FILED  
 September 30, 2003 11:21:19

JOHN E. OTT  
 COUNTY CLERK  
 TRANSACTION NO: 2003025851

BOOK OF DEEDS  
 Book: 00980 Page: 00152



## FIRST AMENDMENT TO DECLARATION OF COVENANTS AND RESTRICTIONS

This First Amendment to Declaration of Covenants and Restrictions made this <sup>MARCH</sup> ~~8<sup>TH</sup>~~ day of ~~February~~, 2004, by and between Spruce Hill LLC, and Dan Ryan Builders Inc., hereinafter referred to as Developers or Declarants.

WHEREAS, the Dan Ryan Builders Inc. executed a Declaration of Covenants and Restrictions upon property known as Spruce Hill Estates as more particularly shown on the plat dated July, 2002, by Associates Engineering Services Inc. which is recorded in the Office of the Clerk of the County Commission of Jefferson County, West Virginia, in Plat Book 19, at Page 57, and

WHEREAS, Spruce Hill LLC executed a Supplemental Declaration as the same pertains to Phase II of the aforesaid subdivision as more particularly set forth on a plat made by Associates Engineering Services Inc. dated October 1, 2002, and recorded in the aforesaid Clerk's Office in Plat Book 19, at Page 84, and

WHEREAS, the Declarants wish to amend the original covenants and restrictions and have the amendment apply both to the first 37 lots as well as the balance of the lots set forth in the Supplemental Declaration, and

NOW, THEREFORE, WITNESSETH:

That the Declarants do hereby amend Article V, COVENANT FOR MAINTENANCE ASSESSMENTS, Section 1, ANNUAL ASSESSMENT to read as follows:

Section 1. Annual Assessment. The Developer hereby covenants and each owner of any lot by acceptance of the deed hereto, whether or not it shall be so expressed in such deed, is deemed to covenant and agree that the association may assess initially, for

each lot, \$300.00 per year, for the use, upkeep and maintenance of the rights of way in all sections of said subdivision and such other common facilities as the Developer may provide thereon subject to any increase provided hereafter. The assessment herein set forth is established to the exempt properties exception as set forth in Section 7 of this Article.

The Declarants do further amend Article V, COVENANT FOR MAINTENANCE ASSESSMENTS, Section 5, ESTABLISHMENT OF ANNUAL ASSESSMENT RATE as follows:

Section 5. Establishment of Annual Assessment Rate. The Board of Directors of the Association, may, after consideration of the current maintenance cost and future needs of the Association, fix the annual assessment in any amount below or above the original amount set forth in Section 1 hereof. No property owner who is in default of the payment of the annual assessment lien as of the first day of any year shall be entitled to vote. As set forth above, the annual assessment for the calendar year 2004 is \$300.00. The Board shall annually review current maintenance costs and replacement costs including a reasonable depreciation reserve and insurance costs, including property, general liability and directors/officers liability, and the future needs of the Association and based upon said review may increase or decrease the assessments, PROVIDED, HOWEVER, that the annual average common expense liability for each lot, exclusive option user fees, and any insurance premiums paid by the Association, shall not exceed the maximum set forth in West Virginia Code Section 36B-2-203, as the same may be amended from time to time, as adjusted pursuant to Section 114, Article 1, of Chapter 36B of the West Virginia Code, to-wit: Adjustment of Dollar Amounts under the West

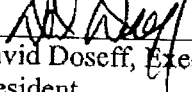
Virginia Uniform Common Interest Ownership Act and the amount of said assessment shall be charged and assessed in equal portions against each lot within the development.

The above amendments shall not affect the rights and obligations of lot owners who have purchased property prior to the recordation of this First Amendment to the Declaration and Covenants, but shall be binding on those purchasing property after the recordation thereof.

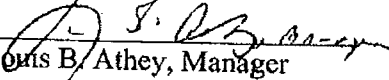
In all other respects the declaration and supplemental thereto is ratified and confirmed.

Witness the following signatures and seals:

Dan Ryan Builders Inc.

By:   
David Doseff, Executive Vice  
President

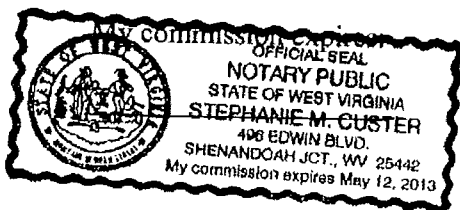
Spruce Hill LLC

By:   
Louis B. Athey, Manager

STATE OF WEST VIRGINIA

COUNTY OF JEFFERSON, to-wit:

The forgoing instrument was acknowledged before me this 5 day of February, 2004 by Louis B. Athey, Manager of Spruce Hill LLC on behalf of the limited liability company.



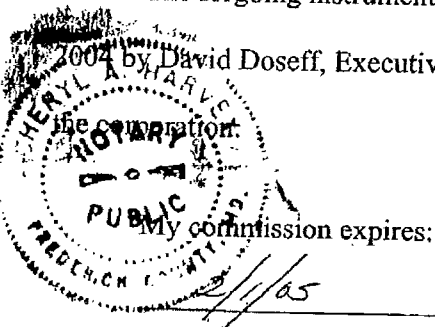
*Stephanie M. Custer*  
Notary Public

STATE OF MARYLAND

COUNTY OF FREDERICK, to-wit:

The forgoing instrument was acknowledged before me this 8<sup>TH</sup> day of ~~February~~ <sup>MARCH</sup>,

2004 by David Doseff, Executive, Vice President of Dan Ryan Builders Inc. on behalf of



*Cheryl A. Harvey*  
Notary Public

JEFFERSON COUNTY, WV  
FILED

March 11, 2004 10:52:08

JOHN E. OTT  
COUNTY CLERK  
TRANSACTION NO: 2004005851

BOOK OF DEEDS  
Book: 009B6 Page: 00313

