

DECLARATION OF CONDITIONS, COVENANTS,

RESTRICTIONS, AND EASEMENTS

THIS DECLARATION, made this 28th day of April, 1995, by JENI COMPANY, A VIRGINIA CORPORATION, authorized to do business in the State of West Virginia, hereinafter called the Declarant.

WITNESSETH:

PROLOGUE:

WHEREAS, the Declarant is the Owner of the real property described in Article I of this Declaration and is desirous of subjecting the same to the restrictions, covenants, reservations, easements, liens, assessments, and the charges hereinafter set forth, which are for the benefit of said property and for each Owner thereof, and shall inure to the benefit of and pass with said property, and each parcel thereof, and shall apply to and bind the successors and interests in any Owner thereof; and,

WHEREAS, the Declarant has deemed it desirable, for the efficient preservation of the values and amenities in said community; for the maintenance of the roads, streets, and other common amenities and for the provision for and the maintenance of common services (by way of expression and not limitation) such as snow removal, road repair, garbage removal, to create an entity to which should be delegated and assigned the powers of maintaining and administering the community properties and facilities, and administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created; and,

WHEREAS, the Declarant has organized under the laws of the State of West Virginia, as a non-stock, non-profit corporation, TABLER ESTATES HOMEOWNERS ASSOCIATION, INC., for the purpose of exercising the functions aforesaid; and

WHEREAS, this Declaration is intended to create a common interest community as defined in the West Virginia Uniform Common Interest Ownership Act, Chapter 36B, West Virginia Statute (the Act), et seq., but which community shall not be subject to the Act pursuant to Chapter 36B, Article 1, Section 203(2) of the Act, except Sections 105, 106, 107 and 114 of Article 1 of the Act.

NOW, THEREFORE, THE DECLARANT DECLARES THAT THE REAL PROPERTY DESCRIBED in Article I, and such additions thereto as may hereafter be made pursuant to Article II hereof, is and shall be held, transferred, sold, conveyed, and occupied subject to the covenants, restrictions, easements, charges, assessments and liens (sometimes referred to as "Covenants and Restrictions") hereinafter set forth.

ARTICLE I

THE EXISTING PROPERTY SUBJECT TO THIS DECLARATION

The real property which is and shall be held and shall be conveyed, transferred and sold subject to the conditions, restrictions, covenants, reservations, easements, liens, assessments, and charges with respect to the various portions thereof set forth in the various articles and subdivisions of this Declaration is located in the District of Arden, County of Berkeley, State of West Virginia, and is more particularly described as follows, to-wit:

Lots 1 through 55 of the Tabler Estates Subdivision together with all streets and ways shown upon that certain plat prepared by Gilbert W. Clifford and Associates, Inc., dated June 14, 1995, and recorded in Plat Cabinet No. 46, at Slide No. 46/47.

AND BEING a part of the same real estate conveyed to the parties of the first part, from J. E. McDonald & Sons, Inc., a corporation, by deed dated March 28, 1989, and recorded in the Office of the Clerk of the County Commission of Berkeley County, West Virginia, in Deed Book No. 446, at page 388, all of which said real estate shall hereinafter be referred to as "Existing Property".

## ARTICLE II

### ADDITIONS TO THE PROPERTY SUBJECT TO THIS DECLARATION

#### Section 1: WITHOUT CONSENT:

1. Additional land within the areas described in that certain deed from J. E. McDonald & Sons, Inc., dated March 28, 1989, and recorded in the aforesaid Clerk's Office preceding this Declaration in Deed Book No. 446, at Page 388 may be annexed by the Declarant without consent of Members within fifteen (15) years of the date of this instrument; Provided, However, that Lot sizes shall not be less than one-half acre in single family sections and further provided that the land use restrictions shall remain substantially the same as provided for in this said Declaration SUBJECT TO THE CONDITION, HOWEVER THAT THE DECLARANT MAY AMEND THE LAND USE RESTRICTIONS, TO PROVIDE FOR REDUCED SETBACKS, SMALLER BUILDING SIZES AND OTHER SIMILAR AMENDMENTS FOR SMALLER BUILDING SIZES AND OTHER SIMILAR AMENDMENTS FOR SMALLER BUILDING LOTS. THE DECLARANT MAY FURTHER AMEND THESE COVENANTS AND RESTRICTIONS AS MORE FULLY SET FORTH IN ARTICLE XIII, SECTION 4 OF THIS DECLARATION.

IT IS ANTICIPATED THAT THE TABLER ESTATES SUBDIVISION AS SET FORTH IN A GENERAL PLAN OF DEVELOPMENT KNOWN AS THE PRELIMINARY PLAT DATED DOCUMENT NUMBER , PREPARED BY GILBERT W. CLIFFORD AND ASSOCIATES, INC. AND APPROVED BY THE BERKELEY COUNTY PLANNING COMMISSION WILL BE BUILT IN MULTIPLE PHASES BUT SUCH GENERAL PLAN OF DEVELOPMENT SHALL NOT AND DOES NOT BIND OR COMMIT THE DECLARANT, THEIR SUCCESSORS AND ASSIGNS TO MAKE THE PROPOSED ADDITIONS OR TO ADHERE TO THE PLAN IN ANY SUBSEQUENT DEVELOPMENT OF THE LANDS SHOWN THEREON. THE DECLARANT SPECIFICALLY RESERVES THE RIGHT TO AMEND THE FINAL PLAN OF DEVELOPMENT IN RESPONSE TO CHANGES IN THE TECHNOLOGICAL, ECONOMIC, ENVIRONMENTAL, SOCIAL AND GENERAL MARKET CONDITION RELATING TO THE DEVELOPMENT OR MARKETING OF THE DECLARANT'S LAND HOLDINGS AND TO CHANGES IN REQUIREMENT OF GOVERNMENTAL AGENCIES, FINANCIAL INSTITUTIONS AND TITLE INSURANCE COMPANIES. NONE OF THE LANDS REFERRED TO IN THIS ARTICLE SHALL BE OR BECOME SUBJECT TO THIS DECLARATION AND ITS CONTENTS UNLESS AND UNTIL FURTHER LANDS REFERRED TO HEREIN ARE SPECIFICALLY SUBJECTED HERETO BY THE FILING OF A SUPPLEMENTAL DECLARATION AS HEREINAFTER SET FORTH.

#### Section 2: With Consent:

Additional property and common property may be annexed to The Properties subject to this Declaration with the consent of a majority of the Members.

#### Section 3: Supplementary Declaration:

The additions authorized under this Article shall be made by filing of record a Supplementary Declaration of Covenants and Restrictions with respect to the additional property which shall extend the scheme of the covenants and restrictions of this Declaration (amended as herein permitted) to such property.

Such Supplementary Declaration may contain such complimentary additions and modifications of the covenants and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added properties, and as are not inconsistent with the scheme of this Declaration. Except as hereinafter permitted, such Supplementary Declaration shall not revoke, modify, or add to the covenants established by this Declaration within the Existing Property.

Section 4: Declarant Not Bound to Add Properties: THE DECLARANT SHALL NOT BE AND IS NOT BOUND TO MAKE OR PROCEED WITH THE ADDITION OF ANY OF THE PROPOSED PROPERTIES.

Section 5: Mergers: Upon a merger or consolidation of the Association with another Association as provided in its Articles of Association, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated Association or alternatively, the properties, rights and obligations of another Association may, by operation of law, be added to the properties, rights, and obligations of Association as a surviving corporation pursuant to a merger. The surviving or consolidated Association may administer the covenants and restrictions established by this Declaration with the Existing Property together with the covenants and restrictions established upon any other properties as one scheme. No such merger or consolidation, however, shall effect any revocation, change or addition to the covenants established by this Declaration within the Existing Property except as herein provided.

#### ARTICLE III

##### DEFINITIONS

Section 1. The following words when used in this Declaration or any Supplemental Declaration (unless the context shall prohibit) shall have the following meanings:

(a) "Association" shall mean and refer to Tabler Estates Homeowners Association, Inc., its successors and assigns.

(b) "The Properties" shall mean and refer to all such Existing Property hereinbefore described and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

(c) "Other Common Properties and/or Areas" shall mean all real property owned by the Association for the common use and enjoyment of the Owners as reflected upon the plat or plats of The Properties subject to this Declaration, including, but not limited to, if any, the roads, parks, access rights of way, utility easements, storm water management facilities and any other areas so delineated.

(d) "Lot" shall mean and refer to any numbered tract or plot of land so designated and shown upon any recorded subdivision plat of The Properties, with the exception of the Common Properties.

(e) "Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of the fee simple title to any Lot situated upon The Properties but, notwithstanding any applicable theory of mortgage law, shall mean and refer to the mortgagee unless and until such mortgagee has acquired title pursuant to foreclosure or proceeding in lieu of foreclosure.

(f) "Member" shall mean and refer to those Owners who are Members of the Association as provided herein.

(g) "Declarant" shall mean and refer to Jeni Company, a Virginia Corporation, the developers or their successors in title, or their transferees as appropriate.

#### ARTICLE IV

##### PROPERTY RIGHTS IN THE COMMON PROPERTIES

Section 1: Members' Easements of Enjoyment: SUBJECT TO THE PROVISIONS OF SECTIONS 3, 4, 5, and 6, of this Article every Owner shall have the right and

easement of enjoyment in and to the Common Properties and such easements shall be appurtenant to and shall pass with the title to every Lot.

**Section 2: Title to the Common Properties:** The Declarant shall convey the Common Properties, if any, to the Association on or before the date of conveyance of the first Lot in the Existing Property which conveyance of Common Properties shall be free and clear of all liens and encumbrances. In addition hereto the Declarant shall convey the Common Properties, if any, within any additions to the Existing Properties to the Association prior to the date of conveyance of the first Lot in any addition. The Declarant reserves the full and complete right to complete any improvements required for final plat approval of the Existing Property and additions thereto, and the conveyance of the Common Properties to the Association shall be subject to the rights, easements and rights-of-way herein reserved to the Declarant. Declarant by execution of this Declaration hereby dedicates the Common Properties, if any, to the Association for the common use and enjoyment of the Owners as reflected upon the plat or plats of The Properties subjected to the provisions herein.

**Section 3: Extent of Owner's Easements:** The rights and easements of enjoyment created hereby shall be subject to the following:

(a) The right of the Association, in accordance with its Articles and By-Laws to borrow money for the purpose of improving the Common Properties, and in aid thereof to mortgage said properties. In the event of a default upon any such mortgage, the lenders rights hereunder shall be limited to a right, after taking possession of such properties, to charge use and other fees as a condition to continued enjoyment by the Owners and, if necessary, to open the enjoyment of such properties to a wider public until the mortgage debt is satisfied whereupon possession of such properties shall be returned to the Association and all rights of the Owners hereunder shall be fully restored; and,

(b) The right of the Association to take such steps as are reasonably necessary to protect the above-described properties against foreclosures; and,

(c) The right of the Association, as provided in its Articles and By-Laws, to suspend the enjoyment, and/or rights of any Owner for any period during which any assessment remains unpaid, and for any period not to exceed thirty (30) days for an infraction of its published Rules and Regulations; and,

(d) The right of the Association to charge reasonable assessments and fees for the use, maintenance, upkeep, and capital improvement of the Common Properties, and for providing community services; and,

(e) The right of the Association to make, establish, promulgate, amend and repeal rules and regulations concerning the use and occupancy of the Common Properties by the Owners or their guests and the provision of community services, and to enforce compliance therewith, including the levying of fines; and,

(f) The right of the Declarant and the Association to dedicate or transfer all or any part of the Common Properties to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Owners, provided that no such dedication or transfer, determination as to purpose, or as to condition thereof, shall be effective unless authorized by a majority of each class of the Members who are voting in person or proxy at a meeting duly called for this purpose written notice of which shall be mailed to all Members at least thirty (30) days in advance.

**Section 4: Parking and Highway Rights:** Owner's easements in the roads and streets shall be SUBJECT TO A RESERVATION, EXCEPTION AND PROVISIO, that Declarant, and their successors, and assigns shall have the right to use all streets, roads and highways within Tabler Estates Subdivision for the purposes of ingress to and egress from all of Declarant's property acquired from J. E. McDonald & Sons, Inc.,

by Deed dated March 28, 1989, and recorded in the aforesaid Clerk's office in Deed Book No. 446, at page 388, all of which said properties may or may not be added to the property which is subject to this Declaration under Article II hereof, the Declarant, and their successors and assigns, specifically hereby reserving and excepting unto themselves, their successors and assigns, a right of way or easement, over all of the streets, road and highways within the subdivision between said surrounding property as aforesaid and any and all public highways presently or hereafter running along or through such surrounding property aforesaid, and said reservation, exception, right of way or easement retained by the Declarant, their successors and assigns, shall be exercised and shall be in effect, even though said surrounding properties of the Declarant aforesaid shall not be made subject to this Declaration. In the event the Declarant does not add or subject the said surrounding properties to this Declaration as provided in Article II hereof, then and in that event, the Association shall have the right to charge and assess the Declarant or their successor and assigns; as the case may be, whichever or both is using said streets and roads, their successors or assigns, who shall be liable for and shall pay, a reasonable, common, non-profit road maintenance assessment for the use of such roads which said charge shall be based not only on the Association's reasonable cost of maintaining said roads but also on the Declarant's and their successors and assigns amount of usage of said roads. Should the Declarant, its successors and assigns, abandon or release said reservations, then any road assessment allowed by this paragraph shall cease and terminate. The Owners' easements in the roads and streets and the Association's right and authority to grant the right and use of the roads and streets in The Properties to any other person, firm, corporation or other type of entity other than the Owner of a Lot in The Properties, including but not limited to the Owner of any property adjacent to The Properties, shall be SUBJECT TO A RESERVATION, EXCEPTION AND PROVISIO THAT IS SPECIFICALLY RESERVED AND EXCEPTED UNTO THE DECLARANT THAT the Association shall not have the right or authority to grant the right or use of the roads and streets in The Properties unto any person, firm, corporation or other type of entity without the express written permission of the Declarant.

Section 5: Take of Roadways for Public Streets: The Properties are subject to the right of any duly constituted public authority and body in the State of West Virginia to condemn, take, and maintain as public roads the streets and ways within The Properties without any requirement or necessity of paying any property or Lot Owner for the land taken lying within the streets and ways within the property so long as all property and Lot Owners shall have full access to and the right to use said streets and ways.

Section 6: Common Properties: Common Properties are not and shall not be dedicated for use by the general public but will be dedicated, subject to the reservations and exceptions herein provided, to the common use and enjoyment of the Owners in Tabler Estates Subdivision, and except for such reservation and exceptions, the roads or rights of way which comprise a part of the Common Area and will not be dedicated to the use of or be used for ingress to or egress from any lands or real estate which is not subject to this Declaration or a Supplemental Declaration as provided for in Article II hereof.

Section 7: Enjoyment of Property: Any Owner may delegate, in accordance with the Association By-Laws, his or her right of enjoyment to the Common Properties and facilities to the Members of his family, his tenants or contract purchasers who reside on the property.

#### ARTICLE V

##### MEMBERSHIP AND VOTING RIGHTS

Section 1: Membership: Every person or entity who is a record Owner of a fee or undivided fee interest in any Lot which is subject to this Declaration or which is, in addition, authorized by this Declaration and subject to a properly

recorded Supplementary Declaration of Covenants and Restrictions shall be a Member of the Association; provided that any such person or entity who holds such an interest merely as a security for the performance of an obligation shall not be a Member and all Owners of Properties exempted from taxation by the laws of the State of West Virginia shall not be a Member.

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

Class A. Class A Members shall be all those Owners as defined in Section 1 with the exception of the Declarant. Class A Members shall be entitled to one vote for each Lot in which they hold the interests required for membership by Section 1. When more than one person holds such interest or interests in any Lot all such persons shall be Members, and the vote for such Lot shall be exercised as they among themselves determined, but in no event shall more than one vote be cast with respect to any such Lot.

Class B. Class B Members shall be the Declarant. The Class B Member shall be entitled to three votes for each Lot in which it holds the interest required for membership by Section 1, provided that the Class B membership shall cease and become converted to Class A membership on the happening of any of the following events, whichever occurs earlier:

(a) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or

(b) on April 15, 2001.

From and after the happening of these events, whichever occurs earlier, the Class B Member shall be deemed to be a Class A Member entitled to one vote for each Lot in which it holds the interest required for membership under Section 1.

As additions are made to The Properties as provided in Article II, the Declarant shall retain and have Class B voting rights for all new Lots added to The Properties, with the time period, as set forth in (b) above to be extended as set forth in the Supplementary Declaration of Covenants and Restrictions.

#### ARTICLE VI

##### COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1: Creation of the Lien and Personal Obligation of Assessments: The Declarant, except as hereinafter provided in Section 2, for each Lot owned within The Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in said deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for general capital improvements. The annual and special assessments, together with interest, costs, and reasonable attorney's fees shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the

personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

**Section 2: Purpose of Assessments:** The assessments levied by The Association shall be used exclusively for the purpose of promoting the recreation, health, safety, and welfare of all of residents in The Properties and in particular for the improvement and maintenance of properties, services, and facilities devoted to this purpose and related to the use and enjoyment of the Common 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 3: Basis and Maximum of Annual Assessments:**

Until the year beginning July 1, 1997, the annual assessment shall be ONE HUNDRED DOLLARS (\$100.00) per Lot. From and after July 1, 1997, 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 special assessments, and exclusive of optional user fees and any insurance premiums paid by The Association, shall not exceed \$300.00 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.

**Section 4: Special Assessments for Capital Improvements:**

In addition to the annual assessments authorized by Sections 1 and 3 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 of a described capital improvement upon the Common Properties, including the necessary fixtures and personal property related thereto; PROVIDED THAT any such assessment shall have the assent of 60% of each class 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 (30) 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 \$300.00 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 by the presence at the meeting of Members or of proxies entitled to cast sixty (60%) percent of the votes of The Association, and at any subsequent meeting called due to a lack of a quorum at the first meeting the quorum required for any such action shall be one-half of the required quorum at the first meeting.

**Section 5: Date of Commencement of Annual Assessment:** Due dates: The annual assessments provided for herein shall commence on the date (which shall be the first day of the month) fixed by the Board of Directors of the Association to be the date of commencement.

The first annual assessment shall be made for the balance of the fiscal year and should become due and payable on the day fixed for commencement. The assessments for any year, after the first year, shall become due and payable on the 1st day of July of each year.

The amount of the annual assessment which may be levied for the balance remaining in the first year of assessment shall be an amount which bears the same relationship to the annual assessment provided in Section 3 hereof as the remaining number of full months in that year bears to twelve. The same reduction in the amount of the assessment shall apply to the first assessment levied against any property which is hereafter added to The Properties now subject to assessment at a time other than the beginning of any assessment period.

Section 6: Duties of the Board of Directors: The Board of Directors of the Association shall fix the date of commencement and the amount of the assessment against each Lot for each assessment period of at least thirty (30) days in advance of such date or period and shall, at that time, prepare a roster of The Properties and the assessments applicable thereto which shall be kept in the office of the Association, or at such other place as determined by the Board of Directors, and shall be open to inspection by any Owner.

Written notice of the assessment shall thereupon be sent to every Owner subject thereto.

The Association shall upon demand at any time furnish to any Owner liable for said assessment a certificate in writing signed by an officer of the Association setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 7: Effect of Non-Payment of Assessment: If any assessments hereinbefore or hereafter provided for are not paid on the date when due, then such assessment shall become delinquent and shall, together with such interest thereon and costs of collection thereof, as hereinafter provided, thereupon become a continuing lien on the property which shall bind such property in the hands of the then Owner, his heirs, devisees, personal representative, and assigns. The personal obligation of the then Owner to pay such assessment, however, shall remain his personal obligation for the statutory period and shall not pass to his successors in title unless expressly assumed by them.

If the assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest from the date of delinquency at the maximum lawful rate and the Association may bring an action at law against the Owner personally obligated to pay the same or to foreclose the lien against the property and there shall be added to the amount of such assessment the costs of preparing and filing the Complaint in such action and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and a reasonable attorney fee to be fixed by the Court, if permitted by law, together with the costs of the court action.

Section 8: Subordination of the Lien to Mortgages: The lien of the assessments provided for herein shall to the extent permitted by law be subordinate to the lien of any mortgage or mortgages now or hereafter placed upon the properties subject to assessments; provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of such property pursuant to a decree of foreclosure, or any other proceeding in lieu of foreclosure. Such sale or transfer shall not release such property from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessments.

Section 9: Exempt Property From the Assessment: The following Property subject to this Declaration shall be exempted from the assessments, charges and liens created herein:

CLASS A EXEMPT PROPERTIES:

- (a) All Properties to the extent of any easement or other interests

dedicated and accepted by the local public authority and devoted to public use;

(b) All Common Properties as defined in Article III hereof;

(c) All Properties exempt from taxation by the Laws of the State of West Virginia upon the terms and to the extent of such legal exemption.

CLASS B EXEMPT PROPERTIES:

(a) All unimproved Lots owned by the Declarant within the area covered by this Declaration; provided, that the Class B exemption shall cease as to any individual Lot or Lots owned by the Declarant upon the date that the Declarant shall remove any such Lot or Lots from its inventory of sales Lots and convert the same to purposes other than a Lot for sale within the subdivision exclusive of and not including the execution of a Sales Contract by the Declarant on said Lot or Lots for a proposed sale of said Lot or Lots, and cease and terminate as to all the remaining Lots owned by the Declarant on April 15, 2001.

(b) As the Declarant is to be exempt from assessments as hereinbefore provided for, the Declarant does hereby covenant and agree that until such time as its exemption terminates as hereinbefore provided for, the Declarant shall be and remain responsible for the reasonable maintenance, operation and upkeep of the undedicated portion of the Common Properties upon, and subject to the proviso that such funds and assessments as are collected by the Association while the Declarant is responsible for said maintenance and upkeep, shall be used and provided to the Declarant to aid and defray the Declarant's cost in maintaining and upkeeping common area and facilities. From and after the termination of the Declarant's exemption, the Declarant shall have no responsibility for the maintenance and upkeep of the Common Properties in the subdivision except as a Member of the Association.

Section 10: Common Expense Liability: Common Expense liability as used in this Article VI is not intended to include and shall not include fines and penalties permitted and levied against Owners and Lots for violations of this Declaration, the By-Laws and the Rules and Regulations of the Association; the By-Laws and Rules and Regulations of the Association; Assessments permitted and levied against Owners and Lots due to an Owner's wilful or negligent damage to the Common Area or other Lots as permitted by this Declaration, the By-Laws and Rules and Regulations of the Association, and other similar Assessments permitted and levied against Owners and Lots pursuant to this Declaration, the By-Laws, and the Rules and Regulations of the Association other than the normal Annual Assessments, and/or Special Assessments levied by appropriate affirmative vote, and normal annual Capital Budget and Contributions permitted by this Declaration.

ARTICLE VII

UTILITY AND DRAINAGE EASEMENT RESERVATION

The Declarant reserves unto the Declarant and/or unto Tabler Estates Homeowners Association, Inc., their successors, and/or assigns, the right to erect, install and maintain telephone electric and cable T.V. systems, conduits, equipment, and sewer, gas, water lines, stormwater management and drainage ditches, and similar utility structures, or to grant easements or rights-of-way therefore, with the right of ingress and egress for the purpose of erection, installation or maintenance on, over, or under a strip of land twenty (20) feet wide at any point along the front lines of each Lot within The Properties and a strip of land ten (10) feet wide at any point along the side and rear lines of each Lot within The Properties. This easement shall be in excess of any street or road right-of-way and the ten (10) feet wide strip shall be measured from the edge of any road right-of-way line. In addition thereto easements for stormwater management and drainage facilities, utility easements and flood plain easements as,

shown on the recorded plat are reserved unto the Declarant and/or Tabler Estates Homeowners Association, Inc., and/or their successors or assigns. Within all reserved easements, no structures, planting or other materials shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities or which may change the direction of or the flow of drainage channels in easements or which may obstruct or retard the flow of water through drainage channels in easements. The easement area of each Lot and any improvement in it shall be maintained continuously by the Owner of the Lot, except those improvements for which the Homeowner's Association, a public authority or utility company is responsible. To the extent reasonably possible utilities will be placed in the streets within the Subdivision.

#### ARTICLE VIII

##### ARCHITECTURAL CONTROL

Section 1: Review by Declarant or his Designated Representative: No building, dwelling, outbuilding, shed, barn, fireplace, fence, wall, private driveway or other structure or construction, temporary or permanent, shall be commenced, erected, placed or maintained upon The Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specification showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Declarant or his designated representative. Such plans and specifications shall be sent by registered or certified mail to the office of the Declarant or his designated representative, or delivered in person and a receipt given therefor. In the event said Declarant or his designated representative fail to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted, or in any event, if no suit to enjoin the addition, alteration or change has been commenced prior to the completion thereof, approval will not be required and this Article will be deemed to have been fully complied with.

In new construction, cinder block or concrete block should not be used more than one foot above grade level, and in any event, where exposed, shall be brick and/or stuccoed and painted. Unsightly accessories such as wash lines and bottled gas tanks should be screened and not visible to adjoining property.

The Declarant reserves the absolute right to transfer the authorities and responsibilities herein to the Association and in the event of such transfer the Association shall form an Architectural Committee composed of three (3) or more representatives appointed by the Board of Directors of the Association to carry out the duties herein specified.

#### ARTICLE IX

##### COVENANTS, CONDITIONS, RESTRICTIONS, RIGHTS OF WAY AND EASEMENTS

The land described in Article II, Section 1, is subject to the following covenants, conditions, restrictions, easements and rights of way:

(1) Land shall be for residential purposes only and after sale and transfer by the Declarant, no Lot may be further subdivided. Hobby-type home workshop activities shall be permitted so long as they do not become a nuisance to the neighborhood. No building may be erected, altered, placed, or permitted to remain on any Lot other than one single family dwelling not to exceed two and one-half (2 1/2) stories in height, and a private garage and other outbuildings not to exceed the height of the dwelling.

(2) No residence or any part thereof, nor any outbuilding shall be used

for the conduct of any business, commerce, or profession. No sign, advertisement, or message shall be displayed or published which offers or implies commercial or professional services or might constitute any other kind of business solicitation in or from any residence or Lot. This restriction shall not be construed as prohibiting the Declarant from maintaining a real estate sales office within the subdivision until such time as all of the Lots within the subdivision have been sold.

(3) Any dwelling or residence to be constructed in Tabler Estates Subdivision shall contain at least 1450 square feet of living area, exclusive of any porch, garage or any other unheated area. All dwellings shall face the development roads.

(4) All dwellings shall be completed prior to being occupied and all exteriors shall be completed so as not to detract from the value of other properties. There shall be no temporary siding or sheathing and no cinder block, concrete block, solid concrete, or asbestos shingles used as an exterior surface facing or roof on any residence or outbuilding built on the premises.

(5) No structure or object of a temporary nature, such as, but not limited to, a trailer, tent, shack, basement, garage, barn or other outbuilding shall be used on any Lot at any time as a residence or for storage, or as an auxiliary building, either temporarily or permanently, nor may it remain on any Lot without written consent of the Declarant. No mobile homes shall be permitted to be used as a residence, or stored on any Lot at any time except that this clause shall not be construed to deny storage or maintenance of travel trailers or motor homes, or campers used by the Owner for recreation travel provided that such recreation vehicle shall be stored at the side of or to the rear of rather than in front of the residence.

(6) No commercial vehicle, such as, but not limited to, moving vans, large trucks (meaning more than 3/4 ton pickup trucks), tractors, wreckers, hearses, compressors, concrete mixers, or buses shall be regularly or habitually parked in front of the residential property or upon residential property unless they are garaged and not visible from adjacent properties. Vehicles which are primarily designed as passenger vehicles, such as station wagons, but which display a business sign of reasonable size and appearance shall be excluded from the restriction. No junked or wrecked automobiles or other equipment shall be allowed to be stored on any property at any time unless they are garaged and not visible from adjacent properties. No vehicles or equipment, such as, but not limited to, boats and travel trailers shall be permitted to remain on any Lot unless they display a valid current license or are garaged and not visible from the adjacent properties.

(7) All grounds shall be neatly maintained, shall be kept free of debris and litter, and all open areas shall be kept mowed and all open areas shall be kept mowed or brushhogged to maintain a reasonable and neat appearance. When an Owner becomes in violation of this restriction, upon oral notice by the Association, followed by written notice, or by written notice alone, such Owner shall have no more than seven (7) days from date of notice to correct the violation, or if the Owner cannot be located or if there is no compliance with the notice, the Association shall have the power to enter upon the property and bring it into compliance with this restriction. The cost thereof shall become a lien upon the land and shall become a personal obligation of the Owner.

(8) No sign of any kind shall be displayed to the public view on any Lot except one sign not to exceed one (1) square foot in area designating that resident's name and/or street number of the residence. This shall not be construed as to deny use of a real estate for sale sign of reasonable size and appearance when the Lot is for sale; provided, however, that all "for sale" signs must be located within the bounds of the Lot(s) to be sold and not upon the roadways, rights of way or common properties of the subdivision.

(9) All dwellings shall be completed within nine (9) months after ground has been broken by either the Owner, his agent, servants or employees.

(10) No chickens, poultry, swine, cows, horses or other farm animals shall be kept, housed, or maintained on any Lot. Domesticated dogs, cats and other house pets are permitted, provided they are not raised, bred or kept for commercial purposes. All pets kept on any Lot shall be controlled and maintained so that they will not constitute a hazard or nuisance to persons or property elsewhere in The Properties.

(11) No noxious or offensive activity shall be carried on upon any Lot nor shall anything be done or placed thereon which shall become a nuisance to the neighborhood.

(12) No fence or wall shall exceed 48 inches in height or interfere with the underground or surface drainage structures, ditches or pipes. This height restriction shall not apply to enclosures of patios, pools, athletic or recreational facilities, or open garden courts and shall not apply to retaining walls required by topography. Barbed wire fencing is prohibited.

(13) All electrical telephone and other wires shall be placed underground from the underground source supply. Storage or tanks containing residential heating fuels, or other fuels of any type shall be either inside the structure, under the surface of the ground or screened from the view of the roadway and the adjacent Lots.

(14) All storage buildings shall be constructed of the same exterior materials as the dwelling on the same Lot and shall not detract from the value of the other properties.

(15) Each Lot is subject to the easements and rights of way and setbacks as shown on the plat plan. No buildings shall be erected on any Lot nearer than twenty (20) feet to the front property lines thereof, nor nearer than ten (10) feet to the side or rear property lines. These setbacks shall apply also to the placement of television satellite dishes, antennas, swimming pools and pet houses.

(16) Enforcement shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant either to restrain violation or to recover damages.

(17) Invalidity of any one of these covenants, or any part thereof, by court order shall in no way affect any of these other provisions which will remain in full force and effect.

(18) These covenants, restrictions and provisions shall run with and bind all of the lands included in this subdivision (The Properties) and shall inure to the benefit of and be enforceable by and binding upon the parties to each and every transaction involving any portion of this subdivision. Failure by any party in interest to enforce any covenants, restrictions and conditions or provisions herein contained shall in no event be deemed a waiver of the right to do so thereafter as to the same breach or as to one occurring prior or subsequent thereto.

(19) Final grading during and after construction shall be done in such a manner as not to divert the natural flow of water as existed prior to construction or excavation.

(20) Wooded areas outside of the residence boundary will not be disturbed, nor will any trees be removed or cut without the consent of the Declarant or his designated representative. All residence, outbuildings, sewer and utility lines shall be constructed and installed in such a manner as to minimize damage to trees, tree roots, and other foliage, and to minimize erosion.

(21) Employees of the Declarant or of the Association shall have the right to enter upon any Lot during reasonable hours on any weekday (other than a holiday) in order to spray to take other measures to control obnoxious weed growth or insects.

(22) The Board of Directors of the Association may establish reasonable rules and regulations governing: camping; camp fires; the collection of trash, garbage, litter or brush; and any other matters reasonably within the scope of this Declaration.

(23) Each Lot Owner shall be responsible for the excavation of a proper driveway apron, including culvert if necessary, prior to any other construction and shall assume any and all responsibility for any road damage which might occur or be caused by construction equipment or building supply vehicles.

(24) The Declarants, their heirs, personal representatives and assigns, reserve the right to modify the plans of said plat, to change the size and shape of blocks, sections and Lots, and the direction and location of streets and other ways shown thereon, or of annulling the same; provided that no change shall be made which shall alter the shape or size of any Lot which has been sold, or the direction of any street or way upon which it abuts so as to cut such Lot off from convenient access to public highways, without the consent of the Owner thereof.

#### ARTICLE X

##### BOUNDARY LINE ADJUSTMENTS

Lots in this Subdivision shall not be further subdivided in any manner except to allow for nominal boundary line adjustments.

#### ARTICLE XI

##### AVAILABLE PUBLIC UTILITIES

All Lots within The Properties shall be connected to and use approved water and septic systems approved by the appropriate Health Departments.

#### ARTICLE XII

##### RIGHT OF WAY PROHIBITION

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, except that portion thereof lying within the streets shown upon any recorded plats of The Properties, and the Declarant specifically reserves the right to sell any portion of the real estate within The Properties as a right-of-way to any property outside of The Properties provided that the part to be used as a right-of-way is not within thirty (30) feet of the Lot line of any Lot previously sold by the Declarant without the express written consent of the Owner of such previously sold Lot.

#### ARTICLE XIII

##### GENERAL PROVISIONS

Section 1: Duration: The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of fifteen (15) 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 has been recorded, agreeing to change the

covenants and restriction in whole or in part. Provided, however, that no such agreement to change shall be effective unless made and recorded three (3) years 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 action taken. And further provided, however, that none of the articles herein requiring connection to and use of any water system or any sewage and collection system shall be abrogated or annulled without the prior written consent of the West Virginia Health Department or such other State Department or agency as shall at that time have the jurisdiction to waive such restrictive covenants.

**Section 2: Nothing Construed to Prohibit Building Homes, etc.:** Nothing contained in this Declaration of Covenants and Restrictions shall be construed to prohibit the Declarant 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 Declarant from erecting, constructing, or building any streets or other common amenities within the subdivision. In addition, the Declarant specifically reserves the right to and shall be permitted to operate a subdivision development and sales office out of a model homes which may be located on any Lot within the subdivision.

**Section 3: Enforcement:** Enforcement of these covenants and restrictions shall be and by any proceedings at law and in equity against any person or persons violating or attempting to violate any covenant or restrictions, either to restrain the violation and/or recover damages, and against the land to enforce any lien created by these covenants; and failure by the Declarant, Association or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

**Section 4: Amendment:** Prior to the conveyance of the first Lot, Declarant may unilaterally amend this Declaration. After such conveyance, the Declarant may amend this Declaration so long as it still owns property described in Article II for development as part of The Properties, and so long as the amendment has no material adverse effect upon any right of any Owner. Any amendment (1) necessary to bring any provision hereof into compliance with any applicable governmental statute, rule or regulation or judicial determination which shall be in conflict therewith; (2) necessary to enable any reputable title insurance company to issue title insurance coverage with respect to any portion of the Commercial Property subject to the Commercial Declaration; (3) required by any state, federal or county agency; (4) required by an institutional or governmental lender or purchaser of mortgage loans, including, for example and not in limitation, the Federal National Mortgage Association or Federal Home Loan Corporation, to enable such lender or purchaser to make or purchase mortgage loans or any portion of The Properties; or (5) necessary to enable any governmental agency or reputable private insurance company or institutional lender to insure mortgage loans on any portion of The Properties shall not be deemed material. In addition, modification or amendments as permitted under Articles II shall not be deemed material. Thereafter and otherwise, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Members representing seventy-five (75%) percent of the total votes of the Association, including seventy-five (75%) percent of the votes held by Members other than the Declarant. However, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. Any amendment to be effective must be recorded in the public records of Berkeley County, West Virginia.

If an Owner consents to any amendment to this Declaration or the By-Laws, it will be conclusively presumed that such Owner has the authority so to consent and no contrary provision in any mortgage or contract between the Owner and a third party will affect the validity of such amendment.

No amendment may be made while the Declarant is a Class "B" Member without

the written consent of Declarant or the assignees of such right or privilege. No amendment may remove, revoke, or modify any right or privilege of Declarant without the written consent of Declarant or the assignee of such right or privilege. No amendment may impair the validity or priority of the lien of any Mortgage held by a Mortgagee or impair the rights granted to the Mortgagees herein without the prior written consent of such Mortgagees.

**Section 5: Indemnification:** The Association shall indemnify every officer, director, and committee Member against any and all expenses, including counsel fees, reasonably incurred by or imposed upon such officer, director, or committee Member in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer, director, or committee Member. The officers, directors, and committee Members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual wilful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association), and the Association shall indemnify and forever hold each such officer and director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of other rights to which any officer, director, or committee Member, or former officer, director, or committee Member may be entitled. The Association shall, as a common expense and if such insurance is reasonably available, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation.

**Section 6: Severability:** Invalidity of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

**Section 7: Right of Entry:** The Association shall have the right, but not the obligation, to enter into any Lot for emergency, security, and safety, which right may be exercised by the Association's Board of Directors, officers, agents, employees, managers, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall include the right of the Association to enter a Lot to cure any condition which may increase the possibility of fire or other hazard in the event an Owner fails or refuses to cure the condition upon request by the Board.

**Section 8: Litigation:** No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote of seventy-five (75%) percent of the Members. This Section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens), (b) the imposition and collection of assessments as provided in Article VI hereof, (c) proceedings involving challenges to ad valorem taxation, or (d) counterclaims brought by the Association in proceedings instituted against it. This Section shall not be amended unless such amendment is made by the Declarant or is approved by the percentage votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

WITNESS the following signature and seal:

JENI COMPANY, A VIRGINIA CORPORATION

By [Signature] (SEAL)

-15-



*Returned to Deane Brown  
3-29-99*

Sect. 2

THIS SUPPLEMENTARY DECLARATION OF CONDITIONS, COVENANTS, RESTRICTIONS, AND EASEMENTS, made this 25<sup>th</sup> day of JANUARY, 1999, by JENI COMPANY, A VIRGINIA CORPORATION, Authorized to do business in the State of West Virginia, hereinafter called the "DECLARANT".

W I T N E S S E T H:

PROLOGUE:

WHEREAS, the Declarant executed and placed on record a Declaration of Conditions, Covenants, Restrictions and Easements (hereinafter the "DECLARATION") dated April 28, 1995, which instrument is recorded in the office of the Clerk of the Circuit Court of Berkeley County, West Virginia in Deed Book 546, at Page 571; and,

WHEREAS, the above referenced Declaration placed or created certain conditions, covenants, restrictions and easements with regard to Lots 1 through 55 of the Tabler Estates Subdivision; and,

WHEREAS, Article I, Section 3, of the Declaration provides for additional land to be annexed to the Tabler Estates Subdivision; and,

WHEREAS, the Declarant desires to annex additional land, as hereinbefore provided, to the Tabler Estates Subdivision and extend the scheme of the conditions, covenants, restrictions and easements of the Declaration to such annexed property.

NOW THEREFORE WITNESSETH: That the Declarant does annex as a part of the Tabler Estates Subdivision, all of those certain lots numbered 56 through 105; and all other lands shown in connection therewith, as set forth on that certain plat of subdivision dated January 19, 1999, by P. Duane Brown, L.S., which plat of subdivision is recorded in Plat Cabinet 7, at Slide No. 196, and designated Tabler Estates Subdivision, Section Two; and,

The Declarant does further incorporate herein, and does hereby impose, upon Lots 56 through 105 Tabler Estates Subdivision Section Two, any and all provisions of the Declaration as if the same were set forth in full herein; and,

The Declarant does further declare that the existing Tabler Estates Subdivision Homeowners Association, with its rights, duties, obligations and responsibilities under the Declaration, shall also have the same rights, duties, obligations and responsibilities in connection with the land annexed herein; and

The Declarant does further declare that no other change or modification is made herein to the Declaration as filed.

WITNESS the following signature and seal:

JENI COMPANY, a Virginia Corporation

By  (SEAL)  
Billy J. Tisinger, Vice President

STATE OF VIRGINIA, AT LARGE,

CITY/COUNTY OF Winchester, To-wit:

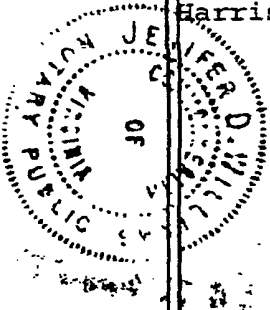
The foregoing instrument was acknowledged before me this  
25<sup>th</sup> day of January, 1998<sup>9</sup>, by Billy J.  
Tisinger, as Vice President of Jeni Company, a Virginia  
Corporation, on behalf of said Corporation.

My commission expires 12/31/2000.

Jennifer Williams  
Notary Public

(NOTARIAL SEAL)

This document was prepared by Billy J. Tisinger, Esq.,  
Harrison & Johnston, P. O. Box 809, Winchester, Virginia 22604.



BERKELEY COUNTY, WV  
FILED

March 29, 1999 11:25:06

JOHN W. SMALL JR.  
COUNTY CLERK

TRANSACTION NO: 1999006459

BOOK OF DEEDS

Book: 00615 Page: 00519



HARRISON & JOHNSTON  
ATTORNEYS AT LAW  
WINCHESTER, VIRGINIA

**SUPPLEMENTAL DECLARATION OF COVENANTS AND RESTRICTIONS FOR  
TABLER ESTATES SUBDIVISION**

THIS SUPPLEMENTAL DECLARATION OF COVENANTS AND RESTRICTIONS  
FOR TABLER ESTATES SUBDIVISION made this 10<sup>th</sup> day of September 2004, by COGAR  
& DULYEA, INC., a West Virginia corporation, hereinafter called "Successor Declarant".

WITNESS:

WHEREAS, a prior Successor Declarant, Jeni Company, executed and placed on record a Declaration of Protective Covenants, Conditions, Restrictions, Easements for Tabler Estates Subdivision, dated April 28, 1995, recorded in the Office of the Clerk of the County Commission of Berkeley County, West Virginia, in Deed Book 546, at Page 571, the Successor Declarant subjected certain real property known as Lot Nos. 1 thru 55, Tabler Estates Subdivision, Arden District, Berkeley County, West Virginia, to all the rights, reservations, restrictions, covenants, conditions, easements, rights of way, liens, charges and assessments more fully set forth in said Declaration of Conditions, Covenants, Restrictions and Easements for Tabler Estates Subdivision; and

WHEREAS, said Declaration of Conditions, Covenants, Restrictions and Easements for Tabler Estates Subdivision provided in said Declaration that additional lands could be annexed by the Successor Declarant to such subdivision; and

WHEREAS, the Successor Declarant desires at this time to annex lands to the Declaration of Conditions, Covenants, Restrictions and Easements for Tabler Estates Subdivision, recorded in Deed Book 546, at Page 573, and to extend the scheme of the Covenants and Restrictions for Tabler Estates Subdivision to said additional property hereafter described, and

WHEREAS, by a Supplemental Declaration of Conditions, Covenants, Restrictions and Easements, dated the 25<sup>th</sup> day of January 1999, and recorded in the Office of the Clerk of the County Commission of Berkeley County, West Virginia, in Deed Book 615, at page 519, the Successor Declarant subjected certain real property described therein as shown on that plat of record in the aforesaid Clerk's office in Plat Cabinet 7, Slide 196, as Lot Nos. 56 through 105, Section Two, Tabler Estates Subdivision to all the rights, reservations, restrictions, covenants, conditions, easements, rights-of-way, liens, charges and assessments more fully set forth in the aforesaid Declaration of Covenants, Conditions, Restrictions and Easements

dated April 28, 1995, of record in the aforesaid Clerk's Office in Deed Book 546, at page 573, and

NOW, THEREFORE, the Successor Declarant declares that all of the real properties known as Lots 106 through 146, Section Three, Tabler Estates Subdivision, as more fully shown upon a plat prepared by Marsh & Lecce Land Surveyors, dated July 22, 2002, and recorded in the Office of the Clerk of the County Commission of Berkeley County, West Virginia, in Plat Cabinet \_\_\_\_\_ at Slide \_\_\_\_\_, and is and shall be held, transferred, sold, conveyed, and occupied subject to and together with the covenants, restrictions, easements, charges, assessments, and liens (sometimes referred to as "Covenants and Restrictions") set forth in that certain Declaration of Conditions, Covenants, Restrictions and Easements for Tabler Estates Subdivision, recorded in the Office of the Clerk of the County Commission of Berkeley County, West Virginia, in Deed Book 546, at Page 571, and heretofore executed by Cogar & Dulyea, Inc. All said easements, reservations, restrictions, covenants, conditions, rights, obligations, liens and assessments set forth in said Deed of Declaration of Conditions, Covenants, Restrictions and Easements for Tabler Estates Subdivision, being hereby incorporated herein by reference as if the same were set forth herein verbatim, and is further subject to and together with those Articles of Incorporation and related By-Laws as more fully set forth in the aforesaid Clerk's Office, in Deed Book 546, at page 571.

The Successor Declarant shall be exempt from Homeowners Association dues until five (5) years from the filing of this declaration in Berkeley County, West Virginia. All lots in Section 3 shall be Class B members to the Homeowners Association until September 2007. Each lot sold out shall become a Class A member as set forth in Deed Book 546, at page 571.

FURTHER, the Successor Declarant does hereby dedicate the common properties to the Homeowners Association for the common use and enjoyment of the property owners as reflected on the plats and in the covenants and restrictions and all supplemental covenants and restrictions, including this supplemental of the properties subject to the provisions herein and as set forth in Article IV, Section 2, of the original covenants and restrictions.

It is not the intention of, and it is hereby declared that nothing set forth in this Supplemental Declaration and Restrictions for Tabler Estates Subdivision or nothing set forth in the original Deed of Covenants and Restrictions shall be construed to prevent or prohibit the Successor Declarant or any other builder from building residences on any one or more lots for purposes of sale, or to prohibit or prevent the Successor Declarant from installing roads or other common amenities within the said subdivision.

The above described easements, reservations, restrictions, covenants, conditions, rights, obligations, liens, and assessments are for the purposes of protecting the values and amenities in Tabler Estates Subdivision, and shall run with the real property and be binding on all parties having any rights, title, or interest in the above described property or any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of owner thereof.

WITNESS the following signatures and seals.

Cogar & Dulyea, Inc.

By: [Signature]

Its: Sec

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

The foregoing instrument was acknowledged before me this 10 day of September 2004, by Dan Dulyea as \_\_\_\_\_, who executes this instrument on behalf of Cogar & Dulyea, Inc., a West Virginia corporation.

[Signature]

Notary Public

[AFFIX NOTARIAL SEAL]

My Commission Expires: July 23, 2009



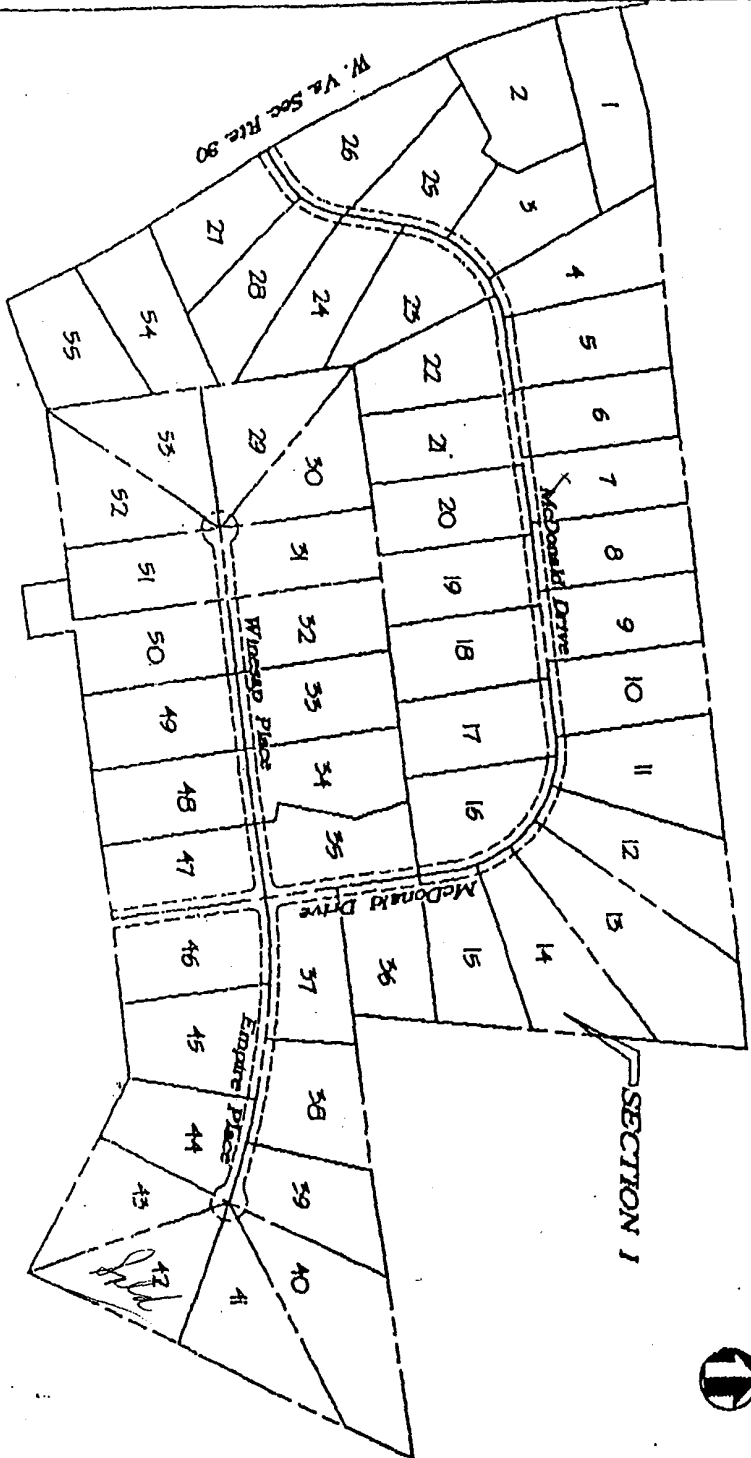
THIS DOCUMENT PREPARED BY:

David D. Pill, Esq.  
PILL & PILL  
Attorneys-at-Law  
P. O. Box 440  
85 Aikens Center  
Martinsburg WV 25401

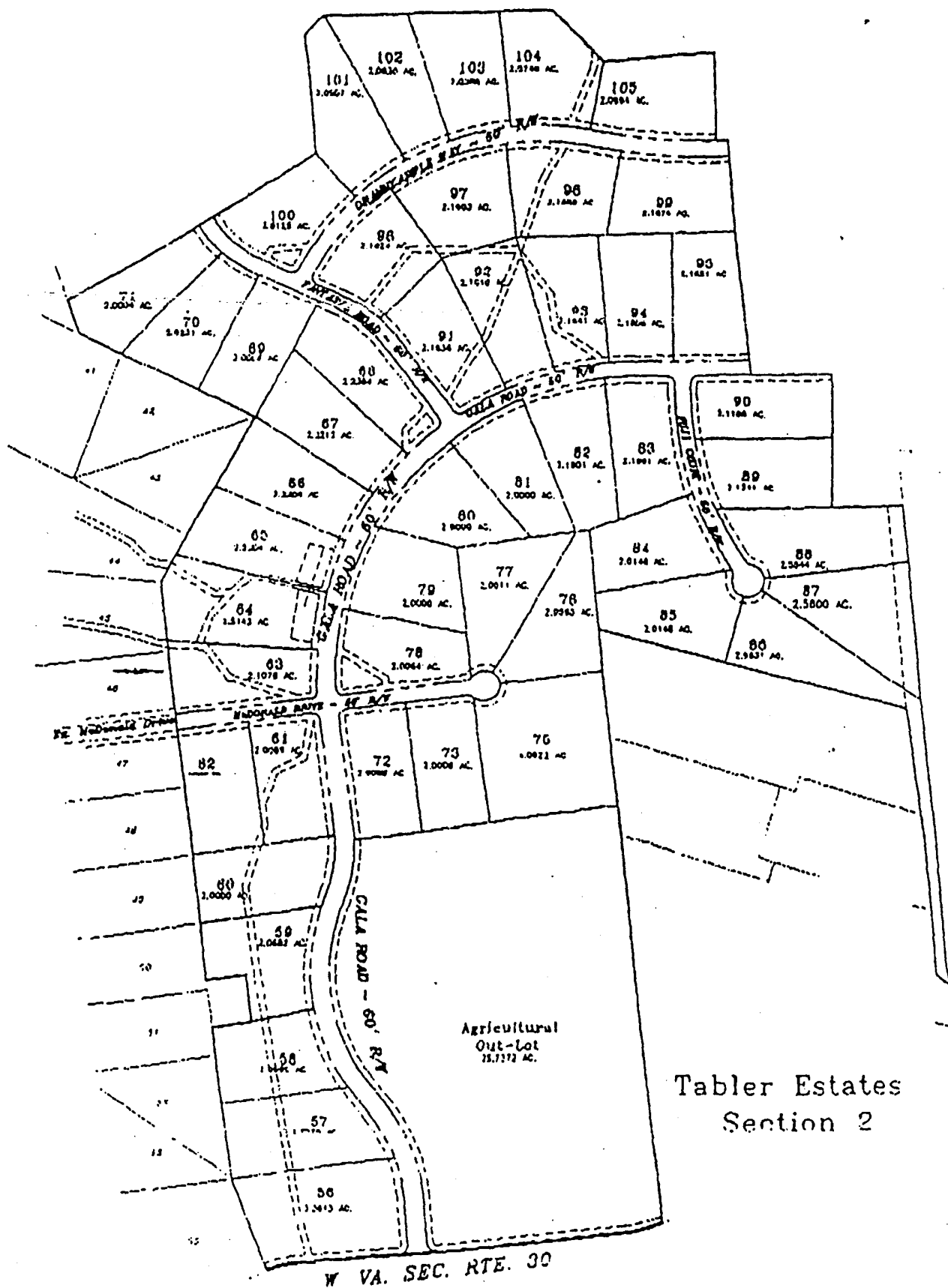
AFTER RECORDING, PLEASE RETURN TO SAME  
File #25171

dsb/TABLER ESTATES Subdivision/Supplemental Covenants & Restrictions

# TABLE TESTS



AREA SUMMARY			
LOT	ACREAGE	LOT	ACREAGE
1	2.1757	29	2.0055
2	2.2581	30	2.0055
3	2.0975	31	2.0055
4	2.1966	32	2.0055
5	2.1966	33	2.0055
6	2.0065	34	2.0055
7	2.0065	35	2.0055
8	2.0065	36	2.0128
9	2.0065	37	2.0551
10	2.0065	38	2.0325
11	2.4801	39	2.0418
12	2.6524	40	3.3436
13	3.8365	41	2.4794
14	2.5093	42	2.2754
15	2.1197	43	2.0000
16	2.1125	44	2.0000
17	2.0038	45	2.2255
18	2.0055	46	2.2254
19	2.0055	47	2.0055
20	2.0055	48	2.0055
21	2.0055	49	2.0055
22	2.0242	50	2.4350
23	2.0000	51	2.0055
24	2.0000	52	2.0055
25	2.0004	53	2.0055
26	2.3302	54	2.0000
27	2.0000	55	2.0000



Tabler Estates  
Section 2

SCALE: 1" = 100'

Table with 2 columns: Parcel Number, Area (Acres)

Table with 2 columns: Parcel Number, Area (Acres)

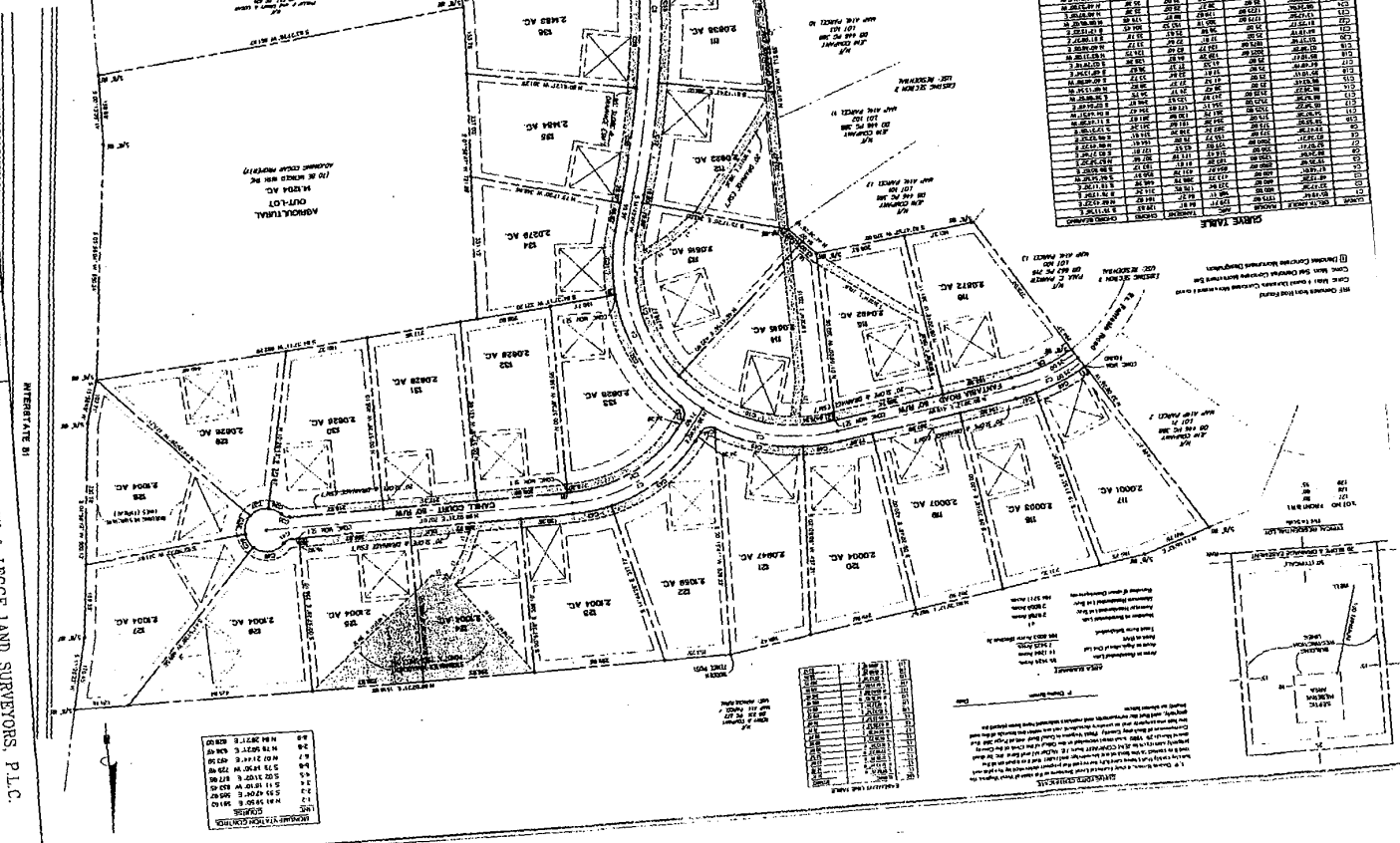
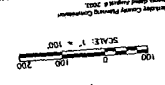
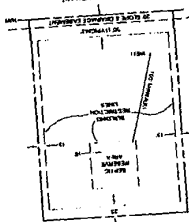


Table with 2 columns: Parcel Number, Area (Acres)

Table with 2 columns: Parcel Number, Area (Acres)

Table with 2 columns: Parcel Number, Area (Acres)

PRELIMINARY PLAT  
TABLER ESTATES - SECTION 3  
RESIDENTIAL LOT LAYOUT

MARSH & LEGGE LAND SURVEYORS,  
660 NORTH JORDON STREET - SUITE 200, VIRGINIA BEACH, VA 23462  
PHONE (800) 887-0888 - FAX (404) 887-0889 - EMAIL: info@mls.com

PRELIMINARY PLAT  
TABLER ESTATES - SECTION 3  
RESIDENTIAL LOT LAYOUT

MARSH & LEGGE LAND SURVEYORS, P.L.C.