

DECLARATION OF
ROAD MAINTENANCE
COVENANTS AND RESTRICTIONS

THIS DECLARATION, made this 22 day of October 1981, by SHENDO LIMITED PARTNER-SHIP, hereinafter called the Developer.

W I T N E S S E T H :

WHEREAS, Developer is the owner of certain real estate described in Article II of this Declaration, and desires to create thereon a subdivision to be known as the Patrick Henry Estates Subdivision with permanent recreational areas and other common facilities for the benefit of said subdivision; and,

WHEREAS, Developer desires to provide for the preservation of the values and amenities in said subdivision and for the maintenance of said recreational areas, and streets, and other common facilities therein; and to this end, desires to subject the real estate described in Article II together with such additions as may be hereafter made thereto to the covenants, restrictions, easements, charges, and liens hereinafter set forth each and all of which is and are for the benefit of said property and each owner thereof; and,

WHEREAS, Developer has deemed it desirable for the efficient preservation of the values and amenities in said subdivision to create an agency to which should be delegated and assigned the powers of maintaining and administering the common properties and facilities and administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created; and,

WHEREAS, Developer has caused to be incorporated under the laws of the State of West Virginia, as a nonprofit corporation, the Patrick Henry Estates Home Owners Association for the purpose of exercising the functions aforesaid.

NOW THEREFORE, the Developer declares the real estate described in Article II, and such additions thereto as may hereinafter be made pursuant to Article II hereof, is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens (sometimes referred to as "covenants and restrictions") hereinafter set forth.

ARTICLE I

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 the Patrick Henry Estates Home-owners Association, a nonprofit association organized and existing under the laws of the State of West Virginia.

(b) "The Properties" shall mean and refer to all such existing properties, and additions thereto, as are subject to this Declaration or any Supplemental Declaration under the provisions of Article II, hereof.

(c) "Common Properties" shall mean and refer to streets, lighting systems, as well as parks, playgrounds, swimming pools, golf courses, commons, footways, including buildings, structures, personal properties incident thereto, and any other properties owned and maintained by the Association for common benefit and enjoyment of the members.

(d) "Lot" shall mean and refer to any plot of land shown on any recorded subdivision map of the Properties.

(e) "Owner" shall mean any person, combination of persons, or entity holding title of a lot with the Patrick Henry Estates Subdivision. If several persons or entities hold partial interests in a single lot, they shall together comprise one "owner".

(f) "Member", as provided in Article II herein, shall mean and refer to every person or entity who is a record owner of a fee or an undivided fee interest in any lot in the Patrick Henry Estates Subdivision governed by the provisions of this document shall be a member of the Association provided that any such person or entity which holds such interest merely as security for the performance of an obligation shall not be a member. Guests and tenants of such lot owners who temporarily reside on the premises shall also be members of the Association.

ARTICLE II

Property Subject to this Declaration Additions Thereto

Section 1. Existing property. The real estate which is, and shall be, held, transferred, sold, conveyed and occupied subject to this Declaration is located in Charles Town District, Jefferson County, West Virginia, and is more particularly described as follows:

BEING all the real estate within Section A of The Patrick Henry Estates Subdivision, a plat of which said subdivision is of record in the office of the Clerk of the County commission of Jefferson County, West Virginia, in Plat Book _____, Page _____, to which said plat of record reference is here made and had for a more particular description of said real estate.

and of which real property shall hereinafter be referred to as "Existing Property".

Section 2. Additions to Existing Property. Additional lands may become subject to this Declaration in the following manner:

(a) Additions. Upon approval in writing of the Association pursuant to a vote of its members as provided in its Articles of Incorporation, the owner of any property who desires to add it to the scheme of this Declaration and to subject it to the jurisdiction of the Association, may file 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 to such property, provided however, the developer may add any property to the scheme of this Declaration without a vote of the members.

Such Supplementary Declarations may contain such complementary 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.

In no event, however, shall such Supplementary Declaration revoke, modify, or add to the covenants established by this Declaration governing the Existing Property described in Section 1, Article II.

ARTICLE III

Membership

Section 1. Every person or entity who is a record owner of a fee or an undivided fee interest in any lot in Patrick Henry Estates Subdivision shall be a member of the Association provided that any such person or entity which holds such interest merely as security for the performance of an obligation shall not be a member. Guests and tenants of such lot owners who temporarily reside on the premises shall also be members of the Association.

Section 2. Every person or entity who is the lessee of a lot used for commercial purposes shall be a member of the Association provided that such leasehold interest was established pursuant to a written lease executed by the lessee and the owner.

ARTICLE IV

Assessments

Section 1. Each owner or lessee of any lot, by acceptance of a deed or lease therefor, shall be deemed to covenant and agree to pay to the Association, in accordance with its By-laws, such initiation fees, yearly and special assessments the Association may impose on its members.

Section 2. The initiation fees, yearly and special assessments so imposed, together with such interest thereon and costs of collection thereof as hereinafter provided, shall be the personal obligation of the person who was the owner or lessee of such property at the time when the initiation fee and assessment fell due.

Section 3. The Developer shall be responsible for the original construction of the streets and common areas in the subdivision. Upon completion of the streets and common areas, the same shall be dedicated and conveyed to the Association. It shall be the further responsibility of the Developer to maintain the streets, and all other common properties, as herein defined, until such time as these amenities are dedicated and deeded to the Association.

Upon dedication of the common properties, as herein defined, to the Association, the initiation fees and assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety, and welfare of the residents and other persons owning and using lots in Patrick Henry Estates Subdivision and in particular for the improvement and maintenance of properties, services and facilities devoted to this purpose. Pursuant to the foregoing, the Association may use and employ initiation fees and assessments to provide for repair, improvement and maintenance of the common properties, payment of taxes and insurance thereon, repaving, improvement, repair and maintenance of streets, alleys, and common ways and for construction, reconstruction, repair, and maintenance and improvement of storm sewers. Any enumeration of specific uses herein, however, shall not be construed to limit the Association to the use of initiation fees and assessments for purposes similar to the foregoing.

Section 4. Beginning January 1, 1981, the yearly assessment shall be ~~\$55.00~~ ^{75.00} per lot for Class A members, as hereinafter defined. From and after January 1, 1981, the yearly assessment may be increased by vote of the members, as hereinafter provided for the next succeeding three years and at the end of each such period of three years for each succeeding period of three years. me
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The Board of Directors of the Association may be after consideration of current maintenance costs and future needs of the Association, fix the actual assessment for any year at a lesser amount.

Section 5. Subject to the limitations of Section 4, hereof, and for the periods herein specified, the Association may change the amount and basis of the assessments fixed by Section 4, hereof prospectively for any such period provided that any such

change shall have the assent of two-thirds (2/3) of the votes of the membership 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.

Section 6. The quorum required for any action authorized under Section 5, hereof shall be as follows:

At the first meeting called, as provided in Section 5, hereof, the presence at the meeting of members, or of proxies, entitled to cast sixty (60) percent of all the votes of the memberships shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the notice requirements set forth in Section 5, 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.

Section 7. The yearly assessment provided for herein shall become due and payable, in monthly installments, on the first day of each month in which membership is obtained, as defined herein.

Section 8. The Board of Directors of the Association shall provide for written notice of the initiation fee and assessment to be sent to every owner subject thereof. The Association shall upon demand at any time furnish to any owner liable for said initiation fee and assessment a certificate in writing signed by an officer of the Association setting forth whether said initiation fee or assessment has been paid. Such certificate shall be paid conclusive evidence of payment of any initiation fee or assessment therein stated to be paid.

Section 9. If the initiation fees or assessments are not paid within thirty (30) days after the delinquency date, the initiation fee and assessment shall bear interest from the date of delinquency at the rate of six percent (6%) per annum, and the Association may bring an action at law against the owner personally obligated to pay the same and there shall be added to the amount of such initiation fee or 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 initiation fee or assessment as above provided and a reasonable attorney's fee to be fixed by the court together with the costs of the action.

Section 10. The membership privileges of any person may be suspended by action of the Directors during the period when the initiation fees or assessments remain unpaid, but, upon payment of such initiation fees or assessments, his privileges shall be automatically restored. If the Directors have adopted and published rules and regulations governing the use of the common lands and facilities, and the personal conduct of any person thereon, they may, in their discretion, suspend the privileges of any person for a period not to exceed thirty (30) days.

ARTICLE V

Rate of Assessments and Voting Rights

Section 1. The Association shall have two classes of voting memberships:

Class A: Class A members shall be all those owners of lots, excluding the Developer. Class A members shall have one vote for each such lot and shall be subject to yearly assessments in proportion to other Class A members for each such lot.

Class B: Class B members shall be the Developer, his heirs, and assigns. The Class B member shall have three (3) votes for each lot, of whatever nature, which he owns, provided such lots have not been leased to a Class A member. The Class B member shall not be subject to special or yearly assessments on any such lot.

Class B members shall cease to be members at such time as eighty percent (80%) of the lots of the Subdivision have been acquired as provided herein by Class A members.

ARTICLE VI

Covenants and Restrictions

Section 1. The residential Class A members, as herein defined, shall be subject to the following covenants and restrictions:

1. Lavatories and/or toilets shall be built indoors and connected with outside septic tank, cesspool, or public sewer system approved by the West Virginia State Department of Health.

2. No manufacturing or commercial enterprise, or enterprises of any kind for profit shall be maintained upon, in front of, on in connection with the land hereby conveyed, nor shall said lot in any way be used for other than strictly residential purposes.

3. No horse, cow, goat, hog or similar animal nor chickens or fowl of any kind shall be kept or maintained on said property or any part thereof. Owners of dogs shall not permit the same to run at large.

4. No building of any kind whatsoever shall be erected or maintained on said lot except a private dwelling house with attached private garage or car port. A structure of an area of 10 feet or less shall not be construed as a building for the purposes hereof.

5. No dwelling house, or any part thereof, except the steps, piazza, or bay window, and any other usual projections thereof shall be erected on any lot with fifteen feet of the front line of each lot.

6. No dwelling house costing less than \$15,000.00 shall be permitted on said lot.

7. No house trailers or mobile homes shall be placed on said land, either permanently or temporarily; nor shall partially completed structures, i.e., basements, etc. to be used as a residence thereon.

8. No motor vehicles shall be parked on the streets, alleys, or right of ways of the subdivision.

9. No fences or walls shall be constructed on said premises for the purpose of dividing or enclosing said real estate from adjoining or abutting lots in said subdivision.

10. No occupancy until dwelling house is connected to public sewer and public water system.

11. Said lot shall not be further subdivided.

12. Only one dwelling house shall be placed on a lot but the construction of one dwelling house on more than one lot is not prohibited.

13. No commercial signs of any character shall be established or erected on the premises, except that the Developer may use signs to promote the sale of the improved or unimproved lots to be subdivided and sold within Patrick Henry Estates.

14. No construction equipment nor junk or abandoned motor vehicles shall be parked, placed or maintained on any lot. All lots shall be kept free of garbage and trash and the vegetation thereon shall be neatly trimmed and maintained so as not to be a nuisance.

These covenants, restrictions and conditions shall not apply to any other lands adjacent to or contiguous with Patrick Henry Estates, Section A, whether platted or not.

The Patrick Henry Estates, which is being developed in stages may be enlarged or diminished, and nothing contained herein shall operate to impose and apply the

the restrictive covenants and conditions hereinabove set forth upon those areas within the Patrick Henry Estates which have not been developed prior to the date hereof and for which no plat has been made part of the public record prior to the date hereof. The Developers reserve and retain the right to provide within the Patrick Henry Estates areas for commercial, educational, civic, social, charitable, medical and other purposes conducive to the convenience, health, and general welfare of the lot owners within the said subdivision, provided that such intended purposes are consistent with prevailing, local, state and federal government regulations. The Developers also reserve and retain the right to change and modify restrictive covenants and conditions on any lot or lots shown on any existing or further plat of the said Patrick Henry Estates.

ARTICLE VII

Property Rights and Rights Of Enjoyment of Common Property

Section 1. Each member, unless his membership privileges are temporarily suspended pursuant to the preceding paragraphs, shall be entitled to the use and enjoyment of the common properties and facilities of the Association.

Section 2. Any member may delegate his or her privileges of enjoyment in the common properties and facilities to another person, either guest or tenant, who temporarily resides on the property.

Section 3. The Developer may retain the legal title to the common properties until such time as he has completed improvements thereon but, notwithstanding any provision herein, the Developer hereby covenants, for himself, his heirs and assigns that he shall convey the common properties to the Association, free and clear of all liens and encumbrances, but subject to easements and rights of way, not later than January 1, 1987.

ARTICLE VIII

General Provisions

Section 1. Duration. The covenants and restrictions of this Declaration shall run with and bind the common properties, and shall inure to the benefit of and be enforceable by the Association, or any member thereof subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of twenty (20) years from the date 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 two-thirds (2/3) of the membership 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 three (3) years in advance of the effective date of such change, and unless written notice of the proposed agreement is sent to every member at least ninety (90) days in advance of any action taken.

Section 2. Notices. Any notice required to be sent to any member under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as a member on the records of the Association at the time of such mailing.

Section 3. Enforcement. Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any member violating or attempting to violate any covenant or restriction either to restrain violation or to recover damages, and against the real estate or personal property to enforce any lien created by these covenants and failure by the Association or any member 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. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

DECLARATION OF
COVENANTS, RESTRICTIONS AND ROAD MAINTENANCE ARRANGEMENTS

ARTICLE IX
Road Maintenance Arrangements

Section 1. Road maintenance shall include:

- * Drain water away from roads into appropriate drainage facilities.
- * Remove snow and ice from roads within 24 hours after it appears in order to avoid hazards to travel and danger from freezing and thawing.
- * Maintain smooth roads and shoulders free from potholes and erosion channels.
- * Maintain roads and shoulders so that surface material and texture are uniform.
- * Maintain all drainage systems to insure proper function and to avoid erosion and sedimentation problems. This may include routine cleaning of culverts and other drainage facilities that become clogged with sediment or debris.
- * Stabilize exposed ditches, banks and fill areas that were formed when the roads were constructed. Stabilization should be accomplished with vegetative cover or other suitable material.
- * Trim vegetative cover within road, rights-of-way so that growth does not interfere with visibility or the intended flow of storm water.
- * Maintain street signs.

Section 2. All roads, rights-of-way, and associated drainage easements within Patrick Henry Estates, Section A, shall be maintained according to the provisions of the ARTICLE.

Section 3. The Board of Directors of the Patrick Henry Estates Property Owners Association (hereinafter referred to as the Board) shall be responsible for managing road maintenance activities as described in this ARTICLE.

Section 4. The Board shall, within sixty (60) days following the recording of the Patrick Henry Estates, Section A, final plat in the Jefferson County Court House, open a road maintenance checking account with a bank in Jefferson County. The checking account shall be in the name of Patrick Henry Estates Road Maintenance Fund.

Section 5. Funds to be deposited in the Road Maintenance Fund checking account shall be collected by the Board as part of the yearly assessment for each lot in Patrick Henry Estates. Such funds shall be equal to at least 80 percent of the required yearly assessment for each lot. The Board shall collect the required yearly assessment for each lot in Patrick Henry Estates according to the provisions of ARTICLE IV.

Section 6. Funds deposited in and withdrawn from the Road Maintenance Fund checking account shall be used EXCLUSIVELY for purposes incidental to road maintenance in the Patrick Henry Estates Subdivision as provided in this ARTICLE.

Section 7. The Board shall keep on file all canceled checks, bank statements, receipts, and other records incidental to road maintenance in the Patrick Henry Estate Subdivision.

Section 8. In July of each year the Board shall mail or deliver to each lot owner in Patrick Henry Estates a financial statement covering road maintenance in the subdivision. The financial statement shall include: a chronological report of road maintenance activities and expenditures for the previous 12 months; a current bank statement covering the Road Maintenance Fund; a general assessment of current road conditions and problems; and, a brief statement of anticipated road maintenance expenditures for the next 12 months.