

Copy

PREAMBLE: Capon Bridge Resorts is a cooperative community of owners joining together to provide for certain common services and to provide rules to permit the safe and enjoyable use of properties held for use in common. The rules provided below are to insure the lowest cost for accomplishing these ends and promote safety and harmony among residents.

I. LAKE

A. Parking in the lake area is to be on the large flat area at the end of the entrance to the lake. No parking is permitted beyond the chain fences near the lake. No parking is permitted along the area between the lake and Edwards Run. No vehicles are to drive between the lake and the run; except for Association maintenance vehicles.

B. There is to be no fishing from the sand beach or the stone walled diving board area to avoid injury to swimmers.

C. All owners and guests are responsible for picking up after themselves and removing all trash and garbage after their use of the Common Properties since garbage services are not provided for the Common Areas. Particular care should be used to remove glass containers which, when broken, can cause potentially serious injury to swimmers.

D. Each lot owner is permitted to bring up to six guests at any time. If larger guest groups are desired, such as for family reunions, arrangements should be made with the Association Manager at least ten days before the date desired.

E. Motorized boats are not permitted on the lake. All boats and craft used on the lake must be removed from the lake and the common area; except that unattended parking of boats and craft, in the water, in the designated tie-up area near the water outlet is permitted for periods not to exceed three days. The Association assumes no responsibility for the

security of boat and craft left in this area.

F. Children under the age of twelve years, must be accompanied by an adult while at the lake commons area.

II. VEHICLES

A. Vehicles using the common roads will not exceed ~~20~~¹⁵ mph.

B. Camping vehicles are not to be parked overnight in the common areas at the lake or at the riverfront boat landing.

III. TRASH - GARBAGE

A. Capon Bridge Resorts Association does not provide for trash and garbage collection. Individual owners must arrange for the removal of trash and garbage through their own means or with private collectors.

IV. FIREARMS AND HUNTING

A. The discharge of firearms on common property of Capon Bridge Resorts is not permitted for the safety of owners and their guests.

B. All common property is to be posted as "NO HUNTING".

V. EXCESSIVE NOISE AND DISTURBANCES

A. Loud and disturbing noise is prohibited on common properties at all times. In particular, electronic reproduction equipment should be kept at low levels of operation during the hours of darkness.

B. Fireworks use is prohibited at all times on the common properties.

AMENDED

DECLARATION

OF

PROTECTIVE COVENANTS AND AGREEMENTS
CAPON BRIDGE RESORT OF CAPON BRIDGE, W. Va.

THIS DECLARATION OF PROTECTIVE COVENANTS AND AGREEMENTS, Made this 20th day of October, 1980, by TTH LAND TRUST, d/b/a "Capon Bridge Resort," an unincorporated trust entity with its principal office being in McLean, Virginia 22101 (hereinafter referred to as "Developer").

WITNESSETH

WHEREAS, Developer is the owner of the real property described in Article 11 of this declaration and desires to create thereon a residential community with open spaces and certain common facilities for the benefit of the said community, and

WHEREAS, Developer desires to provide for the preservation of the values and amenities in said community and for the maintenance of said certain common facilities; and, to this end, desires to subject the real property described in Article 11. (together with such additions as may hereafter be made thereto (as provided in Article 11) 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 community, to create an agency to which should be delegated and assigned the powers of maintaining and administering the community properties and facilities and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created, and

WHEREAS, Developer will incorporate or cause to be incorporated under the laws of the State of West Virginia, as a non-profit corporation, the Capon Bridge Resort Property Owners, for the purpose of exercising the powers and functions aforesaid.

NOW THEREFORE, the Developer declares that the real property described in Article 11, shall be 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 1
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 Capon Bridge Resort Property Owners Association.

(b) "The Properties" shall mean and refer to all lands described herein, as are subject to this Declaration or any supplemental Declaration under the provisions of Articles 11, hereof.

(c) "Common Properties" shall mean and refer to those areas of land shown on recorded subdivision maps of the Properties and designated thereon as common properties and intended to be devoted to the common use and enjoyment of the owners of The Properties and specifically including the lands designated as or owned by The Capon Bridge Resort Property Owners Association.

(d) "Original Lot" shall mean and refer to any plot of land shown upon any original recorded subdivision maps of the Properties with the exception of Common Properties as heretofore defined.

(e) "Owner" shall mean and refer to the equitable owner whether one or more persons or entities holding any original lot, whether such Ownership be in fee simple title or as land contract vendees, and shall not mean or refer to a mortgage.

(f) "Member" shall mean and refer to all owners who are members of the Association as provided in Article III, Section 1 hereof.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION:

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

Included are all of the sections of plats of Capon Bridge Resort as prepared by Stultz & Associates, Registered Engineers and Licensed Land Surveyors No. 531 and filed in the Public Registry of Hampshire County, West Virginia at various times. Certain lots have been excepted from these restrictions.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 1. Membership.

(a) Every person or entity who purchases an equitable interest or an undivided equitable interest in any original lot whether as land contract vendee or fee holder being subject to these covenants and to assessment by the Association shall be a member of the Association provided that any such person or entity who holds such interest merely as a security for the performance or an obligation shall not be a member.

(b) Persons not holding an interest in any lot may become non-voting members of the Association under terms and conditions prescribed by the Board of Directors.

Section 2. Voting Rights.

The Association shall have one class of voting membership. Voting members shall be all those members who hold the interests required for Membership in Article III in Section 1 (a) above. When more than one person shall be members, the vote for such lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any such Original Lot.

ARTICLE IV

PROPERTY RIGHTS IN THE COMMON PROPERTIES

Section 1. Member's Easements of Enjoyment.

Subject to the provisions of Article IV in Section 3, 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 Original lot.

Section 2. Title to Common Properties.

The Developer hereby covenants, for itself, its successors and assigns, that it shall convey the Common Properties to the Association not later than July 1, 1983, or the sale of eighty per centum (80%) or more of the total tracts platted on maps attached hereto, whichever occurs first. At the time of such conveyance title to Common Properties and improvements shall pass to the Association. Properties designated as Common Properties are for the mutual enjoyment of property owners of the subdivision in Section 1 and 11, known as Capon Bridge Resort, and said rights are subject to the terms and conditions of this Declaration.

Section 3. Extent of Member's Easements.

The rights and easements of enjoyment created hereby shall be subject to the following:

(a) The right of the Association to take such steps as are reasonably necessary to protect the above described Common Properties against foreclosure; and,

(b) The right of the Association, as provided in its Articles and By-laws, to suspend the enjoyment rights of any member for any period during which any assessment remains unpaid, and for any period not to exceed thirty (30) days for any infraction of its published rules and regulations; and,

(c) The right of the Association to charge reasonable admission and other fees for the use of the Common Properties to be used for the maintenance of such Common Properties.

ARTICLE V

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments.

Each subsequent owner, as provided in Article III, Section 1, herein, by acceptance of a conveyance for a lot within the subdivision, whether or not it shall be expressed in any such deed or conveyance shall be deemed to covenant and agree to pay to the Association: (1) Annual assessments or charges; (2) special assessments for capital improvements, such assessments to be fixed, established and collected from time to time as hereinafter provided. The annual and special assessments, together with such interest thereon and costs of collection thereof as hereinafter provided, 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 such interest thereon and cost of collection thereof as hereinafter provided, 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 such interest thereon and cost of collection thereof as hereinafter provided, in Section 9 of this Article, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fee was due.

ARTICLE V

Section 2. Purpose of Assessments.

The assessments levied by the Association shall be used by the Association exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents in the Properties and in particular for the improvement and maintenance of Common Properties, services, and facilities devoted to this purpose and related to the use and enjoyment of the Common Properties and of the homes situated upon the Properties, including but not limited to, the payment of taxes and insurance thereon, and repair, replacement and additions thereto, and for the cost of labor, equipment, materials, management and supervision thereof.

Section 3. Basis and Amount of Annual Assessments.

The annual assessment shall be \$50.00 per lot. The Board of Directors of the Association may, after consideration of current maintenance costs and future needs of the Association, fix the actual assessment for any year.

Section 4. Special Assessment for Capital Improvements.

In addition to the annual assessments authorized by Section 3 hereof, the Association may levy in any assessment year a special assessment, applicable to that year only, 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 any such assessment shall have the affirmative of two-thirds (2/3) of the votes of all voting 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.

Section 5. Change in Basis and Maximum of Annual Assessments.

Subject to the limitations of Section 3 hereof, and for the periods therein specified, the Association may change the maximum and basis of the assessments fixed by Section 3 hereof, prospectively for any such period provided that any such changes shall have the assent of two-thirds (2/3) of the voting members who are voting in person or by proxy at a meeting duly called for this purpose, written notice which shall set forth the purpose of the meeting.

Section 6. Quorum for any Action Authorized Under Section 4 and 5.

The Quorum required for any action authorized by Sections 4 and 5 hereof shall be as follows:

At the first meeting called, as provided in Section 4 and 5 hereof, the presence at the meeting of Members or of proxies, entitled to cast sixty (60) per cent of all the votes of the 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 4 and 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 (60) days following the preceding meeting.

Section 7. Date of Commencement of Annual Assessments Due Dates.

The annual assessments provided for herein shall commence on the first day of May, 1981. The assessment for each succeeding year shall become due and payable on the first day of May each year. No adjustments or prorations of assessments shall be made by the Association. For purposes of levying the assessment, assessments shall be considered as paid in advance and shall be levied against any property which is subject to this Declaration or Supplementary Declarations. The due date of any special assessment under Section 4 hereof shall be fixed in the Resolution authorizing such assessment.

ARTICLE V

Section 8. Duties of the Board of Directors.

The Board of Directors of the Association shall prepare a roster of the properties and assessments applicable thereto at least thirty (30) days in advance of such assessment due date. Such assessment roster shall be kept in the office of the Association and shall be open to inspection by an 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 9. Effect of Non-Payment of Assessment.

The personal obligation of the Owner: The Lien: Remedies of Association. If the assessments are not paid on the date when due (being the dates specified in Section 7 hereof), then such assessment shall become delinquent and shall, together with such interest thereon and cost of collection thereof as hereinafter provided, thereupon becoming a continuing lien on the property which shall bind such property in the hands of the then owner, his heirs, devisees, personal representatives 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 due date, a penalty fee not to exceed \$2.00 shall be added thereto and from that date interest at the rate of eight per cent (8%) per annum may be added to the delinquent balance and penalty 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. There shall be added to such assessment, delinquent fee and interest, the cost of preparing and filing Complaint in such action and in the event that judgement is obtained, such Judgement shall include interest on the total amount as above provided and reasonable Attorney's fee to be fixed by the court together with the cost of the action. The developer and/or Association shall establish a registered office where a determination may be made of the amount of any unpaid fees and charges hereunder and the failure so to do within ten (10) years from the date of this instrument shall terminate the obligation, if any, of the purchaser for value of a lot in said sub-division from being encumbered by such delinquent fee.

Section 10. Subordination of the Lien to Mortgages.

The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage or mortgages now hereafter placed upon the properties subject to assessment; 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 relieve such property from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessment.

Section 11. Exempt Property.

The following property subject to this Declaration shall be exempted from the assessments, charge and lien created herein: (a) All properties to the extent of any easement or other interest therein dedicated and accepted by the local public authority and devoted to public use; (b) all Common Properties, as defined in Article 1, Section 1 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; (d) Lot No. _____, including the Lodge Building. The Lodge Building and the acreage in the lot on which it is situated are specifically exempt from this Declaration. Notwithstanding any provisions herein, no land or improvements devoted to dwelling use shall be exempt from said assessments, charges or liens.

ARTICLE VI
ARCHITECTURAL CONTROL COMMITTEE

Section 1. Review by Committee.

No building, fence, wall or other structure shall be commenced, erected 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, 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 relationship to surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. In the event said board or its designated committee fail to approve or disapprove such design and location within sixty (60) days after said plans and specifications have been submitted to it, 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 shall be deemed to have been fully complied with.

ARTICLE VII
BUILDING AND USE LIMITATIONS

Section 1. All lots in the Properties, other than those lots excepted as described in Articles 11, Section 1, hereof, of Capon Bridge Resort shall be limited to residential use. No building shall be erected, altered, placed or permitted to remain on any residential lot other than one family dwelling and private garage or out-buildings incidental thereto. All dwellings must have a minimum enclosed living area of 720 square feet exclusive of open porches or attached garages. All structures shall be completed on the exterior within (6) months from start of construction. Except with written consent of the Developer or the Board of Directors of the Association or the Architectural Committee, no structure of a temporary nature, RV Camper, basement, tent, shack, garage, barn or other out-building shall be occupied or stored on any residential lot either temporarily or permanently. No resident structures shall be located nearer than 25 feet to the front property line, nor nearer to the roadway than the set back line which is indicated on the recorded plat. No residence structure shall be located nearer than 18 feet from any side lot line. No sign or any kind of advertising device shall be displayed to the public view on any residential lot except one sign of not more than two (2) feet square with name and address of owner, other than signs used by builder to advertise a new home previously unoccupied.

Section 2. No animals, livestock or poultry of any kind shall be raised or kept on any lot except dogs, cats or other household pets provided that they shall not be so maintained for commercial purpose, except owners of five-acre lots may maintain up to two horses.

Section 3. Trash, garbage or any other waste material shall be kept in sanitary containers or incinerators. Equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition. All structures intended for occupancy must be equipped with inside plumbing facilities. All sanitary plumbing, and disposal of waste, shall conform with the minimum requirements and be approved by the Health Department of Hampshire County, West Virginia. Wells shall be placed on said properties or may be supplied by public water for a charge.

Section 4. Easements are reserved unto the Developer for the purpose of conveying to public utility companies the necessary easements for utilities along and within 30 feet of the front line, rear line and side lines of all original lots in the subdivision for the construction and perpetual maintenance of conduits, poles, wires and fixtures for electric lights, telephone and other public and quasi-public utilities and drainage and to trim any trees which at any time may interfere or threaten to interfere with the maintenance of such lines with right of egress from and across said premises to employees of said utilities. Said Easement to also extend along any owner's side, rear and front property lines in cases of fractional lots.

The person owning more than one lot may build on such lot line and the easement shall be inoperative as to said line provided such building shall be placed thereon prior to the instigation or use of this easement for one of the foregoing purposes.

It shall not be considered a violation of the provision of easement if wires or cables carried by such pole lines pass over some portion of said properties not within the ten foot wide easement as long as such lines do not hinder the construction of buildings on the property.

Section 5. All buildings, trees, or other improvements now on said premises, or hereafter made or placed thereon shall be a part of the security for the performing of Declaration and may not be removed therefrom. Developer reserves the right to do grading, excavating, under brushing, tree cutting and trimming on the subject property including the right to disturb top soil where in Developer's opinion such work is advantageous for the improvement of this subdivision.

Section 6. No original lot or group of lots may be resubdivided without the written consent of the Developer. The Developer reserves the right to arbitrarily refuse consenting to the resubdivision of any lot(s).

Section 7. It is understood and agreed and represented by the Developer, and the deeds issued to purchasers from the Developer take subject to this representation, that, insofar as the lots which may be included in the sections herein brought under the general Declaration of Protective Covenants and Agreements, are situated or located upon a waterway, the maintenance of waterway and the lands fronting thereon is a liability of each individual lot owner and the declarant owner assumes no maintenance liability therefor.

Section 8. Variance. The purpose of the foregoing Building and Use Limitations being to insure the use of the properties for attractive residential uses, to prevent nuisances, to prevent impairment of the attractiveness of the property, to maintain the desirability of the community and thereby secure to each owner the full benefits and enjoyments to his home with no greater restriction upon the free and undisturbed use of his property than are necessary to insure the same advantages to other owners. Any reasonable changes, modifications or or addition to the foregoing shall be considered by the Developer and the Association and if so approved will then be submitted in writing to the abutting property owners and if so consented to in writing shall be recorded and when recorded shall be as binding as the original covenants.

Section 9. No signs, billboards or advertising of any nature shall be erected, placed or maintained on any lots herein designated, nor upon any buildings erected thereon, except directional and information signs of grantor.

Section 10. No trucks, buses, old cars or unsightly vehicles of any type or description may be left or abandoned on said lots.

Section 11. No motorized or mechanized boats, vehicles shall be used or authorized to be used on or in the lake Common Property.

The foregoing Building and Use Limitations shall not apply to the Common Properties.

ARTICLE VIII

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 twenty 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 the then owners of two-thirds of the original lots 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 owner at least ninety (90) days in advance of any 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, postpaid, to the last known address of the person who appears as a member or owner 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 person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damage, and against the land to enforce any lien created by these covenants; and failure by the 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. Severability. Invalidation 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 5. Throughout these restrictions the term "Developer, its successors or assigns", shall refer to the present or the future owner of this subdivision, or a substantial portion thereof, whose business it is to own, develop and/or sell real property. Throughout the course of this document, use of the singular shall be construed to include the plural and visa versa, and the use of the male form shall be interpreted to include the female when the context so indicates.

Section 6. These Protective Covenants and Agreements shall apply only to the lots as shown on the aforesaid plats of Capon Bridge Resort, Section One and Section Two, and shall not be binding on or have any application whatsoever to any other property of the Developer, its successors and assigns. However, the Developer reserves the right to include at some future time the Lodge building and certain surrounding land under the Protective Covenants.

IN WITNESS WHEREOF, this Declaration has been duly executed as of the day and year first above written.

WITNESS:

TTH LAND TRUST

by Conrad R. Harper (SEAL)
Conrad R. Harper, Trustee

by Glenn E. Thompson, Jr. (SEAL)
Glenn E. Thompson, Jr., Trustee

by Peter Timoshenko (SEAL)
Peter Timoshenko, Trustee

STATE OF VIRGINIA
COUNTY OF FAIRFAX, TO-WIT:

I, Pamela Jane Pennington, a Notary Public in and for the State and County aforesaid, do hereby certify that Conrad R. Harper, Glenn E. Thompson, Jr., and Peter Timoshenko, whose names are signed to the writing above, bearing the date of 20th of October, 1980, for TTH Land TRUST, has this day acknowledged the names before me in said County to be the act and deed of said TTH LAND TRUST.

Given under my hand this 20th day of October, 1980.

Pamela Jane Pennington
Notary Public

My Commission expires:

4/14/82