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11-20-04
Harold R. Johns
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Capon Bridge W.V. 26711

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BOOK 438 PAGE 425

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RESTRICTIVE COVENANT, CONDITIONS AND RESERVATIONS FOR
WATER VIEW ESTATES, COLD STREAM ROAD CAPON BRIDGE
BLOOMERY DISTRICT, HAMPSHIRE COUNTY, WEST VIRGINIA

The following restrictive covenants, conditions and reservations shall apply and be binding upon all real estate situated in Water View Estates as shown on the plat of said subdivision which shall be recorded in the Office of The Clerk of the County Commission of Hampshire County, West Virginia, and shall be considered covenants running with the land and shall be binding upon all owners in said subdivision, their heirs, successors, and assigns.

Article I Definitions

- 1. "Association" shall mean and refer to the Water View Estates Association, its successors and assigns.
- 2. "Owner" shall mean the record owner of the fee simple title to any lot or tract which is a part of the subdivision.
- 3. "Property" shall mean and refer to the real estate referred to herein and shown upon the aforementioned plat and such additions thereto as hereafter becomes a part of said Subdivision.
- 4. "Lot" shall mean and refer to any numbered or similarly designated tract or land shown upon the aforementioned subdivision plat.
- 5. "Declarant" shall mean and refer to the Blue Martin Enterprise, LLC.

6. "Common Area" means those lots or area of land within the property shown on the subdivision plat of the property and is intended to be the entire property, save and except lots conveyed to individual owners. The common area shall include all roads, streets, and parking areas within the property, unless the same are dedicated to the county or state for public use, common facilities and recreational facilities.

7. "Grant of Common Uses" means Declarant covenants that it will convey to the Association the common areas, and the Association shall accept from the Declarant the common areas and shall hold them subject to the provisions hereof. The conveyance shall be made no later than such a time as the completion of all improvements to the common area. The common area may be conveyed as a whole or in part at the election of Declarant, so long as all the common areas are conveyed as herein provided, and after said conveyance and acceptance by the Property Owners' Association the declarants, their heirs, successors and assigns, as the case may be, shall be released from all further duties or obligations whatsoever in connection therewith.

The right of the Association to charge reasonable admission or other fees for the use of any recreational facility situated upon the common area is hereby expressly reserved.

The right of the Association to suspend the voting rights and right to use of the recreational facilities by any owner for any period during which any assessment against his lot remains unpaid is expressly reserved.

8. "Delegation of use" means any owner may delegate, except as otherwise herein provided, his right of enjoyment of the common areas and facilities to the members of his family and his tenants, but they, as well as said owners, shall conform to all rules and regulations as promulgated by the Declarant from time to time.

9. "Structures" No structures shall be erected placed or maintained on common area, except:

- 1. Structures designed exclusively for the common use of owners, including but not limited to benches, chairs, or other seating facilities, walkways, or pavilion.
- 2. The common area may be graded, planted with trees, shrubs and other plants placed and maintained hereon for the use, comfort and enjoyment of the owners for the

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establishment, retention, or preservative of the natural growth or topography of the common area for aesthetic reasons.

3. In addition, there is incorporated herein by reference, and made a part hereof, all of the restrictions and reservations set forth on a plat prepared for Water View Estates by R & S Services, Inc., Rickie C. Davy, licensed West Virginia surveyor #536, dated November 11th, 2004 and of record in the Office of the Clerk of the County Commission Hampshire County, West Virginia, in Map Book No. 10, page 22. Particular reference is made to "Notes" on said Plat: Note "E", pertaining to restrictions and prohibitions regarding building and structure locations; Note "F", pertaining to utility easements; Note "H" regarding water and sewer service by the Town of Capon Bridge; Note "I", regarding no building or structures on drainage easements; Note "J", pertaining to building set back lines of twenty (20) feet from the front lot line and five (5) feet from the side and rear lot line; Note "K", regarding two fifteen (15) foot wide permanent easements abutting certain lots which may not be violated; and Note "L", regarding an easement for location of debris on Lot 5, and prohibiting construction of any type.

4. Lot No. Fourteen (14) is improved with an existing cabin which does not conform to the building requirements required herein due to pre-existing ownership and construction and is therefore grandfathered in. However, if said cabin should be substantially destroyed by fire or other casualty, or removed, the same cannot be repaired, or restored to cabin status, but such repairs or replacement must conform to the building requirements established herein for totally new construction.

10. "Rules" The Association shall have the right to prescribe reasonable rules and regulations governing the use of the common area.

11. "Reserved rights of the Declarant" The Association shall hold the common areas conveyed to it by Declarant subject to the following:

1. The reservation to Declarant of an easement to enter and pass over any part of the common area, such as an easement for the purpose of ingress and egress and the installation and maintenance of public and private utilities to serve the property and any part thereof, including any lot.

2. The right of the Declarant to store building supplies, construction equipment and other similar property on any lot it owns and/or on the common area. This reserved right shall expire upon completion of all improvements by the Declarant.

12. No animals may be kept, maintained or bred on any lot, except that no more than two (2) dogs, cats or similar domestic household pets be kept on any lot, provided they are not kept, bred, or maintained for any commercial purpose, and provided they are kept in such a manner as to avoid becoming a nuisance to neighbors or adjoining property owners. Owners shall properly clean all litter deposited on any lot, or common area by their household pet. No livestock or poultry shall be kept or maintained on any lot within the subdivision.

Any link fences, or similar type fences, and clotheslines of any type, shall be prohibited from being erected, constructed or maintained upon any lot or lots in this Subdivision.

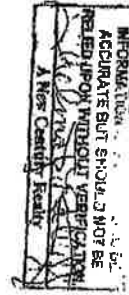
13. No provision contained herein shall be valid if the existence or exercise of that provision shall cause to be applicable the provisions of W.Va. Code, Chapter 36B, except as to Article 1, §105, §106, and §107. It is the intent and purpose of these restrictive covenants and conditions to create an exempt planned community under Chapter 36B, Article 1, §203.

Maintenance Assessments

1. The owner of each lot shall be a member of the Homeowner's Association Membership, and membership shall be appurtenant to ownership of all lots and shall become effective immediately upon conveyance of title of a lot to the owner.

2. The owner of each lot shall pay \$_____ per year for the maintenance of the common area management. Said maintenance shall be the sole responsibility of the Homeowner's Association.

3. Any unpaid assessments shall constitute a lien upon the owner's lot. Said lien is expressly



inferior and subordinate to any mortgage lien presently existing or hereinafter placed upon any of the subject real estate. If any assessments remain unpaid for a period of sixty (60) days after the date when the same is due, the Homeowner's Association may place a notice of such delinquency upon the public land records in the Office of the Clerk of the County Commission of Hampshire County, additionally. The association may bring an action at law against the owner to collect said delinquent assessments. Any and all fees, costs, attorney fees or other similar expenses incurred by the Association in the collection of any delinquent assessments or the preservation of the lien of said assessments shall be fully recoverable from the owner. In the event of the sale and conveyance of a lot within the subdivision upon which there is due and owing any assessments or related expenses, the obligations for said payments shall become the obligation of the new lot owner and shall be subject to the enforcement provisions set forth herein against the new owner.

Use Restrictions

1. All structures upon the lots shall have a minimum living space of 1300 square feet excluding porches and decks. Outbuildings or garages must conform generally in appearance and material with any dwelling on the premises. Exterior construction of the dwellings or outbuildings must be completed within TWELVE (12) MONTHS AFTER CONSTRUCTION BEGINS. All materials used for the exterior wall shall be of good quality material, such as brick, stone, aluminum, masonite, cedar, redwood, vinyl, or other quality wood siding. Any building constructed of wood must have at least two coats of paint, varnish or stain unless the wood is self-sealing nature such as redwood or cedar. Roof pitch shall be 4-12 inches or greater. No temporary sheds, house trailers, travel trailers, manufactured homes, singlewide mobile homes, doublewide mobile homes, garages, or basements shall be used as a permanent residence. The minimum lot area shall be ten thousand (10,000) square feet for the first dwelling unit plus two thousand (2,000) for each additional dwelling unit not to exceed six (6) units per area. If more than one dwelling is built per lot, the Town of Capon Bridge ordinance on multiple dwelling regulations shall apply.

2. All of the lots in this subdivision are served by the Town of Capon Bridge central water and central sewer systems. There shall be no open discharge of sewer or water. Also, there shall be no roof drainage, surface, or ground water discharged into the sanitary sewer lines, and all such drainage by any owner or resident is expressly prohibited.

3. There shall be no further division of any lots in the subdivision; however, a minor boundary adjustment between any two lots, if required, will be allowed.

4. No rights-of-ways or easements shall be granted or created upon or across owners acreage except for public utilities, with the exception of lots owned by the Developer.

5. All lots shall be maintained in a neat appearance at all times, whether or not improvements are constructed thereon. No refuse or trash shall be allowed to accumulate upon any lot and no junked cars, abandoned vehicles or other vehicles without current license or inspection sticker less than six (6) months old may be left the lot.

6. All lots shall contain off street parking for vehicles of the owner and owner's guests. Parking on the subdivision roadways is expressly prohibited, so as not to impede access by emergency vehicles or ingress and egress of other lot owners. "No Parking" signs shall be erected by the Association as it shall determine from time to time, but shall also conform to the requirements of the Town Council of Capon Bridge where street widths variances have been permitted.

7. All lots shall be used for residential purposes only. No businesses shall be located or conducted upon the residential lots with the exception of home occupations conducted by the owner. No signs or billboards, except for sale signs, are permitted on the lots. Signs necessary for the subdivision, as for recognition of street signs, etc. are permitted.

8. No dwelling or other improvements shall be constructed or erected closer than five (5) feet to any side or rear lot lines or within twenty (20) feet of the front lot line or street. See plat for other setback requirements.

9. No owner shall interfere with the natural drainage of surface water from any lot to the detriment of any subdivision roadway. Culvert size shall be a minimum of twenty (20) feet long with a minimum of 12 inch diameter concrete pipe of CMP with riprap on both the inlet and outlet sides. See plat for reserved twenty (20) foot wide drainage easements and for easement(s) reserved for storm water management pond(s).

10. All lot owners shall surface any and all driveways or roadways leading off of the main subdivision roadways with bluestone for a minimum distance of twenty (20) feet long and

fourteen (14) feet wide for the subdivision roadway.

10(a). The Motor Vehicle Code of the State of West Virginia shall apply to all vehicles using said roads and streets in this Subdivision. Consequently, all vehicles shall be properly registered, licensed, and inspected. Unlicensed motorcycles are expressly prohibited on said roads and streets.

11. A building permit is required prior to commencing construction and all other Town of Capon Bridge regulations concerning construction or maintenance of improvements shall be complied with.

12. No toxic or hazardous materials shall be manufactured, produced or stored on any of the lots, and no noxious or offensive activity shall be allowed which will constitute a nuisance in the opinion of a quorum of the Declarant members.

13. Each lot owner shall be responsible for removal of household refuse and trash by a commercial collection service. No trash or other waste shall be permitted to accumulate on any lot. The Homeowner's Association shall be expressly entitled to provide for the removal of any accumulated trash, refuse, or offensive material from any lot and the costs of said removal shall become a lien upon the affected property. After due notice of such action and expenditure by the Association to the owner, which notice shall be in writing, the Association may record a notice of such lien among the county land records. Such expenditures, together with any and all other fees, cost, expenses or attorney fees in regard to the collection thereof, shall be collectable or recoverable from the owner.

14. Additionally, the Homeowner's Association, acting upon the two-thirds (2/3) vote of its Board of Directors, and after fifteen (15) days written notice to the owner of any lot, may through its agents or employees enter upon any lot and perform any necessary maintenance or repairs, including the mowing and removal of grass or removing of any other offending material. Such action shall not constitute a trespass so long as appropriate notice has been given in writing by mailing to the last known address of the owner and the costs of any such action by the Association shall become a part of the assessment and constitute a lien and be subject to collection and recovery as mentioned above.

15. There is hereby dedicated and reserved unto the Declarant and any and all public utility companies the right to construct, install, erect, maintain, operate, repair, replace, or remove any and all necessary facilities for the furnishing of public utility service, such as telephone, electric, sewer, water, or other similar utility within an easement or right-of-way, over, under and across a strip of land twenty (20) feet in width along all front property lines not serving as the centerline of any roadway and ten (10) feet on all side lots or as indicated on the subdivision plat.

16. All lots will be served by a central water system and a central sewer system which will be owned, operated, and maintained by the Town of Capon Bridge. In addition, all lots will be accessed from West Virginia Secondary Route 15 by Water View Drive (a forty (40) foot wide right of way) which is a town street that is owned and maintained by the Town of Capon Bridge. Each lot owner shall install and maintain their own driveway by minimum specifications as set forth above. Also, each lot owner must enter into an agreement with the Town of Capon Bridge for use of the said water and sewer facilities and will be required to pay for said use of prevailing water/sewer rates as set forth in aforesaid agreement. In addition, each lot owner must install at their expense and maintain a water service line and a pressure reducing valve if needed from the existing service tap at the main sewer line to their dwelling.

General Provisions

1. In the event that any state or local government or any utility or public service district requires the installation of any public utility system within the area of the subdivision, the owners of the lots within the subdivision, by acceptance of a deed for said lot, agree, and are required, to connect with such utilities, and pay their proportionate share for the cost and expense of the erection, maintenance and operation of said utility as determined by the appropriate government agency, utility or public service district.

2. Invalidation of any of the aforesaid covenants, conditions or restrictions by judgment or Court Order shall not affect the validity or enforceability of any remaining covenant, restriction or condition which shall remain in full force and effect.

IN WITNESS WHEREOF. The Declarant does hereby execute this Dedication of Plat and Declaration of Protective Covenants, Conditions, and Restriction on Water View Estates this _____ day of November, 2004

BLUEMARLIN ENTERPRISES, LLC

By: Harold R. Johns
HAROLD R. JOHNS, Director

By: Janice C. Johns
JANICE C. JOHNS, Director

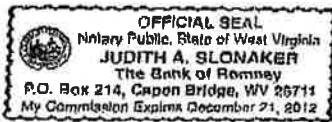
By: Gary A. Tremary, Jr.
GARY A. TREMARY, Jr., Director

By: Brenda C. Tremary
BRENDA C. TREMARY, Director

STATE OF WEST VIRGINIA
COUNTY OF HAMPSHIRE, to wit:

The foregoing and hereto annexed Restrictive Covenants, Conditions and Reservations for the Water View Estates, was acknowledged before me this 10th day November 2004. By Harold R. John, Janice C. Johns, Gary A. Tremary, Jr. and Brenda C. Tremary, Directors of Blue Marlin Enterprise, LLC., on behalf of said corporation.

My commission expires: 12-21-12



Judith A. Slonaker
Notary Public

PREPARED BY CHARLES W. SMITH, L.C., ATTORNEY AT LAW, KEYSER, WEST VIRGINIA

BOOKED
HAMP SHIRE COUNTY CLERK'S OFFICE
RECORDED IN 16875
RECORDED DATE 11/22/2004
RECORDED BY DE
BOOK-956 01-458 429
REC-956 5.00 1.00

STATE OF WEST VIRGINIA, Hampshire County Commission Clerk's Office 11/22/04 3:38 p.m.

The foregoing instrument, together with the certificate of its acknowledgment, was this day presented in said office and admitted to record.

Teste Sharon H. Linko Clerk.