

Ret.To; Bill Owens HC 34 Box 375 Lewisburg WV 24901

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**AMENDED DECLARATION OF COVENANTS, CONDITIONS
RESTRICTIONS
FOR
SHAW-MI-DEL-ECA VILLAGE**

This Amended Declaration of Covenants, Conditions and Restrictions, made this 28 day of August, 2006, by SHAW-MI-DEL-ECA VILLAGE HOMEOWNERS ASSOCIATION, a West Virginia non-profit unincorporated association (sometimes hereinafter referenced as the "Association").

WHEREAS, by Declaration of Covenants, Conditions and Restrictions, of record in the Office of the Clerk of the County Commission of Greenbrier County, West Virginia, in Deed Book No. 464 at page 519, Shaw-Mi-Del-Eca Village Limited Liability Company, subjected certain real estate described therein, situate in White Sulphur District, Greenbrier County, West Virginia, and known as Shaw-Mi-Del-Eca Village, to certain covenants, easements, conditions and restrictions; and,

WHEREAS, the said aforesaid Declaration of Covenants, Conditions and Restrictions has heretofore been amended, modified or supplemented by subsequent Declarations recorded in the aforesaid Clerk's Office in Deed Book No. 477 at page 488, Deed Book No. 479 at page 240, and Deed Book No. 500 at page 416; and,

WHEREAS, the said Shaw-Mi-Del-Eca Village is a planned community, within the meaning of Chapter 36B of the West Virginia Code; and,

WHEREAS, in accordance with the aforesaid Declaration of Covenants, Conditions and Restrictions, as heretofore amended, Shaw-Mi-Del-Eca Village Homeowners Association has duly amended the terms thereof, as hereinafter set forth, for the purpose of protecting the value and desirability of the real property within the said planned community.

NOW, THEREFORE, WITNESSETH: Shaw-Mi-Del-Eca Village Homeowners Association does hereby amend the aforesaid Declaration of Covenants, Conditions and Restrictions, to read in its entirety as hereinafter set forth, and does covenant and declare that the real property hereinafter described shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which shall run with the said real property and be binding on and inure to the benefit of all parties having any right, title or interest in the said real property, their heirs, successors and assigns.

ARTICLE I
Real Property Subject to Declaration

The covenants, easements, conditions and restrictions set forth herein shall apply to certain real property previously owned by Shaw-Mi-Del-Eca Village Limited Liability Company, situate in White Sulphur District, Greenbrier County, West Virginia, and being a portion of those tracts or parcels of real estate conveyed to the said Shaw-Mi-Del-Eca Village Limited Liability Company by two deeds as follows: (a) a deed dated May 21, 1997, from Proteus Design & Construction, Inc., a California Corporation, of record in the aforesaid Clerk's Office in Deed Book No. 443 at page 539; and (b) a deed dated June 16, 1997, from Stewart-Thomas Development, L. P., a California Limited Partnership, of record in the aforesaid Clerk's Office in Deed Book No. 443 at page 932. More particularly, the covenants, easements, conditions and restrictions set forth herein shall apply to that portion of the aforesaid real property shown on a plat of survey for Shaw-Mi-Del-Eca Village prepared by Lovell R. Facemire, WV LLS 1467, Elkview, WV, dated May 2000, of record in the aforesaid Clerk's Office in Record of Maps Book No. 4, Hanging File A-172, but excluding therefrom all areas marked and designated upon the said plat as "Reserved Area" (except that the right of way shown upon the said plat across the "Reserved Area" and the rights established by that Declaration, of record in the aforesaid Clerk's Office in Deed Book No. 479 at page 240, regarding a two hundred (200) foot wide "buffer strip" adjacent to or near Lots 37, 36, 35, 34, 33, 15, 14 and 13, shall continue to inure to the benefit of the Owners, as hereinafter defined, and the same shall be subject to this First Amended Declaration of Covenants, Conditions and Restrictions). The covenants, easements, conditions and restrictions set forth herein shall also apply to that portion of the aforesaid real property not shown upon the aforesaid plat of survey, but described as "Second Tract" in that deed dated May 21, 1997, between Proteus Design & Construction, Inc., and Shaw-Mi-Del-Eca Village Limited Liability Company, of record in the aforesaid Clerk's Office in Deed Book No. 443 at page 539 (hereinafter sometimes referred to as the "Island Common Area").

ARTICLE II
Definitions

When used herein, the following words shall have the meanings specified.

1. **Architectural Review Committee:** The committee designated by the Board to review plans for the construction, renovation and exterior painting of improvements upon any Lot, in accordance with this Amended Declaration of Covenants, Conditions and Restrictions.
2. **Association:** Shaw-Mi-Del-Eca Village Homeowners Association, its successors and assigns.
3. **Board:** The Association's Board of Directors.
4. **Common Property:** Property owned by the Association for the common benefit of all Owners, including roadways, rights of way, easements, the dining hall property (that is, the portion of Lot 40, as shown upon the aforesaid plat of survey, owned by the Association), hiking trails and paths, the Island Common Area, and all right, title and interest of the Association in and to the two hundred (200) foot wide buffer strip described in that certain Declaration of record in the aforesaid Clerk's Office in Deed Book No. 479 at page 240.
5. **Lot:** A privately-owned lot within Shaw-Mi-Del-Eca Village, being one of the numbered lots shown upon the aforesaid plat of survey and having the boundaries set forth thereon, except as set forth in this paragraph. The lots shown upon the said plat of survey as Lot 16 and Lot 17 shall be considered a single Lot for all purposes, and the lots shown upon the said plat of survey as Lot 39 and Lot 48 shall be considered a single Lot for all purposes. That portion of Lot 40 heretofore conveyed to Bill Owens and Dorothy Owens by deed dated December 3, 2004, of record in the aforesaid Clerk's Office in Deed Book No. 494 at page 486, has been combined with Lot 20, and the said portion of Lot 40 and the said Lot 20 shall be considered a single Lot for all purposes. The balance of Lot 40, as shown upon the said plat of survey, is specifically excluded as a Lot, in that the same is Common Property. Lot 21 has previously been divided equally between the Owners of Lot No. 41 and the Owners of Lot No. 20, and the each half of the said Lot 21 shall be considered one-half of a Lot for purposes of assessments, voting rights in the Association and other pertinent purposes. There are fifty-two (52) Lots within Shaw-Mi-Del-Eca Village, and no additional Lots may be created.
6. **Owner:** An owner of one or more Lots.
7. **Village:** Shaw-Me-Del-Eca Village, a planned community.

ARTICLE III
Covenants, Conditions and Restrictions

1. No Lot shall be used for any purpose other than residential purposes. No buildings shall be erected, altered, placed or permitted to remain thereon other than one detached single family dwelling not to exceed two full stories in height, exclusive of an attic, and each residence building shall contain at least 1500 square feet of living floor area (exclusive of porches, garages and attic), if a one-floor plan residence, or at least 1800 square feet of living floor area (exclusive of porches, garages and attic), if a one and one-half or two story plan. The Board may grant an exemption from the requirements contained in this section for any Lot, if the strict application of those requirements to that Lot would result in substantial hardship or inequity, due to unusual conditions relating to the Lot's topography, size, shape or similar circumstances.
2. All residential buildings shall have a solid foundation faced with brick, concrete textured with a simulated brick finish, stone, architectural or decorative block with a simulated stone finish, logs, log siding or other materials approved by the Architectural Review Committee, with open areas up and down stream according to and pursuant to FEMA regulations. Exterior walls above the foundation shall be sided with logs, log siding, wood siding, or other materials approved by the Architectural Review Committee.
3. No portion of any building erected on any Lot may be located closer than fifteen (15) feet to any boundary of the Lot upon which it is erected.
4. No structure of a temporary character and no trailer, camp tent, mobile home, basement, shack, garage, barn or other outbuilding shall be used on a Lot at any time as a residence, either temporarily or permanently.
5. No building material of any kind shall be placed on the property except in connection with construction. As soon as building materials are placed on the property, construction shall be promptly commenced and diligently pursued, and shall be completed within one year, except as otherwise approved by the Board for good cause. No piles of rock, gravel, aggregate, earth, or similar materials may be placed upon the property except in as reasonably necessary for the completion of construction or other improvements upon the property.

6. No Lot shall be further divided or subdivided, and no accumulation of Lots shall be further divided or subdivided into any parcel smaller than the Lots making up the accumulation.
7. Exterior plans for each building or exterior remodeling of a building and the location thereof on any Lot shall be first submitted to the Architectural Review Committee for review and approval before any construction is commenced. Such plans shall comply with all applicable Federal, state, and local building codes and regulations and shall reflect the use of colors and materials compatible with the surrounding natural environment. Within thirty days after submission, the Architectural Review Committee shall provide the Owner with a written approval or a written statement as to the conditions upon which approval will be granted. Otherwise the plans shall be deemed approved, provided they do not clearly conflict with or violate the requirements of this Article III.
8. All exterior painting shall be subject to review and approval by the Architectural Review Committee, and shall reflect the use of colors compatible with the surrounding natural environment, including primarily earth tones. Prior to any such painting, the proposed colors and painting scheme shall be submitted to the Architectural Review Committee, which shall notify the Owner in writing within thirty days following such submission of its approval or a statement as to the conditions upon which approval will be granted. The Architectural Review Committee may from time to time publish a listing of approved paints in order to provide guidance to Owners.
9. No house trailer, camping trailer, mobile home, motorized camper, or any other similar device designated to be transported on or by a motor vehicle shall be parked or kept on any street, vacant Lot, or in the front yard of a residence for more than seven consecutive days in any twelve-month period.
10. No Owner shall, without the written consent of the Board grant an easement over, under or across any Lot, or any part thereof, for ingress and egress to and from any adjoining Lot or Common Property.
11. No sign or advertisement of any nature shall be placed or displayed on any Lot other than street signs, house numbers and the customary signs used in advertising real estate for sale. No signs shall be placed at the entrance to the Village, except as approved in advance by the Board.

12. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other household pets, may be kept, provided they are not kept, bred or maintained for commercial purposes and provided further that their feces is collected and disposed of in a proper manner. Owners will be responsible for abating any public nuisance that their pets may cause.
13. All Lots shall at all times be kept free of rubbish, garbage, trash, weeds, brush or undergrowth. All grass, weeds, brush and undergrowth shall at all times be kept cut on the level portion of all Lots to a height not exceeding one foot.
14. All sewage disposal units in said Lots shall be adequate septic tank and disposal fields so located and constructed as to meet all requirements of the West Virginia Department of Health. The use of dry wells or caves for the disposal of sewage or waste water is expressly prohibited. No outside toilet shall be maintained on any Lot at any time, except during construction of a residence upon the Lot.
15. A perpetual easement at least 15 feet on all sides is reserved by the Association on, over and through each lot in this subdivision for the construction and maintenance of underground utilities such as electricity, telephone, gas, sewage, water, cable television and similar utilities, together with necessary rights of ingress and egress to construct, maintain and replace the same.
16. No obnoxious or offensive operation shall be allowed or maintained on any Lot, and nothing shall be permitted which may constitute a nuisance or unreasonable annoyance to the neighborhood, or which in any way may tend to depress the value of any Lot or Common Property.
17. All road maintenance or road construction in the Village or improvements thereto shall be done at the sole expense of the Owners through the Association's annual or special assessments of Lots.
18. In the event that two or more adjacent Lots in this subdivision shall be owned by the same Owner who uses the same as a single-family residential Lot, then the restrictive covenants herein contained shall apply to the combined Lots as though the same were one Lot, provided however, that this provision shall not apply to assessments imposed pursuant to Article IV or to voting privileges or other privileges of Owners set out in Article IV or Article V.
19. Each Owner shall provide temporary receptacles for garbage and trash in an area not visible from the street, or they may provide temporary underground garbage receptacles or other facilities acceptable to and approved by the Board. Each Owner

shall be responsible for the removal and appropriate disposal of garbage and trash from such Owner's Lot.

20. No all-terrain vehicles, four-wheelers, dirt bikes, go-carts or similar motorized recreational vehicles shall be operated on the roads or land within the Village.
21. Not more than two satellite dishes shall be erected upon any Lot, and no satellite dish larger than twenty-four (24) inches across at its widest point shall be erected. Placement of any other satellite dishes or other television, radio or similar reception devices shall be subject to approval by the Architectural Review Committee before installation.
22. All utilities shall be buried from the main distribution line to individual residences.
23. All trees with a butt diameter of 10 inches or more measured one foot above the ground shall not be severed from a Lot or Common Property without permission of the Board. Any tree that dies from natural causes may be removed without permission from the Board. No soil shall be removed from the Village.
24. In the event of any violation of any restriction or limitation contained herein, the Board may, after providing written notice at least twenty (20) days in advance to the Owners of the affected Lot, take such action as may be reasonably necessary to remedy or abate the violation, including, but not limited to, the removal of rubbish, garbage, or trash, and the cutting of grass, weeds, brush and undergrowth upon the Lot. The Owners of the affected Lot shall be assessed for all expenses incurred with regard to such remedial or abatement action, and the Association shall have a lien upon the affected Lot for such expenses, as well as for interest, costs and reasonable attorneys' fees incurred relative thereto. For purpose of this section, notice shall be considered to have been given when it is delivered in person to any Owner of the affected Lot, or when it is deposited with the United States Postal Service for mailing, certified mail, return receipt requested, postage prepaid, to the Owner at the mailing address designated in writing by the Owner, or if no mailing address is so designated, to the most recent address of the Owner shown upon the records of the Assessor of Greenbrier County, West Virginia.
25. Should any restriction or limitation contained herein be invalidated by judgment of any Court, all other provisions, restrictions, limitations not affected by such judgment shall continue to remain in full force and effect.

ARTICLE IV
Homeowners Association; Assessments

1. The membership of the Association shall consist exclusively of the Owners of a Lot or Lots. Each Owner shall be a member of the Association.
2. The Board of Directors of the Association shall consist of five (5) members, each of whom shall be an Owner. Members of the Board shall be elected by a majority of the Owners voting in person or by proxy at the annual meeting of the Association, with the voting rights of the Owners to be governed by section 5 of this Article. Members of the Board shall serve a term of one year or until their successors are elected and qualify. The Board shall elect one of its members to serve as Chairman for a one (1) year term. The Board shall be charged with the general management responsibilities of the Association, and shall conduct itself in accordance with Article 36B, Chapter 3, of the West Virginia Code, with all other applicable laws of the State of West Virginia, and with the bylaws of the Association, as the Board may adopt and amend from time to time. The Owners of two-thirds of the Lots represented and entitled to vote at any meeting of the Association at which a quorum is present, may remove any member of the Board, with or without cause.
3. A meeting of the Association shall be held at least annually. Special meetings of the Association may be called by the Chairman, a majority of the Board, or by the Owners of twenty percent (20%) of the Lots. Not less than ten (10) nor more than sixty (60) days in advance of any meeting, the secretary or other officer specified in the bylaws shall cause notice to be hand-delivered or sent prepaid by United States mail to the mailing address designated in writing by the Owner of each Lot, or if no mailing address is so designated, to the most recent address of the Owner shown upon the records of the Assessor of Greenbrier County, West Virginia. The notice of any meeting must state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to this declaration, any budget changes, and any proposal to remove an officer or member of the Board.
4. The Board shall meet at least once annually, and may meet more often in a special meeting as is deemed necessary by the Chairman of the Board upon providing three (3) days written notice to the Board members of said special meeting.

5. Members of the Association may vote upon those matters properly brought before the Association, including without limitation the election of the members of the Board, as follows:
- a. In all matters brought before the Association, the Owner or Owners of each Lot shall be entitled to one vote. An Owner who owns more than one Lot shall be entitled to one vote for each Lot owned.
 - b. The Owners of fifty percent (50%) of the Lots shall constitute a quorum by appearing at any meeting in person or by proxy.
 - c. If only one of several Owners of a Lot is present at a meeting of the Association, that Owner is entitled to cast the vote allocated to that Lot. If more than one of the Owners are present, the vote allocated to that Lot may be cast only in accordance with the agreement of a majority in interest of the Owners of the Lot. There is majority agreement if any one of the Owners casts the vote allocated to that Lot without protest being made promptly to the person presiding over the meeting by any of the other Owners of the Lot.
 - d. The vote allocated to a Lot may be cast pursuant to a proxy duly executed by an Owner of the Lot. If a Lot is owned by more than one person, each Owner of the Lot may vote or register protest to the casting of votes by the other Owners of the Lot through a duly executed proxy. An Owner may revoke a proxy given pursuant to this section only by actual notice of revocation to the person presiding over a meeting of the Association. A proxy is void if it is not dated or purports to be revocable without notice. A proxy terminates one year after its date, unless it specifies a shorter term.
 - e. No votes allocated to any Lot owned by the Association may be cast.
 - f. In the event of a delinquency in the payment of any assessment against a Lot, no Owner of that Lot shall be entitled to cast the vote otherwise allocated to that Lot with regard to any matter before the Association until such assessment has been paid in full, provided that the Association shall have provided written notice of such delinquency to the Owner at least twenty (20) days prior to the meeting at which the vote is taken. For purpose of this section, notice shall be considered to have been given when it is delivered in person to any Owner of the affected Lot, or when it is deposited with the United States Postal Service for mailing, by registered or certified mail, return receipt requested, postage prepaid, to the Owner at the mailing address

designated in writing by the Owner, or if no mailing address is so designated, to the most recent address of the Owner shown upon the records of the Assessor of Greenbrier County, West Virginia.

6. The Association shall maintain the Common Property within the Village, as defined herein and as depicted upon the recorded subdivision map of the property, and shall maintain such insurance upon the Common Property as may be required by law or otherwise deemed appropriate by the Board. The Association may exercise all powers authorized applicable law, including those powers set forth in Chapter 36B, Article 3, Section 102 of the West Virginia Code.
7. The Association shall each year make assessments for its expenses, including those expenses incurred for real property taxes upon the Common Property, for insurance, and for otherwise maintaining and improving the Common Property, based on the budget adopted by the Association for that year. The total of such annual assessments shall not exceed the total projected expenses contained in the Association's budget for that year. Except as specifically set forth herein, each Lot shall be assessed 1/52 of the total amount budgeted for such expenses.
8. If an expense is caused by the violation of any restriction or limitation contained herein, or by other misconduct of any Owner, the Association may assess that expense exclusively against the Lot involved in such violation or the Lot of the Owner engaged in such misconduct, as an additional assessment.
9. Within thirty days after the Board's adoption of any proposed annual budget for the Association, the Board shall provide a summary of the budget to all Owners, together with a financial statement of income and expenses for the previous twelve months, and shall set a date for a meeting of the Owners to consider ratification of the budget, not less than fourteen nor more than thirty days after mailing of the summary. Unless at that meeting a majority of all Owners vote to reject the budget, the budget is ratified, whether or not a quorum is present. In the event the proposed budget is rejected, the periodic budget last ratified by the Owners must be continued until such time as the Owners ratify a subsequent budget proposed by the Board.
10. Except as specifically provided herein, the annual assessment made for the Association's expenses shall not exceed \$300.00 per Lot, as adjusted for inflation. The Association may levy a special assessment, as a part of the annual assessment, not more often than once every three years and for no more than \$2,000 per Lot, as adjusted for inflation, to cover the costs of large or unusual capital improvement projects on or to the Common Property. In those years in which a special

assessment is levied, the total annual assessment shall not exceed \$2,300.00 per Lot, as adjusted for inflation.

11. All adjustments for inflation made pursuant to the immediately preceding section shall be based upon the Consumer Price Index for Urban Wage Earners and Clerical Workers: United States City Average, All Items 1967=100, compiled by the Bureau of Labor Statistics, United States Department of Labor, (the "Index"). The Index for June, 2006, which was 591.7, shall be used as the base index for calculating such adjustments for inflation. Any such adjustments shall be made using the most recent Index publicly available at the time that the Board adopts a proposed annual budget for the Association. If the Index is revised in such a manner as to change the Index for June, 2006, all calculations made hereunder shall reflect the application of the appropriate rebasing factor furnished by the Bureau of Labor Statistics. If the Index is superseded, the Index referred to in this section shall be the one represented by the Bureau of Labor Statistics as reflecting most accurately changes in the purchasing power of the dollar for consumers.
12. Any past due assessment or installment thereof shall bear interest at the rate of eighteen percent (18%) per year, unless a lesser rate of interest is established by the Board.
13. The Association shall have a lien on each Lot for any assessment levied against that Lot, together with interest, costs and reasonable attorneys' fees, from the time the assessment becomes due. This lien is prior to all other liens and encumbrances on the Lot, except to the extent that applicable law requires priority to be given to (a) liens and encumbrances recorded on or before September 5, 2000; (b) a first security interest on the Lot recorded before the date on which the assessment sought to be enforced became delinquent; (c) liens for real estate taxes and other governmental assessments or charges against the Lot; or (d) other liens given priority by law. In addition, each assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of the Lot at the time when the assessment became due.
14. For the purpose of perfecting and preserving its lien under the immediately preceding section of this instrument, the Association shall give notice to the Owner in the manner set forth in Chapter 56, Article 2, Section 1, of the West Virginia Code, or by registered or certified mail, return receipt requested, and in a form reasonably calculated to inform the Owner of his liability for payment of the assessment. The lien shall be discharged as to subsequent purchasers for value without notice unless

the Association shall cause to be recorded a notice of the lien in the Office of the Clerk of the County Commission of Greenbrier County, West Virginia.

15. The Association shall have the right to enforce its liens through appropriate proceedings, as provided by the laws of West Virginia.
16. In the event that the Association acquires any Lot by foreclosure or otherwise, such Lot shall be exempt from the payment of any assessments for so long as the said Lot is owned by the Association.
17. Upon written request, the Association shall furnish to an Owner a statement setting forth the amount of unpaid assessments against the Owner's Lot, within ten (10) business days after receipt of the request. This statement shall be binding on the Association, its Board and all Owners.
18. It shall be each Owner's responsibility to ensure that the Association has an accurate record of his or her address. An Owner shall notify the Association, preferably in writing, when a Lot is sold, giving the purchaser's name, address, telephone number, e-mail address, if any, and date of sale in order that appropriate changes can be made in the Association's records.

ARTICLE V Amendments and Incorporation

Nothing contained within this Amended Declaration of Covenants, Reservations, and Restrictions shall be construed so as to impair future amendments hereto. Any amendments to this Amended Declaration may be made upon the vote or written consent of the Owners of the Lots to which at least sixty-seven percent of the votes in the Association are allocated. Additionally, the Association shall have the power to incorporate itself at any time upon the vote or written consent of the Owners of the Lots to which at least sixty-seven percent of the votes in the Association are allocated.

The foregoing constitutes the Amended Declaration of Covenants, Reservations, and Restrictions for Shaw-Mi-Del-Eca Village, having been approved by a vote of the Owners of a majority of the Lots therein conducted on Aug 28th, 2006, in accordance with the Declaration of Covenants, Conditions and Restrictions for the said Shaw-Mi-Del-Eca Village then in effect.

IN WITNESS WHEREOF, Shaw-Mi-Del-Eca Village Homeowners Association, a West Virginia non-profit unincorporated association, has caused this instrument to be executed on its behalf by its Chairman, who is authorized to do so, on this 28 day of August, 2006.

SHAW-MI-DEL-ECA VILLAGE HOMEOWNERS ASSOCIATION, a West Virginia non-profit unincorporated association

BY: Bill E. Owens
Its Chairman

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

The foregoing instrument was acknowledged before me this 1st day of September 2006, by Bill E. Owens, Chairman of SHAW-MI-DEL-ECA VILLAGE HOMEOWNERS ASSOCIATION, a West Virginia non-profit unincorporated association, for and on behalf of the said association.

My commission expires: May 24 2015

Lori A. Fitzwater
Notary Public

