

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

GLADE SPRINGS VILLAGE
PROPERTY OWNERS ASSOCIATION, INC.,

Plaintiff,

v.

Civil Action No. 21-C-129
Raleigh County, Judge Darl W. Poling

COOPER LAND DEVELOPMENT, INC.,
an Arkansas corporation, and
JUSTICE HOLDINGS LLC,
a West Virginia limited liability company,

Defendants.

**DEFENDANT COOPER LAND DEVELOPMENT, INC.'S
MOTION TO REFER ACTION TO THE BUSINESS COURT DIVISION**

Pursuant to Rules 29.04 and 29.06 of the West Virginia Trial Court Rules, defendant Cooper Land Development, Inc. ("CLD"), by counsel, hereby moves this Court for an order referring this civil action to the Business Court Division ("Division") for all further proceedings and trial. This motion should be granted because this civil action (a) centers on a significant commercial dispute spanning more than 20 years involving millions of dollars in controversy, (b) involves parties that are sophisticated commercial entities, and (c) requires the Division's specialized knowledge and expertise in contract law, complex commercial transactions, interpretation and application of the Uniform Common Ownership Interest Act, W. Va. Code §36B-1-101, *et seq.* ("UCIOA") and laws applying to limited expense planned communities, commercial financing, capital development loan restructuring, utility and infrastructure development and financing, tax increment financing, forensic accounting, fiduciary duty and commercial real estate development. Copies of the Complaint, Motion to Dismiss with supporting memorandum of law, docket sheet and other documents supporting referral of this action to the Division are attached hereto as Exhibit 1.

GOOD CAUSE EXISTS TO FILE THIS MOTION NOW

Pursuant to West Virginia Trial Court Rule 29.06(a)(2), CLD represents that good cause exists to file this motion before the time to answer the complaint has expired because it does not expect Plaintiff to oppose it since GSVPOA filed a similar motion in a related matter currently pending in the Business Court Division (Raleigh County Civil Action No. 19-C-357) before Judge Dent (presiding judge) and Judge Lorensen (resolution judge). The undersigned counsel has also reached-out to counsel for Defendant Justice Holdings LLC who has indicated that Justice Holdings will not oppose this motion. Moreover, the issues raised in CLD's Motion to Dismiss involve matters of significance to commercial transactions which would benefit from the Division's specialized knowledge, treatment and expertise in the subject matter.

BACKGROUND

This civil action arises out of Plaintiff Glade Springs Village Property Owners Association, Inc.'s ("GSVPOA") demonstrated attempts to unwind a series of complex commercial transactions spanning more than 20 years from the inception of Glade Springs Village ("GSV") in early 2001 to the present. Over that period of time and as a result of the initial capital investment and infrastructure development of CLD, GSV has grown from rural pastureland to a modern, gated, upscale residential community situate on approximately 3,000 acres with more than 750 homes and two 18-hole championship golf courses that are among the best in the State of West Virginia.

The sheer magnitude and audacity of the Plaintiff's claims and the precedential value of legal decisions resolving those claims have the potential to send shock waves through the commercial development and residential real estate business communities in West Virginia (*and beyond*), may likely impact every residential community in this State, and have a chilling effect on West Virginia real estate development.

The GSVPOA

The GSVPOA was incorporated in 2001 as a domestic, non-profit corporation. The original developer, CLD, and GSVPOA recorded a Declaration of Covenants and Restrictions for Glade Springs Village ("Declaration") in May 2001 in order to impose restrictions under a general plan of improvement for the benefit of all the property owners in GSV and to establish a method of maintenance, preservation, use and enjoyment of the property. The Declaration was recorded in the Office of the Clerk of the County Commission of Raleigh County, West Virginia in Deed Book 5004, Page 6485. After CLD served as Developer and Declarant of GSV for a period of 10 years, Defendant Justice Holdings, LLC purchased all of CLD's legal interests in GSV in October 2010 and released CLD from all liability related to GSV.

The Declaration

The Declaration sets out certain covenants and restrictions, which establish a uniform plan of development for the community by ensuring against the establishment of undesirable uses and activities on adjacent lots to the detriment of each purchaser's enjoyment of his or her lot or residence. Further, these covenants and restrictions, to which every lot and residence is subject to, are mutually enforceable among the property owners. The GSVPOA was organized for the purpose of executing these functions. By virtue of his or her ownership, each property owner in GSV becomes a member in the GSVPOA and has an easement of enjoyment in all of the common properties and is obligated to pay annual assessments to the GSVPOA.

Common Properties

The common properties at GSV are owned by the GSVPOA and include the green belts, roads, the Chatham Lake and Stonehaven & Woodhaven golf courses. A general assessment is levied by the GSVPOA each year, against each residence or vacant lot, to be used for the purposes

of promoting recreation, health, safety, welfare and common benefits and enjoyment of the owners, including the construction and procurement of utility services, facilities, and infrastructure and to repay loans from the developer for such purposes.

GSVPOA's Claims

The Complaint filed by the GSVPOA seeks an accounting from CLD and Justice Holdings of all money advanced and paid on the operating and capital expense loan ("Capital Expense Loan") from the date of its inception in 2001. The Capital Expense Loan was used to fund the operational and maintenance expenses of GSVPOA beginning in May 2001. The GSVPOA also seeks a declaratory judgment that the Capital Expense Loan is void *ab initio* and seeks damages flowing from May 2001 to the present under various causes of action sounding in contract, tort, and equity invoking tenuous and unique legal theories attributable to commercial entities under West Virginia statutes and common law.

ARGUMENT

A. Specialized Treatment By The Business Court Division Is Likely To Improve The Expectation Of A Fair And Reasonable Resolution Of The Controversy Because It Requires Specialized Knowledge Or Expertise In The Subject Matter, The Applicable Law, And Legal Principles.

The GSVPOA's civil action meets the definition of "Business Litigation" set forth in Rule 29.04 of the West Virginia Trial Court Rules (outlining three requirements supporting referral to the Business Court Division). First, the principal claims at issue involve matters of significance to commercial transactions between three business entities, GSVPOA (*a West Virginia corporation organized to execute and enforce property use and restrictions within GSV*), CLD (*a residential real estate and golf course developer*) and Justice Holdings (*a residential and commercial real estate developer and property management company*). Plaintiff's claims seek to unwind a series

of complex commercial transactions spanning more than 20 years and involving millions of dollars in alleged damages in controversy.

Second, this action presents commercial issues in which specialized treatment in the Business Court Division will likely improve the expectation of a fair and reasonable resolution. *Id.* at Rule 29.04(a)(2). It specifically requires specialized knowledge in contract law, complex commercial transactions, interpretation, application of UCIOA and laws applying to limited expense planned communities, commercial financing, capital development loan restructuring, utility and infrastructure development and financing, tax increment financing, forensic accounting, fiduciary duty, and commercial real estate development. In short, this action presents all the hallmarks of business litigation, and it necessitates the Business Court Division's specific expertise in corporate law, liability, and damages. The tribunal's experience in unraveling forensic accounting issues relating to damages under West Virginia and potentially Arkansas law will be of particular value.

Third, the claims at issue do not implicate subjects that are ineligible for Business Court Division treatment, such as products liability, personal injury, wrongful death, consumer class actions, insurance bad faith, or landlord-tenant disputes. *Id.* at Rule 29.04(a)(3)(providing a full list of subjects Business Court Division may not adjudicate). Rather, this action presents the quintessential business litigation dispute: a civil action between three sophisticated commercial entities with the potential to unravel one of West Virginia's premier modern, gated, upscale residential communities which may have a chilling effect on West Virginia real estate development.

RELATED ACTIONS

CLD is aware of three potentially-related civil actions: (1) a civil action referred to the Business Court Division upon GSVPOA's motion involving a commercial dispute between the GSVPOA and a vendor at GSV: *GSVPOA v. Emco Glade Springs Hospitality, LLC, et al*, Raleigh County Civil Action No. 19-C-357 (Judge Dent, presiding Judge and Judge Lorensen, resolution Judge); (2) a civil action involving a dispute between GSVPOA and the current Declarant: *Justice Holdings LLC v. GSVPOA*, Raleigh County Civil Action No. 19-C-481 (Judge Burnside); and (3) a civil action related to liabilities following the sale of GSV from CLD to Justice Holdings in 2010 currently pending in the U.S. District Court for the Southern District of West Virginia with a motion to transfer venue to the U.S. District Court for the Western District of Arkansas: *Justice Holdings LLC v. CLD*, Civil Action No. 5:20-cv-687 (Judge Volk).¹

CONCLUSION

WHEREFORE, for all of the foregoing reasons, defendant Cooper Land Development, Inc. respectfully requests entry of an order referring this civil action to the Business Court Division for all further proceedings and trial and for such other relief as the Court deems appropriate and just.

Dated: June 4, 2021

COOPER LAND DEVELOPMENT, INC.

By Counsel



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¹ By filing this motion, CLD reserves, and does not waive, all venue related rights it has or may have.

CERTIFICATE OF SERVICE

I, M. David Griffith, Jr., counsel for Defendant Cooper Land Development, Inc., hereby certify that on the 4th day of June 2021, service of the foregoing ***"MOTION TO REFER"*** has been made upon the following via U.S. mail, addressed as follows:

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Case Docket Entries

CC-41-2021-C-129

Court: **Circuit** County: **41 - Raleigh** Created Date: **4/30/2021** Security Level: **Public**
 Judge: **Darl Poling** Case Type: **Civil** Case Sub-Type: **Other** Status: **Open**
 Related Cases:
 Style: **Glade Springs Village Property Owners Association, Inc. v. Cooper Land Development Inc**

	<u>Entered Date</u>	<u>Event</u>	<u>Ref. Code</u>	<u>Description</u>
1	4/30/2021 11:52:15 AM	E-Filed		Complaint
	1-1 4/30/2021	Civil Case Information Statement		
	1-2 4/30/2021	Complaint - Complaint		
	1-3 4/30/2021	Transmittal		
	1-4 4/30/2021	Summons		
2	4/30/2021 11:52:15 AM	Judge Assigned	J-41004	Darl Poling
3	4/30/2021 11:52:15 AM	Party Added	P-001	Glade Springs Village Property Owners Association, Inc.
4	4/30/2021 11:52:15 AM	Party Added	D-001	Cooper Land Development Inc
5	4/30/2021 11:52:15 AM	Party Added	D-002	Justice Holdings LLC
6	4/30/2021 11:52:15 AM	Attorney Listed	P-001	A-6005 - Mark A. Sadd
7	4/30/2021 11:52:15 AM	Attorney Listed	P-001	A-6927 - Ramonda C. Marling
8	4/30/2021 11:52:15 AM	Service Requested	D-001	Secretary of State - Certified - Including Copy Fee
9	4/30/2021 11:52:15 AM	Service Requested	D-002	Secretary of State - Certified - Including Copy Fee
10	5/5/2021 3:37:54 PM	Document Emailed		Court user emailed VWOLFE@TCSTLLC.COM document 1-2 - Complaint - Complaint
11	5/5/2021 4:02:05 PM	Document Emailed		Court user emailed VWOLFE@TCPTLLC.COM document 1-2 - Complaint - Complaint
12	5/5/2021 4:12:55 PM	Document Emailed		Court user emailed VWOLFE@TCSPLLC.COM document 1-2 - Complaint - Complaint
13	5/5/2021 4:13:40 PM	Document Emailed		Court user emailed VWOLFE@TCSPLLC.COM document 1-4 - Summons -
14	5/7/2021 10:14:07 AM	E-Docketed		Service Return - RETURN RECEIPT CARD (SEE CARD FOR SIGNATURE) AS TO SECRETARY OF SERVICE
	14-1 5/7/2021	Service Return - RETURN RECEIPT CARD (SEE CARD FOR SIGNATURE) ON BEHALF OF SECRETARY OF STATE, 5/4/21 (DP)		
	14-2 5/7/2021	Transmittal		
15	5/11/2021 11:45:06 AM	E-Docketed		Supporting Documents - ACCEPTANCE OF SERVICE, ON BEHALF OF SEC OF STATE, ON BEHALF OF COOPER LAND DEVELOPMENT, 5/5/21. SP
	15-1 5/11/2021	Supporting Document - ACCEPTANCE OF SERVICE, ON BEHALF OF SEC OF STATE, ON BEHALF OF COOPER LAND DEVELOPMENT, 5/5/21. SP		
	15-2 5/11/2021	Transmittal		
16	6/1/2021 1:55:16 PM	E-Docketed		Supporting Documents - RCVD RTN CERT MAIL GREEN CARD AS TO WV ONE STOP CENTER FOR JUSTICE HOLDINGS
	16-1 6/1/2021	Service Return - RCVD RTN CERT MAIL GREEN CARD AS TO WV ONE STOP CENTER FOR JUSTICE HOLDING		
	16-2 6/1/2021	Transmittal		
17	6/2/2021 9:39:18 AM	E-Docketed		Supporting Documents - REC RETURN OF SERVICE, ACCEPTED BY SEC OF STATE, ON BEHALF OF JUSTICE HOLDINGS LLC, 5/27/21.
	17-1 6/2/2021	Supporting Document - REC RETURN OF SERVICE, ACCEPTED BY SEC OF STATE, ON BEHALF OF JUSTICE HOLDINGS LLC, 5/27/21.		
	17-2 6/2/2021	Transmittal		

IN THE CIRCUIT COURT OF RALEIGH COUNTY, WEST VIRGINIA

**GLADE SPRINGS VILLAGE
PROPERTY OWNERS ASSOCIATION, INC.,**

Plaintiff,

v.

**Civil Action No. _____
The Honorable _____**

**COOPER LAND DEVELOPMENT, INC.,
an Arkansas corporation, and
JUSTICE HOLDINGS LLC,
a West Virginia limited liability company,**

Defendants.

COMPLAINT

COMES now, Plaintiff, Glade Springs Village Property Owner's Association, Inc. ("GSVPOA"), by its counsel, Mark A. Sadd, Ramonda C. Marling and the law firm of Lewis Glasser PLLC, and states as follows:

Parties

1. Plaintiff Glade Springs Village Property Owners Association, Inc. is a West Virginia non-profit corporation with its principal office in Daniels, Raleigh County, West Virginia. GSVPOA was incorporated under the laws of the State of West Virginia on March 19, 2001.

2. Defendant Cooper Land Development, Inc. is an Arkansas corporation formerly authorized to conduct business in the State of West Virginia under the fictitious name of Glade Springs Village. Cooper Land withdrew from the State of West Virginia as of July 27, 2016.

3. Defendant Justice Holdings LLC is a West Virginia limited liability company with its principal office in Daniels, Raleigh County, West Virginia.

Jurisdiction and Venue

4. This Court has jurisdiction of this Civil Action under W. Va. Code § 51-2-2 because the amount in controversy exceeds \$7,500.00; the facts and circumstances of GSVPOA's claims occurred and exist in Raleigh County, West Virginia; and the claims that GSVPOA brings against Defendants arose in Raleigh County, West Virginia.

5. Venue is proper under W. Va. Code § 56-1-1 because the principal offices of Plaintiff and Defendant Justice Holdings are located in Raleigh County, West Virginia, and all of the business activities of Defendant Cooper Land in West Virginia occurred in Raleigh County or were related to or arising from Glade Springs Village.

Facts

6. Glade Springs Village is a common interest community¹ subject to the Uniform Common Interest Ownership Act as codified in Chapter 36B of the Code of West Virginia of 1931, as amended ("UCIOA"). *See Order Granting Glade Springs Village Property Owners Association, Inc. 's Motion for Summary Judgment that UCIOA Applies and Motion for Summary Judgment that Justice Holdings is the Declarant of GSV*, entered October 23, 2020, by the Honorable Robert A. Burnside, Jr. in the civil action in Raleigh County Circuit Court styled, *Justice Holdings LLC v. Glade Springs Village Property Owners Association, Inc.* (Civil Action no. 19-C-481-P)) ("Civil Action no. 19-C-481-P").

7. Cooper Land was the Declarant² of Glade Springs Village beginning in 2001 when Glade Springs Village was created and ending in 2010 when Justice Holdings became the Declarant.

¹ "Common interest community" is defined as "real estate with respect to which a person, by virtue of his ownership of a unit, is obligated to pay for real estate taxes, insurance premiums, maintenance or improvement of other real estate" W. Va. Code § 36B-1-103(7).

² Under UCIOA, "declarant" is defined as "any person or group of persons acting in concert who: (i) As part of a

8. On May 30, 2001, Cooper as the Declarant filed the *Declaration of Covenants and Restrictions Glade Springs Village, West Virginia* in the office of the Clerk of the County Commission of Raleigh County, West Virginia (the “Clerk’s office”) in Deed Book 5004, at page 6485 (the “Declaration”).

9. By his sworn affidavit, J. Neff Basore, Jr., a top official of Cooper Land, attested that he was aware that when Cooper Land “was evaluating a development at Glade Springs Village West Virginia had adopted” “UCIOA.”

10. The Declaration imposes on the land made subject to its restrictions, covenants, easements, and conditions under a general plan of improvement for the benefit of all the property owners and established a method of maintenance, preservation, use and enjoyment of the Lots and Common Elements within Glade Springs Village, including the right to impose and collect assessments against all lots secured by statutory liens with the power of foreclosure and sale.

11. By virtue of his, her, or its ownership of a unit or lot, each unit owner within Glade Springs Village is a member of GSVPOA, has an easement of enjoyment in all of the Common Elements of Glade Springs Village and is obligated to pay regular and special assessments to GSVPOA for the maintenance, operation, repair, and replacement of the Common Elements.

12. Glade Springs Village is a planned community³ as UCIOA defines that term.

13. Glade Springs Village is a not a limited common expense planned community as UCIOA defines that term.

common promotional plan, offers to dispose of his or its interest in a unit not previously disposed of; or (ii) reserves or succeeds to any special declarant right.” W. Va. Code § 36B-1-103(12).

³ “Planned community” is defined as “a common interest community that is not a condominium or a cooperative.” W. Va. Code § 36B-1-103(23).

14. Because Glade Springs Village is a not a limited common expense planned community Glade Springs Village is subject to all provisions of UCIOA.

15. GSVPOA is the association⁴ of the Unit or Lot owners⁵ within Glade Springs Village.

16. If and as the owner of Lots within Glade Springs Village, the Declarant is a GSVPOA Member.

17. While the owner of one or more Lots within Glade Springs Village, Cooper Land was a member of GSVPOA.

18. Cooper Land owned Lots within Glade Springs Village that had not been previously conveyed as Lots to persons other than Justice Holdings (“Developer Lots”).

19. Justice Holdings now owns the Developer Lots. As the owner of the Developer Lots, Justice Holdings is a GSVPOA Member on a par with other GSVPOA Members.

20. While the owner of the Developer Lots, Cooper Land did not pay to GSVPOA Annual Assessments on the Developer Lots.

21. While the owner of the Developer Lots, Justice Holdings did not pay to GSVPOA Annual Assessments on the Developer Lots.

22. Under Article X, Section 7 of the Declaration, “delinquent assessments shall bear interest from the date of delinquency at . . . the rate of 10% per annum.”

23. Under its Bylaws, the Declaration and UCIOA, GSVPOA is governed and managed by and acts solely through its Board of Directors.

⁴ “Association” or “unit owners association” is defined as “organized under section one hundred one, article three of this chapter.” W. Va. Code § 36B-1-103(3).

⁵ For purposes of this civil action, the terms “unit” and “lot” are interchangeable unless the context suggests otherwise. Under UCIOA, the term “unit” is defined as “a physical portion of the common interest community designated for separate ownership or occupancy” W. Va. Code § 36B-1-103(33).

24. As the Declarant, Cooper Land possessed the reserved special declarant right under the Declaration to appoint all of the members of the Board of Directors (the “Declarant-Appointed Board of Directors”) to govern, manage and act on behalf of GSVPOA from GSVPOA’s inception in 2001 through 2010 when Justice Holdings succeeded as the Declarant.

25. Mr. Basore in a sworn affidavit submitted in Civil Action no. 19-C-481-P stated: “The transaction between [Cooper Land] and Justice Holdings was structured to transfer, assign, and secure for Justice Holdings the status of Developer under the Declaration and provide Justice Holdings the status of Developer under the Declaration and provide Justice Holdings with the same reservations, protections, exemptions, rights, status, obligations, and liabilities regarding the Assets that [Cooper Land] held and by which [Cooper Land] was not obligated to pay annual assessments under the Declaration.”

26. After it succeeded as the Declarant, Justice Holdings succeeded to and possessed the reserved special declarant right under the Declaration to appoint all of the members of the Declarant-Appointed Board of Directors.

27. Cooper Land as the Declarant appointed all of the members of the Board of Directors from its creation until Justice Holdings became the Declarant.

28. After it became the Declarant Justice Holdings appointed all of the members of the Declarant-Appointed Board of Directors until April 2019 when GSVPOA Members other than the Declarant had their first opportunity in GSVPOA’s history to participate in the election of the first independent Board of Directors.

29. The Declarant, whether Cooper Land or Justice Holdings, exercised complete dominion and control of the composition of the Declarant-Appointed Board of Directors through April 30, 2019.

30. The Declarant, whether Cooper Land or Justice Holdings, exercised complete dominion and control of the actions of the Declarant-Appointed Board of Directors through April 30, 2019.

31. At all times relevant and material to the matters in this Civil Action, the Declarant-Appointed Board of Directors was required under W. Va. Code § 36B-3-103(a) to act according to a standard of care required of fiduciaries for the benefit of all Glade Springs Village Lot owners as GSVPOA Members.

32. Cooper Land as the owner of Lots within Glade Springs Village had the obligation to pay the Annual Assessments on all of its Lots within Glade Springs Village on a basis equal to and with all the other Lots or unit owners within Glade Springs Village.

33. Cooper Land failed to pay the Annual Assessments on all of its Lots within Glade Springs Village.

34. In addition to its liability to pay the Annual Assessments on all of its Lots within Glade Springs Village, Cooper Land alone was liable to GSVPOA for all expenses in connection with all other real estate within Glade Springs Village subject to the development rights as that term is defined in W. Va. Code § 36B-1-103(14).

35. At all times while Cooper Land was the Declarant, it owned real estate within Glade Springs Village subject to development rights as that term is defined in W. Va. Code § 36B-1-103(14).

36. Justice Holdings as the owner of Lots within Glade Springs Village had the obligation to pay the Annual Assessments on all of its Lots within Glade Springs Village on a basis equal to and with all other Lots or unit owners within Glade Springs Village.

37. Justice Holdings too failed to pay the Annual Assessments on all of its Lots within Glade Springs Village.

38. In addition to its liability that Justice Holdings had to pay the Annual Assessments on all of its Lots within Glade Springs Village, Justice Holdings after it succeeded as the Declarant alone was liable to GSVPOA for all expenses in connection with all other real estate within Glade Springs Village subject to the development rights.

39. Cooper Land directed GSVPOA to enter into the Loan Agreement, dated May 14, 2001, by and between GSVPOA, and Cooper Land for “capital to fund the initial operational and maintenance expenses” for Glade Springs Village and recited that “up to \$2,000,000 is needed to meet these expenses”.

40. During the ensuing 14 years, the parties amended the Loan Agreement 10 times.

41. Each and every time the parties amended the Loan Agreement it was because the Declarant directed the Declarant-Appointed Board of Directors to do so.

42. Under the First Amendment, dated August 1, 2003, Cooper Land and GSVPOA agreed to “increase the maximum amount” that Cooper Land would loan to GSVPOA to \$2,500,000.

43. Under the Second Amendment, dated May 1, 2006, Cooper Land and GSVPOA agreed to “increase the maximum amount” that Cooper Land would loan to GSVPOA to \$2,600,000.

44. Cooper Land and Justice Holdings entered into the Assignment and Assumption of Working Capital Loan Agreement dated October 20, 2010 “whereby [Cooper Land purported to assign and transfer] to [Justice Holdings] all of [Cooper Land’s] rights and obligations of every kind in regard to the” Loan Agreement.

45. Cooper Land and GSVPOA amended the Loan Agreement several times that effectively extended the maturity date.

46. According to the August 13, 2014 GSVPOA board meeting minutes, “the Working Capital loan has been paid in full”.

47. The Declarant-Appointed Board of Directors each time failed to take and to perform proper and necessary corporate actions to authorize GSVPOA to enter into the Loan Agreement and the amendments to the Loan Agreement.

48. Each action of the Declarant-Appointed Board of Directors to enter into and to perform the Loan Agreement and the amendments to the Loan Agreement violated the Bylaws of GSVPOA.

49. Each action of the Declarant-Appointed Board of Directors to enter into and to perform the Loan Agreement and the amendments to the Loan Agreement violated the Declaration.

50. Each action of the Declarant-Appointed Board of Directors to enter into and perform the Loan Agreement and to the amendments to the Loan Agreement time violated UCIOA.

51. Neither Cooper Land nor Justice Holdings has paid the Annual Assessments on the Developer Lots.

52. In early 2019, GSVPOA Members at a duly called meeting there of elected members to the Board of Directors who were the first members independent of the Declarant (the “Elected Board of Directors”).

53. The first Elected Board of Directors elected its first independent officers in April 2019.

54. The first officers of the first Elected Board of Directors took office in May 2019.

55. In Civil Action no. 19-C-481-P, GSVPOA obtained final judgment that the Declarant under UCIOA was and is obligated to pay Annual Assessments on the Developer Lots and all other Lots that it owned on a par with all other Lots or unit owners.

56. Cooper Land is not a party to Civil Action no. 19-C-481-P.

57. Civil Action no. 19-C-481-P is pending on the docket of the Raleigh County Circuit Court.

58. Thus, Cooper Land as the Declarant under UCIOA was obligated to pay Annual Assessments on the Developer Lots and all other Lots that it owned on a par with all other Lot owners.

59. The liability of Cooper Land for unpaid Annual Assessments is approximately equal to the product of the number of Lots that it owned and the Annual Assessment for each fiscal year together with unpaid interest thereon at the rate of 10 percent a year; fees; penalties; and reasonable attorneys' fees and costs.

60. In addition, the liability of Cooper Land for all expenses in connection with all other real estate within Glade Springs Village subject to the development rights is approximately equal to all of the Common Expenses of Glade Springs Village that Cooper Land purported to characterize as debt under the Loan Agreement, together with unpaid interest paid thereon; all other moneys paid by GSVPOA to either Cooper Land or Justice Holdings; loss of income to GSVPOA; fees; penalties; and reasonable attorneys' fees and costs.

61. As holder of the Note under and the beneficiary of the Loan Agreement, either Cooper Land or Justice Holdings from time to time directed the Declarant-Appointed Board of Directors to pay GSVPOA's assessment income from Lots or unit owners to repay the alleged debt under the Loan Agreement.

62. Upon the Declarant's direction, members of the Declarant-Appointed Board of Directors each time paid GSVPOA's assessment income to repay the alleged debt under the Loan Agreement.

63. Under the Loan Agreement, the Declarant altogether directed the Declarant-Appointed Board of Directors to pay and thus received from GSVPOA approximately \$2,689,081 in repayment of advances under the Loan Agreement, with interest.

64. Each of GSVPOA's transfers of money to the Declarant under the Loan Agreement was a conversion of funds and assets contrary to their purpose to pay for the upkeep of the Common Elements.

65. Each of GSVPOA's transfers of money to the Declarant under the Loan Agreement was a breach of GSVPOA's contractual obligation under the Declaration to use assessment income to pay the Common Expenses for the upkeep of the Common Elements.

66. Each of GSVPOA's transfers of money to the Declarant under the Loan Agreement was a violation of UCIOA and other state law.

67. The actual purpose of each transfer was for the improper and unlawful use to satisfy the Declarant's direct obligation under the Declaration and UCIOA to pay its fair share of the Common Expenses.

68. Each of the Declarant's acceptances of money from GSVPOA under the Loan Agreement was a conversion of funds and assets contrary to their purpose to pay the Common Expenses.

69. Each of the Declarant's acceptances of money from GSVPOA under the Loan Agreement was a breach of GSVPOA's contractual obligation under the Declaration to use assessment income to pay the Common Expenses.

70. Each of the Declarant's acceptances of money from GSVPOA under the Loan Agreement was a violation of UCIOA and other state law.

71. The actual purpose of each acceptance was for the improper and unlawful use to satisfy the Declarant's direct obligation under the Declaration and UCIOA to pay its fair share of the Common Expenses.

72. Each of Cooper Land and Justice Holdings as the Declarant is or remains required under UCIOA to prepare and issue a public offering statement about Glade Springs Village to prospective buyers of Lots within Glade Springs Village and, if circumstances require, to amend the public offering statement.

73. Each of Cooper Land and Justice Holdings as the Declarant is or remains required under the Interstate Land Sale Full Disclosure Act ("ILSFDA") to prepare and issue a report about Glade Springs Village to prospective buyers of Lots within Glade Springs Village, and, if circumstances require, to amend the report.

74. Both UCIOA and ILSFDA have robust disclosure requirements.

75. Despite that the Loan Agreement was entered into on May 14, 2001, the first instance that Cooper Land disclosed the existence of the Loan Agreement under either UCIOA or ILSFDA was on page 36 in the Property Report dated September 8, 2008 in which the Declarant stated: "The developer and the Association have entered into two revolving loan agreements. Under the terms of the first loan agreement, the Association may borrow up to \$2.6 million from the developer to fund initial operational and maintenance expenses for Glade Springs Village. The Association has executed a promissory note as evidence of the loan. The total principal advance and interest are due and payable May 1, 2009, unless extended under a written amendment to the loan agreement."

76. By June 10, 2014, the “period of declarant control” for Glade Springs Village as W. Va. Code § 36B-3-103(d) defines that term had ended.

77. By June 10, 2014, the Declarant’s reserved special declarant right to appoint or elect all of the members of the Board of Directors of GSVPOA had terminated by operation of W. Va. Code § 36B-3-103(d) because the period of declarant control had ended.

78. Justice Holdings failed to inform GSVPOA’s Members that the Declarant’s reserved special declarant right to appoint or elect all of the members of the Board of Directors of GSVPOA had terminated by operation of W. Va. Code § 36B-3-103(d).

79. The Property Report issued by Justice Holdings on June 10, 2014 is the last public disclosure under either UCIOA or ILSFDA of the existence of the Loan Agreement. In the June 10, 2014 Property Report, Justice Holdings stated that the “Loan Agreement is currently extended through May 1, 2015.”

80. In the June 10, 2014 Property Report the Declarant stated that the “Association may not modify or terminate the Loan Agreement and Revolving Note after the owners assume control of the association unless otherwise agreed to in writing with the developer.”

81. The Declarant’s foregoing statement in ¶ 80 of this Complaint was material, false and contrary to UCIOA.

82. The Declarant failed to disclose to potential buyers that after the owners assume control of GSVPOA, GSVPOA would have had the right to terminate the Loan Agreement under W. Va. Code § 36B-3-105.

83. The Declarant in multiple Property Reports disclosed the construction of a so-called “Area 2 Golf Course with Golf Center (18-hole irrigated course with cart paths; pro shop and with snack bar and restrooms)”, including the Property Report by Cooper Land, dated February 28,

2006, at pp. 23-24. In the February 28, 2006 Property Report, the Declarant stated: “The Property owners Association is responsible for the administration and maintenance . . . of the Area 2 Golf Course and Golf Center.”

84. Area 2 Golf Course with Golf Center is now known as Woodhaven.

85. On August 14, 2019, GSVPOA instituted a civil action in Raleigh County Circuit Court styled *Glade Springs Village Property Owners Association, Inc. v. EMCO Glade Springs Hospitality, LLC* et al. (The Honorable Jennifer P. Dent, presiding) (Civil Action no. 19-C-57) (“Civil Action no. 19-C-57”).

86. The Declaration includes Protective Covenant no. 22 as follows:

No commercial lot or any parcel of land subject to these Protective Covenants or to this Declaration shall be used to operate any business which competes in any manner with Glade Spring Resort L.L.C.’s food, lodging, resort, conference, rental or property management business, including any timeshare program.

87. In Civil Action no. 19-C-57, the Raleigh County Circuit Court has enforced, interpreted, or construed Protective Covenant no. 22 to mean that neither GSVPOA nor its Members may administer, maintain, manage, provide, or operate food and beverage services within or upon Woodhaven including the snack bar or the clubhouse.

88. On p. 24 of the February 28, 2006 Property Report, the Declarant stated that “Title to the Area 2 Golf Course and Golf Center will be conveyed to the Property Owners Association by Special Warranty Deed free and clear of liens and encumbrances, other than provisions of the Declaration and Protective Covenants.”

89. On p. 24 of the February 28, 2006 Property Report, the Declarant stated that “There are no adverse effects or costs to lot purchasers, other than the annual Property Owners Association assessment, which may be caused by such transfer.”

90. On page 25 of the February 28, 2006 Property Report, the Declarant stated that “While Stonehaven Golf Course is a private course and the Area 2 Golf Course and Golf Center will also be private, the Property Owners Association may allow its guests to use these facilities to generate needed income until, in its judgment, membership use is adversely affected.”

91. To the contrary, Cooper Land conveyed Woodhaven, including its snack bar or clubhouse, to GSVPOA by a so-called “Quitclaim Deed” that is dated October 6, 2010, and is recorded in the Clerk’s office in Deed Book 5041, at page 570. Omitted from the Quitclaim Deed is a special warranty or any warranty.

Count I — Accounting

92. GSVPOA incorporates by reference paragraphs 1 through 91 above as though fully restated herein.

93. GSVPOA is entitled to an accounting of all advances of money to GSVPOA under the Loan Agreement.

94. GSVPOA is entitled to an accounting of all payments to and receipts by the Declarant under the Loan Agreement.

Count II — Loan Agreement Is Unconscionable

95. GSVPOA incorporates by reference paragraphs 1 through 94 above as though fully restated herein.

96. The Loan Agreement was improper, unnecessary, and violative of the Declaration, the Bylaws, the Declaration and UCIOA and other state law.

97. The commercial setting of the negotiations resulting in the execution and delivery of the Loan Agreement by its very nature precluded genuine or *bona fide* arm’s length discussions between the Declarant and GSVPOA.

98. The commercial setting of the negotiations resulting in the execution and delivery of the Loan Agreement by its very nature precluded GSVPOA from determining that the Loan Agreement was improper, unnecessary, and violative of UCIOA and other state law.

99. In directing GSVPOA to enter into and to perform the Loan Agreement, the Declarant knowingly took advantage of the inability of GSVPOA and its Members to reasonably protect its or their interests.

100. In directing GSVPOA to enter into and to perform the Loan Agreement, the Declarant foreclosed GSVPOA from exercising its statutory and contract rights to assessments or payments from the Declarant for the upkeep of the Common Elements of Glade Springs Village.

101. In directing GSVPOA to enter into and perform the Loan Agreement, the Declarant knowingly took advantage of the inability of GSVPOA and its Members to reasonably protect its or their interests because the Declarant forced GSVPOA to enter into the Loan Agreement.

102. The Declarant failed to disclose to GSVPOA's Members that UCIOA required the Declarant to pay for the upkeep of the Common Elements to the extent that assessments from Members other than the Declarant were insufficient to pay for those expenses.

103. There was no valid consideration for GSVPOA's entering into and performing the Loan Agreement.

104. The credit facility created by the Loan Agreement was unnecessary.

105. The only effect of the Loan Agreement was to burden GSVPOA with a debt unfounded on any obligation under contract or law.

106. The only effect of the Loan Agreement was to alleviate the Declarant from its obligation to pay the Annual Assessments on Lots that it owned and the corresponding costs of upkeep of the Common Elements.

107. At the time the Loan Agreement was made GSVPOA's Members had no say whatsoever in the actions of the Declarant-Appointed Board of Directors leading to its execution and performance.

108. Each time the Loan Agreement was amended, GSVPOA's Members had no say or knowledge whatsoever in the actions of the Declarant-Appointed Board of Directors.

109. The relative positions of the two parties to the Loan Agreement and amendments thereto was unconscionable as the Declarant-Appointed Board of Directors was wholly controlled by the Declarant, first Cooper Land and later Justice Holdings.

110. The individual Lot owners other than the Declarant, against whom the debt was actually to be imposed, had no say in the negotiation, execution and performance of the Loan Agreement or amendments to the Loan Agreement.

111. The Loan Agreement contains terms that are unfair and prejudicial to GSVPOA and its Members and beneficial only to the Declarant.

112. The Loan Agreement was unconscionable at the time it was made and amended.

113. Therefore, the Loan Agreement is void *ab initio* and, thus, invalid and unenforceable from its beginning.

114. GSVPOA is entitled to a declaratory or other judgment that the Loan Agreement was unconscionable, void *ab initio*, invalid and unenforceable from its beginning.

115. Because the Loan Agreement was unconscionable, void *ab initio*, invalid and unenforceable from its beginning, GSVPOA is entitled to rescission of the Loan Agreement and all of the documents associated with it.

116. Because the Loan Agreement was unconscionable, void *ab initio*, invalid and unenforceable from its beginning, GSVPOA is entitled to restitution of all moneys paid by

GSVPOA or received by the Declarant under the Loan Agreement and all of the documents associated with it.

Count III — Declarant's Breaches of the Declaration

117. GSVPOA incorporates by reference paragraphs 1 through 116 above as though fully restated herein.

118. The Declaration constitutes a contract among and between the Declarant and the owners of Lots and units within Glade Springs Village.

119. Under the Declaration, the Declarant is required to the Annual Assessments on Lots it owns within Glade Springs Village.

120. The Declarant failed to pay the Annual Assessments on Lots it owns within Glade Springs Village.

121. The Declarant's failures to pay GSVPOA the Annual Assessments on Lots it owns within Glade Springs Village constitute breaches of the Declaration.

122. GSVPOA and its Members suffered damages as a direct and proximate cause of the Declarant's breaches of the Declaration in each and every instance.

123. GSVPOA is entitled to judgment against the Declarant for the aggregate amount of the unpaid Annual Assessments on Lots it owned together with unpaid interest thereon at the rate of 10 percent a year; fees; penalties; and reasonable attorneys' fees and costs.

Count IV — Declarant's Violations of W. Va. Code § 36B-3-107

124. GSVPOA incorporates by reference paragraphs 1 through 123 above as though fully restated herein.

125. "In addition to the liability that a declarant as a unit owner has under this chapter, the Declarant alone is liable for all expenses in connection with real estate subject to the

development rights. No other unit owner and no other portion of the common interest community is subject to a claim for payment of those expenses.” W. Va. Code § 36B-3-107(b).

126. Since the creation of Glade Springs Village, the Declarant was and remains liable under W. Va. Code § 36B-3-107(b) for all expenses in connection with real estate within Glade Springs Village subject to development rights to the Declarant’s failures to pay GSVPOA for all expenses in connection with real estate within Glade Springs Village subject to development rights constitute violations of W. Va. Code § 36B-3-107(b).

127. Because of the Declarant’s failures to pay GSVPOA for all expenses in connection with real estate within Glade Springs Village subject to development rights, GSVPOA and its Members suffered damages as a direct and proximate cause of the Declarant’s breaches of the Declaration in each and every instance.

128. GSVPOA is entitled to judgment against the Declarant for the aggregate amount of the unpaid payment or reimbursement for all expenses in connection with real estate within Glade Springs Village subject to development rights, together with unpaid interest thereon at the rate of 10 percent a year; fees; penalties; and reasonable attorneys’ fees and costs.

Count V — Declarant’s Breaches of Fiduciary Duties

129. GSVPOA incorporates by reference paragraphs 1 through 128 above as through fully stated herein.

130. “Every contract or duty governed by [UCIOA] imposes an obligation of good faith in its performance or enforcement.” W. Va. Code § 36B-3-112.

131. The Declarant had fiduciary duties to GSVPOA and its Members under the Declaration and West Virginia law to act in good faith and in a manner reasonably believed to be

in, or not opposed to, their best interests and to act in a fiduciary capacity with regard to their best interests.

132. For each and all of its acts or omissions related to or arising out of the Loan Agreement, including the acceptance of GSVPOA payments thereunder, the Declarant breached its fiduciary duties to GSVPOA and its Members solely for its own benefit and enrichment.

133. GSVPOA and its Members suffered damages as a direct and proximate cause of the Declarant's breaches of its fiduciary duties.

134. GSVPOA is entitled to judgment against the Declarant for the aggregate amount of the unpaid payment or reimbursement for all expenses in connection with real estate within Glade Springs Village subject to development rights, together with pre- and post-judgment interest thereon; fees; penalties; and reasonable attorneys' fees and costs.

Count VI — Declarant's Negligence

135. GSVPOA incorporates by reference paragraphs 1 through 134 above as through fully stated herein.

136. The Declarant had duties to GSVPOA and its Members under the Declaration and West Virginia law to act in in a prudent and reasonable manner reasonably believed to be in, or not opposed to, their best interests.

137. For each and all of its acts or omissions related to or arising out of the Loan Agreement, including the acceptance of GSVPOA payments thereunder, the Declarant breached its duties to GSVPOA and its Members.

138. GSVPOA and its Members suffered damages as a direct and proximate cause of the Declarant's breaches of its duties.

139. GSVPOA is entitled to judgment against the Declarant for the aggregate amount of the unpaid payment or reimbursement for all expenses in connection with real estate within Glade Springs Village subject to development rights, together with pre- and post-judgment interest thereon; fees; penalties; and reasonable attorneys' fees and costs.

Count VII — Conversion

140. GSVPOA incorporates by reference paragraph 1 through 139 above as through fully stated herein.

141. The Declarant converted GSVPOA assessment income received by GSVPOA required to pay the Common Expenses for its own use and to no benefit or use of GSVPOA or its Members, contrary to UCIOA and other state law.

142. GSVPOA and its Members suffered damages as a direct and proximate cause of the Declarant's conversion.

143. GSVPOA is entitled to judgment against Justice Holdings in an amount to be determined at the time of entry of judgment based upon its failure to pay assessments to GSVPOA and the resulting unjust enrichment and an order or decree directing the Declarant to disgorge the same to GSVPOA.

Count VIII — Unjust Enrichment

144. GSVPOA incorporates by reference paragraph 1 through 143 above as through fully stated herein.

145. For all of its acts or omissions related to or arising out of the Loan Agreement, including the acceptance of GSVPOA payments thereunder, GSVPOA and the members of GSVPOA have conferred benefits upon the Declarant to which it had no right or entitlement under any contract, including the Declaration, or as a matter of West Virginia.

146. The Declarant accepted the benefits conferred upon it related to or arising out of the Loan Agreement.

147. It would be inequitable to permit the Declarant to retain these benefits.

148. GSVPOA is entitled to judgment against Justice Holdings in an amount to be determined at the time of entry of judgment based upon its failure to pay assessments to GSVPOA and the resulting unjust enrichment and an order or decree directing the Declarant to disgorge the same to GSVPOA.

Count IX — Mutual Mistake

149. GSVPOA incorporates by reference paragraph 1 through 148 above as through fully stated herein.

150. If there is a determination that the Declarant and GSVPOA in good faith believed that the Loan Agreement was necessary or proper under the Declaration or West Virginia law when it was not, then GSVPOA is entitled to a judgment or decree that the Loan Agreement and the actions related to or arising out of the Loan Agreement were a result of mutual mistake.

151. The Declarant accepted the benefits conferred upon it related to or arising out of the Loan Agreement even though it was the result of mutual mistake.

152. It would be inequitable to permit the Declarant to retain these benefits.

153. GSVPOA is entitled to judgment against Justice Holdings in an amount to be determined at the time of entry of judgment based upon its failure to pay assessments to GSVPOA and the resulting mutual mistake and an order or decree directing the Declarant to disgorge the same to GSVPOA.

Count X — Declaratory Judgment Related to Woodhaven

154. GSVPOA incorporates by reference paragraph 1 through 153 above as through fully stated herein.

155. GSVPOA seeks declaratory judgment against the Declarant that it is entitled to provide food and beverage services to its Members and invitees at Woodhaven under the Declaration, including Protective Covenant no. 22, without interference from others.

Count XI — Breach of Representation and Special Warranty Related to Woodhaven

156. GSVPOA incorporates by reference paragraph 1 through 155 above as through fully stated herein.

157. The Declarant represented to GSVPOA's Members that GSVPOA and its Members would be entitled to provide food and beverage services to its Members and invitees at Woodhaven under the Declaration, including Protective Covenant no. 22, without impairment or interference from others.

158. The Declarant transferred title to Woodhaven in part by that certain "Quitclaim Deed" dated October 6, 2010 and is recorded in the Clerk's office in Deed Book 5041, at page 570.

159. The Declarant promised a special warranty to GSVPOA and its Members when it was to transfer of title to Woodhaven.

160. Nonetheless, the Declarant omitted from the Quitclaim Deed a special warranty or any warranty.

161. GSVPOA is entitled to make a claim under a special warranty with respect to Woodhaven.

162. Because in Civil Action no. 19-C-57, the Raleigh County Circuit Court has enforced, interpreted or construed Protective Covenant no. 22 to mean that neither GSVPOA nor its Members account may administer, maintain, manage, provide or operate food and beverage services within or upon Woodhaven including the snack bar or the clubhouse, the Declarant breached its representation and special warranty to GSVPOA and its Members that they would not be affected or impaired in their use of Woodhaven.

163. The Declarant breached both its representation and its special warranty.

164. The Declarant's breaches of both its representation and its special warranty are the direct and proximate cause of damages to GSVPOA.

165. GSVPOA is entitled to judgment against the Declarant for such damages, together with pre- and post-judgment interest thereon; fees; penalties; and reasonable attorneys' fees and costs.

Prayer for Relief

WHEREFORE, Plaintiff, Glade Springs Village Property Owners Association, Inc., on behalf of itself and of its Members prays that this Honorable Court, in addition to the specific relief and remedies sought above, further grant, give, declare, decree, adjudge or award the following relief and remedies, including declaratory relief under W. Va. Code § 55-13-1 *et seq.*:

1. Declare that GSVPOA is entitled to a full accounting of all charges and credits under the Loan Agreement, as amended, and enjoin and direct either Cooper Land Development Inc. or Justice Holdings or both of them to provide an accounting;

2. Declare the Loan Agreement, as amended, together with all promissory notes made thereunder and associated loan documents are unconscionable and, thus, unenforceable under West Virginia law;

3. Declare the Loan Agreement, as amended, together with all promissory notes made thereunder and associated loan documents as void *ab initio*;

4. Declare that Justice Holdings willfully violated W. Va. Code § 36B-3-103;

5. Enter judgment against Justice Holdings for its unpaid assessments in an amount to be proven at trial in addition to pre- and post-judgment interest and attorney fees;

6. Rescind the Loan Agreement, as amended, together with all promissory notes made thereunder and associated loan documents;

7. Order Defendants to disgorge money paid or received under the Loan Agreement;

8. Declare that GSVPOA and its Members are entitled to provide by themselves food and beverage services at Woodhaven under the Declaration, including Protective Covenant no. 22, without interference from Defendants or others;

9. Grant judgment against Justice Holdings in an amount to be determined at the time of entry of judgment based upon the substantial impairment of GSVPOA and its Members' use and enjoyment of Woodhaven together with together with pre- and post-judgment interest thereon; fees; penalties; and reasonable attorneys' fees and costs;

10. Award GSVPOA compensatory and other direct damages in an amount to be proven at trial in addition to punitive damages, pre- and post- judgment interest and attorneys' fees;

11. Award GSVPOA punitive damages where appropriate; and

12. Grant such further relief at law or in equity as the Courts deems just and proper.

Plaintiff demands a trial by jury as to all claims so triable.

GLADE SPRINGS VILLAGE
PROPERTY OWNERS ASSOCIATION, INC.

By Counsel

/s/ Mark A. Sadd

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IN THE CIRCUIT COURT OF RALEIGH COUNTY, WEST VIRGINIA

JUSTICE HOLDINGS LLC,

Plaintiff/Counterclaim Defendant,

v.

**Civil Action No. 19-C-481-P
Honorable Robert A. Burnside, Jr.**

**GLADE SPRINGS VILLAGE PROPERTY
OWNERS ASSOCIATION, INC.**

Defendant/Counterclaim Plaintiff.

**ORDER GRANTING GLADE SPRINGS VILLAGE PROPERTY OWNERS
ASSOCIATION, INC.'S MOTION FOR SUMMARY JUDGMENT THAT UCIOA
APPLIES AND MOTION FOR SUMMARY JUDGMENT THAT
JUSTICE HOLDINGS IS THE DECLARANT OF GSV**

On October 5, 2020, came Defendant/Counter-Plaintiff Glade Springs Village Property Owners Association, Inc. ("GSVPOA") by its counsel, Mark A. Sadd and Ramonda C. Marling of Lewis Glasser PLLC, and Plaintiff/Counter-Defendant Justice Holdings LLC ("Justice Holdings") by its counsel Shawn George of George & Lorensen, PLLC for a hearing on (the *Glade Springs Village Property Owners Association, Inc.'s Motion For Summary Judgment that Glade Springs Village is a Common Interest Community Subject To UCIOA* ("UCIOA MSJ") and *Glade Springs Village Property Owners Association, Inc.'s Motion for Summary Judgment that Justice Holdings LLC is the Declarant of Glade Springs Village* (the "Declarant MSJ"). During the hearing GSVPOA argued in favor of the UCIOA MSJ while Justice Holdings opposed the motion. After the Court's careful review of the pleadings filed and upon hearing oral arguments of counsel for and against the UCIOA MSJ, the Court entered its *Order Granting Glade Springs Village Property Owners Association, Inc.'s Motion for Summary Judgment on Count III of its Second*

*Amended Answer, Affirmative Defenses and Counterclaims.*¹ Therein, the Court held that:

A. Glade Springs Village is a “common interest community” as W. Va. Code § 36B-1-103(7) defines that term. Glade Springs Village in a “planned community” as W. Va. Code § 36B-103(23) defines that term.

B. Glade Springs Village is not a limited expenses liability planned community under W. Va. Code § 36B-1-203(2).

C. Because Glade Springs Village is not a limited expenses liability planned community under W. Va. Code § 36B-1-203(2), from its inception in 2001 is subject to the whole of UCIOA and all of its provisions, including W. Va. § 36B-3-105.

Based upon the underlying findings and conclusions of law more fully set forth in this Court’s *Order Granting Glade Springs Village Property Owners Association, Inc.’s Motion for Summary Judgment on Count III of its Second Amended Answer, Affirmative Defenses and Counterclaims*, GSVPOA’s UCIOA MSJ is hereby GRANTED as well.



In response to the Declarant MSJ, Justice Holdings acknowledged “that if the court enters an Order which finds that Glade Springs Village is subject to UCIOA, then, unless reversed, withdrawn, or revised, [it] concedes it is, unintendedly , the Declarant.” Based upon the Court’s prior ruling that UCIOA applies to Glade Springs Village and Justice Holdings concession, the Declarant MSJ is GRANTED.

The objections of Plaintiff/Counter-Defendant Justice Holdings LLC to the findings and conclusions set forth herein are duly noted and preserved.

¹ A hearing was held on GSVPOA’s *Motion for Summary Judgment on Count III of its Second Amended Answer, Affirmative Defenses and Counterclaims* on September 4, 2020. This Court held entry of an order on that motion until after the October 5th hearing on the related UCIOA MSJ to afford the parties a full opportunity to address the inter-related issues presented by both motions.

The clerk of this Court shall provide a copy of this ORDER to counsel of record for the parties.

ENTER this ORDER this 23 day of October 2020.


Honorable Justice Robert A. Burnside, Jr. Judge


Prepared and Submitted by:

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IN THE CIRCUIT COURT OF RALEIGH COUNTY, WEST VIRGINIA

**GLADE SPRINGS VILLAGE
PROPERTY OWNERS ASSOCIATION, INC.,**

Plaintiff,

v.

Civil Action No. _____
The Honorable _____

**COOPER LAND DEVELOPMENT, INC.,
an Arkansas corporation, and
JUSTICE HOLDINGS LLC,
a West Virginia limited liability company,**

Defendants.

COMPLAINT

COMES now, Plaintiff, Glade Springs Village Property Owner's Association, Inc. ("GSVPOA"), by its counsel, Mark A. Sadd, Ramonda C. Marling and the law firm of Lewis Glasser PLLC, and states as follows:

Parties

1. Plaintiff Glade Springs Village Property Owners Association, Inc. is a West Virginia non-profit corporation with its principal office in Daniels, Raleigh County, West Virginia. GSVPOA was incorporated under the laws of the State of West Virginia on March 19, 2001.

2. Defendant Cooper Land Development, Inc. is an Arkansas corporation formerly authorized to conduct business in the State of West Virginia under the fictitious name of Glade Springs Village. Cooper Land withdrew from the State of West Virginia as of July 27, 2016.

3. Defendant Justice Holdings LLC is a West Virginia limited liability company with its principal office in Daniels, Raleigh County, West Virginia.

Jurisdiction and Venue

4. This Court has jurisdiction of this Civil Action under W. Va. Code § 51-2-2 because the amount in controversy exceeds \$7,500.00; the facts and circumstances of GSVPOA's claims occurred and exist in Raleigh County, West Virginia; and the claims that GSVPOA brings against Defendants arose in Raleigh County, West Virginia.

5. Venue is proper under W. Va. Code § 56-1-1 because the principal offices of Plaintiff and Defendant Justice Holdings are located in Raleigh County, West Virginia, and all of the business activities of Defendant Cooper Land in West Virginia occurred in Raleigh County or were related to or arising from Glade Springs Village.

Facts

6. Glade Springs Village is a common interest community¹ subject to the Uniform Common Interest Ownership Act as codified in Chapter 36B of the Code of West Virginia of 1931, as amended ("UCIOA"). *See Order Granting Glade Springs Village Property Owners Association, Inc.'s Motion for Summary Judgment that UCIOA Applies and Motion for Summary Judgment that Justice Holdings is the Declarant of GSV*, entered October 23, 2020, by the Honorable Robert A. Burnside, Jr. in the civil action in Raleigh County Circuit Court styled, *Justice Holdings LLC v. Glade Springs Village Property Owners Association, Inc.* (Civil Action no. 19-C-481-P)) ("Civil Action no. 19-C-481-P").

7. Cooper Land was the Declarant² of Glade Springs Village beginning in 2001 when Glade Springs Village was created and ending in 2010 when Justice Holdings became the Declarant.

¹ "Common interest community" is defined as "real estate with respect to which a person, by virtue of his ownership of a unit, is obligated to pay for real estate taxes, insurance premiums, maintenance or improvement of other real estate" W. Va. Code § 36B-1-103(7).

² Under UCIOA, "declarant" is defined as "any person or group of persons acting in concert who: (i) As part of a

8. On May 30, 2001, Cooper as the Declarant filed the *Declaration of Covenants and Restrictions Glade Springs Village, West Virginia* in the office of the Clerk of the County Commission of Raleigh County, West Virginia (the “Clerk’s office”) in Deed Book 5004, at page 6485 (the “Declaration”).

9. By his sworn affidavit, J. Neff Basore, Jr., a top official of Cooper Land, attested that he was aware that when Cooper Land “was evaluating a development at Glade Springs Village West Virginia had adopted” “UCIOA.”

10. The Declaration imposes on the land made subject to its restrictions, covenants, easements, and conditions under a general plan of improvement for the benefit of all the property owners and established a method of maintenance, preservation, use and enjoyment of the Lots and Common Elements within Glade Springs Village, including the right to impose and collect assessments against all lots secured by statutory liens with the power of foreclosure and sale.

11. By virtue of his, her, or its ownership of a unit or lot, each unit owner within Glade Springs Village is a member of GSVPOA, has an easement of enjoyment in all of the Common Elements of Glade Springs Village and is obligated to pay regular and special assessments to GSVPOA for the maintenance, operation, repair, and replacement of the Common Elements.

12. Glade Springs Village is a planned community³ as UCIOA defines that term.

13. Glade Springs Village is a not a limited common expense planned community as UCIOA defines that term.

common promotional plan, offers to dispose of his or its interest in a unit not previously disposed of; or (ii) reserves or succeeds to any special declarant right.” W. Va. Code § 36B-1-103(12).

³ “Planned community” is defined as “a common interest community that is not a condominium or a cooperative.” W. Va. Code § 36B-1-103(23).

14. Because Glade Springs Village is a not a limited common expense planned community Glade Springs Village is subject to all provisions of UCIOA.

15. GSVPOA is the association⁴ of the Unit or Lot owners⁵ within Glade Springs Village.

16. If and as the owner of Lots within Glade Springs Village, the Declarant is a GSVPOA Member.

17. While the owner of one or more Lots within Glade Springs Village, Cooper Land was a member of GSVPOA.

18. Cooper Land owned Lots within Glade Springs Village that had not been previously conveyed as Lots to persons other than Justice Holdings (“Developer Lots”).

19. Justice Holdings now owns the Developer Lots. As the owner of the Developer Lots, Justice Holdings is a GSVPOA Member on a par with other GSVPOA Members.

20. While the owner of the Developer Lots, Cooper Land did not pay to GSVPOA Annual Assessments on the Developer Lots.

21. While the owner of the Developer Lots, Justice Holdings did not pay to GSVPOA Annual Assessments on the Developer Lots.

22. Under Article X, Section 7 of the Declaration, “delinquent assessments shall bear interest from the date of delinquency at . . . the rate of 10% per annum.”

23. Under its Bylaws, the Declaration and UCIOA, GSVPOA is governed and managed by and acts solely through its Board of Directors.

⁴ “Association” or “unit owners association” is defined as “organized under section one hundred one, article three of this chapter.” W. Va. Code § 36B-1-103(3).

⁵ For purposes of this civil action, the terms “unit” and “lot” are interchangeable unless the context suggests otherwise. Under UCIOA, the term “unit” is defined as “a physical portion of the common interest community designated for separate ownership or occupancy . . .” W. Va. Code § 36B-1-103(33).

24. As the Declarant, Cooper Land possessed the reserved special declarant right under the Declaration to appoint all of the members of the Board of Directors (the “Declarant-Appointed Board of Directors”) to govern, manage and act on behalf of GSVPOA from GSVPOA’s inception in 2001 through 2010 when Justice Holdings succeeded as the Declarant.

25. Mr. Basore in a sworn affidavit submitted in Civil Action no. 19-C-481-P stated: “The transaction between [Cooper Land] and Justice Holdings was structured to transfer, assign, and secure for Justice Holdings the status of Developer under the Declaration and provide Justice Holdings the status of Developer under the Declaration and provide Justice Holdings with the same reservations, protections, exemptions, rights, status, obligations, and liabilities regarding the Assets that [Cooper Land] held and by which [Cooper Land] was not obligated to pay annual assessments under the Declaration.”

26. After it succeeded as the Declarant, Justice Holdings succeeded to and possessed the reserved special declarant right under the Declaration to appoint all of the members of the Declarant-Appointed Board of Directors.

27. Cooper Land as the Declarant appointed all of the members of the Board of Directors from its creation until Justice Holdings became the Declarant.

28. After it became the Declarant Justice Holdings appointed all of the members of the Declarant-Appointed Board of Directors until April 2019 when GSVPOA Members other than the Declarant had their first opportunity in GSVPOA’s history to participate in the election of the first independent Board of Directors.

29. The Declarant, whether Cooper Land or Justice Holdings, exercised complete dominion and control of the composition of the Declarant-Appointed Board of Directors through April 30, 2019.

30. The Declarant, whether Cooper Land or Justice Holdings, exercised complete dominion and control of the actions of the Declarant-Appointed Board of Directors through April 30, 2019.

31. At all times relevant and material to the matters in this Civil Action, the Declarant-Appointed Board of Directors was required under W. Va. Code § 36B-3-103(a) to act according to a standard of care required of fiduciaries for the benefit of all Glade Springs Village Lot owners as GSVPOA Members.

32. Cooper Land as the owner of Lots within Glade Springs Village had the obligation to pay the Annual Assessments on all of its Lots within Glade Springs Village on a basis equal to and with all the other Lots or unit owners within Glade Springs Village.

33. Cooper Land failed to pay the Annual Assessments on all of its Lots within Glade Springs Village.

34. In addition to its liability to pay the Annual Assessments on all of its Lots within Glade Springs Village, Cooper Land alone was liable to GSVPOA for all expenses in connection with all other real estate within Glade Springs Village subject to the development rights as that term is defined in W. Va. Code § 36B-1-103(14).

35. At all times while Cooper Land was the Declarant, it owned real estate within Glade Springs Village subject to development rights as that term is defined in W. Va. Code § 36B-1-103(14).

36. Justice Holdings as the owner of Lots within Glade Springs Village had the obligation to pay the Annual Assessments on all of its Lots within Glade Springs Village on a basis equal to and with all other Lots or unit owners within Glade Springs Village.

37. Justice Holdings too failed to pay the Annual Assessments on all of its Lots within Glade Springs Village.

38. In addition to its liability that Justice Holdings had to pay the Annual Assessments on all of its Lots within Glade Springs Village, Justice Holdings after it succeeded as the Declarant alone was liable to GSVPOA for all expenses in connection with all other real estate within Glade Springs Village subject to the development rights.

39. Cooper Land directed GSVPOA to enter into the Loan Agreement, dated May 14, 2001, by and between GSVPOA, and Cooper Land for “capital to fund the initial operational and maintenance expenses” for Glade Springs Village and recited that “up to \$2,000,000 is needed to meet these expenses”.

40. During the ensuing 14 years, the parties amended the Loan Agreement 10 times.

41. Each and every time the parties amended the Loan Agreement it was because the Declarant directed the Declarant-Appointed Board of Directors to do so.

42. Under the First Amendment, dated August 1, 2003, Cooper Land and GSVPOA agreed to “increase the maximum amount” that Cooper Land would loan to GSVPOA to \$2,500,000.

43. Under the Second Amendment, dated May 1, 2006, Cooper Land and GSVPOA agreed to “increase the maximum amount” that Cooper Land would loan to GSVPOA to \$2,600,000.

44. Cooper Land and Justice Holdings entered into the Assignment and Assumption of Working Capital Loan Agreement dated October 20, 2010 “whereby [Cooper Land purported to assign and transfer] to [Justice Holdings] all of [Cooper Land’s] rights and obligations of every kind in regard to the” Loan Agreement.

45. Cooper Land and GSVPOA amended the Loan Agreement several times that effectively extended the maturity date.

46. According to the August 13, 2014 GSVPOA board meeting minutes, “the Working Capital loan has been paid in full”.

47. The Declarant-Appointed Board of Directors each time failed to take and to perform proper and necessary corporate actions to authorize GSVPOA to enter into the Loan Agreement and the amendments to the Loan Agreement.

48. Each action of the Declarant-Appointed Board of Directors to enter into and to perform the Loan Agreement and the amendments to the Loan Agreement violated the Bylaws of GSVPOA.

49. Each action of the Declarant-Appointed Board of Directors to enter into and to perform the Loan Agreement and the amendments to the Loan Agreement violated the Declaration.

50. Each action of the Declarant-Appointed Board of Directors to enter into and perform the Loan Agreement and to the amendments to the Loan Agreement time violated UCIOA.

51. Neither Cooper Land nor Justice Holdings has paid the Annual Assessments on the Developer Lots.

52. In early 2019, GSVPOA Members at a duly called meeting there of elected members to the Board of Directors who were the first members independent of the Declarant (the “Elected Board of Directors”).

53. The first Elected Board of Directors elected its first independent officers in April 2019.

54. The first officers of the first Elected Board of Directors took office in May 2019.

55. In Civil Action no. 19-C-481-P, GSVPOA obtained final judgment that the Declarant under UCIOA was and is obligated to pay Annual Assessments on the Developer Lots and all other Lots that it owned on a par with all other Lots or unit owners.

56. Cooper Land is not a party to Civil Action no. 19-C-481-P.

57. Civil Action no. 19-C-481-P is pending on the docket of the Raleigh County Circuit Court.

58. Thus, Cooper Land as the Declarant under UCIOA was obligated to pay Annual Assessments on the Developer Lots and all other Lots that it owned on a par with all other Lot owners.

59. The liability of Cooper Land for unpaid Annual Assessments is approximately equal to the product of the number of Lots that it owned and the Annual Assessment for each fiscal year together with unpaid interest thereon at the rate of 10 percent a year; fees; penalties; and reasonable attorneys' fees and costs.

60. In addition, the liability of Cooper Land for all expenses in connection with all other real estate within Glade Springs Village subject to the development rights is approximately equal to all of the Common Expenses of Glade Springs Village that Cooper Land purported to characterize as debt under the Loan Agreement, together with unpaid interest paid thereon; all other moneys paid by GSVPOA to either Cooper Land or Justice Holdings; loss of income to GSVPOA; fees; penalties; and reasonable attorneys' fees and costs.

61. As holder of the Note under and the beneficiary of the Loan Agreement, either Cooper Land or Justice Holdings from time to time directed the Declarant-Appointed Board of Directors to pay GSVPOA's assessment income from Lots or unit owners to repay the alleged debt under the Loan Agreement.

62. Upon the Declarant's direction, members of the Declarant-Appointed Board of Directors each time paid GSVPOA's assessment income to repay the alleged debt under the Loan Agreement.

63. Under the Loan Agreement, the Declarant altogether directed the Declarant-Appointed Board of Directors to pay and thus received from GSVPOA approximately \$2,689,081 in repayment of advances under the Loan Agreement, with interest.

64. Each of GSVPOA's transfers of money to the Declarant under the Loan Agreement was a conversion of funds and assets contrary to their purpose to pay for the upkeep of the Common Elements.

65. Each of GSVPOA's transfers of money to the Declarant under the Loan Agreement was a breach of GSVPOA's contractual obligation under the Declaration to use assessment income to pay the Common Expenses for the upkeep of the Common Elements.

66. Each of GSVPOA's transfers of money to the Declarant under the Loan Agreement was a violation of UCIOA and other state law.

67. The actual purpose of each transfer was for the improper and unlawful use to satisfy the Declarant's direct obligation under the Declaration and UCIOA to pay its fair share of the Common Expenses.

68. Each of the Declarant's acceptances of money from GSVPOA under the Loan Agreement was a conversion of funds and assets contrary to their purpose to pay the Common Expenses.

69. Each of the Declarant's acceptances of money from GSVPOA under the Loan Agreement was a breach of GSVPOA's contractual obligation under the Declaration to use assessment income to pay the Common Expenses.

70. Each of the Declarant's acceptances of money from GSVPOA under the Loan Agreement was a violation of UCIOA and other state law.

71. The actual purpose of each acceptance was for the improper and unlawful use to satisfy the Declarant's direct obligation under the Declaration and UCIOA to pay its fair share of the Common Expenses.

72. Each of Cooper Land and Justice Holdings as the Declarant is or remains required under UCIOA to prepare and issue a public offering statement about Glade Springs Village to prospective buyers of Lots within Glade Springs Village and, if circumstances require, to amend the public offering statement.

73. Each of Cooper Land and Justice Holdings as the Declarant is or remains required under the Interstate Land Sale Full Disclosure Act ("ILSFDA") to prepare and issue a report about Glade Springs Village to prospective buyers of Lots within Glade Springs Village, and, if circumstances require, to amend the report.

74. Both UCIOA and ILSFDA have robust disclosure requirements.

75. Despite that the Loan Agreement was entered into on May 14, 2001, the first instance that Cooper Land disclosed the existence of the Loan Agreement under either UCIOA or ILSFDA was on page 36 in the Property Report dated September 8, 2008 in which the Declarant stated: "The developer and the Association have entered into two revolving loan agreements. Under the terms of the first loan agreement, the Association may borrow up to \$2.6 million from the developer to fund initial operational and maintenance expenses for Glade Springs Village. The Association has executed a promissory note as evidence of the loan. The total principal advance and interest are due and payable May 1, 2009, unless extended under a written amendment to the loan agreement."

76. By June 10, 2014, the “period of declarant control” for Glade Springs Village as W. Va. Code § 36B-3-103(d) defines that term had ended.

77. By June 10, 2014, the Declarant’s reserved special declarant right to appoint or elect all of the members of the Board of Directors of GSVPOA had terminated by operation of W. Va. Code § 36B-3-103(d) because the period of declarant control had ended.

78. Justice Holdings failed to inform GSVPOA’s Members that the Declarant’s reserved special declarant right to appoint or elect all of the members of the Board of Directors of GSVPOA had terminated by operation of W. Va. Code § 36B-3-103(d).

79. The Property Report issued by Justice Holdings on June 10, 2014 is the last public disclosure under either UCIOA or ILSFDA of the existence of the Loan Agreement. In the June 10, 2014 Property Report, Justice Holdings stated that the “Loan Agreement is currently extended through May 1, 2015.”

80. In the June 10, 2014 Property Report the Declarant stated that the “Association may not modify or terminate the Loan Agreement and Revolving Note after the owners assume control of the association unless otherwise agreed to in writing with the developer.”

81. The Declarant’s foregoing statement in ¶ 80 of this Complaint was material, false and contrary to UCIOA.

82. The Declarant failed to disclose to potential buyers that after the owners assume control of GSVPOA, GSVPOA would have had the right to terminate the Loan Agreement under W. Va. Code § 36B-3-105.

83. The Declarant in multiple Property Reports disclosed the construction of a so-called “Area 2 Golf Course with Golf Center (18-hole irrigated course with cart paths; pro shop and with snack bar and restrooms)”, including the Property Report by Cooper Land, dated February 28,

2006, at pp. 23-24. In the February 28, 2006 Property Report, the Declarant stated: “The Property owners Association is responsible for the administration and maintenance . . . of the Area 2 Golf Course and Golf Center.”

84. Area 2 Golf Course with Golf Center is now known as Woodhaven.

85. On August 14, 2019, GSVPOA instituted a civil action in Raleigh County Circuit Court styled *Glade Springs Village Property Owners Association, Inc. v. EMCO Glade Springs Hospitality, LLC* et al. (The Honorable Jennifer P. Dent, presiding) (Civil Action no. 19-C-57) (“Civil Action no. 19-C-57”).

86. The Declaration includes Protective Covenant no. 22 as follows:

No commercial lot or any parcel of land subject to these Protective Covenants or to this Declaration shall be used to operate any business which competes in any manner with Glade Spring Resort L.L.C.’s food, lodging, resort, conference, rental or property management business, including any timeshare program.

87. In Civil Action no. 19-C-57, the Raleigh County Circuit Court has enforced, interpreted, or construed Protective Covenant no. 22 to mean that neither GSVPOA nor its Members may administer, maintain, manage, provide, or operate food and beverage services within or upon Woodhaven including the snack bar or the clubhouse.

88. On p. 24 of the February 28, 2006 Property Report, the Declarant stated that “Title to the Area 2 Golf Course and Golf Center will be conveyed to the Property Owners Association by Special Warranty Deed free and clear of liens and encumbrances, other than provisions of the Declaration and Protective Covenants.”

89. On p. 24 of the February 28, 2006 Property Report, the Declarant stated that “There are no adverse effects or costs to lot purchasers, other than the annual Property Owners Association assessment, which may be caused by such transfer.”

90. On page 25 of the February 28, 2006 Property Report, the Declarant stated that “While Stonehaven Golf Course is a private course and the Area 2 Golf Course and Golf Center will also be private, the Property Owners Association may allow its guests to use these facilities to generate needed income until, in its judgment, membership use is adversely affected.”

91. To the contrary, Cooper Land conveyed Woodhaven, including its snack bar or clubhouse, to GSVPOA by a so-called “Quitclaim Deed” that is dated October 6, 2010, and is recorded in the Clerk’s office in Deed Book 5041, at page 570. Omitted from the Quitclaim Deed is a special warranty or any warranty.

Count I — Accounting

92. GSVPOA incorporates by reference paragraphs 1 through 91 above as though fully restated herein.

93. GSVPOA is entitled to an accounting of all advances of money to GSVPOA under the Loan Agreement.

94. GSVPOA is entitled to an accounting of all payments to and receipts by the Declarant under the Loan Agreement.

Count II — Loan Agreement Is Unconscionable

95. GSVPOA incorporates by reference paragraphs 1 through 94 above as though fully restated herein.

96. The Loan Agreement was improper, unnecessary, and violative of the Declaration, the Bylaws, the Declaration and UCIOA and other state law.

97. The commercial setting of the negotiations resulting in the execution and delivery of the Loan Agreement by its very nature precluded genuine or *bona fide* arm’s length discussions between the Declarant and GSVPOA.

98. The commercial setting of the negotiations resulting in the execution and delivery of the Loan Agreement by its very nature precluded GSVPOA from determining that the Loan Agreement was improper, unnecessary, and violative of UCIOA and other state law.

99. In directing GSVPOA to enter into and to perform the Loan Agreement, the Declarant knowingly took advantage of the inability of GSVPOA and its Members to reasonably protect its or their interests.

100. In directing GSVPOA to enter into and to perform the Loan Agreement, the Declarant foreclosed GSVPOA from exercising its statutory and contract rights to assessments or payments from the Declarant for the upkeep of the Common Elements of Glade Springs Village.

101. In directing GSVPOA to enter into and perform the Loan Agreement, the Declarant knowingly took advantage of the inability of GSVPOA and its Members to reasonably protect its or their interests because the Declarant forced GSVPOA to enter into the Loan Agreement.

102. The Declarant failed to disclose to GSVPOA's Members that UCIOA required the Declarant to pay for the upkeep of the Common Elements to the extent that assessments from Members other than the Declarant were insufficient to pay for those expenses.

103. There was no valid consideration for GSVPOA's entering into and performing the Loan Agreement.

104. The credit facility created by the Loan Agreement was unnecessary.

105. The only effect of the Loan Agreement was to burden GSVPOA with a debt unfounded on any obligation under contract or law.

106. The only effect of the Loan Agreement was to alleviate the Declarant from its obligation to pay the Annual Assessments on Lots that it owned and the corresponding costs of upkeep of the Common Elements.

107. At the time the Loan Agreement was made GSVPOA's Members had no say whatsoever in the actions of the Declarant-Appointed Board of Directors leading to its execution and performance.

108. Each time the Loan Agreement was amended, GSVPOA's Members had no say or knowledge whatsoever in the actions of the Declarant-Appointed Board of Directors.

109. The relative positions of the two parties to the Loan Agreement and amendments thereto was unconscionable as the Declarant-Appointed Board of Directors was wholly controlled by the Declarant, first Cooper Land and later Justice Holdings.

110. The individual Lot owners other than the Declarant, against whom the debt was actually to be imposed, had no say in the negotiation, execution and performance of the Loan Agreement or amendments to the Loan Agreement.

111. The Loan Agreement contains terms that are unfair and prejudicial to GSVPOA and its Members and beneficial only to the Declarant.

112. The Loan Agreement was unconscionable at the time it was made and amended.

113. Therefore, the Loan Agreement is void *ab initio* and, thus, invalid and unenforceable from its beginning.

114. GSVPOA is entitled to a declaratory or other judgment that the Loan Agreement was unconscionable, void *ab initio*, invalid and unenforceable from its beginning.

115. Because the Loan Agreement was unconscionable, void *ab initio*, invalid and unenforceable from its beginning, GSVPOA is entitled to rescission of the Loan Agreement and all of the documents associated with it.

116. Because the Loan Agreement was unconscionable, void *ab initio*, invalid and unenforceable from its beginning, GSVPOA is entitled to restitution of all moneys paid by

GSVPOA or received by the Declarant under the Loan Agreement and all of the documents associated with it.

Count III — Declarant's Breaches of the Declaration

117. GSVPOA incorporates by reference paragraphs 1 through 116 above as though fully restated herein.

118. The Declaration constitutes a contract among and between the Declarant and the owners of Lots and units within Glade Springs Village.

119. Under the Declaration, the Declarant is required to the Annual Assessments on Lots it owns within Glade Springs Village.

120. The Declarant failed to pay the Annual Assessments on Lots it owns within Glade Springs Village.

121. The Declarant's failures to pay GSVPOA the Annual Assessments on Lots it owns within Glade Springs Village constitute breaches of the Declaration.

122. GSVPOA and its Members suffered damages as a direct and proximate cause of the Declarant's breaches of the Declaration in each and every instance.

123. GSVPOA is entitled to judgment against the Declarant for the aggregate amount of the unpaid Annual Assessments on Lots it owned together with unpaid interest thereon at the rate of 10 percent a year; fees; penalties; and reasonable attorneys' fees and costs.

Count IV — Declarant's Violations of W. Va. Code § 36B-3-107

124. GSVPOA incorporates by reference paragraphs 1 through 123 above as though fully restated herein.

125. "In addition to the liability that a declarant as a unit owner has under this chapter, the Declarant alone is liable for all expenses in connection with real estate subject to the

development rights. No other unit owner and no other portion of the common interest community is subject to a claim for payment of those expenses.” W. Va. Code § 36B-3-107(b).

126. Since the creation of Glade Springs Village, the Declarant was and remains liable under W. Va. Code § 36B-3-107(b) for all expenses in connection with real estate within Glade Springs Village subject to development rights to the Declarant’s failures to pay GSVPOA for all expenses in connection with real estate within Glade Springs Village subject to development rights constitute violations of W. Va. Code § 36B-3-107(b).

127. Because of the Declarant’s failures to pay GSVPOA for all expenses in connection with real estate within Glade Springs Village subject to development rights, GSVPOA and its Members suffered damages as a direct and proximate cause of the Declarant’s breaches of the Declaration in each and every instance.

128. GSVPOA is entitled to judgment against the Declarant for the aggregate amount of the unpaid payment or reimbursement for all expenses in connection with real estate within Glade Springs Village subject to development rights, together with unpaid interest thereon at the rate of 10 percent a year; fees; penalties; and reasonable attorneys’ fees and costs.

Count V — Declarant’s Breaches of Fiduciary Duties

129. GSVPOA incorporates by reference paragraphs 1 through 128 above as through fully stated herein.

130. “Every contract or duty governed by [UCIOA] imposes an obligation of good faith in its performance or enforcement.” W. Va. Code § 36B-3-112.

131. The Declarant had fiduciary duties to GSVPOA and its Members under the Declaration and West Virginia law to act in good faith and in a manner reasonably believed to be

in, or not opposed to, their best interests and to act in a fiduciary capacity with regard to their best interests.

132. For each and all of its acts or omissions related to or arising out of the Loan Agreement, including the acceptance of GSVPOA payments thereunder, the Declarant breached its fiduciary duties to GSVPOA and its Members solely for its own benefit and enrichment.

133. GSVPOA and its Members suffered damages as a direct and proximate cause of the Declarant's breaches of its fiduciary duties.

134. GSVPOA is entitled to judgment against the Declarant for the aggregate amount of the unpaid payment or reimbursement for all expenses in connection with real estate within Glade Springs Village subject to development rights, together with pre- and post-judgment interest thereon; fees; penalties; and reasonable attorneys' fees and costs.

Count VI — Declarant's Negligence

135. GSVPOA incorporates by reference paragraphs 1 through 134 above as through fully stated herein.

136. The Declarant had duties to GSVPOA and its Members under the Declaration and West Virginia law to act in in a prudent and reasonable manner reasonably believed to be in, or not opposed to, their best interests.

137. For each and all of its acts or omissions related to or arising out of the Loan Agreement, including the acceptance of GSVPOA payments thereunder, the Declarant breached its duties to GSVPOA and its Members.

138. GSVPOA and its Members suffered damages as a direct and proximate cause of the Declarant's breaches of its duties.

139. GSVPOA is entitled to judgment against the Declarant for the aggregate amount of the unpaid payment or reimbursement for all expenses in connection with real estate within Glade Springs Village subject to development rights, together with pre- and post-judgment interest thereon; fees; penalties; and reasonable attorneys' fees and costs.

Count VII — Conversion

140. GSVPOA incorporates by reference paragraph 1 through 139 above as through fully stated herein.

141. The Declarant converted GSVPOA assessment income received by GSVPOA required to pay the Common Expenses for its own use and to no benefit or use of GSVPOA or its Members, contrary to UCIOA and other state law.

142. GSVPOA and its Members suffered damages as a direct and proximate cause of the Declarant's conversion.

143. GSVPOA is entitled to judgment against Justice Holdings in an amount to be determined at the time of entry of judgment based upon its failure to pay assessments to GSVPOA and the resulting unjust enrichment and an order or decree directing the Declarant to disgorge the same to GSVPOA.

Count VIII — Unjust Enrichment

144. GSVPOA incorporates by reference paragraph 1 through 143 above as through fully stated herein.

145. For all of its acts or omissions related to or arising out of the Loan Agreement, including the acceptance of GSVPOA payments thereunder, GSVPOA and the members of GSVPOA have conferred benefits upon the Declarant to which it had no right or entitlement under any contract, including the Declaration, or as a matter of West Virginia.

146. The Declarant accepted the benefits conferred upon it related to or arising out of the Loan Agreement.

147. It would be inequitable to permit the Declarant to retain these benefits.

148. GSVPOA is entitled to judgment against Justice Holdings in an amount to be determined at the time of entry of judgment based upon its failure to pay assessments to GSVPOA and the resulting unjust enrichment and an order or decree directing the Declarant to disgorge the same to GSVPOA.

Count IX — Mutual Mistake

149. GSVPOA incorporates by reference paragraph 1 through 148 above as through fully stated herein.

150. If there is a determination that the Declarant and GSVPOA in good faith believed that the Loan Agreement was necessary or proper under the Declaration or West Virginia law when it was not, then GSVPOA is entitled to a judgment or decree that the Loan Agreement and the actions related to or arising out of the Loan Agreement were a result of mutual mistake.

151. The Declarant accepted the benefits conferred upon it related to or arising out of the Loan Agreement even though it was the result of mutual mistake.

152. It would be inequitable to permit the Declarant to retain these benefits.

153. GSVPOA is entitled to judgment against Justice Holdings in an amount to be determined at the time of entry of judgment based upon its failure to pay assessments to GSVPOA and the resulting mutual mistake and an order or decree directing the Declarant to disgorge the same to GSVPOA.

Count X — Declaratory Judgment Related to Woodhaven

154. GSVPOA incorporates by reference paragraph 1 through 153 above as through fully stated herein.

155. GSVPOA seeks declaratory judgment against the Declarant that it is entitled to provide food and beverage services to its Members and invitees at Woodhaven under the Declaration, including Protective Covenant no. 22, without interference from others.

Count XI — Breach of Representation and Special Warranty Related to Woodhaven

156. GSVPOA incorporates by reference paragraph 1 through 155 above as through fully stated herein.

157. The Declarant represented to GSVPOA's Members that GSVPOA and its Members would be entitled to provide food and beverage services to its Members and invitees at Woodhaven under the Declaration, including Protective Covenant no. 22, without impairment or interference from others.

158. The Declarant transferred title to Woodhaven in part by that certain "Quitclaim Deed" dated October 6, 2010 and is recorded in the Clerk's office in Deed Book 5041, at page 570.

159. The Declarant promised a special warranty to GSVPOA and its Members when it was to transfer of title to Woodhaven.

160. Nonetheless, the Declarant omitted from the Quitclaim Deed a special warranty or any warranty.

161. GSVPOA is entitled to make a claim under a special warranty with respect to Woodhaven.

162. Because in Civil Action no. 19-C-57, the Raleigh County Circuit Court has enforced, interpreted or construed Protective Covenant no. 22 to mean that neither GSVPOA nor its Members account may administer, maintain, manage, provide or operate food and beverage services within or upon Woodhaven including the snack bar or the clubhouse, the Declarant breached its representation and special warranty to GSVPOA and its Members that they would not be affected or impaired in their use of Woodhaven.

163. The Declarant breached both its representation and its special warranty.

164. The Declarant's breaches of both its representation and its special warranty are the direct and proximate cause of damages to GSVPOA.

165. GSVPOA is entitled to judgment against the Declarant for such damages, together with pre- and post-judgment interest thereon; fees; penalties; and reasonable attorneys' fees and costs.

Prayer for Relief

WHEREFORE, Plaintiff, Glade Springs Village Property Owners Association, Inc., on behalf of itself and of its Members prays that this Honorable Court, in addition to the specific relief and remedies sought above, further grant, give, declare, decree, adjudge or award the following relief and remedies, including declaratory relief under W. Va. Code § 55-13-1 *et seq.*:

1. Declare that GSVPOA is entitled to a full accounting of all charges and credits under the Loan Agreement, as amended, and enjoin and direct either Cooper Land Development Inc. or Justice Holdings or both of them to provide an accounting;

2. Declare the Loan Agreement, as amended, together with all promissory notes made thereunder and associated loan documents are unconscionable and, thus, unenforceable under West Virginia law;

3. Declare the Loan Agreement, as amended, together with all promissory notes made thereunder and associated loan documents as void *ab initio*;

4. Declare that Justice Holdings willfully violated W. Va. Code § 36B-3-103;

5. Enter judgment against Justice Holdings for its unpaid assessments in an amount to be proven at trial in addition to pre- and post-judgment interest and attorney fees;

6. Rescind the Loan Agreement, as amended, together with all promissory notes made thereunder and associated loan documents;

7. Order Defendants to disgorge money paid or received under the Loan Agreement;

8. Declare that GSVPOA and its Members are entitled to provide by themselves food and beverage services at Woodhaven under the Declaration, including Protective Covenant no. 22, without interference from Defendants or others;

9. Grant judgment against Justice Holdings in an amount to be determined at the time of entry of judgment based upon the substantial impairment of GSVPOA and its Members' use and enjoyment of Woodhaven together with together with pre- and post-judgment interest thereon; fees; penalties; and reasonable attorneys' fees and costs;

10. Award GSVPOA compensatory and other direct damages in an amount to be proven at trial in addition to punitive damages, pre- and post- judgment interest and attorneys' fees;

11. Award GSVPOA punitive damages where appropriate; and

12. Grant such further relief at law or in equity as the Courts deems just and proper.

Plaintiff demands a trial by jury as to all claims so triable.

GLADE SPRINGS VILLAGE
PROPERTY OWNERS ASSOCIATION, INC.

By Counsel

/s/ Mark A. Sadd

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IN THE CIRCUIT COURT OF RALEIGH COUNTY, WEST VIRGINIA

JUSTICE HOLDINGS LLC,

Plaintiff/Counterclaim Defendant,

v.

**Civil Action No. 19-C-481-P
Honorable Robert A. Burnside, Jr.**

**GLADE SPRINGS VILLAGE PROPERTY
OWNERS ASSOCIATION, INC.**

Defendant/Counterclaim Plaintiff.

**ORDER GRANTING GLADE SPRINGS VILLAGE PROPERTY OWNERS
ASSOCIATION, INC.'S MOTION FOR SUMMARY JUDGMENT THAT UCIOA
APPLIES AND MOTION FOR SUMMARY JUDGMENT THAT
JUSTICE HOLDINGS IS THE DECLARANT OF GSV**

On October 5, 2020, came Defendant/Counter-Plaintiff Glade Springs Village Property Owners Association, Inc. ("GSVPOA") by its counsel, Mark A. Sadd and Ramonda C. Marling of Lewis Glasser PLLC, and Plaintiff/Counter-Defendant Justice Holdings LLC ("Justice Holdings") by its counsel Shawn George of George & Lorensen, PLLC for a hearing on (the *Glade Springs Village Property Owners Association, Inc.'s Motion For Summary Judgment that Glade Springs Village is a Common Interest Community Subject To UCIOA* ("UCIOA MSJ") and *Glade Springs Village Property Owners Association, Inc.'s Motion for Summary Judgment that Justice Holdings LLC is the Declarant of Glade Springs Village* (the "Declarant MSJ"). During the hearing GSVPOA argued in favor of the UCIOA MSJ while Justice Holdings opposed the motion. After the Court's careful review of the pleadings filed and upon hearing oral arguments of counsel for and against the UCIOA MSJ, the Court entered its to *Order Granting Glade Springs Village Property Owners Association, Inc.'s Motion for Summary Judgment on Count III of its Second*

*Amended Answer, Affirmative Defenses and Counterclaims.*¹ Therein, the Court held that:

A. Glade Springs Village is a “common interest community” as W. Va. Code § 36B-1-103(7) defines that term. Glade Springs Village in a “planned community” as W. Va. Code § 36B-103(23) defines that term.

B. Glade Springs Village is not a limited expenses liability planned community under W. Va. Code § 36B-1-203(2).

C. Because Glade Springs Village is not a limited expenses liability planned community under W. Va. Code § 36B-1-203(2), from its inception in 2001 is subject to the whole of UCIOA and all of its provisions, including W. Va. § 36B-3-105.

Based upon the underlying findings and conclusions of law more fully set forth in this Court’s *Order Granting Glade Springs Village Property Owners Association, Inc.’s Motion for Summary Judgment on Count III of its Second Amended Answer, Affirmative Defenses and Counterclaims*, GSVPOA’s UCIOA MSJ is hereby GRANTED as well.

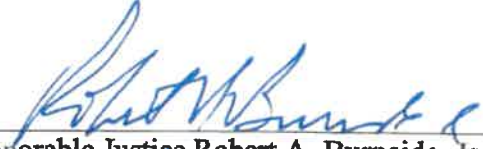

In response to the Declarant MSJ, Justice Holdings acknowledged “that if the court enters an Order which finds that Glade Springs Village is subject to UCIOA, then, unless reversed, withdrawn, or revised, [it] concedes it is, unintendedly , the Declarant.” Based upon the Court’s prior ruling that UCIOA applies to Glade Springs Village and Justice Holdings concession, the Declarant MSJ is GRANTED.

The objections of Plaintiff/Counter-Defendant Justice Holdings LLC to the findings and conclusions set forth herein are duly noted and preserved.

¹ A hearing was held on GSVPOA’s *Motion for Summary Judgment on Count III of its Second Amended Answer, Affirmative Defenses and Counterclaims* on September 4, 2020. This Court held entry of an order on that motion until after the October 5th hearing on the related UCIOA MSJ to afford the parties a full opportunity to address the inter-related issues presented by both motions.

The clerk of this Court shall provide a copy of this ORDER to counsel of record for the parties.

ENTER this ORDER this 23 day of October 2020.


Honorable ~~Justice~~ Robert A. Burnside, Jr. Judge


Prepared and Submitted by:

/s/ Ramonda C. Marling
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West Virginia E-Filing Notice

CC-41-2021-C-129

Judge: Darl Poling

To: Philip Judson Combs
pcombs@tcspllc.com

NOTICE OF FILING

IN THE CIRCUIT COURT OF RALEIGH COUNTY, WEST VIRGINIA
Glade Springs Village Property Owners Association, Inc. v. Cooper Land Development Inc
CC-41-2021-C-129

The following motion was FILED on 6/4/2021 3:49:03 PM

Notice Date: 6/4/2021 3:49:03 PM

Paul H. Flanagan
CLERK OF THE CIRCUIT COURT
Raleigh County
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BECKLEY, WV 25801

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Paul.Flanagan@courtsww.gov

IN THE CIRCUIT COURT OF RALEIGH COUNTY, WEST VIRGINIA

GLADE SPRINGS VILLAGE
PROPERTY OWNERS ASSOCIATION, INC.,

Plaintiff,

v.

Civil Action No. 21-C-129
(Judge Darl W. Poling)

COOPER LAND DEVELOPMENT, INC.,
an Arkansas corporation, and
JUSTICE HOLDINGS LLC,
a West Virginia limited liability company,

Defendants.

**DEFENDANT COOPER LAND DEVELOPMENT, INC.'S
MOTION TO DISMISS PLAINTIFF'S COMPLAINT**

Defendant Cooper Land Development, Inc. ("CLD"), by counsel, hereby moves, pursuant to West Virginia Rules of Civil Procedure 12(b)(1) and 12(b)(6), for an order dismissing all claims against it, with prejudice. As set forth more fully in the accompanying memorandum of law, filed contemporaneously herewith, this Court lacks subject matter jurisdiction, and the Complaint fails to state a claim against CLD upon which relief can be granted.

In support of this Motion, CLD incorporates its Memorandum of Law in Support of Defendants Cooper Land Development, Inc.'s Motion to Dismiss Plaintiff's Complaint, as well as the following exhibits:

EXHIBIT	DESCRIPTION
1	Declaration of Covenants and Restrictions for Glade Springs Village
2	Assignment and Assumption of Developer Rights
3	Assignment and Assumption of Future Developer Liability
4	Termination Agreement
5	Closing Agreement

WHEREFORE, for these reasons, and as more fully set forth in CLD's supporting memorandum, CLD respectfully requests that this Court enter an order granting CLD's Motion to Dismiss Plaintiff's Complaint and dismissing same with prejudice for lack of subject matter jurisdiction and for failure to state a claim upon which relief can be granted.

COOPER LAND DEVELOPMENT, INC.
By Counsel

/s/ M. David Griffith, Jr.

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IN THE CIRCUIT COURT OF RALEIGH COUNTY, WEST VIRGINIA

GLADE SPRINGS VILLAGE
PROPERTY OWNERS ASSOCIATION, INC.,

Plaintiff,

v.

Civil Action No. 21-C-129
(Judge Darl W. Poling)

COOPER LAND DEVELOPMENT, INC.,
an Arkansas corporation, and
JUSTICE HOLDINGS LLC,
a West Virginia limited liability company,

Defendants.

CERTIFICATE OF SERVICE

I, M. David Griffith, Jr., counsel for Defendant Cooper Land Development, Inc., hereby certify that on the 4th day of June 2021, service of the foregoing ***“DEFENDANT COOPER LAND DEVELOPMENT, INC.’S MOTION TO DISMISS PLAINTIFF’S COMPLAINT”*** has been made upon the following counsel of record by utilizing the CourtPLUS Initiative electronic filing system which shall give notice of filing to:

Mark A. Sadd, Esq.
Ramonda C. Marling, Esq.
Lewis Glasser PLLC
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White Sulphur Springs, WV 24986

Justice Holdings LLC
P.O. Box 2178
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and by electronic mail to:

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IN THE CIRCUIT COURT OF RALEIGH COUNTY, WEST VIRGINIA

GLADE SPRINGS VILLAGE
PROPERTY OWNERS ASSOCIATION, INC.,

Plaintiff,

v.

Civil Action No. 21-C-129
(Judge Darl W. Poling)

COOPER LAND DEVELOPMENT, INC., et al.

Defendants.

**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT COOPER LAND
DEVELOPMENT, INC.'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT**

Defendant Cooper Land Development, Inc. ("CLD") respectfully submits this memorandum of law in support of its Motion to Dismiss Plaintiff's Complaint pursuant to Rules 12(b)(1) and 12(b)(6) of the West Virginia Rules of Civil Procedure.¹

BACKGROUND

This civil action arises out of Plaintiff Glade Springs Village Property Owners Association, Inc.'s ("GSVPOA") apparent desire to unwind a series of complex commercial transactions spanning more than 20 years from the inception of Glade Springs Village ("GSV") in early 2001 to the present. Over that period of time and as a result of the initial capital investment, road construction and utilities infrastructure provided to GSVPOA by CLD, GSV has grown from rural pastureland to a modern, gated, upscale residential community situated on approximately 3,000 acres with more than 750 homes and two 18-hole championship golf courses which are among the best in the State of West Virginia.

The sheer magnitude and audacity of the Plaintiff's claims and the future precedential value of legal decisions resolving those claims have the potential to send shock waves through the

¹ CLD reserves all defenses, including but not limited to those available under Rules 8 and 12 of the West Virginia Rules of Civil Procedure.

commercial development and residential real estate business communities in West Virginia (*and beyond*), may likely impact every residential community in this State, and have a chilling effect on West Virginia real estate development.

The GSVPOA

The GSVPOA was incorporated in 2001 as a domestic, non-profit corporation. The original developer, CLD, in conjunction with GSVPOA, recorded a Declaration of Covenants and Restrictions for Glade Springs Village (“Declaration”) in May 2001 in order to impose restrictions under a general plan of improvement for the benefit of all the property owners in GSV and to establish a method of maintenance, preservation, use and enjoyment of the property. The Declaration was recorded in the Office of the Clerk of the County Commission of Raleigh County, West Virginia in Deed Book 5004, Page 6485. A copy of the Declaration is attached to the Motion as Exhibit 1.² After CLD served as Developer and Declarant of GSV for a period of 10 years, Defendant Justice Holdings, LLC (“Justice”) purchased all of CLD’s legal interests in GSV in October 2010 and released CLD from all liability related to GSV. *See Assignment and Assumption of Developer Rights, Assignment and Assumption of Future Developer Liability, Termination Agreement and Closing Agreement* attached to Motion as Exhibits 2 - 5.

GSVPOA and Justice are prolific litigants. When CLD sold GSV, GSVPOA was generating millions of dollars in annual revenue to support GSV operations. But after Justice took over, it failed to market and sell lots, stagnating GSV development. And then recently, the GSVPOA and Justice, together, have devoted their resources to litigation, with the instant civil

² Rule 12(b)(6) permits a court to consider, in addition to the pleadings, documents annexed to it, and other materials fairly incorporated within it. This sometimes includes documents referred to in the complaint but not annexed to it. And Rule 12(b)(6) permits courts to consider matters that are susceptible to judicial notice. *See J.F. Allen Corp. v. Sanitary Board of City of Charleston*, 785 S.E. 2d 627, fn. 4 (W. Va. 2016), *Forshey v. Jackson*, 747–48, 671 S.E.2d 748, 752–53 (W. Va. 2008).

action being the fourth case initiated by either GSVPOA or Justice over GSV in the past two years.

The Declaration

The Declaration sets out certain covenants and restrictions, which have the effect of establishing a uniform plan of development for the community by ensuring against the establishment of undesirable uses and activities on adjacent lots to the detriment of each purchaser's enjoyment of his or her lot or residence. Further, these covenants and restrictions, applicable to every lot and residence, are mutually enforceable among the property owners. The GSVPOA was organized for the purpose of executing these functions, including the administration, operation and maintenance of common properties within GSV. By virtue of his or her ownership, each property owner in GSV becomes a member in the GSVPOA and has an easement permitting him or her to use the common properties and a concomitant obligation to pay annual assessments to the GSVPOA.

Common Properties

The common properties within GSV are owned by the GSVPOA and include the green belts, roads, Chatham Lake and the Stonehaven and Woodhaven golf courses. A monetary assessment is levied by the GSVPOA each year, against each residence or vacant lot, to be used for the purposes of promoting recreation, health, safety, welfare and common benefits and enjoyment of the owners, including the construction and procurement of utility services, facilities, and infrastructure and to repay loans from the developer for such purposes.

Justice Holdings LLC Acquired GSV October 20, 2010

CLD sold GSV to Justice on October 20, 2010. Accordingly, Justice has owned GSV and has been the "Developer" and "Declarant" of GSV since that date. *Complaint*, at ¶ 7. These facts are not disputed, as they are set forth in the Complaint, and in numerous pleadings filed by Justice

and GSVPOA in concurrent, ongoing litigation in the Circuit Court of Raleigh County. Further, Justice's status as Developer and Declarant was created as a matter of law when it acquired GSV and began to combine GSV with its other Glade Springs properties.

Justice has recorded supplements and amendments to the Declaration from time to time over the past decade. And as part of the October 20, 2010 GSV transaction, Justice and CLD executed three documents relevant to Plaintiff's claims: (1) the Assignment and Assumption of Developer Rights; (2) the Assignment and Assumption of Future Developer Liability; and (3) a Termination Agreement. *Motion*, at Exhibits 2-4. In each of these documents, Justice expressly assumes responsibilities and liabilities as Developer and Declarant and releases CLD from liability in connection with GSV. Justice also specifically agreed to indemnify and hold CLD harmless from any and all claims "arising in connection with Justice's failure to satisfy the Future Development Liability fully ... regardless of whether the FDL is determined to be the obligation or liability of CLD, the POA or both." *Motion*, Ex. 3, ¶ 3.³

GSVPOA's Claims

The Complaint filed by the GSVPOA seeks an accounting from CLD and Justice of all money advanced and paid on the operating and capital expense loan ("Capital Expense Loan") from the date of its inception in 2001 (Count I). The Capital Expense Loan was necessary to fund the upfront operational and maintenance expenses of GSVPOA beginning in May 2001 until it could become self-sustaining with a revenue stream derived from annual assessments paid by the purchasers of new lots within the community.

The GSVPOA also seeks a declaratory judgment that the Capital Expense Loan is

³ It should be noted that claims between CLD and Justice arising out of sale of GSV must be analyzed under Arkansas law and may only be brought in the courts of the State of Arkansas. *Termination Agreement, Motion*, at Ex. 4, ¶ 4.

unconscionable and void *ab initio* (Count II) and seeks damages from CLD flowing from May 2001 through October 2010 under theories of breach of the Declaration (Count III), violation of the West Virginia Uniform Common Interest Ownership Act, W. Va. Code §36B-1-107, (“UCIOA”) (Count IV), breach of fiduciary duty (Count V), Negligence (Count VI), Conversion (Count VII), Unjust Enrichment (Count VIII) and Mutual Mistake (Count IX). The Complaint also seeks declaratory judgment and other relief related to the Declaration and Deed to the Woodhaven golf course in Counts X and XI which asks the Court to declare that GSVPOA may provide its own food and beverage service at Woodhaven and that CLD breached a special warranty to GSVPOA allegedly given October 6, 2010. *Complaint*, at ¶¶ 155 and 158.

All of the claims set forth in the Plaintiff’s Complaint against CLD should be dismissed pursuant to W. Va. R. Civ. P. 12(b)(1) because this Court lacks subject matter jurisdiction under the doctrine of ripeness and pursuant to W. Va. R. Civ. P. 12(b)(6) because the Complaint fails to state claims against CLD upon which relief can be granted.

LEGAL STANDARD

Whenever it is determined that a court has no jurisdiction to entertain the subject matter of a civil action pursuant to Rule 12(b)(1) of the West Virginia Rules of Civil Procedure, the forum court must take no further action in the case other than to dismiss it from the docket. *Hinkle v. Bauer Lumber & Home Bldg. Center, Inc.*, 211 S.E.2d 705, 707 (W. Va. 1975). *See also Holley v. Feagley*, 834 S.E.2d 536, 541 (W. Va. 2019).

In ruling on a motion to dismiss for failure to state a claim pursuant to Rule 12(b)(6) of the West Virginia Rules of Civil Procedure, the court must construe the facts in the light most favorable to the Plaintiff. *Estate of Hough v. Estate of Hough*, 519 S.E.2d 640, 647 (W. Va. 1999). The court may consider documents attached to the motion which are pertinent to and/or referenced

in the complaint. *See Forshey v. Jackson*, 671 S.E.2d 748, 752 (W. Va. 2009) (“[O]n a motion to dismiss, a court may consider documents attached to the complaint as an exhibit or incorporated in it by reference ... [or] documents either in plaintiffs’ possession or of which plaintiffs had knowledge and relief on in bringing suit.”). Baseless pleadings are subject to dismissal, and the plaintiff “must know every essential element of [the] cause of action and must state it in the complaint.” *Sticklen v. Kittle*, 287 S.E.2d 148, 158 (W. Va. 1981). Dismissal is therefore proper “where it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations.” *Hough*, 519 S.E.2d at 647 (quotations omitted).

ARGUMENT

A. This Court Does Not Have Subject Matter Jurisdiction Over This Controversy and Should Dismiss the Complaint Pursuant to W. Va. R. Civ. P. 12(b)(1).

Plaintiff’s case is a green banana. The fact that it is not yet ripe is easy to tell. Plaintiff’s claims are predicated upon two orders entered by the Honorable Robert A. Burnside, Jr. on October 5 and 6, 2020, in a case that is still pending in this Court and to which CLD is not a party, as well as a separate ongoing case, pending in the Business Court Division before the Honorable Jennifer P. Dent. *See Complaint*, at ¶¶6, 85-87. The orders in those cases affect only rights and obligations between Justice and GVSPOA and other parties therein, but do not constitute a final judgment and are not subject to appeal.

If the Court amends its orders to change their holdings; if Justice and GSVPOA or the other parties reach a settlement; or if the Supreme Court of Appeals of West Virginia reverses, vacates or remands any of the orders, in whole or in part, GSVPOA’s claims against CLD in this case may change substantially or go away altogether. Accordingly, the instant lawsuit is not ripe, and this Court does not have subject matter jurisdiction over this alleged controversy.

The U.S. Supreme Court has determined that the doctrine of ripeness prevents judicial

consideration of issues until a controversy is presented in "clean-cut and concrete form." *Rescue Army v. Mun. Court of L.A.*, 331 U.S. 549, 584 (1947). The burden of proving ripeness falls on the party bringing suit. *Renne v. Geary*, 501 U.S. 312, 316 (1991). In *State ex rel. Universal Underwriters Ins. Co. v. Wilson*, 801 S.E.2d 216 (W. Va. 2017), the Supreme Court of Appeals of West Virginia recognized that "the ripeness doctrine 'seeks to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements.' *Paraquod v. St. Louis Housing Auth.*, 259 F.3d 956, 958 (8th Cir. 2001) (internal quotations and citation omitted). 'Questions that may never arise or are purely advisory or hypothetical do not establish a justiciable controversy. Because an unripe claim is not justiciable, the circuit court has no subject matter jurisdiction over it.' *Doe v. Golden & Walters, PLLC*, 173 S.W.3d 260, 270 (Ky. Ct. App. 2005) (footnotes omitted); see generally 13 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 3529 (3d ed. 2008) (recognizing central concepts of justiciability often are elaborated into specific categories including advisory opinions, standing, ripeness, mootness, and political questions). *State ex rel. Universal Underwriters Ins. Co.*, 801 S.E. 2d at 223.

It is well established that the issue of subject matter jurisdiction can be raised at any time, even *sua sponte* by this Court. *Id.*, at 224 (*quoting* Syl. Pt. 2, *In re Boggs' Estate*, 63 S.E.2d 497 (W. Va. 1951). Furthermore, "[t]he urgency of addressing problems regarding subject-matter jurisdiction cannot be understated because any decree made by a court lacking jurisdiction is void." *State ex rel. TermNet Merch. Servs., Inc. v. Jordan*, 619 S.E.2d 209, 213 (W. Va. 2005) ; see also Franklin D. Cleckley, Robin Jean Davis, and Louis J. Palmer, Jr., *Litigation Handbook on W.Va. Rules of Civ. Pro.*, § 12(b)(1), at 325-26 (4th ed. 2012) ("Any judgment or decree rendered without such jurisdiction is utterly void.").

Like other challenges to a court's subject matter jurisdiction, motions raising the ripeness issue are treated as brought under Rule 12(b)(1). *Id.*, at 224 (*quoting St. Clair v. City of Chico*, 880 F.2d 199, 201 (9th Cir. 1989)). "A claim is not ripe for adjudication if it rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all." *Id.* (*quoting Texas v. United States*, 523 U.S. 296, 300 (1998)) (internal quotation marks and citations omitted).

West Virginia's Supreme Court has further recognized that courts will not ... adjudicate rights which are merely contingent or dependent upon contingent events, as distinguished from actual controversies. Likewise, courts [will not] resolve mere academic disputes or moot questions or render mere advisory opinions which are unrelated to actual controversies. Indeed, a matter must be ripe for consideration before the court may review it. Courts must be cautious not to issue advisory opinions. *State Farm Mutual Automobile Insurance Co. v. Schatken*, 737 S.E.2d 229, 238 (W. Va. 2012) (*quoting Zaleski v. West Virginia Mut. Ins. Co.*, 687 S.E.2d 123, 131 (W. Va. 2009) (quotation marks omitted)).

There is no question that Plaintiff's claims against CLD are subject to and contingent upon future court action and decisions which may not lead to the result GSVPOA presently anticipates and, indeed, may not occur at all. There is no immediate hardship or burden imposed upon GSVPOA as it continues to prosecute and defend the ongoing predicate litigation against Justice and both Justice and GSVPOA still have available opportunities to move to set aside, alter, or amend the subject orders and the right to appeal the orders (*if that is still necessary*) once they become final judgments. Therefore, this Court does not have subject matter jurisdiction over this controversy under the doctrine of ripeness and should dismiss the Complaint in its entirety pursuant to Rule 12(b)(1) of the West Virginia Rules of Civil Procedure.

B. Plaintiff's Common Law and Statutory Claims Against CLD Are Barred By Expiration of the Applicable Statutes of limitations.

All of the Plaintiff's statutory and common law tort claims (breach of W.V. a Code §36B-3-107 – Count IV, breach of fiduciary duty - Count V, negligence – Count VI, and conversion – Count VII) are barred by the 2-year statute of limitations found at W. Va. Code §55-2-12. *Evans v. United Bank*, 775 S.E. 2d 500, 508 (W. Va. 2015), *Dunn v. Rockwell*, 689 S.E. 2d 255, 268 (W. Va. 2009). Plaintiff's breach of contract claim (Declarant's Breach of Declaration – Count III) is barred by the 10-year statute of limitations applicable to written contracts found at W. Va. Code §55-2-6. *Harris v. County Commission of Calhoun County*, 797 S.E. 2d 62, 68 (W. Va. 2017). Count X – Declaratory Judgment Related To Woodhaven and Count XI – Breach of Representation and Special Warranty Related To Woodhaven are also barred by the applicable statute of limitations, as such claims apparently are based on publicly recorded documents from 2001, 2006 and 2010.⁴ *Complaint*, at ¶¶ 155, 157-58.

Each of the Plaintiff's tort claims is based upon CLD's failure to pay annual assessments and acceptance of payments of assessments from GSVPOA which began 20 years ago in 2001 and ended more than 10 years ago on October 20, 2010, when CLD sold GSV to Justice. *See Complaint*, at ¶¶ 7, 127, 132, 137 and 141. Therefore, all of the Plaintiff's tort claims against CLD expired on October 20, 2012, and the filing of Plaintiff's Complaint against CLD comes more than 8 years too late.

Plaintiff's claims for breach of contract are based upon CLD's alleged failure to pay GSVPOA annual assessments on its developer lots within GSV and alleged breaches of the Declaration and a Quitclaim Deed related to the Woodhaven golf course while CLD was the Declarant. *Complaint*, at ¶¶ 119-20, 155, 159-60. Again, CLD ceased being the Declarant and sold

⁴ Disappointed with rulings against it by The Honorable Judge Jennifer P. Dent in Civil Action No. 19-C-57, GSVPOA is attempting to re-litigate "Woodhaven" issues in the present case. Further, GSVPOA agreed to the decades-old protective covenant it now disputes.

all of its developer lots to Justice on October 20, 2010. *Complaint*, at ¶ 7. Accordingly, CLD could not have breached the Declaration or Quitclaim Deed after October 2010. Therefore, all of the Plaintiff's breach of contract claims against CLD expired no later than October 20, 2020, and the filing of Plaintiff's Complaint against CLD comes at least 6 months too late.

1. Plaintiff's claim for violation of W. Va. Code §36B-3-107 (Count IV) is barred by the 2-year statute of limitations in W. Va. Code §55-2-12.

Plaintiff alleges that CLD, as Declarant from May 2001 until October 2010, remains liable for all expenses in connection with development of GSV and its alleged failure to pay annual assessments. *Complaint*, at ¶¶ 126-28. Plaintiff acknowledges that CLD's term as Declarant ended when Justice became the Declarant on October 20, 2010. *Complaint*, at ¶ 7. Therefore, Plaintiff must also acknowledge that CLD had no obligation for development expenses or assessments after October 20, 2010. W. Va. Code §55-2-12 provides that every action for which no limitation is otherwise prescribed shall be brought within two years next after the right to bring the same accrues. Accordingly, the Court must dismiss Count IV of the Complaint against CLD because the statute of limitations on Plaintiff's claim of breach of W. Va. Code §36B-3-107 expired in October 2012. Because the Plaintiff filed this civil action on April 30, 2021, the Court must dismiss Count IV against CLD as a matter of law.

2. Plaintiff's claim for breach of fiduciary duty (Count V) is barred by the 2-year statute of limitations in W. Va. Code §55-2-12.

The statute of limitations for actions for breach of fiduciary duty is 2-years from the date of occurrence of the alleged breach. *Evans v. United Bank*, 775 S.E. 2d 500, 508 (W. Va. 2015). W. Va. Code §55-2-12. Plaintiff alleges that CLD breached its fiduciary duty to GSVPOA by accepting payments on the capital expense and operating loan agreement entered into between CLD and GSVPOA in May 2001. *Complaint*, at ¶¶ 39 and 132. Plaintiff acknowledges that CLD

assigned and transferred the capital expense and operating loan agreement to Justice on October 20, 2010. *Complaint*, at ¶ 44. Therefore, Plaintiff must also acknowledge that CLD did not accept any further payments on the loan agreement from GSVPOA after October 20, 2010. Accordingly, the Court must dismiss Count V of the Complaint against CLD because the statute of limitations on Plaintiff's claim of breach of fiduciary duty expired in October 2012. Because the Plaintiff filed this civil action on April 30, 2021, the Court must dismiss Count V as a matter of law.

3. Plaintiff's claim for negligence (Count VI) is barred by the 2-year statute of limitations in W. Va. Code §55-2-12.

The statute of limitations for actions for claims of negligence is 2-years from the date of the alleged occurrence. *Evans v. United Bank*, 775 S.E. 2d 500, 508 (W. Va. 2015). W. Va. Code §55-2-12. Plaintiff claims that CLD is liable to GSVPOA as Declarant of GSV for negligence arising out of its "acts or omissions related to or arising out of the Loan Agreement, including the acceptance of payments thereunder . . ." *Complaint*, at ¶ 137. Again, Plaintiff acknowledges that CLD assigned and transferred the capital expense and operating loan agreement to Justice on October 20, 2010. *Complaint*, at ¶ 44. Therefore, Plaintiff must also acknowledge that CLD was no longer the Declarant and did not accept any further payments on the loan agreement from GSVPOA after October 20, 2010. Accordingly, the Court must dismiss Count VI of the Complaint against CLD because the statute of limitations on Plaintiff's claim of negligence expired in October 2012. Because the Plaintiff filed this civil action on April 30, 2021, the Court must dismiss Count VI against CLD as a matter of law.

4. Plaintiff's claim for conversion (Count VII) is barred by the 2-year statute of limitations in W. Va. Code §55-2-12.

The statute of limitations for actions for claims of conversion is 2-years from the date of the alleged occurrence. *Dunn v. Rockwell*, 689 S.E. 2d 255, 268 (W. Va. 2009). W. Va. Code

§55-2-12. Plaintiff claims that CLD as “Declarant converted GSVPOA assessment income received by GSVPOA required to pay the Common Expenses for its own use and to no benefit of use of GSVPOA or its Members . . .” *Complaint*, at ¶ 141. And yet again, Plaintiff acknowledges that CLD assigned and transferred the capital expense and operating loan agreement to Justice on October 20, 2010. *Complaint*, at ¶ 44. Therefore, Plaintiff must also acknowledge that CLD was no longer the Declarant and did not accept any further payments from GSVPOA after October 20, 2010 and could not have converted any income from GSVPOA for its own use after October 20, 2010. Accordingly, the Court must dismiss Count VII of the Complaint against CLD because the statute of limitations on Plaintiff’s claim of conversion expired in October 2012. Because the Plaintiff filed this civil action on April 30, 2021, the Court must dismiss Count VII against CLD as a matter of law.

5. Plaintiff’s claim for breach of contract (Count III) is barred by the 10-year statute of limitations in W. Va. Code §55-2-6.

The statute of limitations for actions on breach of written contracts in West Virginia is ten years from the date of the alleged breach. *Harris v. County Commission of Calhoun County*, 797 S.E. 2d 62, 68 (W. Va. 2017). W. Va. Code §55-2-6. Plaintiff’s claim for breach of contract is based upon CLD’s alleged failure to pay GSVPOA annual assessments on its developer lots within GSV while it was the Declarant. *Complaint*, at ¶¶ 119-20. CLD ceased being the Declarant and sold all of its developer lots to Justice on October 20, 2010. *Complaint*, at ¶ 7. Accordingly, CLD could not have breached the Declaration by allegedly failing to pay annual assessments on developer lots at any time after October 2010. Therefore, Plaintiff’s breach of contract claim against CLD expired by no later than October 20, 2020. Because the Plaintiff filed this civil action on April 30, 2021, the Court must dismiss Count III against CLD as a matter of law.

6. Plaintiff's claim for declaratory judgment and breach of representation and special warranty (Counts X and XI) are barred by the 10-year statute of limitations in W. Va. Code §55-2-6.

The statute of limitations for actions on breach of written contracts in West Virginia is ten years from the date of the alleged breach. *Harris v. County Commission of Calhoun County*, 797 S.E. 2d 62, 68 (W. Va. 2017). W. Va. Code §55-2-6. Counts X and XI of the Complaint seek a declaration that GSVPOA may provide its own food and beverage service at Woodhaven and that CLD breached a special warranty to GSVPOA allegedly given October 6, 2010. *Complaint*, at ¶¶ 155 and 158-60. These allegations rest exclusively on written contracts entered into between CLD and GSVPOA and recorded May 30, 2001 and October 6, 2010.⁵ CLD ceased being the Declarant and sold all of its developer lots to Justice on October 20, 2010. *Complaint*, at ¶ 7. Accordingly, CLD could not have breached the Declaration's covenants with respect to food and beverage service at Woodhaven at any time after October 20, 2010, and similarly could not have breached any special warranty in the October 6, 2010 Quitclaim Deed after October 20, 2010. Therefore, Plaintiff's claim for declaratory judgment under the Declaration and breach of warranty claim against CLD expired no later than October 20, 2020. Because the Plaintiff filed this civil action on April 30, 2021, the Court must dismiss Counts X and XI against CLD as a matter of law.

C. Plaintiff's Equitable Claims Are Barred By the Doctrine Laches.

All of the Plaintiff's equitable claims (Accounting – Count I, Unconscionability – Count II, Unjust Enrichment – Count VIII and Mutual Mistake – Count IX) are barred by the doctrine of laches. *Dunn v. Rockwell*, 689 S.E. 2d 255 at fn. 11 (W. Va. 2009) (“[l]aches applies to equitable

⁵ Plaintiff alleges that CLD “promised a special warranty to GSVPOA and its Members” but nonetheless, “omitted from the Quitclaim Deed a special warranty or any warranty.” *Complaint*, at ¶¶ 159-60. Therefore, to the extent that this alleged promise was not contained within the parties' written contract (Quitclaim Deed), Plaintiff's claim in Count XI is barred by the 5-year statute of limitation found in W. Va. Code §55-2-6 and expired October 6, 2015.

demands[,] where the statute of limitations does not.” (quoting *Syl. Pt. 2, in part, Condry v. Pope*, 166 S.E.2d 167 (W. Va. 1969)).

Essentially, GSVPOA complains that the actions of the Declarants which it accepted, endorsed, and approved each year for a period of more than 20 years, are now suddenly inequitable despite idly standing-by and taking no action to assert its alleged rights until obtaining a surprise favorable court ruling in October 2020, which is not a final judgment.⁶ GSVPOA’s conduct satisfies the very definition of laches which has been adopted by West Virginia’s Supreme Court:

Laches is "delay which operates prejudicially to another person's rights." *Carter v. Carter*, 107 W.Va. 394, 148 S.E. 378 (1929). As we said in Syllabus Point 1 of *State ex rel. Smith v. Abbot*, 187 W.Va. 261, 418 S.E.2d 575 (1992):

Mere delay will not bar relief in equity on the ground of laches. "Laches is a delay in the assertion of a known right which works to the disadvantage of another, or such delay as will warrant the presumption that the party has waived his right." Syllabus Point 2, *Bank of Marlinton v. McLaughlin*, 123 W.Va. 608, 17 S.E.2d 213 (1941).

"This Court has consistently emphasized the necessity of a showing that there has been a detrimental change of position in order to prove laches[.]" *Maynard v. Board of Educ. of Wayne County*, 178 W.Va. 53, 59, 357 S.E.2d 246, 253 (1987). *See also*, Syllabus Point 3, *Carter v. Price*, 85 W.Va. 744, 102 S.E. 685 (1920) ("Where a party knows his rights or is cognizant of his interest in a particular subject-matter, but takes no steps to enforce the same until the condition of the other party has, in good faith, become so changed, that he cannot be restored to his former state if the right be then enforced, delay becomes inequitable, and operates as an estoppel against the assertion of the right. This disadvantage may come from death of parties, loss of evidence, change of title or condition of the subject-matter, intervention of equities, or other causes. When a court of equity sees negligence on one side and injury therefrom on the other, it is a ground for denial of relief.")...

Dunn v. Rockwell, 689 S.E.2d 255, fn. 11 (W. Va. 2009).

GSVPOA, in a publicly recorded Declaration, established GSV in conjunction with CLD, but then waited more than 20 years to claim CLD’s conduct was improper. All the

⁶ To the extent that GSVPOA is suing CLD for its own actions and conduct, its claims are also barred by the doctrines of equitable estoppel and collateral estoppel.

while, it ratified every single action taken by CLD under the Declaration and Bylaws, approved each loan agreement and amendment and every lot assessment increase from 2001 through 2010. It apparently did the same after Justice became the Declarant in 2010 and amended the loans and proposed lot assessment increases several more times. After more than 20 years, GSV is so changed from its initial undeveloped state, that it cannot be restored to the *status quo ante*. Important witnesses and documents have been lost to the ages. And moreover, CLD acted in good faith and with the GSVPOA's active cooperation, encouragement, and assistance to invest capital over a period of more than 10 years which added value to GSVPOA by delivering to it one of West Virginia's premier residential communities out of nothing more than pastureland and can never be restored to its former state before development.

GSVPOA's inconceivable delay in asserting the equitable claims in Counts I, II, VIII and IX operates as an estoppel and provides sufficient grounds to deny the Plaintiff relief as a matter of law at this early stage of litigation under the doctrine of laches.

D. Justice Holdings LLC Released CLD When Plaintiff Acquired the Developer Rights to GSV And Stepped Into CLD's Shoes as Developer and Declarant.

The Declaration, which has been in the public record since May 30, 2001, contains the covenants and restrictions which govern the development, improvements, and maintenance of GSV as well as the rights, duties, and obligations of the property owners and the Developer. *Complaint*, ¶ 8. The Declaration permits the Developer to transfer or sell its interests and obligations in the GSV development to another person or entity by the following language:

Assignment, Transfer or Conveyance by Developer. The Developer reserves and shall have the right to assign, transfer or convey any reservations, rights or obligations of the Developer hereunder, and upon such assignment, transfer or conveyance the Developer shall immediately be released and discharged as to any and all liability

incident to such reservations right or obligation.

Motion, Ex. 1, Art. XVII, Sec. 7.

It is undisputed that CLD assigned, transferred, and conveyed to Justice all of CLD's right, title, interest in GSV on October 20, 2010 and that Justice is now GSV's Developer and Declarant. As part of that October 20, 2010 transaction, Justice and CLD entered into the Closing Agreement consummating the transactions contemplated by the Purchase Agreement. *Complaint*, at ¶ 7; *Motion* at Exhibit 5. The parties recognized and implemented the Declaration's provisions on the transfer and conveyance of the Developer's interests, rights, and obligations by the following language:

CLD Released. CLD and Justice further acknowledge and agree that upon the assignment, transfer and conveyance of all the Developer Rights from CLD to Justice, **CLD, as Developer under said Master Declaration, shall, without the action of any person being required, immediately be released and discharged as to and from any and all liability incident to such rights, duties, reservations and obligations thereunder pursuant to Article XVII, Section 7 of said Master Declaration.**

See Assignment and Assumption of Developer Rights, *Motion* Ex. 2, ¶ 3 (emphasis added).

The release bars any recovery by GSVPOA against CLD in this action for acts or omissions alleged to have occurred while CLD was Developer or Declarant and must be interpreted under Arkansas rules of contract interpretation. *See Walmart Stores, Inc. v. Coughlin*, 255 S.W.3d 424, 429 (Ark. 2007). "The first rule of contract interpretation is to give to the language employed the meaning that the parties intended." *Travelers Cas. & Sur. Co. of Am. v. Cummins Mid-South, LLC*, 460 S.W.3d 308, 313 (Ark. 2015). If the language of the contract is unambiguous, the plain language of the contractual clause will be given full effect "without resorting to the rules of construction." *Id.*

This contractual provision in the Closing Agreement “released and discharged” CLD “from any and all liability” related to the Developer’s “rights, duties, reservations and obligations” under the Declaration. *Motion*, at Ex. 5. The Closing Agreement is neither vague nor ambiguous, and the release language is unambiguous as a matter of law. The result is that GSVPOA is barred from recovering against CLD inasmuch as Justice released CLD and assumed all responsibility, if any, as Developer and Declarant.

The tort claims in Counts V, VI and VII (Negligence, Breach of Fiduciary Duty and Conversion) are afforded a different analysis under Arkansas law. With regard to the tort claims, Arkansas calls the release in the Closing Agreement an “exculpatory contract” or clause because one “party seeks to absolve himself in advance for the consequences of his own negligence.” *Finagin v. Ark. Dev. Fin. Auth.*, 139 S.W.3d 797, 806 (Ark. 2003). Exculpatory contracts in tort cases receive higher scrutiny because of “a strong public policy in Arkansas to encourage the exercise of care. . . .” *Ray v. Albemarle Corp.*, Case No. 07-cv-1076, 2009 U.S. Dist. LEXIS 69752, *7; 2009 WL 2447929 (W.D. Ark. Aug. 10, 2009). In Arkansas, exculpatory contracts “are to be strictly construed against the party relying on them . . . and, to be enforceable, the contract must clearly set out what negligent liability is to be avoided.” *Nat’l Union Fire Ins. Co. v. Guardtronic, Inc.*, 64 S.W.3d 779, 782 (Ark. App. 2002). The lack of ambiguity about the plain meaning of the language of the Closing agreement obviates any difficulty in ascertaining the intention of the parties to implement and carry out a particular provision of the Declaration. Further, the Closing Agreement is enforceable because the exculpation of CLD is confined to “any and all liability” relating to “such rights, duties, reservations and obligations” of CLD as the Developer under the Declaration.

Arkansas courts take one additional step and apply the *Finigan* factors. “. . . An

exculpatory clause may be enforced: (1) when the party is knowledgeable of the potential liability that is released; (2) when the policy is benefitting from the activity which may lead to the potential liability that is released; and (3) when the contract that contains the clause was fairly entered into.” *Finigan*, 139 S.W.3d at 808. Justice is charged with the knowledge of the clear language of the release in the Closing Agreement which it executed, as well as the language of the Declaration. *Id.* citing *Carmichael v. Nationwide Life Ins. Co.*, 810 S.W.2d 39, 41 (Ark. 1991). Justice is a sophisticated business entity which entered into the Closing Agreement as part of an arms’ length course of dealing. Further, the exculpatory clause implements a provision of the Declaration (Art. XVII, Sec. 7) of which Justice was on notice in advance of the closing. Justice proceeded with the deal and has been GSV’s Developer for over ten years. *Id.* As such, the second and third *Finigan* factors are satisfied, the release is enforceable and bars prosecution of GSVPOA’s tort claims against CLD.

E. The Court Should Dismiss Count IX Of Plaintiff’s Complaint Alleging Mutual Mistake Of Fact And Law Because GSVPOA Bore The Risk Of The Alleged Mistakes, And Cannot Utilize The Benefit Of Hindsight To Argue “Facts” Which Did Not Exist In May 2001.

The Declaration was a public record as of May 30, 2001. *Complaint*, at ¶ 8. West Virginia’s UCIOA statute was enacted in 1986. Despite these facts, GSVPOA waited nearly 20 years before claiming the Loan Agreement was the “result of a mutual mistake.” *Complaint*, at ¶150.

In determining whether there has been a mutual mistake sufficient to void a contract, the West Virginia Supreme Court has adopted the following Fourth Circuit analysis:

“[W]e must examine the facts as they existed at the time of the agreement.... A mutual mistake in prophecy or opinion may not be taken as a ground for rescission where such mistake becomes evident through the passage of time. What is today only a conjecture, an opinion, or a guess, might by tomorrow, through the exercise of hind-sight, be regarded then as an absolute fact.”

United States v. Garland, 122 F.2d 118, 122 (4th Cir. 1941) (internal citation omitted).

The West Virginia Supreme Court holds that “[a] party's prediction or judgment as to events to occur in the future, even if erroneous, is not a "mistake" for the purpose of reforming a contract or making a contract voidable. *Ryan v. Ryan*, 640 S.E.2d 64, 69 (W. Va. 2006). Moreover, “[a] mutual mistake is one which is common to all parties, wherein each labors under the same misconception respecting a material fact or provision within the agreement.” Syl. Pt. 4, *Smith v. Smith*, 639 S.E.2d 711 (2006) (citing Syl. Pt. 2, *Ryan, supra.*). "A contract may not be reformed or rescinded based upon a mutual mistake of fact if the mistake relates to a mistaken belief, judgment, or expectation as to future, rather than past or present, facts, occurrences or events." Syl. Pt. 3, *Ryan, supra.* "Mistakes that make contracts voidable or reformable must be about existing facts (past or present) when the contract was made and not be simply poor predictions of future events." *Id.* at 67.

GSVPOA admits that it is and has been a West Virginia corporation since May 19, 2001. *Complaint*, at ¶ 1. GSVPOA admits that under its Bylaws and Declaration, “GSVPOA is governed and managed by and acts solely through its Board of Directors.” *Complaint*, at ¶ 23. And regardless of its composition, the Board of Directors owes a fiduciary duty to GSVPOA. *Complaint*, at ¶ 31. GSVPOA admits that its Board of Directors approved each and every amendment to the Loan Agreement between 2001 and 2015. *Complaint*, at ¶ 41. Therefore, if GSVPOA now claims that it was mistaken that “the Loan Agreement was necessary and proper under the Declaration and West Virginia law when it was not,” then GSVPOA bore the risk of that mistake. *Complaint*, at ¶ 150. This is precisely the situation in which the *Restatement (Second) of Contracts* and the Supreme Court hold that a contract is **not** voidable on grounds of mutual mistake. *See Restatement (Second) of Contracts* §§154(a) and (b), Syl. Pt. 2, *McGinnis v. Cayton*,

312 S.E.2d 765 (W.Va. 1984) (*“Where a mistake of both parties at the time a contract was made as to a basic assumption on which the contract was made has a material effect on the agreed exchange of performances, the contract is voidable by the adversely affected party unless he bears the risk of the mistake.”*).

GSVPOA should not be heard to complain that its own negligent due diligence investigation, breach of fiduciary duty or willful ignorance of the facts and the law as they existed at the time of the transaction makes the Loan Agreement void or voidable, where the law clearly and unequivocally states it is not. GSVPOA should not be permitted to utilize the benefit of 20/20 hindsight to argue that a mutual mistake of fact or law existed in 2001 when its own conduct over a period of nearly twenty years following the development of GSV created its present legal predicament. As the Supreme Court has recognized, a party's prediction or judgment as to events to occur in the future, even if erroneous, is not a "mistake" as defined by the law and is not sufficient to overcome CLD's motion to dismiss. Accordingly, Count IX of the Complaint should be dismissed, with prejudice.

CONCLUSION

WHEREFORE, for all of the foregoing reasons, defendant Cooper Land Development, Inc. respectfully moves this Court for entry of an Order dismissing all of the Plaintiff's claims against CLD, with prejudice, ordering that the Plaintiff takes nothing, and awarding CLD its fees and costs incurred in defending the Complaint and such other further relief as the Court deems appropriate and just.

Dated: June 4, 2021

/s/ M. David Griffith, Jr.
M. David Griffith, Jr. (WVSB #7720)
Thomas Combs & Spann, PLLC
300 Summers Street, Suite 1380
Charleston, WV 25301//Tel: 304.414.1800
Counsel for Cooper Land Development, Inc.

IN THE CIRCUIT COURT OF RALEIGH COUNTY, WEST VIRGINIA

GLADE SPRINGS VILLAGE
PROPERTY OWNERS ASSOCIATION, INC.,

Plaintiff,

v.

Civil Action No. 21-C-129
(Judge Darl W. Poling)

COOPER LAND DEVELOPMENT, INC.,
an Arkansas corporation, and
JUSTICE HOLDINGS LLC,
a West Virginia limited liability company,

Defendants.

CERTIFICATE OF SERVICE

I, M. David Griffith, Jr., counsel for Defendant Cooper Land Development, Inc., hereby certify that on the 4th day of June 2021, service of the foregoing “**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT COOPER LAND DEVELOPMENT, INC.’S MOTION TO DISMISS PLAINTIFF’S COMPLAINT**” has been made upon the following counsel of record by utilizing the CourtPLUS Initiative electronic filing system which shall give notice of filing to:

Mark A. Sadd, Esq.
Ramonda C. Marling, Esq.
Lewis Glasser PLLC
300 Summers Street, Suite 700
P.O. Box 1746
Charleston, WV 25326
Tel: 304-345-2000
Fax: 304-343-7999
Email: msadd@lewisglasser.com
rmarling@lewisglasser.com
Counsel for Plaintiff

by first class U.S. Mail, postage prepaid, in envelopes addressed to :

Justice Holdings LLC
c/o PRAS, LLC
560 Main Street West
White Sulphur Springs, WV 24986

Justice Holdings LLC
P.O. Box 2178
Beaver, WV 25813

and by electronic mail to:

Christopher Schroeck, Esq., General Counsel
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/s/ M. David Griffith, Jr.
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EXHIBIT 1

5004 @ 6488-1
ASSIGNMENT BOOK 5007 @ 0183
ASSIGNMENT BOOK 5007 @ 0186
RELEASE BOOK 5004 @ 7937
RELEASE BOOK 5004 @ 7938
RELEASE BOOK 5004 @ 7939
RELEASE BOOK 5004 @ 7940

DECLARATION OF
COVENANTS AND RESTRICTIONS
GLADE SPRINGS VILLAGE, WEST VIRGINIA

BETTY RIFFE
DEED Clerk 07
Date/Time: 05/30/2001 15:00
Inst #: 50046488
Book/Page: 5004- / 6488-
Sheet/Total: 28,50 .00

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, Cooper Land Development, Inc., an Arkansas corporation, hereinafter called "Developer", has acquired certain lands hereinafter described in ARTICLE II of this Declaration which are reflected upon the following plat prepared by Roy E. Shrewsbury, II, P.S. bearing the following date and which plat is filed contemporaneously with the filing of the Declaration in the office of Raleigh County Clerk in and for Raleigh County, West Virginia and is of record as follows:

Subdivision	Date of Plat	Plat Book No.	Page
1 Acre Common Properties Glade Springs Village	5/15/2001	4	19

which plat is by reference made a part of this Declaration and likewise this Declaration is by reference made a part of each of said plat.

WHEREAS, Developer, in conjunction with the Glade Springs Village Property Owners Association, Inc. hereinafter further described, desires to create upon said lands, together with any additions as thereto as hereinafter provided, to the extent economically feasible a residential and commercial community with streets, water and sewer utility systems, recreational facilities, greenbelt areas and common facilities for the use and benefit of said community; and

WHEREAS, Developer in conjunction with the Glade Springs Village Property Owners Association, Inc. desires to provide for the construction of the facilities aforesaid and also desires to provide for the preservation of the values and amenities in said community and for the maintenance of the common facilities and, to this end, desires to subject the real property described in ARTICLE II, together with such additions as may hereafter be made thereto in accordance herewith, 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

ESI Inc.
119 Appalachian Drive
Beckley WV 25801

Bates-000040

WHEREAS, Developer has deemed it necessary and desirable, for the efficient construction of the common facilities and utility systems and for the preservation of the values and amenities in said community, that an agency be created to which should be delegated and assigned certain construction, maintenance and administration rights, duties and obligations with respect to the common facilities and utility systems, as well as administering and enforcing the covenants and restrictions herein and collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, Developer has encouraged and participated in the formation of the Glade Springs Village Property Owners Association, Inc. a non-profit corporation organized and existing under and by virtue of the laws of the State of West Virginia, hereinafter called "Association", with its principal office to be located within Glade Springs Village, West Virginia, for the purpose of exercising the functions aforesaid, which said Association joins in the execution of this instrument for the purpose of indicating its agreement to perform the obligations placed upon it by this Declaration, as well as any Supplemental Declarations hereafter placed of record pursuant hereto and whether or not executed by it;

NOW THEREFORE, the Developer declares that the real property described in Section 1 of Article II hereof, and any additions thereto as may hereafter be made pursuant to Section 2 of 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, which shall run with the real property subjected to this Declaration.

ARTICLE I Definitions

In addition to other definitions herein provided and except where it is clearly evident from the context that a different meaning is intended, the following terms shall have the following meanings when used in this Declaration, any Supplemental Declaration, any record plat of the lands covered hereby, and any other documents related to the Glade Springs Village development:

- (1) "A Parcel of Land" may be less than a Lot, single Lot, more than a Lot, several Lots, or a plot of land described by a metes and bounds description.

(2) "Assessment" means such amounts as are required by the Association for payment of Common Expenses and levied against the Members by the Association in accordance herewith.

(3) "Association" means Glade Springs Village Property Owners Association, Inc., a West Virginia non-profit corporation, its successors and assigns.

(4) "Commercial Lot" shall mean and refer to any Lot so designated upon any recorded subdivision plat of Glade Springs Village, or as may be so designated by this Declaration or any Supplemental Declaration.

(5) "Common Expense" means all expenses incurred by the Association for the construction, maintenance, repair, replacement, operation, management and administration of Glade Springs Village and the Common Property, including any reasonable reserve, together with any expenses which are the specific responsibility of an individual Owner which are paid by the Association and charged to the responsible Owner as a personal charge for reimbursement.

(6) "Common Property" means any property, real, personal or mixed, owned or leased by the Association or in which the Association otherwise has possessory or use rights, those areas reflected as such upon any recorded subdivision plat of Glade Springs Village, and those areas so designated from time to time by the Developer and intended to be devoted to the common use and enjoyment of the Members.

(7) "Declaration" means this instrument as extended or supplemented from time to time in the manner herein provided.

(8) "Developer" means Cooper Land Development, Inc., an Arkansas corporation, its successors and assigns.

(9) "Glade Springs Village" means all real property concurrently herewith or in the future subjected to this Declaration.

(10) "Glade Springs, Phase I" means the resort community subject to the Declaration of Restrictions for Phase I of Glade Springs, recorded in the Office of the Clerk of the County Commission of Raleigh County, West Virginia in Deed Book 517, at Page 79 as amended from time to time and as specifically amended effective January 1, 2000 which amendment is recorded at Deed Book 5000, Page 1608 of the Raleigh County

records.

(11) "Household" shall mean those who dwell under the same roof and constitute a family.

(12) "Limited Common Property" means those areas reflected as such upon any recorded subdivision plat of Glade Springs Village and those areas so designated from time to time by the Developer, intended to be devoted to the common use and enjoyment of the owners of specifically designated property.

(13) "Living Unit" shall mean and refer to any portion of a building situated within Glade Springs Village designed and intended for use and occupancy as a residence by a single family, including condominium units, townhouse units, cluster homes, patio homes, zero lot line homes and the like.

(14) "Lot" shall be the numbered lots or numbered and lettered lots in the numbered blocks as shown on any recorded subdivision plat of Glade Springs Village.

(15) "Master Plan" means that certain master plan for development of Glade Springs Village as prepared by Cooper Land Development, Inc. and submitted by the Developer to the Raleigh County Planning Commission at the time of closing of the purchase of the initial lands covered hereby.

(16) "Member" means any person or entity who is a member of the Glade Springs Village Property Owners Association, Inc. as hereinafter provided.

(17) "Multi-family Structure" shall mean and refer to any building containing two or more Living Units located on a single Lot.

(18) "Occupant" means any person or persons in possession of a permanent or temporary Lot, Living Unit or timeshare interest.

(19) "Owner" means the Developer and any person, firm, corporation, partnership, association or other legal entity, or any combination thereof, owning of record or purchasing from the Developer a fee interest in a Lot, Living Unit or Timeshare Interest, or who has purchased or is purchasing a Certificate Membership from the Developer, but excluding in all cases any person holding an interest merely as security for the performance of an obligation.

(20) "Personal Charge" means any expense or charge of the Association for which a specific owner is liable.

(21) "Private Street" shall mean and refer to every way of access whether owned or leased by the Association for vehicles which is not dedicated to the general public but is designated as either Common Property or Limited Common Property. That a Private Street shall be known by the name of "street," "road," "avenue," "way," "lane," "place" or other name shall not cause the particular street to be public in nature despite the fact that streets under general definitions are not private in nature.

(22) "Public Street" shall mean and refer to every way of access for vehicles which is dedicated to the use and benefit of the general public.

(23) "Reserved Properties" shall mean and refer to those areas of land designated as such on any recorded subdivision plat of Glade Springs Village which are not subject to the Declaration and which are specifically reserved from the plat.

(24) "Residential Lot" shall mean and refer to any Lot so designated upon any recorded subdivision plat of Glade Springs Village, or as may be so designated by this Declaration or any Supplemental Declaration.

(25) "Single Family Attached" shall mean and refer to any building containing two or more Living Units attached but each Living Unit located on a separate Lot.

(26) "Single Family Detached" shall mean and refer to any building intended for use by a single family and not attached to any other building.

(27) "The Farms" means the resort community subject to the Declaration of Reservations and Restrictive Covenants for The Farms, recorded in the Office of the Clerk of the County Commission of Raleigh County, West Virginia in Microfilm Roll 81 at Page 89 as amended from time to time.

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

(29) "Timeshare Interest" shall mean the ownership of a Timeshare Interval and remainder interest in a Living Unit under the Timeshare Ownership concept established by a timeshare subdivision supplemental declaration.

(30) "Timeshare Interval" shall mean the time period during which a timeshare owner has the exclusive right to use and occupy the living unit.

The person or entity who is the Owner of a Timeshare Interest shall be a Member of the Glade Springs Village Property Owners Association and shall have all rights and obligations as provided for other Members under this Declaration except that no more than one vote may be cast with respect to any timeshare Living Unit and the vote for such Living Unit shall be exercised as the owners among themselves determine.

Further the timeshare 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 title to every Timeshare Interest; however the right and easement of enjoyment in and to the Common Properties in Glade Springs Village shall be limited in time to the Timeshare Interval of which the timeshare Member is the record owner.

(31) "Timeshare Lot" shall mean and refer to any Lot so designated upon any recorded subdivision plat of Glade Springs Village, or as may be so designated by this Declaration or any Supplemental Declaration.

(32) "Timeshare Ownership" shall mean a concept whereby a Living Unit is conveyed to the purchaser for a stated time period for a period of years, which estate is succeeded by a succession of other such estates in the Living Unit, each revolving in consecutive and chronological order annually and being separate and independent of the other, together with a vested remainder over in the Living Unit in fee simple absolute as tenants in common with all other such purchasers in the Living Unit upon termination of the above set forth estates.

(33) "Utility Easements" shall mean and refer to those areas of land designated for such purposes on any recorded subdivision plat for Glade Springs Village or as may be provided for in or by this Declaration or any Supplemental Declaration.

ARTICLE II
Property Subject To this Declaration

Section 1. Existing Property. The existing real property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located and situated in the County of Raleigh, State of West Virginia, to-wit:

Subdivision	Date of Plat	Plat Book No.	Page
1 Acre Common Properties Glade Springs Village	5/15/2001	4	19

Section 2. Additions to Existing Property. Additional properties of the Developer situated in Raleigh County, West Virginia, as well as any other lands within Raleigh or an adjoining county, whether or not owned by the Developer, may be subjected to this Declaration or any part thereof in the following manner:

(A) The Developer, its successors and assigns, shall have the right, but not the obligation, to subject additional properties to the provisions of this Declaration in future stages of development regardless of whether said properties are owned by the Developer. Any additional properties shall be compatible with the existing development. Such additional properties shall become subject to assessments as hereinafter provided. Under no circumstances shall this Declaration or any Supplemental Declaration or the plan of the Declaration bind the Developer, its successors and assigns, to make additions to the existing properties or in anywise preclude the Developer, its successors and assigns, from conveying lands it may own but which have not been made subject to this Declaration, free and clear of this Declaration or any Supplemental Declaration.

(B) The additions authorized hereunder shall be made by filing of record a Supplemental Declaration with respect to the additional property which shall extend the plan of this Declaration or any part thereof to such property, and the owners, including the Developer, in such additions shall immediately be entitled to all privileges herein provided.

(C) Such Supplemental Declarations, if any, may contain such complementary additions and modifications of the covenants, conditions and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added properties as are not inconsistent with the plan of this

Declaration. In no event, however, shall such Supplemental Declarations revoke, modify or add to the covenants, conditions and restrictions established by this Declaration or any Supplemental Declaration with respect to the then Existing Property.

Section 3. Limitation on Additions. No one other than the Developer, its successors and assigns, shall have the right to subject additional lands to this Declaration unless the Developer, its successors and assigns, shall agree in writing to the Association that such additional lands may be included hereunder.

Section 4. Assignment of Developer Rights. Any or all of Developer's rights and obligations set forth in this Declaration may be transferred, in whole or in part, to other persons by written instrument executed by the Developer and filed in the office of the recorder in and for Raleigh County, West Virginia; provided, however, the transfer shall not reduce an obligation nor enlarge a right beyond that which the Developer has under this Declaration.

ARTICLE III Association Membership And Voting Rights

Section 1. Membership. The following classes of membership in the Association are hereby established subject to the limitations herein set forth:

(A) **General Membership:** Every person or entity, other than the Developer, who is the record Owner of a fee or undivided fee in a Lot or Living Unit which is subject by covenants of record to assessment by the Association, and whose purchase money security to the Developer, if any, has been paid in full, shall be a Member of the Association. General Members shall be entitled to all privileges of membership.

(B) **Associate Membership:** Every person or entity who has entered into a contract of purchase with the Developer covering a Lot or Living Unit which is subject by covenants of record to assessment by the Association and whose purchase money security therefor, if any, has not been paid in full shall be an Associate Member of the Association. An Associate Member shall be entitled to all privileges of a Member except the right to vote. Termination of such a contract of purchase for any reason prior to its full performance shall terminate Associate Membership.

(C) **Certificate Membership:** To provide operating revenue to the Association and enhance

utilization of recreational facilities during the early development of Glade Springs Village, the Developer shall have 1,000 Certificate Memberships in the Association. Such Certificate Memberships may be sold by the Developer and shall not require ownership of a Lot or Living Unit. A Certificate Member shall be entitled to privileges of Membership in the Association except the right to vote and as hereinafter provided. Except as to the Developer, Certificate Memberships may be owned only by natural persons, are not transferable other than between spouses and shall terminate in the event of the death of both spouses. Certificate Memberships may be terminated by the Developer for failure of the purchaser to pay in full the purchase price therefor to the Developer or for any other breach of such contract of purchase in accordance with the terms of such contract of purchase or by the mutual cancellation of such contract of purchase by the parties thereto, and by the Association for the failure to pay any assessments or other amounts owed by the certificate Member therefor to the Association or for any other breach by such member of this Declaration which failure to pay or breach shall not be cured within six (6) months after notice to such member by the Association. Notwithstanding anything hereinabove to the contrary, upon termination of a Certificate Membership, for any reason whatsoever, the Developer shall have the right, but not the obligation, to create and sell an additional Certificate Membership in the place thereof, without payment of any kind by the Developer therefor, so long as the total outstanding Certificate Memberships does not exceed 1,000.

(D) **Timeshare Membership:** A Timeshare Living Unit bears the same assessment obligations and voting rights as any other Living Unit, and Owners thereof are entitled to the same privileges of membership in the Association as other Living Unit Owners except as herein below provided. Every person or entity, other than the Developer, who is a record owner of a Timeshare Interest in a Timeshare Living Unit, which is subject to assessment by the Association, shall be a Timeshare Member. A Timeshare Member shall be entitled to all privileges of Membership as other Lot or Living Unit owners except that such shall be limited to that period of time each year consistent with such Timeshare Interval ownership period and the vote for such Timeshare Living Unit shall be exercised as the owners among themselves determine.

(E) **Developer Membership:** The Developer, its successors and assigns, shall be a Member of the

Association so long as it shall be the record Owner of a fee or undivided fee interest in any Lot, Living Unit or Timeshare Living Unit which is subject to assessment by the Association, and shall further be a Member so long as it shall hold legal title to any such Lot, Living Unit or Timeshare Interest and until it shall be paid in full for every such interest it shall sell. The Developer, its successors and assigns, shall be entitled to the privileges of Membership for each such Lot, Living Unit or Timeshare Interest and shall be further entitled to the issuance of Membership guest cards during such Membership to the extent it may deem necessary in its sole discretion to assist in the development and sale of Lots, Living Units, Timeshare Interests or Certificate Memberships.

Notwithstanding anything hereinabove to the contrary, these provisions for Membership are not extended to any person or entity other than the Developer who holds an interest in a Lot, Living Unit or Timeshare Living Unit merely as security for the performance of an obligation.

Section 2. Voting Rights. All those persons or entities as defined in Section 1 of this Article III, with the exception of Developer, who hold the interest required for General Membership by Section 1(A) of this Article III and whose purchase contract with and whose purchase money security in favor of the Developer, if any, shall have been paid in full shall be Class A Members of the Association and shall jointly be entitled to one (1) vote for such Lot or Living Unit as specified in this Declaration or the Bylaws. When more than one person and/or entity holds such interest in a single Lot or Living Unit, the vote for such Lot or Living Unit shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any single Lot or Living Unit.

The Developer, its successors and assigns shall be the sole Class B Member and shall be entitled to one (1) vote for each Lot or Living Unit in which it holds the interest required for membership by Section 1(E) of this Article III until such time as shall cease to be a record Owner thereof and shall have been paid in full therefor. The Class B Member shall be solely entitled to appoint the members of the Association's Board of Directors and to perform other acts as provided in this Declaration or the Bylaws. The Developer shall continue to have the right to cast votes as aforesaid even though it may have contracted to sell the Lot or Living Unit and may have retained a purchase money security interest. Class B Membership shall continue until all Lots or

Living Units in the Developer's remaining inventory have been sold and its active sales and marketing effort is discontinued or until the Developer in its sole discretion determines to terminate such membership at which time its membership shall be converted to Class A Membership.

Notwithstanding anything hereinabove to the contrary, a Timeshare Living Unit shall entitle the Owners thereof to only one (1) vote where any Owner therein shall be entitled to participate in the voting rights, and, in such event, the Developer shall participate in such vote to the same extent pro rata as other Owners therein entitled to participate in such vote.

For purposes of determining the votes allowed herein when Living Units are counted, the Lot or Lots upon which such Living Units are situated shall not be counted.

Section 3. Board of Directors. The affairs of the Association shall be managed by a Board of Directors of up to seven (7) directors who shall be appointed by the Class B Member and who shall serve in accordance with the Articles of Incorporation and the Bylaws of the Association. In the event Class B Membership has been converted to Class A membership, directors shall be elected to fill expired terms by a vote of the Class A Members as provided in the Bylaws.

Section 4. Easement of Enjoyment Limited. Unless expanded by the Association as provided in Section 4(f) of Article VIII of this Declaration, Members other than the Developer are limited in their easement of enjoyment of the Common Properties to a single household. When multiple persons or entities hold Membership in a single Lot, Living Unit or Certificate Membership, the household entitled to the easement of enjoyment shall be designated in accordance with and subject to the provisions and restrictions set forth therefor in the By-Laws of the Association.

ARTICLE IV Reservation Of Easements

Section 1. Utility and Drainage Easements. Developer, for itself and its successors and assigns hereby reserves and is hereby given a perpetual, alienable and releasable blanket easement, privilege and right, but not the obligation, on, in, over and under the lands as hereinafter designated of Glade Springs Village to install, maintain and use electric, antenna television and telephone transmission and distribution systems,

poles, wires, cables and conduits, water mains, water lines, drainage lines and drainage ditches, or drainage structures, sewers and other suitable equipment and structures for drainage and sewerage collection and disposal purposes, or for the installation, maintenance, transmission and use of electricity, cable television systems, telephone, gas, lighting, heating, water, drainage, sewerage and other conveniences or utilities on, in, over and under all of the Common Property and Limited Common Property, and on, in, over and under all of the easements, including, but not limited to, private streets, in place or shown on any subdivision plat of Glade Springs Village, whether such easements are for drainage, utilities or other purposes, and on, in, over and under a 7½ foot strip along the interior of all lot lines of each Lot in Glade Springs Village, said 7½ foot strip aforesaid to be parallel to the interior lot lines of the respective Lots. The Developer shall have the unrestricted and sole right and power of alienating and releasing the privileges, easements, and rights referred to herein with the understanding, however, that the Developer will make such utility easements available to the Association for the purpose of installation of water lines and other water installations and sewer lines and other sewer installations and, in addition, will also make such utility easements available to the Association for any other utilities which the Developer and Association shall agree upon, and for which the Association shall have assumed the responsibility for obtaining additional easements in order that utilities other than sewer and water may be installed. Such utility easements shall be made available to the Association without cost to it. The Association and Owners other than the Developer shall acquire no right, title or interest in or to any poles, wires, cables, conduits, pipes, mains, lines or other equipment or facilities placed on, in, over or under the property which is subject to said privileges, rights and easements. All such easements, including those designated on any plat of Glade Springs Village, not made available to the Association by the Developer are and shall remain private easements and the sole and exclusive property of the Developer and his successors and assigns. Within these aforesaid easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction of flow of drainage channels within the easements, or which may obstruct or retard the flow of water through drainage channels within the easements.

Section 2. Easements for Streets. Developer, for itself and its successors and assigns, hereby reserves and is hereby given a perpetual, alienable and releasable blanket easement, privilege and right, but not the obligation, in, upon, over and across the *Common Properties and Limited Common Properties* for purposes of constructing and maintaining such roads, streets or highways as the Developer shall determine to be necessary or desirable in its sole discretion, including such cuts, grading, leveling, filling, draining, paving, bridges, culverts, ramps and any and all other actions or installations which it deems necessary or desirable for such roads, streets or highways to be sufficient for all purposes of transportation and travel. The width and location of the right of way for such roads, streets or highways shall be within the sole discretion of Developer, its successors and assigns; provided, however, that the Developer, its successors and assigns, will use its reasonable best efforts consistent with its purposes to lessen any damage or inconvenience to improvements which have theretofore been located upon the property. Developer, its successors and assigns, further reserves the *unrestricted and sole right and power of designating such roads, streets or highways as public or private and of alienating and releasing the privileges, easements and rights reserved herein.*

Section 3. Easements of Encroachment. There shall be reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Lot or Living Unit and any adjacent Common Property and between adjacent Lots and Living Units due to the *unintentional* placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than three feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, an Owner, occupant, or the Association.

Section 4. Easements for Golf Course(s). Every Lot, Living Unit and the Common Property are burdened with an easement permitting golf balls unintentionally to come upon such Common Property, Lots, Living Units and for golfers at reasonable times and in a reasonable manner to come upon the Lot, Living Unit or Common Property to retrieve errant golf balls; provided, however, nothing herein shall give any person the

right to enter any dwelling, building or other structure on such property to retrieve golf balls. The existence of this easement shall not relieve golfers of liability for damage caused by errant golf balls.

Section 5. Right of Entry. The Association shall have the right and easement, but not the obligation, to enter upon any Lot or Living Unit for emergency, security, and safety reasons, to perform maintenance pursuant to this Declaration, and to inspect to ensure compliance with this Declaration, a Supplemental Declaration, the Association's By-Laws, and the Association's rules, regulations and policies, which right may be exercised by any member of the Board of Directors, by the Association's officers, agents, employees, and managers, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall include the right of the Association to enter upon any Lot or Living Unit to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to cure the condition within a reasonable time after request from the Board of Directors, but shall not authorize entry into any single family dwelling without permission of the Owner, except by emergency personnel acting in their official capacities.

Section 6. Others. All other easements and reservations as reflected on or in the notes of the recorded subdivision plats of lands within Glade Springs Village or hereafter granted of record by the Association, in its sole discretion, as to the Common Property, shall be binding upon each Owner and his Lot or Living Unit to the same extent as if set forth herein.

ARTICLE V Reserved Properties

Section 1. Reserved Properties. Any area upon a recorded plat under and subject to this Declaration or any Supplemental Declaration, if any, designated as "Reserved Properties" shall remain the sole and exclusive property of the Developer, its successors and assigns, and neither this Declaration or any Supplemental Declaration or the plats recorded in connection with same shall in anywise apply to such "Reserved Properties" unless at a later time same shall be included thereunder as provided in Article II hereof.

Section 2. Utilities Reserved. It is contemplated that utilities for Glade Springs Village shall be furnished by companies so engaged in the vicinity of Glade Springs Village. The Developer has and retains the exclusive and assignable right to negotiate contracts and agreements with all such companies and utility suppliers under such conditions and for such consideration as it shall deem proper under the circumstances. The utilities referred to shall include, but not be limited to, water supply and distribution, sewage collection and treatment, natural, liquified or manufactured gas systems electrical systems, sanitation service, telephone systems, and antenna television transmission and distribution facilities.

In the event the Developer cannot negotiate contracts and agreements with local companies to furnish the utility services aforesaid, it may, but shall not be obligated, to organize a company or companies to furnish such utility services and shall have the right to enter into agreements therewith to furnish utility services, even though such companies so organized shall be wholly or partially owned by the Developer. Nothing herein contained shall be deemed, construed or interpreted as an obligation on the part of the Developer to provide the utilities reserved.

The Developer shall have the right, but not the obligation, to delegate to the Association the right to enter into contracts with utility companies to furnish certain or all of the utility services aforesaid and to install or have installed water and waste water systems, fire hydrants and appurtenances to service the Lots within the subdivisions. In the event of such delegation, the Association shall have the right to so contract and to expend funds of the Association therefor as a Common Expense in order to secure necessary or desirable utility services whether named hereinabove or not.

ARTICLE VI Plan For Construction and Maintenance Of Common Properties

Section 1. Municipal Services and Utilities. The Association shall be authorized, but not obligated, to provide any and all municipal-type services to the Common Properties which the Board of Directors, in its discretion, deems desirable, which may include, without limitation, water, electric, communications, wastewater treatment, solid waste disposal, drainage, security, fire protection, transportation, and similar services, and to install, operate and maintain the necessary infrastructure, facilities and equipment to provide such services.

The costs associated with any such services provided by the Association may be assessed against the Owners as an Assessment, and/or may be offset in whole or in part by user fees, as are charged by local utilities as adjusted from time to time by the West Virginia Public Service Commission and as the Board deems appropriate.

Except as otherwise specifically provided herein, all costs associated with maintenance, repair and replacement of the Common Property shall be a Common Expense to be allocated among all Lots and Living Units as part of the Annual Assessment, without prejudice to the right of the Association to seek reimbursement from the Owners of, or other persons responsible for, certain portions of the common property pursuant to this Declaration or agreements with the Owners thereof. All costs associated with maintenance, repair and replacement of Limited Common Properties shall be a Common Expense assessed as a Assessment solely against the Lots or Living Units to which the Limited Common Properties are assigned, notwithstanding that the Association may be responsible for performing such maintenance hereunder.

Section 2. Non-Owned Property. The Association may maintain other property which it does not own, including, without limitation, property dedicated to the public, if the Board of Directors determines that such maintenance is necessary or desirable for the benefit of its Members. The expense of such maintenance shall be a Common Expense.

Section 3. Water and Sewer System. The cost of installation of water and wastewater mains and fire hydrants to serve the Lots and homes within the subdivisions shall be paid from Assessments as herein provided and from charges made to Owners for furnishing such services at such rates as are charged by local utilities as adjusted from time to time by the West Virginia Public Service Commission. The servicing utility, through its designated agents or employees, shall have the right to enter upon any Lot or other parcel of land to perform the required operation and maintenance to the water system and to the pumped effluent sewer system and shall further have the right, but not the obligation, to perform any or all service, repair, replacement or routine inspections in connection with the on-site residential pressure sewer systems and appurtenances thereto.

Section 4. Private Streets. It is contemplated that the streets shall be constructed by the Developer and that those streets which are not dedicated to the general public will be Private Streets and a part of the Common

Properties. However, the Developer shall be the sole judge as to when such streets, whether dedicated to the public or as Common Properties, shall be constructed and extended from time to time. The Developer shall also be the sole judge as to the extent the streets will be improved, and the timing of any improvement, although it is anticipated that same will be constructed and paved in any subdivision in Glade Springs Village within twenty-four (24) months after completion of the utility systems in such subdivision. In the event the Developer shall decide it is not economically feasible to extend improved streets to areas other than single family Lots registered with the Interstate Land Sales Registration Division, U. S. Department of Housing and Urban Development pursuant to the Interstate Land Sales Full Disclosure Act, it shall not be obligated to do so. Upon completion of construction, the cost of maintenance, capital improvements, operation, taxes and other expenses incident to the streets, including snow removal as needed regardless of whether dedicated to the public or as Common Properties, shall be paid from Assessments as herein provided.

Section 5. Recreational Facilities. It is contemplated that the Developer shall construct, as Common Properties, certain initial recreational facilities consisting of one 18-hole championship golf course and a lake. The Developer shall have the right, but not the obligation, to construct such other recreational facilities as Common Properties in later phases of development as the Developer shall in its sole discretion decide. The cost of maintenance, capital improvements, operation, taxes and other expenses incident to all such Common Properties shall be the obligation of the Association and shall be paid from Assessments as herein provided and also from any fees for the use of the Common Properties. The Developer shall be the sole judge as to the time when and if such recreational facilities shall be constructed.

ARTICLE VII *Plan For Construction And Maintenance Of Limited Common Properties*

Section 1. Construction and Maintenance. The Developer shall construct, as Limited Common Properties, such streets (public or private), utility systems, recreational facilities and other facilities as it shall in its sole discretion decide. The cost of maintenance, capital improvements, operation, taxes and other expenses incident to those Limited Common Properties shall be the obligation of the Owners of the Lots or Living Units entitled to the use, access and enjoyment of the particular Limited Common Properties. To perform such

obligations, the Owners of the Lots and Living Units entitled to the use and enjoyment of particular *Limited Common Properties* may organize a non-profit corporation to be limited in membership to those Owners of Lots and Living Units entitled to the use, access and enjoyment of the particular *Limited Common Properties* and any such non-profit corporation shall have all of the powers, including the power to levy assessments against particular Lots and Living Units in order to obtain funds, as the Association has which are referred to in this Declaration.

Section 2. Failure to Administer. Upon failure of the Owners of the properties entitled to the use, access and enjoyment of particular *Limited Common Properties* to provide for the maintenance, capital improvements, operation, taxes and other expenses incident to such *Limited Common Properties*, the Association may perform same and apportion the expense thereof against the Lots and Living Units entitled to the benefit of such *Limited Common Properties* and same shall constitute a lien against such properties subject only to the lien of a first mortgage or deed of trust against such property.

ARTICLE VIII Property Rights In Common Properties

Section 1. Association Powers and Duties. The operating entity for the *Common Properties* within Glade Springs Village shall be the Association. The Association shall have all powers and duties set forth therefor in this Declaration, its Articles of Incorporation and By-Laws, applicable laws, statutes, ordinances and governmental rules and regulations, and all other lawful powers and duties deemed by its Board of Directors as advisable or necessary to carry out its functions. The Owner of every Lot or Living Unit, however acquired, shall be bound by this Declaration, the Association's Articles of Incorporation, By-Laws, Rules, Regulations, and policies, and the above set forth laws, statutes, ordinances and governmental rules and regulations.

Section 2. Interest of the Association. All property owned or acquired by the Association or in which the Association otherwise holds possessory or use rights within or without Glade Springs Village, whether real, personal or mixed, whether owned or leased, shall be held, utilized and disposed of by the Association for the use and benefit of the Owners within Glade Springs Village. Except as otherwise specifically provided in this Declaration, any expense of the Association for acquisition, ownership, leasing, administration,

maintenance, operation, repair or replacement of the Common Properties shall be treated as and paid for as part of the Common Expense of the Association.

Section 3. Title to Common Properties. The Developer shall convey the Common Properties to the Association within a reasonable time after completion of construction of any improvements which the Developer intends to locate thereon. The Developer shall be the sole judge as to the time when the aforesaid improvements, if any, shall be constructed or provided and as to when such lands will be so conveyed. The Developer shall have the right, but not the obligation, to provide additional lands and improvements to the Association as Common Properties and to cause same to be conveyed or transferred to the Association as and when it shall in its sole discretion decide. The Association may acquire or lease other lands and improvements at its own instance, from the Developer or otherwise.

Section 4. Members Easement of Enjoyment. Every Member of the Association, so long as such Membership shall continue, shall have a right and nonexclusive easement of enjoyment in and to the Common Properties, and such easement shall be appurtenant to and shall pass with the title to every Lot or Living Unit. Such easements of enjoyment shall, however, be subject to the provisions and limitations thereon as set forth in this Declaration or any Supplemental Declaration, including, but not limited to, the following:

- (A) the right of the Association, in accordance with its Articles and By-Laws, to borrow money for the purpose of constructing, maintaining and improving the Common Properties and in aid thereof to mortgage said property as security therefor, provided the rights of such mortgagee in said properties shall be subordinate to the rights of the Owners hereunder; and
- (B) the right of the Association to take such steps as are reasonably necessary to protect the Common Properties against foreclosure; and
- (C) the right of the Association to suspend the enjoyment rights of any Member other than the Developer as provided in this Declaration or its Articles and Bylaws; and
- (D) the right of the Association to impose reasonable membership requirements and to charge reasonable admission and other fees for the use, service and enjoyment of any recreational facility or other

improvements situated upon the Common Properties; and

(E) the right of the Association to open enjoyment of the Common Properties to persons other than Members and their guests on a temporary basis and for appropriate admission, service or use charges; and

(F) the right of the Association to make the Common Properties and/or improvements thereon available by lease, or otherwise, subject to subparagraph (H) hereof, to another entity with the right of the other entity to charge dues to Members and to permit persons who are not Members to enjoy the Common Properties on a daily fee or membership basis with the understanding the other entity shall have the right to make rules and regulations which shall be enforceable as to Members; and

(G) except as to the Developer, Membership in the Association shall entitle only a single household to the easement of enjoyment of the Common Properties; provided, however, the Association may enlarge the limitation aforesaid by a majority vote of its Board of Directors; and

(H) the right of the Developer, so long as any Lot, Living Unit or Certificate Membership is being held by the Developer for sale in the ordinary course of business, to use all or such portions of the Common Properties as the Developer shall determine in its sole discretion for the purpose of aiding in such sales, including the right to determine freely its sales tour route through Glade Springs Village even though traffic is increased in a specific area thereby and to use portions of the Common Properties for parking for prospective purchasers and such other parties as the Developer determines. The foregoing rights shall include the right to display and erect signs, billboards and placards and to store, keep and exhibit same and to exhibit and distribute audio and visual promotional materials upon the Common Properties; and

(I) the right of the Association to dedicate or transfer all or any part of the Common Properties to any public or private agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective unless approved by a majority vote of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose; and .

(J) the right of the Association to adopt rules regulating the use and enjoyment of the Common Properties, including rules requiring registration of and limiting the number of guests who may use the

Common Properties; and

(K) any restrictions, covenants or limitations contained in any deed conveying such property to the Association.

Section 5. Guests and Delegation of Easement of Enjoyment. The Association shall, upon the request of a Member, issue temporary guest cards for the use of the Common Properties of the Association by guests and invitees of such Member, provided, however, such temporary guest cards shall be limited to periods not in excess of thirty (30) days and, except as to Developer guests, shall be subject to such other reasonable limitations and rules and regulations as provided therefor by the Association. Notwithstanding anything herein to the contrary, the easement of enjoyment of an Owner of a Living Unit may be transferred to a tenant or lessee who shall occupy such Living Unit under a written lease agreement for a term of not less than six (6) months, provided (1) that a copy of such lease agreement is provided to the Association, (2) the Owner shall remain jointly and severally liable with the lessee for any breach of the duties and responsibilities under this Declaration, (3) during the period of such lease delegation, the lessee shall have such easement of enjoyment in lieu of the Owners, and (4) such delegation shall be otherwise subject to such reasonable rules and regulations as the board of directors of the Association shall from time to time determine.

Section 7. Access to Private Streets. Each Member shall have a right of ingress and egress and passage over all streets which are Common Properties for himself, members of his household, and his guests and invitees, subject to such limitations (which limitations shall not apply to Developer) as the Association may impose from time to time as to guests and invitees. The right to use such streets shall be appurtenant to and shall pass with the title and equity to every Lot or Living Unit. All such streets shall further be subject to a right-of-way for the agents, employees and officers of Raleigh County (and other counties when applicable), State of West Virginia, and any other governmental or quasi-governmental agency having jurisdiction in Glade Springs Village to permit the performance of their duties, including, but not limited to school buses, mail vehicles, emergency vehicles and law enforcement vehicles.

ARTICLE IX
Property Rights in Limited Common Properties

Section 1. Owners' Easement of Enjoyment. Lands designated from time to time by the Developer as limited Common Property may, at the election of the Developer, be devoted to the common use and enjoyment of the Owners of specifically designated Lots and Living Units to the exclusion of the common use and enjoyment of other Owners. The Owners of such specifically designated Lots or Living Units, so long as such ownership shall continue, shall have a right and nonexclusive easement of enjoyment in and to the particular Limited Common Properties and such easement shall be appurtenant to and shall pass with the title to every such specifically designated Lot or Living Unit. Such nonexclusive easements of enjoyment shall, however, be subject to the provisions and limitations set forth in this Declaration, any Supplemental Declaration, the Articles and By-Laws of the Association, and any rules, regulations and policies adopted by the Association.

Section 2. Title to Limited Common Properties. The Developer may retain the legal title to the Limited Common Properties until the Owners of Lots and Living Units entitled to the nonexclusive easement of enjoyment as to the particular Limited Common Properties shall have constructed permanent improvements thereon and provided for maintenance of same. At such time, the Developer shall convey the title to the particular Limited Common Properties to such entity or entities as the Owners shall direct, and on failure of the Owners to perform or direct the conveyance of the title as to the particular Limited Common Properties, then the Developer shall convey to the Association, and it shall perform as provided in Section 2 of ARTICLE VII hereof.

ARTICLE X
Covenant For Maintenance Assessments

Section 1. Creation of Lien. The Developer subject to the provisions hereinafter set forth, for each Lot, Living Unit and Certificate Membership owned by it within Glade Springs Village, hereby covenants and each Owner of a Lot, Living Unit, or Certificate Membership, other than the Developer, by acceptance of a deed or certificate therefor or by entering into a contract of purchase with the Developer therefor, whether or not it shall

be so expressed in any such deed, certificate, contract of purchase or other conveyance, shall be deemed to covenant and agree to pay to the Association: (1) Annual Assessments, and (2) Special Assessments, 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 cost of collection thereof, including a reasonable attorney's fee, as hereinafter provided, shall be a continuing charge and lien upon the Lot, Living Unit and Certificate Membership against which each such Assessment is made. Each such Assessment, together with such interest, costs and reasonable attorneys fees, shall also be the personal obligation of the Owners of such property at the time when the Assessment fell due. The personal obligation for delinquent Assessments shall not pass to successors in title unless expressly assumed by them.

Section 2. Purpose of Annual Assessments. The Annual Assessments levied hereunder by the Association shall be used exclusively for promoting the recreation, health, safety and welfare of the Owners and, in particular, for the construction, leasing, improvement and maintenance of properties, services and facilities devoted to this purpose and related to the use and enjoyment of the Common Properties and the improvements situated in Glade Springs Village, including, but not limited to, construction and installation of the water distribution system and sewer collection system, the payment of taxes and insurance on the Common Properties, maintenance, repair, replacement and additions thereto, and for the cost of labor, equipment, materials, management and supervision thereof. The limitation aforesaid shall not preclude the use of assessments levied hereunder for maintenance of streets within Glade Springs Village, even though same may be private or may have been dedicated to the public.

Section 3. Basis and Maximum Annual Assessment. Until July 1 of the year this Declaration is executed, the maximum Annual Assessment shall be Six Hundred Thirty Dollars (\$630.00) plus applicable sales tax per Lot, Living Unit or Certificate Membership, provided, however, such Annual Assessment as to Commercial Lots shall be one such assessment for each business establishment located thereon as determined by the existence of separate water meters therefor. From and after July 1 of the year this Declaration is executed, the Annual Assessment aforesaid may be increased each year above the Annual Assessment for the

previous year by majority vote of the Board of Directors of the Association and without a vote of the membership, provided, however, that such increase shall not in any one year exceed the greater of five percent (5%) or the increase in the Consumer Price Index for the twelve (12) month period ending June 30 of the preceding year using the "All Urban Consumer, U.S. City Average" for "General Summary, All Items" as promulgated by the Bureau of Labor Statistics of the U.S. Department of Labor or, if such is not available, any other reliable governmental or other non-partisan publication evaluating similar information. Unless the Annual Assessments shall be increased as aforesaid, they shall remain at the rate prevailing for the previous year. From and after July 1 of the year this Declaration is executed, the Annual Assessment may be changed prospectively from the amounts hereinabove set forth in any year, without limitation on the amount of such change, on the recommendation of the Board of Directors of the Association and approved by a majority vote of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose. The Board of Directors of the Association may at any time after consideration of current income and expense and the future income requirements of the Association, within its discretion, fix the actual Assessment for any year at an amount less than the amounts aforesaid.

Section 4. Special Assessments. In addition to the Annual Assessments, the Association may levy in any assessment year a Special Assessment, applicable to that year only, to defray, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of the water system, sewer system and streets within Glade Springs Village, even though such streets may be private or may have been dedicated to the public, and also any repair, replacement or improvement of facilities of the Association or, any capital improvement located in, on, under, above or upon the Common Properties, including the necessary fixtures and personal property related thereto, provided that any such Assessment shall be proposed by the board of directors of the Association and have the assent of a majority of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum for Any Action of Members Authorized Under Sections 3 and 4. Written notice of any meeting of the Membership called for the purpose of taking any action authorized under

Section 3 or 4 of this Article X shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the date of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast a majority of all votes shall constitute a quorum. If the required quorum is not present, other meetings may be called on ten (10) days notice and the required quorum at any subsequent meetings 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 6. Date of Commencement of Assessments. The annual assessments shall commence and become due and payable as to each Lot, Living Unit and Certificate Membership on the date fixed by the Board of Directors of the Association for commencement, provided, however, that no Assessments shall be applicable to or payable with respect to any Lot, Living Unit or Certificate Membership until the first day of the second month following execution of a contract of sale by the Developer with respect to such Lot, Living Unit or Certificate Membership and, further provided, no Assessment shall commence upon a Lot, Living Unit or Certificate Membership where such contract of purchase is terminated by reason of a failure of down payment or rescission thereof pursuant to any right granted by any public and/or governmental authority or agency. Each initial Annual Assessment on a Lot, Living Unit or Certificate Membership shall be prorated according to the number of months remaining in that calendar year. Written notice of Assessments shall not be required. The due date of any Special Assessment shall be fixed in the resolution authorizing such Assessment and may also be payable monthly within the discretion of the Board of Directors. The Association shall, upon written demand therefor and for which a reasonable charge may be imposed, furnish a certificate signed by an officer of the Association setting forth whether the Assessments on a specified Lot, Living Unit or Certificate Membership have been paid, which certificate shall be conclusive evidence of payment of any Assessments therein stated to have been paid.

Section 7. Non-Payment of Assessments. If any Assessments are not paid on the date when due, such Assessments shall become delinquent and the Association shall have the right to declare the Assessments for the entire year due and payable, together with such interest thereon and costs of collection thereof as hereinafter

provided. The Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the property and both actions shall be cumulative and neither shall preclude the other. No Owner may waive or otherwise escape liability for assessments by non-use of the Common Properties or by abandonment.

If Assessments have become delinquent, such Assessments shall bind such property in the hands of the then Owner, his, her or its heirs, devisees, personal representatives and assigns. The personal obligation of the Owner to pay such Assessments shall remain the Owner's personal obligation and shall not pass to successors in title unless expressly assumed by them. Such delinquent Assessments shall bear interest from the date of delinquency at any lawful rate as determined from time to time by the Board of Directors of the Association or, if not so determined, the rate of 10% per annum. In the event a judgment is obtained, such judgment shall include interest on the Assessments as above provided and a reasonable attorney's fee to be fixed by the applicable court, together with the costs of the action.

Section 8. Subordination of the Lien to Mortgages. The lien of the Assessments provided for herein shall be subordinate to the lien of any first mortgage or deed of trust now or hereafter placed upon the properties subject to assessment. While an ordinary sale or transfer shall not affect the Assessment lien, any sale or transfer which is subject to any first mortgage or deed of trust pursuant to a decree of foreclosure or proceeding in lieu of foreclosure shall extinguish the lien of such Assessments which became due prior to such sale or transfer. No such sale or transfer shall relieve such property from liability for any Assessments thereafter becoming due or from the subsequent lien thereof except with respect to any future such decree of foreclosure or proceeding in lieu of foreclosure.

Section 9. Exempt Property. The following property subject to the Declaration shall be exempt from the Assessments created herein; (a) all properties dedicated to and accepted by a local public authority; (b) the Common Properties; (c) the Limited Common Properties; (d) utility easements and all other easements; (e) any Reserved Properties; (f) any Lot or Living Unit owned or held by the Developer prior to the initial sale or contract to sell by the Developer and excluding and exempting any such Lot or Living Unit sold or contracted to

be sold by the Developer which does not remain effective by reason of failure of down payment or rescission pursuant to any right granted or created by any public and/or governmental agency or authority, and (g) any Certificate Membership owned or held by the Developer.

Section 10. Delegation of Collection of Assessment. The Association may delegate collection of the Assessments herein provided to the Developer, its successors and assigns to be accomplished at the expense of the Association. Due to the common interest of the Developer and the Association, the failure on the part of an Owner to pay an Assessment as herein provided shall be a reason or ground for which the Developer may rescind a contract of sale as to a Lot, Living Unit or Certificate Membership.

ARTICLE XI
Architectural Control Committee

Section 1. Architectural Control Committee. Except as to original construction by the Developer, no building, fence, wall or other structure shall be commenced, erected or maintained within Glade Springs Village, nor shall any exterior addition, change or alteration be made thereto, until and unless 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, location in relation to surrounding structures and topography and compliance with this Declaration and the Protective Covenants contained herein by the Architectural Control Committee (ACC) of the Association and in accordance with ACC rules, regulations and standards. The ACC shall make such determinations by majority vote, and the determination of the individual committee members shall be in the exercise of the sole and absolute discretion of such member. The ACC shall be composed of three (3) or more representatives appointed by the Board of Directors of the Association, and the Association shall have authority and standing to enforce decisions of the ACC in courts of competent jurisdiction decisions of the ACC. In the event the ACC fails to approve or disapprove such design and location within forty-five (45) days after said plans and specifications have been properly submitted to it in accordance with reasonable rules and regulations which may be adopted thereby, approval will not be required and this provision will be deemed to have been fully complied with, except to the extent such construction is in violation of the Protective Covenants. The ACC shall have the right within their discretion to set

reasonable charges and fees necessary to offset expenses incurred by them in connection with the performance of their duties hereunder and failure to pay same shall be grounds for withholding approval hereunder. The ACC, through its members or duly authorized agents or employees, shall have the right, after reasonable notice to the owner, to enter upon any Lot or Living Unit at all reasonable hours for the purpose of the performance of its functions hereunder.

ARTICLE XII Exterior Maintenance

Section 1. Failure to Maintain by Owner. Each Owner shall maintain his or her Lot or Living Unit and all structures, parking areas, and other improvements comprising the Lot or Living Unit in a manner consistent with this Declaration, any Supplemental Declaration, the Protective Covenants, and the Association's By-Laws, rules, regulations and policies, unless such maintenance responsibility is otherwise assumed by or assigned to the Association pursuant to any Supplemental Declaration or other declaration of covenants applicable to such Lot or Living Unit. Unless otherwise specifically provided herein or in other instruments creating and assigning such maintenance responsibility, responsibility for maintenance shall include responsibility for repair and replacement, as necessary. All maintenance shall be performed in a manner consistent with this Declaration, any Supplemental Declaration, the Protective Covenants and the Association's By-Laws, rules, regulations and policies. The Association and/or an Owner shall not be liable for any damage or injury occurring on, or arising out of the condition of, property which it does not own except to the extent that it has been negligent in the performance of its maintenance responsibilities. In the event the Owner of any Lot or Living Unit shall fail to provide properly for exterior maintenance thereof, the Association may, but shall not be obligated to, provide such exterior maintenance as follows: cut, trim, care for and maintain trees, shrubs and grass, or repair, replace and care for walks, roofs, gutters, downspouts, exterior building surfaces, windows, fascia, doors, decks and other exterior improvements, including repainting or staining as needed.

Section 2. Assessment of Cost. The cost of such exterior maintenance shall be assessed by the Association against the Lot or Living Unit upon which such maintenance is done and shall be added to and become a part of the Annual Assessment to which such Lot or Living Unit is subject as a personal charge

and, as a part of such Annual Assessment, it shall be a lien upon said Lot or Living Unit until paid, subject, however, to any prior lien by reason of a first mortgage or first deed of trust, and shall become due and payable in all respects as provided herein for Assessments.

Section 3. Access at Reasonable Hours. For the purpose solely of performing the exterior maintenance authorized by this Article XII, the Association, through its duly authorized agents or employees, shall have the right, after reasonable notice to the Owner, to enter upon any Lot or exterior of any Living Unit during reasonable business hours.

Section 4. Notice. The Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry, except when entry is required due to an emergency situation.

Section 5. Party Walls and Similar Structures.

(a) General Rules of Law to Apply. Each wall, fence, driveway or similar structure built as a part of the original construction on the Units which serves and/or separates any two adjoining Units shall constitute a party structure. To the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

(b) Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party structure shall be shared equally by the Owners who make use of the party structure.

(c) Damage and Destruction. If a party structure is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner who has used the structure may restore it. If other Owners thereafter use the structure, they shall contribute to the restoration cost in equal proportions. However, such contribution will not prejudice the right to call for a larger contribution from the other users under any rule of law regarding liability for negligent or willful acts or omissions.

(d) Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

(e) Arbitration. In the event of any dispute arising concerning a party structure, each party shall appoint one arbitrator. Should any party refuse to appoint an arbitrator within 10 days after written request by the Board of Directors, the Board of Directors shall appoint an arbitrator for the refusing party. The arbitrators appointed shall appoint one additional arbitrator. The decision by a majority of all three arbitrators shall be binding upon the parties and shall be a condition precedent to any right of legal action that either party may have against the other.

ARTICLE XIII Owner Liability

Any violations of this Declaration, any Supplemental Declaration, the Association Articles of Incorporation, By-Laws and Rules and Regulations, or any laws, statutes, ordinances, or governmental authority rules and regulations by a family member, guest, lessee, licensee or invitee of any Owner other than the Developer shall be the responsibility of that Owner and all enforcement rights or penalties therefor shall be applicable to said Owner, except as specifically provided to the contrary in such documents or laws, statutes, ordinances, or governmental authority rules and regulations.

In the event an Owner violates or threatens to violate any of the provisions hereof, the Association shall have the right to proceed in any court of competent jurisdiction for an injunction to seek compliance. In lieu thereof, or in addition thereto, the Association shall have the right to levy a personal charge, enforceable in the same manner as Assessments, against the Owner and his Lot, Living Unit or Certificate Membership for such sums as are necessary to enjoin any violation or to remove any unauthorized addition or alteration and to restore the affected property to good condition and repair.

ARTICLE XIV Suspension of Voting Rights and Easement of Enjoyment

Section 1. Regular Suspension. Should an Member other than the Developer become delinquent in the payment of any Assessment or personal charge or violate any other provision of this Declaration, and Supplemental Declaration, or the Association Articles of Incorporation, By-Laws or Rules and Regulations, or the regulations of the ACC, the Association may deny such Member enjoyment of the Common Properties until

such time as any such delinquent Assessments or personal charges and any interest due thereon are paid and any such violations are ceased and any penalties therefor are satisfied.

Section 2. Penalty Suspension. The Association shall further have the right in its sole discretion to impose as a penalty for any such violations the suspension of such Member's easement of enjoyment for a period not to exceed thirty (30) days for any one violation or occurrence. A Member must be given such notice and opportunity as is reasonable under the circumstances to refute or explain in person or in writing the charges against him by the Association before any decision of the Association to impose any such penalty suspension is enforced.

Section 3. General. Any suspension of rights under these provisions shall not be used as a basis for any reduction of Assessments or other charges payable by such Member.

ARTICLE XV Protective Covenants

Attached hereto as "Exhibit 1" and made a part hereof as fully as though contained herein word for word are the Protective Covenants relative to Glade Springs Village. Every provision of this Declaration shall apply as fully as to the Protective Covenants as if same were set forth herein word for word.

ARTICLE XVII Miscellaneous Provisions

Section 1. Duration. The covenants and restrictions of this Declaration shall run with and bind the land and shall inure to the benefit of and be enforceable by the Association or the Owners subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of twenty-six (26) years from the date this Declaration is recorded, after which time said covenants and restrictions shall be automatically extended for successive periods of ten (10) years unless an instrument has been recorded reflecting that such changes to the Declaration in whole or in part have been agreed to by a majority vote of each class of Members voting in person or by proxy at a meeting duly called for such purpose within the year preceding the beginning of each successive period of ten (10) years.

Section 2. Severability. If any of the provisions of this Declaration, any Supplemental Declaration, the Articles of Incorporation or By-Laws of the Association, or any section, clause, phrase, word, or the application thereof, in any circumstance, is held or determined to be invalid, the validity of the remainder of such instruments and the application of any such provision, action, sentence, clause, phrase or word, in other circumstances, shall not be affected thereby and shall remain in full force and effect.

Section 3. 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 Member or Owner on the records of the Association at the time of such mailing.

Section 4. Genders and Plurals. Whenever the context so requires, use of any gender shall be deemed to include all genders, use of the singular shall include the plural, and use of the plural shall include the singular. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of Glade Springs Village.

Section 5. Captions. The captions used in this Declaration are inserted solely as a matter of convenience and shall not be relied upon or used in construing the effect or meaning of any of the text.

Section 6. Enforcement. Enforcement of this Declaration shall be by any proceeding at law or in equity against any person or entity violating or attempting to violate any covenant, condition or restriction herein, either to restrain violation or to recover damages against the party in violation, and/or against the land to enforce any lien created by these covenants. Failure by the Association, the Developer or any Owner to enforce any covenant, condition or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 7. Assignment, Transfer or Conveyance by Developer. The Developer reserves and shall have the right to assign, transfer or convey any reservations, rights or obligations of the Developer hereunder, and upon such assignment, transfer or conveyance the Developer shall immediately be released and discharged as to any and all liability incident to such reservations right or obligation.

Section 8. Applicability. All provisions set forth herein shall extend to and be binding on the respective legal representatives, heirs, successors and assigns of all parties mentioned herein where consistent with the context hereof.

IN WITNESS WHEREOF, the Developer, joined by the Association for purposes of indicating its agreement hereto, have caused this instrument to be executed by their duly authorized corporate officers who are authorized to so execute same and their seals affixed as of 25th day of May 2001.

ATTEST: [Signature]
Secretary

COOPER LAND DEVELOPMENT, INC.
By [Signature]
President

ATTEST: [Signature]
Assistant Secretary

GLADE SPRINGS VILLAGE
PROPERTY OWNERS ASSOCIATION, INC.
By [Signature]
President

STATE OF ARKANSAS)
COUNTY OF BENTON)
ACKNOWLEDGMENT

On this 25th day of May 2001, personally appeared before me, Randy Brucker and Richard H. Smith to me personally known, who, being by me duly sworn did say that they are the President and Secretary, respectively of COOPER LAND DEVELOPMENT, INC., an Arkansas corporation, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed, sealed and delivered in behalf of said corporation, by an authority of its Board of Directors, and the said Randy Brucker and Richard H. Smith severally acknowledged said instrument to be the free act and deed of said corporation.

WITNESS my hand and official seal at Benton County, Arkansas this the day and year aforesaid.

My Commission Expires:
February 17, 2003



[Signature]
Notary Public

STATE OF ARKANSAS)
)
COUNTY OF BENTON)

ACKNOWLEDGMENT

On this 25th day of May 2001, personally appeared before me, John A. Cooper, III and Richard H. Smith to me personally known, who, being be me duly sworn did say that they are the President and Asst. Secretary, respectively GLADE SPRINGS VILLAGE PROPERTY OWNERS ASSOCIATION, INC., a West Virginia non-profit corporation, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed, sealed and delivered in behalf of said corporation, by an authority of its Board of Directors, and the said John A. COOPER, III and Richard H. Smith severally acknowledged said instrument to be the free act and deed of said corporation.

WITNESS my hand and official seal at Benton County, Arkansas this the day and year aforesaid.

My Commission Expires:

February 17, 2003



Elsie Wood
Notary Public

GLADE SPRINGS DECLARATION OF COVENANTS AND RESTRICTIONS S-24-01/ew

PROTECTIVE COVENANTS**EXHIBIT 1 TO THE DECLARATION**

1. **Application.** These Protective Covenants shall apply to all of the Existing Property. Same shall also apply to additions to Existing Property unless the Developer shall specifically except from these Protective Covenants such additions or a portion thereof in the Supplemental Declaration by which the Developer subjects such additions to this Declaration. In the event of conflict between these Protective Covenants and the Declaration, the Declaration shall prevail.

2. **Architectural Control Committee.** When the Architectural Control Committee, hereinafter referred to as the A.C.C., is mentioned in these Protective Covenants, it shall mean the Architectural Control Committee of the Association as more particularly described in Article XI of the Declaration. Except as to original construction by the Developer, A.C.C. permits shall be required for any construction activity within Glade Springs Village as set forth in Article XI of the Declaration. The A.C.C. shall further have the authority, in connection with the issuance of such permits, to adopt such rules, regulations and standards and to adopt such standard building or other codes (or any portion thereof) as it shall deem appropriate or necessary for the proper performance of its function and duties and for the implementation of these covenants. The owner, contractor and builder will subject all permitted activities to such inspections as required by the A.C.C. to determine compliance with such A.C.C. permits, the Declaration and these Protective Covenants. In the event of any conflict between the provisions of the Declaration, these Protective Covenants and those of the A.C.C. rules, regulations and standards, same shall prevail in that order. All actions of the A.C.C. shall be subject to review by the board of directors of the Association and appeals may be taken thereto under such terms and conditions as such board of directors may set from time to time.

3. **Amendment, Rescission or Additions.** The Developer, its successors and assigns, may amend, rescind or add to the Protective Covenants from time to time, provided, however, unless the Lots are specifically exempted from the Protective Covenants by the Declaration or a Supplemental Declaration at the time the Lots are subjected to the plan of the Declaration, such amendment, rescission or additions shall not

make the Protective Covenants as to those Lots zoned as residential less restrictive for construction of residential buildings than as provided in the standards herein.

4. **Zoning.** The notes upon the recorded subdivision plat shall control as to use of the lots reflected thereon, and as to the residential structure types (single family detached, single family attached and multi-family structure) which shall be permitted upon residential lots, and as to the minimum square footage of each such structure.

5. **Resubdivision.** No Lot shall be resubdivided except upon a formal determination of necessity or hardship by and upon written approval of the A.C.C. In the event more Lots are created by any such A.C.C. approved resubdivision than originally existed, Association assessments shall apply to such newly created Lots as if such had been contained upon the original plat of such lands. The A.C.C. may permit the construction of a single residence upon two or more Lots without a resubdivision upon the waiver of the 7½ foot utility easement and side yard setback on the appropriate interior lot lines, provided, however, such action by the A.C.C. shall not otherwise affect such Lots, or the obligation to pay assessments on each such Lot.

6. **Temporary Structures.** No structure of a temporary character, trailer, tent, shack, garage, or other out-building shall be used on any Lot at any time as a residence, either temporarily or permanently.

7. **Setbacks.** No building shall be placed closer to the front or back lot lines than the setback lines shown therefor on a recorded subdivision plat, provided, however, where such requirements create an undue hardship upon the owner, such setbacks may be modified by the A.C.C. to the extent necessary to prevent the hardship.

8. **Side Yards.** Where Lots are zoned as residential, the following shall apply:

(a) A single family detached structure or any building incident thereto shall not be closer to a side lot line than 7½ feet, which restrictions may be extended in excess of 7½ feet when necessary for drainage, utility, or screening purposes and the extent thereof is reflected on the recorded subdivision plat, provided, however, where such restrictions create an undue hardship upon the owner, such restrictions may be modified by the A.C.C. to the extent necessary to alleviate the hardship.

(b) A single family attached structure shall not be required to have a side yard and a common or party wall may be constructed upon the dividing lines between Lots so that the wall may be partially upon one Lot and partially upon the other, or said common wall may be entirely upon one of the two Lots involved.

(c) Multi-family structures shall not be required to have a side yard and may be constructed up to or upon the dividing lines between Lots where approved by the A.C.C.

The A.C.C. shall decide all questions relative to location of structures upon commercial lots.

9. Party Walls. The following provisions shall apply to party walls within Glade Springs Village:

(a) General Rules of Law to Apply. Each wall which is built as a part of the original construction of a structure and placed on the dividing line between Lots shall constitute a party wall. To the extent not inconsistent with the provisions of this section, general rules of law regarding party walls and of liability for property damage due to negligent or willful acts or omissions shall apply thereto.

(b) Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the owners who make use of the wall in proportion to such use.

(c) Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any owner who has used the wall may restore it and if other owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use, without prejudice, however, to the right of any such owner to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

(d) Weatherproofing. Notwithstanding any other provision of this section, an owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

(e) Right to Contribution Runs with Land. The right of any owner to contribution from any other owner under this section shall be appurtenant to the land and shall pass to such owner's successors in title.

(f) **Arbitration.** In the event of any dispute arising concerning a party wall, or under the provisions of this section, unless a single arbitrator can be agreed upon, each party shall choose one arbitrator, and such arbitrators, as chosen, shall choose one additional arbitrator; the decision of the arbitrator or a majority of all the arbitrators shall be final and conclusive of the question involved.

10. Land Near Golf Courses and Recreation Areas. No structure shall be placed nor shall any material or refuse be placed or stored upon any Lot or other parcel of land within twenty (20) feet of the property line of any Common Property used as a golf course or permanent recreation area, or as otherwise shown on a record plat of lands within Glade Springs Village.

11. Assurance of Completion of Buildings. Except as to original construction by the Developer, the owner and any contractor, builder, person or entity constructing a structure within Glade Springs Village, shall, prior to beginning the construction of any such structure, furnish the A.C.C. such credit information and proof of financial ability to complete the construction, within the time limits fixed by the A.C.C. At the same time, there shall be furnished to the A.C.C. satisfactory proof that builders' risk and appropriate workmen's compensation insurance will be in effect for the construction period.

12. Time for Completion of Buildings. Commercial structures, single family attached structures, and multi-family structures shall be completed according to plans and specifications and all applicable permits, codes, standards, rules and regulations applicable thereto, both as to exterior and interior, within such time as shall be fixed by the A.C.C. when the plans and specifications for the particular structure are approved by the A.C.C. The following shall apply to the construction of a single family detached structure, as well as garage and outbuildings permitted:

- (a) The exterior of any single family detached structure, garage, or permitted outbuildings shall be completely finished within six (6) months of start of construction;
- (b) The interior of any single family detached structure, garage or permitted outbuildings shall be completely finished within twelve (12) months of start of construction.

The owner, contractor and builder will subject all structures to inspection by the A.C.C. as required to determine compliance with completion dates as herein provided or as may be provided by the A.C.C. In the

event of non-compliance with completion dates as herein provided, the Association shall have the right, but not the obligation, to hire one or more contractors to perform the work and furnish the materials necessary for compliance and to bill the owner for the amount expended plus 10% for administration. In the event the owner does not pay same, the Association shall have the legal right to file a statutory lien against the property involved and proceed in law or equity to sell the property to obtain said charges. All money received over and above said charges and court costs, including a reasonable attorney's fee, shall be paid over to the owner.

13. Electric Wiring and Plumbing. Electric wiring and plumbing installed in any structure erected upon or moved upon Glade Springs Village shall be in accordance with standards prescribed by these covenants, and in no event shall such standards be less restrictive than those provided by controlling local or federal agencies or by the State of West Virginia.

14. Sewage Disposal. No privately owned septic tank or other sewage disposal system shall be permitted upon any Lot or parcel of land within Glade Springs Village except in extraordinary circumstances involving temporary service to a major building, which temporary service must be discontinued when central sewer service becomes available, and only after approval by the Association, and then not unless such system is designed, located and constructed in accordance with requirements, standards and recommendations of the West Virginia Department of Health and approved by the A.C.C. In any event, no such privately owned individual system shall be permitted on any single family lot registered with the Interstate Land Sales Registration Division, Department of Housing and Urban Development pursuant to the Interstate Land Sales Full Disclosure Act.

15. Water Supply. No privately owned well or other water system shall be permitted upon any Lot or parcel of land within Glade Springs Village unless approved by the Association and then not unless such system is designed, located and constructed in accordance with requirements, standards and recommendations of the West Virginia Department of Health and approved by the A.C.C. In any event, no such privately owned individual system shall be permitted on any single family lot registered with the Interstate Land Sales Registration Division, Department of Housing and Urban Development pursuant to the Interstate Land Sales Full Disclosure Act.

16. **Outbuildings.** Outbuildings or accessory buildings for residence purposes such as servants' quarters or guest houses, shall be permitted on Lots upon which a single family detached structure has been constructed or is under construction, provided the building and/or buildings are occupied by servants employed on the premises or by guests and are not occupied otherwise as rental units by nonservant or nonguest occupants, and provided the A.C.C. shall approve the design, plans, specifications, et cetera, of such buildings. Outbuildings or accessory buildings permitted upon Lots or parcels of land upon which there is constructed a commercial building, single family attached structures, or multi-family structure, shall be entirely within the discretion of the A.C.C.

17. **Protective Screening.** There shall be compliance with all protective screening areas as reflected upon any recorded subdivision plat of Glade Springs Village. Except as otherwise provided herein at paragraph 18, "Sight Distance at Intersections", shrub plantings, fences or walls shall be maintained throughout the entire length of such areas by the owner of such areas at their own expense to form an effective screen in order to protect and beautify the area. No building or structure except a screening fence or wall approved by the A.C.C. or utility or drainage facilities shall be placed or permitted to remain in such areas. No vehicular access over the area shall be permitted except for the purpose of installation and maintenance of screening, utility and drainage facilities.

18. **Sight Distance at Intersections.** No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two (2) and six (6) feet above the roadways shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting them at points twenty-five (25) feet from the intersection of the street property lines, or in the case of a rounded property corner from the intersection of the street property lines extended. The same sight line limitations shall apply on any Lot within ten (10) feet from the intersection of a street property line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

19. **Signs.** All sign are prohibited in areas zoned upon any recorded subdivision plat as residential except:

(a) Signs erected by the Association or Developer for identification of streets, neighborhoods, recreational amenities, traffic control and directional purposes;

(b) Signs of a temporary nature advertising property for sale and construction signs, which such signs shall not exceed one (1) square foot in area, shall be limited to one (1) such sign per Lot, must be placed upon the specific property involved, and may not be placed for the purpose of advertising that such property is already sold; and

(c) Signs erected by Developer in connection with its sales program.

Except for signs as provided in subparagraphs (a), (b) and (c) above, the erection of signs in areas zoned commercial upon any recorded subdivision plat shall require a permit of the A.C.C. and no such sign shall be erected without the prior approval of the A.C.C.

20. Model Houses. No provision of these Protective Covenants shall preclude the Developer or its designees in furtherance of its sales programs from constructing and maintaining model houses in any area zoned as residential.

21. Businesses Prohibited in Residential Areas. The practice of any profession or the carrying on of any business is prohibited within any area zoned as residential except for the business of the Developer in the furtherance of its sales programs and any home occupation which does not create any extraordinary traffic within the subdivision. All such home occupations must, however, first be approved by the A.C.C. and a permit issued therefor.

22. Non-Competition. No commercial lot or any parcel of land subject to these Protective Covenants or to this Declaration shall be used to operate any business which competes in any manner with Glade Springs Resort L.L.C.'s food, lodging, resort, conference, rental or property management businesses, including any timeshare program.

23. Utility and Drainage Easements. Easements for installation and maintenance of utilities and drainage facilities are reserved in the Declaration and will be reserved in any Supplemental Declaration and also will be reserved as indicated upon any recorded subdivision plat of Glade Springs Village. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or

interfere with the installation and maintenance of utilities, or which may change the direction of flow of drainage channels within the easements. The easement area of each Lot and all improvements in it shall be maintained continuously by the owner of the Lot, except for those improvements for which the Association, a public authority or a utility company is responsible.

24. **Nuisances.** No obnoxious or offensive activity shall be carried on upon any Lot or parcel of land within Glade Springs Village.

25. **Livestock and Poultry.** No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot or parcel of land within Glade Springs Village except that dogs, cats or other household pets which are not considered inherently frightening to the general public may be kept, provided that they are not kept, bred or maintained for any commercial purposes.

26. **Garbage and Refuse Disposal.** No Lot or parcel of land within Glade Springs Village shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall be kept in a clean and sanitary container and disposition of same shall be prompt.

27. **Salvage Yards, Etc.** No automobile wrecking, junk or salvage yards are permitted on any Lot or on any other parcel of land within Glade Springs Village.

28. **Oil and Mining Operations.** No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any Lot or parcel of land within Glade Springs Village. No derrick or other structure designed for use in boring for oil or natural gas, nor any oil wells, tanks, tunnels, mineral excavations or shafts shall be erected, maintained or permitted.

29. **Cemeteries.** The following standards shall apply to the development and construction of any new cemeteries within Glade Springs Village:

1. Sites for cemeteries shall be provided access directly from a collector or arterial street. Access to cemeteries shall not be made from residential streets which have residences or lots abutting the street and using it for access.
2. Any new cemetery shall be located on a site containing not less than five (5) acres.

3. All cemetery structures, including but not limited to, mausoleums, permanent monuments, or maintenance buildings shall be set back not less than twenty-five (25) feet from any property line or street right of way.

4. All graves or burial lots shall be set back not less than twenty-five (25) feet from any property line or street right of way.

30. **A.C.C. Responsibility.** The function of the A.C.C. is designed for the enforcement of the Declaration and these Protective Covenants. The performance of its duties with respect thereto shall be on a best efforts basis in an effort to reasonably protect the aesthetics and property values within Glade Springs Village and the health, safety and welfare of all of the owners therein as a community of interests. No warranty or representation is made to or should be implied by any individual owner that the actions of the A.C.C. in the issuance of permits, inspection and approval of construction, or otherwise, is intended as a tacit approval of the quality, safety, desirability, or suitability of such design or construction.

31. **Enforcement.** These Protective Covenants may be enforced in the same manner as any violation or threatened violation of the Declaration of which these Protective Covenants are a part, including, but not limited to the lien rights of the Association for any costs or charges incurred in connection therewith.

WHICH CANNOT AVOID THE NEW AT

MAP RECORDED IN
MAP FILE 4-10

at 3:00 on the 5th day

[illegible][illegible]

THE ABOVE INFORMATION WAS OBTAINED FROM THE FILES OF THE FBI, WASHINGTON, D. C. ON 10/10/68. IT IS BEING FURNISHED TO YOU FOR YOUR INFORMATION ONLY. IT IS NOT TO BE USED FOR ANY OTHER PURPOSE.

DATE 29th MAY 1964

— **THE NEW YORK PUBLIC LIBRARY** —

12

RECORDED

Call # 100-1457

Date 5/22/01 Time 3:04

Cellulose Breakdown

Betty Ellis, Clerk
Richard Counter, Coordinator

Wesley, West Virginia

DAVID L. JENSEN

BELLA VISTA

1000 140-0401
AMERICAN 72716

Author's Address:

1001

[illegible]

1. **What is the purpose of the study?**
 2. **What are the research objectives?**
 3. **What is the research design?**
 4. **What are the variables?**
 5. **What is the sample size?**
 6. **What are the data sources?**
 7. **What are the data collection methods?**
 8. **What are the data analysis methods?**
 9. **What are the results?**
 10. **What are the conclusions?**
 11. **What are the limitations?**
 12. **What are the implications?**
 13. **What are the recommendations?**
 14. **What are the future research directions?**
 15. **What are the references?**

MAP SHOWING
1 ACRE OF COMMON PROPERTIES
GLADE SPRINGS VILLAGE
**COOPER LAND
DEVELOPMENT, INC.**
SHADY SPRING DISTRICT
RALEIGH COUNTY, WEST VIRGINIA
804-636-1111

1911, W.E.B. DUBOIS. 1911

ESL, Inc.

119 Appalachian Drive, Beckley, WV 25801
Phone: 304.253.5298 Fax: 304.359.9077

I have written 68 books! — Author Robert Bly

Bates-000083

WHEREAS, Developer desires to make an addition to the existing properties by adding thereto the hereinafter described land; and

WHEREAS, it is the desire of the Developer that the properties hereinafter described shall be covered by the Declaration aforesaid to the extent provided herein as if such additional property had been included with the other property described in said Declaration; and

WHEREAS, the Developer desires that certain complimentary additions and modifications in the Covenants and Restrictions contained in the Declaration aforesaid be made with respect to the hereinafter described property to reflect its character as Phase I of Glade Springs Property.

NOW THEREFORE, the Developer, in compliance with Article 2, Section 2 of the Declaration aforesaid, hereby declares and provides that the following land is hereby subject to said Declaration to the extent that the same shall constitute additional land thereunder and shall be a part of the existing property; that said land shall be covered by said Declaration to the extent provided herein as full as though said land had been included in said Declaration at the time same was executed, the land referred to lying and being situated in the County of Raleigh, State of West Virginia, to-wit:

The above-described land shall continue to be subject to the Phase I Declaration in all respects except, however, the assessment lien and the personal obligation to pay assessments to Developer as assignee of Glade Springs Resort Limited Liability Company, as provided in Article 8, shall be satisfied by payment of assessments to the Glade Springs Property Owners Association. Provided further that, by execution of this Supplemental Declaration of Covenants

and Restrictions, the undersigned owner of the above-described property hereby waive any right he may have to pay assessments under Article 8 of the Phase I Declaration at a lesser amount as provided by paragraph 7c of the "Agreed Order Compromising Lawsuit" entered by the Circuit Court of Raleigh County, West Virginia in an action therein pending entitled "Phase I and Farms Property Owners Association, Inc., et al. versus Emco Glade Springs Hospitality, LLC, et al., Civil Action No. 04-C-1288-B."

Neither the Protective Covenants, nor the provisions of Article 11 of the Glade Springs Village Declaration with respect to review and approval by the Glade Springs Village Architectural Control Committee shall apply to this Phase I lot.

The person or entity who is the record owner of the fee or undivided fee in the above-described Glade Springs lot shall be a Class A member of the Glade Springs Village Property Owners Association. He shall have all rights to the easement of enjoyment in and to the common properties as provided to all members under the Declaration and whose obligation shall include the Covenants to pay assessments as provided in the Declaration which rights and obligations shall be appurtenant to and pass with title to the lot provided, however, that any such person or entity who holds such interest merely as security for the performance of an obligation shall not be a member.

IN WITNESS WHEREOF, the Developer joined by the Association and the owner of the above-described property have executed this document as of the 5th day of October, 2011.

ATTEST:

B. Elaine Biddle
Secretary

GSR, LLC

By: [Signature]
Its: Manager

ATTEST:

B Elaine Butler
Secretary

JUSTICE HOLDINGS, LLC

By: [Signature]
Its: 2/12/2012

ATTEST:

Stacey R. Arthur
Secretary

GLADE SPRINGS PROPERTY OWNERS ASSOCIATION

By: B Elaine Butler
Its: Director

Owner

[Signature]
Owner

STATE OF WEST VIRGINIA,

COUNTY OF Raleigh, TO-WIT:

I, Stacey R Arthur, a Notary Public in and for the county and state aforesaid, do hereby certify that, Elmer Coppolse, whose name is signed to the foregoing writing, as Manager and B Elaine Butler as Secretary of GSR, LLC, have acknowledged the same before me in my said county and state to be the act and deed of said corporation.

Given under my hand this 18th day of January, 2012.

My commission expires: 6/14/2020



Stacey R. Arthur
Notary Public

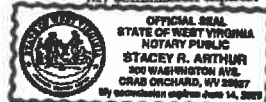
STATE OF WEST VIRGINIA,

COUNTY OF Raleigh, TO-WIT:

I, Stacey R. Arthur, a Notary Public in and for the county and state
aforesaid, do hereby certify that, James Terry Miller, whose name is signed to the
foregoing writing, as Manager and B. Elaine Butler,
as Secretary of JUSTICE HOLDINGS, LLC, have acknowledged the same before me in my
said county and state to be the act and deed of said corporation.

Given under my hand this 18 day of January, 20 12.

My commission expires:

6/14/2020

STATE OF WEST VIRGINIA,

COUNTY OF RALEIGH, TO-WIT:

I, Sue Sharp, a Notary Public in and for the county and state
aforesaid, do hereby certify that, B. Elaine Butler, whose name is signed to the
foregoing writing, as Director and Stacey R. Arthur, as
Secretary of GLADE SPRINGS PROPERTY OWNERS ASSOCIATION, have
acknowledged the same before me in my said county and state to be the act and deed of said
corporation.

Given under my hand this 18th day of January, 20 12.

My commission expires:

September 2, 2014

Notary Public

STATE OF WEST VIRGINIA,

COUNTY OF Wayne, TO-WIT:

I, TAMARA K. BATEMAN, a Notary Public in and for the county and state
aforesaid, do hereby certify that, Tracy M. Stafford, whose name is signed to the
foregoing writing bearing date the 5th day of OCTOBER, 2011, has
acknowledged the same before me in my said county and state.

Given under my hand this 5th day of OCTOBER, 2011.

My commission expires:

OCTOBER 24 2018

Tamara K. Bateman
Notary Public

STATE OF WEST VIRGINIA,

COUNTY OF _____, TO-WIT:

I, _____, a Notary Public in and for the county and state
aforesaid, do hereby certify that, _____, whose name is signed to the
foregoing writing bearing date the _____ day of _____, 20____, has
acknowledged the same before me in my said county and state.

Given under my hand this _____ day of _____, 20____.

My commission expires: _____

Notary Public

Legal Description of Property to be attached to Supplemental Declarations of Covenants and Restrictions for Tracy Meadows Stafford

Property Address: 363 Old Farm Road

Property Deed recorded at Book 5017 Page 1400

BEGINNING at a two-inch (2") iron pipe on the northern right of way line of Old Farm Road, said pipe being situated radially and N 29° 22.7' W 25.00 feet from P.O.C. Sta 65 + 12.58; thence following a 929.93 – foot radius curve to the right for an arc of 59.76 feet (chord: S 62° 27.7' W 59.75 feet) to a point at right angles to and N 25° 41.8' W 25.00 feet from P.T. Sta 65 + 73.95; thence continuing with said right of way line, S 64° 18.2' W. 112.85 feet to a two-inch (2") iron pipe at right angles to a P.O.T. Sta. 66 + 86.80; thence leaving Old Farm Road, N 28° 37.5' W 211.07 feet to a one-half inch (1/2") iron pipe; thence N 65° 32.5' E 173.48 feet to a one-half inch (1/2") iron pipe; thence S 28° 27.8' E 205.35 feet to the point of BEGINNING and containing 0.528 acre, more or less, and being LOT 94, GREENBRIER HOMESITES.

Bates-000090

EXHIBIT 2

ASSIGNMENT AND ASSUMPTION OF DEVELOPER RIGHTS

THIS ASSIGNMENT AND ASSUMPTION OF DEVELOPER RIGHTS ("Assignment") is made as of October 20, 2010, by and between. **COOPER LAND DEVELOPMENT, INC.**, an Arkansas corporation ("CLD" and "Developer") as assignor, and **JUSTICE HOLDINGS, LLC**, a West Virginia limited liability company ("Justice"), as assignee ("Justice"). CLD and Justice are referred to herein from time to time collectively as the "Parties," and individually as a "Party."

WHEREAS, CLD filed various plats and as Developer filed an instrument entitled "Declaration of Covenants and Restrictions Glade Springs Village, West Virginia" dated May 25, 2001 and recorded in the office of the Raleigh County Clerk on May 30, 2001 at 15:00 in Book 5004 at Pages 6485 et seq. (the "Master Declaration"). The Master Declaration established, among other things, restrictive covenants and set forth various rights and obligations of the Developer thereunder; and

WHEREAS, the Master Declaration has been supplemented from time to time by the filing of record of various Supplemental Declarations; and

WHEREAS, CLD and James C. Justice Companies, Inc., a West Virginia corporation ("JCJC") are parties to that certain Purchase Agreement dated July 20, 2010 (the "Purchase Agreement") whereby CLD agreed to convey to JCJC certain real properties and other assets in return for funds and the assumption by JCJC of certain liabilities of CLD, and

WHEREAS, JCJC assigned, with CLD's consent, all of JCJC's rights, duties and obligations under the Purchase Agreement to Justice and Justice assumed all of such rights, duties and obligations; and

WHEREAS, pursuant to the Purchase Agreement CLD agreed to assign and transfer unto Justice and Justice agreed to accept and assume all of CLD's rights, duties and obligations as Developer under the Master Declaration, as supplemented, subject to the terms and conditions provided herein; and

WHEREAS, to provide notice of the assignment of the Developer Rights (as defined below) regarding all real property defined under the Master Declaration as Glade Springs Village, and the assumption thereof by Justice, the Parties wish to execute and deliver a recordable instrument evidencing such assignment and assumption;

NOW, THEREFORE, in consideration of Ten Dollars (\$10.00) paid by Justice to CLD and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Justice hereby covenants and agrees with CLD, as follows:

1. Recitals. The foregoing recitals are true and correct and are incorporated herein as if set forth at length.

2. Assignment and Assumption. In accordance with Article II, Section 4 of said Master Declaration CLD hereby assigns, transfers and conveys to Justice any and all of its rights, duties, reservations and obligations as Developer set forth in said Master Declaration (collectively, the "Developer Rights") as may apply to all real property defined as Glade Springs Village under Article I, Section 9 of the Master Declaration and Justice hereby accepts and assumes and agrees to perform, timely and fully, all obligations of CLD contained in or part of the Developer Rights set forth in said Master Declaration.

3. CLD Released. CLD and Justice further acknowledge and agree that upon the assignment, transfer and conveyance of all the Developer Rights from CLD to Justice, CLD, as Developer under said Master Declaration, shall, without the action of any person being required, immediately be released and discharged as to and from any and all liability incident to such rights, duties, reservations and obligations thereunder pursuant to Article XVII, Section 7 of said Master Declaration.

4. Miscellaneous Provisions.

(a) Invalid Provisions. If any provision of this Assignment is held to be illegal, invalid or unenforceable under present or future laws, such provision shall be modified to the minimum extent necessary to make such provision valid and enforceable, and the remainder of this Assignment shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision prior its modification.

(b) Notices. Notices. Any notices required or permitted to be given under this Agreement (and, unless otherwise expressly provided therein, under any document delivered pursuant to this Agreement) shall be given in writing and shall be deemed received: (i) when personally delivered to the relevant Party at such Party's address as set forth below, (ii) if sent by mail (which must be certified or registered mail, postage prepaid), when received or rejected by the relevant Party at such Party's address indicated below, or (iii) if sent by facsimile transmission, when confirmation of delivery is received by the sending Party:

If to Justice: Justice Holdings, LLC
Glade Springs Resort
255 Resort Drive
Daniels, WV 25832
ATTN: Elmer Coppoolse
Voice: (304)-763-2000
Fax: (304) -763-4990

If to CLD: Cooper Land Development, Inc.
903 North 47th Street
Rogers, AR 72756
ATTN: President
General Counsel
Phone: (479)-246-6500
Fax: (479)-246-6695

Each Party may change its address for purposes of this Section 4(b) by proper notice to the other Parties.

(c) Expenses. Each Party shall pay all expenses incurred by such Party in preparing to consummate and consummating the transactions provided for herein.

(d) Successors and Assigns. This Assignment will be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns, but will not be assignable or delegable by any Party without the prior written consent of the other Party, which may be withheld in the sole and absolute discretion of such Party.

(e) Waiver. No Party's failure or delay in exercising any right, power or privilege shall be a waiver of such right, power or privilege; nor shall any single or partial exercise of any such right, power or privilege preclude any other exercise thereof or the exercise of any other right, power or privilege.

(f) Entire Agreement. With the exception of the Purchase Agreement, this Assignment supersedes any other agreement, whether written or oral, that may have been made or entered into by any Party or any of their respective affiliates (or by any director, officer or representative thereof) relating to the matters contemplated hereby. This Assignment and the Purchase Agreement constitute the entire agreement by and among the Parties regarding the subject of this Assignment and there are no agreements or commitments by or among such Parties except as expressly set forth herein and therein.

(g) No Third Party Beneficiaries. No person or entity not a party to this Assignment shall be deemed to be a third party beneficiary hereunder or entitled to any rights hereunder.

(h) Further Assurances. From time to time, as and when requested by any Party, the other Party will execute and deliver, or cause to be executed and delivered, all such documents and instruments as may be reasonably necessary to consummate the transactions contemplated by this Assignment.

(i) Governing Law. THIS ASSIGNMENT, INCLUDING, WITHOUT LIMITATION, THE INTERPRETATION, CONSTRUCTION AND VALIDITY HEREOF, SHALL BE GOVERNED BY THE LAWS OF THE STATE OF WEST VIRGINIA.

(j) Execution in Counterparts. This Assignment may be executed in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same agreement.

(k) Titles and Headings. Titles and headings to sections herein are inserted for convenience of reference only, and are not intended to be a part of or to affect the meaning or interpretation of this Assignment.

(l) Certain Interpretive Matters and Definitions.

(i) Unless the context otherwise requires: (aa) all references to Sections, Articles or Schedules are to Sections, Articles or Schedules of or to this Assignment, (bb) each term defined in this Assignment has the meaning assigned to it, (cc) words in the singular include the plural and vice versa, (dd) the term "person" means any natural person or entity; (ee) the words "herein," "hereof," "hereunder" and words of like import shall refer to this Assignment as a whole and not to any particular section or subdivision of this Assignment; and (ff) the words "include," "includes" and "including" are not limiting. All references to "\$" or dollar amounts will be to lawful currency of the United States of America.

(ii) No provision of this Assignment will be interpreted in favor of, or against, either of the Parties by reason of the extent to which either such Party or its counsel participated in the drafting thereof or by reason of the extent to which any such provision is inconsistent with any prior draft hereof or thereof.

(m) No Recourse. Notwithstanding any of the terms or provisions of this Assignment, each Party agrees that neither Party nor any person acting on such Party's behalf may assert any claims or cause of action against any officer, director, stockholder, member or equity owner of the other Party in connection with or arising out of this Assignment or the transactions contemplated hereby.

IN WITNESS WHEREOF, the Parties, intending to be bound hereby, affix the signature of a duly authorized officer as of the day first above written.

COOPER LAND DEVELOPMENT, INC.

By: _____

Title: _____

JUSTICE HOLDINGS, LLC

By: _____

Title: _____

STATE OF ARKANSAS)
) ss. ACKNOWLEDGMENT
COUNTY OF BENTON)

On this day before me, the undersigned, a Notary Public duly qualified, commissioned and acting within and for the said state and county, appeared in person the within named Randy Brucker, who declared that he was the duly elected and acting President of COOPER LAND DEVELOPMENT, INC., to me well known, or proven through satisfactory evidence, who stated that he had so signed, executed and delivered said foregoing instrument in the capacity, and for the consideration, uses and purposes therein mentioned and set forth in all respects.

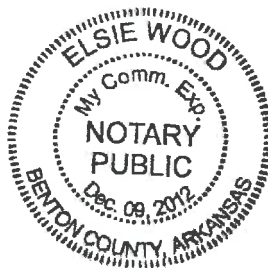
WITNESS my hand and Seal on this 18th day of October, 2010.

Elsie Wood

Notary Public

My Commission Expires:

Dec 9, 2012



STATE OF WV)
) ss. ACKNOWLEDGMENT
COUNTY OF Raleigh)

On this day before me, the undersigned, a Notary Public duly qualified, commissioned and acting within and for the said state and county, appeared in person the within named Stephen W. Ball, who declared that he was the duly elected and acting Managing Member of JUSTICE HOLDINGS, LLC., to me well known, or proven through satisfactory evidence, who stated that he had so signed, executed and delivered said foregoing instrument in the capacity, and for the consideration, uses and purposes therein mentioned and set forth in all respects.

WITNESS my hand and Seal on this 20th day of October, 2010.

Joshua D. Nunley
Notary Public

My Commission Expires:

12-18-2019

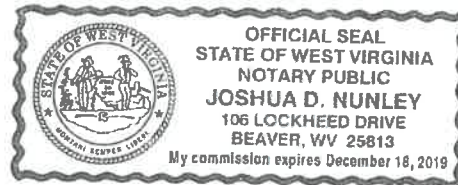


EXHIBIT 3

ASSIGNMENT AND ASSUMPTION OF FUTURE DEVELOPMENT LIABILITY

THIS ASSIGNMENT AND ASSUMPTION OF FUTURE DEVELOPMENT LIABILITY (this "Assignment") is made and entered into as of the 20th day of October, 2010 by and between COOPER LAND DEVELOPMENT, INC., an Arkansas corporation ("CLD") and JUSTICE HOLDINGS, LLC, a West Virginia limited liability company ("Justice"). CLD and Justice are referred to individually herein as a "Party," and collectively as the "Parties."

WITNESSETH

WHEREAS, CLD and James C. Justice Companies, Inc., a West Virginia corporation ("JCJC") entered into a Purchase Agreement dated July 20, 2010 (the "Purchase Agreement") pursuant to which, among other things, CLD agreed to sell and JCJC agreed to purchase certain assets owned by CLD in Glade Springs Village (the "Village"), Beckley, Raleigh County, West Virginia and Justice agreed to assume and thereafter satisfy fully certain liabilities of CLD; and

WHEREAS, JCJC assigned, with CLD's consent, all of JCJC's rights, duties and obligations under the Purchase Agreement to Justice and Justice assumed all of such rights, duties and obligations; and.

WHEREAS, upon the terms and conditions hereof CLD desires to assign and transfer to Justice and Justice desires to assume all of CLD's rights and obligations of every kind and character comprising the Future Development Liability, as such term is defined below; and

WHEREAS, the Parties acknowledge that the Future Development Liability also includes obligations of the Glade Springs Village Property Owners Association, Inc., a West Virginia nonprofit corporation ("POA"), more particularly addressed herein;

NOW THEREFORE, in consideration of the above premises and Ten and 00/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Assignment/Assumption.** CLD does by these presents sell, assign, transfer and convey to Justice all of CLD's rights, titles and interests and obligations and duties of CLD regarding:

(i) Installation of utilities, paving of roads and/or streets and installation of other amenities in Glade Springs Village, Raleigh County, West Virginia consisting of, but not limited to, engineering design, permitting, inspection, and construction and installation of: (a) a potable water system; (b) a low-pressure sanitary sewer system; (c) underground electrical conduit and Aid-in-Construction payments to, and as determined by, electric utilities; (d) underground telecommunications conduit; (e) Aid-in-Construction payments for installation of the natural gas system; and (f) street crushed stone base course and hot-mix asphalt concrete surface course, including all necessary and appropriate appurtenances and accessories as required for proper function and operation of each such system (all such systems, utilities, amenities, appurtenances and accessories are referred to collectively herein, for convenience, as the "FDL Requirements"), all as may be referred to generally and set forth in the *Declaration of Covenants and Restrictions Glade Springs Village, West Virginia* recorded on May 30,

2001 in the office of the Raleigh County Clerk, Raleigh County, West Virginia as Instrument # 50046485, Book 5004, Page 6485, as subsequently amended and supplemented (as so amended and supplemented, collectively referred to herein as the "Declaration"), particularly (but not limited to) Article VI of the Declaration "Plan For Construction and Maintenance of Common Properties"; and Article VII of the Declaration "Plan For Construction and Maintenance of Limited Common Properties" thereof; and

(ii) Installation of the FDL Requirements imposed by: (a) the Interstate Land Sales Full Disclosure Act of 1968, as amended, and the rules and regulations promulgated by the U.S. Department of Housing and Urban Development thereunder; or (b) any other law, rule, regulation of any federal, state or local governmental entity or by administrative order of any governmental agency or by the order of any court; and

(iii) Installation of the FDL Requirements imposed from or by any entity (governmental or otherwise) or source;

(iv) Installation of the FDL Requirements as more particularly set forth in an Agreement Regarding Future Development Liability and Escrow Release between CLD and Justice of even date herewith; and

The obligations of CLD described in (i), (ii); (iii) and (iv) above are referred to collectively herein as the "Future Development Liability." And, as to each of (i), (ii), (iii) and (iv) above, the Future Development Liability extends to and encompasses utilities, roads and/or streets and other amenities within the physical boundaries of Glade Springs Village as shown on all plats recorded in the public records of Raleigh County, West Virginia on the date hereof and as otherwise set forth in any other deed, document, agreement or instrument regarding such installation of utilities, paving of road and/or streets and installation of other amenities. The Parties further agree that construction and installation of each utility system shall be meet all applicable minimum requirements as set forth by federal, state, or local law or as set forth by the respective utility provider, and that, as to paving of roads and streets, Justice shall complete such paving as depicted in the street sections attached hereto as Exhibit A and by this reference made a part of this Assignment as set forth herein word-for-word.

Justice hereby accepts such rights, title and interest of CLD, and hereby assumes and agrees to perform, timely, fully and in accordance with all of the terms and conditions thereof, from and after the date hereof all of the duties, liabilities and obligations, of every kind and character, of CLD comprising the Future Development Liability. Justice acknowledges and agrees with CLD that the cost of performing the Future Development Liability is unknown and unliquidated at this time, and further acknowledges and agrees that such uncertainty does not alter, limit, waive, abate or release, in whole or in part, the duties, liabilities and obligations of Justice pursuant to this Assignment.

2. **POA.** The Parties acknowledge and agree that: (i) certain of CLD's duties, liabilities and obligations comprising the Future Development Liability have been assumed or contractually undertaken, in whole or in part, by the POA, or otherwise have become the duty, liability or obligation of the POA either by agreement with CLD or by the POA's entering into agreements with third parties regarding the installation of utilities, paving of road and/or streets and installation of other amenities in Glade Springs Village; (ii) CLD remains, despite such assumption by the POA, obligated fully, as obligor, for such Future Development Liability; (iii) CLD has loaned funds to the POA to fund the POA's satisfaction of all or part of the Future Development Liability, and such loans are outstanding on the date hereof; and

(iv) such loans comprise part of the assets sold by CLD and purchased by Justice pursuant to the Purchase Agreement.

Justice hereby specifically agrees: (a) that the Future Development Liability, as assigned to and assumed by Justice hereunder, includes, without limitation, all of the obligations, duties and liabilities of the POA directly or indirectly arising from or related to the Future Development Liability, including, without limitation, the installation of utilities, the paving of road and/or streets and the installation of other amenities in Glade Springs Village; (b) to cause the POA from time to time to satisfy, fully and timely, all such obligations, duties and liabilities; and (c) to loan or otherwise make available to the POA from time to time funds sufficient to allow the POA to satisfy all such obligations timely, fully and in accordance with their terms.

3. **Indemnification.** Justice does hereby indemnify and hold CLD harmless from and against any and all liabilities, claims or causes of action arising in connection with Justice's failure to satisfy the Future Development Liability fully, timely and in accordance with the terms and conditions thereof and hereof, regardless of whether the Future Development Liability is determined to be the duty, obligation or liability of CLD, the POA or both.

4. **Miscellaneous Provisions.**

(a) **Invalid Provisions.** If any provision of this Assignment is held to be illegal, invalid or unenforceable under present or future laws, such provision shall be modified to the minimum extent necessary to make such provision valid and enforceable, and the remainder of this Assignment shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision prior its modification.

(b) **Notices.** Any notices required or permitted to be given under this Agreement (and, unless otherwise expressly provided therein, under any document delivered pursuant to this Agreement) shall be given in writing and shall be deemed received: (i) when personally delivered to the relevant Party at such Party's address as set forth below, (ii) if sent by mail (which must be certified or registered mail, postage prepaid), when received or rejected by the relevant Party at such Party's address indicated below, or (iii) if sent by facsimile transmission, when confirmation of delivery is received by the sending Party:

If to Buyer: Justice Holdings, LLC
Glade Springs Resort
255 Resort Drive
Daniels, WV 25832
ATTN: Elmer Coppoolse
Voice: (304)-763-2000
Fax: (304)-763-4990

If to Seller: Cooper Land Development, Inc.
903 North 47th Street
Rogers, AR 72756
ATTN: President
General Counsel
Phone: (479)-246-6500

Fax: (479)-246-6695

Each Party may change its address for purposes of this Section 4(b) by proper notice to the other Parties.

(c) Expenses. Each Party shall pay all expenses incurred by such Party in preparing to consummate and consummating the transactions provided for herein.

(d) Successors and Assigns. This Assignment will be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns, but will not be assignable or delegable by any Party without the prior written consent of the other Party, which may be withheld in the sole and absolute discretion of such Party.

(e) Waiver. No Party's failure or delay in exercising any right, power or privilege shall be a waiver of such right, power or privilege; nor shall any single or partial exercise of any such right, power or privilege preclude any other exercise thereof or the exercise of any other right, power or privilege.

(f) Entire Agreement. With the exception of the Purchase Agreement, this Assignment supersedes any other agreement, whether written or oral, that may have been made or entered into by any Party or any of their respective affiliates (or by any director, officer or representative thereof) relating to the matters contemplated hereby. This Assignment and the Purchase Agreement constitute the entire agreement by and among the Parties regarding the subject of this Assignment and there are no agreements or commitments by or among such Parties except as expressly set forth herein and therein.

(g) No Third Party Beneficiaries. No person or entity not a party to this Assignment shall be deemed to be a third party beneficiary hereunder or entitled to any rights hereunder.

(h) Further Assurances. From time to time, as and when requested by any Party, the other Party will execute and deliver, or cause to be executed and delivered, all such documents and instruments as may be reasonably necessary to consummate the transactions contemplated by this Assignment.

(i) Governing Law. THIS ASSIGNMENT, INCLUDING, WITHOUT LIMITATION, THE INTERPRETATION, CONSTRUCTION AND VALIDITY HEREOF, SHALL BE GOVERNED BY THE LAWS OF THE STATE OF WEST VIRGINIA.

(j) Execution in Counterparts. This Assignment may be executed in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same agreement.

(k) Titles and Headings. Titles and headings to sections herein are inserted for convenience of reference only, and are not intended to be a part of or to affect the meaning or interpretation of this Assignment.

(l) Certain Interpretive Matters and Definitions.

(i) Unless the context otherwise requires: (aa) all references to Sections, Articles or Schedules are to Sections, Articles or Schedules of or to this Assignment, (bb) each term defined in this Assignment has the meaning assigned to it, (cc) words in the singular include the plural and vice versa, (dd) the term "person" means any natural person or entity; (ee) the words "herein," "hereof," "hereunder" and words of like import shall refer to this Assignment as a whole and not to any particular section or subdivision of this Assignment; and (ff) the words "include," "includes" and "including" are not limiting. All references to "\$" or dollar amounts will be to lawful currency of the United States of America.

(ii) No provision of this Assignment will be interpreted in favor of, or against, either of the Parties by reason of the extent to which either such Party or its counsel participated in the drafting thereof or by reason of the extent to which any such provision is inconsistent with any prior draft hereof or thereof.

(m) No Recourse. Notwithstanding any of the terms or provisions of this Assignment, each Party agrees that neither Party nor any person acting on such Party's behalf may assert any claims or cause of action against any officer, director, stockholder, member or equity owner of the other Party in connection with or arising out of this Assignment or the transactions contemplated hereby unless the liability for such claims or causes of action are set forth in writing, such as, but not limited to, a guaranty.

IN WITNESS WHEREOF, this Assignment has been executed and delivered effective as of the Effective Date.

JUSTICE HOLDINGS, LLC

By: 

Title: Manager

COOPER LAND DEVELOPMENT, INC.

By: 

Title: President

STATE OF WV)
) ss. ACKNOWLEDGMENT
COUNTY OF Raleigh)

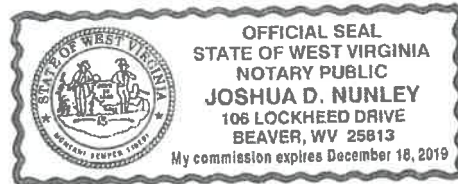
On this day before me, the undersigned, a Notary Public duly qualified, commissioned and acting within and for the said state and county, appeared in person the within named Stephen W. Ball, who declared that he was the duly elected and acting Managing Member of JUSTICE HOLDINGS, LLC., to me well known, or proven through satisfactory evidence, who stated that he had so signed, executed and delivered said foregoing instrument in the capacity, and for the consideration, uses and purposes therein mentioned and set forth in all respects.

WITNESS my hand and Seal on this 20th day of October, 2010.

Joshua D. Nunley
Notary Public

My Commission Expires:

12-18-2019



STATE OF ARKANSAS)
) ss. ACKNOWLEDGMENT
COUNTY OF BENTON)

On this day before me, the undersigned, a Notary Public duly qualified, commissioned and acting within and for the said state and county, appeared in person the within named Randy Brucker, who declared that he was the duly elected and acting President of COOPER LAND DEVELOPMENT, INC., to me well known, or proven through satisfactory evidence, who stated that he had so signed, executed and delivered said foregoing instrument in the capacity, and for the consideration, uses and purposes therein mentioned and set forth in all respects.

WITNESS my hand and Seal on this 18th day of October, 2010.

Elsie Wood

Notary Public

My Commission Expires:

Dec 9, 2012

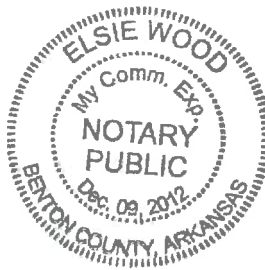
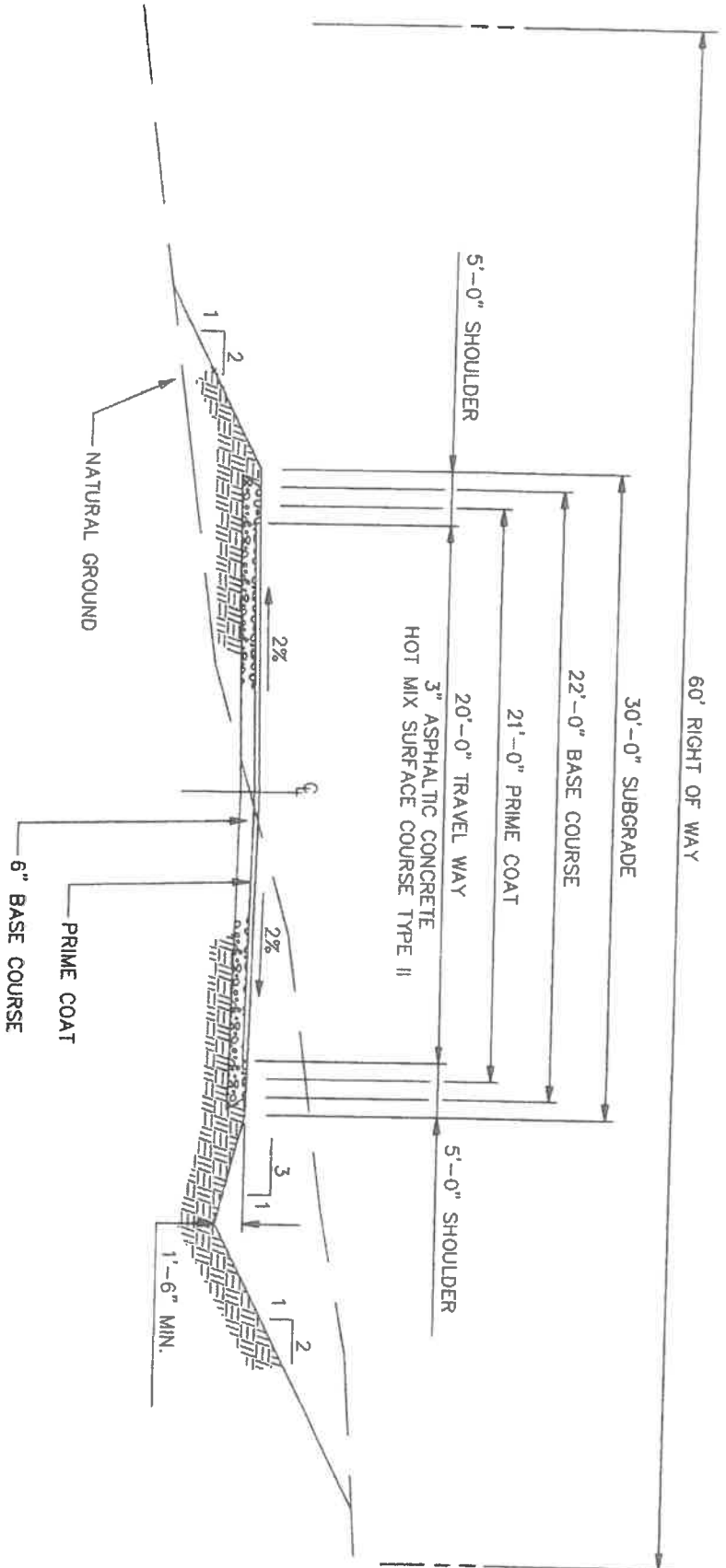


EXHIBIT A

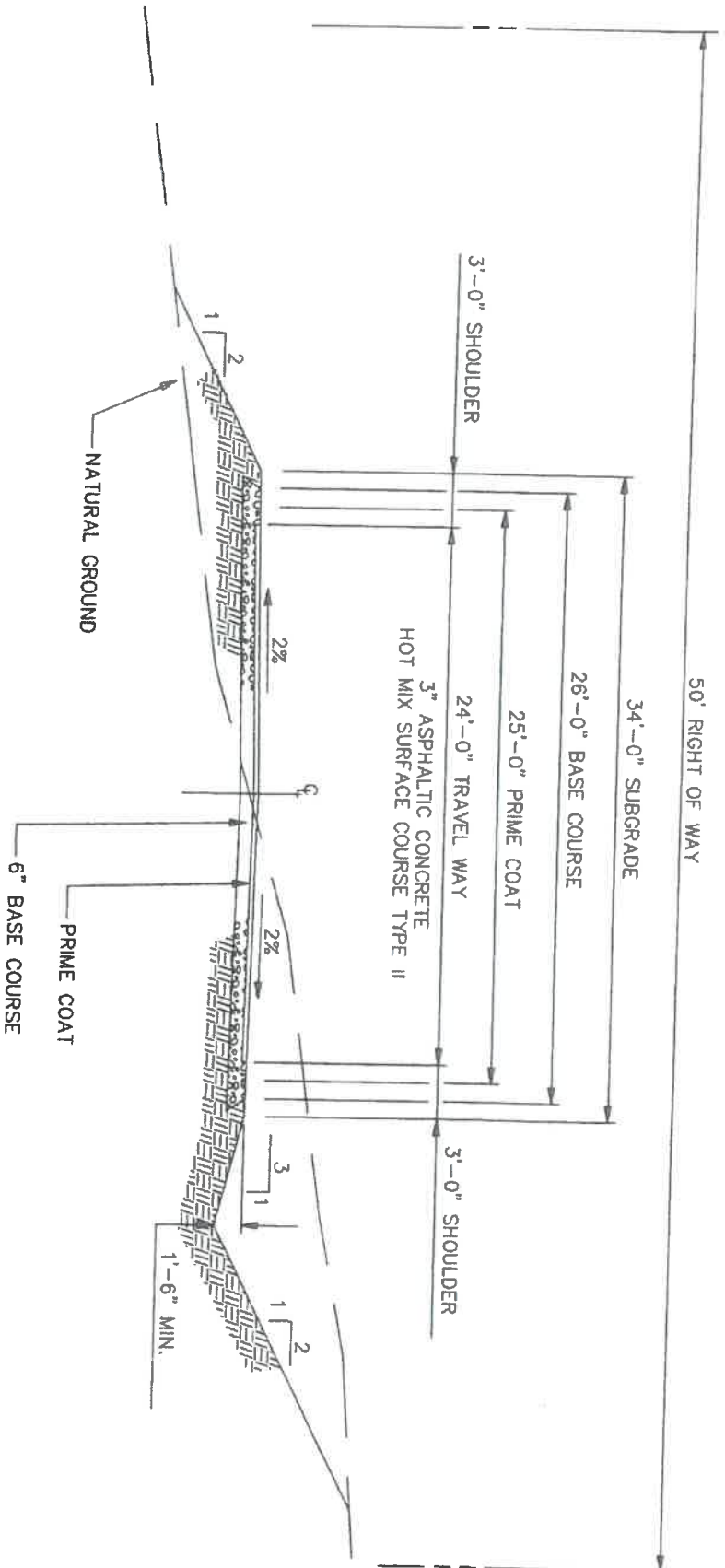


COLLECTOR STREET

N.T.S.

COLLECTOR
STREET SECTION

EXHIBIT A

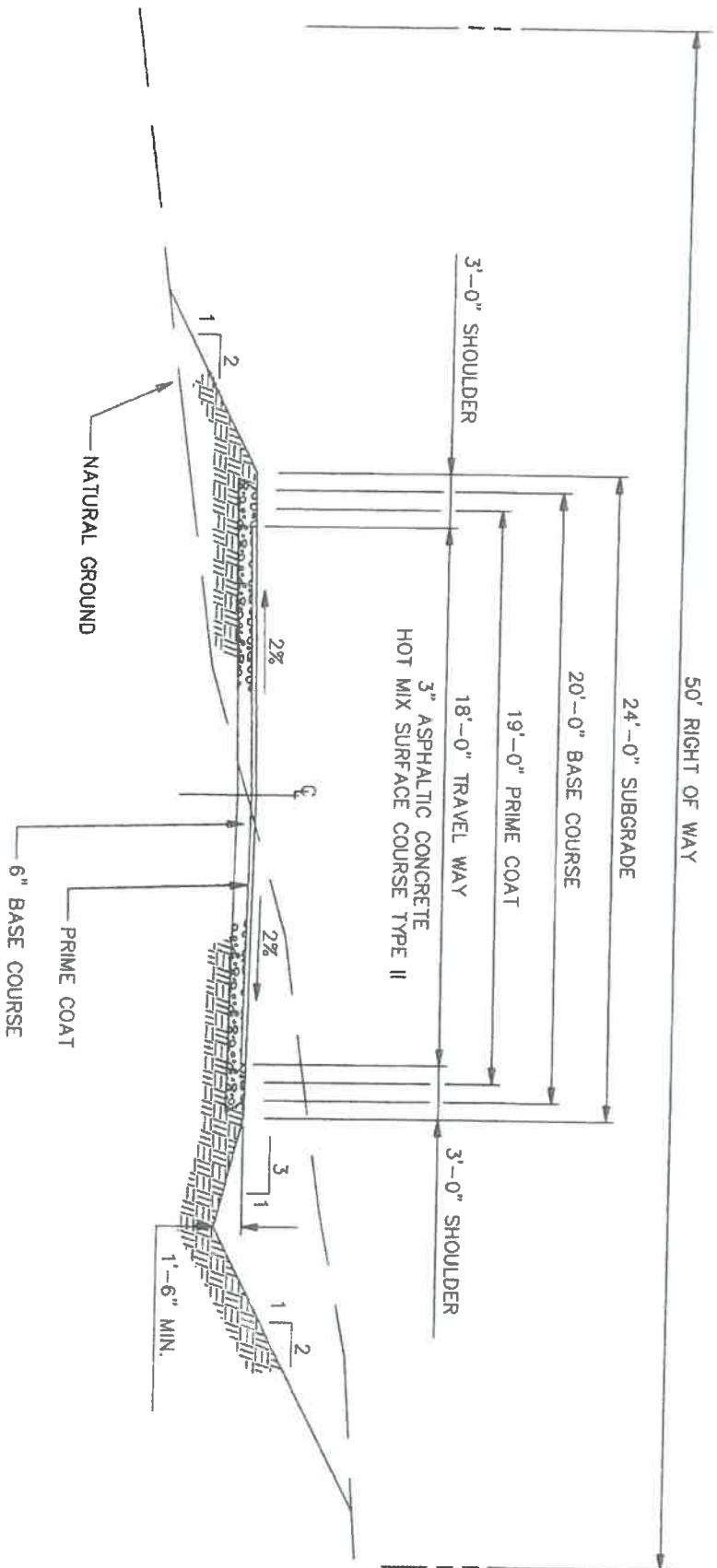


OFFICE, COMMERCIAL, MEDIUM DENSITY STREET

N.T.S.

OFFICE/COMMERCIAL
STREET SECT 3M

EXHIBIT A



SUBDIVISION STREET

N.T.S.

SUBDIVISION
STREET SECTION

EXHIBIT 4

TERMINATION AGREEMENT

This **TERMINATION AGREEMENT** (the "Termination Agreement"), dated as of August 31, 2015, is entered into by and among COOPER LAND DEVELOPMENT, INC., an Arkansas corporation ("CLD") and JUSTICE HOLDINGS, LLC, a West Virginia limited liability company ("Justice"). CLD and Justice are collectively referred to herein from time to time as the "Parties," and individually as a "Party."

RECITALS:

A. CLD and James C. Justice Companies, Inc., a West Virginia corporation (the "Justice Company") entered into a Purchase Agreement dated July 20, 2010 (the "Purchase Agreement") pursuant to which, among other things, CLD agreed to sell and assign to the Justice Company and the Justice Company agreed to purchase and assume certain contracts (the "Contracts Receivable") owned by CLD arising from CLD's business operations in Glade Springs Village, Beckley, Raleigh County, West Virginia.

B. The Justice Company assigned, with CLD's consent, all of its rights, duties and obligations under the Purchase Agreement to Justice and Justice assumed all of such rights, duties and obligations.

C. In addition, pursuant to the requirements of the Purchase Agreement, on October 20, 2010 CLD and Justice entered into: (i) a Servicing Agreement (the "SA"); (ii) a Security Agreement (the "Security Agreement"); and (iii) an Agreement Regarding Future Development Liability And Escrow Release (the "Future Development Agreement"). For convenience, the SA, the Security Agreement and the Future Development Agreement are referred to collectively herein as the "Contracts Receivable Agreements."

D. Upon the terms and conditions hereinafter provided the Parties have agreed to terminate the Contracts Receivable Agreements and desire to reduce their agreements to writing.

NOW THEREFORE, in consideration of the above Recitals, the mutual agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Termination of Contracts Receivable Agreements. Subject to the terms and conditions of this Termination Agreement, the Parties agree that the Contracts Receivable Agreements are hereby terminated, with such termination effective as of 12:01 a.m. on August 31, 2015.

2. Modification of Liabilities. As part of the Parties' termination of the Contracts Receivable Agreements set forth herein, the Parties wish to confirm a previous oral agreement between them.

(a) Accordingly, the Parties acknowledge and agree that:

(i) Certain lots, more particularly identified below in this Section 2 (collectively, the "Excluded Lots"), have not been: (aa) placed into inventory for sale by either CLD or Justice; and (bb) sold by either CLD or Justice; and

(ii) The Excluded Lots were eliminated, by agreement of the Parties, from Exhibits A and B to the Future Development Agreement.

(b) Such Excluded Lots are more particularly identified as follows:

(i) Queensglade Subdivision: Block 2, Lots 1-66, containing 66 lots.

(ii) Queensglade Subdivision: Block 4, Lots 6-21 and 51-57, containing 23 lots.

(iii) Queensglade Subdivision: Block 5, Lots 1-18, containing 18 lots.

3. Representations of the Parties. Justice and CLD represent each to and for the benefit of the other that such Party has not made, in whole or in part, any assignment, subcontracting, transfer, conveyance, or other disposition of: (i) the Contracts Receivable Agreements; (ii) any interest of any kind or character in the Contracts Receivable Agreements; or (iii) any claim, demand, obligation, liability, action, or cause of action arising directly or indirectly from the Contracts Receivable Agreements.

Each Party further hereby represents and warrants to the other Party that: (aa) all consents or approvals required of third parties (including, but not limited to, its governing board or trustee) for the execution, delivery and performance of this Termination Agreement by such Party have been obtained; (bb) each Party has the right and authority to enter into and perform its covenants contained in this Termination Agreement; (cc) the signatory to this Termination Agreement is authorized to sign this document on behalf of such Party under such consents or approvals; and (dd) this Termination Agreement is binding on such Party and enforceable against such Party in accordance with these terms except as such enforceability is limited by applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting the enforcement of creditors' rights generally.

4. Governing Law; Waiver of Jury Trial; Consent To Jurisdiction.

(a) Governing Law. This Agreement, including, without limitation, the interpretation, construction and validity hereof, shall be construed in accordance with and governed by the laws of the State of Arkansas.

(b) Exclusive Jurisdiction. JUSTICE AND CLD AGREE THAT ALL DISPUTES AMONG THEM ARISING OUT OF, CONNECTED WITH, RELATED TO OR INCIDENTAL TO THE RELATIONSHIP ESTABLISHED BETWEEN THEM IN CONNECTION WITH THIS AGREEMENT AND OTHER AGREEMENTS BETWEEN THEM AND WHETHER ARISING IN CONTRACT, TORT, EQUITY OR OTHERWISE, SHALL BE RESOLVED ONLY BY STATE OR FEDERAL COURTS LOCATED IN ARKANSAS, AND EACH WAIVES ANY OBJECTION BASED ON VENUE OR FORUM NON CONVENIENS WITH RESPECT TO ANY ACTION INSTITUTED THEREIN, BUT EACH ACKNOWLEDGES THAT ANY APPEALS FROM THOSE COURTS MAY HAVE TO BE HEARD BY A FEDERAL COURT LOCATED OUTSIDE OF ARKANSAS. JUSTICE WAIVES IN ALL DISPUTES ANY OBJECTION THAT IT MAY HAVE TO THE LOCATION OF THE COURT CONSIDERING THE DISPUTE.

(c) Waiver Of Jury Trial. JUSTICE AND CLD WAIVE ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE, WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE, BETWEEN CLD AND JUSTICE ARISING OUT OF, CONNECTED WITH, RELATED TO OR INCIDENTAL TO THE RELATIONSHIP ESTABLISHED BETWEEN THEM IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION THEREWITH OR THE TRANSACTIONS RELATED THERETO. JUSTICE AND CLD HEREBY AGREE AND CONSENT THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY AND THAT ANY PARTY MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS AGREEMENT WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

5. Miscellaneous Provisions.

(a) Invalid Provisions. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, such provision shall be modified to the minimum extent necessary to make such provision valid and enforceable, and the remainder of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision prior its modification.

(b) Notices. Any notices required or permitted to be given under this Agreement (and, unless otherwise expressly provided therein, under any document delivered pursuant to this Agreement) shall be given in writing and shall be deemed received: (i) when personally delivered to the relevant Party at such Party's address as set forth below, (ii) if sent by mail (which must be certified or registered mail,

postage prepaid), when received or rejected by the relevant Party at such Party's address indicated below, or (iii) if sent by facsimile transmission, when confirmation of delivery is received by the sending Party:

If to Justice: Justice Holdings, LLC
Glade Springs Resort
255 Resort Drive
Daniels, WV 25832
ATTN: Elmer Coppoolse
Voice: (304)-763-2000
Fax: (304)-763-4990

If to CLD: Cooper Land Development, Inc.
903 North 47th Street, Suite 101
Rogers, AR 72756
Phone: 479-246-6500
Fax: 479-246-6695
ATTN: President
General Counsel

Each Party may change its address for purposes of this Section 5(b) by proper notice to the other Parties.

(c) Expenses. Except as otherwise expressly provided herein, each of the Parties shall pay all expenses incurred by such Party in preparing to consummate and consummating the transactions provided for herein.

(d) Successors and Assigns. This Agreement will be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns, but will not be assignable or delegable by any Party, in whole or in part, or by operation of law, without the prior written consent of the other Party.

(e) Waiver. No failure or delay on the part of any Party in exercising any right, power or privilege hereunder or under any of the documents delivered in connection with this Agreement shall operate as a waiver of such right, power or privilege; nor shall any single or partial exercise of any such right, power or privilege preclude any other or future exercise thereof or the exercise of any other right, power or privilege.

(f) Entire Agreement. This Agreement (including the Exhibits to this Agreement, if any) supersedes any other agreement, whether written or oral, that may have been made or entered into by any Party or any of their respective Affiliates (or by any director, officer or representative thereof) relating to the matters contemplated hereby. This Agreement (together with the Exhibits) constitutes the entire agreement by and among the Parties and there are no agreements or commitments by or among such Parties except as expressly set forth herein.

(g) Amendments and Supplements. This Agreement may be amended or supplemented at any time only by additional written agreements signed by the Parties.

(h) No Third Party Beneficiaries. No person or entity not a Party to this Agreement shall be deemed to be a third Party beneficiary hereunder or entitled to any rights hereunder.

(i) Further Assurances. From time to time, as and when requested by any Party, the other Parties will execute and deliver, or cause to be executed and delivered, all such documents and instruments as may be reasonably necessary to consummate the transactions contemplated by this Agreement.

(j) Execution in Counterparts. This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same agreement.

(k) Titles and Headings. Titles and headings to sections herein are inserted for convenience of reference only, and are not intended to be a part of or to affect the meaning or interpretation of this Agreement.

(l) Certain Interpretive Matters and Definitions.

(i) Unless the context otherwise requires: (aa) all references to Sections, Articles or Schedules are to Sections, Articles or Schedules of or to this Agreement, (bb) each term defined in this Agreement has the meaning assigned to it, (cc) words in the singular include the plural and vice versa, (dd) the term "person" means any natural person or entity; (ee) the words "herein," "hereof," "hereunder" and words of like import shall refer to this Agreement as a whole and not to any particular section or subdivision of this Agreement; and (ff) the words "include," "includes" and "including" are not limiting. All references to "\$" or dollar amounts will be to lawful currency of the United States of America.

(ii) No provision of this Agreement will be interpreted in favor of, or against, either of the Parties by reason of the extent to which either such Party or its counsel participated in the drafting thereof or by reason of the extent to which any such provision is inconsistent with any prior draft hereof or thereof.

(m) No Recourse. Notwithstanding any of the terms or provisions of this Agreement, each Party agrees that neither Party nor any person acting on such Party's behalf may assert any claims or cause of action against any officer, director, stockholder, member or equity owner of the other Party in connection with or arising out of this Agreement or the transactions contemplated hereby unless the liability for such claims or causes of action are set forth in writing, such as, but not limited to, a guaranty.

(n) No Offer. The submission of this Agreement for signature by either Party shall not be deemed an offer, nor shall either Party have any rights arising

therefrom unless and until this Agreement is fully executed by a duly authorized representative of both Parties.

(o) Construction. The Parties acknowledge that each Party and each Party's counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party will not be employed in the interpretation of this Agreement or any amendments or schedules hereto.

(p) Time. Time is of the essence in this Agreement.

(q) Specific Performance. Either Party shall be entitled to seek, in the event of a default by the other Party, the judicial remedy of specific performance.

(r) Non-Merger. The provisions of all sections of this Agreement (and the representations, warranties and covenants set forth herein) that from their sense and context are intended to survive the closing shall so survive for a period of one (1) year, as set forth in this Agreement, and shall not be merged into any documents of conveyance or otherwise.

(s) Definitions. All capitalized terms used herein but not expressly defined herein shall have the meaning ascribed thereto in the Contracts Receivable Agreements.

(t) Binding Agreement. In the event of any conflict between the terms of the Contracts Receivable Agreements and the terms of this Termination Agreement, the terms of this Termination Agreement shall control.

(u) Voluntary Agreement. The Parties acknowledge and agree that the Parties have read this Termination Agreement and the mutual releases contained in it and, upon advice of counsel, they have freely and voluntarily entered into this Termination Agreement.


[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have caused this Termination Agreement to be executed by their respective duly authorized officers as of the Effective Date.

CLD:
Cooper Land Development, Inc.

By: 
Title: Vice President

JUSTICE:
Justice Holdings, LLC

By: 
Title: Manager

ACKNOWLEDGEMENT

STATE OF ARKANSAS)
) SS.
COUNTY OF BENTON)

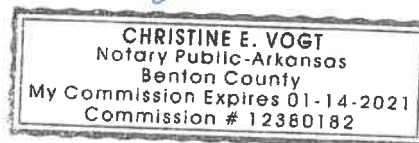
On this 1st day of Sept, 2015, before me, the undersigned, a Notary Public in and for the county and state aforesaid, personally appeared M. Kent Burger to me known to be the identical person who signed the name of the maker thereof to the within and foregoing instrument as its Vice President on behalf of Cooper Land Development, Inc., an Arkansas corporation and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of said corporation for the uses and purposes therein set forth.

Given under my hand and seal the day and year last above-written.


NOTARY PUBLIC

My Commission Expires:

1-14-21



ACKNOWLEDGEMENT

STATE OF WEST VIRGINIA)
) SS.
COUNTY OF GREENBRIER)

On this 27 day of AUGUST, 2015, before me, the undersigned, a Notary Public in and for the county and state aforesaid, personally appeared JAMES T. MILLER to me known to be the identical person who signed the name of the maker thereof to the within and foregoing instrument as its MANAGER on behalf of the Justice Holdings, LLC, a West Virginia limited liability company and acknowledged to me that he/she executed the same as his/her free and voluntary act and deed, and as the free and voluntary act and deed of said limited liability company for the uses and purposes therein set forth.

Given under my hand and seal the day and year last above-written.


NOTARY PUBLIC

My Commission Expires:

12/30/2022

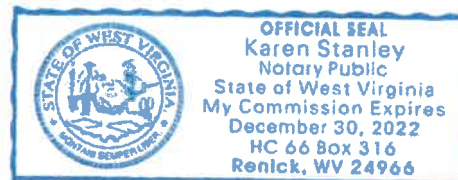


EXHIBIT 5

CLOSING AGREEMENT

This **CLOSING AGREEMENT** (the "Closing Agreement") is made and entered into as of October 20, 2010 (the "Execution Date") between and among COOPER LAND DEVELOPMENT, INC. ("Seller"), an Arkansas corporation, JAMES C. JUSTICE COMPANIES, INC., a West Virginia corporation ("Justice") and JUSTICE HOLDINGS, LLC, a West Virginia limited liability company ("Buyer") and an affiliate of Justice. Buyer, Justice and Seller are sometimes hereinafter referred to collectively as the "Parties" and each individually as a "Party."

WITNESSETH:

WHEREAS, Seller and Justice have entered into a Purchase Agreement dated as of July 20, 2010 (the "Purchase Agreement") regarding the sale by Seller and the purchase by Justice of the Cooper Properties, as such term is defined in the Purchase Agreement, located in or relating to Glade Springs Village, Raleigh County, West Virginia; and

WHEREAS, Justice desires to assign its rights and obligations under the Purchase Agreement to Buyer, and, in connection therewith, to guarantee to Seller the performance of Buyer under the Purchase Agreement and all documents to be entered into by the Parties in furtherance of the transactions contemplated by the Purchase Agreement; and

WHEREAS, the Parties desire to consummate the transactions contemplated by the Purchase Agreement, and further desire to enter into this Closing Agreement in furtherance thereof;

NOW, THEREFORE, in light of the premises set forth above and the mutual agreements of the Parties set forth herein, the Parties agree as follows:

1. Purchase Price Adjustment. The Parties agree that the Purchase Price set forth in the Purchase Agreement of Eleven Million Six Hundred Twenty Five Dollars (\$11,625,000) shall be adjusted, as agreed between the Parties, in the manner set forth upon the closing statement (the "Closing Statement") set forth upon Exhibit A, attached hereto and by this reference made a part of this Closing Agreement, and that Exhibit A sets forth the final Purchase Price to be paid by Buyer to Seller via wire transfer of immediately available funds to an account designated by Seller.

2. Guaranty. Justice hereby agrees to execute and deliver, on the date hereof (the "Closing Date"), to: (i) Seller the Guaranty (the "Guaranty") in the form attached hereto as Exhibit B and by this reference made a part of this Closing Agreement, wherein and whereby Justice shall guarantee the obligations of Buyer both under the Purchase Agreement and under all other instruments, documents and agreements executed in furtherance of the transactions contemplated by the Purchase Agreement; and (ii) Seller and Buyer the Assignment and Assumption of Rights, Duties and Obligations Under Purchase Agreement and Consent To Assignment (the "Purchase Agreement Assignment") in the form attached hereto as Exhibit C, and by this reference made a part of this Closing Agreement.

3. Closing Agreements. To close the transactions contemplated by the Purchase Agreement, Buyer and Seller agree to execute and deliver the agreements more particularly identified upon Exhibit D, attached hereto and by this reference made a part of this Closing Agreement.

4. Employees of CLD and POA. Buyer agrees with Seller to: (i) employ, on the Closing Date, Seller's employees, more particularly identified upon Exhibit E, attached hereto and by this reference made a part of this Agreement, upon the same terms and conditions as employed by Seller prior to the Closing Date; (ii) cause the Glade Springs Village Property Owners Association, a West Virginia non-profit corporation (the "POA") to employ, on the Closing Date, Seller's employees also more particularly identified upon Exhibit E upon the same terms and conditions as employed by Seller prior to the Closing Date; and (iii) pay all such employees their ordinary compensation, at their rates of pay while employed by Seller, from October 16, 2010 through the Closing Date. Buyer further agrees to honor, from and after the Closing Date, the accrued but untaken (as of the Closing Date) paid-time-off of all such employees.

Buyer shall receive a credit against the Purchase Price, set forth on the Closing Statement, in the amount of the aggregate compensation Seller owes such employees from October 16, 2010 through the Closing Date.

Buyer further acknowledges and agrees that the POA shall pay, on the Closing Date, amounts in severance, in accordance with its policies existing on the Closing Date, to: (y) Ms. Amy Grace in the amount of \$27,502.00; and (z) Mr. Robert Seiter in the amount of \$11,975.00. The POA shall further pay, in addition, to such employees (or to governmental entities, as applicable): (aa) compensation for from October 16, 2010 to the Closing Date at existing rates of compensation; (bb) compensation for accrued but unused paid time off; and (cc) FICA taxes related to all such compensation. The Parties further acknowledge and agree that the working capital loan owed by the POA to Seller shall be increased by the sum of \$55,235.95 to reflect such payments prior to assignment by Seller, and assumption by Buyer, of such loan on the Closing Date.

5. Post-Closing Matters and Cooperation. Seller agrees to cooperate with Buyer, on a post-closing basis and as may be reasonably required (but without material expense to Seller), to convey to Buyer any Cooper Property (as such term is defined in the Purchase Agreement) that should have properly been conveyed to Buyer under the Purchase Agreement and as part of the transactions contemplated by the Purchase Agreement but which was not. Buyer agrees to cooperate with Seller, on a post-closing basis and as may be reasonably required (but without material expense to Buyer), to assume any contract or other obligation of Seller that should have properly been assigned to Buyer under the Purchase Agreement and as part of the transactions contemplated by the Purchase Agreement but which was not.

6. Unpaid Commissions. Seller agrees to pay, on or before the Closing Date, all accrued but unpaid commissions, if any, accrued through the Closing Date owed by Seller to Seller's independent contractors involved in the sale of lots at the Village on Seller's behalf prior to the Closing Date and to indemnify and hold Buyer harmless from and after the Closing Date

from any loss, harm, claim, damage, interest or expense caused by or arising from the claimed commission of any independent contractor of Seller.

7. "Resort Property/Sales Center Property" The Parties agree that, at the request of Buyer, the real properties more particularly identified upon Exhibit F, attached hereto and by this reference made a part of this Closing Agreement, shall be conveyed to "GSR, LLC, a West Virginia limited liability company" instead of to Buyer.

8. 2010 Utility Construction. Buyer and Seller agree that, notwithstanding any contrary agreement between them, Buyer shall have no obligation to pay materials or services in 2010 regarding installation of utilities in: (i) Chapelwoods, Block 5, Lots 1-6, 12-21, and 36-120; and (ii) Chapelwoods, Block 6.

9. Estimate of Future Development Liability. The Parties acknowledge and agree that pursuant to: (i) the Purchase Agreement; (ii) Assignment and Assumption of Future Development Liability; (iii) Agreement Regarding Future Development Liability; and (iv) other agreements between the Parties, all of even date herewith, Seller has agreed to assign and Buyer has agreed to assume the Future Development Liability, as such term is defined and quantified in all such agreements and instruments. In connection therewith, the Parties acknowledge and agree that: (i) the dollar amount of the Future Development Liability is uncertain; (ii) the amount of the Future Development Liability used in the agreements between the Parties has been estimated in good faith by the Parties; and (iii) the actual cost of the Future Development Liability will be incurred in the future, and will be affected by many factors in the future such as, but not limited to, future general economic conditions, future inflation or the lack thereof, the performance of third parties (such as contractors, utilities, governmental agencies, engineers and other professionals), the future cost of materials, the imposition or lack of imposition of governmental regulation and the like. The Parties acknowledge and agree that no Party makes any representation or warranty of any kind or character, express or implied, as the accuracy or completeness of the estimates and assumptions used to compute and contract regarding the Future Development Liability or its amount, terms or conditions.

10. Offer of Extended Financing on Contracts Receivable. Buyer acknowledges that Seller has made an offer to certain of the obligors (collectively, the "Contract Obligors") under Seller's lot purchase contracts (collectively, the "Contracts Receivable") to refinance, at the request of such obligors, such contracts for up to eleven years at six percent (6%). The Contracts Receivable are, pursuant to the Purchase Agreement, to be assigned by Seller to Buyer and assumed by Buyer on the Closing Date. In connection therewith, Buyer hereby assumes and agrees to satisfy fully and timely such obligations of Seller to refinance the Contract Receivable of any Contract Obligor to whom such an offer has been made and agrees with Seller that if any such request is properly made by any such Contract Obligor, Buyer will refinance any such obligation on the terms offered by Seller prior to the date hereof.

11. Post-Closing Assistance. Seller agrees, at the written request of Buyer therefor, to provide, but solely upon a basis agreeable to Seller in Seller's sole and absolute discretion, general consulting services for a period of sixty (60) days following the Closing Date.

12. Future Deeding By Seller. Buyer acknowledges and agrees that, as to certain of the real properties subject to Contracts Receivable sold to Buyer pursuant to the Purchase Agreement, more particularly identified upon Exhibit G, attached hereto and by this reference made a part of this Agreement, such properties either: (i) have not, in the ordinary course of Seller's business and in accordance with Seller's normal practices, been deeded of record on the date hereof to the applicable Contract Obligor; or (ii) are subject to a pending trade or other transaction between Seller and the applicable Contract Obligor. In connection therewith, and as to the properties addressed in 12(i) immediately above, Buyer and Seller agree that: (a) Seller shall retain ownership of, and shall not convey to Buyer, such real properties; and (b), Seller shall convey, unless the applicable Contract Obligor shall default under the applicable Contract Receivable, such real properties to such Contract Obligor in the ordinary course of Seller's business from and after the date hereof. As to the properties addressed in 12(ii) immediately above, and unless the applicable Contract Obligor shall default under the applicable Contract Receivable, Seller shall complete such trades and shall deed, upon completion thereof, the applicable real properties to Buyer.

13. Closing Date. The Parties agree that the time and date of closing (the "Closing Date") of the transactions contemplated by the Purchase Agreement shall be 11:59 p.m. Eastern Time on October 20, 2010, and that all prorations shall be effected as of such date and time except as otherwise set forth upon Exhibit A.

14. Post-Closing Access. Buyer agrees that Seller's employees or agents shall have post-closing access, during normal business hours, to the Sales Center to remove Seller's proprietary data from computers located therein and that such data is not conveyed to Buyer by Seller pursuant to the Purchase Agreement or any agreement entered into by the Parties in connection with the Purchase Agreement or the transactions contemplated thereby.

15. Conflict. In the event of a conflict between the terms and conditions of this Closing Agreement and the terms and conditions of the Purchase Agreement, the Parties agree that the terms and conditions of this Closing Agreement shall govern.

16. Miscellaneous Provisions.

(a) Specific Performance. Either Party shall be entitled to seek, in the event of a default by the other Party, the judicial remedy of specific performance.

(b) Invalid Provisions. If any provision of this Closing Agreement is held to be illegal, invalid or unenforceable under present or future laws, such provision shall be modified to the minimum extent necessary to make such provision valid and enforceable, and the remainder of this Closing Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision prior its modification.

(c) Notices. Any notices required or permitted to be given under this Closing Agreement (and, unless otherwise expressly provided therein, under any document delivered pursuant to this Closing Agreement) shall be given in writing and shall be deemed received: (i) when personally delivered to the relevant Party at such Party's address as set forth below, (ii) if sent by mail (which must be certified or registered mail, postage prepaid), when received or

rejected by the relevant Party at such Party's address indicated below, or (iii) if sent by facsimile transmission, when confirmation of delivery is received by the sending Party:

If to Justice/Buyer: Justice Holdings, LLC
Glade Springs Resort
255 Resort Drive
Daniels, WV 25832
ATTN: Elmer Coppoolse
Voice: (304) 763-2000
Fax: (304) 763-4990

If to Seller: Cooper Land Development, Inc.
903 North 47th Street
Rogers, AR 72756
Phone: (479)-246-6500
Fax: (479)-246-6695
ATTN: President
General Counsel

Each Party may change its address for purposes of this Section 16(c) by proper notice to the other Parties.

(d) Expenses. Except as otherwise expressly provided herein, each of the Parties shall pay all expenses incurred by such Party in preparing to consummate and consummating the transactions provided for herein.

(e) Successors and Assigns. This Closing Agreement will be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns, but will not be assignable or delegable by any Party without the prior written consent of the other Party.

(f) Waiver. No failure or delay on the part of any Party in exercising any right, power or privilege hereunder or under any of the documents delivered in connection with this Closing Agreement shall operate as a waiver of such right, power or privilege; nor shall any single or partial exercise of any such right, power or privilege preclude any other or future exercise thereof or the exercise of any other right, power or privilege.

(g) Entire Agreement. This Closing Agreement (including the Exhibits to this Closing Agreement) supersedes any other agreement, whether written or oral, that may have been made or entered into by any Party or any of their respective Affiliates (or by any director, officer or representative thereof) relating to the matters contemplated hereby. This Closing Agreement (together with the Exhibits) constitutes the entire agreement by and among the Parties and there are no agreements or commitments by or among such Parties except as expressly set forth herein.

(h) Amendments and Supplements. This Closing Agreement may be amended or supplemented at any time only by additional written agreements signed by the Parties.

(i) No Third Party Beneficiaries. No person or entity not a Party to this Closing Agreement shall be deemed to be a third Party beneficiary hereunder or entitled to any rights hereunder.

(j) Further Assurances. From time to time, as and when requested by any Party, the other Parties will execute and deliver, or cause to be executed and delivered, all such documents and instruments as may be reasonably necessary to consummate the transactions contemplated by this Agreement.

(k) Governing Law. This Agreement, including, without limitation, the interpretation, construction and validity hereof, shall be governed by the laws of the State of Arkansas.

(l) Execution in Counterparts. This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same agreement.

(m) Titles and Headings. Titles and headings to sections herein are inserted for convenience of reference only, and are not intended to be a part of or to affect the meaning or interpretation of this Closing Agreement.

(n) Certain Interpretive Matters and Definitions.

(i) Unless the context otherwise requires: (aa) all references to Sections, Articles or Schedules are to Sections, Articles or Schedules of or to this Closing Agreement, (bb) each term defined in this Closing Agreement has the meaning assigned to it, (cc) words in the singular include the plural and vice versa, (dd) the term "person" means any natural person or entity; (ee) the words "herein," "hereof," "hereunder" and words of like import shall refer to this Closing Agreement as a whole and not to any particular section or subdivision of this Closing Agreement; and (ff) the words "include," "includes" and "including" are not limiting. All references to "\$" or dollar amounts will be to lawful currency of the United States of America.

(ii) No provision of this Closing Agreement will be interpreted in favor of, or against, either of the Parties by reason of the extent to which either such Party or its counsel participated in the drafting thereof or by reason of the extent to which any such provision is inconsistent with any prior draft hereof or thereof.

(o) No Recourse. Notwithstanding any of the terms or provisions of this Closing Agreement, each Party agrees that neither Party nor any person acting on such Party's behalf may assert any claims or cause of action against any officer, director, stockholder, member or equity owner of the other Party in connection with or arising out of this Closing

Agreement or the transactions contemplated hereby unless the liability for such claims or causes of action are set forth in writing, such as, but not limited to, a guaranty.

(p) No Offer. The submission of this Closing Agreement for signature by any Party shall not be deemed an offer, nor shall any Party have any rights arising therefrom unless and until this Closing Agreement is fully executed by a duly authorized representative of both Parties.

IN WITNESS WHEREOF, the Parties have executed this Closing Agreement as of the date first above written.

James C. Justice Companies, Inc.

By: 

Title: Secretary

Cooper Land Development, Inc.

By: 

Title: President

Justice Holdings, LLC

By: 

Title: Manager