

BOOK NO. 871 JEFFERSON COUNTY

BY-LAWS
OF
BRIAR RUN ESTATES
OWNERS ASSOCIATION, INC.

5446

ARTICLE I

Definitions

Section 1. Association Name. "Association" shall mean and refer to the Briar Run Estates Owners Association, Inc., a non-profit corporation organized and existing under the laws of the State of West Virginia and formed pursuant to the covenants set forth in that certain Declaration of Covenants and Restrictions for Briar Run Estates to be recorded in the Office of the Clerk of the County Commission, Jefferson County, West Virginia.

Section 2. Properties. The Properties shall mean and refer to the following described real property:

All those certain parcels of real estate situate and being in the Charles Town District, Jefferson County, West Virginia, known and designated as Lot Nos. 1 through 37 and Parcel A and B, Phase I of the Briar Run Estates, as shown on that certain subdivision plat to be recorded in the Office of the Clerk of the County Commission, Jefferson County, West Virginia, together with a roads and storm water drainage easement shown thereon.

And such additions thereto as may hereafter be brought within the jurisdiction of the Association as set forth in the Declaration of Covenants and Restrictions for Briar Run Estates to be recorded in the aforesaid Clerk's Office.

Section 3. Additions to Existing Property. The Owner and developer of the subdivision, Marcus Enterprises, Ltd. has reserved for itself and its successors and assigns, the right to add additional property to the jurisdiction of the Association, as set forth in the Declaration of Covenants and Restrictions for Briar Run Estates to be recorded in the aforesaid Clerk's Office. Additions may be without the consent of the Association or members thereof, so long as: (a) such additional property constitutes additional sections and/or Lots of the subdivision; and (b) such additional property is of a residential nature. The developer shall subject such additional properties to the jurisdiction of the Association by filing in the Jefferson County Land Records a Supplemental Declaration, describing the properties to be so added. Owners of the Lots added to the subdivision shall automatically become new members of the Association who shall be responsible for a pro-rated share of the current annual assessment at the date of purchase.

Section 4. Common Properties. "Common Properties" shall mean and refer to the roads and storm water drainage easements shown on any recorded subdivision plat of the properties, and intended to be devoted to the common use and enjoyment of the owners of the properties, and any other properties owned and managed by the Association for the common benefit and enjoyment of the owners of the properties.

ARTICLE II

Location

Section 1. Principal Office. The principal office of the Association shall be located at 608 East Washington Street, Charles Town, West Virginia 25414. Said principal office may be changed to correspond with the address of the President of the Association as it from time to time may change.

ARTICLE III

Membership

Section 1. Persons Eligible. Every person or entity who is a record owner of a fee or undivided fee interest in any Lot in the Subdivision subject shall automatically be a member of the Association, provided that any such person or entity who hold such interest merely as security for the performance of an obligation (such as a mortgagee, trustee or beneficiary of a deed of trust) shall not be a member. The Developer shall at all times be a member (unless the Developer tenders a written resignation of membership to the Association) so long as the Developer or its successors and assigns retain title to any portion of that property acquired by that deed recorded among the Jefferson County land records in Deed Book 619, at page 422.

Section 2. Transfer of Membership. The membership appurtenant to a lot shall pass with title to such lot whether such title shall pass by deed, will, inheritance or otherwise.

ARTICLE IV

Voting Rights

Section 1. Voting Rights. All Lot owners as defined in the preceding section shall be entitled to one vote for each Lot in which they own a fee interest. When more than one person holds such interest or interests in a Lot, all such persons shall be members, and the one vote for such Lot may be exercised as they among themselves determine, but in no event shall more than one vote be cast in respect to any single Lot. Notwithstanding the preceding, the Developer shall be entitled to three votes for each Lot which it owns, plus an additional ten votes so long as the Developer retains title in any remaining portion of that property acquired by that deed recorded among the Jefferson County land records in Deed Book 619, at page 422.

ARTICLE V

Covenant for Maintenance Assessments

Section 1. Creation of Lien and Personal Obligation. Excepting for all unimproved Lots owned by the Developer which are exempt from assessment, the owner of any Lot hereby covenants and agrees, by acceptance of a deed for such Lot (whether or not it is expressly stated in such deed), to pay to the Association in a prompt and timely fashion, annual maintenance assessments.

Such assessments, together with interest thereon, late charges, and all costs of collection, shall constitute a lien upon the title to the Lot against which the assessment is made, and shall further constitute a continuing personal obligation of the person or persons who was the owner of such Lot at the time when the assessment fell due.

[Section 2. Purpose of Assessment. The assessments levied by the Association shall be used exclusively for the maintenance and improvement of the Subdivision and its roadways and Common Properties, for taxes, insurance and utility expenses of common amenities, and for the provision of services to all or the majority of Lots within the Subdivision. Toward such end, the Association shall levy, assess, collect and disburse assessments for road maintenance, snow removal, fees and costs incident to the enforcement of restrictions and collection of assessments, maintenances of the storm water drainage easements, and all other expenditures deemed necessary by the Association to promote and preserve the values and welfare of the Subdivision and its Owners.

Section 3. Assessment Basis and Amount. The annual assessment shall be levied and collected on a calendar year basis by the Association. All Lots, whether improved or unimproved, shall be assessed in an equal fashion. Commencing with the calendar year 1997, the annual assessment shall be established by the Board of Directors of the Association, in such amounts as needed to reasonably afford those expenditures contemplated by the preceding Section, and in view of prior years' expenditures and upon consideration of future needs of the Association, subject to the limitation set forth in the recorded Declaration of Covenants and Restrictions.

ARTICLE VI

Property Rights and Rights of Enjoyment of Common Property

[Section 1. Use of Property. Each member shall be entitled to the use and enjoyment of the common properties and facilities of the Association.

Section 2. Additional Rights. The rights of any member to the use and enjoyment of the Common Properties shall extend to the members of his family who reside upon The Properties or to any of his tenants who reside thereon under a leasehold interest for a term of one year or more, and all guests of the owner.

ARTICLE VII

Association Purposes and Powers

Section 1. Purposes and Powers. The Association has been organized for the following purposes:

To promote, encourage and work for the health, safety and welfare of the residents within Briar Run Estates, Jefferson County, West Virginia, and such additions thereto as may hereafter be brought within the jurisdiction of this Association by annexation; to provide maintenance, repair, upkeep and

improvement of street, alleys, ways, storm sewers, and easements within the said subdivision; to acquire, hold own, manage, lease, mortgage or otherwise deal in and dispose of real or personal property of every kind and character, to accept gifts thereof, from living persons and corporations and by Will or otherwise; to do all other acts and things permitted by the statutes under which this Association is formed which shall at any time appear to be conducive to or expedient for the better accomplishment of its purpose and objectives.

ARTICLE VIII

Meetings

Section 1. Annual Meetings. The annual meeting of the Association for the election of the Directors and for the transaction of such other business as may properly come before the meeting, shall be held no later than January 30 of each year, at a place in Jefferson County specified in the notice of the meeting.

Section 2. Special Meetings. A special meeting of the members may be called at any time by the Board of Directors or by Five (5) members of the Association.

Section 3. Place of Meeting. All meetings of the members of the Association shall be held in the County of Jefferson, State of West Virginia.

Section 4. Notice of Meetings. Notice of each meeting of the Members, whether annual or special, shall be given to each member by mailing to the last known address or delivering a notice thereof to him personally, at least five (5) days prior to the date of the meeting. Every such notice shall be signed by the members making the call for the meeting, or, if called by the Board of Directors, by the President, Vice-President or the Secretary of the Association, and, in addition to stating the time and place of the meeting, shall state briefly the objects thereof, and no business other than that specified in such notice shall be transacted at the meeting, except with the unanimous consent of all members. Notice of the time, place or purpose of any annual or special meeting of the members shall not be required to be given if all the members are present thereat, in person or by proxy, or if every absent member shall in writing, filed with the record of the meeting, either before or after the holding thereof, waive such notice. Notice of any adjourned meeting of the members shall not be required to be given.

Section 5. Quorum. At all meetings of the members of the Association, ten (10) members present in person or by proxy shall constitute a quorum for the transaction of business. In the absence of a quorum, a majority of the members present in person or by proxy may adjourn the meeting from time to time until a quorum be had or those members present may call a further meeting of the members in accordance with Chapter 31, Article I, Section 4a(6) of the Code of West Virginia. Any meeting of the members may be adjourned from time to time though a quorum be present, and at any such adjourned meeting at which a quorum may be present, any business may be transacted which might have been transacted, at the meeting as originally called.

Section 6. Order of Business. The order of business at all meetings of the

members shall be, insofar as applicable, as follows:

- a. Roll call.
- b. Proof of notice of meeting or of waiver thereof. A quorum being present.
- c. Reading of minutes of preceding meeting and action thereon.
- d. Reports of Directors.
- e. Reports of Officers.
- f. Reports of Committees.
- g. Election of Directors.
- h. Unfinished Business.
- i. New Business.

The order of business to be followed at any meeting at which a quorum is present may be changed by the consent of a majority of the members of the Association present in person or by proxy at such meeting. Any change at any meeting in said order of business shall be deemed to have been so changed, unless objection thereto shall have been made by a member present in person and entitled to vote at such meeting.

Section 7. Organization. At every meeting of the members, the President, or, in his absence, the Vice-President, or in the absence of the President and the Vice-President, a chairman chosen by a majority of the members of the Association present in person or by proxy, shall act as chairman. The Secretary of the Association shall act as Secretary at all meetings of the members. In the absence from any such meeting of the Secretary, the chairman may appoint any person to act as Secretary of the meeting.

Section 8. Voting. At every meeting of the members, upon all matters, every member shall be entitled to one vote, except that which may be case in person or by proxy by any person, who, alone or with another person or other persons, holds a membership in the Association. If a membership is held by two persons, the vote shall be as agreed by the two persons and in the absence of agreement, each person shall have a half vote. If a membership is held by three or more persons, the vote of such membership shall be case according to the wishes of the majority of such persons. At all meetings of the members, all matters, except matters the manner of deciding which is especially regulated by statute, and except as otherwise provided in these bylaws, shall be decided by the vote of a majority of the members of the Association present, in person, or by proxy at such meeting, a quorum being present.

Whenever the vote of members at a meeting thereof is required or permitted to be taken in connection with any action of the Association, the meeting and vote of such members may be dispensed with if all of the members who would

have been entitled to vote upon this action, if such meeting were held, shall agree in writing to such action being taken, and such agreement shall have like effect and validity as though the action were duly taken by the unanimous action of all members entitled to vote at a meeting of such members duly called and legally held.

The voting rights of a member shall not be cancelled or otherwise suspended.

As herein above provided, voting may be by proxy. Provided, however, that no proxy shall be valid beyond eleven months of the date of the proxy and in no event shall be binding upon the purchaser or devisee of the grantor of the proxy.

ARTICLE IX

Board of Directors

Section 1. General Powers. The property, affairs and business of the Association shall be managed by the Board of Directors, except as otherwise provided in the by-laws.

Section 2. Number, Term of Office and Qualifications. The number of Directors shall be three (3), but the number may be increased by amendment of these by-laws. A director must be a person eighteen (18) years of age or more, but a director need not be a member of the Association. Each director shall hold office until the annual meeting held next after his election and until his successor shall have been elected and qualified in his stead, or until he shall resign or shall have been removed in the manner hereinafter provided. In case of any directors, the additional directors shall be elected by the members.

Section 3. Election of Directors. All elections of Directors by the members shall be by ballot. If more persons are nominated for the office of Director than there are places to be filled, the persons receiving the greatest number of votes shall be directors.

Section 4. Organizations. At every meeting of the Board of Directors, the President, or in his absence, the Vice-President, shall preside and the Secretary of the Association shall act as Secretary. In the absence from any such meeting of the Secretary, the Board may elect any person to act as Secretary of the meeting.

Section 5. Resignations. Any director of the Association may resign at any time by giving written notice to the President or to the Secretary of the Association. Such resignation shall take effect at the time specified therein, or if the time when it shall become effective shall not be specified therein, then it shall take effect immediately upon receipt by the President and Secretary; and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6. Vacancies. Any vacancy in the Board of Directors because of death, resignation, disqualification, or any other cause, may be filled for the

unexpired portion of the term either by the members at a special meeting thereof held for the purpose, upon notice given as hereinbefore provided for meetings of the members, or (except vacancies caused by removal by the members or by an increase in the number of directors), by the remaining directors at any regular or special meeting of the Board.

[Section 7. Place of Meeting, etc. The Board of Directors may hold its meetings, have one or more offices, and keep the books and records of the Association at such place or places within the State of West Virginia, as the Board may from time to time determine.

Section 8. First Meeting. After each annual election of directors, the Board of Directors shall meet for the purpose of organization and the transaction of other business immediately following the meeting of the members or as soon thereafter as the Board can conveniently meet. Notice of such meeting, if held immediately following the meeting of members at which the directors were elected, need not be given. Such first meeting may be held at any other time or place, which shall be specified in a notice given as hereinafter provided for special meetings of the Board or in a consent and waiver of notice thereof, signed by all the Directors.

Section 9. Regular Meetings. Regular meetings of the Board of Directors may be held at such time or times and upon such notice, if any, as shall be specified in resolutions adopted from time to time by said Board.

[Section 10. Special Meetings. Notice. Special Meetings of the Board of Directors shall be held whenever called by the President or Vice-President or by any two of the directors. Notice of each such meeting shall be mailed to each director, addressed to him at his residence, at least two days before the day on which the meeting is to be held, or be delivered personally or by telephone, not later than the day before the day on which the meeting is to be held. Notice of any meeting need not be given to any director, however, if waived by him in writing, before or after such meeting; and any meeting of the Board of Directors shall be a legal meeting without any notice thereof having been given if all the directors shall be present thereat.

Notice of any adjourned meeting need not be given.

Section 11. Quorum and Manner of Acting. Except as otherwise provided by statute or by these by-laws, a majority of the whole number of Directors shall be necessary to constitute a quorum for the transaction of business at any meeting of the Board and the act of a majority of the directors present at any such meetings at which a quorum is present shall be the act of the Board of Directors. In the absence of a quorum, a majority of the directors present may adjourn the meeting from time to time until a quorum can be had. No member of the Board shall vote on a question in which he has interest otherwise than as a member, except the election of a president or other officer or employee, or be present at the Board while the same is being considered; but if his retirement from the Board in such case reduce the number present below a quorum, the question may nevertheless be decided by those who remain. On any question the names of those voting each way shall be entered on the record of their proceeding if any member at the time require it. The directors shall act only

as a Board and the individual directors shall have no power as such; provided, however, that the vote of directors at a meeting on any action may be dispensed with if all the directors shall agree in writing to such action being taken; and such agreement shall have like effect and validity as though the action were duly taken by the unanimous action of all directors at a meeting of such directors duly called and legally held.

Section 12. Removal of Directors. Any director may be removed, either with or without cause, at any time by the affirmative vote of a majority of the members, given at a special meeting of the members called for the purpose; and the vacancy in the Board caused by any such removal shall be filled by the members at such meeting.

ARTICLE X

Officers

Section 1. Number. The officers of the Association shall be a President, a Vice-President, a Secretary and a Treasurer. One person may hold the offices and perform the duties of any two of said officers except those of President and Vice-President.

Section 2. Election, Term of Office, Qualification. The officers of the Association shall be chosen annually by the Board of Directors. Each officer, except such officers as may be appointed in accordance with the provisions of Section 3 of this Article, shall hold his office until his successor shall have been duly chosen and qualified, or until his death, or until he shall resign, or shall have been removed in the manner hereinafter provided. The President and Vice-President shall respectively be, and remain, directors of the Association.

Section 3. Appointment of Committees. The Board of Directors may appoint such other officers, committees or agents as the business of the Association may require, each of whom shall hold office for such period, have such authority and perform such duties as are provided in these by-laws or as the Board of Directors may from time to time determine.

Section 4. Removal. Any officer may be removed either with or without cause, by a vote of the majority of the whole Board of Directors at any regular meeting of the Board or any special meeting of the Board called for the purpose.

Section 5. Resignations. Any officer may resign at any time by giving written notice to the Board of Directors or to the President, or to the Secretary of the Association. Any such resignation shall take effect at the time specified therein; or, if the time when it shall become effective shall not be specified therein, then it shall take effect immediately upon its receipt by the Board or the President or the Secretary; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6. Vacancies. A vacancy in any office because of death, resignation, removal, disqualification, or any other cause, shall be filled of the unexpired portion of the term in the manner prescribed in these by-laws for regular

appointments or elections to such offices.

Section 7. The President. The President shall be the chief executive officer of the Association and shall have general supervision over the business of the Association and over its several officers, subject, however, to the control of the Board of Directors. He shall preside at all meetings of the members and of the Board of Directors. He may sign and execute, in the name of the Association, contracts or other instruments, authorized by the Board of Directors; and, in general, shall perform all duties incident to the office of President, and such other duties as from time to time may be assigned to him by the Board of Directors.

Section 8. The Vice-President. At the request of the President, or in his absence or disability, the Vice-President may perform all the duties of the President, and, when so acting, shall have all the powers of, and be subject to all the restrictions upon the President; and shall perform such other duties as from time to time may be assigned to him by the Board of Directors or the President.

Section 9. The Secretary. The Secretary shall:

(a) Keep the minutes of the meeting of the members of the Board of Directors in books provided for the purpose.

(b) See that all notices are duly given in accordance with the provision of these by-laws or as required by law.

(c) Be custodian of the records and of the seal of the Association and see that it is affixed to all documents, the execution of which on behalf of the Association under its seal is duly authorized in accordance with the provisions of these by-laws.

(d) Sign such instruments as required the signature of the Secretary.

(e) See that the books, reports, statements, certificates and other documents and records required by law are properly kept and filed.

(f) In general, perform all duties incident to the office of Secretary, and such other duties as from time to time may be assigned to him by the Board of Directors.

Section 10. The Treasurer. The Treasurer shall:

(a) Have charge and custody of, and be responsible for, all funds and securities of the Association, and deposit all such funds in the name of the Association in such banks, trust companies, or other depositories as shall be selected in accordance with the provisions of these by-laws.

(b) Exhibit at all reasonable times his books of accounts and records to any of the Directors of the Association upon request.

(c) Receive, and give receipts from monies due and payable to the

Association from any source whatsoever.

(d) Have charge of the disbursement of the funds of the Association, pursuant to the prior direction and approval of the Board of Directors.

(e) In general, perform all the duties incident to the the office of Treasurer and such other duties as from time to time may be assigned to him by the Board of Directors.

The Treasurer may be required to give bond in such amount as shall be fixed by the Board of Directors, the cost of such bond to be borne by the Association.

Section 11. Salaries. The directors and officers of the Association shall receive no compensation for their services.

ARTICLE XI

Contracts, Checks, Drafts, Bank Accounts, Etc.

Section 1. Contracts, etc. The Board of Directors, except as in these by-laws otherwise provided, may authorize any officer or officers to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Association and such authority may be general or confined to specific instances; and, unless so authorized by the Board of Directors, no officer shall have any power or authority to bind the Association by any contract or engagement or to pledge its credit or to render it liable pecuniarily for any purpose, or to any amount.

Section 2. Disbursements, Checks, Drafts, etc. All checks, drafts or other orders for the payment of money, notes, or other evidences of indebtedness issued in the name of the Association shall be signed by such officer or officers of the Association and in such manner as shall from time to time be determined by resolution of the Board of Directors.

Section 3. Deposits. All funds of the Association shall be deposited from time to time to the credit of the Association in such banks, trust companies or other depositories by any officer or officers of the Association to whom such power may from time to time be delegated by the Board of Directors; and, for such purpose, checks, drafts, and other orders for the payment of money which are payable to the order of the Association may be endorsed, assigned and delivered by the President or the Vice-president, or the Treasurer.

Section 4. General and Special Bank Accounts. The Board of Directors may from time to time authorize the opening and keeping with such banks, trust companies or other depositories as the Board may select of general and special accounts, and may make such special rules and regulations with respect thereto, not inconsistent with the provisions of these by-laws, as they may deem expedient.

ARTICLE XII

Fiscal Year

This fiscal year of the Association shall end on the 31st day of December of each year.

ARTICLE XIII

Seal

The seal of the Association shall be in the form of a circle and shall bear the words Briar Run Estates Owners Association, Inc."

ARTICLE XIV

Amendments

The Board of Directors may, from time to time, make, alter, amend and repeal the by-laws of the Association, subject to the right of the members to alter, amend or repeal any such action taken by the Board.

All by-laws of the Association shall be subject to alteration, amendment or repeal, and new by-laws may be made, by the affirmative vote of a majority of the members of the Association, given at an annual meeting or at any special meeting, provided notice of the proposed alteration or repeal or of the proposed new by-laws be included in the notice of such meeting, provided, however, that no amendment may be made relating to the voting rights of the Developer.

ARTICLE XV

Dissolution

Upon the dissolution of the corporation, the assets, both real and personal of the corporation, shall be dedicated to an appropriate public agency or utility to be devoted to purposes as nearly as practicable the same as those to which they were required to be devoted by the corporation. In the event that such dedication is refused acceptance, such assets, shall be granted, conveyed and assigned to any non-profit corporation, association, trust or other organization to be devoted to purposes as nearly as practicable the same as those to which they were required to be devoted by the corporation, which said non-profit corporation or organization shall also be exempt from federal income taxation under 26 U.S.C. §501.

ADOPTED: AUGUST 11, 1947


Secretary

