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Morgan County  
Kimberly Nickles, Clerk  
Instrument 909200  
11/07/2024 @ 10:37:49 AM  
COVENANTS, RESTRICTIONS, ARTIC  
196  
Pages Recorded 7  
Recording Cost \$ 14.00

**CACAPON SOUTH PROPERTY OWNERS ASSOCIATION**  
**AMENDED and RESTATED DECLARATION OF COVENANTS, CONDITIONS AND**  
**RESTRICTIONS**

WHEREAS the original Declaration, being the "Cacapon South Property Owners Association Declaration of Covenants, Conditions, and Restrictions", dated April 1, 1993, was adopted by Cacapon Associates Limited Partnership, a Maryland Limited Partnership (The "Developer"), as the Declarant and first amended by the Declarant on January 3, 1995; and made of record in the office of the Clerk of the Morgan County Commission in Deed Book 174 at Page 671; and

WHEREAS the membership pursuant to Article IX, number 4, had the authority to amend the governing Declaration or any part thereof at any time by the assent and approval thereof by the Owners of sixty-six and two-thirds percent (66-2/3%) of the Lots voting, in person or by proxy, at a meeting duly called after proper notice for such purpose; and

WHEREAS, on November 2, 2024, at a duly noticed membership, the Owners of sixty-six and two-thirds percent (66-2/3%) of the Lots, voting in person or by proxy, voted to adopt this Cacapon South Property Owners Association Amended and Restated Declaration of Covenants, Conditions, and Restrictions; and

NOW THEREFOR, the Board of Directors of the Association did execute and acknowledge the Cacapon South Property Owners Association Amended and Restated Declaration of Covenants, Conditions, and Restrictions, this 2nd day of November 2024, to be effective upon its recording.

ARTICLE I

Recitals

1. The subdivision contains approximately 203+acres, comprised of 142 Lots, divided into 4 sections with common areas, all as shown on those plats approved by the Planning Commission of Morgan County, West Virginia.
2. The entrance improvements on Route 522 and other designated "common areas", remain all-inclusive under these covenants as declared by the Declarant in 1993 and 1995.

ARTICLE II

Definitions

1. "Association" or "Property Owners Association" shall mean and refer to the CACAPON SOUTH PROPERTY OWNERS ASSOCIATION, its successors and assigns.
2. "Owner" or "Lot Owner" shall mean and refer to the Owner of record, whether one or more persons or entities of the fee simple title to any Lot which is part of the property.
3. "Property" or "Properties" shall mean and refer to that certain real property described above in Article I.
4. "Lot" shall mean and refer to any numbered plot of land shown upon any recorded subdivision plat of the property.
5. "Common Land" or "Common Properties" shall mean and refer to those areas of land that have been deeded to the Association by the Developer and designated as such or as "Common Area" on the subdivision plats, intended to be devoted to the common use and enjoyment of all the Lot Owners. Common Land or Common Properties shall also include any land that may be subsequently transferred to the Association for use as Common Land.
6. "Developer" shall mean and refer to Cacapon Associates Limited Partnership, its Trustee or its Managing Agent or its successor in interest.
7. "Living Area" shall mean that portion of a dwelling house that is generally used for living and is heated and cooled; basement areas, garages, porches, patios, and attics are not included.

ARTICLE III

Membership and Voting Rights in the Association

1. Every owner of a Lot shall be a member of the Association and shall abide by the Association's bylaws and governing documents. Membership shall be appurtenant to and may not be separated from the ownership of the Lot.

CACAPON SOUTH PROPERTY OWNERS ASSOC  
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2. Each Property Owner shall be entitled to cast one vote for each lot, except that there shall be only one vote per Lot. In any situation where a Member is entitled to exercise the vote for his or her Lot, and there is more than one Owner of such Lot, the vote for such Lot shall be exercised as the Co-Owners determine among themselves. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot. The Lot's vote shall be suspended if more than one Member seeks to independently exercise it.

ARTICLE IV  
Lot Assessments

1. Each "Lot Owner" shall sign the deed at the time of conveyance and thereby covenants to pay Association Assessments for common expenses, including the maintenance and improvements of roads, common areas, and the entrance on Route 522 and emergency exit onto Sleepy Creek Road, emergency exit from Wards Lane, taxes and insurance, and such other expenses as may be needed for the operation of the Association. The Association's Board shall administer the assessments and shall review annually the current expenses. The Board shall make available a copy of the final budget, together with notice of the amount of the Base Assessment to be levied pursuant to such budget to each Owner.

2. The annual assessment shall be fixed by the Board of Directors and be due and payable on the 31<sup>st</sup> day of January of each year. Assessments not paid within 30 days shall become delinquent and interest at a rate of 1.5% per month shall be added to the assessment. A prorated portion of the annual assessment shall be payable upon the delivery of the deed to the Lot Owner and the entire annual assessment shall be due and payable on or before the 31<sup>st</sup> day of January of each year thereafter.

3. The annual average common expense liability of any Lot exclusive of optional user fees and any insurance premiums paid by the Developer or the Property Owners Association, may not exceed the sum of \$300.00, as adjusted pursuant to West Virginia Code Section 36B-1-114, as amended Subject to the other provisions of this Article, the maximum permissible annual assessment shall increase each year by no more than an amount allowed under West Virginia Code Section 36B-1-114, as it has been and will continue to be adjusted, unless said code provision is repealed..

4. In addition to the annual assessments and subject to the other provisions of this Article, the Board of Directors of the Association may levy a Special Assessment for a capital improvement or infrastructure repair and maintenance. The Special Assessment may be levied for a duration of no more than five years. The Special Assessment shall be fixed in a Resolution authorizing such assessment and must be approved by fifty-one percent (51%) of the members voting in person or by proxy either at an annual meeting or a special meeting called for that purpose.

5. All assessments are the personal obligation of the Lot Owner and constitute a lien upon the real estate of the Lot Owner. The Association or its agents or representatives may, without notice to the Lot Owner, file a Notice of Lien in the Office of the Clerk of the County Commission of Morgan County, West Virginia, for any delinquent assessment, together with interest and attorney's fees incurred in the preparation and recording thereof. Further the Association or its agents or representatives may take any legal action available to enforce and collect the delinquent assessment including: i) The filing of a suit in equity to foreclose upon the lien under West Virginia Code §55-12-1 or in like manner as a mortgage on real estate or a power of sale under a deed of trust, or ii) The filing of an action at law for damages upon the personal obligation of the Lot Owner. These remedies shall be cumulative and upon prevailing, the Association shall be entitled to recovery of all reasonable attorneys' fees and court costs.

6. The lien created by unpaid assessments shall be subordinate to any prior recorded first mortgage lien placed on the Lot, however, the lien created by assessments shall be due and payable upon the sale and/or transfer of the Lot and at the time of foreclosure on the Lot. Such subordination is merely a subordination and shall not relieve the Lot Owner of the Unit of his, her or its personal obligation to pay all assessments becoming due at a time when he, she or it is the Lot Owner; and no sale or transfer of such property to the mortgagee or to any person pursuant to foreclosure or pursuant to any proceedings executed upon the property, shall relieve any existing or previous Lot Owner of such property or the subsequent Lot Owner from liability from any assessment provided for hereunder which becomes due after such sale or transfer.

7. The Association may demand and receive from the Lot Owner a reasonable charge for the preparation and recordation of the release which shall be recorded in the Office of the Clerk of the County Commission of Morgan County, West Virginia, wherein the notice of lien was filed.

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ARTICLE V  
Board of Directors

1. The Association shall carry out the day-to-day management, conduct the affairs of the Association, and may exercise any right or privilege given to it expressly by the Governing Documents, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. All rights and powers of the Association may be exercised by the Board without a vote of the membership except where applicable law or the Governing Documents specifically require a vote of the membership. The Board of Directors shall consist of no less than five and no more than seven directors, each of whom shall be a Member of the Association and shall serve and be elected in accordance with the bylaws of the Cacapon South Property Owners Association Inc.

2. The Board may institute, defend, settle, or intervene on behalf of the Association in mediation, binding or non-binding arbitration, litigation, or administrative proceedings in matters pertaining to the Area of Common Responsibility, enforcement of the Governing Documents, or any other civil claim or action. However, the Governing Documents shall not be construed as creating any independent legal duty to institute litigation on behalf of or in the name of the Association or its Members.

3. In exercising the rights and powers of the Association, making decisions on behalf of the Association, and conducting the Association's affairs, Board members shall be subject to, and their actions shall be judged in accordance with, the standards set forth in the Bylaws.

4. The Board of Directors of the Association shall also maintain a roster of the Property Owners and keep such roster open for inspection by any Lot Owner, and upon written demand of a Lot Owner, furnish to any Lot Owner liable for an assessment, a certification in writing signed by an officer of the Association setting forth whether such assessment has been paid.

ARTICLE VI  
Architectural Committee

1. No building, fence, wall or other structure shall be commenced, erected or maintained upon the Property, nor shall any extension, addition to or change or alteration thereof be made until the Lot Owner has secured written approval of the detailed site location plan, external appearance, materials, colors, construction plans, specifications, alterations or changes, and applicable landscaping plans as to harmony of external design and location in relation to surrounding structures and topography from the Architectural Review Committee. The Board of Directors may appoint no less than three and no more than seven persons from among its membership to serve as the Architectural Review Committee, and in the absence thereof, the Board of Directors shall serve as the Architectural Review Committee. The primary purpose of requiring such approval is to preserve the aesthetic integrity of the area but the Architectural Review Committee shall not be held responsible for any defects or inadequacies of the plans, whether structural or otherwise.

2. A set of working drawings for the site development plan, construction plan and landscaping plan, once approved, shall be immediately furnished to, and will permanently remain with, the Architectural Review Committee. The site development plan shall, at a minimum, show the proposed location of the driveway and house as well as any incidental structures. The construction plans, in addition to showing adequate design and construction detail, must also specifically show all exterior materials.

3. All approximate exterior grades should be shown on the application. A landscape plan must be provided including proposed paths and outdoor lighting.

4. The Board of Directors may, from time to time, adopt rules relating to the manner in which requests for architectural approval under Article VI may be submitted to the Architectural Review Committee by hand delivery, mail, or electronically.

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ARTICLE VII  
Central Sewer and Water System

1. The Sewer Treatment System lines on each property shall be the exclusive property of Cacapon South Utilities Association, its successors or assigns.
2. No building shall be constructed on any lot until a Sewer permit has been obtained from Cacapon South Utility Association, a not-for-profit company, which is publicly regulated by the WV Public Service Commission, or its successors or assigns
3. Maintenance or replacement of the holding tank and line from house to tank is the responsibility of the lot owner.
4. The Developer reserves the right to grant easements for installation and maintenance of public utilities along the property lines of all lots in addition to easements reserved by any other instrument fully recorded for access on each lot to service the solids holding tank and lines of any Central Sewer or Public Water System serving the Property.

ARTICLE VIII  
Restrictions

1. Subdivision: No Lot shall be further subdivided. No more than one single family residence served by a single septic system or single holding tank shall be erected on any one Lot.
2. Size of House: Lots may be used only for single-family residential purposes and any dwelling built after the date of the recording of this Amended and Restated Declaration shall have a finished living area of a minimum of twelve hundred (1200) square feet. No ground floor of any dwelling of two or more floors built after the date of the recording of this Amended and Restated Declaration may contain less than eight hundred (800) square feet of living area.
3. Setbacks: No part of any building erected on any lot shall be closer than twenty (20) feet to any lot line or closer than one hundred (100) feet from the center line of any existing or proposed road unless otherwise approved by the Architectural Review Committee.
4. Easement area: No lot Owner shall erect or allow to be erected any structure within, or otherwise obstruct, any easement across his lot. No parking shall be permitted upon any road or right-of-way within the Property at any time, and as part of the development of any Lot, every Lot shall provide for adequate off-street parking for its residents and guests.
5. House Location: Each Lot has a recorded plat designating any applicable well and holding tank locations, so as to maintain the integrity of the Sewer System. These exact locations must be specifically adhered to unless approved, in writing, by the Architectural Review Committee. If an alternate location is approved, the Lot Owner shall be required to move the well or holding tank at his/her own expense.
6. Driveways: Unless otherwise approved by the Architectural Review Committee, culverts of sufficient size (and not less than fifteen (15) inches in diameter, shall be installed and maintained by the Lot Owner of each lot at his expense to provide adequate drainage for the driveways of a lot; provided, however, that no Owner shall interfere with the drainage of surface water from or to his Lot which would in any way be detrimental to any other Lot or the roads and common areas of the subdivision.
7. Exterior Construction must be completed and closed within ten (10) months of the commencement of construction. No building of a temporary nature shall be erected or placed on any Lot except those customarily erected in connection with building construction operations; and in such cases, for a period not to exceed four (4) months.
8. Sheds and Like Storage Structures: Any shed, utility building, garage, barn, or outbuilding of any type placed upon the Lot must conform generally in appearance and material with that single family residence constructed on the Lot and no shed, utility building, garage, barn or other out building of any type shall be constructed prior to the completion of construction of the single family residential dwelling. No shed, utility building, garage, barn, or outbuilding of any type may be used for overnight accommodations or as a living quarters on a temporary or permanent basis unless approved by the ARC for said purpose. Any such approval shall be limited to one structure and any such approved structure may never be leased or rented.
9. Modular homes that are sectional shall be permitted, provided they meet the square footage requirements of 2 above, are approved by the Architectural Review Committee, have wood or rustic siding and asphalt, metal or fiberglass shingle roofs with a minimum of 4/12 pitch and are installed on a permanent foundation.

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10. Fences: Any fences erected in the front yard and the side yard to the depth of the dwelling shall be constructed of wood, stone or plantings (hedges/tree rows) and must be kept in good condition and repair. Any fences, hedges or similar barriers, wherever located on the property, must also be kept in good repair.

11. Land use: Lots shall be used for residential purposes and recreational activities of the residents only. No commercial use, structure, activity of any type or nature shall be permitted.

12. Required screening: The following items and activities must be thoroughly screened by appropriate plantings or a fence:

(a) Refuse, recyclable, and trash containers. (All refuse, recyclables, and trash must also be kept in closed sanitary containers at all times.)

(b) Fuel storage tanks.

(c) Garden equipment and supplies.

13. Maintenance of Property: Each Owner shall maintain, repair, and restore, as necessary, the exterior of any buildings or other improvements erected on any lot owned by him. Each lot Owner likewise agrees to repair and restore, to its prior condition, within fourteen (14) days any part of a subdivision road damaged by equipment of such Lot Owner or his agents, employees or contractors enroute to or from the Owner's Lot. All Lots, improved or unimproved, must be maintained by the Owner in a neat, attractive, and orderly condition consistent with good property management at all times. Grass and lawns, if any, must be maintained to a height of no more than 8 inches. No garbage, refuse, trash, junk, abandoned personal property, inoperative vehicle, yard waste, or other debris shall be permitted to accumulate or remain on any Lot. In the event any Lot Owner shall fail to discharge the aforesaid responsibilities, the Association shall have the right, through its agents, to enter upon the Lot and perform necessary maintenance, repairs, and restoration, or to remove any offending material or object. Such action shall not be deemed a trespass, and the cost of the same when performed by the Association shall be charged to and become an assessment against the Lot and shall be both the personal obligation of the Lot Owner and a lien against the Lot.

14. Cutting of Timber: Lots shall not be clear cut or timbered. No living tree having a breast height diameter of at least twelve (12) inches shall be removed from any Lot unless approved for removal by the Association.

15. Activities: No noxious, hazardous, or offensive use, or activity shall be conducted on any Lot, nor shall anything be done thereon which may be or tends to cause embarrassment, discomfort, annoyance, or nuisance to occupants of other Lots within the Properties by reason of unsightliness, or the excessive emission of fumes, odors, glare, heat, vibration, gases, vapors, chemicals, radiation, dust, liquid waste, smoke or noise.

16. Signs: No sign of any kind larger than 10 square feet shall be displayed on any lot, except temporary signs in connection with the construction, lease or sale of houses or lots. Street name, project sign and directional signs are exempted.

17. Firearms: The discharge of firearms or bows for hunting or target shooting is prohibited within the Property.

18. Vehicles: The use of any motorcycle or motor vehicle without proper noise abatement equipment is prohibited within the Property. Operating dirt bikes, motor-cross bikes, atv's, and off-road vehicles of any kind is prohibited within the Property. No truck with a gross vehicular weight rating in excess of 15,000 pounds, commercial tractor, trailer, bus, or inoperative, unlicensed, junk or unsightly vehicle of any type may be left or abandoned on any Lot. No recreational or habitable vehicle or trailer of any nature shall be kept or stored on any street within the Property or upon any Lot unless it is obscured from view from the street and adjoining Lots. All vehicles operated within the Property shall be duly licensed and in compliance with all State and Federal regulations.

19. Animals: No animals shall be kept on any Lot except for those common domestic animals normally considered to be household pets, and then only in reasonable numbers and for no commercial purposes. Pets must be kept in such a manner as to avoid being or becoming a nuisance or threat to Lot Owners and their guests. .

20. Well capping height: All well casings shall be extended vertically to the height of the one-hundred-year flood elevation for the Lot, as shown on the final plat.

21. No Lot may be conveyed or used pursuant to a time-sharing plan and no Lot shall be rented for a period of less than 30 consecutive days; provided that if a Lot Owner can establish that during the period January 1, 2021 through October 28, 2022 the Lot Owner was using or requested the right to use the Owner's Lot for rentals for periods of less than thirty consecutive days and advised the Board of Directors in writing of the Lot Owner's intention to continue with rentals for periods of less than thirty consecutive days, then that Lot Owner may for the limited duration of his or her ownership of the Lot continue to engage in rentals for periods of less than thirty consecutive days; provided further that this exception permitting short term rentals shall terminate upon any change in ownership of the Lot. Nothing in this paragraph shall or is intended to extend to, change, or alter, in any way, those prohibitions and restrictions of paragraph 8 above.

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ARTICLE IX  
Common Area

1. The Common Areas shall be owned by the Association as set forth in Article II. The Common Areas may be graded, and trees, shrubs or other plants may be placed and maintained thereon for the establishment, retention or preservation of the natural growth or topography of the Common Areas, or for aesthetic reasons. No portion of any Common Area may be used exclusively by a Lot Owner for personal gardens, storage facilities or other private uses without the prior written approval of the Association.
2. No noxious or offensive activity shall be carried on upon any Common Area nor shall anything be done thereon which will become an annoyance or nuisance to the neighborhood.
3. The Association shall improve, develop, supervise, manage, operate, examine, inspect, care for, repair, replace, restore, and maintain the Common Areas as from time to time improved, together with any items of personal property placed or installed thereon, all at its own cost and expense.
4. The Association shall have the right to enter onto the Common Areas, including the berms, and those portions of the Owner's Lots designated as Common Areas for the purpose of maintaining the Common Areas and performing any other action necessary or appropriate to carry out the intent of this Declaration.

ARTICLE X  
General Provisions

1. Termination of Developer Rights: All rights and duties of the Developer set forth in these covenants shall terminate when the last lot is sold, and if not sooner transferred, shall be automatically transferred at such time to the Property Owners Association.
2. Building Covenants: These covenants, conditions, and restrictions shall be considered real and running with the land and shall be binding upon all Lots and all Lot Owners, both initially and in the future.
3. Invalidation: The invalidation of any part of these covenants, conditions, and restrictions shall not affect the remainder and all remaining provisions shall remain in full force and effect and, insofar as any covenant, condition, or restrictions shall be later determined to be invalid, said covenant, condition, and restriction is hereby amended to conform with requirements of the law.
4. Amendment: This Declaration or any part thereof may be amended at any time by an appropriate document recorded among the Land Records of Morgan County, West Virginia. Such document must be executed and acknowledged by the Board of Directors of the Association following the assent and approval thereof by the Owners of sixty-six and two-thirds percent (66-2/3%) of the Lots voting, in person or by proxy, at a meeting duly called after proper notice for such purpose.
5. Enforcement. The Association may take the following enforcement procedures to ensure compliance with the Declaration without the necessity of notice or opportunity for hearing:
  - (i) exercising self-help in any emergency situation; or
  - (ii) bring suit at law or in equity to enjoin any violation or to recover monetary damages or both; or
  - (iii) bring suit at law for the recovery of unpaid assessments, or liens; or
  - (iv) foreclose upon any lien; or
  - (v) exercising self-help in any enforcement of the Regulations and Use of the Rights of Way or Common Areas; or
  - (vi) in the case of an Owner failing to perform their maintenance responsibility, the Association may, after

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sending a notice of violation and providing an opportunity of no less than thirty (30) days to cure the

problem, perform such maintenance responsibilities and assess all costs incurred by the Association against the Unit and the Owner as a Specific Assessment.

All remedies set forth above shall be cumulative with any remedies available at law or in equity. In any action to enforce the Declaration, if the Association prevails, it shall be entitled to recover all reasonable attorneys' fees and court costs incurred in the action. The decision to pursue enforcement actions in any particular case shall be left to the Board's sole discretion. The right of the Association to pursue enforcement shall be in addition to and not in lieu of a Members right to enforce.

WITNESS the following signature(s) and seal(s).

*Carol Wiles*

Cacapon South Property Owners Association, Inc.  
By Its President: Carol Wiles

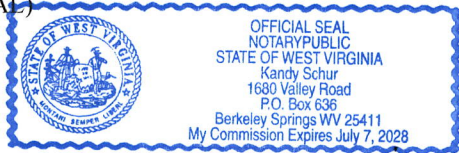
STATE OF WV  
COUNTY OF Morgan, to-wit:

I, Kandy Schur, a Notary Public in and for the abovesaid County and State, do hereby certify that **Carol Wiles, as President of Cacapon South Property Owners Association, Inc.**, whose name is signed to the writing hereto annexed, bearing date the 7 day of NOV, 2024, has this day acknowledged the same before me in my said County and State.

Given under my hand this 7 day of NOV, 2024.

My commission expires: July 7, 2028

(PLACE OF NOTARIAL SEAL)



*Kandy Schur*

NOTARY PUBLIC

County Clerk's Office  
Morgan County, West Virginia

NOV 07 2024

The foregoing writing, was this day presented in said office and thereupon admitted to record. at 10:37.

Testes

Clerks

*Kentucky Nickles*

**LIMITED AMENDMENT to ARTICLE VI of the CACAPON SOUTH PROPERTY OWNERS ASSOCIATION AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

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WHEREAS, pursuant to Article X, number 4, the membership retained the authority to amend the governing Declaration or any part thereof at any time by the assent and approval thereof by the Owners of sixty-six and two-thirds percent (66-2/3%) of the Lots voting, in person or by proxy, at a meeting duly called after proper notice for such purpose; and

WHEREAS, at a duly noticed meeting of the membership, the Owners of sixty-six and two-thirds percent (66-2/3%) of the Lots, voting in person or by proxy, voted to adopt this "Limited Amendment to Article VI of the Cacapon South Property Owners Association Amended and Restated Declaration of Covenants, Conditions, and Restrictions"; and


NOW THEREFOR, the Cacapon South Property Owners Association Amended and Restated Declaration of Covenants, Conditions, and Restrictions of November 2, 2024 is amended this 2nd day of November 2024, as follows:

1. Article VI, Paragraph Number 5, of the Cacapon South Property Owners Association Amended and Restated Declaration of Covenants, Conditions, and Restrictions is added and shall read:

5. The Board of Directors may, from time to time, adopt architectural guidelines as to other matters, including standards for architecture, design, appearance, color, material, numerosity, placement, construction, and landscaping, however no such guidelines shall be effective without the assent and approval thereof by the Lot Owners of fifty-one percent (51%) of the Lots voting, in person or by proxy, at the annual meeting or a meeting duly called and noticed for such purpose.

In all other respects, the Cacapon South Property Owners Association Amended and Restated Declaration of Covenants, Conditions, and Restrictions dated November 2, 2024, shall remain unchanged hereby.

WITNESS the following signature(s) and seal(s).

  
\_\_\_\_\_  
Cacapon South Property Owners  
Association, Inc.  
By Its President: Carol Wiles

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STATE OF WV  
COUNTY OF Morgan, to-wit:

I, Kandy Schur, a Notary Public in and for the abovesaid County and State, do hereby certify that **Carol Wiles, as President of Cacapon South Property Owners Association, Inc.**, whose name is signed to the writing hereto annexed, bearing date the 7 day of Nov, 2024, has this day acknowledged the same before me in my said County and State.

Given under my hand this 7 day of NOV, 2024.

My commission expires: July 7, 2028

(PLACE OF  
NOTARIAL SEAL)

Kandy Schur  
NOTARY PUBLIC



County Clerk's Office **NOV 07 2024**  
Morgan County, West Virginia

The foregoing writing, was this day presented  
in said office and thereupon admitted to record,  
at 10:37. Testes

Kimberly Nickles  
Clerks