

MILL CREEK KNOBS

DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS
AND RESTRICTIONS

Filed: 11-18-05
RCS LLC
C/o Robert R. Williams
P.O. Box 664
Moorefield, W.V.
26036

THIS DECLARATION, made this 12th day of November, 2005, by R C S, LLC, a West Virginia Limited Liability Company, its successors and assigns ("Declarant").

KNOWN ALL MEN BY THESE PRESENTS: That the undersigned known and referred to as "Declarant", does hereby create a Common Interest Community pursuant to the West Virginia Code, as amended, named MILL CREEK KNOBS situate in Mill Creek District of Hampshire County, West Virginia, which real estate was conveyed unto R C S, LLC, a West Virginia Limited Liability company, by deed from Gustav Imhauser and Marion Imhauser, dated June 3, 2005, and of record in the Office of the Clerk of the County Commission of Hampshire County, West Virginia, in Deed Book No. 444, at page 237.

WHEREAS, Declarant is the owner of the real property described herein and desires to create thereon a primarily residential community with roads for the benefit of said community; and

WHEREAS, Declarant desires to provide for the preservation of the values, amenities and natural beauty of the landscape in said community and for the maintenance, including snow removal, of all roadways therein, and to this end, desire to subject the real property described as being a part of "Mill Creek Knobs" subdivision 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

WHEREAS, Declarant has deemed it desirable for the efficient preservation of the values and amenities in said community to create an Association to which should be delegated and assigned the powers of maintaining and administering the community facilities, and administering and enforcing these protective covenants, conditions and restrictions, and collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, Declarant will incorporate under the laws of the State of West Virginia as a non-profit, non-stock corporation, the Mill Creek Knobs Lot Owners Association, Inc., for the purpose of exercising the functions aforesaid.

NOW, THEREFORE, it is hereby declared that the real property described as being a part of Mill Creek Knobs, is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens (sometimes referred to as "Covenants, Conditions and Restrictions") hereinafter set forth.

ARTICLE 1: DEFINITIONS

The following words when used in this Declaration or any Supplemental Declaration (unless the context shall prohibit) shall have the following meanings:

- (a) "Association" shall mean and refer to Mill Creek Knobs Lot Owners Association, Inc.
- (b) "The Properties" shall mean and refer to all such existing properties as are subject to this Declaration, or any Supplemental Declaration, as described in Article II, Section 1, hereof.
- (c) "Roads and Other Common Facilities" shall mean the areas of land shown on any recorded subdivision plat(s) of The Properties which are intended to be devoted to the common use of the owners of The Properties as labeled on said plat(s).
- (d) "Lot" or "Tract" shall mean and refer to any numbered tract or parcel of land as shown upon any recorded subdivision plat of The Properties or any individual tract plat captioned as being a part of Mill Creek Knobs.
- (e) "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Tract or Lot situated upon The Properties but, shall

not mean or refer to the beneficiary of any deed of trust unless such beneficiary has acquired title pursuant to foreclosure or proceedings in lieu of foreclosure.

- (f) "Member" shall mean and refer to all those Owners who are or become members of the Association as provided in Article III, Section 1, hereof.

**ARTICLE 2: REAL ESTATE DEDICATED TO AND MADE A PART OF MILL CREEK KNOBS
SUBDIVISION AND SUBJECT TO THIS DECLARATION**

Section 1. TRACTS. The real property which is, and shall be, held, transferred, sold, conveyed, and occupied subject to this Declaration is located in Mill Creek District of Hampshire County, West Virginia, and there shall be placed of record in the Office of the Clerk of the County Commission of Hardy County, West Virginia, plats of survey and descriptions of survey for the individual tracts comprising "Mill Creek Knobs" which real estate was conveyed unto R C S, LLC, a West Virginia Limited Liability Company, by deed from Gustav Imhauser and Marion Imhauser, dated June 3, 2005, and of record in the Office of the Clerk of the County Commission of Hampshire County, West Virginia, in Deed Book No. 444, at page 237. It is expressly understood that "Tract B", containing 43.7 acres, more or less, as designated upon the Mountain Run plat of survey is not deemed to be a part of Mountain Run subdivision however should the owners of said "Tract B", or any part thereof, elect to use that certain forty foot (40') and thirty foot (30') wide subdivision right of way as depicted on the master plat, for purposes of ingress and egress over Lot 5 to County Route 28/6, said owner(s) shall be obligated to pay such road maintenance fee as is equivalent to that set hereinafter or subsequently set by the Lot Owners Association, and shall further maintain the thirty foot (30') wide right of way traversing through the adjoining Lot 5 of Mill Creek Knobs subdivision. Should "Tract B" relinquish its right to the use of said right of way the obligation to maintain the thirty foot right of way over Tract 5 and pay Association fees for road maintenance of the subdivision roadways shall terminate.

Section 2. FURTHER SUBDIVISION.

Tracts within The Existing Property may be further subdivided, divided or portioned by sale, gift, devise or other method so long as same are made in accordance with the Hampshire County Planning Commission ordinances and standards.

The Declarant further reserves the right to resurvey, replat, re-subdivide or establish new division lines on any unsold lots or lots re-purchased by the Declarant.

Section 3. DEVELOPMENT RIGHTS.

The Declarant may develop all or part of additional real estate as subsequent sections to Mill Creek Knobs, and Declarant reserves the right to incorporate all or part of such additional property into this Declaration at a later date by filing of a supplemental declaration or declarations for that purpose or by incorporating this declaration by reference in the deeds of conveyance for those lots.

Section 4. RESERVATION OF ROADWAYS.

The Declarant reserves unto itself, its successors and assigns, a forty foot (40') wide perpetual, alienable, and releaseable easement over, upon, across and under each Tract for the construction, maintenance, upkeep, repair and use of the roadways and rights-of-way, the location or locations thereof are as shown on the master plat of Mill Creek Knobs or any duly recorded revisions thereof. The aforesaid reservations grant the Declarant such rights as are necessary to construct ditches, drains and install culverts on or off the rights-of-way or roadways of the subdivision. Said roadways shall be used in common by the Declarant, Tract owners, and their respective heirs, successors and assigns, and the Declarant reserves the right to use, and grant unto others, any and all subdivision roads to access any property currently owned or obtained in the future adjacent to Mill Creek Knobs subdivision.

There is a forty foot (40') wide and thirty foot (30') wide right of way through Mill Creek Knobs as depicted upon the master plat. The thirty foot (30') wide right of way on Tract 5 is for the exclusive use of Tract 5, however, it is expressly understood that the adjoining real estate designated as "Tract B", containing 43.7 acres, more or less, upon the Mountain Run plat of survey is not deemed to be a part of Mountain Run subdivision however should the owners of said "Tract B" elect to use that certain forty foot (40') and thirty foot (30') wide subdivision right of way as depicted on said plat, for purposes of ingress and egress over Lot 5 to County Court 28/6, said owner(s) shall be obligated to pay such road

maintenance fee as is equivalent to that set hereinafter or subsequently set by the Lot Owners Association, and it shall be the sole responsibility of the owners of "Tract B" to provide for the maintenance and upkeep of that certain thirty foot (30') wide right of way traversing through the adjoining Lot 5 of Mill Creek Knobs subdivision to "Tract B." Should "Tract B" relinquish its right to the use of said right of way the obligation to maintain the thirty foot (30') right of way over Tract 5 and to pay Association fees for road maintenance of the subdivision roadways shall end.

ARTICLE 3: MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 1. MEMBERSHIP. Every person or entity who is a record Owner of a fee, or undivided fee, interest in any Lot which is subject by covenants of record to assessment by the Association, shall be a Member of the Association, provided that such person or entity who holds such interest merely as a security for the performance of an obligation shall not be a Member, and further provided that the Declarants, without regard to the assessments required as set forth herein, shall be entitled to one membership for each Lot for which they are a record Owner of a fee interest.

Section 2. VOTES. Where more than one person or entity constitutes the owner of a lot, the vote with respect to such lot shall be exercised as if the persons or entities holding title is one (1) vote.

Section 3. MEMBERS' VOTING RIGHTS SUBJECT TO ASSESSMENT: Each Member of the Association shall ensure that any assessment due for each Lot owned is current and that Member's right to vote is subject to being in good standing with the Association. Should default in the payment of an assessment continue in excess of two (2) months from the due date of that assessment, the Member shall automatically be prohibited from voting on issues exclusively concerning monetary expenditures. Voting privileges shall be reinstated upon application to the Association's Board of Directors and the delinquent assessment, including any statutory interest due for the period of default, being brought current with the Association. The Association Minutes shall reflect any default and reinstatement of the Board. This section shall not supersede the right of the Association to attach a lien to any Lot with past assessments or prevent the Association from taking such other legal remedies as may be available for the collection of assessments.

ARTICLE 4: PROPERTY RIGHTS IN THE COMMON PROPERTIES

Section 1. COMMON ELEMENTS. Declarant hereby dedicates as common elements which shall be used and maintained by the Association, all subdivision roads as shown and designated upon subdivision plat/plats, and the right of use same for purposes of ingress and egress to the public highway, shall be appurtenant to and run with the title to every lot in said development.

Section 2. EXTENT OF MEMBERS' EASEMENTS. The rights and easements created hereby shall be subject to the right of the Association to dedicate or transfer the maintenance responsibilities for the roads to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members, provided that no such dedication or transfer, or determination as to the purposes for the same or as to the conditions thereof, shall be effective unless the provisions in the Articles of Incorporation for the Association as to such transfer are complied with.

ARTICLE 5: UPKEEP OF COMMON INTEREST COMMUNITY

Section 1. CREATION OF COMMON EXPENSE LIABILITY. Except the Declarant and the Owners of Lots not subject to maintenance assessments under Section 8 herein, each Owner of a Lot in Mountain Run, by acceptance of a Deed therefore, shall be deemed to covenant and agree to pay to the Association the annual assessments to be fixed and collected in accordance herewith. The annual assessments, together with such interest thereon and costs of collection thereof, shall be a charge on the land and shall be a continuing lien upon the Lot or Lots against which the assessment is made and shall be the obligation of each person or entity owning the property at the time when the assessment became due. Nothing herein shall be construed as requiring the Declarants to maintain the Roads after they cease to own same, and in consideration of the initial construction cost Declarants shall further be exempt from collection of assessments.

Section 2. ASSESSMENTS. The assessments levied by the Association shall be used exclusively for the purpose of improvement and maintenance of Roads within the subdivision. Such levies may be expended specifically to include, but are not limited to, the payment of insurance and expenses for any common elements, and repair, replacement, and additions thereto, and for the cost of labor,

equipment, materials, management, and supervision thereof, and such other purposes as may be set forth in the Articles of Incorporation and the By-Laws of the Association. The Association shall obtain and keep current the insurance required by the West Virginia Code, as amended.

Section 3. BASIS OF ANNUAL ASSESSMENTS. The initial assessment for upkeep, maintenance, repair and replacement of common elements shall be \$100.00 per assessed Lot. The assessment may be changed annually by a vote of the Members as hereinafter provided. The officers and Board of Directors of the Association shall at all times maintain and operate the Association on a non-profit basis. Unless otherwise provided herein or in the Association articles and bylaws, any change in assessments shall be based upon the budget that is proposed by the Board and has the assent of a majority of the members who are voting in person or by proxy at a regular or duly called special meeting pursuant to the provisions contained in the Association documents.

Section 4. INITIAL ASSESSMENT. The annual assessments provided for herein shall be on a calendar year basis, due and payable by the first business day in January of each year hereafter. Lot owners purchasing from Declarants will be responsible for payment at closing of the assessment prorated to the end of the year in which they purchase, at the initial rate of One Hundred Dollars (\$100.00) annually. Such prorated assessments may be utilized by Declarants for the maintenance of the roads. Declarants may collect such annual assessments as are herein provided to fund such maintenance during their ownership period, and Declarants shall enjoy all remedies of the Association in the event of nonpayment of the assessment by Lot Owners. Assessment paid to the Declarant shall be held in an interest-bearing bank account and unused funds shall be transferred to the Association upon its initial elections of officers comprised of Owners at the time the initial Directors of the Association resign. Subject to other conditions herein, the meeting for elections may be held at the Declarants' discretion. As soon as fifty percent (50%) of the lots in said Mountain Run have been sold, the purchasers thereof shall cause to be formed a property owners association which the purchaser of each lot, by the acceptance of a deed therefore, agrees to become, and shall be, a member of the property owners association. Among the purposes and duties of said association shall be the enforcement of all of these restrictive covenants and conditions, the establishment of reasonable assessments against the several owners in order to insure reasonable and proper maintenance of the roads, and the transaction of such other business as may be permitted by law. The association shall also provide that each owner of a lot be entitled to one (1) vote for each lot purchased or owned by him, her or them.

Section 5. DELINQUENT ASSESSMENTS. If not paid by the date due, that assessment shall be deemed delinquent and shall, together with such interest thereon and cost of collection thereof, become a continuing personal obligation of the Owner, his heirs, devisees, and assigns, unless reduced to a lien when it shall pass to his successors in title. The Association upon written request shall furnish to the Lot Owner a statement setting forth the amount of unpaid assessments against the Tract.

Section 6. LIEN FOR ASSESSMENTS. If the assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest from the date of delinquency at the highest legal rate. The Association may bring an action at law against the Owner personally obligated to pay the same, and a judgment or decree in any action brought under this section shall include the costs of filing the complaint and reasonable attorney fees.

Section 7. PRIORITY OF THE LIEN. A lien under this section is prior to all other liens and encumbrances on a Lot except those liens and encumbrances now or hereafter filed prior to the declaration.

Section 8. EXEMPT PROPERTY. Notwithstanding anything herein to the contrary, the following special properties subject to this Declaration shall be exempted from the assessments, charges and liens created herein:

- (a) all properties to the extent of any easement or other interest therein dedicated and accepted by a public authority and devoted to public use;
- (b) all properties exempted from taxation by the laws of the State of West Virginia, upon the terms and to the extent of such legal exemption;
- (c) all properties owned by Declarants during the period of Declarants' ownership only, whether during initial, original ownership or pursuant to foreclosure or proceedings in lieu of foreclosure;

ARTICLE 6: COMMON PROTECTIONS AND PROTECTIVE COVENANTS

Section 1. SETBACK MINIMUMS. No building or any part thereof shall be erected on any Lot closer or nearer than thirty feet (30') to all roads (interior and exterior as depicted on the recorded plat) and exterior property boundary lines; and twenty feet (20') to all other interior property boundary lines. This restriction shall not include septic system reserve areas.

ARTICLE 7: UTILITY EASEMENTS

The Declarants reserve unto themselves, their successors and assigns, the right to construct and maintain all utility and electric lines, or to grant rights-of-way therefore, with the right of ingress and egress for the purpose of installing or maintaining the same on, over or under a strip of land twenty feet (20') from the roadway boundary lines and ten feet (10') along the interior boundary lines of each Tract. Such utility easements are to include, but are not limited to, telephone or electric light poles, conduits, equipment, sewer, gas and water lines. Any Owner placing structures, plantings or improvements or other materials within the aforesaid easements undertakes any interference with the utility easements at his or her own risk and is deemed to waive any and all release any and all parties from any and all claims or damages to said improvements if and when maintenance or other work is performed within the easement area. Each road right-of-way is forty feet (40') in total width, being twenty feet (20') on either side of the roadway center line. Roadway boundary lines shall be measured from the edge of the right-of-way.

ARTICLE 8: RESIDENTIAL AND AREA USE

Section 1. All Lots shall be used for residential and recreational purposes only.

Section 2. Before construction begins on any residence or dwelling, the lot owner shall install an appropriate driveway or entrance to the lot. Such entrance shall include the installation of a culvert of at least fifteen inches (15") in diameter and of a twenty foot (20') minimum length to permit proper drainage in any drainage ditches the driveway will cross. No exterior siding of masonry block or cinder block shall be permitted. All dwellings shall have an enclosed permanent foundation. All external construction and external finishing of a dwelling on said lots shall be completed within eighteen (18) months from the commencement of construction. Failure to externally complete a dwelling within eighteen (18) months from the commencement of the construction and failure to maintain any vacant lot in such condition as will not detract from the subdivision shall be deemed to be a violation of these covenants. All construction waste material must be removed property within two (2) months from completion of any dwelling, residence or structure. In the event of destruction by fire or natural causes of a dwelling or other structure, removal of debris and reconstruction of a building thereon shall likewise comply with this covenant.

Section 3. There shall be no single-wide or double-wide mobile homes or manufactured homes (as they are defined in West Virginia Code §37-15-2 and §21-9-2(j)), house trailers, or buses situate on any Lot for use as a residence or for the storage of materials therein, either temporarily or permanently. This section shall not be construed to exclude modular homes constructed according to BOCA or CABO code, and any such modular home must be factory built, transported in sections, placed and affixed to a solid foundation without wheels or towing hitch or tongue. No exterior siding of masonry block or cinder block shall be permitted. All dwellings shall have an enclosed permanent foundation.

Section 4. Improvements and construction for the maintenance of animals shall be kept in good repair, shall be constructed of new materials and must conform generally in appearance with any dwelling upon a Lot, although such improvements need not be constructed of materials identical to an existing dwelling. No such improvements shall precede the construction of the dwelling. Each Lot Owner shall maintain any such improvements placed upon any Lot and no unsightly or dilapidated buildings or other structures shall be permitted on any Lot.

Section 5. No dwelling house shall be erected or maintained on any Lot unless there is constructed with it a sewage disposal system which conforms to the regulations of and must be approved by the West Virginia Division of Health. Free standing toilets or closets are prohibited, however, portable toilets may be utilized only during the construction period of a residence.

Section 6. Use of any Lot(s) or activities conducted upon said Lot(s) shall not pollute or cause waste water to contaminate or flow into any spring, lake, pond, river, drain or stream crossing such

property or situate near such property. No salvage or junk yard operations are permitted within the Existing Properties.

ARTICLE 9: ROADWAYS, PARKING AND JUNK AUTOMOBILES

Section 1. No automobiles or other motor vehicles shall be parked in or within fifteen feet (15') from the rights-of-way or roads of the subdivision, and no on-street parking is permitted.

Section 2. Junk, inoperable or unlicensed vehicles may not be stored or kept on any Tract unless housed in a garage of the type described above.

Section 3. The speed limit on subdivision roadways shall be twenty (20) miles per hour and Tract Owners, in consideration of the other Members, shall limit the use of the roadways for ingress and egress to their own properties unless a guest of other Tract Owners.

ARTICLE 10: ADVERTISING

No advertising signs or billboards of any nature shall be erected, placed or maintained on any Tract, with the exception of address, identification signs, builders' job location signs and real estate signs offering the premises for sale, none of which exceptions shall exceed four square feet (4') in size. Declarant shall have the right to construct entrance signs and structures which shall remain erected on the Tract upon which each is situate. The Association shall repair and maintain such signs, and shall have the right to enter upon The Existing Property on which the same are affixed as is reasonably necessary.

ARTICLE 11: AGRICULTURE

No commercial poultry or swine agricultural production may occur on any Tract. Proper fencing shall be required for livestock. Hunting and fishing are allowed per West Virginia law.

ARTICLE 12: COMMERCIAL USE

No Tract shall be used for commercial purposes, save that same may be utilized for in-home occupations, excluding garages for automobile maintenance and repair, although no signs or advertisements thereof will be permitted with The Existing Property.

ARTICLE 13: NUISANCE

No noxious, noisy or offensive activity shall be carried on within the Existing Property, nor shall anything be done therein which may be or which may become an annoyance or nuisance to the neighborhood. No toxic or hazardous materials shall be produced or stored within The Existing Property at any time. No Tract shall be used or maintained as a dumping ground for rubbish.

ARTICLE 14: WASTE

No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other or other waste must be kept except in sanitary containers. All incinerators or other equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition. All Owners must comply with state and federal regulations pertaining to installation and maintenance of fuel storage tanks. All Lots shall be kept free and clear of trash and rubbish at all times and shall be kept mown, and no salvage or junk yard operations are permitted with The Existing Properties. The Association shall ensure that trash collection is provided to each Tract regardless of whether the Tract is occupied, and trash collection charges shall be collectable from Tract Owners not complying with the sanitation requirements of the covenants and the cost of same shall be added to and become a part of the assessment to which each Tract is subject.

ARTICLE 15: RECREATION USE

Only legally licensed vehicles and not subject to the prohibited list below may be operated on subdivision roads. The following motorized vehicles are strictly prohibited from being operated on any subdivision road as shown on the recorded master plat or any revision thereto; 4-Wheelers, 3-Wheelers, trailbikes, mini-bikes, go-carts, snowmobiles and similar all-terrain vehicles.

ARTICLE 16: VIOLATIONS

The Association, or any Owner, shall have the right, to enforce by any proceedings, at law or in equity, all restrictions, conditions, covenants, and reservations imposed by the provisions of this Declaration. In the event of violations or the Association's enforcement of any of the covenants and restrictions applying to The Existing Property, the costs and expenses attendant thereto shall be paid by the violator as part of any judgment or remedy obtained. Failure by the Declarant, Association or Owner, to enforce any provisions herein shall in no event be deemed a waiver of the right to do so thereafter.

WITNESS the following signatures and seals:

R C S, LLC, a West Virginia Limited Liability Company

By: Robert R. Williams
ROBERT R. WILLIAMS

Samuel I. Williams
SAMUEL I. WILLIAMS

Chris Miltenberger
LOUIS C. MILTENBERGER

STATE OF WEST VIRGINIA,

COUNTY OF HARDY, to-wit:

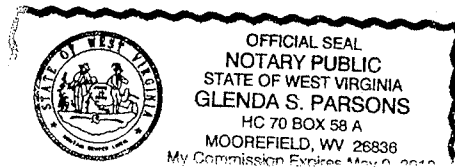
The foregoing instrument was acknowledged before me this 16th day of September, 2005, by ROBERT R. WILLIAMS, SAMUEL I. WILLIAMS and LOUIS C. MILTENBERGER, Member/Managers of R C S, LLC, a West Virginia Limited Liability Company, on behalf of said company.

My commission expires May 9, 2010

Glenda S. Parsons
Notary Public

This Document was prepared by:

Joyce E. Stewart, Attorney at Law
Saville & Stewart
113 Winchester Avenue
Moorefield, WV 26836



SHARON H. LINK
HAMPSHIRE COUNTY 11:22:40 AM
Instrument No 78706
Recorded Date 11/16/2005
Document Type CDR
Book-Page 449-566
Rec/Add Fee 7.00 1.00

STATE OF WEST VIRGINIA, Hampshire County Commission Clerk's Office 11/16/05 11:22 AM
The foregoing Instrument, together with the certificate of its acknowledgment, was this day presented in said office and admitted to record.

Teste Sharon H. Link Clerk.