

HIGH MOUNTAIN ORCHARDS
Dedication of Plat and
Declaration of Protective Covenants,
Conditions and Restrictions

KNOW ALL MEN BY THESE PRESENTS: That the undersigned, referred to as "Declarant", does hereby record the plat of a subdivision known as HIGH MOUNTAIN ORCHARDS SUBDIVISION, lying and being situate in Romney and Mill Creek Districts, Hampshire County, West Virginia, and being more fully described on the plat and survey of Stultz & Associates, Inc., Charles W. Stultz, L. L. S., dated October 30, 1987, and made a part hereof, and recorded in the Clerk's Office of the County Commission of Hampshire County, West Virginia, on November 6, 1987 just prior to the recording of this instrument in Plat Book No. 5, page (page not yet assigned), to which reference is hereby made, and said real estate being the same real estate conveyed to B. K. Haynes Corporation, by deed from Skyview Orchard, Inc. and Ewers Orchards, Inc., West Virginia Corporations dated August 3, , 1987, recorded in the Hampshire County Clerk's Office on October 19, 1987 in Deed Book No. 296, page 150
~~(Page not yet assigned)~~

All lots in the HIGH MOUNTAIN ORCHARDS SUBDIVISION shall be subject to the following protective covenants, conditions, and restrictions and easements which shall run with the land and shall be binding upon all subsequent owners of the lots:

ARTICLE I - DEFINITIONS

1. "Association" shall mean and refer to HIGH MOUNTAIN ORCHARDS Property Owners Association, its successors and assigns.
2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot which is a part of the property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.
3. "Property" shall mean and refer to that certain real property described above and such additions thereto as may hereafter be brought within the jurisdiction of the Association.
4. "Lot" shall mean and refer to any numbered or lettered plat of land shown upon any recorded subdivision plat of the property.
5. "Declarant" shall mean and refer to B. K. HAYNES CORPORATION, its successors and assigns.

ARTICLE II- MEMBERSHIP AND VOTING RIGHTS

1. Every owner of a lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.
2. On or before October 1, 1988, or when three-fourths (3/4) of the lots have been sold, whichever occurs first, a Property Owners Association shall be established with membership consisting of the Owners (and only the owners) of each lot in HIGH MOUNTAIN ORCHARDS SUBDIVISION who shall have one (1) vote per lot owned. The Association shall be governed by the majority of the lot owners. A Board of Directors of three (3) to five (5) members shall be elected by the lot owners.

The initial Directors of the Association consisting of one to five members shall be appointed by the Declarant or its

assigns and thereafter the Board of Directors shall be elected by the owners as outlined in Article II, Section II. The initial Directors shall be responsible for calling the first meeting of the Property Owners Association on or before November 14, 1988, and shall be responsible for the mailing of the written notice of the lot assessment which is due and payable by November 14, 1988. The meeting may be held in Hampshire County, West Virginia, or at such other suitable place to be designated by the initial Board of Directors. At said meeting the said owners shall, by majority vote, form the said Association's legal entity as they deem advisable and shall elect a Board of Directors and or officers of said Association.

ARTICLE III COVENANT FOR MAINTENANCE ASSESSMENT

1. The Declarant shall assess initially, for each Lot, One Hundred Fifty Dollars (\$150.00) per year for the use, upkeep and maintenance of the rights-of-ways within HIGH MOUNTAIN ORCHARDS SUBDIVISION; upkeep and maintenance of the rights-of-ways to and from U. S. Route 50; subject to any increase as provided hereinafter.

2. Any assessment made pursuant to this paragraph, including a late fee of Five Dollars (\$5.00), interest at the rate of ten percent (10%) per annum from the date of delinquency, and reasonable attorney's fees incurred in the collection thereof, shall constitute a lien on this property until paid. The lien is expressly inferior and subordinate to any mortgage liens presently or hereafter encumbering the property affected by these protective covenants. This assessment may not be increased by more than a percentage increase greater than the Cost of Living Index (Urban) as published by the Department of Interior, Bureau of Standards. The owner of each lot, by acceptance of a deed thereto, automatically becomes a member of the Property Owners Association and is deemed to covenant and agree to pay One Hundred Fifty Dollars (\$150.00) per lot per year, beginning November 14, 1988 and to pay annually thereafter to the Property Owners Association, to be created as herein set forth, an amount determined by the positive vote of owners of at least two-thirds (2/3) of the lots in said subdivision as necessary for the purpose of maintaining and improving rights-of-ways and roadways shown on the subdivision plat, and the right-of-way from said subdivision to U. S. Route 50 over other real estate not a part of this subdivision. Beginning the fall of each year hereafter said Association shall notify each lot owner in writing, as to the amount of the lot assessment which shall be due and payable by the lot owner to the HIGH MOUNTAIN ORCHARDS Property Owners Association. In the event of a resale or transfer of one or more parcels in said subdivision, this obligation shall run with the land and become the obligation of the new owner(s) even though it may have been assessed to a prior owner. In the event of a transfer by judicial sale or sale under Deed of Trust, any past due and unpaid road maintenance fees shall be paid by the party forcing the sale of the lot. This section does not apply to Declarant should it reacquire title through judicial sale, deed of trust sale, or by voluntary sale from Owner. See Paragraph no. 4 below.

3. If the owner of any Lot is in default in the payment of any assessments, including interest and costs of collection, in addition to any other means of collection, the Property Owners Association may bring an action at law against the owner personally obligated to pay same and may also sell the lot involved at a public auction after advertisement once a week for two (2) successive weeks, in a newspaper having general circulation in Hampshire County, and after thirty (30) days written notice mailed to the last known address of said owner. Cost of sale, including reasonable and necessary attorney fees,

advertising costs, auctioneering fees, recording fees, and other necessarily incurred costs shall be paid from the proceeds of sale before the payment of the lien involved. Or, if the owner chooses to pay the assessments before sale of the property, the costs incurred to date of owner's payment of the assessment shall be collected from the owner as a condition precedent to cancellation of the sale.

4. In exchange for Declarant's agreement to install and maintain the subdivision roadways and rights-of-way until October 1, 1988, or whenever the Property Owners Association is formed, whichever comes first, the Declarant shall be forever exempt from the payment of said annual assessments and maintenance fees and assessment fees as to lots presently owned by or later reacquired by the Declarant. In the event the Declarant should reacquire real estate through any means, Declarant shall not be required to pay any past due Assessments that the previous Owner may have owed the Association, nor shall Declarant be required, in the future, to contribute to the maintenance of the roadways.

5. If any one owner owns two or more adjoining lots, only one assessment shall be payable so long as only one house is built by said owner of the lots. If any of said lots is hereafter sold or conveyed or improved by an additional dwelling, it shall be subject to separate assessment of \$150.00. Nothing herein shall be deemed to alter the "one vote per one lot owned" rule which is established in Article II, paragraph 2 above.

ARTICLE IV COMMON PROTECTIONS

To maintain and protect property values within HIGH MOUNTAIN ORCHARDS; to provide for adequate light and air; to prevent congestion and undue crowding of land; to insure that this development is used primarily for residential recreational use, for camping or vacationing, or for the growing and harvesting of apples or other fruit; to preserve the natural beauty of the HIGH MOUNTAIN ORCHARDS, the Declarant does now promulgate the following common protections for the common good of all Owners.

1. No signs or advertising of any nature shall be erected or maintained on any lot, except for sale or rental signs not to exceed six (6) square feet in area, except for directional and informational signs of Declarant.

2. No further subdivision is allowed of any lot.

3. No owner of any lot shall interfere with the natural drainage of surface water from such lot to the detriment of any other lot. Consequently, in the construction of a driveway into any lot, a twelve (12) inch diameter culvert, or larger if necessary, shall be used in constructing the driveway in order to alleviate blockage of natural drainage. No owner (nor his guest and invitee) shall block nor obstruct any of the subdivision roads within the subdivision at any time. Reasonable parking on the subdivision roads is allowed, so long as the vehicle does not obstruct or unreasonably hinder traffic lawfully using the subdivision road system. In developing any lot, the owner shall provide adequate off-road parking for owner and his guest(s).

4. Due to the unsightliness of junk vehicles on lots, no motor vehicle which does not have current license plates or an inspection sticker not more than six (6) months out of date shall be permitted on any Lot, unless housed or stored in a garage or accessory building. House trailers shall not be allowed to be placed on any lot within the subdivision, provided that modular homes are allowed so long as they are approved by the Property Owners Association. Temporary camping trailers may be placed on

any lot, and may be used for vacation use; hunting use, or other recreational use, provided that their presence on the lot shall not be "permanent", and the Property Owners Association shall have the power by majority vote to reasonably regulate the consecutive number of days that a camping trailer may be left on the Lot. Additionally, camping trailers are to be placed in wooded areas, where they are not readily visible from the subdivision roads, unless the terrain is too steep or there is an absence of a wooded area, in which case, the Declarant or the Board of Directors of the Property Owners Association shall make exception for hardship.

5. No building of a temporary nature shall be erected or placed on any lot except those customarily erected in connection with building operations and in such cases, for a period not to exceed eight (8) months, provided however nothing shall be construed to prevent the owner from erecting tents on the lot and to camp overnight in said tents for a period of up to fifteen days.

6. Not more than one single family residence shall be erected on a lot. Seasonal cabins or permanent residences shall contain a minimum of 480 feet, excluding basement, garage, porch, carport, deck, and overhanging eaves. All exterior construction must be completed and closed in within eight (8) months of the commencement of construction.

7. Each lot shall be used for residential/recreational purposes only, and any garage or outbuilding must conform generally in appearance and material with any dwelling on said lot.

Notwithstanding the prior paragraph, the following uses are permitted, subject to applicable state and local laws:

(a) Home occupations conducted by occupant.

(b) Home gardening is permitted.

(c) Agricultural uses, including incidental uses and the construction of accessory buildings connected with agriculture (or the building of a residence), including storage of temporary camping and lawn maintenance equipment. Said accessory buildings may be constructed before construction of the residence, provided that the accessory buildings shall not be used for temporary living, camping or sleeping quarters.

(d) After November 15, 1988, each owner is given the right to cultivate, prune, and harvest the apple trees located on their Lot and to sell the harvest from the trees, or to lease their orchard to any third party of their choosing. Owners may apply necessary chemicals to their crops in order to protect them from disease and pests, but all chemicals must be applied by handsprayers, provided that the owners by a 3/4 majority vote of all owners may authorize the use of commercial spraying, cultivating and harvesting practices. But any commercial spraying is to be done, if practicable, on week days and preferably at dusk or night. Provided further however, that the Declarant has entered a lease for the benefit of all owners for 1988, whereby Homer Feller, of Mount Level Orchards, Levels, W. Va. shall have the right to cultivate, prune, spray, and harvest the apples. His lease includes the right for him to apply chemicals in the orchards in accordance with standard commercial practices; to utilize bees within the orchard to improve pollination; to utilize the pumphouse and spraying system located within the subdivision; to use necessary agricultural machinery and equipment within the subdivision; and to use migrant labor to harvest the crop. The proceeds derived from the lease of the apple crop shall be considered the property of the

HIGH MOUNTAIN ORCHARDS Property Owners Association, and for more information reference is made to page 11, Article VI, paragraph 6 of these Protective Covenants.

(e) The pump house and spraying lines shown on the subdivision plat are reserved through the 1988 season for the benefit and use of Homer Feller and may not be damaged or removed before November 15, 1989; thereafter any owner may disable or remove the lines beneath the surface of his lot unless prior to November 15, 1989 2/3 of the owners vote to retain the system. In the event that two thirds (2/3) of the lot owners vote, no later than November 15, 1989, at a meeting called for said purpose, to retain the spraying system for the benefit of the subdivision, the water lines may be utilized by the Owners, or their agents, or lessees, for purposes of obtaining water from the South Branch of the Potomac for spraying of their orchards. If the spraying system is retained, it shall be maintained by the Property Owners Association, and the excess monies assessed for road maintenance may be used to provide for the maintenance of same, or special assessments may be required of the owners for maintenance of same, upon a 2/3 majority vote of the owners.

(f) (i) The owners shall have the right after November 15, 1988 to lease their orchards to third parties, individually, or owners desiring to do so may rent their orchards in blocks or units to any third party lessee interested in leasing the orchard. The third party lessee may only use commercial spraying or harvesting techniques upon a favorable vote of 2/3 of the owners, and may only use the ----- spray system with the permission of the Property Owners Association, AND if the owners have voted by a 2/3 majority of the owners to retain the irrigation and spray system.

(ii) Some fruit trees are located on or adjacent to the boundary lines of adjoining lots, and in order to prune, cultivate, fertilize and harvest these trees, the owner, or his agents, need to place their ladders, bins, and other equipment on the adjoining owners real estate. Each owner or his agent or lessee shall have a seasonal easement to utilize so much of the adjoining owners real estate as reasonably necessary in order to care for and harvest these trees. Included in this easement is the right to use the old orchard roads (some of which are designated on the subdivision plat and some of which are not shown on the subdivision plat) for necessary cultivation, care and harvesting of the apple trees. Most of these trees located at or on the lot boundary lines are old trees, and it is understood that once these trees die or cease production, the owner shall not replant in such proximity to his adjoining owner that he will require continued access to his neighbor's lot in order to care for and harvest his tree.

(iii) Should any owner desire to fence his lot, he shall provide a cattle guard or gate at each location where an "old orchard" road is located so that the seasonal easement above referred to may be utilized by the owners.

(iv) All old orchard roads some of which are designated on the subdivision plat as areas of common easement for cultivation, care and harvesting of apple trees may be abandoned by the owners Association upon a 2/3 favorable vote of the owners, but no vote to abandon any of these roads shall be effective prior to November 15, 1988, as the Declarant has entered a lease of the 1988 apple crop with Homer L. Feller.

8. The Owner shall maintain, repair and restore, as necessary, the exterior of any building or other improvements erected on any Lot owned by him. Owners likewise agree to repair and restore promptly to its prior condition any part of a

subdivision road damaged by equipment of Owner or his contractor enroute to or from Owner's lot. All lots improved or unimproved, must be maintained by the lot owner in a neat and orderly condition at all times. No garbage or trash or other debris shall be permitted to accumulate or remain on any lot.

9. No building shall be erected closer than thirty-five (35) feet from the side or rear line of any tract, nor less than sixty (60) feet from the center line of any road or right of way; provided that the Declarant or the Board of Directors of the Association shall authorize lesser setbacks where dictated by terrain; and provided further that side line set-backs shall not apply to a property line between tracts in single ownership. However, where two or more lots are used together for construction of a dwellinghouse and where setbacks are waived, the two or more lots which comprise the homestead shall thereafter be sold and conveyed as one unit, and may not be sold separately, but voting and membership rights shall not be affected.

10. All sanitation facilities constructed on any lot shall conform with the regulations of the West Virginia Health Department.

11. No lot shall be used or maintained as a dumping ground for rubbish or as a repository for debris from dead apple trees. Trash, garbage, or other waste must be kept in sanitary containers. All trash, garbage, fuel storage tanks, garden equipment, supplies and stored raw materials must be kept from view of the public. In the event any lot owner shall fail to discharge his aforesaid responsibilities in a manner satisfactory to the Board of Directors of the Property Owners Association, upon two-thirds (2/3) vote of the Board of Directors, and after fifteen (15) days notice to the owners of the Property, the Property Owners Association shall have the right, through its agents and employees, to enter upon said lot and perform necessary maintenance repairs (including mowing and removal of grass over 24" high) restoration, or to remove any offending material or object. Such action shall not be deemed a trespass, and the cost of same when performed by the Association shall be added to and become a part of the assessment to which such lot is subject.

12. The Declarant reserves unto itself or its assigns, easements for the installation, erection, maintenance, operation and replacement of telephone and electric light poles, conduits and related equipment, and/or sewer, gas, telephone, cable t. v., electric and water lines on, over and under a strip of land fifteen (15) feet wide along all property lines not serving as the centerline for rights-of-ways, and fifteen (15) feet along the outside boundary of all the rights-of-ways, in addition to easements reserved by any other instrument duly recorded. Nothing herein shall be construed as creating any duty on Declarant to install or maintain any utility services however, as it is contemplated that actual installation will be made at the expense of the utility and/or the owners.

13. Each lot owner shall have an unobstructed and a nonexclusive thirty foot right of ingress and egress to and from his lot over the rights-of-ways and roadways as shown on the subdivision plat, and a right-of-way of sufficient width for access by motor vehicle travel over the access road which provides ingress and egress with U. S. Route 50. The Property Owners Association shall be responsible for maintenance of the subdivision roads, and responsible for the maintenance of the access road to and from U. S. Route 50. The rights-of-ways shall be subject to the common usage of the declarant, its assigns.

14. The Owner's right to use the access road shall be and

is non-exclusive, and shall be shared by all others in chain of title who have the right of ingress and egress. In addition, certain adjoining land owners have the right to use the subdivision roads for necessary ingress and egress to their real estate. Any adjoining land owner who utilizes the access road or the subdivision roads is liable under West Virginia law to contribute to the maintenance of the roads, but the duty to assert such right for contribution shall rest with the Property Owners' Association.

14.1 Wooded lots within the subdivision shall have the right to reasonably cut and harvest trees (or obsolete fruit trees) for personal use or for land clearing. However no harvesting of wood for commercial purposes is allowed, except that lots 35, 36 and 72, which are located at the fringes of the subdivision and which are believed to contain timber in marketable quality and quantities may be harvested by their owner, provided further, that all trees harvested must be at least ten inches in diameter at the stump, and provided further that all timbering must be done between June 1 and September 30 of any year. Any owner who harvests timber and utilizes the subdivision roads for the removal thereof shall be required to repair any ruts or damages caused to the subdivision road system at his own expense.

15. The use of any motorcycle, dirt bike, all terrains vehicles, or other similar motorized conveyance within the subdivision is prohibited unless it is equipped with proper noise abatement equipment.

16. Firearms shall not be discharged within five hundred (500) feet of any dwelling house. Nor shall they be discharged in such a manner that the trajectory of the projectile shall cross any of the subdivision roadways.

17. Subject to obtaining the permission and consent of the Hampshire County Health Department, the Declarant does hereby grant an easement to lot owners within the subdivision for the purpose of laying and maintaining sewage disposal systems and drain fields, across other neighboring or adjoining lots, where a owner's parcel (the dominant parcel) has been found to be unsuitable to sustain a sewage disposal system by the Health Department of Hampshire County, West Virginia. In the event all such lots have been previously sold by Declarant, then these cross easements are hereby granted in advance to each of the lots in the subdivision where necessary and required to accommodate a dwelling on the lots in question, and such easements may be enforced by one lot owner against the other. Any such easement so exercised will be constructed in such a manner as to cause the least damage to the servient tract, and such easement shall include the right to lay lines to and from the sewage disposal systems and shall include the right of repair and reinstallation of same in the future. Any Owner exercising such a right, however, has the duty to replace the surface of the servient tract to the same condition as it existed prior to the construction activity and to reseed the real estate to the reasonable satisfaction of the owner of the servient tract. Any such easements granted herein shall be invalid, however, if its installation would prevent the servient tract or parcel from reasonably being utilized as a homesite as planned.

17.1 Some lots within the HIGH MOUNTAIN ORCHARDS lay on both sides of the subdivision roads, and to determine which lots fall into this category, reference is made to the subdivision plat. Any owner so affected shall have the right to construct buildings on one side of the road, and an easement to lay necessary utility lines to accessory buildings under the subdivision road for the purposes of providing electricity, water, or other necessities to any accessory buildings, provided

that the Owner shall be under a duty to perform the construction expeditiously and to return the road to the same condition as it existed prior to the construction. In addition, if the Owner believes it is necessary to do so, the Owner may run lines for his sewage disposal system under the subdivision roads upon the same terms and conditions outlined above in this paragraph.

18. No part of any Lot may be sold or used as a road or right of way to any land outside this subdivision without the written consent of the Declarant or the Property Owners Association. PROVIDED HOWEVER, that the Declarant has sold Lot no. 71 to G. P. Register INC. , and G. P. Register INC. , its successors and assigns shall have the right to use the subdivision roads for ingress and egress to an adjoining tract of real estate which contains 115 acres, more or less. The contributions which G. P. Register INC. makes to the Property Owner's Association for lot no. 71 shall constitute the sole obligation that G. P. Register INC. has for road maintenance unless (1) a hunting club is created on the 115 acres of real estate; (2) or the 115 acres is subdivided or sold in more than one parcel; (3) he timbers his real estate (4) or otherwise substantially increases the use OR the burden placed on the right of way, in which case, G. P. Register INC. its successors and assigns may be required to repair any damage caused by extraordinary or burdensome use or to increase his contribution to the Property Owners Association to cover increased maintenance costs.

18.1 If any lot owner shall violate any of the covenants herein, it shall be lawful for any other person or persons owning any real estate situated in said subdivision to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such covenant, either to prevent him or them from so doing or to recover damages or other dues for such violation. Failure to enforce any provision herein contained shall in no way be deemed a waiver of the right to do so hereafter.

19. The Association, by vote of two-thirds (2/3) of its members, may make additional rules, covenants, and restrictions for the use of the Property, which are not inconsistent with these Protective Covenants, Conditions and Restrictions, and all Protective Covenants may be enforced by the Property Owners Association in a court of competent jurisdiction. Note: that the covenants provided herein by the Declarant may be changed as individually authorized in certain paragraphs hereof, or as authorized in Article VIII paragraph no. 5 hereof.

ARTICLE V SPECIAL USE EXCEPTIONS

1. J. D. Corbin Jr. shall have a personal, nonassignable, lifetime right of ingress and egress across the subdivision roads and the access road on lot no. 1 to obtain firewood from his real estate which adjoins lot no. 1. At the death of J. D. Corbin Jr. or upon his sale or transfer of his real estate to a third party, this right of access shall terminate. J. D. Corbin Jr. is exempted from paying any road maintenance fees, provided however, that should he damage the road system or the access road on lot no. 1 during his use of the road system, he shall repair the damages caused at his own expense.

2. (i) Lot no. 36 consisting of 30.135 acres, more or less, is hereby excepted and deleted from the subdivision known as HIGH MOUNTAIN ORCHARDS. The owner of Lot no. 36 shall not be bound by any of these Protective Covenants, except as provided by this paragraph, and shall not have any vote at the Property Owners meetings, except as specified in Article VI, paragraph 9. Accordingly, the owner of Lot 36 shall not utilize the

subdivision road system for ingress and egress to Lot no. 36, and instead shall obtain access to Lot 36 by utilizing the "old road bed" which is shown on the subdivision plat (but which is NOT a subdivision access road) which follows the southern boundary of Lot 35, crossing the southern portion of Lot 35, leading to Lot 36. OR, the Owner of Lot 36 may obtain access from other adjoining real estate (not a part of this real estate which the owner may own).

(ii) The Declarant reserves unto itself or its assigns, easements over Lot 36 for the installation, erection, maintenance, operation and replacement of telephone and electric light poles, conduits and related equipment, and/or sewer, gas, telephone, cable t. v., electric and water lines on, over and under a strip of land fifteen (15) feet wide along all property lines not serving as the centerline for rights-of-ways, and fifteen (15) feet along the outside boundary of all the rights-of-ways, in addition to easements reserved by any other instrument duly recorded. Nothing herein shall be construed as creating any duty on Declarant to install or maintain any utility services however, as it is contemplated that actual installation will be made at the expense of the utility and/or the owners.

(iii) There are one or more springs located on Lot 35 and/or 36, and the Declarant reserves the right to tap the spring and to provide develop the spring(s) to provide a central water supply system for the HIGH MOUNTAIN ORCHARDS SUBDIVISION, if the springs are found to be suitable for such development, and Declarant reserves necessary easements for the entry on Lot 36 for the purposes of conducting necessary testing of the spring(s), and right of ingress and egress to lay, install, reinstall, improve and maintain lines, pumps, lift stations and other necessary equipment on the property in connection with the development and use of the the spring.

(iv) Declarant has sold lot 36 to John Sitar and Magdalene Sitar, who also own real estate adjoining lot 36. Declarant reserves the right, in Declarant's sole discretion, to grant an easement to Lot 36 to use the subdivision roads, and to waive the payment of the annual road maintenance assessment for Lot 36 if Declarant finds it necessary and desirable to do so in order to obtain an water line easement from John Sitar and Magdalene Sitar across their adjoining real estate to facilitate installation of the central water system for the benefit of the High Mountain Orchards Subdivision.

3. The owners of lots 63, 64, 65 and 66 shall have the right to use the 20 foot easement shown on the subdivision plat for ingress and egress to their real estate. The access road is NOT a subdivision road, and the owners of lots 64, 65 and 66 shall be responsible to repair and maintain said road. If the owner of lot 63 desires to utilize the 20 foot easement for ingress and egress to lot 63, he shall also contribute to the maintenance of the 20 foot easement.

4. The owners of lots 1 through 11 shall have the right to use the 20 foot easement shown on the subdivision plat for ingress and egress to their real estate. The access road is NOT a subdivision road, and the owners of lots 1 through 11 shall be responsible to repair and maintain said road.

5. The owners of lots 45, 46, 47 and 48 shall have the right to use the 20 foot easement shown on the subdivision plat for ingress and egress to their real estate. The access road is NOT a subdivision road, and the owners of lots 45, 46, 47 and 48 shall be responsible to repair and maintain said road.

ARTICLE VI
PROVISIONS FOR WATER

The HIGH MOUNTAIN ORCHARDS subdivision is located in an area where water is difficult to find without extensive costs to the landowner. One alternative to provide water to the subdivision is to obtain water from neighboring springs, and install necessary distribution lines and pump stations from the spring sites to the subdivision. This alternative is feasible, but could require the Property Owners Association to acquire easements from neighboring owners; development of the spring; maintenance of the water lines, and the Property Owners Association would need to acquire and utilize the services of a certified water operator in accordance with the requirements of the Department of Health.

Another possibility for obtaining water is from the Town of Romney, which has a water line located on the south side of the South Branch of the Potomac River. If the Town agrees to do so, it could extend the line under the river, up the mountain, and to the subdivision. Installation of the lines and necessary lift stations and accessories would have to be privately financed, however.

The Declarant recognizes that a good supply of potable water is necessary to each Owner if the Owner is going to be able to fully utilize his Lot. Therefore, the Declarant now makes the following provisions in order to provide a way for HIGH MOUNTAIN ORCHARDS to obtain water for the benefit of the subdivision.

1. Declarant agrees that the sum of TWENTY EIGHT HUNDRED DOLLARS (\$2,800.00) shall be withheld by Declarant from the sale of each lot within the subdivision, and placed in an irrevocable trust created at the South Branch Valley National Bank, of Moorefield, West Virginia, for the purpose of providing a fund of money to finance or substantially finance the installation of a water system for the HIGH MOUNTAIN ORCHARDS. The trust agreement shall provide that the money may only be utilized to construct a central water system for the subdivision, and any plan for creating such a system (or water supply) must be approved by the Property Owners Association, AND the Declarant. The Officers of the Property Owners Association shall have the right to communicate with the Trustee at all reasonable times, and Trustee shall have the duty to provide accountings to the Property Owners Association from time to time as it may request.

2. As soon as three fourths (3/4) of the the Lots within the subdivision have been sold, the Declarant, the duly authorized agents, officers or committee of the Property Owners Association and the Trustee shall meet and determine the most feasible method to obtain water for the subdivision. In this connection, they may authorize the hiring of such engineers, attorneys, accountants or other agents as they deem necessary, in order to make an effective study of which plan is most feasible. Any planning expenses so incurred may be deducted from the Trust fund.

3. No contracts for the construction of any water project for the subdivision shall be let unless the principal fund in the Trust agreement is sufficiently large to cover 100% of the cost of the bids received. In the event that the bids received for the construction of the system are more than the principal sum of the the Trust, then the project shall be deferred until a sufficient number of the lots within the subdivision have been sold to finance the construction and installation of the system, or if the Declarant has substantially (or totally) sold the Lots within the subdivision to third parties and it is apparent that there will not be enough monies generated within the trust to cover the installation cost of the central water system, then upon a favorable vote of 3/4 of the owners, an additional sum may be assessed from each owner for contribution to the principal

of the trust to enable the water system to be installed. Any owner who fails to pay any assessment agrees and understands that the Property Owners Association shall have the right to bring suit to obtain a judgment for the assessment, and to rent or sell the owners property (as the law might allow) in order to pay any assessment authorized by this paragraph. In the event that such suit is necessary, the owner agrees in advance to pay any attorneys fees incurred by the Property Owners Association in enforcing this paragraph. If the Property Owners Association believes that it has sufficient monies to construct the water system and lets a contract for the construction of same, and unforeseen expenses cause the project to overrun the monies available from the trust, then each owner by virtue of his membership in the Property Owners Association agrees that he will pay his prorata share of any deficiency, and he agrees that the Property Owners Association shall have the right of assessment of the deficiency against the owner, and shall have the right to bring suit to obtain a judgment for the assessment, and to rent or sell the owners property (as the law might allow) in order to pay any assessment authorized by this paragraph. In the event that such suit is necessary, the owner agrees in advance to pay any attorneys fees incurred by the Property Owners Association in enforcing this paragraph.

4. In the event that the Property Owners Association, the Declarant, and the Trustee should determine for some reason not contemplated herein, that it is not necessary or feasible to construct a central water system for the HIGH MOUNTAIN ORCHARDS subdivision, the residue in the Trust Fund shall be refunded to each owner or contributor on a prorata basis. In the event that any owner has given a deed of trust against his property, and if notice thereof has been provided unto the Trustee, then the Trustee shall be authorized to pay the owners' prorata refund (or so much thereof as may be necessary to discharge the deed of trust) unto the beneficial holder of the deed of trust, and to refund the balance (if any) to the owner.

5. It is understood that in addition to the utility easements which Declarant has reserved in ARTICLE IV, paragraph 12, the Declarant also reserves an easement for the Property Owners Association, ^{Lot 90} or its agents, or assigns, to construct a water tank on Lot 49 or of the subdivision and to enter on any Lot and to install, repair and maintain necessary conduits, accessories, accessory buildings, lift stations, or pumps in order to provide water to the HIGH MOUNTAIN ORCHARDS owners.

6. Each owner agrees that by virtue of his membership in the HIGH MOUNTAIN ORCHARDS Property Association, he will pay any tap fee required by the provider, and as soon as the water service is available, he will subscribe to the service irrespective of whether or not he has commenced any building activities on his Lot and pay the monthly fees assessed by the provider. In the event that any owner should fail to pay the tap fee and monthly water fees once established, the Property Owners association shall have the right to pay the water tap fee and to bring suit against him for the amount thereof plus any water fees that he may owe, and to require him to reimburse this sum of money to the Association, or alternative to take judgment against him and to take possession of his land and rent or sell it as may be necessary to reimburse the Association for the judgment. In the event that such suit is necessary, the owner agrees in advance to pay any attorneys fees incurred by the Property Owners Association in enforcing this paragraph.

7. In the event that any monies remain in the trust fund after construction of the water supply system, it shall be given over to the Property Owners Association for its use in maintaining the road system; the water system, or for any other purpose that it might desire.

8. Should any owner elect to construct a cistern to provide water for his cabin or dwellinghouse, Declarant recommends that the cistern be a "closed" cistern to minimize the risk of any orchard chemicals entering the water system.

9. A parcel containing 30.135 acres, more or less, known as Lot no. 36 has been removed and excepted from this subdivision by the Declarant. Even though this parcel of real estate is not a member of the Property Owners Association and even though the use of Lot 36 by its owner is not controlled by these Protective Covenants, it is understood that the any owner purchasing Lot no. 36 from the Declarant shall be bound by this ARTICLE to the extent provided in this paragraph. That is to say, that Twenty Eight Hundred Dollars (\$2,800.00) shall be contributed to the trust in the name of the owner of Lot 36. Even though the owner of Lot 36 is not a member of the Property Owners Association, the Owner shall be notified of any meeting called for the purpose of transacting any business to do with the water system, and the owner of Lot 36 shall have the right to vote as an owner on any matter affecting the central water system or the trust agreement referred to in this ARTICLE. The owner of Lot 36 shall not be required to pay monthly fees for the water service, once available, until such time as the owner of Lot 36 desires to utilize the service.

ARTICLE VII
TEMPORARY MATTERS AFFECTING USE OF THE LOTS
WITHIN HIGH MOUNTAIN ORCHARDS BY OWNERS

This real estate was formerly a part of a "working" orchard, which was owned by Skyview Orchards, Inc., and operated by Ewers Orchards, Inc. Your Declarant acquired this real estate from the foregoing corporations, and pursuant to the contract of sale, Skyview Orchards, Inc. and Ewers Orchards, Inc. have certain rights that expire after 1987, which are mentioned in this ARTICLE, and there are certain notices which Declarant has agreed to furnish the owners, and all of same are set forth in this ARTICLE.

1. Ewers Orchards, Inc. has reserved the right to grow, produce and harvest the apples produced by the apple trees for the 1987 season. Ewers Orchards, Inc. has the non-exclusive right of possession of the real estate to the extent necessary to, mow, spray, and harvest the crop through November 15, 1987. This right of temporary possession expires on November 15, 1987, and thereafter, Ewers Orchards Inc. and Skyview Orchards Inc. have no further rights of possession.

2. Ewers Orchards Inc. and Skyview Orchards Inc. shall not be responsible for any damages accruing to the property or person of any third parties using the property while Ewers Orchards Inc. and Skyview Orchards Inc. are exercising the rights referred to in paragraph no. 1 of this ARTICLE.

3. Ewers Orchards Inc. and Skyview Orchards Inc. intends to use migrant laborers to conduct their apple harvest.

4. Ewers Orchards Inc. and Skyview Orchards, Inc. have reserved the right to use and maintain the pump house and pipelines located on the property (and depicted on the subdivision plat) until November 15, 1987. Thereafter they shall have no further rights to use the spraying system.

5. Ewers Orchards Inc. and Skyview Orchards Inc. have reserved the right to harvest all of the apples from the trees for 1987. Accordingly, each owner is informed that they should not remove, destroy, damage or impair the trees or crop through November 15, 1987. Any owner removing the crop prior to the termination date of the lease with Skyview Orchards Inc. and

Ewers Orchards Inc. may be held responsible in damages to them.

6. (i) Declarant has leased all lots within the subdivision to Homer Feller d/b/a Mt. Levels Orchards for the 1988 season, the lease year shall begin on January 1, 1988, and expire on November 15, 1988. Homer Feller, of Mount Level Orchards, Levels, W. Va. shall have the right to cultivate, prune, spray, and harvest the apples. His lease includes the right for him to apply chemicals in the orchards in accordance with standard commercial practices; to utilize bees within the orchard to improve pollination; to utilize the pumphouse and spraying system located within the subdivision; to use necessary agricultural machinery and equipment within the subdivision; and to use migrant labor to harvest the crop. All spraying will be done at night, where practicable. The proceeds derived from the lease of the apple crop shall be considered the property of the HIGH MOUNTAIN ORCHARDS Property Owners Association, all proceeds collected by Declarant shall, at Declarant's discretion, be disbursed in one of the following ways: (1) given to the South Branch Valley National Bank, trustee, for use in financing the construction of the central water system; (2) given to the general treasury of the Property Owners' Association for such general use as the Property Owners' Association may authorize; or refunded to the property owners on a prorata basis, with each Property owner obtaining 1/99th of the lease proceeds. A copy of the Lease with Homer Feller may be obtained from the Declarant for your review.

(ii) Notwithstanding (i), above, owner is to have the right of possession of the real estate upon closing with Declarant, and shall have the right to remove any apple trees necessary to the construction of his entry road or residence, cabin or accessory building. During the term of the lease to Homer Feller, owner agrees he will not remove any more trees than reasonably necessary to enjoy and utilize his property for the foregoing purposes.

(iii) Owner may harvest one bushel of apples from the trees on his lot in 1988, but since the 1988 crop has been leased to Homer Feller, owner shall not remove any more apples from the trees during 1988, nor shall owner permit any guest or invitee from doing so.

ARTICLE VIII GENERAL PROVISIONS

1. Declarant reserves the right to replat, resubdivide and renumber any unsold lot or lots. Nothing herein shall be construed to prevent Declarant from imposing additional covenants or restrictions on any unsold lot(s).

2. No building shall be constructed on any lot until a sewage disposal permit has been obtained from the West Virginia Health Department.

3. Declarant guarantees for a period of one year from the date that it: delivers a general warranty deed to owner, or if owner is purchasing under installment contract, for a period of one year from the date of the signing of the contract, that at least one location located on each lot sold or conveyed unto owner will pass a soil percolation test administered by a certified septic tank installer (installer must be approved by the local sanitarian at the Hampshire County Health Department) so that the owner may obtain a health permit which would enable him to build at least a two bedroom dwelling house on the real estate. Any soil percolation test obtained by owner shall be at his own expense.

4. The Association, or any owner, shall have the right to enforce by any proceedings, at law or in equity, all restrictions, conditions, covenants, reservations, liens and

charges now or hereafter imposed by the provisions of this Declaration. Failure by the Declarant or Association or by any owner to enforce any provisions herein contained shall in no event be deemed a waiver of the right to do so thereafter.

5. The covenants, restrictions and other provisions of this Declaration shall run with and bind the land for a term of twenty (20) years from the date this Declaration is recorded, after which they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than ninety (90%) of the lot owners, and thereafter by an instrument signed by not less than seventy-five (75%) of the lot owners.

6. Invalidation of any of the covenants, restrictions or other provisions of this Declaration by judgment or Court Order shall in no wise affect any other provisions, which shall remain in full force and effect.

7. Whenever in this Declaration the context so required, the masculine gender includes the feminine and neuter, singular number includes the plural and the plural number includes the singular.

B. K. HAYNES CORPORATION

BY:

B. K. Haynes, Pres.
PRESIDENT--DECLARANT

ATTEST:

Betty G. Haynes
BETTY G. HAYNES, SECRETARY

State of Virginia,
County of WARREN, to-wit:

11 The foregoing instrument was acknowledged before me this the 11 day of November, 1987, by Bradley K. Haynes, President of B. K. Haynes Corporation and Betty G. Haynes, Secretary of B. K. Haynes Corporation.

My commission expires Jan 2, 1991

(SEAL)

Allen D. Bean
Notary Public

This instrument prepared by
Oscar M. Bean, Attorney,
116 Washington St., P. O. Drawer 30
Moorefield, W.Va. 26836.
304/538/6198