

RESTRICTIVE COVENANTS AND CONDITIONS  
FOR MATHIAS ESTATES

The following covenants and conditions shall apply to Mathias Estates, lying and being situate in Lost River District, Hardy County, West Virginia, and being a portion of the same real estate which was conveyed to Garnett R. Turner and Lena A. Turner, his wife, by Mary Voorhees, et vir, et al, by deed dated February 3, 1987, which is of record in the office of the Clerk of the County Commission of Hardy County, West Virginia, in Deed Book No. 193, at Page 189. Each and every one of these covenants and conditions is, and all are, for the benefit of each owner of the various tracts within Mathias Estates, or any interest therein, and shall be construed as covenants and conditions running with the title of the land and with each and every part and parcel thereof regardless of how title was acquired, and said covenants and conditions shall remain in full force and effect unless and until modified by the owners of the various tracts of Mathias Estates as hereinafter set forth.

In the event of violation or breach of the following covenants or conditions, or threatened breach thereof, the owner or owners of any tract or tracts in Mathias Estates shall have the right to enjoin the same with proceedings at law or equity against the person or persons violating or threatening to violate said covenants and conditions, and such owner or owners enforcing same shall have the right to recover just damages for themselves and on behalf of all other owners of the various tracts in Mathias Estates. No delay or omission in exercising any rights, powers or remedies provided in this paragraph shall be construed as a waiver thereof or any acquiescence therein.

Invalidation by any court of any specific covenant or condition contained herein shall in no way affect any other condition or covenant, and all covenants and conditions not expressly in-

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validated herein shall remain in full force and effect.

1. The Grantors herein, that being Garnett R. Turner and Lena A. Turner, his wife, may assess each tract owner a sum of up to One Hundred Dollars (\$100.00) per year, per tract, for the use, upkeep (not snow removal), and maintenance of rights-of-way within the subdivision, and that it is further understood that each tract that has a permanent residence situated on it will be assessed in the amount of One Hundred Dollars (\$100.00) per year, and that tracts not having any permanent residences on same will be assessed in the amount of Thirty-Five Dollars (\$35.00) per year. The rights and responsibilities as created by this paragraph may be delegated by the Grantors to a committee of tract owners, appointed by the Grantors, upon the conveyance of eighty (80) per cent of all lots within the subdivision, and any assessment made pursuant to this paragraph shall constitute a lien on each and every tract until paid, and payment of said assessment and levy shall be made on or before the 15th day of January next following the purchase of any said tract, and on or before the 15th day of January of each year thereafter. When more than one tract is owned by a party or parties and in the event of resale by them of one or more of said tracts, then the obligation to pay said fee shall be binding upon the purchaser or purchasers thereof of said tracts, without any provision therein specifically so providing. After any failure of the Grantors or their heirs, successors or assigns, to exercise the appointive powers set forth in this paragraph, after reasonable notice by at least two (2) land owners within Mathias Estates, given to the said Grantors, their heirs, successors or assigns in title, a meeting of all land owners within Mathias Estates may be called and the majority of those present shall be empowered with all the rights and powers the Grantors could have exercised under the provisions of this paragraph. The Grantors herein may delegate the rights and responsibilities as created by this paragraph in units, which

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is to say that the Grantors may delegate the responsibilities created in this paragraph as same would relate to Hillside Drive to the owners of Tracts Nos. 45 through 50, inclusive, as a separate unit apart from all other tracts. Likewise, the Grantors may also do the same with regard to Mountain Top Drive, which includes Tracts Nos. 1 through 18, inclusive, as a separate unit, and likewise the Grantors herein may also delegate the responsibilities as created by this paragraph as same would relate to Tracts Nos. 19 through 44, inclusive, relating to Cove Drive, Pine Drive and Oak Drive. It is, however, understood that Tracts Nos. 11, 12 and 13 will only pay one fee and that the owners of Tracts Nos. 11, 12 and 13 may elect as to which unit they would like to become a part of when and if the rights and responsibilities as created by this paragraph are delegated by the Grantors herein, and said election would relate to whether or not the owners of Tracts Nos. 11, 12 and 13 would desire to be a part of the Cove Drive unit or of the Mountain Top unit. Nothing set forth herein shall work to prevent the Grantors herein from delegating the rights and responsibilities as created by this paragraph in toto; however, the Grantors herein reserve the right to delegate responsibilities in units as set forth hereinbefore.

2. The Grantors reserve unto themselves, their heirs, successors or assigns, the right to erect and maintain telephone and electric light poles, conduits, equipment, sewer, gas and water lines, or to grant easements or rights-of-way therefor, with the right of egress and ingress for the purpose of erection or maintenance on, over or under, a strip of land twenty-five (25) feet wide at any point along the sides, rear or front lines of any of the tracts within said subdivision.

3. No further subdivision of any of the tracts within Mathias Estates will be allowed for a period of twenty (20) years, and then only with approval of ninety (90) percent of the then existing tract owners within Mathias Estates.

4. The One Hundred Dollar (\$100.00) fee, and the Thirty-Five Dollar (\$35.00) fee per year, referred to in Paragraph 1 hereinbefore, shall apply to all tracts.

5. No structure of any type or kind whatsoever in Mathias Estates may be erected closer than fifteen (15) feet to any road right-of-way within said subdivision, nor shall same be in any manner erected closer than fifteen (15) feet to the sides or rear or front of any tract division line, unless, and only unless, two (2) adjoining tracts are owned by the same party or parties, and then and in that event this paragraph would not apply to the division line separating the two tracts owned by the same party or parties.

6. No trucks, old cars or unsightly vehicles may be left or abandoned on the tracts within Mathias Estates; however, this item shall not be construed as to prohibit farm machinery or vehicles necessarily used in an active farm situation.

7. All tracts within the subdivision, whether occupied or unoccupied, shall at all times be maintained in such a manner as to prevent their becoming unsightly by reason of the accumulation of trash, rubbish, garbage, debris, junk or any other refuse thereon.

8. The construction of any driveway or roadway on any tract shall be done in such a manner so as not to interfere with the use of the main roadways within the subdivision; such construction of any driveway or roadway on any tract shall also be done in such a manner as to prevent any undue or unnecessary damage by drainage or otherwise to the main roadways, and shall require the installation of culverts when necessary to prevent the obstruction of natural drainage on the main roadways.

9. Each tract owner has a right-of-way from State Route 259 for the purposes of ingress and egress to and from their tract or parcel of real estate and said State Route 259. Said right-of-

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way shall only apply to the extent of the property boundary of the tract owned, which said property boundary is the farthest from Route 259 and no farther.

10. Each tract shall be restricted to one family unit, which is to say that there shall be no more than one dwelling unit, be it house, trailer, or whatever, per tract.

11. Tracts Nos. 11, 12 and 13 shall have the right to use Mountain Top Drive and Cove Drive for the purpose of providing their tract or parcel of real estate with ingress and egress to and from State Route 259. The owners of Tracts Nos. 11, 12 and 13 must however, at the time the rights and responsibilities as created by Paragraph 1 may be delegated by the Grantors, elect as to which unit they would like to participate in, as set forth in Paragraph 1 herein, and then and in that event said owners of Tracts Nos. 11, 12 and 13 would only have the right to use the right-of-way or roadway of the unit elected. Until such time, however, said owners shall have the right to use the two rights-of-way or roadways known as Cove Drive and Mountain Top Drive.

12. Tracts Nos. 14 and 15; 16 and 17; 41 and 42; and 7 and 8 have common entrances as is shown on the plat or map of Mathias Estates, as prepared by Frank A. Whitacre, Licensed Land Surveyor. It is made known herein that the common entrances referred to in this paragraph will not be maintained by the Grantors herein as part of the fees set forth herein and, further, that said common entrances shall and must be maintained by the owners of the respective tracts, and upon the Grantors delegating the rights and responsibilities set forth in Paragraph 1 herein, the common entrances will continue to be maintained by the owners thereof and not any committee of tract owners appointed by the Grantors, or the Grantors themselves, until such appointment might be made.

13. It is made known and understood herein that Cove Drive,

as is shown and depicted on the plat or map of Mathias Estates as drawn by Frank A. Whitacre, Licensed Land Surveyor, provides access to the subdivision known as "Cove Mountain Estates," and that all tract owners in the subdivision known as "Cove Mountain Estates" will have the right to travel Cove Drive through the subdivision of "Mathias Estates" for the purpose of gaining ingress and egress to and from the tract or parcel of real estate that they own in "Cove Mountain Estates," and State Route 259.

14. There is a shale pit lying and being situate partially on Tract No. 42 and partially on Tract No. 43. The acreages reflected for Tract No. 42 and Tract No. 43 do not encompass the area designated as "the shale pit" on the plat or map referred to herein. It is made known and understood that the shale pit is not a lot within the subdivision but rather is a small tract or parcel of real estate, the ownership of which is reserved unto the Grantors herein for the purpose of providing shale for the upkeep of the roads within Mathias Estates, and for such other purposes as the Grantors may elect. Said tract or parcel of real estate designated as "the shale pit" is not intended to be now or at any time in the future a lot within the subdivision for the purpose of sale and habitation but, rather, it is reserved for the purposes set forth in this paragraph.

15. The restrictive covenants and conditions set forth in this document may be changed upon approval of eighty (80) per cent of the thenland owners within the subdivision of Mathias Estates, provided, however, that a meeting of all land owners be held and that all land owners then within Mathias Estates be present in person or by their duly authorized representatives.

The above restrictive covenants and conditions apply to each and every roadway and tract of real estate within Mathias Estates, a plat of which is duly recorded in the office of the Clerk of the County Commission of Hardy County, West Virginia, in

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Plat Book No. 3, at Page \_\_\_\_.

WITNESS the following signatures and seals this the 11<sup>th</sup>  
day of September, 1987.

Garnett R. Turner (SEAL)  
Garnett R. Turner

Lena A. Turner (SEAL)  
Lena A. Turner

STATE OF VIRGINIA  
COUNTY OF ROCKINGHAM, to-wit:

I, ELLEN R. GARBER, a Notary Public in  
and for the County and State aforesaid, do hereby certify that  
Garnett R. Turner and Lena A. Turner, his wife, whose names are  
signed to the foregoing writing, bearing date the 11<sup>th</sup> day of  
September, 1987, have this day acknowledged the same before  
me in my said County and State.

Given under my hand this 11<sup>th</sup> day of September, 1987.

My commission expires 12/08/87.

Ellen R. Garber  
Notary Public

(NOTARY SEAL)

SEE, WALTERS  
& KRAUSKOPF  
ATTORNEYS AT LAW  
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This instrument prepared by Jack H. Walters,  
See, Walters & Krauskopf, Attorneys at Law,  
P. O. Box 119, Moorefield, WV 26836.

STATE OF WEST VIRGINIA, Hardy County Commission Clerk's Office September 18, 1987

The foregoing Instrument, together with the certificate of its acknowledgment, was this day presented in  
said office and admitted to record.

Teste Sue L. Haeterman Clerk.