

41461

61

APPLEFIELDS OF HEAVEN  
DECLARATION OF  
COVENANTS, CONDITIONS, AND RESTRICTIONS

THIS DECLARATION, made this 1st day of June, 1986, by Frank A. Whitacre, Inc. and Land Management & Construction, Inc. D/B/A Fairview Associates, a joint venture, hereinafter referred to as "Declarant".

WITNESSETH:

That, whereas Declarant is owner of certain real property in Hampshire County, West Virginia, having acquired the same by Deed recorded in Deed Book 277, Page 573, among the land records of Hampshire County, West Virginia, which was conveyed to Fairview Associates by the Deed mentioned above and containing 726 acres more or less, as described in said Deed and situated in the Mill Creek and Romney Districts.

WHEREAS, the Declarant will convey the said property subject to certain protective covenants, conditions, restrictions, reservations, liens and charges as hereinafter set forth:

NOW THEREFORE, Declarant hereby declares that all of the property described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants, reservations, and conditions, all of which are for the purpose of enhancing and protecting the value and desirability of the real property, which shall run with the real property, and be binding on all parties having any right, title or interest in the above described property or any part thereof, their heirs, successors or assigns, and shall inure to the benefit of each and every owner thereof.

ARTICLE I  
DEFINITIONS

1. "Association" shall mean and refer to the Applefields of Heaven 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 tract 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 bought within the jurisdiction of the Association.

4. "Tract" shall mean and refer to any numbered tract of land shown upon any recorded subdivision plat of the property.

5. "Declarant" shall mean and refer to Frank A. Whitacre, Inc. and Land Management & Construction, Inc. D/B/A Fairview Associates, their successors and assigns, if such successors or assigns should acquire the remaining undeveloped tracts from the Declarant for the purpose of development.

ARTICLE II  
MEMBERSHIP AND VOTING RIGHTS

1. Every owner of a tract 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 tract which is subject to assessment.

2. The association shall have two classes of voting membership: Class A. Class A shall be all owners with the exception of the Declarant and shall be entitled to one vote for each Tract. When more than one person holds an interest in any Tract, all such persons shall be members. The vote for each Tract shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any tract. Class B. The Class B member shall be the Declarant, who shall be entitled to four (4) votes for each Tract owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (a) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or
- (b) On June 30, 1987

ARTICLE III  
COVENANTS FOR MAINTENANCE ASSESSMENTS

1. The Declarant may assess initially, for each Tract, up to TWO HUNDRED TWENTY-FIVE (\$225.00) DOLLARS per year for the use, upkeep, and maintenance of the right-of-way within said Applefields of Heaven Subdivision and such other common facilities as the said Declarant may provide therein, subject to any increase as provided hereinafter, and for having tract mowed, at least one (1) time per year, by July 15th. Such assessment shall be due and payable in the month of January, beginning with January 1986. The payment of said sum of \$225.00 shall be a lien upon the property conveyed to each purchaser until paid. The assessment of said fees does not apply to Lots owned by the Declarant.

2. Any assessment made pursuant to this paragraph, including a late fee of FIVE (\$5.00) DOLLARS, interest at the rate of Ten (10%) Percent 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 and all grantees do bind themselves, their heirs and successors in title to this lien and to the mortgage liens presently or hereafter encumbering the property affected by these protective covenants. This assessment may not be raised by more than Ten (10%) Percent per year without the written affirmative vote of Two-thirds (2/3) of the members of the association entitled to vote. Fairview Associates assume the responsibility for the maintenance of the roads, right-of-way and common areas until June 30, 1987, or until Eighty (80%) percent of the property has been sold, whichever is first. At that time, the rights and responsibilities as created by this Declaration of Protective Covenants will be delegated to the Applefields of Heaven Property Owners Association who shall assume full responsibility for the collection of the fees and the maintenance of the roads, right-of-way, and common areas. The payment of said assessment

and levy shall initiate only upon sale of any tract in the Applefields of Heaven Subdivision and on or before the Thirty-First (31st) day of January of each year thereafter. In event of a resale of one or more tracts in said subdivision, the obligation shall become the obligation of the new owner(s).

#### ARTICLE IV USE RESTRICTIONS

1. Tracts may be used only for single-family residential purposes and for purposes incidental or accessory thereto, including a guest apartment or guest house, which may be rented when not otherwise occupied, with the exception of Lot(s) #2, #3, and any division thereof. No dwelling may be constructed or maintained on any orchard tract with a ground floor area of less than 480 square feet, exclusive of porches and garages. No dwelling may be constructed or maintained on any wooded tract with a ground floor area of less than 320 square feet, exclusive of porches and garages, and shall be constructed no less than Sixty (60') feet of the center line of any access road. The Declarant may authorize a lesser area in unusual cases where justified by the architectural design, location on tract, or landscaping. No dwelling shall be erected less 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 Board of Directors of the Association or the Declarant may authorize lesser setbacks where dictated by terrain; and provided that side line set-backs shall not apply to a property line between tracts in single ownership. All exterior construction must be completed and closed within Eight (8) months from the commencement of construction. Mobile homes are strictly forbidden.

2. No owner shall construct or suffer to be constructed any structure within, or otherwise obstruct, any easement across his tract, nor divert or otherwise interfere with the natural flow of surface water, nor obstruct any drainage ditch. No parking is permitted upon any road within the Property at any time; and as part of the development of any tract, the Owner shall provide adequate off-road parking for himself and his guest(s).

3. No noxious or offensive trade or activity shall be carried on upon any tract or right-of-way, nor shall anything be done thereon which may be or become an annoyance or nuisance to the community. Without exclusion, the following items and activities must be thoroughly screened by appropriate planting or a fence of appropriate design:

- (a) Refuse containers. (All refuse must be kept in closed sanitary containers at all times).
- (b) Fuel storage tanks.

4. The discharge of firearms for hunting or target shooting is strictly prohibited within 150 yards of any improvement, cabin, or living area of any tract within the subdivision.

5. The use of any motorcycle or motor vehicle without proper noise abatement equipment is prohibited within the subdivision.

6. Owners agree to repair and restore to its prior condition any part of a subdivision road damaged by equipment of Owner or his contractor enroute to or from Owner's Tract. All tracts, improved or unimproved, must be maintained by Owner in a neat and orderly condition at all times. No garbage, refuse, trash or inoperative vehicle or other debris shall be permitted to accumulate or remain on any Tract. In the event any Owner shall fail

64  
to discharge his aforesaid responsibilities in a manner satisfactory to the Declarant or Board of Directors of the Association, upon Two-thirds (2/3) vote of its Board of Directors, and after Fifteen (15) days notice to the Owner, shall have the right, through its agents and employees, to enter upon said Tract and perform necessary maintenance, repairs and restoration, or remove any offending material or object. Such action shall not be deemed a trespass, and all cost of same when performed by the Declarant or Association shall be added to and become part of the assessment of which each Tract is subject.

7. No part of any Tract may be sold or used as a road or right-of-way to any land outside the property without the advance, written permission of the Declarant.

8. The Association, by a vote of Two-thirds (2/3) of its members may make additional rules, covenants and restrictions for the use of the Property, which together with the above may be enforced by fines or other penalties.

9. The installation of any satellite reception equipment shall be done in an area, when possible, which shall conceal the dish. Only black mesh dishes are permitted.

#### ARTICLE V GENERAL PROVISIONS

1. Declarant reserves the right to replat any Tract or Tracts prior to delivery of a deed to an original purchaser. Nothing herein shall be construed to prevent Declarant from imposing additional covenants or restrictions on any Tract not already conveyed by them. No Tract in said subdivision may be resubdivided by the Purchaser, his heirs, successors or assigns into a Tract of less than Five (5) acres and any residual Tract must contain at least (5) acres.

2. In the event, state, local government, any utility, cooperative, or municipality expects or requires the installation of a public utility system within the area of which this is a part, the grantee or grantees by the acceptance of the Deed do hereby agree to pay their proportionate share for the cost and expense of the construction, maintenance and operation thereof, as the same cost is determined by the appropriate authority.

3. All sewage disposal systems constructed on said Tracts shall conform to the regulation of the appropriate West Virginia Department of Health. Free standing toilets are also subject to the aforementioned requirements, and shall be placed in a secluded area. No building shall be constructed and no water well shall be drilled on any Tracts until a sewage disposal and well permit has been obtained from the West Virginia Sewage Enforcement Officer.

4. Twelve (12") inch minimum culverts must be used in all driveways leading from any subdivision roads.

5. No truck, buses, junk cars or unsightly vehicles of any type or description may be left or abandoned on said Tracts.

6. Declarant reserves the right to grant easements for installation and maintenance of all utilities between the property lines and the building set-back lines of all Tracts, in addition to easements reserved by any other instrument duly recorded.

7. The Association, or any Owner, shall have the right to enforce, by any proceeding law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now and hereafter imposed by the provision of this Declaration. Failure by the Declarant or Association or by any Owner to enforce any provision herein contained shall in no event be deemed a waiver of the right to do so thereafter.

8. 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%) percent of the land owners, and thereafter by an instrument by not less than Seventy-five (75%) of the land owners.

9. Invalidity of any of the covenants, restrictions, or other provisions of this Declaration by judgement or court order shall in no way affect any other provisions, which shall remain in full force and effect.

10. Cutting of trees to be permitted for driveways, septic systems, buildings, to improve views, dying trees and for replacing with more desirable varieties. In no case is there to be random clear-cutting except with the written permission of the Declarant or the Association.

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