

Mailed: 4.15.83  
Potomac Highlands Land Co.  
P. O. Box 389  
Ft. Loudon, Pa 17224  
Attn Judy Uglow

POTOMAC HIGHLANDS LAND CO.,  
TROUT POND  
DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION, made this 29th day of March, 1983, by Potomac Highlands Land Co., a West Virginia corporation, hereinafter referred to as "Declarant":

WITNESSETH:

That, whereas Declarant is the owner of certain real property in Hardy County, West Virginia, having acquired the same by deed recorded in Deed Book ~~174~~ 164 at Page 461, among the land records of Hardy County, West Virginia, which is more particularly described as follows: All that certain tract of land which was conveyed to Potomac Highlands Land Co. by Thomas E. Mutchler, Jr. and Ruth E. Mutchler by the deed mentioned above, and containing 632.891 acres, more or less, as described in said deed, and located and situate in the Lost River District, Hardy County, West Virginia.

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 real property, and be binding on all parties having any right, title or interest in the above described property or any part hereof, their heirs, successors and assigns, and shall inure to the benefit of each and every owner thereof.

ARTICLE I  
DEFINITIONS

1. "Association" shall mean and refer to the Trout Pond 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 plot of land shown upon any recorded subdivision plat of the Properties.
5. "Declarant" shall mean and refer to Potomac Highlands Land Co., its successors and assigns, if such successors or assigns should acquire the remaining undeveloped Lots from the Declarant for the purposes of development.
6. "Common Properties" shall mean and refer to those areas of land shown on the subdivision plat, as amended from time to time in accordance herewith, as being intended to be devoted to the common use and enjoyment of all the Owners and any Lots that may be transferred to the Association for use as Common Properties.

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. The Association shall have two classes of voting membership:

Class A. Class A members shall be all Owners with the exception of the Declarant and shall be entitled to one vote for each lot. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for each Lot shall be exercised as they among themselves determine.

Class B. The Class B member shall be the Declarant, who shall be entitled to four (4) votes for each lot 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) January 1, 1985

ARTICLE III  
COVENANT FOR MAINTENANCE ASSESSMENTS

1. The Declarant may assess initially, for each lot, up to Seventy-Two (\$ 72.00) Dollars per year, for the use, upkeep and maintenance of the rights-of-way (including maintenance and clearing road right-of-way of stumps, debris, etc.) within all sections of said Trout Pond and such other common facilities as the said Declarant may provide therein, subject to any increase as provided hereinafter. This assessment of said fees does not apply to Lots owned by the Declarant.

2. Any assessment made pursuant to this paragraph, including late fee of Five (\$5.00) Dollars, interest at the rate of nine (9%) 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 covenants herein written. This lien is expressly inferior and subordinate to any mortgage/deed of trust 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. Potomac Highlands Land Co. assumes the responsibility for the collection of the monies due under this lien assessment and for the maintenance of the roads, rights-of-way and common areas until January 1, 1985, or until 80% 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 Trout Pond Property Owners Association, who shall assume full responsibility for the collection of the lien and the maintenance of the roads, rights-of-way and common areas. The payment of said assessment and levy shall initiate upon the sale of any parcel in the Trout Pond Subdivision and on or before the thirty-first (31st) day of January of each year. In the event of a resale of one or more parcels in said subdivision, the obligation shall become the obligation of the new owner(s).

ARTICLE IV  
USE RESTRICTIONS

1. Lots 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. No dwelling may be constructed or maintained on any Lot with a ground floor area of less than 480 square feet, exclusive of porches and garages; provided that the Board of Directors of the Association, or the Declarant, may authorize a lesser area in unusual cases where justified by the architectural design, location on Lot, or landscaping. Nor shall any dwelling be erected less than twenty-five (25') feet from the side or rear line of any Lot, 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 may authorize lesser set-backs where dictated by terrain conditions; and provided that side line set-backs shall not apply to a property line between Lots in single ownership. All exterior construction must be completed and closed within eight (8) months of the commencement of construction. No building of a temporary nature shall be erected or placed on any of said Lots except those customarily erected in connection with building construction operations; and in such cases, for a period not to exceed four (4) months. This shall not prohibit the erection of a toilet complying with provisions of Article V, Paragraph 3, below.
2. No Owner shall erect or suffer to be erected any structure within, or otherwise obstruct, any easement across his Lot, 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 Lot, the Owner shall provide adequate off-street parking for himself and his guest(s).
3. No signs of any kind larger than one square foot shall be displayed on any Lot, except temporary signs in connection with the construction, lease or sale of buildings or Lots, and except street name and directional signs.
4. The use of trailers within said subdivision is unauthorized, except for the use of temporary camping trailers. Camping trailers may not exceed twenty-five (25') feet in length, nor more than ten (10) years in age. This covenant shall not be construed to permit the use of a camping trailer or camper as permanent housing; no such camping trailer or camper shall be permitted to remain on any Lot for a period in excess of four (4) consecutive months.
5. No noxious or offensive trade or activity shall be carried on upon any Lot 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 approved design:
  - (a) Refuse containers. (All refuse must be kept in closed sanitary containers at all times.)
  - (b) Fuel storage tanks.
  - (c) Garden equipment and supplies.
6. The discharge of firearms or bows for hunting or target shooting is strictly prohibited within 150 yards of any improvement, cabin, or living area of any Lot within the subdivision.
7. The use of any motorcycle or motor vehicle without proper noise abatement equipment is prohibited within the subdivision.
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 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 Lot. In the event any Owner shall fail to discharge his aforesaid responsibilities in a manner satisfactory to the Board of Directors of the Association, the Association, upon a 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 Lot and perform necessary maintenance, repairs and restoration, or to remove any offending material or object. Such action shall not be deemed a trespass, and the cost of the same when performed by the Association shall be added to and become a part of the assessment to which such Lot is subject.

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

10. 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.

ARTICLE V  
GENERAL PROVISIONS

1. Declarant reserves the right to replat any Lot or Lots 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 Lot not already conveyed by it. No Lot in said subdivision may be resubdivided by the purchaser, his heirs, successors and/or assigns.

2. In the event state, local government, any utility, co-operative, or municipality expects or requires the installation of a public utility system within the area of which this Property 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 to be determined by the appropriate authority.

3. All sewage disposal systems constructed on said Lots shall conform to the regulations 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 whenever possible. No building shall be constructed until a sewage disposal permit has been obtained from the West Virginia Sewage Enforcement Officer.

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

5. No trucks, buses, old cars or unsightly vehicles of any type or description may be left or abandoned on said Lots.

6. Declarant reserves the right to grant easements for installation and maintenance of public utilities between the property lines and the building restriction lines of all Lots, 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 proceedings at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now and hereafter imposed by the provisions of this Declaration. Failure by the 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. Additional property may be annexed to the Property with the consent of two-thirds (2/3) of the members of the Association.

9. 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 automatically be 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 Lot Owners, and thereafter by an instrument signed by not less than seventy-five (75%) percent of the Lot Owners.

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.

IN WITNESS WHEREOF, the said Potomac Highlands Land Co., being the Declarant herein, has caused this Declaration to be signed by its President and its corporate seal to be affixed, duly attested by its Secretary.

ATTEST:  
  
Its Secretary *James M. Upton*

POTOMAC HIGHLANDS LAND CO.  
BY: *[Signature]* (SEAL)  
Its President

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF FRANKLIN, TO-WIT:

I, Gina M. Cramer, a Notary Public of the County and State aforesaid, do hereby certify that Duane B. Dillard, whose name is signed to the writing above as President of Potomac Highlands Land Co., a West Virginia corporation, has on this 29th day of March, 1983, acknowledged the said writing before me to be the act and deed of said corporation.

GIVEN under my hand this 29th day of March, 1983.

MY COMMISSION EXPIRES:  


*Gina M. Cramer*  
GINA M. CRAMER, Notary Public  
Chambersburg, Franklin Co., Pa.  
My Commission Expires Jan. 26, 1985

STATE OF WEST VIRGINIA, Hardy County Commission Clerk's Office April 11, 1983  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
The foregoing ~~Declaration~~ together with the certificate of its acknowledgment, was this day presented in said office and admitted to record.

Test: *[Signature]* Clerk.

TPPOA, INC  
PO BOX 491  
WARDENSVILLE, WV 26851



BY-LAWS  
OF  
TROUT POND PROPERTY OWNERS ASSOCIATION, INC.  
(TPPOA)

ARTICLE I

Section 1. The membership of the Association shall consist of those property owners owning lots in the Trout Pond Subdivision in Lost River District, Hardy County, West Virginia, who are subject to the payment of an assessment per annum per lot, under Article III of the protective covenants, conditions and restrictions and are referred to as CC&R.

Section 2. Each member shall be liable to such assessments as the protective covenants, restrictions and easements may provide, and there shall be no transfer of membership in the Association until such dues are paid in full to the Treasurer. The annual road maintenance assessment fee shall be waived each year for one (1) lot for the TPPOA President, Treasurer and Roads Maintenance Manager to compensate for travel-related costs and time incurred in these special Trustee positions. This waiver is applicable when these Trustees are actively participating in at least 75% of all meetings, including the annual meeting.

Section 3. In all elections, the owner or owners of each lot in good standing shall have one (1) vote. A majority of votes polled, including proxies when previous notice of the vote has been given, shall be requisite to determine a question.

Section 4. On transfer or sale of a lot, the prior owners' membership in the Association shall cease.

Section 5. Voting in the affairs of the Association may be in person or by proxy, provided such proxy be executed by the lot owners and filed with the Trustees before the meeting at which the proxy is to be voted.

ARTICLE II

Section 1. The Officers of the Association shall consist of seven (7) Trustees who shall also constitute the Board of Directors. These Trustees will consist of at least one member

from each section and four at-large Trustees. These Trustees will decide from their number who will be assigned and serve the duties of Secretary and Treasurer. Each Trustee shall have one (1) vote.

Section 2. The Trustees shall be members, in good standing of the Association, and shall attend the annual meeting of the Association, which annual meeting shall be held no later than the second Saturday of June. Trustees who also serve as a TPPOA contractor, or work for a contractor doing business with TPPOA, shall abstain from voting on TPPOA issues related to that business contract to avoid any conflict of interest. A Trustee associated with a TPPOA contract shall hold his/her own insurance coverage. To ensure accountability, a Trustee performing contracted work shall not provide oversight of the work nor shall represent the Board.

Section 3. The Trout Pond Property Owners Association, Inc. will elect Trustees at their annual meeting to serve two-year terms. An attempt will be made to elect at least one Trustee from each section of A, B and C. (If a member is not available from one particular section, they may be selected from another section). Should a Trustee resign, move or leave the Association for any reason, a replacement will be elected at the next annual meeting and shall serve a two year term, such term to begin from the date of the election. The Trustees may, at their discretion, appoint an ad-hoc Trustee to fill an unexpected vacancy ending an election at the next annual meeting to permanently fill such vacancy.

#### ARTICLE III

Section 1. The Chairperson of the Trustees shall preside at all meetings of the members and at all meetings of the Trustees, and shall implement and direct the execution of the policies and functions of the Association. Special meetings of the Association may be set at the direction of the Chairperson, or upon written request of four (4) members of the Association, or two (2) of the Trustees. Special meetings of the Board of Trustees shall be held upon written request of a majority of the Board of Trustees. Trustees shall select from among themselves a Chairperson to preside at all meetings in the execution of the policies and functions of the Association.

Section 2. The Board of Trustees shall establish such regulations as may be necessary for the payment of the day to day expenses and shall be responsible for the initiating of a fund for petty cash and the authorization of the Chairperson to pay such ordinary and recurring items of expenses as he/she may see fit. The Association will have the Treasurer's books reviewed yearly, and audited every third year by a Certified Public Accountant.

#### ARTICLE IV

Section 1. The members shall receive from the Secretary at least fifteen (15) days notice of the annual meetings and any special meetings of the Association, which meetings shall be held on the grounds of the Trout Pond Subdivision or a close proximity at a time to be designated by the Trustees.

Section 2. The Secretary shall, at least fifteen (15) days prior to each meeting of the Trustees, give each Trustee a written notice of the meeting by mailing them notice of the time and place set for said meeting, said notice to be directed to the member's address appearing on the records of the Association.

Section 3. Nothing hereinbefore set forth with reference to meetings and notice of meetings shall preclude the holding of a meeting pursuant to waiver and by agreement of all members of the Board of Trustees as the case may be.

#### ARTICLE V

Section 1. Amendments to these By-Laws may be made at any annual meeting provided that the proposed amendment being offered be in writing and notice of said proposed amendment be mailed to all members of the Association, together with a copy of same, at least fifteen (15) days prior to the meeting at which said amendment shall come before the membership for vote.

Section 2. Any amendments to the By-Laws must receive a majority of the vote of the members present or by proxy in order to be adopted.

Section 3. Roberts Rule of Order will govern the conduct of the Association's meetings.



Section 4. Ten percent (10%) of the members of the association entitled to vote represented in person or by proxy, shall constitute a quorum at a meeting of association members.

ARTICLE VI

Section 1. Sixty (60) days after the posted due date of the Maintenance Assessment Statement, a late notice shall be sent to all owners who have not paid the annual assessment fee. Late notices shall include the maintenance assessment, and a five (\$5) dollar late fee. Ninety (90) days after the posted due date of the annual Maintenance Assessment Statement, a second late notice and notice of intent to collect shall be sent via certified mail to all owners who have not paid the annual assessment fee. Returned checks are subject to a thirty-five (\$35) dollar fee. Interest at the rate of nine (9%) percent per annum shall begin to accrue one hundred twenty (120) days after the original due date.

Section 2. One Hundred and twenty (120) days after posted date of the initial Maintenance Assessment Statement, those accounts which are not paid, will be declared delinquent.

Section 3. When an account has become delinquent (Article VI, Section 2), the Trout Pond Property Owners Association Board will commence civil action to recover the unpaid balance owed. All costs (including mailings, fees, services, lawyers, collections, etc.) associated with the recovery of delinquent TPPOA annual road maintenance assessment fee shall be added to the payment due.

This document presented and filed:  
03/04/2016 11:03:28 AM

Date: \_\_\_\_\_

Approved this date by the TPPOA Board of Directors

- Gene Hall - President
- Mike Ielmini - Secretary
- Paul Bockting - Treasurer
- Joe Whalen - Road Manager
- Carlis Conner - Trustee
- Preston Deaver - Trustee

*Gene Hall*  
*Michael B. Ielmini*  
*Paul Bockting*  
*Joe Whalen*  
*Carlis Conner*  
*Preston Lee Deaver*

Gregory L. Ely, Hardy County, WV  
201468 Transfer Tax: \$0.00

STATE OF WEST VIRGINIA  
COUNTY OF MARIETTA  
WITNESSES TO AND SUBSCRIBED BEFORE ME THIS  
11th day of June, 2015  
*Keypal M. Moreland*  
NOTARY PUBLIC  
MY COMMISSION EXPIRES Sept 30 2021

