

Mailed 8/29/2003

Joyce E. Stewart
113 Winchester Ave
Moorefield, WV 26836

TOP OF THE MOUNTAIN

DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION, made this 1st day of August, 2003, by RENICK C. WILLIAMS and BETTY P. WILLIAMS, their successors and assigns ("Declarants").

KNOWN ALL MEN BY THESE PRESENTS: That the undersigned known and referred to as "Declarants", do hereby create a Common Interest community pursuant to the West Virginia Code, as amended, named TOP OF THE MOUNTAIN, situate in Moorefield District of Hardy County, West Virginia, north of State Route 55 and west of Bean's Settlement, on County Route 1/2, which real estate is a portion of that which was conveyed unto Renick C. Williams and Betty P. Williams, by deed of Blue Ridge Lumber, dated May 15, 2003, and of record in the Office of the Clerk of the County Commission of Hardy County, West Virginia, in Deed Book No. 274, at page 77.

WHEREAS, Declarants are the owners of the real property described herein and desire to create thereon a primarily residential community with roads for the benefit of said community; and

WHEREAS, Declarants desire to provide for the preservation of the values and amenities in said community and for the maintenance, including snow removal, of all roadways therein, and to this end, desire to subject the real property described as being a part of "Top of the Mountain" to the covenants, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof; and

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

WHEREAS, Declarants will incorporate under the laws of the State of West Virginia as a non-profit, non-stock corporation, the Top of the Mountain Owners Association, Inc., for the purpose of exercising the functions aforesaid.

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

ARTICLE I: DEFINITIONS

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

- (a) "Association" shall mean and refer to The Top of the Mountain Owners Association, Inc.
- (b) "The Properties" shall mean and refer to all such existing properties as are subject to this Declaration, or any Supplemental Declaration, as described in Article II, Section 1, hereof.
- (c) "Roads and Other Common Facilities" shall mean the areas of land shown on any recorded subdivision plat(s) of The Properties which are intended to be devoted to the common use of the owners of The Properties as labeled on said plat(s).
- (d) "Tract" shall mean and refer to any numbered tract or parcel of land as shown upon any recorded subdivision plat of The Properties or any individual tract plat captioned as being a part of the Top of the Mountain.
- (e) "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Tract situated upon The Properties but, shall not mean or refer to the beneficiary of any deed of trust unless such beneficiary has acquired title pursuant to foreclosure or proceedings in lieu of foreclosure.

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

ARTICLE 2: REAL ESTATE DEDICATED TO AND MADE A PART OF TOP OF THE MOUNTAIN, AND SUBJECT TO THIS DECLARATION

Section 1. TRACTS. The real property which is, and shall be, held, transferred, sold, conveyed, and occupied subject to this Declaration is located in Moorefield District of Hardy County, West Virginia, and there shall be placed of record in the Office of the Clerk of the County Commission of Hardy County, West Virginia, plats of survey and descriptions of survey for the individual tracts comprising "Top of the Mountain" subdivision, which real estate is a portion of that which was conveyed unto Renick C. Williams and Betty P. Williams, by deed of Blue Ridge Lumber, a Virginia General Partnership, dated May 15, 2003, and of record in the Office of the Clerk of the County Commission of Hardy County, West Virginia, in Deed Book No. 274, at page 77.

Section 2. OUTSTANDING EASEMENTS AFFECTING USE OF TRACTS

By Order of the Circuit Court of Hardy County, West Virginia, dated June 16, 1980, and recorded in the Office of the Clerk of the County Commission of Hardy County, West Virginia, in Deed Book No. 162, at page 405, in the matter of Lyle B. Park, et al. Plaintiffs v. 7-11 Club, Inc., Defendants, Civil Action No. 77-C-5, certain stipulations and agreement were made regarding the use of that right-of-way crossing the "Park Property", of which the Existing Property was a part. Reference is hereby made to said Order for a more particular description of said right of way and the parties having rights of ingress and egress over same.

Section 3. FURTHER SUBDIVISION. No Lot within The Existing Property shall be further subdivided, divided or portioned in any way by sale, gift, devise or other method, except to allow for nominal boundary line adjustments.

ARTICLE 3: MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

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

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

ARTICLE 4: PROPERTY RIGHTS IN THE COMMON PROPERTIES

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

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

ARTICLE 5: UPKEEP OF COMMON INTEREST COMMUNITY

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

Section 2. ASSESSMENTS. The assessments levied by the Association shall be used exclusively for the purpose of improvement and maintenance of Roads within the subdivision. Such levies may be expended specifically to include, but are not limited to, the payment of insurance and expenses for any common elements, and repair, replacement, and additions thereto, and for the cost of labor, equipment, materials, management, and supervision thereof, and such other purposes as may be set forth in the Articles of Incorporation and the By-Laws of the Association. The Association shall obtain and keep current the insurance required by the West Virginia Code, as amended.

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

Section 4. INITIAL ASSESSMENT. The annual assessments provided for herein shall be on a calendar year basis, due and payable by the first business day in January of each year hereafter. Tract owners purchasing from Declarants will be responsible for payment at closing of the assessment prorated to the end of the year in which they purchase, at the initial rate of One Hundred Dollars (\$100.00) annually. Such prorated assessments may be utilized by Declarants for the maintenance of the Roads. Declarants may collect such annual assessments as are herein provided to fund such maintenance during their ownership period, and Declarants shall enjoy all remedies of the Association in the event of nonpayment of the assessment by Tract Owners. Assessment paid to the Declarant shall be held in an interest-bearing bank account and unused funds shall be transferred to the Association upon its initial elections of officers comprised of Owners at the time the initial Directors of the Association resign. Subject to other conditions herein, the meeting for elections may be held at the Declarants' discretion.

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

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

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

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

- (a) all properties to the extent of any easement or other interest therein dedicated and accepted by a public authority and devoted to public use;

- (b) all properties exempted from taxation by the laws of the State of West Virginia, upon the terms and to the extent of such legal exemption;
- (c) all properties owned by Declarants during the period of Declarants' ownership only, whether during initial, original ownership or pursuant to foreclosure or proceedings in lieu of foreclosure; and
- (d) all Tracts bordering, and using as sole access any State maintained road; provided, however, that the owners of such Tracts shall be members of the Association with all rights and responsibilities appurtenant thereto, but shall not vote on matters of road maintenance, and provided further that assessments or portions thereof levied for other than road maintenance shall remain an obligation of the Owners of such Tracts. HOWEVER, the Owner/Owners of any Tract bordering on or using a public road, including "Bishop Road" or "Olive Branch Road", but also utilizing the subdivision roadways, are not be exempt from the road maintenance assessments and shall be subject to the foregoing Sections of Article 4 herein.

ARTICLE 6: COMMON PROTECTIONS AND PROTECTIVE COVENANTS

Section 1. SETBACK MINIMUMS. No building or any part thereof shall be erected on any Lot closer or nearer to any right-of-way lines, side, rear or boundary lines than thirty feet (30').

Section 2. TIMBER REMOVAL. Not more than thirty percent (30%) of the standing timber shall be cut or removed from any individual Tract, which determination of excessive cutting shall be made by the Association.

ARTICLE 7: UTILITY EASEMENTS

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

ARTICLE 8: RESIDENTIAL AND AREA USE

Section 1. All Tracts shall be used for residential and recreational purposes only. With the exception of structures existing as of the date hereof, no residence shall be erected, constructed, maintained, used or permitted to remain on any Tract other than one (1) single family dwelling containing a minimum of 1,200 square feet total area on the first floor, exclusive of porch, decking, basement, garage, overhanging eaves or outbuilding. Any garages or outbuildings constructed on a Tract must conform generally in appearance and material with any dwelling on said Tract.

Section 2. All exterior construction must be completed and closed within one (1) year of the commencement date of excavation. No exterior siding of masonry block or cinder block shall be permitted. All dwellings shall have an enclosed permanent foundation.

Section 3. There shall be no single-wide or double-wide mobile homes (as they are defined in West Virginia Code 37-15-2), house trailers, or buses situate on any Tract as a residence or for the storage of materials therein, either temporarily or permanently. This section shall not be construed to exclude modular homes, but any such modular home must be placed and affixed to a solid foundation.

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

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

ARTICLE 9: ROADWAYS, PARKING AND JUNK AUTOMOBILES

Section 1. No automobiles or other motor vehicles shall be parked in or within twenty-five feet (25') from the rights-of-way or roads of the subdivision, and no on-street parking is permitted by Tract Owners. Visitors, guests, delivery vehicles or others legitimately using said roads and streets are excepted and are permitted to temporarily park along said streets.

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

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

ARTICLE 10: ADVERTISING

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

ARTICLE 11: AGRICULTURE

No livestock, horses or poultry shall be raised, bred or kept on any Tract for commercial purposes, but household pets, such as dogs and cats, may be kept provided they are not permitted to run at large so as to become an annoyance to other Tract Owners and further provided that they are not bred or maintained for commercial purposes. The raising of pigs or swine is expressly prohibited on any Tract. With suitable facilities and proper fencing, poultry, horses and livestock shall be permitted on Tracts for personal use, provided at least one acre, exclusive of residential use and wooded areas on said tract, per each grazing animal (i.e., livestock and horses) is fenced for the maintenance of said animal. No more than twenty (20) individual fowl may be kept on any single Tract at any one time. Hunting and trapping of wildlife is permitted with The Properties in accordance with West Virginia Law. No poultry houses constructed to contain more than the allowable 20 fowl shall be permitted on Tracts.

ARTICLE 12: COMMERCIAL USE

No Tract shall be used for commercial purposes, save that may be utilized for in-home occupations, excluding garages for automobile maintenance and repair, although no signs or advertisements thereof will be permitted with The Existing Property. While business invitees thereof all have use of the subdivision roadways, such use shall be for ingress and egress only. Such in-home occupational use shall not be permitted to become a nuisance to other Lot Owners.

ARTICLE 13: NUISANCE

Section 1. No noxious, noisy (including excessively barking dogs) or offensive activity shall be carried on within The Existing Property, nor shall anything be done therein which may be or which may become an annoyance or nuisance to the neighborhood. No toxic or hazardous materials shall be produced or stored within The Existing Property at any time.

Section 2. No Tract Owner shall be permitted to install outdoor lighting of such brilliance, or at such height, so as to disturb the enjoyment of any adjoining Tract Owner.

ARTICLE 14: WASTE

No Tract shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other

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

ARTICLE 15: RECREATION USE

No use of trail bikes, mini-bikes or similar all terrain vehicles or snowmobiles may be permitted upon the roads within The Existing Property unless duly licensed, with mufflers, and then only for ingress and egress, which shall be to and from that person's Tract only and by the most direct means to the County Route.

ARTICLE 16: CAMPING

Temporary camping is permitted upon the Tracts from February 1 through December 31 annually. Only equipment professionally manufactured for that purpose, such as tents, travel trailers/campers and recreational vehicles, are permitted for use as camping shelters. Camper trailers must be parked three hundred feet (300') from all rights of way, or be placed where not readily visible from the main subdivision roadways.

ARTICLE 17: VIOLATIONS

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

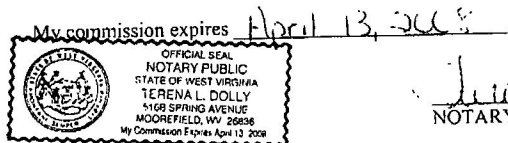
WITNESS the following signatures and seals:

Renick C. Williams
RENICK C. WILLIAMS, DECLARANT
Betty P. Williams
BETTY P. WILLIAMS, DECLARANT

STATE OF WEST VIRGINIA,

COUNTY OF HARDY, to-wit:

Taken, sworn to and subscribed before me, a Notary Public in and for the County and State aforesaid, by RENICK C. WILLIAMS and BETTY P. WILLIAMS, husband and wife, on this the 19th day of August, 2003.



Terena L. Dolly
NOTARY PUBLIC

This Document was prepared by:
Joyce E. Stewart, Attorney at Law
113 Winchester Avenue
Moorefield, WV 26836.

STATE OF WEST VIRGINIA, Hardy County Commission Clerk's Office August 22, 2003 2:51 P.M.

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

Teste Janet B. Furell Clerk.