

Mailed 12-3-2003  
Mr. Robert B. Dillard  
HC 83, Box 18  
Settlers Valley Way  
Lost River, WV 26810

ROBERT B. DILLARD and  
"THE SUMMIT AT LOST RIVER"

## **DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS FOR "THE SUMMIT AT LOST RIVER"**

KNOW ALL MEN BY THESE PRESENTS: That the undersigned, referred to as "Declarant," has previously recorded a plat of 9 lots, containing a total of 41.81 acres, to be known as Phase I of "The Summit at Lost River", Part of Tax Map 349, Parcel 11 and being fully described on a plat of survey prepared by L&W Enterprises, recorded in the Hardy County Clerk's Office in Map Book 7, Page 27, and made a part hereof by reference.

Declarant hereby claims an exemption from the West Virginia Uniform Common Interest Ownership Act, pursuant to the Code of West Virginia, Chapter 36B, Article I, Section 203, inasmuch as this development is a "small planned community" and is not subject to any "development rights", and has no common areas of elements, other than access roads and several shared wells.

The Summit at Lost River subdivision has been approved and is in compliance with the Hardy County Subdivision Ordinance.

All lots in said subdivision shall be subject to the following protective covenants, conditions, restrictions and easements that shall run with the land and shall be binding upon all subsequent owners of each lot:

### **Article I – Definitions**

1. "Association" shall mean and refer to The Summit at Lost River Property Owners Association, its successors and assigns. The Summit at Lost River Property Owners Association may from time to time, be referred to as the "Lot Owners Association" or "Association", but it is understood that they are one and the same entity.

2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, any lot in the subdivision, but excluding those persons or entities having an interest merely as security for the performance of an obligation. Declarant is considered an "Owner" for purposes of voting in the Association, but is exempt from payment of any annual assessments now or in the future.

3. "Lot" shall mean and refer to each of the lots that are described on the plat of survey as referenced above.

4. "Declarant" shall mean and refer to Robert B. Dillard, his heirs, and any individual(s) whom he specifically designates in writing to be a Declarant. In consideration of the Declarant's installation of the roads, the Declarant shall be and is forever exempt from payment of the annual assessment for all lots Declarant owns or should hereafter reacquire, and from payment of any special or other assessments instituted in the future for any purpose. This exemption shall not be amended or revoked pursuant to Article III hereof, or in any other manner.

5. "Common Elements" shall mean and refer to the easements and water rights reserved for the benefit of the Association and lot owners, including the rights-of-way for ingress and egress, shown on the plat of survey as aforesaid.

6. "Assessment" shall refer to the fact that each lot will be subject to an annual assessment for installation, maintenance, repair and replacement of the common elements (road and water). Total assessments may not exceed \$300.00 per year, except as specified herein. Declarant is exempt from assessments.

## Article II – Property Owners Association

Declarant shall assess and collect, for each lot, up to Two Hundred Dollars (\$200.00) per year, for the use, upkeep and maintenance of the rights-of-way within the development. Declarant shall assess and collect for each lot up to One Hundred Dollars (\$100.00) per year, for the use, upkeep and maintenance of the water systems of the development.

There shall be several wells and water systems placed throughout the property to provide water to certain lots and there will be an electric meter adjacent to each said well. The expense for electric for each water system shall be shared equally by the owners of each lot serviced by each water system. The assessment for this electric service shall be prorated and based upon the number of lots, which have been sold and connected to each system. The billing and payment for the electric used for each system shall be the responsibility of each lot owner served by each system and shall not be part of the water system maintenance fund referenced in this Article.

A bank account shall be maintained for road and water funds as aforesaid. Increases shall be provided for hereinafter. Assessments made pursuant to this paragraph shall include a late fee of Five Dollars (\$5.00) per month for failure to pay within thirty (30) days of mailing of the written assessment, plus interest at the rate of nine percent (9%) per annum from the date of delinquency, and reasonable attorney's fees incurred in the collection thereof. Declarant assumes responsibility for the collection of the monies due under this agreement and for arranging for the maintenance of the roads, rights-of-way and water system. At such time as the property owners form an association to carry out these duties and functions, Declarant shall turn over the rights and responsibilities as created by this Declaration of Protective Covenants, along with any previously collected assessments remaining at that time and not expended for purposes set forth herein, to a properly formed property owners association, which shall then assume full responsibility for the collection of assessments and maintenance of the common elements. The assessments, with a maximum of \$300.00 at this time, may not be raised above that amount by more than ten percent (10%) per year without the written affirmative vote of three fourths (3/4) of the members of The Summit at Lost River property owners association who are entitled to vote. Both annual payments are due on January 1<sup>st</sup> of each year.

Membership in the property owners association shall include every owner, including the Declarant, of a lot in said subdivision. Membership shall be appurtenant to, and may not be separated from ownership of any lot.

Owners must form their association and assume the responsibilities set forth above, at the Declarant's exclusive discretion, however Declarant shall schedule the first or organizational meeting of the Association, and shall otherwise assist, to the extent that he is able, in the formation of the Association.

CURRENTLY  
\$395  
AS OF  
2026

\$100.00  
Per Year  
WATER  
Fee  
AS OF  
2026

In the event that a lot owner is delinquent in payment of an assessment, said lot owner shall not be a member in good standing of the Property Owners Association, and therefore shall not be entitled to vote in relation to said Association until said assessment (s) is paid in full.

### **Lien for Assessments**

1. The Association or the Declarant shall have a lien on any lot for the assessment levied against that lot and its owner from the time the assessment becomes due. Late charges, attorney's fees and interest imposed by this Declaration are enforceable as assessments.

2. A lien under this section shall be higher in priority than any other liens and encumbrances on any lot except liens and encumbrances recorded before the recordation of this Declaration and liens for taxes due any governmental entity.

3. A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three (3) years after the full amount of the assessment becomes due.

4. A judgment or decree in any action brought under this section must include costs and reasonable attorney's fees for the prevailing party.

5. The Declarant or the Association, upon written request, shall furnish to the Owner a statement setting forth the amount of unpaid assessments against the lot. The statement must be notarized and in recordable form. The statement must be furnished within ten (10) business days after receipt of the request and is binding on the Association, the Declarant, and every Owner.

6. For purposes of perfecting and preserving the lien, the Association or the Declarant shall give notice to the Owner as follows:

- (a) Personal service in a manner acceptable under West Virginia law.
- (b) By registered or certified mail, return receipt requested, and in a form reasonably calculated to inform the Owner of his liability for payment of the assessment. The lien shall be discharged as to subsequent purchasers for value without notice unless the Association or Declarant shall cause to be recorded a notice of the lien in the office of the Clerk of the County Commission of Hardy County, West Virginia.

Said notice shall contain a legally sufficient description of the lot, name or names of the owners, amount of unpaid assessments due together with the date when each became due, and the date of recordation of the lien.

7. The cost of recordation of the lien shall be added to the assessment, and upon payment of the indebtedness related to the assessment and costs, the Declarant or Association shall execute a written release of the lien, to be recorded in the aforesaid Clerk's Office, at the expense of the Declarant or the Association.

### **Article III – Amendments to the Declaration**

This Declaration may be amended only by vote or agreement of at least three quarters (3/4) of the members of the Property Owners Association, once it has been formed, unless such amendment relates to a provision or section requiring a greater percentage, and in that event the greater percentage will be controlling. This provision may be amended by a property owners association vote in accordance with whatever rules and regulations it adopts.

### **Article IV – Common Protections and Protective Covenants**

1. No further subdivision of any of the lots or tracts of real estate will be allowed.
2. 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 to any lot, a culvert, twenty (20) feet in length, or larger, if necessary, shall be used in constructing the driveway in order to alleviate blockage of natural drainage. No parking is permitted on any development road at any time and as part of the development of any lot, the Owner shall provide adequate off-road parking.
3. Due to the unsightliness of junk vehicles on lots, no motor vehicle which does not have current license plates or a current inspection sticker, shall be permitted on any lot.
4. Mobile homes, house trailers, modular homes, and the so-called "double-wide" are prohibited on any tract within the development. Mobile homes of the "Winnebago" variety, regardless of size, are prohibited.
5. Lots may be used for single-family residential purposes only, and they may be rented.
6. Not more than one single-family residence shall be erected on a lot. For each lot containing more than 4 acres, residences shall contain a minimum of One Thousand Five Hundred Sixty (1,560) square feet, excluding basement, garage, porch, carport, deck and overhanging eaves. For each lot containing 4 acres or less, residences may contain no less than One Thousand Two Hundred (1,200) square feet, excluding basement, garage, porch, carport, deck and overhanging eaves.
7. No buildings or houses shall be erected having vinyl, aluminum or any synthetic material. All buildings and houses must be of log, wood or stone siding.
8. All utilities must be underground except for the main trunk leading from Route 259 to the corner of Rocky Mountain Road which has previously been installed by the Declarant.
9. 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.
10. No sign 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, except street name and directional signs.

11. Each lot shall be used for residential purposes only, and any garage or outbuilding must confirm generally in appearance and material with any dwelling on said lot. No businesses shall be operated on any lot, except for those operating on a mail, telephone, fax or Internet basis.

12. The Owner shall maintain, repair and restore, as necessary, the exterior of any building or other improvements erected on any lot. Owners likewise must repair and restore promptly to its prior condition any part of a development road damaged by equipment of Owner or his contractor in-route to and 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, rubbish, junk, 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 Declarant or the Property Owners Association, after fifteen (15) days notice to the Owner, the Declarant or Property Owners Association shall have the right, through its agents and employees, to enter upon said lot and perform the necessary maintenance, repairs, clean-up, or restoration. Such action shall not be deemed a trespass, and the costs of same, when performed by the Declarant or the Association, shall be added to and become a part of the assessment to which such lot is subject. The Declarant or Property Owners Association shall have the right, through its agents and employees, to enter upon any lot and perform necessary maintenance or repairs to the water system. Such action shall not be deemed a trespass, and the costs of said maintenance and repair shall be paid from the assessment fund as aforesaid.

13. No noxious or offensive trade or activity shall be carried on upon any lot, nor shall anything be done thereon which may be or become an annoyance or nuisance to the community. The following items and activities must be thoroughly screened from public view by appropriate planting or a screen fence:

- Refuse containers – all refuse must be kept in a closed container at all times
- Fuel storage tanks
- Garden equipment and supplies

14. No part of any lot may be sold or used as a road or right-of-way to any land outside the development without the advance written permission of the Declarant or Property Owners Association.

15. All sewage disposal systems constructed on said lots shall conform to the regulations of the West Virginia Department of Health, and no building shall be constructed and no water wells shall be drilled on any lot until a sewage disposal permit has been obtained from the West Virginia sewage enforcement officer. Building permits must be obtained prior to the construction of any structure. No privies may be constructed and maintained on any lot, and during construction of a house, portable toilets that are Health Department approved may be used for a period not to exceed five (5) months.

16. No building shall be erected closer than ten (10) feet to the property line that adjoins the development road, or closer than ten (10) feet to the side or rear property lines. In the event that the lot owner purchases an adjacent lot and would desire to erect a structure on the property line where the lots join, then and in that event the 10 foot setback restriction would not apply to that property line where the lots meet. If this paragraph should be found to provide setbacks less than the amount required by any Hardy County ordinance, then it shall prevail.

17. No livestock permitted. No laying hen, broiler house, or other poultry business is prohibited. No pigs or pens permitted.

18. The Declarant reserves for his benefit, and the benefit of the Association, an easement for the installation, erection, maintenance, operation and replacement of telephone and electric light poles, conduits and related equipment, and/or sewer, gas, telephone, cable television, electric and water lines on, over, above and under a strip of land twenty-five (25) feet wide at any point along the sides, rear or front lines of any of the lots or tracts within the subdivision. 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 of the lots within the subdivision. The easement reserved in this paragraph is the same area referenced hereinbefore in these covenants for setbacks.

19. Each lot owner shall have an unobstructed right of ingress and egress to and from his lot over the rights-of-way and roadways as shown on the development plat. The width of all development rights-of-way is designated on the plat of survey. Reference is made to the development plat for more information. The Declarant or Property Owners Association shall be responsible for maintenance of the development roads and water system (common elements) as aforesaid. Nothing shall require the Declarant to install roads to the full width of the easement.

20. Use of any motorcycle, dirt bike, all-terrain vehicle, or other similar motorized conveyance within the development is strictly prohibited; except for the limited purpose of ingress and egress from the public road to a subdivision lot, by the owner of such lot, their family or guest.

21. Hunting of any type, nature or kind, by the owners, their guests or any other persons, is strictly prohibited. Additionally, target practice or the discharge of firearms of any type, nature or kind is also strictly prohibited.

22. Owners shall insure that domestic animals do not cause a nuisance, audibly or otherwise, by their presence on the real estate, and no kennels, or other group-type shelter for animals shall be permitted on the subdivision property.

23. The Declarant, or 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 provision of this Declaration. Failure by the Declarant or Association or by an Owner to enforce any provisions herein contained shall in no event be deemed a waiver of the right to do so thereafter.

24. Invalidity of any of the covenants, restrictions or other provision of this Declaration by judgment or Court Order, shall in no way affect any other provision, which shall all remain in full force and effect.

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

26. This Declaration of Protective Covenants shall also apply to all subsequent sections and lots of "The Summit at Lost River".

Dated this 1st day of December, 2003

Robert B. Dillard  
Robert B. Dillard  
Declarant

STATE OF WEST VIRGINIA  
COUNTY OF HARDY, to wit:

I, Sharon Michael, a Notary Public in and for the County and State aforesaid, do hereby certify that Robert B. Dillard, Declarant, whose name is signed to the foregoing writing, bearing date the 1st day of December 2003, has this day acknowledged the same before me in my said County and State.

Given under my hand this 1st day of December 2003.

My commission expires July 25, 2011



Sharon Michael  
Notary Public

STATE OF WEST VIRGINIA, Hardy County Commission Clerk's Office December 1, 2003 3:58 PM

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

Teste Janet S. Lundy Clerk.

500  
Mailed 7/7/2004  
Howard Krauskopf  
PO Box 119  
Moorefield, WV 26836

**ROBERT B. DILLARD, ET AL,  
TO  
THE SUMMIT AT LOST RIVER**

**AMENDMENTS TO DECLARATION OF PROTECTIVE COVENANTS,  
CONDITIONS AND RESTRICTIONS  
FOR THE SUMMIT AT LOST RIVER**

*WHEREAS*, The Summit at Lost River subdivision is subject to certain covenants, conditions and restrictions recorded on December 1, 2003, in the Hardy County Clerk's Office in Deed Book 277, Page 106; and

*WHEREAS*, "Declarant" therein, namely Robert B. Dillard, and all of the other property owners in said subdivision as of this date, desire to amend the aforesaid covenants, conditions and restrictions, to reflect a correction for a typographical error and to add one addition and change to said document; and

*WHEREAS*, The individuals executing this document constitute all of the owners of all properties in said subdivision as of this date.

*NOW, THEREFORE, WITNESSETH:* That the following amendments to the Declaration of Protective Covenants, Conditions and Restrictions for the Summit at Lost River subdivision shall, upon the recording of this document, become effective as part of the aforesaid covenants, conditions and restrictions and to the extent that they alter or change the original document, the following amendments shall take precedence; however the remainder of the aforesaid document not affected by the following amendments, shall remain in full force and effect as written and recorded:

*AMENDMENT ONE:* In Article IV at paragraph 17, there is a typographical error, and said paragraph shall now be amended to read as follows:

17. No livestock permitted. No laying hens or boiler house, or other poultry business permitted. No pigs or pens permitted.

*AMENDMENT TWO:* In Article IV at paragraph 7, the following restrictive language is added to the end of that paragraph:

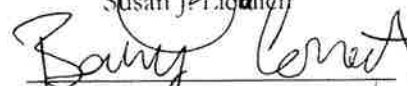
7. ....The Declarant, or the Property Owners' Association Board, must give written approval before construction on structural additions, garages or outbuildings commences, and prior to paint or stain being applied to the exterior of any building in the subdivision, so as to ensure that the construction, paint, or stain conforms generally to the manner in which the existing buildings in the subdivision are constructed, painted or stained. Such approval or authorization shall not be unreasonably withheld. Application for approval or authorization of a construction or paint color or a type of stain shall be made in writing to the Declarant or the Board, along with a drawing of the proposed construction or sample of the proposed paint or stain. A decision on the said application shall be made as soon thereafter as possible, by the Board. Property owners desiring to change or alter the current paint or stain on their existing structures, shall also be required to obtain the aforesaid approval. Property owners desiring said approval are cautioned to provide the Declarant or Board with sufficient lead time to consider such requests, as same would relate to the landowners' plans.

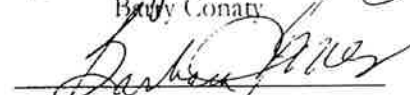
WITNESS the following signatures and seals this the 19<sup>th</sup> day of June, 2004.

  
Robert B. Dillard  
Declarant

  
Sandra L. Huffer

  
Susan J. Liddich

  
Barry Conaty

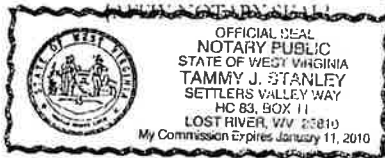
  
Barbara Groves

STATE OF WEST VIRGINIA,  
COUNTY OF HARDY to wit:

I, Tammy J. Stanley, a Notary Public in and for the County and State aforesaid, do hereby certify that Robert B. Dillard, Declarant, of The Summit of Lost River subdivision, whose name is signed to the writing above, bearing date the 19<sup>th</sup> day of June, 2004, has this day acknowledged the same before me in my said County and State.

Given under my hand this the 19<sup>th</sup> day of June, 2004.

My commission expires January 11, 2010.

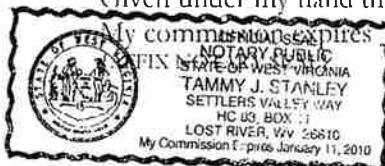


Tammy J. Stanley  
Notary Public

STATE OF West Virginia,  
COUNTY OF Hardy to wit:

I, Tammy J. Stanley, a Notary Public in and for the County and State aforesaid, do hereby certify that Sandra L. Huffer, whose name is signed to the writing above, bearing date the 19<sup>th</sup> day of June, 2004, has this day acknowledged the same before me in my said County and State.

Given under my hand this the 21<sup>st</sup> day of June, 2004.



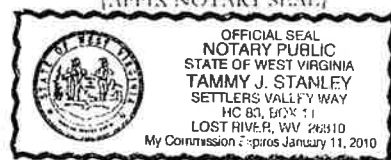
Tammy J. Stanley  
Notary Public

STATE OF West Virginia,  
COUNTY OF Hardy to wit:

I, Tammy J. Stanley, a Notary Public in and for the County and State aforesaid, do hereby certify that Susan J. Liedlich, whose name is signed to the writing above, bearing date the 19<sup>th</sup> day of June, 2004, has this day acknowledged the same before me in my said County and State.

Given under my hand this the 21<sup>st</sup> day of June, 2004.

My commission expires January 11, 2010.

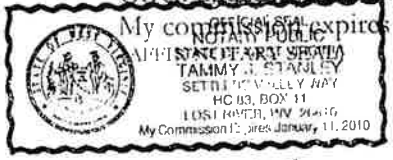


Tammy J. Stanley  
Notary Public

STATE OF West Virginia  
COUNTY OF Hardy, to wit:

I, Tammy J. Stanley, a Notary Public in and for the County and State aforesaid, do hereby certify that Barry Conaty, whose name is signed to the writing above, bearing date the 19<sup>th</sup> day of June, 2004, has this day acknowledged the same before me in my said County and State.

Given under my hand this the 19<sup>th</sup> day of June, 2004.



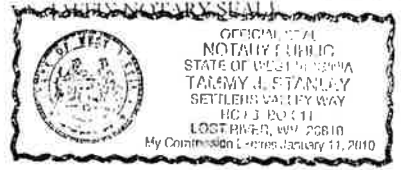
Tammy J. Stanley  
Notary Public

STATE OF West Virginia  
COUNTY OF Hardy, to wit:

I, Tammy J. Stanley, a Notary Public in and for the County and State aforesaid, do hereby certify that Barbara Groves, whose name is signed to the writing above, bearing date the 19<sup>th</sup> day of June, 2004, has this day acknowledged the same before me in my said County and State.

Given under my hand this the 24<sup>th</sup> day of June, 2004.

My commission expires January 11, 2010



Tammy J. Stanley  
Notary Public

STATE OF WEST VIRGINIA, Hardy County Commission Clerk's Office July 1, 2004 - 3:31 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 S. Furrall Clerk.