

10-01-2011

NEW CREEK HIGHLANDS
Dedication of Plat and Declaration of
Protective Covenants

KNOW ALL MEN BY THESE PRESENTS: That the undersigned, Melbourne Properties, Inc., hereinafter referred to as "Declarant" does hereby declare that all Lots or Tracts identified on the Plats of New Creek Highlands Subdivision, lying and being situated in Mineral County, West Virginia, either recorded contemporaneously with this Declaration or to be recorded in the Office of the Clerk of the County Commission of Mineral County, West Virginia, shall be subject to the following protective covenants, conditions, and restrictions and easements which shall run with the land and shall be binding upon all subsequent owners thereof:

ARTICLE I
DEFINITIONS

- (1) "Association" shall mean and refer to New Creek Highlands 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 an interest merely as security for the performance of an obligation.
- (3) "Property" shall mean and refer to any numbered or lettered plat of land shown upon the recorded subdivision plat of the property.
- (4) "Lot" or "Tract" shall mean and refer to any numbered or lettered plat of land shown upon the recorded subdivision plat of the property.
- (5) "Declarant" shall mean "Grantor/Developer" and refer to its successors and assigns.

ARTICLE II
MEMBERSHIP, VOTING RIGHTS, AND OBJECTIVES

- (1) Every owner of a lot, including lots which may be further subdivided, shall be a member of the New Creek Highlands Property Owners' Association. Membership shall be appurtenant to and may not be separated from ownership of any lot. There shall be two classes of membership, Class A and Class B. The Declarant shall be the Class A member and shall be entitled to three votes for every lot owned in New Creek Highlands. All other property owners shall be Class B members and shall be entitled to one vote for each lot owned.

Page 1 of 1

10-01-2011

10-01-2011

10-01-2011

10-01-2011

- (2) The Association shall be governed by a Board of Directors of not less than three (3) nor more than Five (5) members. The Board of Directors shall be elected by the lot owners, except that the Initial Board shall be appointed by the Declarant. The Initial Board of Directors shall be responsible for calling the first meeting of the Association to be held not later than January 31, 2006. The initial meeting of the members shall be held at a suitable place to be designated by the Board of Directors in Mineral County, West Virginia.
- (3) The New Creek Highlands Property Owners' Association, Inc. is required to secure and maintain a third party liability insurance policy in the principal amount as may be required by the State of West Virginia or Federal law from time to time.
- (4) The Duties and Responsibilities of the Property Owners' Association shall include, but not be limited to the following:
 - (A) Maintain Property Owners' Association, periodically elect officers and directors, and establish and collect fees and dues.
 - (B) Maintain Financial Records
 - (C) Administer the upkeep and improvements to the New Creek Highlands Subdivision.

ARTICLE III COVENANT FOR MAINTENANCE ASSESSMENT

- (1) Each owner of a Lot within New Creek Highlands shall pay an assessment for the reasonable construction, use, and maintenance, and expansion of the roads and common areas. All assessments, including any pro-rate share of said assessments, shall be collected by and paid beginning the calendar year of January 1, 2006 through December 31, 2006. The Assessment for the calendar year 2006 and all years thereafter, unless amended pursuant to the terms and conditions of these covenants, shall be \$300. In no event shall the annual average common expense liability of each Lot, exclusive of optional user fees adjusted, pursuant to the provisions of the West Virginia Code Section 36B-1-114, exceed \$300.00. All assessments shall be due and owing on the first day of January of each year and if unpaid shall be a lien upon the property against which each assessment is made. Melbourne Properties, Inc. and its assigns shall have the right to sue for and collect any assessment, together with interest, properly assessed under this contract. Tract 1 is exempt from the assessment for the road maintenance fee in as much as that lot has access from the secondary route and does not have to use the interior roads of New Creek Highland.

- (2) Any assessment made on a property pursuant to this paragraph including a late fee of Five Dollars (\$5.00), interest at the rate of Ten Percent (10%) 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. This lien is expressly inferior and subordinate to any mortgage liens presently or hereafter encumbering the property affected by these protective covenants. The owner of each lot, by acceptance of a deed thereto, automatically becomes a member of the New Creek Highlands Property Owners' Association to be created as herein set forth, and agrees to pay an amount determined by the majority vote of the Owners of the Lots in New Creek Highlands Subdivision as deemed necessary for the purpose of Maintaining (including the removal of snow and the repairs and improvements of the roads and common areas) the right of ways and roadways and common areas as shown on the subdivision plat. During December of each year, beginning December, 2006 said Association shall notify each Lot Owner, in writing, as to the amount of the Lot Assessment which shall be due and payable in January of the following year. In the event of a resale of transfer of one or more Lots in said subdivision, this obligation shall run with the land and become the obligation of the new Owner(s) even though it may have been assessed to a prior owner.
- (3) If the owner of any Lot is in default in the payment of any assessments, including interest and costs of collection, in addition to any other means of collection, the Property Owners' Association may bring an action at law against the owner personally obligated to pay same.
- (4) In exchange for the Declarant's agreement to install and maintain said roadways and rights of way until seventy-five (75%) of the Lots have been conveyed the Declarant shall be forever exempt from the payment of said annual assessments and road maintenance fees as to all Lots now owned or later reacquired by the Declarant. In the event that the Declarant should later reacquire real estate through purchase at a foreclosure sale or through settlement of an Owner's default in any contract, note or deed of trust that the Owner should be obligated to pay the Declarant. Declarant shall not be required to pay any past due assessment that the previous owner may have owed the Association, nor shall the Declarant be required in the future to contribute to the maintenance of the roadways.
- (5) Each Lot Owner, by acceptance of a Deed thereto, acknowledges that the roads, rights of way, and common areas are private in nature and shall not be maintained by the West Virginia Department of Transportation or other public agency and that the maintenance and improvement thereof shall be the mutual obligation of the Landowners in the subdivision abutting said roads and Common Areas.

**ARTICLE IV
USE RESTRICTIONS**

- (1) No signs or advertising of any nature shall be erected or maintained on any lot, except for sale or rental signs not to exceed six (6) square feet in area (said signs must comply with Mineral County (as appropriate) Ordinances relating to the erection of signs), except for directional and informational signs provided by the Declarant.
- (2) No owner of any Lot shall interfere with the natural drainage of surface water from such lot to the detriment of any other lots. Consequently, in the construction of driveways into any lot, a minimum twelve inch diameter culvert shall be used in constructing the driveway in order to facilitate natural drainage. No parking that obstructs traffic is permitted upon any road within the property, and as part of the development of any lot, the Owner shall provide adequate off-road parking for himself and his guests.
- (3) Due to the unsightliness of junk vehicles, no motor vehicle or trailer which does not have current license plates or an inspection sticker not more than six months out of date shall be permitted on any lot. Temporary camping trailers may be placed on any lot, provided they are in compliance with Mineral County and West Virginia laws concerning temporary camping. Temporary camping on all tracts shall be for no more than four months at a time, and no more than six months per year, for the personal use of the owner and his immediate family.
- (4) No building of a temporary nature shall be erected or placed on any lot except those customarily erected in connection with building permanent structures, and in such cases, for a period not to exceed twelve months.
- (5) Not more than one single family residence shall be erected on a lot. Residences shall contain a minimum of 1,000 square feet for a single story or ranch style residence and a minimum of 1,400 square feet for a two story residence. Said square foot minimum is of living area, excluding basement, garage, porch, carport, deck and overhanging eaves. All exterior construction must be completed and closed in within 12 months of the commencement of construction. No exterior siding of masonry block or cinder block shall be permitted. Mobile Homes are not permitted.
- (6) Each Lot shall be used for residential/recreational purposes only, and any garage, barn, or guest house must conform generally in appearance and material with any dwelling on said lot.

Notwithstanding the prior paragraph, the following uses are permitted, subject to applicable state and local laws:

- (A) Home occupations conducted by the occupant.
- (B) Agricultural uses, including incidental use and the construction of accessory buildings connected with the agricultural use or with the building of a residence, including storage of temporary camping and lawn maintenance equipment. Said accessory buildings may be constructed before construction of the residence. Said accessory buildings shall not be used for temporary sleeping or camping quarters.
- (C) Not more than one head of livestock per three (3) acres and one domesticated animal (excluding dogs and cats) per five (5) acres shall be permitted per lot, unless otherwise approved by the Board of Directors of the Property Owners' Association, provided that no pigs or pig pens are allowed within the subdivision. All livestock must be fenced in. Operation of any laying hen, broiler houses, or other poultry business is prohibited. Limited raising of poultry for personal use is permitted. Pets and domesticated animals must be fenced in or otherwise prevented from roaming.
- (7) 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 the subdivision road damaged by equipment of Owner or his contractor en route to or from Owner's lot. All lots improved or unimproved must be maintained by the Owner in a neat and orderly condition at all times. No garbage, trash, or inoperable vehicle or other debris shall be permitted to accumulate or remain on any lot.
- (8) No building shall be erected closer than twenty-five (25) feet from the property line, with the exception that where two or more lots are used together for the construction of one dwelling, then the said twenty-five (25) foot setback shall apply only to the outside lines.
- (9) All sanitation facilities constructed on any lot shall conform with the regulations the West Virginia State Health Department, Mineral County Health Department, and any other government agency regulating the installation of sewage disposal systems.
- (10) No lots shall be used or maintained as a dumping ground for rubbish. Trash, garbage, or other waste must be kept in sanitary containers. All raw materials must be kept from view where possible.

- (11) The Declarant reserves unto himself or his assigns the right to erect, maintain, and operate and replace telephone and electric light poles, conduits, and related equipment and water, gas and sewer lines, and the right to grant easements or rights of way therefore, over, on and under a strip on land twenty (20) feet wide along all property lines (and additional width as necessary for guying purposes), in addition to easements reserved by any other instruments duly recorded. Where the centerline of roadways or right of way serve as the property line of a lot, then the twenty (20) foot wide easement herein otherwise reserved, shall exclude any portion of the lot included in the roadways or rights of way, and extend instead, across the remainder of the lot bounding on said roadways or rights of way. Nothing here shall be construed as creating any duty of 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 lot owners. A \$1500.00 fee is to be collected upon purchase of the lot and held in escrow for the utilities to be started no later than December 31, 2006.
- (12) Each lot owner shall have an unobstructed right of way and easement over and across the roads as shown on the subdivision plat as recorded from time to time, for the purpose of ingress and egress to and from the public roads and any common facilities in the subdivision. No part of any lot may be sold or used as a road or right of way to any land outside the Property without advanced written permission of the Declarant. The Property Owners' Association shall be solely responsible for the maintenance of the subdivision roads and common areas.
- (13) Individual Lot owners are not permitted to cut any timber for commercial purposes. This does not apply to declarant for unsold lots.
- (14) If any lot owner shall violate any of the covenants herein, it shall be lawful for any other person, persons, legal entities owning real estate in the subdivision or the New Creek Highlands Property Owners' Association to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such covenant, either to prevent him from doing so or to recover damages or other dues for such violation. Failure to enforce any provision herein contained shall in no way be deemed a waiver of the right to do so hereafter.
- (15) The Association, by a vote of two-thirds (2/3rds) of its members, may make additional rules, covenants, and restrictions for the use of the Property, which together with the above may be deemed advisable by the Association.
- (16) No Lot may be subdivided
- (17) ATV's and Dirt bikes are prohibited on sub-division roads.

**ARTICLE V
GENERAL PROVISIONS**

- (1) Declarant reserves the right to re-plot any unsold lot or lots. Nothing herein shall be construed to prevent Declarant from imposing additional covenants or restrictions on any unsold lot(s).
- (2) In the event state, local government, and utility companies, or Declarant, requires the installation of a public utility system within the area of which the subdivision is a part, the grantees or grantees, by the acceptance of the deed, so hereby agree to pay their proportional share for the cost of erection, maintenance and operation thereof as determined by the above authority.
- (3) 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 hereinafter imposed by the provision of this Declaration. Failure by the Declarant or Association or by any owner to enforce any provision contained herein shall in no event be deemed a waiver of the right to do so thereafter.
- (4) Additional property maybe annexed to the Subdivision by the Declarant.
- (5) Declarant reserves the right to reasonably modify, change or waive these covenants herein without the consent of any of the owners for a period of one year from the date of the sale of the last lot by Declarant from New Creek Highlands.

ARTICLE VI

- (1) The covenants, restrictions and other provisions of this Declaration shall run with and bind the land for a period of twenty-five (25) 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-five (25) year period by an instrument signed by not less than seventy-five (75) percent of the lot owners.
- (2) Invalidity of any of the covenants, restrictions, or other provisions of this Declaration by judgement or Court Order shall in no way affect other provisions, which shall remain in full force and effect.
- (3) Whenever in this Declaration the context so requires, the masculine gender includes the feminine and neuter and singular numbers include the plural and plural numbers include the singular.