



AMENDED
TROUT PASS SUBDIVISION
A Common Interest Community
Declaration of Protective Covenants, Conditions and Restrictions

THIS AMENDED DECLARATION is made this 17th day of August, 2006, by J. MICHAEL TEETS and JOYCE M. TEETS, the "Declarants".

RECITALS

WHEREAS, the said J. MICHAEL TEETS and JOYCE M. TEETS, the Declarants, did by instrument dated July 12, 2006, and of record in the Office of the Clerk of the County Commission of Hardy County, West Virginia, in Deed Book No. 292, at page 796, declare certain protective covenants, conditions and restrictions for that real estate comprising a common interest community named Trout Pass Subdivision; and,

WHEREAS, the Declarants are in desire of amending said declaration of protective covenants, conditions and restrictions to reflect certain corrections, modifications and amendments thereto, and does hereby formally republish same in its entirety with the modifications and amendments agreed to being incorporated herein; and,

WHEREAS, the following Amended Trout Pass Subdivision, A Common Interest Community, Declaration of Protective Covenants, Conditions and Restrictions, shall and do hereby now replace, supersede and is substituted for the original declaration and shall be deemed as controlling the original Declaration dated July 12, 2006, which is recorded in the Office of the Clerk of the County Commission of Hardy County, West Virginia, in Deed Book No. 292, at page 796.

NOW, THEREFORE, WITNESSETH:

KNOW ALL MEN BY THESE PRESENTS: The undersigned, J. MICHAEL TEETS and JOYCE M. TEETS, referred to hereinafter as "Declarants", being the fee simple owner of certain real estate situate in Lost River District of Hardy County, West Virginia, do hereby make the following declaration as to limitations, restrictions, reservations and uses to which lots of TROUT PASS SUBDIVISION may be placed hereby specifying that said declaration shall be deemed to be covenants to run with the land, as provided by law, and binding upon all parties and all persons claiming under J. MICHAEL TEETS and JOYCE M. TEETS, as set forth above, and for the benefit of and as limitations upon all future owners of said lots, this declaration of restrictions being designated for the purpose of keeping said lots desirable, uniform and suitable in design and use as herein specified.

TRACTS DEDICATED TO AND MADE A PART OF TROUT PASS SUBDIVISION: The real estate designated as Trout Pass Subdivision shall include the following real estate:

That portion of the real estate conveyed unto J. Michael Teets and Joyce M. Teets, husband and wife, by deed of Michael W. Barill, Trustee of the G. Scott Funkhouser, Jr., Charitable Remainder Annuity Trust and Michael W. Barill, Trustee of the Jennifer Roberts Charitable Remainder Unitrust, dated the 13th day of October, 2004, and of record in the Office of the Clerk of the County Commission of Hardy County, West Virginia, in Deed Book No. 282, at page 556, consisting of seventy-one (71) numbered lots or tracts designated as Trout Pass Subdivision by a master plat to be placed of record in the aforesaid Clerk's Office contemporaneously herewith, however, which real estate may be made subject to these covenants or restrictions and any amendments thereto, or to a similar declaration affecting such additional acreage which shall be recorded in the Office of the Clerk of the County Commission of Hardy County, West Virginia.

GREEN ZONE EASEMENTS: Equestrian and Pedestrian are also granted to owners of Trout Pass Subdivision.

The Declarants grant and convey unto each of the owners of Trout Pass Subdivision an easement over and across those areas ten feet (10') feet in width, specifically designated upon the master plat of said subdivision as Green Zone Easements, for equestrian and pedestrian travel. Owners, their heirs and assigns, have the right to horseback ride and/or walk the length of said easements as referenced upon the master plat.

This subdivision is exempt from the provisions of The Uniform Common Interest Ownership Act West Virginia Laws, Chapter 36b, as it is designated a small and limited expenses subdivision. To this end, the Declarant reserves no development rights as defined therein, and the maximum annual average assessment for the common expenses and liabilities of the association is \$300.00, except as limited by the next paragraph. It is also understood that the assessment is set presently at \$200.00, which will run on a calendar year, and which will be prorated for the remainder of the calendar year and collected in advance at closing by the Declarant and placed in an account owned by the Lot Owners Association, provided that a separate assessment may be made annually to cover the cost of liability insurance and user fees may be assessed to cover the expense of any special amenities which the Association should hereafter host, sponsor or create.

The Association may make separate assessments for user fees, if a particular amenity should be created, installed or hosted by the Association, and a separate assessment may also be made for liability insurance. With these two exceptions, the annual assessment may be adjusted as follows: pursuant to West Virginia Code 36B-1-114, a copy of which is attached and incorporated herein by reference.

ARTICLE I

DEFINITIONS

1. "Association" means the Trout Pass Lot Owners Association, a not-for-profit association which the Declarants shall cause to be incorporated, its successors and assigns.
2. "Declarants" means J. Michael Teets and Joyce M. Teets, their heirs and assigns.
3. "Lot" means any numbered or lettered parcel of land shown and identified as a Tract or Lot on any Plat of all or any part of the real estate known as Trout Pass Subdivision.
4. "Owner" means the record owner, whether one or more persons or entities, of fee-simple title to any tract. The term Owner as used herein shall include the Declarants so long as Declarants own any tract.
5. "Plat" means the subdivision plat for Trout Pass Subdivision, as the same may be amended or supplemented from time to time, which are hereafter recorded in the Office of the Clerk of the County Commission of Hardy County, West Virginia.
6. "Roads" means the following right of ways designated on the Plat for ingress and egress to the Lots within the subdivision. This term includes the full width of the easement, regardless of the actual surface of the road. Roads shall remain unobstructed to allow free and unfettered travel over, across and through the roads for ingress and egress. Roads are common elements which will be jointly maintained by the Association. The purpose of the roads is to provide ingress and egress, as may be reasonably necessary for an Owner to get to and from his Lot, nothing more. The roads shall not be used as a circuit or track or for joy riding.
7. "Pedestrian", when used in the context of an easement, shall also be defined to include "equestrian", and reference to an equestrian easement shall be deemed to refer to and include pedestrian easement.
8. Limited Common Elements: Certain spur roads serve a limited neighborhood, and these roads shall also be maintained by the Association. Those driveways are limited common elements and are subject to the same rules and regulations established above for Roads, i.e. see No. 6, which is incorporated herein by reference.

ARTICLE II

APPLICATION

1. All and each of the restrictions herein contained shall be covenants running with the land and shall apply to and be binding upon the owner(s) of each of said lots for the benefit of said subdivision.
2. All owners, their tenants or any other person using or occupying a lot shall be subject to and shall observe and comply with the covenants, conditions and restrictions set forth in this Declaration.

ARTICLE III

PROPERTY RIGHTS

1. Declarants hereby create and reserve utility easements fifteen feet (15') in width along each lot line for the use of all public utility companies for access to and installation, maintenance, repair or removal of poles, mains, drains, wires, cable and other equipment for the furnishing of such services. Nothing herein shall be construed as creating any duty on the Declarants, their heirs or assigns, to install or maintain any utility services, as it is contemplated that actual installation will be made by a utility company at the request of the Lot Owner. 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 and 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.

2. All lots shall possess at least one location thereon (the physical location of perk site on a lot is not guaranteed) which will be suitable for installation of an individual septic tank and drain field for a three (3) bedroom house. Proof of perk results shall be provided at closing, or if the Lot has not yet been perked, a guaranty form shall be issued and delivered to the Buyer(s), and at Buyer's request, part of the proceeds may be escrowed to secure Declarants' promise. All applicable West Virginia State and Hardy County Health Department rules and regulations shall be adhered to during construction of each lot's septic system. Installation of the septic system for each lot shall be the responsibility of the purchaser of each lot.

3. No owner of any lot shall interfere with the natural drainage of surface water from such lot to the detriment of any other lots.

4. The Association shall be responsible for the maintenance and upkeep of the dedicated rights of way for the roads serving the subdivision.

ARTICLE IV

USE RESTRICTIONS

1. Each lot shall be used for residential purposes only.

2. No commercial business operation, including animal husbandry facilities, may be conducted on lots contained within said subdivision.

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

- (a) Home occupations conducted by occupant.
- (b) Home gardening is permitted.

4. All lots are for single family residential use only.

5. Further Subdivision of a Lot:

A. The Declarants may not further subdivide a Lot as that constitutes a development right, provided if the Declarants should re-purchase a Lot from a bona fide third party owner, the Declarants shall be classified as an Owner, in which case they may further subdivide a lot the same as any other Owner, all of which is provided for in this paragraph.

B. No original Lot (as shown upon that certain plat of survey recorded in Map Book No. 7, at Page 131, in the Hardy County Clerk's Office) may be subdivided more than one (1) time. Additionally no such original Lot may be further subdivided for a period of five years from the date that it is sold and conveyed (as demonstrated by recordation of Deed) to an Owner, excepting said Owner may subdivide a lot during said five year period one time so long as it is for the express purpose of conveyance to a parent(s) or child of the Owner and only one residential structure may be placed on each subdivided lot. Any further subdivision of said lot shall require preparation and recordation of a new plat of survey and be described with particularity by a metes and bounds description as prepared by a licensed West Virginia professional surveyor or engineer. Setback lines, utilities and easements for the newly created lots shall conform with all covenants and restrictions set forth herein and any

further subdivision shall not interfere with, effect or diminish any subdivision roadway or easement. In the event any lot is further subdivided that lot owner shall become a voting member of the lot owners association upon recordation of the deed for that lot and shall be required to pay a separate annual assessment(s) for said lot as herein provided.

C. These covenants are in addition to the Hardy County Subdivision Control Ordinance and Zoning Ordinance, i.e., the covenants and the ordinances must be complied with before further subdivision can occur. To the extent that these covenants are more permissive than the local ordinances, the ordinances shall supersede the covenants.

D. All other applicable county regulations and state and federal laws which may affect the right of an Owner to further subdivide his Lot must be complied with. The duty of inquiry rests with the Owner.

6. No building may be located on said lots nearer than twenty (20) feet to any boundary line of the lot. For the purposes of this covenant, eaves, steps and open porches shall be considered as part of the building. Additionally, all buildings must be set back a minimum of forty (40) feet from subdivision roads. Should a building be erected on more than one lot, this restriction shall apply to the side lines of the extreme boundary of the multiple lots.

7. No signs or advertising of any nature shall be erected or maintained on any lot, except "For Sale" or "rental signs" not to exceed four (4) square feet in area, and the directional and informational signs of the Declarants, including the required Subdivision sign.

8. All residences erected upon said lots shall be upon a solid foundation (poured concrete, concrete block or solid stone), and shall be constructed of good finishing materials and constructed in a good and workmanship like matter. Tarpaper, rolled siding and concrete block are specifically not considered as finished materials.

9. All residences shall contain a minimum of 850 square feet of heated living space on the first floor, exclusive of open porches, garages or other non-enclosed areas.

10. No structure of a temporary character, house trailer, single or double wide mobile home or manufactured homes (as they are defined in West Virginia Code §37-15-2 and §21-9-2(j)), nor basement dwelling shall be constructed, placed or maintained upon said lots or any part thereof, except to the extent authorized by this paragraph. A modular dwelling may be placed and maintained thereon, however each Owner shall be responsible for site development to accommodate transport and placement of the home including roadway access and shall further indemnify for any damage caused to common elements in placement of the structure. Additionally, no tent, shack, garage or any other outbuilding shall be used on this land at any time as a dwelling, either temporarily or permanently. In order to accommodate the time period required to complete construction of a residence, an owner who has obtained a building permit from the Hardy County Planning Commission and/or any other applicable agency requiring a permit, may effective with the date that the building permit is issued, temporarily place a mobile home on said lot for a period not to exceed eighteen (18) months therefrom to provide temporary living accommodations during construction. The mobile home/trailer must be permanently removed from the premises upon the occurrence of the earlier of the following two events, i.e. passage of eighteen (18) months from date of issuance of the building permit or completion of the residence. This provision shall not prohibit Owners from keeping boats and travel trailers on their respective lots so long as same are not used for residential purposes.

11. Any garage or outbuildings constructed on a lot must conform generally in appearance to the dwelling on said lot.

12. Before construction begins on any residence or dwelling, the lot owner shall install an appropriate driveway or entrance to the lot. Such entrance shall include the installation of a culvert in any drainage ditches the driveway will cross to permit proper drainage. All external construction and external finishing of a dwelling on said lots shall be completed within eighteen (18) months from the commencement of construction. Failure to externally complete a dwelling within eighteen (18) months from the commencement of the construction and failure to maintain any vacant lot in such condition as will not detract from the subdivision shall be deemed to be a violation of these covenants. All construction waste material must be removed from the property within two (2) months from completion of any dwelling, residence or structure. In the event of destruction by fire or natural causes of a dwelling or other structure, removal of debris and reconstruction of a building thereon shall

likewise comply with this covenant.

13. Due to the unsightliness of inoperative vehicles on lots, no motor vehicle which does not have current license plates or an inspection sticker not more than two (2) months out of date shall not be permitted on any lot outside of a garage.

14. Each lot owner is responsible for keeping all trash and garbage in insect and rodent-proof receptacles and shall remove or dispose of trash at least every fourteen (14) days.

15. All dwellings and outbuildings shall be maintained in a good and a workmanship like manner and of a quality and appearance comparable to its original construction. All lot owners are responsible for maintaining their lot in a neat and attractive manner.

16. No owner may keep or maintain on a lot a Pit Bull or other vicious dog as defined by West Virginia law. No pet shall be allowed to be a nuisance or danger to other lot owners. A continually barking dog shall be deemed to be a public nuisance and shall be removed from said lot. Any Owner who desires may keep or maintain four (4) domesticated "small pets" on his/her property. Small pets include dogs or cats regardless of weight. Otherwise a small pet must weigh less than forty (40) pounds. All pets must be kept within the physical boundaries of each lot and Owners are expected to use reasonable care so that pets maintained by the Owner do not trespass on another Owner's property. West Virginia has strict laws which charge an owner or keeper of dogs with liability for damages inflicted by a dog regardless of the disposition of the animal. Each pet owner has a non-delegable duty to inquire with the State of West Virginia concerning his duties as a pet owner.

17. No wild animals may be kept on a Lot. The State of West Virginia has adopted laws defining what is a wild animal versus a domesticated animal, and an Owner assumes the duty of inquiry. An Owner may keep up to two (2) large animals (defined to mean weighing over forty pounds, except that a dog shall not be considered a large animal regardless of weight), such as horses or cattle. The offspring, i.e. calf or foal, shall be excluded from this number for a period of one (1) year after its birth. No large animal shall be kept or maintained in violation of any local, state or federal laws. All large animals kept or maintained on any lot shall be suitably confined by fence or other accessory which restrains the animals from trespassing on rights of way, common easements or other Owner's property. Any farm animal kept on a year round basis shall be housed in appropriate shelter or barn which is regularly maintained so as not to detract from the value of surrounding lots.

18. An Owner may park a seasonal camper on the property for recreational use. A seasonal camper may not be left on a Lot for more than eight (8) weeks at a time. The purpose of this paragraph is to allow an Owner to enjoy his property until he can build a qualifying residence on same. All sanitation laws of the West Virginia Department of Health must be strictly complied with.

19. Off road motorcycles, dirt bikes, go-carts, snowmobiles, or other all terrain vehicles, or similar motorized conveyance may be used on subdivision roads under the following terms and conditions:

A. They must be equipped with noise abatement equipment.

B. They shall only be used on subdivision roads as necessary to obtain ingress and egress with the public road. In other words, repetitive joy or pleasure riding up and down the subdivision roadway for recreation purposes is prohibited. An Owner has the right to travel from the public road to the Owner's private driveway, no further, and then only to obtain ingress and egress with the public road.

C. No owner shall create a track for purposes of racing off road motorcycles, dirt bikes or other all terrain vehicles, or similar motorized conveyance. Racing is strictly prohibited.

20. No obnoxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the subdivision.

21. No exterior lighting shall be maintained that is a nuisance to the owner of an adjoining lot, nor shall any lighting be used which constitutes more than normal convenience lighting.

22. All West Virginia Department of Transportation, Division of Highways rules and regulations shall be followed in the construction and maintenance of the entrances from the primary

subdivision access road.

23. All fencing, structures or plantings along road rights of way that could potentially interfere with traffic visibility shall comply with the Hardy County Ordinance and any amendments thereto.

24. As regards the equestrian and pedestrian easements, no motorized vehicles are allowed upon the green zone easements and no lot owner shall interfere in free and unobstructed use of said area for equestrian and pedestrian travel. Any lot owners, their guests or agents utilizing such areas shall not cause any destruction to, or leave debris upon or in the vicinity of the easements. Rules may be initially made by Declarants and revised from time to time by the Lot Owners Association which provide limitations on the use of the green zone easements by owners and/or their guests. Any horseback rider assumes the risk of riding horses on the green zone easements and private subdivision roadways which may be subject to motor vehicle usage by other persons who are not owners in Trout Pass Subdivision and whose conduct is not governed by the rules and protective covenants contained herein. Therefore, any owner who elects to horseback ride and/or walk on the road system assumes the risk of doing so and must do so with due regard for the rights of others. Any owners' use of said rights of way for pedestrian and/or equestrian use is subordinate to and shall not interfere with the legitimate rights of persons having the right to use the subdivision roads for ingress and egress to their properties.

ARTICLE V

ASSOCIATION

1. A Lot Owners Association shall be established contemporaneously with the sale of the first lot in the subdivision. The Declarants shall serve as the initial President of the Association, and the Declarants may appoint an initial board of directors which shall serve until a meeting of the Association may be called and officers elected. An election shall be held no later than the earlier of the following events: (1) passage of one (1) year from date of sale of first Lot or (2) after twenty-five percent (25%) of the lots have been sold.

2. This Association shall be responsible for the maintenance of any common areas, right of ways and access roads contained in said subdivision, except that Limited Common Elements which are designated herein and on the Plat of Survey shall be maintained by the users entitled to use same.

3. Each lot owner shall be deemed a member of the lot owners association upon recordation of the deed for that lot. 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 thereafter. Lot 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 Two Hundred Dollars (\$200.00) annually. The assessment may not exceed \$300.00 per annum as provided for in the premises of this Declaration.

4. The assessments levied by the Association shall be used for the common expenses and liabilities of the Association, which includes road maintenance. Separate assessments may be made for amenities hosted or provided by the Association and for liability insurance which the Association is required to purchase.

5. 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.

6. Where more than one person or entity constitutes the owner of a lot, the vote with respect to such lot shall be exercised as if the persons or entities holding title is one (1) vote.

ARTICLE VI

AMENDMENT

1. The Declarants reserve the right to use any and all subdivision roads to access any property currently owned or obtained in the future adjacent to Trout Pass Subdivision.

2. The Declarants reserve the right to correct any deficiencies or errors found in this Declaration as necessary or appropriate for the purpose of maintaining the desirability and value of all lots within the subdivision or to bring the Subdivision into compliance with the requirements of any government regulations.

GENERAL PROVISIONS

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

2. The invalidation of any one of the covenants by a judgment or court order shall in no way effect any of the other provisions contained herein which shall remain in full force and effect.

3. Violation or threatened violation of any of the covenants, conditions and restrictions set forth in this Declaration shall be grounds for the Declarants, the Lot Owners Association, any lot owner, and all persons or entities claiming under them, to enforce by any proceeding in law or in equity against any party violating or threatening to violate these covenants, conditions and restrictions. Relief shall include all damages, attorneys fees or injunctive relief allowed by law. The Declarants shall not be liable for damages of any kind to any person for failing to enforce these covenants and failure by the association or any owner to enforce a covenant shall not be deemed a waiver of the right to do so.

4. Please note that Hardy County is an agricultural community. As such the occasional odors, sights and sounds that accompany the business of agriculture may exist on neighboring property beyond the subdivision boundaries.

WITNESS the following signatures and seals this 17th day of August, 2006.

By: J. Michael Teets (SEAL)
J. MICHAEL TEETS, DECLARANTS

By: Joyce M. Teets (SEAL)
JOYCE M. TEETS, DECLARANTS

STATE OF WEST VIRGINIA

COUNTY OF HARDY, To Wit:

I, Terene L. Dolly, a notary public in and for the County and State aforesaid, do certify that J. MICHAEL TEETS and JOYCE M. TEETS, husband and wife, whose names are signed to the foregoing writing bearing the date 17th day of August, 2006, has this day acknowledged the same before me in my said County and State.

Given under my hand this 17th day of August, 2006.

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

Notary Public



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This document presented and filed:
08/24/2006 10:33:50 AM

Gregory L. Ely

Gregory L. Ely, Hardy County, WV

Transfer Tax: \$0.00