

**SMOKE HOLE LEGENDS
DECLARATION OF PROTECTIVE COVENANTS,
CONDITIONS AND RESTRICTIONS**

Known all men by these presents:

That the undersigned, Stephen H. Harman and Donald B. Huffman, hereinafter referred to as "Declarant", do hereby make and declare the following protective covenants, conditions and restrictions for a subdivision to be known as Smoke Hole Legends, lying and situate in Mill Run District, Pendleton County, West Virginia, as being more fully described on the plat of survey prepared by Dick A. Heavner, P.S. No. 997 to be recorded in the Clerk's Office of the County Commission of Pendleton County, West Virginia, to which reference is hereby made. This being a portion of the real estate that was conveyed to Stephen H. Harman and Donald B. Huffman by James Paul Geary and J. David Judy, III, Special Commissioners, by deed dated June 7, 2000, and of record in the Pendleton County Clerk's Office in Deed Book 153 at page 515.

It is the purpose of Declarant in creating Smoke Hole Legends to provide for the permanent protection of the land, its use, value and the preservation of the natural character and beauty of the landscape. To this end, it is hereby declared that all lots, except as herein provided, shall be subject to the following covenants, restrictions, conditions and easements which shall run with the land and shall be binding upon all subsequent owners of said lots.

ARTICLE I - DEFINITIONS

1. "Association" shall mean and refer to Smoke Hole Legends Property Owners Association, its successors and assigns.
2. "Owner" shall mean and refer to the record owner, whether one or more

3. "Property" shall mean and refer to that certain real property described above and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

4. "Lot" shall mean and refer to any numbered or lettered plat of land shown upon any recorded subdivision plat of the property.

5. "Declarant" shall mean and refer to Stephen H. Harman and Donald B. Huffman, their successors and assigns.

ARTICLE II - MEMBERSHIP AND VOTING RIGHTS

1. A nonstock property owners association has been created and is known as Smoke Hole Legends Property Owners Association, Inc., a West Virginia Corporation, which has one membership and one vote for each lot, and this property owners association shall establish a reasonable assessment for necessary expenses relative to a development of this type and nature which shall initially not exceed \$200.00 per lot per year. Lots in Smoke Hole Legends not yet sold or conveyed by Declarant are exempt from any assessment for maintenance fees. Lots in Smoke Hole Legends that adjoin only a State maintained road are exempt from the payment of road maintenance fees or assessments.

2. Upon acquiring title to a lot, each owner becomes a member of the property owners association and is bound by the articles and by-laws of said property owners association.

3. Lots may be subdivided as hereinafter provided one time so long as the parent lot and the successor lot each contain at least 2 acres, more or less, exclusive of all easements, provided, however, that the parent and successor lots must comply with

4. In the event that any lot is subdivided, the successor or newly created lot shall have one membership and one vote. The successor or newly created lot shall also be bound by these restrictions, conditions and covenants, including all fees and assessments.

5. For all purposes of voting, Declarant shall be entitled to three votes for each lot owned by Declarant in said Subdivision.

ARTICLE III - USE RESTRICTIONS AND EASEMENTS

1. Only private single family dwellings or recreational residences designed for single family occupancy shall be placed or constructed on any lot in Smoke Hole Legend. Said premises shall not be used for any commercial use or purpose other than private recreational residential purposes, except as follows: The private dwelling or residence may be rented, also a home occupation or business office shall be permitted. Only the persons actually residing in the dwelling in which the home occupation or business is situate may conduct an occupation or business in said residence or dwelling. No more than two employees, in addition to resident family members, shall be allowed. Described home occupation or business must be an integral part of the dwelling house.

2. All dwellings and residences shall have a minimum living space on the first floor of not less than 575 square feet exclusive of basement, porches, decks, garages, carports or any like structures connected with the residence or dwelling. Only buildings, structures, dwellings or residences which comport with the natural setting will be allowed within the subdivision. Separate structures, such as garages or storage buildings, must generally conform with the appearances and material structure of the

installation of a culvert in the drainage ditch (there is no culvert required if there is no drainage ditch) of at least 15" in diameter and of a 20' minimum length to allow for proper drainage.

4. Within one year of construction commencement on a dwelling, residence or other structure, the exterior of said dwelling, residence or other structure must be completed. Exceptions will only be allowed when completion is impossible or would cause severe hardship for builder or purchaser as a result of fires, natural disasters, strikes or national emergencies.

5. All dwellings, residences, or other structures shall be set back from the boundary line in a road a distance of at least 50 feet and shall be set back from all other lot boundary lines a distance of at least 25 feet. No part of these covenants and restrictions shall be construed in any manner to prevent the use of one building site on two or more lots, or the use of a construction site on two or more lots so long as Declarant his heirs, successors or assigns release the necessary easement.

6. Proper maintenance of the exterior of all dwellings, residences and structures is mandatory. Any dwelling, residence or structure which suffers apparent exterior damage due to wind, fire, neglect or other cause shall be repaired or removed within sixty (60) days.

7. All septic tanks, drain fields, toilets, sewage and waste disposal systems installed or constructed on said lots shall conform to the regulations of the West Virginia State Health Department. In addition, use of said lot or activities conducted upon said lot shall not pollute or cause waste water to contaminate or flow in to any spring, lake, pond, river, drain, or stream crossing such property or situate near such

debris remaining on the ground or any portion of the property shall be collected and disposed of properly.

9. Mobile homes and single wide trailers will not be allowed on lots within Smoke Hole Legends. Double-wides or other pre-manufactured homes that consist of two or more separate units shall be permitted to be placed and erected on the lots within Smoke Hole Legends so long as they are placed upon a permanent concrete block or poured wall foundation.

10. Boundary line changes or subdivision of any lots shall not be permitted, except as hereinafter provided. However, Declarant reserves the right to resurvey, replat, re-subdivide, or make new division lines on any and all unsold lots.

Provided, however, a lot may be subdivided, so long as the original lot and the successor lot(s) each contain at least 2 acres, more or less, exclusive of all easements, provided that the original and successor lots must comply with all applicable health laws, zoning ordinances, and if applicable, any subdivision control ordinance. No lot may be subdivided pursuant hereto prior to July 1, 2005.

11. Nothing herein is to be construed to prevent Declarant from amending or placing further provisions or covenants or easements on any lots which have not been conveyed by Declarant.

12. Swine, chickens and turkeys shall not be permitted to be kept or maintained upon any tract within Smoke Hole Legends; however, domestic animals such as cats and dogs are allowed as long as they are not a nuisance or danger to others. All domestic animals must be confined to their owner's lot, unless on a leash.

13. Uninsured, unregistered, unlicensed or otherwise unusable vehicles of any

14. Only vehicles which are licensed may be used on the rights of way or roadways within the confines of Smoke Hole Legends. Motorized vehicles such as 4-wheelers, 3-wheelers, ATVs and go-carts are strictly prohibited from use on all subdivision roads and rights of ways.

15. Parking along any right of way, by lot owners or their guests, will not be permitted. Lot owners will provide adequate off-road parking for their own use and the use of their guests.

16. Trash or rubbish will not be allowed to accumulate on any tract and no tract will be maintained or used as a dumping ground for trash or rubbish. Lot owners shall keep trash, rubbish or garbage in sanitary containers until proper disposal. These containers will be kept in a clean condition and in a place which is as inconspicuous as possible.

17. No lot shall be used for an offensive or obnoxious purpose, nor shall any offensive trade be carried on upon any lot, nor shall any activity of any nature, including but not limited to, illegal or unlawful acts, whatsoever which may constitute a nuisance be conducted on any lot.

18. Declarant reserves unto himself, his heirs, successors and assigns, a 50' wide perpetual, alienable, and releasable easement over, upon, across and under each tract for the construction, maintenance, upkeep, repair and use of the roadways and rights of ways, the location or locations thereof are as shown on the plat of Smoke Hole Legends, recorded as aforesaid, in the Pendleton County Clerk's Office; that the aforesaid reservations grant Declarant such rights as necessary to construct ditches, drains, and install culverts on or off the right of way or roadway, as same might be

which common use by Declarant will not be limited to the individual lot owners but is also excepted and reserved for full and unlimited use by Declarant, his respective heirs, successors and assigns for the development of private, residential, commercial and use by Declarant of other developments and property now owned or hereinafter acquired by Declarant.

Specifically, Declarant grants and conveys unto the owner a non-exclusive perpetual easement for ingress and egress from their lot, over subdivision roads, using the most direct and convenient route to reach a public access road.

Declarant does except and reserve a 15' wide easement as more particularly located and described on the master plat of survey of Smoke Hole Legends for the purpose of providing non-vehicular access to the Monongahela National Forest. Therefore, Declarant does hereby grant and convey unto the lot owners of Smoke Hole Legends, a non-exclusive easement 15' wide as more particularly bounded and described on the plat of said subdivision for non-vehicular access and egress to and from the Monongahela National Forest and which easement shall be for the joint and common benefit of the Declarant, the lot owners, their respective heirs, successors and assigns. Declarant will establish limited off road parking at and near said easement and which parking will be within the 50' wide roadway easement.

Declarant also reserves and excepts unto himself, his successors and assigns, a perpetual alienable, and releasable easement for the erection, maintenance, installation and use of electrical and telephone distribution poles, wires (above ground and underground), cables, conduits, anchors, guidewires, and other suitable equipment for the conveyance of electricity, CATV, and the use of telephone equipment, waterlines,

on all sides and rear property boundary lines of each lot. There is an easement of twenty-five (25) feet for any lot's property boundary line adjacent to a roadway or right of way which would commence where the roadway or right of way boundary ceases. Said easements as aforesaid would include locations for anchors and guide wires for poles as needed, even if extending beyond the above enumerated limits.

19. No building of a temporary nature shall be erected or placed on any lot. However, nothing shall be construed to prevent the owner from camping overnight using manufactured equipment such as tents, camper units and/or motor homes. Any camper unit and/or motor home shall be removed from the property for at least 15 days annually on a calendar-year basis. Campers, tents, motor homes and similar structures shall not be used or placed upon a lot for the purpose of a permanent residence.

20. All covenants, restrictions and affirmative obligations as set forth in this declaration shall run with the land and shall be binding on all parties and persons claiming under them. No restriction or covenant herein is intended to be used nor shall any restriction or covenant be used by any lot owner to discriminate or attempt to discriminate against any person, whether a lot purchaser or prospective lot purchaser upon resale by lot owner, upon basis of race, creed, color, marital status, national origin or such other classification.

21. In the event of a violation or breach of any of these restrictions by a lot owner, agent, agent of such lot owner, the owners of lots in this development, jointly or severally, shall have the right to proceed at law or in equity to compel a compliance to the terms hereof or to prevent the violation or breach in any event.

The failure to enforce any right, reservation, restriction or condition contained in

as to a breach occurring prior or subsequent thereto and shall not bar or affect its enforcement.

The invalidation by any Court of any restrictions in this Declaration of Protective Covenants and Restrictions shall in no way affect the other covenants or restrictions, as they shall remain in full force and effect.

22. All covenants, restrictions and affirmative obligations set forth in this Declaration shall run with the land and shall be binding on all parties and persons claiming under them for a period of twenty-five (25) years from _____, 2000, after which time said covenants shall automatically be extended for successive periods of ten (10) years unless an instrument signed by a majority of the then owners of lots affected by such covenants has been recorded, agreeing to change said covenants in whole or in part.

The above covenants and restrictions read and agreed to this the _____ day of _____, 2000.

