

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF
THE HIGHLANDS
AND
THE ORGANIZATION OF THE HIGHLANDS ASSOCIATION

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF THE HIGHLANDS AND THE ORGANIZATION OF THE HIGHLANDS ASSOCIATION, is made this 6th day of July, 1994, by George M. Griffith, DBA The Highlands, (the Declarant) as the Owner of all of that tract of land containing 47.25 acres, more or less, situate in Hardy County West Virginia, described by metes and bounds in Schedule "A" attached hereto and incorporated herein by reference, which is the land conveyed to it by Deed recorded in the Office of the Clerk of the County Commission of Hardy County, West Virginia in Deed Book 188, at Page 161, and is the same land shown on the plat recorded in the land records of Hardy County, West Virginia in Map Book 5, Page 21, and known as Tracts 1 through 6, inclusive, The Highlands. The tract of land thus identified shall be referred to in this Declaration as the "Property".

NOW THEREFORE, Declarant hereby declares that all of the Property herein described shall be held, sold and conveyed subject to the following covenants, conditions, restrictions and easements which shall be covenants running with the Property and every tract and parcel contained therein, whether or not specific reference is made to the Declaration in any deed or other instrument transferring or conveying any portion or all of such property. These covenants shall be binding on all parties having any right, title or interest in the described Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof, all of which are for the purpose of enhancing and protecting the value and desirability of the Property.

Declarant hereby claims exemption from the West Virginia Uniform Common Interest Ownership Act, Chapter 36B, pursuant to West Virginia Code Chapter 36B-1-203, because the average common expense liability of all tracts may not exceed \$100 as adjusted pursuant to section 1-114 (§36B-114), according to and to the extent of changes in the Consumer Price Index for Urban Wage Earners and Clerical Workers: United States City Average, All Items 1967=100, compiled by the Bureau of Labor Statistics, United States Department of Labor, (the "Index") with such adjustment as of December 1993 equal to a maximum of \$423.00.

ARTICLE I THE HIGHLANDS

The Highlands is an unincorporated association organized for the following purposes: (a) to administer the covenants, conditions and restrictions of The Highlands in such a manner as to conserve and protect the value of all the Property; (b) to assess, collect and disburse the assessments authorized by Article II of this Declaration; (c) to promote the peace, health, comfort, safety and general welfare of its members; and to do all other things permitted to similar associations.

Every Owner of a tract designated as such on the attached Plat (Exhibit "A") shall, upon accepting a deed to tract, automatically be a member of the Association by reason of such Ownership so long as he remains an Owner. One who owns an interest in a tract solely as security for the repayments of an obligation shall not be a member. Members shall be personally liable, jointly and severally with all other Owners of their tract, for complying with the provisions of this Declaration and the reasonable rules and regulations promulgated under it by the Board of Directors of the Association, and for the payment of all assessments and charges imposed on their tracts during the period of their Ownership. A member may not escape his membership responsibilities by non-use of the Association facilities or abandonment of this tract.

The affairs of the Association shall be managed by a Board of Directors consisting of at least three members. The initial directors of the Association, consisting of one to three members, shall be appointed by the Declarant, or its assigns. Except for directors appointed by the Declarant, a majority of the directors must be Owners of tracts within the Property. The Board of Directors shall elect officers of the Association, which shall include at least a president, secretary and treasurer. The initial Board of Directors shall adopt By-laws for the Association. The Declarant shall, during any period of Declarant control, have the right to appoint or remove any officer of the Association, or any Director of the Association appointed by it. Unless the Declarant voluntarily surrenders it sooner, the period of Declarant control shall terminate sixty (60) days, after the Declarant has conveyed five of the six tracts to Owners other than the Declarant.

The Owner of each tract designated as such on the attached plat shall be entitled to one vote for each tract owned in connection with the election of directors and on such other matters as may properly come before the membership. Votes allocated to a tract may be cast pursuant to a proxy duly executed by a tract Owner.

The Board of Directors of the Association shall have the powers necessary and appropriate for carrying out the purposes of the Association.

ARTICLE II
ASSESSMENTS

Each Owner of any lot shown on the Plat agrees to pay, as his personal obligation, such assessments as are authorized by this Declaration and levied by the Board of Directors. Every such assessment shall also be a continuing lien upon the lot against which the assessment is made. The sale of any lot pursuant to a foreclosure of a deed of trust on the lot (or deed in lieu of such foreclosure), shall extinguish the lien of such assessments as to payments which became due prior to such foreclosure sale or deed in lieu of foreclosure, but shall not extinguish the personal liability of the Owner of such unpaid assessments which became due during his period of Ownership. The lien provided for herein shall be subordinate to the lien of any first deed of trust, except for assessments which accrued prior to the date such deed of trust was recorded.

The Board of Directors shall fix each year an annual assessment equally against each lot in an amount appropriate to and used exclusively to carry out the purposes of the Association as described in Article I, including the funding of reasonable reserves for construction, maintenance and repair of roadway , and the timely construction, repair and replacement of capital improvements. The maximum annual assessment for each lot will be indexed as stated in Paragraph 3, Page 1 of this Declaration. The Board of Directors may, prior to the beginning of each year, set an annual assessment for such year which does not exceed this maximum, and if the Board should fail to fix an assessment for any year, the previous year's assessment shall apply.

The Board of Directors may also levy a special assessment against some or all of the tracts of the Property, applicable to not more than five years, for the purpose of defraying, in whole or in part, the cost of any acquisition or construction, reconstruction, repair, or replacement of a capital improvement, including fixtures and personal property thereon, provided that such special assessment is approved by a majority vote of the Owners of those tracts which would be subject to the proposed special assessment.

The Board of Directors may also levy a maintenance assessment on any lot whose Owner fails to maintain or restore the lot and improvements on it, as required by Article III of the Declaration. Such a maintenance assessment shall be limited to the amount necessary to meet the cost of the maintenance or restoration and other charges, if any, permitted under this Declaration, and may not be imposed until the Board has given the Owner at least thirty days notice of its intention to undertake such maintenance or restoration and afforded the Owner an opportunity to be heard by the Board on the matter.

The Association may charge the Owner: (a) a late fee on overdue assessments, not to exceed ten percent of the assessment; (b) the costs, including attorney's fees and court costs, for collection of assessments and of enforcing any of the provisions of this declaration; and (c) interest on overdue sums, up to the maximum rate permitted by law. Any such charges shall be added to and become a part of the lienable assessment on the lot, and they may be awarded by a court as part of its judgment in any proceeding in law or in equity.

ARTICLE III
USE RESTRICTIONS

The following restrictions shall apply to all of the tracts on the Property:

- A. Residential Use. The use of each tract is restricted to but one single family private dwelling or residence designed for occupancy by one family and accessory buildings as permitted herein. Except for those activities conducted as part of the marketing and development program of the Declarant, no industry, business, trade or commercial activities other than home professional pursuits, non-residential storage shall be conducted, maintained or permitted on or in any tract.
- B. Subdivision of tracts. No tract shall be divided, subdivided or partitioned in any way by sale, gift, devise or other method of conveyance, except as herein provided for minor boundary line adjustments. This covenant may not be waived or amended.
A tract may be combined or merged with any other tract provided that the tract Owner has obtained prior written approval of the Declarant until all tracts have been sold, after which time written approval by the directors of Association must be obtained. Such combination or merging of tracts must comply with the Hardy County, West Virginia, land use ordinances in effect at that time.
- C. Property Maintenance. Each Owner shall keep the property and improvements thereon in a safe, clean and neat condition and shall comply with all applicable safety, health, police, and fire department requirements. No trash, litter, junk, boxes, containers, bottles, cans, implements, machinery, lumber, or other building material shall be buried, dumped or permitted to remain exposed on any tract except as necessary during the construction period. Rubbish, leaves and trash shall not be disposed of on the property by burning in open fires or incinerators. All trash and garbage cans or receptacles shall be animal proof and shall be stored out of view from neighboring tracts, roads or streets except at times of scheduled garbage or trash pick-up.
- D. Nuisance. No noxious, illegal, hazardous, dangerous or offensive use, construction or activity shall be conducted on any tract, nor shall anything be done thereon which may be or become an annoyance or nuisance to the Owners, tenants or occupants of other tracts within or adjacent to the property by reason of unsightliness, or the excessive emission of fumes, odors, glare, excessive heat, vibration, gases, vapors, chemicals, radiation, dust, liquid waste or smoke.
Appropriate storage buildings and/ or garages as herein permitted must be provided for abandoned or active automobiles, trucks, motorcycles, campers, motor homes or other conveyance
- E. Mobile Homes. No mobile homes, including double wide mobile homes may be kept or installed on a tract.

- F. Building Setback Requirements. The minimum building setback line for all improvements constructed on any tract shall be 50 feet from the front property line, 50 feet from any side property line or rear property line. Side property setback lines shall not apply to a property line between two tracts in single Ownership.
- G. Building Area. The ground floor of any dwelling of two (2) or more floors erected on tract shall contain a minimum of eight hundred (800) square feet, exclusive of porches and garages, unless otherwise approved, in writing, by the Declarant or the Board. The minimum area of living space of any single family dwelling, exclusive of porches and garages, shall be not less than one thousand (1,000) square feet.
- H. Drainage. No Owner shall erect or suffer to be erected any structure within, or otherwise obstruct, any easement across his tract, nor divert or otherwise interfere with the natural flow of surface water, except that a pond which is approved by the proper authorities is permitted, nor obstruct any drainage ditch.
- I. Entrances. A minimum of not less than the equivalent of a twelve (12) inch diameter culvert must be used in all driveways leading from any roadway in any right of way or ingress-egress where a drainage ditch is crossed by such driveway.
- J. Animals. Household pets shall be allowed and other animals such as horses, mules or ponies shall be allowed for personal enjoyment and use, provided that suitable facilities are erected by the Owner to maintain and contain said animals within the tract involved. No commercial farming activity shall be allowed and Owners shall be responsible for the proper restriction of such animals. Neither cattle, swine, poultry shall be allowed.
- K. Easements. Underground electrical and telephone utilities shall be provided by the Declarant to the boundary line of each tract. Within each tract, all utilities shall be installed underground at the Owner's expense.

The Declarant hereby creates a perpetual easement in favor of the Declarant and all tract Owners on, over, under and across a strip of land twenty (20) feet wide at any point along any road right of way line and along any other side, rear or front lines of any tract on the property, except along common property lines where adjoining tracts are under single Ownership, as an easement appurtenant to each tract for the installation, use, maintenance, repair, and replacement of public and private utilities, including sewer, water, gas, electricity, cable television, telephone and telegraph. Said easement areas are not dedicated to the public. Any person exercising the easement rights granted hereby shall repair any damage to an easement area caused by such person, including but not limited to backfilling of trenches, replacement of pavement, sod, fences, shrubbery and landscaping.

- L. Outdoor Lighting. Outdoor lighting shall be of a type and installation such that no glare is visible from adjoining properties.
- M. Storage Tanks. All storage tanks for use in connection with any residence, including tanks for the storage of fuels, must be buried or screened sufficiently to conceal them from the view of neighboring tracts, roads or streets. All storage tanks shall comply with UL or other applicable standards of construction and manufacture, and shall be installed by qualified personnel.
- N. Antennas. Standard television antennas may be installed, but no other television, radio or microwave antennas, including but not limited to dish type antennas for receiving signals transmitted by satellite, shall be installed without screening appropriate to limiting visibility from any other tract or roadway.
- O. Water and Sewer. Each unit shall be served by an individual well and septic system which shall be installed by licensed contractors in accord with all applicable Federal, state and local laws, regulations and ordinances.

ARTICLE IV

DESIGN REVIEW

The drawings or plans for the construction and erection of any permanent building and/or fencing shall, before construction commences, be submitted to the Declarant, or his assigns, for review as to the architectural and aesthetic conformity of said drawings or plans with other buildings at The Highlands. Such plans and drawings shall be subject to the approval of the Declarant, or an appropriate committee appointed by the Association, or their assigns, however such approval shall not be arbitrarily or capriciously withheld. The Owner of any tract, before construction, shall have such plans approved in writing by the Declarant or the Association committee.

ARTICLE V

COMMON AREA

The Association, subject to the rights of the Owners set forth in this Declaration, shall be responsible for the exclusive management and control of the Common areas delineated on the attached plat, including the road right of way and the twenty (20) foot planting element contiguous to State Route 259 and shall keep the same in good, clean, attractive and sanitary condition, order and repair.

Subject to the provisions herein, every Owner shall have a one sixth interest in and to the Common Areas which shall be appurtenant to and shall pass with the title to every tract. The Association will have the right to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed upon by the Owners. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of the Owners agreeing to such dedication or transfer has been recorded.

In the event any Common Area is damaged or destroyed by an Owner or any of his guests, tenants, licensees, agents or member of his family, such Owner does hereby authorize the Association to repair said damage; the Association shall repair said damaged area in a workmanlike manner in conformance with the original plans and specifications of the area involved, or as the area may have been modified or altered subsequently by the Association. The cost of such repairs shall become a Special Assessment against the tract of the Owner.

The Declarant shall retain legal title to the Common Area or portion thereof until such time as he has completed improvements to the property, but not withstanding any provision hereto, the Developer hereby covenants that the Common Area will be conveyed to each tract, free and clear of all liens and financial encumbrances, not later than the conveyance of two-thirds (2/3) of the tracts to Owners.

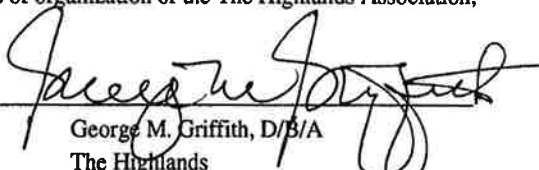
ARTICLE VI GENERAL PROVISIONS

The protective covenants and restrictions contained in the Declaration shall continue in full force and effect until a termination of the Declaration is executed and acknowledged by the Owners of Eighty Three and One Third (83.33%) percent of the tracts and recorded among the land records of Hardy County. This Declaration may be amended with the approval of the Board of Directors and the consent of the Owners of two-thirds of the tracts, at a meeting duly called for that purpose. So long as the Declarant owns any tracts or tracts on the property, no such termination or amendment shall be effective without his consent.

The Association and any Owner of a tract shall have the right to enforce all provisions of this Declaration by any proceeding in law or equity. The Association shall have the right to record among the land records of Hardy County a notice of violation of the provision of the Declaration and to charge the offending Owner with reasonable attorney fees, the cost of recording and removing the same. Failure to enforce any provision of the Declaration shall in no event be deemed a waiver of the right to do so thereafter, nor shall any liability attach to the Association or to any other person for failure to enforce such provision.

The determination by any court that any provision of this Declaration is unenforceable, invalid or void shall not affect the enforceability or validity of any other provision.

IN WITNESS WHEREOF, the Declarant has caused this Declaration of Covenants, Conditions and Restrictions of The Highlands of organization of the The Highlands Association, to be executed this 7th day of July, 1994.

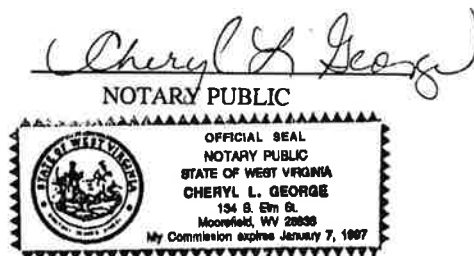

George M. Griffith, D/B/A
The Highlands

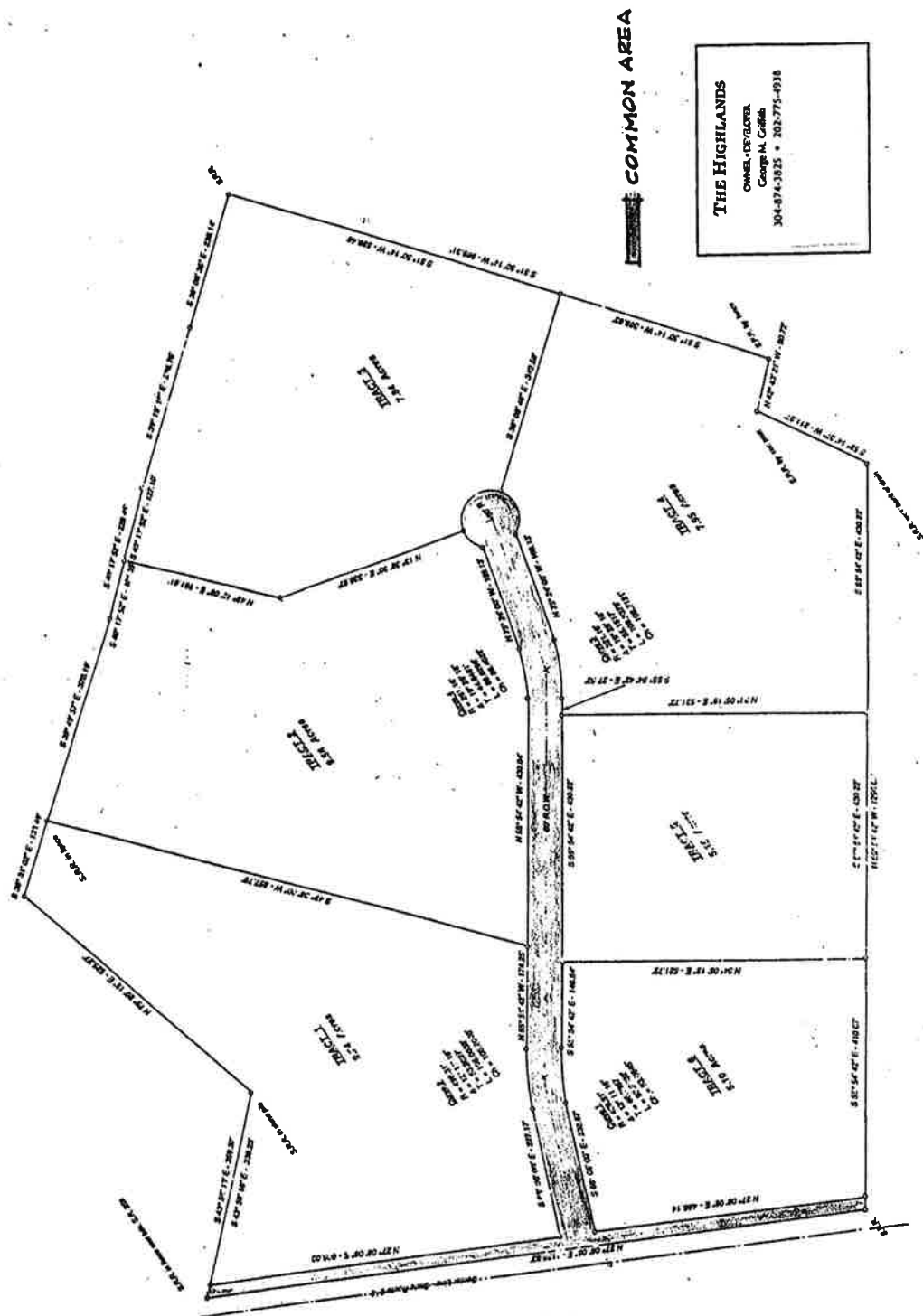
STATE OF West Virginia
COUNTY OF Hardy, to-wit:

I, Cheryl L. George, a Notary Public in and for the County
aforesaid, do hereby certify that George M. Griffith, whose name is signed to the writing above,
bearing the date of July 7, 1994, has this day acknowledged same before me in my said County
and State.

Given under my hand the 7th day of July, 1994
My commission expires January 7, 1997.

(AFFIX NOTARY SEAL)





Schedule "A"
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STATE OF WEST VIRGINIA, Hardy County Commission Clerk's Office July 20, 1994 3:30 P.M.

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

Teste

[Signature]

Clerk.