

see v. a. Thompson

6-24-93

53754

151

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
OF DRY RUN AND
ORGANIZATION OF DRY RUN ASSOCIATION

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF DRY RUN AND ORGANIZATION OF DRY RUN ASSOCIATION, is made this 3rd day of June, 1993, by B. Steven Denney, DBA Shenandoah Land, ("the Declarant"), as the owner of all of that tract of land containing 134.268 acres, more or less, situate in Hampshire 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 Deed Book 338 at Page 585, and is the same land shown on the plat recorded in the Land Records Office of Hampshire County, WV at Map Book No. _____, Page _____, and known as Lots 1 through 31, inclusive, Dry Run. 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 described above shall be held, sold, and conveyed subject to the following covenants, conditions restrictions, and easements, which shall be covenants real running with the Property and every lot and parcel contained therein, whether or not specific reference is made to this 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.

ARTICLE I
DRY RUN

152

Dry Run is an unincorporated association organized under the West Virginia Uniform Common Interest Ownership Act (Sections 36B-1-101 et seq. of the West Virginia Code ("the Act")) for the following purposes: (a) to administer the covenants, conditions and restrictions of Powder Mill Estates 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 by the Act.

Every owner of a lot designated as such on the attached Plat shall, upon accepting a deed to such lot, 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 lot 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 lot, 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 lots 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 lot.

The affairs of the Association shall be managed by a board of directors consisting of a least three members. The initial directors of the association, consisting of one to three members, shall be appointed by Declarant, or its assigns. Except for directors appointed by the Declarant, a majority of the directors must be owners of lots 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 prior to the conveyance of the first lot to an owner other than the Declarant; such By-laws may thereafter be amended by a majority vote of the owners in attendance at a meeting called for that purpose, but during the period of Declarant control may not be amended without the Declarant's consent.

Subject to the provisions of Section 36B-3-103 of the Act, 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 seventy-five percent (75%) of the lots to owners other than the Declarant.

The owner of each lot designated as such on the attached plat shall be entitled to one vote for each lot owned in connection with the election of directors and on such other

matters as may properly come before the membership. Voting shall be in accordance with Section 36B-3-110 of the Act.

The Board of Directors of the Association shall have the powers necessary and appropriate for carrying out the purposes the Association except as may be specifically reserved by this Declaration to the members or to the Declarant.

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 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, until changed by vote of the membership as hereinafter described, shall be Ninety-Five Dollars, (\$95.00) per lot, indexed automatically for inflation as provided in Section 36B-1-114 of the Act. 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 maximum annual assessment may be modified or waived for one or more years with the approval of the Board of Directors and a majority vote of the members, provided that during the period of Declarant control it may only be modified or waived with the unanimous consent of all owners.

The Board of Directors may also levy a special assessment against some or all of the lots on 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 lots 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

156

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 judgement in any proceeding in law or in equity.

ARTICLE III
USE RESTRICTIONS

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

a. Lots may be used only for recreational and single family residential purposes and for purposes incidental or accessory thereto, including one guest house, except that camping is allowed subject to the provisions of section g. of this article.

b. New dwelling or other building shall not be erected less than twenty (20) feet from any road right-of-way line, and twenty (20) feet from the side or rear or other line of any lot; provided that side line set-backs shall not apply to a property line between lots in single ownership.

c. All exterior construction must be completed and closed within nine (9) months of the commencement of construction. No building of a temporary nature shall be erected or place 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 six (6) months.

d. No owner shall erect or suffer to be erected any structure within, or otherwise obstruct, any easement across his lot, 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.

e. As part of the development of any lot, the owner shall provide adequate off-street parking for himself and his guests.

f. No sign of any kind larger than two square feet shall be displayed on any lot, except temporary signs in connection with the construction, lease or sale of buildings or lots, and except street names and directional signs.

g. No trailer (i.e. one which can be towed by an automobile) or camper containing living or sleeping quarters may be placed upon the Property, except for the purpose of camping for temporary periods or intervals, not to exceed thirty (30)

158
consecutive days or a total of one hundred twenty (120) days per calendar year. Any such campers or trailers must be located in compliance with the set-back lines described in section b. of this article, and must be fully self contained or connected to an approved septic system, except that legally registered recreational vehicles may be stored upon said lot if a permanent dwelling exists on said lot.

h. No mobile homes may be kept or installed on any lot, except mobile homes which are at least 24 feet wide. The roof on each house must be pitched so that it rises at least one (1) foot vertically for each three (3) feet of horizontal run, except for the roof on porches. Asphalt siding shall not be allowed on any structure. Concrete or cinder block foundations on houses must be pargeted or painted. Any mobile or modular, panelized or other home placed on any lot must be permanently installed on an appropriate foundation.

i. No noxious or offensive trade or activity shall be carried on upon any lot or right-of-way, nor shall anything be done thereon which may become an annoyance or nuisance to the community. Refuse containers (all refuse must be kept in closed sanitary containers at all times) must be thoroughly screened by appropriate methods.

j. Each owner of a lot shall keep all improvements owned by him in good order and repair, such that the appearance of the property is not detrimental to adjoining lots and Powder Mill Estates.

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

l. The Declarant hereby creates a perpetual easement in favor of the Declarant and all lot owners on, over, under, and across the ingress and egress easement area and 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 lot on the property, except along common property lines where adjoining lots are under single ownership, as an easement appurtenant to each lot in the Property 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, but not the placement of large trees.

m. All sewage disposal systems constructed on said lots shall conform to the regulations of the West Virginia Department of Health and any other appropriate local, state, or federal regulatory authorities. All sewage must be disposed of through an approved in-ground septic system. Out houses are not allowed.

n. A minimum of not less than twelve (12) inch diameter culvert must be used in all driveways leading from any roadway in

any right of way or ingress-egress easement where a drainage ditch is crossed by such driveway.

o. No animals, livestock or poultry of any kind shall be raised, bred, or kept on any lot for commercial purposes.

p. No lot shall be used or maintained as a dumping ground for rubbish, trash, garbage or other household waste of any type or nature, or for cars, appliances, commercial or construction refuse or rubbish of any type.

q. After the initial conveyance of each parcel by the Declarant herein, no further subdivision or resubdivision of any lot shall be permitted under any circumstances, except that minor boundary line adjustments are permitted.

r. No timber shall be harvested for commercial purposes.

s. All right of ways as shown on the plat of the property shall be maintained as private roads by the Association. At such time as a majority of lot owners shall request that the State assume control of said right of way in the Subdivision, and the State agrees to accept the road, each lot owner will execute any and all documents necessary to accomplish dedication of the roads to the State. This paragraph shall not be interpreted, however, as implying any obligation on the part of the Declarant to make any changes or improvements in the road, other than as required by Hampshire County for approval of the Subdivision plan.

t. Any damage done to a roadway by any owner, or the family member, guest or invitee of an owner, shall be the responsibility of such owner to repair. If an owner fails to make any repair

required of him under this section within thirty (30) days of written notice from the Association, then the Association may make such repairs as the agent of the owner and the cost of such repairs shall constitute a maintenance assessment against such owner's lot. Such assessment shall bear interest and be collectible as provided for in Article III of this Declaration.

ARTICLE IV
DECLARATIONS REQUIRED UNDER THE ACT

IN ACCORDANCE WITH Section 36B-2-105 of the West Virginia Code (as amended), and other provisions of the West Virginia Common Interest Ownership Act, the party of the first part does hereby declare, in addition to the other matters set forth in this declaration:

1. The name of the common interest community shall be Dry Run and it is a "planned community" within the meaning of the aforesaid Act;
2. The community is located entirely within Hampshire County;
3. The real estate included in the community is described in Schedule "A";
4. The declarant does not reserve any right to create additional lots or parcels;
5. The boundaries of each lot are shown on the plat.
6. The declarant reserves the following: "special declarant rights" within the meaning of Section 36B-1-103(29) of the said Act: to maintain one sales office and a reasonable number of signs advertising the community until the last lot owned by declarant is sold and conveyed; to use easements through the Property for the purpose of making improvements within the community, until the last lot owned by the declarant is sold and conveyed; and to appoint or remove officers or directors of the Dry Run Association, during the period and under the circumstances described in Article I of this Declaration.

7. The annual assessments for the common expenses of the community shall be levied equally against each lot, and each lot shall be entitled to one vote in the Dry Run Association.

8. The restrictions on use of the lots shall be as set forth in this Declaration. There are no restrictions on occupancy of the lots except a restriction on the period of time for which the lots can be used for camping, as set forth in Article IV, item (g). There are no restrictions on alienation of the lots, nor on the amount for which lots may be sold.

9. Easements and rights of way not of record presently being used by others appurtenant to or included in the community are shown on the herein referenced plat.

10. The record data on easements and licenses appurtenant to or included in the community are shown on the herein referenced plat.

ARTICLE V
DEVELOPMENT RIGHTS AND
OTHER SPECIAL DECLARANT RIGHTS

The Declarant reserves the following Development Rights:

a. The right by amendment to add real estate to the Common Interest Community. The real estate to which this development right applies is 123 acres, more or less, situate in Capon District, Hampshire County, West Virginia, being a part of a tract of land containing 257.5 acres, more or less, known as the "Snapp Land".

b. The development rights reserved in paragraph (a) above must be exercised within fifteen years after the initial Declaration.

c. Any of the development rights set forth in paragraph (a) above may be exercised with respect to different parcels of real estate within the Common Interest Community at different times.

However, no assurances are made by the Declarant as to the portions where the Declarant will exercise its Development Rights or the order in which such portions, or all of the real estate, will be developed. The exercise of Development Rights as to some portions will not obligate the Declarant to exercise them as to other portions of the real estate within the Common Interest Community.

ARTICLE VI
GENERAL PROVISIONS

The protective covenants and restrictions contained in this Declaration shall continue in full force and effect until a termination of the Declaration is executed and acknowledged by the owners of eighty percent of the lots and recorded among the land records of Hampshire County. This Declaration may be amended with the approval of the Board of Directors and the consent of the owners of two-thirds of all of the lots, at a meeting duly called for that purpose. So long as the Declarant owns any lot or lots on the Property, no such termination or amendment shall be effective without its consent.

The Association and any owner of a lot 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 land records of Hampshire County a notice of violation of any provision of this 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

164

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.

In construing this Declaration, the use of one gender or number shall imply the use of any other gender or number as the context may require; the requirement for a majority or two-thirds vote shall mean the vote of the owners of a majority or two-thirds of all of the lots or a vote of a majority or two thirds of all of the Directors, as the case may be, and not just those in attendance at a meeting.

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

This Declaration shall be liberally construed in favor of the party seeking to enforce the provisions hereof to effectuate the purposes of protecting and enhancing the value, marketability and desirability of the Property. The Board of Directors shall have the right to interpret all provisions of this Declaration so as to advance the said purposes.

IN WITNESS WHEREOF, the Declarant has caused this Declaration of Covenants, Conditions, and Restrictions of Dry Run and Organization of Dry Run Association, to be executed this

31st day of June, 1993.



B. STEVEN DENNEY, DBA
SHENANDOAH LAND