

SILVER RIVER ACRES SUBDIVISION

Mailed 8-6-87
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Moorefield, W. Va. 26836

SILVER RIVER ACRES
Dedication of Plat and
Declaration of Protective Covenants,
Conditions and Restrictions

KNOW ALL MEN BY THESE PRESENTS: That the undersigned, referred to as "Declarant", does hereby record the plat of a subdivision known as SILVER RIVER ACRES SUBDIVISION, lying and being situate in South Fork District, Hardy County, West Virginia, and being more fully described on the plat and survey of Larry Kitzmiller L.L.S., and dated July 30, 1987, and made a part hereof, and recorded in the Clerk's Office of the County Commission of Hardy County, West Virginia, just prior to the recording of this instrument in Plat Book No. 3, page _____, to which reference is hereby made, and said real estate being part of a larger tract of real estate conveyed to Benick C. Williams, by deed from George Fisher et ux, dated April 20, 1963, and recorded in the Hardy County Clerk's Office in Deed Book No. 103, page 259.

All lots in the SILVER RIVER ACRES SUBDIVISION 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 of the lots:

ARTICLE I - DEFINITIONS

1. "Association" shall mean and refer to Silver River Acres 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 interest merely as security for the performance of an obligation.

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 Benick C. Williams and Betty P. Williams, their heirs and assigns.

ARTICLE II- MEMBERSHIP AND VOTING RIGHTS

1. Every owner of a lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

2. On or before November 15, 1987, or when three-fourths (3/4) of the lots have been sold, whichever occurs first, a Property Owners Association shall be established with membership consisting of the Owners (and only the owners) of each lot in SILVER RIVER ACRES SUBDIVISION who shall have one (1) vote per lot owned. The Association shall be governed by the majority of the lot owners. A Board of Directors of three (3) to five (5) members shall be elected by the lot owners.

The initial Directors of the Association consisting of one to five members shall be appointed by the Declarant or their assigns and thereafter the Board of Directors shall be elected by the lot owners. The initial Directors shall be responsible for calling the first meeting of the Property Owners Association on or before March 19, 1988, and shall be responsible for the mailing of the written notice of the lot assessment which is due and payable by January 1, 1988. The meeting shall be held in Hardy County, West Virginia, at a suitable place to be designated by the initial Board of Directors. At said meeting the said owners shall, by majority vote, form the said Association's legal entity as they deem advisable and shall elect a Board of Directors and or officers of said Association.

ARTICLE III
COVENANT FOR MAINTENANCE ASSESSMENT

1. The Declarant shall assess initially, for each Lot, ONE HUNDRED DOLLARS (\$100.00) per year for the use, upkeep and maintenance of the rights-of-ways within SILVER RIVER ACRES SUBDIVISION; upkeep and maintenance of the rights-of-ways to and from U. S. Route 220; subject to any increase as provided hereinafter.

2. Any assessment made 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. The lien is expressly inferior and subordinate to any mortgage liens presently or hereafter encumbering the property affected by these protective covenants. This assessment may not be increased by more than a percentage increase greater than the Cost of Living Index (Urban) as published by the Department of Interior, Bureau of Standards. The owner of each lot, by acceptance of a deed thereto, automatically becomes a member of the Property Owners Association and is deemed to covenant and agree to pay One Hundred Dollars (\$100.00) per lot per year, beginning January 1, 1988, and to pay annually thereafter to the Property Owners Association, to be created as herein set forth, an amount determined by the positive vote of owners of at least two-thirds (2/3) of the lots in said subdivision as necessary for the purpose of maintaining and improving rights-of-ways and roadways shown on the subdivision plat, and the right-of-way from said subdivision to U. S. Route 220 over other real estate not a part of this subdivision. Beginning the winter of each year hereafter said Association shall notify each lot owner in writing, as to the amount of the lot assessment which shall be due and payable by the lot owner to the SILVER RIVER ACRES Lot Owners Association. In the event of a resale or transfer of one or more parcels 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. In the event of a transfer by judicial sale or sale under Deed of Trust, any past due and unpaid road maintenance fees shall be paid by the party forcing the sale of the lot, or be paid by the new purchaser. This section does not apply to Declarant should they reacquire title through judicial sale, deed of trust sale, or by voluntary sale from Owner. See Paragraph no. 4 below.

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 and may also sell the lot involved at a public auction after advertisement once a week for two (2) successive weeks, in a newspaper having general circulation in Hardy County, and after thirty (30) days written notice mailed to the last known address of said owner. Cost of sale, including reasonable and necessary attorney fees, advertising costs, auctioneering fees, recording fees, and other necessarily incurred costs shall be paid from the proceeds of sale before the payment of amount involved. Or, if the owner chooses to pay the assessments before sale of the property, the costs incurred to date of owner's payment of the assessment shall be collected from the owner as a condition precedent to cancellation of the sale.

4. In exchange for Declarant's agreement to install and maintain said roadways and rights-of-way until September 1, 1987, the Declarant shall be forever exempt from the payment of said annual assessments and maintenance fees and assessment fees as to all presently owned by or later reacquired by the Declarant. In the event the Declarant should reacquire real estate through purchase at a foreclosure sale or through settlement of Owner's default in any contract, note or deed of trust that Owner should be obliged to pay the Declarant, Declarant shall not be required to pay any past due Assessments that the previous Owner may have owed the Association, nor shall Declarant be required in the future to contribute to the maintenance of the roadways.

5. If any one owner owns two or more adjoining lots, only one assessment shall be payable so long as two or more adjoining lots are so owned, and only one house is built by said owner of said lots. If any of said lots is hereafter sold or conveyed or improved by an additional dwelling, it shall be subject to separate assessment of \$100.00. Nothing herein shall be deemed to alter the "one vote per one lot owned" rule which is established in Article II, paragraph 2 above.

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, except for directional and informational signs of Declarant.

2. No further subdivision is allowed of any 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 lot. Consequently, in the construction of a driveway into any lot, a twelve (12) inch diameter culvert, or larger if necessary, shall be used in constructing the driveway in order to alleviate blockage of natural drainage. No parking is permitted upon any subdivision roads within the subdivision at any time and as part of the development of any lot, the Owner shall provide adequate off-road parking for owner and his guest(s).

4. Due to the unsightliness of junk vehicles on lots, no

motor vehicle which does not have current license plates or an inspection sticker not more than six (6) months out of date shall be permitted on any Lot. House trailers may be placed on any lot so long as the written permission from the Declarant is obtained and furnished the owner prior to placement of the trailer on the premises and provided further so long as any Hardy County regulations with regard to house trailers (mobile homes) are complied with. Three years after the date of these Covenants, Declarant's right to regulate the presence of house trailers within Silver River Acres is hereby assigned unto the Silver River Acres Proper Owners Association. Setback lines for mobile homes shall be 100 feet or from the center line of the subdivision road unless otherwise approved by Declarant or their assigns. Temporary camping trailers may be placed on any lot.

5. No building of a temporary nature shall be erected or placed on any lot except those customarily erected in connection with building operations and in such cases, for a period not to exceed eight (8) months, provided however nothing shall be construed to prevent the owner from erecting tents on the lot and to camp overnight in said tents for a period of up to fifteen days.

6. Not more than one single family residence shall be erected on a lot. Residences shall contain a minimum of 480 feet, and seasonal cabins shall contain a minimum of 320 square feet of living area, excluding basement, garage, porch, carport, deck, and overhanging eaves. Seasonal cabins shall be placed 100 feet or more from the centerline of any roadway unless otherwise approved by Declarant or their assigns. All exterior construction must be completed and closed in within eight (8) months of the commencement of construction.

7. Each lot shall be used for residential/recreational purposes only, and any garage or outbuilding must conform generally in appearance and material with any dwelling on said lot. Use of the property for any form of commercial or agricultural use or the raising of livestock or poultry (regardless of number) is not allowed within the subdivision.

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

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

8. 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 a subdivision road damaged by equipment of Owner or his contractor enroute to or from Owner's lot. All lots improved or unimproved, must be maintained by the lot owner in a neat and orderly condition at all times. No garbage, trash or inoperative vehicle or other debris shall be permitted to accumulate or remain on any lot.

9. No building shall be erected closer than forty-five (45) feet from the property line which adjoins the subdivision road, nor closer than twenty (20) feet to the side or rear property lines. *(Buildings must be 45 feet from the river)* With the exception that where two or more tracts are used together for the construction of one dwelling, then said twenty (20) foot setback shall apply only to the outside lines. However, where two or more lots are used together for

construction of a dwellinghouse and where the twenty (20) foot setback rule is thus waived, the two or more lots which comprise the homestead shall thereafter be sold and conveyed as one unit, and may not be sold separately, but voting and membership rights shall not be affected. Setback for trailers is outlined under #4.

10. All sanitation facilities constructed on any lot shall conform with the regulations of the West Virginia County Health Department.

11. No lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage, or other waste must be kept in sanitary containers. All trash, garbage, fuel storage tanks, garden equipment, supplies and stored raw materials must be kept from view of the public. In the event any lot owner shall fail to discharge his aforesaid responsibilities in a manner satisfactory to the Board of Directors of the Property Owners Association, upon two-thirds (2/3) vote of the Board of Directors, and after fifteen (15) days notice to the owners of the Property, the Property Owners Association shall have the right, through its agents and employees, to enter upon said lot and perform necessary maintenance repairs (including mowing and removal of grass over 24" high in the form of hay), and restoration, or to remove any offending material or object. Such action shall not be deemed a trespass, and the cost of same when performed by the Association shall be added to and become a part of the assessment to which such lot is subject.

12. The Declarant reserves unto themselves or ther assigns, easements for the installation, erection, maintenance, operation and replacement of telephone and electric light poles, conduits and related equipment, and/or sewer, gas, telephone, cable t. v., electric and water lines on, over and under a strip of land ten (10) feet wide along all property lines not serving as the centerline for rights-of-ways, and fifteen (15) feet along all the rights-of-ways, in addition to easements reserved by any other instrument duly recorded. Nothing herein shall be construed as creating any duty on 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 owners.

13. Each lot owner shall have an unobstructed and the nonexclusive thirty foot right of ingress and egress to and from his lot over the rights-of-ways and roadways as shown on the subdivision plat, and a right-of-way thirty feet in width over the Road shown on the plat which provides ingress and egress with U. S. Route 220. The Lot Owners Association shall be responsible for maintenance of the subdivision roads, and responsible for the maintenance of the access road to and from U. S. Route 220. The rights-of-ways shall be subject to the common usage of the declarant, their heirs and assigns. The declarant reserves the right to add additional real estate to the SILVER RIVERS ACRES SUBDIVISION, or to create a subdivision adjoining the SILVER RIVER ACRES SUBDIVISION, provided however, Declarant agrees any future subdivision shall have similar covenants provided for herein and that any new subdivision which utilizes the subdivision road system utilized by Silver River Acres shall require the lot owners to contribute to the maintenance of the subdivision road system.

15. The use of any motorcycle, dirt bike, all terrains vehicles, or other similar motorized conveyance within the subdivision is prohibited unless it is equipped with proper noise abatement equipment.

16. Firearms shall not be discharged within five hundred (500) feet of any dwelling house. Nor shall they be discharged in such a manner that the trajectory of the projectile shall cross any of the subdivision roadways.

17. Subject to obtaining the permission and consent of the Hardy County Health Department, the Declarant does hereby grant an easement to lot owners within the subdivision for the purpose of laying and maintaining septic tank systems and drain fields, across other neighboring or adjoining lots, where a lotowner's parcel (the dominant parcel) has been found to be unsuitable to sustain a sewage disposal system by the Health Department of Hardy County, West Virginia. In the event all such lots have been previously sold by Declarant to lot owners, then these cross easements are hereby granted in advance to each of the lots in the subdivision where necessary and required to accommodate a dwelling on the lots in question, and such easements may be enforced by one lot owner against the other. Any such easement so exercised will be constructed in such a manner as to cause the least damage to the servient tract, and such easement shall include the right to lay pipes to and from the sewage disposal systems and shall include the right of repair and reinstallation of same in the future. Any Owner exercising such a right, however, has the duty to replace the surface of the servient tract to the same condition as it existed prior to the construction activity and to reseed the real estate to the satisfaction of the owner of the servient tract. Any such easements granted herein shall be invalid, however, if its installation would prevent the servient tract or parcel from reasonably being utilized as a homesite as planned.

18. If any lot owner shall violate any of the covenants herein, it shall be lawful for any other person or persons owning any real estate situated in said subdivision 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 or them from so doing 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.

19. The Association, by vote of two-thirds (2/3) of its members, may make additional rules, covenants, and restrictions for the use of the Property, which together with the above, may be enforced by fines or other penalties.

ARTICLE V GENERAL PROVISIONS

1. Declarant reserves the right to replat, resubdivide and renumber any unsold lot or lots, and to add additional adjoining real estate to said subdivision. Nothing herein shall be construed to prevent Declarant from imposing additional covenants or restrictions on any unsold lot(s) or other real estate later added to and becoming a part of said subdivision.

2. In the event state, local government, and utility, cooperative, Declarant, or municipality requires the

installation of a public utility system within the area of which this is a part, the grantee or grantees, by the acceptance of a deed, do hereby agree to pay their proportionate share for the cost and expense of the erection, maintenance and operation thereof as the same cost is to be determined by the appropriate authority.

2.1 Each lot owner has paid and deposited a tap fee for public water with the Hardy County Public Service District. This fee is nonrefundable (unless the project is cancelled by the Public Service District) and will be held in escrow by the Public Service District pending the approval of the public water project which is contemplated for South Fork District of Hardy County, West Virginia. More information regarding the Hardy County Public Service District and this project may be obtained from the agents at the Courthouse, at Moorefield, West Virginia.

2.2 Each lot owner understands that the Declarant has pledged unto the Hardy County Public Service District that each lot within the Silver River Acres Subdivision will become a subscriber of the Hardy Public Service District public water system if it is made available. Monthly subscriber fees (as approved by the Public Service Commission of W.Va.) shall become due and payable commencing with the first available date of the public water, and each lot owner covenants by his purchase of a lot within the Silver River Acres Subdivision that in the event the Public Service District of Hardy County, West Virginia makes public water available to the lot owner, the owner will subscribe to the water service as of the date that it is first available and pay the regular monthly fee for water service which is set by the Public Service District. Should the Owner fail to join and subscribe to the service at the first possible date that the service is available, and should the Declarant be required to make any payments to the Public Service District for the lot within the subdivision owned by the lot owner, then Declarant shall have the right to bring suit and collect for any monthly fees that Declarant was required to pay upon behalf of the lot owner.

3. All sewage disposal systems constructed on said lots shall conform to the regulations of the appropriate West Virginia Department of Health. Free standing toilets are also subject to the aforementioned requirements and shall not be constructed unless specific authority is first obtained from the Health Department, and then they must be placed in such location with respect to the residence, cabin, trailer or accessory building located on the premises that the free standing toilet does not create an unnecessarily unsightly condition to the adjoining lot owners within the subdivision. In this connection, the Owner should submit plans for the construction to the Property Owners Association, and obtain prior approval from the Board of Directors prior to the location and construction of a free standing toilet.

4. No building shall be constructed and no well shall be drilled on any lot until a sewage disposal permit has been obtained from the West Virginia Health Department.

4.1 Declarant guarantees for a period of one year from the date that it: delivers a general warranty deed to Owner, or if Owner is purchasing under installment contract, for a period of one year from the date of the signing of the contract, that at least one location located on each lot sold or conveyed unto

Owner will pass a soil percolation test administered by a certified septic tank installer (installer must be approved by the local sanitarian at the Hardy County Health Department) so that the Owner may obtain a health permit which would enable him to build at least a two bedroom dwelling house on the real estate. Any soil percolation test obtained by Owner shall be at his own expense. If Owner's lot does not pass the soil percolation test and if Declarant is notified within the one year period, then Declarant may, at their option, grant a cross easement under the subdivision road system to their residue, which shall authorize the Owner to install a septic system on Declarant's residue, together with the right to repair, reinstall and maintain said system; OR at Declarant's sole option, Declarant may rescind this transaction in which case, Owners's purchase price, interest paid on any purchase money loan, and attorney fees shall be refunded unto owner.

5. 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 hereafter imposed by the provisions of this Declaration. Failure by the Declarant or Association or by any Owner to enforce any provisions herein contained shall in no event be deemed a waiver of the right to do so thereafter.

6. The covenants, restrictions and other provisions of this Declaration shall run with and bind the land for a term of twenty (20) 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 (20) year period by an instrument signed by not less than ninety (90%) of the lot owners, and thereafter by an instrument signed by not less than seventy-five (75%) of the lot owners.

7. Invalidation of any of the covenants, restrictions or other provisions of this Declaration by judgment or Court Order shall in no wise affect any other provisions, which shall remain in full force and effect.

8. All lots within Silver River Acres were previously used for agricultural purposes by Declarant, and Declarant participated in the ASCS program available for farmers through the West Virginia Department of Agriculture. Declarant retains for themselves use of the ASCS base for 1987.

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

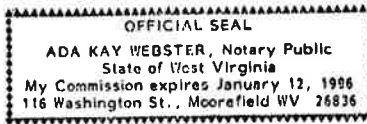
Renick C. Williams
Betty P. Williams
 Declarant

State of West Virginia,
 County of Hardy, to-wit:

30 The foregoing instrument was acknowledged before me this the day of July, 1987, by Renick C. Williams and Betty P. Williams, husband and wife.

My commission expires Jan. 12, 1996
Ada Kay Webster
Notary Public

This instrument prepared by
Oscar M. Bean, Attorney,
Drawer 30
Moorefield, W.Va. 26836.



STATE OF WEST VIRGINIA, Hardy County Commission Clerk's Office July 31, 1987

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

Teste Sue L. Halterman Clerk.