

**MODIFICATION OF  
RESTRICTIVE COVENANTS AND PROVISIONS  
AFFECTING ALL LOTS IN  
KESSEL LUMBER SUPPLY, INC.,  
HEALY HEIGHTS SUBDIVISION  
SECTION 1 PHASE 1  
NEW CREEK DISTRICT, MINERAL COUNTY, WEST VIRGINIA**

BE IT KNOWN that Healy Heights Homeowner's Association, Inc., a corporation organized and existing under the laws of the State of West Virginia, being the association created by the Modification of the Original Restrictive Covenants governing the Healy Heights Subdivision and recorded in the Office of the Clerk of the County Commission of Mineral County in Deed Book 244, at page 638.

Said Healy Heights Homeowner's Association does at this time desire to amend said modified restrictive covenants, having held a meeting and taken the issue to a vote and seventy five (75) percent of said homeowner's voting in favor of said modification as required by the By-Laws of the said Association.

The said Healy Heights Homeowner's Association does hereby stipulate and agree that said declarations shall constitute covenants running with the land as to all said homesites, and shall be binding upon the parties hereto and all persons claiming by or under them, and for the benefit of any by way of declarations being designated for the sole purpose of keeping said homesites desirable, uniform and suitable in architectural design and use as herein specified, to-wit:

1. All restrictive covenants and provisions designated items 1 through 15 as set out in that certain document dated August 18, 1964, and found in the Office of the Clerk of the County Commission of Mineral County, West Virginia, in Deed Book 148, at page 622 are hereby incorporated by reference.
2. The restrictive covenants designated items 1 and 3 in the Modification of Restrictive Covenants and Provisions Affecting Healy Heights Subdivision and dated the 13th day of August, 1986, is hereby incorporated by reference.
3. The purpose of this Amendment is to modify the restrictive covenant designated item 2 in the Modification of Restrictive Covenants and Provisions Affecting Healy Heights Subdivision and dated the 13th day of August, 1986, as follows:

Each purchaser or owner of a homesite in said subdivision shall be entitled to one (1) vote for each homesite. A homesite is defined as one (1) or more adjoining lots in said Subdivision having one (1) single family dwelling or having the potential for one (1) single-family dwelling. To qualify as a homesite the lots must be adjoining. Owners of multiple lots that do not adjoin and have more than one (1) single family dwelling or have the potential to have more than one (1) single family dwelling will have an equal number of votes to the number of homesites that they own.

The owner of a homesite shall pay one annual maintenance fee per homesite and one special assessment (when such special assessments are approved) per homesite regardless of how many adjoining lots consist of the homesite.

All changes hereto affecting the payments of dues by homesite owners are retroactive to January 1, 2000.

IN WITNESS WHEREOF, the said Healy Heights Homeowner's Association, Inc., a corporation, has caused these presents to be executed in its behalf by Randy J. Cirillo, its President, duly attested by its secretary, and its corporate seal hereunto affixed this \_\_\_\_ day of \_\_\_\_\_, 2000.

HEALY HEIGHTS HOMEOWNER'S ASSOCIATION  
a corporation

By \_\_\_\_\_

Its President

ATTEST:

\_\_\_\_\_  
Secretary

RESTRICTIVE COVENANTS AND PROVISIONS  
AFFECTING ALL LOTS IN HEALY HEIGHTS  
SUBDIVISION NEAR THE VILLAGE OF  
NEW CREEK, MINERAL COUNTY, WEST VIRGINIA

BE IT KNOWN that the undersigned Corporation, being the owner in fee simple of certain real estate situated near the Village of New Creek, in New Creek District, Mineral County, West Virginia, being part of a tract of 81.17 acres, more or less, conveyed to Cook & Kessel Corporation, a corporation, from Paul T. Healy and Joan Healy, his wife, by Deed dated the 17th day of August, 1961, and recorded in the office of the Clerk of the County Court of Mineral County, West Virginia, in Deed Book No. 137, at Page 43, the portion to be affected hereby being known and described as "HEALY HEIGHTS SUBDIVISION", according to the Plat thereof dated June, 1964, and recorded as aforesaid in Map Book No. 3, at Page 85, does hereby make the following declarations as to limitations, restrictions and uses to which the lots constituting said Addition may be put, hereby stipulating and agreeing that said declarations shall constitute covenants to run with all of the land contained in said "HEALY HEIGHTS SUBDIVISION", as shown and described in said Plat and any amendments thereof which may be made at a future time, and shall be binding upon the party hereto and all persons claiming by or under it, and for the benefit of and by way of limitation upon all future owners of lots in said Addition, this declaration of restrictions being designed for the sole purpose of keeping said Addition desirable, uniform and suitable in architectural design and use as herein specified, to-wit:

1. LAND USE AND BUILDING TYPE. No lot shall be used except for residential purposes. No building shall be erected, altered, placed, or permitted to remain on any lot other than one detached single-family dwelling not to exceed two and one-half stories in height and a private garage for not more than three cars. This covenant is in no way to be construed as to apply to any structure used for religious purposes.

2. DWELLING COST, QUALITY AND SIZE. No dwelling shall be permitted on any lot at a cost of less than \$15,000 based upon cost levels prevailing on the date these covenants are recorded, it being the intention and purpose of the covenant to assure that all dwellings shall be of a quality of workmanship and materials substantially the same or better

than that which can be produced on the date these covenants are recorded at the minimum cost stated herein for the minimum permitted dwelling size. The ground floor area of the main structure, exclusive of one-story open porches and garages, shall be not less than 1,200 square feet for a one-story dwelling, nor less than 800 square feet for a dwelling of more than one story.

3. BUILDING LOCATION.

(a) No building shall be located on any lot nearer to the front lot line or nearer to the side street line than the minimum building setback lines shown on the recorded plat. In any event, no building shall be located on any lot nearer than 20 feet to the front lot line, or nearer than 20 feet to any side street line.

(b) No building shall be located nearer than 10 feet to an interior lot line, except that no side yard shall be required for a garage or other permitted accessory building. No dwelling shall be located nearer than 6 feet to the rear lot line.

(c) For the purposes of this covenant, eaves, steps and open porches shall not be considered as a part of a building.

4. EASEMENTS. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat and over the rear six feet of each lot. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction of flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area of each lot and all improvements in it shall be maintained continuously by the owner of the lot, except for those improvements for which a public authority or utility company is responsible.

5. NUISANCES. No noxious 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 neighborhood.

6. TEMPORARY STRUCTURES. No structure of a temporary character, trailer, basement, tent, shack, garage, barn, or other outbuilding shall be used on any lot at any time as a residence either temporarily or permanently.

7. SIGNS. No sign of any kind shall be displayed to the public view on any lot except one professional sign of not more than one square foot, one sign of not more than five square feet advertising the property for sale or rent, or signs used by a builder to advertise the property during the construction and sales period.

8. OIL AND MINING OPERATIONS. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any lot.

9. LIVESTOCK AND POULTRY. No animals, livestock, or poultry of any kind shall be raised, bred or kept on any lot, except that dogs, cats or other household pets may be kept provided that they are not kept, bred, or maintained for any commercial purpose.

10. GARBAGE AND REFUSE DISPOSAL. No lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers. All incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.

11. The failure to externally complete a residence within one year from the commencement of the erection thereof and the failure to maintain any vacant lot in such condition as will not detract from the surrounding area shall be deemed to create, and to be, a public nuisance.

12. ROOF DRAINAGE AND SURFACE WATER. No owner of any of the lots in said Addition shall make or suffer to be made any structure on said lots or any modification or alteration of the land which shall cause surface water or water drainage from roofs, spouts, gutters, etc. to drain upon the surface of any lot owned by another, nor shall any owner deposit any roof drainage or surface water in any sanitary sewer now or hereafter installed to serve the lots in said Addition.

13. TERM. These covenants are to run with the land and shall be binding on all parties and all persons claiming under them for a period of thirty years from the date these covenants are recorded, after which time said covenants shall be automatically extended for successive periods of 10 years unless an instrument signed by a majority of the then owners of the lots has been recorded, agreeing to change said covenants in whole or in part.

14. ENFORCEMENT. Enforcement shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant either to restrain violation or to recover damages.

15. SEVERABILITY. Invalidation of any one of these covenants by judgment or court order shall in no wise affect any of the other provisions which shall remain in full force and effect.

IN WITNESS WHEREOF, the said Corporation has caused its presents to be executed in its corporate name by its officers, thereunto duly authorized, and its corporate seal to be hereunto affixed, this the 18th day of August, 1964.

COOK & KESSEL CORPORATION,  
a corporation,

By: (signed by Bernard Cook)  
President

Attest:

(signed by Eleanor E. Kessel)  
Secretary

(SEAL)

STATE OF WEST VIRGINIA,

COUNTY OF MINERAL, TO-WIT:

This day before the undersigned authority, a Notary Public in and for Mineral County, West Virginia, personally appeared Bernard Cook, who signed the foregoing Restrictive Covenants and Provisions dated the 18th day of August, 1964, for Cook & Kessel Corporation, a corporation, who, being by me first duly sworn according to law, did on his oath depose and say that he is President of said Cook & Kessel Corporation and that he was duly authorized to execute and did execute said Restrictive Covenants and Provisions on behalf of said corporation, and further acknowledged said Restrictive Covenants and Provisions to be the corporate act and deed of said Cook & Kessel Corporation, a corporation.

Given under my hand and Notarial Seal this 18th day of August, 1964.

My Notarial Commission expires on the 21st day of May, 1969.

(signed by Howard Hart, Jr.)  
Notary Public

STATE OF WEST VIRGINIA, MINERAL COUNTY, TO-WIT:

Be it remembered that on this 20th day of August, 1964, at 3:05 o'clock P.M., the foregoing Restrictive Covenants, Healy Heights with the certificate thereto annexed, was presented in the Office of the Clerk of the County Court and admitted to record.

(signed Fred Hamill)  
Clerk County Court

MODIFICATION OF  
RESTRICTIVE COVENANTS AND PROVISIONS  
AFFECTING ALL LOTS IN  
KESSEL LUMBER SUPPLY, INC.,  
HEALY HEIGHTS SUBDIVISION  
SECTION 1 PHASE 1  
NEW CREEK DISTRICT, MINERAL COUNTY, WEST VIRGINIA

BE IT KNOWN That Kessel Lumber Supply, Inc., a corporation organized and existing under the laws of the State of West Virginia, being the owner in fee simple of certain real estate situate on the northeast side of U.S. Route 220, approximately 5 miles southwest of Keyser, West Virginia, in New Creek District, Mineral County, West Virginia, and being the same real estate which was conveyed to Kessel Lumber Supply, Inc., from Lawrence Kessel dba L & L Development and Linda Kessel, his wife, by a Deed dated the 18th day of July, 1986, and which Deed is of record in the Office of the Clerk of the County Commission of Mineral County, West Virginia, in Deed Book 244, at Page 611, and which real estate is more particularly shown on a plat which is of record in the Office of the Clerk of the County Commission of Mineral County, West Virginia, in Deed Book 242, at Page 50, does hereby make the following declarations as to limitations, restrictions and use to which lots in Section 1 Phase 1 of the Healy Heights Subdivision thereof may be put. A plat of Section 1, Phase 1, of the Healy Heights Subdivision is found in the Office of the Clerk of the County Commission of Mineral County, West Virginia, in Plat Book 5, at Page 124. The said Kessel Lumber Supply, Inc., hereby stipulates and agrees that said declarations shall constitute covenants running with the land as to all of said lots, and shall be binding upon the parties hereto and all persons claiming by or under them, and for the benefit of and by way of limitation on all future owners of said lots, these declarations being designated for the sole purpose of keeping said lots desirable, uniform and suitable in architectural design and use as herein specified, to-wit:

1. All restrictive covenants and provisions designated items 1 through 15 as set out in that certain document dated August 18, 1964, and found in the Office of the Clerk of the County Commission of Mineral County in Deed Book 148, at Page 622 are hereby incorporated by reference. The minimum dwelling cost of \$15,000.00, mentioned in item 2, shall be based on cost levels prevailing on August 20, 1964.

2. Kessel Lumber Supply, Inc., as soon as 20 of the lots in said subdivision have been sold, shall cause to be formed a mutual nonprofit corporation under the laws of the State of West



Virginia in which the Lot owners by the acceptance of the conveyance of a lot to them, agree to become, and shall be a member, and membership in which shall be limited to the purchasers or owners of lots in said subdivision. The articles of incorporation shall specify, among the purposes and duties of said corporation, the enforcement of all of the restrictions, covenants and conditions herein contained, the maintenance, preservation and improvement of said properties, the maintenance of said subdivision and every part thereof in a clean and sanitary condition, as far as it may lawfully act, the establishment of reasonable assessment against the several owners in order to insure reasonable and proper maintenance of the streets, and the transaction of such other business as may be permitted by law. Said articles of incorporation shall also provide that each purchaser or owner of a lot in said subdivision shall be entitled to one vote for each lot purchased or owned by him or her. The Lot owners shall be entitled to, and obligated to accept, membership in said corporation, and shall have the benefit and bear the burdens of such membership with respect to the unsold lots in said subdivision. Kessel Lumber Supply, Inc. agrees that upon the organization of said corporation it will convey to said corporation its reversionary interest and title and all rights in and to the lots formerly conveyed, arising or that may arise, out of the restrictions and conditions herein created.

3. No unlicensed or disabled motor vehicles shall remain on any lot or street for more than thirty (30) days.

IN WITNESS WHEREOF, the said Kessel Lumber Supply, Inc., a corporation, has caused these presents to be executed in its behalf by Lawrence Kessel, its president, duly attested by its secretary, and its corporate seal hereunto affixed this 13th day of August, 1986.

KESSEL LUMBER SUPPLY, INC.,  
a corporation,

By (signed Lawrence Kessel)  
Its President

ATTEST:

(Signed Jeanne S. Turner)  
Secretary

(SEAL)

STATE OF WEST VIRGINIA,

COUNTY OF MINERAL, to-wit:

I, Hannah S. Welton, a Notary Public in and for the County and State aforesaid, do hereby certify that Lawrence Kessel, who signed the writing above and hereunto annexed, bearing date the 13th day of August, 1986, for Kessel Lumber Supply, Inc., a corporation, has this day in my said County, before

AMENDED DECLARATION OF RESTRICTIVE COVENANTS  
FOR HEALY HEIGHTS SUBDIVISION SECTION 1, PHASE 1

Now comes Kessel Lumber Supply, Inc., and amends the restrictive covenants for Healy Heights Subdivision Section 1, Phase 1, which are recorded in the Office of the Clerk of the County Commission of Mineral County, West Virginia, in Deed Book No. 244, at page 638, and dated August 13, 1986, in the following respect and manner:

Paragraph 2 of said restrictions contains a provision for the establishment of a nonprofit corporation in which all lot owners are required to receive membership and which, among other things, sets forth that said nonprofit corporation, when formed, shall establish reasonable assessments for, among other things, the maintenance of roads.

The purpose of this amendment is, and shall be, to establish a maximum annual assessment which may be assessed by said corporation. Said maximum assessment is hereby established as follows: The assessment which may be established by said corporation shall not be greater than One Hundred (\$100.00) Dollars per year, exclusive of optional user fees and any insurance premium paid by the association, based upon the value of a dollar as of July 1, 1986, and adjusted annually on the 1st day of July as allowed and provided under West Virginia Code §36-1-114.

The undersigned current lot owners hereby join in this amendment for the purpose of acknowledging their consent to the amendment herein contained.

Dated this 23rd day of September, 1988.

KESSEL LUMBER SUPPLY, INC.

By (signed Lawrence Kessel)  
President

MODIFICATION OF  
RESTRICTIVE COVENANTS AND PROVISIONS  
AFFECTING ALL LOTS IN  
KESSEL LUMBER SUPPLY, INC.,  
HEALY HEIGHTS SUBDIVISION  
SECTION 1 PHASE 1  
NEW CREEK DISTRICT, MINERAL COUNTY, WEST VIRGINIA

BE IT KNOWN That Kessel Lumber Supply, Inc., a corporation organized and existing under the laws of the State of West Virginia, being the owner in fee simple of certain real estate situate on the northeast side of U.S. Route 220, approximately 5 miles southwest of Keyser, West Virginia, in New Creek District, Mineral County, West Virginia, and being the same real estate which was conveyed to Kessel Lumber Supply, Inc., from Lawrence Kessel dba L & L Development and Linda Kessel, his wife, by a Deed dated the 18th day of July, 1986, and which Deed is of record in the Office of the Clerk of the County Commission of Mineral County, West Virginia, in Deed Book 244, at Page 611, and which real estate is more particularly shown on a plat which is of record in the Office of the Clerk of the County Commission of Mineral County, West Virginia, in Deed Book 242, at Page 50, does hereby make the following declarations as to limitations, restrictions and use to which lots in Section 1 Phase 1 of the Healy Heights Subdivision thereof may be put. A plat of Section 1, Phase 1, of the Healy Heights Subdivision is found in the Office of the Clerk of the County Commission of Mineral County, West Virginia, in Plat Book 5, at Page 124. The said Kessel Lumber Supply, Inc., hereby stipulates and agrees that said declarations shall constitute covenants running with the land as to all of said lots, and shall be binding upon the parties hereto and all persons claiming by or under them, and for the benefit of and by way of limitation on all future owners of said lots, these declarations

*Healy Heights  
att. for land  
- Keyser - W.V.  
8-19-1986*

being designated for the sole purpose of keeping said lots desirable, uniform and suitable in architectural design and use as herein specified, to-wit:

1. All restrictive covenants and provisions designated items 1 through 15 as set out in that certain document dated August 18, 1964, and found in the Office of the Clerk of the County Commission of Mineral County in Deed Book 148, at Page 622 are hereby incorporated by reference. The minimum dwelling cost of \$15,000.00, mentioned in item 2, shall be based on cost levels prevailing on August 20, 1964.

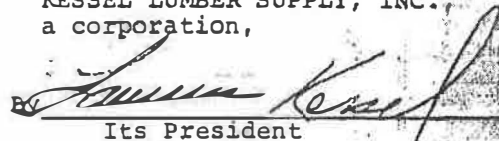
2. Kessel Lumber Supply, Inc., as soon as 20 of the lots in said subdivision have been sold, shall cause to be formed a mutual nonprofit corporation under the laws of the State of West Virginia in which the Lot owners by the acceptance of the conveyance of a lot to them, agree to become, and shall be a member, and membership in which shall be limited to the purchasers or owners of lots in said subdivision. The articles of incorporation shall specify, among the purposes and duties of said corporation, the enforcement of all of the restrictions, covenants and conditions herein contained, the maintenance, preservation and improvement of said properties, the maintenance of said subdivision and every part thereof in a clean and sanitary condition, as far as it may lawfully act, the establishment of reasonable assessments against the several owners in order to insure reasonable and proper maintenance of the streets, and the transaction of such other business as may be permitted by law. Said articles of incorporation shall also provide that each purchaser or owner of a lot in said subdivision shall be entitled to one vote for each lot purchased or owned by him or her. The Lot owners shall be entitled to, and obligated to accept, membership in said corporation and

shall have the benefit and bear the burdens of such membership with respect to the unsold lots in said subdivision. Kessel Lumber Supply, Inc. agrees that upon the organization of said corporation it will convey to said corporation its reversionary interest and title and all rights in and to the lots formerly conveyed, arising or that may arise, out of the restrictions and conditions herein created.

3. No unlicensed or disabled motor vehicles shall remain on any lot or street for more than thirty (30) days.

IN WITNESS WHEREOF, the said Kessel Lumber Supply, Inc. a corporation, has caused these presents to be executed in its behalf by Lawrence Kessel, its president, duly attested by its secretary, and its corporate seal hereunto affixed this 13<sup>th</sup> day of August, 1986.

KESSEL LUMBER SUPPLY, INC.,  
a corporation,

  
Its President

ATTEST:

  
Secretary

(SEAL)

STATE OF WEST VIRGINIA,

COUNTY OF MINERAL, to-wit:

I, Hannah S. Welton a Notary Public in and for the County and State aforesaid, do hereby certify that Lawrence Kessel, who signed the writing above and hereunto annexed, bearing date the 13<sup>th</sup> day of August, 1986, for Kessel Lumber Supply, Inc., a corporation, has this day in my said County, before

12/22/88  
Kessel, WV

AMENDED DECLARATION OF RESTRICTIVE COVENANTS  
FOR HEALY HEIGHTS SUBDIVISION SECTION 1, PHASE 1

Now comes Kessel Lumber Supply, Inc., and amends the restrictive covenants for Healy Heights Subdivision Section 1, Phase 1, which are recorded in the Office of the Clerk of the County Commission of Mineral County, West Virginia, in Deed Book No. 244, at page 638, and dated August 13, 1986, in the following respect and manner:

Paragraph 2 of said restrictions contains a provision for the establishment of a nonprofit corporation in which all lot owners are required to receive membership and which, among other things, sets forth that said nonprofit corporation, when formed, shall establish reasonable assessments for, among other things, the maintenance of roads.

The purpose of this amendment is, and shall be, to establish a maximum annual assessment which may be assessed by said corporation. Said maximum assessment is hereby established as follows: The assessment which may be established by said corporation shall not be greater than One Hundred (\$100.00) Dollars per year, exclusive of optional user fees and any insurance premium paid by the association, based upon the value of a dollar as of July 1, 1986, and adjusted annually on the 1st day of July as allowed and provided under West Virginia Code §36-1-114.

The undersigned current lot owners hereby join in this amendment for the purpose of acknowledging their consent to the amendment herein contained.

Dated this 23rd day of September, 1988.

KESSEL LUMBER SUPPLY, INC.

By *Lester Kessel*  
President

BOOK 253 PAGE 114

# HEALY HEIGHTS



HOMEOWNERS ASSOCIATION, Inc

Dear Lot Owner in Healy Heights Subdivision:

Following is the current policy regarding the payment of the annual maintenance fee:

1. The annual maintenance fee shall be \$125.00 (as of January 1, 1995) per calendar year (January through December), per lot owned, payable on the 1st day of January, April, July and October of each year in at least the amount of \$31.25 per quarter.
2. The annual maintenance fee may be paid annually in lieu of the quarterly payment.
3. Each maintenance fee not paid within thirty (30) days of the due date shall earn interest at the rate of ten (10%) percent per annum.
4. For the calendar year, the initial homeowners maintenance fee for the first quarter shall be due February 1, and shall become delinquent on or after March 1. This payment will be retroactive to January 1.
5. The Board of Directors approved a provision for the recordation of liens concerning nonpaid homeowners maintenance fees as provided by the Restrictive Covenants, By-Laws and Articles of Incorporation.
6. Checks should be made payable to: Healy Heights Homeowners Association, Inc., and mailed to HC 72 Box 391, Keyser, WV 26726.

Very Truly Yours,

Secretary,  
Healy Heights Homeowners Association, Inc.





HEALY HEIGHTS SUBDIVISION  
NEM CREEK, WA