

Mailed: Land Management + Construction

Box 5
High View, W.V.

10-30-84

Office

38757

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FAIRVIEW
DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION, made this 18th day of October, 1984, by FRANK A. WHITACRE, INC. & LAND MANAGEMENT & CONSTRUCTION, INC., West Virginia Corporations, hereinafter referred to as "Declarant":

WITNESSETH:

That, whereas Declarant is owner of certain real property in Hampshire County, West Virginia, having aquired the same by deed recorded in Deed Book 271, Page 786, among the land records of Hampshire County, West Virginia, which is more particularly described as follows: All the certain tract of land which was conveyed to FRANK A. WHITACRE, INC. & LAND MANAGEMENT & CONSTRUCTION, INC. by JAMES A. ADKINS & HELEN D. ADKINS, by the Deed mentioned above and containing 326 acres, more or less, as described in said Deed and situated in the Romney District, Hampshire County, West Virginia.

WHEREAS, the Declarant will convey the said property subject to certain protective covenants, conditions, restrictions, reservations, liens and charges as hereinafter set forth:

NOW THEREFORE, Declarant hereby declares that all of the property described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants, reservations and conditions, all of which are for the purpose of enhancing and protecting the value and desirability of the real property, and which shall run with the real property, and be binding on all parties having any right, title or interest in the above described property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each and every owner thereof.

ARTICLE I
DEFINITIONS

1. "Association" shall mean and refer to the FAIRVIEW 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 bought within the jurisdiction of the Association.
4. "Tract" shall mean and refer to any numbered plot of land shown upon any recorded subdivision plat of the Property.
5. "Declarant" shall mean and refer to Frank A. Whitacre, Inc. & Land Management & Construction, Inc., their successors and assigns, if such successors or assigns should aquire the remaining undeveloped lots from the Declarant for the purpose of development.

ARTICLE II
MEMBERSHIP AND VOTING RIGHTS

1. Every Owner of a Tract which is subject to assessment shall be a member of the Association. Membership shall be apurtenant to and may not be separated from ownership of any tract which is subject to assessment.

2. The association shall have two classes of voting membership:

Class a. Class A members shall be all owners with the exception of the Declarant and shall be entitled to one vote for each Tract. When more than one person holds an interest in any Tract, all such persons shall be members. The vote for each Tract shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Tract.

Class B. The Class B member shall be the Declarant, who shall be entitled to four (4) votes for each Tract owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (a) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or
- (b) On December 31, 1985

ARTICLE III COVENANTS FOR MAINTENANCE ASSESSMENTS

1. The Declarant may assess initially, for each Tract, up to Two Hundred (\$200.00) Dollars per year, for the use, upkeep, and maintenance of the rights-of-way within said Fairview and such other common facilities as the said Declarant may provide therein, subject to any increase as provided hereinafter.

2. Any assessment made pursuant to this paragraph, including late fee of Five (\$5.00) Dollars, interest at the rate of ten (10%) percent 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 and all grantees do bind themselves, their heirs and successors in title to this lien and to the covenants herein written. This 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 raised by more than ten (10%) percent per year without the written affirmative vote of two-thirds (2/3) of the members of the association entitled to vote. Fairview Associates assumes the responsibility for the collection of the monies due and under this lien assessment and for the maintenance of the roads, rights-of-way and common areas until December 31, 1985 or until 80% of the property has been sold, whichever is first. At that time, the rights and responsibilities as created by this Declaration of Protective Covenants will be delegated to the Fairview Property Owners Association who shall assume full responsibility for the collection of the fee and the maintenance of the roads, rights-of-way and common areas. The payment of said assessment and levy shall initiate upon sale of any parcel in the Fairview Subdivision and on or before the Thirty-first (31st) day of January of each year. In the event of a resale of one or more parcels in said subdivision, the obligation shall become the obligation of the new owner(s).

ARTICLE IV USE RESTRICTIONS

1. Tracts may be used only for single-family residential purposes and for purposes incidental or accessory thereto, including a guest apartment or guest house, which may be rented when not otherwise occupied. No dwelling shall be erected less than forty-five (45') feet from the side or rear line of any Tract, nor less than Eighty (80') feet from the center line of any road or right-of-way; provided that the Board of Directors of the Association may authorize lesser set-

backs where dictated by terrain; and provided that side line set-backs shall not apply to a property line between Tracts in single ownership. All exterior construction must be completed and closed within eight (8) months from the commencement of construction.

2. No Owner shall construct or suffer to be constructed any structure within, or otherwise obstruct, any easement across his Tract, nor divert or otherwise interfere with the natural flow of surface water, nor obstruct any drainage ditch. No parking is permitted upon any road within the Property as any time; and as part of the development of any Tract, the Owner shall provide adequate off road parking for himself and his guest(s).

3. No noxious or offensive trade or activity shall be carried on upon any Tract or right-of-way, nor shall anything be done thereon which may be or become an annoyance or nuisance to the community. Without exclusion, the following items and activities must be thoroughly screened by appropriate planting or a fence of approved design:

(a) Refuse containers. (All refuse must be kept in closed sanitary containers at all times.)

(b) Fuel storage tanks.

4. The discharge of firearms for hunting or target shooting is strictly prohibited within 150 yards of any improvement, cabin, or living area of any Tract within the subdivision.

5. The use of any motorcycle or motor vehicle without proper noise abatement equipment is prohibited within the subdivision.

6. Owners agree to repair and restore to its prior condition any part of a subdivision road damaged by equipment of Owner or his contractor enroute to or from Owner's Tract. All Tracts, improved or unimproved, must be maintained by Owner in a neat and orderly condition at all times. No garbage, refuse, trash or inoperative vehicle or other debris shall be permitted to accumulate or remain on any Tract. In the event any Owner shall fail to discharge his aforesaid responsibilities in a manner satisfactory to the Declarant or Board of Directors of the Association, upon two-thirds (2/3) vote of its Board of Directors, and after fifteen (15) days notice to the Owner, shall have the right, through its agents and employees, to enter upon said Tract and perform necessary maintenance, repairs and restoration, or remove any offending material or object. Such action shall not be deemed a trespass, and all cost of same when performed by the Declarant or Association shall be added to and become part of the assessment to which each Tract is subject.

7. No part of any Tract 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.

8. The Association, by a 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 any Tract or Tracts prior to delivery of a deed to an original purchaser. Nothing herein shall be construed to prevent Declarant from imposing additional covenants or restrictions on any Tract not already conveyed by them. No Tract in said subdivision may be resubdivided by the Purchaser, his heirs, successors or assigns into a tract of less

than Five (5) acres and any residual Tract must contain at least Five (5) acres.

2. In the event, state, local government, any utility, co-operative, or municipality expects or 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 the Deed do hereby agree to pay their proportionate share for the cost and expense of the construction, maintenance and operation thereof, as the same cost is to be determined by the appropriate authority.

3. All sewage disposal systems constructed on said Tracts shall conform to the regulations of the appropriate West Virginia Department of Health. Free standing toilets are also subject to the aforesaid mentioned requirements and shall be placed in a secluded area whenever possible. No building shall be constructed and no water well shall be drilled on any Tract until a sewage disposal permit has been obtained from the West Virginia Sewage Enforcement Officer.

4. Twelve (12") inch diameter culverts must be used in all driveways leading from any subdivision roads.

5. No trucks, buses, old cars or unsightly vehicles of any type or description may be left or abandoned on said Tracts.

6. Declarant reserves the right to grant easements for installation and maintenance of public utilities between the property lines and the building set back lines of all Tracts, in addition to easements reserved by any other instrument duly recorded.

7. The Association, or any Owner, shall have the right to enforce, by any proceeding as law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now and hereafter imposed by the provisions of this Declaration. Failure by the Declarant or Association or by any Owner to enforce any provision herein contained shall in no event be deemed a waiver of the right to do so thereafter.

8. The covenants, restriction 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%) percent of the Land Owners, and thereafter by an instrument signed by not less than Seventy-five (75%) percent of the Land Owners.

9. Invalidation of any of the covenants, restrictions, or other provisions of this Declaration by judgement or court order shall in no way affect any other provisions, which shall remain in full force and effect.

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

IN WITNESS WHEREOF, the said FRANK A. WHITACRE, INC. and LAND MANAGEMENT & CONSTRUCTION, INC., West Virginia Corporation, being the Declarant herein, have caused this Declaration to be signed and its corporate seals to be affixed, duly attested by its Secretaries.



Mary H. Whitacre
Its Secretary

FRANK A. WHITACRE, INC.
BY: Frank A. Whitacre (SEAL)
Its President

STATE OF WEST VIRGINIA:
COUNTY OF _____ : to-wit

Paula K. Decker Notary Public of the County and State aforesaid, do hereby certify that Frank A. Whitacre, whose name is signed to the writing above as President of Frank A. Whitacre, Inc., a corporation, has on this 18th day of October, 1984, acknowledged the said writing before me to be the act and deed of said corporation.

Given under my hand 18th day of October, 1984.

Paula K. Decker
Notary Public

My commission expires: December 4, 1988.



ATTEST:
Robert L. Morgan Scoggins
Its Secretary

LAND MANAGEMENT & CONSTRUCTION, INC.
BY: Wanda L. Scoggins (SEAL)
Its President

STATE OF WEST VIRGINIA:
COUNTY OF Hampshire : to-wit

I Barbara A. Seldon, Notary Public of the County and State aforesaid, do hereby certify that Wanda L. Scoggins, whose name is signed to the writing above as President of Land Management & Construction, Inc., a corporation, has on this 18th day of October, 1984, acknowledged the said writing before me to be the act and deed of said corporation.

Given under my hand this 18th day of October, 1984.

Barbara A. Seldon
Notary Public

My commission expires: May 24, 1986.



This instrument prepared by:
LAND MANAGEMENT & CONSTRUCTION, INC.
Box 5
High View, WV 26808

STATE OF WEST VIRGINIA, County of Hampshire, to-wit:
It is remembered that on the 25th day of October, 1984, at 2:12 P M., this Declaration of Covenants was presented in the Clerk's Office of the County Commission of said County and with the certificate thereof annexed, admitted to record.

Attest Nancy C. Feller
Clerk
County Commission, Hampshire County, W. Va.

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RIGHT-OF-WAY AGREEMENT (West Virginia)

FAIRVIEW SUBDIV.

I/we, the undersigned in consideration of One Dollar (\$1.00), and other valuable considerations, receipt of which is hereby acknowledged, hereby grant unto THE POTOMAC EDISON COMPANY, a Maryland and Virginia corporation, its successors and assigns, a right-of-way for the purpose of constructing, reconstructing, operating, inspecting and maintaining an electric line including all necessary poles, anchors, wires, trenches, conduits, cables and other facilities under, over and upon the property which I/we own or in which I/we have any interest, situated in

Romney District of Hampshire County, State of West Virginia, acquired by me/us from JAMES A. & HELEN D. ADKINS and being the same tract of land acquired by Granitor by instrument(s) recorded in

Deed Records of said County in DEED Book 271 at Page 786 and in Book at Page together with right of ingress to and egress from said right-of-way at all times over the lands of grantors; said electric line to be located as far as is practical within a 10'

easement area indicated on Company's Drawing No. which is hereby attached or filed in Company's office, and is more particularly described as follows: over, along, across, under and upon all roads and streets either now or hereafter laid out, also a strip of land fifteen feet (15') wide, with an additional width for guying purposes as may be required, along the front, rear and side lot lines of any lots either now or hereafter laid out in that certain development know as "Fairview" located off County Rte. 10/1, south of Romney

and to permit the installation of wires, cable, conduit or other facilities of any Company or persons; to permit the Company to install, maintain, operate and replace its facilities without responsibility for any damage caused thereby to trees, shrubs, flowers or any other obstruction grown, constructed or placed on said right-of-way. The Company shall at all times have the right to clear, control, cut, trim and remove trees, limbs and brush from said premises or which in its opinion may interfere with the exercise of its rights hereunder or endanger said facilities. The consideration paid is in full payment of the rights hereinabove granted.

I/we hereby agree not to erect or permit the erection of any building or other permanent structure on said right-of-way after the execution of this Agreement.

Witness the following signatures and seals this 24th day of October in the year 1984

FRANK A. WHITACRE, INC. By: Frank Whitacre President LAND MANAGEMENT & CONSTRUCTION, INC. By: Wanda & Georgia, Inc.

STATE OF WEST VIRGINIA, County of Hampshire to wit: I, Pamela K. Duckworth, a Notary Public of the said County of Hampshire do certify that Frank A. Whitacre, Inc. and Land Management & Construction, Inc. his wife, West Virginia Corporation, her husband, whose names are signed to the writing hereto annexed, bearing date the 24th day of October 1984, have this day acknowledged the same before me in my said County.

Given under my hand and Notarial Seal this 24th day of October 1984. Pamela K. Duckworth (NOTARY PUBLIC) December 4, 1984 (MY COMMISSION EXPIRES)

STATE OF WEST VIRGINIA, County of Hampshire to wit: I, a Notary Public of the said County of Hampshire do certify that and his wife, her husband, whose names are signed to the writing hereto annexed, bearing date the day of 19 have this day acknowledged the same before me in my said County. Given under my hand and Notarial Seal this day of 19 (NOTARY PUBLIC) (MY COMMISSION EXPIRES)

DECLARATION OF CONSIDERATION

The undersigned does hereby declare that the transfer involved in the document to which this declaration is appended is not subject to State Excise Tax upon the privilege of transferring the right-of-way for the reason designated as follows: The cost being less than One Hundred Dollars (\$100).

Executed this 24th day of October 1984

THE POTOMAC EDISON COMPANY By: Harry C. Keister (RIGHT-OF-WAY SOLICITOR)

This instrument prepared by Harry C. Keister under the direction of C.E. Martin, Jr. Attorney for The Potomac Edison Company.

STATE OF WEST VIRGINIA, County of Hampshire, to-wit: Be it remembered that on the 25th day of October, 1984, at 3:29 P.M., this R/W was presented in the Clerk's Office of the County Commission of said County and with the certificate thereof annexed, admitted to record.

Attest Nancy C. Feller Clerk County Commission, Hampshire County, W. Va.