

CRYSTAL VALLEY ESTATES/WEATHERING HEIGHTS
**DEDICATION OF AMENDED
DECLARATION OF PROTECTIVE COVENANTS,
CONDITIONS AND RESTRICTIONS**

546

KNOW ALL MEN BY THESE PRESENTS: That the undersigned, referred to as "Declarant", does hereby record the plat of a subdivision known as CRYSTAL VALLEY ESTATES lying and being situate in Springfield District, Hampshire County, West Virginia, and being more fully described on the plat and survey of Frank Whitacre, L.L.S., and dated 1988, and made a part hereof, and recorded in the Clerk's Office of the County Commission of Hampshire County, West Virginia, just prior to the recording of this instrument in Plat Book No. 5, Page (not yet assigned) to which reference is hereby made, and said real estate being part of a larger tract of real estate conveyed to Equerries, Inc., A West Virginia Corporation, by deed from Sally P. Bean and Sue P. Maphis, dated August 10, 1987 and recorded in the Hampshire County Clerk's Office in Deed Book No. 295 at Page 93.

All lots in CRYSTAL VALLEY ESTATES 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 CRYSTAL VALLEY ESTATES 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 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 Equerries, Inc. its successor 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, 1989, 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 CRYSTAL VALLEY ESTATES 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) members shall be elected by the lot owners.

The initial Directors of the Association consisting of one to three 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 November 15, 1989, and shall be responsible for the mailing of the written notice of the lot assessment which is due and payable by January 31, 1990. The meeting shall be held in Hampshire 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

547

1. The Declarant shall assess initially, for each Lot, ONE HUNDRED DOLLARS (\$100) per year for the use, upkeep and maintenance of the rights-of-ways within CRYSTAL VALLEY ESTATES; upkeep and maintenance of the rights-of-ways to and from West Virginia State Route 28; subject to any increase as provided hereinafter. Said \$100 to be collected on day of settlement & upon deed conveyance.

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 31, 1990, 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 West Virginia State Route 28 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 CRYSTAL VALLEY ESTATES 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 public auction after advertisement once a week for two (2) successive weeks in a newspaper having general circulation in Hampshire 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 April 30, 1989, 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. 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 twenty feet in width over the Road, shown on the plat which provides ingress and egress with West Virginia State Route 28. 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 West Virginia State Route 28. 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 CRYSTAL VALLEY ESTATES, or to create a subdivision adjoining CRYSTAL VALLEY ESTATES, 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 CRYSTAL VALLEY ESTATES shall require the lot owners to contribute to the maintenance of the subdivision road system.

Notwithstanding the prior paragraph, the Declarant reserves unto itself and its successors and assigns the right to erect a gate or gates across said rights-of-ways to control unauthorized traffic. Said gate or gates shall be kept locked at all times, if constructed, and should emergency vehicles be necessary, an open access will be granted through lands retained by the Declarant. Cost of constructing and maintenance shall be the responsibility of the Property Owners Association.

2. No part of any tract sold by the Declarant may be sold or used as a road or as a right of way to any other real estate but, as indicated in Article IV Use Restrictions No.1. The declarant for itself, its successors and assigns, reserves the right to use said right-of-way as it crosses the real estate herein conveyed, to provide ingress and egress to and from its remaining real estate or any other real estate hereinafter acquired by Equerries, Inc.

3. The Declarant reserves unto itself and its successor and assigns, easements for the installation, erection, maintenance, operation and replacement of telephone and electric light poles, guy wires may extend beyond the easement limit, cable t. v., electric, water lines, and trails for hiking and horseback riding, 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 or trails, however, as it is contemplated that actual installation will be made at the expense of the utility and/or the owners, trails at the expense of Property Owners Association. Any trails will provide lot owners with as much privacy as possible.

4. 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.

5. No further subdivision is allowed of any lot.

6. 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).

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

8. No building of a temporary nature and no house trailers or mobile homes 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 or temporary camping trailers on the lot and to camp overnight in said tents or camping trailers for a period of up to fifteen days.

9. Not more than one single family residence or temporary camping trailer may be placed on any lot. Residences shall contain a minimum of 480 square feet of living area, excluding basement, garage, porch, carport, deck and overhanging eaves. Residences 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.

10. 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 subdivision.

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

- (a) The raising & use of horses throughout subdivision.
- (b) Home occupations conducted by occupant.
- (c) Home gardening is permitted.

11. 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.

12. No building shall be erected closer than one hundred (100) feet from the property line which adjoins the subdivision road, nor closer than twenty (20) feet to the side or rear property lines, with the exception that where two or more tracts are used together for the construction of one dwelling, then said 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.

12.1. Each owner is responsible to comply with the building ordinance adopted by the Hampshire County Commission which regulates the building of homes, or structures.

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

14. 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 Homeowners 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.

15. The use of any motorcycle, dirt bike, all terrain vehicles, or other similar motorized conveyance within the subdivision is strictly prohibited. No recreational riding of motorcycles, dirt bikes, all terrain vehicles, or other similar motorized conveyance shall be allowed in said subdivision, however, this does not prohibit owners of real estate in this subdivision from using and riding motorcycles over and upon the roadways situate in said subdivision to and from their real estate or for legitimate business reasons.

16. CRYSTAL VALLEY ESTATES/WEATHERING HEIGHTS is a wild life refuge, and no hunting will be permitted. The Declarant, his heirs or assigns shall have the right, should it become necessary, to harvest deer, turkey,

fox, grouse or other wild life after obtaining recommendations from the West Virginia Department of Natural Resources and harvesting will be under their direction. Firearms shall not be discharged within said subdivision except for the above mentioned harvesting of wild life.

17. 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.

550

18. The Association, by vote of two thirds (2/3) of its members, may take 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, re-subdivide and renumber any unsold lot or lots, and to add additional adjoining real estate that it may acquire 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. 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, 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.

3. 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. 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.

5. 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 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.

6. 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.

7. 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.

EQUERRIES, INC., WEST VIRGINIA CORPORATION

by _____
its President

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

The foregoing instrument was acknowledged before me this the 21st day of November, 1988, by William L. Hockensmith, who has signed this instrument as President of Equerries, Inc., and he has acknowledged his signature to be duly authorized as the act and deed of the corporation.
My commission expires June 29, 1992.

*

Notary Public

12.