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Moorefield, WV 26836
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COVENANTS

BACKWOODS, INC.
EVERGREEN FARMS SUBDIVISION
DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION, made this 13th day of October, 1993 by Backwoods, Inc., a West Virginia corporation, hereinafter referred to as "Declarant":

WITNESSETH:

That, whereas Declarant is the owner of certain real property in Capon District, Hardy County, West Virginia. Said real estate has been made into a subdivision called "Evergreen Farms", consisting of lots which are numbered from one through thirty seven, and this is the same real estate which the Declarant acquired by deed from Capon Valley Bank dated October 22, 1992, and recorded in Deed Book 220 at Page 479, in the Clerk's Office of Hardy County, West Virginia, but excluding and excepting the following Properties:

1. Those lands conveyed to Thomas Robinson as recorded in Deed Book 221, Page 30 by Backwoods, Inc.
2. Those lands conveyed to Steve Funkhouser as recorded in Deed Book 220, Page 768 by Backwoods, Inc.
3. A residue shown on the plat of survey adjacent to lots fourteen and fifteen (provided this residue, once platted and sold shall be bound by the terms of these covenants).

WHEREAS, a plat of said subdivision known as Evergreen Farm Subdivision dated February, 1993, and surveyed during February, 1993, prepared by Gregory L. Ely, LLS, will be recorded in the County Clerk's Office at Moorefield, W. Va. of even date with these covenants, and the Declarant agrees to 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 real property, and be binding on all parties having any right, title or interest in the above described property or any part hereof, their heirs, successors and assigns, and shall inure to the benefit of each and every owner thereof.

Declarant hereby claims an exemption from the West Virginia Uniform Common Interest Ownership Act, Ch. 36B, pursuant to West Virginia Code Ch. 36B-1,202 (2), because the average common expense liability of all lots may not exceed \$100.00, except as set forth herein.

ARTICLE I
DEFINITIONS

1. "Association" shall mean and refer to the Evergreen Farms 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, but excluding those having such interest merely as security for the performance of an obligation.

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26836

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 plot of land shown upon any recorded subdivision plat of the Properties

5. "Declarant" shall mean and refer to Backwoods, Inc. its successors 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. Each Lot shall have one vote. Where two or more persons own a Lot, they shall designate in writing which of the owners shall cast the vote for the Lot at Lot Owner meetings.

ARTICLE III COVENANT FOR MAINTENANCE ASSESSMENTS AND FORMATION OF LOT OWNERS ASSOCIATION

1. The Declarant hereby assesses initially, Seventy-five Dollars (\$75.00) per year for each lot, but not to exceed One Hundred Dollars (\$100.00) per year, for the use, upkeep and maintenance of the right-of-way (including maintenance and clearing road right-of-way of stumps, debris, etc.) within all sections of said Evergreen Farms Subdivision, subject to any increase as provided hereinafter. This assessment of said fees does not apply to Lots owned by the Declarant.

2. Any assessment made pursuant to this paragraph, including late fee of Five (\$5.00) Dollars, interest at the rate of nine (9%) 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/deed of trust 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 and in no event shall it exceed \$100.00 per year so long as the declarant owns any lots within this subdivision. In any event, the amount shall never exceed \$300.00 per year.

3. Declarant assumes the initial responsibility for the collection of monies due under this lien assessment. Provided however, the Declarant may form the lot owners association at any time by naming an initial board of directors of not less than three nor more than five owners. Declarant may serve as one of the directors. The board of directors, once formed, shall appoint officers, and discharge all matters relating to the subdivision, including but not limited to collection of fees and administering road maintenance; administering these covenants; determining and collecting assessments; road maintenance; covenant enforcement; adoption of bylaws; setting annual budgets; and making recommendations to the lot owners about incorporation of the lot owners association. The initial Board of Directors shall serve no more than one year, and may call for elections of board of directors at any time. But no longer than one year after their initial appointment, elections shall be held, and a board of directors of not less than 3 nor more than 5 directors shall be elected by the owners.

4. Upon a favorable vote of at least 2/3 of the owners, the association may be incorporated, and each owner will be issued one share of stock for each lot that he/she/they own. If the association is incorporated, then this association shall be governed in the same manner as any corporation, except that the terms of the Declaration shall be deemed to be a part of the Articles of Incorporation--and all terms set forth herein shall supersede any bylaws enacted by the corporation, as the matters set forth herein are for the protection and common good of all owners and constitute matters that have been relied upon by the owners when they purchased from Declarant. At that time, the rights and responsibilities as created by this Declaration of Protective Covenants will be delegated to the Evergreen Farms Property Owners Association, which shall assume full responsibility for the collection of the lien and the maintenance of the roads, rights-of-way and common areas.

4. The payment of said annual assessment (presently \$75.00, but see paragraph 2 above) shall initially be levied upon the sale of any parcel in the Evergreen Farms Subdivision, regardless of the date or time of year that the lot is sold, and at closing, the assessment shall be collected from the buyer. The initial assessment may be prorated in order to avoid unfairness. Thereafter, the assessment shall become due on the 31st day of March, or such other date as is hereafter specified by a vote of at least 2/3 of the owners. In the event of a resale of one or more parcels in said subdivision, any past due assessment shall become the obligation of the new owner(s). Provided however, in consideration of its installation of the roads, Declarant is exempt from paying road maintenance fees.

ARTICLE IV USE RESTRICTIONS

1. Lots 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 may be constructed or maintained on any Lot with a ground floor area of less than 480 square feet, exclusive of porches and garages; provided that the Board of Directors of the Association, or the Declarant, may authorize a lesser area in unusual cases where justified by the architectural design, location on Lot, or landscaping. Nor shall any dwelling be erected less than twenty-five (25') feet from the side or rear line of any Lot, nor less than sixty (60') 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 conditions; and provided that side line set-backs shall not apply to a property line between Lots in single ownership. All exterior construction must be completed and closed within eight (8) months of the commencement of construction. no building of a temporary nature shall be erected or placed on any of said Lots except those customarily erected in connection with building construction operations; and in such cases, for a period not to exceed four (4) months.

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

3. No signs of any kind larger than one square foot shall be displayed on any Lot, except temporary signs in connection with the construction, lease or sale of building or Lots, and except street name and directional signs. Provided that

Declarant may place "for sale" signs on all unsold lots, and Declarant's "for sale" signs are exempt from the provisions of this paragraph.

4. The use of trailers within said subdivision is unauthorized, except for the use of temporary camping trailers. Camping trailers may not exceed twenty-five (25') feet in length, nor shall they be more than ten (10) years old. This covenant shall not be construed to permit the use of a camping trailer or camper as permanent housing; camping trailers, including campers, shall not be permitted to remain on any Lot for a period in excess of four (4) months of any twelve month period (i.e. from 1/1 to 12/31).

5. No noxious or offensive trade or activity shall be carried on upon any Lot or right-of-way, nor shall anything be done thereon which may be or become an annoyance or nuisance to the community.

5.1 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. Home gardening is permitted, but no farm animals, including poultry, may be kept upon the premises. Hobby farming and farming for income is prohibited.

6. The use of any motorcycle, dirt bike, all terrain vehicles, or other similar motorized conveyance within the subdivision is prohibited. What this means is that no owner, his family, guests and/or invitees shall use the subdivision roads to routinely operate motorcycles, dirt bikes and/or all terrain vehicles, as this will constitute a nuisance to neighbors, provided however that licensed motorcycles may be used as a means for transportation to and from the Owners lot and the public road, and provided further that during hunting season, i.e. from October 1, of each year through year end, i.e. December 31, hunters may use all terrain vehicles, motorbikes and the like, with proper noise abatement, to travel across subdivision roads to the cul de sac which provides access with the George Washington National Forest.

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

7. 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 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 Lot. In the event any Owner shall fail to discharge his aforesaid responsibilities in a manner satisfactory to the Board of Directors of the Association, the Association, upon a 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 Lot and perform necessary maintenance, repairs and restoration, or to remove any offending material or object. Such action shall not be deemed a trespass, and the cost of the same when performed by the Association shall be added to and become a part of the assessment to which such Lot is subject.

8. No part of any Lot may be sold or used as a road or right of way to any land outside the property.

9. The Association, by a vote of majority vote of its owners make additional rules, covenants and restrictions for the use of the property; provided however, any rule or regulation which would seek to impose a monetary fine on the owner, must be approved by a 2/3 vote of the owners.

ARTICLE V GENERAL PROVISIONS

1. In the event state, local government, any utility, cooperative, or municipality requires the installation of a public utility system within the area of which this property 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.

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 shall not be allowed. During construction of a house or cabin, portable toilets that are health department approved may be used for a period not to exceed eight (8) months. No building shall be constructed until a building permit has been obtained from the proper authorities.

3. Fifteen (15") inch diameter culverts or larger must be used in all driveways leading from any subdivision roads.

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

5. The Declarant reserves unto itself or its 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 television, 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.

6. 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 and hereafter imposed by the provisions of this Declaration. Failure by the 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.

7. Declarant owns additional property which adjoin Lots #14 & #15. This additional property will be subject to all covenants, conditions and restrictions as stated herein.

✓ 8. Each lot owner shall have an unobstructed and right of ingress and egress to and from his lot over the rights-of-ways and roadways as shown on the subdivision plat. All rights of way within the subdivision are forty feet in width, as measured from the centerline of the road as shown on the plat of survey, which has been recorded at the Hardy County Clerk's Office, in the plat books on October 13, 1993, and which is incorporated herein by reference. Reference is made to the subdivision plat for more information. The Property Owners Association shall be responsible for maintenance of the subdivision roads. Nothing

shall require Declarant to install roads to the full width of the easement. Subdivision roads need only be wide enough for two way motor vehicle traffic. If theft and vandalism becomes a problem, then upon a favorable vote of 2/3 of the owners, the main road may be gated provided however that keys must be made available to all owners. Declarant reserves the right of ingress and egress over subdivision roads to the reserved area. Once the reserved area is sold, any owner of the reserved area, or any part thereof, shall be bound by all terms and conditions of these covenants, and any person or persons or entity receiving an ownership interest in the reserved area shall be bound to pay the annual assessment set forth in these covenants.

9. Each lotowner, his guests and invitees shall have the right of access to the George Washington National Forest. Access to the National Forest may be obtained by any owner, his guests and invitees in the following manner: at the point where the subdivision road intersects with the National Forest at the boundary of lots 29 & 30, and at the point where the subdivision road intersects with the National Forest at the boundary of Lot 14. All lotowners shall have the right of ingress to the National Forest in this manner. Lots no. 33, 34, 35, 36 and 37 do not adjoin the National Forest, and they shall not trespass over other Lots in order to obtain access to the National Forest. The owners of Lots 33, 34, 35, 36 and 37 may obtain access only via the two points designated in this paragraph, and should these owners, their guests and invitees trespass in order to access the National Forest, they may be prosecuted at the option of the offended owner. No owner, his guests and invitees shall obstruct any subdivision road, and therefore parking on the roadways is prohibited, provided that a parking area has been designated on the plat of survey at the point where the right of way intersects with the National Forest on Lot 14, and vehicles may park there. The Board of Directors of the lotowners association shall have rule making power to regulate the use of the parking area by owners and their guests.

10. 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 majority vote of the Board of Directors, and after fifteen (15) days notice to the Lot Owner, the Association shall have the right, through its agents and employees, to enter upon said lot and perform necessary maintenance and/or repairs.

11. 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 automatically be extended for successive periods of ten (10) years. This Declaration may not be amended except by a written instrument signed by not less than seventy-five (75) percent of the Lot Owners.

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 provision, which shall remain in full force and effect.

IN WITNESS WHEREOF, the said Margaret Z. Williams being the Declarant herein, has caused this Declaration to be signed by its President and its corporate seal to be affixed.

BACKWOODS, INC.

BY: Margaret Z. Williams (SEAL)
Its President