

121

AMENDED  
MILL MOUNTAIN ORCHARD  
DECLARATION OF EASEMENTS AND PROTECTIVE DEED COVENANTS

WHEREAS, Homer L. Feller and Nancy C. Feller dedicated a plat to the records at the Hampshire County Clerk's Office creating Mill Mountain Orchard subdivision, which consists of 72 numbered parcels and a designated " Lot A" parcel of real estate, said subdivision being of record in the Hampshire County Clerk's Office in Map Book No. 4, page 33; and,

WHEREAS, the covenants for Mill Mountain Orchard were not centrally recorded at the Hampshire County Clerk's Office, but said covenants have been recorded with the deed of conveyance for each of the outsales which Homer L. Feller and Nancy C. Feller have made through the years; and,

WHEREAS, Homer L. Feller and Nancy C. Feller reserved unto themselves the right to alter, change or modify the covenants for Mill Mountain Orchard as they see fit in paragraph (9) of the covenants, which reads as follows:

"(9) These covenants, which run with the land, may be amended by a two-thirds vote of the members of the Association, or the developer, provided that any such change, amendment or modification is duly recorded among the land records of the Hampshire County, West Virginia Supervisors Court in Romney, West Virginia." and

WHEREAS, Homer L. Feller and Nancy C. Feller having inspected the subdivision and the homes, trailers and improvements placed at Mill Mountain Orchard throughout the years since its creation, are of the opinion that the original prohibition for the installation and placement of mobile homes on Lots No. One through Twenty Eight as set forth in the original covenants at paragraph nine (9), is onerous, unnecessary and out of character with the manner in which the subdivision has evolved since its creation, and they are therefore desirous of altering paragraph nine (9) of the original covenants, but otherwise reaffirming the covenants; and,

**NOW THEREFORE HOMER L. FELLER AND NANCY C. FELLER DO PUBLISH, REPUBLISH, DEDICATE AND REDEDICATE THE HEREAFTER SET FORTH COVENANTS TO BE THE COVENANTS FOR MILL MOUNTAIN ORCHARDS.**

These covenants republish the original covenants which are contained in all of the deeds of conveyance previously granted and conveyed to all third parties, except that Lots No. One through Twenty Eight are now allowed to have mobile homes, as more particularly set forth in paragraph nine, below.

The hereafter described covenants shall run with the land, and shall bind each of the owners of Lots No. One through Seventy Two of Mill Mountain Orchard, their heirs and assigns.

These covenants shall only be deemed to affect the Lots described on the plat of survey of record in the Hampshire County Clerk's Office in Map Book No. 4, at Page 33, and no other subdivision owned by the undersigned, regardless of whether said real estate has ever been designated or known by words which contain the root designation of "Mill Mountain", or any other words similar thereto.

Furthermore, said covenants, once republished, shall be the only covenants which shall be deemed to regulate the owners of Mill Mountain Orchard to the extent they conflict with the original covenants, and each of the Lot owners is notified to hereafter refer to and incorporate these covenants in future deeds of trust and deeds of conveyance or other dealings with said real estate.

Said covenants will be centrally filed at the Hampshire County Clerk's Office in the Deed Book, with book number and page to be assigned. The undersigned state that they have made a search of the records at said Clerk's Office, and that each of the Lot Owners will be notified at the addresses obtained by declarant as to the change in the covenants set forth herein.

Said covenants are therefore republished as follows:

(1) Each owner of a lot shown on the subdivision plat, shall have an easement over and upon the existing roadways running through the subdivision in the 40 foot wide right-of-way provided therefore, for ingress and egress to WV Rt. 50/7.

Any maintenance or repair to the roadways shall be performed on a continuing basis and each lot owner shall contribute on an equal basis for such costs. Said road and common area maintenance shall be \$25.00 annually per lot owned, payable to the Mill Mountain Property Owners Association which will be formed during 1984. Said association shall be comprised of property owners and shall account to all owners for receipts and expenditures. The developers are exempt from the requirement to pay maintenance but shall present completed roads prior to maintenance obligation on the part of the Association (of owners).

(2) The developers reserve unto themselves, their successors and/or assigns, an easement or right-of-way, over, under or through a fifteen (15) foot wide strip of land paralleling all lot lines for the purpose of installing, erecting and maintaining (or allowing public utilities this right) telephone, television cable and electric poles, lines, wires and associated equipment, as well as conduits and pipes for sewer, gas, water and storm drains and culverts.

(3) No commerce or business of any type other than the commercial production of apples is permitted on any lot. Residential structures of a permanent nature, including "double wides" and mobile homes which are by basement or by foundation made part of the real estate are permitted on all lots within this subdivision. No trucks, buses, old cars or unsightly conditions will be allowed to exist on any lot if deemed to be left, stored or abandoned. This paragraph is not intended to restrict camping, camping trailers or motor homes.

(4) Sewerage and waste systems constructed on any lot shall conform to

all applicable regulations of Hampshire County and the State of West Virginia.

(5) No structure of any kind shall be built within 25 feet of any lot line.

(6) No driveway or access way may be built from any roadway which impedes the function of roadway water ditches or drainage culverts. For driveways crossing road drainage ditches, the owner shall cause to have installed a 12 inch diameter culvert to insure proper flow of storm/rain runoff.

(7) No trees (including apple trees, hardwoods or pines) may be cut or destroyed except as necessary for small gardens, building sites, driveways and parking areas, etc. and in any case any such cutting of trees must be approved, in writing, by the developer until such time as the purchaser has received his or her deed and title has passed.

(8) The determination by a Court that any provision hereof is invalid for any reason shall not invalidate any other provision hereof.

(9) These covenants, which run with the land, may be amended by a two-thirds vote of the members of the Association, or the developer, provided that any such change, amendment or modification is duly recorded among the land records of the Clerk of the Hampshire County Commission, at Romney, West Virginia.

Dated this the 13th day of September, 1991, at Romney, West Virginia.

*Homer L. Feller*  
Homer L. Feller

*Nancy C. Feller*  
Nancy C. Feller

STATE OF WEST VIRGINIA,  
COUNTY OF HAMPSHIRE, to-wit:

The foregoing Amended Covenants for Mill Mountain Orchards was acknowledged before me this the 13th day of September, 1991, by Homer L. Feller and Nancy C. Feller, his wife.

My commission expires April 10, 2000  
*Cathy L. Ely*  
Notary Public

Prepared by: Oscar M. Bean  
116 Washington St. Drawer 30  
Moorefield, W. VA. 26836  
Phone 304-538-6198, Fax: 304/538/7155  
d:/dl/Millmt.cov



STATE OF WEST VIRGINIA, County of Hampshire, to-wit:  
Be it remembered that on the 18th day of September 1991, at 1:04 P.M.,  
this Deed 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*  
County Commission, Hampshire County, W. Va. *Clk*

Oscar M. Bean  
& BEAN  
ATTORNEYS AT LAW  
11070N STREET  
MOOREFIELD, WEST VIRGINIA  
26836