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LOST RIVER VALLEY SUBDIVISION ET ALS

Loy, Shingleton & Caryl

204 North Washington Street

Berkeley Spring, West Virginia 25411

c/o Hoy G. Hoy G. Shingleton, Jr.

AMENDED

LOST RIVER VALLEY

DECLARATION OF

COVENANTS, CONDITIONS, AND RESTRICTIONS

THIS DECLARATION, made this 17th day of August, 1979, by Tuscarora Land Co., a Pennsylvania corporation, hereinafter referred to as "Declarant":

WITNESSETH:

That, whereas Declarant is the owner of certain real property in Hardy County, West Virginia, having acquired the same by deeds recorded in Deed Book 151 at Page 418, and Deed Book 152 at Page 580, among the land records of Hardy County, West Virginia, which is more particularly described as follows: All those tracts of land which were conveyed to Tuscarora Land Co. by Bryce Mountain Resort Inc., and all those tracts of land which were conveyed to Tuscarora Land Co. by Velda S. Keller, by the Deeds mentioned above and containing the aggregate 1,980 acreage more or less as described in said Deeds and located and situate in the area known as "Mill Gap" in Lost River District, but excluding and excepting the following Properties:

1. Those two lots known as the Strawderman and Miller lots heretofore conveyed by Tuscarora Land Co. to Charles J. Breeding.
2. A certain tract of land containing 29 acres more or less including the Property known as the Teets Green Valley Farms Lodge, Bunkhouse and other recreational facilities which land is bounded on the North by National Forest Section of Lost River Valley, on the Southeast by Laurel Mountain Section of Lost River Valley, on the East by George Washington National Forest, on the West by Settler's Valley Way and the South by Mill Gap Road.

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 properties 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 which shall run with the real property, and be binding on all parties having any right, title, or interest in the above described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each and every owner thereof.

See Amendments DB 191 P. 187

## ARTICLE I

## DEFINITIONS

1. "Association" shall mean and refer to the Lost River Valley 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 Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.
3. "Properties" 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 Tuscarora Land Co., its successors and assigns, if such successors or assigns should acquire the remaining undeveloped Lots from the Declarant for the purpose of development.
6. "Common Properties" shall mean and refer to those areas of land shown on the subdivision plat, as amended from time to time in accordance herewith, as being intended to be devoted to the common use and enjoyment of all the Owners and any Lots that may be transferred to the Association for use as Common Properties.

## 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. 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 Lot. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for each Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B member shall be the Declarant who shall be entitled to four (4) votes for each Lot 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 August 31, 1983.

### ARTICLE III

#### COVENANT FOR MAINTENANCE ASSESSMENTS

1. The Declarant may assess initially, for each lot, up to Fifty (\$50.00) Dollars per year, for the use, upkeep, and maintenance of the rights-of-way within all sections of said LOST RIVER VALLEY and such other common facilities as the said Declarant may provide therein, subject to any increase as provided hereinafter. Lots, however, which have frontage on Mill Gap Road, may only be assessed initially up to Twenty-five (\$25.00) Dollars. 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 of 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. Tuscarora Land Co. assumes the responsibility for the collection of the monies due under this lien assessment and for the maintenance of the roads, rights-of-way and common areas until August \_\_\_\_\_, 1983, 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 Lost River Valley Property Owners Association who shall assume full responsibility for collection of the lien and the maintenance of the roads, rights-of-way and common areas. 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. The payment of said assessment and levy shall initiate

on or before the thirty-first day of January next following the purchase of any parcel in the LOST RIVER VALLEY Subdivision and on or before the thirty-first day of January of each year thereafter. 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

##### COVENANT FOR SPECIAL ASSESSMENTS FOR CAPITAL IMPROVEMENTS OR ACQUISITIONS

In addition to the annual assessment authorized by Article III, hereof, the Association may levy in any assessment year a special assessment, for the purpose of acquiring additional common properties, defraying, in whole or in part, the cost of any construction, repair or replacement of any improvement upon the Common Properties, including the necessary fixtures and personal property related thereto. The amount of each special assessment, if any, and the time at which the same shall be payable, shall be determined by two-thirds (2/3) written affirmative vote of the members of the Association entitled to vote.

#### ARTICLE V

##### COVENANT FOR SPECIAL ASSESSMENTS FOR EXTENSION OF ELECTRICAL SERVICE

In addition to the annual assessments authorized by Article III, hereof, and the special assessments for capital improvements or acquisitions authorized by Article IV, hereof, the Association may levy in any assessment year a one time special assessment per lot for the purpose of making a non-refundable contribution to the cost of installing underground electrical service by the Shenandoah Valley Electric Co-op, and underground telephone service by the Hardy Telephone Company Inc. to the front property line of each Lot. The amount of this assessment shall be determined by the aforementioned utility companys and shall be approved by the written affirmative vote of two-thirds (2/3) of the Board of Directors of the Association. Each Lot owner shall be responsible for the cost of extending any utility service from the front line of any lot to any dwelling constructed thereon. Unless determined to be economically unfeasible by either of the aforementioned utility companys and the Declarant all such service throughout the properties shall be underground.

ARTICLE VI  
ARCHITECTURAL CONTROL

No building, fence, wall, structure, excavation, driveway, or other improvement shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or alteration therein be made until the detailed plans and specifications thereof, shall have been submitted to and approved in writing as to harmony of external materials and location in relation to surrounding structures and to the compliance to the other covenants and restrictions as set out in this Declaration and as may be established in the future by the Board of Directors of the Association, or by an architectural committee appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location with thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

ARTICLE VII  
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 560 square feet, exclusive of porches and garages; provided that the Board of Directors of the Association may authorize a lesser area in unusual cases where justified by architectural design, location on Lot, and 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 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 in 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. This shall not prohibit the erection of a tiolet complying with provisions of Article VII, Paragraph 2, below.

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 Properties at any time; and as part of the development of any Lot, the owner shall provide adequate offstreet parking for himself and his guest(s).

3. No sign 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 buildings or Lots, except street name and directional signs.

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. This covenant shall not be construed to permit the use of a camping trailer as permanent housing; no such camping trailer or camper shall be permitted to remain on any lot for a period in excess of four (4) months.

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. Without exclusivity, 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.
- c. Garden equipment and supplies.

6. 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 same when performed by the Associations shall be added to and become a part of the assessment to which such Lot is subject.

7. No part of any Lot may be sold or used as a road or right-of-way to any land outside the Properties 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 Properties, which, together with the above, may be enforced by fines or other penalties.

#### ARTICLE VIII GENERAL PROVISIONS

1. Declarant reserves the right to replat any Lot or Lots 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 Lot not already conveyed by it. No lot in said subdivision may be resubdivided by the purchaser, his heirs, successors and assigns into more than two (2) lots. The minimum size of each lot subdivided, including the lot retained by the owner, shall not be less than five (5) acres. The West Virginia State Department of Health may not issue septic tank permits on resubdivisions.

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 be placed in a secluded area whenever possible. No building shall be constructed and no water well shall be drilled on any lot until a sewage disposal permit has been obtained from the West Virginia Sewage Enforcement Officer.

3. Twelve (12") inch diameter culverts 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.

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

6. The Association, or any Owner, shall have the right to enforce, by any proceeding 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

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. Additional property may be annexed to the Properties with the consent of two-thirds (2/3) of the members of the Association, provided that additional property within the area described in Deed Book 151 at Page 418 and Deed Book 152 at Page 580 of the land records of Hardy County, West Virginia, may be annexed by the Declarant without the consent of the Association within five (5) years of the date of this instrument.

8. The covenants, restrictions, and other provisions of this Declaration shall run with and bind the land for a term of twenty 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 percent (90%) of the Lot Owners, and thereafter by an instrument signed by not less than seventy-five percent (75%) 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 provisions, which shall remain in full force and effect.

IN WITNESS WHEREOF, the said Tuscarora Land Co., being the Declarant herein, has caused this declaration to be signed by its President and its corporate seal to be affixed, duly attested by its Secretary.

TUSCARORA LAND CO.

BY: [Signature] (SEAL)  
Its President

ATTEST:

[Signature]  
Its Assistant Secretary

State of Pennsylvania  
County of Franklin, to-wit:

I, Gina M. Cramer, a Notary Public of the County and State aforesaid, do hereby certify that Duane B. Dillard, whose name is signed to the writing above as President of the Tuscarora Land Co., a corporation, has on this the 17th day of August, 1979, acknowledged the said writing before me to be the act and deed of said corporation. Given under my hand this 17th day of August, 1979.  
My commission expires January 26, 1981.

GINA M. CRAMER, Notary Public  
County of Franklin, Pa.  
My Commission Expires Jan. 26, 1981

[Signature]  
Notary Public

STATE OF WEST VIRGINIA, Hardy County Commission Clerk's Office September 8, 1979

The foregoing Declaration together with the certificate of its acknowledgment, was this day presented in said office and admitted to record.

Teste Sue K. Halterman Clerk

By: Charlotte Wilson, Deputy

STATE OF WEST VIRGINIA, Hardy County Commission Clerk's Office September 8, 1979

Amended Covenant  
The foregoing Deed, together with the certificate of its acknowledgment, was this day presented in said office and admitted to record.

Teste Sue K. Halterman Clerk.