

BOOK 217 PAGE 193(48) 142640



**FIRST AMENDMENT  
TO  
PROTECTIVE COVENANTS AND RESTRICTIONS  
  
NEW TIMBERLINE YOAKUM RUN SECTION 2**

**By: Yoakum Run Homeowners' Association, Inc.,  
a West Virginia non-profit corporation,  
acting upon the signatures and approval  
of a majority of its members and a majority  
of the votes allocated to all lots in  
New Timberline Yoakum Run Section 2.**

First Amendment to Declaration – March 14, 2015

**First Amendment**

**To**

**Protective Covenants and Restrictions  
New Timberline Yoakum Run Section 2**

THIS FIRST AMENDMENT TO PROTECTIVE COVENANTS AND RESTRICTIONS NEW TIMBERLINE YOAKUM RUN SECTION 2 (“Amendment”), affecting the real property known as Yoakum Run Subdivision (“Subdivision”), is made by Yoakum Run Homeowners’ Association, Inc., a West Virginia non-profit corporation,

WHEREAS, the Subdivision was created by recordation of that certain instrument entitled Protective Covenants and Restrictions New Timberline Yoakum Run Section 2, (“Declaration”), made by Allegheny Properties, Inc., a West Virginia corporation, and recorded on November 11, 1981, in the Office of the Clerk of the County, Commission of Tucker County, West Virginia, in Deed Book 99 Page 313; and

WHEREAS, the Declaration provides in numbered Paragraph 27 that all “covenants, restrictions and affirmative obligations set forth in [that] Declaration shall run with the land and shall be binding on all parties and persons claiming under them” until “an instrument signed by a majority of the then owners of tracts affected by such covenants has been recorded, agreeing to change said covenants in whole or in part”; and

WHEREAS, the Declaration provides in numbered Paragraph 26 that Declarant would form a duly incorporated association of owners of lots in the Subdivision and that “[m]embership in the [association] shall be mandatory upon all property owners within” the Subdivision; and

WHEREAS, the association required by the Declaration was duly incorporated on June 24, 1986, as Yoakum Run Homeowners Association, Inc., a West Virginia non-profit corporation (“Association”); and

WHEREAS, the Subdivision and lots therein are depicted and shown on that certain Plat recorded in the Office of said Clerk on November 13, 1981, in Plat Cabinet 1, Slide 30; and

WHEREAS, the Declaration provides in numbered Paragraph 26 that each lot in the Subdivision is allocated “only one membership, and only one vote”;

WHEREAS, a requisite 51% votes allocated to lot owners and members of Association were cast in favor of this Amendment as evidenced by the signatures of the members/lot owners attached as Exhibits hereto, and Association makes this Amendment in a representative capacity in behalf of its members/lot owners for the foregoing purposes.

**WITNESSETH:**

Association acting in a representative capacity in behalf of a requisite 51% majority of its members hereby makes this Amendment to the Declaration, pursuant to the authority hereinabove set forth as evidenced by the authority of the members evidenced by the Exhibits to this instrument:

1. Section 12 or Numbered Paragraph 12 of the Declaration is hereby deleted in its entirety and amended and replaced with the following paragraph:

“12. That only licensed and adequately insured two, three, and four-wheeled motorized vehicles may be operated on the common element roadway known as Yoakum Run Road. Unlicensed vehicles prohibited by this section include snowmobiles. The Association is only authorized to grant exceptions for good cause due to real and reasonable necessity when in keeping with the intended purpose of the Declaration and the duties of the Association by balancing the need for a non-conforming use against the potential harm or risk given the Association’s duties to maintain and ensure safe passable roadways. For the purposes of this provision, the terms “licensed” and “adequately licensed” mean vehicles fulfilling the requirement of the State of West Virginia sufficient that the vehicle is authorized by the State of West Virginia to be operated on State roads and specifically includes four-wheeled low-speed vehicles that possess a title or manufacturer’s Certificate of Origin, are registered, insured, and licensed; provided, however, that this provision in no way prohibits: 1) the use of any type or character of vehicle by Allegheny, its successors or assigns, Yoakum Run Homeowners’ Association, Timberline Four Seasons Resort, Timberline Utilities, Canaan Valley Gas Company, and Canaan Cable, their successor or assigns, that may be required or necessary for construction, maintenance, upkeep, and repair of the real estate, roadways, rights of way, ski areas, golf courses, and conservancy area in Timberline or New Timberline or hereafter acquired by Allegheny, its successors or assigns; or 2) reasonable and necessary non-residential and non-recreational use and operation of commercial vehicles required from time-to-time for the construction, demolition, rebuilding, improvement, or repair of Units and the improvements thereto when operated by parties other than the owners of a Unit.”

2. The recitations set forth above, and the following Exhibits attached hereto, are incorporated herein by reference for all pertinent purposes:

- Exhibit A Notice to Members
- Exhibit B Amendment Voting Record Summary
- Exhibit C Votes with Member Signatures
- Exhibit D Certification by Secretary

IN WITNESS WHEREOF, a majority of the Board of Directors of Yoakum Run Homeowners' Association, Inc., having been duly authorized by affirmative vote of the members and owners to which a requisite majority of votes are allocated by the Declaration, hereby executes this Amendment to the Declaration for the purposes above written. This instrument is signed by the current of lots to which a requisite majority of votes are allocated as set forth on Exhibit C.

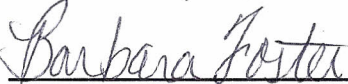
Witness this 14<sup>th</sup> day of March, 2015:

Yoakum Run Homeowners Association, Inc.,  
a West Virginia non-profit corporation

By:

  
\_\_\_\_\_  
Greenleaf Smith, Director

14 March 2015  
\_\_\_\_\_  
Date

\_\_\_\_\_  
John Grizzard, Director  
  
\_\_\_\_\_  
Barbara Foster, Director

\_\_\_\_\_  
Date  
3-14-15  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Robert Cherry, Director

\_\_\_\_\_  
Date  
3/14/15  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Don Richards, Director

\_\_\_\_\_  
Date  
3-14-15  
\_\_\_\_\_  
Date

## Exhibit A – Notice to Members

Yoakum Run Homeowners Association  
PO Box 608  
Davis, WV 26260

Members: Please complete and return in enclosed envelope by 7 January 2015. Thank you.

Covenant 12, Protective Covenants and Restrictions (PC&R) presently states "that only licensed four-wheel vehicles may be used on the roadways or rights of ways in said Section except vehicles such as cycles, ATVs or recreational vehicles may be used for the sole purpose of ingress and egress to the tract site ..." The foregoing language is potentially ambiguous and has been a source of conflicting interpretations and considerable debate among the Association and its members. The Association's board of directors also has concerns regarding this provision due to its obligation to adequately maintain and carry insurance on the roads at the cost of and for the protection of its members. In an attempt to alleviate confusion and determine a consensus opinion of the membership relating to Covenant 12, the board made inquiry to the membership. Based on the majority response to its inquiry, the board of directors proposes the following amendment to Covenant 12 which the board respectfully requests be completed and returned.

The proposed amendment will remain open and pending until: a) the board receives the requisite number of signed responses in favor of the amendment, in which case the board will cause a formal amendment to be prepared and recorded which includes copies of the signed authorizations as an exhibit; or b) the board receives the requisite number of responses opposing the amendment in which case it will be defeated.

Proposed amendment to Covenant 12:

12. That only licensed and adequately insured two, three and four-wheel motorized vehicles may be operated on the common element roadway known as Yoakum Run Road. Unlicensed vehicles prohibited by this section include snowmobiles. The Association is only authorized to grant exceptions for good cause due to real and reasonable necessity when in keeping with the intended purpose of the Declaration and the duties of the Association by balancing the need for a non-conforming use against the potential harm or risk given the Association's duties to maintain and insure safe passable roadways. For the purposes of this provision, the terms "licensed" and "adequately insured" means vehicles fulfilling the requirement of the State of West Virginia sufficient that the vehicle is authorized by the State of West Virginia to be operated on State roads and specifically ,includes four-wheeled low-speed vehicles that possess a title or manufacturer's Certificate of Origin, are registered, insured and licensed; provided, however, that this provision in no way prohibits: 1) the use of any type or character of vehicle by Allegheny, its successors or assigns, Yoakum Run Homeowners Association, Timberline Four Seasons Resort, Timberline Utilities, Canaan Valley Gas Company and Canaan Cable, their successors or assigns, that may be required or necessary for construction, maintenance, upkeep and repair of the real estate, roadways, rights or way, ski areas, golf courses, and conservancy area in Timberline or New Timberline or hereafter acquired by Allegheny, its successors or assigns; or 2) reasonable and necessary non-residential and non-recreational use and operation of commercial vehicles required from time-to-time for the construction, demolition, rebuilding, improvement or repair of Units and the improvements thereto when operated by parties other than the owners of a Unit.

YES \_\_\_\_\_

NO \_\_\_\_\_

Signature \_\_\_\_\_

Lot #: \_\_\_\_\_

YRHOA Address: \_\_\_\_\_

## Exhibit B – Amendment Voting Record Summary

Lot #	Owner(s)	Vote "YES"	Vote "NO"	Date
1		x		1/5/2015
2		x		1/20/2015
3				
4			x	1/2/2015
5			x	1/7/2015
6				
7			x	1/8/2015
8				
9		x		12/31/2014
10		x		1/20/2015
11		x		2/8/2015
12		x		1/16/2015
13		x		1/7/2015
14				
15				
16		x		12/30/2014
17		x		12/30/2014
18		x		1/30/2015
19		x		12/27/2014
20		x		1/26/2015
21				
22				
23		x		1/5/2015
24		x		1/2/2015
25				
26			x	1/21/2015
27		x		1/23/2015
28		x		1/2/2015
29		x		1/16/2015
30				
31		x		1/20/2015
32		x		1/2/2015
33				
34				
35				
36		x		12/31/2014
37		x		12/30/2014
38		x		12/30/2014
39		x		1/11/2015
40				
41		x		1/21/2015
42		x		12/30/2014
43			x	1/22/2015
44			x	1/6/2015
45		x		12/30/2014
46		x		1/7/2015
47		x		12/30/2014
48				
49		x		1/27/2015
50			x	1/6/2015
<b>TOTALS</b>		<b>29</b>	<b>7</b>	
<b>TOTALS BY PERCENTAGE</b>		<b>58.0%</b>	<b>14.0%</b>	

## **Exhibit C – Votes with Member Signatures**

Written responses with signatures from thirty six (36) lot Owners are included in this exhibit.

(NOTE TO OWNERS/MEMBERS: Since these documents contain personal name and address information, they are not included or posted on the website in order to protect member privacy. The original Exhibit C is filed in the Corporation's records and is available for member inspection.)

## Exhibit D – Secretary’s Certification of Authorization

Yoakum Run Homeowners’ Association, Inc.  
PO Box 608  
Davis, WV 26260

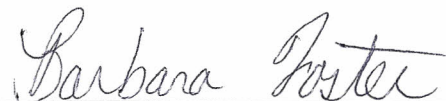
March 14, 2015

### Certification of Board Authority

The undersigned, as Secretary of the Yoakum Run Homeowners’ Association, Inc., hereby certifies that the members of the Board of Directors are authorized and empowered in the West Virginia Code Chapter 31E and the Corporation’s governing documents to execute this Amended Declaration of Protective Covenants and Restrictions. The Association has five (5) Directors. The five (5) Directors of the Association are the following individuals:

Greenleaf Smith, Director  
John Grizzard, Director  
Barbara Foster, Director  
Robert Cherry, Director  
Don Richards, Director

ACCORDINGLY, the undersigned, as Secretary, and by virtue of the authority vested in the secretary by law, hereby issues this certification evidencing the authority of the members of the Board of Directors.



Barbara Foster, Secretary

This document presented and filed:  
03/16/2015 01:16:15 PM



Sherry L. Simmons, Tucker County, WV  
142640 Transfer Tax: \$0.00