



CANAAN VALLEY, W.VA.

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

Allegheny Properties, Inc., Canaan Valley, West Virginia

The protective covenants and restrictions applicable to NEW TIMBERLINE, Yoakum Run Section 2, are herein set out.

Allegheny Properties, Inc., a corporation duly organized and existing under the laws of the State of West Virginia with its principal place of business situate in Canaan Valley, Tucker County, West Virginia, the owner of certain lands, situate in or near Canaan Valley, Tucker County, West Virginia, hereby makes and executes the following Declaration of Protective Covenants and Restrictions as to that portion of said land which will be subdivided and sold to individual tract purchasers for the purpose of erecting private dwellings or recreational residences thereon known as Yoakum Run Section 2, it being expressly understood and agreed by such tract purchasers that the said Protective Covenants and Restrictions shall not apply to anything owned by Allegheny Properties, Inc., its successors or assigns, that is not subdivided and designated Yoakum Run Section 2 for sale to individual tract purchasers; for example, but not by way of limitation, Allegheny Properties, Inc., its successors or assigns, shall not be limited in use or sale of such portions of the said other lands as may be used for hotel, lodge, resort, recreational, entertainment, or similar purposes; nor shall these covenants and restrictions be deemed to prevent the erection and sale of multifamily units, town houses, condominiums or cooperative units or the sale of land, lots, tracts, or portions thereof designed for such use in any overall master land plan to be adopted for the development of NEW TIMBERLINE, its successors and assigns.

It is hereby declared by Allegheny Properties, Inc. (hereinafter referred to as "Allegheny"), that the following covenants, restrictions and easements shall constitute covenants to run with said land in said NEW TIMBERLINE, Yoakum Run Section 2 (hereinafter referred to as Section).

1. Nothing but one single family private dwelling or recreational residence designed for occupancy by any one family shall be erected on any tract in said Section; nor shall said premises be used for any purpose other than private or recreational residential purposes, but the renting or leasing of a private dwelling or recreational residence shall not be considered commercial use, and except as otherwise herein provided; provided, however, that nothing herein contained shall be construed to prevent the use of one building site on two or more tracts, or the use as a building site of portions of two or more tracts; provided further, however that Allegheny, its successors and assigns, may in its sole discretion permit owners of certain tracts to build and use same for hobbies, educational, or professional purposes; provided further, that in no event shall any tract of land or any dwelling or residence erected thereupon be sold or rented on a "time-sharing" basis.

2. No buildings, facility, or other structure, or any additions thereto shall be erected, or the erection thereof begun, on any tract until the plans and specifications thereof shall have been first presented to and approved in writing by Allegheny, its successors or assigns.

3. The ground floor area of any dwelling of two (2) or more floors erected on a tract shall contain a minimum of eight hundred (800) square feet, exclusive of porches and garages, unless otherwise approved in writing, by Allegheny, its successors or assigns.

4. The minimum area of living space of any single-family dwelling therein, and exclusive of porches and garages, shall not be less than one thousand (1,000) square feet, unless otherwise approved, in writing, by Allegheny, its successors or assigns.

5. The exterior woodwork of all houses and buildings on said tract, of whatsoever kind, shall be painted with at least two (2) coats of paint, varnish or stain, as soon as weather permits, after completion. However, Allegheny reserves the right to waive this condition to itself, its successors and assigns in the event that the plans for said dwelling calls for exposed untreated natural wood. The

exterior architectural design of all houses and buildings on said tract shall be subject to the written approval of Allegheny, its successors or assigns. The roofing shingles on all houses and buildings shall be cedar shake, unless specifically waived in writing by Allegheny, its successors or assigns.

6. No building, fence, hedge, sidewalk, wall, drive, or other structure shall be erected, placed or altered on any tract until the proposed building plans, specifications, exterior color or finish, plot plans showing the proposed building plans (showing the proposed location of such building or structure, drives and parking areas), and construction schedule shall have been approved in writing by Allegheny, its successors and assigns. No alterations in the exterior appearance of any building or structure shall be made without like approval by Allegheny, its successors or assigns. One copy of all plans, specifications and related data shall be furnished Allegheny, its successors and assigns, for its records.

7. In order to assure that houses or structures will be located with regard to the topography or relation to wooded areas of each individual tract, Allegheny reserves unto itself, its successors and assigns, the right to control the site and location of any house or dwelling or other structure upon any one or more tracts, provided, however, that such location shall be determined only after reasonable opportunity is afforded the tract owner to recommend a specific site.

8. The exterior of all houses and other structures must be completed within six months after the construction of same shall have commenced, except where such completion is impossible or would result in great hardship to the owner or builder due to strikes, fires, national emergencies or natural calamities.

9. No excavation of stone, gravel, or earth shall be made upon any tract except for basements, cellars, retaining walls, landscaping and driveways. All other excavations or removal of earth or material or deposits of earth or material on any tract shall not be commenced without first obtaining written approval of Allegheny, its successors or assigns.

10. Within one (1) month after completion of a dwelling on a tract, debris and waste material remaining on the ground shall be picked up and disposed of. Within one (1) year after the completion of a dwelling on a tract, said tract shall be landscaped, including the seeding of bare earth in a workmanlike manner. However, Allegheny reserves to itself, its successors and assigns, the right to waive this condition at the request of the owner.

11. Each tract owner shall construct and maintain suitable and adequate parking space on his tract for parking of his vehicles and the parking of vehicles of his guests so that said vehicles when parked shall not obstruct or interfere with vehicular travel on any of the roadways, or cul-de-sacs in said Section.

12. That only licensed four-wheel vehicles may be used on the roadways or right of ways in said Section except vehicles such as cycles, ATV's or recreational vehicles may be used for the sole purpose of ingress and egress to the tract site; provided, however, that this provision in no way prohibits the use of any type or character of vehicle by Allegheny, its successors or assigns, that might 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 access to and from other property now owned or hereinafter acquired by Allegheny, its successors or assigns.

13. No tract of land situate within said section, nor any building or structure erected thereupon may utilize a septic system or other individual sewage system. Likewise, no tract or building or structure erected thereupon may use a well, or any stream, brook, pond or spring as a source of residential water supply. Allegheny Properties, Inc., its successors and assigns will provide a

central water and a central sewage system to owners of said tracts in the said Section at an estimated initial total cost of Fifteen dollars (\$15.00) per month, and at such additional and other amounts as may be approved by the West Virginia Public Service Commission. All owners of tracts, their heirs and successors and assigns shall be required to hook-up to the water and sewage system within 120 days after commencement of the construction of any residence, dwelling or other structure upon each tract of land unless specifically waived in writing by Allegheny, its successors or assigns. The estimated cost for initial hook-up for water and sewage installment will be One hundred and Fifty dollars (\$150.00), subject to approval by the West Virginia Public Service Commission. The estimated cost will be subject to increase, the establishment of tariffs and modifications thereto as permitted by the laws of the State of West Virginia and the rules and regulations governing public utilities that deliver water and sewage services. Allegheny reserves to itself, its successors and assigns, the absolute right to convey upon such terms and conditions as it deems appropriate and for such consideration as may be approved by the West Virginia Public Service Commission, its right title, interest, assets, and obligations in the water system and/or sewage system, which is installed for said Section, and others, to the Yoakum Run Section 2 Property Owners' Association, Inc., hereinafter described in paragraph 26 of these covenants and restrictions, or to any group of Property Owners' Associations for tracts of land developed by Allegheny, its successors and assigns, within Timberline and/or New Timberline, or to such other entity as Allegheny, its successors and assigns deem appropriate. The decision as to whether or not the water and sewage systems shall be transferred to the Yoakum Run Section 2 Property Owners' Association, Inc., or other parties, shall be the exclusive determination of Allegheny, its successors and assigns, subject to approval by the West Virginia Public Service Commission.

14. No trailer, shed, or other temporary or movable building or facility shall be erected or maintained on any tract except as may be reasonably necessary for a short period of time for use in aiding the erection of a dwelling on said tract, and in no event shall said trailer, shed or other temporary movable building or facility be maintained on a tract after completion of said dwelling.

15. No trailer, basement of a partially completed dwelling, tent, garage, barn, shed, structure or facility erected or maintained on any tract shall at any time be used as a residence without first obtaining written permission of Allegheny, its successors or assigns. Camping on tracts of land within said Section is specifically prohibited.

16. No tract shall be used or maintained as a dumping ground for rubbish, nor shall any rubbish or garbage, or other waste of any type be allowed to accumulate on said tract. Said rubbish, garbage, or other waste shall be kept in sanitary containers, and all such containers or incinerators or other equipment used for the storage or disposal of said material shall be kept in a clean and sanitary condition and located in as inconspicuous a place as possible. It is understood and agreed that there is no obligation on the part of Allegheny, its successors or assigns, to provide garbage or trash removal services.

17. No fowl, swine, cattle, sheep, goats, horses, or other domestic wild animals shall be kept or maintained on any tract. This restriction shall not apply to dogs, cats, or other small domestic animals, generally considered as pets, so long as said dogs, cats, or other small domestic animals are of an unoffensive nature; provided that all such pets shall not be permitted to roam at large and must be kept on chain or other similar restraint. Walking of such pets shall be done in an inoffensive manner, keeping said pets on leash or chain at all times.

18. No obnoxious or offensive use shall be made of any tract, nor shall any offensive trade or activity be carried on upon any tract, nor shall any activity of any nature whatsoever be conducted on a tract which may constitute a nuisance. Furthermore, no unlawful or criminal

activities shall be permitted upon any lot.

19. No sign of any kind on a tract will be displayed to the public view without first obtaining a written approval from Allegheny, except that one (1) sign of not more than two (2) square feet, showing the owner's name and the name of the premises shall be permitted on a tract, but in no event shall said sign measure more than three (3) feet in length or height.

20. That no open fires shall be permitted on any tract, and that any outdoor fireplaces shall be equipped with proper screening and approved by Allegheny, its successors or assigns.

21. That all guns and weapons shall be cased and that no firearms shall be discharged within said Section except as might otherwise be permitted in writing by Allegheny, its successors or assigns.

22. Outside illumination of any dwelling, or of a sign erected in accordance with paragraph 19, shall be done by means of a constant light on the general principal of ordinary bulbs or small flood lights, it being the intent of this restriction that no neon or similar type lighting, nor flashing light or illumination of or by any type of reflective lettering, nor dusk to dawn lights, nor the use of luminous or reflective material of any nature shall be permitted in connection with said lighting or the outside illumination of said dwelling.

23. Allegheny reserves unto itself, its successors and assigns, a perpetual, alienable and releasable easement over, upon, across, and under each tract, for the construction, maintenance, upkeep and repair of the roadways and rights of way, the location or locations therefore are as shown on the plat of Yoakum Run Section 2 of New Timberline, recorded in the Tucker County Clerk's Office; that the use of said roadways and rights of ways shall be in common by the tract owners, Allegheny and their respective heirs, successors and assigns, as well as for the general public if in Allegheny's discretion, or that of its successors or assigns, same becomes necessary for the full use and enjoyment of the said Section by tract owners or by Allegheny's subsequent developments of property now owned or hereinafter acquired by Allegheny, its successors or assigns; but such use in common by tract owners, Allegheny, their respective heirs, successors and assigns, and the general public if same becomes necessary, shall be in accordance with the other Protective Covenants and Restrictions herein; also Allegheny reserves to itself, its successors and assigns, a perpetual, alienable and releasable easement for the erection, maintenance, installation and use of electrical and telephone poles, wires, cables, conduits, and other suitable equipment of the conveyance of electricity, CATV and use of telephone equipment, water, sewage, or other public conveniences or utilities but with the understanding that said easement for the aforesaid utilities and related necessities shall be confined to any area within twenty-five (25) feet on each side of any tract's boundary lines; providing however, the twenty-five (25) feet easement for any tract's boundary line or lines adjacent to a roadway or right of way would commence where the roadway or right of way boundary ceases; and Allegheny, its successors and assigns, may further cut drainways for surface water wherever and whenever such action may appear to Allegheny, its successors or assigns, to be necessary in order to maintain reasonable standards of health, safety and appearance. Such rights may be exercised by any licensee of Allegheny, its successors or assigns, but this reservation shall not be considered an obligation of Allegheny, or its successors and assigns, to provide or maintain any such utility or service. Furthermore, Allegheny reserves to itself, its successors and assigns, the right to lay, construct, repair, maintain, operate and replace water and sewage lines, pipes, mains, meters and all related apparatus in furtherance of Paragraph 13 above.

No exterior television or radio antenna of any kind shall be constructed or erected on any tract or residence after

such time as a community antenna television (CATV) system has been made available to residences at rates of charge for installation and monthly service commensurate with the rates charged by comparable CATV systems; this paragraph as to CATV shall not be considered an obligation of Allegheny, its successors or assigns, to provide or maintain any such service.

All electrical service lines and telephone lines to any structure shall be by an underground entry unless waived in writing by Allegheny, its successors and assigns.

24. No trees measuring six inches or more in diameter three (3) feet above ground level may be removed without the written approval of Allegheny, unless located within ten (10) feet of the main dwelling or accessory building or within ten (10) feet of the approved site for such building. No trees shall be removed from any tract until the owner shall be ready to begin construction without the consent of Allegheny.

25. No tract shall be subdivided, or its boundary lines changed, except with the written consent of Allegheny. However, Allegheny hereby expressly reserves to itself, its successors or assigns, the right at any time to re-plot any tract or tracts shown on the plat of said Section or part thereof in order to create a modified building tract or tracts. The restriction and covenants herein apply to each such building tract so created.

That nothing herein is to be construed to prevent Allegheny, its successors or assigns, amending or placing further provisions or covenants or easements on any tracts in said Section which have not been conveyed by it.

26. As to said Sections, it is agreed that as soon as a sufficient number of tracts have been sold in this development, this determination to be the sole and exclusive right reserved unto Allegheny, its successors and assigns, a non-stock property owners' association, to be known as the "YOAKUM RUN SECTION 2 PROPERTY OWNERS' ASSOCIATION, INC." with only one membership, and only one vote, for each tract and that this Association shall establish reasonable annual assessment charges for recreational areas, access and section road maintenance, security services, and other maintenance relative to a subdivision of this type. Membership in the YOAKUM RUN SECTION 2 PROPERTY OWNERS' ASSOCIATION, INC. shall be mandatory upon all property owners within said Section. Furthermore, in the event Allegheny, or its successors or assigns, transfer the water system and/or sewage system to said Association it shall establish such fair, reasonable, and just rates therefore as may be approved by the West Virginia Public Service Commission. Prior to the time such Property Owners' Association is created Allegheny, its successors and assigns, shall charge a reasonable annual assessment to each tract owner for maintenance of roads, recreational areas and for security services for said Section of not less than \$250.00 per annum payable in equal installments of one-half the annual assessment on the 1st of January and 1st of June each year. Every such assessment, whether made by the aforesaid Property Owners' Association, or Allegheny, its successors and assigns, shall constitute a lien against the tract until paid in full. The Property Owners' Association or Allegheny, its successors and assigns, shall mail written notice of the annual assessment to the tract owners on or before December 1 of each preceding year.

Yoakum Run Section 2 of New Timberline is a separate and distinct development from Timberline Development, and is specifically excluded from any amenities or conservancy area use which heretofore may have been granted to owners of property within Timberline Development of Allegheny Properties, Inc. Said amenities and conservancy property area rights have no applicability whatsoever to land or property owners within Yoakum Run Section 2 of New Timberline.

That for the proper game and wildlife control and preservation, no hunting or trapping of wildlife is

permitted on Yoakum Run Section 2 of New Timberline, and that Yoakum Run Section 2 of New Timberline is declared a game and wildlife preserve; providing, however, that Allegheny, its successors and assigns, in their discretion may determine that to properly and effectively protect the land and to maintain the recognized balance of land and food to game population, some hunting and trapping might become necessary and that in such event, Allegheny, its successors and assigns, in their sole discretion shall promulgate the restrictions, regulations and rules for any hunting and trapping on Yoakum Run Section 2 of New Timberline.

27. All covenants, restrictions and affirmative obligations set forth in this Declaration shall run with the land and shall be binding on all parties and persons claiming under them for a period of twenty-five (25) years from November 1, 1981, after which time said covenants shall be automatically extended for successive periods of ten (10) years unless 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. No restriction or covenant herein is intended to be used nor shall any restriction or covenant herein be used by any tract owner, Allegheny, its successors or assigns, to discriminate or attempt to discriminate against any person, whether a tract purchaser, or prospective purchaser upon resale by a tract owner, upon basis of race, creed, sex, color, or national origin.

28. In the event of a violation or breach of any of these restrictions by any property owner, or agent, or agent of such owner, Allegheny, its successors or assigns, or the owners of tracts in the neighborhood or subdivision or Yoakum Run Section 2 Property Owners' Association, Inc., or any of them jointly or severally, shall have the right to proceed at law or in equity to compel compliance to the terms hereof or to prevent the violation or breach in any event, or to seek enforcement of liens. In addition to the foregoing, Allegheny, its successors or assigns, or Yoakum Run Section 2 Property Owners' Association, Inc., shall have the right, whenever there shall have been built on any tract in the subdivision any structure which is in violation of these restrictions to enter upon such property where such violation exists, and summarily abate or remove the same at the expense of the owner, if after thirty (30) days written notice of such violation, it shall not have been corrected by the owner. Any such entry and abatement or removal shall not be deemed as trespass. The failure to enforce any right, reservation, restriction or condition contained in this Declaration of Protective Covenants and Restrictions, however long continued, shall not be deemed a waiver of the rights to do so hereafter, as to the same breach or as to a breach occurring prior or subsequent thereto and shall not bar its enforcement.

29. The invalidation by any Court of any restriction or any part thereof, in this Declaration of Protective Covenants and Restrictions contained shall in no way affect any of the remaining restrictions or parts of such restrictions, and they shall remain in full force and effect.

By sales contract and the below signatures, the undersigned acknowledges receipt of a copy of the within Protective Covenants and Restrictions, and has been informed that same are Covenants and Restrictions running with the tracts in Yoakum Run Section 2 of New Timberline, and agreed to be bound by its provisions.

Dated this the _____ day of _____, 198__.
