

PROTECTIVE COVENANTS

AND

RESTRICTIONS

THE PRESERVE AT NEW CREEK LAKE NEW

CREEK PROPERTIES, INC.

Recorded in Grant County Deed Book 170, Page 147-158

New Creek Properties, Inc., a corporation, duly organized and existing under the laws of the State of West Virginia is the owner of certain lands situate in Union District, Grant County, West Virginia.

It is the purpose of the owners in subdividing and selling land within the Preserve at New Creek Lake (hereinafter referred to as "PRESERVE") to provide for the permanent protection and preservation of the natural character and beauty of the landscape and wildlife and to make it possible for individual lot owners to share in the enjoyment of the scenic and recreational qualities of the Conservancy Area and the property as a whole. To this end, the following Declaration of Protective Covenants and Restrictions is imposed upon any and all lots subdivided from the present and future platted divisions within The Preserve at New Creek Lake.

1. BUILDING

a) Design and Materials. Matters of building design, color and materials shall be approved by the Design Review Committee prior to the start of construction.

The Design Review Committee shall be appointed by the Board of Directors of The New Creek Lake Property Owner's Association. Preference shall be given to structures in harmony with the natural setting of the area. The use of natural materials which are not painted such as logs, cedar and stone are preferred and encouraged but numerous other materials may be approved if used with due consideration. Exterior construction should generally be of Earth-tone colors so as to blend in with the forest. Allowance will be made for materials which naturally darken with age. Color and visibility from the roads as well as from other lots shall be considered in the approval process.

b) Setbacks. No construction of any home, shed, garage or any other similar building shall take place within 75 feet of any road or property border. Temporary construction trailers or sheds shall also conform to this restriction. Any temporary sales trailer for the Declarant is exempt from this restriction.

c) Enclosure. All buildings shall be fully enclosed within six months from the start of construction.

sewage, which must be approved by the West Virginia State Health Department.

e) Construction and House Trailers. Mobile homes and house trailers may not be used as a residence in lieu of a permanent dwelling house.

Temporary construction or house trailers or sheds for the purpose of storage, work and/or living shall be permitted for no longer than eighteen (18) months and only while construction of a home is in progress on that lot. An 18 month permit shall be issued by the New Creek Lake Property Owner's Association which shall be placed prominently on the trailer or shed to display the expiration date. This permit shall not be reissued for the same home.

f) Minimum Size. No home shall be erected of less than 725 square feet of heated main floor area with the exception that a guest cottage of less than that minimum may be erected on any lot if within 200 feet of the main house and only if its construction does not precede the main house or conflict with any other restrictions. Style and materials of construction of a guest cottage should conform generally to those of the main house.

g) Garages. A separate garage shall not be permitted upon any lot beyond 200 feet from the main house. Style and materials of construction should be in harmony with that of the main house but need not be in exact conformance to it.

h) Exceptions. Any permanent improvement intended for common use or benefit by or for the owners of The Preserve shall be exempt from the setback and minimum size restrictions as set forth above. This may include, but not be limited to, structures such as a caretaker's house, equipment garage and guard house.

2. EXTERIOR BUILDING MAINTENANCE

It shall be the responsibility of the Lot Owner to properly maintain the exterior of any and all structures upon that lot.

Any structure which suffers major exterior damage by fire, wind, neglect or other cause shall be repaired or removed within sixty (60) days.

### 3. FENCES AND WALLS

Only fences and walls in aesthetic harmony with the rural wooded environment shall be approved. No fence or wall shall be constructed over 6 feet in height.

Metal fences and solid fences of any type shall not be permitted within 75 feet of any road or lot line. Split rail and "snake" fences are two suggested fence styles which would be readily approved. Natural stone is one suggested wall building material.

All fences and walls shall be kept in good condition at all times or be removed.

### 4. PARKING AND USE OF VEHICLES

Overnight parking of vehicles by Lot owners or their guests shall not be permitted along any right of way or trail where it might hinder access by others. It shall be the responsibility of each Lot Owner to provide adequate off-road parking for his use and the use of his guests.

A property owner may permit temporary guests to park and use a house trailer within the boundaries of his property on a short-term (under 14 days) basis on the condition that a 75 foot setback from roads and property lines is adhered to.

Storage of any unregistered, uninsured or otherwise unusable vehicle of any kind shall not be permitted upon any lot for longer than three months unless it is garaged.

No vehicle shall be operated on any lot or within the Conservancy areas without proper noise abatement devices or in such a manner as to adversely impact the wildlife, land and/or drainage. The Board has full authority to restrict specific vehicles or types of vehicles from use within the Conservancy areas if they determine these vehicles to be detrimental.

### 5. SUBDIVISION OF LOTS

Lots within The Preserve shall not be subdivided. The owner reserves the right to re-survey, re-plat, re-subdivide or to make new division lines on any and all unsold lots or parcels.

No commercial use of any area shall be permitted which can be either seen, heard, smelled or otherwise detected from any lot line or which jeopardizes the peace, privacy or security of any other Lot Owner. Any sign erected upon any lot for commercial use shall be of less than three square feet total area with the exception of signs advertising the sale of property within The Preserve.

### 7. SATELLITE DISHES

The erection of any satellite dish shall be done so that it will not be readily visible from any roadway or other lot during any season. This may be achieved through the use of evergreen screening or the use of a dark finish as well as locating well within any lot.

### 8. REFUSE

It is the responsibility of each Lot Owner to dispose of any and all garbage, construction debris, etc. in a proper manner. Disposal on any lot or portion of the Conservancy Area shall not be permitted. Pollution of any stream or ground water shall not be permitted. The New Creek Lake Property Owner's Association may elect, at its discretion, to place a dumpster at a reasonable location for the use of the Lot Owners, to be shared as a common expense among all Lot owners.

### 9. ANIMALS

With the exception of horses, farm animals such as poultry, swine, cattle, goats, etc. shall not be permitted to be kept upon any lot. Horses kept on any lot for longer than a weekend must have a minimum of one fenced acre per animal. Domestic animals such as dogs and cats are permitted as long as they are not a danger or nuisance to others.

### 10. CONSERVANCY AREA

There is designated a Conservancy Area for THE PRESERVE AT NEW CREEK LAKE and same shall be for the use and benefit of the lot owners, their heirs and assigns, in strict accordance with the rules, regulations, provisions, restrictions and conditions promulgated by New Creek Properties and by the New Creek Lake Property Owner's Association. Said Conservancy Area is designated and shown on a Plat of record in the Grant County Clerk's Office.

The Conservancy Area shall be managed by the Board of Directors in order to preserve its natural character, protect its wildlife and allow for its use by the owners within The Preserve.

The Board has the authority to grant easements and rights of ways within the Conservancy Area that they feel to be in the best interest of New Creek Lake Property Owner's Association.

New Creek Properties reserves unto itself, its successors and assigns, the right to place such provisions, conditions, restrictions, uses and regulations as it might be determined necessary and required for prudent ecological and environmental control of the said Conservancy Area.

The New Creek Property Owner's Association may approve special uses of the Conservancy Area requested by its members if such special uses are deemed to be beneficial to the Conservancy Area or the New Creek Property Owner's Association.

New Creek Properties shall dedicate the common property for the first two sections of The Preserve at the time that 80% of the lot acreage of those two sections has been conveyed. Thereafter, for future sections, the common property for each section shall be dedicated at the time that 80% of the acreage in lots for that section has been conveyed. Mineral rights for all acreage within each section shall be conveyed to the New Creek Lake Property Owner's Association along with the common property.

#### 11. EASEMENTS

In order to maintain privacy and security, the rights of ways within The Preserve shall not be used as a legal easement to any other properties which are not either part of The Preserve or owned by New Creek Properties, Inc. without the authority of the Board.

New Creek Properties, Inc. 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 ways, the location or locations thereof are as shown on the Plat of THE PRESERVE AT NEW CREEK LAKE, recorded as aforesaid in the Grant County Clerk's office; that the use of successors and assigns, and which common use shall not be limited to the Lot Owners of THE PRESERVE AT NEW CREEK LAKE but may also be used in common by New Creek Properties, Inc., their respective heirs, successors and assigns for the benefit of other property now owned or hereinafter acquired by New Creek Properties, Inc. so long as said use thereof is in accordance with the other Protective Covenants and Restrictions herein.

New Creek Properties, Inc. also reserves unto 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 for the conveyance of electricity, CATV, and use of telephone equipment, water, or other public conveniences or utilities but with the understanding that said easement for the aforesaid utilities and related necessities shall be confined to an area within 15 feet on all sides of any Lot's boundary lines; providing, however, the 15 foot easement for any Lot's boundary line or lines adjacent to a roadway or right of way would commence where the roadway or right of way boundary ceases; a 30 foot easement adjacent to the entire outside boundary of THE PRESERVE AT NEW CREEK LAKE; and 30 feet along any right of way which is built or constructed upon any lot. Said easements would include locations for anchors and guy wires for poles as needed, even if extending beyond the above listed limitations.

#### 12. DRAINAGE

Lot Owners shall immediately correct any drainage problems which they may be responsible for which adversely affect any other area, road or trail. Culverts of adequate size to carry reasonably foreseeable storm runoff shall be installed and properly maintained under any driveway crossing a drainage ditch.

#### 13. WOODCUTTING

Reasonable cutting of dead wood or live timber on any Lot for personal use as firewood for the Lot Owner, or for the land clearing for construction or enhancement of a view is permitted, provided that such cutting of wood or timber does not significantly alter the appearance of the Lot as a wooded, rural lot. No more than one acre of trees and brush shall be cleared from any single Lot, regardless of its size or location, without prior written approval of the New Creek Property Owner's Association. Such approval shall expire one year from its enacting if not exercised by that time.

Cutting and collecting of fallen dead wood within the Conservancy Area for personal use as firewood shall be permitted as long as doing so does no damage to the Conservancy Area. Cutting of live trees within the Conservancy Area is prohibited without prior written approval by the New Creek Property owner's Association.

#### 14. MINERAL RIGHTS/TIMBER RIGHTS

All minerals, including oil and gas, and including reasonable extraction rights, pertaining to both private lots as well as the Conservancy Area, are reserved and excepted by New Creek Properties, Inc. to be transferred at a later date to the New Creek Lake Property Owner's Association. It is and will be New Creek Properties' and the New Creek Lake Property Owner's Association's right and responsibility to manage the minerals and timber as aforesaid to the benefit of the New Creek Property Owner's Association and its members.

Any income derived from the development of the mineral or timber rights on dedicated sections of The Preserve shall be used exclusively for capital improvements to the common property and rights of ways (such as building a bridge, installing a security system, building a common facility), extraordinary or non-routine maintenance (such as Gypsy moth control, replacing a bridge) or other purposes which may be desirable and in conformance with the purposes of The Preserve (such as funding wildlife research, purchasing adjacent land for conservation or installing bird houses).

#### 15. HUNTING

Hunting, trapping, snaring, or discharging any firearms, pellet or B-B guns is strictly prohibited on all lands of New Creek Properties, individual lots and conservancy areas.

This prohibition may be temporarily and periodically abated by decision of the Board of Directors of the New Creek Lake Property Owner's Association, Inc. in the event that any species of wildlife is determined to be a serious problem which threatens the health or diversity of that or other species with the Preserve. The said Board of Directors is vested with complete authority in the temporary and periodic prohibition regulating and administering abatement procedures. All acts of the Board of Directors within this section shall comply with the West Virginia Game and Fish Regulations.

may be destroyed or captured in accordance with the laws of the State of West Virginia.

#### 16. CAMPING

Lot Owners are permitted to camp upon their lot or within the Conservancy Area provided that only manufactured gear that is specifically intended for camping be used and that it be removed when not in use.

Overnight camping within the Conservancy Area shall not be permitted at any one location for periods longer than two consecutive days.

#### 17. OPEN FIRES

Open fires shall not be permitted on any lot or within the Conservancy Area at times of high forest fire danger. Property owners shall follow state and local burning regulations.

#### 18. GYPSY MOTH SPRAYING

The Association shall follow Forest Service guidelines concerning the spraying of the trees to control Gypsy moths. In any year that such spraying is recommended by the Forest Service, all affected acreage shall be sprayed, with the cost, if any, shared by each lot owner and New Creek Properties, if it owns land in The Preserve.

#### 19. PROPERTY OWNER'S ASSOCIATION

It is understood that a non-stock property owner's association has been created and is known as The New Creek Lake Property Owner's Association, Inc., a West Virginia Corporation, which has one membership and one vote for each lot, and this property owner's association shall establish reasonable assessment charges for conservancy areas, road maintenance and other necessary expenses relative to a subdivision of this type and nature.

Upon acquiring title to a lot, each owner agrees to become a member of said property owner's association and be bound by the Articles and By-Laws of said property owner's association.

#### 20. BINDING NATURE OF COVENANTS

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. No restriction or covenant herein is intended to be used nor shall any restriction or covenant be used by any lot owner or by NEW

CREEK to discriminate or attempt to discriminate against any person, whether a lot purchaser or prospective purchaser upon resale by a lot owner, upon basis of race, creed, color, marital status, national origin or such other suspect classification.

## 21. ENFORCEMENT

In the event of a violation or breach of any of these restrictions by any lot owner, or agent, or agent of such lot owner, the owners of lots in this development, jointly or severally, shall have the right to proceed at law or in equity to compel a compliance to the terms hereof or to prevent the violation or breach in any event.

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 or affect its enforcement.

The invalidation by any Court of any restrictions in this Declaration of Protective Covenants and Restrictions shall in no way affect any of the other restrictions, as they shall remain in full force and effect.

The above restrictions read and agreed to this the 7th day of September, 1990.

The undersigned, Charlie Winfree, President of NEW CREEK PROPERTIES, INC., does hereby certify and state that the within restrictions and covenants are applicable to all tracts of real estate situate in what has been designated as "The Preserve at New Creek Lake" and that same shall apply to all lots of real estate consisting of and making of the said Development. This real estate is the same property conveyed the 165, page 573.

Dated this the 7th day of September, 1990 NEW

CREEK PROPERTIES, INC.

By: Charlie Winfree Its

President