

**DECLARATION OF RESTRICTIVE COVENANTS
FOR MOUNTAINEER HEIGHTS SUBDIVISION**

SECTION THREE and SECTION FOUR

RECITALS

A. Gerald W. Smith and Martha F. Smith, husband and wife, own certain real estate located in the Town of Broadway, Plains District, Rockingham County Virginia, which has been subdivided into lots in a subdivision known as Mountaineer Heights Subdivision, Section Three and Section Four. Plats of Section Three and Section Four of this subdivision dated July 30, 2004, made by Jerry L. Sheffer, L.S., are attached to this Declaration to be recorded in the Clerk's Office of the Circuit Court of Rockingham County, Virginia; and

B. Gerald W. Smith and Martha F. Smith, the aforesaid owners and proprietors of the aforesaid lots of land, in order to insure purchasers of said lots a uniform mode of development and in order to keep the subdivision desirable and suitable in architectural design and use, and to enhance and protect the value, desirability, and attractiveness of the property, desire that all of the lots in said subdivision (but specifically excluding all other lands now owned by Gerald W. Smith and Martha F. Smith) be sold subject to the restrictions, conditions, covenants, limitations, and easements as hereinafter set forth.

C. Donald E. Showalter, as sole acting Trustee under a Deed of Trust dated December 29, 1998, from Gerald W. Smith and Martha F. Smith, husband and wife, said Deed of Trust recorded at Deed Book 1655, Page 303 in the Clerk's Office of the Circuit Court of Rockingham County, Virginia, and at the request and direction of the noteholder, First United Bank & Trust, as evidenced by its signature hereto, does hereby consent to this Declaration of Covenants, Conditions and Restrictions of Mountaineer Heights, Section Three and Section Four, and joins herein for that limited purpose only

THEREFORE, Gerald W. Smith and Martha F. Smith, covenant and agree for themselves, their successors and assigns, that every lot shown on this plat shall be sold and held by the purchasers, their heirs, successors, devisees and assignees, subject to the following restrictions, conditions, covenants, limitations and easements, which shall run with the title to the real estate and shall be binding on all parties having or acquiring any rights, title, or interest in the described properties or any part thereof, and shall inure to the benefit of each owner thereof:

ARTICLE ONE
ARCHITECTURAL CONTROL COMMITTEE

1. There is established an Architectural Control Committee ("ACC"). The original members shall be Gerald W. Smith and Martha F. Smith. Upon completion of the subdivision of

land owned by Gerald W. Smith and Martha F. Smith (which term includes, but is not limited to this Section) or earlier, if they so desire, the original members shall appoint their successors from record title owners of lots in the entire subdivision. These successors shall hold office for a term of ten (10) years after appointment. Prior to the end of such ten year term, the ACC shall cause an election to be held for their successors by giving at least thirty (30) days written notice of the same to all other lot owners in the entire subdivision at the addresses then listed with the Treasurer of Rockingham County. The ACC shall prepare and send to each such lot owner, a ballot together with the names of at least three persons suggested by them as ACC members, but with the right reserved to each lot owner to nominate and vote for additional or other persons, if desired. Each lot shall have one vote. Persons receiving the highest number of votes shall be elected. Ballots shall be counted and certified by the ACC. The persons elected shall serve a term of ten (10) years and then shall repeat the process to elect their successors. No person shall hold more than one term of office without being out of office for a least five (5) successive years. Vacancies in the ACC, at any time, shall be filled by the remaining member or members, but if all three offices become vacant, any lot owner may request that an election be held as earlier provided. All matters decided by the ACC shall be determined by a majority vote.

2. No building or other improvements shall be erected, placed or altered on any lot until at least two (2) sets of construction plans and specifications, together with a plat showing the location of the structure, have been submitted in writing and approved by the ACC as to external design and materials, harmony of external design with existing structures and as to location on the lot.

(a) No fence or wall shall be erected, placed or altered on any of the lots unless similarly approved.

(b) Metal and/or cinder block storage buildings and chain link fences shall not be allowed to be placed on any lot.

(c) No storage buildings shall exceed 14' x 20' in size.

3. The ACC shall have full and complete discretion to approve or disapprove proposed buildings and improvements on any of the lots and in the exercise of its discretion. The ACC shall not be bound to approve any proposed buildings and improvements solely because they comply with the other restrictions and covenants, or are equal in cost or value to buildings and improvements on other lots. The ACC shall also have the further discretion to approve any proposed buildings or improvements on any of the lots, even though the improvements do not meet the requirements of the other provisions of this instrument, if, in the absolute discretion of the ACC such variances are not harmful to the value of the adjoining property. In no event, however, shall the ACC be empowered to permit any use of any lots other than as provided in Article Two of this Declaration.

4. Refusal or approval of plans or specifications may be based by the ACC upon any grounds, including purely aesthetic consideration, which in the sole and uncontrolled discretion of the ACC shall seem sufficient. However, in exercising all of its powers under this Declaration, the

ACC shall not be unreasonable and must apply such standards that will inure to the benefit of the entire development. The ACC or a representative shall have the right to inspect the building during construction to determine compliance with the approved plans and specifications. Where discrepancies exist, the ACC may require corrective work, or, where warranted, in its opinion, it may issue a notice to cease construction until compliance is assured to its satisfaction. Failure to heed notice of the ACC shall operate as a default of this covenant and shall give the ACC, in addition to any rights under general law, the rights and powers set out in Section 25 of this Declaration. Notwithstanding this covenant any purchaser for value of any lot in this subdivision may assume that any improvements on the lot (so long as they do not violate Article Two) which have been completed for more than six months are satisfactory to the ACC and no purchaser shall be required to see to the application of these covenants except to verify that all improvements have been completed for more than six months.

ARTICLE TWO COVENANTS

5. Each lot shall be used only as a residence for a single family. Each residence shall have a minimum finished living area of 1,500 square feet for a ranch-type home, 1,890 square feet for a two story home, 1,400 square feet on one floor for a split foyer home, and 1,400 square feet on the first floor for a cape cod home, all excluding any porches, breezeways, garages or carports attached to the residence. In any event, the basement of a residence, finished or unfinished shall not be considered or used in calculating the square footage requirement.

6. No one shall erect, make, establish, keep or maintain on any lot a mobile home (whether designated as such or designated as a "trailer home" or "manufactured home" or "double wide" or by other terminology) or any mobile structure, used, or designed for use (even though not in actual use), as a residence or sleeping quarters. No trailer, basement, tent, shack, barn, or other outbuilding erected on any of said lots shall at any time be used as a residence, temporarily or permanently, nor shall any residence of a temporary character be permitted

7. All buildings and improvements constructed on the lots in this subdivision shall be constructed in accordance with the zoning ordinance and building codes of the Town of Broadway, Virginia and of any other applicable governmental authority. The improvements on all lots must be connected to public water and sewer.

8. The ACC shall have absolute discretion to specify building setback lines from any street upon which any of said lots abut, providing said minimum requirements comply with the minimum requirements prescribed by the Town of Broadway for the property contained within the subdivision.

9. No sign of any kind shall be displayed to the public view on any of the lots except one sign of no more than five (5) square feet advertising the property for sale or rent or signs used by the builder to advertise the property during construction.

10. No dwelling shall be permitted to be erected on any of the lots unless there is adequate provision for off street parking for at least two vehicles. Off street parking spaces must be provided for all camping trailers. No van or truck of more than three-quarter ton in size shall be permitted to park overnight or longer on any lot in such a manner as to be visible to the occupants of other lots or the users of any street within the subdivision. Further, no such vehicle shall park on the streets in the subdivision at any time except for brief periods of loading or unloading or during emergencies.

11. All builders shall be approved by the ACC committee and no dwelling shall be erected or placed on any lot which has an exterior construction of concrete block aggregate, basement and foundation walls excepted, and no cinder blocks shall be exposed in the foundation. All driveways shall be paved or constructed of concrete and constructed in accordance with applicable VDOT standards where it joins the public street.

12. No animals, livestock or poultry of any kind shall be raised, bred or kept on any of the lots, except that dogs, cats or other small domestic animals may be kept, provided they are not kept, bred or maintained for any commercial purposes. No such animals or pets shall be allowed to run at large or in any other manner be allowed to become a nuisance to the neighborhood.

13. No lot may be subdivided without the prior approval of the ACC.

14. Gerald W. Smith and Martha F. Smith expressly reserve for themselves, their successors and assigns, an easement ten feet (10') in width for utility lines including, but not limited to, underground water and sewer pipes and mains for underground electric power and telephone lines, and for drainage facilities, said ten foot (10') wide easement shall be located on all front, rear and side property lot lines of each lot in the subdivision. Other easements are reserved and shown in such locations and of such dimensions on the plat. A release by Gerald W. Smith and Martha F. Smith, their successors or assigns, to any individual lot owner of any easement so reserved shall operate as a complete release to such lot owner and only as to that particular lot, and no other party shall be entitled to exert any claim or right to the use of such easement. Only underground utility service shall be installed on any of the lots.

15. All lots, whether occupied or unoccupied, and any improvements placed on the lots shall at all times be maintained in such a manner as to prevent their becoming unsightly by reason of unattractive growth on such lot or the accumulation of rubbish or debris.

16. No improvement on any lot which has been partially or totally destroyed by fire or otherwise shall be allowed to remain in such state for more than three months from the time of such destruction.

17. The exterior of all buildings must be completed within twelve (12) months after start of construction or replacement, including landscaping and paving of driveways.

18. No lot or portion of any lot shall be used as an ~~accessway or right-of-way~~ for ingress or egress to any lot, piece or parcel of land within said subdivision, or any other lot, piece or parcel of land, without the prior written consent of the ACC.

19. No inoperable, stripped down, partially wrecked or junk motor vehicles or any sizable parts thereof shall be permitted to be parked on any street or any lot in the subdivision. No motor vehicle may be kept on a lot unless it has a current state inspection sticker.

20. Satellite television antennas, commonly known as "dishes," are prohibited in this subdivision except that the ACC may permit a variance from this prohibition in appropriate cases. In passing upon any such variance the Committee shall take into account whether (in its opinion) the antenna is unsightly, the landscaping around the same, the terrain of the lot on which the antenna is proposed to be located, the wishes of the closest neighbors, the opinions of other owners in the subdivision, the ability to receive adequate television signals by other means, and such other matters as the Committee seems appropriate.

21. Gerald W. Smith and Martha F. Smith shall have the right to assign all their right, title, and interest, including all rights and powers set forth herein, to any person, corporation, organization, or other entity, which will thereupon succeed to all of their rights, obligations, and powers hereunder. Gerald W. Smith and Martha F. Smith shall also have the right to designate agents to act for them in exercising their rights and powers hereunder, providing such designation is evidenced by a written instrument so stating. Any rights and powers thus assigned or delegated shall be exercised in accordance with the provisions of these Covenants.

ARTICLE THREE **PROPERTY OWNERS ASSOCIATION AND ASSESSMENTS**

22. Not later than the time that Gerald W. Smith and Martha F. Smith own less than ten percent (10%) of the property comprising Mountaineer Heights, Section Three or Section Four, and any additional sections of Mountaineer Heights hereinafter created of record and made subject to this Declaration, Gerald W. Smith and Martha F. Smith shall form a nonstock, nonprofit corporation which shall be charged with carrying out the duties of Gerald W. Smith and Martha F. Smith, including the imposition and collection of assessments for maintenance and upkeep of the common stormwater drainage facilities contained in the subdivision. Gerald W. Smith and Martha F. Smith shall convey fee simple title to any such drainage facilities or an easement for maintenance and upkeep thereof to such corporation at the time of its incorporation. The Board of Directors of said corporation shall be elected by the owners of all lots within the subdivision, with each lot owner to be entitled to one vote for each lot owned within the subdivision.

23. Each platted lot within Mountaineer Heights, Section Three and Section Four, shall be subject to an assessment for the maintenance and upkeep of the stormwater drainage facilities (including mowing) within the subdivision and of any common area that may now or hereafter be

located within the subdivision and designated as such on a recorded subdivision plat. ^{B 2574 P 5 3 2} Such common areas may include, but need not be limited to, green space for an entrance sign for the subdivision.

24. Gerald W. Smith and Martha F. Smith during the period described herein, and thereafter the Board of Directors of the association, shall determine on an annual basis the amount of the annual assessment based on current maintenance costs and projected future needs; however, no lot's annual assessment shall ever increase by more than ten percent (10%) of that lot's assessment for the prior year. Assessments shall be fixed at a uniform rate for all improved lots. Special assessments may also be assessed as needed. No assessments shall be due for lots owned by Gerald W. Smith and Martha F. Smith. Unpaid assessments shall bear interest from the due date at the then current judgment interest rate and shall constitute a lien on the subject lot and shall be collectible and enforceable in accordance with the provisions of Section 55-508 et. seq. of the Code of Virginia, as amended.

ARTICLE FOUR **GENERAL CONDITIONS**

25. In the event of a violation or breach of any of these restrictions by any lot owner or agent of such owner, the Architectural Control Committee or any owner of a lot in the neighborhood, or the ACC and any lot owner, jointly or severally, shall have the right to proceed at law or in equity to compel a compliance with these terms or to prevent the violation or breach of such terms. In addition, the ACC shall have the right, whenever there shall have been built on any lot a structure which is in violation of these restrictions, to enter upon the property where the violation exists and summarily abate or remove the same at the expense of the owner, if, after thirty 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 a trespass.

26. The failure to enforce any restriction, covenants or condition in this Declaration, however long continued, shall not be deemed a waiver of the right to do so as to the same breach or as to breach occurring prior or subsequent thereto and shall not bar or affect its enforcement.

27. These restrictions, conditions, covenants, limitations and easements shall run with the title to the land and shall be binding upon all parties owning the lots and all persons claiming under them until January 1, 2020, at which time they shall be automatically renewed or extended for successive periods of ten (10) years. This Declaration may be terminated or modified by the written consent of the owners of two-thirds (2/3) of the lots comprising Mountaineer Heights which are subject to this Declaration, except that, so long as Gerald W. Smith and/or Martha F. Smith owns ten percent (10%) of the property comprising Mountaineer Heights, as defined above, no such termination or modification shall be effective without the written consent of Gerald W. Smith and Martha F. Smith.

28. These restrictions, conditions, covenants, limitations and easements shall not apply to any other lands now owned by Gerald W. Smith and Martha F. Smith, even though the same may be

developed as part of a common scheme and such other lands may have different types of development than that provided for in this Declaration or may have no restrictions at all.

29. The invalidation by any court of any of the provisions of this Declaration shall in no way affect any of the other conditions, restrictions, covenants or easements, but they shall remain in full force and effect.

WITNESS the following signatures and seals; and

IN WITNESS WHEREOF, First United Bank & Trust has caused this Declaration to be executed on its behalf by its duly authorized officer.

Gerald W. Smith [SEAL]
Gerald W. Smith

Martha F. Smith [SEAL]
Martha F. Smith

Donald E. Showalter [SEAL]
Donald E. Showalter, Sole Acting Trustee

FIRST UNITED BANK & TRUST

By: [Signature]
Its: VP & C.L.O.

STATE OF VIRGINIA
CITY/COUNTY OF Harrisonburg, to wit:

15th The foregoing instrument was acknowledged before me in the jurisdiction aforesaid this day of November, 2004, by Gerald W. Smith.

My commission expires: 10-31-2008.

[Signature]
Notary Public

STATE OF VIRGINIA
CITY/COUNTY OF Harrisonburg, to wit:

B 2574P534

1st The foregoing instrument was acknowledged before me in the jurisdiction aforesaid this day of November, 2004, by Martha F. Smith.

My commission expires: 10-31-2008

Sue Ellen Helgeson
Notary Public

COMMONWEALTH OF VIRGINIA
CITY/COUNTY OF Harrisonburg, to wit:

2nd The foregoing instrument was acknowledged before me in the jurisdiction aforesaid this day of November, 2004, by Donald E. Showalter, Sole Acting Trustee.

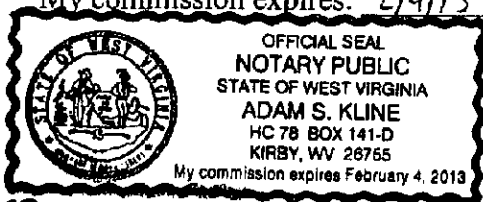
My commission expires: 10-31-2008

Sue Ellen Helgeson
Notary Public

STATE OF WEST VIRGINIA
CITY/COUNTY OF Hardy, to wit:

1st The foregoing instrument was acknowledged before me in the jurisdiction aforesaid this day of November, 2004, by Larry S. Kessel who is Vice President of First United Bank & Trust, on behalf of the bank.

My commission expires: 2/4/13



W.D. K.
Notary Public

DES/sew
42206-20003872

036103

VIRGINIA: In the Clerk's Office of the Circuit Court of Rockingham County
The foregoing instrument was this day presented in the office aforesaid, and is
together with the certificate of acknowledgement annexed, admitted to record this
2 day of NOVEMBER, 2004 at 4:22P M. I certify that
taxes were paid when applicable:

8
Sec. 58-54 - State _____ County _____ City _____
Sec. 58-54.1 - State _____ County _____ City _____ Transfer _____
Recording 21.00 Copies 4.00 TESTE

L. WAYNE HARPER
CLERK 25a

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