

COPY

DECLARATION OF RESERVATIONS, EASEMENTS AND
RESTRICTIVE COVENANTS

LODGES AT BUFFALO GAP - PHASE II ONLY

THIS DECLARATION made on this the 8th day of July, 2009, by B. K. HAYNES CORPORATION, a Virginia Corporation authorized to do business in the State of West Virginia, its successors and assigns ("Developer" also referred to as "Declarant").

WITNESSETH

WHEREAS, Developer is the owner of the real property described in Article II of this Declaration and desires to create thereon a community of residential, residential-rental, vacation, camping and recreational type properties with Roads for the benefit of said community; and

WHEREAS, Developer desires to provide for the preservation of the values in said community and for the maintenance, including snow removal, of all Roads, and to this end, desires to subject the real property described in said Article II to the covenants, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of said property and each Owner thereof; and

WHEREAS, Developer has deemed it desirable for the efficient preservation of the values and amenities in said community to create an agency to which should be delegated and assigned the powers of maintaining and administering the community program and facilities, and administering and enforcing the covenants and restrictions, and collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, Developer will incorporate under the laws of the State of West Virginia as a non-profit, nonstock corporation, for the purpose of exercising the functions aforesaid; and

WHEREAS, Developer discloses that this Declaration pertains to Phase II of the Lodges at Buffalo Gap, which consists of Lots 16-21; while these Lots have been created and subdivided from a larger tract of real estate which has a common source of title with Lots Nos. 1-15, i.e. Phase I of the Lodges at Buffalo Gap, Phase II shall have a separate Property Owners Association "Association"

consisting only of the Owners of Lots in Phase II; furthermore, the Owners of Phase II shall have no rights to use the amenities and common areas provided for Phase I Owners of Lodges at Buffalo Gap; and furthermore, and the Developer makes no express or implied promise that the Declaration and Protective Covenants promulgated for Lots Nos. 1-15 of the Lodges at Buffalo Gap will be the same as or similar to the present Declaration promulgated by the Developer for the Owners of Lots in Phase II of Lodges at Buffalo Gap— Other than a common chain of title, Phase I and Phase II of Lodges at Buffalo Gap are separate and distinct, stand alone communities.

NOW, THEREFORE, the Developer declares that the real property described in Article II hereunder is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens (sometimes referred to herein as the “Covenants and Restrictions”) hereinafter set forth.

ARTICLE I DEFINITIONS

The following words when used in this Declaration or any Supplemental Declaration (unless the context shall prohibit) shall have the following meanings:

A. “Association” shall mean and refer to Property Owners Association, created and organized by the by the Developer for the purposes set forth herein.

B. “The Properties” or “The Property” shall mean and refer to the Lots in Phase II, i.e. Nos. 16-21 of the Lodges at Buffalo Gap. “The Property” may also be referred to as the “Existing Property” or the “Existing Properties”. In the event a Supplemental Declaration is subsequently published pursuant to this Declaration, as described in Article II, Section I, this Declaration shall include any additional properties to which this Declaration may be extended to include

C. “Lot” shall mean and refer to any numbered tract or plot of land as shown upon any recorded subdivision plat of The Property. The Property refers to Phase II Lots Only – i.e. Lots Nos. 16-21. . Under no circumstances shall “Lot” be deemed to apply to a “Lot” in Phase I. This Declaration applies only to the Property located in Phase II, presently Lots 16-21.

D. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot situated upon the Property but, notwithstanding any applicable theory of mortgage law, shall not mean or refer to the mortgagee unless such mortgagee has acquired title pursuant to foreclosure or proceedings in lieu of foreclosure. Under no circumstances shall "Owner" be deemed to apply to an "Owner of a Phase I Lot. This Declaration applies only to the Property located in Phase II, presently Lots 16-21.

E. "Member" shall mean and refer to all those Owners who are or become members of the Association as provided for in Article III, Section 1, hereof. "Member" applies only to Owners of Lots in Phase II - Phase I is not a part of this Declaration.

G. "Plat of Survey" or "Plats of Survey" refers to the recorded Plats of Survey of the Existing Property which plat(s) of survey are further described below. This Declaration applies only to the Lots in Phase II of the Lodges at Buffalo Gap.

ARTICLE II PROPERTIES SUBJECT TO THIS DECLARATION

Section 1. Lot. The real property which is and shall be, held, transferred, sold conveyed and occupied subject to this Declaration is located in Bloomery District of Hampshire County, West Virginia, and is more particularly described as follows:

Lots 16 through and including 21, Lodges At Buffalo Gap. Phase II, as are more fully shown upon the aforesaid mentioned Plat of Survey prepared by R & Services, Inc., dated October 28, 2008, and signed by Rickie C. Davy, P. S., on June 29th and recorded in the Hampshire County Clerk's Office in the Plat Books contemporaneously with or immediately prior to the recordation of this Declaration.

EXCLUDED FROM THIS DECLARATION ARE ALL OF THE LOTS, AMENITIES, COMMON AREAS AND FACILITIES LOCATED IN PHASE ONE OF LODGES AT BUFFALO GAP.

Phase I of Lodges at Buffalo Gap shares a common source of title and is being simultaneously developed by B. K. Haynes Corporation, but the Developer makes no promise to the Owners of Lots

in Phase II that Phase I Lots will be developed with a common scheme of covenants.

AND BEING part of the same real estate conveyed unto B. K. Haynes Corporation, by Deed dated December 16, 2005, and of record in the Office of the Clerk of the County Commission of Hampshire County, West Virginia in Deed Book No. 450, Page No. 611.

The Properties subject to this Declaration include only the Road and rights of way for ingress and egress that are described on the Plat of Survey, i.e. Dark Tree Trail.

Section 2. Additions To Existing Property. Additional land may become subject to this Declaration in the following manner:

A. OTHER ADDITIONS WITH CONSENT: Additional property and common areas may be annexed to the Existing Property with the consent of a majority of each class pursuant to a vote of the Association's Members.

B. SUPPLEMENTARY DECLARATION: The additions authorized under the preceding subsection shall be made by filing of record a Supplementary Declaration of Covenants and Restrictions with respect to the additional property, which shall extend the scheme of the covenants and Restrictions of this Declaration to such property. Such Supplementary Declaration may contain such complimentary additions and modifications to the Covenants and Restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added properties and as are not inconsistent with the scheme of this Declaration. In no event, however, shall such Supplementary Declaration revoke, modify, or add to the Covenants established by this Declaration with The Existing Property after final conveyance by the Developer.

D. MERGERS: Upon merger or a consolidation of the Association with another Association as provided in the Articles of Incorporation, the properties, rights and obligations of Owners of Lots in Phase II of the Lodges at Buffalo Gap Property Owner, may, by operation of law, be transferred to another surviving or consolidated association, or alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Association created pursuant to this Declaration as a surviving corporation pursuant to a merger. The

surviving or consolidated association shall administer the Covenants and Restrictions established by this Declaration and Supplemental Declaration for The Existing Property, together with the covenants and restrictions established upon any other properties, as one scheme. No such merger or consolidation, however, shall effect any revocation, change, or addition to the covenants established by the Declaration(s) within The Existing Property, except as hereinafter provided. Any such proposed merger or consolidation shall be approved by at least sixty percent (60%) of the Owners of Lots in the Existing Property.

ARTICLE III MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 1. Membership. Every person or entity who is a record Owner of a fee, or undivided fee, interest in any Lot which is subject by covenants of record to assessment by the Association shall be a Member of the Association, provided that any such person or entity who holds such interest merely as a security for the performance of an obligation shall not be a Member, and further provided that the Developer, without regard to the assessments required as set forth herein, shall be entitled to one membership for each Lot for which it is a record Owner of a fee interest.

Section 2. Voting Rights. The Association shall have two classes of voting membership which shall, except for the distinctions set forth herein, be equal in all respects.

Class A. Class A members shall be the Owners as defined in Section 1, above, with the exception of the Developer. Class A Members shall be entitled to one vote for each Lot in which they hold the interests required for membership by Section 1. When more than one person holds such interest or interests in any Lot, such persons shall be members, and the vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any such Lot.

Class B. Class B membership shall be limited to the Developer. The Class B Members shall be entitled to three votes for each Lot in which it holds the interest required for membership by Section 1. The Class B membership shall cease when the Developer owns no more Lots in the Existing Property. If the Developer sells, transfers and conveys a Lot but later reacquires that Lot, the

further transfer and assign easements to utilities. The Developer also reserves the right to grant and convey utility easements over unsold Lots if the Developer determines that it is necessary to do so in order to provide utility service to one or more Lots. Developer may permit the use of the Roads by purchasers or potential purchasers at Developer's discretion.

Section 2. Extent of Member's Easements. The rights and easements of enjoyment created hereby shall be subject to the right of the Association to dedicate or transfer the maintenance responsibilities for the Roads to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members upon the favorable vote of sixty per cent (60%) of the Owners of the Lots.

ARTICLE V. COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Except the Developer and the Owners of Lots not subject to maintenance assessments under Section 9(d) herein, each Owner of a Lot in The Existing Property, by acceptance of a Deed therefor, whether or not it shall be so expressed in any such Deed or other conveyance, shall be deemed to covenant and agree to pay to the Association the annual assessment to be fixed, established, and collected from time to time as hereinafter provided. The annual assessments, together with such interest thereon and costs of collection thereof, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with legal interest thereon and the cost of collection thereof, shall also be the personal obligation of each person who was the owner of such property at the time when the assessment fell due. Nothing herein shall be construed as requiring the Developer to maintain the Roads after Developer ceases to own the same, and in consideration of the initial construction, said Developer shall be exempt from collection of assessments regardless of the number of Lots owned by Developer.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the health, safety, and welfare of the Owners of real estate within the Existing Property and the improvement and maintenance of Roads devoted to this purpose.

Such levies may be expended specifically to include, but are not limited to, the payment of taxes, insurance and such other purposes as may be set forth in the Articles of Incorporation and the By-Laws of the Association. Fees for permits with the Department of Natural Resources, if required, shall be paid by the Association. The Association shall obtain and keep current the insurance required by West Virginia Code 36B-3-113, as amended.

Section 3. Basis and Maximum of Annual Assessments. The maximum annual assessment shall be \$300.00 per assessed Lot, in accordance with the West Virginia Code 36 B-1-203 (2) (1994), as adjusted pursuant to West Virginia Code 36B-1-114 as amended, except that the maximum assessment for Lot 16 shall be \$150.00. The initial assessment set by the Developer is the maximum assessment allowed by law, i.e., \$300.00 for Lots 17-21, and \$150.00 for Lot 16. The assessment may be reduced annually by a vote of the Members as hereinafter provided. Lots 17-21 shall always pay an assessment at a 2:1 ratio vis a vis Lot 16. The officers and Board of Directors of the Association shall at all times maintain and operate the Association on a non-profit basis. Unless otherwise provided herein or in the Association articles and bylaws, any change in assessments shall have the assent of a majority of the votes of each class of members who are voting in person or by proxy at a regular or duly called special meeting pursuant to the advancement of provisions contained in the Association documents aforesaid.

Section 4. Date of Commencement of Annual Assessments. The annual assessments provided for herein shall be on a calendar year basis, due and payable by the first business day in January annually. Lot owners purchasing from Developer will be responsible for payment at closing of the assessment pro-rated to the end of the year in which they purchase, at the initial rate of Three Hundred Dollars (\$300.00) annually (Lot 16 pays a maximum of \$150.00). Such pro-rated assessments may be utilized by Developer for the maintenance during the ownership period, and Developer shall enjoy all remedies of the Association in the event of non-payment of the assessment by Lot Owners.

Assessments paid to the Developer shall be held in a non- interest-bearing bank account and unused funds shall be transferred to the Association upon its initial elections of officers comprised of Owners

at the time the initial Directors of the Association resign. Subject to other conditions herein, the meeting for elections may be held at the Developer's discretion. At the meeting, the Developer will assign responsibility for the Roads to the Association. The Association shall accept such Assignment and the ownership of said Roads at that time, provided however that Developer shall not deed the Roads to the Association nor organize initial elections from the Owners of Lots therein until the Roads have been completed in accordance with County specification in Hampshire County.

Section 5. Assessment Certificates. The Association shall upon demand at any time furnish to any Owner liable for said assessments a certificate in writing signed by a duly authorized officer of the Association, setting forth whether said assessment has been paid. Such certification so stating shall be conclusive evidence of the payment of any assessment therein stated to have been paid.

Section 6. Assessment as Personal Obligation of the Owner. If an assessment is not paid on the date when due as aforesaid, such assessment shall become delinquent and shall, together with such interest thereon and cost of collection thereof, become a continuing lien on the Lot of the then Owner, his heirs, devisees, personal representatives and assigns. If not reduced to a lien as hereinafter provided, the personal obligation of the then Owner to pay such assessment shall remain his personal obligation for the statutory period and shall not pass to his successors in title unless expressly assumed by them.

Section 7. Remedies of the Association. If the assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest from the date of delinquency at the highest legal rate. The Association or any Owner may bring an action at law against the payor personally obligated to pay the same, and there shall be added to the amount of such assessment the costs of preparing and filing the complaint in such action, and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and a reasonable attorney fee to be fixed by the Court together with the costs of the action. In addition, the Association may file a lien attaching the Lot of the non-paying Owner without first obtaining judgment.

Section 8. Subordination of the Lien to Mortgages. The lien of the assessments provided for

herein shall be subordinate to the lien of any mortgage or mortgages now or hereafter filed; provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of such property pursuant to a decree of foreclosure, or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve such Lot from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessment.

Section 9. Exempt Property. Notwithstanding anything herein to the contrary, the following special properties subject to this Declaration shall be exempted from the assessments, charges and liens created herein:

- (a) all priorities to extent of any easement or other interest therein dedicated and accepted by a public authority and devoted to public use;
- (b) all properties exempted from taxation by the laws of the State of West Virginia, upon the terms and to the extent of such legal exemption;
- (c) all properties owned by Developers during the period of Developer ownership only, whether during initial, original ownership or pursuant to foreclosure or proceeding in lieu of foreclosure, and

ARTICLE VI SETBACKS

Setbacks are provided for on the Plat of Survey. Reference is made to the Plat of Survey and the Notes prepared by the Surveyor, including but not limited to Notes C and L. No building shall be constructed in the setback area. Existing buildings and fixtures which encroach into the setback are grandfathered.

ARTICLE VII UTILITY EASEMENTS

The Developer reserves unto itself, its successors and assigns, an easement to construct and maintain all utility and electric lines, or to grant rights-of-way therefore, with the right of ingress and egress for purpose of installing or maintaining the same over, under and through the strips of land

designated on the Plat of Survey for utility easements. Reference is made to the Plat of Survey and the surveyor's notes for a description of the area of land reserved for utility purposes, including but not limited to Notes D and L. Such utility easements are to include, but are not limited to, telephone or electric light poles, conduits, equipment, sewer, gas and water lines. Note: By making this reservation for utility easement, Developer is not agreeing to physically install, construct the utilities. Developer will convey each Lot with finished road, as is, where is, and the Owner is responsible to arrange for the further installation of utility service to his property. The only utility service presently available to this rural real estate is electric service. Each Owner shall have a separate duty to arrange for the installation of his septic system and water well and must comply with this Declaration and all applicable laws and regulations. Any Owner placing structures, plantings or improvements or other materials within the aforesaid easements undertakes any interference with the utility easements at his or her own risk and is deemed to waive any and release any and all parties from any and all claims or damages to said improvements if and when maintenance or other work is performed within the easement area. The Road right of way has been designated on the Plat of Survey, and reference is made thereto for any and all pertinent purposes. Provided however, any existing buildings or fixtures which are presently in being and which may encroach into an area designated for utility easements are grandfathered and shall take precedence over the utility easement, and no utility shall be installed or constructed so as to deleteriously affect a pre-existing fixture situate within the easement area.

While no guarantees of the nature or type of further subdivision of Phase I of the Lodges at Buffalo Gap have been made to the Owners of Phase II, the Developer does covenant that a nonexclusive utility easement has been reserved in the setback area of the dividing lines between Lots 15 and 14 of Phase I of the Lodges at Buffalo Gap for the benefit of the Owners of Phase I and to allow the electric utility line(s) to be extended across Rubenstein Road to the Existing Property (i.e. Phase II).

ARTICLE VIII
RESIDENTIAL AND AREA USE

All Lots shall be used for residential, recreational, and camping purposes only, With respect

to all other Lots, one single family house or residence with not less than 700 square feet minimum total area, exclusive of porch, basement and garage or outbuilding may be constructed on each Lot. In addition to one residence, a separate guesthouse may also be constructed on a Lot if the applicable state, federal and county regulations will allow this. A guesthouse is subject to the same minimum square footage requirement. If applicable subdivision ordinance allows it, a Lot may be subdivided one time to allow creation of a separate Lot for a family member. Any Lot further created by this limited exception to the subdivision control ordinance shall be part of the Property and subject to this Declaration and shall pay the same Assessment annually as its mother lot is assessed with paying. (i.e., if a family lot is created from Lot 16, for example, it would pay a separate \$150.00 maximum assessment per annum if created from any of the other lots, the family lot would pay a maximum of \$300.00 per annum— provided however, a family lot created pursuant to this limited exception shall be a NONVOTING member of the Association, as the voting rights shall reside permanently with the mother lot). **Note: soil percolation tests and septic fields located on the plat of survey support one three bedroom house, nothing more.** It is further understood:

- (a) All exterior construction must be completed and closed within one (1) year of the commencement date of excavation. All dwellings shall have an enclosed permanent foundation.
- (b) There shall be no single-wide or double-wide mobile homes (as they are defined in West Virginia Code 37-1502), house trailers, or buses situate on any Lot as a residence or for the storage of materials therein, either temporarily or permanently. (Campers are not prohibited so long as they are licensed and in operating condition)
- (c) Improvements and construction for the maintenance of animals shall be kept in good repair, shall be constructed of new materials and must conform generally in appearance with any dwelling upon a Lot, although such improvements need not be constructed of materials identical to an existing

dwelling. No such improvements shall precede the construction of the dwelling. Each Lot Owner shall maintain any such improvements placed upon any Lot and no unsightly or dilapidated buildings or other structures shall be permitted on any Lot.

ARTICLE IX SEWAGE and JUNK

No dwelling shall be erected or maintained on any Lot unless there is constructed with it a septic system for disposal of sewage, which must be approved by the West Virginia Division of Health. No outside toilet or closet shall be erected on any Lot. Junk, inoperative or unlicensed vehicles may not be stored or kept on any Lot unless housed in a garage of the type described above.

ARTICLE X PARKING

No automobiles or other motor vehicles shall be parked in the rights-of-way or roads of the subdivision, and no on-street parking is permitted by Lot Owners. Visitors, guests, delivery vehicles, service vehicles, or others legitimately using said roads and streets are excepted and are permitted to temporarily park along said streets.

ARTICLE XI ADVERTISING AND SIGNAGE

No advertising signs or billboards of any nature shall be erected, placed or maintained on any Lot, with the exception of address, identification signs, builders' job location signs and real estate signs offering the premises for sale, none of which exceptions shall exceed four square feet (4') in size. Developer, or the Association, shall have the right to construct a subdivision entrance sign and place it on Lot 16 at a location to be agreed upon. Once constructed, it shall remain erected on the Lot upon which it is situate. If the Developer or its assigns constructs an entrance sign before Lot 16 is sold and transferred to an Owner, the Owner takes subject to the existing signage as located by the Developer or its assigns. The Association shall repair and maintain such signs and shall have the right to enter upon The Existing Property to which the same is affixed as is reasonably necessary for

maintenance. .

ARTICLE XII AGRICULTURE

No swine, livestock, horses or poultry shall be raised, bred or kept on any Lot for commercial purposes, but household pets, such as dogs and cats, may be kept provided they are not permitted to run at large so as to become an annoyance to other Lot Owners and further provided that they are not bred or maintained for commercial purposes. With suitable facilities and proper fencing, swine, poultry, horses and livestock shall be permitted on Lots for personal use, provided at least one acre per each grazing animal (i.e. livestock and horses) is fenced for the maintenance of said animal. No more than twenty (20) individual fowl may be kept on any single Lot at any one time.

ARTICLE XIII HUNTING AND TRAPPING

Hunting and Trapping is authorized and allowed, so long as Hunting and Trapping is done in compliance with all applicable laws. Each Owner has the duty of inquiry into applicable laws and regulations pertaining to discharge of firearms, hunting and trapping.

ARTICLE XIV COMMERCIAL USE

No Lot shall be used for commercial purposes, save that Lots may be utilized for in-home occupations although no signs or advertisements thereof will be permitted within The Existing Property. While business invitees thereof all have use of the Roads, such use shall be for ingress and egress only. Such in-home occupational use shall not be permitted to become a nuisance to other Lot Owners.

ARTICLE XV NUISANCE

No noxious, noisy or offensive activity shall be carried on within The Existing Property, nor shall anything be done therein which may be or which may become an annoyance or nuisance to the neighborhood. No toxic or hazardous materials shall be produced or stored within The Existing Property at any time.

ARTICLE XVI
WASTE

No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage, or other waste shall not be kept except in sanitary containers. All incinerators and other equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition. All Lots shall be kept free and clear of trash and rubbish at all times and shall be kept mown, and no salvage or junk yard operations are permitted within The Existing Property. The Association shall ensure that trash collection is provided to each Lot regardless of whether the Lot is occupied, and trash collection charges shall be collectable from Lot Owners not complying with the sanitation requirements of the covenants in addition to the assessment set forth herein. The lien procedure available for delinquent payments shall be utilized in order to ensure the non-accumulation of waste in The Existing Property.

ARTICLE XVII
RECREATION USE

No trail bikes, mini-bikes or similar all terrain vehicles, or snowmobiles shall be permitted to be driven upon the roads within The Existing Property unless duly licensed, with mufflers, and then only for ingress and egress. Joy riding of trail bikes, mini-bikes, and all terrain vehicles is prohibited.

ARTICLE XVIII
CAMPING

Temporary camping is permitted upon the Lots. Only equipment professionally manufactured for the purpose, such as tents, travel trailers/campers and recreational vehicles, are permitted for use as camping shelters.

ARTICLE XIX
SWALE AND DRAINAGE AREAS

All drainage patterns and swale areas shown on the plat across Lots within The Existing Property are reserved and shall not be disturbed, barricaded or filled.

ARTICLE XX
HIKING & HORSEBACK RIDING EASEMENT

The Owners of the Existing Property (i.e. Lots 16-21), their guests and invitees, and their heirs and assigns, are granted an easement over Dark Tree Trail including the Cul de Sac for purposes of horseback riding, mountain bike riding, and hiking. Dark Tree Trail is the Road which provides the sole means of ingress and egress to Lots 17-21, and each Owner, his guest and invitees, who uses Dark Tree Trail for other than motor vehicle access to his Lot assumes the risk associated therewith.

ARTICLE XXI FURTHER SUBDIVISION OF LOTS

Further subdivision of Lots is prohibited, except that Article VIII is incorporated by reference, which provides for the further subdivision of a lot one time to create a "family" or "family member" lot if allowed by the Hampshire County Subdivision Control Ordinance in effect at the time the request would be made to do so.

ARTICLE XXII AMENDMENT OF DECLARATION

After the Developer has sold, transferred and conveyed all twenty one Lots and on or after January 1, 2011, the Owners may, by two-third (2/3) vote of all of the owners, amend this Declaration, provided no easement provided for herein may be canceled or annulled unless all of the Owners agree thereto.

ARTICLE XXIII MISCELLANEOUS PROVISIONS

1. All Lots have been pre-perked and approved for three (3) bedroom homes, nothing more.
2. Developer discloses that a neighbor who owns real estate near the Existing Property operates a shooting range. The Lots located in Buffalo Gap are conveyed subject to this disclosure.
3. The Association shall obtain and maintain liability insurance to protect it from liability arising the ownership, maintenance and use of the Roads. The cost of insurance may be paid from the assessment or may be separately assessed to the Owners, and payment of insurance shall be treated the same as an Assessment and is enforceable in the manner set forth in Article Five.
4. The Association is responsible for road maintenance of Dark Tree Trail and the signage.

5. Each Lot comes with a perked location which is approved for a three bedroom home. The Developer does not guarantee or warrant that any Lot will contain a second perk site which will support a guest house or other more intensive use of a Lot.

6. Any person purchasing two or more adjacent Lots may elect to merge those Lots into one unit. In such case, the proposed merger shall be presented to the Association, which shall approve the plat of survey, and a Supplementary Declaration shall be published which details the changes made to the setbacks. No merger shall operate to curtail the right guaranteed or provided to any other Owner pursuant to this Declaration. A merged lot shall retain the original number of votes provided for by this Declaration, i.e. merger of two lots to one will yield two votes notwithstanding the merger. Upon merger of two lots into one Lot, the Owner shall thereafter pay one annual assessment so long as the merged or successor Lot is used for one residence. Provided however no addition reduction of assessment will be allowed for larger mergers, i.e. a merger of three Lots into one Lot would still require an annual assessment to be paid for two lots (under this example, there would be three votes and three memberships in the Association),

7. Owners of Lots may make minor boundary adjustments between themselves. However, before doing so, they should apply to the Association for approval to do so, and upon approval being granted (and approval shall not be unreasonably withheld), a plat of survey shall be published and recorded. A Supplementary Declaration shall also be published and recorded which merges the area exchanged into the mother Lot and subjects it to this Declaration in all respects.

8. The Plat of Survey (Note N) discloses the present of buried wood stumps). This is a no-building designated area.

9. The harvesting, cutting, removal and pruning of trees is allowed. All Lots may be suitably cleared to the extent necessary to provide for the construction of a residence and other fixtures and facilities necessary to the enjoyment of a Lot for the uses authorized by this Declaration. Provided however, the Existing Property is a wooded property, and the forest provides part of the natural beauty of a wild and primitive subdivision located on a rural secondary road. Therefore, no Owner shall clear

cut the forest or remove substantially all of the trees from his Lot.

10. Reference is made to the Surveyor's Notes on the Plat of Survey, i.e. A through P, which are incorporated herein by reference, and are made a part of this Declaration the same as if they were contained in the four corners of the Declaration.

ARTICLE XIV
VIOLATIONS

In the event of violations or the Association's enforcement of any of the covenants and restrictions applying to The Existing Property, the costs and expenses attendant thereto shall be paid by the violator as part of any judgment or remedy obtained. The Association or any individual Owner has the right to bring suit to enforce this Declaration. Invalidation of one or more of these provisions shall not invalidate this Declaration.

Witness the following signature and seal of B. K. Haynes Corporation, A Virginia Corporation doing business in West Virginia, executed and dated on the date set forth in the notary acknowledgment below.

B. K. HAYNES CORPORATION

BY: _____

ITS PRESIDENT

STATE OF WEST VIRGINIA

COUNTY OF HARDY, TO-WIT:

The foregoing instrument was acknowledged before me, this the 8th day of July, 2009, by B. K. Haynes, President of B. K. Haynes Corporation.

My Commission Expires Nov. 17, 2016.

NOTARY PUBLIC

PREPARED BY:

Oscar M. Bean, Attorney at Law
116 Washington St., PO Dr. 30
Moorefield, W. Va. 26836
304 530 6198; fax: 304 530 7155

