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B. K. Roy 41st Va.
501 RYAL AVE
Front

LODGES AT BUFFALO GAP - PHASE I

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 and Other Common Facilities for the benefit of said community; and

WHEREAS, Developer desires to provide for the preservation of the values and amenities in said community and for the maintenance, including snow removal, of all Roads and Other Common Facilities (as hereinafter defined), 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, The Lodges At Buffalo Gap Property Owners Association (or some similar name) for the purpose of exercising the functions aforesaid.

WHEREAS, Developer makes and publishes this Declaration for the benefit of Phase I of the Lodges at Buffalo Gap; this Declaration does not apply to Phase II, even though Phase II has a

common source of title; and the Owners of Lots in Phase II shall have no rights to use the common areas or amenities in Phase I, and further, no promise, expressed or implied, is made regarding the scheme of protective covenants which the Developer will create for Phase II of the Lodges at Buffalo Gap.

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 The Lodges At Buffalo Gap Property Owners Association, Inc., (or a similarly named corporation created for the purposes set forth herein).
- B. "The Properties" shall mean and refer to all such existing properties as are subject to this Declaration, or any supplemental Declaration, as described in Article II, Section I. "Existing Property" shall have the same meaning herein as "The Properties".
- C. "Roads and Other Common Facilities" shall mean the areas of land shown on any recorded subdivision plat(s) of The Properties which are intended to be devoted to the common use of the owners of The Properties and include any "Common Area(s)" as labeled on said plat(s)..
- D. "Lot" shall mean and refer to any numbered tract or plot of land, except a Common Area as shown upon any recorded subdivision plat of The Properties.
- E. "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 Properties 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.
- F. "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.

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.

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:

1) Lots 1 through and including 15, Lodges At Buffalo Gap. Phase I, as are more fully shown upon the aforesaid mentioned Plat of Survey prepared by R & S Services, Inc., dated October 28, 2008, signed on June __, 2009, and recorded in the Hampshire County Clerk's Office

2) Fee Simple Interest in 3.775 acres of Common Area, as more fully shown upon a Plat of Survey thereof prepared by R & S Services, Inc., dated October 28, 2008, and recorded in the Office of the Clerk of the County Commission of Hampshire County, West Virginia in Plat Book No. 11, Page No. 145 including any subsequent re-plats or re-surveys thereof.

3) Easement in 3.085 acres for recreational lake, being a part of Lot 5; as more fully shown upon a Plat of Survey thereof prepared by R & S Services, Inc., dated October 28, 2008, and recorded in the Office of the Clerk of the County Commission of Hampshire County, West Virginia in Plat Book No. 11, Page No. 145 including any subsequent re-plats or re-surveys thereof. Particular reference is made to Note M on said Plat.

4) Easement in 1.042 acres to provide for drainage from spring to pond (which is a water source for the recreational lake) and Cold Stream, said 1.042 acres being a part of Lot 6; as more fully shown upon a Plat of Survey thereof prepared by R & S Services, Inc., dated October 28, 2008, and recorded in the Office of the Clerk of the County Commission of Hampshire County, West Virginia in Plat Book No. 11, Page No. 145 including any subsequent re-plats or re-surveys thereof.

AND BEING 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, all of which real property shall hereafter be referred to as "Existing Property."

The Properties subject to this Declaration include only the Roads and rights of way for ingress and egress that are described on the Plat of Survey.

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 Lodges at Buffalo Gap Property Owners Association, Inc., 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 Lodges at Buffalo Gap Property Owners Association, Inc., 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%).

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 Developer shall, as to that Lot which he re-acquired, be a Class A Owner even if the Developer then owns other Lots in the Existing Property.

Section 3. Members' Voting Rights Subject To Assessment. Each Member's right to vote is subject

to that Member's good standing with the Association. Every Member of the Association shall ensure that any assessment due for each Lot owned is current with the Association. In the event of a default continuing in excess of two months from the due date of an annual assessment, delinquent payers or Members shall automatically be prohibited from voting privileges on issues exclusively concerning monetary expenditures. Voting privileges shall be reinstated upon delinquent assessments being brought current with the Association, which assessments may then include statutory interest due for the period of default. Delinquent Members must apply to the Association Board of Directors for reinstatement, and the Association Minutes shall reflect the default and reinstatement by the Board. The Association also has the right to attach a lien to any Lot to cover overdue assessments, and this section shall be liberally construed to authorize the Association to pursue any other legal remedy against a delinquent Lot Owner.

ARTICLE IV
PROPERTY RIGHTS IN THE COMMON PROPERTIES

Section 1. Members' Easements of Enjoyment. Every Member of the Association, including Developer, its employees and assigns, shall have a right and easement of enjoyment in and to the Roads and Other Common Facilities. A right of use of same and like easement shall be appurtenant to and shall pass with the title to every Lot; Developer reserves an easement to maintain sales offices within the Existing Property, and to erect sale signs within the Existing Property in locations chosen by the Developer. While Developer has completed installation of the Roads and conveys the property with existing utilities, the Developer reserves a utility easement over the Existing Property in the locations provided for in Article VII, and Developer reserves the right to further execute and assign an easement to such Utilities as may need the use thereof. After Developer has sold and conveyed all of its Lots and is no longer an Owner, the Association shall, by virtue of this Declaration, assume the Developer's right to 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 and Other Common Facilities 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 and Other Common Facilities 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 and Other Common Facilities or any Lots 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, the improvement and maintenance of Roads, and Other common Facilities devoted to this purpose and related to the use and enjoyment of the common facilities. Such levies may be expended specifically to include, but are not limited to, the payment of taxes, insurance and expenses for utilities on any common facilities, and repair, replacement, and additions thereto, and

for the cost of labor, equipment, materials, management, and supervision thereof, 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. The assessment may be reduced annually by a vote of the Members as hereinafter provided. 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. 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 an 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 execute a Deed to the Association for the Roads and Other Common Facilities and will attend to the prompt recordation thereof in both of

the aforesaid Counties. The Association shall accept such Deed and the ownership of said Roads and Other Common Facilities at that time, provided however that Developer shall not deed the Roads and Other Common Facilities to the Association nor organize initial elections from the Owners of Lots therein until the Roads and Other Common Facilities 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
- (d) all Lots bordering, and using as sole access any State-maintained road; provided, however, that the owners of such Lots shall be members of the Association with all rights and responsibilities appurtenant thereto, but shall not vote on matters of road maintenance, and provided further that assessments or portions thereof levied for other than road maintenance shall remain an obligation of the Owners of such Lots.

ARTICLE VI
SETBACK MINIMUMS

The setbacks are provided for on the Plat of Survey. See Notes on the Plat of Survey.

Existing Buildings, Fixtures, and Facilities are grandfathered and exempt from this paragraph, provided that no Existing Building Fixture, or Facility shall be enlarged so as to further intrude into the setback area.

ARTICLE VII

UTILITY EASEMENTS

The utility easements have been provided for on the Plat of Survey. Reference is made to the Notes on the Plat of Survey for more information as to location of the utility easements. Any Owner placing structures, plantings or improvements or other materials within the aforesaid utility easement 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. Each road right-of-way has been designated on the Plats of Survey, and reference is made thereto for any and all pertinent purposes. Provided however, certain Buildings, Fixtures or Facilities which are presently in being 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 any existing Buildings, Fixtures or Facilities which are situate within the easement area.

ARTICLE VIII
RESIDENTIAL AND AREA USE

All Lots shall be used for residential, recreational, residential-rental, and camping purposes only, except that those Lots which adjoin the H. Rubenstein Road may establish commercial camping businesses if applicable state, federal and county regulation would allow for same. 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. **NOTE: SOIL PERCOLATION TESTS AND SEPTIC FIELDS LOCATED ON THE PLAT OF SURVEY SUPPORT ONE THREE BEDROOM HOUSE, NOTHING MORE.** The existing structures located on the Lots are presently limited by health department approval, and while the historic use of a lot may have provided for a more intensive use of

the property, an Owner must comply with all applicable state and local rules and regulations and may not use a Lot in a way that violates the health laws.

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. The Association may establish and provide for parking in the Common Area if it elects to do so. 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 shall have the right to construct subdivision entrance signs and structures, which shall remain erected on the Lot upon which each is situate. The Association shall repair and maintain such signs and structures, and shall have the right to enter upon The Existing Property on which the same are affixed as is reasonably necessary for maintenance. The Association may provide for the construction and placement of signage in the Common Area (3.775 acres).

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 prohibited in Lots 1-15.

ARTICLE XIV
COMMERCIAL USE

No Lot shall be used for commercial purposes, except as may be authorized by Article VIII (camping for profit may be allowed on Lots fronting on Rubenstein Road IF all applicable state, federal and local regulations are complied with), 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 subdivision 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 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. Provided however, it is understood that this Property was previously used as a campground, and the Developer desires this property to be available to be used for recreational use in connection with the location of homes or second homes. Furthermore not for profit camping is allowed on all lots, and "for profit" camping may be authorized on Lots adjacent to Rubenstein Road if an Owner complies with all applicable laws and regulations. There is a pavilion located on one lot, an old cafeteria on another lot, a gymnasium on another Lot, and the Developer has made provision herein to allow more than one Owner to cooperate with one another, so long as proper application and approval is obtained from the Association and all state, federal and county regulations are complied with, to allow the hosting of social or other events. 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 Properties. 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. All Lots which are contiguous with H. Rubenstein Road and located on the north side thereof may have commercial camp grounds so long as they may be laid out and operated in compliance with all state, federal and county regulations. If a campground is established on a Lot, the Owner shall negotiate an acceptable user fee with the Association before inviting paying campers to use the recreational lake, and if an agreeable user fee cannot be negotiated, the commercial campers shall not be allowed to utilize recreational lake.

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. Permanent easements are

reserved over these natural patterns for storm water runoff. In addition to the foregoing, an Easement in 1.042 acres has been reserved and is one of the Common Areas provided for. This 1.042 acre Easement is intended to provide to provide for drainage from spring to pond (see Plat of Survey), and the Association shall maintain the pond and drainage.

ARTICLE XX
HIKING & HORSEBACK RIDING EASEMENT
WILDLIFE PRESERVATION AREA

The Owners, their guests and invitees, and their heirs and assigns, are granted an easement over Lots 1, 2, 3, 7, 8, 12, and 13, at the locations shown on the Plat of Survey for purposes of horseback riding and hiking. The area included in this easement shall be kept in a natural state. No hunting or trapping is allowed in the easement designated area, as this is an area designated for wildlife preservation. Entrance to the easement area shall be made from the setback areas provided for each of these Lots. Owners of Lots which are subject to this easement must provide a convenient access through the setback area to accommodate access by hikers and horseback riders.

ARTICLE XXI
FURTHER SUBDIVISION OF LOTS

Further subdivision of Lots is prohibited.

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 houses and fixtures are conveyed and transferred "as is". No warranty of availability of intensity of use of existing buildings s made, because each Lot (except as may otherwise be stated and provided for herein) comes with a pre-perked site which will support a three bedroom home, nothing more.

2. Warranties of fitness for a particular purpose are disclaimed.

3. No environmental inspection has been made of any buildings. The Developer does not know and is unaware whether or not there is lead paint or asbestos in any structure.
4. All Lots have been pre-perked and approved for three (3) bedroom homes, nothing more.
5. Provided that the old cafeteria located on Lot 5 has been approved by the sanitarian, and it is a working system. An easement is reserved under Cool Creek Road for the installation and maintenance of a septic system for Lot 10. See the Plat of Survey, and the septic field designated for the existing gymnasium located on Lot 10 must be pumped uphill. The septic system has not been installed or constructed by the Developer. The Owner assumes the duty to further execute all applications which may be required from the Department of Health and to construct and install the system.
6. Developer discloses that a neighbor who owns real estate adjacent to Lot 15 operates a shooting range. The Lots located in Buffalo Gap are conveyed subject to this disclosure.
7. Propane tanks were previously located on each Lot, but have been removed. Any remaining propane tanks are owned by Quaries Gas Company. Underground gas lines were disabled, but left in place. Lot 15 has existing diesel and gasoline tanks, but they are located above ground, and the diesel and gasoline tanks located on Lot 15 convey as part of the Lot to the Owner. They convey as is and where is, and the Owner has the duty of inquiry regarding same and assumes all legal duties in connection with the tank and/or the removal thereof. .
8. A Water Tower/Tank is located on Lot 3. This is a defunct fixture. The Owner of Lot 3 assumes the duty to remove it, if he desires to do so. While an old road provides historic access to this tank for maintenance, this old road crosses Lots 7 & 8 and does NOT convey with Lot 3.
9. The Association may make rules and regulations for the use of the Common Area and Recreational Lake.
10. The Association shall obtain and maintain liability insurance to protect it from liability arising the ownership, maintenance and use of the Roads and Common Facilities. The cost of insurance 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.

11. The Association may, as a part of its rule making, impose and require payment of a user fee to Owners, their guests and invitees.

12. Each Owner, and their guests and invitees, has the right to utilize roadways shown on the Plat of Survey for necessary ingress and egress, and for recreational horseback riding, non-motorized bicycle riding and/or pedestrian use.

13. The Association is responsible for road maintenance of Melody Lane and Cool Creek Road, and the Common Facilities. The Association shall collect the dues annually, and budget for the maintenance of the Common Facilities and Roadways.

14. Lot 15 has a separate entrance from the H. Rubenstein Road, WV Secondary 15/4. - Lots 14 and 11 also front on H. Rubenstein Road and share a joint entrance. This joint entrance is considered a limited common easement for the benefit of the Owners of Lots 14 and 11, and their heirs and assigns, and each of these Owners is bound to one another to pay fifty per cent of the cost of maintaining the entrance.

15. So long as all applicable state, federal and county laws are complied with AND so long as the Association authorizes it by a sixty per cent affirmative vote of both classes of Owners, the Owners of two or more Lots may cooperate with one another and cooperatively lease their premises out. If the recreational lake is going to be used for a special event, the Association may assess a user fee.

16. Intentionally Omitted.

17. The approximate limits of the hundred year flood plain are shown on the Plat of Survey and reference is made thereto for any and all purposes.

18. No central water system conveys with the Existing Property. An old, obsolete water system, which previously served the existing buildings of the Existing Property, has been disabled. Each Owner has the duty to provide for his water by drilling a well or installing a cistern. The existing underground electric utilities were obsolete and have been disabled. These underground

facilities may be removed at the Owner's expense, but entry onto adjacent lots is not authorized to do so. Obsolete water lines may also be removed at an Owner's expense, but entry onto an adjacent Lot is not authorized. A utility easement has been reserved in these covenants for the installation of utilities, and each owner is responsible for the installation of his utilities to his property.

19. 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. The mere presence of a lodge or house, or other improvement does not mean, nor should a buyer conclude, that there is a functioning septic system.

20. Pit privies exist on 15. The pit privy may be used temporarily if it complies with all applicable Health Department regulations. Other than the temporary use provided for Lot 15, the use of pit privies is expressly forbidden by this Declaration.

21. Cross-easements for water, electric, and gas have all been disabled and do not survive. Artifact lines which remain in the ground may be removed by an Owner, but an Owner should not trespass on another lot in doing so.

22. The spring located on Lot 6 has been channeled into the pond and provides water to the recreational lake and Cold Stream. The Owner of Lots 5 and 6, and their heirs and assigns, shall take no action which would divert water from the pond or Cold Stream.

23. The water from the pond and the recreational lake run into Cold Stream, and therefore the Association shall not administer chemicals to the pond or recreational lake without inquiring of the applicable government agencies and obtaining permission before doing so. Risk of inquiry is upon the Association. No Owner shall, on his own, administer chemicals into the pond or lake.

24. 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),

25. 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, 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.

26. The private drive on Lot 6 (small part of Lot 5) is a limited common easement for the benefit of allowing ingress and egress to maintain 1.042 acres easement, i.e. which provides for drainage from spring to pond. It is also a private drive for Lots 5 and 6. The Owners of Lots 5 and 6 shall meet from time to time and agree on the necessary cost and maintenance for said private drive. Use by the Owners of the subdivision for other broader purposes is prohibited.

27. The Cottage near the recreational lake on Lot 5 is a private cottage for the benefit of Lot

5.

28. The Well located on Lot 4 is for the sole use of the Owner of Lot 4. The water well is not guaranteed to be a working well. Potability and water quality is disclaimed and not guaranteed. This water well is conveyed "as is".

29. The utilities are shown on the Plat of Survey. Developer discloses that AT&T has an easement referred to on the Plat of Survey, and Allegheny Power Company has an overhead utility easement, also disclosed on the Plat of Survey. There is an underground utility easement in favor of Allegheny Power Company (not shown on the plat of survey) which is in the process of being

abandoned; this underground, now defunct easement runs through Lots 6 and 4.

30. The Plat of Survey discloses certain stump burial areas, and building is prohibited in these areas, all of which are designated on the Plat of Survey. See Lots 11, 9 and 12. See Note N

31. Lot 5 contains what used to be a cafeteria with kitchen. A grease pit is located on Lot 5 which was utilized in connection with the kitchen. The Owner of Lot 5 takes possession of Lot 5 as is and subject to this disclosure.

32. A non-exclusive utility easement is reserved for the benefit of the Owners of Phase I and Phase II of the Lodges at Buffalo Gap, over, across, under and through the setback/utility easement area provided between the division lines of Lots 15 and 14.

32. Reference is made to the Surveyor's Notes on the Plat of Survey, i.e. A through W, which are incorporated herein by reference, and are 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.

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 5th day of July, 2009,

by B. K. Haynes, President of B. K. Haynes Corporation.

My Commission Expires Nov. 17, 2016.

David J. Reid
NOTARY PUBLIC

PREPARED BY:

Oscar M. Bean, Attorney at Law
116 Washington St., PO Dr. 30
Moorefield, W. Va. 26836
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SHARON H LINK
HAMPSHIRE County 12:12:03 PM
Instrument No 119037
Date Recorded 08/14/2009
Document Type C&R
Book-Page 485-444
Recording Fee \$23.00
Additional \$8.00

STATE OF WEST VIRGINIA, Hampshire County Commission Clerk's Office 8/14/09 12:12pm

The foregoing Instrument, together with the certificate of its acknowledgment, was this day presented in said office and admitted to record.

Teste Sharon H. Link Clerk.