

Filed:
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CABIN IN THE FOREST
DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION, made this 8th day of November, 1984,
by B. K. HAYNES CORPORATION, hereinafter referred to as "Declarant":

That, whereas, Declarant is the owner of certain real property in Hampshire County, West Virginia, having acquired the same by deed recorded in Deed Book 273 at Page 608, among the land records of Hampshire County, West Virginia, which is more particularly described as follows: All that certain tract of land which was conveyed to B. K. Haynes Corporation, by the deed mentioned above and containing acres, more or less, as described in said Deeds and located and situate in the Sherman District, Hampshire County, West Virginia.

WHEREAS, The Declarant will convey the said property subject to certain protective covenants, conditions, restrictions, reservations, liens and charges as hereinafter set forth:

NOW THEREFORE, Declarant hereby declares that the property described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants, reservations and conditions, all of which are for the purpose of enhancing and protecting the value and desirability of the real property, and which shall run with the real property, and be binding on all parties having any right, title or interest in the above described property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each and every owner thereof, and shall have the effect of covenants running with the land whether or not specifically referred to in the deeds of conveyance of said lots.

ARTICLE I
DEFINITIONS

1. "Association" shall mean and refer to Cabin in the Forest Property Owners Association, its successors and assigns.
2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot which is a part of the property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.
3. "Property" shall mean and refer to that certain real property described above and such additions thereto as may hereafter be brought within the jurisdiction of the Association.
4. "Lot" shall mean and refer to any numbered or lettered plot of land shown upon any recorded subdivision plat of the Properties.
5. "Declarant" shall mean and refer to B. K. Haynes Corporation, its successors and assigns.
6. "Access" to Short Mountain Public Hunting Area shall mean and refer to that area of land shown on the subdivision plat, as amended from time to time in accordance herewith, as being intended to be devoted to the common use and enjoyment of all the Owners and any lots that may be transferred to the Association for use.

ARTICLE II
MEMBERSHIP AND VOTING RIGHTS

1. Every Owner of a Lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenance to and may not be separated from ownership of any Lot which is subject to assessment.

2. On or before December 31, 1984, or when three-fourths (3/4) of the lots have been sold, whichever occurs first, a Property Owners Association shall be established with membership consisting of the owners (and only the Owners) of each lot in Cabin in the Forest, who shall have one (1) vote per lot owned. The Association shall be governed by the majority vote of the lot owners. A Board of Directors of three (3) to five (5) members shall be elected by the lot owners.

ARTICLE III
COVENANT FOR MAINTENANCE & ASSESSMENTS

1. The Declarant shall assess initially, for each Lot, One Hundred Dollars (\$100.00) per year, for the use, upkeep and maintenance of the rights-of-way within all sections of said Cabin in the Forest and such other common facilities as the said Declarant may provide therein, subject to any increase as provided hereinafter.

2. Any assessment made pursuant to this paragraph, including late fee of Five (\$5.00) Dollars, interest at the rate of ten (10%) percent per annum from the date of delinquency, and reasonable attorney's fees incurred in the collection thereof, shall constitute a lien on this property until paid and all grantees do bind themselves, their heirs, and successors in title to this lien and to the covenants herein written. The lien is expressly inferior and subordinate to any mortgage liens presently or hereafter encumbering the property affected by these protective covenants. This assessment may not be raised by more than a percentage increase not greater than the Cost of Living Index Increase (urban) as published by the Department of Interior, Bureau of Standard. The owner of each Lot, by acceptance of a deed thereto, automatically becomes a member of the Cabin in the Forest Property Owners Association and is deemed to covenant and agree to pay One Hundred Dollars (\$100.00) per lot, per year, beginning January, 1985, and to pay annually thereafter to the Property Owners Association, to be created as hereinafter set forth, an amount determined by the positive vote of owners of at least two-thirds (2/3) of the lots in said subdivision as necessary for the purpose of maintaining all fifty (50) foot wide rights-of-way and the roadways therein shown on the subdivision plat, and any common areas, including the removal of snow and the repairs and improvements of the roadways. During December of each year, beginning December, 1984, the Association shall notify each lot owner, in writing, as to the amount of the lot assessment which shall be due and payable by January 31st. In the event of a resale of one or more parcels in said subdivision, the obligation shall become the obligation of the new owner(s).

If the owner of any lot is in default in the payment of any assessments, including interest and costs of collection, in addition to any other means of collection, the Property Owners Association may bring an action at law against the owner personally obligated to pay same and may also sell the lot involved at a public auction after advertisement once a week for four (4) successive weeks, in some convenient newspaper having general circulation in Hampshire County, and after thirty (30) days written notice mailed to the last known address of said owner. Cost of sale shall be paid from the proceeds of sale before the payment of amount involved. In exchange for Declarant's agreement to maintain said roadways and right-of-way until December 31, 1984, the Declarant shall be exempt from the payment of said annual assessments.

B. K. Haynes Corporation shall be exempt from the payment of road maintenance and common area assessment fees.

If any one owner owns two or more adjoining lots, only one assessment shall be payable so long as two or more adjoining lots are so owned and only one house built by said owner of said lots. If any of said lots is thereafter sold or conveyed or improved by an additional dwelling, it shall be subject to separate assessment of \$100.00.

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ARTICLE IV
USE RESTRICTIONS

1. No signs or advertising of any nature shall be erected or maintained on any lot, except for sale or rental signs for said lot not to exceed six (6) square feet in area (and must comply with the Hampshire County ordinances relating to erection of signs), and except for directional and informational signs of Declarant.
2. No further subdivision is allowed.
3. No owner of any lot shall interfere with the natural drainage of surface water from such lot to the detriment of any other lot. Consequently, in construction of a driveway into any lot, a twelve (12) inch diameter culvert, or larger if necessary, shall be used in constructing the driveway in order to prohibit blockage of natural drainage. No parking is permitted upon any road within the property at any time; and as part of the development of any lot, the Owner shall provide adequate off-road parking for himself and his guest(s).
4. Due to the unsightliness of junk vehicles on lots, no motor vehicle which does not have current license plates or an inspection sticker not more than six (6) months out of date shall be permitted on any lot. House trailers shall be placed on a solid foundation in wooded areas only. Setback lines for trailers shall be 100 feet from the centerline of road unless otherwise approved by Declarant or its assigns. Temporary camping trailers may be placed on any lot provided Hampshire County and West Virginia State laws concerning temporary camping are complied with.
5. No building of a temporary nature shall be erected or placed on any lot except those customarily erected in connection with building operations and in such cases, for period not to exceed eight (8) months.
6. Not more than one single family residence shall be erected on a lot. Permanent residences shall contain a minimum of 320 square feet and seasonal cabins shall contain a minimum of 144 square feet of living area, excluding basement, garage, porch, carport, deck and overhanging eaves. Seasonal cabins shall be placed in wooded areas only, 100 feet from the centerline of any roadway unless otherwise approved by Declarant or its assigns. All exterior construction must be completed and closed in within eight (8) months of the commencement of construction.
7. Each lot shall be used for residential purposes only, and any garage or barn must conform generally in appearance and material with any dwelling on said lot. No portion of any lot may be used as a roadway or right-of-way to any land now owned or hereafter acquired by Declarant, as well as established easements for adjoining land owners.

Notwithstanding the prior paragraph, the following uses are permitted, subject to applicable state and local laws:

 - (a) Home occupations conducted by occupant.
 - (b) Agricultural uses, including incidental uses and the construction of accessory buildings connected with agriculture or the building of a residence, including storage of temporary camping and lawn maintenance equipment.
 - (c) No more than one (1) head of livestock per acre shall be permitted per lot, unless otherwise approved by the Board of Directors of the Property Owners Association.
8. No building shall be erected closer than forty-five (45) feet from the front property line, nor closer than twenty (20) feet to the side or rear property lines, with the exception that where permitted and two or more tracts are used together for the consideration one dwelling, then said twenty (20) feet setback shall apply only to outside lines. Setbacks for trailers and seasonal cottages outlined under #4 and #5.

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9. All sanitation facilities constructed on any lot shall conform with the regulations of the West Virginia and Hampshire County Health Departments.

10. 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 trash, garbage, fuel storage tanks, garden equipment, supplies and stored raw materials must be kept from view of the public. In the event any lot owner shall fail to discharge his aforesaid responsibilities in a manner satisfactory to the Board of Directors of the Property Owners Association upon a two-thirds (2/3) vote of its Board of Directors and after fifteen (15) days notice to the owners the Property Owners Association shall have the right, through its agents and employees, to enter upon said lot and perform necessary maintenance (including mowing and removal of grass over 24" high in the form of hay), repairs and restoration, or to remove any offending material or object. Such action shall not be deemed a trespass, and the cost of same when performed by the Association shall be added to and become a part of the assessment to which such lot is subject.

11. The Declarant reserves unto himself and its assigns, the right to erect, maintain, operate and replace telephone and electric light poles, conduits and related equipment and sewer, gas and water lines and the right to grant easements or rights-of-ways thereof, on, over and under a strip of land twenty (20) foot wide along both sides of the fifty (50) foot wide rights-of-ways, and along all property lines not serving as the centerline for rights-of-ways, in addition to easements reserved by any other instrument duly recorded.

12. Each lot owner shall have the right of ingress and egress from his lot over the rights-of-ways and roadways as shown on the subdivision plat. No part of any lot may be sold or used as a road or right-of-way to any land outside the property without the advance, written permission of Declarant.

13. Reasonable cutting of wood or timber for personal use or for land clearing is permitted. However, no cutting of wood for commercial purposes will be allowed.

14. The use of any motorcycle or motor vehicle without proper noise abatement equipment is prohibited within the subdivision.

15. The Owner shall maintain, repair and restore, as necessary, the exterior of any building or other improvements erected on any Lot owned by him. Owners likewise agree to repair and restore promptly to its prior condition any part of a subdivision road damaged by equipment of Owners or his contractor enroute to or from Owner's Lot. All Lots improved or unimproved, must be maintained by Owner in a neat and orderly condition at all times. No garbage, trash or inoperative vehicle or other debris shall be permitted to accumulate or remain on any Lot. In the event any Owner shall fail to discharge his aforesaid responsibilities in a manner satisfactory to the Declarant or Board of Directors of the Association, upon two-thirds (2/3) votes of the Board of Directors, and after fifteen (15) days notice to the Owner, the Declarant or Board of Directors shall have the right, through its agents and employees, to enter upon said lot and perform necessary maintenance, repairs and restoration, or to remove any offending material or object. Such action shall not be deemed a trespass, and all cost of same when performed by the Declarant or Association shall be added to and become part of the assessment to which such Lot is subject.

16. The access to Short Mountain Public Hunting Area shown on the subdivision plat shall constitute an easement for the use of all property owners and their guests in order that they may enjoy more fully the ecology and natural environment of Cabin in the Forest. Therefore, no permanent structure shall be erected within this zone.

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17. If the parties hereto, or any of them, or their heirs and assigns, shall violate any of the covenants herein, it shall be lawful for any other person or persons owning any real estate situated in said subdivision to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such covenant, either to prevent him or them for so doing or to recover damages or other dues for such violation. Failure to enforce any provision herein contained shall in no way be deemed a waiver of the right to do so hereafter.

18. Invalidity of any one of these covenants by judgment or Court Order, shall in no wise affect any of the other provisions which shall remain in full force and effect.

19. The Association, by a vote of two-thirds (2/3) of its members, may make additional rules, covenants, and restrictions for the use of the Property, which together with the above, may be enforced by fines or other penalties.

ARTICLE V GENERAL PROVISIONS

1. Declarant reserves the right to replat any Lot or Lots prior to delivery of a deed to an original purchaser. Nothing herein shall be construed to prevent Declarant from imposing additional covenants or restrictions on any unsold lot.

2. This property is currently subject to an oil and gas lease dated January 14, 1982, and of record in the Hampshire County Clerk's Office in Deed Book 254 at Page 663, with C. S. Beck, 32 National Transit Bldg., Oil City, PA 16301

WHEREAS, the said B. K. Haynes Corporation desires to and hereby assigns all its undivided interest in said oil and gas lease to all of the lot owners within Cabin in the Forest Subdivision, and to that end, provides as follows:

A. All delay rentals derived from said lease shall be payable to the aforementioned Property Owners Association, to be divided proportionately by the acre to the property owners within Cabin in the Forest subdivision, and

B. Any royalties or other compensation derived from the said oil and gas lease shall be payable to the Property Owners Association, to be distributed proportionately by the acre to the property owners, after first deducting any administrative expenses thereof, and any road maintenance costs exceeding the amount in the then current road maintenance fund.

3. In the event state, local government, and utility, cooperative, declarant or municipality expects or requires the installation of a public utility system within the area of which this is a part, the grantee or grantees, by the acceptance of the Deed, do hereby agree to pay their proportionate share for the cost and expense of the erection, maintenance and operation thereof as the same cost is to be determined by the appropriate authority.

4. All sewage disposal systems constructed on said lots shall conform to the regulations of the appropriate West Virginia Department of Health. Free standing toilets are also subject to the aforementioned requirements and shall be placed in a secluded area whenever possible. No building shall be constructed and no water well shall be drilled on any lot until a sewage disposal permit has been obtained from the West Virginia Sewage Enforcement Office.

5. The Association, or any Owner, shall have the right to enforce, by any proceedings at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges not and hereafter imposed by the provisions of this Declaration. Failure by the Declarant or Association or by any Owner to enforce any provision herein contained shall in no event be deemed a waiver of the right to do so thereafter.

6. Additional property may be annexed to the Property by the Declarant.

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The covenants, restrictions, and other provisions of this Declaration shall run with and bind the land for a term of twenty (20) years from the date this Declaration is recorded, after which they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than ninety (90) percent of the Lot Owners, and thereafter by an instrument signed by not less than seventy-five (75) percent of the Lot Owners.

Invalidation of any of the covenants, restrictions or other provisions of this Declaration by judgment or Court Order shall in no wise affect any other provisions, which shall remain in full force and effect.


Whenever in this Declaration the context so required, the masculine gender includes the feminine and neuter, singular number includes the plural and the plural number includes the singular.

WITNESS the following signatures and corporate seal of B. K. Haynes Corporation which has caused this instrument to be executed and delivered in its corporate name by Bradley K. Haynes, its President, and its corporate seal to be affixed and attested by its Secretary, Betty G. Haynes, this 8th day of November, 1984.

B. K. HAYNES CORPORATION

BY:

BRADLEY K. HAYNES PRESIDENT




BETTY G. HAYNES, SECRETARY

STATE OF VIRGINIA
COUNTY OF WARREN

I, Linda A. Griffey, a Notary Public in and for the State and County aforesaid do hereby certify that Bradley K. Haynes, whose name is signed as President, and Betty G. Haynes, whose name is signed as Secretary of B. K. Haynes Corporation to the foregoing instrument bearing date on the 8th day of November, 1984, have each acknowledged the same before me in my State and County aforesaid and made oath that their signatures and corporate seal were thereto affixed pursuant to due authority.

Given under my hand this 8th day of November, 1984.

My commission expires the 21st day of January, 1985.



Linda A. Griffey
NOTARY PUBLIC

THIS DOCUMENT WAS PREPARED BY JOHN N. McCUNE, ATTORNEY AT LAW, P. O.

BOX 1424, FRONT ROYAL, VIRGINIA, 22630.

STATE OF WEST VIRGINIA, County of Hampshire, to-wit:

Be it remembered that on the 8th day of November, 1984, at 11:29 A M., this Covenants, Restrictions & Conditions was presented in the Clerk's Office of the County Commission of said County and with the certificate thereof annexed, admitted to record.

Attest Nancy C. Keller Clerk
County Commission, Hampshire County, W. Va.