

LIZARD CREEK SUBDIVISION

COPY

DECLARATION

OF

PROTECTIVE COVENANTS AND AGREEMENTS

THIS DECLARATION OF PROTECTIVE COVENANTS AND AGREEMENTS (the "Covenants") made this 30th day of November, 1989, by Robert Clinton Clary, Sr., hereinafter called Developer.

WITNESSETH:

WHEREAS, Developer is the owner of the real property described in Article II of this Declaration and desires to create on this property a residential community with roads and other facilities for the benefit of this community; and

WHEREAS, Developer desires to provide for the preservation of the values and amenities in this community and for the maintenance and operation of any common facilities; and to this end, desires to subject the real property described in Article II to the covenants, restrictions, easements, charges, liens and terms, set forth hereinafter, each and all of which is and are for the benefit of the property and each Owner hereof.

WHEREAS, Developer is incorporating Lizard Creek Association, Inc., a Virginia non-stock, non-profit corporation (the "Association") to which it hereby delegates and assigns the duty and power:

1. To maintain, administer and operate the Common Properties;
2. To administer and enforce the Covenants together with other persons or legal entities who now have, or who may subsequently acquire, ownership of the Property or any portion thereof;
3. To collect and disburse the dues and assessments mentioned in the later provisions of the Covenants; and
4. To perform such other acts and duties as may or might be required, necessary or desired, to the end that the value of the Property and the welfare of the owners and their guests will be promoted, protected and maintained.

NOW, THEREFORE, Developer declares that the real property described in Article II, and such additions to this property as

COPY

may hereafter be made, shall be transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements, charges, liens and terms (sometimes referred to as "Covenants and Restrictions") set forth hereafter.

ARTICLE I

DEFINITIONS

Section 1. Definition of Terms.

The following words, when used in this Declaration or any supplemental declaration (unless the context shall prohibit), shall have the following meaning:

(a) "The Properties" shall mean and refer to all land described herein.

(b) "Common Properties" shall mean and refer to those areas of land designated and/or shown on a map of the subdivision of The Properties which are intended to be devoted to the common use and enjoyment of the Owners of The Properties, including specifically, but not limited to, open spaces, roads, drainage easements and all other common areas and/or facilities.

(c) "Original Lot" shall mean and refer to any plot, tract or lot of land shown upon any original recorded subdivision map of The Properties, with the exception of Common Properties defined above.

(d) "Owner" shall mean and refer to the legal or equitable owner, whether one or more persons or entities, holding any Original Lot, whether such ownership be in fee simple or as land contract vendee, and shall not mean or refer to a mortgagee.

(e) "The Association" shall mean and refer to Lizard Creek Association, Inc., a Virginia Corporation.

(f) "Legal Entities" shall include, but shall not be limited to, corporations, partnerships, associations, churches, governmental agencies, municipalities, counties, states, or the United States of America, or any agency or political subdivision of either.

(g) "Member" shall refer to those association members as provided in Article III, Sections 1 and 2 of these Covenants.

(h) "Set Back Line" shall mean and refer to the building set back line of each Residential Lot shown on the recorded subdivision plat or as provided in Article V, Section 1 of these Covenants.

ARTICLE II

A. PROPERTY SUBJECT TO THIS DECLARATION

The real property which is, and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is particularly described as follows:

1. All those certain lots or parcels of land situate and being in Meherrin Magisterial District, Brunswick County, Virginia, shown on a map made by Crutchfield and Associates, Inc., consisting of two sheets, entitled "Section A, Lizard Creek Subdivision, owned by Robert C. Clary, Sr., Meherrin District, Brunswick County, Va.", dated September 6, 1989, revised September 27, 1989, and recorded in the Clerk's Office of the Circuit Court of Brunswick County, Virginia, in Plat Book ___, Pages ___;

2. All that certain easement or right of way, 50' in width, shown as "Country Lane" on the aforesaid plat made by Crutchfield and Associates, Inc., to be used as means of ingress and egress between the property described in paragraph 1. above and Virginia State Route 667;

Being in all respects a portion of the property conveyed Robert C. Clary, Sr., by (a) deed of Austin A. Morris, et ux, dated March 31, 1988, and recorded in the aforesaid Clerk's Office in Deed Book ___, Page ___, and (b) deed of Union Camp Corporation, a Virginia corporation, dated August 14, 1989, and recorded in the aforesaid Clerk's Office in Deed Book ___, Page ___.

B. RESERVATION OF RIGHTS - DEVELOPER

1. The Developer, its successors and assigns, at any time prior to December 31, 1999, shall have the right to include additional land into the scheme of and to subject such lands to the restrictions, provisions, reservations and conditions of these covenants. The additional land shall be entitled to use all Common Properties of the subdivision including, but not limited to the roadway described in Article II, Section A, above, and shall be subject to assessment for its pro rata share of maintenance costs and expenses of the Common Properties to include any additional Common Properties or streets.

The additional land may be brought under the scheme of the Covenants by the recordation of Supplemental Declarations of Protective Covenants in the Official Records, by the Developer,

its successors or assigns.

The Supplemental Declarations may contain such additions or modifications to the Covenants as the Developer, at its sole discretion, shall determine to reflect the different character, if any, of such additional land and shall expressly include the right to locate upon such additional land townhouses, co-ops, condominiums or time-share facilities.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 1. Membership

(a) There shall be two classes of membership in the Association. Membership shall be restricted to the Developer, its successors or assigns (the Class "A" Member), and to those persons who purchase, by Contract or by Deed (the Lot Owners), one or more Residential Lots in the subdivision (the Class "B" Members). No person or legal entity having an interest in any Original lot as security for payment of a debt shall be a member of the Association.

Section 2. Voting Rights

Class "A" - the Developer, its successors or assigns, shall constitute the sole "Class A Member". It shall have and enjoy 10 votes in Association matters until December 31, 1991, on which day its Class "A" membership and voting rights in the Association shall terminate. Commencing January 1, 1992, all voting rights in the Association shall be possessed and enjoyed by the Class "B" members as hereinafter provided.

Class "B" - the owners of Residential Lots (excluding the Developer until December 31, 1991) shall constitute the "Class B Members". They shall have and enjoy a total of 5 votes in all Association matters until December 31, 1991. Commencing on January 1, 1992, the owner or owners, if there be more than one (including the Developer) of each Residential Lot shall be entitled to one vote per lot in all Association matters.

Section 3. Proxy Votes

Proxy votes shall be permitted at any regular or special meeting of the Members of the Association. A majority of those Members present, in person or by proxy, at any duly called meeting of the membership shall constitute a quorum for the purpose of electing Directors and transacting such other business as may come before the meeting.

When more than one person or legal entity holds an ownership interest in any Residential lot, only one shall be a voting member. The vote for such lot shall be exercised as the Owner's determine, but in no event shall more than one vote be cast with respect to any residential Lot and the Owners of such Lot shall designate the person entitled to vote prior to or at said meeting.

Section 4.

The Developer reserves the right to relinquish control of the Association prior to December 31, 1991, in favor of the Association.

ARTICLE IV

PROPERTY RIGHTS IN THE COMMON PROPERTIES

Section 1. Member's Easements of Enjoyment:

Subject to the provisions of Section 3 of this Article and Section 3 of Article III of the Covenants, each Residential Lot shall include as an appurtenance thereof membership in the Association and the right to use and enjoyment of the Common Properties.

Section 2. Title to and Control of Common Properties:

The Developer may retain title to and control of the Common Properties, and any part thereof until, in its' opinion, the Association is able to adequately maintain and operate the same provided, however, the Developer shall convey said Common Properties to the Association and divest itself of all control thereof not later than January 1, 1995. The Developer may at any time delegate and assign such functions, duties and responsibilities to the Association pertaining to the maintenance and operation of the Common Properties or portions thereof as the Developer considers appropriate and conducive to the welfare of the community. The conveyance of the common property, including improvements, to the Association shall be made subject to the provisions of the Covenants. Properties are for the mutual enjoyment of the Owners and are subject to the terms and provisions, conditions and restrictions.

Section 3. Extent of Members' Easements

The right and easements of enjoyment thereby created are and shall be subject to the following:

(a) The right of the Developer and Association, in accordance with its By-Laws and Articles of Incorporation, to

borrow money for the purpose of improving the Common Properties and to encumber said properties as security for such indebtedness.

The members' rights and easements in the Common Properties shall be subordinate to any purchase money deed of trust given by the Developer or the Association or any deed of trust given by the Developer or the Association as security for funds borrowed for any improvements to the Common Properties whether or not said Deed of Trust be in existence as of the date of this Declaration or is made by the Developer or the Association subsequent to the date hereof.

(b) The right of the Association to take such steps as are reasonably necessary to protect the Common Properties against foreclosure.

(c) The right of the Association or Developer to levy special assessments or other fees for the use and maintenance of the Common Properties in addition to the annual fees hereinafter provided.

ARTICLE V

BUILDING AND USE LIMITATIONS

The following restrictions and covenants shall apply to the property described in Article II of this Declaration.

Section 1. All Original Lots Shall Be Limited To Residential Use In Accordance With The Following:

(a) No building shall be erected, altered, placed or permitted to remain on any residential lot other than a private, residential dwelling, and private garages or outbuildings incidental thereto.

(b) All residential buildings constructed shall have a minimum of eight hundred (800) square feet of floor area, exclusive of open porches, patios, attached garages, basements and similar extensions.

(c) No structure of a temporary character, [other than mobile homes erected in accordance with paragraph (d) below], shall be used on any lot at any time as a permanent residence, except that temporary structures may be used while permanent structures are being constructed, but in no event shall any temporary structure be used on any lot longer than two years from the date of the start of construction.

(d) Mobile homes shall be allowed on the condition that they

are new upon placement on the lot, are properly underpinned, and are at least sixty feet (60') in length and twelve feet (12') in width.

(e) New double wide mobile home units not less than twenty-four feet (24') by fifty feet (50') having a conventional A roof with a minimum overhang of one (1) foot on all sides and ends, equipped with asphalt or similar roofing singles, are permitted.

(f) All exterior building materials used in the construction of any structure shall be conventional.

(g) All residential buildings constructed shall be built with solid foundation walls.

(h) The collection or accumulation of trash, garbage, rubbish, or brush must be immediately removed from the premises and all property shall be kept in an orderly and sanitary condition at all times.

(i) No sign or any type of advertising device shall be displayed to the public view on any residential lot without the consent of the Developers, other than signs used by a builder to advertise a new home previously unoccupied, or signs advertising the premises for sale.

(j) All structures intended for occupancy must be equipped with inside plumbing facilities, and no outside toilet or privy shall be constructed or used on any lot.

(k) No animals, livestock or poultry of any kind shall be raised or kept on any lot except dogs, cats or other household pets, provided that they shall not be so maintained for any commercial purposes.

(l) All fuel tanks shall be underground or adequately concealed.

(m) All sanitary plumbing, septic tanks and disposal of waste shall conform to the minimum requirements of, and be approved by, the Health Department of Brunswick County, Virginia.

(n) Only one (1) residential dwelling shall be erected on any single Original Lot, and no Original Lot shall be subdivided into two (2) or more lots.

(o) One (1) residential dwelling may be erected on two (2) or more Original Lots.

(p) No noxious or offensive activity shall be carried on

upon any Lot nor shall anything be done on any Lot which may become an annoyance or nuisance to the neighborhood.

(q) All residential buildings must be completed within one (1) year after starting, or owner must get written approval of delays from the other property owners.

(r) No residence shall be occupied until the same has been substantially completed in accordance with its plans and specifications.

(s) No stripped-down, partially wrecked, or junked motor vehicle, or sizeable part thereof, shall be permitted to be parked on any street in the subdivision or on any lot in such a manner as to be visible to the occupants of other lots within the subdivision or to the users of any street therein.

(t) Unless otherwise shown on the recorded subdivision plat as having a greater requirement, building set-back lines of twenty-five (25') are established on all front lines (those lines adjoining the roadway) and twelve (12') on all side lines of all lots in the Subdivision.

(u) The invalidation of any one of the covenants, conditions or restrictions, or any part thereof, by judgment or Court order or otherwise, shall in no way affect any of the other covenants, conditions, or restrictions, which shall remain in full force and effect.

Section 2. Variance:

The purpose of the foregoing Building and Use Limitations is to insure the use of the properties for attractive residential uses, to prevent nuisances, to prevent impairment of the attractiveness of the property, to maintain the desirability of the community and thereby secure to each Owner the full benefits and enjoyments to his residence with no greater restrictions upon the free and undisturbed use of his property than are necessary to insure the same advantages to the other Owners. Any reasonable change, modification or addition to the foregoing shall be considered by Developer and, if so approved, will then be submitted in writing to the affected property owners; and, if so consented to in writing by the affected property owners, shall be recorded and upon recordation shall be as binding as the original covenants.

ARTICLE VI

SANITARY FACILITIES AND UTILITIES

Section 1. Privies Prohibited

No outside toilet or privy shall be constructed or used on any Lot in the subdivision.

No untreated waste from any Lot shall be permitted to enter any stream, branch, creek, ditch, gully or tributary thereof nor shall any such effluent be permitted to enter Lake Gaston.

Section 2. Septic Tanks

Sanitary waste disposal is and shall be the responsibility of each Lot owner. The Owners shall install and maintain, at their sole separate expense, septic tanks and subsurface drain fields in strict compliance with the requirements of the Brunswick County, Virginia, Health Department, and such other governmental agencies or political subdivisions thereof having jurisdiction in the premises.

Prior to the commencement of construction of the septic tank or drain field or any other improvements upon the property, the owners must contact the Brunswick County Health Department and obtain an improvements permit for installation of the facilities. The local health officials are required to visit the Lot and establish the location of the septic tank and drain field in advance of construction.

ARTICLE VII

STREETS WITHIN THE SUBDIVISION

Section 1. Construction

The Developer has constructed all streets in the subdivision shown on the Plat mentioned in Article II above.

THE STREET CONSTRUCTION DOES NOT CONFORM TO THE SPECIFICATIONS OF THE VIRGINIA HIGHWAY DEPARTMENT. THE STREETS SHALL NOT BE DEDICATED TO NOR, SHALL THEY BE MAINTAINED BY THE STATE OF VIRGINIA.

STREETS WILL NOT BE INCORPORATED INTO THE HIGHWAY SYSTEM OF THE STATE.

The streets as shown on the plat have a minimum dedicated right of way of fifty (50) feet in width. They have been constructed and afford legal and physical access by conventional vehicular and pedestrian traffic to each of the Lots.

The streets have a graded and graveled wearing surface at a minimum depth of 3 inches.

Section 2. Ownership and Maintenance

The streets are owned and will be maintained by the Developer until December 31, 1999, or until such earlier date when, in the opinion of the Developer, the Association is sufficiently established and is capable of assuming maintenance responsibility for the streets. On that date, or December 31, 1999, whichever first occurs, the streets shall be conveyed, by recorded deed, to the Association which will assume all future maintenance responsibility.

The annual assessments or such portion thereof as the Developer deems necessary and proper, shall be paid to it by the Association to defray the maintenance cost of the streets until the sole maintenance is transferred to the Association.

ARTICLE VIII

COVENANT FOR MAINTENANCE ASSESSMENT

Section 1. Creation of the Lien

Subject to the later provisions of this Article, an annual assessment (the Assessment) is hereby established and levied on each residential lot. The Assessment is hereby made, and shall remain a continuing lien on the Residential Lots. In addition the Assessment shall remain the personal obligation, jointly and severally, of the Owners, their successors and assigns.

To the extent not prohibited by applicable law, the lien of, and the personal obligation to pay, the Assessment shall include:

- (a) the principal amount thereof;
- (b) interest at 10% per annum from and after the due date (hereinafter defined) thereof;
- (c) a late payment charge of 50% of the principal amount of the Assessment if it is not paid within thirty (30) days after its due date;
- (d) all court costs incurred by the Association in the collection of any unpaid Assessment (principal, interest and penalty); and
- (e) attorney's fees of 33-1/3% of the total amount of the Assessment, including principal, interest and penalty.

Section 2. Purpose of the Assessment

The Assessment shall be used by the Association:

A. To maintain, renovate, improve, operate and administer the Common Facilities including, by way of amplification and not limitation, the streets, roads, and easements within the subdivision; and

B. To construct, maintain, renovate, operate and administer such additional common facilities in the subdivision as the Association may deem necessary and proper;

for the benefit and enjoyment of the Owners to the end that value of the Property shall be protected, promoted and enhanced. In the interests of clarity, the streets and roads within the subdivision shall be graded, gravel construction and the wearing surfaces shall be at least twelve feet wide and three inches deep. The covenant of maintenance herein contained shall be deemed to mean that the streets and roadways within the subdivision shall be maintained to reasonably and seasonably afford access to each lot in the subdivision by conventional motor vehicles.

The Common facilities and easements shall be maintained in a reasonable and prudent manner and shall be kept reasonably free of trash, debris and refuge, the area of which shall periodically be bush-hogged or mowed.

Additionally, the Assessment shall be used for the payment of taxes and insurance upon or with reference to the Common Facilities.

Section 3. Amount of Annual Assessment - Due Date

The Annual Assessment shall be \$100.00, and shall be due and payable, in advance, on January 15, 1990, and thereafter on January 15 of each succeeding year (the Due Date). The Assessment shall not be prorated for any portion of any year.

Section 4. Annual Assessment - Increase

The Board of Directors of the Association (which shall be controlled by the Developer until December 31, 1990), may increase the Assessment upon thirty (30) days prior written notice to the owners, but the amount of any increase shall not exceed 25% of the assessment in any annual assessment period.

The increase shall be for such duration as the Board of Directors shall determine and shall be adopted by a two-thirds majority vote of said Directors.

Section 5. Special Assessment - Establishment - Levy

The Board of Directors of the Association may, by resolution adopted at any regular or special meeting, propose a special assessment which shall then be submitted to the membership for approval at any regular or special meeting of the Members. The notice of any meeting of the Members at which a proposed special assessment will be considered shall be given, in writing, to each member at least 15 days, but not more than 30 days, prior to the meeting shall state the time, place and purpose of the meeting. The Resolution shall state the purpose of the special assessment, the amount, duration and due date thereof.

The proposed special assessment shall be deemed inacted and shall become a lien on said Residential Lot in the subdivision upon approval of a majority of the voting members present in person or by proxy at any meeting of the membership which is held in accordance with the provisions of this section.

Section 6. Quorum

A quorum, for any meeting of the membership shall be those Members present, in person or by proxy, at any duly called meeting, notice of which shall have been set as required by the provisions of these Articles.

Section 7. Duties of the Board of Directors

The Board of Directors of the Association shall prepare a roster of properties and assessments applicable thereto at least 15 days in advance of the due date of the Assessment. It shall be kept by the president of the Association and shall be open to inspection by any Member during business hours.

The Board of Directors of the Association shall send an annual notice of the Assessment to each owner of record on or before December 15 of each year commencing December 15, 1989. The Board of Directors of the Association shall send a notice of any special assessment to each member within 15 days next after the enactment of any such assessment. Failure by the board of Directors to send the notice of assessment (annual or special) shall in no way abrogate the lien of the Assessment nor the personal obligation of the owner for the payment of the same.

Section 9. Nonpayment of Assessment, Regular or Special - Enforcement

If any assessment, regular or special, remains unpaid more than thirty (30) days beyond its due date, as herein provided, the Association shall forthwith prepare and file in the Clerk's Office of the Circuit Court of Brunswick County, Virginia, wherein the land lies, a NOTICE OF DECLARATION OF LIENS stating:

- a. The name and address of the property owner-debtor;
- b. The name and address of the Association;
- c. The source and basis of the lien;
- d. The amount of the lien (principal, penalty, and interest rate);
- e. A description of the land to which the lien attaches;
- f. Date on which the lien commenced; and
- g. Such other information as may be required by law.

Thereafter, the Association may proceed by the then appropriate legal action, in law or in equity, in the Court of competent jurisdiction, in personam against the Owner personally obligated to pay the same and/or in rem against the land to enforce the lien personally against the Owner or against the land to collect the amount thereof.

Section 9. Subordination of Lien to Deed of Trusts, Mortgages and Taxes

The lien of the Assessment herein provided is and shall be subordinated to:

a. Taxes levied by the United States of America, the State of Virginia, County of Brunswick, Virginia, or any governmental agency or political subdivision of either

b. To any purchase money deed of trust or mortgage whether or not the Developer or other person or legal entity is the beneficiary.

c. To any other deed of trust or mortgage executed as security for a valid debt.

Provided, however, such subordination shall apply only to assessments which become due and payable prior to the sale of the Residential Lot to which it has attached in a foreclosure proceeding under the Deed of Trust or mortgage, or sale in a proceeding to enforce a tax lien, or other judicial proceeding to enforce the security interest of the Beneficiary of such Deed of Trust or mortgage.

Subsequent assessments shall not be adversely affected by any such sale or transfer and shall not relieve the property from liability therefor. The personal obligation of the Owner for payment of the Assessment shall not in any instance be terminated or otherwise affected by such sale or foreclosure proceeding, whether or not the Assessment became due prior to or subsequent to the foreclosure proceeding or sale.

Section 10. Exempt Property

The following property, subject to this Declaration, shall be exempt from the Assessments, charges and liens created herein:

- a. All properties to the extent of any easement or other interest therein devoted to public use;
- b. All Common Properties as defined herein;
- c. All properties exempt from taxation pursuant to the laws of the State of Virginia, or the United States of America to the extent of such legal exemption; and
- d. Residential Lots owned or held by the Developer for sale and all Residential Lots otherwise owned by the Developer including any repurchased by it at any foreclosure sale under a Deed of Trust given to secure all or any portion of the purchase price of any such Lot.

ARTICLE IX

UTILITY EASEMENTS

Easements are reserved unto the Association for the purpose of conveying to public utility companies the necessary easements along and within the front line, rear line and side lines of all Original Lots in the subdivision, for the construction and perpetual maintenance of conduits, telephone lines, electrical lines, buried cables and buried wires and for other public and quasi-public utilities; for drainage; and to trim any trees which at any time may interfere or threaten to interfere with the maintenance of such lines. Such easements are also reserved to the Developer for the purpose of providing a means of ingress and egress from and across said premises to employees of said utility companies.

ARTICLE X

GENERAL PROVISIONS

Section 1. Duration:

The Covenants and Restrictions of this Declaration shall run with and bind the land and shall insure the benefit of and be enforceable by Developer, its duly authorized agent or successor-in-title, the Owner of any land subject to this Declaration, his legal representatives, heirs, successors and assigns.

Section 2. Notices:

Any notice required to be sent to any Owner under the provisions of this Declaration, or any amendments or additions, shall be deemed to have been properly sent when mailed, post-paid, to the last known address of the person who appears as an Owner on the records of Developer at the time of such mailing.

Section 3. Enforcement:

Enforcement of these Covenants and Restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and to enforce any lien created by these covenants against the land; and failure by Developer, Owner or the Association to enforce any Covenants or Restrictions herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 4. Severability:

Invalidation of any of these Covenants or Restrictions by judgment or Court order shall in no wise affect any other provision which shall remain in full force and effect.

IN TESTIMONY WHEREOF, the said Robert Clinton Clary, Sr., hereinabove referred to as Developer, has affixed his signature and seal, binding his heirs, executors, administrators, successors and/or assigns.

WITNESS the following signature and seal:

ROBERT CLINTON CLARY, SR. (SEAL)

STATE OF VIRGINIA
COUNTY OF Brunswick, to-wit:

The foregoing was acknowledged before me this _____ day
of _____, 1989, by Robert Clinton Clary, Sr.

Notary Public

My commission expires: _____

