39721

LOST MOUNTAIN

SECTION I

DEDICATION OF PLAT AND
DECLARATION OF PROTECTIVE COVENANTS,
CONDITIONS AND RESTRICTIONS

KNOW ALL MEN BY THESE PRESENTS: That the undersigned, B. K. Haynes Corporation, a Virginia Corporation, qualified to do business in the state of West Virginia, does hereby record the plat of a subdivision known as Lost Mountain lying and being situate in the Sherman District, Hampshire County, West Virginia, and being more fully described on the plat and survey of Stultz & Associates, Inc., Charles W. W. Stultz, L.L.S., and dated May , 1985, and made a part hereof, said real estate being all the same real estate conveyed to the said B. K. Haynes Corporation, by deed dated May 10, 1985, from Virginia L. Pancake & Anne E. Pancake, Co-Executrices and recorded in the Clerk's Office of the County Commission of Hampshire et al. County, West Virginia, in Deed Book 277, at Page 166, to which reference is hereby made.

WHEREAS, the Declarant has divided said real estate into lots and intends to convey same 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 covenants, 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 hereof, 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 Lost Mountain 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 the 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 Property.

5. "Declarant" shall mean and refer to B. K. Haynes Corporation, its successors and assigns.

6. "Common Area" and "Access" to Nathaniel Mountain Public Hunting Are shall mean and refer to that area of land shown on the subdivision plat amended from time to time in accordance herewith, and being intended f_ the common use and enjoyment of all Owners, and any other property that ma be transferred to the Association.

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 appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

2. On or before October 1, 1985, 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 Lost Mountain 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, except for the initial Board of Directors which will consist of 1 to 5 Directors as provided herein.

The initial Directors of the Association consisting of one to five members shall be appointed by B. K. Haynes Corporation or its assigns and thereafter the Board of Directors shall be elected by the lot owners. The initial Directors shall be responsible for calling the first meeting of the Property Owners Association on or before November 1, 1985, and shall be responsible for the mailing of the written notice of the lot assessment which is due and payable by November 30, 1985. This meeting shall be an organization meeting. At said meeting the said owners shall, by majority vote, form the said Association's legal entity as they deem advisable and shall elect a Board of Directors and/or officers of said association, and conduct such other business as they may deem advisable.

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-ways within Lost Mountain and such other common facilities as said Declarant may provide therein, subject to any increase as provided hereinafter, as well as the access right-of-way from County Rt. L7E.

2. Any assessment made pursuant to this paragraph, including a late fee of Five Dollars ($5.00), interest at the rate of ten per cent (10%) 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. The lien is expressly inferior and subordinate to any mortage 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 (urban) as published by the Department of Interior, Bureau of Standards. The owner of each Lot, by acceptance of a deed thereto, automatically becomes a member of the Lost Mountain Property Owners Association and is deemed to covenant and agree to pay One Hundred Dollars ($100.00) per lot, per year, beginning October 1, 1985, and to pay annually thereafter to the Property Owners Association, to be created as herein 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 shown on the subdivision plat, and any common areas, including the removal of snow and the repairs and improvements of the roadways and airstrip. During October of each year, beginning October, 1985, the Association shall notify each lot owner, in writing, as to the amount of the lot assessment which shall be due and payable by November 31, 1985. 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 an 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 a 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 rights-of-ways until October 1, 1985, the Declarant shall be forever exempt from the payment of said annual assessments and road maintenance and common area fees as to all lots now owned or hereafter acquired.

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

ARTICLE IV
USE RESTRICTIONS

1. No signs or advertising of any nature shall be erected or maintained any lot, except for sale or rental signs for said lot not to exceed six square feet in area (and must comply with the Hampshire County ordinanc relating to erection of signs), and except for directional and informational signs of Declarant.

2. Resubdivision of any lot is not permitted.

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. In construction of a driveway into any lot, a twelve (12) inch diameter culvert, or larger if necessary, shall be used in constructing the drivew in order to prohibit blockage of natural drainage. No parking is permitt upon any road within the property at any time which blocks traffic, and a 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. Hous trailers shall be placed on a solid foundation in wooded areas only. Setback lines for house 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 laws concerning temporary camping are complied with.

5. No building of a temporary nature shall be erected or placed on any l except those customarily erected in connection with building operations a in such cases, for a period not to exceed eight (8) months.

6. Not more than one single family residence shall be erected on a lot a shall contain a minimum of 320 square feet of living area, in wooded area and shall contain a minimum of 480 square feet of living area in open areas, excluding basement, garage, porch, carport, deck and overhanging eaves. 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 barn must conform generally in appearance and material with any dwelling said lot.

Not withstanding the prior paragraph, the following uses are permitte subject to applicable state and local laws:

(a) Home occupations conducted by occupant.

(b) Agricultural uses, including incidental uses and the constructio of accessory building connected with agriculture or the building of a residence, including storage of temporary camping and lawn maintenance equipment. Said accessory building may be constructed before construct of the residence. Said accessory building shall not be used for tempor sleeping or camping quarters.

(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. 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 his prior condition any part of a subdivision road damaged by equipment of Owner 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 a all times. No garbage, trash or inoperative vehicle or other debris shal be permitted to accumulate or remain on any Lot.

9. No building shall be erected closer than forty-five (45) feet from th front property line, except that Lots 65, 66, 67, and 68 shall have no building erected closer than twenty-five (25) feet from the front propert line, and Lots 3, 5, 6, 7, 9, 27, 28, 29, 30, 31, 32, 33, 34, 35, 38, 39, and 41 shall have no building or obstruction within 100 feet of the cente line of the airstrip, nor closer than twenty (20) feet to the side or rea property lines, with the exception that where permitted and two or more tracts are used together for the construction of one dwelling, then said twenty (20) foot setback shall apply only to outside lines. Setbacks for trailers is outlined under #4.

10. All sanitation facilities constructed on any lot shall conform with the regulations and requirements of the West Virginia and Hampshire County Health Departments, and any other applicable laws.

11. 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.

12. The Declarant reserves unto itself 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 rig to grant easements or rights-of-way therefor, on, over and under a strip o land ten (10) foot wide along all property lines not serving as the centerline for rights-of-ways, and fifteen (15) feet along all the fifty (50) foot rights-of-ways, in addition to easements reserved by any other instrument duly recorded. All lots may have overhead electric and telephone lines except for lots 3, 5, 6, 7, 9, 27, 28, 29, 30, 31, 32, 33, 34, 35, 38, 39, and 41 along their frontage on Nathaniel Drive. These lot shall have underground electric and telephone service.

13. Each lot owner shall have the right of ingress and egress to and fro his lot over the rights-of-way and roadways as shown on the subdivision plat and the access right of way from County Route L7E. No part of any lo 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.

14. Reasonable cutting of wood or timber for personal use or for land clearing is permitted. However, no cutting of wood for commerical purpose is allowed.

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

16. If any lot Owners 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.

17. The walking and parking access to Nathaniel Mountain Public Hunting Area as shown on the subdivision plat shall constitue 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 Lost Mountain. Therefore, n... permanent structure shall be erected within this zone.

18. 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 othe... penalties.

ARTICLE V
GENERAL PROVISIONS

1. Declarant reserves the right to replat any unsold lot or lots. 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 , and of record in the Clerk's Office of the Circuit Court of Hampshire County in Deed Book at Page , with

THIS OIL AND GAS LEASE HAS BEEN RELEASED.

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 Lost Mountain Subdivision, and to that end, provides as follows:

A. All delay rentals, if any, 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 said subdivision.

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 a 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 requirement and shall not be placed in open areas. No building shall be constructe... and no 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 now or hereafter imposed by the provision... of this Declaration. Failure by the Declarant or Association or by any Owner to enforce any provision herein contained shall in no event be deeme... a waiver of the right to do so thereafter.

7. Additional property may be annexed to the Property by Declarant.
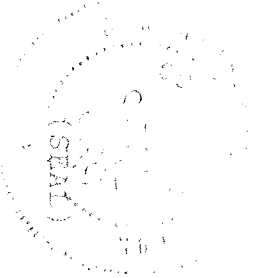
ARTICLE VI

1. 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.

2. 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.

3. 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 it secretary, Betty G. Haynes, this 30th day of May, 1985.

B. K. HAYNES CORPORATION

BY: _____
Bradley K. Haynes, President

ATTEST:

_____
Betty G. Haynes, Secretary

(SEAL)

STATE OF VIRGINIA
COUNTY OF WARREN

I, _____, 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 secretary of B. K. Haynes Corporation to the foregoing instrument bearing date on the 30th day of May, 1985, 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 _____ day of _____, 1985.

My commission expires the 24th day of March, 1986.

(Notary Seal)

_____
Notary Public

This instrument prepared by B. R. Haynes Corporation under the direc
J. Ralph Haynes, attorney, Romney, West Virginia.

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

Be it remembered that on the 4th day of June, 1985, at 11:28 A. M.,
this _____ was presented in the Clerk's Office of the County Commission of said County
and with the certificate thereof annexed, admitted to record.

Attest _____ Clerk
County Commission, Hampshire County, W. Va.