

(2)

Mailed with # 42185

42186

FORT LEISURE
Dedication of Plat and
Declaration of Protective Covenants,
Conditions and Restrictions

323

KNOW ALL MEN BY THESE PRESENTS: That the undersigned, B. K. HAYNES CORPORATION, a Virginia Corporation, hereinafter referred to as "Declarant", does hereby record the plat of a subdivision known as FORT LEISURE, lying and being situate in GORE District, Hampshire County, West Virginia, and being more fully described on the plat and survey of Stultz and Associates, Inc., George A. Cicoff, L. L. S. and dated March 21, 1986, and made a part hereof, and recorded in the Clerk's Office of the County Commission of Hampshire County, West Virginia, in the Plat Books, just prior to the recording of this instrument in Plat Book No. 4, at page , to which reference is hereby made, and said real estate being all the same real estate conveyed to the said B. K. Haynes Corporation by deed dated October 18, 1986 from Homer Feller, ET UX recorded in Deed Book No. 288 Page .

All lots, except Lots 48 and 49 which are hereby excluded from the Fort Leisure Subdivision, are subject to the following protective covenants, conditions, and restrictions and easements which shall run with the land and shall be binding upon all subsequent owners of the lots:

ARTICLE I - DEFINITIONS

1. "Association" shall mean and refer to FORT LEISURE 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 property.
5. "Declarant" shall mean and refer to B. K. Haynes Corporation, its successors and assigns.

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 June 30, 1987, 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 Fort Leisure who shall have one (1) vote per lot owned. The Association shall be governed by the majority of the lot owners. A Board of Directors of three (3) to five (5) members shall be elected by the lot owners.

The initial Directors of the Association consisting of one to five members shall be appointed by the Declarant 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 July 30, 1987, and shall be responsible for the mailing of the written notice of the lot assessment which is due and payable on January 31st of each year commencing January 31, 1987. The meeting shall be held in Hampshire County, West Virginia, at a suitable place to be

designated by the initial Board of Directors. 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. The initial fees due January 31, 1987, will be invoiced and collected by B. K. Haynes Corporation during January, 1987. The fees will be available to B. K. Haynes Corporation to perform required road maintenance, in accordance with these protective covenants, between January 31, 1987, and July 30, 1987. All funds collected shall be properly accounted for and turned over to the Board of Directors on July 31, 1987, or at such time as the Property Owners Association has been set up and established.

ARTICLE III
COVENANT FOR MAINTENANCE ASSESSMENT

1. The Declarant shall assess initially, for each Lot, One Hundred Fifty Dollars (\$150.00) per year for the use, upkeep and maintenance of the rights-of-ways within Fort Leisure subject to any increase as provided hereinafter.

2. Any assessment made pursuant to this paragraph, including a late fee of Five Dollars (\$5.00), interest at the rate of ten percent (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 mortgage liens presently or hereafter encumbering the property affected by these protective covenants. This assessment may not be increased by more than a percentage increase 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 Property Owners Association and is deemed to covenant and agree to pay One Hundred Fifty Dollars (\$150.00) per lot per year, beginning January, 1987, 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 (including the removal of snow and the repair and improvements of said roadways) the right-of-way to Rannells Road. During the fall of each year, beginning December, 1987, said 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 of each year. In the event of a resale or transfer of one or more parcels in said subdivision, this obligation shall run with the land and become the obligation of the new owner(s) even though it may have been assessed to a prior owner.

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 a newspaper having general circulation in Hampshire County, and after thirty (30) days written notice mailed by certified mail, return receipt requested to the last known address of said owner. Cost of sale, including reasonable and necessary attorney fees, advertising costs, auctioneering fees, recording fees, and other necessarily incurred costs shall be paid from the proceeds of sale before the payment of amount involved. Or, if the owner chooses to pay the assessments before sale of the property, the costs incurred to date of owner's payment of the assessment shall be collected from the owner as a condition precedent to cancellation of the sale.

In exchange for Declarant's agreement to install and maintain said roadways and rights-of-way the Declarant shall be forever exempt from the payment of said annual assessments and road maintenance assessment fees as to all lots now owned or hereafter acquired.

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 is 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 \$150.00. Nothing herein shall be deemed to

325

alter the "one vote per one lot owned" rule which is established in Article II paragraph 2 above. No lot may be sold for construction of a residence without the assurance of obtaining a health permit from Hampshire County Health Department.

ARTICLE IV
PROTECTIVE COVENANTS

1. Only directional and information signs are allowed.
 2. No further subdivision is allowed of any lot.
 3. In the 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 alleviate blockage of natural drainage. No parking is permitted upon any subdivision roads within the subdivision at any time and as part of the development of any lot, the Owner shall provide adequate off-road parking for owner and his guest(s).
 4. No junk vehicles are allowed on lots. Setback lines for mobile homes shall be 100 feet from the centerline of the subdivision road unless otherwise approved by Declarant or its assigns. Temporary camping trailers may be placed on any lot provided Hampshire County and West Virginia Zoning 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 a 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 480 square feet and seasonal cabins shall contain a minimum of 320 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/recreational purposes only, and any garage or barn must conform generally in appearance and material with any dwelling on said lot.
- 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. Said accessory buildings may be constructed before construction of the residence. Said accessory building shall not be used for temporary sleeping or camping quarters. Pig pens are not permitted. Operation of any laying hen, broiler houses or other poultry business is prohibited. Tree farms are permitted, provided that commercial activity is not conducted on the lot.
 - (c) Not 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 its 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 at all times. No

garbage, trash or inoperative vehicle or other debris shall be permitted to accumulate or remain on any lot.

9. 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 two or more tracts are used together for the construction of one dwelling, then said twenty (20) foot setback rule is thus waived, the two or more lots which comprise the homestead shall thereafter be sold and conveyed as one unit, and one voting and membership right shall apply. Setbacks for trailers is outlined under #4.
10. All sanitation facilities constructed on any lot shall conform with the regulations of the West Virginia- Hampshire County Health Departments.
11. No lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage, or other waste must be kept in sanitary containers. All raw materials must be kept from view of the public. In the event any lot owner shall fail to discharge his aforesaid responsibilities, the Property Owners Association, upon two-thirds (2/3) vote of the Board of Directors, and after fifteen (15) days notice to the owners of the property, shall have the right, through its agents and employees, to enter upon said lot and perform necessary maintenance repairs (including mowing and removal of grass over 24" high in the form of hay), subject to the right of any lot owner to terminate same by giving sixty (60) days written notice to the Declarant or Property Owners Association when the owner intends to make any use of the grass on his property as hay, 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.
12. The Declarant reserves unto itself, or its assigns, easements for the installation, erection, maintenance, operation and replacement of telephone and electric light poles, conduits and related equipment, and sewer, gas and water lines on, over and under a strip of land ten (10) feet wide along all property lines not serving as the centerline for rights-of-ways, and fifteen (15) feet along all the rights-of-ways, in addition to easements reserved by any other instrument duly recorded. Nothing herein shall be construed as creating any duty on Declarant to install or maintain any utility services however, as it is contemplated that actual installation will be made at the expense of the utility and/or the owners.
13. Each lot owner shall have an unobstructed and the nonexclusive right of ingress and egress to and from his lot over the rights-of-ways and roadways as shown on the subdivision plat and the nonexclusive access over the right-of-way across the adjoining land owners as shown on the plat of said subdivision. The Property Owners Association shall be solely responsible for maintenance of the subdivision roads, and access roads across the adjoining tracts.
14. Reasonable cutting of wood or timber for personal use or for land clearing is permitted. However, no cutting of wood for commercial purposes is allowed.
15. The use of any motorcycle, dirt bike, all terrains vehicles, or other similar motorized conveyance within the subdivision is prohibited unless it is equipped with proper noise abatement equipment.
- 15A. Firearms shall not be discharged within five hundred (500) feet of any dwellinghouse. Nor shall they be discharged in such a manner that the trajectory of the projectile shall cross any of the subdivision roadways;
16. Subject to obtaining the permission and consent of the Hampshire County Health Department, the Declarant does hereby grant an easement to lot owners within the subdivision for the purpose of laying and maintaining septic tank systems and drain fields, across other neighboring or adjoining lots, where lotowner's parcel (the dominant parcel) has been found to be unsuitable to sustain a septic tank system by the Health Department of Hampshire County,

West Virginia. In the event all such lots have been previously sold by B. K. Haynes Corporation to lotowners, then these cross easements are hereby granted in advance to each of the lots in the subdivision where necessary and required to accommodate a dwelling on the lots in question, and such easements may be enforced by one lot owner against the other. Any such easement so exercised will be constructed in such a manner as to cause the least damage to the servient tract, and such easement shall include the right to lay and maintain said septic tank systems. Any such easements granted herein shall be invalid, however, if its installation would prevent the servient tract or parcel from reasonably being utilized as a homesite as planned.

17. If any lot owner 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 from 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. The Association, by 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, resubdivide and renumber any unsold lot or lots, and to add additional adjoining real estate to said subdivision. Nothing herein shall be construed to prevent Declarant from imposing additional covenants or restrictions on any unsold lot(s) or other real estate later added to and becoming a part of said subdivision.

2. 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.

3. 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 not be constructed unless specific authority is first obtained from the Health Department, and then they may not be placed in open areas.

4. No building shall be constructed 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 provisions of this Declaration. Failure by the Declarant or Association or by any Owner to enforce any provisions herein contained shall in no event be deemed a waiver of the right to do so thereafter.

6. 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%) of the lotowners, and thereafter by an instrument signed by not less than seventy-five (75%) of the lot owners.

328

7. 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.

8. 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.

B. K. HAYNES CORPORATION
BY: *B. K. Haynes* (SEAL)
B. K. Haynes, PRESIDENT

STATE OF WEST VIRGINIA,

COUNTY OF HARDY, TO-WIT:

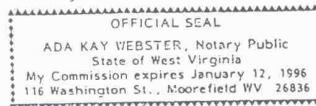
The foregoing instrument was acknowledged before me this 27th day of October, 1986, by Bradley K. Haynes, President of B. K. Haynes Corporation, a Virginia Corporation.

My commission expires Jan. 12, 1996.

(SEAL)

Ada Kay Webster
Notary Public

Prepared by:
Oscar M. Bean
116 Washington St.
Moorefield, W. Va. 26836



STATE OF WEST VIRGINIA, County of Hampshire, to-wit:
Be it remembered that on the 28th day of October, 1986, at 11:26 A M.,
this Covenants 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. Feller* Clerk
County Commission, Hampshire County, W. Va.