

35
W. W. Haynes
12-19-85

40764

SOUTH POTOMAC FOREST
Dedication of Plat and
Declaration of Protective Covenants,
Conditions and Restrictions

644

KNOW ALL MEN BY THESE PRESENTS: That the undersigned, B. K. Haynes Corporation, a Virginia Corporation, hereinafter referred to as "Declarant", do hereby record the plat of a subdivision known as South Potomac Forest, lying and being situated in the Springfield District, Hampshire County, West Virginia, and being more fully described on the plat and survey of Stultz and Associates, Inc., Charles W. W. Stultz, L.L.S., and dated September 15, 1985, and made a part hereof, and recorded in the Clerk's Office of the County Commission of Hampshire County, West Virginia, just prior to the recording of this instrument, in Plat Book , at Page , to which reference is hereby made, and said real estate being all the same real estate conveyed to B. K. Haynes Corporation, by deed dated September 6, 1985 and recorded in Deed Book 280 at Page 308.

All lots in the South Potomac Forest Subdivision shall be 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 South Potomac Forest Property Owner's 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 plat 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, 1986, 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 South Potomac Forest 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 June 30, 1986, and shall be responsible for the mailing of the written notice of the lot assessment which is due and payable by July 30, 1986. 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.

ARTICLE III
COVENANT FOR MAINTENANCE ASSESSMENT

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 South Potomac Forest and the access right-of-way from School House Road, 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 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 South Potomac Forest Property Owners Association and is deemed to covenant and agree to pay One Hundred Dollars (\$100.00) per lot per year, beginning July 30, 1986, 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 repairs and improvements of said roadways) the right-of-ways and roadways shown on the subdivision plat, as the right-of-way from School House Road, across other real estate owned by adjoining land owners in said subdivision. During June of each year, beginning June, 1986, said Association shall notify each lot owner, in writing, as to the amount of the lot assessment which shall be due and payable by July 30, 1986. 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 Owner's 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-way until June 30, 1986, the Declarant shall be forever exempt from the payment of said annual assessments and road maintenance and common area 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 any additional dwelling, it shall 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 on any lot, except for sale or rental signs not to exceed six (6) square feet in area (and must comply with the Hampshire County ordinance relating to erection of signs), and except for directional and informational signs of Declarant.

2. No further subdivision is allowed on any lot of five (5) acres or less. Resubdivision must be in compliance with the Hampshire County Subdivision regulations and the Hampshire County Health Department ruling of two (2) acre minimum for individual well and septic systems.

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 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 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 may be placed on any Lot as long as any Hampshire County regulations with regard to house trailers (mobile homes) are complied with. Setback lines for mobile homes shall be 100 feet from the center line 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 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 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 the 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.

Notwithstanding the prior paragraphs, 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 buildings shall not be used for temporary sleeping or camping quarters.

(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 Owner's Association, provided that no pigs or pig pens are allowed within the subdivision.

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 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 permitted and two or more tracts are used together for the consideration of one dwelling, then said twenty (20) foot setback shall apply only to the outside lines. 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 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 the 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 two-thirds (2/3) vote of the Board of Directors, and after fifteen (15) days notice to the owners of the property, the Property Owners Association 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), 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, and 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) foot 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 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 right-of-way from School House Road across ⁶⁴⁷ the adjoining land owners as shown on the plat of said Subdivision. The lot owners association shall be solely responsible for maintenance of the subdivision roads.

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 motor vehicles without proper noise abatement equipment is prohibited within the subdivision.

16. 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.

17. 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 any unsold lot or lots, and to add additional 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 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 the 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 lot owners, and thereafter by an instrument signed by not less than seventy-five (75%) of the lot owners.

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. The "Common Area" as marked on the Plat shall be conveyed to the Association which may incorporate the same as a separate identity. All rules and regulations for the use of these areas shall be set by the Association. Each member (lot owner) shall have right and easement of enjoyment in and to the common area. Such easement shall be appurtenant to and pass with the title to each lot. Each lot owner's rights to use the common area and the roads shall be conditioned upon his payment of the annual assessments of \$100.00 and his compliance with the rules and regulations of the Association.

9. Declarant reserves the right to add additional covenants concerning access to the Potomac River if Declarant acquires the land and it becomes available.

10. 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 15th day of November, 1985.



B. K. HAYNES CORPORATION

BY: B. K. Haynes
B. K. Haynes, President

ATTEST:

Betty G. Haynes
Betty G. Haynes, Secretary

STATE OF VIRGINIA
COUNTY OF WARREN

I, NANCY S REARDON, 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 15th day of November, 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 15th day of November, 1985.

My commission expires the 29th day of March, 1986.

Nancy S. Reardon
NOTARY PUBLIC

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

Be it remembered that on the 12th day of December, 1985, at 3:08 P M., this Protective Covenant 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.