

DK 0473 PG 00623

DECLARATION OF COVENANTS, EASEMENTS, RESTRICTIONS AND
AFFIRMATIVE OBLIGATIONS
OF SUMMER BREEZE, Phase III & IV

This Declaration of Covenants, Easements, Restrictions, and Affirmative Obligations, hereinafter referred to as "this Declaration", made as of this 3rd day of October, 1990, by NEW RIVER INVESTMENT GROUP, a Virginia General partnership, hereinafter referred to as the "Declarant", provides:

WHEREAS, the Declarant is the fee simple owner of the following described real estate known as "Summer Breeze Phase III & IV", hereinafter referred to as "the development", or "the property", to-wit;

All that certain piece or parcel of land lying and being situated in Boone Magisterial District, Franklin County, Virginia, lying on the South side of State Highway Route 684, and containing 80 acres, more or less, according to certain subdivision plats entitled "Summer Breeze Phase III & IV", prepared by Corner Stone Land Surveyors, Inc., which is recorded in the Clerk's Office, Circuit Court of Franklin County, Virginia in Deed Book 473, at Page 618-621, and to which reference is made for a more complete and particular description and as a means of incorporation hereto.

WHEREAS, the Declarant intends to sell and convey lots contained in "the development", and desires to establish and subject the property to the covenants, easements, restrictions and affirmative obligations set forth hereinafter in order to provide for a development of high desirability and value.

NOW, THEREFORE, the Declarant hereby declares "Summer Breeze Phase III & IV" shall be held, transferred, sold, conveyed, occupied and used subject to the following covenants, conditions, restrictions, easements, and affirmative obligations for and during the time hereinafter specified, which shall run with the property and be binding on all parties having any right, title or interest in the property, or any part thereof, their heirs, successors or assigns, and shall inure to the benefit of each owner thereof. The Declarant reserves the right to add additional restrictive covenants in respect to lots to be conveyed by the declarant, or to limit the applications of this Declaration, but all such additions or limitations shall conform to all County and State ordinances, specifically the Franklin County

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Subdivision Ordinance.

1. The Declarant, its successors and assigns, and all owners of lots in the development shall convey lots therein only as shown on the plat of survey of Summer Breeze Phase III & IV, recorded, as above, and made a part hereof; provided, however, that minor deviations from such plat may be made if deemed necessary by the owners of the lots, with the approval of the Declarant, provided, however, the Declarant expressly reserves to itself, the right to replat any lot or lots owned by it and shown on the aforementioned plat of survey, in order to create and or modify a lot or lots, and to take such other steps as are reasonably necessary to make such replatted lots suitable for marketing. The provisions of this paragraph shall not prohibit the combining of two or more contiguous lots into one large lot, but the resubdivision of any lot into two or more parcels is hereby prohibited without written authorization from Declarant. Provided further that no land not included within the boundaries of Summer Breeze Phase III & IV hereof shall be added to any lot within the development, except by the Declarant, or with written approval of the Declarant.

2. No lot shall be used except for single-family residential purposes and only one primary residence may be constructed on each lot, subject to the provision of Paragraph 8 of these restrictive covenants. Additional out-buildings consistent with residential use may be constructed simultaneously with or after the construction of the primary residence, subject to the provisions of Paragraph 8 hereof.

3. No animals, livestock or poultry of any kind shall be raised, bred or kept on the property except dogs, cats or other household pets, which may be kept provided they are not kept, bred or maintained for any commercial purpose; and if they constitute a nuisance, such permitted household pets will be removed from said property upon the demand of the Declarant or the Homeowners Association; Horses and ponies may be kept, subject to the above provisions, with written approval of the Declarant or the Homeowners' Association,

4. No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may become an annoyance or nuisance to the neighborhood, or which shall in any way interfere with the quiet enjoyment of the owner of any lot.

5. It shall be the responsibility of each property owner and

tenant to prevent the development of unpleasant odors, or any unclean, unsightly, or unkept, conditions of the buildings or grounds on such property which shall tend to substantially decrease the beauty of the community as a whole or the specific area.

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, concealed from open view. Each lot owner shall provide a screened area to serve as a service yard and an area in which garbage receptacles, fuel tanks or other similar storage receptacles, electric and gas meters, air conditioning equipment, clothes lines, wells, television disks and other unsightly objects must be placed or stored in order to conceal them from view from the road and other lots in the development. Garbage receptacles and fuel tanks may be located outside of such screened area only if located underground.

6. No hunting shall be permitted on the property nor shall the discharge of firearms be permitted except in the lawful defense of person or property.

7. No sign, billboard, or similar commercial advertisement shall be constructed on or maintained upon any lot in the development, except that one residential identification sign may be erected with the written permission of, and in a form approved by the Declarant or the Homeowners' Association. Temporary "For Sale" signs may be placed on a lot, with the written permission of the Declarant or the Homeowners' Association.

8. No building, driveway, parking area, road, fence, wall enclosure or other structure or any type of improvement or excavation shall be commenced, erected, altered, or maintained, nor shall a building permit for such improvement be applied for upon any lot, until the proposed location, plans, specifications, elevations, exterior color, design and finish, and construction schedule have been approved, in writing, by the Declarant, its designee or designees or the Homeowners' Association. In addition, the topography or vegetation of any tract shall not be altered until the Declarant, or the Homeowners' Association, or its duly appointed representative, shall have given its approval in writing. In the event the Declarant, or the Homeowners' Association, or its representative fails to act on any such plan of development or fails to file suit to enjoin the proposed construction or development within thirty days after

its receipt of request for approval, approval will not be required and this paragraph will be deemed to have been complied with. One copy of all plans and related data shall be furnished the Declarant or the Homeowners' Association, for its records prior to the applications to Franklin County for a necessary building permit. Any and all mailboxes to be erected must consist of a salt treated, wooden pole.

Plans shall be prepared by a person or firm regularly engaged in such work. Each One-floor dwelling shall contain a minimum of Sixteen Hundred (1600) square feet of livable space; each two-floor dwelling shall contain a minimum of Nineteen Hundred (1900) square feet of livable floor space;; A-frame, story and one halve, and contemporary dwelling shall contain a minimum of Eighteen Hundred (1800) square feet of livable floor space, exclusive of decks, attics, porches, garages, carports or unfinished basements. Subject to the approval of the declarant, the square footage requirement can be waived by the declarant. Exterior construction must be completed and closed in within nine (9) months of commencement of construction.

All dwellings and buildings shall be brick, wood, or natural stone to grade, unless siding is installed within eight (8) inches of grade, in which case stucco may be used between the siding and grade provided such area is rendered invisible from adjacent streets and lots by landscaping or other appropriate methods of concealment. No concrete, block, etc., higher than eight (8) inches from grade will be accepted regardless of visibility.

9. A septic tank and drain field shall be installed by each initial owner entirely within the boundaries of the lot owned by such owner, and in accordance with State and County specifications and within any portion of such lot as approved by the Declarant.

10. No mobile home, trailers, tents, shack, garage, barn or other out building or structure shall be used as a residence, nor shall any structure of temporary character be used as a residence. Recreational or utility vehicles subject to the provisions of Paragraph 13 hereof, and shelters or trailers used by a contractor during approved construction on any lots are allowed. Such construction shelters or trailers shall be removed no later than fifteen days after construction has been completed or after the owner has taken possession, whichever shall first occur.

11. No tree of diameter greater than six inches at ground level shall be killed or cut on any lot, or in any manner

removed therefrom (except by the Declarant in development of the Lots), unless it is on or within fifteen feet of the site of a residence, driveway, parking area, septic tank, drain field or some other structure or improvement permitted under the terms of these restrictive covenants to be constructed thereon, or unless the Declarant, its designee or the Homeowners' Association, shall have given the approval for the killing, cutting or removal of such tree.

12. Houses and other dwelling structures may not be temporarily or permanently occupied until a certificate of occupancy has been issued by the appropriate local government authority. During the continuation of construction the owner of the lot shall require the contractor to maintain the lot in a reasonably clean and uncluttered condition. The owner shall be responsible for requiring the contractor, during period of construction, to restore, immediately, any and all damages done to the roads within the subdivision (excluding private driveways on individual lots), such restoration to be approved to the satisfaction of the Declarant its designee, or the Homeowners' Association, and such owner shall reimburse the Declarant or the Homeowners' Association, for any expenses incurred by the Declarant or the Homeowners' Association, as the result of such owner having failed to cause such restoration.

13. Each lot owner shall provide space for off-street parking for at least two automobiles prior to occupancy of any dwelling. No motor vehicles requiring registration by the State which do not carry a current license or which are not fully operable may be parked on any tract if visible from any road or from any other lot. Boats and boat trailers may be maintained on a lot but only within an enclosed or screened area approved by the Declarant or the Homeowners' Association, such as they are not generally visible from other properties within the development. Recreational trailers, campers or other vehicles exceeding five feet in height may not be parked more than twelve consecutive hours if generally visible from any road or from any other property within the development.

14. All grantees who become owners of lots in the development will thereby automatically become members of The Summer Breeze Phase III and IV Homeowners' Association, Inc., a Virginia non-stock, non-profit, corporation (herein referred to as the Homeowners Association or the Association), and will remain a member with respect to each lot owned so long as such ownership continues, and as an

owner shall be subject to the terms and provisions of this Declaration. Owners shall be members with respect to each lot held by them, and shall be liable for any assessment, liability, charge or expense of the Association or levied by the Association pursuant to the terms of this Declaration. NO ASSESSMENT FOR ROAD MAINTENANCE OR REPAIR WILL BE CHARGED TO LOT OWNERS OF LOTS 2, 13, AND 12 OF SUMMER BREEZE PHASE III. The cost of maintaining and repairing the roads will be assessed in three different ways: Lots 7 and 8 will only be responsible for the repair and maintenance of their road. Lots 9, 10, and 11 will be responsible for the repair and maintenance of their road. Lots 1, 3, 4, 5, 6, 14, and 15 will be responsible for the repair and maintenance of their road. All successors in title to each owner shall likewise succeed to such members.

The Association shall have authority to act to promote the general health, safety and welfare of the property owners. In addition, it shall be responsible for maintenance of common streets, payment of realty taxes with respect to any property owned or acquired by the Association pursuant to this Declaration, procurement of refuse collection services, upkeep and enforcement of scenic and other easements for the general use of members, enforcement of covenants, agreements and restrictions set forth in this Declaration, the Articles of Incorporation or By-Laws and Rules of the Association, or the deeds of conveyance to purchasers of lots in the development.

Membership and voting rights shall be as set forth in the Articles of Incorporation and By-laws of the Association.

15. The road system to be located within the Development is indicated by the plat of Summer Breeze Phase III and IV. All subsequent grantees, their guests and invitees, shall have an easement and right of way for the use of and access to all roads within the subdivision. Each lot shall be sold subject to this easement and right of way which shall run in favor of all owners, their guests and invitees. Acceptance of deeds within the development shall be construed as covenants by the grantees and their successors to dedicate said roads if said dedication is required by Declarant or the Association. The road system shall be a private system, the maintenance and upkeep of which shall be the responsibility of the Association, and not the responsibility of the Virginia Department of Highways or other public agencies. The County of Franklin and/or the Commonwealth of Virginia, its agents or employees, shall have access to enforce the laws and ordinances of the Commonwealth of Virginia, the County of Franklin, and/or those of any other applicable

governmental authority and to provide police and fire protection and the other services of government as may be appropriate. To this extent only, said roads shall be deemed public but shall remain private for all other intents and purposes. The Association may regulate traffic set speed limits and do anything it deems necessary or appropriate to provide for the safe use and upkeep of the roads by the owners and their invitees, including the right to post speed limits, establish speed barriers, construct gates or gate houses, and to bar such roads to the passage of unauthorized personnel or vehicles.

16. As is more specifically provided in Article 7 of the Articles of Incorporation of the Association, the Association will indemnify and hold harmless all members, officers, and directors from and against any and all liabilities, lawsuits, claims and demands of every kind, including court costs and counsel fees, by or on behalf of any person, firm, association or corporation, arising out of the use of any roads or other common facilities, including without limitation, lawsuits, claims or other liabilities arising out of any accident, injury or damage occurring therein or thereon; and from or against any matter growing out of the conditions, maintenance, repair, alteration or operation or other common facilities, except as to any lot owner for such liability as may be attributable to his negligence or the negligence of any member of his family, guests, servants, agents, or invitees.

17. Easements for installation and maintenance of utilities and drainage facilities are reserved for the benefit of the Association as shown on the plat of Summer Breeze Phase III and IV.

18. Enforcement shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenants, either to restrain violation or to recover damages. No suit may be maintained unless the person violating the terms hereof shall have been provided with thirty (30) days written notice of violation.

19. Invalidation of any of these Covenants by judgment of court order shall in no way affect any of the other provisions which shall remain in full force and effect.

20. These Covenants are to run with the land and shall be binding on all parties and all persons claiming under them for a period of fifty (50) years from the date these

Covenants are recorded, after which time said Covenants shall be automatically extended for additional periods of ten (10) years each, unless an instrument signed by two-thirds (2/3) of the then owners of the lots owning not less than two-thirds (2/3) of the acreage in the Development has been recorded, agreeing to change said Covenants in whole or in part.

WITNESS the following signatures and seals:

New River Investment Group, a Virginia general partnership

By William Call, general partner

STATE OF VIRGINIA AT LARGE
COUNTY OF FRANKLIN, to-wit:

The foregoing was acknowledged before me this
the 11 day of Oct., 1990, by William Call.

Glenn R. Shively

NOTARY PUBLIC

My commission expires 10-6-91

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ST. TAX 58.1-801 (039)	\$	_____
LOCAL TAX (213)	\$	_____
TRANSFER FEE (212)	\$	_____
CLERK'S FEE (301)	\$	16.00
PLATS (301)	\$	_____
ST. TAX 58.1-802 (038)	\$	_____
LOCAL 58.1-802 (220)	\$	_____
VA ST. LIBRARY (145)	\$	1.00
TOTAL:	\$	17.00

In the Clerk's Office of the Circuit
Court of Franklin County, Va., this
11 day of OCTOBER, 19 90, this
instrument was presented with the
certificate of acknowledgement annexed
& admitted to record at 11:52 A.M.
The tax imposed under Sec. 58.1-802
has been paid.

Teste: H. J. Walker, Jr. Clerk