

17-1498

BOOK 619 PAGE 731

2017 DECLARATION OF AMENDED COVENANTS

This 2017 DECLARATION OF AMENDED COVENANTS, made and entered into by a majority of the owners of lots in Calmes Neck Estates Subdivision, Chapel Magisterial District, Clarke County, Virginia, as the same appears duly recorded in Deed Book 352 at Page 487 in the Office of the Clerk of the Circuit Court of Clarke County, Virginia.

WITNESSETH:

WHEREAS, the Calmes Neck Estates Subdivision having been duly platted and recorded by developer Double E Land & Cattle Co. in Deed Book 58 at Page 506; such plat being subsequently amended or re-platted in Deed Book 113 at Page 595, Deed Book 125 at Page 468, Deed Book 125 at Page 684, Deed Book 125 at Page 691; and such other amended plats or re-plats, which may appear in the chain of title of Double Land & Cattle Co. and Calmes Neck Property Owners Association; and

WHEREAS, certain real covenants have been previously established in the chain of title of Double E Land & Cattle Co., Calmes Neck Estates Property Owners Association, and Calmes Neck Estates Subdivision for the benefit of the lot owners in said subdivision; and

WHEREAS, in 1992, said real covenants were amended by agreement of the owners of a majority of lots, by a Declaration of Amended Covenants, duly recorded in Deed Book 223, at Page 765 in the Office of the Clerk of the Circuit Court of Clarke County, Virginia ("1992 Declaration of Amended Covenants"); and

WHEREAS, said 1992 Declaration of Amended Covenants provided for

amendment of the same on December 31, 2002 and every ten years thereafter; and

WHEREAS, in 2002, said 1992 Declaration of Amended Covenants were amended and duly recorded in Deed Book 352, at Page 45 in the Office of the Clerk of the Circuit Court of Clarke County, Virginia ("2002 Declaration of Amended Covenants"); and

WHEREAS, said 2002 Declaration of Amended Covenants provide for amendment of the same on December 31, 2007 and every five years thereafter, by the agreement of a majority of the owners of the lots in said subdivision; and

WHEREAS, the undersigned include a majority of the owners of the lots of the Calmes Neck Estates Subdivision, as well as others subject to these covenants, and the undersigned desire and agree to amend the aforesaid real covenants in certain respects as hereinafter more particularly set forth, such amendments to run with, and touch and concern, the land; provided further, that all such other provisions of the 2002 Declaration of Amended Covenants as are not amended herein shall remain in full force and effect and run with, and touch and concern, the land.

NOW, THEREFORE, for and in consideration of the premises and mutual promises contained herein, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto do agree and covenant as follows:

PROTECTIVE COVENANTS
CALMES NECK ESTATES, CLARKE COUNTY, VIRGINIA

OUTLINE

1. USE OF LAND
 - (a) Residential and associated recreational use only
 - (b) Common facilities
 - (c) Animals other than house pets restricted
 - (d) Use of Shenandoah River
2. RULES AND REGULATIONS
3. BUILDINGS AND PLANS
 - (a) Single family dwelling
 - (b) Building lines
 - (c) Size and construction of dwellings
 - (d) Approval of plans
 - (e) Temporary structures
 - (f) No mobile homes, etc.
 - (g) Limitation of antenna
 - (h) Disturbance of ground surface
 - (i) Toilet facilities
 - (j) Storage of building materials
 - (k) Building height
 - (l) Enforcement of building violation
4. EASEMENTS
 - (a) Utilities
 - (b) Ingress and egress
5. PRESERVATION OF NATURAL ENVIRONMENT
 - (a) General
 - (b) Trees and topography
 - (c) Sewage and refuse disposal
 - (d) Fires, firearms, sprays, etc.; hunting
 - (e) Use of motorized vehicles off roads
 - (f) Exterior lighting
6. ASSESSMENTS
 - (a) Definition of assessment unit (lot owner)
 - (b) Scope of annual assessment
 - (c) Basic and supplementary assessments
 - (d) Consequences of delayed payment
7. ENFORCEMENT, AMENDMENT AND CONTINUANCE OF COVENANTS
 - (a) When covenants may be amended
 - (b) Procedure for amending covenants
 - (c) Adding properties to the jurisdiction of the covenants
 - (d) Enforcement of covenants
 - (e) Partial invalidity

PROTECTIVE COVENANTS
CALMES NECK ESTATES, CLARKE COUNTY, VIRGINIA

It is the purpose of the owners of the land in Calmes Neck Estates to provide for the permanent protection and preservation of the natural character and beauty of the landscape and to make it possible for individual lot owners to share in the enjoyment of the scenic and recreational qualities of the area as a whole. It is presumed that purchasers of lots in the subdivision will share these goals and will use and care for their land so as to maintain the most natural and pleasant environment compatible with residential and recreational use. To this end, the following covenants, conditions, reservations and restrictions are imposed upon any and all lots sold from the division of land known as Calmes Neck Estates, as duly recorded in the Clarke County Circuit Court Clerk's Office, and to other properties bound by these covenants. These covenants, conditions, reservations and restrictions shall run with the land and be binding upon present and future owners of all said lots. Each owner of a lot subject to this 2017 Declaration of Amended Covenants shall automatically, by virtue of such ownership, be a member of Calmes Neck Property Owners Association.

The Calmes Neck Property Owners Association is a nonstock corporation incorporated under the laws of the Commonwealth of Virginia for the purpose of maintaining and administering the common properties of Calmes Neck Estates and enforcing the provisions of these covenants. Wherever in these covenants "the Association" appears, the meaning shall be the same as if written "the Calmes Neck Property Owners Association, its successors or assigns."

1. USE OF LAND

(a) All lots in the subdivision shall be used only for residential and associated recreational purposes. No person may engage in any business or occupation upon subject lot or lots except by written consent of the Association.

(b) Each lot owner, his family, and accompanied guests shall have access to, and shall have free use of, certain recreational facilities designated for common use under rules and regulations established by the Association and shown on a map incorporated in the regulations.

(c) No person shall keep animals or poultry of any kind, other than house pets not raised for commercial purposes, on any lot or lots except by written consent of the Association.

(d) No untended boats shall be anchored off shore in the Shenandoah River. When not in use, boats shall be pulled on the bank or moored as closely adjacent to the bank as safety allows, in order that navigation will not be impeded. It is specifically

understood that the use of the Shenandoah River for boating, fishing, swimming, and anchorage is to be at the person's own risk, and the Association shall not be liable for any resulting damages or injury.

2. RULES AND REGULATIONS

To effectuate the intent of these covenants, the Association establishes and publishes appropriate rules, regulations and standards, including a map defining common-use areas and allowable land use. A full and correct copy of the rules, regulations and standards currently in effect will be provided to every property owner. Such rules, regulations and standards may be revised and amended from time to time by sending a copy to each lot owner at the last address of record. Wherever in these covenants the term "rules and regulations" appears it shall mean the rules and regulations so established and currently in effect at the time of the events to which they apply.

3. BUILDINGS AND PLANS

(a) No more than one single-family dwelling house shall be erected on any one lot.

(b) No dwelling, including porches or bay windows attached thereto, shall be built within less than one hundred (100) feet of the line fronting on any public or common-access road as shown on said plat, nor within less than twenty-five (25) feet of side or rear lines of any lot; however, the Association shall have the right to waive or modify these setback restrictions, provided the waiver is in writing.

(c) Any permanent dwelling house shall have a floor area, excluding porches and decks, of no less than one thousand (1,000) square feet. It shall be of design appropriate to the site and shall be of first-class materials and construction, or, with the prior written approval of the Association, hand-crafted of native materials.

(d) No building, fence, road or other permanent structure shall be built, or exterior addition made to an existing building, unless and until detailed plans and specifications, including a site plan showing the location(s) of such structure(s) and areas of clearing, excavation, grading and filling have been submitted to and approved in writing by the Association. If the Association fails to approve or disapprove of such plans within sixty (60) days after receipt thereof, this provision shall be deemed to have been fully complied with, but none of the other restrictions in these covenants are waived thereby. If construction is not begun within one (1) year from date of approval of the plans, such approval is terminated and plans must be submitted anew and acted upon before construction may start.

(e) Any temporary structure or camp site shall be established only (1) with the prior written approval of the Association and (2) under the terms and conditions of such

approval and in no event will they be at a location visible from any public road or other road retained in the ownership of the Association for joint use of property owners.

(f) No mobile home or house trailer shall be parked on any lot, nor any detached building constructed, except by prior written approval of the Association.

(g) No tower or radio or television antenna of trussed construction, or in wooded areas of a height making it visible above the treetops, shall be erected, except by prior written approval of the Association.

(h) Private roads shall be located and constructed with a minimum of disturbance to the landscape and according to a plan previously approved by the Association as provided in Subparagraph (d) above. Drainage ditches, cuts and fills shall be effectively treated to prevent erosion. Impervious paved areas shall be the minimum practical for the intended use, and runoff water therefrom shall be detained within the boundaries of the owner's property until cleared of sediment, then released gradually into natural drainageways.

(i) Temporary or detached toilet facilities may be constructed only with the written approval of the Association and must be removed when the need ceases to exist. The Association reserves the right to withdraw approval of such facilities at any time, whereupon they shall be removed within thirty (30) days from notice of such withdrawal of approval.

(j) No building materials may be stored in open view on any lot before a building plan for their use has been approved. Unused materials shall be removed from the premises or stored out of view from any public or common-access road.

(k) On those properties above 800 feet elevation, no building visible from Calmes Neck Lane shall have a roof of which any part is higher than seven (7) feet above the level of the nearest points on Calmes Neck Lane. External painting of all buildings on said lots must be of a color which blends in with the natural colors of the landscape, especially when viewed from the road or from the opposite side of the Shenandoah River.

(m) The Association, in addition to its other rights hereunder, and any other rights it has at law or in equity, shall have the right to remove or destroy any building or structure erected in violation of these covenants. However, any building or structure completed and maintained for one (1) year without written objection by the Association, or legal action by any property owner in Calmes Neck Estates in objection thereto, shall be conclusively deemed to have been erected with the approval of the Association, without objection and in conformity with these covenants.

4. EASEMENTS

(a) An easement over the twenty (20) foot width adjoining the front, side or rear lines of any lot is specifically reserved for water, sewer, gas, electricity, telephone, drainage and any other utilities to the other properties of this subdivision.

(b) An easement for ingress and egress for fire protection is reserved over all of the respective properties for the benefit of the Association. and all other owners of property in the subdivision.

5. PRESERVATION OF NATURAL ENVIRONMENT

(a) All reasonable efforts shall be made to protect and preserve native vegetation and wildlife, including all forms of animal life, and to preserve the peace and quiet of the area.

(b) Trees and topography shall remain uncut, untrimmed and undisturbed and land shall not be plowed, excavated, removed or cultivated except as done in conformity with the rules and regulations of the Association or a specific plan approved in writing by the Association.

(c) Sewage and refuse shall be disposed of in a sanitary and sightly manner, in conformity with standards and recommendations of state and local health authorities and with rules and regulations established by the Association. No sewage or refuse shall be emptied into the Shenandoah River bounding said premises or any lands adjacent thereto; or into any cove or inlet, stream or waterway connecting therewith.

(d) Fires, firearms, chemical pesticides and other destructive agents shall be used only in accordance with rules and regulations established by the Association or with specific prior approval of the Association. Hunting shall be permitted only during hunting season on specified areas and with written permission of the Association and the owners of the property involved.

(e) Motorized vehicles, including but not limited to motorcycles, motorbikes and snowmobiles shall not be driven off the access roads of the subdivision except on the property of the operators of such vehicles, or with the permission of the property owners where driven, except that the Association may authorize access to any part of the subdivision for purposes of maintaining or protecting the property.

(f) Artificial lighting visible from Calmes Neck Lane or other properties shall be kept to the minimum required for safety and convenience, in accordance with rules and regulations established by the Association.

6. ASSESSMENTS

(a) For purposes of these covenants, a lot owner is defined as a person who individually owns, or multiple persons who jointly own, one or more lots in Calmes Neck Estates or other property governed by these covenants; except that if more than one improved lot is owned by any person or persons, then separate ownerships shall be deemed to exist for each improved lot.

(b) Each lot owner shall be subject to an annual charge or assessment for the repair and maintenance of roads and recreation facilities and associated costs for the convenience and common use of all lot owners, and for such other purposes as agreed to by a majority of the property owners, provided that affirmative votes represent at least two thirds (2/3) of those voting.

(c) The assessment shall consist of the sum of two parts. The basic assessment shall be equal to a pro rata share of expenditures for maintenance, repair and administration, and shall not increase more than ten percent (10%) in any one year over the highest amount assessed during the preceding three years. A supplementary assessment may be initiated or increased only for such purposes and in such amounts as are approved by a majority of the lot owners, provided that affirmative votes represent at least two thirds (2/3) of those voting.

(d) Any lot owner who fails to pay any such charges within thirty (30) days of billing shall forfeit common-use privileges with respect to such designated areas and facilities until the payment, plus successive ten percent (10%) liquidated damages added for each month in arrears, shall have been paid. Assessments, including late charges, shall constitute a lien upon the property which lien will be noted on the Association's books which shall be sufficient to constitute notice to all purchasers; in the absence of such notice on the Association's books, purchasers shall be entitled to assume that the assessments for the lot in question have been paid through the preceding year of purchase. These remedies are in addition to those remedies provided at law or in equity for the enforcement of these assessments.

7. ENFORCEMENT, AMENDMENT, AND CONTINUANCE OF COVENANTS

(a) All restrictions and covenants in this instrument shall continue in force until the 31st day of December, 2007, and shall be automatically and successively renewed for five (5) year periods thereafter, unless amended or revised by the procedure set forth in paragraph (b) of this section.

(b) These covenants may be amended or revised by an instrument setting forth the changes in detail, signed by a majority of lot owners as defined in Paragraph 6(a) above, and recorded in the Office of the Clerk of the Circuit Court of Clarke County, Virginia, two (2) months or more prior to the effective date, and provided that all lot owners were mailed a document discussing such proposed changes at least twelve (12) months prior to the effective date.

(c) The Association may submit additional land to the provisions of these covenants upon receiving written consent of all of the owners of the land proposed for addition and a majority of the existing lot owners as defined in Paragraph 6(a). Any such submission may contain additions to the provisions of this Declaration as may be necessary to reflect the different character of the land desired therein and as are not inconsistent with the overall scheme of this Declaration and the intentions of the Association.

(d) It shall be lawful for the Association, its successors, or any owner of any lot in the subdivision to institute and prosecute any proceedings at law or in equity against the person or persons violating or threatening to violate these covenants. Each of the foregoing agreements, covenants and restrictions shall remain at all times in full force and effect, regardless of whether ownership was acquired by purchase, foreclosure, devise, inheritance, or any other manner.

(e) These covenants are attached to and shall run with the land. If any one or more of these covenants is declared invalid by a court of competent jurisdiction, this shall not affect the enforceability of the remaining covenants.

August 2017