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MAY 30 1985  
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RICHMOND, VIRGINIA

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IN THE  
**Supreme Court of Virginia**

AT RICHMOND

---

RECORD NO. 942231

---

JAN 22 1985

**LEE'S HILL HOMEOWNERS,  
an unincorporated association; and  
KELLY BOEHRINGER,**

*Appellants,*

**v.**

**RALPH DEWAYNE CARTER and  
ROBIN KEITH CARTER,**

*Appellees.*

---

**JOINT APPENDIX**

---

**Michael J. George  
Attorney at Law  
904 Princess Anne Street  
Suite 401  
Fredericksburg, VA 22401  
(703) 371-8939**

*Counsel for Appellants*

**Mark S. Gardner  
GARDNER, MAUPIN & SUTTON, P.C.  
The Professional Building  
9108 Courthouse Road  
P.O. Box 129  
Spotsylvania, VA 22553  
(703) 583-6333**

*Counsel for Appellees*

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**Exhibits**

**Exhibits presented at Trial on September 2, 1994**

**Plaintiffs' Exhibit No.:**

<b>1-Photograph . . . . .</b>	<b>106</b>
<b>2-Declaration for Lee's Hill . . . . .</b>	<b>107</b>
<b>3-Photograph . . . . .</b>	<b>207</b>
<b>4-Photograph . . . . .</b>	<b>208</b>

**Defendants' Exhibit No.:**

<b>1-Plat (Too large to send--on file with Spotsylvania Circuit Court) . . . . .</b>	<b>209</b>
<b>2-Photographs . . . . .</b>	<b>210</b>
<b>3-Photograph . . . . .</b>	<b>211</b>

*filed 6-22-94 JJS*

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF SPOTSYLVANIA

LEE'S HILL HOMEOWNERS, an  
unincorporated association, AND  
KELLY M. BOEHRINGER

PLAINTIFFS

V.

RALPH DEWAYNE CARTER AND  
ROBIN KEITH CARTER

DEFENDANTS

CHANCERY NO. C-94-231

**BILL OF COMPLAINT**  
**AND PETITION FOR INJUNCTIVE RELIEF**

Plaintiffs, the Lee's Hill Homeowners, an unincorporated association, and Kelly M. Boehringer, an individual, respectfully represent to this Court:

1. Plaintiff Lee's Hill Homeowners is an unincorporated association formed for the purpose of protecting individual members' property rights in a collective fashion. Members are owners of plots of land and homes located within the Lee's Hill subdivision situated near the City of Fredericksburg, Virginia in the Magisterial District of Spotsylvania County, Virginia.

2. Plaintiff Kelly M. Boehringer, an adult over the age of eighteen years, is a member of the aforementioned association and is an individual homeowner residing in a home located within the Lee's Hill subdivision situated near the City of Fredericksburg, Virginia in the Magisterial District of Spotsylvania County, Virginia.

3. Plaintiffs purchased these properties and homes over the course of approximately the last four years from the Lee's Hill Partnership, a Virginia general partnership, as reflected by the

covenants accompanying all deeded grants to homeowners, attached hereto as Exhibit "A".

4. Defendants, Ralph Dewayne Carter and Robin Keith Carter, are the owners of a strip of land known hereinafter as "Common Area Property," also located within the Lee's Hill subdivision situated near the City of Fredericksburg, Virginia in the Magisterial District of Spotsylvania County, Virginia; Defendants' intended and imminent use of this Common Area Property and its effect upon an easement owned by the plaintiffs is the subject of this lawsuit.

5. On or about February 11, 1991, the Lee's Hill Association was granted title via deed to property located on Amelia Drive, referred to hereinafter below as "Common Area Property," such conveyance having been done in accordance with the mutual covenants reflected in Exhibit A, above. This Common Area Property adjoins property owned both by Walter L. Carter and Mary Lee Carter as well as property owned by defendants (hereinafter referred to collectively as the "Carter Property"), and provides a buffer between the Lee's Hill Subdivision and the Carter Property. This deed and supplementary declaration (declaring the Common Area Property as "common area") are attached hereto as Exhibit "B".

6. On or about May 13, 1994, the Lee's Hill Association, an entity presently and entirely controlled by Lee's Hill Partnership, exchanged a portion of the Common Area Property for a tract of land owned by the Lee's Hill Partnership elsewhere within the subdivision, the deed recording this transaction is attached hereto as Exhibit "C".

7. On or about May 13, 1994, the Lee's Hill Partnership then sold the Common Area Property obtained via the foregoing exchange to defendants. An amount of \$500 is indicated on the recorded deed as consideration. This deed is attached hereto as Exhibit "D".

8. On or about May 26, 1994, Mary Lee Carter and Walter L. Carter, Jr., then gave a portion of their adjoining tract to defendants. This transfer was a gift and is attached hereto as Exhibit "E".

9. In or about mid-June 1994, the curb next to the Common Area Property was cut in such a way as to indicate that two drive ways would be located across the Common Area Property.

10. These curb cuts prompted an investigation by concerned homeowners and the resulting investigation revealed that the Common Area Property had been sold to the defendants as detailed above and two homes would be placed on the Carter Property and driveway access to Amelia Drive would be gained through the Common Area Property.

11. The deeds of all homeowners in the Lee's Hill Subdivision contain covenants substantially identical to those contained in Exhibit A, such deeds granting, among other things, a "non-exclusive right and easement of use and enjoyment in and to the Common Area."

12. Pursuant to their easement, plaintiffs have used and enjoyed the Common Area Property for a period of several years. Said Common Area Property consists of a strip of land, or embankment, inclined and rising approximately ten feet above the subdivision lots and roadway. The incline and moderate elevation

of the Common Area Property, as well as the trees growing on the strip of land, provide a scenic and aesthetically pleasing break from the building lots and provide for a visual separation between the Lee's Hill Community and the neighborhood located along Mine Road as well as providing a nature setting for walks and other outdoor activities.

13. Defendants now prepare to place two driveways across the Common Area Property. Such use would require the razing of much, if not all of the embankment and the cutting of trees growing on top of the embankment. The two planned driveways would prevent use and enjoyment of the easement possessed by plaintiffs by radically changing the nature of the Common Area Property and will cause them irreparable injury for which they have no adequate remedy at law.

WHEREFORE, PLAINTIFFS PRAY that this Court:

1. Issue a temporary injunction enjoining defendants from interfering with plaintiffs' use of said easement pending a final determination of plaintiffs' rights to such use;
2. Issue a permanent injunction perpetually enjoining and restraining defendants from interfering with the free and dominant use of said easement by plaintiffs and requiring defendants to refrain from any further disturbance of said Common Area Property;
3. And for such other and further relief as equity and the nature of their case may require.

MICHAEL J. GEORGE

  
Counsel for Plaintiffs  
Lee's Hill Homeowners, and  
Kelly M. Boehringer

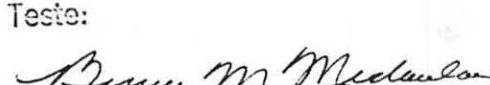
Michael J. George  
2217 Princess Anne Street  
Suite 202A  
Fredericksburg, VA 22401  
(703) 899-3411

Filed for the Office of Spotsylvania County

23 June 1994

Writ Tax	\$ 5.00
Fee	\$ 40.00
Deposit	\$ 4.00
Legal fees	\$ 2.00
Total Paid	\$ 51.00

Teste:

 Deputy Clerk  
Linda Jo Johnson, Clerk

VIRGINIA:

IN THE CIRCUIT COURT OF SPOTSYLVANIA COUNTY

LEE'S HILL HOMEOWNERS, an  
unincorporated association, and  
KELLY M. BOEHRINGER,

Plaintiffs

v.

RALPH DEWAYNE CARTER and  
ROBIN KEITH CARTER,

Defendants

ORDER

On the 22nd day of June, 1994, came the plaintiffs upon the bill of complaint and petition for injunctive relief filed that date and the defendants in person who accepted service of said pleadings in open Court, upon evidence on behalf of the plaintiffs ore tenus, upon the proffers and representations of counsel with respect to facts relevant to the request for temporary injunction, and was argued by counsel.

Upon consideration whereof, the Court finds from the evidence presented including the allegations made in the bill of complaint and the exhibits filed therewith as well as the evidence presented ore tenus and the representations of counsel that there is not a strong likelihood of the plaintiffs prevailing on the merits of this cause, that the harm alleged by the plaintiffs is not irreparable in any event and further that balancing the hardships which would be imposed upon the parties respectively by granting or denying the temporary injunction weighs in favor of denying

the injunction and it is accordingly

ORDERED that the petition for temporary injunction  
be and the same is hereby denied.

And this cause is continued for such other and  
further proceedings as may be necessary.

ENTER:   
Judge


DATE: July 7, 1994

I ASK FOR THIS:



Counsel for Ralph Dewayne Carter  
and Robin Keith Carter

SEEN (AND OBJECTED TO):



Counsel for Lee's Hill Homeowners  
and Kelly M. Boehringer

VIRGINIA:

IN THE CIRCUIT COURT OF SPOTSYLVANIA COUNTY

LEE'S HILL HOMEOWNERS, an  
unincorporated association,  
and KELLY BOEHRINGER,

Plaintiffs

v.

CH94-231

RALPH DEWAYNE CARTER and  
ROBIN KEITH CARTER,

Defendants

ANSWER

Come now the defendants, Ralph Dewayne Carter and Robin Keith Carter, by counsel, and in answer to the bill of complaint and petition for injunctive relief filed against them herein, respectfully state as follows:

1. That they have no knowledge of the truth or falsity of the allegations set forth in paragraphs 1, 2 and 3 of the bill of complaint and therefore the same are denied.

2. That the allegations set forth in paragraphs 4, 5, 6, 7, 8 and 9 of the bill of complaint are all admitted.

3. That defendants have no knowledge of the truth or falsity of the allegations set forth in paragraph 10 of the bill of complaint and therefore deny the same.

4. That the allegations set forth in paragraph 11 of the bill of complaint are admitted. In further affirmative response to said allegations, however, your defendants state that any easement in favor of the plaintiffs in the Common

Area is by virtue of the explicit language in the instrument creating the easement both "non-exclusive" and subject to the powers reserved to the Lee's Hill association which include, among others, the power to convey Common Area properties within the subdivision for any "purpose necessary or desirable for the orderly development of the property (the subdivision) or for the benefit of adjoining real estate" and the unilateral right to relocate boundary lines of Common Areas provided such relocation does not materially and adversely affect any owner.

5. That the allegations set forth in paragraph 12 of the bill of complaint are denied.

6. That defendants admit it is their intention to place two driveways across the Common Area property as is alleged in paragraph 13 of the bill of complaint but the other allegations set forth in that paragraph are denied.

7. Defendants further affirmatively allege that the transfer of the Common Area property in issue in these proceedings was lawfully and properly made for a legitimate purpose specifically set forth in the same instrument which creates any easement in Common Area property in favor of the plaintiffs herein and which by necessity limits any such easement; that the defendants' intended use of a small portion of the Common Area property for installation of driveways as a means of ingress and egress to and from their property and Amelia Drive, a public roadway will in no way

materially or adversely affect any of the plaintiffs nor cause any of them any damage, irreparable or otherwise; and that to enjoin the defendants' intended use of the subject property would impose upon the defendants a substantial and real hardship in that they would be forced to obtain other access to their property from a State maintained roadway at much inconvenience and expense.

WHEREFORE, defendants pray that the bill of complaint and petition for injunctive relief filed herein be dismissed and that they be awarded their costs in this behalf expended.

RALPH DEWAYNE CARTER and  
ROBIN KEITH CARTER

BY: 

Of Counsel

Mark S. Gardner  
GARDNER & MAUPIN  
The Professional Building  
9108 Courthouse Road  
P. O. Box 129  
Spotsylvania, Virginia 22553  
Telephone: (703) 582-6333

CERTIFICATE

I hereby certify that a true copy of the foregoing Answer was mailed by first class mail, postage prepaid, this 12<sup>th</sup> day of July, 1994, to Michael J. George, counsel for the plaintiffs herein, at 2217 Princess Anne Street, Suite 202A, Fredericksburg, Virginia 22401.

  
Mark S. Gardner

GARDNER & MAUPIN  
ATTORNEYS AT LAW  
THE PROFESSIONAL BUILDING  
P. O. BOX 129  
SPOTSYLVANIA C.H.  
VIRGINIA 22553

**EXHIBIT A**

**SEE APPENDIX PAGES 107-206**

**(PLAINTIFFS' EXHIBIT NO. 2)**

*Gardner & Mangin*

B BOOK 981 PAGE 80

3486 PROOFED

SUPPLEMENTARY DECLARATION  
FOR  
LEE'S HILL

Phase/Section 1B

(Detached Single Family)

THIS SUPPLEMENTARY DECLARATION FOR LEE'S HILL is made as of February 11th, 1991 by LEE'S HILL PARTNERSHIP, a Virginia general partnership ("Declarant").

RECITALS:

✓ R-1. The Declarant executed the Declaration For Lee's Hill ("Declaration") dated December 12, 1989 and recorded on December 15, 1989 in Deed Book 890 at Page 125 among the land records of Spotsylvania County, Virginia ("Land Records"), submitting certain real estate as further described in the Declaration to the covenants, charges, restrictions, easements and liens contained in the Declaration.

R-2. Section 4.1 of the Declaration reserves to the Declarant the unilateral right to execute and record amendments to the Declaration submitting certain real estate designated as additional real estate ("Additional Real Estate") and described in Exhibit B thereto, to the Declaration and the jurisdiction of the Association until the twentieth anniversary of the date of recordation of the Declaration.

R-3. The Declarant is the owner in fee simple absolute of certain real estate described in Exhibit A hereto and constituting a portion of the Additional Real Estate.

R-4. The Declarant has complied with the provisions of Article 4 of the Declaration and wishes to submit the real estate described in Exhibit A hereto to the Declaration.

NOW, THEREFORE, the Declarant hereby covenants and declares on behalf of itself and its successors and assigns that all of the real estate described in Exhibit A hereto, together with such additions as may hereafter be made thereto as provided in Article 2 hereof, shall from the date this Supplementary Declaration is recorded, be held, conveyed, acquired and encumbered subject to the covenants, charges, restrictions, easements, liens and other provisions of the Declaration as the same may be amended from time to time in accordance with the provisions for amendment

contained therein, and subject to the covenants, charges, restrictions, easements and liens set forth herein.

#### ARTICLE 1

##### PHASE DESIGNATION

The real estate described on Exhibit A hereto shall be known by the designation set forth in the title.

#### ARTICLE 2

##### ADDITIONAL REAL ESTATE

All or any part of the real estate designated as Additional Real Estate in Exhibit B to the Declaration may be added to this Phase and submitted to the Declaration and this Supplementary Declaration, without the consent of the Owners or Mortgagees (except to the extent a Mortgagee holds a Mortgage on real estate being submitted to this Supplementary Declaration), for so long as the Declarant retains the right to add Additional Real Estate pursuant to Section 4.1 of the Declaration. The Declarant may submit such real estate by recording an amendment to this Supplementary Declaration or recording a separate Supplementary Declaration signed by the Declarant which designates such Additional Real Estate as part of this Phase.

#### ARTICLE 3

##### COMMON AREA

The real estate described in Exhibit B hereto will be Common Area effective upon conveyance to the Lee's Hill Community Association, Inc.

#### ARTICLE 4

##### LIMITED COMMON EXPENSE ASSESSMENTS

Section 4.1. Purpose. Assessments for Limited Common Expenses made against the Lots in this Phase shall be used for the purpose of providing services which are necessary or desirable for the health, safety and welfare of the Owners of Lots within the Phase. Such services may include: (i) management and Upkeep and reservation of reserves for Upkeep of any Common Area designated as Limited Common Area for the benefit of Lots in this Phase; (ii) management and Upkeep and the reservation of reserves for Upkeep of private streets and parking areas located within this Phase; (iii) services only benefiting Lots within this Phase; or (iv) any purpose consistent with Subsection 6.2(a)(2) of the Declaration.

Section 4.2. Basis of Assessment. The basis for assessment shall be as set forth in Section 6.2(a)(2) of the Declaration.

Section 4.3. Maximum Assessment for Limited Common Expenses. Until the first day of the fiscal year following recordation of this Supplementary Declaration, the maximum annual assessment for Limited Common Expenses against Lots in this Phase shall be Two Hundred Twenty Dollars (\$220.00).

Section 4.4. Limitations on Increases. The maximum annual assessment for Limited Common Expenses set forth above and in the Declaration shall be increased annually pursuant to Section 6.2(a)(4) of the Declaration.

Section 4.5. Method of Assessment. The Lots which are part of this Phase shall be assessed in accordance with this Article and Article 6 of the Declaration.

#### ARTICLE 5

##### RESERVATION OF POWER OF ATTORNEY TO GRANT EASEMENTS

There shall be and is hereby reserved granted to the Declarant and its successors and assigns the power and right with respect to the Lots subject to this Supplementary Declaration, to grant easements required by a governmental agency or authority in connection with the release of public improvement bonds or the acceptance of streets for public maintenance. This power shall continue for a period of sixty months from date hereof, or until the earlier release of all public improvement bonds and acceptance for public maintenance of streets serving the Lots subject to this Supplementary Declaration.

#### ARTICLE 6

##### GENERAL PROVISIONS

Section 6.1. Amendment/Termination. Subject to the Declarant's right to add Additional Real Estate to this Phase pursuant to Article 2 hereof, the provisions of this Supplementary Declaration may be amended only by an instrument signed by: (1) the Declarant, during the Development Period, (2) Owners entitled to cast at least sixty-seven percent of the total number of votes appurtenant to Lots in this Phase; and (3) an authorized officer of the Association. All amendments shall be made in accordance with the provisions of Section 15.4 of the Declaration by obtaining the approval of Owners of Lots in this Phase and Mortgagees holding Mortgages on Lots in this Phase, if necessary. Notwithstanding the foregoing, the maximum annual assessment for Limited Common Expenses cannot be decreased. Any amendment which conflicts with the provisions of the Declaration shall be void. No amendment shall have the effect of terminating

the Supplementary Declaration or withdrawing the real estate described on Exhibit A hereto from the Supplementary Declaration or Declaration, except in accordance with the provisions for termination or withdrawal in the Declaration. An amendment or termination shall not be effective until recorded among the Land Records. During the Declarant Control Period and subject to the Declarant's right to add Additional Real Estate to this Phase pursuant to Article 2 hereof, amendment or termination of this Supplementary Declaration requires the approval of the Veterans Administration, if a Mortgage on a Lot in this Phase is guaranteed by the Veterans Administration, and the Federal Housing Administration, if a Mortgage on a Lot in this Phase is insured by the Federal Housing Administration.

Section 6.2. Enforcement. The Association, the Declarant or any Owner or Mortgagee of Lots in this Phase shall have the right, by any proceeding at law or in equity, to enforce all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Supplementary Declaration. Failure to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 6.3. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

Section 6.4. Terms and Definitions. The terms used herein shall have the same meaning and definition as set forth in the Declaration.

## ARTICLE 7

### RESUBDIVISION

The property subject to this Supplementary Declaration shall not be resubdivided without the prior written consent of the Declarant, during the Development Period. Thereafter, Board of Directors must consent to the resubdivision. The Declarant and the Board shall consent to a resubdivision to accommodate not more than sixty-five (65) residential lots.

BOOK 981 PAGE 84

IN WITNESS WHEREOF, the undersigned has caused this Supplementary Declaration to be executed pursuant to due and proper authority as of the date first set forth above.

LEE'S HILL PARTNERSHIP, a  
Virginia General Partnership

By: Blantyre Associates, L.P.,  
its general partner

By: Stoneleigh, Inc.,  
its general partner

By: John T. Hazel, III  
John T. Hazel, III  
President

By: Leewood, L.P.,  
General Partner

By: Beechlee Development  
Corporation, its general  
partner

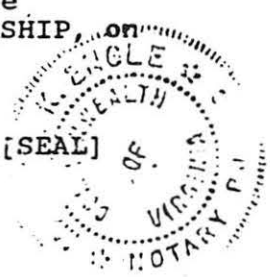
By: Richard M. Hazel  
Richard M. Hazel  
President

COMMONWEALTH OF VIRGINIA )  
COUNTY OF FAIRFAX ) ss:

The forgoing instrument was acknowledged before me this 11th day of February, 19 91, by John T. Hazel, III, President, Stoneleigh, Inc., general partner of Blantyre Associates, L.P., general partner of LEE'S HILL PARTNERSHIP, on behalf of said Lee's Hill Partnership.

Marsha K. Engle [SEAL]  
Notary Public

My Commission Expires: January 19, 1993



COMMONWEALTH OF VIRGINIA )  
 ) ss:  
COUNTY OF SPOTSYLVANIA )

The forgoing instrument was acknowledged before me this 13  
day of February, 1991, by Richard M. Hazel, President  
of Beechlee Development Corporation, general partner of Leewood,  
L.P., general partner of LEE'S HILL PARTNERSHIP, on behalf of  
said Lee's Hill Partnership.

*Francis A. Self* [SEAL]  
Notary Public

My Commission Expires: October 22, 1994



BOOK 931 PAGE 86

EXHIBIT A

[Description of the Submitted Real Estate]

Lots Fifty-one (51) through One Hundred Fifteen (115) inclusive, and Parcels D, E, F and G, Section 1B, LEE'S HILL, as the same appear duly dedicated, platted subdivided and recorded in Deed Book 947 at page 259, among the land records of Spotsylvania County, Virginia.

EXHIBIT B

(Description of the Common Area)

Parcels D, E, F and G, SECTION 18, LEE'S HILL, as the same appear duly dedicated, platted, subdivided and recorded in Deed Book 947 at page 259, among the land records of Spotsylvania County, Virginia.

SPOTSYLVANIA COUNTY CIRCUIT COURT CLERK'S OFFICE, VIRGINIA, *Mark R.*  
 1991, This ~~Deed~~ *Deed* ~~is~~ *is* ~~being~~ *being* ~~recorded~~ *recorded* ~~in~~ *in* ~~this~~ *this* ~~office~~ *office* ~~together~~ *together* ~~with~~ *with* ~~the~~ *the* ~~certificate~~ *certificate* ~~thereon~~ *thereon* ~~admitted~~ *admitted* ~~to~~ *to* ~~record~~ *record* ~~at~~ *at* ~~9:31~~ *9:31* ~~o'clock~~ *o'clock*.  
 A.M. *11:00*  
 Tester: *Margaret M. Cook*, Clerk. Total *17.00*

3487

BOOK 961 PAGE 88

THIS DEED OF GIFT is made as of February 11th, 1991, by and between LEE'S HILL PARTNERSHIP, a Virginia general partnership ("Grantor"); and LEE'S HILL COMMUNITY ASSOCIATION, INC., a Virginia nonstock corporation ("Association").

W I T N E S S E T H T H A T:

WHEREAS, Grantor is the owner of certain property located in Spotsylvania County, Virginia, as further described below (the "Property") being a portion of the property acquired by Grantor by a Deed recorded in Deed Book 827 at Page 212 among the land records of Spotsylvania County, Virginia ("Land Records"); and

WHEREAS, it is the desire of Grantor to convey the Property to the Association,

NOW, THEREFORE, THIS DEED WITNESSETH, that for and in consideration of the premises and the sum of ONE DOLLAR (\$1.00) cash in hand paid, the receipt of which is hereby acknowledged, Grantor does hereby grant, bargain, sell and convey unto the Association with Special Warranty of Title, all of that certain parcel of land situate in Spotsylvania County, Virginia, and more particularly described as follows:

Parcels D, E, F and G, Section 18, LEE'S HILL, as the same appears duly dedicated, platted, subdivided, and recorded in Deed Book 847 at Page 259 among the land records of Spotsylvania County, Virginia.

This conveyance is made subject to the Declaration for Lee's Hill ("Declaration"), dated December 12, 1989, and recorded on December 15, 1989, in Deed Book 890 at Page 125 among the Land Records as amended by supplementary declarations or otherwise and further subject to any other conditions, restrictive covenants, agreements, rights-of-way and easements contained in the deeds forming the chain of title to the Property.

Law Offices  
Hazel & Thomas  
A PROFESSIONAL CORPORATION

C/o Lee's Hill  
10707 Courthouse Rd  
Ft. Belvoir, VA 22401

89

IN WITNESS WHEREOF, Grantor has caused this Deed to be signed and delivered by its duly authorized general partners as of the date first set forth above.

LEE'S HILL PARTNERSHIP, a  
Virginia General Partnership

By: Blantyre Associates, L.P.  
general partner

By: Stoneleigh, Inc., its  
general partner

By: John T. Hazel, III  
John T. Hazel, III  
President

By: Leewood, L.P.,  
general partner

By: Beechlee Development  
Corporation, its general  
partner

By: Richard M. Hazel  
Richard M. Hazel  
President

STATE OF VIRGINIA

COUNTY OF FAIRFAX to-wit:

The forgoing instrument was acknowledged before me this 11th day of February, 1991, by John T. Hazel, III, President, Stoneleigh, Inc., general partner of Blantyre Associates, L.P., general partner of LEE'S HILL PARTNERSHIP, on behalf of said Lee's Hill Partnership.

Marska K. Engle [SEAL]  
Notary Public

My commission expires: January 19, 1993

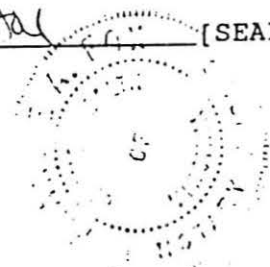
STATE OF VIRGINIA

COUNTY OF SPOTSYLVANIA to-wit:

The forgoing instrument was acknowledged before me this 13 day of February, 1991, by Richard M. Hazel, President of Beechlee Development Corporation, general partner of Leewood, L.P., general partner of LEE'S HILL PARTNERSHIP, on behalf of said Lee's Hill Partnership.

Lance A. Taylor [SEAL]  
Notary Public

My commission expires: October 22, 1994



SPOTSYLVANIA COUNTY CIRCUIT COURT CLERK'S OFFICE, VIRGINIA March 18  
1991. This Deed of Gift was State Tax \_\_\_\_\_  
this day received in this office together with the cer- County Tax 1.00  
tificate thereon admitted to record at 9:31 o'clock. Transfer 13.00  
A.B. Recording 14.00  
Tests: Margaret M. Cooke, Clerk. Add. Tax 14.00  
Total 14.00

Consideration: \$ exchange \_\_\_\_\_ Return to Grantees:  
 Grantees' Address:  
 4313 Essex Court  
 Fredericksburg, VA 22408

11858

DEED OF EXCHANGE

THIS DEED OF EXCHANGE, made and entered into this 13th day of May, 1994, by and between LEE'S HILL PARTNERSHIP, a Virginia General Partnership, Grantor; and LEE'S HILL COMMUNITY ASSOCIATION, INC., a Virginia non-stock corporation, Grantee.

NOW, THEREFORE, WITNESSETH: That for and in consideration of the mutual covenants, and in consideration of the exchange of the property as herein described, and other good and valuable consideration, the receipt of which is hereby acknowledged, Lee's Hill Partnership does hereby grant, bargain, sell and convey unto Lee's Hill Community Association, Inc., a Virginia non-stock Corporation, with GENERAL WARRANTY and all Virginia statutory covenants of title, in fee simple, the following described real estate, to-wit:

All that certain tract, piece or parcel of real estate, with all rights and privileges thereto appurtenant, situate, lying and being in Lee Hill Magisterial District, Spotsylvania County, Virginia, containing 0.48489 acre and more particularly described as to metes and bounds as follows: Beginning at a point a corner to Lot 62, Section 1B, Lee's Hill Subdivision and adjacent to land now or formerly of First Golf, Inc.; thence with the Line of Lot 62 North 37° 30' 31" East to a point in the line of Lot 63, Section 1B, Lee's Hill; thence South 90° 00' 00" East to a point at the corner of Lots 78 and 79, Section 1B, Lee's Hill; thence with the Line of Lot 79 South 31° 40' 03" East 90.44 feet to a point; thence North 89 degrees 51' 46" West to the point of beginning.

It being a portion of the same property acquired by Lee's Hill Partnership by Deed from The Massaponax Valley Corp. dated December 15, 1988, recorded in Deed Book 827, page 212 of the aforesaid Clerk's Office.

AND, FURTHER WITNESSETH: That for and in consideration of the mutual covenants, and in consideration of the exchange of the property as herein

described, and other good and valuable consideration, the receipt of which is hereby acknowledged, Lee's Hill Community Association, Inc., does hereby grant, bargain, sell and convey unto Lee's Hill Partnership, with **GENERAL WARRANTY** and all Virginia statutory covenants of title, in fee simple, the following described real estate, to-wit:

All that certain tract, piece or parcel of real estate, with all rights and privileges thereto appurtenant, situate, lying and being in Lee Hill Magisterial District, Spotsylvania County, Virginia, and more particularly described as Parcel G-2, containing 0.0479 acres of land, located in Section 1-B of Lee's Hill on plat prepared by Sullivan, Donahoe and Ingalls dated April 27, 1994, a copy of which plat is attached to and recorded with this deed.

It being a portion of the same property acquired by Lee's Hill Community Association, Inc. by Deed of Gift dated February 11, 1991, recorded in the Clerk's Office of the Circuit Court of Spotsylvania County, Virginia, in Deed Book 961, page 88.

Reference is hereby made to the aforementioned deeds, plat and other instruments in the chain of title for a more particular description of the property herein conveyed.

WITNESS the following signatures and seals:

LEE'S HILL COMMUNITY  
ASSOCIATION, INC.

By: [Signature] (SEAL)  
Richard M. Hazel / President

LEE'S HILL PARTNERSHIP,  
a Virginia General Partnership

By: Blantyre, L.P., General Partner

By: Stoneleigh, Inc., a Virginia  
Corporation, General Partner

By: [Signature] (SEAL)  
Title: President

State of Virginia at Large

City/County of Spotsylvania, to-wit:

The foregoing instrument was this 13th day of May, 1994, duly acknowledged before me by Richard M. Hazel, President of Lee's Hill Community Association, Inc.

My commission expires: 12/31/97.

Karen A. Beall  
Notary Public [SEAL]

State of Virginia at Large

City/County of Spotsylvania, to-wit:

The foregoing instrument was this 13th day of May, 1994, duly acknowledged before me by Richard M. Hazel, in his capacity as President of Stoneleigh, Inc., a Virginia Corporation, General Partner of Blantyre, L.P., General Partner of Lee's Hill Partnership, Grantor.

My commission expires: 12/31/97.

Karen A. Beall  
Notary Public [SEAL]

**SEE FLAT NEXT PAGE**

Virginia, Spotsylvania County, to-wit:  
In the Clerk's Office of the County and State aforesaid the 25 day of May, 1994, at 10:12 o'clock a. M.,  
preceding writing was presented and admitted to record, together with the  
proper certificate of acknowledgment.  
The tax imposed by Section 58.54-1 in the amount of \$ — has been paid.

Teste: Linda Jo Johnson, Clerk

JARRELL, HICKS  
& SASSER  
ATTORNEYS AT LAW  
P. O. BOX 127  
SPOTSYLVANIA,  
C.H., VA. 22553

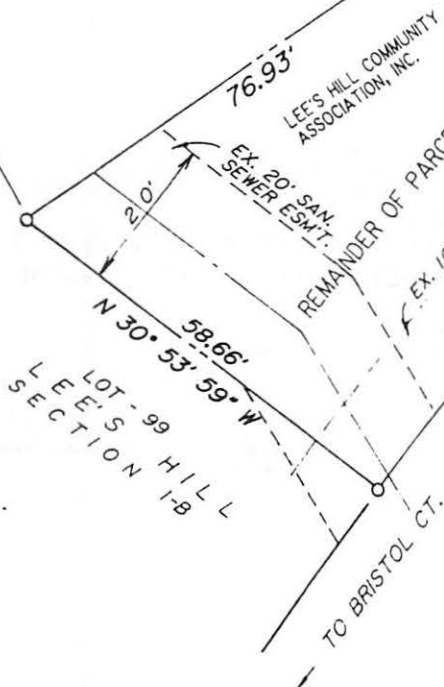
lh/parcelg2.dx/kab

B 1218 337

(A)  
 R= 625.00  
 D= 05-41-35  
 A= 62.10  
 T= 31.08  
 C= 62.08  
 CB= S 67° 12' 16" W



WALTER L. CARTER, JR. & MARY LEE CARTER  
 D.B. 780 PAGE 372



**PARCEL G-2**  
 0.0479 AC.

REMAINDER OF  
 PARCEL "G"  
 LEE'S HILL COMMUNITY  
 ASSOCIATION, INC.



- NOTES:
1. NO TITLE REPORT FURNISHED.
  2. THIS PLAT IS SUBJECT TO ANY ESM'TS. AND RESTRICTIONS OF RECORD.
  3. PARCEL G-2 DOES NOT REPRESENT AN INDIVIDUAL BUILDING PARCEL.

**PLAT**  
 SURVEY OF 0.0479 ACRES OF LAND  
 LOCATED IN  
 SECTION 1-B

**LEE'S HILL**

LEE HILL DISTRICT  
 SPOTSYLVANIA COUNTY, VIRGINIA

DATE: APRIL 27, 1994

26

SCALE: 1" = 20'

**SULLIVAN DONAHOE AND INGALLS**

P.O. BOX 614  
 FREDERICKSBURG, VIRGINIA  
 22404

94

Consideration: \$ 500-  
 Grantees' Address:

607 MINERS  
FRED, VA 22404

11859

THIS DEED, made and entered into this 13th day of MAY, 1994, by and between LEE'S HILL PARTNERSHIP, a Virginia General Partnership, Grantor; and RALPH DEWAYNE CARTER and ROBIN KEITH CARTER, husband and wife, Grantees.

**W I T N E S S E T H:**

That for and in consideration of the sum of Ten Dollars (\$10.00) cash in hand paid, and other good and valuable consideration, the receipt of which is hereby acknowledged, the Grantor does hereby grant, bargain, sell and convey unto the Grantees, as tenants by the entirety with the right of survivorship as at common law, with GENERAL WARRANTY and all Virginia statutory covenants of title, in fee simple, the following described real estate, to-wit:

All that certain tract, piece or parcel of real estate, with all rights and privileges thereto appurtenant, situate, lying and being in Lee Hill Magisterial District, Spotsylvania County, Virginia, and more particularly described as Parcel G-2, containing 0.0479 acres of land, located in Section 1-B of Lee's Hill on plat prepared by Sullivan, Donahoe and Ingalls dated April 27, 1994, a copy of which plat is attached to and recorded with the next hereinafter mentioned deed.

It being the same property acquired by Lee's Hill Partnership by Deed of Exchange dated May 13, 1994, from Lee's Hill Community Association, Inc., a Virginia non-stock Corporation, which deed is duly recorded in the Clerk's Office of the Circuit Court of Spotsylvania County, Virginia, immediately preceding this deed.

This conveyance is made SUBJECT TO any and all easements of record.

JARRELL, HICKS  
 & SASSER  
 ATTORNEYS AT LAW  
 P. O. BOX 127  
 SPOTSYLVANIA,  
 CH., VA. 22553

Reference is hereby made to the aforementioned deed, plat and other instruments in the chain of title for a more particular description of the property herein conveyed.

WITNESS the following signature and seal:

LEE'S HILL PARTNERSHIP,  
a Virginia General Partnership

By: Blantyre, L.P., General Partner

By: Stoneleigh, Inc., a Virginia  
Corporation, General Partner

By: Richard M. Hazel (SEAL)  
Title: President

State of Virginia at Large

City/County of Spotsylvania, to-wit:

The foregoing instrument was this 13th day of May, 1994, duly acknowledged before me by Richard M. Hazel, in his capacity as President of Stoneleigh, Inc., a Virginia Corporation, General Partner of Blantyre, L.P., General Partner of Lee's Hill Partnership, Grantor.

My commission expires: 12/31/97.

Laura A. Buell  
Notary Public [SEAL]

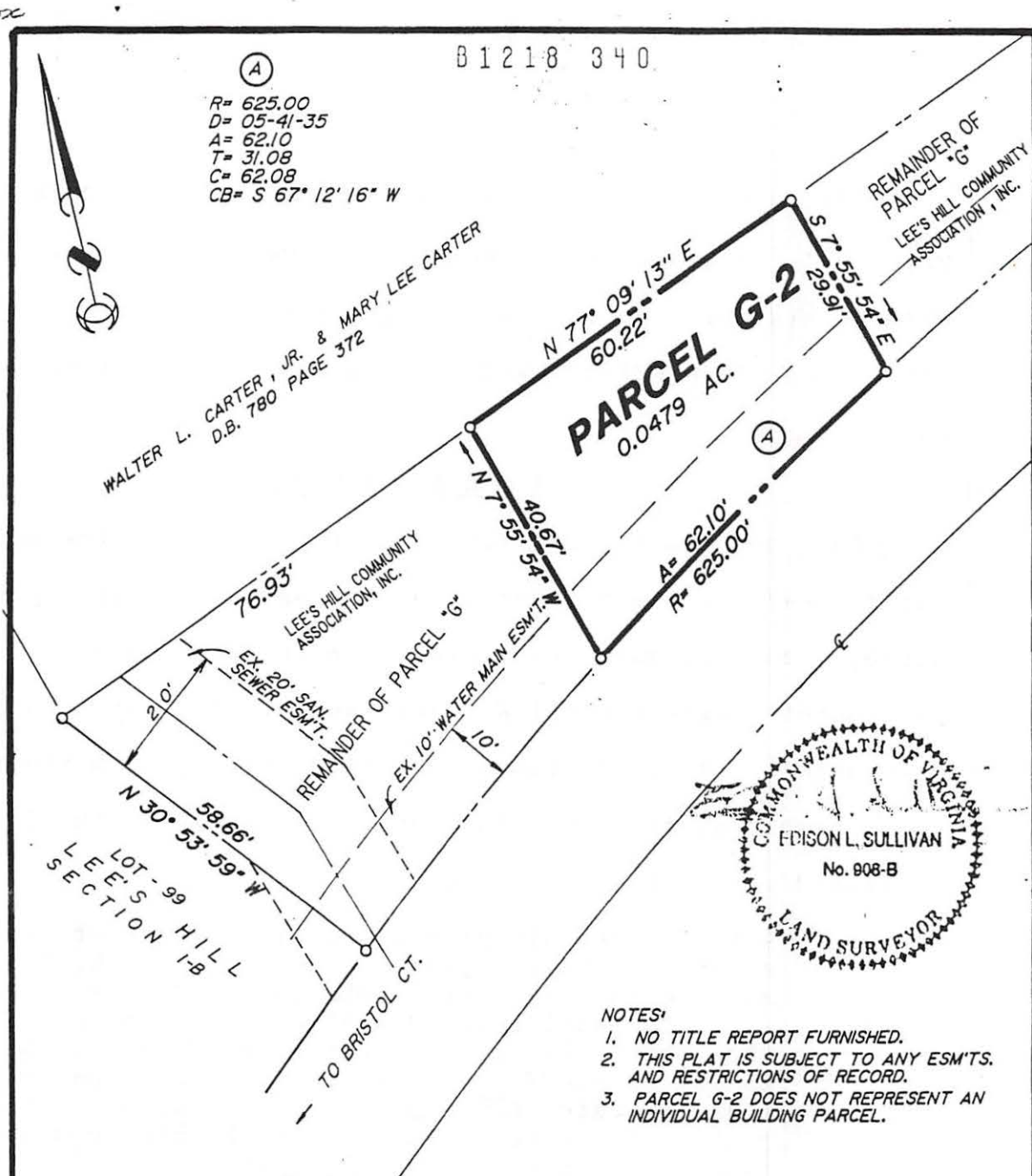
**SEE PLAT NEXT PAGE**

JARRELL, HICKS  
& SASSER  
ATTORNEYS AT LAW  
P. O. BOX 127  
SPOTSYLVANIA,  
C.H., VA. 22553

Virginia, Spotsylvania County, to-wit:  
In the Clerk's Office of the County and State aforesaid the 25 day of May, 1994, at 10:12 o'clock a. M., the foregoing writing was presented and admitted to record, together with the annexed certificate of acknowledgment.  
The tax imposed by Section 58.54-1 in the amount of \$ .50 has been paid

lh/d-carter

Teste: Linda Jo Johnson, Clerk



**PLAT**  
**SURVEY OF 0.0479 ACRES OF LAND**

LOCATED IN  
 SECTION 1-B

**LEE'S HILL**

LEE HILL DISTRICT  
 SPOTSYLVANIA COUNTY, VIRGINIA

DATE: APRIL 27, 1994

SCALE: 1" = 20'

29

**SULLIVAN DONAHOE AND INGALLS**

P.O. BOX 614  
 FREDERICKSBURG, VIRGINIA  
 22404

97

12868

THIS DEED OF GIFT, made and entered into this 26th day of May, 1994, by and between WALTER L. CARTER, JR. and MARY LEE CARTER, his wife, parties of the first part; and RALPH DeWAYNE CARTER and ROBIN KEITH CARTER, his wife, parties of the second part.

W I T N E S S E T H :

That for the natural love and affection that the parties hereto bear for one another, the parties of the first part do hereby grant, bargain and convey unto the parties of the second part herein, with General Warranty and all Virginia statutory covenants of title, as tenants by the entirety with the right of survivorship as at common law, and in fee simple, the following described real estate, to-wit:

All that, certain piece, parcel or tract of real estate, situate, lying and being in Lee Hill Magisterial District, Spotsylvania County, Virginia, containing 0.4897 acre, and being more particularly described as PARCEL-1 of the CARTER PROPERTY, on plat of Sullivan, Donahoe & Ingalls, dated ~~June 6, 1994~~ <sup>June 6, 1994</sup>, a copy of which plat is to be recorded along with this deed and made a part hereof. M.L.C. / W.L.C.

It being a part of the same property conveyed unto the parties of the first part herein by two separate deeds: (1) Deed dated July 18, 1967, from James L. Carver, which deed is duly recorded in the Clerk's Office aforesaid in Deed Book 232, Page 296; and (2) Deed dated January 12, 1988, from Thomas R. Guinan, Trustee, which deed is duly recorded in the Clerk's Office aforesaid in Deed Book 780, Page 372.

Reference to the aforementioned deeds, plat and other instruments in the chain of title is hereby made for a more particular description of the property herein conveyed.

JARRELL, HICKS  
& SASSER  
ATTORNEYS AT LAW  
P. O. BOX 127  
SPOTSYLVANIA,  
C.H., VA. 22553

original given to  
Mary Carter  
6-8-94

WITNESS the following signatures and seals:

Walter L. Carter, Jr. (SEAL)  
WALTER L. CARTER, JR.

Mary Lee Carter (SEAL)  
MARY LEE CARTER

STATE OF VIRGINIA

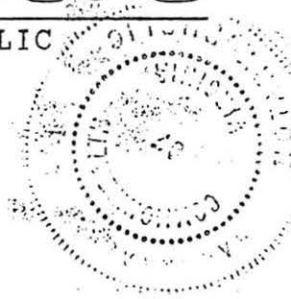
CITY/COUNTY OF Spotsylvania, to-wit:

The foregoing Deed was this 31 day of May, 1994, duly acknowledged before me in my County and State aforesaid by WALTER L. CARTER, JR. and MARY LEE CARTER, his wife.

My commission expires: 12/31/95.

Barbara R. Clore  
NOTARY PUBLIC

GRANTEE ADDRESS: 4600 Mine Rd.  
Liburg Va 22408



RECORDED PLAT FILE 4

NO. 558

Virginia, Spotsylvania County, to-wit:  
the Clerk's Office of the County and State aforesaid the 8 day of  
JUNE, 1994, at 12:28 o'clock P M., the  
foregoing writing was presented and admitted to record, together with the  
required certificate of acknowledgment.  
and tax imposed by Section 58.54-1 in the amount of \$        has been paid

Teste: Linda Jo Johnson, Clerk

JARRELL, HICKS  
& SASSER  
ATTORNEYS AT LAW  
P. O. BOX 127  
SPOTSYLVANIA,  
C.H., VA. 22553

VIRGINIA:

IN THE CIRCUIT COURT OF SPOTSYLVANIA COUNTY

LEE'S HILL HOMEOWNERS, an  
unincorporated association, and  
KELLY M. BOEHRINGER,

Plaintiffs

v.

RALPH DEWAYNE CARTER and  
ROBIN KEITH CARTER,

Defendants

ORDER

On the 2nd day of September, 1994, came the plaintiffs upon the bill of complaint and petition for injunctive relief, upon the answer of the defendants, upon evidence on behalf of the plaintiffs presented ore tenus, at the conclusion of which counsel for defendants moved to strike the plaintiffs' evidence and dismiss the bill of complaint and petition for injunctive relief upon the grounds and for the reasons stated in the record, and was argued by counsel.

Upon consideration whereof, the Court finds from the evidence presented including the stipulation of the parties that the developer of the subdivision, namely Lee's Hill Partnership, a Virginia general partnership, reserved unto itself acting through the Board of Directors of the Lee's Hill Homeowners Association, Inc., a Virginia non-stock corporation, the lawful authority to exchange common areas reserved within the subdivision as set forth in the Declaration of Lee's Hill Subdivision and further finds

that the intended use of the property ultimately conveyed to the defendants and which is the subject of these proceedings does not materially and adversely affect the plaintiffs' interest and, accordingly, that the motion to strike should be granted and the bill of complaint and petition for injunctive relief dismissed. Accordingly, it is hereby

ORDERED that the bill of complaint and petition for injunctive relief be and the same is hereby dismissed with prejudice.

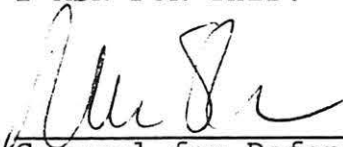
ENTER:

Meyla Leme  
Judge

DATE:

September 22, 1994

I ASK FOR THIS:

Counsel for Defendants

SEEN (AND OBJECTED TO):

Counsel for Plaintiffs

### ASSIGNMENTS OF ERROR

- A. The Circuit Court erred by granting Appellees' motion to strike at the conclusion of Appellants' case despite issues of fact which remained in controversy.
- B. The Circuit Court erred in its ambiguous ruling regarding the existence of Appellants' easement, if such ruling is interpreted to mean that no easement existed.
- C. The Circuit Court erred in finding Appellants' interests in an easement to use and enjoy former "common area property" were not materially and adversely affected by Appellees' intended use of said property for driveway access.

1 VIRGINIA:

2 IN THE CIRCUIT COURT OF THE COUNTY OF SPOTSYLVANIA

3

4 -----

5 LEE HILL HOMEOWNER'S GROUP, ET AL, Plaintiffs :

6 vs. :

7 RALPH DWAYNE CARTER :

and

8 ROBIN CARTER, Defendants :

9 -----

10

11 Complete TRANSCRIPT of all the evidence and  
12 other incidents of the trial in the above styled case,  
13 when heard on September 2, 1994, at 2:00 p.m., before  
14 Honorable J. Peyton Farmer, Judge.

15

16 APPEARANCES:

17 Mr. Michael J. George, Attorney at Law  
2217 Princess Anne Street, Suite 203-A  
18 Fredericksburg, Virginia 22401  
Counsel for the Plaintiffs;

19

Mr. Mark S. Gardner, Gardner & Maupin  
20 9103 Courthouse Road, P. O. Box 129  
Spotsylvania, Virginia 22553-0129  
21 Counsel for the Defendants.

Reported by: Melonie M. Raun

FRANCES K. HALEY & ASSOCIATES, Court Reporters  
10725 Courthouse Road, Suite 300  
Fredericksburg, VA 22407 PH: 703-898-1527 FAX: 898-6154

## I N D E X

	DIRECT	CROSS
Cynthia Salmon	10	20
Roger Dressler	22	25
Kelly M. Boehringer	33	41
Robin S. Browning	52	

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 E X H I B I T S
 

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1 SEPTEMBER 2, 1994

2

3

4

5

THE COURT: Lee Hill Homeowners,  
et al, vs. Ralph Carter, et al. Mr. George,  
are you ready?

6

7

MR. GEORGE: Yes, I am, Your  
Honor.

8

9

THE COURT: Mr. Gardner?

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THE COURT: I've had a chance to  
study the file a little bit. Let me ask a  
couple of questions. Mr. Gardner, do you con-  
cede that the plaintiffs have a nonexclusive  
right and easement of use and adjoinment over  
the property that is now owned by your clients?

MR. GARDNER: No, sir. I would  
concede that they had a nonexclusive easement.  
I would argue that the board of directors of  
the association reserved the right to, in  
essence, substitute like amounts of property  
for that particular location.

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1 THE COURT: Then what is the  
2 provision in the agreement regarding the right  
3 of power to convey common area properties for  
4 the benefit of adjoining real estate and the  
5 unilateral right to relocate boundary lines so  
6 long as such relocation does not materially and  
7 adversely effect any owner?

8 MR. GARDNER: Yes, sir.

9 THE COURT: That agreement is some  
10 seventy-five plus pages long, and will you  
11 refer me to a page number.

12 MR. GARDNER: Judge, I would refer  
13 you, first, to page twelve. There is a section  
14 entitled, "Regulation of common area," which,  
15 among other things, specifically gives the  
16 board the power to convey common areas for fee  
17 simple or grant easements over and through the  
18 common area. On that same page, sections 2.6,  
19 expresses the power of the board of directors  
20 to make boundary adjustments subject only to  
21 the conditions that they don't reduce the

1 overall open space within the subdivision, and  
2 shall transfer to the association as open  
3 space, if necessary, additional property to  
4 maintain that minimum level of open space.

5 And then on page  
6 fourteen, in the middle of the page, it's part  
7 3 (2), the reservation of right to grant and  
8 reserve easements, and rights-of-way, and so  
9 forth. The very end of that speaks about any  
10 other purpose necessary or desirable for the  
11 orderly development of the property or for the  
12 benefit of adjoining real estate. I think  
13 those are the pertinent provisions, Your Honor.

14 THE COURT: Now, did the board of  
15 directors set aside additional common area  
16 properties to replace this fee simple house  
17 conveyance?

18 MR. GARDNER: Yes, sir. One of  
19 the exhibits attached to the bill of complaint  
20 is a deed of exchange between the developer,  
21 which is referred to in the covenants as the

1           declarant. There was a deed from the developer  
2           to the association conveying a like amount of  
3           property in exchange for the conveyance of this  
4           small parcel, which was first conveyed to the  
5           developer, and then sold by the developer to  
6           the Carters.

7                       THE COURT: I understand what your  
8           position is. Mr. George, do you want to make  
9           any opening statement or are you ready to offer  
10          your evidence?

11                      MR. GEORGE: Your Honor, I'd like  
12          to make just a brief one; I suppose partially  
13          in response to what I've just heard. It's a  
14          fairly simple case that we have here, Your  
15          Honor. The facts make it somewhat involved,  
16          but the legal principles are fairly straight-  
17          forward.

18                               What we have here is  
19          an appurtenant easement; and any transfer of  
20          that to the partnership fails to extinguish  
21          that easement, because the dominant estates are

1 the homeowners. The homeowners are the persons  
2 granted this easement to service their prop-  
3 erty, and it comes with their property, and  
4 it's an appurtenant easement. And Virginia law  
5 is fairly clear that appurtenant easements,  
6 when explicitly created, don't just go away.  
7 You have to, at the very least, rejoin the  
8 dominant and serving estates, and that did not  
9 occur in this case.

10 And this case boils  
11 down to an unreasonable interference with the  
12 easement rights of the Lee's Hill homeowners,  
13 both their aesthetic right to see the property  
14 as green space, and also their right to make  
15 use of the property as recreational land; and,  
16 essentially to use and enjoy the land as a  
17 green space or park, which is what its inten-  
18 tion was. And that pretty much sums up the  
19 position of the plaintiffs in this matter, Your  
20 Honor.

21 THE COURT: I think I understand

1 the plaintiffs' position. It's a question of  
2 whether or not Mr. Gardner's position prevails  
3 or your position prevails. The easement was  
4 certainly there. Now, can it be extinguished  
5 by the conveyance in accordance with the terms  
6 of the covenants? I think that's what we're  
7 really going to get down to deciding. I'm  
8 ready to hear you.

9 MR. GEORGE: Okay, Your Honor, I  
10 would like to call Cynthia Salmon.

11 THE COURT: Come forward.

12 THE CLERK: Would you raise your  
13 right hand. Do you solemnly swear the evidence  
14 you're about to give will be the truth, the  
15 whole truth, and nothing but the truth, so help  
16 you God?

17 MS. SALMON: I do.

18 THE COURT: Have a seat in the  
19 witness chair; answer the questions that are  
20 asked of you; please speak loud enough for me  
21 and for the Court Reporter to hear you.

1                                    CYNTHIA SALMON, a witness,  
2                    being called for examination by counsel for the  
3                    plaintiffs, first being duly sworn, testified  
4                    as follows:

5  
6                    DIRECT EXAMINATION

7                    BY MR. GEORGE:

8                    Q                    All right, Ms. Salmon, please state  
9                    your name for the Court please.

10                    A                    Cynthia Salmon.

11                    THE COURT:    Spell your last name.

12                    A                    S-A-L-M-O-N.

13                    Q                    Would you please state your address,  
14                    please, for the Court.

15                    A                    10312 Campbell Drive, Fredericksburg,  
16                    Virginia.

17                    Q                    And where is that residence located?

18                    A                    It is in Lee's Hill North.

19                    Q                    Now, Ms. Salmon, did there come a time  
20                    this past June that struck you as unusual?

21                    A                    Yes.    I learned that we were going to

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direct - Cynthia Salmon

1 have an addition to our area; that the property on  
2 Amelia, that we have considered to be common property,  
3 was transferred to the Carter family, a portion of it  
4 was transferred to the Carter family, with the intent  
5 that they were going to build a driveway to access a  
6 home that was being moved onto that property.

7 Q And was a home subsequently moved?

8 A Yes, on June 22nd, there was a home,  
9 that had been established on Mine Road, it was brought  
10 up Campbell Drive, and placed on the lot next to their  
11 property, and three days later subsequently put on their  
12 property.

13 Q Following the moving of the house, did  
14 something unusual happen?

15 A Yes. I used to go by that property  
16 frequently, and when the house was moved, it was done in  
17 such a way that made me very uncomfortable. There was a  
18 parade going up my street on Campbell Drive where the  
19 house was moved --

20 Q (interjecting) Well, let me stop you  
21 right there. Did something unusual happen with respect

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direct - Cynthia Salmon

1 to the common area property?

2           A           Okay, yes. I was told that the house  
3 was going to be placed on the Carter property on the  
4 24th, a Friday, in June. And that evening I was told  
5 that the house was still on the lot next to it on the  
6 truck, and it was on an angle that was considered by  
7 many homeowners to be rather unsafe for the children to  
8 be near or around. There was a small yellow band around  
9 the house indicating don't go near it, but, even so, it  
10 was on a truck, with blocks under the wheels, and on an  
11 angle coming down the property. So I was told it was  
12 still in that position, I felt very uncomfortable for  
13 the children in the neighborhood to be anywhere near  
14 that property. And I went up to make sure for myself  
15 that the house was in that position and had not yet been  
16 moved onto the property.

17           Q           Can you identify this?

18           A           Okay, this is a picture of the house  
19 while it was on the truck. It is cut off slightly, but  
20 the house was leaning over, so it would be above the  
21 road.

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direct - Cynthia Salmon

1 Q And this is?

2 A This is Amelia Drive and the common  
3 property. (witness indicating)

4 Q Okay, and this was as you described?

5 A Yes.

6 MR. GEORGE: Your Honor, I'd like  
7 to offer this as Plaintiff's Exhibit One.

8 MR. GARDNER: No objection, Your  
9 Honor.

10 THE COURT: Admitted. Plaintiff's  
11 Number One.

12 NOTE: The above referred to  
13 photograph is now being marked and filed by the  
14 Court as Plaintiff's Exhibit One.

15 A Would you like me to continue on what  
16 took place as I was looking at the house?

17 Q Yes, I would like for you to continue.

18 A Okay, it was Friday evening, and it  
19 was dusky, and I was looking at this house, talking to  
20 some of the neighbors, indicating my fear that this  
21 house was in an unsafe manner. And Mr. Walter Carter

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direct - Cynthia Salmon

1 had been up on his property on the top of the embank-  
2 ment, and as I was looking at the house, he came  
3 charging down to me, and indicated --

4 MR. GARDNER: (interjecting) I  
5 would object to this testimony on the grounds  
6 it's not relevant. Mr. Walter Carter is not a  
7 party to these proceedings, and I think she's  
8 about to testify to some exchange of words  
9 between herself and Mr. Walter Carter. I don't  
10 know what possible relevance that could have.

11 MR. GEORGE: Your Honor, Mr.  
12 Walter Carter was acting as an agent for the  
13 defendants in this matter with respect to  
14 making certain that persons did not come onto  
15 the property. Subsequent evidence will also  
16 show that Mr. Walter Carter, with the -- in  
17 acting in this capacity, drove people off of  
18 the common area property that is the subject of  
19 this lawsuit.

20 THE COURT: I sustain the objec-  
21 tion.

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direct - Cynthia Salmon

1 THE WITNESS: May I ask a ques-  
2 tion, Your Honor?

3 THE COURT: No. Just answer the  
4 questions.

5 THE WITNESS: May I confer with my  
6 attorney for a moment?

7 THE COURT: Sure.

8 NOTE: The witness is now  
9 conferring with her counselor.

10

11 BY MR. GEORGE: (continuing)

12 Q Ms. Salmon, have you made use of the  
13 property that is the subject of this lawsuit?

14 A Oh, yes. I have lived in Lee's Hill  
15 for about three years now; and during that time, I have  
16 walked dogs on that property for at least a year twice a  
17 day, morning and evening. I also have sat on the prop-  
18 erty on a fire hydrant that is on the edge of this prop-  
19 erty. I have probably jogged across this property. I  
20 make use of the neighborhood, which this common property  
21 is part of. I have also stood and talked to people in

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direct - Cynthia Salmon

1 front of the property, and during that time, I'm sure I  
2 have stepped up on the property.

3 And my son has made use of  
4 this property. During the winter there was a good ice  
5 storm and we would go sledding up there, both he and I  
6 would sled with many neighborhood children, so we do use  
7 this property frequently.

8 Q Do you make any non-physical use of  
9 the property?

10 A Yes, I've been jogging for quite some  
11 time now, and the path that I jog takes me by this prop-  
12 erty twice. I go down to the golf course, jog, and re-  
13 turn past the property on my way back, so I am near that  
14 property. In addition, in the evenings, until this par-  
15 ticular incident in June, I used to go, and we would  
16 congregate, because this property is in such a position  
17 that Lee's Hill North is divided into two sections; the  
18 section that was first developed is 1A, the newer sec-  
19 tion is 1C; and this property is right about at the  
20 midpoint between the two; so people come there, and  
21 meet, and talk, and socialize.

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direct - Cynthia Salmon

1           Q           Have you ever been denied access to  
2 the subject property, common area property, that is the  
3 subject of this lawsuit?

4                   MR. GARDNER:  Objection, Your  
5 Honor.  I don't think it would be relevant,  
6 unless she's going to testify that she's been  
7 denied access by the parties she seeks to en-  
8 join from denying her access.  I don't know  
9 whether anyone else has or not, but testimony  
10 about anyone else denying her access wouldn't  
11 be relevant.

12                   MR. GEORGE:  Your Honor, I would  
13 offer that the denial of access to this prop-  
14 erty by a relative of the defendants was done  
15 with the knowledge of the defendants, inasmuch  
16 as it's my understanding that one of the defen-  
17 dants was present when this occurred, and since  
18 they are the owners of the property and are  
19 related to the person who was driving other  
20 people off, I would argue that they were, in  
21 fact, acting as an agent of the defendants.

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1 THE COURT: Well, I don't see  
2 where it's relevant. It seems to me that  
3 you've got, as I see it, there are two issues  
4 here; first of all, you contend that you have  
5 an easement that can't be taken away from you,  
6 and the proposed use by the defendants will  
7 materially and adversely effect that easement.

8 MR. GEORGE: Yes.

9 THE COURT: The position of the  
10 defendant is: You no longer have that easement  
11 by virtue of the conveyance to the defendants  
12 by authority of the declarations; or, in the  
13 alternative, if you still do have the easement,  
14 then the proposed use by the defendants does  
15 not materially and adversely effect your prop-  
16 erty. I don't want to misquote your position,  
17 Mr. Gardner, isn't that correct? You have two  
18 alternative grounds that you're relying on?

19 MR. GARDNER: Exactly.

20 THE COURT: All of the other  
21 things are immaterial. This is a legal argu-

1           ment as I see it. So I sustain the objection;  
2           I'm not interested in what has happened in  
3           terms of running somebody off the property. If  
4           they have the fee simple interest and there's  
5           no easement on it, they have the right to run  
6           them off; but that's not an issue before me at  
7           this point, as I see it.

8                     MR. GEORGE: All right, thank you,  
9           Your Honor.

10                    THE WITNESS: Excuse me, may I  
11           confer with you again?

12                    MR. GEORGE: Your Honor, may I  
13           have leave to --

14                    THE COURT: Yes. Are you a  
15           lawyer?

16                    THE WITNESS: No, I'm not.

17                    MR. GEORGE: I apologize, Your  
18           Honor.

19                    NOTE: The witness is now  
20           conferring with her counselor.

21                    MR. GEORGE: Thank you for your

1 indulgence, Your Honor.

2 THE COURT: Yes.

3 MR. GEORGE: That's all I have.

4 Please answer any questions Mr. Gardner may  
5 have.

6  
7 CROSS EXAMINATION

8 BY MR. GARDNER:

9 Q Ms. Salmon, is Amelia Drive a public  
10 roadway?

11 A Yes, it is.

12 Q Is it maintained by the State?

13 A Up through that property, yes.

14 Q And is all of the roadway open to  
15 vehicular traffic from that point back to Mine Road in  
16 the same category, that is State maintained public  
17 roadway?

18 A Yes, unless your client's truck is  
19 blocking the traffic.

20 Q Pardon me?

21 A Yes, unless when your client's truck

cross - Cynthia Salmon

1 is blocking the traffic, it is open.

2 Q When my client's truck blocks the  
3 traffic, it wouldn't any longer be a public State  
4 maintained road?

5 A No, but it wouldn't be open if he  
6 closed it to traffic.

7 MR. GARDNER: No further ques-  
8 tions, Your Honor.

9 MR. GEORGE: No redirect.

10 THE COURT: Thank you very much.

11 -----  
12 WITNESS STOOD ASIDE

13  
14 MR. GEORGE: Your Honor, I'd like  
15 to call Roger Dressler.

16 THE CLERK: Would you raise your  
17 right hand please. Do you solemnly swear the  
18 evidence you're about to give will be the  
19 truth, the whole truth, and nothing but the  
20 truth, so help you God?

21 MR. DRESSLER: I do.

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1                                    ROGER DRESSLER. a witness,  
2                    being called for examination by counsel for the  
3                    plaintiffs, first being duly sworn, testified  
4                    as follows:

5  
6                    DIRECT EXAMINATION

7 BY MR. GEORGE:

8                    Q                    Mr. Dressler, would you please state  
9                    your full name for the Court, please.

10                    A                    Roger Dressler, and I live at 10321  
11                    Campbell Drive.

12                                    THE COURT: Spell your last name.

13                    A                    D-R-E-S-S-L-E-R.

14                    Q                    Mr. Dressler, please tell the Court  
15                    where your residence is located.

16                    A                    I'm at the corner of Amelia Drive and  
17                    Campbell Drive.

18                    Q                    Is that in a particular region of the  
19                    County?

20                    A                    I'm not sure I understand the ques-  
21                    tion.

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direct - Roger Dressler

1 Q Does the development have a name?

2 A Lee's Hill.

3 Q Thank you. Mr. Dressler, have you  
4 made personal and physical use of the subject property?

5 A Yes, I have. I've used it daily up  
6 until the point that I was threatened with litigation  
7 for using it; my wife and I both.

8 Q Can you describe that use?

9 A Walk on it; clean up paper on it. We  
10 would walk after work; I'm a commuter, so I get in about  
11 seven o'clock in the evening; and my wife and I would  
12 walk, and we would meet people from the other side of  
13 the development, and we would meet in that common area  
14 since it's a halfway point; and we would stand, talk,  
15 and sit on the grass.

16 Q Mr. Dressler, have you observed your  
17 neighbors using that property?

18 A Yes, sir. My children also use it in  
19 the wintertime, they, with Cindy's children, sled ride  
20 down the embankment.

21 Q Mr. Dressler, if there's a road across

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direct - Roger Dressler

1 that property, are you going to be able to make the same  
2 use of the property?

3 A No, I won't.

4 Q How will it effect your ability to use  
5 it?

6 A Well, if there's driveways coming out,  
7 then obviously we can't walk on it, if there's cars  
8 parked on it. If there's any obstruction, we can't use  
9 it. The idea is that when we meet in the area, we sit  
10 on the grass; and if it's paved, we can't -- I don't  
11 want to sit on pavement.

12 Q Is there very much common area located  
13 in the --

14 A (interjecting) No, there's not. To  
15 my knowledge, there's one other strip of land that's off  
16 of Amelia Drive, but it's behind some other houses, and  
17 it's inaccessible by us.

18 Q So this is one of the few places  
19 that --

20 A (interjecting) Yes, it is.

21 MR. GEORGE: That's all I have.

1           Please answer any questions Mr. Gardner might  
2           have.

3  
4           CROSS EXAMINATION

5   BY MR. GARDNER:

6           Q           Mr. Dressler, are you aware that the  
7   area that's in contest here is about sixty feet in  
8   length as it runs parallel to Amelia Drive?

9           A           Yes.

10          Q           Are you aware that there is common  
11   area immediately adjacent to this disputed strip on  
12   either side of greater length and width than the piece  
13   that we're talking about?

14          A           Yes, I am.

15          Q           Are you suggesting to the Court that  
16   of that entire strip, which has to be more than two  
17   hundred feet, it's the sixty feet in question which you  
18   use to walk, or sit, or sled?

19          A           From an aesthetic standpoint, yes; but  
20   as far as sitting, we can sit on either side of the  
21   driveway, but if there's cars parked in the street and

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cross - Roger Dressler

1 the driveway, then we can't. We'd have to exit onto the  
2 street and go back up on the other side; it makes it  
3 impractical.

4 Q Makes it impractical?

5 A Impractical, yes.

6 Q The impracticality being that you'd be  
7 compelled to walk around the length of a car before you  
8 set foot on the common area?

9 A The sixty foot length, yes.

10 Q You consider that a material burden on  
11 your use of the common area?

12 A I consider that a restriction, yes.

13 Q Is the common area landscaped in some  
14 way?

15 A It has a slope to it, yes.

16 Q And does it also have vegetation  
17 growing on it in various locations?

18 A Grass. I understand there's been some  
19 trees that were just planted there.

20 Q You understand that?

21 A Yes, I do.

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cross - Roger Dressler

1 Q You haven't seen them?

2 A I've seen them, yes. My understanding  
3 is they were just planted there.

4 Q I'm a little confused at your  
5 terminology. You live there, and have told the Court  
6 you use it or see it, at least, daily, so --

7 A (interjecting) Up until the point  
8 that I was threatened with a lawsuit, yes; then I  
9 stopped.

10 Q I understood you to say that.

11 A Since that point in time, I haven't  
12 gone past it.

13 Q You don't even walk past the  
14 property --

15 A (interjecting) No, sir.

16 Q --or travel by it on Amelia Drive?

17 A My wife now uses her bicycle because  
18 she's afraid to walk past it.

19 Q I didn't ask you that, sir. I asked  
20 if you have gone past it, driven by it, walked by it,  
21 jogged by it, or whatever.

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cross - Roger Dressler

1           A           I've ridden past it, yes.

2           Q           Do you know from your own observation  
3 that trees have been planted on the common area?

4           A           Yes, I am.

5           Q           Is there anything about those trees  
6 which would prevent your use of the property? I presume  
7 they represent obstacles to sledders?

8           A           They're not entirely blocking -- No,  
9 they wouldn't.

10          Q           Trees planted in the common area don't  
11 represent an obstacle to somebody riding a sled down the  
12 hill?

13          A           If you go directly into a tree, yes;  
14 but I think there's enough spacing between the trees  
15 that they could use that, yes.

16          Q           So the spacing between the trees per-  
17 mits you to use the property in the way that you think  
18 it was intended, but a fifteen foot driveway would  
19 unreasonably burden your use of it?

20          A           Yes.

21          Q           Doesn't it have more to do with the

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cross - Roger Dressler

1 thing that you finally mentioned on cross examination,  
2 aesthetics? You didn't mention that at all on direct,  
3 but you did use that word on cross, aesthetics; that's  
4 the real complaint, isn't it; that you prefer green  
5 grass to an asphalt driveway?

6 A I prefer to use the length of the  
7 strip myself. It's there, and I want to be able to use  
8 it.

9 Q Tell the Court what role aesthetics  
10 does play in your mind?

11 A When I first moved in, we went to the  
12 management office, and we looked at the -- what is a map  
13 that showed all of the lots; and, so it's my understand-  
14 ing that that was to be used as public area. So we went  
15 by it, we looked at it; it had a nice row of trees  
16 there. It's the only place on that street where we can  
17 meet without standing in someone's property. It's the  
18 only place that I know of. You put a driveway in there,  
19 it restricts that even more. People walking their dogs  
20 now have -- they'll have to walk their dogs on the  
21 street and back up onto that other side to walk them.

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cross - Roger Dressler

1           Q           Well, let me ask you this: If a  
2 person who lives, let's say, a few doors down on Amelia  
3 Drive away from the common area wanted to walk his or  
4 her dog on the common area, wouldn't that person have to  
5 take a path either across a neighbor's property or in  
6 the street in order to reach the common area?

7           A           Yes.

8           Q           In other words, isn't it only those  
9 people who live immediately adjacent to the common area  
10 who have access to it without ever going into the street  
11 or onto a neighbor's lot?

12          A           You mean --

13                   MR. GEORGE: Objection, ambiguous.

14           I don't understand the question.

15          Q           Is there any way that anyone who  
16 doesn't reside immediately adjacent to the common area  
17 can reach it to walk their dog without going through the  
18 street or over someone else's lot?

19          A           I guess the way you phrased the  
20 question, yes, that's right; it's only the people that  
21 physically connect to that property that can go there

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cross - Roger Dressler

1 without going onto the street. As far as I know there's  
2 only one person that's physically connected, other than  
3 the Carter family.

4 Q Is that person here today?

5 A No.

6 Q Does Lee's Hill maintain jogging paths  
7 or biking paths within the development?

8 A I don't know.

9 Q How long have you lived there?

10 A Two years.

11 Q You don't know whether they have  
12 paths?

13 A No, I don't. We did have a road that  
14 went through the golf course, which they took that away  
15 from us.

16 Q You haven't seen any other paths  
17 through any parts of the neighborhood?

18 A I've seen paths, but as I understand  
19 it those are golf cart paths. There's a golf course  
20 down behind the development.

21 Q And do you have any idea how much

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cross - Roger Dressler

1 green space or open space there is in the entire  
2 development?

3 A No. I'm only concerned with my  
4 northern section where I live.

5 Q Well, what's limited to the northern  
6 section? Do you have any idea how much green space or  
7 open space there is in the northern section?

8 A As far as I know there's two lots.

9 Q Two lots?

10 A Yeah, two lots; one you mentioned that  
11 was that the developer had added, and this lot in  
12 question.

13 Q It's your belief that's the only  
14 common area or green space in the entire northern  
15 section of Lee's Hill?

16 A Yes.

17 MR. GARDNER: No further ques-  
18 tions, Your Honor.

19 THE COURT: Any redirect?

20 MR. GEORGE: No, Your Honor.

21 THE COURT: Thank you very much.

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WITNESS STOOD ASIDE

MR. GEORGE: Your Honor, I'd like  
to call Ms. Boehringer.

THE CLERK: Would you raise your  
right hand. Do you solemnly swear the evidence  
you're about to give will be the truth, the  
whole truth, and nothing but the truth, so help  
you God?

MS. BOEHRINGER: I do.

KELLY M. BOEHRINGER, a  
witness, being called for examination by  
counsel for the plaintiffs, first being duly  
sworn, testified as follows:

DIRECT EXAMINATION

BY MR. GEORGE:

Q Ms. Boehringer, would you please state  
your full name and address for the Court.

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direct - Kelly M. Boehringer

1           A           Kelly Marie Boehringer, B-O-E-H-R-I-N-  
2 G-E-R; and I live at 4117 Gloucester Lane in  
3 Fredericksburg, and that's in Lee's Hill Subdivision,  
4 north side.

5           Q           Ms. Boehringer, how long have you  
6 lived in the Lee's Hill development?

7           A           Just a little bit over one year.

8           Q           And were you aware of the common area  
9 property when you purchased your property?

10          A           Yes, I was.

11          Q           I show you a copy of a document that  
12 counsel has; it's identical to Exhibit A of the plain-  
13 tiff's bill of complaint; can you identify this please.

14          A           Well, it's entitled, "Declaration for  
15 Lee's Hill," but I consider it to be the covenants by  
16 which all lot owners are bound in the north and south  
17 side of the Lee's Hill subdivision.

18          Q           And was this a part of your deed when  
19 you purchased the property?

20          A           Yes, it was. I think I had to sign  
21 several documents indicating that I had read them and

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direct - Kelly M. Boehringer

1 would abide by them.

2 MR. GEORGE: Your Honor, I would  
3 like to proffer this into evidence.

4 MR. GARDNER: No objection, Your  
5 Honor.

6 THE COURT: All right, that's the  
7 same as what you filed --

8 MR. GEORGE: Yes, Your Honor.

9 THE COURT: Plaintiff's Number Two  
10 admitted without objection.

11 NOTE: The above referred to  
12 document is now being marked and filed by the  
13 Court as Plaintiff's Exhibit Two.

14 Q Ms. Boehringer, I'd like to -- Your  
15 Honor, unfortunately, I only have one copy additionally,  
16 so --

17 THE COURT: I can use the one  
18 filed.

19 MR. GEORGE: Thank you, Your  
20 Honor.

21 Q Ms. Boehringer, I'd like for you to

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direct - Kelly M. Boehringer

1 take a moment and read Section 3.8 on pages eighteen and  
2 nineteen, Section A.

3 A Okay.

4 Q Ms. Boehringer, would you please read  
5 out loud the last two sentences of that section.

6 MR. GARDNER: Objection, Your  
7 Honor. It's not necessary for the witness to  
8 read the document that counsel has already  
9 offered to the Court and we all have right in  
10 front of us.

11 THE COURT: Yes, sir.

12 MR. GEORGE: I can read it, Your  
13 Honor.

14 THE COURT: All right, you can  
15 point it out to me in argument as to what it  
16 means.

17 MR. GEORGE: All right, Your  
18 Honor.

19 Q Ms. Boehringer, do you feel that those  
20 two sentences gave you a right to use common area  
21 property?

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direct - Kelly M. Boehringer

1 MR. GARDNER: Objection, Your  
2 Honor. That's a legal conclusion, and she's  
3 not -- It's not relevant what her opinion about  
4 that conclusion is.

5 THE COURT: She may be competent  
6 to render such an opinion, but the Court rules  
7 that it's going to be the Court that has to  
8 make that decision, not this witness.

9 Q Ms. Boehringer, can you describe for  
10 this Court whether or not you make some kind of physical  
11 use of the property?

12 A I have in the past made physical use  
13 of the property by walking on it and past it; but I must  
14 say that, for the most part, my use and enjoyment of  
15 that property is an aesthetic one.

16 Q And could you describe to the Court  
17 how you make aesthetic use of the property.

18 A The main entrance to the north side is  
19 right off of Mine Road onto Campbell; and, for me, I  
20 live at the other end of the development, so I need  
21 to -- I don't need to -- but I, generally, do -- there's

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direct - Kelly M. Boehringer

1 now a second entrance -- go into the subdivision north  
2 side through the main entrance and travel all the way  
3 down Amelia, which is the road that would run into the  
4 driveways, the proposed driveways, across the common  
5 area, in order to get to my home; so I do go past it any  
6 time I come into or leave the development, with the few  
7 exceptions of when I sometimes use the second entrance  
8 which has recently been added.

9 Q And could you describe how the  
10 placement of two driveways across that property would  
11 alter your use of the property.

12 A Well, there isn't much common -- To my  
13 knowledge, and as far as I'm concerned, there's not a  
14 lot of common area on the north side. And when I pur-  
15 chased my property, I did pay very much attention to  
16 where homes were going to be, which property was common  
17 area. I felt confident based on the documents that I  
18 saw and the proposed plans that the developer had that  
19 the common area property would remain just that, common  
20 area property. And it was particularly important to me  
21 to pay attention to that knowing full well that I'd be

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direct - Kelly M. Boehringer

1 going back and forth through the entire subdivision in  
2 order to get to my home. The common area property is --  
3 Are the pictures in evidence?

4 THE COURT: No.

5 A (continuing) --has grass and some  
6 trees on it, and, for me, serves as a very nice barrier  
7 between what is a subdivision and what is a very busy  
8 road, and that's Mine Road; and there is a piece of  
9 property that is in between the common area and Mine  
10 Road, but the trees sort of make a nice break between  
11 where the subdivision is and Mine Road.

12 And my concern with respect  
13 to the driveways is that it is going to be necessary, in  
14 fact some of this has already happened, to change the  
15 physical characteristics of that common area; perhaps,  
16 to take down some trees, and we can only guess at this  
17 point because the driveways haven't been put in, and I'm  
18 not sure exactly where they're proposed, although I've  
19 seen curb cut. And, also, I'm not clear as to what the  
20 driveways will look like either; and there's been no  
21 representation made about whether they'll be paved, or

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direct - Kelly M. Boehringer

1 dirt, or rock; and clearly that's going to interfere  
2 with what, you know, is nice to look at it, or isn't  
3 nice to look at it as I go by that particular strip of  
4 land.

5 Q Ms. Boehringer, I'm going to show you  
6 two photographs. Would you identify what the subject of  
7 that photograph is.

8 A These photos are photos of what that  
9 common area property looked like after the curb cuts  
10 were made but before a big transfusion box was put in,  
11 and I guess some other -- There's a lot of dirt on this  
12 property now, and I'm not sure what that's from.

13 MR. GARDNER: Transmission.

14 A Is that what it is, transmission? A  
15 big green box, that's what I call them.

16 MR. GEORGE: Your Honor, I'd like  
17 to proffer these as exhibits.

18 MR. GARDNER: No objection.

19 THE COURT: Admitted. Plaintiff's  
20 Number Three.

21 NOTE: The above referred to

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1           photographs are now being marked and filed by  
2           the Court as Plaintiff's Exhibit Three and  
3           Plaintiff's Exhibit Four, respectively.

4           Q           Ms. Boehringer, that break between the  
5 road and adjoining property, is that important to you?

6           A           Are you referring to the common area?

7           Q           Yes.

8           A           Yes, it is.

9           Q           Have you observed neighbors making use  
10 of that property?

11          A           Sure. In the very same ways that  
12 Cynthia Salmon and Roger Dressler have already testified  
13 to.

14                       MR. GEORGE: That's all I have.  
15           Please answer any questions Mr. Gardner might  
16           have.

17  
18           CROSS EXAMINATION

19   BY MR. GARDNER:

20          Q           Ms. Boehringer, just to get our  
21 bearings straight, would you agree that Mine Road is,

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1 generally speaking, to the north of the Lee's Hill  
2 development, on the north side of it?

3 A I'm really not good with directions.

4 Q Okay, let me show you a drawing, and  
5 ask you to look at what purports to be a survey of the  
6 Carter property, Mine Road being out here to the north  
7 side, and the hatched area here would be the area that's  
8 in question, the common area shown on either side of it.

9 A Okay.

10 Q Now, Mine Road then would be out here  
11 to the north, generally, of Amelia Drive, right?

12 A Without any reason to question this  
13 survey, that's correct.

14 Q If this is north, then the first  
15 entrance, the main entrance, as you called it, into the  
16 development would be to the west side of this property,  
17 wouldn't it?

18 A That's correct.

19 Q And there's another entrance just east  
20 of the Carter property?

21 A That's the new entrance I referred to,

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1 correct.

2 Q And Amelia runs, generally speaking,  
3 roughly parallel to Mine Road?

4 A Correct.

5 Q Now, can you estimate for the Court  
6 the distance that one travels in a vehicle from the main  
7 entrance off of Mine Road, the first entrance, through  
8 the -- What street is it you first enter on?

9 A Campbell.

10 Q --Campbell to Amelia and then east on  
11 Amelia to this site?

12 A I really couldn't without using my  
13 wildest imagination. I can't; I'm sorry.

14 Q That's all right. Were you aware that  
15 the common area here, even before any part of it was  
16 conveyed by the developer, was encumbered with certain  
17 easements for development, utility easements for  
18 example?

19 A Yes, I was.

20 MR. GARDNER: Judge, if there's no  
21 objection, I'd like to offer this plat just so

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1           you can see what we were talking about. I  
2           think we used it at the first hearing too.

3                       THE COURT: Any objection?

4                       MR. GEORGE: No objection, Your  
5           Honor.

6                       THE COURT: Admitted. Defendant  
7           Number One.

8                               NOTE: The above referred to  
9           plat is now being marked and filed by the Court  
10          as Defendant's Exhibit One.

11           Q           Ms. Boehringer, would you agree that,  
12          assuming the driveway goes straight off of Amelia Drive  
13          at a ninety degree angle from the cut, would you agree  
14          that we're only talking about three trees that would be  
15          effected by the driveway?

16           A           I'm sorry, but I'm not really sure how  
17          many trees it would effect, and I'm not sure what size  
18          they are and how much privacy they provide.

19                       MR. GARDNER: Judge, counsel and I  
20          have talked about that, obviously without Ms.  
21          Boehringer's knowledge, that there would be

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1           three trees, in fact, effected by this. I  
2           don't think we discussed the exact dimensions  
3           of them.

4                       MR. GEORGE: Physically three  
5           trees on the subject property. There are  
6           additional trees on the Carter property, but,  
7           obviously, that's not a subject of this suit.

8                       THE COURT: All right, I'll accept  
9           that as a stipulation.

10

11 BY MR. GARDNER: (continuing)

12               Q           Ms. Boehringer, you haven't seen this  
13           photograph before; it was just taken, but take a look at  
14           it and see if you can tell the Court whether it appears  
15           to be an accurate depiction of the first driveway cut as  
16           you head into the development from the main entrance  
17           looking up at the Carter house?

18               A           It does, because I know that the  
19           second one is just on the other side of that trans-  
20           former.

21               Q           Transmission box.

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1           A           Transmission box.

2           Q           Transformer, that's good. Oh, and I  
3 should ask you at the same time, did you realize or do  
4 you know from your own observation that the developer  
5 apparently planted some additional trees in the common  
6 area?

7           A           I didn't know who was responsible for  
8 that, but I have personally witnessed trees now on the  
9 property that weren't there just a few days ago.

10          Q           Let me ask you if one of those trees  
11 is shown here, it's an evergreen of some kind.

12          A           Yes, I believe they're all evergreens.

13                   THE COURT: You want this as an  
14 exhibit?

15                   MR. GARDNER: Yes, sir, please.

16                   THE COURT: Defendant Number Two,  
17 admitted.

18                   NOTE: The above referred to  
19 photograph is now being marked and filed by the  
20 Court as Defendant's Exhibit Two.

21          Q           Has there been any change of the grade

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1 of the property to this point that you've been able to  
2 observe?

3 A Not that I've been able to observe,  
4 no.

5 Q And where the ground's been disturbed  
6 by installing utility lines has been regraded and  
7 reseeded, hasn't it?

8 A Not to the best of my knowledge. It's  
9 still pretty awful looking, but that could have hap-  
10 pened. I just have no knowledge of it.

11 Q You're right, at the transmission box  
12 at least. Let me ask you to look at these pictures and  
13 see if they appear to depict the same area; of course,  
14 this is the box; you're right, it hasn't been reseeded  
15 yet.

16 A Right. Well, I will say there's hay  
17 on the top of it, so, I mean, that implies that there's  
18 seed there. But, unfortunately, that is what I was  
19 referring to, because that's sort of the focal point of  
20 the conveyed common area property.

21 Q This transmission box you're talking

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1 about?

2 A Right.

3 Q But as far as the three photographs  
4 go, to the best of your observation, they do fairly and  
5 accurately depict the property as it appears now?

6 A Yes, they do.

7 MR. GARDNER: Your Honor, I'd like  
8 to offer these three.

9 THE COURT: Admitted. Defendant  
10 Number Three.

11 NOTE: The above referred to  
12 photographs are now being marked and filed by  
13 the Court collectively as Defendant's Exhibit  
14 Three.

15 Q Ms. Boehringer, to this point, at  
16 least, as you travel along Amelia Drive, do you have any  
17 greater visibility of Mine Road than you did before this  
18 structure was moved?

19 A No, no trees have been taken down yet.

20 Q And it's your fear that taking down  
21 those three trees in the area where the driveways would

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1 be installed would increase the visibility of Mine Road  
2 from Amelia Drive?

3 A I do have that fear, not knowing  
4 exactly where the driveways are going to go and what's  
5 involved in doing that. But that's not in total my  
6 concern, as to my aesthetic enjoyment of that area.

7 Q I understand that. And nobody thinks  
8 a driveway is as attractive as rolling green grass. And  
9 while we're on that subject, aren't all the driveways in  
10 the Lee's Hill development, at least in that section,  
11 paved asphalt driveways?

12 A Yes, they are.

13 Q Did you say to the Court that no one  
14 had represented to you that the driveway the Carters  
15 intend to install would, likewise, be paved asphalt?

16 A No, as a matter-of-fact, initially it  
17 was represented to me very early on, when we first  
18 learned that a house would be moved to that property,  
19 that the driveways would not be paved. And then later  
20 it was discussed that that might be a possibility, among  
21 some other improvements to the property.

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1 MR. GARDNER: I don't have any  
2 further questions, Your Honor.

3 MR. GEORGE: No redirect, Your  
4 Honor.

5 THE COURT: I recognize that you  
6 are an attorney, and you've testified before.  
7 I take it that it would be your position that  
8 the developer, in this case, Lee's Hill  
9 Partnership, had no authority to convey a par-  
10 cel of land to these defendants for the purpose  
11 of giving them access from their property?

12 MS. BOEHRINGER: In my reading of  
13 the covenants, I think the developer does  
14 reserve a right to convey common area; although  
15 the purpose for which that area will be used, I  
16 think in a larger measure, depends on whether  
17 or not it's consistent with the purpose that it  
18 used to be used for, and should continue to be  
19 used for by the lot owners. Because I don't  
20 think that by conveying the property to anybody  
21 else, the developer extinguishes the express

1           easement that he gave me and that I relied on  
2           when I purchased my property. In other words,  
3           the Carters purchased that property subject --  
4           or the land burdened by my easement; and the  
5           covenants are recorded. I mean, they were on  
6           notice that that was going to be the case, and  
7           it might be unfortunate, but --

8                   THE COURT: All right, thank you  
9           for your testimony.

10                                   -----  
11                                   WITNESS STOOD ASIDE

12  
13                   MR. GEORGE: Your Honor, I'd like  
14           to call Shiraine Browning.

15                   THE CLERK: Would you raise your  
16           right hand please. Do you solemnly swear the  
17           evidence you're about to give will be the  
18           truth, the whole truth, and nothing but the  
19           truth, so help you God?

20                   MS. BROWNING: Yes, I do.

21  
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1                                    ROBIN S. BROWNING, a witness,  
2                    being called for examination by counsel for the  
3                    plaintiffs, first being duly sworn, testified  
4                    as follows:

5  
6                    DIRECT EXAMINATION

7 BY MR. GEORGE:

8                    Q                    Ms. Browning, would you please state  
9                    your full name and address for the Court, spelling your  
10                    name.

11                    A                    Robin Shiraine Browning, B-R-O-W-N-I-  
12                    N-G. I live at 4206 Amelia Drive, and that's in Lee's  
13                    Hill North.

14                    Q                    Where is your property located with  
15                    respect to this common area property?

16                    A                    I'm not directly across from it, but  
17                    diagonal.

18                    Q                    Could you throw a rock and it would  
19                    hit on the property?

20                    A                    Probably could.

21                    Q                    Now, have you had occasion to see

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1 people use that property?

2 A Yes.

3 Q Your neighbors?

4 A Yes, children, neighbors, joggers. My  
5 husband takes the dog and walks him up there, and I have  
6 too.

7 Q And you've used it as well?

8 A Yes, my dog has used it; my husband  
9 has congregated there with other fellow residents.

10 Q Do you recall how much you paid for  
11 your lot?

12 MR. GARDNER: Objection, Your  
13 Honor.

14 THE COURT: What's the relevance?

15 MR. GEORGE: Your Honor, the  
16 plaintiffs would argue that the Carters pur-  
17 chasing their property for five hundred dol-  
18 lars, purchased it at a greatly reduced rate  
19 with respect to surrounding lots. It would  
20 give some indication of the market value, at  
21 least -- Well, that's essentially why we are

direct - Robin S. Browning

1 asking the question, Your Honor.

2 THE COURT: I sustain the  
3 objection.

4 MR. GEORGE: Thank you.

5 Q Now, your property benefitted from  
6 the -- what you thought was an easement? Did you use  
7 the common area property?

8 A Right.

9 Q Has the value of your property, to  
10 you, been diminished by what might happen to that  
11 property across the street?

12 A Yes.

13 MR. GARDNER: Objection, Your  
14 Honor. I sent written interrogatories to  
15 counsel to ask about, first of all, expert  
16 witnesses; and I was told there wasn't going to  
17 be any. And, secondly, in conversation, after  
18 receiving those interrogatories, I was assured  
19 that the issue of devaluation of surrounding  
20 properties was not an issue that the plaintiffs  
21 sought to raise as a part of this case here.

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1 MR. GEORGE: Your Honor, I could  
2 perhaps cure that, and I, certainly, didn't  
3 mean for Mr. Gardner to feel that I misled him.  
4 What I would like to establish is just a  
5 personal value that you place in your own  
6 property, not to place a dollar figure to it.

7 THE COURT: Well, again, I just  
8 don't see the relevance.

9 MR. GEORGE: I'll withdraw that  
10 then, Your Honor. That's all I have. Please  
11 answer any questions Mr. Gardner might have.

12 MR. GARDNER: I don't have any  
13 questions, Your Honor.

14 THE COURT: Thank you for your  
15 testimony.

16 -----  
17 WITNESS STOOD ASIDE

18  
19 MR. GEORGE: Your Honor, that's  
20 the plaintiffs' case.

21 THE COURT: All right, Mr.

1           Gardner?

2                   MR. GARDNER: Judge, I would make  
3           a motion to strike the bill of complaint and  
4           the petition for injunction based on the --  
5           Well, I'm not going to spend a lot of time on  
6           it. You understand what our position is, and I  
7           think based on the testimony and the evidence  
8           that the plaintiff has presented, the issue is  
9           squarely before Your Honor; that is whether,  
10          first of all, the declarant, the developer, by  
11          maintaining control of the board of directors,  
12          and pursuant to the declaration, maintained the  
13          right to transfer the property and, in essence,  
14          substitute an easement over common area in  
15          another location by conveying it, extinguish  
16          the easement as you put it is a clearer way of  
17          saying it. We submit that they did maintain  
18          that right.

19                               You can pick iso-  
20          lated sections within the covenants and res-  
21          trictions, as counsel did with Ms. Boehringer,



those provisions, you see that in conjunction with creating the common areas, the developer, the declarant, and through them the association reserve the right, not only to put additional easements across the common areas, but to convey parts of the common area, so long as they do two things; they replace it with a like amount of common area, nothing to say that it has to be in the same neighborhood, it just has to be a part of the same development; and so long as they don't substantially and materially adversely effect the rights of the homeowner.

And, therefore, even on the question of whether the easement's been extinguished, it seems to me the Court has to ask -- It's admitted, I think, by plaintiffs, that the act of conveying the property was lawful. The question is: Does it extinguish the easement, or do the purchasers of it have the right to use that property for a purpose, ingress and egress, which might conflict with

the owner's easement rights? And I submit that under the covenants that, unless the intended use by erection of a driveway for ingress and egress materially and adversely effects their rights, then their case fails.

Now, what's been presented to you about the material adverse harm here? There's been testimony that some of the witnesses, some of the plaintiffs walk across the property from time to time; that they gather on it, sit on it to converse with friends and neighbors; that in certain times of the year when weather permits the hillside is used for sledding by kids. Other testimony that folks who enjoy driving by it and appreciate the aesthetic appeal of it. Other testimony that it acts as a buffer between Amelia Drive and Mine Road, which you can see from the plat is some six hundred feet distance on the other side of the property in dispute.

Now, Your Honor,

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1 with all due respect, it seems to me we've been  
2 dancing around the factual basis for the plain-  
3 tiffs' action. It's not the idea that a fif-  
4 teen foot driveway materially and adversely  
5 effects their ability to jog across the prop-  
6 erty, to step on it, walk their dogs on common  
7 area immediately adjacent to it on either side,  
8 which is much larger than the area we're  
9 talking about. The simple thing is that it's  
10 the idea that they oppose what the developer  
11 did granting a driveway to someone's property  
12 which is not part of the development and not  
13 subject to the other covenants and restric-  
14 tions; that's what they really object to.

15 If you have to base  
16 your decision on the evidence they presented,  
17 that their real objection, that the material  
18 and adverse harm is the restriction on their  
19 ability to walk over it, look at it, and enjoy  
20 it, you'd simply have to find that that's not a  
21 material or adverse effect or harm. To suggest

12 To say that a  
13 fifteen foot wide driveway over this piece of  
14 property that's over two hundred feet wide  
15 materially and adversely restricts my right to  
16 sit on it, or walk on it. I mean, I think when  
17 you stop and look at what they're saying is a  
18 harm, you realize that that's not really the  
19 basis of the complaint, but it's an effort to  
20 fit the real objection within the law.

21 And I respectfully

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1 suggest to Your Honor that at this point it  
2 really is a legal issue. We can present evi-  
3 dence to contradict the things you've heard to  
4 some extent, but the real question is constru-  
5 ing those documents, doesn't the declarant  
6 reserve the right to do exactly what it did?  
7 And in Ms. Boehringer's words, it may be unfor-  
8 tunate, but those rights were reserved; it was  
9 done for a specific purpose, and the purpose  
10 that was set out in the declaration, I would  
11 submit, is perfectly consistent with what's  
12 happened.

13 MR. GEORGE: Your Honor, there's  
14 quite a bit of testimony there in opposing  
15 counsel's argument. It is simply not in evi-  
16 dence that there's some objection to the house  
17 being there, and we're trying to get back at  
18 somebody for having moved a house there. The  
19 only thing that has gone into evidence today,  
20 Your Honor, and the only thing before the  
21 Court, and the only thing the plaintiffs urge

1 the Court to take a look at is the damage to  
2 the aesthetic and physical use of the property.

3 Secondly, Your  
4 Honor, we -- and I suppose turnabout is fair  
5 play to some extent, we don't concede that that  
6 was a lawful sale. We did for the purposes of  
7 the temporary injunction, Your Honor, as did  
8 Mr. Gardner concede that there was an easement  
9 at that hearing, but that was prior to our  
10 developing facts, and, presumably, it was prior  
11 to Mr. Gardner's ability to develop facts which  
12 resulted in his change.

13 Thirdly, Your Honor,  
14 Mr. Gardner said himself that the easement  
15 can't be conveyed separate from the individual  
16 lots, so anything that the homeowners associa-  
17 tion did and anything that the partnership, the  
18 developer, did that didn't involve individual  
19 lots simply cannot transfer the easement and  
20 cannot extinguish the easement.

21 Now, the opposing

counsel earlier in the hearing pointed to a variety of sections for the Court with respect to the developer and the homeowners association's right to make boundary adjustments and transfer property, Your Honor. And that's all well and good, and I suppose that for -- at least, for the purpose here that it's immaterial. You cannot convey more than you have. The developer and the homeowners association did not at any time own the easement that individual lot owners owned; therefore, they couldn't convey it. And if you can't convey something, Your Honor, I submit you cannot extinguish it.

Mr. Gardner's argument is essentially one that I suppose is at the heart of the matter as the Court has pointed out, and it boils down that, in Virginia, Your Honor, appurtenant easements cannot be extinguished by third party actions. It has to involve the dominant and serving

1           estates. And the dominant estate, the individ-  
2           ual lots, at no time were transferred so that  
3           they all came together so that the easement  
4           could be destroyed, and that simply didn't  
5           occur, and that's not the law in this case.

6                               Now, I submit, Your  
7           Honor, that even if it does say that in the  
8           declaration, which it doesn't, but even if it  
9           says that the easement could be destroyed, I  
10          submit that Virginia law doesn't allow that to  
11          occur that way. You have to have an agreement  
12          by an individual lot owner specific to a  
13          particular transfer in order to extinguish an  
14          easement. But, regardless of that, Your Honor,  
15          it simply isn't the law in the State that you  
16          can just appoint the thing saying that you can  
17          transfer property and read into that the right  
18          to extinguish a third party's easement right.

19                              For that reason,  
20          Your Honor, I ask that -- I have one additional  
21          point, Your Honor. Mr. Gardner also argued

1           that it is an absurd proposition that the use  
2           of the property that the defendants seek to do  
3           is of such a minimal interference with the  
4           easement rights of the plaintiffs so as to not  
5           justify any action by the Court.

6                               I'd like to bring to  
7           the Court's attention a couple of matters,  
8           which I'm probably doing so as a redundancy  
9           since the Court is well aware of it. Property  
10          is a unique thing in the law, Your Honor, it's  
11          one of the few things from which you can get  
12          specific performance in equity. And to say  
13          that, well, it's only this sixty feet; they've  
14          got a hundred and whatever feet left, Your  
15          Honor, is simply not a credible legal argument.  
16          Property, land, is unique; its location is  
17          unique, and how people feel about a particular  
18          piece of property is unique, and for that  
19          reason, the law has always, the common law any  
20          way, Your Honor, has always recognized land as  
21          being a special category, unlike chattels, for

1 instance, Your Honor.

2 Secondly, Your  
3 Honor, or lastly, I suppose, the fact the  
4 driveways will go across this property and  
5 presumably cars will be parked on the property,  
6 that's going to interfere with people's ability  
7 to walk the full two hundred feet, and they  
8 have an easement to walk across those two  
9 hundred feet, Your Honor. And I ask that the  
10 motion to strike be denied. Thank you, Your  
11 Honor.

12 MR. GARDNER: Your Honor, I did  
13 not say that the easement or common area could  
14 not be conveyed except by a lot owner or in  
15 conjunction with the lot. It's obviously two  
16 separate things. And you have to start, you  
17 can't put the cart before the horse, you have  
18 to start back at the very beginning.

19 In this case, unlike  
20 one of the cases cited by counsel in his memo-  
21 randum, we're not dealing with an implied ease-

1           ment, we're dealing with an express easement.  
2           And that easement exists by virtue of the  
3           language of the covenants and restrictions,  
4           which expressly say it's subject to certain  
5           limitations. And I don't see how you could  
6           fairly read all of those limitations and draw  
7           any other conclusion than that the developer  
8           reserves the right to convey and restrict the  
9           use of the common areas under certain limita-  
10          tions for development of adjoining property,  
11          easements, and so forth. I think in order to  
12          do that you have to isolate the one sentence  
13          that the plaintiffs relied upon to the exclu-  
14          sion of the other language which seems to say  
15          directly the opposite thing.

16                   THE COURT: The Court finds that  
17                   the developer reserved the right to exchange  
18                   common areas, and that the intended use of the  
19                   deeded property does not materially or adverse-  
20                   ly effect the plaintiffs, and the petition for  
21                   injunction is denied. Mr. Gardner, you can

1           prepare an order, and I'll enter it.

2                       MR. GARDNER: Your Honor, there  
3 was a request in our response to pleadings for  
4 consideration of award of costs and attorney  
5 fees; would Your Honor consider that?

6                       THE COURT: That request is  
7 denied.

8                       MR. GARDNER: Thank you.

9                       MR. GEORGE: Your Honor, may I ask  
10 one clarification of the Court's decision so as  
11 to prevent any problems later on down the line,  
12 has the Court ruled an easement does not exist,  
13 or that an easement that does exist has not  
14 been materially effected?

15                      THE COURT: I ruled just the way I  
16 called it.

17                      MR. GEORGE: All right.

18                      THE COURT: And you know the next  
19 step.

20                      MR. GEORGE: Thank you, Your  
21 Honor.

1 THE COURT: The Court of Appeals.

2 MR. GEORGE: Yes, Your Honor.

3 Thank you.

4 -----  
5 HEARING CONCLUDED AT 3:18 P.M.  
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FRANCES K. HALEY & ASSOCIATES, Court Reporters  
10725 Courthouse Road, Suite 300  
Fredericksburg, VA 22407 PH: 703-898-1527 FAX: 898-6154

1 CERTIFICATE OF COURT REPORTER  
2

3 I, Melonie M. Raun, hereby certify that I,  
4 first being duly sworn, was the Court Reporter in the  
5 Circuit Court of the County of Spotsylvania, Virginia,  
6 on September 2, 1994, at the time of the hearing herein.

7 I further certify that the foregoing transcript  
8 is a true and accurate record of the hearing herein.

9 Given under my hand this 27th day of October,  
10 1994.

11  
12 

13 MELONIE M. RAUN  
14 Court Reporter  
15  
16  
17  
18  
19  
20  
21

FRANCES K. HALEY & ASSOCIATES, Court Reporters  
10725 Courthouse Road, Suite 300  
Fredericksburg, VA 22407 PH: 703-898-1527 FAX: 898-6154

PLAINTIFFS' EXHIBIT NO. 1





## DECLARATION

FOR

LEE'S HILL

19374

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## DECLARATION

FOR

LEE'S HILL

THIS DECLARATION is made as of December 12th, 19 89, by LEE'S HILL PARTNERSHIP, a Virginia general partnership (the "Declarant").

## R E C I T A L S:

1. The Declarant owns in fee simple the real estate designated as Submitted Real Estate in the legal description attached as Exhibit A hereto and shown on the plat attached as Exhibit C hereto, and has decided to subject that real estate to covenants, restrictions, reservations, easements, servitudes, liens and charges, all of which are more particularly hereinafter set forth.

2. The Declarant also wishes to reserve the right to add the real estate designated as Additional Real Estate in the legal description attached as Exhibit B hereto or shown on the plat attached as Exhibit C hereto, as both of the same may be amended by the Declarant from time to time, and may hereafter decide to subject all or any portion of that Additional Real Estate, pursuant to Section 4.1 hereof, to the provisions of this Declaration, all as the same may be amended from time to time.

3. The Declarant deems it desirable and in the best interests of all the owners of real estate subject to this Declaration to protect the value and the desirability of such real estate by providing for the development of such real estate in accordance with a common plan and the maintenance of certain shared facilities.

4. To provide a means for meeting the purposes and intents set forth herein, the Declarant has caused or will cause Lee's Hill Community Association, Inc. to be incorporated under the laws of the Commonwealth of Virginia.

5. The Declarant may also cause or permit other owners associations or condominium unit owners associations to be incorporated or created under the laws of the Commonwealth of Virginia to provide separate and additional entities to govern certain matters pertaining exclusively to certain portions of the real estate described on Exhibits A and B hereto and shown on Exhibit C hereto which may be used for residential or commercial purposes. These additional associations shall be subordinate to the

Association if such real estate is submitted to the Declaration or may be completely independent from the Association if such real estate is not submitted to the Declaration.

NOW, THEREFORE, the Declarant hereby covenants and declares, on behalf of itself and its successors and assigns, that the real estate designated as Submitted Real Estate in Exhibit A hereto shall, from the date this Declaration is recorded, be held, conveyed, acquired and encumbered subject to the terms and provisions hereof, all of which shall run with the land and bind and inure to the benefit of all Persons who may now or hereafter own or acquire any right, title, estate or interest in or to any of such real estate, or who may now or hereafter occupy or enter upon any portion thereof, subject to the right of the Declarant or the Association to amend this Declaration to add all or any portion of the Additional Real Estate.

## ARTICLE 1

### GENERAL PROVISIONS

Section 1.1. Definitions. Terms used herein without definition shall have the meanings specified for such terms in Section 13.1-803 of the Act. Capitalized terms used herein shall have the meanings specified for such terms below.

(a) "Act" means the Virginia Nonstock Corporation Act, Chapter 10 of Title 13.1 of the Code of Virginia (1950), as the same may be amended, supplemented or replaced from time to time.

(b) "Additional Real Estate" means the real estate so designated in Exhibit B or shown on Exhibit C hereto which the Declarant may submit to this Declaration and to the jurisdiction of the Association pursuant to Section 4.1 hereof, or any real estate that the Association may submit to the Declaration and assume jurisdiction over pursuant to Section 4.2 hereof.

(c) "Articles of Incorporation" means the Articles of Incorporation for Lee's Hill Community Association, Inc., filed with the Virginia State Corporation Commission as amended from time to time.

(d) "Association" means Lee's Hill Community Association, Inc. and, with respect to the rights and obligations of the Association set forth in this Declaration, its successors and assigns.

(e) "Association Documents" means collectively, the Articles of Incorporation, this Declaration and the Bylaws, as amended from time to time. Any exhibit, schedule, certification or amendment to an Association Document is an integral part of that document.

(f) "Board of Directors" or "Board" means the executive and administrative entity established by Article 5 of the Articles of Incorporation as the governing body of the Association.

(g) "Builder" means a Person who in the regular course of business purchases Lots and becomes an Owner of such Lots solely for the purpose of constructing improvements upon such Lots for resale or rental.

(h) "Bylaws" means the Bylaws of the Association, as amended from time to time.

(i) "Common Area" means, at any given time, all of the Property, other than Lots, then owned or leased by the Association or otherwise available to the Association for the benefit, use and enjoyment of the Owners; provided, however, that real estate within the Property is not Common Area solely because it is burdened by an easement for utilities, storm water management, landscaping or signage or dedicated as a public street or roadway. A portion of the Common Area which the Association has the right to maintain as Community Trails or otherwise for the benefit of the Owners may be located within a Lot. For the purposes of operation and control, such portion of the Lot shall be treated as Common Area; for the purposes of ownership, such portion shall be part of the Lot and shall be included in the calculation of voting rights and assessments.

(j) "Common Expenses" means all expenditures lawfully made and incurred on behalf of the Association, together with all funds determined by the Board of Directors to be necessary for the creation and maintenance of reserves pursuant to the provisions of the Association Documents. Except when the context clearly requires otherwise, any reference to Common Expenses includes General Common Expenses, Limited Common Expenses and Recreational Facilities Expenses.

(1) "General Common Expenses" means all Common Expenses less Limited Common Expenses and Recreational Facilities Expenses.

(2) "Limited Common Expenses" means expenses incurred by the Association and benefiting one or more but less than all of the Lots pursuant to Subsection 6.2(a)(2) hereof, but not including Recreational Facilities Expenses.

(3) "Recreational Facilities Expenses" means expenses incurred by the Association for the management and Up-keep of and insurance for the Recreational Facilities and such amounts as the Board of Directors may determine to be necessary to create reserves for the repair and replacement of the Recreational Facilities.

(k) "Community Trails" means the paths and trails constructed by the Declarant or by an Owner pursuant to an agreement with the Declarant across Lots and any Common Area owned in fee simple by the Association, which shall be maintained by the Association for the use of all Owners. Such paths and trails shall be considered part of the Common Area, even though located within a Lot.

(l) "Covenants Committee" means the committee that may be established by the Board of Directors pursuant to Article 9 hereof to assure that the Property shall be maintained in a manner consistent with the purposes and intents of this Declaration.

(1) "Modifications Subcommittee" means the subcommittee of the Covenants Committee that reviews proposed visible additions, alterations or modifications to the exterior of existing structures on the Property, except for Commercial Lots, as set forth in Subsections 9.2(b) and 9.2(d) hereof.

(2) "Rules Enforcement Subcommittee" means the subcommittee of the Covenants Committee that reviews possible violations of the Association Documents and Rules and Regulations and recommends appropriate enforcement action as set forth in Subsection 9.2(c) hereof.

(3) "Commercial Modifications and Rules Enforcement Subcommittee" means the subcommittee of the Covenants Committee that may review proposed visible additions, alterations or modifications to the exterior of existing structures on Commercial Lots and reviews possible violations of the Association Documents and the Rules and Regulations by Owners of Commercial Lots and recommend appropriate enforcement action as set forth in Subsection 9.2(d) hereof.

(m) "Declarant" means Lee's Hill Partnership, a Virginia general partnership. Following recordation of an instrument assigning to another Person some or all of the rights reserved to the Declarant under the Association Documents, pursuant to Section 5.2 hereof the term "Declarant" shall mean or include that assignee.

(n) "Declarant Control Period" means the period ending on the earlier of: (1) the later of (i) the tenth anniversary of the date of recordation of the Declaration or (ii) the fifth

anniversary of the date of recordation of the most recent amendment to the Declaration made by the Declarant adding Additional Real Estate (provided, however, that once the Declarant Control Period has expired, the recordation of a subsequent amendment to the Declaration shall not reinstate the Declarant Control Period; and provided, further, that if the Declarant is delayed in the improvement and development of the Property due to a sewer, water or building permit moratorium or other cause or event beyond the Declarant's control, then the aforesaid period shall be extended for the period of the delay or three years, whichever is less); (2) the date the number of votes of Class A and Class B members equals the number of votes of the Class E member; or (3) the date specified by the Declarant in a written notice to the Association that the Declarant Control Period is to terminate on that date.

(o) "Declaration" means this Declaration For Lee's Hill made by the Declarant and recorded among the Land Records. The term Declaration shall include all amendments to the Declaration: (i) amending the provisions herein pursuant to Article 15 hereof, and (ii) Supplementary Declarations submitting Additional Real Estate to the terms of this Declaration and the jurisdiction of the Association pursuant to Article 4 hereof, whether or not such amendments add provisions reflecting the unique character of the real estate being added.

(p) "Design Standards" means the standards developed for the Property by the Covenants Committee pursuant to Article 9 hereof, and any standards established by the Declarant.

(q) "Land" means, at any given time, the real estate then subject to the Declaration (including Lots and Common Area), but does not include improvements or appurtenances thereto.

(r) "Land Records" means the land records of Spotsylvania County, Virginia, the jurisdiction in which the Property and the Additional Real Estate are located.

(s) "Limited Common Area" means a portion of the Common Area designated by the Declarant pursuant to Section 3.9 hereof for the exclusive use of one or more but less than all of the Lots.

(t) "Lot" means a portion of the Property designated as a separate subdivided lot of record (but not including the real estate designated as Common Area and owned by the Association) on a plat of subdivision, resubdivision or consolidation or boundary line adjustment of a portion of the Property recorded among the Land Records or any plot of real estate held in separate ownership and includes any improvements now or hereafter appurtenant to that real estate. Lot shall also mean any condominium unit created in accordance with Chapter 4.2 of Title 55 of the Code of Virginia (1950), as amended, or any

cooperative unit created in accordance with Chapter 29 of Title 55 of the Code of Virginia (1950), as amended.

(1) "Civic Lot" means a Lot containing improvements primarily used and occupied for a public purpose and owned by a governmental or nonprofit entity, including without limitation schools, fire and rescue stations, police stations, libraries, churches and parks. If a Civic Lot is no longer used and occupied for a public purpose and owned by a governmental or nonprofit entity, such Lot shall no longer be a Civic Lot and shall be treated as a Commercial Lot, Multifamily Residential Lot or Single Family Residential Lot, as appropriate, for purposes of voting and assessment.

(2) "Commercial Lot" means a Lot containing primarily corporate office, office building, commercial condominium units, retail use, restaurant, hotel, day care facilities or similar uses.

(3) "Multifamily Residential Lot" means any Lot upon which the improvements are primarily intended for use and occupancy as a permanent residence and, unless otherwise specified, residential includes without limitation Lots containing rental apartments and elderly congregate care facilities.

(4) "Single Family Residential Lot" means any Lot upon which the improvements are primarily intended for use and occupancy as a permanent residence and, unless otherwise specified, includes without limitation Lots containing residential condominium and cooperative units, townhouses, and single family attached and detached homes.

(u) "Majority Vote" means a simple majority (more than fifty percent) of the votes entitled to be cast by members present in person or by proxy at a duly held meeting of the members at which a quorum is present. Any vote of a specified percentage of members means that percentage with respect to the total number of votes entitled to be cast by members present in person or by proxy at a duly held meeting at which a quorum is present. Any vote by a specified percentage of the Board of Directors (or the Covenants Committee) means that percentage with respect to votes entitled to be cast by directors (or Committee Members) present at a duly held meeting of the Board (or Committee) at which a quorum is present. Any vote of or approval by a specified percentage of the Mortgagees means a vote of or approval by the Mortgagees of Lots calculated according to the number of votes allocated to the Lot on which each has a Mortgage.

(v) "Mortgagee" means an institutional lender (one or more commercial or savings banks, savings and loan associations, trust companies, credit unions, industrial loan associations, insurance companies, pension funds or business trusts, including but not limited to real estate investment trusts, any other lender regularly engaged in financing the purchase, construction, or improvement of real estate, or any assignee of loans made by such lender, or any combination of any of the foregoing entities) holding a first mortgage or first deed of trust ("Mortgage") encumbering a Lot. Only for the purpose of the notice and inspection rights in Articles 13, 15 and 16 hereof, the term "Mortgagee" shall also include the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, the Federal National Mortgage Association, the Farmer's Home Administration, the Veterans Administration, the Government National Mortgage Association and any other public or private secondary mortgage market entity, if such entity is participating in purchasing, guarantying or insuring mortgages on Lots, if the Board of Directors has notice of such participation.

(w) "Net Floor Area" means the floor area constructed or allowed to be constructed on a Lot under local zoning regulations.

(x) "New Construction Committee" means the committee that reviews proposed initial construction of any structure on the Property as set forth in Section 9.4 hereof.

(y) "Officer" means any Person holding office pursuant to Article 6 of the Bylaws.

(z) "Owner" means one or more Persons who own a Lot in fee simple, including contract sellers, but does not mean any Person having an interest in a Lot solely by virtue of a contract or as security for an obligation.

(aa) "Person" means one or more natural persons, corporations, partnerships, associations, trusts or other entities capable of holding title to real estate, or any combination thereof.

(bb) "Phase" means a portion of the Property designated as provided in Section 4.3 hereof. The Phase shall be the Subdivision Section stated in the Supplementary Declaration, unless indicated otherwise.

(cc) "Private Streets and Roadways" means all streets, roadways, sidewalks, curbs, gutters and parking areas which are part of the Common Area, but not including streets and roadways dedicated to public use by a plat or deed of dedication.

(dd) "Property" means, at any given time, the real estate then subject to the Declaration (including Lots and Common Area) and includes all improvements and appurtenances thereto now or hereafter existing.

(ee) "Recreational Facilities" means the swimming pools, tennis courts and associated community buildings and any other facilities owned by the Association and restricted to use by the Class A members and other Persons purchasing memberships pursuant to the regulations and charges established by the Board of Directors but not including tot lots, playing fields, multi-purpose courts, trails and community centers open to all Owners and their designees.

(ff) "Reserved Common Area" means a portion of the Common Area for which the Board of Directors has granted a revocable license for exclusive use pursuant to Section 3.9 hereof.

(gg) "Rules and Regulations" means the rules and regulations governing the use, occupancy, operation and physical appearance of the Property adopted from time to time by the Board of Directors.

(hh) "Submitted Real Estate" means the real estate designated as such in Exhibit A hereto and all real estate which is from time to time submitted to the Declaration.

(ii) "Supplementary Declaration" means an amendment to the Declaration submitting a portion of the Additional Real Estate to the terms of this Declaration and subjecting such Additional Real Estate to the jurisdiction of the Association, pursuant to Article 4 hereof.

(jj) "Upkeep" means care, inspection, maintenance, operation, repair, repainting, remodelling, restoration, improvement, renovation, alteration, replacement and reconstruction.

## Section 1.2. Construction of Association Documents.

(a) Captions. The captions are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of the document in which used or any provision thereof.

(b) Pronouns. The use of the masculine gender shall be deemed to include the feminine and neuter genders, and the use of the singular shall be deemed to include the plural and vice versa, whenever the context so requires.

(c) Severability. Each provision of an Association Document is severable from every other provision, and the invalidity of any one or more provisions shall not change the meaning

of or otherwise affect any other provision. To the extent that any provision of the Association Documents is found to be overly broad or unenforceable and a narrower or partially enforceable construction may be given to such provision, then the narrower or partially enforceable construction shall be applied and, to the extent practicable, the provision shall be enforced.

(d) Interpretation. If there is any conflict between the Association Documents, the Declaration shall control, except as to matters of compliance with the Act, in which case the Articles of Incorporation shall control. Particular provisions shall control general provisions, except that a construction consistent with the Act shall in all cases control over any construction inconsistent therewith. The provisions of the Bylaws shall control over any conflicting provision of any rule, regulation or other resolution adopted pursuant to any of the Association Documents.

(e) Complementarily of Association Documents and Incorporation by Reference. The Association Documents shall be construed together and shall be deemed to incorporate one another. Any requirements as to the content of one shall be deemed satisfied if the deficiency can be cured by reference to any of the others. Any provision of any Association Document referenced in any other Association Document with the intent to incorporate the provisions of the Association Document into the other Association Document, shall be deemed incorporated therein, as if set forth in full.

### Section 1.3. The Association.

(a) Creation. The Lee's Hill Community Association, Inc. is a nonstock corporation organized and existing under the laws of the Commonwealth of Virginia, charged with the duties and vested with the powers prescribed by law and set forth in the Articles of Incorporation and the Bylaws.

(b) Membership. Members of the Association shall at all times be, and be limited to, the Declarant (for so long as the Declarant or its designees are engaged in development or sales, or activities related thereto, anywhere on the Property or the Additional Real Estate) and the Persons who constitute Owners of the Lots. If more than one Person owns a Lot, then all of the Persons who own such Lot shall collectively constitute one Owner and be one member of the Association. Each Person is entitled to attend all meetings of the Association. Membership in the Association is mandatory.

Upon acquiring title to a Lot, each new Owner shall immediately give written notice to the Secretary stating the name and address of such new Owner and the number or address of the Lot. If the new Owner fails to give the Secretary such notice

within thirty days after acquiring title to such Lot, then reasonable record keeping costs incurred by the Association may be assessed against such Owner pursuant to Section 12.1(a) hereof.

(c) Classes of Members; Voting Rights. The Association shall have five classes of members as follows:

The Class A members shall be the Owners of Single Family Residential Lots, other than the Declarant, and shall have one vote for each Lot owned.

The Class B members shall be the Owners of Multifamily Residential Lots, other than the Declarant, and shall have one vote for each occupied dwelling unit located on such Lot.

The Class C members shall be the Owners of Commercial Lots, including the Declarant, and shall have one vote per 3,000 square feet of net floor area constructed or permitted to be constructed on such Owner's Lot; provided, however, that a Class C member shall have at least one vote for each Lot owned.

The Class D members shall be the Owners of Civic Lots and shall have no vote.

The Class E member shall be the Declarant. The Declarant shall have 3,750 votes [a number equal to one and one-half times the total number of Class A and Class B votes projected when the Submitted Real Estate and the Additional Real Estate described in Exhibit B to the Declaration are fully developed] less the number of votes held by Class A and B members when a vote is taken. If Exhibits A or B of the Declaration are amended from time to time to include additional real estate that was not originally described on Exhibits A and B when the Declaration was recorded, the number of votes of the Class E member described above shall be increased by one and one-half times the number of Class A or Class B votes that would be appurtenant to any Lots created on such real estate if such real estate were fully developed under the applicable zoning regulations and submitted to the Declaration.

After the Declarant Control Period expires, the Class E membership shall cease to exist and the Declarant shall be treated as any other Owner with respect to the voting rights appurtenant to Lots owned by the Declarant.

(d) Board Authority to Act. Unless otherwise specifically provided in the Act or the Association Documents, all rights, powers, easements, obligations and duties of the Association may be performed by the Board of Directors on behalf of the Association.

(e) Merger or Consolidation. Upon merger or consolidation of the Association with another association formed for similar purposes, the Association's properties, rights and obligations may be transferred to the surviving or consolidated Association, or alternatively, the properties, rights and obligations of the other association may be assumed by the Association, as the surviving corporation. No such merger or consolidation shall effect any revocation, termination, change or addition to this Declaration except pursuant to Articles 15 and 16 hereof.

(f) Other Associations. Any portion of the Property may also be subjected to a declaration which grants rights with respect to a portion of the Property to a second owners association or condominium unit owners association which addresses concerns particular to that specific portion of the Property. Any obligations created under any such declaration shall be in addition to and subordinate to the obligations created hereunder.

## ARTICLE 2

### COMMON AREA

Section 2.1. Conveyance; Title. The Declarant shall convey the Common Area in each Phase of the Property to the Association in fee simple released from any encumbrance securing the repayment of monetary obligations incurred by the Declarant, but subject to all easements and other encumbrances then of record (including those created by this Declaration). The Common Area in each Phase of development shall be conveyed to the Association before the conveyance of any Lot in such Phase to an Owner other than the Declarant or a Builder. The Association shall accept title to any real estate or personal property offered to the Association by the Declarant.

Section 2.2. No Dedication. Nothing contained herein or in the other Association Documents shall be construed as a dedication to public use or as an assumption of responsibility for Upkeep of any Common Area by any public or municipal agency, authority or utility, nor shall it be construed to prevent the Board of Directors of the Association from permitting public access to or use of any Common Area.

Section 2.3. Transfer of Responsibility for Upkeep. When the Declarant substantially completes the improvements on any portion of the Common Area, Declarant may transfer responsibility for Upkeep for such portion of the Common Area to the Association. After the Association assumes responsibility for Upkeep of a portion of the Common Area, the Association shall continue to cooperate with the Declarant to obtain release of County bonds for the improvements located on such Common Area.

Section 2.4. Regulation of Common Area. The Board of Directors shall have the right to regulate use of the Common Area pursuant to Section 8.3 hereof and to charge fees for the use thereof. The Board may offer memberships to the general public in the Recreational Facilities subject to a fee. The Board may also mortgage, dedicate or convey the Common Area owned in fee simple by the Association or grant easements over and through any Common Area subject to the restrictions in Section 15.4 hereof. The Board of Directors is specifically authorized to enter into agreements with other parties to cover the pool during the off-season (to be determined by the Board of Directors, but generally considered to be before Memorial Day or after Labor Day) and to operate such pool as a membership club or otherwise, the use of which may require additional fees not included in the assessments levied pursuant to Article 6 hereof.

Section 2.5. Additional Improvements on Common Area. After the initial improvement and conveyance of any Common Area to the Association, the Declarant may, but is not obligated to, construct additional improvements on the Common Area for the benefit of the Property, pursuant to the easements in Section 3.1 hereof.

Section 2.6. Boundary Adjustments. The Board of Directors has the power at any time or times, consistent with the then existing zoning ordinances of the applicable governmental authority, and pursuant to a recorded subdivision or resubdivision plat, to transfer part of the Common Area to or at the direction of the Declarant for the purpose of adjusting Lot lines or otherwise in connection with the orderly subdivision and development of the Property; provided, however, that: (i) such transfer shall not reduce the portion of the Property designated as "open space" below the minimum level of "open space" required in the subdivisions comprising the Property at the time of the transfer; (ii) the Declarant shall transfer to the Association as "open space: such portion of the Property as is necessary to maintain the total acreage designated as "open space" at that level existing at the time of the transfer; (iii) the appropriate governmental authorities approve such Lot line adjustments; and (iv) documents showing each such Lot line adjustment are submitted to the Veterans Administration if the Veterans Administration is guarantying a loan on a Lot affected by the adjustment.

## ARTICLE 3

EASEMENTSSection 3.1. Development Easements.(a) Easements Reserved to the Declarant.

(1) Easement to Facilitate Development. The Declarant hereby reserves to itself and its designees a non-exclusive blanket easement over and through the Property for all purposes reasonably related to the development and completion of improvements on the Property, including without limitation: (i) temporary slope and construction easements; (ii) drainage, erosion control, and storm and sanitary sewer easements (including the right to cut or remove trees, bushes or shrubbery, to regrade the soil and to take any similar actions reasonably necessary; provided, however, that thereafter the Declarant shall restore the affected area as near as practicable to its original condition); (iii) easements for the storage (in a sightly manner) of reasonable supplies of building materials and equipment necessary to complete the improvements; and (iv) easements for the construction, installation and Upkeep of improvements (e.g., buildings, landscaping, street lights, signage, etc.) on the Property or reasonably necessary to serve the Property.

(2) Easement to Facilitate Sales. The Declarant hereby reserves to itself and its designees the right to: (i) use any Lots owned or leased by the Declarant, any other Lot with the written consent of the Owner thereof or any portion of the Common Area (including any improvement) as models, management offices, sales offices, a visitors' center, construction offices, customer service offices or sales office parking areas (provided, however, that the Declarant shall remain responsible for the Operating expenses of any portion of the Common Area used for the foregoing purposes); (ii) place and maintain in any location on the Common Area, the common area of any owners association or the common elements of any condominium and on any Lot (for a distance of fifteen feet behind any Lot line which parallels a public or private street), street and directional signs, temporary promotional signs, plantings, street lights, entrance features, "theme area" signs, lighting, stone, wood or masonry walls or fences and other related signs and landscaping features; provided, however, that all signs shall comply with applicable governmental regulations and the Declarant shall obtain the consent of the Owner of any affected Lot or of the Covenants Committee if the Owner does not consent; and (iii) relocate or remove all or any of the above from time to time at the Declarant's sole discretion.

(3) Easement for Utilities and Related Services.

(i) A non-exclusive blanket easement is hereby granted over and through the Property for ingress, egress, installation and Upkeep of the equipment for providing to any portion of the Property or adjacent real estate, any utilities, including without limitation water, sewer, drainage, gas, electricity, telephone and television service, whether public or private; such easement is hereby granted to any Person providing, installing or providing Upkeep for the aforesaid services. Any pipes, conduits, lines, wires, transformers and any other apparatus necessary for the provision or metering of any utility may be installed, maintained or relocated where permitted by the Declarant, where contemplated on any site plan approved by the Declarant or where approved by resolution of the Board of Directors.

(ii) The Declarant hereby reserves to itself and its successors and assigns the right to grant and reserve easements, rights-of-way and licenses over and through: (1) the Common Area; (2) the common area of any owners association or the common elements of any condominium; (3) any real estate conveyed to a Builder prior to subdivision into individual Lots; and (4) within twenty-five feet of any boundary line of a Commercial, Civic or Multifamily Residential Lot or ten feet of any boundary line of a Single Family Residential Lot for the installation and Upkeep of the equipment for providing to any portion of the Property or adjacent real estate, any utilities, including without limitation water, sewer, drainage, gas, electricity, telephone and television service, whether public or private, or for any other purpose necessary or desirable for the orderly development of the Property or for the benefit of adjoining real estate.

(4) Dedications and Easements Required by Governmental Authority. The Declarant hereby reserves to itself and its successors and assigns, the right to make any dedications and to grant any easements, rights-of-way and licenses required by any government or governmental agency over and through all or any portion of the Common Area owned in fee simple by the Association.

(5) Landscaping Easement Across Lots; Community Trails. The Declarant hereby reserves to itself and its successors and assigns, an easement and the right to grant and reserve easements over and through the Common Area, the common area within any planned community or the common elements of any condominium located within the Property or over and through any Lot within ten feet of any public right-of-way or any adjacent Lot. These easements shall be for the purpose of construction, installation, irrigation and maintenance of landscaping features, including without limitation plants, trees and earth berms and other earth contouring and shall include access as necessary to

perform such tasks. The Owner of a Lot burdened by the easement shall not construct any improvements within the easement without the permission of the Declarant (during the Declarant Control Period), or the Association thereafter. The Declarant or the Association, as appropriate, may require the Owner of the Lot to maintain the easement area located on such Owner's Lot. Maintenance of these easement areas by the Association shall be a common expense. These easement areas are not part of the Common Area. In addition, the Declarant may install or require an Owner of a Civic, Commercial or Multifamily Residential Lot to install Community Trails within the easement areas described in this paragraph without the permission or approval of the Owner of such Lot or in any other location over and through the Lot with the permission of the Owner of such Lot. The Declarant hereby reserves to itself and its successors and assigns, the right to grant easements across Community Trails and grant to the Association and each Owner an easement for access across such Community Trails. The Community Trails shall be available for the use of all Owners and shall be considered part of the Common Area even though not owned by the Association. The Association shall maintain the Community Trails and the cost of such maintenance shall be a Common Expense.

(6) Storm Water Management Easement. The Declarant hereby reserves to itself and its successors and assigns an easement and the right to grant and reserve easements over and through the Property for the construction and Upkeep of storm water management facilities, including storm water retention areas. The Declarant shall also have the right to allow adjacent properties to tie their storm water management facilities into the storm water management facilities for the Property; provided, however, that the owners of such adjacent properties agree to bear a portion of the expense of Upkeep for the storm water management facilities for the Property in such amount as may be deemed appropriate by the Declarant.

(7) Access to Adjacent Roof. The Declarant hereby reserves an easement to itself, its designees and also grants to the Association, the adjacent Owner and their agents, employees or designees for access to the roof area of improvements built or to be built upon the Lots which share a common wall with the improvements on the adjacent Lot or Common Area for the purpose of inspection and Upkeep of such roof areas and which easement shall permit any Person exercising its rights under this section access at reasonable hours for such purposes. This easement is for the purpose of mutual protection of adjacent Owners from damage or possible damage to an improvement resulting from roof leakage from or into an adjacent improvement.

(8) Storm Water Runoff. In certain cases, the storm water runoff from the roof surfaces of the improvements built or to be built upon the Property may be directed or piped

over, upon or under adjacent Lots or Common Area. In such cases, the Declarant hereby grants a perpetual easement for the continued existence of such water direction or piping over and upon the lot or Common Area so affected, the Declarant, any affected Owner, or the Association, or any of their designees, employees or agents shall have the right, with notice and at reasonable hours, to enter upon such Lot or the Common Area for the purposes of inspection, repair, maintenance and reconstruction of such facilities.

(b) Further Assurances. Any and all conveyances made by the Declarant to the Association with respect to any of the Common Area shall be conclusively deemed to incorporate these reservations of rights and easements, whether or not set forth in such grants. Upon written request of the Declarant, the Association and each Owner shall from time to time execute, acknowledge and deliver to the Declarant such further assurances of these reservations of rights and easements as may be requested.

(c) Duration and Assignment of Development Rights. The Declarant shall be entitled to the rights, powers and easements granted under this section for so long as the Declarant or its designees are engaged in development or sales, or activities related thereto, anywhere on the Property or the Additional Real Estate. The Declarant may assign its rights under this Article to, or share such rights with, one or more other Persons, exclusively, simultaneously or consecutively with respect to the Common Area or Lots owned by such designees.

Section 3.2. Association Power to Make Dedications and Grant Easements. The Declarant, on behalf of itself and its successors and assigns, hereby also grants to the Association the rights, powers and easements reserved to the Declarant by Paragraphs 3.1(a)(2)(ii) and (iii), (3) (5) and (6) hereof. These rights, powers and easements may be exercised by the Association, subject to Section 15.4 hereof; provided, however, that the limitations on duration applicable to the Declarant shall not apply to the Association. If the Declarant or any Owner requests the Association to exercise its powers under this section, the Association's cooperation shall not be unreasonably withheld, conditioned or delayed.

### Section 3.3. Easement for Upkeep.

(a) Association Access. The Declarant, on behalf of itself and its successors and assigns, hereby grants the right of access over and through any portion of the Property (excluding any occupied dwelling) to the Association, the managing agent and any other Person authorized by the Board of Directors, in the exercise and discharge of their respective powers and responsibilities, including without limitation to make inspections, correct any condition originating in a Lot or in the Common Area

threatening another Lot or the Common Area, correct drainage, perform installations or Upkeep of utilities, landscaping or other improvements located on the Property for which the Association is responsible for Upkeep, or correct any condition which violates the Association Documents. The agents, contractors, Officers and directors of the Association may enter any portion of the Property (excluding any occupied dwelling) in order to utilize or provide for the Upkeep of the areas subject to easements granted in this Article to the Association. Each Owner shall be liable to the Association for the cost of all Upkeep performed by the Association and rendered necessary by any act, neglect, carelessness or failure to comply with the Association Documents for which such Owner is responsible pursuant to Section 12.1 hereof, and the costs incurred by the Association shall be assessed against such Owner's Lot in accordance with subsections 6.2(d) and 12.1(a) hereof.

(b) Declarant Access. Until the expiration of any applicable warranty period, the Declarant hereby reserves to itself and its designees a right of access over and through the Property (including any improvement) to perform warranty-related work within the Common Area or the Lots. The Declarant may assign its rights under this subsection to, or share such rights with, one or more other Persons, exclusively, simultaneously or consecutively.

(c) Entry into Improvements. If entry to an improvement is required by any Person pursuant to this section, a request for entry shall be made in advance and such entry shall be made, to the extent practicable, at a time reasonably convenient to the Owner (or where the improvement is used for commercial purposes, during normal business hours). In case of an emergency, however, such right of entry to any improvement shall be immediate.

#### Section 3.4. Limitations on Exercise of Rights and Easements.

(a) These easements are subject to all other easements and encumbrances of record (including those created by this Declaration).

(b) The Declarant or the Association, as appropriate, when exercising the rights and easements granted by this Article, shall: (i) give reasonable prior notice to all affected Owners, unless an emergency exists which precludes such notice; (ii) minimize any economic or aesthetic injury to the affected Lots or the Common Area; and (iii) not unreasonably interfere with the affected Owners' use, enjoyment and benefit from such Owners' Lots or the Common Area.

(c) If an easement is relocated, the cost of such relocation shall be paid by the party requesting the relocation.

(d) Any damage resulting from the exercise of the aforesaid rights and easements shall be promptly repaired and the site restored to the extent practicable by the Declarant or the Association, as appropriate, or at the option of the Declarant or the Association, the party responsible for such damage. In either case, the cost of such repair and restoration shall be paid for by the party responsible for the damage.

Section 3.5. Easements for Encroachments. If any improvement on the Property now or hereafter encroaches on any other portion of the Property by reason of (1) the original construction thereof, (2) deviations within normal construction tolerances in the Upkeep of any improvement, or (3) the settling or shifting of any land or improvement, an easement is hereby granted to the extent of any such encroachment for the period of time the encroachment exists. The Owner of the encroaching improvement shall also have an easement for the limited purpose of Upkeep of the encroaching improvement. This easement does not relieve any Owner or any other Person from liability for such Owner's or other Person's negligence or willful misconduct.

Section 3.6. Easement for Support. To the extent that any portion of the Property now or hereafter supports or contributes to the support of any other portion of the Property, the former is hereby burdened with an easement for the lateral and subjacent support of the latter.

Section 3.7. Emergency Access. The Declarant, on behalf of itself and its successors and assigns, hereby grants an easement (1) to all police, fire, ambulance and other rescue personnel over and through all or any portion of the Property for the lawful performance of their functions during emergencies and (2) to the Association over and through all Lots, if emergency measures are required in any Lot to reduce a hazard thereto or to any other portion of the Property. The Association is hereby authorized but not obligated to take any such measures.

Section 3.8. Easement for Use of Common Area.

(a) Use and Enjoyment. The Declarant hereby reserves to itself for, so long as the Declarant or its designees are engaged in development, sales, or activities related thereto anywhere on the Property or the Additional Real Estate, and Declarant hereby grants to each Owner and each Person lawfully occupying a Lot a non-exclusive right and easement of use and enjoyment in and to the Common Area (except to the extent limited by the designation of Limited Common Area or Reserved Common Area). Such right and easement of use and enjoyment shall be appurtenant to each Lot, whether or not mentioned in the deed

thereto. Any purported conveyance or other transfer of such rights and easements apart from the Lot to which such rights and easements are appurtenant shall be void.

(b) Vehicle and Pedestrian Access.

(1) Submitted Real Estate. The Declarant hereby reserves to itself, for so long as the Declarant or its designees are engaged in development, sales, or activities related thereto anywhere on the Property or the Additional Real Estate, and Declarant hereby grants to each Owner and each Person lawfully occupying a Lot a non-exclusive easement over all streets, walks and paths on the Common Area (including the Common Area located within Lots) for the purpose of vehicular and/or pedestrian access, ingress and egress, as appropriate, to any portion of the Property to which such Person has the right to go, subject to any Rules and Regulations promulgated by the Association pursuant to Section 8.3 hereof. Any purported conveyance or other transfer of such rights and easements apart from the Lot to which such right and easement are appurtenant shall be void.

(2) Additional Real Estate. The Declarant hereby reserves to itself and its successors and assigns, for so long as the Declarant or its designees are engaged in development, sales, or activities related thereto anywhere on the Property or the Additional Real Estate, the right to grant to each Person lawfully occupying a portion of the designated Additional Real Estate described in Exhibits B or shown on Exhibit C hereto a non-exclusive easement over all streets, walks and paths on the Common Area, as may be necessary for vehicular and/or pedestrian ingress and egress across such Common Area from a public right-of-way to any portion of the Additional Real Estate that would not otherwise have access to a public right-of-way; provided, however, that the Person benefiting from such easement agrees to bear a portion of the expenses of Upkeep for the access roads in such amounts as may be determined by the Declarant.

(c) Recreational Facilities. Each Class A member and each Person purchasing a membership in the Recreational Facilities is hereby granted a non-exclusive right of use and enjoyment in common with others of such Recreational Facilities which constitute a portion of the Common Area and a right of access over and through the Common Area (other than any Limited Common Area or other Reserved Common Area) to such Recreational Facilities. The Board of Directors shall provide memberships to any Class B member on the same basis as Class A members upon the request of any Class B member. Once a Class B member requests membership in the Recreational Facilities, however, such Class B member can not withdraw from membership in the Recreational Facilities without the approval of the Board of Directors. The rights and easements granted hereby shall be subject to all rights and powers of the Association (in addition to any easements granted or reserved in

thereto. Any purported conveyance or other transfer of such rights and easements apart from the Lot to which such rights and easements are appurtenant shall be void.

(b) Vehicle and Pedestrian Access.

(1) Submitted Real Estate. The Declarant hereby reserves to itself, for so long as the Declarant or its designees are engaged in development, sales, or activities related thereto anywhere on the Property or the Additional Real Estate, and Declarant hereby grants to each Owner and each Person lawfully occupying a Lot a non-exclusive easement over all streets, walks and paths on the Common Area (including the Common Area located within Lots) for the purpose of vehicular and/or pedestrian access, ingress and egress, as appropriate, to any portion of the Property to which such Person has the right to go, subject to any Rules and Regulations promulgated by the Association pursuant to Section 8.3 hereof. Any purported conveyance or other transfer of such rights and easements apart from the Lot to which such right and easement are appurtenant shall be void.

(2) Additional Real Estate. The Declarant hereby reserves to itself and its successors and assigns, for so long as the Declarant or its designees are engaged in development, sales, or activities related thereto anywhere on the Property or the Additional Real Estate, the right to grant to each Person lawfully occupying a portion of the designated Additional Real Estate described in Exhibits B or shown on Exhibit C hereto a non-exclusive easement over all streets, walks and paths on the Common Area, as may be necessary for vehicular and/or pedestrian ingress and egress across such Common Area from a public right-of-way to any portion of the Additional Real Estate that would not otherwise have access to a public right-of-way; provided, however, that the Person benefiting from such easement agrees to bear a portion of the expenses of Upkeep for the access roads in such amounts as may be determined by the Declarant.

(c) Recreational Facilities. Each Class A member and each Person purchasing a membership in the Recreational Facilities is hereby granted a non-exclusive right of use and enjoyment in common with others of such Recreational Facilities which constitute a portion of the Common Area and a right of access over and through the Common Area (other than any Limited Common Area or other Reserved Common Area) to such Recreational Facilities. The Board of Directors shall provide memberships to any Class B member on the same basis as Class A members upon the request of any Class B member. Once a Class B member requests membership in the Recreational Facilities, however, such Class B member can not withdraw from membership in the Recreational Facilities without the approval of the Board of Directors. The rights and easements granted hereby shall be subject to all rights and powers of the Association (in addition to any easements granted or reserved in

shall be subject to such restrictions, reasonable charges and conditions on the use thereof as the Board may deem appropriate. Such Reserved Common Area shall be maintained by the Association or, at the Board's option, by the Persons having the exclusive right to use the Reserved Common Area. Recreational Facilities shall also be deemed to be Reserved Common Area for the benefit of the Owners of Lots assessed for Recreational Facilities Expenses and other persons paying fees to use the Recreational Facilities.

(b) Limited Common Area. The Declarant shall have the power, for as long as the Declarant has the right to add Additional Real Estate under Section 4.1 hereof, to restrict portions of the Common Area owned in fee simple by the Association in the nature of an easement for the exclusive use of the Owners of one or more specific Lots by designating such portions of the Common Area as Limited Common Area. The Declarant may either: (1) indicate the locations of the Limited Common Area appertaining to one or more Lots by depicting such Limited Common Area and the Lots to which it is appurtenant on a plat attached as part of a Supplementary Declaration; (2) label a portion of the Common Area as "Common Area that may be assigned as Limited Common Area" on a plat attached as an exhibit to a Supplementary Declaration and thereafter assign such Limited Common Area to one or more specific Lots by unilaterally amending the Supplementary Declaration to indicate the assignment depicting the Limited Common Area being assigned and the Lots to which it is appurtenant; or (3) indicate that such Common Area is Limited Common Area by a legal description in a Supplementary Declaration or an amendment thereto. The Declarant shall not, however, designate Common Area as Limited Common Area or Common Area that may be assigned as Limited Common Area after such Common Area has been conveyed to the Association or otherwise designated as Common Area.

#### ARTICLE 4

##### DEVELOPMENT OF THE PROPERTY

Section 4.1. Expansion by the Declarant. The Declarant hereby reserves an option until the twentieth anniversary of the date of recordation of this Declaration to expand the Property from time to time without the consent of any Owner or Mortgagee by submitting all or any portion of the Additional Real Estate described on Exhibit B or shown on Exhibit C hereto to the provisions of this Declaration and the jurisdiction of the Association whether or not such real estate is owned by the Declarant. The Declarant may also unilaterally amend Exhibits A or B hereof to describe or correct the description of any real estate within the development limits shown on Exhibit C hereof. The option to expand may be terminated only upon the recordation

Declarant without the written consent of such Owner. The Declarant shall add Additional Real Estate in accordance with the procedures set forth in Section 4.3 hereof. There are no limitations on the option to expand except as set forth in this Article.

Section 4.2. Expansion by the Association. The Association may submit any real estate located immediately adjacent to the Property or across a public right-of-way from the Property to the provisions of this Declaration and the jurisdiction of the Association in accordance with the procedures set forth in Section 4.3 hereof, upon (i) the written consent of the fee simple owner (if not the Association) and any mortgagee or holder of a deed of trust on such real estate, (ii) a sixty-seven percent vote of the members or the written approval of members entitled to cast sixty-seven percent of the total number of votes, and (iii) the written consent of the Declarant during any period that the Declarant has the right to add Additional Real Estate under Section 4.1 hereof.

Section 4.3. Procedure for Expansion. The Declarant or the Association, as appropriate, may record one or more amendments to the Declaration ("Supplementary Declarations") submitting the real estate described therein to this Declaration and to the jurisdiction of the Association. Each Supplementary Declaration shall include a legally sufficient description of the real estate added and shall designate such real estate with the term "Phase" followed by a unique identifier so as to differentiate between each Phase of the Property. Any amendment or Supplementary Declaration may contain such additions to the provisions in this Declaration as may be necessary to reflect the different character of the Additional Real Estate and as are not inconsistent with the overall scheme of this Declaration; provided, however, that such additions shall not apply to any real estate previously submitted to this Declaration after conveyance of a Lot to an Owner other than the Declarant without the written consent of the Owner of the Lot subject to the additional provisions.

## ARTICLE 5

### SPECIAL DECLARANT RIGHTS; TRANSFER

Section 5.1. Special Declarant Rights. Special declarant rights are those rights reserved for the benefit of the Declarant as provided for in the Association Documents, and shall include without limitation the following rights: (1) to complete improvements on the Property; (2) to maintain models, management offices, construction offices, sales offices, customer service offices and signs advertising the Property; (3) to use easements over and through the Property for the purpose of making improve-

#### Section 4.4. Withdrawable Real Estate.

(a) Public Roadways. Upon the dedication for public road purposes of any portion of the Property, or upon the conveyance to any public entity or authority for public road purposes of any portion of the Property, this Declaration shall no longer be applicable to the land so dedicated or conveyed.

(b) Other Public Purposes. The Declarant (for so long as the Declarant or its designees are engaged in development or sales, or activities related thereto, anywhere on the Property or Additional Real Estate) has the unilateral right without the consent of the Owners or the Mortgagees to execute and record an amendment to the Declaration withdrawing any portion of the Property, if such real estate is dedicated or is to be dedicated to public use.

(c) Generally. If there are no Owners other than the Declarant or a Builder and no Common Area has been conveyed to the Association with respect to a specific Phase, the Declarant and any Builder owning real estate in such Phase may withdraw the real estate comprising such Phase from the Supplementary Declaration and the Declaration by executing an instrument terminating such Supplementary Declaration.

### ARTICLE 5

#### SPECIAL DECLARANT RIGHTS; TRANSFER

Section 5.1. Special Declarant Rights. Special declarant rights are those rights reserved for the benefit of the Declarant as provided for in the Association Documents, and shall include without limitation the following rights: (1) to complete improvements on the Property; (2) to maintain models, management offices, construction offices, sales offices, customer service offices and signs advertising the Property; (3) to use easements over and through the Property for the purpose of making improvements within the Property; (4) to exercise the rights and votes of the Class E member of the Association; (5) to remove and replace any director elected by the Class E member until the meeting at which all members with voting rights are entitled to elect a majority of the directors; (6) to make unilateral amendments to the Association Documents as provided in Sections 3.9, 4.1, 4.4 and 15.1 hereof; (7) to add Additional Real Estate; and (8) to exercise any other rights given to the Declarant.

#### Section 5.2. Transfer of Special Declarant Rights.

(a) The Declarant may transfer special declarant rights created or reserved under the Association Documents to any

Person acquiring Lots or Additional Real Estate by an instrument evidencing the transfer recorded in the Land Records. The instrument shall not be effective unless executed by the transferor and transferee; provided, however, that a Person acquiring Lots or Additional Real Estate pursuant to Subsection 5.2(c) may unilaterally execute an instrument to acquire some or all of the special declarant rights. A partial transfer of special declarant rights does not prevent the transferor declarant from continuing to exercise special declarant rights with respect to the real estate retained by such declarant. The instrument providing for partial transfer of special declarant rights shall allocate rights between the transferor and the transferee. If at any time the Declarant ceases to exist and has not made an assignment of the special declarant rights, a successor may be appointed by an amendment to the Declaration made pursuant to section 15.2 hereof.

(b) Upon transfer of any special declarant right, the liability of a transferor declarant is as follows:

(1) A transferor is not relieved of any obligation or liability arising before the transfer and remains liable for warranty obligations the transferor has undertaken or which are imposed upon the transferor by law.

(2) If the successor to any special declarant right is an Affiliate of a declarant (as defined in subsection (g)), the transferor is jointly and severally liable with the successor for any obligation or liability of the successor which relates to the Property.

(3) If a transferor retains any special declarant rights, but transfers other special declarant rights to a successor who is not an Affiliate of the declarant, the transferor remains liable for any obligations and liabilities relating to the retained special declarant rights imposed on a declarant by the Association Documents arising after the transfer.

(4) A transferor has no liability for any act or omission, or any breach of a contractual or warranty obligation arising from the exercise of a special declarant right by a successor declarant who is not an Affiliate of the transferor.

(c) Unless otherwise provided in a Mortgage, in case of foreclosure of a Mortgage (or deed in lieu of foreclosure), tax sale, judicial sale, sale by a trustee under a deed of trust, or sale under the Bankruptcy Code or receivership proceedings, of any Lots or Additional Real Estate owned by a declarant, a Person acquiring title to all the Lots or Additional Real Estate being foreclosed or sold, but only upon such Person's request, succeeds to all special declarant rights related to such Lots or Additional Real Estate or only to any rights reserved in the Association

Documents to maintain models, management offices, construction offices, sales offices, customer service offices and signs advertising the Property. The judgment, instrument conveying title or other instrument recorded in the Land Records shall provide for transfer of only the special declarant rights requested.

(d) Upon foreclosure (or deed in lieu of foreclosure), tax sale, judicial sale, sale by a trustee under a deed of trust, or sale under the Bankruptcy Code or receivership proceedings, of all Lots and Additional Real Estate owned by a declarant (1) the declarant ceases to have any special declarant rights, and (2) the Declarant Control Period terminates unless the judgment or an instrument recorded among the Land Records provides for transfer of special declarant rights held by that declarant to a successor declarant.

(e) The liabilities and obligations of Persons who succeed to special declarant rights are as follows:

(1) A successor to any special declarant right who is an Affiliate of a declarant is subject to all obligations and liabilities imposed on the transferor by the Association Documents.

(2) A successor to any special declarant right, other than a successor described in paragraphs (3) or (4) of this subsection or a successor who is an Affiliate of a declarant, is subject to all obligations and liabilities imposed by the Association Documents: (A) on a declarant which relate to such declarant's exercise or non-exercise of special declarant rights; or (B) on the transferor, other than: (i) misrepresentations by any previous declarant; (ii) warranty obligations on improvements made by any previous declarant, or made before the Association was created (if any); (iii) breach of any fiduciary obligation by any previous declarant or such declarant's appointees to the Board of Directors; or (iv) any liability or obligation imposed on the transferor as a result of the transferor's acts or omissions after the transfer.

(3) A successor to only a right reserved in the Association Documents to maintain models, sales offices, customer service offices and signs, if such successor is not an Affiliate of a declarant, may not exercise any other special declarant right, and is not subject to any liability or obligation as a declarant.

(4) A successor to all special declarant rights held by a transferor who succeeded to those rights pursuant to foreclosure, a deed in lieu of foreclosure or a judgment or instrument conveying title under subsection (c), may declare the intention in an instrument recorded in the Land Records to hold those rights solely for transfer to another Person. Thereafter,

until transferring all special declarant rights to any Person acquiring title to any Lots owned by the successor, or until recording an instrument permitting exercise of all those rights, that successor may not exercise any of those rights other than any right held by the transferor to vote as the Class E member in accordance with the provisions of the Association Documents for the duration of any Declarant Control Period, and any attempted exercise of those rights is void. So long as a successor declarant may not exercise special declarant rights under this subsection, such successor is not subject to any liability or obligation as a declarant.

(f) Nothing in this Article subjects any successor to a special declarant right to any claim against or other obligation of a transferor declarant, other than claims and obligations arising under the Association Documents.

(g) For the purposes of this section, "Affiliate" or "Affiliate of a declarant" means any Person who controls, is controlled by, or is under common control with a declarant. A Person controls a declarant if the Person (i) is a general partner, officer, director or employer of the declarant, (ii) directly or indirectly or acting in concert with one or more persons or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing more than twenty percent of the voting interests in the declarant, (iii) controls in any manner the election of a majority of the directors of the declarant, or (iv) has contributed more than twenty percent of the capital of the declarant. A Person is controlled by a declarant if the declarant (i) is a general partner, officer, director or employer of the Person, (ii) directly or indirectly or acting in concert with one or more other Persons or through one or more subsidiaries, owns, controls, holds with power to vote or holds proxies representing more than twenty percent of the voting interest in the Person, (iii) controls in any manner the election of a majority of the directors of the Person, or (iv) has contributed more than twenty percent of the capital of the Person. Control does not exist if the powers described in this paragraph are held solely as security for an obligation and are not exercised.

Section 5.3. No Obligations. Nothing contained in the Association Documents shall impose upon the Declarant or its successors or assigns any obligation of any nature to build, construct, renovate or provide any improvements.

## ARTICLE 6

COMMON EXPENSES AND ASSESSMENTSSection 6.1. Determination of Common Expenses and Assessments.

(a) Fiscal Year. The first fiscal year of the Association shall be as determined in accordance with Section 10.4 of the Bylaws.

(b) Preparation and Approval of Budget.

(1) At least fifty-five days before the beginning of each fiscal year, the Board of Directors shall adopt a budget for the Association containing an estimate of the total amount considered necessary for the ensuing fiscal year to pay the cost of management and Upkeep of the Common Area and, to the extent provided in the Association Documents, Upkeep of the Lots, and the cost of other expenses that may be declared to be Common Expenses by the Association Documents or by a resolution of the Board of Directors including without limitation any services to be provided to the Owners, Lots or the Common Area.

(2) Such budget shall also include such reasonable amounts as the Board of Directors considers necessary to provide working capital (available cash for day-to-day expenses which is otherwise uncommitted), a general operating reserve (including an amount to cover operating losses due to insurance deductibles) and reserves for contingencies (potential costs or liabilities which have not been incurred but which should be planned for) and replacements. At least forty days before the beginning of each fiscal year, the Board of Directors shall make available a copy of the budget in a reasonably itemized form which sets forth the amount of the Common Expenses and the fire and rescue squad fees. Such budget shall constitute the basis for determining the assessment against each Lot.

(3) The budget shall reflect the separate assessment of Limited Common Expenses, including without limitation certain expenses (and reserves) relating to or benefiting one or more but less than all of the Lots, whether categorized by location or type of expense. Such expenses shall be assessed only against the Lots benefited in accordance with subsection 6.2(a)(2) hereof.

(4) The budget shall reflect the separate assessment of Recreational Facilities Expenses which include the cost of management and Upkeep of and insurance for the Recreational Facilities including such amounts as the Board of Direc-

tors may determine to be necessary to create reserves for repair and replacement of the Recreational Facilities.

(c) Installment Payments and Due Dates. Any and all such assessments and other charges shall be a lien against each Owner's Lot as provided in Section 12.2 hereof. On or before the first day of each fiscal year, and the first day of each succeeding payment period in such fiscal year, each Owner shall pay to such Person at such place as the Board of Directors may direct that installment of the annual assessment which is due during such period. The Board of Directors shall establish one or more payment periods and the due dates for each such payment in each fiscal year; provided, however, that payments shall be due not less than quarterly or more frequently than monthly unless specifically provided otherwise herein. All sums collected by the Board of Directors with respect to assessments against the Lots or from any other source may be commingled into a single fund.

(d) Initial Budget and Initial Assessment.

(1) Upon taking office, the first Board of Directors shall determine the budget, as defined in this section, for the period commencing thirty days after taking office and ending on the last day of the fiscal year in which such directors take office.

(2) The first installment of the annual assessment for Common Expenses shall be prorated based upon the number of days remaining in the payment period and shall be due on the earlier of: (i) the date of recordation of the Declaration or (ii) the date a Lot becomes subject to assessment pursuant to Section 6.2(a)(1) hereof. Any additional amounts due shall be divided by the number of full payment periods (if any) remaining in that fiscal year and paid in equal installments on the first day of each payment period remaining in that fiscal year. Such assessment shall be levied and become a lien as set forth in Section 12.2 hereof.

(3) Notwithstanding the foregoing, the Declarant may, at the Declarant's sole option, decide to pay all ordinary operating costs of the Association for a period of time not to exceed two years. If the Declarant so elects, the Association will incur no Common Expenses and thus no assessments will be collected during such time.

(4) Each initial purchaser other than the Declarant or a Builder shall pay at settlement an "initial assessment" equal to Thirty Dollars (\$30.00).

(e) Effect of Failure to Prepare or Adopt Budget. For the first fiscal year of the Association following the first conveyance of any Lot to an Owner other than the Declarant, and for

all fiscal years thereafter, the Board of Directors shall establish the annual assessment against each Lot for Common Expenses. The failure or delay of the Board of Directors to prepare or adopt a budget for any fiscal year shall not constitute a waiver or release in any manner of an Owner's obligation to pay the allocable share of the Common Expenses as herein provided whenever the same shall be determined and, in the absence of any annual budget or adjusted budget, each Owner shall continue to pay assessments at the rate established for the previous fiscal year until notified of the new payment which is due on the first day of the next payment period which begins more than ten days after such new annual or adjusted budget is adopted and the Owner receives such notice.

(f) Pledge of Revenues. The Board of Directors, by a vote of two-thirds of the total number of directors, shall have the right and power to assign and pledge all revenues to be received by the Association, including but not limited to annual and additional assessments, in order to secure the repayment of any sums borrowed by the Association from time to time.

## Section 6.2. Assessments and Common Expenses.

### (a) Rate of Assessment and Payment.

(1) General Common Expense Assessment. Subject to the provisions of Subsections 6.2(a)(2), (3), and (4) hereof, and Section 6.3 hereof, the total amount of the estimated funds required for the management and Upkeep of the Property set forth in the budget or otherwise shall be assessed annually or levied as an additional assessment. The Board of Directors shall assess each Lot for Common Expenses as follows:

(A) Subject to the limitations set forth in Section 6.2(a)(4) hereof, the Board of Directors shall assess each Single Family Residential Lot and Multifamily Residential Lot an amount equal to: (1) the total amount budgeted for General Common Expenses; (2) minus the amount assessed against Commercial Lots pursuant to paragraph (B) below; (3) divided by the total number of dwelling units located or to be located on all such Lots; and (4) multiplied by the total number of dwelling units located or to be located on the Lot to be assessed.

(B) The Board of Directors shall assess each Commercial Lot in an amount as set forth in the Supplementary Declaration submitting such Commercial Lot to the Declaration. The amount assessed against each Commercial Lot shall increase or decrease each fiscal year based upon the increase or decrease in the amount budgeted for Common Expenses (excluding Limited Common Expenses and Recreational Facilities Expenses) for each such fiscal year in comparison to the amount budgeted for Common Expenses (excluding Limited Common Expenses and Recreational Facilities Expenses).

ities Expenses) the previous fiscal year. Such amount assessed against a Commercial Lot shall not be otherwise changed; provided however, that the Class C members may agree by a Majority Vote or by written consent of Class C members entitled to cast more than fifty percent of the total number of votes entitled to be cast by Class C members subject to such assessment to increase such amount.

(C) The Board of Directors shall not assess a Civic Lot for so long as such Lot is used and occupied for a public purpose and owned by a governmental or nonprofit entity.

(2) Limited Common Expense Assessment. Limited Common Expenses shall be assessed only against the Lots benefited in proportion to their relative General Common Expense liability inter se or based on usage, as appropriate. Such Limited Common Expenses shall be determined as follows:

(A) Any expenses designated in a Supplementary Declaration as Limited Common Expenses to be paid by the Owners of Additional Real Estate being submitted to the Declaration.

(B) Any expenses proposed by the Board of Directors or a specific group of Owners as Limited Common Expenses against a specific group of Lots and agreed to by members entitled to cast a majority of the total number of votes with respect to such Lots, assessed against such Lots as such Owners may agree or on the basis set forth in Subsection 6.2(a)(1) hereof inter se.

(C) Any expenses incurred in the Upkeep of or the maintenance of reserves for the Upkeep and replacement of a "pipestem" drive or similar common drive serving a limited number of Lots shall be assessed only against the Lots served by such drive.

(D) Any expenses incurred in the Upkeep of or the maintenance of Reserves for the Upkeep of Limited Common Area may be assessed solely against the Lots served by such Limited Common Area.

(3) Recreational Facilities Assessment.

The Board of Directors shall assess each Single Family Residential Lot (except for Single Family Residential Lots consisting of condominium units) which is subject to assessment pursuant to Subsection 6.2(a)(1) hereof for Recreational Facilities Expenses in an amount to be determined by the Board of Directors; provided, however, that such amount does not exceed the maximum Recreational Facilities Expense assessment set forth in 6.2(a)(4) hereof. The Board of Directors shall assess a Multifamily Residential Lot or a Single Family Residential Lot

consisting of a condominium unit for Recreational Facilities Expenses only if the amendment adding the Additional Real Estate containing such Lot states that the residents of such Lot are entitled to use the Recreational Facilities and that the Lot is subject to assessment for Recreational Facilities Expenses or the Owner of the Multifamily Residential Lot requests membership in the Recreational Facilities. A Multifamily Residential Lot or a Single Family Residential Lot consisting of a condominium unit shall pay the same amount per dwelling unit for Recreational Facilities Expenses as Single Family Residential Lots. Recreational Facilities Expenses are meant to include expenses incurred by the Association for the operation of the pool during the summer months. During the off-season as determined by the Board of Directors, but generally considered prior to Memorial Day or after Labor Day, the Board of Directors may enter into agreements with other parties to cover the pool and operate the pool as a membership club or otherwise, the use of which may require additional fees.

(4) Limitations on Increases.

(A) Maximum Assessments. For the first fiscal year, the maximum annual assessment against Single Family Residential and Multifamily Residential Lots for Common Expenses, excluding Limited Common Expenses and Recreational Facilities Expenses, shall be Four Hundred Dollars (\$400.00) per dwelling unit. The maximum annual assessment against Single Family Residential Lots for Limited Common Expenses shall be set forth in the Supplementary Declaration submitting the Lots paying such Limited Common Expense. For the first fiscal year, the maximum annual assessment against Single Family Residential Lots and Multifamily Residential Lots for Recreational Facilities Expenses shall be One Hundred Fifty Dollars (\$150.00) per dwelling unit.

(B) Increases in Maximum Assessment.

(i) Each fiscal year the maximum annual assessment for Common Expenses, Limited Common Expenses, or Recreational Facilities Expenses set forth above or in amendments to the Declaration shall increase the greater of:

(a) ten percent; or

(b) the increase in the U.S. Department of Labor Consumer Price Index - All Urban Consumers (1967=100) during the last twelve month period for which figures are available at the date when the Board adopts the budget; and the proportionate amount by which any real estate taxes and casualty and other insurance premiums payable by the Association have increased over amounts payable the previous fiscal year. Wherever in the Association Documents the U.S. Department of

Labor Consumer Price Index - All Urban Consumers (1967=100) is used, if such index ceases to incorporate a significant number of items now incorporated therein, ceases to reflect the increases in expenses of the Association, or if a substantial change is made in the method of establishing such index, then such other reliable governmental or other nonpartisan index designated by the Board of Directors shall be used.

The Board of Directors may determine not to increase the maximum assessments set forth in the Declaration and amendments thereto to the full extent of the automatic increase provided by this subsection. In such case, the Board of Directors may determine to increase the maximum assessment by any lesser amount.

(ii) The Board of Directors may determine to set the actual annual assessments for Common Expenses, Limited Common Expenses or Recreational Facilities Expenses at an amount less than the applicable maximum for any fiscal year. The Board of Directors may not levy an annual assessment or an additional assessment for Common Expenses, Limited Common Expenses or Recreational Facilities Expenses which in the aggregate will exceed the applicable maximum assessment per dwelling unit for such fiscal year unless such annual assessment or additional assessment is approved by the members obligated to pay such assessment by at least a Majority Vote of such members or the written approval of members entitled to cast more than fifty percent of the total number of votes of such members.

(b) Lots Added During the Fiscal Year. Whenever any Additional Real Estate is added, the assessment against each Lot being added (other than unoccupied Lots which are owned by the Declarant or a Builder and exempt from assessment in accordance with Section 6.3 hereof) shall be calculated in the same manner and due in the same number of installments as the assessment for the remainder of the fiscal year against Lots already a part of the Property. In addition, the Owner of the Lot being added shall pay a prorated portion of any amount payable for the period between the later of: (i) the date the Lot becomes subject to assessment pursuant to section 6.2(a) (1) hereof or (ii) the date such Lot was added to the Property and the due date of the next installment. Such proration of the assessment due for any Lot added shall be based upon the total assessment due and a 365-day fiscal year. Payment of the prorated portion will be due no later than the due date of the first installment to be paid by the Owner of any Lot added.

(c) Additional Assessments. The Board of Directors may levy additional assessments on the Lots subject to assessment under Subsection 6.2(a)(1)(A) hereof; provided, however, that such additional assessment when added to the annual assessment for Common Expenses, Limited Common Expenses, or Recreational Facilities Expenses, as appropriate, shall not exceed the ap-

plicable maximum annual assessment per dwelling unit unless approved pursuant to Subsection 6.2(a)(4) hereof. The Board of Directors shall give notice of any additional assessment to the Owners against whose Lots the assessment will be levied specifying the amount and reasons therefor, and such assessment shall, unless otherwise specified in the notice, be payable in full with the next periodic installment which is due more than ten days after the date of such notice or in not more than six equal periodic installments, as the Board may determine. Such assessment shall be a lien as set forth in Section 12.2 hereof.

(d) Individual Assessments. The Board of Directors may assess an Owner's Lot individually: (i) for the amount of any costs incurred by the Association pursuant to Section 7.2(a) hereof in performing Upkeep that the Owner failed to perform as required by that section; (ii) for the costs of improvements determined by the Board to be substantially for the benefit of that Owner pursuant to Section 7.4 hereof; (iii) for the amount of any charges imposed on that Owner pursuant to Section 12.1(h) hereof; and (iv) for any costs incurred by the Association because of any violation or negligence for which that Owner is responsible under Section 12.1(a) hereof. Each such assessment shall be due ten days after notice thereof is given to the Owner unless the notice specifies a later date. Individual assessments are not included in or subject to the maximums set forth in Subsection 6.2(a)(4) hereof.

(e) Optional Expenses. Upon request, the Association may provide certain services to Owners (including the Declarant) on a contractual basis pursuant to Section 7.8; provided, however, that the charge for such services shall be assessed against such Owner's Lots in accordance with the terms of the contract.

(f) Reserves. The Board of Directors shall build up and maintain reasonable reserves for working capital, contingencies and replacements. Such funds shall be a Common Expense of the Association and may be deposited with any financial institution, the accounts of which are insured by an agency of the United States of America or may, in the discretion of the Board of Directors, be invested in obligations of, or fully guaranteed as to principal by, the United States of America. Reserves for items serving only certain Lots or the Recreational Facilities shall be accounted for and funded solely by the Owners of Lots served (as a Limited Common Expense or a Recreational Facilities Expense, as appropriate). As to each separate reserve account:

(1) Extraordinary expenditures not originally included in the annual budget, which may become necessary during the year, shall be charged first against the appropriate reserves. Except for expenses for normal Upkeep shown in the annual operating budget, all expenses for repair and replacement of physical assets maintained by the Association shall be charged

first against the appropriate reserves. Unless otherwise determined by the Board of Directors, the amount held as reserves shall not substantially exceed the amount reasonably required to assure the Association's ability to replace components as they reach the end of their useful lives.

(2) If regular annual maintenance extends the useful life of components so that reserves are excessive, the reserves shall be adjusted by reallocation to other budget items, if appropriate, or by distribution to each Owner (including the Declarant) in proportion to the percentage (if any) of assessments paid by such Owner.

(3) If the reserves are inadequate to meet actual expenditures for any reason (including non-payment of any Owner's assessment) then the Board of Directors shall, in accordance with Section 6.2(c) hereof, levy an additional assessment against the Lots.

(g) Surplus and Deficit.

(1) Any amount accumulated in excess of the amount required for actual expenses and reserves shall, at the discretion of the Board of Directors, be placed in reserve accounts, be placed in a special account to be expended solely for the general welfare of the Owners, be credited to the next periodic installments due from Owners under the current fiscal year's budget, until exhausted, or distributed to each Owner (including the Declarant) in proportion to the percentage (if any) of assessments paid by such Owner.

(2) Unless the budget for the succeeding fiscal year is adjusted to amortize the deficit during such fiscal year, any net shortage in expenses (including reserves) shall be assessed promptly against the Owners as an additional assessment in accordance with Section 6.2(c) hereof.

Section 6.3. Reduced Assessment Against Lots Owned by the Declarant or a Builder; Exemptions.

(a) Reduced Assessment for Declarant and Builders. Lots containing dwelling units which have never been occupied owned by the Declarant or a Builder shall be assessed at twenty-five percent of the amount assessed per dwelling unit for Common Expenses or Limited Common Expenses and shall not be assessed for Recreational Facilities expenses. This reduced assessment does not apply to Lots used for "model home" purposes.

(b) Exemptions. Civic Lots, the Common Area, common area within an owners association or common elements within a condominium and any properties dedicated to a public authority or exempt from taxation by a public authority shall be exempt from

assessment and the lien created hereby except that no Lot used for residential or commercial purposes shall be exempt. Unoccupied dwelling units located on Single Family Residential Lots and Multifamily Residential Lots (dwelling units which have never been occupied) owned by the Declarant or a Builder shall be exempt from the assessment for Common Expenses for so long as: (i) the Declarant or Builder performs or pays the costs associated with Upkeep of such unoccupied dwelling units owned by the Declarant or Builder; (ii) the Declarant or Builder pay the reduced assessment levied pursuant to Subsection 6.3(a) hereof; and (iii) during the Declarant Control Period, the Declarant pays the full amount, if any, by which the expenses of the Association exceed the total budgeted income of the Association; provided, however, that the Declarant's obligation under this section does not include any expenses that the Association is unable to meet because of nonpayment of any Owner's assessment and shall not exceed the amount the Declarant would be obligated to pay if Lots owned by the Declarant or a Builder were assessed in accordance with Section 6.2(a) hereof. The obligation under this subsection (b) shall be a lien against the Land owned by the Declarant or Builder.

#### Section 6.4. Liability for Common Expenses.

(a) Declarant and Owner Liability. The Declarant hereby covenants and agrees, and each Owner of a Lot by acceptance of a deed therefor, whether or not so expressed in any such deed or other conveyance, shall be deemed to covenant and agree, to pay to the Association all Common Expenses, including Limited Common Expenses and Recreational Facilities Expenses, as may be assessed against such Lot and other charges assessed by the Board of Directors pursuant to the provisions of this Declaration. Each Owner shall be personally liable for all assessments against such Owner's Lot. No Owner shall be exempt from liability for the assessment for Common Expenses by reason of waiver of the use or enjoyment of any of the Common Area or by abandonment of the Lot. No Owner shall be liable for the payment of any part of the Common Expenses assessed against the Lot subsequent to the date of recordation of a conveyance in fee by such Owner of such Lot. Prior to or at the time of any such conveyance, all liens, unpaid charges and assessments shall be paid in full and discharged. The purchaser of a Lot shall be jointly and severally liable with the selling Owner for all unpaid assessments against the latter for the proportionate share of the Common Expenses up to the time of such recordation, without prejudice to the purchaser's right to recover from the selling Owner amounts paid by the purchaser therefor; provided, however, that any such purchaser may rely on a Statement of Common Expenses obtained pursuant to Section 6.6 herein.

(b) Mortgagee Liability. Each holder of a Mortgage who comes into possession of a Lot by virtue of foreclosure or by deed or assignment in lieu of foreclosure, or any purchaser at a foreclosure sale, shall take the Lot free of any claims for unpaid assessments or charges against such Lot which accrue prior to the time such Person comes into possession thereof, except for claims for a pro rata share of such assessments or charges resulting from a pro rata reallocation of such assessments or charges to all Lots including the mortgaged Lot assessed after such Person takes possession. The lien created by Section 12.2 hereof shall cease to exist with respect to assessments and charges levied prior to the time title is transferred by foreclosure or by deed or assignment in lieu thereof; provided, however, that if the proceeds of a foreclosure exceed the total amount due on a Mortgage, the excess shall first be paid to the Association and applied to the satisfaction of the Association's lien.

Section 6.5. Collection of Assessments. Any assessment, or installment thereof, not paid within ten days after the due date shall be delinquent and shall accrue a late charge in the amount of ten dollars per dwelling unit in the case of Single Family Residential Lots and Multifamily Residential Lots and ten percent of the amount due in the case of Commercial Lots, or such other amounts as may be established from time to time by the Board of Directors. The Board of Directors, or the managing agent at the request of the Board, shall take prompt action to collect any assessments for Common Expenses due from any Owner or member which remain unpaid for more than thirty days after the due date for payment thereof.

Section 6.6. Statement of Common Expenses. The Board of Directors or managing agent shall provide any Owner, contract purchaser or Mortgagee, within fourteen days after a written request therefor, with a written statement of all unpaid assessments for Common Expenses due with respect to a specific Lot (or a statement that the amount of unpaid assessments is zero) as part of the "Association Disclosure Packet" attached as Exhibit A to the Bylaws or otherwise. No contract purchaser, Mortgagee or purchaser from a Mortgagee requesting such a statement shall be liable for, nor shall the Lot conveyed to such Person relying on such statement be subject to a lien for, any unpaid assessments due prior to the date of such statement in excess of the amount set forth on such statement; provided, however, that this section shall not be interpreted to release any Person from personal liability for such assessments levied while such Person owned the Lot. The Board of Directors may impose a reasonable charge for the preparation of such statement to cover the cost of preparation.

Section 6.7. Assessment from Lots Subject to Subassociation. With respect to assessments provided for herein which are payable by Owners of Lots which are also subject to the jurisdiction of an owners association or condominium unit owners association located within the Property, the Board of Directors may elect by resolution to collect such assessments directly from the owners association or condominium unit owners association which also governs such Lots. In such event, payment of such assessments shall be an obligation of such owners association or condominium unit owners association, but each Owner shall remain personally liable for the assessment against such Owner's Lot and each such Lot shall remain subject to a lien for assessments. If the Board elects to collect assessments from such owners association or condominium unit owners association, then all notices regarding assessments against such Lots shall be sent to such association, but notices of any intention to lien an Owner's Lot shall also be sent to the Owner of the Lot. This section shall not limit or waive any of the Association's remedies for non-payment of assessments.

## ARTICLE 7

### OPERATION OF THE PROPERTY

Section 7.1. Upkeep of Common Area. (a) General. The Association shall be responsible for the management and Upkeep of all of the Common Area, including Limited Common Area, Reserved Common Area and Recreational Facilities, the cost of which shall be assessed against all Lots as a Common Expense, Limited Common Expense or Recreational Facilities Expense, as appropriate, except for improvements specially assessed in accordance with Sections 7.2 and 7.4 hereof. All facilities located on the Common Area including without limitation community centers, tot lots, multi-purpose courts, playing fields, bus shelters, etc. shall also be maintained by the Association. The Association shall be responsible for the Upkeep of certain landscaped areas along the boundaries of certain Lots as determined by the Board of Directors the cost of which shall be a Common Expense. The Association shall also be responsible for Upkeep of the Community Trails which may run over and through a Lot, the cost of which shall be a Common Expense. The Association shall not have any responsibility for the Upkeep of any Lot except for those responsibilities and duties specifically enumerated within the Association Documents. Notwithstanding the general provisions for maintenance of Common Area set forth in this section, specific maintenance responsibilities and allocations of maintenance costs shall be determined by any provisions therefor indicated on either an amendment to the Declaration or plat recorded with such as amendment, subjecting such Common Area to the Declaration. If the Board of Directors determines that certain

Upkeep was necessitated by the negligence, misuse or neglect of an Owner or for which an Owner is responsible pursuant to Section 12.1 hereof, the cost of such Upkeep shall be assessed against such Owner's Lot pursuant to Section 12.1(a) hereof. Further, the Board may determine that all or a part of the Upkeep of any portion of the Common Area designated as Reserved Common Area shall be performed by the Person having the exclusive right to use the same. The Board of Directors shall establish the standard for Upkeep of the Common Area in its sole discretion.

(b) Storm Water Management. The Declarant may construct improvements and facilities for storm water management control. Such facilities shall not be used for any purposes other than storm water management, and the Association shall post signs prohibiting swimming, wading, skating or other similar uses of any storm water retention ponds. The Declarant shall provide Upkeep for any storm water retention ponds and all improvements and facilities for storm water management at its sole expense until the earlier of: (i) release from the County bond or (ii) the end of the Declarant Control Period. Thereafter, the Upkeep of the storm water retention ponds and related improvements and facilities for storm water management shall be an expense of the Association.

(c) Entrance Features and Rights-of-Ways. The Board of Directors may also determine to provide for Upkeep of the landscaping located within the center island and along the road frontage (including public right-of-ways to the extent not maintained by the appropriate governmental authorities) of all public and private roads within the Property, such Upkeep to include entrance features, sidewalks, project signage, bus shelters, pedestrian underpasses and landscaping.

#### Section 7.2. Upkeep of Lots.

##### (a) Individual Upkeep.

(1) Each Owner shall keep such Owner's Lot and all improvements located on the Lot in good order, condition and repair and in a clean and sanitary condition, including without limitation all necessary grounds maintenance except as may be otherwise provided in an amendment to the Declaration adding Additional Real Estate. Each Owner shall perform this responsibility in such manner as shall not unreasonably disturb or interfere with the other Owners. If any Owner shall fail to keep such Owner's Lot in as good repair and condition as when acquired (normal wear and tear excepted) and in a neat and orderly condition, consistent with such Rules and Regulations as the Board of Directors may promulgate, then the Board may, pursuant to resolution, give notice to that Owner of the condition complained of, specifying generally the action to be taken to rectify that condition. If the Owner fails to take the actions

specified by the Board or to otherwise rectify the condition within thirty days after the date the notice is given, or such other period as may be specified in the notice, if the circumstances warrant a different time period, the Board of Directors shall have the right, pursuant to Section 3.3 and Subsection 12.1(e) hereof and any resolutions adopted by the Board of Directors, to rectify that condition by taking such action (or by causing such action to be taken) as was specified in the notice. The costs incurred in rectifying that condition shall be assessed against such Owner's Lot in accordance with Section 12.1 hereof. If such Owner fails to reimburse the Association within thirty days after receipt of a statement for such expenses from the Board, then the indebtedness shall constitute a lien as provided for in Section 12.2 hereof. The Owner may contract with a third party, including the Association to the extent provided for in Section 7.8 hereof, to perform the Owner's responsibility for Upkeep under this section.

(b) Common Area in Subassociations. The owners association of any commercial or residential planned community or the condominium unit owners association of any condominium located within the Property shall keep the common area of the planned community or the common elements of the condominium, as applicable, in good order, condition and repair and in a clean and sanitary condition (in keeping with the general character of the Property) including without limitation all necessary grounds maintenance. The owners association or condominium unit owners association may contract with third parties, including the Association to the extent provided in Section 7.8 hereof, to provide the necessary Upkeep and/or management services to perform its responsibilities under this section. If such owners association or such condominium unit owners association shall fail to keep the portion of the Property for which such association has maintenance responsibility in as good repair and condition as when acquired (normal wear and tear excepted) and in a neat and orderly condition, consistent with such Rules and Regulations as the Board of Directors may promulgate, then the Board may, pursuant to resolution, give notice to that association of the condition complained of, specifying generally the action to be taken to rectify the condition. If the owners association or the condominium unit owners association fails to take the actions specified by the Board or to otherwise rectify the condition within thirty days after the date the notice is given, or such other period as may be specified in the notice if the circumstances warrant a different time period, the Board of Directors shall have the right pursuant to Section 3.3 and Section 12.1(e) hereof and any resolutions adopted by the Board of Directors, to rectify the condition by taking such action (or by causing such action to be taken) as was specified in the notice. The costs incurred shall be charged against such association.

Section 7.3. Manner of Repair and Replacement. All repairs and replacements shall be substantially similar to the original construction and installation and shall be of first-class quality, but may be made with contemporary materials. The method of approving payment vouchers for all repairs and replacements made by the Association shall be determined by the Board of Directors.

Section 7.4. Additions, Alterations or Improvements by the Board of Directors. Whenever in the judgment of the Board of Directors the Common Area shall require capital additions, alterations or improvements (other than for Upkeep) costing in excess of five percent in the aggregate of the total annual assessment for Common Expenses for that fiscal year during any period of twelve consecutive months, the making of such additions, alterations or improvements requires a Majority Vote of the members or written approval of members entitled to cast more than fifty percent of the total number of votes in the Association, and the Board of Directors shall assess all Owners benefited for the cost thereof as a General Common Expense, Limited Common Expense or Recreational Facilities Expense depending on the nature of the improvement. Any capital additions, alterations or improvements (other than for Upkeep) costing in the aggregate five percent or less of the total annual assessment for Common Expenses for that fiscal year during any period of twelve consecutive months may be made by the Board of Directors without approval of the members and the cost thereof shall constitute a General Common Expense, Limited Common Expense or Recreational Facilities Expense depending on the nature of the improvements. Notwithstanding the foregoing, if the Board of Directors determines that such capital additions, alterations or improvements are exclusively or substantially exclusively for the benefit of specific Owners, such Owners shall be assessed therefor in such proportion as they jointly approve or, if they are unable to agree thereon, in such proportion as may be determined by the Board of Directors. Any assessments resulting from expenditures authorized under this section must also comply with Paragraph 6.2(a)(4) hereof which imposes limitations on increases in assessments above a specified maximum. If member approval is required to increase the applicable maximum assessment such approval shall be obtained simultaneously with the vote required by this section.

Section 7.5. Additions, Alterations or Improvements by the Owners.

(a) Approval.

(1) No Person shall make any addition, alteration or improvement in or to any Lot or any portion of the Property (other than for normal Upkeep or natural landscaping and not including areas within a building visible from the exterior only because of the transparency of glass doors, walls or windows) which is visible from the exterior of the Lot or such portion of

the Property, without the prior written consent of the Covenants Committee. No Person shall paint, affix a sign not permitted by the Rules and Regulations to or alter the exterior of any improvement, including the doors and windows, if such exterior is visible from another Lot or the Common Area, without the prior written consent of the Covenants Committee. Approval by the Covenants Committee or the Board of Directors shall not relieve a Owner from any obligation to obtain required governmental permits. If any application to any governmental authority for a permit to make any such structural addition, alteration or improvement to any Lot or improvement located on any Lot requires execution by the Association, and provided consent has been given by the Board of Directors or the Covenants Committee, as appropriate, then the application shall be executed on behalf of the Association by an Officer only, without incurring any liability on the part of the Board of Directors, the Association, the Board of Directors or the Covenants Committee or any of them to any contractor, subcontractor or materialman on account of such addition, alteration or improvement, or to any Person having a claim for personal injury or property damage arising therefrom.

(2) With respect to Single Family or Multifamily Residential Lots or Commercial Lots which are also subject to the jurisdiction of an owners association or condominium unit owners association, the covenants committee, board of directors or similar body of such association may review all applications for architectural review on behalf of the Covenants Committee, if the Board of Directors so determines. Owners of such Lots must comply with the guidelines established by the Covenants Committee and the Rules and Regulations for the Property, as well as any guidelines or rules and regulations established by such other association having jurisdiction over such Lot.

(3) Subject to the approval of the Owner and any Mortgagee of the affected Lot, the Board of Directors, and the appropriate governmental entity, any Lot may be subdivided or altered so as to relocate the boundaries between such Lot and any adjoining Lot. Additionally, in the case of Lots which are also part of another owners association, any subdivision or relocation of boundaries must be in compliance with the documents governing such association as well as this section. Otherwise, no Lot may be subdivided nor may any Lot's boundaries be relocated except by or as approved by the Declarant. No portion less than all of any Lot shall be conveyed or transferred by an Owner (other than the Declarant) without the prior written approval of the Declarant or the Board of Directors. However, this section is not intended to require the approval of the Board of Directors or Covenants Committee to grant deeds of correction, deeds to resolve boundary line disputes and similar corrective instruments or to grant any easement, right-of-way or license to any municipality, political subdivision, public utility or other public body or authority, or to the Association or the Declarant for any purpose.

(4) The provisions of this section shall not apply to Lots owned by the Declarant or to the improvements on Lots owned by Builders if such improvements have been approved by the Declarant. The Declarant shall have the right to make or permit alterations or subdivisions without the consent of the Board of Directors or the Covenants Committee and an authorized Officer shall execute any such application required.

(5) The provisions of this section shall not apply to a Mortgagee in possession of a Lot as a result of foreclosure, judicial sale or proceeding in lieu of foreclosure affixing a sign or taking any other actions that may be necessary to sell or lease all or any portion of the Lot, if such actions are in accordance with applicable zoning and not detrimental to the value of the Property.

(b) Limitations.

(1) Any Person obtaining approval of the Covenants Committee or the appropriate subcommittee thereof shall commence construction or alteration in accordance with plans and specifications approved within six months after the date of approval and shall substantially complete any construction or alteration within twelve months after the date of commencement, or within such other period as specified in the approval. Notwithstanding the foregoing, the approval may provide for a longer period during which to commence or complete construction. If any such Person does not commence work within six months after approval or such other time period as specified in the approval, then approval shall lapse.

(2) Any Person obtaining approval of the Covenants Committee or appropriate subcommittee thereof shall not deviate materially from the plans and specifications approved without the prior written consent of the Committee. Such Person shall notify the Committee when the alterations or improvements are complete. Approval of any particular plans and specifications or design does not waive the right of the Committee to disapprove such plans and specifications, or any elements or features thereof, if such plans and specifications are subsequently submitted for use in any other instance or by any other Person.

(c) Certificate of Compliance. Upon the completion of any construction or alteration in accordance with plans and specifications approved by the Covenants Committee or appropriate subcommittee thereof, the Committee shall, at the request of the Owner thereof, issue a certificate of compliance which shall be prima facie evidence that such construction or alteration referenced in such certificate has been approved by the Committee and constructed or installed in full compliance with the provisions

of this Article and with such other provisions and requirements of the Association Documents as may be applicable. The certificate shall not be used and may not be relied upon for any other purpose, and shall not constitute a representation either as to the accuracy or sufficiency of the plans and specifications reviewed by the committee or the quality or soundness of the construction, alteration or improvement. The Committee may impose a reasonable charge to cover the costs of preparation and inspection.

(d) New Construction. To the extent initial construction is subject to the Review of the New Construction Committee pursuant to Section 9.4 hereof, all references in this section to the Covenants Committee shall be deemed to refer to the New Construction Committee

#### Section 7.6. Parking and Transportation Services.

(a) Right to Use Parking Areas. Each of the parking spaces located on the Common Area (other than on Limited Common Area or Reserved Common Area or parking spaces reserved for commuter parking) shall be available for the use of the Owners, such Owners' tenants and such Owners' (or tenants') households or companies guests, employees, customers, agents or invitees subject to Subsection 7.6(b) hereof and such reasonable Rules and Regulations regulating the same as the Board of Directors may adopt. The Association will not unreasonably interfere with the right of any Owner, or such Owner's tenant or such Owner's (or tenant's) household or company guests, employees, customers, agents or invitees to use the Private Streets and Roadways for both vehicular and pedestrian ingress and egress to and from such Owner's Lot. Unless otherwise specifically designated in this Declaration or any other agreement, the parking areas and driveways on each Owner's Lot are to be used and maintained solely by such Owner and such Owner's designees.

(b) Limitations. Each of the parking spaces located on the Common Area shall be subject to designation as Reserved Common Area appurtenant to certain designated Lots or reserved for commuter parking pursuant to the reservation set forth in Section 3.9(a) hereof. Until assigned as Limited Common Area or Reserved Common Area, all parking spaces located in the Common Area shall be used by the owners for self-service parking purposes on a "first come, first served" basis, except as the Board of Directors may otherwise determine or as may be otherwise stated with respect to Additional Real Estate in an amendment to this Declaration adding such Additional Real Estate. For so long as the Declarant or its designees are engaged in development or sales activities, or activities related thereto, anywhere on the Property or the Additional Real Estate, the Declarant or its designees may use any parking spaces located on the Common Area for sales purposes or may reserve a maximum of fifty parking

spaces in addition to any parking spaces reserved for such purposes on Limited Common Area solely for such use.

(c) Transportation Systems Management Plan. The Board of Directors may perform such acts as are reasonably necessary in the Board's discretion to facilitate any transportation management requirements imposed by governmental authorities or as may be otherwise determined by the Board of Directors to be desirable to enhance the flow of traffic through the Property. The Board may take such actions as it determines appropriate including without limitation hiring additional staff, appointing special committees, encouraging and/or coordinating carpooling or van-pooling, encouraging flexible work hour schedules from all Owners of Commercial Lots, building and maintaining bus stop shelters, building and maintaining commuter parking lots and entering into agreements with other owners associations, governmental agencies or similar entities. Such actions taken by the Association shall be a General Common Expense or a Limited Common Expense, as may be determined by the Board of Directors. The Board of Directors may not revise the parking regulations or the directional flow of traffic on private streets and roadways without notifying the Spotsylvania County Zoning Administrator and Fire Marshall's office.

#### Section 7.7. Disclaimer of Liability.

(a) Bailee. The Board of Directors, the Association, any Owner and the Declarant shall not be considered a bailee of any personal property stored or placed on the Common Area (including property located in vehicles parked on the Common Area), whether or not exclusive possession of the particular area is given to an Owner for parking or otherwise, and shall not be responsible for the security of such personal property or for any loss or damage thereto, whether or not due to negligence, except to the extent covered by insurance in excess of any applicable deductible.

(b) Operational. The Association shall not be liable for any failure of water supply or other services to be obtained by the Association or paid for as a Common Expense, or for personal injury or property damage caused by the elements or by any Owner, or any other Person, or resulting from electricity, water, snow or ice which may leak or flow from or over any portion of the Property or from any pipe, drain, conduit, appliance or equipment, or any secondary or consequential damages of any type. The Association shall not be liable to any Owner for loss or damage, by theft or otherwise, of articles which may be stored upon any portion of the Property. No diminution, offset or abatement of any assessments shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements to the Property by the Association or from any action taken by the Association to comply with any law, ordinance

or with the order or directive of any governmental authority. This section is not intended nor shall it be construed to relieve any insurer of its contractual obligations under any policy benefiting the Association or an Owner.

Section 7.8. Services to Owners and Subassociations. The Association may, in the sole discretion of the Board of Directors, provide additional services to Owners (including the Declarant), and to any owners association or condominium unit owners association located within the Property on a contractual basis at the request of such Persons. The charges for such services shall be assessed against the Lot of the Owner or charged to the owners association or condominium unit owners association.

Services which may be provided to an owners association or condominium unit owners association include without limitation: (i) the Upkeep of any common area owned by an owners association or the common elements maintained by the condominium unit owners association; (ii) the enforcement of any declaration creating a condominium or governing the planned community; (iii) the collection of assessments under the declaration creating a condominium or governing a planned community on behalf of and in the name of the owners association or condominium unit owners association; (iv) financial and physical property management services; and (v) obtaining insurance for such owners association or condominium unit owners association.

## ARTICLE 8

### RESTRICTIONS ON USE OF LOTS AND COMMON AREA; RULES AND REGULATIONS

Section 8.1. Permitted Uses. Except as otherwise provided in the Association Documents, no Lot shall be used for other than the purposes for which such Lot is zoned and designed. Nothing in the Association Documents shall be construed to prohibit (i) the use of Lots for mental health/mental retardation facilities, or (ii) the Declarant or its designees from using any Lot owned by the Declarant (or any other Lot with the permission of the Owner thereof) or any portion of the Common Area for promotional, marketing, display or customer service purposes (such as a visitors' center) or for the settlement of sales of Lots. Further, the Declarant specifically reserves the right to operate a construction office or a rental, brokerage and management office at any time on Lots owned or leased by the Declarant (or any other Lot with the permission of the Owner thereof) and on any portion of the Common Area, to the extent permitted by law. The Declarant may assign its rights under this subsection to or share

such rights with one or more other Persons, exclusively, simultaneously or consecutively with respect to the Common Area and Lots owned or leased by the Declarant or such Persons.

Section 8.2. Restrictions. Each Lot and the Common Area shall be occupied and used as follows:

(a) Waste or Hazardous Activities. Nothing shall be done or kept on the Property which will increase the rate of insurance for the Common Area or any part thereof applicable for permitted uses without the prior written consent of the Board of Directors; including without limitation any activities which are unsafe or hazardous with respect to any person or property. No Person shall permit anything to be done or kept on the Property which will result in the cancellation of any insurance on the Common Area or any part thereof or which would be in violation of any law, regulation or administrative ruling. No waste will be committed on the Common Area.

(b) Compliance with Laws. No improper, offensive or unlawful use shall be made of the Property or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental agencies having jurisdiction thereof shall be observed. All laws, orders, rules, regulations or requirements of any governmental agency having jurisdiction thereof relating to any portion of the Property shall be complied with, by and at the sole expense of the Owner, the Association, the Declarant or any owners association or condominium unit owners association, whichever shall have the obligation for the Upkeep of such portion of the Property, and, if the Association, then the cost of such compliance shall be a Common Expense, Limited Common Expense or Recreational Facilities Expense, as appropriate.

(c) Harmful Discharges. There shall be no emissions of dust, sweepings, dirt, cinders, odors, gases or other substances into the atmosphere except for normal residential chimney emissions, no production, storage or discharge of hazardous wastes on the Property or discharges of liquid, solid wastes or other harmful matter into the ground or any body of water, if such emission, production, storage or discharge may adversely effect the use or intended use of any portion of the Property or may adversely effect the health, safety or comfort of any Person.

(d) Noise. No Person shall cause any unreasonably loud noise (except for security devices) anywhere on the Property, nor shall any Person permit or engage in any activity, practice or behavior for the purpose of causing annoyance, discomfort or disturbance to any Person lawfully present on any portion of the Property; but this provision shall not be construed as forbidding any work involved in the construction or Upkeep of any portion of the Property so long as such work is

undertaken and carried out (i) with the minimum practical disturbance to Persons occupying other portions of the Property; (ii) in such a way as does not violate the rights of any Person under other provisions of this Declaration; and (iii) in accordance with all applicable restrictions in the Rules and Regulations, the resolutions of the Board of Directors and the other provisions of this Declaration.

(e) Obstruction of Common Area. No Person shall obstruct any of the Common Area or otherwise impede the rightful access of any other Person on any portion of the Property upon which such Person has the right to be. No Person shall place or cause or permit anything to be placed on or in any of the Common Area without the approval of the Board. Nothing shall be altered or constructed in or removed from the Common Area except with the prior written approval of the Board of Directors.

(f) Use of Common Area. The Common Area shall be used only for the furnishing of the services and facilities for which the same is reasonably suited and which are incident to the use and occupancy of the Lots. The improvements located on the Common Area shall be used only for their intended purposes. Except as otherwise expressly provided in the Association Documents, no Owner shall make any private, exclusive or proprietary use of any of the Common Area (except those areas, if any, designated as Limited Common Area or Reserved Common Area by the Board of Directors) without the prior written approval of the Board of Directors and then only on a temporary basis.

(g) Mining. No Lot shall be used for the purpose of boring, mining, quarrying, exploring for or removing oil or other hydrocarbons, minerals, gravel or earth except with the prior written approval of the Board of Directors.

(h) Signs. Except for such signs as may be posted by the Declarant or a Builder for promotional or marketing purposes or the Association, no signs of any character shall be erected, posted or displayed in a location that is visible from the Common Area or any other Lot, except as may be permitted in accordance with the Design Standards or with the approval of the Covenants Committee.

(i) Trash. Except in connection with construction activities, no burning of any trash and no accumulation or storage of litter, refuse, bulk materials, building materials or trash of any other kind shall be permitted on any Lot. Trash containers shall not be permitted to remain in public view from the Common Area or another Lot except on days of trash collection. No incinerator shall be kept or maintained upon any Lot without the prior written approval of the Covenants Committee.

(j) Landscaping and Utility Lines. No tree, hedge or other landscape feature shall be planted or maintained in a location which obstructs sight-lines for vehicular traffic on public streets. No structure of a temporary character, and no trailer, tent, shack, barn, pen, kennel, run, stable, outdoor clothes line, shed or other temporary accessory buildings shall be erected, used or maintained on any Lot except in connection with construction activities. Pavement, plantings and other landscape materials shall not be placed or permitted to remain upon any Lot: (i) if such materials may damage or interfere with any easement for the installation or maintenance of utilities; (ii) in violation of the requirements of such easements; (iii) unless in conformity with public utility standards; or (iv) if such materials may unreasonably change, obstruct or retard direction or flow of any drainage channels. Otherwise, the installation of such materials within utility easements shall be encouraged. Except for hoses and the like which are reasonably necessary in connection with construction activities or normal landscape maintenance, no water pipe, sewer pipe, gas pipe, drainage pipe, television cable or other similar transmission line shall be installed or maintained upon any Lot above the surface of the ground.

(k) Tree Cutting. Except in accordance with the Design Standards, no sound trees shall be removed from any Lot without the prior written approval of the Covenants Committee unless necessary to construct improvements based on plans previously approved by the Covenants Committee.

(l) Antenna. No outside antenna shall be maintained upon the Property. It is not anticipated that outside antenna will be allowed upon the Property, however, the Board of Directors may approve such antenna in the appropriate circumstances.

(m) Fences. Except for any fence installed by the Declarant, a Builder or by the Association, no fence shall be installed except in conformance with standards established therefor and with the written approval of the Covenants Committee.

(n) Vehicles. Except in connection with construction activities, no trucks, trailers, campers, recreational vehicles, boats and other large vehicles may be parked on any portion of the Common Area or public rights-of-way within or adjacent to the Property or any portion of a Lot visible from the Common Area or another Lot, unless expressly permitted by the Board of Directors and only in such parking areas (if any) or for such time periods as may be designated for such purpose. The Board of Directors shall, however, make reasonable rules and regulations concerning the parking of commercial vehicles on Commercial Lots so that the Owner of such Commercial Lots may use such Lots to conduct

commercial activities permissible under the applicable zoning. However, grounds maintenance equipment may be stored and maintained on the Property with the prior written approval of the Covenants Committee. No junk or derelict vehicle or other vehicle on which current registration plates and current county and state inspection permits are not displayed shall be kept upon any portion of the Common Area or any portion of a Lot visible from the Common Area or another Lot. Vehicle repairs and storage of vehicles are not permitted, except in accordance with the Rules and Regulations.

(o) Timeshare. No Lot shall be subjected to or used for any timesharing, cooperative, licensing or other arrangement that would entail weekly, monthly, or any other type of revolving or periodic occupancy by multiple Owners, cooperators, licensees, or timesharing participants.

(p) Mailboxes and Newspaper Tubes. Only mailboxes and newspaper tubes meeting Design Standards of the Association shall be permitted.

(q) Lighting. No exterior lighting shall be directed outside the boundaries of the Lot.

(r) Construction Activities. This section shall not be construed as forbidding any work involved in the construction or Upkeep of any portion of the Property so long as such work is undertaken and carried out (i) with the minimum practical disturbance to Persons occupying other portions of the Property; (ii) in such a way as does not violate the rights of any Person under other provisions of this Declaration; and (iii) in accordance with all applicable restrictions in the Rules and Regulations, the resolutions of the Board of Directors and the other provisions of this Declaration. The Board of Directors may approve temporary structures for construction purposes which may otherwise be in violation of the Association Documents or the Rules and Regulations.

(s) Residential Lots.

(i) Residential Lots shall be used for residential purposes only; provided, however, that the Board of Directors may permit reasonable temporary non-residential use on such Lots from time to time for a professional office (including day care), provided that such use is consistent with all applicable laws, ordinances and regulations of any governmental authority. As a condition to consenting to such office use, the Board may require the Owner to pay any increase in the rate of insurance for the Association or any other increase in costs to the Association which may result from such office use. Such permission may not be revoked later except for good cause shown.

(ii) Animals. The maintenance, keeping, boarding or raising of animals, livestock, poultry or reptiles of any kind, regardless of number, is prohibited on any Lot or upon the Common Area, except that the keeping of guide animals and orderly domestic pets (e.g., dogs, cats or caged birds) without the approval of the Board of Directors, is permitted, subject to the Rules and Regulations adopted by the Board of Directors; provided, however, that such pets are not kept or maintained for commercial purposes or for breeding; and provided, further, that any such pet causing or creating a nuisance or unreasonable disturbance or noise may be permanently removed from the Property upon ten days written notice from the Board of Directors. Pets shall not be permitted upon the Common Area unless accompanied by someone who can control the pet and unless carried or leashed. Any Owner who keeps or maintains any pet upon any portion of the Property shall be deemed to have indemnified and agreed to hold the Association, each Owner and the Declarant free and harmless from any loss, claim or liability of any kind or character whatever arising by reason of keeping or maintaining such pet within the Property. All pets which may leave the Lot shall be registered and inoculated as required by law.

(iii) Clothes Drying Equipment. No clothes lines or other clothes drying apparatus shall be permitted on any Lot, unless approved in writing by the Covenants Committee. It is initially contemplated that no exterior clothes lines or other exterior clothes drying apparatus will be permitted.

Section 8.3. Rules and Regulations. The Board of Directors shall have the power to adopt, amend and repeal Rules and Regulations restricting and regulating the use and enjoyment of the Property or of any portion thereof, which may supplement, but may not be inconsistent with the provisions of the Association Documents. The Board of Directors shall also review and approve the rules and regulations proposed by any owners association or condominium unit owners association located on the Property; provided, however, that any rules and regulations submitted to the Board shall be deemed approved if not disapproved within ten days after the first meeting of the Board after such rules and regulations are submitted. The Property shall be occupied and used in compliance with the Rules and Regulations, as well as the rules and regulations established by any owners association or condominium unit owners association; provided, however, that any rules and regulations adopted by such association which are inconsistent with the Association Documents or the Rules and Regulations of the Association shall be void. Copies of the Rules and Regulations shall be furnished by the Board of Directors to each member. Changes to the Rules and Regulations shall be published prior to the time when the same shall become effective and copies thereof shall be provided to each Owner. The Rules and Regulations shall not unreasonably interfere with the use or enjoyment of the Lots or Common Area or the reasonable conduct of business

on the Lots. Also, the Board of Directors may issue temporary exceptions to any prohibitions expressed or implied by this Article, for good cause shown.

Section 8.4. Exclusion for the Declarant and Designees of the Declarant. Notwithstanding any other provision of the Association Documents, neither the restrictions in this Article nor the Rules and Regulations of the Association shall apply to any otherwise lawful acts or omissions of the Declarant or of any Person designated by the Declarant from time to time in notices to the Association as long as the Declarant or such designee is engaged in development or sales, or activities related thereto, anywhere within the Property or on any Additional Real Estate. Such exception shall be subject to such rules as may be established by the Declarant to maintain reasonable standards of safety, cleanliness and general appearance of the Property.

Section. 8.5. Leasing. No dwelling unit located on a Single Family Residential Lot or any portion thereof shall be used or occupied for transient or hotel purposes or in any event leased for an initial period of less than six months. No portion of any dwelling unit located in a Single Family Residential Lot (other than the entire dwelling unit) shall be leased for any period; provided, however, that a reasonable number of roommates is permitted. No Owner shall lease a Lot other than on a written form of lease: (1) requiring the lessee to comply with the Association Documents; and (2) providing that failure to comply constitutes a default under the lease. The foregoing provisions of this subsection, except the restriction against use or occupancy of dwelling units on Single Family Residential Lots for hotel or transient purposes, shall not apply to Lots owned by the Association, by the Declarant, or by a Mortgagee in possession of a Lot as a result of foreclosure, judicial sale or a proceeding in lieu of foreclosure.

## ARTICLE 9

ARCHITECTURAL REVIEWSection 9.1. Covenants Committee.

(a) Purpose. The Board of Directors shall establish a Covenants Committee, consisting of at least three persons appointed by the Board, each to serve for a term of from one to three years as may be determined by the Board of Directors, in order to assure that the Property shall always be maintained in a manner: (i) providing for visual harmony and soundness of repair; (ii) avoiding activities deleterious to the aesthetic or property values of Property; and (iii) promoting the general welfare and safety of the Owners, such Owners' tenants and such Owners' (or tenants') households or companies, guests, employees, customers, agents and invitees. If the Board of Directors fails to appoint a Covenants Committee, then the Board of Directors shall perform the duties of the Covenants Committee.

(b) Powers.

(1) The Covenants Committee shall regulate the external design, signage, appearance, use and maintenance of the Lots and the Common Area; provided, however, that the Covenants Committee shall not have the power to regulate the activities of the Association or the Declarant on the Common Area or any Lot owned by the Declarant or any improvement on any Lot owned by a Builder which has been approved by the Declarant; and provided, further, that the Covenants Committee shall not have the power to review initial construction on the Property, if such construction is reviewed by the New Construction Committee. In addition, unless the Board of Directors otherwise determines, the covenants committee, board of directors or similar body of any owners association or condominium unit owners association also governing a portion of Property with respect to any commercial or residential planned community or condominium located on the Property shall review applications made by Owners of Lots subject to the jurisdiction of such owners association or condominium unit owners association on behalf of the Covenants Committee.

(2) The Covenants Committee may from time to time establish requirements regarding the form and content of plans and specifications to be submitted for approval. The Covenants Committee shall have the power to impose reasonable application fees as well as the costs of reports, analyses or consultations required in connection with improvements or changes proposed by an Owner. Such fees shall be assessed against the Owner.

(3) The Covenants Committee shall have the power pursuant to Subsection 12.1(h) hereof (upon petition of any Owner

or upon its own motion) to impose reasonable charges upon, and issue a cease and desist request to, an Owner, such Owner's tenant and such Owner's (or tenant's) household or company, guests, employees, customers, agents, and invitees whose actions are inconsistent with the provisions of the Association Documents.

(4) Subject to the review of the Board of Directors, the Covenants Committee shall from time to time provide interpretations of the Association Documents pursuant to the intents, provisions and qualifications thereof when requested to do so by an Owner or the Board of Directors. The Committee may publish and record such interpretations in order to establish precedents for application of the Association Documents or the Design Standards or other matters relative to architectural control and protection of the aesthetic or property values of the Property.

(5) The Covenants Committee shall propose Design Standards for approval by the Board of Directors. Such Design Standards are hereby incorporated by this reference and shall be enforceable as if set forth herein in full; provided, however, that no Design Standards affecting initial construction of improvements shall be enforced against an Owner which were more restrictive than those in effect when the Owner purchased the Lot. The Covenants Committee shall also review the architectural guidelines proposed by the board of directors, covenants committee or similar committee of any owners association or condominium unit owners association operating within the Property and shall determine whether such guidelines are in keeping with the overall architectural character of the Property. Notwithstanding the provisions of Section 9.1(d) hereof, any such guidelines which are submitted to the Covenants Committee shall be deemed approved if not disapproved within forty-five days. The guidelines or rules established by any owners association or condominium unit owners association are subordinate to the Design Guidelines and are void to the extent inconsistent with the Design Guidelines.

(6) A Majority Vote of the Covenants Committee shall be required in order to take any action except as otherwise provided in Section 12.1(h) hereof. The Covenants Committee shall keep written records of all its actions. Any action, ruling or decision of the Covenants Committee may be appealed to the Board of Directors by any party deemed by the Board to have standing as an aggrieved party and the Board may modify or reverse any such action, ruling or decision. The Covenants Committee and the Board of Directors shall have no authority to regulate construction by the Declarant.

(c) Conduct of Business. The Covenants Committee shall not exercise its powers and authority to interfere with the reasonable conduct of business on the Property or the development of the Property by the Declarant. Reasonable signs, modifica-

tions, alterations and changes of use which are consistent with Design Standards and needed for the proper conduct of business shall be permitted.

(d) Authority. The Covenants Committee shall have such additional duties, powers and authority as the Board of Directors may from time to time provide by resolution. The Board of Directors may relieve the Covenants Committee of any of its duties, powers and authority either generally or on a case-by-case basis. The Covenants Committee shall carry out its duties and exercise its powers and authority in accordance with Subsections 12.1(h) and (i) hereof and in the manner provided for in the Rules and Regulations adopted by the Board of Directors or by resolution of the Board of Directors.

(e) Time for Response; Variances. The Covenants Committee shall act on all matters properly before it within forty-five days; failure to do so within the stipulated time shall constitute an automatic referral to the Board of Directors. Except when a request is being handled by the Covenants Committee, the Board of Directors shall be obligated to answer any written request by an Owner for approval of a proposed structural addition, alteration or improvement within fifteen days after the first Board of Directors meeting held following referral to the Board, and failure to do so within the stipulated time shall constitute a consent by the Board of Directors to the proposed structural addition, alteration or improvement; provided, however, that the Board of Directors has no right or power, either by action or failure to act to waive enforcement or grant variances from written Design Standards without a specific finding that enforcement of such standards would impose an unfair burden on such Owner and stating the variance and the reasons therefor in a written instrument which shall be part of the records of the Association. Upon such written approval of any specific variance or exception from the requirements of the Design Standards, all development conforming to such variance or exception shall be deemed to comply.

Section 9.2. Subcommittees of the Covenants Committee. The Covenants Committee shall establish certain subcommittees to exercise the powers of the Covenants Committee. The Covenants Committee may in its discretion establish additional subcommittees to carry out its functions. Wherever in the Association Documents reference is made to the Covenants Committee, such reference shall mean the Covenants Committee itself or the appropriate subcommittee thereof.

(a) Modifications Subcommittee. The Modifications Subcommittee shall review and approve or disapprove the plans for any visible additions, alterations or modifications to the exterior of existing improvements located on the Property, in order to ensure the quality and compatibility of the style of improvements

on the Property; except to the extent such families are performed by the Commercial Modifications and Rules Enforcement Subcommittee.

(b) Rules Enforcement Subcommittee. The Rules Enforcement Subcommittee shall review possible violations of the Rules and Regulations, recommend appropriate enforcement action and act as the judicial arm of the Covenants Committee as set forth in Section 12.1(h) and (i) hereof; except to the extent such functions are performed by the Commercial Modifications and Rules Enforcement Subcommittee.

(c) Commercial Modifications and Rules Enforcement Subcommittee. If 250,000 square feet or more of Net Floor Area is constructed within the Property then the Board of Directors shall establish a Commercial Modification and Rules Enforcement Subcommittee, otherwise, architectural review and rules enforcement for Commercial Lots will be performed by the Covenants Committee or the Modifications Subcommittee or Rules Enforcement Subcommittee, as appropriate. If required, the Commercial Modifications and Rule Enforcement Subcommittee shall consist of five persons. Four members of the subcommittee shall be Owners of Commercial Lots and one member shall be the Owner of a Single Family Residential Lot. The Owner of the Single Family Residential Lot serving on the subcommittee shall be appointed by the Board of Directors. The Owners of the Commercial Lots serving on the subcommittee shall be elected by the Owners of Commercial Lots based on one vote per Lot. If all the Commercial Lots located within the Property are subject to a single owners association, or the Owners of all Commercial Lots fail to hold a meeting to elect or to otherwise elect representatives on the subcommittee, the four Owners of Commercial Lots serving on the subcommittee shall be appointed by the Board of Directors. The Commercial Modifications and Rule Enforcement Subcommittee shall review and approve or disapprove the plans for any visible additions, alterations or modifications to the exterior of existing improvements located on Commercial Lots. The subcommittee shall also review possible violations of the Rules and Regulations, recommend appropriate enforcement action and act as the judicial arm of the Covenants Committee as set forth in Section 12.1(h) and (i) hereof with respect to Commercial Lots. Notwithstanding any other provision of the Association Documents, the Commercial Modifications and Rules Enforcement Subcommittee shall control all aspects of architectural review for Commercial Lots including developing Design Standards and reviewing any design standard developed by commercial subassociations. Decisions of the Commercial Modifications and Rules Enforcement Subcommittee are not appealable to the Board of Directors or subject to Board of Directors' review and Design Standards developed by the Commercial Modifications and Rules Enforcement Subcommittee are not subject to the Board of Directors Review.

(d) Subcommittee Powers. Any subcommittee or the New Construction Committee shall have the right to inspect construction periodically. Any deviation from the approved drawings and specifications which materially changes the exterior appearance or location of the improvement is a violation of the Association Documents. If a subcommittee does not respond within the requisite time periods, the application or drawings and specifications shall be deemed approved. Each subcommittee shall adopt its own requirements, procedures and time periods for action and incorporate the same in the Design Standards. This section shall in no way affect any requirement for inspection by any governmental entity.

Section 9.3. Compensation of the Covenants Committee. One or more members of the Covenants Committee or a subcommittee or the New Construction Committee (other than an Owner or a resident of the Property) may be compensated by the Association for their services on the Covenants Committee as may be determined by the Board of Directors.

Section 9.4. New Construction Committee. The Declarant shall appoint a New Construction Committee consisting of at least three persons which shall adopt initial Design Standards for the Property and review and approve or disapprove the plans for the initial construction of any structure to be located on the Property including without limitation the site development plan, architectural design, architectural materials, landscaping plan, non-structural improvements and general appearance, in order to ensure the quality and compatibility of style of all the improvements to be located on the Property. Such Design Standards are hereby incorporated herein by this reference and shall be enforceable as if set forth herein in full. The New Construction Committee may establish its own applications and procedures and may charge a fee for its review. While the New Construction Committee exists, all additions and modifications to the Design Standards must be approved by the Committee. The Declarant may appoint the New Construction Committee for so long as the Declarant or its designees are engaged in development and sales, or activities related thereto, anywhere on the Property or on the Additional Real Estate. After the Declarant completes development and sales activities, the New Construction Committee shall cease to exist. If initial construction on the Property occurs after the New Construction Committee ceases to exist, then such construction will be reviewed by the Covenants Committee or the appropriate subcommittee thereof.

## ARTICLE 10

INSURANCESection 10.1. Authority to Purchase; Notice.

(a) The Board of Directors shall have the power on behalf of the Association to (i) purchase insurance policies relating to the Common Area, (ii) adjust all claims arising under such policies; and (iii) execute and deliver releases upon payment of claims. The cost of all insurance policies purchased by the Board relating to the Common Area shall be a Common Expense, a Limited Common Expense or a Recreational Facilities Expense, as appropriate. The Board of Directors, the managing agent and the Declarant shall not be liable for failure to obtain any coverages required by this Article or for any loss or damage resulting from such failure: (i) if such failure is due to the unavailability of such coverages from reputable insurance companies; (ii) if such coverages are so available only at an unreasonable cost; or (iii) if the Association's insurance professionals advise that the coverages required by paragraph (2) of 10.2(b) or 10.4 hereof are not necessary. Exclusive authority to negotiate losses under policies purchased by or on behalf of the Association shall be vested in the Board of Directors or with its authorized representative. The Board of Directors shall promptly notify the members of material adverse changes in, or termination of, insurance coverages obtained on behalf of the Association.

(b) Each such policy shall provide that:

(1) The insurer waives any right to claim by way of subrogation against the Declarant, the Association, the Board of Directors, the managing agent, any Owner and their respective households or companies, guests, employees, customers, tenants, agents and invitees;

(2) Such policy shall not be cancelled, invalidated or suspended due to the conduct of any Owner, or such Owner's tenant or such Owner's (or tenant's) household or company guests, employees, customers, agents and invitees, or of any Officer or employee of the Board of Directors or the managing agent without a prior demand in writing that the Board or the managing agent cure the defect and neither shall have so cured such defect within sixty days after such demand; and

(3) Such policy may not be cancelled or substantially modified (including cancellation for non-payment of premium) without at least thirty days prior written notice to the Board of Directors or the managing agent.

(c) All policies of insurance shall be written by reputable companies licensed or qualified to do business in Virginia.

(d) The deductible (if any) on any insurance policy purchased by the Board of Directors shall be a Common Expense (or a Limited Common Expense or a Recreational Facilities Expense, as appropriate); provided, however, that the Association may, pursuant to Subsection 12.1(a) hereof, assess any deductible amount necessitated by the misuse or neglect of an Owner against such Owner.

(e) The Declarant, so long as the Declarant shall own any Lot, shall be protected by all such policies as an Owner.

#### Section 10.2. Physical Damage Insurance.

(a) The Board of Directors shall obtain and maintain a blanket, "all-risk" form policy of fire insurance with extended coverage, vandalism, malicious mischief, sprinkler leakage (if applicable), cost of demolition, debris removal, and water damage endorsements, insuring any improvements located on the Common Area (including without limitation any floor covering, fixtures and appliances), together with all air conditioning and heating equipment and other service machinery contained therein and covering the interests of the Association, in an amount equal to one hundred percent of the then current replacement cost of any improvements located on the Common Area (exclusive of the land, excavations, foundations and other items normally excluded from such coverage), without deduction for depreciation (such amount to be redetermined annually by the Board with the assistance of the insurance company affording such coverage). The Board of Directors shall also obtain and maintain appropriate coverage on all personal property and real estate other than the Common Area owned by the Association.

(b) Each such policy shall also provide:

(1) a waiver of any right of the insurer to repair, rebuild or replace any damage or destruction, if a decision is made not to do so;

(2) the following endorsements (or equivalent):  
 A) "no control" (to the effect that coverage shall not be prejudiced by any act or neglect of any occupant or Owner or their agents when such act or neglect is not within the control of the insured or the Owners collectively, nor by any failure of the insured, the Owners collectively, to comply with any warranty or condition with regard to any portion of the Property over which the insured, the Owners collectively, have no control; B) "cost of demolition"; C) "contingent liability from operation of building laws or codes"; D) "increased cost of construction"; E) "re-

placement cost"; and F) "agreed amount" or elimination of co-insurance clause;

(3) that any "no other insurance" clause expressly exclude individual Owners' policies from its operation so that the physical damage policy purchased by the Board of Directors shall be deemed primary coverage and any individual Owners' policies shall be deemed excess coverage, and in no event shall the insurance coverage obtained and maintained by the Board of Directors hereunder provide for or be brought into contribution with insurance purchased by individual Owners or their Mortgagees, unless otherwise required by law; and

(4) such deductibles as to loss, but not coinsurance features, as the Board of Directors in its sole discretion deems prudent and economical.

(c) Certificates of physical damage insurance signed by an agent of the insurer, all renewals thereof, and any sub-policies or certificates and endorsements issued thereunder, together with proof of payment of premiums, shall be delivered by the insurer to any Mortgagee requesting the same, at least ten days prior to expiration of the then current policy. All Mortgagees shall be notified promptly of any event giving rise to a claim under such policy arising from damage to improvements located on the Common Area in excess of ten percent of the then current replacement cost of such improvements.

Section 10.3. Liability Insurance. The Board of Directors shall obtain and maintain comprehensive general liability, broad form endorsement (including libel, slander, false arrest and invasion of privacy coverage) and property damage liability insurance in such limits as the Board may from time to time determine, insuring each director, the managing agent and the employees of the Association against any liability to the public or to any Owner or such Owner's tenant and such Owner's (or tenant's) household or company, guests, employees, customers, agents and invitees arising out of, or incident to the ownership or care, custody, control and use of the Common Area or legal liability arising out of employment contracts of the Association. Such insurance shall be issued on a comprehensive liability basis and shall contain: (1) a cross-liability endorsement under which the rights of a named insured under the policy shall not be prejudiced with respect to an action against another named insured; (2) hired and non-owned vehicle coverage; (3) host liquor liability coverage with respect to events sponsored by the Association; (4) deletion of the normal products exclusion with respect to events sponsored by the Association; and (5) a "severability of interest" endorsement which shall preclude the insurer from denying liability coverage to an Owner because of negligent acts of the Association or of another Owner. The Board of Directors shall review such limits once each year, but in no event shall

such insurance be less than one million dollars covering all claims for bodily injury or property damage arising out of one occurrence. Reasonable amounts of "umbrella" liability insurance in excess of the primary limits shall also be obtained in an amount not less than two million dollars.

Section 10.4. Other Insurance. The Board of Directors shall obtain and maintain:

(a) adequate fidelity coverage to protect against dishonest acts on the part of directors, Officers, trustees and employees of the Association and all others who handle, or are responsible for handling, funds of the Association, including the managing agent. If the Association has delegated some or all of the responsibility for handling funds to a managing agent, such managing agent shall be covered by its own fidelity bond. Such fidelity bonds (except for fidelity bonds obtained by the managing agent for its own personnel) shall: (i) name the Association as an obligee, (ii) be written in an amount not less than one-half the total annual assessment for Common Expenses or the amount required by the Mortgagees, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, whichever is greatest and (iii) contain waivers of any defense based upon the exclusion of Persons who serve without compensation from any definition of "employee" or similar expression;

(b) if required by a majority of the Mortgagees or governmental regulations, flood insurance in accordance with the then applicable regulations for such coverage;

(c) workers' compensation insurance if and to the extent necessary to meet the requirements of law (including a voluntary employees endorsement and an "all states" endorsement);

(d) if applicable, pressure, mechanical and electrical equipment including air conditioning equipment coverage on a comprehensive form in an amount not less than fifty thousand dollars per accident per location;

(e) directors and officers liability insurance in an amount not less than one million dollars; and

(f) such other insurance: (i) as the Board of Directors may determine; or (ii) as may be required with respect to the Additional Real Estate by any amendment to this Declaration adding such Additional Real Estate; or (iii) as may be requested from time to time by a Majority Vote of the members.

### Section 10.5. Separate Insurance on Lots.

(a) Optional Insurance. Each Owner shall have the right to obtain insurance for such Owner's benefit, at such Owner's expense, covering the improvements located on such Owner's Lot. No Owner shall acquire or maintain insurance coverage on the Common Area insured by the Association so as: (i) to decrease the amount which the Board of Directors may realize under any insurance policy maintained by the Board; (ii) to cause any insurance coverage maintained by the Board to be brought into contribution with insurance coverage obtained by a Owner; or (iii) in violation of any condominium instruments or declaration of covenants encumbering such Owner's Lot. No Owner shall obtain separate insurance policies on the Common Area owned in fee simple by the Association.

(b) Required Coverage. (1) Each Owner of a Commercial Lot or a Multifamily Residential Lot containing multifamily rental property shall obtain general liability insurance in a minimum amount of one million dollars and shall provide a certificate of insurance to the Board of Directors fifteen days prior to the expiration of such insurance.

(2) Owners may be required to obtain certain insurance coverages with respect to Additional Real Estate in amendments to this Declaration adding such Additional Real Estate.

## ARTICLE 11

### RECONSTRUCTION AND REPAIR

#### Section 11.1. When Reconstruction or Repair Required.

(a) Common Area. Except as otherwise provided in Section 11.4 hereof, if all or any part of any improvement located on the Common Area is damaged or destroyed by fire or other casualty, the Board of Directors shall arrange for and supervise the prompt repair and restoration thereof (including without limitation any floor coverings, fixtures and appliances). The Association shall not use the proceeds of casualty insurance received as a result of damage or destruction of improvements located on the Common Area for purposes other than the repair, replacement or reconstruction of such improvements except in accordance with Sections 11.4 and 15.4 hereof.

(b) Lots. If a building or other major improvement located upon a Lot is damaged or destroyed, the Owner thereof shall restore the site either (i) by repairing or reconstructing such building or other major improvement or (ii) by clearing away the debris and restoring the site to an acceptable condition com-

patible with the remainder of the Property. Unless the Covenants Committee permits a longer time period, such work must be commenced within six months after the casualty and substantially completed within eighteen months after the casualty.

Section 11.2. Procedure for Reconstruction and Repair of Common Area.

(a) Cost Estimates. Immediately after a fire or other casualty causing damage to any portion of any improvement located on the Common Area, the Board of Directors shall obtain reliable and detailed estimates of the cost of restoring and repairing such improvement (including without limitation any floor coverings, fixtures and appliances) to a condition as good as that existing before such casualty. Such costs may also include professional fees and premiums for such bonds as the Board of Directors determines to be necessary.

(b) Plans and Specifications. Any such reconstruction or repair shall be substantially in accordance with the original construction of any improvement located on the Common Area, subject to any modifications required by changes in applicable governmental regulations, and using contemporary building materials and technology to the extent feasible; provided, however, that other action may be taken if approved in accordance with Section 15.4 hereof.

Section 11.3. Disbursement of Construction Funds for Common Area.

(a) Construction Fund and Disbursement. The proceeds of insurance collected on account of a casualty and the sums received by the Board of Directors from the collection of assessments against the Owners pursuant to Subsection 11.3(b) hereof, or any Owner pursuant to Subsection 12.1(a) hereof, shall constitute a construction fund which shall be disbursed in payment of the costs of reconstruction and repair in the following manner.

(1) If the estimated cost of reconstruction and repair is less than ten percent of the total annual assessment for Common Expenses for that fiscal year, then the construction fund shall be disbursed in payment of such costs upon order of the Board of Directors.

(2) If the estimated cost of reconstruction and repair is ten percent or more of the total annual assessment for Common Expenses for that fiscal year, then the construction fund shall be disbursed in payment of such costs upon approval of an architect qualified to practice in Virginia and employed by the Board of Directors to supervise such work, payment to be made from time to time as the work progresses. The architect shall be required to furnish a certificate giving a brief description of

the services and materials furnished by various contractors, sub-contractors, materialmen, the architect and other Persons who have rendered services or furnished materials in connection with the work stating that: (i) the sums requested by them in payment are justly due and owing and that such sums do not exceed the value of the services and materials furnished; (ii) there is no other outstanding indebtedness known to such architect for the services and materials described; and (iii) the cost as estimated by such architect for the work remaining to be done subsequent to the date of such certificate does not exceed the amount of the construction fund remaining after payment of the sum so requested. The Board of Directors shall be entitled to rely on such certificate.

(b) Shortfalls. If the proceeds of insurance are not sufficient to defray such estimated costs of reconstruction and repair, or if upon completion of reconstruction and repair the funds for the payment of the costs thereof are insufficient, the amount necessary to complete such reconstruction and repair may be obtained from the appropriate reserve for replacement funds or shall be deemed a Common Expense, a Limited Common Expense or a Recreational Facility Expense, as appropriate, and an assessment therefor shall be levied subject to Section 6.2 hereof.

(c) Surplus. The first monies disbursed in payment of the cost of reconstruction and repair shall be from insurance proceeds. If, after payment of the costs of all reconstruction and repair, and the refund of any excess payments made by Owners pursuant to Subsection 11.3(b) hereof in proportion to their contributions or the refund of excess payments by any Owner pursuant to Subsection 12.1(a) hereof, there remains any surplus fund, such fund shall be paid to the Association and shall be placed in the appropriate reserve account.

Section 11.4. When Reconstruction and Repair of Common Area Not Required. If destruction of the improvements located on the Common Area is insubstantial, the Board of Directors may elect not to repair such insubstantial damage. Otherwise, any decision not to repair or restore improvements on the Common Area shall be made in accordance with Section 15.4 hereof. If damaged improvements are not repaired, then the Board of Directors shall remove all remnants of the damaged improvements and restore the site thereof to an acceptable condition compatible with the remainder of the Common Area and the balance of any insurance proceeds received on account of such damage shall be placed in the appropriate reserve account.

## ARTICLE 12

COMPLIANCE AND DEFAULT

Section 12.1. Relief. Each Owner and each owners association or condominium unit owners association located within the Property shall be governed by, and shall comply with, all of the terms of the Association Documents and the Rules and Regulations as they may be amended from time to time. A default by an Owner or owners association or condominium unit owners association located within the Property shall entitle the Association, acting through its Board of Directors or through the managing agent, to the following relief.

(a) Additional Liability. Each Owner or each owners association or condominium unit owners association within the Property shall be liable to the Association or to any affected Owner for the expense of all Upkeep, rendered necessary by such Owner's act or omission or the act or omission of such owners association or condominium unit owners association, regardless of neglect or culpability but only to the extent that such expense is not covered by the proceeds of insurance carried by the Board of Directors. Such liability shall include any increase in casualty insurance rates occasioned by use, misuse, occupancy or abandonment of any Lot or its appurtenances. Nothing contained herein, however, shall be construed as modifying any waiver by any insurance company of its rights of subrogation. Any costs, including without limitation legal fees, incurred as a result of a failure to comply with the Association Documents or the Rules and Regulations by any Owner may be assessed against such Owner's Lot.

If a new Owner does not give the Secretary written notice stating the name and address of the new Owner and the number or address of the Lot within thirty days after acquiring title to such Lot, pursuant to Section 1.3 hereof, then reasonable record-keeping costs incurred by the Association, as determined by the Board of Directors, may be assessed against such Owner. The Board may set or change the amount of such assessment from time to time. Such assessment shall be a lien against such Owner's Lot as provided in Section 12.2 hereof.

(b) Costs and Attorney's Fees. In any proceedings arising out of any alleged default by an Owner or an owners association or condominium unit owners association located within the Property, the prevailing party shall be entitled to recover the costs of such proceeding and such reasonable attorneys' fees as may be determined by the court. The prevailing party shall be entitled to costs and attorney's fees even though said proceeding is settled prior to judgment.

(c) No Waiver of Rights. The failure of the Association, the Board of Directors or an Owner to enforce any right, provision, covenant or condition which may be granted by the Association Documents shall not constitute a waiver of the right of the Association, the Board or any Owner to enforce such right, provision, covenant or condition in the future. All rights, remedies and privileges granted to the Association, the Board of Directors or any Owner pursuant to any term, provision, covenant or condition of the Association Documents shall be deemed to be cumulative and the exercise of any one or more thereof shall not be deemed to constitute an election of remedies, nor shall it preclude the party exercising the same from exercising such other privileges as may be granted to such party by the Association Documents, the Act or at law or in equity.

(d) Interest. If a default by any Owner in paying any sum assessed against such Owner's Lot, except for Common Expenses, or any owners association or condominium unit owners association in paying any amount to be collected from such owners association or condominium unit owners association continues for a period in excess of ten days, interest from the due date at a rate not to exceed the lesser of the maximum permissible interest rate which may be charged by a Mortgagee under a Mortgage at such time or eighteen percent per annum may be imposed in the discretion of the Board of Directors on the principal amount unpaid from the date due until paid.

(e) Abating and Enjoining Violations. The violation of any of the Rules and Regulations adopted by the Board of Directors or the breach of any other provision of the Association Documents shall give the Board of Directors the right, in addition to any other rights set forth in the Association Documents: (1) to enter the portion of the Property (excluding any occupied dwelling) on which, or as to which, such violation or breach exists and summarily to abate and remove, at the expense of the defaulting Owner, any structure, thing or condition that may exist therein contrary to the intent and meaning of the provisions of the Association Documents or the Rules and Regulations, and the Board of Directors shall not thereby be deemed guilty in any manner of trespass; (2) to use self-help to remove or cure any violation of the Association Documents or the Rules and Regulations on the Property (including without limitation the towing of vehicles); or (3) to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such breach; provided, however, that before any construction may be altered or demolished (except in emergencies) judicial proceedings shall be instituted.

(f) Legal Proceedings. Failure to comply with any of the terms of the Association Documents or the Rules and Regulations shall be grounds for relief, including without limitation an action to recover any sums due for money damages, injunctive

relief, foreclosure of the lien for payment of all assessments, any other relief provided for in the Association Documents and any other relief afforded by a court of competent jurisdiction, all of which relief may be sought by the Association, the Board of Directors, the managing agent or, if appropriate, by any aggrieved Owner or member and shall not constitute an election of remedies. Before injunctive relief may be sought by the Board of Directors, the Owners against whom such action would be brought shall be given an opportunity to be heard and to be represented by counsel, at such Owner's expense if such Owner so desires before the Board of Directors or the Covenants Committee in accordance with the provisions of subsection 12.1(h) hereof.

(g) Other Remedies. The Board of Directors may suspend member's voting rights pursuant to Section 3.2(d) of the Bylaws. The Board may also suspend the right of an Owner or other resident, and the right of such Person's household, guests, employees, customers, tenants, agents and invitees, to use the Common Area for a reasonable period not to exceed sixty days for any violation of any provision of any of the Association Documents or the Rules and Regulations or for any period during which any assessment against an Owner's Lot remains unpaid; provided, however, that the Association shall not suspend the right to use the Private Streets and Roadways for both vehicular and pedestrian ingress and egress to and from such Owner's Lot and for parking or to use the Common Area for necessary, ordinary and reasonable pedestrian ingress and egress to and from such Owner's Lot, or to suspend any easement over the Common Area for storm water drainage, electricity, water, sanitary sewer, natural gas, television reception, telephone service or similar utilities and services to the Lots.

(h) Charges and Suspension of Rights. The Board of Directors or the Covenants Committee (or the appropriate subcommittee thereof), as appropriate, has the power to impose charges and suspend the right to vote in the Association (pursuant to Subsection 3.2(d) of the Bylaws and Subsection 12.1(g) hereof) in the case of an Owner or to impose charges in the case of an owners association or condominium unit owners association located within the Property found to be responsible for a violation of the Association Documents or the Rules and Regulations. No such penalty shall be imposed until the Person charged with such a violation has been given notice and an opportunity for a hearing as set forth in (i) below. The Board or Committee may deliberate privately, but shall either announce its decision in the presence of the respondent or give the respondent notice thereof. A decision adverse to the respondent shall require a two-thirds majority vote of the whole membership of the Board or Committee. Charges may not exceed Five Hundred Dollars for each violation, or Fifty Dollars per day for each violation of a continuing nature for non-residential Lots or One Hundred Dollars for each violation, or Ten Dollars per day for each violation of a contin-

uing nature for Owners of Multifamily or Single Family Residential Lots or owners association or condominium unit owners associations located within the Property. No charge may be imposed for failure to pay an assessment except as otherwise provided in the Declaration. Charges are individual assessments and shall be collectible as such and shall also constitute a lien against a Lot in accordance with Section 12.2 hereof to the extent permissible under Virginia law.

(i) Due Process. The Board of Directors or the Covenants Committee, before imposing any charge or before taking any action affecting one or more specific Owners or owners association or condominium unit owners association, shall afford such Person the following basic due process rights.

(1) Notice. The respondent shall be afforded prior written notice of any action (except when an emergency requires immediate action) and, if notice is of default or violation, an opportunity to cure which is reasonable under the circumstances, prior to the imposition of any sanction. The notice shall also state that the respondent is entitled to a hearing. Notice of any hearing shall be mailed by registered or certified mail, return receipt requested, to the Owner at such Owner's address of record with the Association at least fourteen days prior to such hearing, pursuant to Article 11 of the Bylaws.

(2) Hearing. If the respondent requests in writing a hearing before any charge is imposed or action taken, then the imposition of the charge or the taking of the action shall be suspended until the respondent has an opportunity to be heard at a hearing at which the Board of Directors or Covenants Committee, as appropriate, discusses such charge or action. Each Person so appearing shall have the right to be represented by such Person's counsel, at such Person's own expense.

(3) Appeal. Upon receipt of a written request therefor made within ten days after the date of an action by the Covenants Committee, the Board of Directors may afford an Owner or owners association or condominium unit owners association deemed by the Board to have standing as an aggrieved party the right to appeal to the Board, and the Board may modify or reverse any action taken by the Covenants Committee.

(4) Fairness. The Board of Directors and the Covenants Committee shall treat all Persons equitably, based upon decision-making procedures, standards and guidelines which shall be applied to all Persons consistently.

(j) Enforcement Against Owners Association and Condominium Unit Owners Association. If an owners association or condominium unit owners association fails to pay any assessment or charge due from such association within twenty days after due,

then the Association may attach any assessments or charges due from the Owners to such owners association or condominium unit owners association and notify such Owners that all assessments or other charges shall be paid directly to the Association until such Owners are notified otherwise. The Association may then retain such portion of the sums collected to satisfy the amount due from the owners association or condominium unit owners association and shall remit any sums collected in excess of assessments or charges due to such owners association or condominium unit owners association.

#### Section 12.2. Lien for Assessments.

(a) Lien. The total annual assessment of each Owner for Common Expenses, including Limited Common Expenses and Recreational Facilities Expenses, any additional assessment, any individual assessment or any other sum duly levied (including without limitation charges, interest, late charges, etc.), made pursuant to the Association Documents, is hereby declared to be a lien levied against any Lot owned by any Owner. Until fully paid and satisfied, the lien shall apply to and encumber all of the Lots that were owned, as of the date when payment was due, by the Owner from whom payment was due, and shall also apply to and encumber any and all Lots thereafter acquired by that Owner from the time such Owner becomes the Owner thereof. With respect to annual assessments, the lien is effective on the first day of each fiscal year of the Association and, as to additional assessments, individual assessments and other sums duly levied, on the first day of the next payment period which begins more than ten days after the date of notice to the Owner of such additional assessment, individual assessment or levy. The Board of Directors or the managing agent may file or record such other or further notice of any such lien, or such other or further document, as may be required to confirm the establishment and priority of such lien. The lien created by this section shall be prior to all liens and encumbrances hereafter recorded except Mortgages, real estate taxes and other charges levied by governmental authority and made superior by law. The personal obligation of the Owner to pay such assessment shall, in addition, remain such Owner's personal obligation and a suit to recover a money judgment for non-payment of any assessment or installment thereof, levied pursuant hereto, may be maintained without foreclosing or waiving the lien herein created to secure the same.

(b) Acceleration. In any case where an assessment against an Owner is payable in installments, upon a default by such Owner in the timely payment of any two consecutive installments, the maturity of the remaining total of the unpaid installments of such assessment may be accelerated, at the option of the Board of Directors, and the entire balance of the assessment may

be declared due and payable in full by the service of notice to such effect upon the defaulting Owner.

(c) Enforcement. The lien for assessments may be enforced and foreclosed in any manner permitted by the laws of Virginia or by an action in the name of the Board of Directors, or the managing agent, acting on behalf of the Association. During the pendency of any such action to enforce the Association lien, the Owner shall be required to pay a reasonable rental for the Lot for any period prior to sale pursuant to any judgment or order of any court having jurisdiction over such sale. The plaintiff in such proceeding shall have the right to the appointment of a receiver, if available under the laws of Virginia. The Association shall have the power to bid on the Lot at foreclosure or other legal sale and to acquire, hold, lease, mortgage, convey or otherwise deal with such Lot.

(d) Remedies Cumulative. A suit to recover a money judgment for unpaid assessments may be maintained without foreclosing or waiving the lien securing the same, and a foreclosure may be maintained notwithstanding the pendency of any suit to recover a money judgment.

Section 12.3. Subordination and Mortgagee Protection. Notwithstanding any other provision hereof to the contrary including the notice provisions in Article 13, the lien of any assessment levied pursuant to the Association Documents upon any Lot (and any charges, interest on assessments, late charges or the like) shall be subordinate to, and shall in no way affect the rights of the holder of a Mortgage made in good faith for value received; provided, however, that such subordination shall apply only to assessments which have become due and payable prior to a sale or transfer of such Lot pursuant to foreclosure or any proceeding in lieu of foreclosure. Such sale or transfer shall not relieve the mortgagee or the purchaser of the Lot at such sale from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessment, which lien shall have the same effect and be enforced in the same manner as provided herein.

## ARTICLE 13

### MORTGAGEES

Section 13.1. Notice to Board of Directors. Upon request, an Owner who mortgages such Owner's Lot shall notify the Board of Directors of the name and address of the Mortgagee. No holder of a Mortgage shall be entitled to any Mortgagee rights under the Association Documents unless such Mortgagee has notified the Board of its address as required by Section 13.2 below and has requested all rights under the Association Documents.

Section 13.2. Notices to Mortgagees. Any holder of a Mortgage who desires any notice from the Association shall notify the Secretary of the Association to that effect by certified or registered United States Mail. Any such notice shall contain the name and address (including post office address) of such Mortgagee and the name of the person to whom notices from the Association should be directed. The Board of Directors shall notify Mortgagees of the following:

(1) Any default of an Owner of a Lot, upon which the Mortgagee has a Mortgage, in paying assessments for Common Expenses (which remains uncured for sixty days) or any other default, simultaneously with the notice sent to the defaulting Owner;

(2) Any casualty, if required by Section 10.2(c) hereof;

(3) All actions taken by the Association with respect to reconstruction of the Common Area or a Lot upon which the Mortgagee has a Mortgage;

(4) Any lapse in an insurance policy held by the Association on the Common Area;

(5) Any taking in condemnation or by eminent domain of the Common Area and the actions of the Association pursuant to Article 14 hereof;

(6) Any proposal to terminate the Declaration, at least fifty days before any action is taken to terminate in accordance with Article 16 hereof; and

(7) Any proposal to amend materially the Articles of Incorporation, this Declaration or the Bylaws, at least seven days before any action is taken pursuant to Section 15.4 hereof.

Section 13.3. Other Rights of Mortgagees. All Mortgagees or their representatives shall have the additional right to request to receive notice of and to attend and to speak at meetings of the Association. All such Mortgagees shall have the right to examine the Association Documents and books and records of the Association and to require the submission of annual financial reports and other budgetary information. Any Mortgagee who makes a request shall be entitled to an audited financial statement for the preceding fiscal year of the Association prepared at the Association's expense and provided within a reasonable time. After fourteen days notice to the Association, a Mortgagee may, jointly or singly, pay taxes or other charges levied against the Common Area and may pay overdue premiums or hazard insurance policies or secure new hazard insurance coverage upon the lapse of a policy

for such Common Area. The Mortgagee or Mortgagees giving such notice and making such payments shall be reimbursed by the Association.

#### ARTICLE 14

##### CONDEMNATION

Section 14.1. Definition. For the purposes of this Article, "Taking" means an acquisition of all or any part of the Common Area or of any interest therein or right accruing thereto as a result of, in lieu of or in anticipation of the exercise of the right of condemnation or eminent domain, or a change of grade caused by the action of a governmental entity affecting the value of the Common Area or any part thereof so severely as to amount to condemnation.

Section 14.2. Taking of Common Area. If there is a Taking of all or any part of the Common Area, then the Association shall notify the Owners, but the Board of Directors shall act on behalf of the Association in connection therewith and no Owner shall have any right to participate in the proceedings incident thereto. The award made for such Taking shall be payable to the Association, to be disbursed as follows. If the Taking involves a portion of the Common Area on which improvements have been constructed, then the Association shall restore or replace such improvements so taken on another portion of the Common Area, to the extent land is available therefor, in accordance with plans approved by the Board of Directors, unless within sixty days after such Taking the Declarant (during the Declarant Control Period) or the members by a Sixty-seven Percent Vote (after the Declarant Control Period) shall otherwise agree. The provisions of Article 11 hereof regarding the disbursement of funds following damage or destruction shall apply.

#### ARTICLE 15

##### AMENDMENT; EXTRAORDINARY ACTIONS

Section 15.1. Amendment by the Declarant. For so long as the Declarant or its designees are engaged in development or sales activities, or activities related thereto, anywhere on the Property or the Additional Real Estate, Declarant may unilaterally amend any provision of this Declaration to: (1) make non-material changes; (2) satisfy the requirements of any government, governmental agency or Mortgagee; (3) relocate boundary lines between the Common Area and any Lots or among any Lots; provided,

however, that such relocation does not materially and adversely affect any Owner other than the Declarant and that such relocation is reflected in an approved resubdivision of all or any part of the Property; (4) depict the assignment of Limited Common Area as required by Section 3.9(b) hereof; (5) amend Exhibit A and Exhibit B hereto (pursuant to Section 4.1 hereof); and (6) add all or any portion of the Additional Real Estate in accordance with Section 4.1 hereof.

Section 15.2. Amendment by the Association.

(a) Subject to Section 15.4 hereof, the Association may amend this Declaration by at least a Sixty-seven Percent Vote of the members or with the written approval of members entitled to cast at least sixty-seven percent of the total number of votes. This subsection does not apply to the amendment of Supplementary Declarations. Amendment of a Supplementary Declaration is governed by the provisions for amendment contained therein, and the requirements of Section 15.4 hereof. A Supplementary Declaration may not be amended to include provisions in conflict with the provisions of this Declaration.

(b) An amendment shall not be effective until certified by the President as to compliance with the procedures set forth herein, executed and acknowledged by the President and Secretary of the Association, and recorded among the Land Records. Any procedural challenge to an amendment must be made within one year after recordation.

Section 15.3. Prerequisites. Written notice of any proposed amendment by the Association shall be sent to every Owner at least fifteen days before any action is taken. No amendment shall be made to the Declaration during the Declarant Control Period without the prior written consent of the Declarant. No amendment shall increase financial obligations of an Owner in a discriminatory manner or further restrict development on existing Lots. No amendment to the Declaration shall diminish or impair the rights of the Declarant under the Declaration without the prior written consent of the Declarant. No amendment to the Declaration shall diminish or impair the express rights of the Mortgagees under the Declaration without the prior written approval of at least Fifty-one Percent of the Mortgagees. No amendment may modify this Article or the rights of any Person hereunder. Except as specifically provided in the Declaration, no provision of the Declaration shall be construed to grant to any Owner or to any other Person any priority over any rights of Mortgagees.

Section 15.4. Extraordinary Actions of the Association. The provisions of this section shall not be construed to reduce the percentage vote that must be obtained from Mortgagees or Owners where a larger percentage vote is required by the Act or

other provisions of the Association Documents. This section shall not be construed to affect the rights of the Declarant granted by the Declaration to make certain unilateral amendments to the Declaration.

(a) Two-Thirds of Mortgagees. Unless at least sixty-seven percent of the Mortgagees and members entitled to cast at least sixty-seven percent of the total number of votes, including a majority of the votes entitled to be cast by Owners other than the Declarant, have given their prior written approval, the Association shall not, by act or omission: (i) seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area Owned in fee simple by the Association (except for the granting of easements for utilities, the adjustment of boundary lines pursuant to Section 2.6 hereof or for other purposes consistent with the intended use of such Common Area); (ii) change the method of determining the obligations, assessments or other charges which may be levied against an Owner; (iii) change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or exterior appearance or maintenance of Lots, the maintenance of any fences, walkways or driveways in the Common Area, or the Upkeep of lawns and plantings on the Property; (iv) fail to maintain fire and extended coverage on insurable Common Area on a current replacement cost basis in an amount at least 100 percent of the insurable value (based on current replacement cost), in accordance with Section 10.2 hereof; (v) use hazard insurance proceeds for losses to the Common Area for any purpose other than repair, replacement or restoration of such Common Area substantially in accordance with the Association Documents and the original plans and specifications; or (vi) terminate the Declaration or dissolve the Association for reasons other than substantial destruction or condemnation of the Property.

(b) Majority of Mortgagees. Unless at least fifty-one percent of the Mortgagees and members entitled to cast at least sixty-seven percent of the total number of votes, including a majority of the votes entitled to be cast by Owners other than the Declarant, have given their prior written approval, the Association shall not (i) terminate the Declaration after any substantial destruction or condemnation of the Property, (ii) fail to employ professional management if professional management has been previously required by a Mortgagee, or (iii) add or amend any material provisions of the Association Documents which establish, provide for, govern or regulate any of the following: (1) voting; (2) assessments, assessment liens or subordination of such liens; (3) reserves for maintenance, repair and replacement of the Common Area; (4) insurance or fidelity bonds; (5) reallocation of interest in or rights to use of the Common Area or Limited Common Area (if any); (6) maintenance responsibility; (7) redefinition of the boundaries Lots; (8) leasing of Lots; (9) imposition of any right of first refusal or similar restriction

on the right of an Owner to sell, transfer, or otherwise convey such Owner's Lot; (10) expansion or contraction of the Property or the addition, annexation or withdrawal of real estate to or from the Property; (11) convertibility of Lots into Common Area or vice versa; (12) restoration or repair of the Property after damage or partial condemnation in a manner other than that specified in the Association Documents; or (13) any provisions which are for the express benefit of Mortgagees.

(c) Presumptive Approval. A Mortgagee who is notified of additions or amendments by United States mail, return receipt requested, and who does not deliver or post to the requesting party a negative response within thirty days shall be deemed to have approved such request. Approval by a Mortgagee also includes the issuance of written approval or any written waiver or a formal letter stating "no objection."

(d) Non-Material Amendments. Any addition or amendment to the Association Documents shall not be considered material if it is for the purpose of correcting technical errors or for clarification only.

(e) Veterans Administration Consent. When a Veterans Administration guarantee is in effect on a mortgage, without the consent of the Veterans Administration, (1) the Declarant may not amend the description of Additional Real Estate or participate in an Association vote to amend the description of Additional Real Estate; (2) the Association may not submit any real estate other than Additional Real Estate, and (3) the Association may not take any action described in Subsections 15.4(a) and 15.4(b) during the Declarant Control Period.

## ARTICLE 16

### TERMINATION

Section 16.1. Termination by the Association. Subject to Section 15.4 hereof, the Association may terminate this Declaration only by a vote of the members entitled to cast at least eighty percent of the total number of votes as certified by the President or with the written approval of members entitled to cast at least eighty percent of the total number of votes. In either case the termination shall not be effective until certified by the President as to compliance with the procedures set forth herein, executed and acknowledged by the President and Secretary of the Association and recorded among the Land Records.

Section 16.2. Prerequisites. Written notice of the proposed termination shall be sent to every Owner and Mortgagee at least fifty days before any action is taken. The Declaration may

not be terminated during the Declarant Control Period without the prior written consent of the Declarant. Such termination shall not affect any permanent easements or other permanent rights or interests relating to the Common Area created by or pursuant to the Association Documents. To the extent necessary, the termination agreement shall provide for the transfer or assignment of the easements, rights or interests granted to the Association herein to a successor entity which is assuming the Association's maintenance and regulatory responsibilities. Any lien which has arisen pursuant to the provisions of the Declaration shall remain in full force and effect despite termination of the Declaration until the amounts secured thereby are paid in full.

## ARTICLE 17

### PARTY WALLS AND FENCES

Section 17.1. Laws of Virginia to Apply; Easement. All matters arising in connection with any wall which would constitute a party wall at common law shall, to the extent consistent with the provisions of this Article, be subject to the common law of Virginia as modified by statute from time to time and as modified by this Article. If the centerline of a party wall now or hereafter fails to coincide with the boundary between the Lots it serves, an easement for any resulting encroachment is granted in accordance with Section 3.5 hereof. If a party wall serves three or more Lots, each segment of it serving two Lots shall be treated for the purposes of this Article as a separate party wall.

Section 17.2. Upkeep. The Owners of Lots served by a party wall shall provide for the Upkeep of party walls and shall share equally the cost of its Upkeep except as otherwise provided in this Article. No Owner shall impair the structural integrity of any party wall nor diminish the fire protection afforded by any party wall.

Section 17.3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, the following procedures shall be followed in order to restore such party wall.

(1) Either Owner served by the party wall shall notify the other Owner served by the party wall of any proposal to repair the wall. If within ten days after such notice (or in an emergency, within twenty-four hours after such notice or a bona fide attempt to give such notice) the other Owner has not responded to the notice, then the Owner giving notice may proceed with the repairs. Such repairs must be substantially similar to the original construction and installation and of first class quality, but may be made with contemporary materials.

(2) If the other Owner served by the party wall responds to the notice, the Owners shall act together to repair the party wall. If the Owners are unable to agree upon the action to be taken, they shall submit the issue to arbitration in accordance with Section 17.5 hereof.

(3) If any Owner restores a party wall in accordance with this section, then the other Owner shall contribute one-half of the cost thereof. An Owner may, however, demand a larger contribution from the other Owner or refuse to contribute one-half of such costs, under any rule of law or equity regarding liability for negligent or willful acts or omissions.

(4) To the extent that any failure to repair a party wall affects the use and enjoyment of the Common Area, the Association may participate in the repair of the party wall and, in an emergency situation threatening life or property, may make such repair without notice to the Owners. The Association may assess the cost of such repair against the Owners responsible for the damage or benefiting from the repair pursuant to Section 12.1(a) hereof.

Section 17.4. Liability. Any Owner who by a negligent or willful act or omission causes or permits a party wall to be damaged shall pay the cost of restoring such party wall to its condition prior to such damage.

Section 17.5. Arbitration. In the event of any dispute between Owners concerning a party wall, the Owners on each side shall each select one arbitrator, and the arbitrators thus selected shall select one additional arbitrator. Arbitrators shall be qualified by experience and education to serve as such. Once selected, the arbitrators shall promptly agree upon and notify the parties of the discovery procedures and rules of evidence to be used in the arbitration. The arbitrators shall be requested to reach a decision within twenty days after their appointment. The decision of a majority of the arbitrators shall bind the Owners and their successors in interest. The cost of arbitration shall be paid by the losing party unless the arbitrators determine that the cost should be otherwise allocated between the parties, in which case that allocation shall be binding.

Section 17.6. Fences and Other Barriers. The provisions of this Article pertaining to party walls shall also govern any fence, other barrier or shared improvement originally installed by the Declarant or Builder (except for fences or barriers installed in connection with construction activities) and to any replacement thereof authorized by the Board of Directors or the Covenants Committee. Otherwise, the Upkeep of any fence, other barrier or improvement shall be the responsibility of the Owner installing such fence, barrier or improvement unless different arrangements are agreed to by the adjoining Owners.

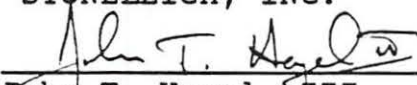
Section 17.7. Right to Contribution Runs With Land. Rights and duties of contribution set forth in this Article and any such rights and duties arising under the laws of Virginia shall run with the land and bind successors in interest. This Article shall not prejudice any right of a successor in interest to recover any amount from a predecessor in title for which such predecessor was liable. Any rights of contribution set forth in this Article shall constitute a lien in favor of any Owner entitled to contribution against any Owner obligated to pay such contribution. Until fully paid and satisfied, the lien shall apply to and encumber all of the Lots that were owned, as of the date when payment was due, by the Owner from whom payment was due, and shall also apply to and encumber any and all Lots thereafter acquired by that Owner from the time such Owner becomes the Owner thereof. The lien created by this section shall be prior to all liens and encumbrances, except Mortgages, real estate taxes and other charges levied by governmental authority made superior by law and the Association's lien established pursuant to Section 12.2 hereof.

IN WITNESS WHEREOF, the undersigned has caused this Declaration to be executed pursuant to due and proper authority as of the date first set forth above.

LEE'S HILL PARTNERSHIP  
a Virginia general partnership


By: BLANTYRE ASSOCIATES, L.P.  
General Partner

By: STONELEIGH, INC.

By:   
John T. Hazel, III  
President

By: LEEWOOD, L.P.  
General Partner

By: BEECHLEE DEVELOPMENT  
CORPORATION

By:   
Thomas E. Goodwin  
President

STATE OF Virginia  
COUNTY OF Spotsylvania, to-wit:

The foregoing instrument was duly acknowledged before me this 13th day of December, 1989, by John T. Hazel, III, President of Stoneleigh, Inc., general partner of Blantyre Associates, L.P., general partner of Lee's Hill Partnership on behalf of the partnership.

My Commission expires: April 29, 1990

*Karen A. Boer*  
Notary Public

STATE OF Virginia  
COUNTY OF Spotsylvania, to-wit:

The foregoing instrument was duly acknowledged before me this 13th day of December, 1989, by Thomas E. Goodwin, President of Beechlee Development Corporation, general partner of Leewood, L.P., general partner of Lee's Hill Partnership, on behalf of the partnership.

My Commission expires: April 29, 1990

*Karen A. Boer*  
Notary Public

CONSENT OF TRUSTEES  
TO DECLARATION FOR LEE'S HILL

The undersigned as beneficiary ("Mortgagee") under a certain Deed of Trust ("Mortgage"), dated August 2, 1989, and recorded on August 11, 1989, in Deed Book 868 at Page 748 among the land records of Spotsylvania County, Virginia ("Land Records") hereby consents to: 1) the execution and recordation of the foregoing Declaration For Lee's Hill ("Declaration"); 2) the submission of the real estate described in Exhibits A and B and shown on Exhibit C hereto to the Declaration; and 3) the subordination of the Mortgage to the terms of the Declaration, and for such purposes hereby directs the trustees under the Mortgage to join in the execution and delivery of the Declaration.

IN WITNESS WHEREOF, the undersigned FIRST VIRGINIA BANK has caused this Consent of Trustees to be executed by Donald L. Lawson, its Vice President all as of the 12th day of December, 1989.

MORTGAGEE:

FIRST VIRGINIA BANK

By: Donald L. Lawson

The undersigned Trustees, at the request of the Mortgagee as evidenced above, join in, without liability or obligation for the sole purpose of subordinating the lien of the Mortgage to the terms of the Declaration.

Edward V. Allison [SEAL]  
Edward V. Allison, Trustee

Robert D. Holland Jr. [SEAL]  
Robert D. Holland, Trustee  
Jr.

STATE OF VIRGINIA )  
 ) ss:  
 CITY/COUNTY OF FAIRFAX )

I, the undersigned, a Notary Public in and for the jurisdiction aforesaid, do hereby certify that Donald L. Lawson, Vice President of FIRST VIRGINIA BANK, whose name is signed to the foregoing Consent of Trustees, has acknowledged the same before me in the aforesaid jurisdiction as an authorized officer of the corporation.

GIVEN under my hand and seal on December 11, 1989

Robin L. Cashill [SEAL]  
 Notary Public

My commission expires: September 21, 1990

STATE OF VIRGINIA )  
 ) ss:  
 CITY/COUNTY OF COUNTY )

The foregoing Consent of Trustees was duly acknowledged before me this 11th day of December, 1989, by Edward V. Allison, Trustee.

GIVEN under my hand and seal on December 11, 1989.

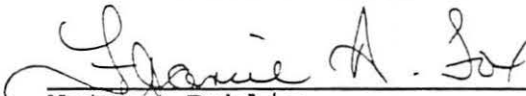
Robin L. Cashill [SEAL]  
 Notary Public

My commission expires: September 21, 1990

State OF Virginia )  
 ) ss:  
 CITY/COUNTY OF Fairfax )

The foregoing Consent of Trustees was duly acknowledged before me this 11th day of December, 1989, by Robert D. Holland, Jr. Trustee.

GIVEN under my hand and seal on December 11, 1989.

  
 Notary Public [SEAL]

My commission expires: October 28, 1990

EXHIBIT A

[Description of the Submitted  
Real Estate]

Lots one (1) through fifty (50), inclusive, and Parcels A, B and C, Section One-A (1-A), LEE'S HILL, as the same appear duly dedicated, platted, subdivided and recorded in Deed Book 887 at page 115, among the Land Records of Spotsylvania County, Virginia.

TRACT I

All that certain piece, parcel or tract of land situate, lying and being in Lee Hill Magisterial District, Spotsylvania County, Virginia, on the East side of U. S. Route 1, near U. S. Route I-95, Massaponax Interchange and containing fifty-six (56) acres, more or less, and being more particularly described as follows:

Being the residue of a certain parcel of land containing 72 acres, more or less, as shown on a plat of H. C. Baker, said plat dated April 3, 1947 and recorded in Deed Book 140 at page 217; said 72 acre parcel having been acquired by Thomas E. W. Baker and Bertha Mae Baker by deed dated September 23, 1958, said deed recorded in the Clerk's Office of the Circuit Court of Spotsylvania County, Virginia, in Deed Book 186, Page 116.

LESS AND EXCEPT: (1) 1 acre more or less vesting in Associated Stations, Incorporated by deed recorded in Deed Book 198 at Page 304 among the Land Records of Spotsylvania County, Virginia. (2) 10.9131 acres vesting in Innkeepers of Fredericksburg, Inc. by Deed Book 537 at Page 338 among the aforesaid Land Records. (3) Four acres more or less vesting in the Commonwealth of Virginia by Deed recorded in Deed Book 196 at Page 445 among the aforesaid Land Records. (4) A parcel of land for sewer pumps, station to the Spotsylvania County Board of Supervisors by deed recorded in Deed Book 222 at Page 350 among the aforesaid Land Records.

LESS AND EXCEPT: All that certain piece, parcel or tract of land situate, lying and being in Lee Hill Magisterial District, Spotsylvania County, Virginia, on the east side of U.S. Route 1, near U.S. Route I-95, Massaponax Interchange and containing 0.7307 acres, more or less and being more particularly described on a sketch of survey prepared by Sullivan, Donahoe and Ingalls, dated July 17, 1987 which is attached to Deed recorded in Deed Book 748, Page 204.

## TRACT 2

Page Two

All that certain tract of land in Lee Hill District, Spotsylvania County, Virginia, containing 55.1798 acres, more or less, as shown on the plat of survey made by John C. Russell, S.C., dated January 30, 1973, updated February 1, 1974, a copy of which is recorded in the Clerk's Office of the Circuit Court of Spotsylvania County, Virginia, in Deed Book 336 at Page 70.

LESS AND EXCEPT: 3.8496 acres conveyed unto Hugh C. Cosner and Renna H. Cosner, his wife, by Mine Road Associates by deed dated September 12, 1985, recorded in the aforesaid Clerk's Office in Deed Book 669, Page 704, leaving a balance of 51.3302 acres, more or less, conveyed hereby.

TAX MAP NO. R-36-A-4

## TRACT 3

All those two certain parcels of real estate, situate, lying and being in Lee Hill Magisterial District, Spotsylvania County, Virginia, containing 356.2 acres more or less, this sale being in gross and not by the acre and being known as "Hunters Lodge" and more particularly described as follows:

PARCEL A: All that certain piece, parcel or tract of land containing 351.7 acres more or less and being that portion of the "Hunters Lodge" tract situated to the North of State Route 635.

PARCEL B: All that certain piece, parcel or tract of land containing 4.5 acres more or less and being that portion of "Hunter's Lodge" located on the South side of State Route 635.

That both Parcels A and B are more particularly shown on a plat of survey prepared by H. C. Baker said plat dated May 21 to 24, 1956 and which plat is recorded in the Clerk's Office of the Circuit Court of Spotsylvania County, Virginia in Deed Book 177 at Page 312.

TAX MAP NO. R 36-A-34

**TRACT 4**

Page Three

All that certain piece, parcel or tract of land situate, lying and being in Lee Hill Magisterial District, Spotsylvania County, Virginia, containing 63.5965 acres, more or less, and all rights, privileges, easements and appurtenances thereto.

The land herein conveyed is more particularly described on a plat of survey of Sullivan, Donahoe & Associates, and described on said plat as Parcel "G". Said plat which is recorded in the Clerk's Office of The Circuit Court of Spotsylvania,, Virginia in Plat Book 14 at Page 21 is incorporated herein by reference.

**TAX MAP NO. R 36-A-96**

**TRACT 5**

All that certain lot or parcel of land together with all rights and privileges thereto appurtenant, containing 3.8496 acres, more or less, situate, lying and being in Lee Hill Magisterial District Spotsylvania County, Virginia, as shown on plat of survey of Sullivan, Donahoe & Ingalls dated September 5, 1985 and attached to Deed recorded in Deed Book 775 at Page 65.

**TAX MAP NO. R 36-A-2**

**TRACT 6**

All that certain lot or parcel of land together with all rights and privileges thereto appurtenant, containing 2.4503 acres, more or less, situate lying and being in Lee Hill Magisterial District, Spotsylvania County, Virginia, as shown on plat of survey of Sullivan, Donahoe & Ingalls, dated January 10, 1983, a copy of which is attached to Deed recorded in Deed Book 775 at Page 4 among the aforesaid Land Records.

**TAX MAP NO. R 36-A-3B**

**TRACT 7**

All that certain piece, parcel or tract of land situate, lying and being in Lee Hill Magisterial District, Spotsylvania County, Virginia, containing 376.9308 acres, more or less, being more particularly shown on plat of survey of Sullivan, Donahoe & Ingall dated September 29, 1987 and recorded with the Deed recorded in Deed Book 827 at Page 212 in recorded Plat File 1, No. 766.

**LESS AND EXCEPT:** 1.6566 acres heretofore reconveyed by The Massaponax Valley Corp. to John J. Hall and Thomas R. Guinan, Trustees by deed recorded in Deed Book 780, Page 369.

## TRACT 8

All that certain parcel of land, with all improvements thereon and privileges thereto attached, situate, lying and being on Mine Road in Lee Hill Magisterial District, formerly Courtland District, Spotsylvania County, Virginia, containing 2.13 acres, more or less, as shown on that plat of survey dated July, 1959, prepared by H. C. Baker, C.S., of record in the Clerk's Office of the Circuit Court of Spotsylvania County, Virginia, as attachment to Deed recorded in Deed Book 192 at Page 224.

TAX MAP NO. R 36-A-156

## TRACT 9

All that certain lot or parcel of land, together with such improvements and fixtures as are found thereon, located in Spotsylvania County, Virginia, and being more particularly described as follows:

This certain tract of land is located in Spotsylvania County, Virginia lying North of Slabtown Road (State Route #635) and is a portion of the old Eastern View Farm. This land is more particularly described as follows:

BEGINNING at an old iron rod in the Charles Hillard and Joseph J. Jett property lines; thence, leaving the Hillard line and with Jett north property line N 78-33-00W...1582.45 feet (crossing the properties of the Crossroads Baptist Church, State Route #635, and the Farmer's and Merchants State Bank, respectively) to iron pipe in the M. E. Hicks east property line; thence, with the M. E. Hicks property line N 00-11-57E...1465.37 feet to an old iron pipe in the Gilbert Hahn, Jr. South property line; thence leaving the M. E. Hicks line and with the Gilbert Hahn, Jr. line S 78-11-46E...1438.87 feet to an old axel iron in the Evelyn Wormley Estate west property line; thence, leaving the Gilbert Hahn, Jr. line and with the Evelyn Wormley Estate west property line S 05-17-12E...1491.50 feet to the point of beginning. This tract of land contains 49.6511 acres in area, more or less.

TAX MAP NO. R 36-A-35

TRACT 10

PARCEL 1: All that certain lot or piece of real estate, lying and being situate in Lee Hill Magisterial District (formerly Courtland District) of Spotsylvania County, Virginia, on the north side of State Route 635, containing approximately 6,525 square feet and more particularly described as follows:

BEGINNING at an iron pin set in the corner common with the certain 0.50 acre lot conveyed to James M. Smith et ux by deed from Cassie Smith, widow, et als dated January 29, 1970 and recorded in the aforesaid Clerk's Office in Deed Book 254, Page 415; thence N. 81 degrees 48 minutes W. along State Route 635 a distance of fifty (50) feet to a point; thence N. 03 degrees 33 minutes E. a distance of 130.50 feet to a point in the boundary line common with the lands of Marshall & Gardner (See Deed Book 712, Page 62); thence along said common boundary line S. 81 degrees 48 minutes E. a distance of fifty (50) feet to a cedar stake marking the northwest corner of the aforesaid James M. Smith one-half acre lot; thence along the common boundary line with the aforesaid James M. Smith one-half acre lot S. 03 degrees 33 minutes E. a distance of 130.50 feet to the point of beginning and containing 6,525 square feet, more or less.

PARCEL II: All that certain tract or parcel of land lying and being in the Lee Hill District, Spotsylvania County, Virginia, containing 5.9345 acres, more or less, being more particularly described on the plat of division of James Anderson Estate dated October 26, 1979, made by Everett D. Grissom, C.L.S., the said parcel being labeled "Cassie Smith 5.9345 acres", a copy of which plat is recorded in the aforesaid Clerk's Office in Plat Book 14, Page 31A.

TAX MAP NO. R-36-14-4

PARCEL III: All that certain tract or parcel of land, lying and being in the Lee Hill District, Spotsylvania County, Virginia, containing 8.0000 acres, more or less, and being more particularly described on the plat of James Anderson Estate dated October 26, 1979, made by Everett D. Grissom, C.L.S., the said parcel being labeled "Harold Gardner 8.0000 acres," a copy of which is recorded in the Clerk's Office of the Circuit Court of Spotsylvania County, Virginia, in Plat Book 14, Page 31-A.

TAX MAP NO. R 36-14-5

## TRACT 11

All that certain tract or parcel of land, lying, situate and being in Lee Hill Magisterial District, Spotsylvania County, Virginia, containing, 155.25 acres of land, more or less, as shown on plat of survey by H.C. Baker, C.L.S. recorded along with deed dated October 29, 1923, from Orpha O. Alsop, widower, to Massaponax Sand and Gravel Corporation, duly of record in the Clerk's Office of the Circuit Court of Spotsylvania County, Virginia, in Deed Book 96, Page 369, and being bounded by lands formerly owned by L. R. Colbert, lands formerly owned by the Warden Estate, lands of the R. F. & P. Railroad, and the remainder of lands formerly owned by Orpha O. Alsop.

TAX MAP NO. 36-A-97

## TRACT 12

All that certain tract or parcel of land, located in the County of Spotsylvania, Virginia, Lee Hill Magisterial District, containing approximately 21.1058 acres of land on the southerly side of Virginia State Route 636, more particularly described on that certain survey plat prepared by Elliott & Associates, Engineers and Planners, entitled "Plat Showing a Portion of 95.290 Acres Located in Lee Hill Magisterial District Spotsylvania County, Virginia," recorded in the Office of the Clerk of the Circuit Court of Spotsylvania County, in Deed Book 413, Page 237 (which plat depicts a parcel of 23 acres), less, however, a parcel containing 1.8942 acres more particularly described on that certain survey plat prepared by Sullivan, Donahoe and Ingalls, dated September 17, 1982, entitled "Plat Survey of 1.8942 Acres of Land Located in Lee Hill District, Spotsylvania County, Virginia," which plat is recorded in the aforesaid Clerk's Office in Deed Book 593, Page 355.

TAX MAP NO. R36-A-111

## TRACT 13

All that certain lot or parcel of land situate, lying and being in Lee Hill Magisterial District, Spotsylvania, Virginia, containing 11.03 acres, more or less, and designated as parcel "B", as shown on plat of R. Wayne Farmer, C.L.S., dated May 14, 1987, and recorded in Deed Book 748 at page 398, in Plat File 1 at page 206, among the land records of Spotsylvania County, Virginia.

TAX MAP NO. R36-A-89

**TRACT 14**

**Parcel A:**

All that certain tract or parcel of land, lying and being situate in Lee Hill Magisterial District (formerly Courtland Magisterial District), Spotsylvania County, Virginia, on the north side of Slabtown Road (heretofore erroneously referred to as on the south side of Slabtown Road) containing one-half acre, more or less, and being more particularly described on plat of survey by Thomas L. Bays, C.L.S., dated January, 1970, a copy of which is recorded in the Clerk's Office of the Circuit Court of Spotsylvania County, Virginia with Deed recorded in Deed Book 254, Page 415.

**Parcel B:**

All that certain tract or parcel of land, lying and being situate in Lee Hill Magisterial District (formerly Courtland District), Spotsylvania County, Virginia, containing 1.5 more or less, being the rest and residue of a tract containing 2 acres more or less, as shown on Plat attached to Deed dated January 24, 1945 and recorded in Deed Book 134 at Page 255 in the Clerk's Office of the Circuit Court of Spotsylvania County, Virginia.

**LESS AND EXCEPT** from the said 2 acre parcel the following:

(1) .50 acres to James M. Smith and Jean L. Smith by deed recorded in the aforesaid Clerk's Office in Deed Book 254, Page 415; (2) .0 acres to the Commonwealth of Virginia by deed recorded in the aforesaid Clerk's Office in Deed Book 242, Page 217; and (3) 6,525 square feet, more or less, conveyed unto Harold L. Gardner, homme sole, by deed recorded in the aforesaid Clerk's Office in Deed Book 789, Page 186.

**TRACT 15**

All that certain lot, piece or parcel of land, situate, lying and being in Lee Hill Magisterial District, Spotsylvania County, Virginia, and described as containing 4.514 acres, more or less, according to Plat and Survey thereof, made by Everett D. Grissom, C.L.S., dated September 14, 1988 as attached to that certain Deed dated November 1, 1988 and recorded in Deed Book 819 at page 646.

**TAX MAP NO. R36-A-25**

## TRACT 16

All that certain piece, parcel or tract of land situate, lying and being in Lee Hill Magisterial District, Spotsylvania county, Virginia, on the north side of State Route #635, and containing 20.4059 acres of land, more or less, being more particularly described as follows:

Beginning at a point on the northerly line of Route #635 (30' wide), said point being a corner to the lands of Rodney M. Jones (Deed Book 814 at page 369) and the southwesterly corner of the parcel herein described; thence with the easterly line of said lands of Jones N 13° 51' 16" E 783.90 feet to a corner of the lands of Linwood W. Waddy (Deed Book 242 at page 329); thence departing the easterly line of said lands of Jones and with the southerly line of said lands of Waddy the following six (6) courses and distances:

- (1) N 84° 09' 19" E 138.43 feet, thence
- (2) N 88° 29' 19" E 252.78 feet, thence
- (3) N 74° 09' 19" E 405.90 feet, thence
- (4) N 48° 37' 19" E 135.96 feet, thence
- (5) N 37° 12' 19" E 126.72 feet, and thence
- (6) N 54° 41' 19" E 250.80 feet to a 14" birch tree northwest of a branch and corner to the lands of Layton R. Fairchild, Sr. (Deed Book 685 at page 66);

thence with the westerly line of said lands of Fairchild S 01° 04' 47" E 997.26 feet to a point on the aforementioned northerly line of Route #635 (30' wide); thence with the northerly line of Route #635 205.65 feet along the arc of a curve to the left having a radius of 1288.24 feet, a central angle of 09° 08' 47", and a chord bearing and chord of N 84° 43' 44" W and 205.43 feet, respectively, to a point of tangency; thence N 89° 18' 08" W 106.04 feet to a point of curvature; thence 296.08 feet along the arc of curve to the left having a radius of 1160.92 feet, a central angle of 14° 36' 45", and a chord bearing and chord of S 83° 23' 29" W and 295.28 feet, respectively, to a point of tangency; thence S 76° 05' 07" W 274.77 feet to a point of curvature; thence 76.04 feet along the arc of a curve to the right having a radius of 1894.86 feet, a central angle of 02° 17' 57", and a chord bearing and chord of S 77° 14' 05" W and 76.04 feet, respectively, to a point of reverse curvature; thence 143.06 feet along the arc of a curve to the left having a radius of 1160.92 feet, a central angle of 07° 03' 38", and a chord bearing and chord of S 74° 51' 15" W and 142.97 feet, respectively, to a point of tangency; thence S 71° 19' 26" W 303.92 feet to the point of beginning.

**TRACT 17**

All that certain tract or parcel of land, situate, lying and being in Lee Hill Magisterial District, Spotsylvania County, Virginia, located on the north side of State Route 635 containing an aggregate of 76.0255 acres, more or less and more particularly shown and described on plat by Larry N. Scartz, CLS, dated January 12, 1989, a copy which plat is attached to the Deed recorded in Deed Book 838 at Page 762 and appears in recorded Plat File 2, No. 62 and more particularly described as follows:

**PARCEL I:** All those certain lots designated as Lots 8, 9, 10, 11, 12, 13, and 14 containing an aggregate of 32.7304 acres as shown on the aforesaid plat; and

**PARCEL II:** All that certain tract or parcel of land containing 43.2951 acres as shown on the aforesaid plat.

SIMS TRACT

All that certain lot or parcel of land, with all appurtenances thereto, situate, lying and being in Lee Hill Magisterial District, Spotsylvania, Virginia, containing 12.4396 acres and designated as Parcel "A", as shown on plat of Dewberry & Davis, dated August 17, 1989, a copy of which is attached to a certain Deed, dated August 21, 1989, and recorded in Deed Book 871 at page 762 among the land records of the Circuit Court of Spotsylvania County, Virginia.

WADDY TRACT

All that certain tract and parcel of land situated in the County of Spotsylvania, Virginia, including all appurtenances thereto, and bounded as follows:

BEGINNING at large Red Oak on north side of a branch comes to Alsop thence with same N. 76 15.51 ch. to a cedar post corner to Alsop thence with Alsop and Dandridge S. 17 degrees 18' W. 9.96 ch. to hickory marked in Dandridge line corner to Coleman thence with Coleman line 1st, N. 89 E. 1.85 ch. 2nd 86 degrees 40' 3.83 ch. 3rd N. 79 E. 6.15 ch. 4th N. 53 degrees 28' E. 2.06 ch. 5th N. 42 degrees 3' E. 1.92 ch. 6th N. 59 degrees 32' E. 3.80 ch. to the beginning containing ten acres, more or less.

FAIRCHILD TRACT

All of those two certain parcels or tracts of land, with all improvements thereon and all rights and privileges thereto appurtenant, situate, lying and being in Lee Hill Magisterial District, Spotsylvania County, Virginia, and containing in the aggregate 25.873 acres, more or less, and more particularly described as follows:

Parcel I: 11.28708 acres, more or less, fronting on State Route 654, and originally containing 13.393 acres as shown on plat recorded in the Spotsylvania County Circuit Court Clerk's Office in Deed Book 90, Page 314; Less and Except from that 13.393 acres, that certain lot or parcel containing 0.92402 acre as shown on plat of survey by John B. Vance, Jr., C.L.S., dated May 9, 1975, and recorded in the aforesaid Clerk's Office in Deed Book 441, Page 103; and further Less and Except from the said 13.393 acres that certain lot or parcel containing 1.181 acres as shown on plat of survey by Everett D. Grissom, C.L.S., dated April 26, 1977, and recorded in the aforesaid Clerk's Office in Deed Book 441, Page 102.

Parcel II: 15.229 acres, more or less, and being more particularly described as part of the East View Tract as set forth on the plats of two surveys by E.H. Randall, made January 12, 1918 and January 6, 1913; and being the same real estate that was conveyed unto Lewis Coleman from Leonard F. Pierson, Special Commissioner, by deed dated August 27, 1918, and recorded in the aforesaid Clerk's Office in Deed Book 90, Page 483.

Being the same land described as Tract 2 as conveyed to Layton R. Fairchild, Sr., Grantor herein, by deed from George C. Rawlings, Jr., et als, Special Commissioners, dated April 25, 1984, and recorded in the aforesaid Clerk's Office in



This is a technical map of Spotsylvania County, Virginia. The map displays a complex network of land parcels, many of which are labeled with numbers (e.g., 148, 97, 72A, 73, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100). Several areas are highlighted with hatching and labeled as 'INSERT 360', 'INSERT 361', 'INSERT 362', and 'INSERT 363'. The map also shows major roads, including what appears to be a highway running horizontally across the middle. Water features include 'Massaponi Creek' and several smaller streams. Other labels include 'LHDP LCP', 'DIST', 'COP', 'A', 'B', 'C', 'D', 'E', 'F', 'G', 'H', 'I', 'J', 'K', 'L', 'M', 'N', 'O', 'P', 'Q', 'R', 'S', 'T', 'U', 'V', 'W', 'X', 'Y', 'Z'. A large area is outlined in thick black, possibly indicating a boundary or a specific zone of interest.

PLAINTIFFS' EXHIBIT NO. 3



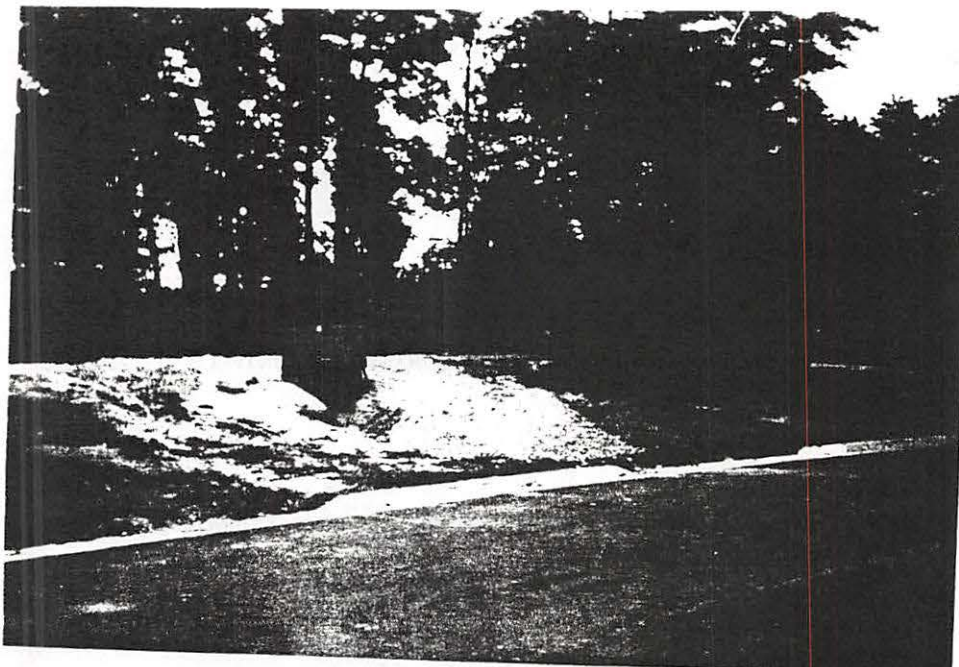
PLAINTIFFS' EXHIBIT NO. 4



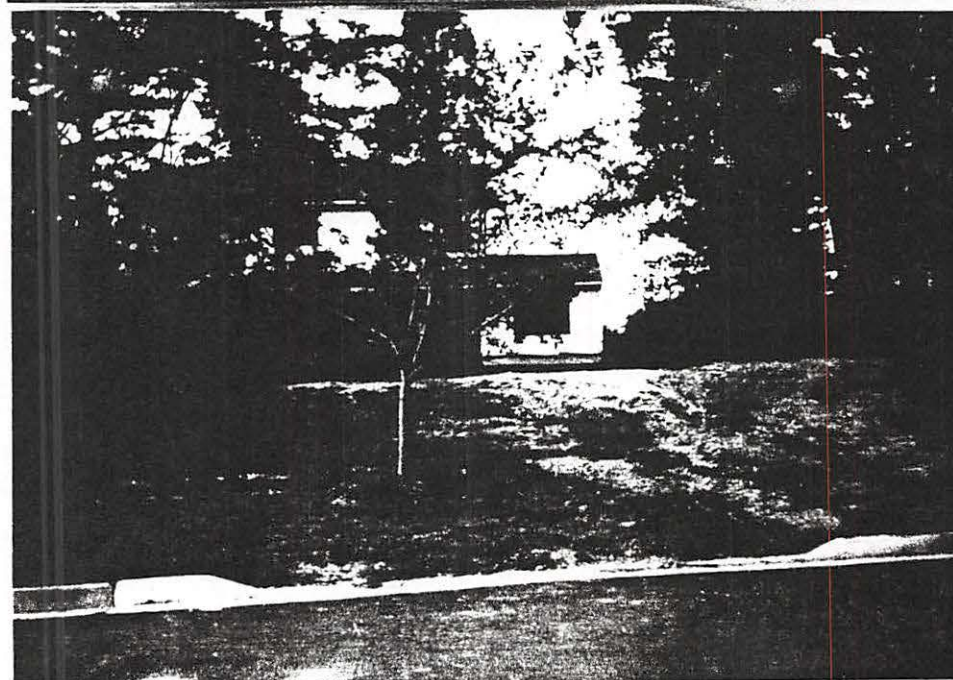
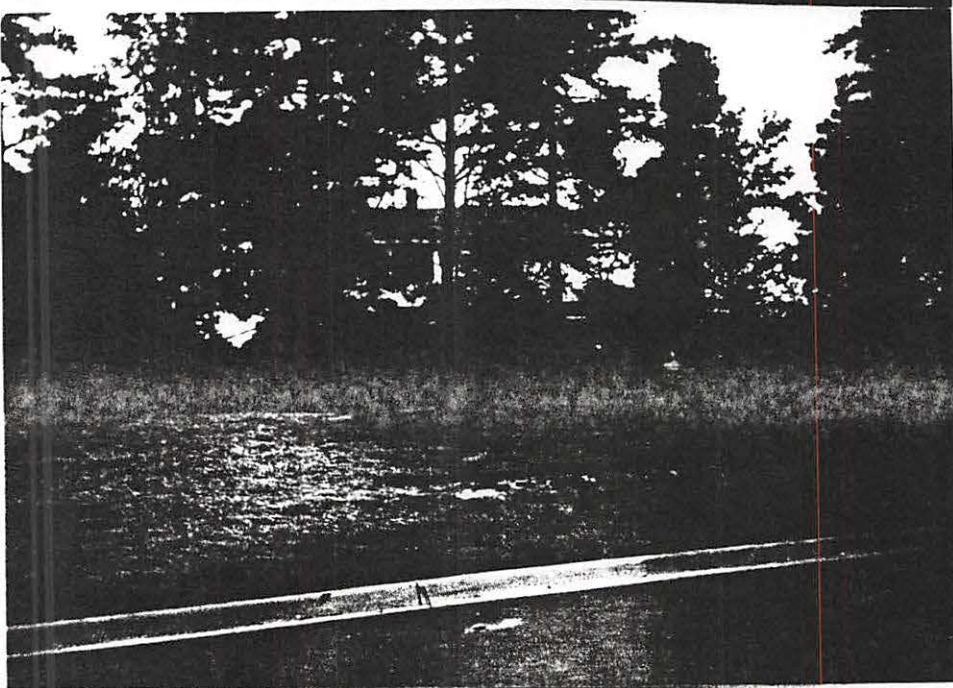
**DEFENDANTS' EXHIBIT NO. 1**

**PLAT**

**TOO LARGE TO SEND--ON FILE WITH CLERK'S OFFICE  
OF SPOTSYLVANIA CIRCUIT COURT**



DEFENDANTS'  
EXHIBIT NO. 2



DEFENDANTS' EXHIBIT NUMBER 3



