264 VA 632

In The

Supreme Court of Virginia

CLERK
SUPREME COURT OF VIRGINIA
RECEIVED
JUN 10 2002
RICHMOND, VIRGINIA

RECORD NOS. 012881, 020092

AUDREY LEA HAISFIELD and LAUREL RIDGE, LLC,

Appellants,

v.

KENNETH R. LAPE, TRUSTEE OF THE KENNETH R. LAPE LIVING TRUST and BARBARA GSAND LAPE, TRUSTEE OF THE BARBARA GSAND LAPE LIVING TRUST,

Appellees.

KENNETH R. LAPE, TRUSTEE OF THE KENNETH R. LAPE LIVING TRUST and BARBARA GSAND LAPE, TRUSTEE OF THE BARBARA GSAND LAPE LIVING TRUST,

Appellants,

v.

AUDREY LEA HAISFIELD and LAUREL RIDGE, LLC,

Appellees.

JOINT APPENDIX

James C. Roberts
Robert A. Angle
TROUTMAN SANDERS LLP
1111 East Main Street
Post Office Box 1122
Richmond, Virginia 23219
(804) 697-1200 - Telephone
(804) 697-1339 - Facsimile

Counsel for Audrey Lea Haisfield, et al.

John G. Berry
BERRY & EARLY
306 South Main Street
Post Office Box 620
Madison, Virginia 22727
(540) 948-6848 - Telephone
(540) 948-3513 - Facsimile

Counsel for Kenneth R. Lape, Trustee, et al.

THE LEX GROUP ♦ 1108 East Main Street ♦ Suite 1400 ♦ Richmond, VA 23219
(804) 644-4419 ♦ (800) 856-4419 ♦ Fax: (804) 644-3660 ♦ www.thelexgroup.com

TABLE OF CONTENTS

Appendix Page

Plaintiffs' Motion for Judgment,
with Exhibit,
filed July 28, 2000 1

Exhibit:

A. Virginia Association of Realtors
Residential Contract of Purchase
dated February 14, 2000 5

Grounds of Defense and Counterclaims of
Audrey Lea Haisfield and Laurel Ridge, LLC,
with Attachment,
filed August 18, 2000 14

Attachment:

Deed
dated May 3, 1994 20

Plaintiffs' Answer and Grounds of Defense to Counterclaims
filed September 19, 2000 23

Excerpts of Transcript of Hearing before
The Honorable Paul M. Peatross, Jr.,
with Exhibits,
on May 24, 2001 27

Testimony of Wendall Winn:

Direct Examination by Mr. Berry 45
Cross Examination by Mr. Wright 61

Excerpts of Transcript of Hearing before
The Honorable Paul M. Peatross, Jr.
on May 24, 2001, continued:

Testimony of Joe Cochran:

Direct Examination by Mr. Berry 64
Cross Examination by Mr. Wright 70

Testimony of Kenneth Lape:

Direct Examination by Mr. Berry 72
Cross Examination by Mr. Wright 95
Redirect Examination by Mr. Berry 104

Testimony of Carol Clark:

Direct Examination by Mr. Berry 108
Cross Examination by Mr. Wright 123
Redirect Examination by Mr. Berry 127
Recross Examination by Mr. Wright 130

Testimony of Forbes Reback:

Direct Examination by Mr. Berry 132

Testimony of Steve McLean:

Direct Examination by Mr. Berry 141
Cross Examination by Mr. Wright 158
Redirect Examination by Mr. Berry 164

Excerpts of Transcript of Hearing before
The Honorable Paul M. Peatross, Jr.
on May 24, 2001, continued:

Testimony of Audrey Haisfield:

Direct Examination by Mr. Berry 166
Cross Examination by Mr. Wright 181
Redirect Examination by Mr. Berry 183
Recross Examination by Mr. Wright 186

Testimony of Warren Andrews:

Direct Examination by Mr. Wright 187
Cross Examination by Mr. Berry 192
Redirect Examination by Mr. Wright 199

Testimony of Audrey Haisfield, recalled

Direct Examination by Mr. Wright 202
Cross Examination by Mr. Berry 212

Testimony of Steve McLean, recalled:

Direct Examination by Mr. Wright 215
Cross Examination by Mr. Berry 220

Testimony of Kenneth Lape, recalled:

Direct Examination by Mr. Berry 226

Plaintiffs' Exhibits:

1. Virginia Association of Realtors
Residential Contract of Purchase
dated February 14, 2000 264

Plaintiffs' Exhibits, continued:

2. Letter to
Forbes Reback from
Wendall Winn, Jr.
Re: Sale by Ken and Barbara Lape to Laurel Ridge, L.L.C.
dated June 28, 2000 274

3. Letter to
Wendall Winn, Jr. from
Marshall Slayton
Re: Haisfield Purchase of 98.78 Acres from Lape
dated June 29, 2000 276

4. Letter to
Wendall Winn, Jr. from
Marshall Slayton
Re: Amendment to June 29, 2000 Letter (Haisfield Purchase of 98.78 Acres from Lape)
dated June 30, 2000 277

5. Letter to
Marshall Slayton from
Wendall Winn, Jr.
Re: Haisfield Purchase of 98.78 Acres from Lape
dated June 30, 2000 279

6. Letter to
Forbes Reback from
Joseph Cochran
Re: Lape/Haisfield
dated June 23, 2000 281

7. Deed
dated May 20, 1998 282

Plaintiffs' Exhibits, continued:

10. Letter to
Mr. and Mrs. Haisfield from
Forbes Reback
Re: Dealings with Lape
dated June 28, 2000 286

11. McLean's Notes
undated 287

12. McLean's Note
undated 288

13. Virginia Association of Realtors
Residential Contract of Purchase,
with Addendum,
dated April 20, 2000 289

Addendum:

Tye River Limited Partnership, *et al* to Haisfield
Re: Closing
undated 296

14. Bill of Sale Agreement
Re: Kenneth and Barbara Lape
dated June 6, 2000 297

15. Letter to
Steve from
Warren Andrews
Re: Measurement of Flat Land
undated 298

Plaintiffs' Exhibits, continued:

16. ALTA Commitment for Title Insurance Documents
Re: Audrey Lea Haisfield
dated June 16, 2000 299

17. Letter to
Mr. and Mrs. Moses from
Stephen McLean
Re: Boundary Line between the Moses and Lape Residences
dated October 25, 2000 301

Defendants' Exhibits:

1. Deed
dated May 3, 1994 308

4. Map
undated 311

Opinion Letter to
Counsel and Mr. McLean from
The Honorable Paul M. Peatross, Jr.
dated June 14, 2001 312

Plaintiffs' Motion and Notice of
Presentation of Final Order
filed October 4, 2001 323

Excerpts of Transcript of Proceedings before
The Honorable Paul M. Peatross
on October 9, 2001 324

Final Order of
The Honorable Paul M. Peatross, Jr.
entered November 9, 2001 331

Assignments of Error 333

VIRGINIA: IN THE CIRCUIT COURT OF ALBEMARLE COUNTY

KENNETH R. LAPE, TRUSTEE OF THE
KENNETH R. LAPE LIVING TRUST,
and
BARBARA GSAND LAPE, TRUSTEE OF THE
BARBARA GSAND LAPE LIVING TRUST,

Plaintiffs

v. At Law No. CL00-8407

AUDREY LEA HAISFIELD,
826 Ballard Canyon Road
Solvang, California 93463.

LAUREL RIDGE, LLC, a Virginia Limited Liability Company
Serve: Forbes R. Reback, Registered Agent
700 East High Street
Post Office Box 20
Charlottesville, Virginia 22902 (Albemarle County), and

McLEAN FAULCONER, INC., a Virginia Corporation,
Serve: Stephen T. McLean, President
McLean Faulconer, Inc.
503 Faulconer Drive, Suite 5
Charlottesville, Virginia 22903 (Albemarle County)

Defendants

FILED
2000 JUL 28 AM 10: 50
CLERK OF THE CIRCUIT COURT
ALBEMARLE COUNTY, VA.
SHELBY J. HARRIS, CLERK
BY _____ D.C.

MOTION FOR JUDGMENT

TO THE HONORABLE JUDGE OF THIS COURT:

Come now the Plaintiffs, Kenneth R. Lape, Trustee of the Kenneth R. Lape Living Trust, and Barbara Gsand Lape, Trustee of the Barbara Gsand Lape Living Trust, by counsel, and in support of this Motion for Judgment against the Defendants, jointly and severally, say as follows:

1. The Plaintiffs own certain real estate situated in the Scottsville Magisterial District of Albemarle County, containing 98.78 acres, more or less, being designated as Tax Map 111, Parcel

1

Number 5A, with improvements, fronting on Virginia State Route 712 in North Garden. This real estate is a portion of the same property conveyed to the Plaintiffs by deed dated May 20, 1998, recorded in Deed Book 1706, Page 144 in the Clerk's Office of the Circuit Court of Albemarle County.

2. On or about February 14, 2000, the Plaintiffs entered into a Virginia Association of Realtors Residential Contract of Purchase, including certain addenda, with the Defendants Audrey Lea Haisfield or Laurel Ridge, LLC. The contract was executed by Audrey Lea Haisfield in her individual capacity and as apparent agent for Laurel Ridge, LLC. A copy of the contract is attached hereto as Exhibit A.

3. The contract contained, *inter alia*, the following provision: "Should Purchaser default and/or breach this Contract, the Seller shall be entitled to retain the earnest money deposit of $50,000.00 as liquidated damages in lieu of all other remedies provided at law or in equity against the Purchaser."

4. The Plaintiffs complied with all of their legal requirements pursuant to the contract, and all contingencies were met. As the contract closing date of June 30, 2000 approached, counsel for the Plaintiffs drafted a proposed deed and closing statement and provided these documents to counsel for the Defendants Haisfield and Laurel Ridge, LLC, on or about June 23, 2000.

5. On or about the scheduled closing date of June 30, 2000, the Plaintiffs by their counsel tendered full performance of their obligations under the contract to counsel for the Defendants Haisfield and Laurel Ridge, LLC. A day before the scheduled closing, for the first time, counsel for these Defendants alleged that certain covenants contained in the deeds in the chain of title to the property constituted a defect in the title which "materially and adversely affect the use of the property for residential purposes and/or render the title unmarketable." (See paragraph 14 of Exhibit A, the sales contract)

6. In fact, these covenants do not constitute a defect in the title which materially and adversely affect the use of the property for residential purposes nor do these covenants render the title unmarketable. The Defendants Haisfield and Laurel Ridge, LLC, did not act in good faith in asserting the aforesaid covenants as a title defect, rather they used this provision of the contract as a pretext for avoiding performance of their obligations to purchase the property.

7. The actions of the Defendants Haisfield and Laurel Ridge, LLC as described above constitute a default and/or breach of the terms of the contract, thereby entitling the Plaintiffs to the agreed upon liquidated damages. The Plaintiffs have, in fact, suffered damages as a result of the default and/or breach of the aforesaid Defendants.

8. In addition to the liquidated damages, paragraph 23 of the contract entitles the Plaintiffs to all attorneys' fees, costs, and other expenses as a consequence of any breach or default, in addition to all other remedies available at law or equity. The Plaintiffs have incurred expenses, legal fees and other costs as a consequence of the actions of the Defendants as set forth in this Motion.

9. McLean Faulconer, Inc. is made a party defendant to this action because it holds the liquidated damage deposit of $50,000 to which the Plaintiffs are entitled in view of the Defendants' actions.

WHEREFORE, the Plaintiffs, Kenneth R. Lape, Trustee of the Kenneth R. Lape Living Trust and Barbara Gsand Lape, Trustee of the Barbara Gsand Lape Living Trust, by counsel, move the court for judgment against the Defendants, Audrey Lea Haisfield and Laurel Ridge, LLC, jointly and severally, in the amount of FIFTY THOUSAND DOLLARS ($50,000.00), plus interest at the judgment rate thereon from June 30, 2000, until paid, plus their taxable costs, attorneys' fees, and any other reasonable expenses as permitted by Paragraph 23 of the purchase contract. The Plaintiffs further move the court to order the Defendant McLean Faulconer, Inc., to surrender the liquidated damage deposit to them as provided in the contract.

KENNETH R. LAPE, Trustee
BARBARA GSAND LAPE, Trustee

By: John G. Berry
Counsel

John G. Berry
Berry & Early
P. O. Box 620
Madison, Virginia 22727
(540) 948-6848
(540) 948-3513 (facsimile)

3

VIRGI ASSOCIATION OF REALT S®
RESIDENTIAL CONTRACT OF PURCHASE

EXHIBIT A

(This is a legally binding contract. If not understood, seek competent advice before signing.)

This CONTRACT OF PURCHASE made as of February 14, 2000, between Kenneth R. Lape and Barbara G. Lape, Trustees for the Kenneth R. Lape* Living Trust (the "Seller", whether one or more), and Andrew Lee Reinfield or Laurel Ridge LLC, whose address is Solvang, California (the "Purchaser", whether one or more), provides:
The Listing Broker for the Property, as defined below, Montague Miller & Company
and the Selling Broker is McLean Faulconer Inc. Realtors

1. REAL PROPERTY: Purchaser agrees to buy and Seller agrees to sell the land, and all improvements thereon located in the County or City of Albemarle, Virginia and described as (legal description): Albemarle County Tax Map 111, Parcel 5A; Deed Book 1706, Page 144; 98.78 Acres and all improvements fronting on State Route 712 in North Garden.

and more commonly known as: Laurel Ridge
together with the items of personal property described in paragraph 2 (the "Property").

2. PERSONAL PROPERTY INCLUDED: The following items of personal property are included in this sale: all appliances currently in residence.

3. PURCHASE PRICE: The Purchase Price of the Property is ($ 900,000.00) Nine Hundred Thousand Dollars, which shall be paid to Seller at settlement in cash or by cashier's check subject to the provisions described herein and/or from the following sources:

☐ (a) THIRD PARTY FIRST TRUST: This sale is subject to Purchaser ☐ obtaining or ☐ assuming: ☐ a conventional, ☐ FHA, ☐ VA, ☐ VHDA, or other (describe) ( ) loan secured by a first deed of trust lien on the Property in the principal amount of $, or % of the Purchase Price bearing interest ☐ at a fixed rate not exceeding % per year, or ☐ at an adjustable rate with an initial rate not exceeding % per year and a maximum rate during the term of the loan not exceeding % per year, or ☐ at the market rate of interest at the time of settlement, amortized over a term of years, and requiring not more than a total of loan discount points, excluding a loan origination fee, or an assumption fee not exceeding $. (If this contract provides for the assumption of a loan: (i) the Parties acknowledge that the balance set forth above is approximate and that the principal amount to be assumed will be the outstanding principal balance on the date of settlement, and (ii) Purchaser shall assume all obligations of Seller under such loan.)

☐ (b) THIRD PARTY SECOND TRUST: As set forth in paragraph 3, this sale is also subject to Purchaser obtaining a loan secured by a second deed of trust lien on the Property in the principal amount of $, or % of the Purchase Price bearing interest at rate not exceeding % per year, amortized as follows , and requiring not more than a total of loan discount points, excluding a loan origination fee.

☐ (c) SELLER FINANCE: Seller agrees that $ or % of the Purchase Price shall be evidenced by a note made by Purchaser in such amount bearing interest at a rate of % per year amortized as follows . The note shall be secured by a deferred purchase money ☐ first, ☐ second or (specify priority) deed of trust lien on the Property. The deed of trust and note shall provide, among other things, that: (i) the note shall be due and payable in full if the Property, or any interest therein, is transferred, sold or conveyed; (ii) Purchaser shall have the right to prepay the note at any time in whole or in part ☐ with a premium or penalty of % of the amount prepaid or ☐ without premium or penalty; (iii) a lot release schedule shall be provided, if applicable; (iv) a late payment charge not exceeding five percent of the payment may be assessed by the Seller for any payment more than seven (7) calendar days late; (v) the note and deed of trust shall otherwise be in form satisfactory to the Seller; (vi) other terms:

If this Contract provides for SELLER FINANCING, then (i) such financing shall be contingent upon review and approval by Seller of a current credit report on each Purchaser and a current personal financial statement of each Purchaser, which documents must be provided to Seller within business days following execution of this Contract by both parties; (ii) Purchaser shall properly record the applicable deed of trust, at its expense, at settlement; and (iii) Purchaser may not assign this Contract in whole or in part, without the prior written consent of Seller, which Seller shall be under no obligation to give.

(d) PURCHASER'S REPRESENTATION AND WARRANTY: Unless specified in a written contingency, neither this Contract nor Purchaser's financing is dependent or contingent on the sale or settlement or lease of other real property.

(e) OTHER FINANCING TERMS:

4. DEPOSIT: (a) Purchaser has made a Deposit with McLean Faulconer Inc. Realtors (the "Escrow Agent"), of Fifty Thousand Dollars ($ 50,000.00) (the "Deposit") ☐ in cash, ☒ by check, ☐ bank letter of credit, or ☐ by a note due and payable on receipt of which is hereby acknowledged. Upon ratification of this Contract by all parties, the Deposit shall be held in escrow by the Escrow Agent. If the transaction does not settle, the Deposit shall be held or disbursed in accordance with the regulations of the Virginia Real Estate Board.

5. LOAN FEES: If a lender making a loan described in paragraph 3 requires a loan discount fee, commonly known as "points" (a "point" being 1% of the principal amount of the loan) as a condition of making the loan, Seller agrees to pay the first trust lender up to N/A points, and to pay the second trust lender up to N/A points. Except as otherwise agreed upon in paragraph 7 or in paragraphs 5 or 6 hereof, Purchaser shall pay all points, loan origination fees, charges and other costs imposed by a lender or otherwise incurred in connection with obtaining the loan or loans.

Produced with ZipForm™ by Vertical Inc. 18225 Pilsner Mile Road, Clinton Township, Michigan 48038, (800) 383-9805
McLean Faulconer Inc. REALTORS® 300 Faulconer Drive, Inc., Charlottesville VA 22903 Phone 804-293-1126 Fax 804-293-2277 ©VAR REALTORS

6. FINANCING: (a) This Contract is contingent on Purchaser obtaining a written commitment or commitments, as the case may be, for the third Party financing or loan assumption required in paragraph 3. Purchaser agrees to make written application for such financing or assumption (including the payment of any required application, credit, or appraisal fees) within N/A business days of the date of acceptance of this Contract and to diligently pursue obtaining a commitment therefore.

(b) If Purchaser does not obtain such written commitment and so notifies Seller or Selling Broker or the Listing Broker in writing before 5:00 p.m. local time on N/A, then this Contract shall terminate upon giving of such notice and the Deposit shall be refunded to the Purchaser. If Purchaser does not obtain such a written commitment and notice thereof is not received by the deadline, or such later deadline as the Parties may agree upon in writing, the Seller shall have the right to (i) deem the financing contingency provided herein satisfied, or (ii) terminate this Contract by giving Purchaser written notice of such termination within five (5) business days after deadline. Failure of Purchaser to make such application or to diligently pursue obtaining such financing shall be a default hereunder.

(c) If the balance of the purchase price is to be paid in cash without third party or seller financing, Purchaser shall give Seller written verification from Purchaser's bank or other source within _____ days after the date this Contract is fully ratified that Purchaser has or can have the balance of the purchase price in cash not later than the settlement date. If Purchaser fails to give such verification within such time, Seller may terminate this Contract by giving Purchaser written notice thereof within 10 days after the date by which verification was to be given.

7. VA/FHA LOAN: It is expressly agreed that notwithstanding any other provisions of this Contract, the Purchaser shall not be obligated to complete the purchase of the Property described herein or to incur any penalty by forfeiture of earnest money Deposits or otherwise unless the Purchaser has been given in accordance with HUD/FHA or VA requirements a written statement by the Federal Housing Commissioner, Veterans Administration, or a Direct Endorsement lender setting forth the appraised value of the Property of not less than $ N/A (the Purchase Price). The Purchaser shall have the privilege and option of proceeding with consummation of this Contract without regard to the amount of the appraised valuation. The appraised valuation is arrived at to determine the maximum mortgage the Department of Housing and Urban Development will insure. HUD does not warrant the value or the condition of the Property. The Purchaser should satisfy himself/herself that the price and condition of the Property are acceptable.

8. SETTLEMENT; POSSESSION: Settlement shall be made at attorney's office on or about June 30, 2000. Possession of the Property shall be given at settlement, unless otherwise agreed in writing by the Parties.

9. BROKERAGE FEE: Seller and other parties hereto authorize and direct the settlement agent to disburse to Listing Broker and/or Selling Broker from the settlement proceeds their respective portions of the brokerage fee payable as a result of this sale and closing under the Contract. Listing Broker and/or Selling Broker shall deliver to the settlement agent, prior to settlement, a written statement signed by each broker entitled to all or a portion of the brokerage fee stating how such a fee and any additional sales incentives are to be disbursed.

10. PROPERTY OWNERS' ASSOCIATION DISCLOSURE: Seller represents that Property (check as applicable) is ☐ is not ☒ located within a development which is subject to the Virginia Property Owners' Association Act (Section 55-508 through 55-516 of the Code of Virginia). If the Property is within such a development, the Act requires Seller to obtain from the Property Owners' Association an association disclosure packet and provide it to the Purchaser. Purchaser may cancel this Contract within three (3) days after receiving the association disclosure packet or being notified that the association disclosure packet will not be available. The right to receive the association disclosure packet and the right to cancel this Contract are waived conclusively if not exercised before settlement.

11. ACKNOWLEDGMENT OF DISCLOSURE OF BROKERAGE RELATIONSHIP: (Check as applicable.)

A. ☐ The Parties confirm that in connection with the transaction contemplated by this Contract, the Listing Broker and the cooperating or Selling Broker and their salespersons have acted on behalf of Seller as Seller's representatives.

B. ☒ The Parties confirm that in connection with the transaction contemplated by this Contract, the Listing Broker and its salespersons have acted on behalf of Seller as Seller's representative, and/or the Purchaser's Broker and its salespersons, by agreement, have acted on behalf of Purchaser as Purchaser's representative.

C. ☒ The Parties also confirm, with respect to their own representation, that any required disclosure of the brokerage relationships described in paragraph 11(A) or (B) above was made in writing at the time specific real estate assistance was provided by the brokers named above or their respective salespersons.

D. ☐ The Listing Broker and its salespersons are acting on behalf of both the Seller and the Purchaser as disclosed dual representatives. An executed Disclosure of Dual Representation is attached.

E. ☐ The principal or supervising broker has designated _____ to represent the Seller in the transaction and _____ to represent the Purchaser in the transaction. _____, the principal or supervising broker, is acting on behalf of both the Seller and the Purchaser as a disclosed dual representative. An executed Disclosure of the Use of Designated Representatives is attached.

F. ☐ The parties also confirm that the disclosure of and consent to the brokerage relationships described in paragraph 11(D) or (E) above was made prior to the time the offer was made by Purchaser and delivered to Seller.

G. The duties of real estate licensees in Virginia are set forth in section 54.1-2130 et seq. of the Code of Virginia and in the regulations of the Virginia Real Estate Board. In addition to the information contained in this disclosure pertaining to brokerage relationships, there may be other information relevant to the transaction, which may be obtained from other sources.

12. OCCUPANCY: Purchaser ☐ does or ☐ does not intend to occupy the Property as primary residence.

13. EXPENSE PRORATION: Seller agrees to pay the expense of preparing the deed and the recordation tax applicable to grantors. Except as otherwise agreed herein, all other expenses incurred by Purchaser in connection with the Purchase, including without limitation title examination, insurance premiums, survey costs, recording costs and the fees of Purchaser's attorney, shall be borne by the Purchaser. All taxes, assessments, interest, rent escrow deposits, and other township fees, if any, shall be prorated as of the date of settlement. In addition to the Purchase Price, Purchaser agrees to pay Seller for all fuel oil remaining in the tank (if applicable) at the prevailing market price as of the date of settlement.

14. TITLE: At settlement Seller shall convey the Property to the Purchaser by a general warranty deed containing English covenants of title, free of all encumbrances, tenancies, and liens (for taxes and otherwise), but subject to such restrictive covenants and utility easements of record which do not materially and adversely affect the use of the Property for residential purposes or render the title unmarketable. If the Property does not abut a public road, title to the Property must include a recorded easement providing adequate access thereto. In the event this sale is subject to a financing contingency under paragraph 3(a) or 3(b), the access to a public road must be acceptable to such lender. If the examination reveals a title defect of a character that can be remedied by legal action or otherwise within a reasonable time, Seller, at its expense, shall promptly take such action as is necessary to cure such defect. If the defect is not cured within 60 days after Seller receives notice of the defect, then Purchaser shall have the right to (i) terminate this Contract, in which event the Deposit shall be returned to Purchaser, and Purchaser and Seller shall have no further obligations hereunder; or (ii) waive the defect and proceed to settlement with no adjustment to the Purchase Price. If the Seller has agreed to cure such defect, the parties agree that the settlement date prescribed in paragraph 8 shall be extended as necessary to enable Seller to cure such title defect, but not for more than 60 days.

15. NOTICE TO PURCHASER(S): Purchaser(s) should exercise whatever due diligence Purchaser(s) deems necessary with respect to information on any sexual offenders registered under Chapter 23 section 19.2-387 et seq. of Title 19. Such information may be obtained by contacting your local police department or the Department of State Police, Central Records Exchange at (804) 674-2000 or www.state.va.us/vsp/vsp.html.

Produced with ZipForm® by Vertical Inc. 10025 Plaza Mile Road, Clinton Township, Michigan 48038, (800) 383-0038

16. ROLL-BACK TAXES, IF ANY, WILL B[illegible] AS FOLLOWS: Should Purchaser elect not to continue with land use taxation, any roll back taxes will be paid by the Purchaser.

17. RISK OF LOSS: All risk of loss or damage to the Property by fire, windstorm, casualty, or other cause is assumed by Seller until settlement. In the event of substantial loss or damage to the Property before settlement, Purchaser shall have the option of either (I) terminating this Contract and recovering the Deposit; or (II) affirming this Contract, in which event Seller shall assign to Purchaser all of Seller's rights under any policy or policies of insurance applicable to the Property.

18. EQUIPMENT CONDITION AND INSPECTION: Purchaser agrees to accept the Property at settlement in its present physical condition. Notwithstanding the foregoing and except as otherwise provided herein, Seller warrants that all appliances, heating and cooling equipment, plumbing and electric systems, and well and/or septic systems will be, at the time of settlement or of Purchaser's occupancy, whichever occurs first, in working condition. Seller agrees to deliver the Property in broom clean condition and to exercise reasonable and ordinary care in the maintenance and upkeep of the Property between the date this Contract is executed by Seller and the time of settlement or of Purchaser's occupancy, whichever occurs first. Seller grants to Purchaser or his representative the right to make a preoccupancy or presettlement inspection to verify that the condition of the Property conforms to this Contract.

19. WELL AND SEPTIC: If the Property is served by an on-site well or other natural water source or sewage disposal system or both, Seller agrees to furnish Purchaser with a certificate dated not more than 30 days prior to settlement of this Contract from the appropriate governmental authority, or from an acceptable private company, indicating that the water is free from contamination by coliform bacteria and that there is no evidence of malfunction of the sewage disposal system. If either is found defective, Seller shall take immediate steps to repair all defects at Seller's expense. If Seller fails to make such repairs within a reasonable time, Purchaser shall have the right to (I) terminate this Contract, in which event the Deposit shall be returned to Purchaser, and Purchaser and Seller shall have no further obligations hereunder, or (II) waive the defect and proceed to settlement with no adjustment to the Purchase Price.

20. WOOD INFESTATION INSPECTION AND REPORT: Prior to settlement, Seller shall provide Purchaser a report, dated not more than 30 days prior to date of settlement, from a wood infestation control company certified and licensed by the Commonwealth of Virginia and properly insured, concerning the presence of, or damage from termites or other wood-destroying insects or organisms. If the inspection reveals active infestation in the primary dwelling on the Property, Seller, at its expense, shall have the primary dwelling treated by a company licensed by the Commonwealth of Virginia and properly insured. If the inspection reveals damage to the primary dwelling on the Property, Seller shall have the damage repaired by a contractor licensed in the Commonwealth of Virginia; PROVIDED HOWEVER, that if the estimated aggregate cost of such treatment or repairs or both exceeds $750, Seller shall have the option to terminate this Contract unless Purchaser and Seller mutually agree to share the cost exceeding the above amount.

21. SELLER'S AND PURCHASER'S OPTIONS: In the event that the total cost of fulfilling Seller's obligations set forth in paragraphs 14, 18 and 19 above exceeds $5,000.00, Seller shall have the option to (I) pay the total cost, or (II) pay $5,000.00 to Purchaser and refuse to pay any excess over that amount. If Seller elects (II), Purchaser shall have the option to either accept the Property in its present condition, in which case the Seller shall pay $5,000.00 to Purchaser at settlement or terminate this Contract and recover the Deposit. If no amounts are entered in the above spaces in this paragraph, the Parties agree that the amount of each shall be $1,000.

22. VIRGINIA CONDOMINIUM ACT: If the Property is a condominium unit, this Contract is subject to the Virginia Condominium Act which requires Seller to furnish certain financial and other disclosures to Purchaser prior to entering into a binding contract of sale. If the required disclosures are not available on the date this Contract is fully executed by Seller and Purchaser (the "Date of Ratification"), Seller shall promptly request them from the Unit Owner's Association and provide them to Purchaser who shall acknowledge receipt in writing upon delivery. If Purchaser does not receive the disclosures within 15 days after the Date of Ratification or the disclosures are unacceptable to Purchaser, Purchaser may void this Contract by delivering notice to Listing Broker or Seller within three days after disclosures were received or due (if not received) and the Deposit shall be returned promptly. If more than 60 days elapse between the Date of Ratification and the date of settlement, Purchaser may request disclosure of any material changes from the Unit Owners' Association. Purchaser may void this Contract within three days after either receipt of disclosure that there are material changes or failure of the Unit Owners' Association to provide assurance that there have been no material changes within 10 days after receipt of the request.

23. DEFAULT: If Seller or Purchaser defaults under this Contract, the defaulting party, in addition to all other remedies available at law or in equity, shall be liable for the brokerage fee referenced in paragraph 9 hereof as if this Contract had been performed and for any damages and all expenses incurred by the non-defaulting party, the Listing Broker and Selling Broker in connection with this transaction and the enforcement of this Contract, including, without limitation to, attorneys' fees and costs, if any. Payment of real estate brokers' fee as the result of a transaction relating to the Property which occurs subsequent to a default under this Contract, shall not relieve the defaulting party of liability for the fee of the Listing Broker in this transaction and for any damages and all expenses incurred by the non-defaulting party, the Listing Broker and the Selling Broker in connection with this transaction. In any action brought by Seller, Purchaser, Listing Broker or Selling Broker under this Contract or growing out of the transactions contemplated herein, the prevailing party in such action shall be entitled to receive from the non-prevailing party or parties, jointly and severally, in addition to any other damages or awards, reasonable attorneys' fees and costs expended or incurred in prosecuting or defending such action.

24. OTHER ITEMS: (Use this space for additional terms not covered in this Contract.) 1) See attached addenda which shall be a part of this Contract; 2) Purchaser's earnest money deposit shall be held in an interest bearing escrow account with interest accruing to Purchaser until closing; 3) The Property is subject to the existing right-of-way allowing ingress and egress from Route 712 to the 258.78 acres (Albemarle Co. Tax Map 111, Parcel 45; Deed Book 1706, Page 1441); 4) Should Purchaser default and/or breach this Contract, the Seller shall be entitled to retain the earnest money deposit of $50,000.00 as liquidated damages in lieu of all other remedies provided at law or in equity against the Purchaser.

25. MECHANICS LIEN NOTICE: (a) Virginia law (Section 43-1 et seq.) permits persons who have performed labor or furnished materials for the construction, removal, repair or improvement of any building or structure to file a lien against the Property. This lien may be filed at any time after the work is commenced or the material is furnished, but not later than the earlier of (I) 90 days from the last day of the month in which the lienor last performed work or furnished materials or (II) 90 days from the time the construction, removal, repair or improvement is terminated. AN EFFECTIVE LIEN FOR WORK PERFORMED PRIOR TO THE DATE OF SETTLEMENT MAY BE FILED AFTER SETTLEMENT. LEGAL COUNSEL SHOULD BE CONSULTED.
(b) Seller shall deliver to Purchaser at settlement an affidavit, on a form acceptable to Purchaser's lender, if applicable, signed by Seller that no labor or materials have been furnished to the Property within the statutory period for the filing of mechanics' or materialmens' liens against the Property. If labor or materials have been furnished during the statutory period, Seller shall deliver to Purchaser an affidavit signed by Seller and the person(s) furnishing the labor or materials that the costs thereof have been paid.

26. NOTICE OF DISCLAIMER OR DISCLOSURE PURSUANT TO VIRGINIA RESIDENTIAL PROPERTY DISCLOSURE ACT:
(a) Disclaimer ☒ is ☐ is not attached. (b) Disclosure ☐ is ☒ is not attached.
(ATTACHMENT DOES NOT MAKE DISCLAIMER OR DISCLOSURE PART OF CONTRACT)

27. HOMEPURCHASER'S INSPECTION: Purchaser may have a home inspection of the Property performed at Purchaser's cost to determine the condition of the Property's appliances and structural, mechanical, plumbing and electrical systems. Purchaser ☐ WAIVES ☒ DESIRES a home inspection of the Property to be performed at Purchaser's expense. If the Purchaser desires a home inspection, see attached home inspection addendum.

Prepared with ZipForm™ by Verdant Inc. 10535 Plaza Mile Road, Clinton Township, Michigan 48038, (800) 383-0038

28. LEAD-BASED PAINT INSPECTION: This paragraph applies only if the Property was built prior to 1978 and is not exempt from the provisions of the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4852d) and regulations promulgated pursuant thereto.

(Check as applicable):

☐ (a) Attached to this Contract and made a part hereof by this reference is a fully executed "Disclosure of Information and Acknowledgment Lead-Based Paint and/or Lead-Based Paint Hazards."

☐ (b) Notwithstanding any other provision of this Contract to the contrary, Purchaser shall have ten (10) days after the date this Contract is fully ratified to conduct, at Purchaser's sole cost and expense, a risk assessment or inspection of the Property for the presence of "lead-based paint" and/or "lead-based paint hazard", as defined under 42 U.S.C. 4852d (the "LBP Deficiency"), and to furnish a copy of the assessment or inspection report and any necessary corrective actions to Seller. If the report reveals the presence of LBP Deficiency, Seller shall notify Purchaser in writing within five (5) days of receipt of such report (the "Seller Response Period") whether Seller intends to take the corrective actions called for in the report. If Seller notifies Purchaser that it does not intend to take the actions called for in the report, or if Seller does not notify Purchaser of Seller's intent within the Seller Response Period, Purchaser shall have the right either (i) to terminate this Contract by written notice to Seller within five (5) days after the end of the Seller Response Period, in which event the Deposit will be returned to Purchaser and neither party shall have any further obligations to the other hereunder, or (ii) to waive this contingency and proceed to settlement in accordance with the provisions of this Contract, in which event Seller shall have no obligation to remedy the LBP Deficiency. If Seller notifies Purchaser within the Seller Response Period that Seller will remedy the LBP Deficiency, or if the parties otherwise agree in writing on the corrective actions to be taken by Seller, Seller shall have until the date settlement occurs hereunder to perform such remedy. Time shall be of the essence for each of the provisions of this paragraph.

☐ (c) Purchaser waives its right to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards.

29. NOTICE TO PURCHASER REGARDING SETTLEMENT AGENT AND SETTLEMENT SERVICES:

Choice of Settlement Agent: You have the right to select a settlement agent to handle the closing of this transaction. The settlement agent's role in closing your transaction involves the coordination of numerous administrative and clerical functions relating to the collection of documents and the collection and disbursement of funds required to carry out the terms of the contract between the parties. If part of the purchase price is financed, your lender will instruct the settlement agent as to the signing and recording of loan documents and the disbursement of loan proceeds. No settlement agent can provide legal advice to any party to the transaction except a settlement agent who is engaged in the private practice of law in Virginia and who has been retained or engaged by a party to the transaction for the purpose of providing legal services to that party.

Escrow, closing and settlement services guidelines: The Virginia State Bar issues guidelines to help settlement agents avoid and prevent the unauthorized practice of law in connection with furnishing escrow, settlement or closing services. As a party to a real estate transaction, you are entitled to receive a copy of these guidelines from your settlement agent, upon request, in accordance with the provision of the Consumer Real Estate Settlement Protection Act.

30. DISPUTE RESOLUTION SYSTEM CLAUSE: The Parties who have initialed this paragraph below hereby agree that if mediation services are available, any dispute or claim arising out of or relating to this Contract, the breach of this Contract or the services provided in relation to this Contract, shall be submitted to mediation in accordance with the Rules and Procedures of the Dispute Resolution System. Disputes shall include representations made by the Purchaser(s), Seller(s) or any real estate broker or other person or entity in connection with the sale, purchase, financing, condition or other aspect of the Property to which this Contract pertains, including without limitation allegations of concealment, misrepresentation, negligence and/or fraud. Any agreement signed by the Parties pursuant to the mediation conference shall be binding. If the Parties cannot reach a mutually agreeable settlement, they are free to arbitrate or litigate their dispute as if the mediation never took place.

The following matters are excluded from mediation hereunder: (a) judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage, or land contract; (b) an unlawful detainer action; (c) the filing or enforcement of a mechanic's lien; (d) any matter which is within the jurisdiction of a probate court; or (e) violation of a state's real estate license laws. The filing of a judicial action to enable the recording of a notice of pending action, for order of attachment, receivership injunction, or other provisional remedies, shall not constitute a waiver of the right to mediate under this provision, nor shall it constitute a breach of duty to mediate.

This provision shall be binding on those parties who have initialed this paragraph, even if not all the parties have so initialed it, and shall survive settlement and conveyance of title to the Property. The failure of any party to initial this paragraph shall not affect the validity or the enforcement of any other provision of this contract as to any party executing this contract.

By initialing in the place below, you hereby acknowledge that you have received, read and understood the standard announcement brochure for the Dispute Resolution System and agree to submit disputes as described above to mediation in accordance with the Dispute Resolution System.

Purchasers' Initials	Sellers' Initials	Listing Broker' Initials	Selling Broker' Initials

31. MISCELLANEOUS: This Contract may be signed in one or more counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same document. Documents delivered by facsimile machine shall be considered as originals. Unless otherwise specified herein, "days" mean calendar days. For the purpose of computing time periods, the first day shall be the day following the date this Contract is fully ratified. This Contract represents the entire agreement between Seller and Purchaser and may not be modified or changed except by written instrument executed by the Parties; PROVIDED, HOWEVER, that the provisions of paragraph 9 of this Contract may not be modified or changed without the written consent of the Listing Broker and the Selling Broker. This Contract shall be construed, interpreted and applied according to the laws of the Commonwealth of Virginia and shall be binding upon and shall inure to the benefit of the heirs, personal representatives, successors, and assigns of the Parties. To the extent any handwritten or typewritten terms herein conflict with or are inconsistent with the printed terms hereof, the handwritten or typewritten terms shall control. UNLESS OTHERWISE PROVIDED HEREIN, THE REPRESENTATIONS AND WARRANTIES MADE BY SELLER HEREIN AND ALL OTHER PROVISIONS OF THIS CONTRACT SHALL BE DEEMED MERGED INTO THE DEED DELIVERED AT SETTLEMENT AND SHALL NOT SURVIVE SETTLEMENT.

32. ACCEPTANCE: This Contract, when signed by Purchaser, shall be deemed an offer and shall remain in effect until _____ (time), _____. If not accepted by Seller within that time by delivery of a signed copy of this Contract to the Purchaser, or an agent for Purchaser, it shall become null and void.

WITNESS the following duly authorized signatures and seals: (SEPARATE ALL COPIES BEFORE SIGNING BELOW)

Seller accepts this offer this _____ day of _____.

3/1/2000 [signature] (SEAL) DATE SELLER	2/28/2000 Andrew Robinfield (SEAL) DATE PURCHASER
144-28-8063 SOCIAL SECURITY NUMBER	238-96-8305 SOCIAL SECURITY NUMBER
3-1-2000 Barbara A Lopez (SEAL) DATE SELLER	_____ / _____ (SEAL) DATE PURCHASER
123-34-5787 SOCIAL SECURITY NUMBER	SOCIAL SECURITY NUMBER

COPYRIGHT© 1999 by the Virginia Association of REALTORS®. All rights reserved. This form may be used only by members in good standing of the Virginia Association of REALTORS®. The reproduction of this form, in whole or in part, or the use of the name "Virginia Association of REALTORS®", in connection with any other form, is prohibited without prior written consent of the Virginia Association of REALTORS®.

Receipt of deposit per Paragraph 4 above is hereby acknowledged.
2/15/00 / [signature] (SEAL)

Produced with ZipForm® by Winhall Inc. 18025 Fifteen Mile Road, Clinton Township, Michigan 48035, (877) 283-0623 GALERIA.FD

VIR . \ ASSOCIATION OF REALTO. .
ADDENDUM TO CONTRACT OF PURCHASE
ADDENDUM # 1 of _____

McLean Faulconer Inc. REALTORS®

This ADDENDUM, TO CONTRACT OF PURCHASE, which is attached to and made a part of contract of purchase (the "Contract") dated February 14, 2000, between Kenneth R. Lape and Barbara G. Lape,* (the "Seller") and Audrey Lee Heisfield or Laurel Ridge LLC (the "Purchaser") for the sale of that certain real property and all improvements thereon located in the County or City of Albemarle, Virginia, and described in the Contract as Laurel Ridge provides as follows:

* Trustees for the Kenneth R. Lape Living Trust

This Contract is contingent upon the following:

1) STUDY PERIOD: Purchaser shall have a study period for twenty-one (21) business days from the date this Contract is executed by both Purchaser and Seller. If within said twenty-one (21) business day study period, Purchaser notifies both Seller or an agent of Seller, in writing, of her intent not to purchase subject property, in her sole and absolute judgment, Purchaser may declare this Contract null and void. In this event, Purchaser shall receive a refund of her deposit and all parties shall be relieved of further liability hereunder. In the absence of such timely notice (time shall be of the essence) from the Purchaser that she elects to declare this Contract null and void, this Contract shall be in full force and effect.

2) EIGHTEEN (18) MONTH OPTION: Seller grants Purchaser, for the purchase price of FOUR HUNDRED FIFTY THOUSAND DOLLARS ($450,000.00), an eighteen (18) month option on the remaining 258.78 acres (Albemarle County Tax Map 113, Parcel 45; Deed Book 1706, Page 144). At any time during the eighteen (18) month period, Purchaser may elect to purchase and close on said property with thirty (30) days notice to Seller for the pre-agreed upon price of FOUR HUNDRED FIFTY THOUSAND DOLLARS ($450,000.00) for said option. Purchaser shall make a non-refundable deposit, payable to Seller, of TWENTY-FIVE THOUSAND DOLLARS ($25,000.00) at closing of the main house and 38.78 acres. Should Purchaser purchase said 258.78 acre parcel within the eighteen (18) month period, the TWENTY-FIVE THOUSAND DOLLAR ($25,000.00) deposit shall be applied towards the purchase price of FOUR HUNDRED FIFTY THOUSAND DOLLARS ($450,000.00). Should Purchaser not purchase said 258.78 acre parcel within the eighteen (18) month period, the TWENTY-FIVE THOUSAND DOLLAR ($25,000.00) non-refundable deposit shall remain with Seller.

WITNESS the following duly authorized signatures and seals:

3/6/00, _____ (SEAL) 2/28/2000, _____ (SEAL)
Date Seller Date Purchaser

3-1-2000, _____ (SEAL) _____, _____ (SEAL)
Date Seller Date Purchaser

COPYRIGHT© 1999 by the Virginia Association of REALTORS®. All rights reserved. This form may be used only by members in good standing of the Virginia Association of REALTORS®. The reproduction of this form, in whole or in part, or the use of the name "Virginia Association of REALTORS®", in connection with any other form, is prohibited without the prior written consent of the Virginia Association of REALTORS®.

VAR FORM 600C REV. 2/99

• McLEAN •
FAULCONER INC.
Farm, Estate and Residential Brokers
503 Faulconer Drive, Suite 5 Charlottesville, Virginia 22903
Phone: (804) 295-1131 Fax: (804) 293-7377
web site www.mcleanfaulconer.com
e-mail homes@mcleanfaulconer.com

INSPECTION ADDENDUM

ADDENDUM TO CONTRACT DATED February 14, 2000, BETWEEN Kenneth R. Lape and Barbara G. Lape, Trustees for the Kenneth R. Lape Living Trust (herein called "Seller"), AND Andrew Lee Hatfield or Laurel Ridge LLC (herein called "Buyer"), AND Montague Miller & Company and McLean Faulconer Inc. Realtors (herein called "Realtor(s)"), to Purchase and Sell property known as Laurel Ridge.

This Contract is contingent upon the Purchasers obtaining, at Purchaser's expense, within ten (10) business days of acceptance of this Contract, a satisfactory home and property inspection by a licensed inspector and/or contractor(s) of Purchaser's choice, including, but not limited to, the structural, mechanical, electrical, plumbing, roof and gutters systems of the property. If the results of such inspection are unsatisfactory to Purchaser, Purchaser shall provide Seller with copy of said report and written statement stating the reasons why the Purchaser is not satisfied within thirteen (13) business days of signing of this Contract by both parties. In that event, Seller shall have the option to correct said condition(s) at his expense to conform to building code of City or County in which property is located, or to terminate this agreement. Seller must notify Purchaser in writing of his decision within three (3) business days of receiving said report from Purchaser. Failure of the Purchaser to comply by the date indicated shall be deemed a waiver of this contingency. If Sellers fail to respond or express their intent not to correct the condition(s), Purchaser may terminate this Contract and recover all earnest money deposits. If Seller terminates this agreement, as called for above, this Contract shall be declared null and void, and all earnest money deposits returned to Purchaser. If Seller elects to terminate this agreement, Purchaser, within twenty-four (24) hours after receiving notification of termination, shall have the right to reinstate the contract by relieving the Seller of any obligation to correct said deficiencies.

WITNESS the following duly authorized signatures and seals:

Seller _____ Purchaser _____

Seller _____ Purchaser _____

· McLEAN ·
FAULCONER INC.
Farm, Estate and Residential Brokers
web site: www.mcleanfaulconer.com
503 Faulconer Drive, Suite 5 Charlottesville, Virginia 22903
Phone: (804) 295-1131 Fax (804) 293-7377
e-mail: homes@mcleanfaulconer.com

RADON ADDENDUM

ADDENDUM TO CONTRACT DATED February 14, 2000, BETWEEN

Kenneth R. Lane and Barbara G. Lane, Trustees for the Kenneth R. Lane Living Trust (herein called "Seller"),

AND Audrey Lea Haisfield or Laurel Ridge LLC (herein called "Buyer"), AND

Montague Miller & Company and McLean Faulconer Inc. Realtors (herein called "Realtor(s)"), to

Purchase and Sell property known as Laurel Ridge.

This Contract is contingent upon the following:

Purchaser, at his expense, will have the property inspected for the presence of Radon by a company meeting the Commonwealth of Virginia's requirements for providing professional radon testing services to the public, and testing the Property in accordance with the U.S. Environmental Protections Agency's guidelines for testing residential properties involved in real estate transactions. Seller agrees to cooperate with inspector by making best efforts to keep all doors and windows closed during the testing period. The inspection shall be completed and the Seller notified of the results within ten (10) business days of the Purchaser's receipt of a fully executed copy of the Contract. If the radon testing professional believes the original test is unreliable due to possible tampering with the testing device, power failure, equipment malfunction or other condition out of the Purchaser's control, another five (5) business days will be allowed for re-testing. If Radon is found to be present at levels that exceed 4 pCi/L (picocuries per liter), the action level established by the Environmental Protection Agency, then Seller may have five (5) business days to retest at Seller's expense. If Radon level is again found to exceed 4pCi/L, then Seller has the following options:

A) Seller, at Seller's expense, will correct the condition and furnish the Purchaser with a certification, at Seller's expense, demonstrating that the condition has been remedied before the date of settlement or within 45 days of ratification of the Contract, whichever shall occur first; or

B) Seller may refuse to remedy the condition in which case the Purchaser may, at his option, terminate the Contract or waive this contingency by providing written notice to the Seller within five (5) business days of Seller's refusal. In the event the Contract is terminated, ALL PARTIES AGREE TO EXECUTE AN APPROPRIATE RELEASE OF THIS SALES CONTRACT RETURNING ALL MONIES, WHICH HAD BEEN DEPOSITED IN THE BROKER'S ESCROW ACCOUNT, TO THE PURCHASER.

The Purchaser may remove this contingency without cause within seven (7) days of being notified of Radon levels in excess of 4 pCi/L.

WITNESS the following duly authorized signatures and seals:

Seller _____ Purchaser _____

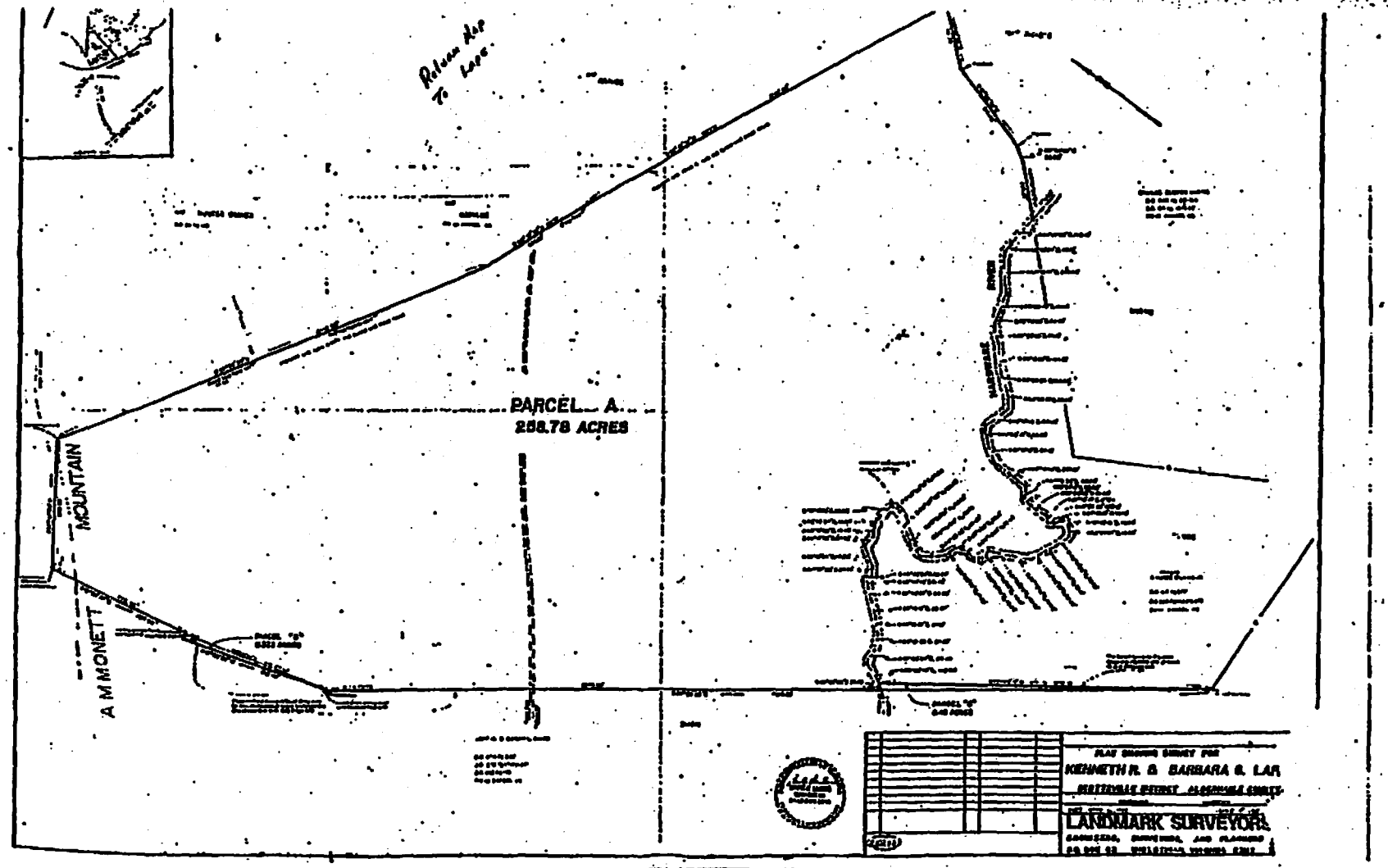
Seller _____ Purchaser _____

RESIDENTIAL PROPERTY DISCLAIMER STATEMENT

NOTICE TO SELLER AND PURCHASER

The Virginia Residential Property Disclosure Act requires the owner of certain residential real property, whenever the property is to be sold or leased with an option to buy, to furnish to the purchaser either (a) a RESIDENTIAL PROPERTY DISCLAIMER STATEMENT stating that the owner makes no representations or warranties as to the condition of the property, except as otherwise provided in the purchase contract, or (b) a RESIDENTIAL PROPERTY DISCLOSURE STATEMENT disclosing defects in the condition of the property actually known by the owner. Certain transfers of residential property are excluded from this requirement (see the exemptions listed on the reverse side).

◆◆◆


PARCEL A
258.78 ACRES
AMMONETT MOUNTAIN
KENNETH R. & BARBARA G. LAR
LANDMARK SURVEYORS

VIRGINIA: IN THE CIRCUIT COURT FOR THE COUNTY OF ALBEMARLE

KENNETH R. LAPE, TRUSTEE OF THE
KENNETH R. LAPE LIVING TRUST, et al.,

Plaintiffs,

v. Case No. CL00-8407

AUDREY LEA HAISFIELD, et als.,

Defendants.

GROUNDS OF DEFENSE AND COUNTERCLAIMS OF AUDREY LEA HAISFIELD AND LAUREL RIDGE, LLC

Defendants, Audrey Lea Haisfield and Laurel Ridge, LLC, by counsel, state the following for their Grounds of Defense to Plaintiff's Motion for Judgment:

1. Defendants admit the allegations in paragraph 1 of Plaintiff's Motion for Judgment.

2. Defendants admit the allegation in paragraph 2 of Plaintiff's Motion for Judgment.

3. The agreement speaks for itself. Defendants, therefore, deny the allegations in paragraph 3 of Plaintiff's Motion for Judgment.

4. Defendants deny the allegation in paragraph 4 of Plaintiff's Motion for Judgment that Plaintiffs complied with all of their legal requirements pursuant to the contract, and all contingencies were met. Defendants admit the allegation in paragraph 4 of Plaintiff's Motion for Judgment that counsel for Plaintiffs drafted a proposed deed and closing statement and provided these documents to counsel for the Defendants on or about June 23, 2000.

5. Defendants deny the allegation in paragraph 5 of Plaintiff's Motion for Judgment that on or about the closing date of June 30, 2000, the Plaintiffs by their counsel tendered full

FILED
2000 AUG 18 AM 9:52
CIRCUIT COURT CLERK'S OFFICE
ALBEMARLE COUNTY, VA.
SHELBY J. MARSHALL, CLERK

performance of their obligation under the contract to counsel for the Defendants. Defendants admit the remaining allegations in paragraph 5 of Plaintiff's Motion for Judgment.

6. Defendants deny the allegations in paragraph 6 of Plaintiff's Motion for Judgment

7. Defendants deny the allegations in paragraph 7 of Plaintiff's Motion for Judgment.

8. Defendants deny the allegations in paragraph 8 of Plaintiff's Motion for Judgment.

9. Defendants admits the allegation in paragraph 9 of Plaintiff's Motion for Judgment that McLean Faulconer, Inc. is made a party defendant to this action because it holds the liquidated damage deposit of $50,000.00. Defendants deny the remaining allegations of paragraph 9 of Plaintiff's Motion for Judgment.

10. Defendants reserve the right to amend their Grounds of Defense to Plaintiff's Motion for Judgment from time to time as they deem fair, and to avail themselves of such defenses and/or affirmative defenses as they deem fit.

COUNTERCLAIMS

11. The Plaintiffs own certain real estate situated in the Scottsville Magisterial District of Albemarle County, containing 98.78 acres, more or less, being designated as Tax Map 111, Parcel Number 5A, with improvements, fronting on Virginia State Route 712 in North Garden. This real estate is a portion of the same property conveyed to the Plaintiffs by deed dated May 20, 1998, recorded in Deed Book 1706, Page 144 in the Clerk's Office of the Circuit Court of Albemarle County.

12. On or about February 14, 2000, the Plaintiffs entered into a Virginia Association of Realtors Residential Contract of Purchase, including certain addenda, (hereinafter the "Contract") with the Defendants, Audrey Lea Haisfield and Laurel Ridge, LLC.

13. Paragraph 4 of the Contract states: "That Purchaser has made a Deposit with McLean Faulconer, Inc. (the "Escrow Agent"), of Fifty Thousand Dollars ($50,000.00) (the "Deposit") by check, receipt of which is hereby acknowledged. Upon ratification of this Contract by all parties, the Deposit shall be held in escrow by the Escrow Agent. If the transaction does not settle, the Deposit shall be held or disbursed in accordance with the regulations of the Virginia Real Estate Board."

14. Paragraph 14 of the Contract states, in part: "At settlement Seller shall convey the Property to the Purchaser by a general warranty deed containing English covenants of title, free of all encumbrances, tenancies, and liens (for taxes and otherwise), but subject to such restrictive covenants and utility easements of record which do not materially and adversely affect the use of the Property for residential purposes or render the title unmarketable."

15. Prior to the closing date, Defendants examination of title to the Property revealed restrictive covenants in a Deed between Kenneth R. Lape and Barbara G. Lape, Grantors, and Hamilton Moses, III and Alexandra Gibson Moses, Grantees, recorded in the Clerk's office for the Circuit Court for the County of Albemarle in Deed Book 1401, page 449 (hereinafter the "Deed"), that materially and adversely affected Defendants use of the property for residential purposes and/or rendered the title unmarketable (hereinafter the "Title Defects"). The Title Defects are as follows: (1) a building restriction which states:

"[t]he Grantors covenant for themselves, their successors and assigns, that for a period of thirty (30) years from the date of this deed, no building shall be built on the current Albemarle County Tax Map Parcel 111-5A (a portion of the 98.81 residue parcel of Grantors as depicted on the Plat) which may be visible from the main residence (Oakmont) located on the property conveyed by this deed;" and (2) a prohibition against the "commercial removal of timber, except for sound land management purposes," for thirty years on a portion of the 98.78 acres. A copy of the Deed is attached hereto and incorporated herein as "Exhibit 1".

16. On or about June 29, 2000, Defendants notified Plaintiffs of the Title Defects and gave Plaintiffs sixty (60) days to cure the Title Defects, pursuant to paragraph 14 of the Contract.

17. Plaintiffs failed and refused to cure the Title Defects, and continue to fail and refuse to cure the Title Defects.

18. Plaintiffs failed to comply with the legal requirements of the Contract, and failed to tender full performance of their obligations under the Contract.

19. Plaintiffs defaulted and/or breached the Contract, thereby entitling Defendants to the return of the Deposit, in accordance with the regulations of the Virginia Board of Realtors

20. Paragraph 23 of the Contract allows the Defendants to recover their attorneys fees and costs from Plaintiffs as a result of Plaintiffs default and/or breach of the Contract.

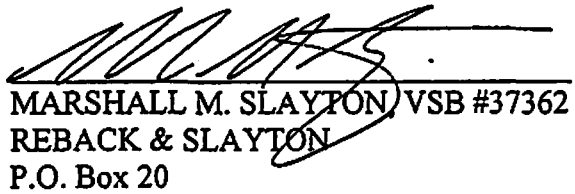
WHEREFORE, Defendants, Audrey Lea Haisfield and Laurel Ridge, LLC, ask that Plaintiff's Motion for Judgment be dismissed with prejudice, that McLean Faulconer, Inc. be

ordered to return the earnest money deposit of $50,000.00 to Defendants, that Defendants be awarded judgment against the Plaintiffs for interest on the $50,000.00 at the judgment rate from June 30, 2000, until paid, plus taxable costs, attorney's fees and other reasonable expenses as permitted by Paragraph 23 of the Contract.

Respectfully Submitted,

AUDREY LEA HAISFIELD and
LAUREL RIDGE, LLC

By Counsel



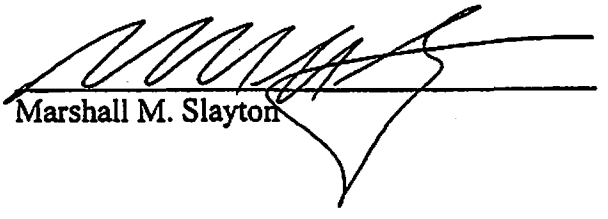
MARSHALL M. SLAYTON, VSB #37362
REBACK & SLAYTON
P.O. Box 20
700 East High Street
Charlottesville, VA 22902
Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Grounds of Defense and Counterclaims of Audrey Lea Haisfield and Laurel Ridge, LLC, was mailed, first-class, postage prepaid, this 18th day of August, 2000, to:

John G. Berry, Esq.
Berry & Early
P.O. Box 620
Madison, VA 22727

Stephen T. McLean, President
McLean Faulconer, Inc.
503 Faulconer Drive, Suite 5
Charlottesville, VA 22903



Marshall M. Slayton

BK 1401 PG 0149

005835

THIS DEED, made as of this 3rd day of May, 1994, by and between KENNETH R. LAPE and BARBARA G. LAPE, husband and wife, Grantors, parties of the first part, and HAMILTON MOSES, III and ALEXANDRA GIBSON MOSES, husband and wife, Grantees, parties of the second part, whose address is: Rt. 1, Box 549, North Garden, Va 22959

W I T N E S S E T H:

That for and in consideration of the sum of NINE HUNDRED TWENTY THOUSAND AND NO/100 DOLLARS ($920,000.00), cash in hand paid, the receipt of which is hereby acknowledged, the said Grantors do hereby GRANT, BARGAIN, SELL and CONVEY with GENERAL WARRANTY and ENGLISH COVENANTS OF TITLE unto the Grantees, as tenants by the entirety with full rights of survivorship as at common law, and not as tenants in common, all that certain lot or parcel of land with all improvements thereon and all appurtenances thereunto belonging, situated in the Scottsville Magisterial District of Albemarle County, Virginia, containing 48.725 acres, as shown and more particularly described on plat of Robert L. Lum, C.L.S., dated April 6, 1992, which plat is recorded in the Clerk's Office of the Circuit Court of Albemarle County, Virginia, in Deed Book 1220, page 568 (the "Plat"). Being a portion of the same property conveyed to the Grantors herein by deed of Carolyn B. Randolph and Larned D. Randolph, her husband, dated August 22, 1979, recorded in the aforesaid Clerk's Office in Deed Book 678, page 662.

This deed further provides that the Grantors covenant for themselves, their successors and assigns, that for a period of

thirty (30) years from the date of this deed, no commercial removal of timber, except if necessary for sound land management purposes, shall occur on the following described property of Grantors:

Beginning at the Northeast corner of the property conveyed by this deed (adjacent to the barn depicted on the referenced Plat), then running in a Northwesterly direction along the same bearing as the property line (N 54° 48' 41" W) for 300 feet; then in a straight line approximately 800 feet to VSH 712 to a point along VSH 712 which is 150 feet from the Northwestern corner of the property conveyed by this deed.

The Grantors covenant for themselves, their successors and assigns, that for a period of thirty (30) years from the date of this deed, no building shall be built on the current Albemarle County Tax Map Parcel 111-5A (a portion of the 98.81 residue parcel of Grantors as depicted on the Plat) which may be visible from the main residence (Oakmont) located on the property conveyed by this deed.

This conveyance is made expressly subject to the easements, conditions, restrictions, and reservations contained in duly recorded deeds, plats and other instruments constituting constructive notice in the chain of title to the property hereby conveyed, which have not expired by limitation of time contained therein or have not otherwise become ineffective and any lien, inchoate or otherwise for real estate taxes and assessments not yet due and payable.

BK1401PG0451

WITNESS the following signatures and seals:

_____ (SEAL)
Kenneth R. Lape

_____ (SEAL)
Barbara G. Lape

STATE OF VIRGINIA

CITY/~~COUNTY~~ OF Charlottesville, to wit:

The foregoing instrument was acknowledged before me this 28th day of April, 1994, by Kenneth R. Lape and Barbara G. Lape.

_____ (SEAL)
Notary Public

My Commission Expires: May 31, 1996

LAP4D011.jjh

VIRGINIA: IN THE CLERK'S OFFICE OF THE CIRCUIT COURT OF ALBEMARLE:

THIS DEED WAS PRESENTED, AND WITH CERTIFICATE ANNEXED, IS ADMITTED TO RECORD ON May 3, 1994, AT 2:41 O'CLOCK P M.

STATE TAX	$1380.00	(039)
LOCAL TAX	$460.00	(213)
TRANSFER FEE	$1.00	(212)
VSLF	$1.00	(145)
CLERK'S FEE	$12.00	(301)
PLAT	$	
SEC.58.1-802:		
STATE TAX	$460.00	(038)
LOCAL TAX	$460.00	(220)
LOCAL TAX	$	(223)
TOTAL	$2,774.00	

TESTE:
SHELBY J. MARSHALL, CLERK
BY: _____
DEPUTY CLERK

a true copy TESTE:
SHELBY J. MARSHALL, CLERK
by: _____
Deputy Clerk

VIRGINIA: IN THE CIRCUIT COURT OF ALBEMARLE COUNTY

KENNETH R. LAPE, TRUSTEE OF THE KENNETH R. LAPE LIVING TRUST, et al.,

Plaintiffs

v. Case No. Cl00-8407

AUDREY LEA HAISFIELD, et al.,

Defendants

ANSWER AND GROUNDS OF DEFENSE TO THE COUNTERCLAIMS OF AUDREY LEA HAISFIELD AND LAUREL RIDGE, LLC

TO THE HONORABLE JUDGE OF THIS COURT:

Come now the Plaintiffs, Kenneth R. Lape, Trustee of the Kenneth R. Lape Living Trust, et al., and in response to the Counterclaims filed herein by the Defendants Haisfield and Laurel Ridge, LLC, say as follows:

1. Paragraphs 11 and 12 of the Counterclaims are admitted.

2. Paragraphs 13 and 14 contain quotations from the parties real estate contract, and are admitted to the extent that they purport to repeat certain portions of the contract, but are denied to the extent that these allegations suggest that the quoted provisions are the only contract terms which govern this dispute.

3. Paragraphs 15 through 20, inclusive, are denied.

4. The Plaintiffs intend to rely on all affirmative defenses, including waiver and estoppel, and all other affirmative defenses which might become known through pre-trial discovery and for which proper notice is given.

5. All allegations of the Plaintiffs Motion for Judgment are incorporated by reference as fully as if set forth herein verbatim.

WHEREFORE, the Plaintiffs move the court for all relief requested in the Motion for Judgment filed in this case, for dismissal of the Counterclaims, and for all taxable costs and

2000 SEP 19 PM 12: 40

CIRCUIT COURT
ALBEMARLE COUNTY, VA.
SHELBY J. MARSHALL, CLERK
BY

legal fees and expenses related to the defense of the counterclaims as the same may be allowed by law and the terms of the contract.

KENNETH R. LAPE, TRUSTEE OF THE
KENNETH R. LAPE LIVING TRUST, et als.

By: John G. Berry
Counsel

John G. Berry
Berry & Early
P. O. Box 620
Madison, Virginia 22727
(540) 948-6848
Facsimile: (540) 948-3513

CERTIFICATE

I certify that a true copy of the foregoing Answer and Grounds of Defense was mailed and sent by facsimile to Marshall M. Slayton, Esquire, and mailed to Stephen T. McLean, President, McLean Faulconer, Inc., on September 19, 2000.

John G. Berry

VIRGINIA: IN THE CIRCUIT COURT OF ALBEMARLE COUNTY

KENNETH R. LAPE, TRUSTEE, et al.,
Plaintiffs

v. CASE No. C100-8407

AUDREY LEA HAISFIELD,
Defendants

TO THE HONORABLE CLERK OF THIS COURT:

The undersigned certifies that this case is mature on the merits, and the Clerk is requested to place it on the docket on December 21, 2000, at 9:30 a.m. or as soon thereafter as it may be heard, to set the case for trial, without a jury. The trial is expected to take an estimated time of 5 hours.

KENNETH R. LAPE, TRUSTEE, et al.

By _____
Counsel

John G. Berry
Berry & Early
P. O. Box 620
Madison, Virginia 22727
(540) 948-6848
Facsimile: (540) 948-3513

FILED
2000 DEC -6 PM 2:32
CLERK

CERTIFICATE

I hereby certify that a true copy of the foregoing Praecipe was mailed to counsel of record and all unrepresented parties on December 6, 2000.

020092 + 012881 ORIGINAL

VIRGINIA: IN THE CIRCUIT COURT FOR ALBEMARLE COUNTY

KENNETH R. LAPE, Trustee of the
KENNETH R. LAPE LIVING TRUST, et als.,

Plaintiffs

v.

AUDREY LEE HAISFIELD, et als.,

Defendants

CLERK
SUPREME COURT OF VIRGINIA
RECEIVED
JAN 29 2002
RICHMOND, VIRGINIA

HEARING

Taken on

May 24, 2001

I, Shelby J. Marshall, Clerk of Circuit Court of Albemarle County do hereby certify this to be the original transcript in the matter of Kenneth R. Lape, Trustee, et als vs Audrey Lee Haisfield, et als.

FILED
2001 NOV -2 PM 3:
CLERK
BY

Shelby J. Marshall

Shelby J. Marshall, Clerk

LANE'S COURT REPORTERS, INC.
609 E. HIGH STREET
CHARLOTTESVILLE, VIRGINIA 22902

APPEARANCES:

John G. Berry, Esq.
Berry & Early
P.O. Box 620
Madison, VA 22727
Attorney for Plaintiffs

Joseph W. Wright, III, Esq.
McGuire Woods LLP
P.O. Box 1288
Charlottesville, VA 22902
Attorney for Defendants

Before: The Honorable Paul M. Peatross, Jr.

TABLE OF CONTENTS

WITNESS - Plaintiff	DIRECT	CROSS	REDIRECT	RECROSS
Wendall Winn	22	39		
Joe Cochran	42	48		
Kenneth R. Lape	50	72	82	
Carol Clarke	86	101	105	108
Forbes Reback	110			
Steve McLean	119	136	142	
Audrey Lee Haisfield	143	159	160	164

WITNESS - Defense	DIRECT	CROSS	REDIRECT	RECROSS
Warren Andrews	165	170	177	
Audrey Haisfield (Recalled)	179	190		
Steve McLean (Recalled)	193	198		

WITNESS - Rebuttal	DIRECT	CROSS	REDIRECT	RECROSS
Kenneth R. Lape	203			

1 EXHIBITS

2

NUMBER	DESCRIPTION - Plaintiff	RECEIVED AT PAGE
1	Real Estate Contract	25
2	Letter	27
3	Letter	30
4	Letter	30
5	Letter	33
6	Letter	47
7	Deed	72
8	Proposed Plan	151
9	Marketing Brochure	89
10	Letter	112
11	McLean's Notes	121
12	McLean's Notes	124
13	Contract for Purchase	156
14	Bill of Sale	158
15	Note	175
16	Title Insurance	207
17	Letter	212

20

21

22

23

24

25

NUMBER	DESCRIPTION - Defense	RECEIVED AT PAGE

1	Deed	73
2	Plat	76
3	Plat	77
4	Topographical Map	78
5	Set of Plans	170
6	Moses Letter	203

1 (All witnesses were excluded at this time.)

2

3 THE COURT: So witnesses have been excluded.

4 Opening statement, Mr. Berry.

5 MR. BERRY: Thank you, Your Honor. May it please

6 the Court. As the Court knows from the earlier hearing we

7 had last week and also likely from review of the file, this

8 is a contract action based upon a Virginia Association of

9 Realtors standard form residential contract. It involves

10 property that's owned by Kenneth and Barbara Lape, which is

11 located in the North Garden area of Albemarle County.

12 They've owned a good portion of this property for twenty-

13 five (25) years roughly. Mr. Lape is a retired American

14 Airlines pilot. They--

15 THE COURT: So wait a minute, is Mr. McLean a wit-

16 ness?

17 MR. WRIGHT: Yeah, he will be a witness.

18 THE COURT: Sir, you need to wait outside. You

19 can wait in the building.

20 MR. WRIGHT: McLean Faulconer is a party, Your

21 Honor.

22 THE COURT: Do you agree with that, Mr. Berry?

23 MR. BERRY: Judge, they are sort of a nominal

24 party, although--but they're a party only because they hold

25 the escrow. That's the only reason. The pleadings make

1 that clear. So I think it's probably within the Court's
2 discretion to exclude them. Mr. McLean is really more of a
3 witness, I think, than he is a party. There's no claim
4 against them other than that they hold the stake.
5 THE COURT: The stake holder.
6 MR. BERRY: Yes, sir.
7 THE COURT: Well, but he's still a named party.
8 MR. BERRY: He is a named party.
9 THE COURT: So he can stay in the courtroom.
10 MR. BERRY: Judge, the property that the Lapes
11 bought twenty-five (25) years ago is called Oakmont Farm and
12 they lived there for a number of years. It has a historic
13 residence on it. In 1994 they contracted to sell that resi-
14 dence with 48 acres of land, roughly, to Dr. Hamilton Moses
15 and his wife. McLean Faulconer and Frank Hardy acted as
16 seller's agents in that transaction. The contract in that
17 transaction included certain restrictive covenants that the
18 Moses requested concerning the residue of the Oakmont Farm
19 property that was being retained by the Lapes. The parties
20 went to settlement, both sides were represented by counsel.
21 The Lapes were represented by McGuire, Woods, Battle &
22 Boothe. The deed that was prepared from that transaction
23 imposed on the residue, the 98-acre residue, two covenants,
24 one of which was that there was to be a very limited buffer
25 at the boundary line between the Oakmont Farm property being

1 sold to the Moses and the residue of the property being re-
2 tained by the Lapes. The buffer consisted of about anywhere
3 from a hundred and fifty (150) feet to somewhat wider, de-
4 pending on where you were along the boundary line and pro-
5 hibited commercial timber. That was the restriction. The
6 balance of this 98-acre tract, Judge, is mostly wooded with
7 the exception of a small cleared area where the residence
8 that the Lapes have is now located.
9 The other covenant, Judge, said that the Lapes
10 would not build any building, and I underscore the word
11 building, on the residue property that could be seen from
12 the primary residence at Oakmont, a view easement in short-
13 hand terms. In 1995 the Lapes constructed a substantial
14 residence on the residue property which is now known as Lau-
15 rel Ridge, consisting of between forty-three hundred (4,300)
16 and five thousand (5,000) square feet and that's where they
17 then made their residence. The property, the main resi-
18 dence, is accessed by a paved road from the public roadway.
19 In 1999 the Lapes listed with Montague Miller the residue
20 property, Laurel Ridge, along with another tract of approxi-
21 mately 250 acres that Mr. Lape had purchased, Mr. and Mrs.
22 Lape had purchased that was above, if you will, sort of up
23 the mountain from the residue property, from Laurel Ridge.
24 Carol Clarke was the realtor with Montague Miller who han-
25 dled the matter as the listing agent for the seller's agent

1 for the Lapes. In February of 2000, Mr. and Mrs. Haisfield
2 from California through--acting through McLean Faulconer
3 were shown the property and ultimately put a written offer
4 in place which was negotiated, and with about two weeks of
5 back and forth resulted in a contract being fully executed
6 around the first of March of 2000. That contract for nine
7 hundred thousand dollars ($900,000) for the primary resi-
8 dence and an option on the 250 acres which involved the pay-
9 ment of twenty-five thousand dollars ($25,000) at closing
10 and then put in place the purchase price for that option
11 property ultimately if the Haisfields decided to buy it,
12 contained a provision as all standard form residential con-
13 tracts at that time did, indicating that the property would
14 be conveyed subject to restrictive covenants and utility
15 easements of record which did not materially and adversely
16 affect the use of the property for residential purposes or
17 render the title unmarketable. Those were the key words in
18 the contract. The contract also, at the request of the buy-
19 ers, Mrs. Haisfield at that point and Laurel Ridge LLC, con-
20 tained a provision that in the event of default by the buyer
21 or buyers, there would be a fifty thousand dollar ($50,000)
22 liquidated damage escrow that would be paid over as a result
23 and that that would limit the buyer's damages to that
24 amount. That language was passed on by an attorney in Cali-
25 fornia who conferred with or communicated with both realtors

1 who agreed with the understanding that he had of that lan-
2 guage that basically would prohibit any claim for real es-
3 tate commissions or anything other than the language of the
4 fifty thousand dollars ($50,000) that was in the contract.
5 The contract also provided for a study period whereby the
6 buyer could investigate the use of the property and at the
7 conclusion of that time would have a right to basically uni-
8 laterally walk away from the contract if she chose to do
9 that. Things moved along from there, Judge, at what I would
10 suggest is a fairly normal pace. Things were being done.
11 The study--the property was being viewed by various people.
12 At the end of the study period the buyer did not opt to get
13 out of the contract, did not opt not to go forward. Both
14 realtors agreed the study period was over. Then everybody
15 started preparing for closing. The contract called for a
16 June 30th closing date. As the closing came closer, in May
17 Mr. Lape initiated some discussions concerning the sale of
18 his personal property, some farm equipment, things of that
19 nature, on the farm. The communication occurred between the
20 realtors. Mrs. Haisfield ultimately said she wanted to buy
21 the property at the price that was suggested, which I be-
22 lieve was twenty-three thousand, five hundred dollars
23 ($23,500) the evidence will show, and on or about June 6th,
24 Mrs. Haisfield executed a bill of sale for the purchase of
25 that property and on the bill of sale wrote language that

1 says that she would buy that at the time of closing on an
2 if, as and when basis, and she added in the language, on an
3 if, as and when basis. Because of this fact and some other
4 things that were happening as the month of June progressed,
5 the buyer--the seller's agent, Ms. Clarke, and the sellers,
6 Mr. and Mrs. Lape, became concerned because they wanted to
7 know is this contract going to closing, and Mr. and Mrs.
8 Lape have another residence in Florida. They were moving,
9 had made arrangements to move all of their furniture out of
10 their house, basically closing down their period of Laurel
11 Ridge and preparing to move away. On the 22nd of June, be-
12 cause of the phone call that Carol Clarke had received from
13 Steve McLean and statements that he had made in that phone
14 call about renegotiating certain aspect of the contract, Ms.
15 Clarke called Joe Cochran at the law firm of Richmond &
16 Fishburne, the law firm that was representing Mr. Lape in
17 the closing, specifically Wendall Winn. Mr. Winn was gone
18 on vacation during that time and Joe Cochran was assisting
19 with the file. And in that conversation Mr. Cochran in-
20 quired of Mr. Reback, the attorney for Mrs. Haisfield,
21 whether or not there was going to be a closing and Mr. Re-
22 back's comment to him was that the buyer may well walk away
23 from the closing. He wasn't sure what was going to happen,
24 and at that point, of course, the Lapes were concerned about
25 whether or not they should move out of the house and what

1 should occur. As the week went along, the law firm of Rich-
2 mond & Fishburne, the seller's counsel, made the normal ar-
3 rangements for closing, provided the normal documents, ten-
4 dered a draft of a deed, the closing statement, the termite
5 report, well report, things of that nature, and then on the
6 29th of June for the first time, the closing scheduled the
7 following day, received a letter late in the day, I believe
8 the evidence will show from Marshall Slayton, one of the
9 buyer's attorneys, saying that there was a title defect on
10 the property, specifically this so-called building restric-
11 tion that the Court heard me describe a moment ago. That
12 followed with an exchange of letters back and forth between
13 counsel with Mr. Winn tendering performance, taking issue
14 with the position that Mr. Slayton took, taking the position
15 that the property was in fact marketable and that there was
16 a fine residence on the property that was available for use.
17 A second letter from Mr. Slayton, which came on the 30th of
18 June and amended his earlier letter, also included the tim-
19 ber restriction in the--the commercial timbering restriction
20 on that short or that small buffer at the boundary as an al-
21 leged title defect. The Court can, I would assume, imagine
22 the correspondence back and forth at that point and Mr. Winn
23 ultimately said, we're going to consider your clients in
24 breach if they're not prepared to close by next Friday,
25 which at that point would have been July the 7th, I believe,

1 this was coming up on the 4th of July holiday. As July 7th
2 rolled around there were more exchanges of letters, demands
3 by the buyer's attorney to cure responses as the evidence
4 will show by Mr. Winn, that there was no defect, nothing to
5 be cured. No closing took place on the 7th of July and
6 things sort of sat at that point, Judge, ultimately with
7 this lawsuit being filed thereafter.
8 The evidence will also show, Judge, as November
9 approached that there was an effort by the Haisfields who,
10 once again, initiated closing on this property. Contact was
11 made with Mr. Winn to set up the closing by Mr. McLean.
12 There was no discussion of any curing of any title defects
13 or anything of that nature, simply that they were going to
14 go forward. There was now this third piece of property that
15 I'll reference here in a second was going to be closing and
16 so they were ready to close, and that closing then did not
17 take place allegedly because the third party refused to
18 close on its property, therefore the Lape property couldn't
19 be purchased. The Lape property, the evidence will show,
20 Judge, had no contingency in it related to the purchase of
21 any other property, and as the June 30th closing date ap-
22 proached initially, the evidence will be that the real con-
23 cern, or one of the real concerns on the part of Mrs. Hais-
24 field was that she had to have, as she said, all three prop-
25 erties. In other words, the residue property, the option

1 property the Lapes owned and this other piece of property
2 which basically formed a pie-shaped slice in between the two
3 Lape tracts, and that property was owned partly by the Gor-
4 dons here in Albemarle County and partly by a trust. At
5 that time I believe the Tye River Limited Partnership per-
6 haps was the other owner, but it was a family type of trust
7 and that property would not go to closing on June the 30th.
8 The evidence will be that that contract which was entered
9 into late, actually on the 20th of April, did in fact con-
10 tain a contingency that it would not close unless the Lape
11 property closed. So it's our position, and we said this at
12 the time of the motion for summary judgment, it's our posi-
13 tion that the real reason that the contract didn't close on
14 the 30th of June had nothing to do with these alleged title
15 defects, it had to do with what was going on with this third
16 tract and that the title defects amounted to--or the claim
17 of a title defect amounted to a pretext for avoiding closing
18 until the Haisfields could address that issue and then go to
19 closing on all three. Judge, we believe the evidence will
20 support the claim of the Lapes, that they're entitled to
21 this liquidated damage deposit that's being held by Mr.
22 McLean. We will also ask the Court to award attorney's fees
23 and expenses under the other provisions of the contract and
24 I think the Court, if the Court gets to that point, is going
25 to have to look at whether or not that liquidated damage

1 provision is specific enough that it eliminates any claim
2 for attorney's fees and other expenses or whether those
3 claims are properly made in addition to the amount of money
4 in the liquidated damage escrow. Thank you.
5 THE COURT: Thank you. Mr. Wright, opening state-
6 ment?
7 MR. WRIGHT: Your Honor, we represent the defen-
8 dants, Audrey Lee Haisfield and Laurel Ridge LLC. As you've
9 heard already, the motion for judgment the Lapes filed in
10 this matter request and award of fifty thousand dollars
11 ($50,000), the amount of the earnest money deposit Mrs. Ha-
12 isfield made when she executed a February 14, 2000 contract
13 for the purchase of Laurel Ridge, and I'll correct one thing
14 Mr. Berry said. Mr. Berry said that Mr. and Mrs. Haisfield
15 visited the property and executed the contract. I know he
16 didn't mean to say that both of them executed the contract.
17 In fact they both visited the property, but Mrs. Haisfield
18 is the purchaser on the contract. Mr. Haisfield is not a
19 party to that contract.
20 Mrs. Haisfield and Laurel Ridge, LLC filed a coun-
21 terclaim in this matter requesting a reimbursement of the
22 earnest money deposit on the premise that there was no
23 breach of this contract by the purchaser. She failed to
24 close on the contract when she learned one day before clos-
25 ing that there were restrictive covenants on the property

1 that threatened her intended use of the property and created
2 what she believed to be a defect in the title. She believed
3 that she was getting less than she bargained for, for rea-
4 sons that you will hear her explain. The evidence will be
5 that Ms. Haisfield, who was going to use the property as a
6 residence but also as a horse farm for the breeding of a
7 herd of horses, intended to make substantial improvements to
8 the property and engaged various consultants in the spring
9 of 2000, architect, landscape architects, interior design-
10 ers, to advise her about improvements to the property, what
11 she needed to do, where these various buildings could be po-
12 tentially located, additions to the residence, location of
13 an equestrian facility, an indoor arena, ancillary barns, a
14 pool, housing for some employees that the Haisfields would
15 ultimately bring with them to the farm at whatever time they
16 moved to Virginia, pastures, a hay field. You're going to
17 hear from her that she spent about forty thousand dollars
18 ($40,000) in consulting fees for all of these experts advis-
19 ing her about what options she had for improving the prop-
20 erty to make it usable for her horse farm operation. You
21 will hear from her that she was going to bring about thirty
22 (30) horses here to Laurel Ridge. You're going to hear evi-
23 dence that because there's only about 10 or 12 acres of open
24 area around the residence, she would have had to retain a
25 commercial timbering operation to fell a substantial amount

1 of the timber on Laurel Ridge to provide space for pastures
2 and hayfields which are necessary to operation of a horse
3 farm. You're going to hear from her that until June 29,
4 2000 she fully intended to perform and close on this con-
5 tract, that she had been sent closing documents, had re-
6 ceived them, had furnished instructions to a bank in Phila-
7 delphia to wire funds to Charlottesville to be available for
8 closing, that until that date when she learned for the first
9 time that these restrictions on the use of the property she
10 was ready and willing to close on this sale. And then on
11 June 29, one day before closing, her then attorney, Marshall
12 Slayton, telephoned her and advised her that there were re-
13 strictive covenants on the property that prohibited commer-
14 cial timbering in a certain area for a period of thirty (30)
15 years and prohibited construction of any building, any
16 building, that could possibly be visible from the residence
17 at Oakmont, the home of Dr. and Mrs. Hamilton Moses. She's
18 going to tell you that because her plans for developing that
19 parcel were not final at that point, that she could not have
20 known one day before closing whether her ultimate plans for
21 the property, adding all of these improvements, would or
22 would not adversely--be adversely impacted by these cove-
23 nants. She needed to preserve her ability to use and develop
24 the property without an adjacent property owner having a
25 veto power over where she ultimately put her horse facility

1 or indoor ring or ancillary barns and the other improve-
2 ments, the tenant housing, for example, that she would be
3 making to the property, and she concluded that the covenants
4 were a defect in the title, and she demanded that the Lapes
5 cure that defect prior to closing.
6 You're going to learn that she never said I'll
7 never close on this property. She simply said, I cannot
8 close on June 30 because there are these problems with the
9 title that threaten to undo these plans that I've set in mo-
10 tion for developing my property so that I can use it for my
11 intended purpose. The sale and purchase didn't close on
12 June 30. But I think it's important, Your Honor, and you're
13 going to hear some testimony today that these parties con-
14 tinued some negotiations over a period of time that went as
15 late as about November of 2000 in an effort to resurrect
16 this deal and make it happen, and at the conclusion of the
17 evidence, Your Honor, we're going to ask the Court to dis-
18 miss the motion for judgment in this matter and to award Ms.
19 Haisfield and Laurel Ridge LLC judgment on the counterclaim
20 for the fifty thousand dollar ($50,000) earnest money de-
21 posit. Thank you.
22 THE COURT: Thank you. Mr. Berry, first witness.
23 MR. BERRY: Wendall Winn, Judge, is going to be
24 our first witness.
25 THE COURT: Let me just report to you that Mr.

1 Craig called Mr. White's office. He was not at work, left a
2 message for a secretary to come over. Have we seen anybody
3 yet, Mr. Craig?
4 MR. CRAIG: No, sir. I left a message for his
5 secretary to tell him to come over here.
6 THE COURT: To tell Mr. White to come over here?
7 MR. CRAIG: Yes, sir.
8 THE COURT: Was he expected at work or did she
9 say?
10 MR. CRAIG: She said he might be back, she didn't
11 know.
12 THE COURT: Okay.
13 MR. BERRY: Judge, we may be able to resolve it.
14 There's a document that I want to get in. Mr. Wright and I
15 may be able to handle it. I don't have a problem if we just
16 play it by ear.
17 THE COURT: All right. So we'll wait and see what
18 happens. So first witness is Mr. Winn?
19 MR. BERRY: Yes, sir.
20 THE COURT: Wendall Winn. So, Mr. Winn, if you'll
21 come forward to the witness chair in front, please. If
22 you'll stand and raise your right hand.
23
24 WENDALL WINN, having been so duly sworn, testified
25 as follows:

1 DIRECT EXAMINATION

2 By: Mr. Berry

3 Q Would you state your name please, sir?

4 A Wendall Winn.

5 Q And what's your age, Mr. Winn?

6 A Fifty-four (54).

7 Q What is your position, or what is your employ-

8 ment?

9 A I'm a partner with the law firm of Richmond &

10 Fishburne.

11 Q Are you licensed to practice law in Virginia?

12 A Yes, I am.

13 Q And how long have you been a practicing lawyer

14 in Virginia?

15 A Thirty (30)--thirty (30) years this June.

16 Q What is the primary area of your practice?

17 A Real estate and wills, trusts and estates.

18 Q Did there come a time in 2000, early 2000 that

19 you agreed to represent Ken and Barbara Lape in a real es-

20 tate transaction?

21 A Yes.

22 Q And describe the manner in which you set about

23 undertaking that transaction on their behalf. In other

24 words, what you ordinarily do and what you did, just

25 briefly.

1 A I received a contract in late February or early
2 March of the year 2000. I opened a file, a real estate
3 file, did a memo to file, contacted the Lapes. Generally we
4 send a retainer letter to the clients just telling them what
5 we're going to do, and contacted Forbes Reback, the purchas-
6 ers attorney.
7 Q Who had advised you that Mr. Reback was the at-
8 torney for the purchaser?
9 A Probably Carol Clarke. Carol was the realtor
10 who was the listing agent, the seller's broker.
11 Q All right. I'm going to show you a document
12 which I'm going mark as Plaintiff's Exhibit 1 and ask you if
13 this is in fact a copy of the real estate contract that the
14 realtors provided to you for this transaction.
15
16 (Plaintiff's Exhibit #1 was so marked for identi-
17 fication at this time.)
18
19 Q Can we agree that it is? I'll let you look at
20 it briefly but I think--
21 A Yes, this is the contract. It's dated February
22 14th, signed by Audrey Haisfield on February the 28th and by
23 the Lapes on March the 1st.
24 Q All right. Judge, we'd move this in as Plain-
25 tiff's 1.

1 THE COURT: Any objection?
2 MR. WRIGHT: No objection.
3 THE COURT: Received as Plaintiff's 1.
4
5 (Plaintiff's Exhibit #1 was so received into evi-
6 dence at this time.)
7
8 Q I'm going to try to move us through to the
9 point where things started to break down fairly quickly, Mr.
10 Winn. So can you summarize for us what occurred with this
11 transaction after you received the contract and did the,
12 what I'll call the initial housework to get going on the
13 closing?
14 A Right. Well, from the middle of March until
15 early June there was really very little activity on this
16 closing. The closing was scheduled for June the 30th in
17 2000. I went away on vacation to the Outer Banks on June
18 the 7th and did not get back in the office until June the
19 26th. Before I went on vacation I conferred with an associ-
20 ate in our office, a real estate attorney by the name of Joe
21 Cochran, and asked him to press this thing ahead to closing.
22 We would have prepared a deed and a closing statement and
23 forwarded it to Forbes Reback, and when I left for vacation
24 on June the 7th, I had every expectation that it would close
25 on June the 30th. It wasn't until I got back on he 26th that

1 I got involved again.
2 Q All right. Did you on the 28th of June send a
3 letter to Mr. Reback confirming that the Lapes were prepared
4 to go to closing--
5 A I did.
6 Q --on June 30th?
7 A I did. In fact, I met with Ken and Barbara
8 Lape on the afternoon of June the 28th. That was a Wednes-
9 day. They came to sign the deed and other seller's closing
10 documents.
11 Q Had you gotten any indication up until that
12 point that there was--at least in your communications, I'm
13 not talking about Mr. Cochran now, in your communications
14 that there was--whether--as to there not being a closing?
15 A Not in mine. I conferred with Joe Cochran and
16 he informed me that he had some conversations that indicated
17 that there--
18 MR. WRIGHT: Objection to the hearsay, Your Honor.
19 THE COURT: Sustained.
20 Q Yes, sir. We're going to call him.
21 A No, not that I was directly involved with.
22 Q Is that letter an accurate copy of the letter
23 that you transmitted to Mr. Reback on the 28th?
24 A It is and I hand delivered it to him because in
25 our discussions we agreed that Mrs. Haisfield as purchaser

1 would need to sign the deed because it contained an option,
2 that's an agreement. We felt like that the optionee needed
3 to sign it so he was going to take the original, FedEx it or
4 somehow get it to California because she was not expected to
5 be present at closing.
6 Q And your understanding was that document was to
7 be back by Friday?
8 A Correct.
9 Q All right. Judge, we'd move this letter into
10 evidence as Plaintiff's 2.
11 MR. WRIGHT: No objection.
12 THE COURT: Received as Plaintiff's 2.
13
14 (Plaintiff's Exhibit #2 was so marked and received
15 into evidence at this time.)
16
17 Q Tell the Court what occurred then, Mr. Winn,
18 after you delivered that letter on the 28th of June to Mr.
19 Reback's office.
20 A As far as I was concerned at that point we were
21 going to close on Friday, the 30th. Forbes, I believe was--
22 Forbes informed me that he was going out of town, I think,
23 on Thursday and that Marshall Slayton in his office would
24 handle the closing on Friday. I received a call from Mar-
25 shall Slayton Friday morning saying that it would not close.

1 MR. WRIGHT: Objection to the hearsay, Your Honor.
2 Q Judge, I think he is describing a discussion
3 that he had with an attorney representing Mrs. Haisfield who
4 I would submit is an agent of hers and therefore that testi-
5 mony is exempt from exclusion under the hearsay rule.
6 THE COURT: So how about him, Mr. Slayton being an
7 agent of Mrs. Haisfield, a party?
8 MR. WRIGHT: Mr. Slayton is here today and can
9 testify as to what he said on whatever date, Your Honor. I
10 still think it is hearsay when it's testimony introduced by
11 Mr. Winn.
12 THE COURT: So I'm going to receive it not for the
13 truth of it, but to show what Mr. Winn did. So you can ask
14 him what Mr. Slayton said and then ask him what he did as a
15 result of being told whatever he was told.
16 Q Judge, I won't argue the point now, but I do
17 believe that a statement by an attorney or any agent,
18 frankly, in situations like that is the same as a statement
19 by the principal themselves and therefore would be exempt
20 from the hearsay rule, but I don't--
21 THE COURT: And I'm inclined to agree with you but
22 since Mr. Slayton is here, we don't have a problem.
23 Q Yes, sir. Right. And I'm not going to argue
24 at this point. I agree.
25 A He informed me that it would not close on Fri-

1 day.

2 Q Do you remember at what point in the day that

3 information was received by you?

4 A Well, it was around eleven or twelve o'clock

5 that day. I was insisting that it close because we were

6 prepared to close and in fact delivered the original deed

7 and there was no reason, in my opinion, that it shouldn't

8 close. So I waited around that afternoon. When I called

9 back to speak with him again, I believe his office informed

10 me that he had left for the day.

11

12 (Plaintiff's Exhibits #3 and #4 were so marked for

13 identification at this time.)

14

15 Q All right. I'm going to show you a couple of

16 documents that have been marked 3 and 4 which are letters

17 from Mr. Slayton dated the 29th and the 30th. Just ask if

18 you received those. Did you get--get these communications?

19 A Yes, I did. One--one letter was dated June

20 29th and the other was dated June 30.

21 Q Do you remember at what point in the day on the

22 29th, Mr. Winn, if at all, you saw the letter of the 29th?

23 A To the best of my recollection I did not re-

24 ceive this letter dated June the 29th until June the 30th.

25 Q And then you received--did you receive the let-

1 ter dated June the 30th that same day?
2 A I would have to look at my file. I don't think
3 I did. I think I got this like on Monday subsequent. But I
4 did receive both these letters. I know I did not receive
5 the June 29 letter until the 30th.
6 Q All right. Judge, we'd move these into evi-
7 dence as 3 and 4.
8 THE COURT: Any objection?
9 MR. WRIGHT: No objection.
10 THE COURT: Received.
11
12 (Plaintiff's Exhibits #3 and #4 were so received
13 into evidence at this time.)
14
15 Q As a result of receiving the letter of June the
16 29th, did you in fact communicate with Mr. Slayton and re-
17 spond with your letter of June 30th?
18 A I did. First, of course, I called Ken Lape to
19 inform him that we would not be closing, and then I composed
20 a letter which I did transmit by fax on the 30th with a hard
21 copy by first class mail and this is that letter.
22 Q What was your purpose in sending that letter,
23 Mr. Winn?
24 A To respond to the first letter, the June 29
25 letter that I received on the 30th in which they gave their

1 reason for not closing, and I pointed out that in my opinion
2 the restrictive covenants which they recited as being the
3 problem or the explanation for not closing, did not, in my
4 opinion, materially adversely affect the use of the property
5 for residential purposes. Primarily, if for no other rea-
6 son, because there was a good residence already there that
7 the Lapes, in fact, had already vacated. Nor, in my opin-
8 ion, did it render the title unmarketable and so I was basi-
9 cally tendering the deed in the second page, which we do in
10 real estate practice, and giving them until Friday the 7th
11 to close, and if they didn't close by then, telling them
12 that we could consider them in breach on contract and that
13 they would forfeit the earnest money deposit.
14 Q All right. What prompted you to respond to him
15 that in your opinion the title was not unmarketable?
16 A Well, covenants of this nature, in my opinion
17 occur frequently, attach to real estate transactions. We
18 deal a lot with conservation easements which--which impose a
19 severe covenant on real estate, and in my experience I've
20 never--I've never seen that render a title unmarketable,
21 which to me means it can't be marketed, there's no market
22 for it. So in my opinion, it was--it was preposterous to
23 suggest that the covenant in question made the title to the
24 Lape property unmarketable.
25 Q Did you have any telephone--

1 MR. WRIGHT: Your Honor, I'm going to ask the
2 Court to strike the expert conclusion. Unless something
3 missed my view, I don't think Mr. Winn was identified as an
4 expert in this case by the plaintiff and I think that de-
5 spite his experience in the practice of law, he's not enti-
6 tled to offer expert testimony.
7 Q Judge, he's entitled, I would submit, to ex-
8 plain what he put in his letter and the reasons for it,
9 which I presume Mr. Slayton and Mr. Reback will likewise do.
10 In other words, he's testifying about a response to the let-
11 ter that he got or letters he got from them and explaining
12 why he said in his letter what he did and I would submit--
13 THE COURT: Did Mr. Wright ask you for experts?
14 Q We both asked and we both--neither side have
15 identified experts to be called, Judge.
16 THE COURT: Okay. So I'll exclude any expert
17 opinion, but he can say what he responded to.
18 Q Yes, sir.
19 THE COURT: Or say how he responded.
20 Q Did you get any communication--I take it the
21 30th was a Friday, is that right, Mr. Winn?
22 A That's correct, yes.
23 Q And we had the 4th of July holiday coming up?
24 A Right.
25 Q Judge, we'd move Plaintiff's 5 into evidence at

1 this point.
2 THE COURT: Any objection to 5?
3 MR. WRIGHT: I don't object to it being admitted.
4 I ask the Court to exclude the expert opinion portion of it.
5 Q Judge, I don't think it's--it's not being of-
6 fered as expert opinion. It's what he wrote and he ex-
7 plained to the Court why he did it.
8 THE COURT: So I'll just receive it that this was
9 his response. So I overrule the objection and receive it
10 into evidence.
11
12 (Plaintiff's Exhibit #5 was so marked and received
13 into evidence at this time.)
14
15 Q Did you have any discussions or communication
16 with the office of Marshall Slayton and Forbes Reback the
17 following week about this matter going to closing?
18 A Yes, I did. On July the 7th I received a call
19 from Marshall Slayton saying that they would proceed to
20 closing if we would reduce the price of the option parcel by
21 a hundred thousand dollars ($100,000). I called Mr. Lape.
22 He rejected that and indicated that he wanted them to close
23 on the terms that had been contracted for and I communicated
24 that response to Mr. Slayton.
25 Q Did Mr. Slayton say anything in response to

1 that?

2 A He did not. He did not come back with any

3 other proposal at that time.

4 Q Did--to your normal way of real estate prac-

5 tice, Mr. Winn, did you and your client tender full perform-

6 ance under the contract?

7 A We did.

8 Q And did you have anymore communications or were

9 any other objections raised to closing by Mr. Slayton or Mr.

10 Reback other than what's contained in the letters of June

11 29th and June 30th that have been admitted into evidence?

12 A None whatsoever.

13 Q Did they raise any other complaint about the

14 title other than the information contained in those letters?

15 A No.

16 Q Did there come a time when you later received

17 some additional communication from Steve McLean, the buyer's

18 agent, about this Lape contract?

19 A In September or that fall of 2000 I received a

20 telephone call from Steve McLean, the realtor acting for the

21 Haisfields, in which he asked if the Lapes would--in which

22 he offered on behalf of the Haisfields that they would pro-

23 ceed to closing on the front piece, which is the subject of

24 the contract in question, in exchange for the Haisfields in-

25 creasing the option deposit from twenty-five thousand

1 (25,000) to a hundred thousand dollars ($100,000) which we
2 would hold, but for the Lapes' part, they would be expected
3 to reduce the price of the option parcel from four hundred
4 and fifty thousand dollars ($450,000) to three hundred and
5 fifty thousand dollars ($350,000). In other words, they
6 wanted a hundred thousand dollar ($100,000) reduction in the
7 option price on the option parcel and they were offering to
8 increase the option amount which would be held in escrow and
9 in consideration of that, they said they would go ahead and
10 close on the purchase of the front parcel immediately.
11 Q Was there any discussion in that conversation
12 about the restrictive covenants that had come up earlier?
13 A No.
14 Q And did your client accept that proposal?
15 A No. I call Ken Lape and he said Wendall, this
16 is essentially the offer we rejected back in July. I'm not
17 interested, you know. The contract is very clear and we
18 will close, you know, if at all, under the terms of that
19 contract and only under those terms.
20 Q Did you have anymore communication with Mr.
21 McLean after this September conversation?
22 A I did. I received a call from--I'm not sure of
23 the sequence. I received a call from Ken Lape informing me
24 that he had heard from Carol Clarke, his realtor, that an-
25 other contract was forthcoming from the Haisfields and this

1 was around November the 7th of 2000. Steve McLean did call
2 me and tell me that it was coming and I did, in fact, re-
3 ceive by fax, I believe on the 7th of November, which was a
4 Tuesday, election day, from Carol Clarke, a contract dated I
5 think October the 19th which was essentially the same as the
6 contract that we had negotiated back in March and expected
7 to have closed on June the 30th offering nine hundred thou-
8 sand dollars ($900,000) for the Lape parcel and called for
9 closing, you know, within a week or so.
10 Q And how did you respond to that on behalf of
11 your client?
12 A I conferred with Ken Lape and we decided that
13 we did not want to enter into another contract. We already
14 had one which we felt they were in breach of, and basically
15 communicated to Steve McLean first and then to Marshall
16 Slayton that if they showed up on Friday November the 10th
17 with a cashier's check, we would show up with a deed and
18 close, and they indicated that they would do that, that they
19 were prepared to close on November the 10th. So I got the
20 deed out, redid the closing statement and was ready to pro-
21 ceed with closing on November the 10th and had authority
22 from my client to do so, and in the meantime we realized
23 that November the 10th was a holiday, the Clerk's Office was
24 going to be closed and we agreed to do it on Monday, Novem-
25 ber the 13th.

1 Q What happened that day?
2 A I got a call from Marshall Slayton, I believe
3 it was, on Monday, November the 13th, saying that we weren't
4 going to be closing.
5 Q All right.
6 A And got a letter, I believe subsequently, con-
7 firming that fact.
8 Q Did you--did you have any discussions with ei-
9 ther Mr. Slayton or Mr. McLean in any of these November con-
10 versations indicating any desire or need on their part or on
11 the part of Ms. Haisfield to in any way modify these re-
12 strictive covenants?
13 MR. WRIGHT: Objection to leading.
14 THE COURT: Sustain leading.
15 Q All right.
16 THE COURT: Don't answer. Next question.
17 Q Yes, sir. Did you have any discussion with
18 them at all about the complaints that they had about the ti-
19 tle?
20 A No. I remember calling Steve McLean at that
21 point because I was obviously very angry and frustrated as
22 was my client, and I said what's going on and he said--I be-
23 lieve it's--it's my recollection that he said that the deal
24 did not close with the Lapes because they also wanted to get
25 the adjoining property from the Gordons and if that deal

1 didn't close then they weren't going to close with the Lapes
2 without the Gordon property.
3 Q When was the first time you heard anything
4 about the so-called Gordon contract?
5 A I am not--I am not really sure. Certainly in
6 the context of that November closing that didn't happen,
7 that, you know, that came to my attention.
8 Q Do you recall anything about the Gordon con-
9 tract being mentioned to you by Mr. McLean or either of Ms.
10 Haisfield's attorney's before June the 30th of 2000?
11 A To my--to the best of my recollection and I re-
12 viewed the file, no mention of one being contingent on the
13 other was ever made to me prior to June 30th.
14 Q All right. Just so we're clear and probably is
15 better in another way to get this information before the
16 Court, but to sort of shorthand it, did the restrictive
17 covenants apply to any property other than the 98-acre resi-
18 due that the Lapes have? In other words, do they apply to
19 the option property?
20 A To--to my knowledge, no, they do not. They
21 were contained in the deed from the Lapes to Dr. and Mrs.
22 Moses who own property that also adjoins the Lape property
23 and that they only benefited the Moses property. In other
24 words, the Moses property would have been the dominate es-
25 tate in easement terminology and the front piece owned by

1 the Lapes under contract to the Haisfields was a servient
2 parcel.
3 Q I don't have any other questions of Mr. Winn at
4 this point, Judge.
5 THE COURT: Cross-examination, Mr. Wright.
6
7 CROSS-EXAMINATION
8 By: Mr. Wright
9 Q Mr. Winn, you had mentioned that you did not
10 expect Mrs. Haisfield to be present at the closing on this
11 sale that was to occur on June 30.
12 A Right.
13 Q What was your understanding of how closing
14 would happen?
15 A Via Federal Express. My understanding was that
16 I would deliver the original deed to Forbes on Friday or to
17 Marshall Slayton who was filling in for him, that he would
18 Federal Express it to California and then get it back in
19 time for closing, probably early the next week.
20 Q Did you ever receive confirmation that in fact
21 the closing documents had been sent to Mrs. Haisfield?
22 A No.
23 Q You spoke about a July 7 call from Mr. Slayton
24 suggesting that Mrs. Haisfield would proceed to closing if
25 the Lapes were willing to reduce the price of the option

1 property by one hundred thousand dollars ($100,000).
2 A Right.
3 Q Do you have any understanding as to whether
4 that one hundred thousand dollar ($100,000) decrease re-
5 flected the decreased value they believed they were getting
6 because of the existence of the restrictive covenant?
7 A I do not.
8 Q That was never a part of that discussion?
9 A I don't know how they came up with that figure.
10 Q That was not a part of anything Mr. Slayton
11 communicated to you?
12 A He may have said something like they, you know,
13 they want to get the Gordon property and, you know, they
14 need to get the property to the rear to make it all work or
15 something like that. Again, I'd be glad to go back and look
16 at my notes, but I don't remember specifically.
17 Q So you don't remember any specific discussion
18 with Mr. Slayton about the basis for the request that the
19 option property price be decreased by one hundred thousand
20 dollars?
21 A I do not. Not without refreshing my recollec-
22 tion.
23 Q Is that the same for the conversation you had
24 with him in September of 2000?
25 A I don't think I talked to Marshall Slayton in

1 September. My notes, which I've reviewed, indicate a con-
2 versation with only Steve McLean.
3 Q Okay. And did Steve McLean provide any expla-
4 nation for the request that the price on the option property
5 be decreased by one hundred thousand dollars ($100,000)?
6 A It's not in my notes. Again, I don't have any
7 recollection, specific recollection of an explanation being
8 given.
9 Q Okay. You spoke briefly about a second possible
10 closing on November the 13th and you spoke about the fact
11 that Mrs. Haisfield had submitted a second contract. Was
12 that contract ever signed by Mr. and Mrs. Lape?
13 A No.
14 Q I don't have any other questions, Your Honor.
15 THE COURT: Redirect?
16 MR. BERRY: No redirect, Judge. I'd just like for
17 him to be subject to recall from his office if we need him.
18 A I'll make myself available.
19 THE COURT: So it's okay for him to go back to his
20 office?
21 MR. BERRY: Yes, sir.
22 THE COURT: So you'll be on call, Mr. Winn, if
23 you're needed to be recalled. So next witness, Mr. Berry.
24 MR. BERRY: Joe Cochran, Your Honor.
25 THE COURT: Mr. Cochran, if you'll come to the

1 witness chair. Please stand to be sworn. Raise your right
2 hand, please.
3
4
5 JOE COCHRAN, having been so duly sworn, testified
6 as follows:
7
8 DIRECT EXAMINATION
9 By: Mr. Berry
10 Q State your name, please.
11 A Joe Cochran.
12 Q And how old are you, Mr. Cochran?
13 A I'm thirty-eight (38).
14 Q What is your occupation?
15 A I'm an attorney with the law firm of Richmond &
16 Fishburne.
17 Q How long have you been in the practice of law?
18 A This is my eleventh year.
19 Q What is your primary area of practice?
20 A Real estate, doing closings and transactions.
21 Q How long have you been doing that?
22 A For the past eight, eight and a half years.
23 Q All right. Did you have any involvement with
24 the closing that your firm was handling in the month of June
25 for Ken and Barbara Lape?

1 A Yes.
2 Q And tell the Court briefly what involvement you
3 had in terms of how you became involved.
4 A In our firm I handle a lot of the transactions
5 that come into the office and the Lapes were Mr. Winn's cli-
6 ents and typically what happens is I'll do a lot of the work
7 on the closings to prepare for the closings and many times
8 Mr. Winn or Mr. Richmond, other lawyers, will meet with the
9 client to do the actual closing, and in this case that's
10 what I was doing. I was working up the documents with para-
11 legals and preparing for the closing in, I think it was late
12 June.
13 Q Did you have any understanding at that point as
14 to who was representing the buyer of the property?
15 A Forbes Reback.
16 Q And did there come an occasion when you had a
17 conversation with Mr. Reback?
18 A Yes.
19 Q Do you remember when that was?
20 A It was approximately a week before closing,
21 probably, I think it was June 22nd.
22 Q How did you come to talk to him on that occa-
23 sion as opposed to Mr. Winn?
24 A Well, Mr. Winn was on vacation, he had left in
25 the latter part of June for a vacation, so I was the attor-

1 ney--

2 Q Handling the file?

3 A --handling the file, right.

4 Q What prompted you to contact Mr. Reback?

5 A I had received a call from Carol Clarke, who
6 was one of the realtors involved in the transaction, and she
7 expressed concern that the buyer--there may be a problem
8 with the buyers performing on the contract.

9 Q What did you do as a result?

10 A I called Mr. Reback to tell him I'd received
11 this call and to inquire as to the buyer's intentions and
12 also to just touch base with him on the closing. It was
13 coming up on the 30th and just to make sure we were in line
14 to close.

15 Q Describe for the Court the discussions you had
16 with Mr. Reback in that telephone conversation.

17 A I told Mr. Reback that I'd received a call from
18 the realtor, that she had indicated that there were--she had
19 been hearing that the buyers might not perform and I asked
20 him was there a problem, were the buyers going to perform or
21 was there a problem with them performing. He indicated that
22 in fact there might be a problem with the closing, that they
23 may not perform, and I asked him for what reason and he said
24 that--he indicated there was a parcel of land adjacent to
25 the land that the Lapes owned that was also for sale that

1 the buyers were negotiating or either under contract or hop-
2 ing to buy and it looked like that transaction would not go
3 through, or possibly would not go through, and if that
4 didn't go through, they did not want to purchase the Lapes'
5 property.
6 Q What was your response to his indications about
7 this other contract?
8 A Well, I think during the conversation I picked
9 up the file, looked through and looked at the contract to
10 see if our contract was contingent on the closing of the 85
11 acres and I didn't see any kind of contingency like that and
12 I said to Forbes, I said, I don't think our contract is con-
13 tingent on that closing so I don't think they can--they can-
14 not terminate our contract if they don't buy the 85 acres,
15 and Forbes tended to indicate that he agreed. He didn't
16 know of a contingency in our contract that would let them
17 out of the Lapes' contract if they didn't buy the adjacent
18 property.
19 Q Do you remember roughly how long this conversa-
20 tion lasted?
21 A Oh, probably ten to fifteen (15) minutes.
22 Q Did he give you any assurance at the conclusion
23 of the conversation that the transaction was going to close
24 on June 30th as it was agreed to?
25 A No. I mean, he--he said that he would keep me

1 informed as to developments. He did go into a little bit of
2 what was going on on the adjacent parcel, on that transac-
3 tion. I think he said there was something about some liens
4 that were having to be cleared up, that Ed Bain was repre-
5 senting parties on that side and that Ed was working to
6 clear titles so that they could move forward with that clos-
7 ing, and so he said I'll keep you informed and up-to-date as
8 to what happens.
9 Q Did you actually draft the deed in this trans-
10 action that was tendered?
11 A It was probably my paralegal who actually
12 drafted it.
13 Q You reviewed it?
14 A Uh-huh. (Indicating yes.)
15 Q Do you know where the description came from
16 that went into the deed?
17 A We probably picked it up from the deed into the
18 Lapes when they purchased the property.
19 Q Did you have any--did you--well, let me show
20 you this document which might cut through it a little bit.
21 Judge, I think this is Plaintiff's 6 if I remember the num-
22 bers.
23 THE COURT: That's right. The next one is 6.
24 Q Let me show Mr. Wright this. Can you identify
25 this document, Mr. Cochran, Plaintiff's 6?

1 A Yes. This is a letter I wrote to Forbes Re-
2 back.
3 Q And I gather in that portion of the letter that
4 refers to the conversation, you're talking about the one you
5 just described on the witness stand that you had with him
6 the day previously?
7 A That's right, uh-huh.
8 Q Is that an accurate copy of the letter you sent
9 him?
10 A Yes.
11 Q Judge, we move this into evidence.
12 THE COURT: Is there any objection to 6?
13 MR. WRIGHT: NO objection, Your Honor.
14 THE COURT: Received.
15
16 (Plaintiff's Exhibit #6 was so marked and received
17 into evidence at this time.)
18
19 Q Did you have anymore direct involvement with
20 either Mr. Slayton or Mr. Reback or the seller's agent--
21 excuse me, the buyer's agent, Mr. McLean, from the 23rd of
22 June until the end of June?
23 A Not that I can recall. Wendall Winn came back
24 from vacation and basically took over the file at that
25 point.

1 Q That's all I have of Mr. Cochran, Your Honor.
2 THE COURT: Cross-examination.
3
4 CROSS-EXAMINATION
5 By: Mr. Wright
6 Q Mr. Cochran, you've described a conversation
7 you had with Mr. Reback about a week before closing. Didn't
8 you have a conversation with him by phone a couple of days
9 after that where he told you that there--that Mrs. Haisfield
10 would be going to closing?
11 A I--I can't recall but possibly so. At that
12 point I was proceeding to prepare documents and prepare for
13 closing because Mr. Reback in our initial conversation
14 didn't say definitely they weren't closing. He just said
15 there might be a problem.
16 Q Right. And do you recall a telephone confer-
17 ence that you and I had probably four to six weeks ago where
18 we discussed your notes and you had actually pulled your
19 notes out of your file?
20 A Yes.
21 Q I don't want to put words in your mouth. As
22 you sit here today, do you recall or do you not recall hav-
23 ing a conversation a couple of days after the conversation
24 you described for Mr. Berry where Forbes told you that Mrs.
25 Haisfield would be proceeding to closing?

1 A I--I can't recall. I won't say that it didn't
2 happen because many times in closings you've got many con-
3 versations going back and forth. I know the notes that
4 you're referring to in our conversation were for June 22nd.
5 That's what I pulled out of my file when you and I spoke and
6 that was the conversation I just described.
7 Q Okay. Your Honor, I would ask that this wit-
8 ness'--this witness be subject to recall later and that we
9 ask him to bring his notes back because there was another
10 conversation and I--
11 MR. BERRY: Judge, I'm going to object to Mr.
12 Wright testifying. I don't object to him coming back with
13 his notes.
14 THE COURT: Okay. So don't say what the notes
15 said, Mr. Wright, but we'll let Mr. Cochran come back.
16 MR. WRIGHT: I understand.
17 THE COURT: So, Mr. Berry, you got any redirect?
18 MR. BERRY: I don't have any redirect at this
19 point. I'd simply like for him to remain under the rule at
20 his office or wherever.
21 THE COURT: All right. So if you want to go back
22 to your office, fine, but please don't discuss your testi-
23 mony with anyone. You're still subject to recall.
24 A Okay.
25 THE COURT: All right.

1 MR. WRIGHT: Your Honor, could I just ask the wit-
2 ness for his phone number so if we want to get in touch with
3 him later we'll have it?
4 MR. BERRY: I know it.
5 MR. WRIGHT: You've got it?
6 MR. BERRY: 977-8590.
7 MR. WRIGHT: Thank you.
8 MR. BERRY: Judge, our next witness is going to be
9 Ken Lape.
10 THE COURT: Mr. Lape, if you'll come around
11 please.
12
13
14 KENNETH R. LAPE, having been so duly sworn, testi-
15 fied as follows:
16
17 DIRECT EXAMINATION
18 By: Mr. Berry
19 Q State your name for the Court, please.
20 A Kenneth Robert Lape.
21 Q What is your age, Mr. Lape?
22 A I'm sixty-four (64).
23 Q What is your occupation?
24 A I'm retired.
25 Q And what are you retired from?

1 A I flew for American Airlines.
2 Q Okay. And how long did you do that?
3 A Thirty-two (32) years.
4 Q Do you have any military service in your back-
5 ground?
6 A Yes, sir.
7 Q What branch of the service did you serve in?
8 A I was in the Air Force.
9 Q And did you serve in combat?
10 A Yes, I did.
11 Q In what conflict?
12 A Vietnam.
13 Q Do you own property here in Albemarle County?
14 A Yes, sir.
15 Q And is part of the property you own known as
16 Laurel Ridge?
17 A Yes, sir.
18 Q How long have you owned that particular prop-
19 erty?
20 A Approximately 1975. I'm really not sure.
21 About twenty-five (25) years.
22 Q And tell the Court actually what you purchased
23 in 1975.
24 A In 1975 I purchased--my wife and I purchased
25 148 acre farm from Caroline Randolph.

1 Q Is that Oakmont Farm?
2 A Yes, sir.
3 Q And did you reside on that farm?
4 A Yes, we did.
5 Q Did there come a time when you sold a portion
6 of that farm?
7 A Yes, sir, that's correct.
8 Q And roughly when did that occur?
9 A Approximately 1993, 1994.
10 Q And to whom did you sell it?
11 A Dr. Hamilton Moses and his wife.
12 Q Is her name Alexandra, I believe?
13 A Yes, sir.
14 Q Who--did you have a real estate firm involved
15 in that transaction?
16 A Yes, we did.
17 Q And who was the--who was the listing firm?
18 A The listing firm was John Rady with Frank Hardy
19 Associates.
20 Q And was there also another involved as the
21 seller's agent?
22 A Yes, sir, that's correct.
23 Q Who was that?
24 A That was McLean Faulconer.
25 Q And I gather you entered into a contract with

1 Dr. and Mrs. Moses, is that right?
2 A Yes, sir. That's correct.
3 Q And you ultimately went to closing on the con-
4 tract?
5 A Yes, sir, we did.
6 Q And did the--tell the Court what provisions
7 were contained in the contract relative to the covenants
8 that are at issue in this case.
9 A Well, it's just they wanted two covenants and
10 one of them was, I guess you could call it a commercial tim-
11 bering covenant which covered a mutual buffer on our prop-
12 erty and the dimensions of the buffer was three hundred
13 (300) feet by eight hundred (800) feet by a hundred and
14 fifty (150) feet, which kind of paralleled our mutual
15 boundaries.
16 Q When you say those dimensions, are you saying
17 that at some points the width was a hundred and fifty (150)
18 feet and at some points as much as three hundred (300) feet?
19 A That's correct. The width is a maximum three
20 hundred (300) feet, a minimum of a hundred and fifty (150)
21 feet. Yes, sir, that's correct.
22 Q And this is along the common boundary you share
23 with what I'll call Oakmont?
24 A Yes, sir, that's correct.
25 Q And was there also another covenant that was

1 discussed?
2 A Yes, sir. The second covenant was that there
3 would be no building built on the 98 acres that could be
4 viewed from the main house of Oakmont.
5 Q All right. Who requested these covenants?
6 A Dr. Moses did.
7 Q And you and your wife agreed to it?
8 A That's correct.
9 Q Were both sides represented by counsel at clos-
10 ing?
11 A Yes, sir, they were.
12 Q And who represented you and your wife?
13 A Through this whole process McGuire, Woods &
14 Battle represented us.
15 Q And did you prepare a deed and tender the deed
16 as a part of the closing or did your attorneys prepare a
17 deed that contained these covenants that you just described?
18 A Our attorneys, McGuire, Woods & Battle, pre-
19 pared the deeds and we went to closing.
20 Q Now, when you sold Oakmont Farm, you had been
21 residing in the residence there, is that right?
22 A Yes, sir, that's correct.
23 Q How far--tell the Court generally what the to-
24 pography is in the area where your common boundary is as you
25 look back towards what's now the residue property. Just

1 give a general description of the area.
2 A Well, it's--it's very hilly. There's a hill
3 that goes that Oakmont looks into and it's very heavily
4 wooded. It's mountain laurel. It's hardwood trees and it's
5 severe in nature that it goes straight up and then straight
6 down and the elevation probably goes up a hundred and fifty
7 (150) feet in some places.
8 Q Is the Oakmont main residence right on the
9 boundary line?
10 A No, it is not. As a matter of fact, it's about
11 a thousand (1,000) feet to twelve hundred (1,200) feet from
12 the boundary line.
13 Q All right. And what did you and your wife do
14 as far as a residence once you told Oakmont?
15 A Once we sold Oakmont we always had a spot on
16 the remaining piece of land that we thought we would love to
17 build a house on and so we contracted with an architectural
18 firm and a builder and designed a house to our requirements
19 and our likings and we built on this spot that we had se-
20 lected.
21 Q And that's on the residue property, is that--
22 what I'll call the residue?
23 A Yes, sir, that's correct. That's correct.
24 Q Can that home be seen at all from Oakmont in
25 any season from the main residence at Oakmont, Mr. Lape?

1 A No, sir, absolutely not.
2 Q Winter, summer, anytime?
3 A At no time.
4 Q And do you have other buildings that you con-
5 structed in the general area of the residence?
6 A Yes, sir.
7 Q And what are they?
8 A It's a--it's a frame--I don't think you could
9 call it a barn, but it's a framed type of shed behind the
10 main house that's sufficient to put three cars in, to give a
11 size, dimension to it.
12 Q All right. Is it also a kennel on the prop-
13 erty?
14 A Yes, sir, that's correct.
15 Q What portion of the Laurel Ridge, and again,
16 I'll refer to it for simplicity's sake as the residue, what
17 portion of that property is wooded and what portion is open?
18 A It's mostly wooded. It's mostly hardwoods and
19 as I said, mountain laurel and undergrowth. Of the 98
20 acres, I would say there is approximately 92, 93 acres for-
21 ested and the rest is open land.
22 Q Are these mature trees that are on the prop-
23 erty?
24 A Yes, they are.
25 Q Oak and poplar?

1 A Yes, sir.
2 Q And describe the density of the tree growth on
3 the part of Laurel Ridge that exists between your residence
4 and the primary residence at Oakmont.
5 A It's extremely dense. You probably cannot see
6 more than fifty (50) yards or thirty-five (35) yards into
7 the woods due to the undergrowth and due to the nature of
8 the trees. There is some soft wood there. There is also
9 some pine trees there. So it would be difficult to see more
10 than fifty (50) yards into the woods.
11 Q Have you measured the distance between the main
12 residence at Oakmont and the residence at Laurel Ridge?
13 A Yes, sir.
14 Q And what is the distance?
15 A One thousand, seven hundred and forty-two
16 (1,742) feet.
17 Q And is that as the crow flies?
18 A That's a direct line, yes, sir.
19 Q When you walk between the two residences, do
20 you actually have to walk farther?
21 A No.
22 Q Okay. You can walk a straight line?
23 A That's correct.
24 Q And describe for the Judge the topography as
25 you get further into the Laurel Ridge property towards the

1 residence away from the Oakmont boundary line.
2 A Once you leave Laurel Ridge and go towards Oak-
3 mont, it's quite severe. The elevation at Laurel Ridge is
4 about six hundred (600) feet and once you leave that point I
5 would say the elevation goes down at least a hundred (100)
6 to a hundred and fifty (150) feet into a ravine, goes back
7 up another hill, back into another ravine, back up to the
8 elevation of Oakmont. Oakmont's elevation is five hundred
9 and eighty (580) feet.
10 Q Is there--describe for the Court roughly the
11 shape or the configuration of this 98-acre residue on which
12 your residence was constructed.
13 A Oh boy. It's an irregular shape. It's not a
14 rectangle or anything like that.
15 Q Where on that property is your residence situ-
16 ated?
17 A The residence--
18 Q In other words is it on one edge, is it in the
19 middle, where is it?
20 A Yes, sir. It sits on the back I would say one-
21 quarter to one-third portion of the property, back being the
22 boundary line that's shared with the 85 acres that the Gor-
23 dons own.
24 Q All right. Does the Gordon property border the
25 98 acres, immediately border?

1 A Yes, sir, it does. Yes, it does.
2 Q And does your option property I'll call it for
3 simplicity sake again, then border the Gordon property on
4 the other side?
5 A That's correct, and the option property and the
6 98 acres meet. There's a contiguous point above the 85
7 acres.
8 Q Are there other potential home sites on the
9 Laurel Ridge tract which are not visible from Oakmont?
10 A Yes, sir, there's many, many sites.
11 Q What causes you to say that? Why do you say
12 that?
13 A Well, just the nature of--the roll of the land.
14 The main driveway that comes into Laurel Ridge is an eleva-
15 tion of four hundred and sixty (460) feet. To the east side
16 of the driveway the mountainside goes up approximately two
17 hundred (200) feet.
18 Q How far is the Laurel Ridge residence roughly
19 off the public road?
20 A It's approximately a third of a mile.
21 Q And how do you access it?
22 A By a main road, a right-of-way.
23 Q Is it a paved road?
24 A It's partially paved, yes, sir.
25 Q All right. Did you decide at some point to

1 sell what I'll call Laurel Ridge, in other words, the resi-
2 due property?
3 A Yes, sir, we did.
4 Q Did you also decide to sell what I'll call the
5 option property?
6 A Yes, sir, we did.
7 Q Were they listed for sale at the same time?
8 A Yes, they--they are now and they were, yes.
9 Q With whom did you list them?
10 A Carol Clarke and Montague Miller.
11 Q And roughly when was that?
12 A Approximately March 1999.
13 Q At the time of the listing, Mr. Lape, did you
14 give any thought to these restrictive covenants?
15 A No, not really.
16 Q Did you talk to Ms. Clarke about them?
17 A No, I did not.
18 Q And did you describe for her firm or her, any
19 other easements or restrictions on the property?
20 A The only thing that was discussed or said any-
21 thing to do with the fact that we were in conjunction with
22 putting both pieces of property on the market, she wanted to
23 make sure that people--if somebody was interested in the 257
24 acres by itself, how do you access it, and that's when we
25 put down that it's the right-of-way through Oakmont--excuse

1 me, through Laurel Ridge back to the 257 acres and described
2 it so people would know how you get back to the--
3 Q How you could get to the option property.
4 A The option land, that's correct.
5 Q Is that why the twenty (20) foot right-of-way
6 is referenced in the contract?
7 A That's correct. Yes, sir, that's correct.
8 Q Are there any restrictive covenants on what
9 I'll call the option property?
10 A No, sir.
11 Q After you listed the property, did you later
12 receive an offer from Mrs. Haisfield?
13 A Yes, sir, that's correct.
14 Q And did you and your wife accept the initial
15 offer?
16 A No.
17 Q And did the initial offer, which I assume was
18 in the form of a written contract, did that contain any
19 liquidated damage provision?
20 A As I remember, it does not. Did not.
21 Q Was there a counter offer in effect made?
22 A Yes.
23 Q And as a result of those negotiations did the
24 contract that was admitted as Plaintiff's Exhibit 1 get
25 signed?

1 A Yes, sir.
2 Q Do you recall at what point the liquidated dam-
3 age provision showed up in the contract?
4 A I believe the final offer perhaps is when it
5 showed up. I believe that's correct. The final offer is
6 when it showed up.
7 Q Who requested that provision?
8 A The Haisfields.
9 Q Who did you get to represent you in the trans-
10 action, the Richmond & Fishburne firm we've heard earlier?
11 A That's correct, Wendall Winn.
12 Q Did you have any discussion with the contract
13 or with Steve McLean at any point after it was executed?
14 A No, sir, at no time.
15 Q Did Mr. McLean ever come to the property and
16 visit it with you after the contract was executed?
17 A Yes, sir, he did.
18 Q And can you tell the Court roughly when that
19 was?
20 A It was--it was around spring break as I remem-
21 ber. It had to be April, May. I'm really not sure of the
22 exact date. I flew up from Florida and I believe Mr. McLean
23 flew in from the Bahamas and we met, and the reason for it,
24 we were supposed to meet with Mr. Haisfield and walk the
25 property lines with him.

1 Q How did you--why were you under the impression
2 you were going to be meeting with Mr. McLean and Mr. Hais-
3 field?
4 A I was told.
5 Q Who told you that?
6 A I believe Carol Clarke who set the appointment
7 up.
8 Q And was this--could this have been in late
9 March as well?
10 A Yes, yes.
11 Q All right. And did you actually come up and
12 come to the property?
13 A Yes, I did.
14 Q And who was there?
15 A Mr. McLean.
16 Q Did Mr. Haisfield show up?
17 A No, he did not.
18 Q Did you get any indication why he didn't?
19 A No, I think they just said personal reasons, I
20 think.
21 Q What did you and Mr. McLean do?
22 A Well, we basically walked the property lines.
23 Q Okay. And what portion of the lines did you
24 walk, the entire boundary?
25 A Pretty much the entire boundary that borders

1 with Moses and also the 85 acres in the back. We did not go
2 up on the top of the mountain, which would be our westerly
3 boundary. It's pretty severe and we did not walk that.
4 Q So you walked basically the common boundary
5 with Oakmont and the common--
6 A Yes, sir.
7 Q --boundary with Gordon?
8 A Yes, sir.
9 Q At the time that you entered into the Haisfield
10 contract, Mr. Lape, was there any discussion with you about
11 the Gordon property by anyone?
12 A None whatsoever.
13 Q Do you know the Gordons?
14 A Yes, sir, I do.
15 Q Do they live in that general area?
16 A Yes, they do.
17 Q When you walked the boundary in late March or
18 whenever it was with Mr. McLean, was there any discussion at
19 that point about these covenants?
20 A Not covenant per se. I can remember when Steve
21 and I walked up the common boundary with Oakmont. I think I
22 made the comment to him, this is the area we cannot commer-
23 cially cut or something of that effect.
24 Q Did he have any response to that?
25 A None whatsoever.

1 Q Was Mr. McLean familiar with your property?
2 A Yes, he--yes. I'm sure. He's been out there
3 quite a few times. He's shown it quite a few times. Even
4 in the early days when we first bought it he had hunted on
5 our property and I would think so, yes.
6 Q Did you also have some personal property you
7 wanted to sell with the property?
8 A Yes, I did.
9 Q If you can just briefly describe what those
10 items were?
11 A Well, it was farm equipment. It was a Kubota
12 tractor. It was a pickup truck. It was the equipment I
13 felt that anybody who would buy Laurel Ridge would need to
14 live there comfortably as far as snow removal or bushhogging
15 fields.
16 Q Did you communicate that fact, that you wanted
17 to sell that equipment, to Mrs. Haisfield?
18 A I did through Carol Clarke, yes.
19 Q What were the results of that communication?
20 A They asked me to list the equipment and the
21 price that we wanted and thought the equipment was worth.
22 which I did, and they would convey that or pass that on to
23 the Haisfields.
24 Q All right. So it was your understanding that
25 would sell with the property?

1 A Yes, sir, that's correct.
2 Q As the closing approached, what steps did you
3 and your wife take to prepare for the sale of Laurel Ridge?
4 A Well, we were getting ready to move. For us it
5 was a little--not a problem. It was something we had to
6 consider. We had a daughter who was going to get married in
7 September and we had to move. We had to clear out. We had
8 to get rid of the equipment. We had to get rid of the ani-
9 mals. We had to plan for somewhere to live until the wed-
10 ding. So we had made an arrangement with the Marriott Resi-
11 dence Inn for an extended stay there. We got the movers.
12 Q Was there an inspection of your home as a part
13 of the preparation for the contract during this so-called
14 study period?
15 A There was an inspection of our home during this
16 period of time. I can't tell you when because we were in
17 Florida, but I do know there was an inspection of the home.
18 Q Did you have to do any work in connection with
19 the inspection, get the residence ready or was it ready?
20 A No, sir, none whatsoever.
21 Q Okay. Did you observe people coming to Laurel
22 Ridge as June approached on Mrs. Haisfield's behalf?
23 A Yes, we did. We--we were very open with every-
24 body. We wanted to make it as--we knew they lived in Cali-
25 fornia. We wanted to make it as easy as possible for them.

1 We told them any subcontractors or contractors, we had sur-
2 veyors there who wanted to come in and view the property,
3 they could come and go as they wanted. If they wanted to
4 get in the house, we'd have somebody open the house for
5 them. We just were trying to accommodate them any way we
6 could.
7 Q When did you get any indication, Mr. Lape, that
8 there might be a problem with the effort to close by June
9 30th?
10 A Well, I kind of was getting a gut feeling. We
11 had very little correspondence and then I had a phone call
12 from Carol saying she spoke with Steve McLean and Steve
13 McLean said that this deal was shaky.
14 Q All right. When was that?
15 A That was in June, approximately ten days to two
16 weeks before closing.
17 MR. WRIGHT: I object to the double hearsay, Your
18 Honor. We have both Mr. McLean and Ms. Clarke here today.
19 THE COURT: So sustain the objection.
20 Q We just offer it Judge, for what--as to why he
21 did what he did as a result.
22 THE COURT: Not received for the truth of it but--
23 Q Yes, sir.
24 THE COURT: --to say what he did afterwards.
25 Q And once you got that information, then what

1 did you do?
2 A I called Wendall's office and tried to get a
3 hold of Wendall and it was that period of time he was on va-
4 cation and I said Joe, do we have a problem here, what's go-
5 ing on. We've got the packers, we've got the movers and I
6 got a call from Carol saying that there may be a problem
7 here.
8 Q What did you do as a result of your discussions
9 with your attorneys, Mr. Lape? Did you go ahead and move
10 out?
11 A Yes, we did. I asked--as we got closer to
12 closing I asked Wendall, in effect--
13 THE COURT: But it's not what they told you. The
14 question is what did you do. You moved out.
15 Q What they told you is hearsay. So I'm just
16 trying to get--
17 A Okay. All right, sir. Yes, sir, we moved out,
18 packed up and moved out. That's correct, yes, sir.
19 Q And did you execute the necessary documents to
20 perform on your end of the closing?
21 A Yes, sir, we did.
22 Q And when did you find out that the transaction
23 was not going to close on June 30th?
24 A I guess the night of the 29th.
25 Q Okay, and you found that out from Carol Clarke?

1 A Yes, sir, that's correct.
2 Q She called you?
3 A That she did.
4 MR. WRIGHT: Object to leading.
5 Q Okay. Well, I was trying--
6 THE COURT: Sustained.
7 Q Yes, sir. Who called you?
8 A Carol Clarke called me.
9 Q What did you do then, Mr. Lape, after the
10 aborted closing didn't occur?
11 A Well, we moved out and we moved into the resi-
12 dent--Marriott Residence Inn in Charlottesville.
13 Q Did anybody contact you leading up to closing
14 about changing the utility service?
15 A No, sir.
16 Q What utility service is there to this house?
17 A There's of course electric. There is a sophis-
18 ticated alarm system. There is propane. That's it, I
19 think.
20 Q Did anybody contact you about insurance?
21 A No, sir. Now, I take that back. Somebody
22 asked me who carried our homeowner's policy.
23 Q Do you remember who did that?
24 A No, I do not. It may have been Carol Clarke, I
25 don't know.

1 Q All right. So after the closing didn't take
2 place, what did you and your wife do?
3 A We were living in Charlottesville.
4 Q Up until this point, had you heard any--were
5 you out of the residence?
6 A Yes, sir.
7 Q Living at the Marriott?
8 A That's correct. The house was empty.
9 Q Did you have any communication with anyone up
10 until this point about your transaction in any way being
11 tied to this so-called Gordon transaction?
12 A None whatsoever.
13 Q Did you even know there was a contract between
14 the Haisfields and the Gordons?
15 A I learned that there was, that the Gordons had
16 an intent to buy. I knew nothing about the contract. I
17 think it was Wednesday of the week of closing.
18 Q All right.
19 A And that was just by accident how I learned
20 that.
21 Q Did you receive some communication later as the
22 fall approached about another effort to close?
23 A Yes, sir, that's correct.
24 Q And did you authorize Mr. Winn to close on the
25 transaction?

1 A The effort to close--I have to go back. In No-
2 vember I did. There were verbal offers made prior to that
3 that I told Wendall we can't negotiate, we have a contract.
4 For all they know I could have a deposit on another home.
5 The home is vacant, no. There was an offer made in November
6 as to price and everything which reflect--reflected the
7 price and everything in the original contract, and I did au-
8 thorize him to sell the properties to the Haisfields at that
9 time.
10 Q Had there ever been any discussions at any
11 point leading up until November, between June and November,
12 between Mr. McLean and you about these covenants and Dr.
13 Moses?
14 A Steve and I went out, as I remember, and looked
15 at the boundary and talked about the possibility of putting
16 another entrance in the side of the hill and he said he was
17 going to have a discussion with the Moses about it or some-
18 thing like that--
19 Q All right.
20 A --but that would be about it.
21 Q All right. Is this property still on the mar-
22 ket?
23 A Yes, sir.
24 Q Is it being shown?
25 A Yes, sir, I believe so.

1 Q Has Mr. McLean shown it to people?
2 A Yes, sir.
3 Q Since this?
4 A Yes, sir.
5 Q Answer Mr. Wright's questions. Judge, excuse
6 me, I do have one exhibit, if the Court will permit me. I
7 don't think there's going to be any objection to it. It's
8 number, I believe, 8.
9 THE COURT: Seven.
10 Q Seven, I'm sorry. This is simply the deed that
11 shows what the Lapes' current ownership of the property is.
12 THE COURT: Any objection, Mr. Wright?
13 MR. WRIGHT: I have no objection to it.
14 THE COURT: Received as 7.
15
16 (Plaintiff's Exhibit #7 was so marked and received
17 into evidence at this time.)
18
19 Q I don't have any other evidence--or questions
20 of Mr. Lape at this point other than possibly redirect,
21 Judge.
22 THE COURT: Go ahead, Mr. Wright.
23
24 CROSS-EXAMINATION
25 By: Mr. Wright

1 Q Mr. Lape, let me show you a deed and ask you if
2 you can identify it?
3 A Yes, sir. It appears to be the--yes, I recog-
4 nize it, yes, sir.
5 Q Okay. Would you tell the Court what it is?
6 A It appears to be a deed from my wife and myself
7 to Mr. and Mrs. Moses.
8 Q Okay. And this deed is a document that you and
9 your wife signed on the third page?
10 A Yes, sir.
11 Q And the deed is dated May 3, 1994?
12 A Yes, sir, that's correct.
13 Q And it bears the deed book and page reference,
14 Book 1401, Page 449. Do you see that on the top?
15 A Yes, sir, I see that. That's correct.
16 Q I would move the admission of this deed as De-
17 fense Exhibit 1, Your Honor.
18 MR. BERRY: We don't object to it, Judge.
19 THE COURT: All right. So I'll receive it as De-
20 fendant's 1.
21
22 (Defendant's Exhibit #1 was so marked and received
23 into evidence at this time.)
24
25 Q I apologize, I didn't put any little exhibit

1 stickers.
2 THE COURT: That's all right. We've got stickers.
3 Q Now, in response to Mr. Berry's questions, you
4 indicated that McGuire Woods prepared this deed, is that
5 correct?
6 A Yes, sir, I believe so.
7 Q Who at McGuire Woods prepared the deed for you?
8 A I don't recollect.
9 Q You don't recall what attorney--
10 A No.
11 Q --represented you in this matter?
12 A No, I don't.
13 Q Now, you lived for almost twenty (20) years at
14 Oakmont, is that correct?
15 A Yes, sir, that's correct.
16 Q And is there a time of year when the foliage is
17 missing from the trees, say in the wintertime when from the
18 residence of Oakmont some portion of Laurel Ridge is visi-
19 ble?
20 A When you say Laurel Ridge, do you mean build-
21 ings, fields, trees?
22 Q Just anything.
23 A Sure, certainly.
24 Q So if somebody decided to erect a structure
25 near the boundary line between Laurel Ridge and Oakmont,

1 it's possible that that building could be visible from the
2 residence at Oakmont, is that correct?
3 A Yes, sir, certainly, yes, sir.
4 Q Mr. Lape, let me show you this document.
5 A Yes, sir.
6 Q This is a plat that titled Mr. and Mrs. Manuel
7 R. Angulo property near North Garden by A.R. Sweet & Associ-
8 ates dated in May of 1958. Have you seen that before?
9 A I would say so, yes, sir.
10 Q Okay. It depicts on the left side a property
11 of about 98 acres and then sort of to the right and a little
12 bit down from that a second property. Just looking at this
13 plat, do you recognize either or both of those parcels?
14 A Yes, sir, I do.
15 Q The parcel that I etched in red, what is that?
16 A That's our 98 acres that we refer to as Laurel
17 Ridge Farm.
18 Q That's the Laurel Ridge property?
19 A Yes, sir.
20 Q Okay. The property that I've etched in blue,
21 what is that?
22 A That's Oakmont.
23 Q Okay. I'd move the admission of this just for
24 demonstrative purposes--
25 MR. BERRY: Judge, I don't object to it.

1 Q --as Defense Exhibit 2.
2 MR. BERRY: To give the Court some sense of the
3 shape of things.
4 THE COURT: Received as 2.
5
6 (Defendant's Exhibit #2 was so marked and received
7 into evidence at this time.)
8
9 Q Mr. Lape, let me show you another plat that was
10 done by Landmark Surveyors and it's titled, A plat showing
11 survey for Kenneth R. and Barbara G. Lape. Do you recognize
12 this property?
13 A I--yes, sir, I recognize it. It's a little
14 difficult to see the writing. I don't know how accurate it
15 is, but I do recognize it.
16 Q Okay. This indicates a Parcel A, 258.78 acres.
17 A Yes, sir.
18 Q Is this the option property?
19 A That's correct.
20 Q I'd move the admission of this, Your Honor, as
21 Defense Exhibit 3.
22 MR. BERRY: I don't object, Judge.
23 THE COURT: Received as 3.
24
25

1 (Defendant's Exhibit #3 was so marked and received
2 into evidence at this time.)
3
4 Q I'm going to show you, Mr. Lape, what really is
5 a topographical map that somebody has drawn, two parcels,
6 one a 258-acre parcel and one a 98-acre parcel. Have you
7 seen this before?
8 A I don't think I've seen this in particular.
9 I'm really not sure but I'm familiar with it, certainly.
10 Q Okay. Does this show at least the relationship
11 between the Laurel Ridge property and the option property?
12 A I would say it's an approximation.
13 Q An approximation?
14 A Yes, sir.
15 Q For demonstrative purposes?
16 A Yes, sir.
17 Q Okay. And what is the property, the triangular
18 piece that would be sort of between the 258 acre and the 98
19 acre parcel, if you know?
20 MR. BERRY: Judge, I'm not--I'm not going to ob-
21 ject to this and it might help the Court to be looking at it
22 while he's talking.
23 THE COURT: Do you want me to use this one?
24 Q It doesn't matter. We'll move this as Defense
25 Exhibit 4.

1 THE COURT: All right. Received.
2
3 (Defendant's Exhibit #4 was so marked and received
4 into evidence at this time.
5
6 A Yes, sir, I see that.
7 Q Okay. Do you know what this piece of property
8 is, the triangular piece that's between the 98-acre parcel
9 and the 258-acre parcel?
10 A Yes, I do.
11 Q And who owns that property?
12 A The Gordons.
13 Q The Gordons?
14 A Quiet Entry Farm.
15 Q Now as you sit here today, have you ever met
16 Richard Haisfield?
17 A No.
18 Q And isn't it true that you never met Audrey Ha-
19 isfield before this litigation began?
20 A That's correct.
21 Q So you never had a telephone conference di-
22 rectly with either one of them about this deal or their in-
23 tentions about closing on the contract, is that fair?
24 A None.
25 Q And most of your communications about this con-

1 tract were with either Carol Clarke, Wendall Winn or Joe
2 Cochran, is that fair?
3 A That's correct. After June 30th of course, Mr.
4 Berry.
5 Q Okay. And so you never communicated directly
6 with the Haisfields about the improvements they contemplated
7 making to Laurel Ridge?
8 A Never, that's correct.
9 Q But you knew that they were bringing horses to
10 the property, didn't you?
11 A Only by rumor. Nobody--no one called and said
12 are you aware of the fact they're bringing horses to the
13 property. I received that information by innuendo or rumor
14 or--
15 Q Okay. So you don't--you don't recall exactly
16 how you got the information--
17 A That's correct.
18 Q --but you were aware that they'd be bringing
19 horses to the property?
20 A That's correct. I think maybe I'm aware of it
21 now because Mrs. Haisfield was deposed. Maybe that's where
22 I got that information, but prior to the June 30th closing,
23 I really had no idea.
24 Q Okay. So prior to the June 30 closing you
25 weren't sure?

1 A I was not sure, that's correct. I did not know
2 for certain.
3 Q And you gave various consultants that the Hais-
4 fields had retained, access to your property during the
5 spring of 2000, correct?
6 A Anyone who they wanted to come in and examine
7 the property, we gave them free access, that's correct, yes,
8 sir.
9 Q And at one point in time you saw a plat showing
10 buildings at various locations lying on the hood of one of
11 the consultant's vehicles, didn't you?
12 A That's correct, yes, sir.
13 Q So that you knew that the Haisfields were con-
14 templating some buildings on the property?
15 A That's correct. That was Wednesday before
16 closing, or it was Tuesday before closing. Closing was Fri-
17 day. Tuesday a group of people showed up. We allowed them
18 access. They showed us the plans of the house on the hood--
19 front hood of the truck and they also showed us the layout,
20 some kind of landscaping plan also at that time. So I just
21 had a cursory view of it, maybe not more than a few moments
22 and that was it.
23 Q But these plans, even on cursory review, showed
24 some new buildings on the property?
25 A None on the 98 acres.

1 Q So what do you recall seeing?
2 A I recall seeing some improvements to the main
3 house, a barn on the back part of the property which would
4 be the option piece, if you will, ponds, and this was the
5 juncture or the first time that I had learned that they had
6 in fact were going to attempt to buy Gordon's property, be-
7 cause I said something to someone, that pond site is not on
8 our property and the reply was, they're going to purchase
9 that piece of property.
10 Q Okay. So what you saw on the hood of that car
11 involved more than your parcel is what you're telling me?
12 A It was a plan for all three parcels, that's
13 correct, yes, sir. And the plan I saw had some improvements
14 to the main house, of our house, no new--no new entrance and
15 improvements to the 85 acres of Gordons' and to our 258
16 acres in the back.
17 Q You knew that the Haisfields would be bringing
18 certain employees with them to the property, didn't you?
19 A There again, no one ever told me that. It was
20 all by rumor or innuendo and I probably learned that from
21 Mrs. Haisfield's deposition.
22 Q Mrs. Haisfield never advised you in person that
23 she was thinking about not closing on June 30th, did she?
24 A Before June 30th no one ever called me and
25 said, Ken, this is what the Haisfields have planned for your

1 property, they're bringing horses, they're bringing employ-
2 ees. No one ever shared any of that information with us.
3 The only information we got was by innuendo or a subcontrac-
4 tor coming out and saying do you know or did you know or
5 were you aware. No one ever called me, Mr. McLean or anyone
6 who represented the Haisfields, and told us what they had
7 planned, not only for our 98 acres, we weren't aware they
8 were going to buy the 85 acres or the 257 acres in the back.
9 No one ever shared that information with us, period.
10 Q Your Honor, give me just a moment if you would.
11 THE COURT: Sure.
12 Q No further cross-exam, Your Honor.
13 THE COURT: Redirect.
14 MR. BERRY: Judge, I just have one. Well, a cou-
15 ple.
16 THE COURT: Go ahead.
17 MR. BERRY: But I'm going to need a document that
18 Mr.--
19 THE COURT: Do you need one of the exhibits?
20 MR. BERRY: No, sir. I need something that Mr.
21 Wright was bringing with him.
22
23 REDIRECT EXAMINATION
24 By: Mr. Berry
25 Q I'll have this marked in a moment. Mr. Lape,

1 I'm going to show you a document which I probably will ask
2 be marked in a moment, but it's entitled, Laurel Ridge Con-
3 ceptual Plan, Audrey and Richard Haisfield, Ian Robertson
4 Limited and ask if you've ever seen that before?
5 A Yes, sir.
6 Q When did you see that?
7 A I saw that on the hood of the truck on that day
8 we spoke about the week of closing.
9 Q All right. Is this the plan you were referring
10 to when you answered Mr.--
11 A Yes, sir, that's correct.
12 Q --Wright's questions?
13 A That's correct.
14 Q Judge, I'm going to mark this. I don't want to
15 damage an original document that they have. I'll respect
16 Mr. Wright's wishes on how to do it, but I think we need to
17 mark it so it can be referred to.
18 MR. WRIGHT: Are you asking that it be moved into
19 admission at this point or just marked?
20 Q I may at some point but I think because it's
21 going to be referred to, I think it would be best to mark
22 it. I'm going to move its admission very likely at some
23 point.
24 MR. WRIGHT: Okay. I'm going to object to it be-
25 ing admitted without more foundation than has been laid, but

1 I don't care if it's marked for identification purposes.
2 THE COURT: So we'll mark it as 8.
3 Q Yes, sir.
4 THE COURT: Do you just want to put it on the back
5 of the plan?
6 Q Yeah. I'll put it on the back so it doesn't
7 interfere with the--and I don't have a problem, Judge, later
8 on if somebody substitutes a copy if in fact it is admitted.
9 THE COURT: It's just marked as 8, not received
10 into evidence.
11 Q Yes, sir.
12
13 (Plaintiff's Exhibit #8 was so marked for identi-
14 fication at this time.)
15
16 Q Mr. Lape--I--I don't have any other questions,
17 Judge, I don't believe at this point. I may need to recall
18 Mr. Lape, but I don't have any other questions right now.
19 THE COURT: All right. Thank you, Mr. Lape. You
20 may stand aside. Are you ready for the next witness or do
21 you want a stretch break?
22 MR. BERRY: It's up to you, Judge. I'm going to
23 call Ms. Clarke next and if the Court wants to keep going,
24 she's not going to be too long, I don't think.
25 THE COURT: Mr. Wright, you and your client okay

1 to keep going or do you need a break? So Carol Clarke, Mr.
2 Craig.
3 THE BAILIFF: She went across the street for (un-
4 intelligible). I don't know where she went to.
5 THE COURT: So do you want to call another wit-
6 ness?
7 MR. BERRY: Judge, I'm going to call very likely
8 Mr. Reback after her. I don't know if he's gotten back over
9 here or not. If he has, I can call him. If he hasn't maybe
10 we'd better---oh, okay, he wasn't coming until noon.
11 THE COURT: So you want us to call him? We can
12 take a five-minute stretch break and try to find Ms. Clarke
13 and call Mr. Reback. Is that what you want to do?
14 MR. BERRY: I guess that would be best, Judge.
15 I'd like to call Ms. Clarke next. It sounds like she may
16 have stepped out to make a call or something.
17 THE COURT: Well, you want Mr. Craig to call Mr.
18 Reback?
19 MR. BERRY: Yes, sir. I'm going to call--I'm go-
20 ing to call him right after her, so I mean--I'm planning on
21 trying to get through in the time I indicated.
22 THE COURT: So anybody got Mr. Reback's number
23 handy? Mr. Craig can look it up if you want. It's Forbes
24 Reback, the attorney, Mr. Craig, R-e-b-a-c-k. So you want
25 to take a stretch break then and somebody can go across the

1 street and see if they can find Ms. Clarke?
2 MR. BERRY: Yes, sir.
3 THE COURT: Okay. So we'll all take a stretch
4 break.
5
6 (Court in recess.)
7
8 MR. BERRY: Ms. Clarke is our next witness, Judge.
9 THE COURT: Ms. Clarke, if you'll come up to the
10 witness chair please, stand to be sworn, raise your right
11 hand please.
12
13
14 CAROL CLARKE, having been so duly sworn, testified
15 as follows:
16
17 DIRECT EXAMINATION
18 By: Mr. Berry
19 Q State your name, please.
20 A Carol Clarke.
21 Q What is your occupation, Ms. Clarke?
22 A Real estate broker with Montague Miller & Com-
23 pany Realtors.
24 Q And what is your position with that firm?
25 A I'm president of the company.

1 Q How long have you been a--well, let me back up
2 a second. Are you a licensed real estate agent in Virginia?
3 A A licensed real estate broker.
4 Q How long have you been a licensed broker?
5 A I've been a licensed broker since '87, licensed
6 salesperson since '84.
7 Q All right. What is your educational back-
8 ground?
9 A I have a Bachelor in Science from Duke Univer-
10 sity and various graduate courses at the University of Vir-
11 ginia and Virginia Commonwealth University.
12 Q Do you have any professional designations in
13 the real estate profession?
14 A Yes. I'm a graduate of the Realtors Institute,
15 a certified residential broker, a certified residential spe-
16 cialist.
17 Q Are you familiar with the Ken and Barbara Lape
18 property which I'll describe as Laurel Ridge located here in
19 Albemarle County?
20 A Yes.
21 Q Are you also familiar with this roughly 250-
22 acre option piece I'll call it?
23 A Yes.
24 Q And are those properties properties which are
25 listed for sale with your firm?

1 A Yes.
2 Q And are you the listing broker?
3 A Yes.
4 Q When did you learn--let me ask it differently
5 maybe. How did you learn of the interest that Mrs. Hais-
6 field might have in this property?
7 A We received an offer to purchase the property
8 in the middle of February. I believe February 14th, some-
9 where in the middle of February in 19--oh, no, 2000.
10 Q Okay. Who submitted that to you?
11 A Steve McLean, McLean Faulconer.
12 Q And was he acting as buyer's agent for Mrs. Ha-
13 isfield?
14 A Yes.
15 Q What form did the offer take? Was it on a Vir-
16 ginia Association of Realtors standard form residential con-
17 tract?
18 A Yes. It was on a standard contract with a cou-
19 ple of addendums, inspection addendum, a radon inspection
20 addendum.
21 Q All right. I want to show you a document be-
22 fore we go any further which is--will be Plaintiff's Exhibit
23 9, I believe, if I'm right, Judge. Is that--or is it 10?
24 THE COURT: That's right, it's 9. Eight is the
25 marked exhibit.

1 (Plaintiff's Exhibit #9 was so marked for identi-
2 fication at this time.)
3
4 Q Can you tell us what Plaintiff's Exhibit 9 is?
5 A It's the current marketing brochure for Laurel
6 Ridge.
7 Q Who prepared that?
8 A I did, along with my graphic designer at the
9 office.
10 Q And does that generally provide photographs and
11 a description of the house and the general area of the Lau-
12 rel Ridge property?
13 A Yes. The brochure would be exactly what it is,
14 sort of photographs, floor plans, a plat.
15 Q A marketing brochure.
16 A Marketing brochure.
17 Q Judge, we'd move #9 into evidence.
18 THE COURT: Any objection?
19 MR. WRIGHT: No objection.
20 THE COURT: Received as 9.
21
22 (Plaintiff's Exhibit #9 was so received into evi-
23 dence at this time.)
24
25 Q Did the Lapes accept the initial offer that you

1 just described that Mrs. Haisfield made?
2 A There were some negotiations back and forth,
3 oral negotiations over a period of two or three days before
4 we came to a final agreement and to the final terms of the
5 offer.
6 Q Who initiated the inclusion of the liquidated
7 damage provision in the final contract?
8 A Would you ask that question again? Who--
9 Q Who initiated that to be included in the--the
10 liquidated damage provision to be included in the contract,
11 the Lapes or the Haisfields?
12 A Oh, the Haisfields.
13 Q Have you visited this property, Ms. Clarke?
14 A Yes.
15 Q Can you describe generally the area at Laurel
16 Ridge? Realizing that the Court has heard descriptions from
17 other people as well, just give your best description of the
18 Laurel Ridge property.
19 A Laurel Ridge currently consists of the property
20 in two parcels. It sits back, oh gosh, probably half,
21 three-quarters, maybe even closer to a mile off the road
22 known as Plank Road, 712 outside the village of North Gar-
23 den. Ninety-eight (98) acres is--has a house and a new mul-
24 tipurpose barn, storage shed, could be a stable, and has
25 some open land. It's mostly wooded. The back separate par-

1 cel of 256, 257 acres is behind this parcel and is accessed
2 by a twenty (20) foot right-of-way to the back parcel and
3 it's all--all--
4 Q Are you--go ahead, I'm sorry.
5 A It's mostly in timber and has some ATV trails
6 and some nice recreational land.
7 Q Is it--describe the topography of the land,
8 hilly, it's flat?
9 A It's pretty hilly and of course the back parcel
10 is pretty much on the side of a mountain so it's pretty--can
11 be steep in portions.
12 Q Have you walked along the line that exists, the
13 common boundary line between what's known as Oakmont and the
14 Laurel Ridge property?
15 A Yes.
16 Q And you're familiar with the lay of the land in
17 that area?
18 A Yes.
19 Q Can you see the Laurel Ridge residence from the
20 main residence at Oakmont?
21 A No.
22 Q And are there other locations on the--well, let
23 me back up and ask it this way. What location on the Laurel
24 Ridge property is visible from the Oakmont residence?
25 A Would you ask that again?

1 Q Yes, ma'am. What part of the 98 acres can you
2 see if you're at the Oakmont house?
3 A Well, you really just see trees because the to-
4 pography as it adjoins the two properties immediately goes
5 uphill. So it's a hillside of trees. So you really just
6 see trees.
7 Q What is the slope of the hills, flat, steep,
8 gradual?
9 A It's--it's a--it's a gradual--I wouldn't call
10 it quite steep but it's gradual to steep if you want to sort
11 of describe it that way. It would not be flat.
12 Q Does your brochure give a generally accurate
13 description of the residence on the Laurel Ridge property?
14 A I think so. It has pictures and it has a floor
15 plan.
16 Q Was that property ready to be occupied at the
17 time the contract was signed?
18 A Absolutely.
19 Q Is it a nice home?
20 A Yes.
21 Q As you guys approached the closing in this
22 transaction, did you have any discussions with Steve McLean,
23 the buyer's agent, concerning the purchase of personal prop-
24 erty that the Lapes had on their place at Laurel Ridge?
25 A We had, after the contract was ratified, dis-

1 cussion about additional personal property in the form of
2 farm equipment.
3 Q And describe those discussions and how long
4 they went on for the Court.
5 A A property the size of Laurel Ridge, it would
6 necessary to have a certain amount of farm equipment for its
7 maintenance and upkeep, and Mr. Lape was going to sell that
8 property and we had also learned that there might be some
9 interest from the purchaser on it. So it was sometime in
10 May we were requested to, you know, price the property and
11 we did--I did a memo to Steve McLean, itemizing the differ-
12 ent pieces of equipment for sale and the price of those par-
13 cels and sent it to Steve to submit to the purchaser.
14 Q What response did you get, if any?
15 A I didn't get a response for quite a long period
16 of time. I called Steve and his assistant, Adella Soon, to
17 request a response because at the time the Lapes were making
18 plans to vacate the house and to divest themselves of the
19 personal property. They were not going to move tractors and
20 trucks to Florida and they really needed to make--had to
21 have some decisions made and there was a sense of urgency
22 because there had been some other interest expressed in that
23 property, the personal property, and they wanted to be able
24 to know that they had taken care of selling it.
25 Q Did you ever get a response?

1 A Eventually I did, but to my best recollection
2 it was not until a week or ten day prior to closing. It was
3 in--it was in June. It was a full month, four to six weeks
4 after we initiated the initial document with the pricing.
5 Q Did you have any other discussions with Mr.
6 McLean as the closing approached in the last week or ten
7 days leading up to the June 30th closing date that caused
8 you concern about the contract?
9 A Yes.
10 Q Tell the Court what discussions you had and as
11 best you can recall, when?
12 A My best recollection, it was--I think it was
13 June 22nd I had had a conversation with Steve that raised
14 some red flags. It was intuitive just that he felt that his
15 client was unpredictable and he wasn't quite sure what was--
16 what might happen and I felt uncomfortable enough that at
17 that time I called the Lapes' attorney, Wendall Winn, who
18 was out of town. I think I talked to Joe Cochran and just
19 said we need to find out what's going on because I just have
20 this feeling that we may--there may be a problem with clos-
21 ing.
22 Q Did you have any other discussions with Mr.
23 McLean relative to your real estate commission either in
24 that conversation or in any later conversations?
25 A My recollection is whether it was that day or

1 the first of the following week, which would have been the
2 week of the closing, had it taken place, that there was some
3 mention of renegotiating the contract and renegotiating the
4 commission.
5 Q And who had those discussions with you?
6 A Steve McLean.
7 Q And whose choice of words is renegotiate? Is
8 that something you're choosing now or is that a word you
9 heard him use in that discussion?
10 A That's the word that Steve used with me.
11 Q And what response did you give him?
12 A Response to request for renegotiating the com-
13 mission was that I had participated in the commission reduc-
14 tion at the time we negotiated the contract in February of
15 2000 and my clients weren't happy that I had done that and I
16 did it to facilitate the sale and that I was not really in-
17 terested in doing anymore at that time.
18 Q Did you have any discussion with him in that
19 conversation or either--any of these conversations about
20 this so-called Gordon contract?
21 A Probably--it was probably in that earlier con-
22 versation on June 22nd that it probably came to light that
23 the Haisfields were negotiating or had a contract with the
24 Gordons. Up until that point, I wasn't totally sure that
25 that was the case and Steve indicated that there were some

1 problems in that, in their ability to purchase the Gordon
2 tract. At some point, in one of those conversations with
3 Steve, I said to him that the Lape contract was not contin-
4 gent on the purchase of any other piece of property contigu-
5 ous to this property.
6 Q Did he have any response to your statement that
7 the contracts were not legally connected?
8 A Yes. I mean, he probably said I realize that
9 or I know that. I mean he knew that.
10 Q All right. Did he ever discuss with you, Mr.
11 McLean in those conversations, when the Gordon closing was
12 supposed to take place?
13 A He made mention, and I'm not a hundred percent
14 sure, but he may have mentioned that they were trying to
15 close everything at the same time, and at some point I did
16 become aware of that because I think it became an issue.
17 Whether that was before the actual closing date or after,
18 but we knew that was an issue.
19 Q When is the next time you talked to Mr. McLean
20 after this group of conversations that you had a week or so
21 before closing?
22 A The next time I talked to him was the evening
23 before closing and I was at home, and whether I was return-
24 ing his phone call or he actually called me at home, I
25 really don't recollect, but I know I was at home and he

1 called and said that we probably wouldn't be closing the
2 next day, that there was a cloud on the title and I said
3 what are you talking about, and he said that there was a
4 problem and that he didn't think his clients would close and
5 I said I was not aware of any problem, that what he de-
6 scribed, briefly described--what he described to me was--as
7 it turned out wasn't completely accurate but I said I didn't
8 know anything about it and that I would have to talk to the
9 Lapes and their attorney but I didn't believe that there was
10 any cloud on the title.
11 Q What was the nature of the so-called cloud that
12 he described to you?
13 A A view easement from--that was in the convey-
14 ance of the property known as Oakmont the Lapes conveyed to
15 the Moses several years ago to create a buffer of--between
16 the two properties which we call a view easement.
17 Q All right. And what was your response to him
18 as far as his statement to you, that the view easement was a
19 cloud on the title?
20 A I just said the view easement would not be con-
21 sidered a cloud on the title.
22 MR. WRIGHT: Objection. She's offering opinion
23 testimony, Your Honor.
24 Q Judge, I think she's--it's sort of like the
25 letter. She's telling what she said. We're not offering it

1 as an expert opinion.
2 MR. WRIGHT: It's still opinion.
3 THE COURT: Sustained.
4 Q And what did you do as a result of that conver-
5 sation then, Ms. Clarke? I gather that was the extent of
6 the conversation?
7 A It was very brief.
8 Q And what did you do as a result of that?
9 A It was after business hours. It was probably
10 six-ish and I tried to get Richmond & Fishburne's office,
11 tried to get Wendall, and of course they weren't there and I
12 called the Lapes.
13 Q All right. Did you have anymore discussions
14 with Mr. McLean concerning--and I'm talking about later now,
15 after the, I'll call it aborted June 30th closing, did you
16 have any discussions with him ever about changing the access
17 to Laurel Ridge?
18 A At some point in the fall, October, November-
19 ish, he wanted to take a look at the property on the border
20 between Laurel Ridge and Oakmont to see if a road could be
21 cut through there to access Laurel Ridge.
22 Q Is that the first you learned that anybody
23 might be thinking of a separate access?
24 A Yes.
25 Q Did he ever tell you anything about the discus-

1 sion--did Mr. McLean ever talk with you about the discus-
2 sions he had with Dr. Moses?
3 A I knew about those discussions probably after
4 the fact.
5 Q All right. Describe your experience with what
6 you call view easements for this type of property in Albe-
7 marle County.
8 A View easements are not--
9 MR. WRIGHT: Your Honor, I'm going to object. I
10 think we're heading into the realm of opinion testimony.
11 THE COURT: How is it relevant?
12 Q Judge, I guess my point is that if she's had
13 other experience with it, then that's relevant to the ques-
14 tion of whether or not that creates some problem with mar-
15 ketability.
16 MR. WRIGHT: She's going to be giving an opinion
17 on marketability here that she's not--well, she was desig-
18 nated for it and we resolved it between ourselves when I--
19 Q I'm not offering it as an expert opinion,
20 Judge. I'm simply offering her experience in the real es-
21 tate business based on observations she's made on other
22 property, and the sale of other properties.
23 THE COURT: But I mean--
24 Q In other words, is this the only property on
25 earth that there's a view easement on. That's the gist of

1 the question.
2 MR. WRIGHT: I object for the reasons already
3 stated but also we have restrictive covenants here that are
4 more than just view easement and I think you would have to
5 look at these kinds of things on a case by case basis in
6 terms of what a purchaser is going to be using that property
7 for and therefore her testimony is not relevant to the issue
8 before the Court in this case.
9 THE COURT: I agree. Sustained.
10 Q Yes, sir. Judge, we'd simply proffer that she
11 would say that she's seem them in other situations on prop-
12 erties on this type in Albemarle County.
13 THE COURT: So that's proffered but the objection
14 is sustained. Go ahead.
15 Q Yes, sir. Do you--is this property still
16 listed with you?
17 A Yes.
18 Q And do you continue to market it?
19 A Yes.
20 Q Has Mr. McLean shown it to prospective purchas-
21 ers since the time of the aborted June closing?
22 A Yes.
23 Q That's all I have, Judge.
24 THE COURT: Cross.
25

1 CROSS-EXAMINATION
2 By: Mr. Wright
3 Q Ms. Clarke, have you ever stood next to the
4 Oakmont residence in the middle of the winter and looked in
5 the direction of Laurel Ridge?
6 A Yes.
7 Q And isn't it true that without the foliage on
8 the trees that time of year there are parts of Laurel Ridge
9 that are visible from the residence on Oakmont?
10 A I don't recollect that.
11 Q You don't recall that?
12 A No.
13 Q Did you know at any time, Ms. Clarke, that Mrs.
14 Haisfield was going to be using this property as a horse
15 farm?
16 A No. I did not know what her intended use of
17 the property was.
18 Q So in all the discussions you had with Mr.
19 McLean, you never learned what she proposed doing with the
20 farm?
21 A No.
22 Q Did you know that she intended to build various
23 improvements on the property?
24 A I knew that there was quite a lot of--quite a
25 lot of folks accessing the property to do improvements,

1 measuring the house and doing things and looking at the pos-
2 sibility of perhaps some other buildings, but it was never
3 specifically shared with me what.
4 Q Okay. And did you ever ask?
5 A No.
6 Q Now, you never met Mrs. Haisfield during the
7 period of the contract, did you?
8 A No.
9 Q And during the period that the property was un-
10 der contract, did you have any kind of conversations with
11 her?
12 A No.
13 Q And so all of your conversations with her side
14 of this deal would have been with Mr. McLean, is that fair?
15 A Correct.
16 Q Okay. You testified a few minutes ago that on
17 approximately June 22nd, 2000, you and Steve McLean spoke
18 and I believe you said that he said the client was unpre-
19 dictable and he's not sure what would happen. Is that cor-
20 rect?
21 A Yes.
22 Q But in that conversation he never said this
23 deal is not going to close on the 30th, did he?
24 A No.
25 Q And you testified that a couple of days after

1 that Mr. McLean called you and said that you needed to rene-
2 gotiate real estate brokerage commissions. Am I stating it
3 fairly accurately?
4 A Yes.
5 Q Is it even possible that that discussion didn't
6 happen that week but happened a couple of weeks later in
7 July?
8 A I suppose it might be possible, but my recol-
9 lection is that it happened that week.
10 Q But you didn't keep a calendar that would memo-
11 rialize the actual date this happened?
12 A No, I did not.
13 Q And you didn't put anything in writing to Mr.
14 McLean that would establish with any certainty what date
15 that particular communication occurred?
16 A No.
17 Q And so it could have been after the aborted
18 closing on this particular real estate sales contract, could
19 it not?
20 A My recollection was that it was before.
21 Q But we don't have anything that memorializes
22 that?
23 A No.
24 Q You testified that you got a telephone call
25 from Mr. McLean about the restrictive covenants on June the

1 29th, is that correct?
2 A (No audible response.)
3 Q And that was the day before the scheduled clos-
4 ing.
5 THE COURT: That's a yes?
6 A Yes. I'm sorry. Yes.
7 Q And what time of the day did you hear from Mr.
8 McLean?
9 A It was six-ish.
10 Q Late in the evening.
11 A I was at home.
12 Q You were at home.
13 A Yes.
14 Q Okay. And before getting that call, isn't it
15 true that you were not even aware of the existence of these
16 covenants and the chain of title?
17 A Correct.
18 Q And so you had not included any information
19 about these covenants in the marketing brochures that Monta-
20 gue Miller & Company had prepared, is that correct?
21 A Correct.
22 Q Is the Lape property heavily wooded?
23 A Yes.
24 Q Now, when Mr. McLean called you on June the
25 29th, what he told you is, we discovered these covenants,

1 this deal will not be closing tomorrow, is that correct?
2 A Pretty close to it, yeah.
3 Q And he never said, even at that time, that
4 there's no way on earth this deal will ever close?
5 A No.
6 Q And you had discussions with Mr. McLean after
7 June 30 about the possibility of resurrecting this deal and
8 making it happen, did you not?
9 A Yes.
10 Q And do you know whether discussions about mak-
11 ing this deal happen continued as late as late October or
12 early November of 2000?
13 A Yes.
14 Q Thank you. I have no other questions, Your
15 Honor.
16 THE COURT: Redirect?
17 MR. BERRY: Yes, sir.
18
19 REDIRECT EXAMINATION
20 By: Mr. Berry
21 Q Ms. Clarke, in situations where--do you sell
22 other properties in Albemarle County with restrictive cove-
23 nants?
24 A Yes.
25 Q Do you always include that information in mar-

1 keting brochures?
2 A No.
3 Q And what is the reason that you might include a
4 certain type of information in a marketing brochure?
5 A Marketing brochures really, we say, a picture
6 is worth a thousand words, is to show as much as you can in
7 terms of visual. It's an enticement to get people to see
8 the property and look at the property. It would be difficult
9 to include all the information on a property in a marketing
10 brochure. So it's--at least my philosophy is a few words,
11 lots of pictures, floor plans, that kind of thing.
12 Q Mr. Wright asked you about these discussions
13 that you had with Mr. McLean. Did Mr. McLean in those dis-
14 cussions use the terminology that he was calling because his
15 clients wanted to renegotiate the contract?
16 A Which time frame? I mean do--
17 Q I'm talking about the time frame of June 22nd,
18 23rd, 26th, in that time frame, before the aborted June 30
19 closing.
20 A Yes, there was some talk about renegotiating
21 the contract.
22 Q And you're confident that happened before June
23 30th?
24 MR. WRIGHT: Objection, leading.
25 THE COURT: Sustained. Don't answer. Next ques-

1 tion.
2 Q When did it happen?
3 A There was talk of renegotiating the contract at
4 several junctures. My recollection that there was a conver-
5 sation prior to June 30th, there was also a conversation af-
6 ter June 30th.
7 Q All right. I'm going to show you some--a piece
8 of paper here and ask if it refreshes your recollection.
9 MR. WRIGHT: Your Honor, if I could have a second.
10 Q What is that? Are these your notes?
11 A These are some notes I made at some juncture.
12 I don't remember exactly when I knew that I might need to
13 have a clearer timeline.
14 Q I'm going to ask if you would review those and
15 if they refresh your recollection about the timeline.
16 A I can barely read this.
17 MR. WRIGHT: Your Honor, I'm going to object to
18 even using this document. He's indicated he's not going to
19 admit it into evidence, but it's not something that was ever
20 produced in discovery. I've never seen it before and I
21 don't think it's appropriate to use it even to refresh rec-
22 ollection.
23 THE COURT: So I'm going to overrule your objec-
24 tion. She can read it and then give it back to Mr. Berry
25 before any further questioning.

1 A I'm sorry, it was hard to read.
2 THE COURT: That's all right. Now, Mr. Berry, you
3 can ask her a question.
4 Q Does that document refresh your recollection
5 concerning the timeline of when you had discussions with Mr.
6 McLean?
7 A Yes.
8 Q And when did you have discussions with him
9 about renegotiating the contract?
10 A My notes say June 27th.
11 Q And is that consistent with your recollection?
12 A It is.
13 Q Prior to this closing, did you--the June 30th
14 aborted closing, did you receive any communication from Mr.
15 McLean about changing utility service, changing the security
16 service, doing a walk through, anything in the way of a fi-
17 nal move towards settlement?
18 A No.
19 Q That's all I have, Judge.
20 THE COURT: Any recross, Mr. Wright?
21
22 RECROSS-EXAMINATION
23 By: Mr. Wright
24 Q Ms. Clarke, when the issue of renegotiation of
25 the contract came up, your response was no, is that correct?

1 A On the part that I was asked to renegotiate my
2 commission.
3 Q Right.
4 A Yes.
5 Q But that's what you were talking about with Mr.
6 Berry just now when you said renegotiate the contract?
7 A Right.
8 Q When you told Steve that you were unwilling to
9 renegotiate, did Steve ever say to you, because of that,
10 this contract will not go to closing on June 30th?
11 A No.
12 Q Thank you.
13 THE COURT: So you want to hold Ms. Clarke?
14 MR. BERRY: I'd like for her to remain under the
15 rule, Judge. I don't object if she wants to go back to--
16 well, if she wants to go back to her office or do what she
17 needs to do, I don't object. We'll have to try--if we need
18 her, we'll have to bear the responsibility of getting her
19 back.
20 THE COURT: All right.
21 MR. BERRY: I'd like for her to stay under the
22 rule.
23 THE COURT: So, Ms. Clarke, what that means is
24 you're subject to recall. Do not discuss your testimony or
25 the case with anyone until you're released as a witness and

1 you can go back to your office and just be subject to come
2 back on a phone call. Is that okay?
3 A Okay.
4 MR. BERRY: Judge, Forbes Reback will be our next
5 witness.
6 THE COURT: Forbes Reback. Mr. Reback, if you'll
7 come forward to the witness chair, please. When you get
8 there if you'll stand and raise your right hand to be sworn
9 and I'll let you have a seat.
10
11
12 FORBES REBACK, having been so duly sworn, testi-
13 fied as follows:
14
15 DIRECT EXAMINATION
16 By: Mr. Berry
17 Q Your name is Forbes Reback?
18 A Yes, sir.
19 Q And what is your occupation, Mr. Reback?
20 A Lawyer.
21 Q And how long have you been in practice?
22 A Thirty-seven (37) years.
23 Q What is the primary area of your practice?
24 A Real estate, trusts and estates, small corpora-
25 tions.

1 Q You practice with the firm of Reback & Slayton
2 here in Charlottesville?
3 A I do.
4 Q And did you represent Dorothy Haisfield and
5 Laurel Ridge LLC in connection with a real estate--a resi-
6 dential real estate contract involving the Lape property?
7 A I did.
8 Q And I'm going to show you a document after I
9 show it to Mr. Wright. Is this a letter that you transmit-
10 ted--it's marked Plaintiff's 10--that you transmitted to
11 Mrs. Haisfield, your client?
12 A It's not my signature but let me look at it.
13 It was signed by my secretary, Ms. Harlow.
14 Q Your name is signed to it, is that right?
15 A Yes.
16 Q And she sent it with your authority?
17 A Yes, I guess.
18 Q And I gather you dictated the letter?
19 A It sounds like me.
20 Q Yes, sir. Judge, I'm going to move this into
21 evidence as Plaintiff's 10.
22 THE COURT: Any objection?
23 MR. WRIGHT: No objection.
24 THE COURT: Received.
25

1 (Plaintiff's Exhibit #10 was so marked and re-
2 ceived into evidence at this time.)
3
4 Q I'm going to ask a couple of questions about
5 it, Mr. Reback. I notice the last paragraph. Basically
6 you're sending the documents to the Lapes to be signed--
7 excuse me, to the--to Mrs. Haisfield and Laurel Ridge LLC to
8 be signed, is that correct?
9 A Yes, sir.
10 Q And at the bottom of that letter dated June
11 28th you say, even if Steve's negotiations are successful, I
12 doubt everyone will be ready to close before next Thursday,
13 is that correct?
14 A That's what it says.
15 Q And what was your purpose in including that
16 letter in the conversation--excuse me, that mention of that
17 negotiation in the letter?
18 A I don't recall because there were several nego-
19 tiations going on at the time.
20 Q What negotiations were you referring to?
21 A There was a second real estate transaction
22 which we considered to be a part and parcel of this one
23 which was with Bill and Helen Gordon and the Tillman family,
24 the Tye River Limited Partnership, for a parcel of land that
25 touched the Lapes' parcel.

1 Q Sort of in between the triangle?
2 A Yes, yes.
3 Q Were negotiations still going on, vis-à-vis
4 that land as of June the 28th?
5 A I am not sure.
6 Q You said there were several negotiations going
7 on at that time frame. What other negotiations were going
8 on?
9 A We were also negotiating with the airport au-
10 thority for a hangar release and it had gone through--it had
11 been sent back and forth a couple of times.
12 Q So that's what you were referring to in the
13 letter, the Gordon negotiations and the hangar negotiations?
14 A I believe so.
15 Q The closing for this transaction at this point
16 at least, was scheduled for June 30th, was it not?
17 A Yes, sir.
18 Q Had you notified Mr. Winn or Mr. Cochran, who
19 were representing the sellers, that there wasn't going to be
20 a closing, at least before the following Thursday?
21 A I'm sorry. Had I notified--I mean, that letter
22 speaks for itself.
23 Q I realize the letter speaks--I realize the let-
24 ter speaks for itself but the letter says, even if Steve's
25 negotiations are successful, I doubt that everybody will be

1 ready to close before next Thursday, which would have been--
2 you meant the following week, didn't you?
3 A I must have since the 30th was a Friday.
4 Q Yes, sir.
5 A So I must have.
6 Q And you hadn't told Mr. Winn or Mr. Cochran at
7 the time that letter was written that there wasn't going to
8 be a closing on June 30th, had you?
9 A No.
10 Q And June 30th was the scheduled closing date,
11 was it not?
12 A Yes.
13 MR. WRIGHT: Objection, Your Honor. I think we're
14 talking about two deals here and I think his testimony sub-
15 stantiates that. I don't know whether there would be a need
16 to communicate to Mr. Winn.
17 Q Judge, if you look at the letter--I think he
18 makes a nice argument, but the witness is testifying and if
19 you look at the letter and hear what he said, I would submit
20 that the testimony is properly given. If he wants to cor-
21 rect his answer, then obviously Mr. Wright can do that when
22 he examines him.
23 THE COURT: So I overrule the objection. Go
24 ahead. Next question.
25 Q You were also handling the closing on the

1 Gordon contract, is that right?
2 A Yes.
3 Q And that contract was contingent on a closing
4 on the Lape contract, was it not?
5 A Yes.
6 Q And the Haisfields did not intend to go forward
7 to--or Mrs. Haisfield and Laurel Ridge LLC did not intend to
8 go to closing on the Lape contract unless they also went to
9 closing on the Gordon contract, isn't that right?
10 A They were inextricably intertwined.
11 Q All right.
12 A But I can't speak to the intent.
13 Q You can only say from your standpoint the two
14 were worked on together?
15 A Yes.
16 Q There was never any effort on your part to
17 close one without the other?
18 MR. WRIGHT: Objection to leading.
19 THE COURT: Sustained.
20 Q Judge he's, I would submit, an adverse witness.
21 He is an attorney for an adverse party.
22 THE COURT: So do you want to be heard on that,
23 Mr. Wright?
24 Q By the nature of the beast.
25 MR. WRIGHT: I don't think Mr. Reback is repre-

1 senting his client any longer in the matters that are pend-
2 ing and I don't think he's got a dog in this fight. I think
3 he's testifying very--in a very unbiased fashion and there's
4 no reason--
5 THE COURT: So how is he adverse now, Mr. Berry.
6 I know he did represent Mrs. Haisfield then.
7 Q We're not suggesting he's making--Mr. Wright
8 forms the question. We're not suggesting he's doing any-
9 thing other than trying to tell the truth, but he is an at-
10 torney at the time of the transaction for an adverse party.
11 THE COURT: I know, but how does he have an ad-
12 verse interest now?
13 Q He has an adverse interest--
14 THE COURT: Because his testimony is being judged
15 now, not back then.
16 Q His testimony is being judged now, Judge, but
17 his--his fiduciary responsibility, his ethical responsibili-
18 ties ran to his client then and they run to her now. They
19 don't change simply because he's not actively involved in a
20 transaction and I would submit--the Court can give it what-
21 ever weight you want. I'm not trying to argue that. What
22 I'm trying to argue is it gives me the right to question him
23 as an adverse witness which gives me the right to lead. In
24 other words, no one can say he's my witness. I haven't
25 called him on behalf of my client, I've called him because

1 he represented an adverse party just like an agent or any-
2 body else.
3 THE COURT: But you haven't declared that until
4 now. You didn't declare that when you first called him.
5 Q Well, I didn't get an objection, Judge. I
6 didn't get an objection until now. I thought it was a given
7 to be honest with you.
8 MR. WRIGHT: If he's got a fiduciary duty at this
9 point to the Haisfields, then I need to be raising attorney-
10 client privilege to some of these questions and I haven't
11 done that. We're not trying to shield him from answering
12 questions, but I don't think he's properly an adverse wit-
13 ness.
14 THE COURT: Okay, so I overrule the objection.
15 You can ask the question.
16 Q I think--I don't even remember the question at
17 this point, Judge. I think--I think what I was asking you,
18 Mr. Reback, is your instructions and your effort at closing
19 these two transactions was to do the two together, is that
20 right?
21 A That would have been my preference.
22 Q Well, that isn't what I asked you. Was that
23 your instruction?
24 A I don't recall any specific instructions.
25 Q Okay. Was it your understanding that the two

1 were going to close together?
2 A Yes.
3 Q I don't have anything else, Judge, at this
4 point.
5 THE COURT: Cross-examination?
6 MR. WRIGHT: I don't have anything, Your Honor.
7 THE COURT: Do you want to hold this witness?
8 MR. WRIGHT: No.
9 THE COURT: So you're excused, Mr. Reback, and you
10 can leave.
11 A Thank you.
12 THE COURT: Or you're welcome to stay if you wish.
13 MR. BERRY: Judge, I may need to--I need to keep
14 him under the rule. I also have him subpoenaed, but I don't
15 have any other questions of him in this part of my case.
16 THE COURT: So you may recall.
17 MR. BERRY: I may need to recall him.
18 THE COURT: Okay. So can you be at your office on
19 call? Is that a problem?
20 A Yes, sir. Yeah. I'll wait till--the Court is
21 going to break at one o'clock and I'll go to lunch at one
22 and be back at my office.
23 THE COURT: So this means you can't discuss your
24 testimony or the case with anyone until you're released as a
25 witness.

1 A Yes, sir.
2 THE COURT: Thank you. Next witness?
3 MR. BERRY: Judge, I'm going to call Steve McLean
4 as an adverse witness.
5 THE COURT: All right. Mr. McLean. If you'll
6 come up, stand, and raise your right hand.
7
8
9 STEVE McLEAN, having been so duly sworn, testified
10 as follows:
11
12 DIRECT EXAMINATION
13 By: Mr. Berry
14 Q Would you state your name, please?
15 A Steve McLean.
16 Q And what is your position, Mr. McLean?
17 A I'm a real estate broker with McLean Faulconer.
18 Q And are you a principal in that firm or--
19 A Yes. I'm the president of the company.
20 Q All right. At some point did you become in-
21 volved in the negotiations regarding a real estate contract
22 for Audrey Haisfield concerning the Lape property known as
23 Laurel Ridge here in Albemarle County?
24 A Yes, sir.
25 Q All right. Do you recall when you initially

1 were contacted by Mrs. Haisfield?
2 A I think it was in December of 1999.
3 Q All right. I'm going to show you a document
4 which has been marked Plaintiff's Exhibit 11 as soon as I
5 let Mr. Wright look at it. Can you identify what Plain-
6 tiff's Exhibit 11 is?
7 A They are my notes referencing the Haisfields'
8 name, their address, probably from a telephone conversation
9 I had with them talking about the--what they wanted in prop-
10 erty in this area and listed on the right-hand side, names
11 of some properties.
12 Q All right. And is that for the most part in
13 your handwriting?
14 A Yes. Is it not exclusively but for the most
15 part.
16 Q And that exhibit contains an entry about midway
17 down that says conservation easement, IMPT. Tell the Court
18 what that's a shorthand for.
19 A Important.
20 Q So your notes from that conversation indicate
21 that a conservation easement was important?
22 A That's correct.
23 Q And you don't recall, do you, whether that
24 meant--or whether it was told to you that it meant property
25 that now has a conservation easement on it or one that would

1 subject to having one put on it?
2 A No. I remember definitely that the point of
3 the conservation easement was that Mr. Haisfield was looking
4 for a tax incentive as well, that it would enable him, if he
5 placed an easement on the property. He had been--he had
6 been told about the possibility of putting easements on
7 properties and that there were some benefits to him if he
8 chose to put an easement on a property.
9 Q A conservation easement.
10 A A conservation easement on a property so that
11 he could derive these tax benefits.
12 Q Is that an accurate--#11 is an accurate copy of
13 your notes?
14 A Yes. It also says, December--he's here Decem-
15 ber 8th, so I must have spoken to him prior to that.
16 Q Somewhere in that time frame.
17 A Yeah.
18 Q Judge, we'd ask that this be admitted.
19 THE COURT: Any objection?
20 MR. WRIGHT: None.
21 THE COURT: Received, #11.
22
23 (Plaintiff's Exhibit #11 was so marked and re-
24 ceived into evidence at this time.)
25

1 Q They told you in that conversation also that
2 they were looking for property basically to use as a horse
3 farm, is that right?
4 A You know, I didn't look at those notes closely
5 enough to refer exactly what our conversation was, but a
6 general estate property on which you could have horses, I
7 assume, as well. I did know that they were into horses.
8 Q All right. And I'm going to show you another
9 document which has been marked Plaintiff's Exhibit 12 and
10 ask if this is also a copy of some notes that you took, or
11 that you made. Is that an accurate copy of some notes that
12 you made on another occasion?
13 A Yes. These are notes I believe from the cover
14 of my file. As is true with the last page that you showed
15 me, I would add to these notes from time to time based on
16 conversations.
17 Q All right. And that's an accurate copy?
18 A Yes, I believe so.
19 Q All right. You made the notation on the right-
20 hand side, the more land the better, the more private the
21 better, is that correct?
22 A I believe so, yes, sir.
23 Q Well, that's your handwriting, isn't it?
24 A Yes, sir.
25 Q All right. And that's based on conversations

1 that you had with Mr. and Mrs. Haisfield, is that right?
2 A I would think so.
3 Q Well, it is in fact, isn't it, Mr. McLean?
4 A Well, I think so.
5 Q You didn't have any conversations with anyone
6 else on their behalf, an agent or anyone such as that?
7 A Yes.
8 Q Who?
9 A Mr. Reback.
10 Q Okay. So you're saying--but you didn't talk to
11 him until the contract was already signed, is that right?
12 A No, I spoke to--the Haisfields were referred to
13 me from Mr. Reback early on. That's how I came to know the
14 Haisfields.
15 Q And not the other way around?
16 A Let me just--what did I say. The Haisfields
17 were referred to me by Mr. Reback, that's correct.
18 Q So you're saying the conversation that resulted
19 in these notes could have either come from him or it could
20 have come from them?
21 A That's correct, it could have. I had a discus-
22 sion with Mr. Reback when he referred them to me and some of
23 the names of properties that were listed on that first page
24 that you showed me were names of properties that they had
25 either already seen or might be interested in.

1 Q Yes, sir.
2 A And that came from Mr. Reback who had talked
3 with them prior to my ever knowing them and he had also dis-
4 cussed with them, I believe, about conservation easements.
5 Q All right. Judge we'd move this into evidence.
6 THE COURT: Any objection?
7 MR. WRIGHT: No objection.
8 THE COURT: Twelve (12) is received.
9
10 (Plaintiff's Exhibit #12 was so marked and re-
11 ceived into evidence at this time.)
12
13 Q That also refers to having--the Haisfields hav-
14 ing horses that they needed land for, isn't that right?
15 A Yes, sir.
16 Q The initial contract offer by Mrs. Haisfield
17 for this property came through you, did it not?
18 A Yes, sir.
19 Q It was on a standard Virginia Residential Con-
20 tract, Virginia Association of Realtors Residential Con-
21 tract?
22 A Yes, sir.
23 Q Same form as the one that was ultimately
24 signed?
25 A Yes, sir.

1 Q And that offer did not contain a liquidated
2 damage provision, did it?
3 A I don't remember.
4 Q All right. The liquidated damage provision was
5 proposed by Mrs. Haisfield, your client, is that right?
6 A I believe that's correct.
7 Q All right. Now, at some point you also negoti-
8 ated a contract on their behalf with William Gordon, did you
9 not?
10 A That's correct.
11 Q And that was for the purchase of the 85 acres,
12 is that right?
13 A Yes, sir.
14 Q And that contract was negotiated and ultimately
15 signed in April of 2000, is that right?
16 A I believe that's correct.
17 Q And that contract was in fact contingent on the
18 Lape contract, was it not?
19 A Yes, sir.
20 Q You also assisted the Haisfields in getting lo-
21 cal builders, architects, people who could assist with modi-
22 fications to the property to come and look at it and give
23 them proposals, is that not correct?
24 A Yes, sir.
25 Q Did you refer them to Roger Sherry?

1 A I don't think so.
2 Q Okay. Do you know how they got in touch with
3 him?
4 A No, sir.
5 Q You didn't receive any plans from Roger Sherry?
6 A I don't know Roger Sherry.
7 Q Okay. So your answer to that is yes, you
8 didn't receive any?
9 A I didn't receive any.
10 Q Okay. And you had discussions with the Hais-
11 fields about changes that they wanted to make to the Laurel
12 Ridge residence, did you not?
13 A Yes.
14 Q And there was some concern at some point that
15 the cost of those might interfere with their desire to pur-
16 chase the property, isn't that right?
17 A I don't--I don't know if it was--that it would
18 interfere with the purchase of the property. They--you
19 know, it was a factor in the purchase of the property.
20 Q All right. And those discussions took place
21 after the conclusion of the study period, isn't that right?
22 A Yes, sir.
23 Q And at one point you had a conversation with
24 them where it was indicated that this might not be the prop-
25 erty for them because of the difficulty making changes to

1 the home that they wanted to make, isn't that right?
2 A Could you state that again, please?
3 Q Yes, sir. You had a conversation with the Ha-
4 isfields at one point after some of the architectural plan-
5 ning was done where Mr. Haisfield and his wife indicated to
6 you that perhaps because of the changes that would need to
7 be made that this property really wasn't for them.
8 A I don't think it was ever concluded it wasn't
9 for them, but we did talk about the extensive renovations
10 that they might want to do or additions they might want to
11 do to the property.
12 Q And they were concerned about that, weren't
13 they?
14 A I think there was some concern about it, yes,
15 sir.
16 Q Well, you recall testifying in depositions in
17 this case don't you, Mr. McLean?
18 A I do.
19 Q And do you recall using the term heartburn?
20 A I don't remember exactly, no, sir.
21 Q All right. Do you recall saying that there
22 were two things causing you heartburn as the closing neared?
23 A Okay.
24 Q Do you recall that?
25 A I do.

1 Q All right. And do you recall testifying that
2 those two things were the concern about the house not being
3 suitable for their needs and the problems with the Gordon
4 contract?
5 A I would--yes. I was concerned personally. I
6 don't think that that related to conversations I had with
7 the Haisfields, but I was concerned personally, yes.
8 Q And those were the two reasons you were con-
9 cerned?
10 A Yes.
11 Q All right. And you--you had constant contact
12 with Forbes Reback who was their attorney, did you not?
13 A I wouldn't say it was constant, no.
14 Q You had discussions with him leading up to the
15 closings?
16 A I had conversations close to the closing. I
17 don't remember having extensive or any conversations par-
18 ticularly from the initial time I talked to him when he re-
19 ferred these people, the Haisfields, to me or up until clos-
20 ing. We didn't discuss a whole lot in the interim.
21 Q What steps did you take or were you directed to
22 take as a result of your concern that the Gordon contract
23 wasn't going to close?
24 A I didn't know the Gordon contract was not going
25 to close and I wasn't directed to do anything.

1 Q You had concerns about it not closing but there
2 was no reason for that and you didn't do anything as a re-
3 sult of that?
4 A I had personal concerns about it because the
5 transaction was a very protracted, complicated, involved,
6 lengthy discussion. So it was, you know, it worked out
7 fine. We got the property under contract, it was set to go
8 to closing but it was a long, difficult procedure.
9 Q Well, you worried about the Lape contract clos-
10 ing because you knew it depended on the Gordon contract
11 closing, isn't that right?
12 A When the Haisfields contracted to buy the Lape
13 property, there was no discussion at all or interest on the
14 Haisfields' part about purchasing the Gordon property.
15 Q Well, we understand that, Mr. McLean. What I'm
16 referring to as to closing neared, and I apologize, let me
17 put it in a time frame. When you said you had heartburn
18 about the Gordon contract, the reason that that had anything
19 to do with the Lape transaction is because you knew the two
20 needed to close together, isn't that right?
21 A I knew that the two were hopefully going to try
22 to be closed together. There were discussions at length
23 with the attorney representing the Gordon family who was in
24 Baltimore about liens and other things going on with the
25 Gordon property that needed to be resolved and I was con-

1 cerned, as was the attorney, as to how he was going to make
2 that happen. We weren't concerned about it not closing, it
3 was just a matter of when it might close.
4 Q And this is the Gordon--you're talking about
5 Mr. Klienfelter?
6 A I'm speaking of Mr. Klienfelter and the Gordon
7 property.
8 Q And you called him at one point and told him
9 that the purchasers were having second thoughts, that is the
10 Haisfields, and that the Gordons needed to reduce the price
11 by fifty thousand (50,000) and the Lapes by a hundred thou-
12 sand (100,000), isn't that right?
13 A I think that's correct. We had discussion
14 about the price reduction. I'm not sure about the second
15 thoughts.
16 Q You never told Carol Clarke about the Gordon
17 contract prior to June 30th, did you?
18 A I don't know if we discussed it or not. Carol
19 initially and I had conversations about the Gordon property
20 possibly being available.
21 Q But you didn't tell her it was under contract?
22 A I don't know if I told her or not.
23 Q You didn't tell her that it needed to close to-
24 gether with the Lape transaction?
25 A I don't think I did, no.

1 Q And you didn't communicate that information to
2 Wendall Winn or to anybody representing Mr. and Mrs. Lape,
3 did you?
4 A I don't think that I did, no.
5 Q There was no effort as June 30th approached by
6 anybody in your firm that you know of to transfer the Lapes'
7 utilities or coordinate a transfer of the utilities to the
8 Haisfields, the security system, anything of that nature,
9 was there?
10 A The Haisfields were not going to use the prop-
11 erty. They were going to do some major renovations to it so
12 it wasn't something that was critical so we didn't make any
13 efforts to do that.
14 Q You weren't asked to do it, were you?
15 A No, we weren't asked to do it. We oftentimes
16 aren't.
17 Q After this transaction didn't close in late
18 June, there was an effort on your part to continue to try to
19 get it to close, was there not?
20 A Yes, sir.
21 Q And part of your effort there resulted in you
22 going and talking to Dr. Moses, did it not?
23 A Yes, sir.
24 Q And when you went out and talked to him and his
25 wife, did you tell them exactly why you needed to talk to

1 them?

2 A When I spoke--when I went to speak to Dr. and
3 Mrs. Moses, I was more looking for an understanding. I had
4 previously gone to speak to Ken and Barbara to try to under-
5 stand the easement from Ken and Barbara's perspective, why
6 they did it, what it entailed, what it meant to them. And
7 so I did that and we had that conversation and I told Ken at
8 the time that I was going to speak to Moses and this was
9 partly in preparation for that and I wanted to make sure I
10 understood what the easement was all about, and then I went
11 to the Moses to talk with the Moses about pretty much the
12 same thing, to try to get an understanding as to what their
13 perspective was about this easement. I also was talking to
14 them about the possibilities--I was trying to think of any
15 number of ways I could make this transaction happen and--the
16 transaction with the Haisfields and Lapes, and one of the
17 ideas that had been discussed previously was the possibility
18 of, among many other ideas, there was the possibility of the
19 Haisfields at some point building another house on the prop-
20 erty. If that happened, then the Haisfields wanted the
21 ability to sell off the current Laurel Ridge house. In or-
22 der for them to do that, I was concerned that there wasn't
23 enough road frontage, we couldn't get State Highway Depart-
24 ment approval, VDOT approval for a site. So I went down and
25 had a highway person--department person meet me at the prop-

1 erty to see if that could be done as a--just for information
2 sake and I discussed that and walked that site with Mrs.
3 Moses as well.
4 Q So that was over relocating the entrance?
5 A That was all, you know, being discussed because
6 of this possibility of not relocating the entrance, but the
7 ability to have a separate entrance, should one choose to
8 have one.
9 Q In other words, a second entrance that would
10 serve the option property and the--
11 A A separate entrance to serve the (unintelligi-
12 ble)--not, not--yeah, just a separate entrance.
13 Q All right.
14 A So that the Lape house, Laurel Ridge, and the
15 option property would not have to share a driveway.
16 Q And that's what you talked to Dr. Moses about,
17 the--what I'll call the buffer area, about--concerning that,
18 is that right?
19 A As I said, the possibilities of how that prop-
20 erty could be used in general, the Moses idea of what it
21 meant, the easement property, what the easement actually
22 meant to the Moses.
23 Q Your firm participated in the contract that re-
24 sulted in that, did you not, Mr. McLean?
25 A That resulted in?

1 Q In this--in these covenants?
2 A My firm was the selling company when the Lapes
3 sold the Oakmont property.
4 Q Okay. You were--your firm was the selling
5 agent, is that right?
6 A That's correct.
7 Q And the Lapes were the sellers?
8 A That's correct.
9 Q And you had a file on it, didn't you?
10 A I did not, no.
11 Q Your office did?
12 A I assume our office does, yes, sir.
13 Q Are you telling me you don't know to this day
14 whether your office has a file on it?
15 A I would assume we do. I've never seen the file
16 regarding that. I was not involved in that transaction.
17 Q Well, you produced a number of documents as a
18 result of a request for documents that included those docu-
19 ments, didn't you, in this lawsuit?
20 A If I did, then we would have the file.
21 Q All right. Didn't you tell Dr. Moses in the
22 conversation that you had with him and his wife that you
23 would try to make arrangements to have him meet with the Ha-
24 isfields or Mrs. Haisfield about this entrance?
25 A I don't recall saying that the Haisfields were

1 going to get together with the Moses, no.
2 Q You don't think you told him that?
3 A I don't remember.
4 Q So you might have told him but you just don't
5 remember right--
6 A That's a possibility, sure.
7 Q That never did occur, though, did it?
8 A No.
9 Q And you were aware that this contract, based on
10 the conversations you initiated with Mr. Winn, you were
11 aware that there was a second effort to close on the Lape-
12 Haisfield contract in November, is that right?
13 A Yes, sir.
14 Q And there was no change in the restrictive
15 covenants proposed or put in place prior to that closing
16 that didn't occur, was there?
17 A I think that's correct.
18 Q And that didn't occur because the Gordon trans-
19 action wouldn't close, isn't that right?
20 A That's correct.
21 Q Judge, I don't have any other questions at this
22 point.
23 THE COURT: Cross-examination.
24
25

1 CROSS-EXAMINATION
2 By: Mr. Wright
3 Q Did the Moses object to a new entry being put
4 in?
5 A Yes.
6 Q And that was because of these restrictive cove-
7 nants?
8 MR. BERRY: Judge, I'm going to object to the
9 hearsay.
10 THE COURT: Did the Moses object. Okay. So I'll
11 sustain hearsay.
12 Q Mr. Berry asked you a number of questions about
13 the Gordon contract. To your knowledge did the closing with
14 the Lapes occur because of problems with the Gordon con-
15 tract?
16 MR. BERRY: Judge, I object to asking him to give
17 an opinion about why it occurred or didn't occur.
18 THE COURT: Overruled. You've asked him about
19 this. He has a right to cross on it.
20 MR. BERRY: All right.
21 Q Let me just repeat the question.
22 MR. BERRY: I think it's his witness, though,
23 Judge.
24 THE COURT: No, he's a party.
25 MR. BERRY: Yes, sir, I understand.

1 THE COURT: It's not his witness.
2 MR. BERRY: Well, he's an adverse party to me
3 though.
4 THE COURT: Well, but that doesn't mean he can't
5 cross-examine him.
6 MR. BERRY: I agree with you, Judge. I under-
7 stand. I understand.
8 THE COURT: He's not your witness. Go ahead, Mr.
9 Wright.
10 Q Why did the closing on the Gordon contract not
11 take place on approximately June 30, 2000?
12 A The Gordon property contract--
13 MR. BERRY: Judge, I object to this on the grounds
14 of hearsay. In other words, without a better foundation
15 laid as to where he got this information.
16 THE COURT: Okay. So lay a foundation, Mr.
17 Wright.
18 Q Okay. Were you involved in discussions with
19 Mr. Klienfelter and Mr. Gordon and others in the June time
20 period about the Haisfield-Gordon contract?
21 A Yes.
22 Q Were you involved in any communication with Mr.
23 Klienfelter or Mr. Gordon about closing on that deal not
24 happening?
25 A Mr. Klienfelter and I talked a lot about the

1 closing but as far as I know, that closing was going to take
2 place on the 30th of June.
3 MR. BERRY: Judge, I object now if it's getting to
4 hearsay.
5 THE COURT: Well, we haven't gotten there yet.
6 What's the next question? Overruled.
7 MR. BERRY: Well, he says the closing was going to
8 take place on June 30th.
9 THE COURT: I understand that.
10 MR. BERRY: Yes, sir.
11 THE COURT: That's just the foundation question.
12 MR. BERRY: Yes, sir.
13 THE COURT: Next question.
14 Q Did that closing not occur because the Lape
15 closing didn't occur?
16 MR. BERRY: Judge, I object to that without a bet-
17 ter foundation being laid.
18 THE COURT: So you can lay a foundation as to how
19 he knows that information. If it's based on hearsay, it
20 might not be admissible.
21 Q Do you know who made the decision not to close
22 on the sale from Gordon to Mrs. Haisfield?
23 MR. BERRY: Objection with the lack of foundation,
24 Judge.
25 THE COURT: Overruled.

1 Q We're going to try to lay a little foundation.
2 THE COURT: That's what you're trying to do.
3 Overruled.
4 A I'm sorry. Could you say it again, please?
5 Q Yeah. Do you know who made the decision that
6 there was not going to be a closing on the Haisfield--excuse
7 me, the Gordon to Haisfield contract in late June of 2000?
8 THE COURT: Yes, I know, no, I don't.
9 A Could you say the question again?
10 Q Yes. I'm sorry if I'm wording it poorly. Do
11 you know who made the decision that there was not going to
12 be a closing on the sale from Gordon to Haisfield that was
13 scheduled to close June 30, 2000?
14 A I don't know who specifically made it.
15 THE COURT: That answers the question, so go to
16 the next one.
17 Q You were acting in that deal as well as in the
18 Lape deal as the broker representing Mrs. Haisfield?
19 A That's correct.
20 Q At some point did someone tell you the decision
21 had been made not to close on the Gordon deal?
22 MR. BERRY: Objection on the grounds of hearsay,
23 Judge. And I--I also object to him leading this witness.
24 The witness is a party but not an adverse party and he
25 doesn't have any right that comes from the law of evidence

1 that permits him to lead this witness and I object to it.
2 THE COURT: But you called him and he gets to
3 cross-examine this witness.
4 MR. BERRY: Yes, sir, he does, but he does not get
5 to lead a witness who is an agent of his client because the
6 witness has not been proven adverse to him. The reason I
7 get to lead, whether I call him or not, is because he's an
8 adverse witness.
9 THE COURT: So why doesn't he get to cross-examine
10 the witness that you called?
11 MR. BERRY: Professor Friend says he doesn't be-
12 cause it's, in effect, his witness. It's the same thing as
13 me calling his client whom he then can't lead.
14 Q Your Honor, I think for the purposes of cross-
15 examining on the same subject that Mr. Berry questioned him
16 on I can lead. I think if I were to attempt to expand be-
17 yond the scope of direct, I could not.
18 THE COURT: Okay. So go ahead. You may proceed
19 on that basis.
20 MR. BERRY: We note our objection, Judge. Thank
21 you.
22 THE COURT: Noted.
23 Q How did you find out that there was not going
24 to be a closing on the sale from Haisfield--excuse me, I'm
25 stumbling--the sale from Gordon to Haisfield?

1 A I received a telephone call from Marshall Slay-
2 ton, I believe.
3 Q Okay. And did he explain to you why that was
4 not going to close?
5 MR. BERRY: Objection, Judge. Same objection.
6 THE COURT: I'll sustain.
7 A The--
8 Q You can't answer that.
9 THE COURT: Don't answer. Next question.
10 Q He sustained the objection.
11 A Sorry.
12 Q Mr. Berry asked you some questions about Mr.
13 Klienfelter asking you about renegotiating the price on
14 both--or a conversation you had with Mr. Klienfelter where
15 there was a discussion of renegotiating the price on both
16 the Gordon deal and the Lape deal. Do you recall whether
17 that occurred before June 30 or after June 30?
18 A I thought that was after.
19 Q Okay. Mr. Berry also asked you some questions
20 about Mr. or Mrs. Haisfield at some point after the archi-
21 tect had done some investigation making some statement about
22 this might not have been the best property for them. Do you
23 recall that?
24 A Yes.
25 Q Did they ever tell you to try to find a way to

1 undo this deal?
2 A No.
3 Q That's all the questions I have right now. We
4 will call Mr. McLean later.
5 THE COURT: Redirect?
6
7 REDIRECT EXAMINATION
8 By: Mr. Berry
9 Q Just one. You--you're not certain that the
10 conversation with Mr. Klienfelter took place before June 30
11 or after June 30, is that what you're telling us?
12 A I'm not certain, yes.
13 Q So if someone said it took place before, that
14 might be true, if someone said it took place afterwards,
15 that might be true?
16 A I remember the conversation, I just don't re-
17 member when it happened, that's correct.
18 Q That's all, Judge.
19 THE COURT: Thank you. You may stand aside, Mr.
20 McLean.
21 A Thank you.
22 THE COURT: Mr. Berry, you have another short wit-
23 ness?
24 MR. BERRY: Judge, I was going to call Mrs. Hais-
25 field next as an adverse witness, and I don't think it will

1 be long, but we might run into more after that so I don't
2 know what the Court wants to do.
3 THE COURT: So how many more witnesses do you have
4 without holding you to it?
5 MR. BERRY: Perhaps one after her, perhaps none.
6 THE COURT: Okay. So why don't we take or lunch
7 break. It's, according to that clock, five minutes to one.
8 So why don't we come back at two o'clock according to that
9 clock. Is that okay?
10 MR. BERRY: Yes, sir.
11 THE COURT: So you can leave your things in place
12 and we'll return and pick up at two o'clock.
13
14 (Court in recess.)
15
16 THE COURT: Who is your next witness?
17 MR. BERRY: I'm going to call Mrs. Haisfield,
18 Judge, as an adverse witness.
19 THE COURT: Mrs. Haisfield, if you'll come around,
20 please. If you'll stand and face me and raise your right
21 hand, please.
22
23
24 AUDREY L. HAISFIELD, having been so duly sworn,
25 testified as follows:

1 DIRECT EXAMINATION
2 By: Mr. Berry
3 Q Would you state your name please, ma'am?
4 A Audrey Lee Haisfield.
5 Q And what is your address, Mrs. Haisfield, your
6 residence?
7 A 826 Ballard Canyon Road, Solvang, California.
8 Q And did there come a time when you entered into
9 a contract to purchase some real estate here in Virginia?
10 A Yes.
11 Q And that occurred roughly in February of the
12 year 2000, is that right?
13 A Correct.
14 Q And you worked with Steve McLean as a seller--a
15 buyer's agent, a realtor in negotiating and finding property
16 to buy, is that right?
17 A Correct.
18 Q And Mr. Reback was your attorney?
19 A Yes.
20 Q Did he refer you to Mr. McLean?
21 A Yes, sir, he did.
22 Q And roughly when did you start looking at prop-
23 erty here in Virginia?
24 A In 1999.
25 Q Okay. And from what point forward was Mr. Re-

1 back your attorney in connection with the purchase of real
2 estate here in Virginia? In other words, when did you en-
3 gage him?
4 A In 1999.
5 Q Okay. Late 1999?
6 A Yes.
7 Q So at the time these--or this contract was en-
8 tered into with the Lapes, you had already engaged him as
9 your counsel and Mr. McLean was your buyer's agent, is that
10 right?
11 A Yes.
12 Q All right. Your purpose in looking at property
13 here was to try to relocate or at least have more room for a
14 horse breeding operation that you have, is that right?
15 A That was one of the reasons. My parents are
16 both eighty (80) years old. They live in North Carolina.
17 My mother-in-law is alone because my father-in-law died a
18 year ago, two years ago at this point, and she's eighty-four
19 (84) years old and they need us right now so we needed to be
20 closer to them and that was one of the catalysts for coming
21 here.
22 Q You--but part of the reason you looked for the
23 property here was because you needed a larger area for your
24 horse breeding and horse raising operations, isn't that
25 right?

1 A If I moved here, yes, I wanted to move with
2 more property.
3 Q You recall testifying in your deposition in
4 this case that was taken on March the 22nd, do you not?
5 A Yes.
6 Q And do you recall being asked--and I'm on page
7 5, Mr. Wright, if you need to look--do you recall being
8 asked on line 6, is that--was that the reason for buying the
9 ranch, so you could raise horses there and your answer be-
10 ing, I am a breeder and a shower and I needed a lot more
11 ground in order to breed my horses. Okay. When you say you
12 needed a lot more ground, do you mean you needed more ground
13 than what you now have in California? Answer: Yes. Is
14 that the reason you began exploring the possibility of buy-
15 ing property in Virginia? Answer: Yes. Do you recall giv-
16 ing that testimony?
17 A Yes.
18 Q And so that testimony was accurate?
19 A Yes. Plus the other reasons.
20 Q Okay. And as a part of your effort to use this
21 property for those purposes, you had certain studies made of
22 the property after you contracted to buy it, is that not
23 correct?
24 A Correct.
25 Q And one of those was to engage Roger Sherry, a

1 landscape architect, to do a plan for you, is that correct?
2 A Correct.
3 Q Judge, may I approach?
4 THE COURT: You may.
5 Q I'm going to show you a document, Mrs. Hais-
6 field, which was marked as Plaintiff's Exhibit #8 and ask
7 you if that in fact was a plan that Mr. Sherry prepared for
8 you?
9 A Yes, it is.
10 Q And did he actually deliver that plan to you?
11 A Yes.
12 Q And this plan is dated, I notice, on June the
13 23rd of 2000. Do you recall when it was delivered to you?
14 A No, I don't know when it was delivered.
15 Q Was it--you got it at some point, I take it,
16 prior to June 30th when the closing was scheduled for?
17 A I have no idea.
18 Q You're not sure?
19 A No, I'm not sure of the date.
20 Q Okay. This plan shows certain improvements on
21 the Gordon-Lape option property and the Laurel Ridge prop-
22 erty, does it not?
23 A Correct.
24 Q And these were placed on this property by Mr.
25 Sherry, or these plans were prepared by Mr. Sherry after you

1 had discussions with him about what you wanted to do with
2 the property, isn't that right?
3 A Correct.
4 Q And this plan represented what you directed him
5 to prepare for viewing as a part of what you wanted to do
6 with the property, is that correct?
7 A Not necessarily.
8 Q Okay. Tell me what didn't represent what you
9 wanted.
10 A I had given him certain parameters as to what I
11 needed in my operation. I needed an indoor arena, an out-
12 door arena. I needed a round pen. I needed extensive
13 trails throughout the property and well, a lot of various
14 improvements horse-wise because there are no facilities on
15 the property now.
16 Q Okay.
17 A I let him do the entire property with his
18 imagination, without my giving him any boundaries whatsoever
19 because I do a lot of real estate investing and this is the
20 best way I can get work out of my people.
21 Q In other words, you let him decide to propose
22 it to you?
23 A Yes. Let him do his dream and then I can de-
24 cide from there yes, this is great, no, I don't like that.
25 On here he placed I think my barn way far back on the outer

1 parcel, which isn't what I want. I like my horses right up
2 close because I go out every night at nine o'clock and check
3 them before I go to bed. And so that wouldn't have worked
4 for me on this, but I liked the ponds and the different
5 things like that. What I needed to do was actually get
6 there and live on the property for a while to see if I
7 needed to purchase the properties I had under option.
8 Q All right. So you weren't sure--obviously you
9 weren't sure at the time of the contract whether you were
10 going to buy the option property or not?
11 A Correct. That is the purpose of an option.
12 Q And you didn't know for certain at that point
13 whether you were going to put improvements on the option
14 property or on the Laurel Ridge property, is that correct?
15 A I was hoping to put--correct.
16 Q Okay. Did you have any discussions with any
17 other people concerning improvements to the immediate area
18 of the house that's now on Laurel Ridge?
19 A Yes.
20 Q And one of those people was Mr. Andrews, the
21 architect, is that not correct?
22 A Correct.
23 Q And he designed a plan for you, did sketches
24 that included barns and other buildings that were more--that
25 were closer to the house than this plan, is that right?

1 A Correct.
2 Q And his plan was also one that you had under
3 consideration as far as something you might do to the prop-
4 erty if you purchased it, is that right?
5 A They were all various considerations.
6 Q Okay. So this plan was one possibility, Mr.
7 Andrews plan was another possibility?
8 A Well, with corrections.
9 Q Yes, ma'am, with the corrections you testified
10 about. Are you talking about this plan?
11 A I'm talking about any corrections I would want
12 to make to their plans.
13 Q Okay. You hadn't finalized any of their plans?
14 A No.
15 Q None of the plans that Mr. Sherry did nor the
16 plans that Mr. Andrews did had the improvements between your
17 home, the Laurel Ridge home, and the Oakmont residence, did
18 they?
19 A I don't recall that. I don't remember. I let
20 them do their dream on all of the acreage to see what they
21 would come up with.
22 Q All right. If you took the improvements which
23 are shown on what I'll call the option property on this plan
24 and relocated them closer to the Laurel Ridge house, I take
25 it this plan would have been more in line with what you

1 wanted than what Mr. Sherry actually did?
2 A I don't know.
3 Q You don't know. You--no one else to your
4 knowledge--you were the only person who hired Mr. Sherry to
5 make these proposals to you regarding the Laurel Ridge prop-
6 erty concerning your horse operation, isn't that right? In
7 other words you--you hired him?
8 A Yes.
9 Q Judge, I'm going to move this into evidence at
10 this point.
11 THE COURT: Any objection, Mr. Wright?
12 MR. WRIGHT: Your Honor, if we receive it only as
13 evidence that it's one particular plan that was prepared at
14 some point in time among many and that it was not a final
15 design for any improvements, I don't have any objection to
16 it.
17 THE COURT: We'll receive it based on her testi-
18 mony and what she just said.
19 MR. WRIGHT: That's fine.
20 THE COURT: All right. Received as #8.
21
22 (Plaintiff's Exhibit #8 was so received into evi-
23 dence at this time.)
24
25 Q Did you actually see the plans that Mr. Andrews

1 ultimately prepared?
2 A Yes.
3 Q And those include, as I've said, improvements
4 up closer to the house, did they not?
5 A I don't really remember.
6 Q Okay. Well he's here, we'll get to call him.
7 You wanted the barn closer to the house and slightly behind
8 the house so you could access it easily, is that right?
9 A Right.
10 Q You wouldn't have to walk so far or drive so
11 far or ride a horse so far to get to the barn from the
12 house, is that correct?
13 A Correct.
14 Q You also had contracted to buy the, what we'll
15 call the Gordon property at some point, is that not right,
16 Ms. Haisfield?
17 A Correct.
18 Q And that's the roughly 85 acres that lies in
19 sort of a pie shaped piece between the Laurel Ridge resi-
20 dence property and the option property, is that correct?
21 A Correct.
22 Q And it was your idea that you needed all three
23 properties in order to make this work as a farm, is that
24 correct?
25 A I wanted additional acreage, yes. Although,

1 you have to remember, it was an option on both of those
2 properties.
3 Q Yes, ma'am.
4 A What I had under contract was Laurel Ridge.
5 Q Okay. Judge, if I could have just a moment.
6 All right. You--you authorized Mr. McLean to negotiate on
7 the Laurel Ridge--on the Gordon property, didn't you?
8 A Yes.
9 Q And that contract was entered into around mid
10 April, is that correct?
11 A Correct.
12 Q And you needed all three parcels together to
13 make this one large farm to make it work for you, did you
14 not?
15 A That's what I wanted.
16 Q That's what you needed?
17 A That's what I wanted.
18 Q Okay. Do you recall depositions in this case?
19 You said you did, Mrs. Haisfield, on the 22nd of March, page
20 45, Mr. Wright, line 14. My question. Well, maybe--maybe
21 I'll try--I'll try to be as succinct as I can. I want--I'm
22 asking you to summarize for me what you know, paraphrase,
23 summarize, whatever you want to call it, what you know about
24 any negotiations which were conducted between you and the
25 Gordons or anybody that owns that property in relation to

1 the potential purchase of that property, and your answer
2 was, Steve McLean had been negotiating on that property and
3 we put the three parcels together to make this one large
4 farm to make it work for us. Is that--that was your answer,
5 is that right?
6 A Yes.
7 Q And that is in fact true, is it not?
8 A Yes.
9 Q And all three--not all three closings, but the
10 closing on all three parcels was scheduled to occur at the
11 same time, was it not?
12 A Yes.
13 Q And--
14 A Well--
15 Q It was scheduled--
16 A --maybe not closing. I don't think that that's
17 quite the right word. We weren't closing on either of the
18 options. We were just closing on the Lape property.
19 Q All right. Do you recall being asked this
20 question in deposition, Mrs. Haisfield, on page 48, Mr.
21 Wright. Did you have a closing scheduled with the Gordons
22 for that property prior to June the 30th of 2000? Your an-
23 swer: All three closings were scheduled simultaneously.
24 A Yes.
25 Q Is that accurate?

1 A For the option--the option and the Lape prop-
2 erty.
3 Q So you're saying that the Gordon property was
4 not an actual contract to buy, it was an option to buy?
5 A Correct.
6 Q Judge, I'm not sure what my next exhibit is.
7 Is it 12?
8 THE COURT: Yes. No, wait a minute, wait a min-
9 ute, I think we do have a 12. What did I do, get them out
10 of order.
11 Q I didn't have one on my list.
12 THE COURT: It's 13. I have 12. Twelve (12) is
13 the second set of notes from Mr. McLean.
14 Q Yes, sir.
15 THE COURT: So it's 13.
16
17 (Plaintiff's Exhibit #13 was so marked for identi-
18 fication at this time.)
19
20 Q I'm going to show you a document and ask you if
21 this is a copy the Gordon contract that you had, Mrs. Hais-
22 field? I'm going to show you this document marked Plain-
23 tiff's 13 and ask if you can identify that.
24 A A contract for purchase for the Gordon prop-
25 erty.

1 Q And that contract, at least prior to June 30th,
2 that's the contract that you had to buy the 85 acres from
3 the Gordons and other family members--from the Gordons and
4 their other family members, is that right?
5 A Yes.
6 Q All right. Judge, I would move this into evi-
7 dence as Plaintiff's Exhibit 13.
8 THE COURT: Any objection?
9 MR. WRIGHT: No objection.
10 THE COURT: Received.
11
12 (Plaintiff's Exhibit #13 was so received into evi-
13 dence at this time.)
14
15 Q Mrs. Haisfield, as this closing approached with
16 the Lapes, there was also discussion about you buying the
17 personal property, some personal property that was on the
18 farm, is that right?
19 A Correct.
20 Q That included a tractor and some other equip-
21 ment that was used in connection with the property, is that
22 right?
23 A Yes.
24 Q And you received a propo--you agreed to buy it,
25 I take it, is that right?

1 A Yes.
2 Q And so you received from one of the realtors a
3 proposed bill of sales agreement, is that correct?
4 A Yes.
5 Q I'm going to show you Plaintiff's Exhibit 14
6 which is titled, Bill of Sale Agreement and ask you if that
7 is a copy of the Bill of Sale Agreement that you received
8 and then signed?
9 A Yes.
10 Q And the language that's added in in handwritten
11 form at the bottom where it says, at the time of closing on
12 an if, as and when basis is your handwritten interlineation
13 there, is that right?
14 A Correct.
15 Q And those are your initials after that?
16 A Yes.
17 Q And this is your signature here at the bottom?
18 A Yes.
19 Q And I gather after you signed it you transmit-
20 ted it back to one of the realtors in anticipation of the
21 closing, is that right?
22 A Correct.
23 Q Judge, we'd move this into evidence as Plain-
24 tiff's 14.
25 THE COURT: Any objection?

1 MR. WRIGHT: No objection.
2 THE COURT: Received.
3
4 (Plaintiff's Exhibit #14 was so marked and re-
5 ceived into evidence at this time.)
6
7 Q Why did you add the language, Mrs. Haisfield,
8 on an if, as and when basis at the bottom of the bill of
9 sale agreement?
10 A Because I did not want to purchase the equip-
11 ment before I purchased the farm.
12 Q And you didn't think the language in there that
13 said that you would do it at closing was sufficient to keep
14 you from having to do that?
15 A I don't remember. I suppose not.
16 Q And you also meant by that language if, in
17 fact, a closing took place you were going to buy the equip-
18 ment, is that right?
19 A When the closing took place.
20 Q And if it took place, is that correct?
21 A Correct. You never have a closing until you
22 have a closing.
23 Q Do you recall being asked that language that
24 you added in at the deposition that we had?
25 A I recall you asking me about it, yes.

1 Q I'm on page 33, Mr. Wright, line 5. Do you re-
2 member me asking you, tell me what your purpose was in add-
3 ing that language to the document, and your answer was, I
4 don't know. And my question then was, you don't know why
5 you added that language, and your answer was, no, I don't.
6 So is that--is it your testimony today that you don't remem-
7 ber why you did it or that you did it--you added the lan-
8 guage because you weren't certain if there was going to be a
9 closing?
10 A Oh, no, there was going to be a closing. We
11 wanted the property. I loved the area and I wanted to get
12 here.
13 Q So why did you tell me on March the 22nd that
14 you didn't know what your purpose was in adding that lan-
15 guage?
16 A Because I don't remember what it was.
17 Q Judge, I don't have any other questions at this
18 juncture.
19 THE COURT: Mr. Wright, do you want to ask ques-
20 tions? And I would agree it can't be cross with leading be-
21 cause she is your client.
22
23 CROSS-EXAMINATION
24 By: Mr. Wright
25 Q Mrs. Haisfield, how did you intend to use this

1 property?
2 A It was going to be my primary residence with my
3 horses, a--a farm.
4 Q When you executed this contract, did you con-
5 template that at some point you would relocate here from
6 California?
7 A Definitely.
8 Q Did you intend that relocation to occur on or
9 about June 30th?
10 A No. There were way too many improvements that
11 had to be done at that point. We needed to do a lot of im-
12 provements to the home to add on to make it what we wanted
13 and I wanted to get there and get a feel for the property,
14 see how much I could place on the 98 acres and see how my
15 trails would work through and then I could--after getting a
16 feel for the property I could decide where to put the im-
17 provements and if I even needed the option properties.
18 Q I don't have any other questions right now,
19 Your Honor.
20 THE COURT: All right. Any redirect, Mr. Berry?
21 MR. BERRY: Just—just one question raised by
22 that, Judge.
23
24 REDIRECT EXAMINATION
25 By: Mr. Berry

1 Q Let me see, it won't take me but a second. You
2 actually looked at places on the option property for em-
3 ployee housing, did you not?
4 A Yes. I looked at various sites on all three
5 properties.
6 Q And you--at the time that you entered into the
7 contract and then later, you weren't certain what you might
8 put on the option property in the way of facilities, but you
9 thought there might be some facilities there, and by that I
10 mean tenant houses, things such as that?
11 A I needed three, maybe four homes for my help
12 and the day before closing when I found out about the re-
13 striction on the property, that really--it threw me for a
14 loop because I didn't know how much property that con-
15 trolled--that was controlled by my neighbor and I didn't
16 know anytime of year what they could see from the property.
17 I was going to have to fell a lot of the timber and I
18 couldn't go forward with closing at that point.
19 Q All right. You later agreed to go to closing
20 in November on this property, didn't you?
21 A I did.
22 Q And you had not actually gone--between June and
23 November, you hadn't gone to Oakmont personally and looked
24 and tried to see what you could see from the residence
25 there, had you?

1 A I had gone with Stephen McLean and my husband
2 to Laurel Ridge on the boundary of Oakmont and walked that
3 and looked at the property.
4 Q You never went to the main residence on Oak-
5 mont?
6 A No. That's when Stephen came up with the idea
7 of perhaps we could use the old existing road and I could
8 sell off the front part of the property and then I would not
9 be hampered by the restriction.
10 Q So you were going to--you were considering at
11 least at that point, and this was after June, the idea of
12 putting in a separate entrance, exercising your option on
13 the option property, then selling off the Laurel Ridge
14 house.
15 A Correct.
16 Q Is that right?
17 A Correct. We thought we would just put our
18 residence back there and all of our facilities back there
19 and then we wouldn't be subject to veto power by a neighbor.
20 Q And you were willing to go to closing in Novem-
21 ber on this contract without any change to the covenants
22 based on that and some other considerations that you had I
23 take it, is that right?
24 A Yes. I always wanted to close on this property
25 and even after I found out about the restriction, we kept

1 trying to make it happen.
2 Q All right. Had you definitely decided by the
3 time November came and there was this second effort to
4 close, that you would build a residence on the option prop-
5 erty and sell off the front property, or was that still just
6 one thing you were considering?
7 A It was just an option.
8 Q It was one of many things you were considering?
9 A Yes.
10 Q You hadn't finalized any plans at that point?
11 A No, because there was a problem with the Moses.
12 They didn't want us using that existing roadway. They said
13 they could see the traffic going in on the road and that was
14 totally negative to what they wanted to accomplish with the
15 covenant.
16 Q Okay. The Gordon property didn't close in No-
17 vember, did it?
18 A No. At that point they backed out. They
19 wouldn't sell the property.
20 Q And that's the reason you didn't close on the
21 Lape property?
22 A Correct.
23 Q That's all I have, Judge.
24 THE COURT: Thank you, you may stand aside.
25 A Thank you.

1 MR. WRIGHT: Could I ask one more follow-up cre-
2 ated by the questions he just asked?
3 THE COURT: If you want to recross, yes.
4
5 RECROSS-EXAMINATION
6 By: Mr. Wright
7 Q You mentioned in response to Mr. Berry's ques-
8 tion that you would need the Laurel Ridge tract to fell a
9 bunch of timber. Why did you need to take timber down on
10 the Laurel Ridge tract?
11 A If we only did the 98-acre parcel, I had to put
12 everything on that. All of my improvements for my barns, my
13 stables, I didn't know if I wanted to do a big barn or three
14 or four smaller ones. Also I needed pasture and that's very
15 important to me for my horses, and also I wanted to do hay-
16 fields to be a self-sufficient ranch, and that's why I
17 needed to fell the timber.
18 Q Thank you, Your Honor.
19 THE COURT: All right. You may have a seat.
20 MR. BERRY: Judge, may I have a second?
21 THE COURT: Yes, you may.
22 MR. BERRY: Judge, if I can look at my exhibit
23 list and make sure I got in what I wanted, I think I'm going
24 to rest. We do rest, Judge.
25 THE COURT: All right. Plaintiffs rest. Evi-

1 dence, Mr. Wright?
2 MR. WRIGHT: Yes, Your Honor. I'd like to call
3 briefly Andy Andrews.
4 THE COURT: Andy Andrews. Mr. Andrews, if you'll
5 come to the chair in front of you and when you get there if
6 you'll stand and face me and raise your right hand to be
7 sworn then I'll let you have a seat.
8
9
10 WARRAN ANDREWS, having been so duly sworn, testi-
11 fied as follows:
12
13 DIRECT EXAMINATION
14 By: Mr. Wright
15 Q Good afternoon, Mr. Andrews.
16 A Good afternoon.
17 Q Please state your name and address for the re-
18 cord.
19 A Warren Andrews, 1450 Oakencroft Lane, Char-
20 lottesville.
21 Q And how are you employed, Mr. Andrews?
22 A I'm a self-employed architect.
23 Q And what's the name of the business that you
24 work with?
25 A SLDC Architects.

1 Q Okay. And did there come a time that you were
2 retained by Audrey Haisfield or someone acting on her behalf
3 to develop some drawings for Laurel Ridge?
4 A Yes.
5 Q Do you recall approximately when that was?
6 A I would say maybe April of 2000, around then.
7 I'm not exactly sure.
8 Q Okay. And what charge were you given, if there
9 was any such charge? What was your--the request made of
10 you?
11 A Well, to review the floor plans and the site
12 and come up with some proposals to improve the property.
13. Q Okay. This may or may not be the same thing
14 you brought with you, but let me ask you if you can identify
15 this document. Let me show it first to--
16 A I'm sure it's basically what I have here.
17 MR. BERRY: Judge, if we can cut to the chase a
18 little bit. This is what you provided me through subpoena
19 duces tecum, is that right?
20 A Yes. Yes.
21 Q Because of the size of this, I'm going to lay
22 it right here and just ask you if this is a copy of the--or
23 a set of drawings you prepared for Laurel Ridge at Mrs. Ha-
24 isfield's request?
25 A Yes.

1 Q Okay. And does this set involve an addition to
2 the existing house?
3 A Parts of it were additions, parts were modify-
4 ing existing plan, just trying to improve some of the aes-
5 thetics of it also.
6 Q Okay. What--if Mrs. Haisfield had decided to
7 implement this particular plan, what about the residence was
8 changed?
9 A Well, there might be some existing plans in
10 there and then if you compare those to the modifications you
11 can see. In other words, like a wraparound porch, a conser-
12 vatory added, another garage would be added. We went
13 through different--several different schemes also.
14 Q Okay. And the second garage or the new garage
15 to be added, was that one story or two stories?
16 MR. BERRY: Judge, I'm going to--I don't have a
17 problem with him talking about this. I assume you're going
18 to introduce that into evidence. Well, if he's just ex-
19 plaining the exhibit, I don't object to it. I just want to
20 make sure we weren't in a situation where you were going to
21 hear about it and then it wasn't moved into evidence and all
22 we had was his testimony, because I think the best evidence
23 rule applies then, but I'm not going to object to him asking
24 him about it if he's going to move to admit it.
25 THE COURT: All right. Go ahead.

1 Q Do you remember my question?
2 A Yes. It was a garage with--one of the schemes
3 was a garage with an apartment above it.
4 Q Okay. Now, can you identify this particular
5 page of the drawings--and let me show Mr. Berry what I'm re-
6 ferring to.
7 A Yes. This was one of the initial site plans
8 that I did for the property.
9 Q Okay. So in addition to designing an addition
10 and some changes to the house, you also designed a site plan
11 for the property itself?
12 A Right, a conceptual site plan.
13 THE COURT: So why don't we just count the pages.
14 What page is that in from the beginning? Is that the fourth
15 page?
16 Q This is the fourth page in on this set of draw-
17 ings, Your Honor.
18 THE COURT: All right, that identifies it.
19 MR. BERRY: If you want to put a four on there, I
20 don't care.
21 Q We can put a four on it. Okay. Now, where is
22 the existing house on this particular document?
23 A It would be right about here.
24 Q Okay. And as you move out this way, do you
25 know what direction we're going, north, south, east or west?

1 A Not really. I mean, I could--if I got the plat
2 and all that, I could determine it.
3 Q What various structures or buildings are de-
4 picted on here?
5 A Well, the main portion would be the barn lo-
6 cated here with some employee housing behind it, a swimming
7 pool and a show ring onto the side.
8 Q Okay.
9 A And this would be the garage addition right
10 there.
11 Q Okay. Are you generally familiar with this
12 property?
13 A Yes.
14 Q Do you know where its boundary line with a
15 property call Oakmont is?
16 A No, I don't.
17 Q The area where the barn and the employee vil-
18 lage are shown on this plat, is that an area that at the
19 present time is wooded?
20 A Yes.
21 Q So if this plan had been implemented, would it
22 have required the felling of timber?
23 A Yes.
24 Q Do you--do you have any idea how much?
25 A No.

1 Q Okay. Your Honor, I am going to move the ad-
2 mission of these plans, and we could even--let's just put
3 the whole set in, as Defense Exhibit, I guess, 5.
4 THE COURT: All right.
5
6 (Defendant's Exhibit #5 was so marked and received
7 into evidence at this time.)
8
9 Q I don't have any other questions of Mr. Andrews
10 at this time, Your Honor. Thank you, Mr. Andrews.
11 THE COURT: Questions, Mr. Berry?
12 MR. BERRY: Yes, sir.
13
14 CROSS-EXAMINATION
15 By: Mr. Berry
16 Q Did you--did you formulate any other plans that
17 you provided to Mrs. Haisfield, Mr. Andrews, other than that
18 set there? In other words, did you have any other plans
19 that you provided to her for her to review and decide
20 whether she liked them or not other than--
21 A Well, it was that plan, a modified version of
22 that plan.
23 Q Did you do the modified version before or after
24 you did that plan?
25 A I would say after.

1 Q Okay. And what changed on it?
2 A Basically it was extending the barn further
3 away from the existing residence.
4 Q In the back?
5 A Yes.
6 Q And how much further back?
7 A I don't know. It should be in there. You
8 could scale it. I would say maybe another eighty (80),
9 ninety (90) feet.
10 Q Okay. Now, you've been up on the Laurel Ridge
11 property obviously?
12 A Yes.
13 Q And the area around the house generally is open
14 and then there are woods that surround it once you go from
15 the open, is that correct?
16 A That's correct.
17 Q And you're talking about maybe 4 or 5 acres of
18 open property there at the top around the house, is that
19 correct?
20 A Yes.
21 Q And on that drawing that you prepared, nothing
22 that you proposed on there has an elevation higher than the
23 top of the present house, does it?
24 A No.
25 Q The garage apartment that would be added on is

1 still below the present roofline, is that correct?
2 A Yes.
3 Q And the barns were not higher than the present
4 roofline of Laurel Ridge, is that right?
5 A Yes.
6 Q Do you know approximately what date you pre-
7 pared--you may have said this and I just missed it--what
8 date you--mid April, is that what you said?
9 A I would--maybe March.
10 Q Okay. And the second set where you made this
11 modification, sort of backing things up, how much--how much
12 after mid March was that?
13 A I would say maybe toward the end of March.
14 Q All right. So basically both of them within a
15 month's period of time or so?
16 A Right.
17 Q Mrs. Haisfield did not want to build anything
18 on any area--any of these improvements on an area where
19 there was any sort of steep slope, did she?
20 A I know the steep slope came in with considera-
21 tion of horses.
22 Q Okay. She told you that the maximum allowable
23 for locating these improvements was a 15% slope, is that
24 right?
25 A Here again, I believe the 15% slope pertained

1 to the horses as far as grazing goes.
2 Q All right. Let me show you this document and
3 just make sure. Maybe that's what you were referring to.
4 Judge, this is 15, isn't it? Sorry to keep asking.
5 THE COURT: No, that's all right, 14.
6 Q No, I think I--did I not admit 14? The bill of
7 sale I believe was--
8 THE COURT: Hold on.
9 Q The bill of sale that had--
10 THE COURT: Okay, you're right, 14 is the bill of
11 sale so that's 15.
12 Q Do you recognize this note, Mr. Andrews, which
13 I gather is in your handwriting?
14 A Yes. That's my print.
15 Q That contains information about a rough slope
16 study that you had done to avoid locating anything on a
17 steep slope, is that correct?
18 A Well, here again, I think it was basically for
19 the horse operation.
20 Q Well, what was the--let me ask it this way,
21 maybe we can get to it easier. What was the reason that the
22 15% slope area had anything to do with any of this? Why was
23 that important?
24 A Because--because I think it was the grade. I'm
25 not--I know nothing about horses except I think it was how

1 much pastureland could they have and if it was over 15% it
2 wouldn't be good for pastureland.
3 Q Okay. Did you ever get any written direction
4 from Ms. Haisfield about what to do? Did you get any writ-
5 ten communication from her about what to do?
6 A Most of it was over the telephone.
7 Q Did you ever get any written communication,
8 though?
9 A Might have been some e-mail.
10 Q Okay. Did she ever comment to you on those
11 plans that you introd--that Mr. Wright introduced as evi-
12 dence that you prepared for her?
13 A Well, when I prepared those, basically she said
14 she was going to hold off on the barns but let's do the
15 house, work on the house first.
16 Q Okay. But did you ever get any written commu-
17 nication from her, approving or disapproving of those plans?
18 A I'd have to go back, I haven't, you know, look
19 in my records.
20 Q Do you have that with you?
21 A Yeah.
22 Q Judge, I'm going to move 15 into evidence at
23 this point while he's doing that.
24 THE COURT: Any objection?
25 MR. WRIGHT: No objection.

1 THE COURT: Fifteen (15) is received.
2
3 (Plaintiff's Exhibit #15 was so marked and re-
4 ceived into evidence at this time.)
5
6 A Right here--well, here's something, you know,
7 about modifications to the plans. Not the site plan but the
8 plans to the house.
9 Q All right. And when did you receive that?
10 A It's dated March 14th.
11 Q Did she ever approve or disapprove your plans?
12 A Of the house?
13 Q Yes, sir.
14 A We kept--you know, she would say I need to
15 change things and we kept modifying the--
16 Q Did you ever arrive at a final set?
17 A Yes.
18 Q All right. And where are they?
19 A They should be in that set that you have.
20 Q Okay. And did she approve the final set of
21 plans for the house?
22 A Well, what--what happened, we got to a stage
23 where she was pleased with it and then wanted preliminary
24 prices.
25 Q All right.

1 A And we got a contractor to work up a prelimi-
2 nary price.
3 Q So she indicated to you she was satisfied with
4 the plan that you ultimately came up with for the house?
5 A Basically.
6 Q All right. And that's included in that exhibit
7 that you--
8 A It should be.
9 Q All right. Well, let's make sure it is. You
10 got served with a subpoena duces tecum in this case, didn't
11 you?
12 A Excuse me?
13 Q You got served with a subpoena for your records
14 in this case, didn't you?
15 A Right.
16 Q And it included all of your records, didn't it?
17 A No, I think--I don't have a copy of the sub-
18 poena, you might, I thought it was just for the drawings.
19 Q Okay. So the drawings are what you produced,
20 nothing else?
21 A Right.
22 Q All right. Show me in here where the final
23 drawings for the house are. I'm not trying to harass you, I
24 just want to make sure we've got this into evidence.
25 A It would be these sheets, A-1 through--A-1

1 through 6 and E-1 and--and E-1. There might be two sets of
2 E-1.
3 Q All right. So--just so I'm--
4 A So this is what the contractor took for his
5 take off.
6 Q So we're talking about A-1 through A-6 and then
7 E-1?
8 A Right.
9 Q And those are dated--it says revisions
10 6-7-2000, is that correct?
11 A Yes.
12 Q So were final plans revised prior to her accep-
13 tance on June the 7th of 2000? I'm talking about on the
14 house now.
15 A Right. These drawings, right.
16 Q And they were revised June the 7th of 2000?
17 A Yes.
18 Q All right. That's all I have, Judge.
19 THE COURT: Redirect?
20
21 REDIRECT EXAMINATION
22 By: Mr. Wright
23 Q Was--or did you sense any urgency in this pro-
24 ject?
25 MR. BERRY: Objection to the form of the question,

1 Judge. It requires him to speculate. In other words, did
2 you sense any urgency.
3 THE COURT: Sustained.
4 Q Let me rephrase, Your Honor. Did the direc-
5 tions you received for this particular project include any
6 urgent element?
7 MR. BERRY: Judge, I object to the leading but--
8 I'm going to withdraw the objection, I'm going to let him
9 answer the question.
10 THE COURT: All right.
11 A Yes. They seemed to be quite anxious to move
12 forward with it.
13 Q Okay. Was there a deadline date on when this
14 all had to be done and ready for use?
15 A Well, it was just verbally that as soon as the
16 property was closed, they wanted to start immediately.
17 Q No other questions, Your Honor.
18 THE COURT: Do you want to hold the witness?
19 MR. WRIGHT: No.
20 THE COURT: Any objection to the witness being ex-
21 cused, Mr. Berry?
22 MR. BERRY: Judge, I don't object to him going
23 back to his office. I'd like for him to remain under the
24 rule. He's waited long enough. I don't think I would call
25 him, I'm just not sure what's going to happen after this.

1 THE COURT: So, Mr. Andrews, they want to hold you
2 as a potential witness but let you go back to your office.
3 Is that all right?
4 A That's fine. How long do I have to remain in
5 my office?
6 MR. BERRY: As far as I'm concerned, normal busi-
7 ness hours, Judge. If he leaves at 4:30 or five, if we ha-
8 ven't called him back by then.
9 THE COURT: Is that okay?
10 A That would be fine.
11 THE COURT: All right. So don't discuss the case
12 with anyone and by 4:30 we'll let you know whether you need
13 to come back or not. All right. Thank you sir. Next wit-
14 ness, Mr. Wright?
15 MR. WRIGHT: Mrs. Haisfield.
16 THE COURT: Mrs. Haisfield, if you'll come back
17 around please. So you're still under oath. You can just
18 resume the witness chair please.
19
20
21 AUDREY L. HAISFIELD, having been previously sworn,
22 was recalled and testified as follows:
23
24 DIRECT EXAMINATION
25 By: Mr. Wright

1 Q Mrs. Haisfield, you've been sitting here
2 throughout the day and you probably recall that the--a copy
3 of the contract was admitted into evidence as Plaintiff's
4 Exhibit 1. Did you make any monetary deposit at the time
5 you executed the contract?
6 A Yes.
7 Q How much?
8 A Fifty thousand dollars ($50,000).
9 Q If you know, who is holding that deposit?
10 A McLean Faulconer Escrow.
11 Q Okay. Now the subject of the study period has
12 come up in previous testimony today. What, if anything, did
13 you do during the initial study period?
14 A During the twenty-one (21) day due diligence I
15 had Stephen McLean contact someone to do all the home in-
16 spection for me and everything passed.
17 Q Okay. Did there come a time that you retained
18 other consultants to assist you in making decisions about
19 what you could do with the property?
20 A Yes.
21 Q Okay. Tell the Court who you retained and for
22 what purpose?
23 A SLDC Architects for improvements to the home
24 and the barns and stables, everything that I wanted to build
25 on the property. I also hired Ian Robertson, landscape de-

1 signers, and they were helping me with all of the exterior
2 landscaping, and I had Peterson, Riksler and Loosy Interior
3 Designers of mine from Philadelphia to come and look at the
4 home.
5 Q Okay. And if you can tell me, approximately
6 when did these consultants start their work?
7 A They started right away after we had the con-
8 tract.
9 Q Okay. And how--how long were they on and off
10 the property doing what you were asking them to do?
11 A Up until the closing was aborted.
12 Q And how much money did you pay these various
13 consultants for their work?
14 A Forty to fifty thousand dollars
15 ($40,000/50,000) and I work very hard for my money--
16 MR. BERRY: Judge, I object to this sort of narra-
17 tive.
18 THE COURT: Sustained. The question was answered.
19 A Okay.
20 THE COURT: Next question.
21 Q Okay. During the spring of 2000 did you give
22 any attention to the kind of buildings or other improvements
23 you might need to put on Laurel Ridge?
24 A Yes, I did.
25 Q And describe for the Court, you started a few

1 moments ago in response to Mr. Berry's questions, but de-
2 scribe for the Court the kinds of improvements you were con-
3 templating.
4 A I was going to put an extensive trail system in
5 because that's how I work my horses. I needed pastures. I
6 like flat level ground for my pastures. I also needed a
7 flat level ground cleared for my hayfields. I wanted to put
8 an indoor arena, an outdoor arena. I had to do a round pen,
9 employee housing, a hot walker. I mean there are so many
10 different things to a horse operation that I needed to put
11 in. I needed time to think about where to place them.
12 Q How many horses did you have at the time?
13 A Twenty-nine (29).
14 Q And by June 29, 2000 had the location of any of
15 these specific improvements that you described been finally
16 determined?
17 A No.
18 Q Are there enough open acres around the Laurel
19 Ridge residence to allow space to pasture your horses?
20 A No.
21 Q Okay. Had you given any thought during spring
22 of last year to what you would have to do to create pas-
23 tures?
24 A Yes. We would have to fell a lot of the timber
25 and we had someone come in, look at what it would take to

1 clear the property, to take the timber down, and then we
2 found out that after that's done they leave all the stumps
3 and then they have to come back and clear out the stumps.
4 So it was going to take a lot of work to get the ground pre-
5 pared so that we could plant out pastures.
6 Q Okay. Did any of the locations contemplated
7 for tree removal approach the border between Laurel Ridge
8 and Oakmont?
9 MR. BERRY: Objection to the leading, but--
10 THE COURT: Are you objecting?
11 MR. BERRY: Yes, sir.
12 THE COURT: Then I'll sustain.
13 Q What locations were you considering for taking
14 out trees to create pasture?
15 A Various locations, but if I only did the 98
16 acres with the Lape home on it, then it would have inter-
17 fered with that setback that I found out was on the prop-
18 erty, that covenant.
19 THE COURT: Can I be clear on what you mean by the
20 setback?
21 A The covenant, that restriction that I found out
22 about day before closing.
23 THE COURT: The view that you--any--you couldn't--
24 A I could not cut three hundred (300) feet into
25 the property.

1 THE COURT: Well, is it the view restriction
2 you're talking about? Anything you could see that's a resi-
3 dential use from Oakmont, is that what you're talking about?
4 A Yes.
5 Q I think, Your Honor--
6 A And not just the residential but it says any
7 building, and I know that they would be able to see some-
8 thing if I had to cut down all of that timber because the
9 ground, the way it rolls, the flat areas is what I would be
10 clearing and you would be able to see that from Oakmont
11 probably at some point during the year. I just didn't know
12 and that's why I couldn't go forward.
13 Q Did there come a time, Mrs. Haisfield, that you
14 executed a contract with William and Helen Gordon for the
15 purchase of a property between the Laurel Ridge and the op-
16 tion property?
17 A Yes.
18 Q And approximately when was that?
19 A That was in April.
20 Q Okay. Do you recall testimony earlier today
21 about a request to renegotiate the price on that contract?
22 MR. BERRY: Judge, I'm going to object to the
23 leading. I think Mr. Wright--and I'm not, you know, he's
24 got to ask the questions and she's got to answer them. She
25 doesn't comment on other testimony. She's just got to be

1 asked a question and answer it.
2 THE COURT: So I'm going to overrule the objection
3 and say it's a foundation question, but the question is, do
4 you recall the testimony about the Gordon contract, is that
5 what your question was?
6 Q That's what my question was.
7 THE COURT: Do you recall that testimony?
8 A Yes, I do.
9 THE COURT: So now you can ask a non-leading ques-
10 tion.
11 Q Okay. Why was there a request to renegotiate
12 the price on the Gordon property?
13 A The Gordons did not want us using about 15
14 acres--
15 MR. BERRY: Judge, I'm going to object to the
16 hearsay on this.
17 THE COURT: Overruled. Not for the truth of it
18 but to explain her actions.
19 Q Exactly. Go ahead.
20 A There was a 15-acre parcel down on the river
21 that the Gordons did not want anything put on so that they
22 would not see it from their property as well and it would
23 all be--it was the river that was the boundary and then both
24 sides would be a very natural habitat.
25 Q Who--

1 A That was the reason for us asking for a price
2 reduction is they didn't want us to use 15 acres of it.
3 Q Who made the decision not to close on the
4 Gordon tract?
5 A The Gordons.
6 MR. BERRY: Judge, I'm going to object to the tes-
7 timony as it relates to anything that's said by someone else
8 on the grounds that it's hearsay, including her last answer.
9 THE COURT: Well, I mean, the question was, did
10 the Gordons tell you--the question was who made the deci-
11 sion.
12 MR. BERRY: Yes, sir, but without a foundation,
13 Judge, we know she--apparently she didn't make it so someone
14 else made it. So without a foundation that gives the Court
15 the opportunity to know that that evidence isn't hearsay,
16 you've got to have the person that made the decision here,
17 and we would object.
18 THE COURT: Okay. So I'll take into evidence that
19 she didn't make the decision not to close Gordon.
20 Q Okay.
21 THE COURT: Somebody else did other than Mrs. Ha-
22 isfield. Go ahead.
23 Q When you answered my question just now, I
24 didn't put it in a time frame and the--I'm asking about the
25 Gordon--the original Gordon agreement that was set to close

1 at approximately the same time as the Lape property.
2 A That's June 30th.
3 Q June 30th. Who made the decision not to close
4 on that particular purchase of the Gordon property?
5 MR. BERRY: Same objection, Judge.
6 THE COURT: Same ruling. So don't answer. Next
7 question. Sustained. You can ask her if she made the deci-
8 sion not to close. Right?
9 Q I can.
10 THE COURT: Okay.
11 Q Did you make the decision not to close on the
12 purchase of the Gordon property that was set to close on
13 June 30th?
14 A No.
15 Q When did you first learn about the existence of
16 restrictive covenants on this particular property?
17 A The day before closing.
18 Q How did you learn of that?
19 A A phone call from Marshall.
20 Q And you're referring to Mr. Slayton?
21 A Yes, Marshall Slayton.
22 Q Prior to learning about the existence of these
23 covenants, had you told anybody at all that you were not go-
24 ing to close on this property on the 30th?
25 A No. I'd spent a lot of money on--

1 MR. BERRY: Judge, I object to this now. She an-
2 swered the question.
3 THE COURT: You answered the question no and what
4 you add to it is not responsive.
5 A Okay.
6 THE COURT: So I'm not going to let you respond
7 further.
8 A Okay.
9 THE COURT: Because you've answered the question.
10 Q Okay. Prior to learning about the existence of
11 the covenants, was it your intent to close on this sale on
12 June 30th, 2000?
13 A Yes.
14 Q Were you planning to come to Virginia for the
15 closing?
16 A No. I don't attend my closings.
17 Q Okay. So what was your plan for making sure
18 this closing happened?
19 A I had all the closing documents. All I needed
20 to do was FedEx them to Marshall and my money was all set in
21 my Sovran Bank in Philadelphia and they had wiring instruc-
22 tions and the amount as to what to wire.
23 Q Had you made any arrangements to have utilities
24 transferred to your name?
25 A I personally had not. My attorneys and real-

1 tor, they always do that at closing for me.
2 Q Okay. Had you come physically to Virginia in
3 the week or so before the closing date for a walk through of
4 the property?
5 A I don't remember doing that, no.
6 Q And is there a reason you didn't do that?
7 A It wasn't necessary.
8 Q When you learned about the restrictive cove-
9 nants, did you decide that you would never, under any cir-
10 cumstances, close on this property?
11 A No.
12 MR. BERRY: Objection to the leading, Judge.
13 THE COURT: Sustain leading. Don't lead.
14 Q Explain for the Court why you concluded that
15 the existence of these covenants made it impossible for you
16 to close on this sale.
17 MR. BERRY: Judge, I object to this on the grounds
18 that it's argument. In other words--
19 THE COURT: Overruled. It's not argument.
20 Q It's her facts.
21 A It's my reasoning. I didn't know where I was
22 going to put all my facilities. I didn't know what could be
23 seen from the Oakmont property at any time of year or what
24 could not be. I didn't know how it would affect the value
25 of the property in resale. I didn't know--I wanted to keep

1 the integrity of the property, but I wanted to have all of
2 my options open as to what I wanted to do with my property
3 without veto power from my neighbor.
4 Q Okay. Were there any discussions after June 30
5 about your interest in finding a way to purchase the prop-
6 erty?
7 A Yes. I kept trying to get the closing to hap-
8 pen.
9 Q That's all I have on direct, Your Honor.
10 THE COURT: Cross-examination.
11
12 CROSS-EXAMINATION
13 By: Mr. Berry
14 Q You were--you were going to clear the reasona-
15 bly flat areas for pasture, is that right, Mrs. Haisfield?
16 A I was going to clear a lot of the ground.
17 Q All right. But the steep hillsides I take it
18 you weren't going to clear?
19 A I can't say that I wasn't because we were also
20 thinking about putting in a vineyard.
21 Q Okay. So let's keep it to the horse operation
22 for right now. For the horse operation you weren't going to
23 clear the steep slopes?
24 A Correct.
25 Q But you were thinking about maybe putting in a

1 vineyard and you would have cleared the steep slopes to do
2 that?
3 A Yes.
4 Q Did you talk with any of these planners about a
5 vineyard?
6 A You'll probably see them on the plans, the
7 original plans, the first ones that you have up there.
8 Q Mr. Sherry's?
9 A Yes, from Mr. Sherry.
10 Q All right.
11 A Roger.
12 Q You never contacted the Moses, the owners of
13 Oakmont, to try to get some understanding of what might be
14 seen or not seen from that residence, did you?
15 A Personally, no.
16 Q And you don't know--when was the last time you
17 went to Laurel Ridge before November the 10th to actually
18 look at the property?
19 A I don't remember.
20 Q The leaves were still on the trees, though, at
21 that point, is that right?
22 A I would think so, yes.
23 Q Well, were they or were they not, do you not
24 remember?
25 A I don't remember when the last time I was

1 there. It's always been very heavily wooded.
2 Q Okay, and there were leaves on the trees the
3 last time you went there?
4 A Yes.
5 Q You--do you--were the last set of plans that
6 were done for the residence those that you heard Mr. Andrews
7 testify about a moment ago, the ones that were done on June
8 7th?
9 A What about them?
10 Q Were they the last plans that were done for the
11 residence that you enlisted him to do?
12 A Probably.
13 Q And you had basically approved those plans, is
14 that right?
15 A Yes.
16 Q And you didn't have any other plans for the
17 residence itself beyond what's shown in that architectural
18 drawing, did you?
19 A I don't know. I didn't see that drawing just
20 right now.
21 Q I guess what I'm saying is, once you reached
22 sort of a final decision with him so that you could start
23 getting bids, that's what you had decided you wanted to get
24 bids on, those plans--
25 A Yes.

1 Q --that was satisfactory to you?
2 A Yes.
3 Q Judge, I don't have any other questions.
4 THE COURT: Redirect?
5 MR. WRIGHT: No, Your Honor.
6 THE COURT: Thank you. You may stand aside, Mrs.
7 Haisfield. Any further evidence?
8 MR. WRIGHT: Steve McLean.
9 THE COURT: Mr. McLean, you're under oath. You
10 can have a seat.
11
12
13 STEVE McLEAN, having been previously sworn, testi-
14 fied as follows:
15
16 DIRECT EXAMINATION
17 By: Mr. Wright
18 Q Mr. McLean, how long have you been a real es-
19 tate broker in the Charlottesville-Albemarle area?
20 A Twenty-five (25) years a broker.
21 Q And do you yourself specialize in marketing any
22 particular kinds of properties?
23 A More upper end residential and farm estate
24 properties.
25 Q And were you involved in any way in working

1 with any of the consultants that Mrs. Haisfield retained in
2 the spring of 2000 to do studies about the property?
3 A I think I was the original contact with Andy
4 Andrews and I made contact with several other people, some
5 who were used and others were not.
6 Q Did you work with Mrs. Haisfield in connection
7 with some of the buildings or improvements she was contem-
8 plating putting on the property as these consultants were
9 doing their work last spring?
10 A We discussed them, yes.
11 Q Okay. Do you know what areas of the property
12 were discussed, for example, for a barn or equestrian facil-
13 ity?
14 A There were several discussed.
15 MR. BERRY: Judge, I'm going to object to any tes-
16 timony. This is asking him to relate what Mrs. Haisfield
17 told him unless it's being offered as a foundation question
18 for something else. It's hearsay.
19 THE COURT: I'll sustain hearsay as to what she
20 said or spots she wanted to consider.
21 Q I don't think I asked it that way. I mean, he
22 was--he was involved working with some of these consultants
23 off and on. Well, let me ask you this. Were you involved
24 with these consultants at Mrs. Haisfield's request?
25 A Some of them, yes.

1 Q Okay. With which consultants did you work?
2 A Andy Andrews in particular.
3 Q Okay. If you know, was Andy Andrews involved
4 in suggesting various locations for some of these improve-
5 ments?
6 A Yes.
7 Q Okay. And did you have discussions with Mr.
8 Andrews about citing these improvements at various places?
9 A Yes.
10 Q Okay. Without asking you to repeat exactly
11 what Mr. Andrews told you, do you know as we sit here, what
12 some of these places were that were being discussed for the
13 horse barn?
14 MR. BERRY: Judge, I object on the grounds of
15 hearsay.
16 THE COURT: Sustain. Mr. Andrews was here and
17 could tell us that directly.
18 Q Okay. Moving to approximately June the 22nd of
19 2000, do you recall having any conversations with Carol
20 Clarke that dealt with the subject of closing coming up on
21 the 30th?
22 A I remember a conversation with Carol, yes.
23 Q And to the best of your recollection, what was
24 discussed?
25 A We talked about the closing. As I had said

1 earlier, it was all very--to me it was--
2 MR. BERRY: Judge, I'm going to object to this.
3 Now the question was, what did the two of you talk about
4 rather than the background.
5 THE COURT: That's right. What did you and Ms.
6 Clarke talk about is the question.
7 A I think I expressed to her I'd be glad when
8 this happened, that it had been a difficult and involved,
9 complicated transaction.
10 Q Do you recall telling her that closing on the
11 30th was shaky?
12 MR. BERRY: Objection to the leading.
13 THE COURT: Sustained. Don't lead.
14 Q Okay.
15 THE COURT: Don't answer. Next question.
16 Q Is that all you recall telling her in that con-
17 versation?
18 MR. BERRY: Same objection, Judge. The question
19 is what did you--what did she and what did you talk about,
20 what did she tell you, what did you tell her.
21 Q Okay, and he's answered. Anything else?
22 MR. BERRY: Objection to that, Judge.
23 THE COURT: Overruled. I'll let you ask it. Any-
24 thing else that you discussed that you have not mentioned
25 with Ms. Clarke. Now is your chance.

1 A I don't remember discussing anything else.
2 Q Okay. Do you recall any other discussions with
3 her between the 22nd of June and the date set for closing?
4 A Hearing Ms. Clarke talk earlier, it--it struck
5 me that we could have had a conversation. I can't pinpoint
6 this conversation, whether it happened just before closing
7 or after closing concerning the reduction of our commission
8 and that renegotiation, so I can't place it. I had it with
9 Carol but I don't know when it happened, whether it happened
10 just before or just after.
11 Q Okay. After June 30 came and no closing oc-
12 curred on that date, were you involved in continued efforts
13 relating to this deal?
14 A Yes.
15 Q What did you do after June the 30th?
16 A The first thing that I did was to call Mr.
17 Klienfelter and tell him that we were not going to proceed
18 forward with the closing on the Gordon property at the mo-
19 ment, that something had come up for the closing on the Lape
20 property. That's the first thing that I did. After that
21 there were some discussions. I really was just on a wait
22 and see, and it wasn't until several weeks later that we re-
23 grouped. I was brought back in to try to brainstorm about
24 how to keep this deal together, see what we could do.
25 Q For how long did those types of communications

1 continue after June 30?
2 A Up until I guess November 10th.
3 Q Prior to her learning about the restrictive
4 covenant on June 29, had Mrs. Haisfield ever instructed you
5 to terminate this contract?
6 A No.
7 Q I don't have any other questions, Your Honor.
8 THE COURT: Cross?
9 MR. BERRY: Just a couple, Judge.
10
11 CROSS-EXAMINATION
12 By: Mr. Berry
13 Q I gather the conversation that you had with Ms.
14 Clarke whether it occurred before or after June 30th about
15 reducing your commission, was taken because of some communi-
16 cation you had with the Haisfields, is that correct?
17 A Yes.
18 Q Did they authorize you to talk to her about re-
19 ducing the commission?
20 A They asked me if I would do this and talk to
21 Carol about it and I said I would.
22 Q Did they direct you to also seek a reduction in
23 the purchase price?
24 A I don't remember that.
25 Q You're saying it could have happened, you just

1 don't know?
2 A Yes. It could have been part of that conversa-
3 tion and I just don't remember it.
4 Q And you say you called Mr. Klienfelter before
5 the June 30th date and let him know that you would not be
6 going--or around that time, before there was supposed to be
7 a closing on the Gordon property, and let him know that that
8 closing would not be going forward because the Lape closing
9 didn't go forward, is that correct?
10 A That's correct.
11 Q So your understanding was that the reason
12 Gordon didn't close is because Lape didn't close?
13 A That--that's correct.
14 Q Judge, I don't have any other questions.
15 THE COURT: Redirect?
16 MR. WRIGHT: None.
17 THE COURT: Thank you, Mr. McLean, you may stand
18 aside. Further evidence, Mr. Wright?
19 MR. WRIGHT: There's one document I would like to
20 get in that we're going to have to deal with, the Dr. Hamil-
21 ton Moses deposition from yesterday to do it. I don't think
22 I've ever done this before in your court. Is it your pref-
23 erence to simply read the transcript or is it your prefer-
24 ence to have somebody sit in the chair and read it back and
25 forth? There are Judges who like to do it different ways.

1 MR. BERRY: Judge, I won't object to you just
2 reading it if that's what you'd rather do.
3 MR. WRIGHT: We can have somebody sit in the chair
4 and--
5 THE COURT: However you want to present it. I
6 don't have any specific set rule. If you and Mr. Berry have
7 agreed on a procedure, that's fine.
8 MR. WRIGHT: Well, it really depends, I think on
9 what Mr. Berry's objection is. I know he's got an objection
10 to the document. Does it go beyond that so that you also
11 object to some of the content of the deposition?
12 MR. BERRY: No, I'm not going to object. I re-
13 served objections but I'm not going to object to the content
14 of the deposition. I don't mind if you read it. There was
15 a document that was referred to in the deposition that I do
16 object to. I guess we probably need a ruling from the Court
17 on that, but the rest of it I think you can just read.
18 MR. WRIGHT: You may need to read it in order to
19 make a ruling on the objection.
20 THE COURT: Is it your preference that somebody
21 read the answers or is it all right with you, Mr. Wright,
22 that I just read it?
23 MR. WRIGHT: It's fine with me if you just read
24 it, Your Honor.
25 THE COURT: Okay. So Mr. Berry doesn't object--

1 MR. BERRY: No, sir, I don't object to that proc-
2 ess. I think that makes sense.
3 THE COURT: I'm ready to read it right now.
4 (The Court reviewed the deposition at this time.)
5 THE COURT: All right, I've read the deposition.
6 So did you just want me to read it or did you want it marked
7 as an exhibit and enter it, or do you just want me to give
8 it back? Just read it as testimony as if he were here?
9 MR. WRIGHT: I'd say just keep it as testimony as
10 if he was here.
11 THE COURT: All right. Okay. Further evidence?
12 MR. BERRY: Judge, he's moving in that letter. If
13 the Court could give me a second, we may be able to dispense
14 with any objection on that. The letter that's an exhibit to
15 the deposition, we reserved an objection to.
16 THE COURT: I don't see the letter in this deposi-
17 tion.
18 MR. WRIGHT: I've got it right here. I pulled it
19 out so we wouldn't hand it up until we'd dealt with the ob-
20 jection.
21 MR. BERRY: Why don't you give that to him and let
22 him read it. Let me find what I'm looking for.
23 THE COURT: So I've read the letter.
24 MR. BERRY: Judge, I apologize. An exhibit that I
25 had escaped me, and if you give me a second I think--somehow

1 it got lost in the shuffle here. Judge, there's a letter
2 of--I think Dr. Moses refers to it in his letter from Mr.
3 McLean of October the 25th that he basically is responding
4 to when he writes that letter of October 30th, and what I
5 told Mr. Wright was I'm not going to continue to object to
6 that letter of Dr. Moses, even though I think it's hearsay.
7 He testified about it and sort of used it as a foundation
8 but I do--I would like for the Court to have the letter of
9 October 25th from McLean which he is responding to as a part
10 of the evidence, and I've got it. I had it right here and I
11 don't know what happened to it.
12 MR. WRIGHT: And we'll stipulate to the admissi-
13 bility of that particular letter if he can find it. So with
14 that understanding, we'd just like to move the admission of
15 Dr. Moses letter dated October 30th as--I guess it would be
16 6?
17 THE COURT: So is there any objection to receiving
18 that as 6 if you can find and submit your letter?
19 MR. BERRY: No, sir. We're going to find it and
20 we'll submit it. I don't object. Mr. McLean has probably
21 got a copy of it but--because I think that's where I got
22 mine from in the document production. I don't know where it
23 went. It was here earlier. Judge, we can proceed. We'll
24 get you a copy of it.
25 THE COURT: All right.

1 (Defendant's Exhibit #6 was so marked and received
2 into evidence at this time.)
3
4 THE COURT: So your letter is in as Defendant's 6,
5 which is the letter of October 30, 2000 from Dr. Moses to
6 Mr. McLean.
7 MR. WRIGHT: Thank you, Your Honor.
8 THE COURT: And when Mr. Berry finds the other
9 letter of October 25, 2000 from Mr. McLean to the Moses,
10 we'll let that in as a Plaintiff's Exhibit.
11 MR. WRIGHT: That's fine.
12 THE COURT: So do you have further evidence?
13 MR. WRIGHT: We do not. We rest.
14 THE COURT: The defendants rest. Further evi-
15 dence, Mr. Berry?
16 MR. BERRY: I'd like to recall Mr. Lape for a mo-
17 ment.
18 THE COURT: All right. Mr. Lape, you can resume
19 the witness chair. You're still under oath.
20 MR. LAPE: Yes, sir.
21
22
23 KENNETH R. LAPE, having been previously sworn, was
24 recalled on rebuttal and testified as follows:
25

1 DIRECT EXAMINATION

2 By: Mr. Berry

3 Q Mr. Lape, tell the Court, you may have done
4 this generally earlier, but tell the Court what the topogra-
5 phy of the area is immediately behind the Laurel Ridge house
6 where these proposed improvements appear on this drawing
7 that Mr. Andrews brought, or put into evidence.

8 A Well, as was said earlier, it's heavily wooded,
9 hardwood and of course laurel bushes and undergrowth. You
10 probably can't see fifteen (15) yards into it, but I would
11 say approximately a hundred and fifty (150) to a hundred and
12 eighty (180) feet from the house it drops off precipitously
13 down I would say a hundred (100) feet or so into not even a
14 valley, a gully on a direct line from Laurel Ridge to Oak-
15 mont. It drops down a hundred (100), a hundred twenty (120)
16 feet, goes back up and drops down again. It's very severe.

17 Q The area immediately behind your home now, is
18 that in grass or is that wooded, immediately behind your
19 home?

20 A Immed--excuse me, immediately behind our home
21 it is grass and that's good to, probably out to a hundred
22 and fifty (150) to a hundred and seventy-five (175) feet.

23 Q So a hundred and fifty (150) to a hundred and
24 seventy-five (175) feet from the house to the wood line?

25 A That's correct.

1 Q Is the area behind your house going in the di-
2 rection of the Oakmont residence or away from the Oakmont
3 residence?
4 A The direction from the back of our house to
5 Oakmont is a hundred and ninety-three (193) degrees.
6 Q Well, what I'm asking--I'm not asking you that.
7 If you--if you stood on your--the back of your house and
8 walked in the direction of the tree line--
9 A Okay.
10 Q --are you walking away from Oakmont or towards
11 Oakmont?
12 A Towards Oakmont.
13 Q Okay. And the drop-off that occurs in that
14 area at the end of the grass, is that area--is there anymore
15 open area between that place and the border with Oakmont?
16 A None until you hit the--within twenty (20) feet
17 of the Oakmont property line.
18 Q Have you seen those drawings that Mr. Andrews--
19 that were put into evidence through him?
20 A Yes. We had a copy, that's correct.
21 Q They were given to you earlier?
22 A Yes, that's correct.
23 Q Have you looked at the proposed improvements to
24 the home?
25 A Yes, I have.

1 Q Could any of those be seen from Oakmont?
2 A Not in my opinion.
3 Q And could any of the buildings behind the home
4 be seen from Oakmont?
5 A I would say no but there were no elevations on
6 the barns as to how high they were.
7 Q All right.
8 A The Oakmont, when we built it, we put fill in,
9 so as soon as you leave the house at Oakmont, you probably
10 drop off twenty (20) feet.
11 Q Are you talking about the house at Oakmont or
12 the house at Laurel Ridge?
13 A I'm sorry. I'm in error. The house at Laurel
14 Ridge. As soon as you leave the area around the house, you
15 drop off twenty (20) feet. The reason for this is the house
16 has a hip roof and we're very concerned about drainage.
17 Q All right. I don't have any other questions,
18 Judge.
19 THE COURT: Cross-examination?
20 MR. WRIGHT: No, Your Honor.
21 MR. BERRY: Judge, the only other document--
22 THE COURT: You can have a seat, Mr. Lape.
23 MR. WRIGHT: This is the one I looked at earlier?
24 MR. BERRY: Yes, it is.
25 MR. WRIGHT: It's not a problem.

* * *

* * *

1 MR. WRIGHT: That may be exactly what we ask for.
2 We'll argue it and then--
3 MR. BERRY: I don't object to that if they want to
4 do that.
5 THE COURT: That's fine. All right, Mr. Berry, go
6 ahead.
7 MR. BERRY: Judge, may it please the Court. Your
8 Honor, the first place that I would submit this case has to
9 start and maybe where it has to finish is in the language of
10 the contract, and if the Court looks at that, the contract
11 basically makes a provision, as I indicated earlier, that
12 restrictive covenants are permitted, expressly permitted by
13 the terms of the contract and by the way, it is a Virginia
14 Residential Association of Realtors contract and it says
15 that restrictive covenants are acceptable by definition, so
16 to speak, unless they adversely and materially affect the
17 use of the property for residential purposes. Now, I would
18 stop there for a moment and focus on that language. There's
19 nothing in this case, Judge, I would suggest, that indicates
20 that the covenants which exist adversely or materially af-
21 fect the use of this property as a residential property.
22 All the evidence that we've heard about from Mrs. Haisfield
23 about plans that she had for the property are more in the
24 nature of what I would call a commercial or an agricultural
25 slash commercial operation. In other words, it's a horse

1 farm that she basically wants to convert it to. The con-
2 tract doesn't speak to that and it does not say as the
3 Gordon unimproved land contract says that it's subject to
4 her intended use of the property, and I would invite the
5 Court to compare those two provisions in the contracts be-
6 cause I would submit that's telling. What the drafters of
7 the residential form contract were trying to do is basically
8 limit the ability of a party to claim some problem with ti-
9 tle based on restrictive covenants in a residential situa-
10 tion unless they affected materially and adversely the resi-
11 dential use of property, and I would submit to the Court
12 that all the evidence is, there's a residence on the prop-
13 erty which is fit to be occupied. It could have been added
14 to, anything that needed to be done to that property from
15 the standpoint of the residence--we don't concede that any-
16 thing needed to be done, but even if Mrs. Haisfield had
17 plans for the residence, none of those would be affected by
18 these covenants. The testimony is that the plans that Mr.
19 Andrews prepared for changes to the residence itself nowhere
20 exceeded the existing roofline. So in other words, nothing
21 that Mrs. Haisfield wanted to do with the residence elevated
22 it to the point where it would have been visible from Oak-
23 mont. Even if that were otherwise a consideration, there is
24 nothing in the evidence that suggests that that would have
25 happened even with her intended use for the residence.

1 Now, the next question that the contract ad-
2 dresses, Judge, is that in order for the buyer to say
3 there's a problem with title because of restrictive cove-
4 nants, they have to render the title unmarketable, and that
5 is a very broad concept, Judge, in the sense that we're
6 talking about covenants that would render the property basi-
7 cally not subject to being sold. It doesn't say that it
8 would--that they might affect marketability. It doesn't use
9 that language. It says that it has to render the title un-
10 marketable, and I think one of the points from Mrs. Hais-
11 field's testimony that they didn't--she wasn't certain that
12 these might not affect the value of the property is really
13 not even a material consideration in the sense that the con-
14 tract doesn't prohibit a covenant that might, quote, un-
15 quote, affect value. What the contract prohibits is a cove-
16 nant that renders the title unmarketable. There is a lot of
17 evidence in the case, Judge, which would suggest that even
18 Mrs. Haisfield and her agents do not deem the title to be
19 unmarketable. If the Court will recall, after the failed
20 closing in June, there were negotiations leading then to a
21 closing that was scheduled in November on the same contract
22 with no change to the covenants, no request to cure further,
23 nothing addressing those, suggesting that either they had
24 weighed any concern about marketability or they really
25 didn't feel like it rendered them unmarketable, rendered the

1 title unmarketable. Mrs. Haisfield even said that they con-
2 sidered closing--one of their possible plans was to go ahead
3 and buy both properties, that is the option property and the
4 85 or the 90, roughly 90 acres and then sell that off with
5 the existing residence. Well, obviously if that were unmar-
6 ketable, you couldn't sell it off. So their own plan recog-
7 nized that these covenants did not render the title unmar-
8 ketable.
9 Mr. McLean, the agent in the case, and I'm not
10 suggesting this is binding on Mrs. Haisfield in any sense,
11 but I submit that it's evidence in the case, he continues to
12 show the property and there's no evidence that the covenants
13 aren't still there. Ms. Clarke continues to show the prop-
14 erty. So I would submit to the Court that the burden that
15 has to be met under the contract is a very, very high burden
16 in order for someone to suggest that a property is not--is
17 unmarketable. It renders it--these covenants render the ti-
18 tle unmarketable.
19 Judge, I would submit that in some ways, while I
20 have argued consistently that I don't think the Court can
21 consider this case in a vacuum, but in some ways at some
22 point, what Mrs. Haisfield's plans for the property are be-
23 comes irrelevant. Somewhere a line has to be drawn because
24 this is not a contract that says that the property is avail-
25 able for commercial use. It's not a contract that says the

1 property is available for an agricultural operation. It's a
2 contract that says we're selling a residence and that's why
3 the language in the covenants--or the language in the con-
4 tract about what effect restrictive covenants might have
5 comes into play even more so because, as we said, there's a
6 residence there and all of the evidence is that nothing
7 about these covenants affects the current use of the Laurel
8 Ridge residence.
9 There's also testimony, Judge, again to the extent
10 it matters, that there are other home sites on this prop-
11 erty, on the 90-acre property, that can't be seen from Oak-
12 mont. The topography is described by Dr. Moses, who lives
13 there, in his deposition. The topography is described by
14 the real estate agent, Ms. Clarke. The topography is de-
15 scribed by Mr. Lape and then of course the Court has seen
16 all that or heard all that in the context of a view. Dr.
17 Moses himself said that because of the steep slope that ex-
18 ists towards the Oakmont residence, most of the Laurel Ridge
19 property, or a great part of it, and I'm paraphrasing his
20 words, is not visible from his location and in any event,
21 this buffer of trees that can't be commercially timbered, it
22 doesn't say no trees can be cut, it says they can't be com-
23 mercially timbered, is a screen for anything that happens
24 beyond that point. One of the things that Mr. Wright has
25 tried to suggest with the evidence I will submit, and he's

1 used Dr. Moses' testimony for this purpose, is to show some-
2 how that because Dr. Moses might object to some particular
3 proposed use, that that limits the title unmarketable be-
4 cause it's uncertain as to whether Mrs. Haisfield might face
5 litigation, and it seems to me, Judge, you have to look at
6 that very closely. There are a couple of points there. One
7 is the Court, of course, is not bound by Dr. Moses' inter-
8 pretation of the covenants. The covenants say what they
9 say. The Court can read them just like Dr. Moses and me and
10 Mr. Wright and one of the--sort of one of the standard prin-
11 ciples of legal construction as it relates to restrictive
12 covenants is that they have to be most strictly construed
13 against the person seeking to enforce them, and I'm citing
14 Am Jur on Covenants and Restrictions, Section 338. In this
15 case what the covenant says is you can't build a building,
16 you can't construct a building that can be seen from the
17 main residence. It says nothing about putting in a road.
18 So even if Mrs. Haisfield wanted to put in a road, even if
19 that made a difference, then there's nothing in either one
20 of those covenants that would prohibit her from doing that.
21 She couldn't commercially timber the area where she put the
22 road. It doesn't say she couldn't remove a tree to put the
23 road in, and she is not in a position where she could con-
24 struct a building. But it does not prevent her from putting
25 in a road. So to the effect that--to the extent that the

1 other side tries to suggest that because Dr. Moses might
2 contemplate some claim, it's got to be based on some reason-
3 able and acceptable and objective standard that he has such
4 a claim, and I would submit that based on what the Court has
5 in front of it with this road, that he's--he's not construing
6 the covenant correctly. But let's put that aside even
7 for a moment. What he says then in his testimony upon fur-
8 ther examination is, I really don't know what I would do. I
9 would want to know, and he even said it this way, the spe-
10 cifics of the specifics. He would want to know exactly what
11 was proposed for the adjoining property so that he could
12 make some judgment because he obviously by the tone of his
13 testimony and his own statements is saying I'm not going to
14 jump into a dogfight with my neighbor, I would simply like
15 to know what's going on. And in this case, Judge, he in-
16 vited--he invited them to do just that. His testimony is
17 that he contacted Mr. McLean and tried to set up a meeting
18 where he could meet with the potential buyer or prospective
19 buyer and see exactly what it is that they were going to do
20 and he wasn't taken up on that and that gets us back, Judge,
21 I would submit to really where the case is because the rea-
22 son that the contract didn't close in June, at least the
23 best evidence I would submit is because the Gordon contract
24 was uncertain and didn't close. And the other side may say
25 well, until the 29th when we learned about these covenants

1 we were ready to close and then we learned about them and
2 that changed our mind, but there's no real explanation then
3 for why by November, Judge, they weren't concerned about
4 them again. Because by that time the Gordon contract was
5 back in place and ready to go, they thought. So what evi-
6 dence is there, then, prior to that closing that the Gordon
7 contract was the problem? Judge, Mrs. Haisfield testified,
8 and she admitted from her deposition that what she said was
9 accurate then, they weren't going to close unless they did
10 all--and she said all three closings, she really meant all
11 three properties at the same time. In other words, they
12 were going to tie them all up together or they weren't going
13 to do it. She said that numerous times, and I would submit
14 to the Court if you look at that exhibit, the bill of sale
15 that she added the language to in early June when supposedly
16 everybody is ready to close, there's no reason not to, and
17 then there's a bill of sale that says we'll pay X dollars on
18 closing to get this personal property and then she adds in,
19 on an as, if and when basis. Now, what can that mean? She
20 at first said in her deposition she admitted she didn't know
21 and then today she said--she offered some other reason, that
22 no closing is a certainty. So taken in a vacuum, she would
23 have the Court believe there was no really no effect to that
24 language, but I would submit to the Court in the context of
25 everything else that was going on, that's very telling be-

1 cause you don't say we'll pay if there's a closing or as
2 there's a closing or when there's a closing if you've got a
3 closing scheduled and you're ready to go and you plan to go.
4 In common sense experience, Judge, that doesn't happen. The
5 document itself said, you don't owe the money until closing.
6 What Mrs. Haisfield did was to add in a very clear indica-
7 tion of her intent, we're not sure what's going to happen.
8 If we close, we'll pay.
9 Then we have things happening as the month goes
10 along, Judge. If \this contract is ready to go forward,
11 why does Mr. McLean call Carol Clarke, and I would submit to
12 the Court that the best evidence is that this conversation
13 did in fact take place prior to June 30th. Mr. McLean
14 wasn't sure. He really couldn't say one way or the other.
15 Ms. Clarke started with before, then was uncertain on cross-
16 examination. Then after reviewing her own notes said it was
17 before. And what she said was Mr. McLean called and basi-
18 cally wanted to renegotiate the contract on behalf of his
19 clients, renegotiate the commission, and she said no. So
20 why do you have that happen shortly before a closing that
21 everybody says we were fully intending to go through with.
22 Why does that happen.
23 Ms. Clarke, because of one of these conversations
24 with Mr. McLean, calls up Joe Cochran and says, would you
25 check with Forbes Reback and see what's going on, you know,

1 we're getting ready for a closing. These people are moving,
2 they're packing up. So Mr. Cochran calls Mr. Reback, and
3 Mr. Reback says basically, and again, we're eight days be-
4 fore a closing that's been scheduled for months, I don't
5 know whether they're going to close or not. They're unpre-
6 dictable. I'm not sure what's going to happen. Now, this
7 is their own attorney. And I would submit to the Court that
8 their intention and desire and intent at that point was so
9 clear, why did their own lawyer and why did their own real
10 estate agent here not believe or have some fear that there
11 wasn't going to be a closing?
12 Your Honor, we said in our pleading that the re-
13 strictive covenants, the existence of them and the use of
14 them at the last moment was a pretext for not closing be-
15 cause there were other problems going on, there were other
16 things happening, and I would submit the evidence has borne
17 that out. I'm not suggesting necessarily, Judge, that
18 there's anything immoral about that, although I would submit
19 it certainly is not in the general sense of the word the
20 best use of good faith when there are people on the other
21 side that are depending on your actions, but it does violate
22 the terms of this contract and it subjects Mrs. Haisfield to
23 having to pay over the fifty thousand dollar ($50,000) de-
24 posit that she put into the contract as a liquidated damage
25 provision because she's in breach if she didn't close be-

1 cause the Gordon closing didn't go forward.

2 Mr. McLean, Your Honor, said that he was having
3 heartburn or he was seeing problems with two things prior to
4 closing and it's one of the reasons he got worried and Mr.
5 Reback said essentially the same thing. We didn't know if
6 the Gordon closing was going to occur. Mr. Reback said I
7 always assumed, I always understood, I was always working
8 with the idea that they were going to all occur at once, it
9 was going to be done simultaneously. Mrs. Haisfield made
10 that decision, Judge, she made a decision not to close, and
11 when she did, she had that right legally to do that in the
12 sense that no one could compel her to do otherwise, but my
13 clients then have the right to recover that deposit and we
14 would ask the Court to so hold.

15 THE COURT: Thank you, Mr. Berry. Mr. Wright?

16 MR. WRIGHT: Your Honor, the evidence is that one
17 day before closing Mrs. Haisfield became aware of these re-
18 strictive covenants and realized that if she went ahead with
19 the closing, she would be getting less than the full bundle
20 of rights she had contracted to purchase. She had one day,
21 no time to investigate, no time to finalize her plans. Her
22 testimony was that she had all these plans for improving the
23 property with a horse facility, an addition to the resi-
24 dence, a two-story addition to the residence, pastures, out-
25 door ring, an indoor arena, hay fields, a swimming pool, and

1 while she had looked at a number of possibilities of where
2 to place these things, both on the Lape property and on the
3 three different properties assembled together, no decisions
4 would be made and until those final decisions could be made,
5 it would really not be possible to determine whether the re-
6 strictive covenants would create a bar to her plans for de-
7 veloping that property. She testified that she recognized
8 that if she was going to do this stuff on the 98-acre par-
9 cel, she was going to have to cut down a whole lot of tim-
10 ber, and where Mr. Andrews plans showed the new horse barn
11 being built was back in an area at the back of the house, we
12 walked back that way, that would have involved taking out a
13 lot of those trees. The more timbering gets done out there,
14 the more likelihood that the improvements that are placed on
15 Laurel Ridge could be visible from Dr. Moses' property and
16 we stood over there this afternoon. Dr. Moses' residence is
17 up at some fairly significant elevation so that if you look
18 over the top of that tree line, anything that might extend
19 above that tree line at any point in the future is going to
20 be visible from Dr. Moses' property and arguable is going to
21 violate these covenants. It was the sheer uncertainty of
22 whether she would ever be able to put her dream for this
23 property in place with one day before closing that made it
24 impossible for her to go forward with this deal and meant
25 that she put the Lapes' attorney on notice that we believe

1 the title was not marketable because of those restrictive
2 covenants and we asked them to take some action to cure that
3 defect.
4 THE COURT: So do you agree with me that only no-
5 tice on the view easement was given?
6 MR. WRIGHT: Well, I would take the position, Your
7 Honor, that because there's only one restrictive covenant
8 that has two different pieces to it, notice of that restric-
9 tive covenant was given even if it was called a view ease-
10 ment. There is an area there, though, when I asked the
11 Court for leave to submit something in writing in a few
12 days, I may want to address that issue a little bit further.
13 I did look through those documents.
14 THE COURT: You agree the June 30 letter from Mr.
15 Slayton just talks about the view easement.
16 MR. WRIGHT: It talks about a view easement. I--I
17 agree with that.
18 THE COURT: It doesn't say getting rid of the tim-
19 ber easement as a defect, cure that within sixty (60) days.
20 MR. WRIGHT: It doesn't read that--that way spe-
21 cifically, Your Honor.
22 THE COURT: Okay. All right.
23 MR. WRIGHT: Bottom line, Mrs. Haisfield realized
24 that if she closed on the 30th, she was buying the nuisance
25 of having an adjacent property owner dictate what she could

1 or could not do on her property and that gave her less in
2 terms of total package of rights, property rights, than she
3 bargained for. We believe that translates into the defect
4 in the marketability of title.
5 Now, I have a few other things to say, but I want
6 to respond to a few of the points that Mr. Berry made in his
7 closing. Mr. Berry takes the position that the real reason
8 this property didn't, or the sale didn't close was the fact
9 that the Gordon sale fell through. Mrs. Haisfield did tes-
10 tify that it was important to her to get all three parcels
11 if she possibly could because that would optimize her abil-
12 ity to develop the kind of farm property that she would like
13 to develop. But she also testified that she had every in-
14 tent, until she learned of this covenant, of going forward
15 on the closing of this property. These had been timed to
16 close together. There had been a few bumps in the road on
17 the Gordon deal in the last few weeks, but Steve McLean tes-
18 tified that ultimately the Gordon deal got put on hold be-
19 cause the deal with the Lapes did not close as the result of
20 Mrs. Haisfield learning about the restrictive covenant. So
21 there's very clear testimony that the causation is the other
22 way around. The reason the Gordon property didn't close at
23 that point in time is that the restrictive covenants coming
24 up at the last minute put Mrs. Haisfield in a position where
25 she was not comfortable closing until that particular issue

1 could be cleared up.

2 The June 6th bill of sale. I think Mrs. Hais-

3 field's testimony on that was pretty clear. She added those

4 words but her testimony was if anything happened to closing,

5 if closing got delayed by two or three days, I didn't want

6 to be buying the farm equipment until that date that the

7 deal actually closed. I think her testimony was very clear

8 that there was never a time until the 29th that she in-

9 structed anybody to terminate this contract. Her own real

10 estate agent testified that he was never instructed to ter-

11 minate or try to undo this contract. Everything keyed off

12 of this new information about the restrictive covenants that

13 came up when Mr. Slayton reviewed the title binder on the

14 29th of June.

15 There's been some discussion of the varied and

16 somewhat conflicting testimony on when the issue of

17 renegotiating the terms of the contract came up, and I know

18 we had testimony from both Ms. Clarke and Mr. McLean about

19 that. Earlier in the day, though, we also had testimony

20 from Mr.--it was either Mr. Winn or Mr. Cochran, Your Honor.

21 They were talking about notes from their file indicating

22 that the subject of renegotiation came up on the 7th of July

23 and we believe everybody has done his or her level best to

24 recollect these dates with the passage of time but Mr. Winn

25 or Mr. Cochran, whichever of the two it was, had actually

1 checked notes and that date was one which had been verified
2 through a visiting of the files in that law firm, and I
3 think that date is a very credible date as to when the dis-
4 cussions concerning renegotiation of terms actually occurred
5 after the aborted closing on that deal.
6 Mr. Berry referred to Forbes Reback talking about
7 the closing possibly being in jeopardy a week or so ahead of
8 time, but as I recall Mr. Reback's testimony, although he
9 wasn't a hundred percent certain, he thought it more likely
10 that what he was talking about at that time was the Gordon
11 deal because it was hitting one of its bumps in the road on
12 about that date.
13 Mr. Berry argued that the contract language
14 clearly refers to residential purposes. Mrs. Haisfield tes-
15 tified that she was going to use this property for her pri-
16 mary residence. She just has thirty (30) horses that she
17 also was going to make a part of her residence property.
18 Previous--if before the 29th there was no reason for her to
19 know that she couldn't do that, on the 29th she learns that
20 she no longer can, that is a defect in the marketability of
21 title if she cannot develop the property for the use she in-
22 tends and is getting less than the full bundle of rights
23 that she bargained for.
24 I'm going to revisit not all of the law that I
25 went through last week but one case from the Virginia Su-

1 preme Court.
2 THE COURT: Let me ask you a factual question be-
3 fore you do that. Do you say the contract on the Gordon
4 property introduced was an option contract or a sale con-
5 tract?
6 MR. WRIGHT: I believe that version of it was a
7 sale contract, although this is not in the evidence before
8 the Court, I think a subsequent version of that deal was
9 perhaps an option contract.
10 THE COURT: Okay. But you agree what's in evi-
11 dence is a sale contract?
12 MR. WRIGHT: I believe so, Your Honor.
13 THE COURT: All right. Go ahead.
14 MR. WRIGHT: The Virginia Supreme Court has stated
15 that the question of marketability of title is a question of
16 law for the Court, and in that case the Virginia Supreme
17 Court defined marketable title as, and this is Medbeth, Inc.
18 against Weed, one which is free from liens and encumbrances,
19 one which discloses no serious defects, that is dependent
20 for its validity upon no doubtful questions of law or fact,
21 one which will not expose the purchaser to the hazard of
22 litigation or embarrass him in the peaceable enjoyment of
23 the land, one which a reasonably well informed and prudent
24 person acting upon business principles and the full knowl-
25 edge of the facts and their legal significance would be

1 willing to accept with the assurance that he in turn could
2 sell or mortgage the property at its fair value. And in
3 that case the Court determined that title was defective be-
4 cause the boundaries of the parcel to be conveyed might have
5 been overlapped by prior, somewhat ambiguous conveyances, or
6 might have been encroached upon by a sewer easement. Even
7 the encroachment of the sewer easement was enough to justify
8 a Court finding title unmarketable. If you look at these
9 various elements, though, to the definition of marketable
10 title, one which is free from liens and encumbrances,
11 clearly a restrictive covenant under the law is an encum-
12 brance. One which will not expose the purchaser to the haz-
13 ards of litigation or embarrass him in the peaceable enjoy-
14 ment of the land, clearly whether Dr. Moses is right or
15 wrong in his interpretation of this particular covenant, his
16 letter and some of the meetings he had with Steve McLean in
17 the fall of 2000 when efforts were being made to put this
18 deal back together again, indicate clearly that closing on
19 this property could have exposed Mrs. Haisfield to the risk
20 of litigation. He did say he wasn't sure he'd have sued.
21 He'd have wanted to have known all the specifics and had a
22 better sense of exactly how it was going to impact his prop-
23 erty. But when they were talking about putting that second
24 entryway in to service the option property should they close
25 on that, he decided that that separate roadway through that

1 old existing roadbed that we crossed when we were out there
2 today, he believed would violate one or both of the cove-
3 nants. I believe that was his testimony in his deposition.
4 If Mrs. Haisfield had closed, she could have been buying a
5 lawsuit. Clearly it would have embarrassed her in the
6 peaceable enjoyment of the property.
7 THE COURT: Let me ask you this. Do you say that
8 this view easement as some people have called it, is an
9 encumbrance against the property?
10 MR. WRIGHT: Yes.
11 THE COURT: Okay. Do you agree that the contract
12 recognizes that there are encumbrances that may exist
13 against this property?
14 MR. WRIGHT: Yes. Encumbrances of record which do
15 not adversely impact its use for residential purposes or
16 render title unmarketable.
17 THE COURT: So the fact that there are encum-
18 brances recognized by the contract that don't adversely and
19 materially affect the residential use doesn't make this un-
20 marketable, right?
21 MR. WRIGHT: No.
22 THE COURT: I mean, so clearly you've got a mar-
23 ketable title with encumbrances against it.
24 MR. WRIGHT: Right. But now that you've got this
25 kind of restriction which may completely interfere with some

1 of the improvements she ultimately wants to make to the
2 property, then you've got a defect in that title which we
3 believe under the terms of the contract justify her in mak-
4 ing a decision not to close on the deal until those defects
5 are cured.
6 THE COURT: I mean if there were a right-of-way
7 across the property--
8 MR. WRIGHT: Yeah, if Virginia Power had the
9 right-of-way across the property, I think that's the encum-
10 brance that the contract permits.
11 THE COURT: Permit--you're saying that wouldn't
12 adversely affect her use of the property, adversely and ma-
13 terially affect her residential use of the property?
14 MR. WRIGHT: Probably not.
15 THE COURT: Probably not.
16 MR. WRIGHT: We didn't take objection to any of
17 those easements when we got the title binder.
18 THE COURT: So I'm trying to fit these facts into
19 this--into this definition in the Medbeth case. I mean
20 where do you say the facts fit that say this--these restric-
21 tions render it, the title unmarketable?
22 MR. WRIGHT: These restrictions allow someone to
23 have a veto power over certain things that Mrs. Haisfield
24 might have been planning to do to her property. It gives
25 another property owner the right to second guess her deci-

1 sion or even say no, you can't put that there.
2 THE COURT: Okay. But if I go out and look at the
3 view and I look at this--this timber easement, and, you
4 know, so you factually determine is there some commercial
5 timber in there that could be logged that's going to affect
6 her ability to use the property. I mean what if I say well,
7 there really isn't any commercial timber so there's not any
8 adverse and material effect there and so I make the same
9 analysis about the view easement. Don't I have to find that
10 residential use would be where it would be in view of Oak-
11 mont, that she doesn't have any other residential use? I
12 mean doesn't she have residential use of this property on
13 90% of the 98 acres?
14 MR. WRIGHT: She may have. It was just impossible
15 in a one-day period of time before closing for her to have
16 sufficient information available to make that determination.
17 She concluded that she was getting less than she bargained
18 for, and that entitled her to say that there was a defect in
19 the marketability of title that allowed her not to go for-
20 ward with closing. And I think that under the Medbeth-Weed
21 definition, a couple of those definitional elements fit the
22 facts of this case.
23 THE COURT: So which definitions are you pointing
24 to under Medbeth that you say fits this case?
25 MR. WRIGHT: One is the one I just discussed, one

1 which will not expose the purchaser to the hazard of litiga-
2 tion or embarrass him in the peaceable enjoyment of the
3 land.
4 THE COURT: So she would have to say, I need to
5 build a residential building of some sort in the view of
6 Oakmont in order to invite the lawsuit, right?
7 MR. WRIGHT: Dr. Moses took the position that put-
8 ting that second access in to the back of the property vio-
9 lates the covenant.
10 THE COURT: Yeah, but I mean, as a matter of a
11 law, do you agree with that?
12 MR. WRIGHT: Oh, I'm not sure I agree with it.
13 THE COURT: Well, I mean, aren't we talking about
14 legitimate lawsuits, not frivolous, baseless lawsuits. I
15 mean, just because he said he might sue, I mean, he's got to
16 have a legal basis to do it, doesn't he?
17 MR. WRIGHT: Well, but should she be put in the
18 position of having to defend even a frivolous lawsuit be-
19 cause these covenants are there and they just end up putting
20 her in that box if she hadn't known anything about them?
21 THE COURT: But the covenants don't say you can't
22 put a road in there.
23 MR. WRIGHT: No, they don't.
24 THE COURT: Okay.
25 MR. WRIGHT: But if you have an adjacent property

1 owner who has the right to enforce the covenants who takes
2 the position that they do, you can be defending frivolous
3 litigation.
4 THE COURT: Okay. All right. So any others in
5 the Medbeth definition that you say the facts of this case
6 meet?
7 MR. WRIGHT: One dependent for its validity upon
8 no doubtful questions of law or fact. I mean, I think there
9 were some questions of law and fact about what bundle of
10 rights she was getting if she went ahead with closing on
11 this particular piece of property. The other--the other
12 case that I found that had interesting facts, it just had
13 nine easements across it which made the property more diffi-
14 cult to develop in a manner the purchaser intended, and the
15 Eastern District of Virginia said that was a problem with
16 marketable title, Sterling against Blackwelder, 302 F.Supp
17 1125. It doesn't seem to be a whole lot greater problem
18 than we have with this property and that Court said no,
19 you've got a defect in title.
20 THE COURT: So would you agree that the Court has
21 to judge this case based on the facts and the intended use
22 of Ms. Haisfield as opposed to well, in the future she may
23 want to divide it up into 2-acre lots and put residential
24 homes that might be in the view of Oakmont? I mean, Black-
25 welder seemed to address--there were nine easements and it

1 didn't match the intended use of the purchaser in that case
2 so therefore they said not marketable.
3 MR. WRIGHT: Right.
4 THE COURT: But here are the facts personal to
5 Mrs. Haisfield as to what she wants to use it or can she
6 just make the argument that look, it affects her ability to
7 subdivide the property into 2-acre parcels or she can do
8 that under the zoning laws and--and sell the property and
9 develop the property in that manner. Do these restrictions
10 then materially and adversely affect her or make the title
11 unmarketable?
12 MR. WRIGHT: I would take both positions.
13 THE COURT: You got a case that supports that?
14 MR. WRIGHT: No, but I'm going to reserve the
15 right to submit something in the next few days.
16 THE COURT: I understand. I understand. Okay.
17 MR. WRIGHT: I can try to find a case.
18 THE COURT: Oh, I understand and I would like to
19 see it if you can find it. Go ahead.
20 MR. WRIGHT: Your Honor, there was some testimony
21 that suggested that this deal was about to fall apart in the
22 weeks before the scheduled closing date, but you also heard
23 from Mrs. Haisfield and from Steve McLean that there was
24 never any decision to try to avoid closing on the deal, and
25 I would submit that most of that evidence, while well inten-

1 tioned, is really a red herring here. I would--I'm going to
2 close there but request, like I said, request leave to sub-
3 mit something to supplement in writing in the next few days.
4 THE COURT: So, Mr. Berry, if Mrs. Haisfield
5 wanted to put a house up on the hill behind this timber
6 easement that was in view of Oakmont, why wouldn't that af-
7 fect her ability to use this for residential purposes?
8 MR. BERRY: Judge, number one, because there is
9 already a residence on the property that had been seen and
10 included in the contract provisions when she--before she
11 signed it. In other words, we have to put this in an objec-
12 tive context too. She went and signed a contract to buy
13 residential property that had an existing residence on it.
14 The distinction here is, and it's borne out pretty well by
15 the language in these two different contracts. What the
16 Court is suggesting there is that she could use it for her
17 intended purposes, and I would submit that's not what she
18 contracted to do. It basically says that the covenant mate-
19 rially and adversely affects it for residential purposes.
20 So the first standard is to sort of look at it objectively
21 and say well, there's already a residence there and there
22 are plenty of other places on the property that you could
23 build. If you make it subjective, Judge, and to further try
24 to address your question, there is absolutely no evidence
25 that she had any plan to do that. So in other words, what

1 you--what can happen with this, and it's why title can't be
2 a subjective question, is that somebody can engineer a prob-
3 lem and then it's difficult for Courts to figure it out.
4 There has to be some certainty in all of this, and real es-
5 tate transactions are generally considered to be the area in
6 the law where you look for that most prevalently, and here
7 not only did Mrs. Haisfield not contemplate doing what the
8 Court suggested, she--the contract that she signed doesn't
9 provide that she really is in a position to be able to do
10 that, I would submit. Otherwise, every time someone went
11 and bought a piece of property that there was any kind of
12 restrictive covenant, and there are restrictive covenants
13 everywhere, then you could engineer a problem. And title
14 again, the thing that struck me in listening to Mr. Wright
15 and it does go hand-in-hand in some degree with the Court's
16 question, is the title can't become a subjective question.
17 We're not dealing here with intent and purpose by the--by
18 the buyer. It's got to be some objective standard and--
19 otherwise title is whatever the buyer says it is.
20 I will submit the Court--the Court hit the nail on
21 the head in one of the questions, earlier questions that you
22 posed to Mr. Wright and that is, doesn't this contract al-
23 ready contemplate that restrictive covenants are not the
24 type of blight on title or encumbrance on title. Everybody
25 knows they might be an encumbrance. But the contract says

1 by definition they're not a problem unless one of these two
2 conditions is met. Judge, if we go back and look at this,
3 you go back to the Gordon--to the--to the Moses and Lape
4 contract. You have a deed prepared and signed where Mr.
5 Lape was represented by competent counsel. The buyer is
6 represented by counsel. There are two real estate firms in-
7 volved, the covenants are negotiated, and what the Court
8 would be holding, I would submit, at least under part of Mr.
9 Wright's argument, because he focuses most strongly on this
10 business of the title not being marketable, the Court would,
11 in effect, be holding that back in 1994 when that transac-
12 tion was completed, that that deed and the language in it
13 created a defect in the title to the degree that this prop-
14 erty is rendered unmarketable, not affecting marketability.
15 That's not an issue. I would submit that you probably would
16 find it in the case law and you certainly would find it in
17 testimony, anybody would say any kind of covenant might af-
18 fect value. There are probably people that would prefer it
19 not to have a Rappahannock Electric or VEPCo easement on
20 their property even if it's 200 acres. So it might affect
21 value, but that doesn't mean it renders title unmarketable,
22 and what Mr. Wright says that Mrs. Haisfield contracted for,
23 in effect, is perfect title, or whatever she wanted, other-
24 wise then it's unmarketable, and there again we're back to
25 this subjective standard. One thing that is not in any

1 doubt in this case, and that is that the existing residence
2 under all of the evidence cannot be seen from Oakmont at any
3 time. Dr. Moses says it. The Lapes say it. Mr. Lape says
4 it. There's testimony from Carol Clarke that supports that
5 as well.
6 So then the next question is, what else is--what
7 else would adversely affect this for residential purposes.
8 In other words, what other facts are we talking about, and
9 the Court posed one by its question but there's no evidence
10 Mrs. Haisfield had any intent to put a house anywhere that
11 it could bee seen, and as Mr. Moses, or Dr. Moses said, this
12 hillside is steep. What this timber buffer--basically it
13 prevents you from seeing much of anything on the rest of
14 that property. On most of it, I think he used that termi-
15 nology.
16 Judge, one of the things that Mr. Wright does and
17 we do it as lawyers all the time, I do it, we all do it,
18 it's good argument to a point, and that is to say, if you
19 look at each one of these individual things that happened
20 prior to this closing, they can be explained. But if you
21 look at all of them, Judge, it starts--it's one of these
22 things, if it walks like a duck and talks like--quacks like
23 a duck, it's probably a duck. We've got all sorts of things
24 happening, leading up to a very--this is an expensive prop-
25 erty. We've had a study here that's been long since com-

1 pleted. We've got all these people working on the property.
2 We get into June and there's all sort of uncertainty flying
3 around and you might be able to explain each one of them,
4 Judge, but when you apply common sense and say well, the
5 bill of sale in early June and then you've got this conver-
6 sation with Ms. Clarke by Mr. McLean, and he says he called
7 them up with the authority of his principal, he said that in
8 his testimony. That phone call about--about--in June was--
9 he did that with the authority of his principal. He wasn't
10 doing that without authority. Then you've got a telephone
11 call that Mr. Cochran makes to Mr. Reback. Maybe that's ex-
12 plained away because he didn't say he wouldn't close. Then
13 you've got Mr. Reback's letter, Judge, and I'm not--I wasn't
14 trying to embarrass him on the stand but this is--this is a
15 fact in the case. He's writing a letter two days before
16 closing suggesting there isn't going to be a closing.
17 Hasn't told the other side that. Sends it off with some
18 documents and says, we've got to wait and see how Steve's
19 negotiations come out. And yet Mrs. Haisfield said, well,
20 there was nothing left to negotiate. Everything was done,
21 we were going to close. We thought we were going to close
22 until we got this thing on the 29th. All of that together,
23 Judge, I would suggest just belies what she says and Gordon
24 is the answer. The Gordon contract is the answer.
25 Now, even given Mr. Wright those arguments and

1 saying that well, these individual things can be explained
2 and Mrs. Haisfield didn't know whether she could use it for
3 residential purposes or any of this other stuff, then why in
4 November is there an effort to close on the same contract
5 and there's no curing, there's no remedy, there's no ques-
6 tion asked. The only thing that's different is now we think
7 the Gordon contract is going to closing, whether it was an
8 option or a contract or whatever, and therefore we're going
9 on with the Lape contract, and then all of a sudden the Lape
10 contract doesn't close again. Not a word is said about the
11 covenant.
12 THE COURT: Is your position that the November 13
13 closing had a reduced price for the option or not of a hun-
14 dred thousand dollars ($100,000)?
15 MR. BERRY: No, sir. The testimony--
16 THE COURT: So you're saying November 13th was the
17 contract as originally agreed upon?
18 MR. BERRY: Yes, sir. That was the testimony from
19 Mr. Winn and from Mr. Lape, and I would submit that's the
20 evidence before the Court, that there was no other agree-
21 ment. And what Mr. Winn testified that basically was said
22 was, we're not signing anything. He said Mr. McLean gave
23 him another document that was essentially the same as the
24 other contract, he said. We're not signing anything. We
25 will show up with the money--with the deed, you show up with

1 the money and there will be a closing. That's the gist of
2 what I heard Mr. Winn testify to.
3 THE COURT: So there's no modification of the op-
4 tion contract other than--
5 MR. BERRY: No, sir.
6 THE COURT: --hundred thousand dollars ($100,000)
7 less. Okay.
8 MR. BERRY: There was discussion about that but
9 his client rejected it and Mr. Winn said that and Mr. Lape
10 said that, and that's uncontroverted, I believe. We thought
11 we were going to close, then it didn't happen again. Mrs.
12 Haisfield said, you know, Gordon wouldn't close. And maybe
13 all of this would have been cured, Judge, if there had been
14 a contingency in the Lape contract like when you see a cross
15 default clause in deeds of trust, you know, we see that kind
16 of thing where you're tying everything together. But that
17 didn't happen and the bottom line--
18 THE COURT: What's your position on this commer-
19 cial timber easement as far as a defect that Mrs. Haisfield
20 has claimed materially and adversely affects the--
21 MR. BERRY: Judge, there are two points on that.
22 THE COURT: --use or is unmarketable?
23 MR. BERRY: Yes, sir. Two points on that. One is
24 the--I think the Court pointed out one point and that is the
25 letters from Mr. Slayton, if I recall correctly, do not

1 identify that--the letters do not identify that as a title,
2 quote, unquote, title defect. I think that was the way he
3 phrased the letter. And there is law. CJS gives a sort of
4 summary of it, I think, but it's found pretty much every-
5 where. I'm sure there are Virginia cases on this point.
6 There are certainly cases from other states, that when you
7 make specific objections to title, you can't then go back
8 and bring new ones in. In other words, the reason for that
9 is, if you make an objection and the contract gives somebody
10 a right to cure, then you've got to tell them what's wrong,
11 and there's a Virginia case, and I don't have the cite in
12 front of me, I can furnish it to the Court, I thought I had
13 it here but--that basically says you can't be silent about
14 what the defect is. You can't say hey, there's a defect and
15 then not tell the seller what it is.
16 THE COURT: So do I have any evidence that the
17 seller was told about this commercial timbering--
18 MR. BERRY: I don't believe there's any before the
19 Court that they were told. It's in the pleading that Mr.
20 Slayton filed, Judge, but I don't believe it's in evidence
21 before the Court.
22 THE COURT: And your position is they have to be
23 told so they have an opportunity to cure it?
24 MR. BERRY: That's right. But as I said a moment
25 ago, that's--and I think that's the law. I said a moment

1 ago, though, Judge, and I really think this is sort of why
2 that question goes into thin air maybe, and that is because
3 it never came up again. In other words, if we didn't have
4 all this stuff happening in November, there's a demand to
5 cure. I mean that's--it's not just well, you know, things
6 go back into place and we'll close. This is a pattern where
7 you've got a demand to cure, people taking the position it's
8 not a defect and the people that are demanding the cure then
9 agree to close on the same contract with no cure. So--so
10 either they've waived any claim to defect or they don't be-
11 lieve there's a defect to begin or it's a pretext. There's
12 no other explanation for why you would then go to closing.
13 And that's why I say, Judge, I'm not sure it really matters
14 at this point whether they told the Lapes about it or not
15 because certainly when they--or they told the Lapes' repre-
16 sentatives about it because when they went to close later,
17 it never came up.
18 If I could have one second to review my notes, I
19 think I'm just about done. I want to see if there's any-
20 thing else that Mr. Wright said that I wanted... Just fi-
21 nally, Judge, and this goes back to the marketability ques-
22 tion. Mr. Wright said there's a defect in the marketability
23 and I'm not--I'm not sure that--and he's arguing that under
24 Medbeth case, Judge, and I would submit the contract in this
25 case defines that away because it says a restrictive cove-

1 covenant is not the type of encumbrance that--it's lumped in
2 with utility easements if the Court looks at the language in
3 the contract, and it's qualified then by these two things,
4 and that can't be the type of defect in title that renders
5 title unmarketable. Otherwise, title becomes a subjective
6 matter and I would submit that can't be permitted to happen.
7 The buyers are then in a position of being able to tell us
8 what the title is. You would have thought, Judge, if some-
9 one really was concerned about whether or not something
10 would be seen or there was a problem with residential use,
11 yet they really wanted to close, that was the real issue,
12 they needed to figure this out, wouldn't you have gone out
13 to Oakmont, particularly if you were invited and said hey,
14 can I come up there and look around and see what's really
15 going on? I mean, let me look at the property, let me go
16 and walk, let me come over there to the house, let me do
17 some of the same things we did on view. Dr. Moses said he
18 gave that invitation. It was never taken up on and that
19 suggests, Judge, that it really wasn't the issue because
20 otherwise, why in the world wouldn't you have done that, and
21 I would submit to the Court that it would be the most dra-
22 matic kind of position and that's really the position--Mr.
23 Wright wants to stay clear of it a little bit, that's why he
24 argues the Medbeth case. He can't bring himself to use the
25 term unmarketable title, but that's really what the Court

1 would have to find this is in order to say that my client is
2 not entitled to the escrow because that's what the contract
3 says and that is the most extreme sort of determination,
4 Judge, and it's one that the parties really haven't put on
5 the property themselves and I would ask the Court to reject
6 that position and to give Mr. and Mrs. Lape the relief they
7 seek. Thank you.
8 THE COURT: Thank you. So how many days do want
9 to submit authority, ten days, two weeks? You-all choose.
10 MR. WRIGHT: I'll try to do it in ten days but if
11 you would permit me up to two weeks, that would be great.
12 I've got to be in D.C. some next week and it's a holiday
13 week so realistically it will be the following week.
14 THE COURT: Is that all right with you, Mr. Berry,
15 two weeks?
16 MR. BERRY: The sooner the better, Judge, but I
17 can't say that's unreasonable.
18 THE COURT: Okay. So are each of you going to re-
19 serve the right to submit something in writing within two
20 weeks and then there's going to be no reply?
21 MR. BERRY: I would prefer it that way, Judge.
22 THE COURT: Just the one presentation opportunity
23 here?
24 MR. WRIGHT: I think that's fine.
25 THE COURT: Okay. * * *

VIRGII \ ASSOCIATION OF REALT 1S®
RESIDENTIAL CONTRACT OF PURCHASE

(This is a legally binding contract. If not understood, seek competent advice before signing.)

This CONTRACT OF PURCHASE made as of February 14, 2000, between Kenneth R. Lepa and Barbara G. Lepa, Trustees for the Kenneth R. Lepa* Living Trust (the "Seller", whether one or more), and Andrew Lee Hatfield or Laurel Ridge LLC whose address is Solvang, California (the "Purchaser", whether one or more); provided: The Listing Broker for the Property, as defined below, Montagna Miller & Company and the Selling Broker is McLean Parlomar Inc. Realtors

1. **REAL PROPERTY:** Purchaser agrees to buy and Seller agrees to sell the land, and all improvements thereon located in the County or City of Albemarle, Virginia and described as (legal description): Albemarle County Tax Map 111, Parcel 3A; Deed Book 1706, Page 144; 98.78 Acres and all improvements fronting on State Route 712 in North Garden.

and more commonly known as: Laurel Ridge
together with the items of personal property described in paragraph 2 (the "Property").

2. **PERSONAL PROPERTY INCLUDED:** The following items of personal property are included in this sale: all appliances currently in residence.

PLAINTIFF'S EXHIBIT NO. 1 5-21-01

3. **PURCHASE PRICE:** The Purchase Price of the Property is ($ 900,000.00) Nine Hundred Thousand Dollars, which shall be paid to Seller at settlement in cash or by cashier's check subject to the provisions described herein and/or from the following sources:

☐ (a) **THIRD PARTY FIRST TRUST:** This sale is subject to Purchaser ☐ obtaining or ☐ assuming: ☐ a conventional, ☐ FHA, ☐ VA, ☐ VHDA, or other (describe) (_____) loan secured by a first deed of trust lien on the Property in the principal amount of $ _____, or _____ % of the Purchase Price bearing interest ☐ at a fixed rate not exceeding _____ % per year, or ☐ at an adjustable rate with an initial rate not exceeding _____ % per year and a maximum rate during the term of the loan not exceeding _____ % per year, or ☐ at the market rate of interest at the time of settlement, amortized over a term of _____ years, and requiring not more than a total of _____ loan discount points, excluding a loan origination fee, or an assumption fee not exceeding $ _____. (If this contract provides for the assumption of a loan: (i) the Parties acknowledge that the balance set forth above is approximate and that the principal amount to be assumed will be the outstanding principal balance on the date of settlement, and (ii) Purchaser shall assume all obligations of Seller under such loan.)

☐ (b) **THIRD PARTY SECOND TRUST:** As set forth in paragraph 3, this sale is also subject to Purchaser obtaining a loan secured by a second deed of trust lien on the Property in the principal amount of $ _____, or _____ % of the Purchase Price bearing interest at rate not exceeding _____ % per year, amortized as follows _____, and requiring not more than a total of _____ loan discount points, excluding a loan origination fee.

☐ (c) **SELLER FINANCE:** Seller agrees that $ _____ or _____ % of the Purchase Price shall be evidenced by a note made by Purchaser in such amount bearing interest at a rate of _____ % per year amortized as follows _____. The note shall be secured by a deferred purchase money ☐ first, ☐ second or (specify priority) _____ deed of trust lien on the Property. The deed of trust and note shall provide, among other things, that: (i) the note shall be due and payable in full if the Property, or any interest therein, is transferred, sold or conveyed; (ii) Purchaser shall have the right to prepay the note at any time in whole or in part ☐ with a premium or penalty of _____ % of the amount prepaid or ☐ without premium or penalty; (iii) a lot release schedule shall be provided, if applicable; (iv) a late payment charge not exceeding five percent of the payment may be assessed by the Seller for any payment more than seven (7) calendar days late; (v) the note and deed of trust shall otherwise be in form satisfactory to the Seller; (vi) other terms:

If this Contract provides for SELLER FINANCING, then (i) such financing shall be contingent upon review and approval by Seller of a current credit report on each Purchaser and a current personal financial statement of each Purchaser, which documents must be provided to Seller within _____ business days following execution of this Contract by both parties; (ii) Purchaser shall promptly record the applicable deed of trust, at its expense, at settlement; and (iii) Purchaser may not assign this Contract in whole or in part, without the prior written consent of Seller, which Seller shall be under no obligation to give.

(d) **PURCHASER'S REPRESENTATION AND WARRANTY:** Unless specified in a written contingency, neither this Contract nor Purchaser's financing is dependent or contingent on the sale or settlement or lease of other real property.

(e) **OTHER FINANCING TERMS:**

4. **DEPOSIT:** (a) Purchaser has made a Deposit with McLean Parlomar Inc. Realtors (the "Escrow Agent"), of Fifty Thousand Dollars ($ 50,000.00) (the "Deposit") ☐ in cash, ☒ by check, ☐ bank letter of credit, or ☐ by a note due and payable on _____, receipt of which is hereby acknowledged. Upon ratification of this Contract by all parties, the Deposit shall be held in escrow by the Escrow Agent. If the transaction does not settle, the Deposit shall be held or disbursed in accordance with the regulations of the Virginia Real Estate Board.

5. **LOAN FEES:** If a lender making a loan described in paragraph 3 requires a loan discount fee, commonly known as "points" (a "point" being 1% of the principal amount of the loan) as a condition of making the loan, Seller agrees to pay the first trust lender up to N/A points, and to pay the second trust lender up to N/A points. Except as otherwise agreed upon in paragraph 7 or in paragraphs 5 or 6 hereof, Purchaser shall pay all points, loan origination fees, charges and other costs imposed by a lender or otherwise incurred in connection with obtaining the loan or loans.

Prepared with ZipForm® by Vanderbilt Inc. 12200 Fifteen Mile Road, Clinton Township, Michigan 48038, (800) 383-9668
McLean Parlomar Inc. REALTORS® 203 Parlomar Drive, Ste., Charlottesville VA 22903 Phone: 804-293-1131 Fax: 804-293-7277

6. **FINANCING:** (a) This Contract is contingent upon Purchaser obtaining a written commitment or commitments, as the case may be, for the third Party financing or loan assumption required in paragraph 3. Purchaser agrees to make written application for such financing or assumption (including the payment of any required application, credit, or appraisal fees) within N/A business days of the date of acceptance of this Contract and to diligently pursue obtaining a commitment therefore.

(b) If Purchaser does not obtain such written commitment and so notifies Seller or Selling Broker or the Listing Broker in writing before 5:00 p.m. local time on N/A, then this Contract shall terminate upon giving of such notice and the Deposit shall be refunded to the Purchaser. If Purchaser does not obtain such a written commitment and notice thereof is not received by the deadline, or such later deadline as the Parties may agree upon in writing, the Seller shall have the right to (i) deem the financing contingency provided herein satisfied, or (ii) terminate this Contract by giving Purchaser written notice of such termination within five (5) business days after deadline. Failure of Purchaser to make such application or to diligently pursue obtaining such financing shall be a default hereunder.

(c) If the balance of the purchase price is to be paid in cash without third party or seller financing, Purchaser shall give Seller written verification from Purchaser's bank or other sources within _____ days after the date this Contract is fully ratified that Purchaser has or can have the balance of the purchase price in cash not later than the settlement date. If Purchaser fails to give such verification within such time, Seller may terminate this Contract by giving Purchaser written notice thereof within 10 days after the date by which verification was to be given.

7. **VA/FHA LOAN:** It is expressly agreed that notwithstanding any other provisions of this Contract, the Purchaser shall not be obligated to complete the purchase of the Property described herein or to incur any penalty by forfeiture of earnest money Deposits or otherwise unless the Purchaser has been given in accordance with HUD/FHA or VA requirements a written statement by the Federal Housing Commissioner, Veterans Administration, or a Direct Endorsement lender setting forth the appraised value of the Property of not less than $ N/A (the Purchase Price). The Purchaser shall have the privilege and option of proceeding with consummation of this Contract without regard to the amount of the appraised valuation. The appraised valuation is arrived at to determine the maximum mortgage the Department of Housing and Urban Development will insure. HUD does not warrant the value or the condition of the Property. The Purchaser should satisfy himself/herself that the price and condition of the Property are acceptable.

8. **SETTLEMENT; POSSESSION:** Settlement shall be made at attorney's office on or about June 30, 2000. Possession of the Property shall be given at settlement, unless otherwise agreed in writing by the Parties.

9. **BROKERAGE FEE:** Seller and other parties herein authorize and direct the settlement agent to disburse to Listing Broker and/or Selling Broker from the settlement proceeds their respective portions of the brokerage fee payable as a result of this sale and closing under the Contract. Listing Broker and/or Selling Broker shall deliver to the settlement agent, prior to settlement, a written statement signed by each broker entitled to all or a portion of the brokerage fee stating how such a fee and any additional sales incentives are to be disbursed.

10. **PROPERTY OWNERS' ASSOCIATION DISCLOSURE:** Seller represents that Property (check as applicable) is ☐ is not ☒ located within a development which is subject to the Virginia Property Owners' Association Act (Section 55-508 through 55-516 of the Code of Virginia). If the Property is within such a development, the Act requires Seller to obtain from the Property Owners' Association an association disclosure packet and provide it to the Purchaser. Purchaser may cancel this Contract within three (3) days after receiving the association disclosure packet or being notified that the association disclosure packet will not be available. The right to receive the association disclosure packet and the right to cancel this Contract are waived conclusively if not exercised before settlement.

11. **ACKNOWLEDGMENT OF DISCLOSURE OF BROKERAGE RELATIONSHIP:** (Check as applicable.)

A. ☐ The Parties confirm that in connection with the transaction contemplated by this Contract, the Listing Broker and the cooperating or Selling Broker and their salespersons have acted on behalf of Seller as Seller's representatives.

B. ☒ The Parties confirm that in connection with the transaction contemplated by this Contract, the Listing Broker and its salespersons have acted on behalf of Seller as Seller's representative, and/or the Purchaser's Broker and its salespersons, by agreement, have acted on behalf of Purchaser as Purchaser's representative.

C. ☒ The Parties also confirm, with respect to their own representation, that any required disclosure of the brokerage relationships described in paragraph 11(A) or (B) above was made in writing at the time specific real estate assistance was provided by the brokers named above or their respective salespersons.

D. ☐ The Listing Broker and its salespersons are acting on behalf of both the Seller and the Purchaser as disclosed dual representatives. An executed Disclosure of Dual Representation is attached.

E. ☐ The principal or supervising broker has designated _____ to represent the Seller in the transaction and _____ to represent the Purchaser in the transaction. _____, the principal or supervising broker, is acting on behalf of both the Seller and the Purchaser as a disclosed dual representative. An executed Disclosure of the Use of Designated Representatives is attached.

F. ☐ The parties also confirm that the disclosure of and consent to the brokerage relationships described in paragraph 11(D) or (E) above was made prior to the time the offer was made by Purchaser and delivered to Seller.

G. The duties of real estate licensees in Virginia are set forth in section 54.1-2130 et seq. of the Code of Virginia and in the regulations of the Virginia Real Estate Board. In addition to the information contained in this disclosure pertaining to brokerage relationships, there may be other information relevant to the transaction, which may be obtained from other sources.

12. **OCCUPANCY:** Purchaser ☐ does or ☐ does not intend to occupy the Property as primary residence.

13. **EXPENSE PRORATIONS:** Seller agrees to pay the expense of preparing the deed and the recordation tax applicable to grantors. Except as otherwise agreed herein, all other expenses incurred by Purchaser in connection with the Purchase, including without limitation title examination, insurance premiums, survey costs, recording costs and the fees of Purchaser's attorney, shall be borne by the Purchaser. All taxes, assessments, interest, rent escrow deposits, and other township fees, if any, shall be prorated as of the date of settlement. In addition to the Purchase Price, Purchaser agrees to pay Seller for all fuel oil remaining in the tank (if applicable) at the prevailing market price as of the date of settlement.

14. **TITLE:** At settlement Seller shall convey the Property to the Purchaser by a general warranty deed containing English covenants of title, free of all encumbrances, tenancies, and liens (for taxes and otherwise), but subject to such restrictive covenants and utility easements of record which do not materially and adversely affect the use of the Property for residential purposes or render the title unmarketable. If the Property does not abut a public road, title to the Property must include a recorded easement providing adequate access thereto. In the event this sale is subject to a financing contingency under paragraph 3(a) or 3(b), the access to a public road must be acceptable to such lender. If the examination reveals a title defect of a character that can be remedied by legal action or otherwise within a reasonable time, Seller, at its expense, shall promptly take such action as is necessary to cure such defect. If the defect is not cured within 60 days after Seller receives notice of the defect, then Purchaser shall have the right to (i) terminate this Contract, in which event the Deposit shall be returned to Purchaser, and Purchaser and Seller shall have no further obligations hereunder, or (ii) waive the defect and proceed to settlement with no adjustment to the Purchase Price. If the Seller has agreed to cure such defect, the parties agree that the settlement date prescribed in paragraph 8 shall be extended as necessary to enable Seller to cure such title defect, but not for more than 60 days.

15. **NOTICE TO PURCHASER(S):** Purchaser(s) should exercise whatever due diligence Purchaser(s) deems necessary with respect to information on any sexual offenders registered under Chapter 23 section 19.2-387 et seq. of Title 19. Such information may be obtained by contacting your local police department or the Department of State Police, Central Records Exchange at (804) 674-2000 or www.state.va.us/vsp/vsp.html.

Produced with ZipForm® by Mortgage Info, 13428 Pierson Mile Road, Clinton Township, Michigan 48038, (800) 383-0408 ©MLIMI1999

16. ROLL-BACK TAXES, IF ANY, WILL BE PAID AS FOLLOWS: Should Purchaser elect not to continue with land use taxation, any roll back taxes will be paid by the Purchaser.

17. RISK OF LOSS: All risk of loss or damage to the Property by fire, windstorm, casualty, or other cause is assumed by Seller until settlement. In the event of substantial loss or damage to the Property before settlement, Purchaser shall have the option of either (I) terminating this Contract and receiving the Deposit, or (II) affirming this Contract, in which event Seller shall assign to Purchaser all of Seller's rights under any policy or policies of insurance applicable to the Property.

18. EQUIPMENT CONDITION AND INSPECTION: Purchaser agrees to accept the Property at settlement in its present physical condition. Notwithstanding the foregoing and except as otherwise provided herein, Seller warrants that all appliances, heating and cooling equipment, plumbing and electric systems, and well and/or septic systems will be, at the time of settlement or of Purchaser's occupancy, whichever occurs first, in working condition. Seller agrees to deliver the Property in broom clean condition and to exercise reasonable and ordinary care in the maintenance and upkeep of the Property between the date this Contract is executed by Seller and the time of settlement or of Purchaser's occupancy, whichever occurs first. Seller grants to Purchaser or his representative the right to make a preoccupancy or presettlement inspection to verify that the condition of the Property conforms to this Contract.

19. WELL AND SEPTIC: If the Property is served by an on-site well or other natural water source or sewage disposal system or both, Seller agrees to furnish Purchaser with a certificate dated not more than 30 days prior to settlement of this Contract from the appropriate governmental authority, or from an acceptable private company, indicating that the water is free from contamination by coliform bacteria and that there is no evidence of malfunction of the sewage disposal system. If either is found defective, Seller shall take immediate steps to repair all defects at Seller's expense. If Seller fails to make such repairs within a reasonable time, Purchaser shall have the right to (I) terminate this Contract, in which event the Deposit shall be returned to Purchaser, and Purchaser and Seller shall have no further obligations hereunder, or (II) waive the defect and proceed to settlement with no adjustment to the Purchase Price.

20. WOOD INFESTATION INSPECTION AND REPORT: Prior to settlement, Seller shall provide Purchaser a report, dated not more than 30 days prior to date of settlement, from a wood infestation control company certified and licensed by the Commonwealth of Virginia and properly insured, concerning the presence of, or damage from termites or other wood-destroying insects or organisms. If the inspection reveals active infestation in the primary dwelling on the Property, Seller, at its expense, shall have the primary dwelling treated by a company licensed by the Commonwealth of Virginia and properly insured. If the inspection reveals damage to the primary dwelling on the Property, Seller shall have the damage repaired by a contractor licensed in the Commonwealth of Virginia; PROVIDED HOWEVER, that if the estimated aggregate cost of such treatment or repairs or both exceeds $750, Seller shall have the option to terminate this Contract unless Purchaser and Seller mutually agree to share the cost exceeding the above amount.

21. SELLER'S AND PURCHASER'S OPTIONS: In the event that the total cost of fulfilling Seller's obligations set forth in paragraphs 14, 18 and 19 above exceeds $ 5,000.00, Seller shall have the option to (I) pay the total cost, or (II) pay $5,000.00 to Purchaser and refuse to pay any excess over that amount. If Seller elects (II), Purchaser shall have the option to either accept the Property in its present condition, in which case the Seller shall pay $5,000.00 to Purchaser at settlement or terminate this Contract and recover the Deposit. If no amounts are entered in the above spaces in this paragraph, the Parties agree that the amount of each shall be $1,000.

22. VIRGINIA CONDOMINIUM ACT: If the Property is a condominium unit, this Contract is subject to the Virginia Condominium Act which requires Seller to furnish certain financial and other disclosures to Purchaser prior to entering into a binding contract of sale. If the required disclosures are not available on the date this Contract is fully executed by Seller and Purchaser (the "Date of Ratification"), Seller shall promptly request them from the Unit Owner's Association and provide them to Purchaser who shall acknowledge receipt in writing upon delivery. If Purchaser does not receive the disclosures within 15 days after the Date of Ratification or the disclosures are unacceptable to Purchaser, Purchaser may void this Contract by delivering notice to Listing Broker or Seller within three days after disclosures were received or due (if not received) and the Deposit shall be returned promptly. If more than 60 days elapse between the Date of Ratification and the date of settlement, Purchaser may request disclosure of any material changes from the Unit Owners' Association. Purchaser may void this Contract within three days after either receipt of disclosure that there are material changes or failure of the Unit Owners' Association to provide assurances that there have been no material changes within 10 days after receipt of the request.

23. DEFAULT: If Seller or Purchaser defaults under this Contract, the defaulting party, in addition to all other remedies available at law or in equity, shall be liable for the brokerage fee referenced in paragraph 9 hereof as if this Contract had been performed and for any damages and all expenses incurred by the non-defaulting party, the Listing Broker and Selling Broker in connection with this transaction and the enforcement of this Contract, including, without limitation to, attorneys' fees and costs, if any. Payment of real estate broker' fee as the result of a transaction relating to the Property which occurs subsequent to a default under this Contract, shall not relieve the defaulting party of liability for the fee of the Listing Broker in this transaction and for any damages and all expenses incurred by the non-defaulting party, the Listing Broker and the Selling Broker in connection with this transaction. In any action brought by Seller, Purchaser, Listing Broker or Selling Broker under this Contract or growing out of the transactions contemplated herein, the prevailing party in such action shall be entitled to receive from the non-prevailing party or parties, jointly and severally, in addition to any other damages or awards, reasonable attorneys' fees and costs expended or incurred in prosecuting or defending such action.

24. OTHER ITEMS: (Use this space for additional terms not covered in this Contract.) 1) See attached addenda which shall be a part of this Contract; 2) Purchaser's earnest money deposit shall be held in an interest bearing escrow account with interest accruing to Purchaser until Closing; 3) The Property is subject to the existing right-of-way allowing ingress and egress from Route 712 to the 258.78 acres (Albemarle Co. Tax Map 111, Parcel 48; Deed Book 1796, Page 144); 4) Should Purchaser default and/or breach this Contract, the Seller shall be entitled to retain the earnest money deposit of $50,000.00 as liquidated damages in lieu of all other remedies provided at law or in equity against the Purchaser.

25. MECHANICS LIEN NOTICE: (a) Virginia law (Section 43-1 et seq.) permits persons who have performed labor or furnished materials for the construction, removal, repair or improvement of any building or structure to file a lien against the Property. This lien may be filed at any time after the work is commenced or the material is furnished, but not later than the earlier of (I) 90 days from the last day of the month in which the lienor last performed work or furnished materials or (II) 90 days from the time the construction, removal, repair or improvement is terminated. AN EFFECTIVE LIEN FOR WORK PERFORMED PRIOR TO THE DATE OF SETTLEMENT MAY BE FILED AFTER SETTLEMENT. LEGAL COUNSEL SHOULD BE CONSULTED.

(b) Seller shall deliver to Purchaser at settlement an affidavit, on a form acceptable to Purchaser's lender, if applicable, signed by Seller that no labor or materials have been furnished to the Property within the statutory period for the filing of mechanics' or materialmen' liens against the Property. If labor or materials have been furnished during the statutory period, Seller shall deliver to Purchaser an affidavit signed by Seller and the person(s) furnishing the labor or materials that the costs thereof have been paid.

26. NOTICE OF DISCLAIMER OR DISCLOSURE PURSUANT TO VIRGINIA RESIDENTIAL PROPERTY DISCLOSURE ACT:
(a) Disclaimer ☒ is ☐ is not attached. (b) Disclosure ☐ is ☒ is not attached.
(ATTACHMENT DOES NOT MAKE DISCLAIMER OR DISCLOSURE PART OF CONTRACT)

27. HOMEPURCHASER'S INSPECTION: Purchaser may have a home inspection of the Property performed at Purchaser's cost to determine the condition of the Property's appliances and structural, mechanical, plumbing and electrical systems. Purchaser ☐ WAIVES ☒ DESIRES a home inspection of the Property to be performed at Purchaser's expense. If the Purchaser desires a home inspection, see attached home inspection addendum.

Produced with ZipForm® by Zipform Inc. 18025 Fifteen Mile Road, Clinton Township, Michigan 48035, (800) 383-9805 (6/01)VRLRFD

28. LEAD-BASED PAINT INSPECTION: This paragraph applies only if the Property was built prior to 1978 and is not exempt from the provisions of the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4852d) and regulations promulgated pursuant thereto.
(Check as applicable):

☐ (a) Attached to this Contract and made a part hereof by this reference is a fully executed "Disclosure of Information and Acknowledgment Lead-Based Paint and/or Lead-Based Paint Hazards."

☐ (b) Notwithstanding any other provision of this Contract to the contrary, Purchaser shall have ten (10) days after the date this Contract is fully ratified to conduct, at Purchaser's sole cost and expense, a risk assessment or inspection of the Property for the presence of "lead-based paint" and/or "lead-based paint hazard", as defined under 42 U.S.C. 4852d (the "LBP Deficiency"), and to furnish a copy of the assessment or inspection report and any necessary corrective actions to Seller. If the report reveals the presence of LBP Deficiency, Seller shall notify Purchaser in writing within five (5) days of receipt of such report (the "Seller Response Period") whether Seller intends to take the corrective actions called for in the report. If Seller notifies Purchaser that it does not intend to take the actions called for in the report, or if Seller does not notify Purchaser of Seller's intent within the Seller Response Period, Purchaser shall have the right either (i) to terminate this Contract by written notice to Seller within five (5) days after the end of the Seller Response Period, in which event the Deposit will be returned to Purchaser and neither party shall have any further obligations to the other hereunder, or (ii) to waive this contingency and proceed to settlement in accordance with the provisions of this Contract, in which event Seller shall have no obligation to remedy the LBP Deficiency. If Seller notifies Purchaser within the Seller Response Period that Seller will remedy the LBP Deficiency, or if the parties otherwise agree in writing on the corrective actions to be taken by Seller, Seller shall have until the date settlement occurs hereunder to perform such remedy. Time shall be of the essence for each of the provisions of this paragraph.

☐ (c) Purchaser waives its right to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards.

29. NOTICE TO PURCHASER REGARDING SETTLEMENT AGENT AND SETTLEMENT SERVICES:

Choice of Settlement Agent: You have the right to select a settlement agent to handle the closing of this transaction. The settlement agent's role in closing your transaction involves the coordination of numerous administrative and clerical functions relating to the collection of documents and the collection and disbursement of funds required to carry out the terms of the contract between the parties. If part of the purchase price is financed, your lender will instruct the settlement agent as to the signing and recording of loan documents and the disbursement of loan proceeds. No settlement agent can provide legal advice to any party to the transaction except a settlement agent who is engaged in the private practice of law in Virginia and who has been retained or engaged by a party to the transaction for the purpose of providing legal services to that party.

Escrow, closing and settlement services guideline: The Virginia State Bar issues guidelines to help settlement agents avoid and prevent the unauthorized practice of law in connection with furnishing escrow, settlement or closing services. As a party to a real estate transaction, you are entitled to receive a copy of these guidelines from your settlement agent, upon request, in accordance with the provision of the Consumer Real Estate Settlement Protection Act.

30. DISPUTE RESOLUTION SYSTEM CLAUSE: The Parties who have initialed this paragraph below hereby agree that if mediation services are available, any dispute or claim arising out of or relating to this Contract, the breach of this Contract or the services provided in relation to this Contract, shall be submitted to mediation in accordance with the Rules and Procedures of the Dispute Resolution System. Disputes shall include representations made by the Purchaser(s), Seller(s) or any real estate broker or other person or entity in connection with the sale, purchase, financing, condition or other aspect of the Property to which this Contract pertains, including without limitation allegations of concealment, misrepresentation, negligence and/or fraud. Any agreement signed by the Parties pursuant to the mediation conference shall be binding. If the Parties cannot reach a mutually agreeable settlement, they are free to arbitrate or litigate their dispute as if the mediation never took place.

The following matters are excluded from mediation hereunder: (a) judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage, or land contract; (b) an unlawful detainer action; (c) the filing or enforcement of a mechanic's lien; (d) any matter which is within the jurisdiction of a probate court; or (e) violation of a state's real estate license laws. The filing of a judicial action to enable the recording of a notice of pending action, for order of attachment, receivership injunction, or other provisional remedies, shall not constitute a waiver of the right to mediate under this provision, nor shall it constitute a breach of duty to mediate.

This provision shall be binding on those parties who have initialed this paragraph, even if not all the parties have so initialed it, and shall survive settlement and conveyance of title to the Property. The failure of any party to initial this paragraph shall not affect the validity or the enforcement of any other provision of this contract as to any party executing this contract.

By initialing in the place below, you hereby acknowledge that you have received, read and understand the standard announcement brochure for the Dispute Resolution System and agree to submit disputes as described above to mediation in accordance with the Dispute Resolution System.

Purchasers' Initials	Sellers' Initials	Listing Brokers' Initials	Selling Brokers' Initials

31. MISCELLANEOUS: This Contract may be signed in one or more counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same document. Documents delivered by facsimile machine shall be considered as originals. Unless otherwise specified herein, "days" mean calendar days. For the purpose of computing time periods, the first day shall be the day following the date this Contract is fully ratified. This Contract represents the entire agreement between Seller and Purchaser and may not be modified or changed except by written instrument executed by the Parties; PROVIDED, HOWEVER, that the provisions of paragraph 9 of this Contract may not be modified or changed without the written consent of the Listing Broker and the Selling Broker. This Contract shall be construed, interpreted and applied according to the laws of the Commonwealth of Virginia and shall be binding upon and shall inure to the benefit of the heirs, personal representatives, successors, and assigns of the Parties. To the extent any handwritten or typewritten terms herein conflict with or are inconsistent with the printed terms hereof, the handwritten or typewritten terms shall control. UNLESS OTHERWISE PROVIDED HEREIN, THE REPRESENTATIONS AND WARRANTIES MADE BY SELLER HEREIN AND ALL OTHER PROVISIONS OF THIS CONTRACT SHALL BE DEEMED MERGED INTO THE DEED DELIVERED AT SETTLEMENT AND SHALL NOT SURVIVE SETTLEMENT.

32. ACCEPTANCE: This Contract, when signed by Purchaser, shall be deemed an offer and shall remain in effect until _____ (time), _____. If not accepted by Seller within that time by delivery of a signed copy of this Contract to the Purchaser, or an agent for Purchaser, it shall become null and void.

WITNESS the following duly authorized signatures and seals: (SEPARATE ALL COPIES BEFORE SIGNING BELOW)
Seller accepts this offer this _____ day of _____, _____.

3/1/2000 DATE	(SEAL) SELLER
144-28-9613 SOCIAL SECURITY NUMBER	
3-1-2000 DATE	Barbara A Lopez (SEAL) SELLER
103-34-5782 SOCIAL SECURITY NUMBER	

2/28/2000 DATE	Andrew Lee Hirsfield (SEAL) PURCHASER
238-96-8305 SOCIAL SECURITY NUMBER	
_____ DATE	_____ (SEAL) PURCHASER
SOCIAL SECURITY NUMBER	

COPYRIGHT© 1999 by the Virginia Association of REALTORS®. All rights reserved. This form may be used only by members in good standing of the Virginia Association of REALTORS®. The reproduction of this form, in whole or in part, or the use of the mark "Virginia Association of REALTORS®", in connection with any other form, is prohibited without prior written consent of the Virginia Association of REALTORS®.

Receipt of deposit per Paragraph 4 above is hereby acknowledged.
2/15/00 (SEAL)

Produced with ZipForm® by Zerulent Inc. 18023 Fifteen Mile Road, Clinton Township, Michigan 48035, (800) 383-9668

VIRGINIA ASSOCIATION OF REALTORS®
ADDENDUM TO CONTRACT OF PURCHASE
ADDENDUM # 1 of ____

McLean Faulconer Inc. REALTORS®

This ADDENDUM, TO CONTRACT OF PURCHASE, which is attached to and made a part of contract of purchase (the "Contract") dated February 14, 2000, between Kenneth R. Lape and Barbara G. Lape,* (the "Seller") and Audrey Lee Heisfield or Laurel Ridge LLC (the "Purchaser") for the sale of that certain real property and all improvements thereon located in the County or City of Albemarle, Virginia, and described in the Contract as Laurel Ridge provides as follows:

* Trustees for the Kenneth R. Lape Living Trust

This Contract is contingent upon the following:

1) STUDY PERIOD: Purchaser shall have a study period for twenty-one (21) business days from the date this Contract is executed by both Purchaser and Seller. If within said twenty-one (21) business day study period, Purchaser notifies both Seller or an agent of Seller, in writing, of her intent not to purchase subject property, in her sole and absolute judgment, Purchaser may declare this Contract null and void. In this event, Purchaser shall receive a refund of her deposit and all parties shall be relieved of further liability hereunder. In the absence of such timely notice (time shall be of the essence) from the Purchaser that she elects to declare this Contract null and void, this Contract shall be in full force and effect.

2) EIGHTEEN (18) MONTH OPTION: Seller grants Purchaser, for the purchase price of FOUR HUNDRED FIFTY THOUSAND DOLLARS ($450,000.00), an eighteen (18) month option on the remaining 258.78 acres (Albemarle County Tax Map 111, Parcel 45; Deed Book 1706, Page 144). At any time during the eighteen (18) month period, Purchaser may elect to purchase and close on said property with thirty (30) days notice to Seller for the pre-agreed upon price of FOUR HUNDRED FIFTY THOUSAND DOLLARS ($450,000.00) for said option. Purchaser shall make a non-refundable deposit, payable to Seller, of TWENTY-FIVE THOUSAND DOLLARS ($25,000.00) at closing of the main house and 98.78 acres. Should Purchaser purchase said 258.78 acre parcel within the eighteen (18) month period, the TWENTY-FIVE THOUSAND DOLLAR ($25,000.00) deposit shall be applied towards the purchase price of FOUR HUNDRED FIFTY THOUSAND DOLLARS ($450,000.00). Should Purchaser not purchase said 258.78 acre parcel within the eighteen (18) month period, the TWENTY-FIVE THOUSAND DOLLAR ($25,000.00) non-refundable deposit shall remain with Seller.

WITNESS the following duly authorized signatures and seals:

3/1/2000	(SEAL)	2/28/2000	(SEAL)
Date	Seller	Date	Purchaser
3-1-2000	(SEAL)	____	(SEAL)
Date	Seller	Date	Purchaser

COPYRIGHT© 1999 by the Virginia Association of REALTORS®. All rights reserved. This form may be used only by members in good standing of the Virginia Association of REALTORS®. The reproduction of this form, in whole or in part, or the use of the name "Virginia Association of REALTORS®", in connection with any other form, is prohibited without the prior written consent of the Virginia Association of REALTORS®.

VAR FORM 600C REV. 2/99

· McLEAN ·
FAULCONER INC.
Farm, Estate and Residential Brokers
503 Faulconer Drive, Suite 5 Charlottesville, Virginia 22903
Phone: (804) 295-1131 Fax: (804) 293-7377

web site
www.mcleanfaulconer.com

e-mail
homes@mcleanfaulconer.com

INSPECTION ADDENDUM

ADDENDUM TO CONTRACT DATED February 14, 2000, BETWEEN

Kenneth R. Lane and Barbara G. Lane, Trustees for the Kenneth R. Lane Living Trust (herein called "Seller"),

AND Andrew Lee Hatfield or Laurel Ridge LLC (herein called "Buyer"), AND

Montague Miller & Company and McLean Faulconer Inc. Realtors (herein called "Realtor(s)"), to

Purchase and Sell property known as Laurel Ridge.

This Contract is contingent upon the Purchasers obtaining, at Purchaser's expense, within ten (10) business days of acceptance of this Contract, a satisfactory home and property inspection by a licensed inspector and/or contractor(s) of Purchaser's choice, including, but not limited to, the structural, mechanical, electrical, plumbing, roof and gutters systems of the property. If the results of such inspection are unsatisfactory to Purchaser, Purchaser shall provide Seller with copy of said report and written statement stating the reasons why the Purchaser is not satisfied within thirteen (13) business days of signing of this Contract by both parties. In that event, Seller shall have the option to correct said condition(s) at his expense to conform to building code of City or County in which property is located, or to terminate this agreement. Seller must notify Purchaser in writing of his decision within three (3) business days of receiving said report from Purchaser. Failure of the Purchaser to comply by the date indicated shall be deemed a waiver of this contingency. If Sellers fail to respond or express their intent not to correct the condition(s), Purchaser may terminate this Contract and recover all earnest money deposits. If Seller terminates this agreement, as called for above, this Contract shall be declared null and void, and all earnest money deposits returned to Purchaser. If Seller elects to terminate this agreement, Purchaser, within twenty-four (24) hours after receiving notification of termination, shall have the right to reinstate the contract by relieving the Seller of any obligation to correct said deficiencies.

WITNESS the following duly authorized signatures and seals:

Seller _____ Purchaser _____

Seller _____ Purchaser _____

· McLEAN ·
FAULCONER INC.
Farm, Estate and Residential Brokers
web site www.mcleanfaulconer.com
503 Faulconer Drive, Suite 5 · Charlottesville, Virginia 22903
Phone: (804) 295-1131 Fax (804) 293-7377
e-mail: homes@mcleanfaulconer.com

RADON ADDENDUM

ADDENDUM TO CONTRACT DATED February 14, 2000, BETWEEN

Kenneth R. Lane and Barbara G. Lane, Trustees for the Kenneth R. Lane Living Trust (herein called "Seller"),

AND Audrey Lee Haisfield or Laurel Ridge LLC (herein called "Buyer"), AND

Montague Miller & Company and McLean Faulconer Inc. Realtors (herein called "Realtor(s)"), to

Purchase and Sell property known as Laurel Ridge.

This Contract is contingent upon the following:

Purchaser, at his expense, will have the property inspected for the presence of Radon by a company meeting the Commonwealth of Virginia's requirements for providing professional radon testing services to the public, and testing the Property in accordance with the U.S. Environmental Protections Agency's guidelines for testing residential properties involved in real estate transactions. Seller agrees to cooperate with inspector by making best efforts to keep all doors and windows closed during the testing period. The inspection shall be completed and the Seller notified of the results within ten (10) business days of the Purchaser's receipt of a fully executed copy of the Contract. If the radon testing professional believes the original test is unreliable due to possible tampering with the testing device, power failure, equipment malfunction or other condition out of the Purchaser's control, another five (5) business days will be allowed for re-testing. If Radon is found to be present at levels that exceed 4 pCi/L (picocuries per liter), the action level established by the Environmental Protection Agency, then Seller may have five (5) business days to retest at Seller's expense. If Radon level is again found to exceed 4pCi/L, then Seller has the following options:

A) Seller, at Seller's expense, will correct the condition and furnish the Purchaser with a certification, at Seller's expense, demonstrating that the condition has been remedied before the date of settlement or within 45 days of ratification of the Contract, whichever shall occur first; or

B) Seller may refuse to remedy the condition in which case the Purchaser may, at his option, terminate the Contract or waive this contingency by providing written notice to the Seller within five (5) business days of Seller's refusal. In the event the Contract is terminated, ALL PARTIES AGREE TO EXECUTE AN APPROPRIATE RELEASE OF THIS SALES CONTRACT RETURNING ALL MONIES, WHICH HAD BEEN DEPOSITED IN THE BROKER'S ESCROW ACCOUNT, TO THE PURCHASER.

The Purchaser may remove this contingency without cause within seven (7) days of being notified of Radon levels in excess of 4 pCi/L.

WITNESS the following duly authorized signatures and seals:

Seller _____ Purchaser _____

Seller _____ Purchaser _____

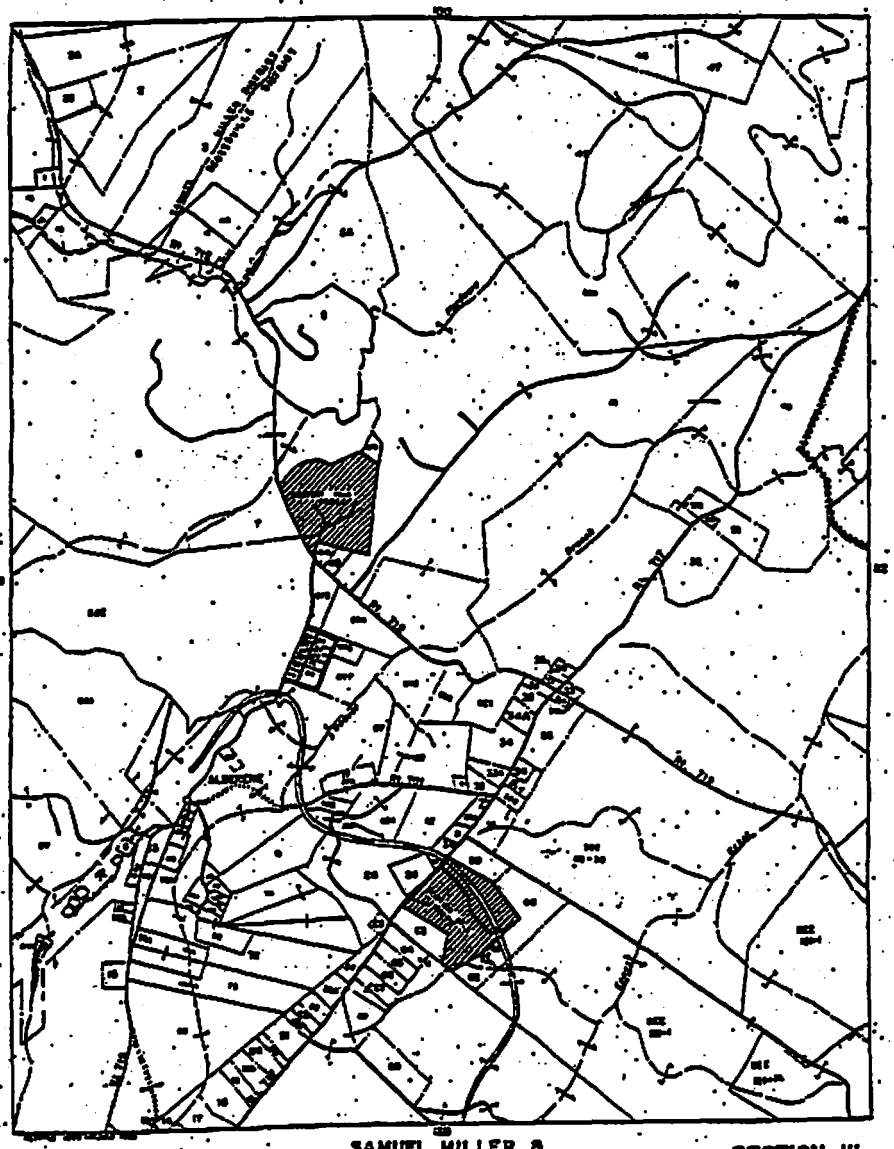
RESIDENTIAL PROPERTY DISCLAIMER STATEMENT

NOTICE TO SELLER AND PURCHASER

The Virginia Residential Property Disclosure Act requires the owner of certain residential real property, whenever the property is to be sold or leased with an option to buy, to furnish to the purchaser either (a) a RESIDENTIAL PROPERTY DISCLAIMER STATEMENT stating that the owner makes no representations or warranties as to the condition of the property, except as otherwise provided in the purchase contract, or (b) a RESIDENTIAL PROPERTY DISCLOSURE STATEMENT disclosing defects in the condition of the property actually known by the owner. Certain transfers of residential property are excluded from this requirement (see the exemptions listed on the reverse side).

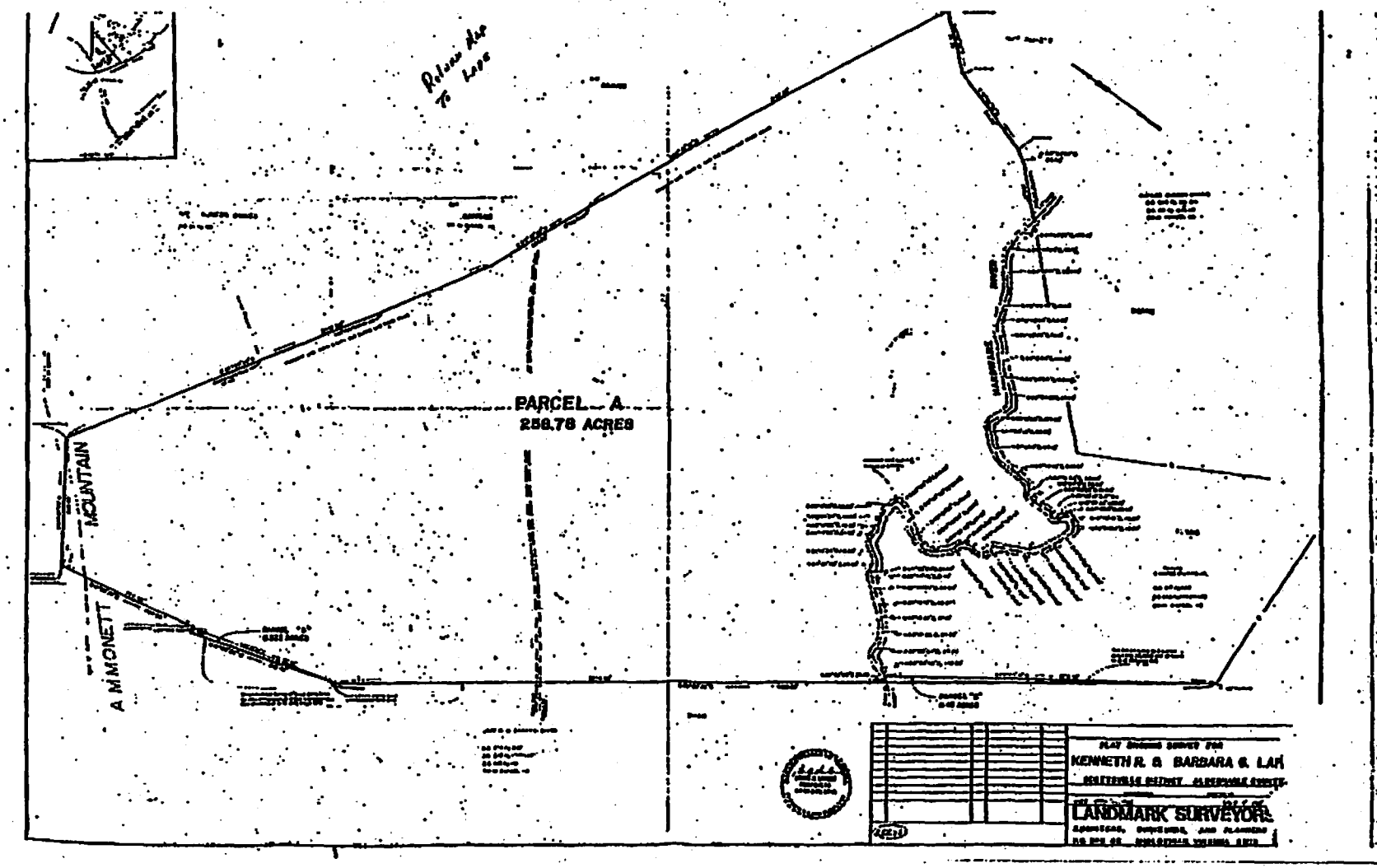
◆◆◆

ALBEMARLE COUNTY



SAMUEL MILLER &
SCOTTSVILLE DISTRICTS

SECTION III


PARCEL A
258.78 ACRES
A MONETT MOUNTAIN
KENNETH R. & BARBARA G. LAN
LANDMARK SURVEYORS

RICHMOND AND FISHBURNE, L.L.P.
ATTORNEYS AT LAW
QUEEN CHARLOTTE SQUARE
214 EAST HIGH STREET
P. O. BOX 559
CHARLOTTESVILLE, VIRGINIA 22902-0559
(804) 977-8590
FAX (804) 296-9861
www.richfish.com

JOSEPH W. RICHMOND, JR.
WENDALL L. WINN, JR.
MATTHEW B. MURRAY[a]
THOMAS G. NOLAN
CHRISTINE THOMSON
JOSEPH M. COCHRAN
MARK J. NELSON
PATRICIA P. SHIELDS
KATHERINE T. MUTH
JEFFREY R. ADAMS

[a] ALSO ADMITTED IN DC

JOSEPH W. RICHMOND
(1916-1986)

JUNIUS R. FISHBURNE
(1915-1991)

June 28, 2000

BY HAND

~~VIA FACSIMILE: 293-5017~~

PLAINTIFF'S EXHIBIT NO. 2

Forbes R. Reback, Esq.
Reback & Slayton
Post Office Box 20
Charlottesville, Virginia 22902

Re: Sale by Ken & Barbara Lape to Laurel Ridge, L.L.C.
Closing Date: June 30, 2000

Dear Forbes:

I met with Ken and Barbara Lape this afternoon. They have signed the Deed of Bargain and Sale and other closing documents, and we will be ready to close this Friday, June 30. The Lapes have removed all of their furniture and furnishings from the house, and they are anxious to close as scheduled on June 30, as set forth in the Contract.

As I mentioned on the telephone this afternoon, there is some farm equipment that the Lapes have offered to sell to your clients. A list of the farm equipment with the selling price is enclosed with this fax. The total is $23,270. Your clients have previously indicated that they would like to buy this farm equipment. I would appreciate it if you would check with your clients and confirm that this is the case so that we can either add this amount to the purchase price at closing or handle this by a separate check outside of closing.

I would appreciate it if you would talk to your clients and let me know if, in fact, they still intend to purchase the farm equipment.

I look forward to hearing from you.

Sincerely,

Wendall

Wendall L. Winn, Jr.

WLW/lg

REBACK & SLAYTON
Attorneys and Counsellors at Law

Forbes R. Reback
Marshall M. Slayton

A. Ward Sims
Of Counsel

700 East High Street
Post Office Box 20
Charlottesville, VA 22902
Telephone (804) 979-7900
Facsimile (804) 293-5017

June 29, 2000

VIA FACSIMILE AND MAIL
Wendall L. Winn, Jr., Esq.
Richmond and Fishburne, LLP
214 East High Street
Charlottesville, VA 22902-5177

Re: Haisfield Purchase of 98.78 Acres from Lape

Dear Wendall:

The purchaser's examination of title to the above-referenced property has revealed restrictive covenants which materially and adversely affect the use of the property for residential purposes and/or render the title unmarketable ("Title Defect"). The Title Defect is in the nature of a building restriction which states: "The Grantors covenant for themselves, their successors and assigns, that for a period of thirty (30) years from the date of this deed, no building shall be built on the current Albemarle County Tax Map Parcel 111-5A (a portion of the 98.81 residue parcel of Grantors as depicted on the Plat) which may be visible from the main residence (Oakmont) located on the property conveyed by this deed." I have attached a copy of the deed for your review.

The purchaser was unaware of the Title Defect until today.

At this time, the purchaser is unaware of whether or not the Title Defect can be remedied by legal action or otherwise within a reasonable time. If so, Seller is obligated, at its expense, to promptly take such action as is necessary to cure such Title Defect. If the Title Defect is not cured within sixty (60) days after the date of this notice, the purchaser will make an election to either: (1) terminate this contract, in which event the deposit shall be returned to the purchaser, and purchaser and seller shall have no further obligations hereunder; or (2) waive the Title Defect and proceed to settlement with no adjustment to the purchase price.

Sincerely,

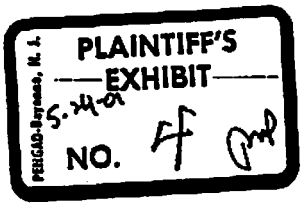
Marshall M. Slayton

cc: Audrey Lea Haisfield (w/encl.)(via facsimile and mail)
Edward H. Bain, Jr., Esq. (w/encl.)(via facsimile and mail)
C. Lamar Garren, Esq. (w/encl.)(via facsimile and mail)
Mr. Stephen T. McLean (w/encl.)(via facsimile and mail)

REBACK & SLAYTON
Attorneys and Counsellors at Law

Forbes R. Reback
Marshall M. Slayton

A. Ward Sims
Of Counsel



700 East High Street
Post Office Box 20
Charlottesville, VA 22902
Telephone (804) 979-7900
Facsimile (804) 293-5017

June 30, 2000

VIA FACSIMILE AND MAIL
Wendall L. Winn, Jr., Esq.
Richmond and Fishburne, LLP
214 East High Street
Charlottesville, VA 22902-5177

Re: Amendment to June 29, 2000 Letter (Haisfield Purchase of 98.78 Acres from Lape)

Dear Wendall:

The purchaser's examination of title to the above-referenced property has revealed restrictive covenants which materially and adversely affect the use of the property for residential purposes and/or render the title unmarketable ("Title Defect"). The Title Defect is in the nature of a building restriction which states: "The Grantors covenant for themselves, their successors and assigns, that for a period of thirty (30) years from the date of this deed, no building shall be built on the current Albemarle County Tax Map Parcel 111-5A (a portion of the 98.81 residue parcel of Grantors as depicted on the Plat) which may be visible from the main residence (Oakmont) located on the property conveyed by this deed." I have attached a copy of the deed for your review.

The purchaser was unaware of the Title Defect until today.

At this time, the purchaser is unaware of whether or not the Title Defect can be remedied by legal action or otherwise within a reasonable time. If so, Seller is obligated, at its expense, to promptly take such action as is necessary to cure such Title Defect. If the Title Defect is not cured within sixty (60) days after the date of this notice, the purchaser will make an election to either: (1) terminate this contract, in which event the deposit shall be returned to the purchaser, and purchaser and seller shall have no further obligations hereunder; or (2) waive the Title Defect and proceed to settlement with no adjustment to the purchase price.

Pending receipt of the Seller's advise as to whether or not the Seller is going to commence its efforts to cure the Title Defect, the settlement date described in Paragraph 8 of the contract is extended as necessary to enable Seller to cure the Title Defect, but not for more than sixty (60) days.

If the Title Defect is not resolved as required, please consider the contract terminated and return the deposit to Audrey Lea Haisfield.

Sincerely,

Marshall M. Slayton

cc: Audrey Lea Haisfield (w/encl.)(via facsimile and mail)
Edward H. Bain, Jr., Esq. (w/encl.)(via facsimile and mail)
C. Lamar Garren, Esq. (w/encl.)(via facsimile and mail)
Mr. Stephen T. McLean (w/encl.)(via facsimile and mail)

RICHMOND AND FISHBURNE, L.L.P.
ATTORNEYS AT LAW
QUEEN CHARLOTTE SQUARE
214 EAST HIGH STREET
P. O. BOX 559
CHARLOTTESVILLE, VIRGINIA 22902-0559
(804) 977-8590
FAX (804) 296-9861
www.richfish.com

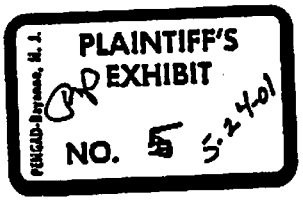
JOSEPH W. RICHMOND, JR.
WENDALL L. WINN, JR.
MATTHEW B. MURRAY°
THOMAS O. NOLAN
CHRISTINE THOMSON
JOSEPH M. COCHRAN
MARK J. NELSON
PATRICIA P. SHIELDS
KATHERINE T. MUTH
JEFFREY R. ADAMS

° ALSO ADMITTED IN DC

JOSEPH W. RICHMOND
(1916-1986)

JUNIUS R. FISHBURNE
(1915-1991)

June 30, 2000



VIA FACSIMILE: 293-5017
AND FIRST-CLASS MAIL

Marshall M. Slayton, Esq.
Reback & Slayton
Post Office Box 20
Charlottesville, Virginia 22902

Re: Haisfield Purchase of 98.78 Acres from Lape

Dear Marshall:

I am writing to respond to your letter of June 29, 2000.

The restrictive covenants contained in the Deed from Mr. and Mrs. Lape to Mr. and Mrs. Moses (Deed Book 1401, page 449) do not materially and adversely affect the use of the property for residential purposes or render the title unmarketable. There is an existing residence on the Lape property, which means that the Lape property is available immediately for occupation by the Haisfields for residential purposes. Furthermore, as a practical matter, there is an existing buffer of trees along the property line between the Lape tract and the Moses tract which would permit the Haisfields to construct a building on the Lape property which would not be visible from the main residence on the Moses tract. In addition, the topography of the land between the Moses tract and the Lape tract is hilly and rolling, which would obscure the view from the Moses tract looking to the north and west to the Lape tract.

The restrictive covenant referred to in your letter is not a title defect. Title to the property is marketable and insurable and meets the requirements of the Contract of Purchase.

The Contract gave your clients a study period of 21 business days, which was ample opportunity for them to have reviewed the restrictive covenants and file an objection. The study period expired long ago without any mention of a concern about the restrictive covenants.

Mr. and Mrs. Lape have vacated the property and are in a position to close today. We hereby tender a copy of the Deed, Mechanic's Lien Affidavit and Closing Statement which have been signed by Mr. and Mrs. Lape, and we call on your clients to close no later than 5:00 p.m. on Friday, July 7. If they do not close by that date, we will consider them to be in breach of contract, and they will forfeit the $50,000 earnest money deposit. In this event, the Lapes intend to put the property back on the market in an effort to find another purchaser. We ask that your clients honor their obligation under the Contract and authorize you to proceed to closing today. I look forward to hearing from you.

Sincerely,

Wendall Winn

Wendall L. Winn, Jr.

WLW/lg
Enclosures
cc: Mr. & Mrs. Kenneth Lape
Carol Clarke (via fax)
Stephen T. McLean (via fax)
lapeltr2slayton.wpd

RICHMOND AND FISHBURNE, L.L.P.
ATTORNEYS AT LAW
QUEEN CHARLOTTE SQUARE
214 EAST HIGH STREET
P. O. BOX 559
CHARLOTTESVILLE, VIRGINIA 22902-0559
(804) 977-8590
FAX (804) 296-9861
www.richfish.com

JOSEPH W. RICHMOND, JR.
WENDALL L. WINN, JR.
MATTHEW B. MURRAY[a]
THOMAS G. NOLAN
CHRISTINE THOMSON
JOSEPH M. COCHRAN
MARK J. NELSON
PATRICIA P. SHIELDS
KATHERINE T. MUTH
JEFFREY R. ADAMS

[a] ALSO ADMITTED IN DC

JOSEPH W. RICHMOND
(1916-1986)

JUNIUS R. FISHBURNE
(1913-1991)

June 23, 2000

BY FACSIMILE
293-5017

Forbes R. Reback, Esquire
Reback & Slayton
P. O. Box 20
Charlottesville, Virginia 22902

PLAINTIFF'S EXHIBIT
NO. 6
5-24-01

Re: Lape/Haisfield

Dear Forbes:

Following up on our conversation yesterday, I enclose a proposed deed and closing statement for the above-referenced matter. Please keep me informed as to the status of closing. My clients are understandably very concerned about the transaction given the information you have provided.

We will be prepared to close on the 30th as required by the contract.

Sincerely,

Joe

Joseph M. Cochran

JMC/jlh
00-lape.haisfield.reback.ltr

cc: Mr. and Mrs. Kenneth R. Lape
Mrs. Carol Clarke, Montague Miller & Co. (by fax)

PLAINTIFF'S EXHIBIT
5-24-01
NO: 7

Prepared by: Payne & Hodous

THIS DEED is made as of May 20, 1998, by and between KENNETH R. LAPE and BARBARA G. LAPE, husband and wife, as Grantors; and KENNETH R. LAPE, TRUSTEE OF THE KENNETH R. LAPE LIVING TRUST, whose address is 2992 Plank Road, North Garden, VA 22959, and BARBARA GSAND LAPE, TRUSTEE OF THE BARBARA GSAND LAPE LIVING TRUST, whose address is 2992 Plank Road, North Garden, VA 22959, ("Trustees") under the provisions of their respective trust agreements dated January 23, 1997 (the "Trust Agreements"), as Grantees.

WITNESSETH:

THAT for and in consideration of the premises, Kenneth R. Lape and Barbara G. Lape, husband and wife, do hereby grant and convey, with Special Warranty, unto Kenneth R. Lape, Trustee of the Kenneth R. Lape Living Trust, under the provisions of the trust agreement dated January 23, 1997, an undivided fifty percent (50%) interest, and unto Barbara Gsand Lape, Trustee of the Barbara Gsand Lape Living Trust, under the provisions of the trust agreement dated January 23, 1997, the remaining undivided fifty percent (50%) interest, as tenants in common, in and to the following described property located in the County of Albemarle, Virginia (the "Property"):

PARCEL ONE:

All that certain tract or parcel of land and all appurtenances, easements and improvements thereunto pertaining or belonging, in Albemarle County, Virginia, located on the Hardware River, in the Scottsville Magisterial District containing 258.78 acres, more or less, and more particularly described as Parcel A on plat showing survey prepared for Kenneth R. and Barbara G. Lape by Landmark Surveyors, Inc. dated April 12, 1983, recorded in the Clerk's Office of the Circuit Court of Albemarle County, Virginia in Deed Book 761, page 204; together with a non-exclusive right-of-way for a road 20 feet in width, running from State Route 712 to the aforesaid property, including all necessary easements for construction, drainage, cuts, fills and embankments necessary to construct, support and maintain said 20 foot wide road bed, said right-of-way being more particularly described in a deed from

Carolyn B. Randolph and others to Shirley Vance Wilkins, Jr. dated March 16, 1977 and recorded in said Clerk's Office in Deed Book 617, page 577; being in all respects the same property conveyed to Kenneth R. Lape and Barbara G. Lape, husband and wife, by Deed of Shirley Vance Wilkins, Jr. and Edith B. Wilkins, his wife, dated April 14, 1983 and recorded in said Clerk's Office in Deed Book 761, page 199.

PARCEL TWO:

All that certain tract or parcel of land with all improvements thereon and all appurtenances thereunto belonging, situated in the Scottsville Magisterial District of Albemarle County, Virginia, containing 147.326 acres, more or less, as shown and more particularly described on plat of A. R. Sweet and Associates, Engineers and Surveyors, dated May, 1958, which plat is recorded in the Clerk's Office of the Circuit Court of Albemarle County in Deed Book 354, page 473, LESS AND EXCEPT HOWEVER, 48.725 acres, more or less, conveyed to Hamilton Moses, III by Deed of Kenneth R. Lape and Barbara G. Lape, dated May 3, 1994 and recorded in said Clerk's Office in Deed Book 1401, page 449; being all of the residue, after said off-conveyance, of the property conveyed to Kenneth R. Lape and Barbara G. Lape, husband and wife, by Deed of Carolyn B. Randolph and Larned D. Randolph, her husband, dated August 22, 1979, and recorded in said Clerk's Office in Deed Book 678, page 662.

98.601 acre

No party dealing with either of the Trustees in relation to the Property and their respective interests in such Property in any manner whatsoever shall be obliged (a) to see to the application of any purchase money, rent or money borrowed or otherwise advanced on the Property, (b) to see that the terms of the trusts have been complied with, (c) to inquire into the authority, necessity or expediency of any act of the Trustees or (d) be privileged to inquire into any of the terms of the Trust Agreements creating said trusts. Every deed, mortgage, lease or other instrument executed by either of the Trustees in relation to the Property and their respective interests in such Property shall be conclusive evidence in favor of every person claiming any right, title or interest thereunder: (a) that at the time of the delivery thereof the respective trust was in full force and effect, (b) that such instrument was executed in accordance with the trust, terms and conditions thereof and of the respective trust agreement and is binding upon all beneficiaries thereunder, (c) that the Trustee was duly authorized and empowered to execute and deliver every such instrument, and (d) if a conveyance

has been made to a successor or successors in trust, that such successor or successors have been properly appointed and are fully vested with all the title, estate, rights, powers, duties and obligations of its, his or their predecessor in trust.

This Deed is governed by and is to be read and construed with reference to Section 55-17.1 of the Code of Virginia, 1950, as amended, and in force.

The conveyance hereby made is subject to any and all easements, restrictions, reservations and conditions contained in duly recorded deeds, plats and other instruments constituting constructive notice in the chain of title to the above described property which have not expired by a time limitation contained therein or have not otherwise become ineffective.

This deed is exempt from recordation tax pursuant to Sections 58.1-811A.12. and -811C. of the Code of Virginia of 1950, as amended.

WITNESS the following signatures and seals:

(SEAL)
KENNETH R. LAPE

(SEAL)
BARBARA G. LAPE

STATE OF Virginia

CITY/~~COUNTY~~ OF Charlottesville, to-wit:

The foregoing instrument was acknowledged before me this 20th day of May, 1998 by Kenneth R. Lape.

Notary Public

My commission expires: 11/30/2000

BK 1706 PG 0147

STATE OF Virginia

CITY/COUNTY OF Charlottesville to-wit:

The foregoing instrument was acknowledged before me this 20th day of May 1998 by Barbara G. Lape.

Benita F. Jones
Notary Public

My commission expires: 11/30/2000

VIRGINIA: IN THE CLERK'S OFFICE OF THE CIRCUIT COURT OF ALBEMARLE:

THIS DEED WAS PRESENTED, AND WITH CERTIFICATE ANNEXED, IS ADMITTED TO RECORD ON May 21, 1998, AT 3:17 O'CLOCK P.M.

STATE TAX	$	(039)
LOCAL TAX	$	(213)
TRANSFER FEE	$ 1.00	(212)
I.T.T.F.	$ 3.00	(106)
VSLF	$ 1.00	(145)
CLERK'S FEE	$ 12.00	(301)
PLAT	$	
SECT.58.1-802:		
STATE TAX	$	(038)
LOCAL TAX	$	(220)
LOCAL TAX	$	(223)
TOTAL	$ 17.00	

TESTE:
SHELBY J. MARSHALL, CLERK
BY: Betsy Monahan
DEPUTY CLERK

4

REBACK & SLAYTON
Attorneys and Counsellors at Law

Forbes R. Reback
Marshall M. Slayton

A. Ward Sims
Of Counsel

700 East High Street
Post Office Box 20
Charlottesville, VA 22902
Telephone (804) 979 7900
Facsimile (804) 293-5017

June 28, 2000

VIA OVERNIGHT MAIL

PLAINTIFF'S EXHIBIT
5-24-01
NO. 10

Mr. & Mrs. Richard Haisfield
826 Ballard Canyon Road
Solvang, CA 93463

Dear Richard and Audrey:

Please have Audrey as Managing Member sign the enclosed documents in BLACK INK, and have her signature notarized also in BLACK INK, to-wit:

1. Counterpart of the Lape deed and option;

2. Original Tye River Ltd. Partnership Option to Purchase, prepared by us this afternoon; and

3. Revised hangar lease (initial changes).

I also enclose a letter from the Lape's attorneys regarding the farm equipment sale. If it meets your expectations, have Audrey again as Managing Member of Laurel Ridge LLC sign the attached equipment list and include the funds in your wire.

We will contact Lape's insurer about binding coverage.

Even if Steve's negotiations are successful I doubt everyone will be ready to close before next Thursday.

Please stay in touch with my partner, Marshall Slayton, or my assistant, Brooke Dunn.

Good Luck,

Forbes R. Reback/cph

Forbes R Reback

FRR/cph
Enclosures

Audrey and Richard Haisfield Haisfield

826 Ballard Canyon Rd

Solvang, Ca 93463

805-688-9210

Fax 688-3071

- wants good vet services

wife horse farm 27 horses

has farm in California

- prefer smaller second farm

$600,000 to $1,000,000

100± ac

Conservation easements impt

here - Wed Dec 8 show early Thurs am

Staying @ Inn at Little Wash.

- possibly Lexington / horse facilities

- fed ex

* 20 min of pri airport / w hanger space

Mustabella

✓ Wolfrap-Farm

✓ Cover Springs

both 7 Oaks

✓ Cuth

Mt. Ella

Piedmont Farm

Nutmeg

Lofthouse - too many horses around for.

- Rapidan River - too

- Windsor

- Green Springs Plantation didn't like area

PLAINTIFF'S EXHIBIT NO. 11 5-24-01 gmp

m) 805-455-3281

ASPEN.: 970-544-0014
FAX 970-544-0016

Bill Gordon

Fencing + Barns

Lake Fla
305-289-7781

Mobile 984-2010

1. P. J. Williams
801-925-6325
800-809-5174

PLAINTIFF'S EXHIBIT
NO. 12

- house + barns house
- land for horses
- the more land the better
- the more private the better

VIRGI"'A ASSOCIATION OF REALTORS
CONTRACT FOR PURCHASE OF UNIMPROVED PROPERTY

(This is a legal form for use in the sale of Land only. This is a legally binding contract; if not understood, seek competent advice before signing.)

This CONTRACT OF PURCHASE made as of April 20, 2000, between Tye River Limited Partnership (Richard C. Tilghman Jr.) ** (the "Seller", whether one or more), and Andrew Lee Reisfield or Laurel Ridge LLC (the "Purchaser", whether one or more), whose addresses are shown below, provides the Listing Broker for the Property, as defined below is McLean Paulconer Inc. and the Selling Broker is McLean Paulconer Inc. Realtors.

1. REAL PROPERTY: Purchaser agrees to buy and Seller agrees to sell the land, and all improvements thereon located in the County or City of Albemarle, Virginia, and described as (legal description): 85.34 Acres known as Parcel X on Albemarle County Tax Map 111 and shown on attached plat dated 6-6-90 by Roger W. Ray & Associates Inc.

** William Gordon and Helen Gordon.

and more commonly known as: 85.34 Acres. Parcel X
together with the items of personal property described in paragraph 2 (the "Property").

2. PERSONAL PROPERTY INCLUDED: The following items of personal property are included in this sale:
☒ None ☐ See Addendum.

3. PURCHASE PRICE: The Purchase Price (the "Purchase Price") of the Property is $200,000.00.
☒ This price shall be the exact sales price.
☐ This price shall be adjusted at settlement to an exact Purchase price of $ N/A per (sq. ft.) (acre). The exact area to be determined by a survey to be made by a registered surveyor and paid for by N/A. At his option, Purchaser may waive said survey. The Purchaser shall pay to the seller at settlement the Purchase Price in cash or by cashier's or certified check, subject to the provisions herein and further subject to one or more of the following financings, (check as applicable):

☐ $ N/A (a) THIRD PARTY FIRST TRUST: As set forth in paragraph 5, this sale is subject to Purchaser ☐ obtaining or ☐ assuming: ☐ a conventional, ☐ or other (describe) ( ) loan secured by a first deed of trust lien on the Property in the principal amount of $ bearing interest ☐ at a fixed rate not exceeding % per year, or ☐ at an adjustable rate with an initial rate not exceeding % per year and a maximum rate during the term of the loan not exceeding % per year, or ☐ at the prevailing rate of interest at the time of settlement, amortized over a term of years, and requiring not more than a total of loan discount points, excluding a loan origination fee or an assumption fee not exceeding $. (If this Contract provides for the assumption of a loan: (i) the Parties acknowledge that the balance set forth above is approximate and that the principal amount to be assumed will be the outstanding principal balance on the date of settlement, and (ii) Purchaser shall assume all obligations of Seller under such loan.)

☐ $ N/A (b) THIRD PARTY SECOND TRUST: As set forth in paragraph 5, this sale is also subject to Purchaser obtaining a loan secured by a second deed of trust lien on the Property in the principal amount of $, bearing interest at a rate not exceeding % per year, repaid as follows: , and requiring not more than a total of loan discount points, excluding a loan origination fee.

☐ $ N/A (c) SELLER FINANCING: Seller agrees that $ of the Purchase Price shall be evidenced by a note made by Purchaser in the principal amount of $ bearing interest at the rate of % per year, repaid as follows: . The note shall be secured by a deferred purchase money ☐ first, ☐ second or (specify priority) deed of trust lien on the Property. The deed of trust and note shall provide, among other things, that: (i) the note shall be due and payable in full if the Property, or any interest therein, is transferred, sold or conveyed except as provided in a lot release agreement; (ii) Purchaser shall have the right to prepay the note at any time and from time to time in whole or in part ☐ with a premium or penalty of % of the amount prepaid or ☐ without premium or penalty; (iii) a late payment charge not exceeding five percent of the payment may be assessed by Seller for any payment more than seven (7) calendar days late; (iv) the note and deed of trust shall otherwise be in form satisfactory to seller, and (v) other terms: .

If this Contract provides for SELLER FINANCING, then (i) such financing shall be contingent upon review and approval by Seller of a current credit report on each Purchaser and a current personal financial statement of each Purchaser, which documents must be provided to Seller within business days following execution of this Contract by all parties, Seller shall within business days after receipt of Purchaser's financial data give Purchaser a written loan commitment or this Contract shall terminate and Purchaser's deposit shall be refunded; (ii) Purchaser shall properly record the applicable deed of trust, at Purchaser's expense, at settlement; and (iii) Purchaser may not assign this Contract, in whole or in part, without the prior written consent of Seller, which Seller shall be under no obligation to give. Any deed of trust securing SELLER FINANCING; (i) shall contain a provision requiring the trustees under said deed of trust, without the necessity of obtaining the prior consent or joiner of the noteholder, to release land for easements and right of ways, and/or land to be dedicated for public use from the above mentioned trust without curtailment and at no cost to Purchaser, provided such releases in their aggregate total less than % of the total land area originally encumbered by the deed of trust, (ii) shall provide that Purchaser shall have the right, at any time after settlement, to raze existing improvements, cut, fill, grade, erect improvements and do all other things Purchaser believes necessary in the development of the Property, ☐ with or ☐ without obligation to make any prepayment on account of the debt secured by the deferred purchase money deed of trust.

☐ $ N/A (d) OTHER FINANCING TERMS: .

☒ $ 5,000.00 DEPOSIT: See paragraph four (4)
☒ $ 195,000.00 BALANCE OF THE PURCHASE PRICE: To be paid by Purchaser at settlement (approximate in the case of a loan assumption).
☒ $ 200,000.00 TOTAL PURCHASE PRICE

Please initial
Purchaser _____ _____ Seller RCT HTG

Produced with ZipForm™ by Vertical Inc. 18025 Fifteen Mile Road, Clinton Township, Michigan 48035, (800) 383-9668
McLean Paulconer Inc. REALTORS® 203 Federal Drive, Dr., Charlottesville VA 22903 Phone: 804/971-1111 Fax: 804/293-7277 CONTRACT

PLAINTIFF'S EXHIBIT NO. 13

4. **DEPOSIT:**
(a) Purchaser has made a deposit with ____ Watson Faulconer Inc. Realtors
(the "Escrow Agent"), of Five Thousand Dollars ($ 5,000.00)
("the Deposit") ☐ in cash, ☒ by check, ☐ bank letter of credit, or ☐ by a note due and payable on _____ receipt of which is hereby acknowledged. The Deposit shall be held in escrow by the Escrow Agent until settlement and then applied to the Purchase Price.
(b) If the Escrow Agent is a licensed real estate broker, the Deposit shall be held and applied in conformity to the Regulations of the Virginia Real Estate Board. Pursuant to such Regulations, the Deposit will be placed in an escrow account of the Escrow Agent until this transaction has been consummated or terminated. The Regulations provide that if this transaction is not consummated, the Escrow Agent shall hold the Deposit in Escrow until (i) all Parties to the transaction have agreed in writing to the disposition thereof, or (ii) a court of competent jurisdiction orders disbursement, or (iii) the Escrow Agent can pay the funds to the Party who is entitled to receive them in accordance with the clear and explicit terms of this Contract. In the latter event, prior to disbursement, the Escrow Agent shall give written notice to the Party not to be paid, by either (i) hand delivery receipted by the addressee, or (ii) by regular and certified mail, that his payment will be made unless a written protest from the Party is received by the Escrow Agent within thirty days of the delivery or mailing, as appropriate, of the notice.

5. **FINANCING:**
(a) This Contract is contingent upon Purchaser obtaining a written commitment or commitments, as the case may be, for the third Party financing or loan assumption required in paragraph 3. Purchaser agrees to make written application for such financing or assumption within N/A business days of the date of acceptance of this Contract and to diligently pursue obtaining a commitment therefore.
(b) If Purchaser does not obtain such a written commitment and so notifies Seller or Selling Broker or the Listing Broker in writing before 5:00 p.m. local time on N/A, then this Contract shall terminate upon the giving of such notice and the Deposit shall be refunded to Purchaser. If such a notice is not received by the deadline, or such later deadline as the Parties may agree upon in writing, then Seller shall have the right to (i) deem the financing contingency provided herein satisfied, or (ii) terminate this Contract by giving Purchaser written notice of such termination within five (5) days after the deadline. Failure of Purchaser to make such application or to diligently pursue obtaining such financing shall be a default hereunder.

6. **LOAN FEES:** If a lender making a loan described in paragraph 3 requires a discount fee, commonly known as "points" (a point being 1% of the principal amount of the loan) as a condition of making the loan, Seller agrees to pay the first trust lender up to N/A points and to pay the second trust lender up to N/A points. Except as otherwise agreed in this paragraph 6 and paragraph A of the Standard Provisions, Purchaser shall pay all loan origination fees, charges and other costs imposed by a lender or otherwise incurred in connection with obtaining the loan or loans.

7. **SETTLEMENT; POSSESSION:** Settlement shall be made at attorney's office (See #11 - Other Items) on or about June 30, 2000 Possession of the Property shall be given at settlement, unless otherwise agreed in writing by the Parties. Sept. 1, 2000 RC WSC HTG

8. **BROKERAGE FEE:** Seller and other parties hereto authorize and direct the settlement agent to disburse to Listing Broker and/or Selling Broker from the settlement proceeds their respective portions of the brokerage fee payable as a result of this sale and closing under the Contract. Listing Broker and/or Selling Broker shall deliver to the settlement agent, prior to settlement, a written statement signed by each broker entitled to all or a portion of the brokerage fee stating how such fee and any additional sales incentives are to be disbursed.

9. **STUDY PERIOD:** Purchaser shall have N/A days from the date this Contract is executed by both Purchaser and Seller, to determine, through engineering and feasibility studies, whether Purchaser's plan of development of the Property is practical. Purchaser shall contract for such studies within ten days from the date of execution, and deliver to Seller and agent copies of the letter(s) ordering the studies, said letter(s) stipulating that true copies of all studies are to be sent to Seller or an agent of Seller, simultaneously with delivery to Purchaser. If within said N/A days, Purchaser notifies both Seller or an agent of Seller, in writing, that his plan, in his sole judgment, is not practical, Purchaser may declare this Contract null and void. In this event, Purchaser shall receive a refund of his deposit and all parties shall be relieved of further liability hereunder. In the absence of such timely notice (time shall be of the essence) from the Purchaser that he elects to declare this Contract null and void, this Contract shall be in full force and effect.

10. **SOIL STUDY:** This Contract is contingent for N/A days from date of execution of this Contract by both Purchaser and Seller to allow N/A at its expense to obtain a soil study and/or percolation test, which shall lawfully allow for the erection of N/A. Said report shall be pursued diligently and in good faith and if such study or test reveals that Purchaser's intended use of the Property is not permissible, Purchaser shall have the right, upon written notice to Seller, to declare this Contract null and void, in which event the deposit shall be returned to Purchaser and all parties relieved of further liability hereunder.

11. **OTHER ITEMS:** (Use this space for additional terms not covered in this Contract.) 1) This Contract is contingent upon the simultaneous closing of Laurel Ridge, which Purchaser is currently under contract to purchase; 2) Subject property is transferring without any development rights, as an addition to an adjacent property; 3) Purchaser's earnest money deposit shall be held in an interest bearing escrow account with interest accruing to Purchaser until Closing.

See Addendum No. 1 RCT WSC HTG

Addendum attached: No ☒ Yes ☐ Consisting of ____ pages.

12. **PROPERTY OWNERS' ASSOCIATION DISCLOSURE:** Seller represents that the Property (check as applicable) is ☐ is not ☒ located within a development which is subject to the Virginia Property Owners' Association Act (Sections 55-508 through 55-516 of the Code of Virginia). If the Property is within such development, the Act requires Seller to obtain from the Property Owners' Association an association disclosure packet and provide it to Purchaser. Purchaser may cancel this Contract within three (3) days after receiving the association disclosure packet or being notified that the association disclosure packet will not be available. The right to receive the association disclosure packet and the right to cancel this Contract are waived conclusively if not exercised before settlement. The rights afforded Purchaser pursuant to this paragraph and the Act may be waived in writing by Purchaser in a separate document.

13. **ACKNOWLEDGEMENT OF DISCLOSURE OF BROKERAGE RELATIONSHIP:** (Check as applicable.)
A. ☐ The Parties confirm that in connection with the transaction contemplated by this Contract, _____ (the Listing Broker), and _____ (the cooperating or Selling Broker), and their salespersons, have acted on behalf of Seller as Seller's representatives.

Please initial
Purchaser ____ ____ Seller RCT WSC HTG

Produced with ZipForm™ by Vertical Inc. 18228 Fifteen Mile Road, Clinton Township, Michigan 48038, (800) 383-9808 6250/04/1/70

B. ☐ The Parties confirm that in connection with the transaction contemplated by this Contract _____ (the Listing Broker), and its salespersons have acted on behalf of Seller as Seller's representative; and/or _____ (the Purchaser's Broker), and its salespersons, by agreement, have acted on behalf of Purchaser as Purchaser's representative.

C. ☐ The Parties also confirm, with respect to their own representation, that disclosure of the brokerage relationships described in paragraph 13(A) or (B) above was made in writing at the time specific real estate assistance was provided by the Brokers named above, or their respective salespersons.

D. ☒ The Listing Broker and its salespersons are acting on behalf of both the Seller and the Purchaser as disclosed dual representatives. An executed Disclosure of Dual Representation is attached.

E. ☐ The principal or supervising broker has designated _____ to represent the Seller in the transaction and _____ to represent the Purchaser in the transaction. _____, the principal or supervising broker, is acting on behalf of both the Seller and the Purchaser as a disclosed dual representative. An executed Disclosure of the Use of Designated Representatives is attached.

F. ☒ The Parties also confirm that the disclosure of and consent to the brokerage relationships described in paragraph 13(D) or (E) above was made prior to the time the offer was made by Purchaser and delivered to Seller.

G. The duties of real estate licensees in Virginia are set forth in Section 54.1-2130 et seq. of the Code of Virginia and in the regulations of the Virginia Real Estate Board. In addition to the information contained in this disclosure pertaining to brokerage relationships, there may be other information relevant to the transaction which may be obtained from other sources.

14. STANDARD PROVISIONS ON PAGE FOUR HEREOF: All the Standard Provisions on the PAGE FOUR HEREOF are incorporated by reference and shall apply to this Contract, unless expressly modified in paragraph 11 and except the following letter Standard Provisions, which are hereby deleted: B. Access shall not be required. RCT
(If none deleted, state "None".)

15. MECHANIC'S LIEN NOTICE:

(a) Virginia law (Section 43-1 et seq.) permits persons who have performed labor or furnished materials for the construction, removal, repair or improvement of any building or structure to file a lien against the property. This lien may be filed at any time after the work is commenced or the material is furnished, but not later than the earlier of (i) 90 days from the last day of the month in which the lienor last performed work or furnished material or (ii) 90 days from the time the construction, removal, repair or improvement is terminated. **AN EFFECTIVE LIEN FOR WORK PERFORMED PRIOR TO THE DATE OF SETTLEMENT MAY BE FILED AFTER SETTLEMENT. LEGAL COUNSEL SHOULD BE CONSULTED.**

(b) Seller shall deliver to Purchaser at settlement an affidavit, on a form acceptable to Purchaser's lender, if applicable, signed by Seller that no labor or materials have been furnished to the Property within the statutory period for the filing of mechanics' or materialmen's liens against the Property. If labor or materials have been furnished during the statutory period, Seller shall deliver to Purchaser an affidavit signed by Seller and the person(s) furnishing the labor or materials that the costs thereof have been paid.

16. DISPUTE RESOLUTION SYSTEM CLAUSE: The Parties who have initialed this paragraph below hereby agree that if services are available, any dispute or claim arising out of or relating to this Contract, the breach of this Contract or the services provided in relation to this Contract, shall be submitted to mediation in accordance with the Rules and Procedures of the Dispute Resolution System. Disputes shall include representations made by the Buyer(s), Seller(s) or any real estate broker or other person or entity in connection with the sale, purchase, financing, condition or other aspect of the Property to which this Contract pertains, including without limitation allegations of concealment, misrepresentation, negligence and/or fraud. Any agreement signed by the Parties pursuant to the mediation conference shall be binding. If the Parties cannot reach a mutually agreeable settlement, they are free to arbitrate or litigate their dispute as if the mediation never took place.

The following matters are excluded from mediation hereunder: (a) judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage, or land contract; (b) an unlawful detainer action; (c) the filing or enforcement of a mechanic's lien; (d) any matter which is within the jurisdiction of a probate court; or (e) violation of a state's real estate license laws. The filing of a judicial action to enable the recording of a notice of pending action, for order of attachment, receivership injunction, or other provisional remedies, shall not constitute a waiver of the right to mediate under this provision, nor shall it constitute a breach of the duty to mediate.

This provision shall be binding on those parties who have initialed this paragraph even if not all of the parties have so initialed it, and shall survive settlement and conveyance of title to the Property. The failure of any party to initial this paragraph shall not affect the validity or the enforcement of any other provision of this contract as to any party executing this contract.

By initialing in the place below, you hereby acknowledge that you have received, read and understand the standard announcement brochure for the Dispute Resolution System and agree to submit disputes as described above to mediation in accordance with the Dispute Resolution System.

Buyer's Initials	Seller's Initials	Listing Broker's Initials	Selling Broker's Initials
	RCT/WG HR		

17. ACCEPTANCE: This Contract, when signed by Purchaser, shall be deemed an offer and shall remain in effect until _____ (time), _____. If not accepted by Seller within that time by delivery of a signed copy of this Contract to the Purchaser, or an agent for Purchaser, it shall become null and void.

WITNESS the following duly authorized signatures and seals:

(SEPARATE ALL COPIES BEFORE SIGNING BELOW)

Seller accepts this offer _____ day of _____.

The Rivo Limited Partnership

_____ / _____ (SEAL)		_____ / _____ (SEAL)	
DATE	SELLER	DATE	PURCHASER
[illegible]			
ADDRESS		ADDRESS	
217 58 7420		_____ / _____ (SEAL)	
SOCIAL SECURITY NUMBER		DATE	PURCHASER
_____ / _____ (SEAL)		_____	
DATE	SELLER	ADDRESS	
_____		Receipt of deposit per Paragraph 4 above is hereby acknowledged. _____ / _____ (SEAL)	
ADDRESS		DATE	
216-46-1731			
SOCIAL SECURITY NUMBER			

Produced with ZipForm™ by Vertical Inc, 18333 Fifteen Mile Road, Clinton Township, Michigan 48035, (800) 383-9668

STANDARD PROVISIONS

A. EXPENSE PRORATIONS: Seller agrees to pay the expense of preparing the deed and the recordation tax applicable to grantors. Except as otherwise agreed herein, all other expenses incurred by Purchaser in connection with this Purchase, including without limitation title examination, insurance premiums, survey costs, recording costs and the fees of Purchaser's attorney, shall be borne by the Purchaser. All taxes, assessments, interest, rent, escrow deposits, and other ownership fees, if any, shall be prorated as of the date of settlement. In addition to the Purchase Price, Purchaser agrees to pay Seller for all fuel oil remaining in the tank (if applicable) at the prevailing market price as of the date of settlement.

B. TITLE: At settlement Seller shall convey the Property to Purchaser by a general warranty deed containing English covenants of title, free of all encumbrances, tenancies, and liens (for taxes or otherwise), but subject to such restrictive covenants and utility easements of record which do not materially and adversely affect the Purchaser's intended use of the Property or render the title unmarketable. If the Property does not abut a public road, title to the Property must include a recorded easement providing adequate access thereto. In the event this sale is subject to a financing contingency under paragraphs 3(a) or 3(b), the access to a public road must be acceptable to each such lender. If the examination reveals a title defect of a character that can be remedied by legal action or otherwise within a reasonable time, Seller, at its expense, shall promptly take such action as is necessary to cure such defect. If the defect is not cured within sixty days after Seller receives notice of the defect, then either party may terminate this Contract at the expiration of such sixty day period and the Deposit shall be refunded to Purchaser. Upon the making of such refund, this Contract shall be terminated, and neither purchaser nor seller shall have any claim against the other by reason of this Contract. The parties agree that the settlement date prescribed in paragraph 7 shall be extended if necessary to enable Seller to cure any title defect, but not for more than sixty days.

C. LAND USE ASSESSMENT: In the event the Property is taxed under land use assessment and this sale results in disqualification from land use eligibility, Seller shall pay any rollback taxes assessed. If the Property continues to be eligible for land use assessment, Purchaser agrees to make application, at Purchaser's expense, for continuation under land use, and to pay any rollback taxes resulting from failure to file or to qualify. Notwithstanding anything herein to the contrary, the provisions of this paragraph C shall survive settlement and the delivery of the deed.

D. RISK OF LOSS: All risk of loss or damage to the Property by fire, windstorm, casualty or other cause is assumed by Seller until settlement. In the event of substantial loss or damage to the Property before settlement, Purchaser shall have the option of either (i) terminating this Contract and recovering the Deposit, or (ii) affirming this Contract, in which event Seller shall assign to Purchaser all of Seller's rights under any policy or policies of insurance applicable to the Property.

E. NOTICE: Whenever notice is to be given under the terms of this Contract, such notice shall be deemed to have been given when enclosed in an envelope having the proper postage, addressed to all parties hereto and deposited as Certified Mail at a U.S. Post Office. The date at which such notice shall be deemed to have been given, shall be the date of the postmark on said envelope.

F. PRIOR ACCESS: Purchaser and his agents shall have the right to enter onto the Property at any time prior to settlement for purposes of engineering, surveying and such other work, so long as such studies do not result in a change in the character or topography of the Property. Purchaser shall hold Seller harmless against any loss or liability to person or property resulting from such entry on the Property.

G. DEFAULT: If either Seller or Purchaser defaults under this Contract, the defaulting party, in addition to all other remedies available at law or in equity, shall be liable for the brokerage fee referenced in paragraph 8 on PAGE TWO HEREOF as if this Contract had been performed and for any damages and all expenses incurred by the non-defaulting party, the Listing Broker and the Selling Broker in connection with this transaction and the enforcement of this Contract, including, without limitation, attorneys' fees and costs, if any. Payment of a real estate broker's fee as the result of a transaction relating to the Property which occurs subsequent to a default under this Contract, shall not relieve the defaulting party of liability for the fee of the Listing Broker in this transaction and for any damages and all expenses incurred by the non-defaulting party, the Listing Broker and the Selling Broker in connection with this transaction.

H. MISCELLANEOUS: This Contract represents the entire agreement between Seller and Purchaser and may not be modified or changed except by written instrument executed by the parties; PROVIDED, HOWEVER, that the provisions of paragraph 8 on PAGE TWO HEREOF may not be modified or changed without the written consent of the Listing Broker and the Selling Broker. This Contract shall be construed, interpreted and applied according to the laws of the Commonwealth of Virginia and shall be binding upon and shall inure to the benefit of the heirs, personal representative's, successors, and assigns of the parties. To the extent any handwritten or typewritten terms herein conflict with, or are inconsistent with the printed terms hereof, the handwritten or typewritten terms shall control. UNLESS OTHERWISE PROVIDED HEREIN, THE REPRESENTATIONS AND WARRANTIES MADE BY SELLER HEREIN AND ALL OTHER PROVISIONS OF THIS CONTRACT SHALL BE DEEMED MERGED INTO THE DEED DELIVERED AT SETTLEMENT AND SHALL NOT SURVIVE SETTLEMENT.

COPYRIGHT© 1999 by the Virginia Association of REALTORS®. All rights reserved. This form may be used only by members in good standing of the Virginia Association of REALTORS®. The reproduction of this form, in whole or in part, or the use of the name "Virginia Association of REALTORS®", in connection with any other form, is prohibited without the prior written consent of the Virginia Association of REALTORS®.

VIRGIN ASSOCIATION OF REALTO ®
REQUIRED DISCLOSURE OF BROKERAGE RELATIONSHIP
(THIS IS NOT A CONTRACT)

Real estate licensees in Virginia who have entered into brokerage relationships are required by law to make prompt written disclosure of these brokerage relationships to those they work with, but do not represent in the real estate transaction. Licensees must also make written disclosures and obtain timely written consents from their clients in order to enter into certain brokerage relationships. This disclosure form is provided to you to satisfy these requirements and to assure that you understand the nature of the brokerage relationships in which the licensee presenting this disclosure is involved. Regardless of whose interests a licensee represents, all licensees who are REALTORS® are required by the REALTORS® Code of Ethics to treat all parties with whom they deal honestly.

The duties of real estate licensees in Virginia are set forth in Section 54.1-2130 et seq. of the Code of Virginia and in the regulations of the Virginia Real Estate Board. You should be aware that in addition to the information contained in this disclosure pertaining to brokerage relationships, there may be other information relevant to the transaction which may be obtained from other sources.

On the back of this form is information about brokerage relationships and the responsibilities of both licensees and the parties they represent. If you have any questions about any of this information, please ask the licensee presenting this form for clarification.

DISCLOSURE OF BROKERAGE RELATIONSHIP TO NON-CLIENT

(This box to be signed by any non-client with whom the Agent has had substantive discussion about a specific property.)

The undersigned do hereby acknowledge disclosure that:

_____ (Name of Firm and Licensee)

represents the following party in a real estate transaction: ☐ Seller(s) or ☐ Buyer(s) ☐ Landlord(s) or ☐ Tenant(s)

_____ / _____ _____ / _____

Date — Signature of Non-Client to whom disclosure is being made — Date — Signature of Non-Client to whom disclosure is being made

DISCLOSURE OF DUAL REPRESENTATION

The undersigned do hereby acknowledge disclosure that:

Stephen T. McLean, McLean Faulconer Inc. Realtors (Name of Firm and Licensee)

represents more than one party in this real estate transaction as indicated:

☒ Seller(s) and Buyer(s) ☐ Landlord(s) and Tenant(s)

The undersigned understands that the foregoing dual representative may not disclose to either client or such client's designated representative any information that has been given to the dual representative by the other client within confidence and trust of the brokerage relationship except for that information which is otherwise required or permitted by Article 3 (§54.1-2130 et seq.) of Chapter 21 of Title 54.1 of the Code of Virginia to be disclosed. The undersigned by signing this notice do hereby acknowledge their informed consent to the disclosed dual representation by the licensee named above.

_____ / _____ _____ / _____

Date — Signature (Seller/Landlord) — Date — Signature (Buyer/Tenant)

_____ / _____ _____ / _____

Date — Signature (Seller/Landlord) — Date — Signature (Buyer/Tenant)

DISCLOSURE OF THE USE OF DESIGNATED REPRESENTATIVES

The undersigned do hereby acknowledge disclosure that:

_____ (Name of Firm and Licensee)

represents more than one party in this real estate transaction as indicated:

☐ Seller(s) and Buyer(s) ☐ Landlord(s) and Tenant(s)

The undersigned understands that the foregoing dual representative may not disclose to either client or such client's designated representative any information that has been given to the dual representative by the other client within confidence and trust of the brokerage relationship except for that information which is otherwise required or permitted by Article 3 (§54.1-2130 et seq.) of Chapter 21 of Title 54.1 of the Code of Virginia to be disclosed. The undersigned by signing this notice do hereby acknowledge their informed consent to the disclosed dual representation by the licensee named above.

The principal or supervising broker has assigned _____ to act as Designated Representative for the one party as indicated:

☐ Seller(s) or ☐ Landlord(s)

and _____ to act as Designated Representative for the other party as indicated:

☐ Buyer(s) or ☐ Tenant(s)

_____ / _____ _____ / _____

Date — Signature (Seller/Landlord) — Date — Signature (Buyer/Tenant)

_____ / _____ _____ / _____

Date — Signature (Seller/Landlord) — Date — Signature (Buyer/Tenant)

VAR FORM 100 REV. 6/97 Page 1 of 2

THE LICENSEE'S DUTIES

As licensee may have a contractual agreement to represent a client, who is commonly referred to as the "principal". A licensee owes certain duties to his principal, as defined in the duties of a standard agent as set out in Virginia law or as otherwise agreed to in writing by the parties. A licensee who is not representing you in a transaction can nonetheless provide you other valuable information and assistance. However, you should always keep in mind whom the licensee represents in your transaction, and thus to whom that licensee owes the duties described above.

WHOM DOES THE LICENSEE REPRESENT?

In any real estate transaction, a licensee may represent the seller, the buyer, or, under certain circumstances, both seller and buyer.

The Seller - A licensee may represent a seller under a listing agreement, in which case the licensee owes his primary responsibilities to the seller. The listing agreement may authorize the listing firm to list the property with a multiple listing service and to cooperate with other licensees. These cooperating licensees, who frequently work for other firms, may operate under an agreement of subagency with the listing firm, in which case they also owe their primary responsibilities to the seller. Buyers working with a licensee should be aware that the licensee may be a subagent of the listing firm and thus the representative of the seller.

The Buyer - A licensee and a buyer may enter into an agreement by which the licensee agrees to represent the interests of the buyer. A buyer's representative must repudiate any subagency offered by a listing firm and must disclose his relationship with the buyer whenever dealing with the seller or seller's representative.

The Buyer and the Seller - A licensee, either acting directly or through one or more of the real estate company's other licensees, may be the representative of both the buyer and the seller in a particular transaction, but only with the informed written consent of both the buyer and the seller. A licensee representing both the buyer and the seller will necessarily be limited in his ability to represent either buyer or seller fully and exclusively. The licensee must safeguard the confidentiality of any information obtained within the confidentiality and trust of the brokerage relationship, unless disclosure of such information is required by law. Specifically, the licensee must not tell the buyer that the seller will accept a price lower than the listing price, nor tell the seller that the buyer will pay a price higher than the price offered.

Designated Representatives - Virginia law also permits a principal or supervising broker to assign different licensees affiliated with the broker as designated representatives to represent different clients in the same transaction. Unlike the dual representative discussed in the previous paragraph, these designated representatives represent only the interest of their respective clients, and may therefore represent those interests more fully. The principal or supervising broker who is supervising the transaction will be considered a dual representative of both seller and buyer. Designated representatives may not disclose, except to their broker, personal or financial information received from the clients during the brokerage relationship and any other information a client requests to be kept confidential, unless required by law to be disclosed or the client consents to its disclosure in writing.

THE PRINCIPALS' RESPONSIBILITIES

Representation by a licensee in a real estate transaction does not relieve sellers and buyers from the fundamental responsibility to protect their own interests. A buyer should take all reasonable steps to determine the condition of the property the buyer is purchasing, and all parties should carefully read all agreements to assure that they adequately express their understanding of the transaction. A real estate licensee is qualified to advise about real estate, but if you need legal or tax advice, you should consult a competent professional.

A principal should ensure that any existing brokerage relationship is disclosed to other principals and their representatives. A buyer should also consult the buyer's representative before visiting any resale or new homes or contacting any other licensees to avoid the possibility of confusion over brokerage relationships.

You might receive more than one disclosure form, depending upon the number of licensees assisting in the transaction. The law may require a licensee with whom you have substantive discussions about specific property, and with whom you do not have a brokerage relationship, to present you with a written disclosure. You should read its contents each time it is presented to you and you should consider the relationship between you and the licensee in your specific transaction.

COPYRIGHT© 1997 by the Virginia Association of REALTORS®. All rights reserved. This form may be used only by members in good standing with the Virginia Association of REALTORS®. The reproduction of this form, in whole or in part, or the use of the name "Virginia Association of REALTORS®", in connection with any other form, is prohibited without prior written consent from the Virginia Association of REALTORS®.

PURSUANT TO THE ALBEMARLE COUNTY ZONING ORDINANCE IN EFFECT THIS DATE AND ARE SHOWN FOR INFORMATION PURPOSES ONLY. THEY ARE NOT RESTRICTIVE COVENANTS RUNNING WITH THE LAND AND THEIR APPEARANCE ON THIS PLAT IS NOT INTENDED TO IMPOSE THEM AS SUCH.

NO DIVISION RIGHTS BEING TRANSFERRED WITH PARCEL X.

PLAT SHOWING
SURVEY OF PARCEL X
A PORTION OF THE SARAH LOUISE SMITH PROPERTY
BEING ADDED TO & COMBINED WITH
THE KENNETH R. & BARBARA G. LAPE PROPERTY
LOCATED OFF ST. RT. 712 & ON THE HARDWARE RIVER
ABOUT 4.5 MILES N.W. OF KEENE
ALBEMARLE COUNTY, VIRGINIA

SCALE : 1" = 300' DATE : 6-6-90

FOR

SARAH L. SMITH

ROGER W. RAY & ASSOC., INC.
CHARLOTTESVILLE, VA.

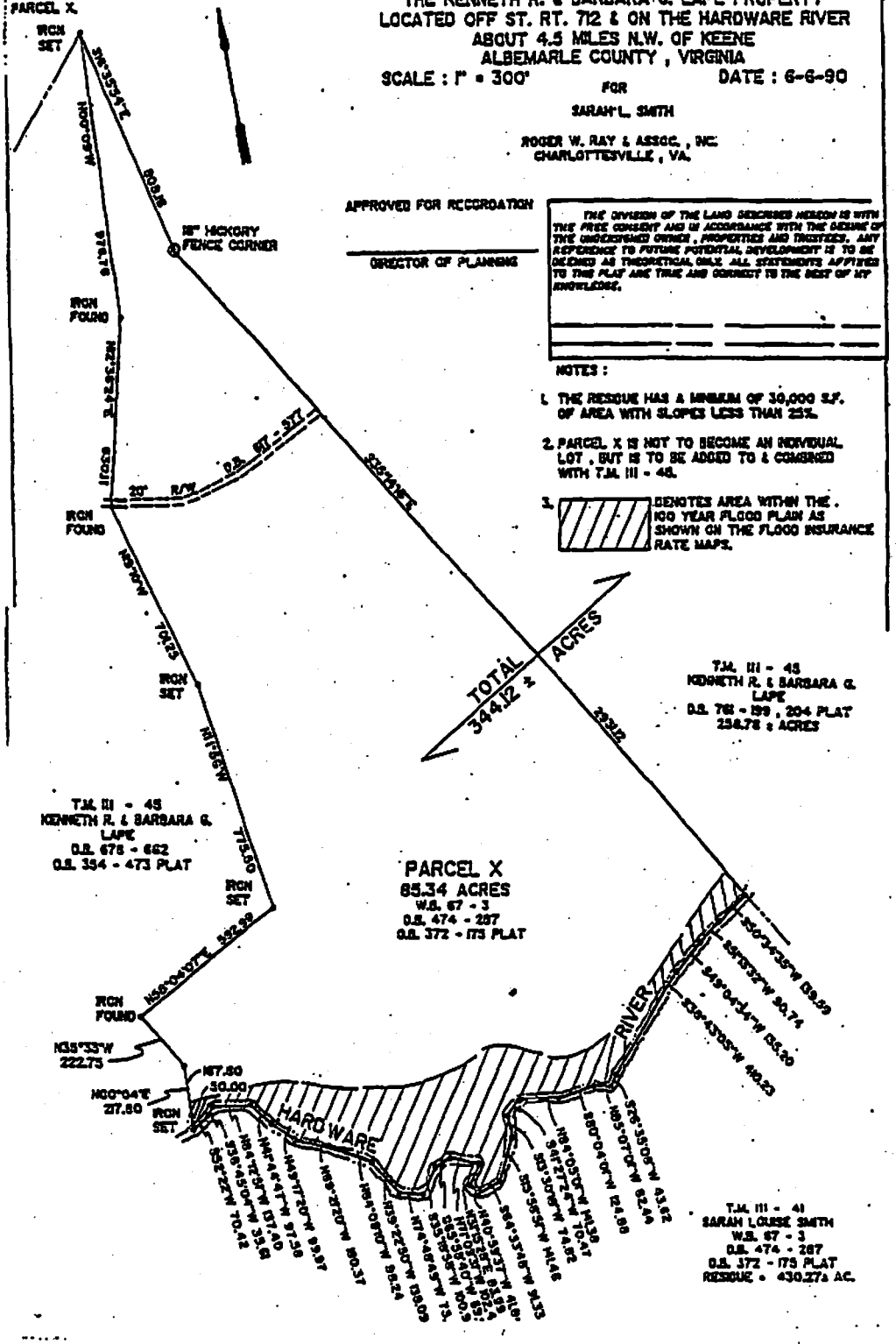
APPROVED FOR RECORDATION

DIRECTOR OF PLANNING

THE DIVISION OF THE LAND DESCRIBED HEREON IS WITH THE FREE CONSENT AND IN ACCORDANCE WITH THE DESIRE OF THE UNDERSIGNED OWNER, PROPRIETOR AND TRUSTEES. ANY REFERENCE TO FUTURE POTENTIAL DEVELOPMENT IS TO BE DEEMED AS THEORETICAL ONLY. ALL STATEMENTS AFFIXED TO THIS PLAT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

NOTES :

1. THE RESIDUE HAS A MINIMUM OF 30,000 S.F. OF AREA WITH SLOPES LESS THAN 25%.
2. PARCEL X IS NOT TO BECOME AN INDIVIDUAL LOT, BUT IS TO BE ADDED TO & COMBINED WITH T.M. III - 45.
3. DENOTES AREA WITHIN THE 100 YEAR FLOOD PLAIN AS SHOWN ON THE FLOOD INSURANCE RATE MAPS.



ADDENDUM NO. 1

TYE RIVER LIMITED PARTNERSHIP, *et al.*
TO HAISFIELD

Seller will use best efforts to obtain partial releases of the Property from existing mortgages and liens. If Seller is unable to obtain such releases by August 15, 2000, Seller may extend closing to November 1, 2000. If Seller has not obtained such releases by October 15, 2000, either party may thereafter terminate this Contract and the Deposit shall be refunded to the Purchaser.

Montague, Miller & Co.
REALTORS
Serving Central Virginia Since 1948

PLAINTIFF'S EXHIBIT NO. 14 5-24-01

Bill of Sale Agreement

The following items are contingent to the settlement and to be conveyed at the time of settlement of the property known as Laurel Ridge Farm. For the price of Twenty three thousand, two hundred seventy dollars ($ 23,270.00). Payable in cash to Kenneth and Barbara Lape at the time of closing on an if, as and when basis. AA

	Item	Price
1.	Farm Equipment as per attached list	$23,270.00
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		

This agreement is binding by the undersigned parties as of June / 6 /

_____ (SEAL) Seller

Audrey Hatfield (SEAL) Purchaser

_____ (SEAL) Seller

_____ (SEAL) Purchaser

DEPOSITION EXHIBIT McLean #2

PLAINTIFF'S EXHIBIT
5-24-01
NO. 15

SLDC LTD.

ARCHITECT • PLANNING

FROM THE DESK OF
Warren E. Andrews

STEVE

WELCOME BACK

ATTACHED IS A VERY ROUGH SLOPE STUDY SHOWING AREAS UNDER 15% (A FIGURE AUDREY SAYS IS MAX ALLOWABLE — SHE'S CONCERNED THERE IS NOT ENOUGH FLAT LAND)

IF YOU COULD GIVE ME A ROUGH MEASUREMENT FROM REAR OF HOUSE (PATIO SIDE) TO THE EDGE OF THE WOODS & THE DROP FROM PATIO TO EDGE OF WOODS.

CALL - 977-0129 (H)

410 EAST WATER STREET, CHARLOTTESVILLE, VIRGINIA 22902 (804) 295-9197

Issued By:
CHICAGO TITLE INSURANCE COMPANY

SCHEDULE A

ALTA COMMITMENT FOR TITLE INSURANCE

Your Reference: HAISFIELD, AUDREY LEA

Commitment No: 2071-00527

1. COMMITMENT DATE: June 16, 2000 AT 8:30 AM

2. POLICY OR POLICIES TO BE ISSUED: AMOUNT

Owner's Policy: ALTA OWNER'S POLICY (10-17-92)

Proposed Insured: $1,100,000.00

AUDREY LEA HAISFIELD OR LAUREL RIDGE, LLC

Loan Policy:

Proposed Insured: $0.00

3. FEE SIMPLE Interest in the land described in this commitment is owned, at the Commitment date, by:

KENNETH R. LAPE, TRUSTEE OF THE KENNETH LAPE LIVING TRUST, AND BARBARA GSAND LAPE, TRUSTEE OF THE BARBARA GSAND LAPE LIVING TRUST, Trustees, under the provisions of their respective trust agreements dated January 23, 1997 and TYE RIVER LIMITED PARTNERSHIP, a Virginia limited partnership, AND WILLIAM S. GORDON AND HELEN T. GORDON

4. The land referred to in this commitment is described as follows:

- SEE ATTACHED -

PLAINTIFF'S EXHIBIT NO. 16

ALTA COMMITMENT FOR TITLE INSURANCE

Your Reference: HAISFIELD, AUDREY LEA

Commitment No: 2071-00527

4. **The land referred to in this Commitment is described as follows:**

PARCEL ONE: ALL that certain tract or parcel of land with all improvements thereon and all appurtenances thereunto belonging, situated in the Scottsville Magisterial District of Albemarle County, Virginia, containing 147.326 acres, more or less, as shown and more particularly described on plat of A. R. Sweet and Associates, Engineers and Surveyors, dated May, 1958, which plat is recorded in the Clerk's Office of the Circuit Court of Albemarle County, Virginia in Deed Book 354, Page 473; LESS AND EXCEPT HOWEVER, 48.725 acres, more or less, conveyed to Hamilton Moses, III by Deed of Kenneth R. Lape and Barbara G. Lape, dated May 3, 1994, recorded in said Clerk's Office in Deed Book 1401, Page 449.

BEING a portion of the same property conveyed to Kenneth Lape, Trustee of the Kenneth Lape Living Trust and Barbara Gsand Lape, Trustee of the Barbara Gsand Lape Living Trust, Trustees under the provisions of their respective trust agreements dated January 23, 1997, by deed of Kenneth R. Lape and Barbara G. Lape, dated May 20, 1998, recorded in the Clerk's Office of the Circuit Court of Albemarle County, Virginia in Deed Book 1706, Page 144.

PARCEL TWO: ALL that certain tract or parcel of land lying east of State Route 712 and on the north side of the Hardware River in the Scottsville Magisterial District of Albemarle County, Virginia, near Alberene, more particularly described as Parcel X containing 85.34 acres, more or less, on plat of survey made by Roger W. Ray & Assoc., Inc., dated June 6, 1990, recorded in the Clerk's Office of the Circuit Court of Albemarle County, Virginia in Deed Book , Page , being that portion of Albemarle County T.M. 111-41 which lies north of the Hardware River as shown on plat of survey made by Roger W. Ray & Assoc., Inc., dated February 12, 1993, recorded in the Clerk's Office of the Circuit Court of Albemarle County, Virginia in Deed Book 1300, Page 270.

BEING a portion of "Quiet Entry Farm" which was conveyed to Tye River Limited Partnership and William S.Gordon and Helen T. Gordon, by deed of Sheri L. Smith, Trustee of the Sara Louise Mayfield Smith Trust u/a dated January 27, 1989, eated April 9, 1993, recorded in the Clerk's Office of the Circuit Court of Albemarle County, Virginia in Deed Book 1300, Page 267.

ALTA COMMITMENT FOR TITLE INSURANCE

Your Reference: HAISFIELD, AUDREY LEA

Commitment No: 2071-00527

The following requirements must be met:

(a) Pay the agreed amounts for the interest in the land and/or the mortgage to be insured.

(b) Pay us the premiums, fees and charges for the Policy.

(c) Documents satisfactory to us creating the interest in the land and/or the mortgage to be insured must be signed, delivered and recorded. They are:

Proper Deed of Bargain and Sale from KENNETH R. LAPE, TUSTEE OF THE KENNETH R. LAPE LIVING TRUST, AND BARBARA GSAND, and LAPE, TRUSTEE OF THE BARBARA GSAND LAPE LIVING TRUST, and TYE RIVER LIMITED PARTNERSHIP, and WILLIAM S. GORDON AND HELEN T. GORDON, vesting FEE SIMPLE title to the above described property in AUDREY LEA HAISFIELD OR LAUREL RIDGE, LLC.

(d) You must tell us in writing the name of anyone not referred to in this Commitment who will get an interest in the land or who will make a loan on the land.

WE MAY THEN MAKE ADDITIONAL REQUIREMENTS OR EXCEPTIONS.

(e) TAX INFORMATION:

There must be payments of all taxes, charges and assessments which are due and payable.

(f) You must provide us with satisfactory evidence that there has been no labor performed or materials furnished for renovation, repair or construction of improvements on the subject land for which a lien could be filed; or in the alternative, that all charges for such labor, services, or materials for which a lien could be filed if unpaid have been satisfied in full.

CONTINUED ON NEXT PAGE

ALTA COMMITMENT FOR TITLE INSURANCE

Your Reference: HAISFIELD, AUDREY LEA Commitment No: 2071-00527

(g) The Owner/Seller Affidavit enclosed must be executed prior to the recordation of the instruments creating the estate or interest insured and must be returned with the final application for the policy(ies) and must show no exceptions.

(h) You must pay and release of record the following items:

** SEE ATTACHED **

(I) SPECIAL REQUIREMENTS:

Q 1. Certification by the approved attorney that the name of each prospective purchaser has been examined in the Judgment Lien records of the Clerk of the Circuit Court from the effective date of this commitment to current and that no judgment liens were found.

R Plat of survey made by Roger W. Ray & Assoc., Inc., dated June 6, 1990 referred to in Schedule A must be recorded with documents.

ALTA COMMITMENT FOR TITLE INSURANCE

Your Reference: HAISFIELD, AUDREY LEA

Commitment No: 2071-00527

(h) You must pay and release of record the following items:

PARCEL TWO:

Deed of Trust from Tye River Limited Partnership, a Virginia limited partnership and William S. Gordon and Helen T. Gordon to Richard E. Reeves and Forbes R. Reback, Trustee(s) for Staunton Farm Credit, ACA dated April 8, 1993 and recorded April 13, 1993, in Deed Book 1300, page 274, securing the principal amount of$1,125,000.00.

Deed of Trust from Tye River Limited Partnership, a Virginia limited partnership and William S. Gordon and Helen T. Gordon to Richard E. Carter and John W. Zunka, Trustee(s) for Frank J. Quayle, dated February 24, 1994, recorded March 1, 1994, in Deed Book 1386, page 390, securing the principal amount of $75,000.00.

Deed of Trust from Tye River Limited Partnership, a Virginia limited partnership and William S. Gordon and Helen T. Gordon to Richard E. Carter and John W. Zunka, Trustee(s) for Frank J. Quayle, dated June 10, 1994, recorded July 12, 1994, in Deed Book 1417, page 472, securing the principal amount of $35,000.00.

Deed of Trust from Tye River Limited Partnership, a Virginia limited partnership and William S. Gordon and Helen T. Gordon to Richard E. Carter and John W. Zunka, Trustee(s) for Frank J. Quayle, dated September 1, 1995, recorded September 6, 1995, in Deed Book 1490, page 400, securing the principal amount of $80,000.00.

Deed of Trust from Tye River Limited Partnership, a Virginia limited partnership and William S. Gordon and Helen T. Gordon to Richard E. Carter and John W. Zunka, Trustee(s) for Frank J. Quayle, dated Septembe 30, 1992, recorded September 30, 1992, in Deed Book 321, page 102 (NELSON COUNTY), securing the principal amount of $150,000.00.
SUPPLEMENTAL DEED OF TRUST recorded in Deed Book 1596, Page 408, adds Quiet Entry Farm as additional collateral.

Recorded release of land described in Schedule from lien of Judgement as follows:
Dated: March 19, 1999, in Judgment Lien Docket Book 99, Page 183
Amount: $126,785.95, plus interest and costs ($19,017.89 attorney fees)
Favor of: Wachovia Bank, N.A.
Against: William S. Gordon and Helen Tilghman Gordon

ALTA COMMITMENT FOR TITLE INSURANCE

Your Reference: HAISFIELD, AUDREY LEA Commitment No: 2071-00527

Any Policy we issue will have the following exceptions unless they are taken care of to our satisfaction.

General Exceptions:

1. Rights or claims of parties in possession not shown by the public record.
2. Encroachments, overlaps, boundary line disputes, and any other matters which would be disclosed by an accurate survey and inspection of the premises.
3. Easements or claims of easements not shown by the public records.
4. Any lien, for services, labor, or material heretofore or hereafter furnished, imposed by law, and not shown by the public records.
5. Taxes or special assessments which are not shown as existing liens by the public records.

Special Exceptions:

A 1. Taxes for the second half of the year 2000 and subsequent years.

2. Encroachments, overlaps, boundary line disputes, and any other matters which would be disclosed by an accurate survey and inspection of the premises.

Easements or claims of easements not shown by the public records.

P 3. Any additional taxes for any past, present or future tax year which may become due under the land use ordinance of Albemarle County, but which are not presently payable because of the existing classification and use of the land.

PARCEL ONE:

C 4. Easements granted to Appalachian Electric Power Company by instruments recorded in Deed Book 246, Page 28 and Deed Book 1447, Page 174.

D 5. Easements granted to Virginia Telephone and Telegraph Company by instrument recorded in Deed Book 403, Page 214.

E 6. Rights of others in and to the use of the old road as the same now runs accross the western part of the insured premises.

F 7. Non-exclusive easement of right of way over a new road across western part of insured premises as described by instrument recorded in Deed Book 617, Page 577.

G 8. Restrictive covenants recorded in Deed Book 1401, Page 449, but omitting any restrictions based on race,

ALTA COMMITMENT FOR TITLE INSURANCE

Your Reference: HAISFIELD, AUDREY LEA Commitment No: 2071-00527

color, religion, sex, handicap, familial status or national origin unless and only to the extent that said covenant:

A. is exempt under Chapter 42, Section 3607 of the United States Code, or

B. relates to handicap but does not discriminate against handicapped persons.

This policy insures that a violation thereof will not cause a forfeiture or reversion of title.

PARCEL TWO:

K 9. 20' easements of right of way granted by instruments recorded in Deed Book 133, Page 244 and Deed Book 617, Page 577.

L 10. Easements granted to Applachian Electric Power Compny by instruments recorded in Deed Book 246, Page 75, Deed Book 246, Page 77, Deed Book 261, Page 186, Deed Book 734, Pge 127 and Deed Book 264, Page 440.

M 11. Title to that portion of the insured premises lying within the bounds of Hardware River and Beaver Branch.

N 12. Title to that portion of the insured premises lying within the bounds of the old public roads crossing the insured premsies.

O 13. 100 year flood plain as shown on plat recorded in Deed Book 1300, Page 270.

CHICAGO TITLE INSURANCE COMPANY

218 5TH STREET, N.E., CHARLOTTESVILLE, VA 22902

PHONE: (804)295-7196
FAX: (804)979-7208

Date: JUNE 23, 2000

COMMITMENT/REPORT TYPE: RESIDENTIAL COMM.

Application Date: JUNE 23, 2000
Due Date: JUNE 30, 2000

Order Number 2071-00527

Customer number: HAISFIELD, AUDREY LEA

Policy or Policies to be Issued:

OWNER'S POLICY: ALTA OWNER'S POLICY (10-17-92) $1,100,000.00
Proposed Insured: AUDREY LEA HAISFIELD OR LAUREL RIDGE, LLC

LOAN POLICY: $0.00
Proposed Insured:

Owner: KENNETH R. LAPE, TUSTEE OF THE KENNETH R. LAPE LIVING TRUST, AND BARBARA GSAND, and LAPE, TRUSTEE OF THE BARBARA GSAND LAPE LIVING TRUST, and TYE RIVER LIMITED PARTNERSHIP, and WILLIAM S. GORDON AND HELEN T. GORDON

SUBDIVISION:
SECTION:
BLOCK:
LOT:
PHASE/PART:

STREET ADDRESS	2992 PLANK ROAD	
CITY/STATE	NORTH GARDEN	VIRGINIA
COUNTY	Albemarle	

TAX I.D.: 111-5A & 111-41

Special Instructions:

147.326 ACRES - PARCEL ONE
85.34 ACRES - PARCEL TWO

Additional Information:

CUSTOMER INFORMATION:

FORBES R. REBACK
FORBES R. REBACK
700 EAST HIGH STREET
P.O. BOX 20
CHARLOTTESVILLE, Virginia 22902

PHONE: FAX:

· McLEAN ·
FAULCONER INC.
Farm, Estate and Residential Brokers
web site: www.mcleanfaulconer.com
503 Faulconer Drive, Suite 5 Charlottesville, Virginia 22903
Phone: (804) 295-1131 Fax: (804) 293-7377
e-mail: homes@mcleanfaulconer.com

October 25, 2000

Dr. & Mrs. Hamilton Moses III
Rt. 1, Box 549
North Garden, VA 22959

Dear Dr. and Mrs. Moses:

I very much appreciate Mrs. Moses taking the time to meet with me last Friday concerning the boundary line between your property and the Lape property as well as discussing the possible usage of the old roadbed right of way on the Lape property for access to the Lape residence. While I do not think it will be certain that every purchaser will use that old roadbed, I do believe, should my purchasers go forward with the purchase of the Lape property, they will reconstruct the entrance to the Lape property by using the old road that we walked as access to the residence. Should you have any questions or comments or if I can help clarify anything else for you with regard to the boundary line, or should you have any general concerns, don't hesitate to call me at your convenience. It was a pleasure to have met you both and I look forward to the pleasure of seeing you both again in the near future.

With best wishes,

Sincerely,

Stephen T. McLean
President

STM:acs

PLAINTIFF'S EXHIBIT 5-24-01 NO. 17 (pp)

NATIONAL ASSOCIATION OF REALTORS
AMERICAN CHAPTER, INTERNATIONAL REAL ESTATE FEDERATION
VIRGINIA CHAPTER, NATIONAL FARM & LAND INSTITUTE

BK 1401 PG 0149

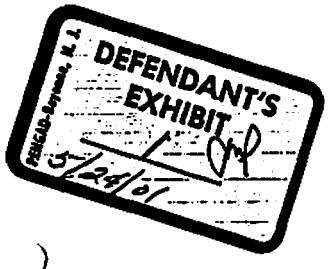
005835

THIS DEED, made as of this 3rd day of May, 1994, by and between KENNETH R. LAPE and BARBARA G. LAPE, husband and wife, Grantors, parties of the first part, and HAMILTON MOSES, III and ALEXANDRA GIBSON MOSES, husband and wife, Grantees, parties of the second part, whose address is: Rt. 1, Box 549, North Garden, VA 22959

W I T N E S S E T H:

That for and in consideration of the sum of NINE HUNDRED TWENTY THOUSAND AND NO/100 DOLLARS ($920,000.00), cash in hand paid, the receipt of which is hereby acknowledged, the said Grantors do hereby GRANT, BARGAIN, SELL and CONVEY with GENERAL WARRANTY and ENGLISH COVENANTS OF TITLE unto the Grantees, as tenants by the entirety with full rights of survivorship as at common law, and not as tenants in common, all that certain lot or parcel of land with all improvements thereon and all appurtenances thereunto belonging, situated in the Scottsville Magisterial District of Albemarle County, Virginia, containing 48.725 acres, as shown and more particularly described on plat of Robert L. Lum, C.L.S., dated April 6, 1992, which plat is recorded in the Clerk's Office of the Circuit Court of Albemarle County, Virginia, in Deed Book 1220, page 568 (the "Plat"). Being a portion of the same property conveyed to the Grantors herein by deed of Carolyn B. Randolph and Larned D. Randolph, her husband, dated August 22, 1979, recorded in the aforesaid Clerk's Office in Deed Book 678, page 662.

This deed further provides that the Grantors covenant for themselves, their successors and assigns, that for a period of



thirty (30) years from the date of this deed, no commercial removal of timber, except if necessary for sound land management purposes, shall occur on the following described property of Grantors:

Beginning at the Northeast corner of the property conveyed by this deed (adjacent to the barn depicted on the referenced Plat), then running in a Northwesterly direction along the same bearing as the property line (N 54° 48' 41" W) for 300 feet; then in a straight line approximately 800 feet to VSH 712 to a point along VSH 712 which is 150 feet from the Northwestern corner of the property conveyed by this deed.

The Grantors covenant for themselves, their successors and assigns, that for a period of thirty (30) years from the date of this deed, no building shall be built on the current Albemarle County Tax Map Parcel 111-5A (a portion of the 98.81 residue parcel of Grantors as depicted on the Plat) which may be within 1000 feet from the main residence (Oakmont) located on the property conveyed by this deed.

This conveyance is made expressly subject to the easements, conditions, restrictions, and reservations contained in duly recorded deeds, plats and other instruments constituting constructive notice in the chain of title to the property hereby conveyed, which have not expired by limitation of time contained therein or have not otherwise become ineffective and any lien, inchoate or otherwise for real estate taxes and assessments not yet due and payable.

BK1401PG0451

WITNESS the following signatures and seals:

Kenneth R. Lape (SEAL)

Barbara G. Lape (SEAL)

STATE OF VIRGINIA

CITY/COUNTY OF Charlottesville, to wit:

The foregoing instrument was acknowledged before me this 28th day of April, 1994, by Kenneth R. Lape and Barbara G. Lape.

Sharon L. Horouch (SEAL)
Notary Public

My Commission Expires: May 31, 1996

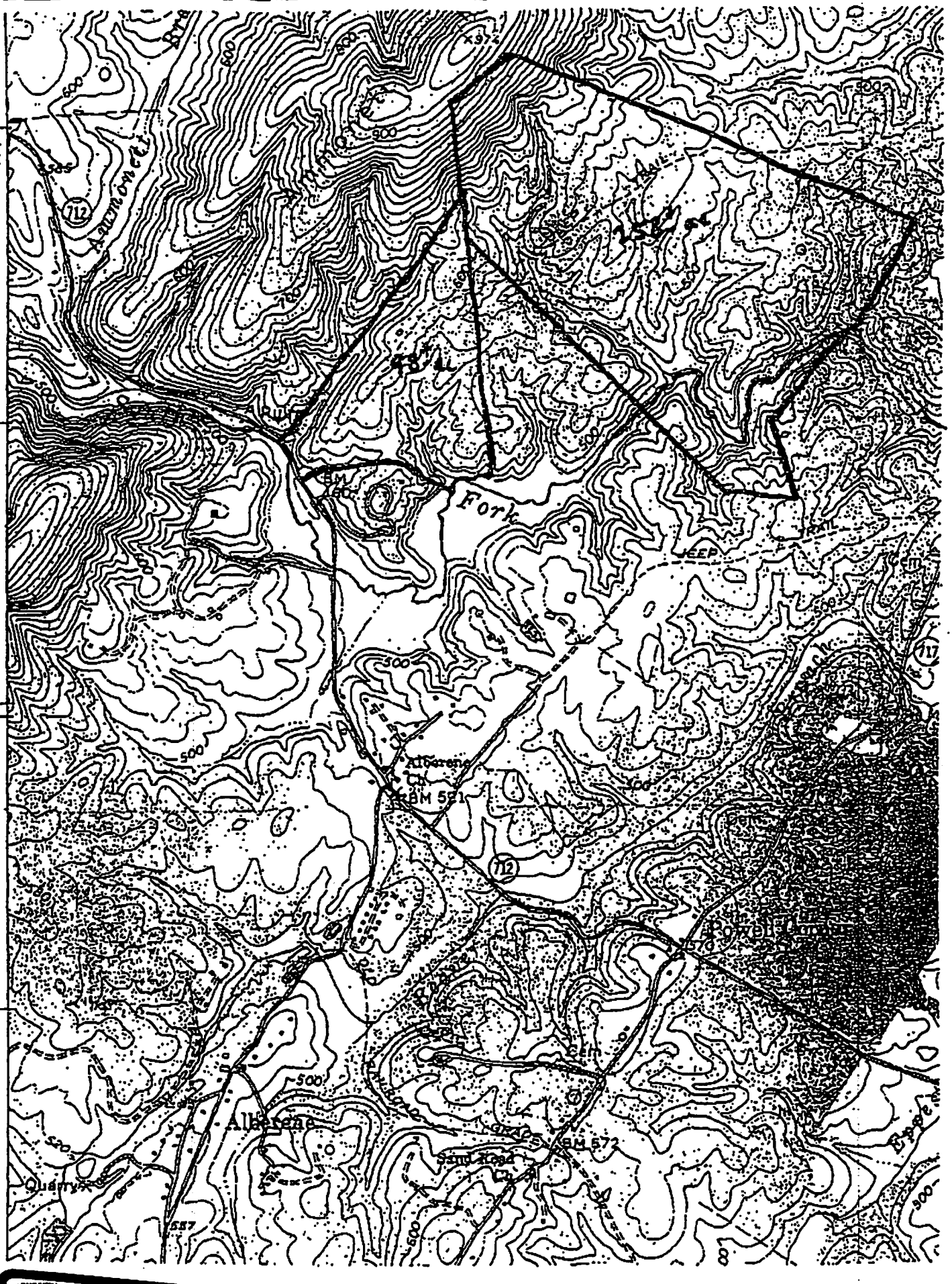
LAP4D011.jjh

VIRGINIA: IN THE CLERK'S OFFICE OF THE CIRCUIT COURT OF ALBEMARLE:

THIS DEED WAS PRESENTED, AND WITH CERTIFICATE ANNEXED, IS ADMITTED TO RECORD ON May 3, 1994, AT 2:41 O'CLOCK P M.

STATE TAX	$1380.00	(039)
LOCAL TAX	$460.00	(213)
TRANSFER FEE	$ Free	(212)
VELF	$ 1.00	(145)
CLERK'S FEE	$ 13.00	(301)
PLAT	$	
SEC.58.1-802:		
STATE TAX	$ 460.00	(038)
LOCAL TAX	$ 460.00	(220)
LOCAL TAX	$	(223)
TOTAL	$2774.00	

TESTE:
SHELBY J. MARSHALL, CLERK
BY: Eleanor P. Mills
DEPUTY CLERK



DEFENDANT'S EXHIBIT 4

COMMONWEALTH OF VIRGINIA

F. Ward Harkrader, Jr.
P.O. Box 799
Louisa, Virginia 23093
(540) 967-5300

Paul M. Peatross, Jr.
P.O. Box 1651
Charlottesville, Virginia 22902
(804) 972-4015

John R. Cullen
P.O. Box 876
Louisa, Virginia 23093
(540) 727-3440

Sixteenth Judicial Circuit

Albemarle Culpeper Fluvanna Goochland
Greene Louisa Madison Orange Charlottesville

Edward L. Hogshire
315 East High Street
Charlottesville, Virginia 22902
(804) 293-5859

Daniel R. Bouton
P.O. Box 230
Orange, Virginia 22960
(540) 672-2433

June 14, 2001

John G. Berry, Esquire
Berry & Early
Post Office Box 620
Madison, Virginia 22727

Joseph W. Wright, III, Esquire
McGuire Woods LLP
310 Fourth Street, N. E, Suite 300
Charlottesville, Virginia 22902

Stephen T. McLean, President
McLean Faulconer, Inc.
503 Faulconer Drive, Suite 5
Charlottesville, Virginia 22903

RE: Kenneth G. Lape, et. al., v. Audrey Lea Haisfield, et al.
Law No.: CL00-8407

Dear Counsel and Mr. McLean:

This matter was tried before the Court without a jury on May 24, 2001. Both sides presented evidence and the Court took a view of the real estate in question at the request of plaintiffs without objection from defendants. The Court took the matter under advisement to receive additional legal authority and argument from counsel within fourteen (14) days of May 24, 2001.

FACTUAL FINDINGS

Kenneth R. Lape and Barbara G. Lape, Trustees for the Kenneth R. Lape Living Trust, entered into a contract or "purchase agreement" for the sale of 98.78 acres known as Laurel Ridge in Albemarle County, Virginia, to Audrey Lea Haisfield (or "Laurel LLC") by written contract dated February 14, 2000.

Audrey Lea Haisfield, hereafter referred to as "Purchaser", made a deposit of $50,000.00 to McLean Faulconer Inc., Realtor and identified as escrow agent. A proposed closing date was established in the purchase agreement of June 30, 2000.

The purchase agreement also provided for liquidated damages and stated: "Should purchaser default and/or breach this contract, the seller shall be entitled to retain the earnest money deposited of $50,000.00 as liquidated damages in lieu of all other remedies provided at law or in equity against the purchaser."

A title search by the purchaser revealed a restriction[1] applying to the 98-acre tract which stated: "The grantors covenant for themselves, their successors and assigns, that for a period of thirty (30) years from the date of this deed, no building shall be built on the current Albemarle County Tax Map Parcel 111-5A (a portion of the 98.81 residue parcel of grantors as depicted on the plat) which may be visible from the main residence (Oakmont) located on the property conveyed by this deed." By letters dated June 29 and June 30, 2000, respectively, Marshall M. Slayton, attorney for purchaser notified seller's attorney, Wendell L. Winn, Jr. of this alleged Title Defect and referring in those letters to paragraph 14 of the Real Estate Contract

[1] The Court has excluded reference to a second restrictive covenant attached to Laurel Ridge preventing removal of commercial timber for 30 years on a strip 150 to 350 feet wide and 850 feet in length. This restrictive covenant is not at issue because the purchaser did not inform the seller prior to the closing date of June 30, 2000, that this particular restriction was a "title defect" requiring curing under the purchase agreement.

introduced as Plaintiffs' Exhibit 1 (Contract of February 14, 2000). Paragraph 14 states:

> **TITLE:** At settlement seller shall convey the Property to the Purchaser by a general warranty deed containing English covenants of Title, free of all encumbrances, tenancies, and liens (for taxes and otherwise), but subject to such restrictive covenants and utility easements of record which do not materially and adversely affect the use of the Property for residential purposes or render the Title unmarketable.

Purchaser took the position in the letters of June 29 and June 30, 2000 (Plaintiffs' Exhibits 3 and 4) that the "view" restriction from Oakmont as to buildings on the 98-acre parcel, "Laurel Ridge", was a restriction which "...materially and adversely affect[ed] the use of the Property for residential purposes or render[ed] the Title unmarketable."

Kenneth Lape, one of the plaintiffs, testified that he originally owned the tract including Oakmont and the 98-acre tract which he retained after the sale of Oakmont in 1994 to Dr. Hamilton Moses, III and Alexandra Gibson Moses. The deed from the Lapes to the Moses was received into evidence as Defendants' Exhibit 1.

Mr. Lape testified that as one views the Laurel Ridge tract from Oakmont, one looks at a hill covered with hardwood trees which ascends in elevation approximately 150 feet. The Oakmont residence measures 1000 to 1200 feet from the property line of Laurel Ridge. Kenneth and Barbara Lape built a residence on the Laurel Ridge property and a distance of 1,742 feet separates the houses if one walks a straight line. Mr. Lape also testified that the property between the two residences consists of dense, mature trees with undergrowth and that one can see 50 yards at most when looking into the woods. He also testified that the elevation at Laurel Ridge is 600 feet and the elevation goes down 150 feet, up a hill, down another hill into a ravine, and then up to Oakmont. The elevation of Oakmont is 580 feet. Mr. Lape also testified that of the 98 acres of land at Laurel Ridge, 92 to 93 acres were forested in mature trees. The view taken by the Court confirms the above facts.

Mr. Lape also testified that the residence at Laurel Ridge could not be seen from Oakmont at any season of the year. He stated that there were many sites for building on the Laurel Ridge land that would not be in the view of Oakmont. The view by the Court also confirms these facts.

The Court also received into evidence Defendants' Exhibit 5, which was a set of proposed plans prepared by SLDC Limited for improvements to the residence at Laurel Ridge prepared for Mr. and Mrs. Richard Haisfield. Mr. Andrews of SLDC testified that Mr. and Mrs. Haisfield approved these plans on or about June 7, 2000, and he was asked to get contractors to bid on the improvements. The improvements were additions or modifications to the existing house and the building of a horse barn facility in the back of the Laurel Ridge house. The elevations of all these structures, including a proposed garage with a second floor apartment, were not higher than the existing Lape residence.

Defendant Audrey Haisfield testified that her plans were to occupy the 98-acre Laurel Ridge tract as a primary residence. She stated that she intended to move her 29 to 30 horses to the property after constructing an indoor arena, outdoor arena, round pin, housing units for her employees, barn, pastures and riding trails on the property as well as a swimming pool and several ponds located throughout the property.

Ms. Haisfield testified that her desire was to move to the property and "get a feel" for the property before she made any final decision as to improvements for her use of the property as a residence and as a horse operation for her horses.

The Court also received evidence that Plaintiffs' Exhibit 1 granted purchaser an option to buy a 258-acre tract ("Option Property") adjacent to the 98-acre tract. Plaintiffs' Exhibit 8 is a proposal prepared upon request from Ms. Haisfield for her consideration to place the equestrian center on the 258-acre Option Property. Ms. Haisfield testified that this was one option she was considering as an alternative to placing the improvements on the 98-acre tract where she feared they would be visible from Oakmont.

Ms. Haisfield testified that she had a contract to either purchase, or have an option to purchase, the Gordon tract, which is the triangular tract of property in between Laurel Ridge and the 258-acre Option Property shown on Plaintiffs Exhibit 8 containing pasture and a pond. Her plan was to put the three properties together and to close on all three at the same time. This plan was verified by her attorney, Forbes Reback, at trial.

The Court also received testimony that purchaser made a second offer to sellers in late October/early November of 2000. This offer was for the same amount of money and the same property contained in the original purchase agreement, i.e., the purchase of the 98-acre Laurel Ridge property with the option to purchase the 258-acre Option Property.

In its view, the Court walked to the residence at Oakmont and viewed the Laurel Ridge property. It also visited the Laurel Ridge residence. Both residences are located at the top of hills.

QUESTIONS PRESENTED

I. Whether the "view" easement from Oakmont constitutes a "restrictive covenant" that materially and adversely affects the use of the Laurel Ridge property for residential purposes according to the relevant terms of the purchase agreement found in Section 14?

II. Whether the view easement renders the title unmarketable under the terms of the purchase agreement?

LEGAL ARGUMENTS AND CONCLUSIONS

I. Whether Restrictive Covenant Materially and Adversely Affects the Property for Residential Use.

The Court holds that the view easement does not constitute a restrictive covenant that materially and adversely affects the use of the Laurel Ridge Property for residential purposes. In reaching this decision, the Court was heavily influenced by the fact that a substantial residence already exists on Laurel Ridge that cannot be seen from Oakmont and thus does not violate the view

easement. Clearly, the mere existence of the Lape house is the strongest evidence that the restrictive covenant does not materially affect the use of the property for residential purposes. It is also worth noting that while Ms. Haisfield had plans to make improvements and additions to the Lape residence, none of her architectural plans depicted improvements that would be higher than existing structural elevations.

As Plaintiff's counsel points out in his supporting memorandum, the term "for residential purposes" does not include improvements to the property that are commercial or agricultural in nature. See Jernigan v. Capps, 187 Va. 73, 80, 45 S.E.2d 886 (1948)(holding that a residential building is one that is used for residential purposes - that is, "one in which people reside or dwell, as distinguished from one which is used for commercial or business purposes"); 20 Am. Jur., Covenants, Conditions and Restrictions, § 186, citing Timms v. Griffith, 68 S.W.2d 535 (Tex. Civ. App.)(holding that term "residential purposes" does not include erecting a stable and keeping horses).

The Court was presented with evidence indicating that Ms. Haisfield intended to improve the property at some point in the future by constructing some or all of the following: a barn for her horses, a pasture, riding trails, an indoor and outdoor arena, a round pin, homes for her employees, wine vineyards, and several ponds or lakes. However, whether or not the construction of these improvements would violate the restrictive covenant is irrelevant due to the fact that these intended uses fall outside of the realm of "residential purposes."

Defense counsel in his supporting memorandum asks the Court to interpret the phrase "for residential purposes" objectively, claiming that the Court should not limit its review to only those improvements found in Ms. Haisfield's architectural plans, but should also consider any possible improvements that could be made which would violate the restrictive covenant. For example, Mr. Wright puts forth several cases which define the phrase "for residential purposes" as including such structures as tennis courts, basketball courts, baseball fields, gardens, tree-houses, and swimming pools. See generally Bagko Development Co. v. Damitz, 640 N.E.2d 67 (Ind. Ct. App. 1994)(holding that these structures are within the purpose of a single-family

residence). Mr. Wright's argument is that Ms. Haisfield would be prohibited by the view easement from building these improvements in the future, and losing the right to make these improvements materially and adversely affects Ms. Haisfield's ability to use and enjoy her property for residential purposes. The Court rejects this argument.

There is no evidence that Ms. Haisfield intended to make these improvements, with the exception of perhaps a swimming pool. More importantly, there is no evidence before the Court that the construction of any of these features would violate the view easement. Even if the Court were to assume that the restrictive covenant would prevent Ms. Haisfield from building one or more of these improvements, the Court is not convinced that such deprivation would "materially" affect her ability to use the property for residential purposes.

Finally, counsel for Defense argues that Ms. Haisfield specifically intended to build a new road to access the Option Property. Because construction of the road would likely violate the restrictive covenant, Ms. Haisfield would be prevented from constructing the road and thus materially and adversely affected. In support of his argument, Mr. Wright cites an Arkansas case in which the court allows the construction of a road despite the existence of a restrictive covenant limiting property use to residential purposes only. See Casebeer v. Beacon Realty, Inc., 449 S.W.2d 701 (Ark. 1970). However, the restrictive covenant in the case at hand only prevents the erection of *buildings* on the Laurel Ridge property that can be viewed from Oakmont. There is no evidence that the construction of an access road for residential purposes will violate the view easement. See generally Neekamp v. Huntington Chamber of Commerce, 99 W.Va. 388, 129 S.E. 314 (1925)(holding that "the word 'building' cannot be held to include every species of erection on land, such as fences, gates, or other like structures," and rejecting the argument that a railroad track constitutes a building); Hemenway v. Bartevian, 321 Mass. 226, 72 N.E.2d 536 (1947)(holding that the extension and modification of a concrete entranceway did not constitute a "building" so as to violate a restrictive covenant).

For the above stated reasons, Defendant has failed to prove that the restrictive covenant materially and

adversely affects her ability to use the Laurel Ridge property for residential purposes.

II. Whether Restrictive Covenant Renders Title Unmarketable.

The Court also finds that the restrictive covenant does not render title unmarketable. The question of marketability of title is a question of law for the Court. Madbeth, Inc. v. Weade, 204 Va. 199, 202, 129 S.E.2d 667, 669-70 (1963). In Madbeth, the Supreme Court of Virginia defined a marketable title as such:

> A marketable title is one which is free from liens and encumbrances; one which discloses no serious defects and is dependent for its validity upon no doubtful questions of law or fact; one which will not expose the purchaser to the hazard of litigation or embarrass him in the peaceable enjoyment of the land; one which a reasonable well-informed and prudent person, acting upon business principles and with full knowledge of the facts and their legal significance, would be willing to accept, with the assurance that he, in turn, could sell or mortgage the property at its fair value.

Id. at 202, 129 S.E.2d at 669-70.

In his supporting memorandum, counsel for Defense focuses on the language "free from liens and encumbrances" and "one which will not embarrass [the Purchaser] in the peaceable enjoyment of the land." Id. The essence of Mr. Wright's argument is that the restrictive covenant attached to the Laurel Ridge property is a negative easement, and all negative easements are encumbrances. See generally 77 Am. Jur. 2d., Vendor and Purchaser, § 210 (stating that "private covenants or agreements imposing restrictions as to the use to which premises may be put . . . render the title unmarketable). Because a marketable title under Madbeth is one that is free from all encumbrances, title in the case at hand is unmarketable. Madbeth 204 Va. at 202, 129 S.E.2d at 669-70; see also McAllister v. Harmon, 101 Va. 17, 42 S.E. 920, 922-23 (1902)(holding purchaser need only show that encumbrance may negatively impact his

ability to develop or enjoy his property to render title unmarketable). The Court rejects this argument.

While Mr. Wright's legal reasoning appears sound at first glance, his argument cannot be applied directly to the case at hand in light of the specific language found in the relevant portion of the purchase agreement. Section 14 of the purchase agreement states:

> At settlement Seller shall convey the Property to the Purchaser by general warranty deed containing English covenants of title, free of all encumbrances, tenancies, liens (for taxes or otherwise), but **subject to such restrictive covenants and utility easements of record which do not materially and adversely affect the use of the Property for residential purposes or render the title unmarketable.** (Emphasis added)

Because the terms of the purchase agreement specifically allow for the presence of some restrictive covenants, Mr. Wright's argument that title must be completely free from all encumbrances fails.

Mr. Wright's second argument supporting the claim that the title is unmarketable is grounded upon testimony by Dr. Moses indicating that he might initiate a legal action in the future to prevent Ms. Haisfield from building an access road to the Option Property. According to Dr. Moses' deposition, he believes that construction of such a road *may* violate one or both restrictive covenants. Defense counsel argues that Dr. Moses' testimony is evidence that Ms. Haisfield may be exposed to the threat of litigation and may be "embarrassed . . . in the peaceable enjoyment of the land." Madbeth, 204 Va. at 202, 129 S.E.2d at 669-70. Accordingly, under the definition of marketable title as laid out in Madbeth, the threat of such litigation renders title unmarketable. See id. The Court does not agree with this argument.

In Madbeth, the seller of a two-acre piece of property brought an action for breach of contract against the purchaser when purchaser refused to close the deal pursuant to the purchase agreement. The purchase agreement provided that the property title was to be "free and clear of all liens and indebtedness of every kind." Id. at 200. The

defendant-purchaser denied that he was in breach, claiming that certain clouds on the title existed which the seller failed to cure and which rendered title unmarketable. Specifically, the two-acre parcel of land was part of a larger tract that had been conveyed away in piece-meal fashion by several different conveyances during previous years. The exact boundaries and descriptions of these prior conveyances were vague and indefinite. There was also evidence of the existence of a sewer easement located somewhere on the two-acre property. Because of the high probability of overlapping conveyances, multiple claims to the property, and the existence of an easement whose dimensions and location were unknown, the Supreme Court of Virginia ruled that title was unmarketable. Id. at 203. The Court based its ruling on the "hazard" of litigation that a purchaser would likely face and the "necessity to resort to extrinsic proofs." Id.

As stated above, the purchase agreement in the present case, unlike that in Madbeth, does not require the property to be completely free of all liens and encumbrances at closing. The Court also finds that the view easement attached to the Laurel Ridge property is clearly distinguishable from the multitude of claims and the ambiguous easement encumbering the two-acre property in Madbeth.

The test for determining unmarketable title is an objective one, where title is considered "unmarketable" only where a *reasonable buyer* would refuse to accept the property due to conflicting interests in or litigation over the property. See Madbeth, 204 Va. at 202, 129 S.E.2d at 670. Madbeth does not require this Court to find title "unmarketable" simply based on the possibility of future litigation that *may* result from *future* intentions and improvements to the property contemplated by Ms. Haisfield prior to sale. Even if the Court were to look specifically at Ms. Haisfield's plans for Laurel Ridge, there is no evidence to suggest that her contemplated access road will violate the restrictive covenants and lead to a litigious battle with her neighbors at Oakmont.

Applying the test as set forth in Madbeth, the Court does not find that the restrictive covenant renders title in the present case unmarketable. Despite Ms. Haisfield's planned improvements and Dr. Moses' testimony, there is little evidence that the purchaser of Laurel Ridge would be

subject to embarrassing litigation that would prevent him or her from the peaceable enjoyment of the property. In addition, the Court has difficulty accepting Defendant's argument that title is no longer marketable in light of Ms. Haisfield's renewed offer to purchase Laurel Ridge in November, 2000. It is worth noting that this renewed offer, initiated by the Defendant, was for the same amount previously agreed upon by the two parties prior to discovery of the restrictive covenants by Ms. Haisfield.

For the reasons stated above, the Court finds that the restrictive covenant, under the terms of the purchase agreement, does not adversely and materially affect the use of the property for residential purposes or render title unmarketable. As a result, Defendant's refusal to make payment on June 30, 2000, as required under the purchase agreement, constitutes a breach of contract for which the Plaintiffs are entitled to judgment in the amount of $50,000 liquidated damages.

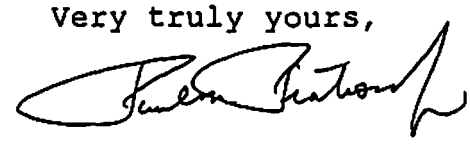
The Court notes that there was no evidence presented at trial to support a claim for attorney's fees; consequently, none shall be awarded.

CONCLUSION

Defendant McLean Faulconer is ordered to pay the sum of $50,000 to Plaintiffs plus any interest earned to be credited to the judgment herein awarded Plaintiffs against Defendants of $50,000 plus interest at the judgment rate from June 30, 2000, plus costs of court.

Mr. Berry is directed to prepare an Order consistent with this Opinion and submit it to the Court after Mr. Wright's endorsement.

Very truly yours,



Paul M. Peatross, Jr.
Judge

VIRGINIA: IN THE CIRCUIT COURT ALBEMARLE COUNTY

FILED
2001 OCT -4 PM 4:21
CIRCUIT COURT CLERK'S OFFICE
ALBEMARLE COUNTY, VA
SHELDON J. HARSHALL, CLERK
BY _____ D.C.

KENNETH R. LAPE, et al.,
Plaintiffs

v. CASE NO. CC100-407

AUDREY LEA HAISFIELD, et al.
Defendants

MOTION AND NOTICE OF PRESENTATION OF FINAL ORDER

PLEASE TAKE NOTICE that the undersigned will appear before the Judge of the Circuit Court of Albemarle County on October 9, 2001, at 11:30 a.m., the date and time previously agreed upon, and move for entry of the attached Final Order in this case. The Plaintiffs will also at the same time and place move the Court for an award of attorneys fees in the case in the amount of $6,000.00.

KENNETH R. LAPE, TRUSTEE, et al.

By: John G. Berry
Counsel

John G. Berry
Berry & Early
P. O. Box 620
Madison, Virginia 22727
(540) 948-6848
Facsimile: (540) 948-3513

CERTIFICATE OF SERVICE

I hereby certify that I sent a true copy of this Motion and Notice of Presentation of Final Order, by first class mail and by facsimile, to Robert A. Angle, Esquire; Joseph W. Wright, III, Esquire, and Mr. Stephen T. McLean, President, McLean Faulconer, Inc., on October 3, 2001.

John G. Berry

020092 + 012881

1 VIRGINIA:

2 IN THE CIRCUIT COURT OF THE COUNTY OF ALBEMARLE

3 **********
KENNETH R. LAPE, Trustee of the *
4 Kenneth R. Lape Living Trust, *
et al., *
5 *
Plaintiffs, * At Law Number
6 v. * C100-8407
*
7 AUDREY LEA HAISFIELD, et al., *
*
8 Defendants. *
****

ORIGINAL

CLERK
SUPREME COURT OF VIRGINIA
RECEIVED
JAN 29 2002
RICHMOND, VIRGINIA

9

10 TRANSCRIPT OF PROCEEDINGS

11 BEFORE THE HONORABLE PAUL M. PEATROSS, JUDGE

12 October 9, 2001

13 11:30 a.m. - 12:27 p.m.

14 Charlottesville, Virginia

15 I, Shelby J. Marshall, Clerk of Circuit Court
16 of Albemarle County do hereby certify this to
be the original transcript in the matter of
17 Kenneth R. Lape, Trustee, et als vs Audrey Lee
Haisfield, et als.

18 Shelby J. Marshall
Shelby J. Marshall, Clerk

19 HALASZ REPORTING & VIDEO

20 P.O. Box 1644

21 Richmond, Virginia 23218-1644

22 (804) 741-5215

FILED
2001 NOV -2 PM 3:27

23

24

25 REPORTED BY: GWENDA E. APPLEGATE, RPR, CRR

1 here is clear. I think it is -- it ought to be
2 clear from the fact that no contrary authority
3 is even cited by the other side, that this
4 particular determination, and I say it again
5 respectfully, Your Honor, is incorrect so far as
6 the provision concerning title marketability and
7 the requirement of the general warranty deed
8 containing English covenants.
9 With respect to the other matter, Your
10 Honor, to the extent that any conversations have
11 gone on between counsel on the legal fee issues,
12 they have been handled by Robert Angle, my
13 associate here, who is at the table. I do agree
14 with Mr. Berry that the figures that he gave to
15 Mr. Angle in the conversations certainly didn't
16 sound unreasonable to me, but I don't think that
17 there would be any entitlement to those legal
18 fees. I'll ask Mr. Angle if he'll just take a
19 second to describe that to you.
20 THE COURT: All right.
21 MR. ROBERTS: Thank you, sir.
22 THE COURT: Mr. Angle?
23 MR. ANGLE: Your Honor, Mr. Berry is
24 correct in that we don't take issue with the
25 amount of the attorneys' fees. And I've

1 actually had an opportunity to review his final
2 order, and there are two issues in there that we
3 disagree with. One is the attorneys' fee issue,
4 and he's correct in expecting that we disagree
5 as to his legal entitlement.
6 The Lapes' remedies under the contract
7 are exclusively the liquidated damages that they
8 agreed to. Originally under the contract,
9 before they added the addenda which adds the
10 liquidated damages clause, they were entitled to
11 damages under default, which is paragraph 23
12 under the contract. It provides in the first
13 sentence that if seller or purchaser defaults in
14 this contract, the defaulting party, in addition
15 to all their remedies available to all brevity,
16 shall be liable for any damages, all expenses
17 incurred by the non-defaulting party in
18 connection with this transaction and the
19 enforcement of the contract, including, without
20 limitation, attorneys' fees and costs, if any.
21 So originally under the contract, the
22 Lapes would have had to come forward and present
23 whatever evidence of damages they might have,
24 and then they would be entitled under paragraph
25 23 to recover those damages and any attorneys'

1 fees and costs. Instead, however, the parties
2 agreed to a liquidated damages provision which
3 is in paragraph 24.
4 And paragraph 24 provides that should
5 purchaser default and/or breach this contract,
6 the seller shall be entitled to retain the
7 earnest money deposit, $50,000, as liquidated
8 damages in lieu of all other remedies provided
9 at law or in equity against the purchaser. It's
10 a one-way default provision. It benefits the
11 sellers, not the purchaser.
12 The significance, Your Honor, of this
13 provision is twofold. One, obviously, it
14 obviates the need for the Lapes to actually
15 prove actual damages which, in a case like this,
16 could be very difficult to prove. But it also
17 protects the Haisfields, and that was the
18 intent, to limit their exposure under the
19 contract, the $50,000 in liquidated damages.
20 And, Your Honor, the use of the term --
21 in fact, in Mr. Berry's argument, he said you
22 have to start with a contract and look at the
23 contract and see what it says. And that's --
24 he's absolutely right. That's a basic,
25 fundamental legal proposition for a contract

1 interpretation. And the use of the term remedy
2 in paragraph 24 is very significant.
3 As Your Honor is aware, under all well
4 established rules of construction, a contract is
5 to be construed according to the plain meaning
6 of the terms used. That's from the Bridgestone
7 Firestone case, Virginia Supreme Court, 250 Va
8 402, from 1995. And also the supreme court
9 said, The guiding light is the intention of the
10 parties as expressed by them in the words they
11 have used. And courts are bound to say the
12 parties intend what the written instrument
13 plainly declares. That comes from Meagan Corp,
14 which is a Virginia Supreme Court case at 203 Va
15 259, a 1962 case.
16 Your Honor, attorneys' fees are one of
17 the remedies that was originally provided under
18 the contract. The American rule, as you know,
19 is that the parties are not entitled to recover
20 their attorneys' fees in any, just normal
21 litigation. They're either entitled by
22 contractual right or by statute, or there are
23 certain other narrow exceptions. But those are
24 it, by contract or by statute. They have no
25 statutory right to recover their attorneys' fees

1 here. Instead, it is a remedy that was provided
2 in paragraph 23 of the contract.
3 So in paragraph 24, when the parties
4 agreed instead to go forward and accept
5 liquidated damages of $50,000 in lieu of all
6 other remedies at law or in equity, they were
7 therefore giving up their right to recover
8 attorneys' fees under paragraph 23. "All other
9 remedies" is significant here and actually, I
10 think, controlling.
11 THE COURT: Well, did Mr. Berry reserve
12 his right to put on evidence of attorneys' fees
13 at trial?
14 MR. ANGLE: I don't believe he did, but I
15 wasn't there so I'll have to defer to him. But
16 I didn't -- I don't know.
17 THE COURT: Well, would you want to rely
18 on the Court's letter opinion on that?
19 MR. ANGLE: Sure, Your Honor. I would --
20 let me look at the Court's letter opinion, but
21 I --
22 THE COURT: Well, it says on page 11 that
23 the Court notes that there was no evidence
24 presented at trial to support a claim for
25 attorneys' fees, consequently none shall be

1 awarded. So I thought I addressed that in the
2 letter opinion, but maybe not.
3 MR. ANGLE: I think that Your Honor has
4 addressed it.
5 The other issue is prejudgment interest
6 that is sought by the final order. Our argument
7 is essentially the same, Your Honor. Under the
8 contract, the earnest money deposit was stuck in
9 an escrow account where it has been earning
10 interest. We don't have any argument with
11 opposing counsel, at least I don't think so,
12 that they would be entitled to whatever interest
13 was earned on the $50,000. And that interest
14 was intended to allow the $50,000 to continue
15 accruing interest so that if closing got pushed
16 from the original closing date, the sellers
17 wouldn't be harmed in any way because the value
18 of the $50,000 would remain constant.
19 Your Honor, prejudgment interest is not a
20 matter of right under Virginia law. As you
21 know, prejudgment interest is normally designed
22 to make -- I'm sorry. The prejudgment interest
23 is awarded in discretion of the Court, as the
24 supreme court has held. Prejudgment interest is
25 remedial, we would say, just like the attorneys'

VIRGINIA: IN THE CIRCUIT COURT ALBEMARLE COUNTY

KENNETH R. LAPE, et al.,
Plaintiffs

v. CASE NO. C100-8407

AUDREY LEA HAISFIELD, et al.
Defendants

FINAL ORDER

On the 24th day of May, 2001, came the parties hereto on the issues joined, and the case was tried before the Court, sitting without a jury. The Court heard the evidence, took a view of the real property that is the subject of this action, and received the oral and written argument of counsel.

On June 14, 2001, the Court issued its ruling in the case in the form of a letter opinion. In accordance with the findings and rulings of the Court contained therein, it is ORDERED that the Plaintiffs, Kenneth R. Lape, Trustee, and Barbara Gsand Lape, Trustee, shall have judgment against Audrey Lea Haisfield and Laurel Ridge, LLC, Defendants, jointly and severally, in the amount of $50,000.00, with interest thereon at the judgment rate from June 30, 2000, until paid, plus the Plaintiffs' taxable costs. It is ORDERED that the Defendant McLean Faulcouner, Inc., the holder of an escrow in the amount of $50,000.00 plus interest which has accrued thereon, shall pay the $50,000.00 plus accrued interest to the Plaintiffs to be credited against the Plaintiffs' judgment against the Defendants Haisfield and Laurel Ridge, LLC.

The Defendants' Motion for Reconsideration is denied.

Upon the argument of counsel and the presentation of evidence concerning the Plaintiffs' legal fees, the Court awards $ — 0 — GR in counsel fees from the Defendants Haisfield and Laurel Ridge, LLC, to the Plaintiffs.

And nothing further remaining to be accomplished in this action, it is ORDERED dismissed from the pending docket of the Court.

ENTER: _____
Judge

DATE: 10-9-01

LOB 159 P240

I ask for this, except as to rulings on counsel fees to which objection is preserved in accordance with agreement, on the record and prays for relief

_____
Counsel for the Plaintiff

Seen and objected to: for the reasons and on the authorities argued and relied upon in Motion to Reconsider and at time of case.

_____
Counsel for the Defendants Haisfield and Laurel Ridge, LLC

Assignment of Error – Audrey Lea Haisfield

I. The trial court erred, as a matter of law, when it ruled that a restrictive covenant, such as that encumbering the property at issue, does not render title to the property unmarketable.

Assignment of Error – Kenneth R. Lape

I. The trial court erred in denying counsel fees to the Lapes when the reasonableness and timeliness of the request was not in dispute, only the legal right to collect such fees under the contract.