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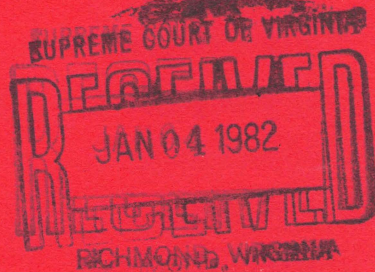
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IN THE  
**Supreme Court of Virginia**  
AT RICHMOND

WASHINGTON & LEE  
LAW LIBRARY

RECORD NO. 810025

JAN 31 1984



BRUCE FORBES, ET AL.

Appellants

v.

JOHN R. SCHAEFER, ET AL.

Appellees

---

JOINT APPENDIX

---

I. Clinton Miller, Esq.  
Lawyer's Row  
Woodstock, Virginia 22664

~~Patrick M. McSweeney, Esq.  
Jack W. Burtch, Jr., Esq.  
McSweeney, Stutts & Burtch  
9 South Twelfth Street  
Richmond, Virginia 23219~~

Counsel for Appellants

Kermit L. Racey, Esq.  
Racey & Racey  
115 West Court Street  
Woodstock, Virginia 22664

Ronald D. Hodges, Esq.  
Wharton, Aldhizer & Weaver  
90 North Main Street  
Harrisonburg, Virginia 22801

Counsel for Appellees

Thomas V. Monahan, Esq.  
Hall, Monahan, Engle,  
Mahan & Mitchell  
9 East Boscawan Street  
Winchester, Va. 22601

Counsel for Appellees



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DECLARATORY JUDGMENT

TO THE HONORABLE JUDGES OF SAID COURT:

COMES NOW your Complainants, John R. Schaefer and Barbara L. Schaefer, and doth respectfully represent unto Your Honors as follows:

(1) That your Complainants are the owners of Lots 94 and 95, Block A, Section VI, Bryce's Mountain Resort, Inc., in Ashby Magisterial District, Shenandoah County, Virginia, having acquired Lot 94 from Jerauld L. Olmsted and Karen A. Olmsted, husband and wife, by deed dated 27 September 1979, and recorded in the Clerk's Office of the Circuit Court of Shenandoah County, Virginia, in Deed Book 405, Page 107; and Lot 95 from William Douglas Davidson and Hollace Hurd Davidson, husband and wife, by deed dated 15 June 1979, and recorded in the aforesaid Clerk's Office in Deed Book 400, Page 359; attested copies of which deeds are attached hereto as Complainants' "EXHIBITS A and B", respectively.

(2) That the Defendant, Bruce Forbes, is the owner of a 7.35 acre parcel adjoining the Schaefer real estate, and known as the O'Mara Tract at Bryce's Mountain Resort, Inc., having acquired same from A. James O'Mara and Lois J. O'Mara, husband and wife, by deed dated 1 November 1978, of record in the aforesaid Clerk's Office, in Deed Book 392, Page 551; an attested copy of which deed is attached hereto as Complainants' "EXHIBIT C".

(3) That Henry C. Clark and V. Stephen Bradshaw are trustees under Deed of Trust dated 27 April 1971, executed by A. James O'Mara and Lois J. O'Mara, husband and wife, and recorded in the aforesaid Clerk's Office in Deed Book 282, Page 116, which deed of trust represents a first trust on the 7.35 acre parcel heretofore mentioned; an attested copy of which Deed of Trust is attached hereto as Complainants' "EXHIBIT D".



(4) That I. Clinton Miller is Trustee under Deed of Trust dated 2 December 1978, executed by Bruce Forbes and Lois J. Forbes, husband and wife, and recorded in the aforesaid Clerk's Office in Deed Book 392, Page 554, which deed of trust represents a second trust on the 7.35 acre parcel heretofore mentioned; an attested copy of which Deed of Trust is attached hereto as Complainants' "EXHIBIT E".

(5) That the parcels of real estate described in Paragraphs 1 and 2 above were conveyed specifically subject to certain restrictions set forth in the Declaration of Protective and Restrictive Covenants of Bryce's Mountain Resort, Inc., dated 18 May 1969, and recorded in the Clerk's Office of the Circuit Court of Shenandoah County, Virginia, in Deed Book 262, Page 275, which restrictions include, among other things, the following:

"1. Nothing but one single family private dwelling or residence designed for occupancy by one family shall be erected on any lot in said SKY BRYCE, nor shall said premises be used for any purpose other than residential purposes,....

3. No single family dwelling erected on any lot shall contain more than two and one-half (2-1/2) floors and the total height of said dwelling shall not exceed thirty-five (35) feet to be measured from the top of the basement level of said dwelling and said basement level is to be that level which is wholly or substantially below ground.

22. No room or rooms in any dwelling on a lot shall be leased or rented for any period of time. However, a dwelling or rooms therein may be rented pursuant to an agreement made by the owner with Resort",

an attested copy of which Restrictive Covenants are attached hereto as Complainants' "EXHIBIT F".

(6) That despite the provisions of the Restrictive Covenants aforesaid, and in violation thereof, the Defendant, Bruce Forbes, intends to build and is in the process of constructing a large number of multi-family units for commercial purposes, which units are to be three stories in height and sold on a time-sharing basis, essentially a peculiar form of rental arrangement.

(7) In addition, a deed from Bryce's Mountain Resort, Inc., to A. James O'Mara and Lois J. O'Mara, husband and wife, (Defendant Forbes' grantors) dated 22 December 1970, and recorded in the aforesaid Clerk's Office in Deed Book 278, Page 706, contains the following Restrictive Covenant which is alleged to be in violation of the Declaration of Protective and Restrictive Covenants heretofore mentioned:

"(b) No more than twelve (12) dwelling units, whether apartments, single residence units, or multiple residence units, shall be placed or constructed on said real estate."

an attested copy of which deed is attached hereto as Complainants' "EXHIBIT G".

(8) That Pheasant Drive, a one and one-half lane access road will be so overburdened as a result of the construction of multi-family units as to create a nuisance in violation of Paragraph 21 of the Restrictive Covenants, which states as follows:

"21. No obnoxious or offensive use shall be made of any lot, nor shall any offensive trade or activity be carried on upon any lot, nor shall any activity of any nature whatsoever be conducted on a lot which may constitute a nuisance."

(9) That the Defendant, Bruce Forbes, has repeatedly stated that his real estate is not subject to the Declaration of Protective and Restrictive Covenants heretofore mentioned and intends to proceed with the construction of his project despite the protests from your Complainants that his real estate is so bound. As a result of same, an actual controversy exists between the parties to this suit based on an antagonistic assertion and denial of right.

(10) That your Complainants have standing to maintain this suit and are legitimate parties thereto pursuant to Paragraph 32 of the Declaration of Protective and Restrictive Covenants which provide as follows:



"32. In the event of a violation or breach of any of these restrictions by any property owner, or agent, or agent of such owner, the owners of lots in the neighborhood or subdivision, or any of them jointly or severally, shall have the right to proceed at law or in equity to compel a compliance to the terms hereof or to prevent the violation or breach in any event...."

WHEREFORE, your Complainants pray that this Court determine pursuant to Title 8.01-184 of the Code of Virginia, 1950, as amended, whether the Defendant's real estate is subject to the terms of the Declaration of Protective and Restrictive Covenants of Bryce's Mountain Resort, Inc., and if in the affirmative, whether same are being violated. Your Complainants further pray that if any of said Defendants are found to be in violation of the Restrictive Covenants that they be permanently enjoined from further violations in regard thereto; and that your Complainants may have such other and further relief as the nature of their cause may require or which to equity shall seem meet.

JOHN R. SCHAEFER

BY: James P. Pincus II  
Counsel

BARBARA L. SCHAEFER

BY: James P. Pincus II  
Counsel

RACEY & RACEY  
115 West Court Street  
Woodstock, Virginia 22664

Filed in the Clerk's Office the 4th day of December, 1977

Writ Tax \$ 5.00

Tests:

Fee 25.00

Deposit 8.50

Total Paid \$ 38.50

Mary Ann Indelicato, Clerk  
D. C.

Now comes the defendant, Bryce's Mountain Resort, Inc., and for its answer to the declaratory judgment filed herein says as follows:

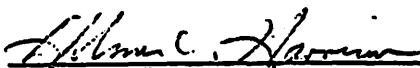
1. Paragraphs one and two are admitted.
2. Defendant lacks sufficient information to either admit or deny paragraphs three through ten, and, accordingly, those paragraphs are denied.

Further, defendant says:

3. That no relief against the defendant has been prayed for nor have any facts been alleged from which it appears that the defendant has such interest in the controversy to be a proper party herein.

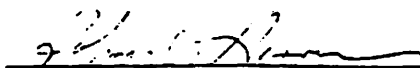
Wherefore, defendant prays that it be dismissed as a party herein.

BRYCE'S MOUNTAIN RESORT, INC.  
By Counsel



Holmes C. Harrison  
OF CLARK, BRADSHAW, HARRISON & LAYMAN, P.C.  
92 North Liberty Street  
Harrisonburg, Virginia 22801

I hereby certify that a copy of the foregoing was mailed this 27 day of December, 1979, to Kermit Racey, II, Esquire, 115 West Court Street, Woodstock, Virginia, 22664.



Holmes C. Harrison



CROSS-BILL

In Chancery No. 1474

Comes now Defendant Bryce's Mountain Resort, Inc. (Bryce's), by counsel, and for its Cross-Bill against Defendants Bruce Forbes and Lois J. Forbes (Forbes), represents as follows:

1) Defendants Forbes allege that the restrictive covenants contained in the deed of December 22, 1970, from Bryce's to A. James O'Mara and wife were released by an agreement dated July 28, 1978, between Bryce's, O'Mara and wife, and Forbes which has been filed herein as "Exhibit A" to the Answer of Defendants Forbes.

2) Bryce's alleges that said agreement is null and void and of no effect for the following reasons:

(a) No valid consideration passed between the parties;

(b) Ronald G. Petcher, Vice President, Bryce's, was without authority, actual or implied, to enter into such an agreement;

(c) Said agreement does not bear Bryce's corporate seal nor does it contain an attestation by the corporate secretary;

(d) Said agreement fails to recite the authority of Ronald G. Petcher to release the restrictive covenants referred to in said document;

(e) Said agreement was never ratified, adopted or approved by the Board of Directors of Bryce's; and

(f) Said agreement was not consummated until September 21, 1979, when A. James O'Mara and Lois J. O'Mara signed the document, subsequent to the sale on July 31, 1979, of all the outstanding stock of Bryce's to Paul B. Brice.

3) Bryce's alleges that it owns various lots within the development subject to the Declaration of Protection Covenants and Restrictions.

4) Bryce's further alleges that it has the right pursuant to Paragraph 32 of said Declaration of Protective Covenants and Restrictions to proceed in equity to compel compliance by Defendants Forbes with said Declaration.

5) Bryce's adopts paragraph 5 of the Bill of Complaint insofar as it alleges restrictive covenants which run in favor of Bryce's as well as Complainants John R. Schaefer and Barbara L. Schaefer.


6) Bryce's adopts paragraphs 6, 7, 8 and 9 of the Complaint.

WHEREFORE, Bryce's prays that this Court declare the purported release of July 28, 1978, to be null and void; that this Court declare Defendants Forbes real estate to be subject



to the Declaration of Protective Covenants and Restrictions;  
that Defendants Forbes be enjoined from violating said restrictive  
covenants; that Defendants Forbes be required to pay the costs  
of this proceeding; and for such other and further relief as  
to equity may seem meet and the nature of this case may require.

BRYCE'S MOUNTAIN RESORT, INC.  
By Counsel

  
RONALD D. HODGES  
of Wharton, Aldhizer & Weaver  
90 North Main Street  
Harrisonburg, Virginia 22801  
Counsel for Bryce's Mountain Resort,  
Inc.

CERTIFICATE

I hereby certify that a copy of the foregoing  
Cross-Bill was delivered to Kermit Racey, Esquire, of 115  
West Court Street, Woodstock, Virginia, 22664, Counsel for  
Complainants, and to Henry H. Whiting, Esquire, of Kuykendall,  
Whiting, Costello & Hanes, P.C., P. O. Box 2760, Winchester,  
Virginia, counsel for Defendants, this 27th day of February,  
1980.

  
Counsel for Bryce's Mountain  
Resort, Inc.

O R D E R

In Chancery No. 1474

This 27th day of February, 1980, came Bryce's Mountain Resort, Inc., by counsel, and moved for leave of Court to file its Cross-Bill against Defendants Bruce Forbes and Lois J. Forbes and to amend its Answer previously filed herein, *and to withdraw its Answer,* and without objection and for good cause shown, it is hereby ORDERED that Bryce's Mountain Resort, Inc. be granted leave to file its Cross-Bill against Defendants Bruce Forbes and Lois J. Forbes and to amend its Answer on or before March 3, 1980.

ENTER:

Almon C. Clark, Judge

I ask for this Order:

Ronald D. Hodges  
Counsel for Bryce's Mountain Resort, Inc.

Seen and Agreed:

Herbert P. Ramsey II  
Henry White

*Chancery Order Book 42  
Page 500*



Comes now Defendant Bryce's Mountain Resort, Inc.

(Bryce's), by counsel, and for its Cross-Bill against Defendants Bruce Forbes and Lois J. Forbes (Forbes), represents as follows:

1) Defendants Forbes allege that the two additional restrictive covenants contained in the deed of December 22, 1970, from Bryce's to A. James O'Mara and wife were released by an agreement dated July 28, 1978, between Bryce's, O'Mara and wife, and Forbes which has been filed herein as "Exhibit A" to the Answer of Defendants Forbes.

2) Bryce's alleges that said agreement is null and void and of no effect for the following reasons:

(a) No valid consideration passed between the parties;

(b) Ronald G. Petcher, Vice President, Bryce's, was without authority, actual or implied, to enter into such an agreement;

(c) Said agreement does not bear Bryce's corporate seal nor does it contain an attestation by the corporate secretary;


(d) Said agreement fails to recite the authority of Ronald G. Petcher to release the restrictive covenants referred to in said document;

(e) Said agreement was never ratified, adopted or approved by the Board of Directors of Bryce's; and

(f) Said agreement was not consummated until September 21, 1979, when A. James O'Mara and Lois J. O'Mara signed the document, subsequent to the sale on July 31, 1979, of all the outstanding stock of Bryce's to Paul B. Brice.

WHEREFORE, Bryce's prays that this Court declare the purported release of July 28, 1978, to be null and void; that this Court declare Defendants Forbes real estate to be subject to the two additional restrictive covenants; that Defendants Forbes be enjoined from violating said restrictive covenants; that Defendants Forbes be required to pay the costs of this proceeding; and for such other and further relief as to equity may seem meet and the nature of this case may require.

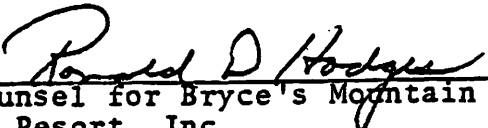
BRYCE'S MOUNTAIN RESORT, INC.  
By Counsel

  
RONALD D. HODGES  
of Wharton, Aldhizer & Weaver  
90 North Main Street  
Harrisonburg, Virginia 22801  
Counsel for Bryce's Mountain Resort,  
Inc.

- 2 -

CERTIFICATE

I hereby certify that a copy of the foregoing Cross-Bill was mailed to Kermit Racey, Esquire, of 115 West Court Street, Woodstock, Virginia, 22664, Counsel for Complainants, and to Henry H. Whiting, Esquire, of Kuykendall, Whiting, Costello & Hanes, P.C., P. O. Box 2760, Winchester, Virginia, Counsel for Defendants, this 17<sup>th</sup> day of March, 1980.

  
Counsel for Bryce's Mountain  
Resort, Inc.

DECREE

On the 27th day of February, 1980, again came counsel for Complainants, counsel for Defendants Forbes, and also came Ronald Hodges, Esquire, counsel for Bryce's Mountain Resort, Inc. ("Bryce's"), who tendered and filed an Order permitting Holmes Harrison, Esquire, to withdraw as counsel of record for Bryce's with said Ronald Hodges, Esquire, being substituted therefor, and an Order permitting Bryce's to file an Amended Answer and a Cross-Bill, both of which Orders were accordingly entered by the Court and the pleadings filed and by agreement Defendants' Forbes' Demurrer was treated as applying to said Cross-Bill.

Whereupon, the Court heard argument upon the Demurrer filed by Defendants Forbes, and the Court FINDING that the Declaration of Protective Covenants and Restrictions ("covenants and restrictions") (attached to the Bill of Complaint for Declaratory Judgment as Exhibit F), the Deed from Bryce's to O'Mara, Forbes' predecessor in title (Exhibit G to the Bill of Complaint), and the Deed from O'Mara to Forbes (Exhibit C to the Bill of Complaint), when considered together and in connection with the allegations contained in the Bill of Complaint, are unambiguous, consistent, and integrated documents insofar as the subject matter of this cause is concerned; and the Court FURTHER FINDING that, taking all of the allegations of the Bill of Complaint as being true, said documents demonstrate that the property now owned by Forbes ("O'Mara-Forbes Tract") was and is not restricted, affected, or bound by the covenants and restrictions (Exhibit F) ~~and therefore said demurrer is overruled~~ based upon the following reasons:

~~1. The language of the covenants and restrictions~~  
1. The language of the covenants and restrictions (Exhibit F) did not and does not bind any of Bryce's property,

except for portions thereof that were to be subdivided and sold to individual lot purchasers for the purpose of erecting private dwellings or residences thereon, and, there being no allegation in the Bill of Complaint or otherwise that such was the purpose of the purchase of the O'Mara-Forbes Tract at the time it was sold by Bryce's to O'Mara (Exhibit G) or that a private dwelling was thereafter erected on the said property by O'Mara or anyone else, the O'Mara-Forbes Tract was and is not covered or affected by the covenants and restrictions set forth in Exhibit F.

2. The language of the covenants and restrictions (Exhibit F) expressly excludes therefrom such property of Bryce's as was not subdivided and sold to individual lot purchasers for the purpose of erecting private dwellings or residences, and therefore, the O'Mara-Forbes Tract was not restricted or affected by said covenants and restrictions; since the O'Mara-Forbes Tract was unrestricted at the time it was sold by Bryce's to O'Mara, and since the only restrictions imposed upon said tract were those set forth in paragraphs (a) and (b) on the third page of the Deed from Bryce's to O'Mara (Exhibit G), the sole restrictions imposed upon the O'Mara-Forbes Tract when O'Mara acquired it were that Bryce's written approval was required of proposed building plans and specifications and the tract was limited to the construction thereon of not more than twelve (12) dwelling units, whether they be apartments, single residence units, or multiple residence units.

3. The reference in the covenants and restrictions (Exhibit F) to the use of Bryce's land which was not subdivided for sale to individual lot purchasers for the erection of private dwellings or residences, and providing examples of such use of the land (which examples were not to be exclusive

or exhaustive), did not limit Bryce's in any use of said land, and therefore permitted Bryce's to sell such land, or portions thereof, to any purchaser to be used for any purpose Bryce's may designate, but without any requirement that such land be designated as to type of use in any overall master plan prepared by Bryce's to indicate the development of its land which was not subdivided for sale to individual lot purchasers for the erection of private dwellings or residences thereon.

Having so found, the Court hereby sustains Defendants Forbes' Demurrer, and Complainant and Defendant Bryce's duly objected and excepted to the ruling of the Court.

Complainants and Defendant Bryce's were given <sup>15</sup> ~~ten~~ (10) days from February 27, 1980 in which to file an Amended Bill of Complaint and/or Cross-Bill, if they be so advised, otherwise the Bill of Complaint and Cross-Bill as to the matters dealt with in the Demurrer are ordered dismissed. <sup>such</sup> Defendant Forbes is granted ten (10) days to answer any ~~case~~ amended pleadings after filing thereof.

<sup>before a jury</sup> The Court CONFIRMED April 9, 1980, as the date for hearing this matter, if an Amended Complaint and Answer thereto be filed, but DIRECTED that any issue which may be raised by Defendant Bryce's' Cross-Bill bearing on the validity of the release of the two restrictions imposed upon the O'Mara-Forbes Tract (set forth in Exhibit G and noted in paragraph 2 of this Order), which release document is Exhibit A to the Answer of Defendant Forbes, shall be heard as a separate matter at a later date.

ENTER this 12 day of March, 1980.

Thomas C. Cole  
Judge



SEEN:

Ronald D. Hodges

Kenneth S. Rogers

Henry W. G. J.

I. Ch. Miller

Chancery, Order Book 42  
Page 566

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CLERK OF COURT  
CHANCERY

Comes now Defendant Bryce's Mountain Resort, Inc. (Bryce's), by counsel, and for its Answer to the amended Bill of Complaint, represents as follows:

1) That the allegations contained in paragraphs (1), (2), (3), (4), (5), (6), (7) and (8) of the amended Motion for Judgment are admitted.

2) It is admitted, as alleged in paragraph (9) of the amended Motion for Judgment, that the O'Mara lot was conveyed subject to the Common Declaration of Protective Covenants and Restrictions and by two additional covenants. This Defendant does not have sufficient information or knowledge either to admit or to deny the remaining allegations in said paragraph.

3) That the allegations contained in paragraph (10) of the amended Motion for Judgment are admitted.

4) That the allegations contained in paragraph (11) of the amended Motion for Judgment are denied.

5) That the allegations contained in paragraphs (12), (13) and (14) of the amended Motion for Judgment are admitted.


6) This Defendant does not have sufficient information or knowledge either to admit or to deny the allegations contained in paragraph (15) of the amended Motion for Judgment.

7) That the allegations contained in paragraph (16) of the amended Motion for Judgment are admitted.

8) This Defendant does not have sufficient information or knowledge either to admit or to deny the allegations contained in paragraphs (17) and (18) of the amended Motion for Judgment.


9) That the allegations contained in paragraphs (19) and (20) of the amended Motion for Judgment are admitted.

BRYCE'S MOUNTAIN RESORT, INC.  
By Counsel

  
\_\_\_\_\_  
RONALD D. HODGES  
of Wharton, Aldhizer & Weaver  
90 North Main Street  
Harrisonburg, Virginia 22801  
Counsel for Bryce's Mountain Resort,  
Inc.

CERTIFICATE

I hereby certify that a copy of the foregoing Answer was mailed to Kermit Racey, Esquire, of 115 West Court Street, Woodstock, Virginia, 22664, Counsel for Complainants, and to Henry H. Whiting, Esquire, of Kuykendall, Whiting, Costello & Hanes, P.C., P. O. Box 2760, Winchester, Virginia, counsel for Defendants, this 17<sup>th</sup> day of March, 1980.

  
\_\_\_\_\_  
Counsel for Bryce's Mountain Resort,  
Inc.

ANSWER TO CROSS-BILL

For Answer to the Cross-Bill, or so much thereof as Defendants Bruce Forbes and Lois J. Forbes (hereafter "Forbes," even though more than one) are advised they should answer, do answer and say:

1. They admit the allegations of paragraph 1.

2. They deny the allegations of paragraph 2 and say that even if 2 (c), (d), (e) and (f) were true, it did not affect the validity of the release.

Having fully answered the Cross-Bill, Defendants Forbes pray to be hence dismissed with their costs and attorneys' fees in this behalf expended.

BRUCE FORBES and LOIS J. FORBES

By Henry H. Whiting

Counsel

I. Clinton Miller,  
Attorney at Law  
Lawyers Row  
Woodstock, Virginia 22664

Henry H. Whiting  
KUYKENDALL, WHITING, COSTELLO  
& HANES, P.C.  
Post Office Box 2760  
Winchester, Virginia 22601

Counsel for Defendants Bruce Forbes  
and Lois J. Forbes

CERTIFICATE

I hereby certify that on the 21<sup>st</sup> day of March, 1980, a true copy of the foregoing Answer to Cross-Bill was mailed or delivered to I. Clinton Miller, Esquire, Woodstock, Virginia 22664, co-counsel for Defendants Forbes; Ronald D. Hodges, Esquire, Wharton, Aldhizer and Weaver, 90 North Main Street, Harrisonburg, Virginia, Counsel for Bryce Mountain Resort, Inc.; Henry C. Clark, Trustee, 92 North Liberty Street, Harrisonburg, Virginia; V. Stephen Bradshaw, Trustee, 92 North Liberty Street, Harrisonburg, Virginia 22801; and to Kermit L. Racey, II, Esquire, Racey and Racey, 115 West Court Street, Woodstock, Virginia 22664, counsel for Complainants.

Henry C. Clark



ANSWER TO BILL OF COMPLAINT

For Answer to the Bill of Complaint for Declaratory Judgment, or so much thereof as Defendants Bruce Forbes and Lois J. Forbes (hereafter "Forbes," even though more than one) are advised they should answer, do answer and say:

1. They admit the allegations of paragraphs 1 through 4, both inclusive, paragraphs 6, 11, 15 and 20, except that they allege that the deed of trust referred to in paragraph 3 has been paid, and has been released of record as shown by that certain Certificate of Satisfaction recorded in the Office of the Clerk of the Circuit Court of Shenandoah County, Virginia, in Deed Book 407, at Page 297.

2. They admit that paragraph 5 describes a part of certain language which was placed in both their deeds and Complainants' deeds, are not advised as to the language in the deeds to the remaining approximately 3,000 other lots in Bryce's Mountain, but deny that:

(a) Their tract is in the same development,

(b) It is similarly situated to Complainants' lot or to the 3,000 lots, as alleged;

(c) That any of those restrictions alleged in the exhibit referred to in paragraph 5 affect or bind their property.

3. They deny their property was a part of Section VI, or it was a lot subdivided for sale to individual lot purchasers for the purpose of erecting private dwellings or residences thereon as claimed in paragraph 7.

4. They admit the conveyance to O'Mara, as set forth in paragraph 8, but deny that it was a conveyance of one of the lots in Section VI, as alleged in paragraph 8.

5. They again deny their property was conveyed subject to the Common Declaration of Protective Covenants and Restrictions as alleged in paragraph 9 but admit the imposition of the two covenants referred to in paragraph 9. They deny those covenants were in violation of the Common Covenants, because the Common Covenants did not bind their property but expressly aver that said Covenants showed on their face that the Grantor intended to permit multi-family housing on said property, and the Grantee bought the property for that purpose.

6. They admit the two instruments did eliminate the multi-family residential covenant as alleged in paragraph 10 and referred to in the preceding paragraph of the Bill of Complaint but deny either instrument left intact the Common Restrictive Covenants, and they deny that the inclusion of the language referred to in said paragraph 10, and by reference, paragraph 5 of the Bill of Complaint, imposed any of the said Common Covenants upon this property.

7. They admit the execution of the deed referred to in paragraph 12, but deny that the language therein had the effect alleged in paragraph 12.

8. They admit the allegations of paragraph 13, except the claim that time sharing is a form of rental arrangement peculiar or otherwise.

9. They deny Pheasant Drive is a very narrow road, as described, it will be substantially overburdened through travel as a result of the construction of multi-family units, or that it will create a nuisance in violation of paragraph 21, all as set forth in paragraph 14.

10. They deny the allegations of paragraph 16 and say that even if 16 (c), (d), (e), and (f) were true, it would not affect the validity of the release.

11. They admit the release had not been executed or admitted to record on December 27, 1979, as alleged in paragraph 17, and are not advised as to whether Complainants had notice of the said release, but deny that they had any interest in the property of Forbes or right to enforce any covenants against them, as claimed in paragraph 17.

12. They deny Complainants or any other lot owners in Bryce's development had a right to rely on the enforceability of the restriction covenants applicable to the Forbes property or that any such covenants do apply to the Forbes property, and as claimed in paragraph 18.

13. They deny the time-sharing use of multi-family dwellings on their property is such an "obnoxious, unorthodox, abnormal, uncommon, and unusual" use of land, as not to have been within the contemplation of Bryce's Mountain Resort, Inc. or that Forbes' use of said tract of land would constitute a violation of any of the covenants in the manner set forth in paragraph 19.

14. The Defendants deny Complainants are entitled to the relief prayed for.

Having fully answered the Bill of Complaint,  
the Defendants pray to be hence dismissed with their  
costs and attorneys' fees in this behalf expended.

BRUCE FORBES and LOIS J. FORBES

By *Henry H. Whiting*  
Counsel

I. Clinton Miller,  
Attorney at Law  
Lawyers Row  
Woodstock, Virginia 22664

Henry H. Whiting  
KUYKENDALL, WHITING, COSTELLO  
& HANES, P.C.  
Post Office Box 2760  
Winchester, Virginia 22601

Counsel for Defendants Bruce Forbes  
and Lois J. Forbes

CERTIFICATE

I hereby certify that on the 21<sup>st</sup> day of  
March, 1980, a true copy of the foregoing Answer to Bill  
of Complaint was mailed or delivered to I. Clinton Miller,  
Esquire, Woodstock, Virginia 22664, co-counsel for  
Defendants Forbes; Ronald D. Hodges, Esquire, Wharton,  
Aldhizer and Weaver, 90 North Main Street, Harrisonburg,  
Virginia, Counsel for Bryce Mountain Resort, Inc.; Henry  
C. Clark, Trustee, 92 North Liberty Street, Harrisonburg,  
Virginia; V. Stephen Bradshaw, Trustee, 92 North Liberty  
Street, Harrisonburg, Virginia 22801; and to Kermit L.  
Racey, II, Esquire, Racey and Racey, 115 West Court  
Street, Woodstock, Virginia 22664, counsel for Complainants.

*Henry H. Whiting*

ANSWER

For answer to the Bill for Declaratory Judgment filed against him as Trustee, or so much thereof as he is advised and believes he should answer, Defendant, I. Clinton Miller, Trustee, answers and says:

1. I. Clinton Miller as Trustee, neither admits nor denies the allegations set forth in the Bill for Declaratory Judgment and respectfully asks the Court to protect the interests of I. Clinton Miller, Trustee, under that certain Deed of Trust, dated the 2nd day of December, 1978, executed by Bruce Forbes and Lois J. Forbes, husband and wife, and recorded in the Office of the Clerk of the Circuit Court of Shenandoah County, Virginia, in Deed Book 392, Page 554.

Respectfully submitted: .

  
I. Clinton Miller, Trustee

CERTIFICATION

I hereby certify that a true copy of the foregoing Answer was mailed to Kermit L. Racey, II, Woodstock, Virginia, p.q., Bruce Forbes and Lois J. Forbes, 5112 Southhampton Drive, Annandale, Virginia, 22003, Defendants, Henry C. Clerk, Trustee, and V. Stephen Bradshaw, Trustee, 92 North Liberty Street, Harrisonburg, Virginia, and Bryce's Mountain Resort, Inc., c/o Paul B. Brice, President, Basye, Virginia, all Defendants, this 21<sup>st</sup> day of March, 1980.

  
I. Clinton Miller



DECLARATORY JUDGMENT

TO THE HONORABLE JUDGES OF SAID COURT:

COMES NOW your Complainants, John R. Schaefer and Barbara L. Schaefer, and doth respectfully represent unto your Honors as follows:

(1) That your Complainants are the owners of Lots 94 and 95, Block A, Section VI, Bryce's Mountain Resort, Inc., in Ashby Magisterial District, Shenandoah County, Virginia, having acquired Lot 94 from Jerauld L. Olmsted and Karen A. Olmsted, husband and wife, by deed dated 27 September, 1979, and recorded in the Clerk's Office of the Circuit Court of Shenandoah County, Virginia in Deed Book 405, page 107; and Lot 95 from William Douglas Davidson and Hollace Hurd Davidson, husband and wife, by deed dated 15 June 1979, and recorded in the aforesaid Clerk's Office in Deed Book 400, page 359; attested copies of which deeds are attached hereto as Complainants' "EXHIBITS A and B", respectively.

(2) That the Defendants, Bruce Forbes and Lois F. Forbes, are the owners of a 7.35 acre parcel adjoining the Schaefer real estate, and commonly known as the O'Mara Lot at Bryce's Mountain Resort, Inc., having acquired same from A. James O'Mara and Lois J. O'Mara, husband and wife, by deed dated 1 November 1978, of record in the aforesaid Clerk's Office, in Deed Book 392, page 551; an attested copy of which deed is attached hereto as Complainants' "EXHIBIT C".

(3) That Henry C. Clark and V. Stephen Bradshaw are trustees under Deed of Trust dated 27 April 1971, executed by A. James O'Mara and Lois J. O'Mara, husband and wife, and recorded in the aforesaid Clerk's Office in Deed Book 282, page 116, which deed of trust represents a first trust on the 7.35 acre parcel heretofore

mentioned; an attested copy of which Deed of Trust is attached hereto as Complainants' "EXHIBIT D".

(4) That I. Clinton Miller is Trustee under Deed of Trust dated 2 December, 1978, executed by Bruce Forbes and Lois J. Forbes, husband and wife, and recorded in the aforesaid Clerk's Office in Deed Book 392, page 554, which deed of trust represents a second trust on the 7.35 acre parcel heretofore mentioned; an attested copy of which Deed of Trust is attached hereto as Complainants' "EXHIBIT E".

(5) That the Complainants' and Defendants' Forbes real estate described in Paragraphs 1 and 2 above, as well as approximately 3,000 other lots within the same development and similarly situated, were conveyed specifically subject to certain common restrictions and covenants set forth in a Declaration of Protective Covenants and Restrictions executed by Bryce Mountain Resort, Inc., dated 18 May 1969, of record in the Clerk's Office of the Circuit Court of Shenandoah County, Virginia, in Deed Book 262, page 275, by reference to the place of recordation in the aforesaid Clerk's Office and by use of certain uniform words and phrases as follows, to-wit: "Said real estate is conveyed subject to that certain Declaration of Protective Covenants and Restrictions, executed by Bryce Mountain Resort, Inc., on the 18th day of May 1969, and of record in the Clerk's Office of the Circuit Court of Shenandoah County, Virginia, in Deed Book 262, page 275", an attested copy of which Restrictive Covenants are attached hereto as Complainants' "EXHIBIT F".

(6) That among other restrictions and covenants set forth in said Declaration are the following, to-wit:

"1. Nothing but one single family private dwelling or residence designed for occupancy by one family shall be erected on any lot in said SKY BRYCE, nor shall said premises be used for any purpose other than residential purposes,....

3. No single family dwelling erected on any lot shall contain more than two and one-half (2-1/2) floors and the total height of said dwelling shall not exceed thirty-five (35) feet to be measured from the top of the basement level of said dwelling and said basement level is to be that level which is wholly or substantially below ground.

22. No room or rooms in any dwelling on a lot shall be leased or rented for any period of time. However, a dwelling or rooms therein may be rented pursuant to an agreement made by the owner with Resort",

(7) That prior to December 22, 1970, Bryce Mountain Resort, Inc. subdivided a parcel of real estate into what it designated as Section VI of Bryce's Development, which Section included a number of lots, one of which contained 7.35 acres, more or less, same being subdivided for sale to individual lot purchasers for the purpose of erecting private dwellings or residences thereon.

(8) By deed dated 22 December, 1970, of record in the aforesaid Clerk's Office in Deed Book 278, page 706, Bryce Mountain Resort, Inc., conveyed one of the lots in Section VI, namely a lot containing 7.35 acres, more or less, to A. James O'Mara and Lois J. O'Mara, husband and wife, a true copy of which is attached hereto as Complainants' "EXHIBIT G".

(9) That the O'Mara lot was conveyed first subject to the Common Declaration of Protective Covenants and Restrictions by use of the uniform phraseology set forth heretofore and secondly subject to two additional covenants as follows, to-wit:

"(a) No development of said real estate, including site development, improvements, buildings, improvements or construction of any kind or nature, shall be made on said real estate until the proposed plans and specifications therefore have been approved in writing by the Grantor herein, its successors or assigns.

(b) No more than twelve (12) dwelling units, whether apartments, single residence units, or multiple residence units, shall be placed or constructed on said real estate,"

both of which additional covenants are hereby alleged to be in violation of the aforesaid Common Covenants incorporated in said deed, and in violation of the intended and designated use of said lot and Section as heretofore defined.

(10) By two instruments dated 28 July 1978, as recorded in the Clerk's Office of the Circuit Court of Shenandoah County, Virginia, in Deed Book 405, Page 378; and Deed Book 405, Page 382, on the 26th day of November 1979, executed by Bryce Mountain Resort, Inc., et als, said parties purported to set aside and declare null and void the additional restrictions placed in the O'Mara deed and designated as (a) and (b) above, but left intact the Common Restrictive Covenants in said deed and therein<sup>incorporated</sup>/through the use of the usual and uniform words and phraseology set forth in Paragraph 5 above, a copy of which purported release is attached hereto as Complainant's "EXHIBIT H".

(11) It is verily believed and so alleged that the two additional restrictions in the O'Mara deed, one of which appeared to authorize multi-family units were legally and validly vacated by virtue of the aforesaid Release.

(12) The deed from O'Mara to Forbes as represented by Complainants' "Exhibit C" and described in Paragraph 2 hereof, was made subject only to the Common Declaration of Protective and Restrictive Covenants as recorded in Deed Book 262, pag 275, same containing the same uniform phraseology essentially used in all of the three thousand plus deeds within the Bryce Mountain Resort development, and as retained in the O'Mara deed.

(13) That despite the provisions of the Restrictive Covenants aforesaid, and in violation thereof, the Defendants Bruce Forbes and Lois J. Forbes, intend to build and are in fact in the process of constructing a large number of multi-family units upon the O'Mara lot for commercial purposes, which units are to be three stories in height and sold on a time-sharing basis, essentially a peculiar form of rental arrangement.

(14) That access to lots within Section VI, including the lots owned by Complainants and Defendants Forbes, is provided by

Pheasant Drive, a very narrow road, which will be substantially overburdened through travel as a result of the construction of multi-family units so as to create a nuisance in violation of Paragraph 21 of the Common Covenants, to-wit:

"21. No obnoxious or offensive use shall be made of any lot, nor shall any offensive trade or activity be carried on upon any lot, nor shall any activity of any nature whatsoever be conducted on a lot which may constitute a nuisance."

(15) That the Defendants, Bruce Forbes and Lois J. Forbes, have repeatedly stated that their real estate is not subject to the Declaration of Protective and Restrictive Covenants heretofore mentioned and have proceeded with the construction of multi-family units on said lot despite the Complainants' protests that the Forbes real estate is so bound.

(16) In the alternative, the Complainants allege and so aver that the purported execution of a release between Bryce Mountain Resort, Inc., et als, of the two additional Restrictive Covenants in the O'Mara deed as set forth in Paragraph 11 above, was invalid, null and void for the following reasons, to-wit:

- (a) No valid consideration passed between the parties;
- (b) Ronald G. Petcher, Vice President, Bryce's, was without authority, actual or implied, to enter into such an agreement;
- (c) Said agreement does not bear Bryce's corporate seal nor does it contain an attestation by the corporate secretary;
- (d) Said agreement fails to recite the authority of Ronald G. Petcher to release the restrictive covenants referred to in said document;
- (e) Said agreement was never ratified, adopted or approved by the Board of Directors of Bryce's; and
- (f) Said agreement was not consummated until September 21, 1979, when A. James O'Mara and Lois J. O'Mara signed the document, subsequent to the sale on July 31, 1979, of all the outstanding stock of Bryce's to Paul B. Brice.
- (g) That all requisite parties to the validity of the revocation of the Restrictive Covenants have not executed same.

(17) Additionally, it is alleged that at the time the Complainants purchased their lot on the 27th day of September, 1979, the aforesaid release had not been executed or admitted to record in the aforesaid Clerk's Office and therefore did not constitute constructive notice to them or other similarly situated purchasers all of whom were third party beneficiaries of the common Declaration of Protective and Restrict Covenants and otherwise entitled to rely upon the enforceability thereof, as well as the two additional covenants heretofore mentioned.

(18) That the Complainants, being third party beneficiaries along with other lot owners similarly situated within Bryce development, had a right to and were in fact induced to purchase their respective parcels in reliance upon the enforceability of the common Restrictive Covenants aforesaid in a uniform and consistent manner, that is they had the right to rely on similar statements having the same meaning and effect when set forth by common words and phraseologies in approximately 3,000 separate deeds.

XX  
XX  
XX

(19) It is further alleged that the contemplated use of the multi-family dwellings on the O'Mara lot under a time-sharing device or principle is so obnoxious, unorthodox, abnormal, uncommon and such an unusual interest of use of land as not to have been within the contemplation or consideration of Bryce Mountain Resort, Inc. when it adopted its Common Declaration of Protective Covenants and Restrictions, it being alleged that same were adopted essentially for the protection of individual lot purchasers intending to erect private residences or dwellings thereon. It is further alleged that the use intended by the



defendant Forbes of his lot to construct multi-family dwellings under a time-sharing plan will constitute such a violation of the aforesaid Common Covenants and Restrictions as to essentially deprive all private lot owners with private residences of the benefit of such covenants upon which they relied and had a right to rely in making their lot purchases within the development. In addition, it is alleged that such use would constitute a specific violation under Paragraph 21 of said Declaration of Protective Covenants and Restrictions relating to obnoxious and offensive use.

(20) As a result of all of the above allegations, an actual controversy exists between the parties of this suit based on an antagonistic assertion and denial of right.

WHEREFORE, Complainant prays that the Court grant the following relief, to-wit:

1) Declare whether or not the Forbes lot is or is not subject to the Common Covenants and Restrictions of Bryce Mountain Resort, Inc.

2) If said lot is subject to said Restrictions, are said covenants being violated as alleged in the Complaint, as a result of the use now being made or intended to be made of said lot.

3) If said lot is not subject to said Common Covenants and Restrictions, is it nevertheless restricted in use to multi-family units not in excess of twelve.

4) If multi-family units, regardless of number, are authorized for use upon defendant's lot will the application of the principle of time-sharing nevertheless constitute a nuisance in violation of the Common Covenants and Restrictions or otherwise constitute a violation of the Complainants' rights as alleged in the Bill of Complaint.

5) Should the Court find a violation or contemplated

violation of any of the Common Covenants and Restrictions as alleged in the Bill of Complaint or a violation or contemplated violation of any other covenants applicable to the Forbes lot, or should the use or intended use of the Forbes lot be found by the Court to be in violation of any of the Complainant's rights as alleged in the Bill, then it is respectfully prayed that such violations by the defendants, their agents, servants or assigns, be forever enjoined and restrained and that said Complainants may have such other and further relief as the nature of their cause may require or which to equity shall seem meet.

JOHN R. SCHAEFER  
BARBARA L. SCHAEFER

BY: Hermit L. Racey  
Counsel

RACEY & RACEY  
115 West Court Street  
Woodstock, VA 22664

C E R T I F I C A T E

I hereby certify that a true copy of the foregoing Amended Bill of Complaint was mailed to Henry H. Whiting, Esquire, of Kuykendall, Whiting, Costello & Hanes, P.C., P.O. Box 2760, Winchester, Virginia, and I. Clinton Miller, Esquire, Woodstock, Virginia, Co-Counsel for Defendants/ <sup>Forbes;</sup> Ronald D. Hodges, Esquire, of Wharton, Aldhizer and Weaver, 90 North Main Street Harrisonburg, Virginia, Counsel for Bryce Mountain Resort, Inc.; Henry C. Clark, Trustee, 92 North Liberty Street, Harrisonburg, Virginia; V. Stephen Bradshaw, Trustee, 92 North Liberty Street, Harrisonburg, Virginia; and I. Clinton Miller, Trustee, Woodstock, Virginia, this 13th day of March 1980.

32  
Hermit L. Racey  
Counsel

1968 APR -2 PM 5:01

MOTION FOR PERMISSION TO INTERVENE

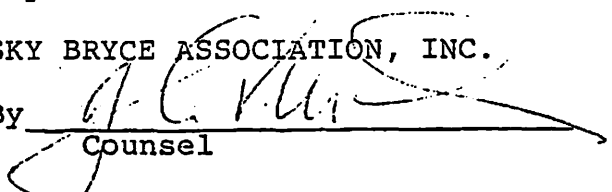
Now comes Sky Bryce's Association, Inc., a corporation organized and existing under the laws of the State of Virginia and moves the Court as follows:

1. The undersigned is a Virginia Corporation, whose Articles of Incorporation, recorded on the 3rd day of April 1969, appear in Charter Book 5 at Page 77 in the Office of the Clerk of this Court.
2. The said corporation is a non-stock corporation composed of all lot owners, owning lots at Bryce's Mountain Resort, Inc., Basye, Virginia, the said lot owners having acquired their lots as a part of the subdivision of property of Bryce's Mountain Resort, Inc. and said lots being subject to the restrictive covenants set forth in Complainant's Exhibit F to the Amended Bill of Complaint herein.
3. The rights of the Association members as aforesaid will be affected by the outcome of this litigation, both respecting the enforcement of covenants and the acts of the Defendant Forbes in the Amended Bill of Complaint as constituting a nuisance toward the undersigned and its member lot owners.

WHEREFORE, the undersigned prays the Court that it be allowed to intervene in this litigation on behalf of its

members and to protect their respective interests.

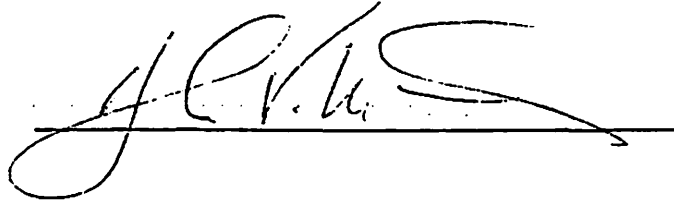
SKY BRYCE ASSOCIATION, INC.

By   
Counsel

Thomas V. Monahan, Esquire  
Hall, Monahan, Engle, Mahan & Mitchell  
9 East Boscawen Street  
Winchester, Virginia 22601  
Counsel for Defendant  
Sky Bryce Association, Inc.

CERTIFICATE

I certify that on the 2nd day of April, I hand-delivered an exact copy of the foregoing Motion for Permission to Intervene to Henry H. Whiting, Esquire, Kuykendall, Whiting, Costello & Hanes, P.C., P. O. Box 2760, Winchester, Virginia 22601, and I. Clinton Miller, Esquire, Woodstock, Virginia, Co-Counsel for Defendants Forbes; Ronald D. Hodges, Esquire, of Wharton, Aldhizer and Weaver, 90 North Main Street, Harrisonburg, Virginia, Counsel for Bryce's Mountain Resort, Inc., and Kermit L. Racey, II, Esquire, Racey and Racey, 115 West Court Street, Woodstock, Virginia 22664, counsel for Schaefer, and a copy of the foregoing Motion for Permission to Intervene was mailed to Henry C. Clark, Trustee, 92 North Liberty Street, Harrisonburg, Virginia; and to V. Stephen Bradshaw, Trustee, 92 North Liberty Street, Harrisonburg, Virginia 22801.



ANSWER TO BILL OF COMPLAINT

For Answer to the Bill of Complaint for Declaratory Judgment, or so much thereof as Defendants V. Stephen Bradshaw, Trustee and Henry C. Clark, Trustee are advised they should answer, said Trustees do answer and say:

1. They admit that they are the Trustees under Deed of Trust dated April 27, 1971, executed by A. James O'Mara and Lois J. O'Mara, husband and wife, and recorded in the Clerk's Office of Shenandoah County, Virginia, in Deed Book 282, Page 116, except that they allege that the Deed of Trust referred to has been paid, and has been released of record as shown by certain Certificate of Satisfaction executed by the Equitable Trust Company, successor by merger to University National Bank, which said Certificate of Satisfaction is duly recorded in the Clerk's Office of the Circuit Court of Shenandoah County, Virginia, in Deed Book 407 at Page 297.

2. They deny that they are proper parties to this proceeding in that they have no interest in the subject matter of this cause.

Having fully answered Defendants V. Stephen Bradshaw, Trustee and Henry C. Clark, Trustee pray to be hence dismissed and removed as parties to this proceeding with their costs and attorneys' fees in this behalf expended.

V. STEPHEN BRADSHAW, Trustee  
HENRY C. CLARK, Trustee


By: Helene C. Ham

Counsel

Clark, Bradshaw, Harrison & Layman, P.C.  
P.O. Box 71  
92 North Liberty Street  
Harrisonburg, Virginia 22801  
Counsel for Defendants  
V. Stephen Bradshaw, Trustee  
and  
Henry C. Clark, Trustee

CERTIFICATE

I hereby certify that on the 3 day of April, 1980, a true copy of the foregoing Answer was mailed or delivered to I. Clinton Miller, Esq., Woodstock, Virginia 22664, Co-Counsel for Defendants Forbes; Henry H. Whiting, Esq., Kuykendall, Whiting, Costello & Hanes, P.C., P.O. Box 2760, Winchester, Virginia 22601, Co-Counsel for Defendants Forbes; Ronald D. Hodges, Esq., Wharton, Aldhizer & Weaver, 90 North Main Street, Harrisonburg, Virginia 22801, Counsel for Bryce Mountain Resort, Inc.; and to Kermit L. Racey, II, Esq., Racey & Racey, 115 West Court Street, Woodstock, Virginia 22664, Counsel for Complainants.

  
\_\_\_\_\_  
Of Counsel

DECREE

The 2nd day of April, 1980, came the respective parties in the above cause, all by counsel, and came Sky Bryce Association, Inc., by counsel, upon its Motion for Permission to Intervene, and said Motion and the Motions filed by the Plaintiffs and the Defendant, Bryce's Mountain Resort, Inc., were argued by counsel.

Upon the argument made, it appearing to the Court that the matter is not ready for trial but that there should be a further pre-trial conference on the 23rd of April, 1980, to frame issues, and that the discovery has not been completed herein, and it further appearing to the Court that there is good cause for the intervention of Sky Bryce Association, Inc., it is ADJUDGED, ORDERED, and DECREED that the Motion for Permission to Intervene filed by Sky Bryce Association, Inc., is granted, the Defendant Forbes objecting and excepting, and said Sky Bryce Association, Inc., shall be permitted to file such pleadings herein as to it shall be deemed appropriate, on or before April 15, 1980, except that such pleadings shall be responsive to the issues and not preliminary motions if the same would delay the trial schedule hereinafter established.

Responses thereto shall be filed on or before April 21, 1980.

It is further ADJUDGED, ORDERED, and DECREED that the Motion to Continue this cause from the 9th of April, 1980 be, and the same is, granted, over the objection and exception of Defendants Forbes, and the Court doth further ADJUDGE, ORDER, and DECREE that the matter is set for pre-trial hearing to frame the issues and dispose of any preliminary matters on the 23rd day of April, 1980, and the case is further set for hearing on issues out of chancery, said issues to be framed on the 23rd

day of April, 1980, before a jury to be summoned on the 9th  
day of July, 1980, unless the Court shall in the interim advance  
the date of trial.

ENTER this 9<sup>th</sup> day of April, 1980.

Ernest Macpherson  
Judge

SEEN:

ICM Min

Kenneth L. Bally

J. H. W. D. asy for Shy Bice

Ray White

Ronald W. Hodges

Chancery Order Book 42  
Page 608



ANSWER OF SKY BRYCE ASSOCIATION, INC.

Now comes the intervenor, Sky Bryce Association, Inc., and for its answer to the Amended Bill of Complaint for Declaratory Judgment filed herein, and further answer to the Cross-Bill filed herein by the Defendant, Bryce's Mountain Resort, Inc., states:

1. Sky Bryce Association, Inc., is a corporation organized and existing under the laws of the State of Virginia, organized pursuant to Declaration No. 29 of the Declarations of Protective Covenants and Restrictions, of record with respect to Sky Bryce Subdivision, Exhibit F to the Amended Bill of Complaint.

2. As such, it has as its non stock members the owners of all lots at Bryce's Mountain Resort.

3. As such, your intervenor states that it believes to be true, on information and belief, and therefore adopts the allegations of paragraphs 1 through 18 of the Bill of Complaint, and adopts the prayer for relief thereof contained in paragraphs 1, 2, 3, and 5 of said prayer, and further adopts the allegations of the Cross-Bill.

WHEREFORE, your intervenor joins in the prayers for relief contained in such Bill of Complaint as previously stated and of the Cross-Bill.

SKY BRYCE ASSOCIATION, INC.

By Thomas V. Monahan, by John F. Lander  
Counsel

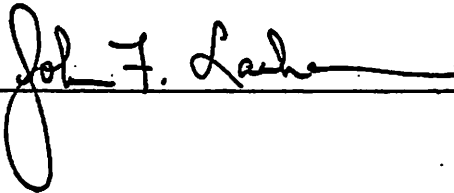
Thomas V. Monahan, by John F. Lander  
Thomas V. Monahan  
HALL, MONAHAN, ENGLE,  
MAHAN & MITCHELL  
Attorneys at Law  
3 East Market Street  
Leesburg, Virginia 22075

110

V

CERTIFICATE

I hereby certify that on this 10th day of April, 1980, I mailed a true copy of the foregoing pleading to Kermit L. Racey, Esquire, RACEY & RACEY, 115 West Court Street, Woodstock, Virginia 22664, Counsel for Complainants; Ronald D. Hodges, Esquire, WHARTON, ALDHIZER AND WEAVER, 90 North Main Street, Harrisonburg, Virginia, Counsel for Bryce Mountain Resort, Inc.; Henry H. Whiting, Esquire, KUYKENDALL, WHITING, COSTELLO & HANES, Fairfax Cameron Bldg., Suite 101, 20 S Cameron Street, Winchester, Virginia 22601, and I. Clinton Miller, Esquire, Woodstock, Virginia, Co-Counsel for Defendants, Forbes.

  
\_\_\_\_\_

ADDENDUM TO OPINION

In the opinion of the Court the provisions of the deed dated the 22nd day of December, 1970, recorded in Deed Book No. 278, page 706, from Bryce's Mountain Resort, Inc. to A. James O'Mara created binding restrictive covenants as set forth in the "DECLARATION OF PROTECTIVE COVENANTS AND RESTRICTIONS SKY BRYCE BRYCE'S MOUNTAIN RESORT, INC.", recorded in Shenandoah County Deed Book No. 262, page 275, in so far as the same can be found to be applicable to the use of the property for multi-dwelling purposes.

Accordingly, the Court doth find that each of the thirty-two restrictions is applicable with the exception of Numbers 1, 2, 3, 4, 5, 8, 10 and 28.

July 15, 1980

  
JUDGE

*Chancery, Order Book 43*  
*Page 37*

DECREE

THIS CAUSE was heard on the 9th, 10th, 11th and 12th days of July, 1980, upon the Amended Bill of Complaint for declaratory judgment against the Defendants Forbes, and others; upon papers formerly read and proceedings previously had in the case; and upon the Answer of the Defendant, Bryce's Mountain Resort, Inc. and its Cross-Bill against the Defendants Forbes; upon the Answer of the Trustee Defendants, I. Clinton Miller, V. Stephen Bradshaw and Henry C. Clark; upon the Motion of Sky Bryce Association, Inc. for leave to intervene; upon the granting of said motion; upon the Answer of Sky Bryce Association, Inc., to the Amended Bill of Complaint; upon the case having been regularly matured and set down for hearing on the 19th day of April, 1980, and thereafter continued until 9 July, 1980; upon appearance of all parties except the Trustee Defendants, in person and by counsel.

The Complainants first having offered their evidence and having rested, the individual Defendants, by counsel, moved to strike the evidence of the Complainants and the matter was argued. The Court was and is of the opinion that the evidence of the Complainants was insufficient to establish a restrictive covenant with respect to the land of the individual Defendants limiting them to the construction of less than 12 living units upon the said property and to that extent the motion of the individual Defendants is sustained. In all other respects, the said motion was and is overruled.

Thereupon, the individual Defendants proceeded to introduce evidence in defense of the complaint made against them and rested, after which the Complainants and Intervenor introduced certain rebuttal evidence and the Defendant, Bryce's Mountain Resort, Inc., introduced evidence in support of its Cross-Bill. No party desired to offer further evidence and all parties rested. Counsel argued the case, and the Court thereupon rendered its judgment as follows:

UPON CONSIDERATION of all of which, the Court is of the opinion and doth FIND that:

(1) The 7.35 acre tract of the Defendants was not subject to any of the restrictive covenants up until its acquisition by A. James O'Mara and wife, by deed from Bryce's Mountain Resort, Inc., dated December 22, 1970, and recorded in the Clerk's Office of the Circuit Court of Shenandoah County, Virginia, in Deed Book 278 at Page 706, but upon the recordation of the deed to the said O'Maras (Complainants' Exhibit G), it was provided that the restrictive covenants as set forth in the Declaration of Protective Covenants and Restrictions, Sky Bryce, Bryce's Mountain Resort, Inc., recorded in the aforesaid Clerk's Office in Deed Book 262 at Page 275 (Complainants' Exhibit A herein) would apply to the property if it is later subdivided and/or sold for single-family detached dwelling units, and Restrictions (a) and (b) as set forth in Complainants' Exhibit G would apply to the property devoted to use as multi-unit residences as well as those restrictive covenants set forth in said Complainants' Exhibit A, insofar as those restrictive covenants can be found to be applicable to the use of the said 7.35 acre tract for multi-family purposes, and that each of the thirty-two (32) restrictions is applicable to said multi-family uses with the exception of Nos. 1, 2, 3, 4, 5, 8, 10 and 28.

(2) The release of the restrictive covenants as set forth in Exhibits VI and V2 herein and as recorded in the aforesaid Clerk's Office in Deed Book 405 at Page 378, and Deed Book 405 at Page 382 is binding upon Defendant Bryce's Mountain Resort, Inc.

(3) The residents of Section VI of Sky Bryce and Sky Bryce Association, Inc. can require the restrictive covenants as modified by the Court herein to be enforced.

(4) The evidence is insufficient to show that the restrictions would prevent the use of Defendants' dwellings for timesharing purposes.

ACCORDINGLY, the Court doth ADJUDGE, ORDER and DECREE:

(1) The Defendants shall comply with the said restrictive covenants insofar as they have been held to be binding upon the property herein.

(2) The Cross-Bill of Defendant Bryce's Mountain Resort, Inc., is hereby DISMISSED.

(3) Defendants may use their 7.35 acre tract and any improvements erected thereon, for timesharing purposes.

(4) Each of the parties herein having prevailed in part, an award of costs is DENIED, and each party shall bear costs as incurred. The Clerk is directed to record this Decree in the current deed book in his office and to index the same in the names of all parties to this cause.

All parties duly objected and except to all adverse rulings of the Court adverse to their interests as set forth in the transcript of the evidence herein; which transcript is

directed to be prepared and become a part of the record of this case in accordance with Rule 5:9 (a).

Enter this 9<sup>th</sup> day of October, 1980.

Ernest M. Madach  
JUDGE

We ask for this:

BRUCE FORBES AND  
LOIS FORBES

BY: I. C. L. Wilson  
Counsel

Seen and objected to:

SKY BRYCE ASSOCIATION

BY: J. E. H.  
Counsel

JOHN R. SCHAEFFER AND  
BARBARA L. SCHAEFFER

BY: W. E. F.  
Counsel

BRYCE MOUNTAIN RESORT, INC.

BY: Ronald D. Hodges  
Counsel

REFUSED AND EXCEPTION NOTED

Ernest M. Madach  
JUDGE

*Chancery Order Book 43*  
*Page 181*

ORDER

Upon the Motion of Defendants, there being no objection by any of the parties in this Cause, it is hereby Ordered that the transcript of hearing in this Cause become a part of the record in accordance with Rule 5:9(a).

Enter this 9<sup>th</sup> day of October, 1980.

Ernest Mardace  
JUDGE

I ask for this:

I. Clinton Miller

I. Clinton Miller, Counsel for Defendants,  
Bruce Forbes and Lois Forbes

Seen and not objected to:

Ernest L. Ruff  
Counsel for Complainants

J. V. H.  
Counsel for Intervenor, Sky Bryce Association

Ronald D. Hodges  
Counsel for Defendant, Bryce Mountain Resort, Inc.

*Chancery Order Book 43*  
*Page 186*



DECREE

The 9th day of July, 1980, came the parties in the above cause, the individual Defendants appearing personally and by counsel, and the Corporate Defendant and the Intervenor by counsel, this matter having been previously set for hearing ore tenus at the Bar of the Court.

Thereupon, upon the 9th, 10th, 11th, and 12th days of July, 1980, the Complainants and the Defendants proceeded to introduce evidence with respect to the claims set forth in the Bill of Complaint and the Cross-Claim filed by the Defendant, Bryce Mountain Resort, Inc.

The Complainants first having offered their evidence and having rested, the individual Defendants, by counsel, moved to strike the evidence of the Complainants and the matter was argued. The Court was and is of the opinion that the evidence of the Complainants was insufficient to establish an express restrictive covenant with respect to the land of the individual Defendants limiting them to the construction of less than 12 living units upon the said property and to that extent the motion of the individual Defendants is sustained. In all other respects, the said motion was and is overruled.

Thereupon, the individual Defendants proceeded to introduce evidence in defense of the complaint made against

them and rested, after which the Complainants and Intervenor introduced certain rebuttal evidence and the Defendant, Bryce's Mountain Resort, Inc., introduced evidence in support of its Cross-Claim. No party desiring to offer further evidence and all parties having rested, the Court thereupon rendered its judgment as follows:

It is ADJUDGED, ORDERED, and DECREED that:

1. The evidence of the Complainants and Intervenor is insufficient to establish a limitation upon the individual Defendants, Bruce Forbes and Lois J. Forbes, restricting them to the construction of single-family residences upon the property of the said Defendants known as the O'Mara or 7.35 acre parcel.

2. The covenants contained in the deed from Bryce's Mountain Resort, Inc. to O'Mara, and described therein as covenants (a) and (b) and the general covenants with respect to Bryce's Mountain Resort, Inc., not in conflict with covenants (a) and (b), are applicable to the said land of the Defendants acquired from O'Mara.

3. Accordingly, the Defendants with respect to that land are entitled to build thereon apartment houses, multiple family dwellings, condominiums, or other residences so long as they do not construct more than twelve (12) living units on the property as a whole.

4. A living unit is that combination of rooms and facilities ordinarily utilized for housing a single family.

5. The release of the covenants by the Defendant, Bryce's Mountain Resort, Inc., render the covenants unenforceable as between the Defendant, Bryce's Mountain Resort, Inc., and the individual Defendants and accordingly judgment on the Cross-Claim is rendered in favor of the individual Defendants.

6. Those covenants not in conflict with covenants (a) and (b) of the O'Mara deed and therefor applicable to the

tract of land which is the subject of the Bill of Complaint are: All of the covenants contained in that certain Common Declaration of Protective Covenants and Restrictions dated May 18, 1969, and recorded in the Office of the Clerk of the Circuit Court of Shenandoah County, Virginia in Deed Book 262 at page 275, except the covenants numbered 1, 2, 3, 4, 5, 8, 10, and 28.

7. Complainants and Intervenor have failed to establish that the proposed use of the property by defendants Bruce Forbes and Lois J. Forbes will constitute a nuisance, and further Complainants have failed to prove that the proposed use of the property upon a "time-sharing" basis will constitute a violation of any restrictive covenant nor any implied covenant and accordingly the injunction sought on the basis of nuisance and the injunction sought to forbid "time-sharing" are denied.

Each of the parties herein having prevailed in part, an award of costs is denied and each party shall bear costs as incurred. The Clerk is directed to record this decree in the current deed book in his office and to index the same in the names of all parties to this cause.

All parties, by Counsel, object and except to any and all adverse provisions of this Decree; and as set forth in the transcript of evidence.

ENTER this 7<sup>th</sup> day of October, 1980.

Glenn MacLean  
Judge

SEEN:

*John H. S. Counsel for Defendant*

*Krist S. Rader*

*I. C. H. H. H.*

*Ronald D. Hodges*

*Counsel for Plaintiff*

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### ASSIGNMENTS OF ERROR

1. The chancellor erred by holding that covenants (a) and (b) of the Bryce to O'Mara deed are applicable to the appellants' land acquired from O'Mara.

2. The chancellor erred by holding that any of the general covenants of the Declaration are applicable to the subject land.

3. The chancellor erred by holding that appellants are limited to building not more than twelve (12) living units on the subject property as a whole.

4. The chancellor erred by imposing an equitable servitude on the subject land in the absence of evidence that the intention of the common grantor was to benefit third parties and in the absence of evidence of a common scheme of development.

5. The chancellor erred by imposing an implied equitable servitude on the subject land where the rights of the parties were clearly expressed in written documents which plainly precluded the existence of a servitude by implication.

6. The chancellor erred by implicitly holding that the release of covenants (a) and (b) by Bryce's Mountain Resort, Inc. did not render the covenants unenforceable as to all third parties.

7. The chancellor erred by implicitly finding that the subject property ever became incorporated as part of Section VI of Bryce Mountain Resort.

8. The chancellor erred by failing to sustain appellants' motion to strike complainant-appellee's evidence.

9. The chancellor erred by permitting testimony in violation of the parole evidence rule about written instruments to dispose of real property which are valid, complete, unambiguous and unaffected by accident or mistake.

### ASSIGNMENTS OF CROSS-ERROR

The Cross-Appellants, John R. Schaefer and Barbara L. Schaefer, do hereby assign the following errors to the final judgment of the Circuit Court of Shenandoah County, Virginia, entered on the 7th day of October 1980, in this cause.

1. The Chancellor erred in sustaining Defendants' Demurrer to the Bill of Complaint.
2. The Chancellor erred in sustaining Defendants' motion to strike in part by holding the restrictive covenants on their face were plain and unambiguous and permitted the O'Mara tract to be used for multi-family purposes.
3. The Chancellor erred by implicit holding the O'Mara tract was not part of a common scheme of development prohibiting multi-family use.
4. The Chancellor erred by implicit failing to hold the O'Mara tract to be part of Section VI of Bryce's Mountain Resort, Inc. and restricted to single-family residential use.
5. The Chancellor erred in holding time-sharing to be a permissible use of the O'Mara tract.
6. The Chancellor erred in holding the O'Mara tract was not originally intended for sale to individual lot purchasers for erection of single-family private dwellings.

7. The Chancellor erred in holding the O'Mara tract not to be expressly subject to each and every one of the covenants in the Declaration of Protective Covenants and Restrictions.
8. The Chancellor erred in holding the O'Mara tract not to be subject to each and every one of the covenants in the Declaration of Protective Covenants and Restrictions pursuant to an implied reciprocal negative easement or servitude.

1 VIRGINIA: IN THE CIRCUIT COURT OF SHENANDOAH COUNTY

2  
3 JOHN R. SCHAEFFER, ET AL

4 COMPLAINANTS

5 V.

IN CHANCERY NO. 1474

6 BRUCE FORBES, ET AL

7 RESPONDENTS

8 SHENANDOAH COUNTY CIRCUIT  
9 COURT HOUSE

10 WOODSTOCK, VIRGINIA 22664

11 JULY 9, 1980

12 THIS MATTER COMES ON TODAY FOR TRIAL

13 BEFORE

14 THE HONORABLE ELLIOTT MARSHALL, JUDGE  
Presiding

15 APPEARANCES:

16 FOR THE COMPLAINANTS:

17 KERMIT L. RACEY, ESQUIRE  
KERMIT L. RACEY, II, ESQUIRE  
18 RACEY & RACEY  
115 WEST COURT STREET  
WOODSTOCK, VIRGINIA 22664

19  
20 FOR THE RESPONDENTS:

21 HENRY H. WHITING, ESQUIRE  
KUYKENDALL, WHITING, COSTELLO  
AND HANES  
20 SOUTH CAMERON STREET  
22 WINCHESTER, VIRGINIA 22601

23 I. CLINTON MILLER, ESQUIRE  
120 SOUTH MAIN STREET  
24 WOODSTOCK, VIRGINIA 22664



1 the restrictive covenants; in other words, didn't mention  
2 anything about the reference; or they specifically stated  
3 that the real estate was sold not subject to the restrictive  
4 covenants. So, the only exceptions to the normal reference  
5 are those deeds which have already been granted allowing  
6 multi-family use.

7 Aspen-East Resort...Aspen-East Condominiums. I  
8 believe they have three deeds; two don't mention restrictive  
9 covenants at all; the other says they are specifically not  
10 subject.

11 Stoney Court Townhouses, again, they were sold for  
12 multi-family use. Not mentioned in the deed about the  
13 restrictive covenants.

14 Bryce Hill Condominiums states specifically that  
15 it is sold not subject to the restrictive covenants.

16 But, in Mr. Forbes deed, in fact, every deed in  
17 his chain of title states that it is sold specifically  
18 subject to the restrictive covenants. The same as all of the  
19 three thousand-plus other deeds there.

20 Therefore, by expressed adoption, they have made  
21 those covenants apply.

22 THE COURT: The objection is overruled.

23 MR. WHITING: Exception.

24 THE COURT: Exception noted. Goes to all of the  
parol evidence.

1 You gentlemen agree to that? Continuing objection to all  
2 parol evidence?

3 MR. RACEY: Yes, Your Honor.

4 BY MR. RACEY:

5 Q. You say in '67...I believe it is the last question,  
6 when answered, was in 1967 was the date in which you started  
7 the planning of this subdevelopment: is that correct?

8 A. Right.

9 Q. And, what type of...what was your...what type of  
10 a development was it supposed to be?

11 A. A retirement development. I have been involved  
12 in aviation for a number of years, and that is the reason  
13 for the term: "Sky Bryce". In 1966, I formed an association,  
14 or a club, called Sky Bryce, which was advertised throughout  
15 the United States as an aviation country club.

16 A number of friends of mine who...

17 Q. Well, wait a minute. I don't want to go into too  
18 much on that. Excuse me for interrupting you. We might be  
19 getting...save a little time, if we could be more abrupt in  
20 answering the questions.

21 First of all, I believe you said you were the  
22 president of Bryce Mountain Resort, Inc. at the time?

23 A. Right.

24 Q. And how much land did you own at that time?

1           A.    Approximately, either under option or we owned  
2 approximately a thousand acres.

3           Q.    And what is the nature of the terrain, or  
4 topography, that makes up what is known as Bryce's Mountain  
5 Resort, Inc.

6           A.    The greater portion of it is extremely steep.

7           Q.    All right, sir. I see. And, what other than...  
8 you said it was to be sold to retired people and this sort  
9 of thing?

10          A.    That is right.

11          Q.    What type of residences were envisaged as being  
12 constructed there?

13          A.    Each one of the residences would have a good view.  
14 In fact, there would be not any land on the majority of the  
15 lots to put in gardens or yards or put in swimming pools.  
16 It would just be a homesite of about approximately half...  
17 at that time, most of the lots were a half acre or larger  
18 because we had hoped to be able to put septic tanks on the  
19 properties.

20          Q.    I see. Could...

21               MR. WHITING: This objection also...this is parol  
22 evidence because this is a further objection. This is un-  
23 expressed intention. Uncommunicated as a statement of his  
24 intention. I think it is inadmissible, for that further

1 reason.

2 MR. RACEY: The answer is who best can know what  
3 was intended at that time than he himself.

4 THE COURT: What difference does it make what he  
5 had in mind?

6 MR. RACEY: I am going to say whether or not he  
7 accomplished that, Your Honor. I intend to enlarge on it.

8 BY MR. RACEY:

9 Q. All right, now. What size lots were to be  
10 constructed there for...

11 A. Most of the original lots were at least a half  
12 acre or larger. Quite a number of them were larger than an  
13 acre.

14 Q. All right. And what type of construction or  
15 buildings were intended for construction on those buildings?

16 A. A house in which there would be a minimum of a  
17 thousand square feet, with a minimum of eight hundred square  
18 feet on the lower level, if it was a two level house.

19 Q. Now, over the years has that scheme been carried  
20 out?

21 A. Absolutely.

22 Q. Now, how did you...what type of environment was  
23 intended for these retirees in this area?

24 A. We were building a golf course. We had plans to

1 MR. RACEY: Yes, sir. That is the plat. That is  
2 in Section Six.

3 BY MR. RACEY:

4 Q. Now, after it was adopted, where was it put?

5 A. Brought it to your law firm. First I made a draft  
6 of the idea and concerns that I had in viewing the number of  
7 developments. Then, I brought the drafts of  
8 a number of other restrictive covenants to our attorney in  
9 Washington, who was the secretary of the corporation, Reid  
10 Miller,

11 Q. All right. After they were finally adopted, what  
12 did you do?

13 A. Then they were brought to Shenandoah County and  
14 recorded. You, I believe, typed and put together the final  
15 draft.

16 Q. And do you remember when that was?

17 A. That was in 1968.

18 Q. All right. Now, to what portions of Bryce's  
19 Mountain development was that to apply?

20 A. It was to apply to all...

21 THE COURT: Now, it is understood this is a  
22 continuing objection. The objection goes to the whole  
23 testimony? Do you gentlemen agree to that.  
24

1 MR. RACEY: Yes, sir. We agreed to that.

2 BY MR. RACEY:

3 Q. All right. Now, when did you commence selling lots?

4 A. The first lot was sold in 1969, during the winter  
5 of 1969. And, we had sold...

6 Q. Who was..

7 A. We had sold one other lot in a separate section  
8 without it being in the overall master plan, in 1968.

9 Q. Do you remember who those sales were to?

10 A. Yes. I do.

11 Q. Who were they?

12 A. There were three people that we sold to. The first  
13 one was William Bickerstaff. That was a lot that is now  
14 part of Section 5.

15 The second lot was to Joseph Luder, an unplatted  
16 lot, that he originally had intended to build a condominium  
17 on, in 1968.

18 And the third lot was to a man by the name of  
19 John O'Neal, and that was in Section 3.

20 Q. All right. Now, how many sections was Bryce's  
21 Mountain Resort eventually...or how many sections did Bryce  
22 Mountain Resort, Inc. eventually develop?

23 A. Twelve.

24 Q. Twelve. And, did you ever...and how many of those

1 Q. Well, I understood...

2 A. "...at Thirty-seven Hundred Dollars since the  
3 survey was essential to the exercise of the option to acquire  
4 the Nesselrodt property and to the further sale of lots."

5 MR. WHITING: If the Court please, I don't believe  
6 that constitutes an adoption of this document as an overall  
7 master plan as contemplated by the restrictive covenants.

8 THE COURT: I agree with you so far, but this map,  
9 as I understand it, was offered to the prospective customers.

10 THE WITNESS: That is right, Your Honor.

11 THE COURT: Used by the organization.

12 MR. WHITING: That doesn't make it an overall  
13 master plan.

14 THE COURT: Oh, I agree with that. I have to  
15 agree with that. But it is relevant. It shows, as I  
16 would take it, it is relevant to show that was holding out to  
17 the lot purchasers. This was what the salesman showed the  
18 lot purchasers: is that correct?

19 THE WITNESS: That is correct.

20 THE COURT: I think it would be admissible for  
21 that purpose.

22 MR. WHITING: If Your Honor please, there has been  
23 no showing that it was shown to either O'Mara or Forbes.  
24 Unless that is shown, we wouldn't be bound by it.

1 THE COURT: Well, it will be admitted into evidence  
2 as the general design and plan. I think this is relevant to  
3 show that there was a holding out to the prospective lot  
4 purchasers and for that purpose only. Admitted for that purpose.

5 MR. WHITING: We have no objection, Your Honor.

6 MR. RACEY: It has already been received into  
7 evidence.

8 THE COURT: No. It hasn't been received into evidence.

9 MR. RACEY: Has Your Honor received it into  
10 evidence now?

11 THE COURT: Yes. I will admit it.

12 MR. RACEY: Thank you.

13 THE COURT: What is the number of the exhibit?

14 MR. RACEY: C-1.

15 (WHEREUPON, Sky Bruce master plan is admitted into evidence  
16 as Complainants' Exhibit C-1).

17 FURTHER DIRECT EXAMINATION

18 BY MR. RACEY:

19 Q. Now, I hand you a document identified as C-2 for  
20 identification and ask if you can identify it?

21 A. That is the current master plan for Bryce's  
22 Mountain Resort, Incorporated.

23 MR. WHITING: If the Court please. I am going to  
24 object to that, unless...to the statement "Current master plan "



1 THE COURT: Objection sustained.

2 BY MR. RACEY:

3 Q. All right. You stated this was a master plan.

4 Why do you say that?

5 A. That is what we are using to sell the property.

6 Q. Over what period of time has it been used for that  
7 purpose?

8 A. For approximately five years.

9 Q. And, how do you go about using it to sell property?

10 A. You show where the recreational amenities are  
11 located. The majority of people are interested in one  
12 particular thing and they will drawn to that, and then you  
13 show the property located in that area.

14 Q. Does it depict the sections and lots?

15 A. Certainly does.

16 Q. The development of Bryce Mountain Resort, Inc?

17 A. That is right.

18 Q. And, do you know how many people that are  
19 prospective purchasers or buyers it has been shown to?

20 A. Everybody who purchases real estate is given one  
21 of these maps.

22 Q. Over what period of time has that extended?

23 A. Ever since we started the development.

24 Q. Do you know who put this together?

1           As I understand it, this witness refreshed his  
2 recollection.

3           MR. WHITING: That straightens it out very nicely.  
4 BY MR. WHITING:

5           Q.    Now, Mr. Bryce, as I understand your testimony,  
6 all of the lots in the subdivision at Bryce that were  
7 divided into lots of an acre or a half acre or less, was  
8 intended to be single family dwellings: is that right?

9           A.    That is correct.

10          Q.    And that if anything was going to be a condominium  
11 or a multi-family property, it was specifically so stated in  
12 the deed?

13          A.    That is correct.

14          Q.    Now, Section 3 is a part of the Bryce...Section  
15 3 Extended: is a part of the Bryce subdivision: is it not?

16          A.    It was.

17          Q.    Was? Okay. Now, tell me how it got to be past  
18 tense, if you please.

19          A.    Because I developed a concept to build a solar  
20 development. As a result of there being necessary changes  
21 to the restrictive covenants, we deleted the unplatted  
22 Section 3 Extended and then replatted it and then resubmitted  
23 a new set of restrictive covenants.

24                The purpose being that each lot would have to have

1 a different orientation, mainly, to the south.

2 Q. Now, that is...now when the property was first  
3 conveyed, it was conveyed, as you say, subject to the  
4 original general covenants...

5 A. Right.

6 Q. ...that are sought to be enforced here?

7 A. That is correct.

8 Q. Now, that was hundred and twenty-nine lots: wasn't  
9 it?

10 A. I believe that would be correct.

11 Q. Now, then, that was in the original conveyance in  
12 July of 1978: wasn't it?

13 A. That is correct.

14 Q. Now, then, in October or November of '78, by an  
15 undated instrument, Bryce's Mountain Resort, Incorporated  
16 and Bryce's Mountain Ski and Country Club, and the Bryce  
17 Family Enterprises and trustees of the respective deeds of  
18 trust, purported to vacate all of the restrictions in that  
19 subdivision: did they not?

20 A. That is correct.

21 Q. And I observe...

22 THE COURT: What exhibit is that?

23 MR. WHITING: You didn't introduce that: did you,  
24 Kermit?

1 MR. RACEY: No.

2 MR. WHITING: Okay.

3 BY MR. WHITING:

4 Q. I observed that instrument is signed by Ronald G.  
5 Petcher as vice president of Bryce's Mountain Resort,  
6 Incorporated.

7 A. John Lerner, at that time, was the secretary.

8 MR. WHITING: Let's introduce that. This will be  
9 Defendants' #1.

10 THE WITNESS: What was the date of that?

11 MR. WHITING: It was executed in October or  
12 November of 1978. Doesn't say when.

13 (WHEREUPON, undated instrument purporting to vacate all of  
14 the restrictions is admitted into evidence as Defendants'  
15 Exhibit #1).

16 THE COURT: Did the lot owners execute this paper?

17 MR. WHITING: No lot owners except in Section 3,  
18 as I understand. I am going to come to that.

19 THE COURT: There were no lot owners except those?

20 MR. WHITING: Well, I think he said there was one.

21 THE COURT: It is talking about these other  
22 restrictions.

23 MR. MONAHAN: It doesn't apply to anything we are  
24 dealing with, Judge.

1 information.

2 Q. Now, Mr. Bryce, did there come a time when you  
3 with the Bryce's Mountain Resort, in April of 1974, when  
4 that corporation sold some land to an outfit called Harvington  
5 Associates?

6 A. I was a partner with Mr. Ray, who is one of the  
7 principals of Harvington Associates.

8 Q. You talked a little bit about that this morning:  
9 didn't you?

10 A. Right.

11 Q. Okay. You all sold it, and you were also a  
12 director and a salesman of Bryce's Mountain Resort at that  
13 time?

14 A. And there is a reference to that in the minutes.

15 Q. Would you just answer the question? It would go  
16 faster.

17 Now, at that time, there was a tract of 28.60 acres  
18 sold to this Harvington Associates.

19 A. I am very familiar with it. This was my old air  
20 strip at Bryce's.

21 Q. Okay. And, will you show Judge Marshall where that  
22 is in your plat?

23 A. Comes right like this, down and back, here, and it  
24 takes in this whole area.

1 THE COURT: What was that name?

2 MR. WHITING: Harvington.

3 THE WITNESS: And this is the original hill resort.

4 BY MR. WHITING:

5 Q. Now, I am not asking you about that.

6 A. I just wanted to locate it.

7 Q. Now, Mr. Bryce, when that property was sold to  
8 the Harvington Associates, was it sold subject to these  
9 common covenants?

10 A. Not to my knowledge.

11 Q. And you did not intend it to be bound by these  
12 common covenants?

13 A. They were not because they were going to build  
14 condominiums on it. And also build a three million dollar  
15 poly clinic.

16 Q. I am getting to that. Now, then, I hand you here-  
17 with what purports to be a copy of the deed from Bryce's  
18 Mountain Resort, Incorporated to Harvington Associates.

19 MR. RACEY: May counsel see that?

20 MR. WHITING: Sure.

21 BY MR. WHITING:

22 Q. I will read there: dated December 11, 1974, and  
23 I ask you if you recognize that as the deed by which the  
24 property was conveyed by Bryce and acquired by Harvington?

1 seen, there was a document which was relied upon by the  
2 corporation, represented to the public, held out to the  
3 public over the years...

4 THE COURT: Well, that is a map...

5 MR. MONAHAN: ...I think that document would fill...

6 THE COURT: ...I don't consider that to be a...  
7 document.

8 THE WITNESS: That was the master plan.

9 THE COURT: Other than the map.

10 BY MR. WHITING:

11 Q. Other than sketches, schematic drawings or maps.

12 A. We had schematic sales literature that we gave the  
13 people when they came in to purchase real estate if that...  
14 I still don't understand...now repeat...I am sort of dull.  
15 Would you repeat to me one more time what you said because  
16 it isn't coming through. I just don't get.

17 Q. All right. Let me break it down very simply.

18 Is there anything, first, in the minutes of the  
19 board of directors of Bryce's Mountain Resort, Incorporated  
20 by which that board of directors adopted a master plan, apart  
21 from what you showed us this morning?

22 A. The master plan was the only thing we ever  
23 discussed. I don't know whether they specifically said:

24 "Well, we are going to look, and this is going to be the master



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1 ....". I showed you all those documents that were prepared  
2 through a period of years. The first master plan was the  
3 one that I showed you at the beginning of the hearing this  
4 morning.

5 I do not recall there being any specific formal  
6 meeting saying: "This is the meeting for the master plan."

7 Q. Okay. That...you have answered...

8 A. Because the master plan was added to as we acquired  
9 lands, and then we enlarged it. This is the final, what is  
10 on His Honor's desk.

11 MR. HODGES: What Exhibit?

12 THE COURT: C-2.

13 BY MR. WHITING:

14 Q. Now, then, Mr. Bryce, was there ever any contract  
15 or deed or dedication executed which adopted a master plan  
16 by Bryce's Mountain Resort, Incorporated?

17 A. There was a contract with Bufford Hayden to develop  
18 the master plan and then after he completed his work, there  
19 was contract with James Wilkins. That is all I can say. I  
20 have not seen...

21 Q. Now, wait, Mr. Bryce. The contract with this  
22 Mr. Hayden was a contract to do some planning work: wasn't  
23 it?

24 A. Right.



1           So, even if everything they say is so, even if it  
2 subject to it, it is subject to all of it, which by its  
3 terms show that it does not apply. And what the Arizona  
4 Court is saying is: "We are cautious lawyers. We are not  
5 going to get our grantors' neck out on a noose. And we are  
6 inviting you to look back at the other instruments, when we  
7 say 'subject to', and if it is otherwise subject, you are  
8 taking notice of it. But, if it isn't otherwise subject to  
9 it, we don't intend to create it."

10           And, clearly this grantor didn't intend to create  
11 it because if he did, right by the first paragraph, he is  
12 saying "single family dwellings", and he is already conveying  
13 by multiple.

14           I hand you back the Arizona case, Your Honor.

15           THE COURT: Mr. Whiting, it is apparently conceded  
16 that you can't build more than twelve housing units...

17           MR. WHITING: Did I concede it?

18           THE COURT: They concede it.

19           MR. WHITING: Well, I didn't understand they do.

20           THE COURT: Well, that is the way I understood.

21           MR. WHITING: No. Well...

22           THE COURT: As I understand it, counsel agrees that  
23 Section B of the deed, and nine of the contract, permits  
24 you to build multiple resident units or apartments, but

1 you can't build more than twelve on the seven acres.

2 MR. WHITING: Well, Judge, you don't want me to  
3 speak for them. I am like a fox carrying their lunch. I  
4 understand, all day long, that they are saying that I can't  
5 put anything but single family dwellings there.

6 THE COURT: I understand to the contrary. I  
7 believe...I am of the opinion that it is plain and unambiguous  
8 that you can, under the deed, specifically provided in  
9 the deed, and you don't need any extraneous evidence, that  
10 you can build twelve apartments...

11 MR. MONAHAN: Your Honor, so that....

12 THE COURT: ...or single residences and multiple  
13 residence units.

14 MR. MONAHAN: So that there is no concession in  
15 the record on my part, I argued and you recall that at the  
16 time my argument was that under O'Mara, the deed you hold  
17 in your hand, he could have, but I still say that when the  
18 waiver of A and B went on record, then he could not build  
19 in accordance with A and B because that was obliterated,  
20 leaving the original covenants in full force and effect  
21 under the language "subject to".

22 My concession at this point is that he can't  
23 build...that if he can build anything, it can't be more than  
24 twelve. That is the only concession I make.

1 THE COURT: That is understood.

2 MR. RACEY: Counsel for Schaeffer would reiterate  
3 that same argument, Your Honor.

4 THE COURT: Well, gentlemen, I am of the opinion  
5 that...still of the opinion that apparently Judge Gibb was,  
6 that the documents are plain and unambiguous. That the  
7 restriction as to the O'Mara was that he could not build  
8 more than twelve dwelling units, whether apartments, single  
9 residence units or multiple residence units.

10 Now, and I also hold, so as to the motion, I am  
11 going to sustain it. According to those conditions.

12 That doesn't mean that this approves of the type  
13 of buildings; I don't know what they are.

14 MR. WHITING: That is not the point, Your Honor.

15 THE COURT: Now, as to the implied restrictions,  
16 I am going to overrule the motion.

17 MR. WHITING: We note exception to the Court's  
18 ruling.

19 THE COURT: All right.

20 MR. WHITING: Your Honor, can we take a few  
21 minutes to sort of structure how we are going to this  
22 present this?

23 THE COURT: This Court will now recess for about  
24 five minutes.

1 I can't remember Barbara's last name right now. I believe  
2 Gene Bogan was a director. And I believe Ernie Anderson was  
3 a director, but I am not sure that he was.

4 Q. Now, did the directors meet with any degree of  
5 regularity?

6 A. They were not on a set schedule, but the board of  
7 directors did meet. But, I would say on an irregular basis.

8 Q. Could you estimate how often they might meet in a  
9 year?

10 A. Twice.

11 Q. Do you recollect the occasion when a plat for  
12 Section Six was prepared in October of 1969?

13 A. Yes.

14 Q. Do you remember the surveyor who prepared it?

15 A. Yes.

16 Q. Who was that?

17 A. Jim Wilkins form Harrisonburg, Virginia.

18 Q. Tell us, if you will please, what you recollect  
19 about how it was prepared, what directions, if any, you  
20 gave him, and just how it was done. And if there are any  
21 documents that would help you to explain it, you may ask for  
22 them.

23 A. Generally, the way all, after I arrived at Bryce,  
24 the way all the plats were prepared, is that we had a

1 topographical survey shot of the mountain which showed the  
2 controur lines on the entire mountain. Jim Wilkins would  
3 draw in roads and draw in lots. In most cases, he and I  
4 would then sort of walk the center line of the road to  
5 determine how the road was on the ground. And then, we  
6 would spend nights in his office, really, just playing  
7 around with how to put the lots on the topo map that he had  
8 prepared, until we came to a plat that we were both satisified  
9 with, that met our aims and objectives.

10 And then, I would instruct, once we were satisfied,  
11 I would instruct him to draw the plat up that way.

12 Q. Now, Mr. Stancil in connection with the plat of  
13 Section 6, do you recollect whether there was any land,  
14 either in Section 6 or adjacent to Section 6, that was not  
15 platted as lots?

16 A. There were actually three pieces of land, one  
17 that was, I think, by this time, had been dedeed to a man  
18 name Scott. There was the tract of land that adjoined  
19 Section 6 that we later referred to as the O'Mara tract.  
20 And there was a nother tract of ground, approximately three  
21 acres, that was later sold to Mrs. Emily Coughlin. And  
22 those were specifically left out of Section 6.

23 Q. Now, by whose direction were they left out?

24 A. By mine.

1 Q. And why was that?

2 A. Well, the Scott tract, as I said, had already been  
3 sold. That didn't belong to Bryce. The Coughlin land, the  
4 land that was later sold to Coughlin, was left out because it  
5 was a nice piece, flat piece of land that we thought would  
6 someday make a nice multi-family site.

7 The tract that was later sold to Mr. O'Mara was...  
8 when we first did a plat, we did it because of the nature of  
9 the terrain. Did not appear that it was feasible to develop  
10 that land into lots. The way the road had to be put in, it  
11 would only allow, I think, about two lots in order to hook  
12 into the road system that we had. And consequently, we felt  
13 that, or I felt, that we would be better off holding that  
14 land as a possible multi-family site. And we simply took it  
15 off the plat at that point in time.

16 Q. Now, Mr. Stancil, when Mr. Wilkins prepared the  
17 area around Section 6, did he do a perimeter survey of that?

18 A. I am sure he did.

19 Q. All right.

20 A. I don't specifically recall, but I am sure he did.

21 Q. Mr. Stancil, I am handing you and showing you  
22 Defendants' Exhibit #1, which is a colored document which  
23 says on its face "Master Plan, Bryce's Mountain Resort,  
24 Incorporated", and I direct your attention to the notation in

1 pencil: "O'Mara-Forbes". Is that the O'Mara tract that you  
2 have been referring to?

3 MR. MILLER: Are we going to...

4 MR. WHITING: Do we have that?

5 MR. HODGES: We have got the exhibits.

6 MR. MILLER: The deposition exhibits?

7 MR. WHITING: Yes.

8 MR. MILLER: Defendants' Exhibit #1.

9 Q. Is that the O'Mara tract that you have been  
10 referring to?

11 A. Yes. Up here is...

12 THE COURT: Is that the same as Exhibit C-2?

13 MR. WHITING: No, it isn't, either.

14 THE COURT: That doesn't.

15  
16 Q. Is that the O'Mara...

17 MR. WHITING: I point out the Court, I direct  
18 your attention to the notation in pencil: "O'Mara-  
19 Forbes."

20 MR. MILLER: The answer is: "Yes. Up here is  
21 D." Whatever that means.

22 THE COURT: It is marked in pencil: "O'Mara'  
23 Forbes"?

24 MR. WHITING: Yes, sir.

1 Q. Now, Mr. Stancil, I hand you what purports to be  
2 Sheet 6 of 19, which purports to be a section of Section 6.  
3 I ask you if that is the form usually Mr. Wilkins' platting  
4 took before it was recorded?

5 A. Yes.

6 MR. WHITING: Where is that?

7 MR. MILLER: That is the exhibit.

8 MR. WHITING: All right. Is that the O'Mara  
9 tract that you have been referring to?

10 THE COURT: Same exhibit, #C-2.

11 MR. WHITING: No. No. This is...

12 THE COURT: Is it necessary to have two  
13 exhibits for this?

14 MR. MILLER: Can we agree this is what he was  
15 talking about?

16 MR. RACEY: Yes. We can.

17 MR. HODGES: Yes. We can agree.

18 MR. MILLER: This is Exhibit A.

19 MR. RACEY: That is A.

20 MR. MILLER: No. That is...

21 MR. RACEY: B?

22 MR. MILLER: B.

23 THE COURT: That is the main exhibit.

24 MR. MILLER: Complainants' Exhibit B.



1 THE COURT: Let the record show that he was  
2 referring to a map which is identical to Exhibit  
3 #C-2.

4 MR. MILLER: And now I am referring to  
5 Complainants' Exhibit B. The Court's Exhibit B.  
6 And the answer is: "Yes."

7 Q. Now, I observe, Mr. Stancil, a legend at the top of  
8 Sheet 6 of 19 "Possible Future Sections". Would you inspect  
9 that and tell us whether or not you can determine if that is  
10 a portion of the O'Mara-Forbes tract?

11 A. It appears that it refers to the land that is the  
12 O'Mara-Forbes tract.

13 Q. This Sheet 6 of 19, assuming this is the one, and  
14 I think we can all agree...Mr. Racey responded: "It is the  
15 one."

16 We all agree that it is the one. Assuming that  
17 it is the one, and was the one, is that the form in which  
18 you felt the plat was recorded in the Clerk's Office?

19 A. Yes.

20 Q. And did you intend, in looking at the plat, that  
21 the O'Mara tract not be considered as a part of Section 6?

22 A. That was my intention. Yes.

23 Q. Now, Mr. Stancil, the surveyor's description  
24 includes this land running from here over to here and

1 describing the outer bounds of Section 6. Were you aware  
2 of that when that was recorded?

3 A. No.

4 MR. WHITING: This was made defendants' exhibit  
5 #10 to the deposition, and counsel can agree that  
6 it was one and the same document as Court Exhibit  
7 #B.

8 MR. MILLER: B.

9 MR. WHITING: B as in Baker.

10 Q. Now, Mr. Stancil, did there come a time when that  
11 piece of property was sold to Mr. O'Mara?

12 A. Yes. There was.

13 Q. What, if anything, do you recollect about how it  
14 came to be sold and what role, if any, did you play in the  
15 negotiations and sale?

16 A. Well, it came about, and I don't remember which  
17 came first. Mr. O'Mara, I believe, prior to this had  
18 purchased four lots and had built four houses at Bryce's.  
19 He had a friend named Doug Davison, who I think, his home  
20 adjoins this tract of land. And they were simply discussing  
21 one day, and I think Mr. O'Mara was at that point interested  
22 in buying that tract of land. He had some idea to put up  
23 some multi-family housing on it. He, I think, has been in  
24 that type of business. I am not really sure what his business

1 is.

2 I went up with him. We looked at the land. I  
3 remember specifically doing that. He talked about building  
4 multi-family and it was agreeable with us. And at that  
5 point, we sold him the tract of land.

6 MR. RACEY: Excuse me. Mr. Whiting, I am not  
7 sure that our depositions are similar here.

8 MR. WHITING: Oh, really?

9 MR. RACEY: Could I see your Page 86 please?

10 MR. WHITING: We are on 87.

11 MR. RACEY: Yes. I know. Let's go back over  
12 86 where you...

13 MR. WHITING: Well, we didn't read you and me  
14 talking about exhibits.

15 MR. RACEY: Oh. You didn't write any of that  
16 in? Okay. That is where I was...

17 MR. WHITING: You don't want to read that:  
18 do you?

19 MR. RACEY: Well, I was going by what you  
20 said. I didn't know where you were. Where are  
21 you: on 87, now?

22 MR. WHITING: Yes. I am sorry. We can agree,  
23 can't we?

24 MR. RACEY: Yes. That is all right.

1 Q. Now, the deed, if you look at the deed..before  
2 we get into that, let me ask you this: Do you know whether or  
3 not there was any salesman involved in this or was this  
4 simply your direct dealing with Mr...

5 A. I don't remember a salesman being involved with it.  
6 There may have, but I don't think so.

7 Q. Now, then, I observe, first, a sales contract  
8 which is Defendants' Exhibit #7, and I will ask you if that  
9 is your signature on there?

10 MR. MONAHAN: That should be S: shouldn't it?

11 MR. RACEY: Yes.

12 MR. MONAHAN: Complainants' Exhibit S.

13 MR. RACEY: Exhibit S.

14 MR. WHITING: S as in sugar?

15 MR. RACEY: Right.

16 MR. WHITING: All right. We will agree that  
17 it is the same as Exhibit S.

18 A. Yes. It is.

19 Q. I am going to ask you, first, whether or not the  
20 board of directors was required, and did as a practice,  
21 approve the execution of deeds to any of these properties?

22 A. No. They did not.

23 Q. I also ask you whether or not the board of directors  
24 was required to approve any waivers of restrictions?

1 A. To my knowledge, they never were asked, nor did  
2 they ever give any approvals on waivers.

3 Q. All right.

4 A. Just was not a normal practice of the board.

5 Q. I will ask you, then, if from time to time, they  
6 were advised that certain restrictions had been waived and  
7 there was no objection to it by them?

8 A. I don't remember advising them when any restrictions  
9 were waived. That was...it is just simply not a matter that  
10 came before the board. To my knowledge, or to my recollection.

11 Q. But, my inquiry is, after it was done, in an annual  
12 meeting later, would there be some reference, maybe not as a  
13 regular course, but occasionally, as to a particular waiver?

14 A. I don't think I understand your question. Would  
15 you restate it?

16 Q. The question is: was there ever an occasion when  
17 a particular restriction had been waived or modified, where  
18 in the course of reviewing business done with the board,  
19 reference was made to the fact that from time to time, the  
20 officers had executed waivers?

21 A. I don't remember it ever coming before the board.  
22 No, sir.

23 Q. Now, Mr. Stancil, in referring to this sales  
24 agreement, first, it was drawn by Clarke and Bradsahw. I will

1 ask you if they were the attorneys for Bryce's Mountain  
2 Resort at that time?

3 A. At that time, I believe they were.

4 Q. Now, I observe in here, in the fifth paragraph  
5 on the second page, a statement that the real estate is sold  
6 and to be conveyed subject to those certain declaration of  
7 protective covenants and restrictions executed by Bryce's  
8 and of record...I won't read the rest of it. It was May 18th,  
9 '69 covenants: "...except as otherwise herein expressly  
10 provided". And then, later on, it provides that it cannot  
11 be developed except that the proposed plans and specifications  
12 be approved in writing by Bryce's and no more than twelve  
13 dwelling units, whether apartments, single residence units,  
14 or mutliple residence units shall be placed or constructed  
15 on the real estate. Does my reading of that language refresh  
16 your recollection as to how that came to be put in there?

17 A. Okay. I have no recollection of why this thing  
18 that is in Section 5, which is referring to the declaration  
19 of protective covenants and restrictions, was put in there.

20 My recollection of why the twelve units...dwelling  
21 units limitation was placed is, the best I can recall, it was  
22 simply an arbitrary figure assigned by me. It also occurs  
23 to me that at the same time, some related stockholders were  
24 doing a condominium project at Bryce, and that they...I think

1 there was an idea they didn't want any major competition up  
2 there, at that point in time.

3 Q. Who was the major stockholder to whom you are  
4 referring? Who was doing the other development?

5 A. Well, I said some related stockholders. Joe Luder  
6 was involved with it. I was involved with it. Ernest  
7 Anderson was involved in it. There were several stockholders  
8 involved in it. They were also stockholders at Bryce.

9 Q. Doing multi-family development?

10 A. That is correct.

11 Q. And, do I understand from what you say, that you  
12 were the one who put the twelve limitation on it?

13 A. To the best of my knowledge, I am the one that came  
14 up with that figure. Of course, I am sure that I discussed  
15 it with Joe Luder. He was the president of the company.  
16 Before we came to that figure, but to the best of my  
17 recollection, I am the one that came up with that figure.

18 Q. Now, what instructions, if any, were passed...how  
19 would Mr. Bradshaw, who wrote this, have known how to put that  
20 in? Who told him?

21 A. I can't recall. I don't know.

22 Q. Maybe to put it in focus, I will ask you whether  
23 or not a number of deeds and contracts were being written for  
24 other lots..of other property at Bryce's during this same

1 period of time?

2 A. We were selling many, many lots at the time. And,  
3 I think this was a standard...that I noted that either that  
4 paragraph or something close to it was standard in all of  
5 our deeds.

6 Q. Now, Mr. Stancil, was there any particular  
7 discussion with Mr. O'Mara as to what the restrictive  
8 covenants would be on his property when he bought it?

9 A. I don't remember having a specific conversation  
10 with him on it.

11 Q. What request, if any, did he make as to what  
12 covenants would..what use he could make of this property?

13 A. Well, I think we knew that he intended to, at least  
14 one of his thoughts was to do multi-family dwellings on it.  
15 And I am sure that we had told him that that was okay.

16 Q. Now, then, did there come a time later, when a  
17 Mr. Forbes wanted to buy the O'Mara tract, that you knew of?

18 A. Yes. I was aware of that.

19 Q. How did you become aware of that, Mr. Stancil?

20 A. Mr. Ron Petcher, who was at that time general  
21 manager at Massanutten Village, where I am associated with,  
22 who was also still at the time an officer of Bryce's Mountain  
23 Resort, Incorporated, told me that he had been requested...  
24 it had been requested of him for Bryce's Mountain Resort to



1 analogy, that if you didn't intend it to be in Section 6,  
2 you would have said so in both the contract and the deed:  
3 wouldn't you? That would have been a better way of identifying  
4 than by number, one way or another.

5 A. I have lost the question.

6 MR. MILLER: Now, you objected to this.

7 Mr. Whiting says: "All right. Let my  
8 objection run on this. Mr. Racey is now  
9 engaged in an argument with the witness. But,  
10 you go ahead and continue. Note my objection."

11 Q. Maybe I can make it simpler. If I can, I am not  
12 sure I can, but I will try. The last answer to the question  
13 was that if you intended that the lot, this O'Mara tract,  
14 was in 6, you would have given it a number. Now, my question  
15 using that same analogy, if you didn't intent it to be in  
16 Section 6, you would have not said that it was in Section 6:  
17 would you?

18 A. I am having a hard time answering this. I am  
19 giving you the best of recollection. There was no intent  
20 for that tract to be a portion of Section 6. You have pointed  
21 out all the documents referring to it being a portion of  
22 Section 6. That is what the documents say. I am saying,  
23 to the best of my recollection, there was no intent for that  
24 tract to be a portion of Section 6.

1 Q. Okay. All right. Now, do you know whether or not  
2 the metes and bounds...have you read the metes and bounds  
3 description to see whether or not that brings it within 6,  
4 Section 6, or without?

5 A. No. I have not.

6 MR. MILLER: Mr Whiting says: "We will  
7 concede that it does."

8 "Mr. Racey: Okay. Let the record so reflect."  
9 There is a discussion between Mr. Whiting and  
10 Mr. Racey for a while.

11 Q. Now, at what point in time, if you can recall, did  
12 you and Mr. O'Mara first make contact relative to the  
13 possibility of a purchase by O'Mara of this parcel?

14 A. I am not aware of the exact date. It would have  
15 been a relatively short time prior to the dates of the sales  
16 contract.

17 Q. So, there was no long prolonged period of time  
18 between the time he approached you and the time that you  
19 signed the contract?

20 A. I don't remember how long a time it was, but my  
21 <sup>is</sup> recollection /it was not a prolonged time.

22 Q. Did he advise you at that time that he had any  
23 feasibility studies, or anything like that?

24 A. I don't remember him advising me of that.

1 Q. And what was the nature of the first discussions,  
2 if you recall, that you had with him relative to this  
3 parcel?

4 A. I simply don't recall.

5 Q. Was there ever any discussion between the two of  
6 you, other than he wanted to purchase this parcel?

7 A. I can't recall any.

8 Q. No details, the two of you didn't discuss the  
9 details of it, other than the price, for instance?

10 A. I am sure we did.

11 Q. Well, what can you tell me, that you are sure of,  
12 that you did discuss?

13 A. Okay. As I stated earlier, I think Doug Davidson  
14 got us together. Mr. O'Mara was involved at that time with  
15 building some houses on four lots at Bryce's. He indicated  
16 an interest in acquiring this tract of land and ultimately  
17 doing something with it, primarily in...the impression that  
18 I have, is of a multi-family nature. And wanted to know  
19 simply what we wanted for the property. We had never tried to  
20 set a price on it.

21 I am sure that I discussed with Mr. Luder, who I  
22 believe at some point probably talked to Mr. O'Mara. And  
23 a price was determined and I would say the ultimate price  
24 determination came from Mr. Luder.

1 Q. And once you arrived at a price, did that stay  
2 stable thereafter or were there any changes in that? To  
3 your knowledge.

4 A. I don't remember any fluctuations in price.

5 Q. Were there any changes in the contract or did that  
6 remain the same once it was prepared?

7 A. I don't remember any changes.

8 Q. Considering the size of this parcel, and its  
9 location, and what you have described as being outside a  
10 numbered section, this would have been...would you have called  
11 this a little more than...an unusual sale rather than just  
12 an ordinary sale?

13 A. This would have been outside of our usual sale.  
14 Yes, sir.

15 Q. So, you would discuss the details of it at some  
16 length, perhaps, with Mr. Luder?

17 A. That is correct. I would have.

18 Q. Do you know whether or not you all discussed, you  
19 and Mr. Luder, discussed in any detail about the use that  
20 might be made of this parcel?

21 A. I don't recall a specific discussion with Mr. Luder  
22 about what use was going to be made of it. In general, both  
23 of us, I think, at that point, at least I was, aware that it  
24 was going to probably be put to a multi-family use.

1 Q. Now, you previously stated that the...virtually  
2 all deeds for all lots in the subdevelopment that were sold  
3 out were made subject to the general covenants that were  
4 recorded, and I note that you included that in your contract  
5 and the O'Mara deed: is that correct?

6 A. That is correct.

7 Q. There must have been purpose for that.

8 A. I don't remember the purpose for it.

9 Q. But, everything else in the contract, the deed has  
10 ...everything that you say in the contract and deed has a  
11 purpose: does it not?

12 MR. MILLER: Then Mr. Whiting argues.

13 Q. Let me ask you this: Did this have any meaning to  
14 you at all?

15 MR. RACEY: What page is that?

16 MR. MILLER: This is at the bottom of  
17 Page 119.

18 Q. Let me ask you this: Did this have any meaning to  
19 you at all, that was put in this contract and the deed?

20 MR. RACEY: More argument.

21 MR. MILLER: The next question is on Line  
22 7.

23 Q. Did this have any meaning to you at all, when it  
24 was put in both the deed and the contract on the O'Mara

1 tract, which made it subject to the common covenants?

2 A. As I stated, I don't even remember this...

3 Q. You don't remember a thing?

4 A. ...provision going in there.

5 Q. Do you remember the two additional covenants in  
6 there which states...I believe it is Eight and Nine, about  
7 submitting plans and restricting it to twelve units?

8 A. The basic thing I remember about it is the  
9 restriction to twelve units.

10 Q. Twelve units?

11 A. Right.

12 Q. What is that particular twelve sticks in your  
13 mind?

14 A. I don't know. It just does.

15 Q. Did that have some particular meaning in...

16 THE COURT: Let the record show that the  
17 witness

18 MR. RACEY: That will be fine, Judge.

19 Q. Did that have some peculiar meaning in relation to  
20 this particular land, to you as the vice president and  
21 executive director?

22 A. No particular...

23 Q. What did "units" mean when you put it...used it in  
24 Paragraph Nine? "No more than twelve dwelling units"?

1 A. That would be a living room, kitchen, bedroom, a  
2 unit.

3 Q. I see.

4 A. A living unit.

5 Q. One living unit. So, it meant twelve living units?

6 A. Yes.

7 Q. Okay. And then, after the deed to O'Mara was  
8 signed, you played no part in the Forbes transaction?

9 A. No.

10 Q. Wasn't aware that it took place or transpired, or  
11 the attempted revocation of these two covenants which I  
12 mentioned as being 8 and 9? You knew nothing about that  
13 until it was brought to your attention recently? Or was  
14 that brought to your attention? That is, about the twelve  
15 unit restriction.

16 A. As I have said, Ron Petcher had received a call,  
17 would we be willing as Bryce's Mountain Resort to waive  
18 the deed restrictions that we had placed in the O'Mara deed.

19 Q. Uh, huh.

20 A. That is when I was aware of it and that is when I  
21 instructed Ron that I had no objection.

22 Q. You said you didn't have any objection to it. Now,  
23 you were the...you owned one-half of the...

24 A. That is correct.

1 Q. ...of the stock at that time.

2 A. That is correct.

3 MR. MILLER: Now, this is further cross  
4 examination by Mr. Racey, II.

5 Q. Mr. Stancil, to your knowledge, was the use to which  
6 the O'Mara tract was to be made ever brought before the  
7 board of directors for its consideration or determination?

8 A. Not to my knowledge.

9 Q. Was the sale...were any of the aspects of the sale  
10 of the 7.35 acres to Mr. O'Mara ever brought before the  
11 board of directors for their consideration and determination?

12 A. I don't remember it being brought before the board.  
13 No.

14 Q. So, as far as you can remember, you don't...can't  
15 recall whether this twelve, number twelve in the restrictions  
16 ever were brought before the board of directors?

17 A. I don't believe it was. But I can't remember.

18 MR. MILLER: This is recross  
19 examination by Mr. Racey, Kermit Racey.

20 Q. I have a question. Do you know who notified Mr...  
21 Clarke and Bradshaw to prepare the contract for the sale of  
22 the O'Mara tract?

23 A. I don't know who it was. I surmise it was probably  
24 me.



1 Q. And do you know who told them what to include in  
2 the contract: what provisions?

3 A. Once again, I surmise that it was probaby me.

4 Q. And it would have come back to you, then, the  
5 contract?

6 A. I suppose.

7 Q. And then you got hold of O'Mara and it was executed  
8 by you all?

9 A. That is correct.

10 MR. MILLER: Further cross examination  
11 by Mr. Racey, II.

12 Q. I have a couple of more questions. Mr. Stancil,  
13 do you remember ever making a statement to Mr. O'Mara that  
14 the property was going to be...the 7.35 acre parcel of real  
15 estate...was going to be restricted to twelve units, take or  
16 leave it? Or something similar to that? Well, during the  
17 negotiation period.

18 A. I doubt that I would have said anything like that.  
19 I may have said that the maximum units that we are going to  
20 put...allow you in the deed is twelve units. I doubt if I  
21 would have said "Take it or leave it."

22 Q. And, what was the...do you recall, you may have  
23 mentioned it already, what purpose was in the putting of the  
24 restriction on there?

1           A.    I don't recall a specific purpose in restricting  
2 it to twelve units.

3           Q.    When you...at the time Mr. Forbes, I guess,  
4 approached you, or approached Mr. Petcher and through Mr.  
5 Petcher to you, as to the release of the two special  
6 covenants, what was it that changed your mind at that time,  
7 if anything, that those covenants were no longer necessary or  
8 no longer of any benefit to Bryce's Mountain?

9           A.    Well, one of the things, I am not saying this is  
10 all. One of the things would have been that Bryce's Mountain  
11 Resort was no longer actively developing and selling to the  
12 public. Consequently, a development of more than twelve  
13 units would not have constituted competition to us as a  
14 developer. Consequently, we had no reason...consequently, we  
15 had no purpose in not granting the release from those  
16 covenants.

17          Q.    Were you associated with Bryce Sales, Inc. at this  
18 time, or at anytime? Simply, were you associated with Bryce  
19 Sales, Inc. at that particular time?

20          A.    At that time, no.

21          Q.    At the time...

22                   MR. RACEY: Where is this?

23                   MR. MILLER: We are on the top of Page

24                   127.

1 with you?

2 A. I remember discussions taking place between myself  
3 and Dale Stancil in regard to his recommendation that the  
4 property be set up for the use that I have previously  
5 indicated.

6 Q. Now, Mr. Luder, at the time you bought Bryce's  
7 Mountain were you shown any documents or drawings or anything  
8 like that that would indicate that there was a master plan  
9 for the development of Bryce's Resort?

10 A. Well, I remember the plot layout, and in that  
11 particular area, you had individual lots laid out, which  
12 were numbered. And the O'Mara tract was a section of land  
13 that was, of course, larger...I forget the number of acres,  
14 I think it was several acres involved. And that was left  
15 blank, as I recall.

16 Q. But was there any master plan adopted for the  
17 development of the whole area before you did it, or was it  
18 done on a piece by piece basis?

19 A. There was a rough master plan developed at a very  
20 date.

21 Q. How was that evidenced, I should say?

22 A. There was a brochure indicating a master plan, and  
23 to the best of my knowl4dge, we adhered to the master plan.  
24 As we got into the actual development of sections, there were

1 minor changes, I am sure. But we had a general overall plan  
2 from, I would say, 1970 on.

3 Q. Mr. Luder, do you remember any meeting at your  
4 house, or anywhere else, with Mr. Bryce or any other members  
5 of the board of directors, in which it was discussed that  
6 the O'Mara tract would be sold and limited to twelve single  
7 family dwellings?

8 A. I don't remember such a meeting. We had several  
9 meetings with the Board of Directors at my house, as I  
10 recall. The decisions on exactly how we would subdivide  
11 the land at Bryce's Mountain was always a decision that was  
12 generally arrived at by Dale Stancil, which he would clear  
13 with me, and the two of us would make a decision.

14 Q. As I take from what you say, the directors did not  
15 make these decisions. You and Mr. Stancil did.

16 A. That is correct. The directors never got involved  
17 in the day-to-day decisions involving the development of  
18 Bryce Mountain. Not after I came on board. They could have  
19 very well gotten involved while Pete Bryce was president,  
20 prior to the sale of the O'Mara tract.

21 MR. WHITING: This would be the cross  
22 examination by Mr. Racey.

23 Q. Mr. Stancil, was there ever adopted to the  
24 corporation a general scheme of development for all the

1 parcels that would be known as Bryce's Mountain Resort, Inc?

2 A. Yes. As I indicated, there was a brochure that we  
3 had printed which indicated the general master plan of the  
4 area.

5 Q. Now, was this master plan prepared by the board  
6 of directors or under the supervision or under the direction  
7 of Mr. Stancil and yourself or other persons?

8 A. The board of directors, as I indicated earlier,  
9 never got involved in the day-to-day decisions of any kind.  
10 Just not the way I operated at Bryce Mountain. We would have  
11 a board meeting, oh, two or three times a years. Maybe more.  
12 And generally to bring the board up to date on what was  
13 taking place.

14 Q. Was this master plan that you referred to, as  
15 set forth in the brochure, had that been adopted or was it  
16 in existence at the time that you took over the presidency  
17 of the firm?

18 A. There may have been a rough master plan prior to  
19 my taking over the presidency, but most of the land was  
20 bought after I took over. So, that would indicate to me  
21 that there certainly was not a detailed plan.

22 Q. There was not a detailed plan?

23 A. No. Pete Bryce had a master plan of sorts for the  
24 area, but that plan was expanded quite a bit after I took

1 over. We acquired sizable tracts of land, pieces of land,  
2 after I came aboard. As you recall, I am sure, money was  
3 pretty tight prior to that time.

4 Q. On this brochure master plan that you referred to,  
5 did it have the lots numbered in the brochure?

6 A. I believe it did. Yes.

7 Q. Did it have all the sections set forth and what  
8 was included?

9 A. As I say, sections were added.

10 Q. From time to time?

11 A. From time to time. Section 10, 11 and 12 were  
12 added at a much later time, for instance.

13 Q. So, the master plan would have been not a  
14 comprehensive master plan because at the beginning, you would  
15 not have had some land which was later acquired?

16 A. That is correct.

17 Q. Now, were there a set of common restrictive  
18 covenants that were adopted for this development?

19 A. Yes.

20 Q. Had they been adopted and admitted to record prior  
21 to your becoming president of the firm?

22 A. Pete Bryce had a list of covenants that he had  
23 drawn up before I became president. Yes. For the most part,  
24 as I recall, we adopted those same covenants.

1 Q. Did they apply to all the various sections that  
2 were developed by Bryce's Mountain Resort from time to time?

3 A. That is a legal question, I guess. But, speaking  
4 as a layman, I would say yes.

5 Q. Were those covenants incorporated into the deeds,  
6 to your knowldege, if you know, of the outconveyances of the  
7 lots that were made from time to time?

8 A. That is my understanding.

9 Q. Do you know of any other covenants...restrictive  
10 covenants, that were adopted as common covenants for the  
11 development other than the ones that you just referred to?

12 A. No.

13 Q. Do you know if the O'Mara tract was shown on the  
14 master plan as a separate parcel, distinct from the others?

15 A. I am not sure on that. I know that the O'Mara  
16 tract, as I recall, on the master plan that section of land  
17 known as the O'Mara tract was shown on the master plan as a  
18 blank area for future development, I believe. But, I really  
19 ...I would have to look at the master plan itself.

20 Q. Do you know, or recollect, approximately when you  
21 were first aware of the O'Mara tract as such? I am referring  
22 to the O'Mara tract as a parcel...

23 A. Yes.

24 Q. ...of 7.35 acres?

1       A.    Yes.  As I indicated earlier, Dale Stancil, along  
2 with Jim Wilkins, had the responsibility and subdivided the  
3 various lots at Bryce Mountain and Dale approached me one  
4 day and indicated that we had a section of land that was not  
5 conducive for single lots, and that he was going to hold it  
6 out and try to sell it as a tract and thought it would be  
7 suitable for townhouses, condominiums or some multi-family  
8 type of units.

9               We had some concern.  We certainly didn't want a  
10 eight or ten story hotel or high-rise going there, and I  
11 believe there was a restriction limiting the number of units  
12 that could be built there so that what was done on the  
13 piece of land would not be out of character with the single  
14 family lots.

15       Q.    Is this parcel located in a single family  
16 residential area?

17       A.    Yes.

18       Q.    Of Bryce's Mountain.  Are there any other similiar  
19 parcels  to the O'Mara tract in or about the O'Mara tract,  
20 in the near vicinity, other than that one?

21       A.    Not that I recall.  No.  I don't think so.

22       Q.    So, the first discussion that you recollect about  
23 this particular O'Mara tract was with Mr. Stancil prior to  
24 any thought of its sale: is that correct?  The decision had



1 been made that it would be sold in some manner for use  
2 other than individual dwellings, prior to the time you  
3 actually put it on the market?

4 A. Well, a decision of some sort would have to be  
5 made prior to it actually being put on the market.

6 Q. It wasn't a simultaneous thing?

7 A. I don't recall whether...it was a matter of days,  
8 I am sure. Might have been weeks. But, the decision was  
9 made by Dale Stancil and I agreed to put the piece of  
10 property on the market for the purposes that I mentioned to  
11 you.

12 Q. And do you recollect exactly when it was, or as  
13 closely as you can recall, after the decision was made that  
14 this property would be used for something different than  
15 private dwellings to the time when you first discussed with  
16 O'Mara the...

17 A. Would you repeat the question?

18 Q. In terms of time, do you recollect when it was  
19 that you talked with O'Mara after the decision was made to  
20 use this for multi-family dwellings?

21 A. I don't remember the time frame.

22 Q. Do you recall...did Mr. O'Mara talk to you first  
23 about it, or did he talk to Dale Stancil and Dale Stancil  
24 talked to you?

1           A.    I don't know who Jim O'Mara talked to. I met Jim  
2 O'Mara about the time that he was buying it or after he  
3 bought the property. I did not ever get involved in the  
4 actual selling of the property at Bryce Mountain.

5           Q.    Did you ever discuss with Mr. Stancil about putting  
6 the restrictions that you spoke of as to the number of units  
7 that could be built on this parcel?

8           A.    Come again, now.

9           Q.    Did you ever discuss with Dale Stancil limiting  
10 the number of units that could be built on this parcel?

11          A.    Dale came to me with a recommendation and I agreed.  
12 I had pretty complete confidence in Dale's judgment and very,  
13 very few times, I would rescind a decision of this kind,  
14 particularly from Dale. We pretty well agreed on the general  
15 direction that we wanted to go.

16          Q.    Insofar as the twelve units: did you recollect,  
17 individually, that it was twelve units that it had been  
18 restricted to or was being restricted to?

19          A.    I remember that there was some restriction. I  
20 understand there is twelve. That sounds about the right  
21 number. I couldn't swear whether it was twelve or ten or  
22 eight. So, as I say, I do remember distinctly that the  
23 property was to be possibly used for small multi-family  
24 units.

1 Q. Did you ever, in fact, see any of the instruments  
2 dealing with the transfer of the title to O'Mara?

3 A. No.

4 Q. That would include the purchase, if there was one.

5 A. No. As I indicated earlier, I just never got  
6 involved in the day-to-day operations.

7 Q. And there was keen feeling, was there, or was  
8 there a substantial feeling that there should be restrictions  
9 on the number of units that could be developed on this  
10 particular parcel?

11 A. Well, the feeling was Dale's and I agreed that we  
12 certainly didn't want a hundred units on that piece of  
13 property and Dale recommended that we put in some limits,  
14 as I understand, it is twelve, to make sure that what was  
15 put on the property would not be offensive to the purchasers  
16 of the single family houses.

17 Q. As I understand, you established the general  
18 policies for the development and Dale then put them into  
19 effect and carried out the day-to-day part of the operation:  
20 is that correct?

21 A. Yes. Dale, as I indicated earlier, Pete Bryce  
22 was the one that had the original dream...concept of Bryce  
23 Mountain. And Dale Stancil and I, together, we took that  
24 original idea and expanded on it. You don't develop Bryce

1 Mountain in two or three years.

2 Q. Within the realm of general policy, would you  
3 include discussions on the parcels of real estate, or  
4 decisions as to whether or not it would or would not be sold  
5 as a multi-family tract or single family tract? Within the  
6 realm of what you say...the authority was reserved to your-  
7 self, which was to establish general policies, within the  
8 realm of that general policy, would you include decisions  
9 in regard to what use would be made of a particular parcel  
10 like the O'Mara tract?

11 A. I would not make the...I generally followed the  
12 recommendations of Dale Stancil. As I say, it was his  
13 recommendation on how to treat the O'Mara tract, and quite  
14 frankly, there wasn't a great deal of discussion about it.  
15 It was...I just happened to remember that particular  
16 transaction. But there was an awful lot of property sold  
17 up there and there was a very limited amount of discussion  
18 in that regard, to be honest with you.

19 Q. Do you remember, generally speaking, how many  
20 lots were sold from the development while you were president  
21 of the firm?

22 A. I am not sure of the exact number. It was close  
23 to two thousand, I guess. But I am not going to say for  
24 sure.

1 Q. Do you recollect how many parcels were conveyed  
2 off during that period of time for uses other than private  
3 residential parcels or tracts?

4 A. Yes. Well, Aspen East bought two tracts for  
5 condominiums or townhouse development. We sold some property  
6 to Pete Bryce commonly known as "The Hill" area, and he has  
7 since developed that into multi-family.

8 Q. Are any of those parcels that you have told us of,  
9 such as those conveyed to Aspen East, similarly situated in  
10 regard to other residential lots?

11 A. Yes. They abut residential lots. You can look  
12 at the master plan and you have single family lots right  
13 next to condominiums. They are right on the ski slopes.

14 MR. WHITING: This is cross  
15 examination by Mr. Hodges.

16 Q. Mr. Luder, I would like to ask you to be as  
17 specific as you can on these board of directors meetings  
18 that you mentioned earlier that were held at your house.  
19 In response to one of the questions Mr. Whiting asked you,  
20 you indicated that, yes, there were several meetings with  
21 the board of directors at your house. Now, turning to those  
22 meetings, and again trying to be as specific as possible,  
23 do you recall during any of those meetings, the subject  
24 matter of the O'Mara tract coming up for discussion?

1 Q. Do you know what particular factors, if any, were  
2 considered when the limitations of twelve units were placed  
3 on this lot?

4 A. No. It was a rather...it was an arbitrary figure,  
5 I think, that Dale Stancil came up with. It could have been  
6 ten; it could have been twelve or fourteen. I think he just  
7 picked a number that he thought would be compatible with the  
8 tract of land.

9 Q. And the surrounding use? Did you take into  
10 consideration the limitations of the units in relation...did  
11 you want the use to be compatible with the surrounding...the  
12 use made of the surrounding lots?

13 A. Well, yes. We wanted the whole area to be  
14 compatible. I mean, we tried to the best of our ability  
15 to get the area in a way that would be compatible to all  
16 concerned.

17 Q. When you say compatible...excuse me.

18 A. What I know...I always thought that what would  
19 eventually go there would be a PUD type of development, where  
20 you have one road, one main sewer line coming in, and just a  
21 cluster of homes that could be very readily developed without  
22 an excessive development cost. It would be one road for  
23 eight units rather than one road...well, eight roads and  
24 eights units and eight sewer lines. A PUD development is,

1 you know, becoming more and more popular all the time.

2 MR. WHITING: Do you want to know what  
3 that is, Judge. Somebody tell him. I  
4 don't know exactly.

5 MR. MILLER: Planned Unit Development:  
6 clustered type housing. Agree?

7 MR. RACEY: Agree.

8 MR. WHITING: Can PUD be single and  
9 multi?

10 MR. MILLER: It can be single; it can  
11 multi, and calls for...in a planned unit  
12 development, it would have common walls.

13 MR. MONAHAN: Not necessarily.

14 MR. HODGES: I disagree. It may. Would  
15 not necessarily...

16 MR. WHITING: It could be either one?

17 MR. HODGES: Could be either one.

18 MR. WHITING: All right.

19 MR. MONAHAN: But, we are talking about  
20 what this witness is talking about. He  
21 says what he is talking about.

22 MR. WHITING: All right. We are not  
23 contending that is part of the evidence,  
24 Your Honor.

1 why they put the word subject in the deed, I contend, except  
2 for as it may have been modified by A and B, and that was in  
3 their own testimony of all of those parties. It was also in  
4 the contract of sale, which was from Bryce to O'Mara  
5 specifically spelling out that it's subject to those covenants  
6 except as modified by A and B.

7 I don't see how this Court could possibly find that it  
8 was not part of Section 6, that it was not the intention of  
9 the parties in conveying subject to all of the restrictions  
10 and subject except as modified by A and B, and as stated by  
11 the parties, the very defendant whose client rises to deny  
12 it; as stated by him, yes, I knew it, I had them, I recognized  
13 them, and I wanted to get rid of them, but I made no effort  
14 to take the rights of adjacent landowners into account.  
15 Thank you.

16 THE COURT: Gentlemen, in my opinion up until the  
17 O'Mara deed, seven acre tract was not subject  
18 to any of the restrictive covenants, but on the recordation  
19 of that deed from Bryce Mountain Resort, Incorporated, Mr.  
20 James O'Mara and others, provided that the general pro-  
21 tective covenants and restrictions would apply, surely in the  
22 event that the property were subdivided into single dwelling  
23 lots, and that the restrictions A and B would apply in the  
24 event that the property was devoted to use as multi-unit



1 residences I cannot find that the units could not have been  
2 used as...I forget the name of the term...

3 MR. MONAHAN: Time sharing, Your Honor?

4 THE COURT: Time sharing use, I cannot find from the  
5 evidence that the restrictions would prevent the use of the  
6 dwellings for...I keep forgetting that, what's...

7 MR. MONAHAN: Time sharing.

8 THE COURT: Time sharing basis. Now, as to the  
9 so-called vacation of these restrictive covenants A and B,  
10 I find that they would be binding upon the corporation under  
11 the evidence; however, I do not find that it was binding upon  
12 the owners of the lots in Section 6, but I don't believe that  
13 the corporation could require the restrictive covenants to be  
14 enforced, however, I do believe that any of the residents,  
15 especially of Section 6, adjacent to the property, would have  
16 the right to enforce the restrictive covenants, that is to the  
17 effect that there would be 12 dwelling units on the property.

18 Now, is there anything else that I should say?

19 MR. MONAHAN: May I ask for a clarification so that  
20 we'll not have to come back, Your Honor? I would like you, if  
21 you feel prepared at this time, to state whether or not it is  
22 your holding that where A and B are not in conflict with the  
23 remainder of the 32 general covenants, they are or are not  
24 applicable to the property?

1 THE COURT: I was hoping that I wouldn't have to  
2 decide that; however, it seems to me that these general  
3 restrictive covenants should apply regardless of whether  
4 they're multi-occupancy or dwellings. They should apply if  
5 they're pertinent. There have been many of them that were  
6 not.

7 MR. MONAHAN: And were not in conflict.

8 THE COURT: That were not in conflict. Many of them  
9 wouldn't apply, in my opinion, to the multi...

10 MR. MONAHAN: No, Sir, I wouldn't ask you to rule  
11 on each one at this time. I simply hope that now the parties  
12 know what their rights are, they can work out an understand-  
13 ing.

14 THE COURT: I think that they will apply. No  
15 nuisances should be permitted, and I was saying that in  
16 the course of...

17 MR. WHITING: Well, Your Honor, it's quarter of  
18 two on a Saturday afternoon after a three and a half day  
19 trial, I'm not going to impose on Your Honor to decide that,  
20 but of course if we can't agree, well of course, we want a  
21 whole decision. So, we would ultimately ask Your Honor to  
22 decide. I think that the evidence is in, and Your Honor  
23 could do that later.

24 MR. MONAHAN: Your Honor, I would disagree. I

1 think the Court, at this point, can only do what it has done  
2 and that if questions arise as to conflicts with the in-  
3 dividual covenants it will be based on a set of facts then  
4 existing.

5 THE COURT: Well, I wouldn't want at this moment to  
6 take the provisions of the restrictions one by one and  
7 determine whether or not they would apply.

8 MR. WHITING: Your Honor, this is a suit for de-  
9 claratory judgment, which all the issues have been submitted  
10 to you, and it seems to me...now, there may be an argument  
11 on a particular stated fact, but it seems to me that before  
12 you is a request for a construction of which of these cov-  
13 enants is consistant with your ruling. Which of these  
14 covenants do apply to multifamily? Some obviously don't.

15 THE COURT: Well, I think I can segregate them if  
16 I had time to study them.

17 MR. WHITING: Well, I'm not asking you to do that  
18 now. I'm just simply saying...I want to be fair to opposing  
19 counsel, because I think that does and could be decided  
20 before the termination of litigation.

21 THE COURT: Well, will you gentlemen give me an  
22 opportunity to study the...

23 MR. MONAHAN: Your Honor, I would, quite frankly,  
24 feel that I do not believe that the pleadings raised the

1 issue of covenant by covenant at this point. I also feel that  
2 it will depend upon the factual situation which may arise;  
3 therefore, I do not want to concede that at this point.

4 THE COURT: Of course you couldn't predetermine  
5 every argument that might arise as to...

6 MR. WHITING: We don't dispute that, Your Honor.  
7 It's the particular things under the covenant; so I think  
8 we're entitled to know which of the covenants in a general  
9 fashion.

10 MR. MONAHAN: And I submit, Your Honor, that the  
11 only pleading is that the covenants applied, except as in  
12 conflict with A and B, not...

13 THE COURT: Well, I'd like to make a final decision  
14 and finally determine all the disputes at the bench so that  
15 the Supreme Court doesn't have to decide all of these issues  
16 also.

17 MR. MONAHAN: Yes, Sir.

18 THE COURT: In other words, to put an end to the  
19 disputes if we can. So, I will, Mr. Whiting if you want me  
20 to, I will study these restrictions and attempt to, the best  
21 I can, to enumerate the ones that I think will apply to  
22 multifamily dwellings.

23 MR. WHITING: Yes, Sir.

24 MR. RACEY, SR.: Your Honor, may I address the

1 Court for just one second?

2 THE COURT: Yes, sir.

3 MR. RACEY, SR.: On behalf of my clients who do  
4 reside in Section 6, as I understand the ruling of the Court,  
5 it says that the defendant may, in fact, build multifamily  
6 units not to exceed 12, and in accordance with the definition  
7 as set forth in that one particular covenant which defined  
8 it, which said ~~about~~ townhouses, apartments, or private  
9 dwellings. I believe that's the exact wording that's in  
10 there.

11 THE COURT: That's exactly what I would conclude  
12 in the decrees.

13 MR. RACEY, SR.: That would be in your decrees, the  
14 exact wording that's there?

15 MR. WHITING: Of the covenant?

16 MR. MONAHAN: Yes.

17 MR. RACEY, SR.: Yes, that's what I'm saying. I  
18 just want to make sure that multifamily was not extended.

19 THE COURT: That's what I had in mind.

20 MR. RACEY, SR.: That's what I understood, Your  
21 Honor. I just wanted to make sure.

22 THE COURT: Is there anything else?

23 MR. RACEY, SR.: I believe that's all, Your Honor.

24 MR. WHITING: Well now if Your Honor please, in the

1 issue here has been the word condominium. There's been a  
2 definition of condominium. That's the . . .

3 THE COURT: Well, what is the definition of a  
4 condominium?

5 MR. WHITING: It's in the Code, Your Honor. There's  
6 a statutory definition.

7 THE COURT: Well, let's put it this way, I will  
8 hold that the dwellings, which the record discloses, are  
9 contemplated under Section B of the O'Mara deed.

10 MR. RACEY, SR.: Whatever that says.

11 MR. MONAHAN: And in fact constitute 12 units.

12 THE COURT: Right.

13 MR. MONAHAN: That's all I want.

14 THE COURT: Now, is there anything further?

15 MR. RACEY, SR.: No, Sir.

16 MR. MONAHAN: Thank you for your patience.

17 THE COURT: This Court will now recess.

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Registered  
Professional  
Reporter

*Linda Grimsley Logan, C.P.*

REGISTERED PROFESSIONAL REPORTER

116  
WOODSTOCK, VIRGINIA 22664  
PHONE 459-2121

DECLARATION OF PROTECTIVE COVENANTS AND RESTRICTIONS

SKY BRYCE

BRYCE'S MOUNTAIN RESORT, INC..

#850

Bryce's Mountain Resort, Inc., a corporation duly organized and existing under the laws of the State of Virginia, with its principal place of business situated in the Town of Basye, County of Shenandoah, State of Virginia, the owner of certain lands and premises situated in or near said Town of Basye, known as Bryce's Mountain Resort, hereby makes and executes the following declaration of protective covenants and restrictions as to that portion of said land which will be subdivided and sold to individual lot purchasers for the purpose of erecting private dwellings or residences thereon, known as SKY BRYCE, it being expressly understood and agreed by such lot purchasers that the said protective covenants and restrictions shall not apply to nor shall anything herein contained be construed as limiting or restricting Bryce's Mountain Resort, Inc. in its use of the portions of the said land now owned or hereafter acquired by said Bryce's Mountain Resort, Inc. that is not subdivided for sale to individual lot purchasers; for example, but not by way of limitation, Bryce's Mountain Resort, Inc. shall not be limited in its use or sale of such portions of the said land as may be used or useful for hotel, lodge, resort, recreational, entertainment or similar purposes nor shall these covenants and restrictions be deemed to prevent the erection and sale of multi-family units, town houses, condominium or co-operative units, or the sale of lands or lots or portions of lots designed for such use in the overall master land plan to be adopted for the development of said SKY BRYCE and said Resort.

It is hereby declared by Bryce's Mountain Resort, Inc., (hereinafter referred to as "Resort"), that the following covenants, restrictions and easements shall constitute covenants to run with said land in said SKY BRYCE

described and delineated and subject to the exceptions as aforesaid:

1. Nothing but one single family private dwelling or residence designed for occupancy by one family shall be erected on any lot in said SKY BRYCE, nor shall said premises be used for any purpose other than residential purposes, except that a two-car private garage, for the sole use of the owner or occupant of said lot, may be erected on said lot; provided, however, that nothing herein contained shall be construed to prevent the use of one building site of two or more lots, or the use as a building site of portions of two or more lots, or the resale of parcels no smaller than one-half (1/2) acre by purchasers of lots or tracts which are at least one (1) acre in size.

2. No pools, buildings, facility, or other structure, or any additions thereto shall be erected, or the erection thereof begun, on any lot until the plans and specifications thereof shall have been first presented to and approved in writing by Resort, its successors or assigns.

3. No single family dwelling erected on any lot shall contain more than two-and-one-half (2 1/2) floors, and the total height of said dwelling shall not exceed thirty-five (35) feet to be measured from the top of the basement level of said dwelling and said basement level is to be that level which is wholly or substantially below ground.

4. The ground floor area of any dwelling of two (2) or more floors erected on a lot shall contain a minimum of eight hundred (800) square feet, exclusive of porches and garages, unless otherwise approved, in writing, by Resort.

5. The minimum area of living space of any single family dwelling erected on a lot, regardless of the number of floors contained therein, and exclusive of porches and garages, shall be not less than one thousand  (1000) square feet, unless otherwise approved, in writing, by Resort.



6. The exterior woodwork of all houses and buildings on said tract, of whatsoever kind, shall be painted with at least two (2) coats of paint, varnish or stain, as soon as weather permits, after completion. However, Resort reserves the right to waive this condition in the event that the plans for said dwelling call for exposed untreated natural wood. The exterior architectural design of all houses and buildings on said tract shall be subject to the written approval of Resort.

7. No building, fence, hedge, sidewalk, wall, drive or other structure shall be erected, placed or altered on any lot until the proposed building plans, specifications, exterior color or finish, plot plans (showing the proposed location of such building or structure, drives and parking areas), and construction schedule shall have been approved in writing by Resort, its successors and assigns. Refusal of approval of plans, location or specification may be based by Resort upon any ground, including purely aesthetic considerations which in the sole and uncontrolled discretion of Resort shall seem sufficient. No alterations in the exterior appearance of any building or structure shall be made without like approval by Resort. One copy of all plans, specifications and related data shall be furnished Resort for its records.

8. In order to assure that houses will be located with regard to the topography of each individual lot, Resort reserves unto itself, its successors and assigns, the right to control absolutely and solely to decide the precise site and location of any house of dwelling or other structure upon any lot or building plot consisting of more than one lot, provided, however, that such location shall be determined only after reasonable opportunity is afforded the lot owner to recommend a specific site.

9. The exterior of all houses and other structures must be completed within one year after the construction of same shall have commenced, except

where such completion is impossible or would result in great hardship to the owner or builder due to strikes, fires, national emergencies or natural calamities

10. No trees growing within ten (10) feet of the side or rear lines of any lot shall be cut or removed in any manner, however, trees growing within said ten (10) feet may be limbed up from the ground to a reasonable height and in a manner to avoid killing said trees. Brush and dead trees may be removed from said ten (10) foot area at any time. In the event the owner of any residential lot permits any underbrush, weeds, etc., to grow upon any lot to a height of two (2) feet (except as part of a landscaping plan approved by Resort), and on request fails to have the premises cut within thirty (30) days, agents of Resort may enter upon said land to remove the same at the expense of the owner; provided, however, that such expense shall not exceed Twenty-Five Dollars (\$25.00) annually. Resort may likewise enter upon said lot without such entrance and removal being deemed a trespass, all at the expense of the owner of said lot; provided, however, that such expense shall not exceed \$25.00 annually. This provision shall not be construed as an obligation on the part of Resort to provide garbage or trash removal services.

11. No pool, building, facility or structure or any additions thereto, or any part or projection thereof shall be erected on a lot within twenty-five (25) feet of any boundary of said lot. However, Resort hereby reserves the right to waive this condition as to a boundary of any lot that does not border on other properties owned by Resort.

12. No excavation of stone, gravel, or earth shall be made upon any lot except for basements, cellars, retaining walls, landscaping and driveways. All other excavations or removal of earth or material or deposits of earth or material on any lot shall not be commenced without first obtaining written approval of Resort.

13. Within one (1) month after completion of a dwelling on a lot, debris and waste material remaining on the ground shall be picked up and disposed of. Within one (1) year after the completion of a dwelling on lot, said lot shall be landscaped, including the seeding of bare earth, in a workmanlike manner. However, Resort reserves the right to waive this condition at the request of an owner.

14. Each lot owner shall construct and maintain suitable and adequate parking space on his lot for parking of his vehicles and the parking of vehicles of his guests so that said vehicles when parked shall not obstruct or interfere with vehicular travel on any of the roadways in said SKY BRYCE.

15. Lines or appliances of any type designed for the purpose of drying laundry shall be erected and maintained in as inconspicuous a place as possible.

16. Before any dwelling on any lot is occupied, the owner thereof shall, at the owner's expense, drill a usable well for drinking water and other purposes and shall install a septic tank and drainage field or sewage disposal system approved by the Department of Health of the Commonwealth of Virginia, or other health authority having jurisdiction of such matter. Said septic tank and drainage field or other disposal system shall not be constructed within ten (10) feet of any boundary line of any lot, and said septic tank and drainage field or disposal system shall be installed in accordance with rules, regulations, or recommendations as may be from time to time established by the Department of Health of the Commonwealth of Virginia, or other health authority having jurisdiction of such matters.

17. No trailer, shed, or other temporary or movable building or facility shall be erected or maintained on any lot except as may be reasonably necessary for a short period of time for use in aiding the erection of a dwelling on said lot, and in no event shall said trailer, shed or other temporary movable building or facility be maintained on a lot after completion of said dwelling.

18. No trailer, basement of a partially completed dwelling, tent, garage, barn, shed, structure or facility erected or maintained on any lot shall at any time be used as a residence without first obtaining written permission of Resort.

19. No lot shall be used or maintained as a dumping ground for rubbish, nor shall any rubbish or garbage, or other waste of any type be allowed to accumulate on said lot. Said rubbish, garbage, or other waste shall be kept in sanitary containers, and all such containers or incinerators or other equipment used for the storage or disposal of said material shall be kept in a clean and sanitary condition and located in as inconspicuous a place as possible.

20. No fowl, swine, cattle, sheep, goats, horses, or other domestic or wild animals shall be kept or maintained on any lot. This restriction shall not apply to dogs, cats, or other small domestic animals, generally considered as pets, so long as said dogs, cats, or other small domestic animals are of a quiet and inoffensive nature. Resort reserves the right to waive this condition as it applies to horses, provided the said lot on which such horses are kept be at least one acre or larger in size and provided suitable facilities are erected by the owner to maintain and to contain said horse or horses within the lot or tract involved.

21. No obnoxious or offensive use shall be made of any lot, nor shall any offensive trade or activity be carried on upon any lot, nor shall any activity of any nature whatsoever be conducted on a lot which may constitute a nuisance.

22. No room or rooms in any dwelling on a lot shall be leased or rented for any period of time. However, a dwelling or rooms therein may be rented pursuant to an agreement made by the owner with Resort.

23. No sign of any kind on a lot shall be displayed to the public view without first obtaining a written approval from Resort, except that one (1) sign of not more than two (2) square feet, showing the owner's name and the name of the premises shall be permitted on a lot, but in no event shall said sign measure more than three (3) feet in length or height.

24. Outside illumination of any dwelling, or of a sign erected in accordance with the preceding section, shall be done by means of a constant light on the general principal of ordinary bulbs or small flood lights, it being the intent of this restriction that no neon or similar type lighting nor flashing light or illumination of or by any type of reflective lettering, or the use of luminous or reflective material of any nature shall be used in connection with said signs or the outside illumination of said dwelling.

25. In the event any owner desires to sell any lot or lots, either improved or unimproved, then the said lot or lots which such owner shall desire to sell shall be first offered for sale to Resort at the same price and on the same terms at which the highest bona fide offer has been made to the owner for the said lot or lots. The owner desiring to sell such lot or lots shall give Resort written notice via registered mail, return receipt requested, of the owner's desire to sell any such lot or lots and shall further advise Resort in said offer of the name and address of the person, firm or corporation making said bona fide offer as well as the amount and terms of said offer. Resort shall have a period of ten (10) days after receipt of said written notice within which to exercise its option to purchase said lot or lots at the same price and on the same terms as said highest bona fide offer and Resort shall have an additional period of not

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less than twenty (20) days within which to close the said transaction. Should Resort fail or refuse within said 10-day period to exercise its option to purchase said lot or lots at the offered price and terms, then the owner shall have the right to sell said lot or lots to the person, firm, or corporation making said bona fide offer whose identity was revealed to Resort in said written notice, provided, however, that any such sale of any lot or lots by the owner to the person, firm or corporation making such offer shall be subject to all of the terms, covenants, limitations and provisions of this Declaration of Protective Covenants and Restrictions. The provisions of this Paragraph shall continue and be effective until January 1, 1988, at which time the provisions of this paragraph, including all options and rights granted to or reserved by Resort by this Paragraph shall terminate; provided, however, that each purchaser or owner of a lot or lots in the Charter Tract of the SKY BREEZ Subdivision of Resort covered by this Declaration of Protective Covenants and Restrictions agrees that the provisions of this Paragraph and all options and rights granted to or reserved by Resort under this Paragraph may be re-imposed and again become effective and apply for successive periods of twenty (20) years each from each such termination date (that is, January 1, 1988, and every 20 years thereafter) upon an instrument or instruments in writing being executed by the owners of a majority of the said lots (on each such termination date) in the said Charter Tract of the SKY BREEZ Subdivision to which this Declaration of Protective Covenants and Restrictions applies.

26. Resort reserves unto itself, its successors and assigns, a perpetual, alienable and releasable easement over, upon, across and under each lot for erection, maintenance, installation and use of electrical and telephone poles, wires, cables, conduits, sewers, water mains and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, sewer, water

other public convenience or utilities, and Resort may further cut drainways for surface water wherever and whenever such action may appear to Resort to be necessary in order to maintain reasonable standards of health, safety and appearance. It further reserves the right to locate wells, pumping stations, and tanks within residential areas on any walkway, or any residential lot designated for such use on the applicable plat of a residential subdivision, or to locate same upon any adjacent lot with the permission of the owner of such adjacent lot. Such rights may be exercised by any licensee of Resort, but this reservation shall not be considered an obligation of the Company to provide or maintain any such utility or service.

27. No large trees measuring six inches or more in diameter at ground level may be removed without the written approval of Resort, unless located within ten (10) feet of the main dwelling or accessory building or within ten feet of the approved site for such building. No trees shall be removed from any lot until the owner shall be ready to begin construction without the consent of Resort.

28. No lot shall be subdivided, or its boundary lines changed, except with the written consent of the Resort. However, Resort hereby expressly reserves to itself, its successors or assigns, the right to re-plat any lot or lots shown on the plat of any said subdivision, section, block or part thereof prior to delivery of deed in order to create a modified building lot or lots. The restrictions and covenants herein apply to each such building lot so created.

29. It is agreed that as soon as a sufficient number of lots have been sold in this development a nonstock property owners' association, to be known as the "SKY BRYCE Association, Inc.", shall be formed with one membership for

each property owner and that this Association in conjunction with the Resort shall establish reasonable annual assessment charges for road maintenance and maintenance of the trails and recreational areas; it being understood that the Resort, its officers and directors, shall exercise three votes each in this Association.

30. Neither the Resort nor the purchasers of the said lots in SKY BRYCE will request the Board of Supervisors of Shenandoah County, Virginia, or the Virginia Department of Highways that the streets or roads in SKY BRYCE be taken into the highway system until the said lot owners and Resort have brought said streets up to the specifications of the Virginia Department of Highways of Shenandoah County, Virginia.

31. Except as hereinabove expressly provided with respect to the provision of Paragraph 25, all covenants, restrictions and affirmative obligations set forth in this Declaration shall run with the land and shall be binding on all parties and persons claiming under them for a period of twenty-five (25) years from January 1, 1968, after which time said covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by a majority of the then owners of lots affected by such covenants has been recorded, agreeing to change said covenants in whole or in part; provided, however, that the covenant contained in



Paragraph 30, above, shall remain effective in perpetuity.

No restriction or covenant herein is intended to be used nor shall any restriction or covenant be used by any lot owner or the resort to discriminate or attempt to discriminate against any person, whether a lot purchaser or prospective purchaser upon resale by a lot owner upon the basis of race, creed, color or national origin.

32. In the event of a violation or breach of any of these restrictions by any property owner, or agent, or agent of such owner, the owners of lots in the neighborhood or subdivision, or any of them jointly or severally, shall have the right to proceed at law or in equity to compel a compliance to the terms hereof or to prevent the violation or breach in any event. In addition to the foregoing, Resort shall have the right, whenever there shall have been built on any lot in the subdivision any structure which is in violation of these restrictions, to enter upon the property where such violation exists, and summarily abate or remove the same at the expense of the owner, if after thirty (30) days written notice of such violation, it shall not have been corrected by the owner. Any such entry and abatement or removal shall not be deemed a trespass. The failure to enforce any right, reservation, restriction or condition contained in this Declaration of Protective Covenants and Restrictions, however long continued, shall not be deemed a waiver of the rights to do so hereafter,

BOOK 262 : 80

as to the same breach or as to a breach occurring prior or subsequent thereto and shall not bar or affect its enforcement. The invalidation by any court of any restrictions in this Declaration of Protective Covenants and Restrictions contained shall in no way affect any of the other restrictions, but they shall remain in full force and effect.

IN WITNESS WHEREOF, Bryce's Mountain Resort, Inc. has caused its name and seal to be affixed hereto by Paul B. Brice, its President, this 13th day of May, 1969.

IN PRESENCE OF:

BRYCE'S MOUNTAIN RESORT, INC.

Reed Miller  
Reed Miller, Secretary

By:

Paul B. Brice President  
(Corporate Seal)

(Corporate Seal)

STATE OF VIRGINIA )  
                              ) SS.  
SHENANDOAH COUNTY )

At Bryce, this 18th day of May, 1969,  
Paul B. Brice, ~~Secretary~~ President of Bryce's Mountain Resort, Inc.,  
personally appeared and acknowledged this instrument, by him sealed  
and subscribed, to be his free act and deed and the free act and deed  
of said corporation.

Before me, Daniel A. Book Notary Public

My Commission Expires: 2/27/72

SHENANDOAH COUNTY, SS

The foregoing writing with certificate of acknowledgment thereon was received at the Clerk's Office of said County, admitted to record and indexed. The taxes imposed by Sect. 53-51, (a) and (b), of the Code have been paid.

This 23rd day of May, 1969

1:35 P.M. Test: W. H. Sigler Clerk

# 3088

THIS DEED, Made and entered into this 27th day of September 1979, by and between JERAULD L. OLMSTED and KAREN A. OLMSTED, husband and wife, parties of the first part, and JOHN R. SCHAEFER and BARBARA L. SCHAEFER, husband and wife, of 6105 Crossover Lane, Rockville, Maryland 20854, parties of the second part.

WITNESSETH:

That for and in consideration of the principal sum of Eight Thousand Five Hundred Dollars (\$8,500.00), cash in hand paid, the receipt of which is hereby acknowledged, the said parties of the first part do hereby grant, bargain, sell and convey, with GENERAL WARRANTY AND ENGLISH COVENANTS OF TITLE, unto the said John R. Schaefer and Barbara L. Schaefer, husband and wife, as tenants by the entireties and not as tenants in common, with full common law rights of survivorship in the survivor as at common law (it being intended that the part of the one dying should then belong to the other, his or her heirs or assigns), all of that certain lot or parcel of real estate, situate, lying and being near the Village of Basye, in Ashby Magisterial District, Shenandoah County, Virginia, and being more particularly described and designated in that certain plat and survey of Section VI, of Bryce's Mountain Resort, Inc., Basye, Virginia, executed by James C. Wilkins, C.L.S., on the 9th day of October, 1969, as LOT NO. 94, BLOCK A, said Lot No. 94 containing 26,406 square feet, more or less.

Together with a perpetual right of way and easement over the roads of said subdivision as shown on said plat and across other properties of the said Bryce's Mountain Resort, Inc., for the purpose of ingress and egress to and from the State Highway and other common facilities established in the development.

Said real estate is conveyed subject to that certain declaration of protective covenants and restrictions, executed by

Bryce's Mountain Resort, Inc., on the 18th day of May 1969, and of record in the Clerk's Office of the Circuit Court of Shenandoah County, Virginia, in Deed Book 262, Page 275.

The above described and conveyed lot or parcel of real estate is the identical real estate conveyed to Jerauld L. Olmsted and Karen A. Olmsted, husband and wife, by deed from Bryce's Mountain Resort, Inc., dated 28 July 1970, and of record in the aforesaid Clerk's Office in Deed Book 273, Page 419.

The aforesaid plat and survey is duly recorded in the aforesaid Clerk's Office in Deed Book 266, Page 177.

The real estate herein conveyed is made together with and subject to all rights of ways, easements, covenants and restrictions of record, and particularly subject to that certain easement granted to the owners of Lot 93, Block A, Section 6, giving access to the sewer line on Lot 94, Block A, Section 6, by instrument dated 19 February 1974, and of record in the aforesaid Clerk's Office in Deed Book 331, Page 48.

It is covenanted and agreed that neither the proprietors and owners of said subdivision, or the purchasers of the lot or lots herein described, their successors or assigns, will request the Board of Supervisors of Shenandoah County, Virginia, or the Virginia Department of Highways, that the streets within the said subdivision be taken into the highway system until the said lot owners and proprietors have brought said streets up to the specifications of the Virginia Department of Highways of Shenandoah County, Virginia.

Reference is hereby made to the above mentioned deed, plat and records and to the references therein referred to for a more particular description of the real estate herein conveyed.

WITNESS the following signatures and seals.

Jerauld L. Olmsted (SEAL)  
Jerauld L. Olmsted

Karen A. Olmsted (SEAL)  
Karen A. Olmsted

City Washington  
STATE OF VIRGINIA  
District Columbia  
COUNTY OF ~~ARLINGTON~~, TO WIT:

The foregoing instrument was acknowledged before me this  
10<sup>th</sup> day of October, 1979, by Jerauld L. Olmsted and  
Karen A. Olmsted, husband and wife.

My Commission expires: February 14, 1982

Margaret A. Olmsted  
Notary Public

SHERMAN COUNTY, GA

The foregoing writing with certificate of acknowledgment thereon was received at the  
Clerk's Office of said County, admitted to record and indexed. The taxes imposed by Ga.  
58-54, (a) and (b), of the Code have been paid.

this 15<sup>th</sup> day of November, 1979

4:49 P.M. Teste: [Signature]

A Copy, Teste:

M. D. Segler, Clerk

by: Sarahy L. Lamm, S.C.

# 1843

400 DE 359

THIS DEED, Made and entered into this 15th day of June, 1979, by and between WILLIAM DOUGLAS DAVIDSON and HOLLACE HURD DAVIDSON, husband and wife, parties of the first part, and JOHN R. SCHAEFER and BARBARA L. SCHAEFER, husband and wife, of 6105 Crossover Lane, Rockville, Maryland 20854, parties of the second part,

WITNESSETH:

That for and in consideration of the sum of Forty-Nine Thousand Five Hundred Dollars (\$49,500.00), cash in hand paid, the receipt of which is hereby acknowledged, the said parties of the first part do hereby grant, bargain, sell and convey with GENERAL WARRANTY AND ENGLISH COVENANTS OF TITLE, unto the said parties of the second part, John R. Schaefer and Barbara L. Schaefer, husband and wife, as tenants by the entireties and not as tenants in common with full common law rights of survivorship in the survivor as at common law (it being intended that the part of the one so dying should then belong to the other, his or her heirs and assigns), all that certain lot or parcel of land situate and lying about one (1) mile northeast of Basye, in Shenandoah County, Virginia, and being more particularly described and designated on that certain plat and survey of SECTION VI of BRYCE'S MOUNTAIN RESORT, INC., of Basye, Virginia, made by James C. Wilkins, C.L.S., as LOT NO. NINETY-FIVE (95), BLOCK A, and a triangular strip adjoining said lot on the west, containing in aggregate 28,785 square feet, which said plat is duly of record in the Clerk's Office of Shenandoah County, Virginia, in Deed Book 266, Page 177, said lot and additional strip being described according to survey made by James C. Wilkins, C.L.S., on November 11, 1970, as follows:

"BEGINNING at an iron pin in the northern limits of a 30' street, a corner of Lot 94 of the afore-said subdivision; thence, leaving Lot 94 and with

Complainants' "EXHIBIT B"

the northern limits of said street, N. 39° 26' W. 33.03 feet to an iron pin, the p.s. of a curve to the left, having a radius of 152.69 feet; thence, with said curve 64.95 feet, chord N. 51° 37' W. 64.46 feet to an iron pin; thence, leaving said curve N. 24° 34' E. 350.48 feet to an iron pin, a corner of Lot 67 of the aforesaid subdivision; thence, with said lot S. 54° 43' E. 72.84 feet to an iron pin, a corner to Lot 94 S. 21° 20' W. 367.39 feet to the beginning."

The aforesaid plat of said revised lot is duly recorded in the Clerk's Office of the Circuit Court of Shenandoah County, Virginia, in Deed Book 278, Page 507.

Together with a perpetual right of way and easement over the roads of said subdivision as shown on said plat and across other properties of the said Bryce's Mountain Resort, Inc., for the purpose of ingress and egress to and from the State Highway and other common facilities established in the development.

The above described and conveyed tract or parcel of real estate is the identical real estate conveyed to William Douglas Davidson and Hollace Hurd Davidson, husband and wife, by deed from Bryce's Mountain Resort, Inc., a Virginia Corporation, bearing date on the 1st day of December, 1970, which deed is duly of record in the Clerk's Office of the Circuit Court of Shenandoah County, Virginia, in Deed Book 278, Page 504.

Said real estate is conveyed subject to that certain Declaration of Protective Covenants and Restrictions, executed by Bryce's Mountain Resort, Inc., on the 18th day of May, 1969, and of record in the aforesaid Clerk's Office in Deed Book 262, Page 275.

It is covenanted and agreed that neither the proprietors and owners of said subdivision or the purchasers of the lot or lots described herein, their successors or assigns, will request the Board of Supervisors of Shenandoah County, Virginia, or the Virginia Department of Highways, that the streets within the said

subdivision be taken into the highway system until the said lot owners and proprietors have brought said streets up to the specifications of the Virginia Department of Highways of Shenandoah County, Virginia.

Reference is hereby made to the above mentioned deeds and records and to the references therein referred to for a more particular description of the real estate herein conveyed.

WITNESS the following signatures and seals.

William Douglas Davidson (SEAL)

Hollace Hurd Davidson (SEAL)

STATE OF VIRGINIA

COUNTY OF SHENANDOAH, TO-WIT:

The foregoing instrument was acknowledged before me this 17<sup>th</sup> day of June, 1979, by William Douglas Davidson and Hollace Hurd Davidson, husband and wife.

My commission expires Jan 8, 1980.

Sirrey Lee Duckless  
Notary Public

SHENANDOAH COUNTY, VA.

The foregoing instrument with certificate of acknowledgment thereon was received at the Clerk's Office of said County, and filed to record and indexed. The taxes imposed by Sect. 58-54, (a) and (b), of the Code have been paid.

This 13<sup>th</sup> day of July 1979.  
11:00 A.M. Teste: [Signature] Clerk

A Copy, Teste:

[Signature]; Clerk

by: Sirrey Lee Duckless, S.C.



Co TX \$37.50  
 58-54 \$75.00  
 Exd 12/21/78  
 Mailed To:  
 Bruce Forbes  
 5112 S. Hampton Dr.  
 Annandale, VA 2200  
 12/21/78

# 4138

BOOK 392 PAGE 551

THIS DEED, Made this 1st day of November, 1978, by  
 and between A. JAMES O'MARA and LOIS J. O'MARA, husband and wife,  
 parties of the first part and BRUCE FORBES, 5112 Southampton  
 Drive, Annandale, Virginia 22003, party of the second part.

## WITNESSETH:

That for and in consideration of the sum of Ten Dollars  
 (\$10.00), cash in hand paid by the party of the second part to  
 the parties of the first part, and of other good and valuable  
 consideration given, all of which is hereby acknowledged by the  
 parties of the first part before the execution and delivery hereof,  
 the said parties of the first part do hereby grant and convey unto  
 the said Bruce Forbes all that certain tract or parcel of land  
 situate and lying adjacent to SECTION VI of BRYCE'S MOUNTAIN  
 RESORT, INC., near Basye, in Ashby Magisterial District, Shenandoah  
 County, Virginia, described according to survey made by James C.  
 Wilkins, C.L.S., as follows:

"BEGINNING at an iron pin, a corner to Lot 155  
 in the aforesaid subdivision and a corner in the  
 outer boundary of Section VI; thence, leaving Lot  
 155 and with the outer lines of Section VI, N. 72°  
 53' E. 533.62 feet to an iron pin; thence, N. 84° 16'  
 E. 340.70 feet to an iron pin, a corner in the outer  
 boundary of Section VI, and Lot 95; thence, leaving  
 the outer boundary of Section VI and with Lot 95 as  
 revised, S. 24° 34' W. 350.48 feet to an iron pin, a  
 corner to Lot 95, in a curve to the right, having a  
 radius of 152.69 feet; thence, with said curve 20.00  
 feet chord S. 60° 00' E. 19.98 feet to an iron pin in  
 the northern limits of a 30-foot right of way; thence  
 leaving Lot 95 and crossing said right of way, S. 35°  
 40' W. 30.00 feet to an iron pin in the southern  
 limits of said right of way, the p. c. of a curve to  
 the right, having a radius of 20.00 feet; thence,  
 with said right of way and curve 28.55 feet chord

S. 15° 53' E. 26.19 feet to an iron pin, the p. t. of said curve in the western limits of a 30-foot right of way; thence, with the western limits of said right of way; S. 25° 01' W. 109.20 feet to an iron pin, a corner to Lot 105; thence, leaving said right of way and with Lot 105, N. 44° 45' W. 100.00 feet to an iron pin, a corner of Lot 105; thence, S. 40° 48' W. 213.52 feet to an iron pin, a corner to Lot 105 and Lot 106; thence, leaving Lot 105 and with Lot 106, S. 43° 07' W. 177.19 feet to an iron pin, a corner to Lot 106 in the line of Lot 150; thence, leaving Lot 106 and with Lots 150 and 151, N. 52° 06' W. 130.60 feet to an iron pin, a corner to Lots 151 and 152; thence, leaving Lot 151 and with Lot 152, N. 39° 26' W. 129.32 feet to an iron pin, a corner to Lot 152 and Lot 153; thence, leaving Lot 152 and with Lots 153, 154, and 155, N. 24° 24' W. 358.08 feet to the beginning, containing 7.35 acres, more or less."

Together with a perpetual right of way and easement over the roads of said Subdivision as shown on the plat of said SECTION VI of said Subdivision, which said plat is duly of record in the Clerk's Office of Shenandoah County, Virginia, in Deed Book 266, at Page 177, and across other properties of Bryce Mountain Resort, Inc. for the purpose of ingress and egress to and from the State Highway and other common facilities established in the development.

Said real estate is conveyed subject to that certain Declaration of Protective Covenants and Restrictions, executed by Bryce's Mountain Resort, Inc., on the 18th day of May, 1969, and of record in the Clerk's Office of the Circuit Court of Shenandoah County, Virginia, in Deed Book 262, Page 275.

It is covenanted and agreed that neither the proprietors and owners of said Subdivision or the purchasers of the tract described herein, their successors or assigns, will request the Board of Supervisors of Shenandoah County, Virginia, or the Virginia Department of Highways, that the streets within the said Subdivision be taken into the highway system until the said lot owners and proprietors have brought said streets up to the specifications of the Virginia Department of Highways of Shenandoah County, Virginia.

The above described real estate is that same real estate which was conveyed to A. James O'Mara and Lois J. O'Mara from Bryce's Mountain Resort, Inc., a Virginia Corporation, by deed dated the 22nd day of December, 1970 and recorded in the aforesaid Clerk's Office in Deed Book 278, Page 706.

WITNESS the following signatures and seals:

A. James O'Mara (SEAL)  
A. James O'Mara

Lois J. O'Mara (SEAL)  
Lois J. O'Mara

STATE OF MARYLAND,

COUNTY OF Prince George's TO-WIT:

The foregoing instrument was acknowledged before me this 1st day of November, 1978, by A. James O'Mara and Lois J. O'Mara, husband and wife.

My commission expires: July 1, 1982

Sarah Jane Parker  
Notary Public

**SHENANDOAH COUNTY, SS**

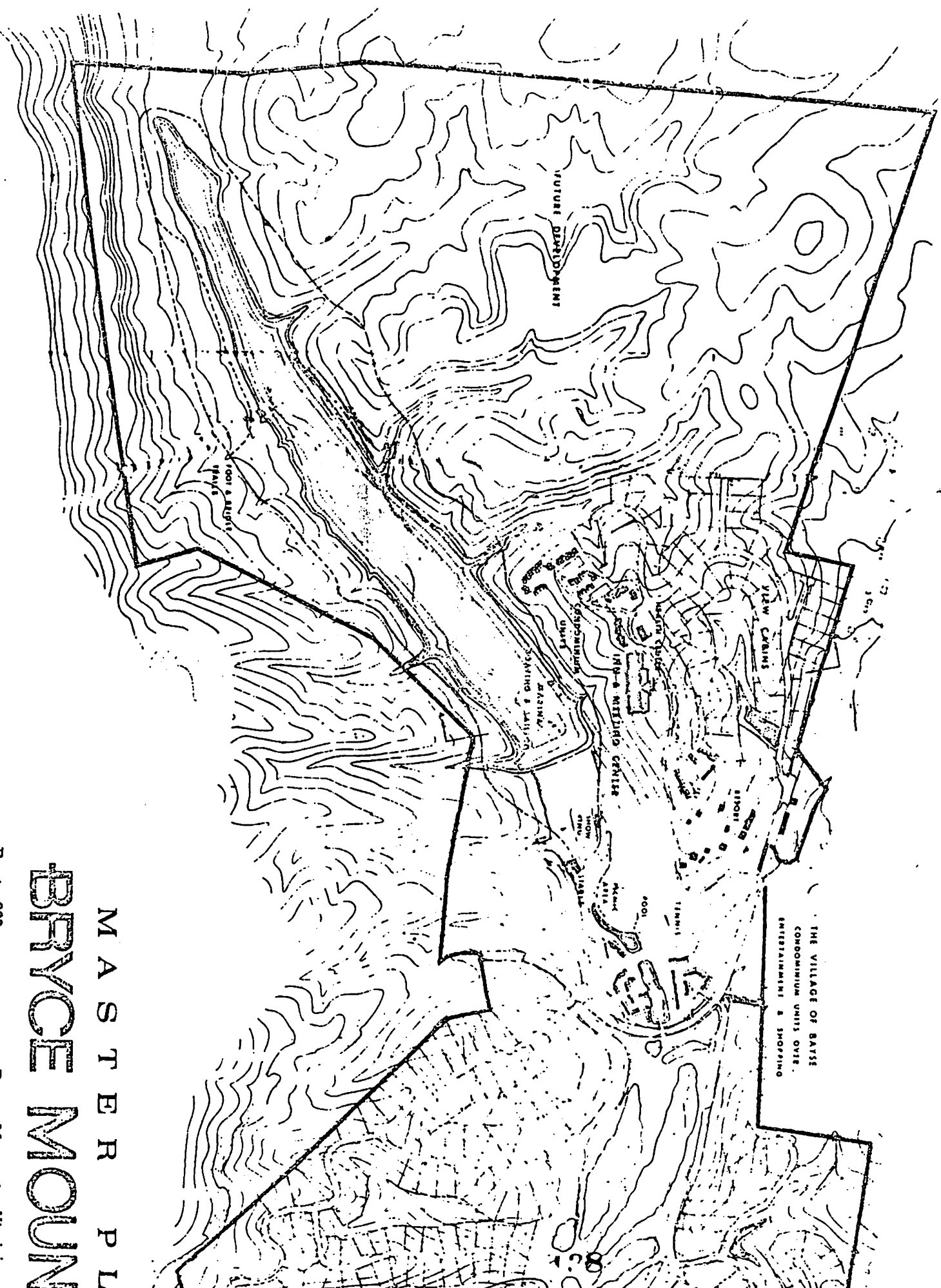
The foregoing writing with certificate of acknowledgment thereon was received at the Clerk's Office of said County, admitted to record and indexed. The taxes imposed by Sect. 58-59, (a) and (b), of the Code have been paid.

this 5 day of December 19 78  
4:25 P.M. Taxed by [Signature] Clerk

A Copy, Teste:

M. D. Sigler, Clerk

by: Lorinda Leman, S.C.



MASTER PLAN  
**BRUCE MOUNTAIN**

Route 263

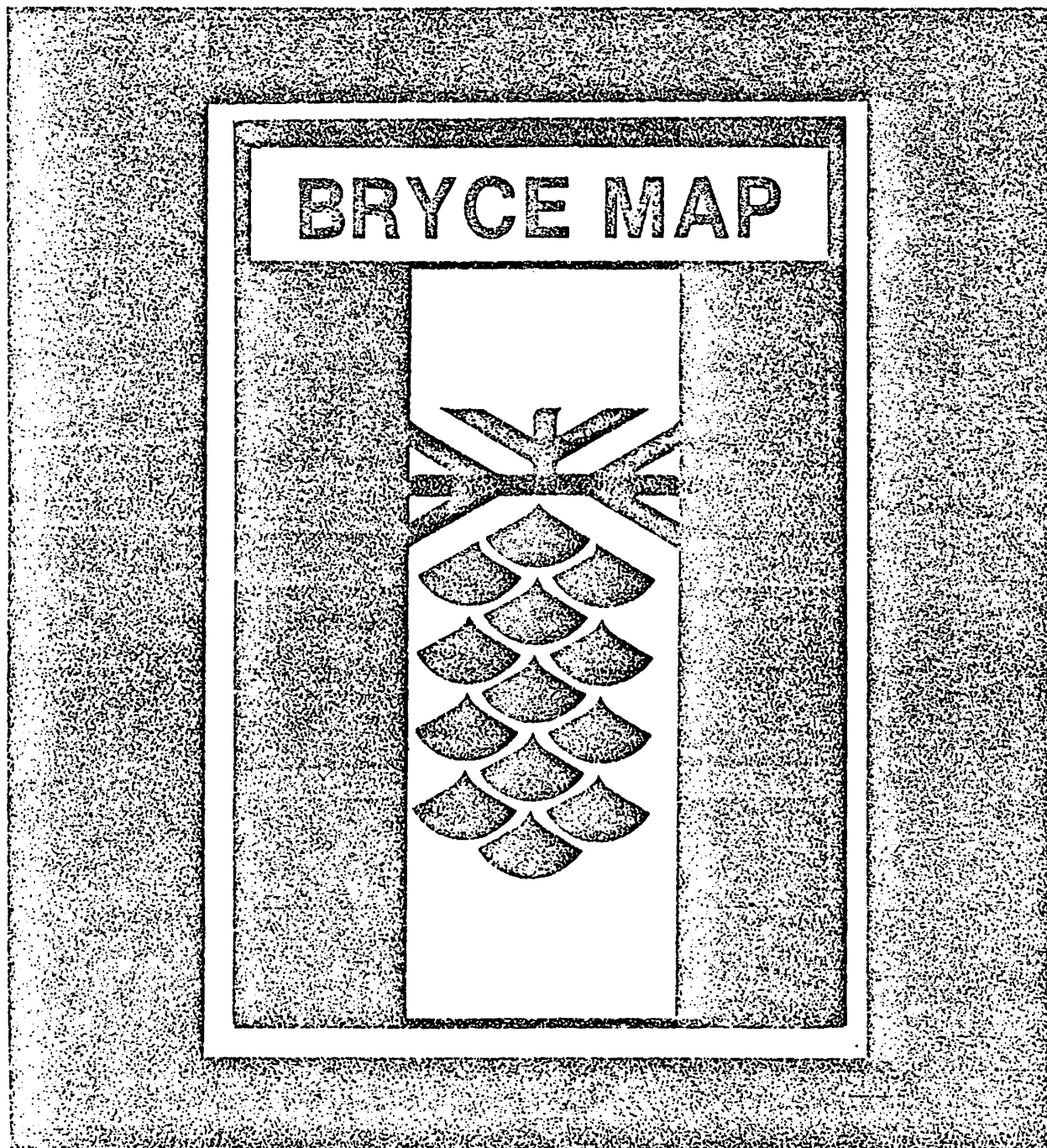
Bryce Mountain, Virginia

Edmund B. Ault, ~~Livingston~~  
Bellevue, Maryland



## Highsmith and Drechsler

"Brokers at Bryce"  
P.O. Box 142  
Basye, Virginia 22810  
Phone: (703) 856-2149 (Basye)  
(703) 620-9494 (D.C. Area)

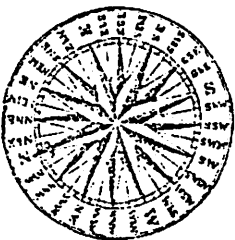
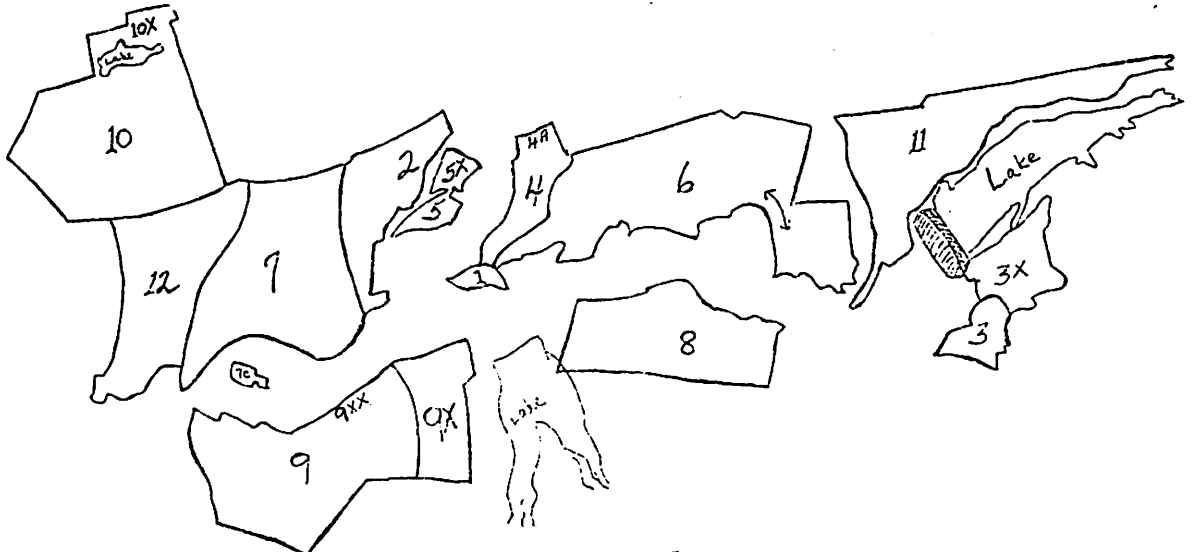
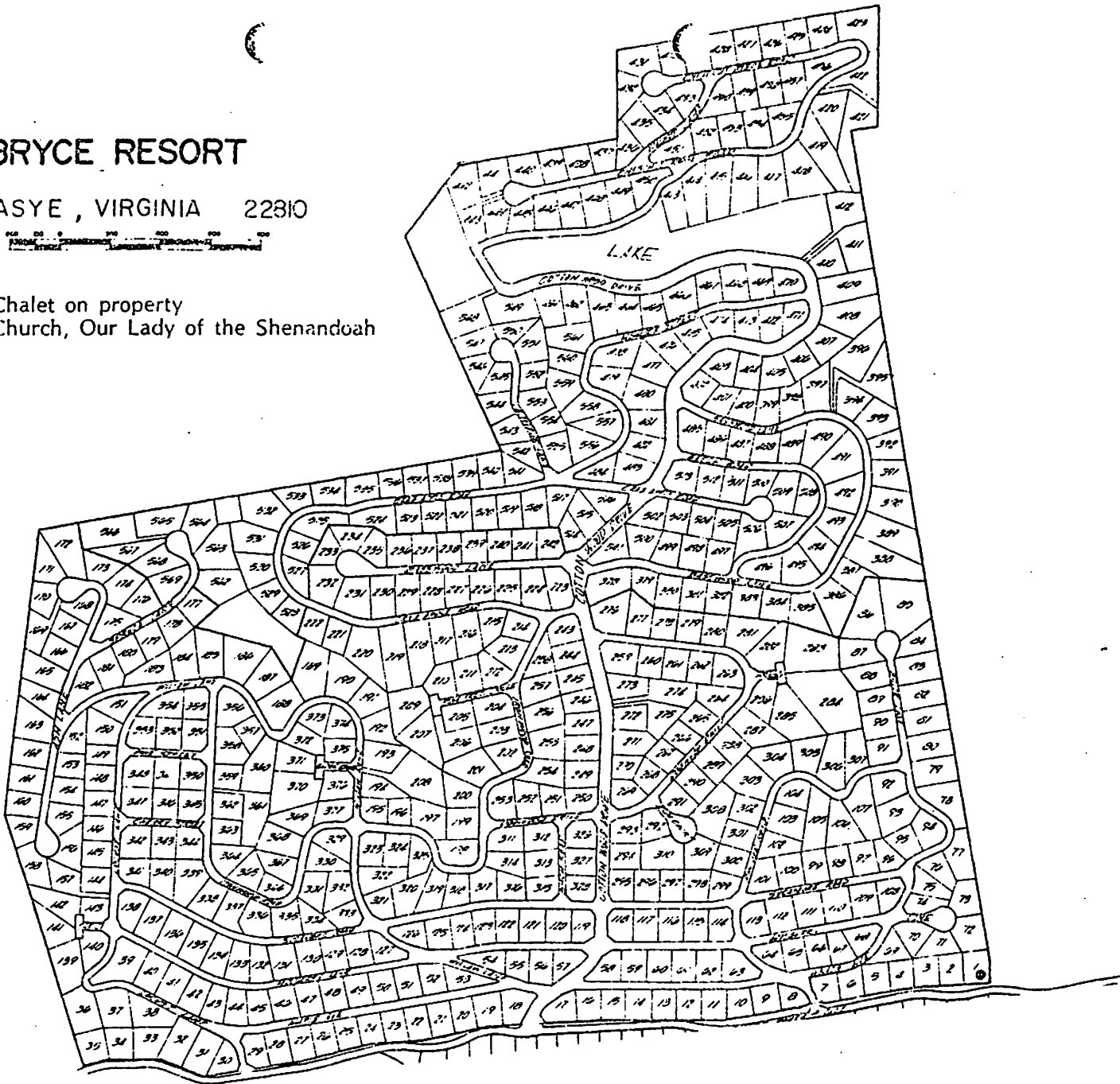


# BRYCE RESORT

BASYE, VIRGINIA 22810

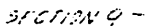


•Chalet on property  
†Church, Our Lady of the Shenandoah

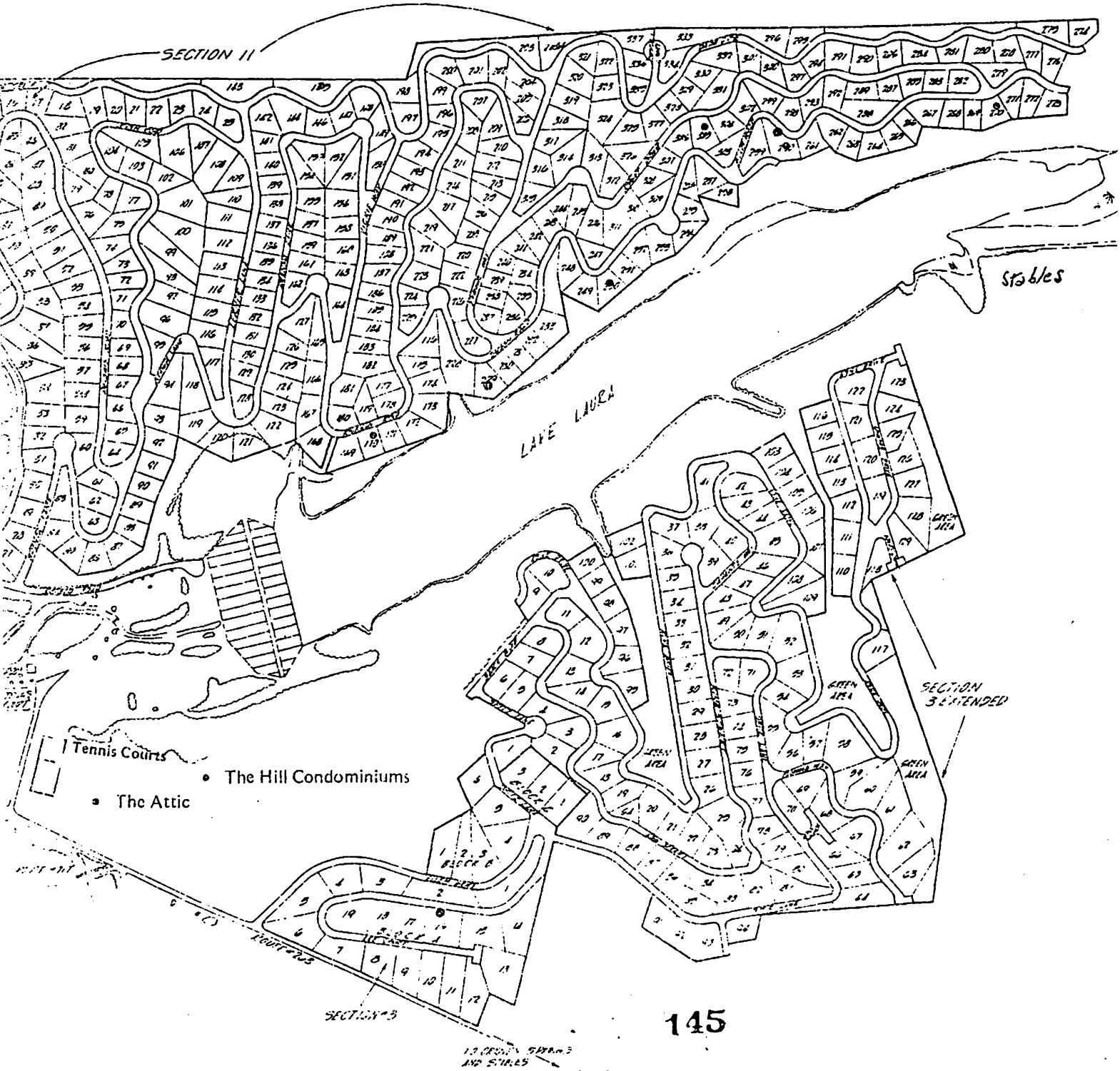












| <u>STREET NAME</u>   | <u>Section</u> | <u>Page</u> | <u>STREET NAME</u>    | <u>Section</u> | <u>Page</u> | <u>STREET NAME</u> | <u>Section</u> | <u>Page</u> |
|----------------------|----------------|-------------|-----------------------|----------------|-------------|--------------------|----------------|-------------|
| Alder Way            | 7              | 3           | Fairway Drive North   | 1,6            | 4,5         | Nancy Circle       | 7              | 4           |
| Alder Court          | 10             | 2           | Fairway Drive South   | 9              | 3,4         | Nelson Way         | 8              | 5           |
| Anderson Road        | 7              | 3           | Fawn Lane             | 12             | 3           | Nicklaus Drive     | 8              | 5           |
| Anna Road            | 7              | 3           | Fleming Way           | 3              | 6           | Oak Circle         | 6              | 5           |
| Arnold Road          | 11             | 6           | Forrest Street        | 9              | 4           | Oak Court          | 10             | 2           |
| Ash Lane             | 10             | 2           | Fritzel Way           | 5              | 4           | Palmer Road        | 8              | 5           |
| Ashe Drive           | 3              | 6           | Gordon Circle         | 9              | 4           | Pearl Place        | 7              | 3           |
| Ashby Road           | 9              | 4           | Greenview Drive       | 7              | 3,4         | Peto's Peak        | 4              | 4,5         |
| Aspen Way North      | 4              | 5           | Greise Court          | 3              | 6           | Pheasant Drive     | 6              | 5           |
| Aspen Way South      | 5              | 4           | Ground Squirrel Court | 12             | 3           | Picard Court       | 8              | 5           |
| Basswood Lane        | 10             | 2           | Guldahl Court         | 8              | 5           | Pickett Street     | 9              | 4           |
| Beach Boulevard      | 3              | 6           | Gum Tree Circle       | 10             | 2           | Pin Oak Road       | 10             | 2           |
| Beauregard Drive     | 9              | 3           | Hampton Street        | 9              | 3           | Pinoak Street      | 6              | 5           |
| Beaver Road          | 12             | 3           | Harmon Road           | 8              | 5           | Pine Street        | 10             | 2           |
| Beech Road           | 10             | 2           | Herlock Street        | 10             | 2           | Player Road        | 8              | 5           |
| Birch Road           | 10             | 2           | Hillside Court        | 1              | 4,5         | Folk Street        | 9              | 3           |
| Blackberry Hill Road | 7              | 4           | Hogan Drive           | 8              | 5           | Quail Road         | 12             | 3           |
| Bogart Lane          | 7              | 3           | Holly Court           | 10             | 2           | Raccoon Road       | 6              | 5           |
| Buckner Circle       | 9              | 3           | Hood's Point Road     | 9              | 4           | Richmon Road       | 11             | 6           |
| Bitternut Lane       | 10             | 2           | Ironwood Road         | 10             | 2           | Ringneck Court     | 6              | 5           |
| Bragg's Cove Road    | 9              | 4           | Jewel Court           | 7              | 3           | Roberts Run        | 7              | 4           |
| Brawley Lane         | 7              | 3,4         | Johnston Street       | 9              | 3           | Rondi Lane         | 12             | 3           |
| Breckinridge Road    | 9              | 3           | Joseph Street         | 7              | 4           | Ryan Road          | 11             | 6           |
| Brenda Lane          | 11             | 6           | Joyce Court           | 9x             | 4           | Sandpiper Drive    | 12             | 3           |
| Brian Drive          | 9x             | 4           | Keith Place           | 6AA            | 5           | Sandy Circle       | 9x             | 4           |
| Campbell Court       | 11             | 6           | Kiley Court           | 3              | 6           | Sarazen Court      | 8              | 5           |
| Caroline Circle      | 7              | 3           | Killmon Road          | 9x             | 4           | Scott Road         | 5x             | 4           |
| Chad Lane            | 7C             | 3           | King Street           | 3              | 6           | Semmes Street      | 9              | 4           |
| Charlene Court       | 11             | 5           | Knight Drive          | 11             | 6           | Snead Lane         | 8              | 5           |
| Cherry Street        | 10             | 2           | Lark Court            | 12             | 3           | Spitz Lane         | 3              | 6           |
| Chestnut Ridge Road  | 10             | 2           | Laura Court           | 6              | 5           | Spruce Hollow      | 6              | 5           |
| Clark Road           | 7              | 4           | Lee Court             | 3              | 6           | Spruce Lane        | 10             | 2           |
| Clemente Way         | 3              | 6           | Lee Drive             | 7              | 3,4         | State Road #611    | 2,7,10,12      | 2,3,4       |
| Connie Road          | 9x             | 4           | Lee Road              | 9              | 3,4         | State Road #720    | 12             | 3           |
| Cotton Wood Drive    | 10             | 2           | Leigh Court           | 4A             | 5           | Stonewall Drive    | 9              | 3           |
| Crab Apple Road      | 10             | 2           | Leigh Lane            | 4A             | 5           | Straton Court      | 2              | 4           |
| Dale Drive           | 7              | 3           | Lerner Lane           | 11             | 6           | Straton Way        | 2              | 4           |
| Davis Court          | 9              | 3           | Linda Lane            | 6              | 4,5         | Strudel Court      | 2              | 4           |
| Dawn Drive           | 11             | 6           | Locher Road           | 9x             | 4           | Stuart Drive       | 9              | 3           |
| Deloris Road         | 11             | 6           | Locust Lane           | 10             | 2           | Susan Road         | 11             | 6           |
| Demaret Road         | 8              | 5           | Longstreet Road       | 9              | 3           | Sycamore Road      | 10             | 2           |
| Dogwood Drive        | 6              | 5           | Mallard Drive         | 12             | 3           | Unitas Drive       | 3              | 6           |
| Dogwood Drive        | 10             | 2           | Maple Avenue          | 10             | 2           | Vail Way           | 2              | 4           |
| Dooley Drive         | 9x             | 4           | Middlecoff Way        | 8              | 5           | Valley View Road   | 6              | 5           |
| Early Drive          | 9              | 4           | Miller Road           | 7              | 4           | Vickie Way         | 11             | 6           |
| Elk Road             | 12             | 3           | Mink Court            | 12             | 3           | Walnut Lane        | 10             | 2           |
| Ellen Circle         | 7              | 4           | Moccasin Way          | 12             | 3           | Wheeler Street     | 9              | 3           |
| Ellen Drive          | 3              | 6           | Morgan Street         | 9              | 4           | Whippoorwill Road  | 12             | 3           |
| Ellie Circle         | 9x             | 4           | Morrie Drive          | 9x             | 4           | Williams Lane      | 7              | 4           |
| Ellis Road           | 11             | 6           | Nosby Hill Road       | 9              | 4           | Willow Lane        | 10             | 2           |
| Elm Court            | 6              | 5           | Mount Snow Court      | 2              | 4           | Yvonne Way         | 11             | 6           |
| Elm Court            | 10             | 2           | Mulberry Lane         | 10             | 2           |                    |                |             |
| Emily Lane           | 7              | 3           |                       |                |             |                    |                |             |
| Erika Drive          | 9x             | 4           |                       |                |             |                    |                |             |
| Ewall's Ridge Road   | 9              | 4           |                       |                |             |                    |                |             |

Bryce Mountain is a year-round recreational resort community of approximately 1800 acres located in the heart of Virginia's Shenandoah Valley. In May of 1975 when the land sales phase of development was completed, a group of Bryce Mountain property owners bought the recreational facilities and other amenities with the objective of keeping Bryce beautiful and making it the best family resort in Virginia.

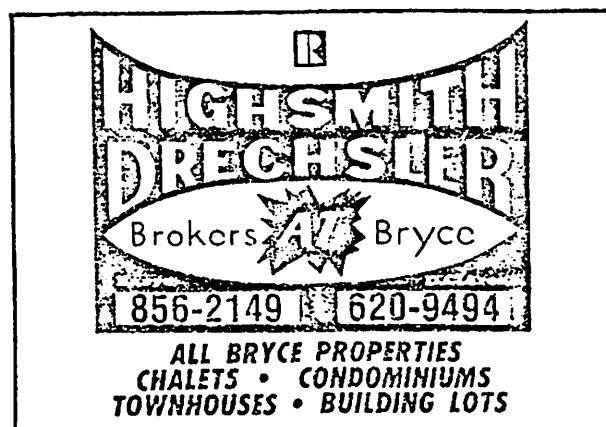
Sports activities include snow and grass skiing; golf; tennis; boating, swimming and fishing in Bryce's 45 acre Lake Laura; horseback riding; and hiking in the nearby National Forest.

#### DIRECTIONS:

To reach Bryce by airplane: Sky Bryce Airport at Bryce Mountain is located 26 nautical miles west of Linden VOR on 272 radial and 31 nautical miles southwest of Front Royal VOR on 244 radial. Instrument pilots file Sky Bryce, W-92, via Basye intersection. Visual pilots contact Martinsburg FSS for DF assist. Airport data: Unicom 122.8 prior to landing, traffic pattern altitude 2400 MSL for noise control and safety, runway 5-23 2400 feet, tiedowns, daytime parking fee waived with purchase of fuel (EXXON). FAA approved pilot school, private through instructor. Air charter and shuttle flights via Dulles International Airport. Telephone 703 856-2167.

To reach Bryce by car: Bryce is located one and one half hours from the Beltway. From Washington, take Beltway to Route 66 Exit, on Route 66 take US 50 Exit to Winchester; South on I-81 to Exit 69 (Mount Jackson, Basye); State Road 263 to Basye. From Richmond and Norfolk: 1-66 to Zion Crossroad; Route 15 to Gordonsville; Route 33 to I-81 at Harrisonburg; North to Exit 69 (Mount Jackson, Basye); State Road 263 to Basye.

Highsmith and Drechsler is the only licensed real estate firm located and available daily at Bryce Mountain. Our staff of sales agents is intimately familiar with the various Bryce properties - chalets, townhouses, condominiums and building lots - and is uniquely qualified to offer expert professional and informed real estate service.



OFFICE LOCATED IN BRYCE MOUNTAIN  
SKI & COUNTRY CLUB ADMINISTRATIVE BLDG.  
ADJACENT TO SKI LIFT # 2

-Complaints  
-Ex. C-2-1  
-7/9/80 LGL

*Ernest Marshall*  
*for*

# PROPERTY REPORT

NOTICE AND DISCLAIMER BY OFFICE OF  
INTERSTATE LAND SALES REGISTRATION,

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

The Interstate Land Sales Full Disclosure Act specifically prohibits any representation to the effect that the Federal Government has in any way passed upon the merits of or given approval to this subdivision, or passed upon the value, if any, of the property.

It is unlawful for anyone to make, or cause to be made to any prospective purchaser, any representation contrary to the foregoing or any representations which differ from the statements in this property report. If any such representations are made, please notify the Office of Interstate Land Sales Registration at the following address:

Office of Interstate Land Sales Registration  
HUD Building, 451 Seventh Street, S.W.  
Washington, D. C. 20410

Inspect the property and read all documents. Seek professional advice. Unless you received this property report prior to or at the time you enter into a contract, you may void the contract by notice to the seller.

If you received the Property Report less than 48 hours prior to signing a contract or agreement you have until midnight of the third business day following the consummation of the transaction to revoke your contract by notice to the seller.

## 1. Name of Developer: BRYCE'S MOUNTAIN RESORT, INC.

Address: Route 263, Basye, Virginia 22810

## 2. Name of Subdivision: BRYCE MOUNTAIN

Location: Shenandoah County, State of Virginia

a. Effective date of Property Report: January 10, 1975

## IMPORTANT, READ CAREFULLY

Name of Subdivision: Bryce Mountain

By signing this receipt you acknowledge that you have received a copy of the Property Report prepared pursuant to the Rules and Regulations of the Office of Interstate Land Sales Registration, U.S. Department of Housing and Urban Development.

Received by \_\_\_\_\_

Street Address \_\_\_\_\_

Date \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_

Zip \_\_\_\_\_

Notwithstanding your signature by which you acknowledged that you received the Property Report you still have other important rights under the Interstate Land Sales Full Disclosure Act.

118  
44

Compl. EXH. C-2-1

WARNING: THE DEVELOPER IS NOT LEGALLY OBLIBATED FOR SOME OF THE PROPOSALS WHICH HE HAS INCLUDED IN THIS PROPERTY REPORT

b. This offering consists of 2,943 lots. Developer may make additional offerings. Developer has, and may in the future develop multi-family units at Bryce Mountain. The legal description of each lot will be by reference to plats of all lots of record in the Clerk's Office of Shenandoah County, Virginia. The recording reference with section number, blocks, number of lots in each section and lot numbers is as follows:

| SECTION NO.     | BLOCK NO. | NO. OF LOTS | LOT NOS.                                | RECORDING REFERENCE   |
|-----------------|-----------|-------------|---|-----------------------|
| Sec. I          |           | 20          | 1-11, 15-22,<br>Plus one unnumbered lot | Plat Bk. 12, Pg. 61   |
| Sec. II         | 1         | 43          | 1-9, 12-45                              | Plat Bk. 12, Pg. 69   |
|                 | 2         | 41          | 1-41                                    | Plat Bk. 12, Pg. 69   |
|                 | TOTAL:    | 84          |   |                       |
| Sec. III        | A         | 19          | 1-19                                    | Plat Bk. 12, Pg. 78   |
|                 | B         | 6           | 1-6                                     | Plat Bk. 12, Pg. 78   |
|                 | C         | 3           | 1-3                                     | Plat Bk. 12, Pg. 78   |
|                 | TOTAL:    | 28          |   |                       |
| Sec. III - Ext. |           | 129         | 1-129                                   | Deed Bk. 309, Pg. 788 |
| Sec. IV         |           | 16          | 1-16                                    | Plat Bk. 12, Pg. 79   |
| Sec. IV-A       |           | 13          | 1-13                                    | Deed Bk. 309, Pg. 169 |
| Sec. V          |           | 16          | 1-16                                    | Plat Bk. 12, Pg. 80   |
| Sec. V - Ext.   |           | 16          | 17-32                                   | Deed Bk. 309, Pg. 374 |
| Sec. VI         | A         | 182         | 12-95, 105-202                          | Deed Bk. 266, Pg. 177 |
|                 | B         | 73          | 1-73                                    | Deed Bk. 266, Pg. 177 |
|                 | TOTAL:    | 255         |   |                       |
| Sec. VI-AA      |           | 5           | 1-5                                     | Deed Bk. 305, Pg. 306 |
| Sec. VII-A      |           | 171         | 1-117, 119-172                          | Deed Bk. 282, Pg. 457 |
| Sec. VII-B      | A         | 61          | 99-159                                  | Deed Bk. 282, Pg. 469 |

|                |     |   |  |
|----------------|-----|---|--|
| B              | 28  | 1-28  | Deed Bk. 282, Pg. 469                          |
| C              | 64  | 1-64  | Deed Bk. 282, Pg. 469                          |
| D              | 36  | 1-36  | Deed Bk. 282, Pg. 469                          |
| E              | 20  | 2-21  | Deed Bk. 282, Pg. 469                          |
| F              | 21  | 173-193   | Deed Bk. 282, Pg. 469                          |
| AA             | 7   | 1-7   | Deed Bk. 282, Pg. 469                          |
| TOTAL:         | 237 |   |  |
| Sec. VII-C     | 7   | 1-7   | Deed Bk. 309, Pg. 798                          |
| Sec. VIII      | 214 | 1-149, 151-215  | Deed Bk. 285, Pg. 731                          |
| Sec. IX        | 375 | 1-334, 335-338, 340-343, 345-346, 348-369, 371-372, 374-380 | Deed Bk. 292, Pg. 682<br>Deed Bk. 327, Pg. 765 |
| Sec. IX - Ext. | 167 | 1-139, 140-156, 158-163, 165-169                            | Deed Bk. 298, Pg. 209<br>Deed Bk. 327, Pg. 765 |
| Sec. X         | 377 | 1-377   | Deed Bk. 289, Pg. 530                          |
| Sec. X - Ext.  | 192 | 378-569   | Deed Bk. 300, Pg. 548                          |
| Sec. XI        | 338 | 1-203, 203A-337   | Deed Bk. 309, Pg. 44                           |
| Sec. XII       | 283 | 1-283   | Deed Bk. 327, Pg. 748                          |

3. List names and populations of surrounding communities and list distances over paved and unpaved roads to the subdivision.

| Name of Community            | Population | Distance Over |               | Total |
|------------------------------|------------|---------------|---------------|-------|
|                              |            | Paved Roads   | Unpaved Roads |       |
| Mt. Jackson, Va.             | 1,000      | 11 mi.*       | *             | 11    |
| Woodstock, Va. (County Seat) | 2,200      | 22 mi.        | *             | 22    |
| New Market, Va.              | 800        | 18 mi.        | *             | 18    |
| Winchester, Va.              | 15,800     | 46 mi.        | *             | 46    |
| Front Royal, Va.             | 10,000     | 54 mi.        | *             | 54    |
| Harrisonburg, Va.            | 14,500     | 34 mi.        | *             | 34    |

\* Mileage over paved roads is to Basye, Va., the approximate center of the Subdivision. Access from Basye to Sections X-Extended and

XII are, in part , over unpaved state roads, 1.1 miles and .14 miles in length.

4. Complete all items under this paragraph regardless of whether the sale will be an installment or cash sale.

a. Will the sales contract be recordable?  
Yes or No?

No.

b. In the absence of recording the Contract or Deed could third parties or creditors of any person holding an interest in the land acquire title to the property free of any obligation to deliver a deed? Yes or No?

Yes, in the absence of recording the contract or deed your right to the title of the land may be defeated by such third parties as subsequent purchasers or creditors of any person holding an interest in the land.

c. State whether and or when the contract or deed will be recorded, and who will record it. State who will bear the costs of recordation, and the amount if those costs are to be borne by the purchaser.

The deed delivered to purchaser will be recorded by the Developer as part of closing cost, under the Land Sale Contract.

d. What provision, if any, has been made for refunds if buyer defaults? If none, and the buyer's payments are to be retained, state whether his loss will be limited to the amount of his payments to date, or whether he will be responsible to the Developer or his assignees for additional damages or for the balance of his contract.

None. Prior to Closing the payments will be retained as liquidation damages. After Closing since Buyer has a recorded deed and the payments are secured by a recorded deed of trust, the lot must be advertised for sale by a trustee under the deed of trust and sold at auction in case of default, and any surplus above the amount of debt and cost of sale would go to the defaulting Buyer. The defaulting Buyer would be personally liable for any deficiency.

e. State prepayment penalties or privileges, if any.

Buyer may prepay on his Note and deed of trust at any time. In the event of prepayment, prepaid finance charges under the Rule of 78 less a minimum pre-payment charge of \$100.00, will be refunded to Buyer. Although the Rule of 78's is not to your advantage, it is not gener-

ally considered to be a penalty, its use is so wide-spread in the financing industry.

5. Is there a blanket mortgage or other lien on the subdivision or portion thereof in which the subject property is located? Yes or No? If yes, list below and describe arrangements, if any, for protecting interests of the buyer or lessee if the Developer defaults in payment of the lien obligation. If there is such a blanket lien, describe arrangements for release to a buyer of individual lots when the full purchase price is paid.

a. Yes. There are two liens on all lots in sections I through IX-Extended and Lot Nos. 26 through 34, 58 through 66, 83 through 93, 119, 120, 121, 169 through 174, 228 through 233, 235, 236, 245 through 312, 325 through 337 in section XI.

| Type of Liens  | Effect on Buyers<br>if Developer Defaults             |
|--|---|
| Deeds of Trust to Virginia National Bank (Bank) from Bryce's Mountain Resort, Inc. | You may lose your financial interest in the Property. |

The Bank has agreed to release individual lots from the blanket encumbrance at the time of conveyance of title to Buyer without consideration, provided Developers payments on the indebtedness are current in all respects. The release provision is not a matter of public record. Upon Default by Developer in making payment on the blanket encumbrances on the property, the Bank would be entitled to sell any or all of the real estate covered by such encumbrance free and clear of any subsequent contract or conveyance thereof unless the Lot has been previously released from the encumbrance. A foreclosure would affect the recreational and other common facilities situated on land covered by any blanket encumbrance which will not be released until the debt secured thereby is satisfied.

6. Does the offering contemplate leases of the property in addition to, or as distinguished from, sales? Yes or No? If yes, a lease addendum must be completed, attached, and made a part of the property report.

No. Lots will not be leased.

7. Is buyer to pay taxes, special assessments, or to make payments of any kind for the maintenance of common facilities in the subdivision (a) before taking title or (b) after taking title?



If yes, complete the schedule below.

a. No, not before taking title.

b. Yes, after taking title.

**APPROXIMATE AMOUNT OF BUYER'S  
ANNUAL PAYMENTS**

**Taxes:** \$2.20 per hundred dollars on 25 percent of assessed value real estate taxes will be assessed in the name of Buyer as of January 1 following taking title. Such taxes are due and payable to the Treasurer of Shenandoah County, Virginia, on or before December 5 of each year thereafter and presently are \$44.00 per year on a lot selling for \$8,000.00. Buyers are advised to consult with the Commissioner of Revenue of Shenandoah County, Virginia.

**Special Assessments:** \$1,500 as a grant in aid of sewer construction. Lot purchasers agree in their purchase contract to pay the sum of \$1,500.00 to Developer as a grant in aid of sewer construction within 90 days of the time sewer service is available to their lot line. Developer and purchaser may agree to pay the \$1,500.00 in installments pursuant to a financing arrangement to be mutually agreed upon. No charge is made for water system tap-in.

**Payments to Property Owner's Association:** \$30-\$100. After taking title, Buyer automatically becomes a member of Sky Bryce Association, Inc., a lot owners association. The association will establish an annual assessment to be charged to lot owners to be used for road maintenance, garbage and trash removal, security service, and such other purposes as may be decided upon by the association. The present estimated amount of annual assessment is not less than \$30.00 nor more than \$100.00, however, since such fees will be established by the association, Developer can give no assurance as to the amount of the charge. Membership in Sky Bryce Association, Inc., is mandatory while membership in Bryce Mountain Association, the recreational membership association, is optional.

**Other:** None.

**Specify:** Not applicable.

8. a. Will buyer's downpayment and installment payments be placed in escrow or otherwise set aside? Yes or No? If yes, with whom? If not, will title be held in trust or in escrow?

No, except that deposits and downpayments are deposited in a special bank account. Title will not be held in trust or in escrow.

b. Except for those property reservations which land developers commonly convey or dedicate to local bodies or public utilities for the purpose of bringing public services to the land being developed, will buyer receive a deed free of exception? Yes or No? If no, list all restrictions, easements, covenants, reservations and their effect upon the Buyer.

No, Buyers title will be subject to extensive protective covenants, restrictions and reservations attached hereto as Exhibit B which have been duly recorded and are applicable to each Lot in the subdivision which attach to and run with the land to protect property values and provide for a desirable residential community, as well as covenants, easements and restrictions of record in the chain of Title, including but not limited to, telephone line easements, power line easements, and drainage easements.

c. List the permissible uses of the property based upon the restrictive covenants and which are consistent with local zoning ordinances.

There are no Shenandoah County or other local zoning ordinances which restrict the permissible uses of the property, thus only the restrictions, reservations and protective covenants attached hereto as Exhibit B control the use of the property. These restrictions should be consulted for the limits they place on the use of the lot being purchased. Generally, only single family private dwelling houses with a minimum living space of 1,000 square feet with a maximum of 2-1/2 floors are permitted. The developer may alter your plans to build on or use your lot.

You will be required to obtain a building permit before being able to construct on your lot. Building permits are obtained from:

Shenandoah County Department of  
Building Inspections  
French Building  
Woodstock, Virginia 22664

d. List all existing or proposed unusual conditions relating to the location of the subdivision as to noise, safety or other nuisances which affect or might affect the subdivision.

Small aircraft take-off and landing at subdivision airstrip, noise of snowguns when making snow on ski slopes and mechanical sound of ski chair-lift when operating. The land is generally covered with wooded forest and, as such, is subject to some minor damages

from forest fires. Lots 97 through 102 and Lots 114 and 115 of Section III-Extended and Lots 122 through 124, Lots 166 through 176, Lots 228 through 230 and Lot 233 of Section XI are subject to a lake flood line based on the elevation of the spillway of the lake. Any construc-

tion will be required to be outside the flood line.

9. List all recreational facilities currently available, proposed, or partly completed (e.g., swimming pool, golf courses, ski slopes, etc.) and complete the following format for each facility:

| Facility                          | % Complete | Estimated Completion Date | Financial Assurance of Completion | Developer Obligated | Buyer's Cost or Assessments |
|-----------------------------------|------------|---------------------------|-----------------------------------|---------------------|-----------------------------|
| 1. Ski Facility                   | 100%       | N/A                       | N/A                               | N/A                 | *0                          |
| 2. 18 Hole Golf Course            | 100%       | N/A                       | N/A                               | N/A                 | *0                          |
| 3. 2500 foot paved airstrip       | 100%       | N/A                       | N/A                               | N/A                 | *0                          |
| 4. Tennis Courts                  | 100%       | N/A                       | N/A                               | N/A                 | *0                          |
| 5. Hiking and Riding Trails       | 100%       | N/A                       | N/A                               | N/A                 | *0                          |
| 6. Horseback Riding Facility      | 100%       | N/A                       | N/A                               | N/A                 | *0                          |
| 7. Restaurant and Club facilities | 100%       | N/A                       | N/A                               | N/A                 | *0                          |
| 8. 45 acre lake                   | 100%       | N/A                       | N/A                               | N/A                 | *0                          |
| 9. Picnic and Playground area     | 100%       | N/A                       | N/A                               | N/A                 | *0                          |
| 10. Beach and Lake                | 100%       | N/A                       | N/A                               | N/A                 | *0                          |

Bryce's Mountain Resort, Inc. owns and operates the above facilities with the exception of the restaurant and club facilities. The restaurant and club facilities are owned by Richard E., Jr. and Barbara P. Green with the restaurant being operated by Bryce's Mountain Resort, Inc. and the club facilities being operated by the Bryce Mountain Golf and Ski Club.

\* No charges or assessments will be made to lot purchasers for maintenance of these facilities. Use of the facilities for skiing, golfing, swimming and tennis will be charged to lot purchasers at regular rates or those established through membership in Bryce Mountain Association. The annual fee for Bryce Mountain Association is \$400 per annum for a family consisting of husband and wife and two dependent children plus \$50 for each additional child and may be changed at the discretion of Developer. Except for free access to and use of the lake (excluding gasoline or other marine, boating, fishing or swimming equipment or supplies) property ownership does not entitle a lot purchaser to free use of these recreational facilities. The purchase contract contains a provision permitting the purchasers' use of such facilities through payment of annual fee or on a per use basis as purchaser may desire. Equipment rentals, horse rentals and individual items for use with the recreational facilities are available to lot purchasers at regularly established rates.

10. State availability of the following in the subdivision: state any estimated costs or assessments to buyer or lessee. If only proposed or partly completed, state estimated completion date, state provisions to assure completion, and give an estimate of all costs to buyer or lessee, including maintenance costs.

#### a. Roads:

##### 1. Access:

###### Paved —

Access is attained to the subdivision by way of a two lane State Route 263 from Mount Jackson, Virginia to Basye, Virginia.

###### Unpaved —

None.

##### 2. Road system within the Subdivision:

Roads within the subdivision are under construction and will be shale based with crushed gravel and one shot-oiled surface.

The Estimated Schedule for Completion is as follows:

Sections III, V-Extended, VIIA & B, VIII, IX, IX-Extended, X, X-Ex-

tended, XI, XII, and additions to IX  
and IX-Extended ..... Dec., 1975.

Sections III-Extended and VIIC ....  
..... Dec., 1979.

The estimated completion dates for  
Sections VIIA & B, VIII, IX, and IX-  
Extended were previously December,  
1974; for Sections III-Extended and  
VIIC, estimated completion dates were  
December, 1975.

The Developer has not set aside any  
money or entered into any bond, escrow  
or trust arrangement to assure comple-  
tion of the subdivision roads. Accord-  
ingly, there is no assurance, other than  
the promise of the Developer, that the  
subdivision roads will be completed.

Subdivision roads have not and will  
not be accepted by local authorities.  
Once the roads are completed, the lot  
purchaser will be responsible to maintain  
the same through Sky Bryce Association,  
Inc. and the estimated cost thereof in-  
cluded in the annual property owners  
assessment.

**Paved —**

Paved roads are approximately  
21% complete.

**Unpaved —**

Cut to subgrade — 99% complete.

Crushed gravel with no shot-oil  
surface — approximately 47% com-  
plete.

**b. Utilities:**

**1. Water**

All lots will be served by common  
wells drilled at the expense of Developer  
and, at present, intended to be subse-  
quently operated and maintained by a  
public utility corporation. Water lines  
will be extended to individual lots within  
30 days after lot owner requests service.  
Despite Covenant No. 16 (See Exhibit B  
attached), you will not be permitted to  
use individual water systems and water  
will not be available to your lot until after  
the well serving your lot is drilled and  
lines from such well run to your lot.  
Developer is not obligated to drill the  
wells. The Developer has not set aside

any money or entered into any bond,  
escrow or trust arrangement to assure  
completion of the well system. Accord-  
ingly, there is no assurance, other than  
the promise of the Developer, that the  
well system will be completed. Currently,  
there is no charge for water service but  
charges may be made in the future  
when, and if, the system is transferred to  
and water service is provided by a public  
utility corporation. Such a corporation  
would be 100 % owned by Developer.  
The corporation's rates and tariffs will  
be approved and regulated by the State  
Corporation Commission. Water is avail-  
able to approximately 30 % of the lots  
within the subdivision. A permit to  
operate a public water supply has not  
been obtained and there is no assurance  
that the lot owners will be able to use the  
wells. The Developer has not obtained a  
report from a cognizant health officer on  
the quality and purity of water. Accord-  
ingly, there is no assurance that the avail-  
able water will be either pure or of ac-  
ceptance quality. Developer has ob-  
tained reports from the Commonwealth  
of Virginia indicating the well water is  
free from bacteriological contamination  
as indicated by Coliform bacteria.  
Occasionally, such a report indicates the  
possibility of contamination. If so, the  
well is treated with chlorine and re-tested  
until reports are negative.

**2. Electricity**

Electricity lines are now available at  
the subdivision and electrical service  
will be extended to the individual lots as  
the use for such service demands. Said  
service is provided by regulated public  
utilities and charges to buyers by them  
will be in accordance with approved  
rates and tariffs. Buyers are required to  
have underground service. A charge,  
estimated at not more than \$250.00 will  
be made for providing underground  
power service to the lot line. You will be  
responsible for this charge at the time  
you construct a dwelling or 5 years from  
date of lot purchase, whichever is earlier.

**3. Gas**

Natural gas is not available in this  
subdivision. Fuel oil is available at a  
current charge of 36-1/4 cents per gallon  
plus \$75.00 for fuel oil storage tank.

Bottled LP gas is available at a current charge of 14-1/2 cents per pound in cylinders or 35 cents per gallon in bulk storage. A lease fee varying from \$15.00 to \$75.00 is charged for the bulk storage tank depending on its size. These prices are subject to change and you should consult local suppliers.

#### 4. Telephone

Telephone lines are now available at the Subdivision and telephone service will be extended to the individual lots as the use for service demands. Said service is provided by a regulated public utility and charges to the buyers by the utility will be in accordance with approved, regulated rates and tariffs. Buyers are required to have underground service. There is no underground installation charge for telephone service.

#### 5. Sewage Disposal

Developer is now installing a central sewage system. Despite the Covenant No. 16 (See Exhibit B attached hereto) you will not be permitted to use an individual sewage disposal system; sewage disposal will not be available to your lot until after the central sewage system has been installed.

Some Sections presently have central sewer available. The estimated schedule for completion for Sections which do not have sewer is as follows:

Sections III, V-Extended, X, X-Extended, XI, XII, and additions to IX and IX-Extended ..... Dec., 1975.

Sections III-Extended and VIIC ..... Dec., 1979.

The estimated completion dates for Sections X and X-Extended were previously December, 1974; for Sections III-Extended and VIIC, estimated completion dates were previously December, 1975. Completion schedules depend upon the availability of funds.

Developer is not obligated to complete the sewer system. Purchaser agrees in the purchase contract to pay the sum of \$1,500.00 to Developer as a grant-in-aid of sewer construction within 90 days of the time sewer service is available at purchaser's lot line. A sewer connection fee of \$50.00 is charged for each non-

multifamily residential unit. The current sewer service user charge is \$24.75 per quarter. An escrow agreement has been set aside to assure completion of part of this project. The Developer has not set aside any money or entered into any bond, escrow or trust arrangement to assure completion of the entire sewer facility. Accordingly, there is no assurance, other than the promise of the Developer, that the sewer facility will be completed. Developer owns 100 % of the issued stock of the public utility corporation which will own and operate the sewer facilities. Sewer service is available to approximately 50 % of the lots in the Subdivision.

#### 6. Drainage and Flood Control

It is contemplated that the only drainage work required for construction on lots will be the digging of shallow drainage ditches at appropriate places for the control of surface water as in normal subdivision development. No drainage will be required to render any of the lots suitable for construction purposes.

#### 7. Television

Depending on lot location, generally acceptable television reception is available from Channel 3, Harrisonburg, Virginia. Fringe area television reception with antennae is available from Washington, D. C. and Richmond, Virginia.

#### c. Municipal Services:

##### 1. Fire Protection

The Orkney Springs Volunteer Fire Department offers year-round fire protection to the subdivision and is located approximately one and one-half miles from Basye, Virginia. Service is provided at no cost to the property owners. The Fire Department is supported, in part, by donations. Property owners, at their discretion, contribute to the Fire Department.

##### 2. Police Protection

Police protection is available from:

(a) Virginia State Police  
Woodstock, Virginia 22664

(b) Shenandoah County Sheriff's  
Department  
Woodstock, Virginia 22664

(c) Bryce Mountain Resort Security  
Bryce Mountain Resort

The Virginia State Police is provided by the Commonwealth of Virginia. The Sheriff's Department is provided by Shenandoah County. Bryce Mountain Resort Security is provided by the Sky Bryce Association, Inc. (Property Owners Association) and the Developer with each sharing in the expense of same. Bryce Mountain Resort Security currently provides police protection from 5 P.M. to 9 A.M. daily.

**3. Garbage and Trash Collection**

Garbage and trash removal is provided by the Sky Bryce Association, Inc. (Property Owners Association) and is included in the annual fee.

**4. Public Schools**

The nearest elementary school available to residents of the Subdivision is located in Mount Jackson, Virginia, approximately 11 miles from the center of the Subdivision.

The nearest junior and senior high school available to the residents of the Subdivision is located at Mount Jackson, Virginia, approximately 14 miles from the center of the Subdivision.

School bus transportation is available on state access roads to the subdivision. Public transportation is not available to the schools.

**5. Medical and Dental Facilities**

There is a hospital located at Woodstock, Virginia. The Shenandoah County Memorial Hospital has 129 beds, is a public hospital offering general services and is located 20 miles from the subdivision.

Ambulance services to the hospital is available from the Mount Jackson Rescue Squad, Mount Jackson, Virginia.

Doctors and dentists are located at Mount Jackson, Virginia, Woodstock, Virginia and Harrisonburg, Virginia, 11 miles, 20 miles and 34 miles, respectively, from the subdivision.

**6. Public Transportation**

Public transportation is not available

from the subdivision to nearby municipalities. The closest public transportation is bus service in Mount Jackson, Virginia, 11 miles away.

**7. U.S. Postal Service**

Mail is not delivered to lots in the Subdivision. Lot purchaser may have their mail addressed "c/o General Delivery, Basye, Virginia, 22810." and pick up at the post office in the center of the Subdivision.

**11. Will the water supply be adequate to serve the anticipated population of the area?**

An adequate water supply is believed to be available. The Developer has not obtained an engineer's report or a hydrological survey indicating the source and quantity of water in the Subdivision and accordingly, there is no assurance that a sufficient quantity of water will be available to serve the anticipated population of the area.

**12. Is any drainage or surface water, or use of fill necessary to make lots suitable for construction of a one-story residential structure? Yes or No? If yes, state whether any provision has been made for drainage or fill and give estimate of any costs buyer would incur.**

No. Drainage or fill is not required for homesites. However, due to the rolling nature of the terrain, buyers may wish to regrade certain lots to adapt particular structures to the property.

**13. State whether shopping facilities are available in the subdivision. If not, state the distance in miles to such facilities and whether public transportation is available.**

Small general store shopping facilities are located at the subdivision in Basye, Virginia. Larger shopping facilities are located in Mt. Jackson, Woodstock, Harrisonburg, Winchester and other communities listed in Paragraph 3 above. There is not public transportation from the subdivision to these facilities.

**14. How many homes were occupied as of October 31, 1974?**

190

**15. a. State elevation of the highest and lowest lots in the Subdivision and briefly describe topography and physical characteristics of the property.**

The elevation of the highest and lowest lots in the subdivision is 1,720 feet a.m.s.l., and

1,200 feet a.m.s.l., respectively. The terrain in the subdivision varies from gently sloping to relatively rugged mountainous or hilly land with a relatively narrow valley passing through its center. Lots are generally wooded and the soil is typical alkaline, shale mountain soil.

b. State in inches the average annual rainfall and, if applicable, the average annual snowfall for the subdivision or the area in which it is located.

According to information from Virginia Polytechnic Institute and State University Cooperative Extension Service (County Agent's Office) Woodstock, Virginia, covering the thirty year period from 1934 to 1963, the average annual rainfall is 35.8 inches and the snowfall is 33.2 inches.

c. State temperature ranges for summer and winter, including highs, lows and means.

The 30-year averages supplied by the same source are as follows:

Summer: high 85.8°; low 60.5°; mean 73.2°

Winter: high 49.7°; low 25.0°; mean 35.6°

16. Will any subsurface improvement, or special foundation work be necessary to construct one-story residential or commercial structures on the land?

Some of the lots may require the use of pier type construction (concrete tubes or equivalent) due to steepness of the individual lot. This may, but does not necessarily result in higher costs. Buyer should check with his builder or architect as to necessary foundation work.

17. State whether there is physical access (by conventional automobile) over legal rights-of-way to all lots and common facilities in the subdivision. State whether the access will be by public or private roads and streets and whether they will be maintained by public or private funds.

Yes. All of the roads leading to the subdivision are public. The lots within the subdivision are located on private roads which are to be maintained by private funds. Access is guaranteed to each lot and to the common facilities through duly recorded plats and covenants by the Developer. See Reply to Question 10 of this Report for further information on this subject.

18. Has land in the subdivision been platted of record? Yes or No? If not, has it been surveyed? Yes or No? If not, state estimated cost to buyer to obtain a survey.

Yes. All lots in the subdivision have been surveyed and platted of record. Recordation refer-

ences to such plats are given in Question 2 of this Property Report.

19. Have the corners of each individual lot been staked or marked so that the purchaser can identify his lot? If not, state the estimated cost to the purchaser to obtain a survey and to have the corners of his lot staked or marked.

Yes.

20. Does the Developer have a program in effect to control soil erosion, sedimentation and flooding throughout the entire subdivision? Yes or No? Describe the program, if any. Has the plan been approved or must it be approved by officials responsible for the regulation of land development? Yes or No? Is the Developer obligated to comply with the Plan? Yes or No?

No. Erosion and flooding could result in property damage and could create a health and safety hazard. Bryce Mountain has not experienced property damage or health and safety hazards due to soil erosion, sedimentation and flooding.

21. State whether or not the Developer has a deficit in retained earnings or has experienced an operating loss during the last fiscal year. Yes or No. If yes, your attention is directed to those items in the Property Report wherein the Developer may have promised to complete certain facilities or to discharge financial obligations.

Yes. The Developer experienced an operating loss during the last fiscal year.

22. State whether the accountant qualified his opinion on the financial statements. Yes or No. If yes, your attention is called to the copy of that opinion in Exhibit A of this Property Report.

Yes.

23. State whether the Subdivision or any of the parties involved in the Development of the Subdivision have been or are parties to disciplinary proceeding, bankruptcies or litigation which may materially affect lot purchasers in this Subdivision.

There are some twenty cases currently pending in federal court wherein plaintiffs seek to rescind their Bryce Mountain lot purchases, based on an allegation that plaintiffs did not receive an effective property report at the time of their purchase. Four of these plaintiffs seek to bring a class action on behalf of similarly situated purchasers. In a decision handed down in July, 1974, the Court ruled that purchasers who bring such suits must do so within two years of their

purchase or they are barred by the statute of limitations. Since all of the above named plaintiffs purchased more than two years prior to filing suit, Bryce Mountain has moved to dismiss all cases. Neither these motions nor plaintiffs defense thereto have been ruled on by the Court. If the class actions are certified as a class and the plaintiffs successfully avoid the Court's decision on the statute of limitations the plaintiffs would then be entitled to re-convey their lots to the Developer and receive a refund. Such a result may affect the Developer's ability to complete promised facilities on schedule.

24. Does the Developer operate, or propose to operate, a program for the resale of Purchasers' lots or to assist them in the resale of their lots?

No.

#### **SPECIAL RISK FACTORS**

a. The future value of land is very uncertain; do NOT count on appreciation.

b. You may be required to pay the full amount of your obligation to a bank or third party to whom the Developer may assign your contract or note, even though the Developer may fail to fulfill promise he has made.

c. Resale of your lot may be subject to the Developer's restrictions, such as limitations on

the posting of signs, limitations to the rights of other parties to enter the subdivision unaccompanied, membership prerequisites or approval requirements, or Developer's first right of refusal. You should check your contract for such restrictions and also note whether your lien or any other liens on the property would affect your right to sell your lot.

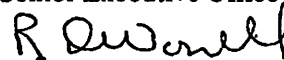
d. You should consider the competition which you may experience from the Developer in attempting to resell your lot and the possibility that real estate brokers may not be interested in listing your lot.

e. Changing land development and land use regulations by Government agencies may affect your ability to obtain licenses or permits or otherwise affect your ability to use the land.

#### **FINANCIAL STATEMENTS**

You should carefully review the attached financial statements of the Developer (see Exhibit A).

Signature of the Senior Executive Office of the Developer.



R. D. Worrell

Executive Vice President

January 10, 1975

**EXHIBIT A**

**BRYCE'S MOUNTAIN RESORT, INCORPORATED**

**CONSOLIDATED FINANCIAL STATEMENTS**

**October 31, 1973**



BRYCE'S MOUNTAIN RESORT, INCORPORATED

OFFICERS

Joseph W. Luter, III  
*President*  
*and*  
*Chairman of the Board*

Lewis F. Baxter, Jr.  
*Treasurer*

Reed Miller  
*Secretary*

Robert D. Worrell  
*Executive Vice President*

DIRECTORS

Ernest A. Anderson  
Addison Armstrong  
Barbara J. Armstrong  
H. William Brawley

Jewel Ann Brice  
Paul B. Brice  
Emily B. Coughlin  
Joseph W. Luter, III

Robert D. Worrell

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HAMILL, GRISSOM AND COMPANY

Certified Public Accountants  
1414 United Virginia Bank Building  
5 Main Plaza East  
Norfolk, Virginia 23510  
(804) 622-4000

Walter F. Hamill, Jr., C.P.A.  
Allen R. Grissom, C.P.A.

Lawton H. Baker, C.P.A.

Members  
American Institute of  
Certified Public Accountants  
Virginia Society of  
Certified Public Accountants

To the Board of Directors of

Bryce's Mountain Resort, Incorporated:

We have examined the consolidated balance sheet of Bryce's Mountain Resort, Incorporated and subsidiaries as of October 31, 1973 and the related consolidated statements of income, retained earnings and changes in financial position for the year then ended. Our examination was made in accordance with generally accepted auditing standards, and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances except that we did not verify estimated development costs which enter in the determination of deferred income and earned improvements revenue.

The accumulative effect of a change in estimated costs to complete future improvements, applicable to prior years' sales, is reflected in the period during which a change in estimated costs becomes evident. Because of the nature of the adjustments (See Note 9), management considers it more appropriate to reflect the effect of these adjustments in the current period rather than over the periods during which the future improvements are to be completed.

The aforementioned financial statements reflect a retroactive change in accounting method to conform to the American Institute of Certified Public Accountants Industry Guide on "Accounting for Retail Land Sales" (See Note 11) with which we concur. They do not conform to standard reporting in that the restated financial information for the preceding four years is not presented.

The company is advising certain lot purchasers that they may have rights provided by the Interstate Land Sales Disclosure Act. These rights may exist as a result of technical violations of the act. The scope of our examination could not be extended sufficiently to determine the possible outcome of the action.

In our opinion, subject to any adjustment to the balance sheet and statement of retained earnings which may result from 1) the company's actual cost to complete the land development of lots sold, and/or 2) any unfavorable results of litigation regarding the possible rights of certain lot purchasers, the consolidated balance sheet and consolidated statements of income, retained earnings and changes in financial position present fairly the consolidated financial position of Bryce's Mountain Resort, Incorporated and subsidiaries at October 31, 1973 and the consolidated results of their operations and changes in financial position for the year then ended. Accounting principles have not been consistently applied to prior years' financial statements in that no restated financial statements are presented. Therefore, with respect to consistency, the consolidated financial statements are not fairly presented on a basis consistent with preceding years.

HAMILL, GRISSOM AND COMPANY

Norfolk, Virginia

December 12, 1973

BRYCE'S MOUNTAIN RESORT, INCORPORATED

CONSOLIDATED BALANCE SHEET

October 31, 1973

ASSETS

|  |                  |    |                   |
|--|------------------|----|-------------------|
| Cash   |                  | \$ | 435,500           |
| Restricted Cash  |                  |    | 405,500           |
| Contracts and Notes Receivable on Land Sales<br>(Net of \$3,136,700 Deferred Interest) | \$ 13,518,600    |    |                   |
| Less: Allowance for Cancellations  | ( 1,848,200)     |    |                   |
| Unamortized Valuation Discount   | ( 1,297,600)     |    | 10,372,800        |
| Mortgages and other Receivables  |                  |    | 118,200           |
| Receivables from Employees, Officers and Affiliates                                    |                  |    | 41,800            |
| Inventory  |                  |    | 68,400            |
| Prepaid Expenses   |                  |    | 82,800            |
| Development Costs  |                  |    |                   |
| Land being Improved  | \$ 375,800       |    |                   |
| Improvements   | 1,399,200        |    |                   |
| Unimproved Land and Options  | <u>2,283,700</u> |    | 4,058,700         |
| Property and Equipment (Net of \$1,483,400 Accumulated Depreciation)                   |                  |    | 2,506,700         |
| Utility System (Net of \$2,128,200 Grants-in-Aid of Construction)                      | \$ 203,800       |    |                   |
| Less: Accumulated Depreciation   | ( 48,700)        |    | 155,100           |
| Investments – at Cost (No Market)  |                  |    | 147,100           |
| Goodwill   |                  |    | <u>12,400</u>     |
|  |                  | \$ | <u>18,405,000</u> |

## LIABILITIES

|  |               |
|--|---------------|
| Bank Overdraft                               | \$ 226,600    |
| Accounts Payable                             | 428,500       |
| Mortgages, Notes, and Debentures Payable     | 6,227,500     |
| Mortgages and Land Purchase Notes Payable    | 864,800       |
| Accrued Commissions and Wages                | 66,300        |
| Accrued Interest                             | 113,600       |
| Accrued Taxes                                | 59,100        |
| Other Payables                               | 12,300        |
| Income Taxes — Deferred                      | 405,000       |
| Deferred Revenue — Future Improvements       | 8,735,300     |
| Deposits                                     | <u>21,500</u> |
| Total Liabilities                            | \$ 17,160,500 |
| Minority Interest in Consolidated Subsidiary | 45,300        |

## STOCKHOLDERS' EQUITY

|   |                      |
|---|----------------------|
| Paid-In Capital                           |                      |
| Common Stock — \$2.50 par, 200,000 Shares |                      |
| Authorized; 49,515 Shares Issued          | \$ 123,800           |
| Additional Paid-In Capital                | <u>1,161,500</u>     |
|   | \$ 1,285,300         |
| Retained Earnings                         | <u>117,400</u>       |
|   | \$ 1,402,700         |
| Treasury Stock — 7,000 Shares at Cost     | <u>( 203,500)</u>    |
| Total Stockholders' Equity                | <u>1,199,200</u>     |
|   | <u>\$ 18,405,000</u> |

BRYCE'S MOUNTAIN RESORT, INCORPORATED  
CONSOLIDATED STATEMENT OF RETAINED EARNINGS  
FOR THE YEAR ENDED OCTOBER 31, 1973

Beginning Balance

|  |                     |
|--|---------------------|
| As Previously Reported   | \$ 1,649,800        |
| Adjustment for Change in Accounting Method (Net of<br>\$1,160,700 Income Tax Effect) | <u>( 1,117,500)</u> |

|             |            |
|-------------|------------|
| As Restated | \$ 532,300 |
|-------------|------------|

|                       |                   |
|-----------------------|-------------------|
| Net Loss for the Year | <u>( 414,900)</u> |
|-----------------------|-------------------|

|                |                          |
|----------------|--------------------------|
| Ending Balance | <u><u>\$ 117,400</u></u> |
|----------------|--------------------------|

*See accompanying summary of significant accounting policies and  
notes to financial statements*

BRYCE'S MOUNTAIN RESORT, INCORPORATED  
CONSOLIDATED STATEMENT OF INCOME  
FOR THE YEAR ENDED OCTOBER 31, 1974

REVENUES

|  |                  |                  |
|--|------------------|------------------|
| Land Sales (Net of \$385,500 Current Year Cancellations) |                  | \$ 10,705,000    |
| Less: Estimated Uncollectible Sales                      | \$ 1,067,700     |                  |
| Current Revenue Deferred – Future Improvements           | 4,427,800        |                  |
| Valuation Discount                                       | <u>1,010,500</u> | <u>6,506,000</u> |
| Net Land Sales   |                  | \$ 4,199,000     |
| Deferred Improvement Revenue Earned                      |                  | 557,500          |
| Bulk Land Sales  |                  | 100,000          |
| Interest Income  |                  | 825,300          |
| Valuation Discount Earned                                |                  | 205,100          |
| Other Income   |                  | <u>1,046,500</u> |
|  |                  | \$ 6,933,400     |

COST OF REVENUE

|                 |                |                  |
|-----------------|----------------|------------------|
| Land Sales      | \$ 1,372,600   |                  |
| Bulk Land Sales | 2,400          |                  |
| Other           | <u>120,700</u> | <u>1,495,700</u> |
|                 |                | \$ 5,437,700     |

SELLING EXPENSES

(\$ 2,565,300)

OPERATING, GENERAL AND

ADMINISTRATIVE EXPENSES

(\$ 2,490,600)

|  |                |
|--|----------------|
| Income Before Income Taxes, Minority Interest, Extraordinary Credit and Cumulative Effect of Change in Estimated Development Costs | \$ 381,800     |
| PROVISION FOR INCOME TAXES (Net of \$11,400 Investment Credit)   | <u>205,600</u> |

Income Before Minority Interest \$ 176,200

MINORITY INTEREST

8,200

Net Income Before Extraordinary Credit and Cumulative Effect of Change in Estimated Development Costs \$ 168,000

EXTRAORDINARY CREDIT – REDUCTION IN  
IN FEDERAL INCOME TAX PROVISION  
RESULTING FROM TAX LOSS  
CARRYFORWARD

18,600

CUMULATIVE EFFECT ON YEARS PRIOR TO  
1973 OF A CHANGE IN ESTIMATED DEVELOPMENT  
COSTS (Net of \$629,000 Income Tax Effect)

( 601,500)

NET LOSS

(\$ 414,900)

EARNINGS PER SHARE (42,515 Shares)

Income Before Extraordinary Credit  
and Cumulative Effect of Change  
in Estimated Development Costs

\$ 3.95

Extraordinary Credit

.44

Cumulative Effect of Change

in Estimated Development Costs

(\$ 14.15)

NET LOSS

(\$ 9.76)

*See accompanying summary of significant accounting policies and  
notes to financial statements*



BRYCE'S MOUNTAIN RESORT, INCORPORATED  
CONSOLIDATED STATEMENT OF CHANGES IN FINANCIAL POSITION  
FOR THE YEAR ENDED OCTOBER 31, 1973

**CASH GENERATED**

|  |                            |
|--|----------------------------|
| Net Income Before Extraordinary Items<br>and Effect of Cumulative Change in<br>Estimated Costs | \$ 168,000                 |
| Add: Items which Net Effect did not<br>Require or Generate Cash                                |                            |
| Depreciation and Amortization  | 365,900                    |
| Other Items of Income, Cost and Expense  | 619,200                    |
| Minority Interest in Net Earnings  | <u>8,200</u>               |
| Cash Generated from Operations   | \$ 1,161,300               |
| Issuance of Common Stock in Subsidiary   | <u>5,500</u>               |
|  | <u><u>\$ 1,166,800</u></u> |

**CASH APPLIED**

|                                     |                            |
|-------------------------------------|----------------------------|
| Sewer Utility Escrow Increase       | \$ 350,000                 |
| Notes Payable — Stockholder         | 10,000                     |
| Purchase of Treasury Stock          | 150,000                    |
| Utility System                      | \$707,600                  |
| Less: Grants-in-Aid of Construction | <u>663,000</u>             |
|                                     | 44,600                     |
| Property, Plant and Equipment       | 438,300                    |
| Increase in Cash                    | <u>173,900</u>             |
|                                     | <u><u>\$ 1,166,800</u></u> |

*See accompanying summary of significant accounting policies and  
notes to financial statements.*

BRYCE'S MOUNTAIN RESORT, INCORPORATED  
CONSOLIDATED SCHEDULE OF SELLING EXPENSES  
FOR THE YEAR ENDED OCTOBER 31, 1973

|                          |                     |
|--------------------------|---------------------|
| Advertising              | \$ 902,000          |
| Commission Incentive     | 64,800              |
| Insurance                | 1,300               |
| Interest                 | 14,900              |
| Management Services      | 14,800              |
| Miscellaneous            | 21,700              |
| Office                   | 20,500              |
| Payroll Taxes            | 30,900              |
| Professional Fees        | 1,500               |
| Rent                     | 17,700              |
| Repairs                  | 700                 |
| Salary                   | 507,600             |
| Salesmen Commissions     | 874,800             |
| Telephone                | 56,700              |
| Travel and Entertainment | <u>35,400</u>       |
|                          | <u>\$ 2,565,300</u> |

BRYCE'S MOUNTAIN RESORT, INCORPORATED

CONSOLIDATED SCHEDULE OF GENERAL AND ADMINISTRATIVE EXPENSES

FOR THE YEAR ENDED OCTOBER 31, 1973

|                               |                            |
|-------------------------------|----------------------------|
| Advertising                   | \$ 81,700                  |
| Bad Debts                     | 25,500                     |
| Closing and Recording         | 13,600                     |
| Depreciation and Amortization | 365,900                    |
| Employee Benefits             | 36,000                     |
| Insurance                     | 72,300                     |
| Interest                      | 502,300                    |
| Maintenance and Repair        | 93,300                     |
| Office                        | 49,200                     |
| Other Operating Expenses      | 28,800                     |
| Professional Fees             | 173,900                    |
| Rent                          | 17,800                     |
| Salaries                      | 668,000                    |
| Small Tools and Supplies      | 39,200                     |
| Taxes and Licenses            | 137,000                    |
| Telephone                     | 35,400                     |
| Travel and Entertainment      | 54,500                     |
| Utilities                     | <u>96,200</u>              |
|                               | <u><u>\$ 2,490,600</u></u> |

## BRYCE'S MOUNTAIN RESORT, INCORPORATED

### SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

October 31, 1973

#### 1) PRINCIPLES OF CONSOLIDATION

The consolidated financial statements include the accounts of the parent, Bryce's Mountain Resort, Incorporated and all subsidiaries. All significant intercompany accounts and transactions are eliminated in consolidation and net earnings are reduced by the portion of the earnings of the subsidiaries applicable to minority share owners.

#### 2) CHANGE IN ACCOUNTING METHOD FOR RETAIL LAND SALES

Prior to 1973, income from retail site sales was recognized at closing. Cost of land and related estimated improvement costs were charged to operations at the time of sale.

In 1973 the American Institute of Certified Public Accountants approved an Accounting Guide on "Accounting for Retail Land Sales." To conform with these new industry accounting requirements, Bryce's has retroactively changed its method of accounting for retail land sales to the accrual method as defined in the guide.

Bryce's has also retroactively provided for a valuation discount on sewer availability fees receivable (with no stated interest) to yield an interest rate of 12% over their estimated collection period.

#### 3) RECOGNITION OF INCOME

Revenue is recognized on the accrual basis as defined by the AICPA Industry Accounting Guide "Accounting for Retail Land Sales" issued in 1973, (a percentage of completion of related improvements for the sites sold) at the time of contract closing, provided the purchaser has made a downpayment of at least 10%. Title passes at closing, and the balance of the sales price is evidenced by a note, secured by a deed of trust, primarily payable in monthly installments for a period of seven to ten years. The notes bear interest ranging from 8% to 10.6% with imputed interest to effect an interest rate between 10.6% and 12%. The weighted average interest rate, giving effect for imputed interest, is 11.3%. Generally, notes which exceed a ninety-day delinquency period are considered cancelled for accounting purposes.

Sales of sites are generally closed prior to the completion of the associated land improvements (such as roads, water service and utility disposal system). The anticipated cost of such land development work to be completed in the future is used to compute the percentage of completion for revenue deferral and recognition. Cost of site sales is allocated to the sites based on a) the relationship of sales price to total estimated sales price per section, and b) the total number of sites which the project is expected to yield.

Costs completed on site sales are charged against income at the time the revenue is recognized. Such expenses are composed of unimproved land and estimated costs of required improvements. The adequacy of estimated development costs is reviewed annually; the cumulative effect of changes in estimated costs are reflected in the period during which such change becomes evident.

Offsite amenities, consisting of golf course, club house, ski slopes, etc., are considered as part of the ongoing operations, and as such are being depreciated over their estimated useful lives.

Cancellations of prior years' sales result in a charge to the allowance for loss on contract cancellations. This charge is the unpaid balance of the contract, less recoverable expenses. An allowance of approximately 10% of the contract price is provided for losses on contract cancellations by charges to income to provide for estimated future cancellation losses.

The sales contract requires the purchaser to pay \$1,500 on the cost of a central utility disposal system. The company records the \$1,500 as a part of land sales revenue. Interest is imputed on the \$1,500 receivable to effect a 12% interest rate over the estimated average collection period of four years.

Interest, real estate taxes, and various other items are charged to operations when incurred, rather than being capitalized and charged to operations through cost of land sales.

Advertising and promotional expenses are charged to operations when incurred.

4) INVENTORY

Inventories are stated at the lower of cost (first-in, first-out method) or market.

5) PROPERTY

Most fixed assets are carried at cost. Approximately \$75,000 of present property was acquired by exchange of stock at the date of incorporation in 1965 and is carried at the 1965 appraised book value which exceeds tax book value by approximately \$10,000.

6) DEPRECIATION AND AMORTIZATION

Depreciation and amortization are computed on the straight line and declining balance methods over the assets' estimated useful lives. Assets acquired for capital stock at incorporation were recorded at appraised value and are depreciated accordingly.

The excess of cost of subsidiary over net assets acquired is being amortized ratably over a five-year period.

7) MAINTENANCE AND REPAIRS

Maintenance and repairs are charged to operating expenses as incurred. Cost of betterments are capitalized and property replaced or removed is accounted for as a retirement.

8) INVESTMENTS

Investments in corporations which represent less than 20% ownership by the company are carried at cost.

9) INCOME TAXES

The company and its subsidiaries file consolidated Federal income tax returns. Deferred income tax reflects the timing differences for recording material items of income and expense on the books, and the inclusion of such items in taxable income. Such timing differences relate primarily to a) the allowance for loss on contract cancellations and valuation discounts which are recognized only in financial reporting and b) the income tax use of the installment and cash sales method of income recognition for land sales, whereas the percentage of completion is used for financial reporting.

Investment tax credits are accounted for on the flow-through method which reduces federal income tax expense for the year in which the asset was placed in service.

The additional income tax, if any, payable when earnings of subsidiaries are transferred to the parent company is charged to earnings in the year of transfer.

10) DEPOSITS

Advance receipts for annual recreational passes are reflected in income when the service is provided.

Advance receipts on land sales contracts are reflected in income when the sale is recorded or the deposit forfeited.

**11) DEFERRED INTEREST**

Deferred interest income is recognized in revenue pursuant to the rule of seventy-eights computed from the date of the note, and reflected when payments on the notes are received. Unamortized valuation discount is recognized as interest income ratably over the life of the related receivable.

**12) EARNINGS PER SHARE**

Earnings per share are based on shares outstanding at the end of the company's fiscal year rather than on average shares outstanding during the period. Changes in the company's capital stock are relatively infrequent.

**13) START-UP AND PREOPERATING COSTS**

Start-up and preoperating costs are charged to expense as incurred.

BRYCE'S MOUNTAIN RESORT, INCORPORATED

NOTES TO FINANCIAL STATEMENTS

October 31, 1973

NOTE 1 — CONTRACTS AND NOTES RECEIVABLE ON LAND SALES

Maturities of gross notes receivable from land sales contracts, including deferred interest and unamortized valuation discount are:

|                                    |                     |
|------------------------------------|---------------------|
| Fiscal year ended October 31, 1974 | \$ 2,730,000        |
| Fiscal year ended October 31, 1975 | 3,000,000           |
| Fiscal year ended October 31, 1976 | 2,950,000           |
| Fiscal year ended October 31, 1977 | 2,660,000           |
| Fiscal year ended October 31, 1978 | 2,370,000           |
| Thereafter                         | 2,950,000           |
|                                    | <u>\$16,660,000</u> |

The percentage of contracts expected to pay out to maturity is estimated by management to be 90%.

NOTE 2 — PROPERTY

|                                |                     |
|--------------------------------|---------------------|
| Golf Course under Construction | \$ 170,000          |
| Buildings and Improvements     | 1,010,000           |
| Machinery and Equipment        | 1,950,000           |
| Furniture and Fixtures         | 240,000             |
| Land and Slopes                | 620,000             |
|                                | <u>\$ 3,990,000</u> |
| Accumulated Depreciation       | <u>1,480,000</u>    |
|                                | <u>\$ 2,510,000</u> |

NOTE 3 — MORTGAGES AND LAND PURCHASE NOTES PAYABLE

Mortgages and land purchase notes payable mature as follows:

|                                    |                   |
|------------------------------------|-------------------|
| Fiscal year ended October 31, 1974 | \$ 279,700        |
| Fiscal year ended October 31, 1975 | 131,900           |
| Fiscal year ended October 31, 1976 | 131,900           |
| Fiscal year ended October 31, 1977 | 105,100           |
| Fiscal year ended October 31, 1978 | 105,100           |
| Thereafter                         | 111,100           |
|                                    | <u>\$ 864,800</u> |

The obligations bear interest at annual rates of 5% to 7% and the weighted average interest rate is 6.9%.

#### NOTE 4 — MORTGAGES AND NOTES PAYABLE

The notes payable at October 31, 1973 which are secured by substantially all of the company's assets are as follows:

|  |                     |
|--|---------------------|
| Economic Development Administration 4%   | \$ 157,600          |
| Virginia National Bank 10.5%             | 3,250,000           |
| Bank of Virginia 11%                     | 2,400,200           |
| Other Bank Loan 5.6% to 11.08%           | 306,500             |
| Subordinate Debentures (called 10-73) 6% | 11,700              |
| Life Insurance Loan (Net of CSV) 5.6%    | 4,900               |
| Chattel Mortgages                        | 48,600              |
| Treasury Stock Purchase 6%               | 48,000              |
|  | <u>\$ 6,227,500</u> |

The weighted average interest rate is 10.30%.

Bryce has a \$4,000,000 10½% line of credit agreement with Virginia National Bank and a \$3,000,000 11% line of credit agreement with the Bank of Virginia. Some of the stipulations of the agreements are:

- a) Substantially all property and receivables (generated as a result of site sales) shall be pledged as security on the loan, including assignment of all life insurance policies. Net unpaid sales contracts shall at all times equal at least 150% of the total outstanding loan.
- b) No dividends can be paid without approval.
- c) Except for lot sales, no assets in excess of \$5,000 can be disposed of without approval.
- d) No reduction of paid-in capital, no merger, nor any sale of the corporation can be effected without approval.
- e) The Bank of Virginia requires that 80% of the collections on sales contracts securing their loan be applied against the loan balance.
- f) Between October 31, 1974 and December 31, 1974 the Virginia National Bank loan shall be renegotiated and an amortization schedule determined.
- g) Virginia National Bank requires a 10% compensating balance be maintained by the company and or certain stockholders and other affiliates.

Bryce borrowed \$150,000 from the Virginia National Bank to purchase common stock and bonds of Public National Bank of Washington, D.C. The common stock represents approximately 5% of Public's issued and outstanding common stock. As stipulated in the agreement, the maximum possible loss to Bryce would not be more than approximately \$50,000. The amortization of the \$150,000 loan will begin in 1976.

Below is the current amortization schedule of notes payable over the next five years. The land development loan of \$3,250,000 will be scheduled for amortization when the loan is renegotiated between October 31, 1974 and December 31, 1974. The terms of the renegotiation cannot be reasonably predicted at this time.

|   |                     |
|---|---------------------|
| Fiscal year ended October 31, 1974                                  | \$ 464,300          |
| Fiscal year ended October 31, 1975                                  | 420,300             |
| Fiscal year ended October 31, 1976                                  | 456,900             |
| Fiscal year ended October 31, 1977                                  | 491,200             |
| Fiscal year ended October 31, 1978                                  | 536,100             |
|   | <u>\$ 2,368,800</u> |
| Virginia National Bank loan to be renegotiated by December 31, 1974 | 3,250,000           |
| Subsequent to October 31, 1978                                      | 608,700             |
|   | <u>\$ 6,227,500</u> |



## NOTE 5 — COMMITMENTS AND CONTINGENCIES

- a) The corporation is contingently liable for approximately \$3,100,000 on notes discounted with financial institutions. These notes are from land sales contracts and are secured by first deeds of trust.
- b) Virginia Electric and Power Company has agreed to lay underground electrical cables. The corporation is under bond which guarantees certain power usage after the laying of the cables. Within a five year period after the cables are laid, the unsold lots in the first six sections will create a liability payable to the power company of approximately \$225 per lot. In addition to this commitment on the first six sections, Bryce has agreed to pay Virginia Electric and Power Company \$18 per lot upon completion of the connections to the underground service which is being installed in other sections. These commitments are personally guaranteed by Mr. J. W. Luter, III.
- c) The company has land purchase options on approximately 500 acres of underdeveloped land with an exercise price approximately \$117,000. The company has leased approximately 260 acres for 15 years with variable lease payments of \$4,800 to \$6,000 annually.
- d) Certain property had been in the process of negotiations for purchase by the company. The company has initiated legal proceedings for specific performance of the related contract. It is the opinion of legal counsel that the company will at least recover its costs.
- e) Federal income tax returns have been examined for Bryce through the fiscal year ended October 31, 1970. The 1971 return is currently being reviewed. Any adjustment is not expected to be significant. Blue Knob's income tax returns have never been examined.
- f) In January, 1974 the company advised certain lot purchasers of the Basye, Virginia development, that the company did not meet the requirements of the Interstate Land Sales Disclosure Act. As a result, the act may provide certain rights to those lot purchasers. As a result of that communication, several class action legal proceedings have been instituted. Neither management nor legal counsel can determine the probable outcome of the actions.

## NOTE 6 — TREASURY STOCK

The following schedule summarizes the treasury stock transactions during the year.

|   |                   |
|---|-------------------|
| Beginning balance, 2,000 shares                     | \$ 53,500         |
| Additional 5,000 shares of treasury stock purchased | <u>150,000</u>    |
|   | <u>\$ 203,500</u> |

## NOTE 7 — TAX CARRYFORWARDS

The company's 82% owned subsidiary had, at October 31, 1973, net operating loss carryforwards for federal income tax purposes, of approximately \$96,000 which is not reflected on the consolidated financial statements.

The net operating loss carryforwards expire as follows:

|                                     |                  |
|-------------------------------------|------------------|
| Fiscal year ending October 31, 1974 | \$ 49,000        |
| Fiscal year ending October 31, 1976 | <u>47,000</u>    |
|                                     | <u>\$ 96,000</u> |

#### NOTE 8 — ESTIMATED FUTURE LAND IMPROVEMENT COSTS

The company's estimate of total costs to improve major areas from which sales are being made is \$16,100,000. \$5,100,000 has been paid through October 31, 1973. To complete the company's commitments, the following annual expenditures are anticipated for improvements in the major areas from which sales are being made.

|  |                     |
|--|---------------------|
| Paid through October 31, 1973                      | \$ 5,100,000        |
| Fiscal year ending October 31, 1974                | 3,200,000           |
| Fiscal year ending October 31, 1975                | 2,500,000           |
| Fiscal year ending October 31, 1976                | 2,400,000           |
| Fiscal year ending October 31, 1977                | 200,000             |
| Fiscal year ending October 31, 1978                | 100,000             |
| Fiscal year ending October 31, 1979 and Thereafter | <u>2,600,000</u>    |
|  | <u>\$16,100,000</u> |

#### NOTE 9 — CHANGE IN ACCOUNTING ESTIMATE

Effective for the year ending October 31, 1973, Bryce's has increased its estimated cost of completing project improvements for water and sewer facilities. Limited water availability in certain sections are estimated to increase the per lot water improvement cost in these sections by approximately \$600. Provision for increased sewer facilities to meet increased density projections are estimated to cost an additional \$800 per lot for the entire project at Basye, Virginia. This change in estimates decreased the 1973 income before extraordinary credit and cumulative effect of change in estimated development cost by \$185,400 (\$4.36 per share) net of the related income tax effect of \$193,900.

The cumulative effect on years prior to 1973 of such change in estimates reduced previously reported net income by \$601,500 (\$14.15 per share) net of income taxes.

#### NOTE 10 — DEFERRED REVENUE

Land sales revenue deferred, until improvements are completed after October 31, 1973, is \$8,735,300. The related deferred gross profit included in the deferred revenue is \$1,530,000.

Deferred gross profit at October 31, 1973 for income tax reporting, resulting from the installment sales method of reporting, is \$4,660,000.

#### NOTE 11 — CHANGE IN ACCOUNTING METHOD

Bryce's has retroactively changed its accounting method to conform with the accrual method as defined in the AICPA accounting guide on "Accounting for Retail Land Sales" issued in 1973, and to effect a valuation discount on certain contract receivables. The effect of deferring income recognition on this method and the valuation discount was to reduce previously reported net income by \$1,117,500 (\$23.52 per share).

The following summarizes the restated consolidated balance sheet at October 31, 1972.

BRYCE'S MOUNTAIN RESORT, INCORPORATED  
 RESTATED CONSOLIDATED BALANCE SHEET

OCTOBER 31, 1972

ASSETS

|   |              |                      |
|---|--------------|----------------------|
| Cash  |              | \$ 261,600           |
| Restricted Cash   |              | 47,000               |
| Contracts and Notes Receivable — Land Sales —<br>(Net of \$1,881,400 Deferred Interest) | \$ 7,804,900 |                      |
| Less: Allowance for Cancellation  | ( 1,216,600) |                      |
| Unamortized Valuation Discount  | ( 492,200)   | 6,096,100            |
| Mortgages and Other Receivables   |              | 448,700              |
| Inventory   |              | 79,500               |
| Prepaid Expenses  |              | 73,000               |
| Deferred Selling Expense  |              | 93,600               |
| Development Costs   |              |                      |
| Land being Improved   | \$ 141,200   |                      |
| Improvements  | 871,400      |                      |
| Unimproved Land and Options   | 1,087,100    | 2,099,700            |
| Property and Equipment (Net)  |              | 2,443,100            |
| Utility System (Net)  |              | 125,500              |
| Investments   |              | 147,100              |
| Goodwill  |              | 15,500               |
|   |              | <u>\$ 11,930,400</u> |

LIABILITIES

|  |               |
|--|---------------|
| Bank Overdraft                               | \$ 53,500     |
| Accounts Payable                             | 485,200       |
| Mortgages and Notes Payable                  | 4,339,900     |
| Mortgages and Land Purchases Notes Payable   | 236,400       |
| Accrued Wages                                | 25,300        |
| Accrued Interest                             | 120,700       |
| Income Taxes — Current                       | 46,300        |
| Income Taxes — Deferred                      | 880,000       |
| Deferred Revenue — Future Improvements       | 3,793,200     |
| Deposits                                     | 154,200       |
| Total Liabilities                            | \$ 10,134,700 |
| Minority Interest in Consolidated Subsidiary | 34,600        |

STOCKHOLDERS' EQUITY

|                   |              |                      |
|-------------------|--------------|----------------------|
| Paid-In Capital   | \$ 1,282,300 |                      |
| Retained Earnings | 532,300      |                      |
|                   | \$ 1,814,600 |                      |
| Treasury Stock    | ( 53,500)    | 1,761,100            |
|                   |              | <u>\$ 11,930,400</u> |

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## EXHIBIT A

## BRYCE'S MOUNTAIN RESORT, INCORPORATED

## CONSOLIDATED PROFIT AND LOSS STATEMENT

FOR THE MONTH OF SEPTEMBER, 1974

INCOMEYEAR TO DATE

|                              |               |                        |
|------------------------------|---------------|------------------------|
| General and Administrative   | \$ 848,345.28 |                        |
| Land Sales Department        | 1,191,680.63  |                        |
| Golf Department              | 74,086.81     |                        |
| Recreation and Stables       | 25,513.54     |                        |
| Restaurant and Ski Cafeteria | 164,106.83    |                        |
| Ski Area Department          | 131,595.34    |                        |
| Ski Rental Department        | 50,394.13     |                        |
| Ski School Department        | 15,627.00     |                        |
| Ski Shop Department          | 24,292.84     |                        |
| Airport Department           | 300.00        |                        |
| Chalets Department           | 27,604.53     |                        |
| Maintenance Department       | 1,183.70      |                        |
| Security Department          | 18,360.00     |                        |
| Wells Department             | 4,624.16      |                        |
| <u>Total Income</u>          |               | <u>\$ 2,577,714.79</u> |

EXPENSES

|  |                        |
|--|------------------------|
| Depreciation                                   | \$ 196,665.06          |
| Employee Benefits                              | 66,335.60              |
| Bank and Credit Card Charges                   | 2,809.21               |
| Dues and Subscriptions                         | 2,543.28               |
| Interest                                       | 400,907.69             |
| Postage and Office Supplies                    | 5,478.29               |
| Professional Fees                              | 138,884.86             |
| Telephone                                      | 17,127.49              |
| Maintenance                                    | 66,417.77              |
| Advertising                                    | 25,461.57              |
| Bank Points, Appraisal Fees and Recording Cost | 19,382.63              |
| Cleaning and Sanitation                        | 7,134.16               |
| Commissions                                    | 779,855.00             |
| Entertainment                                  | 2,700.50               |
| Gas, Oil, and Grease                           | 1,518.69               |
| Heat, Light, and Power                         | 51,478.99              |
| Insurance                                      | 44,729.79              |
| Laundry  | 5,343.65               |
| Rental of Equipment and Office                 | 8,186.50               |
| Tires, Tubes, and Batteries                    | 188.22                 |
| Travel   | 31,383.05              |
| Small Tools and Equipment                      | 8,207.66               |
| Supplies                                       | 15,349.13              |
| Salaries                                       | 470,800.73             |
| Licenses and Taxes                             | 46,428.21              |
| Miscellaneous                                  | 33,258.34              |
| <u>Total Expenses</u>                          | <u>\$ 2,448,576.07</u> |
| Net Profit Prior to Sparmark Division          | 129,138.72             |
| Add: Profit Sparmark Division                  | ( 191,564.83)          |
| <u>Net Profit</u>                              | <u>(\$ 62,426.11)</u>  |

## EXHIBIT A

## BRYCE'S MOUNTAIN RESORT, INCORPORATED

## BALANCE SHEET

SEPTEMBER 30, 1974

ASSETS

|   |                     |                         |
|---|---------------------|-------------------------|
| Cash  |                     | \$ 13,367.92            |
| Restricted Cash   |                     | 268,830.60              |
| Notes Receivable on Land Sales (Net of \$1,643,887.21)                |                     |                         |
| Deferred Interest   | \$ 5,691,041.96     |                         |
| Less: Allowance for Cancellations                                     | <u>1,151,432.06</u> | 4,539,609.90            |
| Receivables — Sewer Availability Fee                                  | \$ 2,693,650.00     |                         |
| Less: Unamortized Valuation Discount                                  | <u>650,247.88</u>   | 2,043,402.12            |
| Other Receivables   |                     | 35,801.77               |
| Receivables from Employers, Officers, and Affiliates                  |                     | 1,594,987.62            |
| Inventories   |                     | 61,475.29               |
| Prepaid Expenses  |                     | 4,668.69                |
| Investments:  |                     |                         |
| Public National Bank  | \$ 122,140.00       |                         |
| Affiliates  | <u>160,434.70</u>   | 282,574.70              |
| Property and Equipment (Net of \$925,326.68 Accumulated Depreciation) |                     | 1,608,105.38            |
| Development Cost  |                     |                         |
| Land Being Improved and Improvements                                  | \$ 2,026,820.33     |                         |
| Unimproved Land and Options   | <u>1,467,079.90</u> | 3,493,900.23            |
| <u>Total Assets</u>   |                     | <u>\$ 13,946,724.22</u> |

LIABILITIES

|  |                         |
|--|-------------------------|
| Accounts Payable                         | \$ 113,489.35           |
| Mortgages, Notes, and Debentures Payable | 4,554,943.93            |
| Accrued Interest                         | 82,510.89               |
| Accrued Taxes                            | 32,112.26               |
| Accrued Others                           | 46,818.56               |
| Taxes Payable                            | 1,335.57                |
| Income Tax Payable                       | ( 29,991.00)            |
| Income Tax Deferred                      | 399,700.00              |
| Deferred Revenue — Future Improvements   | <u>7,609,090.68</u>     |
| <u>Total Liabilities</u>                 | <u>\$ 12,810,010.24</u> |

STOCKHOLDERS' EQUITY

|   |                      |                         |
|---|----------------------|-------------------------|
| Paid-In-Capital                                   |                      |                         |
| Common Stock                                      | \$ 123,787.50        |                         |
| Premium Capital Stock                             | 1,158,505.00         |                         |
| Additional Paid-In-Capital                        | 2,974.97             |                         |
| Treasury Stock                                    | <u>( 203,500.00)</u> | \$ 1,081,767.47         |
| Retained Earnings                                 |                      |                         |
| Beginning Balance                                 |                      |                         |
| November 1, 1973                                  | \$ 117,372.62        |                         |
| Add: Net Profit for the Period                    | <u>( 62,426.11)</u>  | <u>54,946.51</u>        |
| <u>Total Stockholders' Equity</u>                 |                      | <u>\$ 1,136,713.98</u>  |
| <u>Total Liabilities and Stockholders' Equity</u> |                      | <u>\$ 13,946,724.22</u> |

**EXHIBIT B**  
**DECLARATION OF PROTECTIVE**  
**COVENANTS AND RESTRICTIONS**  
**APPLICABLE TO SECTIONS I THROUGH XII**  
**OF**  
**BRYCE'S MOUNTAIN RESORT, INC.**

The Protective Covenants and Restrictions applicable to Sections I through XII are the same except where set forth below as to Section X.

Bryce's Mountain Resort, Inc., a corporation duly organized and existing under the laws of the State of Virginia, with its principal place of business situated in the Town of Basye, County of Shenandoah, State of Virginia, the owner of certain lands and premises situated in or near said Town of Basye, known as Bryce's Mountain Resort, hereby makes and executes the following declaration of protective covenants and restrictions as to that portion of said land which will be subdivided and sold to individual lot purchasers for the purpose of erecting private dwellings or residences thereon, known as SKY BRYCE, it being expressly understood and agreed by such lot purchasers that the said protective covenants and restrictions shall not apply to nor shall anything herein contained be construed as limiting or restricting Bryce's Mountain Resort, Inc., in its use of the portions of the said land now owned or hereafter acquired by said Bryce's Mountain Resort, Inc., that is not subdivided for sale to individual lot purchasers; for example, but not by way of limitation, Bryce's Mountain Resort, Inc., shall not be limited in its use or sale of such portions of the said land as may be used or useful for hotel, lodge, resort, recreational, entertainment, or similar purposes nor shall these covenants and restrictions be deemed to prevent the erection and sale of multi-family units, town houses, condominiums or co-operative units, or the sale of land or lots or portions of lots designed for such use in the overall master land plan to be adopted for the development of said SKY BRYCE and said Resort.

It is hereby declared by Bryce's Mountain Resort, Inc. (hereinafter referred to as "Resort"), that the following covenants, restrictions and easements shall constitute covenants to run with said land in said SKY BRYCE, described and delineated and subject to the exceptions as aforesaid:

1. Nothing but one single family private dwelling or residence designed for occupancy by one family shall be erected on any lot in said SKY BRYCE, nor shall said premises be used for any purpose other than residential purposes, except that a two-car garage, for the sole use of the owner or occupant of said lot, may be erected on said lot; provided, however, that nothing herein contained shall be construed to prevent the use of one building site of two or more lots, or the use as a building site of portions of two or more lots, or the resale of parcels no smaller than one-half (1/2) acre by purchaser of lots or tracts which are at least one (1) acre in size.

2. No pools, buildings, facility, or other structure, or any additions thereto shall be erected, or the erection thereof begun, on any lot until the plans and specifications thereof shall have been first presented to and approved in writing by Resort, its successors or assigns.

3. No single family dwelling erected on any lot shall contain more than two-and-one-half (2-1/2) floors and the total height of said dwelling shall not exceed thirty-five (35) feet to be measured from the top of the basement level of said dwelling and said basement level is to be that level which is wholly or substantially below ground.

4. The ground floor area of any dwelling of two (2) or more floors erected on a lot in Sections One (I) through Twelve (XII) shall contain a minimum of eight hundred (800) square feet, exclusive of porches and garages, unless otherwise approved, in writing, by Resort. In Section Ten (X) the minimum ground floor area of any dwelling of two or more floors shall contain seven hundred (700) square feet, exclusive of porches and garages, unless otherwise approved, in writing, by Resort.

5. The minimum area of living space of any single-family dwelling therein, and exclusive of porches and garages, shall be not less than one thousand (1,000) square feet, unless otherwise approved, in writing, by Resort.

6. The exterior woodwork of all houses and buildings on said tract, or whatsoever kind, shall be painted with at least two (2) coats of paint, varnish or stain, as soon as weather permits, after completion. However, Resort reserves the right to waive this condition in the event that the plans for said dwelling call for exposed untreated natural wood. The exterior architectural design of all houses and buildings on said tract shall be subject to the written approval of Resort.

7. No building, fence, hedge, sidewalk, wall, drive or other structure shall be erected, placed or altered on any lot until the proposed building plans, specifications, exterior color or finish, plot plans (showing the proposed location of such building or structure, drives and parking areas), and construction schedule shall have been approved in writing by Resort, its successors and assigns. Refusal or approval of plans, location or specifications may be based by Resort upon any ground, including purely aesthetic considerations, which in the sole and uncontrolled discretion of Resort shall seem sufficient. No alterations in the exterior appearance of any building or structure shall be made without like approval by Resort. One copy of all plans, specifications and related data shall be furnished Resort for its records.

8. In order to assure that houses will be located with regard to the topography of each individual lot, Resort reserves unto itself, its successors and assigns, the right to control absolutely and solely to decide

the precise site and location of any house or dwelling or other structure upon any lot or building plot consisting of more than one lot, provided, however, that such location shall be determined only after reasonable opportunity is afforded the lot owner to recommend a specific site.

9. The exterior of all houses and other structures must be completed within one year after the construction of same shall have commenced, except where such completion is impossible or would result in great hardship to the owner or builder due to strikes, fires, national emergencies or natural calamities.

10. No trees growing within ten (10) feet of the side or rear lines of any lot shall be cut or removed in any manner, however, trees growing within said ten (10) feet may be limbed up from the ground to a reasonable height and in a manner to avoid killing said trees. Brush and dead trees may be removed from said ten (10) foot area at any time. In the event the owner of any residential lot permits any underbrush, woods, etc., to grow upon any lot to a height of two (2) feet (except as part of a landscaping plan approved by Resort), and on request fails to have the premises cut within thirty (30) days, agents of Resort may enter upon said land to remove the same at the expense of the owner; provided, however, that such expense shall not exceed Twenty-Five Dollars (\$25.00) annually. Resort may likewise enter upon said lot without such entrance and removal being deemed a trespass, all at the expense of the owner of said lot; provided, however, that such expense shall not exceed Twenty-Five Dollars (\$25.00) annually. This provision shall not be construed as an obligation on the part of Resort to provide garbage or trash removal services.

11. In Sections One (I) through Twelve (XII), no pool, building, facility or structure or any addition thereto, or any part of projection thereof shall be erected on a lot within twenty-five (25) feet of any boundary of said lot. However, Resort hereby reserves the right to waive this condition as to a boundary of any lot that does not border on other properties owned by Resort.

In Section Ten (X), no pool, building, facility or structure or any additions thereto, or any part or projection thereof shall be erected on a lot within fifteen (15) feet of any boundary of said lot, unless otherwise approved, in writing, by Resort.

12. No excavation of stone, gravel, or earth shall be made upon any lot except for basements, cellars, retaining walls, landscaping and driveways. All other excavations or removal of earth or material or deposits of earth or material on any lot shall not be commenced without first obtaining written approval of Resort.

13. Within one (1) month after completion of a dwelling on a lot, debris and waste material remaining on the ground shall be picked up and disposed of. Within one (1) year after the completion of a dwelling

on a lot, said lot shall be landscaped, including the seeding of bare earth, in a workmanlike manner. However, Resort reserves the right to waive this condition at the request of an owner.

14. Each lot owner shall construct and maintain suitable and adequate parking space on his lot for parking of his vehicles and the parking of vehicles of his guests so that said vehicles when parked shall not obstruct or interfere with vehicular travel on any of the roadways in said SKY BRYCE.

15. Lines or appliances of any type designed for the purpose of drying laundry shall be erected and maintained in as inconspicuous a place as possible.

16. As to lots in Section One (I) through Twelve (XII), before any dwelling on any lot is occupied, the owner thereof shall, at the owner's expense, drill a usable well for drinking water and other purposes and shall install a septic tank and drainage field or sewage disposal system approved by the Department of Health of the Commonwealth of Virginia, or other health authority having jurisdiction of such matter. Said septic tank and drainage field or other disposal system shall not be constructed within ten (10) feet of any boundary line of any lot, and said septic tank and drainage field or disposal system shall be installed in accordance with rules, regulations, or recommendations as may be from time to time established by the Department of Health of the Commonwealth of Virginia, or other health authority having jurisdiction of such matters.

As to Section Ten (X), before any dwelling on any lot is occupied, the owner thereof shall, at the owner's expense, install a septic tank and drainage field or connect to a sewage disposal system approved by the Department of Health of the Commonwealth of Virginia, or other health authority having jurisdiction of such matter. Said septic tank and drainage field or disposal system shall be installed in accordance with rules, regulations, or recommendations as may be from time to time established by the Department of Health of the Commonwealth of Virginia, or other health authority having jurisdiction of such matters.

17. No trailer, shed, or other temporary or movable building or facility shall be erected or maintained on any lot except as may be reasonably necessary for a short period of time for use in aiding the erection of a dwelling on said lot, and in no event shall said trailer, shed or other temporary movable building or facility be maintained on a lot after completion of said dwelling.

18. No trailer, basement or a partially completed dwelling, tent, garage, barn, shed, structure or facility erected or maintained on any lot shall at any time be used as a residence without first obtaining written permission of Resort.

19. No lot shall be used or maintained as a dumping ground for rubbish, nor shall any rubbish or garbage, or other waste of any type be allowed to accumulate on said lot. Said rubbish, garbage, or other waste shall be kept in sanitary containers, and all such containers or incinerators or other equipment used for the storage or disposal of said material shall be kept in a clean and sanitary condition and located in as inconspicuous a place as possible.

20. No fowl, swine, cattle, sheep, goats, horses, or other domestic or wild animals shall be kept or maintained on any lot. This restriction shall not apply to dogs, cats, or other small domestic animals, generally considered as pets, so long as said dogs, cats, or other small domestic animals are of a quiet and unoffensive nature. Resort reserves the right to waive this condition as it applies to horses, provided the said lot on which such horses are kept be at least one acre or larger in size and provided suitable facilities are erected by the owner to maintain and to contain said horses within the lot or tract involved.

21. No obnoxious or offensive use shall be made of any lot, nor shall any offensive trade or activity be carried on upon any lot, nor shall any activity of any nature whatsoever be conducted on a lot which may constitute a nuisance.

22. No room or rooms in any dwelling on a lot shall be leased or rented for any period of time. However, a dwelling or rooms therein may be rented pursuant to an agreement made by the owner with Resort.

23. No sign of any kind on a lot shall be displayed to the public view without first obtaining a written approval from Resort, except that one (1) sign of not more than two (2) square feet, showing the owner's name and the name of the premises shall be permitted on a lot, but in no event shall said sign measure more than three (3) feet in length or height.

24. Outside illumination of any dwelling, or of a sign erected in accordance with the preceding section, shall be done by means of a constant light on the general principal of ordinary bulbs or small flood lights, it being the intent of this restriction that no neon or similar type lighting nor flashing or illumination of or by any type of reflective lettering, or the use of luminous or reflective material of any nature shall be used in connection with said signs or the outside illumination of said dwelling.

25. As to lots in Section One (I) through Twelve (XII), in the event any owner desires to sell any lot or lots, either improved or unimproved, then the said lot or lots which such owner shall desire to sell shall be first offered for sale to Resort at the same price and on the same terms at which the highest bona fide offer has been made to the owner for the said lot or lots. The owner desiring to sell such lot or lots shall give Resort written notice via registered mail, return

receipt requested, of the owner's desire to sell any such lot or lots and further advise Resort in said offer of the name and address of the person, firm, or corporation making said bona fide offer, as well as the amount and terms of said offer. Resort shall have a period of ten (10) days after receipt of said written notice within which to exercise its option to purchase said lot or lots at the same price and on the same terms as said highest bona fide offer and Resort shall have an additional period of not less than twenty (20) days within which to close the said transaction. Should Resort fail or refuse within said 10-day period to exercise its option to purchase said lot or lots at the offered price and terms, then the owner shall have the right to sell said lot or lots to the person, firm, or corporation making said bona fide offer whose identity was revealed to Resort in said written notice, provided, however, that any such sale of any lot or lots by the owner to the person, firm or corporation making such offer shall be subject to all of the terms, covenants, limitations and provisions of this Declaration of Protective Covenants and Restrictions. The provisions of this Paragraph shall continue and be effective until January 1, 1988, at which time the provisions of this paragraph, including all options and rights granted to or reserved by Resort by this Paragraph shall terminate; provided, however, that each purchaser or owner of a lot or lots in the Charter Tract of the SKY BRYCE SUBDIVISION of Resort covered by this Declaration of Protective Covenants and Restrictions agrees that the provisions of this Paragraph and all options and rights granted to or reserved by Resort under this Paragraph may be re-imposed and again become effective and apply for successive periods of twenty (20) years each from each such termination date (that is, January 1, 1988, and each 20 years thereafter) upon an instrument or instruments in writing being executed by the owners of a majority of the said lots (on each such termination date) in the said Charter Tract of the SKY BRYCE Subdivision to which this Declaration of Protective Covenants and Restrictions applies.

As to Section Ten (X), this covenant does not apply except the sale of any lot or lots by the owner, other than Resort, to any person, firm, or corporation shall be subject to all of the terms, covenants, limitations and provisions of this Declaration of Protective Covenants and Restrictions.

26. Resort reserves unto itself, its successors and assigns, a perpetual, alienable and releasable easement over, upon, across and under each lot for the erection, maintenance, installation and use of electrical and telephone poles, wires, cables, conduits, sewers, water mains and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, sewer, water, or other public convenience or utilities, and Resort may further cut drainways for surface water wherever and whenever such action may appear to Resort to be necessary in order to maintain standards of health, safety and appearance. It further reserves the right to locate wells, pumping stations,



and tanks within residential areas on any walkway, or any residential lot designated for such use on the applicable plat of a residential subdivision, or to locate same upon any adjacent lot with the permission of the owner of such adjacent lot. Such rights may be exercised by any licensee of Resort, but this reservation shall not be considered an obligation of the Company to provide or maintain any such utility or service.

27. No large trees measuring six inches or more in diameter at growth level may be removed without the written approval of Resort, unless located within ten (10) feet of the main dwelling or accessory building or within ten (10) feet of the approved site for such building. No trees shall be removed from any lot until the owner shall be ready to begin construction without the consent of Resort.

28. No lot shall be subdivided, or its boundary lines changed, except with the written consent of the Resort. However, Resort hereby expressly reserves to itself, its successors or assigns, the right to re-plat any lot or lots shown on the plat of any said subdivision, section, block or part thereof prior to delivery of deed in order to create a modified building lot or lots. The restrictions and covenants herein apply to each such building lot so created.

29. As to Section One (I) through Twelve (XII), it is agreed that as soon as a sufficient number of lots have been sold in this development a non-stock property owners' association, to be known as the "SKY BRYCE Association, Inc.," shall be formed with one membership for each property owner and that this Association in conjunction with the Resort shall establish reasonable annual assessment charges for road maintenance and maintenance of the trails and recreational areas; it being understood that the Resort, its officers and directors, shall exercise three votes each in this Association.

As to Section Ten (X), it is agreed that each lot owner shall become a member of a non-stock property owners' association, known as the "SKY BRYCE Association, Inc.," with one membership for each property owner and that this Association in conjunction with the Resort shall establish reasonable annual assessment charges for road maintenance and maintenance of the trails and recreational areas; it being understood that the Resort, its officers and directors, shall exercise one vote for each numbered lot owned by the Resort, provided, however, no assessment charges shall be made against the Resort.

30. Neither the Resort nor the purchasers of the said lots in SKY BRYCE will request the Board of Supervisors of Shenandoah County, Virginia, or the Virginia Department of Highways that the streets or roads in SKY BRYCE be taken into the highway system until the said lot owners and Resort have brought said streets up to the specifications of the

Virginia Department of Highways of Shenandoah County, Virginia.

31. Except as hereinabove expressly provided with respect to the provision of Paragraph 25, all covenants, restrictions and affirmative obligations set forth in this Declaration shall run with the land and shall be binding on all parties and persons claiming under them for a period of twenty-five (25) years from January 1, 1968, after which time said covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by a majority of the then owners of lots affected by such covenants has been recorded, agreeing to change said covenants in whole or in part; provided, however, that the covenant contained in Paragraph 30 above shall remain effective in perpetuity. No restriction or covenant herein is intended to be used nor shall any restriction or covenant be used by any lot owner or the Resort to discriminate or attempt to discriminate against any person, whether a lot purchaser or prospective purchaser upon resale by a lot owner, upon the basis of race, creed, color, or national origin.

As to Section Ten (X), the foregoing provisions shall apply except that the period thereof shall be for twenty-five (25) years from August 1, 1971.

32. In the event of a violation or breach of any of these restrictions by any property owner, or agent, or agent of such owner, the owners of lots in the neighborhood or subdivision, or any of them jointly or severally, shall have the right to proceed at law or in equity to compel a compliance to the terms hereof or to prevent the violation or breach in any event. In addition to the foregoing, Resort shall have the right, whenever there shall have been built on any lot in the subdivision any structure which is in violation of these restrictions, to enter upon the property where such violation exists, and summarily abate or remove the same at the expense of the owner, if after thirty (30) days written notice of such violation, it shall not have been corrected by the owner. Any such entry and abatement or removal shall not be deemed a trespass. The failure to enforce any right, reservation, restriction or condition contained in this Declaration of Protective Covenants and Restrictions, however long continued, shall not be deemed a waiver of the rights to do so hereafter, as to the same breach or as to a breach occurring prior or subsequent thereto and shall not bar or affect its enforcement. The invalidation by any court of any restrictions in this Declaration of Protective Covenants and Restrictions contained shall in no way affect any of the other restrictions, but they shall remain in full force and effect.

Declaration of Protective Covenants and Restrictions as to Section One (I) through Twelve (XII) as recorded in Deed Book 262, Page 275, on May 18, 1969; and as to Section Ten (X) as recorded in Deed Book 289, Page 542, on September 9, 1971, in the Clerk's Office of the Circuit Court of Shenandoah County, Virginia.

THIS DEED, made this 22nd day of December, 1970, by and between BRYCE'S MOUNTAIN RESORT, INC., a Virginia corporation, party of the first part, and A. JAMES O'MARA and LOIS J. O'MARA, husband and wife, parties of the second part,

W I T N E S S E T H :

That for and in consideration of the sum of Ten Dollars (\$10.00), cash in hand paid by the parties of the second part to the party of the first part, and of other good and valuable consideration given, all of which is hereby acknowledged by the party of the first part before the execution and delivery hereof, the said party of the first part does hereby grant and convey with General Warranty and English Covenants of title unto the said A. JAMES O'MARA and LOIS J. O'MARA, husband and wife, as tenants by the entirety with the right of survivorship as at common law, parties of the second part, all that certain tract or parcel of land situate and lying in SECTION VI of BRYCE'S MOUNTAIN RESORT, INC., near Basye, in Ashby Magisterial District, Shenandoah County, Virginia, described according to survey made by James C. Wilkins, C. L. S., as follows:

"BEGINNING at an iron pin, a corner to Lot 155 in the aforesaid subdivision and a corner in the outer boundary of Section VI; thence, leaving Lot 155 and with the outer lines of Section VI, N. 72° 53' E. 533.62 feet to an iron pin; thence, N. 84° 16' E. 340.70 feet to an iron pin, a corner in the outer boundary of Section VI, and Lot 95; thence, leaving the outer boundary of Section VI and with Lot 95 as revised, S. 24° 34' W. 350.48 feet to an iron pin, a corner to Lot 95, in a curve to the right, having a radius of 152.69 feet; thence, with said curve 20.00 feet chord S. 60° 00' E. 19.98 feet to an iron pin in the northern limits of a 30-foot right of way; thence leaving Lot 95 and crossing said right of way, S. 35° 40' W. 30.00 feet to an iron pin in the southern limits of said right of way, the p. c. of a curve to the right, having a radius of 20.00 feet; thence, with said right of way and curve 28.55 feet chord S. 15° 53' E. 26.19 feet to an iron pin, the p. t. of said curve in the western limits of a 30-foot right of way; thence, with the western limits of said right of way, S. 25° 01' W. 109.20 feet to an iron pin, a corner to Lot 105; thence, leaving said

right of way and with Lot 105, N. 44° 45' W. 100.00 feet to an iron pin, a corner of Lot 105; thence, S. 40° 48' W. 213.52 feet to an iron pin, a corner to Lot 105 and Lot 106; thence, leaving Lot 105 and with Lot 106, S. 43° 07' W. 177.19 feet to an iron pin, a corner to Lot 106 in the line of Lot 150; thence, leaving Lot 106 and with Lots 150 and 151, N. 52° 06' W. 130.60 feet to an iron pin, a corner to Lots 151 and 152; thence, leaving Lot 151 and with Lot 152, N. 39° 26' W. 129.32 feet to an iron pin, a corner to Lot 152 and Lot 153; thence, leaving Lot 152 and with Lots 153, 154, and 155, N. 24° 24' W. 358.08 feet to the beginning, containing 7.35 acres, more or less."

Together with a perpetual right of way and easement over the roads of said Subdivision as shown on the plat of said SECTION of said Subdivision, which said plat is duly of record in the Clerk's Office of Shenandoah County, Virginia, in Deed Book 266, Page 177, and across other properties of the party of the first part, for the purpose of ingress and egress to and from the State highway and other common facilities established in the development.

\* Said real estate is conveyed subject to that certain Declaration of Protective Covenants and Restrictions, executed by Bryce's Mountain Resort, Inc., on the 18th day of May, 1969, and of record in the Clerk's Office of the Circuit Court of Shenandoah County, Virginia, in Deed Book 262, Page 275.

It is covenanted and agreed that neither the proprietors and owners of said Subdivision or the purchasers of the tract described herein, their successors or assigns, will request the Board of Supervisors of Shenandoah County, Virginia, or the Virginia Department of Highways, that the streets within the said Subdivision be taken into the highway system until the said lot owners and proprietors have brought said streets up to the specifications of the Virginia Department of Highways of Shenandoah County, Virginia.

Real estate taxes for the year 1970 are to be paid by the grantor herein.

\* As a part of the consideration for this conveyance, it is further agreed between the parties hereto as covenants running

ne land & rein conveyed:

(a) No development of said real estate, including site development, improvements, buildings, improvements or construction of any kind or nature, shall be made on said real estate until the proposed plans and specifications therefor have been approved in writing by the Grantor herein, its successors or assigns.

(b) No more than twelve (12) dwelling units, whether apartments, single residence units, or multiple residence units, shall be placed or constructed on said real estate.

IN WITNESS WHEREOF, Bryce's Mountain Resort, Inc., has caused its name to be signed hereto by B. DALE STANCIL, its Vice President, and its corporate seal to be duly affixed and attested by its Secretary.

BRYCE'S MOUNTAIN RESORT, INC.

By: B. Dale Stancil

B. Dale Stancil  
Executive Vice President

ATTEST:

Jewel H. Brice  
Asst. Secretary, Jewel Brice

STATE OF VIRGINIA,  
COUNTY OF SHENANDOAH, to-wit:

I, Carline Emmerich, a Notary Public of  
and for the County of Shenandoah, in the State of Virginia, do  
hereby certify that B. Dale Stancil, acting as  
Executive Vice President of BRYCE'S MOUNTAIN RESORT, INC., whose  
name as such is signed to the foregoing writing bearing date the  
22nd day of December, 1970, has this day personally appeared before  
me in my County aforesaid, and acknowledged the same in the name  
of and on behalf of said Corporation; that he is the Vice  
President of said Corporation; and that said seal affixed to said  
writing is the true corporate seal of said Corporation, and that  
it has been affixed to said writing by due authority.

Given under my hand this 9<sup>th</sup> day of January 1971.  
~~December, 1970.~~

My commission expires the 4<sup>th</sup> day of September.

1974 .

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LIBER 405 PAGE 378

# 3179

WHEREAS, by deed dated the 22nd day of December, 1970, by and between Bryce's Mountain Resort, Inc. and A. James O'Mara and Lois J. O'Mara, husband and wife, a certain tract of real estate described hereinafter was conveyed subject to two certain covenants designated as (a) and (b), running with the land, as follows, to wit:

"(a) No development of said real estate, including site development, improvements, buildings, improvements or construction of any kind or nature, shall be made on said real estate until the proposed plans and specifications therefore have been approved in writing by the Grantor herein, its successors or assigns.

(b) No more than twelve (12) dwelling units, whether apartments, single residence units, or multiple residence units, shall be placed or constructed on said real estate;" and

WHEREAS, the said A. James O'Mara and Lois J. O'Mara have contracted to convey said real estate to Bruce Forbes and Lois J. Forbes, his wife; and whereas the said Bruce Forbes and Lois J. Forbes, his wife have requested that the said covenants be eliminated and made null and void and of no further force and effect regarding said real estate; and whereas the said Bryce's Mountain Resort, Inc. and A. James O'Mara and Lois J. O'Mara, agree to such termination:

Now, therefore, this agreement made this 28th day of July, 1978, by and between Bryce's Mountain Resort, Inc., a Virginia Corporation, party of the first part; A. James O'Mara and Lois J. O'Mara, parties of the second part; and Bruce Forbes and Lois J. Forbes, husband and wife, parties of the third part.

WITNESSETH:

For and in consideration of One Dollar (\$1.00) cash in hand paid to the party of the first part and to the parties of the

second part by the said parties of the third part, receipt of which is hereby acknowledged, and for other good and valuable consideration, the said party of the first part and parties of the second part do hereby agree that those certain covenants set forth as aforesaid, and designated as running with the land, in that certain deed dated the 22nd day of December, 1970, by and between the said party of the first part and the said parties of the second part and recorded in the Office of the Clerk of the Circuit Court of Shenandoah County, Virginia, in Deed Book 278, Page 706, are, by the execution of the said party of the first part and the said parties of the second part hereto, hereby terminated, released, null and void and of no further force and effect and that said covenants will no longer be any restriction whatsoever upon the real estate described hereinafter, the said Bryce's Mountain Resort, Inc., being the entity which placed said covenants upon said real estate, and the said parties of the second part, A. James O'Mara and Lois J. O'Mara, being the only other parties in interest concerning said covenants.

The real estate which is the subject matter of this agreement is described as follows: being that certain tract of real estate located near Basye, in Ashby Magisterial District, Shenandoah County, Virginia, and lying adjacent to Section VI of Bryce's Mountain Resort, Inc., and described by survey of James C. Wilkins, C.L.S., as containing 7.35 acres, more or less, and being that same real estate which was conveyed to A. James O'Mara and Lois J. O'Mara, from Bryce's Mountain Resort, Inc. by deed dated the 22nd day of December, 1970, and recorded in said Clerk's Office in Deed Book 278, at Page 706.

Reference is made to the above mentioned deed and records for more particular description of the real estate affected hereby.

The said parties of the third part, Bruce Forbes and Lois J. Forbes, do join in this agreement by their execution hereof for the purpose of acknowledging and consenting to the termination of said covenants as to said real estate.

BRYCE'S MOUNTAIN RESORT, INC.

BY:

Ronald G. Petcher  
Ronald G. Petcher, Vice President

A. James O'Mara

Lois J. O'Mara

Bruce Forbes  
Bruce Forbes

Lois J. Forbes

STATE OF VIRGINIA,

COUNTY OF Shenandoah , TO-WIT:

The foregoing instrument was acknowledged before me this  
28th day of July , 1978, by Ronald G. Petcher, Vice President  
for Bryce's Mountain Resort, Inc.

My commission expires: May 29, 1979

Margaret C. L. L. L.  
Notary Public

STATE OF VIRGINIA,

COUNTY OF , TO-WIT:

The foregoing instrument was acknowledged before me this  
day of , 1978, by A. James O'Mara and Lois J.  
O'Mara, husband and wife.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public



STATE OF VIRGINIA,

COUNTY OF SHENANDOAH, TO-WIT:

The foregoing instrument was acknowledged before me this  
7th day of September, 1979, by Bruce Forbes.

My commission expires: August 14, 1982.

Marie Wells  
Notary Public

STATE OF VIRGINIA,

COUNTY OF \_\_\_\_\_, TO-WIT:

The foregoing instrument was acknowledged before me this  
\_\_\_\_ day of \_\_\_\_\_, 1979, by Lois J. Forbes.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

SHERANDOAH COUNTY, VA

The foregoing writing with certificate of acknowledgment thereon was received at the  
Clerk's Office of said County, admitted to record and indexed. The taxes imposed by Sect.  
58-54. (a) and (b), of the Code have been paid.

this 26<sup>th</sup> day of November 1979

3:21 P. M. Teste: [Signature] Clerk

# COMPLAINANT'S

EXHIBIT V(2)

LIBER 405 PAGE 382

#3179

WHEREAS, by deed dated the 22nd day of December, 1970, by and between Bryce's Mountain Resort, Inc. and A. James O'Mara and Lois J. O'Mara, husband and wife, a certain tract of real estate described hereinafter was conveyed subject to two certain covenants designated as (a) and (b), running with the land, as follows, to wit:

"(a) No development of said real estate, including site development, improvements, buildings, improvements or construction of any kind or nature, shall be made on said real estate until the proposed plans and specifications therefore have been approved in writing by the Grantor herein, its successors or assigns.

(b) No more than twelve (12) dwelling units, whether apartments, single residence units, or multiple residence units, shall be placed or constructed on said real estate;" and

WHEREAS, the said A. James O'Mara and Lois J. O'Mara have contracted to convey said real estate to Bruce Forbes and Lois J. Forbes, his wife; and whereas the said Bruce Forbes and Lois J. Forbes, his wife have requested that the said covenants be eliminated and made null and void and of no further force and effect regarding said real estate; and whereas the said Bryce's Mountain Resort, Inc. and A. James O'Mara and Lois J. O'Mara, agree to such termination:

Now, therefore, this agreement made this 28th day of July, 1978, by and between Bryce's Mountain Resort, Inc., a Virginia Corporation, party of the first part; A. James O'Mara and Lois J. O'Mara, parties of the second part; and Bruce Forbes and Lois J. Forbes, husband and wife, parties of the third part.

WITNESSETH:

For and in consideration of One Dollar (\$1.00) cash in hand paid to the party of the first part and to the parties of the

Compl.  
EXH.  
V-2

second part by the said parties of the third part, receipt of which is hereby acknowledged, and for other good and valuable consideration, the said party of the first part and parties of the second part do hereby agree that those certain covenants set forth as aforesaid, and designated as running with the land, in that certain deed dated the 22nd day of December, 1970, by and between the said party of the first part and the said parties of the second part and recorded in the Office of the Clerk of the Circuit Court of Shenandoah County, Virginia, in Deed Book 278, Page 706, are, by the execution of the said party of the first part and the said parties of the second part hereto, hereby terminated, released, null and void and of no further force and effect and that said covenants will no longer be any restriction whatsoever upon the real estate described hereinafter, the said Bryce's Mountain Resort, Inc., being the entity which placed said covenants upon said real estate, and the said parties of the second part, A. James O'Mara and Lois J. O'Mara, being the only other parties in interest concerning said covenants.

The real estate which is the subject matter of this agreement is described as follows: being that certain tract of real estate located near Basye, in Ashby Magisterial District, Shenandoah County, Virginia, and lying adjacent to Section VI of Bryce's Mountain Resort, Inc., and described by survey of James C. Wilkins, C.L.S., as containing 7.35 acres, more or less, and being that same real estate which was conveyed to A. James O'Mara and Lois J. O'Mara, from Bryce's Mountain Resort, Inc. by deed dated the 22nd day of December, 1970, and recorded in said Clerk's Office in Deed Book 278, at Page 706.

Reference is made to the above mentioned deed and records for more particular description of the real estate affected hereby.

The said parties of the third part, Bruce Forbes and  
Lois J. Forbes, do join in this agreement by their execution hereof  
for the purpose of acknowledging and consenting to the termination  
of said covenants as to said real estate.

BRYCE'S MOUNTAIN RESORT, INC.

BY:

Ronald G. Petcher  
Ronald G. Petcher, Vice President

✓ A. James O'Mara  
A. James O'Mara

✓ Lois J. O'Mara  
Lois J. O'Mara

Bruce Forbes  
Bruce Forbes

Lois J. Forbes  
Lois J. Forbes

STATE OF VIRGINIA,

COUNTY OF Shenandoah , TO-WIT:

The foregoing instrument was acknowledged before me this  
28th day of July , 1978, by Ronald G. Petcher, Vice President  
for Bryce's Mountain Resort, Inc.

My commission expires: May 29, 1979

Margaret C. Seearp  
Notary Public

✓ STATE OF ~~DE~~ MARYLAND

✓ COUNTY OF PRINCE GEORGE'S , TO-WIT:

The foregoing instrument was acknowledged before me this  
21st day of September , <sup>1979</sup> 1978, by A. James O'Mara and Lois J.  
O'Mara, husband and wife.

My commission expires: July 1, 1982

✓ Sean J. O'Hara  
Notary Public

NOTARY PUBLIC

For recording acting as a Notary Public, I am authorized to perform the duties of a Notary Public in the State of Maryland.

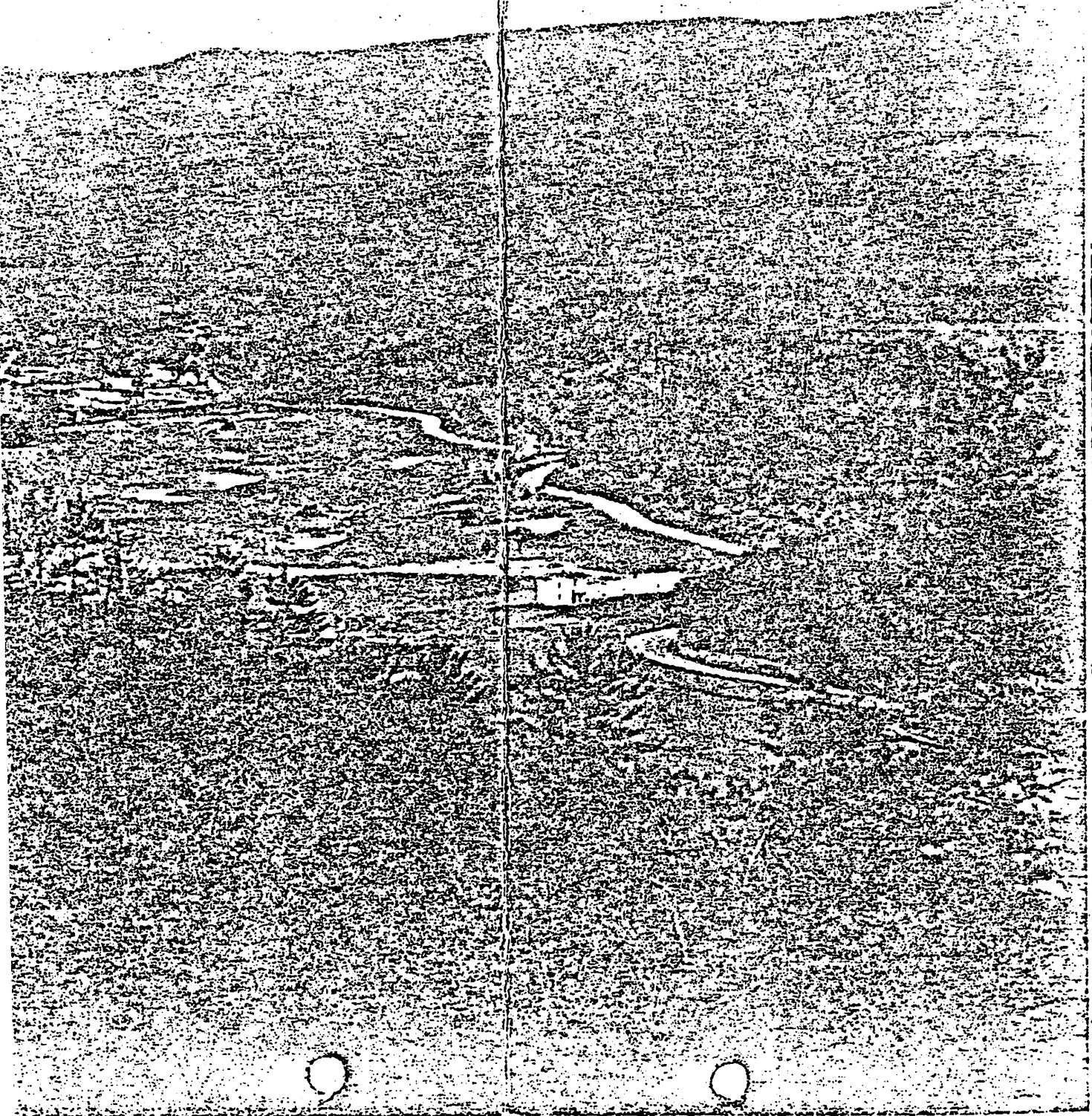
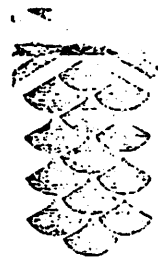
26<sup>th</sup> November 1979

3:10 PM by J. E. Light

# BRYCE MOUNTAIN MASTER PLAN



# BRYCE MOUNTAIN MASTER PLAN





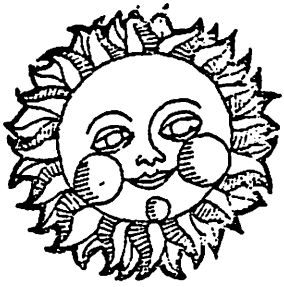
# BRYCE MOUNTAIN

*For prudent investors  
who want to have fun.*

We mean fun year-round. Skiing, swimming, golfing, tennis, fishing, hunting, sailing, hiking, riding—even flying and soaring. Bryce Mountain, the year-round second-home resort community in Virginia's beautiful Shenandoah country, offers all this and a remarkably sound investment, too.

When you purchase one of the home sites ( $\frac{1}{2}$  acre and larger) at Bryce you open a whole new world of excitement for you and your family. Your Bryce home will be your private resort retreat in any season, or all the year through. There's as much to do—or as little—as you demand.





## *Skiing*

Bryce Mountain offers the best skiing facilities south of New York. Four slopes (from novice to expert) are serviced by the most modern snow-making equipment, two double-chair lifts, and a friendly, inviting 7,000 square-foot lodge, ski-shop and grille.

## *Swimming*

Our Olympic-sized pool may become your favorite sun spot.

## *Sailing and Canoeing*

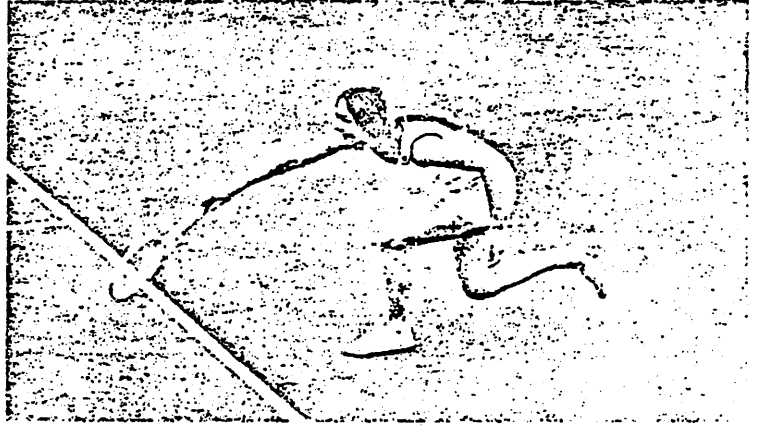
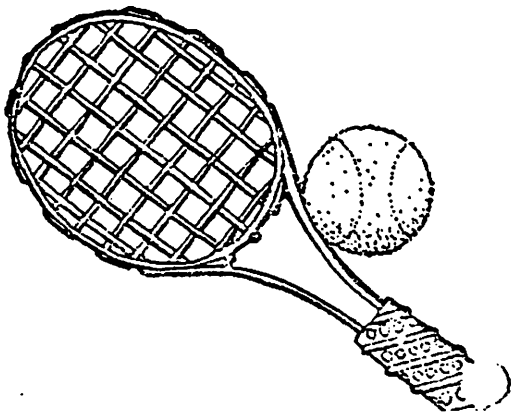
A 45-acre man-made lake will lure all you salts, young and old (it's just months away).

## *Golf*

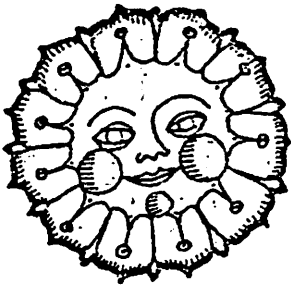
Our new golf course is as breathtaking as it is challenging. Nine holes are now open, the balance are under construction.

## *Tennis*

Test your skill on our all-new, all-weather courts.







### *Riding and Hiking*

Endless miles of mountain trails are an explorer's paradise.

### *Hunting*

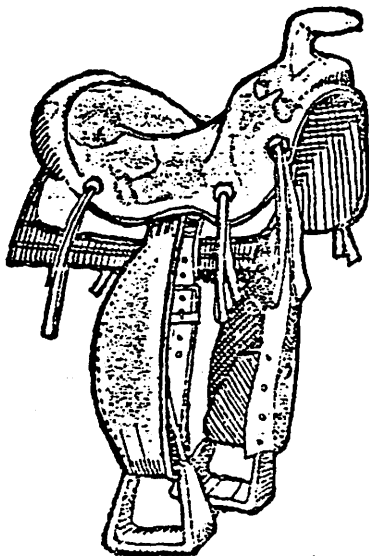
The Shenandoah National Forest right next door is abundant with game.

### *Fishing*

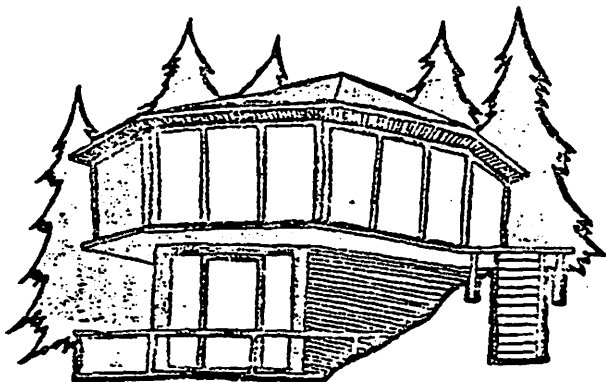
Pick our own well-stocked trout pond or cast about in cascading mountain streams.

### *Flying and Soaring*

Learn to fly or soar at our FAA approved flying school. Bryce's 2500 foot lighted landing strip is a great place to take off from—and come home to.







## *Your second home for all seasons*

A half-acre or larger home site at Bryce can be your second home summer, winter, spring and fall. Whether you build now, ten years from now, or never at all, you and your family will be part of an extraordinary recreation second-home community.

### *Creative Land Planning*

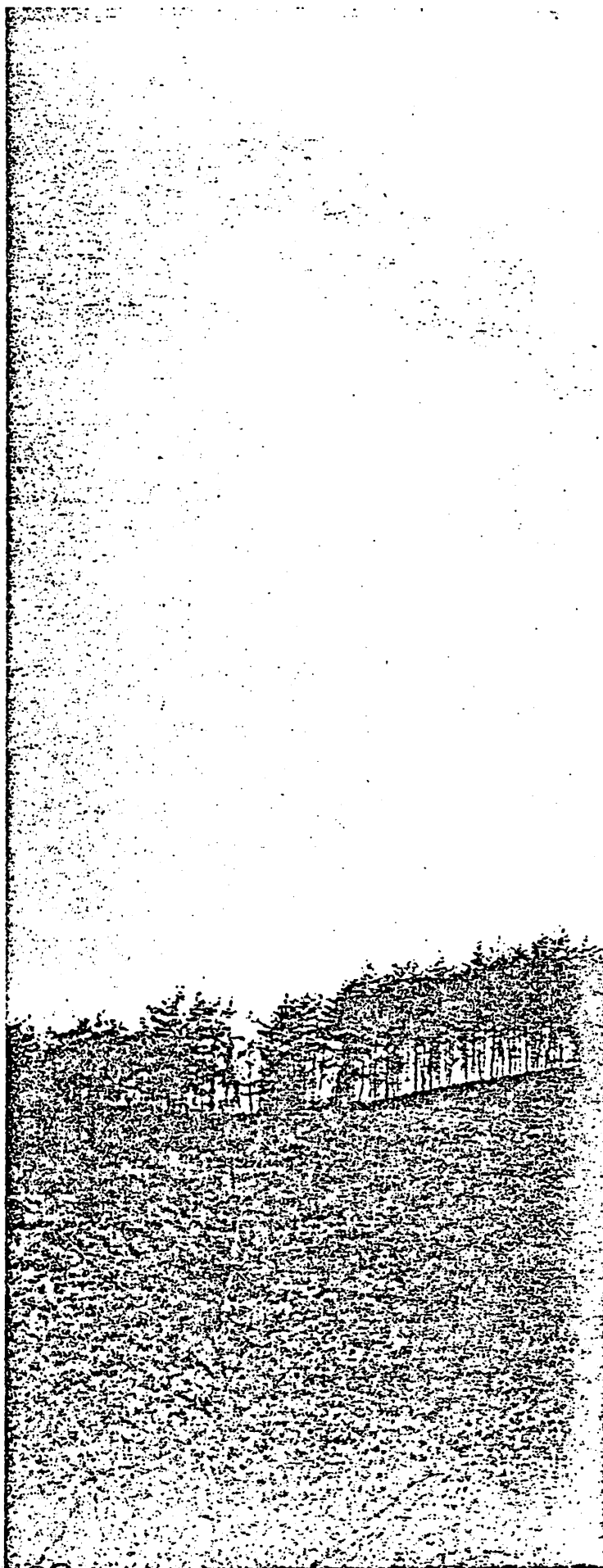
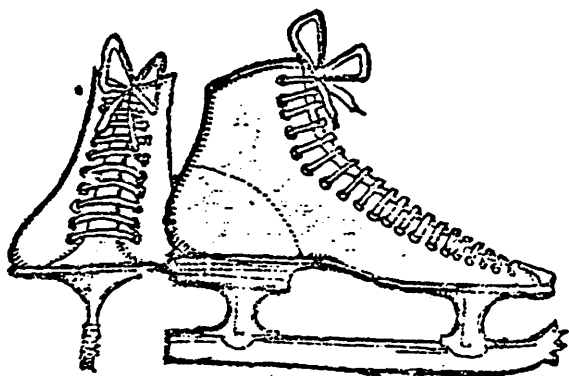
Home sites are not pieced together in small parcels. You have room to play in, plan in, and live in.

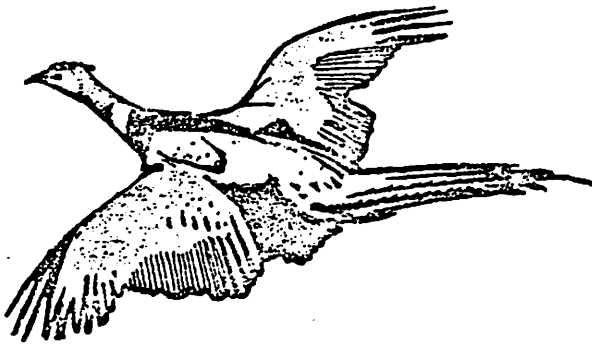
### **Environmental Control**

We protect the value of your investment, by protecting the environment . . . not only natural but man-made. All building designs must be approved before construction, foliage and trees must be maintained. We see to it that the beauty of Bryce is embellished not eroded.

### **Underground Sewerage**

A central sewerage system is already being installed underground to serve each site. All you do is tie-in when you're ready.





### Underground Utilities

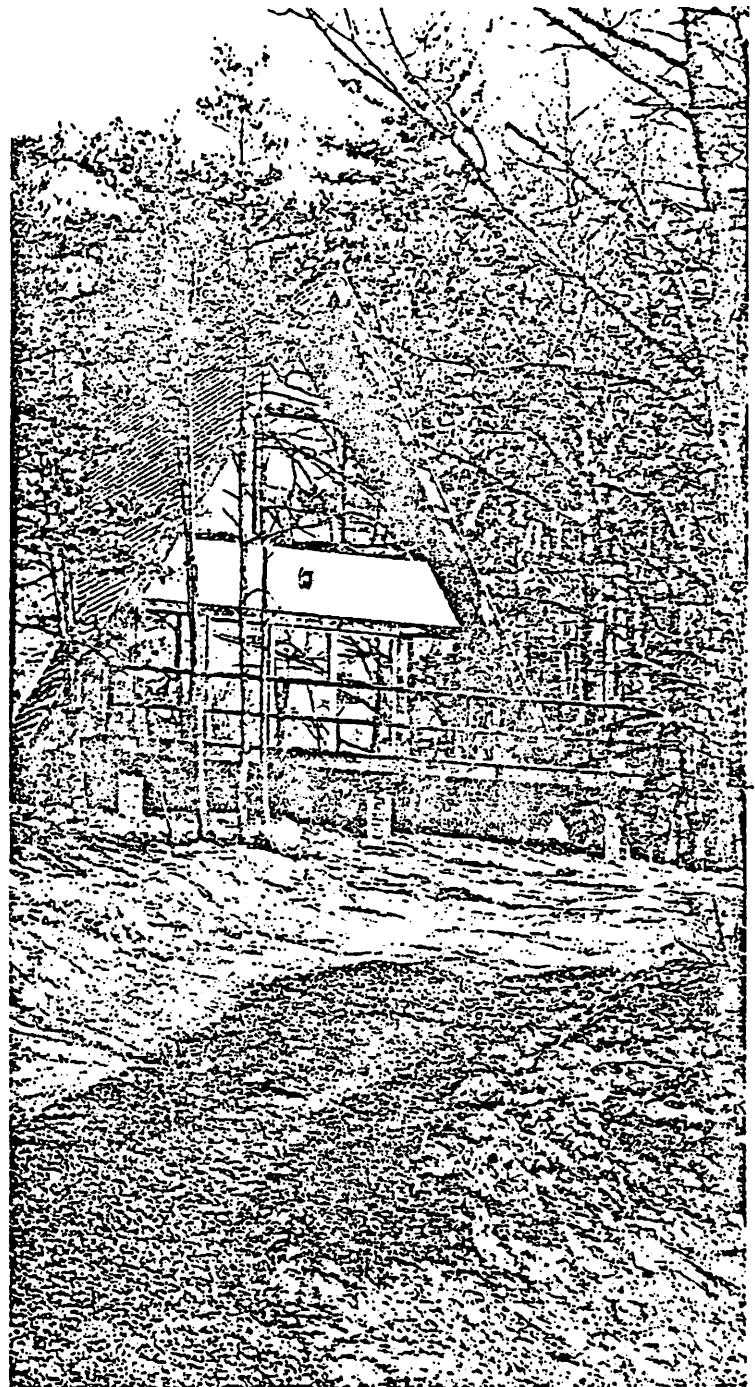
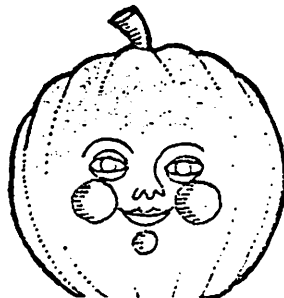
There are no unsightly poles, wires or pipes to mar the beauty of your mountain. Electrical and phone lines are all underground.

### Responsible On-Site Management

Our management and sales force will give you every assistance in selecting your site and arranging financing for your acquisition. Then when you're ready to build, you can rely on the Bryce management. We'll put you in touch with local architects and contractors if you prefer, and help in any way we can to make your dream home a reality.

### Rental Management

If you have purchased your property and wish to vacation on your mountain before your own home is completed, you can rent one of the privately owned and furnished homes already erected. As a Bryce property owner you'll get first consideration. When your home is finished, you'll want to take advantage of this rental program, too. By renting your home when you are not using it, you can reduce initial investment costs. You could save tax dollars, too.





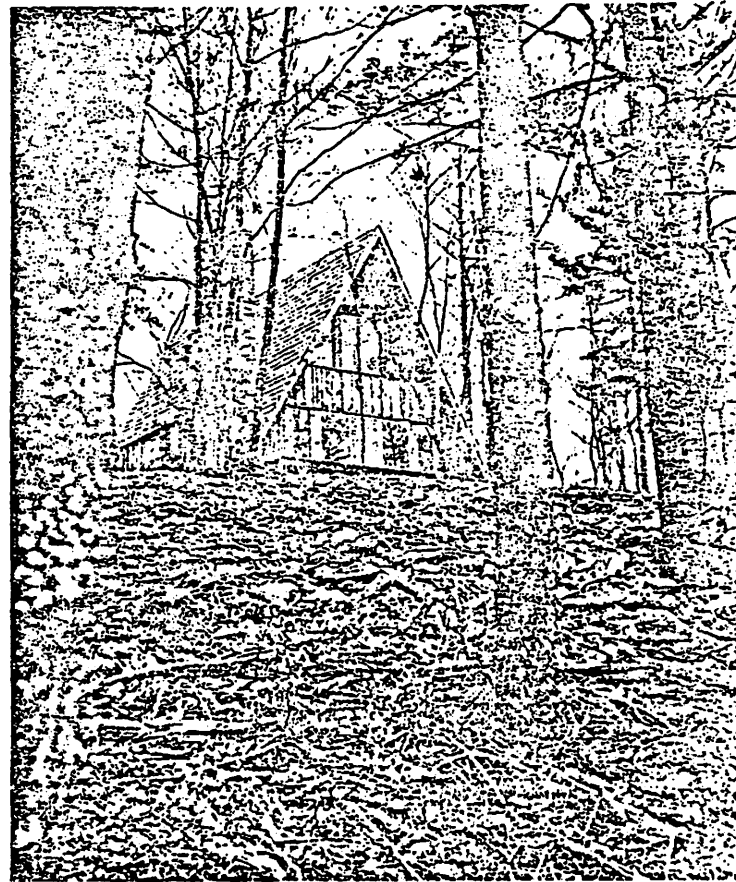
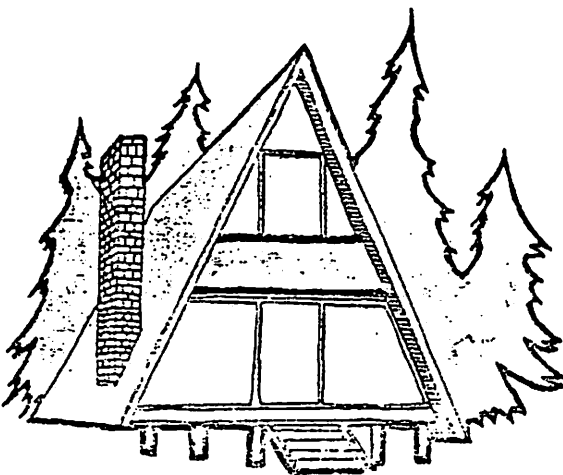
## *The Bryce Mountain Association*

In the future, when Bryce becomes a private resort community, the Bryce Mountain Association will oversee the upkeep and usage of recreational facilities. If you purchase a home-site now, your first year's membership is free.

### **BUY FOR NOW, BUILD FOR LATER AT BRYCE MOUNTAIN**

Excellent Financing is now available for land acquisition at Bryce Mountain. And there's no better time to buy. With recreational land in increasing demand, site prices are bound to rise. Make an investment in fun. Make an investment in the future. Make an investment in Bryce!

Why not come down and visit Bryce? See the Bryce excitement for yourself. For further information call (703) 477-3171; or write to Bryce Mountain, Basye, Virginia 22810.



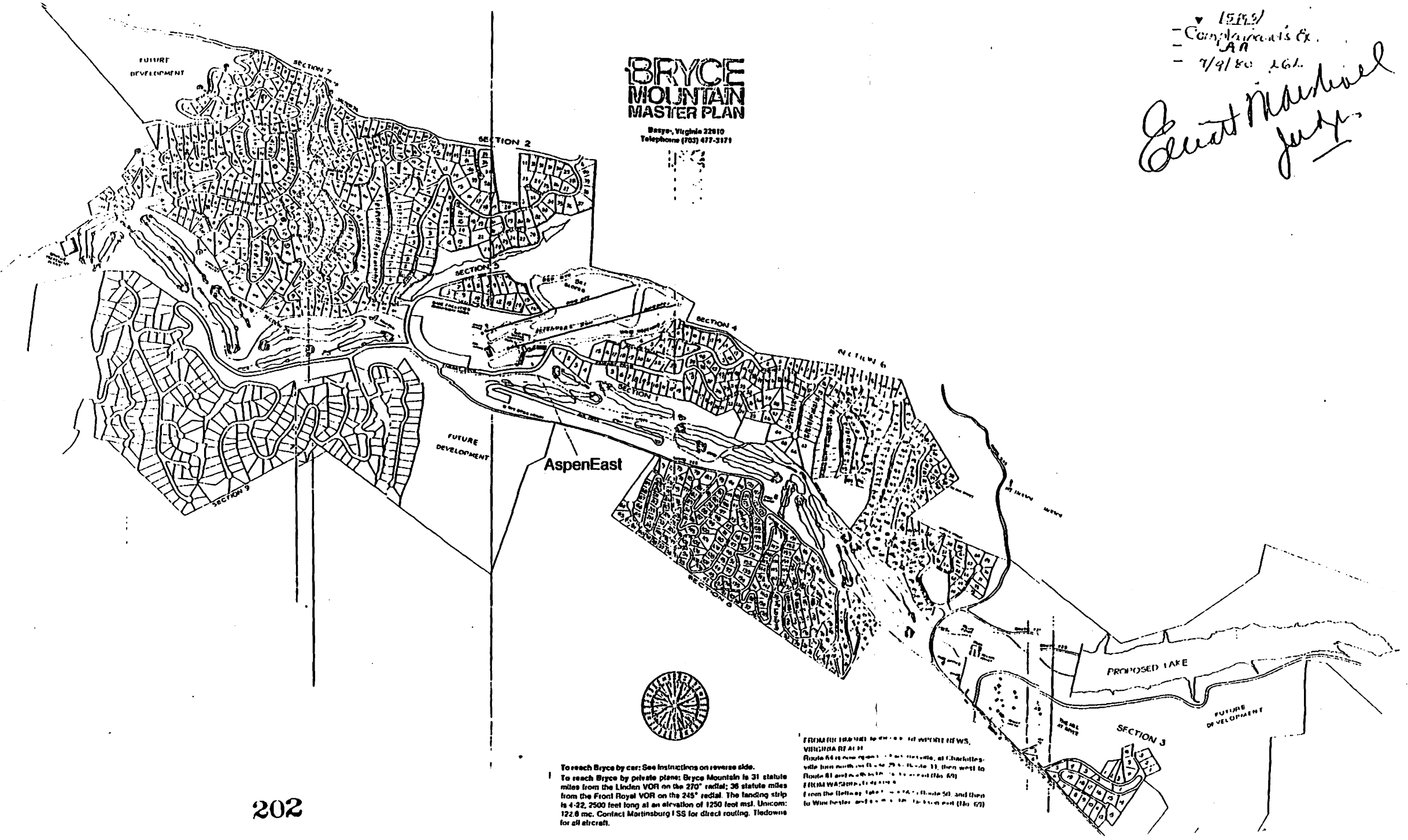


# BRYCE MOUNTAIN MASTER PLAN

Bryce, Virginia 22810  
Telephone (703) 477-5171

15149/  
Compliments Ex.  
AN  
7/9/80 JGL

*Grant Marshall  
Jr.*



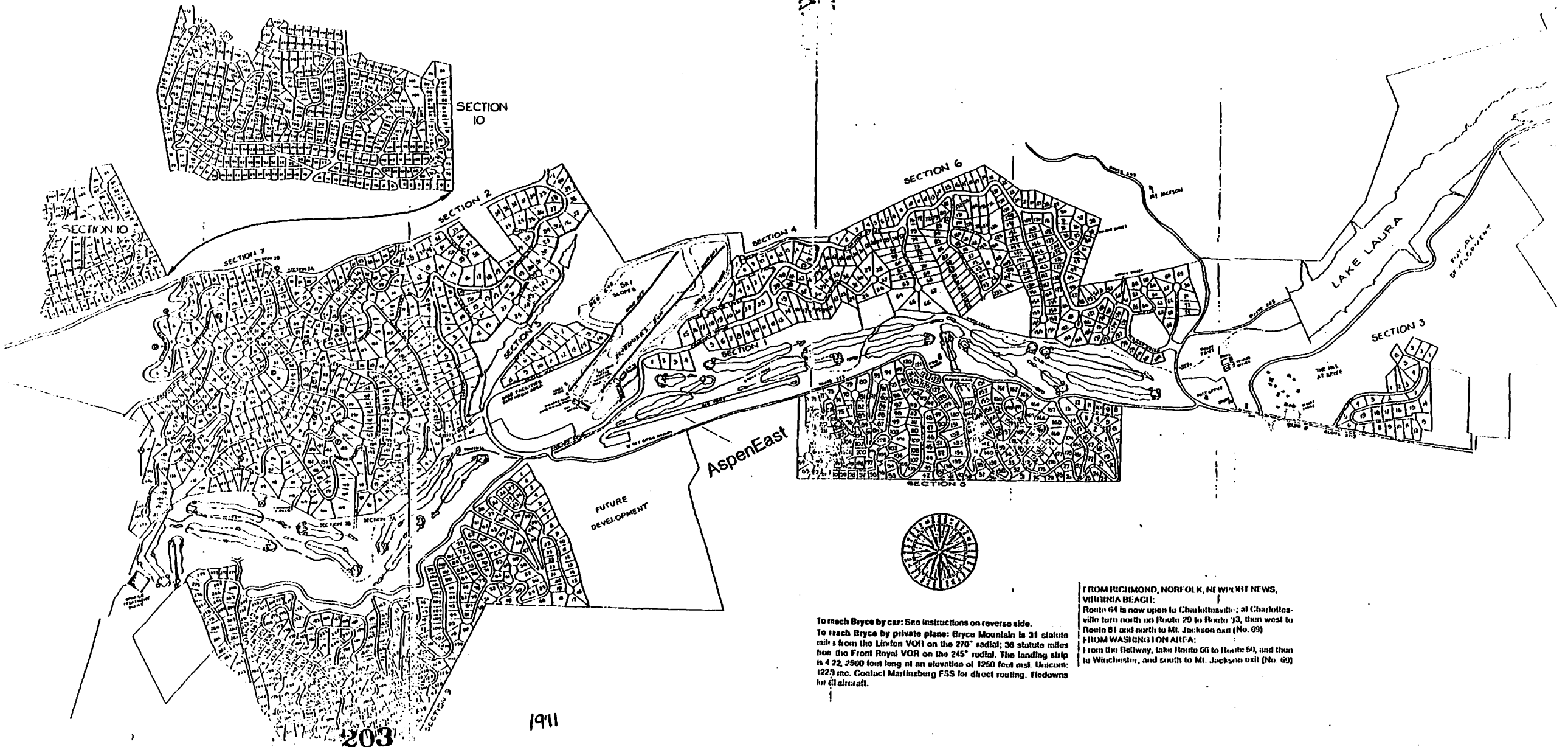
To reach Bryce by car: See instructions on reverse side.  
To reach Bryce by private plane: Bryce Mountain is 31 statute miles from the Linden VOR on the 270° radial; 36 statute miles from the Front Royal VOR on the 245° radial. The landing strip is 4-22, 2500 feet long at an elevation of 1250 feet msl. Unicom: 122.8 mc. Contact Martinsburg FSS for direct routing. Tie-downs for all aircraft.

FROM THE LINDEN VOR, VIRGINIA RT 41  
Route 64 to new road 1.0 mi. to village, at Chalkleyville turn north on Rt. 29 to Route 11, then west to Route 81 and north on Rt. 11 to road (Rt. 64)  
FROM FRONT ROYAL, VA  
From the highway take Rt. 29 to Route 50, and then to Wm. Byrd and Rt. 29 to the town end (Rt. 64)



# BRYCE MOUNTAIN MASTER PLAN

Bryce, Virginia 22810  
Telephone (202) 477-3171

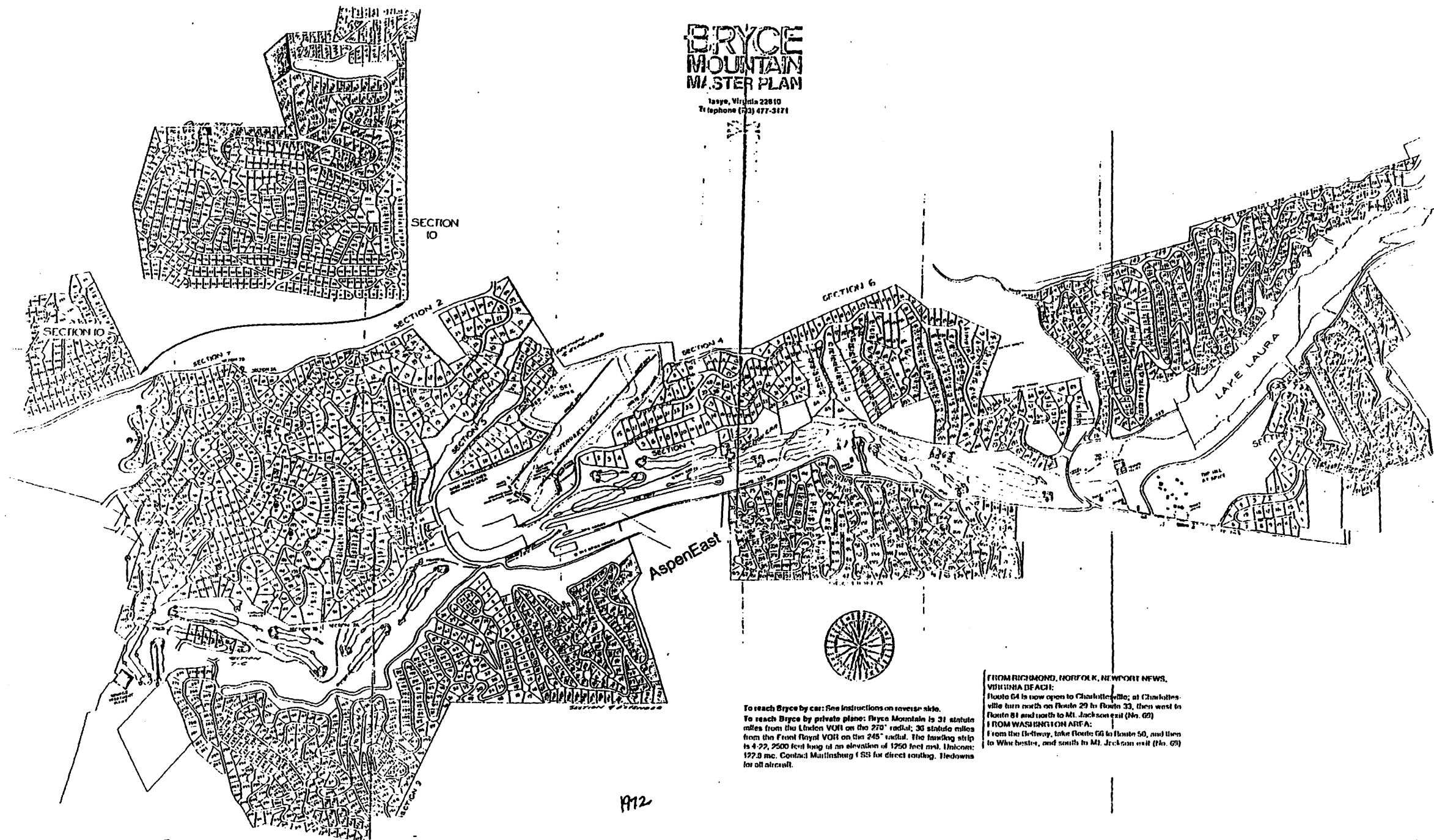


To reach Bryce by car: See instructions on reverse side.  
To reach Bryce by private plane: Bryce Mountain is 31 statute miles from the Lincolnton VOR on the 270° radial; 36 statute miles from the Front Royal VOR on the 245° radial. The landing strip is 4,225, 2,500 foot long at an elevation of 1,250 feet msl. Unicom: 122.7 mcs. Contact Martinsburg FSS for direct routing. Flaredowns in aircraft.

FROM RICHMOND, NORFOLK, NEWPORT NEWS, VIRGINIA BEACH:  
Route 64 is now open to Charlottesville; at Charlottesville turn north on Route 29 to Route 73, then west to Route 81 and north to Mt. Jackson exit (No. 69)  
FROM WASHINGTON AREA:  
From the Beltway, take Route 66 to Route 50, and then to Winchester, and south to Mt. Jackson exit (No. 69)

# BRYCE MOUNTAIN MASTER PLAN

Isaie, Virginia 22610  
Telephone (703) 477-3171



To reach Bryce by car: See instructions on reverse side.  
To reach Bryce by private plane: Bryce Mountain is 31 statute miles from the Linden VOR on the 270° radial; 30 statute miles from the Front Royal VOR on the 245° radial. The landing strip is 4-22, 2500 feet long at an elevation of 1250 feet msl. Unicom: 122.8 mc. Contact Martinsburg FSS for direct routing. Tie-downs for all aircraft.

FROM RICHMOND, NORFOLK, NEWPORT NEWS,  
VIRGINIA BEACH:  
Route 64 is now open to Charlottesville; at Charlottesville turn north on Route 29 to Route 33, then west to Route 81 and north to Mt. Jackson exit (No. 69).  
FROM WASHINGTON AREA:  
From the D-4-way, take Route 66 to Route 50, and then to Whitesites, and south to Mt. Jackson exit (No. 69).

1912

- Complaints Ex.  
- BB  
- 7/10/80

TRUE COPY!

APPLICATION FOR  
PLAN EXAMINATION AND  
BUILDING PERMIT

IMPORTANT - Applicant to complete all items in sections: I, II, III, IV, and IX.

ASHA

NO. 4309-79 STREET Vashers Lodge N. Chola

|                         |                                   |                                      |
|-------------------------|-----------------------------------|--------------------------------------|
| I. LOCATION OF BUILDING | AT (LOCATION) <u>O'Nea West</u>   | ZONING DISTRICT <u>6</u>             |
|                         | (NO.)                             | (STREET)                             |
|                         | BETWEEN _____ AND _____           | (CROSS STREET)                       |
|                         | SUBDIVISION <u>Bryce Mountain</u> | LOT _____ BLOCK _____ LOT SIZE _____ |

II. TYPE AND COST OF BUILDING - All applicants complete Parts A - D

|  |  |  |  |
|--|--|--|--|
| A. TYPE OF IMPROVEMENT   |  | D. PROPOSED USE - For "Wrecking" most recent use           |  |
| 1 <input checked="" type="checkbox"/> New building   | 2 <input type="checkbox"/> Addition (If residential, enter number of new housing units added, if any, in Part D, 13)<br>3 <input type="checkbox"/> Alteration (See 2 above)<br>4 <input type="checkbox"/> Repair, replacement<br>5 <input type="checkbox"/> Wrecking (If multifamily residential, enter number of units in building in Part D, 13)<br>6 <input type="checkbox"/> Moving (relocation)<br>7 <input type="checkbox"/> Foundation only | Residential  | Nonresidential   |
| 12 <input type="checkbox"/> One family   |  | 18 <input type="checkbox"/> Amusement, recreational        |  |
| 13 <input checked="" type="checkbox"/> Two or more family - Enter number of units - - - - - <u>12</u>                |  | 19 <input type="checkbox"/> Church, other religious        |  |
| 14 <input type="checkbox"/> Transient hotel, motel, or dormitory - Enter number of units - - - - - <u>          </u> |  | 20 <input type="checkbox"/> Industrial                     |  |
| 15 <input type="checkbox"/> Garage   |  | 21 <input type="checkbox"/> Parking garage                 |  |
| 16 <input type="checkbox"/> Carport  |  | 22 <input type="checkbox"/> Service station, repair garage |  |
| 17 <input type="checkbox"/> Other - Specify <u>Build.</u>  |  | 23 <input type="checkbox"/> Hospital, institutional        |  |
| B. OWNERSHIP   |  | 24 <input type="checkbox"/> Office, bank, professional     |  |
| 8 <input checked="" type="checkbox"/> Private (individual, corporation, nonprofit institution, etc.)                 | 25 <input type="checkbox"/> Public utility   |  | 26 <input type="checkbox"/> School, library, other educational |
| 9 <input type="checkbox"/> Public (Federal, State, or local government)  | 27 <input type="checkbox"/> Stores, mercantile   |  | 28 <input type="checkbox"/> Tanks, towers                      |
|  |  | 29 <input type="checkbox"/> Other - Specify _____          |  |

2 buildings of 6 units each for condominiums  
(3-story each) 57'x36' each: well

|  |                  |  |
|--|------------------|--|
| C. COST  |                  | Nonresidential - Describe in detail proposed use of buildings, e.g., food processing plant, machine shop, laundry building at hospital, elementary school, secondary school, college, parochial school, parking garage for, department store, rental office building, office building at industrial plant. If use of existing building is being changed, enter proposed use. |
| 10. Cost of improvement.....                       | <u>\$250,000</u> |  |
| To be installed but not included in the above cost |                  |  |
| a. Electrical.....                                 |                  |  |
| b. Plumbing.....                                   |                  |  |
| c. Heating, air conditioning.....                  |                  |  |
| d. Other (elevator, etc.).....                     |                  |  |
| 11. TOTAL COST OF IMPROVEMENT                      | \$               |  |

III. SELECTED CHARACTERISTICS OF BUILDING - For new buildings and additions, complete Parts E - L; for wrecking, complete only Part J, for all others skip to IV.

|  |   |  |   |                             |          |
|--|---|--|---|-----------------------------|----------|
| E. PRINCIPAL TYPE OF FRAME                                       |   | G. TYPE OF SEWAGE DISPOSAL   |   | J. DIMENSIONS               |          |
| 30 <input type="checkbox"/> Masonry (wall bearing)               | 31 <input type="checkbox"/> Wood frame<br>32 <input type="checkbox"/> Structural steel<br>33 <input checked="" type="checkbox"/> Reinforced concrete<br>34 <input type="checkbox"/> Other - Specify _____ | 40 <input checked="" type="checkbox"/> Public or private company                   | 41 <input type="checkbox"/> Private (septic tank, etc.) | 48. Number of stories.....  | <u>3</u> |
| 42 <input checked="" type="checkbox"/> Public or private company |   | 49. Total square feet of floor area, all floors, based on exterior dimensions..... |   | <u>4104</u>                 |          |
| 43 <input type="checkbox"/> Private (well, cistern)              |   | 50. Total land area, sq. ft.....   |   |                             |          |
|  |   | K. NUMBER OF OFF-STREET PARKING SPACES   |   |                             |          |
| F. PRINCIPAL TYPE OF HEATING FUEL                                |   | I. TYPE OF MECHANICAL  |   | 51. Enclosed.....           |          |
| 35 <input type="checkbox"/> Gas                                  | 36 <input type="checkbox"/> Oil<br>37 <input type="checkbox"/> Electricity<br>38 <input type="checkbox"/> Coal<br>39 <input checked="" type="checkbox"/> Other - Specify <u>Heat Pumps</u>                | Will there be central air conditioning?  |   | 52. Outdoors.....           |          |
| 44 <input checked="" type="checkbox"/> Yes                       |   | 45 <input type="checkbox"/> No   |   |                             |          |
| Will there be an elevator?                                       |   |  |   |                             |          |
| 46 <input type="checkbox"/> Yes                                  |   | 47 <input checked="" type="checkbox"/> No  |   |                             |          |
|  |   | L. RESIDENTIAL BUILDINGS ONLY  |   | 53. Number of bedrooms..... |          |
|  |   | 54. Number of bathrooms  |   | <u>28</u>                   |          |
|  |   | Full.....  |   | <u>24</u>                   |          |
|  |   | Partial.....   |   |                             |          |

PAGE 61 PAGE 110E



Leppo

11/9/79 Foote in North end ok to  
Pave recommended 3 additional rods on  
lower side of each wall. JAS  
11-11-79 Foote - other half approved with recommendation  
as above - P.D.

11/21/79 Rough-in on plumbing under  
floor app CJK

12/5/79 - Foote approved (2nd unit) P.D.

Shenandoah County, Virginia

# BUILDING PERMIT

OFFICE COPY

No 4309

Date October 23, 1977

Owner Price & Lois Barnes 6569 Edsall Road Springfield, Va. 22155 P.O. Box 11  
Builder W.H. Const. Co. Days, Va. 22020

Location Edsall Road Lot        Blk        Sect       

Subdivision Maple Mountain, or tract of        acres, Mag. Dist.       

Permission is hereby granted to Build 2 buildings of 6 units each for condominium of        sq. ft.,        /basement in accordance with the Building Code (3<sup>rd</sup> story) each 57'x36'; well

Use group Residential Const. type Concrete Estimated Cost \$ 257,000.00

Conditions and/or Remarks:

For inspection call: 459-4047

Permit and Inspection Fee

\$ 751.27

Building Inspector

This permit is not complete or valid unless receipted by the Treasurer and signed by the Building Inspector.

1977

| Name  | Mailing address - Number, street, city, and State | ZIP code | Tel. No.                              |
|---|---|----------|---------------------------------------|
| 1. Owner or Lessee<br><i>Donna &amp; Chris Jordan</i> | <i>6519 Edmont Road</i>                           |          |                                       |
|   | <i>Springfield, Va. 22151</i>                     |          |                                       |
| 2. Contractor<br><i>JKF Contract Co</i>               | <i>P.O. Box 11</i>                                |          | Builder's License No. <i>854-2533</i> |
|   | <i>Bohys, Va. 22810</i>                           |          |                                       |
| 3. Architect or Engineer                              |   |          |                                       |

I hereby certify that the proposed work is authorized by the owner of record and that I have been authorized by the owner to make this application as his authorized agent and we agree to conform to all applicable laws of this jurisdiction.

|  |         |                                     |
|--|---------|-------------------------------------|
| Signature of applicant:<br><i>Chris Jordan</i> | Address | Application date<br><i>10-29-79</i> |
|--|---------|-------------------------------------|

DO NOT WRITE BELOW THIS LINE

| V. PLAN REVIEW RECORD - For office use |       |                  |                    |    |                     |    |       |
|--|-------|------------------|--------------------|----|---------------------|----|-------|
| Plans Review Required                  | Check | Plan Review Fee  | Date Plans Started | By | Date Plans Approved | By | Notes |
| BUILDING                               |       | <i>\$ 246.24</i> |                    |    |                     |    |       |
| PLUMBING                               |       | <i>\$ 120.00</i> |                    |    |                     |    |       |
| MECHANICAL                             |       | <i>\$ 120.00</i> |                    |    |                     |    |       |
| ELECTRICAL + meters                    |       | <i>\$ 240.00</i> |                    |    |                     |    |       |
| OTHER <i>Sail &amp; Lining</i>         |       | <i>\$ 10.00</i>  |                    |    |                     |    |       |
| <i>Plan Review</i>                     |       | <i>10.00</i>     |                    |    |                     |    |       |

| VI. ADDITIONAL PERMITS REQUIRED OR OTHER JURISDICTION APPROVALS |       |               |        |    |                     |       |               |        |    |
|---|-------|---------------|--------|----|---------------------|-------|---------------|--------|----|
| Permit or Approval  | Check | Date Obtained | Number | By | Permit or Approval  | Check | Date Obtained | Number | By |
| BOILER  |       |               |        |    | PLUMBING            |       |               |        |    |
| CURB OR SIDEWALK CUT  |       |               |        |    | ROOFING             |       |               |        |    |
| ELEVATOR  |       |               |        |    | SEWER               |       |               |        |    |
| ELECTRICAL  |       |               |        |    | SIGN OR BILLBOARD   |       |               |        |    |
| FURNACE   |       |               |        |    | STREET GRADES       |       |               |        |    |
| GRADING   |       |               |        |    | USE OF PUBLIC AREAS |       |               |        |    |
| OIL BURNER  |       |               |        |    | WRECKING            |       |               |        |    |
| OTHER   |       |               |        |    | OTHER               |       |               |        |    |

| VII. VALIDATION                               |  | FOR DEPARTMENT USE ONLY |
|---|--|-------------------------|
| Building Permit number <i>4309-79</i>         |  | Use Group _____         |
| Building Permit issued <i>October 29 1979</i> |  | Fire Grading _____      |
| Building Permit Fee \$ <i>751.24</i>          |  | Live Loading _____      |
| Certificate of Occupancy \$ _____             |  | Occupancy Load _____    |
| Drain Tile \$ <i>711</i>                      |  |                         |
| Plan Review Fee \$ <i>10</i>                  |  |                         |
| Approved by: <i>Jack F. [Signature]</i>       |  |                         |
| <i>Building Official</i>                      |  |                         |
| TITLE <i>dm</i>                               |  |                         |

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# VIII. ZONING PLAN EXAMINERS NOTES

DISTRICT *High Density R-3*

USE *Multi ~~Family~~ Dwelling*

FRONT YARD *OK.*

SIDE YARD *10ft*

SIDE YARD *10ft.*

REAR YARD *30ft. (next to Road)*

NOTES *X* *These deals with two (2) buildings only. Application being presented to Planning Commission for ~~eight~~ <sup>seven</sup> such units. This part of Permit deals with distances only.*

*Approved Nov. 8, 1978*

*Roy Wilkovich, zoning Admin.*

## IX. SITE OR PLOT PLAN - For Applicant Use

DEWBERRY, NEALON & DAVIS  
ENGINEERS • ARCHITECTS • PLANNERS • SURVEYORS

8411 ARLINGTON BOULEVARD FAIRFAX, VIRGINIA 22031 (703) 560-1100

October 1, 1979

Mr. Tom Eberly  
Virginia State Health Department  
Division of Engineering  
P. O. Box 11  
Lexington, Virginia 24450

RE: Bruce Forbes Development

SIDNEY O. DEWBERRY  
RICHARD N. DAVIS  
HAROLD WILLIAMS  
VERNON R. GINGELL  
ERNEST M. JENNELLE  
PAUL J. TEMPLES  
ROBERT J. DIAISO  
WILLIAM H. EDWARDS  
DOUGLAS R. FAHL  
WILLIAM G. FRY  
CARL E. KEISLER  
JOHN T. MONAGHAN  
ROBERT E. POEHNER  
ARCHIE L. WHISONANT  
THOMAS L. WILEY  
WARREN H. ZIMMERMAN  
• NON-REGISTERED PROFESSIONALS

Dear Mr. Eberly:

As agreed during our meeting on September 18th, I am writing you to outline the proposed plan for developing a water system to serve a housing project for Mr. Bruce Forbes, located within Section 6A at Bryce Mountain.

The owner plans to construct a series of 2-bedroom condominiums on the property, with six units in each apartment house. The 7-acre tract will be developed in stages, with the initial stage consisting of a sales office and one apartment house. Sewer service to the site will be provided by the public sewer system owned by Stoney Creek Utilities. Domestic water will be taken from drilled wells.

At the present time, plans are to construct and expand the water system in conjunction with growth of the development. If the well (or wells) for which sites were approved last week, produce enough water, they will become part of a public water system installed to serve the housing complex. The system would fully adhere to requirements of the Water Works Regulations concerning drilling, source development, treatment, distribution and storage. Until a decision is made on the public system, however, we wish to operate as a private water system. From discussions held during our meeting, it is my understanding that up to eight, 2-bedroom apartments could be served before the system becomes classified public.

We appreciate your assistance in planning the water system for the proposed housing development, and it is our intent to work with the Department in implementing these plans. It is requested that bottles for bacteriological and chemical samples be sent to Mr. Louis Cardarella, Box 11, Basye, Virginia 22810.

Sincerely,



Eugene D. Millar, Jr., P.E.  
Project Manager

EDM:jlh

cc: Mr. Bruce Forbes

Mr. Louis Cardarella ✓

SEVERNA PARK, MARYLAND - GAITHERSBURG, MARYLAND - FREDERICK, MARYLAND  
MARION, VIRGINIA - VIENNA, VIRGINIA - DANVILLE, VIRGINIA - STAUNTON, VIRGINIA

Stoney Creek  
Utilities Corporation

P. O. Box 2  
Basyo, Virginia 22810  
(703) 856-2741

September 17, 1979

Mr. Bruce Forbes  
Great North Mountain Corp.  
c/o Forbes & Associates  
6569 Edsall Road  
Springfield, VA 22151

Dear Bruce:

This letter serves to confirm that Stoney Creek Utilities Corporation intends to provide sewer and water service to one residential unit in the seven-acre tract located adjacent to the golf course in Section VI.

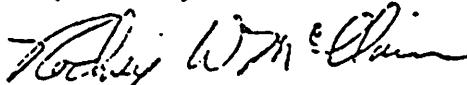
Said services will be available to the property line of the above mentioned tract where deemed feasible by Stoney Creek Utilities Corp.

It will be the responsibility of the developer to install water and sewer laterals to the property line at the point where Stoney Creek Utilities Corp. has provided service.

This agreement confirms the conversation of Bruce Forbes and Pete Bryce of an earlier date.

No additional services will be provided by Stoney Creek Utilities Corporation without explicit, written permission.

Respectfully,



Rodney W. McClain  
General Manager

KM:bd



DEPARTMENT OF TRANSPORTATION  
FEDERAL AVIATION ADMINISTRATION

Airspace and Procedures Branch, AEA-300  
Air Traffic Division  
Federal Aviation Administration  
Federal Building  
John F. Kennedy International Airport  
Jamaica, New York 11430

IN REPLY REFER TO  
AERONAUTICAL STUDY  
NO. 79-AEA-235-01

ACKNOWLEDGMENT OF NOTICE OF PROPOSED CONSTRUCTION OR ALTERATION

|                       |                             |                                 |                         |
|-----------------------|-----------------------------|---------------------------------|-------------------------|
| CONSTRUCTION PROPOSED | DESCRIPTION<br>New building | CONSTRUCTION LOCATION           |                         |
|                       |                             | PLACE NAME<br>BAYVIEW, VIRGINIA |                         |
|                       |                             | LATITUDE<br>38-44-N             | LONGITUDE<br>77-44-45-W |
|                       |                             | HEIGHT (IN FEET)                |                         |
|                       |                             | ABOVE GROUND<br>35              | ABOVE MSL<br>1425       |

The Federal Aviation Administration hereby acknowledges receipt of notice dated 6/7/79 concerning the proposed construction or alteration described above.

A study has been conducted under the provisions of Part 77 of the Federal Aviation Regulations to determine whether the proposed construction would be an obstruction to air navigation, whether it should be marked and lighted to enhance safety in air navigation, and whether supplemental notice of start and completion of construction is required to permit timely charting and notification to airmen. The findings of that study are as follows:

- has
- ( ) The proposed construction would not exceed FAA obstruction standards and would not be a hazard to air navigation. However, the following applies to the construction proposed:
    - ( ) The structure should be obstruction ~~marked~~ lighted per FAA Advisory Circular AC 70/7460-1, "Obstruction Marking and Lighting."
    - ( ) Supplemental notice is required at least 48 hours before the start of construction (use the enclosed FAA form).
    - ( ) Supplemental notice is required within five days after construction reaches its greatest height (use the enclosed FAA form).
  - ( ) The proposed construction would exceed FAA obstruction standards and further aeronautical study is necessary to determine whether it would be a hazard to air navigation. Pending completion of any further study, it is presumed the construction would be a hazard to air navigation. Further study:
    - ( ) Has been initiated by the FAA.
    - ( ) May be requested by the sponsor within 30 days of date of this acknowledgement.
  - ( ) If the proposed structure were reduced in height to not exceed \_\_\_\_\_ ft. above ground level ( \_\_\_\_\_ ft. above sea level), it would not exceed Part 77 obstruction standards.

The structure is subject to the licensing authority of the Federal Communications Commission, a copy of this acknowledgment must be sent to that Agency.

Notice is required anytime the project is abandoned or the proposal is modified. (Use the enclosed FAA form.)

TITLE \_\_\_\_\_  
ON \_\_\_\_\_

BODY 401 PAGE 216

WHEREAS, Bryce's Mountain Resort, Inc., a Virginia corporation, has heretofore recorded a plat of a subdivision situate in Shenandoah County, Virginia, known as Section 3 Extended of Bryce's Mountain Resort, Inc., which said plat is recorded in the Clerk's Office of the Circuit Court of Shenandoah County, Virginia, in Deed Book 309, at page 788; and

WHEREAS, by deed dated May 1, 1975, Bryce's Mountain Resort, Inc., conveyed certain portions of said subdivision to Bryce Mountain Ski and Country Club, a limited partnership, which deed is recorded in said Clerk's Office in Deed Book 346, at page 355; and

WHEREAS, by deed dated October 6, 1976, Bryce Mountain Ski and Country Club conveyed said real estate in trust to William N. Deaver and Kenneth L. Crovo, trustees, to secure a certain promissory note held by First and Merchants National Bank, of Arlington, Virginia, which said deed of trust is recorded in said Clerk's Office in Deed Book 368, at page 600; and

WHEREAS, by deed dated July 1, 1978, Bryce's Mountain Resort, Inc., conveyed lots 1 through 129, inclusive, in said subdivision to The Brice Family Enterprises, Inc., a Virginia corporation, said lots being all of the real estate remaining in said subdivision subsequent to the aforesaid conveyance to Bryce Mountain Ski and Country Club, said deed being recorded in the said Clerk's Office in Deed Book 390, at page 255; and

WHEREAS, by deed dated July 1, 1978, The Brice Family Enterprises, Inc., conveyed lots 16 through 129, inclusive, in trust to Henry C. Clark and V. Stephen Bradshaw, trustees, to secure a certain note payable to Bryce's Mountain Resort,



Inc., which said deed is recorded in said Clerk's Office in Deed Book 390, at page 257; and

WHEREAS, by deed dated October 6, 1978, The Brice Family Enterprises, Inc., conveyed Lot 6 in trust to Henry C. Clark and Rodney Crowder, trustees, to secure a certain note payable to Citizens National Bank of New Market, which said deed is recorded in said Clerk's Office in Deed Book 390, at page 261; and

WHEREAS, the foregoing parties are all of the owners of an interest in said subdivision and are desirous of vacating a portion of the plat of said subdivision and of vacating the restrictive covenants applicable to all of the lots in Section Three Extended,

NOW, THEREFORE, the undersigned parties do hereby request and agree that lots 16 through 129, inclusive, as shown on the plat of Section 3 Extended of Bryce's Mountain Resort, Inc., which is recorded in the Clerk's Office of the Circuit Court of Shenandoah County in Deed Book 309, at page 788, be vacated from said plat pursuant to Section 15.1-482 of the Code of Virginia, as amended.

The vacation of said lots 16 through 129 shall not affect such roads, green areas and reserved areas as may appear on said plat, it being the intent of the parties that only the portion of said plat which includes lots 16 through 129 be vacated.

The parties do further agree that the restrictive covenants dated May 18, 1969, and recorded in said Clerk's Office in Deed Book 262, at page 275, are hereby vacated, and said vacation of the restrictive covenants shall apply to Lots 1 through 129, inclusive.

This agreement is joined in by the Board of Supervisors of Shenandoah County, Virginia, for the purpose of showing the approval of the aforesaid vacation by the governing body of the county within which the land is located, as required by said Section 15.1-482(a).

WITNESS the following signatures and seals:

BRYCE'S MOUNTAIN RESORT, INC.,  
a Virginia corporation

By: Ronald G. Petcher  
Ronald G. Petcher, Vice President

(Seal)

ATTEST:

John P. Lerner  
Secretary

BRYCE MOUNTAIN SKI AND COUNTRY CLUB,  
a limited partnership  
By: Bryce Mountain Ski & Country Club Corp., Inc.

ATTEST:

By: William N. Deaver  
President

William N. Deaver (SEAL)  
William N. Deaver, Trustee

Kenneth L. Crovo (SEAL)  
Kenneth L. Crovo, Trustee

FIRST AND MERCHANTS NATIONAL BANK,  
of Arlington, Virginia, a  
corporation

(Seal)

ATTEST:

Christine R. Pugh  
Vice Pres.

THE BRICE FAMILY ENTERPRISES, INC.,  
a Virginia corporation

(Seal)

ATTEST:

Janet H. Brice  
Secretary

Henry G. Clark (SEAL)  
Henry G. Clark, Trustee

V. Stephen Bradshaw (SEAL)  
V. Stephen Bradshaw, Trustee

Rodney M. Crowder (SEAL)  
Rodney M. Crowder, Trustee

CITIZENS NATIONAL BANK OF NEW MARKET,  
a Virginia corporation

By: [Signature]  
Asst Vice President

(Seal)

ATTEST:

[Signature]

BOARD OF SUPERVISORS OF  
SHENANDOAH COUNTY, VIRGINIA

By: [Signature]

STATE OF VIRGINIA,

COUNTY OF Rockingham, to-wit:

The foregoing instrument was acknowledged before me  
this 15th day of October, 1978, by Donald G. Percher  
VICE PRESIDENT of BRYCE'S MOUNTAIN RESORT, INC.,  
a Virginia corporation, on behalf of the corporation.

My commission expires: May 22, 1979

[Signature]  
Notary Public

STATE OF VIRGINIA,

COUNTY OF Shenandoah, to-wit:

The foregoing instrument was acknowledged before me  
this 1st day of November, 1978, by Basil M. Winstead  
President  
Partner, on behalf of BRYCE MOUNTAIN SKI AND COUNTRY CLUB, a  
limited partnership.

My commission expires: Oct. 33, 1980

[Signature]  
Notary Public

STATE OF Virginia,

COUNTY OF Arlington, to-wit:

The foregoing instrument was acknowledged before me  
this 14<sup>th</sup> day of November, 1978, by WILLIAM N.  
DEAVER, Trustee.

My commission expires: March 16, 1982

Mary A. Skiles  
Notary Public

STATE OF Virginia,

COUNTY OF Arlington, to-wit:

The foregoing instrument was acknowledged before me  
this 14<sup>th</sup> day of November, 1978, by KENNETH L.  
CROVO, Trustee.

My commission expires: March 16, 1982

Mary A. Skiles  
Notary Public

STATE OF VIRGINIA,

COUNTY OF Arlington, to-wit:

The foregoing instrument was acknowledged before me  
this 14<sup>th</sup> day of November, 1978, by William N. Deaver,  
Senior Vice Pres. of FIRST AND MERCHANTS NATIONAL  
BANK, of Arlington, Virginia, a association  
corporation, on behalf of the corporation. association

My commission expires: March 16, 1982

Mary A. Skiles  
Notary Public

STATE OF VIRGINIA,

COUNTY OF Stafford to-wit:

The foregoing instrument was acknowledged before me  
this 16<sup>th</sup> day of October, 1978, by Paul B. Brice  
President of THE BRICE FAMILY ENTERPRISES, INC.,  
a Virginia corporation, on behalf of the corporation.

My commission expires: 1-9-82

Bruce A. Dierks  
Notary Public

STATE OF VIRGINIA,  
COUNTY OF ROCKINGHAM, to-wit:

The foregoing instrument was acknowledged before me  
this 10<sup>th</sup> day of January, 1978, by HENRY C. CLARK,  
Trustee.

My commission expires: July 20, 1981

Cynthia E. Folly  
Notary Public

STATE OF VIRGINIA,  
COUNTY OF ROCKINGHAM, to-wit:

The foregoing instrument was acknowledged before me  
this 10<sup>th</sup> day of January, 1978, by V. STEPHEN BRADSHAW,  
Trustee.

My commission expires: July 20, 1981

Cynthia E. Folly  
Notary Public

STATE OF VIRGINIA,

COUNTY OF Henrico, to-wit:

The foregoing instrument was acknowledged before me  
this 24<sup>th</sup> day of November, 1978, by RODNEY M. CROWDER,  
Trustee.

My commission expires: September 3, 1980

Maurice J. Hoffman  
Notary Public

STATE OF VIRGINIA,

COUNTY OF Shenandoah, to-wit:

The foregoing instrument was acknowledged before me  
this 22nd day of December, 1978, by W. Michael  
Stunk, Asst. V. President of CITIZENS NATIONAL BANK OF NEW  
MARKET, a Virginia corporation, on behalf of  
the corporation.

My commission expires: September 3, 1980

Maurice J. Hoffman  
Notary Public

STATE OF VIRGINIA,

COUNTY OF Shenandoah, to-wit:

The foregoing instrument was acknowledged before me  
this 13th day of March, 1978, by C. Thomas Sollenberger  
of the Board of Supervisors of Shenandoah County, Virginia,  
on behalf of said Board.

My commission expires: September 6, 1981

Anna Elizabeth Feller  
Notary Public

SHENANDOAH COUNTY, VA.  
The foregoing writing with certificate of acknowledgment thereon was reviewed at the  
Clerk's Office of said County, submitted to record and indexed. The taxes imposed by Sect.  
58-59, (a) and (b), of the Code have been paid.

1978 3rd day of August 1979  
2066 M. Tester [Signature] Clerk

11/2/80  
Secret Manual  
Jy

September 18, 1979

Mr. & Mrs. A. James O'Mara  
100 Spring Brook Drive  
Silver Spring, Maryland 20904

RE: 7.35 Acre tract, Shenandoah County, Virginia and sold to  
Bruce Forbes and Lois J. Forbes

Dear Mr. & Mrs. O'Mara:

Enclosed you will find a photostatic copy of an agreement between Bryce's Mountain Resort, Inc., and Bruce Forbes, which was executed by Bryce's Mountain Resort, Inc., on the 28th of July, 1978, and in which agreement I joined you and your wife. I did not get you and your wife to execute the agreement at that time so I am enclosing this photostatic copy in hopes that the two of you will execute it before a Notary Public and return same to me at your earliest convenience.

It is very important that I have this document concerning the removal of the two restrictions on the real estate which was purchased by Mr. & Mrs. Forbes.

I will appreciate your cooperation and if you have any questions at all concerning this, do not hesitate to call me collect at my above number. Please sign the enclosed instrument on the lines marked by the red check marks and have the Notary affix seal on the certification marked by the red check marks.

Sincerely,

I. Clinton Miller

ICM:mw  
Encl.



# BRYCE'S MOUNTAIN RESORT, INC.

P.O. Box 2  
BASYE, VIRGINIA 22810 / (703) 856-2131

July 28, 1973

Mr. I. Clinton Miller  
Attorney at Law  
Post Office Box 484  
Woodstock, Virginia 22664

Dear Clinton:

Enclosed please find the executed instrument you prepared consenting to the release of the two covenants on the O'Mara tract.

If you have any questions in this regard, please don't hesitate to contact me.

Sincerely,

Rondld G. Petcher  
General Manager

RGP:mcs

Enclosure



I. CLINTON MILLER

ATTORNEY AT LAW  
WOODSTOCK, VIRGINIA  
22664

June 30, 1978

AREA CODE 703  
TELEPHONE 459-2159

Mr. Ronald G. Petcher  
General Manager  
Bryce's Mountain Resort, Inc.  
P. O. Box 2  
Basye, VA 22810

RE: Release of Covenants on 7.35 acres, at Bryce's  
Mountain Resort (O'Mara tract)

Dear Ron:

Enclosed you will find an instrument I have prepared for execution by Bryce's Mountain Resort, Inc. consenting to the release of the two covenants on the O'Mara tract. Please have this executed, properly acknowledged, and returned to me at your earliest convenience. If you have any questions, please call.

Thank you for your cooperation on this matter.

Sincerely,



I. Clinton Miller

ICM/djc

Enc.

Per Ron. There are no  
buildings on this  
parcel. See Agreement  
28 Dec 1970. last paragraph  
initialed by Stanil and  
also par 6 -

Not to be billed until  
he bills and then at 1000  
percent -

12,000      10/21/75  
unpaid      Bayler  
for all units

WHEREAS, by deed dated the 22nd day of December, 1970, by and between Bryce's Mountain Resort, Inc. and A. James O'Mara and Lois J. O'Mara, husband and wife, a certain tract of real estate described hereinafter was conveyed subject to two certain covenants designated as (a) and (b), running with the land, as follows, to wit:

"(a) No development of said real estate, including site development, improvements, buildings, improvements or construction of any kind or nature, shall be made on said real estate until the proposed plans and specifications therefore have been approved in writing by the Grantor herein, its successors or assigns.

(b) No more than twelve (12) dwelling units, whether apartments, single residence units, or multiple residence units, shall be placed or constructed on said real estate;" and

WHEREAS, the said A. James O'Mara and Lois J. O'Mara have contracted to convey said real estate to Bruce Forbes and Lois J. Forbes, his wife; and whereas the said Bruce Forbes and Lois J. Forbes, his wife have requested that the said covenants be eliminated and made null and void and of no further force and effect regarding said real estate; and whereas the said Bryce's Mountain Resort, Inc. and A. James O'Mara and Lois J. O'Mara, agree to such termination:

Now, therefore, this agreement made this 28th day of July, 1978, by and between Bryce's Mountain Resort, Inc., a Virginia Corporation, party of the first part; A. James O'Mara and Lois J. O'Mara, parties of the second part; and Bruce Forbes and Lois J. Forbes, husband and wife, parties of the third part.

WITNESSETH:

For and in consideration of One Dollar (\$1.00) cash in hand paid to the party of the first part and to the parties of the

second part by the said parties of the third part, receipt of which is hereby acknowledged, and for other good and valuable consideration the said party of the first part and parties of the second part do hereby agree that those certain covenants set forth as aforesaid, and designated as running with the land, in that certain deed dated the 22nd day of December, 1970, by and between the said party of the first part and the said parties of the second part and recorded in the Office of the Clerk of the Circuit Court of Shenandoah County, Virginia, in Deed Book 278, Page 706, are, by the execution of the said party of the first part and the said parties of the second part hereto, hereby terminated, released, null and void and of no further force and effect and that said covenants will no longer be any restriction whatsoever upon the real estate described hereinafter, the said Bryce's Mountain Resort, Inc., being the entity which placed said covenants upon said real estate, and the said parties of the second part, A. James O'Mara and Lois J. O'Mara, being the only other parties in interest concerning said covenants.

The real estate which is the subject matter of this agreement is described as follows: being that certain tract of real estate located near Basye, in Ashby Magisterial District, Shenandoah County, Virginia, and lying adjacent to Section VI of Bryce's Mountain Resort, Inc.; and described by survey of James C. Wilkins, C.L.S., as containing 7.35 acres, more or less, and being that same real estate which was conveyed to A. James O'Mara and Lois J. O'Mara, from Bryce's Mountain Resort, Inc. by deed dated the 22nd day of December, 1970, and recorded in said Clerk's Office in Deed Book 278, at Page 706.

Reference is made to the above mentioned deed and records for more particular description of the real estate affected hereby.



STATE OF VIRGINIA,

COUNTY OF \_\_\_\_\_, TO-WIT:

The foregoing instrument was acknowledged before me this  
\_\_\_\_\_ day of \_\_\_\_\_, 1978, by Bruce Forbes and Lois J.  
Forbes, husband and wife.

My commission expires: \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

oc

*O'Mara Inc*

CASH OR INSURANCE DEAL

- ☒ Deed
- ☒ Deed of Partial Release (not on section X)
- ☐ Disclosure Statement and Sale Agreement
- ☐ Checks (not on an insurance deal)
- ☒ Sewage Completion Report
- ☐ Bryce Mountain Membership Report
- ☐ House Report
- ☐ Water Availability Report
- ☒ Other (explain)

*Agreement; Deed Receipts (2)*

THIS DEED, made this 22nd day of December, 1970, by and between BRYCE'S MOUNTAIN RESORT, INC., a Virginia corporation, party of the first part, and A. JAMES O'MARA and LOIS J. O'MARA, husband and wife, parties of the second part,

W I T N E S S E T H :

That for and in consideration of the sum of Ten Dollars (\$10.00), cash in hand paid by the parties of the second part to the party of the first part, and of other good and valuable consideration given, all of which is hereby acknowledged by the party of the first part before the execution and delivery hereof, the said party of the first part does hereby grant and convey with General Warranty and English Covenants of title unto the said A. JAMES O'MARA and LOIS J. O'MARA, husband and wife, as tenants by the entirety with the right of survivorship as at common law, parties of the second part, all that certain tract or parcel of land situate and lying in SECTION VI of BRYCE'S MOUNTAIN RESORT, INC., near Basye, in Ashby Magisterial District, Shenandoah County, Virginia, described according to survey made by James C. Wilkins, C. L. S., as follows:

"BEGINNING at an iron pin, a corner to Lot 155 in the aforesaid subdivision and a corner in the outer boundary of Section VI; thence, leaving Lot 155 and with the outer lines of Section VI, N. 72° 53' E. 533.62 feet to an iron pin; thence, N. 84° 16' E. 340.70 feet to an iron pin, a corner in the outer boundary of Section VI, and Lot 95; thence, leaving the outer boundary of Section VI and with Lot 95 as revised, S. 24° 34' W. 350.48 feet to an iron pin, a corner to Lot 95, in a curve to the right, having a radius of 152.69 feet; thence, with said curve 20.00 feet chord S. 60° 00' E. 19.98 feet to an iron pin in the northern limits of a 30-foot right of way; thence leaving Lot 95 and crossing said right of way, S. 35° 40' W. 30.00 feet to an iron pin in the southern limits of said right of way, the p. c. of a curve to the right, having a radius of 20.00 feet; thence, with said right of way and curve 28.55 feet chord S. 15° 53' E. 26.19 feet to an iron pin, the p. t. of said curve in the western limits of a 30-foot right of way; thence, with the western limits of said right of way, S. 25° 01' W. 109.20 feet to an iron pin, a corner to Lot 105; thence, leaving said



right of way and with Lot 105, N. 44° 45' W. 100.00 feet to an iron pin, a corner of Lot 105; thence, S. 40° 48' W. 213.52 feet to an iron pin, a corner to Lot 105 and Lot 106; thence, leaving Lot 105 and with Lot 106, S. 43° 07' W. 177.19 feet to an iron pin, a corner to Lot 106 in the line of Lot 150; thence, leaving Lot 106 and with Lots 150 and 151, N. 52° 06' W. 130.60 feet to an iron pin, a corner to Lots 151 and 152; thence, leaving Lot 151 and with Lot 152, N. 39° 26' W. 129.32 feet to an iron pin, a corner to Lot 152 and Lot 153; thence, leaving Lot 152 and with Lots 153, 154, and 155, N. 24° 24' W. 358.08 feet to the beginning, containing 7.35 acres, more or less."

Together with a perpetual right of way and easement over the roads of said Subdivision as shown on the plat of said SECTION VI of said Subdivision, which said plat is duly of record in the Clerk's Office of Shenandoah County, Virginia, in Deed Book 266, at Page 177, and across other properties of the party of the first part, for the purpose of ingress and egress to and from the State Highway and other common facilities established in the development.

Said real estate is conveyed subject to that certain Declaration of Protective Covenants and Restrictions, executed by Bryce's Mountain Resort, Inc., on the 18th day of May, 1969, and of record in the Clerk's Office of the Circuit Court of Shenandoah County, Virginia, in Deed Book 262, Page 275.

It is covenanted and agreed that neither the proprietors and owners of said Subdivision or the purchasers of the tract described herein, their successors or assigns, will request the Board of Supervisors of Shenandoah County, Virginia, or the Virginia Department of Highways, that the streets within the said Subdivision be taken into the highway system until the said lot owners and proprietors have brought said streets up to the specifications of the Virginia Department of Highways of Shenandoah County, Virginia.

Real estate taxes for the year 1970 are to be paid by the grantor herein.

As a part of the consideration for this conveyance, it is further agreed between the parties hereto as covenants running

with the land herein conveyed:

(a) No development of said real estate, including site development, improvements, buildings, improvements or construction of any kind or nature, shall be made on said real estate until the proposed plans and specifications therefor have been approved in writing by the Grantor herein, its successors or assigns.

(b) No more than twelve (12) dwelling units, whether apartments, single residence units, or multiple residence units, shall be placed or constructed on said real estate.

IN WITNESS WHEREOF, Bryce's Mountain Resort, Inc., has caused its name to be signed hereto by B. DALE STANCIL, its Vice President, and its corporate seal to be duly affixed and attested by its Secretary.

BRYCE'S MOUNTAIN RESORT, INC.

(Seal)

By: B. Dale Stancil

B. Dale Stancil  
Executive Vice President

ATTEST:

Jewel H. Brice  
Asst. Secretary, Jewel Brice

STATE OF VIRGINIA,  
COUNTY OF SHENANDOAH, to-wit:

I, Caroline Emmerich, a Notary Public of and for the County of Shenandoah, in the State of Virginia, do hereby certify that B. Dale Stancil, acting as Executive Vice President of BRYCE'S MOUNTAIN RESORT, INC., whose name as such is signed to the foregoing writing bearing date the 22nd day of December, 1970, has this day personally appeared before me in my County aforesaid, and acknowledged the same in the name of and on behalf of said Corporation; that he is the Vice President of said Corporation; and that said seal affixed to said

writing is the true corporate seal of said Corporation, and that it has been affixed to said writing by due authority.

Given under my hand this 9<sup>th</sup> day of ~~December~~ <sup>January</sup> 1971, 1970.

My commission expires the 4<sup>th</sup> day of September,

1974.

Caroline Ennsweiler

Notary Public

THIS DEED OF PARTIAL RELEASE, made and entered into this 22nd day of December, 1970, by and between KERMIT L. RACEY, TRUSTEE under deeds of trust recorded in Deed Book 235, Page 556, and Deed Book 240, Page 653, party of the first part, and BRYCE'S MOUNTAIN RESORT, INC., a Virginia corporation, party of the second part, and VIRGINIA NATIONAL BANK, of Charlottesville, Virginia, party of the third part,

WHEREAS, on the 1st day of October, 1965, the said party of the second part did convey unto the said Kermit L. Racey, party of the first part herein, and G. D. Holden, as Trustees, certain real estate situate, lying and being about one mile northeast of the Village of Basye, in Ashby Magisterial District, Shenandoah County, Virginia, by a deed of trust which is recorded in the Clerk's Office of Shenandoah County, Virginia, in Deed Book 235, Page 556, to which said deed of trust reference is hereby made for a more particular description of said real estate, to secure the payment of the principal sum of THREE HUNDRED THOUSAND DOLLARS (\$300,000.00) and interest thereon, payable to the Virginia National Bank, Charlottesville, Virginia; and

WHEREAS, on the 7th day of July, 1966, the said party of the second part did convey unto the said Kermit L. Racey and G. D. Holden, Trustees, certain real estate situate, lying and being about one mile northeast of the Village of Basye, in Ashby Magisterial District, Shenandoah County, Virginia, by a deed of trust which is recorded in the Clerk's Office of the Circuit Court of Shenandoah County, Virginia, in Deed Book 240, Page 653, to which said deed of trust reference is hereby made for a more particular description of said real estate, to secure the payment of the principal sum of SEVENTY FIVE THOUSAND DOLLARS (\$75,000.00) and interest thereon, payable to the Virginia National Bank, Charlottesville, Virginia; and

WHEREAS, the said party of the second part has requested a release from the liens of said two deeds of trust of a portion of the real estate described in said deeds of trust, which is more particularly described herein, and the Virginia National Bank, of Charlottesville, Virginia, which is the owner and holder of the aforesaid lien indebtedness secured by said deeds of trust has expressed its willingness that the said party of the first part should execute said release as requested and has joined with the said party of the second part in making said request.

NOW, THEREFORE, THESE PRESENTS - WITNESSETH:

That for and in consideration of the sum of Ten Dollars (\$10.00), to him in hand paid, the receipt whereof is hereby acknowledged, the said party of the first part does hereby release and quitclaim unto the said party of the second part, all of the following described real estate, to-wit:

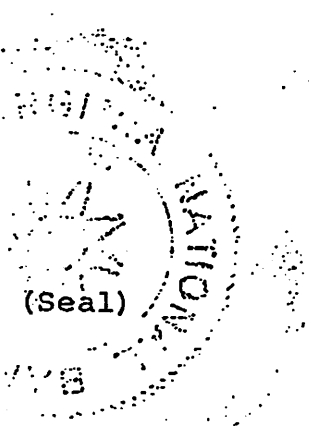
All that certain tract or parcel of land located in SECTION VI of BRYCE'S MOUNTAIN RESORT, INC., near Basye, in Ashby Magisterial District, Shenandoah County, Virginia, described according to survey made by James C. Wilkins, C. L. S., as follows:

"BEGINNING at an iron pin, a corner to Lot 155 in the aforesaid subdivision and a corner in the outer boundary of Section VI; thence, leaving Lot 155 and with the outer lines of Section VI, N. 72° 53' E. 533.62 feet to an iron pin; thence, N. 84° 16' E. 340.70 feet to an iron pin, a corner in the outer boundary of Section VI, and Lot 95; thence, leaving the outer boundary of Section VI and with Lot 95 as revised, S. 24° 34' W. 350.48 feet to an iron pin, a corner to Lot 95, in a curve to the right, having a radius of 152.69 feet; thence, with said curve 20.00 feet chord S. 60° 00' E. 19.98 feet to an iron pin in the northern limits of a 30-foot right of way; thence leaving Lot 95 and crossing said right of way, S. 35° 40' W. 30.00 feet to an iron pin in the southern limits of said right of way, the p. c. of a curve to the right, having a radius of 20.00 feet; thence, with said right of way and curve 28.55 feet chord S. 15° 53' E. 26.19 feet to an iron pin, the p. t. of said curve in the western limits of a 30-foot right of way; thence, with the western limits of said right of way, S. 25° 01' W. 109.20 feet to an

iron pin, a corner to Lot 105; thence, leaving said right of way and with Lot 105, N. 44° 45' W. 100.00 feet to an iron pin, a corner of Lot 105; thence, S. 40° 48' W. 213.52 feet to an iron pin, a corner to Lot 105 and Lot 106; thence, leaving Lot 105 and with Lot 106, S. 43° 07' W. 177.19 feet to an iron pin, a corner to Lot 106 in the line of Lot 150; thence, leaving Lot 106 and with Lots 150 and 151, N. 52° 06' W. 130.60 feet to an iron pin, a corner to Lots 151 and 152; thence, leaving Lot 151 and with Lot 152, N. 39° 26' W. 129.32 feet to an iron pin, a corner to Lot 152 and Lot 153; thence, leaving Lot 152 and with Lots 153, 154, and 155, N. 24° 24' W. 358.08 feet to the beginning, containing 7.35 acres, more or less."

But it is expressly to be understood that the release of the foregoing real estate just described, from the lien of each of said deeds of trust, shall not affect in anywise the liens of said deeds of trust upon the other land thereby conveyed, and not released hereby.

IN WITNESS WHEREOF, the said party of the first part has hereunto set his hand and seal, and the party of the third part has caused its name to be signed hereto by Rodney Crowder, its <sup>Assistant</sup> Vice President, and its corporate seal to be duly affixed and attested the day and year first above written.



Kermit L. Racey (SEAL)  
Kermit L. Racey, sole surviving Trustee under Deeds of Trust recorded in Deed Book 235, Page 556, and Deed Book 240, Page 653

VIRGINIA NATIONAL BANK, CHARLOTTESVILLE, VIRGINIA, a Virginia Corporation

By: [Signature] A. V. P.

ATTEST:

[Signature]  
Secretary Assistant Vice President

STATE OF VIRGINIA,  
COUNTY OF SHENANDOAH, to-wit:

I, Sydney B. Davis, a Notary Public of  
and for the County aforesaid, in the State of Virginia, do  
hereby certify that KERMIT L. RACEY, whose name as Trustee is  
signed to the foregoing writing bearing date on the 22nd day of  
December, 1970, has this day personally appeared before me in my  
said County and acknowledged the same.

Given under my hand this 15<sup>th</sup> day of JANUARY,  
1971.  
~~1970~~.

My commission expires the 20<sup>th</sup> day of March,  
1973.

Sydney B. Davis  
Notary Public

STATE OF VIRGINIA,  
COUNTY OF PAGE, to-wit:

I, Eddie L. Randolph, a Notary Public of  
and for the County aforesaid, in the State of Virginia, do hereby  
certify that R. M. CROWDER and MARTIN D. BALLANTINE  
whose names as ASST. VICE PRES. and ASST. VICE PRESIDENT  
respectively of VIRGINIA NATIONAL BANK, CHARLOTTESVILLE, VIRGINIA,  
are signed to the foregoing writing bearing date the 22nd day  
of December, 1970, have this day personally appeared before me  
in my County and State aforesaid, and acknowledged the same in the  
name of and on behalf of said Corporation; and that said seal  
affixed to said writing is the true corporate seal of said  
Corporation, and that it has been affixed to said writing by due  
authority.

Given under my hand this 21 day of JAN.,  
1971.

My commission expires the 17th day of November,

19 74.

B & BRADSHAW, RANDOLPH COUNTY, SS

KEYS AT LAW The foregoing writing with certificate of acknowledgment thereon was received  
LIBERTY STREET At the Clerk's Office of said County, admitted to record and indexed. The  
BURG, VIRGINIA is imposed by Sect. 58-54, (a) and (b), of the Code have been paid,

William T. Raulston  
Notary Public

this 29th day of January, 19 71

L. S. P. At Test: W. H. Sigler Clerk



7/2/11  
December 22, 1970

KERMIT L. RACEY, TRUSTEE

TO: DEED OF PARTIAL RELEASE

BRYCE'S MOUNTAIN RESORT, INC.,  
a Virginia Corporation

Recorded  
Circuit Court Shenandoah County,

January 29 1971

1:30 P.M. o'clock

Tested: *M. S. Light* Clerk.

State Tax.....\$

County Tax.....\$

Transfer Fee.....\$

Clerk's Fee.....\$ 9.00

Rev. Stamps.....\$

Plat.....\$

Total \$ 9.50

Recorded Deed Book 278

Page 702 CLARK AND BRADSHAW

ATTORNEYS AT LAW

92 NORTH LIBERTY STREET

P. O. BOX 71  
HARRISONBURG VIRGINIA

RECORDED  
SHERANDOAH COUNTY, VA  
D. C. SMITH, CLERK  
12/22/70

1971 JAN 23 PM 1:13

THIS AGREEMENT, made this 28<sup>th</sup> day of December, 1970,  
between BRYCE'S MOUNTAIN RESORT, INC., a Virginia corporation,  
party of the first part, hereinafter called the "SELLER", and  
R. James O'Mara and Lois J. O'Mara,  
party of the second part, hereinafter called the "PURCHASER",

(1) The SELLER agrees to sell and convey and the  
PURCHASER agrees to purchase all that certain tract or parcel  
of land located in SECTION VI of BRYCE'S MOUNTAIN RESORT, INC.,  
near Basye, in Ashby Magisterial District, Shenandoah County,  
Virginia, described according to survey made by James C. Wilkins,  
C. L. S., as follows:

"BEGINNING at an iron pin, a corner to Lot 155  
in the aforesaid subdivision and a corner in the  
outer boundary of Section VI; thence, leaving Lot  
155 and with the outer lines of Section VI, N. 72°  
53' E. 533.62 feet to an iron pin; thence, N. 84° 16'  
E. 340.70 feet to an iron pin, a corner in the outer  
boundary of Section VI, and Lot 95; thence, leaving  
the outer boundary of Section VI and with Lot 95 as  
revised, S. 24° 34' W. 350.48 feet to an iron pin, a  
corner to Lot 95, in a curve to the right, having a  
radius of 152.69 feet; thence, with said curve 20.00  
feet chord S. 60° 00' E. 19.98 feet to an iron pin in  
the northern limits of a 30-foot right of way; thence  
leaving Lot 95 and crossing said right of way, S. 35°  
40' W. 30.00 feet to an iron pin in the southern  
limits of said right of way, the p. c. of a curve to  
the right, having a radius of 20.00 feet; thence,  
with said right of way and curve 28.55 feet chord  
S. 15° 53' E. 26.19 feet to an iron pin, the p. t.  
of said curve in the western limits of a 30-foot  
right of way; thence, with the western limits of  
said right of way, S. 25° 01' W. 109.20 feet to an  
iron pin, a corner to Lot 105; thence, leaving said  
right of way and with Lot 105, N. 44° 45' W. 100.00  
feet to an iron pin, a corner of Lot 105; thence,  
S. 40° 48' W. 213.52 feet to an iron pin, a corner  
to Lot 105 and Lot 106; thence, leaving Lot 105 and  
with Lot 106; S. 43° 07' W. 177.19 feet to an iron  
pin, a corner to Lot 106 in the line of Lot 150;  
thence, leaving Lot 106 and with Lots 150 and 151,  
N. 52° 06' W. 130.60 feet to an iron pin, a corner to  
Lots 151 and 152; thence, leaving Lot 151 and with  
Lot 152, N. 39° 26' W. 129.32 feet to an iron pin, a  
corner to Lot 152 and Lot 153; thence, leaving Lot  
152 and with Lots 153, 154, and 155, N. 24° 24' W.  
358.08 feet to the beginning, containing 7.35 acres,  
more or less."

(2) The purchase price is Forty Four Thousand One Hundred  
Dollars  
~~Sixty Four Dollars and Fifty One Cents (\$44,164.51)~~, payable as  
(\$44,100.00) <sup>BOS.</sup>  
470

follows:

- (a) \$ 10<sup>00</sup> upon the execution and delivery  
of this Agreement;
- (b) \$ 44,090<sup>00</sup> on delivery of the deed as herein-  
after provided.

(3) On closing SELLER shall deliver to PURCHASER a  
deed conveying said real estate with good and marketable title, free  
and clear of all liens and encumbrances except as hereinafter  
provided.

(4) Closing shall be held at SELLER's office, Basye,  
Virginia, on or before the 9<sup>th</sup> day of January, 1971.

(5) Said real estate is sold and to be conveyed subject  
to that certain Declaration of Protective Covenants and Restrictions,  
executed by Bryce's Mountain Resort, Inc., on the 18th day of May,  
1969, and duly of record in the Clerk's Office of the Circuit Court  
of Shenandoah County, Virginia, in Deed Book 262, Page 275, except  
as otherwise herein expressly provided.

(6) On or before November 1, 1971, SELLER shall provide  
sewer services to the property line of said real estate. PURCHASER  
shall pay to SELLER or to such other firm or corporation providing  
said sewer service the sum of One Thousand Dollars (\$1,000.00) per  
dwelling unit that may thereafter be hooked onto said sewer service.

(7) PURCHASER agrees to install on said real estate a  
water system adequate to provide water service for the dwelling units  
anticipated to be constructed on said real estate. Upon completion  
of said water system, SELLER agrees to take over the maintenance and  
operation thereof and make charges to the users thereof for pro-  
viding water service to said dwelling units.

(8) No development of said real estate, including site development, improvements, buildings, improvements or construction of any kind or nature, shall be made on said real estate until the proposed plans and specifications therefor has been approved in writing by SELLER, its successors or assigns.

(9) No more than twelve (12) dwelling units, whether apartments, single residence units, or multiple residence units shall be placed or constructed on said real estate.

(10) The covenants and conditions herein contained shall survive the execution and delivery of the aforesaid deed.

IN WITNESS WHEREOF, Bryce's Mountain Resort, Inc., has caused its name to be signed hereto by B. DALE STANCIL, its Vice President, its corporate seal to be duly affixed and attested by its Secretary, and PURCHASER has hereunto set his hand and seal.

(Seal)

BRYCE'S MOUNTAIN RESORT, INC.

By:

B. Dale Stancil  
B. Dale Stancil  
Executive Vice President

ATTEST:

Jewel L. Brice  
Asst. Secretary Jewel Brice

A. James O'Meara

*AS*  
*BIB*  
In the event that a central sewer system is not provided to property by Nov. 1, 1971, Bryce's Mountain Resort Inc. agrees to install and maintain holding tanks for the purpose of sewage disposal as required until such time as a central sewer system is available. No additional fee will be charged for this service other than fees established in paragraph 6 above. *BIB*  
*AS*

OFFICIAL RECEIPT

CAS 3 A 8

CLERK'S OFFICE

CIRCUIT COURT, SHENANDOAH COUNTY, VA.

RECEIVED OF.....

Clark &amp; Bradshaw Jan. 29, 1971

DOLLARS

FOR RECORDATION OF THE FOLLOWING DEED

FROM Kenneth F. Kearns  
 TO Pyxis Mountain Resort, Inc.  
 DESCRIPTION Real estate in Rocky Ditch  
Recorded in DB 278 page 702

ACCOUNT

AMOUNT

101

STATE TAX

50

204A

COUNTY TAX

204

TRANSFER

301

RECORDING

9.00

5

PLATS

120

STATE TAX

§ 58-54 (b)

220A

LOCAL TAX

§ 58-54 (b)

220B

LOCAL TAX

§ 58-54 (b)

TOTAL

9.50

CONSIDERATION \$

VALUE OF INTEREST

SOLD § 58-54 (b) \$

TIME OF

RECORDATION

A.M.

KIND OF

P.M.

CONVEYANCE

Deed of Partial  
Release

No. 62

DEED No. 211

M. G. SIGLE

OFFICIAL RECEIPT

CAS 3 A 8

CLERK'S OFFICE

CIRCUIT COURT, SHENANDOAH COUNTY, VA.

RECEIVED OF.....

Clark &amp; Bradshaw Jan. 29, 1971

DOLLARS

FOR RECORDATION OF THE FOLLOWING DEED

FROM Pyxis Mountain Resort, Inc.  
 TO R. James O'Hara & wife  
 DESCRIPTION Real estate in Rocky Ditch  
Recorded in DB 278 page 706

ACCOUNT

AMOUNT

101

STATE TAX

66.00

204A

COUNTY TAX

27.00

204

TRANSFER

1.00

301

RECORDING

8.00

5

PLATS

120

STATE TAX

§ 58-54 (b)

220A

LOCAL TAX

§ 58-54 (b)

220B

LOCAL TAX

§ 58-54 (b)

TOTAL

72.00

22.00

22.00

141.00

CONSIDERATION \$

VALUE OF INTEREST

SOLD § 58-54 (b) \$

TIME OF

RECORDATION

A.M.

KIND OF

P.M.

CONVEYANCE

44,000.00  
Deed

No. 62

DEED No. 212

M. G. SIGLE

SEWAGE COMPLETION REPORT

Date March 13, 1972

Accounting

Please be advised that sewer has been completed on the below  
named property

Section VI  
Block A  
Lot Tract

\_\_\_\_\_  
\_\_\_\_\_

Date Billed 6-22-72

Date Collected \_\_\_\_\_ Amount \$ \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Total Collected \_\_\_\_\_ \$ \_\_\_\_\_  
\_\_\_\_\_



**Stony Creek  
Utilities Company**

Basye, Virginia 22810

October 1, 1974

*A. James O'Mara*  
*I-4A + (II-A) Trans*

Dear Customer:

Due to the general delay in paying sewer bills, we find it necessary to advise our customers of the provision for late charge and termination of service. The paragraph below covers the situation. We appreciate the cooperation of our customers and this information is a reminder to those who are not paying promptly.

Per the rules and regulations of the State Corporation Commission, "bills for sewer service are due when presented or mailed and are payable, quarterly in advance on the first day of January, April, July and October of each year . . . If a quarterly bill is not paid within 15 days from the date on which it is due, a service charge of 10% of the bill shall be added to the bill. If a quarterly bill and any service charges are not paid within 30 days after the date on which they are due, the customers service may be terminated at any time after the 30 day period and after 5 days written notice is mailed to the customer at his address as shown on the company's records, and a connection charge, in addition to all other charges due, must be paid prior to reconnection."

Very truly yours,

*L. F. Baxter, Jr.*  
*PK*

L. F. Baxter, Jr.  
Sec. - Treas.

LFBjr/pck

100 Springbrook Drive  
Silver Spring, Maryland

October 14, 1971

Mr. Dale Stancil  
Bryce Mountain  
Basye, Virginia 22810

Dear Dale:

I had a material takeoff done for my house and have a firm price (delivered) for all lumber, including decking, windows, doors, shingles, siding, panelling and hardware (rough and finish). This should make it easier for those people you had figuring a price on my house as they seemed concerned over lumber takeoff and pricing.

Accordingly, I would appreciate it if you would ask them to quote me, excluding the furnishing of the above.

Very truly yours,



A. James O'Mara

AJO'M/sjw

RECEIVED OCT 15 1971



July 7, 1971

Mr. B. Dale Stancil  
Bryce Mountain Resort, Inc.  
Basye, Virginia 22810

Dear Dale:

As per your request please instruct the three builders you contacted to parge the exposed concrete block and apply two coats of exterior masonry paint.

Thank you very much for your assistance.

Sincerely,



A. James O'Mara

AJO/njc.

*Caroline,*

*Who did we send to.*

June 28, 1971

Mr. A. James O'Mara  
100 Springbrooke Drive  
Silver Spring, Maryland 20904

Dear Jim:

As requested I have forwarded your three sets of plans to local builders in the area. The firms contacted were Burgess Dellinger, Inc., Central Valley Construction Company, and Travis Watson Construction Company. I hope to hear from them shortly.

Jim, on your plans I noticed you left unfinished concrete block on your basement. It is a requirement of ours for exterior treatment that, at the minimum, all exterior block be parged and painted. We do, in fact, recommend studco or the same exterior treatment as the rest of the house. I would appreciate your consideration in conforming these plans to meet standards.

If I can be of any assistance in helping you, please advise.

I look forward to seeing you in the future.

Cordially,

B. Dale Stancil  
Executive Vice President  
and General Manager

BDS:cbe

June 16, 1971

Mr. James O'Mara  
100 Springbrook Drive  
Silver Spring, Maryland 20904

Dear Jim:

I had sent your plans out to three builders without looking at them and they have been returned by one builder. Upon reviewing the plans for your house he found that they did not conform with the Protective Covenants and Restrictions as they are too small. There must be a minimum of 800 square feet on the first floor with a minimum of 1000 square feet overall.

I would appreciate your revising these plans to meet the protective covenants. I apologize for the delay. I should have reviewed the plans before I sent them out but I did not. If I can be of any assistance or answer any questions, please advise.

Sincerely,

B. Dale Stancil  
Executive Vice President  
and General Manager

BDS:cbs

Enclosure

50. 1A \$500.00  
Co. Tx \$100.00  
58-54 \$200.00  
Exd. 1/17/75  
Mailed to Clark,  
Bradshaw, Jolly & Smith  
P. O. Box 71  
Harrisonburg, Va.  
1/17/75

Plat recorded on page  
897

#55

BOOK 342 PAGE 898

THIS DEED, made this 11th day of December, 1974, by and between BRYCE'S MOUNTAIN RESORT, INC., a Virginia corporation, party of the first part, and HARBINGTON ASSOCIATES, a joint venture, party of the second part,

W I T N E S S E T H :

That for and in consideration of the sum of Ten Dollars (\$10.00), cash in hand paid by the party of the second part to the party of the first part, before the execution and delivery hereof and of other good and valuable consideration given, the receipt of all of which is hereby acknowledged, the said party of the first part, does hereby grant and convey with English Covenants and General Warranty of title, together with all rights, privileges and appurtenances thereunto belonging or in anywise appertaining, unto the said HARBINGTON ASSOCIATES, a joint venture, party of the second part, all that certain tract or parcel of land, situated on the south side of State Route No. 263, at Basye, in Shenandoah County, Virginia, described according to survey made by James C. Wilkins, C.L.S., on November 21, 1973, as follows:

"Beginning at an iron pin set on the south side of State Route 263, a corner to the P. Bryce property; thence, with said Bryce the following courses, S. 27° 52' E. 339.11 feet to an iron pin set; thence, S. 72° 36' E. 333.70 feet to an iron pin set; thence, N. 76° 35' E. 209.79 feet to an iron pin set; thence, N. 68° 28' E. 307.19 feet to an iron pin set; thence, leaving said Bryce and making new lines through the property of Bryce Mountain Resort, Inc., S. 33° 09' W. 612.34 feet to an iron pin set; thence, following an approximate flood line, S. 20° 46' W. 451.31 feet to a point; thence, S. 29° 18' W. 112.38 feet to a point; thence, S. 66° 02' W. 98.48 feet to a point; thence, S. 48°

15' E. 87.12 feet to a point; thence, S. 17° 26' W. 216.97 feet to a point; thence, S. 29° 06' W. 312.46 feet to a point; thence, S. 33° 08' E. 85.98 feet to a point; thence, N. 74° 59' W. 174.81 feet to a point east of a 30' right-of-way; thence, crossing said right-of-way, N. 77° 37' W. 30.00 feet to an iron pin set, a corner to Lot 9, Sec. 3, Ext.; thence, with said lot, N. 80° 49' W. 80.02 feet to an iron pin set on the eastern line of a 30' right-of-way; thence, with the eastern line of said right-of-way, N. 03° 23' W. 425.83 feet to an iron pin set; thence, crossing said right-of-way, S. 86° 37' W. 30.00 feet to an iron pin set, the P.C. of a curve to the right having a radius of 25.00 feet; thence, with the arc of said curve 34.86 feet chord, S. 36° 34' W. 32.11 feet to the P.T. of said curve; thence, following the northern line of a 30' right-of-way, S. 76° 31' W. 237.33 feet to the P.C. of a curve to the left having a radius of 50.00 feet; thence, with the arc of said curve 10.43 feet, chord, N. 36° 55' W. 10.41 feet to the P.T. of said curve; thence, following the eastern line of a 30' right-of-way, N. 29° 39' E. 141.61 feet to a point; thence, crossing said right-of-way, N. 60° 21' W. 30.00 feet to an iron pin set, a corner to Lot 1, Sec. 3, Ext., the P.C. of a curve to the left, having a radius of 25.00 feet; thence, with the arc of said curve 39.20 feet, chord, N. 15° 16' W. 35.31 feet to the P.T. of said curve; thence, with the northern line of Lot 1, Sec. 3 Ext., N. 60° 11' W. 108.07 feet to an iron pin set, a corner to Lot 3, Block C, Sec. 3; thence, crossing a 30' right-of-way, S. 76° 54' E. 104.40 feet to an iron pin set, a corner to Lot 6, Block B, Sec. 3; thence, with said lot, N. 05° 34' E. 159.69 feet to an iron pin set; thence, N. 65° 56' W. 154.12 feet to an iron pin set; thence, with Lots 1 and 2, N. 16° 15' E. 195.62 feet to an iron pin set; thence, with Lot 1, N. 33° 44' W. 200.00 feet to an iron pin set, on the eastern line of a 30' right-of-way; the P.C. of a curve to the right having a radius of 415.66 feet; thence, with the arc of said curve 48.21 feet, chord, N. 59° 36' E. 48.18 feet to the P.T. of said curve; thence, with the eastern line of said 30' right-of-way, N. 62° 55' E. 164.23 feet to an iron pin set, the P.C. of a curve to the left having a radius of 315.00 feet; thence, with the arc of said curve 90.22 feet, chord, N. 54° 43' E. 89.91 feet to the P.T. of said curve; thence, N. 46° 31' E. 66.25 feet to an iron pin set; the P.C. of a curve to the left having a radius of 160.00 feet; thence, with the arc of said curve 64.34 feet, chord, N. 34° 59' E. 63.91 feet to the P.T. of said curve; thence, N. 23° 28' E. 74.03 feet to the P.C. of a curve to the left having a radius of 165.00 feet; thence, with the arc of said curve 59.38 feet, chord, N. 13° 09' E. 59.06 feet to the P.T. of said curve; thence, N. 02° 51' E. 155.84 feet to the P.C. of a curve to the right having a radius of 185.00 feet; thence, with the arc of said curve 17.94 feet, chord, N. 05° 38' E. 17.93 feet to the P.T. of said curve; thence, N. 08° 24' E. 43.54 feet to the P.C. of a curve to the left having a radius of 287.73 feet; thence, with the arc of said curve 82.26 feet, chord, N. 00° 13' E. 81.98 feet to a P.R.C. to the right having a radius of 25.00 feet; thence, with the arc of said curve 33.74 feet, chord, N. 31° 30' E. 31.24 feet to the P.T. of said curve on the southern right-of-way line of State Route 263; thence, with said right-of-way, N. 71° 25' E. 88.67 feet to the beginning," and enclosing an area of 28.60 acres.

A plat of the real estate herein conveyed is attached hereto, made a part hereof and to be recorded herewith.

As a part of the consideration for this conveyance, it is mutually agreed between the parties hereto as follows:

(1) There is included with this conveyance a perpetual right-of-way and easement to and over the roads of Bryce's Mountain Resort Subdivision, where they presently exist, or as may be hereafter designated and defined upon plats of Bryce's Mountain Resort Subdivision, together with a perpetual right of access to and use of the lake on the east side of the herein described real estate at any point along the line designated as "approx. flood line", as shown on the attached plat.

(2) There is further included with this conveyance a perpetual right to full use of any or all recreational facilities now or hereafter available at what is now known as Bryce's Mountain Resort, by the parties of the second part, their successors and assigns, and any guest at any facility or improvement now or hereafter erected on the herein conveyed real estate, provided, however, that reasonable fees in an amount not in excess of fees charged to guests of lot owners in any subdivision developed by the party of the first part may be charged by the party of the first part or its successors and assigns for such use of such recreational facilities.

(3) Grantor specifically retains for itself, its successors and assigns, an easement twenty (20) feet in width along State Route No. 263 as shown on the plat attached hereto for the installation, maintenance, replacement and repair of water and sewer lines to service Section Three and Section Three Extended of Bryce's Mountain Resort.

(4) Grantor specifically reserves for itself, its successors and assigns, an easement twenty (20) feet in width

BOOK 012 PAGE 000  
across the real estate herein conveyed at such place as Grantor may elect for the installation, maintenance, replacement and repair of a sewer line to service Section Three and Section Three Extended of Bryce's Mountain Resort, provided that such sewer line is installed within seven years from the date hereof and further provided that such sewer line shall be so located as not to interfere with any improvements on the real estate herein conveyed or with the reasonable and orderly development thereof. Grantee shall have the right to make connections to said sewer line after installation thereof for the purpose of providing sewer service to the real estate herein conveyed at no cost to Grantee, provided, however, upon connection to said sewer line, Grantee shall be required to pay to Stony Creek Utility Corporation such fees and service charges as are established by the State Corporation Commission of Virginia for such connection and sewer service.

IN WITNESS WHEREOF, Bryce's Mountain Resort, Inc. has caused this writing to be signed in its name and on its behalf by its Vice President, and its corporate seal to be hereunto affixed and attested by its Secretary, as thereunto duly authorized.

BRYCE'S MOUNTAIN RESORT, INC.

(Seal)

ATTEST:

By

R. D. Worrell  
Vice-President

J. S. Blythe Jr.  
Secretary

STATE OF VIRGINIA,  
COUNTY OF SHENANDOAH, to-wit:

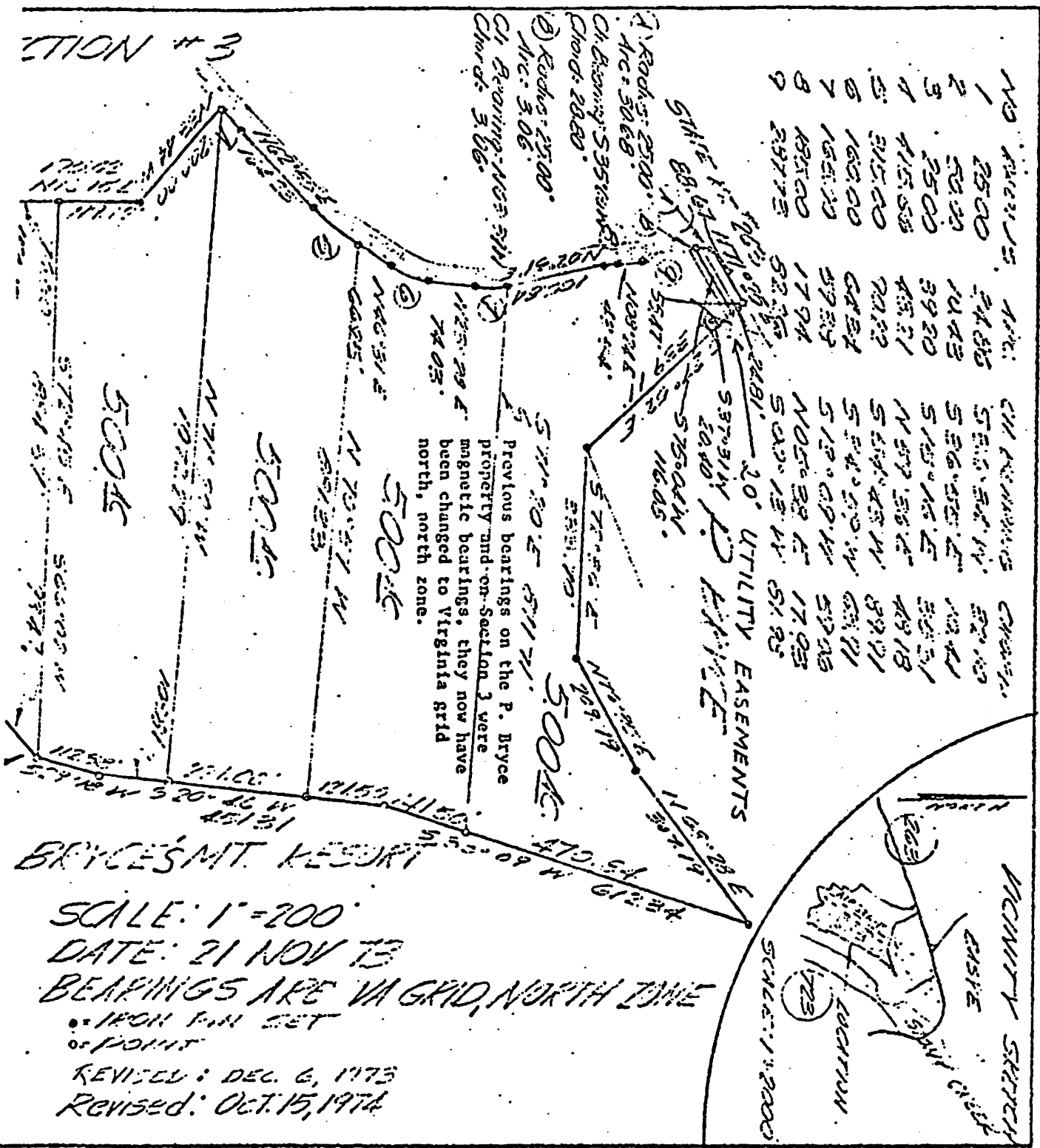
The foregoing instrument was acknowledged before me this 31<sup>st</sup> day of December, 1974, by R. D. WORRELL, Vice-President of Bryce's Mountain Resort, Inc., a Virginia corporation, on behalf of the corporation.

My commission expires: 1-17-78.

Brian A. Dirger  
Notary Public

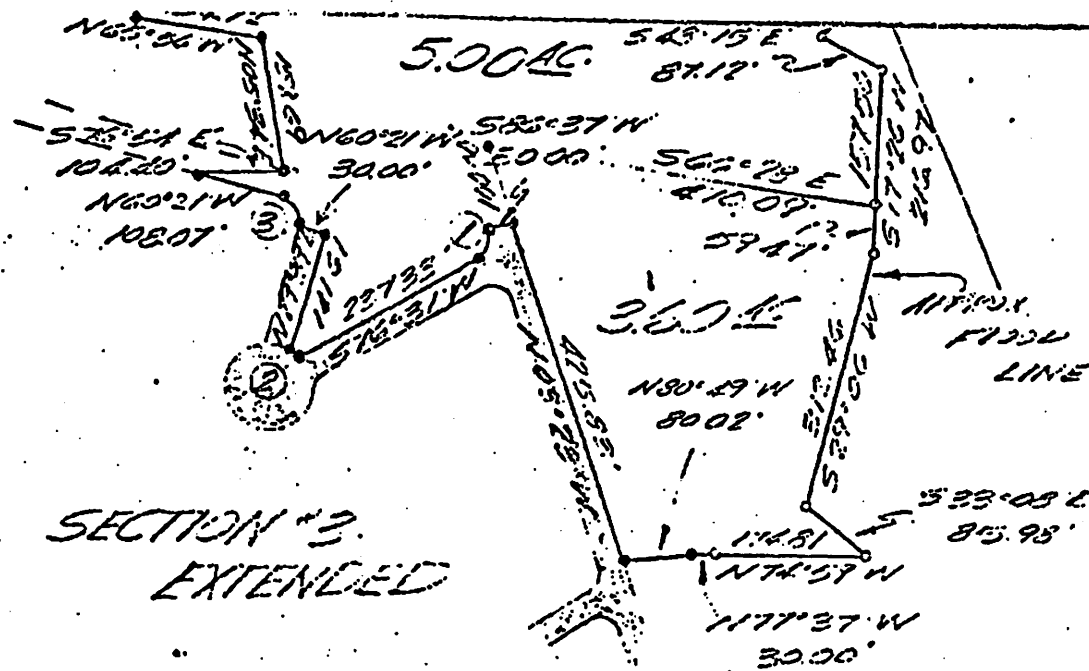
31<sup>st</sup> day of January, 1975  
5:58 P.M. Test: M. H. Lister Clerk

LARK, BRADSHAW  
JOLLY & SMITH  
ATTORNEYS AT LAW  
NORTH LIBERTY STREET  
HARRISONBURG, VIRGINIA





52



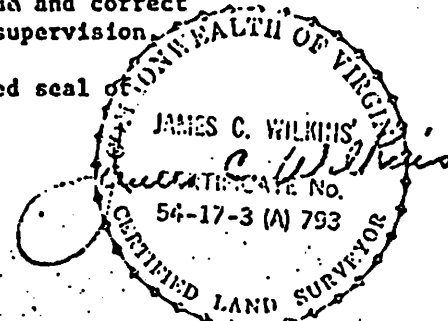
*Plat of a 28.60 Acre Tract  
Divided into 6 Lots, Bryce's Mt. Resort, Inc., Basye, Va.  
Shenandoah County, Virginia*

**SURVEYOR'S CERTIFICATE**

I hereby certify that the plat shown hereon is a true and correct representation of a survey actually made, under my supervision.

This is not a true certified copy unless the embossed seal of James C. Wilkins & Associates, Inc. appears hereon.

Given under my hand this 21st day of November 1973.



SHENANDOAH COUNTY, SS

The foregoing writing with certificate of acknowledgment thereon was received at the Clerk's Office of said County, submitted to record and indexed. The same is approved by Sec. 52-54, (c) and (d), of the Code of Virginia 1960.

21st day of November 1973  
5:15 PM  
M. Tester  
Clerk

see PB 401 Page 216 for record  
Plot & Plat. Cons. etc.  
Ordinary. Written by Clerk.  
8/3/79

CO. TX 501.00  
58-54 \$175.00  
Exd. 5/19/75  
Mailed to Clark, Bradshaw, Jolly &  
Smith, P. O. Box 71  
Harrisonburg, Va.  
5/19/75

11/11/5.3

BOOK 340 PAGE 355

THIS DEED, made this 1st day of May, 1975, by and  
between BRYCE'S MOUNTAIN RESORT, INC., a Virginia corporation,  
party of the first part, and BRYCE MOUNTAIN SKI AND COUNTRY  
CLUB, a limited partnership, party of the second part,

W I T N E S S E T H:

That for and in consideration of the sum of Ten  
Dollars (\$10.00) cash in hand paid by the party of the  
second part to the party of the first part, before the  
execution and delivery hereof and of other good and valuable  
consideration given, the receipt of all of which is hereby  
acknowledged, it, the said party of the first part, does  
hereby grant and convey with Special Warranty of title  
unto the said BRYCE MOUNTAIN SKI AND COUNTRY CLUB, a  
limited partnership, party of the second part, all real  
estate situate near Basye, in Shenandoah County, Virginia,  
owned by Bryce's Mountain Resort, Inc., as of the date  
hereof, together with improvements thereon consisting of  
stables, lakes, ponds, pools, tennis courts, golf course,  
ski lifts, ski slopes, recreational park, parking areas,  
airport, ski lodge and other buildings, structures and fixtures  
together with all appurtenances thereunto belonging or in  
anywise appertaining, except and expressly reserving to the  
grantor and its assigns:

255

(a) All platted lots of record, recorded as of

DEF.'S  
EXH. 4

January 25, 1975 contained within the perimeter survey of any section or addition or extension thereof Bryce's Mountain Resort as of record in the Clerk's Office of the Circuit Court of Shenandoah County, Virginia as of January 25, 1975.

~~(b) Lots 33, 34, and 35 of Section V Extended as shown upon the plat thereof as attached hereto and made a part hereof.~~

(c) All fixtures, improvements, equipment and buildings forming a part of or used in connection with the sewer plant located northeast of the fourteenth fairway of the golf course with the right to remove the same within five years from the date hereof.

(d) Blanket, wild easements over the real estate herein conveyed for the purpose of installing, maintaining, replacing and repairing underground utility systems as now existing or as may be required in the further development of the lands comprising the subdivision or development known as Bryce's Mountain Resort, provided, however, grantor or its assigns shall at their cost restore any property to its prior existing state following the installation, replacement or repair of such utilities and no further or future installation shall be made until thirty days notice of the location and intent to make such installation shall have been given to grantee.

(e) A perpetual use easement running with the land herein conveyed for the benefit of all lot and property owners as they exist from time to time of property located in the subdivision or development known as Bryce's Mountain Resort, together with the guests of such property owners, over all recreational facilities at said Bryce's Mountain Resort as are described in the Statement of Record and Property Report filed by grantor with Interstate Land Sales Office of the Department of Housing and Urban Development effective as of January 10, 1975, including without limitation, golf, skiing, tennis, boating and stable facilities, provided, however, such user beneficiaries shall be required to pay fees and charges in an amount not in excess of fees and charges made to other persons using said facilities

through the grantee, provided, however, nothing herein contained shall be construed to require grantee or any successor in interest to provide any recreational services or facilities that grantee or its successor in interest may elect not to provide, it being the intention of this provision only that any service or facility that is provided be provided on a non-discriminating basis to all lot, property, condominium and townhouse owners in the subdivision or development known as Bryce's Mountain Resort and their guests.

(f) Any lands or property acquired by Bryce's Mountain Resort, Inc. subsequent to the date hereof, whether the conveyance thereof be recorded prior or subsequent to the recordation of this deed.

(g) All wells, pipe lines, fixtures and equipment used by grantor or its assigns in the supplying of water and sewer service to the development known as Bryce's Mountain Resort.

As a part of the consideration for this conveyance it is agreed between the parties hereto that this conveyance is made subject to the following:

(a) All easements and rights of way across the subject real estate to public utility companies heretofore granted by grantor or its predecessors in title to such utility companies.

(b) An easement and right of way over all existing roads on the real estate herein conveyed for the benefit of all lot owners in Bryce's Mountain Resort Subdivision or development.

(c) All rights of access to Lake Laura by lot and property owners in Section XI and Section III Extended of Bryce's Mountain Resort.

(d) The lease agreements covering the airport and airport operations building and equipment.

IN WITNESS WHEREOF, Bryce's Mountain Resort, Inc., has caused this writing to be signed in its name and on its behalf by

BOOK 318 PAGE 358

its Vice President, and its corporate seal to be hereunto affixed and attested by its Secretary, as thereunto duly authorized.

BRYCE'S MOUNTAIN RESORT, INC.

(Seal)

ATTEST:

By

R. D. Worrell  
Vice President

L. B. Jefferson  
Secretary

STATE OF VIRGINIA,  
COUNTY OF SHENANDOAH, to-wit:

The foregoing instrument was acknowledged before me this 1st day of May, 1975, by R. D. Worrell, Vice President of Bryce's Mountain Resort, Inc., a Virginia corporation, on behalf of the corporation.

My commission expires: 1-17-78

Brenda A. Dinger  
Notary Public

SHENANDOAH COUNTY, SS

The foregoing writing with certificate of acknowledgment thereon was received at the Clerk's Office of said County, admitted to record and indexed. The taxes imposed by Sect. 53-54, (a) and (b), of the Code have been paid.

this 21st day of May, 1975  
2111 P. M. Teste: W. J. Sigler Clerk

October 16, 1978

Mr. Rodney W. McClain  
General Manager  
Stony Creek Utilities Company  
Basye, Virginia 22810

RE: Bruce Forbes and proposed purchase of O'Mara tract

Dear Mr. McClain:

Thank you very much for your letter of August 9, 1978, with the map showing the service areas of Stony Creek Utilities Corporation.

I represent Bruce Forbes who is proposing to purchase a certain tract of real estate containing 7.35 acres, unimproved, which is contiguous to Section 6 of Bryce Mountain Resort at Basye.

This tract of real estate is within the service area of Stony Creek Utilities Corporation.

My client intends to purchase this property and develop it into various townhouse type units. It may be that perhaps 35 units would be placed upon the property.

Upon its development, Mr. Forbes would run the water and sewer lines to the property line where it joins existing utilities lines of Stony Creek Utilities Corporation. Any units contemplated to hook onto the sewer and water line constructed by my client, which would intersect with the public utility system, would naturally pay the sewer and water tap on fees applicable to such connection. Also, upon completion of the project, all water and sewer lines upon the premises would be turned over to Stony Creek Utilities Company.

A sewer availability fee of \$1500.00 would appear to perhaps be applicable to this 7.35 acre tract of real estate as it relates to the total system of Stony Creek Utilities Company in accordance with the covenants and restrictions recorded in Deed Book 262, at Page 275.

Mr. Rodney W. McClain  
October 16, 1978  
Page Two

In summation, if my client purchases this tract of real estate and develops townhouse units thereon, estimated to be approximately 35, and could be a few more innnumber or a few less, and construct tthe water and sewer lines to your present lines, and each townhouse unit pays a tap on fee for water and sewer, and my client pays a \$1500900 sewer availability fee to Stony Creek Utilities Company, this would appear to be a very beneficial project for Stony Creek Utilities Company as well as, hopefully, my client.

We hope to close this transaction by the end of this week, on Friday, October 20, so I would like to hear from you immediately upon your receipt of this letter regarding the overview of your company concerning this proposed project. I have partially cleared ~~matsemeten~~<sup>this matter</sup> with the County Government, and hope to get the entire development plan assamilated very soon, so I would like to hear from you so I can get some idea regarding our future pprocedures to have a smooth and working relationship with your company on this development.

Thank you for your consideration and I shall await to hear from you at your earliest convenience.

Sincerely,

I. Clinton Miller

ICM/ds