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7399

DECLARATION

THIS DECLARATION dated this 22 day of September, 1999, by CURTIS L. NAYLOR, hereinafter referred to as "Declarant".

WITNESSETH:

WHEREAS, Declarant is the owner of a certain parcel of land situated in the Green Spring District of Louisa County, Virginia, more particularly shown and described on Exhibit A, which is attached hereto and incorporated herein by reference as a part hereof; and

WHEREAS, Declarant has subdivided the said parcel as shown on a certain plat of subdivision which is attached hereto and incorporated herein by reference as Exhibit B; and

WHEREAS, Declarant desires to subject the lots in such subdivision to the 50-foot right-of-way easement hereinafter set forth and to subject such lots to the covenants, liens and charges for private maintenance and improvement of the right-of-way as hereinafter set forth, which are for the benefit of the lots served by such right-of-way and the Owners thereof.

NOW, THEREFORE, Declarant hereby declares that the lots shown on the said subdivision plat shall be held, transferred, sold, conveyed and occupied subject to the covenants, easements, liens and charges hereinafter set forth which are hereby imposed to enhance and protect the value and desirability of the said lots. The provisions set forth herein shall run with the land and shall be binding upon any and all parties who have, or shall acquire, any right, title or interest in all or any part of the said lots and shall inure to the benefit of each Owner thereof.

*McClure Callaghan & ALKINS:
Prepared by:
Plat Book 8, Page 1217*

ARTICLE I - DEFINITIONS

The following words, when used in this Declaration, shall have the following meanings:

Section 1.01. "Access Easement" shall mean and refer to the 50-foot right-of-way easement established in Section 2.01 hereof.

Section 1.02. "Owner" shall mean and refer to the record Owner, whether one or more persons or entities, including Declarant, of the fee simple title to each lot served by the Access Easement including contract sellers, but excluding those having such interests merely as security for the performance of an obligation. In the case where any such lot is held by one or more persons for life with the remainder to another or others, the term "Owner" shall mean and refer only to such life tenant or tenants until such time as the remainderman or remaindermen come into use, possession or enjoyment of such lot. In the case where any such lot is beneficially owned by more than one person, such persons may exercise the rights provided herein as they may choose among themselves, provided, however, that each lot shall be entitled to only a single vote; and provided further that each such person shall be jointly and severally liable for any assessment made with respect to such lot.

ARTICLE II - ACCESS EASEMENT

Section 2.01. Establishment of Access Easement: Declarant does hereby establish and impose a non-exclusive access easement fifty (50) feet in width across certain of the lots for the benefit of the lots shown on the said plat along and across that certain strip of land designated as "Private Lane - 50' R/W Easement" on

Exhibit B for the joint use of the lots for ingress and egress to and from State Route 694, and for carrying utilities.

Section 2.02. Maintenance: The Access Easement is private and requires private maintenance as hereinafter set forth. THE COSTS OF REPAIR, MAINTENANCE, UPKEEP, IMPROVEMENT OR REPLACEMENT OF THE ACCESS EASEMENT AND THE PRIVATE ROAD LOCATED THEREIN WILL NOT BE BORNE BY THE COUNTY OF LOUISA, THE COMMONWEALTH OF VIRGINIA, OR ANY OTHER PUBLIC AGENCY, BUT RATHER SHALL BE THE RESPONSIBILITY OF AND BORNE AS FOLLOWS:

(a) Declarant: The initial construction of the private road and related improvements (grading, seeding, drainage ditch, culvert pipe, etc.) within the Access Easement shall be borne and completed by Declarant. Upon the completion of such initial construction, the Declarant shall have the rights of an Owner as to each lot actually owned by it; except that, as to any assessment made pursuant to Section 2.03(c), the Declarant shall have only one vote, regardless of the number of lots actually owned by it.

(b) Owners of Lots: The Owners of lots shall be responsible for and shall bear equally, the costs of maintenance of the private road and related improvements within the Access Easement.

(c) Damage From Construction Activities: Notwithstanding the foregoing, each Owner shall be solely and exclusively responsible for and shall fully bear the cost of maintenance within the Access Easement necessitated by construction activities on his lot, and each Owner shall restore any portion of the Access Easement damaged by his construction activities to at least its prior condition upon completion of such construction.

Section 2.03. Assessments:

(a) Standards of Maintenance: The Owners of lots served by the Access Easement shall determine (by a majority decision) the standards to which the Access Easement and private road located therein shall be maintained; provided, however, that any portion of the private road and related improvements shall be maintained in such condition that the private road is passable at all times for ordinary use by passenger automobiles, excepting only severe, temporary weather conditions such as snow or ice, with gravel of appropriate type, depth and width, and drainage ditches and culverts as necessary. Periodic removal of ice and snow shall be deemed to be maintenance if the Owners of a majority of the lots shall so determine. The expense of such maintenance shall be assessed against each lot served by the Access Easement in equal shares. A notice of such assessment shall be delivered to the Owner of each such lot. Each notice of assessment shall be presumed to have been delivered in accordance with this section if it shall be mailed, by first class mail, postage prepaid, to the Owner of such lot at the address listed in the Office of the Commissioner of Revenue of Louisa County for such Owner for tax purposes.

(b) Improvements by Individual Owners: Any Owner may, at his own expense, make such improvements to the Access Easement as he may deem advisable, from time to time; provided, however, that all such improvements shall be carried out in a manner consistent with good engineering practice and without interruption of service for the Owners of other lots. In addition, except as other determined

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by the Owners of a majority of the lots served by the Access Easement, any Owner making such improvements shall be solely liable for all additional maintenance expenses proximately caused by such improvements. Such liability for additional maintenance expenses may be enforced by assessment as provided in subsection (a) of this Section.

(c) Other Improvements: In the event that it shall be determined by the Owners of more than 2/3 of the lots served by the Access Easement that it is desirable to make improvements thereto, other than ordinary maintenance, the Owner of each lot served by the Access Easement shall be liable for his proportionate share of such expense, which expense shall be divided equally among all the lots served by the Access Easement. Such liability shall be evidenced by an assessment made by vote of the Owners of more than 2/3 of the lots served by the Access Easement. A notice of such assessment shall be delivered to the Owner of each lot served by the Access Easement. Each notice of assessment shall be presumed to have been delivered in accordance with this section if it shall be mailed, by first class mail, postage prepaid, to the Owner of such lot at the address listed in the Office of the Commissioner of Revenue of Louisa County for such Owner for tax purposes.

Section 2.04. Collection of Assessments:

(a) Personal Liability: Each Owner shall be personally liable and responsible for his share of the assessments provided for in Section 2.02 and 2.03, above, which are incurred during his Ownership of his lot, and shall pay to the person or corporation performing the work for which such assessment was made his share

withing fifteen (15) days following completion of such work.

(b) Enforcement: If any Owner shall fail to pay his proportionate share of the costs of maintenance for which he is responsible, as provided hereinabove, any other Owner, or the person or corporation performing such maintenance, may bring an action of law against each Owner of a lot failing to pay his proportional share, and/or foreclose the lien provided for in Section 2.04(c) below against said Owner's lot. The amount due by any delinquent Owner shall bear interest at the maximum judgment rate provided by law from the date of completion of the maintenance; and the delinquent Owner shall be liable to pay all costs of collection, including reasonable attorney's fees.

(c) Lien: There shall be a continuing lien on each of the said lots to secure the payment of the assessment as described in Section 2.03, above. Such lien shall be at all times subject to the provisions of Section 2.04(d), and shall be enforceable in the same manner as a mortgage.

(d) First and Second Deeds of Trust: The lien provided in Section 2.04(b) above shall at all times be subject to any first or second mortgage or deed of trust placed on any lot at any time until notice of such lien shall have been recorded as hereinafter provided. If any assessment is not paid by any Owner of a subject lot within fifteen (15) days after the same becomes due and payable, a notice of such employment as to such lot may be recorded by any other Owner or by the person or corporation performing such maintenance in the Clerk's Office of the Circuit Court of Louisa County, Virginia, and from the time of such recordation the amount

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stated in the notice, together with interest, costs of collection, and reasonable attorney's fees shall become a lien prior to any first or second mortgage or deed of trust recorded subsequent to the date of such notice.

ARTICLE III -- RESUBDIVISION

No lot served by the Access Easement shall be resubdivided without the written consent of the Owners of all lots served by the Access Easement. In no event shall the Access Easement serve more than seven (7) lots.

ARTICLE IV -- IMPROVEMENT TO PUBLIC ROAD STANDARDS
DEDICATION TO PUBLIC USE

The Access Easement is not a public road and is not eligible for inclusion into the Virginia Secondary Highway System. It is contemplated that, at some time in the future, it is possible that the Owners of lots served by the Access Easement may wish to cause the same to be submitted for inclusion into the said System. In the event of such submission, the expense of improving the Access Easement to the standards of the said System shall be the sole responsibility of the Owners of lots served by the Access Easement. Such expense may be paid by assessments as provided in Section 2.03(c), above. In the event that the Owners of more than 2/3 of the lots served by the Access Easement be dedicated to public use, the Owners of all lots in the subdivision shall take appropriate action to dedicate to public use, in fee simple absolute, without additional consideration, all of the strip of land designated as "50' R/W Easement" on the attached subdivision plat. The duty to dedicate such strip may be enforced as a ministerial duty by mandamus, injunction or otherwise.

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No school bus service or United States postal service is provided along the private road.

THE FOREGOING NOTWITHSTANDING, NOTHING CONTAINED HEREIN SHALL BE DEEMED TO GUARANTEE THAT THE ACCESS EASEMENT WILL EVER BE ACCEPTED AS A PUBLIC ROAD OR THAT THE SAME WILL EVER BE MAINTAINED BY THE COUNTY OF LOUISA, THE COMMONWEALTH OF VIRGINIA, OR ANY OTHER PUBLIC AGENCY.

ARTICLE V - ASSIGNMENT OF RIGHTS

The rights set forth herein relating to assessments for maintenance and improvements, including the collection thereof, may be assigned by the Owners to an association incorporated for that purpose. The members of any such association shall be the Owners of all of the lots in the subdivision, and membership in the association shall be non-severable from the ownership of each such lot. The voting rights of the members of any such association as to assessments for maintenance and improvements shall be the same as the voting rights of Owners pursuant to this Declaration. Such assignment shall be in writing, signed by the Owners of all lots in the subdivision and recorded in the Office of the Clerk of the Circuit Court of Louisa County.

ARTICLE VI - GOVERNING LAW; VENUE

This Declaration shall be construed and enforced in accordance with the laws of the Commonwealth of Virginia and the County of Louisa. Exclusive venue for any dispute arising hereunder shall be in the Courts of the County of Louisa.

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IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed on its behalf by its duly authorized agent.

BY: Curtis L. Naylor
Curtis L. Naylor

STATE OF VIRGINIA AT LARGE
CITY/COUNTY OF Charlottesville, to-wit:

The foregoing Declaration was acknowledged before me this 22 day of September 1998, by Curtis L. Naylor.

Suzanne B. Webster
Notary Public

My commission expires: August 31, 2003

APPROVED AS TO FORM IN ACCORDANCE
WITH SECTION OF THE LOUISA COUNTY
CODE:

Robert J. Myers
COUNTY ATTORNEY

BOOK 621 PAGE 396

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EXHIBIT A

PROPERTY DESCRIPTION

All those certain tracts or parcels of land, lying and being situated in the Green Spring District of Louisa County, Virginia, designated as Lots 1 through 7, Mountain Sunset Subdivision, and shown on plat of G. D. Hosaflook, Land Surveyor, dated September 7, 1998, attached hereto and made a part hereof; being a portion of the property conveyed to Curtis L. Naylor by deed of William B. Day, Jr. and Margie E. Day, dated October 2, 1996, recorded in the Clerk's Office of the Circuit Court of Louisa County, Virginia, in Deed Book 522, page 433.

INSTRUMENT #9907395
RECORDED IN THE CLERK'S OFFICE OF
LOUISA COUNTY VA
OCTOBER 15, 1999 AT 09:00AM
DEAN P. AGEE, CLERK

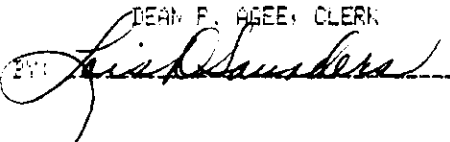
Dean P. Agee (DC)

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DEAN P. AGEE, CLERK

BY:  (DC)

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DEAN P. AGEE, CLERK

Dean P. Agee (DC)

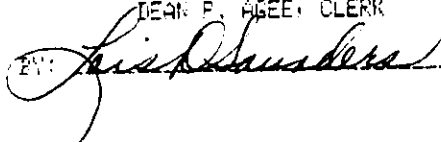
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