

52738

EMERALD HILLS SUBDIVISION
DECLARATION OF COVENANTS, CONDITIONS
AND RESERVATIONS OF HOMEOWNERS ASSOCIATION

THIS DECLARATION, made on this 8th day of November, 1989, by W. Boutros & Company, a Virginia Corporation, and hereinafter referred to as the "Declarant."

W I T N E S S E T H :

WHEREAS, Declarant is the owner of certain real estate situated in Wayne District, Augusta County, Virginia, being subdivided into a subdivision known as Emerald Hills, a plat of Section 1 of Emerald Hills entitled "Plat of Correction Emerald Hills Subdivision, Section 1, Wayne District, Augusta County, Virginia," dated October 5, 1989, made by Patton Harris Rust & Associates, recorded in the Clerk's Office of the Circuit Court of Augusta County in Plat Book 1, Pages 770, 771 and 772, and being real estate conveyed to Declarant by deed of Wafaiey R. Boutros and Jocelyn Boutros, his wife, dated February 22, 1989, recorded in the aforesaid Clerk's Office in Deed Book 962, Page 250; and

WHEREAS, Declarant desires to convey those lots designated and described on the aforesaid "Plat of Correction Emerald Hills Subdivision, Section 1," subject to certain conditions, covenants and reservations as hereinafter set forth, which pertain to the ownership, use and maintenance of common areas and to trash removal service for all lots;

NOW, THEREFORE, Declarant hereby declares that the lots designated and described on the aforesaid plat entitled "Plat of Correction Emerald Hills Subdivision, Section 1," shall be held, sold and conveyed subject to the following covenants and conditions which shall run with the land and shall be binding upon all parties having or acquiring any right, title and interest in and to the lots in Emerald Hills Subdivision, Section 1, and shall inure to the benefit of each owner thereof.

ARTICLE I

Definitions

Section 1. "Association" shall mean and refer to Emerald Hills Homeowners Association, Inc.

Section 2. "Properties" shall mean and refer to the real estate hereinafter described and any such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 3. "Easements" and "Common Areas" shall mean the easements and common areas owned by the Association for the common use and benefit of the members of the Association.

Section 4. "Lot" shall mean and refer to any one of the numbered lots of land designated and described upon the aforesaid plat entitled "Plat of Correction Emerald Hills Subdivision, Section 1."

Section 5. "Member" shall mean and refer to every person or entity who holds membership in the Association.

7.

Section 6. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Lot which is part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 7. "Declarant" shall mean and refer to W. Boutros & Company.

ARTICLE II

Conveyance of Easements and Common Areas

Declarant will convey to Emerald Hills Homeowners Association, Inc. Easements and Common Areas shown on the aforesaid plat of Correction Emerald Hills Subdivision, Section 1, or on plats specifically setting forth any such Easements or Common Areas.

ARTICLE III

Owners and Memberships

Every person or entity who is a record owner of a fee simple or undivided fee simple interest in any Lot which is subject by covenants and conditions of record to assessment by the Association, including contract Sellers, shall be a member of the Association. The foregoing is not intended to include persons or entities who hold interest merely as security for the performance of an obligation. No Owner shall have more than one membership. Membership shall be appurtenant to and may not be

separated from the ownership of any Lot which is subject to assessment by the Association. Ownership of such lot shall be the sole qualification for membership.

ARTICLE IV

Voting Rights

The Association shall have one class of voting membership who shall be those owners as defined in Article III and shall be entitled to one vote for each lot in which they hold the interest required for membership by Article III. When more than one person holds such interest in any Lot, all such persons shall be Members. The vote for any such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

ARTICLE V

Property Rights

Section 1. Member's Easements of Enjoyment. Every member shall have a right and easement of enjoyment in the Easements and Common Areas and such Easements and Common Areas shall be appurtenant to and shall pass with the title to every assessed Lot, subject to the following provisions:

(a) The right of the Association to dedicate or transfer all or any part of the Easements or Common Areas to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective unless an instrument signed by Members entitled to cast at least two-thirds of the

votes has been recorded, agreeing to such dedication or transfer, and unless written notice of the proposed action is sent to every Member not less than 20 days nor more than 60 days in advance;

(b) The right of the Association, in accordance with its articles and by-laws, to borrow money for the purpose of improving the Easements or Common Areas;

(c) The right of the individual owners to the use of the Common Areas as appurtenances to said lots.

Section 2. Delegation of Use. Any member may delegate in accordance with the By-laws his right of enjoyment to the Common Areas to members of his family, his tenants or contract purchasers who reside on the property.

Section 3. Utility Easements. The Association by normal corporate action may convey and grant any utility easements, within the boundaries of the Common Areas.

Section 4. The Association shall further be in charge of the general control of the Easements and Common Areas and can make any reasonable regulations for the control, maintenance and use of such.

ARTICLE VI

Covenants for Maintenance Assessments

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each lot owned within the properties, hereby covenants, and each Owner for any lot by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to

covenant and agree to pay to the Association such annual assessments or charges, and special assessments for capital improvements, as may be fixed, established and collected from time to time as herein provided. The annual and special assessments, together with such interest thereon and costs of collection thereof, as herein provided, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made in the manner hereinafter provided, and subject to prior liens upon the property as hereinafter provided. Each such assessment together with interest and collection costs shall also be the personal obligation of the person who was the owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of the upkeep, maintenance and improvement of Easements and Common Areas that may hereafter be conveyed to the Association.

Section 3. Basis and Maximum of Annual Assessments. Until January 1, 1991, the maximum annual assessment shall be One Hundred Dollars (\$100.00) per lot.

(a) After January 1, 1991, the maximum annual assessment may be increased by up to twenty-five percent (25%) per year by the Board of Directors of the Association without a vote of

membership, which Board may fix such annual increase after due consideration of current maintenance costs and needs of the Association.

(b) Any increase requested by the Board of Directors above the annual twenty-five percent (25%) increase as permitted herein must be approved by at least a two-thirds (2/3) vote of members who are voting in person or by proxy at a meeting duly called for this purpose.

(c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

Section 4. Special Assessments for Capital Improvements.

In addition to the annual assessments the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any major improvement within the Easements or Common Areas, provided that any such assessment shall have the approval of a majority of the vote of members who are voting in person or by proxy at a meeting called for this purpose.

Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Sections 3 or 4 shall be sent to all members not less than twenty (20) days nor more than sixty (60) days in advance of the meeting. At any such meeting called, the presence of members or proxies entitled to

cast sixty percent (60%) of all votes of the membership shall constitute a quorum. Notice shall be sent to the last known address of the members as shown on the records of the Association.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all lots and may be collected on a quarterly basis.

Section 7. Date of Commencement of Annual Assessments Due Dates. The annual assessments provided for herein commence as to all lots on the first day of the month following the conveyance of any Easements and Common Areas to the Association. The Board of Directors shall fix the amount of the annual assessment against each lot at least thirty days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every owner subject thereto. The Association shall upon demand furnish a certificate in writing setting forth whether the assessments on a specified lot have been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 8. Effect of Nonpayment of Assessments. Any assessments not paid within thirty (30) days after the due date shall bear interest from the date of delinquency at the interest rate of 12% per annum and the Association may bring an action at

law against the owner personally obligated to pay the same, or foreclose the lien against the property. No owner may waive or otherwise escape liability for the assessments provided herein by abandonment of his lot.

Section 9. Lien for Payment of Assessments and Subordination of Lien. There shall be a continuing lien upon each of the individual lots herein to secure the payment of any of the assessments provided under this Declaration, but such continuing lien shall be at all times subject and subordinate to any mortgages or deeds of trust placed on the lot; however, at such time as the Association places of record in the proper Clerk's Office a notice of delinquency as to any particular lot, then from the date of recordation the lien for payment of assessments shall become a lien prior to any mortgage or deed of trust placed of record subsequent to the date of said recordation of notice in the same manner as the lien of a docketed judgment in the State of Virginia.

Section 10. Exempt Property. The following property subject to this declaration shall be exempt from the assessments created herein:

(a) All properties dedicated to and accepted by a local public authority or utility company.

(b) The Esserents and Common Areas.

ARTICLE VII

Annexation of Additional Properties

Section 1. Additional lands may be added by Declarant as a future section of Emerald Hills Subdivision utilizing the Easements and Common Areas herein described, provided, however, that such additional lands must adjoin any of the land conveyed to Declarant by the deeds referred to hereinabove and further that all of the rules, regulations and controls herein set forth shall be made applicable to any such additional lands.

ARTICLE VIII

Trash Removal Service

Section 1. Contracting for Trash Removal. The Board of Directors of the Association shall have the responsibility of contracting with a trash removal company for the purpose of providing uniform trash removal service for all Lots. Any such contract shall be reviewed at the annual meeting of the members of the Association.

Section 2. Payments for Service. Payments for trash removal service shall be made by each Owner to the company providing such service in accordance with the terms of the contract entered into between the Association and the company.

Section 3. Use of Service. Each Owner must utilize the trash removal service provided and contracted for by the Board of Directors of the Association.

ARTICLE IX

General Provisions

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this declaration. Failure by the Association or by any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by court order or otherwise shall not affect any other provision which shall remain in full force and effect.

Section 3. Amendment. The covenants and conditions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or by the Owner of any Lot subject to this Declaration. The covenants and conditions of this Declaration may be amended by an instrument signed by no less than sixty percent (60%) of the Lot Owners and any such amendment must be properly recorded.

IN WITNESS WHEREOF, the undersigned, being the Declarant defined herein, have hereunto set their hands and seals on this the 8th day of November, 1989.

W. BOUTROS & COMPANY

By: W. R. Boutros
W. R. Boutros, President

STATE OF VIRGINIA, AT LARGE:

CITY OF STAUNTON, to-wit:

The foregoing instrument was acknowledged before me this 8th day of November, 1989, by W. K. BOUTROS, President of W. Boutros & Company.

My commission expires: June 12, 1990

David L. Lawrence, Jr.
Notary Public