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This Document Prepared By:  
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**EMERALD HILLS SUBDIVISION, SECTION 5  
DECLARATION OF COVENANTS, CONDITIONS AND  
RESTRICTIONS AFFECTING LOTS IN EMERALD HILLS  
SUBDIVISION, SECTION 5**

**THIS DECLARATION** made and entered into this 14th day of October, 1999, by **W. BOUTROS & COMPANY, a Virginia Corporation**, hereinafter referred to as "Declarant."

**\*\*\* WITNESSETH \*\*\***

**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, Section 5" as shown on a plat entitled "Emerald Hills Subdivision, Section 4, Wayne District, Augusta County, Virginia" prepared by Patton Harris Rust & Associates, P.C., dated February 26, 1999, revised March 24, 1999 which plat is of record in the Augusta County Circuit Court Clerk's Office in Plat Book 1, Pages 416A - 4172; and

**WHEREAS**, Declarant desires to create certain covenants, conditions, and restrictions to affect and benefit those lots designated and described on the aforesaid plat,

**NOW THEREFORE**, Declarant hereby declares that the lots designated and described on the aforesaid plat shall be held, sold and conveyed subject to the following covenants, conditions, and restrictions 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 5, and shall inure to the benefit of each owner thereof.

**ARTICLE 1**

**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 and refer to 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.

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

**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, a Virginia corporation, or any successor corporate or business entity.

**ARTICLE II**

**Covenants, Conditions, and Restrictions**

All lots designated and described on the aforesaid plat shall be subject to the

following covenants, conditions and restrictions which shall be deemed to be running with the land:

FIRST: Each lot shall be used for single-family residential purposes and for no other purpose. No building shall be erected, altered, placed or permitted to remain on any lot other than one detached dwelling not to exceed three stories in height and a private garage for not less than two (2) cars, and such other outbuildings as may be approved by the Architectural Review Committee.

SECOND: The ground floor area of any dwelling located on all lots in Section 5 exclusive of porches, garages and breezeways, shall not be less than sixteen hundred (1600) square feet for a one story dwelling, nor less than one thousand (1000) square feet for a dwelling of more than one story provided that the total living area of a dwelling of more than one story, exclusive of porches, garages and breezeways, shall be no less than eighteen hundred (1800) square feet.

THIRD: No dwelling shall be permitted to be erected on any of said lots unless adequate provisions for off-street parking for at least two (2) vehicles be provided upon such lot.

FOURTH: No sign of any kind shall be displayed to the public view on any of said lots except one sign of not more than five (5) square feet advertising the property for sale or rent, or signs used by the builder to advertise the property during construction. One sign not exceeding one-half ( $\frac{1}{2}$ ) square foot displaying the name of the owner of the property shall be permitted on any of said lots. Declarant and its agents are permitted to display signs larger than the five (5) square feet.

FIFTH: No dwelling, building, or other structure having a flat roof shall be constructed upon any of said lots.

SIXTH: No building or other improvements shall be erected, placed or altered

on any of said lots until construction plans and specifications and a plat showing the location of the structure have been submitted in writing and approved by the Architectural Review Committee as to external design and materials, harmony of external design with existing structures, and as to location on the lot. No fence, wall, or sign of any kind shall be erected, placed, or altered on any of said lots until similarly approved.

SEVENTH: The Architectural Review Committee hereinabove referred to shall be composed of three (3) persons designated by the Board of Directors of the Declarant.

A majority of the Committee may designate a representative to act for it. The Architectural Review Committee's approval or disapproval as required in these Covenants shall be in writing. In the event that the Committee or its designated representative fails to approve or disapprove an application within thirty (30) days after construction plans and specifications have been submitted to it, then approval will not be required and this provision will be deemed to have been fully complied with. The applicant may appeal an adverse decision by the Architectural Review Committee to an arbitration panel consisting of three (3) persons, one (1) person selected by the Architectural Review Board, one (1) person selected by the applicant and one (1) person selected by these two persons, and this arbitration panel may reverse or modify such decision which decision shall be binding upon all parties involved.

EIGHTH: Trash, garbage, or other waste shall be kept in sanitary and closed containers, and all incinerators or other containers shall be appropriately screened from view from any street or road on which any of said lots front.

NINTH: No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any of said lots, except dogs, cats or other household pets may be kept

provided they are not kept, bred, or maintained for any commercial purpose.

TENTH: No trailer, basement, tent, shack, barn, or outbuildings erected on any of said lots shall at any time be used as a residence, temporarily or permanently, nor shall any residence of a temporary character be permitted. No house trailer shall be permitted on any of said lots at any time. No recreational vehicle, or boat shall be permitted to be parked in front of the dwelling constructed on any lot. No larger commercial vehicles shall be permitted on any lot.

ELEVENTH: No lot may be further subdivided for the purpose of building an additional residence thereon, nor shall only a portion of any lot be sold and conveyed by the owner thereof without the prior written approval of the Architectural Review Committee.

TWELFTH: No lot or portion of any lot shall be used as an access way or right-of-way for ingress or egress to any other lot, piece or parcel of land, without the prior written consent of the Architectural Review Committee.

THIRTEENTH: Easements for drainage and for the installation, repair, replacement and maintenance of underground water and sewer pipes and mains, and for overhead or underground electric power and telephone lines, are reserved to W. Boutros & Company or assigns, over, through and across the strips of land designated as drainage and utility easements on the aforesaid plat of Emerald Hills Subdivision, Section 5. Such easements are expressly reserved to the use of W. Boutros & Company or assigns, and no third party shall be or become entitled to the use thereof, nor shall any other party, except the lot owner, have any vested interest in or to the use of such easements except W. Boutros & Company or assigns, or such utility company as may be granted specific rights over, through or across such easements. Except as such rights are granted to a utility company by a recorded easement or right-of-way, a

release by W. Boutros & Company or assigns to any individual lot owner of any easements so reserved shall operate as a complete release to such lot owner and no other party shall be entitled to exert any claim or right to the use thereof.

FOURTEENTH: The exterior of any dwelling or building being constructed on any of said lots, and the surfacing of any driveway on said lot, shall be completed within twelve (12) months from the commencement of construction. It is required that all driveways shall be either paved or concrete.

FIFTEENTH: Any water drainage or water detention system traversing or abutting any lot or lots of said subdivision shall be maintained by the owner or owners of such lots. The Emerald Hills Homeowner's Association, Inc. and the individual lot owners, jointly and severally, shall keep plant growth in the drainage easements and in the detention easement mowed so that it never exceeds fifteen inches (15") in height. Pursuant to a requirement of the County of Augusta, Virginia, lot owners of Lots 141, 142, 143, 155, 167, 181, and 182, Section 5, shall keep plant growth in the drainage easements located on the particular lot of such owners mowed so that it never exceeds fifteen inches (15") in height.

SIXTEENTH: No noxious or offensive use or activity shall be carried on upon any lot, nor shall any practice be engaged in by the owners of the lots, their tenants, agents, guests or assigns, that shall become an annoyance or nuisance to the neighborhood.

SEVENTEENTH: No portion of the foundation of any building shall be showing above ground unless covered with brick or other covering approved by the Architectural Review Committee.

### **ARTICLE III**

#### **Conveyance of Easements and Common Areas**

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

**ARTICLE IV**  
**Owners and Memberships**

Every person or entity who is a record owner of a fee simple or undivided fee simple interest in any Lot is subject to these covenants and conditions of record and assessment by the Association as described in Article VII, and each shall be a member of the Association, excluding bona fide builders and contractors who are holding unimproved lots for building and subsequent resale (but no longer than 24 months). 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 V**  
**Voting Rights**

The Association shall have one class of voting membership who shall be those owners as defined in Article I and shall be entitled to one vote for each lot in which they hold the interest required for membership by Article IV. When more than one person hold 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 VI**  
**Property Rights**

**Section 1. Members 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 appurtenance 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 VII Covenants for Maintenance Assessments**

**Section 1. Creation of the Lien and Personal Obligation of Assessments.**



Each Owner for any Lot by the acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or other conveyance, hereby 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 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.

The Declarant shall be exempt from all assessments and charges unless declarant transfers, then requires a lot or lots. For such required lot, the Declarant shall pay the applicable assessments and charges.

Bona fide builders and contractors who are holding unimproved lots for building and subsequent resale shall be exempt from all assessments and charges (but no longer than 24 months or until time of transfer of said lot or lots, whichever first occurs).

**Section 2. Purposes of Assessments.** The assessment 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, 2004, the maximum annual assessment shall be One hundred Dollars (\$100.00) per Lot.

(a) After January 1, 2004, the maximum annual assessment may be increased by no more than 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 Assessment 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 of 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 and 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 (30) 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 twelve percent (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 subordinated 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 place 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

**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 Easements and Common Areas.

### **ARTICLE VIII 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 IX Trash Removal Service**

**Section 1. Contraction 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, if they so decide. Any such contract shall be reviewed at the annual meeting of the members of the Association.

**Section 2. Payments for Services.** 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 X**  
**General Provisions**

**Section 1. Enforcement.** The Association, or any other Owner, shall have the right to enforce, by and 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, has hereunto set his hand and seal:

W. BOUTROS & COMPANY  
BY: *Wahid R. Boutros* (SEAL)  
W.R. Boutros, President

STATE OF VIRGINIA, AT LARGE

CITY/COUNTY OF WAYNESBORO, To-wit:

The foregoing instrument was acknowledged before me this 15<sup>th</sup> day of OCTOBER, 1999, by W. R. Boutros, President, on behalf of W. Boutros and Company.

My commission expires: NOV 30, 2001

[Signature]  
Notary Public

State Tax	039	\$	_____	VIRGINIA: In the Clerk's Office of the Circuit Court of Augusta County, Va. <u>Oct. 15</u> 1999 this writing was admitted to record at <u>10:42</u> o'clock <u>A</u> .M. and the Tax imposed by Section 58.1-802 of the Code of Virginia in the amt. of \$ <u>now</u> has been paid. TESTE: JOHN B. DAVIS, CLERK By <u>[Signature]</u> Dep. Clerk
County Tax	213	\$	_____	
Transfer Fee	212	\$	_____	
Clerk's Fee	301	\$	<u>22.00</u>	
St. Library	145	\$	<u>1.00</u>	
Tech. Fund	106	\$	<u>3.00</u>	
State Tax	038	\$	_____	
Local Tax	220	\$	_____	
TOTAL		\$	<u>26.00</u>	