

*Del. to Bryan City
in Bryan City
7/20/79*

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DEED 510 PAGE 733

THIS DEED OF DEDICATION AND DECLARATION OF PLAT OF ASH HOLLOW ESTATES, made and dated this 16th day of July, 1979, by and between RSH PROPERTIES, a Virginia Partnership, party of the first part, hereinafter called the Declarant, MICHAEL L. BRYAN, Sole Acting Trustee, party of the second part, and THE COMMERCIAL AND SAVINGS BANK of Winchester, Virginia, party of the third part.

WHEREAS, RSH Properties, a Virginia Partnership, is the owner of that certain tract of land situate in Stonewall Magisterial District, Frederick County, Virginia, containing 10.000 Acres, and being the same real estate conveyed to said RSH Properties by that certain deed dated October 18, 1978, from Denny's, Inc., which deed is of record in the Clerk's Office of the Circuit Court of Frederick County, Virginia, in Deed Book 500, at Page 29; and,

WHEREAS, the party of the third part and the party of the fourth part are the Trustee and Beneficiary, respectively, of that certain deed of trust upon the subject property, which deed of trust is dated October 18, 1978, and of record in the aforesaid Clerk's Office in Deed Book 500 at Page 36; and,

WHEREAS, it is the intention of the Declarant to subdivide said tract of land in accordance with that certain Final Plat of Ash Hollow Estates, dated April 26, 1979, drawn by Greenway Engineering and Surveying Co., Inc., a copy of which is attached hereto and incorporated herein by reference, and to impose upon said lots of said certain easements, restrictions, covenants and conditions as more fully set forth hereinafter.

NOW, THEREFORE WITNESSETH: The Declarant does hereby declare that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the

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real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to Ash Hollow Estates Homeowners Association, Inc., a Virginia non-stock corporation, its successors and assigns.

Section 2. "Properties" shall mean and refer to that certain real property hereinabove described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 3. "Common Areas" shall mean all property owned by the Association for the common use and enjoyment of the members of the Association; said Common Areas are designated as such on the attached plat of Ash Hollow Estates, and shall further be deemed to include all Parking Areas.

Section 4. "Lot" shall mean and refer to any of the lots designated upon the plat of Ash Hollow Estates, with the exception of the Parking Areas and Common Areas.

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 a fee simple title to any Lot which is a 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 RSH Properties, its successors and assigns.

ARTICLE II

MEMBERSHIP

Every person or entity who is a record owner of a fee or undivided fee interest in any Lot which is subject by covenants

of record to assessments 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 an 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 ownership of any Lot which is subject to assessment by the Association. Ownership of such Lot shall be the sole qualification for membership.

ARTICLE III

VOTING RIGHTS

Each member of the Association shall have one vote for each lot owned in which said member shall hold the interest required for membership in Article II. When more than one person holds such interest in any Lot, all such persons shall be members. The vote for 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 IV

PROPERTY RIGHTS IN COMMON PROPERTIES

Section 1. Members' Easements of Enjoyment. Every member shall have a right and easement of enjoyment in and to the Common Areas and Parking Areas, specifically including the rights of ingress and egress to the Parking Areas from Ash Hollow Drive, and such easement shall be appurtenant to and shall pass with the title to every assessed Lot, subject to the following provisions:

- (a) The rights of the Association, in accordance with its Articles and By-Laws, to borrow money for the purpose of improving the Common Areas, Parking Areas and facilities and in aid thereof to mortgage said property, and the rights of such mortgagee in said properties shall be subordinate to the rights of the homeowners hereunder.
- (b) The rights of the Association to suspend the voting rights and the right to use of the recreational facilities by a member for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed thirty (30) days for any infraction of its published rules and regulations;

- (c) The rights of the Association to dedicate or transfer all or part of the Common Areas and Parking 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 two-third (2/3) 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 twenty-five (25) days nor more than fifty (50) days in advance.
- (d) The right of the individual owners to the exclusive use of the parking spaces as provided in this Article.

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

Section 3. Title to the Common Areas and Parking Areas. The Declarant hereby covenants for itself, its heirs and assigns, that it will convey fee simple title to the Common Areas and Parking Areas to the Association, free and clear of all encumbrances and liens, prior to the conveyance of the first Lot.

Article 4. Parking Rights. Each owner or owners shall have the right to park two vehicles within the areas designated as Parking Areas. The invitees of any member shall have the right to park within said Parking Areas, so long as said parking does not substantially interfere with the parking rights of any member as set forth herein.

ARTICLE V

COVENANTS FOR MAINTENANCE

ASSESSMENTS FOR THE ASSOCIATION

The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of 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; (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be fixed, established, and collected from time to time as hereinafter provided. During the period of construction of improvements, the Declarant for each Lot owned within the Properties, hereby covenants and agrees to pay to the Association fifty percent (50%) of the annual assessments or charge and special assessments for capital improvements as provided immediately hereinabove, on those Lots owned by the Declarant which are vacant or superimposed by an unsold or unoccupied townhouse. The annual assessments and special assessments, together with such interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment together with such interest, costs and reasonable attorney's fee shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fee was due. The personal obligation 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 promoting the recreation, health, safety and welfare of the residents in the Properties and in particular for the improvement and maintenance of the Properties, payment of real estate taxes, repairs, snow removal and services and facilities devoted to this purpose and related to the use of and enjoyment of the Common Areas and Parking Areas.

Section 3. Basis and Maximum of Annual Assessments. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be Seventy-five Dollars (\$75.00) per year.

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- (a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above that set forth hereinabove by a vote of the members for the next succeeding year and at the end of each year's period, for each succeeding period of one year, provided that any such change shall have the assent of two-thirds (2/3) of the votes of members who are voting in person or by proxy, at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting setting forth the purpose of the meeting. The limitations hereof shall not apply to any change in the maximum and basis of the assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation.
- (b) After consideration of current maintenance costs and future needs of the Association, the Board of Directors may fix the annual assessments at an amount not in excess of the maximum.

Section 4. Special Assessments for Capital Improvements.

In addition to the annual assessments authorized above, 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 construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the Common Areas or Parking Areas, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting setting forth the purpose of the meeting.

Section 5. 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 monthly basis.

Section 6. Quorum for any Action Authority Under Section 3 and 4. At the first meeting called, as provided in Sections 3

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and 4 hereof, the presence at the meeting of members or of proxies entitled to cast sixty-seven percent (67%) of all votes shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the notice requirement set forth in Sections 3 and 4, and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 7. Date of Commencement of Annual Assessments:

Due date: The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the Common Areas and Parking Areas. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. 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 due dates shall be established by the Board of Directors. The Association shall upon demand at any time furnish a certificate in writing signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A reasonable charge may be made by the Board for the issuance of these certificates. Such certificates shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 8. Effect of Non-Payment of Assessments: Remedies of the Association.

Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of Nine percent (9%) per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien

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against the property, and interest, costs and reasonable attorney's fees on any such action shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Areas and Parking Areas or abandonment of his Lot.

Section 9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage or mortgages now or hereafter encumbering any Lot. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot which is subject to any mortgage, pursuant to a decree of foreclosure under such mortgage or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such assessments as to payments thereof which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due from the lien thereof.

Section 10. Exempt Property. The following property subject to this Declaration shall be exempt from the assessments created herein: (a) the Common Areas and Parking Areas; (b) all properties dedicated to and accepted by a local public authority; (c) all properties owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of Virginia. However, no residence occupied as a dwelling shall be exempt from these assessments.

ARTICLE VI

PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the homes upon the Properties and placed on the dividing line between the Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party wall and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

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Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Weatherproofing. Notwithstanding any other provisions of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5. Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 6. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators.

ARTICLE VII

ARCHITECTURAL CONTROL

No building, accessory building, or structure, shed, awning, porch, or porch covering, garage, trailer, tent, driveway, back fence, hedges, screens, barns, driveways, wall or other structures shall be allowed, constructed, or altered upon any Lot

or house thereon without the plans and specifications of such having been approved by the Architectural Control Committee as to quality of workmanship, design, colors, and materials and harmony of same to be the project as a whole. No structure built upon any of the said Lots shall have the exterior painted without the proposed color thereof having been approved by the said Architectural Control Committee.

No front or side yard fence, wall or walls, or other similar type structures shall be allowed except those approved by the Architectural Control Committee.

No fence, wall, hedge, or shrub over 3 feet high shall be allowed to be erected, planted, or constructed upon any Lot which is located at the intersection of two (2) streets. The purpose of such covenant being to avoid obstruction of view at such intersections.

No exterior clothesline, or hanging device shall be allowed upon any Lot.

No roof top antenna may be installed or permitted higher than 5 feet above the roof line of the building.

The Architectural Control Committee shall be appointed by the Board of Directors and shall consist of three (3) or more members.

Application for approval of any item covered above shall be made to the Architectural Control Committee in writing, accompanied by complete plans and specifications. The said committee is empowered to reject any plans and/or specifications when it does not deem adequate. The committee approval or disapproval as required in these covenants shall be in writing. In the event the committee, or its designated representatives, fails to approve or disapprove within thirty (30) days after plans and specifications have been submitted to it, approval will not be required and the related covenants shall be deemed to have been fully complied with.

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ARTICLE VIII

EXTERIOR MAINTENANCE

In the event any Owner of any Lot in the Properties shall fail to maintain the premises and the improvements situated thereon in a manner satisfactory to the Board of Directors, the Association, after approval by at least two-thirds (2/3) vote of the Board of Directors, shall have the rights, through its agents and employees, to enter upon said parcel and to repair, maintain, and restore the Lot and the exterior of the building and any other improvements erected thereon. The cost of such exterior maintenance shall be added to and become part of the assessment to which such Lot is subject.

ARTICLE IX

USE RESTRICTIONS

No Lot shall be used except for residential purposes, or for professional offices, or for a builder's construction or sales office during the construction and sales period.

Each Lot shall be used for single family townhouses, one (1) per Lot.

All Lots, improved or unimproved, shall be kept free of undergrowth, brush, trash and debris.

~~No motor vehicle which does not have a current license plate or a current inspection sticker shall be permitted on any Lot.~~

No noxious or offensive activities shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

No sign of any kind shall be displayed to the public view on any Lot except one professional sign of not more than one (1) square foot, one (1) sign of not more than five (5) square feet advertising the property for sale, or rent, or signs used by a builder to advertise the property during the construction and sales period.

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No animals, livestock, or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other household pets may be kept provided that they are not kept, bred, or maintained for a commercial purpose.

No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers. All incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.

No individual sewage disposal system shall be permitted on any Lot.

No individual water supply system shall be permitted on any Lot.

ARTICLE X

EASEMENTS

Easements for installation and maintenance of utilities, sewer lines, and drainage facilities, and access to all lots are reserved as shown on the recorded plat of the project. Within these easements, no structure, planting, or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of said utilities or access to other Lots. The easement area of each Lot and all improvements (if any) on it shall be maintained continuously by the owner of the Lot, except for those improvements for which public authority or utility company is responsible.

ARTICLE XI

GENERAL PROVISIONS

Section 1. Enforcement. The Association, its successors or assigns, 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, its successors or assigns, 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 judgment or court order shall in no wise affect any other provision which shall remain in full force and effect.

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with the land and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the Owner of any Lot subject to this Declaration, their respective legal representative, heirs, successors and assigns, for a term of thirty (30) years from the date this Declaration is recorded, after which time, said covenants shall be automatically extended for successive periods of ten (10) years. The covenants and restrictions of this Declaration may be amended during the first thirty (30) year period by an instrument signed by not less than ninety percent (90%) of the Lot Owners, and thereafter, by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners. Any amendment must be properly recorded.

Section 4. Failure to Maintain Common Space. In the event that the Association established to own and maintain common open space, or any successor organization, shall at any time after establishment of the properties fail to maintain the common open space in reasonable order and condition in accordance with the plan, the Board of Supervisors of Frederick County, Virginia, may serve written notice upon such organization or upon the residents of the Ash Hollow Estates setting forth the manner in which the Association has failed to maintain the common open space in reasonable condition, and said notice shall include a demand that such deficiencies of maintenance be remedied within thirty (30) days thereof and shall state the date and place of a hearing

thereon which shall be held within fourteen (14) days of the notice. At such hearing the Board of Supervisors may modify the terms of the original notice as to the deficiencies and may give extension of time within which they shall be remedied. If the deficiencies set forth in the original notice or in the modifications thereof shall not be remedied within thirty (30) days or any extension thereof, the Board of Supervisors, in order to preserve the taxable values of the properties within the Ash Hollow Estates and to prevent the common open space from becoming a public nuisance, may enter upon said common open space and maintain the same for a period of one (1) year. Said entry and maintenance shall not vest in the public any rights to use of the common open space except when the same is voluntarily dedicated to the public by the Owners. Before the expiration of the said year, the Board of Supervisors shall, upon its initiative or upon the request of the organization theretofore responsible for the maintenance of the common open space, call a public hearing upon notice to such organization, or to the residents of the Ash Hollow Estates, to be held by the Board of Supervisors, at which hearing such organization or the residents of the Ash Hollow Estates shall show cause why such maintenance by the County of Frederick, Virginia, shall not, at the election of the Board of Supervisors, continue for a succeeding year. If the Board of Supervisors shall determine that said organization is not ready or willing or able to maintain the common open space in a good, clean and safe condition, the Board of Supervisors may, in its discretion, continue to maintain said space, subject to a similar hearing and determination in the next succeeding year and in each year thereafter.

The cost of maintenance by the County of Frederick shall be assessed ratable against the properties with the Ash Hollow Estates that have a right of enjoyment of the common open space and shall become a tax lien on said properties. The County of

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Frederick at the time of entering upon said common open space for the purpose of maintenance, shall file a notice of such lien in the Office of the Clerk of the Circuit Court of Frederick County, Virginia, upon the properties affected by such liens within the Ash Hollow Estates.

IN WITNESS WHEREOF, RSH PROPERTIES has caused its partnership name to be hereunto signed by the Partners of said Partnership to-wit: JOHN G. SFARNAS, HARRY L. HICKS and VERNON M. RACER, respectively, all as of the 16th day of July, 1979.

RSH PROPERTIES

By [Signature] (SEAL)
JOHN G. SFARNAS, PARTNER

By [Signature] (SEAL)
HARRY L. HICKS, PARTNER

By [Signature] (SEAL)
VERNON M. RACER

[Signature] (SEAL)
MICHAEL L. BRYAN, SOLE ACTING TRUSTEE

THE COMMERCIAL AND SAVINGS BANK

By [Signature]

STATE OF VIRGINIA,

County of Frederick, TO-WIT,

I, Betty L. Holliday, a Notary Public in and for the State and County aforesaid, do hereby certify that JOHN G. SFARNAS, HARRY L. HICKS and VERNON M. RACER, Partners of RSH Properties, whose names are signed to the foregoing Deed of Dedication and Declaration of Plat of Ash Hollow Estates, dated July 16, 1979, have personally appeared before me and acknowledged the same in my State and County aforesaid.

Given under my hand this 16th day of July, 1979.

My Commission expires November 12, 1980.

[Signature]
NOTARY PUBLIC

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