

**THIS DEED OF DEDICATION OF MULBERRY TERRACE** (the "**Dedication**"), made and dated this 31<sup>st</sup> day of August, 2005, by and between **HAMPTON HOMES, LLC**, a West Virginia limited liability company, hereinafter called the "**Declarant**", and **TOWN OF STEPHENS CITY, VIRGINIA**, hereinafter called the "**Town**", **TRSTE, INC.**, a Virginia corporation, hereinafter called the "**Trustee**", and **WACHOVIA BANK, NATIONAL ASSOCIATION**, hereinafter called the "**Lender**".

**RECITALS:**

A. The Declarant is the owner in fee simple of that certain lot or parcel of land situate northeast of Mulberry Street in the Town of Stephens City, Opequon Magisterial District, Frederick County, Virginia, containing 3.19145 acres, as more particularly described on the "Boundary Survey on the Property of Yates Newtown Court Townhomes, LLC" dated December 22, 2003, drawn by Randy A. Stowers, L.S., a copy of which is attached to and incorporated by reference into that certain Deed dated December 23, 2003, of record in the Clerk's Office of the Circuit Court of Frederick County, Virginia as Instrument No. 030029089. Tax Map No. 74A3-A-113A

B. The Declarant is also the owner in fee simple of that certain lot or parcel of land situate on the northeast side of Mulberry Street, in the Town of Stephens City, Opequon Magisterial District, Frederick County, Virginia, containing 5,505 square feet, as more particularly described on the "Consolidation Plat of the Properties of Yates Newtown Court Townhomes, LLC" dated December 19, 2003, drawn by Randy A. Stowers, L.S., a copy of which is attached to and incorporated by reference into that certain Deed of Consolidation dated December 19, 2003, of record in the aforesaid Clerk's Office as Instrument 030028854. Tax Map No: 74A3-A-187B.

C. The aforesaid lots or parcels of land, containing in the aggregate 3.345 acres, are sometimes hereinafter collectively referred to as the "**Property**".

D. The Declarant has subdivided the Property into Lots 1-31, inclusive, for the construction of townhomes thereon, as more particularly set forth on that certain plat titled "Final Subdivision Plat Mulberry Terrace" dated May 12, 2004, drawn by Randy A. Stowers,

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Court Square  
2<sup>nd</sup> Floor  
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L.S. (the "Subdivision Plat"), a copy of which is attached hereto and incorporated herein by reference as if set out in full. The Subdivision Plat also sets forth certain areas designated as "Open Space" containing in the aggregate 1.3532 acres, and a parcel containing 15,194 square feet (0.3488 acre) for purposes of dedication to the Town for street purposes (the "Street Dedication Parcel") as well as certain drainage, sewer, utility, access, waterline, emergency access, private sewer and other easements and other matters, as more particularly described on the attached Subdivision Plat.

E. The Property is subject to the lien of that certain Credit Line Deed of Trust, dated June 30, 2004 of record in the aforesaid Clerk's Office as Instrument No. 040012598, wherein the Property was conveyed to the Trustee to secure the Lender the repayment of the indebtedness more particularly described therein (the "Deed of Trust").

F. The subdivision of the Property as it appears upon the attached Subdivision Plat is with the free consent and in accordance with the desires of the undersigned Declarant, with the consent of the Trustee and Lender.

**NOW, THEREFORE, THIS DEED OF DEDICATION WITNESSETH:** That for and in consideration of the premises and the benefits which will accrue by reason this Dedication, the Declarant does hereby subdivide, grant and dedicate the Property designated as Mulberry Terrace, lying and being situate in the Town of Stephens City, Opequon Magisterial District, Frederick County, Virginia, and being more particularly described on the attached Subdivision Plat.

All of the Lots (as hereinafter defined) shown on the attached Subdivision Plat shall be subject to the following restrictions, covenants and conditions which shall be deemed covenants running with the land, and shall be binding upon all parties having any right, title and interest in and to the aforesaid Lots (as hereinafter defined) or any part thereof, their heirs, personal representatives, successors and assigns, and shall inure to the benefit of each Owner (as hereinafter defined) thereof.

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**ARTICLE I**  
**DEFINITIONS**

Section 1. "Association" shall mean and refer to Mulberry Terrace Homeowners Association, Inc., a non stock Virginia Corporation, its successors and assigns.

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

Section 3. "Lot" or "Lots" shall mean and refer to Lots 1-31, inclusive, as designated upon the attached Subdivision Plat. The Lots shall not include the Open Space or the Street Dedication Parcel.

Section 4. "Member" shall mean and refer to every person or entity who holds membership in the Association.

Section 5. "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 a part of Mulberry Terrace, as shown on the Subdivision Plat, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 6. "Declarant" shall mean and refer to Hampton Homes, LLC, a West Virginia limited liability company, its successors and assigns.

**ARTICLE II**  
**MEMBERSHIP**

Every person or entity who is a record owner of a fee or undivided interest in any Lot which is subject 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. Only one membership shall be accorded per Lot. 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.

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**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 as described in Article II, above. 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.

**BOARD OF DIRECTORS**

The affairs of the Association shall be managed by a Board of not less than three (3), but no more than five (5) Directors (the "Board"), who must be members of the Association. The initial Board of Directors shall be appointed by the Declarant and serve until the first annual meeting following conveyance of the first Lot in Mulberry Terrace; thereafter, the Board of Directors shall be elected by the Membership as determined in the Bylaws of the Association.

**TREASURER**

If so determined by the Association, the Treasurer of the Association shall be bonded, with the expense of such a fidelity bond for said officer to be borne by the Association.

**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, specifically including but not limited to the rights of ingress and egress across the aforesaid Common Areas 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 these Articles and the Bylaws as duly adopted by the Association, to borrow money for the purpose of improving the aforesaid Common Areas and in aid thereof to mortgage said property and the rights of such mortgagee in said Common Areas shall be subordinate to the rights of the Owners hereunder.
- (b) The right of the Association to suspend the voting rights and the right

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to the use of the Common Areas by a Member for any period during which any assessment against his Lot remains unpaid.

- (c) The right of the Association to suspend the voting rights and the right to the use of the Common Areas by a Member for a period not to exceed thirty (30) days for any infraction of the Association's published rules and regulations.
- (d) The right of the Association to dedicate or transfer all or part of the 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 sixty percent (60%) of the votes have 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.

Section 2. Delegation of Use: Any Member may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Areas to the members of his family, his tenants, or contract purchasers who reside on the Lot.

Section 3. Title to the Common Areas: The Declarant hereby covenants for its successors and assigns, that Hampton Homes, LLC, a West Virginia limited liability company, will convey fee simple title to the Common Areas to the Association, prior to the conveyance of the first Lot to a bonafide purchaser.

**ARTICLE V**

**COVENANTS FOR MAINTENANCE  
ASSESSMENTS FOR THE ASSOCIATION**

Section 1. Assessments: The Declarant, for each Lot owned, 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. 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 Lot and shall be a continuing lien upon the Lot 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 Lot at the time

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when the assessment was due.

Section 2. Purpose of Assessments: The assessments levied by the Association shall be used exclusively for the following purposes, to-wit: (i) improvements and maintenance of the Common Areas, specifically including, but not limited to, payment of real estate taxes, repairs, snow removal from all parking areas, storm drainage maintenance and repair, maintenance, operation, repair and replacement of street lights, and payment of all utility charges therefore, and services and facilities devoted to the aforesaid purposes and related to the use of and enjoyment of the Common Areas; (ii) for the maintenance of shrubbery, and the mowing of all lawns in Mulberry Terrace, including the mowing of all lawns of all Lots; (iii) installation, maintenance and replacement of street signs and entrance signs to the Mulberry Terrace development; and (iv) for the purposes of promoting the recreation, health, safety and welfare of the residents in the Common Areas of Mulberry Terrace.

Section 3. Basis and Maximum of Annual Assessments: All Lots shall be subject to annual assessments for operation expenses (the "Operational Assessment") and capital assessments for future improvements (the "Capital Assessments"), as set forth hereinafter:

- (a) Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum Operational Assessments shall be \$350.00 per year per Lot and the maximum Capital Assessment shall be \$100.00 per year per lot;
- (b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum Operational Assessment and maximum Capital 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 sixty percent (60%) 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. 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.
- (c) After consideration of current maintenance costs and future capital needs of the Association, the Board of Directors may fix the annual

Operational Assessment and Capital Assessment at amounts not in excess of the maximum.

Section 4. Special Assessments for Capital Improvements: In addition to the Operation Assessment and Capital Assessment 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 or anticipated future cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement (the "Special Capital Assessment"). The Special Capital Assessment shall have the assent of sixty percent (60%) 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: All Operational Assessments, Capital Assessments and Special Capital 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 Sections 3 and 4: At the first meeting called, as provided in Sections 3 and 4 hereof, the presence at the meeting of Members or of proxies entitled to cast sixty percent (60%) 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 Section 3 and 4 and the required quorum at any such subsequent meeting shall be one-half of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than ninety (90) days following the preceding meeting.

Section 7. Date of Commencement of Assessments; Due Date: The Operating Assessment and Capital Assessment shall commence as to all Lots on the first day of the month following the conveyance of the first lot to an Owner. Such assessment shall be adjusted according to the number of months remaining in the calendar year. The Board shall fix the amount of the Operational Assessment and Capital Assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the

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annual assessments shall be sent to every Owner subject thereto. The due dates shall be established by the Board.

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 due date, the assessment shall bear interest from the date of delinquency at the rate of ten percent (10%) per annum, and the Association may exercise any and all rights and remedies as accorded by law, including, but not limited to, the right to bring an action at law against the Owner personally obligated to pay the same, and/or foreclose the lien against the Lot, and interest, costs and reasonable attorney's fees on any such action or actions 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 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. 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 (b) all properties dedicated to and accepted by a local public authority. However, no Lot occupied as a residence shall be exempt from these assessments.

**ARTICLE VI**

**USE, RESTRICTIONS AND COVENANTS**

This Subdivision shall be subject to the following restrictions which are constituted covenants real to run with the land:

1. All Lots shall be used for single family residential purposes only. No garage or carport shall be permitted on any Lot with the exception of those lots in which a garage was constructed in the basement thereof at the time of construction of the townhouse situate thereon.

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2. No profession or home occupation shall be conducted in or on any part of a Lot; provided, however, that Declarant reserves the right to use one or more of said Lots for business purposes in connection with the development, sales and operation of said townhouse subdivision.
3. No signs or advertising of any nature shall be erected or maintained on any Lot except for sale signs for said Lot not to exceed five (5) square feet in area, or signs used by the Declarant or other builder to advertise the property during construction and sale. No "For Rent" signs shall be allowed on any Lot.
4. No exterior antennas, satellite dishes or similar devices shall be permitted on the front of any townhouse constructed upon any Lot.
5. No boats, mobile homes, motor homes, campers, buses, trailers of any type, tractors, trucks or other motor vehicles (other than automobiles, motorcycles, pickup trucks, and 3/4 ton (or less) vans) shall be permitted on any Lot except during the course of construction. No motor vehicles or material portion thereof which does not have a current license or current Virginia inspection sticker shall be permitted on any Lot. Ownership of each Lot shall entitle the Owner thereof to the use of not more than two (2) vehicular parking spaces which shall be as near and convenient to said Lot as reasonably possible, together with the right of ingress and egress upon said Common Area.
6. No vehicles shall be parked in an area other than the designated parking areas within the Common Areas, or in the driveways to the aforesaid townhouses with garages constructed in the basement thereof.
7. No animals of any kind (including livestock, poultry or birds) shall be permitted or kept on any Lot, except that dogs, cats and other usual household pets may be kept, provided they are not kept, bred or maintained for commercial or charitable purposes or in unusual numbers; and further provided that no dogs shall be permitted to run at large or without restraint by leash within Mulberry Terrace. No dog may be tied or left unattended outdoors, and no kennel or pen shall be maintained on any Lot.
8. No fence or hedge shall be constructed or erected on any Lot in said Subdivision.
9. 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 residents of Mulberry Terrace.
10. In the event that a dwelling is destroyed, the Owner of the dwelling shall within thirty (30) days after said destruction clear away the remaining portion of the dwelling unit and maintain the Lot in a neat and orderly condition. No structure

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other than a townhouse of at least the same dimensions, architecture and materials as the unit destroyed, shall be constructed in the place of the original unit.

11. Each Owner shall keep all Lots owned by him and all improvements therein or thereon in good order and repair and free of debris, including, but not limited to, the seeding, watering and mowing of all lawns and the pruning and cutting of all trees and shrubbery (in the event that such duties are not undertaken and performed by the Association, as set forth hereinabove), and the painting, maintenance and repair (or other appropriate external care) of all buildings and other improvements, all in a manner and with such frequency as is consistent with good property management. In the event an Owner of any Lot in Mulberry Terrace shall fail to maintain the premises and the improvements situated thereon as provided herein, the Association, after notice to the Owner as provided in the Bylaws and approval by sixty percent (60%) vote of the Board, shall have the right to enter upon said Lot to correct drainage and to repair, maintain and restore the Lot and the exterior of the building erected thereon. All costs related to such correction, repair, or restoration shall become a special assessment upon such Lot, and shall be assessed and collected by the Association as provided in Article V, above.
12. The general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply. The cost of reasonable repair and maintenance of a party wall shall be shared by the two adjoining Owners, except to the extent the wall is not of use to one of the Owners. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has use of the wall may restore it and if the other Owners thereafter make use of the wall, the shall contribute to the cost of the restoration thereof, in proportion to such use without prejudice, however, to the right of any such Owner to call for a larger contribution from the others under any rule of law regarding liability for negligence or for willful acts or omissions.

Notwithstanding any other provision of this Article, an Owner who by his negligence or willful act causes a party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the Lot and shall pass such Owner's successor in title.

13. No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall be in sanitary containers. All containers for the storage or disposal of such trash, garbage or other waste shall be kept in a clean and sanitary condition in the rear of the townhouse unit located upon the Lot. No refuse or any container for same shall be placed or stored in front of any townhouse, except on the date of garbage pickup.

- 14. No trees shall be planted nor other digging undertaken without first securing the approval of the local utility providers and without first being advised as to the location of all underground electrical, gas, telephone or other utility lines.
- 15. No exterior clothes line, or hanging device, shall be permitted on any Lot.
- 16. The color of the paint on the exterior of every building on each Lot shall be the same as the original color.
- 17. No building, structure, addition nor exterior alteration (including basketball backboards, rims and nets) or improvements of any character shall be constructed upon any Lot or dwelling located thereon, except as exterior painting is permitted by Restriction 16, above, unless the plan of construction, including quality of workmanship, design, colors and materials, shall have been approved in writing by the Mulberry Terrace Homeowners Association as being in harmony with the whole subdivision, especially the adjoining townhouse unit or units.
- 18. If in the construction of any dwelling by Declarant there occurs an encroachment, then such encroachment shall be deemed a perpetual easement for the benefit of the dominant Lot.
- 19. No Lot upon which a townhouse has been constructed shall be further subdivided or separated into smaller lots by any Owner and no portion less than all of such Lot, nor any easement or other interest herein, shall be conveyed or transferred by an Owner, provided that this shall not prohibit deeds of correction, deeds to resolve boundary disputes and similar corrective instruments or the granting of grading easements in order to correct drainage problems.
- 20. The Police Department for the Town of Stephens City, Virginia shall have free and unobstructed ingress and egress over all parking areas within the Subdivision.
- 21. All of the covenants and restrictions herein shall be binding and remain in full force and effect for a period of thirty (30) years from the date this Declaration is recorded and shall be renewed automatically for additional successive ten (10) year periods unless the Owners of a majority of Lots in Mulberry Terrace shall at least six (6) months prior to any such renewal date, execute and record an agreement amending said covenants and restrictions.
- 22. The Declarant herein reserves and shall have the right alone to waive any one or more of the restrictive covenants and conditions contained herein as to any Lot transferred by it except that it cannot change the use of any Lot from residential to commercial. This waiver shall not affect the binding effect of the covenants and conditions upon any other Lot. The Declarant further reserves the right alone to impose additional restrictive covenants and restrictions as to any Lot or Lots

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owned by it at the time of the imposition and such imposition shall not affect the binding effect of these provisions upon any other Lots.

- 23. The invalidation of any one of the covenants or restrictions contained herein by judgment or Court order shall in nowise affect any of the other provisions which shall remain full force and effect. The failure of the Lot Owners or the Declarant herein to enforce any covenants or restrictions shall not be deemed to be a waiver of the right to do so thereafter as to a default occurring prior or subsequent thereto.

**ARTICLE VII**

**EASEMENTS AND DEDICATION OF STREET**

Section 1. Utility, Drainage and Access Easements: The Property dedicated hereby is subject to those certain easements or rights of way designated "20' Storm Drain Easement", "Ex. San. Sew. Esmt.", "15' Storm Drain Easement", "5' Utilities Easement", "Access & Utilities Easement", "Utilities Easement", "Waterline Easement", "20' Emergency Access Easement", "Ex. Utilities Esmt." and "10' Private Sewer Easement" and other matters as more particularly set forth on the attached Subdivision Plat. In addition, the property dedicated hereby is subject to certain building restriction lines as more fully set forth on the attached Subdivision Plat.

Section 2. Reserved Surface Drainage Easements: The Declarant, for a period of five (5) years from the date of conveyance of the first Lot in Mulberry Terrace, hereby reserves a blanket easement and right on, over and under the ground within Mulberry to maintain and correct drainage of surface water in order to maintain reasonable standards of health, safety and appearance. Such right expressly includes the right to cut any trees, bushes or shrubbery, make any grading of the soil or to take any other similar action reasonably necessary, following which the Declarant shall restore the affected property to its original condition as near as reasonably practical. The Declarant shall give reasonable notice of intent to take such action to all affected Owners, unless in the opinion of the Declarant an emergency exists which precludes such notice.

Section 3. Street Dedication: The Declarant hereby dedicates unto the Town

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of Stephens City, Virginia for public street purposes that certain lot or parcel of land designated as "15,194 Sq. Ft. Dedicated to the Town of Stephens City for Future Right-Of-Way" as more particularly set forth on the attached Subdivision Plat.

**ARTICLE VIII**

**GENERAL PROVISIONS**

Section 1. Enforcement: The Association, its successors and 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 the Owners to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. All costs which the Association, its successors or assigns, or any Owner shall incur in the enforcement of the restrictions, conditions, covenants, reservations, liens and charges, nor or hereafter imposed, shall be borne by the party against which action is taken and which costs shall include reasonable attorney's fees, costs and damages.

Section 2. Severability: Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way 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 representatives, 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 additional successive ten (10) year period unless the Owners of a majority of the Lots in Mulberry Terrace shall at least six (6) months prior to any such renewal date execute and record an agreement amending said covenants and restrictions. 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

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of Stephens City, Virginia for public street purposes that certain lot or parcel of land designated as "15,194 Sq. Ft. Dedicated to the Town of Stephens City for Future Right-Of-Way" as more particularly set forth on the attached Subdivision Plat.

**ARTICLE VIII**

**GENERAL PROVISIONS**

Section 1. Enforcement: The Association, its successors and 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 the Owners to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. All costs which the Association, its successors or assigns, or any Owner shall incur in the enforcement of the restrictions, conditions, covenants, reservations, liens and charges, nor or hereafter imposed, shall be borne by the party against which action is taken and which costs shall include reasonable attorney's fees, costs and damages.

Section 2. Severability: Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way 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 representatives, 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 additional successive ten (10) year period unless the Owners of a majority of the Lots in Mulberry Terrace shall at least six (6) months prior to any such renewal date execute and record an agreement amending said covenants and restrictions. 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

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an instrument signed by not less than seventy-five (75%) of the Lot Owners. Any amendment must be properly recorded among the land records in the Clerk's Office of the Circuit Court of Frederick County, Virginia.

Section 4. Dissolution: Upon dissolution of the Association, other than incident to a merger or consolidation, the assets of the Association shall be dedicated to an appropriate public agency to be used for purposes similar to those for which the Association was created or for the general welfare of the residents of Mulberry Terrace. In the event that such dedication is refused acceptance, such assets shall be deemed vested in the Members of the Association as tenants in common.

The Dedication and Subdivision of the land as shown on the attached plat is with the free consent and in accordance with the desire of the undersigned Declarant, with the consent and approval of the Trustee and Lender of the Property being subdivided.

The Town of Stephens City, Virginia, by the signature of its agents on the attached plat, hereby accepts the dedication of the Street Dedication Parcel for public street purposes.

The designated Common Areas are not dedicated hereby for use by the general public but are dedicated to the common use and enjoyment of the Owners in Mulberry Terrace as provided hereinabove.

WITNESS the following signatures and seals:

HAMPTON HOMES, LLC

By:  (SEAL)  
Deepinder Singh Grewal, Manager

WACHOVIA BANK, NATIONAL ASSOCIATION

By:  (SEAL)  
Its: 

TRSTE, INC

By:  (SEAL)  
Its: 

chael L. Bryan  
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STATE OF VIRGINIA, At-Large,  
CITY/COUNTY OF Winchester, to-wit:

The foregoing instrument was acknowledged before me on the 31<sup>st</sup> day of August, 2005, by Deepinder Singh Grewal, who is Manager of Hampton Homes, LLC, a West Virginia Limited Liability Company, whose name is signed to the foregoing Deed of Dedication, dated the 31<sup>st</sup> day of August, 2005.

My Commission expires 2/31/06

Phyllis M. D...  
NOTARY PUBLIC

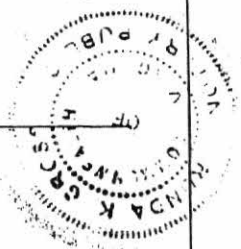


STATE OF VIRGINIA, At-Large,  
CITY/COUNTY OF Frederick, to-wit:

The foregoing instrument was acknowledged before me on the 7<sup>th</sup> day of September, 2005, by A. Michael Wilkerson, who is Senior Vice President of Wachovia Bank, National Association, whose name is signed to the foregoing Deed of Dedication, dated the 31<sup>st</sup> day of August, 2005.

My Commission expires June 30, 2006

Ronda K. Gness  
NOTARY PUBLIC

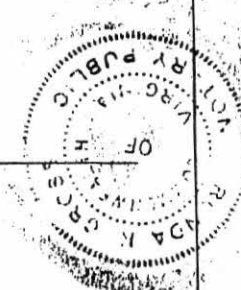


STATE OF VIRGINIA, At-Large,  
CITY/COUNTY OF Frederick, to-wit:

The foregoing instrument was acknowledged before me on the 7<sup>th</sup> day of September, 2005, by A. Michael Wilkerson, who is Officer of TRSTE, Inc., whose name is signed to the foregoing Deed of Dedication, dated the 31<sup>st</sup> day of August, 2005.

My Commission expires June 30, 2006

Ronda K. Gness  
NOTARY PUBLIC

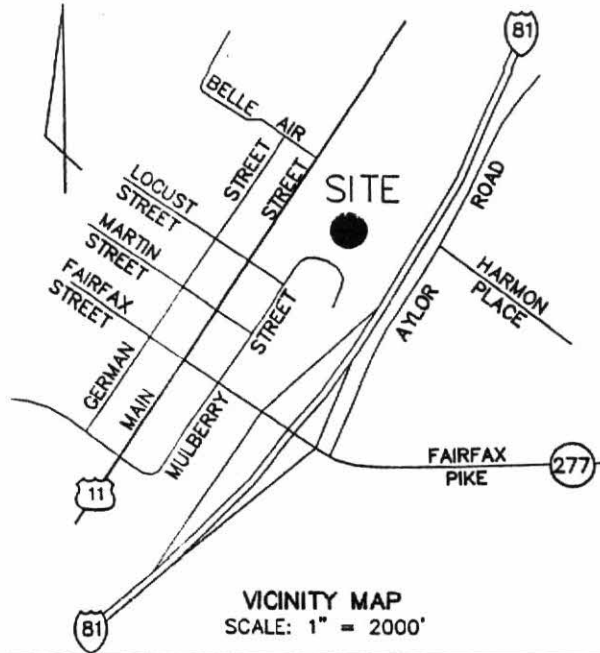


MLB/pmn  
c:\Deeds\Hampton Homes Deed of Ded  
8/12/05

Michael L. Bryan  
Court Square  
2<sup>nd</sup> Floor  
Winchester, VA



0052



APPROVED BY:  
 SUBDIVISION AGENT/TOWN MANAGER Michael Kehoe DATE 9/1/05

**OWNER'S CONSENT:**  
 THE ABOVE AND FOREGOING SUBDIVISION OF MULBERRY TERRACE, AS APPEARS ON THE ACCOMPANYING PLATS, IS WITH THE FREE CONSENT AND IN ACCORDANCE WITH THE DESIRES OF THE UNDERSIGNED OWNERS, PROPRIETORS AND TRUSTEES, IF ANY.

David J. [Signature]  
 FOR HAMPTON HOMES, LLC

**NOTARY PUBLIC:**

STATE OF Virginia  
 CITY/COUNTY OF Winchester

THE FOREGOING INSTRUMENT WAS ACKNOWLEDGED BEFORE ME ON July 19, 2005 BY Deepinder Singh Grewal, General Manager of Hampton Homes, LLC. (DATE)  
Sharon M. Butcher MY COMMISSION EXPIRES January 31, 2006  
 (NOTARY PUBLIC)

**SURVEYOR'S CERTIFICATE**

I, RANDY A. STOWERS, A DULY AUTHORIZED LAND SURVEYOR IN THE COMMONWEALTH OF VIRGINIA, HEREBY CERTIFY, TO THE BEST OF MY KNOWLEDGE AND BELIEF, THAT THE PROPERTY CONTAINED IN THIS SUBDIVISION IS THE SAME PROPERTY CONVEYED TO HAMPTON HOMES, LLC BY DEED RECORDED AT INSTRUMENT #030029089 AMONG THE LAND RECORDS OF FREDERICK COUNTY, VIRGINIA.



FINAL SUBDIVISION PLAT  
**MULBERRY TERRACE**  
 TOWN OF STEPHENS CITY, VIRGINIA  
 SCALE: AS SHOWN DATE: MAY 12, 2004  
 gilbert w. clifford & associates  
 A DIVISION OF  
**PATTON HARRIS RUST & ASSOCIATES**  
 A PROFESSIONAL CORPORATION  
 CONSULTING ENGINEERING - LAND SURVEYING - PLANNING  
 117 E. PICCADILLY STREET, WINCHESTER, VIRGINIA 22601  
 (540) 667-2139



**AREA SUMMARY**

TOTAL DEVELOPMENT AREA: 3.3545 ACRES  
 AREA IN LOTS: 1.6525 ACRES  
 AREA IN OPEN SPACE: 1.3532 ACRES  
 AREA IN FUTURE R/W: 0.3488 ACRES  
 NUMBER OF LOTS: 31  
 AVERAGE LOT SIZE: 2,322 SQ. FT.  
 SMALLEST LOT SIZE: 2,100 SQ. FT.

0053

PARENT PARCELS 74A3--((A))--113A AND 74A3--((A))--187B

**MINIMUM SETBACK REQUIREMENTS**

FRONT = 20'  
 REAR = 20'  
 SIDE FOR END UNITS = 7'

R-3 DISTRICT  
 PROPOSED USE - TOWNHOUSES

**NOTES**

5/8" REBAR WILL BE SET AT ALL LOT CORNERS NOT PREVIOUSLY MONUMENTED.

**LINE TABLE**

LINE	LENGTH	BEARING
L1	20.21	S27°28'37"E
L2	79.34	S54°51'51"E

**CURVE TABLE**

CURVE	DELTA	RADIUS	LENGTH	TANGENT	BEARING	CHORD
C1	90°00'00"	49.00	76.97	49.00	S80°16'30"W	69.30
C2	90°00'00"	8.53	13.40	8.53	S80°16'30"W	12.06
C3	77°47'22"	22.50	30.55	18.15	N15°49'49"W	28.26
C4	50°45'54"	25.00	22.15	11.86	S30°45'09"E	21.43
C5	70°30'16"	20.00	24.61	14.14	S88°36'47"W	23.09
C6	90°00'00"	20.00	31.42	20.00	N11°08'05"W	28.28
C7	90°00'00"	25.00	39.27	25.00	N78°51'55"E	35.36
C8	29°25'18"	54.00	27.73	14.18	S49°59'09"W	27.43
C9	6°36'36"	49.00	5.65	2.83	S68°00'06"W	5.65
C10	27°23'14"	15.00	7.17	3.65	S41°10'14"E	7.10
C11	35°13'35"	40.00	24.59	12.70	N37°15'03"W	24.21

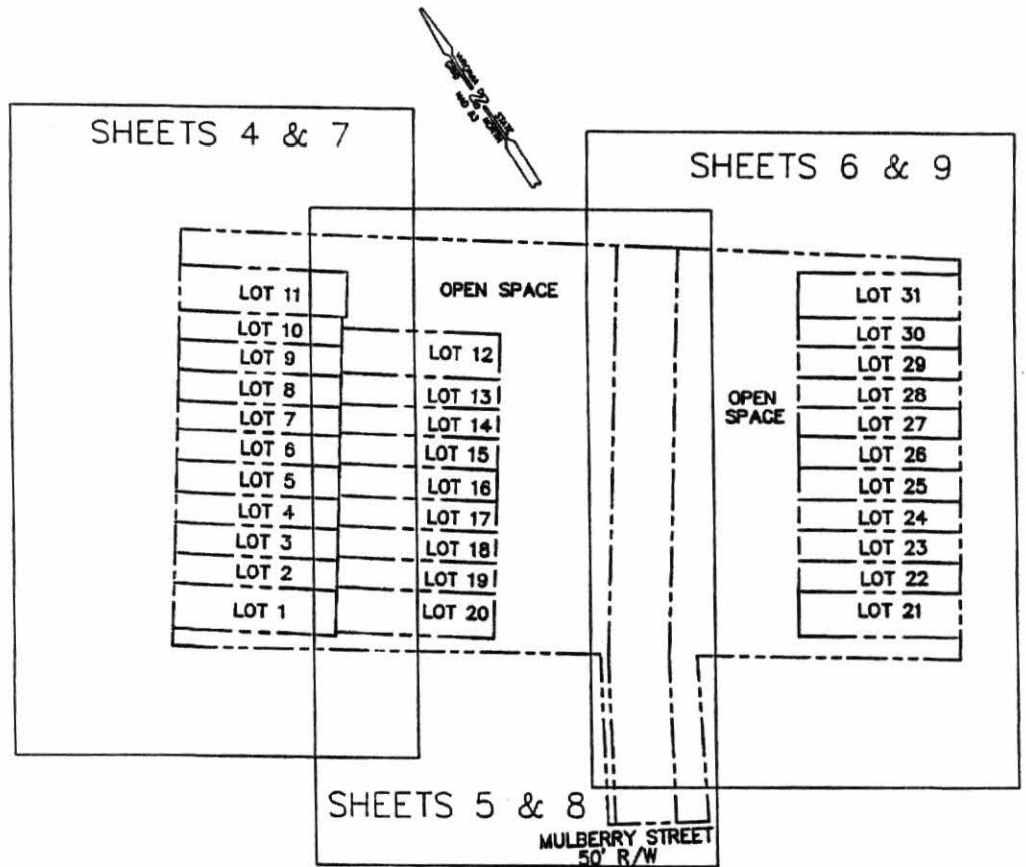


FINAL SUBDIVISION PLAT  
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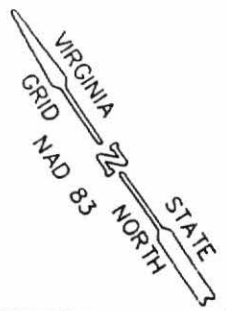
# KEY SHEET

1"=100'

0054



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YATES NEWTOWN COURT  
TOWNHOMES, LLC  
T.M. #74A3-A-110  
INST. #020007622

YATES NEWTOWN COURT  
TOWNHOMES, LLC  
T.M. #74A3-A-189  
INST. #020007622

0055

20' STORM  
DRAIN  
EASEMENT

NOTE:  
FOR ADDITIONAL EASEMENTS  
SEE SHEET 7 OF 9

YATES NEWTOWN COURT  
TOWNHOMES, LLC  
T.M. #74A3-A-112A  
INST. #020007622

DIXIE B. ERWIN &  
DANA PATTERSON  
T.M. #74A3-A-113  
W.B. 117, PG 1077

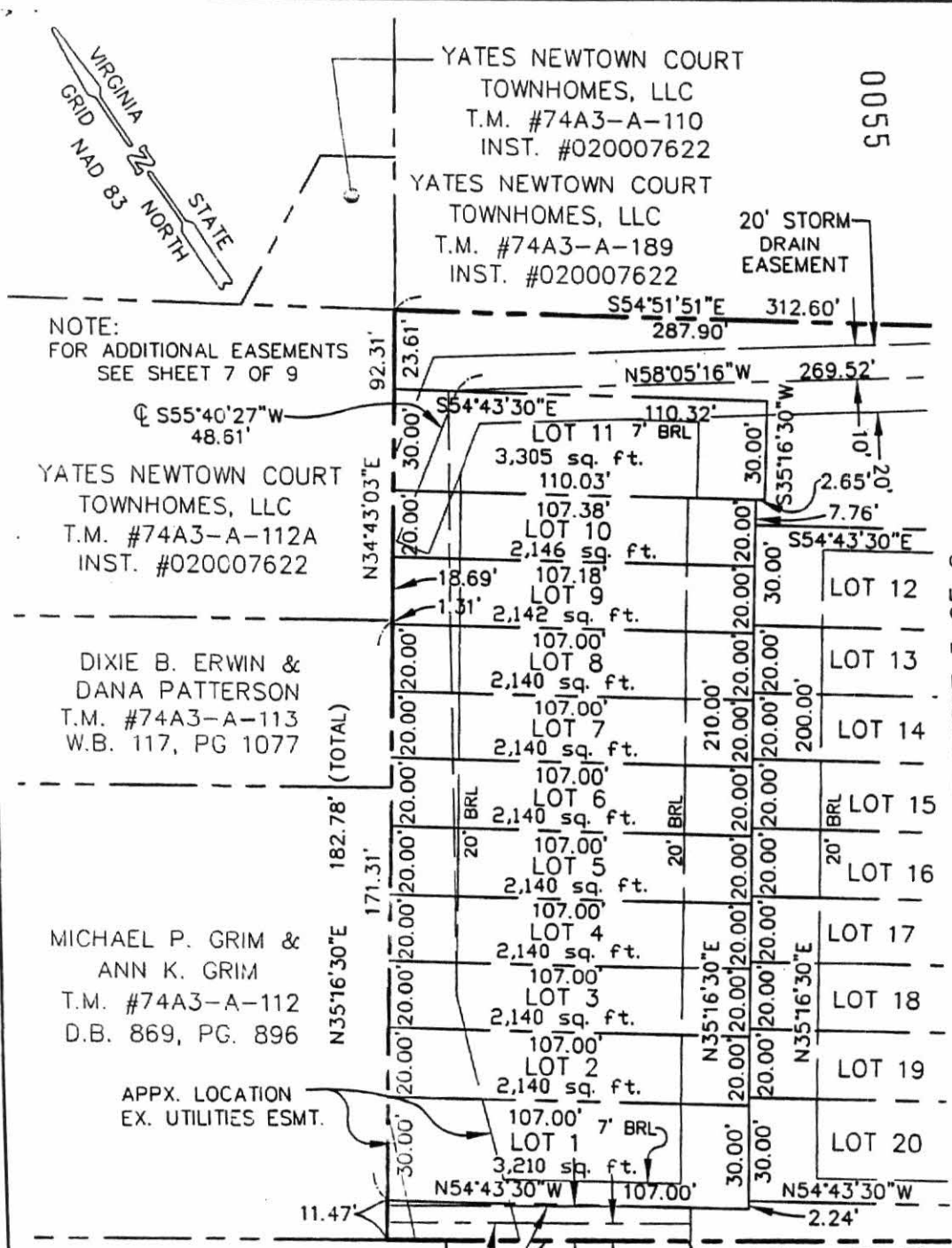
MICHAEL P. GRIM &  
ANN K. GRIM  
T.M. #74A3-A-112  
D.B. 869, PG. 896

APPX. LOCATION  
EX. UTILITIES ESMT.

10' PRIVATE SEWER EASEMENT

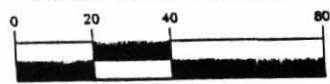
SHELLEY L. KEESLING  
T.M. #74A3-A-114  
INST. #030018918

MOWREY SUBDIVISION  
D.B. 370, PG. 134



SEE SHEET 5 OF 9

GRAPHIC SCALE



1 inch = 40 ft.



FINAL SUBDIVISION PLAT  
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gilbert w. clifford & associates

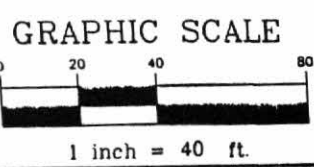
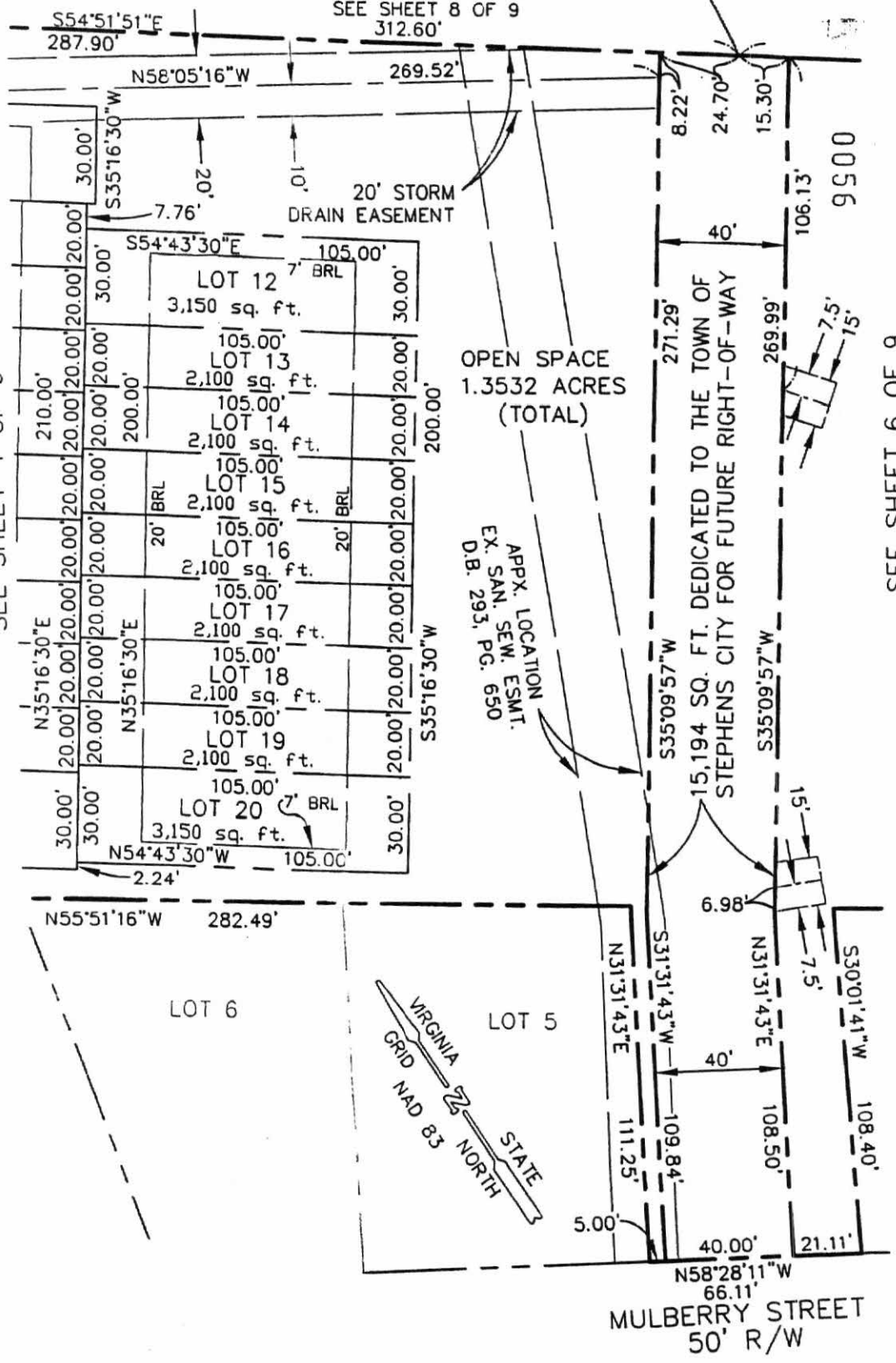
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SHEET 4 OF 9

NOTE: FOR ADDITIONAL EASEMENTS  
SEE SHEET 8 OF 9

SEE SHEET 4 OF 9

SEE SHEET 6 OF 9



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VIRGINIA  
GRID NAD 83 NORTH STATE

GILBERT DAVIDSON &  
JULIA SA DAVIDSON,  
TRUSTEES  
T.M. #74A3-A-189A  
D.B. 915, PG. 737

L500

SEE SHEET 5 OF 9

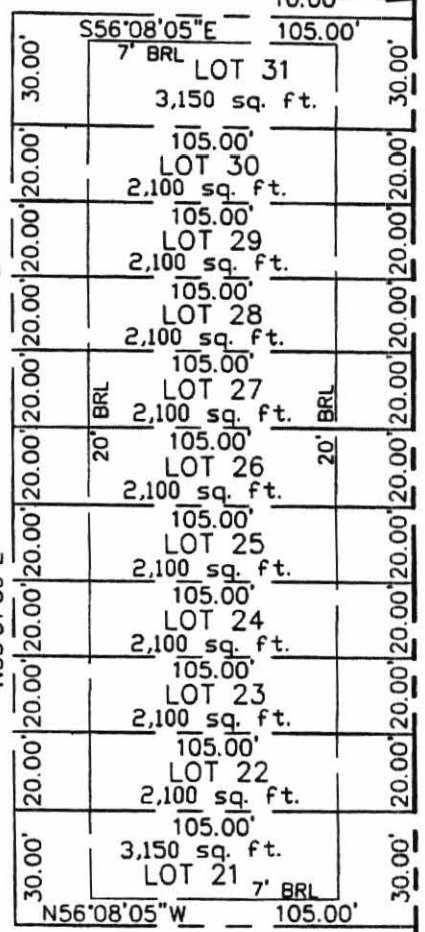
15,194 SQ. FT. DEDICATED TO THE TOWN OF  
STEPHENS CITY FOR FUTURE RIGHT-OF-WAY

NOTE:  
FOR ADDITIONAL  
EASEMENTS  
SEE SHEET 9 OF 9

OPEN SPACE  
1.3532 ACRES  
(TOTAL)

15' STORM  
DRAIN EASEMENT

15' STORM  
DRAIN EASEMENT



265.00'

S33°51'55\"W

S54°31'00\"E 199.02'  
183.72'

S56°08'05\"E 105.00'

30.00'

7' BRL LOT 31  
3,150 sq. ft.

105.00'

LOT 30  
2,100 sq. ft.

105.00'

LOT 29  
2,100 sq. ft.

105.00'

LOT 28  
2,100 sq. ft.

105.00'

LOT 27  
2,100 sq. ft.

105.00'

LOT 26  
2,100 sq. ft.

105.00'

LOT 25  
2,100 sq. ft.

105.00'

LOT 24  
2,100 sq. ft.

105.00'

LOT 23  
2,100 sq. ft.

105.00'

LOT 22  
2,100 sq. ft.

105.00'

LOT 21  
3,150 sq. ft.

7' BRL

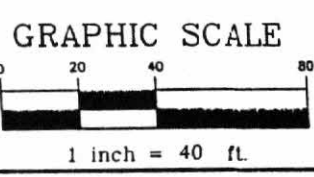
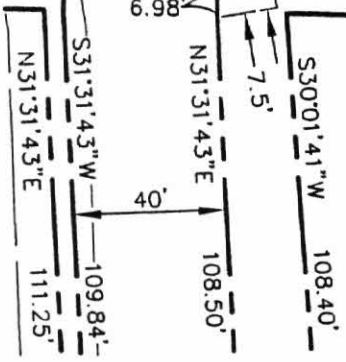
N56°08'05\"W 105.00'

15.00'

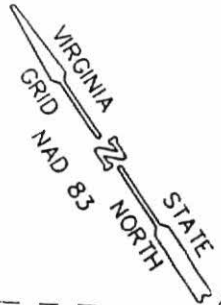
N55°51'16\"W 171.50'

MULBERRY TOWNHOUSES, INC.  
T.M. #74A3-3-9  
D.B. 434, PG. 405

RICHARD O. CLEM  
T.M. #74-4-103  
D.B. 355, PG. 697

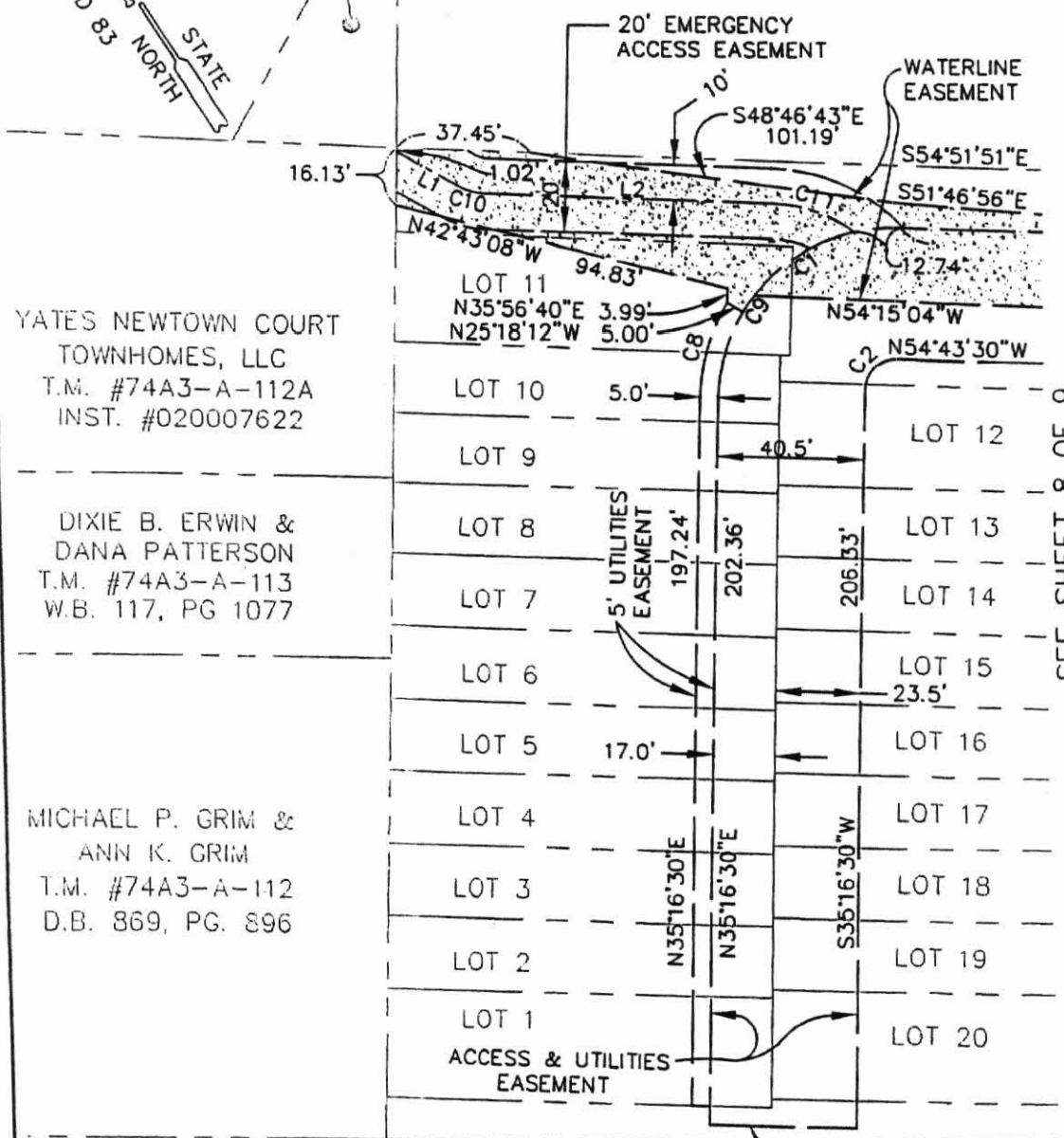


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TOWNHOMES, LLC  
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INST. #020007622

00518



YATES NEWTOWN COURT  
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MOWREY SUBDIVISION  
D.B. 370, PG. 134

SEE SHEET 8 OF 9

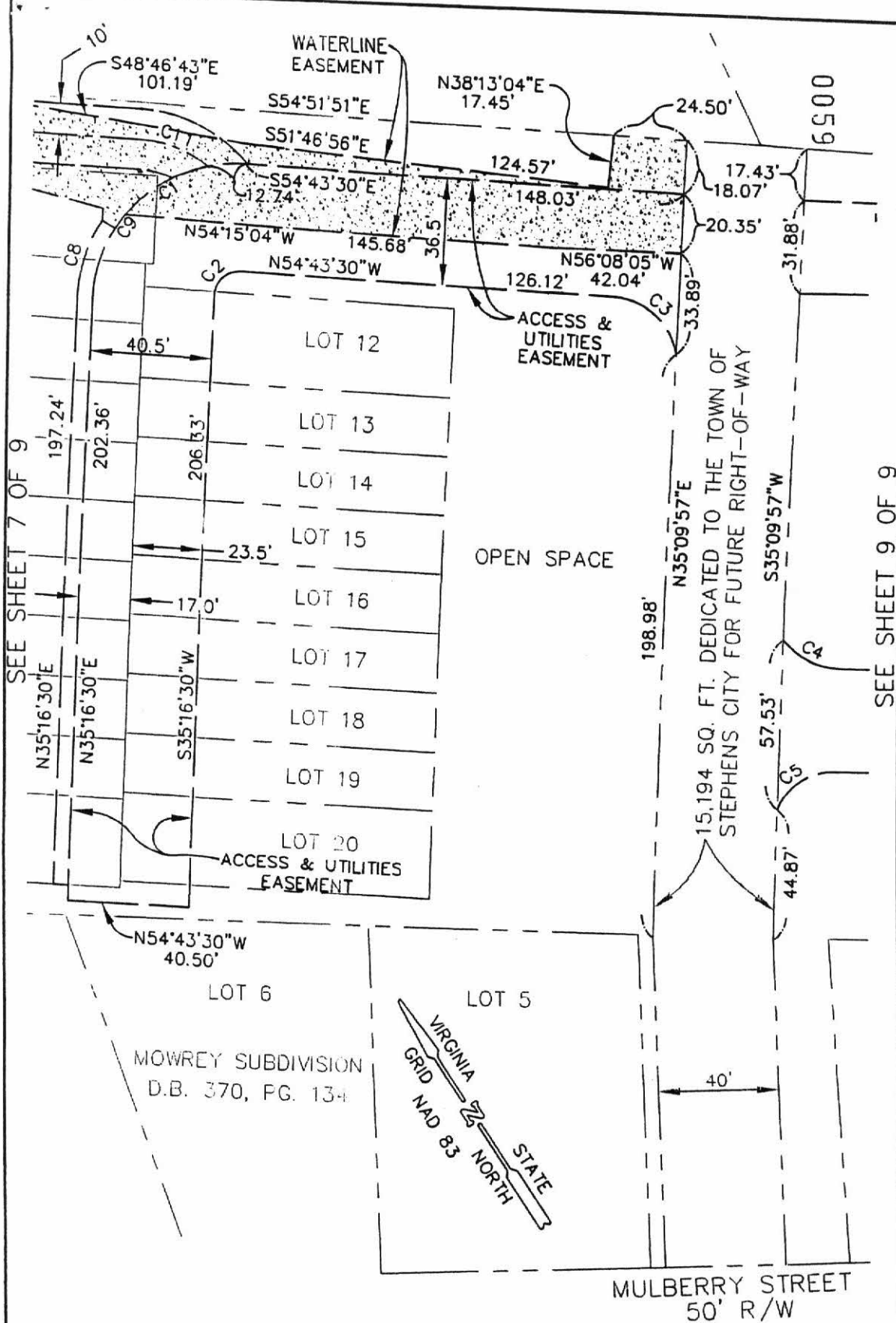
GRAPHIC SCALE



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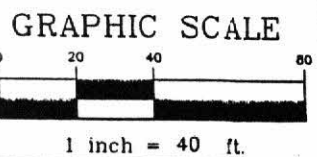
PATTON HARRIS RUST & ASSOCIATES  
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(540) 667-2139 SHEET 7 OF 9





SEE SHEET 7 OF 9

SEE SHEET 9 OF 9



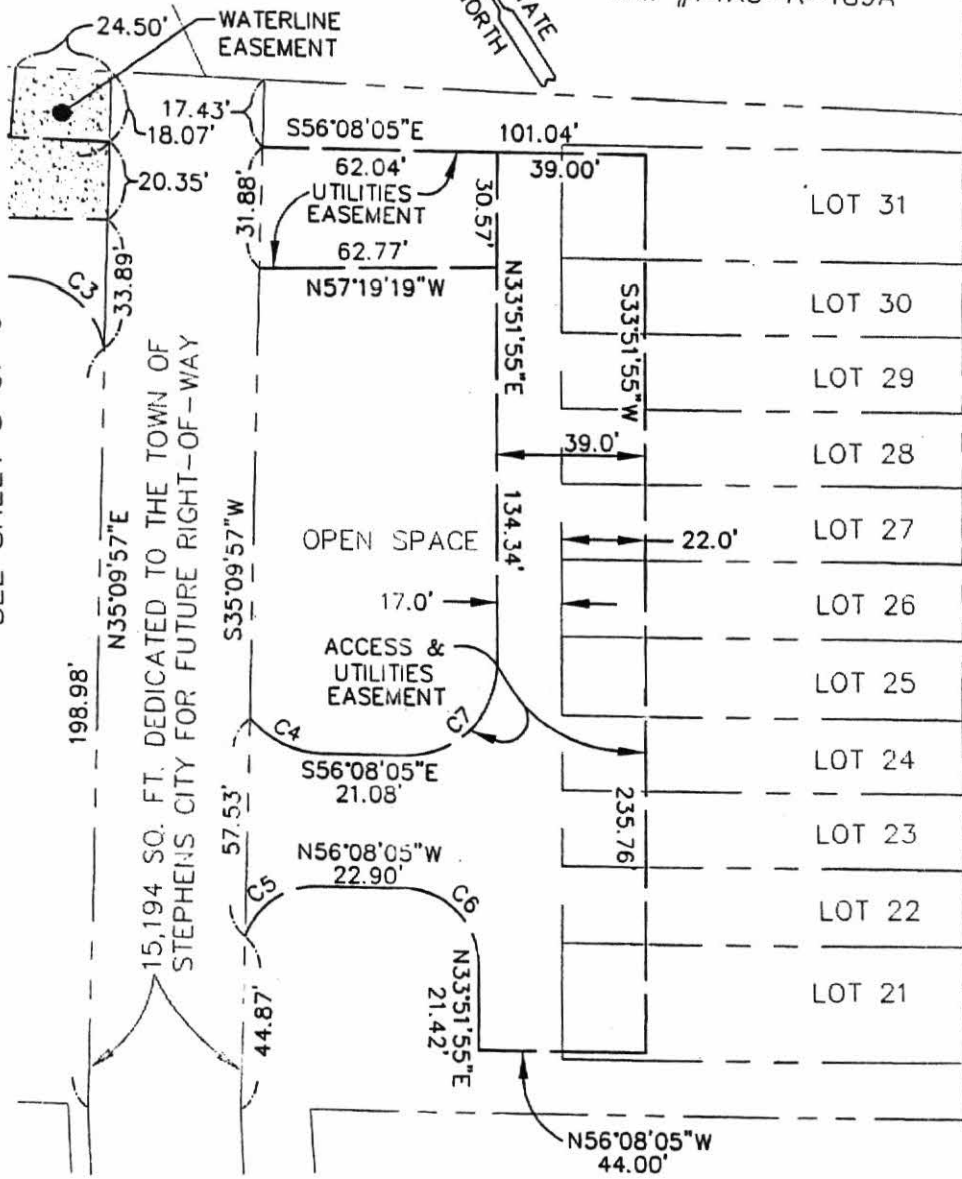
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VIRGINIA STATE  
GRID NAD 83 NORTH

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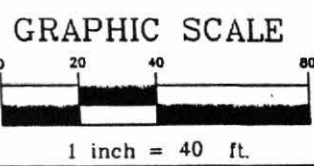
0900

SEE SHEET 8 OF 9



RICHARD O. CLEM  
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MULBERRY TOWNHOUSES, INC.  
T.M. #74A3-3-9  
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(540) 667-2139

VIRGINIA: FREDERICK COUNTY, SCT.

This instrument of writing was produced to me on

09-08-05 at 9:41 am

and with certificate of acknowledgement thereto annexed  
was admitted to record. Tax imposed by Sec. 58.1-802 of

§ N/A, and 58.1-801 have been paid, if assessable

*Rebecca P. Hogan*, Clerk