

040012065

THIS DEED OF DEDICATION, made and dated this 10th day of May, 2004, by and between **LARRY A. RUSSELL, GLEN W. RUSSELL, and JUDY S. RUSSELL**, parties of the first part, and **THE COUNTY OF FREDERICK, VIRGINIA**, party of the second part.

WHEREAS, the parties of the first part are the owners in fee simple of the real estate shown on the plats drawn by P. Duane Brown, L.S., dated November 7, 2003 (Section 2), and November 10, 2003 (Section 3), known as **Shawnee Village, Sections 2 and 3**, and being the same property conveyed to the parties of the first part herein by deed from Shawnee Village, L.C., by deeds recorded in the Clerk's Office of the Circuit Court of Frederick County, Virginia as Instrument Nos. 040000348 (Section 2) and No. 040006970 (Section 3); and,

WHEREAS, said real estate, as shown on the aforesaid plats, has been subdivided into lots, which plats show the metes and bounds of the subdivided land, together with the dimensions of each lot thereof and those certain drainage easements, and water and sanitary sewer easements reserved for installation and maintenance of water and sewer facilities for said lots, and active and inactive separation buffers, all of which are hereby dedicated to the public.

NOW, THEREFORE, THIS DEED OF DEDICATION WITNESSETH:

That in consideration of the premises and the benefits which will accrue by reason of this dedication, the parties of the first part do hereby subdivide that certain tract of land designated as **Shawnee Village, Sections 2 and 3**, situate in Shawnee Magisterial District, Frederick County, Virginia, and being more particularly described by the aforesaid plats of P. Duane Brown, L.S., dated November 7 and 10, 2003, made a part hereof and by this reference incorporated herein as if set out in full; and does hereby dedicate the streets and roadways shown thereon to Frederick County for public use.

HOME OWNER'S ASSOCIATION MATTERS

DEFINITIONS

Section 1. "Association" shall mean and refer to Shawnee Village Homeowner's Association, a nonstock Virginia corporation, its successors and assigns.

Section 2. "Properties" shall mean and refer to the real property described in the Shawnee Village Final Development Master Plan and such additions thereto as may hereafter be brought within the jurisdiction of the corporation, and shall not be limited to Section 1, 2 or 3 as shown on said plats.

Section 3. "Lot" shall mean and refer to any of the lots designated upon the plats of Shawnee Village, with the exception of the open space(s) and buffer area(s).

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 person 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 6. "Declarant" shall mean and refer to the Grantors herein, their successors and assigns.

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. When more than one person holds such interest in any lot, all such persons shall be members. (The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation.)

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.

VOTING RIGHTS

Each member of the association shall have one vote for each lot owned, but in no event shall more than one vote be cast with respect to any one lot. The vote for such lot shall be exercised as the owners determine among themselves.

BOARD OF DIRECTORS

The affairs of the association shall be managed by a board of not less than three, but no more than nine directors, who must be members of the association. The initial board of directors shall be appointed by the party of the first part herein, and serve until the first annual meeting following conveyance of the first lot in the properties; thereafter, the board of directors shall be elected by the membership as determined in the bylaws of the association.

PROPERTY RIGHTS IN COMMON PROPERTIES

Section 1. Member's Easements of Enjoyment: Every member shall have a right and easement of enjoyment in and to the open space(s), specifically including but not limited to the rights of ingress and egress across the aforesaid open space(s) 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 bylaws, to borrow money for the purpose of improving the open space(s) and in aid thereof to mortgage the property. The rights of such mortgagee in the properties shall be subordinate to the rights of the homeowners hereunder. Approval of at least sixty-seven percent of the membership, excluding the Declarant, is required to mortgage or encumber the open space(s).

(b) The rights of the association to suspend the voting rights and the right to use the open space(s) by a member for any period during which any assessment against his lot remains unpaid; and for a period not to exceed thirty 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 open space(s) to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by not less than sixty-seven percent of the members, excluding the Declarant. No such dedication or transfer shall be effective unless an instrument signed by members entitled to cast 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 twenty-five days nor more than fifty days in advance.

(d) In the event the association is dissolved, the assets shall be dedicated to a public body, or conveyed to a nonprofit organization with similar purposes.

(e) If ingress or egress to any residence is through the open space(s), any conveyance or encumbrance of such area shall be subject to the lot owner's easement.

Section 2. Delegation of Use: Any member may delegate, in accordance with the bylaws, his right of enjoyment to the open space(s) to the members of his family, his tenants, or contract purchasers who reside on the property.

Section 3. Title to the Open Space(s): The Declarant hereby covenants for its heirs and assigns, that it will convey fee simple title to any open space(s) to the association, free and clear of all encumbrances, prior to the U.S. Department of Housing and Urban Development's insuring the first mortgage or deed of trust in the development.

COVENANTS FOR MAINTENANCE ASSESSMENTS FOR THE ASSOCIATION

Section 1. Assessments: The Declarant, for each lot owned within the properties, hereby covenants, and each owner of any lot by acceptance of a deed therefor, 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 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 service and facilities devoted to this purpose and related to the use of and enjoyment of the open space(s).

Section 3. Basis and Maximum of Annual Assessments: Until January 1, 2005, the maximum assessment shall be \$ _____ .00 per lot.

(a) From and after January 1, 2005, the maximum annual assessment per lot 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 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 days nor more than sixty 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 open space(s), including the necessary fixtures and personal property related thereto, *provided that* any such assessment shall have the assent of two-thirds 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 days nor more than sixty 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 Sections 3 and 4: At the first meeting called, as provided in Section 3 and 4, the presence at the meeting of members or of proxies entitled to cast 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 of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty days following the prior meeting.

Section 7. Date of Commencement of Annual Assessments: Due Date: The annual assessments shall begin as to all lots on the first day of the month following the conveyance of the open space(s). 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 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 assessments are not paid within thirty days after the due date, the assessment shall bear interest from the date of delinquency at the rate of 12% per annum, and the association may bring an action at law against the owner personally obligated to pay the same, or foreclose the lien against the property. 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 open space(s) or abandonment of his lot.

Section 9. Subordination of the Lien to Mortgages: The lien of the assessments provided for herein shall be subordinated 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 thereof, shall extinguish the lien of such

assessments as to payments thereof which become due prior to such sale or transfer. No sale or transfers 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 open space(s); (b) all properties dedicated to and accepted by a local public authority; and (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.

Section 11. Failure to Maintain Open Space(s): In the event that the association, or its successors, shall fail to maintain the open space(s) in reasonable order and condition, the County of Frederick may take such action as authorized by the Frederick County Zoning Ordinance. The Frederick County Zoning Ordinance is by this reference made a part hereof as if set out in full.

GENERAL SUBDIVISION MATTERS

RESTRICTIONS AND COVENANTS

All of the lots shown on the plats attached hereto shall be subject to the following restrictions and covenants which are covenants running with the land, and shall be binding upon all parties having any right, title and interest in and to the aforesaid lots or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

1. The lots shall be used exclusively for residential purposes. No business or occupation of any kind other than a "home occupation" shall be carried on or permitted upon these lots. A "home occupation" is defined to be an occupation carried on by the occupant of a dwelling as a secondary use in connection with which there is no display, and no one is employed other than members of the family residing on the premises. No building shall be erected, altered, placed or permitted to remain on any lot other than one single-family detached dwelling, garage and other approved structures for use solely by the occupants. Except for those related to real estate sales and construction, no sign, advertisement or message other than for identification purposes only shall be displayed or published which offers or implies commercial or professional services, or which may constitute any other kind of business solicitation in or from any residence or residential property. Notwithstanding the foregoing, the Grantors herein may, for a period not to exceed two years from the date of this instrument, erect, maintain and operate real estate sales and construction offices, model homes, displays, signs and special lighting on any part of the property and on or in any building or structure now or hereafter erected thereon while owned by any of the Grantors herein or their successors in interest.

2. No clothing, laundry, or wash shall be aired or dried at any time on the open space easements, as set forth below, nor on any portion of the lots in any area other than in the rear yard of the lots.

3. No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done or placed thereon which may become an annoyance or nuisance to the neighborhood. Owners shall at all times maintain their property and all appurtenances thereto in good repair and in a state of neat appearance. All lawn areas shall be kept mowed and shall not be permitted to grow beyond a reasonable height.

4. No sign of any kind that is illuminated and/or larger than two square feet shall

be displayed to the public view on any lot, except temporary real estate signs not more than four square feet in area advertising the property for sale or rent, and except as provided herein.

5. No animals shall be kept or maintained on any lot except common household pets such as dogs and cats, provided that they are not kept, bred or maintained for commercial purposes and do not create a nuisance or annoyance to surrounding lots nor the neighborhood and are in strict compliance with applicable Frederick County ordinances.

6. Trash and garbage containers shall not be permitted to remain in public view except on days of trash collection. No accumulation or storage of litter, new or used building materials, or trash of any kind shall be permitted on any lot.

7. The exteriors of all structures, including walls, doors, windows and roofs, shall be kept in good maintenance and repair. No structure shall be permitted to stand with its exterior in an unfinished condition for longer than six months after the commencement of construction. In the event of fire, windstorm or other damage, the exterior of no structure shall be permitted to remain in a damaged condition for longer than three months.

8. No single story dwelling (including but not limited to ramblers, ranches, and above-ground levels of multi-level homes) shall be erected upon said lot shown on the attached plats which shall contain less than 1,000 square feet of finished floor area. No multiple story dwelling shall contain less than 900 square feet of ground floor area. Such areas shall be exclusive of porches, patios, carports, basements, and attics. Any garage, carport or car shelter constructed on said lots shall be attached to and be a part of the main structure. The Grantors reserve for themselves and their successors in interest the right to determine what structure is to be regarded as a two-story dwelling so long as any lot in the subdivision is unsold. Split foyer and Cape Cod style dwellings shall contain not less than 1,000 square feet on the main living area. All residential structures must be at least 26 feet wide across the front elevation, and shall have a minimum roof pitch of 5/12.

9. No lot on the attached plats shall at any time be subdivided, conveyed, leased, nor sold except as a whole, unless such subdivision, conveyance, lease or sale involves multiple lots so that each of the portions into which the lots are divided for the purpose of subdivision, conveyance, lease or sale results in the lots being created for the purpose of such subdivision, conveyance, lease or sale, as well as each of the lots remaining after such subdivision, conveyance, lease or sale, being of a size larger than the lots as shown on the plats which is recorded with this instrument. The Grantors herein, however, for themselves and their successors in interest, reserves the right to resubdivide any of the lots shown on the attached plats and to alter, amend and change any lot lines or subdivision plan so long as they own any of said lots.

10. No fence, hedge or other visual barrier shall be erected or planted in the front yard of any lot shown on the attached plats, and no tree, hedge, or shrub planting shall be maintained anywhere on any lot in such a manner as to obstruct sight lines for vehicular traffic. Fencing of back yards may include side yards to a limit of one-half the depth of each dwelling only. Any fence or wall built on any lot shall be maintained in a proper manner so as not to detract from the value and desirability of surrounding property. No fence shall exceed six feet (6') in height.

11. No junk vehicles, recreational vehicles, house trailers, or commercial industrial vehicles, such as (but not limited to) moving vans, trucks, tractors, trailers, vans, wreckers, hearses, buses, boats, boating equipment, travel trailers, or camping equipment shall be regularly or habitually parked on any public streets within Shawnee Village Sections 2 and 3, (and such additions to and future sections of Shawnee Village

subdivision) or otherwise parked within the boundaries of the subdivision. No vehicle may be parked for a period greater than sixty days on any lot or on any platted street as shown on the attached plats unless such vehicle bears a currently valid Virginia vehicle inspection windshield sticker. Notwithstanding the foregoing, the Grantors herein or their successors in interest may, for a period not to exceed two years from the date of this instrument, erect, maintain and operate real estate sales and construction offices, model homes, displays, signs and special lighting on any part of the property and on or in any building or structure now or hereafter erected thereon while owned by any of the Grantors herein or their successors in interest.

12. The provisions of Paragraphs 4, 6, 7, 10, and 11 shall not apply to the construction or development of improvements on any lot by any of the Grantors herein, commencing within two years from the date of submission of said lot to these restrictive covenants.

13. Any lease or rental agreement must be for a period of at least thirty days and must be subject to the rules and regulations set forth in these restrictive covenants.

14. All lots are required to observe **building restriction lines** as indicated on the plats of Shawnee Village, in addition to those requirements of applicable Frederick County ordinances. No structures are permitted within the **Road Efficiency Buffers** or **Residential Separation Buffers**, indicated on said plats.

15. The Grantors herein reserve the right for themselves and their successors in interest to waive any one or all of the restrictive covenants, conditions, reservations, or restrictions as to any or all lots, except that it cannot change the development from residential to commercial. This waiver shall not affect the binding effect of the covenants, restrictions, and conditions upon any other lots. The Grantors herein do further reserve the right for themselves and their successors in interest to impose additional restrictive covenants, conditions, reservation, and restrictions on any or all lots and such imposition shall not affect the binding effect of these provisions upon any other lots.

16. Any Shawnee Village, Section 2 or 3 (and such additions to and future sections of Shawnee Village subdivision) homeowner shall have the right to enforce, by a proceeding at law or in equity, all restrictions, covenants, and conditions now or hereafter imposed by the provisions of this deed. Failure by any homeowner to enforce any right, restriction, provision, condition, or covenant granted by this deed and declaration shall not constitute a waiver of the right of such homeowner to enforce such right, restriction, provision, condition, or covenant in the future.

17. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

OTHER MATTERS

1. The property dedicated hereby is subject to certain easements designated "**Sanitary Sewer Easement,**" **Water Easement,**" "**Drainage Easement,**" as indicated on said subdivision plats, which easements are hereby dedicated for public use and access.

The Grantors herein do hereby grant and convey unto the Frederick County Sanitation Authority perpetual easements for the installation and maintenance of water and sewer lines and any related facility on the easements designated on said plats as Sanitary Sewer Easements and Water Easements.

2. The property dedicated hereby is subject to those certain easements or rights of way designated "**Drainage Easement**" on the aforesaid attached plats for the purpose of surface water drainage easement, which easements are hereby dedicated for public use and access. No structures of any kind which substantially impede or obstruct the flow or ponding of surface drainage water may be placed within said surface water drainage easements designated on the aforesaid attached plats. Said surface water drainage easements may not be altered or modified without the prior consent of the County of Frederick, and the Grantors herein do hereby grant and convey unto the County of Frederick a perpetual right of way or easement over the aforesaid designated surface drainage easements for the purpose of so providing surface drainage. The Grantors herein do further agree that Frederick County shall be under no obligation to maintain said drainage easements.

No owner of any lot shall interfere with the natural drainage of surface water from such lot to the detriment of any other property shown on said plats.

3. All lots are subject to a 10' **Utility and Drainage Easement** along all property boundary lines. The Grantors herein reserve unto themselves, their successors or assigns, the right to erect, maintain, operate and replace underground and above ground telephone and electric light conduits, related equipment, and other facilities, sewer, gas, water, and television lines and related equipment, and other utility equipment where such utility lines and equipment are now located and along said 10' Utility Easements on each lot and along those areas intended for public access on the attached plats. All lots are further subject to a 20' **Slope and Drainage Easement** along all rights of way.

4. The covenants and restrictions of this deed shall run with and bind the land, and shall inure to the benefit of and be enforceable by the owner of any lot subject to this deed and declaration, his legal representatives, heirs, successors and assigns, for a term of ten years from the date this deed and declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten years. The covenants and restriction so this deed and declaration may be amended in whole or in part, provided that any such amendment during the first ten-year period shall have the assent of not less than seventy-five percent of the lot owners, and thereafter any amendment shall have the assent of no less than sixty-seven percent of the lot owners. Any amendment must be property executed and acknowledged by the lot owners and recorded among the land records of Frederick County, Virginia.

Bold face type is for convenience only, and shall not enlarge or restrict any matters set forth in this instrument.

The platting and dedication of the herein described land is made in accordance with the statutes made and provided in such cases, and is with the free consent and in accordance with the desire of the Grantors herein, sole owners and proprietors of the land embraced within the bounds of said subdivision, as evidenced by the signature of its president.

WITNESS the following signatures and seals

 _____ [SEAL]
LARRY A. RUSSELL

 _____ [SEAL]
JUDY S. RUSSELL

0210

Glen W. Russell [SEAL]
GLEN W. RUSSELL

STATE OF VIRGINIA
CITY OF WINCHESTER, to-wit:

Acknowledged before me this 10th day of May, 2004, by LARRY A. RUSSELL, GLEN W. RUSSELL, and JUDY S. RUSSELL.

[Signature]
NOTARY PUBLIC FOR THE STATE OF VIRGINIA

My commission expires: 6/30/06

VIRGINIA: FREDERICK COUNTY, SCT.

This instrument of writing was produced to me on

June 28, 04 at 11:49 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