

333 THIS DEED OF DEDICATION is made and dated this 5TH day of MARCH, 1986, by and between VALLEY STATION, INC., a Virginia corporation, party of the first part, hereinafter called the Declarant, and THE CITY OF WINCHESTER, VIRGINIA, party of the second part, and EDWIN B. YOST, Sole Acting Trustee, party of the third part, hereinafter called Trustee, and JEAN H. and LOHR E. DUNLAP, parties of the fourth part hereinafter called Lienholder.

WHEREAS, the party of the first part is the owner in fee simple of the real estate shown on the attached plat drawn by P. Duane Brown, C.L.S., dated December 2, 1985, known as "Valley Station Townhouses," and being all of the real estate conveyed to Valley Station, Inc., a Virginia corporation, by that certain Deed dated December 16, 1985, of record in the Clerk's Office of the Circuit Court for the City of Winchester, Virginia, in Deed Book 198 at Page 45, and

WHEREAS, said real estate as shown on the aforesaid plat attached hereto has been subdivided into lots, and the attached plat shows accurately the metes and bounds of the subdivided land, together with the dimensions of each lot thereof and also shows that certain access easement to be used as a parking area, private street, and for installation and maintenance of water and sewer facilities for said lots, and further shows that certain 10 foot utility easement, and 60 foot private access and City utilities easement, situate upon and crossing a portion of said property as shown on the plat attached hereto; and

WHEREAS, property subdivided herein is subject to the lien of that certain Deed of Trust, dated December 16, 1985, from the parties of the first part to Edwin B. Yost, et al, Trustee, given to secure Jean H. and Lohr E. Dunlap, an indebtedness as more fully set forth therein, which Deed of Trust is of record in the aforesaid Clerk's Office in Deed Book 198 at page 49, and

WHEREAS, the Declarants now desire to subdivide the same into lots to be known as Valley Station Townhouses. The subdivision of said real estate, as it now appears on the aforesaid attached plat, is with the free consent in accordance with the desires of the undersigned Declarants, Trustee and Lienholder and the parties

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hereto further disire to subdivide the aforesaid real estate in accordance with the provisions of "The Virginia Land Subdivision Act" as are applicable and in force and effect as of the date of execution of this Deed of Dedication.

NOW, THEREFORE, THIS DEED OF DEDICATION WITNESSETH:

That for and in consideration of the premises and the benefits which will accrue by reason of this Dedication, the Declarants do hereby subdivide, grant and dedicate in fee simple all that certain tract or parcel of land designated as Valley Station Townhouses, lying and being situate in the City of Winchester, Virginia, and being more particularly described by the aforesaid plat of P. Duane Brown, C.L.S., dated December 2, 1985, attached hereto and made a part hereof and by this reference incorporated herein as if set out in full, and being the same real estate conveyed to Valley Station, Inc., a Virginia corporation, by that certain Deed dated December 16, 1985, of record in the aforesaid Clerk's Office in Deed Book 198 at Page 45.

All of the lots shown on the plat 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.

ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to Valley Station Townhouses Homeowners Association, Inc., a Virginia 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. "Access Easement" shall mean all property owned by the Association for the common use and enjoyment of the members of the Association; said Access Easement is designated as such on the attached plat of Valley Station Townhouses, and shall further be deemed to be the parking area and private street for Valley

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Station Townhouses.

Section 4. "Lot" shall mean and refer to any of the lots designated upon the plat of Valley Station Townhouses, with the exception of the Access Easement or Parking Area or private street.

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 records 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 Valley Station, Inc., a Virginia corporation, 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 Access Easement or Parking Area, specifically including but not limited to the rights of ingress and egress to the lots in Valley Station Townhouses across the aforesaid Access Easement from Woodstock Lane for the purpose of parking, 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 aforesaid Access Easement or Parking Area or private street, 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 the use of the Access Easement or Parking Area, 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 Access Easement or Parking Area 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-thirds (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 rights 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 Access Easement or Parking Area to the members of his family, his tenants, or contract purchasers who reside on the property.

Section 3. Title to the Access Easement and Parking Areas. The Declarant hereby covenants for itself, its heirs and assigns, that it will convey fee simple title to the Access Easement or Parking Area to the Association, prior to the conveyance of the first Lot.

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Section 4. Parking Rights. Each owner or owners shall have the right to park two vehicles within the areas designated as Access Easement or Parking Area. The invitees of any member shall have the right to park within said Access Easement or Parking Area, 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

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 captial 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 captial improvements as provided immediately hereinabove, on the 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, insurance, repairs, snow removal, common area maintenance, facilities devoted to this purpose and related to the use of and enjoyment of the Access Easement and Parking Area.

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 One Hundred Twenty Dollars (\$120.00) per year per lot

- (a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, 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 (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 Access Easement or Parking Area, 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 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-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 Access Easement or Parking Area. 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 ten percent (10%) 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, 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 Access Easement and Parking Area 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 Access Easement or Parking Area; (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.

Section 11. Failure to Maintain Common Access or Parking Area. In the event that the Association, or its successors, shall fail to maintain the access or parking area in reasonable order and condition, the City of Winchester, Virginia, may take such action as authorized by Section 7-9-8.6 of Article 7 of the Zoning Ordinance of the City of Winchester, Virginia, a copy of which is attached hereto marked Exhibit "A" and incorporated herein by reference as if set out in full.

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 divided 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.

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.

ARCHITECTURAL CONTROL

No building, accessory building, or structure, shed, awning, porch, or porch covering, garage, trailer, tent, driveway, fence, barns, wall, TV antennas, or other structures shall be allowed, constructed, or altered upon any Lot or townhouse 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 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 or hedge shall be allowed to be erected, planted, or constructed upon any front yard of any Lot.

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 seem 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.

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 a builder's construction trailer 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 to be parked on the Access Easement or Parking Area.

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 (1) sign of not more than five (5) square feet advertising the property for sale or rent. This provision shall not apply to signs used by a builder to advertise the property during the construction and sales period.

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

1. 10 foot Utility Easement:

The property dedicated hereby is subject to those certain easements or rights of way 10' in width in favor of the City of Winchester, for the installation and maintenance of water and sewer lines and storm sewer lines set forth on the plat attached hereto drawn by P. Duane Brown, C.L.S., dated December 2, 1985.

2. Private Access & City Utilities Easement

The property dedicated hereby is subject to that certain easement or right of way 60 feet in width in favor of the City of Winchester, Virginia, for the installation and maintenance of water and sewer lines and related facilities, said easement being designated as "60 foot private access, and city utilities easement".

3. Sidewalk Easement

All designated lots of the subject property shall be subject to that certain 5 foot Sidewalk Easement, as shown on that plat attached hereto.

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 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 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.

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 as Declarants, Proprietors, Trustee and Lienholder of the land being subdivided, and is in conformity with the provisions of the "Virginia Land Subdivision Act" as are applicable, together with the applicable ordinances and regulations of the governing body of the City of Winchester, Virginia. The Declarants have previously submitted the foregoing, together with the attached plat to the Common Council of the City of Winchester, Virginia, for consideration and said plats and plans were duly approved by said Common Council of the City of Winchester, Virginia, as shown and confirmed by the endorsement and date entered on said attached plat, and this Deed of Dedication by the proper officials of said body.

WITNESS the following signatures and seals:

VALLEY STATION, INC.

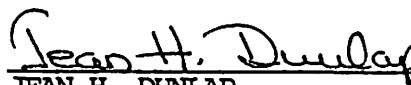
BY: 
Seamus J. Dillon

THE CITY OF WINCHESTER

BY: 
Seamus J. Dillon
City Manager



EDWIN B. YOST, Sole Acting Trustee



JEAN H. DUNLAP


JOHN E. DUNLAP

APPROVED BY COMMON COUNCIL, CITY OF WINCHESTER, VA. DECEMBER 19, 1985

 CITY MANAGER

EXHIBIT "A"

Section 7-9-8.6, Article 7, Zoning Ordinance of the City of Winchester, Virginia.

Failure to maintain common open space and private streets.

- (a) In the event that the organization established to own and maintain common open space and private streets or any successor organization, shall at any time after establishment of the townhouse development fail to maintain the common open space and private streets in reasonable order and condition in accordance with the site plan, the City Council may serve written notice upon such organization or upon the residents of the townhouse development setting forth the manner in which the organization has failed to maintain the common open space and private streets 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 City Council may modify the terms of the original notice as to the deficiencies and may give an 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 said thirty (30) days or any extension thereof, the City, in order to preserve the taxable values of the properties within the townhouse development and to prevent the common open space and private streets from becoming a public nuisance, may enter upon said common open space and private streets 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 the common open space and private streets except when the same are voluntarily dedicated to the public by the owners. Before the expiration of the said year, the City shall, upon its initiative or upon the request of the organization theretofore responsible for the maintenance of the common open space and private streets, call a public hearing upon notice to such organization, or to the residents of the townhouse development, to be held by the City Council, at which hearing such organization or the residents of the townhouse development shall show cause why such maintenance by the City shall not at the election of the City Council continue for a succeeding year. If the City Council shall determine that said organization is ready and able to maintain said common open space and private streets in a reasonable condition, the City Council shall cease to maintain said common open space and private streets at the end of said year. If the City Council shall determine that said organization is not ready or able to maintain the common open space and private streets in a good, clean, and safe condition the City Council may, in its discretion, continue to maintain said space, subject to a similar hearing and determination in the next succeeding year and in each thereafter.

(b) The cost of such maintenance by the City shall be assessed ratably against the properties within the townhouse development that have a right of enjoyment of the common open space and private streets and shall become a tax lien on said properties. The City at the time of entering upon said common open space and private streets for the purpose of maintenance, shall file a notice of such lien in the office of the Clerk of the Circuit Court upon the properties affected by such lien with the townhouse development.