

**WESTVIEW SUBDIVISION**

Declaration of Restrictions, Covenants And Conditions

THIS DECLARATION made this 30 day of March, 2000, by HURT INVESTMENT COMPANY, a Virginia corporation ("Declarant");

**WITNESSETH:**

WHEREAS, the Declarant is the owner of certain real property containing 213.35 acres, more or less, (the "Property") located in Albemarle County, Virginia, and desires to create thereon (and on such additional Property as may hereafter be subjected to the provisions of this Declaration) a subdivision known as "Westview";

WHEREAS, the Declarant desires to subject the Property to covenants, restrictions, easements, conditions, reservations, liens and charges to which the Property shall henceforth be subject, each and all of which is and are for the benefit of said Property and the Owners thereof.

NOW, THEREFORE, the parties hereto declare and agree that henceforth the Property described in Section 2.01 hereof, is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, conditions, reservations, liens and charges hereinafter set forth, and any valid amendments or supplements hereto, which are imposed to enhance and protect the value and desirability of the real property in Westview. The provisions set forth herein shall run with the land and shall be binding upon any and all parties who have or shall acquire any right, title and/or interest in all or any part of the Property subject to this Declaration, and shall inure to the benefit of each Owner thereof.

**ARTICLE I.**  
**DEFINITIONS**

The following words, when used in this Declaration, shall have the following meanings:

Section 1.01. "**Westview**" shall mean and refer to the Property described in Section 2.01 hereof which is hereby subjected to this Declaration.

Section 1.02. "**Declaration**" shall mean and refer to the covenants, restrictions, easements, conditions, reservations, liens and charges and all other provisions herein set forth in this entire document, as same may from time to time be amended or supplemented.

Section 1.03. "**Supplementary Declaration**" shall mean and refer to any declaration of restrictions, covenants and conditions which may be executed and recorded by the Declarant which extends the provisions of this Declaration to additional real property and contains such complementary or modifying provisions for such additional real property as are not inconsistent with the concept of this Declaration.

Section 1.04. "**Declarant**" shall mean and refer to Hurt Investment Company and any assignee of it as Declarant with regard to Westview.

Section 1.05. "**Lot**" shall mean and refer to any plot of land designated as a "Lot" upon any recorded plat of any portion of Westview, including Preservation Tract A.

Section 1.06. "**Owner**" shall mean and refer to the record owner, whether one or more persons or entities, including the Declarant, of the fee simple title to any Lot, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation. In the case where a Lot is held by one or more persons for life with the remainder to another or others, the term "Owner" shall mean and refer only to such life tenant or tenants until such time as the remainderman or remaindermen shall come into use, possession or enjoyment of such Lot.

Section 1.07. "**Association**" shall mean and refer to the Westview Owners Association, a non-profit association, its successors and assigns.

Section 1.08. "**Member**" shall mean and refer to every person or entity who holds membership in the Association.

Section 1.09. "**Road**" shall mean and refer to Buffalo Hills Road as shown and described on the plat referred to in Section 2.01 hereof. "**Roads**" shall mean and refer to Buffalo Hills Road, and any other roads which may be subsequently added to Westview.

Section 1.10. "**Architectural Control Board**" shall mean and refer to the board established in Article V below for the purpose of controlling and regulating the development and the external design, appearance, landscaping, grading and use of the Lots and the structures and other improvements thereon.

## **ARTICLE II.**

### **PROPERTY SUBJECT TO DECLARATION**

Section 2.01. **Existing Property.** The real property which at this time is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is described as all those certain twenty (20) lots situated in Albemarle County, Virginia, shown and described as Lots 1 through 20 and Preservation Tract A on a plat of Roger W. Ray & Assoc., Inc., dated September 28, 1999, revised March 27, 2000, captioned "Subdivision Plat Lots 1 Thru 20 and Preservation Tract A Westview Located on State Routes 604, 663 & 664 White Hall District Albemarle County, Virginia", consisting of three sheets, a copy of which is attached hereto and recorded herewith (the "Plat").

### **ARTICLE III.** **ROADS; EASEMENTS**

Section 3.01. **Dedication to Public Use.** The Declarant shall have the right and power and *does hereby dedicate to public use:*

(a) Buffalo Hills Road so that it may be accepted into the Virginia State Highway System and thereby be publicly maintained; and

(b) the easement(s) reserved by the Declarant in this Article III which are required by a public body to be dedicated for Buffalo Hills Road being accepted into the Virginia State Highway System.

Section 3.02. **Regulation of Traffic and Parking.** Until such time as the Road is accepted for public maintenance, the Declarant shall have the right and power to place any reasonable restrictions upon the use of the Road, including the establishment of speed limits and regulation of parking along the Road.

Section 3.03. **Maintenance.** The initial construction of the Road shall be paid for by and shall be completed by the Declarant. Thereafter and until such time as the Road may be accepted into the State Highway System, the necessary money for the future repair, maintenance, improvement, enhancement or replacement ("Maintenance") of the Road will not be borne by any Owner, but rather shall be provided by the Declarant.

Section 3.04. **Damage By or Negligence of Owner or Declarant.** Notwithstanding any other provision of this Declaration, if the Declarant, or any Owner through his own negligence or through his construction, development or other unusual activity on his Property causes any Road to be damaged, then he shall be solely and exclusively responsible for the repair of such damage without the benefit of contribution from the other Owners.

Section 3.05. **Temporary Construction Easements.** The Declarant reserves unto itself, its successors and assigns, temporary, alienable easements within and across those portions of the Lots lying within fifty feet (50') of the centerline of the Road for the construction and grading of the Road and the cutting, filling and grading of slopes and installation of drainage facilities. This temporary construction easement shall terminate upon completion of the Road and its acceptance into the State Highway System.

Section 3.06. **Utility, Drainage, Sight Distance, Etc. Easements.**

(a) **Generally.** The Declarant reserves unto itself, its successors and assigns, perpetual and alienable easements and right of ways above ground and underground twenty feet (20') in width inside and along the front and rear Lot lines and twenty feet (20') in width centered on the side Lot lines of all Lots subject to this Declaration: (i) to construct, maintain, inspect, replace and repair electric and telephone poles, wires, cables, conduits, pipes, and other suitable equipment for the conveyance of telephone, electricity, cable, communications and other utilities and public conveniences; (ii) for storm and surface water drainage, together with the right of ingress and egress to all such facilities and easements for the construction and maintenance thereof; (iii) to create, provide and maintain any sight distances and/or slopes required by the Virginia Department of Transportation for use and/or acceptance for public maintenance of the Roads; and (iv) to meet any other condition or requirement of any governmental authority related to the subdivision and or development of Westview and/or the use of and/or acceptance of the Roads for public maintenance.

(b) **Drainage Easements.** The Declarant reserves unto itself, its successors and assigns, perpetual and alienable drainage easements and rights of way above ground and underground as shown on the Plat, to construct, maintain, inspect, replace and repair pipes and swales for storm and surface water drainage.

(c) **Scope of Easements.** The easements provided for in this Section shall include the right to cut any trees, brush and shrubbery, make any grading of soil, and take other similar action reasonably necessary to provide economical and safe utility installation and drainage facilities. No new trees, shrubs, fences, buildings, overhangs or other improvements or obstructions shall be placed within the easements provided for in this Section. The rights in this Section may be exercised by any licensee of the Declarant, but shall not be deemed to impose any obligation upon the Declarant to provide or maintain any utility or drainage services. Any damage resulting from the use of the easements hereby reserved shall be promptly rectified at the expense of the entity responsible for such damage.

Section 3.07. **Entrances to Road.** Any entrance to the Road constructed by the Owner of a Lot within Westview shall be constructed and maintained by the Owner pursuant to standards approved by the Virginia Department of Transportation. If any Owner shall fail to so design, construct or maintain the entrance from the Road to his Lot to meet the minimum specifications and standards of the Virginia Department of Transportation for a private entrance on a publicly maintained road, Declarant shall have the right to bring such entrance into compliance with such specifications and standards and to collect the cost(s) of such work from such Owner (together with costs of collection, including reasonable attorneys' fees).

#### **ARTICLE IV.** **ASSOCIATION**

Section 4.01. **Association.** Every Owner of a Lot within Westview shall be a member of the Association.

Section 4.02. **Voting Rights.** Each member of the Association shall be entitled to one (1) vote for each Lot owned by said Member. In the event that more than one person or entity holds such interest in any Lot, all such persons or entities shall be Members and 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.

Section 4.03. **Duties.** After the sale of the last Lot owned by the Declarant, the Association shall become the successor to the Declarant under this Declaration for all purposes including architectural control, the enforcement of all covenants, restrictions and conditions, and the granting of necessary and appropriate utility and drainage easements. Prior to the sale of all Lots by the Declarant, the Declarant shall have the right in its sole discretion to transfer any one or more (including all) of its rights, privileges and duties under this Declaration to the Association, which transfer shall be evidenced by an instrument executed by the Declarant and recorded in the appropriate Clerk's Office.



Section 4.04. **Operation of the Association.** The Association shall be governed by and operated in accordance with the provisions of this Declaration and the By-Laws of the Westview Owners Association to be determined at a later date.

## **ARTICLE V.**

### **ARCHITECTURAL CONTROL**

Section 5.01. **Architectural Control.** Until the sale of all the Lots by the Declarant, the Architectural Control Board ("ACB") shall consist of one or more individuals appointed by the Declarant. After the sale of all the Lots by the Declarant, or at such earlier time as the Declarant in its sole discretion may determine, as evidenced by an instrument recorded in the Clerk's Office of the Circuit Court of Albemarle County, Virginia, the selection of the members of the ACB shall be by the Association.

Section 5.02. **Purpose.** The ACB shall regulate the development and external design, appearance, landscaping, grading, use and location of the Lots and of the structures and other improvements thereon in such a manner so as to preserve and enhance values and to maintain a harmonious relationship among structures and the natural vegetation and topography.

Section 5.03. **Conditions.** No improvements, alterations, repairs, excavations, changes in grade, major landscaping or other work which in any way alters the exterior of any Lot or the improvements located thereon from its natural or improved state existing on the date such property was first conveyed in fee by the Declarant to an Owner shall be made or done unless and until the plans, specifications, working drawings, and proposals for the same showing the nature, kind, shape, type, materials and location thereof shall have been submitted to and approved in writing by the ACB, pursuant to Section 5.04 hereof. No building, fence, wall, residence, structure or other improvement shall be commenced without the prior written approval of the ACB. The Declarant shall not be required to obtain the consent or approval of the ACB or of the Association for any land clearing, excavations, changes in grade, or other work performed by the Declarant, its contractors and/or subcontractors, in the construction of the Roads, and/or the installation of utilities and drainage facilities within Westview.

Section 5.04. **Procedures.** In the event the ACB fails to approve, modify or disapprove in writing a request for approval required herein within fourteen (14) days after plans, specifications, or other appropriate materials have been submitted in writing to it, approval will be deemed granted.

Section 5.05. **Presumption.** In the event that the appropriate equitable action together with a lis pendens has not been commenced within ninety (90) days after the completion of any activity requiring the approval of the ACB, it shall be conclusively presumed that such activity is approved by the ACB.

Section 5.06. **Variances.** The ACB shall have the right to grant a reasonable variance or adjustment from individual restrictions set forth in Article VI hereof (except for Sections 6.01, 6.02, 6.12, 6.13, and 6.18) in order to overcome practical difficulties and to prevent unnecessary hardships, provided such variance will not be materially detrimental to neighboring Lots or defeat the general purposes of this Declaration.

**ARTICLE VI.**  
**GENERAL USE RESTRICTIONS**

**Section 6.01. Restriction on Further Subdivision.**

(a) No Lot shall be further subdivided or separated into smaller Lots by an Owner other than the Declarant without the written consent of the Declarant, its successors and assigns, and no portion less than all of any such Lot shall be conveyed or transferred by an Owner other than the Declarant; provided, however, that this shall not prohibit deeds of correction, deeds to resolve boundary line disputes and similar corrective instruments. No Lot shall be used as a roadway for access to any property lying outside of the boundaries of Westview, without the written consent of the Declarant, its successors and assigns. Notwithstanding the foregoing, there shall be no restriction or prohibition whatsoever upon the Declarant against further subdivision and/or re-subdivision of the Existing Property, or any addition to the Existing Property, or any Lots.

(b) In the event the applicable ordinances of Albemarle County would in the future permit the further subdivision of Lot 19, Lot 20, or Preservation Tract A, such further subdivision shall only be permitted upon the prior written approval of Declarant or its designee, which right of approval shall be personal to Declarant or its designee and shall not run with the title to Lot 19, Lot 20, or Preservation Tract A.

(c) Each subsequent Owner of a Lot (including Preservation Tract A) acknowledges and agrees that such Owner is aware of Declarant's intent to further subdivide or reduce the size of Lot 19, Lot 20, and/or Preservation Tract A and agrees not to oppose any efforts by Declarant, its successors and assigns, to do so or in connection therewith.

**Section 6.02. Single Family Dwellings.** No building of any kind shall be erected or maintained upon any Lot except one private detached single-family dwelling and buildings accessory thereto, e.g., garages and gazebos, stables, private greenhouses, domestic animal shelters, tool sheds, etc. which have been approved by the ACB.

**Section 6.03. No Temporary Structures.** No structure of a temporary character, partially completed dwelling, tent, or trailer shall be used on any Lot at any time as a residence, either permanently or temporarily for a time greater than three days.

**Section 6.04. Design.** Each dwelling constructed on any Lot will have a minimum of 2,500 square feet of floor space within the exterior walls exclusive of basement, garage, and porches, whether open or closed. All garage doors must provide for entry only from the side or rear of a residence unless otherwise permitted by the ACB.

**Section 6.05. Roofing Material.** Each dwelling constructed on any Lot shall have a roof made of cedar shakes, metal, slate, or thirty (30) year architectural grade dimensional roofing shingles, or other roofing material of similar appearance approved by the ACB.

**Section 6.06. No Signs.** No billboards or signs of any kind shall be erected or maintained or displayed except "For Sale" or "For Rent" signs not greater than two square feet, which may be placed upon any Lot for sale or for rent.

**Section 6.07. Sewage Disposal.** All sewage disposal will be in accordance with specifications of the State Health Department.

Section 6.08. **No Offensive Activities.** 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.

Section 6.09. **Setback Lines.** No building or any part thereof shall be erected hereafter within fifty feet (50') of the boundary of any street or road, or within fifty feet (50') of any side or rear Lot line. No suit shall be brought over sixty (60) days after the completion of any such structure on account of its location. The Declarant reserves the right to waive these setback lines in individual cases.

Section 6.10. **Non-Interference with Drainage.** Nothing shall be done on any Lot that interferes with the drainage of surface water to the injury of any other Lot.

Section 6.11. **No Hunting or Shooting.** No hunting or shooting shall be allowed unless the Declarant determines that wild animals constitute a nuisance.

Section 6.12. **Mobile Homes Prohibited.** No mobile home or house trailer shall be permitted or located on any Lot.

Section 6.13. **Swine Prohibited.** No hogs or swine shall be kept, raised or bred on any Lot at any time.

Section 6.14. **Mailboxes.** No mail or paper delivery boxes shall be erected without the approval of the ACB as to the location, color, size, design, lettering, and all other particulars of such mail or paper delivery boxes, and the standards, brackets and name signs for such boxes.

Section 6.15. **Vehicles.** Except as may otherwise be expressly provided for in the rules and regulations adopted by the Association, no unlicensed vehicles, no recreational vehicle, no motor home, no trailer, no camper, no camper top, no bus, no truck over one (1) ton capacity, no boat, and no other machinery, shall be placed, stored, or parked on such Lots either temporarily or permanently, except in garages or other storage structures approved by the ACB. Notwithstanding the foregoing, trucks, tractor trailer rigs and/or equipment may be temporarily parked on Lots in connection with the moving of furnishings into and out of a residence or in connection with construction activities being performed on the Lots.

Section 6.16. **Diligent Completion of Construction.** All construction, landscaping, or other work on any Lot shall be performed with diligence from the commencement until the completion thereof, and in any case all construction shall be completed within the period of time (if any) specified by the ACB.

Section 6.17. **Maintenance of Lots.** Each Lot (whether improved or unimproved) and the structures and other improvements thereon shall be kept and maintained in good order and repair, free of debris, and free of inoperable motor vehicles. In the event that any Lot or the structures or other improvements thereon shall be damaged by fire, windstorm or any other cause, the damage shall be promptly repaired and restored to its prior condition, or the damaged item demolished and removed and the ground surface restored to a condition approved by the ACB. If any Owner shall fail to maintain his Lot in compliance with this Section 6.17, then either Declarant and/or the Association shall have the right (but not the obligation) to perform the necessary corrective work and to collect the cost of such work from such Owner (together with costs of collection including reasonable attorneys' fees).

Section 6.18. **Underground Utilities.** All new lines, cable, wires, and pipes for utility services shall be installed underground, with the exception that necessary transformers, meters,



junction boxes and similar equipment may be located above ground at locations approved by the ACB.

Section 6.19. **Storage Tanks; Outside Storage.** No elevated tanks of any kind shall be erected, placed or permitted on any part of any Lot. Any tank for use in connection with any structure constructed on any Lot, including tanks for the storage of fuels, must be buried or walled sufficiently to conceal them from the view of neighboring Lots or the Roads. Plans for all enclosures of this nature must be approved by the ACB.

Section 6.20. **Antennas, Aerials and Satellite Dishes.** No television and/or radio antenna, aerial or satellite dish shall be placed on any Lot, or be affixed to or extend from the exterior of any structure on any Lot, unless approved by the ACB. No transmitting or receiving equipment which might interfere with television, radio or any other communications reception of Owners shall be used or permitted upon or within any Lot.

Section 6.21. **Clothes Drying.** No clothing, laundry, or wash shall be aired or dried on any portion of any Lot exposed to view from any other Lot, any adjoining property, or any Road.

Section 6.22. **Trash Containers.** Trash cans, barrels and containers must be maintained within screened bins or out of sight from the Roads.

## **ARTICLE VII.** **GENERAL PROVISIONS**

Section 7.01. **Non-Discrimination.** Any person, when he becomes an Owner, agrees that neither he nor anyone authorized to act for him will refuse to sell or rent, after the making of a bona fide offer, or refuse to negotiate for the sale or rental of, or to otherwise make unavailable or deny any of the property owned by him in Westview to any person because of race, color, religion, sex, or national origin. Any restrictive covenant affecting Westview relating to race, color, religion, sex, or national origin which is inconsistent with this Section is recognized as being illegal and void and is specifically disclaimed.

Section 7.02. **Enforcement.** Enforcement of the provisions of this Declaration shall be by proceedings at law or in equity against any person or persons violating or attempting to violate the covenant either to restrain violation or to recover damages. Notwithstanding any other provisions of this Declaration which may appear to be contrary, such action may be brought by the Declarant, the Association, or the Owner of any Lot.

Section 7.03. **Severability.** Invalidation of any one or more of the provisions of this Declaration by judgment, court order, or otherwise shall in no way affect any other provisions which shall remain in full force and effect.

Section 7.04. **Duration.** The provisions of this Declaration shall run with and bind the land for a term of thirty-five (35) years from the date this Declaration is recorded, and thereafter shall be automatically renewed for successive periods of ten (10) years unless modified, amended or terminated as provided in Section 7.05 hereof.

Section 7.05. **Termination and Amendment.** This Declaration may be amended, in whole or in part, or terminated at any time by the recordation of an instrument in the Clerk's Office, Circuit Court, Albemarle County, Virginia, signed by the Declarant (until the sale of all Lots by the Declarant) and the Owners of a majority of the Lots, agreeing to such amendment, modification or



termination. Notwithstanding the foregoing, no amendment, modification, or termination which would affect any rights reserved herein in favor of Declarant shall be effective unless joined in by Declarant or its successors and assigns.

**ARTICLE VIII.**  
**DECLARANT'S RIGHTS**

Section 8.01. **Declarant's Rights.** Declarant hereby reserves to itself, and each owner of any Lot by acceptance of a deed or other instrument of conveyance therefore hereby agrees, that Declarant shall have the following rights, so long as Declarant owns any Lot in Westview, to-wit:

(a) the right to replat, vacate, or withdraw any area, platted or unplatted, of the real property subject to this Declaration in accordance with the laws of the Commonwealth of Virginia;

(b) the right to approve or disapprove any amendments to this Declaration and any amendment to any corporate documents related to the Association; and

(c) the right to conduct the development, construction, marketing, and sale of all Lots in Westview, owned by the Declarant.

WITNESS the following signature and seal.

HURT INVESTMENT COMPANY

By: Charles Wm. Hurt (SEAL)  
Charles Wm. Hurt, President

COMMONWEALTH OF VIRGINIA

~~CITY~~/COUNTY OF Albemarle, to-wit:

The foregoing instrument was acknowledged before me this 30th day of March, 2000, by Charles Wm. Hurt, as President of Hurt Investment Company, on behalf of said corporation.

My Commission Expires: 9/30/2000

Shirley L. Fisher  
Notary Public