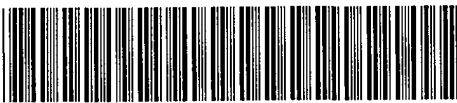


ROCKINGHAM COUNTY  
Chaz W. Haywood  
CLERK OF COURT  
Harrisonburg, VA 22801



60 2016 00005059

Instrument Number: 2016- 00005059

As

Recorded On: February 24, 2016

Restrictive Covenants

Parties: MELVIN &amp; NAOMI REAL ESTATE LLC

To

NO GRANTEE

Recorded By: CLARK &amp; BRADSHAW PC

Num Of Pages: 28

Comment:

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**\*\* Examined and Charged as Follows: \*\***

Restrictive Covenants	6.50	11 - 30 Pages	28.50
Recording Charge:	35.00		

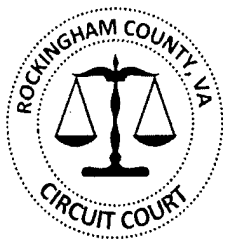
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**\*\* THIS PAGE IS PART OF THE INSTRUMENT \*\***

I hereby certify that the within and foregoing was recorded in the Register of Deeds Office For: ROCKINGHAM COUNTY, VA

**File Information:****Record and Return To:**

Document Number: 2016- 00005059	CLARK & BRADSHAW PC
Receipt Number: 339068	92 NORTH LIBERTY ST
Recorded Date/Time: February 24, 2016 10:16:11A	HARRISONBURG VA 22802
Book-Vol/Pg: Bk-OR VI-4691 Pg-345	
Cashier / Station: A Pittman / Cash Station 3	



THE STATE OF VIRGINIA}  
COUNTY OF ROCKINGHAM}

I certify that the document to which this authentication is affixed is a true  
copy of a record in the Rockingham County Circuit Court Clerk's Office  
and that I am the custodian of that record.

CLERK OF COURT  
ROCKINGHAM COUNTY, VIRGINIA

VE&Z

Doc Bk Vol Pg # of Pgs  
 00005059 OR 4691 345 28  
 Feb 24, 2016

# DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS

## COFFMAN'S CORNER, PHASE 1

**THIS DECLARATION**, is made this 22nd day of February, 2016, by MELVIN & NAOMI REAL ESTATE, LLC, a Virginia limited liability company, "Developer" (GRANTOR), JOHN D. MEADE, III and LARRY G. PACKETT, the "Trustees" either of whom may act, (GRANTORS); and THE FIRST BANK AND TRUST COMPANY, the "Lender" (GRANTOR).

### WITNESSETH:

**WHEREAS**, Developer is the owner of Phase 1 Coffman's Corner Subdivision, (herein "Phase 1"), as shown on the plat entitled "*Coffman's Corner, Phase 1, Central District, Rockingham County, Virginia*" dated February 9, 2015, made by Hal T. Benner, L.S., (herein the "Plat"), which Plat is to be recorded immediately prior hereto; and

**WHEREAS**, the 3.393 acre "residue area" depicted on the Plat shall be excluded from, and not a part of Phase 1 subject to this Declaration; and

**WHEREAS**, Developer wishes to provide for the protection and enhancement of Phase 1, to protect the owner of each parcel, and to this end Developer desires to subject the property, depicted on the Plat and any future sections of Phase 1 to the covenants, restrictions and easements hereinafter set forth; and

**WHEREAS**, Developer desires to assure the perpetual maintenance of the public streets shown on the Plat and to impose obligations on the owner of the lots and their successors and assigns (the "Owners") to assure their appropriate maintenance, as well as to grant certain sidewalk, landscaping and stormwater easements and to impose an obligation on the Owners to ensure the perpetual maintenance of certain sidewalk, landscaping and stormwater serving Phase 1; and

**WHEREAS**, Lender is the Noteholder under a Credit Line Deed of Trust as follows: 1) a Credit Line Deed of Trust dated June 11, 2015, recorded in the Clerk's Office of the Circuit Court of Rockingham County, Virginia, in Deed Book 4582, page 294, as which subject Phase 1 to the Lender's lien; and

**WHEREAS**, the Lender joins in this Declaration to acknowledge its consent to the terms of this Declaration, its agreement that the lien represented by the foregoing Credit Line Deed of Trust shall be held subject to this Declaration, and to reflect its direction to the Trustees to execute this Declaration to give effect to the subordination of the Credit Line Deed of Trust to this Declaration; and,

**WHEREAS**, Developer will convey the properties in Phase 1 subject to certain protective covenants, conditions, restrictions, reservations, liens, easements and charges as hereinafter set forth;

**NOW, THEREFORE**, Developer declares that the lots in Phase 1 shall be held, transferred, sold, conveyed, and occupied subject to the covenants, restrictions, and easements hereinafter set forth and to any and all amendments thereto. These covenants, restrictions and easements shall run with the land, and shall be binding upon any and all parties who have, or acquire title to all or any part of said lots, and shall inure to the benefit of each owner thereof.

## **I. INTRODUCTION.**

The purpose of these covenants and restrictions are to insure proper development and use of the property, to protect the owner of each lot against such improper development and use of surrounding lots as will depreciate the value of his lot, to prevent the erection on the property of structures built of improper design or materials, to encourage the erection of attractive improvements at appropriate locations, to prevent haphazard and inharmonious improvements, to secure and maintain proper setbacks from streets and adequate free spaces between structures, and in general, to provide adequately for the high quality of development of the property in accordance with a general plan.

## II. USE OF LOTS.

The property in Phase 1 is zoned General Business with Conditions (B-1C), and shall be developed in accordance with the proffers submitted to and zoning approvals obtained from Rockingham County, Virginia. It is the intent of the Developer for Phase 1 to be developed as a business district with mix of retail and office uses. All uses permitted in accordance with the Zoning Ordinance of Rockingham County, Virginia, shall be permitted in Phase 1, except those uses expressly prohibited in *Section III.1* below, or by the zoning proffers for the property. The Developer reserves the right, however, further to disapprove or to restrict uses permitted by Special Use Permits or future Permitted Uses which may in the future be added to the zoning classification by Rockingham County, Virginia, which in the opinion of the Developer, are not consistent with the goals of these covenants and restrictions.

## III. PROHIBITED LAND USES.

No use will be made of any lot or any portion thereof or any building or structure thereon at any time, nor shall any materials or products be manufactured, processed, or stored thereon or therein, which shall, in the opinion of the Developer, cause an undue fire or health hazard to adjoining properties, or which shall constitute a nuisance or cause the emission of noxious odors or gases or smoke, or cause noises or other conditions which might violate the purpose and intent of these covenants and restrictions which shall constitute a violation of any law of the United States, the State of Virginia, or Rockingham County, or any regulation or ordinance promulgated thereunder.

The operation and use of drilling for and removal of oil, gas or other hydrocarbon substances on any property subject to these covenants and restrictions shall not be permitted without the prior written consent of the Developer.

1. The following uses and operations shall not be permitted on any property subject to these covenants and restrictions:
  - Bus station
  - Fruit packing plant

- Auto repair or servicing
- Machine, welding or blacksmith shop
- Machinery sales and service
- Animal hospital
- Kennel operation
- Sales of travel trailers, manufactured homes or campers
- Water hauling
- Water filling station, natural source
- Boarding house operation
- Recreation or amusement enterprises (outside of enclosure)
- Auction sale
- Circus, carnival, fair, sideshow, tent meeting, music festival of a temporary nature, or flea market
- Dwelling unit associated with a permitted use
- Livestock sales pavilion, riding stable, or horse show area
- Cemetery
- Taxidermy
- Water filling station, confined source
- Truck terminal
- Truck stop
- Animal shelter
- Sales or lawn ornaments with outside display
- Antique shop with outside display
- Craft shop with outside display
- Produce auction

#### **IV. APPROVAL OF PLANS.**

No building, structure, boundary fence or wall shall be commenced, erected, placed or altered on any lot until the plans and specifications showing the nature, kind, shape, dimensions, materials, exterior color scheme and location of such structure shall have been submitted to and approved in writing by the Developer. If Developer fails to either approve

or disapprove any proposed plans, specifications or locations within thirty (30) days after submittal of all final plans and specifications or changes to said plans and specifications, such plans, specifications and locations shall be deemed to have received approval of Developer.

The Developer shall have the right to disapprove any such plans, specifications or locations which, in its opinion are not suitable or desirable for aesthetic or other reasons and in so passing upon such plans, specifications and locations, it shall have the right to require as many as four elevation drawings to scale together with topographic recordings of the site related to the road on which the land fronts and to take into consideration the suitability of the proposed building or other structure, as planned, on the view of the adjacent or neighboring properties.

The Developer shall have complete and unfettered discretion in the administration of the control imposed in *Section V* of these restrictions, and anything therein contained to the contrary notwithstanding, Developer shall have full authority to waive, modify or amend any requirement therein contained, if in the determination of Developer such waiver, modification or amendment would result in more desirable, attractive and harmonious development of the property.

Neither Developer nor its successors or assigns by their approval or disapproval of plans shall incur any liability to any person for errors, mistakes in judgment, failure to perform contracts, or for any other cause. Any owner by acquiring title to any lot, or anyone submitting plans for approval, waives claim for any such damage sustained.

## **V. ARCHITECTURAL AND AESTHETIC STANDARDS.**

### **1. Off-Street Parking:**

- a. No parking will be permitted on the private streets in the Phase 1 and each lot owner shall provide adequate off-street parking to accommodate all parking needs for employees, customers, visitors and company vehicles on the lot. If parking requirements increase as a result of a change in use

or number of employees, additional off-street parking shall be provided by the lot owner to satisfy the intent of this section. The number of parking spaces required for each lot shall be determined by the Zoning Ordinance of Rockingham County. All parking facilities and private driveways/entrances must be approved by the Developer in accordance with *Section IV*.

- b. All driveways and parking shall be paved with asphalt or concrete and curbed. Alternative paving materials may be allowed subject to approval of Developer.

2. **Setbacks:** All properties and structures shall conform to the minimum setback requirements as stated in the Zoning Ordinance of Rockingham County.

3. **Building Height:** Buildings shall not exceed three (3) stories in height including a basement or terrace level. Taller buildings may be allowed on certain lots if permitted by Rockingham County and if deemed appropriate by the Developer.

4. **Exterior Construction, Permitted Materials, Prohibited Materials, Approved Construction Methods, and Design:** Any structure erected on a lot shall conform to the following construction practices:

- a. **Exterior walls must be finished on the exterior with the following:** architectural masonry units, (excluding concrete block and cinder block), natural and cultured stone, glass materials, concrete fiber or wood siding. Alternative masonry units and siding material may be permitted subject to Developer approval.

Such finish building materials shall be applied to all sides of a building which are visible to the general public, as well as from neighboring

property and streets. Colors shall be harmonious and compatible with the colors of the natural surroundings and other adjacent buildings. The Developer shall have the sole right to approve and disapprove materials and colors.

- b. **Temporary Improvements.** No temporary buildings or other improvements of temporary nature, including trailers, incomplete buildings, tents, or shacks shall be permitted on any lots. Temporary Improvements used solely in connection with the construction or sales of permanent approved improvements may be permitted provided they are located as inconspicuously as possible and are removed immediately after completion of such construction. In all cases, no temporary structure shall be permitted on any lots for more than three hundred and sixty (360) days.

5. **Signs:** Plans and specifications for the construction, installation or alteration of all outdoor signs shall be first submitted to have the written approval of Developer. Detailed plans including size, materials, colors, illumination, location, and installation shall be submitted to Developer. The Developer shall have the sole right to approve or disapprove all signs and their sizes, colors, and locations. If Developer fails to either approve or disapprove any proposed plans, specifications or locations within thirty (30) days after submittal of final plans and specifications for approval, such plans, specifications or locations shall be deemed to have received approval of Developer. Flashing signs shall not be permitted, except to the extent that such flashing is part of a sign with scrolling text messages or images as approved by Developer.

Each lot owner shall have an easement for the joint use of the Developer installed pylon sign, in the location shown as a sign easement on the plat attached hereto. Preference for name placement on the pylon sign shall be in order of lot purchase, or as otherwise agreed with the Developer. Developer reserves the right to approve the text, style or logos displayed on



the pylon sign. When a business is no longer operating in the project, they shall remove their signage from the pylon sign, or consent to the removal thereof by the Developer or Association at that owner's expense.

**6. Landscaping and Grassed Areas:**

- a. Every lot on which a structure shall have been placed shall be landscaped to plans approved as specified herein and maintained thereafter in a sightly and well-kept condition.
- b. The lot owner shall landscape and maintain unpaved areas between the property lines and the building.
- c. Landscaping as approved by the Developer shall be installed within ninety (90) days of occupancy or completion of the structure, whichever occurs first, or as soon as weather will allow if such period falls within winter months.
- d. The lot owner of any lot shall at all times keep the landscaping in good order and condition. Should the lot owner, lessee or occupant on any lot fail to remedy any deficiency in the maintenance of the landscaping within ten (10) days after written notification, Developer hereby expressly reserves the right, privilege and license to make any and all corrections or improvements in landscape maintenance at the expense of the lot owner. All such charges, together with interest thereon from the due date at the rate of ten percent (10%) per annum and costs of collection thereof, including reasonable attorney's fees, shall be a charge on the lot and shall be a continuing lien upon the lot against which each such charge is made, and shall also be the personal obligation of the owner.

7. **Exterior Lighting:** All exterior lighting for any structure or sign shall be controlled and directed. Exterior lighting shall not be directed in a manner that adversely impacts an adjoining structure or neighboring property. The location and type of exterior lighting and the time of day the lighting is to be illuminated shall be approved by the Developer. If Developer fails to approve or disapprove location and type of lighting within thirty (30) days from final submittal of location and type, such location and type of lighting shall be deemed to have received approval of Developer.

8. **Communication Facilities:** Detailed written plans and specifications for the placement, construction, installation, size, type and/or alteration of all outdoor communication facilities, including but not limited to, towers, cables, satellites, etc., shall be submitted to Developer for Developer's approval prior to any such placement, installation or alteration. The Developer shall have the sole right to approve or disapprove any such proposed facilities. If Developer fails to approve or disapprove any such proposed facilities within thirty (30) days of submission to the Developer, such proposed facilities shall be deemed to have been approved by the Developer. All such communications facilities shall also conform to any applicable County, State or Federal regulations relating to such facilities.

9. **Outdoor Storage:**

- a. **Closed Structure; Visibility:** Unless specifically approved by Developer in writing, no materials, supplies, or equipment, including but not limited to trash and garbage receptacles, shall be stored in any area on a lot except inside a closed structure, or behind a visual barrier screening such areas from the view of adjoining properties and/or public streets. Should a lot owner not comply with this section, Developer reserves the right to enter onto said lot owner's property and remove and dispose of any materials, supplies or equipment, including, but not limited to, trash and garbage receptacles at the lot owner's expense. All such charges, together with interest thereon from the due date at the rate of ten percent (10%) per annum and costs of

collection thereof, including reasonable attorney's fees, shall be a charge on the lot and shall be a continuing lien upon the lot against which each such charge is made, and shall also be the personal obligation of the owner.

- b. **Screening of Service Containers:** Garbage and refuse containers shall be concealed by means of a screening wall of materials similar to and compatible with that of the building. These elements shall be integral with the concept of the building and site plans, be designed so as not to attract attention, and shall be located in the most inconspicuous manner possible.
- c. **Storage Tanks:** No storage tanks, including but not limited to, those used for storage of water or propane gas or other fuel or chemical shall be permitted on a lot unless they are buried or screened from the view of adjoining properties and/or public streets with the same screening as required in Paragraph 9(b) above.

**10. Maintenance Requirements, Refuse Collection and Prohibition of Junk Storage:** Each lot owner, lessee or occupant shall at all times keep his premises, buildings, improvements, parking and appurtenances in a safe, clean, neat and sanitary condition and shall comply with all laws, ordinances and regulations pertaining to health and safety. Each lot owner shall provide for the removal of trash and rubbish from his premises. In addition to the foregoing, each lot owner, lessee or occupant of a lot with stormwater facilities located thereon or adjacent thereto shall keep all debris removed and plant growth thereon mowed or trimmed so that the growth never exceeds fifteen (15) inches in height. The lot shall not be used for storage of junk automobiles or any scrap materials.

**11. Snow and Ice Removal:** Each lot owner shall be responsible for the snow removal from its own parking area and any driveway leading from public or private streets, as defined below, to their parking area. Each

lot owner shall keep any sidewalk or exterior walking area free and clear from any snow, ice or other debris. Should a lot owner not comply with this section, Developer reserves the right to enter onto said lot owner's property and remove or remediate any snow, ice or debris that has accumulated at the lot owner's expense. All such expenses, together with interest thereon from the due date at the rate of ten percent (10%) per annum and costs of collection thereof, including reasonable attorney's fees, shall be a charge on the lot and shall be a continuing lien upon the lot against which each such charge is made, and shall also be the personal obligation of the owner.

12. **Repair of Buildings:** No building or other improvement shall be permitted to fall into disrepair and each improvement shall at all times be kept in good condition and repair and adequately painted or otherwise finished in accordance with specifications established by the Developer. The owner of any lot hereby grants to Developer the right to make any necessary alterations, repairs or maintenance to carry out the intent of this provision and the owner further agrees to reimburse Developer for any expenses actually incurred in carrying out the foregoing.

## **VI. COFFMAN'S CORNER PROPERTY OWNERS' ASSOCIATION**

1. **Developer's Right to Establish:** Developer declares that in order to maintain the uniform standards of development quality required hereunder, it shall have the right, but not the obligation, to provide for the incorporation, at some future date determined in its sole and absolute discretion, of a non-profit/non-stock corporation known as the "Coffman's Corner Property Owners' Association Inc." (the "Association"), with a membership consisting of all of the owners of lots in Phase 1. Until such time as the Developer establishes the Association, the Developer will provide all duties and responsibilities reserved for Developer or the Association as stated herein. Should Developer chose, at its sole discretion, to form the Association, Developer will turn control of the Common Areas and maintenance of private streets and common easements over to the Association no later than the date in which Developer conveys the final lot owned by it in Phase 1. At that point, all obligations and powers of Developer, as described herein, shall become obligations and powers of the Association as well and the Association shall have the power to enforce as described herein. Developer retains the right to enforce the terms of these

declarations and covenants should the Association fail to do so.

The Association shall be governed by a Board of Directors (the "Board"), which will be responsible for enforcing these Covenants, for maintaining and improving the Common Areas or easements for signs, private streets, sidewalks or landscaping of Phase 1, maintaining and operating all stormwater management facilities located within or serving Phase 1 and for administering the Association as provided in this Article VI. The Association shall have such further rights and obligations as the Association's Articles, Bylaws and other controlling documents may provide, but further, that in the event of any conflict between the Covenants and the corporate documents, the Covenants will control.

## 2. **Membership and Voting Rights:**

- a. **Membership:** Every person or entity who is a record fee simple owner of a portion of Phase 1, including the Developer at all times as long as it owns all or part of the property subject to this Declaration, shall be a member of the Association, provided that such person or entity who holds such interest only as security for the performance of an obligation shall not be a member. Membership shall be appurtenant to, and may not be separated from, ownership of any portion of Phase 1.
- b. **Voting Rights:** Subject to the restrictions and limitations hereinafter set forth, each member shall be entitled to one (1) vote for each Lot in Phase 1 in which he holds the interest required for membership. The Developer shall retain voting rights so long as Developer owns any property, including common areas, within Phase 1. When one or more persons holds the interest or interests in any property, all such persons shall be members and the vote(s) for such property shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect

to any Lot.

The votes for any Lot cannot be divided for any issue and must be voted as a whole. Except as otherwise required herein or by law, the affirmative vote of the owners of a majority of Lots represented at any meeting of the members duly called and at which a quorum is present, shall be binding upon the members.

- c. **Control of the Board of Directors:** The Board shall consist of seven (7) persons initially designated by the Developer. So long as Developer owns at least one Lot in Phase 1, it shall appoint the seven (7) Directors. Developer shall be deemed to have relinquished control of the Board on the date of the first annual meeting occurring after the Developer no longer owns any lots in Phase 1.

3. **Board of Directors and Officers:** After the incorporation of the Association by the Developer, the affairs of the Association shall be managed by a Board of Directors consisting of seven (7) Directors. So long as Developer shall have the right to appoint the Directors, Directors need not be members of the Association; thereafter, all Directors shall be members of the Association. Developer shall appoint seven (7) Directors to hold office at the pleasure of Developer until Developer no longer owns any lots in Phase 1. Thereafter, elections shall be held as contained herein. Elections shall be by plurality vote. At the first annual election to the Board of Directors, which shall occur at the first annual meeting of the Association after the Developer no longer owns any lots in Phase 1, the term of office of the two (2) elected Directors receiving the two highest pluralities of votes shall be established at two (2) years, and the term of office of the other three (3) elected Directors shall be one (1) year. Thereafter, as many Directors shall be elected as there are regular terms of office of Directors expiring at such time, and the term of the Director so elected at each annual election shall be for two (2) years expiring at the second annual election following their election, and thereafter until their successors are duly elected and qualified or until removed from office with or without cause by an affirmative vote of

a majority of the members.

4. **Covenants for Maintenance Assessments:**

- a. **Creation of the Lien and Personal Obligation of Assessments.** Each Owner of any portion of Phase 1 shall be deemed to Covenant and agree to pay to the Association any annual assessments or charges, and any special assessments for capital improvements or major repairs; such assessments to be fixed, established from time to time as hereinafter provided. All such assessments, together with interest thereon from the due date at the rate of ten percent (10%) per annum and costs of collection thereof, including reasonable attorney's fees, shall be a charge on the lot and shall be a continuing lien upon the lot against which each such assessment is made, and shall also be the personal obligation of the owner. No owner of a lot in Phase 1 may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or easements or by abandonment.
- b. **Purpose of Assessments.** The annual and special assessments levied by the Association shall be used exclusively for the purpose of promoting the health, safety, security and welfare of the members of the Association and in particular for the improvement and maintenance of the Common Areas and of any easement in favor of the Association, and maintaining and operating all stormwater management facilities located within or serving Phase 1, including but not limited to, the cost of insurance, taxes, labor, equipment, materials, management, maintenance and supervision thereof, as well as for such other purposes as are permissible activities of, and

undertaken by, the Association. As shown on the Plat, Phase 1 contains two private roads bordered by sidewalks. The term to "maintain," or any derivation of that verb, includes the maintenance, replacement, reconstruction and correction of defects or damage including snow removal. The private streets and sidewalks shall at all times be maintained so that they are safe and convenient for passenger automobiles, emergency vehicles and pedestrians except temporarily during severe weather conditions.

- c. **Maximum Annual Assessment.** Except as hereinafter provided, the annual assessment, excluding any special assessment for capital improvements or majority repair, shall in no event exceed \$3,600.00 per Lot per annum. The Board shall fix the assessments, which shall be in amounts determined in accordance with the projected financial needs of the Association. By a vote of four-fifths (4/5) of the members of the Board, the maximum amounts of the assessments may be varied from the amounts herein above set forth, however, the maximum assessment may not be increased at any time without the written consent of the owners of four-fifths of Phase 1. The initial regular assessment per Lot in Phase 1 shall be set at \$172.50 per month consisting of \$110.00 for operating expenses and \$62.50 for capital reserves.
- d. **Uniform Rate of Assessment.** All regular and special assessments shall be at a uniform rate for each Lot in Phase 1.
- e. **Special Assessments for Capital Improvements and Major Repairs.** In addition to any annual assessments, 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, reconstruction, unexpected repair or replacement of a capital improvement as approved by the Board, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the consent of the owners of two-thirds (2/3) of Phase 1 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 owners at least thirty (30) days in advance and shall set forth the purpose of the meeting.

- f. **Date of Commencement of Annual Assessment Due Date.** The assessments for which provision is herein made shall commence on the closing date for the purchase of any Lot in Phase 1. The due date of any assessment shall be fixed in the resolution authorizing such assessments and any such assessment shall be payable in advance in monthly, quarterly, semi-annual or annual installments, as determined by the Board.
- g. **Duties of the Board of Directors.** The Board shall fix the date of commencement, and the amount, of the assessment against each lot for each assessment period at least thirty (30) days in advance of such date or period and shall, at that time, prepare a roster of the lots and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any owner. Written notice of the assessment shall be sent to every owner subject thereto not later than seven (7) days after fixing the date of commencement thereof. The mailing of such notice to the improvements constructed on a lot

shall be deemed sufficient notice to the owner, whether or not he is the occupant of such improvements.

The Association shall, upon demand at any time, furnish to any lot owner liable for said assessment, a certificate in writing signed by an officer of the Association, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

- h. **Effect of Non-payment of Assessment; the Lien, the Personal Obligation, Remedies of the Association.** If the assessment is not paid within thirty (30) days after the due date, which shall be set by the Board, the assessment shall bear interest from the date due at the rate of the higher of ten percent (10%) per annum or prime plus 1%, with prime as published in the Wall Street Journal (New York edition), and the Association may at any time thereafter bring an action to foreclose the lien against the lot in like manner as a foreclosure of a mortgage on real property, and/or a suit on the personal obligation against the owner(s), and there shall be added to the amount of such assessment the cost of preparing and filing the complaint in such action including a reasonable attorney's fee, and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and a reasonable attorney's fee to be fixed by the Court, together with the costs of the action.

The lien of the Association upon a lot shall be effective from and after recording, in the Public Records of Rockingham County, a claim of lien stating the description of the lot encumbered

thereby, the name of the owner, the amount and the date when due. Such claim of lien shall include only assessments which are due and payable when the claim of lien is recorded, plus interest, costs, attorney's fees, advances to pay taxes and prior encumbrances and interest thereon, all as above provided. Such claims of lien shall be signed and verified by an officer or agent of the Association. Upon full payment of all sums secured by such claim of lien, the same shall be satisfied of record.

- i. **Subordination to Lien of Mortgages.** The lien of the assessments for which provision is herein made, as well as in any other Article of this Declaration, shall be subordinate to the lien of any first mortgage to a federal or state chartered bank, life insurance company, federal or state savings and loan association or real estate investment trust. Such subordination shall apply only to the assessments which have become due and payable prior to the sale or transfer of such lot pursuant to foreclosure, and in any other proceeding in lieu of foreclosure of such mortgage. No sale or other transfer shall relieve any lot from liability for any assessments thereafter becoming due, nor from the lien of any subsequent assessment. The written opinion of either the Developer or the Association that the lien is subordinate to a mortgage shall be dispositive of any question of subordination.

## 5. **Exterior Maintenance Assessment:**

- a. **Exterior Maintenance.** In addition to maintenance upon the Common Area and/or upon easements, the Association may provide upon any lot requiring same, when necessary in the opinion of the Board to avoid blight and to preserve the beauty, quality and value of the lot, maintenance,

including paint, repair, roof repair and replacement, gutters, down spouts, exterior building surfaces, and yard cleanup, landscaping and/or maintenance.

- b. **Access at Reasonable Hours.** For the purpose of performing the maintenance authorized by this Article, the Association, through its duly authorized agents or employees, shall have the right, after reasonable notice to the owner, to enter upon any lot or the exterior of any improvements thereon at reasonable hours of the day.

## VII. EASEMENTS

1. **Utility Easements.** Easements for installation and maintenance of utilities, walkways, driveways, drainage facilities, sanitary sewer, water line, street lights, and community entrance sign and fencing and access to all lots are reserved as shown or described on the Plat and designated thereon respectively as Public or Private Drainage, Utility, Sanitary Sewer, Stormwater, Public Sidewalk and Waterline Easements. Easements for utilities and maintenance of utilities are reserved over the Lots as necessary for the benefit of said lots, said locations to be designated by Developer. Within these easements, no structure, planting, or other material shall be placed or permitted to remain which may obstruct or interfere with the installation and maintenance of said utilities or which may obstruct or interfere with the installation and maintenance of said utilities or access to lots. The easement area within each lot shall be maintained constantly by the Owner of said lot, except those easements for which a public authority, utility company, or municipality is responsible. Owners acknowledge and agree that said Easements may be subject to the requirements of the County of Rockingham for public easements in place and adopted by the County from time-to-time. The Developer and Association shall also retain all responsibility for the maintenance of all storm water management systems located on the lots and any offsite stormwater management improvements or facilities in accordance with the approved and installed original design plans, or future requirements imposed by Rockingham County or other governmental agency.

2. **Easements of the Developer/Association.** There is hereby reserved to the Developer and Association such easements as are necessary to perform the duties and obligations of the Association, including such access easements as are necessary for ingress, egress, and maintenance of the public streets.

3. **Pipes, Ducts, Cables, Wires, Conduits.** Each Owner shall have an easement in common with the Owners of all other lots to use pipes, wires, ducts, cables, conduits, telephone, and public utility lines. Developer and the Association, their agents, the County of Rockingham, and such telephone, electric, and other utility companies as may be appropriate, but no other person or entity without the consent of the Owner, shall have the right of access to each lot to inspect the same, to remove violations therefrom, and to maintain, repair, or replace same.

4. **Priority of Easements.** Each of the easements hereinabove referred to shall be deemed to be established upon the recordation of this Declaration and shall run with the land for the use and benefit of the lots superior to all other encumbrances which may hereafter be applied against or in favor of the lots or any portion hereof.

5. **Developer's Easements to Correct Drainage.** For a period of ten (10) years from the date of submission of each lot to this Declaration, Developer reserves an easement and right on, over, and under the ground within each Lot to maintain and to 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, to perform any grading of the land, or to take any other similar action reasonably necessary, following which Developer shall restore the affected property to its original condition as nearly as is practicable. Developer shall give reasonable notice of intent to take such action to all affected Owners, unless in the opinion of Developer an emergency exists which precludes such notice.

6. **Construction Easements and Rights.** Notwithstanding, any provision of this Declaration, so long as Developer is engaged in developing or improving any portion of Phase 1. Developer and its employees, agents,

and assigns shall have an easement of ingress, egress, and use over any portion of Phase 1 not conveyed as a Lot to an Owner for occupancy for (i) movement and storage of building materials and equipment, (ii) erection and maintenance of directional and promotional signs, and (iii) conduct of sales activities, including maintenance of model Units. Such easement shall be subject to such rules as may be established by Developer to maintain reasonable standards of safety, cleanliness, and general appearance of Phase 1.

7. **Easement to Inspect.** There is hereby created an easement in favor of the Association for ingress and egress on any lot (i) to inspect such property for alleged violations of the Declaration, based on formal, written complaints, and/or compliance with architectural standards and/or approved plans for alterations and improvements and (ii) to perform such maintenance as is required by this Declaration for such lot, provided the Owner of such lot is given written notice of the purpose and time of inspection at least three (3) days in advance thereof and such inspection is performed during reasonable hours.

8. **Easement for Governmental Personnel.** A right of entry on any lot is hereby granted to law enforcement officers and fire and rescue personnel as is needed to carry out their duties, including enforcement of cleared emergency vehicle access.

9. **Easement for Ingress and Egress over Private Streets; Sidewalks.** There is hereby created for all Lot Owners, Developer and the Association their heirs, successors, and assigns, a non-exclusive easement for ingress and egress over and across all private streets and sidewalks as created and shown on the Plat. Said easement of ingress and egress shall also be reserved to the reasonable and customary use of guests, invitees, customers and service providers of lot owners, Developer and the Association. The reasonable regulation of the private streets and sidewalks shall be governed by Developer and the Association at their discretion.

## VIII. MISCELLANEOUS

1. **Deemed to Constitute a Nuisance.** The result of every action of omission whereby any Covenant herein contained is violated in whole or

part is hereby declared to be and to constitute a nuisance, and every remedy allowed by law or equity against an owner, either public or private, shall be applicable against every such result and may be exercised by Developer or any owner of property subject to these Covenants.

2. **Enforcement.** The Developer, any owner and Rockingham County has the right to enforce these Covenants.

3. **Failure to Enforce Not a Waiver of Rights.** Any waiver or failure to enforce any provision of these Covenants in a particular situation shall not be deemed a waiver or abandonment of such provision as it may apply in any other situation or to the same or a similar situation at any other location in Phase 1 or of any provision of these Covenants. The failure of Developer or any owner to enforce any Covenant herein contained shall in no event be deemed to be a waiver neither of the right to do so thereafter nor of the right to enforce any other Covenant.

4. **Assignments of Developer's Rights and Duties.** Any and all of the rights, powers and reservations of Developer herein contained may be assigned to any person, corporation or association which will assume the duties of Developer pertaining to the particular rights, powers and reservations assigned, and upon any such person, corporation or association evidencing its consent in writing to accept such assignment and assume such duties as are given to and assumed by Developer herein. The term "Developer" as used herein includes all such assignees and their heirs, successors and assigns. Transfer or conveyance of any or all of the property subject to these Covenants shall not act as nor be construed as an assignment to or an assumption by the Grantee therein, of the rights, duties, obligations, powers or responsibilities of the Developer herein created. If at any time Developer ceases to exist and has not made such an assignment, a successor to Developer may be appointed by the new owner of the Developer's property.

The Developer may from time to time delegate any or all of its rights, powers, discretion and duties hereunder to such agent or agents as it may nominate. It may also permanently assign any or all of its powers and duties (including discretionary powers and duties), obligations, rights, title, easements, to associations or persons that will accept the same. Any such

assignment shall be in writing recorded among the Land Records of Rockingham County and the assignee shall join therein for the purpose of evidencing its acceptance of the same, and such assignee shall thereupon have the same rights, title, powers, obligations, discretion and duties as are herein reserved to the Developer, and the Developer shall thereupon be released therefrom.

5. **Mutuality, Reciprocity Runs with Land.** All covenants, conditions and agreements contained herein are made for the direct, mutual and reciprocal benefit of each and every part and parcel in favor of every other parcel; shall create reciprocal rights and obligations between the respective owners of all parcels and privity of contract and estate between all grantees of said parcels, their heirs, successors and assigns; and shall, as to the owner of each lot, his heirs, successors and assigns, operate as covenants running with the land, for the benefit of all other lots. The Developer reserves the right, however, from time to time hereafter to delineate, plat, grant or reserve within the remainder of Phase 1 not hereby conveyed such public streets, roads, sidewalks, ways and appurtenances thereto, and such easements for drainage and public utilities, as it may deem necessary or desirable for the development of Coffman's Corner (and from time to time change the location of the same) free and clear of these restrictions and Covenants and to dedicate the same to public use or to grant the same to Rockingham County and/or to appropriate public utility corporations.

6. **Paragraph Headings.** Paragraph headings, where used, herein, are inserted for convenience only and are not intended to be a part of this Declaration or in any way to define, limit or describe the scope and intent of the particular paragraph to which they refer.

7. **Right to Amend.** These Covenants may be amended or modified by the Developer, at its sole discretion, by subsequent instrument in writing recorded with the Land Records of Rockingham County, Virginia.

8. **Addition of Property.** Additional lands may be annexed to Phase 1 from time to time by the Developer, or its successors and/or assigns, by recording a "Declaration of Annexation" or "Supplemental Declaration" in the Land Records of Rockingham County, Virginia, subjecting the property to be annexed to the terms hereof. Any annexed land will be subject



to the Covenants and any amendments thereto.

9. **Effect of Invalidation.** If any provision of this Declaration is held to be invalid by any court, the invalidity of such provision shall not effect the validity of the remaining provisions hereof.

10. **Further Subdivision.** There shall be no further subdivision of any lot as shown on the plat of Phase 1 without the advance, express written consent of the Developer. In addition, such further subdivision, if approved by the Developer, shall be in compliance with all subdivision and zoning ordinances of Rockingham County, Virginia.

*[Remainder of page left blank intentionally.]*

**WITNESS** the following signatures and seals.

**DEVELOPER:**

**MELVIN & NAOMI REAL ESTATE, LLC**  
a Virginia limited liability company

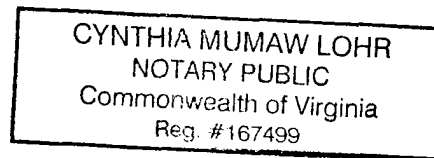
By: *Teresa C. Myers, Manager*  
TERESA C. MYERS, Manager

COMMONWEALTH OF VIRGINIA  
CITY OF HARRISONBURG, to-wit:

The foregoing instrument was acknowledged before me this 23rd  
day of February, 2016, by TERESA C. MYERS, Manager of Melvin &  
Naomi Real Estate, LLC, a Virginia limited liability company, on behalf of  
said company.

My commission expires: 6/30/2016

*Cynthia Mumaw Loehr*  
Notary Public



**MELVIN & NAOMI REAL ESTATE, LLC**  
a Virginia limited liability company

By: *Sharon C. Liskey, Manager*  
SHARON C. LISKEY, Manager

COMMONWEALTH OF VIRGINIA  
CITY OF HARRISONBURG, to-wit:

The foregoing instrument was acknowledged before me this 22nd  
day of February, 2016, by SHARON C. LISKEY, Manager of Melvin &  
Naomi Real Estate, LLC, a Virginia limited liability company, on behalf of  
said company.

My commission expires: 6/30/2016

*Cynthia Mumaw Loehr*  
Notary Public

CYNTHIA MUMAW LOHR  
NOTARY PUBLIC  
Commonwealth of Virginia  
Reg. #167499

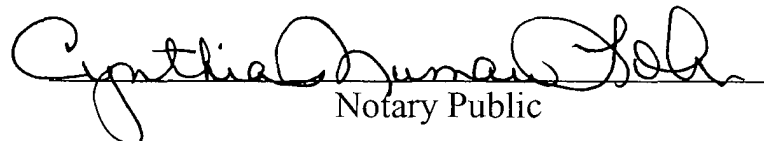
LENDER:  
**THE FIRST BANK AND TRUST COMPANY**

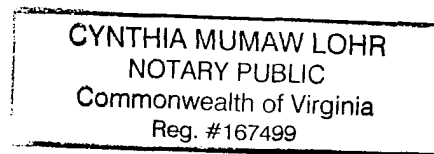
By: *Bradley F. Welch*  
Its: Vice President

COMMONWEALTH OF VIRGINIA  
COUNTY/CITY OF Harrisonburg, to-wit:

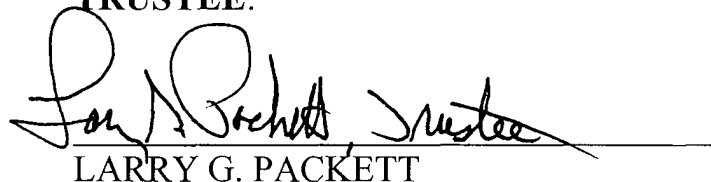
The foregoing instrument was acknowledged before me this 24th  
day of February, 2016, by Bradley T. Webb, as  
Vice President, of The First Bank and Trust Company, on  
behalf of said Lender.

My commission expires: 6/30/2016

  
Notary Public



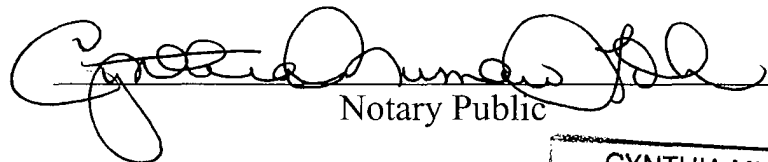
**TRUSTEE:**

  
LARRY G. PACKETT

COMMONWEALTH OF VIRGINIA  
CITY OF HARRISONBURG, to-wit:

The foregoing instrument was acknowledged before me this 24th  
day of February, 2016, by LARRY G. PACKETT, TRUSTEE.

My commission expires: 6/30/2016

  
Notary Public

