

CPJHS 7890-90-8700  
7890-64-8117

20101124000143640 1 / 67  
Bk: 2990 Pg: 642  
Hanover Co VA  
11/24/2010 10:23:58 AM  
DECL

## HICKORY HILL PROTECTIVE COVENANTS

THIS DECLARATION is made as of the 7<sup>th</sup> day of October, 2010 by Hickory Hill Partners, LLC, Virginia limited Liability Company (hereinafter referred as "Declarant").

### ARTICLE I

#### RECITALS

1.01 Ownership Declarant is the fee simple owner of certain real property (the "Property") consisting of 71 lots as shown on a certain plat of survey prepared by Balzer and Associates, Inc. dated Nov. 8 2010, entitled "Hickory Hill, Section 2, Beaverdam District, Hanover County, Virginia". And recorded in the Clerk's Office, Circuit Court, Hanover County, Virginia on the 24 day of Nov, 2010 in Plat Book 40 page 160 (the "Plat").

### ARTICLE II

#### GENERAL PROVISIONS

2.01 Establishment of Covenants Declarant hereby declares that the Property (as herein defined) shall hereafter be held, transferred, sold, leased, conveyed, financed, mortgaged and occupied subject to the covenants and provisions herein set forth, each and all of which is and are for, and shall inure to the benefit of and pass with, each and every parcel of the Property and all ground leasehold estates therein and shall apply to and bind the heirs, legal and personal representatives, assignees and successors in interest of any Owner (as hereinafter defined) thereof; provided, however, that any and all rights, powers and reservations of Declarant including but not limited to those relating to issuances of approval, enforcement, curing of defaults and rights of regulation according to this Declaration are personal to Declarant and may be transferred to its successor and assigns as contemplated in Section 7.03 hereof which taker may or may not own land in Hickory Hill.

2.02 Purpose of Covenants The general purpose of this Declaration is to provide that the Property which is and shall be known as Hickory Hill will be developed, improved and used in such a manner that:

- (a) The image of Hickory Hill as a high quality residential development will be created, preserved and enhanced;
- (b) Improvements (as hereinafter defined) located therein will provide a harmonious and appealing appearance and function;
- (c) The common areas and appurtenances thereto will be maintained and administered.

The specific purpose of this Declaration is to provide a means for creating, maintaining, controlling and preserving Hickory Hill as a high-quality residential development as permitted by the Zoning Ordinances (hereinafter defined) and these Protective Covenants.

**2.03 Definitions**

(a) **Association** "Association" shall mean the Hickory Hill Property Owners Association, Inc. created pursuant to Article VIII of these Protective Covenants.

(b) **Common Area** "Common Area" shall mean any land, improvement, right of way, or easement designated by Declarant for the use of all Owners (as hereinafter defined) of Lots (as hereinafter defined) in Hickory Hill. A Common Area shall be deemed sufficiently designated if labeled "Common Area" on a plat of all or a portion of the Property signed by and recorded by Declarant. For purposes of these Protective Covenants, Common Area shall not include any portion of a Site that the Owner thereof may designate as a common area for any purpose or in any other document unless such other document specifically declares such common area to be a Common Area within the scope of the Declaration and Declarant accepts such area as a Common Area.

(c) **Declarant** "Declarant" shall mean Hickory Hill Partners, LLC and its successors and its assigns pursuant to Article 7.03 hereof.

(d) **Improvements** "Improvements" shall mean and may include, but not be limited to, buildings, outbuildings, underground installations, slope alterations, dams, embankments, spillways, ponds, lakes, swimming pools, spas, tennis courts, recreational structures, sediment control devices, roads berms, driveways, parking areas, sidewalks, walking paths, street lights, fences, screening walls, retaining walls, stairs, decks, windbreaks, plantings, planted trees and shrubs, poles, signs, utilities, water lines, sewer, drainfield and septic systems, electrical and gas distribution facilities, heating, cooling and air circulation equipment and facilities, loading areas and all other structures or landscaping improvements of every type and kind initially or at any time thereafter placed or constructed on any Lot (as hereinafter defined).

(e) **Occupant** "Occupant" shall mean any person, corporation, partnership, or organization who or which has purchased, leased, rented, or is otherwise legally entitled to occupy and use any Lot (as hereinafter defined) or portion thereof.

(f) **Owner** "Owner shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Lot (as hereinafter defined) but excluding Trustees under Deeds of Trust and all others holding title merely as security for the performance of an obligation. No delegation by a fee simple owner shall relieve such fee simple owner from liability for the performance of such fee simple owner's obligations hereunder. In the event any Lot is jointly owned by two or more persons or entities then each shall be fully liable hereunder as an Owner.

  
20101124000143640 2 / 67  
Bk: 2990 Pg: 643  
Hanover Co VA  
11/24/2010 10:23:58 AM  
DECL

(g) Property "Property" shall mean the real property described in Section 1.01 and any additional real property subjected to these Protective Covenants pursuant to the provisions of this Declaration.

(h) Lot "Lot" shall mean a lot owned in fee simple by Declarant or any other Owner in Hickory Hill as shown and designated on the Plat as described in Section 1.01. One Owner may own more than one Lot and such Lots shall not merge and shall remain separate Lots in spite of the fact that two or more of same may have a common boundary line.

(i) Preservation Lot "Preservation Lot" shall mean the Lot shown as the Preservation Lot on the subdivision plat.

(j) Supplemental Declarations "Supplemental Declarations" shall mean any declaration of covenants, conditions and restrictions subsequently imposed upon all or any portion of the Property by Declarant provided such subsequent declaration specifically provides that it is supplemental to this Declaration.

(k) Survey "Survey" and "Surveys" shall mean collectively the subdivision plat entitled "Hickory Hill Section 2", Beaverdam District, Hanover County Virginia, and subsequent sections, a copy of which survey was recorded in the Office of the Clerk of the Circuit Court of the County of Hanover on Nov 24, 2010 in Plat Book 40 page 160.

(l) Zoning Ordinances "Zoning Ordinances" shall mean (i) the ordinance adopted by the Board of Supervisors of Hanover County, Virginia, concerning rezoning of the Property or portions thereof, and any amendments or modifications thereto, and rezoning of the same or other portions of the Property, in any such case only with the consent of Declarant and (ii) such other zoning, subdivision, or land use ordinances hereinafter adopted by the Hanover County Board of Supervisors to the extent applicable to the Property. Zoning Ordinances shall include, without limitation, the conditions proffered by the zoning applicant and made a part of the Zoning Ordinances, and any amendments of the foregoing proffers.

(m) Builder "Builder" shall mean and refer to any natural person or entity who is duly licensed as a contractor and who purchases one (1) or more Lots for the purpose of constructing improvements for later sale to consumers in the ordinary course of such person's or entity's business. Any natural person or entity occupying or leasing a Lot for residential purposes shall cease to be considered a Builder with respect to such Lot immediately upon occupancy of the Lot for residential purposes, notwithstanding that such natural person or entity originally purchased the Lot for the purpose of constructing improvements for later sale to consumers.

### ARTICLE III



20101124000143640 3 / 67

Bk: 2990 Pg: 644

Hanover Co VA

11/24/2010 10:23:58 AM

DECL

## PERMITTED AND PROHIBITED USES

**3.01 Permitted Uses** The Property is to be used solely for high-quality residential purposes in accordance with the terms and conditions of the Zoning Ordinances, of these Protective Covenants, and of Supplemental Declarations recorded subsequently hereto by Declarant as to various phases and subdivisions of the Property provided such subsequent covenants, conditions and restrictions expressly state that they are subject to these Protective Covenants. Each Lot (other than the Preservation Lot) may be used only as a single family residence.

### **3.02 Prohibited Uses**

(a) No operations or use shall be permitted or maintained which is dangerous, unlawful or unsafe or which causes or produces any of the following effects discernible outside of buildings or affecting any adjacent Property:

(1) Noise or sound including, without limitation, music whether prerecorded or performed live that is objectionable because of its volume, duration, or frequency; (unless such noise is part of a community or public function in Common Areas and/or preservation areas)

(2) Smoke;

(3) Noxious, toxic, or corrosive fumes or gases;

(4) Obnoxious odors;

(5) Unusual fire or explosive hazards;

(6) Violations of applicable laws, ordinances and regulations;

(7) Any other activity which creates a nuisance, in noxious or offensive or is not consistent with the intent or purpose of these Protective Covenants;

(8) No clotheslines or similar type structures shall be permitted on any lot so as to be visible from the street.

(b) No manufacturing or industrial uses or operations may be conducted or permitted on any Lot.

(c) The following shall be prohibited unless expressly approved by the Architectural Review Committee as hereinafter set forth:

(1) Fences;

(2) Exterior antenna other than television antenna;

(3) Satellite dishes unless screened as not to be visible from the street or any other Lot;

(4) Above ground swimming pools;

(5) Exposed masonry other than brick or stone;

(6) Garages and garage doors attached to the main residence that front on a street;

(7) See Architectural Review Book for specifications of the Architectural Review Committee.



20101124000143640 4 / 67

Bk: 2990 Pg: 645

Hanover Co VA

11/24/2010 10:23:58 AM

DECL

(d) Unless specifically authorized in writing by Declarant, which authorization shall be at their sole discretion, no animals, horses, livestock cattle, hogs, goats or poultry of any kind shall be raised, bred or kept on any lot. Excluding the Preservation lot, no more than 5 adult dogs, cats or other household pets may be kept on any Lot. No dog kennels of any type shall be allowed.

(e) All trash, waste, garbage or other items to be disposed of must be kept in sanitary containers in the rear yard of each residence. No rubble shall be dumped on any Lot.

(f) No unlicensed motor vehicle shall be parked on any Lot for more than 30 days unless kept in an enclosed garage. No trailer, recreational vehicles (RV's), boats or commercial vehicles shall be parked for more than 12 hours in any one seven (7) day period on any Lot unless same is kept in enclosed garage or in a rear driveway area lying behind the front foundation line of the house, so as not to be visible from the street or unless appropriate screening is provided to shield the view of such from any houses on neighboring Lots.

(g) All on-street parking of motor vehicles is prohibited except for motor vehicles of temporary, non-resident, invited guests or contractors.

(h) Mailboxes are prohibited except for the standard Hickory Hill mailboxes and posts including paper box as designed by Declarant.

(i) No structures, statues, flagpoles, art, fountains, boulders, paving or any other foreign or decorative objects may be located between the street and rear building line of the main residence without the prior written permission of the Architectural Control Committee.

**3.03 Subdivision** Except in accordance with the Zoning Ordinances, and except with Declarant's consent in writing, which consent will be in Declarant's sole and absolute discretions, no Lot shall be subdivided, no dedication of any part of a Lot for a public or private road shall be made and no private right-of-way shall be granted; provided, however, that Declarant reserves the right at any time and from time to time to dedicate any portions of the Property owned by it as a public right of way and upon such dedication these Protective Covenants will thereafter no longer affect or apply to the portions of the Property so dedicated and accepted. Any Lot that is subdivided in accordance with this Section 3.03 shall result in the creation thereby of one or more new Lots for purposes of this Declaration. Declarant may express its consent thereto by signing and recording a plat of survey for such new Lots which plat of survey shall automatically result in the creation of additional Lots.

### **3.04 Lot Maintenance**

  
20101124000143640 5 / 67  
Bk: 2990 Pg: 646  
Hanover Co VA  
11/24/2010 10:23:58 AM  
DECL

(a) Vacant Lot The Owner of any Lot that is not Improved or on which the Improvements have been destroyed by fire or other casualty, and on which Improvements are not under construction shall maintain its Lot in such a manner that no trash and debris will be allowed to collect and to otherwise provide upkeep to the Lot so that the Lot will not be hazardous and will at all times present a neat and attractive appearance.

(b) Improved Lot The Owner of any Lot shall, during and after completion of construction of Improvements keep the premises, Improvements and appurtenances in a safe, clean, wholesome condition and comply in all respects with all governmental, health, fire and police requirements and regulations and shall remove at his or its own expense any rubbish of any character whatsoever which he may have accumulated on his Lot. The Owner shall perform all exterior maintenance and repairs to each improved Lot including lawn and garden cutting, mowing, trimming, clipping, replacing of dead or diseased shrubs, cleaning of gutters and downspouts, painting, repairing to roofs, siding, chimneys, gutters, downspouts, decks, the exterior of any balconies, exterior stairs and railing.

3.05 Common Area Maintenance The Association shall be responsible for the upkeep of the Common Areas.

## ARTICLE IV

### REGULATION OF IMPROVEMENTS

4.01 Standards The Architectural Review Committee (hereinafter defined) shall have the right to approve or disapprove any submitted plans for improvement if the Committee, in its sole discretion, determines that such plans are not in the best interest of the contemplated development of the Property. The approvals set forth in Article V, together with compliance with all applicable laws, ordinances, and regulations, must be obtained prior to beginning construction of any Improvements on any Lot.

4.02 Completion of Construction After commencement of construction of any Improvements, the work thereon shall be diligently and continuously prosecuted, to the end that the Improvements shall not remain in a partly finished condition any longer than reasonably necessary for completion thereof. Once commencement of construction of any Improvements occurs, the Owner of the Lot on which such construction is taking place shall diligently and continuously prosecute the completion of such Improvements and will not allow such construction to be discontinued for a period longer than ninety (90) days without the prior written consent of Declarant. In the event construction is discontinued due to strike(s) or labor dispute(s), inability to obtain labor or materials, or reasonable substitute there from, acts of God, governmental restriction or other reasons beyond the control of the Owner, this prohibition shall not apply so long as the Owner notifies Declarant of the reason for the discontinuance, the steps being taken to correct the reason for discontinuance and the anticipated amount of time before construction



20101124000143640 6 / 67

Bk: 2990 Pg: 647

Hanover Co VA

11/24/2010 10:23:58 AM

PDF

will continue, and such notices is updated every thirty (30) days. The Owner of each Lot, or part thereof, shall at all times keep contiguous public and private streets and Street Rights-of-Way free from any dirt, mud, garbage, trash or other debris which is occasioned by construction of Improvements.

**4.03 Excavation** No clearing or excavation shall be made except in connection with the construction, maintenance or repair of an Improvement including landscaping; and upon completion thereof exposed openings shall be backfilled, and disturbed ground shall be leveled, graded and seeded, as provided on the plans for landscaping required by Section 4.04 hereof.

**4.04 Landscaping** Every Lot shall be landscaped and maintained thereafter in a sightly and well kept condition. The required rear and side yard area of each lot, as required by the zoning ordinance, along with a minimum 50 feet front setback shall be selectively cut with no cutting of trees of 5-inch caliper or greater to be allowed. Additional clearing may be allowed (i) when said areas may be used for driveways, wells, drainfield, drainage and utility easement when necessary for dwelling or all other outbuilding construction and/or (ii) when required by the County of Hanover, and then only to the minimum extent necessary, except when cutting is permitted in accordance with approved grading plans, issued by the Public Works Department. The foregoing shall not prohibit the removal of dead or diseased trees. In addition, trees may be cut wherever necessary to establish required storm water detention, or drainage facilities.

**4.05 Signs** No outdoor signs shall be permitted without the written consent of Declarant or the Committee except: (1) a "for sale" sign not exceeding ten square feet in size may be placed on any Lot while same is being offered for sale; (2) appropriate signage at the entrances and/or other locations designating the Property as Hickory Hill or various sections of Hickory Hill, may be erected by Declarant or the Association; (3) house numbering and street signs may be erected by Declarant or the Association; and (4) appropriate signs to regulate traffic and the use of the common areas may be erected by Declarant or the Association.

**4.06 Storage** Except during the construction of Improvements, no materials, supplies or equipment, shall be stored in any area except inside an approved and enclosed building.

**4.07 Specific Requirements** Notwithstanding the foregoing, the following shall be required of all improvements on each Lot:

(a) All Lots must have a driveway and such driveway must be constructed of a hard surface, including, asphalt, concrete, brick, or some other hard surface specifically approved by the Committee:

(b) All Lots must have a hard surface walk either from the fronting street or the driveway, such walk to be constructed of asphalt, concrete, brick or some other hard surface specifically approved by the Committee;

  
20101124000143640 7 / 67  
Bk: 2990 Pg: 648  
Hanover Co VA  
11/24/2010 10:23:58 AM  
DECL

(c) All Lots must be improved with a front yard postlamp;

(d) All structures erected on a Lot must incorporate a minimum of thirty (30) year asphalt shingles as roofing material or some other roofing material specifically approved by the Committee:

(e) The primary exterior wall surface of any residence constructed on a Lot must be at least 50% brick unless the house is constructed of stucco or some other surface specifically approved by the Committee. No cinder block, cement block, solite block, or asbestos shingles shall be permitted for the finished exterior of any structure;

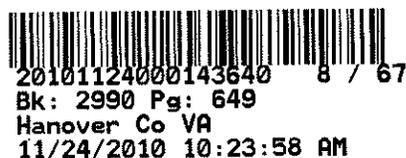
(f) The minimum dwelling size shall be 2,000 square feet for a one-story dwelling and 2,500 for a one and one-half or two story dwelling. Minimum floor area shall not include garages or breezeways in any category. Floor area shall be measured along the exterior walls of the structure.

(g) The purchaser of Lot 71 Section 2 of Hickory Hill shall put an open space preservation easement on the lot that conforms to the standard designated by the Virginia Board of Historic Resources (Board). The easement shall be recorded with the DHR to preserve the historic architectural, archeological, landscape, and cultural resources located on the portion of the property comprising lot 71. Within 12 months from the closing date on Lot 71, Section 2, the Virginia Department of Historic Resources shall receive a letter of intent from the purchaser to start the easement process.

**4.08 Specific Prohibitions** Without limiting the generality of any of the foregoing, the following use restriction shall be maintained and enforced with respect to the Property:

(a) **Temporary Improvements** No temporary buildings or other improvements of a temporary nature, including without limitation trailers, tents and shacks, shall be permitted on the Property except as may be permitted by the Committee (as hereinafter defined) in its sole and absolute discretion. Temporary improvements used solely in connection with the construction of approved Improvements may be permitted provided they are located reasonably inconspicuously and are removed immediately after completion of such construction.

(b) **Service Lines** No "service" lines shall be constructed, placed or maintained anywhere in or upon the Property unless the same shall be contained in conduits or cables constructed, placed and maintained underground or concealed in, under or on buildings or other approved Improvements, except that electrical transformers may be permitted if properly screened and approved by the Declarant. Nothing herein shall be deemed to forbid the erection and use of temporary power or telephone service poles incident to and during the construction of approved Improvements, nor the installation of approved permanent outdoor safety light poles. The foregoing shall not apply to "transmission lines" presently existing on the Property. As used herein, the term "service line" shall include electric, cable television and



telephone poles, wires, cables, conduits and/or equipment or other devices for the conveyance and use of electricity, telephone, radio, television and other energy transmission or communication signals on any Lot or part thereof. As used herein, the term "transmission line" shall include such master electric, cable television and telephone poles, wires, cables, conduits, and/or equipment or other devices for the conveyance and use of electricity, telephone, radio and/or television signals to and across the Lots or parts thereof, and from which the "service lines" run. All junction and access boxes shall be screened with appropriate landscaping. The necessity for utility connection, meter boxes, etc. should be recognized and integrated with the architectural style and site plan for each site.

(c) Garages Garage doors on garages of the homes constructed shall not front on a street. Detached garages may have the garage doors front on a street so long as the garage is at least 30 feet behind the furthest rear corner of the dwelling. All detached garages must first be approved by the Committee as provided herein.

(d) No timbering operations or clearing shall be allowed immediately adjacent to Lot 71 Section 2.

(e) Additional restrictions have been recorded in order to preserve 58.71 acres of open space and a portion of the Preservation lot as shown in Exhibit C and as described as Compensation Credit for preservation in perpetuity in its natural state

## ARTICLE V

### APPROVAL OF PLANS AND COMMENCEMENT OF CONSTRUCTION

**5.01 Plans** Before commencing the construction or alteration of all initial or any subsequent or replacement buildings, enclosures, fences, parking facilities, storage yards or any other structures or any landscaping or any other Improvements on or to any Lot including, without limitation all replacements thereof and exterior renovations, reconstruction and repairs thereto the Owner of every such Lot shall first submit preliminary and final plans (including site grading and landscape plans) and specification, for all of the foregoing, all in duplicate, to an architectural review and control committee (hereinafter referred to as "Committee") for its written approval as hereinafter provided. The membership of the Committee shall be initially comprised of Todd D. Rogers and Michael B. Chenault. One copy of submitted plans, specifications, and landscape plans, both preliminary and final, shall become the sole property of the Committee. The Committee shall be organized immediately upon the recordation of this Declaration. The Committee will select its own chairman and may adopt its own rules of order and the chairman himself or upon the request of any member thereof shall call a meeting of the Committee with not less than twenty-four (24) hours prior written notice thereof to each member. A quorum of the Committee shall consist of a majority of its members or one member in the event the Committee consists of two persons or less and a quorum may act as the Committee at any meeting at which a quorum is present.

Provided, however, that the Committee may designate and empower one or more of its members to act as the Committee in which event the member so acting shall exercise all power and authority of the Committee. The Committee may engage and seek advice from professional persons including without limitation, attorneys, architects, engineers, surveyors, landscape architects and land planners in connection with the review of submitted plans and specifications in which event the fees of such professional persons may be charged to and paid by any Owner who has submitted such plans as a condition to approval. The Committee may impose such reasonable fees for its services as it may deem appropriate which fees shall be paid by any Owner who has submitted plans as a condition to approval. Other organizational and operational matters shall be as determined by the Committee at its meetings. The Committee will adopt an Architectural Control Book which identifies written design criteria to be used by the Committee. The Architectural Control Book may be modified from time to time by the Committee. In the event of the death or resignation of one or all of the members of the Committee the Board of Directors of the Association shall elect replacement members, provided, however, that so long as the Declarant is the owner of at least one Lot the Declarant may appoint such replacement members of the Committee. In the event the Declarant fails to appoint replacement members within 30 days of resignation or death of a member or members then the Board of Directors of the Association shall elect replacement members. At such time as the Declarant no longer owns a Lot the members of the Committee shall be elected by the Board of Directors of the Association. However, notwithstanding anything herein to the contrary, approval of plans for initial construction of Improvements on an unimproved Lot, whether the Lot is owned by a Builder or by an individual Lot Owner, shall continue to be within the sole and absolute discretion of the Declarant even after Declarant ceases to own a Lot and the control of the Committee has been passed to the Board of Directors of the Association. The initial mailing address of the Committee is: Hickory Hill Review Committee c/o Todd D. Rogers, 9235 Shady Grove Road, Suite 109, Mechanicsville, Virginia 23116. The Committee may change its address at any time without notice.

#### 5.02 Approval Procedures and Requirements

(a) No Improvements, as defined herein, shall be constructed, erected, placed or altered on any Lot until preliminary and final plans and specifications for the Improvements showing such details and matters as may from time to time be established by the Committee, shall have been submitted to and approved in writing by the Committee.

(b) The procedure for obtaining approvals shall be as follows: The Owner of each Lot will submit an application (copy attached as Exhibit "D") for the Improvements to be constructed or installed on the Lot to the Committee. Not later than twenty-one (21) business days after the date the Committee actually receives the application with all appropriate attachments, the Committee will give the Owner written notice of approval or disapproval.

  
20101124000143640 10 / 67  
Bk: 2990 Pg: 651  
Hanover Co VA  
11/24/2010 10:23:58 AM  
DECL

(c) Nothing contained in this Declaration shall prohibit the reconstruction or replacement of Improvements on any Lot, in the event the existing Improvements are destroyed by fire, wind, storm or other such hazard or in the case of landscaping by drought, decay or other cause; provided, however, that the covenants and conditions contained herein including, but not limited to, the Committee's approval requirements shall continue to apply to the Lot and any reconstruction of Improvements shall be performed in accordance with the terms hereof. In the event any Improvements are destroyed or damaged either in whole or in part, the Owner of the Lot on which such damage or destruction occurs shall repair (including any applicable rebuilding) such Improvements within a reasonable period of time thereafter subject in all events to the terms and conditions of these Protective Covenants; provided however, that if any such Improvements are totally damaged or destroyed or partially damaged or destroyed so as to make the cost of repair excessive and the Owner does not desire to so repair and rebuild such Improvements, then such damaged or destroyed Improvements, and such other Improvements on the same Lot of which such damaged and destroyed Improvements are an integrated part shall be immediately and completely razed, dismantled and removed completely from the Lot, the Lot shall be completely cleared of any and all debris and the Lot shall then be landscaped by the Owner pursuant to plans therefore submitted to and approved by the Committee as contemplated herein. For purposes of this Declaration, total damage or destruction shall mean that the Improvement is damaged or destroyed to such an extent that the Owner in the reasonable exercise of his or its judgment can no longer use or occupy such Improvement for its intended purpose.

**5.03 Time for Approval** If the Committee fails either to approve or to disapprove the application within twenty-one (21) business days after the Committee has actually received such application with all appropriate attachments such application shall be deemed approved by the Committee

**5.04 Disapproval** Whenever the Committee disapproves such applications, the disapproval shall be accompanied by a written statement of the reason or reasons for such disapproval and such other information in connection wherewith as is otherwise provided for in the Article V.

**5.05 Limitation of the Committee's Liability** Neither the Committee nor any member thereof, or its or their successors or assigns, shall be liable in damages to anyone submitting plans and specifications to them for approval, or to any Owner or Occupant of land affected by this Declaration, by reason of a mistake in judgment, negligence, variance, inconsistency or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve any such plans and specifications. In the event any member of the Committee is named as a party in any actual or threatened legal action on account of his membership in the Committee or of any action or non-action which he has taken or not taken as a member of the Committee in good faith then the Association shall pay such members reasonable attorney's fees and costs incurred as a result of any such action. Every person, corporation, partnership or organization who submits plans and specifications to the Committee for approval agrees, by submission of



such plans and specifications, and every Owner of any of the Property agrees by acquiring title thereto or an interest therein, that he or it will not bring any action, proceeding or suit against the Committee or any member thereof to recover any such damages. The Committee's approval of any building plans, specifications, site or landscape plans or elevations or any other approvals or consents given or requirements imposed or suggested in connection therewith by the Committee pursuant hereto or otherwise shall not be deemed a warranty, representation or covenant that such buildings, landscaping or other Improvements or other action taken pursuant thereto or in reliance thereon complies with, or is not in violation of, any applicable laws, rules or regulations, and by taking title to or leasing any part of the Property the Owner and/or Occupant, for themselves and their heirs, successors and assigns, do hereby expressly release and relieve Declarant, the Committee and all other members of the Committee of any and all liability in connection therewith.

**5.06 Easements and Common Area Dedications** As a prerequisite of approval of plans and specifications, the Committee shall have the power to require the Owner who has submitted plans and specifications to grant easements for water lines, sanitary sewers, storm drainage facilities, underground telephone and electric power lines and other public utilities and to dedicate real estate as a Common Area.

**5.07 Time Limitation** All approvals issued by the Committee as provided for in this Article V shall be effective for a period of one year from the date approval is given or deemed to have been given as provided in Section 5.03. In the event construction of the work called for by the plans and specifications approved has not been substantially completed within said one year period then approval shall be deemed expired and no construction shall thereafter commence unless a written renewal of such prior approval is granted by the Committee upon application of the Owner according to the method for submission of original plans and specifications as provided for in this Article V.

## ARTICLE VI

### COMPLIANCE AND ENFORCEMENT

**6.01 Reciprocal Right; Covenants Run with Land** Except as otherwise provided for herein, all restrictions, conditions, covenants and agreements contained herein are made for the direct, mutual and reciprocal benefit of each and every Lot or in favor of every other Lot or part thereof; shall create reciprocal rights and obligations between the respective Owners of all Lots and privity of contract and estate between all Owners of all Lots, 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 or parts thereof.

**6.02 Attorney's Fees** In any legal or equitable proceeding for the enforcement of or to remedy the violation of these covenants or any provision hereof, the losing party

or parties shall pay the reasonable attorney's fees and costs of the prevailing party or parties, in such amount as may be fixed by the court in such proceeding. Such fees upon appropriate docketing of a judgment to such effect shall become a lien against the Lot (if any) of the losing party. All remedies provided herein and/or otherwise available, at law or in equity, shall be cumulative and not exclusive.

**6.03 Inspection** Declarant, the Committee and authorized agents of the Association may from time to time at any reasonable hour or hours and upon prior reasonable notice to the Owner, enter upon and inspect any Property or Improvements subject to these Protective Covenants to ascertain compliance therewith.

**6.04 Compliance Enforcement** Every Owner shall comply with all provisions of this declaration. Any lack of such compliance shall be grounds for an action or suit to recover sums due, for damages and for injunctive relief or for any other remedy available at law or in equity including, without limitation, specific performance.

**6.05 By Whom Enforceable** Subject to the limitations set forth herein these covenants may be enforced by the Association, by any managing agent on behalf of the Association, by the Declarant, by the Committee or in any proper case by one or more aggrieved Owners, but none of them shall have any obligation to do so nor be liable to any one in the event of their failure so to do.

**6.06 Failure to Enforce Not a Waiver of Rights** The failure of Declarant, the Committee, the Association or any Owner to enforce any covenants herein contained shall in no event be deemed to be a waiver of the right to do so thereafter nor of the right to enforce any other provision of these Protective Covenants.

**6.07 Right to Cure** In the event the Owner of any Lot fails to remedy any default, deficiency or violation of these Protective Covenants then Declarant or the Association (and not any Owner, Occupant or any other person or entity) shall, in addition to all other remedies provided for herein, have the right, privilege and license to cure such default, deficiency or violation and to make and perform any and all reasonable maintenance, repairs or correction including without limitation, the destruction and removal of any Improvements constructed without approval of the Committee as provided in Article V hereof, and the costs and expenses thereof, including the reasonable attorney's fees of Declarant or the Association, as the case may be, shall be deemed a special assessment against the Lot and enforceable as provided in Article VIII hereof. Before any such action is taken by the Association the Owner shall be given an opportunity to be heard and to be represented by counsel before a meeting of the board of directors. Notice of such hearing shall be hand delivered to the Owner or mailed by registered or certified mail, return receipt requested, to the Owner at the address of record with the Association at least fourteen (14) days prior to the hearing.

ARTICLE VII



20101124000143640 13 / 67  
Bk: 2990 Pg: 654  
Hanover Co VA  
11/24/2010 10:23:58 AM  
DECL

**TERM, MODIFICATION AND ASSIGNMENT**  
**OF DECLARANTS RIGHTS AND DUTIES**

**7.01 Term** Unless extended, modified, amended or terminated as provided in Section 7.02 hereof this Declaration, every provision hereof and every covenant, condition and restriction contained herein shall continue in full force and effect until \_\_\_\_\_ 2040 provided, however, that unless terminated at the conclusion of the present or any extension term by a majority vote the total votes available to be voted for Class A directors as described in Section 8.03 hereof, this Declaration shall continue thereafter for successive extension terms of five (5) years each. The vote shall be in writing and shall be certified to be correct by the Board of Directors of the Association which shall be prima facie evidence of the truth of the matter certified.

**7.02 Modification** This Declaration, or any provision hereof, may be extended, modified or amended (but not terminated completely except as provided for in Section 7.01 or this Section 7.02), as to the whole of the Property or any portion thereof, as to any extension, modification or amendment, the vote of 67% of the total votes available to be voted as described in Section 8.03 and as to the termination hereof the vote of 80% of the total votes available to be voted as described in Section 8.03. The vote shall be in writing or shall be certified to be correct by the Declarant or by the Board of Directors of the Association which certification shall be prima facie evidence of the truth of the matter certified. Notwithstanding the foregoing for so long as Declarant, owns any Lot (i) no such extensions, modification, amendment or termination shall be effective without the written approval of Declarant, and (ii) Declarant may at any time, at Declarant's sole and absolute discretion, extend, modify, amend or terminate this Declaration as to any Lot. Amendments can not conflict with the "Zoning Ordinances".

**7.03 Assignment of Declarant's Rights and Duties** Any and all rights, powers, easements and reservations of Declarant herein contained or hereafter granted to Declarant pursuant to the terms and provisions of this Declaration may be assigned in whole or in part to any person, corporation, partnership or organization (including, but not limited to, the Committee or the Association) which will assume the position of Declarant pertaining to the particular rights, powers, easements and reservations assigned, and upon any such person, corporation, partnership or organization's evidencing its consent in writing to accept such assignment and assume such position, he or it shall, to the extent of such assignment, have the same rights, powers, easements and reservations as Declarant and be subject to the same obligations, if any, which then exist by reason of these Protective Covenants. Upon the occurrence of such assignment to any person or entity than the Association, Declarant will serve written notice thereof on all then Owners in accordance with Section 10.05 hereof, or give record notice to all Owners by recording a notice of such assignment in the Office of the Clerk of the Circuit Court of County of Hanover. In the event of an assignment to the Association, then the Association shall be responsible for giving or recording such notice. Upon the occurrence of such assignment Declarant and agents shall be released and relieved from



20101124000143640 14 / 67

Bk: 2990 Pg: 655

Hanover Co VA

11/24/2010 10:23:58 AM

DECL

any and all liability and obligations imposed upon it as the Declarant by this Declaration occurring subsequent to the date of such assignment.

## ARTICLE VIII

### OWNERS ASSOCIATION

**8.01 Creation** The Declarant will, within one hundred and twenty (120) days of the recordation of the subdivision plat in the Circuit Court Clerk's Office of Hanover County, Virginia, cause to be incorporated under the laws of the Commonwealth of Virginia, a non-stock corporation to be named Hickory Hill Property Owners Association or a similar name (the "Association"). The Association will be governed by a board of directors. The primary purpose of the Association is to provide for the use, care, maintenance, repair and improvement of the Common Areas and slave cemetery, and the road embankment identified in Exhibit "F", Maintenance and Easement Agreement for Dams Appurtenant to a State Maintained Road. In connection therewith, it may provide for capital reserves for this purpose, employ employees, engage professional persons and engage professional management to assist in the operation of the Association and borrow funds as it deems prudent and necessary to run the affairs of the Association. The Association will be governed by the provisions of its Articles of Incorporation and Bylaws which shall be consistent with the provisions of this Article VIII.

**8.02 Members** Upon organization of the Association, all Owners of Lots shall upon becoming an Owner, automatically become members of the Association. Membership in the Association shall be appurtenant to and may not be severed from record title to a Lot. Ownership of a Lot shall be the sole qualification for membership in the Association. There shall be two classes of membership, Class A and Class B, with Declarant constituting Class B and Declarant (so long as it is an Owner) and all other Owners constituting Class A as specified in Section 8.03 hereof.

#### **8.03 Board of Directors**

(a) The initial board of directors will consist of three (3) directors who will be named by Declarant and set forth in the Articles of Incorporation. The terms of all directors shall be three (3) years unless otherwise provided in the Articles of Incorporation of the Association or any amendments thereto. Following the termination of Class B as described in Section 8.03(b), the Association may, by vote of a majority of the Class A members cast as described in Section 8.03(c) increase the number of directors to five and provide for staggered terms of directors. Said majority vote shall be sufficient to support any amendment to the Articles of Incorporation required for such purpose.

(b) Upon expiration of the term of the initial board of directors and thereafter Declarant, as the sole member of Class B, will elect or designate one member of the



20101124000143640 15 / 67  
Bk: 2990 Pg: 656  
Hanover Co VA  
11/24/2010 10:23:58 AM

board of directors. The members of Class A will elect or designate the remaining two (2) directors except as hereinafter provided. For so long as Declarant is the owner of any Lot, Declarant shall be entitled to designate one of the Class A directors. At such time as Declarant does not own a Lot, Class B shall cease to exist and Class A shall be the only Class of members of the Association. The number and terms of office of Class A directors will not be changed so long as Declarant is entitled to designate any directors and in all events the above referenced ratio between Class B and Class A directors will not be changed so long as Class B continues to exist. All Class A directors which Declarant is not entitled to name as provided in this Section shall be elected as provided hereinafter.

(c) Subject to the above, each Class A member of the Association shall be entitled to vote for election of Directors as follows: each Owner of a Lot shall be entitled to one vote per Lot. Owners entitled to vote may give a written proxy to any other Owner entitling such Owner to cast votes by proxy. The membership books will be closed and adjustments in each member's voting rights will be made on the above basis by the Board of Directors 90 days prior to each annual meeting of the members or upon such date closer to the meeting as may be required by statute then in effect.

#### 8.04 Adoption and Enforcement of Rules

(a) The board of directors of the Association shall have the power to establish, adopt, and enforce rules and regulations with respect to use of the Common Areas and with respect to such other areas of responsibility assigned to the Association by the Declaration. Rules and regulations may be adopted by resolution and shall be reasonably published or distributed to the Owners or posted in a conspicuous place or places in the Common Areas. The members of the Association may, by a majority of the members present in person or by proxy constituting a quorum for the conduct of business as provided in the Bylaws of the Association, at a meeting convened in accordance with the provisions of the Bylaws of the Association and called for that purpose, repeal or amend any rule or regulation adopted by the board of directors. Rules and regulations may be enforced by any method normally available to the owner of private property in Virginia, including, but not limited to, application for injunctive relief or damages, during which the court may award to the Association court costs and reasonable attorney's fees. Votes of members shall be cast and counted in the same manner as votes for Class A directors as described in Section 8.03 hereof.

(b) In addition to other remedies available to it, the board of directors of the Association shall also have the power to seek injunctive relief from the circuit court of the County of Hanover against any Owner for any violation of the Declaration or rules and regulations for which the Owner or his family members, tenants, guests or other invitees are responsible. Before such injunctive relief is sought, the Owner shall be given an opportunity to be heard and to be represented by counsel before the board of directors. Notice of a hearing shall be hand delivered to the Owner or mailed by registered or certified mail, return receipt requested, to the Owner at the address of record with the Association at least fourteen days prior to the hearing. The Association



20101124000143640 16 / 67

Bk: 2990 Pg: 657

Hanover Co VA

11/24/2010 10:23:58 AM

may recover from the Owner its costs and reasonable attorney's fee in enforcing this Section.

#### 8.05 Funding; Assessments

(a) Assessments Funds to operate the Association will be provided by assessment of the Owners. The amount of such assessment shall be fixed by the Board of Directors. At or before the annual meeting of members the Board of Directors shall submit to the members its estimate of the total cost to be incurred by the Association for the ensuing year, and each Owner by virtue of ownership of a Lot shall thereupon become liable for and be assessed for his or its pro rata share of such total based upon the ratio of such Owner's vote or votes for Class A member of the Board of Directors of the Association as set forth in Section 8.03 (c) to the total number of such votes, which shall be payable as determined by the Board of Directors. Annual assessments for each year shall be due and payable on January 25<sup>th</sup> unless otherwise determined by the Board of Directors. Should the owner of such lot be a builder then his or her assessment shall become due when the certificate of occupancy is issued for the house or December 30<sup>th</sup> of that assessment year whichever date comes first. For purposes of such assessment, Declarant shall be deemed a member to the same extent as any Owner with respect to any Lot owned by it except as otherwise provided for herein. Declarant may require that each initial purchaser of a Lot from Declarant contribute an initial cash payment to the Association at the time of purchase of a Lot. Such amount shall be within the sole discretion of Declarant and may be changed from time to time without notice. The total annual operating and maintenance costs for 2010 are estimated by the Declarant to be \_\_\_\_\_ which is comprised of (i) \$ \_\_\_\_\_ for maintenance of the entrance, common areas, and roadways adjacent to common areas and maintenance of dams appurtenant to a State maintained road, (ii) \_\_\_\_\_ cost of water for irrigation, and (iii) \$ \_\_\_\_\_ miscellaneous (cemetery maintenance fences & marker) maintenance and operating expenses. At such maintenance expense, the initial Assessment shall be \$500 per lot per year.

*Amendment No 3*

(b) Creation of Lien and Personal Obligation for Assessments Each Owner by acceptance of a deed whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay annual assessments and special assessments to the Association as provided in this Section, all such assessments to be established and collected as herein provided. All assessments, together with interest, costs and reasonable attorney's fees incurred in the collection thereof (collectively, the "Collection Costs") shall be a charge on the land and shall be a lien upon the Lot against which each such assessment is made as provided by and subject to the provisions of Section 8.06 hereof. Each such assessment, together with the Collection Costs appertaining thereto, shall also be the personal obligation of the persons or entities who are the Owners of such Lot at the time when the assessment falls due. The personal obligation for delinquent assessments shall not pass to successors in title unless expressly assumed by such successors.

#### (c) Special Assessments

  
20101124000143640 17 / 67  
Bk: 2990 Pg: 658  
Hanover Co VA  
11/24/2010 10:23:58 AM  
DECL

(1) In addition to all other assessments which are authorized in the Declaration, the board of directors of the Association shall have the power to levy a periodic special assessment against the Owners if the purpose in so doing is found by the board of directors to be in the best interests of the Association and the proceeds of such assessment are used primarily for the maintenance and up keep, including capital expenditures, of the Common Areas and maintenance of the dam. Any such special assessment may be rescinded by majority vote of the Owners constituting a quorum as provided in the Bylaws of the Association attending a meeting of the membership convened in accordance with the provisions of the Bylaws of the Association within sixty days of receipt of the notice of such assessment. The Owners shall be deemed to have received notice of such special assessment three days after mailing of same by the Association as provided in Section 10.5 hereof.

(2) The failure of an Owner to pay the special assessment allowed by subsection A shall entitle the association to the lien provided hereunder as well as any other rights afforded a creditor under law.

(3) The failure of an Owner to pay the special assessment allowed by subsection A will provide the Association with the right to deny such Owner access to any or all of the Common Areas.

(d) Interest on Unpaid Assessments; Late Charges Any assessments by the Association which are not paid by an Owner within such time as shall be designated by the board of directors, in the by-laws of the Association or as otherwise provided for herein, shall result in such Owner being liable for a reasonable late charge determined by the board of directors, and such assessment shall bear interest per annum at a rate of two percent (2%) above the prime rate established from time to time by SunTrust Bank of Richmond, Virginia, from such date until paid, or at the maximum lawful interest rate for such obligations, whichever is less.

#### 8.06 Lien for Assessments

(a) Once perfected, the Association shall have a lien on every Lot for unpaid assessments levied against that Lot in accordance with the provisions of the Property Owner's Association Act set forth in Chapter 26, of Title 55 (Sections 55-508 et seq.) of the code of Virginia of 1950, as amended, as same may be amended from time to time (the "Property Owners' Association Act") and of the Declaration. The lien, once perfected, shall be prior to all other subsequent liens and encumbrances except (i) real estate tax liens on that Lot, (ii) liens and encumbrances recorded prior to the recordation of the Declaration, and (iii) sums unpaid on and owing under any mortgage or deed of trust recorded prior to the perfection of said lien.

(b) The Association, in order to perfect the lien given by this section, shall file before the expiration of six months from the time such assessment became due and payable in the clerk's office of Hanover County, a memorandum, verified by the oath of the President, Vice President, Secretary or Treasurer of the Association, which shall

contain the following information or such other information as may be required by the Property Owner's Association Act as same may be amended from time to time;

- (1) The name of the development, Hickory Hill;
- (2) A brief legal description of the Lot;
- (3) The name or names of the person constituting the Owners of the Lot;
- (4) The amount of unpaid assessments currently due or past due relative to such Lot together with the date when each fell due;
- (5) The date of issuance of the memorandum;
- (6) The name of the Association and the name and current address of the person to contact to arrange for payment or release of the lien; and
- (7) A statement that the Association is obtaining a lien in accordance with the provisions of the Property Owner's Association Act.

(c) Prior to filing a memorandum of lien, a written notice shall be sent to the Owner by certified mail, at the Owner's last know address, informing the Owner that a memorandum of lien will be filed in the circuit court clerk's office. The notice shall be sent at least ten days before the actual filing date of the memorandum of lien.

(d) Suit to enforce any lien perfected under subsection B may be brought within twenty-four months from the time when the memorandum of lien was recorded; however, the filing of a petition to enforce any such lien in any suit wherein the petition may be properly filed shall be regarded as the institution of a suit under this section.

(e) In addition to the remedy set forth above the Association may maintain an action at law to recover any assessment. In any action, whether to enforce a lien or a law the Association shall be entitled to recover its reasonable attorney's fees and costs in perfecting and enforcing any lien or in actions at law to recover any sum due.

(f) The time periods set forth in this section are intended to comply with those set forth in the Property Owner's Association Act. In the event any time period is extended by amendment to said act or by subsequent statute then the longer time period shall control.

## ARTICLE IX

### COMMON AREAS, EASEMENTS, PRIVATE MAINTENANCE EASEMENTS

**9.01 Maintenance of Common Areas** Declarant shall convey the Common Areas, if any, to the Association by deed or deeds immediately after the creation of the Association. Upon conveyance the Association shall accept such Common Areas and the Association shall at its cost and expense is responsible for the upkeep of such Common Areas and access easements, and cemetery and maintenance easements (Exhibit E). For purposes of this Section "upkeep" is defined to include operation, care, maintenance,

repair, restoration, replacement, improvement, renovation and reconstruction of the Common Areas and amenities therein, including without limitation, street lights, signs, pedestrian paths, sidewalks, fences and historical markers in common area, slave cemetery or access easements shown on the approved construction plans which detail the amenities, the plans are titled Hickory Hill Section 2 Road Construction Plans, prepared by Balzer & Associates, Inc., dated July 26, 2007 last revised on November 13, 2009 and approved by the Planning Department on December 18, 2009 and the continual clean up and removal of all trash and debris on the Common Areas. Such up keep will be performed by the Association to the end that the Common Areas shall be kept in good order and condition and state of repair.

## ARTICLE X

### MISCELLANEOUS PROVISIONS

**10.01 Constructive Notice and Acceptance** Every person, corporation, partnership or organization, who which now or hereafter owns or acquires any right, title or interest in or to any portion of their property is and shall be conclusively deemed to have consented and agreed to every covenant, conditions and restriction contained herein, whether or not any reference to this Declaration is contained in the instrument by which such person, corporation, partnership or organization acquired such right, title or interest. Except as otherwise specified provided the provisions of this Section will not apply to any mortgagee of any Owner until such time as it becomes a mortgagee in possession of the Lot of the Owner or becomes the Owner by foreclosure or otherwise of such Lot in which case it and its successors and assigns (including, but not limited to, the successful bidder at a foreclosure sale of a Lot) as Owner of such Lot will be so bound only as long as they are the Owner of such Lot and afterwards only for matters occurring during the period of ownership.

**10.02 Paragraph Headings** Paragraph, Article and Section headings, where used herein, are inserted for convenience of reference only, are not intended to be a part of these Protective Covenants or in any way to define, limit or describe the scope and intent of the particular paragraphs to which they refer, and accordingly shall not be deemed or construed to affect the meaning of any provision hereof.

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

**10.04 Conflict with Applicable Laws** This Declaration is intended to comply with the provisions of applicable law, including, without limitation the provisions of the Property Owners Association act and the provisions of this Declaration shall be construed and interpreted so as to comply with rather than to violate any such provision of law in the event of any conflict.



20101124000143640 20 / 67  
Bk: 2990 Pg: 661  
Hanover Co VA  
11/24/2010 10:23:58 AM  
DECL

**10.05 Written Notice** Whenever written notice is required or specified herein, such written notice shall be deemed given only when delivered in person or deposited in the United States mail, postage paid and addressed to the last know address of the addressee which may be the address shown on the real estate tax records of the County of Hanover for the addressee. All such notices shall be sent certified mail, return receipt requested. Whenever actual receipt is specified or required herein, then such actual receipt shall be deemed obtained when notice is given in writing and delivered in person or otherwise actually received by the designated recipient.

**10.06 Exceptions and Waivers** Declarant reserves the right to grant exceptions to and waive any of the provisions contained in this Declaration except those related to maintenance and as otherwise required under the Hanover County Code Zoning Ordinances. Such exceptions shall be granted by Declarant and such waivers shall be granted by Declarant only when, in its sole and absolute discretion, the exception or waiver is harmonious with the general intent or purpose of this Declaration. Every exception and waiver granted by Declarant shall be made in writing in recordable form and may be recorded. The granting of any exception or waiver with respect to any Lot or part thereof shall not be deemed an amendment of this Declaration except to the extent specifically set forth in such exception or waiver, shall not entitle any Owner to similar rights or privileges and shall create no negative reciprocal easements in favor of any other party.

**10.07 Other Property of Declarant** By their purchase or obtaining any interest in any Lot subject to these Protective Covenants, all Owners of Lots or any interest therein, their heirs, legal and personal representatives, successors and assigns recognize that Declarant is or may become the owner of property in the vicinity of the Property, some of which may be contiguous thereto, and that such property is not now subject to this Declaration, may never become subject to this Declaration and may be developed by Declarant in a manner that does not conform to the requirements of this declaration. By their purchase or obtaining any interest in any Lot subject to this Declaration, all such parties recognize and agree that all such property of Declarant not made specifically subject to this Declaration by a written and appropriately recorded document executed by Declarant and evidencing Declarant's intention to subject such property hereto will in no way be burdened or bound by this Declaration, or any restrictive covenants in equity, equitable easements, equitable servitudes, implied restrictive covenants in equity or implied reciprocal negative easements, covenants or servitudes or any other restriction, condition, covenant or servitude according to any doctrine or theory that could in any way be construed to impose the provisions of this Declaration on any such property of Declarant not made subject specifically thereto in writing and recorded. All of the remaining property within the Hickory Hill RC district shall, when recorded, become part of the property governed by these Covenants.

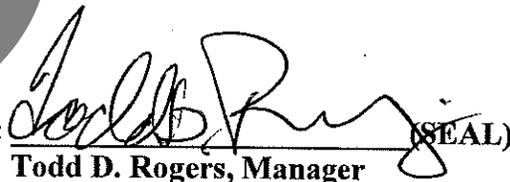
**10.08 Other Covenants and Restrictions** Nothing contained in this Declaration is to be construed as preventing or inhibiting the Declarant from imposing further covenants or restrictions on its Lot or Lots or from providing for easements in connection with the development thereof; provided, however, that in the event of any

conflict between the terms and conditions of any such covenants or restrictions and the terms and conditions of this Declaration, the terms and conditions of this Declaration shall in all events prevail. Subsequent or further covenant and restrictions imposed upon any Lot may specifically provide that they are supplemental to this Declaration in which event they shall be Supplemental Declarations as defined in Section 2.03 hereof and they shall be a part of this Declaration but only as to the Lot against which such Supplemental Declarations are recorded, and in such event all terms, provisions, covenants, rights and remedies set forth herein shall be a part of and incorporated by reference into such Supplemental Declarations. Such Supplemental Declarations may contain provisions limiting the ability of Owners, but not of Declarant or the Association, from enforcing the provision of Supplemental Declarations, or has consented to be bound by the terms of such Supplemental Declarations.

**10.09 Cumulative Remedies** The various rights, options, elections, powers and remedies contained in this Declaration shall be construed as cumulative, and no one of them shall be exclusive of any of the others or of any other legal or equitable remedy which Declarant, the Association, the Committee or any Owner might otherwise have in the event of breach or default in the terms hereof, and the exercise of one right or remedy of any such party shall not impair its right to any other right or remedy until all obligations imposed upon any other party, person or entity have been fully performed.

IN WITNESS WHEREOF, Declarant has caused this Declaration to be executed.

HICKORY HILL PARTNERS, LLC

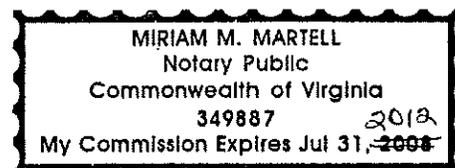
By:  (SEAL)  
Todd D. Rogers, Manager

STATE OF VIRGINIA  
CITY/COUNTY OF Hanover to-wit:

The foregoing Declaration was acknowledged before me this 12<sup>th</sup> day of November 2010, by Todd D. Rogers, Manager of Hickory Hill Partners, LLC, on behalf of the corporation.

  
Notary Public

My Commission expires: July 31, 2012



20101124000143640 22 / 67

Bk: 2990 Pg: 663  
Hanover Co VA  
11/24/2010 10:23:58 AM

Exhibit A

20101124000143640 23 / 67  
Bk: 2990 Pg: 664  
Hanover Co VA  
11/24/2010 10:23:58 AM  
DECL

GPIN(S) 7890-64-8117  
7890-90-8700

**DEED**  
**OPEN SPACE EASEMENT**  
**RC District - Common Open Space**

THIS DEED OF EASEMENT is entered into \_\_\_\_\_, 200\_\_  
by Hickory Hill Parnters, LLC

(herein referred to as "Grantor") and HANOVER COUNTY, VIRGINIA, a political subdivision  
of the Commonwealth of Virginia (the "County"); \_\_\_\_\_

**BB&T - VA COLLATERAL SERVICE CORPORATION** ("Trustee(s)") either of whom  
*(Names of Trustee(s) in CAPS)*

may act; and \_\_\_\_\_  
*(Names of Noteholder(s) in CAPS)*

("Noteholder(s)").

WITNESSETH:

WHEREAS Grantor is the fee simple owner of the tract or tracts of land designated  
"Common Open Space", GPIN(s) 7890-64-8117, 7890-90-8700 located in  
Beaverdam District, Hanover County, Virginia, described in Exhibit A  
attached to and recorded with this Deed; and

WHEREAS the Common Open Space owned by the Grantor has agricultural, scenic,  
natural and aesthetic value in its present state as a natural and rural area; and

WHEREAS in furtherance of the purposes of the Open Space Land Act, Title 10.1,  
Chapter 17 of the Virginia Code, and as required by the Hanover County Zoning Ordinance, the  
Grantor is willing to grant a perpetual Open Space Easement applicable to the Common Open  
Space, restricting and limiting the use of the land, on the terms and conditions and for the  
purposes set forth below, and the County is willing to accept the Easement; and

Prepared by:  
Hanover County Planning Department  
P.O. Box 470  
Hanover, Virginia 23069

1 of 12  
FORM0315 TN FITB  
11/01  
Deed of Open Space w/Trustee Noteholder - Common Open Space - RC District

WHEREAS the Grantor and the County recognize the value of the Common Open Space in its present state, and have a common purpose of conserving the Common Open Space, preserving the dominant rural character of the Common Open Space, and preventing the use or development of the Common Open Space for any purpose or in any manner which would conflict with maintenance in accordance with purposes of the Open Space Land Act and the Hanover County Zoning Ordinance; and

WHEREAS the County is authorized by the Open Space Land Act to accept, hold and administer the Open Space Easement, and the County possesses the authority to accept and is willing to accept the Open Space Easement under the terms and conditions described below, and the Grantor, for itself, its successors and assigns waives any objection to the perpetual nature of this easement.

NOW THEREFORE, for good and valuable consideration, receipt of which all parties acknowledge, and in consideration of the mutual covenants and restrictions set forth below, the Grantor conveys to the County and its successors and assigns forever and in perpetuity an Open Space Easement of the nature and character and to the extent set forth below, applicable to the Common Open Space more particularly described in Exhibit A, for the purposes of preserving the important features of the Common Open Space and maintaining permanently the rural, natural and scenic character of the Common Open Space; and

The commitments, conditions and restrictions applicable to the Common Open Space, for the purpose of achieving these goals are set forth below:

1. This Easement shall be perpetual. It is an easement in gross, and shall run with the land as an incorporeal interest in the Common Open Space enforceable by the County against



20101124000143640 24 / 67  
Bk: 2990 Pg: 665  
Hanover Co VA  
11/24/2010 10:23:58 AM  
DECL

2 of 12

FORM0315 TN FITB  
11/01

24

the Grantor and its heirs, successors and assigns. The Grantor for itself, its heirs, successors and assigns waives any objection to the perpetual nature of the Easement.

2. There shall be no dumping of soil, trash, ashes, garbage, waste or offensive material. There shall be no dumping or filling in of any pond, wetland, waterway, or other area except as may be permitted by applicable laws for the purpose of combating erosion. Accumulation or application of trash, refuse, junk, sludge or other unsightly material is not permitted on the Common Open Space. There shall be no dumping, storage or placement on the Common Open Space of any stumps, brush, grass or other land clearing debris from off-site. This paragraph shall be reasonably interpreted so as to permit activities that are consistent with sound agricultural and silvicultural practices, such as the composting of vegetative materials grown or used on site, the amendment of soils to be used for agriculture by the incorporation of sand, topsoil or compost materials from off site, or the proper storage of inoperative machinery, fencing materials, etc. for repair, reuse or recycling.

3. Mining, dredging and removal of loam, gravel, soil, rock, sand, coal and other materials are prohibited, except as necessary for:

- a. Application of good farming and forestry practices;
- b. Maintenance of existing accesses; and
- c. Construction and maintenance of accesses to uses and structures permitted within the provisions of this Deed of Easement. Accesses shall be designed and constructed to cause a minimum of interference with the existing topography, drainage, vegetation, wildlife, and conservation purposes of the Common Open Space.

4. Removal, destruction and cutting of trees, shrubs, or other vegetation is prohibited except as indicated on the Conceptual Plan and for:



20101124000143640 25 / 67  
Bk: 2990 Pg: 666  
Hanover Co VA  
11/24/2010 10:23:58 AM  
DECL

3 of 12

FORM0315 TN FITB  
11/01

- a. Reasonable maintenance of existing accesses or construction and maintenance of accesses permitted by this Deed of Easement; or
- b. Application of good management practices including the prevention or treatment of disease; or
- c. Periodic selective harvest of marketable timber under the supervision of a qualified forester; or
- d. Furtherance and perpetuation of the agricultural, horticultural, silvicultural and naturalistic uses of the Common Open Space; or
- e. Removal of only such vegetation as is reasonably necessary for construction and improvements in substantial conformity with the Conceptual Plan and in accordance with this Deed of Easement.

All forestal management activities shall be in accordance with the sound forestry management guidelines promulgated by the Society of American Foresters or successor organization for natural forests and plantations. All forestry practices shall serve the dual purpose of:

- (i) Protecting the soils, drainage and water quality of the Common Open Space; and
  - (ii) Enhancing the sustainable growth, and quality of the tree species suited to the Common Open Space.
5. There shall be no activities or uses detrimental or adverse to water conservation, erosion control, soil conservation and, subject to the permitted uses, the preservation of wildlife habitat.

  
20101124000143640 26 / 67  
Bk: 2990 Pg: 667  
Hanover Co VA  
11/24/2010 10:23:58 AM  
DECL

4 of 12

FORM0315 TN FITB  
11/01

20

6. Use, development and improvement of the Common Open Space shall be permitted only in accordance with the Hanover County Zoning Ordinance and as depicted on the Conceptual Plan approved by the Board of Supervisors and referred to in Exhibit A. The Common Open Space shall not be further divided, subdivided, or conveyed in fee except as depicted in the Conceptual Plan, and shall be maintained as open space.

7. There shall be no alteration of the topography of the Common Open Space, except as required for the construction of structures, roads or other improvements in substantial conformity with the Conceptual Plan or reasonably necessary to provide for permitted uses.

8. The features designated on the Conceptual Plan for preservation, including all historic structures, woodlands, and historic sites shall be maintained and preserved by the Grantor, its heirs, successors or assigns substantially as depicted on the Conceptual Plan, and in substantially the same condition as exists on the date of execution of this Deed.

9. The Grantor expressly reserves to itself, its successors and assigns the right to:

- a. Continue the agricultural, forestry and naturalistic uses of the Common Open Space.
- b. Improve, repair, restore, alter, remodel or replace the permitted structures depicted on the Conceptual Plan with structures of similar size and purpose and construct any other improvements depicted on the Conceptual Plan provided that the changes are compatible with the conservation purposes of the Common Open Space and all other provisions of this Easement.

c. Continue the use of the Common Open Space for all purposes not inconsistent with this Easement.



20101124000143640 27 / 67  
Bk: 2990 Pg: 668  
Hanover Co VA  
11/24/2010 10:23:58 AM  
DECL

5 of 12

FORM0315 TN FITB  
11/01

10. The parties agree that monetary damages would not be an adequate remedy for the breach of any of the terms, conditions and restrictions of this Easement, and therefore, in the event that the Grantor, its heirs, successors or assigns, violate or breach any of these terms, conditions and restrictions, the County and its successors and assigns, may institute a suit and shall be entitled to enjoin by ex parte temporary and/or permanent injunction such violation and to require the restoration of the Common Open Space to a condition in compliance with this Easement. The County, its successors and assigns, by any prior failure to act do not waive or forfeit the right to take any action as may be necessary to insure compliance with the terms, conditions and purposes of this Easement.

11. The County, its successors and assigns, have the right, with reasonable notice, to enter the Common Open Space for the purpose of inspection to determine whether the Grantor, or its successors or assigns, are complying with the terms, conditions and restrictions of this Easement. This right of inspection does not include the interior of any dwellings.

12. The County may assign its rights under this Easement to any State or federal agency charged with the responsibility of conservation of natural or farm areas, or open space, or to any non-profit, tax-exempt organization engaged in promoting conservation of historic, rural or natural areas; and if such assignee shall be dissolved or shall abandon this Easement or the rights and duties of enforcement or if proceedings are instituted for condemnation of this Easement, the Easement and rights of enforcement shall revert to the County; and if the County shall be dissolved and if the terms of the dissolution fail to provide a successor, then the Hanover County Circuit Court shall appoint an appropriate successor.



20101124000143640 28 / 67  
Bk: 2990 Pg: 669  
Hanover Co VA  
11/24/2010 10:23:58 AM  
DECL

13. The Grantor agrees for itself, its heirs, successors and assigns to give notice in writing to the County of the names and addresses of any parties to whom the Common Open Space is to be transferred, at the time of transfer.

14. The County agrees to hold this Easement exclusively for conservation purposes, and will not transfer the Easement in exchange for money, other property, or services, except as provided in and permitted by the Open Space Land Act.

15. This Easement shall be construed to promote the purposes of the Virginia Open Space Land Act, to promote the Comprehensive Plan of Hanover County, and to promote the conservation purposes of this Easement, including such purposes as are defined in the Internal Revenue Code.

16. Although this Easement in gross will benefit the public in ways recited above by encouraging and requiring elements of good land management, it shall not be construed to convey a right to the public of access or use of the Common Open Space, and the Grantor, its heirs, successors and assigns shall retain exclusive right to access and use.

The covenants agreed to and the terms, conditions, restrictions and purposes imposed shall be binding not only upon the Grantor, but also its agents, personal representatives, heirs, assigns, and all other successors to it in interest, and shall continue as a servitude running in perpetuity with the above described land, notwithstanding any restrictions at common law on the term of easements in gross, or their enforcement.

17. Notwithstanding any other provision of this Deed of Easement, the Hanover County Zoning Ordinance and other applicable statutes, ordinances and regulations shall apply to the Property and shall take precedence over this Easement to the extent that those requirements are more restrictive than the terms of this Easement.

  
20101124000143640 29 / 67  
Bk: 2990 Pg: 670  
Hanover Co VA  
11/24/2010 10:23:58 AM  
DECL

18. The invalidity or unenforceability of any provision of this Easement shall not affect the validity or enforceability of any provision of this Easement or any ancillary or supplementary agreement relating to the subject matter of this Easement.

THIS DEED FURTHER WITNESSETH: That for the consideration hereinabove stated, the Trustee(s), with the consent of the Noteholder(s) as evidenced by the Noteholder's(s) signature hereto, do hereby join in and consent to the granting of the aforesaid easements and do release all of their right, title and interest in and to the above described permanent easement by virtue of that certain Deed of Trust dated May 24, 2007, and recorded May 25, 2007, in the Clerk's Office of the Circuit Court of Hanover County, Virginia, in Deed Book 2879 at page 283, and the following amendments to the Deed of Trust (if applicable): \_\_\_\_\_

It is expressly understood, however, that the liens of said Deed of Trust remain in full force and effect as to all property which was conveyed by said Deed(s) of Trust and not expressly released.



20101124000143640 30 / 67  
Bk: 2990 Pg: 671  
Hanover Co VA  
11/24/2010 10:23:58 AM  
DECL





**NOTEHOLDER(S):**

\_\_\_\_\_  
*(NAME OF NOTEHOLDER IN CAPS)*

By: \_\_\_\_\_  
Name Printed: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
*(NAME OF NOTEHOLDER IN CAPS)*

By: \_\_\_\_\_  
Name Printed: \_\_\_\_\_  
Title: \_\_\_\_\_

COMMONWEALTH OF VIRGINIA )

COUNTY OF HANOVER )

) to-wit:  
)

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 200\_\_, by \_\_\_\_\_, Noteholder.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

COMMONWEALTH OF VIRGINIA )

COUNTY OF HANOVER )

) to-wit:  
)

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 200\_\_, by \_\_\_\_\_, Noteholder.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public



20101124000143640 33 / 67

Bk: 2990 Pg: 674

Hanover Co VA

11/24/2010 10:23:58 AM

DECL

Approved as to form:  
Hanover County Attorney's Office  
November 1, 2001

Approved as to substance:

\_\_\_\_\_  
Director/Deputy Director of Planning

Acceptance of this Deed by Hanover County, a political subdivision of the Commonwealth of Virginia, pursuant to Va. Code Section 15.2-1803, is evidenced by the signature below.

Date: \_\_\_\_\_

\_\_\_\_\_  
County Administrator/Deputy County Administrator

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

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 200\_\_, by \_\_\_\_\_, on behalf of Hanover County, Virginia.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

County's Address:  
County Administrator  
P.O. Box 470  
Hanover, Virginia 23069-0470



20101124000143640 34 / 67  
Bk: 2990 Pg: 675  
Hanover Co VA  
11/24/2010 10:23:58 AM  
DECL

**Exhibit B**

20101124000143640 35 / 67  
Bk: 2990 Pg: 676  
Hanover Co VA  
11/24/2010 10:23:58 AM  
DECL

GPIN(S) 7890-64-8117  
7890-90-8700

**DEED**  
**OPEN SPACE EASEMENT**  
**Preservation Lot**

THIS DEED OF EASEMENT is entered into \_\_\_\_\_, 2010  
by Hickory Hill Partners, LLC

(herein referred to as "Grantor") and HANOVER COUNTY, VIRGINIA, a political subdivision  
of the Commonwealth of Virginia (the "County"); and HICKORY HILL PROPERTY  
*(Name of Owners' Association in CAPS)*

OWNERS ASSOCIATION, INC ("the Association").

\_\_\_\_\_  
*(Names of Trustee(s) in CAPS)* ("Trustee(s)") either of whom may act; and

BB&T - VA COLLATERAL SERVICE CORPORATION, ("Noteholder(s)").  
*(Names of Noteholder(s) in CAPS)*

WITNESSETH:

WHEREAS Grantor is the fee simple owner of the tract or tracts of land designated  
"Common Open Space", GPIN(s) 7890-64-8117, 7890-90-8700  
located in Beaverdam District, Hanover County, Virginia, described in  
Exhibit A attached to and recorded with this Deed; and

WHEREAS the Property owned by the Grantor has agricultural, scenic, natural and  
aesthetic value in its present state as a natural and rural area; and

WHEREAS in furtherance of the purposes of the Open Space Land Act, Title 10.1,  
Chapter 17 of the Virginia Code, and as required by the Hanover County Zoning Ordinance, the  
Grantor is willing to grant a perpetual Open Space Easement applicable to the Preservation Lot,  
restricting and limiting the use of the land, on the terms and conditions and for the purposes set  
forth below, and the County is willing to accept the Easement; and

Prepared by:  
Hanover County Planning Department  
P.O. Box 470  
Hanover, Virginia 23069

1 of 13

FORM0316 TN FITB  
11/01  
Deed of Open Space - Preservation Lot - RC District

WHEREAS the Grantor and the County recognize the value of the Preservation Lot in its present state, and have a common purpose of conserving the Preservation Lot, promoting and encouraging the preservation of farmland, promoting and enhancing agriculture as an important industry within the County, preserving the dominant rural character of the Preservation Lot, and preventing the use or development of the Preservation Lot for any purpose or in any manner which would conflict with maintenance in accordance with purposes of the Open Space Land Act and the Hanover County Zoning Ordinance, and recognize this Easement as an easement appurtenant to land retained by the Association designated as Common Open Space; and

WHEREAS the County is authorized by the Open Space Land Act to accept, hold and administer the Open Space Easement, and the County and the Association possess the authority to accept and are willing to accept the Open Space Easement under the terms and conditions described below, and the Grantor, for itself, its successors and assigns waives any objection to the perpetual nature of this Easement.

NOW THEREFORE, for good and valuable consideration, receipt of which all parties acknowledge, and in consideration of the mutual covenants and restrictions set forth below, the Grantor conveys to the County and to the Association and their successors and assigns forever and in perpetuity an Open Space Easement of the nature and character and to the extent set forth below, applicable to the Preservation Lot for the purpose of preserving the important features of the Preservation Lot and maintaining permanently the rural, natural and scenic character of the Preservation Lot; and

The commitments, conditions and restrictions applicable to the Preservation Lot, for the purpose of achieving these goals are set forth below:

  
20101124000143640 36 / 67  
Bk: 2990 Pg: 677  
Hanover Co VA  
11/24/2010 10:23:58 AM  
DECL

2 of 13

FORM0316 TN FITB  
11/01

1. This Easement shall be perpetual. The Easement conveyed to the County is an easement in gross. The Easement interest of the Association benefits and is appurtenant to land retained by the Association. The Easement shall run with the land as an incorporeal interest in the Preservation Lot enforceable by the County and the Association, against the Grantor and its successors and assigns. The Grantor for itself, its successors and assigns waives any objection to the perpetual nature of the Easement.

2. There shall be no dumping of soil, trash, ashes, garbage, waste or offensive material. There shall be no dumping or filling in of any pond, wetland, waterway, or other area except as may be permitted by applicable laws for the purpose of combating erosion. Accumulation or application of trash, refuse, junk, sludge or other unsightly material is not permitted on the Preservation Lot. There shall be no dumping, storage or placement on the Preservation Lot of any stumps, brush, grass or other land clearing debris from off-site. This paragraph shall be reasonably interpreted so as to permit activities that are consistent with sound agricultural and silvicultural practices, such as the composting of vegetative materials grown or used on site, the amendment of soils to be used for agriculture, and the proper storage of inoperative machinery, fencing materials, etc. for repair, reuse or recycling. In addition, this paragraph shall not be deemed to prohibit reasonable activities ancillary to any residential use of the Preservation Lot, such as the incineration of household refuse produced on site, the disposal of ashes from the incinerator, fireplaces and wood stoves, the composting of vegetative household waste, etc.

3. Mining, dredging and removal of loam, gravel, soil, rock, sand, coal and other materials are prohibited, except as necessary for:

a. Application of good farming and forestry practices;

  
20101124000143640 37 / 67  
Bk: 2990 Pg: 678  
Hanover Co VA  
11/24/2010 10:23:58 AM  
DECL

3 of 13

FORM0316 TN FITB  
11/01

37

- b. Maintenance of existing accesses; and
  - c. Construction and maintenance of accesses to uses and structures permitted within the provisions of this Deed of Easement. Accesses shall be designed and constructed to cause a minimum of interference with the existing topography, drainage, vegetation, wildlife, and conservation purposes of the Preservation Lot.
4. Removal, destruction and cutting of trees, shrubs, or other vegetation is prohibited except as indicated on the Conceptual Plan and for:
- a. Reasonable maintenance of existing accesses or construction and maintenance of accesses permitted by this Deed of Easement; or
  - b. Application of good management practices including the prevention or treatment of disease; or
  - c. Periodic selective harvest of marketable timber under the supervision of a qualified forester; or
  - d. Furtherance and perpetuation of the agricultural, horticultural, silvicultural and naturalistic uses of the Preservation Lot; or
  - e. Removal of only such vegetation as is reasonably necessary for construction and improvements or good farming practices in substantial conformity with the Conceptual Plan and in accordance with this Deed of Easement.

All forestal management activities shall be in accordance with the sound forestry management guidelines promulgated by the Society of American Foresters or successor organization for forests and plantations. All forestry practices shall serve the dual purpose of:

  
20101124000143640 38 / 67  
Bk: 2990 Pg: 679  
Hanover Co VA  
11/24/2010 10:23:58 AM  
DECL

- (i) Protecting the soils, drainage and water quality of the Property;  
and
- (ii) Enhancing the sustainable growth, and quality of the tree species  
suited to the Property.

5. There shall be no activities or uses detrimental or adverse to water conservation, erosion control, soil conservation and, subject to the permitted uses, the preservation of wildlife habitat. Agricultural activities conducted in accordance with practices and standards developed by State and federal regulatory agencies shall not constitute an activity detrimental or adverse to water conservation, erosion control, or soil conservation.

6. Development of the Preservation Lot shall not be permitted except as provided in this Easement or as provided in the Hanover County Zoning Ordinance, and use of the Preservation Lot shall be permitted only in accordance with the Hanover County Zoning Ordinance. The Preservation Lot shall not be further divided, subdivided, or conveyed in fee except in the tracts described in the Plat and shall be maintained as open space.

7. There shall be no alteration of the topography of the Preservation Lot, except as required for the construction of structures, roads, ponds, or other improvements in substantial conformity with the Conceptual Plan or reasonably necessary to provide for permitted uses.

8. The features designated on the Conceptual Plan for preservation, including all historic structures, woodlands, and historic sites shall be maintained and preserved by the Grantor, its successors or assigns substantially as shown on the Conceptual Plan, and in substantially the same condition as exists on the date of execution of this Deed.

9. The Grantor expressly reserves to itself, its successors and assigns the right to:

  
20101124000143640 39 / 67  
Bk: 2990 Pg: 680  
Hanover Co VA  
11/24/2010 10:23:58 AM  
DECL

a. Continue the agricultural, forestry and naturalistic uses of the Preservation Lot.

b. Improve, repair, restore, alter, remodel or replace the permitted structures depicted in the Conceptual Plan with structures of similar size and purpose and construct any other improvements in areas depicted on the Conceptual Plan provided that the changes are compatible with the conservation purposes of the Preservation Lot and all other provisions of this Easement.

c. Continue the use of the Preservation Lot for all purposes not inconsistent with this Easement and the Zoning Ordinance.

10. The parties agree that monetary damages would not be an adequate remedy for the breach of any of the terms, conditions and restrictions of this Easement, and therefore, in the event that the Grantor, its heirs, successors or assigns, violate or breach any of these terms, conditions and restrictions, the County or the Association, or both, and their successors and assigns, individually or jointly, may institute a suit and shall be entitled to enjoin by ex parte temporary and/or permanent injunction such violation and to require the restoration of the Preservation Lot to a condition in compliance with this Easement. The County and the Association, their successors and assigns, by any prior failure to act do not waive or forfeit the right to take any action as may be necessary to insure compliance with the terms, conditions and purposes of this Easement.

11. The County and authorized representatives of the Association, and their successors and assigns, have the right, with an appointment which shall be arranged by the owner within four (4) days of a request being made, to enter the Preservation Lot with an owner and a representative of the County for the purpose of inspecting the Lot to determine whether the

  
20101124000143640 40 / 67  
Bk: 2990 Pg: 681  
Hanover Co VA  
11/24/2010 10:23:58 AM  
DECL

6 of 13

FORM0316 TN FITB  
11/01

40

Grantor, or its successors or assigns, are complying with the terms, conditions and restrictions of this Easement. There shall be no more than two (2) such inspections within one (1) calendar year. This right of inspection does not include the interior of any dwellings. No more than three authorized representatives of the Association may enter the Property. Three (3) representatives shall be elected by the Association, and their names shall be furnished to the owner prior to an appointment.

12. The County may assign its rights under this Easement to any State or federal agency charged with the responsibility of conservation of natural or farm areas, or open space, or to any non-profit, tax-exempt organization engaged in promoting conservation of historic, rural or natural areas; and if such assignee shall be dissolved or shall abandon this Easement or the rights and duties of enforcement or if proceedings are instituted for condemnation of this Easement, the Easement and rights of enforcement shall revert to the County; and if the County shall be dissolved and if the terms of the dissolution fail to provide a successor, then the Hanover County Circuit Court shall appoint an appropriate successor.

13. The Grantor agrees for itself, its successors and assigns to give notice in writing to the County of the names and addresses of any parties to whom the Preservation Lot is to be transferred, at the time of transfer.

14. The County and the Association agree to hold this Easement exclusively for conservation purposes, and will not transfer the Easement in exchange for money, other property, or services, except as provided in and permitted by the Open Space Land Act.

15. This Easement shall be construed to promote the purposes of the Virginia Open Space Land Act, to promote the Comprehensive Plan of Hanover County, and to promote the



20101124000143640 41 / 67  
Bk: 2990 Pg: 682  
Hanover Co VA  
11/24/2010 10:23:58 AM  
DECL

7 of 13

FORM0316 TN FITB  
11/01

conservation purposes of this Easement, including such purposes as are defined in the Internal Revenue Code.

16. Although this Easement in gross will benefit the public in ways recited above by encouraging and requiring elements of good land management, and the property retained by the Association will be benefited by this Easement, it shall not be construed to convey a right to the public of access or use of the Preservation Lot, and the Grantor, its successors and assigns shall retain exclusive right to access and use.

The covenants agreed to and the terms, conditions, restrictions and purposes imposed shall be binding not only upon the Grantor, but also its agents, personal representatives, heirs, assigns, and all other successors to it in interest, and shall continue as a servitude running in perpetuity with the above described land, notwithstanding any restrictions at common law on the term of easements in gross, or their enforcement.

17. Notwithstanding any other provision of this Deed of Easement, the Hanover County Zoning Ordinance and other applicable statutes, ordinances and regulations shall apply to the Preservation Lot and shall take precedence over this Easement to the extent that those requirements are more restrictive than the terms of this Easement. This paragraph shall not be construed to impair vested rights.

18. The invalidity or unenforceability of any provision of this Easement shall not affect the validity or enforceability of any provision of this Easement or any ancillary or supplementary agreement relating to the subject matter of this Easement.

THIS DEED FURTHER WITNESSETH: That for the consideration hereinabove stated, the Trustee(s), with the consent of the Noteholder(s) as evidenced by the Noteholder's(s)' signature hereto, do hereby join in and consent to the granting of the aforesaid easements and do release all of

  
20101124000143640 42 / 67  
Bk: 2990 Pg: 683  
Hanover Co VA  
11/24/2010 10:23:58 AM  
DECL

8 of 13

FORM0316 TN FITB  
11/01

42

their right, title and interest in and to the above described permanent easement by virtue of that certain Deed of Trust dated May 24, 2007, and recorded May 25, 2007, in the Clerk's Office of the Circuit Court of Hanover County, Virginia, in Deed Book 2879 at page 283, and the following amendments to the Deed of Trust (if applicable): \_\_\_\_\_

It is expressly understood, however, that the liens of said Deed of Trust remain in full force and effect as to all property which was conveyed by said Deed(s) of Trust and not expressly released.

COPY



20101124000143640 43 / 67  
Bk: 2990 Pg: 684  
Hanover Co VA  
11/24/2010 10:23:58 AM  
DECL





TRUSTEE(S):

**BB&T - VA COLLATERAL SERVICE CORPORATION**  
(NAME OF TRUSTEE IN CAPS)

By: \_\_\_\_\_  
Name Printed: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
(NAME OF TRUSTEE IN CAPS)

By: \_\_\_\_\_  
Name Printed: \_\_\_\_\_  
Title: \_\_\_\_\_

COMMONWEALTH OF VIRGINIA )

COUNTY OF HANOVER )

) to-wit:  
)

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 200\_\_, by \_\_\_\_\_, Trustee.

My commission expires:

\_\_\_\_\_  
Notary Public

COMMONWEALTH OF VIRGINIA )

COUNTY OF HANOVER )

) to-wit:  
)

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 200\_\_, by \_\_\_\_\_, Trustee.

My commission expires:

\_\_\_\_\_  
Notary Public

  
20101124000143640 46 / 67  
Bk: 2990 Pg: 687  
Hanover Co VA  
11/24/2010 10:23:58 AM  
DECL

**NOTEHOLDER(S):**

\_\_\_\_\_  
*(NAME OF NOTEHOLDER IN CAPS)*

By: \_\_\_\_\_  
Name Printed: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
*(NAME OF NOTEHOLDER IN CAPS)*

By: \_\_\_\_\_  
Name Printed: \_\_\_\_\_  
Title: \_\_\_\_\_

COMMONWEALTH OF VIRGINIA )

COUNTY OF HANOVER )

) to-wit:  
)

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 200\_\_, by \_\_\_\_\_, Noteholder.

My commission expires:

\_\_\_\_\_  
Notary Public

COMMONWEALTH OF VIRGINIA )

COUNTY OF HANOVER )

) to-wit:  
)

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 200\_\_, by \_\_\_\_\_, Noteholder.

My commission expires:

\_\_\_\_\_  
Notary Public



20101124000143640 47 / 67  
Bk: 2990 Pg: 688  
Hanover Co VA  
11/24/2010 10:23:58 AM  
DECL

Approved as to form:  
Hanover County Attorney's Office  
November 1, 2001

Approved as to substance:

\_\_\_\_\_  
Director/Deputy Director of Planning

Acceptance of this Deed by Hanover County, a political subdivision of the Commonwealth of Virginia, pursuant to Va. Code Section 15.2-1803, is evidenced by the signature below.

Date: \_\_\_\_\_

\_\_\_\_\_  
County Administrator/Deputy County Administrator

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

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 200\_\_, by \_\_\_\_\_, on behalf of Hanover County, Virginia.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

County's Address:  
County Administrator  
P.O. Box 470  
Hanover, Virginia 23069-0470



20101124000143640 48 / 67

Bk: 2990 Pg: 689

Hanover Co VA

11/24/2010 10:23:58 AM

DECL

# Exhibit C

GPINs: 7890-6A-8117 &  
8800-15-5055

## DECLARATION OF RESTRICTIONS

OF

HICKORY HILL

IN

Hanover County, VIRGINIA

BY

Hickory Hill Partners, LLC  
Todd Rogers  
(Manager)



2009032400042950 Pg. 1 OF 6  
Bk: 2940 Pg: 3207  
Hanover Co VA  
03/24/2009 02:47:58 PM DECL

THIS DECLARATION OF RESTRICTION COVENANTS is made this 16<sup>th</sup> day of March, 2009, by Todd Rogers (Manager) of Hickory Hill Partners, LLC.

WHEREAS, (Todd Rogers and Hickory Hill Partners, LLC) is the owner of the Property more fully described on Exhibit A attached hereto; it being the same property conveyed to Todd Rogers and Hickory Hill Partners, LLC, by deed from Hickory Hill LLC, dated May 24, 2007, and recorded in the Clerk's Office of the County of Hanover in Deed Book 2879, at page 254).

WHEREAS, (Todd Rogers and Hickory Hill Partners, LLC) desires to impose on said Property restrictive covenants expressing (Todd Rogers and Hickory Hill Partners, LLC) 's intent to preserve 58.71 acres of said property as shown on Exhibit B and as described as Compensation Credit for preservation in perpetuity in its natural state as detailed below. These covenants are imposed by Owner freely and voluntarily, in order to assure that the aquatic impacts pursuant to DEQ permit number 08-V0535 shall be minimal.

NOW THEREFORE THIS DECLARATION WITNESSETH: (Todd Rogers and Hickory Hill Partners, LLC) does hereby declare, covenant and agree, for itself and its successors and assigns, that said Property described as Hickory Hill Compensation Credit shown on Exhibit B and including the following three areas:

- Area 1: 2.64 acres, all within the 100 foot buffer of 400 linear feet of intermittent stream
- Area 2: 6.07 acres, all within the 100 foot buffer of 1,108 linear feet of intermittent stream
- Area 3: 50.00 acres, 27.50 acres within existing RPA and 22.50 outside of existing RPA and also including 3,968 linear feet of perennial stream and 5.5 acres of waters of the United States



20101124000143640 49 / 67  
Bk: 2990 Pg: 690  
Hanover Co VA  
11/24/2010 10:23:58 AM  
DECL

The area identified in Exhibit B shall be hereafter held, leased, transferred, and sold subject to the following conditions and restrictions which shall run with the land and be binding on all parties and persons claiming under them.

#### Covenants and Restrictions.

The Property described as Hickory Hill shown on Exhibit B attached hereto shall be preserved in perpetuity in its natural state, by prohibiting the following activities:

1. Destruction or alteration of the preservation area shown on Exhibit B other than those alterations authorized by the Virginia Department of Environmental Quality (DEQ) under permit number 08-V0535;
2. Construction, maintenance or placement of any structures or fills including but not limited to buildings, mobile homes, fences, signs other than those which currently exist;
3. Ditching, draining, diking, damming, filling, excavating, grading, plowing, flooding/ponding, mining, drilling, placing of trash and yard debris or removing/adding topsoil, sand, or other materials (except as may be necessary on a case-by-case basis with prior written approval by DEQ);
4. Cultivating, harvesting, cutting, logging, planting, and pruning of trees and plants, or using fertilizers and spraying with biocides (except as may be necessary on a case-by-case basis with prior approval by DEQ);

#### Amendment

The covenants contained herein shall not hereafter be altered in any respect without the written approval and consent of the Owner or its successor in interest and the DEQ. The Owner or its successor may apply to the DEQ for vacation or modification of this declaration; however, after recording, these restrictive covenants may only be amended or vacated by a recorded document signed by the DEQ and the Owner or its successor in interest.

#### Compliance Inspections and Enforcement

The DEQ and its authorized agents shall have the right to enter and go upon the Property to inspect the Property and take actions necessary to verify compliance with these restrictive covenants with prior notification to owners. The restrictive covenants herein shall be enforceable by any proceeding law or in equity or administrative proceeding by the DEQ, [for any owner of a lot within the Hickory Hill subdivision]. Failure by any agency (or owner) to enforce any covenant or restriction contained herein shall in no event be deemed a waiver of the right to do so thereafter.



2009032400042950 Pg. 2 OF 6  
Bk: 2990 Pg: 691  
Hanover Co VA  
03/24/2009 02:47:58 PM DECL



20101124000143640 50 / 67  
Bk: 2990 Pg: 691  
Hanover Co VA  
11/24/2010 10:23:58 AM  
DECL

**Separability Provision**

The provisions hereof shall be deemed individual and severable and the invalidity or partial invalidity or unenforceability of any one provision or any portion thereof shall not affect the validity or enforceability of any other provision thereof.

WITNESS the following signature the day and year first above written.

  
BY: Manager

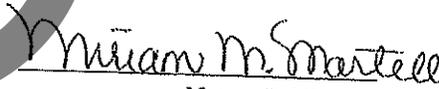
BY: Todd D. Rogers

TITLE: Manager

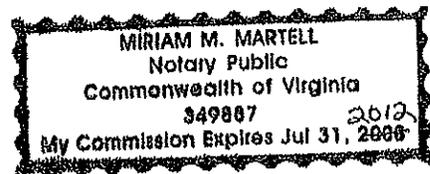
Commonwealth of Virginia, County of Hanover, to wit:

I, MIRIAM M. MARTELL, a notary public for the state and city aforesaid, do certify that [Todd D. Rogers] [Manager, Hickory Hill Partners, LLC] whose name was signed on 17<sup>th</sup> of March, 2009 in his capacity on that date to the foregoing document has acknowledged said document and signature before me in the County aforesaid.

Given under my hand and notarial seal this 17<sup>th</sup> day of March, 2009.

  
Notary Public

My commission expires July 31, 2012.



Attachments:

- Exhibit A – Deed Map
- Exhibit B – Compensation Credit Layout



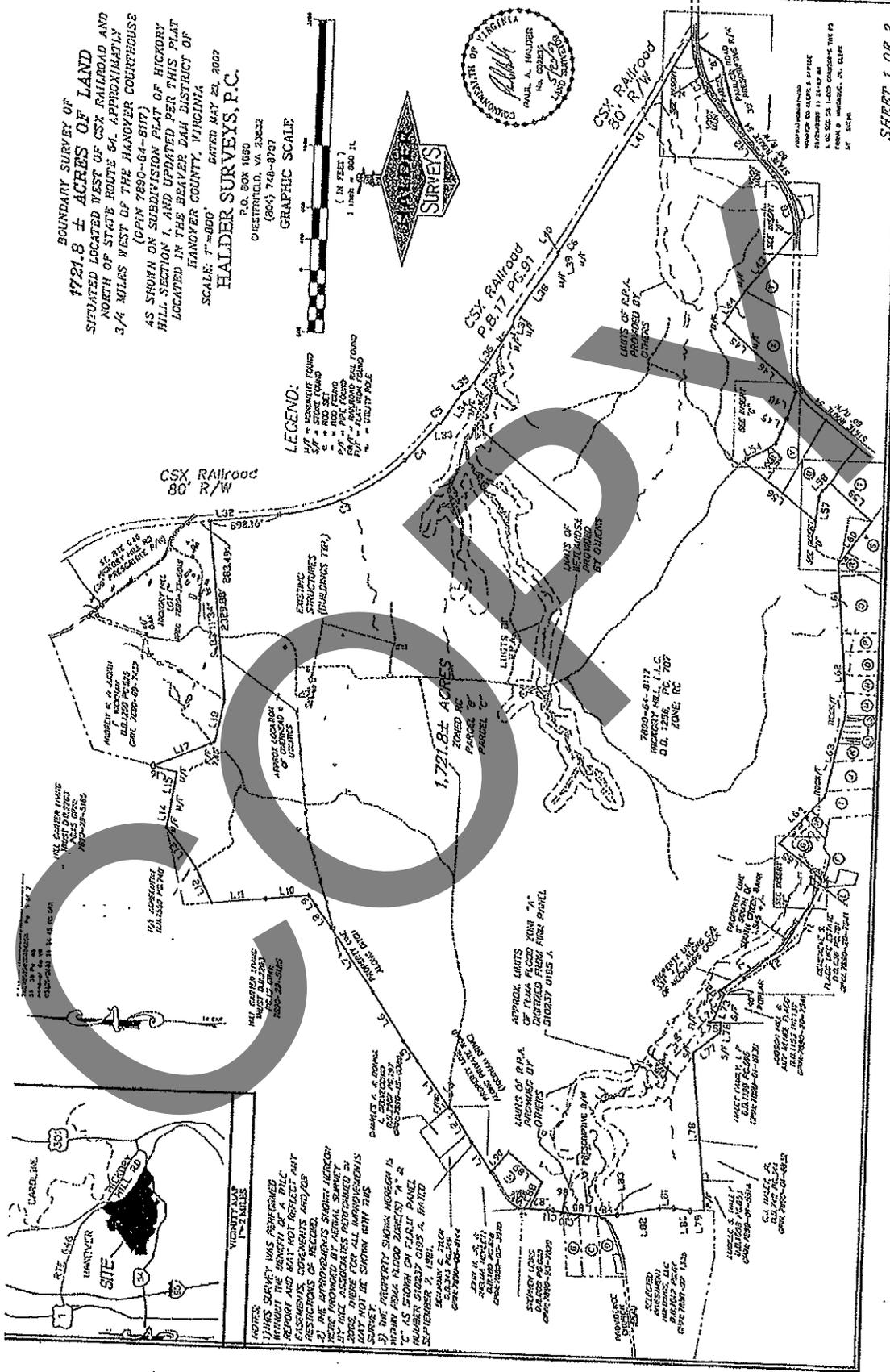
20090324000042950 Pg. 3 OF 6  
Bk: 2940 Pg: 3209  
Hanover Co VA  
03/24/2009 02:47:58 PM DECL



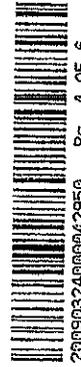
20101124000143640 51 / 67  
Bk: 2990 Pg: 692  
Hanover Co VA  
11/24/2010 10:23:58 AM  
DECL

Exhibit A, Page 1 of 1

PB 38/65



SHEET 1 OF 2



20101124000143640 Pg. 4 OF 6  
Bk: 2990 Pg: 693  
Hanover Co VA  
03/24/2009 02:47:58 PM DECL

20101124000143640 52 / 67  
Bk: 2990 Pg: 693  
Hanover Co VA  
11/24/2010 10:23:58 AM  
DECL

52

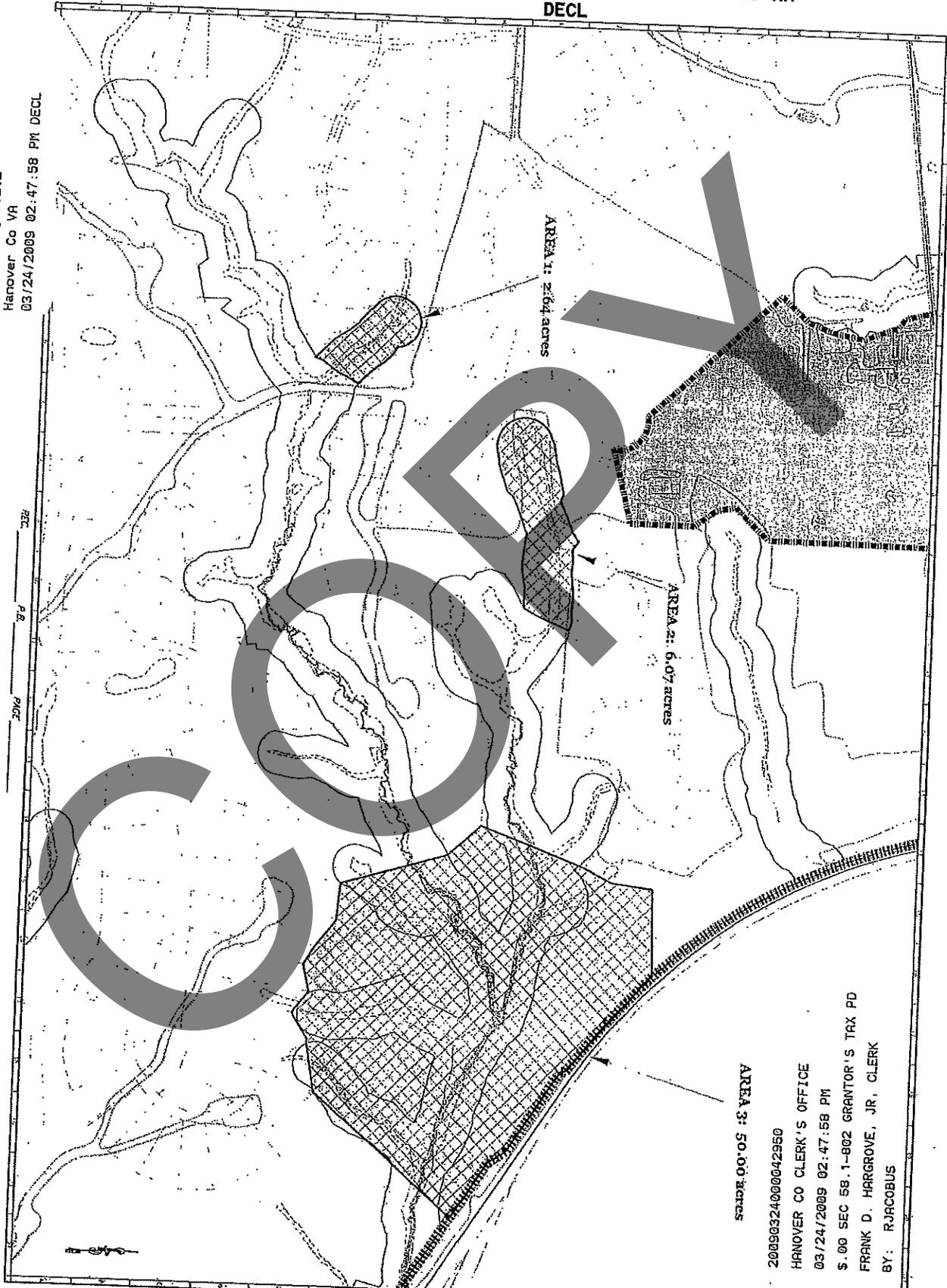




20101124000143640 54 / 67  
 Bk: 2990 Pg: 695  
 Hanover Co VA  
 11/24/2010 10:23:58 AM  
 DECL



2009032400042950 Pg. 6 OF 6  
 Bk: 2940 Pg: 3212  
 Hanover Co VA  
 03/24/2009 02:47:58 PM DECL



REC. PAGE

AREA 3: 50.00 acres  
 2009032400042950  
 HANOVER CO CLERK'S OFFICE  
 03/24/2009 02:47:58 PM  
 \$ .00 SEC 58.1-802 GRANTOR'S TAX PD  
 FRANK D. HARGROVE, JR., CLERK  
 BY: RJACOBUS

1 of 1

DATE: 03/24/09  
 SCALE: 1" = 300'

HICKORY HILL  
 COMPENSATION CREDIT  
 BEAVERDAM DISTRICT  
 HANOVER COUNTY, VIRGINIA

**PAZEPID SYSTEMS**  
 1871 Old York Road  
 Suite 200  
 Hanover, VA 23110  
 804-764-8271  
 FAX 804-764-2022

Exhibit B

54

# Hickory Hill Exterior Alteration Form

Date Received: ___/___/___
Approved: YES or NO
By: _____ Committee Chair
Date of Approval: ___/___/___

Owner Name (Please Print)

Owner Street #/Name

City/State/Zip

Home Phone

Work Phone

Legal Description of Property on Which Changes are Proposed

*\*Complete the following if work is to be done by a third party:*

Business Name

Contact Name

Work Phone

Pager #

Please provide a description of alteration, including but not limited to fencing, storage sheds, dog enclosures, etc. Describe in detail, the changes you propose including material used, color and size. Attach a copy of your lot plat showing where alterations will be made (i.e. location of sheds, fences, dog enclosures, Satellite dish, etc.) When completed, send application, plat map, and any related requirements to:

Hickory Hill ARC

Attn: ARC

9235 Shady Grove Road, Suite 109

Mechanicsville, Virginia 23116

Description of Alteration: (Please use back of page if more room is needed)

---

---

---

---

---

---

---

---



20101124000143640 55 / 67  
Bk: 2990 Pg: 696  
Hanover Co VA  
11/24/2010 10:23:58 AM  
DECL

SS

### OWNER'S AGREEMENT

I have completed this application in good faith and it accurately represents the alteration I propose to make. I understand that approval of this application does not authorize me to violate any provisions of the Architectural Standards, Declaration of the building and County zoning codes.

I understand and agree that any construction or alteration undertaken prior to receipt of the Architectural Review Committee's approval is at my own risk, and that I may be required to return the property to its former condition at my own expense should the application be disapproved wholly or in part and I may be subject to fines.

I understand that representatives of the Architectural Review Committee are permitted to enter upon my property at any reasonable time for the purpose of inspection the area for the proposed project, the project in progress, or the completed project and that such entry does not constitute trespass.

I understand that work must be completed in a workmanlike manner as soon as possible after the Committee's approval and that the improvement must be built only on my property.

\_\_\_\_\_  
Owner

\_\_\_\_\_  
Date

### ARCHITECTURAL REVIEW COMMITTEE (ARC) REVIEW

The ARC will process this application without undue delay, although they have up to 21 business days for review. The procurement of additional required information may extend the processing time and in no way may be construed to be a waiver of authority by the Committee. The architectural review process is described in the governing document and the rules. If you wish to discuss this application with the Committee, contact the Committee Chair. If you disagree with the decision of the Committee, a written appeal may be made within 10 days of receipt of their decision.

.....**FOR ARCHITECTURAL REVIEW COMMITTEE USE**.....

*Committee Comments (Please describe in detail if an application is denied)*




Bk: 2990 Pg: 697  
Hanover Co VA  
11/24/2010 10:23:58 AM  
DECL

5C

# Exhibit E

GPIN(S): 7890-64-8117

Consideration: \$0

This Deed is exempt from the Grantees tax imposed by Va. Code §58.1-811.

## MAINTENANCE AND EASEMENT AGREEMENT FOR DAMS APPURTENANT TO A STATE MAINTAINED ROAD

THIS MAINTENANCE AND EASEMENT AGREEMENT FOR DAMS APPURTENANT TO A STATE MAINTAINED ROAD (the "Agreement") is entered into \_\_\_\_\_, 2010, by **HICKORY HILL PARTNERS, LLC**, owner of the property which is the subject of this Agreement, for itself and its successors in title (the "Developer") and **HANOVER COUNTY**, a political subdivision of the Commonwealth of Virginia (the "County"), **BB&T-VA. COLLATERAL SERVICE CORPORATION** (the "Trustee") and **BRANCH BANKING AND TRUST COMPANY**, (the "Noteholder").

### RECITALS

WHEREAS, Hickory Hill Partners, LLC is the owner of the 1,708.554 acre parcel of land located in Hanover County, Virginia, designated GPIN 7890-64-8117 in the County's tax records, having acquired the real property by deed recorded in the Hanover County Circuit Court Clerk's Office in Deed Book 2879 page 254 (the "Property"); and

WHEREAS a Plan prepared by Balzer and Associates dated 7-26-07, titled "Hickory Hill Sec 2" the "Plan") has been approved or submitted for approval by the County; and

WHEREAS, the County will enter into a "County - State Agreement for Maintenance of a Road Over a Dam" (the "County - State Agreement") which will be recorded in the Clerk's Office;



20101124000143640 57 / 67  
Bk: 2990 Pg: 698  
Hanover Co VA  
11/24/2010 10:23:58 AM  
DECL

Return to:  
Hanover County Department of Public Works  
P.O. Box 470  
Hanover, Virginia 23069-0470t

Page 1 of 11

Hickory Hill  
05/13/2010

WHEREAS, the County will petition the Virginia Department of Transportation (VDOT) to maintain the roadway crossing the dam as part of the Secondary System of State Highways;

WHEREAS, the Plan provides for the construction of a road over a dam requiring private maintenance of the dam depicted in the Plan within an area designated "Area for Maintenance and Easement Agreement for Dams Appurtenant to a State Maintained Road" (the "Dam") described in a Plat by Balzer and Associates, Inc., titled "Plat Showing an Area for a Maintenance and Easement Agreement for Dams Appurtenant to a State Maintained Road" dated October 14, 2009 and revised December 10, 2009 including all embankment fill, drainage structures, slopes, and vegetative surfaces and other appurtenances necessary for safe and continued operation of the dam; and

WHEREAS, the County requires that the Dam be constructed and adequately maintained by the Developer.

NOW THEREFORE, in consideration of mutual benefits and other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the signatures of the authorized representatives of the parties below, the parties agree as follows:

AGREEMENT

The Developer warrants that it is the owner of fee simple title to the Property and that there are no exceptions or restrictions which would interfere with or adversely affect the County's rights pursuant to this Agreement, or which would adversely affect the Developer's authority to enter into this Agreement and convey the Easements and record the restrictive covenants described below. The Developer further agrees that it will execute any other documents or assurances required by the County, in order to meet the terms of this warranty or to achieve the fee simple ownership which is represented by the Developer. The Developer agrees for itself and its successors that it shall, in perpetuity, hold the County harmless from and pay all

20101124000143640  
Bk: 2990 Pg: 699  
Shover Co VA  
58 / 67  
.1/24/2010 10:23:58 AM

costs of defense of the County in the event of any claims or demands resulting from failure to comply with the terms of this warranty of fee simple ownership. In no event shall this Agreement be interpreted to obligate the County, its officials and employees, except at the option of the County, to maintain the Dam, any easement areas, or the Property.

The parties further agree as follows:

1. The Developer shall promptly provide maintenance for the Dam as needed to ensure that the Dam remains in proper working condition in accordance with the Plan and with County approved design standards and applicable federal, State and local laws and regulations (the "Requirements"), including without limitation the Hanover County Code, as amended from time to time.. Maintenance shall include repair, reconstruction or replacement of the Dam as necessary to meet the standards of this Agreement.

2. The Developer shall cause inspections of the Dam to be conducted and reports prepared at the expense of the Developer by a licensed professional engineer as follows:

a. During construction of the Dam and Road the Developer shall provide geotechnical inspection and other necessary inspections of the Road, to be conducted by a licensed professional engineer, documenting conformance with the Requirements. Prior to approval by the County of roads for the subdivision, a certification letter from the engineer will be submitted to the County stating that the engineer has reviewed the plans and specifications for the Dam, including appurtenances, and that the design conforms to prevailing engineering principles applicable to the design of dams and that the construction fully complies with the approved plan and specifications and the Requirements.

b. Following acceptance of the Road into the State system the Developer agrees to cause inspections of the Dam to be conducted and reports to be filed during the

DECL  
Hanover Co VA  
11/24/2010 10:23:58 AM  
Bk: 2990 Pg: 700  
20101124000143640 59 / 67

first sixty (60) days of operation of the dam and at least annually thereafter, or as required in writing by the County staff.

c. The Developer shall submit a written inspection report to the County within thirty (30) days after each inspection including:

- i. The date of inspection;
- ii. The name of the Inspector;
- iii. The condition of vegetation, fences, drainage structures, embankments, road way appurtenances and any other item that could affect the proper functioning of the Dam; and
- iv. A description of all maintenance that the Inspector deems necessary in order to ensure that the Dam continues to function in accordance with the design and the approved Plan.

  
20101124000143640 60 / 67  
Bk: 2990 Pg: 701  
Hanover Co VA  
11/24/2010 10:23:58 AM  
DECL

3. For mutual benefits and other valuable consideration the Developer conveys to the County an easement over the Property for access from public rights-of-way to the Dam and an easement within the "Area for Maintenance and Easement Agreement for Dams Appurtenant to a State Maintained Road" designated on the Plat for the purpose of constructing, operating, maintaining, adding to, or replacing the Dam, in the event of failure of the Developer to comply with this Agreement. Prior to or simultaneous with subdivision the Developer shall also convey to the County and/or VDOT an easement across the Dam or other necessary property rights for all purposes necessary for a public roadway.

4. In the event the Developer fails to correct any defects or to commence or provide an acceptable plan for the correction of such defects to maintain the proper working condition of the Dam within fourteen (14) days after the date of the County's written notice of such defects, the

County may enter upon the Property and take whatever reasonable steps it deems necessary to maintain the Dam.

5. In the event of an emergency involving the Dam as determined by the County Administrator or designee, the County, its employees or agents, at its option, may enter immediately upon the Property and take whatever reasonable steps it deems necessary to meet the emergency. The County shall notify the Developer by any appropriate means of such emergency and entry as soon as practicable. Should the Developer fail to respond, or should the Developer inform the County that it intends not to respond within the specified period of time, or should it be necessary to protect the public health, safety and welfare, the County may, at its option, enter immediately upon the Property and take whatever reasonable steps it deems necessary to address the emergency, all at the expense of the Developer.

6. The County shall not pay any compensation at any time for any use of the Property in any way necessary for the inspection and maintenance of the Dam, including access to the Dam.

7. In the event the County, pursuant to this Agreement, performs work or expends any funds reasonably necessary for the maintenance or construction of the Dam, including labor, equipment, supplies and materials, the Developer shall reimburse the County within thirty (30) days after the date of written notice of such expenditures.

8. Any amounts owed by the Developer to the County and not paid within thirty (30) days after receipt of such notification shall be the obligation of the owner of record of the Property or any portion thereof, or successors or assigns, as of the date the liability arose. The full amount owed to the County by the Developer shall be a lien on Property and the joint and several personal obligations of the owners of record. The lien shall be recorded by the County in the lien book in the Clerk's Office, or, if this is not possible for any reason, in a lien book maintained by and in the Office of the County Administrator or designee.



9. The Developer, its assigns and any other successors in interest, shall indemnify and hold harmless the County and its agents and employees for any and all claims, damages, accidents, casualties, and occurrences which might arise or be asserted against the County arising out of or resulting from the construction, presence, existence, maintenance or use of the Dam by the Developer, except for those damages, accidents, casualties, occurrences or claims arising out of the direct or indirect acts or omissions of the County.

10. In the event a claim is asserted against the County, its agents or employees, arising in connection with the Dam, and except for those claims arising out of the acts or omissions of the County, the County shall promptly notify the Developer and the Developer shall defend at its own expense any suit based on such claim. If any judgment or claim against the County, its agents or employees arising in connection with the Dam shall be allowed, and not otherwise arising out of the acts or omissions of the County, the Developer shall pay the amounts of all costs and expenses related to the claim or defense of the claim immediately upon written demand.

11. Except in the event of emergency, notices required by this Agreement shall be effective if given by certified mail, return receipt requested, or other receipted mail delivery, including change of address or legal status of the parties. Notice to the owners of record of the Property shall be notice to the Developer in the event ownership has been transferred following the date of this Agreement. Any notice to the County shall be given to the County Administrator, P. O. Box 470, Hanover, Virginia 23069-0470, and notices, including emergency notices, to the Developer in the name and at the address given below, or to owners of record of the Property.

Developer: Hickory Hill Partners, LLC

Address: 9235 Shady Grove Rd, Suite 109, Mechanicsville, VA 23116

The Owner agrees to notify the County immediately of any change of legal status or of



address. In the event of change of ownership or address, notification by the County to the owner at the address listed in the County real estate assessment (tax) records shall be deemed adequate.

12. The responsibilities and obligations of the Developer shall constitute a covenant running with the land, and shall be binding upon all subsequent owners, their administrators, executors, assigns, heirs and any other successors in interest so long as they own the Property or any portion thereof. Notwithstanding the foregoing, it is understood and agreed that any liability arising during the period of time when any such owner shall own the Real Property or any portion thereof shall remain a personal liability as to such owner, and all successors in title shall be jointly and severally liable for amounts due pursuant to this Agreement. This covenant shall be included in covenant documents recorded by the Developer pertaining to the Property, prior to subdivision of the Property, obligating future owners to comply with this Agreement and to pay assessment for the purpose of carrying out the terms of this Agreement. The Developer shall establish an owners' association pursuant to the covenants, for the purpose of administering the covenants, prior to the issuance of any permit for construction within the Property.

13. In no event shall any provision of this Agreement be interpreted to place any obligations upon the County, its officials, employees or agents, except as specifically described in this Agreement. In no event shall any provision of this Agreement be interpreted to modify or waive the requirements of any federal, State or local law or regulation or the terms of any other agreements between the parties.

14. The laws of the Commonwealth of Virginia shall govern the construction of this Agreement and all claims and actions related to this Agreement shall be filed in the Hanover County General District Court or the Hanover County Circuit Court.

15. Words importing the singular number shall include the plural number and vice versa.

  
20101124000143640 63 / 67  
Bk: 2990 Pg: 704  
Hanover Co VA  
11/24/2010 10:23:58 AM  
DECL

16. For the consideration hereinabove stated, the Trustee, with the consent of the Noteholder as evidenced by the Noteholder's signature hereto, join in and consent to the Maintenance and Easement Agreement for Dams Appurtenant to a State Maintained Road by virtue of that certain Deed of Trust dated May 24, 2007, and recorded May 25, 2007, in the Clerk's Office of the Circuit Court of Hanover County, Virginia, in Deed Book 2879 at page 283.

It is expressly understood, however, that the liens of said Deed of Trust remain in full force and effect as to all property which was conveyed by said Deed of Trust and not expressly released.

17. This Agreement shall be recorded in the Clerk's Office by the County.

The signatures and seals of the parties or of their authorized representatives are set out below in acknowledgment of this Agreement.

**DEVELOPER:**

**HICKORY HILL PARTNERS, LLC**

By: \_\_\_\_\_ (SEAL)  
Todd D. Rogers, Manager

CITY/COUNTY OF \_\_\_\_\_,  
STATE OF \_\_\_\_\_

The foregoing instrument was acknowledged before me \_\_\_\_\_, 2010, by  
Todd D. Rogers, Manager, Hickory Hill Partners, LLC.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public



20101124000143640 64 / 67  
Bk: 2990 Pg: 705  
Hanover Co VA  
11/24/2010 10:23:58 AM  
DECL

**TRUSTEE:**

**BB&T-VA. COLLATERAL SERVICE CORPORATION**

By: \_\_\_\_\_  
Name Printed: \_\_\_\_\_  
Title: \_\_\_\_\_

CITY/COUNTY OF \_\_\_\_\_  
STATE OF \_\_\_\_\_

The foregoing instrument was acknowledged before me \_\_\_\_\_, 2010, by \_\_\_\_\_, Trustee.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

**NOTEHOLDER:**

**BRANCH BANKING & TRUST COMPANY, A  
NORTH CAROLINA BANKING CORPORATION**

By: \_\_\_\_\_  
Name Printed: \_\_\_\_\_  
Title: \_\_\_\_\_

CITY/COUNTY OF \_\_\_\_\_  
STATE OF \_\_\_\_\_

The foregoing instrument was acknowledged before me \_\_\_\_\_, 2010, by \_\_\_\_\_, Noteholder.

My commission expires: \_\_\_\_\_



20101124000143640 65 / 67  
Bk: 2990 Pg: 706  
Hanover Co VA  
11/24/2010 10:23:58 AM  
DECL

65

Notary Public

COPY



20101124000143640 66 / 67  
Bk: 2990 Pg: 707  
Hanover Co VA  
11/24/2010 10:23:58 AM  
DECL

Approved as to form:

Approved as to substance:

\_\_\_\_\_  
A. Lisa Barker  
Deputy County Attorney

\_\_\_\_\_  
J. Michael Flagg, P.E.  
Director of Public Works

**HANOVER COUNTY**, a political subdivision of  
the Commonwealth of Virginia,

Date: \_\_\_\_\_

By: \_\_\_\_\_ (SEAL)  
Name: John H. Hodges  
Deputy County Administrator

COUNTY OF HANOVER,  
COMMONWEALTH OF VIRGINIA,

The foregoing instrument was acknowledged before me \_\_\_\_\_, 2010 by John  
H. Hodges, Deputy County Administrator, on behalf of Hanover County, a political subdivision of  
the Commonwealth of Virginia.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

  
20101124000143640 67 / 67  
Bk: 2990 Pg: 708  
Hanover Co VA  
11/24/2010 10:23:58 AM  
DECL

20101124000143640  
HANOVER CO CLERK'S OFFICE  
11/24/2010 10:23:58 AM  
SEC 58.1-802 GRANTOR'S  
TAX PD. \$.00  
FRANK D. HARGROVE, JR, CLERK  
BY: SWEBB

20101124000143620 1 / 13  
Bk: 2990 Pg: 615  
Hanover Co VA  
11/24/2010 10:23:56 AM  
DEED EASEMENT

GPIN(S) 7890-90-8700 & 7890-64-8117 in part

DEED

**OPEN SPACE EASEMENT**  
RC District - Common Open Space

THIS DEED OF EASEMENT is entered into 19<sup>th</sup> day of November, 2010

by Hickory Hill Partners, LLC

(herein referred to as "Grantor") and HANOVER COUNTY, VIRGINIA, a political subdivision of the Commonwealth of Virginia (the "County"); BB&T VA COLLATERAL

**SERVICE CORPORATION**

("Trustee(s)") either of whom

*(Names of Trustee(s) in CAPS)*

may act; and BRANCH BANKING AND TRUST COMPANY

*(Names of Noteholder(s) in CAPS)*

("Noteholder(s)").

WITNESSETH:

WHEREAS Grantor is the fee simple owner of the tract or tracts of land designated "Common Open Space", GPIN(s) 7890-90-8700, 7890-64-8117 IN PART located in BEAVERDAM District, Hanover County, Virginia, described in Exhibit A attached to and recorded with this Deed; and

WHEREAS the Common Open Space owned by the Grantor has agricultural, scenic, natural and aesthetic value in its present state as a natural and rural area; and

WHEREAS in furtherance of the purposes of the Open Space Land Act, Title 10.1, Chapter 17 of the Virginia Code, and as required by the Hanover County Zoning Ordinance, the Grantor is willing to grant a perpetual Open Space Easement applicable to the Common Open Space, restricting and limiting the use of the land, on the terms and conditions and for the purposes set forth below, and the County is willing to accept the Easement; and

WHEREAS the Grantor and the County recognize the value of the Common Open Space in its present state, and have a common purpose of conserving the Common Open Space, preserving the dominant rural character of the Common Open Space, and preventing the use or development of the Common Open Space for any purpose or in any manner which would conflict with maintenance in accordance with purposes of the Open Space Land Act and the Hanover County Zoning Ordinance; and

WHEREAS the County is authorized by the Open Space Land Act to accept, hold and administer the Open Space Easement, and the County possesses the authority to accept and is willing to accept the Open Space Easement under the terms and conditions described below, and the Grantor, for itself, its successors and assigns waives any objection to the perpetual nature of this easement.

NOW THEREFORE, for good and valuable consideration, receipt of which all parties acknowledge, and in consideration of the mutual covenants and restrictions set forth below, the Grantor conveys to the County and its successors and assigns forever and in perpetuity an Open Space Easement of the nature and character and to the extent set forth below, applicable to the Common Open Space more particularly described in Exhibit A, for the purposes of preserving the important features of the Common Open Space and maintaining permanently the rural, natural and scenic character of the Common Open Space; and

The commitments, conditions and restrictions applicable to the Common Open Space, for the purpose of achieving these goals are set forth below:

1. This Easement shall be perpetual. It is an easement in gross, and shall run with the land as an incorporeal interest in the Common Open Space enforceable by the County against

  
20101124000143620 2 / 13  
Bk: 2990 Pg: 616  
Hanover Co VA  
11/24/2010 10:23:56 AM  
DEED EASEMENT

the Grantor and its heirs, successors and assigns. The Grantor for itself, its heirs, successors and assigns waives any objection to the perpetual nature of the Easement.

2. There shall be no dumping of soil, trash, ashes, garbage, waste or offensive material. There shall be no dumping or filling in of any pond, wetland, waterway, or other area except as may be permitted by applicable laws for the purpose of combating erosion. Accumulation or application of trash, refuse, junk, sludge or other unsightly material is not permitted on the Common Open Space. There shall be no dumping, storage or placement on the Common Open Space of any stumps, brush, grass or other land clearing debris from off-site. This paragraph shall be reasonably interpreted so as to permit activities that are consistent with sound agricultural and silvicultural practices, such as the composting of vegetative materials grown or used on site, the amendment of soils to be used for agriculture by the incorporation of sand, topsoil or compost materials from off site, or the proper storage of inoperative machinery, fencing materials, etc. for repair, reuse or recycling.

3. Mining, dredging and removal of loam, gravel, soil, rock, sand, coal and other materials are prohibited, except as necessary for:

- a. Application of good farming and forestry practices;
- b. Maintenance of existing accesses; and
- c. Construction and maintenance of accesses to uses and structures permitted within the provisions of this Deed of Easement. Accesses shall be designed and constructed to cause a minimum of interference with the existing topography, drainage, vegetation, wildlife, and conservation purposes of the Common Open Space.

4. Removal, destruction and cutting of trees, shrubs, or other vegetation is prohibited except as indicated on the Conceptual Plan and for:

  
20101124000143620 3 / 13  
Bk: 2990 Pg: 617  
Hanover Co VA  
11/24/2010 10:23:56 AM  
DEED EASEMENT

- a. Reasonable maintenance of existing accesses or construction and maintenance of accesses permitted by this Deed of Easement; or
- b. Application of good management practices including the prevention or treatment of disease; or
- c. Periodic selective harvest of marketable timber under the supervision of a qualified forester; or
- d. Furtherance and perpetuation of the agricultural, horticultural, silvicultural and naturalistic uses of the Common Open Space; or
- e. Removal of only such vegetation as is reasonably necessary for construction and improvements in substantial conformity with the Conceptual Plan and in accordance with this Deed of Easement.

All forestal management activities shall be in accordance with the sound forestry management guidelines promulgated by the Society of American Foresters or successor organization for natural forests and plantations. All forestry practices shall serve the dual purpose of:

- (i) Protecting the soils, drainage and water quality of the Common Open Space; and
- (ii) Enhancing the sustainable growth, and quality of the tree species suited to the Common Open Space.

5. There shall be no activities or uses detrimental or adverse to water conservation, erosion control, soil conservation and, subject to the permitted uses, the preservation of wildlife habitat.



20101124000143620 4 / 13  
Bk: 2990 Pg: 618  
Hanover Co VA  
11/24/2010 10:23:56 AM  
DEED EASEMENT

6. Use, development and improvement of the Common Open Space shall be permitted only in accordance with the Hanover County Zoning Ordinance and as depicted on the Conceptual Plan approved by the Board of Supervisors and referred to in Exhibit A. The Common Open Space shall not be further divided, subdivided, or conveyed in fee except as depicted in the Conceptual Plan, and shall be maintained as open space.

7. There shall be no alteration of the topography of the Common Open Space, except as required for the construction of structures, roads or other improvements in substantial conformity with the Conceptual Plan or reasonably necessary to provide for permitted uses.

8. The features designated on the Conceptual Plan for preservation, including all historic structures, woodlands, and historic sites shall be maintained and preserved by the Grantor, its heirs, successors or assigns substantially as depicted on the Conceptual Plan, and in substantially the same condition as exists on the date of execution of this Deed.

9. The Grantor expressly reserves to itself, its successors and assigns the right to:

a. Continue the agricultural, forestry and naturalistic uses of the Common Open Space.

b. Improve, repair, restore, alter, remodel or replace the permitted structures depicted on the Conceptual Plan with structures of similar size and purpose and construct any other improvements depicted on the Conceptual Plan provided that the changes are compatible with the conservation purposes of the Common Open Space and all other provisions of this Easement.

c. Continue the use of the Common Open Space for all purposes not inconsistent with this Easement.

  
20101124000143620 5 / 13  
Bk: 2990 Pg: 619  
Hanover Co VA  
11/24/2010 10:23:56 AM  
DEED EASEMENT

10. The parties agree that monetary damages would not be an adequate remedy for the breach of any of the terms, conditions and restrictions of this Easement, and therefore, in the event that the Grantor, its heirs, successors or assigns, violate or breach any of these terms, conditions and restrictions, the County and its successors and assigns, may institute a suit and shall be entitled to enjoin by ex parte temporary and/or permanent injunction such violation and to require the restoration of the Common Open Space to a condition in compliance with this Easement. The County, its successors and assigns, by any prior failure to act do not waive or forfeit the right to take any action as may be necessary to insure compliance with the terms, conditions and purposes of this Easement.

11. The County, its successors and assigns, have the right, with reasonable notice, to enter the Common Open Space for the purpose of inspection to determine whether the Grantor, or its successors or assigns, are complying with the terms, conditions and restrictions of this Easement. This right of inspection does not include the interior of any dwellings.

12. The County may assign its rights under this Easement to any State or federal agency charged with the responsibility of conservation of natural or farm areas, or open space, or to any non-profit, tax-exempt organization engaged in promoting conservation of historic, rural or natural areas; and if such assignee shall be dissolved or shall abandon this Easement or the rights and duties of enforcement or if proceedings are instituted for condemnation of this Easement, the Easement and rights of enforcement shall revert to the County; and if the County shall be dissolved and if the terms of the dissolution fail to provide a successor, then the Hanover County Circuit Court shall appoint an appropriate successor.



20101124000143620 6 / 13  
Bk: 2990 Pg: 620  
Hanover Co VA  
11/24/2010 10:23:56 AM  
DEED EASEMENT

13. The Grantor agrees for itself, its heirs, successors and assigns to give notice in writing to the County of the names and addresses of any parties to whom the Common Open Space is to be transferred, at the time of transfer.

14. The County agrees to hold this Easement exclusively for conservation purposes, and will not transfer the Easement in exchange for money, other property, or services, except as provided in and permitted by the Open Space Land Act.

15. This Easement shall be construed to promote the purposes of the Virginia Open Space Land Act, to promote the Comprehensive Plan of Hanover County, and to promote the conservation purposes of this Easement, including such purposes as are defined in the Internal Revenue Code.

16. Although this Easement in gross will benefit the public in ways recited above by encouraging and requiring elements of good land management, it shall not be construed to convey a right to the public of access or use of the Common Open Space, and the Grantor, its heirs, successors and assigns shall retain exclusive right to access and use.

The covenants agreed to and the terms, conditions, restrictions and purposes imposed shall be binding not only upon the Grantor, but also its agents, personal representatives, heirs, assigns, and all other successors to it in interest, and shall continue as a servitude running in perpetuity with the above described land, notwithstanding any restrictions at common law on the term of easements in gross, or their enforcement.

17. Notwithstanding any other provision of this Deed of Easement, the Hanover County Zoning Ordinance and other applicable statutes, ordinances and regulations shall apply to the Property and shall take precedence over this Easement to the extent that those requirements are more restrictive than the terms of this Easement.

  
20101124000143620 7 / 13  
Bk: 2990 Pg: 621  
Hanover Co VA  
11/24/2010 10:23:56 AM  
DEED EASEMENT

18. The invalidity or unenforceability of any provision of this Easement shall not affect the validity or enforceability of any provision of this Easement or any ancillary or supplementary agreement relating to the subject matter of this Easement.

THIS DEED FURTHER WITNESSETH: That for the consideration hereinabove stated, the Trustee(s), with the consent of the Noteholder(s) as evidenced by the Noteholder's(s) signature hereto, do hereby join in and consent to the granting of the aforesaid easements and do release all of their right, title and interest in and to the above described permanent easement by virtue of that certain Deed of Trust dated MAY 24, 2007, and recorded MAY 25, 2007, in the Clerk's Office of the Circuit Court of Hanover County, Virginia, in Deed Book 2879 at page 283, and the following amendments to the Deed of Trust (if applicable):

It is expressly understood, however, that the liens of said Deed of Trust remain in full force and effect as to all property which was conveyed by said Deed(s) of Trust and not expressly released.

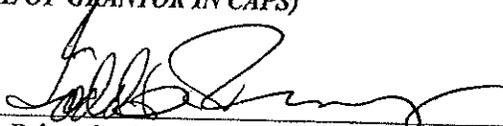
The signatures and seals of the parties or their authorized representatives are set out below in acknowledgment of this conveyance.

<p>Nature of entity:</p> <p><input type="checkbox"/> Virginia corporation</p> <p><input type="checkbox"/> Non-Virginia corporation</p> <p>State of incorporation:</p> <p><input type="checkbox"/> Limited liability company</p> <p><input type="checkbox"/> General partnership</p> <p><input type="checkbox"/> Limited partnership</p> <p><input type="checkbox"/> Sole proprietorship/individual(s)</p>
---

GRANTOR(S):

HICKORY HILL PARTNERS, LLC

(NAME OF GRANTOR IN CAPS)

By: 

Name Printed: TODD D. ROGERS

Title: MANAGER

  
20101124000143620 8 / 13  
Bk: 2990 Pg: 622  
Hanover Co VA  
11/24/2010 10:23:56 AM  
DEED EASEMENT

\_\_\_\_\_  
(NAME OF GRANTOR IN CAPS)

By: \_\_\_\_\_  
Name Printed: \_\_\_\_\_  
Title: \_\_\_\_\_

TRUSTEE(S):

**BB&T VA COLLATERAL SERVICE CORP.**  
(NAME OF TRUSTEE IN CAPS)

By: *[Signature]*  
Name Printed: DAVID M. ROE  
Title: Vice President

\_\_\_\_\_  
(NAME OF TRUSTEE IN CAPS)

By: \_\_\_\_\_  
Name Printed: \_\_\_\_\_  
Title: \_\_\_\_\_

NOTEHOLDER(S):

**BRANCH BANKING AND TRUST COMPANY**  
(NAME OF NOTEHOLDER IN CAPS)

By: *[Signature]*  
Name Printed: ELSPETH S. MCCLELLAND  
Title: SENIOR VICE PRESIDENT

\_\_\_\_\_  
(NAME OF NOTEHOLDER IN CAPS)

By: \_\_\_\_\_  
Name Printed: \_\_\_\_\_  
Title: \_\_\_\_\_

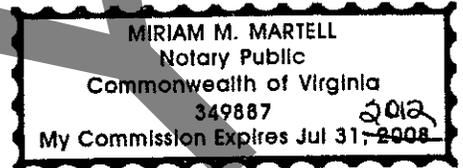
  
20101124000143620 9 / 13  
Bk: 2990 Pg: 623  
Hanover Co VA  
11/24/2010 10:23:56 AM  
DEED EASEMENT

COMMONWEALTH OF VIRGINIA )  
 ) to-wit:  
COUNTY OF HANOVER )

The foregoing instrument was acknowledged before me this 15<sup>th</sup> day of November, 2010, by Todd D. Rogers, Grantor.

My commission expires: 7-31-2012

Miriam M. Martell  
Notary Public



COMMONWEALTH OF VIRGINIA )  
 ) to-wit:  
COUNTY OF HANOVER )

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 200\_\_, by \_\_\_\_\_, Grantor.

My commission expires:

\_\_\_\_\_  
Notary Public

COMMONWEALTH OF VIRGINIA )  
City of Richmond ) to-wit:  
COUNTY OF HANOVER )

The foregoing instrument was acknowledged before me this 18 day of November, 2010, by Douglas M. Roth, Trustee.

My commission expires: 4-30-2011

Denise C. Windsor  
Notary Public



20101124000143620 10 / 13  
Bk: 2990 Pg: 624  
Hanover Co VA  
11/24/2010 10:23:56 AM  
DEED EASEMENT

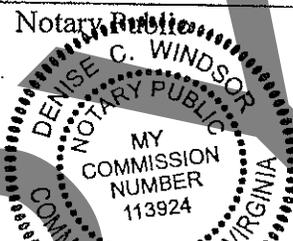
COMMONWEALTH OF VIRGINIA )  
 ) to-wit:  
COUNTY OF HANOVER )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 200\_\_, by \_\_\_\_\_, Trustee.

My commission expires:

\_\_\_\_\_

COMMONWEALTH OF VIRGINIA )  
City of Richmond ) to-wit:  
~~COUNTY OF HANOVER~~ )



The foregoing instrument was acknowledged before me this 18 day of November, 2000, by Elsbeth S. McClelland, Noteholder.

My commission expires: 4.30.2011

Denise C. Windsor  
Notary Public

COMMONWEALTH OF VIRGINIA )  
 ) to-wit:  
COUNTY OF HANOVER )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 200\_\_, by \_\_\_\_\_, Noteholder.

My commission expires:

\_\_\_\_\_  
Notary Public



20101124000143620 11 / 13  
Bk: 2990 Pg: 625  
Hanover Co VA  
11/24/2010 10:23:56 AM  
DEED EASEMENT

Approved as to form:  
Hanover County Attorney's Office  
November 1, 2001

Approved as to substance:

John A. Bender  
Director/Deputy Director of Planning

Acceptance of this Deed by Hanover County, a political subdivision of the Commonwealth of Virginia, pursuant to Va. Code Section 15.2-1803, is evidenced by the signature below.

Date: 11/23/10

John Hodges  
County Administrator/Deputy County Administrator

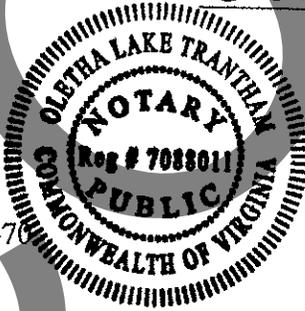
COMMONWEALTH OF VIRGINIA,  
COUNTY/CITY OF HANOVER, to-wit:

The foregoing instrument was acknowledged before me this 23 day of November, 2010, by John Hodges, on behalf of Hanover County, Virginia.

My commission expires: 11/30/11

Oletha Lake Trantham  
Notary Public

County's Address:  
County Administrator  
P.O. Box 470  
Hanover, Virginia 23069-0470



20101124000143620 12 / 13  
Bk: 2990 Pg: 626  
Hanover Co VA  
11/24/2010 10:23:56 AM  
DEED EASEMENT

20101124000143620 13 / 13  
Bk: 2990 Pg: 627  
Hanover Co VA  
11/24/2010 10:23:56 AM  
DEED EASEMENT

**EXHIBIT A**  
**OPEN SPACE EASEMENT - COMMON OPEN SPACE**

NAME OF DEVELOPMENT: Hickory Hill, Section 2  
GPIN(S): 7890-64-8117 and 7890-90-8700  
ZONING DISTRICT: RC (c)

*REZONING CASE C- 39-05 (c)*  
CONCEPTUAL PLAN BY: McKinney & Company DATED: December 7, 2006  
TITLED: Hickory Hill Subdivision  
APPROVED BY THE BOARD OF SUPERVISORS: January 24, 2007

That real estate located in the Beaverdam District, Hanover  
County, Virginia, consisting of approximately 144.28 acres described in a  
plat/plan titled "Hickory Hill, Section 2  
\_\_\_\_\_" by Balzer & Assoc., dated November 8,  
2010. Reference is made to the plat/plan for a more complete description  
of the property.

Being a portion of the same property conveyed to Hickory Hill Partners, LLC  
\_\_\_\_\_, by deed from  
Hickory Hill LLC, dated  
May 24, 2007 and recorded May 25, 2007, in the  
Hanover County Circuit Court Clerk's Office in Deed Book 2879, page

254 and by deed from John Graham Wickham, dated May 17, 2007 and  
recorded May 25, 2007 in Hanover County Circuit Court Clerk's Office  
in Deed Book 2879, page 251.

20101124000143620  
HANOVER CO CLERK'S OFFICE  
11/24/2010 10:23:56 AM  
SEC 58.1-802 GRANTOR'S  
TAX PD. \$.00  
FRANK D. HARGROVE, JR, CLERK  
BY: SWEBB

FORM0318A (Exhibit A - Common Open Space - RS & RC Districts)

20101124000143630 1 / 14  
Bk: 2990 Pg: 628  
Hanover Co VA  
11/24/2010 10:23:57 AM  
DEED EASEMENT

GPIN(S) 7890-90-8700 & 7890-64-8117 IN PART  
**DEED**

**OPEN SPACE EASEMENT**  
**Preservation Lot**

THIS DEED OF EASEMENT is entered into 19<sup>th</sup> day of November, 2010  
by HICKORY HILL PARTNERS, LLC

(herein referred to as "Grantor") and HANOVER COUNTY, VIRGINIA, a political subdivision  
of the Commonwealth of Virginia (the "County"); and HICKORY HILL PROPERTY

OWNERS ASSOCIATION, INC (*Name of Owners' Association in CAPS*) ("the Association"), BB&T VA COLLATERAL

SERVICE CORPORATION ("Trustee(s)") either of whom may act; and  
(*Names of Trustee(s) in CAPS*)

BRANCH BANKING AND TRUST COMPANY, ("Noteholder(s)").  
(*Names of Noteholder(s) in CAPS*)

WITNESSETH:

WHEREAS Grantor is the fee simple owner of the tract or tracts of land designated  
"Common Open Space", GPIN(s) 7890-90-8700, 7890-64-8117 IN PART  
located in BEAVERDAM District, Hanover County, Virginia, described in  
Exhibit A attached to and recorded with this Deed; and

WHEREAS the Property owned by the Grantor has agricultural, scenic, natural and  
aesthetic value in its present state as a natural and rural area; and

WHEREAS in furtherance of the purposes of the Open Space Land Act, Title 10.1,  
Chapter 17 of the Virginia Code, and as required by the Hanover County Zoning Ordinance, the  
Grantor is willing to grant a perpetual Open Space Easement applicable to the Preservation Lot,  
restricting and limiting the use of the land, on the terms and conditions and for the purposes set  
forth below, and the County is willing to accept the Easement; and

WHEREAS the Grantor and the County recognize the value of the Preservation Lot in its present state, and have a common purpose of conserving the Preservation Lot, promoting and encouraging the preservation of farmland, promoting and enhancing agriculture as an important industry within the County, preserving the dominant rural character of the Preservation Lot, and preventing the use or development of the Preservation Lot for any purpose or in any manner which would conflict with maintenance in accordance with purposes of the Open Space Land Act and the Hanover County Zoning Ordinance, and recognize this Easement as an easement appurtenant to land retained by the Association designated as Common Open Space; and

WHEREAS the County is authorized by the Open Space Land Act to accept, hold and administer the Open Space Easement, and the County and the Association possess the authority to accept and are willing to accept the Open Space Easement under the terms and conditions described below, and the Grantor, for itself, its successors and assigns waives any objection to the perpetual nature of this Easement.

NOW THEREFORE, for good and valuable consideration, receipt of which all parties acknowledge, and in consideration of the mutual covenants and restrictions set forth below, the Grantor conveys to the County and to the Association and their successors and assigns forever and in perpetuity an Open Space Easement of the nature and character and to the extent set forth below, applicable to the Preservation Lot for the purpose of preserving the important features of the Preservation Lot and maintaining permanently the rural, natural and scenic character of the Preservation Lot; and

The commitments, conditions and restrictions applicable to the Preservation Lot, for the purpose of achieving these goals are set forth below:

  
20101124000143630 2 / 14  
Bk: 2990 Pg: 629  
Hanover Co VA  
11/24/2010 10:23:57 AM  
DEED EASEMENT

1. This Easement shall be perpetual. The Easement conveyed to the County is an easement in gross. The Easement interest of the Association benefits and is appurtenant to land retained by the Association. The Easement shall run with the land as an incorporeal interest in the Preservation Lot enforceable by the County and the Association, against the Grantor and its successors and assigns. The Grantor for itself, its successors and assigns waives any objection to the perpetual nature of the Easement.

2. There shall be no dumping of soil, trash, ashes, garbage, waste or offensive material. There shall be no dumping or filling in of any pond, wetland, waterway, or other area except as may be permitted by applicable laws for the purpose of combating erosion. Accumulation or application of trash, refuse, junk, sludge or other unsightly material is not permitted on the Preservation Lot. There shall be no dumping, storage or placement on the Preservation Lot of any stumps, brush, grass or other land clearing debris from off-site. This paragraph shall be reasonably interpreted so as to permit activities that are consistent with sound agricultural and silvicultural practices, such as the composting of vegetative materials grown or used on site, the amendment of soils to be used for agriculture, and the proper storage of inoperative machinery, fencing materials, etc. for repair, reuse or recycling. In addition, this paragraph shall not be deemed to prohibit reasonable activities ancillary to any residential use of the Preservation Lot, such as the incineration of household refuse produced on site, the disposal of ashes from the incinerator, fireplaces and wood stoves, the composting of vegetative household waste, etc.

3. Mining, dredging and removal of loam, gravel, soil, rock, sand, coal and other materials are prohibited, except as necessary for:

a. Application of good farming and forestry practices;

  
20101124000143630 3 / 14  
Bk: 2990 Pg: 630  
Hanover Co VA  
11/24/2010 10:23:57 AM  
DEED EASEMENT

- b. Maintenance of existing accesses; and
  - c. Construction and maintenance of accesses to uses and structures permitted within the provisions of this Deed of Easement. Accesses shall be designed and constructed to cause a minimum of interference with the existing topography, drainage, vegetation, wildlife, and conservation purposes of the Preservation Lot.
4. Removal, destruction and cutting of trees, shrubs, or other vegetation is prohibited except as indicated on the Conceptual Plan and for:
- a. Reasonable maintenance of existing accesses or construction and maintenance of accesses permitted by this Deed of Easement; or
  - b. Application of good management practices including the prevention or treatment of disease; or
  - c. Periodic selective harvest of marketable timber under the supervision of a qualified forester; or
  - d. Furtherance and perpetuation of the agricultural, horticultural, silvicultural and naturalistic uses of the Preservation Lot; or
  - e. Removal of only such vegetation as is reasonably necessary for construction and improvements or good farming practices in substantial conformity with the Conceptual Plan and in accordance with this Deed of Easement.

All forestal management activities shall be in accordance with the sound forestry management guidelines promulgated by the Society of American Foresters or successor organization for forests and plantations. All forestry practices shall serve the dual purpose of :

- (i) Protecting the soils, drainage and water quality of the Property;  
and
- (ii) Enhancing the sustainable growth, and quality of the tree species  
suited to the Property.

5. There shall be no activities or uses detrimental or adverse to water conservation, erosion control, soil conservation and, subject to the permitted uses, the preservation of wildlife habitat. Agricultural activities conducted in accordance with practices and standards developed by State and federal regulatory agencies shall not constitute an activity detrimental or adverse to water conservation, erosion control, or soil conservation.

6. Development of the Preservation Lot shall not be permitted except as provided in this Easement or as provided in the Hanover County Zoning Ordinance, and use of the Preservation Lot shall be permitted only in accordance with the Hanover County Zoning Ordinance. The Preservation Lot shall not be further divided, subdivided, or conveyed in fee except in the tracts described in the Plat and shall be maintained as open space.

7. There shall be no alteration of the topography of the Preservation Lot, except as required for the construction of structures, roads, ponds, or other improvements in substantial conformity with the Conceptual Plan or reasonably necessary to provide for permitted uses.

8. The features designated on the Conceptual Plan for preservation, including all historic structures, woodlands, and historic sites shall be maintained and preserved by the Grantor, its successors or assigns substantially as shown on the Conceptual Plan, and in substantially the same condition as exists on the date of execution of this Deed.

9. The Grantor expressly reserves to itself, its successors and assigns the right to:

- a. Continue the agricultural, forestry and naturalistic uses of the Preservation Lot.
- b. Improve, repair, restore, alter, remodel or replace the permitted structures depicted in the Conceptual Plan with structures of similar size and purpose and construct any other improvements in areas depicted on the Conceptual Plan provided that the changes are compatible with the conservation purposes of the Preservation Lot and all other provisions of this Easement.
- c. Continue the use of the Preservation Lot for all purposes not inconsistent with this Easement and the Zoning Ordinance.

10. The parties agree that monetary damages would not be an adequate remedy for the breach of any of the terms, conditions and restrictions of this Easement, and therefore, in the event that the Grantor, its heirs, successors or assigns, violate or breach any of these terms, conditions and restrictions, the County or the Association, or both, and their successors and assigns, individually or jointly, may institute a suit and shall be entitled to enjoin by ex parte temporary and/or permanent injunction such violation and to require the restoration of the Preservation Lot to a condition in compliance with this Easement. The County and the Association, their successors and assigns, by any prior failure to act do not waive or forfeit the right to take any action as may be necessary to insure compliance with the terms, conditions and purposes of this Easement.

11. The County and authorized representatives of the Association, and their successors and assigns, have the right, with an appointment which shall be arranged by the owner within four (4) days of a request being made, to enter the Preservation Lot with an owner and a representative of the County for the purpose of inspecting the Lot to determine whether the

  
20101124000143630 6 / 14  
BK: 2990 Pg: 633  
Hanover Co VA  
11/24/2010 10:23:57 AM  
DEED EASEMENT

Grantor, or its successors or assigns, are complying with the terms, conditions and restrictions of this Easement. There shall be no more than two (2) such inspections within one (1) calendar year. This right of inspection does not include the interior of any dwellings. No more than three authorized representatives of the Association may enter the Property. Three (3) representatives shall be elected by the Association, and their names shall be furnished to the owner prior to an appointment.

12. The County may assign its rights under this Easement to any State or federal agency charged with the responsibility of conservation of natural or farm areas, or open space, or to any non-profit, tax-exempt organization engaged in promoting conservation of historic, rural or natural areas; and if such assignee shall be dissolved or shall abandon this Easement or the rights and duties of enforcement or if proceedings are instituted for condemnation of this Easement, the Easement and rights of enforcement shall revert to the County; and if the County shall be dissolved and if the terms of the dissolution fail to provide a successor, then the Hanover County Circuit Court shall appoint an appropriate successor.

13. The Grantor agrees for itself, its successors and assigns to give notice in writing to the County of the names and addresses of any parties to whom the Preservation Lot is to be transferred, at the time of transfer.

14. The County and the Association agree to hold this Easement exclusively for conservation purposes, and will not transfer the Easement in exchange for money, other property, or services, except as provided in and permitted by the Open Space Land Act.

15. This Easement shall be construed to promote the purposes of the Virginia Open Space Land Act, to promote the Comprehensive Plan of Hanover County, and to promote the

  
20101124000143630 7 / 14  
Bk: 2990 Pg: 634  
Hanover Co VA  
11/24/2010 10:23:57 AM  
DEED EASEMENT

conservation purposes of this Easement, including such purposes as are defined in the Internal Revenue Code.

16. Although this Easement in gross will benefit the public in ways recited above by encouraging and requiring elements of good land management, and the property retained by the Association will be benefited by this Easement, it shall not be construed to convey a right to the public of access or use of the Preservation Lot, and the Grantor, its successors and assigns shall retain exclusive right to access and use.

The covenants agreed to and the terms, conditions, restrictions and purposes imposed shall be binding not only upon the Grantor, but also its agents, personal representatives, heirs, assigns, and all other successors to it in interest, and shall continue as a servitude running in perpetuity with the above described land, notwithstanding any restrictions at common law on the term of easements in gross, or their enforcement.

17. Notwithstanding any other provision of this Deed of Easement, the Hanover County Zoning Ordinance and other applicable statutes, ordinances and regulations shall apply to the Preservation Lot and shall take precedence over this Easement to the extent that those requirements are more restrictive than the terms of this Easement. This paragraph shall not be construed to impair vested rights.

18. The invalidity or unenforceability of any provision of this Easement shall not affect the validity or enforceability of any provision of this Easement or any ancillary or supplementary agreement relating to the subject matter of this Easement.

THIS DEED FURTHER WITNESSETH: That for the consideration hereinabove stated, the Trustee(s), with the consent of the Noteholder(s) as evidenced by the Noteholder's(s) signature hereto, do hereby join in and consent to the granting of the aforesaid easements and do release all of

  
20101124000143630 8 / 14  
Bk: 2990 Pg: 635  
Hanover Co VA  
11/24/2010 10:23:57 AM  
DEED EASEMENT

their right, title and interest in and to the above described permanent easement by virtue of that certain Deed of Trust dated MAY 24, 2007, and recorded MAY 25, 2007, in the Clerk's Office of the Circuit Court of Hanover County, Virginia, in Deed Book 2879 at page 283, and the following amendments to the Deed of Trust (if applicable): \_\_\_\_\_

It is expressly understood, however, that the liens of said Deed of Trust remain in full force and effect as to all property which was conveyed by said Deed(s) of Trust and not expressly released.

The signatures and seals of the parties or their authorized representatives are set out below in acknowledgment of this conveyance.

<i>Nature of entity:</i>
<input type="checkbox"/> <i>Virginia corporation</i>
<input type="checkbox"/> <i>Non-Virginia corporation</i>
<i>State of incorporation:</i>
<input type="checkbox"/> <i>Limited liability company</i>
<input type="checkbox"/> <i>General partnership</i>
<input type="checkbox"/> <i>Limited partnership</i>
<input type="checkbox"/> <i>Sole proprietorship/individual(s)</i>

GRANTOR(S):

**HICKORY HILL PARTNERS, LLC**

(NAME OF GRANTOR IN CAPS)

By: 

Name Printed: **TODD D. ROGERS**

Title: **MANAGER**

(NAME OF GRANTOR IN CAPS)

By: \_\_\_\_\_

Name Printed: \_\_\_\_\_

Title: \_\_\_\_\_

  
20101124000143630 9 / 14  
Bk: 2990 Pg: 636  
Hanover Co VA  
11/24/2010 10:23:57 AM  
DEED EASEMENT

**OWNERS' ASSOCIATION:**

**HICKORY HILL PROPERTY OWNERS ASSOCIATION, IN**  
*(NAME OF OWNERS' ASSOCIATION IN CAPS)*

By: *Todd D. Rogers* Pres.  
Name Printed: Todd D. Rogers  
Title: President

**TRUSTEE(S):**

**BB&T VA COLLATERAL SERVICE CORP.**  
*(NAME OF TRUSTEE IN CAPS)*

By: *DMR*  
Name Printed: Douglas M. Roth  
Title: Vice President

*(NAME OF TRUSTEE IN CAPS)*

By: \_\_\_\_\_  
Name Printed: \_\_\_\_\_  
Title: \_\_\_\_\_

**NOTEHOLDER(S):**

**BRANCH BANKING AND TRUST COMPANY**  
*(NAME OF NOTEHOLDER IN CAPS)*

By: *Elspeth S. McClellan*  
Name Printed: Elspeth S. McClellan  
Title: Senior Vice President

*(NAME OF NOTEHOLDER IN CAPS)*

By: \_\_\_\_\_  
Name Printed: \_\_\_\_\_  
Title: \_\_\_\_\_

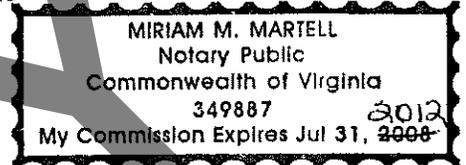
  
20101124000143630 10 / 14  
Bk: 2990 Pg: 637  
Hanover Co VA  
11/24/2010 10:23:57 AM  
DEED EASEMENT

COMMONWEALTH OF VIRGINIA )  
 ) to-wit:  
COUNTY OF HANOVER )

The foregoing instrument was acknowledged before me this 19<sup>th</sup> day of November, 2010, by TODD D. ROGERS, Grantor.

My commission expires: 7-31-2012

Miriam M. Martell  
Notary Public



COMMONWEALTH OF VIRGINIA )  
 ) to-wit:  
COUNTY OF HANOVER )

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 200\_\_, by \_\_\_\_\_, Grantor.

My commission expires:

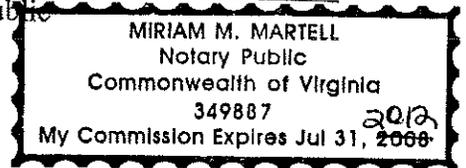
\_\_\_\_\_  
Notary Public

COMMONWEALTH OF VIRGINIA )  
 ) to-wit:  
COUNTY OF HANOVER )

The foregoing instrument was acknowledged before me this 19<sup>th</sup> day of November, 2010, by TODD D. ROGERS, on behalf of HICKORY HILL PROPERTY OWNERS ASSOCIATION, INC. (name of Owner's Association in CAPS).

My commission expires: 7-31-2012

Miriam M. Martell  
Notary Public



Bk: 2990 Pg: 638  
Hanover Co VA  
11/24/2010 10:23:57 AM  
DEED EASEMENT

COMMONWEALTH OF VIRGINIA )  
City of Richmond ) to-wit:  
COUNTY OF HANOVER )



The foregoing instrument was acknowledged before me this 18 day of November, 2010, by Douglas M. Roth, Trustee.

My commission expires: 4.30.2011

Denise Windsor  
Notary Public

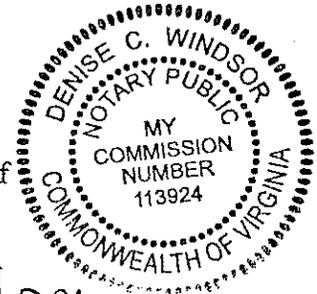
COMMONWEALTH OF VIRGINIA )  
 ) to-wit:  
COUNTY OF HANOVER )

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 200\_\_, by \_\_\_\_\_, Trustee.

My commission expires:

\_\_\_\_\_  
Notary Public

COMMONWEALTH OF VIRGINIA )  
City of Richmond ) to-wit:  
COUNTY OF HANOVER )



The foregoing instrument was acknowledged before me this 18 day of November, 2010, by Elsbeth S. McClelland, Noteholder.

My commission expires: 4.30.2011

Denise Windsor  
Notary Public

COMMONWEALTH OF VIRGINIA )  
 ) to-wit:  
COUNTY OF HANOVER )

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 200\_\_, by \_\_\_\_\_, Noteholder.

My commission expires:

\_\_\_\_\_  
Notary Public



Approved as to form:  
Hanover County Attorney's Office  
November 1, 2001

Approved as to substance:

John A. Bender  
Director/Deputy Director of Planning

Acceptance of this Deed by Hanover County, a political subdivision of the Commonwealth of Virginia, pursuant to Va. Code Section 15.2-1803, is evidenced by the signature below.

Date: 11/23/10

John R. Hodges  
County Administrator/Deputy County Administrator

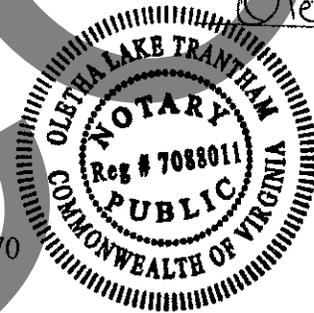
COMMONWEALTH OF VIRGINIA,  
COUNTY/CITY OF HANOVER, to-wit:

The foregoing instrument was acknowledged before me this 23 day of November, 2010, by John Hodges, on behalf of Hanover County, Virginia.

My commission expires: 11/30/11

Oletha Lake Trantham  
Notary Public

County's Address:  
County Administrator  
P.O. Box 470  
Hanover, Virginia 23069-0470



20101124000143630 13 / 14  
Bk: 2990 Pg: 640  
Hanover Co VA  
11/24/2010 10:23:57 AM  
DEED EASEMENT

20101124000143630 14 / 14  
Bk: 2990 Pg: 641  
Hanover Co VA  
11/24/2010 10:23:57 AM  
DEED EASEMENT

**EXHIBIT A  
OPEN SPACE EASEMENT - COMMON OPEN SPACE**

NAME OF DEVELOPMENT: Hickory Hill, Section 2  
GPIN(S): 7890-64-8117 and 7890-90-8700  
ZONING DISTRICT: RC (c)  
*REZONING CASE C- 39-05 (c)*  
CONCEPTUAL PLAN BY: McKinney & Company DATED: December 7, 2006  
TITLED: Hickory Hill Subdivision  
APPROVED BY THE BOARD OF SUPERVISORS: January 24, 2007

That real estate located in the Beaverdam District, Hanover County, Virginia, consisting of approximately 754.6 acres described in a plat/plan titled "Hickory Hill, Section 2" by Balzer & Assoc., dated November 8, 2010. Reference is made to the plat/plan for a more complete description of the property.

Being a portion of the same property conveyed to Hickory Hill Partners, LLC, by deed from Hickory Hill LLC, dated May 24, 2007 and recorded May 25, 2007, in the Hanover County Circuit Court Clerk's Office in Deed Book 2879, page 254 and by deed from John Gram Wickham, dated May 17, 2007 and recorded May 25, 2007 in Hanover County Circuit Court Clerk's Office in Deed Book 2879, page 251.

20101124000143630  
HANOVER CO CLERK'S OFFICE  
11/24/2010 10:23:57 AM  
SEC 58.1-802 GRANTOR'S  
TAX PD. \$ .00  
FRANK D. HARGROVE, JR., CLERK  
BY: SWEBB

FORM0318A (Exhibit A - Common Open Space - RS & RC Districts)