

05-19-97

DELIVERED TO: Exp. of Devel.

BOOK 397 PAGE 790

DECLARATION SUBJECTING

THE COTTAGES

VALLEY SUBDIVISION 1-V

BLOCK E, at STONEY CREEK, WINTERGREEN

NELSON COUNTY, VIRGINIA

TO TERMS AND CONDITIONS, COVENANTS AND RESTRICTIONS

THIS DECLARATION, is made this the 8th day of April, 1997, by Wintergreen Development, Inc., hereafter called "Company"

WITNESSETH:

WHEREAS, the Company is the owner of certain real property described herein and desires to create thereon a planned development community with a balanced representation of residential commercial and recreational uses to be known as "Wintergreen"; and

WHEREAS, the Company desires to provide for the preservation of values and for the maintenance of common facilities and services and for a vehicle for the administration and enforcement of covenants and restrictions; and,

WHEREAS, the Company desires to subject the real estate described herein to certain covenants and conditions; and,

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that the Company, as evidenced by its execution of this Declaration, hereby subjects the herein described property to all of the terms and conditions contained in the documents entitled, (i) "Declaration of Rights, Restrictions, Affirmative Obligations and Conditions Applicable to all Property in Wintergreen",

SEE PLAT
PLAT CAPTION 3
SIDE 355

Instrument drafted by Stuart R. Sadler

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duly recorded in the Clerk's Office of the Circuit Court of Nelson County, Virginia in Deed Book 137, at Page 568, (ii) the "Declaration of Covenants and Restrictions of the Wintergreen Property Owners Association and Wintergreen, a Virginia Limited Partnership", duly recorded in the aforesaid Clerk's Office in Deed Book 137, at Page 589, as supplemented by the "Addendum to the Declaration of Covenants and Restrictions of the Wintergreen Property Owners Association and Wintergreen, a Virginia Limited Partnership", recorded in the aforesaid Clerk's Office in Deed Book 147, at Page 269 and as amended both by the, "Amendment to the Declaration of Covenants and Restrictions of the Wintergreen Property Owners Association and Wintergreen, a Virginia Limited Partnership", recorded in the aforesaid Clerk's Office in Deed Book 151, at Page 672, by the "Second Amendment to the Declaration of Covenants and Restrictions of the Wintergreen Property Owners Association and Wintergreen, a Virginia Limited Partnership", recorded in the aforesaid Clerk's Office in Deed Book 169, at Page 508, and by the "Addendum to the Declaration of Covenants and Restrictions of the Wintergreen Property Owners Association and Wintergreen, a Virginia Limited Partnership", in Deed Book 223, at Page 474 and (iii) the "Declaration of Rights, Restrictions, Affirmative Obligations and Conditions, the Cottages Covenants", which are attached hereto and are recorded herewith.

The property hereby subjected is described as follows:

All that certain tract or subdivision of land, which is lying, situate and being in the Rockfish Magisterial District of Nelson County, Virginia, which tract is in the Valley portion of the Wintergreen Development and is more fully described below:

All that certain tract or parcel of land containing 10.137 acres of land as shown on a plat and survey thereof by Steven L. Key, C.L.S., dated January 27, 1997, and revised February 13, 1997, entitled, "Subdivision Plat of Valley Subdivision 1-V, Block E, at Stoney Creek, WINTERGREEN, Nelson County, Virginia";

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which plat is recorded in the aforesaid Clerk's Office with this declaration.

WITNESS the following corporate execution, duly authorized by the Board of Directors of
Wintergreen Development, Inc.:

WINTERGREEN DEVELOPMENT, INC

By: Stuart R. Sadler

STATE OF VIRGINIA

To-Wit:

COUNTY OF NELSON

The foregoing instrument was acknowledged before me this the 8th day of April, 1997, by
Stuart R. Sadler, Vice-President, of WINTERGREEN DEVELOPMENT, INC. on behalf of the
corporation.

My commission expires: 8-31-97

AFFIX
NOTARIAL
SEAL

Antonette C. Alden
NOTARY PUBLIC

SEE PLAT
PLAT CASINET 3
SLIDE 355

INSTRUMENT #97000102E
RECORDED IN THE CLERK'S OFFICE OF
NELSON ON
APRIL 10, 1997 AT 09:15AM
ROSEMARY F. TARTE, CLERK

BY: Jan M. Deagan DEPUTY CLERK

05/19/97

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DELIVERED TO: *Secretary of Nelson*

**DECLARATION OF RIGHTS, RESTRICTIONS,
AFFIRMATIVE OBLIGATIONS AND CONDITIONS
THE COTTAGES COVENANTS**

April 8, 1997

In addition to the General Covenants, the following restrictions and covenants shall be applied to certain properties or Lots shown on the plat of The Cottages, Valley Subdivision 1-V, Block E at Stoney Creek, Wintergreen, which plat is recorded in the Office of the Clerk of the Circuit Court of Nelson County, Virginia contemporaneously herewith.

PART I - DEFINITIONS

The definition, of the term "Wintergreen", as defined in the General Covenants is specifically incorporated herein, by reference to the General Covenants described below.

"Association" as used herein shall mean and refer to The Cottages Unit Owner's Association, an unincorporated association, its successors and assigns.

"The Cottages" as used herein is defined as that certain parcel tract of land which is shown on a plat and survey prepared by Steven L. Key, C.L.S., dated January 27, 1997 and revised February 13, 1997, titled "Subdivision Plat of Valley Subdivision 1-V, Block E, at Stoney Creek, Wintergreen, Nelson County, Virginia" and recorded in the Clerk's Office of the Circuit Court of Nelson County, Virginia contemporaneously herewith.

"Common Maintenance Elements" as the term is used herein, shall mean those elements and areas which the Association shall be responsible to care for and maintain. No ownership interest is granted to the Association or to others by the use of the term "Common Maintenance Elements".

"Common Maintenance Expenses" as the term is used herein shall mean those expenses that are for the care and maintenance of the Common Maintenance Elements on an ongoing basis, that are set aside as reserves to pay for major foreseeable maintenance expenses relating to the Common Maintenance Elements in the future or that are used to pay for other necessary or reasonable expenses of the Association.

The "Company" as used herein, shall mean Wintergreen Development, Inc., its successors and assigns.

"General Covenants" as used herein shall mean and refer to the "Declaration of Rights, Restrictions, Affirmative Obligations and Conditions Applicable To All Properties In

This instrument drafted by Stuart R. Sadler

"Wintergreen" established by the Company on the 10th. day of September, 1974, and which is recorded in the Office of the Clerk of the Circuit Court of Nelson County, Virginia in deed book 137, at page 568.

"Lot" a tract or parcel of land designated as a Lot on the Plat of The Cottages.

"Owner" shall mean the record owner of a Lot or Home. All Owners of any Lot or Home shall be jointly and severally liable for all debts and other obligations that accrue hereunder.

"Home" as used herein shall mean a Lot which has a completed dwelling constructed on it. Completion of a dwelling unit shall be determined by the issuance of a certificate of occupancy from the appropriate governmental authority. The term "Home" does not refer to anything located within the dwelling on the Lot.

PART II - RESTRICTIONS

1. All approvals required to be made by the Company under paragraph 1 of Part I of the General Covenants shall be based solely upon the Company's subjective aesthetic and/or design requirements. Explicit objective standards are not established by these covenants because such standards would make it impossible to take full advantage of the individual characteristics of each lot, of on-going technological advances or of changing environmental considerations. Approvals for the erection, placement or alteration of structures required under paragraph 1 of Part I of the General Covenants shall require the approval of the design of postal delivery boxes and the standards upon which such boxes are placed. No change or alteration shall be made in the completed landscape of any Home (except for the replacement of existing materials or plants with similar materials or plants) from the requirements of the landscape plan required by said paragraph I of Part 1 of the General Covenants, nor shall any change in the exterior lighting associated with any Lot or Home be made except with the prior written approval of the Company, its successors or assigns. All approvals made by the Company (unless a deemed approval as described in paragraph 14 below), shall be in writing and shall be effective when placed in the mail or hand delivered to the individual requesting the approval. The Company shall have the right to condition any approval required by paragraph 1 of Part I of the General Covenants upon the deposit of a reasonable surety of performance by the individual requesting such approval.

2. (a) All Homes in The Cottages shall be used for residential purposes exclusively; provided, however nothing in this paragraph shall restrain the Company or R. D. Wade Builder, Inc. from using one or more Homes as model units for the purpose of selling its real estate products. The use of a portion of a Home as an office by the owner or tenants thereof shall be considered a residential use if such use does not create customer or client traffic to and from the Home.

(b) No enclosed structure, except as hereinafter provided shall be erected, altered, placed or permitted to remain on any Lot other than one detached single-family dwelling with an attached garage or carport.

3. Each Home Owner shall provide a screened area in which garbage receptacles, fuel tanks, water tanks or similar storage receptacles, electric and gas meters, air-conditioning equipment, and other unsightly objects must be placed or stored in order to conceal them from view from the road and adjacent properties. Plans for such screened area delineating the size, design, texture, appearance and location must be approved by the Company prior to construction. Garbage receptacles and fuel tanks may be located outside of such screened area only if located underground. Clotheslines and drying yards shall not be placed on any Home or Lot at any time.
4. Each Home shall have provided at least two (2) spaces for the parking of automobiles off streets prior to the occupancy of any building or structure constructed on said property in accordance with reasonable standards established by the Company.
5. No mobile home, motor home, trailer, tent, or other similar temporary out building or structure shall be placed or stored on any Lot or Home at any time, either temporarily or permanently, provided, however, that this prohibition shall not apply to shelters or temporary structures used by the contractor during the construction of the main dwelling house, it being clearly understood that these latter temporary shelters may not, at any time, be used as residences or permitted to remain on the Lot after completion of construction.
6. No television antenna, satellite dish, radio receiver or sender or other similar device shall be attached to or installed on the exterior portion of any Home or Lot except as specifically permitted under regulations promulgated by the Federal Communications Commission.
7. The utility and drainage easement reserved by the Company in paragraph eleven (11) of Part I of the General Covenants shall be located along any two (2) of the boundary lines of each Lot and Home in The Cottages provided, however, if a specific location of such easements is shown on the recorded subdivision plat, such specific easement location shall be in addition to the utility and drainage easements provided hereby.
8. No Lot or Home shall be subdivided, or its boundary lines changed, nor shall application for same be made to Nelson County, except with the written consent of the Company. However, the Company hereby expressly reserves to itself, its successors, or assigns, the right to replat any Lot or Lots owned by it and shown on the plat of any subdivision with Wintergreen in order to create a modified building Lot or Lots; and to take such other steps as are reasonably necessary to make such replatted Lot suitable and fit as a building site including, but not limited to, the relocation of easements, walkways, rights of way, private roads, bridges, parks, recreational facilities and other amenities to conform to the new boundaries of said replatted Lots, provided, however, no Lot originally shown on a recorded plat shall be reduced to a size more than ten (10%) percent smaller than the smallest Lot shown on the first plat of the affected subdivision section recorded in the public records. The provisions of this paragraph shall not prohibit the combining of two (2) or more contiguous Lots into one (1) larger Lot. Following the combining of two (2) or more Lots into one (1) larger Lot, only the exterior boundary lines of the resulting larger Lot shall be considered in the interpretation of these covenants.

9. No livestock, fowl or other animals may be kept or maintained on any Lot or Home except domestic cats, dogs and pet birds (except parrots) which may be kept in reasonable numbers as pets for the pleasure and use of the occupants, but not for any commercial use or purpose. No dog houses, pens or animal shelters of any kind shall be permitted on any Lot. No animal shall be allowed to run loose upon the exterior of any Home or Lot.

10. No permanently mounted through the wall or window mounted air-conditioning units shall be permitted to be installed in or maintained in any Home unless expressly approved in writing by the Company or its assigns.

11. No exterior loud speaker or other out of doors audio broadcasting system shall be erected, installed, maintained or operated on any Home or Lot unless such action shall have been approved by the Company.

12. No structure, pool or other facility shall be constructed or maintained on any Lot or Home so that it shall be heated or cooled by an alternative energy source (including, but not limited to, active or passive solar energy or by wind driven electrical generators), which shall involve the construction or erection of any separate structure or unusual exterior architectural feature or features without the prior written approval of the Company.,

13. No private golf carts, motorcycles, motor bikes, motor homes or ATV's (all terrain vehicles) shall be operated or stored on any Lot or Home.

14. In the event an approval shall be requested in a writing delivered to the Company or its designated representative for any item or action covered by these covenants, and the Company shall take no action on such request for a period of thirty (30) days following receipt of such request, such item or action shall be taken as approved by the Company.

PART III - MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

1. Every Owner of a Lot or Home in The Cottages as shown by the records in the Clerk's Office of the Circuit Court of Nelson County, Virginia shall be a member of the Association. Membership shall be appurtenant to and may not be separated from the ownership of such property.

2. The Owner(s) of each Lot or Home in The Cottages shall have a single vote in the Association for each property owned. Whenever a property is owned of record in the names of two or more persons or entities, whether fiduciaries, joint tenants, tenants in common, or if the Lot shall be owned by a corporation or a partnership, then such Owners shall file with the Secretary of the Association an instrument in writing signed by such Owners designating one Owner (one Officer in the case of a Corporation or one Partner in the case of a Partnership) to cast the vote attributable to such property. Individuals or entities which hold an interest in the property solely for the purpose of securing an obligation or debt shall not be considered Owners hereunder.

The principle of this section shall apply, insofar as possible, to the execution of proxies, waivers, consents or objections for the purpose of ascertaining a quorum.

PART IV - OBLIGATIONS OF MEMBERS

1. Every Owner shall contribute toward the expense of the maintenance of the Common Maintenance Elements and payment of Common Maintenance Expenses, as provided by these covenants and the By-laws of the Association. Each Lot shall pay an annual assessment of \$50.00 per year. Each Home shall be assessed equally by the Association once it has been certified to be a completed dwelling as provided for in the definition of "Home". Assessments shall begin on the first day of the month following the granting of a certificate of occupancy. Quarterly assessments for newly completed units shall be prorated if the assessment does not begin on the first day of a quarter. The Association shall fix a quarterly assessment for Homes in an amount sufficient to provide for the maintenance of the Common Maintenance Elements and other Common Maintenance Expenses, subject to adjustment from time to time as the Association may deem necessary.

Such quarterly charge shall be due and payable in advance on the first day of every calendar quarter, shall at the option of the Board of Directors when established at a duly called meeting of said Board, bear interest at the highest rate permitted by law or at such lesser rate as may be established by the Board of Directors of the Association from due date until paid, and with such interest shall be a lien on the Home, assessed prior in right to all other charges whatsoever except assessments, liens and charges in favor of the State of Virginia or the County of Nelson for taxes past due and unpaid on such Home and amounts and liabilities secured by first mortgage instruments or deeds of trust duly recorded prior to the perfection of the lien and securing institutional lenders. In the event any Owner is delinquent in the payment of any quarterly assessment for a period in excess of thirty (30) days, the Association is authorized to discontinue all services that the Association is furnishing to his Home and residents thereof.

2. (a) Every Home Owner must perform promptly all maintenance and repair work within his own Home excluding, however, the Common Maintenance Elements, which if omitted would affect the Common Maintenance Elements and/or any other Home, and shall be expressly responsible for the damages and liabilities that his failure to do so may engender. Every Home Owner shall be responsible for maintaining the interior temperature of his Home sufficiently high such that water pipes located within such Home shall not be in danger of freezing.

(b) Every Home Owner shall be responsible for the repairs of internal installations of the Home which serve only such Home, such as water, light, power, sewerage, telephone, sanitary installations, doors, windows, lamps and all other accessories belonging to the Home.

(c) A Home Owner shall reimburse the Association for any expenditures it incurs in repairing or replacing any Common Maintenance Element or facility damaged through the Owner's negligence or failure to promptly perform all maintenance and repair work within his Home.

3. The Association may perfect its lien against any Home or Lot for which assessments are not paid within ninety (90) days from the time such assessments became due.

PART V - FUNCTIONS OF THE ASSOCIATION

1. The Association shall be authorized to enter upon, maintain and care for those areas of Lots and those exterior portions of Homes as shall be defined as the Common Maintenance Elements. Initially the Common Maintenance Elements shall be defined as the landscaped portions of individual Lots and the exterior portions of Homes within the subdivision plat of The Cottages. This maintenance obligation shall include:

- (a) Garbage and trash collection from Homes;
- (b) Landscape maintenance including trimming the grass, raking and removing leaves from the yard, mulching shrubbery, clearing snow and sleet from the sidewalks and driveways;
- (c) Painting and/or staining the exterior siding and trim of Homes;
- (d) Maintaining the entrance sign to the subdivision and common area landscaping including entrance areas;
- (e) Such additional responsibilities relating to exterior maintenance, landscaping and related items as the Association shall agree to in writing; provided, however, that nothing set forth herein shall require the Association to replace or to undertake structural repairs to any of the improvements located on any of the lots.

2. These maintenance obligations shall continue and may not be reduced by the Association until January 1, 2002, at which the Association may elect to reduce its maintenance obligation upon an affirmative vote of 13 votes accruing to Lots and Homes.

PART VI - ADDITIONAL LIMITATIONS

1. All covenants, restrictions, and affirmative obligations set forth in this Declaration shall run with the land and shall be binding on all parties and persons claiming under them specifically including, but not limited to, the successors and assigns, if any of the Company for a period of thirty (30) years from the execution date of this Declaration, after which time, all said covenants shall be automatically extended for successive periods of ten (10) years, unless an instrument signed by a majority of the then owners of property substantially affected by a change in covenants, has been recorded, agreeing to change said covenants in whole or in part. Unless the contrary shall be determined by a court of equity jurisdiction, "substantially affected" shall mean those properties in Wintergreen shown on (a) the plats showing the properties to be modified in permitted use by the change, and (b) the plats which subdivide the property immediately abutting the property shown on plats identified in the Realty records in the Office of

the Clerk of the Circuit Court of Nelson County, Virginia.

2. In the event of a violation or breach of any of the restrictions contained herein by any property owner, or agent of such owner, the owners of properties in the neighborhood or subdivision, or any of them, jointly or severally, shall have the right to proceed at law or in equity to compel compliance to the terms hereof or to prevent the violation or breach in any event. In addition to the foregoing, the Company and/or the Association shall have the right to proceed at law or in equity to compel compliance to the terms hereof or to prevent the violation or breach in any event. In addition to the foregoing, the Company and/or the Association shall have the right, whenever there shall have been built on any property in the subdivision any structure in violation of these restrictions, to enter upon such property where such violation exists and summarily abate or remove the same at the expense of the owner, if after thirty (30) days written notice of such violation it shall not have been corrected by the owner. Any such entry and abatement or removal shall not be deemed a trespass. The failure to enforce any rights, reservations, restrictions, or condition contained in this Declaration, regardless of how long such failure shall continue, shall not constitute a waiver of or a bar to such right to enforce.

3. The Company reserves in each instance the right to add additional restrictive covenants in respect to lands conveyed in the future in Wintergreen, or to limit therein the application of these covenants. The right to add additional restrictions or to limit the application of the covenants shall be reasonably exercised and shall materially affect only properties against which these covenants have not been imposed.

4. The Company reserves the right to assign in whole or in part to a subsequent developer of Wintergreen or to the Association or to the Wintergreen Property Owners Association, Inc. its rights reserved in these covenants which include, but are not limited to, its right to grant approvals (or disapprovals), to establish rules and regulations, and all other rights reserved herein by the Company, including, but not limited to, the right to approve (or disapprove) plans, specifications, color, finish, plot plan and construction schedules. Following the assignment of such rights, the Assignee shall assume all of the Company's obligations which are incident thereto (if any) and the Company shall have no further obligations or liability with respect thereto.

The Assignment of such right or rights by the Company to an Assignee shall be made by written instrument which shall be recorded in said Clerk's Office.

5. The Company shall not be liable to an owner or to any other person on account of any claim, liability, damage or expense suffered or incurred by or threatened against an owner or such other person arising out of or in any way relating to the subject matter of any reviews, acceptances, inspections, permissions, consents or required approvals which must be obtained from the Company whether given, granted or withheld.

6. Wintergreen Property Owners Association, Inc. has established and published certain covenants and land use restrictions affecting properties in Wintergreen. Said covenants

are recorded in the Office of the Clerk of the Circuit Court of Nelson County, Virginia in Deed Book 137, at Page 589 as amended by documents recorded in said Clerk's Office in Deed Book 147, at Page 269, at Deed Book 151, at Page 672, at Deed Book 169, at Page 508 and at Deed Book 223, at Page 474. Properties and owners of property subject to these Covenants shall also be subject to the provisions of the said covenants established by the Wintergreen Property Owners Association, Inc.

7. Severability. Should any covenant or restriction herein contained, or any Article, Section, Subsection, sentence, clause, phrase or term of this Declaration be declared to be void, invalid, illegal, or unenforceable, for any reason, by the adjudication of any court of other tribunal having jurisdiction over the parties hereto and the subject matter thereof, such judgment shall in no wise affect the other provisions hereof which are hereby declared to be severable and which shall remain in full force and effect.

WITNESS the following corporate execution:

WINTERGREEN DEVELOPMENT, INC.

By: [Signature]
Vice-President

ATTEST-

[Signature]
Stuart R. Sadler, Secretary

STATE OF VIRGINIA
To-Wit:
COUNTY OF NELSON

The foregoing instrument was acknowledged before me this 8th day of April, 1997 by L. Stanley Hardy, Vice-President of Wintergreen Development, Inc. on behalf of the Corporation.

My commission expires: 8-31-98

AFFIX
NOTARIAL
SEAL

[Signature]

