216 Va. 681
CLERK
SUPREME COURT OF VIRGINIA
RECEIVED
JUN 26 1975
RICHMOND, VIRGINIA

APPENDIX

SUPREME COURT OF VIRGINIA

Record No. 750093

EDWARD DEV BUNN, et al.,

Appellants,

v.

T. J. OFFUTT, et al.,

Appellees.

Appeal from the Circuit Court
of Arlington County, Virginia

Thomas W. Ullrich
5616 Glenwood Drive
Alexandria, Virginia 22310
347-5179

TABLE OF CONTENTS

	Page
Bill of Complaint	1
Answer and Grounds of Defense	4
Bill of Particulars	6
Court Opinion, July 8, 1974 letter of the Honorable Charles S. Russel	9
Decree	12
Notice of Appeal and Assignments of Error	13
Complainants' Statement of Facts	17
Statement of Facts	21
Motion to Supplement the Statement of Facts	25

EXHIBITS

Complainants No. 1 - Purchase Agreement between the Winns and Temco, Inc.	27
Complainants No. 2 - November 14, 1969 letter from Sonnett to Bunn	29
Complainants No. 3 - May 20, 1974 assignment of all rights from the Winns to the Bunns	30
Complainants No. 4 - August 2, 1949 letter from Bunn to Sonnett	31
Complainants No. 5 - September 8, 1969 letter from Bunn to Robbins	32
Complainants No. 6 - October 20, 1969 letter from Bunn to Sonnett	33

Complainants No. 7 - October 25, 1969 letter from Bunn to Offutt---------- 34

Complainants No. 8 - purchase agreement for other property owners adjoining pool---------- 35

Complainants No. 9 - purchase agreement for other property owners adjoining pool---------- 36

Complainants No. 10 - February 5, 1975 letter from Offutt to Bunn---------- 36-A

Defendents No. A - purchase agreement between the Bunns and the Winns---------- 37

Defendents No. B - deed from the Winns to the Bunns---------- 39

Defendents No. C - deed from Temco, Inc. to the Winns---------- 41

BILL OF COMPLAINT

To the Honorable Judges
of the aforesaid Court:

The complainants respectfully represent as follows:

1. On or about July 9, 1962 defendants as joint owners did convey the premises known as 900 South Wakefield St., Arlington, Virginia to Harvey Winn and Rosabelle G. Winn.

2. That at the time of the said conveyance it was agreed in writing that the owners of the said premises and their successors shall have an easement and right of way to use the swimming pool on the premises adjacent to 900 South Wakefield St., Arlington, Virginia owned by defendants and managed and maintained by defendants T. J. Offutt and Dittmar Company, Inc.

3. That this easement and right of way was utilized by the said owners of the 900 South Wakefield St. premises up to and including July 1969.

4. That in or about June 1969 defendants and or their agents and employees, in accordance with the said agreement and utilization of the said easement and right of way by the owners of the 900 South Wakefield St. premises, did represent and tell Harvey and Rosabelle Winn, employees and agents of Sonnett Realty, George Sonnett, James E. Robins and others that the owner and successor owners of the 900 South Wakefield St. premises would have and hold the easement and right of way to use the said swimming pool adjacent to the premises.

5. That as a result of the said representations to the said persons, which were inturn made to complainants, complainants did purchase the 900 South Wakefield St. premises in July 1969.

6. That complainants have an easement and right of way in the land adjacent to the 900 South Wakefield St. premises to go upon the land and use the swimming pool thereon.

7. That defendants are in possession of the said swimming pool and unlawfully detain and hold from complainants the right to go upon the adjacent land and use the said swimming pool.

8. That in or about February 1970 defendant T. J. Offutt incorrectly represented to complainants that the original deed to the said 900 South Wakefield St. premises limited the easement and right of way to use the said swimming pool to the original owners of the 900 South Wakefield St. premises, and that in reliance thereon and as a result of that representation complainants have been prevented from exercising the easement and right of way to use the said swimming pool.

9. That the said 900 South Wakefield St. premises does not have the same market value and appeal without the said easement and right of way to use the said swimming pool, and the acts of defendants have caused damage and injury to the said property.

10. Complainants have tried unsuccessfully to duplicate the said easement and right of way.

WHEREFORE, complainants pray that defendants and each of them be enjoined from denying, preventing, and interfering with complainants' easement and right of way to use the swimming pool adjacent to the 900 South Wakefield St., Arlington, Virginia premises, and that judgment be entered against defendants jointly and severally in the amount of five thousand

dollars ($5,000.00) for loss of the right to use of the easement and right of way and for loss of value and appeal in the 900 South Wakefield St. premises, and for such further and additional relief as the Court may find just and equitable, including attorney fees and costs of this action.

Edward DeV. Bunn

Sandra M. Bunn
By counsel

Thomas W. Ullrich
1625 K St., N.W
Washington, D.C. 20006
347-5179
Attorney for complainants

ANSWER AND GROUNDS OF DEFENSE

TO: The Honorable Judges of the Circuit Court of Arlington County:

Come now your Defendants, by Counsel, and for their answer to the Bill of Complaint of Complainants previously filed herein respectfully represent to this honorable Court as follows:

1. Your Defendants specifically deny the allegations of paragraph one (1) of the Bill of Complaint, as alleged, except that your Defendants state that there was a Deed dated July 9, 1962 wherein Defendant, Temco, Inc. conveyed the premises known as 900 South Wakefield Street, Arlington, Virginia to Harvey W. Winn and Rosabelle G. Winn, his wife.

2. Your Defendants specifically deny each and every allegation of paragraph two (2) of the Bill of Complaint.

3. Your Defendants specifically deny the allegations of paragraph three (3) of the Bill of Complaint.

4. Your Defendants specifically deny each and every allegation of paragraph four (4) of the Bill of Complaint.

5. Your Defendants specifically deny the allegations of paragraph five (5) of the Bill of Complaint.

6. Your Defendants specifically deny the allegations of paragraph six (6) of the Bill of Complaint.

7. Your Defendants specifically deny the allegations of paragraph seven (7) of the Bill of Complaint.

8. Your Defendants specifically deny the allegations of paragraph eight (8) of the Bill of Complaint.

9. Your Defendants specifically deny the allegations of paragraph nine (9) of the Bill of Complaint.

10. Your Defendants specifically deny the allegations of paragraph ten (10) of the Bill of Complaint.

And now having fully answered said Bill of Complaint, your Defendants, by Counsel, respectfully pray that the Bill of Complaint be dismissed and that your Defendants have such other and further relief as the nature of the cause may require or as to equity may seem meet.

T. J. Offutt, By Counsel

Dittmar Company, By Counsel

Temco, Inc., By Counsel

Jean Harrison Clements
Counsel for the Defendants
7 South Wirt Street
Leesburg, Virginia 22075

BILL OF PARTICULARS

Pursuant to the Decree of the Court that the Complainants serve a Bill of Particulars in response to Defendants' Motion for Bill of Particulars, the Complainants specify the following particulars in response to the numbered paragraphs of Defendants' Motion:

1. The defendants T. J. Offutt, Dittmar Company, and Temco, Inc. agreed on or about July 9, 1962 that there would be an easement right of way for the use of the swimming pool. Others acting on the behalf of these defendants, such as Sonnett Realty, George Sonnett, and James E. Robins, also agreed to this on behalf of these defendants, but Complainants cannot at this time list all persons as they have not been able to undertake discovery or the deposition of defendant Offutt because counsel for defendants has objected every time Complainants attempt to take the deposition of defendant Offutt. The Complainants do not have in their possession copies of the agreement, but counsel for defendants does have possession of such copies as she has read a copy of the agreement to Complainant Edward DeV. Bunn over the telephone. Complainants intend to obtain copies of such agreement as soon as counsel for defendants will stop objecting to the deposition of defendant Offutt and permit Complainants to undertake discovery, including a Request for Production of Documents under Rule 4:9.. All defendants operate out of the same office, and the corporate defendants are only shell companies of defendant Offutt.

2. The defendants T. J. Offutt, Dittmar Company, and Temco, Inc. made the representations that the Complainants would have and hold the easement and right of way to use the swimming pool. Sonnett Realty, George Sonnett and James E. Robins made the representation on behalf of these defendants. Others acting on behalf of these defendants also made the representations, for example the office manager and clerk acting for and employed by these defendants, made the representations, but Complainants cannot at this time list all persons or their names as they have not been able to undertake discovery or the deposition of defendant Offutt because counsel for defendants has objected every time Complainants attempt to take the deposition of defendant Offutt. The defendant Offutt is the principal behind the defendants Dittmar Company and Temco, Inc., and they all operate out of the same office. Dittmar Company and Temco, Inc. are only shell companies of defendant Offutt.

3. The following persons made the representations to Complainants:

T. J. Offutt
Office manager for T. J. Offutt, Dittmar Company and Temco, Inc.
Office clerk for T. J. Offutt, Dittmar Company and Temco, Inc.
George Sonnett
James E. Robins
Harvey Winn
Rosabelle Winn

4. Complainants do not know whether the easement and right of way has been recorded; it probably was not. There were, however, numerous contracts and conveyances concerning the master plat and the development of the housing project, including contracts between the defendants and

conveyances between the defendants. All of these records are in the possession of the defendants, and the defendants are the only source which have a complete record of all contracts and conveyances which would simplify a search to determine if it has been recorded. Until Complainants have completed discovery, and for the purpose of this Bill of Particulars so as not to foreclose Complainants from raising the issue at a later date if it has been recorded, Complainants do allege that it was recorded.

5. They have told Complainants that they cannot use the swimming pool. If they deny this, and now wish to permit Complainants to use the swimming pool, Complainants will dismiss the request for injunctive relief.

Edward DeV. Bunn
By counsel

Sandra M. Bunn
By counsel

Thomas W. Ullrich
1625 K St., N.W.
Washington, D.C. 20006
347-5179
Attorney for Complainants

Circuit Court of Arlington County
Virginia

WILLIAM L. WINSTON
JUDGE
PAUL D. BROWN
JUDGE
CHARLES S. RUSSELL
JUDGE
CHARLES H. DUFF
JUDGE

July 18, 1974

WALTER T. MCCARTHY
JUDGE RETIRED

COURT HOUSE
ARLINGTON, VIRGINIA

Thomas W. Ullrich, Esquire
1625 K Street N.W.
Washington, D.C. 20006

Geoffrey T. Williams, Sr., Esquire
607 Executive Building
2009 North 14th Street
Arlington, Virginia 22201

Re: Edward Dev. Bunn, et al., v.
T. J. Offutt, et al.
In Chancery No. 22829

Gentlemen:

I have given careful consideration to the testimony taken Ore Tenus in this case on May 20, 1974, together with the points and authorities submitted by counsel.

In my opinion the rights of the parties depend entirely upon the nature of the transaction between the Defendant, as seller, and Mr. and Mrs. Winn, as purchaser, in 1962. The parties made no point of the several identities of the Defendants at the trial, and treated both corporate Defendants as if they were alter egos of Mr. Offutt, and accordingly the Court will not trouble itself with these distinctions.

Mr. Offutt testified that he intended that the privilege of using the swimming pool would only extend to the original purchasers of the house which he was selling adjacent to his apartment development. He had lacked experience with the sale of houses adjoining apartment buildings and felt (he now thinks erroneously) that they would

be difficult to sell unless some such additional inducement were offered. He testified that he never intended that these purchasers have the privilege of passing the swimming pool rights along to subsequent purchasers or tenants and that he was at pains never to permit this to happen. The language of the contract with the Winns is clear enough on this point: "use of apartment swimming pool to be available to purchaser and his family". The documentary evidence is thus consistent with Defendant's theory that what was intended was a mere license, to Mr. and Mrs. Winn and their family, rather than an interest in land or an estate of inheritance. The culmination of this transaction was the delivery of a deed which was also consistent with the seller's expressed purpose, for it was entirely silent as to any swimming pool rights. This would be consistent with a personal license to Mr. and Mrs. Winn, but entirely inconsistent with Complainants' theory of the creation of an easement.

Easements may be created by grant, by implication, by reservation, by estoppel or by prescription. In these circumstances, the silence of the deed is sufficient to preclude any easement by grant or reservation. An easement by prescription requires use for a period of twenty years, against the wishes of the owner of the servient tenement and with his actual or constructive knowledge. A hostile, continuous and adverse use is required, in which the owner of the servient tenement has slept upon his rights for a long period.

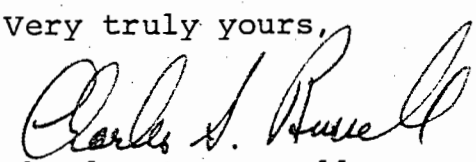
An easement by estoppel arises where an owner has given a license to another to use his land, and where the licensee has improved it by substantial expenditures and efforts, to the extent that it would be inequitable to permit the owner to revoke the license. Such cases have involved the construction of railroads in reliance upon parol licenses.

Here there was no expenditure to improve the alleged right of way. Nor did the grantor promise that an easement would be granted. His statements and acts were entirely consistent with his expressed intention of granting only a personal license.

Easements may also be created by implication or necessity, and if Complainant is to prevail it must, it seems to me, be upon this theory. However, such easements arise only where there is a separation of title between the dominant and servient tenement, where the use of the easement had existed before the separation of title occurred, to such an extent that it was so obvious and manifest as to show permanency, and where a continuation of such pre-existing use would be essential to the beneficial enjoyment of the dominant tenement after the separation of title. 24 ALR 2d 112. In this case there was a separation of title, but no pre-existing use. Neither was there any showing that the use would be essential to the beneficial enjoyment of the land conveyed.

Accordingly, I must conclude that a mere license was granted, which was personal to Mr. and Mrs. Winn and their family. This was not an estate capable of being assigned or transferred to the Complainants, and is not a privilege running with the land so as to inure to successive grantees. Counsel for Defendants should prepare a decree denying the prayers of the Bill of Complaint and, after submission to opposing counsel for approval as to form, forward the same for entry.

Very truly yours,



Charles S. Russell
Judge

CSR:kw

D E C R E E

THIS CAUSE came on to be heard and tried by both counsel on May 20, 1974.

UPON CONSIDERATION THEREOF, it appearing to the Court that the complainant's prayers contained in his Bill of Complaint should be denied, it is

ADJUDGED, ORDERED AND DECREED that the complainant's prayers contained in his Bill of Complaint be and hereby are denied.

ENTERED THIS _____ DAY OF _____, 1974.

_____
J U D G E

By agreement:

_____
Thomas W. Ullrich
Counsel for Complainants
1625 K Street, N. W.
Washington, D. C. 20006
5616 Glenwood Drive
Alexandria, Virginia 22310

_____
Geoffrey T. Williams
Counsel for Defendants
2009 North 14th Street, Suite 607
Arlington, Virginia 22201

NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR

TO CLERK OF THE CIRCUIT COURT OF ARLINGTON COUNTY:

Counsel for Edward DeV. Bunn and Sandra M. Bunn, the complainants in the above-styled case, hereby give Notice of an Appeal from a final decree entered herein on September

The said complainants in the above-styled suit, will apply to the Supreme Court of Virginia for an appeal to the said decree, and herewith sets forth their Assignments of Error as follows:

1. The Court erred in denying complainants' prayers in the Bill of Complaint and finding the use of the swimming pool was a personal license as the complainants had an easement to use the swimming pool adjacent to their property: the purchase contract to the complainants' grantors provides "use of apartment swimming pool is available to purchaser", the term "purchaser' is used in the purchase contract 22 times without any distinction, the purchase contract provides that it contains the entire agreement of the parties and that the parties are not bound by any terms or statments not in the agreement, the purchase agreement specifically provides that it is binding on the heirs, executors, administrators and assigns of the parties, and the rights and title under the purchase contract were transfered to the complainants; the said purchase contract is clear and

conclusive that the use of the swimming pool was not a personal license, but ran with the land, and further the defendants and their agents specifically told the complainants and complainants' grantors that the complainants would have the use of the pool if they purchased the property adjacent to the pool and in reliance on this complainants did purchase the' property and pay therefor the sum of $37,750.00 and additionally spend substantial additional sums in improving the purchased property, and the defendants did not produce any evidence at trial or deny any of these facts.

2. The Court was in error when he applied the rule of law that the intent of the grantor determines the extent and nature of title he conveys, as the law is contrary to this.

3. The Court erred in not applying the rule of law that in the interpretation of contracts or deeds in cases of doubt or ambiguity they will be construed most strongly against the grantor and in favor of the grantee.

4. The Court erred in not applying the rule of law that in the interpretation of contracts or deeds they should be construed against the draftor so as to give the other party all that the words used are capable of passing.

5. The Court erred in not applying the rule of law that a conveyance of land without limitation passes a fee simple interest or all that the grantor is capable of passing.

6. The Court erred in not applying the rule of law that a grantor must be considered to have intended to convey all that the language used is capable of passing.

7. The Court erred in not applying Virginia Code §55-50 which provides that every deed shall, unless an exception be made therein, be construed to include all privileges of every king belonging to the lands embraced therein.

8. The Court erred in not applying Virginia Code §55-11 which provides that when any real estate is conveyed without words of limitation, as was done in the present case, the conveyance is construed to pass the whole estate or interest of the grantor.

9. The Court erred in not applying Virginia Code §55-73 which provides that a covenant of the grantor as was given in this case that he will execute such further assurances of the land as may be requisite shall have the effect of requiring the grantor to do all further acts for the better, more perfectly and absolutely conveying the land and premises intended to be granted to the grantee.

10. The Court erred in not applying the law of Restatment of Contracts §90 (promissory estoppel) in that defendants and their agents told complainants and complainants' grantors that complainant had the right to use the pool and in reliance on this complainants paid $37,750.00 for the purchase of the property adjacent to the pool property and made substantial improvents and spent a substantial amount of money improving the purchased property.

11. The Court erred in not applying the law of easement by estoppel and by implication.

The Complainants will file a statment of facts.

DATED this ___ day of October 1974.

Edward DeV. Bunn
By Counsel

Sandra M. Bunn
By Counsel

Thomas W. Ullrich
5616 Glenwood Drive
Alexandria, Virginia
347-5179
Attorney for Complainants

COMPLAINANTS' STATEMENT OF FACTS

The complainants' evidence established the following:

That on January 26, 1962 Harvey Winn and Rosabelle Winn both of whom are school teachers for Arlington County, Virginia, signed a contract to purchase the property located at 900 South Wakefield Street, Arlington, Virginia from defendant Temco, Inc. The contract was prepared and written by the exclusive real estate sales agent of Temco, Inc., Parker, Smith & Donnell. They were told by the exclusive agent that the owner of the 900 South Wakefield property would have the right to use the swimming pool on the adjacent property owned also by the seller, Temco, Inc. The contract read "Use of apartment swimming pool to be available to purchaser and his family." The defendants were constructing a row of homes on 9th Street, between Wakefield and Buchanan and behind the homes it was constructing a group of apartment house buildings, with the pool between several of the apartment houses and with some of the row of homes facing out onto the pool. The Winns were specifically told that the use of the pool went with the ownership of the home, and that subsequent purchasers would have the right to use the pool. This was important to them and was emphasized to them as a sales feature if they later decided to sell the property. Other purchasers of the row of homes were given the same swimming pool rights as the Winns, and were also told that subsequent

purchasers of the homes would have the use of the pool.

There are three defendants, T. J. Offutt, Dittmar Company and Temco, Inc. Temco, Inc. is the owner of the property upon which the pool in question is situated, Dittmar Company is the managing agent of the property and pool, and T. J. Offutt is the President of both Temco, Inc. and Dittmar Company and in fact controls all decisions for the corporations. The offices of each defendant are in the same room in the same building situated on the property where the pool is located and the only name on the door is "Dittmar Company". Also located in the same building is the real estate offices of Sonnett Realty, of whom George Sonnett is the broker and James Robbins is a salesman for Sonnett Realty. Sonnett Realty had an exclusive agency with the defendants in 1969 to sell homes being built by the defendants.

On July 18, 1969 the Winns sold the property at 900 South Wakefield Street to the complainants. As part of the inducement to purchase, the Winns told the complainants that the use of the pool went with the purchase of the property. The salesman Robbins and broker Sonnett for the sale, both of whom had at the time an exclusive listing with the defendants to sell other homes the defendants had just built, also told the complainants that they would have the use of the pool. The Winns were purchasing one of the new homes now being built by the defendants in another location, and the salesman Robbins and broker Sonnett were the salesman and broker for both the purchase of the new home by the Winns from the defendants and the sale of the Winn property to the complainants. In fact, the sale by the Winns

of the property purchased from the defendants in 1962, with the pool rights attached, was a condition in the contract to the purchase by the Winns of the new home being built by the defendants. Unless the Winns sold the home they were then living in they could not afford to purchase the new home. Before the complainants went to settlement on the property they went to the defendants to get the passes which were issued by the defendants as a control to keep out persons who either did not own homes or live in the apartment houses. The complainants explained that they had contracted for the purchase of the Winn property and settlement was in a few days. The defendants told the complainants that the passes could not be issued until settlement and to come back after settlement and they would be issued passes.

The original purchase price offered by the complainants to the Winns was rejected. In order to get the complainants to increase their offering price $750 so that the Winns would agree to the sale, the salesman Robbins and broker Sonnett induced the complainants to increase the offering price by telling them that pool membership in a club would cost them a $500 membership fee and annuals dues, and in a very short time they would have their money back. The use of the pool was the major sales tool used and the major reason why plaintiffs agreed to an increased purchase price for the property. As a result of the sale of the Winn property to complainants, the defendants made a sale of one of its new homes, and a sales commission was earned by the salesman Robbins and broker Sonnett on the sale of two homes--the sale of the property to the complainants and the sale of the new home to the Winns.

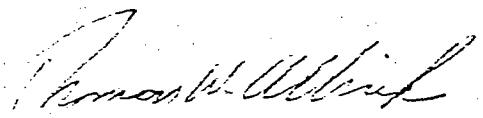
After the complainants went to settlement, they went to the

defendants and requested the pool passes. The defendants refused to issue passes, stating that they had changed their minds and would no longer honor the contracts of original purchasers and let subsequent purchasers of the land adjacent to the pool use the pool because it was causing them to pay an increased insurance rate. The broker Sonnett and salesman Robbins talked with defendants but were unable to convince the defendants to permit the complainants to use the pool. The broker Sonnett had talked with the defendants before the sale to complainants and the defendants had told him the new purchasers of the Winn property would have the use of the pool as that right went with the land.

The defendants did not introduce any evidence to contradict the evidence of the complainants, although the rule on witnesses was not exercised and they had 3 witnesses in the courtroom during the time complainants put on their evidence. The defendant Offutt was called to the stand by the complainants. He testified that the defendants never intended the use of the pool to pass with the land, but that only first purchasers and their family were to have use of the pool.

The complainants spent substantial money in installing central air conditioning, installing wall to wall carpet throughout the house, construction of a patio and brick barbecue pit, and other remodeling of the house, including the kitchen. After this had been completed, Sonnett Realty offered to refund to the complainants the purchase price they had paid for the property.

Respectfully submitted,



Thomas W. Ullrich
5616 Glenwood Drive
Alexandria, Virginia
347-5179
Attorney for Complainants

STATEMENT OF FACTS

The complainants' evidence showed the following:

That on January 26, 1962 Harvey Winn and Rosabelle Winn both of whom are school teachers in Arlington County, Virginia, signed a contract to purchase the property located at 900 South Wakefield Street, Arlington, Virginia from defendant Temco, Inc. The contract was prepared and written by the real estate sales agent of Temco, Inc., Parker, Smith & Donnell. They were told by the agent that the owner of the 900 South Wakefield property would have the right to use the swimming pool on the adjacent property owned also by the seller, Temco, Inc. The contract read "Use of the apartment swimming pool to be available to purchaser and his family." The deed conveying the property to the Winns was silent as to the swimming pool. Defendants were constructing a row of homes on 9th Street, between Wakefield and Buchanan and behind the homes it was constructing a group of apartment house buildings, with the pool between several of the apartment houses and with some of the row of homes facing out onto the pool. The Winns were specifically told, by the real estate agent, that the use of the pool went with the ownership of the home, and that subsequent purchasers would have the right to use the pool. This was important to them and was emphasized to them as a sales feature if they later decided to sell the property.

There are three defendants, T. J. Offutt, Dittmar Company and Temco, Inc. Dittmar Company is the managing agent of the property and pool. The offices of each defendant are in the same room in the same building situated on the property where the pool is located and the only name on the

door is "Dittmar Company". Also located in the same building with 3 or 4 other tenants, was the real estate offices of Sonnett Realty, of whom George Sonnett is the broker and James Robbins was a salesman for Sonnett Realty. Sonnett Realty had an exclusive agency with the defendants in 1969 to sell homes being built by the defendants.

On July 18, 1969 the Winns sold the property at 900 South Wakefield Street to the complainants. As part of the inducement to purchase, the Winns told the complainants that the use of the pool went with the purchase of the property. The salesman Robbins also told the complainants that they would have the use of the pool. The Winns were purchasing one of the new homes now being built by the defendants in another location, and the salesman Robbins and broker Sonnett were the salesman and broker for both the purchase of the new home by the Winns from the defendants and the sale of the Winn property to the complainants. In fact, the sale by the Winns of the property purchased from the defendants in 1962, was a condition in the contract to the purchase by the Winns of the new home being built by the defendants. Unless the Winns sold the home they were then living in they could not afford to purchase the new home.

The original purchase price offered by the complainants to the Winns was rejected. In order to get the complainants to increase their offering price $750.00 so that the Winns would agree

to the sale, the salesman Robbins told them that pool membership in a club would cost them $300.00 membership fee and annual dues, and in a very short time they would have their money back. Both the contract from Winn to Bunn and the deed from Winn to Binn were silent as to any swimming pool rights.

After the complainants went to settlement, they went to the defendants and requested the pool passes. The defendants refused to issue passes. The complainant Bunn testified that they were told by defendant Offutt that defendants had changed their policy and would not let subsequent purchasers of the land adjacent to the pool use the pool because it was causing them to pay an increased insurance rate. The broker Sonnett talked with the defendants but were unable to convince the defendants to permit the complainants to use the pool.

The defendant Offutt was called by the complainants as an adverse witness. He testified that he developed all of the houses and the adjacent apartment together. He thought the apartment building would be an impediment to the sale of the houses and accordingly told the broker that he would offer the free right to the use of the pool on the apartment property to orignal purchasers of the houses and their families. He never intended the right to run with the land and inure to successors in interest.

Complainant Bunn called him about pool passes in 1969. Offutt responded that the matter was not negotiable, that the defendants were adamant in their policy not to extend pool passes to successors in interest of the first purchasers. The right to use the pool, he testified, had been offered to first purchasers

as an inducement to the initial sale, but the pool was crowded and in his opinion there was a danger of liability complications. He never extended pool privileges to any successors in interest of the first purchasers. He testified that the only party to give him any problem in this respect was the complainant Bunn and a tenant who rented property from an original purchaser/

January , 1975

Judge

Thomas W. Ullrich
Attorney for Complainants

Geoffrey T. Williams
Attorney for Defendants

NOTICE OF OBJECTION

Counsel for the complainant verily believes the above statement of facts to be accurate but incomplete for the reasons stated in the attached "Motion to Supplement the Statement of Facts and Request for Immediate Hearing" and, therefore, notes his objection.

Thomas W. Ullrich

MOTION TO SUPPLEMENT THE STATEMENT OF FACTS AND REQUEST FOR IMMEDIATE HEARING

On November 22, 1974, Complainants' counsel, Mr. Ullrich, served notice that on December 13, 1974, he would present to the Court a Statement of Facts for approval. On December 13, 1974, both parties were available for a hearing before the Court but because of a crowded court calendar it was agreed that the parties would attempt to resolve the matter themselves. Counsel for defendants, Mr. Williams, agreed to provide counsel for complainants with a counter-statement of facts but failed to do so despite repeated requests. Finally, on the evening of January 15, 1975, a meeting was held in the office of Mr. Williams. All but a few facts were agreed to. In order to resolve these immediately, as the Petition For Appeal was due January 24, 1975, Judge Russell heard in chambers the facts which could not be agreed upon. Following that January 15th hearing, Mr. Ullrich was to re-type for signature of the Court the agreed Statement of Facts. The revised statement was furnished to Mr. Williams on January 17, 1975, a copy of which is attached.

Mr. Williams telephoned Mr. Ullrich on January 20, 1975, and advised he wanted to make several additional changes. Another hearing was then scheduled for January 22, 1975, to resolve the only disputed matter remaining, to wit, whether the statement "The broker Sonnett had talked with the defendants before the sale to complainants and the defendants had told him the new purchasers of the Winn property would have the use of the pool as that right went with the land" had been testified to during trial.

On January 22, 1975, after the Complainants had filed their Petition For Appeal, the Court sua sponte and over objection of counsel for Complainants made the following changes in the Statement of Facts in addition to resolving the disputed matter in favor of the defendants. These changes were not even requested by Mr. Williams.

(1) The Court deleted the following statements:

> Before the complainants went to settlement on the property they went to the defendants to get the passes which were issued by the defendants as a control to keep out persons who either did not own homes or live in the apartment houses. The complainants explained that they had contracted for the purchase of the Winn property and settlement was in a few days. The defendants told the complainants that the passes could not be issued until settlement and to come back after settlement and they would be issued passes.

(2) The Court deleted the statement:

> As a result of the sale of the Winn property to complainants, the defendants made a sale of one of its new homes, and a sales commission was earned by the salesman Robbins and broker Sonnett on the sale of two homes - the sale of the property to the complainants and the sale of the new home to the Winns.

Counsel submits that the changes made by the Court were incorrect and requests an immediate hearing in which all persons present in the courtroom during the trial be subpoened to testify as to the trial testimony in order to establish the correct statement of facts.

Thomas W. Ullrich
Attorney for Complainants
5616 Glenwood Drive
Alexandria, Virginia 22310

PARKER, SMITH & DONNELL INC

① purchase [illegible] 22 times with no [illegible]
② bending in [illegible] Real Estate contract
premises

MAIN OFFICE
[illegible] 19TH STREET, NORTH
ARLINGTON, VIRGINIA

FALLS CHURCH OFFICE
[illegible] SOUTH WASHINGTON STREET
FALLS CHURCH, VIRGINIA

CALL: JACKSON 7-8161 — JACKSON 7-8162 — JACKSON 7-8163

January 25, 1962

Received from Harvey W. and Rosabelle G. Hyma

deposit of One Thousand Dollars ($ 1,000.00) ☐ Note ☐ Cash ☑ Check

which shall be held by the agent, to be applied as part payment of the purchase of the property located at [illegible] South Fairfield Street, Arlington, Virginia, with improvements thereon, also known as Lot 2 E, Block G, Barcroft, Arlington County, Virginia, upon the following terms of sale:

Total price of property Twenty-Three Thousand Six Hundred Dollars ($ 23,600.00) to be paid in the following manner:

The purchaser agrees to pay Ten Thousand Dollars ($ 10,000.00) cash at the date of conveyance, of which sum this deposit shall be a part. Said payment shall constitute a part of the purchase price.

The purchaser is to ~~secure, give~~ place, ~~take title subject to~~ a first deed of trust secured on the premises of Thirteen Thousand Six Hundred Dollars ($ 13,600.00) bearing interest at the rate of 5 3/4 per cent per annum, payable ~~in twenty-five years at approx. Eighty-Five Dollars per month for principal and interest, plus~~ taxes and ~~insurance~~. The same shall constitute a part of the purchase price.

The balance of deferred purchase money is to be secured by a ~~None~~ deed of ~~trust on said~~ property, which is to be given to the seller, to be paid in monthly installments of — Dollars ($ —) or more, including interest at the rate of — per cent per annum, each installment when so paid to be applied, first, to the payment of interest on the amount of principal remaining unpaid and the balance thereof credited to principal. Said amount is a part of the purchase price.

Trustees in all deeds of trust are to be named by the parties secured thereby.

The property is sold free of encumbrance except as aforesaid; title is to be good of record and in fact, subject, however, to covenants, conditions and restrictions of record, if any; otherwise said deposit is to be returned and sale declared off at the option of the purchaser, unless the defects are of such character that they may readily be remedied by legal action, but the seller and agent are hereby expressly released from all liability for damages by reason of any defect in the title. In case legal steps are necessary to perfect the title, such action must be taken by the seller promptly at his own expense, whereupon the time herein specified for full settlement by the purchaser will thereby be extended for the period necessary for such prompt action.

Rents, taxes, insurance and interest on existing encumbrances, if any, and operating charges are to be adjusted to the date of transfer. Taxes, general and special, are to be adjusted according to the certificate of taxes as issued by the Collector of Taxes, except that assessments for improvements completed prior to the date hereof, whether assessment therefor has been levied or not, shall be paid by the seller or allowances made therefor at the time of transfer.

Examination of title, conveyancing, notary fees and all recording charges, including those for purchase money trust, if any, are to be at the cost of the purchaser who, together with the seller, hereby authorizes the undersigned agent to select the settlement attorneys, order the examination of title; provided, however, that if upon examination, the title should be found defective, the seller hereby agrees to pay the cost of the examination of the title and also to pay to the agent herein a commission hereinafter provided for just as though the sale had actually been consummated and all the terms of this contract complied with.

Within 6 ~~months~~ ~~days~~ from the date of acceptance hereof by the owner, or as soon thereafter as a report on the title can be secured if promptly ordered, or as soon thereafter as any necessary new financing is obtained, the seller and purchaser are required and agree to make full settlement in accordance with the terms hereof. If the purchaser shall fail so to do, the deposit herein provided for may be forfeited at the option of the seller, in which event the purchaser shall be relieved from further liability hereunder, or without forfeiting the said deposit the seller may avail himself of any legal or equitable rights which he may have under this contract. In the event of the forfeiture of the deposit, the agent shall allow the seller one-half hereof as liquidated damages and shall retain the balance as a compensation for his services.

Purchaser and seller agree that they will promptly and diligently commit those acts necessary to obtain the above described financing and such other details as are required to fulfill the terms and conditions of this contract, and failure on the part of either party shall constitute a breach of this contract.

Settlement is to be made at the office of agent or the attorney selected by the agent, and the deposit of the purchase money, the deed of conveyance for execution and such other papers as are required of either party by the terms of this contract shall be considered good and sufficient tender of performance of the terms hereof. [illegible]

Seller agrees to execute the usual general warranty deed, to be prepared at his expense, and to pay for Federal Revenue Stamps on deed. Property is sold subject to an existing tenancy as follows: None

Seller agrees to give possession at time of settlement, and in the event he shall fail so to do he shall become and be thereafter a tenant by sufferance of the purchaser and hereby waives all notice to quit, as provided by the laws of the State of Virginia.

The risk of loss or damage to said property by fire or other casualty is hereby assumed by the purchaser upon settlement, or

upon his taking possession of the property, whichever is earlier.

The Vendor agrees to pay to the Agent cash for his services in obtaining this contract, a commission on the price of the property at the rate of SIX per cent. The Title Company or office through which settlement is made, is hereby authorized and directed to make deduction of the aforesaid commission from the proceeds of the sale and to make payment thereof to said agent.

The principals to this contract mutually agree that it shall be binding upon their respective heirs, executors, administrators or assigns.

This contract, ~~together with the memorandum on the reverse~~ hereof, if any, when ratified by the seller contains the final and entire agreement between the parties hereto and they shall not be bound by any terms, conditions, statements or representations, oral or written, not herein contained.

If a first trust is to be placed, this contract is contingent upon its procurement.

~~Sale price of property includes range and refrigerator, dishwasher, disposal, exhaust fan, venetian blinds, window screens and screen doors. Purchaser to choose colors of interior and floor covering not yet installed.~~

PARKER, SMITH & DONNELL, INC.

By Willis L. Lawrence Agent

We, the undersigned, hereby ratify, accept and agree to the above memorandum of sale and acknowledge it to be our contract.

Harvey W. Wynn Purchaser

January 26, 1962 Lorelle Wynn Purchaser

TEMCO, INC. Seller

26 January, 1962 J. Donald Smith Seller

Property is to be conveyed in the name

(over)

The offer on the reverse hereof is subject to the following additional provisions:

If a new first trust loan is to be placed, Purchaser and Seller each agree to pay loan brokerage charges as necessary to obtain same.

If a new FHA insured first trust is to be placed, Purchaser and Seller each agree to the following:

It is expressly agreed that, notwithstanding any other provisions of this contract, the purchaser shall not be obligated to complete the purchase of the property described herein or to incur any penalty by forfeiture of earnest money deposits or otherwise unless the seller has delivered to the purchaser a written statement issued by the Federal Housing Commissioner setting forth the appraised value of the property for mortgage insurance purposes of not less than $_____, which statement the seller hereby agrees to deliver to the purchaser promptly after such appraised value statement is made available to the seller.

If new VA or FHA financing is to be placed, and necessary appraisals have not been ordered, Purchaser agrees to pay for the required appraisal of the property.

3 March, Hwy Rgw

~~Purchaser to take possession on February 24, 1962 on a letter of possession.~~

~~paying $10.00 per diem until date of settlement.~~

~~Use of apartment swimming pool to be available to purchaser and his family.~~

Shutters to be placed on the windows on the front of the house Hwy Rgw

Harvey W. Wynn (Purchaser)

Date: January 26, 1962 Lorelle Wynn (Purchaser)

TEMCO, INC. (Seller)

Date: 26 January 1962 J. Donald Smith (Seller)

By: Willis L. Lawrence (Agent) PARKER, SMITH & DONNELL, INC.

SONNETT REALTORS, INC.
944 S. WAKEFIELD
ARLINGTON, VIRGINIA 22204

920-0200

INSURANCE
MORTGAGE LOANS
MEMBER of M-L-S

November 14, 1969

π Ex & Cell

Mr. Edward DeV. Bunn
Union Trust Building
Washington, D. C. 20005

Dear Mr. Bunn:

We have been unable to secure the passes for the swimming pool owned by Ditmar Company. Since the situation is beyond our control, the only alternative we have is that we would be only too happy to assume your existing trust and give you the cash you have invested in the property.

Sincerely,

George M Sonnett

George M. Sonnett

GS:jr

INDENTURE

WHEREAS Harvey W. Wynn and Rosabelle G. Wynn, his wife, did on January 26, 1962 execute a contract for the purchase of Lot Two-E (2-E), of Resubdivision of Lots 1 and 2, Block G, BARCROFT, and thereafter pursuant to that contract did on July 9, 1962 receive a deed to said property;

WHEREAS on July 18, 1969 Harvey W. Wynn and Rosabelle G. Wynn did by deed convey the said property to Edward DeV. Bunn and Sandra Bunn, his wife, and that deed did provide that the grantors "will execute such further assurances of the said land as may be requisite;"

NOW THEREFORE, Harvey W. Wynn and Rosabelle G. Wynn do in more perfect form transfer and assign and convey to Edward DeV. Bunn and Sandra Bunn all their right, title, and interest in the January 26, 1962 contract for the purchase of the said property, and in particular the right, title, and interest to the use of the apartment swimming pool as provided in the said contract.

DATED this 20 day of May 1974.

(Seal)
Harvey W. Wynn

(Seal)
Rosabelle G. Wynn

August 2, 1983

Mr. Sonnett
Sonnett Realty Co., Inc.
[illegible] South Wakefield Street
Arlington, Virginia 22204

Dear Mr. Sonnett:

As you know, we were advised that pool privileges went with the purchase of the property at 800 South Wakefield Street. We have contacted Dittmar Company, Inc. whom we understood managed the pool for our free passes, and they have refused to provide us with passes. Please take the necessary measures to correct this at your earliest possible convenience in order that we may enjoy the pool before the season ends.

With kindest regards, I am

Sincerely,

Edward DeV. Bunn

EDeVB:me

To Ex 5 Vol

September 8, 1969

Mr. James E. Robbins
Bennett Realty Co., Inc.
944 South Wakefield Street
Arlington, Virginia 22204

Dear Mr. Robbins:

After your visit to see us it was our understanding that you were to undertake further measures to either provide us with pool passes or to find out who misled you on the pool passes. It is imperative that this matter be corrected and that we be provided with passes. Your cooperation in this is requested.

With kindest regards, I am

Sincerely,

Edward DeV. Bunn

EDeVB:me

October 20, 1983

Mr. Sonnett
Sonnett Realty Co., Inc.
844 South Wakefield Street
Arlington, Virginia 22204

Re: 800 South Wakefield Street

Dear Mr. Sonnett:

Please advise me whether you intend to take the necessary measures to provide us with pool passes so that I may know how to proceed. Unless this matter is attended to, you afford me no alternative to legal action.

Sincerely,

Edward DeV. Bunn

EDeVB:me

cc Mr. James E. Robbins

October 25, 1971

T Cx7 (4

Mr. T. J. Offutt
944 South Wakefield Street
Arlington, Virginia 22204

Re: 900 South Wakefield Street
swimming pool easement

Dear Mr. Offutt:

Unless an agreement is reached within 10 days from the date of this letter concerning the easement and right of way to use the swimming pool held by me, the enclosed suit papers will be filed with the Court.

Any error in the suit papers concerning the respective ownerships and obligations of the defendants will be corrected after pretrial discovery.

Sincerely,

Edward DeV. Bunn

EDeVB:me
Encl.

DITTMAR CO., INC.

C O N T R A C T

Tr Ex 8(d)

In consideration of the deposit of $ 500.00 this day paid Dittmar Co., Inc. hereinafter called the Seller, agrees to sell to John Ratway & Regina A. Ratway - hereinafter called the Purchasers, the property described as follows: 4612 S. 9th St., Arl., Va. Lot 20, Block G, Barcroft, Arlington, Va. under the following terms and conditions:

Total price of property is $ 23,525.00

The down payment, of which this deposit is a part, is cash above first trust

The purchaser shall place a first deed of trust of 17,643.75 $, at 5½ or 5 3/4 % interest, payable monthly for 25 years. Balance of purchase price, if any, shall be in the form of a 2nd deed of trust note @ 6% interest, payable $ $ per month, with larger payments allowed at anytime, and the entire balance due and payable within years from date of settlement.

Settlement shall be on or before Feb. 1, 1962, at the offices of Hiss & Rutledge

Seller warrants property to be free and clear of all encumbrances other than any that are listed herein.

The expense of removing any title defect shall be at the expense of seller

Rents, taxes, insurance, interest and water rents shall be adjusted to date of settlement.

Possession previous to settlement shall be allowed upon additional deposit of $, and payment of $ per day.

Loss or damage by fire or other casualty prior to settlement shall be at the risk of the seller.

The Seller agrees to pay the cost of federal revenue stamp and preparation of deed of conveyance; otherwise all settlement costs to be at the expense of Purchasers.

The Purchasers and seller hereby affirm that the only binding conditions and terms relative to this transaction are those listed in this contract.

If the Purchasers fail to settle in accordance with this contract the deposit is forfeited to the Seller.

If it is impossible to secure the aforementioned financing this contract shall be considered null and void unless the Purchasers and Sellers subsequently agree to other available financing.

Cash allowance will be made for refrigerator ($192) and shrubbery ($40)

Purchaser to have free rights to use of swimming pool and play area of the apartment project adjoining his lot. Builder's warranty against structural defects is for one year. Builder guarantees the basement to be dry and remain dry of surfact water for a period of one year. Builder guarantees house to be free of termites at time of settlement, with inspectio at purchaser's expense, if desired. If necessary, the seller will hold a second trust of $1276.25, payments $12.76 per month, balance due and payabl within 5 years from date of settlement.

Date 27 Oct 1961 /S/ John Ratway Purchaser

Date /S/ Regina Ratway Purchaser

Date /S/ T. J. Offutt Seller

T. Ex 4

[illegible] of the deposit of $ $500.00 this day [illegible]
Dittmar Co., Inc. hereinafter called the Seller, agrees to
Bernard J. Fegan & Rose Z. Fegan hereinafter called the
[illegible] property described as follows: 4712 S. 9th St., Arl., Va.
Lot 1-C, Block G, Barcroft
[illegible] the following terms and conditions:
[illegible] total price of property is $ 24,300.00.
[illegible] down payment, of which this deposit is a part, is $6,100.00
[illegible] the purchaser shall place a [illegible] deed of trust of
$ 18,000.00, at 5½ or 5 3/4 %
[illegible], payable monthly for 25 years. Balance of purchase price, if
[illegible], shall be in the form of a 2nd deed of trust note @ 6% interest, payable
[illegible] per month, with larger payments allowed at anytime, and the
[illegible] balance due and payable within [illegible] years from date of settlement.
Settlement shall be on or before Jan. 10, 1962 at the offices of
Hiss & Rutledge
Seller warrants property to be free and clear of all encumbrances other than any that are listed herein.
The expense of removing any title defect shall be at the expense of seller.
Rents, taxes, insurance, interest and water rents shall be adjusted to date of settlement.
Possession previous to settlement shall be allowed upon additional deposit of $ [illegible], and payment of $ [illegible] per day.
Loss or damage by fire or other casualty prior to settlement shall be the risk of the seller.
The seller agrees to pay the cost of federal revenue stamp and preparation of deed of conveyance; otherwise all settlement costs to be at the expense of Purchasers.
The Purchasers and seller hereby affirm that the only binding conditions and terms relative to this transaction are those listed in this contract.
If the Purchasers fail to settle in accordance with this contract the deposit is forfeited to the Seller.
If it is impossible to secure the aforementioned financing this contract shall be considered null and void unless the Purchasers and Sellers subsequently agree to other available financing.

Seller to finish basic house in manner similar to houses in Forest Glen subdivision. Seller to remove tree closest to house (in rear of house). Purchaser to have free rights to use of swimming pool & play area of the apartment projedt adjoining his lot. Price includes G E dishwasher, eye-level oven & burner top, Disposal, and Model 342 Refrigerator.

Date 21 OCT 61 — Bernard J. Fegan — Purchaser

Date _____ — _____ Purchaser

Date Oct 21, 1961 — _____ Seller

DITTMAR COMPANY
P. O. BOX 4098
944 SOUTH WAKEFIELD STREET
ARLINGTON, VIRGINIA 22204

671-1134
920-3131

February 5, 1970

Tr Ex 10 Cont

Mr. Edward DeV. Bunn
900 South Wakefield Street
Arlington, Virginia 22204

Dear Mr. Bunn:

When you called me on Monday, I declined an appointment with you because I knew you wished to discuss use of the Columbia Park Pool, and this issue simply is not negotiable.

Almost every succeeding owner has approached us and many have claimed that they understood the pool rights went with the property, although it was made plain to every initial buyer that pool rights applied only to initial purchasers and their families and did not apply to succeeding owners.

The Pool is at this time overcrowded; and use by persons other than tenants complicates our insurance coverage.

Very truly yours,

DITTMAR COMPANY

T. J. Offutt

T. J. Offutt

TJO/eks

REALTORS

944 S. Wakefield Street
Arlington, Virginia 22204
920-0200

Arlington, Virginia, May 31, 19 69

Received from Edward DeLe Bunn $1000.00
a deposit of ONE THOUSAND and no/100 *Dollars* ($)
to be applied as part payment of the purchase of the following described real estate:
lot 20 Block G, Resub of lots 1&2 Barcroft also known as 900 S. Wakefield St., Arl, Va

Terms of Sale:

(1) *Total Price of Property* Thirty Seven Thousand Five Hundred *Dollars* ($37,500.00

(2) *Purchaser agrees to pay* no money down - VA loan *Dollars* ($ -0-)
cash at date of conveyance of which above deposit is a part.

(3) *Purchaser is to* Place *a first deed of trust secured on the premises of* Thirty Seven Thousand Five Hundred *Dollars* ($ 37,500.00) *bearing interest at the rate of* 7½ *per cent per annum and payable* $262.50 - 167 *per month, including* P & I

(4) *The balance of deferred purchase money is to be secured by a* n/a *deed of trust on said property, to be paid in monthly installments of* n/a *Dollars* ($ -0-) *or more, including interest at the rate of* n/a *per cent per annum, each installment when so paid to be applied, first, to the payment of interest on the amount of principal remaining unpaid and the balance thereof credited to the principal.*

Stove Refrigerator, Dishwasher, Disposal, Exhaust Fan, Venitian Blinds, & Storm Doors
Washer and Dryer in as is condition.
This is to be a thirty (30) year VA loan.

Where financing is to be secured by a purchaser the seller hereby agrees to pay at time of settlement the prevailing loan discount required by the lending institution and which cannot be charged to the purchaser due to Government or other regulations.

Rents, taxes, water rent, insurance and interest on existing encumbrances, if any, and operating charges are to be adjusted to the date of the transfer. Taxes, general and special, are to be adjusted according to the certificate of taxes issued by the Collector of Taxes of the State of Virginia, except that assessments for improvements completed prior to the date hereof, whether assessment therefor has been levied or not, shall be paid by the seller or allowance made therefor at the time of transfer.

Examination of title, tax certificate, conveyancing, notary fees and all recording charges, including those for purchase money trust, if any, are to be at the cost of the purchaser who hereby authorizes the undersigned agent to order the examination of title; provided, however, that if upon examination the title should be found defective, the seller hereby agrees to pay the cost of the examination of the title and also to pay to the agent herein a commission hereinafter provided for just as though the sale had actually been consummated and all the terms of this contract complied with; however, a reasonable time shall be allowed the Seller to correct any defects reported by the title examiner.

Within forty five days from the date of acceptance hereof by the owner, or as soon thereafter as a report on the title can be secured if promptly ordered, the seller and purchaser are required and agree to make full settlement in accordance with the terms hereof. If the purchaser shall fail to do so, the deposit herein provided for may be forfeited at the option of the seller, in which event the purchaser shall be relieved from further liability hereunder, or without forfeiting the said deposit the seller may avail himself of any legal or equitable rights which he may have under this contract. But it is specifically understood that the agent is expressly released from all liability by both purchaser and seller for failure of either party to comply with this sales contract. In the event of the forfeiture of the deposit, the seller shall allow the agent one-half thereof as a compensation for his services.

Settlement is to be made at the office of agent or at the Title Company searching the title, and the deposit with the Title Company of the purchase money, the deed of conveyance for execution and such other papers as are required of either party by the terms of this contract shall be considered good and sufficient tender of performance of the terms hereof.

Seller agrees to execute and pay for the usual general warranty deed and to pay for State Recording Tax Stamps on Deed.

Seller agrees to give possession at time of settlement, and in the event he shall fail so to do he shall become and be thereafter a tenant by sufferance of the purchaser and hereby waives all notice to quit, as provided by the laws of the State of Virginia.

The risk of loss or damage to said property by fire or other casualty until the deed of conveyance is recorded is assumed by the seller.

The seller agrees to pay Sonnett Realty Co., Inc., broker, a commission of six percent and the Title Company or Office through whom the settlement is made is hereby authorized and directed to make deduction of the aforesaid commission from the proceeds of the sale and make payment thereof to the said agent. Entire deposit to be held in escrow by Sonnett Realty Co., Inc. until settlement hereunder is made.

The principals to this contract mutually agree that it shall be binding upon their respective heirs, executors, administrators or assigns.

If a first trust is to be placed, this contract is contingent on its procurement.

For FHA financing it is expressly agreed that, notwithstanding any other provisions of this contract, the purchaser shall not be obligated to complete the purchase of the property described herein or to incur any penalty by forfeiture of earnest money deposits or otherwise unless the seller has delivered to the purchaser a written statement issued by the Federal Housing Commissioner setting forth the appraised value of the property for mortgage insurance purposes of not less than $ n/a , which statement the seller hereby agrees to deliver to the purchaser promptly after such appraised value statement is made available to the seller. The purchaser shall, however, have the privilege and option of proceeding with the consummation of this contract without regard to the amount of the appraised valuation made by the Federal Housing Commissioner.

In the event veteran-purchaser fails to obtain the aforementioned VA guaranteed loan, this contract shall be declared null and void, and his deposit shall be returned.

Seller warrants all equipment and utilities to be in proper working condition at time of occupancy or settlement, whichever occurs first; however sellers are not otherwise responsible for any maintenance, repairs, or additional warranty. Purchaser accepts property in its existing condition subject to this agreement.

This contract when ratified by the seller contains the final and entire agreement between the parties hereto and they shall not be bound by any terms, conditions, statements, or representations, oral or written, not herein contained. Agent's signature hereto constitutes receipt of deposit only, to be disbursed in manner stated above, and it is understood that agent is in no way responsible for defects, omissions, or alterations pertaining to the property being conveyed herein. Agent represents buyer and seller in capacity of broker only.

It is expressly agreed that, notwithstanding any other provisions of this contract, the purchaser shall not incur any penalty by forfeiture of earnest money or otherwise or be obligated to complete purchase of property described herein, if the purchase price or cost exceeds the reasonable value of property established by VA. The purchaser shall, however, have the privilege and option of proceeding with the consummation of this contract without regard to the amount of the reasonable value established by VA.

We, the undersigned, hereby ratify, accept and agree to the above memorandum of sale and acknowledge it to be our contract.

SONNETT REALTY CO., INC.

By ..... *Broker*

..... *Sales Agent*

..... , 19 69

Accepted by Owner

..... , 19 ..

..... *Purchaser*

..... *Purchaser*

..... *Seller*

..... *Seller*

Deed Book

This Deed, Made and entered into this 18th day of July, 1969, by and between HARVEY W. WYNN and ROSABELLE G. WYNN, his wife, parties of the first part; and EDWARD DeVERE BUNN and SANDRA BUNN, his wife, as tenants by the entirety, parties of the second part;

Witnesseth

That for and in consideration of the sum of Ten Dollars ($10.00) cash in hand paid, and other good and valuable consideration, receipt of all of which is hereby acknowledged, the parties of the first part hereto do hereby grant, bargain, sell and convey, with GENERAL WARRANTY of title unto the parties of the second part, as tenants by the entirety, with the common law right of survivorship, it being intended that fee simple title to the property hereby conveyed shall vest in the parties of the second part during their joint lives and thereafter fee simple title shall vest in the survivor of them, all of that certain lot or parcel of land situate, lying and being in the County of Arlington, State of Virginia, and more particularly described as follows:

Lot TWO-E (2-E), of Resubdivision of Lots 1 and 2, Block G, BARCROFT, as the same appears duly resubdivided, platted and recorded in Deed Book 1439 at page 196 among the land records of Arlington County, Vir ginia.

And being that same property conveyed to the parties of the first part by deed recorded in Deed Book 1478 at page 664 among the said County land records.

This is to certify that the tax imposed by Section 58-54 (b) has been paid.

THIS CONVEYANCE is made subject to the restrictions and conditions contained in the deeds forming the chain of title to this property.

SAID PARTIES OF THE FIRST PART COVENANT that they have the right to convey the said land unto the parties of the second part, that they have done no act to encumber the same; that the said parties of the second part shall have quiet possession of the said land, free from all encumbrances; that they, the said parties of the first part will execute such further assurances of the said land as may be requisite.

WITNESS the following signatures and seals:

_____ (SEAL)
HARVEY W. WYNN

_____ (SEAL)
ROSABELLE G. WYNN

COMMONWEALTH OF VIRGINIA

COUNTY OF FAIRFAX to-wit:

I, the undersigned, a Notary Public in and for the County aforesaid, in the State of Virginia, do hereby certify that Harvey W. Wynn and Rosabelle J. whose names are signed to the foregoing Deed dated July 18th, 1969, have acknowledged the same before me in my County and State aforesaid.

GIVEN under my hand this 18th day of July, 1969.

My Commission expires on the 5th day of March, 1972.

VIRGINIA: In the Clerk's office of the Circuit Court of Arlington County this deed was received and with the annexed certificate admitted to record at 5:00 o'clock P.M.

AUG 5 - 1969

Notary Public

THIS DEED, made this 9th day of July, 1962, by and between TEMCO, INC. (a Virginia Corporation), party of the first part; and HARVEY W. WYNN and ROSABELLE G. WYNN, his wife, tenants by entirety with the common law right of survivorship, parties of the second part:

WITNESSETH, that for and in consideration of the sum of Ten Dollars, the said party of the first part does hereby grant and convey, with general warranty, unto the said parties of the second part, as tenants by entirety, with the common law right of survivorship, it being intended that the fee simple title to said property shall be vested in said parties of the second part during their joint lives, and thereafter fee simple title shall be vested in the survivor of them, all that certain land, together with improvements thereon, situate in Arlington County, Virginia, more particularly described as follows:

> Lot TWO-E (2-E), of Resubdivision of Lots ONE (1) and TWO (2), Block G, BARCROFT, as the same is duly resubdivided, platted and recorded among the land records of said County in Deed Book 1439 at page 196:
>
> AND BEING part of the same property conveyed to the said Temco, Inc. (a Virginia Corporation) by deed recorded in Deed Book 1444 at page 243 of the said land records.

This conveyance is made subject, however, to restrictions and conditions contained in the deeds forming the chain of title to this property.

The said party of the first part covenants that it has the right to convey the said land to the said parties of the second part; that it has done no act to encumber the same; that the said parties of the second part shall have quiet possess-

ion of the said land, free from all encumbrances; and that it, the said party of the first part will execute such further assurances of the said land as may be requisite.

IN WITNESS WHEREOF, TEMCO, INC. (a Virginia Corporation), has caused this deed to be signed by its president and its corporate seal to be hereto affixed, duly attested by its secretary.

TEMCO, INC. (a Virginia Corporation)

By

President

ATTEST:

Secretary

STATE OF VIRGINIA

COUNTY OF ARLINGTON, to-wit:

I, Dorothy A. Dinkle, a Notary Public, in and for the State and County aforesaid, whose commission expires on the 5th day of August, 1962, do hereby certify that , whose names as President and Secretary respectively, of Temco, Inc. (a Virginia Corporation), are signed to the foregoing deed, bearing date on the day of , 1962, have acknowledged the same before me in my State and County aforesaid.

GIVEN under my hand and seal this day of , 1962

Notary Public