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IN THE

Supreme Court of Virginia

AT RICHMOND

4

RECORD NO. 791213

RICHARD A. BAUER, et al. Appellants

v.

EDWIN HARN, et al. Appellees

APPENDIX

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Attorneys for Appellants

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BILL OF COMPLAINT FOR DECLARATORY JUDGMENT

(Filed 2/12/79)

Your Complainants, Richard A. Bauer, et al., for and on their own behalf and on behalf of the similarly situated land owners of the Lake of the Woods Community listed in Attachment A hereof, by counsel, respectfully represent unto the Court as follows:

1. Your complainants are citizens of the Commonwealth of Virginia, taxpayers, and residents upon land they own in the Lake of the Woods community near Locust Grove in the Gordon Magisterial District of Orange County, Virginia, and have an interest in the subject matter of this suit.

2. Defendant Edwin Harn is President of and a member of the Board of Directors of the Lake of the Woods Association, Inc. The other defendants are all members of the Board of Directors of said Association. All defendants are sued in their aforesaid capacities.

3. The Lake of the Woods community is a private retirement and recreational community of more than 2,600 acres of residential property, streets, parks, recreational facilities, administrative buildings, and other facilities. All except the residential property is owned by Lake of the Woods Association. Entrance to the community is restricted

to the owners of residential property therein and to their invitees, the general public being excluded from use of the streets which are maintained at the sole expense of the Lake of the Woods Association, Inc.

4. The Lake of the Woods Association, Inc., is a non-stock Virginia corporation. The members of the incorporated Association are the owners of residential lots within the community. The affairs and business of the incorporated Association are managed by its Board of Directors and such affairs and business include the management and maintenance of the Association-owned property within the Lake of the Woods community. The Directors of the Association are duly elected by the members of the Association.

5. The Articles of Incorporation of the Association set forth the general purposes and powers of the Association consistent with the Restrictive Covenants applicable to the community. Those Restrictive Covenants are recorded in the Clerk's office of this honorable Court, are applicable to all of the residential property in the Lake of the Woods community, run with the land, and are binding on all parties having an interest in real property within the community. True copies of the Restrictive Covenants and the Articles of Incorporation are attached hereto as Attachment B.

6. In purported exercise of their authority, Defendants in this cause, acting as the Board of Directors of the Lake of the Woods Association, Inc., on December 9,

1978, approved and adopted a new program under which the right of entry to and use of the facilities and amenities of the Lake of the Woods community, together with the right to bring guests for the same purpose, will be sold to people who have no legal or equitable title to or interest in real estate within the aforesaid community. A true copy of the regulations implementing the new program, together with the general instructions to the purchasers of said rights, is appended hereto as Attachment C.

7. The action of December 9, 1978, by the Defendants followed by four months their earlier action of August 12, 1978, by which defendants, or their predecessors, had approved and adopted a similar program which, by slightly different language, would have produced substantially the same result as will the program of December 9, 1978. A copy of the advertisement offering the privileges of entry to and use of the facilities pursuant to the August, 1978, program is appended hereto as Attachment D. The Board reconsidered the August, 1978, program after a challenge was raised to the authority of the Board to sell "Guest Memberships" in the Association and, upon such reconsideration, the Board modified its action by approving and adopting the program of December 9, 1978, which denominates the rights to be sold as "Guest Privileges." In spite of the names by which it may be called, the program of the Board of Directors contemplates the sale to "guests" of rights which are the

equivalent in major part of the rights specifically reserved by the Restrictive Covenants to the property owners of Lake of the Woods.

8. The program of the Board of Directors of the Lake of the Woods Association to sell to "guests" the right of entry to the private community and the right of access to and use of the physical amenities thereof is beyond the authority of the Board, is contrary to the Restrictive Covenants, and is in contravention of the plain intent of the contractual arrangement under which the present owners of real property in the Lake of the Woods community purchased their land.

9. Section 11, Subsection A, of the Restrictive Covenants, set forth in its entirety at page 13 of Attachment B hereof, provides in part as follows:

> "Each of the streets in the* * *Subdivision* * * is a private street, and every park, recreational facility and other amenity within the* * *Subdivision is a private park, facility or amenity* * *. An easement for the use and enjoyment of each of said streets and areas designated on the plat as parks is reserved to Declarant, its successors and assigns; to the persons who are, from time to time, members or associate members of the Lake of the Woods Association, Inc.; to the members and owners of The Lake of the Woods Golf and Country Club, Inc., its successors and assigns; to the residents, tenants, and occupants of any multi-family residential buildings, guest house, inn or hotel facilities, and all other kinds of residential structures that may be erected within the boundaries of the Section or Subdivision and to the invitees of all the aforementioned persons."

10. The Declarant to which the foregoing Restrictive Covenant refers is Virginia Wildlife Clubs, Inc., the

developer of the Subdivision. The Lake of the Woods Association, Inc., is the successor and assignee of Virginia Wildlife Clubs, Inc. The members of the Lake of the Woods Association, Inc., are, through the mandatory provisions of Section 12, Subsection A, of the Restrictive Covenants, the owners of real property within the community. There are no associate members of the Association because the requirements for such memberships as set forth in Article V, Section 5, of the Articles of Incorporation of the Association (Attachment B, page 64) cannot be met due to the fact that under existing zoning no multi-family dwelling exists or can be built within the community. There are no owners or members of The Lake of the Woods Golf and Country Club, Inc., because that corporation has ceased to exist and has no successors or assigns within Virginia. There is no guest house, inn, or hotel facility in the Lake of the Woods community. As a consequence of the foregoing, the easement of entry to and enjoyment of the facilities and amenities of the Lake of the Woods community is limited to the Lake of the Woods Association, its members and their invitees.

11. The Board of Directors of the Lake of the Woods Association is limited in its rights and powers by the provisions of the Restrictive Covenants and the Articles of Incorporation of the Association. There is no provision authorizing the Board to sell "guest memberships" or "guest privileges" by virtue of which a person other than a member

of the Association could be vested with (a) the right of entry to the community, (b) the right to bring in members of his family, (c) the right to bring in up to four guests, (d) the right to use the facilities and amenities of the community on the same basis as is applicable to the property owners and members of the Association, and (e) to make the facilities and amenities of the community available for the enjoyment of members of his family and his guests. The absence of any such authorization renders null and void the Board's action of December 9, 1978, and makes unlawful the program it institutes.

12. The Lake of the Woods Association, Inc., is not a voluntary association of landowners. It is, instead, a creature of the Restrictive Covenants running with the land and membership in it is a prerequisite to the acquisition by any landowner of legal title to his land in Lake of the Woods. The provisions of Subsection A of Section 12 of the Restrictive Covenants, page 14 of Attachment B hereto, are susceptible to no other interpretation. There thus arises a contract between the Association and its members and the provisions of that contract are that the affairs of the community must be administered in strict conformity to the Restrictive Covenants and the Articles of Incorporation of the Association. The Board of Directors of the Lake of the Woods Association, Inc., has not been vested with the right

to make judgments for what it believes to be the good of the community if the effect of any such judgment would be contrary to or inconsistent with the plain provisions of the Restrictive Covenants or the Articles of Incorporation, or if the effect thereof is contrary to the plain intent and purpose of the entire arrangement under which the Lake of the Woods community has been created and established. The action of December 9, 1978, of the Board of Directors is contrary to both the specific provisions of the Restrictive Covenants and the Articles of Incorporation and is, therefore, illegal and void.

13. As a result of the foregoing action by the Board of Directors of Lake of the Woods Association, Inc., an actual controversy exists between your Complainants and the Defendants and the Court should make a binding adjudication of the rights of the parties hereto.

14. The Court should invalidate the actions and program of December 9, 1978, adopted and approved as of that date by the Board of Directors, and enter such order as would prohibit or vacate the sale of the right of entry and access to the facilities of the Lake of the Woods to people who are not the owners of real property within that community.

WHEREFORE, your Complainants respectfully pray that the Court enter a declaratory judgment pursuant to §8.-1-184 of

the Code of Virginia, as amended, that the action of the Board of Directors of the Lake of the Woods Association in approving and authorizing the sale of the right of entry and access to and enjoyment of the facilities and amenities of the Lake of the Woods Community be declared illegal, invalid, and void, and that the Court vacate the aforesaid action of the aforesaid Board of Directors.

_____

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_____

Complainants

By _____

S. Page Higginbotham
102 W. Main Street
Orange, VA 22960

_____

Homer S. Carpenter
1600 Wilson Boulevard
Arlington, VA 22209
Their Attorneys

Exhibit B
of Complaint
Filed 2/12/79

DECLARATION OF RESTRICTIONS
LAKE OF THE WOODS

(Applicable to Section 1 through 14 and Section 18*)

THIS DECLARATION, made this 8th day of February, 1967, by VIRGINIA WILDLIFE CLUBS, INC., a Virginia Corporation, herein referred to as "Declarant",

WITNESSETH:

WHEREAS, Declarant is the owner of all the real property set forth and described on that certain plat (herein called "the plat") entitled "Lake of the Woods", Section , which plat is recorded among the Land Records of Orange County, Virginia in Map Book at page , and is made a part hereof and incorporated herein by reference; and

WHEREAS, all of the real property described in the plat comprises in the aggregate a part of the Lake of the Woods general subdivision (herein called "Subdivision"); and

WHEREAS, there are subdivided numbered lots set forth and described in the recorded plat, which numbered lots comprise in the aggregate a single subdivision section (herein called "Section") which is one of several sections contemplated in the Lake of the Woods general subdivision, which other sections shall be developed from adjoining lands owned by Declarant; and

WHEREAS, Declarant is about to sell and convey said lots and before doing so desires to subject them to and impose upon them mutual and beneficial restrictions, covenants, conditions and charges, hereinafter collectively referred to as "Restrictions", under a general plan or scheme of improvement for the benefit and complement of all of the lots in the Section and Subdivision, and the future owners of said lots;

*Some minor variations in these Declarations of Restrictions exist between Sections. Therefore, for completely accurate details one will need to refer to the documents filed with the Clerk of the Circuit Court of Orange County, Virginia.

NOW, THEREFORE, Declarant hereby declares that all of said lots are held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved subject to the following Restrictions, all of which are declared and agreed to be in furtherance of a plan for the subdivision, improvement and sale of said lots and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the property described in the plat and of the Subdivision as a whole. All of the Restrictions shall run with the land and shall be binding on all parties having or acquiring any right, title or interest in and to the real property or any part or parts thereof subject to such Restrictions.

1. APPLICABILITY

A. These Restrictions shall apply to subdivided numbered lots only and are specifically excluded from application to other lands designated on the plat as parcels or as lands of Declarant, which parcels and land are intended for commercial, multiple dwelling, single family residential or recreational uses.

2. TERM

A. These Restrictions shall affect and run with the land and shall exist and be binding upon all parties and all persons claiming under them until January 1, 1995, after which time the same shall be extended for successive periods of ten (10) years each, unless an instrument signed by a majority of the then owners of the lots subject thereto has been recorded, agreeing to change the covenants in whole or in part; provided, however, that at any time before January 1, 1980 these Restrictions may be amended by the vote of the then record owners of two-thirds (2/3) of such lots and thereafter by a majority of such owners.

B. Declarant reserves to itself, its successors and assigns the right to revoke at any time prior to the sale of any lot within the Section all or any part of these Restrictions and further to vacate any or all of the streets, parks, recreational facilities and any other amenity shown on the recorded plats, provided, however, that Declarant will not prevent access to or installation of utilities to lots in any other Section of the Subdivision.

3. MUTUALITY OF BENEFIT AND OBLIGATION

A. The Restrictions and agreements set forth herein are made for the mutual and reciprocal benefit of each and

every lot in the Section and the Subdivision and are intended to create mutual, equitable servitudes upon each of said lots in favor of each and all of the other lots therein; to create reciprocal rights between the respective owners of all of said lots; to create a privity of contract and estate between the grantees of said lots, their heirs, successors and assigns, and shall, as to the owner of each such lot, his heirs, successors, assigns, operate as covenants running with the land for the benefit of each and all other lots in the Section and Subdivision and their respective owners. Restrictions substantially the same as those contained herein shall be recorded on all future sections of the Subdivision in conformity with the general scheme of improvement of all lands to be included therein.

4. EXCLUSIVE RESIDENTIAL USE AND IMPROVEMENTS

A. No lot shall be used except for residential purposes. No structures shall be erected, placed or permitted to remain on any lot other than one (1) detached, single family residence dwelling and such outbuildings as are usually accessory to a single family residence dwelling including a private garage.

5. ENVIRONMENTAL CONTROL COMMITTEE

A. All plans and specification for any structure or improvement whatsoever to be erected on or moved upon or to any lot, and the proposed location thereof on any lot or lots, the construction material the roofs and exterior color schemes, any later changes or additions after initial approval thereof and any remodeling, reconstruction, alterations or additions thereto on any lot shall be subject to and shall require the approval in writing before any such work is commenced of the Environmental Control Committee (herein called "Committee"), as the same is from time to time composed.

B. The Committee shall be composed of three (3) members to be appointed by Declarant. Committee members shall be subject to removal by Declarant and any vacancies from time to time existing shall be filled by appointment of Declarant, or in the event of Declarant's failure to so appoint within two (2) months after any such vacancy, then by the Board of Directors of the Lake of the Woods Association, Inc. (hereinafter called "Association"); provided, however, that at any time hereafter the Declarant may, at its sole option, relinquish to the Board of Directors of the Association the power of appointment and

removal reserved herein to the Declarant. Such transfer of power must be evidenced in writing.

C. There shall be submitted to the Committee two (2) complete sets of plans and specifications for any and all proposed improvements, the erection or alteration of which is desired, and no structures or improvements of any kind shall be erected, altered, placed or maintained upon any lot unless and until the final plans, elevations, and specifications therefore have received such written approval as herein provided. Such plans shall include plot plans showing the location on the lot of the building, wall, fence, or other structure proposed to be constructed, altered, placed or maintained, together with the proposed construction material, color schemes for roofs and exteriors thereof and proposed landscape planting. At the discretion of the Committee, a filing fee of $30.00 shall accompany the submission of such plans to defray Committee expenses. No additional fee shall be required for resubmission of plans revised in accordance with Committee recommendations.

D. The Committee shall approve or disapprove plans, specifications and details within thirty (30) days from the receipt thereof. One (1) set of said plans and specifications and details with the approval or disapproval endorsed thereon, shall be returned to the person submitting them and the other copy thereof shall be retained by the Committee for its permanent files.

E. The Committee shall have the right to disapprove any plans, specifications or details submitted to it in the event the same are not in accordance with all of the provisions of these Restrictions; if the design or color scheme of the proposed building or other structure is not in harmony with the general surroundings of such lot or with the adjacent buildings or structures; if the plans and specifications submitted are incomplete; or in the event the Committee deems the plans, specifications or details, or any part thereof to be contrary to the interests, welfare or rights of all or any part of the real property subject hereto, or the owners thereof. The decisions of the Committee shall be final.

F. Neither the Committee nor any architect or agent thereof or of Declarant shall be responsible in any way for any defects in any plans or specifications submitted, revised or approved in accordance with the foregoing provisions, nor for any structural or other defects in any work done according to such plans and specifications.

G. Whenever the Committee shall approve plans and specifications for a boat shelter, pier, float or similar structure on or extending into any lake, such approval shall constitute a mere revocable license from Declarant or its successor or successors in interest to said lake for the construction, placement, and maintenance of the proposed structure.

6. SIZE AND PLACEMENT OF RESIDENCES AND STRUCTURES

A. Every residence dwelling constructed on a lot shall contain the following minimum square feet of fully enclosed floor area devoted to living purposes (exclusive of roofed or unroofed porches, terraces, garages, carports and other outbuildings):

(a) 1200 square feet, if the lot is within any area designated "TARA" in the plat of the Subdivision;

(b) 1000 square feet, if the lot is not within the "TARA" area but is contiguous to any part of any lake;

(c) 775 square feet, if the lot is not within the "TARA" area and is not contiguous to a lake; provided, however, that if the Committee, as provided below, shall approve the construction of a 1 1/2 or 2 story house upon any lot within the classification established by this subparagraph (c), the ground floor area thereof need not exceed 500 square feet if the total floor area of the house is not less than 800 square feet.

B. Each dwelling shall be of single story construction; provided, however, that split level or two story residences may be constructed on lots where, in the opinion of the Committee, the terrain of such lots lends itself to such construction.

C. The Committee shall have the authority to set up regulations to the height and size requirements for all other types of buildings and structures, including fences, walls, copings, etc.

D. In order to preserve the natural quality and aesthetic appearance of the existing geographic areas within the Subdivision, all property lines shall be kept free and open one to another and no fences shall be permitted on any lot or lot lines except where, in the opinion of the Committee, a fence or other enclosure, as a structure or aesthetic feature of a design concept, will contribute to and be in keeping with the character of the area.

E. Except as may be otherwise shown on the plat, the following minimum dimensions shall govern for front, sides and rear setbacks on all lots (except fences or walls where approved or required by the Committee), with respect to any dwelling house or above grade structure that may be constructed or placed on any lot in the Subdivision.

(a) Twenty-five (25) feet from the front line of each lot abutting a street.

(b) Eight (8) feet from each lot side line;

(c) Twenty (20) feet or twenty-five per cent (25%) of the depth of the lot, whichever is greater, from the rear line of each lot unless such rear lot line shall be either contiguous to a boundary line of the golf course, in which case the depth of the rear yard shall be twenty-five (25) feet or twenty-five percent (25%) of the depth of the lot, whichever is greater; or contiguous to a lake shoreline, in which event the depth of the rear yard shall be (50) feet or twenty-five per cent (25%) of the depth of the lot, whichever is greater, using as a rear line the normal high water level of such lake as shown on the plat; provided, however, that on any lot, the rear line of which is contiguous to a lake shoreline, there may be constructed and maintained, at or adjacent to such shoreline, any boat shelter, pier, or similar structure in respect to the size, design, construction or placement of which the committee shall have issued a permit or license.

7. PARTICULAR RULES FOR APPLICATION OF SETBACK REQUIREMENTS

A. If the lines with respect to which a setback measurement is to be made is a meandering line, the average length of the two lot lines that intersect said meandering line shall be determined, and using that average length, an imaginary straight line shall be drawn through the meandering line and the setback measurement shall be made along a line perpendicular to such imaginary line.

B. The term "side line" defines a lot boundary line that extends from the street on which the lot abuts to the rear line of the lot.

C. The term "rear lot line" defines the boundary line of the lot that is farthest from, and substantially parallel to, the line of the street on which the lot abuts, except that on corner lots it may be determined from either street line.

D. A corner lot shall be deemed to have a front line on each street on which the lot abuts, and such lot need have only one rear yard as defined by 6-E (c).

8. GENERAL PROHIBITIONS AND REQUIREMENTS

A. The following general prohibitions and requirements shall prevail as to the construction or activities conducted on any lot in the Section or subdivision:

(a) No outside toilet or individual water well shall be constructed on any lot. All plumbing fixtures, dishwashers, toilets, or sewage disposal systems shall be connected to a septic tank or other sewage system constructed by the lot owner and approved by the appropriate governmental authority.

(b) No temporary house, trailer, tent, garage, or other outbuilding shall be placed or erected on any lot, provided, however, that the Committee may grant permission for any such temporary structure for storage of materials during construction. No such temporary structures as may be approved shall be used at any time as a dwelling place.

(c) Once construction of improvements is started on any lot, the improvements must be substantially completed in accordance with plans and specifications, as approved, within six (6) months from commencement.

(d) No residence shall be occupied until the same has been substantially completed in accordance with its plans and specifications.

(e) All structures constructed or placed on any lot shall be constructed with a substantial quantity of new material and no used structures shall be relocated or placed on any such lot.

(f) No animals or livestock of any description, except the usual household pets, shall be kept on any lot.

(g) All signs, billboards, or advertising structures of any kind are prohibited except upon application to and written permission from the Committee.

(h) No stripped down, partially wrecked, or junk motor vehicle or sizeable part thereof, shall be permitted to be parked on any street in the Section or Subdivision

or on any lot in such manner as to be visible to th occupants of other lots within the Section or Subdivision or to the users of any street, lake or golf course therein.

(i) Every tank for storage of fuel installed outside any building in the Section or Subdivision shall be either buried below the surface of the ground or screened to the satisfaction of the Committee by fencing or shrubbery. Every outdoor receptacle for ashes, trash, rubbish or garbage shall be installed underground, screened or so placed and kept as not to be visible from any street, lake, or golf course within the Section or Subdivision at any time except during refuse collections.

(j) All outdoor clothes poles, clothes lines and similar equipment shall be so placed or screened by shrubbery as not to be visible from any street, lake, or golf course within the Section or Subdivision.

(k) No owner of any lot shall build or permit the building thereon of any dwelling house that is to be used as a model house or exhibit unless prior written permission to do so shall have been obtained from the Committee.

(l) All lots, whether occupied or unoccupied, and any improvements placed thereon, shall at all times be maintained in such manner as to prevent their becoming unsightly by reason of unattractive growth on such lot or the accumulation of rubbish or debris thereon.

(m) No noxious, offensive or illegal activities shall be carried on on any lot nor shall anything be done on any lot that shall be or become an unreasonable annoyance or nuisance to the neighborhood.

(n) No oil or natural gas drilling, refining, quarrying, or mining operations of any kind shall be permitted upon or in any lot and no derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted on any lot.

(o) No vehicle shall be parked on any street in the Subdivision. No truck shall be parked for storage overnight or longer, on any lot in the Section or Subdivision in such a manner as to be visible to the

occupants of other lots in the Section or Subdivision or the users of any street, lake, or golf course within the Section or Subdivision.

(p) Any dwelling or outbuilding on any lot in the Section or Subdivision which may be destroyed in whole or in part by fire, windstorm or for any other cause or act of God must be rebuilt or all debris removed and the lot restored to a sightly condition with reasonable promptness, provided, however, that in no event shall such debris remain longer than six (6) months.

(q) No tree over six inches in diameter shall be removed from any lot in the Section or Subdivision without the written consent of the Environmental Control Committee.

(r) No radio station or shortwave operators of any kind shall operate from any lot or residence. No exterior television or radio antenna of any kind shall be constructed or erected on any lot or residence after such time as a central television system has been made available to the Section or Subdivision at rates commensurate with those prevailing in the area.

(s) No trash, ashes, garbage or other refuse shall be dumped or stored or accumulated on any lot or be thrown into or left on the shoreline of any lake in the Section or Subdivision. No outside burning of wood, leaves, trash, garbage or household refuse shall be permitted. In order to enhance the appearance and orderliness of the Section or Subdivision, the Declarant hereby reserves for itself, its successors and assigns, the exclusive right to operate, or from time to time to grant an exclusive license to a third party to operate a commercial scavenging service within the Section or Subdivision for the purpose of removing garbage, trash and other like household refuse. Such refuse collection and removal service shall be provided not less often than once a week on a day or days designated by the Declarant or its successors or assigns. The charge to be made for such refuse collection and removal service shall be at a reasonable rate commensurate with the rates charged by commercial scavangers serving other subdivisions of high standards in the area, and shall be subject to change from time to time.

(t) There shall be no access to any lot on the perimeter of the Subdivision except from designated roads within the Sections or Subdivision.

9. VARIANCES

A. The Committee may allow reasonable variances and adjustments of these Restrictions in order to overcome practical difficulties and prevent unnecessary hardships in the application of the provisions contained herein; provided, however, that such is done in conformity with the intent and purposes hereof and provided also that in every instance such variance of adjustment will not be materially detrimental or injurious to other property or improvements in the neighborhood, the Section or the Subdivision.

10. EASEMENTS

A. Declarant reserved for itself, its successors and assigns, for purposes incident to its development of the real property subject to these Restrictions, the following easements and/or rights-of-way:

(a) For the use and maintenance of drainage courses of all kinds designated on the plat as "Drainage Easements". These easements are ten (10) feet in width unless otherwise specified on the recorded plats and are centered about the existing drainage channels.

(b) For maintenance and permanent stabilization control of slopes in the slope-control areas as set forth in the note regarding slope easements on the plat.

(c) For access to "Well Lots" as shown on the recorded plats and for installation and maintenance of facilities thereon, and further such additional easements shall be granted as are required for the practical construction, operation and maintenance of any electrical, telephone and television facilities. Such easements to be granted upon request of the applicable utility or utilities.

B. Declarant has dedicated, or will dedicate, to Orange County and/or the appropriate utility company or companies rights-of-way and easement areas for the installation and maintenance of public utilities over strips of land five (5) feet in width along side and rear property

lines and ten (10) feet in width along the front property line of each lot as noted on the plat.

C. Declarant reserves for itself, its successors or assigns an exclusive easement for the installation and maintenance of radio and television transmission cables within the rights-of-way and easement areas reserved and defined in paragraph 10-B above.

D. On each lot, the rights-of-way and easement areas reserved by Declarant or dedicated to public utilities purposes shall be maintained continuously by the lot owner but no structures, plantings or other material shall be placed or permitted to remain or other activities undertaken which may damage or interfere with the installation or maintenance of utilities, which may change the direction of flow of drainage channels in the easements, which may obstruct or retard the flow of water through drainage channels in the easements, or which damage or interfere with established slope ratios or create erosion or sliding problems, provided, however, that where the existing location of a drainage channel would hinder the orderly development of a lot the drainage channel may be relocated as shown on the recorded plat by drainage arrows, provided, such relocation does not cause an encroachment on any other lot in the Section or Subdivision. Improvements within such areas shall also be maintained by the respective lot owner except for those for which a public authority or utility company is responsible.

E. The lots in the Section or Subdivision shall be burdened by such additional easements as may be shown on the recorded plats.

F. Every lot in the Section or Subdivision that lies contiguous to a lake shall be subject to a flowage easement to an elevation on the lot equal to the high water elevation of such lake as stated on the recorded plats.

11. OWNERSHIP, USE AND ENJOYMENT OF STREETS, PARKS AND RECREATIONAL AMENITIES

A. Each of the streets in the Section or Subdivision designated on the plat is a private street, and every park, recreational facility and other amenity within the Section or Subdivision is a private park, facility or amenity and neither Declarant's execution or recording of the plat nor any other act of Declarant with respect to the plat is, or is intended to be, or shall be construed as a dedication to the public of any of said streets, parks, recreational

facilities and amenities other than as reflected therein. An easement for the use and enjoyment of each of said streets and areas designated on the plat as parks is reserved to Declarant, its successors and assigns; to the persons who are, from time to time, members or associate members of the Lake of the Woods Association, Inc.; to the members and owners of The Lake of the Woods Golf and Country Club, Inc., its successors and assigns; to the residents, tenants, and occupants of any multi-family residential buildings, guest house, inn or hotel facilities, and all other kinds of residential structures that may be erected within the boundaries of the Section or Subdivision and to the invitees of all the aforementioned persons.

B. The ownership of the recreational amenities within the Section and Subdivision, which may include but shall not be limited to lakes, dams, marinas, beaches, lake access tracts, golf courses, tennis courts, swimming pools, clubhouses, and adjacent clubhouse grounds, and campgrounds shall be in Declarant or its successors or assigns and the use and enjoyment thereof shall be on such terms and conditions as Declarant, its successors or assigns, shall from time to time license; provided, however, that any or all of such amenities may be conveyed to the Lake of the Woods Association, Inc., which conveyance shall be accepted by it, provided the same is free and clear of all financial encumbrances.

C. Declarant reserves for itself, its successors and assigns a one (1) foot wide strip of ground around the outer perimeter of the Subdivision as shown on the recorded plats. There shall be no access to any lot on the perimeter of the Subdivision through, over or across the aforesaid one (1) foot strip, all access to said lots being from designated roads in the Section or Subdivision as provided in paragraph 8 (t) above.

D. Declarant hereby covenants, for itself, its successors and assigns, that it will convey fee simple title to the streets and to those areas designated as park on the plat and on all future plats of the Subdivision to the Lake of the Woods Association, Inc., within three (3) years after their completion, subject to the easements of record.

12. LAKE OF THE WOODS ASSOCIATION

A. Every person who acquires title, legal or equitable, to any lot in the Subdivision shall become a member of the Lake of the Woods Association, Inc., a Virginia nonprofit corporation, herein referred to as "Association",

and no such person shall acquire such title until he has been approved for membership in the Association, nor shall the owner of a lot or lots in the Subdivision convey the title to said lot or lots to any person who has not been approved in writing for membership in the Association, provided, however, that such membership is not intended to apply to those persons who hold an interest in any such lot merely as security for the performance of an obligation to pay money, eg. mortgages, deeds of trust, or real estate contract purchases. However, if such a person should realize upon his security and become the real owner of a lot within the Subdivision, he will then be subject to all the requirements and limitations imposed in these Restrictions on owners of lots within the Subdivision and on members of the Association, including those provisions with respect to alienation and the payment of an annual charge.

B. The general purpose of the Association is to further and promote the community welfare of property owners in the Subdivision.

C. The Association shall be responsible for the maintenance, repair and upkeep of the private streets and parks within the Subdivision and the appurtenant drainage and slope easements reserved by Declarant. The Association shall also be the means for the promulgation and enforcement of all regulations necessary to the governing of the use and enjoyment of such streets and parks and such other properties within the Subdivision as it may from time to time own.

D. The Association shall have all the powers that are set out in its Articles of Incorporation and all other powers that belong to it by operation of law, including (but not limited to) the power to levy against every member of the Association a uniform annual charge per single-family residential lot within the Section and Subdivision, the amount of said charge to be determined by the Board of Directors of the Association after consideration of current maintenance needs and future needs of the Association, for the purposes set forth in its Articles of Incorporation, provided, however, that the uniform annual charge shall in no event be less than THIRTY DOLLARS ($30.00) per lot, and provided further that no such charge shall ever be made against, or be payable by the Developer, the Association itself, or any corporation or corporations that may be created to acquire title to, and operate, the water or sewer utilities serving the Section and Subdivision, or any lake, dam, beach, lake access tract, marina, golf course, tennis courts, swimming pool, clubhouse, clubhouse grounds, campgrounds, or other like recreational facilities within the Subdivision.

(a) Every such charge so made shall be paid by the member to the Association on or before the first day of May of each year, for the ensuing year. The Board of Directors of the Association shall fix the amount of the annual charge per lot by the first day of April of each year, and written notice of the charge so fixed shall be sent to each member.

(b) If any such charge shall not be paid when due, it shall bear interest from the date of delinquency at the rate of six per cent (6%) per annum; the Association may publish the name of the delinquent member in a list of delinquent members, or by any other means of publication; and the Association may file a notice that it is the owner of a lien to secure payment of the unpaid charge plus costs and reasonable attorneys' fees which lien shall encumber the lot or lots in respect of which the charge shall have been made, and which notice shall be filed in the Office of the Clerk of the Circuit Court of Orange County, Virginia. Every such lien may be foreclosed by equitable foreclosure at any time within three years after the date on which the notice thereof shall have been filed. In addition to the remedy of lien foreclosure, the Association shall have the right to sue for such unpaid charges, interest, costs, and reasonable attorney's fees, in any court of competent jurisdiction as for a debt owed by the delinquent member or members to the Association. Every person who shall become the owner of the title (legal or equitable) to any lot in the Subdivision by any means is hereby notified that, by the act of acquiring such title, such person will be conclusively held to have covenanted to pay the Association all charges that the Association shall make pursuant to any paragraph or subparagraph of these Restrictions.

(c) The Association shall upon demand at any time furnish a certificate in writing signed by an officer of the Association certifying that the charges on a specified lot have been paid or that certain charges against said lot remain unpaid, as the case may be. A reasonable charge may be made by the Board of Directors of the Association for the issuance of these certificates. Such certificate shall be conclusive evidence of payment of any charges therein stated to have been paid.

E. The fund accumulated as the result of the charges levied by the Association shall be used exclusively for the purposes of promoting the recreation, health, safety, and

welfare of the members of the Association and in particular for the improvement and maintenance of the streets and those areas within the Section and Subdivision designated as parks on the plats thereof, and other property within the Section and Subdivision as such streets, parks, and properties shall have been conveyed to the Association.

F. The lien of a deed of trust representing a first trust placed upon any lot for the purpose of permanent financing and/or constructing a residence or other improvement thereon recorded in accordance with the laws of the State of Virginia, shall be, from the date of recordation, superior to any and all such liens provided for herein.

G. The Board of Directors of the Association shall have the right to suspend the voting rights (if any) and the right to use of the recreational facilities of the Association of any member (or associate member):

(a) For any period during which any Association charge (including the charges and the fines, if any, assessed under paragraphs 12-D, 13 and 14 of these Restrictions) owed by the member or associate member remains unpaid;

(b) During the period of any continuing violation of the restrictive covenants for the Section and Subdivision, after the existence of the violation shall have been declared by the Board of Directors of the Association;

(c) During the period that any utility bill for water service rendered to the member or associate member shall remain unpaid.

13. MOTOR VEHICLE SPEED LIMITS

A. Speed limits for streets and the rules governing the use of parks within the Section and Subdivision shall be as promulgated from time to time by Declarant, its successors and assigns. Appropriate postings of these speed limits shall be made. The Association shall have the power to assess fines for the violation of the motor vehicle speed limits in accordance with a schedule of fines promulgated by the Association. Every such fine shall be paid promptly upon its being assessed; if it is not, the Association may add the amount of the fine to the annual charge made by the Association, pursuant to subparagraph 12-D of the Restrictions, and the amount of such fine shall be collectible by the same means as are prescribed in said

subparagraph for the collection of delinquent annual charges of the Association or through the use of the sanctions prescribed in subparagraph 12-G of the Restrictions.

14. ASSOCIATION'S RIGHT TO PERFORM CERTAIN MAINTENANCE

A. In the event an owner of any lot in the Subdivision shall fail to maintain the premises and the improvements situated thereon in a manner satisfactory to the Board of Directors of the Association, the Association shall have the right, through its agents and employees, to enter upon said lot and repair, maintain, and restore the lot and the exterior of the buildings and any other improvements erected thereon. Such right shall not be exercised unless two-thirds of such Board of Directors shall have voted in favor of its being exercised. The cost of such exterior maintenance shall be added to and become part of the annual charge to which such lot is subject.

15. PROVISIONS IN RESPECT OF LAKES AND LOTS CONTIGUOUS THERETO.

A. Certain lots in the Section and Subdivision are, as aforesaid, contiguous to the lake or lakes that have been or are to be established within the boundaries of the Subdivision. The water in, and the land under, said lake or lakes is and will be owned by the Developer, its successors and assigns. Said lake or lakes are or will be depicted in the recorded plats of the Subdivision, and the normal pool water elevation and the high water elevations of said lake or lakes, is, or will be, also indicated on said plats. The title that will be acquired by the grantee of the Developer's title to any of said contiguous lots (and by the successors and assigns of such grantee) shall extend only to the shoreline of the lake to which such lot is contiguous, as said shoreline would be established on the date hereof if the water elevation in said lake were at an elevation one vertical foot above the normal pool water elevation indicated in said Subdivision plat and as the shoreline may hereafter be established by the water, at an elevation one vertical foot above normal pool water elevation, by erosion from said shoreline. No such grantee, nor any of such grantee's successors or assigns, shall have any right with respect to any stream that is a tributary to said lake or with respect to said lake, the land thereunder, the water therein, or its elevation, use, or condition, and none of said lots shall have any riparian rights or incidents appurtenant; provided, further that title shall not

pass by reliction or submergence or changing water elevations. The Declarant, its successors and assigns shall have the right at any time to dredge or otherwise remove any accretion or deposit from any of said lots in order that the shoreline of the lake may be moved toward or to, but not inland beyond, the location of said shoreline as it would exist as of the date hereof if the water elevation in said lake were at an elevation one vertical foot above the normal pool water elevation indicated in said Subdivision plat, and title shall pass with such dredging or other removal as by erosion.

16. RESERVATION OF EASEMENT OF DECLARANT FOR OPERATION OF LAKE

A. The Declarant reserves to itself, and its successors and assigns, such an easement upon, across and through the lakefront portion of each of said lots contiguous to said lake as is reasonably necessary in connection with operating said lake. Without limiting the generality of the immediately preceding sentence, it is declared that neither the Declarant nor any successor or assign of the Declarant shall be liable for damages caused by ice, erosion, washing, flooding or other action by the water.

B. The Declarant reserves to itself, and its successors and assigns, the right to raise and lower the elevation of said lake, but neither the Declarant nor any successor or assign of the Declarant shall have an easement to raise (by increasing the height of any dam or spillway, or otherwise) the high water elevation of said lake to an elevation above that indicated on said Subdivision plats.

17. RIGHTS OF FIRST REFUSAL

A. Whenever the owner of any lot in the Section or Subdivision shall receive a bona fide offer to purchase said lot, which offer is acceptable to said owner, or shall independently decide to put said lot on the market, said owner shall offer to sell said lot, at the price and on the same terms contained in said bona fide offer or (if said owner shall independently have decided to put said lot on the market) at the price and on the terms acceptable to said owner, first to the owner of the lot on the right of the prospective seller's lot, next to the owner of the lot on the left of the prospective seller's lot, and finally, to the Declarant, its successors or assigns. Such offerings shall be made successively, and each of said

offerees shall have ten (10) days within which to accept or refuse such offer. If all said offerees refuse to purchase said lot at the price and on the terms proposed by said owner, said owner shall be free, subject to the limitations contained herein requiring the purchaser to have been approved for membership in the Lake of the Woods Association, Inc., to sell said lot to the party who shall have made said bona fide offer of (if said owner shall independently have deciced to put said lot on the market) to any third party, in either case at a price and on terms not substantially more favorable to the purchaser than those offered, as aforesaid, to said owner's neighbors and the Declarant or its successors or assigns. The "Lot on the right" for purposes of this paragraph 17, shall be the next lot on one's right hand as one faces the rear of one's own lot.

18. CHARGES FOR WATER SERVICE

A. Every owner (legal or equitable) of a lot in the Section or Subdivision shall be conclusively presumed to have covenanted, by acquiring title to his lot (regardless of the means of such title acquisition) to pay charges for water service as follows: At the rate of FOUR DOLLARS ($4.00) per month commencing upon the availability of water service to the lot; at such time as the owner of a lot shall elect to have service connected, he shall pay a connection charge of THREE HUNDRED EIGHTY FIVE DOLLARS ($385.00) to the serving utility; thereafter, he shall pay for water service at reasonable consumption rates, subject to a minimum monthly charge, established by said utility. Said availability or consumption rates may be billed monthly or quarterly or semi-annually in arrears at the option of the utility.

19. REMEDIES

A. The Association or any party to whose benefit these Restrictions inure may proceed at law or in equity to prevent the occurrence, continuation or violation of any of these Restrictions and the court in any such action may award the successful party reasonable expenses in prosecuting such action, including attorney's fees.

B. The remedies hereby specified are cumulative, and this specification of them shall not be taken to preclude an aggrieved party's resort to any other remedy at law, in equity, or under any statute. No delay or failure on the part of an aggrieved party to invoke an available remedy in respect of a violation of any of these Restrictions shall

be held to be a waiver by that party of (or an estoppel of that party to assert) any right available to him upon the recurrence or continuation of said violation or the occurrence of a different violation.

20. GRANTEE'S ACCEPTANCE

A. The grantee of any lot subject to the coverage of this Declaration, by acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from Declarant or a subsequent owner of such lot, shall accept such deed or contract upon and subject to each and all of these Restrictions and the agreements herein contained, and also the jurisdiction, rights and powers of Declarant, and by such acceptance shall for himself, his heirs, personal representatives, successors and assigns, covenant, consent and agree to and with Declarant, and to and with the grantees and subsequent owners of each of the lots within the Subdivision to keep, observe, comply with and perform said Restrictions and agreements.

B. Each such grantee also agrees, by such acceptance, to assume, as against Declarant, its successors or assigns, all the risks and hazards of ownership or occupancy attendant to such lot, including but not limited to its proximity to golf course fairways and lakeshores.

C. Each such grantee whose lots are adjacent to available underground electrical service also agrees to complete the underground secondary electrical service to their respective residences. All such extensions of underground electrical service shall be made by Virginia Electric Cooperative, Bowling Green, Virginia, its successors and assigns, who will be paid by the owners at established rates for underground service on file with and approved by the Virginia State Corporation Commission, such payments to be made prior to the service being extended.

21. SEVERABILITY

A. Every one of the Restrictions is hereby declared to be independent of and severable from, the rest of the Restrictions and of and from every combination of the Restrictions. Therefore, if any of the Restrictions shall be held to be invalid or to be unenforceable or to lack the quality of running with the land, that holding shall be without effect upon the validity, enforceability, or "running" quality of any other one of the Restrictions.

22. CAPTIONS

A. The underlined captions preceding the various paragraphs and subparagraphs of these Restrictions are for convenience of reference only, and none of them shall be used as an aid to the construction of any provision of the Restrictions. Wherever and whenever applicable the singular form of any word shall be taken to mean or apply to the plural, and the masculine form shall be taken to mean or apply to the feminine or to the neuter.

23. CHARGES FOR SEWER SERVICE

A. Notwithstanding the provisions of Paragraph 8 A(a) above as the same applies to septic tanks or other sewage systems, every owner (legal or equitable) of a lot in the Section or Subdivision shall be conclusively presumed to have covenanted, by acquiring title to his lot (regardless of the means of such title acquisition) to pay charges for sewer service as provided in this paragraph. Owners of all dwellings shall be required to connect to said sewer service as follows: Within 30 days after the time said services should be made available in the case of dwellings already constructed; before the time of occupancy in the case of dwellings constructed after said service should be made available. Charges for sewer service shall be at the rate of TWO DOLLARS ($2.00) per month commencing upon the availability of sewer service to the lot; at such time as the owner of a lot has service connected, he shall pay a connection charge of SEVEN HUNDRED EIGHTY FIVE DOLLARS ($785.00), or such other charge as may be authorized by the governing body having jurisdiction, to the serving utility; thereafter, he shall pay for sewer service at reasonable rates, subject to a minimum monthly charge, established by said utility. Said availability or use rates may be billed monthly or quarterly or semi-annually in arrear at the option of the utility. Easements in addition to those reserved throughout these restrictions and on the recorded plats shall be granted for the practical construction, operation and maintenance of said sewer facilities upon request of the applicable utility.

IN WITNESS WHEREOF, The Declarant has executed this Declaration the day and year first above written.

VIRGINIA WILDLIFE CLUBS, INC.

BY_____
Vice President

BY_____
Assistant Secretary

ARTICLES OF INCORPORATION
OF
LAKE OF THE WOODS ASSOCIATION, INC.

WHEREAS, Virginia Wildlife Club, Inc., a Virginia Corporation (hereinafter sometimes referred to as "the Developer"), is now developing part of Orange County, Virginia, as a complete residential community that will be known as "Lake of the Woods" and is hereinafter sometimes referred to as "the Subdivision"; and

WHEREAS, it is desirable that a maintenance system be established, governed, and operated by the owners of the residential lots in the Subdivision in such a manner as to promote the creation and preservation of peaceful enjoyment of the property and the protection of property values in the Subdivision; and

WHEREAS, plat restrictions and restrictive covenants are to be recorded with respect to the Subdivision;

KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned, each of whom is a citizen of the United States, do hereby undertake to form a not for profit corporation without capital stock under the provisions of The Virginia General Non-Stock Corporation Act, as amended.

ARTICLE I

The name of the Corporation is Lake of the Woods Association, Inc., and it is hereinafter referred to as "the Association."

ARTICLE II

The general objects and purposes of the Association are:

1. To further and promote the community welfare and property owners in the Subdivision and to exercise the powers and functions granted to it in, or pursuant to, the Restrictive Covenants applicable to the Subdivision, or any portions thereof, and any other restrictive covenants that have heretofore or may hereafter be recorded in respect of the Subdivision or any part thereof.

2. To care for, maintain, and repair certain vacant and unimproved and unkept lots and certain common areas of the Subdivision, or any part thereof; to repair, rebuild and

maintain structures or residences on any lot in the Subdivision for the purpose of preventing any such structure's falling into a rundown condition; and to repair, maintain, rebuild and/or beautify all streets and their rights of way, and all parks within the Subdivision that are not subject to maintenance by governmental authority.

3. To provide for the payment of taxes and assessments, if any, that may be levied by any governmental authority upon any area in the Subdivision that may be conveyed to the Association.

4. To enforce charges, easements, restrictions, conditions, covenants, and servitudes existing upon and created for the benefit of the property over which the Association may have jurisdiction; to pay all expenses incidental thereto; to enforce the decisions and rulings of the Association, and to pay all expenses in connection therewith.

5. To provide for the maintenance of parks, recreational facilities, and other community features of such land in the Subdivision as may be conveyed to the Association, and to provide for the maintenance of those areas designated on the subdivision plats of the Subdivision as pedestrian easements.

6. To appoint such committees as may be necessary to, or convenient in, the Association's discharging the duties entrusted to it, including (but not limited to) a membership committee, building control committee, a traffic control committee, a budget and dues assessment committee, a maintenance committee, and an audit committee.

7. To levy an annual charge upon the members of the Association; to publish the names of members who shall fail to pay charges made by the Association; to sue to collect any of such charges as are not paid, to impose a lien against any real estate in the Subdivision that is owned by a delinquent member of the Association for any such charge as is not paid when due; and to foreclose any such lien. Each year the Board of Directors of the Association shall consider the current maintenance needs and future needs of the Association and, in the light of those needs, shall fix the amount of the annual charge herein provided for, which shall not be less than Thirty Dollars ($30.00) in respect of each numbered lot that is restricted to single family residential use; in respect of each numbered residential lot on which a multi-family dwelling unit shall have been erected, the annual charge shall be an amount equal to the product of the number of residential units situated on such lot on the date of the levy and the amount of the then annual charge upon each numbered residential lot that is restricted to single family residential use. Nothing contained in this paragraph 7 does, or is intended to, or shall be construed

to,create in the Association a power to levy or make any charge of any kind against the Developer, against the Association itself, or against any corporation that may hereafter be created to acquire title to, and operate, the water utilities serving the Subdivision, or any lake, dam, beach, lake access tract, marina, golf course, tennis courts, clubhouse, clubhouse grounds, or other like recreational facility within the Subdivision.

8. To acquire by gift, purchase or other means, to own, hold, enjoy, lease, operate, maintain, convey, sell, lease, transfer, mortgage or otherwise encumber, or dedicate for public use, real or personal property in connection with the business of this Association.

9. To expend the moneys collected by the Association from assessments or charges, and other sums received by the Association, for the payment and discharge of all proper costs, expenses, and obligations incurred by the Association in carrying out all or any of the purposes for which the Association is formed.

10. To borrow money and to give, as security therefore, a mortgage or other security interest in any or all real or personal property owned by the Association, or a pledge of moneys to be received under paragraph 7 above, and to assign and pledge its right to make assessments and charges and its right to claim a lien therefore.

11. To do any and all lawful things and acts, and to have any and all lawful powers, which a corporation organized under and by virtue of The Virginia Non-Stock Corporation Act, as amended, may do and have, and in general to do all things necessary and proper to accomplish the foregoing purposes, including the specific power to appoint any person or corporation as its fiscal agent to collect all assessments and charges levied by the Association and to enforce the Association's liens for unpaid assessments and charges or any other lien owned by the Association.

ARTICLE III

The period during which the Association shall continue as a corporation shall be perpetual.

ARTICLE IV

The post office address of the registered office of the Association shall

Somerville, Moore & Joyner
Virginia National Bank Bldg.
Orange, Virginia 22960

ARTICLE V

1. The members of the Association shall be persons or corporations who at any time are owners (legal or equitable) of numbered residential lots in the Subdivision and whose applications for membership have been approved by the membership committee appointed by the Board of Directors; the officers, from time to time, of the Developer shall also be members of the Association. A person who has no interest in real estate in the Subdivision other than an interest that is held merely as security for the performance of an obligation to pay money (e.g., the interest of a mortgagee or a land contract vendor) shall not be entitled to membership in the Association.

2. Membership in the Association shall lapse and terminate when any member shall cease to be the owner of a numbered residential lot in the Subdivision; provided, however, that the membership in the Association of any person who is a member of the Association solely by reason of his being an officer of the Developer shall terminate only when he shall cease to be such an officer.

3. Meetings of members may be held at such place either within or without this State, as may be provided in the by-laws, or where not inconsistent with the by-laws, in the notice of the meeting.

An annual meeting of the members shall be held at such times as may be provided in the by-laws. Meetings of the members may be called by the president or by the board of directors.

Written notice stating the place, day and hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than ten or more than fifty days before the date of the meeting (except as a different time is specified below), either personally or by mail by or at the direction of the president or the board of directors to each member entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the member at his address as it appears on the records of the corporation, with postage thereon prepaid. In lieu of delivering notice as above, the corporation may publish such notice at least once a week for two successive calendar weeks in a newspaper published in the city or county in which the registered office is located, or having a general circulation therein, the first publication to be not more than fifty days, and the second not less than seven days, before the date of the meeting.

4. The members of the Association shall be divided into classes viz., Class A members and Class B members. No person,

firm or corporation except the Developer (and any person who shall hereafter succeed to the Developer's business and properties substantially as a whole) shall hold a Class B membership in the Association. A Class A member shall be entitled to one vote for each numbered residential lot in the Subdivision that is owned by the member; a Class B member shall be entitled to three votes for each numbered residential lot in the Subdivision that is owned by the Member. Any member (whether a Class A member or a Class B member) shall have the power to cast his vote or votes by proxy. Any person who is a member solely by reason of his being an officer of the Developer shall have no vote.

5. In addition to the Class A and Class B members described in paragraph 4, above, the Association shall have associate members. Any person who is the tenant or regular occupant of any unit in any multi-family dwelling situated within the Subdivision and whose applications for associate membership shall have been approved by the Membership Committee of the Association shall be an associate member of the Association. Associate membership shall cease automatically upon the termination of such tenancy or occupancy. Associate members shall have no vote or right to notice of any meeting of members, regular or special. Associate member shall not be required to pay an annual charge, but shall be required to observe all rules governing the conduct of members and shall be entitled to enjoy all the other privileges of membership.

6. Notwithstanding anything to the contrary in the foregoing paragraphs of this Article V, each owner (legal or equitable, except security holders, as aforesaid), of a unit or units in a multi-family dwelling organized as a cooperative or condiminium shall be entitled to apply for Class A membership in the Association, and, upon attaining such membership, shall have the same rights, duties, and privileges (in respect to each cooperative or condominium residential unit owned by him), incident to Association membership as a member owning a numbered residential lot, despite the fact that there may be more than one such residential unit situated on the numbered residential lot or lots on which such residential unit or units of his shall be situated.

7. No member or associate member may be expelled from membership in the Association for any reason whatsoever; provided, however, that the Board of Directors of the Association shall have the right to suspend the voting rights (if any), and right to use of the parks and other recreational facilities of the Association of any member or associate member (i) for any period during which any Association charge owed by the member or associate member remains unpaid; (ii) during the period of any continuing violation of the

restrictive covenants of the Subdivision, after the existence of the violation shall have been declared by the Board of Directors of the Association; and (iii) while any bill for water or sewer service owed by the member or associate member shall remain unpaid.

8. There shall be no other preferences, limitations, or restrictions with respect to the relative rights of the members.

ARTICLE VI

The affairs and business of the Association shall be managed by a Board of Directors, the exact number to be stated in the By-Laws of the Association. Each member of the first Board of Directors shall serve for a term of five (5) years; thereafter, each Director shall serve for a term of three (3) years.

The Board of Directors of the Association shall have power to adopt By-Laws of the Association not inconsistent with these Articles or with the laws of the State of Virginia. Pursuant to the By-Laws, the Board of Directors may elect a President, one or two Vice Presidents, a Secretary, one or two Assistant Secretaries, and a Treasurer. The Offices of Secretary and Treasurer may be filled by one person. The officers shall have such qualifications, powers and duties, and shall be elected in such manner, at such time and place, and shall serve for such terms as may be provided in the By-Laws of the Association.

The Corporation shall indemnify any director or officer or former director or officer of the corporation, or any person who may have served at its request as a director or officer of another corporation in which it owns shares or capital stock or of which it is a creditor, against expenses actually and reasonably incurred by him in connection with the defense of any claim, action, suit or proceeding against him by reason of being or having been such director or officer, except in relation to matters as to which he shall be finally adjudged in such action,suit or proceeding to be liable for negligence or misconduct in the performance of duty; and to make any other or further indemnity to any such persons that may be authorized by the articles of incorporation or any resolution adopted, before or after the event, by the members.

ARTICLE VII

The number of directors constituting the initial board of directors is three and the names and addresses of the persons who are to serve as the initial directors are:

John S. Keating, Jr.	119 East Ogden Hinsdale, Illinois
C. Daniel Clemente	5850 Leesburg Pike Falls Church, Virginia
Wesley T. Butler	P. O. Box 631 Springfield, Virginia

ARTICLE VIII

The names and addresses of the incorporators are as follows:

James C. Foote	P. O. Box 631 Springfield, Virginia
John S. Keating, Jr.	119 East Ogden Hinsdale, Illinois
Wesley T. Butler	P. O. Box 631 Springfield, Virginia

ARTICLE IX

No property is to be taken over by the Association at or upon its incorporation, but this fact shall in no manner restrict the Association in respect of its later receiving property by donation, grant, purchase or other means.

ARTICLE X

The Association is organized without capital stock and no part of the income of the Association shall inure to the benefit of any member, associate member, director or officer of the Association.

ARTICLE XI

None of the provisions of these Articles of Incorporation may be altered or amended in whole or in part in such a way as to bring them into conflict with the restrictive covenants and deed restrictions now or hereafter made applicable to the Subdivision. With the foregoing exception, these Articles may be freely amended in accordance with the provisions of The Virginia General Non-Stock Corporation Act, as now or hereafter amended.

GIVEN under our hands this day of February 1967.

_____
James C. Foote

John S. Keating, Jr.

Wesley T. Butler

Charter Number: 111895
Filed: February 28, 1967
Approved: April 21, 1967

ADDENDUM AND COMMENTS

Pursuant to the terms of the contract made and entered into between Boise Cascade Home and Land Corporation and Lake of the Woods Association, Inc. under date of October 23, 1972 and with respect to which settlement was completed on November 30, 1972, the rights of the Declarant or the Developer (which had not previously been transferred) were transferred to the Association, as such terms are used in the Restrictive Covenants or the Articles of Incorporation.

This transfer included specifically (1) the exclusive easement for the installation and maintenance of radio and televion transmission cables as described in Section 10, Subparagraph C of the Restrictive Covenants; and (2) the right existing under present Restrictive Covenants to levy and collect charges, fees and assessments for the operation and maintenance of the recreational properties.

The aforesaid contract also transferred to the Association "all of the right, title and interest of Boise in and to oil, gas, and mineral rights within the subdivision known as Lake of the Woods."

The exemption granted the Developer from payment of the charges assessments or dues, as provided in both the Restrictive Covenants and the Articles of Incorporation, expires November 30, 1973.

Finally, essentially all of the authorities of the "Declarant," as such term is used herein, were transferred to the Association. Copies of the contracts are on file in the Association's office.

Exhibit C
of Complaint
Filed 2/12/79

December 9, 1978

Section 06.G.01 Annnal Guest Privilege Program

A. GENERAL

1. The annual guest privilege program is open to residents of the counties of Orange, Culpeper, Spotsylvania, Stafford, and Fauquier, and the cities and towns therein.

2. An "Annual Guest Privilege" application form must be filled out by prospective participants.

3. A guest committee shall be formed for the purpose of reviewing and approving applications. (The guest committee shall consist of the General Manager, President of the Association and Chairman of the Public Relations Committee or their designee).

4. The program will commence on May 1, 1979 and run from May 1 until April 30 therafter.

5. The program will be limited to 250 card holders.

6. Applicants accepted into the program will be issued a general instruction sheet, a card, bumper sticker, a copy of the rules and regulations, and a map.

7. Card holders may apply for annual memberships at the golf course, swimming pools or tennis courts.

8. A card holder may bring in his immediate family (father, mother, spouse, sons, daughters and spouses of sons and daughters) and up to 4 other guests in any one day. Special arrangements may be made with the General Manager for large groups of guests. The card holder must provide a list of guests at the Security Gate prior to the guests' arrival.

9. A card holder's right to use the facilities shall be construed as a revokable license granted by the Association. Failure to abide by the rules and regulations of the Association will result in revocation.

10. A card holder is entitled to use all facilities within LOW except (a) the campgrounds, (b) registration of boat providing user fees (annual or other) have been paid where appropriate.

Approved by the Board of Directors
9 Dec 78

B. REGISTRATION

1. The "Annual Guest Privilege Application" form must be filled out in full, and signed and submitted to the Administrative office by the applicant.

2. A check for $300.00 to cover the annual fee must accompany the application. The annual fee is neither refundable or transferable once applicant has been approved.

3. Upon approval by the Guest Committee, the Association shall issue the following to the applicant:

a. An annual guest privilege card
b. A bumper sticker
c. A copy of the LOW rules and regulations
d. A LOW map
e. A general instruction sheet
f. A copy of the user fees

4. A roster of accepted applicants will be provided to the security gate on a weekly basis.

C. COLLECTION

1. Annual guest privilege fees will be turned over to the Association accountant upon acceptance of application by the Guest Committee.

D. REFUNDS

1. No refunds shall be granted to card holders who wish to cancel their guest privileges.

Lake of the Woods Association, Inc.
Box 1 Lake of the Woods
Locust Grove, Virginia 22508

Telephone (703) 972-2237

GENERAL INSTRUCTIONS ON "ANNUAL GUEST PRIVILEGE" PROGRAM

Lake of the Woods Association, Inc. is a private organization designed to provide property owners, tenants and guests with a variety of recreational amenities. The Association controls and operates all facilities within Lake of the Woods including an 18 hole championship golf course, 550 acre lake, exquisite country club dining, lounge and meeting facilities, snack bars, beaches, olympic size pools, tournament tennis courts, 35 acre fishing lake, picnic facilities, parks, playgrounds and stables.

"GUEST" PRIVILEGES

When you purchase your "Annual Guest Privilege" at the rate established by the Board of Directors of the Association you and your family are entitled to enter Lake of the Woods and use the facilities. For purposes of definition a Family is defined as father, mother, spouse, sons, daughters and spouses of sons and daughters.

An "annual Guest Privilege" entitles you to bring in your father, mother, spouse, sons, daughters and spouses of sons and daughters and up to 4 other guests in any one day. You must provide a list of guests at the Security Gate prior to the guests' arrival.

The Board of Directors reserves the right to revoke "guest privileges" for failure to abide by the Rules, Regulations, Bylaws, and Restrictive Covenants of the Association or failure to pay all fees or fines owned the Association.

The Board of Directors may terminate the guest privilege concept on or about May 1 of any given year. The privilege shall be valid for the period of May 1 through April 30.

NON RESIDENT GUEST BENEFITS

A "Guest Privilege" in Lake of the Woods Association entitles you to the following:

-Entrance into Lake of the Woods with access to 2600 acres with recreational facilities and 50 miles of paved roads.
-Free use of facilities including public beaches, including main beach at Clubhouse Point measuring 750' x 100' - sandy, gently sloping, well marked and complete with beach umbrellas, designated swimming areas; 5 parks and playgrounds.
-Use of various recreational facilities upon payment of user fees including:

A. 18 hole championship golf course with watered fairways and putting green and separate golfers clubhouse at the first tee with pro shop, locker facilities, and snack bar.
B. 4 tournament tennis courts.
C. 2 olympic size swimming pools.
D. Riding stables with access to miles of riding trails throughout Wilderness Battlefield Park.
E. Clubhouse - 7500 square feet of colonial design, with dining, lounge and entertainment facilities.
F. Fishing lakes - the main lake approximately 550 acres and the fishing lake 25 acres.

USER FEES

Once you pay your annual fee you are entitled to use beaches, picnic facilities, parks, playgrounds and fishing lake (no boats) without charge.

For facilities that carry user fees, as is true for property owners and tenants, you must pay the user fee prior to using these facilities. The current rates for these facilities are attached. The Board of Directors reviews the user fee schedule on an annual basis and determines what adjustments will be made.

GUEST RULES

All rules, regulations, Bylaws, and Restrictive Covenants must be followed.

As a "Guest" of Lake of the Woods Association, you are responsible for the conduct of your "guests" and any fines or fees unpaid by guests are your responsibility.

The "Annual Guest Privilege" does not permit you to use the Campgrounds or to have a boat on the lake.

MANAGEMENT

The Association facilities are managed by a professional staff of over 50 full and part time employees. If you have any questions concerning the operation of any facility within Lake of the Woods the Administrative staff is here to assist you. We are open from 8:30 AM - 4:30 PM, Monday through Friday.

APPLICATION

If you would like to purchase an "Annual Guest Privilege" simply fill out the attached application form and return with your check to:

"Annual Guest Privilege" Program
Lake of the Woods Association
Box 1, LOW
Locust Grove, VA 22508

LAKE OF THE WOODS ASSOCIATION, INC.
Box 1, LOW
Locust Grove, VA 22508

LAKE OF THE
W O O D S

ANNUAL GUEST PRIVILEGE
APPLICATION

By my signature below, I hereby apply for ANNUAL GUEST PRIVILEGES at Lake of the Woods Association, Inc.

ANNUAL GUEST ROSTER

I prefer that my name be placed on the annual guest roster as follows:

NAME _____

My spouses's name is: _____

My children's names and birthdates are: _____

_____

_____

Other family members: _____

_____

Residence _____ Phone _____

_____ Zip Code _____

Business Name _____ Title _____

Business Address _____ Phone _____

_____ Zip Code _____

It is agreed and understood that my family, myself and my guests are bound by and shall comply with all the rules and regulations and Declaration of Restrictions of Lake of the Woods Association, Inc, as they may be amended from time to time.

_____
Applicant's Signature

Accepted this ____ day of _____, 197___.
Lake of the Woods Association, Inc. By _____
Guest Committee

Enclose fee of $300 with application form.

ANSWER OF DEFENDANTS

(Filed 2/28/79)

The defendants, Edwin Harn and others, for answer to the bill of complaint for declaratory judgment heretofore filed in the Clerk's Office of the Circuit Court of Orange County, Virginia, come now and respectfully state unto the Court as follows:

1. The allegations of Paragraph 1 of the bill of complaint are not denied.

2. The allegations of Paragraph 2 of the bill of complaint are not denied.

3. Lake of the Woods is a planned residential community approved by the Board of Supervisors of Orange County, Virginia, pursuant to the Orange County Zoning Ordinance. More than twenty-six hundred (2600) acres of land comprise the subdivision which includes residential properties,

streets, parks, recreational amenities (facilities) and other amenities. All property within the subdivision with the exception of the residential lots is owned by Lake of the Woods Association, Inc. Lake of the Woods Association, Inc. presently controls entrance to the subdivision by the use of a main entrance gate and security personnel who man the main entrance gate. Entrance to Lake of the Woods is restricted to the owners of residential lots, employees of Lake of the Woods Association, Inc., tenants, and guests and invitees of owners of the residential lots and Lake of the Woods Association, Inc. The streets within the subdivision are maintained with funds of Lake of the Woods Association, Inc., appropriated for this purpose by the Board of Directors of Lake of the Woods Association, Inc. All allegations of Paragraph 3 of the bill of complaint which are inconsistent with the allegations herein set forth are denied.

4. The allegations of Paragraph 4 of the bill of complaint are not denied.

5. The allegations of Paragraph 5 of the bill of complaint are not denied.

6. Pursuant to the discretion, power and authority duly vested in them by the Articles of Incorporation of Lake of the Woods Association, Inc. by the By-Laws of the Corporation, by the Statute Law of the Commonwealth of Virginia, and by the Restrictive Covenants pertaining to Lake of the Woods,

the Board of Directors of Lake of the Woods Association, Inc. formulated and adopted a program known as the Annual Guest Privilege Program. Under this program persons other than owners of recreational lots are invited to apply for guest privileges at Lake of the Woods. Attachment C with the bill of complaint accurately describes this program. A Guest Committee reviews and approves applicants for guest status and an annual guest fee fixed by the Board of Directors is charged to each guest for the use of certain recreational amenities at Lake of the Woods. Upon approval by the Guest Committee and after payment of the annual fee, the guest will be entitled to enter Lake of the Woods. All allegations of Paragraph 6 of the bill of complaint which are inconsistent with the allegations herein set forth are denied.

7. The Board of Directors of Lake of the Woods Association, Inc. gave careful consideration to the Annual Guest Privilege Program for a number of months; heard comments by members of Lake of the Woods Association, Inc. who favored the program, as well as comments by members who objected to the program; conducted open hearings to which all members of the Association were invited for the purpose of obtaining suggestions relating to the program; made some changes in the program as originally conceived by the Board of Directors; and thereafter adopted the program referred to in Paragraph 6 hereof. All allegations of Paragraph 7 of

the bill of complaint which are inconsistent with the allegations herein set forth are denied.

8. The program adopted by the Board of Directors of Lake of the Woods Association, Inc. does not contravene the discretion, power and authority vested in the Board of Directors and does not contravene any contract between the owners of residential lots at Lake of the Woods and Lake of the Woods Association, Inc. All allegations of Paragraph 8 of the bill of complaint which are inconsistent with the allegations herein set forth are denied.

9. Section 11, Sub-sections A. and B., of the Restrictive Covenants of Lake of the Woods provide as follows:

> "A. Each of the streets in the Section or Subdivision designated on the plat is a private street, and every park, recreational facility and other amenity within the Section or Subdivision is a private park, facility or amenity and neither Declarant's execution or recording of the plat nor any other act of Declarant with respect to the plat is, or is intended to be, or shall be construed as a dedication to the public of any of said streets, parks, recreational facilities and amenities other than as reflected therein. An easement for the use and enjoyment of each of said streets and areas designated on the plat as parks is reserved to Declarant, its successors and assigns; to the persons who are, from time to time, members or associate members of the Lake of the Woods Association, Inc.; to the members and owners of The Lake of the Woods Golf and Country Club, Inc., its successors and assigns; to the residents, tenants, and occupants of any multi-family residential buildings, guest house, inn or hotel facilities, and all other kinds of residential structures that may be erected

"within the boundaries of the Section or Subdivision and to the invitees of all the aforementioned persons.

"B. The ownership of the recreational amenities within the Section and Subdivision, which may include but shall not be limited to lakes, dams, marinas, beaches, lake access tracts, golf courses, tennis courts, swimming pools, clubhouses, and adjacent clubhouse grounds, and campgrounds shall be in Declarant or its successors or assigns and the use and enjoyment thereof shall be on such terms and conditions as Declarant, its successors or assigns, shall from time to time license; provided, however, that any or all of such amenities may be conveyed to the Lake of the Woods Association, Inc., which conveyance shall be accepted by it, provided the same is free and clear of all financial encumbrances."

10. Lake of the Woods Association, Inc. acting by and through its Board of Directors has the discretion, power and authority by virtue of the Articles of Incorporation, the Statute Law of the Commonwealth of Virginia, the By-Laws of the Corporation and the Restrictive Covenants pertaining to Lake of the Woods to invite persons other than members of the Association to enter Lake of the Woods, to use the streets and to use and enjoy the recreational amenities (facilities). All allegations of Paragraph 10 of the bill of complaint which are inconsistent with the allegations herein set forth are denied.

11. The Board of Directors derives its authority from the Articles of Incorporation, the Statute Law of the Commonwealth of Virginia, the By-Laws of the Corporation and the Restrictive Covenants pertaining to Lake of the Woods and

by virtue of this authority, it has the right to invite persons other than members of the Association into Lake of the Woods. The Annual Guest Privilege Program adopted by the Board of Directors was thoroughly and carefully studied and the Board of Directors considered that the program would be beneficial to the Association. The amenities (facilities) are not fully utilized and the Annual Guest Privilege Program will enable the Association to obtain additional revenues which will benefit the Association and its members. All allegations of Paragraph 11 of the bill of complaint which are inconsistent with the allegations herein set forth are denied.

12. Sub-section A of Section 12 of the Restrictive Covenants and Article V of the Articles of Incorporation provide that members of the Association shall be persons who own residential lots in Lake of the Woods. The Board of Directors is elected by the members to administer the affairs of the Association. The action of the Board of Directors in adopting the Annual Guest Privilege Program is not contrary to the provisions of the Restrictive Covenants and the Articles of Incorporation and is not illegal or void. All allegations of Paragraph 12 of the bill of complaint which are inconsistent with the allegations herein set forth are denied.

13. The allegations of Paragraph 13 of the bill of complaint are not denied.

14. It is respectfully submitted that the Court should uphold the right of the Board of Directors to adopt the Annual Guest Privilege Program and that the Court should enter no order to the contrary.

WHEREFORE, the Defendants respectfully pray that the Court dismiss the suit for declaratory judgment; that the action of the Board of Directors of Lake of the Woods Association, Inc. be upheld by the Court; and that no action be taken by the Court which will in any way prejudice the right of the Board of Directors of Lake of the Woods Association, Inc. to promote, conduct and regulate the program herein described.

EDWIN HARN, PRESIDENT
ARTHUR H. BOURNE
RONALD E. DUELL
ROBERT B. HEINEY
JOHN M. NOLAN
DONALD NOWAKOSKI
PATRICIA STIVERS

By /s/ Atwell W. Somerville
Of Counsel

Somerville, Moore & Joyner, Ltd.
P. O. Box 629
Orange, Virginia 22960,
Counsel for the Defendants

STIPULATION OF COUNSEL

(Filed 3/26/79)

1. That the Court will hear the matter on the pleadings, on the attachments filed with the bill of complaint, and on such oral and/or written argument as the parties deem appropriate;

2. The issue to be decided by the Court is whether the Board of Directors of Lake of the Woods Association, Inc. has the authority to establish and maintain the Annual Guest Privilege Program described in Attachment C; and

3. Section 11 of the Restrictive Covenants of Lake of the Woods prescribes the ownership, use, and enjoyment of the streets, parks, and recreational amenities and resolution of the issue in this case rests upon the Court's interpretation of the word "invitees" as used in said Section 11 of the Restrictive Covenants.

/s/ S. Page Higginbotham
Homer S. Carpenter
S. Page Higginbotham
for the Complainants

Atwell W. Somerville
for the Defendants

Filed 4/4/79

CIRCUIT COURT OF ORANGE COUNTY
P. O. BOX 230
ORANGE, VIRGINIA 22960

Judges
Vance M. Fry
Harold H. Purcell
David F. Berry
Herbert A. Pickford, III

H. C. Dejarnette
Clerk

April 4, 1979

Mr. Homer S. Carpenter
1600 Wilson Blvd.
Arlington, Va. 22209

Mr. S. Page Higginbotham
102 W. Main St.
Orange, Va. 22960

Mr. Atwell W. Somerville
Virginia National Bank Bldg.
Orange, Va. 22960

Re: R. A. Bauer, et al v. Edwin Harn,
President, Lake of the Woods, et als

Gentlemen:

I wish to thank you for your excellent brief and arguments in the above styled matter.

The question is whether the Board of Directors of the Lake of the Woods Association has authority to sell memberships to the general public, giving the buyers the right to use the amenities of the Lake of the Woods.

It is strenuously argued that this would destroy the entire purpose of the development. This may be true, but a close reading of paragraphs A & B of Section 11, indicates that the Board does have this authority and the Court so finds.

If the owners of the Lake of the Woods development do not approve, their remedy is to elect a new Board of Directors.

As I read the restrictive covenants, the Board does have that authority. I confess that I am alarmed about the uncontrolled lease of the property by the owners, but here again, I believe that the restrictive covenants authorize this practice.

Very truly yours,

/s/ Harold H. Purcell

Harold H. Purcell, Judge

FINAL ORDER

(Filed 5/29/79)

On April 4, 1979, this cause came on to be heard on the pleadings, on the attachments filed with the Bill of Complaint, on the stipulation of Counsel, on the oral argument of Counsel and on the Brief filed by Counsel for the Complainants, and at the conclusion of argument the Court took this matter under advisement.

Thereafter, the Court gave further consideration to the matter presented to the Court and to the argument of Counsel, and on April 4, 1979, addressed a letter to Counsel stating that it was the opinion of the Court that the Board of Directors of Lake of the Woods Association, Inc., has the authority to establish and maintain the Guest Program

described in the Bill of Complaint and in the Answer of the Defendants.

WHEREFORE, the Court doth ADJUDGE, ORDER and DECREE that the Board of Directors of Lake of the Woods Association, Inc., has the authority to establish and maintain the Annual Guest Program described in Attachment C filed with the Bill of Complaint; that the relief prayed for in the Bill of Complaint for declaratory judgment should be denied; and that the Complainants should pay the costs of this proceeding.

It appearing to the Court that nothing further remains to be done in this proceeding, the Court doth DIRECT that this cause be dismissed from the docket and that the papers be placed among the ended causes in the Clerk's Office of this Court.

The Complainants, by Counsel, duly objected and excepted to the ruling and judgment of the Court. And the Complainants having indicated an intention to petition the Supreme Court of Virginia for a Writ of Error but not having asked for a suspension of this Order, no bond of the Complainants is required by this Court.

ENTER: _____
Judge

DATE: _____

ASSIGNMENTS OF ERROR

A. The court below erred in holding that the Board of Directors of the Lake of the Woods Association has authority to sell memberships to the general public, giving the buyers the right to use the amenities of the Lake of the Woods.

B. The court below erred in failing to find that the privacy of the Lake of the Woods community is guaranteed by the restrictive covenants under which the community was established and that Complainants have the legal right to demand enforcement of those restrictive covenants.

C. The court below erred in failing to find that the relationship between the Lake of the Woods Association and its members is contractual and that the powers of the Association are only those granted by its Articles of Incorporation and are limited by the restrictive covenants.

D. The court below erred in declining to find that the restrictive covenants do not permit the Board of Directors to sell to the general public the right to utilize the recreational facilities of the Lake of the Woods community on a continuing basis.

E. The court below erred in refusing to accept as an exhibit of record a copy of the Orange County Zoning Ordinance and to find that the sale to the general public of rights to use the facilities of the Lake of the Woods on a continuing basis is a violation of Article V Section 5-06-05 of said Zoning Ordinance.

STATEMENT OF FACTS AND OTHER INCIDENTS OF THE CASE

(Filed 6/27/79)

1. The case arose by complaint of a group of residents of the Lake of the Woods community seeking a declaratory judgment holding unlawful an action by the Board of Directors of the Lake of the Woods Association, Inc. under which annual guest privileges were to be sold to persons having no legal or equitable title to real estate in the Lake of the Woods community. The annual guest program established by the Board of Directors granted to such persons the right to enter the community and to use the recreational facilities and amenities for a period of twelve (12) months upon payment of a prescribed fee.

2. The Lake of the Woods community is a planned residential community approved by the Board of Supervisors of Orange County, Virginia, pursuant to the Orange County Zoning Ordinance. More than twenty-six hundred (2600) acres

of land comprise the subdivision which includes residential properties, streets, parks, recreational amenities (facilities) and other amenities. All property within the subdivision with the exception of the residential lots is owned by Lake of the Woods Association, Inc. Lake of the Woods Association, Inc. presently controls entrance to the subdivision by the use of a main entrance gate and security personnel who man the main entrance gate. Entrance to Lake of the Woods is restricted to the owners of residental lots, employees of Lake of the Woods Association, Inc., tenants, and guests and invitees of owners of the residential lots and Lake of the Woods Association, Inc. The streets within the subdivision are maintained with funds of Lake of the Woods Association, Inc. appropriated for this purpose by the Board of Directors of Lake of the Woods Association, Inc.

3. The Lake of the Woods Association, Inc. is a non-stock Virginia corporation. Article V of its Articles of Incorporation and Paragraph 12, Subsection A of the Restrictive Covenants applicable to the Lake of the Woods community provide that members shall be persons who own residential lots in Lake of the Woods. The affairs and business of the incorporated Association are managed by its Board of Directors and such affairs and business include the management and maintenance of the Association-owned property within the Lake of the Woods community. The Directors of the

Assocation are duly elected by the members of the Association.

4. The Articles of Incorporation of the Association set forth the general purposes and powers of the Association consistent with the restrictive covenants applicable to the community. Those restrictive covenants are recorded in the Office of the Clerk of the Circuit Court of Orange County and are applicable to all of the residential property in the Lake of the Woods community, run with the land, and are binding on all parties having an interest in real property within the community. True copies of the restrictive covenants and the Articles of Incorporation are attached to the complaint as Attachment B.

5. Defendants in this cause, acting as the Board of Directors of the Lake of the Woods Association, Inc., on December 9, 1978, approved and adopted a new program entitled Annual Guest Privilege Program. This program is limited to two hundred and fifty (250) applicants. A guest committee reviews and approves applications. Failure to abide by the rules and regulations of the Association will result in revocation of the privileges. Those persons who are approved have the right to enter Lake of the Woods and to use the facilities and amenities of the Lake of the Woods community and to bring guests with them for the same purpose. A true copy of the regulations implementing the new program, together

with the general instructions to the purchasers of said rights, is appended to the complaint as Attachment C.

6. The Board of Directors of the Lake of the Woods Association, Inc. gave careful consideration to the annual guest privilege program for several months and in the late summer of 1978 announced that it would implement the program and inserted in various newspapers advertisements offering the guest privileges to the public. A copy of such advertisement is appended to the complaint as Attachment D. Thereafter, and upon the request of members of the Lake of the Woods Association, Inc. who objected to the program, the Board of Directors sat in special sessions to hear comments of the members, both those opposed and those in favor. Some changes in the program as originally designed were made and thereafter the program as described in Attachment C of the complaint was adopted.

7. Section 11, Sub-sections A. and B., of the Restrictive Covenants of Lake of the Woods provide as follows:

> "A. Each of the streets in the Section or Subdivision designated on the plat is a private street, and every park, recreational facility and other amenity within the Section or Subdivision is a private park, facility or amenity and neither Declarant's execution or recording of the plat nor any other act of Declarant with respect to the plat is, or is intended to be, or shall be construed as a dedication to the public of any of said streets, parks, recreational facilities and amenities other than as reflected therein. An easement for the use and enjoyment of each of said streets and areas designated on the plat as parks is reserved to

"Declarant, its successors and assigns; to the persons who are, from time to time, members or associate members of the Lake of the Woods Association, Inc.; to the members and owners of The Lake of the Woods Golf and Country Club, Inc., its successors and assigns; to the residents, tenants, and occupants of any multi-family residential buildings, guest house, inn or hotel facilities, and all other kinds of residential structures that may be erected within the boundaries of the Section or Subdivision and to the invitees of all the aforementioned persons.

"B. The ownership of the recreational amenities within the Section and Subdivision, which may include but shall not be limited to lakes, dams, marinas, beaches, lake access tracts, golf courses, tennis courts, swimming pools, clubhouses, and adjacent clubhouse grounds, and campgrounds shall be in Declarant or its successors or assigns and the use and enjoyment thereof shall be on such terms and conditions as Declarant, its sucesssors or assigns, shall from time to time license; provided, however, that any or all of such amenities may be conveyed to the Lake of the Woods Association, Inc., which conveyance shall be accepted by it, provided the same is free and clear of all financial encumbrances."

8. The Declarant to which the foregoing restrictive covenant refers is Virginia Wildlife Clubs, Inc., and the Lake of the Woods Association, Inc. is the successor and assignee thereof. The members of the Lake of the Woods Association, Inc. are the owners of real property within the community. There are no associate members and The Lake of the Woods Golf and Country Club, Inc. no longer exists.

9. The Court heard the cause on the pleadings, on the attachments filed with the complaint, on the stipulation of

counsel that the issue will turn on the interpretation of subsections A and B of Section 11 of the restrictive covenants (Attachment B of the complaint), particularly the meaning of the word "invitees" as used therein, on the brief filed by counsel for complainants, and on oral argument of counsel for complainants and defendants.

10. In the course of the oral argument heard on April 4, 1979, the Court's attention was invited to Article V, Section 5-06-05, of the Orange County Zoning Ordinance, effective April 2, 1979, not yet printed as of that date, and a true copy thereof was tendered to the Court.

11. At the conclusion of the argument, the Court took the matter under advisement, stating that the issue was obviously of importance not only to the Lake of the Woods community, but also to two other communities of similar nature within the Court's jurisdiction, namely Lake Louisa and Lake Monticello.

12. By letter dated April 4, 1979, the same day on which oral argument was heard, the Court advised all counsel as follows:

> "I wish to thank you for your excellent brief and arguments in the above styled matter.
>
> "The question is whether the Board of Directors of the Lake of the Woods Association has authority to sell memberships to the general public, giving the buyers the right to use the amenities of the Lake of the Woods.

"It is strenuously argued that this would destroy the entire purpose of the development. This may be true, but a close reading of paragraph A & B of Section 11, indicates that the Board does have this authority and the Court so finds.

"If the owners of the Lake of the Woods development do not approve, their remedy is to elect a new Board of Directors.

"As I read the restrictive covenants, the Board does have that authority. I confess that I am alarmed about the uncontrolled lease of the property by the owners, but here again, I believe that the restrictive covenants authorize this practice."

13. The Court's final order was entered on May 29, 1979, at which time counsel for complainants tendered to the Court an official copy of the Orange County Zoning Ordinance and asked that it be made a part of the record. It was rejected by the Court, to which action and to the failure of the Court to refer to the Orange County Zoning Ordinance in its final order counsel for complainants took exception.

Harold H. Purcell, Judge

DATE: June 27, 1979

Filed 4/29/79

ARTICLE V
PLANNED RESIDENTIAL COMMUNITIES
(R-3)

5-01

STATEMENT OF INTENT: This district is intended for tracts of land to be developed and subdivided for residential use where a percentage of the total land area to be developed in excess of 25% thereof, or such greater percentage as the Board of Supervisors of Orange County may require, is permanently allocated and devoted to private recreational or natural conservation purposes, such as lakes, dams, parks, golf courses, forests or other private recreational or conservation areas, exclusive of and not including the residential lots, the streets and roads, or any private water or sewage disposal systems. Because of the permanent allocation of said percentage of the total acreage for private recreational and natural conservation purposes, approved by the Board of Supervisors of Orange County, lot size and set back regulations may be of a lesser nature than in other residential districts. It is the intent of this section to encourage developers to allocate areas to recreation and conservation purposes which otherwise would not be encouraged or required under other sections of the Zoning Ordinance. It is also the intent to make the development of planned communities subject to stricter control by the Board of Supervisors of Orange county than is the case for other residential developments,pursuant to recommendations of the Planning Commission of Orange County.

5-02

USE REGULATIONS: In planned residential community district (R-3) any building to be erected or land to be used shall be for one or more of the following uses or purposes:

5-02-01

SINGLE FAMILY: Single family dwelling upon one or more lots and accessory buildings, whether attached or unattached, such as garages or storage structures, in harmony with the construction of any such single family dwelling unit.

5-02-02

MULTI-SINGLE FAMILY: Multiple single family dwelling units, upon one or more multiple unit lots are defined hereinafter, not to exceed 6 such single family units, under one

roof but separated and with separate entrances, or of the cluster type, consisting of not more than 3 structures with no more than 2 single family dwelling units to each, with separate entrances.

5-02-03

PRIVATE RECREATIONAL STRUCTURES: Private recreational structures or buildings, or private facilities such as clubhouses, tennis courts, golf courses, swimming pools, parks, lakes, ponds or other private recreational uses of the natural conservation of forests, open areas or other natural resources separate and apart from the subdivided residential lots.

5-02-04

FACILTIES FOR UTILITIES: Structures or facilities for utilities and for private or public water or sewage disposal systems, and facilities or structures relative to the maintenance of streets, roads or recreational areas.

5-02-05

ADMINISTRATIVE FACILITIES: Structures or facilities necessary for administrative functions, fire and rescue facilities, security force facilities and places of worship.

5-03

SEWAGE DISPOSAL AND WATER SYSTEMS: General and common sewage disposal and water systems shall be approved by the State Health Department and conform with Section 16-68 of Orange County Zoning Ordinance. Individual water and sewage disposal units may be utilized on the subdivided lots provided Health Department approval is obtained in each instance by the owner of any such lot.

5-04

STREETS AND ROADS: Streets and roads within the developed area shall effectively serve all subdivided residential lots and all other facilities therein and shall, if dedicated for public use and accepted by the appropriate governing body, meet the requirements of the subdivision ordinance for Orange County, Virginia, effective April 11, 1978 or any amendments thereto. Private streets and roads, which shall also effectively serve all subdivided residential lots and other facilities in the area, shall meet such specifications and conditions as shall be prescribed by the Board of Supervisors of Orange County, both as to construction and maintenance.

5-05

AREA REGULATIONS: For the subdivided residential lots to contain one single family dwelling and accessory buildings the minimum lot area shall be 10,000 square feet. For subdivided residential lots to accommodate multiple single

family dwelling units as described in 5-02-02 the minimum lot area shall be 60,000 square feet.

5-06

SETBACK, FRONTAGE, SIDE YARD AND HEIGHT REGULATIONS FOR SUBDIVIDED RESIDENTIAL LOTS.

5-06-01

FOR SINGLE FAMILY DWELLINGS: The minimum lot width at the building setback line shall be 60 feet. Single family residences or accessory buildings shall be setback a distance of 35 feet from the street or road upon which they front. Single family residences or accessory buildings shall be set back 25 feet from the rear line of any subdivided residential lot. The minimum side yard for each single family residential dwelling, including accessory buildings, whether connected or not, shall be 8 feet, except for corner lots where if the side yard of any residential lot shall be abutted by a street the single family dwelling structure and all accessory buildings shall be set back 25 feet from such street or road abutting such side yard. Accessory buildings such as garages shall be in harmony with the construction of the single family resident structure, and shall be one story only. The maximum height of any single family residential structure shall be 40 feet.

5-06-02

FOR MULTIPLE SINGLE FAMILY UNITS: The minimum lot width at the building setback line shall be 200 feet. All structures shall be set back a distance of 50 feet from the street or road upon which they front. All structures shall be set back 25 feet from the rear line of any such lot. The minimum side yard for all structures shall be 15 feet, except for corner lots where if the side yard of such lot shall be abutted by a street or road all structures shall be set back 25 feet from such street or road abutting such side yard. Accessory buildings, such as garages, shall be in harmony with the construction of the multiple single family residential units and shall be of one story only. The maximum height of any multiple unit single family structure shall be 50 feet, but all such structures shall be limited to two stories of residential living space of area.

5-06-03

RESIDENTIAL LOTS ABUTTING WATER: Where any residential lot, whether accommodating one single family dwelling or multiple single family dwelling units, shall abut a lake or other impoundment of water, docks and boat houses harmonizing with the residential structure or structures shall be permitted irrespective of setback regulations.

5-06-04

OFF STREET PARKING: Off street parking to be controlled by paragraph 11-07.

5-06-05

COMMERCIAL USES: No commercial use shall be made of any subdivided residential lot or structure thereon, nor shall any commercial activity be carried on in the limited district (R-3) which shall be open to the public, but this shall not prevent private activities relating to recreation of a commercial nature serving the owners of the subdivided lots or dwelling units, or their guests, by the developing entity or by a concessionaire in the allocated recreational areas, such activity to be entirely private in nature, and not available or open to the public. This shall not prevent the leasing of residential units by the owners thereof.

5-07

APPROVAL OF PLANS BY BOARD OF SUPERVISORS OF ORANGE COUNTY: No tract of land shall be admitted to the planned residential community district (R-3) except by approval of the Board of Supervisors of Orange County. In order for the Board of Supervisors to approve or disapprove any application for inclusion of a tract in this district the developing entity, at its expense, shall submit such detailed plans, plats and specifications as shall be required by the Board of Supervisors in order for it to make a comprehensive study of the development. Before approving or disapproving the inclusion of any tract of land in this district the Board of Supervisors shall refer any application received, along with all documents and exhibits in support thereof, to the Planning Commission of Orange County, which shall make a study of the proposed development and furnish the Board of Supervisors with its recommendations as to whether the application should be approved or disapproved, along with its recommendations as to conditions, stipulations and other relevant matters which may be deemed advisable by the Planning Commission of Orange County. The recommendations of the Planning Commission shall not be binding upon the Board of Supervisors but shall be considered by the Board of Supervisors in reaching its decision. In approving or disapproving or recommending the approval or disapproval of the inclusion of any tract in this district, the Board of Supervisors of Orange County and the Planning Commission of Orange County shall consider the general welfare and benefit to the people of Orange County, the environmental impact on Orange County, the orderly development of Orange County, the size and location of the tract of land involved, the financial responsibility of the developer, and the length of time to be allowed for the completion of any such development. The Board of Supervisors, if it is inclined to approve the inclusion of a tract of land in this district, may, in its discretion, require of the developing entity a performance bond with such surety as the Board of Supervisors may determine appropriate for the proper compliance

with the plans, specifications, plats and conditions upon which the inclusion of the tract of land is granted, provided, however, that the Board of Supervisors, upon compliance with the foregoing by the developing entity in a satisfactory manner, shall release the developing entity and surety from any such bond. The Zoning Administrator shall be deemed the Agent for the Orange County Board of Supervisors, for the purpose of reviewing the initial application and referring same to the Planning Commission for study evaluation and report.

5-08

AREA OF TRACT DEVELOPED: The minimum area for tracts of land to be included in this planned residential community district (R-3) shall be 30 acres, but the Board of Supervisors may require larger areas, depending upon location, soil conditions, types of water and sewage disposal systems, topography and other relevant factors. Where residential lots as prescribed herein are to contain cluster type or other type multiple unit single family dwellings, such multiple unit residential lots are to be separated by a park or other recreational or conservation area, the type of which and dimensions of which are to be approved by the Board of Supervisors upon the recommendations of the Planning Commission of Orange County.

5-09

DEFINITIONS:

(a) Wherever the term "developer" or "developing entity" is used the same shall include individual property owners, corporations, and wholly owned subsidiaries of any such corporation, and associations of lot owners or separate corporations or owners acting in concert, or separate corporations or entities acting independently as to the same development.

(b) The word "private" as used herein means subject to use only by the developer and the owners of lots or units within the development and not subject to use by the general public even though the area be served by public streets or roads or by public water or sewage disposal systems.

(c) The term "multiple single family units", as well as the term "multiple unit residential lot" is intended to embrace multiple ownership of either the lot area or the units themselves, such as a condominium multiple unit structure where portions of the structure, even though under one roof, are owned by more than one person or entity, and where the land area encompassed by the multiple unit residential lot is conveyed jointly or in common to the owners of the multiple units or their successors in title in fee simple. This term does not embrace the leasing of said land area for a period of years by the developer, and no such leases will be permitted in this district.

5-10

INCLUSION OF "OUR PARCELS": Any development or tract of land, if approved by the Board of Supervisors of Orange County, may be included in this district even though such development or tract of land was developed prior to the adoption of the effective Zoning Ordinance of Orange County, or parts thereof, and even though such development is either wholly or partly developed prior to the application for inclusion in this district.

5-11

APPEALS: If the Board of Supervisors of Orange County shall render a decision regarding the inclusion of any tract of land in this district whereby any party in interest feels itself aggrieved by the decision of the Board of Supervisors, such aggrieved party, within 60 days after the decision by the Board of Supervisors of Orange County, may appeal the decision of said Board of Supervisors to the Circuit Court of Orange County, Virginia, which shall consider the application of the developing entity and all relevant factors involved, and which may overrule the decision of the Board of Supervisors of Orange County, either in whole or in part, and enter such order or orders as said Court may determine for the inclusion or non-inclusion of any tract in this district, and if a tract is to be included in this district, said Court may impose such conditions, stipulations or restrictions as it may deem appropriate. Upon entry of any such order or orders the Board of Supervisors of Orange County shall promptly comply therewith.

C E R T I F I C A T E

The undersigned, Homer S. Carpenter, an Attorney qualified to practice in the Supreme Court of Virginia, doth hereby certify that on this, the 4th day of January, 1980, Rule 5:49 has been complied with by filing 20 copies of this Appendix to Brief and 20 copies of the Brief with the Clerk of the Supreme Court of Virginia, and by mailing three copies of this Appendix to Brief and three copies of the Brief to Atwell W. Somerville, Esq., of Somerville, Moore & Joyner, P. O. Box 629, Orange, Virginia 22960, Counsel of record for Edwin Harn, et al., Appellees.