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**DECLARATION OF EASEMENTS AND PROTECTIVE  
AND RESTRICTIVE COVENANTS FOR THE EASTERN  
PORTION OF BRIERWOOD SUBDIVISION**

This Declaration, made of even date with the Deed from Fincastle Country Club, Inc. to Brierwood, Inc. of Virginia, a Corporation, hereinafter referred to as "Developer", is attached to and made a part of said Deed and is intended to be recorded therewith as follows:

**WITNESSETH:**

**SECTION A. PREAMBLE**

**BRIERWOOD SUBDIVISION**

**BLUEFIELD, VIRGINIA**

WHEREAS, Developer is developing certain real estate in the Town of Bluefield, Tazewell County, Virginia, which real estate is more particularly described upon that certain plat prepared by R. Gary Shields, Land Surveyor, dated June 29, 1999, and entitled "PLAT SHOWING PROPERTY BEING CONVEYED TO BRIERWOOD, INC. OF VIRGINIA, CLEARFORK DISTRICT, TAZEWELL COUNTY, BLUEFIELD, VIRGINIA", area: 56.58 acres, which plat is attached to the above-described Deed, and is to be recorded with said Deed and this Declaration in the Office of the Clerk of the Circuit Court of Tazewell County, Virginia. The easements and protective and restrictive covenants set forth herein and on said plat shall remain in effect and shall run with the land conveyed by the aforesaid Deed and shown upon said plat, until this instrument may be amended as provided herein. The Architectural Control Committee and Brierwood Subdivision Maintenance Association shall be the same entities as previously established by Declaration of Easements and Protective and Restrictive Covenants applicable to the western portion of the Brierwood Subdivision dated February 15, 1995, and found of record in the Office of the Clerk of the Circuit Court of Tazewell County, Virginia in Deed Book 706, at page 595, even though the applicable easements and covenants herein stated may vary from those previously recorded.

**SECTION B. AREA OF APPLICATION**

**B-1. FULLY PROTECTED RESIDENTIAL AREA.**

The residential area covenants in Section C in their entirety shall apply to the real estate described upon the above-referenced plat.

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**SECTION C. RESIDENTIAL AREA COVENANTS****C-1. LAND USE AND BUILDING TYPE.**

No lot shall be used except for single family residential purposes.

**C-2. ARCHITECTURAL CONTROL.**

No improvement, including but not by way of limitation any residence, accessory building, tennis court, swimming pool, recreational improvement or structure, flag pole, fence, wall, exterior lighting, or other improvements, shall be constructed or maintained upon any lot and no alteration or repainting of the exterior of a structure shall be made and no landscaping performed unless complete plans, specifications, and plot plans therefore, showing the exterior design, height, building material and color scheme thereof, the location of the structure plotted horizontally and vertically, the location and size of driveways, erosion and sediment control, the general plan of landscaping, fencing, walls, and windbreaks, and the grading plan shall have been submitted and approved in writing as provided for in Sections C and E hereof.

**C-3. DWELLING COST, QUALITY AND SIZE.**

All improvements shall be of a quality and size comparable with others in the area. No such improvement shall have less than two thousand square feet (2,000 ft<sup>2</sup>) of living space. Approval shall be as in Section C-2 above. No such improvement shall have more than three (3) stories above ground level.

**C-4. PARKING.**

All subdivision lots improved for residential purposes shall in addition to other improvements, provide for off-street parking in such manner as determined by the Architectural Control Committee, hereinafter referred to as the "Committee", under Section C-2, above. No lot may be used to park or store boats, travel trailers, motor homes or other vehicles except currently licensed, inspected and operable personal vehicles whose sole purpose is ground transportation.

**C-5. CLOTHES LINES.**

No clothes lines or other apparatus designed and used for the outdoor drying of clothing shall be located on any lot in Brierwood Subdivision.

**C-6. CONSTRUCTION.**

All improvements to, land disturbing activities upon, or subdivision of any property subject to these restrictions shall be made or done in a good and workmanlike manner and in accordance

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with all applicable laws and regulations of the Town of Bluefield, Virginia, and the Commonwealth of Virginia, including those applicable to erosion and sediment control, in effect at the time such improvements, land disturbing activities or subdivision are made or implemented. No improvement on any lot adjoining the Fincastle Country Club Golf Course shall be located less than thirty-five (35) feet from the common boundary line between said lot-owner and Fincastle Country Club, Inc.

**C-7. CONSTRUCTION TIME.**

All improvements under construction within Brierwood Subdivision must be completed within one (1) year from the time of beginning construction and no improvement shall be occupied as a residence until the same has been substantially completed and an occupancy permit has been granted by the appropriate government authority, if applicable.

**C-8. PROPERTY MAINTENANCE.**

All lots and parcels of land within Brierwood Subdivision must be maintained in an orderly manner and kept in good appearance, as determined by the Committee, and upon failure of the owner or occupier to accomplish such maintenance, Brierwood Subdivision Maintenance Association may perform the same and assess the cost to the owner.

**C-9. DETACHED BUILDINGS.**

Detached buildings or structures are generally considered to be inappropriate for lots in Brierwood Subdivision and the same shall only be permitted upon unanimous approval of the Committee.

**C-10. FOUNDATIONS.**

No foundation or exterior wall of any improvement shall have exposed above grade any concrete or cinder blocks, either plain or painted.

**C-11. GARAGES.**

For lots adjoining Fincastle Country Club Golf Course, garage doors located on the golf course side of any improvement or structure are generally considered to be inappropriate and the same shall only be permitted upon unanimous approval of the Committee.

**C-12. NUISANCES.**

No commercial activity or noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the

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neighborhood, including, but not by way of limitation, repair of motor vehicles, logging or yard sales.

**C-13. TEMPORARY STRUCTURES.**

No structure of a temporary character, trailer, basement, tent, shack, garage, barn, or other out building shall be used on any lot at any time, except during construction as provided in Section C-6.

**C-14. SIGNS.**

No signs of any kind shall be displayed to the public view on any lot, except for one sign of not more than five square feet advertising property for sale or rent, or signs used by a builder to advertise the property during the construction and sales period. No signs of any kind shall be displayed on the side of any lot that adjoins Fincastle Country Club Golf Course.

**C-15. LIVESTOCK AND POULTRY.**

No animals, livestock, or poultry of any kind shall be raised, bred or kept on any lot, except that dogs, cats or other household pets may be kept, provided that they are not kept, bred or maintained for any commercial purpose. Household pets shall be under leash control at all times when not confined to the pet owner's lot by means permissible under these covenants.

**C-16. GARBAGE AND REFUSE DISPOSAL.**

No lot shall be used or maintained as a dumping ground for rubbish, trash, garbage, or other waste and all waste shall be kept in sanitary containers out of view in attractive housing. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.

**C-17. SIGHT DISTANCE AT INTERSECTION.**

No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between 2 and 6 feet above the roadways shall be placed or permitted to remain on any corner lot within the triangular area formed by the street and property lines and a line connecting them at points 25 feet from the intersection of the street lines, or in the case of a rounded property corner, from the intersection of the street property lines extended. No tree shall be permitted to remain within such distance of any such intersection, unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

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**C-18. ANTENNAS.**

Radio or television or like antenna, including but not by way of limitation, satellite dishes, shall only be permitted to be placed on any lot upon unanimous approval of the Committee.

**C-19. MAILBOXES.**

Only mailboxes meeting the approval of the Committee and installed by the Developer, Brierwood, Inc. of Virginia, may be used and maintained on the subject property.

**C-20. EASEMENTS.**

Utility line easements. The lots in said Subdivision shall all be subject to easements reserved for the installation of utility lines and drainage easements, in favor of the Developer, and utility companies for the installation of utility and drainage lines, on, over and through said lots, for the benefit of other lots, the same to be installed with care so as not to affect the utilization of the property for residential use.

**SECTION D. AREA COVENANTS**

D-1. In the event that the Developer should designate certain areas of this Subdivision for common purposes, Brierwood Maintenance Association shall accept title to the same and maintain such areas for the use and benefit of the Subdivision. No structure or improvement for recreational purposes may be placed on any such common area which adjoins the Fincastle Country Club Golf Course.

**D-2. STANDARDS FOR MAINTENANCE OF GOLF COURSE PROPERTY BETWEEN THE OUT-OF-BOUNDS MARKERS AND GOLF COURSE PROPERTY LINE.**

Future lot owners of Brierwood Subdivision who purchase lots adjoining the Fincastle Country Club boundary will also acquire, as a part of such conveyance, the right to go upon and maintain the area between the Fincastle Country Club golf course out-of-bounds markers and such property line in accordance with standards for maintenance agreed upon between the Fincastle Country Club Grounds Committee and the Committee, all as more particularly described in the Deed from Fincastle Country Club, Inc. to Brierwood, Inc. of Virginia. Until modified in writing by agreement between these two organizations, such standards for maintenance shall include, as a minimum, the following:

(1) No tree with a diameter greater than six inches (6") at a height of forty-eight inches (48") above the ground or at a height where the tree trunk branches, if such branching occurs

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at less than forty-eight inches (48"), shall be cut or removed without the express written approval of the Grounds Committee of Fincastle Country Club.

(2) The area within the twenty-foot (20') strip shall be kept in grass and maintained in a manner comparable to the golf course rough adjacent thereto.

(3) Such maintenance may also include the planting of flowers, small shrubbery and trees as shall be approved by the Fincastle Country Club Grounds Committee and the Committee.

#### SECTION E. ARCHITECTURAL CONTROL

E-1. The Committee, which is the same Architectural Control Committee as heretofore established for the western portion of Brierwood Subdivision, shall be composed of three (3) members. One (1) of such members shall be appointed by Fincastle Country Club, Inc. The other two (2) members shall be appointed by Brierwood, Inc. of Virginia, until such time as the last lot in the Brierwood Subdivision is conveyed or architectural control is turned over to the Brierwood Subdivision Maintenance Association by Brierwood, Inc. of Virginia. At such time as architectural control is turned over to Brierwood Maintenance Association, the members of that Association shall also acquire the right and power of Committee member appointment previously held by Brierwood, Inc. of Virginia. By unanimous vote, the Committee may designate a representative to act for it. In the event of death or resignation of any member of the Committee, the remaining members shall have full authority to designate a successor to act until the next meeting of Brierwood Maintenance Association and/or Fincastle Country Club. Neither the members of the Committee nor its designated representatives shall be entitled to any compensation for services performed. After architectural control is turned over to the Brierwood Maintenance Association by Brierwood, Inc. of Virginia, any vacancy caused by the death, resignation, removal, or inability to act of either of the two (2) members appointed by Brierwood, Inc. of Virginia may be filled by majority vote of the members of the Association.

#### E-2. PROCEDURE.

The approval or disapproval, as required in these covenants, shall be in writing. In the event Brierwood, Inc. of Virginia or the Committee, or its designated representative fails to approve or disapprove within thirty (30) days after plans and specifications have been submitted to it, such submission to include notice to the member appointed by Fincastle Country Club, Inc., approval will not be required and the related covenants shall be deemed to have been fully complied with.

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## E-3. INDEMNIFICATION AND ARBITRATION.

Neither Brierwood, Inc. of Virginia, nor the members of the Committee, nor any person acting on behalf of any of them, shall be liable for any costs or damages due to any mistake in judgment, negligence or other action of the Committee in connection with the approval or disapproval of plans and specifications. Each owner and occupant of any property within Brierwood Subdivision agrees, as do their successors and assigns by acquiring title thereto or an interest therein, or assuming possession thereof, that they shall not bring any action or suit against Brierwood, Inc. of Virginia, the members of the Committee or their respective agents, in order to recover any damages caused by the actions of the Committee. The Association shall indemnify, defend and hold the members of the Committee and Brierwood, Inc. of Virginia, and their respective agents, servants and employees harmless from all cost, expenses and liabilities, including attorney's fees, of all nature resulting by virtue of the acts of the Committee or its members. Neither Brierwood, Inc. of Virginia, the Association, the Committee or any person acting on behalf of any of them, shall be responsible for any defects in the plans or specifications or for any defects in any improvements constructed pursuant thereto. Each party submitting plans and specifications for approval shall be solely responsible for the sufficiency thereof and for the quality of construction performed pursuant thereto.

If there should arise any matters in dispute hereunder on which Brierwood, Inc. of Virginia or the Committee and the owner of any lot or lots in Brierwood Subdivision cannot finally agree, such matter or matters shall be referred to a board of arbitrators consisting of three (3) disinterested, competent persons, one selected by Brierwood, Inc. of Virginia or the Committee or both, one by the lot owner, and the two thus selected shall select the third, who shall have the power of an umpire and be known as umpire-arbitrator. The decision and award of such arbitrators, or any two of them, or, in the case of disagreement among all the arbitrators, of the third or umpire-arbitrator, shall be conclusive and binding upon Brierwood, Inc. of Virginia, the Committee and the lot owner and promptly complied with.

The party desiring arbitration shall give written notice to the other party, stating definitely the point or points in dispute and naming the person selected as arbitrator; and it shall be the duty of the other party, within fifteen (15) days after receiving such notice to name an arbitrator, and these two shall select the third arbitrator; and in the event the party notified does not name an arbitrator

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within said period of fifteen (15) days, the party serving such notice may select a second arbitrator and the two thus selected shall select the third arbitrator.

In the event of failure of the two arbitrators, selected as aforesaid, to agree, within twenty (20) days from notice to them of their selection, in choosing a third arbitrator, then such third arbitrator shall, upon application by either party, be named by the person (or any one of the persons) who may be holding the office of Judge of the Circuit Court of Tazewell County, Virginia, or the person holding office which corresponds to such office as now existent if it shall have then been abolished.

The arbitrators thus chosen shall give Brierwood, Inc. of Virginia or the Committee or both and the lot owner written notice as to the time and place of hearing, which shall not be less than twenty-five (25) days nor more than forty-five (45) days thereafter, and at the time and place appointed shall proceed with the hearing unless, for some good cause of which the arbitrators shall be the judge, it shall be postponed until some later date within a reasonable time. Brierwood, Inc. of Virginia or the Committee or both and the lot owner shall have full opportunity to be heard, orally and in writing, on any question thus submitted. Said arbitrators shall make their decision and award in writing and deliver a copy to both Brierwood, Inc. of Virginia, the Committee and the lot owner and shall as a part thereof decide by whom the costs of arbitration, excluding legal fees, shall be borne and paid and the amount of such costs including reasonable compensation for the arbitrators.

#### SECTION F. GENERAL PROVISIONS - TERMS

F-1. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by Brierwood, Inc. of Virginia, Fincastle Country Club, Inc., the Association, or the owner of any lot subject to this Declaration, their legal representatives, heirs, successors and assigns. However, no violation of these covenants and restrictions shall cause a forfeiture of the land and a reversion to Brierwood, Inc. of Virginia. The covenants and restrictions of this Declaration may be amended by an instrument signed by not less than all of the lot owners and all members of the Architectural Control Committee. Any amendment must be properly recorded.

#### F-2. SEVERABILITY.

Invalidation of any one of these covenants by judgment or court order shall in no wise affect any of the other provisions which shall remain in full force and effect.



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**SECTION G. BRIERWOOD MAINTENANCE ASSOCIATION****G-1. MEMBERSHIP.**

Each original owner and each successive owner of each lot shall, by accepting title thereto, become a member of Brierwood Maintenance Association, a non-profit corporation, herein referred to as the Association, whose purpose is to maintain the surface water drainage, storm drains, open drains, ditches, street lighting, entrance, and common areas of Brierwood Subdivision. This Association, which shall be governed by its Board of Directors, shall have the power to levy dues and assessments against its members for the purpose of financing the repair and maintenance of the said facilities, in accordance with the By-Laws of said Association. The owners of each lot shall be entitled to one vote. If joint owners of a lot cannot agree how their vote shall be cast on any issue, then each such vote shall be divided into fractional shares for each joint owner equal to the proportional interest of each such owner in each such lot.

**G-2. COVENANT FOR PAYMENT OF DUES.**

The said Brierwood, Inc. of Virginia, a Corporation for each lot owned by it, hereby covenants, and each purchaser of a lot covenants and agrees to pay the dues and assessments as provided in the By-Laws, and further agrees that said dues and assessments shall be a charge on the land and shall be a continuing lien upon the property against which the dues and assessments are made, with Brierwood, Inc. of Virginia, a Corporation, being chargeable on the basis of one assessment for each two (2) lots owned, whose voting power shall be in the same proportion.

**G-3. CONVEYANCE TO ASSOCIATION.**

A conveyance by Deed will be made to the Association, granting unto it the common areas.

**G-4. ASSESSMENTS AND COLLECTING.**

Assessments and collections of the stated amount or rate of the assessment, and the basis of the assessment, shall be on a per lot basis.

**G-5. COVENANTS FOR MAINTENANCE ASSESSMENTS.****G-5-a. CREATION OF THE LIEN AND PERSONAL OBLIGATION OF ASSESSMENTS.**

The declarant, for each lot owned, hereby covenants and each owner of any lot, by acceptance of a Deed therefor, whether or not it shall be so expressed in any such Deed or other conveyance, is deemed to covenant and agree to pay to the Association: (1) monthly assessments or charges, and (2) special assessments for capital improvements, such assessments to be fixed,

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established and collected from time to time hereinafter provided. The monthly and special assessments, together with such interest, cost and reasonable attorney's fees, as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made.

**G-5-b. PURPOSE OF ASSESSMENTS.**

The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents in the properties, services and facilities devoted to this purpose, and related to the use and enjoyment of the common area and of the homes situated upon the properties.

**G-5-c. BASIS AND MAXIMUM OF MONTHLY ASSESSMENTS.**

Until January 1 of the year immediately following the conveyance of the first lot to an owner, the maximum assessment shall be Twenty-Five Dollars (\$25.00) per lot per month.

(1) From and after January 1 of the year immediately following the conveyance of the first lot to an owner, the maximum monthly assessment may be increased, effective January 1 of each year, without a vote of the membership, in conformance with the rise, if any, of the Consumer Price Index (published by the Department of Labor, Washington, D.C.) for the preceding month of July.

(2) From and after January 1 of the year immediately following the conveyance of the first lot to an owner, the maximum monthly assessment may be increased above that established by the Consumer Price Index formula, by vote of the members provided that any such change shall have the assent of two-thirds (2/3rds) of the votes of each class of members who are voting in person, or by proxy, at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than thirty (30) days, nor more than sixty (60) days, in advance of the meeting, setting forth the purpose of the meeting. The limitations hereof shall not apply to any change in the maximum and basis of the assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation.

(3) After consideration of current maintenance costs and future needs of the Association, the Association may fix the monthly assessment at an amount in excess of the maximum.

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**G-5-d. SPECIAL ASSESSMENTS FOR CAPITAL IMPROVEMENTS.**

In addition to the monthly assessments authorized above, the Association may levy, in any assessment year, a special assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the common area, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3rds) of the votes of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting, setting forth the purpose of the meeting.

**G-5-e. UNIFORM RATE OF ASSESSMENT.**

Both monthly and special assessments shall be fixed at a uniform rate for all lots and may be collected on a monthly basis.

**G-5-f. QUORUM FOR ANY ACTION AUTHORIZED UNDER G-5-c-(2) AND G-6.**

At the first meeting called, as provided in Sections G-5-c-(2) hereof, the presence at the meeting of members, in person or by proxies, entitled to cast sixty percent (60%) of all votes of each class of membership, shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the notice requirement set forth in Sections G-5-c-(2) and G-6, and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

**G-6. DATE OF COMMENCEMENT OF MONTHLY ASSESSMENTS AND DUE DATES.**

The monthly assessments provided for here shall commence the first day of the month following the first annual meeting of the membership. The Association shall fix the amount of the monthly assessment against each lot and send written notice once a year at least thirty (30) days in advance of the annual meeting. The due dates shall be established by the Association. The Association shall, upon demand, at any time furnish a certificate in writing, signed by an officer of the Association, setting forth whether the assessments on a specified lot have been paid. A reasonable charge may be made by the Association for the issuance of these certificates. Such

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certificates shall be conclusive evidence of payment of any assessment therein stated to above been paid.

**G-7. EFFECT OF NONPAYMENT OF ASSESSMENTS AND REMEDIES OF THE ASSOCIATION.**

Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency, at the legal rate of interest per annum and the Association may bring an action at law against the owner personally obligated to pay the same, or foreclose the lien against the property, and interest, costs and reasonable attorney fees of any such action shall be added to the amount of such assessment. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the common area or abandonment of his lot.

**G-8. SUBORDINATION OF THE LIEN TO MORTGAGES AND DEEDS OF TRUST.**

The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage or Deed of Trust. Sale or transfer of any lot shall not affect the assessment lien. However, the sale or transfer of any lot which is subject to any mortgage, pursuant to a decree or foreclosure of a Deed of Trust or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such assessments as to payments thereof which became due prior to such sale or transfer. No sale or transfer shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereof.

**G-9. EXEMPT PROPERTY.**

The following property subject to this Declaration shall be exempt from the assessments created herein: (a) all properties dedicated and accepted by local public authority; (b) common areas; and (c) all properties owned by a charitable or non-profit organization exempt from taxation by the laws of the State of Virginia. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

**SECTION H. ATTEST**

H-1. All of the foregoing matters shall be incorporated by reference in Deeds to lots in said Brierwood Subdivision and shall be as binding and as effective as though set out verbatim in said Deeds, it being understood that each of the foregoing items shall be referred to and hereto become part and parcel of every such Deed.

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IN WITNESS WHEREOF, Brierwood, Inc. of Virginia, a Corporation, has caused these presents to be signed by its authority duly given this 26TH day of August, 1999.

BRIERWOOD, INC. OF VIRGINIA,  
A Corporation

By: Rodney Keesling  
RODNEY KEESLING

STATE OF WEST VIRGINIA

COUNTY/CITY OF PRINCETON, to-wit:

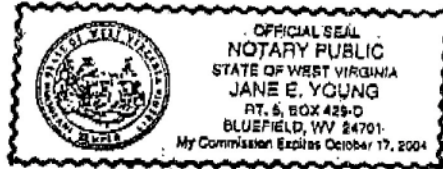
I, Jane E. Young, a Notary Public within and for the County/City and State aforesaid, do hereby certify that Rodney Keesling, who signed the foregoing writing, bearing date the 1<sup>ST</sup> day of September 1999, for Brierwood, Inc. of Virginia, a Corporation, has this day, before me in my said County/City, acknowledged the said writing to be the act and deed of said Association.

Given under my hand this 1<sup>ST</sup> day of September 1999.

Jane E. Young  
NOTARY PUBLIC

My commission expires:

10-17-2004



INSTRUMENT #990004797  
RECORDED IN THE CLERK'S OFFICE OF  
TAZEWELL COUNTY ON  
SEPTEMBER 22, 1999 AT 04:02PM  
JAMES E. BLEVINS, CLERK

BY: Angela O. Ray (DC)