

**DECLARATION OF PRIVATE INGRESS, EGRESS AND UTILITY EASEMENT AND
MAINTENANCE OBLIGATIONS**

"Section Three (A Cluster Subdivision) RIVER DOWNS" (6 Sheets)

(Public Works Agreement No. F-94-078)

THIS DECLARATION OF PRIVATE INGRESS, EGRESS AND UTILITY EASEMENT AND MAINTENANCE OBLIGATIONS, made this 10th day of September, 1995, by **RIVER DOWNS PARTNERSHIP**, a Maryland General Partnership, (hereinafter referred to as "Owner"), **RIVER DOWNS GOLF COURSE LIMITED PARTNERSHIP**; and **PATRICK J. BOLLINGER** and **PATRICK L. BURKE**, Substitute Trustees, and **THE BANK OF BALTIMORE**, now known as **FIRST FIDELITY BANK, N.A.**, Beneficiary and **THOMAS C. MYERS** and **FREDERICK G. BOTTI**, Trustees, and **PROVIDENT BANK OF MARYLAND**, Beneficiary, (hereinafter collectively referred to as "Lenders").

WHEREAS, Owner intends to record a subdivision plat among the Land Records of Carroll County, Maryland, contemporaneously herewith, said plat entitled "Section Three (A Cluster Subdivision) RIVER DOWNS" (6 Sheets) (hereinafter referred to as the "Subdivision Plat"); and

WHEREAS, as a condition of approval of the Subdivision Plat by Carroll County, Maryland, Lots 68, 69, 70, 71, 72 and Parcel Q (hereinafter referred to as "Lots") are required to and restricted to using a certain common access area (designated as "40' EASEMENT FOR INGRESS AND EGRESS TO LOTS 68 THRU 72 AND PARCEL Q" and also designated as "River Downs Drive") as set forth on Sheet 5 of the aforementioned Subdivision Plat (hereinafter referred to as "Common Access Area") to **Lawndale Road**, as shown on the aforementioned Subdivision Plat; and

WHEREAS, said Common Access Area is also shown on a plat entitled "Section Two (A Cluster Subdivision) RIVER DOWNS" (Sheet 5 of 5) which plat is recorded among the Land Records of Carroll County in Plat Book L.W.S. No. 39, Page 91; and Parcel Q is shown on a plat entitled "Plat of Golf Course Club House and Maintenance Parcels for RIVER DOWNS" and recorded among the Land Records of Carroll County in Plat Book L.W.S. No. 39, Page 100, and Parcel Q is owned by River Downs Golf Course Limited Partnership by virtue of a Deed dated November 9, 1994 and recorded among the Land Records of Carroll County in Liber L.W.S. No. 1651, Folio 367; and

WHEREAS, as a further condition of the recordation of the aforementioned Subdivision Plat, Carroll County has required the Owner to fix the maintenance obligation of the Lots serviced by the Common Access Area; and

WHEREAS, Patrick J. Bollinger and Patrick L. Burke, Substitute Trustees for the benefit of First Fidelity Bank, N.A. by virtue of Deed of Removal dated August 29, 1995 and recorded among the Land Records of Carroll County in Liber L.W.S. No. 1724, Folio 791, have secured a loan to Owner with property which wholly or in part is set forth on the Subdivision Plat by way of a Deed of Trust dated November 8, 1993 and recorded among the Land Records of Carroll County in Liber L.W.S. No. 1527, Folio 826; and Thomas C. Myers and Frederick G. Botti, Trustees for the benefit of Provident Bank of Maryland, have secured a loan with Parcel Q as part of the collateral thereunder by way of a Deed of Trust dated November 10, 1993 and recorded among the Land Records of Carroll County in Liber L.W.S. No. 1527, Folio 876; and

WHEREAS, Lenders join herein for the purpose of assenting to this Declaration and by such joinder do hereby agree to subject any sales of the aforementioned Lots on foreclosure to the legal operation and effect hereof.

NOW THEREFORE, THIS DECLARATION OF MAINTENANCE OBLIGATIONS, WITNESSETH, that for and in consideration of the premises and of the acceptance of the aforesaid Subdivision Plat by Carroll County, Maryland, the said Owner and River Downs Golf Course Limited Partnership hereby make this Declaration and declare and agree as follows:

1. **LEGAL EFFECT.** All covenants, conditions and agreements contained herein are made for the direct, mutual and reciprocal benefit of each and every of the aforesaid Lots; shall create reciprocal rights and obligations between and/or among the respective Owner of the aforesaid Lots and privity of contract and estate between and/or among all Owners, their respective personal representatives, successors and assigns; and shall as to the Owner of each and every of the aforesaid Lots, their respective personal representatives, successors and assigns, operate as covenants running with the land, for the benefit of each other of the aforesaid Lots.

2. **FORECLOSURE.** The parties hereto agree that should any of the aforesaid Lots be sold under a foreclosure or by deed in lieu of foreclosure or sale by a trustee in bankruptcy or other sales under distress, such sales or conveyances will be subject to this Declaration.

3. **CREATION AND USE OF EASEMENT.** The Owner for itself, its successors and assigns does hereby grant, create, establish and convey an Easement as herein set forth (hereinafter referred to as the "Easement") on, across, above and below the Common Access Area, and for the benefit of the Lots designated herein, subject to the terms and conditions of this Declaration. The Easement shall be used for the purpose of vehicular and pedestrian ingress and egress to the Lots and for the installation and maintenance

of utilities, storm water sewers, surface drains and storm water management devices and shall be maintained as such. The parking or stopping of vehicles and the erection of buildings or any other structures of any kind in, on or over the Easement are specifically prohibited. The Easement specifically includes the right to use the Common Access Area for access to and from Lawndale Road by guests, customers, commercial deliveries, employees, maintenance vehicles, equipment and other authorized persons or vehicles; and to install, maintain and repair entrance signs and landscaping; and to carry on other similar uses relating to Parcel Q and the operation of River Downs Golf Course and all uses accessory or incidental thereto, without limitation. The Easement shall also extend to access for such other residential or non-residential uses which may be lawfully established upon Parcel Q from time to time.

4. **MAINTENANCE OF EASEMENT.**

a. **General Maintenance.** The Easement shall at all times be maintained in a safe, clean and orderly condition and in good repair. Such maintenance shall include, but shall not be limited to, removal of snow and ice, mowing of grass shoulders and the repair and replacement of the surface.

b. **Responsibility for Maintenance.** River Downs Golf Course Limited Partnership, the Owner of Parcel Q, its successors and/or assigns, shall be responsible for all maintenance of the Common Access Area and improvements thereon. All maintenance or improvements shall be determined and carried out by the Owner of Parcel Q. Major physical changes in the appearance of the Common Access Area shall be subject to the consent of a majority of the owners of the Lots benefited by the Easement which consent shall not be unreasonably withheld. The collective owners of each Lot shall be entitled to one collective vote (Parcel Q has one vote).

c. **Payment of Maintenance Costs.** The obligation to pay the costs of maintenance of the Easement shall constitute a binding obligation on the Owner of Parcel Q.

5. **DAMAGE FROM CONSTRUCTION.** Any and all damage to the Easement or any Lot occasioned by or in connection with any construction or other activity by any Lot owner, construction company, or other agent of the lot owner, shall be repaired by the lot owner responsible therefor at its sole cost and expense and without contribution from any other Lot owner and said expense shall constitute a lien upon such Lot.

6. **MINIMUM DRIVEWAY STANDARDS.** The minimum maintenance obligation herein established shall be to maintain the Common Access Area in accordance with the original requirements of Carroll County, Maryland, applicable thereto.

7. **BINDING EFFECT.** Every person and/or entity who now or hereafter owns or acquires any right, title or interest in and/or to any of the aforesaid Lots is and shall be conclusively deemed to have consented and agreed to every condition, standard and covenant contained herein, whether or not any reference to this Declaration is contained in the instrument by which such person and/or entity acquired such interest in the aforesaid Lots.

8. **PARKING/STORAGE PROHIBITED.** As certain portions of the Common Access Area are, or may be, necessary for use by emergency equipment, parking and/or storage of any personal property, particularly vehicles on "driveway pullovers" or "turn around" areas, as shown on Subdivision Plat or actually in existence, is hereby prohibited and the owner of any Lot may enforce, by injunction, this restriction and/or recover damages for a violation of this restriction, including the cost of reasonable attorneys' fees expended in enforcing this restriction.

9. **ENFORCEMENT BY CARROLL COUNTY.** The covenants, conditions and agreements contained herein may be enforced by the County Commissioners of Carroll County, a body corporate and politic of the State of Maryland ("County"), or its successor, as though it were an owner of a Lot for the purpose of providing for emergency service protection. The power of the County to enforce this Declaration shall not be deemed to create County's obligation to act, or any liability for either acting or not acting to enforce this Declaration. Each owner of a Lot, by accepting a deed or other conveyance of Lot, expressly agrees to indemnify and hold harmless County from any and all claims, actions, and demands whatsoever arising from the provisions of this Declaration.

10. **PRIVATE REMEDIES.**

a. **Legal Action.** Each owner of a Lot benefited by the Easement may proceed at law or in equity to prevent the occurrence or continuance of any violation of any provision of this Declaration. All costs and expenses of prosecuting any proceeding at law or in equity brought to enforce the provisions of this Declaration, including reasonable attorneys' fees and expenses, shall be assessed against the owner of the lot against whom a decision is rendered.

b. **Other Remedies.** The legal actions specified herein are not intended to limit any parties' available remedies at law or in equity. Failure of any party to enforce this Declaration or to enforce any available remedy under this Declaration shall not constitute a waiver by that party of any right available to it upon future occurrence or continuance of the same or a different violation.

11. **EFFECTIVE LIEN.** Any lien provided for above shall not be valid as against a bona fide purchaser (or bona fide lienor) of the Lot in question unless a suit to enforce the same shall have been filed in a Court of record in Carroll County prior to the recordation among the Land Records of Carroll County of the Deed (or lien) conveying the Lot in question to such purchaser (or subjecting the same to such lien).


12. **CAPTIONS.** The captions of this Declaration are inserted for convenience only and do not constitute a substantive portion of this Declaration.

13. **NOTICES.** Every notice, approval, consent or other communication authorized or required by this Declaration shall not be effective unless the same shall be in writing and hand delivered or sent postage prepaid by United States Registered or Certified Mail, return receipt requested, directed to the addressee thereof at its address appearing in the Real Estate Tax Assessments Records of Carroll County with respect to the lot owned by such addressee or such other address as any party subject to this Declaration may designate to the sender of any such communication by notice given in accordance with this Section.

AS WITNESS the name of **RIVER DOWNS PARTNERSHIP** by its General Partner, **GAYLORD RIVER DOWNS LIMITED PARTNERSHIP**, by its General Partner, **GAYLORD BROOKS INVESTMENT CO., INC.**, by the signature of **RICHARD A. MOORE**, its President; **RIVER DOWNS GOLF COURSE LIMITED PARTNERSHIP** by its General Partner, **GAYLORD BROOKS INVESTMENT CO., INC.**, by the signature of **RICHARD A. MOORE**, its President, by its General Partner, **GOLFSOUTH CAPITAL, INC.**, by the signature of **N. BARTON TUCK, JR.**, its Chairman; **PATRICK J. BOLLINGER** and **PATRICK L. BURKE**, Substitute Trustees, and **FIRST FIDELITY BANK, N.A.**; and **THOMAS C. MYERS** and **FREDERICK G. BOTTI**, Trustees, and **PROVIDENT BANK OF MARYLAND**, by its duly authorized officers.

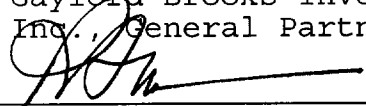
RIVER DOWNS GOLF COURSE LIMITED PARTNERSHIP

BY: GolfSouth Capital, Inc., General Partner

By:  (SEAL)
N. BARTON TUCK, JR., Chairman

RIVER DOWNS GOLF COURSE LIMITED PARTNERSHIP

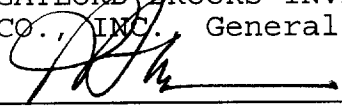
BY: Gaylord Brooks Investment Co., Inc., General Partner

By:  (SEAL)
RICHARD A. MOORE, President

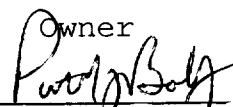
RIVER DOWNS PARTNERSHIP, A Maryland General Partnership

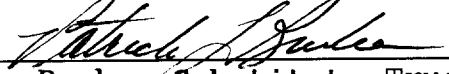
BY: GAYLORD RIVER DOWNS LIMITED PARTNERSHIP, General Partner

BY: GAYLORD BROOKS INVESTMENT CO., INC., General Partner

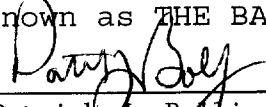
By:  (SEAL)
RICHARD A. MOORE, President

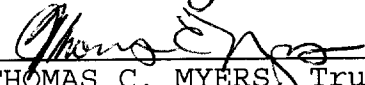
Owner

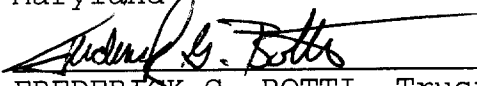
 (SEAL)
Patrick J. Bollinger, Substitute Trustee for the benefit of The Bank of Baltimore now known as First Fidelity Bank, N.A.

 (SEAL)
Patrick L. Burke, Substitute Trustee for the benefit of The Bank of Baltimore now known as First Fidelity Bank, N.A.

FIRST FIDELITY BANK, N.A. formerly known as THE BANK OF BALTIMORE

By:  (SEAL)
Patrick J. Bollinger, Vice President

 (SEAL)
THOMAS C. MYERS, Trustee for the benefit of Provident Bank of Maryland

 (SEAL)
FREDERICK G. BOTTI, Trustee for the benefit of Provident Bank of Maryland

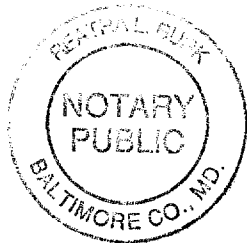
PROVIDENT BANK OF MARYLAND

By: *H. Douglas Scriba, Jr.* (SEAL)
H. Douglas Scriba, Jr.

STATE OF MARYLAND, COUNTY OF *Baltimore*, to wit:

I HEREBY CERTIFY that on this *12TH* day of *September*, 1995, before me, the subscriber, a Notary Public in and for the State and County aforesaid, personally appeared **RICHARD A. MOORE**, President of **GAYLORD BROOKS INVESTMENT CO., INC.**, General Partner of **GAYLORD RIVER DOWNS LIMITED PARTNERSHIP**, General Partner of **RIVER DOWNS PARTNERSHIP**, and General Partner of **RIVER DOWNS GOLF COURSE LIMITED PARTNERSHIP**, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same in the capacity therein stated and for the purposes therein contained.

Witness my hand and Notarial Seal.



Rebecca L. Busk
Notary Public
My Commission expires: *January, 1996*

STATE OF MARYLAND, COUNTY OF *Baltimore*: To Wit:

I HEREBY CERTIFY that on this *1ST* day of *September*, 1995, before me, the subscriber, a Notary Public of the State and County aforesaid, personally appeared **Patrick J. Bollinger, Substitute Trustee** for the benefit of **THE BANK OF BALTIMORE**, now known as **FIRST FIDELITY BANK, N.A.**, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same in the capacity therein stated and for the purposes therein contained.

AS WITNESS, my hand and notarial seal.

Diana A. Bailey
Notary Public
My Commission Expires: *1/3/99*

STATE OF MARYLAND, COUNTY OF Baltimore : To Wit:

I HEREBY CERTIFY that on this 1st day of September, 1995, before me, the subscriber, a Notary Public of the State and County aforesaid, personally appeared Patrick L. Burke, Substitute Trustee for the benefit of THE BANK OF BALTIMORE, now known as FIRST FIDELITY BANK, N.A., known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same in the capacity therein stated and for the purposes therein contained.

AS WITNESS, my hand and notarial seal.

Donna A. Bailey
Notary Public
My Commission Expires: 4/13/99

STATE OF MARYLAND, COUNTY OF Baltimore : To Wit:

I HEREBY CERTIFY that on this 1st day of September, 1995, before me, the subscriber, a Notary Public of the State and County aforesaid, personally appeared Patrick J. Bollinger, Vice President of **FIRST FIDELITY BANK, N.A.**, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same in the capacity therein stated and for the purposes therein contained; and that The Bank of Baltimore is now known as First Fidelity Bank, N.A.

AS WITNESS, my hand and notarial seal.

Donna A. Bailey
Notary Public
My Commission Expires: 4/13/99

STATE OF MARYLAND, COUNTY OF Hartford : To Wit:

I HEREBY CERTIFY that on this 11th day of September, 1995, before me, the subscriber, a Notary Public of the State and County aforesaid, personally appeared **THOMAS C. MYERS**, Trustee for the benefit of PROVIDENT BANK OF MARYLAND, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same in the capacity therein stated and for the purposes therein contained.

AS WITNESS, my hand and notarial seal.

CATHERINE E. VING
NOTARY PUBLIC STATE OF MARYLAND
My Commission Expires December 21, 1997

Catherine E. Ving
Notary Public
My Commission Expires:

STATE OF MARYLAND, COUNTY OF Hartford : To Wit:

I HEREBY CERTIFY that on this 11th day of September, 1995, before me, the subscriber, a Notary Public of the State and County aforesaid, personally appeared **FREDERICK G. BOTTI**, Trustee for the benefit of PROVIDENT BANK OF MARYLAND, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same in the capacity therein stated and for the purposes therein contained.

AS WITNESS, my hand and notarial seal.

CATHERINE E. VING
NOTARY PUBLIC STATE OF MARYLAND
My Commission Expires December 21, 1997

Catherine E. Ving
Notary Public
My Commission Expires:

STATE OF MARYLAND, COUNTY OF Hartford : To Wit:

I HEREBY CERTIFY that on this 11th day of September, 1995, before me, the subscriber, a Notary Public of the State and County aforesaid, personally appeared H. Douglas Scriba Jr., Commercial Banking Officer of **PROVIDENT BANK OF MARYLAND**, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same in the capacity therein stated and for the purposes therein contained.

AS WITNESS, my hand and notarial seal.

CATHERINE E. VING
NOTARY PUBLIC STATE OF MARYLAND
My Commission Expires December 21, 1997

Catherine E. Ving
Notary Public
My Commission Expires:

STATE OF SOUTH CAROLINA, COUNTY OF GREENVILLE, to wit:

I HEREBY CERTIFY that on this 28th day of August, 1995, before me, the subscriber, a Notary Public of the State and County aforesaid, personally appeared N. BARTON TUCK, JR., Chairman of GOLFSOUTH CAPITAL, INC., General Partner of RIVER DOWNS GOLF COURSE LIMITED PARTNERSHIP, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same in the capacity therein stated and for the purposes therein contained.

AS WITNESS my hand and Notarial Seal.

Billie B. Howard
Notary Public
My Commission Expires:

MY COMMISSION EXPIRES 02-04-2003

RECEIVED IN
CIRCUIT COURT
CARROLL CO., MD
Dec 12 8 53 AM '95
LARRY W. SHIPLEY
CLERK

County Attorney

JAN 05 1996

TOP FD 3162
RECORDING FEE
TOTAL
Rec'd 0802
LWS 010
Dec 12, 1995
Rec'd 1 3000
MVA 1 356
09:02