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MEMORANDUM

VIA E-MAIL AND U.S.P.S.

To: Overlook at Greenbrier Property Owners' Assoc., Inc.
Scott R. Lutz, Treasurer
16604 Ferrier Court
Leesburg, VA 20176

Date: October 15, 2013

This memorandum is intended to address the interplay between right-of-ways and easements for roads which are owned by the Property Owners' Association, and the utility easements reserved on all lots together with the potential effect of both on the properties within Overlook at Greenbrier.

Article IV of the Declaration of Reservations and Restrictive Covenants for Overlook at Greenbrier provides that the owner of every lot shall have a right to use the "Roads and Other Common Facilities".

Article I, paragraph (c) provides: "Roads and Other Common Facilities" shall mean the areas of land shown on any recorded subdivision plat(s) of the properties which are intended to be devoted to the common use of the owners of the properties and include any "common area(s) as labeled on said plat(s)".

The effect of these two provisions is that the roads and other common facilities are identified by maps or plats of record in the Office of the Clerk of the County Commission of Greenbrier County, West Virginia. The recorded maps of the roadways and common facilities contain coordinates and survey information that each lot owner should use to identify his or her property lines.

Article VII of the Declaration of Reservations and Restrictive Covenants for Overlook at Greenbrier places the additional burden of a utility easement on the perimeter of every lot in the development. The utility easement extends into each lot a distance of twenty feet (20') from the front, side and rear property lines of each lot, except that the utility easement is forty feet (40') wide from the rear boundary of all lots on the perimeter of the development. Language in Article VII also provides that each road right-of-way is sixty feet (60') in width, being thirty feet (30') on either side

of the center line, and that street lines are measured from the edge of the right-of-way. It is important to note that the actual traveled roadway is probably no more than ten (10) to twelve feet (12') wide, which would only involve approximately twenty percent (20%) of the actual road easement. The plain language of Article VII indicates that the street lines are measured from the edge of the right-of-way, which is thirty feet (30') on either side of the center line. Because the actual traveled roadway is only a fraction of the actual road right-of-way and the utility easement adds an additional twenty feet (20') from all street lines, lot owners should not attempt to measure appropriate setbacks from the existing roadway, rather they should use the coordinates shown on their lot surveys.

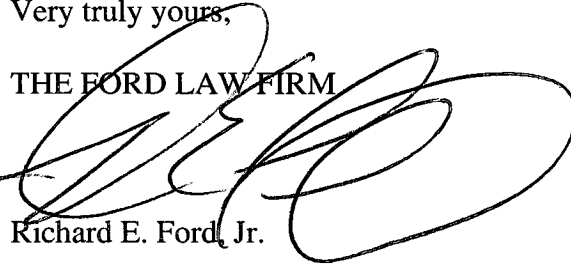
Article VII, relating to utility easements, also provides that any owner who places structures, plantings, improvements or other materials within the aforesaid easements does so at his or her own risk, and is deemed to waive any claim for damages to improvements within the easement area. The Association might want to consider a policy that would prohibit permanent structures being placed within the utility easement area. Losing some shrubbery or having to move an outbuilding from a utility easement would be a minor inconvenience for any property owner, but having to remove any kind of permanent structure could be an issue.

Because the width of traveled roadway is only ten (10) or twelve feet (12'), if a property owner were simply to measure from the edge of the traveled roadway, and then add the twenty foot (20') utility easement, it is quite possible that the property owner could believe that they were outside of the utility easement when, in fact, they were still within the sixty foot (60') roadway easement. It is for this reason that it is recommended that all lot owners be advised to use the coordinates for their individual lots, rather than trying to measure from the center of the traveled roadway to determine the correct locations of their property lines. Once the front property line is established, the utility easement extends twenty feet (20') further into the lot from the front lot line. If the center line of the actual traveled roadway is, in fact, the center line of the road right-of-way, there is a distance of fifty feet (50') from the center line to the inside of the utility easement, but, because the center line of the actual traveled roadway may not be the center line of the road right-of-way, lot owners should not use the edge of the traveled roadway for the purpose of determining where their front property lines are, or how deep into their lot the utility easements extend.

All lots in the development have been mapped and coordinates are available for all lot lines and corners. These coordinates should be used by the property owners for the purpose of determining where the home site should be and where permanent structures or improvements may be located. Any homeowner who attempts to use the center line of the existing traveled roadway for measurement purposes runs a substantial risk of getting inaccurate results which could result in substantial costs in the event that permanent structures were erected within the twenty foot (20') utility easement reserved on each lot.

Overlook at Greenbrier Property Owners' Assoc., Inc.
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Page 3
October 15, 2013

I hope this information will be of assistance to the Property Owners' Association in dealing with the road and utility easement issue. Please feel free to contact me if you have questions or need additional information.

Very truly yours,
THE FORD LAW FIRM

Richard E. Ford, Jr.

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