

DAVID I. LEVINE AND GALE M. LEVINE, GRANTORS  
TO (COVENANTS AND CONDITIONS)

CITY OF VIRGINIA BEACH,  
A municipal corporation of  
the Commonwealth of Virginia, GRANTEE

THIS AGREEMENT, made this 15th day of June, 1987,  
between DAVID I. LEVINE and GALE M. LEVINE, "GRANTORS", of the  
one part, and the CITY OF VIRGINIA BEACH, a municipal corporation  
of the Commonwealth of Virginia, "GRANTEE", of the other part:

WITNESSETH THAT:

WHEREAS, the Grantor has initiated amendments to the Zoning  
Map of the City of Virginia Beach, Virginia, by petition of the  
Grantor addressed to the Grantee, so as to change the  
classifications of the Grantor's property from A-1 to B-2; from  
B-2 to A-4; from A-1 to A-4; and from R-6 to B-2 on certain  
properties containing a total of 59 acres, more or less, in the  
Lynnhaven Borough of the City of Virginia Beach, Virginia,  
located on the North by a bike path and drainage easement  
approximately 400 feet South of Shore Drive; on the East by the  
Cape Story by the Sea subdivision and by City owned property  
designated as a spoil site; on the South by Long Creek and on the  
West by a City owned drainage ditch 150 feet, more or less East  
of existing Great Neck Road, said properties being generally  
described as Parcel "1" (4.221 acres); Part of Parcel "1-C"

(4.693 acres) which is the Southern portion of Parcel "1-C" (12.339 acres overall of which the 4.693 acres are the acreage on which B-2 are requested.). Part of Parcel "1-B", 2.598 acres which is the North and Northeastern portion of Parcel "1-B" (4.246 acres overall of which the 2.598 acres are the acreage on which B-2 Zoning is requested;) all of Parcel "1-D", the Northeast quadrant of the properties consisting of 16.330 acres on which A-4 Zoning is requested; Parcel "1-A" which consists of 24 1/2 acres, more or less, of which 14.001 acres are the acreage on which A-4 Zoning is requested and the balance of 12 acres, more or less, is planned for a marina oriented facility which requires 1.976 acres zoned from A-1 to B-2 and 1.228 acres zoned from R-6 to B-2. Said properties are generally described on the Composite Map of Property of David I. and Gale M. Levine, dated 10-2-86 and updated and drawn by Baldwin & Gregg, Engineers, Surveyors and Planners, and filed with the Planning Department of the City of Virginia Beach, Virginia.

WHEREAS, the Grantee's policy is to provide only for the orderly development of land, for various purposes, including business and residential purposes, through zoning and other land development legislation; and

WHEREAS, the Grantor acknowledges that the competing and sometimes incompatible uses conflict and that in order to permit differing uses on and in the area of the subject property and at the same time to recognize the effects of change, and the need for various types of uses, including business and multifamily

residential, certain reasonable conditions governing the use of the property for the protection of the community that are not generally applicable to land similarly zoned A-4 and B-2 are needed to cope with the situation which the Grantor's rezoning application gives rise to; and

WHEREAS, the Grantor has voluntarily proffered in writing, in advance of and prior to the public hearing before the Grantee, as a part of the proposed amendment to the Zoning Map, in addition to the regulations provided for the A-4 and B-2 zoning district or zone by the existing overall Zoning Ordinance, the following reasonable conditions related to the physical development and operation of the property to be adopted as a part of said amendment to the new Zoning Map relative to the property described above, which have a reasonable relation to the rezoning and the need for which is generated by the rezoning; and

WHEREAS, said conditions having been proffered by the Grantor and allowed and accepted by the Grantee as part of the amendment to the Zoning Ordinance, such conditions shall continue in full force and effect until a subsequent amendment changes the zoning on the property covered by such conditions; provided, however, that such conditions shall continue despite a subsequent amendment if the subsequent amendment is part of a comprehensive implementation of a new or substantially revised zoning ordinance, unless, notwithstanding the foregoing, these conditions are amended or varied by written instrument recorded in the Clerk's Office of the Circuit Court of the City of

Virginia Beach, Virginia, and executed by the record owner of the subject property at the time of recordation of such instrument; provided, further, that said instrument is consented by the Grantee in writing as evidenced by a certified copy of an ordinance or a resolution adopted by the governing body of the Grantee, after a public hearing before the Grantee advertised pursuant to the provisions of the Code of Virginia, Section 15.1-431, which said ordinance or resolution shall be recorded along with said instrument as conclusive evidence of such consent;

NOW, THEREFORE, the Grantors, for themselves, their successors, assigns, grantees, and other successors in title or interest, voluntarily and without any requirement by or exaction from the Grantee or its governing body and without any element of compulsion or quid pro quo for zoning, rezoning, site plan, building permit, or subdivision approval, hereby make the following declaration of conditions and restrictions as to the physical development and operation of the subject property and governing the use thereof and hereby covenant and agree that this declaration shall constitute covenants running with the said property, which shall be binding upon the property and upon all parties and persons claiming under or through the Grantors, their heirs, personal representatives, assigns, grantees and other successors in interest or title, namely:

1. The entire property shall be developed in compliance with sections A, B, C, E, and H of the City of Virginia Beach's "Urban Best Management Practices Handbook".
2. On the Northwest Parcel 1-C (12.339 acres) there shall be no more than two (2) curb cuts on Great Neck Road relocated.
3. On the Southwest Parcel 1-B (4.246 acres) there shall be no curb cuts on Great Neck Road relocated.
4. On the Northeast Parcel 1-D (16.330 acres) there shall be no more than two (2) curb cuts on Great Neck Road relocated. A 75' wide strip of land, running the entire eleven hundred feet (plus or minus) from north to south on the Eastern boundary of Parcel 1-D shall be provided and maintained as a buffer zone. This two acre, more or less, buffer strip is to be used for calculation of density and recreational purposes only, confined to jogging, fountains, beaches, bird baths, bird houses, individual fitness stations not to exceed three (3) exercises per station, walkways, children's fitness outdoor equipment, and low level lighting. Existing trees and vegetation in the buffer zone are to be preserved and maintained to the maximum possible degree. All structures constructed on Parcel 1-D shall be subject to a maximum height limit of sixty-five (65) feet, and the density shall not exceed three hundred ninety-two (392)

units (twenty-four (24) units per gross acre).

5. Southeast Parcel 1-A (14.001 acres) shall have no curb cuts on Great Neck Road relocated. All structures constructed on Parcel 1-A shall be subject to a maximum height limit of sixty-five (65) feet, and the density on the parcel shall not exceed three hundred thirty-six (336) units (twenty-four (24) units per gross acre). Within the limits permitted by law, structures constructed on Parcel 1-A shall be occupied by adults (21 years or older) only. This restriction as to adults only shall be enforced by deed restriction, and/or homeowners association and/or owners of the apartments if rented.

6. Parcel 1 (4.221 acres) shall not be developed in any manner other than for walkways, bird nests and bird feeders, and shall be preserved as a nature conservancy. The grantors hereby concur and give their consent to any motion which may be made by the City of Virginia Beach to rezone Parcel 1 to P-1, Preservation District. By this restriction it is the grantors' intent that the marshlands on Parcel 1 shall be protected and that the entire parcel shall remain in its natural state, free from development other than as stated herein. The Grantors reserve the right to return the high land (located at the south end of Wake Forest St.) to marsh by removal of fill.

7. In the event that a marina is constructed on the property, there shall be no ingress or egress to or from the marina by way of the City's haul road.

All references hereinabove to the A-4 and B-2 Zoning districts and to the requirements and regulations applicable thereto refer to the Comprehensive Zoning Ordinance of the City of Virginia Beach, Virginia, in force as of the date of Planning Commission hearing on April 14, 1987, which is by this reference incorporated herein.

The Grantors covenant and agree that (1) the Zoning Administrator of the City of Virginia Beach, Virginia, shall be vested with all necessary authority on behalf of the governing body of the City of Virginia Beach, Virginia, to administer and enforce the foregoing conditions, including (i) the ordering in writing of the remedying of any noncompliance with such conditions, and (ii) the bringing of legal action or suit to ensure compliance with such conditions, including mandatory or prohibitory injunction, abatement, damages, or other appropriate action, suit or proceedings; (2) the failure to meet all conditions shall constitute cause to deny the issuance of any of the required building or occupancy permits as may be appropriate; (3) if aggrieved by the decision of the Zoning Administrator made pursuant to the provisions, the Grantors shall petition to the governing body for the review thereof prior to instituting

proceedings in court; and (4) the Zoning Map may show by an appropriate symbol on the map the existence of conditions attaching to the zoning of the subject property and that the ordinance and the conditions may be readily available and accessible for public inspection in the office of the Zoning Administrator and in the Planning Department and that they shall be recorded in the Clerk's Office of the Circuit Court of the City of Virginia Beach, Virginia, and indexed in the name of the Grantors and Grantee.

WITNESS the following signature and seals.

*[Signature]*  
PLANNING 7-7-87  
RECEIVED AS TO RECORD  
JAY L. TURTUP  
7-7-87  
CITY CLERK

*[Signature]* (SEAL)  
*[Signature]* (SEAL)

STATE OF VIRGINIA,  
CITY OF VIRGINIA BEACH, to-wit:

I, GARY R. MOUTON, a Notary Public in and for the State of Virginia at Large, do hereby certify that David I. Levine and Gale M. Levine, whose names are signed as Grantors to the foregoing instrument bearing date on the 15 day of JUNE 1987, has acknowledged the same before me in the city and state aforesaid.

Given under my hand this 15<sup>th</sup> day of JUNE, 1987.

*[Signature: Gary R. Mouton]*  
Notary Public

My Commission expires: 1-30-1991

VIRGINIA: In the Clerk's Office of the Circuit Court of Virginia Beach, day of July, 1987 at 3:30, this instrument was received and upon the certificate of acknowledgment thereto annexed, admitted to record. The tax imposed by §58.1-802 of the Code, has been paid, in the amount of \$.....

TESTE: J. CURTIS FRUIT, Clerk  
By: *[Signature]* D. C.

C.C. 21 REV. 3/85