

## ENTRY AND SHARED USE AGREEMENT FOR TOT LOT

THIS ENTRY AND SHARED USE AGREEMENT ("Agreement") is made and entered into this 25 day of July, 2001, by and between Derwood Station Homeowners Association No. 2, Inc. ("Grantor") and Hollybrooke Homeowners Association, a/k/a The Derwood Station South Homeowners Association, Inc. ("Grantee").

WHEREAS, Grantor is a Maryland corporation (ID# D01384957), homeowners association, and the owner of certain real property in Derwood, Montgomery County, Maryland, (the "Property") consisting of that portion of the common area of Grantor identified as "New Tot Lot" on Exhibit A;

WHEREAS, Grantee is a Maryland corporation (ID# D01807320) and homeowners association located adjacent to Grantor;

WHEREAS, Grantor and Grantee want to share in the improvement of and to enhance their use of the Property;

WHEREAS, the parties recognize that the Property is owned by Grantor;

WHEREAS, it is the parties' desire to work and communicate in a neighborly fashion and for the Boards of Directors (both present and future) of both Grantor and Grantee to work together in making this community relationship work and succeed; and

WHEREAS, Grantor is willing to grant the entry and use as herein stated on the terms and conditions provided in this Agreement, and the parties have agreed to enter into this Agreement to memorialize and finalize their understanding:

1. Grantee will reimburse Grantor for 50% (one half) of the costs of the new Tot Lot, the location of which is as marked on Exhibit A. The Tot Lot components and

equipment shall be owned by Grantor. Grantor shall provide to Grantee a copy of the invoice(s) for the costs of the new Tot Lot, including but not limited to the following items: the installation, the site preparation, and the components and equipment. Grantee shall pay the amount(s) due within thirty (30) days of whichever occurs later, receipt of the invoice(s) or the effective date of this Agreement. Failure to pay by the due date shall activate the procedure identified in paragraph 16.

2. All Tot Lot components and equipment shall be properly installed and be properly maintained at all times by Grantor's agents or contractors. Grantee shall have the absolute right and obligation to enter the Property at any time inspect the Tot Lot. Grantee shall report promptly any inspection results to Grantor, especially with regard to safety items or condition of equipment.

3. The yearly maintenance, upkeep, and minor replacement costs (which include usual and customary yearly cleanups and inspections) shall be shared equally between the parties up to \$1,400 per year. Grantee agrees to pay one half (50%) of additional monies above the \$1,400 for any unusual or extraordinary cost associated with maintenance, upkeep, or minor replacement of the Tot Lot components or equipment. Grantor shall provide a copy of each invoice promptly to Grantee. Grantee shall pay the amount(s) due within thirty (30) days of receipt of the invoice(s). Failure to pay by the due date shall activate the procedure identified in paragraph 16. Any dispute as to whether an item is unusual or extraordinary shall be resolved by the procedures identified in paragraph 13.

4. Grantee and Grantor each agree to create its own capital reserve item for one half (50%) of the replacement cost of the Tot Lot and to amortize its share of the cost

over the ten-year life of this Agreement. The parties shall inform each other of the status of these capital reserve items at least yearly and more often upon reasonable written request. Each capital reserve account shall be separately maintained and controlled by the corresponding Party.

5. Grantee, its members, and its guests shall have access to and use of the new Tot Lot and other recreational equipment owned by Grantor.

6. Grantor shall be liable for any and all injuries, property damage, or death associated with use or misuse of the Tot Lot or other recreational equipment covered by this Agreement. Grantor agrees to maintain adequate property and casualty insurance. Grantee shall be provided a copy of the insurance policy and be a named insured under the policy. A copy of the policy shall be provided to Grantee. Grantee shall attempt to and, if it is reasonably available, obtain additional coverage for any Grantee member or their guests. Grantor shall hold harmless and indemnify Grantee for any and all claims, absent specific proof of negligence on the part of Grantee. Grantor's policy shall be the primary coverage.

7. Grantor and Grantee shall report to each other promptly any reported injuries or property damage for anyone using the Tot Lot or the other recreational equipment. Grantor and Grantee shall advise each other promptly of any complaints about the Tot Lot or the other recreational equipment.

8. Any additional recreational equipment on the Property shall be added at the sole discretion and cost of Grantor, provided that Grantor agrees to provide prior notice to Grantee. Grantor shall provide prior notice to Grantee if Grantor considers adding recreational equipment or play areas, including but not limited to soccer goals, basketball

courts, or volleyball courts, adjacent to property owned by Grantee or one or more Grantee members. Grantor shall consider Grantee's comments in making its decision about the addition. Any dispute as to any such additions shall be resolved by the procedure identified in paragraph 13.

9. This Entry and Shared Use Agreement is the entire agreement between the parties. There are no other oral or written representations as to this Agreement. This Agreement may be amended only by consensual approval of the Boards of Directors of Grantor and Grantee.

10. Grantor and Grantee shall consult regularly on the condition of the Tot Lot. If in the judgement of both of their Boards of Directors the Tot Lot needs complete replacement, then a plan for replacement shall be considered. Each party agrees to bring the issue of using the capital reserves referenced in paragraph 4 to its respective members for a ballot vote, if necessary. If both Grantor and Grantee agree on the nature and expense of the replacement plan, their Boards of Directors shall agree to continue funding the replacement Tot Lot on an equal basis and shall enter into a new agreement incorporating the present contractual rights and obligations as described herein.

11. In the event that one party adjudges the Tot Lot to require complete replacement and the other party disagrees, the entire Boards of both Grantor and Grantee shall be convened to vote. In such event, the number of voters shall be the same from each Board. A majority vote shall be determinative. In the event of a tie, the Tot Lot shall be adjudged to not require replacement. In the event of a tie, Grantor may elect to proceed with the replacement without contribution from Grantee, and, if at least ten (10) years have passed since the date of this contract, Grantee agrees to notify its members

that the Tot Lot henceforth shall be exclusively off-limits to Grantee members and their guests. Grantee members shall retain full rights to use the Tot Lot, including any new equipment purchased exclusively by Grantor, until the end of the tenth (10<sup>th</sup>) year from the date of this contract, unless Grantor elects to terminate the agreement immediately and provide Grantee with a pro-rata refund of Grantee's original payment under paragraph 1. This shall be based upon a ten (10) year life expectancy of the equipment.

12. Grantor shall erect signs at the Tot Lot, facing Indianola Drive and Oskaloosa Drive (see attached Exhibit A), notifying the public that the property is private and may be used only by members of Grantor, Grantee, and their guests. The signs shall also provide that trespassing is not permitted and that trespassers are subject to criminal action. The parties agree to share equally the costs of such signs. Grantor shall provide Grantee with a copy of the invoice(s). Grantee shall pay the amount(s) due within thirty (30) days of receipt of the invoice(s). Failure to pay by the due date shall activate the procedure identified in paragraph 16.

13. The parties acknowledge that they are neighborly associations and believe in the importance of good relations and civility of community. The parties agree to try to resolve any disputes between themselves through mediation or arbitration and to utilize the services of the Montgomery County Commission of Common Ownership Communities in this effort.

14. The parties agree to share the costs of reasonable attorneys' fees and related expenses in the preparation on this Agreement.

15. At the end of the ten-year period, each party shall have the right to terminate this agreement. Failure by either party to provide written notice of termination prior to the

tenth year of this Agreement shall result in the agreement having another ten (10) year term consistent with the provisions of this Agreement.

16. If Grantee fails to make any payment within the time period required, Grantor shall send to Grantee a Notice of Termination. Grantee shall respond within fifteen (15) days and request that any disagreement as to payment shall be resolved by the procedure identified in Paragraph 13. Grantee may be held liable for any cost of collection if payment is not made promptly.

17. Parties seeking to enforce any provisions of this contract in a court of law or through other means shall bear their own court costs and attorneys fees.

18. This contract is governed by the laws, regulations, and codes of the State of Maryland, Montgomery County.

19. Any and all modifications of this Agreement shall be in writing and executed by the parties hereto, or by their respective authorized successors and assigns.

IN WITNESS WHEREOF, the parties hereto set their hands and seals  
this 25<sup>th</sup> day of July 2001.

DERWOOD STATION HOMEOWNERS  
ASSOCIATION NO. 2, INC.

By: Bred Botwin (SEAL)  
[Signature], President  
Grantor

ATTEST:

\_\_\_\_\_  
Secretary

THE DERWOOD STATION SOUTH  
HOMEOWNERS ASSOCIATION, INC.

By: Richard Fein (SEAL)  
*Richard Fein*, President  
Grantee

ATTEST:

\_\_\_\_\_  
Secretary

STATE OF ~~MARYLAND~~ DISTRICT OF COLUMBIA

TO WIT:

COUNTY OF WASHINGTON

I HEREBY CERTIFY that on this 25<sup>th</sup> day of July, 2001, before me the  
subscriber, a Notary Public of the State and County aforesaid, personally appeared  
Bred Betton, President of Derwood Station HOA 2, and  
acknowledged that he/she executed the foregoing instrument for the purposes therein  
contained on behalf of h/s, in his/her capacity to do so

WITNESS my hand and official Notarial Seal.

*Frank J. Dwyer*

Notary Public

My Commission Expires:

Notary Public, District of Columbia

Commission Expires 03/14/06

~~STATE OF MARYLAND~~

District of Columbia TO WIT:  
~~COUNTY OF~~

I HEREBY CERTIFY that on this 2nd day of Aug, 2001, before me the subscriber, a Notary Public of the State and County aforesaid, personally appeared Richard Fein, President of Derwood Station South, H.O.A. and acknowledged that he/she executed the foregoing instrument for the purposes therein contained on behalf of Derwood Station South H.O.A., in his/her capacity to do so

WITNESS my hand and official Notarial Seal.

*Elina A. Quinn*

Notary Public

My Commission Expires: Mar 14, 2005

First Union Bank  
Connecticut + L St, N.W  
Washington, DC



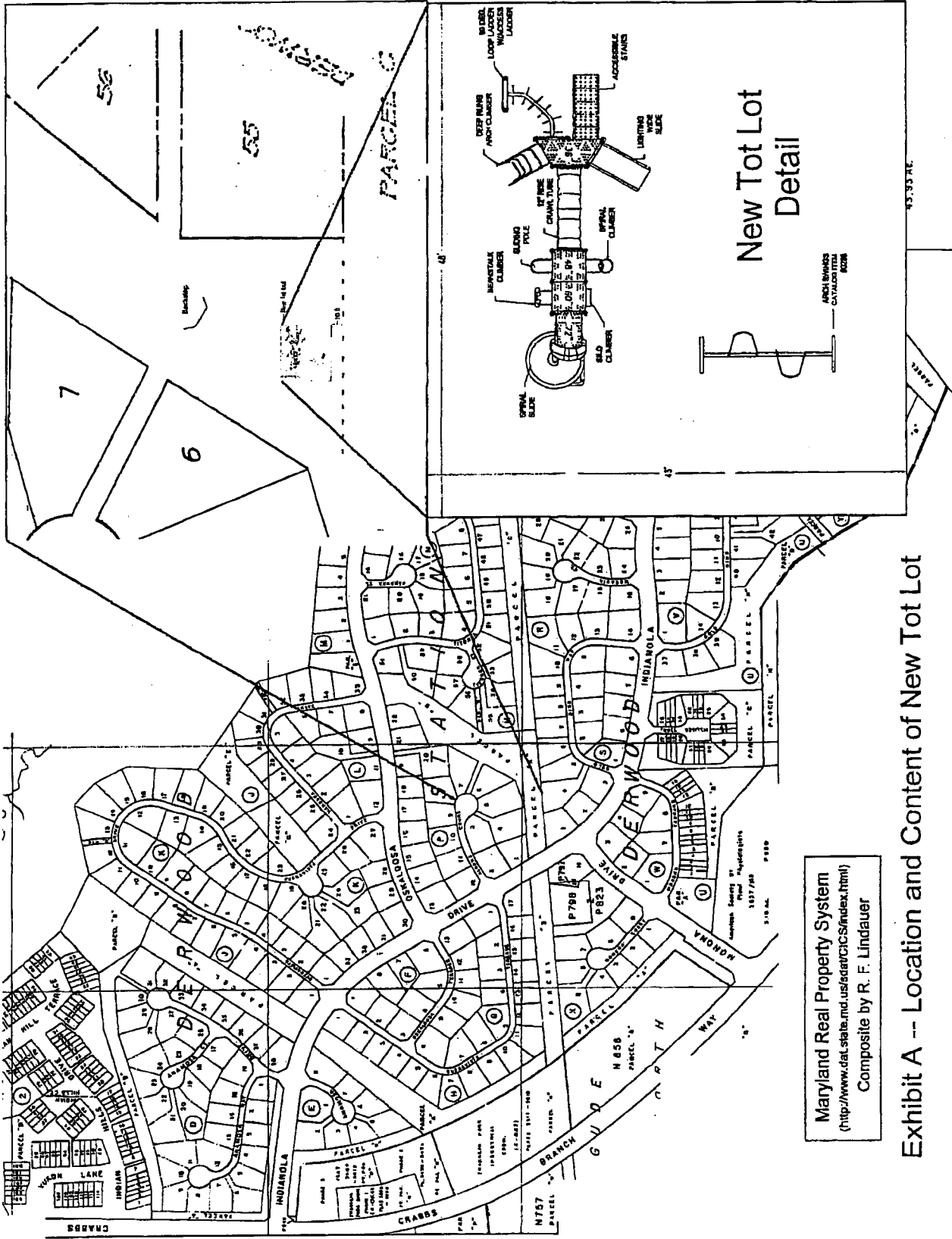


Exhibit A -- Location and Content of New Tot Lot

Maryland Real Property System  
 (<http://www.dat.state.md.us/soar/cics/index.html>)  
 Composite by R. F. Lindauer

ALL RECREATION OF MARYLAND, INC.  
 340 EAST 5TH STREET  
 FREDERICK, MD 21701



**Invoice**  
 Invoice Number: 516

Invoice Date:  
 Apr 9, 2001

Voice: 301-695-0886  
 Fax: 301-695-4027

RECEIVED APR 9 - 2001

Page:  
 1

Sold To:  
 THE MANAGEMENT GROUP  
 ONE BANK ST., #301  
 GAITHERSBURG, MD 20878-1504

Ship to:  
 DERWOOD STATION HOA

Customer ID		Customer PO		Payment Terms	
M12000				Net 10 Days	
Sales Rep ID		Shipping Method		Ship Date	Due Date
JE		Best Way			4/19/01
Quantity	Item	Description	Unit Price	Extension	
1.00	#001523	CHALLENGER	10,670.00	10,670.00	
1.00	#0288	ARCH SWING	975.00	975.00	
2.00	#1410	6' BENCH, PVC	230.00	460.00	
1.00	S-1	GRADE ARE FOR POSITVE DRAINAGE	450.00	450.00	
280.00	B-1	TIMBER BORDERS	4.55	1,274.00	
1.00	WC	WOODCARPET	1,870.00	1,870.00	
1.00	R-1	REMOVE EXISTING EQUIPMENT	2,730.00	2,730.00	
1.00	I-1	INSTALLATION	5,287.00	5,287.00	

CLIENT	<u>PS2</u>
ACCT	<u>9921</u>
AMT	<u>AMT 12,378.12</u>
AMT	<u>AMT</u>
APPR	<u>DATE 4/10/01</u>
DESCRIP	<u>DATE</u>
PAID	<u>DATE</u>

WE ACCEPT VISA AND MASTERCARD  
 A FINANCE CHARGE WILL BE APPLIED AT AN ANNUAL RATE OF 18% EQUAL TO 1 1/2% PER MONTH ON ALL ACCOUNTS OVER 30 DAYS.

Check No: 267

Subtotal	23,716.00
Sales Tax	605.25
Freight	435.00
Total Invoice Amount	24,756.25
Payment Received	<u>12,378.13</u>
TOTAL	12,378.12

ALL RECREATION OF MARYLAND, INC.  
 340 EAST 5TH STREET  
 FREDERICK, MD 21701



Statement

Statement Date:  
 May 29, 2001

Voice: 301-695-0886  
 Fax: 301-695-4027

Customer Account ID:

Wolff - 301 963-3856 M12000

Account Of: THE MANAGEMENT GROUP  
 ONE BANK ST., #301  
 GAITHERSBURG, MD 20878-1504

Amount Enclosed  
 \$ \_\_\_\_\_

Date	Date Due	Reference	Paid	Description	Amount	Balance
10/10/00				Balance Fwd		1,798.68
11/1/00		1002		Payment	-1,798.68	0.00
11/9/00	11/19/00	419	Full		1,547.15	1,547.15
11/13/00	11/23/00	420	Full		57,998.00	59,545.15
11/13/00		1421		Payment	-30,000.00	29,545.15
12/7/00		1601		Payment	-1,547.15	27,998.00
12/21/00		267		Cash Sale		27,998.00
12/29/00		001485		Payment	-27,998.00	0.00
1/9/01	1/19/01	462	Full		1,854.00	1,854.00
1/29/01		1394		Payment	-1,854.00	0.00
4/9/01	4/19/01	516	Part		24,756.25	24,756.25
4/9/01		267		Payment	-12,378.12	12,378.12
5/29/01		312		Payment	-10,000.00	2,378.12
					<b>Total</b>	<b>2,378.12</b>

CLIENT DS2  
 ACCT 9071 AMT 2378.12  
 APPR S DATE 6/7/01  
 DESCRIP \_\_\_\_\_  
 PAID \_\_\_\_\_ DATE \_\_\_\_\_

*(Signature)* 21 Jun 01

0 - 30	31 - 60	61 - 90	Over 90 days
0.00	2,378.12	0.00	0.00

Please attend to this payment as soon as possible.

CHECK NO.  
000312

05/16/01

VENDOR: ALL R ALL RECREATION OF MD, INC

OUR REF. NO. YOUR INV. NO.

INVOICE AMOUNT

AMOUNT PAID

DISCOUNT TAKEN

10,000.00

10,000.00

.00

INVOICE DATE 04/09/01

Ref: 4/01

696 516

Check total 10,000.00

DERWOOD STATION HOA NO. 2

CHECK NO.  
000318

06/07/01

ALL R ALL RECREATION OF MD, INC

VENDOR:

OUR REF. NO.	YOUR INV. NO.	INVOICE DATE	INVOICE AMOUNT	AMOUNT PAID	DISCOUNT TAKEN
702 516		04/09/01	2,378.12	2,378.12	.00

Ref: BALANCE OWED

DERWOOD STATION HOA NO. 2

Check total 2,378.12