ATTACHMENT 4

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By Facsimile (540) 687-4056

Barbara Elgin
2737 Landmark School Road
The Plains, Virginia 20118

Dear Barbara:

You have asked me to provide you some basic information concerning the potential liability of neighboring land owners for injuries that might be suffered by minor children who wandered onto the property of those neighbors while attending a camp you intend to operate from the property located at Landmark School Road. As we have discussed, I am a lawyer who is licensed to practice law in Virginia; and you have asked me to describe the basic principles of Virginia law that might apply in determining whether or not neighboring land owners could be liable in the event minor children suffered injuries on their property.

I will assume, for these purposes, that you are properly licensed to operate a camp, that minor children who attend your camp do so with the permission of their parents or guardians; that there will be physical boundaries in plain sight identifying the boundaries between the property on which the camp is operated and the property of neighboring land owners, that the children will be instructed not to cross over those boundaries, and that the children will be of sufficient age, intelligence and experience to understand those instructions. Because I have been asked to provide only a brief description of the legal principles involved, I will not here discuss any other facts or concerns that you, or the parents of children enrolled in your camp, might have about safety or responsibility.

Generally speaking, if a minor child crossed the boundary onto neighboring properties without permission of the property owners they would be trespassers. Under Virginia law, a property owner owes a trespasser only the duty to do such trespasser no intentional or willful injury. This legal principle has long been recognized in Virginia. It applies to define the standard of care of property owners to trespassers, whether the trespassers be adults or children. See, e.g., Virginia Electric & Power Company v. Dungee, 520 S.E. 2d 164 (Va. 1999). Accordingly, a minor child who left camp property and entered the property of neighboring land

owners would not be able to hold those neighboring land owners responsible for injuries suffered by the children as a result of accident or otherwise, unless the property owner had committed some act with the intention to cause injury.

There are some circumstances in which what is known as the "trespass rule" described above would not necessarily apply to insulate a neighboring land owner from liability. Under what is known as the "dangerous instrumentality rule," a land owner over whose land a minor child trespasses could nonetheless be liable if the land owner maintained a "dangerous instrumentality" on property on which the land owner knew or should have known children would likely be playing. Virginia courts have suggested that a land owner might be liable to trespassing children who found, and were injured by, explosives maintained by the land owner at a location when it was known children would likely be playing in the immediate area. See, e.g., Daugherty v. Hippchen, 7 S.E. 2d 119 (Va. 1940).

These principles suggest several things you and your immediate neighbors should do to avoid the possibility of a liability for accidents that could happen to minor children. First, the boundaries between the property on which the camp is located and those of neighboring property owners should be clearly identified and children should be carefully instructed about not crossing the boundaries. Neighbors should be clearly advised not to maintain their property in a way that would be knowingly dangerous to children who might wander across property lines. Certainly no inherently dangerous items, such as fire arms or the like, should be stored near the property lines. And as a separate but related matter, property owners should not knowingly allow conditions that might be considered "attractive nuisances" to be near the property lines, which could both attract children and be inherently dangerous to them, such as visible wells, or the like.

Assuming that none of your neighbors would do any intentional acts to cause injury to children attending your camp, and that reasonable precautions were taken by you to identify boundaries and instruct the campers, the risk of the liability on the part of neighboring land owners seems slight. The risk is further limited by the fact that if such minor children were contributorily negligent, they would be responsible for any injury they suffered, and could not hold neighboring land owners responsible for anything short of acts actually intended to cause injury. Contributory negligence on the part of one claiming injury in Virginia is a complete bar to holding even a negligent party liable for injuries suffered by another as a result of that negligence, and this applies to children as well as adults. While the law in Virginia presumes that a minor between the age of seven and fourteen is not capable of engaging in negligent conduct that would either injure others, or constitute contributory negligence on that minor's part, if it is shown that the minor child had sufficient age and understanding to understand warnings about avoiding dangerous situations (which would likely include warnings that had been given about staying off unauthorized property), the minor child would be barred from holding a land owner liable for injuries suffered by the minor child. See, e.g., Norfolk and Portsmouth Belt Line Railroad Company v. Barker, 275 S.E. 2d 613 (Va. 1981).

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Of course there are many other considerations applying to your responsibility for the safety of children attending camp under your care, but they do not apply to the issue here addressed, concerning the potential liability of neighboring property owners.

Sincerely,

Jeffrey L. Squires

JLS:llc