

BY-LAWS

OF

POTOMLA COMMUNITY ASSOCIATION, INC.

ARTICLE 1 Name and Location

The name of the Association is **POTOMIA COMMUNITY ASSOCIATION, INC.**, hereinafter referred to as the "**Association**". The principal office of the Association shall be located at 11800 Sunrise Valley Drive, Suite 424, Reston, Virginia 20191, but meetings of Members and Directors may be held at such places within or outside the Commonwealth of Virginia as may be designated by the Board of Directors.

ARTICLE 2 Definitions

Capitalized terms used in these By-Laws shall have the meaning set forth and defined below:

"Administrative Resolutions" means the procedures, adopted by the Board of Directors, for implementing provisions of the Governing Documents as more fully herein described, as amended from time to time.

"Annual Assessments" means the assessments levied against all Lots within the Community to fund Common Expenses.

"Articles of Incorporation" means the articles of incorporation creating and incorporating the Association to be filed with the Virginia State Corporation Commission as the same may be amended from time to time in accordance with the Documents.

"Assessments" means all Annual Assessments, Special Assessments and other fees and charges, including all installments thereof, as may be levied by the Association in accordance with the Governing Documents.

"Assessment Unit" shall mean and refer to either (i) an area consisting of each Three Thousand (3,000) Square Feet of net leasable commercial space, or fraction thereof, within a Commercial Lot; or (ii) a single Living Unit. For purposes of the Declaration there shall be deemed to be an aggregate of one (1) Assessment Unit for each Three Thousand (3,000) Square Feet of net leasable commercial space, or fraction thereof, within each Commercial Lot, and one (1) Assessment Unit for each Living Unit actually constructed, or, if not constructed, as approved for construction pursuant to the Development Plan or other applicable governmental approval, within each Lot or Conservancy Lot.

"Association" means the Potomia Community Association, Inc., a Virginia non stock corporation, the entity which will hold title to the Community Property and

the entity responsible for administering the Declaration and the other Governing Documents.

"Board of Directors" means the governing body of the Association as more fully described in these By-Laws and the Articles of Incorporation of the Association.

"By-Laws" means these By-Laws as the same may be amended from time to time in accordance with the Founding Documents.

"Commercial Lot" shall mean and refer to any plot of land created as a separate subdivided lot or parcel of record upon any recorded subdivision plat of the Property which has been subjected to the Declaration, upon which the planned or actual improvements are for use and occupancy for non-residential purposes and/or work/live residential housing, including, without limitation, offices and commercial and retail uses permitted by the Village Center Commercial and Workplace Area Category, Section 4-1209(C) of the Loudoun County Zoning Ordinance ("Ordinance") and, if approved pursuant to the Ordinance, special exception uses in Section 4-1210(C). No Commercial Lot shall be counted twice in any situation where it may fall within more than one of the descriptions herein contained.

"Commercial Owner" means the record title holder of any Commercial Lot, whether one or more persons. The term Commercial Owner excludes those having an interest in a Commercial Lot merely as security for the performance of an obligation.

"Commercial Unit" means any Structure or portion of a Structure located on a Commercial Lot.

"Common Expenses" refer to the actual and estimated expenses of operating the Association and making all necessary payments and disbursements required of the Association in accordance with the Governing Documents, including all reserves, as determined by the Board of Directors in accordance with the Governing Documents.

"Community" and **"Property"** refer to all real property described on Exhibit 1 attached to the Declaration and any other real property as may hereafter be annexed within the jurisdiction of the Association by the recordation of one or more Declarations of Annexation in accordance with Article 2 of the Declaration.

"Community Architect" means the individual described in Article 7 of the Declaration, who is charged with assisting the Board of Directors in the review of applications for Improvements and/or Alterations and in otherwise preserving and enhancing the visual integrity of the Community. The individual designated to serve as the initial Community Architect is Thomas M. Mateya whose address is 11800 Sunrise Valley Drive, Suite 424, Reston, Virginia 20191 and whose telephone number is 703-620-1333.

"Community Facilities" means all open space, greens, trails, the swimming pool, bathhouse, tennis courts and any other recreational facilities located on the Community Property and constructed by the Developer or the Association on either the Developer's Land or the Conservancy Land for the common use and enjoyment of the Owners and Residents. The Community Facilities located on the Developer's Land, upon completion of construction by the Developer, shall become a part of the Community Property and the Developer shall convey to the Association the Community Facilities located on the Developer's Land. The use of the Community Facilities shall be limited to Owners, Residents and their respective guests and shall be subject to such regulation and control as may be adopted by the Board of Directors.

"Community Plan" means the Developer's plan for the development of the Property. Given its dynamic nature, the Community Plan is subject to change from time to time at the sole discretion of the Developer in order to address the changing needs of the Community, or in response to changes in market conditions, or for any other reason deemed necessary or desirable by the Developer.

"Community Property" means all real property owned, leased or maintained by the Association (including the improvements thereto and, with respect to the Conservancy Land, over which the Association has a recorded easement, right of way or other recorded right of use), for the common use and enjoyment of the Owners and Residents, including but not limited to the Private Roads and Alleys and the Community Facilities.

"Concept Development Plan" shall mean and refer to the concept development plan approved with Loudoun County Rezoning Application ZMAP 1995-0004.

"Conservancy Land" means the real property attached to the Declaration as Exhibit 3.

"Conservancy Lots" shall mean and refer to any plot of land created as a separate subdivided lot or parcel of record upon any recorded subdivision plat of the Conservancy Land and designated as a conservancy lot as set forth in the Proffer Statement dated January 8, 1996 with a letters of clarification dated January 24, 1996 and February 21, 1996, respectively filed in conjunction with Loudoun County Zoning Map Amendment ZMAP 1995-0004 and as shown on the Concept Development Plan.

"County" means Loudoun County, Virginia and any County agency, regulatory authority or department.

"Declaration" means the Declaration of Covenants, Conditions and Restrictions for the POTOMIA development recorded among the Land Records as the same may be

amended from time to time in accordance with the terms of the Governing Documents.

"Declaration of Annexation" means any instrument, including, without limitation, any supplementary declaration of covenants, conditions and restrictions, recorded by the Developer, which expressly extends the provisions of the Declaration to any other real property, including that shown on **Exhibit 2** attached to the Declaration.

"Developer" means Elysian Land, LLC, a Virginia limited liability company, its successors, transferees and assigns, provided, however, that no successor, transferee or assign of Developer shall acquire any of the Developer's Rights and Obligations unless specifically set forth and described in the instrument of succession, transfer or assignment recorded in the Land Records.

"Developer Control Period" means the period specified in Section 4.2 of the Declaration.

"Developer's Land" means the real property set forth and described on **Exhibit 1** attached to the Declaration and, if annexed in accordance with the provisions of Article 2 of the Declaration, the real property set forth and described on **Exhibit 2** attached to the Declaration.

"Developer's Rights and Obligations" means those privileges, powers, easements, exemptions, rights and duties reserved to the Developer as set forth in the Declaration.

"Developer's Rights and Obligations Period" means the duration for which the Developer's Rights and Obligations shall remain in effect as set forth and described in Section 12.2 of the Declaration.

"Founding Documents" means the Declaration, the Articles of Incorporation and the By-Laws, together with any recorded Declarations of Annexation.

"Governing Documents" refer to the Founding Documents, the Administrative Resolutions and the Equity Resolutions.

"Land Records" means the land records of Loudoun County, Virginia

"Lawn and Garden Areas" mean portions of any Lot which contain grass, shrubs, bushes, trees or other planted material, provided that any portion of a Lot which is enclosed by a wall or fence and is not readily accessible to the Association shall not be considered a Lawn and Garden Area.

"Living Unit" means any Structure or portion of a Structure located on (i) a Residential Lot and designed and intended for use and occupancy by a single household or (ii) any Structure built on a Commercial Lot as a "work/live unit". The term Living Unit includes, without limitation, single family detached and townhouse dwelling units.

"Local Committee" means any committee comprised of the Owners and Residents of Lots within a Local Committee area, as established by the Board of Directors in accordance with Article 9 of the Declaration.

"Lot" means any Residential Lot or Commercial Lot. No Lot shall be counted twice in any situation where it may fall within more than one of the descriptions herein contained. The term Lot excludes Community Property and outlots of real property dedicated for public use.

"Member" means every person, group of persons, corporation, partnership, trust or other legal entity, or any combination thereof, that holds any class of Membership in the Association pursuant to the Declaration.

"Membership" means all of the Members.

"Owner" means (a) in the case of a Lot, the record title holder of any Lot, whether one or more persons or entities and (b) in the case of the Developer's Land, the record title owner of the Developer's Land or parts thereof. The term Owner excludes those having an interest in a Lot merely as security for the performance of an obligation.

"Participating Builder" means a person or entity that acquires one or more Lots from the Developer for the purpose of building a residential Living Unit for sale or, to the extent permitted hereunder, lease to others. WVT will be a Participating Builder.

"Private Roads" and "Alleys" shall mean those roadways to be owned and maintained by the Association within the Community. The Private Roads and Alleys shall be for the use and benefit of the lots served thereby and available for use as a means of ingress and egress through and across the Property and to any adjoining property. Roadways initially designated as Private Roads shall cease to be Private Roads upon conveyance to a governmental entity and acceptance for maintenance by such governmental entity.

"Resident" means Owners, their family members, tenants, guests, lessees, invitees, and any other person who legally resides in a Living Unit within the Community or occupies and operates a commercial use on a Commercial Lot.

"**Residential Lot**" shall mean and refer to any subdivided plot of land created as a separate subdivided lot or parcel of record upon any recorded subdivision plat of the Property, which has been subjected to the Declaration, and upon which the planned or actual improvements are intended entirely for residential use, but excluding Conservancy Lots. A Residential Lot may not be counted twice in any situation where it may fall within more than one of the descriptions herein contained.

"**Special Assessments**" refer to assessments levied in accordance with Section 5.6 of the Declaration.

"**Structure**" shall mean any thing or device other than trees and landscaping (but including hedges and barriers hereafter described) the placement of which upon any Lot may affect the appearance of such Lot, including by way of illustration and not limitation, any building, house, townhouse, garage, porch, shed, greenhouse, bathhouse, coop, cage, covered or uncovered patio, swimming pool, clothes line, radio or television antenna, fence, curbing, paving, wall, barrier or hedge more than two (2) feet in height (whether made of shrubbery or evergreen trees), signboard or any temporary or permanent living quarters (including any house trailer) or any other temporary or permanent improvement to such Lot. The term "**Structure**" shall also mean (i) any excavation, fill, ditch, diversion dam or other thing or device which affects or alters the natural flow of surface waters from, upon or across any Lot, or which affects or alters the flow of any waters in any natural or artificial stream, wash or drainage channel from, upon or across any Lot (ii) any sediment control device; and (iii) any change in the grade of any Lot of more than six inches from that existing at the time of purchase by each Owner. Structure shall not include any construction trailer, sales trailer, sales park, model home park or similar facilities owned and/or operated by the Developer or its designee.

"**Subassociation**" shall mean and refer to any Virginia nonstock corporation or unincorporated association, and its successors and assigns, established in accordance with the Virginia law, whose membership shall consist of the owners of the Conservancy Lots within the Association.

ARTICLE 3

Meeting of Members

Section 3.1 Annual Meetings. The first annual meeting of the Members shall be held within twelve (12) months from the date of filing of the Articles of Incorporation of the Association, and each subsequent regular annual meeting of the Members shall be held on the same day of the same month of each year thereafter or such other reasonably similar date as may be selected by the Board of Directors. If the day for the annual meeting of the Members is a legal holiday, the meeting will be held at the same hour on the first day following which is not a legal holiday.

Section 3.2 Special Meetings. Special meetings of the Members may be called at any time by the President or by the Board of Directors, or upon written request of the Members who are entitled to vote one-twentieth (1/20) of all of the votes of any class of Members.

Section 3.3 Notice of Meetings. Written notice of each meeting of the Members shall be given by, or at the direction of, the Secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, or hand delivering a copy of such notice, at least ten (10) days (but not more than sixty (60) days) before such meeting to each Member entitled to vote thereat, addressed to the Member's address last appearing on the books of the Association, or supplied by such Member to the Association for the purpose of notice, except that notice of any meeting to act on an amendment to the Articles of Incorporation, a plan of merger, a proposed sale of assets pursuant to Section 13.1-900 of the Virginia Nonstock Corporation Act, as amended from time to time, or the dissolution of the Association shall be sent no earlier than sixty (60) days and no later than twenty-five (25) days prior to the meeting date. Such notice may be waived upon the declaration of an emergency by the person calling the meeting. Such notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting. All meetings of the Members shall be held at places and times convenient to the greatest number of Members, and shall be open to all Owners and Residents.

Section 3.4 Quorum. At a meeting called pursuant to a notice sent in compliance with Section 3.3, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes in the aggregate (and not be individual class of Members) of the Membership of the Association (Class A, Class B and Class C) shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting. If, however, such quorum shall not be present or represented at any meeting, the Members entitled to vote thereat shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or be represented.

Section 3.5 Membership Classes; Voting. The Association shall have three (3) classes of voting Members, as follows:

Class A: With the exception of the Developer (until expiration of the Class C Memberships as provided below), every person, group of persons, corporation, partnership, trust or other legal entity or any combination thereof, who is an Owner of a Commercial Lot containing a Commercial Unit which is part of the Community shall be a Class A Member of the Association; provided, however, that any such person, group of persons, corporation, partnership, trust or other legal entity or any combination thereof, who holds such interest solely as security for the

performance of an obligation shall not be a Class A Member solely on account of such interest. Ownership of a Commercial Lot shall entitle each Owner holding the interest required for Class A Membership to cast one (1) vote; provided, however, that if more than one (1) person or entity are the Owners of a Commercial Lot, the vote for such Commercial Lot shall be exercised as those persons or entities themselves determine and advise the Secretary, but in no event shall more than one (1) vote be cast with respect to any Commercial Lot. Any Owner that leases a Commercial Unit may, in the lease or other written instrument, assign the voting right appurtenant to such Commercial Lot to the Owner's lessee, provided that a copy of such instrument is furnished to the Association.

Class B: With the exception of the Developer (until expiration of the Class C Memberships as provided below), every person, group of persons, corporation, partnership, trust or other legal entity or any combination thereof, who is an Owner of a Residential Lot containing a Living Unit which is part of the Community shall be a Class B Member of the Association; provided, however, that any such person, group of persons, corporation, partnership, trust or other legal entity or any combination thereof, who holds such interest solely as security for the performance of an obligation shall not be a Class B Member solely on account of such interest. Ownership of a Residential Lot shall entitle each Owner holding the interest required for Class A Membership to cast one (1) vote; provided, however, that if more than one (1) person or entity are the Owners of a Residential Lot, the vote for such Residential Lot shall be exercised as those persons or entities themselves determine and advise the Secretary, but in no event shall more than one (1) vote be cast with respect to any Residential Lot. Any Owner that leases a Living Unit may, in the lease or other written instrument, assign the voting right appurtenant to such Residential Lot to the Owner's lessee, provided that a copy of such instrument is furnished to the Association.

Class C: The Class C Member shall be the Developer, its nominee or nominees and shall include every person, group of persons, corporation, partnership, trust or other legal entity or any combination thereof, who shall obtain any Class C Membership by specific assignment in writing from the Developer. The Class C Member shall be entitled initially to three (3) votes for each Lot within the Property. Class C Membership shall terminate and become converted to Class A or B Membership as the case may be upon the happening of the earlier of the following (in each case the "**Developer Control Period**"):

- i. When seventy five percent (75%) of the Residential Lots are deeded to Owners other than the Developer or Participating Builders;
- ii. December 31, 2010; or
- iii. Such earlier time as Developer may elect in its sole discretion.

Notwithstanding the foregoing, after the Developer Control Period has ended, in the event the Developer annexes pursuant to Article 2 of the Declaration any additional properties, the Class C Membership shall be revised with respect to all Lots owned by the Developer on the annexed property. Class C Membership shall cease and be converted to Class A or B Membership, as the case may be, on the happening of either of the following events, whichever occurs first:

i. When seventy five percent (75%) of the Residential Lots (including those in the annexed property) are deeded to Owners other than the Developer or Participating Builders, or

ii. Seven (7) years from the date of recordation of the final Deed of Dedication or Supplemental Declaration for the last portion of such annexed property. Any vote of the Members shall be taken without regard to class of Membership except in those instances requiring the affirmative vote or approval of each class of Membership in accordance with this Declaration and the Articles of Incorporation or By-Laws of the Association.

The vote of the Members representing sixty-six and two thirds percent $66 \frac{2}{3}$ of the total votes of all of the Memberships (Class A, Class B and Class C) in the aggregate at the meeting, in person or by proxy, calculated as aforesaid, shall be necessary to decide any question brought before such meeting, unless the question is one upon which, by the express provision of law or of the Articles of Incorporation, the Declaration or of these By-Laws, a different vote is required, in which case such express provision shall govern and control. The vote for any Membership which is held by more than one person may be exercised by any of the co-holders present at any meeting unless any objection or protest by any other holder of such Membership is noted at such meeting. In the event all of the co-holders of any Membership who are present at any meeting of the Members are unable to agree on the manner in which the votes for such Membership shall be cast on any particular question, then such vote shall not be counted for purposes of deciding that question. In the event any Membership is owned by a corporation, then the vote for any such Membership shall be cast by a person designated in a certificate signed by the President or any Vice President of such corporation and attested by the Secretary or an Assistant Secretary of such corporation and filed with the Secretary of the Association, prior to or during the meeting. The vote for any Membership which is held by a trust or partnership may be exercised by any trustee or partner thereof, as the case may be, and, unless any objection or protest by any other such trustee or partner is noted at such meeting, the Chairman of such meeting shall have no duty to inquire as to the authority of the person casting such vote or votes. No Class A or Class B Member shall be eligible to vote, either in person or by proxy, or to be elected to the Board of Directors, who is shown on the books or management accounts of the Association to be more than sixty (60) days delinquent in any payment due the Association. All election materials prepared with Association

funds must list candidates in alphabetical order and must not suggest a preference among candidates.

Section 3.6 Absentee Ballots. Any unsigned absentee ballot, to be valid, shall be received in a signed, sealed envelope bearing the identification of the Living Unit or Commercial Lot on the outside, and shall be opened only at a meeting at which all candidates or their delegates have a reasonable opportunity to be present.

Section 3.7 Proxies. At all meetings of Members, each Member may vote in person or by proxy. Every proxy shall be revocable and shall automatically cease upon conveyance by the Member of such Member's Lot. No proxy shall be valid after eleven (11) months from its date, unless otherwise provided in the proxy. All proxies shall be in writing and shall be filed with the Secretary, in such form as is approved by the Board of Directors, which approval may not be unreasonably withheld, before the appointed time of each meeting. Any written proxy which conforms with the applicable laws of the Commonwealth of Virginia shall be deemed to be satisfactory and approved as to form by the Board of Directors. Notwithstanding anything herein to the contrary, only a directed proxy may be utilized to vote for Members of the Board of Directors. A nondirected proxy may be counted toward a quorum and may vote on any matters of business other than the election of Directors.

Section 3.8 Rights of Mortgagees. Any institutional mortgagee of any Lot who desires notice of the annual and special meetings of the Members shall notify the Secretary to that effect by Registered Mail - Return Receipt Requested. Any such notice shall contain the name and post office address of such institutional mortgagee and the name of the person to whom notice of the annual and special meetings of the Members should be addressed. The Secretary of the Association shall maintain a roster of all institutional mortgagees from whom such notices are received and it shall be the duty of the Secretary to mail or otherwise cause the delivery of a notice of each annual or special meeting of the Members to each such institutional mortgagee in the same manner, and subject to the same requirements and limitations as are otherwise provided in this Article for notice to the Members. Any such institutional mortgagee shall be entitled to designate a representative to attend any annual or special meeting of the Members and such representative may participate in the discussion at any such meeting and may, upon request made to the Chairman in advance of the meeting, address the Members present at any such meeting. Such representative shall have no voting rights at any such meeting. Such representative shall be entitled to copies of the minutes of all meetings of the Members upon request made in writing to the Secretary.

ARTICLE 4

Board of Directors; Selection; Term of Office

Section 4.1 Number. The affairs of the Association shall be managed by a Board of Directors initially consisting of an odd number of not less than three (3) nor more than five (5) natural persons (each a "Director"). The names of the initial Directors are set forth in the Articles of Incorporation. Commencing with the first annual meeting of the Association, the Board of Directors shall consist of an uneven number of not less than three (3) nor more than five (5) Directors who shall be appointed by the Developer or elected by the Members in accordance with these By-Laws. Prior to expiration of the Developer's Rights and Obligations Period as provided in the Declaration, the number of Directors shall be determined from time to time by the Developer; thereafter, the number of Directors shall be determined by a vote of the Members at any annual or special meeting of Members and the number of Directors may be changed by a vote of the Members at any subsequent annual or special meeting of the Members; provided, however, that (a) the limitations of this Section shall continue to apply; and (b) no such change shall operate to curtail or extend the term of any incumbent Director. After expiration of the Developer's Rights and Obligations period, a majority of the Members of the Board of Directors shall be Residents.

Section 4.2 Developer's Representation on Board of Directors. All Members of the initial Board of Directors appointed by the Developer shall serve until replaced as provided herein. At the first annual meeting of the Association after twenty-five percent (25%) of the Living Units planned to be included within the Community have been initially occupied, one (1) member of the Board of Directors shall be elected by the Class A and Class B Members in the aggregate (and not one member per Class) to replace a Developer appointee. At the first annual meeting of the Association after sixty percent (60%) of the Living Units planned to be included within the Community have been initially occupied, one (1) additional member of the Board of Directors shall be elected by the Class A and Class B Members in the aggregate (and not one member per Class) to replace a Developer appointee. At the first annual meeting of the Association after lapse of all of the Class C Memberships as herein provided for or, if sooner, at the first annual meeting of the Association after expiration of ten (10) years following the date of the initial recordation of the Declaration, the Class A and Class B Members Owners shall elect a majority of the members of the Board of Directors. The Developer's right to appoint members to the Board of Directors, not otherwise elected by the Class A and Class B Members, shall continue so long as Developer's Rights and Obligations are in effect. Except as expressly set forth in this Section, nothing herein shall otherwise be construed as limiting the Developer's right to vote as a Class B Member of the Association, after lapse of the Class C Memberships, on any matter. Notwithstanding anything herein contained to the contrary, the Developer shall always, for so long as the Developer has the power of appointment of more than one member of the Board of Directors, designate at least one member of the Board of Directors from a representative nominated by the Owners of the Commercial Lots.

Section 4.3 Term of Office. Except for Members of the Board of Directors appointed by the Developer, who shall serve until removed and/or replaced by the Developer or until replaced by a Director elected by the non-Developer Owners as provided herein, the term of office of each Member of the Board of Directors shall be two (2) years. In the alternative, the Members may resolve at any annual or special meeting following the expiration of the Developer's Rights and Obligations period, to establish the term of office for all Directors to be one (1) year, or to establish staggered terms for the Directors of from one (1) to three (3) years. Any change in the number of Directors or term of office of Directors shall not act to extend or curtail the term of office of any incumbent Director. Directors shall hold office until their successors have been elected and hold their first regular meeting.

Section 4.4 Removal. Except with respect to Directors appointed by the Developer, any Director may be removed from the Board, with or without cause, by a majority vote of all the Members of the Association, and, in the event of the death, resignation or removal of a Director, a successor shall be selected by the remaining Members of the Board who shall serve for the unexpired term of such Director's predecessor. Members of the Board of Directors appointed by the Developer shall serve at the pleasure of and may be removed and/or replaced, with or without cause, by the Developer.

Section 4.5 Compensation. No Director shall receive compensation for any service rendered to the Association. However, any Director may be reimbursed for actual expenses incurred in the performance of such Director's duties.

Section 4.6. Action Taken Without a Meeting. The Directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the Directors and by filing such approval with the minutes of the proceedings of the Board of Directors. Any action so approved shall have the same effect as though taken at a meeting of the Directors.

ARTICLE 5

Nomination and Election of Directors

Section 5.1 Nomination. Nomination for election to the Board of Directors, commencing with the first annual meeting of Members at which non-Developer Owners are entitled to elect Members of the Board of Directors, may be made by a Nominating Committee. Nominations may also be made from the floor at the annual meeting. The Nominating Committee, if any, shall consist of a Chairman, who shall be a Member of the Board of Directors, and two or more Members of the Association. The Nominating Committee, if any, may be appointed by the Board of Directors prior to each annual meeting of the Members and such appointment may be announced at each annual meeting. The Nominating Committee, if any, may

make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Such nominations may be made from among Residents or non-Residents.

Section 5.2 Election. Election to the Board of Directors shall be by secret written ballot. At such election the Members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. Only directed proxies shall be valid for the purpose of casting of votes for election of Members to the Board of Directors. All election materials prepared with funds of the Association shall list candidates in alphabetical order and shall not suggest a preference among candidates. The persons receiving the largest number of votes shall be elected. Votes shall not be counted until after the time allotted by the Association for voting has ended. Cumulative voting is not permitted.

ARTICLE 6

Meetings of Directors

Section 6.1 Regular and Special Meetings. All meetings of the Board of Directors or any committee created by the Board of Directors shall be held only upon regularly scheduled and established dates or periods, at such time and place as shall have been made known to all Directors in writing or upon written notice provided by mail or hand delivery not less than seventy-two (72) hours nor more than ninety (90) days prior to the date of the meeting. All such meetings shall be open to all Owners and Residents, except that such meetings may be held in closed session for the following purposes, provided the Board complies with applicable provisions of the Property Owners Association Act (§55-508 et seq. of the Code of Virginia (1950), as amended):

- (a) to consider personnel matters;
- (b) to consult with legal counsel;
- (c) to discuss and consider contracts, potential or pending litigation and matters involving violations of the declaration or rules and regulations adopted pursuant thereto for which a Member, his family Members, tenants, guests or other invitees are responsible; or
- (d) to discuss and consider the personal liability of Members to the Association upon the affirmative vote in open meeting to assemble in closed session.

Section 6.2 Quorum. A majority of the number of Directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the Directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

Section 6.3 Rights of Mortgagees. Any institutional mortgagee of any Lot who desires notice of the regular and special meetings of the Board of Directors shall notify the Secretary to that effect by Registered Mail - Return Receipt Requested. Any such notice shall contain the name and post office address of such institutional mortgagee and the name of the person to whom notice of the regular and special meetings of the Board of Directors should be addressed. The Secretary of the Association shall maintain a roster of all institutional mortgagees from whom such notices are received and it shall be the duty of the Secretary to mail or otherwise cause the delivery of a notice of each regular or special meeting of the Board of Directors to each such institutional mortgagee, in the same manner, and subject to the same requirements and limitations, as are otherwise provided in this Article for notice to the Members of the Board of Directors. Any such institutional mortgagee shall be entitled to designate a representative to attend any regular or special meeting of the Board of Directors and such representatives may participate in the discussion at any such meeting and may, upon his request made to the Chairman in advance of the meeting, address the Members of the Board of Directors present at any such meetings. Such representative shall have no voting rights at any such meeting. Such representative shall be entitled to copies of the minutes of all meetings of the Board of Directors upon request made in writing to the Secretary.

Section 6.4 Fidelity Bonds. To the extent reasonably available and at a cost not deemed prohibitive by the Board of Directors, blanket fidelity bonds shall be maintained by the Association for all officers, directors, managers, trustees, employees and volunteers of the Association and all other persons handling or responsible for funds held or administered by the Association, whether or not they receive compensation for their services. Where the Association has delegated some or all of the responsibility for the handling of funds to a management agent, such management agent shall be covered by its own fidelity bond. Except for fidelity bonds that a management agent obtains for its personnel, all fidelity bonds should name the Association as an obligee and should have their premiums paid as a Common Expense by the Association.

Section 6.5 Directors and Officers Liability. The Association shall maintain Directors and Officers liability insurance coverage in an amount not less than One Million Dollars (\$1,000,000.00) per occurrence or claim. The premium for such coverage shall be a Common Expense of the Association.

Section 6.6 Requirements for Insurance and Fidelity Bond Coverage. The Board of Directors may, by duly adopted Administrative Resolution, set forth specific qualifications and requirements for insurance and fidelity bond coverage obtained and maintained by the Association.

ARTICLE 7

Powers and Duties of the Board of Directors

Section 7.1 Powers. The Board of Directors shall have power to:

(a) Adopt and publish rules governing the use of the Community Property and Community Facilities situated thereon, and the personal conduct of the Members and their guests thereon, and to establish penalties for the infraction thereof;

(b) Suspend an Owner's voting rights and an Owner's and/or Resident's right to use the Community Property and/or any Community Facilities situated thereon for (i) any period during which any Assessment against such Owner's or Resident's Lot remains unpaid, and (ii) for a period not to exceed sixty (60) days for any infraction of the Governing Documents, provided that such Owner or Resident is given reasonable notice of the violation and an opportunity for a hearing;

(c) Exercise for the Association all powers, duties and authority vested in or delegated to this Association and not reserved to the Membership by other provisions of these By-Laws, the Articles of Incorporation, or the Declaration;

(d) Declare the office of a Member of the Board of Directors to be vacant in the event such Director shall be absent from three (3) consecutive regular meetings of the Board of Directors; and

(e) Employ a manager, an independent contractor, or such other employees as they deem necessary, and to prescribe their duties.

Section 7.2 Duties. It shall be the duty of the Board of Directors to:

(a) Cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the Members at the annual meeting of the Members, or at any special meeting when such statement is requested in writing by one-fourth (1/4) of the Class B Members who are entitled to vote;

(b) Supervise all officers, agents and employees of this Association, and to see that their duties are properly performed;

(c) As more fully provided in the Declaration, to:

(1) fix the amount of the Assessments against each Lot;

(2) send written notice of each Annual and Local Assessment to every Owner subject thereto prior to the commencement date of the new Annual and Local Assessments; and

(3) Foreclose the lien against any property for which Assessments are not paid when due or bring an action at law against the Owner personally obligated to pay the same;

(d) Issue, or cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any Assessment has been paid. A reasonable charge may be made by the Board for the issuance of these certificates. If a certificate states an Assessment has been paid, such certificate shall be conclusive evidence of such payment;

(e) Procure and maintain adequate liability and hazard insurance on property owned by the Association;

(f) Cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate;

(g) Cause the Community Property and Community Facilities to be maintained and maintain any other property which is the responsibility of the Association pursuant to the Declaration; and

(h) Otherwise perform or cause to be performed the functions and obligations of the Board and the Association as provided for in the Declaration, Articles of Incorporation and these By-Laws, including collection of Assessments.

Section 7.3 Management Agent. The Board of Directors may employ a Management Agent in accordance with the Governing Documents.

ARTICLE 8 [INTENTIONALLY OMITTED]

ARTICLE 9 Officers and Their Duties

Section 9.1 Enumeration of Officers. The officers of this Association shall be a President and Vice President, who shall at all times be Members of the Board of Directors, a Secretary, and a Treasurer, and such other officers as the Board may from time to time by resolution create, all of which officers are to be elected by the Board of Directors.

Section 9.2 Election of Officers. The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the Members; provided that the initial Board of Directors shall elect the first group of officers at its first organizational meeting.

Section 9.3 Term. The officers of this Association shall be elected annually by the Board and each shall hold office for one (1) year or until their successors are duly elected and qualified, unless they shall sooner resign, or shall be removed, or otherwise disqualified to serve.

Section 9.4 Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

Section 9.5 Resignation and Removal. Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time by giving written notice to the Board, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 9.6 Vacancies. A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

Section 9.7 Multiple Offices. The offices of Secretary and Assistant Secretary, Treasurer and Vice President may be held by the same person, but in no event shall the same officer execute, acknowledge or verify any instrument in more than one capacity, if such instrument is required by law, the Declaration, the Articles of Incorporation or these By-Laws to be executed, acknowledged or verified by two (2) or more officers. No person shall simultaneously hold more than one (1) of any of the other offices except in the case of special offices created pursuant to Section 9.4 of this Article and except as otherwise provided in this Section 9.7.

Section 9.8 Duties. The duties of the officers are as follows (any of which may be assigned, in whole or in part, by the Board of Directors to the Management Agent):

(a) The President shall preside at all meetings of the Board of Directors; shall see that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds and other written instruments and shall co-sign all checks and promissory notes.

(b) The Vice President shall act in the place and stead of the President in the event of the President's absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required by the Board.

(c) The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the Members; keep the corporate seal of the Association and affix it on all papers requiring said seal; serve notice of

meetings of the Association, and shall perform such other duties as required by the Board.

(d) The Treasurer shall receive and deposit in appropriate bank accounts all moneys of the Association and shall disburse such funds as directed by resolution of the Board of Directors; shall sign all checks and promissory notes of the Association; keep proper books of account, cause an annual audit of the Association's books to be made by a public accountant at the completion of each fiscal year; and shall prepare an annual budget and a statement of income and expenditures to be presented to the Board, and deliver copies thereof to the Members.

Section 9.9 Compensation. No officer shall receive compensation for any service rendered to the Association. However, any officer may be reimbursed for actual expenses incurred in the performance of such officer's duties.

ARTICLE 10

Liability and Indemnification of Officers and Directors

The Association shall indemnify every officer and Director of the Association against any and all expenses, including counsel fees, reasonably incurred by or imposed upon an officer or Director in connection with any action, suit or other proceeding (including the settlement of any such suit or proceeding if approved by the then Board of Directors of the Association) to which such officer or Director may be made a party by reason of being or having been an officer or Director of the Association, whether or not such person is an officer or Director at the time such expenses are incurred. The officers and Directors of the Association shall not be liable to the Members of the Association for any mistake of judgment, negligence, or otherwise, except for their own individual willful misconduct or bad faith. The officers and Directors of the Association shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association and the Association shall indemnify and forever hold each such officer and Director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer or Director of the Association or former officer or Director of the Association may be entitled.

ARTICLE 11

Committees

The Board of Directors may appoint a Covenants Committee as provided in the Declaration, and a Nominating Committee, as provided in these By-Laws. In addition, the Board of Directors may appoint other committees as deemed appropriate in carrying out its purposes. All committees appointed by the Board of Directors shall hold meetings in accordance with Section 6.1 of these By-Laws.

ARTICLE 12

Books and Records/Fiscal Management

Section 12.1 Fiscal Year. The fiscal year of the Association shall begin on the first day of January every year, except for the first fiscal year of the Association which shall begin on the date of recordation of the Declaration. The commencement date of the fiscal year herein established shall be subject to change by the Board of Directors should the practice of the Association subsequently dictate.

Section 12.2 Principal Office - Change of Same. The principal office of the Association shall be as set forth in the Articles of Incorporation of the Association. The Board of Directors, by appropriate resolution, shall have the authority to change the location of the principal office of the Association from time to time.

Section 12.3 Books and Accounts. Books and accounts of the Association shall be kept under the direction of the Treasurer in accordance with generally accepted accounting practices, consistently applied. The same shall include books with detailed accounts, in chronological order, of receipts and of the expenditures and other transactions of the Association and its administration and shall specify the maintenance and repair expenses of the Community Property and Community Facilities, services required or provided with respect to the same and any other expenses incurred by the Association. The amount of any Assessment or portion of any Assessment, required for payment of any capital expenditure or reserves of the Association shall be credited upon the books of the Association to the "Paid-in-Surplus" account as a capital contribution by the Members.

Section 12.4 Auditing. At the close of each fiscal year and at the election of the Board of Directors, the books and records of the Association may be audited by an independent Public Accountant whose report shall be prepared in accordance with generally accepted auditing standards, consistently applied. Based upon such report, if any, the Association shall furnish the Members and any mortgagee requesting the same with an annual financial statement, including the income and disbursements of the Association, within one hundred twenty (120) days following the end of each fiscal year.

Section 12.5 Inspection of Books. The books and accounts of the Association, vouchers accrediting the entries made thereupon and all other records maintained by the Association shall be available for examination by the Members and their duly authorized agents or attorneys, and to the institutional holder of any first mortgage on any Lot and its duly authorized agents or attorneys, during normal business hours and for purposes reasonably related to their respective interests and after reasonable notice. The Declaration, the Articles of Incorporation and the By-Laws of the Association shall be available for inspection by any Member at the principal office of the Association, where copies may be purchased at reasonable cost.

ARTICLE 13
Assessments

As more fully provided in the Declaration, each Member is obligated to pay to the Association Annual and Local Assessments which are secured by a continuing lien upon the property against which the Assessment is made.

ARTICLE 14
Corporate Seal

The Association may have a seal in circular form having within its circumference the words:

POTOMIA COMMUNITY ASSOCIATION, INC., a Virginia nonstock corporation.

ARTICLE 15
Amendments

These By-Laws may be amended, at a regular or special meeting of the Members, by a vote of a majority of a quorum of all Members present in person or by proxy.

ARTICLE 16
Interpretation/Miscellaneous

Section 16.1 Conflict. These By-Laws are subordinate and subject to all provisions of the Declaration and to the provisions of the Articles of Incorporation of the Association. In the event of any conflict between these By-Laws and the Declaration, the provisions of the Declaration shall control; and in the event of any conflict between these By-Laws and the Articles of Incorporation of the Association, the provisions of the Articles of Incorporation shall control. These By-Laws have been conformed to be consistent with the provisions of the Declaration.

Section 16.2 Notices. Unless another type of notice is herein elsewhere specifically provided for, any and all notices called for in these By-Laws shall be given in writing.

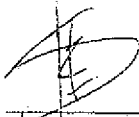
Section 16.3 Severability. In the event any provision or provisions of these By-Laws shall be determined to be invalid, void or unenforceable, such determination shall not render invalid, void or unenforceable any other provisions hereof which can be given effect.

Section 16.4 Waiver. No restriction, condition, obligation or provisions of these By-Laws shall be deemed to have been abrogated or waived by reason of any failure or failures to enforce the same.


Section 16.5 Captions. The captions contained in these By-Laws are for convenience only and are not a part of these By-Laws and are not intended in any way to limit or enlarge the terms and provisions of these By-Laws or to aid in the construction thereof.

Section 16.6 Gender, etc. Whenever in these By-Laws the context so requires, the singular number shall include the plural and the converse, and the use of any gender shall be deemed to include all genders.


IN WITNESS WHEREOF, we, being all of the Directors of POTOMIA
COMMUNITY ASSOCIATION, INC., have hereunto set our hands effective this
29 day of November, 2003



(SEAL)



(SEAL)



(SEAL)



Instr: 20040312-0022356 Pg: 1 OF 55
Loudoun County, VA
03/12/2004 11:38:16AM
Gary M. Clemens, Clerk

POTOMIA

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS for **POTOMIA** (the "**Declaration**") is made and effective as of this 8th day of MARCH, 2004 by **ELYSIAN LAND, LLC**, a Virginia limited liability company (hereafter the "**Developer**"), Grantor; **POTOMIA COMMUNITY ASSOCIATION, INC.**, a Virginia non-stock corporation (hereafter the "**Association**"), Grantor; **WASHINGTON-VIRGINIA TRADITIONAL DEVELOPMENT SITES, INC.**, a Virginia corporation (hereafter "**WVTDSI**"), Grantor; **PETER E. KALARIS, TRUSTEE** (hereafter, the "**WVTDSI Trustees**"), Grantors; and **VIRGINIA TITLE HOLDING CORPORATION, TRUSTEE**, a Virginia corporation (hereafter, the "**BFV Interim Trustee**"), Grantor; in accordance with the Virginia Property Owners Association Act, Chapter 26 of Title 55 of the Code of Virginia (1950) as amended.

EXPLANATORY STATEMENT

A. The Developer owns in fee simple TH 1 through TH 33, Lot 1 through Lot 80, Lot 101 through Lot 105, Lot 112 through Lot 141, inclusive, CLVG1, CL1, CL2 and FCS, ELYSIAN HEIGHTS, Phase 1 (the "**Elysian Land Property**"), as the same are more fully described on **Exhibit 1** attached hereto.

B. The Association owns in fee simple Parcels C through N, Parcel O (Open Space), Park 1 and CLVG2, ELYSIAN HEIGHTS, Phase 1 as the same are more fully described on **Exhibit 1** attached hereto.

C. The Elysian Land Property is subject to the lien of a certain deed of trust recorded in Deed Book 1776 at Page 1739 and modified by Deed of Partial Release recorded in Deed Book 1959 at Page 63 of the Land Records (the "**WVTDSI Deed of Trust**"), wherein the Elysian Land Property was conveyed unto the WVTDSI Trustees, in trust, to secure a certain indebtedness, as more specifically set forth therein.

D. The Elysian Land Property is subject to the lien of a certain Deed of Trust recorded in Deed Book 1776 at Page 1750 of the Land Records (the "**BFV Interim Deed of Trust**") wherein the Elysian Land Property was conveyed unto the BFV Interim Trustee, in trust, to secure a certain indebtedness, as more specifically set forth therein.

E. Developer and the Association anticipate that the real property described on **Exhibit 1** will be developed as the community of Potomia, which community may include a mix of land uses consisting of various housing types, commercial and/or retail facilities, community open space, facilities and amenities which will serve and benefit all the Owners.

F. The Developer, with the consent of the Trustees, and the Association have decided to subject that real estate described on **Exhibit 1** to certain covenants, restrictions,

reservations, easements, servitudes, liens and charges, all of which are more particularly hereinafter set forth.

G. The Developer also owns in fee simple certain additional real estate described on **Exhibit 2** attached hereto, which the Developer may hereafter decide to subject (either in whole or in part) to the provisions of this Declaration, all as the same may be amended from time to time.

H. In order to implement the purposes and intents set forth herein, the Developer has caused Potomia Community Association, Inc., a Virginia nonstock, non-profit corporation, to be incorporated under the laws of the Commonwealth of Virginia.

NOW, THEREFORE, in consideration of the foregoing Explanatory Statement, the provisions of which are a substantive part of this Declaration, and other good and valuable consideration, the Developer, with the consent of the Trustees, and the Association hereby declare that, upon recordation of this Declaration, all of the real property described on **Exhibit 1**, and any other real property hereafter annexed within the jurisdiction of the Association in accordance with Article 2 hereof, shall thereafter be held, conveyed, hypothecated, encumbered, sold, leased, rented, used, occupied and improved subject to the covenants, conditions, restrictions and easements set forth in this Declaration, all of which shall run with the real property described on **Exhibit 1** and any other real property subjected to this Declaration and which shall be binding on all parties having any right, title or interest in all or any portion of the Community, their respective heirs, personal representatives, successors, transferees and assigns, and shall inure to the benefit of each Owner thereof.

ARTICLE I **DEFINITIONS**

Capitalized terms used in this Declaration, including the Explanatory Statement, shall have the meaning set forth and defined below:

"Administrative Resolutions" means the procedures, adopted by the Board of Directors, for implementing provisions of the Governing Documents as more fully described in the By-Laws, as amended from time to time.

"Annual Assessments" means the assessments levied against all Lots within the Community to fund Common Expenses.

"Articles of Incorporation" means the articles of incorporation creating and incorporating the Association filed with the Virginia State Corporation Commission as the same may be amended from time to time in accordance with the Founding Documents.


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"Assessments" means all Annual Assessments, Special Assessments and other fees and charges, including all installments thereof, as may be levied by the Association in accordance with the Governing Documents.

"Assessment Unit" shall mean and refer to either (i) an area consisting of each Three Thousand (3,000) Square Feet of net leasable commercial space, or fraction thereof, within a Commercial Lot; or (ii) a single Living Unit. For purposes of this Declaration there shall be deemed to be an aggregate of one (1) Assessment Unit for each Three Thousand (3,000) Square Feet of net leasable commercial space, or fraction thereof, within each Commercial Lot, and one (1) Assessment Unit for each Living Unit actually constructed, or, if not constructed, as approved for construction pursuant to the Development Plan or other applicable governmental approval, within each Lot or Conservancy Lot.

"Association" means the **Potomia Community Association, Inc., a Virginia nonstock corporation**, the entity which will hold title to the Community Property and the entity responsible for administering this Declaration and the other Governing Documents.

"Board of Directors" means the governing body of the Association as more fully described in the By-Laws and Articles of Incorporation of the Association.

"By-Laws" means the duly adopted By-Laws of the Association as the same may be amended from time to time in accordance with the Founding Documents.

"Commercial Lot" shall mean and refer to any plot of land created as a separate subdivided lot or parcel of record upon any recorded subdivision plat of the Property which has been subjected to this Declaration, upon which the planned or actual improvements are for use and occupancy for non-residential purposes and/or work/live residential housing, including, without limitation, offices and commercial and retail uses permitted by the Village Center Commercial and Workplace Area Category, Section 4-1209(C) of the Loudoun County Zoning Ordinance ("**Ordinance**") and, if approved pursuant to the Ordinance, special exception uses in Section 4-1210(C). No Commercial Lot shall be counted twice in any situation where it may fall within more than one of the descriptions herein contained.

"Commercial Owner" means the record title holder of any Commercial Lot, whether one or more persons. The term Commercial Owner excludes those having an interest in a Commercial Lot merely as security for the performance of an obligation.

"Commercial Unit" means any Structure or portion of a Structure located on a Commercial Lot.

"Common Expenses" refer to the actual and estimated expenses of operating the Association and making all necessary payments and disbursements required of the Association in accordance with the Governing Documents, including all reserves, as determined by the Board of Directors in accordance with the Governing Documents.

"Community" and **"Property"** refer to all real property described on **Exhibit 1** and any other real property as may hereafter be annexed within the jurisdiction of the Association by the recordation of one or more Declarations of Annexation in accordance with Article 2 hereof.

"Community Architect" means the individual described in Article 7 of the Declaration, who is charged with assisting the Board of Directors in the review of applications for Improvements and/or Alterations and in otherwise preserving and enhancing the visual integrity of the Community. The individual designated to serve as the initial Community Architect is Thomas M. Mateya whose address is 11800 Sunrise Valley Drive, Suite 424, Reston, Virginia 20191 and whose telephone number is 703-620-1333.

"Community Facilities" means all open space, greens, trails, the swimming pool, bathhouse, tennis courts and any other recreational facilities located on the Community Property and constructed by the Developer or the Association on either the Developer's Land or the Conservancy Land for the common use and enjoyment of the Owners and Residents. The Community Facilities located on the Developer's Land, upon completion of construction by the Developer, shall become a part of the Community Property and the Developer shall convey to the Association the Community Facilities located on the Developer's Land. The use of the Community Facilities shall be limited to Owners, Residents and their respective guests and invitees and shall be subject to such regulation and control as may be adopted by the Board of Directors.

"Community Plan" means the Developer's plan for the development of the Property. Given its dynamic nature, the Community Plan is subject to change from time to time in the sole discretion of the Developer in order to address the changing needs of the Community, or in response to changes in market conditions, or for any other reason deemed necessary or desirable by the Developer.

"Community Property" means all real property owned, leased or maintained by the Association (including the improvements thereto and, with respect to the Conservancy Land, over which the Association has a recorded easement, right of way or other recorded right of use), for the common use and enjoyment of the Owners and Residents, including but not limited to the Private Roads and Alleys and the Community Facilities.

"Conservancy Land" means the real property set forth and described on **Exhibit 3**.

"Concept Development Plan" shall mean and refer to the concept development plan approved with Loudoun County Rezoning Application ZMAP 1995-0004.

"Conservancy Lots" shall mean and refer to any plot of land created as a separate subdivided lot or parcel of record upon any recorded subdivision plat of the Conservancy Land and designated as a conservancy lot on the Concept Development Plan and as set forth in the Proffer Statement dated January 8, 1996 with a letters of clarification dated

January 24, 1996 and February 21, 1996, respectively filed in conjunction with Loudoun County Zoning Map Amendment ZMAP 1995-0004.

"County" means Loudoun County, Virginia and any County agency, regulatory authority or department.

"Declaration" means this instrument as the same may be amended from time to time in accordance with the terms of the Governing Documents.

"Declaration of Annexation" means any instrument, including, without limitation, any supplementary declaration of covenants, conditions and restrictions, recorded by the Developer, which expressly extends the provisions of this Declaration to any other real property, including that shown on **Exhibit 2**

"Developer" means Elysian Land, LLC, a Virginia limited liability company, its successors, transferees and assigns, provided, however, that no successor, transferee or assign of Developer shall acquire any of the Developer's Rights and Obligations unless specifically set forth and described in the instrument of succession, transfer or assignment recorded in the Land Records.

"Developer Control Period" means the period specified in Section 4.2.

"Developer's Land" means the real property set forth and described on **Exhibit 1** and, if annexed in accordance with the provisions of Article 2, the real property set forth and described on **Exhibit 2**.

"Developer's Rights and Obligations" means those privileges, powers, easements, exemptions, rights and duties reserved to the Developer as set forth in this Declaration.

"Developer's Rights and Obligations Period" means the duration for which the Developer's Rights and Obligations shall remain in effect as set forth and described in Section 12.2 hereof.

"Federal Mortgage Agencies" means the Federal National Mortgage Association ("FNMA"), Government National Mortgage Association ("GNMA"), and any agency or department of the United States Government or of any state or municipal government, and their respective successors, transferees and assigns.

"Founding Documents" means this Declaration, the Articles of Incorporation and the By-Laws, together with any recorded Declarations of Annexation.

"Governing Documents" refer to the Founding Documents, the Administrative Resolutions and any other resolutions duly adopted by the Board of Directors.

"Land Records" means the land records of Loudoun County, Virginia

"Lawn and Garden Areas" mean portions of any Lot which contain grass, shrubs, bushes, trees or other planted material, provided that any portion of a Lot which is enclosed by a wall or fence and is not readily accessible to the Association shall not be considered a Lawn and Garden Area.

"Living Unit" means any Structure or portion of a Structure located on (i) a Residential Lot and designed and intended for use and occupancy by a single household or (ii) any Structure built on a Commercial Lot as a "work/live unit". The term Living Unit includes, without limitation, single family detached and townhouse dwelling units.

"Local Committee" means any committee comprised of the Owners and Residents of Lots within a Local Committee area, as established by the Board of Directors in accordance with Article 9 of this Declaration.

"Lot" means any Residential Lot or Commercial Lot. No Lot shall be counted twice in any situation where it may fall within more than one of the descriptions herein contained. The term Lot excludes Community Property and outlots of real property dedicated for public use.

"Member" means every person, group of persons, corporation, partnership, trust or other legal entity, or any combination thereof, that holds any class of Membership in the Association pursuant to this Declaration.

"Membership" means all of the Members.

"Owner" means (a) in the case of a Lot, the record title holder of any Lot, whether one or more persons or entities and (b) in the case of the Developer's Land, the record title owner of the Developer's Land or parts thereof. The term Owner excludes those having an interest in a Lot merely as security for the performance of an obligation.

"Participating Builder" means a person or entity that acquires one or more Lots from the Developer for the purpose of building a residential Living Unit or structure permitted on a Commercial Lot for sale or, to the extent permitted hereunder, lease to others. WVT and/or its designee will be a Participating Builder with respect to its ownership of Residential Lots and Commercial Lots.

"Private Roads" and "Alleys" shall mean those roadways to be owned and maintained by the Association within the Community. The Private Roads and Alleys shall be for the use and benefit of the lots served thereby and available for use as a means of ingress and egress through and across the Property and to any adjoining property. Roadways initially designated as Private Roads shall cease to be Private Roads upon conveyance to a governmental entity and acceptance for maintenance by such governmental entity.

"Resident" means Owners, their family members, tenants, guests, lessees, invitees, and any other person who legally resides in a Living Unit within the Community or occupies and operates a commercial use on a Commercial Lot.

"Residential Lot" shall mean and refer to any subdivided plot of land created as a separate subdivided lot or parcel of record upon any recorded subdivision plat of the Property, which has been subjected to this Declaration, and upon which the planned or actual improvements are intended entirely for residential use, but excluding Conservancy Lots. A Residential Lot may not be counted twice in any situation where it may fall within more than one of the descriptions herein contained.

"Special Assessments" refer to assessments levied in accordance with Section 5.8 of the Declaration.

"Structure" shall mean any thing or device other than trees and landscaping (but including hedges and barriers hereafter described) the placement of which upon any Lot may affect the appearance of such Lot, including by way of illustration and not limitation, any building, house, townhouse, garage, porch, shed, greenhouse, bathhouse, coop, cage, covered or uncovered patio, swimming pool, clothes line, radio or television antenna, fence, curbing, paving, wall, barrier or hedge more than two (2) feet in height (whether made of shrubbery or evergreen trees), signboard or any temporary or permanent living quarters (including any house trailer) or any other temporary or permanent improvement to such Lot. The term **"Structure"** shall also mean (i) any excavation, fill, ditch, diversion dam or other thing or device which affects or alters the natural flow of surface waters from, upon or across any Lot, or which affects or alters the flow of any waters in any natural or artificial stream, wash or drainage channel from, upon or across any Lot; (ii) any sediment control devices; and (iii) any change in the grade of any Lot of more than six inches from that existing at the time of purchase by each Owner. Structure shall not include any construction trailer, sales trailer, sales park, model home park or similar facilities owned and/or operated by the Developer or its designee.

"Subassociation" shall mean and refer to any Virginia nonstock corporation or unincorporated association, and its successors and assigns, established in accordance with the Virginia law.

"WVT" shall mean Washington-Virginia Traditional Development Sites, Inc, a Virginia Corporation.

"WVT Lots" shall mean Lots owned by WVT in its capacity as a Participating Builder.

ARTICLE 2

PROPERTY SUBJECT TO GOVERNING DOCUMENTS

Section 2.1. Property To Be Subjected to the Governing Documents.

The real property, which shall be held, conveyed, hypothecated, encumbered, sold, leased, rented, used, occupied and improved subject to the Governing Documents shall be the real property described on **Exhibit 1** of this Declaration.

Section 2.2. Annexations. Any real property contiguous to or in the vicinity of the Community, including that shown and described on **Exhibit 2**, may be annexed within the jurisdiction of the Association by or with the consent of the Developer, without the consent of the Class A or Class B Members of the Association or any other party, for a period of ten (10) years from the date of the recordation of this Declaration. Except for annexations of real property by the Developer for which consent of the Members shall not be required, all other annexations of real property shall require the consent of two-thirds (2/3) of each class of Members. The scheme of the Governing Documents shall not, however, be extended to include any such real property unless and until the same has been annexed within the jurisdiction of the Association by a Declaration of Annexation as provided below. Any annexations made pursuant to this Article, or otherwise, shall be made by recording a Declaration of Annexation among the Land Records for Loudoun County, Virginia, which Declaration of Annexation shall extend the scheme of the Governing Documents to such annexed property. Any Declaration of Annexation made pursuant to the provisions of this Article, or otherwise, may contain such complementary or supplemental additions and modifications to the covenants, conditions, restrictions and easements set forth in the Governing Documents as may be considered necessary or desirable by the maker of such Declaration of Annexation. No real property may be annexed into the Association without the written consent of the owner or owners of such real property.

Section 2.3. Deannexation. So long as there are any Class B or Class C Members, the Developer may deannex any property within the Developer's Land within the jurisdiction of the Association pursuant to Section 2.2 above for a period of ten (10) years from the date of recordation of this Declaration. Such deannexed property shall no longer be subject to the covenants and restrictions of the Governing Documents except for (i) any easements, rights, reservations, exemptions, powers or privileges reserved to the Developer pursuant to the Governing Documents which affect the deannexed property and (ii) any other easements, rights, reservations, exemptions, powers or privileges which are expressly reserved to the Developer in the instrument effectuating such deannexation. Such deannexation shall be made by recording a written instrument among the Land Records of Loudoun County, Virginia, withdrawing the effect of the covenants, conditions, restrictions and easements of the Governing Documents from the deannexed property. No deannexation shall impair the right and authority of the County to require compliance with proffers and approval conditions applicable to the Property.

ARTICLE 3 **PROPERTY RIGHTS**

Section 3.1. Owner's Easements of Enjoyment. Every Owner and Resident (and the owner of each Conservancy Lot and their respective guests having a right to use the Community Property and Facilities) shall have a non-exclusive right and easement of enjoyment in and to the Community Property and Community Facilities, including an easement for the use and enjoyment of the Private Roads, Alleys, parking lots and walkways within the Community Property, which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) The right of the Association to charge reasonable and uniform admission and other fees for the use of the Community Property and any Community Facility situated upon the Community Property;

(b) The right of the Association to suspend an Owner's voting rights and an Owner's and/or Resident's right to use the Community Property and/or any Community Facilities situated thereon for (i) any period during which any Assessments against such Owner's or Resident's Lot remains unpaid, and (ii) for a period not to exceed sixty (60) days for any infraction of the Governing Documents, provided that such Owner or Resident is given reasonable notice of the violation and an opportunity for a hearing.

(c) The right of the Association, consistent with the applicable zoning or subdivision ordinances of the County, to dedicate or transfer all or any part of the Community Property to any public agency, authority, or utility, for such purposes as are consistent with the purposes of the Governing Documents and subject to such conditions as may be agreed to by the Owners. Unless transferred or dedicated by the Developer, no such dedication or transfer shall be effective unless two-thirds (2/3) of each class of Members consent to such dedication or transfer. Notwithstanding the foregoing, the Developer shall have the right, without necessity of consent of the Members, to dedicate to public use and cause to be transferred to the County the Private Roads within the Developer's Land as long as a condition to such transfer is the maintenance by the County or any governmental agency or entity of the Private Roads so transferred to the County or such other governmental agency or entity. Notwithstanding the foregoing, in no event shall the Association have any authority to dedicate or transfer any part of the Conservancy Land or Conservancy Lots;

(d) The right of the Association to limit the number of guests of Owners and Residents that may utilize the Community Property and Community Facilities and to impose additional restrictions on the use of Community Facilities on the Conservancy Land or Conservancy Lots;

(e) The right of the Association to establish Administrative Resolutions pertaining to the use of the Community Property and any Community Facilities situated thereon which are not otherwise inconsistent with the provisions of this Declaration;

(f) The right of the Association to provide for the exclusive use by Owners and Residents of certain designated parking spaces within the Community Property;

(g) The right of the Association, the Developer, utility companies and Owners with respect to the easements established by or created pursuant to the Governing Documents;

(h) The right of the Association, in accordance with the Governing Documents, and with the consent of two-thirds (2/3) of each class of Members, to borrow money for the purpose of improving the Community Property and any Community Facilities situated thereon in a manner designed to promote the enjoyment and welfare of the Residents and

in aid thereof to mortgage any of the Community Property and facilities situated thereon. Notwithstanding the foregoing, the initial construction of the Community Facilities to be located on the Developer's Land shall be paid for by the Developer (including contributions by Participating Builders to the Developer) and shall not be funded by any loan or borrowing of the Association. Community Facilities which may (but are not required to be) located on the Conservancy Land shall be paid for by the Developer if the Developer elects to construct such Community Facilities on the Conservancy Land and if no such election is made (but are not required to be), may be funded by the Association. Notwithstanding the foregoing, in no event shall the Association have any authority to mortgage any part of the Conservancy Land or Conservancy Lots;

(i) The right of the Association to take such actions as are reasonably necessary, to protect the Community Property against mortgage default and foreclosures; provided, however, that such actions are in conformity with the other provisions of the Governing Documents. The foregoing shall not be deemed to grant any authority to the Association to take any action to protect any part of the Conservancy Land or Conservancy Lots but may maintain and repair any facilities owned or constructed on the Conservancy Land or Conservancy Lots;

(j) The rights of the Developer, including those set forth in Articles 11 and 12 of this Declaration, to grant easements, to utilize reserved rights and easements, and to otherwise utilize the Community Property as it deems appropriate in connection with the development of the Community. Notwithstanding the foregoing, in no event shall the Association have any authority to grant any easements on any part of the Conservancy Land or Conservancy Lots;

(k) The right of the Association, acting by and through its Board of Directors, to grant easements, licenses or other rights of use of the Community Property and any Community Facilities situated thereon to Owners, Residents and their respective guests and invitees and on such terms and conditions as the Board of Directors may from time to time consider appropriate; provided, however, that no such easements, licenses or other rights of use shall be unreasonably and permanently inconsistent with the rights of the Owners and Residents to the use and enjoyment of the Community Property and any facilities situated thereon. Notwithstanding the foregoing, the right of the Association set forth in this subparagraph (k) shall not exceed the right of the Association and its Members pertaining to any part of the Conservancy Land or Conservancy Lots set forth in any recorded easements and rights of way granted to the Association;

(l) The right of the Association to assess charges against Owners and Residents for violating the provisions of the Governing Documents;

(m) The right of the Association to suspend the use by any Resident of the Community Property and Community Facilities in instances where the Owner or Resident of the Living Unit or Commercial Unit has not paid its Assessments or has otherwise failed to comply with the provisions of the Governing Documents; and

(n) Such other rights of the Association as may be necessary or required to implement the Governing Documents which are not inconsistent with the Governing Documents.

Section 3.2. Limitations.

(a) Any other provision of this Declaration to the contrary notwithstanding, the Association shall have no right to suspend the right of any Owner or Resident or any member of the public, generally to use the Private Roads and Alleys; provided, however, that the Association shall have the right to restrict the use of parking spaces within the Community Property to those Owners and Residents who live adjacent to such parking areas.

(b) Any other provision of this Declaration to the contrary notwithstanding, the Association shall have no right to suspend the right of any Owner or Resident to use the Community Property for necessary, ordinary and reasonable pedestrian ingress and egress to and from such Owner's or Resident's Lot, Commercial Lot, Living Unit or Commercial Unit or to suspend any easement over the Community Property or any facilities situated thereon for storm water drainage, electrical energy, water, sanitary sewer, natural gas, cable television, telephone service or similar utilities and services to the Lots, Living Units or Commercial Units.

Section 3.3 Enforcement by Conservancy Lot Owners. Anything herein contained to the contrary notwithstanding, in the event the Association shall fail to take action to enforce any provisions restricting or regulating the use of the Common Facilities located on the Conservancy Lots following reasonable notice from WVT or its designee then right is reserved to WVT to enforce such provisions (including obtaining injunctive relief); if WVT is successful in such enforcement action, the cost of same shall be paid by the Association.

ARTICLE 4
OWNERSHIP AND VOTING RIGHTS

Section 4.1. Ownership.

Every Owner shall be a Member of the Association. With the exception of the Developer, no Owner, whether one or more persons or entities, shall have more than one (1) Membership for each Lot owned. Membership in the Association shall be appurtenant to and may not be severed from ownership of any Lot.

Section 4.2. Membership Classes; Voting Rights. The Association shall have three (3) classes of voting Members, as follows:

Class A: With the exception of the Developer (until expiration of the Class C Memberships as provided below), every person, group of persons, corporation, partnership, trust or other legal entity or any combination thereof, who is an Owner of a

Commercial Lot containing a Commercial Unit which is part of the Community shall be a Class A Member of the Association; provided, however, that any such person, group of persons, corporation, partnership, trust or other legal entity or any combination thereof, who holds such interest solely as security for the performance of an obligation shall not be a Class A Member solely on account of such interest. Ownership of a Commercial Lot shall entitle each Owner holding the interest required for Class A Membership to cast one (1) vote; provided, however, that if more than one (1) person or entity are the Owners of a Commercial Lot, the vote for such Commercial Lot shall be exercised as those persons or entities themselves determine and advise the Secretary, but in no event shall more than one (1) vote be cast with respect to any Commercial Lot. Any Owner that leases a Commercial Unit may, in the lease or other written instrument, assign the voting right appurtenant to such Commercial Lot to the Owner's lessee, provided that a copy of such instrument is furnished to the Association.

Class B: With the exception of the Developer (until expiration of the Class C Memberships as provided below), every person, group of persons, corporation, partnership, trust or other legal entity or any combination thereof, who is an Owner of a Residential Lot containing a Living Unit which is part of the Community shall be a Class B Member of the Association; provided, however, that any such person, group of persons, corporation, partnership, trust or other legal entity or any combination thereof, who holds such interest solely as security for the performance of an obligation shall not be a Class B Member solely on account of such interest. Ownership of a Residential Lot shall entitle each Owner holding the interest required for Class A Membership to cast one (1) vote; provided, however, that if more than one (1) person or entity are the Owners of a Residential Lot, the vote for such Residential Lot shall be exercised as those persons or entities themselves determine and advise the Secretary, but in no event shall more than one (1) vote be cast with respect to any Residential Lot. Any Owner that leases a Living Unit may, in the lease or other written instrument, assign the voting right appurtenant to such Residential Lot to the Owner's lessee, provided that a copy of such instrument is furnished to the Association.

Class C: The Class C Member shall be the Developer, its nominee or nominees and shall include every person, group of persons, corporation, partnership, trust or other legal entity or any combination thereof, who shall obtain any Class C Membership by specific assignment in writing from the Developer. The Class C Member shall be entitled initially to three (3) votes for each Lot within the Property. Class C Membership shall terminate and become converted to Class A or B Membership as the case may be upon the happening of the earlier of the following (in each case the "**Developer Control Period**"):

- i. When seventy five percent (75%) of the Residential Lots are deeded to Owners other than the Developer or Participating Builders;
- ii. December 31, 2013; or
- iii. Such earlier time as Developer may elect in its sole discretion.

Notwithstanding the foregoing, after the Developer Control Period has ended, in the event the Developer annexes pursuant to Article 2 of the Declaration any additional properties, the Class C Membership shall be revised with respect to all Lots owned by the Developer on the annexed property. Class C Membership shall cease and be converted to Class A or B Membership, as the case may be, on the happening of either of the following events, whichever occurs first:

- i. When seventy five percent (75%) of the Residential Lots (including those in the annexed property) are deeded to Owners other than the Developer or Participating Builders, or
- ii. Seven (7) years from the date of recordation of the final Deed of Dedication or Supplemental Declaration for the last portion of such annexed property. Any vote of the Members shall be taken without regard to class of Membership except in those instances requiring the affirmative vote or approval of each class of Membership in accordance with this Declaration, the Articles of Incorporation and By-Laws of the Association.

ARTICLE 5

COVENANT FOR ASSESSMENTS

Section 5.1. Creation of Lien and Personal Obligation for Assessments. Each Owner of a Lot by acceptance of a deed therefor, whether or not expressly stated in such deed, shall be deemed to covenant and agree to pay the Association all Annual Assessments and Special Assessments as may be levied by the Association in accordance with the Governing Documents. Each Assessment, together with interest, costs, late fees and reasonable attorneys' fees, shall be a charge on the Lot (including all improvements thereon), and shall be a continuing lien upon the property against which each such Assessment is made. Each Assessment, together with interest, costs, late fees and reasonable attorneys' fees shall also be the personal obligation of the Owner of the Lot at the time the Assessment fell due. The personal obligation for delinquent Assessments shall not pass to a prior Owner's successors in title unless expressly assumed by such successors. No Owner shall be exempt from liability for Assessments by abandonment of such Owner's Lot or by the abandonment of such Owner's right to the use and enjoyment of the Community Property.

Section 5.2. Purpose of Assessments. Assessments levied by the Association shall be used to promote the recreation, health, safety, and welfare of the Owners and Residents of the Community and for any lawful purpose relating to the proper conduct of Association activities, including, without limitation, the following:

- (a) Improvement, maintenance, repair and replacement of the Community Property, including, without limitation, all wooded areas therein and any Community Facilities situated thereon including grass cutting and lawn maintenance, maintenance of bicycle and pedestrian trails, swimming pool maintenance and operation, repair and

maintenance of the community center, garbage collection, and the improvement, maintenance, repair and replacement of rights-of-way, sidewalks, entry strips, signs, Private Roads and Alleys (including snow removal), and entrance features or improvements located within the Community or which are appurtenant to and serve or benefit the Community;

(b) Improvement, maintenance, repair and replacement of all storm water management facilities (including, without limitation, ponds, basins, storm drainage pipes, inlets, oil grit separators, drainage areas and underground facilities, if any) located within the Community, or which are designed to benefit or serve any portion of the Community, or which are otherwise required or intended to be maintained by the Association pursuant to any easement, agreement or the direction of any governmental authority or agency;

(c) Improvement, maintenance, repair, replacement and landscaping of the Lawn and Garden Areas, if the Association elects to assume responsibility for such areas pursuant to the Governing Documents;

(d) Payment of charges or expenses accruing with respect to off-site facilities that serve or benefit the Community, which the Association elects to maintain or which are otherwise required or intended to be maintained by the Association pursuant to any easement, agreement or the direction of any governmental authority or agency.

(e) Payment of all taxes, charges and assessments levied against the Community Property and any facilities situated thereon;

(f) Payment for services provided to the Association for the benefit of the Community Property, any facilities situated thereon, the Lots and/or Residents, including the costs of garbage collection;

(g) Payment of management fees, utility charges and operating expenses relating to the Community Property and any facilities situated thereon;

(h) Payment of insurance premiums for liability and property insurance on the Community Property and any facilities situated thereon, and for such other insurance as the Association may obtain with respect to the Community Property, any facilities situated thereon and/or the Living Units within the Community;

(i) Payment of fees associated with the management and administration of the Association's affairs, including fees paid to the Management Agent, if any;

(j) Funding all reserves established by the Association, including, without limitation, general operating reserves and reserves for replacements and/or contingencies; and

(k) Payment of all other costs and expenses incurred by the Association in the proper conduct of its activities or as may be deemed by the Board of Directors to be related to the well being of the Community and its Residents.

Section 5.3. Annual Assessments. The Board of Directors shall from time to time set the Annual Assessment at an amount sufficient to meet the Common Expenses of the Association. The Board of Directors shall determine the amount of the Annual Assessments before the beginning of each fiscal year in connection with preparation of the Association's annual budget, and may do so at more frequent intervals should circumstances so require. Upon resolution of the Board of Directors, installments of Annual Assessments may be levied and collected on a monthly, quarterly, semi-annual or annual basis. Any Class A or Class B Member may prepay one or more installments of any Annual Assessment levied by the Association without premium or penalty. Neither Annual nor Special Assessments may be utilized for the construction of capital improvements if such capital improvements are otherwise required to be constructed by the Developer.

Section 5.4. Maximum Annual Assessments.

(a) Subject to the provisions of Subsection (b) below, the maximum annual amount of Annual Assessments (the "**Maximum Assessment**") that may be levied by the Association against Lots within the Community for the fiscal period ending December 31, 2003 is as set forth on **Exhibit 4** attached hereto and made a part hereof. Subject to the provisions of Subsection (b) below, with the calendar year commencing January 1, 2004, and for each calendar year thereafter, the Maximum Assessment for that year shall automatically increase, without a vote of the Class A Membership, by an amount equal to ten percent (10%) of the Maximum Assessment for the immediately preceding year. Except as provided in Subsection (b) below, at any time and as often as is necessary or desirable, the Maximum Assessment may be increased above the amount permitted above by a vote of two-thirds (2/3) of each class of Members, who are voting, in person or by proxy, at a meeting duly called for this purpose.

(b) Upon completion of construction of the Community Facilities on the Developer's Land and any constructed on the Conservancy Land, the Association, acting through its Board of Directors, shall have the right to increase the Maximum Assessment (without necessity of a vote of the Members) to the extent necessary to fund the cost, maintenance and repair for such Community Facilities and reasonable reserves for replacements. In determining the amount of such increase, the Association shall procure an estimate of such additional expenses pertaining to the Community Facilities on the Developer's Land from an independent third party management company not affiliated with the Developer. The Association shall give prompt notice to the Members of any increase in the Maximum Assessment permitted by this Subsection (b).

(c) Any meeting of the Membership called for purposes of increasing the Maximum Assessment above the amount specified in this Section shall be subject to the same notice and quorum requirements as are specified in this Article with respect to establishing Special Assessments.

(d) If the Board of Directors determines that the functions of the Association may be properly funded by Annual Assessments that are less than the applicable Maximum Assessment for any fiscal year of the Association, then the Board of Directors may levy such lesser Annual Assessments as it deems appropriate. The levy of an Annual Assessments that is less than the applicable Maximum Assessment for any fiscal year shall not affect the right of the Board of Directors to increase Annual Assessments equal to the full amount of the applicable Maximum Assessment for that year or any subsequent year.

Section 5.5. Allocation of Common Expenses. Except to the extent provided in Section 5.8 of this Declaration, the Common Expenses shall be allocated among the Members as follows:

(a) **Class A Members.** Each Class A Member's respective share of the Common Expenses for any fiscal year of the Association shall be determined by multiplying the Common Expenses for that year by a fraction, the numerator of which shall be the total number of Assessment Units within such Member's Lot or Lots, and the denominator of which shall be the aggregate number of Assessment Units within all Lots subject to this Declaration.

(b) **Class B Members.** Each Class B Member's respective share of the Common Expenses for any fiscal year of the Association shall be determined by multiplying the Common Expenses for that year by a fraction the numerator of which shall be the total number of Assessment Units within such Member's Lot or Lots, and the denominator of which shall be the aggregate number of Assessment Units within all Lots subject to this Declaration.

(c) **Class C Members.** The Class C Member, as well as any Participating Builder, shall pay Assessments in accordance with Section 5.6 herein.

Section 5.6. Assessment of Developer: Assessment of Participating Builders.

(a) **Assessment of Developer.** For the duration of the Developer Control Period, Lots owned by the Developer shall not be subject to pay any Assessments provided, however, that Developer shall pay full Assessments for Lots owned by Developer upon which a dwelling or other Structure has been completed and occupied by a party other than Developer. Lots formerly owned by Developer shall be subject to the full amount of such Assessments commencing upon transfer or conveyance of any such Lot from Developer to any other Owner, other than a Participating Builder. Lots owned by a Participating Builder shall be assessed in accordance with Section 5.6(b). Lots owned by WVT and/or its designee as a Participating Builder shall be assessed in accordance with Section 5.6(c).

To the extent expressly required by the federal mortgage agencies, but only for the duration of the Developer Control Period, Developer shall also provide funds to cover any "actual cash deficits" (defined below) in the Association's operations; provided, however, that Developer's obligation to fund such deficits hereunder during any fiscal year of the

Association shall not exceed one hundred percent (100%) of the Assessments that would have been applicable to Developer's Lots during such fiscal year had they been owned by an Owner other than Developer or a Participating Builder. For the purposes of this Section, an "actual cash deficit" is created when in any given fiscal year of the Association, the income received by the Association plus all accumulated working capital, minus operating expenses and reserve transfers, does not provide sufficient funds to operate the Association; provided, however, capital expenses which were not contemplated by the Annual Budget for such fiscal year shall not be subtracted from the income figure for purposes of determining whether an actual cash deficit has been created.

(b) **Assessment of Participating Builders other than WVT.** Lots owned by Participating Builders shall be subject to an Assessment equal to fifty percent (50%) of the respective Assessments applicable to such Lots owned by the Members (excluding the Developer); provided, however, that Participating Builders shall pay full Assessments for Lots owned by the Participating Builders on the first to occur of (1) six months after the conveyance of such Lot to the Participating Builder or (2) completion of construction of a Living Unit on the Lot for which a use and occupancy permit has been issued. Lots formerly owned by the Participating Builders shall be subject to the full amount of such Assessments commencing upon transfer or conveyance of any such Lot from a Participating Builder to any other Owner (other than Developer).

(c) **Assessment of WVT as Participating Builder.** WVT Lots shall not be subject to any Assessment until six months after a building permit is obtained for each respective Lot. Thereafter, WVT Lots shall be subject to the full amount of such Assessments. Any actual cash deficit (as described in Section 5.6(a)) resulting from a WVT Lot being exempt from Assessments shall be paid by the Developer.

Section 5.7. Adoption of Budget. The Board of Directors shall make a reasonable effort to prepare a budget at least thirty (30) days before the beginning of the fiscal year. The budget shall include the estimated costs of operating the Association during the coming year and shall also include an amount sufficient to fund all reserves established by the Association in accordance with Section 5.13 hereof. The Board of Directors shall cause a copy of the budget, and the amount of the Annual Assessments to be levied against each Lot for the following year, to be delivered to each Owner at least fourteen (14) days prior to the commencement date of the new Annual Assessments. The budget and the Annual Assessments shall become effective unless a special meeting of the Association is duly held and at such special meeting the budget and the Annual Assessments are disapproved by a vote of greater than a majority of each class of the then Members of the Association. In the event the Membership disapproves the budget or the Board of Directors fails for any reason to determine the budget for the succeeding year, then and until such time as a budget shall have been determined as provided herein, the budget in effect for the then current year shall continue for the succeeding year.

Section 5.8. Special Assessments. In addition to the Annual Assessments authorized by this Article, the Association may levy in any assessment year a Special Assessment or Special Assessments, applicable in that year only, for the purpose of defraying, in whole or

in part, the cost of any construction, reconstruction, extraordinary repair or replacement of capital improvements located upon or forming a part of the Community Property or any facilities situated thereon, including any fixtures or personal property related thereto, or for such other purposes as the Board of Directors may consider appropriate in its discretion; provided, however, that any such Special Assessment shall have the consent of two-thirds (2/3rds) of each class of the then Members who are voting, in person or by proxy, at a meeting duly called for this purpose. The Association may also levy a Special Assessment against any Owner to reimburse the Association for costs incurred in bringing the Owner and/or such Owner's Lot into compliance with the Governing Documents; provided, that such Special Assessment may only be levied upon the affirmative vote of the Board of Directors, after notice and an opportunity for a hearing has been provided to the Owner.

Section 5.9. Notice and Quorum. Written notice of any meeting called for the purpose of establishing a Special Assessment in accordance with Section 5.8 hereof, shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of such meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes of the Membership of the Association (Class A and Class B) shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 5.10. Commencement of Assessments. Unless an earlier commencement date is established by the Board of Directors, Assessments shall commence as to all Lots simultaneously with the conveyance of the first Lot to a Class B Member. Whenever additional Lots are annexed within the jurisdiction of the Association by a Declaration of Annexation or otherwise subjected to the Assessments levied by the Association, Assessments against such added Lots shall be calculated in the same manner and due in the same number of installments as the Assessments for the remainder of the fiscal year against Lots already a part of the Community or already subject to assessment, except as Assessments against the Developer and Participating Builders are limited by this Article. No Lot shall be subject to assessment by the Association prior to annexation.

Section 5.11. Exempt Property. No portion of the Community Property or the Community Facilities situated thereon shall be subject to assessment of any kind by the Association.

Section 5.12. Working Capital Contribution. On the conveyance of each Lot within the Developer's Land, to other than a Participating Builder, the Developer may establish a working capital fund for contribution to the Association. Such working capital fund shall be funded by a one time assessment of up to two (2) months of Annual Assessments applicable to a Lot and shall be payable on the settlement of a completed Living Unit or Commercial Unit of a Lot.

Section 5.13. Reserves. The Association shall establish and maintain a reserve fund for the repair and replacement of the Community Property and any facilities situated thereon, including, without limitation, storm water management facilities, which require substantial periodic maintenance and/or replacement. Such reserve fund may also be established for the repair and replacement of any property, improvements or facilities otherwise required or intended to be maintained by the Association pursuant to any easement, agreement or the direction of any governmental authority, or agency. The Board of Directors shall set the required reserve fund contribution, if any, annually, in an amount sufficient to meet the projected reserve needs of the Association. The reserve fund contribution shall be included as part of the Association's annual budget, and shall be payable as part of the Annual Assessment applicable to all Lots to the extent such reserve fund will be utilized to replace assets which are determined by the Board of Directors to benefit substantially all Owners. The Association may establish such other reserve funds as the Board of Directors may from time to time consider necessary, or desirable, including, without limitation, a general operating reserve. The proportional interest of an Owner in any reserve fund established by the Association shall be considered an appurtenance of such Owner's Lot and shall not be separately withdrawn, assigned, transferred or otherwise separated from the Lot to which it appertains, and shall be deemed to be transferred with such Lot.

Section 5.14. Private Road and Alley Maintenance Assessment. Each Lot upon which a Living Unit or Commercial Unit has been substantially completed shall be subject to an Assessment augmenting a reserve fund established, or to be established, by the Developer for the maintenance of the Community's Private Roads and Alleys, in accordance with the Private Road and Alley Maintenance Program more fully described in Administrative Resolutions adopted, or to be adopted, by the Board of Directors. This special reserve fund has been created expressly for the purpose of dedicating monies for annual road and alley maintenance, including but not limited to snow removal, street cleaning, curb and gutter and pothole repair, street striping, as well as the more substantial costs of resurfacing and other road treatments over time. The Private Road and Alley Maintenance Assessment will be adjusted on an annual basis by the Board of Directors as budgets are formulated for the upcoming fiscal year. Past and future demand on the fund will be respectively evaluated and anticipated at that time and Assessments adjusted accordingly. Reserves established for the maintenance and repair of the Community's Private Roads and Alleys may only be expended for such purposes unless and until the Private Roads or Alleys are dedicated to and accepted for maintenance by the Virginia Department of Transportation or are otherwise dedicated to public use and accepted for maintenance. The County shall have no responsibility for the maintenance, repair or replacement of Private Roads and Alleys.

Section 5.15. Assessment of Lots Subject to Subassociation. With respect to any Assessments provided for herein which are payable by the Owners of Lots which have been subjected to a Subassociation, the Board of Directors may elect by resolution to collect such Assessments directly from the governing body of the Subassociation, provided that the governing body of such Subassociation elects by resolution to collect such Assessments from its members on behalf of the Association. In such event, payment of the Assessments

provided for herein shall be an obligation of such Subassociation; provided, however, that each Owner shall remain personally liable for all Assessments against such Owner's Lot and each such Lot shall remain subject to the lien for the Assessments established by this Declaration. If the Board of Directors elects to collect Assessments from the Subassociation, then all notices regarding Assessments against such Lots shall be sent to the governing body of the Subassociation, provided, however, that notice of any action to enforce an Owner's personal obligation to pay Assessments or to foreclose the lien against such Owner's Lot shall also be sent to the Owner of the Lot. This Section shall not be deemed to limit or waive, and shall be without prejudice to any rights, remedies or recourses available to the Association for non-payment of Assessments.

ARTICLE 6

REMEDIES OF ASSOCIATION FOR NON-PAYMENT OF ASSESSMENTS

Section 6.1. Non-Payment of Assessments. Any Assessment levied by the Association pursuant to the Governing Documents which is not paid within ten (10) days after the due date established for such Assessment by the Board of Directors, may, upon resolution of the Board, bear interest from the due date until paid at the rate of interest established by the Board, not to exceed the maximum, if any, rate of interest permitted under the laws of the Commonwealth of Virginia. The Board of Directors may also impose a reasonable late fee against any Owner (and such Owner's Lot) for failure to pay any Assessment within ten (10) days after the due date for such Assessment. The Association may bring an action at law against the Owner personally obligated to pay the delinquent Assessment and/or foreclose on the lien against such Owner's Lot in the manner now or hereafter provided under applicable law. The Owner personally obligated to pay the delinquent Assessment shall also be obligated to pay all attorneys' fees, court costs and administrative costs incurred by the Association in connection with the collection of such Assessment.

Section 6.2. Assessment Certificate. The Association shall, upon demand of any Owner, issue such Owner a written certificate signed by an officer of the Association setting forth whether the Assessments applicable to such Owner's Lot have been paid and if not paid the amount of the delinquent Assessments. A properly executed certificate of the Association regarding the status of Assessments on a Lot shall be binding on the Association as of the date of issuance. If permitted by applicable law, the Association may charge a reasonable fee for the issuance of each such certificate.

Section 6.3. Acceleration of Installments. Upon default in the payment of any Assessment, the entire balance of all unpaid Assessments for the remainder of the fiscal year, may, at the Board's discretion, be accelerated and declared due and payable in full, in the same manner as the delinquent portion of such Assessment.

Section 6.4. Priority of Lien. The lien for Assessments under the Governing Documents shall be subordinate to the lien of any first mortgage or deed of trust recorded against a Lot. Sale or transfer of any Lot shall not affect the Assessment lien; provided, however, that the sale or transfer of any Lot pursuant to mortgage or deed of trust foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such Assessments as to installments

which became due prior to the date of sale (but not thereafter). No sale or transfer of a Lot shall exempt such Lot or the Owner thereof from liability for any Assessments thereafter coming due or from the lien thereof. No amendment to this Section shall affect the rights of the holder of any first mortgage on a Lot (or the indebtedness secured thereby) recorded prior to recordation of such amendment unless the holder thereof (or of the indebtedness secured thereby) shall join in the execution of such amendment.

ARTICLE 7

DESIGN REVIEW AND ARCHITECTURAL CONTROL

Section 7.1. Architectural Control. No construction or development activities, including, without limitation, staking, clearing, excavation, grading or other site work shall be commenced or maintained on any Lot or the Community Property; no building, Structure or other improvement of any kind, including, without limitation, fences, walls, mailboxes and decks shall be commenced, erected or maintained within the Property and no exterior addition, change or alteration of any nature to the Lots, Living Units, Commercial Units or other existing improvements within the Property, including, without limitation, changes in color, changes or additions to driveway or walkway surfaces and landscaping modifications, shall be made until plans and specifications showing the nature, kind, shape, height, materials, location and color of the same (hereinafter collectively referred to as "**Improvements and/or Alterations**") shall have been submitted to and approved in writing by the Community Architect pursuant to this Article, provided that the Resident Guidelines may, pursuant to Section 7.3 hereof, establish categories of routine Improvements and/or Alterations not requiring application to or approval by the Community Architect.

Section 7.2. Additional Approvals. In addition to approval by the Community Architect, if necessary, no Improvements and/or Alterations shall be commenced or maintained within any Lot unless and until all applicable governmental approvals and/or permits, if available, have been obtained by the Owner of such Lot. All Improvements and/or Alterations shall comply with applicable local zoning ordinances, governmental guidelines and restrictions. Further, any Owner proposing to make Improvements and/or Alterations to such Owner's Lot shall make reasonable efforts to consult with any adjoining Lot Owners regarding the design, location and other characteristics of the proposed Improvements and/or Alterations provided that the approval of each adjoining Lot Owners shall not be required. Provided that any proposed Improvements and/or Alterations are approved by the Community Architect and are otherwise in compliance with the Governing Documents, it is the Developer's intention that the Owners be governed only by the exercise of good taste and a sense of neighborliness in the design of such Improvements and/or Alterations.

Section 7.3. Design Review. The Community Architect shall have the power to review applications for all Improvements and/or Alterations within the Property and shall otherwise assist the Board of Directors in preserving and enhancing the visual integrity of the Community. The Community Architect shall have such powers as may be reasonably

necessary to fulfill his or her duties under the Governing Documents, including, without limitation, the power to:

(a) Accept, review, approve, modify and/or reject written applications from Owners for Improvements and/or Alterations based upon such criteria as the Community Architect shall, in his or her discretion, deem appropriate, including, without limitation, applicable provisions of the Resident Guidelines, harmony of external design and location in relation to surrounding Structures and topography, preservation of the natural beauty of the Community, prevention of haphazard and inharmonious improvement of Lots, maintenance of adequate setbacks from streets and wooded areas and maintenance of adequate open spaces between Living Units or Commercial Units which shall not exceed requirements of the applicable zoning ordinance.

(b) Propose design guidelines, rules and regulations, and amendments thereto, for adoption by the Board of Directors (the "**Resident Guidelines**"), which shall establish criteria for the review of applications for Improvements and/or Alterations including, without limitation, guidelines for the architectural design and placement of buildings, Structures and other improvements within the Property, and permissible color schemes, materials, exterior finishes and similar features; provided, however, that the Resident Guidelines shall not contravene any specific standards or use restrictions established by this Declaration. The Resident Guidelines may establish categories of routine Improvements and/or Alterations not requiring application to or approval by the Community Architect provided that such Improvements and/or Alterations comply with such design standards and other criteria as may be specified in the Resident Guidelines. The Community Architect is further authorized to adopt Commercial Guidelines specifically pertaining to the Commercial Lots and Commercial Units with the approval of the owner of the commercial lots, which, after adoption by the Community Architect, may not be amended or revised without the consent of the Owners of the Commercial Lots affected by the proposed change or amendment. The Commercial Guidelines for the Commercial Lots may differ from those pertaining to the Residential Lots and shall take into account the differing use and purpose for each and the need to maintain design flexibility for the Commercial Lots, however, they shall be in substantial conformance with the Builder Design Guidelines and the appearance of the buildings shall reflect the architecture of the residential units. The Resident Guidelines and amendments thereto, may also be proposed and approved by the Board of Directors acting alone, without action by the Community Architect. The Resident Guidelines shall constitute a part of the Governing Documents.

(c) Propose procedures and requirements for the submission of applications to the Community Architect, and amendments thereto, for adoption by the Board of Directors, including, without limitation, the number of copies, the content, scale and detail of the plans and specifications to be included with such applications and identification of any required supporting materials. Such procedures and requirements and amendments thereto, may also be proposed and approved by the Board of Directors acting alone, without action by the Community Architect. No such procedures or requirement shall be construed

as a waiver of the provisions of this Article or any other provision or requirement of the Governing Documents.

(d) Retain and confer with such consultants and experts as the Community Architect may deem necessary or desirable in connection with its review of applications for Improvements and/or Alterations.

(e) The Board of Directors or the Community Architect shall, upon the request of an owner of a Commercial Lot, create a "**Commercial Lot Architectural Control Committee**". Any provisions in this Declaration notwithstanding, this Committee shall have the exclusive right to apply the Residential Guidelines for the Commercial Lots to any application to construct, improve, alter, modify or remove any structure or any part of the lot within a Commercial Lot or Commercial Unit and the exclusive power to determine whether such application complies with said guidelines. WVT or its designee shall have the sole right to appoint and remove members of said Committee, and to establish procedures for same, which procedures shall not be required to match the procedures established by the Board of Directors or the Community Architect for design review of the residences in the Community. This Section 7.3(e) shall not be changed or amended without the written consent of the Developer and the Owners of the Commercial Lots.

(f) Impose reasonable application fees as well as fees to cover the costs of reports, analyses or consultants required in connection with the review of plans and specifications submitted by any Owner, subject to the approval of the Board of Directors; provided that the amount of such fees shall be disclosed in advance to the applicant Owner.

Section 7.4. Community Architect.

(a) The Community Architect shall be an individual with demonstrable experience in a recognized design profession who is not required to be an Owner or Resident of the Community. The Community Architect shall be charged with reviewing applications for Improvements and/or Alterations and with assisting the Board of Directors in preserving and enhancing the visual integrity of the Community. The specific powers and responsibilities of the Community Architect may be further established by the Board of Directors in Administrative Resolutions, provided that all actions of the Community Architect with respect to Residential Lots shall be subject to review by the Board of Directors. Decisions of any Community Architect appointed for the Commercial Lots (as set forth in subparagraph (b) below) shall not be subject to review by the Board of Directors.

(b) The Community Architect shall be appointed by and serve at the pleasure of the Developer during the Developer's Rights and Obligations Period. Thereafter if the Association decides to extend the period of Community Architect authority, the Community Architect shall be appointed by and serve at the pleasure of the Board of Directors. The Community Architect may be paid a reasonable compensation by the Association, as determined by the Board of Directors. In the event that the Developer or the Board of Directors shall have failed to appoint a Community Architect or in the event of the Community Architect's absence, resignation or inability or refusal to act, the Board of

Directors shall have the power and authority of the Community Architect and shall otherwise exercise and discharge the Community Architect's duties under the Governing Documents. The initial Community Architect shall be Mr. Thomas M. Mateya.

(c) The provisions of this Section 7.4 may not be amended without the written consent of the Developer and the Owners of the Commercial Lots.

Section 7.5. Action by the Community Architect. The Community Architect shall have forty-five (45) days from his or her actual receipt of a complete application, including payment of all applicable fees and receipt of all additional material which the Community Architect may request, in which to approve, disapprove, modify or reject any plans and specifications for Improvements and/or Alterations within the Property. Failure to respond within this time frame shall be deemed automatic disapproval of the plans and specifications by the Community Architect. The Community Architect shall make a reasonable effort to advise applicants of the basis for any partial or total rejection of an application. Approval of any particular plans and specifications shall not be construed as a waiver of the right of the Community Architect to reject such plans and specifications or any elements or features thereof, in the event such plans and specifications are subsequently submitted for use in any other instance. The Community Architect shall have the right to disapprove any plans and specifications submitted hereunder because of any of the following:

(a) The failure of such plans or specifications to comply with any provision of the Declaration or Resident Guidelines;

(b) Failure to include information in such plans and specifications as may have been reasonably requested;

(c) Objection to the exterior design, appearance or materials of any proposed Structure;

(d) Incompatibility of any proposed Structure or use with existing Structures or uses upon other Lots in the vicinity;

(e) Objection to the location of any proposed Structure upon any Lot or with reference to other Lots in the vicinity;

(f) Objection to the grading and landscaping plans for the Lot; objection to the color scheme, finish, proportions, style of architecture, height, bulk or appropriateness of any proposed Structure;

(g) Objection to the parking areas proposed for any Lot on the grounds of (i) incompatibility to proposed uses and Structures on such lot or (ii) the inappropriateness of the size of parking in relation to the proposed use of the Lot;

(h) Any other matter which, in the judgement of the Community Architect, would render the proposed Structure, Structures or uses inharmonious with the plan of improvement of the Property or with the Structures or uses located upon other Lots in the vicinity.

(i) The failure of the applicant to provide to the Community Architect the written consent of at least two (2) Lot Owners adjoining the Lot which is the subject of the application and at least one (1) Lot Owner whose Lot may be impacted by the granting of such application. Notwithstanding the foregoing, the Community Architect shall have the authority to waive the requirement of this Subsection (i) if he determines, in the exercise of his sole discretion, that the adjoining Lot Owners and affected Lot Owners are unreasonably withholding their written consent.

In any case where the Community Architect shall disapprove any plans and specifications submitted hereunder or shall approve the same only as modified or upon specified conditions, such disapproval or qualified approval shall be accompanied by such a statement of the grounds upon which such action was based. In any such case the Community Architect shall, if requested, make reasonable efforts to assist and advise the applicant in order that an acceptable proposal can be prepared and submitted for approval.

Section 7.6. Appeal. Subject to such procedures as may be established by the Board of Directors, any applicant may appeal an adverse decision of the Community Architect to the Board of Directors. The Board of Directors may uphold, modify or reverse the Community Architect's decision.

Section 7.7. Conditions to Approval. The Community Architect may condition his or her approval of any application upon the Owner's compliance with such limitations or conditions as the Community Architect may deem appropriate, including, without limitation, the condition that any proposed Improvement and/or Alteration be commenced and/or completed within a reasonable period of time from the date of approval by the Community Architect. There shall be no deviations from approved plans and specifications without the prior consent, in writing, of the Community Architect.

Section 7.8. Non-liability for Approval of Plans and Specifications. The Community Architect is responsible for reviewing and deciding on applications for Improvements and/or Alterations within the Property on the basis of criteria and requirements set forth in the Governing Documents. The Community Architect shall not be held responsible for integrity of engineering or architectural design, quality of construction or compliance with local zoning ordinances, governmental guidelines or restrictions. Therefore, neither the Community Architect, the Board of Directors, the Association, the Owners or the Developer shall be responsible or liable for any architectural, engineering or construction defect, public code violation or the consequences of such defects or violations with regard to any Improvement and/or Alteration made by an Owner. Approval by the Community Architect or the Board of Directors shall in no way be construed as to pass judgment on the correctness of the location, structural design, suitability of water flow or drainage,

location of utilities or other qualities of the Improvement and/or Alteration being reviewed, nor shall such approval be substituted in lieu of applicable governmental approvals and permits or be deemed to constitute a determination as to compliance with local zoning ordinances, governmental guidelines or restrictions.

Section 7.9. Relaxation of Restrictions and Hardship Waiver. The Community Architect shall have the power to permit an Owner to deviate from the standards or restrictions contained in the Governing Documents, except for specific standards or use restrictions established by this Declaration. The Community Architect shall further, however, have the power to permit an Owner to deviate from the specific standards or restrictions contained in the Governing Documents in a case of bona fide and demonstrated hardship or physical impracticality. However, the Community Architect must provide, in writing, as part of his or her decision, the basis of and rationale for allowing any such deviations. The granting of any waiver by the Community Architect shall not be deemed to establish any precedent for any future considerations by the Community Architect. Generally, but not exclusively, this Section is intended to enable the Community Architect to appropriately respond to creative and beneficial design solutions that are consistent with the overall design character of the Community and the objectives of this Declaration, but which were not specifically anticipated in the Governing Documents. This provision is not intended to encourage or support arbitrary or capricious decisions by the Community Architect. Decisions and approvals by the Community Architect shall be final and binding on any future Community Architect and approval of plans by the Community Architect may not thereafter be rescinded or modified by a subsequent Community Architect.

Section 7.10. New Construction. No construction of the initial improvements on a Lot by a Participating Builder may be commenced until the plans, specifications and materials for such improvements have been approved, in writing, by the Community Architect or in the event of the Community Architect's absence, resignation or inability or refusal to act, by the Developer. The Community Architect or the Developer, as applicable, shall have sixty (60) days from actual receipt of all materials which they may reasonably request from the Participating Builder in which to approve or disapprove such plans, specifications and materials. Failure to respond within this time frame shall be deemed automatic approval of the plans, specifications and materials. The approval of the Community Architect or the Developer, as applicable, shall in no way be substituted in lieu of applicable governmental approvals and permits and no construction may commence until all such approvals and permits have been obtained. The approval of the Community Architect or the Developer shall not be construed as a representation or warranty of any type regarding the design or construction of any improvement built by any Participating Builder. The Community Architect or the Developer, as applicable, may disapprove any plans, specifications or materials (or any elements or features thereof) for any reason, in their reasonable discretion. Approval of any plans, specifications or materials (or any elements or features thereof) does not constitute a waiver of the right to disapprove the same or similar plans, specifications or materials (or any elements or features thereof) subsequently submitted for any purpose. Approval of Plans of a Participating Builder by a Community Architect shall be binding on any successor Community Architect, the Association and the Board of Directors.

Section 7.11. Jurisdiction. Any provision hereof to the contrary notwithstanding, neither the Community Architect nor the Board of Directors shall have any jurisdiction over or right to approve, modify or reject any improvements and/or alterations to any Lots, Living Units, Commercial Units or Community Property undertaken by the Developer.

Section 7.12. Ratification Prior Approvals. All approvals, consents or denial of approvals pertaining to plans and specifications received by an Owner for any Lot, Living Unit, Commercial Unit or Structure once granted or withheld, shall remain in full force and effect from and after the date of approval or denial and shall not be subject to any later rescission, modification, cancellation or withdrawal by any subsequent Community Architect or the Association. This provision may not be amended without the consent of all Members of the Association.

ARTICLE 8

COVENANTS COMMITTEE

Section 8.1. Purpose and Powers of the Covenants Committee. The purpose of the Covenants Committee shall be to ensure compliance with the Governing Documents and to foster harmony within the Community through reasoned and impartial adjudication of disputes within the Community as they arise. To this end, the principal powers of the Covenants Committee shall be as follows:

- (a) To make reasonable efforts to resolve conflicts between Owners and/or Residents on an informal and amicable basis.
- (b) To investigate and render decisions of alleged violations of the Governing Documents.
- (c) To hear and adjudicate disputes among Owners and/or Residents within the Community.
- (d) Upon petition of any Resident or upon its own initiative, to issue cease and desist requests to any Owner or Resident whose actions are inconsistent with the provisions of the Governing Documents or otherwise detrimental to the Community.
- (e) To provide interpretations of the Governing Documents when requested to do so by a member of the Board of Directors or on its own initiative.
- (f) To assess charge for violations of the Governing Documents, subject to the approval of the Board of Directors.
- (g) To propose rules and procedures for conducting a hearing concerning alleged violations of the Governing Documents, for adoption by the Board of Directors, which shall incorporate reasonable concepts of due process and fundamental fairness. Such rules and procedures, and amendments thereto, may also be proposed and approved by the Board of

Directors acting alone, without action by the Covenants Committee. No such rules or procedures shall be construed as a waiver of any provision or requirement of the Governing Documents.

(h) Such additional powers as may be granted by the Board of Directors to enable the Covenants Committee to fulfill its duties under the Governing Documents.

Section 8.2. Selection of Covenants Committee. The Covenants Committee shall consist of not less than three (3) or more than seven (7) persons. For so long as Developer's Rights and Obligations are in effect, the Developer shall appoint a majority of the members of the Covenants Committee, and the balance of the Covenants Committee shall be appointed by the Board of Directors. Members of the Covenants Committee appointed by the Developer shall serve at the pleasure of and may be removed, without cause, by the Developer. Members of the Covenants Committee appointed by the Board of Directors shall serve at the pleasure of and may be removed, without cause, by the Board of Directors. Upon expiration of the Developer's Rights and Obligations Period, or earlier upon written notice from the Developer to the Association, the number, qualifications, tenure, and manner by which members of the Covenants Committee are to be chosen shall be as determined from time to time by the Board of Directors, in the Board of Directors' sole discretion. For so long as Developer's Rights and Obligations are in effect, the members of the Covenants Committee members need not be Owners. In the event that the Developer and/or the Board of Directors shall have failed to appoint a Covenants Committee, or in the event of the Committee's absence, resignation or inability or refusal to act, the Board of Directors shall have the power and authority of the Covenants Committee and shall otherwise exercise and discharge the Committee's duties under the Governing Documents.

Section 8.3. Appeal. Subject to such procedures as may be established by the Board of Directors, any Owner or Resident may appeal an adverse Covenants Committee decision to the Board of Directors. The Board of Directors may uphold, modify or reverse the decision of the Covenants Committee.

Section 8.4. Jurisdiction of Covenants Committee. Any provision hereof to the contrary notwithstanding, the Covenants Committee shall have no jurisdiction over the Developer or any Participating Builder. The Board of Directors may from time to time, in its sole discretion, curtail the jurisdiction or authority of the Covenants Committee, either generally or on a case-by-case basis.

ARTICLE 9 **LOCAL COMMITTEES**

Section 9.1. Function. Owners and Residents may serve on Local Committees, if established in accordance with this Article and any Administrative Resolution adopted by the Board of Directors. Local Committees shall serve in an advisory capacity with respect to issues and matters that relate to or are of particular concern to the Owners or Residents of that area of the Community represented by such Local Committees.

Section 9.2. Further Local Committee Provisions. The Board of Directors may adopt Administrative Resolutions further defining the authority of Local Committees, as well as Administrative Resolutions establishing further rules and procedures to be followed by the Local Committees in connection with the exercise of such authority.

ARTICLE 10 **USE RESTRICTIONS**

In addition to all other covenants contained herein, the use of all property within the Community shall be subject to the following:

Section 10.1. Permitted Uses.

(a) The Residential Lots shall be used for residential purposes exclusively, and no building shall be erected, altered, placed or permitted to remain on any such Residential Lot other than one used as a Living Unit and any Structures appurtenant to such dwelling, including, without limitation, gazebos, garages and play houses, except that a professional office may be maintained and used within a Living Unit, provided that such maintenance and use is limited to the person actually residing in the Living Unit and, provided, further, that such maintenance and use is in strict conformity with the provisions of any applicable zoning law, ordinance or regulation (and other applicable County laws) and the Governing Documents. As used in this Section, the term "professional office" shall mean rooms used for office purposes by a member of any recognized profession, including doctors, dentists, lawyers, architects and the like, but not including medical or dental clinics. Nothing contained in this Article, or elsewhere in the Governing Documents, shall be construed to prohibit the Developer or its designees from the use of any Lot, Living Unit, Community Property, or improvement thereon, for promotional or display purposes, or as "model homes", a sales, leasing, management and/or construction office or the like and the Developer shall have an easement for access to all such facilities. The right of the Developer to maintain and carry on such activities shall include specifically the right to utilize the Community Property and any facilities situated thereon as model and sales offices for as long as the Developer is conducting marketing and sales activities.

(b) The Commercial Lots shall be used only for purposes permitted by the applicable zoning ordinances governing such Commercial Lot.

(c) Pursuant to Proffered Condition 20 of approved Loudoun County Rezoning Application ZMAP 1995-0004, the Property shall not be further subdivided to allow the number of lots recorded to exceed the maximum number of residential lots noted on the Concept Development Plan. This restriction shall not preclude modifying the size of recorded lots through boundary line adjustments, easements and right of way dedications.

(d) Pursuant to Proffered Condition 23 of approved Loudoun County Rezoning Application ZMAP 1995-0004, the Developer, its successors and assigns, shall incorporate fire alarms and sprinkler systems in all commercial buildings.

Section 10.2. Prohibited Uses and Nuisances.

Except for the activities of the Developer during the construction or development of the Community, or as may be necessary in connection with reasonable and necessary repairs or maintenance to any Living Unit, Commercial Unit or the Community Property:

(a) No noxious or offensive trade or activity shall be allowed on any Lot or within any Living Unit or Commercial Unit or any other part of the Community, nor shall anything be done therein or thereon which may be or become an annoyance or nuisance to the neighborhood or other Residents. Without limiting the generality of the foregoing, no speaker, horn, whistle, siren, amplifier or other sound device, except such devices as may be used exclusively for security purposes, shall be located, installed or maintained upon the exterior of any dwelling or upon the exterior of any other improvements constructed upon any Lot. Notwithstanding the foregoing, outdoor speakers or sound devices may be permitted for individual residential or commercial use provided the sound decibel level does not exceed that established by the Community Architect. The sound decibel level for residential use may be revised from time to time by the Community Architect. The sound decibel level for commercial use, once established by the Community Architect, is not subject to revision.

(b) The maintenance, keeping, boarding or raising of animals, livestock, or poultry, of any kind, regardless of number, shall be and is hereby prohibited on any Lot or within any Living Unit or Commercial Unit or other part of the Community, except that this shall not prohibit the keeping of not more than a reasonable number of domestic pets provided such domestic pets are not kept, bred or maintained for commercial purposes and provided further, that such domestic pets are not a source of annoyance or nuisance to the Community or other Residents. The Board of Directors or the Covenants Committee shall have the authority, after hearing, to determine whether a particular pet is a nuisance or a source of annoyance to the Community or other Residents and such determination shall be conclusive. Pets shall be attended at all times and shall be registered, licensed and inoculated as may from time to time be required by law. Pets shall not be permitted upon the Community Property unless accompanied by a responsible person and unless they are carried or leashed. The person accompanying any pet is responsible for the removal and disposal of any solid waste products deposited by the pet on Community Property or Lots.

(c) No burning of any trash and no accumulation or storage of litter, lumber, scrap metals, refuse, bulk materials waste, new or used building materials, or trash of any other kind shall be permitted on any Lot or other part of the Community.

(d) Except for parking within garages, within rear yards on designated parking pads or within other areas screened from public view or as approved in writing by the Board of Directors or the Covenants Committee, no junk vehicle, commercial vehicle or vehicle displaying commercial information (including vans used for commercial purposes), truck (as defined by the Virginia Department of Transportation and/or by common usage and practice except for light pick-up trucks of three-quarter (3/4) ton capacity or less used for non-commercial purposes), unlicensed or inoperable motor vehicle (which shall include,

without limitation, any vehicle which would not pass applicable state inspection criteria), trailer, camp truck, recreation vehicle, horse trailer, boat or other similar vehicles, machinery or equipment of any kind or character (except for such equipment or machinery, as may be reasonable, customary and usual in connection with the maintenance and repair of any Lot and the improvements thereon) shall be kept upon the Property or upon the public or private streets within or adjacent to the Property, nor (except for bona fide emergencies) shall the repair or extraordinary maintenance of automobiles or other vehicles be carried out thereon. Jeeps, SUV's, vans, multi-purpose vehicles and other vehicles designed primarily as passenger vehicles and which are not used for commercial purposes are not prohibited. Vehicle repairs lasting longer than five (5) days (either consecutively or during any thirty (30) day period) may not be undertaken or continued unless conducted in enclosed garages.

(e) Trash, garbage and recycling containers shall not be permitted to remain in public view except on days of collection and after 6:00 p.m. on days prior to collection. Trash shall be stored in closed metal containers or containers constructed of other suitable materials. Except on days of collection or after 6:00 p.m. on days prior to collection, all trash, garbage and recycling containers shall be kept in the side or rear yards of the Lots or in the garage and shall be screened from public view at all times.

(f) No Residential Lot shall be divided or subdivided and no portion of any Residential Lot (other than the entire Residential Lot) shall be transferred or conveyed for any purpose without the prior approval of the Board of Directors or Covenants Committee. The provisions of this subsection shall not be construed to prohibit the granting of any easement or right-of-way to any municipality, political subdivision, public utility or other public body or authority or to the Association, the Developer or any other person for any purpose.

(g) No tree, hedge or other landscape feature shall be planted or maintained in a location which obstructs sight-lines for vehicular traffic on public streets or private streets and roadways.

(h) No tent, trailer, shack, barn, pen, kennel, stable, or temporary Structure of any kind are permitted in the front yard of any Lot. Storage sheds, if not built as part of the original construction on a Lot, may be erected or placed on a Lot only if approved by the Community Architect in accordance with Article 7 hereof. All dog houses, kennels, dog runs and the like may be erected or placed on a Lot only if approved by the Community Architect in accordance with Article 7.

(i) All signage within the Community shall comply with applicable local zoning ordinances, governmental guidelines and restrictions. The Community Architect or the Board may, establish additional criteria for acceptable use of signage within the Community.

(j) Except for hoses and the like which are reasonably necessary in connection with normal lawn maintenance, no hose, water pipe, sewer pipe, gas pipe, drainage pipe,

television cable or other similar transmission line shall be installed or maintained upon any Lot above the surface of the ground, unless such installation is approved in writing by the Board of Directors or the Community Architect, or is required by the servicer or provider of any utility, including, without limitation, power, water, sewer, gas and cable television.

(k) Subject to the provisions of Section 10.3 or if the prior approval of the Community Architect is obtained, no exterior television aerial or radio antenna, or other aerial or antenna for either reception or transmission, including, but not limited to, satellite dish antennae, shall be maintained within the Community; provided, that aerials or antennae located entirely within the interiors of Living Units and Commercial Units are permitted.

(l) No Owner or Resident shall make any private, exclusive or proprietary use of any of the Community Property except with the specific approval of the Board of Directors and then only on a temporary basis. No Owner shall engage or direct any employee of the Association on any private business of the Owner during the hours such employee is employed by the Association.

(m) Chainlink fencing is specifically prohibited. Any other type of wire fencing may only be used with the approval of the Community Architect.

(n) Bed sheets, plastic sheets, newspapers, or other similar window treatments shall not be hung or placed in or on any window within the Living Unit or Commercial Unit.

(o) No Owner or Resident may construct or occupy an additional living area on their Residential Lot without the consent of the Community Architect and, during the Developer Control Period, the Developer. Such prohibition shall apply to finished enclosed living space but shall not include garages used to house automobiles.

(p) No drying or airing of any clothing, bedding or similar materials shall be permitted outdoors other than within rear yards of the Lots after dark. Clothes-hanging devices such as lines, reels, poles, frames, etc., shall be stored out of sight when not in use.

(q) Except as approved in writing by the Board of Directors or the Community Architect, no garage or outbuilding erected on a Lot shall at any time be used for human habitation, temporarily or permanently, nor shall any Structure of a temporary character be used for human habitation and no garage may be altered, modified or changed in any manner which would inhibit or in any way limit its function as a parking area for vehicles.

(r) No trees in excess of six (6) inches in diameter as measured six (6) feet from the ground shall be removed from within the Community, except for diseased or dead trees, trees requiring removal to promote the growth of other trees or for safety reasons, unless approved by the Community Architect. Dead or diseased trees exceeding the

measurements in this Section may only be removed after obtaining approval for removal from the Community Architect.

(s) No signage of any kind shall be permitted on a Residential Lot or within a Living Unit (including signage displayed in a window) and which is viewable from outside such Residential Lot. The foregoing shall not, however, prohibit (1) emergency direction decals for the benefit of fire and rescue personnel; (2) decals or placards of a size not exceeding one (1) square feet advising that a Living Unit has in place an alarm system; (3) political signs promoting the candidacy of a person running for public office provided that such signage may not exceed in the aggregate four (4) square feet and may not remain in place for more than ninety (90) days prior to or five (5) days after the publicly scheduled election and (4) for sale signs provided that such signage may not exceed in the aggregate four (4) square feet provided that such for sale signs shall be removed upon sale of the Residential Lot.

(t) All automatic and manual underground sprinkler systems are prohibited. In addition, the Association shall have the right to restrict use of sprinklers and other watering devices to specified days during a week.

(u) No interior fire suppression system shall be installed on any Lot except where the Owner of such Lot supplies a booster pump in size, design and capacity approved by the Community Architect.

Section 10.3. Satellite Dishes. The Federal Communications Commission ("FCC") established guidelines in December, 1996, for installations of satellite dishes and antennas. Satellite Dishes must comply with current ruling of the FCC (a copy of which can be obtained from the Management Agent). The intent is to comply with FCC rule while maintaining the aesthetics of our community. The burden is on the Resident and Owner to comply. It should be noted that Section 10.2(k) of the Declaration specifically excludes the installation of other types of exterior antennas (including aerials). The installation of such devices requires approval by the Community Architect prior to installation and shall comply with the following guidelines:

- (a) The device must be 39 inches or less in diameter.
- (b) The device should be located in an area on the Lot where it is compatible with the natural setting of the house and neighborhood, namely:
 - (i) The rear side of the roof and/or chimney below the ridge line not visible from the street or walkway, or
 - (ii) Entirely within and entirely below the height of approved privacy fencing which fully encloses the rear yard of any attached townhouse unit, or
 - (iii) At ground level in the rear yard of any non-attached house or screened or decorated with natural landscaping or

(iv) Above the walking surface of a railed deck, provided that no portion of the device projects more than six (6) inches above the height of the deck railing.

(c) The device should be of a color and material that are reasonably compatible with the color and materials of the home.

(d) The device must not adversely affect the safety of others or the reception of radios and television sets of neighbors.

The Association Board of Directors may require the applicant to install visual barriers, such as lattice or landscaping, around the device in order to diminish any adverse effect that may be caused by the installation of the device. Also, the Board of Directors may require the applicant to locate the dish in another setting so long as the dish is still capable of receiving sufficient signal strength for adequate reception. Should positioning or screening the dish as specified in the guidelines above adversely affect reception or result in substantial additional expense, it is the responsibility of the Owner to provide a written affidavit from a licensed installer explaining the circumstances. For the purpose of enforcing these guidelines, the Association may retain the services of a licensed installer to evaluate questionable installations. Should such an evaluation result in a finding that neither reception nor cost would be affected by suggested placement, the cost of said services would be billed to the homeowner. Antennas and Satellite Dishes that are installed within the interior of a home are permitted, do not require prior approval and are not subject to these guidelines.

Section 10.4. Leasing and Transfers.

(a) Except as hereafter permitted, no portion of a Living Unit, other than an entire Living Unit, may be leased or rented without the approval of the Board of Directors. The foregoing shall not, however, preclude or prohibit leasing of a part of a Living Unit to a family member (i.e., father, mother, grandparents, children, etc.). The foregoing restriction shall also not apply to Living Units located on the Commercial Lots and shall also not be deemed to preclude a reasonable number of roommates. All leases shall be on forms approved by the Board of Directors and shall (i) contain provisions advising the tenant of the obligation to comply with the Governing Documents; (ii) provide that any violation of the Governing Documents shall also constitute a violation of and grounds to terminate such lease. The Owner of a leased Lot shall notify the Association in writing of the Owner's current address. The Association may, upon resolution of the Board of Directors, require an Owner to utilize a form of lease or lease addendum supplied by the Association. Every lease shall be subordinate to any lien filed by the Association, whether before or after such lease was entered into. The minimum term any Living Unit may be leased or rented shall be six (6) months, and in no event may a transient tenant be accommodated in any Living Unit.

(b) Prior to the sale, conveyance or transfer of any Lot or Living Unit, the Owner shall notify the Board of Directors in writing of the name and address of the person to

whom the proposed sale, conveyance or transfer is to be made and provide such other information as the Board of Directors may reasonably require.

Section 10.5. Enforcement; Right to Remove or Correct Violations. In the event any violation or attempted violation of any of the Governing Documents shall occur or be maintained upon any Lot or in the event of any other conduct in violation of the Governing Documents, then the same shall be considered to have been undertaken in violation of the Governing Documents and without the approval of the Board of Directors, the Community Architect or the Covenants Committee, as applicable. Upon written notice from the Board of Directors, the Community Architect or the Covenants Committee such violation shall be promptly removed or abated. Notice sent by regular mail or certified mail to the Owner's and/or Resident's address as it appears in the records of the Association shall be considered adequate notice for all purposes. In the event the violation is not removed or the violation is not otherwise terminated or abated, within fifteen (15) days (or such shorter period as may be required in any such notice) after notice of such violation is delivered, then the Association shall have the right, through its agents and employees (but only after a resolution of the Board of Directors or the Covenants Committee and a reasonable opportunity for a hearing is given to the Owner and/or Resident of the Lot) to enter upon such Lot and to take such steps as may be necessary to remove or otherwise terminate or abate such violation and the cost thereof may be assessed against the Owner or Resident of the Lot upon which such violation occurred. A statement for the amount of such assessment (including attorneys' fees and costs) shall be rendered to the Owner and/or the Resident of said Lot, at which time the assessment shall become due and payable, and shall constitute a continuing lien upon such Lot and the binding personal obligation of the Owner and/or Resident of such Lot. The Association shall have the further right, through its agents and employees, to enter upon and inspect any Lot at any reasonable time for the purpose of ascertaining whether any violation of the provisions of the Governing Documents exist on such Lot. Neither the Association nor any such agent or employee shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection; provided, however, the interior of a Living Unit or Commercial Unit may not be entered pursuant to this Section unless such entry is necessary for the protection of any Lot or the Community Property as determined by the Board of Directors or its agents or employees.

Section 10.6. Exemptions. None of the restrictions set forth in this Article or elsewhere in the Governing Documents shall be applicable to the activities of the Developer, the Participating Builders or their respective officers, employees, agents, nominees or assigns, in their development, marketing, construction, leasing and sale of Lots, Living Units, Commercial Units or other parcels within the Property; or to the Association, its officers, employees and agents, if accomplished in connection with the proper maintenance, repair, replacement and improvement of the Community Property and any facilities situated thereon.

ARTICLE 11
DECLARATION OF EASEMENTS AND RIGHTS

Section 11.1. Declaration of Easements and Rights. The following easements and rights are hereby declared or reserved:

(a) The Developer reserves the right to grant easements, both temporary and permanent, to all public authorities (including, but not limited to, all State and County governmental authorities and agencies) and utility companies over any part of the Community Property.

(b) Each Lot within the Community is hereby declared to have an easement, not exceeding one foot (1') in width, over all adjoining Lots and Community Property for the purpose of accommodating any encroachment due to engineering errors, errors in original construction, settlement or shifting of the Living Unit, roof overhangs, gutters, architectural or other appendages, draining of rainwater from roofs, or any other similar cause. There shall be valid easements for the maintenance of said encroachments so long as they shall exist, and the rights and obligations of Owners shall not be altered in any way by said encroachment, settlement or shifting; provided, however, that in no event shall a valid easement for encroachment be created in favor of an Owner or Owners if said encroachment occurred due to the willful misconduct of said Owner or Owners. In the event a Structure on any Lot is partially or totally destroyed and then repaired or rebuilt, the Owners of each Lot agree that minor encroachments over adjoining Lots shall be permitted and that there shall be valid easements for the maintenance of said encroachments so long as they shall exist.

(c) There is hereby reserved unto the Developer (and to such other party(ies) as the Developer may specifically and in writing, assign such rights), for the benefit of the Property and any part thereof ("**Benefited Property**"), a blanket easement upon, across and under the Community (provided such easement does not encroach upon any Living Unit or Commercial Unit within the Community or unreasonably interfere with the use and enjoyment of the Community), for vehicular and pedestrian ingress and egress, curb cuts, slope, or grading easements, as well as for the installation, replacement, repair and maintenance of all utilities, including, but not limited to, water, sewer, drainage, storm water detention and/or siltation, gas, cable television, telephones and electricity and further including the right to connect to and use any such utilities which may exist or be located upon the Property from time to time. By virtue of this easement, it shall be expressly permissible to erect and maintain the necessary poles, pipes, lines and other equipment within the Community, to affix and maintain electrical or telephone wires and conduits, sewer and water drainage lines, on, above or below any portion of the Community, including any improvements constructed thereon and to have construction vehicles, equipment and the like exercise the aforesaid right of ingress and egress within the Community. There is further reserved unto the Developer the right to erect entry features, promotional and other similar items within the Community provided they do not unreasonably interfere with the use, operation and enjoyment of Living Units and Commercial Units within the Community. There is further reserved unto the Developer the

right to grant specific easements, both temporary and permanent, to any person or entity, including all public authorities and utility companies, over any part of the Community in furtherance of the blanket easement created by this subsection. Further, without limiting the generality of the foregoing, the Developer reserves the right to unilaterally execute and record such additional easements and agreements as may be necessary to give effect to the foregoing easements and other rights, which additional easements and other agreements need not be consented to or joined in by any party having an interest in the Community; provided, however, that if requested by the Developer, any party having an interest in the Community shall promptly join in and execute such confirmatory easements and other agreements. Each Lot shall further be subject to a public pedestrian access easement over and upon any sidewalk (or the replacement thereof) constructed on the Lot by the Developer, which sidewalk is reasonably deemed to be for the use of the Community.

(d) There is hereby further reserved for the benefit of the owner of any Conservancy Lot upon which a dwelling unit has been constructed and occupied (or such Owner's guests, invitees, licensees or other parties entitled to occupy such dwelling unit) the right to use any Community Facilities from time to time, located within the Community; provided, however, as a condition precedent to the exercise of such rights, the election to allow the use of such facility(ies) is specifically made by the Developer pursuant to a written instrument recorded among the Land Records of Loudoun County, Virginia. If the rights contemplated by the provisions above are elected, then the parties benefiting from such rights shall be obligated to pay their pro-rata share of the cost of maintaining, operating and repairing such Community Facilities, which share shall be computed by multiplying the total of such bona-fide costs times a fraction, the numerator of which shall be the number of completed dwelling units owned by the party from whom such contribution is sought and the denominator shall be the total number of completed dwelling units entitled to use such Community Facilities. The computation contemplated by the immediately preceding sentence shall be made at each time a contribution for such costs is sought.

(e) An easement is hereby reserved to the Developer to enter the Community Property during the period of construction and sales within the Community, and to maintain such facilities and perform such operations as in the sole opinion of Developer may be reasonably required, convenient or incidental to the construction and sale of residences, including, without limitation, a business office, sales and/or rental office, storage area, construction yards, signs, displays and model units.

(f) The Developer also reserves the right to enter any portion of the Community for the purpose of carrying out any obligations it may have, or assume, with respect to the curing of any defects in workmanship or materials in the Community or the improvements thereon. There is further reserved unto the Developer and its agent(s) a non-exclusive easement over, across and through all of the Community Property for the purpose of access, the storage of building supplies, materials and equipment and, without any limitation, for any and all purposes reasonably related to the completion of the development, construction or rehabilitation and repair of the Community.

(g) For a period of fifteen (15) years from the date of conveyance of the first Lot, the Developer reserves a blanket easement and right on, over and under the Community to maintain and to correct drainage of surface water in order to maintain reasonable standards of health, safety and appearance; provided, however, that the Developer shall have no obligation to exercise such right. Such right expressly includes the right to cut any trees, bushes or shrubbery, make any gradings of the soil or to take any other similar action reasonably necessary, following which the Developer shall restore the affected property to its original condition as near as practicable. The Developer shall give reasonable notice of intent to take such action to all affected Owners, unless in the opinion of the Developer an emergency exists which precludes such notice. There is further reserved unto the Developer the right to grant specific easements, both temporary and permanent, to any person or entity, including all public authorities and utility companies, over any part of the property in furtherance of the blanket easement created by this subsection.

(h) The rights and duties with respect to sanitary storm and water, electricity, gas, cable television and telephone lines and facilities shall be governed by the following:

(i) Whenever water, sanitary sewer, electricity, gas, cable television or telephone connections lines, cables or any portion thereof, are or have been installed within the Community, the Owner of any Lot, and the Association shall have the right, and are hereby granted an easement to the extent necessary therefor, to enter upon or have a utility company enter upon any portion of the Community in which said installations lie, to repair, replace and generally maintain said installations.

(ii) The right granted in subsection (i) above shall be only to the extent necessary, to entitle the property of the Owner or Association serviced by said installation to its full and reasonable use and enjoyment, and provided further that anyone exercising said right shall be responsible for restoring the surface of the easement area so used to its condition prior to such use.

(iii) In the event of a dispute between Owners with respect to the repair or rebuilding of said installations or with respect to the sharing of the cost thereof, upon written request of one of such Owners addressed to the Association, the matter shall be submitted to the Board of Directors or Covenants Committee, who shall decide the dispute and the decision of the Board of Directors or Covenants Committee shall be final and conclusive as to the parties.

(iv) Each Lot is hereby subject to an easement upon and across such Lot for the drainage and discharge of water from any storm drain or downspout situated on another Lot and the owner of such Lot may not alter or obstruct such drainage or flow of water to the detriment of any Lot or the Common Area.

(i) The Association shall have an easement to enter any portion of the Community for the performance of its duties hereunder; provided that such easement shall not entitle entry within the interior portion of any Living Unit located within the

Community and provided further such easement in no way interferes with the activities of the Developer.

(j) A mutual right and easement for utility services is hereby established for the benefit of all Owners, such that no Owner shall take any action which would in any way interfere with utility services being provided to other Owners within the Community. If a Lot contains any utility pipes, ducts, conduits, wires or the like which are for the benefit, in whole or in part of other Owners within the Community, then the Owner of such Lot shall promptly, at such Owner's expense, repair any damage to such utilities caused by the Owner or the Resident of such Owner's Lot.

(k) With respect to "zero lot line", "patio home", "townhouse" and similar type Living Units which are designed to be built on or near Residential boundary lines, it is hereby acknowledged that the roofs, gutters, downspouts and other exterior features of such Living Units may extend over the property line of the adjoining Residential Lots and an easement is hereby declared and created to the extent necessary to accommodate such encroachment. Further, each that is adjacent to another Residential Lot upon which there is constructed, or is intended to be constructed, a "zero lot line", "patio home", "townhouse" or similar type Living Unit shall be subject to a non-exclusive easement and right of passage for the benefit of such other Residential Lot (the "**Benefited Lot**") to the extent reasonably necessary to permit the Owner of the Benefited Lot (the "**Benefited Owner**") access to the exterior of the Living Unit situated upon such Benefited Lot for purposes of inspecting, maintaining, repairing, replacing and otherwise caring for the exterior of the Benefited Owner's Living Unit; provided, however, that the Benefited Owner shall take reasonable steps to minimize any damage to any adjacent Residential Lot or Owner as a result of the exercise of this easement, and that the Benefited Owner shall restore as nearly as possible any adjacent Residential Lot and Living Unit to its original condition if there is any damage or alteration to such Residential Lot or Living Unit as a result of the exercise of this easement. The Benefited Owner's exercise of its rights hereunder shall be at reasonable times and shall not interfere with the use and enjoyment of any adjacent Residential Lot by the Owner thereof. The Benefited Owner shall indemnify and save harmless the adjacent Owner from any loss or damage that such Owner may sustain, including reasonable attorneys' fees, as a result of the entry by the Benefited Owner on the adjacent Owner's Residential Lot.

(l) Each Residential Lot upon which is constructed or intended to be constructed, a "zero lot line", "patio home", "townhouse" or similar type Living Unit is subject to an easement to the extent reasonably necessary to provide access and ingress and egress to and from any other adjacent Residential Lot upon which is constructed or intended to be constructed, a "zero lot line", "patio home", "townhouse" or similar type Living Unit. Such easement shall be over and across any sidewalk, driveway or other walkway situated upon such burdened Residential Lot and shall only benefit the Owner and Resident of any Residential Lot which is otherwise not readily accessible without such easement right and the Owner and Resident of the burdened Residential Lot shall not limit, obstruct or otherwise interfere with such easement.

(m) Subject to applicable County law, the Developer reserves the right to modify or alter the size, number, type and location of the Community Property and Lots, as well as the improvements thereon, as it deems necessary or desirable in conjunction with the development of the Community, including, without limitation, the right to re-subdivide all or a portion of the Property, to adjust boundary lines, to convey Community Property, to modify the site plan, and to construct improvements on the Community Property.

Section 11.2. Tree Preservation Easement. There is hereby imposed an easement for the benefit of the Association over any Lot or portion thereof designated as being subject to a tree preservation easement on the subdivision plats or in any Declaration of Annexation recorded with respect to the Property, for the preservation and maintenance of trees located on such Lots or portions thereof in accordance with this Section (the "**Tree Preservation Easement**"). Owners of Lots subject to the Tree Preservation Easement shall preserve and maintain all trees within the Tree Preservation Easement in a neat and attractive manner consistent with the Governing Documents, including reasonable pruning and trimming of such trees and shall not remove any tree from within the Tree Preservation Easement except as may be permitted by this Section. No tree greater than six (6) inches in diameter, as measured at six (6) feet above the ground, shall be removed from any Lot or portion thereof subject to the Tree Preservation Easement without the prior written approval of the Community Architect; provided, that diseased or dead trees, trees requiring removal to promote the growth of other trees or vegetation, trees requiring removal for health or safety reasons or trees that have been substantially damaged may be removed with the prior written approval of the Association alone. In the event of a violation of this Section by the Owner or Resident of a Lot subject to the Tree Preservation Easement, the Association may require such Owner or Resident to replace any removed tree with one (1) or more comparable trees of such size and number and in such location(s) as the Association may deem necessary or desirable. In the event that the Owner or Resident of a Lot subject to the Tree Preservation Easement, fails to maintain trees located within the Tree Preservation Easement in a manner consistent with the Governing Documents, as determined by the Board of Directors or Covenants Committee in accordance with the Governing Documents, the Association shall enter any such Lot to take all action as may be appropriate to ensure the proper preservation and maintenance of such trees. The costs of any action taken by the Association in accordance with this Section may be assessed against the Owner of such Lot in the same manner as any other Assessment under the Governing Documents.

Section 11.3. Conservation Easements. Some of the Lots or Community Property may be subject to a non-disturbance easement or similar easement for conservation or wetlands purposes as shown on the subdivision plat(s) of some or all of the Properties recorded among the Land Records of Loudoun County, Virginia. Such easements may also be created by one or more Declarations of Annexation and the Developer reserves the right to grant such easements over any portion of the Property. In general, no construction, clearing, grading or other such disturbance shall be permitted in such areas.

Section 11.4. Association Easements. The Board of Directors of the Association shall have the right to grant easements, rights-of-way, licenses and similar interests over any

part of the Community Property (excluding, however, the Conservancy Land and Conservancy Lots) for any lawful purpose which the Board of Directors, in its sole discretion, determines to be in the best interests of the Association.

ARTICLE 12

DEVELOPER'S RESERVED RIGHTS AND OBLIGATIONS

Section 12.1 Rights and Obligations. To secure Developer's interests related to the development of the Property, including the pursuit and furtherance of the missions and goals of the Community established by Developer on behalf of the Owners, Developer shall have the benefit of the rights and be encumbered with certain obligations as more particularly set forth in this Article 12 and in the Declaration generally.

Section 12.2 Duration of Developer's Rights and Obligations. The Developer's Rights and Obligations Period with respect to Residential Lots shall extend until the later of the conveyance of all Lots contained or to be contained within the Community to Owners other than the Developer or Participating Builders, or fifteen (15) years after the last filing of this Declaration, except that some specific rights and obligations may expire by virtue of their being tied to the occurrence of certain events arising prior to conveyance of all Lots. The Developer's Rights and Obligations Period with respect to Commercial Lots shall extend until the issuance of use and occupancy permits for Structures constructed on more than fifty percent (50%) of the Commercial Lots, or fifteen (15) years after the last filing of this Declaration, except that some specific rights and obligations may expire by virtue of their being tied to the occurrence of certain events arising prior to conveyance of all Lots. The Developer, however, may elect to voluntarily terminate all or any portion of Developer's Rights and Obligations by expressing such election in writing to the Association. No amendment of the provision of this Article 12 may be made without the concurrence of the Developer.

Section 12.3 Right to Complete Community Plan. The Developer shall have the right to conduct all activities required to complete the Community Plan, as such may be amended from time to time. Completion of the Community Plan shall include the Commercial Lots that exist and those that will be created and are identified as "Future Commercial" on the plans. The Association shall not, as an entity, take any position of opposition against provisions of the Community Plan in a public setting, nor utilize any of its material or financial resources to oppose the development activities of Developer so long as they remain generally consistent with the Community Plan. This provision is not intended to diminish the right of any individual to express opinions nor of the Association to pursue claims arising out of alleged breaches of agreements or representations by the Developer. At the direction of the Developer, the Association shall transfer any part of the Community Property to the Developer or a third party, for the purpose of adjusting boundary lines or otherwise in connection with the orderly subdivision or development of the Property, but only to the extent such resubdivision or adjustment does not contravene the requirements of zoning and other ordinances applicable to the Property.

Section 12.4 Amendments and Other Actions Affecting Developer.

(a) **Founding and Governing Documents.** The Association shall make no amendments to the Founding Documents that affect Developer's interests, including Developer's Rights and Obligations, without Developer's concurrence. No action may be taken by the Association that materially affects Developer's interests without Developer's concurrence. In these contexts, Developer's interests are intended to include those of the Participating Builders, because of their indispensable role in fulfilling the intent of the Community Plan.

(b) **Easements.** The Association shall take no action seeking to alter easements established in the Founding Documents by the Developer, nor to prevent establishment of easements necessary to complete the Community Plan.

Section 12.5 Association Related Rights and Obligations.

(a) **Developer's Responsibilities for Affairs of Association.** Developer shall be exclusively responsible for conducting the affairs of the Association until at least one Owner, other than Developer or a Participating Builder has been elected to a seat on the Board of Directors.

(b) **Developer's Representation on Board of Directors.** All members of the initial Board of Directors appointed by the Developer shall serve until replaced as provided herein. At the first annual meeting of the Association after twenty-five percent (25%) of the Living Units planned to be included within the Community have been initially occupied, one (1) member of the Board of Directors shall be elected by the Class A and Class B Members to replace a Developer appointee. At the first annual meeting of the Association after sixty percent (60%) of the Living Units planned to be included within the Community have been initially occupied, one (1) additional member of the Board of Directors shall be elected by the Class A and Class B Members to replace a Developer appointee. At the first annual meeting of the Association after lapse of all of the Class C Memberships as herein provided for or, if sooner, at the first annual meeting of the Association after expiration of ten (10) years following the date of the initial recordation of the Declaration, the Class A and Class B Members Owners shall elect a majority of the members of the Board of Directors. The Developer's right to appoint members to the Board of Directors, not otherwise elected by the Class A and Class B Members, shall continue so long as Developer's Rights and Obligations are in effect. Except as expressly set forth in this Section, nothing herein shall otherwise be construed as limiting the Developer's right to vote as a Class B Member of the Association, after lapse of the Class C Memberships, on any matter. Notwithstanding anything herein contained to the contrary, the Developer shall always, for so long as the Developer has the power of appointment of more than one member of the Board of Directors, designate at least one member of the Board of Directors from a representative nominated by the Owners of the Commercial Lots.

Section 12.6 Developer's Power of Attorney to Amend Founding Documents.

(a) **Amendment of Founding Documents.** Notwithstanding any provision to the contrary contained in the Founding Documents, the Developer hereby reserves for itself, its successors, transferees and assigns, for a period of fifteen (15) years from the date of the recordation of the Declaration or until all Living Units planned to be included within the Community are conveyed by the Developer and the Participating Builders, whichever occurs first, the right to execute on behalf of all contract purchasers, Owners, mortgagees and other lienholders or parties having a legal or equitable interest in any Lot or Community Property, any such agreements, documents, amendments or supplements to the Founding Documents as may be necessary or desirable to correct errors or omissions or which may be required or desired by the Federal Mortgage Agencies, the County, any governmental or quasi-governmental agency with regulatory jurisdiction over the Association, by a lender or title insurance company designated by the Developer or a Participating Builder or to accomplish the goals and objectives of the Developer in fulfilling the Community Plan.

(b) **Appointment.** By acceptance of a deed to any Lot or Living Unit or by the acceptance of any other legal or equitable interest in the Lots or Community Property, each and every contract purchaser, Owner, mortgagee and other lienholder or party having a legal or equitable interest in any Lot or Community Property does automatically and irrevocably name, constitute, appoint and confirm the Developer, its successors, transferees and assigns, as attorney-in-fact for the purpose of executing such agreement, document, amendment, supplement and other instrument(s) necessary or desirable to effect the foregoing, subject to the limitations set forth herein.

(c) **Limitations.** No such agreement, document, amendment, supplement or other instrument which materially and adversely affects the value or marketability of a Lot or Living Unit or Commercial Unit or substantially increases the financial obligations of an Owner or reserves any significant additional or special privileges for the Developer not previously reserved, shall be made without the prior written consent of the affected Owner and all owner of any mortgage encumbering the Lot owned by the affected Owner. Any such agreement, document, amendment, supplement or instrument which materially and adversely affects the priority or validity of any mortgage which encumbers any Lot or Living Unit or Commercial Unit shall not be made without the prior written consent of the owner of such mortgage.

(d) **Duration.** The power of attorney aforesaid is expressly declared and acknowledged to be coupled with an interest in the subject matter hereof and the same shall run with the title to any and all Lots and Community Property and be binding upon the heirs, personal representatives, successors, transferees and assigns of any of the foregoing parties. Further, said power of attorney shall not be affected by the death or disability of any principal and is intended to deliver all right, title and interest of the principal in and to said power of attorney. Said power of attorney shall be vested in the Developer, its successors, transferees and assigns, for a period of fifteen (15) years from the date of the initial recordation of the Declaration or until all Living Units planned to be included within the Community are conveyed by the Developer and the Participating

Builders, whichever occurs first. Thereafter, said power of attorney shall automatically vest in the Association to be exercised by its Board of Directors.



ARTICLE 13 **MAINTENANCE**

Section 13.1. Lot Maintenance. Except as otherwise specifically provided in the Governing Documents, each Owner and/or Resident of a Lot within the Community shall keep such Lot and all improvements therein or thereon, in good order and repair and free of debris, including but not limited to the seeding, watering and mowing of all lawns, the pruning of all trees and shrubbery and the painting (or other appropriate external care) of all buildings and other improvements located on such Lot, all in a manner and with such frequency as is consistent with good property management. In the event an Owner and/or Resident of any Lot within the Community shall fail to maintain such Owner's Lot and the improvements situated thereon, the Board of Directors or its agent shall have the right to enter upon said Lot to repair, maintain and restore the Lot and the exterior of the buildings and any other improvements erected thereon. The Association shall also have the right to enter Lots to correct drainage. Except in the case of an emergency, the Board of Directors shall provide an Owner and/or Resident at least fifteen (15) days written notice prior to entering a Lot for the purposes set forth in this Section. Notice shall be deemed to be given when mailed by regular or certified mail to the address of the Owner and/or Resident as it appears in the records of the Association. All costs related to such correction, repair, maintenance or restoration shall become a lien upon such Lot, and such lien may be enforced in the same manner as the lien for any other Assessment under the Governing Documents.

Section 13.2. Association Maintenance. The Association shall maintain, repair, replace and keep in good order (i) the Community Property (including grass cutting and lawn maintenance) and any improvements, landscaping and facilities situated thereon including the exercise/fitness facility, (ii) all Private Roads, Alleys and pathways (including, without limitation, bicycle and pedestrian trails and snow removal on all private streets) located within the Community Property, (iii) all storm water management facilities (including, without limitation, ponds, basins, storm drainage pipes, inlets, oil grit separators, drainage areas and underground facilities, if any) located within the Community, or which are designed to benefit or serve any portion of the Community or which are otherwise required or intended to be maintained by the Association pursuant to any easement, agreement or the direction of any governmental authority or agency, (iv) rights-of-way, sidewalks, entry strips, signs and entrance features or improvements located within the Community or which are appurtenant to and serve or benefit the Community, (v) any Private Road or Alley and pedestrian walkway lighting systems, and (vi) any other property, facilities or equipment appurtenant to and serving or benefiting the Community which the Association elects or is required to maintain, repair or replace. The Association shall provide, or enter into shared maintenance agreements to provide for maintenance of all sidewalks lying within all public rights of way for streets dedicated as part of any record plat for Potomia, to the extent said sidewalks are not maintained by the Virginia

Department of Transportation unless the responsibility for maintenance of said sidewalks is accepted by appropriate governmental authorities. Such maintenance, repair and replacement shall be funded as provided in the Governing Documents.

Section 13.3 Lawn and Garden Areas. The Association may elect, pursuant to a duly adopted resolution, to maintain and keep in good order the Lawn and Garden Areas (as defined below) located within any Lot, group of Lots or all of the Lots. In the event the Board of Directors elects to assume such maintenance responsibilities, all costs of such maintenance shall be assessed only against the Owners of Lots that contain Lawn and Garden Areas maintained by the Association. Without limiting the generality of the foregoing, in the event the Board of Directors elects to maintain any Lawn and Garden Areas, the Association shall be responsible for mowing, fertilizing, trimming and otherwise caring for the lawns, as well as planting, pruning, fertilizing and otherwise maintaining the trees, shrubs and other plant materials which are located within such Lawn and Garden Areas, and an easement is hereby granted to The Board of Directors and its agents and employees to perform such maintenance. All such maintenance and care of the Lawn and Garden Areas shall be in conformity with standards established by the Board of Directors from time to time.

Section 13.4. Landscape Buffer Easement. In addition to the Association's general obligation to maintain Community Property, the Association shall further maintain certain portions of the Community Property as follows:

(a) **Maintenance of Landscape Buffer Easement.** Upon conveyance to the Association of any real property or portion thereof designated as being subject to a landscape buffer easement in any Declaration of Annexation recorded with respect to the Property ("**Landscape Buffer Easement**"), the Association shall preserve and maintain all trees and vegetation located on such Community Property in a neat and attractive manner consistent with the Governing Documents, including reasonable pruning and trimming of such trees, and shall not remove any tree from such Community Property except as may be permitted by this Section. No tree greater than six (6) inches in diameter, as measured at six (6) feet above the ground, shall be removed from any Community Property subject to a Landscape Buffer Easement without the prior written approval of the Community Architect; provided, that diseased or dead trees or vegetation, trees or vegetation requiring removal to promote the growth of other trees or vegetation, trees or vegetation requiring removal for health or safety reasons, or trees or vegetation that have been substantially damaged may be removed without the approval of the Community Architect. Any dead, diseased or substantially damaged trees or vegetation removed in accordance with this Section shall be replaced by the Association with one (1) or more comparable trees or vegetation of such size and number and in such location(s) as the Association may deem necessary or desirable.

(b) **Storm Drain and Related Facilities.** In the event that any governmental agency, authority or entity requests that any tree or vegetation within a Landscape Buffer Easement be removed for the purpose of installing, constructing, reconstructing, maintaining, repairing, operating or inspecting storm drain and related facilities or for any

other valid purpose, the Association shall not unreasonably withhold, delay or condition granting its consent to such removal.

(c) **Utility Equipment and Utility Services.** In the event that any public utility company requests that any tree or vegetation within a Landscape Buffer Easement be removed for the purpose of installing, repairing, accessing, constructing or reconstructing any utility equipment and/or appurtenances thereto or for the purpose of providing utility services of any nature whatsoever to the Property or for any other valid purpose, the Association shall not unreasonably withhold, delay or condition granting its consent to such removal.

(d) **New Plantings.** Notwithstanding anything in this Section to the contrary, the Association may plant grass, herbaceous materials, and shrubs on any Community Property within a Landscape Buffer Easement without obtaining the Community Architect's approval.

(e) **Emergency.** Notwithstanding anything in this Section to the contrary, in the event of an emergency, as determined by the Association, the Association may remove any tree or vegetation from any Community Property within a Landscape Buffer Easement.

(f) **Obligation of Association.** The obligations of the Association hereunder shall apply only with respect to Community Property within a Landscape Buffer Easement and only for the period during which the Association is the fee simple owner of such Community Property. When the Association ceases to own a fee simple interest therein, the obligations and liabilities thereafter accruing (but not any accrued and unperformed obligations and liabilities) shall be the obligations of the transferee of such Community Property.

Section 13.5. Additional Maintenance Responsibilities. The Association may, pursuant to a duly adopted resolution, assume additional maintenance responsibilities upon all or any portion of the Community, including, but not limited to, the exteriors of Living Units (but not the interiors thereof), and an easement is hereby granted to the Board of Directors and its agents and employees to perform such maintenance. In the event the Board of Directors elects to assume such additional maintenance responsibilities, all costs of such maintenance shall be assessed only against those Owners residing within the portion of the Community receiving or benefiting from the additional services. This assumption of responsibility may take place either by contract or because, in the opinion of the Board of Directors, the level and quality of service provided within the Community is not consistent with standards established from time to time by the Board of Directors.

ARTICLE 14 **INSURANCE**

Section 14.1. Individual Coverage. Each Owner covenants and agrees with all other Owners and with the Association that each Owner shall carry blanket, all risk, casualty insurance on the Living Unit and Commercial Unit and all Structures located upon such

Owner's Lot that, at a minimum, shall provide coverage against loss or damage by fire or other hazards in an amount sufficient to cover the full replacement cost of any repair or reconstruction work in the event of damage or destruction from any insured hazard. The Board of Directors of the Association, or its duly authorized agent, shall have the authority but not the obligation, to obtain insurance for all or any of the Living Units or Commercial Units within the Community, unless the Owners thereof has supplied the Board with proof of adequate casualty insurance coverage against loss or damage by fire or other hazards in an amount sufficient to cover the full replacement cost (less a reasonable deductible) of any repair or reconstruction work in the event of damage or destruction from any insured hazard. The insurance proceeds payable on account of loss or damage to the Living Unit shall be applied to repair or restoration of the damaged property in substantial conformity to the original plans and specifications, unless otherwise approved by the Board of Directors or the Community Architect. The Board of Directors and the Association shall incur no liability to any Owner or mortgagee in the event that the Board of Directors or the Association shall elect not to exercise their authority to obtain such insurance for all or any of the Living Units within the Community. In the event the Board of Directors obtains insurance coverage for any Living Unit pursuant to this Section, the cost thereof shall be assessed against the Owner of the Lot benefiting from such insurance and shall be collectible in the same manner as any other Assessment under the Governing Documents. Each Owner of a Lot further covenants and agrees that in the event that the Living Unit or other Structures constructed on such Owner's Lot are partially or totally destroyed, the Owner shall proceed promptly to repair or to reconstruct the Living Unit and other damaged Structures in a manner consistent with the original construction, unless approval to do otherwise is obtained from the Board of Directors or Covenants Committee.

Section 14.2 Required Coverage. The Board of Directors of the Association or its duly authorized agent, shall be required to obtain, maintain and pay the premiums, as a Common Expense, upon a policy of property insurance covering all insurable improvements to the Community Property (except land, foundation, excavation and other items normally excluded from coverage) including fixtures and building service equipment, to the extent that they are a part of the Community Property, as well as common personal property and supplies owned by the Association. If any portion of the Community Property is in a special flood hazard area, as defined by the Federal Emergency Management Agency, the Board of Directors of the Association, or its duly authorized agent, shall be required to obtain, maintain and pay, as a Common Expense, the premiums upon a "master" or "blanket" policy of flood insurance on the Community Property and any improvements and facilities situated thereon. The policy shall be in an amount deemed appropriate, but not less than the maximum coverage available under the National Flood Insurance Program for all buildings and other insurable property within any portion of the Community Property located within a designated flood hazard area or one hundred percent (100%) of current replacement cost of all such buildings and other insurable property. The Association shall also maintain comprehensive general liability insurance coverage (with initial policy limits of at least **One Million Dollars (\$1,000,000)** per occurrence but subject to annual review) covering all of the Community Property, public ways within the Community and other areas that are under the Association's supervision, including, but not limited to, a Community Facility located on the Conservancy Land or a Conservancy Lot. The Board of

Directors shall further have the authority to add as an additional insured to any policy of insurance maintained by the Association, the owner of the Conservancy Land or any Conservancy Lots over which the Association maintains any Community Facilities.

Section 14.3. Fidelity Bonds. To the extent reasonably available and at a cost deemed reasonable by the Board of Directors, blanket fidelity bonds may be maintained by the Association for all officers, directors, managers, trustees, employees and volunteers of the Association and all other persons handling or responsible for funds held or administered by the Association, whether or not they receive compensation for their services. Where the Association has delegated some or all of the responsibility for the handling of funds to a Management Agent, such Management Agent shall be covered by its own fidelity bond. Except for fidelity bonds that a Management Agent obtains for its personnel, all fidelity bonds should name the Association as an obligee and should have their premiums paid as a Common Expense by the Association.

Section 14.4. Directors and Officers Liability Hindrance. The Association shall maintain Directors and Officers liability insurance coverage in an amount not less than **One Million Dollars (\$1,000,000)** per occurrence or claim. The premium for such coverage shall be a Common Expense of the Association.

Section 14.5. Requirements for Insurance and Fidelity Bond Coverage. The Board of Directors may, by duly adopted Administrative Resolution, set forth specific qualifications and requirements for insurance and fidelity bond coverage obtained and maintained by the Association.

Section 14.6. Repair and Reconstruction of the Community Property After Fire or Other Casualty. In the event of damage to or destruction of any portion of the Community Property covered by insurance payable to the Association as a result of fire or other casualty, the Board of Directors shall arrange for the prompt repair and restoration thereof, and shall disburse the proceeds of all insurance policies to the contractors engaged in such repair and restoration. Promptly after a casualty causing damage or destruction of any portion of the Community Property for which the Association has the responsibility of maintenance, repair, and/or replacement, the Board of Directors shall obtain reliable and detailed estimates of the cost to place the damaged portions of the Community Property in as good a condition as existed before the casualty. Such costs may include professional fees and premiums for such bonds as the Board of Directors may desire.

Section 14.7. Owner Responsibility for Deductible and Other Loss. In the event that the Association suffers any loss as a result of the intentional or negligent act or omission of any Owner (or such Owner's guests, lessees, invitees or licensees) the deductible for any insurance claim based on such loss plus any amount of the loss not covered by insurance shall be collectible from such Owner in the same manner as any other Assessment under the Governing Documents.

Section 14.8. Other Required Coverage. The Association shall further maintain such other or additional insurance coverages as shall be required under the terms of any rights

of way, easements or use agreements in favor of the Association pertaining to the Conservancy Land or the Conservancy Lots. The Association shall also comply with all indemnification obligations (and is authorized to grant such indemnification) to the owners of the Conservancy Lots and the Conservancy Land and such other parties as are a condition to the grant to the Association of any right of way, easement or use agreement for Common Facilities on the Conservancy Lots or the Conservancy Land.

ARTICLE 15

PARTY WALLS AND PARTY FENCES

The rights and duties of the Owners and Residents with respect to party walls and party fences constructed as part of the original construction within the Community shall be governed by the following (except as may be provided otherwise in the documents establishing a condominium regime within the Property):

Section 15.1. General Rules of Law to Apply. Each wall or fence which is constructed as a part of the original construction within the Community and any part of which is placed on the dividing line between separate Lots, shall constitute a party wall or party fence and with respect to such wall or fence, each of the adjoining Owners shall assume the burdens, and be subject to an easement for that portion of a party wall or party fence on such Owner's Lot and be entitled to the benefits of these restrictive covenants. To the extent not inconsistent herewith, the general rules of law regarding party walls and party fences and of liability for property damage due to negligence or willful acts or omissions, shall apply thereto.

Section 15.2. Sharing of Repair and Maintenance and Destruction by Fire or Other Casualty. If any such party wall or party fence is damaged or destroyed by fire or other casualty or by some cause other than the act of one of the adjoining Owners or Residents (including ordinary wear and tear and deterioration from lapse of time), then, in such event, both such adjoining Owners or Residents shall proceed forthwith to rebuild or repair the same to as good condition as formerly, in proportion to their respective use of the party wall or party fence.

Section 15.3. Repairs of Damage Caused by One Owner and/or Resident.

If any such party wall or party fence is damaged or destroyed through the act of one adjoining Owner or Resident, so as to deprive the other adjoining Owner or Resident of the full use and enjoyment of such wall or fence, then the Owner or Resident responsible for such damage shall forthwith proceed to rebuild and repair the same to as good condition as formerly, without cost to the adjoining Owner.

Section 15.4. Weatherproofing. Notwithstanding any other provision of this Article, any Owner or Resident that negligently or willfully causes a party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 15.5. Encroachments. If any portion of a party wall shall encroach upon any adjoining Lot, or upon the Community Property, by reason of reconstruction, settlement or shifting of any building or otherwise, a valid easement for the encroachment and for the maintenance of the same shall exist as long as the party wall stands.

Section 15.6. Other Change. In addition to meeting the other requirements of this Declaration, and of any building code, zoning ordinance or similar governmental regulations or ordinances, any Owner proposing to modify, make additions to or rebuild a Living Unit in any manner which requires the extension or other alteration of any party wall or party fence, shall first obtain the written consent of the adjoining Owner, which consent shall not be unreasonably delayed or denied.

Section 15.7. Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 15.8. Dispute. In the event of a dispute between Owners with respect to the repair or rebuilding of a party wall or party fence or with respect to the sharing of the cost thereof, then, upon written request of one of such Owners addressed to the Association, the matter shall be submitted to its Board of Directors or Covenants Committee who shall decide the dispute, and the decision of such Board of Directors or Covenants Committee shall be final and conclusive upon the parties.

ARTICLE 16 **JOINT DRIVEWAYS**

Section 16.1. General Rules of Law to Apply. Any driveway which is built or installed as part of the original construction within the Community and which is situated on the property, line between Lots or partly on one Lot and partly on another Lot or other Lots shall constitute a joint driveway for the equal and common use and benefit of the Owners and Residents of such Lots and of other portions of the Community which such driveway is reasonably designed to serve. To the extent not inconsistent with the provisions of this Article, the general rules of law regarding joint driveways and of liability for property, damage due to negligent or willful acts or omissions shall apply thereto.

Section 16.2. Maintenance. The Owners and Residents of Lots served or benefited by a joint driveway shall maintain such driveway in a safe and orderly condition and shall be responsible for all maintenance, repairs and replacements necessitated as a result of ordinary wear and tear or as a result of damage or destruction caused by fire or other casualty, other than any damage or destruction caused by the act of an adjoining Owner or Resident. All costs associated with the maintenance, repair or replacement of any joint driveway shall be born equally by all Owners and/or Residents served or benefited by such driveway.

Section 16.3. Damage Caused by Adjoining Owners or Residents. If any joint driveway is damaged or destroyed through the act of an adjoining Owner or the Residents of such Owner's Lot, so as to deprive the other adjoining Owners or Residents of the full use and enjoyment of the joint driveway, then the Owner and/or Resident responsible for such damage or destruction shall forthwith proceed to rebuild and repair the joint driveway to as good condition as existed prior to such damage or destruction, without cost to the adjoining Owner or Owners.

Section 16.4. Easement and Right of Passage. There shall be a perpetual and non-exclusive easement and right of passage on, through, over, under and across any joint driveway reserved to and for the benefit of the Owners and Residents of any Lot or Lots upon which a joint driveway has been built or installed and any Lot or Lots which such joint driveway has reasonably been designed to serve or benefit, for purposes of vehicular and pedestrian ingress and egress to and from such Lot or Lots. No person shall in any way interfere with the free and unobstructed use thereof by said Owners and Residents.

Section 16.5. Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 16.6. Dispute. In the event of a dispute between Owners with respect to the maintenance, repair or replacement of a joint driveway or with respect to sharing the costs thereof, then, upon written request of one of such Owners addressed to the Association, the matter shall be submitted to the Board of Directors or Covenants Committee, who shall decide the dispute and the decision of the Board of Directors or Covenants Committee shall be final and conclusive upon the parties.

ARTICLE 17 **MANAGEMENT**

Section 17.1. Management Agent. The Board of Directors shall employ a professional management agent or qualified property manager (the "**Management Agent**") at a rate of compensation established by the Board of Directors to perform such duties and services as the Board of Directors shall from time to time authorize in writing, including, without limitation, the following:

(a) Establishing (with the approval of the Board of Directors) and providing for the collection of Assessments and to provide for the establishment and enforcement of liens therefor in a manner consistent with the law and the provisions of the Governing Documents;

(b) Providing for the care, upkeep, maintenance and surveillance of the Community Property and any facilities situated thereon;

(c) Designating, hiring and dismissing such personnel, contractors and subcontractors as may be required for the good working order, maintenance and efficient operation of the Community Property and any facilities situated thereon; and

(d) Providing such other services for the Association as may be consistent with law and the provisions of the Governing Documents.

Section 17.2. Duration of Management Agreement. Unless otherwise determined by the Board of Directors by Administrative Resolution, any management agreement entered into by the Association shall provide, inter alia, that such agreement may be terminated for cause by either party upon thirty (30) days' written notice thereof to the other party. The term of any such management agreement shall not exceed one (1) year; provided, however, that the term of any such management agreement may be renewable by mutual agreement of the parties for successive one (1) year periods. Any management agreement entered into by the Developer prior to transfer of control of the Association to Owners other than the Developer, must be terminable, without cause, any time after transfer of control, on not less than thirty (30) nor more than ninety (90) days' notice, and no charge or penalty may be associated with such termination.

ARTICLE 18 **GENERAL PROVISIONS**

Section 18.1. Limitation of Liability. The Association shall not be liable for any failure of any services to be obtained by the Association or paid for out of the Common Expense funds or for injury or damage to person or property, caused by the elements or resulting from water which may leak or flow from any portion of the Community Property or from any pipe, drain, conduit or the like. The Association shall not be liable to any Owner and/or Resident for loss or damage, by theft or otherwise, of articles which may be stored upon the Community Property. No diminution or abatement of Assessments, as herein elsewhere provided for, shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements to the Community Property or from any action taken by the Association to comply with any of the provisions of the Governing Documents, with any law or ordinance or with the order or directive of any municipal or other governmental authority. No officer, director, committee member or the Community Architect shall have any liability to any Owner or Resident for any action taken by any of same in their respective capacity.

Section 18.2. Enforcement. Unless otherwise limited, the Association, any Owner and any mortgagee of any Lot shall have the right to enforce, by any proceeding at law and/or in equity, all restrictions, conditions, covenants, reservations, easements, liens, charges or other obligations or terms now or hereafter imposed by the provisions of the Governing Documents. Failure by the Association, any Owner or by any mortgagee of any Lot, to enforce any provision of the Governing Documents shall in no event be deemed a waiver of the right to do so thereafter. There shall be and there is hereby created and declared to be a conclusive presumption that any violation or breach or attempted violation or breach of any of the Governing Documents, cannot be adequately remedied by action at law or

exclusively by recovery of damages. If the Association or any Owner or mortgagee of any Lot successfully brings an action to extinguish a violation or otherwise enforce the provisions of the Governing Documents, the costs of such action, including legal fees, shall become a binding, personal obligation of the Owner and/or Resident committing or responsible for such violation and such costs shall be collectible in the same manner as any other Assessment under the Governing Documents.

Section 18.3. Assessment of Charges. In addition to the means for enforcement provided elsewhere herein, the Association shall have the right to assess charges against an Owner and/or Resident, in the manner set forth herein and such charges shall be collectible as any other Assessment such that the Association shall have a lien against the Lot of such Owner as provided in the Governing Documents and such charges shall also become the binding personal obligation of such Owner.

(a) The Board of Directors, or the Covenants Committee, shall be charged with determining where there is probable cause that any of the provisions of the Governing Documents, regarding the use of the Living Units, Lots or Community Property, are being or have been violated. In the event that the Board of Directors or the Covenants Committee determines an instance of such probable cause it shall cause the Board of Directors to provide written notice to the person alleged to be in violation and the Owner or Resident of the Lot which that person occupies or is visiting if such person is not the Owner, of the specific nature of the alleged violation and of the opportunity for a hearing before the Board of Directors upon a request made within fourteen (14) days of the sending of the notice. The notice shall be hand delivered or mailed by registered or certified mail, return receipt requested, to such Owner or Resident to the address of record with the Association at least fourteen (14) days prior to any hearing, if requested, held pursuant thereto. The notice shall specify and it is hereby provided, that each recurrence of the alleged violation or each day during which it continues shall be deemed a separate offense, subject to a separate fine to be established by the Board of Directors from time to time for each offense, not to exceed Fifty Dollars (\$50.00) for a single offense or Ten Dollars (\$10.00) per offense for any offense of a continuing nature. The notice shall also specify and it is hereby provided, that in lieu of requesting a hearing, the alleged violator or Owner may respond to the notice within fourteen (14) days of its sending, acknowledging in writing that the violation occurred as alleged and promising that it will henceforth cease and will not recur. Such acknowledgment, and performance in accordance therewith, shall terminate the enforcement activity of the Association with regard to such violation.

(b) If a hearing is timely requested, the Board of Directors or Covenants Committee shall hold the same and shall hear any and all defenses to the charges, including any witnesses that the alleged violator, Owner, Resident or the Board of Directors or Covenants Committee may produce. Any party at the hearing may be represented by counsel.

(c) Subsequent to any hearing, or if no hearing is timely requested and if no acknowledgment and promise is timely made, the Board of Directors or Covenants Committee shall determine whether there is sufficient evidence of a violation or violations

as provided herein. If the Board of Directors or Covenants Committee determines that there is sufficient evidence, it may assess a charge for each violation in the amount provided herein.

(d) A charge pursuant to this Section shall be assessed against the Lot which the violator occupied or was visiting at the time of the violation, whether or not the violator is an Owner of that Lot and shall be collectible in the same manner as any other Assessment, including by the Association's lien rights as provided in the Governing Documents. Nothing herein shall be construed to interfere with any right that an Owner may have to obtain from a violator occupying or visiting such Owner's Lot payment of the amount of any charges assessed against that Lot.

(e) Nothing herein shall be construed as a prohibition of or limitation on the right of the Association to pursue any other means of enforcement of the provisions of the Governing Documents, including, but not limited to, legal action for damages or injunctive relief.

Section 18.4. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

Section 18.5. Duration and Amendment. Except where permanent easements or other permanent rights or interests are herein created, the covenants and restrictions of the Declaration shall run with and bind the land for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended by an instrument signed by, or the affirmative vote of, the Owners of not less than seventy-five percent (75%) of the Lots. Any amendment must be recorded among the County Land Records.

(a) **County Approval.** A number of provisions are contained within this Declaration to comply with the Conditions required by Proffers of Zoning Map Amendment ZMAP 1995-0004 together with Letters of Clarification from the applicant dated January 24, 1996 and February 21, 1996, respectively, and the Conditions of Subdivision Approval of preliminary subdivision SBPL 1997-0038. No amendment shall modify or delete any provisions of this Declaration required by such proffers and approval conditions, nor shall any amendment impair the right and authority of Loudoun County to require compliance with the proffers and approval conditions applicable to the Property without the prior written approval of the County.

(b) **Termination.** This Declaration may not be terminated without the approval of the appropriate agency of Loudoun County.

Section 18.6. Successors of Developer. Any and all rights, reservations, easements, interests, exemptions, privileges and powers of the Developer hereunder, or any part of them, may be assigned and transferred (exclusively or non-exclusively) by the Developer by instrument in writing, without notice to the Association.

Section 18.7. Taxes and Assessments. It is the intent of this Declaration that insofar as the interests of each Owner to use and enjoy the Community Property is an interest in real property appurtenant to each Lot, the value of the interest of each Owner in such Community Property shall be included in the assessment for each such Lot and as a result, any assessment directly against such Community Property should be of a nominal nature reflecting that the full value of the same should be included in the several assessments of the various Lots.

Section 18.8. No Dedication to Public Use. Nothing herein contained shall be construed as a dedication to public use or as an acceptance for maintenance of any Community Property by any public or municipal agency, authority, or utility and no public or municipal agency, authority or utility shall have any responsibility or liability, for the maintenance or operation of any of the Community Property.

Section 18.9. Incorporation by Reference on Resale. In the event any Owner sells or otherwise transfers any Lot, any deed purporting to effect such transfer shall contain a provision incorporating by reference the covenants, restriction, servitudes, easements, charges and liens set forth in this Declaration, however, the failure to do so shall not affect the validity of any such deed.

Section 18.10. Developer Reserved Rights. No supplemental or amendment to the Governing Documents may remove, revoke or modify any right, reservation or privilege of the Developer without the prior written consent of the Developer.

IN WITNESS WHEREOF, the Developer has set its hand and seal as of the year and day first above written.

ELYSIAN LAND, LLC,
a Virginia limited liability company

By: Batavia, LLC, a Virginia
limited liability company,
Its Manager

By:  (SEAL)
JAN A. ZACHARIASSE
Managing Member

COMMONWEALTH OF VIRGINIA
COUNTY OF Fairfax

I HEREBY CERTIFY that on this 8th day of March, 2008⁴, before me, a Notary Public in and for the State and County aforesaid, personally appeared Jan A. Zachariasse, the Managing Member of Batavia, LLC, a Virginia limited liability company, the Manager of Elysian Land, LLC, a Virginia limited liability company, and being authorized to do so, acknowledged that he executed the foregoing and annexed instrument on behalf of Elysian Land, LLC, a Virginia limited liability company by signing the name of Batavia, LLC, a Virginia limited liability company, its Managing Member.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.


Notary Public

My Commission Expires: July 31, 2005

POTOMIA COMMUNITY ASSOCIATION, INC.
a Virginia non-stock corporation

By:  (SEAL)

Name: Rick L. Stark

Title: President


Instr: 20040312-0022356
Page: 57 OF 66

COMMONWEALTH OF VIRGINIA,
COUNTY OF FAIRFAX, to-wit:

The foregoing instrument was acknowledged and sworn to before me this 8th day of March, 2008 by Rick L. Stark as President of Potomia Community Association, Inc., on behalf of the corporation.


Notary Public

My commission expires: July 31, 2008

WASHINGTON-VIRGINIA TRADITIONAL
DEVELOPMENT SITES, INC.
a Virginia corporation

Instr: 20040312-0022356
Page: 58 OF 65

By: *Peter E. Kalanis* (SEAL)
Name: Peter E. Kalanis
Title: Vice President

COMMONWEALTH OF VIRGINIA,
COUNTY OF LOUDOUN, to-wit:

The foregoing instrument was acknowledged and sworn to before me this 8th day of March, 2003 by Peter E. Kalanis as V.P. of Washington-Virginia Traditional Development Sites, Inc., on behalf of the corporation.

E. James Ellis
Notary Public

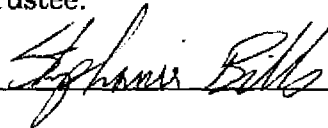
My commission expires: 2-26-04



PETER E. KALARIS, TRUSTEE (SEAL)

COMMONWEALTH OF VIRGINIA,
COUNTY OF LOUDOUN, to-wit:

The foregoing instrument was acknowledged and sworn to before me this 2nd day of March, 2004 by Peter E. Kalaris, Trustee.



Notary Public

My commission expires: 2-26-06

VIRGINIA TITLE HOLDING CORPORATION,
TRUSTEE
a Virginia corporation

Instr: 20040312-0022358
Page: 60 OF 65

By: Elizabeth M. Wright (SEAL)
Name: ELIZABETH M. WRIGHT
Title: EXEC. VICE PRESIDENT

COMMONWEALTH OF VIRGINIA,
COUNTY OF FAIRFAX, to-wit:

The foregoing instrument was acknowledged and sworn to before me this 8th day of March, 2008 by Elizabeth M. Wright as Exec. Vice President of Virginia Title Holding Corporation, Trustee.

[Signature]
Notary Public

My commission expires: July 31, 2005

EXHIBIT 1
(Land being subjected to Declaration)

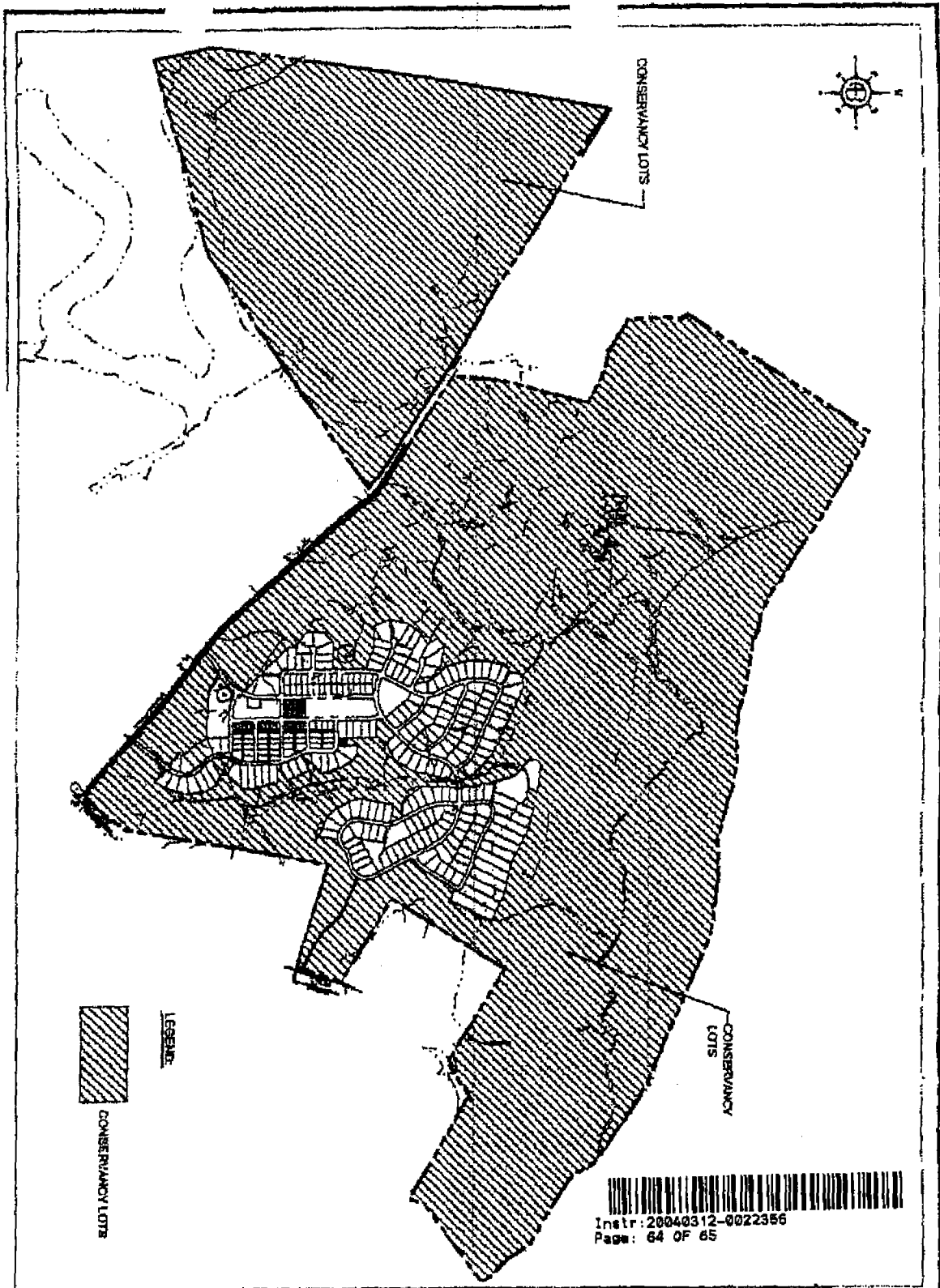
TH 1 through TH 33, Lot 1 through Lot 80, Lot 101 through Lot 105 and Lot 112 through Lot 141, inclusive, and Parcels C through N, Parcel O (Open Space), Park 1, CLVG1, CLVG2, CL1, CL2, and FCS, ELYSIAN HEIGHTS, Phase 1, as the same are duly subdivided, platted and recorded by Deed of Subdivision, Dedication, Easement and Conveyance recorded contemporaneously herewith.

EXHIBIT 2
(Other land of Developer and which may be annexed to Declaration)

Parcel Two

Parcel Two containing 90.45194 acres, more or less, as the same are duly subdivided, platted and recorded by Deed of Subdivision, Dedication, Easement and Conveyance recorded contemporaneously herewith.

EXHIBIT 3
(Description of Conservancy Land)



Richmond

Richmond Engineering, Inc.

401 N. Bridge St.
Richmond, Virginia 23110
Phone: (813) 340-7730
Fax: (813) 340-7731
Web: www.richmond.com

Engineering
Surveying
Land Planning

**Elysian Heights
Village Center**

**EXHIBIT 3
CONSERVANCY LOTS**

PROJ. NO.: 00507
DWG: BASE-EXHIBIT.DWG
DATE: 03/20/2000
SCALE: 1" = 1000'
SHEET: 5A

EXHIBIT 4

**Maximum Annual Assessment for period ending December 31, 2003 is
\$3,000.00.**

After recording return to:

Settlement Department
Linowes and Blocher LLP
7200 Wisconsin Avenue, Suite 800
Bethesda, MD 20814-4842

**FIRST AMENDMENT TO THE
POTOMIA**

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS FIRST AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS for POTOMIA (the "Amendment") is made and effective as of this 25th day of March, 2004 by ELYSIAN LAND, LLC, a Virginia limited liability company (hereafter the "Developer"), Grantor; POTOMIA COMMUNITY ASSOCIATION, INC., a Virginia non-stock corporation (hereafter the "Association"), Grantor; WASHINGTON-VIRGINIA TRADITIONAL DEVELOPMENT SITES, INC., a Virginia corporation (hereafter "WVTDSI"), Grantor; PETER E. KALARIS, TRUSTEE (hereafter, the "WVTDSI Trustees"), Grantors; in accordance with the Virginia Property Owners Association Act, Chapter 26 of Title 55 of the Code of Virginia (1950) as amended.

EXPLANATORY STATEMENT

A. Whereas, the above referenced Developer, Association, WVTDSI and WVTDSI Trustees recorded a "Declaration of Covenants, Conditions and Restrictions for Potomia" (the Declaration) among the land records of the Clerk's Office of the Circuit Court of the County of Loudoun, Virginia on March 12, 2004, as INSTRUMENT NO. 200403120022356.

B. Whereas, the aforesaid Developer, with the consent of the Trustees and WVTDSI, and the Association have decided to correct and amend the definition of "Community Facilities" contained in "Article I - Definitions" of the Declaration by deleting the words "and invitees" from said definition.

NOW THEREFORE, in consideration of the premises and other valuable consideration, the Developer, with the consent of the Trustees and WVTDSI, and the Association, hereby amend the definition of "Community Facilities" in Article I of the Declaration as follows: The words "and invitees" are hereby deleted from said definition, so that the amended definition of "Community Facilities" shall contain the following:

"Community Facilities" means all open space, greens, trails, the swimming pool, bathhouse, tennis courts and any other recreational facilities located on the Community Property and constructed by the Developer or the Association on either the Developer's Land or the Conservancy Land for the common use and enjoyment of the Owners and Residents. The Community Facilities located on the Developer's Land, upon completion of construction by the Developer, shall become a part of the Community Property and the Developer shall convey to the Association the Community Facilities located on the Developer's Land. The use of the Community Facilities shall be limited to Owners, Residents and their respective guests and shall be subject to such regulation and control as may be adopted by the Board of Directors.



Instr: 20040329-0028093 Pg: 1 OF 4
Loudoun County, VA
03/29/2004 3:24:41PM
Gary M. Clemens, Clerk

6/10 # 101-14-0741-000 and 101-38-1230-000
Tax Map # / 20/118/119/and/20/118/119/18/
Prepared OUTSIDE THE Commonwealth.

IN WITNESS WHEREOF, the Developer has set its hand and seal as of the year and day first above written.

ELYSIAN LAND, LLC,
a Virginia limited liability company

By: Batavia, LLC, a Virginia
limited liability company,
Its Manager

By:  (SEAL)
JAN A. ZACHARIASSE
Managing Member

COMMONWEALTH OF VIRGINIA
COUNTY OF Fairfax

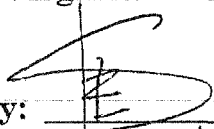
I HEREBY CERTIFY that on this 25th day of March, 2004, before me, a Notary Public in and for the State and County aforesaid, personally appeared Jan A. Zachariasse, the Managing Member of Batavia, LLC, a Virginia limited liability company, the Manager of Elysian Land, LLC, a Virginia limited liability company, and being authorized to do so, acknowledged that he executed the foregoing and annexed instrument on behalf of Elysian Land, LLC, a Virginia limited liability company by signing the name of Batavia, LLC, a Virginia limited liability company, its Managing Member.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.


Notary Public

My Commission Expires: July 31, 2005

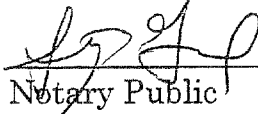
POTOMIA COMMUNITY ASSOCIATION, INC.
a Virginia non-stock corporation

By:  (SEAL)
Name: Rick L. Stark
Title: President

COMMONWEALTH OF VIRGINIA,
COUNTY OF FAIRFAX, to-wit:

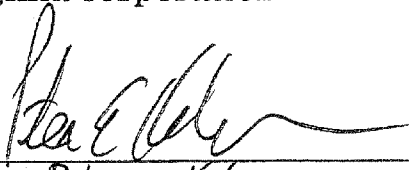

Instr: 20040329-0028093
Page: 2 OF 4

The foregoing instrument was acknowledged and sworn to before me this 25th day of March, 2004 by Rick L. Stark as President of Potomia Community Association, Inc., on behalf of the corporation.


Notary Public

My commission expires: July 31, 2005

WASHINGTON-VIRGINIA TRADITIONAL
DEVELOPMENT SITES, INC.
a Virginia corporation

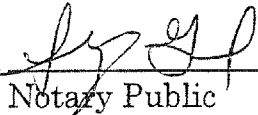
By:  (SEAL)

Name: Peter E. Kalaris

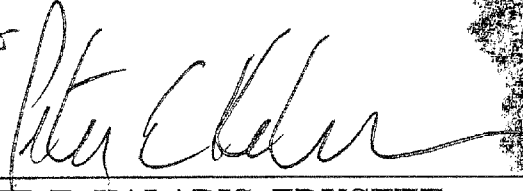
Title: Vice President

COMMONWEALTH OF VIRGINIA,
COUNTY OF LOUDOUN, to-wit:

The foregoing instrument was acknowledged and sworn to before me this 25th day of March, 2004 by Peter E. Kalaris as Vice President of Washington-Virginia Traditional Development Sites, Inc., on behalf of the corporation.


Notary Public

My commission expires: July 31, 2005

 (SEAL)
PETER E. KALARIS, TRUSTEE

COMMONWEALTH OF VIRGINIA,
COUNTY OF LOUDOUN, to-wit:


Instr: 20040329-0028093
Page: 3 OF 4

The foregoing instrument was acknowledged and sworn to before me this 25th day of March, 2004 by Peter E. Kalaris, Trustee.


Notary Public

My commission expires: July 31, 2005



Instr: 20040329-0028093
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