

# *Declaration*

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DECLARATION OF COVENANTS AND RESTRICTIONS

THIS DECLARATION OF COVENANTS AND RESTRICTIONS ("Declaration") is made this 10 day of June, 2002, by POWHATAN CROSSING, INC., a Virginia corporation, whose address is 213 Ingram Road, Williamsburg, Virginia 23185 ("Declarant"), to be indexed as Grantor.

RECITALS:

A. Declarant is the owner of the real property described below ("Subdivided Property"):

SEE ATTACHED EXHIBIT "A" FOR LEGAL DESCRIPTION

B. Declarant desires to provide for the preservation and enhancement of the property values, amenities and opportunities of the Subdivided Property and for the maintenance of the land and improvements thereon, and to this end desires to subject the Subdivided Property, together with such additions as may hereafter be made thereto (as provided in Article II) to the covenants, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of the Subdivided Property and each owner thereof.

NOW, THEREFORE, Declarant declares that the Property, and such additions thereto as may hereafter be made pursuant to Article II hereof, is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens hereinafter set forth.

ARTICLE I  
DEFINITIONS

Section 1. "Association" shall mean and refer to the Monticello Woods Homeowners Association, Inc., its successors and assigns.

Section 2. "Common Area" shall mean and refer to all real property, open space and improvements thereon owned or leased by, or subject to an easement in favor of, the Association for the use and enjoyment of the Members.

Section 3. "Declaration" shall mean and refer to the covenants, conditions and restrictions and all other provisions herein set forth in this entire document, as same may from time to time be amended.

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Section 4. "Declarant" shall mean and refer to Powhatan Crossing, INC., a Virginia corporation, its successors and assigns; provided, however, that no successor or assignee of Declarant shall have any rights or obligations of Declarant hereunder unless such rights and obligations are specifically set forth in the instrument of succession or assignment or which pass by operation of law.

Section 5. "First Mortgagee" shall mean and refer to an Institutional Lender who holds the first deed of trust on a Lot and who has notified the Association of its holdings.

Section 6. "Governing Documents" shall mean and refer to the Articles of Incorporation of the Association, this Declaration, any Supplementary Declarations, and the Association Bylaws, all as initially drawn by Declarant and filed and recorded as the case may be, and all as may be duly amended from time to time.

Section 7. "Institutional Lender" shall mean and refer to one or more commercial or savings banks, savings and loan associations, trust companies, credit unions, industrial loan associations, insurance companies, pension funds, or business trusts including but not limited to real estate investment trusts, any other lender regularly engaged in financing the purchase, construction, or improvement of real estate, or any assignee of loans made by such a lender, or any private or governmental institution which has insured a loan of such a lender, or any combination of any of the foregoing entities.

Section 8. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Property, with the exception of Common Area as heretofore defined.

Section 9. "Members" shall mean and refer to members of the Association, which shall consist of all Owners.

Section 10. "Owner" shall mean and refer to the record holder of the fee simple title to any Lot, whether one (1) or more persons or entities, including contract sellers; the term shall exclude those having such interest merely as security for the performance of an obligation.

Section 11. "Plat" shall mean that certain plat entitled copy of Exhibit A "PLAT OF SUBDIVISION MONTICELLO WOODS LOTS 1-5 AND 55-73, OWNED BY POWHATAN CROSSING, INC. BERKLEY DISTRICT JAMES CITY COUNTY, VIRGINIA" which plat has been duly recorded in the Clerk's Office of the Circuit Court of James City County in Plat Book 86, at Page 64-67

Section 12. "Property" shall mean and refer to the Subdivided Property, together with such other real property as may from time to time be annexed thereto under the provisions of Article II hereof.

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Section 13. "Supplementary Declaration" shall mean and refer to any declaration of covenants, conditions and restrictions which may be recorded by Declarant, which extends the provisions of this Declaration to the Property.

Section 14. "Zoning Ordinance" shall mean the zoning ordinance of the County of James City, Virginia, as amended from time to time and as such shall be applicable to the Property.

ARTICLE II  
PROPERTY SUBJECT TO THIS DECLARATION  
ADDITIONS THERETO

Section 1. The Subdivided Property. The Subdivided Property shall be held, transferred, sold, conveyed, and occupied subject to this Declaration, which is for the purpose of protecting the value and desirability of, and which shall run with, the Subdivided Property and be binding on all parties having any right, title and/or interest in the Subdivided Property, or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

Section 2. Additions to The Property. The Subdivided Property is the first phase of the community known as Monticello Woods. Declarant shall have the right to bring within the scheme of this Declaration additional properties lying within the boundaries of that parcel owned by Declarant and more particularly described on Exhibit A, attached hereto. Additional properties may become subject to this Declaration by complying with the requirements of the Zoning Ordinance and by filing of record one (1) or more Supplementary Declarations of covenants and restrictions with respect to the additional property, which shall extend the scheme of this Declaration to such property.

ARTICLE III  
MONTICELLO WOODS HOMEOWNERS ASSOCIATION

Section 1. Organization.

(a) The Association. The Association is a nonprofit non-stock corporation organized and existing under the laws of Virginia charged with the duties and vested with the powers prescribed by law and set forth in the Governing Documents, as such may be amended from time to time, provided no other Governing Documents than this Declaration shall for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

(b) Board of Directors.

(1) The number of Directors and method of selection shall be as provided in the Bylaws.

(2) The Board of Directors shall have all powers for the conduct of the affairs of the Association which are enabled by law or the Governing Documents which are not specifically reserved to Members or Declarant by such Documents.

(3) The Board of Directors shall exercise its powers in accordance with the Governing Documents.

Section 2. Membership.

(a) Basis. Membership shall be appurtenant to the Lot giving rise to such membership, and shall not be assigned, transferred, pledged, hypothecated, conveyed or alienated in any way except as provided in the Governing Documents.

(b) Member's Rights and Duties. Each Member shall have the rights, duties and obligations set forth in the Governing Documents.

(c) Voting Rights. The Association shall have two (2) classes of voting membership:

Class A. Class A Members shall be all Owners except the Class B Member. Class A Members shall be entitled to one (1) vote for each Lot owned.

Class B. The Class B Member shall be Declarant which shall have three (3) votes for each Lot owned.

The Class B membership and the Class B voting rights shall cease upon the earlier of the following events: when the total number of Class A votes equals the total number of Class B votes or on December 31, 2008, whichever first occurs. Thereafter, Declarant shall have Class A membership rights for each Lot it may own.

(d) Exercise of Vote. The vote for any membership, which is held by more than one (1) person may be exercised by any one (1) of them, unless any objection or protest by any holder of such membership is made prior to the completion of a vote, in which case the vote for such membership shall not be counted.

Section 3. The Architectural Review Board.

(a) Composition. The Architectural Review Board shall consist of three (3) members appointed as set forth in the Association Bylaws. None of such members shall be required to be an architect or to meet any other particular qualifications for membership. A member need not be, but may be, a member of the Board of Directors or an officer of the Association.

(b) Powers and Duties. The Architectural Review Board shall regulate the external design, appearance and location on the Subdivided Property of improvements thereon in such a manner so as to preserve and enhance values and to maintain a harmonious relationship among structures and the natural vegetation and topography. In furtherance thereof, the Board shall:

(1) Review and approve, modify or disapprove written applications of Owners and of the Association, for improvements or additions to Lots or the Common Area.

(2) In accordance with the Bylaws, monitor Lots for compliance with architectural standards and approved plans for alteration;

(3) Adopt architectural standards subject to the confirmation of the Board of Directors;

(4) Adopt procedures for the exercise of its duties; and

(5) Maintain complete and accurate records of all actions taken.

(c) Failure to Act. In the event the Architectural Review Board fails to approve, modify or disapprove in writing a correctly filed application within thirty (30) days, approval will be deemed granted. Total or partial disapproval will include the reasons for such disapproval.

(d) Appeal. An applicant may appeal an adverse Board decision to the Board of Directors, which may reverse or modify such decision.

#### ARTICLE IV COMMON AREA

Section 1. Obligations of the Association. The Association, subject to the rights of the Members set forth in this Declaration, shall be responsible for the management and control for the benefit of the Members of the Common Area conveyed to it and all improvements thereon (including furnishings and equipment related thereto), and shall keep the same in good, clean, attractive and sanitary condition, order and repair in compliance with standards contained in the Book of Resolutions.

Section 2. Easement of Enjoyment. Subject to the provisions herein, every Owner shall have a right and easement of enjoyment in and to any Common Area set aside for recreational purposes, which shall be appurtenant to and shall pass with the title to every Lot, and every Member shall have a right of enjoyment to such Common Area.

Section 3. Extent of Members' Easement. The Members' easement of enjoyment created hereby shall be subject to the following:

(a) The right of the Association to establish reasonable admission and other fees for the use of Common Area set aside for recreational use;

(b) The rights of the Association to suspend the right of an Owner to use recreational facilities located within the Common Area for any period during which any assessment against his Lot remains unpaid for more than thirty (30) days after notice until such default has been remedied; the right of the Association to suspend the right of a Member to use recreational facilities located within the Common Area for a period not to exceed sixty (60) days for any other infraction of the Governing Documents;

(c) The right of the Association to mortgage any or all of the Common Area. In the event of a default upon any mortgage, the lender's rights hereunder shall be limited to a right, after taking possession of such properties, to charge reasonable admission and other fees as a condition to continued enjoyment by the Members and, if necessary, to open the enjoyment of such properties to a wider public until the mortgage debt is satisfied, whereupon the possession of such properties shall be returned to the Association and all rights of the Members hereunder shall be fully restored;

(d) The right of the Association to convey, or transfer all or any part of the Common Area, is subject to the assent of two-thirds (2/3) of the votes of the Class A Owners and the consent of the Class B Member so long as the Class B membership shall exist;

(e) The right of the Association to license portions of the Common Area to Members on a uniform, non- preferential basis; and

(f) The right of the Association to regulate the use of the Common Area for the benefit of Members.

Section 4. Delegation of Use. Any member may delegate his right of enjoyment to the Common Area and facilities to the members of his family and to his guests subject to such general regulations as may be established from time to time by the Association.

## ARTICLE V COVENANT FOR ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Declarant hereby covenants, and each Owner of any Lot by acceptance of a deed thereof, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association such

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annual and special assessments as are established herein and paid in the manner hereinafter provided.

All such assessments, together with interest thereon and costs of collection thereof (including reasonable attorneys' fees) as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest thereon and costs of collection thereof (including reasonable attorneys' fees), shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due and shall not pass to his successors in title unless expressly assumed by them. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 2. Subordination of the Lien to Mortgage. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage or first deed of trust. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to foreclosure of a first mortgage or first deed of trust or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 3. Method of Assessment. All assessments shall be levied by the Association against Lots and collected and disbursed by the Association. The Board of Directors shall fix the amount of the assessments as provided hereinafter and set the dates such assessments shall become due.

Section 4. Purpose of Assessments. The assessments shall be used exclusively to promote the health, safety and welfare of the Members and in particular to improve, maintain, and operate the Common Area and facilities, including funding of appropriate reserves for future repair and replacement.

Section 5. Maximum Annual Assessment. Until the first day of the fiscal year following commencement of assessments, the maximum annual assessment rate shall be One Hundred Twenty-Five and 00/100 Dollars (\$125.00). Nothing herein shall be construed to prohibit the Board of Directors from adopting an annual assessment rate more than the maximum annual assessment rate set forth herein. Builders shall pay the initial capital assessment of \$200.00 per lot, but shall be exempt from annual assessments until the lot is conveyed to a subsequent owner.

From and after the first day of the fiscal year immediately following the commencement of assessments, the Board of Directors may increase the maximum annual assessment rate each year by an amount deemed necessary by the Board of Directors to provide sufficient funds required to carry out the functions of the Association; such increase shall become effective the first day of the next fiscal year.

From and after the first day of the fiscal year immediately following the commencement of assessments, the maximum may be increased above the amount which can be set by the Board with the assent of one-half (1/2) of the votes of the Class A Members who are voting in person or by proxy, at a meeting duly called for this purpose, and the consent of the Class B Member, so long as the Class B membership shall exist. Written notice of this meeting shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting setting forth the purpose of the meeting.

Section 6. Initial Capital Assessment. Upon the sale and purchase of a Lot, the Owner shall pay the sum of \$200.00 to the Association as a capital contribution at the closing and sale of said Lot.

Section 7. Special Assessments.

(a) Capital Improvement Assessment. The Association may levy in any assessment year a special assessment, applicable to that year and payable over not more than the next three (3) succeeding years, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of the Class B member, if any, and of two-thirds (2/3) of the votes of the Class A Members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting setting forth the purpose of the meeting.

(b) Restoration Assessment. The Association may levy a Restoration Assessment upon any Lot whose Owner fails to maintain such Lot, as provided in Article VI, or who fails to provide such maintenance funds as may be required by the Declaration for such Lot. Restoration Assessments shall be limited to the amount necessary to meet the cost of restoration or deficiency in required funds and the cost of collection thereof.

Section 8. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment installment not paid within thirty (30) days after the due date shall be delinquent. Thereupon, the Association shall provide notice of such delinquency and may (i) declare the entire balance of such annual or special assessment due and payable in full; (ii) charge interest from the due date at a percentage rate no greater than the statutory maximum, such rate to be set by the Board for each assessment period plus an administrative fee of \$20.00; (iii) give written notice to the Owner that in the event payment with accrued interest is not paid within thirty (30) days from the date of such notice, then the expressed contractual lien provided for herein shall be foreclosed; (iv) upon written notice to the Owner, suspend the right of such Owner to vote or to use the recreational facilities until the assessment and accrued interest is paid in full.

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Section 9. Exempt Property. The following property subject to this Declaration shall be exempted from the assessments, charge and lien created herein: (i) all properties to the extent of any easement or other interest therein dedicated and accepted by a public authority and devoted to public use; (ii) all Common Areas; and (iii) all properties exempted from taxation by the state or county government upon the terms and to the extent of such legal exemption, provided that no property utilized for residential purposes shall be exempt.

## ARTICLE VI USE OF PROPERTY

Section 1. Residential Use. Each Lot is limited to one (1) single family dwelling house ("Dwelling") for the use and occupancy of one (1) family and attendant domestic servants, and no such building shall exceed two and one-half (2 1/2) stories in height, in addition to any basement. Each Dwelling shall have an attached or detached three-car or less garage unless otherwise specifically approved in writing by Declarant. Except as otherwise specifically approved in writing by Declarant, other improvements, including, but not limited to, storage areas, tool cabins, garden houses, etc., must be attached to the Dwelling or garage. No Lot shall be permitted to be resubdivided into additional building sites, except by Declarant and only if approval from the County of James City is obtained.

Section 2. Minimum Size and Setbacks. Any Dwelling constructed on any Lot shall have a fully-enclosed gross living area of not less than two thousand three hundred (2,300) square feet, exclusive of all garages, steps, stoops, breezeways, porches, and all patios, whether covered or uncovered. Minimum side yard setbacks shall be five feet (5'). Minimum front yard setbacks shall be twenty feet (20'). Minimum back yard setback shall be ten feet (10').

Section 3. Mandatory Inspection and Approval. Whether or not provision therefor is specifically stated in any sales contract, deed, deed of conveyance, or other conveyance or record made by the Declarant, each Owner, by acceptance of title thereto or by taking possession thereof, covenants and agrees that no Dwelling, building, wall, fence, mailbox, swimming pool, pool house, garage, aerial, antenna, dog house, tool shed, gazebo, deck, or any other structure of any description whatsoever shall be placed upon any Lot unless the plans and specifications therefor and a site plan, in such form and in such detail as the Architectural Review Board shall require to describe fully the Dwelling or improvements, shall be approved in writing by the Architectural Review Board.

All plans, specifications and site plans shall be submitted in triplicate, and two sets shall be retained by the Architectural Review Board, which shall include a floor plan drawn to scale, exterior elevations, roof pitch, exterior building material, and a landscaping plan providing for a reasonable number of trees and shrubs, and in addition, specifying all existing trees over 8 inches in diameter proposed to be removed from the Lot. In addition to these plans, specifications and site plans, building material samples shall also be submitted to the Architectural Review Board for approval, including but not limited to, all proposed exterior brick, roof, shingle and paint

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samples, if applicable, or such other materials as the Architectural Review Board may desire to inspect based upon the proposed plans and specifications of such building or structure. Each such Dwelling, wall, fence, mailbox, swimming pool, garage, or other such structure shall be placed on the premises only in accordance with the plans, specified site plans and with the materials specifically approved by the Architectural Review Board. Refusal or approval of plans and specifications by the Architectural Review Board may be for any reason, including purely aesthetic grounds, which determination shall be in the sole, absolute and uncontrolled discretion of Declarant, its successors and assigns.

The Architectural Review Board, through a designee or otherwise, shall have the right to inspect construction of any Dwelling or other structure while under construction to determine if this Declaration is being adhered to and shall have the right to stop any construction which does not conform to the plans and specifications which have been submitted and approved as herein required.

Section 4. Foundations. No Dwelling shall be constructed upon a slab foundation. Each Dwelling shall have a crawl space with crawl space vents between the ground floor and the supporting foundation for such Dwelling. All plumbing and roof vents and stacks for the Dwelling or structure shall be in the rear and side of the Dwelling or structure. No outside stairway leading to the second story or above of the Dwelling, which can be viewed from the street, shall be permitted for any Dwelling or structure. No storage tank or container shall be installed, placed or maintained above the ground on any Lot without the prior written consent of Declarant.

Section 5. Fence or Wall. No fence or wall shall be placed or erected on any Lot without the prior written approval of the Architectural Review Board pursuant to paragraph three above. Any fence or wall which the Architectural Review Board may approve to be placed or erected on any Lot shall only be composed of wood, vinyl and/or brick and shall have a minimum height of three (3) feet and a maximum height of five (5) feet unless otherwise specifically approved in writing by the Architectural Review Board or assigns. No chain link fence shall be allowed. The height of any fence or wall shall be measured from the existing elevation of the Lot along any such fence or wall.

Section 6. Driveways and Parking. No driveway shall be constructed so as to interfere with the normal drainage of the street on which the Lot fronts. The driveway entrance to each Lot shall intersect the public street at the predetermined "driveway wipe down" in the curb and gutter for that Lot. No other driveway location will be permitted without the express written permission of Declarant.

No driveway or parking area which may be in front of, adjacent to, or highly visible part of any Lot shall be used for commercial vehicles, mobile homes, recreational vehicles, boats, trailers, campers or trucks other than pickup trucks, for a period in excess of twenty-four hours.

The term "commercial vehicles" shall include all commercial trucks and shall also include all other motor vehicles and vehicular equipment which shall bear any sign imprinted, painted or placed on any exterior surface of said vehicle containing any reference to a commercial business or undertaking.

The term "recreational vehicles" shall include all motorized vehicles used or designed primarily for recreational purposes except for jeeps and other four-wheel drive vehicles of a similar type and size. Nothing in this paragraph shall be construed to prohibit or limit the parking of any vehicle of any kind or nature in a closed garage.

The "parkway" (that area between the street pavement and the front lot line of each Lot) of each Lot shall not be used for the parking of commercial vehicles, boats, trailers, or recreational vehicles.

The "parkway" section of any driveway shall be, stamped concrete, brick pavers, or exposed aggregate concrete.

Section 7. Utilities. All electrical, gas, telephone, cable television and other wires, lines, cables and pipes used for utility services, either at the Lots or any buildings or structures on said Lots, shall be placed underground.

No antenna, aerial, dish receiver, transmitter or other electronics or communication equipment or device shall be constructed, erected, or placed on the exterior surface or the roof of a Dwelling or structure or on other exterior surfaces of any Dwelling or structure or on other exterior surfaces of any Dwelling or structure on any Lot or on the Lot itself in such a way that such equipment or device can be seen from any public street or adjoining Lot, except for antennas as permitted by FCC regulations and rules without written consent of Declarant. No transmitting equipment or communication equipment shall be operated from a Lot that will in any manner interfere with standard electronic equipment, radio or television reception used in neighboring residences within the subdivision.

Section 8. Trees, Grade and Landscaping. Owners must conform to the County of James City tree ordinance and the Chesapeake Bay Preservation Act.

The grading and/or landscaping of any Lot may not be carried out in such a manner as to alter or change materially the flow of surface water across the Lot onto the adjoining Lots or to cause any portion of the drainage system for the Lots to overflow.

No brick mailboxes, columns, endwalls, sprinkler heads or shrubs, may be located within the VDOT right of way as defined on the existing plot plan. If this provision is not adhered to, the costs to enforce this provision and all costs of enforcement, including reasonable attorney's fees, shall be assessed against the landowner. An additional penalty for this violation shall be \$50.00 per day ten days from the date of notice of the violation from Declarant.

Section 9. Preservation Areas. No Owner shall engage in or cause any land disturbance of any areas or any Lot designated as a "Preservation Area" "Natural Open Space" "Open Space" or "Delineated Wetland Area" without first obtaining permission from Declarant and without applying for and obtaining a Chesapeake Bay Preservation Act variance from the County of James City Chesapeake Bay Preservation Area Board. "Land disturbance" shall mean any activity which causes, contributes to or results in the removal or covering of the vegetation upon such land, including, but not limited to, clearing, dredging, filling, grading or excavating. The term "land disturbance" shall not include minor activities such as home gardening, individual home landscaping and home maintenance.

Section 10. Miscellaneous Prohibitions. Nothing shall be done on any Lot which may become an annoyance or nuisance to the neighborhood. No horses, cattle, swine, goats, poultry or fowl or any other animal not customarily a household pet shall be kept on any Lot. No manufacturing trade, business, commerce, industry, professional office or other occupation whatsoever shall be conducted or carried on or upon any Lot or any part thereof or in any Dwelling or other structure erected thereon.

All outside lighting shall be non-obtrusive to the neighboring Lots.

No trash shall be allowed to accumulate on a Lot so as to be unsightly, a detriment to the area, or a fire hazard. In the event that any Owner or occupant shall fail or refuse to keep his premises free of weeds, underbrush, refuse or other unsightly growth or objects, Declarant, its successors or assigns may enter upon said lands to remove the same at the expense of the Owner.

No trash, rubbish, refuse, garbage, leaves or other waste material shall be kept or stored on any Lot except in covered sanitary containers hidden from view of the Owners of adjoining Lots and the public. During construction, a dumpster shall be provided as the builder determines is reasonable and the Lot shall be kept clear of construction debris.

No trailer, tent, shack, detached garage, barn or other improvement placed or erected on any Lot shall be used temporarily or permanently as a residence, except as a sales center or construction trailer utilized by the builder upon the approval of the Declarant.

Construction of garden sheds, greenhouses, garbage enclosures or other similar accessory structures shall only be permitted subject to the prior written review and prior approval of the Architectural Review Board. No above ground structures of any type will be permitted in front yards bordering the street. Inground pools are permissible with the approval of Declarant.

No statues, monuments or other decorative or ornamental personal property or words, symbols, or other drawings or writings, other than the residence number and the names of the residents of a Dwelling, shall be displayed on any portion of any Lot or on the Dwelling or other

structure constructed on such Lot which is observable from any adjoining Lot or street without the prior written review and prior approval of the Architectural Review Board.

No sign of any kind shall be displayed to the public view on any Lot except one (1) sign of not more than six (6) square feet advertising the property for sale or rent, or a sign used by a builder to advertise the property during the construction and sales period. All signs must be approved as provided in paragraph three (3) as set forth above.

## ARTICLE VII EASEMENTS

Section 1. Utility Easements. There is hereby created an easement of five (5) feet in width along the front side and rear lines of each Lot, unless a greater width is shown on the Plat, upon, across, over, through and under each Lot for drainage, ingress, egress, installation, replacement, repair and maintenance of all utility and service lines and systems including, but not limited to water, sewers, gas, telephones, electricity, television, cable or communication lines and systems. By virtue of this easement, it shall be expressly permissible for Declarant or the providing utility or service company to install and maintain facilities and equipment on each Lot, provided such company restores disturbed areas to the condition in which they were found.

Notwithstanding anything to the contrary contained in this paragraph: (i) no sewers, electrical lines, water lines or other utility service lines or facilities for such utilities may be installed or relocated on said premises except as approved by Declarant or by the Association after Declarant control expires, and (ii) it shall not be construed to apply to the relocation, installation or removal of utility lines within a Lot that serve only that Lot. This easement shall in no way affect any other recorded easements on the Property.

Section 2. Declarant's Easements to Correct Drainage. For a period of five (5) years from the date of conveyance of each Lot, Declarant reserves an easement and right on, over and under the ground within that Lot to maintain and to correct drainage of surface water in order to maintain reasonable standards of health, safety and appearance. Such right expressly includes the right to cut any trees, bushes or shrubbery, make any grading of the land, or to take any other similar action reasonably necessary, following which Declarant shall restore the affected property to its original condition as near as practicable. Declarant shall give reasonable notice of intent to take such action to all affected Owners, unless in the opinion of Declarant an emergency exists which precludes such notice.

Section 3. Construction Easements and Rights. Notwithstanding any provision of this Declaration or of any Supplementary Declaration, so long as Declarant is engaged in improving any portion of the Subdivided Property, Declarant shall have an easement of ingress, egress and use over any lands not conveyed to an Owner for occupancy for (i) movement and storage of building materials and equipment, (ii) erection and maintenance of directional and promotional signs and

(iii) conduct of sales activities. Such easement shall be subject to such rules as may be established by Declarant to maintain reasonable standards of safety, cleanliness and general appearance of the Property.

Section 4. Easement to Inspect. There is hereby created an easement in favor of the Association for ingress and egress on any Lot (i) to inspect such property for alleged violations of the Governing Documents, based on formal, written complaints, and/or compliance with architectural standards and/or approved plans for alterations and improvements and (ii) performing such maintenance as is required by the Supplementary Declaration on such Lots, provided the Owner of such Lot is given written notice of the purpose and time of inspection at least three (3) days in advance thereof and such inspection is performed during reasonable hours.

Section 5. Easement for Governmental Personnel. A right of entry on any Lot or Common Area is hereby granted to law enforcement officers, fire and rescue personnel as needed to carry out their duties, including enforcement of cleared emergency vehicle access.

Section 6. Easement for Landscape and Entry Features. There is hereby created in favor of the Association, its successors and assigns, a perpetual easement ("Easement") under, upon and across Parcel "G" open space and Parcel "E" natural space as shown on the subdivision plat feet in depth as depicted on the Plat for the installation and maintenance of community landscape and entry features. Declarant shall, at its expense, construct all improvements located within the Easement, and the Association shall reconstruct, repair and maintain all such improvements in a manner reasonably satisfactory to Declarant.

Section 7. Easement for Landscaping, Signs and Related Purposes. There shall be and is hereby reserved to Declarant for so long as it retains any interest in the Property, a non-exclusive easement over all Lots and Common Area for a distance of twenty-five (25) feet behind any Lot line which parallels a street (whether public or private) for the purpose of erecting and maintaining street intersection signs, directional signs, temporary promotional signs, plantings, street lights, entrance features and/or "theme areas," lighting, stone, wood, or masonry wall features and/or related landscaping. Exercise of this easement will be with the consent of the Owner of an affected Lot, or the Architectural Review Board if such Owner does not consent.

Section 8. Drainage Easements. There is hereby granted a non-exclusive easement to the Association for drainage as noted on the Plat

Section 9. Underground Irrigation systems: No underground irrigation system (including the tap into the water source) shall be installed between the property owner's property line and within the Commonwealth of Virginia's right of way, which is that area located within twenty-five feet (25') of the center line of any road.

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ARTICLE VIII  
RIGHTS OF INSTITUTIONAL LENDERS AND PUBLIC AGENCIES

Section 1. Consents. The Association shall not, without the prior written consent of a majority of First Mortgagees:

(a) amend any provisions of the Declaration or any Supplementary Declaration which relate to the basis for assessments; or

(b) mortgage, partition, subdivide, transfer or otherwise dispose of any of the Common Area or improvements thereon.

Section 2. Notice and Other Rights. The Association shall maintain a file of all First Mortgagees, with a proper designation of the property in which they have an interest.

The Association shall provide to all First Mortgagees:

1. If requested, written notification thirty (30) days prior to the effective date of:

(a) any material change in the Declaration, Bylaws and Articles of Incorporation; or

(b) the mortgage, partition, subdivision, transfer or other disposition of any of the Common Area or improvements thereon.

2. If requested, written notification of any default in the performance of any obligation under the Governing Documents by the Owner of a Lot which is the security for the indebtedness due the First Mortgagee, which is not cured within sixty (60) days.

3. If requested, written notice of any condemnation or eminent domain proceeding or other proposed acquisition by a condemning authority of a Lot which is the security for the indebtedness due the First Mortgagee.

4. If requested, written notice, with right to attend, of all meetings of the Association.

5. All Institutional Lenders who have an interest in the Property shall have the right to inspect the books and records of the Association during normal business hours.

6. If requested, the Treasurer shall submit to the First Mortgagees, an annual report of the Association within ninety (90) days following the end of its fiscal year.

JUN 26 2019 7

7. The Board shall give to and such other First Mortgagees as may request it, expeditious notice of any civil action or liens lodged against the Association or officers or trustees regarding their conduct in administering the affairs of the Association.

ARTICLE IX  
GENERAL PROVISIONS

Section 1. Duration. The covenants and restrictions of this Declaration shall run and bind the land for a term of twenty-five (25) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of twenty-five (25) years, unless at the expiration of any such period the covenants and restrictions are expressly terminated by an instrument signed by Owners of not less than seventy-five percent (75%) of the Lots.

Section 2. Amendment. For a period of seven (7) years after the recording of this Declaration, Declarant may make any amendment required by the County of James City, Virginia, as a condition of approval of the documents by the execution and recordation of such amendment following written notice to all Owners. After such seven (7) year period, or to make any amendment which is not one required by such agencies, any amendment shall be accompanied by a document signed by Owners of not less than seventy-five percent (75%) of the Lots. Any amendment must be recorded in order to become effective.

Section 3. Enforcement. The Declarant, Association, any Member or First Mortgagee, as their interests may appear, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration and of Supplementary Declarations. Failure to enforce any covenants or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The prevailing party shall be entitled to recover its expenses including reasonable attorney's fees.

Section 4. Certain Rights of Declarant. For such time as Declarant shall own Lots, its rights and interests shall not be prejudiced by any of the following actions unless it shall, in writing, join in such actions:

There shall be no amendments to the Governing Documents which:

- (a) Discriminate or tend to discriminate against its rights as an Owner;
- (b) Changes Article I, Definitions, in a manner which alters its rights or status;

JUN 26 2001 98

- (c) Alters its rights under Article II as regards annexation of additional properties;
- (d) Alters the character and rights of membership or the rights of Declarant as set forth in Article III;
- (e) Alters previously recorded or written agreements with public or quasi-public agencies as regards easements and rights of way;
- (f) Denies the right to convey Common Areas to the Association;
- (g) Alters its rights as set forth in Article VI relating to design controls;
- (h) Alters the basis for assessments;
- (i) Alters the provisions of the protective covenants as set forth in Article VI;
- (j) Alters the number or selection of Directors as established in the Bylaws; or
- (k) Alters Declarant's rights as they appear under this Article.

Section 5. Limitations. As long as Declarant has any interest in the Subdivided Property as defined in Article I, hereof, the Association may not use its financial resources to defray any costs of opposing the activities of Declarant.

Section 6. Severability. Invalidation of any one of those 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 7. Conflict. In the event of conflict among the Governing Documents, this Declaration shall control, then Supplementary Declarations, then the Articles of Incorporation of the Association, then the Bylaws, except that in all cases where the Governing Documents may be found to be in conflict with statute, the statute shall control.

Section 8. Interpretation. Unless the context otherwise requires, the use of the singular shall include the plural and vice versa; the use of one gender shall include all genders; and the use of the term "including" shall mean "including, without limitation." This Declaration shall be liberally construed in favor of the party seeking to enforce the provisions hereof to effectuate the purpose of protecting and enhancing the value, marketability, and desirability of the Property by providing a common plan for the development thereof. The headings used herein are for indexing

JUN 26 02 01 99

purposes only and shall not be used as a means of interpreting or construing the substantive provisions hereof.

ARTICLE X  
DISSOLUTION OF THE ASSOCIATION

The Association may be dissolved at a duly held meeting at which a quorum is present upon the vote of more than two-thirds (2/3) of the votes, in person or by proxy, of the Class A and by the Class B Member. Prior to dissolution of the Association, other than incident to a merger or consolidation, the assets of the Association shall be offered for dedication to the locality in which they are situated. In the event that such dedication is refused upon dissolution, such assets shall be granted, conveyed and assigned to any nonprofit corporation, association, trust or other organization to be devoted to similar purposes.

IN WITNESS WHEREOF, Declarant, Powhatan Crossing, Inc., a Virginia corporation, under the laws of Virginia, has caused these presents to be duly executed by C. Lewis Waltrip II, its Manager, this \_\_\_\_ day of June, 2002.

Powhatan Crossing, Inc.

By: \_\_\_\_\_

C. Lewis Waltrip II

COMMONWEALTH OF VIRGINIA

CITY/COUNTY OF WILLIAMSBURG

The foregoing instrument was acknowledged before me this 10 day of June 2002, by C. LEWIS WALTRIP II as President of Powhatan Crossing, Inc.

[Signature]  
Notary Public

My Commission Expires: \_\_\_\_\_

9/30/03

JUN 26 2002

EXHIBIT "A"

ALL THOSE certain lots, pieces or parcels of land, situate and lying in James City County, Virginia as shown on the plat entitled "PLAT OF SUBDIVISION MONTICELLO WOODS LOTS 1-5 AND 55-73, OWNED BY POWHATAN CROSSING, INC. BERKLEY DISTRICT JAMES CITY COUNTY, VIRGINIA", dated March 6, 2002, and made by AES Consulting Engineers to which reference is hereby made.

VIRGINIA: CITY OF WILLIAMSBURG & COUNTY OF JAMES CITY  
This document was admitted to record on 26 June 02  
at 10:15 AM/PM. The taxes imposed by Virginia Code  
Section 58.1-801, 58.1-802 & 58.1-814 have been paid.

STATE TAX	LOCAL TAX	ADDITIONAL TAX
\$ <u>—</u>	\$ <u>—</u>	\$ <u>—</u>

TESTE: BETSY B. WOOLRIDGE, CLERK

BY: Betsy B. Woolridge Clerk

JUN 26 8 02 01

020 014539

Prepared By/Return To:

Williams Mullen  
One Old Oyster Point Road, Suite 210  
Newport News, Virginia 23602  
757-249-5100

GPIn/TaxMap:  
Recording per Sec. 58.1-811D

**THIS DEED OF GIFT**, made this 10 day of June , 2002, from **POWHATAN CROSSING, INC.**, a Virginia corporation, party of the first part, to **MONTICELLO WOODS OWNERS ASSOCIATION, INC.**, a Virginia corporation, party of the second part, c/o Mr. C. L. Waltrip, II, 213 Ingram Road, Williamsburg, Virginia 23185.

**WITNESSETH:**

**THAT FOR** and in consideration of Ten Dollars (\$10.00) cash in hand paid from the party of the second part to the party of the first part, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledge, the party of the first hereby grants and conveys unto the party of the second part, the following described property ("Property"), to-wit:

***SEE EXHIBIT "A" ATTACHED  
HERETO AND MADE A PART HEREOF***

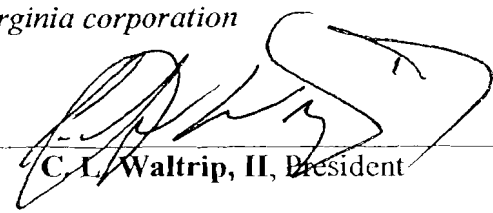
**TO HAVE TO HOLD** to above described property for the purposes and in accordance with all terms and provisions of that certain Declaration of Covenants and Restrictions dated June 10, 2002 and duly recorded in the Clerk's Office of the Circuit Court for James City County, Virginia, on June 11, 2002, as Instrument Number 020014538

Whenever used herein, the singular shall include the plural, the plural the singular, and the use of any gender shall include all other genders.

WITNESS the following signatures and seals:

JUN 26 2002

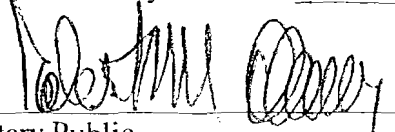
**POWHATAN CROSSING, INC.**  
*a Virginia corporation*

By:  (SEAL)  
C. L. Waltrip, II, President

COMMONWEALTH OF VIRGINIA  
City of Newport News, to-wit:

I, the undersigned Notary Public in and for the Commonwealth of Virginia, do certify that C. L. Waltrip, II as President of Powhatan Crossing, Inc., a Virginia corporation, whose name is signed to the foregoing Deed dated June 10, 2002, has acknowledged the same before me for and on behalf of said Powhatan Crossing, Inc.

Given under my hand this 10 day of June, 2002.

  
\_\_\_\_\_  
Notary Public

My Commission Expires: 9/30/03

**EXHIBIT "A"**  
*(Legal Description)*

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All those certain parcels of land situate, lying and being in the Berkeley District in James City County, Virginia, known and designated as Parcel 'G' OPEN SPACE, containing 0.35 Acres  $\pm$ , Parcel 'C' OPEN SPACE, containing 0.52 Acres  $\pm$ , Parcel 'B' Recreation Area, containing 1.90 Acres,  $\pm$  and Parcel 'A' BMP Area, containing 2.43 Acres  $\pm$ , as shown on that certain plat entitled "PLAT OF SUBDIVISION MONTICELLO WOODS LOTS 1-5 AND 55-73 OWNED BY: POWHATAN CROSSING, INC. BERKELEY DISTRICT, JAMES CITY COUNTY, VIRGINIA" dated March 6, 2002, made by AES Consulting Engineers, to which reference is here made.

#342296 v1 - LEGAL - Deed to HO Association

VIRGINIA: CITY OF WILLIAMSBURG & COUNTY OF JAMES CITY  
This document was admitted to record on 26 June 02  
at 10:17 AM/~~PM~~. The taxes imposed by Virginia Code  
Section 58.1-801, 58.1-802 & 58.1-814 have been paid.

STATE TAX	LOCAL TAX	ADDITIONAL TAX
\$ <u>          </u>	\$ <u>          </u>	\$ <u>          </u>

TESTE: BETSY B. WOOLRIDGE, CLERK

BY: Betsy B. Woolridge Clerk

JUN 26 2004

020 014540

Prepared by and return to:

Williams Mullen  
One Old Oyster Point Road #210  
Newport News, VA 23602  
(757) 249-5100

Exempt from recordation tax under Virginia  
Code Section 58.1-811(A)(3), As Amended

**DEED OF EASEMENT FOR NATURAL OPEN SPACE**

THIS DEED OF EASEMENT is made this 21 day of May, 2002, by and between **POWHATAN CROSSING, INC.**, a Virginia corporation whose mailing address is Post Office 3011, Williamsburg, Virginia 23187-3011 ("Grantor"); and **COUNTY OF JAMES CITY, VIRGINIA**, whose mailing address is Post Office Box 8784, Williamsburg, Virginia 23187-8784 ("Grantee").

WHEREAS, the Grantor is the owner of a certain property known as Monticello Woods (formerly Hiden Property), consisting of a tract of land containing approximately one hundred thirty-six (136) acres, more or less, located in the Berkley District of James City County (the "Property");

WHEREAS, Grantee has adopted the Chesapeake Bay Preservation Ordinance, Chapter 23 of the James City County Code, as required by Chapter 21 of Title 10.1 of the Code of Virginia to protect the Chesapeake Bay and its tributaries from nonpoint source pollution within the Chesapeake Bay drainage area; and

WHEREAS, the Grantor wishes to preserve land as natural open space as part of Grantor's efforts to improve the quality of storm water runoff from the Property.

NOW, THEREFORE, in recognition of the foregoing and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt of

JUN 26 2005

which is hereby acknowledged, the Grantor does hereby grant and convey to Grantee an easement in perpetuity in gross, with the right in perpetuity to restrict the use as described below, of the portion herein described of that certain tract, lot, piece or parcel of land (“Easement Property”), to wit:

***SEE EXHIBIT “A” ATTACHED HERETO AND MADE  
A PART HEREOF FOR COMPLETE LEGAL  
DESCRIPTION***

The restrictions hereby imposed on the use of the Easement Property, the acts which the Grantor covenants to do or not to do and the restrictions which the Grantee is hereby entitled to enforce, shall be as follows:

1. No building or structure shall be built or maintained on the Easement Property other than such building or structure approved by the County Engineer, in writing;
2. The Easement Property shall be kept free and clear of any junk, trash, rubbish or other unsightly or offensive material;
3. No new signs, billboards, outdoor advertising, road or utility lines shall be placed on the property without the expressed written consent of the County Engineer;
4. The Easement Property shall remain in its natural condition with respect to natural leaf litter or other ground covering vegetation, understory vegetation or shrub layer and tree canopy. The activities of Grantor within the Easement Property shall be limited to those that do not remove or damage any vegetation or disturb any soil. Such activities include selective trimming and pruning with the express written consent of the County Engineer that will not alter the natural character of the Easement Property.

JUN 26 2007

Grantor may install pedestrian trails, through the Easement Property and remove dead, diseased, poisonous or invasive vegetation with the expressed written consent to the County Engineer.

5. Grantee and its representatives may enter upon the Easement Property from time to time for inspection, to enforce the terms of this Easement and to post a sign or marker identifying Grantee's interest in the easement Property as natural open space.

6. Grantee may install and maintain trails for pedestrian and bicycle use including construction and user access areas. The location of trails will be determined by the Grantee. The area disturbed for construction and maintenance shall not exceed 30 feet in width;

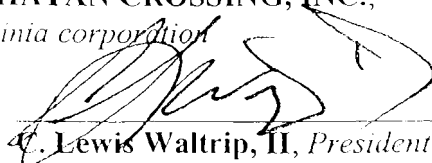
7. In the event of a violation of this Easement, the Grantee shall have the right to seek all appropriate legal and equitable relief, including, but not limited to, the right to restore the Easement Property to its natural condition and assess the cost of such restoration as a lien against the Easement Property.

Although this easement in gross will benefit the public in the ways cited above, nothing herein shall be construed to convey a right to the public of access to or use of the Easement Property, except as provided in Paragraph 5 and 6 and the Grantor shall retain exclusive right to such access and use, subject only to the provisions herein recited.

Witness the following signatures and seals on the date first above written:

**POWHATAN CROSSING, INC.,**  
*a Virginia corporation*

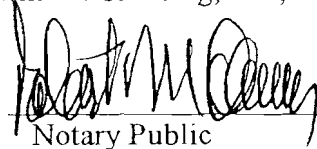
By:

  
C. Lewis Waltrip, II, President

(SEAL)

COMMONWEALTH OF VIRGINIA  
CITY/COUNTY OF WILLIAMSBURG to-wit:

The foregoing instrument was acknowledged before me this 21 day of May, 2002 by C. Lewis Waltrip, II, President of Powhatan Crossing, Inc., a Virginia corporation for and on behalf of same.

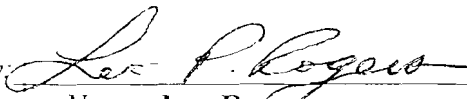
  
\_\_\_\_\_  
Notary Public

My Commission Expires: 9/30/03

The form of this Deed of Easement is approved and, pursuant to Resolution of the Board of Supervisors of James City County, Virginia duly executed on the 17<sup>th</sup> day of May, 1993 this conveyance is hereby accepted on behalf of said County.

**SEEN AND APPROVED**

6/3/02  
\_\_\_\_\_  
Date


By:  (SEAL)  
Name: **Leo Rogers**  
Title: **Deputy County Attorney**

COMMONWEALTH OF VIRGINIA  
COUNTY OF JAMES CITY, to-wit:

I, the undersigned Notary Public of and for the jurisdiction aforesaid, do hereby certify that Leo Rogers, Deputy County Attorney, whose name is signed to the foregoing instrument dated May 21, 2002, has this date appeared before me, and acknowledged the same.

Given under my hand this 3rd day of June, 2002.



  
\_\_\_\_\_  
Notary Public

My Commission Expires: Oct. 31, 2005

JUN 26 2002 0208

**EXHIBIT "A"**  
*(Legal Description)*

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All those certain lots, pieces or parcels of land situate, lying and being in the Berkley District, James City County, Virginia, being the area of Natural Open Space containing 19.93 Acres  $\pm$  in the aggregate and known as Parcel 1B containing 2.82 Acres  $\pm$ , Parcel 2A containing 13.10 Acres  $\pm$ , Parcel D containing 2.68 Acres and Parcel E containing 1.33 Acres, all as shown on that certain plat entitled, "PLAT OF SUBDIVISION MONTICELLO WOODS LOTS 1-5 AND 55-73 OWNED BY: POWHATAN CROSSING, INC. BERKELEY DISTRICT, JAMES CITY COUNTY, VIRGINIA" dated March 6, 2002, made by AES Consulting Engineers, to which reference is here made.

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VIRGINIA: CITY OF WILLIAMSBURG & COUNTY OF JAMES CITY  
This document was admitted to record on 26 June 02  
at 10:20 AM/PM. The taxes imposed by Virginia Code  
Section 58.1-801, 58.1-802 & 58.1-814 have been paid.

STATE TAX	LOCAL TAX	ADDITIONAL TAX
\$ <u>    </u>	\$ <u>    </u>	\$ <u>    </u>

TESTE: BETSY B. WOOLRIDGE, CLERK

BY: Betsy B. Woolridge Clerk

JUN 26 02 0209

030 005065

Prepared by and Return to:

Joseph H. Latchum, Jr., Esquire  
Williams Mullen  
One Old Oyster Point Road, Suite 210  
Newport News, VA 23602  
(757) 249-5100

**FIRST AMENDMENT TO DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS FOR MONTICELLO WOODS.**

This First Amendment to Declaration of Covenants, Conditions and Restrictions for Monticello Woods is made as of this 10 day of February, 2003, by **Powhatan Crossing, Inc.**, Virginia Corporation as Declarant whose address is 213 Ingram Road Williamsburg, Virginia 23185; to be indexed as Grantor.

Recitals:

1. Powhatan Crossing, Inc., as Declarant executed a Declaration of Covenants, Conditions and Restrictions for Monticello Woods on June 10, 2002, which were recorded in the Clerk's Office of the Court of the City of Williamsburg and the County of James City as instrument number 020014538.
2. The Declaration of Covenants, Conditions and Restrictions for Monticello Woods and the additional modifications as made herein are deemed one instrument and shall hereinafter collectively be referred to as the "Declaration."
3. The purpose of this Agreement is to amend and restate the Declaration of Covenants, Conditions and Restrictions for Monticello Woods as stated herein and to increase the initial capital contribution and to modify the maximum annual assessments.

NOW, THEREFORE, WITNESS that for and in consideration of the sum of ten dollars (\$10.00), cash in hand paid and other mutual promises made, the Declaration is hereby modified as follows:

FEB 18 2003 07 34

Article 5 Section 5. Maximum Annual Assessment : the following language shall be substituted and incorporated as follows:

Declarant hereby establishes and the Association is hereby authorized to levy assessments as provided for in this Article and elsewhere in the Governing Documents. The obligation to pay assessments shall commence as to purchase date of each Unit or Lot to a person other than Declarant except to Builders. Builders shall pay the initial capital assessment of \$200.00 per lot but shall be exempt from the monthly assessments payable on a quarterly basis until the lot is conveyed to a subsequent owner.

Purchasers of a lot, other than a Builder, shall pay an initial capital assessment of \$200.00 for each lot and a one time fee of \$150.00 as a capital assessment toward the maintenance and operation of the swimming pool facilities.

Assessments shall be paid in such manner and on such dates as the Board may establish. The Board may require advance payment of assessments at closing of the transfer of title to a unit and impose special requirements for Owners with a history of delinquent payment. If the Board of Directors so elects, assessments may be paid in two or more installments. Unless the Board provides otherwise, the monthly Base Assessment shall be due and payable the first quarter of the fiscal year. If any Owner is delinquent in paying any assessments or other charges levied on his Unit, the Board may require the outstanding balance on all assessments to be paid in full immediately.

From and after the first day of the fiscal year immediately following the commencement of assessments, the Board of Directors may increase the maximum annual assessment rate each year by an amount deemed necessary by the Board of Directors to provide sufficient funds required to carry out the functions of the Association; such increase shall become effective the first day of the next fiscal year.

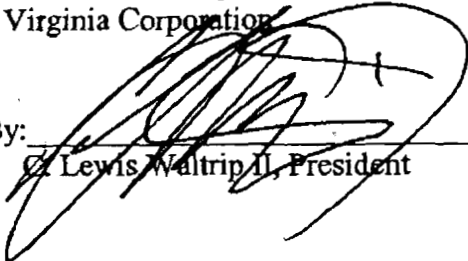
Article 5 Section 6. Initial Assessment.

- (a) Initial Capital Assessment. Upon the sale and purchase of a Lot, the Owner shall pay the sum of \$200.00 to the Association as a capital contribution at the closing and sale of said Lot.
- (b) Initial Set Up Contribution. Upon the sale and purchase of a Lot, the Owner shall pay the sum of \$150.00 to the Association as a Set Up contribution, to be placed in the Association's funding pool for maintenance of the swimming pool and related facilities and/or the Association's replacement reserves at the closing and sale of said Lot.

FEB 18 2013 07:35

WITNESS the following signature and seal:

Powhatan Crossing, Inc.  
a Virginia Corporation

By:   
C. Lewis Waltrip II, President

COMMONWEALTH OF VIRGINIA,  
CITY OF WILLIAMSBURG, to-wit:

The foregoing instrument was acknowledged before me this 10 day of  
February, 2003, by C. Lewis Waltrip, II, President for and on behalf of Powhatan  
Crossing, Inc.

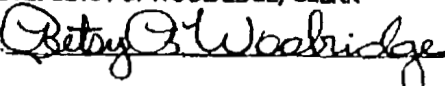
  
NOTARY PUBLIC

My Commission expires: 9/30/03

FEB 18 2003 07:36

VIRGINIA: CITY OF WILLIAMSBURG & COUNTY OF JAMES CITY  
This document was admitted to record on 18 Feb 03  
at 2:56 AM/PM. The taxes imposed by Virginia Code  
Section 58.1-801, 58.1-802 & 58.1-814 have been paid.  
STATE TAX LOCAL TAX ADDITIONAL TAX

#380879 v3 - Amendment to Declaration of Covenants

\$ \_\_\_\_\_ \$ \_\_\_\_\_ \$ \_\_\_\_\_  
TESTE: BETSY B. WOOLRIDGE, CLERK  
BY:  Clerk