

## DECLARATION OF COVENANTS AND RESTRICTIONS

THIS DECLARATION, made this 6th day of August, 19 81, by POWHATAN ENTERPRISES, INC., a Virginia Corporation, hereinafter called Developer.

### W I T N E S S E T H :

WHEREAS, Developer is presently the owner of the real property in James City County, Virginia, west of the City of Williamsburg, shown on the hereinafter referred to Master Plan of Powhatan of Williamsburg Secondary, and desires to create thereon a planned community to be known as Powhatan of Williamsburg Secondary (referred to herein as "Powhatan") of high environmental quality, respecting existing natural amenities, ecologically sensitive areas and important historic elements and intends to develop the community in accordance with the Master Plan hereinafter defined; and

WHEREAS, Developer desires to provide for the preservation and enhancement of the property values, amenities and opportunities in said community and for the maintenance of the Properties and improvements thereon; and to this end, desires to subject a portion of the real property presently owned by it described on Exhibit "A" 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 said property and the owners thereof; and

WHEREAS, Developer has deemed it desirable, for the efficient preservation of the values and amenities in said community, to create an agency to which should be delegated and assigned the powers of owning, maintaining and administering the community properties and facilities and administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created and promoting the recreation, health, safety and welfare of the residents; and

WHEREAS, Developer has incorporated under the laws of the State of Virginia the Powhatan Community Services Association as a non-profit corporation for the purpose of exercising the functions aforesaid;

NOW, THEREFORE, the Developer declares that the real property described in Exhibit "A" attached hereto, 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 (sometimes referred to as "covenants and restrictions") hereinafter set forth.

## ARTICLE I

Definitions. Section 1. "Declaration" shall mean 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.

Section 2. "Association" shall mean and refer to Powhatan Community Services Association, its successors and assigns.

Section 3. "Developer" shall mean and refer to Powhatan Enterprises, Inc., and its assigns, together with any successor to all or substantially all of its business of developing the Properties.

Section 4. "Powhatan Master Plan" shall mean and refer to the conceptual Master Plan of Powhatan prepared by Langley and McDonald, Engineers, Planners and Surveyors, Virginia Beach, Virginia, dated April 1978, consisting of (i) map plan drawing and (ii) written statement of overall recreational concept, as may be revised from time to time by agreement between developer and Planning Department of James City County, Virginia.

Section 5. "The Properties" shall mean and refer to all real property described on Exhibit "A" attached hereto, together with such other real property as may from time to time be annexed thereto under the provisions of Article II hereof.

Section 6. "Common Area" shall mean and refer to those areas of land now or hereafter conveyed to the Association or shown on any recorded subdivision plat of the Properties and improvements thereon, which are intended to be devoted to the common use and enjoyment of the Members.

Section 7. "Living Unit" shall mean and refer to any portion of a structure situated upon the Properties designed and intended for use and occupancy as a residence by a single family.

Section 8. "Lot" shall mean and refer to any plat of land shown upon any recorded subdivision map of the Properties with the exception of Common Area as heretofore defined. The term shall include a condominium Living Unit where such may occur.

Section 9. "Multifamily Structure" shall mean and refer to a structure with two or more Living Units under one roof, except when such Living Unit is situated upon its own individual Lot as defined herein.

Section 10. "Owner" shall mean and refer to the record owner, whether one or more persons, or entities, of the fee simple title to any Lot including contract sellers, but excluding those



having such interest merely as security for the performance of an obligation.

Section 11. "Occupant" shall mean and refer to the occupant of a Living Unit who shall be either the Owner or a lessee who holds a written lease having an initial term of at least twelve (12) months.

Section 12. "Parcel" shall mean and refer to all platted subdivisions of one or more Lots which are subject to the same Supplementary Declaration.

Section 13. "Supplementary Declaration" shall mean any declaration of covenants, conditions and restrictions which may be recorded by the Developer, which extends the provisions of this Declaration to a Parcel and contains such complementary provisions for such Parcel as are herein required by this Declaration.

Section 14. "Book of Resolutions" shall mean and refer to the document containing rules and regulations and policies adopted by the Board of Directors as same may be from time to time amended.

Section 15. "Board of Directors" shall mean the then duly constituted board of directors of the Association.

Section 16. "Member" shall mean any Owner and any lessee of a Living Unit constructed on any Lot who holds a written lease having an initial term of at least twelve (12) months.

Section 17. "Limited Common Area" shall mean and refer to those areas of land now or hereafter conveyed to the Association or shown on any recorded subdivision plat of the Properties and improvements thereon, which are intended to be devoted to the common use and enjoyment of those Members with respect to Living Units located within the Parcel to which the use of said Limited Common Area is restricted, in accordance with the terms of the Supplementary Declaration applicable to that Parcel.

The term Limited Common Area shall refer both to areas which are restricted to all Members located within a single Parcel, and to areas restricted to the use of less than all of the Members located within a single Parcel.

## ARTICLE II

### Property Subject to This Declaration and Additions Thereto.

Section 1. Existing Property. The real property which is and shall be held, transferred, sold, conveyed, and occupied subject to this Declaration is located James City County, Virginia, and is more particularly described in Exhibit "A".

Section 2. Additions to Existing Property. Added properties may become subject to this Declaration in the following manner:

(a) Additions by the Developer. The real property described in Exhibit "A" attached hereto is the first phase of the planned community known as Powhatan, as contemplated by the Powhatan Master Plan. The Developer, its successors and assigns, shall have the right to bring within the scheme of this Declaration additional properties in future stages of development which are a portion of Powhatan as illustrated in the Powhatan Master Plan. The properties thus added shall include but not be limited to areas and facilities (including lakes, trails, community and recreation areas and facilities and the like) which are devoted to the common use and enjoyment of all Members.

(b) Other Additions. Additional lands may be annexed to the Existing Property upon approval in writing of the Developer and of the Association, pursuant to a majority of votes of the Owners who are voting in person or by proxy at a regular meeting of the Association or at a meeting duly called for this purpose.

The additions authorized under subsections (a) and (b) shall be made by the recording of one or more duly executed and acknowledged Supplementary Declarations of covenants and restrictions with respect to the additional property or, with respect to areas or facilities devoted to the common use and enjoyment of all Members, by deed of conveyance to the Association. The covenants for assessments set forth in Article IV of this Declaration shall be deemed to include the maintenance, operation and improvement of that portion of such additional properties devoted to common use and enjoyment of all Members from and after the time such properties are thus added.

(c) Mergers. No merger or consolidation shall affect any revocation, change or addition to the covenants established by this surviving or consolidated association may administer the covenants and restrictions established by this Declaration within the Existing Property together with the covenants and restrictions established upon any other properties as one scheme.

### ARTICLE III

Common Area. Section 1. Obligations of the Association. The Association, subject to the rights of the Owners set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Area 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.

Section 2. Owners' and Members' Rights of Enjoyment. Subject to the provisions hereof, every Owner shall have a right of enjoyment



in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, and every Member shall have a right of enjoyment in the Common Area.

Section 3. Extent of Owners' and Members' Easements. The Owners' and Members' easements of enjoyment created hereby shall be subject to the following:

(a) the right of the Association to establish reasonable rules and to charge reasonable admission and other fees for the use of the Common Area by guests of Owners and Members.

(b) the right of the Association to suspend the right of an Owner to use any portion of its facilities for any period during thirty (30) days after notice; the right of the Association to suspend the right of a Member or Owner to use any portions of its facilities for a period not to exceed one hundred eighty (180) days for any other infraction of this Declaration or the Books of Resolutions which remains uncorrected after the last day of a period established for correction by the Association, such period to be stated in a notice to the Member Owner together with a statement of the infraction complained of and the manner of its correction.

(c) the right of the Association to mortgage any or all of the facilities constructed on the Common Area for the purposes of improvements or repair to Association land or facilities.

(d) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be desired by the Association.

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, and included within the Books of Resolutions.

Section 5. Damage or Destruction of Common Area by Owner. In the event any Common Area is damaged or destroyed by an Owner or his tenants or any of their guests, licensees, agents or members of their families, the Owner does hereby authorize the Association to repair such damaged area. The Association shall repair said damaged area in a good workmanlike manner in conformance with the original plans and specifications of the area involved, or as the area may have been modified or altered subsequently by the Association in the discretion of the Association. The costs of such repairs shall become a Special Assessment upon the Lot of such Owner.

Section 6. Title to Common Area. The Developer may retain the legal title to the Common Area or portion thereof until such time as it has completed improvements thereon, but notwithstanding any provision herein, the Developer hereby covenants that it shall convey the Common Area to the Association, free and clear of all liens and financial encumbrances, not later than two years from the date such Common Area or portion thereof is subjected to this Declaration. Members and Owners shall have all the rights and obligations imposed by the Declaration with respect to portions of the Common Area from and after the time such portions of the Common Area are subjected to this Declaration, except that prior to such conveyance the Association shall be liable for payment of taxes, insurance and maintenance costs with respect thereto.

Section 7. Obligations of the Association. The Association, subject to the rights of the Owners set forth in the Declaration as it may be amended from time to time, any Supplementary Declaration which may be applicable, or any deed, shall be responsible for the exclusive management and control of the Limited Common Areas 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.

Section 8. Owners' and Members' Rights of Enjoyment. Subject to the provisions hereof, every Owner who is entitled to the use of a Limited Common Area shall have a right of enjoyment in and to the Limited Common Area which shall be appurtenant to and shall pass with the title to every Lot, and every Member who is entitled to the use of a Limited Common Area shall have a right to enjoyment in the Limited Common Area.

Section 9. Extent of Owners' and Members' Easements. The Owners' and Members' easements of enjoyment created hereby shall be subject to the following:

(a) the right of the Association to establish reasonable rules and to charge reasonable admission and other fees for the use of the Limited Common Area by guests of Owners and Members.

(b) the right of the Association to suspend the right of an Owner to use any portion of its facilities for any period during which any assessment against his Lot remains unpaid for more than thirty (30) days after notice; the right of the Association to suspend the right of a Member or Owner to use any portions of its facilities for a period not to exceed one hundred eighty (180) days for any other infraction of this Declaration or the Books of Resolutions which remains uncorrected after the last day of a period established for correction by the Association, such period to be stated in a notice to the Member or Owner together with a statement of the infraction complained of and the manner of its correction.



(c) the right of the Association to mortgage any or all of the facilities constructed on the Limited Common Area for the purposed of improvements or repair to Association land or facilities.

(d) the right of the Association to dedicate or transfer all or any part of the Limited Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be desired by the Association.

Section 10. Delegation of Use. Any Member may delegate his right of enjoyment to the Limited 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 and included within the Books of Resolutions.

Section 11. Damage or Destruction of Limited Common Area by Owner. In the event any Limited Common Area is damaged or destroyed by an Owner or his tenants or any of their guests, licensees, agents or members of their families, the Owner does hereby authorize the Association to repair such damaged area. The Association shall repair said damaged area in a good workman-like manner in conformance with the original plans and specifications of the area involved, or as the area may have been modified or altered subsequently by the Association in the discretion of the Association. The costs of such repairs shall become a Special Assessment upon the Lot of such Owner.

Section 12. Title to Limited Common Area. The Developer may retain the legal title to the Limited Common Area or portion thereof until completion of improvements thereon, the notwithstanding any provision herein, the Developer hereby covenants that it shall convey the Limited Common Area to the Association, free and clear of all liens and financial encumbrances but subject to any licenses for use which may have been reserved, not later than two years from the date such Limited Common Area or portion thereof is subjected to this Declaration. Members and Owners shall have all the rights and obligations imposed by the Declaration with respect to portions of the Limited Common Area from and after the time such portions of the Limited Common Area are subjected to this Declaration, except that prior to such conveyance the Association shall be liable for payment of taxes, insurance and maintenance costs with respect thereto.

Section 13. Assessments with Respect to Limited Common Areas. Each Owner of any Lot, by acceptance of a deed thereto, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association such assessments as shall be levied with respect to Limited Common Areas applicable to the Parcel wherein such Owner's Lot is located.

Such assessments shall be those established in accordance with Section 3 and 5 of Article IV hereof, and Section 2 of Article VII hereof.



Assessments with respect to Limited Common Areas shall be limited to those Owners located within the Parcel to which such Limited Common Areas are applicable, in accordance with the terms of the Supplementary Declaration applicable to that Parcel.

#### ARTICLE IV

Covenant for Maintenance Assessments. Section 1. Creation of the Lien and Personal Obligation of Assessments. The Developer hereby covenants, and each Owner of any lot by acceptance of a deed thereto, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association the following: (1) initial and annual general assessments or charges, (2) special assessments for capital improvements, (3) annual or special parcel assessments or charges, such assessments to be established and collected as hereinafter provided, and (4) special assessments provided for in Article IV, Section 5 and Article VII, Section 2 hereof.

All such assessments, together with interest thereon and costs of collection thereof 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, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. No Owner may waive or otherwise avoid liability for the assessments provided herein by nonuse of the Common Area or Limited Area or abandonment of his Lot.

#### Section 2. Initial and General Assessment.

(a) Purpose of Assessment. The general assessment levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents of the Properties, to enhance the environment, and, in particular for the improvement, maintenance and operation of the Common Area and facilities together with such Areas and facilities as may from time to time be designated as future Common Areas.

#### (b) Basis for Assessment.

(1) Lots. Each lot upon which there has been erected a living unit which is certified for occupancy by James City County shall be assessed at a uniform rate. All other lots which have been conveyed to an Owner other than the Developer shall be assessed at a uniform rate not to exceed one hundred percent (100%) of the rate for lots upon which there are living units certified for occupancy.



(2) Developer-owned Property. The Developer shall not be obligated to pay an annual assessment on lots it owns upon which no living unit certified for occupancy has been erected.

(c) Maximum Annual Assessment.

(1) Until January 1, 1982, the maximum annual general assessment shall not exceed \$240.00 per lot on which there has been erected a living unit certified for occupancy.

(2) From and after January 1st of the third year immediately following the commencement of assessments, the Board of Directors may each year increase the maximum annual assessment rate, to become effective the first day of the next fiscal year.

(3) From and after January 1st of the third year immediately following the commencement of assessments, the assessment basis and/of the maximum annual general assessment may be changed by a vote of the Developer and two-thirds majority of the votes of the Owners who are voting in person or by proxy at a meeting duly called for this purpose.

(d) Method of Assessment. By a vote of a majority of the members of the Board of Directors, the amount of the initial and annual assessments shall be fixed in the manner set forth above, which amount shall be sufficient to meet the obligations imposed by this Declaration and all other obligations created or assumed by the Association with respect to the Properties; provided, however, that such amount shall not exceed the maximum permissible assessment provided above. The Board of Directors shall set the date(s) such amounts shall become due.

Section 3. Parcel Assessments.

(a) Purpose of Assessment. Parcel assessments shall be used for such purposes as are authorized by the Supplementary Declaration for the given Parcel.

(b) Method of Assessment. The assessment shall be levied by the Association against Lots in a Parcel, using the basis set forth in the Supplementary Declaration for the given Parcel, and collected and disbursed by the Association. By a vote of two-thirds of the directors, the Board shall fix the annual parcel assessment for each Parcel, and date(s) such assessments become due.

Section 4. Special Assessment for Capital Improvement. In addition to the annual assessments authorized above, the Association may levy in any assessment year a special assessment applicable to that year and not more than the next five succeeding years for the purpose of defraying, in whole or in part, the cost of any construc-



tion, reconstruction, repair, or replacement of a capital improvement upon the Common Area, including equipment, fixtures and personal property related thereto, provided that any such assessment shall have the assent of the Developer and of a majority of the votes of the Owners who are voting in person or by proxy at a special meeting duly called for that purpose.

Section 5. Special Parcel Assessment for Capital Improvement. In addition to the annual assessments authorized above, the Association may levy in any assessment year, for that year and not more than the next five succeeding years, a special assessment against the Lots of the Parcel 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 Parcel for the use and benefit of the Owners of Lots in such Parcel, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of the Developer and a majority of the votes of the Owners of Lots in the Parcel who are voting in person or by proxy at a meeting duly called for this purpose.

Section 6. Date of Commencement of Annual Assessments. The annual assessments provided for herein shall commence with respect to any lot or living unit within a Parcel on the first day of the month following conveyance of the first Lot in the Parcel to an Owner who is not the Developer. The initial annual assessment on any Lot or Living Unit shall be adjusted according to the number of whole months remaining in the fiscal year.

Section 7. Effect of Nonpayment of Assessments; Remedies of Association. Any assessment not paid within thirty (30) days after the due date may upon resolution of the Board of Directors, bear interest from the due date at the maximum contract interest rate provided by law. The lien of the assessments provided for herein, whether or not notice has been placed of record as herein-after provided, may be foreclosed by a bill in equity in the same manner as provided for the foreclosure of mortgages, vendor's liens, and liens of similar nature. A statement from the Association showing the balance due on any assessment shall be prima facie proof of the current assessment balance and delinquency, if any, due on a particular Lot. The Association may bring an action at law against any Owner personally obligated to pay the same, either in the first instance or for deficiency following foreclosure, and interest and costs of any such action (including reasonable attorney's fees) shall be added to the amount of such assessment.

Section 8. Lien for Payment of Assessments and Subordination of Lien to First and Second Mortgages. There shall be a continuing lien upon each of the individual Lots herein, in order to secure the payment of any of the assessments provided under this Declaration, but such lien shall be at all times subject and subordinate to any



first or second mortgages or deed of trust placed on the property at any time; except that, at such time as the Association places to record a notice of delinquency as to any particular Lot at such place as instruments of conveyance and liens are recorded for such Lot on a form prescribed by the Board of Directors, then, from time of recordation of said notice the lien of such delinquent assessments in the amount stated in such notice shall from that time become a lien prior to any first or second mortgages or deeds of trust placed as the lien of a docketed judgement in the State of Virginia. Sale or transfer of any Lot shall not affect any lien provided for hereunder.

Section 9. Exempt Property. The following property subject to this Declaration shall be exempted from the assessments, charge and lien created herein: (1) all properties dedicated and accepted by a public authority and devoted to public use; (2) all Common Areas; (3) all Limited Common Areas; and (4) all properties exempted from taxation by state or local governments upon the terms and to the extent of such legal exemption.

Section 10. Annual Budget. The Board shall adopt an annual budget for the subsequent fiscal year, which shall provide for allocation of expenses in such a manner that the obligations imposed by the Declaration and all Supplementary Declarations will be met.

#### ARTICLE V

Architectural Control. Section 1. Architectural and Land Preservation Board. An architectural and Land Preservation Board (hereinafter called "ALPB") consisting of three or more persons shall be appointed by the Developer. At such time as the Developer's membership expires, the ALPB shall be appointed by the Board of Directors.

Section 2. Purpose. In accordance with the provisions of Article XII of the Powhatan Community Services Association By-Laws, the ALPB shall regulate the external design, appearance, use, location, and maintenance of the Properties and of improvements thereon in such a manner so as to preserve and enhance values, to maintain a harmonious relationship among structures and the natural vegetation and topography, and to conserve existing natural amenities, ecologically sensitive areas and important historic elements.

Section 3. Conditions. No improvements, alterations, repairs, change of paint colors, excavations, changes in grade or other work which in any way alters the exterior of any property or the improvements located thereon from its natural or improved state existing on the date such property was first conveyed in fee by the Developer to an Owner shall be made or done without the prior approval of the ALPB, except as otherwise expressly provided in this Declaration.

No building, fence, wall, residence, or other structure shall be commenced, erected, improved, altered, made or done without the prior written approval of the ALPB.

Section 4. Procedures. In the event the ALPB fails to approve, modify or disapprove in writing an application within thirty (30) days after plans and specifications have been submitted in writing to it, in accordance with adopted procedures, approval will be deemed granted. The applicant may appeal an adverse ALPB decision to the Board of Directors, who may reverse or modify such decision by a two-thirds (2/3) vote of the directors.

## ARTICLE VI

### Use of Property. Section 1. Protective Covenants.

(a) General Restrictions. All Lots within the Properties shall be developed in accordance with the Powhatan Master Plan.

(b) Other Restrictions. All Lots within the Properties shall be subject to the standards established by the ALPB.

(1) regarding design, minimum side yard and set back, streets, parking and service areas, lighting, signs, special landscape treatment;

(2) to implement the purposes of the Powhatan Master Plan and of Article V, Section 2 and Section 4 of this Article;

(3) to interpret the covenants in this section including but not limited to rules to regulate animals, antennas, storage and use of recreational vehicles, storage and use of machinery, use of outdoor drying lines, trash containers, planting, maintenance and removal of vegetation.

Upon or before conveyance of the first Lot in any Parcel, the ALPB shall adopt the general rules and standards appropriate to that Parcel. Such general rules may be amended by a two-thirds (2/3) vote of the ALPB following a public hearing, for which due notice has been provided, and pursuant to an affirmative vote of two-thirds (2/3) of the Board of Directors. All such general rules and any subsequent amendments thereto shall be placed in the Book of Resolutions.

(c) Residential Use. All property designated for residential use shall be used, improved and devoted exclusively to residential use. Nothing herein shall be deemed to prevent the owner from leasing a Living Unit to a single family, subject to all of the provisions of the Declaration. As used herein the term "single



family" is defined to include only persons related by blood or lawful marriage.

(d) Restriction on Further Subdivision. No Lot shall be further subdivided or separated into smaller lots by any Owner other than the Developer without the written consent of Developer, and no portion less than all of any such Lot, shall be conveyed or transferred by an Owner other than the Developer provided, however, that this shall not prohibit deeds of correction, deeds to resolve boundary line disputes, and similar corrective instruments.

(e) Nuisances. No nuisance shall be permitted to exist or operate upon any property so as to be detrimental to any other property in the vicinity thereof or to its occupants.

(f) Exceptions. The ALPB may issue temporary permits to except any prohibitions expressed or implied by this section, provided the Board acts in accordance with adopted guidelines and procedures and can show good cause.

Section 2. Maintenance of Property. Each Owner shall keep all Lots owned by him and all frontage extending from the Lot lines to the edge of pavement and all improvements therein or thereon free of debris and in good order and repair, including, but not limited to the seeding, watering and mowing of all lawns, the pruning and cutting of all trees and shrubbery and the painting (or other appropriate external care) of all buildings and other improvements, excluding repair or replacement of paved swales, all in a manner and with such frequency as is consistent with good property management and so as not to detract from the overall beauty of the Properties and health and safety of Powhatan residents. In the event an Owner of any Lot shall fail to maintain the premises and the improvements situated thereon as provided herein, the Association, after notice to the Owner as provided in the By-Laws shall have the right to enter upon said Lot to correct any violation of this section stated in such notice. All costs related to such correction, repair or restoration may become a Special Assessment upon such Lot in the discretion of the Board of Directors, which shall notify the Owner of such Lot in writing in the event of the imposition of any such special assessment by the Board.

Section 3. Utility and Drainage Easements. The Developer reserves unto itself, its successors and assigns, a perpetual, alienable easement and right of way

(i) to construct, maintain, inspect, replace and repair electric and telephone poles, wires, cables, conduits, sewers, pipes, water mains, other suitable equipment and facilities for the conveyance of water, sewer, gas, telephone, electricity, television, cable, communications or other utilities or public conveniences on,



over and under the rear ten (10) feet of each Lot and such other areas as may be designated for such purposes on appropriate recorded plats of subdivision, and

(ii) for storm and surface water drainage, including the right to construct, maintain, inspect, replace and repair pipes, kitches, culverts and other suitable facilities for the disposition of storm and surface water drainage, on, over and under the rear ten (10) feet of each Lot and five (5) feet along both sides of each Lot, and such other areas as may be designated for such purposes on appropriate recorded plats of subdivision. The easements provided in this Section 3(i) and (ii) shall include the right of ingress and egress thereto, and the right to cut any trees, brush and shrubbery, make any grading of soil, and take other similar action reasonably necessary to provide economical and safe utility installation and drainage facilities. The rights herein reserved may be exercised by any licensee of the Developer, but shall not be deemed to impose any obligation upon the Developer to provide or maintain any utility or drainage services.

Section 4. Landscape Protection Zones and Scenic Easements. It is the intent of the Developer to establish Landscape Protection Zones to be designated on plats hereafter filed for record in the Office of the Clerk of James City County. The ALPB shall establish restrictions for use of areas so designated, and scenic easements in order to protect natural streams and water supplies, to maintain and enhance the conservation of natural and scenic resources, to promote the conservation of soils, wet lands, beaches, tidal marshlands, wildlife, game and migratory birds, enhance the value of abutting and neighboring forests, wildlife preserves, natural reservations or sanctuaries or other open areas and open spaces, and to afford and enhance recreation opportunities, preserve historical sites, and implement generally the Powhatan Master Plan for development. The Developer hereby reserves the right of access upon such designated areas for the establishment and maintenance of improvements thereto.

Section 5. Historical Artifacts. The Developer hereby retains ownership rights to any historical artifacts discovered on or in any portion of the Properties. In the event such artifacts are discovered, before such artifacts shall be disturbed or removed notice shall be given to the Developer, and the Owner shall cooperate fully with the Developer to allow such artifacts to be removed.

#### ARTICLE VII

General Provisions. Section 1. Duration. The covenants and restrictions of this Declaration shall run with and bind the land for a term of thirty-five (35) years from the date this Declaration is recorded.



Section 2. This Declaration may be amended at any time by an instrument of record after the written consent thereto by not less than seventy-five percent (75%) of the Owners and the Developer shall have been obtained.

Section 3. Enforcement. The Association, any Owner or the Developer shall have the right to enforce, by any proceedings 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 covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 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 5. Limitations. As long as the Developer is likewise an Owner, the Association may not use its resources nor take a public position in opposition to the Powhatan Master Plan or to changes thereto proposed by the Developer without the written consent of Developer. Nothing in this section shall be construed to limit the rights of the members acting as individuals or in affiliation with other members or groups.

Section 6. Release of Negative Reciprocal Easements. All Owners acknowledge that the Developer owns real estate in James City County, Virginia, which may in some areas be contiguous to the Properties and may be shown on the Master Plan. No real estate shall be included within the scheme of this Declaration, however, except the Properties and any additional properties added pursuant to Article II, Section 2 hereof as and when such properties are added. Each Owner, by his acceptance of this Declaration or the deed to his Lot, waives any right and interest he may have (i) in and to real estate not covered by this Declaration and (ii) to the enforcement of all or any portion of this Declaration, any Supplemental Declaration, and the Book of Resolutions against any such real estate.

IN WITNESS WHEREOF, POWHATAN ENTERPRISES, INC. has caused its name to be signed and its corporate seal to be affixed and attested by its duly authorized officers, all as of the day and year first above written.

POWHATAN ENTERPRISES, INC.

By William C. Be...  
President

THIS IS A TRUE COPY OF THE DECLARATION OF COVENANTS AND RESTRICTIONS AS RECORDED IN THE OFFICE OF THE CLERK OF THE CIRCUIT COURT FOR JAMES CITY COUNTY IN DEED BOOK 215, PAGE 722, ON 6 AUGUST 1981.