

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR THE PRESERVATION AREA AND THE BUFFER AREA WITHIN  
MONTICELLO WOODS, PHASE ONE AND PHASE TWO,  
JAMES CITY COUNTY, VIRGINIA**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS ("Declaration") is made this 7 day of August, 2001, by POWHATAN CROSSING, INC., a Virginia corporation, whose address is 213 Ingram Road, Williamsburg, Virginia 23188, index as a "Grantor".

**Recitals**

WHEREAS, Powhatan Crossing, Inc. is the Owner of that certain property shown on Exhibit "A" (the "Monticello Woods, Phase I Property") and shown on a plan entitled, "Wetlands Impacts Map - Hiden Property", dated May 21, 2001, and prepared by Williamsburg Environmental Group, Inc., as Job No. 653, attached hereto and incorporated herein by this reference (the "Plan") and more specifically described as:

See attached Exhibit A for Legal Description

WHEREAS, the Plan designates certain areas of the Hiden Property "Wetlands to Remain," which all areas shall be referred to herein as the "Preservation Area", and

WHEREAS, the Plan designates certain areas of the Hiden Property as "30' Buffer", which areas shall be referred to herein as the "Buffer Area," and

WHEREAS, the Owner desires to impose on the Preservation Area certain covenants, conditions and restrictions expressing the Owner's intent to preserve the Preservation Area in perpetuity in its natural state by prohibiting wetland destruction or alteration, building construction, addition of fill material, cultivation and tree harvesting, within the Preservation Area, and

WHEREAS, the owner desires to impose on the Buffer Area certain covenants, conditions and restrictions expressing the Owner's intent to preserve the Preservation Area in perpetuity in its natural state by prohibiting or restricting certain activities in the Buffer Area.

NOW, THEREFORE, the Owner does hereby declare, covenant and agree, for itself and its successors and assigns, that the Preservation Area and Buffer Area shall be hereafter held and sold subject to the following covenants, conditions and reservations:

1. The Preservation Area shall be preserved in perpetuity in its natural state by prohibiting, except as specifically authorized below, wetland destruction or alteration, building construction, addition of fill material, cultivation and tree harvesting.

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2. Additionally, the following activities shall be prohibited in the Preservation Area as described below:
- (a) Destruction or alteration of wetlands in the Preservation Area other than those alterations authorized by the Norfolk District, U.S. Army Corps of Engineers (the "USACE"), or its successor in interest, under permit #01-R0313.
  - (b) Construction or maintenance of buildings or mobile homes; however, by way of example and not limitation, structures such as boardwalks, foot trails, wildlife management structures and observation decks may be placed in the wetlands provided that any such structure permits the natural movement of water and preserves the natural contour of the ground and is subject to prior approval by the USACE or its successor in interest.
  - (c) Ditching, draining, diking, damming, filling, excavating, land clearing, plowing, mining or drilling; removal of topsoil, sand, or other materials; and any building of roads or alteration in the topography and/or hydrology of the land in any manner except for the earth moving necessary for restoration and/or maintenance of foot trails for recreational use, or as otherwise allowed in this Declaration.
  - (d) Removal, destruction and cutting of trees and plants (except as necessary to maintain water control structures and existing roads or to construct or maintain foot trails for safety), except that wildlife management and silvicultural activities may be allowed on a case-by-case basis as approved by the USACE or its successor in interest. Nothing contained herein shall be construed to prohibit the cutting and/or removal of dead or diseased trees and vegetation or portions thereof, consistent with current sound forestry management practices.
  - (e) Silvicultural activities undertaken where the substantial effect or purpose is to generate funds; however, forest activities undertaken to, for, or in association with, for example, control of disease or insect infestation, salvage cutting, to encourage diversity of species, to create wildlife clearings, for fire management, and authorized construction activities, may be authorized by the USACE or its successor in interest on a case-by-case basis and timber or other forest products incidentally produced from these authorized activities may be sold.
  - (f) Clearcutting.
  - (g) Dumping of ashes, trash, garbage or other unsightly or offensive material, and changing of the topography through the placing of soil or other substances or material such as landfill or dredged material.
  - (h) Activities which could cause erosion or siltation in the Preservation Area.
3. The Buffer Area shall be preserved in perpetuity in its natural state by prohibiting, except as specifically authorized below, building construction, addition of fill material, cultivation and tree harvesting.

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4. Additionally, the following activities shall be prohibited in the Buffer Area as described below:
- (a) Construction or maintenance of buildings or mobile homes; however, by way of example and not limitation, structures such as boardwalks foot trails, wildlife management structures observation decks, picnic tables, and children's playground equipment may be placed in the Buffer Area provided that any such structure preserves the natural contour of the ground and is subject to prior approval by the USACE or its successor in interest. Ditching, draining, diking, damming, filling, excavating, land clearing, plowing, mining or drilling; removal of topsoil, sand, or other materials; and any building of roads or alteration in the topography and/or hydrology of the land in any manner except for the earth moving necessary for restoration and/or maintenance of foot trails for recreational use, or as otherwise allowed in this Declaration.
  - (b) Removal, destruction and cutting of trees and plants (except as necessary to maintain water control structures and existing roads or to construct or maintain foot trails for safety), except that wildlife management and silvicultural activities may be allowed on a case-by-case basis as approved by the USACE or its successor in interest. Nothing contained herein shall be construed to prohibit the cutting and/or removal of dead or diseased trees and vegetation or portions thereof, consistent with current sound forestry management practices.
  - (c) Silvicultural activities undertaken where the substantial effect or purpose is to generate funds; however, forest activities undertaken to, for, or in association with, for example, control of disease or insect infestation, salvage cutting, to encourage diversity of species, to create wildlife clearings, for fire management, and authorized construction activities, may be authorized by the USACE or its successor in interest on a case-by-case basis and timber or other forest products incidentally produced from these authorized activities may be sold.
  - (d) Clearcutting.
  - (e) Dumping of ashes, trash, garbage or other unsightly or offensive material, and changing of the topography through the placing of soil or other substances or material such as landfill or dredged material.
5. Outdoor recreational activities shall be permitted in the Preservation Area and the Buffer Area including, but not limited to, canoeing, boating, hiking, camping, wildlife and botanical observation and studies, horseback riding, hunting, trapping and fishing. The construction and maintenance of support facilities, including but not limited to restrooms, for these or similar activities may be authorized by the USACE or its successor in interest on a case-by-case basis, and to the extent practicable, confined to the Buffer Area and other non-wetland areas and areas of lesser environmental significance. Any facilities constructed to support these or similar recreational activities shall ensure that the Preservation Area generally retains its character as a mature forested wetland in perpetuity.

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6. The covenants, conditions and restrictions contained herein shall not hereafter be altered in any respect without the express written approval and consent of the Owner, or its successor in interest, and the USACE, or its successor in interest. The covenants, conditions and restrictions contained herein run only to the benefit of the United States through the USACE, and the joiner of any other party or entity other than the Owner, or its successor in interest, and the USACE or its successor in interest, shall not be required to amend or vacate this Declaration.
7. The provisions hereof shall be deemed individual and severable and the invalidity or partial invalidity or unenforceability of any one provision or any portion thereof shall not affect the validity or enforceability of any other provision of this Declaration.
8. The provisions hereof shall be enforceable by any proceeding at law or in equity by the USACE, the U.S. Environmental Protection Agency, the U.S. Fish and Wildlife Service, or their respective successors in interest, or any lot owner within the Hiden Property or any non-profit corporation or entity whose primary purpose is environmental protection or preservation. Failure by any agency or the Owner to enforce any covenant, condition, or restriction contained herein shall in no event be deemed a waiver of the right to do so thereafter.
9. These covenants, conditions and restrictions shall run with the land and shall be binding on all parties and persons claiming under them. This Declaration is made subject to all applicable agreements, restrictions, deeds, easements, encumbrances and other matters of record affecting either the Preservation Area or the Buffer Area. These covenants, conditions and restrictions are imposed by the Owner freely and voluntarily, in order to assure that the wetland impacts pursuant to permit # 01-R0313 shall be minimal.

WITNESS the following signature and seal:

OWNER:

POWHATAN CROSSING, INC., a Virginia corporation

By: 

Name: C. Lewis Waltrip, II, President

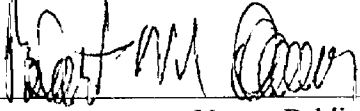
COMMONWEALTH OF VIRGINIA, at large:

I, ROBERT M. OLIVER a notary public for the commonwealth aforementioned, do certify that C. Lewis Waltrip, II, the President of Powhatan Crossing, Inc., whose name was

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signed on the 7<sup>th</sup> day of August, 2001, in his capacity as President, on that date to the foregoing document has acknowledged said document and signature before me in the commonwealth aforementioned.

Given under my hand this 7<sup>th</sup> day of August, 2001.

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

My commission expires: 9/30/03

Declaration of Covenants, etc..doc

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Exhibit A  
The Plan

All those certain pieces or parcels of land situate, lying and being in the County of James City, Virginia, as shown on that certain plat entitled, "WETLAND IMPACTS MAP, HIDDEN PROPERTY, JAMES CITY COUNTY, VIRGINIA", dated May 21, 2001, as job number 653 and made by Williamsburg Environmental Group, Inc., to which reference is made for a more particular description.

DOCUMENT PREPARED BY JOSEPH LATCHUM,  
WILLIAMS, MULLEN, CLARK, & JOBBINS

VIRGINIA, City of Williamsburg and County of James City, to Wit:  
In the Clerk's Office of the Circuit Court for the City of  
Williamsburg and County of James City the City of  
City of Aug 2001 this Consents  
presented with the certificate annexed and admitted  
to record at 10:40 PM o'clock.  
Teste:  
By: Mona Bawell  
Deputy Clerk

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