

Prepared by:

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**DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
OF EMERALD BAY VILLAGES**

THIS DECLARATION, DATED AS OF September 22, 2005, by Bayview Holdings, LLC, a Virginia Corporation, hereinafter referred to as "Developer", recites and provides:

**RECITALS**

The Developer is the fee simple owner of certain real property located in Franklin County, Virginia, as described in Exhibit A attached hereto and made a part hereof (the Property), and desires to develop therein a residential planned unit development community pursuant to plans submitted and approved heretofore in accordance with the Franklin County Code, (the Community), together with common lands (the Common Areas) and limited common lands (Limited Common Areas) and facilities for the benefit of the Community. There shall also be established Limited Common Easements (the Limited Common Easements) which shall be easements to locate, maintain, repair, operate and replace septic systems and drainfields on adjoining lands of Developer (or Emerald Bay Villages Property Owners Association, Inc.) as described on Exhibit B attached hereto and made a part hereof or upon Lots as described on said Exhibit B.

The Developer desires to provide for the preservation of the values and amenities in the Community and for the maintenance of such Common Areas, Limited Common Areas, Limited Common Easements and facilities, and to this end, desires to subject the Property, the Common Area, the Limited common Areas and Limited Common Easements to the covenants, restrictions, easements, charges, liens and requirements of American Electric Power Company, appropriate federal, state and local regulatory agencies and the Federal Energy Regulatory Commission Order for Project No. 2210-096 (hereinafter referred to collectively as the Restrictions) as hereinafter set forth for the benefit of the Property and each Owner thereof. The covenants, restrictions, easements and charges shall have limited applicability to the Limited Common Easements to the extent of providing for the location, construction, maintenance, repair, operation and replacement of septic systems drainfields to be located within said easements. Where Limited Common Easements are located upon Lots, the land upon which such easements are located and which is a part of the Lot shall be subject to the covenants, restrictions, easements and charges applicable to the Lot, but the Limited Common Easement located thereon shall be subject solely to those matters expressly stated herein.

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The Developer has deemed it desirable, for the efficient preservation of the values and amenities in the community, to create an agency to which will be delegated and assigned the powers of maintaining and administering the community facilities, administering and enforcing the covenants and restrictions and levying, collecting and disbursing the assessments and charges hereinafter created.

The Developer has incorporated the Association under the laws of the Commonwealth of Virginia, as a non-profit corporation (Emerald Bay Villages Property Owners Association, Inc.) for the purpose of exercising the functions aforesaid.

The Developer desires that the Restrictions shall run with, burden, and bind the Property and the Common Areas, and solely to the extent expressly herein set out, the Limited Common Easements.

## DECLARATION

NOW, THEREFORE, the Developer hereby declares that the Property, including the Common Areas, and the Limited Common Areas, is, and shall be held, transferred, sold, conveyed, occupied and used subject to the provisions of the Restrictions hereinafter set forth, for and during the period of time hereinafter specified and the Limited Common Easements shall be held, transferred, sold, conveyed, occupied and used subject to the terms and conditions expressly herein set forth as applying to said Limited Common Easements.

## ARTICLE I DEFINITIONS

The following words when used in this Declaration or any supplement hereto (unless the context shall prohibit) shall have the following meanings:

- (a) "Additional or Expandable Land" shall mean and refer to those tracts or parcels of land that may or may not be added to the Property pursuant to Article III, hereof.
- (b) "Affiliate" shall mean a person or entity related to or affiliated with the Developer and includes, but is not limited to, a joint venture, partnership or corporation in which the Developer or any of its members have an interest.
- (c) "Articles of Incorporation" shall mean and refer to the Articles of Incorporation of the Association.
- (d) "Assessment" shall mean and refer to a Member's share of the Common Expenses from time to time assessed against a Member by the Association in the manner herein provided.

- (e) "Association" shall mean and refer to Emerald Bay Villages Property Owners Association, Inc., a Virginia Non-Profit Corporation, its successors and assigns.
- (f) "Association Property" shall mean and refer to the real property owned by or acquired in the future by the Association.
- (g) "Architectural Board" shall mean and refer to the Board of Architectural Review charged with the approval of any improvements, alterations and additions on the Lots under the provisions of Article VI hereof.
- (h) "Board" shall mean the Board of Directors of the Association.
- (i) "Common Area(s)" shall mean all portions of the Property other than the property shown on the Plat as individual Lots. Such Common Areas are intended to be devoted to the common use and enjoyment of the Members of the Association, as herein defined, and are not dedicated for use by the general public. The Common Areas shall include the roads and septic systems located on the Lots and also within the Common Areas to be conveyed to the Association.
- (j) "Common Expenses" shall mean and refer to all expenditures lawfully made or incurred by or on behalf of the Association, together with all funds lawfully assessed for the creation or maintenance of reserves, pursuant to the provisions of this Declaration.
- (k) "Declaration" shall mean and refer to the Declaration of Covenants, Conditions and Restrictions of Emerald Bay Villages, as the same now exists or may be hereafter amended.
- (l) "Developer" shall mean and refer to Bayview Holdings, LLC, a Virginia Limited Liability Company, and any successors or assigns.
- (m) "Dwelling" shall mean a single family residential structure including garage and all fixtures thereto as constructed by the Developer and modified by the Developer or the Association from time to time as provided hereunder.
- (n) "FERC Order" shall mean the Federal Energy Regulatory Commission Order for Project No. 2210-096, dated August 15, 2004, as it may be amended, extended or renewed from time to time.
- (o) "Fire Flow Agreement" shall mean and refer to that certain Fire Flow Waiver Agreement dated as of September 21, 2005 between the Developer and the Board of Supervisors of Franklin County, Virginia.
- (p) "Limited Common Area" shall mean the individual boat slips constructed upon the Property and being shown on the plat of Emerald Bay Villages. Individual boat slips will be assigned and granted as an appurtenant license, pursuant to the FERC Order, to the Lots in Emerald Bay Villages for the exclusive use of the Lot Owner of the Lot to which the boat slip is assigned. The maintenance of the general structure of the boat slip shall be performed by the Association, but the interior and all mechanical and electrical equipment contained within the individual covered boat slips shall be maintained by Lot Owner of the Lot to which the boat slip is assigned and granted.

- (q) "Limited Common Easements" shall mean easements upon and over adjoining property of the Developer and/Emerald Bay Property Owners Association, Inc. and upon and over Lots as herein defined, said easements being shown on sheets 2 and 3 of the Plat made by WW Associates, dated 10/29/05, revised 8/12/05, and designated as "Drainage Easement", "Slope and Drainage Easement", "Well Lot Ingress & Egress Easement" and/or "Drainfield" for specified Lots upon said Plat.
- (r) "Lot " shall mean the land designated by Lot number and the property within the Lot lines of the individual Lots, all as shown on the Plat and shall refer to any portion of the Property designed and intended for individual ownership and use as a single family residence.
- (s) Lots 1-12 or Phase I shall refer to those Lots in Emerald Bay Estates, adjacent to the Community, whose Owners may desire to join the Association and agree to some or all of these covenants and who execute such necessary documents to accomplish same.
- (t) "Member" shall mean and refer to all those Owners who are members of the Association as provided in Article II, Section 1 of this Declaration.
- (u) "Mortgage" shall mean and refer to any mortgage, deed of trust or similar instrument encumbering a Lot as security for the performance of any obligation.
- (v) "Net Dilution Area" shall mean that certain area as shown on the Plat, dated May 27, 2005, limiting the right to construct certain improvements in the Net Dilution Area as set forth on the Plat, of record in the Clerk's Office of the Circuit Court of Franklin County, Virginia as Instrument Number 050005698, revised at 050006128, at Deed Book 850, Page 1696 as revised at Deed Book 851, Page 1488.
- (w) "Occupant" shall mean and refer to any person, including, without limitation, any guest, invitee, tenant, lessee or family member of a Member, occupying or otherwise using or visiting a Lot.
- (x) "Operations and Maintenance Manual" shall mean and refer to that certain Operations and Maintenance Manual For The Villages at Emerald Bay Wastewater System in Franklin County, prepared by EcoOptions, LLC, Rocky Mount, Virginia, and filed with the Franklin County Department of Environmental Quality as of May 19, 2005, as may be amended from time to time.
- (y) "Owner" or "Lot Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot, but shall not mean or refer to any mortgagee or subsequent holder of a Mortgage, unless and until such mortgagee or holder has acquired title pursuant to foreclosure or any proceedings in lieu of foreclosure.
- (z) "Plat" shall mean and refer to the plat of survey entitled Subdivision Plat of Villages at Emerald Bay, Gills Creek Magisterial District, Franklin County, Virginia, made by WW Associates, Engineers Surveyors Planners, dated 10/29/04, revised 8/12/05, to be recorded in the Clerk's Office of Franklin County, Virginia.

- (aa) "Property" shall mean and refer to the Property described in Exhibit A and all additions thereto, as are subject to this Declaration or any supplemental declaration recorded under the provision of Article III hereof. The areas designated on the Plat as Additional Lands of Bayview Holdings, LLC (Developer), are not subject to the restrictions set forth in this Declaration, however Developer reserves the right to develop such Additional Lands in any manner approved by applicable law or to bring such Additional Land and/or other properties of Developer, now owned or to be acquired by Developer, to be subjected to any or all such restrictions, as more specifically allowed pursuant to Article III of this Declaration.
- (bb) "Road Management Agreement" shall mean and refer to that certain Agreement, dated July 20, 2005, recorded simultaneously with this Declaration and executed by the Developer and the Association relative to the maintenance of the rights of way for ingress and egress to the lots and designated as the Common Area roads.

## ARTICLE II MEMBERSHIP AND VOTING RIGHTS

Section 1. Every owner of a Lot shall be a Member of the Association, provided, however that any such person or entity who holds such interest merely as security for the performance of an obligation shall not be a Member, unless and until such person or entity has succeeded to such Owner's interest by enforcement of such security interest. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

Section 2. The Association shall have two (2) classes of voting membership:

- (a) Class A. Class A Members shall be all Lot Owners including the Developer and shall be entitled to one (1) vote for each Lot owned. When more than one person holds interest in any Lot, all persons shall be Members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot.
- (b) Class B. The Class B Member shall be the Developer or Affiliate of Developer, and shall be entitled to a total number of votes equal to the total number of votes of all Class A Members plus thirty, so that the Developer or Affiliate will have a number of votes equal to a majority of the total votes of all Members of the Association. The Class B membership shall cease and terminate at such time that the Developer has conveyed the last Lot or parcel to a Class A Member, but shall terminate in any event on December 31, 2030.

## ARTICLE III PROPERTY SUBJECT TO THIS DECLARATION

Section 1. Description. The real property subject to this Declaration is all that property located in Franklin County, Virginia, as described in Exhibit A attached hereto and made a part hereof. The Common Areas, Limited Common Areas and the Limited Common Easements as herein defined shall be subject to such matters as are stated in the Declaration expressly as applying to said easements.

Section 2. Additions to the Property by the Association. Developer hereby reserves the exclusive right to incorporate residue, additional or expandable lands, whether now owned or to be acquired in the future by Developer, into the Property, for a period terminating on December 31, 2030. This right is unilateral in nature, requiring no consent from any purchaser or mortgagee. If Developer exercises this right, it shall record proper documents incorporating such other lands into the Property, thereby enlarging the Property and subjecting such additional or Expandable Lands to this Declaration, any portions hereof, and its amendments.

Section 3. Revisions to Plat and Plans, Adjustment to Lot Lines and Additions to the Property by Developer. The Developer reserves the right while a Class B member; to adjust Lot lines, revise the Plat, grant easements as required for construction of roads and installation of utility services and drainage easements, grant easements for the grazing and riding of horses, owned by Developer and its members, grant easements for pedestrian and vehicular for access to and from other properties, now owned or to be acquired in the future by Developer.

Section 4. Mergers. Upon a merger or consolidation of the Association with another similar association, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association, or alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger; provided, however, that such merger shall have been approved by the vote of two-thirds (2/3) of the Class A membership and the assent of the Class B Member, if any, at a meeting duly called for such purpose. The surviving or consolidated association may administer the covenants and restrictions established by this Declaration within the Property and the Limited Common Easements, together with covenants and restrictions established upon any other properties as one scheme. No such merger or consolidation, however, shall affect any revocation, change, or addition to the covenants established by this Declaration within the Property or the Limited Common Easements except as hereinafter provided.

Section 5. Other Additions. Upon approval in writing of the Association pursuant to a vote as provided in Section 2 of this Article III, the Owner of any property who desires to add it to the scheme of this Declaration and subject it to the jurisdiction of the Association, may file for record in the aforesaid Clerk's Office a supplemental declaration so effecting the same.

Section 6. Effect of Annexation. In the event that any additional lands or easements are annexed to the Property pursuant to Section 2, Section 3, or Section 5 of this Article III:

- (a) Such additional lands shall be considered within the definition of the Property for all purposes of this Declaration; and such additional easements shall be considered within the definition of Limited Common Easements.
- (b) All voting of each class of the membership of the Association, and all voting by the owners hereunder, shall be aggregated, it being intended that (i) any voting requirements need not be fulfilled separately for the real property described in a supplemental declaration, and (ii) any Class B Member shall have a majority of the votes of the Association.

Section 7. Contraction of the Property. At any time and from time to time, as long as the Developer owns any portion of the Property, the Developer shall have the right to remove portions of the property and the Common Areas, Limited Common Areas and the Limited Common Easements from the plan of development and the covenants, conditions and restrictions set forth in this Declaration by filing for record in the aforesaid Clerk's Office a supplemental declaration with respect to such land. Upon the filing of such supplemental declaration, the land and/or easements described therein shall not be included as a portion of the Property or the Common Areas, Limited Common Areas, or Limited Common Easements for any purpose whatsoever and the Lot Owners and the Association shall have no rights or interest therein. No contraction, however, shall reduce the easements for drainfield locations, sewer lines or other septic system equipment unless approved by the appropriate state and/or local Department of Health.

#### ARTICLE IV PROPERTY RIGHTS IN THE COMMON AREAS

Section 1. Owners' Easements of Enjoyment. Subject to the provisions of Section 3 of this Article IV, every Owner shall have a right and easement of enjoyment in and to the Common Areas and such easement shall be appurtenant to and shall pass with the title to every Lot. Owners' rights as to the Limited Common Easements shall be limited to the right to use the areas designated on the Plat for their particular Lot as a location of a drainfield and for sewer lines or other septic system equipment with the right to maintain, construct, repair and

replace same and the reasonable right of ingress thereto. Owners' rights to the Limited Common Area shall consist of the assignment of the License to the individual covered boat slips designated for the particular Lot and a nonexclusive easement for ingress and egress thereto. The use and maintenance of such boat slips shall be governed by the FERC Order.

Section 2. Title to Common Areas. The transfer of title and control and maintenance responsibilities of Common Areas, common facilities, Limited Common Area and Limited Common Easements to the Association shall take place no later than at such time as the Developer transfers legal or equitable ownership of at least one hundred percent of the Lots within the property to purchasers of such Lots or when all the amenities and facilities are completed, whichever shall first occur, but at the option of the Developer, no sooner than five years from the date the Developer sells its first Lot within the Property should the Developer elect to retain title to said Common Areas, Limited Common Areas, Limited Common Easements and common facilities for such period.

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

- (a) The rights of the Association to borrow money for the purpose of improving the Common Areas, Limited Common Areas and Limited Easements and in aid thereof to Mortgage the Property it owns and the rights of such mortgagee in such properties shall be subordinate to the rights of the Owners hereunder; provided, however, that no such borrowing or mortgaging shall be made unless approved by the vote of two-thirds (2/3) of the Class A membership and the assent of the Class B membership, if any, at a meeting duly called for such purpose; and
- (b) The right of the Association to take such steps as are reasonably necessary to protect the above-described properties against foreclosure; and
- (c) The right of the Association to suspend the enjoyment of rights of any Member in facilities for any period during which any assessment remains unpaid, and for any period not to exceed sixty (60) days for any infraction of its published rules and regulations; and
- (d) The right of the Association to charge reasonable admission and other fees for the use of the Common Areas and Limited Common Areas; and
- (e) The right of the Association to dedicate or transfer all or any part of its interest in the Common Areas, Limited Common Areas or Limited Common Easements to any public agency, authority or utility for such purpose an subject to such conditions as may be agreed to by the Members, provided that no such dedication or transfer, or determination as to the purposes or as to the conditions thereof, shall be effective unless an instrument signed by Members entitled to cast two-thirds (2/3) of the votes of the Class A membership and the Class B membership, if any, has been recorded, agreeing to such dedication, transfer, purpose of condition, and

- further provided that no easements so granted shall be granted which would encroach upon the use and/or operation of sewage drainfield areas, contrary to any State or Local Department of Health regulations as exist from time to time; and
- (f) The right of the Developer prior to the conveyance of the fee interest in the Common Areas and Limited Common Areas to the Association, and of the Association, to adjust and relocate Lot lines and boundaries prior to the conveyance of such Lots as may be affected by same, to grant and reserve easements and rights-of-way through, under, over and across the Common Areas, Limited Common Areas and Areas of the Limited Common Easements, for the installation, maintenance and inspection of the lines and appurtenances for public or private water, sewer, septic tanks, drainage, gas electricity, telephone and other utilities provided, however, that such relocation of Lot lines or boundaries shall not such interfere with underground utility easement which would encroach upon a sewage drainfield area, contrary to any State or Local Department of Health regulations as exist from time to time; and
  - (g) The right of the Developer to use any portion of the Property for a management office and/or sales office or for sale promotions until such time as Developer or its Successors conveys title to all Lots. The Developer shall have the right to locate the same from time to time within the Property and shall be able to maintain on the Property such advertising signs and banners which may be placed in any location on the Property as the Developer may determine. This easement to facilitate sales shall continue in full force and effect until the Developer is no longer a Class B member.
  - (h) The right of the Association to adopt rules and regulations governing the use by the Owners of the Common Areas, Limited Common Areas or the Limited Common Easements.
  - (i) The obligations of the Owners and the Association as successors to the Developer, as set forth in the Fire Flow Agreement. Pursuant to the Fire Flow Agreement, the EBVPOA will assume all obligations of the Owner to make such improvements as may be necessary to comply with the Fire Flow Agreement, including the connection and installation of fire hydrants and other improvements to the Water System as may be required by the County at the time the public water distribution system is available to the Property. In the event the EBVPOA does not fulfill its responsibilities under the Fire Flow Agreement, the individual Lot Owners will be responsible for their proportionate share of such expenses. The complete Fire Flow Agreement is of record in the Clerk's Office of the Circuit Court of Franklin County, Virginia.
  - (j) The obligations of the Owners pursuant the Net Dilution Area Plat.
  - (k) The obligations of the Owners and the Association to maintain the Roads pursuant the Road Management Agreement.

Section 4. Delegation of Use. Any Owner may delegate his right of enjoyment of the Common Areas, Limited Common Areas and facilities and Limited Common Easements to the members of his family, tenants, or contract purchaser (and members of the family of any tenant or contract purchaser) who resides on the Property or to such other persons as may be permitted by the Association, provided however, the use of the Limited Common Area, or Limited Common Easements shall be limited as herein provided and shall only be assigned or transferred in conjunction and as a part of the particular Lot which such Limited Common Areas or Limited Common Easements may serve.

Section 5. Obligations of the Association. The Association shall:

- (a) Operate and maintain, for the use and benefit of all Members of the Association, all Common Areas, Limited Common Areas, Easements, Limited Common Easements and facilities and improvements developed thereon including but not limited to, without limitation, the roads and streets in accordance with the requirements of the Road Management Agreement, including the driveways of the individual Lots as shown on the plat of Emerald Bay Villages; trails and fences of any type located on the Common Areas, Limited Common Areas, Easements, Limited Common Easements; drainage structures and area lighting.
- (b) Maintain, mow the grass and replace all dead or destroyed landscaping on the Lots and on the Property.
- (c) Manage and insure the operation, repair, maintenance and replacement of the septic sewer system and drainfields serving the Property as shown on the above referenced Plat.
- (d) Maintain and care for the exterior of the dwellings constructed on the Lots including roofs, the private roads, the driveways, and the grounds and vegetation located thereon. The obligation to maintain and care for the dwellings does not include repair or restoration after damage or destruction by fire or other casualty. Maintenance and care of the interior, the inside walls, and the mechanical apparatus of the boat slips and the remainder of the interior of the residences on the Lots shall be the responsibility of the Lot Owner. The maintenance of the interior of, or modifications, improvements or refinements to the covered boat slips made after approval pursuant to Article VI shall be the responsibility of the appropriate Lot Owner. The Association shall maintain the structural components and exterior and roof of the covered boat slips.

## ARTICLE V COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Developer, for itself and its successors or assigns, and for each Lot, hereby covenants, and each Owner of any Lot by acceptance of a deed or other transfer

document thereof, whether or not it shall be so expressed in such deed or other transfer document, is deemed to covenant and agree to pay to the Association:

- (a) Annual assessments or charges; and
- (b) Special assessments for capital improvements and operating, repair, and replacement reserve funds, such assessments to be fixed, established and collected as hereinafter provided;
- (c) An initial assessment of \$1500.00 upon purchase of each Lot as a contribution to the reserve account.

All Owners and Lots must become Members of the Association and pay all dues and assessments levied by the Association.

The annual and special assessments of the Association, together with interest, costs and reasonable attorney's fees, 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, costs, and reasonable attorney fees, shall also be the personal obligation of the person who was the Owner of such Property at the time the assessment fell due. The personal obligation for delinquent assessments shall not pass to the Owner's successors in title (other than as a lien on the land) unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the Association, Lot Owners and in particular the improvement and maintenance of the exteriors of the dwellings and driveways, roads and grounds as herein provided, the Common Areas, the Limited Common Areas as herein provided, and/or the Limited Common Easements and for services and facilities devoted to this purpose and related to the use and enjoyment of the Common Areas, including, but not limited to, the payment of taxes and insurance on the Common Areas and Limited Common Areas and the repair, replacement, and additions including the cost of labor, equipment, materials, management and supervision thereof, for operating reserve funds, and for reserve funds, all for the repair, operation maintenance and replacement of Common Areas, the Limited Common Areas as herein provided, Limited Common Easements and facilities thereon, and the exteriors of the dwellings and driveways, roads and grounds, as herein provided.

Section 3. Basis and Maximum of Annual Assessments.

- (a) The initial payment of \$1500.00, in addition to all assessments, of \$275.00 per month for each Lot shall be payable by the initial Owner of each Lot, other than the Developer, at the closing of the sale of each Lot by the Developer. Commencing with the conveyance of the first Lot from the Developer to an Owner and until changed by the Board of Directors as

herein provided. The monthly assessment imposed upon each Member of the Association shall be at the rate of \$275.00 per Lot owned by such Member. The assessments may be collected monthly or quarterly as the Association may determine and may be increased as hereinafter provided in Section 4 of this Article V.

- (b) The Board of Directors of the Association may, after consideration of current maintenance costs and future needs of the Association, fix the annual assessment for any year, provided that it shall be an affirmative obligation of the Association and its Board of Directors to fix such assessments at an amount sufficient to maintain and operate the Common Areas, Limited Common Areas as provided, Limited Common Easements and facilities and to provide reserves for the operating, repair, and replacement of same.

Section 4. Change in Maximum Annual Assessments. The Board of Directors of the Association may, without a vote of the members of the Association, prospectively increase the annual assessments (fixed by Section 3 (a) hereof) by an amount which is no greater than (i) thirty-five (35%) above the annual assessment fees stated in Section 3 (a) of this Article V. The Association may prospectively increase the maximum of the assessments above the amount permitted pursuant to the preceding sentence, provided that any such change shall have the assent of two-thirds (2/3) of the votes of each class of Members who are voting in person or by proxy, at a meeting duly called for this purpose.

#### Section 5. Determination of Annual Assessments.

- (a) Fiscal Year. The fiscal year of the Association shall consist of the twelve-month period commencing on January 1 of each year and terminating on December 31 of that year.
- (b) Preparation and Approval of Budget. Each year on or before November 1, the Board of Directors shall adopt a budget containing an estimate of the total amount which it considers necessary to pay the cost of maintenance, management, operation, repair and replacement of the dwelling exteriors, driveways, road and grounds as herein provided, the Common Areas, Limited Common Areas as provided herein, and Limited Common Easements, and the cost of wages, materials, insurance premiums, services, supplies and other expenses and the rendering to the Lot Owners of all related services. Such budget shall also include such reasonable amount as the Board of Directors considers necessary to provide working capital, a general operating reserve, and reserves for contingencies and replacements. The Board of Directors shall send to each Owner a copy of the budget, in a reasonably itemized form which sets forth the amount of the common expenses payable by each Owner, on or before December 15 preceding the fiscal year to which the budget

- applies. The said budget shall constitute the basis for determining each Owner's assessment as hereinbefore provided.
- (c) Reserves. The Board of Directors shall build up and maintain an adequate reserve for working capital and contingencies, and an adequate reserve for replacement of all dwelling exteriors, facilities or the Common Areas and Limited Common Areas and Limited Common Easements, which shall be collected as part of the annual assessment as hereinbefore provided. All funds accumulated for reserves shall be kept in a separate bank account, segregated from the general operating funds, and, if the Board of Directors deems it advisable, funds accumulated for each type of reserve shall be kept in a separate bank account, identified by reference to the specific category of reserve. Extraordinary expenditures not originally included in the annual budget, which may become necessary during the year shall be charged first against such reserves. Except where an emergency requires an expenditure to prevent or minimize loss from damage to, or deterioration of, the dwelling exteriors, driveways, roads or grounds as herein provided. Common Areas, Limited Common Areas as herein provided, and Limited Common Easements, reserves accumulated for one purpose may not be expended for any other purpose unless approved by the Board of Directors. If the reserves are inadequate for any reason, including non-payment of any Owner's assessment, the Board of Directors may at any time levy a further assessment in accordance with the provisions hereof, and which may be payable in a lump sum or in installments as the Board of Directors may determine. In the event there is a balance of reserves at the end of any fiscal year and the Board of Directors determines the Association may lose its tax exempt status due to such balance, the balance may be returned on an equal basis to all Members who are current in the payment of assessments due to the Association.
- (d) Effect of Failure to Prepare or Adopt Budget. The failure or delay of the Board of Directors to prepare or adopt the annual budget or adjusted budget for any fiscal year shall not constitute a waiver or release in any manner of an Owner's obligation to pay his assessment as herein provided, whenever the same shall be determined, and in the absence of any annual budget or adjusted budget, each Owner shall continue to pay the assessment at the then existing rate established for the previous fiscal period in the manner such payment was previously due until notified otherwise.
- (e) Accounts. Except as otherwise provided, all sums collected by the Board of Directors with respect to assessments against the Owners may be commingled into a single fund, but shall be held for each Owner in accordance with his votes in the Lot Owner's Association.

Section 6. Special Assessments for Capital Improvements and Operating Reserves. In addition to the annual assessments authorized by Section 3 of this Article V, the Association may levy in any assessment year a special assessment (which must be fixed at one uniform rate for each Lot) applicable to that year only, for the purpose of defraying in whole or in part, the cost of any construction, reconstruction, repair or replacement of dwelling exteriors, driveways, roads and grounds as herein provided, a capital improvement upon the Common Areas, Limited Common Areas as herein provided, or Limited Common Easements, including the necessary fixtures and personal property related thereto, and for operating the Common Areas, Limited Common Areas as herein provided and Limited Common Easements, for which a reserve fund does not exist or is not adequate, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 7. Date of Commencement of Annual Assessments; Due Dates. The annual assessments as to any Lot shall commence on the conveyance of such Lot from the Developer to an Owner and shall be due and payable thereafter on the first day of each calendar month thereafter unless the assessments are required by the Board of Directors to be paid quarterly, in which event they shall be due and payable thereafter on the first day of January, April, July and October. The due date of any special assessment under Section 6 hereof shall be fixed in the resolution authorizing such assessment.

Section 8. Duties of the Board of Directors. In the event of any change in the annual assessment as set forth herein, the Board of Directors of the Association shall fix the date of commencement and the amount of the assessment against each Lot for each assessment period at least thirty (30) days in advance of such date or period and shall at that time, prepare a roster of the Lots and assessments applicable thereto which shall be open to inspection by any Owner. Written notice of the assessment shall thereupon be sent to every Owner subject thereto. The Association shall, upon demand at any time, furnish to any Owner liable for said assessment a certificate in writing signed by an officer of the Association, setting forth whether said assessment has been paid, or the amount of any unpaid assessment. A reasonable charge may be made by the Association for the issuance of such certificate. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 9. Non-Payment of Assessment. The Personal Obligation of the Owner: The Lien; Remedies of the Association. Any assessment not paid on that date when due shall be delinquent and shall together with such interest thereon and costs of collection thereof as are hereinafter provided, become a lien on the Lot, which shall bind such Lot in the hands of the then Owner, his heirs, devisees, personal representatives, successors and assigns. In addition to such

lien rights, the personal obligation of the then Owner to pay such assessment, however, shall remain his personal obligation and shall not pass to his successor in title (other than as a lien on the land) unless expressly assumed by them. If any assessment is not paid within five (5) days after the due date, then a late charge, not in excess of the greater of \$25.00 or ten percent (10%) of the amount of each assessment or installment thereof, not paid when due, shall also be due and payable to the Association. If any assessment or portion thereof is delinquent for a period of more than five (5) days, then if not paid within ten (10) days after written notice is given to the Member to make such payment, the entire unpaid balance of the assessment for that calendar year may be accelerated at the option of the Board of Directors and be declared due and payable in full, and foreclosure proceedings may be instituted to enforce such lien. Such notice shall be sent by regular first class mail, to the Member both at the address of the Lot or at any other address the Member may have designated to the Association in writing, specifying the amount of the assessments then due and payable, together with authorized late charges and interest accrued thereon. In addition, the Association may cause to be recorded among the land records of the County of Franklin, Virginia, a memorandum of lien against the Lot and Owner thereof for all charges specified herein. Any assessment or portion thereof, together with authorized late charges, not paid when due will also bear interest from the date of delinquency at the rate of eighteen (18) percent per annum together with reasonable attorney fees, in an amount of 33% of all sums due. The Board of Directors may also suspend the voting rights of the Member and his Occupants to use the recreational facilities, if any, of the Property during the period in which any assessment or portion thereof remain unpaid and after at least ten (10) days written notice is given to the Member as aforesaid, and the Association may bring an action at law against the Member personally obligated to pay the same or foreclose its lien against such Member's Lot, in which event late charges, interest and costs of collection to include court costs, the expenses of preservation of the Lot, and reasonable attorney's fees in the amount of 33% of the total amount claimed. All payments on account shall be applied first to the aforesaid costs of collection and attorneys fees, then to late charges, then to interest, and then to the assessment lien first due. All late charges and interest collected shall be credited to the Common Expense fund. Each Member vests in the Board of Directors the right and power to bring all actions against him personally for the collection of such assessments as a debt and to foreclose the aforesaid lien in the same manner as other liens for the improvement of real property. The lien provided for in this Article shall be in favor of the Association and shall be for the benefit of all Members. The Board of Directors acting on behalf of the Association, shall have the power to bid in the Lot at any foreclosure sale and to acquire, hold, lease, encumber and convey the same. No Member may waive, or otherwise escape liability for the assessments provided for herein by non-use of the Lot, Common Areas or Limited Common Areas or Limited Common Easements or abandonment of its Lot. The lien for assessments shall lapse and be of no further effect as to assessments or installments thereof,

together with late charges and interest applicable thereto, first becoming due and payable more than five (5) years prior to the institution of suite therefore if suit is not instituted within one hundred eighty (180) days after the giving of such notice.

Section 10. Subordination of the Lien to First Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first lien deed of trust or mortgage on the Lot. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot by foreclosure of any first lien deed of trust or mortgage on the Lot, or any proceeding in lieu thereof, shall release the lien of such assessments as to the payments which became due prior to such sale or transfer provided however that such lien shall attach to any proceeds of such foreclosure in excess of the amount due under such lien foreclosure upon including all costs of foreclosure. No other sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 11. No Alienation of Lots. No Owner shall be permitted to convey, hypothecate, sell lease, give, or devise his Lot unless and until he (or his personal representative) shall have paid in full to the Association all unpaid assessments against his Lot, except as otherwise specifically provided herein. Any conveyance by deed of trust to secure a valid indebtedness of the Lot Owner shall be free and clear of any such unpaid assessments. The Association shall promptly furnish to any Lot Owner (or his devisee or personal representative) requesting the same in writing pursuant to this Section, a recordable statement certifying whether or not such Lot Owner is then obligated for any outstanding assessments previously levied against such Lot and the amount, if any, then outstanding. In the event that the Lot is subject to outstanding expenses previously levied against such Lot, the statement shall certify any waiver of, or failure or refusal to exercise, the right of the Association to prevent the disposition of such Lot, in all cases where the Association allows such disposition. Failure or refusal to furnish promptly such a statement in such circumstances shall make the above-mentioned prohibition inapplicable to any disposition of the Lot. Any such statement shall be binding on the Association and every Lot Owner. The Association shall comply with the Virginia Property Owners Association Act, Title 55, Chapter 26, of the Code of Virginia of 1950, as amended.

Section 12. Exempt Property. The following properties subject to this Declaration shall be exempted from the assessments, charges and liens created herein.

- (a) All properties dedicated to and accepted by a governmental body, agency or authority, and devoted to public use; and
- (b) All Common Areas; and

- (c) All Lots owned by the Developer. Developer shall not pay any assessments, annual, special, capital or otherwise, while Developer is a Class B Member of the Association.

## ARTICLE VI ARCHITECTURAL CONTROL

The Architectural Board. No resubdivision, modification, alteration or improvement of any nature whatsoever, except for interior alterations not affecting the external structure of appearance of any Lot, shall be undertaken on any Lot, Limited Common Easement or boat slip, unless and until a plan of such construction or alteration shall have been approved in writing by the Architectural Board. No Owner shall paint or alter the exterior of a dwelling on a Lot, including the doors and windows, except in accordance with the provisions hereof. The plan submitted to the Board for approval shall include (1) the construction plans and/or specifications, including all proposed landscaping, and (ii) a drawing showing a rendering of all proposed improvements. No construction shall be commenced and no dwelling on a Lot shall be modified except in accordance with such plan or a modification thereof that has also been approved by separate application. Boat slips for the individual Lots will be assigned to said Lots by the Developer.

Approval shall be granted or denied by the Architectural Board based upon compliance with provisions of this Declaration, the quality of workmanship and materials, harmony of external design with surrounding structures, the effect of the construction on the view from surrounding property and Lots, and all other factors which in the sole opinion of the Architectural Board will affect the desirability or suitability of the construction.

The Architectural Board shall consist of three (3) Members. The members of the Architectural Board shall be appointed by the Developer until the Developer has no further interest in the Property, at which time the appointments shall be by the Board of Directors of the Association. Until all members of the Architectural Board have been appointed, all powers of the Architectural Board shall be vested in the Developer.

The Architectural Board shall establish uniform procedures for the review of the applications submitted to it. These procedures shall provide (i) the time and place of meeting of the Architectural Board; (ii) the submission and review procedures, and (iii) the review costs and fees (to be paid by the applicant) to be paid to the Association. The Architectural Board Members' compensation shall be fixed initially by the Developer and adjusted annually by the Board of Directors with all such payments payable out of Association funds.

Approval or disapproval of applications to the Architectural Board shall be given to the applicant in writing within sixty (60) days of receipt thereof; in the event that the approval or disapproval is not forthcoming within sixty (60) days, unless an extension is agreed to by the applicant, the application shall be deemed approved and the construction of the applied for improvements may be commenced provided that all such construction is in accordance with the submitted plans and provided further that such plans conform in all respects to the other terms and provisions of this Declaration.

Approval by the Architectural Board shall not constitute a basis for any liability of the members of the Architectural Board, the Developer, or the Association as regards (i) failure of the plans to conform to any applicable building codes, or (ii) inadequacy or deficiency in the plans resulting in defects in the improvements.

## ARTICLE VII PROPERTY USE AND MAINTENANCE

Section 1. Maintenance. It shall be the responsibility of each Owner to keep and maintain the interior of any Dwelling on a Lot and the boat slip assigned to the Lot in a neat and orderly manner, and, generally, prevent any condition of the improvements or the grounds to decrease the beauty of the Property. Each Owner shall be responsible for all damages to any and all other Lots and the Common Areas or Limited Common Areas resulting from his failure to maintain his Lot and Dwelling.

All Common Areas, and facilities, and the exterior of the Dwellings upon the Lots and all landscaping upon the Lots and common areas and the exterior and structural components of the boat slips shall be maintained by the Association. The interior of boat slips and any improvements or modifications or refinements thereto shall be maintained by the Lot Owners having the use of such slip. Any additional landscaping by Owners upon Lots shall be subject to approval by the Board.

It shall be the responsibility of each Lot Owner to maintain, repair or replace the sewage line from his or her Lot to the specific tank for such Lot. For the purpose of this document, "sewer line" as herein used shall be the line from a Dwelling on a Lot to the septic tank serving such Lot and "septic system" shall be and include the septic tank, holding tank, pump and chamber, distribution line, distribution box and drainfield lines. It shall be the joint and several responsibility of the Lot Owners to maintain, repair or replace the septic system serving their respective Lots, and the costs of same shall be equally borne by the Owners of Lots serviced by said septic system. In the event one of several owners is required to expend funds for such maintenance, repair or replacement of a septic system serving more than such Owner's Lot, then such Owner shall have a claim and cause of action against the other Owner or Owners whose Lot or Lots are

served by such system for contribution of that Owner or Owners' fair share. If any Lot Owner fails to keep his Lot, the Dwelling thereof or the sewage line from the Lot to the septic tank, or the septic system serving his Lot in good and attractive condition and repair, the Association, or the Developer if the permit and ownership of the septic system and its responsibilities have not been transferred to the Association in accordance with this Declaration, shall (after notice by mail addressed to the Lot Owner giving the owner five (5) days to make the necessary repairs) take whatever action it deems necessary or appropriate in order to keep the property and sewage line to the septic tank and septic system serving such Lot or Lots involved attractive and in good condition and repair and any such action shall be at the sole cost and expense of the Lot Owner or Owners, whose Lot or Lots are involved, such costs to be paid to the Association upon demand, together with a construction management fee of 10% of such costs and interest at the rate of 18% per annum on all amounts due, and if not paid within ten (10) days after demand, to become a lien upon the Lot or Lots affected equal in priority to a lien created by failure to pay a annual or special assessment as provided by the said Declaration. Upon transfer by the Developer of the title, control and maintenance responsibility hereunder, all drainfield areas and the sewage system easement areas shall be maintained, operated repaired or replaced by the Association, except for the maintenance, repair or replacement of the sewage lines and septic systems by the Lot Owner or owners as provided in the preceding paragraph. Further responsibilities of the Lot Owner(s) for the maintenance and operation of the sewage lines and septic systems are found in the Operation and Maintenance Manual.

Section 2. Restrictions of Use of Lots and Common Areas. These restrictions are set forth on the attached Exhibit C.

Section 3. Right of Access. Each Owner shall grant a right of access to his Lot to the Association, or any other person authorized by the Association, or any group of the foregoing, for the purpose of making inspections or for the purpose of correcting any condition originating in his Lot and threatening another Lot or the Common Areas, Limited Common Areas or Limited Common Easements or to correct any condition which violates the provisions of any Mortgage covering another Lot, provided that requests for entry are made in advance and that any such entry is at a time reasonably convenient to the Owner. In case of any emergency such right of entry shall be immediate, whether the Owner is present at the time or not.

Section 4. Rules and Regulations. Rules and regulations concerning the operation and use of the Common Areas and Limited Common Areas and Limited Common Easements may be promulgated and amended by the Association, provided that such rules and regulations are not contrary to or inconsistent with the laws of the State of Virginia or to the purposes of this

Declaration. Copies of the rules and regulations shall be furnished by the Association to each Owner prior to the time when the same shall be effective.

Section 5. Electricity and Water Charges. Electricity shall be supplied by the public or private utility company serving the area directly to each Lot through separate meters and each Owner shall be required to pay the bills for electricity consumed or used on his Lot. The electricity serving the Common Areas shall be separately metered, and the Association shall pay all bills for electricity consumed in such portions of the Common Areas. The water charges shall also be individually metered and charged and each Lot Owner shall pay all bills for water service consumed on his Lot. Each individual Lot shall be responsible for any costs associated with connecting to the public water system in accordance with the Fire Flow Agreement. Lots 1-12 in Phase I of Emerald Bay Estates are authorized to have individual wells serving each individual Lot and will not be required to connect to the public water system in the event they elect to join the Association.

Section 6. Driveways and Parking Spaces. Two (2) parking spaces shall be provided for each Lot. Vehicular repairs including, without limitation, engine washing, may not be accomplished on the Property, except that minor repairs including, without limitation, tire changing, may be accomplished from time to time. No improperly licensed or inoperable vehicles or any boats, recreational vehicles or trailers or trucks of any kind (including but not limited to pick-ups) may be parked on the Property, except in common areas designated by the Board. In the event that a Lot Owner does not observe the requirements of this Section, the Association is authorized to take proper corrective measures, without liability to the Owner therefore, including, without limitation, towing improperly parked vehicles, and to charge the Owner for any costs including reasonable attorney fees incurred in the process. Driveways and parking areas as shown on the Plat shall be maintained by the Association. Unreasonable wear and tear and damage to such driveways and/or parking areas caused by the misuse by a Lot Owner shall be repaired by such Lot Owner.

Section 7. County Parking Regulations. The Association shall establish and enforce rules and regulations relating to the parking of vehicles which shall conform to any pertinent restrictions provided for by the laws of Franklin County, Virginia as they may be amended from time to time.

Section 8. Facilitate Sales. All Lots shall be subject to an easement in favor of Developer or any Affiliate thereof to use any portion of the Property for management offices or sales offices or sales promotions. Developer reserves the right to maintain on the Property, such advertising signs and banners which may be placed in any location on the Property and be relocated or removed, all at the sole discretion of the Developer. This easement to facilitate sales shall

continue in full force and effect until Developer is no longer a Class B Member and shall include such areas even after title has passed to an Owner.

The Developer, its agents or an Affiliate thereof, may use the property for general real estate advertising purposes, including the taking and use of photographs in advertisements of any residences located on the Property with the express limitation that neither the names of the Owners, nor the address of the residence will be given in the advertisement. This reservation of rights will be used without notice to or permission of any Lot Owner. No Lot Owner shall be entitled to any compensation for the use of any such photographs or advertisements.

#### ARTICLE VIII SEWAGE – SEPTIC SYSTEMS

The Developer will be the initial owner of the sewage disposal system including the drainfields or the easements for the location of drainfields and also of the permit issued by the State and/or Local Health Department for the construction, maintenance, and operation of the septic tank and drainfield sewage disposal system. The Developer is obligated to expend funds to initially install, operate and maintain the system. All repairs, renovations, maintenance to, or replacement of the sewage disposal system shall be made in compliance with applicable state and local laws, regulations and ordinances. The permit and ownership of the sewage disposal system including the drainfield or Limited Common Easements but excluding the land of Developer upon which said easements are located and described on Exhibit B and land within the boundary lines of any Lot and its responsibilities will be transferred to the Association no later than the date specified in Article IV, Section 2. The Developer or the Association shall retain ownership of, property upon which some of the drainfields are located subject to drainfield easements to be granted to the Association, all as shown on the Plat subject to the Dedication and Maintenance Agreement for Emerald Bay Villages to be properly executed and recorded in the Clerk's Office of the Circuit Court of Franklin County, Virginia. The transfer of the construction permit and/or operation permit to the Association is conditioned upon the approval of the appropriate state or local Department of Health. The sewage disposal system operation permit will be issued or assigned to the Association upon compliance with all applicable regulations and the following:

1. The appropriate health department is presented evidence that all documents relating to the creation of the Association have been filed with the appropriate Circuit Court; and
2. The appropriate health department is presented evidence that the title to the portion of the sewage disposal system equipment located in the Common Area and the Limited Common Easements for drainfields have been transferred to the Association.

Documents indicated that the above conditions have been met shall be submitted to the appropriate state and local agencies.

The Association shall be obligated to and shall be authorized to expend such funds as are necessary for the maintenance, repair or any malfunction, normal operation, or replacement of such system, all of which shall be done in compliance with applicable state and local laws, ordinances and regulations. The sewage disposal system shall be a Common Area except the title to land upon which the drainfields are located on individual Lots shall remain vested in the Owners of individual Lots and the Developer and the Association, subject, however, to the Limited Common Easements for drainfields to be conveyed to the Association.

The Association and each individual Owner of a Lot in the Property shall have an easement appurtenant to be used in common with other Lot Owners that have a similar like right, the easement and right to operation, maintenance, repair and replacement of a sewage disposal system, which term includes but is not limited to all necessary lines, pipes, tanks, drainfields and related equipment together with reasonable ingress and egress thereto, in such area and Limited Common Easements as shown on the Plat.

## ARTICLE IX UTILITY EASEMENTS

Section 1. Utility Easements. The Developer, for itself and its successors or assigns, hereby creates easements over, under, in, on, and through the Property and the areas of the Limited Common Easements for the installation, construction, reconstruction, relocation, removal, maintenance, repair, operation and inspection of sewer, water, drainage, electric, gas, television, telephone and cable telephone and television facilities and the wires, lines, conduits and other necessary and proper attachments in connection therewith, for the benefit of the adjoining landowners, the Developer, any Federal, State or Local authority, commission, or agency having jurisdiction thereover and any corporation, either public, quasi-public or private, supplying or servicing such facilities provided, however, that no such underground utility easement shall be granted which would encroach upon a sewage drainfield area contrary to Department of Health regulations as exist from time to time.

Section 2. Easement of Access. Every Owner shall have an easement over and across the Property in order to gain access to the Common Areas, Limited Common Areas, and Limited Common Easements and such easement shall be appurtenant to and pass with the title to every Lot. Any Owner may delegate his right of access to the Common Areas to the members of his family who reside on the Property or to such other persons as may be permitted by the Association.

An Owner's rights as to the Limited Common Easements shall be limited to those rights specified herein and in particular recited in Article IV, Section 1.

## ARTICLE X INSURANCE

Section 1. Insurance of Common Areas, Limited Common Areas and Limited Common Easements. The Board of Directors shall be required to maintain the following insurance on Common Areas and any improvements constructed thereon.

(a) Fire insurance with extended coverage, vandalism, malicious mischief and windstorm, endorsements in an amount not less than that necessary to comply with co-insurance percentage stipulated in the policy, but in the event not less than one hundred (100%) of the insurable value (based upon replacement) of the improvements constructed on the Common Areas; and

(b) Worker's compensation insurance if and to the extent necessary to meet the requirements of law; and

(c) Such other insurance as the Board of Directors of the Association may determine or may be requested from time to time by a majority of the Lot Owners.

The Board of Directors shall also be required to obtain and maintain public liability and property damage insurance in such limits as the Board of Directors may from time to time determine, insuring against any liability arising out of, or incident to, the ownership and use of the Common Areas, Limited Common Areas and Limited Common Easements. Such insurance shall be issued on a commercial general liability basis and shall contain a "Severability of interest" endorsement which shall preclude the insurer from denying the claim of a Lot Owner because of negligent acts of the Association, the Board of Directors or other Lot Owners. The Board of Directors shall review such limits once each year but in no event shall such insurance be less than \$300,000 with respect to any one person, \$1,000,000.00 with respect to any one accident or occurrence, and \$100,000 with respect to any claim for property damage.

It shall be the responsibility of each Lot Owner to obtain, at his own expense, liability insurance with respect to the ownership and use of his Lot and the Board of Directors shall not be responsible for obtaining such insurance.

Section 2. Insurance of the Lots. Each Lot Owner shall obtain and maintain fire insurance and insurance against the perils customarily covered by a special perils endorsement in an amount equal to not less than the full insurable value of

the Dwelling on a Lot (based upon replacement) and, upon request therefore, shall forward evidence of such insurance coverage together with evidence of payment on the most recent premium therefore to the Association. Such policy shall be subject to approval by the Association and name it as loss payee.

Section 3. Each such policy shall provide that:

- a. The insurer waives any right to claim by way of subrogation against the Developer, the Association, the Board of Directors, the Managing Agent or the Members, and their respective agents, employees, guests and, in the case of the Members, the members of their households;
- b. Such policy shall not be cancelled, invalidated or suspended due to the conduct of any Member (including his invitees, agents and employees) or of any member, officer or employee of the Board of Directors or the Managing Agent without a prior demand in writing that the Board of Directors or the Managing Agent cure the defect and without sixty (60) days having elapsed after such demand without a cure of the defect;
- c. Such policy may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least sixty (60) days prior written notice to the Board of Directors and the Managing Agent, and in the case of physical damage insurance, to all Mortgagees of the Lots.
- d. The Developer, so long as it shall own any Lot, shall be protected by all such policies as a Member;
- e. All policies of insurance shall be written by reputable companies licensed to do business in the Commonwealth of Virginia and holding a rating of "AAA", or better, by Best's Insurance Reports and a policyholder's rating of "A" or better. Physical damage policies shall be in form and substance acceptable to the Mortgagees of the Lots.

## ARTICLE XI

### REPAIR AND RECONSTRUCTION AFTER FIRE OR OTHER CASUALTY

Section 1. Restoration. In the event of damage to, or destruction of all or any of the improvements in the Common Areas, Limited Common Areas as herein provided or to the drainfields, sewer lines or other septic system equipment in the Common Areas or the Limited Common Easements as a result of fire or other casualty, the Board of Directors of the Association shall arrange for and supervise the prompt repair and restoration of such improvements substantially in accordance with the plans and specifications under which the improvements were originally constructed. The Board of Directors shall proceed towards reconstruction of such improvements as quickly as practicable under the circumstances and shall obtain funds for such reconstruction from the insurance

proceeds and any special assessments that may be necessary after exhaustion of reserves for the repair and replacement of such improvements.

Any Lot Owner whose Dwelling is destroyed or damaged by fire or other casualty shall immediately proceed to rebuild and restore same to the condition existing immediately prior to such damage or destruction. All such rebuilding and restoration shall be undertaken in accordance with the provisions of Article VI hereof.

Section 2. Termination. Anything in the above, to the contrary, notwithstanding, in the event (i) more than two-thirds (2/3) of the Lots on the Property, in value, are destroyed by fire or other casualty, or (ii) eighty percent (80%) of the Lot Owners (either by vote at a regular or special meeting or by executing a written document, within ninety (90) days after the date of such damage or destruction) and the mortgagees holding Mortgages constituting first liens on eighty (80%) of the Lots encumbered by Mortgages agree to waive and terminate the Community, then neither the Lots nor the Common Areas need be rebuilt and all insurance proceeds shall be distributed to the parties having an insurable interest in the destroyed property in the amount and priority as their interest may appear.

## ARTICLE XII MORTGAGES

Section 1. Notice to Board of Directors. An Owner who mortgages his Lot shall notify the Association of the name and address of his mortgagee. However, failure of each Owner to so notify the Association shall in no way impair or invalidate the validity of any Mortgage placed upon any of the Lots, including the rights of the Owners of Lots in the Common Areas and Limited Common Areas and Easements.

Section 2. Notice of Unpaid Assessments for Common Expenses. The Association, whenever so requested in writing by a Mortgagee of a Lot, shall promptly report any then unpaid assessments for Common Expenses due from, or any other default by, the Owner of the mortgaged Lot.

Section 3. Notice of Default. The Association, when giving notice to an Owner of a default in paying an assessment for common expenses or any other default, shall send a copy of such notice to each holder of a Mortgage covering such Owner's Lot whose name and address has theretofore been furnished to the Association. Further, the Association shall send such mortgagees written notice of any default by such Owner which has not been cured within thirty (30) days after the delivery to such Owner of the first notice relating to such default. Any such notices specified herein will only be given to the Mortgagee at the address on file in the offices of the Association, and the failure to notify the

Association of any change of address will be deemed a waiver of any such notices.

ARTICLE XIII  
COMPLIANCE AND DEFAULT

Section 1. Relief. Each Owner of a Lot shall be governed by, and shall comply with, all of the terms of the Declaration, and the rules and regulations promulgated by the Association and any amendments of the same. A default by an Owner shall entitle the Association, acting through its Board of Directors or through its agents, to the following relief:

- (a) Legal Proceedings. Failure to comply with any of the terms of the Declaration, and the rules and regulations shall be grounds for relief which may include, without limited the same, an action to recover any sums due for money damages, injunctive relief, foreclosure of the lien for the payment of all assessments, any other relief provided for herein including reasonable attorneys fees, or any combination thereof, and any other relief afforded by a court of competent jurisdiction, all of which relief may be sought by the Association, the Board of Directors, its agents, or, if appropriate, by an aggrieved Owner. The Association shall be responsible for the Developer's costs and reasonable attorneys fees in the event an unsuccessful action is brought against Developer for any reason whatsoever.

In the event any party files a suit against the Developer and/or a Contractor employed by the Developer, pursuant to any terms and conditions of this Declaration, or pursuant to the construction of a residence on any Lot, the party filing such legal action shall be responsible for all court costs and attorneys fees incurred by Developer and/or Contractor employed by Developer, if such legal action is dismissed or decided in favor of Developer and/or Contractor employed by Developer or if said legal action is decided in favor of said Lot Owner but the decision is consistent with a previous settlement offer made by the Developer and/or Contractor employed by Developer.

- (b) Additional Liability. Each Owner shall be liable for the expense of all maintenance, repair or replacement rendered necessary by his act, neglect or carelessness, or the act, neglect or carelessness or any member of his family or his employees, agents or licensees. Such liability shall include any increase in insurance rates occasioned by use, misuse, occupancy or abandonment of any Lot or its appurtenances. Nothing contained herein, however, shall be construed as modifying any waiver by any insurance company of its rights and subrogation.

- (c) **Costs and Attorney's Fees.** In any proceeding arising out of any alleged default by an Owner, the Association shall be entitled to recover the costs of the proceeding, and such reasonable attorneys' fees as may be determined by the court.
  
- (d) **No Waiver of Rights.** The failure of the Association, the Board of Directors, or of an Owner to enforce any right, provision, covenant, or condition which may be granted by this Declaration, or the rules and regulations, shall not constitute a waiver of the right of the Association, the Board of Directors or the Owner to enforce such right, provision, covenant or condition in the future. All rights, remedies and privileges granted to the Association, the Board of Directors, or any Owner pursuant to any term, provision, covenant or condition of the Declaration, or the rules and regulations shall be deemed to be cumulative, and the exercise of any one or more thereof shall not be deemed to constitute an election of remedies, nor shall it preclude the party exercising the same from exercising such privileges as may be granted to such party by the Declaration or the rules and regulations, or at law or in equity.
  
- (e) **Abatement and Enjoyment of Violations by Owners.** The violation of any rule or regulation adopted by the Association, or the breach of any provision of the Declaration, shall give the Association the right, in addition to any other rights set forth herein or at law (i) to enter the Lot in which, or as to which, such violation or breach exists and summarily to abate and remove, at the expense of the defaulting Owner, any structure, thing or condition that may exist therein contrary to the intent and meaning of the provisions hereof, and the Association shall not thereby be deemed guilty in any manner of trespass, or (ii) to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such breach.
  
- (f) **Penalty Assessments and Fines.** The Board shall be authorized to establish a schedule of fines for the violation of any matter set forth in the Declaration and in Exhibit C, General Provisions and for the violation of any rules or regulations adopted hereunder by the Board. Such schedule of fines shall be published by the Board to all members when it is adopted and any assessments or fines imposed by the Board hereunder shall become an assessment against the Lot of the Lot owner assessed and shall be collected and enforced as provided in Article V hereof.

ARTICLE XIV  
MSCCELLANEOUS PROVISIONS

Section 1. Duration and Amendment. The provisions of this Declaration run with and bind the Property, and shall inure to the benefit of and be enforceable by the Association, or the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of fifty (50) years from the date this Declaration is recorded, after which time the Restrictions shall be automatically extended for the successive periods of ten (10) years each unless an instrument signed by the Owners holding not less than three-fourths (3/4) of the votes of the membership has been recorded, agreeing to terminate or change said Restrictions in whole or part; provided, however, that no such agreement to terminate or change shall be effective unless written notice of the proposed agreement is sent to every Owner at least ninety (90) days in advance of any action taken. Unless specifically prohibited herein, this Declaration may be amended by an instrument either (i) signed by Developer so long as it owns any portion of the property or (ii) thereafter signed by Owners holding not less than ninety (90) percent of the votes of the membership at any time until the end of the initial fifty (50) year term and thereafter by an instrument signed by the Owners holding not less than three-fourths (3/4) of the votes of the membership. Any amendment must be properly recorded to be effective. No amendment shall change architectural, engineering, landscaping (which term shall be defined in its broadest sense as including grass, fences, hedges, vines, trees and the like) or decorative design of the Community as finally constructed by Developer without Developer's written consent.

Developer shall retain the exclusive right to amend, modify, revoke, alter, expand and update the contents of this Declaration, or amendments thereto, or to add any real estate to the scope of this Declaration, or amendments thereto, without the permission of any party. Any amendment or alteration to the Declaration shall take effect only after Developer, or any entity in which one or more of the principals of Developer is a principal of the Developer, has caused to be recorded an amended Declaration among the Franklin County, Virginia land records.

Section 2. Consent of First Mortgagees. This Declaration contains provisions concerning various rights, priorities, remedies and interest of the mortgagees of Lots. Such provisions are to be construed as covenants for the protection of the mortgagees on which they may rely in making loans secured by Mortgages on Lots. Accordingly, no amendment or modification of this declaration impairing such rights, priorities, remedies or interest of a mortgagee shall be adopted without prior written consent of such mortgagee. If there is more than one mortgagee holding Mortgages on the Lots, it shall be sufficient to obtain the written consent of the institutional mortgagee or

mortgagees holding first liens on seventy-five percent (75%) of the Lots encumbered by Mortgages. This paragraph shall not apply to or in any way be construed as a limitation upon those rights of the Developer under this Declaration which do not so adversely affect such Mortgagees.

Section 3. Notices. Any notice required to be sent to any Member or Owner under the provisions of this instrument shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as member or Owner on the records of the Association at the time of such mailing.

Section 4. Assignability. Developer, its successors and assigns, shall at all times have the right to fully transfer and assign any or all of his rights and powers under this Declaration, subject only to Developer's obligations hereunder.

Section 5. Power of Attorney. All Lot Owners hereby appoint Developer as attorney-in-fact for each Lot Owner to change and alter any Lot lines set forth on the Plat of the Property recorded in the Circuit Court for Franklin County, Virginia, so long as Developer is a Class B Member of the Association.

Section 6. Non-Waiver. The failure of the Developer, or any Owner, or their respective legal representatives, heirs, and successors and assigns, to enforce any restriction contained in this Declaration shall in no event be considered a waiver of the right to do so thereafter, as to the same violation or breach or as to such violation or breach occurring prior or subsequent thereto.

Section 7. Construction and Interpretation. The Developer, to the extent specifically provided herein, may adopt and promulgate reasonable rules and regulations regarding the administration, interpretation and enforcement of the provisions of this Declaration. In so adopting and promulgating such rules and regulations, and in making any findings, determination, ruling or order or in carrying out any directive contained herein relating to the issuance of permits, authorizations, approvals, rules or regulations, the Developer shall take into consideration the best interests of the Owners to the end that the Property shall be preserved and maintained in a high quality manner.

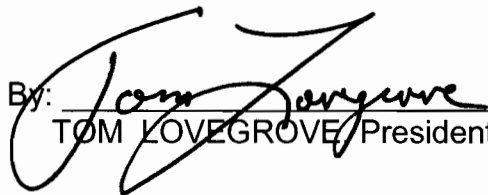
Section 8. Severability. All of the covenants, conditions, restrictions, and reservations contained in this Declaration are hereby declared to be severable and a finding by any court of competent jurisdiction that any of them or any clause or phrase thereof is void, unlawful or unenforceable, shall not affect the validity or enforceability of any other covenants, conditions, restrictions, reservations, of clause or phrase thereof.

Section 9. Future Roads. Except for Property and Lots owned by Developer, or any entity in which one or more of the principals is a principal of Developer, no street or road connecting the Property to adjoining lands may be constructed on any Lot or portion of the Property unless such street or road is constructed by Developer, or any entity in which one or more of the principals is a principal of the Developer, or Developer gives its express written permission for such construction. The Developer shall have the absolute right to place a road to develop adjoining land over any recorded Lot, so long as the Developer owns said Lot.

Section 10. Lot Grades. The Developer shall have the absolute right to change the grades (including the addition of fill dirt) on any Lot after conveyance of said Lot, or a Lot under contract to a purchaser, to accommodate grading of any adjacent vacant lot owned by Developer. This would allow Developer to install driveways and/or turn-arounds and/or proper drainage on said adjacent Lot owned by Developer. It is the intention of this reservation that Developer shall have the right to alter grades on conveyed Lots to facilitate construction of homes by the Developer.

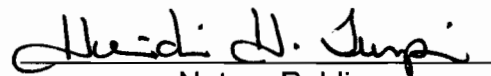
WITNESS THE FOLLOWING SIGNATURE:

BAYVIEW HOLDINGS, LLC

By:   
TOM LOVEGROVE President

STATE OF VIRGINIA  
COUNTY OF ROANOKE, TO-WIT:

The foregoing instrument was acknowledged before me on this 26<sup>th</sup> day of September, 2005 by Tom Lovegrove, President of Bayview Holdings, LLC, a Virginia limited liability company, on behalf of said company.

  
Notary Public

My commission expires: 2/28/06

EXHIBIT A

That certain tract or parcel of land consisting of 36.506 acres located in Franklin County, Virginia and being shown by Plat of Emerald Bay Villages by WW Associates, Engineers, Surveyors and Planners dated 10/29/04, revised 8/12/05, to be recorded in the Clerk's Office of the Circuit Court of Franklin County, Virginia.

Together with a nonexclusive easement to the use of the lands below the contour line, the elevation of which is 800 feet, and adjacent to the 36.506 acres.

**EXHIBIT B**

Easements to locate, construct, maintain, repair, operate and replace drainfields in the areas shown on sheets 2 and 3 of that certain plat of survey entitled Subdivision Plat of Villages at Emerald Bay, Gills Creek Magisterial District, Franklin County, Virginia, made by WW Associates, Engineers Surveyors Planners, dated 10/29/04, revised 8/12/05 to be recorded in the Clerk's Office of Franklin County, Virginia, and being designated as Private Drainfield and Septic System Easement, for drainfields for numerous Lots, including all the necessary easements for all sewer lines and force mains and any and all pumps, junctions and other necessary equipment with reasonable ingress and egress thereto.

EXHIBIT C  
RESTRICTIONS ON LOTS AND USE OF COMMON AREAS

The Developer does hereby, of its own free will, impose, for the protection of the value, desirability and attractiveness of the Lots hereinafter mentioned, in order that the same may be properly developed, certain restrictions, covenants and conditions which shall apply to all of the Lots and Common Areas to be conveyed in fee to the Association; as well as to Limited Common Easements to be located on property of Developer that will not be conveyed in fee to the Association, said easements which are easements for drainfields, which said restrictions, covenants and conditions are as follows: to-wit:

1. **APPLICABILITY:** These Restrictions shall apply to Lots and the Common Areas, Limited Common Areas and Limited Common Easements, as provided, to be conveyed in fee to the Association, but specifically excluding from their application the Limited Common Easements or the Additional Lands of Developer, which parcels and land are intended for other uses. All of the Restrictions shall run with the land and shall be binding on all parties having or acquiring any right, title or interest in and to the real property or any part or parts thereof subject to such Restrictions.

2. **TERM:** These covenants are to run with the land shall be binding all parties and all persons claiming under them for a period of 50 years from the date these covenants are recorded, after which time said covenants shall be automatically extended for successive periods or ten (10) years unless an instrument signed by three-fourths (3/4) of the then Owner of the Lots has been recorded agreeing to change said covenants in whole or in part.

Developer so long as it owns any portion of the property and/or Association reserves the right to modify, revoke, alter or amend these Restrictions, covenants and conditions. The rights of the Developer reserved herein may be delegated or assigned to the Association.

3. **MUTUALITY OF BENEFIT AND OBLIGATION:** These Restrictions and agreements set forth herein are made for the mutual and reciprocal benefit of each and every Lot in the Community and are intended to create mutual, equitable servitude upon each of said Lots and Common Areas in favor of each and all of the other Lots therein; to create reciprocal rights between the respective Owners of all of said Lots; to create a privity of contract and estate between the grantees of said Lots, their heirs, successors and assigns, and shall, as to the Owner of each such Lot, his heirs, successors and assigns, operate as covenants running with the land for the benefit of each and all other Lots in the subdivision and their respective Owners.

4. **EXCLUSIVE RESIDENTIAL USE; LOCATION AND DESIGN OF DOCKS AND DRIVEWAYS:** All Lots in the subdivision shall be used for residential purposes only. All boat slips shall be built according to the FERC Order and all applicable governmental specifications. No outbuildings will be permitted. All driveways and any culverts shall be located and constructed as approved by the Developer or the Architectural Board. No structure shall be erected, altered, placed or permitted to remain upon any Lot other than one single family dwelling the design of which shall be in full and complete accordance with the plans and specifications as determined by the Developer or its successors and as constructed by Developer or its successors.
5. No outside toilet shall be constructed on any Lot. All plumbing fixtures, dishwashers, toilets or sewage disposal systems shall be connected to the sewage disposal system of the Association or which will be transferred to the Association.
6. No temporary house, trailer, tent, garage, or other outbuilding shall be placed or erected on any Lot.
7. No animals or livestock of any description, except the usual household pets, shall be kept on the Property or pursuant to Developer's easement to graze and ride horses on the Common Areas. Household pets must be controlled so as not to be a nuisance. No wild animals shall be permitted on any Lot. No Owner shall keep more than 2 dogs and/or 2 cats on any Lot. Other small domestic pets may be kept provided they are kept in cages and are not used for commercial or breeding purposes or maintained in unreasonable quantities. All Owners must comply with county licensing requirements for dogs and all dogs and cats must be vaccinated against rabies. All dogs must be fenced or controlled on a leash or be under the direct and immediate control of the owner. Owners must prevent their dogs from making noise objectionable to other owners. Any animal fencing shall be subject to Board approval.
8. No commercial signs, including "for rent", "for sale", and other similar signs except promotional signs of the Developer shall be erected or maintained on the property except with the written permission of the Board or except as may be required by legal proceedings. Size, shape, color and design of such signs shall be subject to written approval of the Board. If a Lot is for sale or rent, an Owner can only display a sign that reads "Open" or "Open House" and the area of the face of such sign may not exceed six square feet, and such sign can only be displayed while the Owner of the Lot or the Owner's agent is present, but not more frequently than once in seven days and not more than six hours continuously, but in any event, not while Developer owns any Lots. The Owner or Owner's agent can display in one window a "For Sale" or "For Rent" sign but said sign must be of the standard size and design approved by the Board. Notwithstanding the foregoing, the Developer shall be entitled to place such signs and banners of such size and design as the Developer determines, including directional signs, upon any structure or any Lot, even after title to such Lot has been conveyed by the Developer.

9. No unused, unlicensed, stripped down, partially wrecked or junk motor vehicles or sizeable parts thereof, shall be permitted to be parked on any street or on any part of the Property. Boats, trailers, recreational vehicles and trucks may be parked in the Common Area as designated by the Developer or the Board of Directors.
10. Any tanks for the storage of fuel installed shall be buried below the surface of the ground or be screened to the satisfaction of the Architectural Board. Every receptacle for ashes, trash, rubbish or garbage shall be installed underground, screened or so placed as not be visible from any viewpoint at any time and shall be approved by the Architectural Board. If an Owner is planning on storing items such as a lawnmower, grills, etc. outside of his dwelling he must construct a screening fence to shield and hide the items from view, subject to approval of the Architectural Board. Plans for such fence, delineating the size, design, texture, appearance and location, must be approved by the Architectural Board prior to construction. Any right of an Owner to use of any of the Common Area for the above purposes shall be limited by the covenants, conditions and restrictions concerning the "Property" as therein defined.
11. There shall be no outdoor clothes poles, clothes lines or similar equipment except as shall be so placed or screened as not to be visible from any viewpoint. Any flags displayed shall be subject to Architectural Board approval. There shall be no permanent sports equipment such as basketball back stops and polls, nets of any type, or permanent tether ball poles installed except by Architectural Board approval. Temporary window coverings such as sheets and blankets will not be permitted. Holiday decorations shall be installed no more than 30 days prior to, or 15 days after, any holiday.
12. All Lots, whether occupied or unoccupied, shall at all times be maintained in such manner as to prevent their becoming unsightly by reason of the accumulation of rubbish or debris thereon. If this is not done by the Owner, the Lot will be cleaned up by Developer or the Board of Directors at the Owner's expense. Garage doors shall remain closed at all times except for reasonable periods of time when the garage is being used.
13. No noxious, offensive, or illegal activities shall be carried on any Lot or the Common Area or Limited Common Areas not shall anything be done on any Lot or the Common Areas or Limited Common Areas that shall be or become an unreasonable annoyance or nuisance to the neighborhood.
14. No trees measuring 4" or more in diameter as measured 24" from the ground shall be cut or moved without approval of the Architectural Board.
15. No private water wells may be drilled or maintained on the Property so long as there is such a water distribution line planned or existing within fifty (50) feet of the property with an average daily water pressure in such line adequate for normal household use in dwelling served by such distribution line. The Lot Owner shall pay the Developer or its assigns, for water service per gallon used, with a minimum charge of \$20.00 per month. Billing for water service will be on a monthly or quarterly basis. This clause is waved for those members of Emerald Bay Estates, Phase I, Lots 1-12.

16. No bizarre or exotic ornamentation or landscaping will be allowed. Any and all antennas shall be subject to written approval of the Architectural Board before installation is begun.

17. Firing of guns of any kind is prohibited at all times on the Property.

18. No fence shall be constructed on Property except those as may be constructed by the Developer, without prior written approval of the Architectural Board.

19. Camping or the use of tents for any purpose shall be prohibited on all Lots at all times including land abutting such Lots below the 800 foot contour line.

20. No open air fire shall be started or maintained on any Lot, including the abutting land below the 800 foot contour line, except in a grill, fireplace, or other suitable enclosure or container designed for the safe housing of man-made fires for cooking.

21. No satellite dish antennae or other transmission or receiving antennae shall be installed or maintained on any Lot without prior approval of the Architectural Board. The maximum diameter or diagonal measurement of a dish or antenna shall be 18". The location and screening of any dish or antenna shall be as provided by the Architectural Board.

22. With regard to the land and Common Area below the 800 foot contour line, when the Developer herein recites restrictions, covenants, conditions or rights as to such Lot, the same shall apply, subject to the rights of American Electric Power Company, to the said land below the 800 foot contour line. A Lot Owner's use of the land below the 800 foot contour line whether flooded by the waters of Smith Mountain Lake or not, shall be so as not to unreasonably interfere with the rights or property of other Lot Owners and in accordance with the FERC Order. Such rights shall be subject to the rights of the Developer and the Association and its members as to the construction, maintenance, repair and replacement and use of the boar docks and boat slips as herein provided.

23. In addition, the Developer reserves unto itself, its successors and assigns including the Association a perpetual, alienable and releasable easement and right on, over and under any Lot to dispense pesticides and take other action which in the opinion of the Developer is necessary or desirable to control insects, vermin or destructive wild animals, to cut fire breaks and other activities which in the opinion of the Developer are necessary or desirable to control fires on any property, or any improvements thereon. Entrance upon Lots pursuant to the provisions of this paragraph shall not be deemed a trespass.

The rights reserved unto the Developer in this paragraph shall not be unreasonably employed and shall be used only where necessary to effect the stated intents and purposes of said paragraphs.

24. In order to implement effective and adequate erosion control to adjoining Lots or property of Developer and protect the purity and beauty of

Smith Mountain Lake, the Developer, its successors and assigns, and its agents shall have the right to enter upon any Lot before or after a building or structure had been constructed thereon for the purpose of performing any grading or landscaping work or constructing and maintaining erosion prevention devices. Provided, however, that prior to exercising its right to enter upon the Lots for the purpose of performing any grading or landscaping work or constructing or maintaining erosion prevention devices, the Developer, its successors and assigns, shall give the Owner of the Lot the opportunity to take any corrective action required by giving the owner of the Lot notice indicating what type of corrective action is required and specifying in that notice that immediate corrective action must be taken by the Owner. If the Owner of the Lot fails to take the corrective action immediately, the Developer, its successors or assigns, shall then exercise its right to enter upon the Lot in order to take the necessary corrective action. The cost of such erosion prevention measures when performed by the Developer, its successors or assigns, shall be kept as low as reasonably possible and shall be paid by the Owner thereof. Entrance upon a Lot pursuant to the provisions of this paragraph shall not be deemed a trespass.

25. The Owner of each Lot shown hereon shall be responsible for the neat and orderly maintenance of such Lot, shall provide for sanitary garbage disposal and shall not permit or suffer any garbage, sewage, refuse, waste, or other contaminated matter except normal surface water to be case, drained or discharged from such Lot into the waters of Smith Mountain Lake. In the event the Owner shall fail to comply with the requirements of this paragraph, the Developer and the Association shall, after reasonable written notice to the Owner, have the right to enter upon any such Lot to correct the condition causing the violation of this paragraph and the Owner shall be responsible for reimbursing the Developer for its actual cost in correcting said condition, together with a construction management fee equal to ten (10) percent of the actual cost incurred.

26. The Developer reserves unto itself and to the Association the right to publish and enforce rules and regulations concerning the use of Property located within the Property including any areas abutting same located below the 800 foot contour line whether or not flooded by the waters of Smith Mountain Lake. The use of the said land below the 800 foot contour line and the waters of Smith Mountain Lake shall be at the users risk and in accordance with all applicable rules, regulations, laws, restrictions and conditions on record or otherwise published by any entity the FERC Order, or government agency or body properly exercising ownership or jurisdiction as to said area.

27. Each Lot Owner shall be responsible for keeping all boats belonging to him or his guests parked and/or docked in a neat and orderly fashion in the specific area designated for his Lot.

28. Enforcement shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant either to restrain violation or to recover damages.

29. Only grass or other vegetation approved by the Franklin County Health Department may be placed over the septic tanks and drainfield areas.
30. Should any covenants or restrictions herein contained, or any sentence, clause, phrase or term of this instrument be declared to be void, invalid, illegal or unenforceable, for any reason, by the adjudication of any court or other tribunal having jurisdiction over the parties hereto and the subject matter hereof, such judgment shall in no way affect the other provisions hereof which are hereby declared to be severable and which shall remain in full force and effect. In addition, if there is any contradiction between these restrictions and any governmental ordinances, laws or regulations of a federal state or local agency, the latter shall prevail.
31. Nothing herein is to be construed to prevent the Developer, its heirs, or assigns from placing further restrictions or easements on the property which shall not theretofore have been conveyed from it.
32. Any Lot Owner who rents his Lot to a lessee (s) shall execute and deliver to the Association a written statement designating the name or names of those persons entitled to use the Lot, together with a written covenant from that party or those parties in favor of the Association stating that there will be full compliance with all the terms and provisions of the Declaration, the Articles of Incorporation and By-Laws of the Association and all rules and regulations adopted thereunder. In the event that such covenants are violated, the aforesaid Owner shall cause such party or parties to vacate the Lot and, in the event such party or parties do not vacate the Lot, the Association shall take whatever measures are necessary to have the party or parties removed from the Lot and shall assess the Owner for any costs or attorney's fees caused by such measures. Any leases must be subject to the Declaration and By-Laws and all rules and regulations adopted thereunder. Leasing or rental of Lots by a commercial leasing or real estate agency shall be prohibited. Leases or rental of Lots for less than two consecutive weeks shall be prohibited. The Developer will not offer leasing services.
33. To preserve the architectural appearance of the Lots, no construction, painting or other changes of any nature whatsoever shall be commenced or maintained by any Owner other than Developer with respect to the exterior of any structure or any other portion of the Lot whether appurtenant thereto or not. An Owner may make improvements and alterations within his structure; provided however, that no Owner may make any structural alterations or remove any portion thereof or make any additions thereto or do anything which would or might jeopardize or impair the safety, soundness or structural integrity of that structure or any other structure; nor shall any Owner impair any easement without first obtaining the written consent of the association and that of the Owner or Owners and their mortgagees for those whose benefit such easement exists. No alteration of original landscaping (which term shall be defined in its broadest sense as including grass, fences, hedges, vines, trees and the like, except the Developer or the association after the Developer is no longer a Class B Member shall have the authority to approve additional plantings requested by


an Owner at the rear of their residence), or change in the exteriors of any Lot or Common Maintenance Area, including color, except as made by the Developer, even after a Lot is sold, will be permitted. In the event an Owner violates this Section, the Board and/pr Developer shall have the right, without notice, to remove any alteration and restore the original alteration or landscaping at the Owner's expense together with a construction management fee equal to ten (10) percent of the actual cost of the restoration. Said expenses shall be a lien, as is herein defined, on Owner's Lot.

No healthy trees, other than those cut or approved by the Architectural Board, may be cut unless terminally diseased or extensively storm damaged.

34. The design, type, location, size, intensity (wattage) and color of all exterior lights shall be maintained as installed or approved by the Architectural Board, unless the Architectural Board approves any alteration.

35. No awnings, shades or other items shall be attached to, hung or used on the exterior of any window or door of a structure or on the exterior of any building. No screen or storm door shall be permitted on any windows or doors other than those installed or approved by the Architectural Board. No foil, window tinting or other sunshielding materials or devices shall be permitted on any exterior glass surfaces.

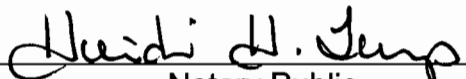
BAYVIEW HOLDINGS LLC

By:   
TOM LOVEGROVE  
President

STATE OF VIRGINIA

COUNTY OF ROANOKE, TO-WIT:

The foregoing instrument was acknowledged before me this 26<sup>th</sup> day of September, 2005 by Tom Lovegrove, President of Bayview Holdings, LLC., a Virginia limited liability company, on behalf of said company.

  
Notary Public

My Commission expires: 2/28/06

EXHIBIT D

BY-LAWS  
OF  
EMERALD BAY VILLAGES  
PROPERTY OWNERS ASSOCIATION, INC.

ARTICLE I  
NAME AND LOCATION

The name of the corporation is Emerald Bay Villages Property Owners Association, Inc., hereinafter referred to as the "Association". The principal office of the corporation shall be located at Smith Mountain Lake, Hardy, VA 24101, but meetings of Members and directors may be held at such places and times as may be designated by the Board of Directors.

ARTICLE II  
DEFINITIONS

Section 1. "Association" shall mean and refer to Emerald Bay Villages Property Owners Association, Inc., its successors and assigns.

Section 2. "Properties" shall mean and refer to that certain real property described in the Declaration of Covenants, Limited Common Easements, Emerald Bay Villages, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 3. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the Owners.

Section 4. "Lot" shall mean and refer to any plot of land as shown on the subdivision plat of Emerald Bay Villages now of record or as may be amended from time to time.

Section 5. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 6. "Developer" shall mean and refer to Bayview Holdings, L.L.C., a Virginia Limited Liability Company, its successors and assigns, if such successors or assigns should acquire more than one undeveloped lot from the Developer for the purpose of development.

Section 7. "Declaration" shall mean and refer to the Declaration of Covenants, Conditions and Restrictions of Emerald Bay Villages, applicable to the properties recorded in the Clerk's Office of the Circuit Court for the County of Franklin, Virginia.

Section 8. "Member" shall mean and refer to those persons entitled to Membership as provided in the Declaration.

Section 9, "Fire Flow Agreement" shall mean and refer to that certain Fire Flow Waiver Agreement dated September 21, 2005 between the Developer and the Board of Supervisors of Franklin County, Virginia.

Section 10, "Net Dilution Area Agreement" shall mean that certain Dedication and Maintenance Agreement between the Developer and the Association, dated May 27, 2005, limiting the right to construct certain improvements in the Net Dilution Area as set forth in the Agreement.

Section 11, "Road Management Agreement" shall mean that certain Agreement between the Developer and the Association, dated July 20, 2005.

### ARTICLE III MEETING OF MEMBERS

Section 1. Annual Meetings. The first annual meeting of the Members shall be held within one year from the date of incorporation of the Association, and each subsequent regular annual meeting of the Members shall be held on the same day of the same month of each year thereafter, at the office of the Association, unless otherwise stated in the notice of the meeting. If the day for the annual meeting of the Members is a legal holiday, the meeting will be held at the same hour on the first day following which is not a legal holiday.

Section 2. Special Meetings. Special meetings of the Members may be called at any time by the President or by the Board of Directors, or upon written request of the Members who are entitled to vote one-fourth (1/4) of all of the votes of the Class A Membership.

Section 3. Notice of Meeting. Written notice of each meeting of the Members shall be given by or at the direction of the secretary or person authorized to call the meeting by mailing a copy of such notice postage prepaid, at least 25 days before such meeting to each Member entitled to vote thereat, addressed to the Member's address last appearing on the books of the association, or supplied by such Member to the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting.

Section 4. Quorum. The presence at the meeting of Members entitled to cast, or of proxies entitled to cast, one-fourth quorum for any action except as otherwise provided in the Articles of Incorporation, the Declaration, or these By-Laws. If, however, such quorum shall not be present or represented at any meeting, the meeting shall be adjourned from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or be represented.

Section 5. Proxies. At all meetings of Members, each Member may vote in person or by proxy. All proxies shall be in writing and filed with the secretary. Every proxy shall be revocable and shall automatically cease upon conveyance by the owner of his lot.

#### ARTICLE IV BOARD OF DIRECTORS

Section 1. Number. The affairs of this Association shall be managed by the Board of Directors, which shall consist of at least 2 but not more than 7 Directors, who need not be Members of the Association.

Section 2. Term of Office. The directors shall be elected at each annual meeting of the Members.

Section 3. Removal. Any director may be removed from the Board, with or without cause, by a majority vote of the Members of the Association. In the event of death, resignation or removal of a director, his successor shall be selected by the remaining Members of the Board and shall serve for the unexpired term of his predecessor.

Section 4. Compensation. No director shall receive compensation for any services he may render to the Association. However, any director may be reimbursed for his actual expenses incurred in the performance of his duties.

Section 5. Action Taken Without a Meeting. The directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the directors. Any action so approved shall have the same effect as though taken at a meeting of the directors.

#### ARTICLE V NOMINATION AND ELECTION OF DIRECTORS

Section 1. Nomination. Nomination for election to the Board of Directors shall be made by the Nominating Committee. Nominations may also be made from the floor at the annual meeting. The Nominating Committee shall consist of a

chairman, who shall be a Member of the Board of Directors, and one or more Members of the Association. The Nominating Committee shall be appointed by the Board of Directors prior to each annual meeting until the close of the next annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Such nominations may be made from among Members or non-Members. While there is a Class B Member, the Class B Member may nominate and elect the Board of Directors.

Section 2. Election. Election to the Board of Directors shall be by secret written ballot. At such election the Members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

## ARTICLE VI MEETINGS OF DIRECTORS

Section 1. Regular Meetings. Regular meetings of the Board of Directors shall be held at least bi-monthly without notice, at such place and hour as may be fixed from time to time by resolution of the Board. Should said meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

Section 2. Special Meetings. Special meetings of the Board of Directors shall be held when called by the President of the Association, or by any two directors, after not less than three (3) days notice to each director.

Section 3. Quorum. A majority of the number of directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

## ARTICLE VII POWERS AND DUTIES OF THE BOARD OF DIRECTORS

Section 1. Powers. The Board of Directors shall have power to:

- (a) Adopt and publish rules and regulations governing the use of the Common Area and facilities, and the personal conduct of the Members and their guests thereon, and to establish penalties for the infraction thereof; and
- (b) Suspend the voting rights and right to use of the recreational facilities of a Member during any period in which such Member shall be in default in the payment of any assessment levied by the Association. Such rights may

- also be suspended after notice and hearing, for a period not to exceed sixty (60) days for infraction of published rules and regulations; and
- (c) Exercise for the Association all powers, duties and authority vested in or delegated to this Association and not reserved to the Membership by other provisions of these By-Laws, the Articles of Incorporation, or the Declaration; and
  - (d) Declare the office of a Member of the Board of Directors to be vacant in the event such Member shall be absent from three (3) consecutive regular meetings of the Board of Directors; and
  - (e) Employ a manager, an independent contractor, or such other employees as they deem necessary, and to prescribe their duties;
  - (f) Exercise all duties set forth in Section 2 and all powers incident thereto; and
  - (g) While there is a Class B Member, amend the Articles of Incorporation or these ByLaws without approval of the Members.

Section 2. Duties. It shall be the duty of the Board of Directors to:

- (a) Cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the Members at the annual meeting of the Members, or at any special meeting when such statement is requested in writing by one-fourth (1/4) of the Class A Members who are entitled to vote; and
- (b) Supervise all officers, agents and employees of this Association, and to see that their duties are properly performed; and
- (c) As more fully provided in the Declaration, to:
  - (1) Fix the amount of the annual assessment against each lot at least thirty (30) days in advance of each annual assessment period; and
  - (2) Send written notice of such assessment to every owner subject thereto at least (30) days in advance of each annual assessment period; and
  - (3) Foreclose the lien against any property for which assessments are not paid within (30) days after due date or to bring an action at law against the owner personally obligated to pay the same.
- (d) Issue, or cause an appropriate officer or agent to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board for the issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment; and
- (e) Cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate; and
- (f) Cause the Common Areas and Limited Common Areas to be maintained.
- (g) Cause the sewer/septic systems, including drainfields, and that portion of the nitrate dilution area to be conveyed to the Association to be maintained, repaired or replaced in accordance with the terms and

conditions of the Declaration, the Fire Flow Agreement and the Net Dilution Area Agreement.

ARTICLE VIII  
OFFICERS AND THEIR DUTIES

Section 1. Enumeration of Officers. The officers of this Association shall be a President and Vice-President, who shall at all times be Members of the Board of Directors, a Secretary and a Treasurer, and such other officers as the Board may from time to time by resolution create.

Section 2.. Election of Officers. The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the Members.

Section 3. Term. The officers of this Association shall be elected annually by the Board and each shall hold office for one (1) year unless he shall sooner resign, or shall be removed, or otherwise disqualified to serve.

Section 4. Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

Section 5. Resignation and Removal. Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time by giving written notice to the Board, the president or the secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6. Vacancies. A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

Section 7. Multiple Offices. The offices of Secretary and Treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant to Section 4 of this Article.

Section 8. Duties. The duties of the officers are as follows:

President: The President shall preside at all meetings of the Board of Directors; shall see that orders and resolutions of the Board are carried out;

shall sign all leases, mortgages, deeds and other written instruments and shall co-sign all checks and promissory notes.

Vice-President: The Vice-President shall act in the place and stead of the President in the event of his absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him by the Board.

Secretary: The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the Members; keep the corporate seal of the Association and affix it on all papers requiring said seal; serve notice of meeting of the Board and of the Members; keep appropriate current records showing the Members of the Association together with their addresses, and shall perform such other duties as required by the Board.

Treasurer: The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors; shall co-sign all checks and promissory notes of the Association; keep proper books of account; cause an annual audit of the Association books to be made by a public accountant at the completion of each fiscal year, and shall prepare an annual budget and a statement of incomes and expenditures to be represented to the Membership at its regular annual meeting, and deliver a copy of such to the Members.

#### ARTICLE IX COMMITTEES

The Board of Directors shall appoint an Architectural Review Committee as provided in the Declaration, and a Nominating Committee, as provided in these By-Laws. In addition, the Board of Directors shall appoint other committees as deemed appropriate in carrying out its purpose.

#### ARTICLE X BOOKS AND RECORDS

The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any Member. The Declaration, the Articles of Incorporation and the By-Laws of the Association shall be available for inspection by any Member at the principal office of the Association, where copies may be purchased at reasonable cost.

ARTICLE XI  
ASSESSMENTS

As more fully provided in the Declaration, each Member is obligated to pay to the association annual and special assessments which are secured by a continuing lien upon the property against which the assessment is made. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty(30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of (10) percent per annum, and the Association may bring an action at law against the owner personally obligated to pay the same or foreclose the lien against the property, and interest, costs, and reasonable attorney's fees of any such action shall be added to the amount of such assessment. 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.

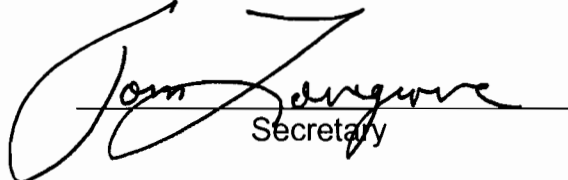
ARTICLE XII  
MISCELLANEOUS

The fiscal year of the Association shall begin on the 1<sup>st</sup> day of January and end on the 31<sup>st</sup> day of December of each year, except that the first fiscal year shall begin on the date of incorporation.

ARTICLE XIII  
IDEMNIFICATION

The Association shall indemnify its directors and officers in the manner, against the matters, and to the full extent provided and permitted by Section 13.1-875 through 13.1 – 881 and Section 13.1 – 883 of the Code of Virginia of 1950, as amended.

The foregoing By-Laws of Emerald Bay Villages Property Owners Association, Inc. were duly adopted at the organizational meeting of the Board of Directors of the corporation held on the 21 day of September, 2005.

  
Secretary

INSTRUMENT # 050011443  
RECORDED IN THE CLERK'S OFFICE OF  
FRANKLIN COUNTY ON  
Sept. 26, 20 05 AT 3:39 pm  
ALICE S. HALL, CLERK

BY: Margaret Board (DC)

COMMONWEALTH OF VIRGINIA



OFFICIAL RECEIPT  
FRANKLIN COUNTY CIRCUIT  
DEED RECEIPT

DATE: 09/26/05 TIME: 15:47:55 ACCOUNT: 067CLR050011443 RECEIPT: 05000020309  
CASHIER: MLB REG: KF19 TYPE: DEC PAYMENT: FULL PAYMENT  
INSTRUMENT : 050011443 BOOK: 862 PAGE: 1818 RECORDED: 09/26/05 AT 15:39  
GRANTOR: BAYVIEW HOLDINGS LLC EX: N LOC: CO  
GRANTEE: BAYVIEW HOLDINGS LLC EX: N FCT: 100%

AND ADDRESS : X  
RECEIVED OF : BAYVIEW HOLDINGS

CHECK : \$55.00

DESCRIPTION 1: EMERALD BAY VILLAGES  
2:

PAGES: 47  
NAMES: 0

CONSIDERATION: .00 A/VAL: .00 MAP:  
PIN:

301 DEEDS 48.50 145 VSLF 1.50  
106 TECHNOLOGY TRUST FU 5.00

TENDERED : 55.00  
AMOUNT PAID: 55.00  
CHANGE AMT : .00

CLERK OF COURT: ALICE S. HALL

BUSINESS FORMS SPECIALTY, INC (757) 927-9575

(1143-005 1/05

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