

*Delivered Nov. 15-2006
to John D. Hill, Esq.*

**DEWITT CROSSING COMMERCIAL PARK
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

*PIN: 640644
PIN: 640646*

This Declaration of Covenants, Conditions and Restrictions ("Declaration") is made as of this 14th day of November, 2006, by DEWITT CROSSING, LLC, a Virginia limited liability company, which is hereinafter called the "Developer," and DEWITT CROSSING COMMERCIAL PARK ASSOCIATION, a Virginia nonstock corporation, hereinafter called the "Association".

*** * * WITNESSETH * * ***

WHEREAS, Developer is the owner of certain real property in the City of Waynesboro, Virginia, situated on the East and West side of Lew DeWitt Blvd., containing 32.145 acres, more or less, and being further described on a plat entitled "Final Plat of DeWitt Crossing", made by Lotts, Austin & Associates (Barry E. Lotts, L.S.), dated September 27, 2006, revised: October 25, 2006, a copy of which shall be recorded with this Declaration in the City of Waynesboro Circuit Court Clerk's Office; and

WHEREAS, the Developer intends that the aforesaid lots shall contain commercial and related uses permitted under the terms of the Zoning District Regulations of the City with access to Lew DeWitt Blvd. directly and over internal streets to be dedicated to public use and accepted for maintenance by the City of Waynesboro as part of the City of Waynesboro secondary road system; and

WHEREAS, this real property, together with such additional land as may be submitted to this Declaration in the manner provided in Article II, Section 2, shall be known as the DeWitt Crossing Commercial Park (the "Park"); and

WHEREAS, in order to provide for the preservation and enhancement of the property values, amenities, and commercial opportunities in the Park, which will contribute to the profitability of the businesses situated therein and the safety and welfare of employees, customers and invitees, and for the maintenance of the land and improvements thereon and the storm water management facilities to be constructed for the drainage of storm water from the Park, the Developer desires to subject the Park to the covenants, conditions, restrictions, easements, charges and liens of this Declaration, said covenants, conditions, restrictions, easements, charges and liens to run with the Park, bind all persons or entities having or acquiring any right, title, or interest in the Park or any part thereof, and inure to the benefit of the City of Waynesboro, as its interests may appear, and the owner or owners of each lot in the Park; and

WHEREAS, to provide a means for meeting the purposes and intents herein set forth, the Developer has incorporated the Association under the laws of the Commonwealth of Virginia.

NOW THEREFORE, Developer does hereby grant, establish, and convey to each Owner mutual nonexclusive rights, privileges, and easements of enjoyment on terms to be held in common with all other Owners in and to the use of the storm water management facilities; and does hereby declare the Park to be held, transferred, sold, conveyed, and occupied subject to the covenants, conditions, easements, charges, and liens (hereinafter referred to as "Covenants and Conditions"), hereinafter set forth, which are for the purpose of controlling the flow of storm water from and shall run with the Park and be binding on all parties having any right, title, or interest in the Park or any portions thereof, their successors and assigns, and shall inure to the benefit of each Owner thereof as well as to the City of Waynesboro, Virginia.

AND FURTHER, the Developer hereby delegates and assigns to the Association the powers of owning, maintaining, and administering the storm water management facilities, administering and

enforcing the covenants, conditions and restrictions and collecting and disbursing the assessments and charges hereinafter created.

ARTICLE I.

DEFINITIONS

Unless the context clearly indicates to the contrary, the terms listed below shall be construed in accordance with the following definitions:

Section 1. “*Association*” shall mean and refer to DeWitt Crossing Commercial Park Association, its successors and assigns.

Section 2. “*Builder*” shall mean and refer to a person or entity that acquires a portion of the Park for improving such portion for resale to Owners or for lease to tenants.

Section 3. “*Clerk’s Office*” shall mean and refer to the Clerk’s Office of the Circuit Court of the City of Waynesboro, Virginia.

Section 4. “*City*” shall mean and refer to the City of Waynesboro, Virginia, a political subdivision of the Commonwealth of Virginia.

Section 5. “*Declaration*” shall mean and refer to this Declaration of Covenants, Conditions and Restrictions and all other provisions herein set forth in this entire document, as the same may from time to time be amended by Supplementary Declaration.

Section 6. “*Developer*” shall mean and refer to DeWitt Crossing LLC, a Virginia limited liability company, its successors and assigns; provided, however, that no successor or assignee of the Developer shall have any rights or obligations of the Developer hereunder unless such rights and obligations are specifically assigned by DeWitt Crossing LLC, by document recorded among the land records of the City or unless said rights and obligations of the Developer inure to the successor of DeWitt Crossing LLC, by operation of law. The rights and obligations of the Developer, in its

capacity as Developer as set forth herein, shall cease when the Developer shall have subdivided the entire land area within the Development Limits of the Park into public streets and Lots and shall have conveyed all of the Lots to Owners, except as otherwise provided in Article VIII, Section 1.

Section 7. *“Development Limits”* shall mean and refer to the total land area of the Park and such additional land as may be submitted to this Declaration by the Developer in the manner provided in Article II, Section 2.A.

Section 8. *“Governing Documents”* shall mean and refer to the Articles of Incorporation of the Association, this Declaration, the Supplementary Declarations and the Bylaws of the Association, all as initially drawn by the Developer and filed or recorded as the case may be and as may be duly amended from time to time.

Section 9. *“Hazardous Substance”* shall mean and refer to the same term as used in 42 U.S.C. § 9601 as well as the term “hazardous waste” as used in said statute or any amendment thereto or replacement thereof. The Occupant of any Lot upon which a Hazardous Substance is present shall describe such Hazardous Substance in a Notice to be delivered to the Association not less than five days after such Occupant or any officer, director, manager, agent or employee of such Occupant has actual knowledge or, in the exercise of ordinary care, should have knowledge of the presence of any Hazardous Substance on the premises of the Lot occupied by such Occupant. The failure of such Occupant to give such Notice shall subject such Occupant to a penalty equal to five times the annual assessment attributable to such Lot, which shall be assessed and collected as annual assessments are assessed and collected as provided in Article VI. At the Association’s request, such Occupant shall demonstrate that it is handling such Hazardous Substance in accordance with applicable federal, state and local laws and regulations.

Section 10. *“Lot”* shall mean and refer to each of the lots shown on the Plat and any other plot of land shown upon any recorded subdivision plat of the Park, subject to such Storm Water Management Facilities as may be situated within the boundaries of same.

Section 11. *“Members”* shall mean and refer to members of the Association, each of whom shall be the Owner of a Lot.

Section 12. *“Notice”* shall mean and refer to written notice delivered personally or mailed to the last known address of the intended recipient.

Section 13. *“Occupant”* shall mean and refer to the occupant of a Lot who is the Owner, contract purchaser, or lessee or sublessee who holds a written lease having an initial term of at least twelve (12) months.

Section 14. *“Owner”* shall mean and refer to the record holder of the fee simple title to any Lot, whether referring to one person or entity or collectively to more than one person or entity who have joint ownership of a Lot, including contract Sellers; the term *“Owner”* shall exclude those having an interest merely as security for the performance of an obligation.

Section 15. *“Quorum of Members”* shall mean and refer to the representation at a duly called meeting of the Members by presence or proxy of Members who hold at least one-third of the outstanding Class A votes, and the representation by presence or proxy of the Class B Member, so long as it shall exist. In the event a Quorum of Members is not present at a duly called meeting of the Members, no action may be taken which requires the vote of a Quorum of Members. At the next duly called meeting of the Members after failure of the attending Members at the previous meeting to constitute a quorum, the quorum requirement shall be at least one-sixth of the outstanding Class A votes and the representation by presence or proxy of the Class B Member, so long as it shall exist,

provided that in order for the reduced quorum requirement to apply, the purpose of the meeting as recited in the notice given to all Members is the same as the purpose recited in the notice of the preceding meeting at which no quorum was present.

Section 16. “*Registered Notice*” shall mean and refer to any Notice which has been sent by Registered U.S. Mail, return receipt requested, to the last known address of the intended recipient and which has been signed for or has been certified by the U.S. Postal Service that delivery was attempted at the aforementioned address. Failure by refusal of an intended recipient to acknowledge or accept such Notice shall nevertheless constitute receipt.

Section 17. “*Plat*” shall mean and refer to the plat entitled “Final Plat of DeWitt Crossing”, made by Lotts, Austin & Associates (Barry E. Lotts, L.S.), dated September 27, 2006, revised: October 25, 2006, which is incorporated herein by this reference and a copy of which shall be recorded with the Declaration in the Clerk’s Office.

Section 18. “*Shared Facilities*” shall mean and refer to Storm Water Management Facilities that receive and transmit the flow of storm water from and through the Park.

Section 19. “*Storm Water Management Facilities*” shall mean and refer to all easements within the area of the Park that the Developer hereafter conveys to the Association for the purpose of draining, detaining, retaining, treating, managing and controlling the flow of storm water from the Park, including all drainage swales, ditches, pipes and conduits, all detention basins and ponds and related structures and devices constructed, installed and maintained within the bounds of such easements, which shall be designated upon plats to be approved by the City and recorded in the Clerk’s Office. Without intending to limit the generality of the foregoing, Storm Water Management Facilities shall include all of the drainage easements, including all drainage swales, ditches, pipes and

conduits, all detention basins and ponds and related structures and devices constructed, installed and maintained within the bounds thereof, as shown on the Section One Plat.

Section 20. *“Supplementary Declaration”* shall mean and refer to any declaration of covenants, conditions, and restrictions that may be recorded by the Developer, which expands the Development Limits beyond the land area that is subjected initially to the Declaration.

ARTICLE II.

PROPERTY SUBJECT TO THE DECLARATION AND ADDITIONS

Section 1. *The Park.* The Park or any subdivided portions thereof shall be held, transferred, sold, conveyed, and occupied subject to this Declaration.

Section 2. *Additions to the Park.* Additional properties may become subject to this Declaration in the following manner:

A. *Additions by the Developer.* The Developer shall have the unilateral right to subject to the Declaration all or any portion of the commercially zoned land adjoining the park.

B. *Other Additions.* Additional land, other than the land initially subjected to this Declaration and land that may be added by the Developer as provided in subsection A above, may be annexed to the Park upon approval of two-thirds of the Class A Members and the Class B Member, if Class B membership has not ceased.

C. *Supplementary Declarations.* The Supplementary Declaration which subjects additional property to the Declaration shall describe the real property to be annexed to the scheme of this Declaration and shall state that it is being made pursuant to the terms of this Declaration for the purpose of annexing the property described in the Supplementary Declaration to the scheme of this Declaration and extending the jurisdiction of the Association to cover the real estate so described in such Supplementary Declaration.

D. *Compliance with City Ordinances.* The additions authorized under subsections A and B above shall be made by complying with the requirements of the applicable City Ordinances and by recording in the Clerk's Office one or more Supplementary Declarations of Covenants and Conditions with respect to the additional property.

ARTICLE III.

THE ASSOCIATION

Section 1. *Organization.* The Association is a nonprofit, non-stock corporation organized and existing under the laws of Virginia and charged with the duties and vested with the powers prescribed by law and set forth in the Governing Documents, as such may be amended from time to time, provided no other Governing Documents shall be amended for any reason or otherwise changed or interpreted so as to be inconsistent with this Declaration.

Section 2. *Membership.*

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

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

C. *Voting Rights.* The Association shall have two classes of voting membership:

1. *Class A Members.* Class A shall be constituted of all Owners except the Class B Member, which shall become a Class A Member upon the cessation of its Class B membership as provided in subsection 3 below. Class A Members shall be entitled to one vote for each 0.01 acre of land area of each Lot owned. For the purpose of calculating the number of votes to be allocated to

each Lot, the land area shown on the recorded subdivision plat of each Lot, rounded to the nearest 0.01 acre shall be conclusive.

2. *Class B Member.* The Class B Member shall be the Developer, or any successor or assignee to which the Developer assigns any or all of its rights as Developer pursuant to this Declaration by assignment recorded in the Clerk's Office. Such assignment shall only operate as to the land which is owned by such successor or assignee and which is referenced specifically in the instrument of assignment. The Class B Member shall be entitled to three votes for each 0.01 acre of land area of each Lot owned, less the number of Class A votes outstanding at the time the vote is taken. For the purpose of calculating the number of votes to be allocated to each Lot, the land area shown on the recorded subdivision plat of each Lot, rounded to the nearest 0.01 acre shall be conclusive.

3. *Cessation of Class B Membership.* The Class B membership and Class B voting rights shall cease when the total number of Class A votes equals one-half the total number of Class B votes. Thereafter, the Developer shall have Class A membership rights for each Lot that it owns.

D. *Exercise of Vote.* The vote for any membership that is held by more than one person may be exercised by any one of such persons, if no objection or protest by any other holder of such membership is made before the completion of a vote. If such protest is lodged before the completion of the vote, the vote for such membership shall not be counted, but the Member whose vote is in dispute shall be counted as present at the meeting for quorum purposes if the protest is lodged at such meeting.

Section 3. *Board of Directors.*

A. *Composition.* The number of Directors and method of selection of Directors shall be as provided in the Bylaws; provided, however, that the Developer, until its rights as Developer cease, shall be entitled to appoint at least two (2) Directors.

B. *Extent of Power.*

1. The Board of Directors shall have all powers to conduct the affairs of the Association which are enabled by law or the Governing Documents and which are not specifically reserved to Members or the Developer by said Documents.

2. The Board of Directors shall exercise its powers in accordance with the Governing Documents.

C. *Powers and Duties.* By way of example and without limiting the generality thereof, the Board shall have the power and obligation to perform the following duties:

1. *Storm Water Management Facilities.* To own, hold, improve, maintain and manage the Storm Water Management Facilities subject to the provisions of Article II and Article IV of this Declaration and the minimum maintenance standards prescribed by the City;

2. *Assessments.* To fix, levy, and collect assessments as provided in Article V; and

3. *Employment of Agents.* To employ, enter into contracts with, delegate authority to, and supervise such persons or entities as may be appropriate to manage, conduct, and perform the business obligations and duties of the Association; and

4. *Enforcement of Governing Documents.* To perform acts, as may be reasonably necessary or appropriate, including bringing suit, causing a lien to be filed or enforced, suspending membership rights, or enforcing or effectuating any of the provisions of the Governing Documents.

Section 4. *Architectural Review Committee.*

A. *General.* A basic harmony of architecture shall prevail among all uses, buildings and developments so that no building or land use shall detract from the appearance of the Park. Nevertheless, a relatively large variety of architectural and environmental designs and materials shall be permitted in the Park.

B. *Required Submittals.* The building plans and specifications for any structure or improvement whatsoever to be erected on or moved upon or to any lot, together with a statement of the intended use to be made of the Restricted Lot, shall be prepared and submitted to the Architectural Review Committee (herein called "the Committee") for approval. The plans and specifications shall show the proposed elevations and locations of all buildings and improvements to be constructed or erected on any Restricted Lot or Lots, the construction material, the roofs and the exterior color schemes. The plans and specifications and any later changes or additions after initial approval thereof, and any exterior remodeling, reconstruction, alterations, or additions thereto on any lot shall be subject to and, before any work is commenced, shall require the approval in writing of the Committee. No new construction or expansion or exterior alteration of buildings, utilities, signs, screens, fences, pavements, landscaping, or other facilities shall be initiated without approval by the Committee of the plans and specification for the same. No use or change in any approved use shall be made of any Restricted Lot unless such use or change in use is approved by the Committee.

C. *Committee Membership.* The Committee shall be composed of not less than three (3) members and not more than five (5) members who shall be appointed by the Developer until the Developer's rights and obligations under this Declaration cease as provided in Article I, Section 7. After the Developer's rights cease, the Board of Directors shall appoint the members of the

Committee from among the designated representatives of the Owners. The members of the Committee need not be Members of the Association nor own any interest in any Owner.

D. *Committee Review.*

1. The Committee's review shall ensure compliance and compatibility of uses, structures and improvements within the Park.

2. Items of review shall include, but not be limited to:

- (a) Sight lines from major access corridors, sight lines from landscaped entrances, and interior sight lines from office locations;
- (b) Signage and the development of guidelines for their construction, erection and use;
- (c) Items that may require concealment such as loading areas, dumpsters, and unsightly mechanical equipment;
- (d) Color, lighting, landscaping compatibility of materials and building orientation, including without limitation the building's orientation on its Lot, its orientation within the Park, and the exterior arrangement of building elements such as office space, warehouse space, shipping and receiving areas, utility areas, ATM installations and drive-up service areas;
- (e) The orientation of dependencies such as guard houses, dumpster enclosures and storage buildings;
- (f) The flow of traffic within driveways and parking areas and at entrances and exits to and from the streets in the Park; and
- (g) The compatibility of any proposed use with other uses being made of Lots within the Park.

3. The Committee shall approve or disapprove proposed uses, plans, specifications and details within thirty (30) days from the receipt of all submittals required in subsection B above (the "Review Period"). The Committee's report shall be in writing, and, in the case of disapproval, the reasons for the disapproval shall be stated. If the Committee does not disapprove such submittals within the Review Period, they shall be conclusively presumed to have been approved.

4. The Committee shall act by majority vote. As long as the Developer's appointees are

members of the Committee, however, the Developer shall have the exclusive authority to approve or disapprove all submittals; the remaining Committee members shall then serve in an advisory capacity.

5. The Committee shall have the right to disapprove any plans, specifications, or details submitted to it if (i) the same are not in accordance with all of the provisions of this Declaration; (ii) the proposed uses are not compatible with existing uses; (iii) the design or color scheme of the proposed building or other structure is not in harmony with the general surroundings of the Lot or adjacent buildings or structures; (iv) the plans and specifications submitted are incomplete; or (iv) the Committee, in its sole and absolute discretion, determines that the proposed uses, plans, specifications, or any detail or part thereof is contrary to the interests, welfare, or rights of one or more of the Owners. The decisions of the Committee shall be final.

E. *Committee Not Liable.* Neither the Committee nor any architect or agent thereof nor the Developer shall be responsible in any way for any defects in any plans or specifications submitted, revised, or approved in accordance with the foregoing provisions, nor for any structural or other defects in any work done according to such plans and specifications.

Section 5. *Fidelity Bonds.* The Association may obtain fidelity coverage against dishonest acts on the part of Directors, officers, managers, employees, or agents responsible for handling funds collected and held for the benefit of the Association.

Section 6. *Insurance.* The Association shall maintain a comprehensive policy of public liability insurance covering the Storm Water Management Facilities.

ARTICLE IV.

STORM WATER MANAGEMENT FACILITIES

Section 1. *Obligations of the Association.* The Association, subject to the rights of the

Members set forth in this Declaration, shall be responsible for the management and control for the benefit of the Members and the City of the Storm Water Management Facilities conveyed to it, including without limitation the obligations to remove debris and cut any trees, bushes, shrubbery or grass within the Storm Water Management Facilities as may be required by the City's minimum maintenance standards, to repair any Facilities eroded by storm water and to take any other similar action reasonably necessary to keep the Facilities in good, clean, attractive, and sanitary condition, order and repair.

Section 2. *Drainage Easement.*

A. *Storm Water Management Facilities.* Subject to the provisions herein, every Owner shall have a right and nonexclusive easement to drain storm water that is uncontaminated by any Hazardous Substance from Owner's Lot into the Storm Water Management Facilities, which shall be appurtenant to and shall pass with the title to every Lot.

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

A. The right of the Association to regulate the use of the Storm Water Management Facilities for the benefit of Members;

B. The right of the Association to establish rules and regulations and assessments for the maintenance and operation of the Storm Water Management Facilities; and

C. The right of the Association to convey or transfer all or any part of the Storm Water Management Facilities, subject to the prior approval of the City and the assent and the approval of the Class B Member.

Section 4. *Title to Storm Water Management Facilities.* The Developer hereby covenants that the easements the Developer conveys to the Association as Storm Water Management Facilities shall be free and clear of liens and financial encumbrances at the time of conveyance, except as otherwise provided herein.

Section 5. *Transfer to City.* The Developer intends to construct the Storm Water Management Facility to specifications which will allow the City of Waynesboro to assume its maintenance and control. At the time the City of Waynesboro approves and accepts responsibility for the Storm Water Management Facility, the Developer and/or the Association shall convey to the City all of these Facilities and easements pursuant to this Article.

ARTICLE V.

COVENANT FOR ASSESSMENTS

Section 1. *Creation of the Lien and Personal Obligation of Assessments.* The Developer hereby covenants and each Owner of each Lot by acceptance of a deed thereto, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association such Annual and Special Assessments as are established herein and paid in the manner hereinafter provided. Each assessment, together with interest thereon and costs of collection thereof as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the Lot against which such assessment is made. Each assessment, together with interest thereon and costs of collection thereof, shall also be the personal obligation of the entity or person who was the Owner of such Lot at the time when the assessment became due but shall not pass as a personal obligation to his successors in title unless expressly assumed by them. No Owner may waive or otherwise escape liability for the

assessments provided for herein by nonuse of the Storm Water Management Facilities or abandonment of its Lot.

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

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

Section 4. *Annual Assessments.* Annual Assessments shall be payable quarterly, exclusively to administer the Association, purchase liability and casualty insurance for the benefit of the Association and its officers and directors, improve, maintain, and operate the Storm Water Management Facilities and fund appropriate reserves for future maintenance, repair, and replacement of such Facilities.

Section 5. *Basis for Assessment.* For Annual Assessment purposes, each Lot shall be assessed at a rate based upon the number of votes allocated to each Lot as provided in Article III, Section 2.C. The assessment per vote allocated to each Lot owned by the Class B member shall be 25% of the assessment per vote allocated to the Lots owned by the Class A members. The assessment

per vote allocated to each unimproved Lot shall be 25% of the assessment per vote allocated to the improved Lots. An "improved Lot", for the purposes of this Section, is a Lot for which a building permit has been granted by the City or upon which construction has commenced on a building, structure or other improvement for which a building permit would be required.

A. *Amount of Assessment.* The amount of each Annual Assessment shall be determined by the Board of Directors, which shall adopt and publish annually to the Members an operating budget sufficient to pay the costs of the Association's performance of its obligations under the terms of this Declaration. The amount of each Annual Assessment shall not be less than the actual pro rata cost attributable to each Lot for the maintenance and operation of the Storm Water Management Facilities administer the Association, purchase liability and casualty insurance for the benefit of the Association and its officers and directors, improve, maintain, and operate the Storm Water Management Facilities and fund appropriate reserves for future maintenance, repair, and replacement of such Facilities.

B. *Method of Assessment.* By a vote of two-thirds of the Directors, the Board shall fix the amount of each Annual Assessment; provided, however, that the Annual Assessments shall be sufficient to meet the obligations imposed by the Declaration and the Supplementary Declarations. In the event the Board fails to fix an assessment for any calendar year, then each assessment established for the prior year shall automatically be continued until the Board acts.

C. *Date of Commencement of Annual Assessments.* The first Annual Assessments provided for herein shall commence as to each Lot on the first day following the earlier of the date the Developer conveys the Lot to the Owner or the date the Owner or Occupant takes occupancy of the Lot.

Section 6. *Special Assessments.*

A. *Capital Improvement Assessment.* The Association may levy in any assessment year a Special Assessment against Lots applicable to that year for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, or replacement of a capital improvement in the Storm Water Management Facilities, including fixtures related thereto, provided that any such assessment shall require the affirmative vote of two-thirds of the Class A Members who are present and voting, in person or by proxy, at a meeting at which a Quorum of Members is present, and the consent of the Class B Member, if Class B membership has not expired.

B. *Clean-Up Assessment.* The Association shall levy a Clean-Up Assessment upon any Lot whose Occupant causes, by act or omission, Hazardous Substances to enter the Storm Water Management Facilities from such Lot or from any public street within the Park. A Clean-Up Assessment shall be equal to three times the aggregate costs actually incurred by the Association to clean-up and remove the Hazardous Substances from the Storm Water Management Facilities, a reasonable administrative fee for oversight of the clean-up and removal operation and collection of such assessment and the actual costs incurred by the Association in collecting such assessment, including court costs and reasonable attorneys' fees.

Section 7. *Effect of Nonpayment of Assessments; Remedies of the Association.* Any assessment installment not paid within thirty (30) days after the due date shall be delinquent. Thereupon, the Association shall provide Notice of such delinquency as provided by law and may (a) assess a late payment charge equivalent to the amount of the assessment installment (b) declare the entire balance of such Annual or Special Assessment due and payable in full; (c) charge interest from the due date at 18% per annum; (d) give Notice to the Owner that in the event the assessment

installment, late payment charge and accrued interest are not paid within thirty (30) days from the date of such Notice, then the expressed contractual lien provided for herein shall be filed and/or enforced; and (e) upon Registered Notice to the Owner, suspend the right of such Owner to vote until the assessment installment, late payment charge, accrued interest, and costs of collection are paid in full.

Section 8. *Certificate of Payment.* Upon payment of a reasonable administrative fee to be determined by the Board of Directors, the Association shall certify to any Owner or the mortgagee of any Owner the status of payment of any assessment levied by the Association against such Owner's Lot as provided in this Article.

Section 9. *Exempt Property.* All properties to the extent dedicated and accepted by a public authority and devoted to public use shall be exempted from the assessments, charges, and liens created herein.

ARTICLE VI.

USE OF PROPERTY

Section 1. *Restrictions.* The Developer hereby declares that all of the Lots shall be held, conveyed, hypothecated and encumbered, leased, rented, used, occupied, and improved subject to the following Restrictions, all of which are declared to be in furtherance of a plan for the subdivision, improvement and sale of Lots and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Park. 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.

A. *Exclusive Commercial Use and Improvements.* No Lot shall be used except for such commercial purposes as shall be (i) permitted in the City Zoning District in which the Lots are

situated and (ii) approved by the Architectural Review Committee in the manner provided in Article III, Section 4.

B. *Roof Pitch.* All buildings with ten thousand (10,000) square feet of net finished space shall have a sloped roof of 2/12 or greater.

C. *Building Exteriors.* The exterior of all structures shall be either brick or stucco,(or their equivalent).

D. *Site Plan.* All building and site plans are subject to approval by the Architectural Review Committee.

E. *Accessory Structures.* Accessory buildings and enclosures shall be of similar design utilizing identical or complimentary materials as the principal buildings.

F. *Fencing.* Fencing for security reasons may be permitted by the Architectural Review Committee and if permitted shall be of design and material consistent with the high quality of the Park. Gates for entry, if used, shall be in a form and style consistent with the fencing design. Barbed wire or concertina wire, however, shall not be permitted.

G. *Outdoor Storage.* Outdoor storage areas shall be allowed only by permit issued by the Architectural Review Committee. If a permit is issued, all permanent outdoor storage areas shall be designed, located, or screened such that they are not visible from other buildings in existence in the Park at the time of construction or from Lew Dewitt Blvd. or any street in the Park. Screening may be accomplished by walls, building elements, or landscaping. For purposes of this subsection, “outdoor storage” is defined as the confinement of any goods, junk, material, merchandise, or inoperable vehicles in any place other than a completely enclosed building for more than seventy-two hours. The term shall include outdoor displays, but shall not include boats, trailers, commercial or

recreational vehicles or motor vehicles that are stored outdoors in the course of an Occupant's business in parking areas approved for such purpose by the Architectural Review Committee.

H. *Rubbish and Debris.* No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot except in waste containers approved by the Architectural Review Committee and located in screened areas at the rear or sides of buildings approved by the Architectural Review Committee. Waste removal areas that are visible from any public road must be gated and contain brick screened enclosures.

I. *Utilities.* The Developer shall arrange for the transmission of public utility services, including without limitation water, sewer, electric power and telecommunications to a boundary line of each Lot by overhead or underground lines and other necessary installations. Each Owner shall arrange for underground installation of all utility service lines, including without limitation electric power, telephone, and fiber optic cable to the improvements situated on its Lot. All such extensions of underground services shall be made by the service provider who will be paid by each Owner before the extension of such service at established rates for underground service on file with and approved by the Virginia State Corporation Commission, if applicable.

J. *Vehicular Parking.*

1. *Driveways and Parking Areas.* All access drives and parking areas shall be paved with bituminous asphalt surfacing, concrete, or equivalent materials to provide a dust-free and impervious surface. All vehicular movement and parking shall be confined to these areas. The parking areas shall be landscaped and subject to approval by the Architectural Review Committee. The driveways and parking areas must be completed within six months after the completion of construction.

2. *On-Site Parking Required.* The Owner of each Lot shall provided adequate vehicular parking for the reasonable needs of its employees, visitors and company vehicles. No use or activity shall be permitted on any Lot unless adequate parking is provided on the Lot for such use or activity.

3. *Off-Site Parking Discouraged.* Each Occupant shall use its best efforts to prevent its employees, lessees, agents, contractors, customers and visitors from parking on any street within the Park. Until the streets are dedicated to public use and accepted for maintenance by the City of Waynesboro, the Developer or the Association, as permitted by law, may cause vehicles parked on any such street to be removed to a licensed facility for storage and the owner of the removed vehicle shall be charged with the costs of such removal and storage in accordance with applicable provisions of the City Code or the Code of Virginia.

4. *Lighting.* All lighting for parking areas shall be partial or full cutoff lighting.

K. *Off-Street Loading.* All off-street loading areas shall be completely contained within the boundaries of each Lot. No off-street loading area shall be located within the required setback adjoining any street boundary.

L. *Signage.* All signage is subject to review by the Architectural Review Committee and must comply with the sign regulations of the City, if any, and the following additional restrictions:

1. Signage may be backlit or illuminated from the front but shall not be accented with lighting that flashes on and off. No part of a roof sign shall be elevated above the apex of the roof to which it is attached.

2. Company signs and logos placed at the Lot entrance or exit shall be substantially constructed with brick or masonry material and decoratively accented. These company signs shall be lit at night and surrounded by mulched and landscaped planting beds that are at least as large in area as the accented signs.

3. No sign shall be located in such a manner as to overhang or project in public right-of-way, or to obstruct free or clear vision, or cause hazards for vehicular, bicycle or pedestrian traffic by reason of location, shape, illumination, color or height.

M. *Landscaping.* Each Occupant shall maintain all landscaping on each Lot and the landscaped portion of any abutting street. Maintenance shall include all necessary planting, cutting, watering, fertilizing, aerating, seeding, spraying, pruning, weeding, and removal and replacement of irreparably damaged or diseased plant life. Additional landscaping at Lot entrances shall be provided and maintained by the Occupant. Landscaping at Lot entrances shall utilize mulch beds, trees of varying heights and species, shrubs, and flowering plants. Landscaping that is to be used as screening shall provide the same screening in winter months as it does in summer months. Earth berms used for screening must be planted with grass or other suitable ground cover approved by the Architectural Review Committee. Landscaping adjacent to buildings may be required to break up large unbroken expanses of building walls and to add rhythm and character to the building face.

The grassed areas of all Lots shall be kept mowed and at no time may plant growth exceed 12 inches in height. Although the Association will maintain and mow the Storm Water Management Facilities, each Occupant shall keep the Facilities situated within the boundaries of each Lot free of debris or objects that may interfere with the unimpeded flow of storm water within such Facilities. No Owner or Occupant shall permit any landscaping or construction within the boundaries of the Lot to obstruct or interfere with the efficient operation of the Storm Water Management Facilities.

N. *Communication Facilities.* No communication towers, satellite earth stations, dish antennae, of exterior radio/TV antennae shall be permitted without the prior written consent of the

Architectural Review Committee.

O. *Nuisances.* No operation will be permitted on any Lot that creates objectionable noise, smoke, odors or in any other way, in the opinion of the Architectural Review Committee, constitute a nuisance or degrade the value of the real property within the Park.

P. *Maintenance.* No building, signage or other improvements on any Lot shall be permitted by its Owner or Occupant to fall into disrepair and each building, sign or other improvement shall be kept at all times clean, safe, in good condition and repair, and adequately painted and finished in appearance. All asphalt or concrete paved surfaces shall be resurfaced or sealed as necessary and all fractures, cracks and potholes shall be repaired promptly.

Q. *Impervious Surface Area.* The total impervious surface area of any Lot shall be less than or equal to eighty-five percent (85%) of the total area of the Lot less any portion of the Lot designated for storm water management.

Section 2. *Remedies.*

A. The Developer, the Association or any party to whose benefit these Restrictions inure may proceed at law or in equity to prevent the occurrence, continuation, or violation of any of these Restrictions, and the court in any such action may award the successful party reasonable expenses in prosecuting such action, including attorney's fees.

B. The remedies hereby specified are cumulative, and this specification of them shall not be taken to preclude an aggrieved party's resort to any other remedy at law, in equity, or under any statute. No delay or failure on the part of an aggrieved party to invoke an available remedy in respect of a violation of any of these Restrictions shall be held to be a waiver by the party of (or an estoppel of that party to assert) any right available to him upon the recurrence or continuation of said violation

or the occurrence of a different violation.

ARTICLE VII.

EASEMENTS AND RIGHTS OF DEDICATION

Section 1. *Developer's Easement to Construct and Maintain Storm Water Management Facilities.* Until the rights and obligations of the Developer shall cease as provided in Article I, Section Seven, the Developer reserves an easement and right on, over, and under the ground within each Lot to construct, maintain, repair and correct the operation of the Storm Water Management Facilities and maintain reasonable standards of efficiency, health, safety, and appearance within such Facilities. Such right expressly includes the rights to cut any trees, bushes, shrubbery or grass to such height as may be required by City regulations, to perform any grading of the land, provided such grading does not reduce the capacity and rate of flow of storm water within the Storm Water Management Facilities as approved by the City, to repair any facilities eroded by storm water and to take any other similar action reasonably necessary, following which the Developer shall restore the affected property to its original condition as nearly as is practicable. The Developer shall give reasonable notice of its intent to take such action to all affected Owners, unless in the opinion of the Developer an emergency exists which precludes such notice.

Section 2. *Construction Easements and Rights.* Notwithstanding any provision of this Declaration or of any Supplementary Declaration, so long as the Developer or Builders are engaged in developing or improving any portion of the Park, the Developer and Builders and their employees, agents, and assigns shall have an easement of ingress, egress, and use over any portion of the Park not conveyed as a Lot to an Owner for occupancy for (1) movement and storage of building materials and equipment, (2) erection and maintenance of directional and promotional signs, and (3) conduct

of sales activities. Such easement shall be subject to such rules as may be established by the Developer to maintain reasonable standards of safety, cleanliness, and general appearance of the Park.

Section 3. *Easement to Inspect.* There is hereby created an easement in favor of the Association for ingress and egress on any Lot to (a) inspect such property for alleged violations of the Governing Documents based on formal, written complaints and (b) perform such maintenance as is required by this Declaration or the Supplementary Declaration for such Lot, provided the Owner of such Lot is given written notice of the purpose and time of inspection at least three (3) days in advance thereof and such inspection is performed during reasonable hours.

Section 4. *Easement for the City.* A right of entry on any Lot is hereby granted to the City to inspect and, if necessary, to repair or correct any deficiencies in the Storm Water Management Facilities caused by the failure of the Association to maintain them as provided in this Declaration. In the event of such failure, the City shall be entitled to recover its administrative fees and the costs of such repairs and corrections from the Association and pro rata from each of the Owners, to enforce the rights of the Association as provided in Section 7 of Article V and to collect such prorated fees and costs from the Owners as taxes and levies are collected.

Section 5. *General Utility Easement.* There shall be and is hereby reserved a ten foot (10') utility easement inside all exterior property lines and centered on all interior lot lines.

ARTICLE VIII.

GENERAL PROVISIONS

Section 1. *Duration.* The Covenants and Conditions of this Declaration shall run with and bind the land until they are terminated with the written consent of seventy-five percent (75%) of the Class A Members, the consent of the Class B Member and the approval of the City pursuant to an instrument recorded in the Clerk's Office. Upon any such termination, the Association shall convey

the Storm Water Management Facilities to a nonprofit corporation, association, trust, or other organization or governmental entity devoted to similar purposes and approved by the City.

Section 2. *Amendment.* Until the rights and obligations of the Developer shall cease as provided in Article I, Section 7, the Developer may amend this Declaration unilaterally if required by the City following Registered Notice to all Owners. After such period or if any amendment is not required by the City, the proposed amendment shall be accompanied by a document signed by not less than two-thirds of the Class A Members and the Class B Member and evidence of approval by the City and recorded in the Clerk's Office in order to become effective.

Section 3. *Certain Rights of the Developer.* For such time as the Developer shall own Lots and unless it shall, in writing, join in such amendment, its rights and interests shall not be prejudiced by any amendments to the Governing Documents which (a) discriminate or tend to discriminate against its rights as an Owner; (b) change the definitions provided in Article I in a manner that alters its rights or status; (c) alter its right to add additional properties to the Park in the manner provided in Article II; (d) alter the character and rights of membership or the rights of the Developer as set forth in Article III; (e) alter previously recorded or written agreements with public or quasi-public agencies affecting easements and rights-of-way; (f) alter the Developers rights as set forth in Article III, Section 4 relating to architectural controls; (g) alter the basis for assessments; (h) alter the protective covenants as set forth in Article VII; (i) alter the number or selection of Directors as established in the Bylaws; or (j) alter the Developer's rights as they appear in this Article.

Section 4. *Enforcement.* The Association, the Developer, any Owner, or the City as their interests may appear, shall have the right to enforce, by any proceeding at law or in equity, all conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions

of this Declaration and of Supplementary Declarations. Failure to enforce any covenants or restrictions herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 5. *Severability.* Invalidation of any one of those covenants or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

Section 6. *Conflict.* In the event of conflict among the Governing Documents, this Declaration shall control, then Supplementary Declarations, then the Articles of Incorporation of the Association, then the Bylaws; except that in all cases where the Governing Documents are found to be in conflict with statute, the statute shall control.

Section 7. *Interpretation.* Unless the context otherwise requires, the use of the singular shall include the plural and vice versa; the use of one gender shall include all genders; and the use of the term “including” shall mean “including, without limitation.” This Declaration shall be liberally construed in favor of the party seeking to enforce the provisions hereof to pursue the purpose of controlling the flow of storm water in and away from the Park. The headings used herein are for indexing purposes only and shall not be used as a means of interpreting or construing the substantive provisions hereof.

Section 8. *Notices.* All notices to be given with respect to this Declaration shall be in writing. Each notice shall be sent by registered or certified mail, postage prepaid and return receipt requested, to the party to be notified at such address as either party may from time to time designate in writing.

Unless otherwise designated by the parties, their addresses are designated as follows:

The Developer:

DeWitt Crossing LLC,
Brett A. Hayes, Manger
19 Briar Knoll Court
Fishersville, Virginia 22939

The Association:

John I. Hill, Registered Agent
Poindexter & Schorsch, P.C.
P. O. Drawer 1067
Waynesboro, Virginia 22980

Every notice shall be deemed to have been given at the time it shall be deposited in the United States mails in the manner prescribed herein. Nothing contained herein shall be construed to preclude personal service of any notice in the manner prescribed for personal service of a summons or other legal process.

ARTICLE IX.

DISSOLUTION OF THE ASSOCIATION

The Association may be dissolved with the written consent of seventy-five percent (75%) of the Class A Members and the consent of the Class B Member, upon the conveyance of the Storm Water Management Facilities to any nonprofit corporation, association, trust, or other organization or governmental entity devoted to similar purposes and approved by the City.

IN WITNESS WHEREOF, the Developer, DeWitt Crossing LLC, has caused this Declaration to be duly executed this day of and year first aforewritten.

DeWitt Crossing LLC, a Virginia limited liability company

By: [Signature]
Brett A. Hayes, Manager

STATE OF VIRGINIA, AT LARGE
CITY/COUNTY OF Waynesboro, TO-WIT:

The foregoing instrument was acknowledged before me this 14th day of November, 2006, by Brett A. Hayes, Manager of DeWitt Crossing LLC, a Virginia limited liability company.

[Signature]
Notary Public

My Commission Expires: 10/31/07



INSTRUMENT #060004004
RECORDED IN THE CLERK'S OFFICE OF
WAYNESBORO ON
NOVEMBER 14, 2006 AT 04:51PM
NICOLE A. BRIGGS, CLERK

Nicole A. Briggs
RECORDED BY: DBS
DBS