

THIS SUPPLEMENTARY CLUSTER DECLARATION FOR FISHHOOK LANE CLUSTER, made this \_\_\_\_ day of \_\_\_\_\_, 2006, by FISHHOOK LANE CLUSTER ASSOCIATION, INC., a non-profit corporation, hereinafter called "Cluster Declarant".

WITNESSETH:

WHEREAS, by a Deed of Declaration of Conditions, Covenants, Restrictions, and Easements, dated April 9, 1976, and recorded in the office of the Clerk of the County Commission of Berkeley County, West Virginia, in Deed Book No. 297, at page 1, (hereinafter called "Deed of Declaration"), Potomac Valley Properties, Inc., (hereinafter called "Declarant") subjected certain real property known as "Stage I, Section 2 of 'The Woods Subdivision' and 'The Woods Road'" to all of the rights, reservations, restrictions, covenants, conditions, easements, rights-of-ways, liens, charges and assessments more fully set forth in said Deed of Declaration; and

WHEREAS, the Declarant by a Special May, 1987 Supplementary Declaration dated May 30, 1987 and recorded in the aforesaid Clerk's office in Deed Book No. 420, at page 509, established the terms, conditions, covenants and restrictions for the lands hereinafter described and The Association by its signature thereto appended did establish a public record of its consent to the annexation to the lands hereinafter described and to the terms, covenants, and conditions of the Special May, 1987 Supplementary Declaration; and

WHEREAS, Article XXVIII of the Special May, 1987 Supplementary Declaration authorizes and permits the Owners of any group of Lots to submit such Lots to a Cluster Declaration; and

WHEREAS, the Declarant by a Supplementary Declaration of Covenants and Restrictions, dated February 1, 1990, and recorded in the office of the Clerk of the County Commission of Berkeley County, West Virginia, in Deed Book No. 461, at page 655, subjected certain real property, including, but not being limited to, all of the lots and roads known as Section 13 of 'The Woods Subdivision', as more fully shown upon a plat thereof prepared by P.C. DiMagno, Engineers and Surveyors, dated the 9<sup>th</sup> day of November, 1989, and recorded in the office of the Clerk of the County Commission of Berkeley County, West Virginia, immediately preceding the 1990 Supplementary Declaration in Plat Cabinet No. 3, at Slides 198-199, which plat is hereby incorporated herein by reference, to all of the rights reservations, restrictions, covenants, conditions, easements, rights-of-ways, liens, charges and assessments

more fully set forth in that certain Declaration of Conditions, Covenants, Restrictions and Easements heretofore executed by Potomac Valley Properties, Inc., a corporation, the Declarant, dated April 9, 1976, and recorded in the office of the Clerk of the County Commission of Berkeley County, West Virginia, in Deed Book No. 297, at page 1, AS AMENDED BY THAT CERTAIN SPECIAL MAY, 1987 SUPPLEMENTARY DECLARATION, dated May 30, 1987, and recorded in the office of the Clerk of the County Commission of Berkeley County, West Virginia, in Deed Book No. 402, at page 509, and further AS AMENDED BY THAT FEBRUARY, 1990 SUPPLEMENTARY DECLARATION, dated February 1, 1990, and recorded in the office of the Clerk of the County Commission of Berkeley County, West Virginia, in Deed Book No. 461, at page 655, all of said easements, reservations, rights-of-way, restrictions, covenants, conditions, rights, obligations, liens and assessments set forth in said Deed of Declaration as amended by the Special May, 1987 Supplementary Declaration and further as amended by the February, 1990 Supplementary Declaration, being hereby incorporated herein by reference as if the same were set forth verbatim; and

WHEREAS, the Declarant by a Cluster Declaration for Fishhook Lane Cluster, dated February 1, 1990, and recorded in the office of the Clerk of the County Commission of Berkeley County, West Virginia, in Deed Book No. 461, at page 655, subjected certain real property, including, but not being limited to, all of the lots and roads known as Section 13 of 'The Woods Subdivision', as more fully shown upon a plat thereof prepared by P.C. DiMagno, Engineers and Surveyors, dated the 9<sup>th</sup> day of November, 1989, and recorded in the office of the Clerk of the County Commission of Berkeley County, West Virginia, immediately preceding the 1990 Supplementary Declaration in Plat Cabinet No. 3, at Slides 198-199, which plat is hereby incorporated herein by reference, to all of the rights reservations, restrictions, covenants, conditions, easements, rights-of-ways, liens, charges and assessments more fully set forth in that certain Cluster Declaration for Fishhook Lane Cluster, dated February 1, 1990, and recorded in the office of the Clerk of the County Commission of Berkeley County, West Virginia, in Deed Book No. 461, at page 655; and

WHEREAS, said February, 1990 Cluster Declaration for Fishhook Lane provides in Section 11.2(a) that said Cluster Declaration may be amended pursuant to the written consent of all of the following: (i) Cluster Owners representing not less than seventy-five percent (75%) of the total Cluster Association voting power of all Cluster Owners (ii) Noticed Mortgagees holding

first mortgage liens on Cluster Lots and Cluster Living Units within the Cluster Property representing not less than seventy percent (70%) of the total Noticed Mortgagees holding such first liens; and

WHEREAS, the Cluster Declarant desires at this time to amend said February, 1990 Cluster Declaration for Fishhook Lane; and

WHEREAS, the Cluster Declarant submitted to the Cluster Owners and the Noticed Mortgagees its proposed changes (as more fully described herein) to the February, 1990 Cluster Declaration; and

WHEREAS, \_\_\_\_\_ Cluster Owners, representing \_\_\_\_\_ % of the total Cluster Association voting power of all Cluster Owners have consented in writing, and \_\_\_\_\_ Noticed Mortgagees holding first mortgage liens on Cluster Lots and Cluster Living Units within the Cluster Property, representing \_\_\_\_\_ % of the total Noticed Mortgagees holding such first liens, have consented to said proposed changes.

NOW, THEREFORE, the February, 1990 Cluster Declaration is hereby amended as follows:

(1) The following paragraphs shall be added to **Section 2.2**:

**Section 2.2:**

The Cluster Association shall not have the obligation or duty to maintain or to repair damage to any Cluster Living Units or Cluster Lots caused by the neglect of any Cluster Lot Owner or Cluster Living Unit owner or by a casualty event including, but not limited to, fire damage, water damage, or damage caused by a severe weather event. The maintenance obligation of the Cluster Association shall be limited to superficial repairs and maintenance as necessary to assure the Cluster Living Units and Cluster Common Areas are maintained in an aesthetically pleasing manner. The Cluster Association may seek a recommendation or evaluation from a qualified Maintenance Committee and/or a maintenance professional to help the Cluster Association evaluate and prioritize maintenance actions for the Board's approval.

No reference to the Cluster Association obligation to provide maintenance in the Supplementary Declaration of Covenants and Restrictions dated February 1, 1990 shall obligate the Cluster Association to perform any maintenance or repairs other than those mentioned in the preceding paragraph.

(2) **Section 3.4(d)** shall be deleted and replaced with the following:

To operate, maintain and otherwise provide the exterior maintenance upon each Cluster Lot and each Cluster Living Unit which is located within the Cluster Properties and is subject to assessment under the terms of this Cluster Declaration.

The Cluster Association shall not be obligated to perform any maintenance and or improvements made necessary due to the

neglect of a Cluster Lot Owner or Cluster Living Unit owner. Cluster Association shall not be obligated to perform any maintenance and/or repair made necessary by a casualty event including but not limited to fire and water damage and severe weather events. The obligation to make any repairs due to neglect or casualty events shall be the obligation of the Cluster Lot Owner and/or the Cluster Living Unit owners. If a Cluster Lot Owner or Cluster Living Unit Owner fails to perform necessary repairs, then the Cluster Board shall have the authority to perform or have performed such maintenance and repairs at the expense of the Lot Owner and/or the Living Unit Owner's expense.

(3) The following paragraph shall be added to **Section 3.5(f)**:

The Cluster Association shall not be obligated to repair, rebuild or renovate any exterior damage caused by the neglect of any Cluster Lot Owner or Cluster Living Unit owner or any damage caused by a casualty event. Such repairs shall be the obligation of the Cluster Lot Owners and/or Cluster Living Unit owners to make at the Lot Owner or Living Unit owner's own expense.

(4) **Section 5.15** shall be deleted and replaced with the following:

The Cluster Association shall provide exterior maintenance made necessary by normal wear and tear to maintain the as built appearance as it is determined to be necessary by the Cluster Board and to provide landscaping for each Cluster Lot and Living Unit, and shall levy, collect and extend assessments for such purposes.

The above described Easements, Rights-of-way, Covenants, Conditions, Rights, Obligations, Reservations, Liens and Assessments are for the purpose of protecting the values and amenities of Section 13 of 'The Woods Subdivision' and for the purpose of preserving certain rights-of-way and easements and shall run with the real property and be binding on all parties having any right, title or interest in the above described property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

AND FURTHER THEREFORE, the Declarant declares that the real estate hereinbefore described as Section 13, of 'The Wood Subdivision' is and shall be held, transferred, sold, conveyed, occupied and used subject to the provisions hereinafter set forth in this Supplementary Cluster Declaration for Fishhook Lane Cluster, which provisions shall be in addition to and not in elimination of the provisions contained in the Cluster Declaration.

WITNESS the corporate name and seal of the said corporation and the signature of its president hereto affixed this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

FISHHOOK LANE CLUSTER ASSOCIATION, INC.,  
a non-profit corporation

(CORPORATE SEAL)

By \_\_\_\_\_

Rose Wayland, President

STATE OF WEST VIRGINIA,

COUNTY OF BERKELEY, to-wit:

I, \_\_\_\_\_, a Notary Public in and for said County and State, do hereby certify that Rose Wayland, President, who signed the writing above of FISHHOOK LANE CLUSTER ASSOCIATION, INC., a non-profit corporation, bearing date the \_\_\_\_ day of \_\_\_\_\_, 2006, has this day acknowledged the same before me in my said County to be the act and deed of said corporation.

Given under my hand this \_\_\_\_ day of \_\_\_\_\_, 2006.

AFFIX NOTARIAL SEAL

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

My commission expires:

\_\_\_\_\_  
This instrument was prepared by Michael T. Smith, Attorney, Steptoe & Johnson, PLLC, 126 E. Burke Street, Martinsburg, West Virginia, 25401.