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Tax map # P/O 210-A-11

**DECLARATION OF COVENANTS AND RESTRICTIONS  
DOWNTOWN MONETA ASSOCIATION**

THIS DECLARATION OF COVENANTS AND RESTRICTIONS ("Declaration") is made as of Feb 26, by NBI DEVELOPMENT, L.L.C., Virginia limited liability company, (hereinafter referred to as "Declarant").

WITNESSETH:

WHEREAS, Declarant is the owner of real property located in the County of Bedford, Virginia, known as "Downtown Moneta East", as shown on a plat of survey entitled "Plat Showing Town Center Downtown Moneta East, etc", made by J.A. Michael Nichols, Land Surveyor, revised December 19, 2006, a copy of which is recorded in the Office of the Clerk, Circuit Court, Bedford County, Virginia, in Plat Book 48, pages 293-295, and which property is referred to herein as the "Development"; and

WHEREAS, the Development is part of a Planned Development District, known as Downtown Moneta Planned Development District, which will contain residential, office, retail, civic and related uses as defined and established pursuant to Sections 30-67-1 through 30-67-9 of the Bedford County Zoning Ordinance; and

WHEREAS, in order to provide for the orderly and cohesive use, preservation and maintenance of the Development and the Downtown Moneta Planned Development District, the Grantor desires to subject the Development to the covenants, restrictions, easements, charges, and liens of this Declaration of Covenants and Restrictions, said covenants, restrictions, easements, conditions, and charges running with the real property within the Development; and

WHEREAS, pursuant to § 13.1-814.1, Code of Virginia, the Declarant has incorporated the Association under the laws of the Commonwealth of Virginia as a "Community Association" to provide a means for meeting the purposes and intents herein set forth.

NOW, THEREFORE, Grantor hereby declares the real property within the Development to be held, transferred, sold, conveyed, and occupied subject to the covenants, restrictions, easements, conditions, charges, and liens (hereinafter referred to as "Covenants and Restrictions"); hereinafter set forth, which shall run with the title to this real property within the Development and be binding on all parties having any right, title, or interest in the above-

described real property or any portions thereof, their successors and assigns, and shall inure to the benefit of each Owner thereof.

AND FURTHER, the Declarant intends to delegate and assign to the Association the powers and duties of (a) owning, controlling and maintaining portions of the Development set aside and designated by the Declarant as "Common Area", including but not limited to open space, signs, landscaping, private streets, parking areas or alleys and sidewalks and structures and improvements thereon and easements granted or reserved to the Association by the Declarant within the Development, (b) maintaining areas of properties adjoining the Development to the extent an obligation for such maintenance is now imposed upon the Declarant as owner of the Development, (c) administering and enforcing the Covenants and Restrictions and (d) collecting and disbursing the assessments and charges hereinafter created.

#### ARTICLE I DEFINITIONS

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

Section 1. "Approval" shall mean and refer to the issuance by any public agency of written approval, or any written waiver of approval rights, or a formal letter stating "no objection".

Section 2. "Association" shall mean and refer to Downtown Moneta Association, its successors and assigns.

Section 3. "Book of Resolutions" shall mean and refer to a document containing the rules and regulations and policies of the Association as they may from time to time be adopted or amended.

Section 4. "Common Areas" shall mean and refer to all portions of the Development and improvements thereon and all interests therein designated and/or described as Common Area on the aforesaid plat recorded in the Office of the Clerk, Circuit Court, Bedford County, Virginia, in Plat Book 48, pages 293-295 and any amendment thereof or supplement thereto and easements related thereto (including but not limited to any open space and squares as defined in Sections 30-67-1 through 30-67-9 of the Bedford County Zoning Ordinance and any drainage facilities or easements, private utility facilities, vehicle passageways, parking areas, walkways, parks, open spaces and all improvements thereon) owned or controlled by the Association for the use, enjoyment or benefit of the Members and /or the Development. Common areas shall include all sidewalks and private streets. The foregoing notwithstanding, Common Area shall not include any portion of Lot 3 whatsoever.

Section 5. "Declaration" shall mean and refer to this Declaration of Covenants and Restrictions and all other provisions herein set forth in this entire document, as supplemented or amended from time to time by Supplementary Declaration.

Section 6. "Declarant" shall mean and refer to NBI Development, LLC, its successors and assigns; provided, however, that no successor or assignee of the Declarant shall have any rights or obligations of the Declarant hereunder unless such rights and obligations are specifically assigned by document recorded in the land records or unless said rights and obligations of the Declarant inure to the successor by operation of law. The rights and obligations set forth herein of the Declarant, as Declarant and a Class B Member of the Association, shall cease at the time Class B membership and voting rights cease pursuant to ARTICLE III of this Declaration.

Section 7. "Development" shall mean and refer to the real property described on the aforesaid plat recorded in the Office of the Clerk, Circuit Court, Bedford County, Virginia, in Plat Book 48, pages 293-295 and all improvements now or hereafter constructed or placed thereon, together with the potential land that may become a part of the Development to the extent annexed and subjected to this Declaration as amended or supplemented in accordance with ARTICLE II hereof.

Section 8. "Founding Documents" shall mean and refer to the Articles of Incorporation of the Association, this Declaration, any Supplementary Declarations, or amendments thereto, and the Bylaws of the Association.

Section 9. "Governing Documents" shall mean and refer collectively and severally to the Founding Documents and the Book of Resolutions, as such may be amended from time to time.

Section 10. "Lot" or "Tract" shall mean and refer to Lots 1, 2, 3, 15A and 15B, as shown upon the plats referred to in the aforesaid plat recorded in the Office of the Clerk, Circuit Court, Bedford County, Virginia, in Plat Book 48, pages 293-295 or designated as a Lot or Tract upon any future plat of the Development, or any portion thereof, made and recorded by the Declarant. The numbering of a plot of land on a plat shall be deemed a designation of the plot as a Lot unless the plat states otherwise. Should a Lot or Tract become subject to a condominium regime under the Virginia Condominium Act, §§ 55-79.39 *et seq.*, any lien for assessments contemplated by this Declaration shall be against only the common elements of the condominium.

Section 11. "Members" shall mean and refer to members of the Association, each of whom shall be the Owner or representative of the Owner of a Lot or a Tract or the Declarant.

Section 12. "Notice" shall mean and refer to written notice delivered personally or mailed to the last known address of the intended recipient or by email if requested by a Member and the Association has the capacity to transmit and receive email.

Section 13. "Owner" shall mean and refer to the record holder of the fee simple title to any Lot or Tract, whether referring to one person or entity or collectively to more than one

person or entity who have joint ownership of a Lot or Tract, including contract Sellers. The term "Owner" shall not include those having a lien or other interest merely as security for the payment or performance of an obligation. In the event, however, that a Lot or Tract becomes subject to a condominium regime under the Virginia Condominium Act §§ 55-79.39 et seq., the term "Owner" shall refer to the condominium unit owners association then established upon such Lot or Tract. Each such condominium unit owners association shall duly appoint, elect, or otherwise select its representatives to the Association, and each such individual shall be a Member pursuant to Section 11 of this Declaration.

Section 14. "Plat" shall mean and refer to the plats referred to in the aforesaid plat recorded in the Office of the Clerk, Circuit Court, Bedford County, Virginia, in Plat Book 48, pages 293-295 or any future plat of the Development or any portion thereof made and recorded by the Declarant and approved by the County of Bedford and recorded prior to the termination of the Class B membership pursuant to ARTICLE III of this Declaration.

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 sixty percent (60%) 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 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 thirty percent (30%) 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 or Certified 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 "Supplementary Declaration" shall mean and refer to any declaration of covenants, conditions, and restrictions which may be recorded by the Declarant, which amends this Declaration and/or makes additional Lots created within the Development by a Plat hereafter recorded by Declarant subject to the Declaration.

## ARTICLE II PROPERTY SUBJECT TO THIS DECLARATION

Section 1. The Lots within the Development are and shall be held, transferred, sold, conveyed, and occupied subject to this Declaration.

Section 2. Amendments. The Declarant may subdivide any Tract into Lots at any time before the sale and conveyance of the Tract and make such Lots subject to this Declaration and designate part of the Tract or any Lot as Common Area to be conveyed to the Association and /or maintained by the Association by a subdivision plat and Supplementary Declaration duly recorded in the Clerk's Office of the Circuit Court of the County of Bedford, Virginia. Such subdivision shall be approved by the County of Bedford in accordance with the Bedford County Zoning Ordinance and applicable Building Codes. The Declarant may, by a plat approved by the County of Bedford and recorded in the said Clerk's Office, amend any recorded plat of subdivision of any part of the Development to change the boundary lines of or divide, combine or enlarge any unsold Lot or Tract. The Declarant may also grant the right to subdivide a Tract to a purchaser of a Tract from the Declarant subject to all terms and provisions of this Declaration and any amendment hereof and the Governing Documents.

Section 3. Permitted Additions to the Development. As long as it is a Class B Member the Declarant shall have the unilateral right, subject to this Declaration to add additional property to this Declaration by a subdivision plat and Supplementary Declaration recorded in the Clerk's Office of the Circuit Court of the County of Bedford, Virginia.

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. The Supplementary Declaration may provide for the additional property to be annexed as a separate Neighborhood and may provide that a Neighborhood may have separate Common Areas and may be subject to different provisions for voting and assessments within the Association than are applicable to Owners of Lots within the remainder of the Development.

Section 4. Merger. In accordance with its Articles of Incorporation, the real estate, personalty, rights, and obligations of the Association may by operation of law be transferred to another surviving or consolidated association similar in corporate nature and purpose. Similarly, the real estate, personalty, rights, and obligations of an association similar in corporate nature and purposes to the Association may by operation of law be added to the property, rights, and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants and restrictions established by this Declaration upon any other real property 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 Development except as hereinafter provided. Such merger or consolidation shall require the affirmative vote of sixty-seven percent (67%) of the Class A Members and the approval of the Class B Member, if Class B membership has not ceased.

ARTICLE III  
THE ASSOCIATION

Section 1. Organization

(a) The Association. 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.

(b) Membership in the Moneta Square Association. The Association shall be a member of the Moneta Square Association, which is formed to promote the civic and cultural affairs of the Downtown Moneta Planned Development District and the Mayberry Hills Planned Development District. The Association, unto to the Moneta Square Association, such assessments as may be levied by it on its members ; provided, any assessment imposed upon the Downtown Moneta Association shall be paid on behalf of the Downtown Moneta Association by the Downtown Moneta Shoppes Association, pursuant to Article V, Section 5(e) of this Declaration.

(c) Subsidiary Associations. The Association shall have the right to form one or more subsidiary corporations for any purpose or purposes deemed appropriate by a majority vote of the Board of Directors. Without limiting the generality of the foregoing, one (1) or more subsidiary corporations may be formed for the operation and maintenance of any specific area or to perform any function within the Development; however, such subsidiary corporation shall be subject to this Declaration and may not take any action to lessen or abate the rights of Members.

Section 2. Membership.

(a) Basis. Membership shall be appurtenant to the Lot or Tract 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. Class A Members shall be all Owners except the Class B Member. An Owner shall be entitled to one vote for each Lot or Tract owned. Class A Members shall be appurtenant to a Lot or Tract and upon sale, conveyance or other transfer of ownership of a Lot or Tract the Class A Membership shall pass to the successive Owner or Owners and shall not otherwise be assigned, transferred, pledged, hypothecated, conveyed, or alienated. Upon the transfer of fee simple title to a Lot or Tract or an interest in a Lot or Tract, the purchaser or transferee shall give written notice of the transfer to the Secretary of the

Association which notice shall contain the name, residence address and mailing address of the transferee and the date of recordation of the deed, will or other instrument by which such title was transferred. The Board of Directors may authorize a form to be used by a transferee of a Lot or Tract or an interest in a Lot or Tract for the purpose of notice of the transfer. Each Lot owned by Class A Members shall be subject to assessments imposed in accordance with the Founding Documents. The foregoing notwithstanding, should a Lot or Tract become subject to a condominium regime under the Virginia Condominium Act, §§ 55-79.39 et seq., the condominium unit owners association then established upon such Lot or Tract shall be deemed to be the Owner of any voting rights appurtenant to such Lot or Tract.

(2) Class B. The Class B Member shall be the Declarant, or any successor or assignee to whom the Declarant assigns any or all of its rights as Declarant pursuant to this Declaration by assignment recorded in Clerk's Office of the Circuit Court of the County of Bedford, Virginia. 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(s) shall have the number of votes equal to two hundred percent (200%) of the total of the number of Class A votes outstanding at the time the vote is taken. In the event of the assignment by the Declarant of its rights as Declarant as to less than all of the land in the Development then owned by the Declarant, the Class B votes shall be allocated between the Declarant and the assignee as agreed by the Declarant and the assignee and stated in instrument of assignment.

The Class B membership and voting rights shall cease upon the earliest of the date that the Declarant does not own any vacant or undeveloped land or any vacant or undeveloped Lot or Tract in the Development or on December 31, 2020. Thereafter, the Declarant shall have Class A membership rights for each Lot or Tract that it owns. For the purpose of this provision the term "vacant" shall mean both land with no building erected thereon and a Lot or Tract upon which Declarant has erected a building that has not been occupied and used by Declarant or a tenant of Declarant. Storage of construction materials, supplies, equipment and documents or use of a building as an office or facility solely related to development of the Development or the construction of buildings and improvements on or in the Development by Declarant shall not be considered occupancy or use of a Lot or Tract owned by Declarant creating Class A membership as to the Lot or Tract. Otherwise, when a building on a Lot or Tract has been occupied and used by Declarant or tenants of Declarant, Declarant shall have Class A membership rights and obligations for such Lot or Tract whether or not the Class B membership has ceased. After the Class B membership has ceased, the Declarant shall have Class A membership rights for each Lot or Tract that it owns. Otherwise, no Lot or Tract owned by Declarant as Class B Member shall be subject to assessments.

(d) Exercise of Vote. The vote for any membership held by more than one person may be exercised by any one of them and the owner of a beneficial interest in a Lot or Tract as (a) a beneficiary of a trust, custodial or retirement account or similar entity, (b) executor or beneficiary of the estate of a deceased Owner or (c) a shareholder, partner or member of a

corporation, partnership or limited liability company which is an Owner may exercise the vote for such Lot or Tract, provided that no objection or protest by any other holder of such membership or an interest therein is made prior to the completion of a vote. If such protest is lodged prior to 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 Class B Member shall be entitled to appoint the number of Directors sufficient to constitute a majority of the Directors until the Class B membership has ceased.

(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 Founding Documents and which are not specifically reserved to Members or the Declarant 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) Real and Personal Property. To acquire, own, hold, improve, maintain, manage, lease, pledge, convey, transfer, or dedicate real or personal property for the benefit of the Members in connection with the affairs of the Association, except the acquisition, mortgaging, or disposal of Common Area and/or improvements shall be subject to the provisions of Articles II and IV of this Declaration, the Bedford County Ordinances; and

(2) Rule Making. To establish rules and regulations for the improvement and use of property in the Development as provided in Articles IV and VI and to review and approve architectural standards for buildings and improvements adopted by the Downtown Moneta Architectural Review Board as provided in Section 4 of this Article III; and

(3) Assessments. To fix, levy, and collect assessments as provided in Article V; and

(4) Easements. To grant and convey easements over and across the Common Area as may become necessary and as provided in Article VII; and



(5) 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

(6) Mergers/Consolidations. To participate in mergers and consolidations with other corporations as provided in Article II; and

(7) Participation with other Associations. To enter into joint contracts with or participate with other community associations owning or controlling real estate located within the Mayberry Hills Planned Development District or the Downtown Moneta Planned Development District or whose members are owners of real estate located within the Mayberry Hills Planned Development District or the Downtown Moneta Planned Development District for the purpose of improving, maintaining and managing, Common Areas and the promotion of civic cultural events for the Mayberry Hills and Downtown Moneta Planned Development Districts.

(8) 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. The Downtown Moneta Architectural Review Board.

(a) There shall be one architectural review board for the Development to be known as the Downtown Moneta Architectural Review Board.

(b) Composition. Until the Declarant's rights as Class B Members cease, the Downtown Moneta Architectural Review Board shall be composed of not more than three (3) persons appointed by the Declarant. When the Declarant's rights as Class B member cease, the Downtown Moneta Architectural Review Board shall consist of three (3) or more persons who shall be appointed by the Board of Directors as provided in the Bylaws. Except as otherwise provided by the Bylaws, members of the Downtown Moneta Architectural Review Board are not required to be Members of the Association.

(c) Powers and Duties. The Downtown Moneta Architectural Review Board shall regulate the external design, appearance, and location of improvement located on the Development in such a manner so as to preserve and enhance values and to maintain a harmonious relationship among structures and the natural vegetation and topography. In furtherance thereof, the Downtown Moneta Architectural Review Board shall:

(1) Review and approve, modify, or disapprove written applications of Owners and of the Association for construction of buildings and other improvements on Lots, Tracts or Common Areas or the expansion, construction, modification or change thereof. Notice of any disapprovals of applications shall be by Registered Notice. Approval shall be sent by regular mail;

(2) Monitor Lots for compliance with rules and regulations and architectural standards adopted by the Board of Directors and approve plans for construction and alteration in accordance with this Declaration, the Bylaws and the Bedford County Ordinances.;

(3) Adopt architectural standards subject to the confirmation of the Declarant until the Class B membership ceases and thereafter the Board of Directors; and

(4) Adopt procedures for the exercise of its duties and enter them in the Book of Resolutions.

(d) **Obligation of Owners.** At least thirty (30) days prior to commencement of any construction or exterior repair, renovation or expansion or any building or other improvement on a Lot or Tract the Owner of the Lot or Tract shall submit to the Downtown Moneta Architectural Review Board site plans and building plans and specifications clearly reflecting the location, size, design, elevation, materials, color, exterior lighting and signage of the building or improvement and parking lot and driveway finish and design which are sufficiently complete and specific for the Downtown Moneta Architectural Review Board to determine that such proposed improvement will be in compliance with this Declaration and all the related documents referred to in this Declaration, in conformity and harmony with existing or planned and approved improvements in the Development and compatible as to location with respect to topography and drainage.

(e) **Failure to Act.** In the event the Downtown Moneta Architectural Review Board fails to approve, modify, or disapprove, in writing, a correctly filed application within thirty (30) days, approval will be deemed granted. Notification of total or partial disapproval shall include the reasons for such disapproval. Failure of the Downtown Moneta Architectural Review Board, Declarant or the Board of Directors to enforce the architectural standards or to notify an Owner of noncompliance with architectural standards or approved plans for any period of time shall not constitute a waiver by the Downtown Moneta Architectural Review Board, the Declarant or the Board of Directors of the enforcement of this Declaration at any later date.

(f) **Appeal.** An applicant may appeal an adverse decision of the Downtown Moneta Architectural Review Board to the Declarant until the Class B membership ceases and thereafter to the Board of Directors, which may reverse or modify such decision.

(g) **Temporary Permits by the Boards of Directors.** The Board of Directors may issue temporary permits to except any prohibitions expressed or implied by this section, provided that the Board can show good cause and acts in accordance with adopted guidelines and procedures.

**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 hazard insurance policies for 100% of the replacement cost of any improvements on the Common Areas and a comprehensive policy of public liability insurance covering the Common Areas.

#### ARTICLE IV COMMON AREA

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 of the Common Areas (including drainage facilities, street lights, structures, signs, furnishings, and equipment related thereto) and shall keep the same in good, clean, attractive, and sanitary condition, order and repair in compliance with standards established the Board of Directors. The Board of Directors may authorize additional activities including, without limitation, snow removal, the cleaning and maintenance of any portion of public rights-of-way within or abutting the Development located between the exterior boundary of the right-of-way and the paved or improved portion of the right-of-way and garbage and trash removal from the Common Areas or other portion of the Development (including Lots and Tracts and the buildings thereon) to the extent the Board of Directors shall determine from time to time.

Section 2. Pursuant to the terms of that certain Maintenance Agreement, dated September 14, 2006, by and between the Declarant and Smith, Huisking Holdings, LLC, a copy of which is attached as Exhibit "A", the Association, and/or its assigns, shall be responsible for the maintenance of the area depicted on the exhibit to the Maintenance Agreement and the detention pond on Lot 3 (the "Maintenance Area"). Notwithstanding any notion on the aforesaid plat recorded in the Office of the Clerk, Circuit Court, Bedford County, Virginia, in Plat Book 48, pages 293-295, approved by the Bedford County Subdivision Agent on December 20, 2006, to the contrary, no part of Lot 3 shall be Common Area. The maintenance of the Maintenance Area is for the sole benefit of the owner of Lot 3, its successors and assigns, and shall not create any property rights in Lot 3 or the Maintenance Area in favor of the Association or its Members.

Section 3. Easement of Enjoyment. Subject to all applicable provisions of the Governing Documents, every Owner shall have a right and nonexclusive easement of enjoyment in and to those portions of the Common Area designated as private roads or streets, which shall be appurtenant to and shall pass with the title to every Lot, and every member shall have a right of enjoyment to the Common Areas. The foregoing notwithstanding, neither the Association, nor any Owner, shall by virtue of this Section 3 have any property rights in or to Lot 3, including without exception the Maintenance Area.

Section 4. Extent of Members' Easement. The Members' easement of enjoyment created hereby shall be subject to the following:

(a) The right of the Association to convey or transfer, all or any part of the Common Areas, subject to the assent of sixty-seven percent (67%) of the Class A Members and the approval of the Class B Member;

(b) The right of the Declarant or Association to assign the use of portions of the Common Area consisting of drainage easement to one or more Lots or Tracts;

(c) The right of the Association to establish rules and regulations for the use of the Common Areas by Members and nonmembers;

(d) The right of the Association, at any time or times, consistent with the then existing zoning ordinances of the County of Bedford, and pursuant to a recorded subdivision or re-subdivision plat, to transfer part of the Common areas to or at the direction of the Declarant for the purpose of adjusting Lot lines or otherwise in connection with the orderly subdivision and development of the Development, provided that the adjustment shall not materially alter the Common Area.

Section 5. Delegation of Use. Any Member may delegate the right of use of the Common Area subject to such general regulations as may be established from time to time by the Board of Directors, and included within the Book of Resolutions.

Section 6. Title to Common Area. The Declarant hereby covenants that areas which the Declarant conveys to the Association as Common Areas shall be free and clear of liens and financial encumbrances at the time of conveyance. In the event a lien or encumbrance shall attach to all or a portion of the Common Areas, one or more of the lien holders and/or mortgagees shall have the right to discharge said lien or encumbrance after reasonable notice to the Association and to seek reimbursement for amounts paid discharge the lien or encumbrance.

## ARTICLE V COVENANT FOR ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant hereby covenants and each Owner of any Lot or Tract 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 General and Special Assessments as are established herein and paid in the manner hereinafter provided.

All such assessments, together with interest thereon and costs of collection thereof as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the Lot or Tract against which each such assessment is made. Each such assessment, together with interest thereon and costs of collection thereof, shall also be the obligation of the Owner of such Lot or

Tract at the time the assessment became due and shall not pass as a personal obligation of a successor in title unless expressly assumed by the successor. In the event Lot or Tract becomes subject to a condominium regime under the Virginia Condominium Act, §§ 55-79.39 et seq., any assessment, together with interest thereon and costs of collection thereof, shall be the obligation of the condominium unit owners associations then established upon such Lot or Tract and any lien for assessments contemplated by this Declaration shall be against only the common elements of the condominium.

No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Area or abandonment of a Lot or Tract.

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 or Tract 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 or Tract 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 each Lot or Tract, and collected and disbursed by the Association. The Board of Directors shall fix the amount of the assessments as provided hereinafter and set the installments and dates such assessments shall become due and payable.

Section 4. Assessment Year. The Assessment Year of the Association shall commence on the first day of January of each year and end on December 31st.

Section 5. Annual Assessments.

(a) Purpose. The Annual Assessment shall be used exclusively to improve, maintain and operate the Common Areas and related easements and facilities, and shall include the funding of appropriate reserves for future maintenance, repair and replacement.

(b) Basis for Assessment. The Owner of each Lot shall be assessed with a portion of the Annual Assessment as shown on Exhibit B.

(c) Maximum. The total Annual Assessment for the year commencing on January 1, 2007 shall be \$9,000.00-. The first Annual Assessment shall be payable in monthly installments beginning January 1, 2007. The Annual Assessment shall apply to and be binding upon each Lot and Tract in the Development other than a Lot or Tract owned by the Declarant, subject to the provisions of Article III.

(1.) Change in Maximum. From and after the first day of the fiscal year immediately following the commencement of assessments, the Board of Directors may increase

the maximum each year by not more than ten percent (10%) of the maximum for the current fiscal year.

Such increase shall become effective the first day of the next fiscal year. From and after the first day of the assessment year immediately following the commencement of assessments, the maximum may be increased above the amount which can be set by the Board with the affirmative vote of sixty-seven percent (67%) 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 with the consent of the Class B Member, if Class B membership has not ceased.

(d) Method of Assessment. By a vote of two-thirds of the Directors, the Board shall fix the General Assessment to be collected annually at an amount not in excess of the current maximum for such assessment; provided, however, that the General Assessment 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 fiscal year, then each assessment established for the prior year shall automatically be continued until such time as the Board acts.

(e) Disposition of Assessments ; Downtown Moneta Shoppes Association. All Assessments shall be collected by the Association and shall be paid to the Downtown Moneta Shoppes Association which shall be responsible for all maintenance of Common Area and associated administrative costs , pursuant to the purpose described in Article V, Section 5(a), above. In addition, the Association shall pay over to the Downtown Moneta Shoppes Association, for payment by the Downtown Moneta Shoppes Association on behalf of the Downtown Moneta Association, such assessments as may be levied against it by the Moneta Square Association. So long as the Association shall be responsible for the collection of assessments from the Downtown Moneta Association, pursuant to Article V, Section 5(e), at least one (1) Director of the Downtown Moneta Association shall be a Director of the Downtown Moneta Shoppes Association.

#### 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 and payable over not more than the next three (3) succeeding years, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, or other specified purpose, provided that any such assessment shall require the affirmative vote of two-thirds (2/3s) 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) Restoration Assessment. The Association may levy a Restoration Assessment upon any Lot whose Owner fails to maintain such Lot or the improvements on such Lot, as

provided in Article VI, Section 2, or who fails to provide such maintenance funds as may be required by a Supplementary Declaration for such Lot or Tract. Restoration Assessments shall be limited to the amount necessary to meet the cost of restoration or deficiency in required funds and the cost of collection thereof.

Section 6. 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) declare the entire balance of such Annual or Special Assessment due and payable in full; (b) charge interest from the due date at a percentage rate equal to the lesser of eighteen percent (18%) per annum or the maximum rate then permitted by law, such rate to be set by the Board for each Assessment period; (c) charge a penalty to be set by the Board of Directors not exceeding twenty percent (20%) of the installment; (d) give Notice to the Owner that in the event payment with accrued interest and penalties 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 or Occupant of the Lot, suspend the right of such Owner or Occupant to vote until the assessment, accrued interest, penalties, and costs of collection are paid in full.

## ARTICLE VI USE OF PROPERTY

Section 1. Protective Covenants. The Lots referred to in Article 1, Section shall be subject to the following :

(a) Nuisances. No nuisance shall be permitted to exist or operate upon any of the Lots or Tracts as to jeopardize property values or be detrimental to or interfere with the reasonable and intended use of the Development by Owners or their tenants.

(b) Prohibited businesses. Game Rooms or arcades of any nature, adult entertainment establishments offering nude or partially nude entertainment, and/or stores or facilities, selling, exhibiting or utilizing adult (X-rated) books, publications, motion pictures, videos, or similar products featuring nudity, explicit sex, or pornography are prohibited.

(c) Customer Seating Limitations. Any use of a Lot providing customer seating for food consumption on site, must be approved in writing by the Downtown Moneta Architectural Review Board and cannot utilize more seats and involve more employees than permitted by the County of Bedford, Virginia.

(d) Building Exteriors. The exposed exterior walls (above grade level) of any building constructed on any Lot shall be finished to grade and faced with Brick, Stone, wood, split face block or similar material. Concrete, Concrete Block, cinder block, wood composite, vinyl, stucco or other synthetic material may be used only to the extent and in the manner approved in advance by the Downtown Moneta Architectural Review Board.

(e) Lot Maintenance. Except as otherwise noted in this Declaration, or otherwise provided in the Maintenance Agreement described in Article IV, Section 2, after purchase from the Declarant, the Owner of the Lot shall keep it free of tall grass, dead trees, undergrowth, trash, and rubbish, and the surface of the Lot not occupied by a structure shall be landscaped and maintained in good order.

(f) Utility Lines. All telephone, electric, and other utility lines and connections between the main utility lines and buildings located on each Lot shall be concealed and located underground so as not to be visible.

(g) Architectural Approval. Before construction of any improvements on a lot, a building and site plan, including proposed landscaping, shall be submitted to the Downtown Moneta Architectural Review Board. No building, or other structure, driveway, parking area, walkway, fence, wall, or landscaping shall be commenced, built, erected or installed within a Lot and no improvements, alterations, repairs, change of paint colors, excavations, changes in grade, or other work which in any way alters the exterior of any Lot, or the improvements located thereon shall be made or done without the prior written approval of the Downtown Moneta Architectural Review Board and, to the extent required or permitted by the Zoning and Subdivision Ordinances of the County of Bedford.

(h) Living Units. Living Units shall be located only above the Ground Level of any building on a Lot. No Living Unit may be located within a building having only one (1) story or level excluding basements or subterranean construction. No building may be used or occupied solely as a residence.

(i) Exterior Lighting. All freestanding exterior lights shall be white light with the pole and fixture design approved by the Downtown Moneta Architectural Review Board. All exterior lighting shall be directed and shielded so that no direct beam extends beyond the property lines of the Lot on which the light fixture is located.

(j) Subdivision of Lots. Except as otherwise provided or set forth in this Declaration or any amendment or supplementary Declaration, no Lot shall be further subdivided or separated into smaller Lots by any owner, and no portion less than all of any such Lot, nor any easement or other interest therein, shall be conveyed or transferred by an Owner, provided that this shall not prohibit condominiums, horizontal property regimes, or condominium projects; leases or licenses; deed of correction, deeds to resolve boundary line errors or disputes and similar corrective instruments; or easements to public agencies or authorities, or for utilities;

(k) Drive-up Facilities. Drive-up facilities shall be permitted provided waiting vehicles do not extend in to the Common Area.

(l) Rules and Regulations. From time to time the Board of Directors shall adopt general rules, including, but not limited to, rules to regulate potential problems relating to the use of property and the well-being of Members, such as keeping of animals, storage and use of all vehicles, storage and use of machinery, use of outdoor drying lines, antennas, satellite dishes,



solar panels, signs, trash and trash containers, maintenance and removal of vegetation on the Development, and the type and manner of application of fertilizers or other chemical treatments to the Development in accord with nonpoint source pollution control standards. Ninety (90) days after conveyance of the first Lot to an Owner, such general rules may only be adopted or amended by a two-thirds vote of the Board, following a hearing for which due notice has been provided to all Members. All such Annual rules and any subsequent amendments thereto shall be placed in the Book of Resolutions and shall be binding on all Members, except where expressly provided otherwise in such rule.

(m) Exceptions. The Board of Directors may issue temporary permits to except any prohibitions expressed or implied by this section, provided that the Board can show good cause and acts in accordance with adopted guidelines and procedures. So long as the Declarant or an Owner is engaged in developing or improving any portion of the Development, such persons shall be exempted from Rules affecting movement, disposition and storage of building materials and equipment, erection and maintenance of directional and promotional signs. Such exemption shall be subject to such rules as may be established by the Declarant to maintain reasonable standards of safety, cleanliness and general appearance of the Lots or Tracts.

#### Section 2. Maintenance of Property.

(a) Owner Obligation. To the extent that exterior maintenance is not provided for in this Declaration or a Supplementary Declaration, or the Maintenance Agreement described in Article IV, Section 2, each Owner of a Lot or Tract shall keep it and all improvements therein or thereon, in good order and repair, free of debris, all in a manner and with such frequency as is consistent with good property management and this Declaration and existing rules and regulations.

(b) Failure to Maintain. In the event an Owner of any Lot in the Development shall fail to maintain the premises and the improvements situated thereon as provided herein, the Association, after Notice to the Owner and approval by two-thirds (2/3) vote of the Board of Directors, shall have the right to enter upon said Lot to correct drainage and to repair, maintain and restore the Lot and the exterior of the buildings and any other improvements erected thereon. All costs related to such correction, repair or restoration including a twenty percent (20%) administrative fee shall become a Restoration Assessment upon such Lot and as such shall be regarded as any other assessment with respect to lien rights of the Association and remedies provided in the Governing Documents for nonpayment.

### ARTICLE VII EASEMENTS

Section 1. Utility Easements. There is hereby created and granted an easement upon, across, over, through and under the Development for ingress, egress, installation, replacement, repair and maintenance of all utility and service lines and systems, including, but not limited to, water, sanitary sewers, storm water drainage, gas, telephone, electricity, television, cable or communication lines and systems. By virtue of this easement, it shall be expressly permissible

for the Declarant or the providing utility or service company with the consent of the Declarant to install and maintain facilities and equipment on the Development, to excavate for such purposes, and to affix and maintain wires, circuits and conduits on, in, and under the roofs and exterior walls of structures provided such company restores as nearly as is practicable all disturbed areas to the condition in which they were found.

Notwithstanding anything to the contrary contained in this Section: (1) no sanitary sewers, storm water drainage facilities, electrical lines, water lines, gas lines, or other utility service lines or facilities for such utilities may be installed or relocated on any Lot or Tract except as approved by the Declarant prior to the conveyance of the Lot or Tract to any Owner or by the Owner of the Lot or Tract and the Association thereafter, and (2) this paragraph shall not be construed to apply to the relocation, installation, or removal of utility lines within a Lot or Parcel that serve only the building(s) on that Lot or Parcel.

This easement shall in no way affect any other recorded easements on the Development.

Section 2. Declarant's Easements to Correct Drainage. For a period of five (5) years from the date of submission of each Lot or Tract to this Declaration, the Declarant reserves an easement and right on, over and under the ground within each Lot or Tract to maintain and to correct drainage of surface water in order to maintain reasonable standards of health, safety and appearance. Such right expressly includes the right to cut any trees, bushes or shrubbery, to perform any grading of the land, or to take any other similar action reasonable necessary, following which the Declarant shall restore the affected property to original condition as nearly as is practicable. The Declarant shall give reasonable notice of intent to take such action to all affected Owners, unless in the opinion of the Declarant an emergency exists which precludes such notice.

Section 3. Construction Easements and Rights. Notwithstanding any provision of this Declaration or of any Supplementary Declaration, so long as the Declarant is engaged in developing or improving any portion of the Development, the Declarant and its contractors, employees, agents and assigns shall have an easement of ingress, egress, and use over any portion of the Development not conveyed 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.

Section 4. Easement to Inspect and Maintain. There is hereby created an easement in favor of the Declarant and the Association for ingress and egress on any Lot (a) to inspect such property for alleged violations of the Governing Documents, based on formal, written complaints, and/or compliance with architectural standards and/or approved plans for alterations and improvements and (b) to perform such maintenance as is required by this Declaration for such property, provided the Owner is given 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 5. Easement for Governmental Personnel. A right of entry on any Lot or Common Area is hereby granted to authorized governmental employees and agents, including

law enforcement officers and fire and rescue personnel, as is needed to carry out their duties, including enforcement of cleared emergency vehicle access.

Section 6. Easement for Landscaping, Signs and Related Purposes. There shall be and is hereby reserved to the Declarant, for so long as it retains its rights as Declarant, a nonexclusive easement over all Common Areas for the purpose of erecting and maintaining street intersection signs, directional signs, temporary promotional signs, plantings, entrance features and/or "theme areas" lighting, stone, wood, or masonry wall features, and/or related landscaping.

#### ARTICLE VIII GENERAL PROVISIONS

Section 1. Duration. The Covenants and Restrictions of this Declaration shall run with and bind the land for a term of twenty-five (25) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless the Covenants and Restrictions are expressly terminated by an instrument signed by not less than seventy-five percent (75%) of the Class A Members and by the Class B Member, if Class B membership has not ceased. A termination must be approved by the County of Bedford and be recorded in the land records of said County in order to become effective.

Section 2. Amendment. The Declarant may amend this Declaration in any manner and to any extent until any Lot or Tract is conveyed to an Owner. For a period of three (3) years after the recording of this Declaration, the Declarant may make any amendment unilaterally which is required by the County of Bedford, Virginia, by the execution and recordation of such amendment following Registered Notice to all Owners. Otherwise, any amendment must be approved by a majority of the Class A Members present and voting in person or by proxy at a meeting of the Members after notice that sets forth the amendment and by the Class B Member. At such time as the Class B membership ceases, any amendment must be approved by two-thirds (2/3s) of the Class A Members present and voting in person or by proxy at a meeting of the Members after notice that sets forth the amendment. Any amendment must be approved by the County of Bedford, Virginia, to the extent required by applicable County Ordinances and recorded in the land records of the County of Bedford in order to become effective.

Section 3. Enforcement. The Association, the Declarant, any Owner, or the County of Bedford, as their interest may appear, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration and of Supplementary Declarations. Failure to enforce any covenants or restrictions herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 4. Certain Rights of the Declarant. For such time as the Declarant shall own any portion of the Development, its rights and interests shall not be prejudiced by any of the following actions unless it shall in writing, join in such actions:

There shall be no amendments to the Founding Documents which:

- (a) Discriminate or tend to discriminate against its rights as an Owner;
- (b) Change Article I, Definitions, in a manner that alters its rights or status;
- (c) Alter its rights under Article II;
- (d) Alter the character and rights of membership or the rights of the Declarant as set forth in Article III;
- (e) Alter previously recorded or written agreements with public or quasi-public agencies as regards easements and rights-of-way;
- (f) Deny the right to convey Common Area to the Association so long as such Common Area lies within the land area represented in the Development;
- (g) Alter its rights as set forth in Article III relating to design controls;
- (h) Alter the basis for assessments;
- (i) Alter the provisions of the protective covenants as set forth in Article VI;
- (j) Alter the number or selection of Directors as established in the Bylaws;
- (k) Alter the Declarant's rights as they appear under this Article.

Section 5. Management Contracts. Until such time as the Class B membership expires, the Declarant shall have the right to enter into professional management contracts for the management of the Development; provided, however, that such contracts shall not be for more than three (3) years, and the Association shall have the right to terminate such contracts, with or without cause, upon ninety (90) days written notice given to the other party, or upon the expiration of the rights of the Declarant as set forth in Article I, Section 8.

Section 6. Limitations. As long as the Declarant has an interest in developing the Development as defined in Article I hereof, the Association may not use its financial resources to defray any costs of opposing the development activities of the Declarant. Nothing in this Section shall be construed to limit the rights of Members to act as individuals or in affiliation with other Members or groups.

Section 7. Severability. Invalidation of any one of the covenants or restrictions included in this Declaration by judgment or court order shall in no way affect any other provisions of this Declaration, which shall remain in full force and effect.

Section 8. 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, then the Book of Resolution; except that in all cases where the

Governing Documents are found to be in conflict with a statute, the applicable statute shall control.

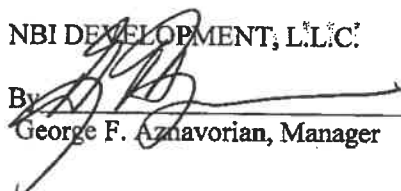
Section 9. Interpretation. Unless the context otherwise requires, the use of the singular shall include the plural and vice versa; the use of one gender shall include all genders; and the use of the term "including" shall mean "including, without limitation." This Declaration shall be liberally construed in favor of the party seeking to enforce the provisions hereof to effectuate the purpose of protecting and enhancing the value, marketability and desirability of the Development by providing a common plan for the development thereof. 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.

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, if Class B membership has not ceased. . Prior to the dissolution of the Association, other than incident to a merger or consolidation, the assets of the Association shall be offered for dedication to the County of Bedford, Virginia. In the event that such dedication is refused acceptance, upon dissolution such assets shall be granted, conveyed and assigned to any non-profit corporation, association, trust or other organization to be devoted to similar purposes.

IN WITNESS WHEREOF, the Declarant, and the Association, have caused this Declaration to be duly executed this \_\_\_ day of \_\_\_ 2007.

NBI DEVELOPMENT, L.L.C.

By  (SEAL)  
George F. Aznavorian, Manager

DOWNTOWN MONETA ASSOCIATION

By  (SEAL)  
George F. Aznavorian, Its President

STATE OF VIRGINIA  
CITY/COUNTY OF Virginia, to-wit:

The foregoing instrument as acknowledged before me this 26<sup>th</sup> day of  
February, 2007, by George F. Aznavorian, as manager of  
NBI Development, L.L.C., on behalf of the company.

Mary Jo Boone  
Notary Public

My commission expires: 12/31/08

STATE OF VIRGINIA  
CITY/COUNTY OF Virginia, to-wit:

The foregoing instrument as acknowledged before me this 26<sup>th</sup> day of  
February, 2007, by George F. Aznavorian, as President of  
Downtown Moneta Association, on behalf of the corporation.

Mary Jo Boone  
Notary Public

My Commission expires: 12/31/08

"EXHIBIT A"

MAINTENANCE AGREEMENT

THIS MAINTENANCE AGREEMENT, made this 14th day of SEPTEMBER, 2006, by and between NBI DEVELOPMENT, LLC, a Virginia limited liability company ("Grantor") and SMITH, HUISKING HOLDINGS, LLC, a Virginia limited liability company ("Grantee").

WITNESSETH:

WHEREAS, Grantor is the owner of certain real property in Bedford County, Virginia and the developer of a Planned Development District on said real property to be known as "Downtown Moneta East" (the "Development").

WHEREAS, Grantor will incorporate a community association, as defined by § 13.1-814.1, Code of Virginia (1950), as amended (the "Association"), and the Association will have various purposes with respect to the Development, including ownership, control and maintenance of portions of the development designated as Common Area.

WHEREAS, Grantor and the Association shall enter into one or more declarations of covenants and restrictions with respect to the Development.

WHEREAS, Grantee has purchased from Grantor certain real property in Bedford County, Virginia, shown and described as Outparcel 3 on the attached exhibit marked "PLAT EXHIBIT," (hereinafter referred to as "Grantee Parcel"), which is a part of the Development.

WHEREAS, Grantee intends to construct on his real property mixed-use buildings, sidewalks and appurtenant paved driveways, and parking areas, and to provide certain open space, all in compliance with the plans, rules and regulations of Grantor.

WHEREAS, Grantor and Grantee desire to establish certain terms for the care and maintenance of certain portions of the Grantee Parcel by Grantor.

NOW, THEREFORE, in consideration of the sum of One Dollar (\$1.00) cash in hand paid to each other, the promises and covenants contained herein, and for other valuable considerations, the receipt and sufficiency of which is hereby acknowledged by both Grantor and Grantee, each of them do hereby promise, covenant and agree as follows:

1. Grantor agrees, with respect to those certain portions of the Grantee Parcel, as indicated on Exhibit A hereunto attached, and to the standards established by the Association, to: (a) cut grass, maintain landscaping, and landscape features, and (b) maintain all stormwater drainage structures. If Grantor fails or refuses to perform these tasks for a period of thirty (30) days after receipt of written notice thereof, Grantee shall be entitled, upon prior written notice, to cure such breach in addition to all remedies at law or equity, provided that no notice is required should the breach create an emergency or interfere with use of Grantee Parcel. All expenses required to cure the breach shall be paid by the Grantor within thirty (30) days after receipt of written evidence confirming the payment of such expenses, together with interest thereon at the legal rate.

2. Grantor shall create the Association and cause a declaration to be drafted describing the maintenance responsibilities of the Association with respect to Common Area (the "Declaration"). The Declaration shall cause the Association to undertake, with respect to those certain portions of the Grantee Parcel, as indicated on Exhibit A hereunto attached, the Common Area maintenance obligations described in the Declaration.

3. Grantor shall cause creation of the Association and recordation of the Declaration within thirty (30) days of approval by the County of Bedford of the plat(s) to be recorded with said Declaration.

4. In the event Grantee must undertake any of the obligations described in Paragraph




1, above, Grantee may deduct all expenses required to cure the breach, together with interest, from the Assessment as an offset to any failure of Grantor to reimburse Grantee for the expenses and interest within thirty (30) days after receipt of written evidence confirming the payment of such expenses.

5. This Agreement shall be binding upon the parties hereto, their survivors and assigns, and shall be construed according to the laws of the Commonwealth of Virginia.

WITNESS the following signatures and seals.

SMITH, HUISKING HOLDINGS, LLC, a Virginia limited liability company

By:  (SEAL)  
Morris Gilbert Smith

NBI DEVELOPMENT, LLC, a Virginia limited liability company

By:  (SEAL)  
9/14/06

COMMONWEALTH OF VIRGINIA )  
 ) To-wit:  
\_\_\_\_ OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me on this 14<sup>th</sup> day of September 2006, by Morris Gilbert Smith the duly authorized Manager of SMITH, HUISKING HOLDINGS, LLC.

My commission expires: 30 April 2010.

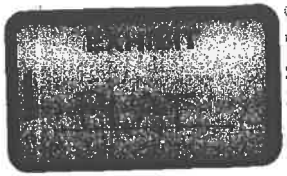
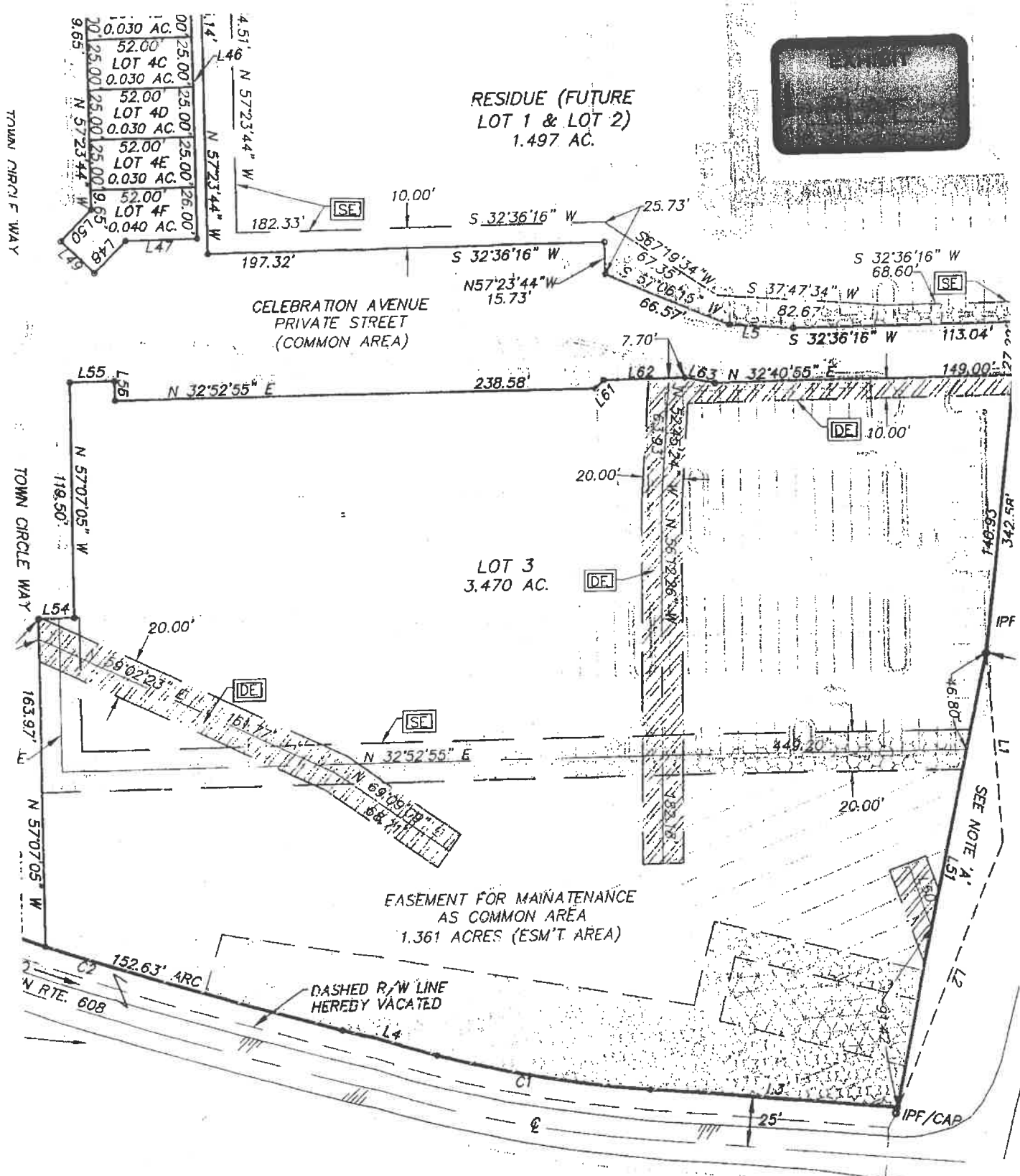
[Signature]  
Notary Public

COMMONWEALTH OF VIRGINIA )  
 )To-wit:  
 )  
\_\_\_\_\_ OF \_\_\_\_\_

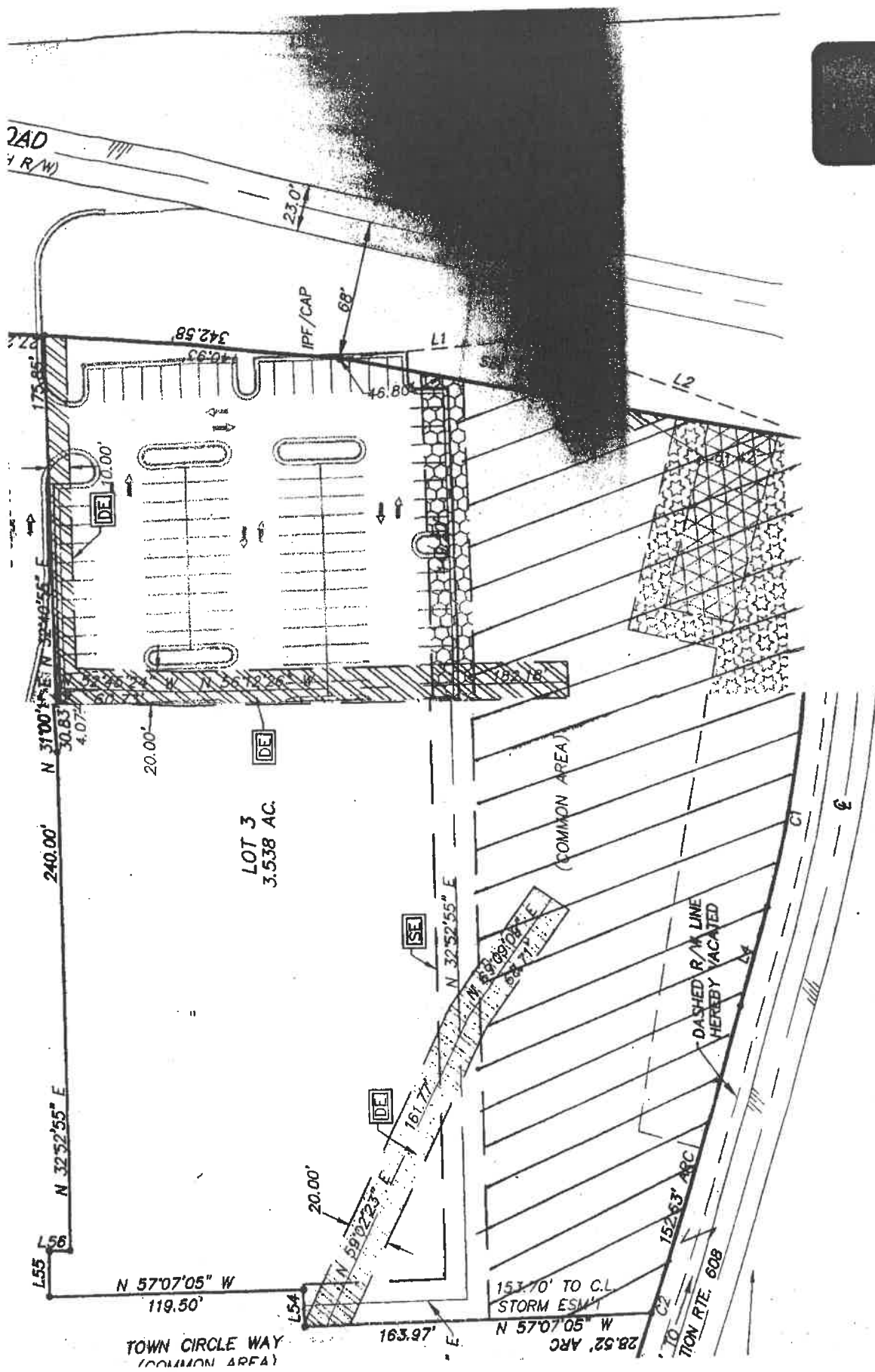
The foregoing instrument was acknowledged before me on this 14<sup>th</sup> day of September 2006, by George F. Armanorian the duly authorized President of NBI DEVELOPMENT, LLC.

My commission expires: July 31, 2007

[Signature]  
Notary Public



# 210-A-11B)  
 14A-14D)  
 DRIVE AND ADDITIONAL R/W AREA FOR  
 TO BEDFORD COUNTY FOR ROADWAY PURPOSES)



TM# 210-A-11B  
 2D, 14A-14D  
 VETA DRIVE AND ADDITIONAL R/W AREA FOR  
 VATED TO BEDFORD COUNTY FOR ROADWAY PURPOSES)

EXHIBIT "B"

POA BUDGET  
DTM East & Outparcels

<u>LOT</u>	<u>DESCRIPTION</u>	<u>PARKING SPACES</u>
1	Outparcel	
2	Outparcel	
3.	Outparcel	
4	6 Unit, 1 story	42
5	6 Unit, 2 story	72
6	7 Unit (5 large, 2 small) 1 story	46
7	2 unit Commercial/residential (12ea)	24
8	2 unit Commercial/residential (12ea)	24
9	2 unit Commercial/Residential (12 ea)	24
10	6 unit (2 large, 4 small) 2 sotry	72
11	4 unit (12 ea)	48
12	4 unit (12 ea)	48
*13	4 unit (12 ea)	48
*14	4 unit (12 ea)	48
*15	Outparcel	
*19	Outparcel	
*20	Outparcel	
*25	Outparcel	
	<b>Total Spaces</b>	<b>496</b>
	496 Total spaces at \$125.00=	\$62,000.00
	Outparcel Contribution=	\$9,000.00
	Total =	\$71,000.00

**7 Outparcels**

#	Month	Year
1	\$125.00	\$1,500.00
2	\$100.00	\$1,200.00
3	\$175.00	\$2,100.00
15	\$125.00	\$1,500.00
19	\$ 75.00	\$ 900.00
20	\$ 75.00	\$ 900.00
25	<u>\$ 75.00</u>	<u>\$ 900.00</u>
	<b>\$750.00</b>	<b>\$9,000.00</b>

\*Lots not yet surveyed

POA Budget  
DTM - Town Center

	<u>Per Unit/Month</u>	<u>Total Units/Month</u>	<u>Total Units/Year</u>
AEP		\$ 300.00	\$ 3,600.00
Water		\$ 100.00	\$ 1,200.00
Landscaping		\$2,200.00	\$26,400.00
Snow Removal		\$ 400.00	\$ 4,800.00
Insurance		\$ 250.00	\$ 3,000.00
Legal/Accountant		\$ 200.00	\$ 2,400.00
Repairs/Maintenance		\$ 400.00	\$ 4,800.00
Miscellaneous		\$ 466.67	\$5,600.04
Management		\$ 750.00	\$ 9,000.00
RE Tax		\$100.00	\$ 1,200.00
Long Term Reserve		\$ 500.00	\$ 6,000.00
Master POA		<u>\$ 250.00</u>	<u>\$ 3,000.00</u>
Total	\$0.00	\$5916.67	\$71,000.04

RETURNED  
 MAILED

*Wanda*  
\$ 35.<sup>00</sup>

INSTRUMENT #070002930  
RECORDED IN THE CLERK'S OFFICE OF  
BEDFORD COUNTY ON  
FEBRUARY 27, 2007 AT 08:39AM  
CATHY C. HOGAN, CLERK

RECORDED BY: CMM