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LEGAL MEMORANDUM

TO: Oak Hills Home Owners Association Board of Directors

FROM: Tim Ramis

DATE: April 9, 2013

RE: National Historic Register
File No. 51815-71476

**PRIVILEGED AND CONFIDENTIAL
ATTORNEY-CLIENT COMMUNICATION**

Background:

The Oak Hills Home Owners Association has requested an analysis of the potential impacts of the Oak Hills neighborhood associated with being designated as historic district on the National Register of Historic Places (“NRHP”).

The Oak Hills neighborhood has been nominated for inclusion on the NRHP as a historic district. In February, the State Advisory Committee on Historic Preservation recommended inclusion on the NRHP. Currently, the State Historic Preservation Office is holding a comment period until May 15, 2013, during which interested parties can submit writings in support or opposition. At the end of the comment period, the State Historic Preservation Office will submit a recommendation to the Keeper of the National Historic Register, who then has forty-five (45) days to make a final decision on whether to include Oak Hills on the NRHP.

This memorandum reviews whether or not becoming a historic district listed on the NRHP limits the uses that property owners in the Oak Hills neighborhood can make of their property, such as remodeling, or new construction. The memorandum also reviews whether Washington County can impose limitations on such uses based on the designation as a NRHP historic district.

Question 1:

Does inclusion on the NRHP impose any restrictions on the use of property within the Oak Hills neighborhood?

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Short Answer 1:

No, the allowed uses of property will not be changed by inclusion on the NRHP, but property owners will have access to tax and grant opportunities associated with the NRHP.

Discussion 1:

Listing on the NRHP enables a property owner to take advantage of programs that provide certain tax benefits and grants that are only available to listed historic properties. There are multiple programs that are available to owners of listed properties, and each has its own set of regulations which must be observed. This firm can assist the Oak Hills HOA and property owners in assessing whether these programs are beneficial to meet your objectives.

If a property owner does take advantages of the tax benefits and grants available through these programs, the trade off is typically that the NRHP imposes limitations to any construction or use of the property that impacts the historic character of the listed structure or property. However, if a property owner does not voluntarily take advantage of such programs, inclusion on the NRHP does require the preservation of the historic nature of a property, or otherwise impact the owner's use of a property.

Question 2:

Will Washington County impose any restrictions on the use of property within the Oak Hills neighborhood, if it is included in the NRHP?

Short Answer 2:

Not automatically, but the County does have a Historic Preservation Overlay District that it could impose, based on inclusion in the NRHP.

Discussion 2:

The County Community Development Code ("CDC") allows the County to apply a Historic and Cultural Resource Overlay District on property that has been included on the County's Cultural Resources Inventory. *See* CDC 373. Application of the Overlay District limits construction and use of property to those that "will not impair or change the essential historic form and integrity of the historic property." CDC 373-6.3.A.

However, inclusion of the Oak Hills neighborhood on the NRHP does not impose any requirement on the County to apply the Overlay District to Oak Hills. It would take a discretionary decision of the County Board of Commissioners in order to apply the Overlay District. And even in the event that the Board of Commissioners made such a decision, the Oak Hills property owners would be able to apply to the County to be exempt from the Overlay District, on a property by property basis. *See* CDC 373-7. The County reports that its practice is to approve all exemption applications. Should they so chose, individual property owners may request inclusion of property within the Overlay District as well. CDC 373-4.1.

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Conclusion:

Inclusion of the Oak Hills neighborhood on the NRHP does not directly result in any limitation on the use or development of property within the neighborhood, unless a property owner voluntarily takes advantage of the programs associated with the NRHP designation. There is also a chance that some time in the future, the County could, based on the NRHP historic district designation, make an effort to include Oak Hills on the County Cultural Resources Inventory and apply the Historic and Cultural Resource Overlay District to the neighborhood. If this came to pass, it would limit uses and development of property, and require a County approval (albeit purportedly easy to obtain) in order to remove those limitations.

Therefore, should the Oak Hills Homeowner Association desire to avoid future application of the County Overlay District, I advise that the HOA inform the County Board of Commissioners of its positions. To this end I have prepared the attached draft letter to the Board of Commissioners, which can be transmitted on the HOA letterhead.

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