

LANDFALL

at Jamestown

Declaration of Covenants

TABLE OF CONTENTS

<u>CONTENTS</u>		<u>PAGE</u>
RECITALS		3
DECLARATION		3
ARTICLE I	DEFINITIONS	3
ARTICLE II	ADDITIONS TO THE SUBMITTED LAND	6
ARTICLE III	LANDFALL at Jamestown COMMUNITY ASSOCIATION	8
ARTICLE IV	COMMON AREA AND EASEMENT AREAS	10
ARTICLE V	ASSESSMENTS	12
ARTICLE VI	DESIGN REVIEW	15
ARTICLE VII	USE OF PROPERTY	18
ARTICLE VIII	EASEMENTS	21
ARTICLE IX	INSURANCE	24
ARTICLE X	MORTGAGEES	24
ARTICLE XI	COMPLIANCE AND REMEDIES	25
ARTICLE XII	GENERAL PROVISIONS	28

THIS DECLARATION OF COVENANTS, EASEMENTS AND AND RESTRICTIONS, is made this 29th day of January, 1998 by MCCAILE DEVELOPMENT – LANDFALL, L.L.C., a Virginia Limited Liability Company, (the “Declarant”).

RECITALS

- A. The Declarant is the owner of certain real estate located in the County of James City, Virginia, on which it intends to create a single family residential community to be generally known as “LANDFALL AT JAMESTOWN”. The initial phase of Landfall at Jamestown is described on Exhibit A attached hereto, and constitutes the initial undertaking of the Declarant to establish a general plan and uniform scheme of development and improvement of the Submitted Land.
- B. To provide for the preservation and enhancement of property values, for the maintenance and care of certain Common Areas and Easement Areas within the community, and to enhance the general health, safety and welfare of the property owners and the residents therein, the Declarant desire to subject the Submitted Land to the covenants, restrictions, easements, charges and liens hereinafter set forth, all of which are for the benefit of the community and the owners of the lots therein.

DECLARATION

NOW, THEREFORE, Declarant hereby declares that the Submitted Land described in Exhibit A hereto, and such additions thereto as may be made pursuant to Article II hereof, is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges, liens and other provisions set forth herein, as the same may be amended or supplemented from time to time.

ARTICLE I: DEFINITIONS

As used in this Declaration, the terms listed below shall have the indicated meanings:

- a. **Additional Land** shall have the meaning set forth in Section 2.1

- b. **Applicable Zoning** means all zoning ordinances, subdivision ordinances and rules and regulations as may be applicable to the Submitted Land from time to time, as the same may be amended from time to time.
- c. **Articles** means the Articles of Incorporation of Landfall at Jamestown Community Association, as the same may be amended from time to time.
- d. **Association** means the Landfall at Jamestown Community Association, a Virginia nonstock corporation, its successors and assigns.
- e. **Association Documents** means this Declaration and all Supplemental Declarations together with all supplements or amendments thereto, the Design and Environmental Standards, the rules and all other rules, regulations and guidelines adopted hereunder, the Articles and the Bylaws, as well as all additions, amendments and revisions to the aforesaid documents.
- f. **Board of Directors** means the Board of Directors of the Association.
- g. **Builder** means a person or entity who in the regular course of business purchases a Lot or Lots for the purpose of constructing improvements thereon for resale or rental.
- h. **Bylaws** means the Bylaws of the Association, as the same may be amended from time to time.
- i. **County** means the County of James City, Virginia.
- j. **Clerk's Office** means the Clerk's Office for the Circuit Court for the County of James City.
- k. **Common Area** means
 - i. All of the real estate specifically designated as "Common Area" on recorded plats of the Submitted Land, in any Supplemental Declaration or in any other instrument executed by declarant and recorded in the Clerk's Office; and
 - ii. All other real property and improvements or facilities now or hereafter owned by the Association which are intended for common benefit of the Owners. The Common Area includes or may in the future include, without limitation, areas set aside for stormwater management facilities or natural greenspace.
- l. **Common Expenses** means all expenditures lawfully made and incurred on behalf of the Association, together with all funds determined by the Board of Directors of the

Association to be necessary for the creation and maintenance of preserves pursuant to the Association Documents.

- m. **Declarant** means McCale Development – Landfall, L.L.C., a Virginia Limited Liability Company, and in addition to or instead of McCale Development Corporation as the case may be, any person or entity to whom McCale Development – Landfall, L.L.C., has assigned its rights as “Declarant” hereunder by instrument recorded in the Clerk’s Office as provided in Section 12.10 hereof.
- n. **Declarant Control Period** means the period ending on the earlier of :
 - 1. The later of
 - i. the tenth anniversary of the date of recordation of this declaration or
 - ii. the fifth anniversary of the date of recordation of the most recent Supplemental Declaration adding Additional Land;
 - 2. The date the number of votes of Class A Members equals the number of votes of the Class B Members; or
 - 3. The date specified by the Declarant in a written notice to the Association that the Declarant Control period is to terminate on that date.
- o. **Declaration** means this declaration of Covenants, Easements and Restrictions, as the same from time to time may be supplemented or amended.
- p. **Design and Environmental Standards** shall have the meaning set forth in Section 6.6
- q. **Design Review Board** shall have the meaning set forth in Section 6.1
- r. **Federal Mortgage Agencies** means those federal agencies, if any, which have an interest in the Submitted Land and which have notified the Board of Directors of such interest, such as the Federal Housing Administration, the veterans Administration, the Federal National Mortgage Association and the federal home Loan Mortgage Corporations, or their successors.
- s. **General Assessments** shall have the meaning set forth in Section 5.4
- t. **Improvement** shall have the meaning set forth in Section 6.3 of this Declaration.
- u. **Lot** means any portion of the Submitted Land which is designated as a separate lot on a plat of subdivisions, resubdivision or boundary line adjustment and on which is constructed or is to be constructed a single family, detached residence. The term “Lot” shall not include any portion of the Submitted Land which at the time in question is not included in a recorded plat of subdivision, resubdivision, reboundary line adjustment, nor

shall "Lot" include Common Areas, public streets or property dedicated to and accepted by a public authority.

- v. **Member** means every person or entity who holds membership in the Association.
- w. **Mortgagee** means an institutional lender holding a first deed of trust on a Lot which has notified the Association of its status and requested all rights under the Association Documents.
- x. **Neighborhood** means one or more Lots which are part of the same Subdivision and are subject to the same Supplemental Declaration.
- y. **Owner** means the record holder, whether one or more persons or entities, of fee simple title to any Lot of Parcel, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.
- z. **Rules and Regulations** means the rules and regulations adopted pursuant to Section 7.12 as well as all additions, amendments and revisions thereto.
- aa. **Special Assessment** shall have the meaning set forth in Section 5.5.
- bb. **Submitted Land** means all property currently subjected to this Declaration, together with such other real property as may from time to time be subjected in whole or in part to this Declaration by Declarant pursuant to Article II hereof.
- cc. **Supplemental Declaration** shall have the meaning set forth in Section 2.3 hereof.
- dd. **Virginia Code** shall mean the Code of Virginia (1950), as in effect on the first date of recordation of this Declaration and as amended from time to time thereafter. Except as otherwise expressly permitted herein, if any sections of the Virginia Code referred to in this Declaration are hereafter repealed or recodified, each such reference shall be deemed to apply to the section of the Virginia Code that is the successor to the previous section referred to herein, or, if there is no successor section, such reference shall be interpreted as if the section had not been repealed.

ARTICLE II: ADDITIONS TO THE SUBMITTED LAND

Section 2.1 Additional Land:

The real estate which is subject to this declaration as of the date of its recordation in the Clerk's Office is described in **Exhibit A** hereto and constitutes the first phase of the development known as LANDFALL at Jamestown. In addition to the lands described in **Exhibit A** hereto, Declarant reserves the right to extend this Declaration to such additional lands (hereinafter referred to as the "Additional Land") as may be adjacent and contiguous to the aforesaid lands described in

Exhibit A hereto. However, Declarant shall not be obligated to bring all or any part of the Additional Land within the scheme of development established by this Declaration, and no negative reciprocal easement shall arise out of this Declaration so as to benefit or bind any portion of the Submitted Land or the Additional Land until such portion of the Additional land is expressly subjected to the provisions of this Declaration in accordance with Section 2.2 below any then such portion of the Additional land shall be subject to any additions, deletions and modifications to the provisions of this Declaration as are made pursuant to Section 2.2.

Section 2.2 Right to Subject Additional Land to Declaration:

Declarant reserves the right, at its sole discretion and without the consent of any owner, Mortgagee or the Association, at such time or times as it shall determine on or before the fifteenth anniversary of the recordation of this Declaration, to subject the Additional land, or such portions thereof as Declarant shall determine, together with improvements thereon and easements, right and appurtenances thereunto belonging or appertaining, to the provisions of this Declaration in whole or in part. Any portions of the Additional Land which is not, on or before the fifteenth anniversary of the recordation of this declaration, subjected to the provisions of this Declaration in whole or in part pursuant to this Section 2.2 and thereby constituted a part of the "Submitted Land", shall cease to be Additional land. Each of the additions authorized pursuant to this Section 2.2 shall be made by Declarant's recordation in the Clerk's Office of an appropriate instrument describing the portion(s) of the Additional Land subjected to this Declaration and containing such additional, amended or different covenants, easements and restrictions as declarant determines may be necessary to reflect the different characteristics of such portion of the Additional Land. However, no negative reciprocal easement shall arise out of any additions, deletions or modifications to this Declaration made in the instruments which subject the Additional land to this Declaration except as to the real estate expressly subject to such additions, deletions or modifications.

Section 2.3 Supplemental Declarations:

In addition to subjecting the Additional Land to this Declaration as provided in section 2.2, Declarant may, in its discretion, execute and record one (1) or more supplemental declarations (each a "Supplemental Declaration") for the purpose of establishing certain additional, amended or different covenants, easements and restrictions (including without limitation a different level of assessments) applicable to different portions of the Submitted Land as Declarant determines may be necessary to reflect the different characteristics of any portion of the Submitted Land covered thereby; provided, however, no such Supplemental Declaration shall apply to any real estate previously submitted to this Declaration after conveyance of a Lot to an Owner other than Declarant without the consent of the Owner of the Lot subjected to the additional Supplement Declaration. However, no negative reciprocal easement shall arise out of any Supplemental Declaration so as to bind any real property not expressly subjected thereto.

Section 2.4 Power Not Exhausted by One Exercise, Etc.:

No exercise of the power granted Declarant hereunder as to any portion of the Additional land shall be deemed to be an exhaustion of such power as to other portion(s) of the Additional Land not so subjected to the provisions hereof or to the provisions of a Supplemental Declaration.

The discretionary right of Declarant to subject the Additional land to the provisions of this Declaration or a Supplemental Declaration is not conditioned upon or subject to the approval of other owners or Mortgagees and therefore the requirements set forth in Section 12.2 for amendments to this Declaration shall not apply to this Article II. The failure of Declarant to extend the provisions of this Declaration to the Additional Land or any portion(s) thereof shall not be deemed to prohibit the establishment of a separate scheme of development (including provisions substantially similar or identical to those contained herein) for such portion(s) of the Additional land to which this Declaration is not extended.

Section 2.5 Development of Additional Land:

The portion(s) of the Additional Land subjected to the provisions of this Declaration may contain additional Common Areas, and Easement Areas or facilities to be owned and/or maintained by the Association.

Section 2.6 Withdrawal:

Provided no Lot in the subject Neighborhood has been conveyed to an Owner, Declarant shall have the right, in its sole discretion, to remove from the Submitted Land all or any portion of the real estate constituting the Neighborhood by recording the applicable Clerk's Office an appropriate instrument describing the Neighborhood or portions thereof to be removed from the Submitted Land and stating that such portion(s) of the Neighborhood are thereby removed from the Submitted Land. Any real estate so removed from the Submitted Land shall thereupon revert to being Additional Land.

Section 2.7 Master Plan:

The existence of a master plan for the Submitted Land and Additional Land as part of the Applicable Zoning or as used by Declarant in developing and/or selling the Submitted Land and Lots therein shall not be deemed to constitute a representation by Declarant that the real estate shown whereon shall be developed as depicted on the master plan, and the master plan may be amended from time to time in the sole discretion of Declarant with the consent to the extent required) of any governmental agency whose approval is required.

ARTICLE III: LANDFALL at Jamestown COMMUNITY ASSOCIATION

Section 3.1 Membership:

Every Owner of a Lot shall be a member of the Association. Membership shall be appurtenant to and shall not be separated from ownership of any Lot. Upon the recordation of a deed to a Lot, the membership of the selling Owner shall become a member of the Association.

Section 3.2 Classes of Members:

The Association shall have two classes of voting membership:

Class A: All Owners of Lots other than the Declaration during the Declarant Control Period shall be Class A Member.

Class B: Declarant shall be the Class B Member. The Class B membership shall terminate upon the termination of the Declaration Control Period and Declarant shall thereupon be treated as a Class A Member as to each Lot then owned by Declarant.

Section 3.3 Voting Rights:

- a. Each Class A Member shall be entitled to cast one vote for each Lot owned.
- b. Declarant as the Class B Member shall have 158 votes (being equal to one and one-half times the number of votes of the Class A Members projected when the Submitted Land and Additional land are fully developed under the Applicable Zoning); less the number of votes held by the Class A Members when a vote is taken. The intent of this voting scheme is to give the Declarant a majority of votes until the Declarant Control Period is ended.

Section 3.4 Suspension of Voting Rights:

The Board of Directors of the Association may suspend the voting rights of any Member subject to assessment under this Declaration during the period when any such assessment shall be delinquent, or if the Member is in violation of any Rule or Regulation of the Association. The voting rights of such Member shall automatically be restored upon the Member's compliance with the subject Rule or Regulation and/or upon the payment of the delinquent assessment, together with all costs of enforcement or collection, including court costs and reasonable attorneys fees, related thereto. The Board of Directors shall be the sole judge of the qualifications of its membership and of the right to participate and vote at the Association's meetings.

Section 3.5 Articles and Bylaws to Govern; Property Owners' Association Act:

Except to the extent expressly provided in this Declaration, all rights, powers and duties of the Association and the Members, shall be governed by the Articles and the Bylaws. The Articles provide, among other things, that the Class B Member shall appoint the members of the Board of Directors until the Declarant Control Period terminates. However, in the event of any conflict of inconsistency between the provisions of this Declaration or any Supplemental Declaration and the provisions of the Articles or Bylaws, this declaration and all Supplemental Declarations (to the extent applicable) shall control. In addition to all of the rights, powers and duties of the Association provided in this Declaration, the Association shall have such rights, powers and duties provided in the property Owners' Association Act, Section 55-508 et seq of the Virginia Code (the Act), as the same may be amended from time to time, as are specifically incorporated by reference herein. The Association and the submitted Land shall not otherwise be subject to the Act.

ARTICLE IV: COMMON AREA AND EASEMENT AREAS

Section 4.1 Obligations of the Association:

The Association, subject to the rights of the Members set forth in this Declaration, shall be responsible for the maintenance, management, operation and control, for the benefit of the members, of the Common Area, if any, conveyed to the Association and all improvements thereon (including fixtures, personal property and equipment related thereto) and shall keep the Common Area and the improvements thereon in accordance with the requirements of the Applicable Zoning, this Declaration and any applicable Supplemental Declaration, and the Association shall keep the same in good, clean, and attractive condition, order and repair. It is contemplated that the Association (alone or together with Declarant) will be the holder of easements over portions of Lots for landscaping, conservation and other purposes for the mutual benefit of owners. Such easement areas shall not be common Areas and no Owner (other than the Owner of the Lot in question) shall have any rights to use or occupy any such easement area by virtue of ownership of a Lot. The Association shall be responsible for the management, control and maintenance of all street intersection signs, directional signs, temporary promotional signs, landscaping, plantings, street lights, entrance features and/or "theme areas," lighting, stone, wood or masonry wall features and/or related landscaping and bicycle/pedestrian paths erected, installed or planted in the Common Areas by the Declarant or the Association or located within:

- i. Easement areas reserved for the benefit of the Association by virtue of this Declaration, any Supplemental declaration, any recorded subdivision map of the Submitted Land, or otherwise; or
- ii. Street right-of-ways, whether public or private, immediately adjacent to the Submitted Lands for the benefit of the Members or the Association; so long as such items are not maintained by James City County at its expense.

Section 4.2 Owners' Rights of Enjoyment and Use of Common Areas:

Subject to the provisions of this Declaration and any applicable Supplemental Declaration and the Articles and Bylaws, every owner shall have a right of enjoyment in and to the Common Areas which right of enjoyment shall be appurtenant to and shall pass with the title to every Lot. The Common Areas shall be used by Owners only for the purpose or purposes for which the Common Areas may have been improved by Declarant, or the Association and subject to any applicable restrictions in the Applicable Zoning. Any Common Area which has not been improved for a particular use is intended to remain in its natural condition until so improved, and any use thereof by an Owner shall not damage or disturb such natural condition or the enjoyment thereof by other Owners.

Section 4.3 General Limitations on Owners' Rights:

The Owners' rights of enjoyment in the Common Areas shall be subject to the following:

- a. The right of the Association to establish reasonable rules and regulations and to charge reasonable admission and other fees for the use of the Common Area;
- b. The limitation imposed by the last sentence of Section 55-514C of the Act as in effect on the date hereof, the right of the Association to suspend the right of an Owner to use or benefit from any of the Common areas for the period during which there remains a delinquency in the payment of any assessment and any costs of collection, including court costs and reasonable attorneys fees, related thereto;
- c. The right of the Association to suspend the right of an Owner to use or benefit from any of the Common Areas for the period during which any other violation by the Owner of this Declaration, a Supplemental Declaration or the rules and regulations, as well as all additions, amendments and revisions thereto promulgated by the Association pursuant to this Declaration, remains uncorrected after the last day of a period established for correction by the Association (such period to be stated in a notice to the Owner together with a statement of the violation complained of and the manner of its correction) and for not more than sixty (60) days after such correction;
- d. The Bylaws, the right of the Declarant or the Association to mortgage any or all of the Common Areas for the purpose of making improvements or repairs thereto;
- e. The Bylaws, the right of the Declarant or the Association to grant utility easements across the Common Areas as provided in Article VIII;
- f. The Bylaws, the right of the Declarant or the Association to dedicate or transfer all or any part of the Common Areas to any public agency, authority or utility for such purposes and subject to such conditions as may be desired by the Declarant or the Association; and
- g. All of the other easements, covenants and restrictions provided for in this Declaration and any Supplemental Declaration(s) applicable to the Common Areas.

Section 4.4 Delegation of Use:

Subject to the provisions of Section 4.3 above, any Owner may delegate his right of enjoyment to the Common Area to members of his family living on his Lot and to his guests, and he may transfer such right to his tenants, subject to such rules and regulations and fees as may established from time to time by the Association.

Section 4.5 Damage or Destruction of Common Area by Owner:

In the event any Common Area or improvement thereon is damaged or destroyed by an Owner, his tenants, guests, licensees, agents or members of his family, the Association may repair such damage at the Owner's expense. The Association shall repair such damage in a good and workmanlike manner in conformity with the original plans and specifications of the area or

improvement involved, or as the Common Area, or improvement may have been theretofore modified or altered by the Association, in the discretion of the Association. The cost of such repairs shall become an individual assessment on the Lot of such Owner and shall constitute a lien on such Owner's Lot and be collectible in the same manner as other assessments set forth herein.

Section 4.6 Rights in Common Areas Reserved by Declarant:

Until such time as Declarant conveys a parcel of real estate constituting Common Area to the Association, Declarant shall have the right as to the parcel, but not the obligation, subject to the provisions of Article VI hereof, to construct such improvements thereon as it deems appropriate and as permitted by the Applicable Zoning for the common use and enjoyment of Owner. Until such time as Declarant conveys a parcel of real estate constituting Common Area, to the Association, Declarant shall maintain such Common Area in good condition and repair in light of its use or intended use.

Section 4.7 Title to Common Area:

Declarant may retain legal title to the Common Area or portions thereof until it has completed improvements thereon, but notwithstanding any provision herein to the contrary, Declarant may, at its sole discretion, convey each Common Area to the Association free and clear of all liens but subject to this Declaration and all other easements, conditions and restrictions of record prior to the end of the Declarant Control Period.

ARTICLE V: ASSESSMENTS

Section 5.1 Establishment of Assessments:

There are hereby created assessments for expenses of the Association as set forth in the Association Documents and as may from time to time be specifically authorized by the Board of Directors of the Association to be commenced as to each Lot at the time set forth in Section 5.6. There shall be three types of assessments:

- a. General Assessments to fund Common Expenses for the benefit of all Owners as described in Section 5.4;
- b. Special Assessments as described in Section 5.5; and
- c. Individual Assessments as described in Section 5.6.

Section 5.2 Adoption of Annual Budget:

The Board of Directors of the Association shall adopt a budget containing an estimate of the total amount of Association expenses, including any proposed capital expenditures for each fiscal year of the Association and shall establish in such budget the level of General Assessments for every Lot subject thereto. With the exception of the initial annual budget, the Board of Directors shall send written notice of each annual budget and assessment level set forth therein to each Owner at least fifteen (15) days in advance of adopting the same. In adopting the budget, the Board of Directors shall provide for reasonable reserves. There shall be no tender of payment of assessments until the Board of Directors adopts the initial annual

budget. Once the initial annual budget is adopted, the Owner must then tender payment of all assessments as required by this Article. The failure or delay of the Board of Directors to prepare or adopt a budget for any fiscal year after the initial annual budget is adopted shall not constitute a waiver or release in any manner of an Owner's obligation to pay assessments as herein provided whenever the same shall be determined and, in the absence of any annual budget or adjusted budget, each Owner liable for assessments shall continue to pay each periodic installment at the rate established for the previous fiscal year until the new or adjusted annual budget is adopted and new level of assessment established. During the Declarant Control Period, Declarant shall fund any deficits in the Association's operating budget (excluding extraordinary expenditures), other than deficits resulting from the nonpayment of assessments by Owners other than Declarant.

Section 5.3 Creation of the Lien and Personal Obligation for Assessment:

Declarant, for each Lot owned within the Submitted Land, hereby covenants (subject to Sections 5.2, 5.7, and 5.10), and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant, to pay to the Association assessments as set forth in this Declaration, any Supplemental Declaration and in the Bylaws, the assessments, together with interest thereon, late charges and costs of collection including attorneys' fees, shall be a continuing lien upon the Lot against which each such assessment is made in order to secure payment thereof and shall also be the personal obligation of the party who was the Owner of the Lot at the time the assessment fell due. No Owner may waive or otherwise avoid liability for the assessments provided herein by nonuse of the Common Areas, or abandonment of his Lot. Each assessment that is not paid when due shall bear interest at the rate established by the Association, which rate shall not exceed the maximum rate permitted by applicable law. Each assessment that is not paid within fifteen (15) days of its due date shall, at the option of the Association, incur a late charge of \$15.00. No Owner shall be liable for any part of the assessment against his Lot and due subsequent to the date of recordation of a deed conveying in fee his Lot to a successor Owner.

Section 5.4 General Assessments:

The Board of Directors shall establish and levy General Assessments to pay Common Expenses. Common Expenses may include, but are not limited to, expenses for the management, maintenance, improvement, care, operation, renovation, repair and replacement of the Common Areas and improvements thereon, the area of any landscape or similar easements held by the Association and other property owned or acquired by the Association of whatever nature, all amounts payable, if any, by the Association pursuant to any covenant to share cost or cost-sharing agreement between the Association and any other property owners association or owner of adjacent property for the maintenance of property of mutual benefit to the Association and the other party to any such covenant or agreement, for the discharge of all taxes and levies or other assessments against the Common Areas and improvements thereon and any other property owner or hereafter acquired by the Association, for the establishment of reserves with respect to the Association's obligations, for the discharge of such other obligations as may be imposed upon or assumed by the Association pursuant to the Association Documents, and for such other purposes as may be authorized by the Association Documents.

The General Assessment levied against each Lot in a given year shall be less than \$150, unless otherwise determined by the Board of Directors pursuant to the provisions of the Bylaws and this Declaration.

Section 5.5 Special Assessments:

In addition to the General Assessments, the Board of Directors of the Association may levy a periodic special assessment if the purpose in doing so is found by the Board of Directors to be in the best interest of the Association and the proceeds of such assessment are used primarily for the maintenance and upkeep, including capital expenditures, of the Common Area or easement areas maintained by the Association. If any such special assessment is in an amount greater than the General Assessment for the same year, then no such special assessment shall be levied without the approval of a majority of the votes of the Class A Members who are voting in person or by proxy at a meeting duly called for this purpose and the approval of the Class B Member; otherwise, such special assessment may be established by the Board of Directors of the Association without a vote of the membership provided, however, that any such special assessment may be rescinded by a majority vote of the Members attending a meeting of the Association.

Section 5.6 Individual Assessments:

The Board of Directors may levy assessments against an Owner's Lot individually;

- a. for the costs of repairs pursuant to Section 4.5;
- b. for the amount of any costs incurred by the Association pursuant to Sections 5.11, 6.3, 7.14, 8.3 or 11.2.

Section 5.7 Date of Commencement of General Assessments:

Subject to Section 5.10, the General Assessments provided for herein shall commence as to each Lot on the first day of the month following the recordation of the deed to such Lot to an Owner who purchases the same. The first such assessment on a Lot shall be adjusted according to the number of months remaining in the calendar year. Unless the Board of Directors of the Association amends the Bylaws to provide otherwise, the General Assessments shall be provided in the Bylaws.

Section 5.8 Effect of Nonpayment of Assessments; Remedies of Association:

The lien of the assessments provided for in this Declaration may be perfected and enforced in the manner provided in Section 55-516 of the Act. A statement from the Association showing the balance due on any assessment shall be prima facie proof of the current assessment balance and the delinquency, if any, due on a particular Lot. The Association may also bring an action at law against any Owner personally obligated to pay the same, either in the first instance or for deficiency following foreclosure, and interest, late charges and costs of collection including attorney's fees shall be added to the amount of such assessment and secured by the assessment lien.

Section 5.9 Subordination of Lien to Mortgages:

The lien upon each of the Lots securing the payment of the assessments shall have the priority set forth in Section 55-516A of the Act. The sale or transfer of any Lot shall not affect the assessment lien. Each Mortgagee who comes into possession of a Lot through foreclosure or by deed in lieu of foreclosure, of any purchaser at a foreclosure sale, shall take the Lot free of any liens or claims for unpaid assessments against such Lot which accrue before such Mortgagee or person comes into possession of such Lot. Any such Mortgagee or person shall be liable for all assessments against such Lot accruing after such Mortgagee or person comes into possession of the Lot. All assessments which are extinguished by a foreclosure or deed in lieu of foreclosure pursuant to this Section shall become Common expenses and shall be assessed as such.

Section 5.10 Exempt Property:

The following property subject to this Declaration shall be exempt from the assessments and liens created herein:

- a. Any property used as a sales or leasing center, model, maintenance center, management facility or for similar purposes by declarant;
- b. All property owned by Declarant except for any Lots owned by Declarant upon which a building has been constructed and for which a certificate of occupancy has been issued by James City County;
- c. All properties dedicated and accepted by a public authority;
- d. All Common Areas; and
- e. All properties wholly exempt from real-estate taxation by state or local governments upon the terms and to the extent of such legal exemption.

Section 5.11 Capitalization of Association:

Upon the acquisition of recorded title to a Lot, the first purchaser (other than the Declarant or a Builder) shall make to the Association a contribution to the working capital of the Association in the amount equal to \$150.00. Such contribution shall be deposited by the first purchaser in the purchase and sales escrow at settlement, and shall be disbursed therefrom to the Association for its reserves. For purposes of this section, Owners who acquire a Lot directly from the Declarant and act as their own Builder shall be liable for such contribution to capital reserves.

ARTICLE VI: DESIGN REVIEW

Section 6.1 Design Review Board

There is hereby established a board (the "Design Review Board") for the purpose of reviewing and, as appropriate, approving or disapproving all Plans (hereinafter defined) submitted by Owners in accordance with this Article VI. The Design Review Board shall be composed of three persons, who need not be members of the Association, from time to time appointed by Declarant during the Declarant Control Period or by the Board of Directors of the Association from and after the termination of the Declarant Control Period or the date Declarant delegates in writing this responsibility to the Association. The Declarant or the Board of Directors, as the

case may be, may appoint one alternate member to the Design Review Board, which alternate member may vote only in the absence of a regular member. The members of the Design Review Board shall serve for such terms as may be determined by Declarant or the Board of Directors of the Association, as the case may be.

6.2 Plans to be Submitted:

Before commencing the construction, erection or installation of any building, fence, wall, animal pen or shelter, exterior lighting, sign, mailbox or mailbox support, improvement or other structure (each of the foregoing being hereinafter referred to as an "Improvement") on any Lot, including any site work in preparation therefor, and before commencing any alteration, enlargement, demolition or removal of an Improvement or any portion thereof in a manner that alters the exterior appearance (including paint color) of the Improvement or of the Lot on which it is situated, each Owner shall submit to the Design Review Board a completed application on the form provided by the Design Review Board (the "Application"), a proposed construction schedule and at least three sets of plans and specifications of the proposed construction, erection, installation, alteration, enlargement, demolition or removal, which plans and specifications shall include (unless waived by the Design Review Board) all the information required by Section 5.00 Submission Requirements of the Design and Environmental Standards, as amended from time to time (collectively, the "Plans"). The Design Review Board may, in its sole discretion, waive the requirement that any or all of the required Plans be submitted in a particular case where it determines such Plans are not necessary to properly evaluate the Application. The Design Review Board shall not be required to review any Plans unless and until the Application has been submitted in completed form and the Plans contain all of the required items. The Design Review Board shall notify each applicant when a submittal is deemed complete. The Application, Plans and the proposed construction schedule must be submitted to the Design Review Board at the address of declarant in the same manner as notices are to be sent to Declarant pursuant to Article XIII, for so long as all members of the Design Review Board are appointed by Declarant, and thereafter the Application, Plans and the proposed construction schedule may be submitted to the Design Review Board at the address of the Association in the same manner as notices are to be sent to the Association pursuant to Article XII. The Design Review Board shall act on all applications within fourteen (14) days of the date the application is deemed complete by the Design Review Board. The Design Review Board shall notify in writing each applicant of either the approval of the Application and Plans or the items in the Application and Plans deemed by the Board not to be in conformity with the Association Documents, and the reasons for such finding and suggestions for curing such objections. The Design Review Board shall have the authority to grant conditional approval of the Application and Plans, and shall notify in writing each applicant as to the specific conditions upon which approval is given. In the event the applicant fails to satisfy or abide by the conditions set forth therein, the conditional approval given to the Application and Plans shall be withdrawn and considered null and void as of the date first issued.

Section 6.3 Consultation With Architects, Etc.; Administrative Fee:

In connection with the discharge of its responsibilities, the Design Review Board may engage or consult with architects, engineers, planners, surveyors, attorneys and others. Any person

seeking the approval of the Design Review Board agrees to pay all fees thus incurred by the Design Review Board and further agrees to pay an administrative fee to the Design Review Board in such amount as the Design Review Board may from time to time reasonably establish to defray its expenses. The payment of all such fees is a condition to the approval or disapproval by the Design Review Board of any Plans, and the commencement of review of any Plans may be conditioned upon the payment of the Design Review Board's estimate of such fees.

Section 6.4 Approval of Plans:

The Design Review Board shall not approve the Plans for any Improvement that would violate any of the provisions of this Declaration or of any Supplement Declaration applicable thereto. In all other respects, the Design Review Board may exercise its sole discretion in determining whether to approve, disapprove or grant conditional approval to any Plans, including, without limitation, the location of any Improvements on a Lot.

Section 6.5 No Structures to be Constructed, etc. Without Approval:

No Improvement shall be constructed, erected, installed or maintained on any Lot, nor shall any Improvement be altered, enlarged, demolished or removed in a manner that alters the exterior appearance (including paint color) of the Improvement or of the Lot on which it is situated, unless the Application and Plans therefor have been approved by the Design Review Board. After the Application and Plans therefor have been approved, all Improvements shall be constructed, erected, installed, maintained, altered, enlarged, demolished or removed strictly in accordance with the approved Plans. Upon commencing the construction erection, installation, alteration, enlargement, demolition or removal of an Improvement, all of the work related thereto shall be carried on with reasonable diligence and dispatch and in accordance with the construction, erection, installation, alteration, enlargement, demolition or removal. If such work does not commence within 12 months of approval by the Design Review Board, such approval shall be deemed withdrawn and the Owner must reapply for a new approval.

Section 6.6 Guidelines May Be Established:

The Design Review Board may, in its sole discretion and without limitation, establish guidelines and standards (the "Design and Environmental Standards") to be used in considering whether to approve or disapprove builder, landscaper plans, materials, colors, home designs, Plans, etc., and approve the contractor proposed to construct the improvements contained therein. Such Design and Environmental Standards may include without limitation, requirements for minimum building sizes, building and roof materials, walls, fences, garages and other outbuildings and uniform standards for signage and mailboxes and mailbox supports and a requirement that each Owner or Builder post a bond or cash escrow with the Association to secure its obligation to comply with the Association Documents, any adopted Design Guidelines and the approved Plans. However, nothing contained in this Declaration shall require the Design Review Board to approve the Plans for Improvements on a Lot on the grounds that the layout, design and other aspects of such Improvements are the same or substantially the same as the layout, design and other aspects of Improvements approved by the Design Review Board for another Lot.

Section 6.7 Limitation of Liability:

The approval by the Design Review Board of any Plans, and any requirement by the Design Review Board that the Plans be modified, shall not constitute a warranty or representation by the Design Review Board or any agent or person consulted by the Design Review Board of the adequacy, technical sufficiency or safety of the Improvements described in such Plans, as the same may be modified, or contractor proposal to construct the proposed Improvements. The Design Review Board and any person consulted by the Design Review Board shall have no liability whatsoever for the failure of the Plans or the Improvement to comply with applicable building codes, laws and ordinances or to comply with sound engineering, architectural or construction practices. In addition, in no event shall the Design Review Board have any liability whatsoever to an Owner, a Builder, a Contractor or any other party for any costs or damages (consequential or otherwise) that may be incurred or suffered on account of the Design Review Board's approval, disapproval or conditional approval of any Plans.

Section 6.8 Other Responsibilities of Design Review Board:

In addition to the responsibilities and authority provided in this Article VI, the Design Review Board shall have such other rights, authority and responsibilities as may be provided elsewhere in this Declaration, in any Supplemental Declaration and in the Bylaws.

Section 6.9 Applicability to Declarant:

So long as Declarant has the right to annex Additional Land pursuant to Article II, the provisions of this Article VI shall not apply to Lots owned by Declarant.

ARTICLE VII: USE OF PROPERTY

Section 7.1 Use:

All Lots shall be used only for residential uses as permitted by the Applicable Zoning and the Association Documents, except as set forth below. Nothing in the Association Documents shall prohibit the Declarant or its assigns from using any Lot owned by Declarant or its assigns (or any other Lot with the permission of the Owner thereof) or any portion of the Common Area for promotional, marketing, construction, sales, display or customer services purposes (such as visitors or sales center or a construction, brokerage or management office). The declarant may assign its rights under this Section to, or share such rights with, one or more builders or other persons, exclusively, simultaneously or consecutively with respect to the Common Area or any Lot owned or leased by Declarant, such Builder or other person.

Section 7.2 Quiet Enjoyment; No Nuisance:

No obnoxious or offensive activity shall be carried on upon the Submitted Land, nor shall anything be kept or done upon any Lot that will emit foul or obnoxious odors, fumes or other emissions or that will cause any excessive noise or other condition that will or might disturb the peace, quiet enjoyment, safety or comfort of other Owners. No unlawful use shall be made of any part of the Submitted Land.

Section 7.3 Maintenance and Appearance of Lots:

All Lots and the Improvements thereon shall at all times be maintained by the Owner thereof in good order and repair and in a clean and attractive condition, free of all debris or other unclean and unsightly or unkempt materials or conditions and in accordance with the Design and environmental Standards and other Rules and Regulations adopted hereunder.

Section 7.4 Parking; Storage of Vehicles and Boats:

All owners shall provide adequate space for parking of automobiles on their Lot rather than on the street or road on which the Lot fronts. Owners shall park their vehicles only in driveways or garages on Lots or in other areas designated for parking by Declarant during the Declarant Control Period and thereafter the Board of Directors. Commercial vehicles, tractors, mobile homes, trailers, campers, camper trailers, boats and boat trailers and recreational vehicles shall be parked only in areas designated for such parking by the Declarant during the Declarant Control Period and thereafter by the Board of Directors for such purpose and if such areas have been so designated, parking or storage of any such vehicles on the Submitted Land is not permitted.

Section 7.5 Signs:

Except for signs erected by the Declarant or the Association, no signs of any kind shall be erected or displayed that are visible from the Common Area, any other Lot or from any public road within or adjacent to the Submitted Land, unless such sign is permitted by and in accordance with the Design and Environmental Standards or the Rules and Regulations or approved by the Design Review Board.

Section 7.6 Water and Sewer:

All residences built on a Lot shall connect to the public water and sewer systems.

Section 7.7 Obstruction of and Dumping on Common Areas:

No person shall obstruct any of the Common Area or otherwise impede the rightful access of any person on any portion of the Submitted Land upon which such person has the right to be. No person shall place or dump or cause to be placed or dumped any trash, debris or other material of any kind in any Common Area without the approval of the Board of Directors. No Owner other than the Declarant shall have any right to construct or alter improvements in the Common Area except with the prior approval of the Board of Directors.

Section 7.8 Underground Utilities:

All utility service lines and facilities to be located on any such Lot shall be installed underground by the Owners of such Lot. This restriction shall be enforceable by other Owners as set forth herein and by James City County.

Section 7.9 Animals:

The maintenance, keeping, boarding or raising of animals, livestock, poultry or reptiles of any kind, regardless of number, is prohibited on any Lot or upon the common Area, except that the keeping of guide animals and orderly domestic pets (e.g., dogs, cats or caged birds) without the

approval of the Board of Directors, is permitted, subject to the Rules and Regulations adopted by the Board of Directors; provided, however, that such pets are not kept or maintained for commercial purposes or for breeding . Any such pet causing or creating a nuisance or unreasonable disturbance or noise may be permanently removed from the Submitted Land upon ten (10) days written notice from the Board of Directors. Pets shall not be permitted upon the Common Area unless accompanied by someone who can control the pet and unless carried or leashed. Pet droppings shall be cleaned up by the Owner of the pet. Any Owner who keeps or maintains any pet upon any portion of the Submitted Land shall be deemed to have indemnified and agreed to hold the Association, each Owner and the declarant free and harmless from any loss, claim or liability of any kind or character whatever arising by reason of keeping or maintaining such pet within the Submitted Land. All pets shall be registered and inoculated as required by law.

Section 7.10 No Further Subdivision:

No Lot may be further subdivided or separated into smaller Lots by any owner and no portion less than all of such Lot shall be transferred or conveyed by such Owner; provided, however, this Section shall not prohibit deeds of correction, deeds or plats of resubdivision or boundary line adjustment and similar corrective instruments.

Section 7.11 Business Use:

No Lot containing a dwelling unit shall be used for any business, commercial, manufacturing, mercantile, storing, vending or other nonresidential purpose; provided, however, that an Owner may maintain an office in the dwelling constructed on such Owner's Lot if

- a. such office generates no significant number of visits (determined by the Board of Directors) by clients, customers or other persons related to the business,
- b. no equipment or other items related to the business are stored, parked, or otherwise kept on such Owner's Lot or the Submitted Land outside of an approved enclosure, and
- c. such Owner has obtained approvals for such use as may be required by James City County. As a condition to such use, the Board may require the Owner to pay any increase in the rate of insurance or other costs for the Association which may result from such use.

Section 7.12 Rules and Regulations:

The Board of Directors shall have the power to adopt, amend and repeal Rules and Regulations restricting and regulating the use and enjoyment of the Submitted Land or of any portion thereof, which may supplement, but may not be inconsistent with the provisions of the Association Documents, including, but not limited to, rules and regulations regarding use of machinery, outdoor drying lines, antennas, trash and trash containers, basketball equipment, discharge of firearms, swimming pools, tents, trailers and temporary structures, tree removal, outdoor lighting, fences, mailboxes, newspaper tubes, playground equipment, exterior sculpture and other similar matters. The submitted Land shall be occupied and used in compliance with the rules and Regulations. Copies of the Rules and Regulations shall be furnished by the Board

of Directors to each Owner. Changes to the rules and regulations shall be published prior to the time when the same shall become effective and copies thereof shall be provided to each Owner. The Rules and Regulations shall not unreasonably interfere with the use or enjoyment of the Lots or the Common Areas. Also, the Board of Directors may issue temporary or other appropriate exceptions to any prohibitions expressed or implied by this Article, for good cause shown.

Section 7.13 Exclusion for the Declarant and Designees of the Declarant:

Notwithstanding any other provision of the Association Documents, neither the restrictions in this Article, other than 7.9, nor the Rules and Regulations of the Association shall apply to any otherwise lawful acts or omissions of the Declarant.

Section 7.14 Resale of Lots by Owners Other Than Declarant:

Upon the acquisition of recorded title to a Lot, whether such be from the Declarant, designees of the Declarant or otherwise, a new Owner shall pay to the Association an administrative fee in the amount set from time to time by the Board of Directors, which amount shall initially be \$100.00. Such administrative fee shall be deposited by the new Owner in the purchase and sales escrow at settlement, and shall be disbursed therefrom to the Association. For purposes of this section, builders who acquire a Lot directly from the Declarant or designees of the Declarant shall not be liable for the payment of such administrative fee.

Section 7.15 Security:

NEITHER THE ASSOCIATION NOR DECLARANT SHALL BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. ALL OWNERS, TENANTS, GUESTS, AND INVITEES OF ANY OWNER, AS APPLICABLE, ACKNOWLEDGE THAT THE ASSOCIATION AND DECLARANT, AND COMMITTEES ESTABLISHED BY ANY OF THE FOREGOING ENTITIES, ARE NOT INSURERS AND THAT EACH OWNER, TENANT, GUEST, AND INVITEE ASSUMES ALL RISK OF LOSS OR DAMAGE TO PERSONS, TO STRUCTURES OR OTHER IMPROVEMENTS SITUATED ON LOTS AND PARCELS, AND TO THE CONTENTS OF ANY IMPROVEMENTS SITUATED ON LOTS AND PARCELS AND FURTHER ACKNOWLEDGE THAT DECLARANT HAS MADE NO REPRESENTATIONS OR WARRANTIES, NOR HAS ANY OWNER, TENANT, GUEST, OR INVITEE RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE RELATIVE TO ANY SECURITY MEASURES RECOMMENDED OR UNDERTAKEN.

ARTICLE VIII: EASEMENTS

Section 8.1 Development Easements:

The Declarant hereby reserves to itself and its successors and assigns a nonexclusive blanket easement over and through the Common Area and each Lot within ten (10) feet of any Lot boundary-line for all purposes reasonable related to the development and completion of

improvements on the Submitted Land (the "Development Easements"), including without limitation:

- a. temporary slope and construction easements;
- b. erosion control and storm drainage easements (including the right to cut or remove trees, bushes or shrubbery, to regrade the soil and to take any similar actions reasonably necessary; provided, however, that thereafter the Declarant shall restore the affected area as near as practicable to its original conditions);
- c. easements for the temporary storage (in a slightly manner) of reasonable supplies of building materials and equipment necessary to complete the improvements;
- d. easements for the construction, installation and maintenance of improvements, (e.g., buildings, landscaping, street lights, signage, etc.) on the Submitted Land or reasonable necessary to serve the Submitted Land;
- e. easements and the right to reserve easements for storm water management; and
- f. easements and the right to reserve or grant easements for ingress, egress, installation, operation and service of the equipment for providing to any portion of the Submitted Land or the adjacent real estate any utilities, including without limitation water, sewer, drainage, gas, electricity, telephone and television service, whether public or private. Declarant reserves the right to convey and dedicate easements reserved to it under this Section to other Owners, Builders, governmental entities, utility companies and others.

Section 8.2 Erosion Control:

Declarant reserves a perpetual easement, right and privilege to enter upon any Lot or Common Area, and the Association is granted a perpetual easement, right and privilege to enter upon any Lot, either before or after a building has been constructed thereon or during such construction, for the purpose of taking such erosion control measures as Declarant or the Association deems necessary to prevent or correct soil erosion or siltation thereon; provided, however, that Declarant or the Association shall not exercise such right unless it has given the Owner of the Lot or the Association (as to the Common Area) at least ten (10) days prior notice thereof and the Owner or the Association, as the case may be, has failed to take appropriate action to correct or prevent the erosion siltation problem. The cost incurred by the Association or by Declarant in undertaking such erosion control measures on any Lot shall become an individual assessment on such Lot and shall constitute a lien against such Lot and shall be collectible in the manner provided herein for the payment of assessments. This Section shall not apply to Lots owned by Declarant.

Section 8.3 Maintenance of Lots:

Declarant reserves the perpetual easement, right and privilege, and the Association is granted the perpetual easement, right and privilege, to enter on any Lot, after at least five (5) days notice to the Owner thereof, for the purpose of mowing, removing, clearing, cutting or pruning underbrush, weeds or other unsightly growth, dispensing pesticides, herbicides and fertilizer and grass seed, removing trash and taking such other action as the Declarant or the Association may consider necessary to correct any condition which detracts from the overall

beauty of the Submitted Land or which may constitute a hazard or nuisance. The cost incurred by the Association in taking such action (including any overhead costs associated therewith) shall constitute an individual assessment on the Lot and shall be collective in the manner provided herein for the payment of assessments. This Section shall not apply to Lots owned by Declarant.

Section 8.4 Sales Easements and Rights:

Notwithstanding any provision of this Declaration or of any Supplemental Declaration, so long as Declarant is engaged in developing or improving any portion of the Submitted Land or the Additional land, Declarant shall have easements of ingress, egress and use over any lands not conveyed to an Owner for

- a. erection and maintenance of directional and promotional signs and
- b. conduct of sales activities, including maintenance of model residences.

Section 8.5 Right of Entry for Governmental Personnel:

A right of entry on any Lot and Common Area is hereby granted to law enforcement officers and fire and rescue personnel as needed to lawfully carry out their duties.

Section 8.6 Easement for Landscaping, Signs and Related Purposes:

There shall be and is hereby reserved to Declarant for so long as it retains the right to annex Additional land pursuant to Article II, and there is hereby reserved perpetually to the Association, a non-exclusive easement over all Lots, and Common Area for the distance of twenty (20) feet behind any Lot or parcel line which parallels, and is adjacent to, a street (whether public or private) for the purpose of erecting and maintaining street intersection signs, directional signs, temporary promotional signs, landscaping, plantings, street lights, entrance features, and/or "theme areas," lighting, stone, wood, or masonry wall features and/or related landscaping. Exercise of this easement shall be with the consent of the Owner of the affected Lot or if such Owner does not consent, with the consent of the Design Review Board.

Section 8.7 Easement for Encroachment:

Each Lot and the Common area are hereby declared to have an easement over all adjoining Lots, and the Common Area for the purpose of accommodating any encroachment due to engineering errors, errors in original construction, settlement or shifting of a building, or any other similar cause, and any encroachment due to building overhang or projection. There shall be valid easements for the maintenance of said encroachments so long as they shall exist, and the rights and obligations of Owners shall not be altered in any way by said encroachment, settling or shifting; provided, however, that in no event shall a valid easement for encroachment be created in favor of an Owner or Owners if said encroachment occurred due to the willful act or acts with full knowledge of said Owner or Owners. In the event a structure on any Lot is partially or totally destroyed, and then repaired or rebuilt, the Owners of each lot agree that minor unintentional encroachments over adjoining Lots shall be permitted, and that there shall be valid easements for the maintenance of said encroachments so long as they shall exist.

Section 8.8 Conservation Easements:

It is contemplated that the Association will be the holder, together with James City County, of Conservation easements over portions of certain of the Lots. Such easements may be enforced by the Association or James City County against any Owner whose Lot is subject to such easement in accordance with the terms thereof and, in addition, the Association shall have the rights and remedies set forth herein for violations of this Associations Documents for violations of the terms of such easements.

ARTICLE IX: INSURANCE

The Association is hereby authorized to purchase property and casualty insurance on the Common Area and liability, indemnity and fidelity insurance in such amounts and with such companies as the Board of Directors shall deem appropriate or as may be required by the Bylaws.

ARTICLE X: MORTGAGEES

Section 10.1 Notice to Board of Directors:

An Owner who mortgages such Owner's Lot shall notify the Board of Directors of the name and addresses of the Mortgagee. No Mortgagee shall be entitled to any Mortgagee rights under the Association Documents unless such Mortgagee has notified the Board of its address as required by Section 10.2 below and has requested all rights under the Association Documents.

Section 10.2 Notices to Mortgagees:

Any Mortgagee who desires any notice from the Association shall notify the Association to that effect by certified or registered United States Mail. Any such notice shall contain the name and address (including post office address) of such Mortgagee and the name of the person to whom notices from the Association should be directed. The Board of Directors shall have the right to notify Mortgagees of the following:

- a. any default of an Owner of a Lot, upon which the Mortgagee has a mortgage, in paying assessments for Common Expenses (which remains uncured for sixty (60) days) or any other default under the Association Documents, simultaneously with the notice sent to the defaulting Owner;
- b. any casualty, if required by the Bylaws;
- c. all actions taken by the Association with respect to reconstruction of the Common Area or a Lot upon which the Mortgagee has a mortgage;
- d. any termination, lapse or material modification of an insurance policy held by the Association;
- e. any taking in condemnation or by eminent domain of the Common Area and the actions of the Association;
- f. any proposal to terminate the Declaration, at least fifty (50) days before any action is taken; and

- g. any proposal to amend materially the Articles of Incorporation, this Declaration or the Bylaws which requires approval of Mortgagees under this Article, at least seven (7) days before any action is taken.

Section 10.3 Other Rights of Mortgagees:

All Mortgagees or their representatives shall have the additional right to request to receive notice of and to attend and speak at meetings of the Association. All such Mortgagees shall have the right to examine the Association Documents and books and records of the Association and to require the submission of annual financial reports and other budgetary information. Any Mortgagee who makes a request shall be entitled to an audited financial statement for the preceding fiscal year of the Association prepared at the Association's expense and provided within a reasonable time. After fourteen (14) days notice to the Association, a Mortgagee may, jointly or singly, pay taxes or other charges levied against the Common Area and may pay overdue premiums or hazard insurance policies or secure new hazard insurance coverage upon the lapse of a policy for such Common Area. Any Mortgagees giving such notice and making such payments shall be reimbursed by the Association.

ARTICLE XI: COMPLIANCE AND REMEDIES

Section 11.1 Compliance:

Each Owner shall be governed by, and shall comply with, all of the terms of the Association Documents, as they may be amended from time to time.

Section 11.2 Remedies:

A default by an Owner under the Association Documents shall entitle the Association to the following remedies:

- a. **Additional Liability:** Each Owner shall be liable to the Association or to any affected Owner for the expense of all maintenance, repairs, renovation, reconstruction, replacement, care, inspection or alteration, rendered necessary by such Owner's act or omission regardless of neglect or culpability but only to the extent that such expense is not covered by the proceeds of insurance carried by the Board of Directors. Such liability shall include any increase in casualty insurance rates occasioned by use, misuse, occupancy or abandonment of any Lot or its appurtenances. Nothing contained herein, however, shall be construed as modifying any waiver by any insurance company of its rights of subrogation. Any costs, including without limitation legal fees, incurred as a result of a failure to comply with the Association Documents or the Rules and Regulations by any Owner may be assessed against such Owner's Lot.
- b. **Costs and Attorney's Fees:** In any proceedings arising out of any alleged default by an Owner under the Association Documents, the Association or the declarant shall be entitled to recover the costs of such proceeding and such reasonable attorney's fees as may be determined by the Court.

- c. No Waiver of Rights: The failure of the Association, the Board of Directors or an Owner to enforce any right, provision, covenant or condition which may be granted by the Association Documents shall not constitute a waiver of the right of the Association, the Board or any Owner to enforce such right, provision, covenant or condition in the future. All rights, remedies and privileges granted to the Association or any Owner pursuant to any term, provision, covenant or condition of the Association Documents shall be deemed to be cumulative and the exercise of any one or more thereof shall not be deemed to constitute an election of remedies, nor shall it preclude the party exercising the same from exercising such other privileges as may be granted to such party by the Association Documents, the applicable provisions of the Act or at law or in equity.
- d. Interest: If a default by any Owner in paying any sum assessed against Owner's Lot, except for Common Expenses, continues for a period in excess of ten (10) days, interest from the due date at a rate not to exceed the lesser of the maximum interest rate permitted by applicable law or eighteen percent (18%) per annum may be imposed in the discretion of the Association on the principal amount unpaid from the date due until paid.
- e. Abating and Enjoining Violations: The violation of any of the Rules and Regulations adopted by the Association or the Design and Environmental Standards or the breach of any other provision of the Association Documents shall give the Association the right, in addition to any other rights set forth in the Association Documents:
1. to enter the portion of the Submitted land (excluding any occupied dwelling) on which, or as to which, such violation or breach exists and summarily to abate and remove, at the expense of the defaulting Owner, any structure, thing or condition that may exist therein contrary to the intent and meaning of the provisions of the Association Documents, the Rules and Regulations and the Association shall not thereby be deemed guilty in any manner of trespass;
 2. to use self-help to remove or cure any violation of the Association Documents on the Submitted Land (including without limitation the towing of vehicles); or
 3. to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such breach; provided, however, that before any construction may be altered or demolished (except in emergencies) judicial proceedings shall be instituted. The Association shall follow the due process procedures set forth in Subsections 11.2 g. and h. hereof.

- f. Legal Proceedings: Failure to comply with any of the terms of the Association Documents shall be grounds for relief, including without limitation an action to recover any sums due for money damages, injunctive relief, foreclosure or the lien for payment of all assessments, any other relief provided for in the Association Documents and any other relief afforded by applicable law, all of which relief may be sought by the Association, or, if appropriate, by any aggrieved Owner or Member and shall not constitute an election of remedies. Before injunctive relief may be sought, the Owner against whom such action would be brought shall be given an opportunity to be heard and to be represented by counsel, at such Owner's expense, if such Owner so desires before the Board of Directors, in accordance with the provision of Subsections 11.1 g. and h. hereof. ¹
- g. Charges and suspension of Rights: The Association has the power to impose charges and to suspend the right to vote in the Association or other rights in the case of an Owner found to be responsible for a violation of the Association Documents. The amount of charges so assessed shall not be limited to the expense or damage to the Association caused by the violation; charges may not exceed Fifty Dollars (\$50.00) for each violation or Ten Dollars (\$10.00) per day for each violation of a continuing nature for each Owner. No charge may be imposed for failure to pay assessment except as otherwise provided in the Declaration or under other applicable state law. Charges are individual assessments and shall be collectable as such and shall also constitute a lien against a Lot in accordance with Article V hereof. The Association shall also have the power to suspend the right of an Owner or the rights of such person's household, tenants or guests, to use the Common Areas for a reasonable period, not to exceed sixty (60) days for any violation of any provision of any of the Association Documents, or for any period during which any assessment against an Owner's Lot remains unpaid. No charge shall be imposed, no legal action brought and no construction altered or demolished until the person charged with such a violation has been given notice and an opportunity for a hearing as set forth in Subsection h. below. In addition, voting rights and the right to use Common Areas may not be suspended until the person charged with the violation has been given notice and an opportunity for a hearing before the Board of Directors pursuant to Subsection h. below, unless such right are suspended due to non-payment of assessments, in which case the person charged with the violation is not entitled to notice and an opportunity for a hearing. The Board may deliberate privately but shall either announce its decision in the presence of the respondent or give the respondent notice thereof. A decision adverse to the respondent shall require a two-thirds (2/3) vote of the Board.
- h. Due Process: The Association, before imposing any charge or before taking any action affecting one or more specific Owners, shall afford such person the following basic due process rights:

¹ The reference to "Subsections 11.1 g. and h." may be a scrivener's error, and the reference probably is intended to refer to "Subsections 11.2 g. and h.".

1. Notice: The respondent shall be afforded prior written notice of any action (except when an emergency requires immediate action) and, if notice is of default or violation, an opportunity to cure which is reasonable under the circumstances, prior to the imposition of any sanction. The notice shall also state that the respondent is entitled to a hearing, if a hearing is required pursuant to Subsection g. above. Notice of any violation or of any hearing shall be mailed by registered or certified mail, return receipt requested, to the Owner or such Owner's address of record with the Association at least fourteen (14) days prior to such hearing.
2. Hearing: If the respondent is entitled to a hearing pursuant to Subsection g. above and requests in writing a hearing before the Board of Directors before any charge is imposed or action taken, then the imposition of the charge or the taking of the action shall be suspended until the respondent has an opportunity to be heard at a hearing at which the Board of Directors discusses such charge or action. Each person so appearing shall have the right to be represented by such person's counsel, at such person's own expense.

ARTICLE XII: GENERAL PROVISIONS

Section 12.1 Duration:

The covenants and restrictions of this Declaration shall run with and bind the Submitted 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 twenty-five (25) years, unless at the expiration of any such period, the covenants and restrictions are expressly terminated by an instrument signed by Owners of a majority of the Lots.

Section 12.2 Amendments:

Except as otherwise set forth in this Declaration, this Declaration may be amended whether

- a. By Declarant without the consent of any other Owners during the Declarant Control period, or
- b. By a vote of sixty-seven percent (67%) of the Class A votes, and with the written consent of the Declarant if during the Declarant Control Period. Notwithstanding the foregoing, the provisions of Article II and VIII and Sections 3.2, 4.7, 5.8, 5.10, 6.9 and this section 12.2 may not be amended in any event without the written consent of Declarant, regardless of whether the Declarant Control Period has terminated, so long as Declarant owns any property subject to this Declaration. In addition, Declarant shall have the right without the consent of any other Owners to amend this Declaration in any respect as may be necessary or appropriate in order for this Declaration or the Submitted Land to comply with applicable laws now or hereafter enacted or to satisfy the requirements of

any Federal Mortgage Agency, as the same may be amended from time to time, with respect to their purchase of mortgage loans secured by Lots.

Section 12.3 Severability:

Invalidation of any one of these 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 12.4 Conflict:

In the event of conflict among the Association Documents, this Declaration shall control, then applicable Supplemental Declarations, then the Articles, then the Bylaws, except that in all cases where the Governing Documents may be found to be in conflict with statute, the statute shall control.

Section 12.5 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.” The headings used herein are for ease of reference only and shall not be used as a means of interpreting or construing the substantive provisions hereof.

Section 12.6 Use of Words “Landfall at Jamestown,” or “Landfall at Jamestown Community Association”:

No person or entity shall use the words “Landfall at Jamestown” or “Landfall at Jamestown Community Association” or any derivative thereof in any printed or promotional material without the prior written consent of Declarant.

Section 12.7 Approvals and Consents:

All approvals and consents required or permitted by this Declaration (other than approvals or consents given by Members in a vote conducted in accordance with the Bylaws) shall be in writing, shall be signed by the party from whom the consent or approval is sought and, unless otherwise provided herein, may be withheld by such party in its sole discretion.

Section 12.8 Assignment of Declarant’s Rights:

Any and all rights, powers, easements and reservations of Declarant set forth herein may be assigned in whole or in part, at any time or from time to time, to the Association, to another Owner, or to any other party in Declarant’s sole discretion. Each such assignment shall be evidenced by an instrument which shall be signed by Declarant and its assignee and recorded in the Clerk’s Office.

Section 12.9 Successors and Assigns:

All the provisions of this Declaration shall be deemed to be covenants running with the land, and shall be binding on the inure to the benefit of the Owners, their heirs, successors, and assigns, and all parties claiming by, through, or under them shall be taken to hold, agree, and covenant

with such Owners, their successors in title, and with each other, to conform to and be bound by all of the terms and conditions contained in the Association Documents.

Section 12.10 Notices:

All notices, demands, requests and other communications required or permitted hereunder shall be in writing and shall be either delivered in person or sent by overnight express courier or by U.S. first class mail, postage prepaid.

Notices to the Declarant shall be sent to:

McCale Development Corporation
729 Thimble Shoals Boulevard
Suite 4A
Newport News, Virginia 23606
Attention: President,

Or, to such other address as the Declarant shall specify by executing and recording an Amendment to this Declaration, which Amendment shall not require the approval of any other parties as provided in Section 12.2.

Notices to the Association or to Owners (other than the Declarant) may be sent to the address which the Bylaws provide may be used for them.

All such notices, demands, requests and other communications shall be deemed to have been given when sent to the appropriate address specified above. Rejection or other refusal to accept shall not invalidate the effectiveness of any notice, demand, request and other communication. Notwithstanding the foregoing, any notice of the filing of a memorandum of assessment lien shall be sent in the manner required by Section 55-516C of the Code of Virginia, 1950, as amended.