

**BYLAWS OF LANDFALL AT JAMESTOWN COMMUNITY ASSOCIATION  
Final after October 2008, 2010 and 2015 Annual Meeting.**

**ARTICLE I : PLAN OF OWNERSHIP**

**Section 1.1 Applicability:**

These Bylaws provide for the governance of the Landfall at Jamestown Community Association, a Virginia non- stock corporation ( "the Association"). Capitalized terms used herein without definition shall have the meanings specified for such terms in the Articles of Incorporation of the Association ( the "Articles") or in the Declaration of Covenants, Easements and Restrictions dated as of January 29, 1998, made by McCale Development-Landfall L.L.C., a Virginia Limited Liability Company (the "Declarant"), as recorded in the Clerk's Office of the Circuit Court of the County of James City, Virginia as the same may hereafter be amended or supplemented (the "Declaration").

**Section 1.2 Compliance:**

Every Owner and all those entitled to occupy a Lot shall comply with these Bylaws.

**Section 1.3 Office:**

The principal office of the Association shall be located at the Submitted Land or at such other place as may be designated from time to time by the Board of Directors.

**ARTICLE II : MEMBERSHIP**

**Section 2.1 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 closing of the sale of any Lot, the membership of the selling Owner shall cease and the purchasing Owner shall become a member of the Association.

**Section 2.2 Class of Members:**

There shall be two classes of Members of the Association.

**Class A:** All Owners of lots other than the Declarant during the Declarant Control Period shall be Class A Members.

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

**Section 2.3 Voting:**

Members shall have the voting rights set forth in the Declaration, as well as all additions, amendments and revisions thereto.

### **ARTICLE III: MEETINGS OF MEMBERS**

#### **Section 3.1 Annual Meetings:**

The annual meeting of Members of the Association shall be held on the fourth (4th) Tuesday of October of each year, for the purpose of electing Directors and for the transaction of such other business as may come before the meeting. If the day fixed for the annual meeting is a legal holiday, such meeting shall be held on the next succeeding business day, or on such other date as set by the Board of Directors.

#### **Section 3.2 Special Meetings:**

(a) The president shall call a special meeting of the Association if so directed by resolution of the Board of Directors, upon the request of the Declarant or upon a petition signed and presented to the Secretary by Owners holding not less than ten percent (10%) of the Class A membership votes. The notice of any special meeting shall state the time, place and purpose thereof. Only business within the purpose or purposes described on the notice of a special meeting shall be transacted at the meeting.

(b) Within ninety (90) days after the expiration of the Declarant Control Period, notice shall be given of a special meeting of the Members of the Association at which all of the members of the Board of Directors designated by the Declarant shall resign, and the Class A Members shall thereupon elect successor members of the Board of Directors as provided in the Articles.

#### **Section 3.3 Place of Meetings:**

Meetings of the Members shall be held at the principal office of the Association or at such other suitable place as may be designated by the Board of Directors.

#### **Section 3.4 Notice of Meetings:**

The Secretary shall mail or hand deliver to each Owner a notice of each annual or regularly scheduled meeting of the Association at least fourteen (14) but not more than sixty (60) days before such meeting, stating the time, date and place thereof. Notice of any other meeting shall be given at least twenty-five (25) but not more than sixty (60) days prior to such meeting, stating the time, place and the purpose thereof. Notwithstanding the foregoing notice of any meeting at which there shall be voted upon any amendment to the Articles, a plan of merger, a proposed sale of assets pursuant to Section 13.1-900 of the Virginia Code or the dissolution of the Association shall be given as required by Section 13.1-842 of the Virginia Code. The mailing or personal delivery of a notice of meeting in the manner provided in these Bylaws shall be considered service of notice.

#### **Section 3.5 Adjournment of Meetings:**

If at any meeting of the Members a quorum is not present, Owners holding a majority of the votes who are present at such meeting in person or by proxy may adjourn the meeting to a time not less than forty-eight (48) hours after the time the original meeting was called. Notice of an adjournment of any meeting of the Association shall be posted at a community communications board or other conspicuous location and shall state the time and place for the meeting to be reconvened and shall be notified by e-mail, if they have provided the Secretary of the Association with their e-mail address.

### **Section 3.6 Voting:**

Voting at all meetings of the Association shall be on the basis set forth in these Bylaws. Where the ownership of a Lot is in more than one person, the person who shall be entitled to cast the vote appurtenant to such Lot shall be the person named in a certificate executed by all of the Owners of such Lot and filed with the Secretary or, in the absence of such person from the meeting, the person entitled to cast the vote appurtenant to such Lot shall be the person owning such Lot who is present. If more than one person owning such Lot is present, then such vote shall be cast only in accordance with their unanimous agreement. Such certificate shall be valid until revoked by a subsequent certificate similarly executed. Wherever the approval or disapproval of an Owner is required by Declaration, the Articles or these Bylaws, such approval or disapproval shall be made only by the person who would be entitled to cast the vote of such Lot at any meeting of the Association.

Except where a greater number is required by law, the Declaration, the Articles or these Bylaws, Owners holding more than one-half (1/2) of the aggregate Class A membership votes present in person or by proxy at a duly convened meeting at which a quorum is present ("Majority of Owners") are required to adopt decisions at any meeting of the Association.

Decisions regarding additional improvements to be added to the Common Areas or any other decision requiring capital expenditures not covered in the Reserves or as part of normal maintenance and repairs shall require a two-thirds (2/3) favorable vote of the Class A members present and voting: *Provided that for such a favorable vote to be effective it must also have received the favorable vote of at least fifty-one (51%) per centum of ALL of the then Association lot owners.*

### **Section 3.7 Proxies:**

A vote may be cast in person or by proxy. Proxies shall be duly executed in writing by one with authority to execute deeds pursuant to the requirements of Section 13.1-847 of the Virginia Code and must be filed with the Secretary before the appointed time of the meeting. Such proxy shall be deemed revoked only upon the actual receipt of notice of revocation by the person presiding over the meeting from any of the persons owning such Lot. Except with respect to proxies in favor of a Mortgagee (hereinafter defined), no proxy shall in any event be valid for a period in excess of eleven (11) months after the execution thereof and, in any event, any proxy shall terminate automatically upon the adjournment of the

first meeting held, at which a quorum is present, on or after the date of the proxy. Proxies may be either for quorum purposes only, or, if specifically providing for such therein, may grant to the holder the authority to vote on any measure to come before the meeting in such manner as the holder, in his or her sole discretion, deems appropriate.

**Section 3.8 Quorum:**

Except as otherwise provided in these Bylaws, the presence in person or by proxy of Class A Owners holding one third (1/3) of the aggregate Class A membership votes shall constitute a quorum at all meetings of the Members of Association.

**Section 3.9 Conduct of Meetings:**

The President shall preside over all meetings of the Association, and the Secretary shall keep the minutes of the meeting and record in a minute book all resolutions adopted and a record of all other transactions occurring, at the meeting. General rules of order for the conduct of such meetings shall govern the conduct of all meetings of the Association when not in conflict with the Declaration, the Articles, these Bylaws or applicable law. The presiding officer's rulings shall govern unless challenged by a member whose challenge is upheld by a majority of Members present and voting.

**Section 3.10 Order of Business:**

The order of business at all meetings shall follow as nearly as practicable the following outline:

- (a) Calling meeting to order and determination of a quorum,
- (b) Reading and adoption of minutes of previous meeting(s) if any,
- (c) Reports of officers, if any,
- (d) Reports of special meetings, if any,
- (e) Elections of Directors (or officers), if appropriate,
- (f) Unfinished business, if any,
- (g) New business,
- (h) Adjournment.

**ARTICLE IV : BOARD OF DIRECTORS**

**Section 4.1 Number, Election and Term:**

- (a) The affairs of the Association shall be managed under the direction of its Board of Directors. At the special meeting of the Association to be held after the expiration of the Declarant Control Period, as provided in the Articles, the directors appointed by Declarant shall resign and the Class A Members (including Declarant, but only to the extent it owns one or more Lots) shall elect not less than five (5) and shall consist of either five (5), seven (7), or nine (9) members of the Board of Directors. The method of nomination and electing such directors at the special meeting and at

subsequent annual meetings shall be as provided in the Articles. The removal of directors and the filling of vacancies in the Board of Directors after the expiration of the Declarant Control Period shall also be as provided in the Articles.

(b) In the event of the election of either six (6) or eight (8) directors, the Board of Directors so elected shall caucus and shall select one (if six directors) or two (if eight directors) to be alternate members of the Board of Directors. Alternate members shall be available to sit as voting members of the Board in the event one or more of the (non-alternate) members is not available for any regular or special meeting of the Board of Directors. The purpose of this provision being to insure a quorum is available for all meetings and to encourage more Owners to stand for election and become involved in the affairs of LANDFALL AT JAMESTOWN.

(c) The term of each member of the Board of Directors shall be as follows:

(i) At the annual meeting following the end of the Declarant's control period, two (2) Directors shall be elected for a three (3) year term each, two directors shall be elected for a two (2) year term each, and all other Directors shall be elected for a one (1) year term each. (ii) Thereafter, each succeeding Director shall be elected for a term of two (2) years.

#### **Section 4.2 Powers and Duties:**

The Board of Directors shall have all of the powers and duties necessary for the administration of the affairs of the Association and may do all such acts and things as are by applicable law, the Declaration, the Articles or by these Bylaws, required to be exercised and done by the Association. The Board of Directors shall have the power from time to time to adopt any rules and regulations, as well as all additions, amendments and revisions, deemed necessary for the benefit and enjoyment of the Common Areas; provided, however, such rules and regulations shall not be in conflict with the Declaration, the Articles or these Bylaws. The Board of Directors may from time to time elect to have the Association treated as a "homeowner's association" within the meaning of Section 528 of the Internal Revenue Code of 1986, as amended. In addition to the duties imposed by these Bylaws or by any resolution of the Association that may hereafter be adopted, the Board of Directors on behalf of the Association shall have the power and duty to:

(a) Prepare and annual budget in which there shall be established the General Assessments of each Owner.

(b) Make General Assessments and, to the extent permitted by the Declarant, Special Assessments against Owners to pay the Common Expenses,

establish the means and methods of collection such assessments from the Owners and establish the period of the installment payments of the assessments. Unless otherwise determined by the Board of Directors and except as set forth in the Declaration, the regular assessment against each Lot shall be payable in annual, semi-annual or quarterly installments to be due and payable in advance on the first day of January each year, and the first day of April, July and October if quarterly payments are chosen, or July if semi-annual installments are chosen.

(c) Provide for the operation, care, upkeep maintenance and servicing of the Common Areas, and for the replacement of improvements therein.

(d) Designate, hire and dismiss the personnel necessary for the operation, care, upkeep, maintenance and servicing of the Common Areas and, where appropriate, provide for the compensation of such personnel and for the purchase of equipment, supplies and material to be used by such personnel in the performance of their duties.

(e) Collect the assessments against the Owners, deposit the proceeds thereof in the bank depositories designated by the Board of Directors or prudently invest the same ( for which purpose the Board of Directors may retain an investment advisor) to the extent such proceeds are not immediately required, and use the proceeds to carry out the administration of the Association.

(f) Enact and amend rules and regulations from time to time for the use of the Common Areas and establish fees for the use of Common Areas; provided, however, that no such rules and regulations so adopted shall be in conflict with the Declaration, the Articles or these Bylaws; and provided further that no such rules and regulations shall bind or be construed so as to impair in any manner the lien of any mortgage or deed of trust with respect to any Lot and/or the Common Areas.

(g) Open bank accounts and take out certificates of deposit on behalf of the Association and designate the signatories thereon.

(h) Make, or contract for the making of repairs, additions and improvements to or alterations of the Common Areas in accordance with the Declaration.

(i) Enforce by legal means the provisions of the Declaration, the Articles, these Bylaws and the rules and regulations promulgated pursuant thereto.

(j) Obtain and carry insurance as provided in the Declaration and in Article IX of these Bylaws.

(k) Pay for the cost of all authorized services rendered to the Association

and not billed to Owners or otherwise provided for.

(l) Keep or cause to be kept books with detailed accounts of the receipts and expenditures affecting the Association and the administration of the Common Area, specifying the expenses of maintenance and repair of the Common Areas and any other expenses incurred. All books and records shall be kept in accordance with generally accepted accounting principles consistently applied (but may be on the cash method of accounting).

(m) Acquire, hold and dispose of Lots and Common Areas.

(n) Do such other things and acts not inconsistent with the Declaration, the Articles or these Bylaws which the Board of Directors may be authorized to do under applicable law or by a resolution of the Association.

(o) Subject to the Declaration, grant permits, licenses and easements under, through and over the Common Areas for drainage, utilities, roads and access and other purposes which are reasonably necessary to the ongoing development and operation of the Submitted Land.

(p) When it is authorized to do so as set forth in the Declaration, appoint members of the Architectural Review Board.

(q) Maintain or cause to be maintained an updated list of Owners and their mailing addresses, telephone numbers and e-mailing addresses, and shall make such lists available to all Owners *for non-commercial purposes only* by mailing or hand-delivering and by electronic communications to all such Owners in order to facilitate inter-Owner correspondence regarding the operation of the Landfall Development and activities therein.

(r) Maintain or cause to be maintained a "web-site", if practical, whereby Owners may post notices, articles and correspondence relating SOLELY to Owner activities and items of interest to the Association and its members.

#### **Section 4.3 Managing Agent:**

Employment of Management Agent: The Board of Directors may employ for the Association a "Managing Agent" at a compensation to be established by the Board of Directors. The Declarant or an affiliate of the Declarant may be employed as Managing Agent. Any agreement with a Managing Agent shall be for a term not exceeding one (1) year and must permit termination by either party without cause and without termination fee upon no more than ninety (90) days written notice.

(a) Duties: The Managing Agent shall perform such duties and services as the Board of Directors shall authorize, which may include but are not limited to

the duties of these Bylaws. The Board of Directors may delegate to the Managing Agent all of the powers granted to the Board of Directors by these Bylaws other than the powers set forth in Section 4.2(b), (f),(m), (o), and (p) of these Bylaws.

(b) Standards: The Board of Directors may impose appropriate standard of performance upon the Managing Agent.

(c) Liaison: The Board of Directors may designate one of its members as liaison officer who will be authorized to instruct and deal with the Managing Agent on any matter.

**Section 4.4 Annual Meeting:**

The annual meeting of the Board of Directors shall be held promptly following the annual meeting of the Members of the Association. No notice shall be necessary to the newly elected members of the Board of Directors in order legally to constitute such meeting, provided a quorum of the Board of Directors shall be present.

**Section 4.5 Regular Meetings:**

Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by a majority of the directors. Notice of regular meetings of the Board of Directors shall be given to each director by mail or hand delivery or e-mail, at least three (3) business days before the day named for such meeting.

At every regularly-scheduled meeting, excluding the annual meeting, the Board of Directors shall provide for at least a one-half (1/2) hour period for members to address the Board on any matter relating to the operation of the Association.

**Section 4.6 Special Meetings:**

Special meetings of the Board of Directors may be called by the President on one(1) business days notice to each director, given by mail or hand delivery, which notice shall state the time, place and purpose of the meeting. Special meetings of the Board of Directors shall be called by the President or Secretary in like manner and with like notice on the written request of at least two (2) directors.

**Section 4.7. Waiver of Notice:**

Any director may at any time, in writing signed by such director, waive notice of any meeting of the Board of Directors, and such waiver shall be deemed equivalent to the giving of such notice. Except in the circumstances described in Section 13.1-8678 of the Virginia code, attendance by a director at any meeting of the Board of Directors shall constitute a waiver of notice by him of the time, place and purpose of such meeting. If all directors are present at any meeting of the Board of Directors, no notice shall be required and any business may be transacted at such meeting.



**Section 4.8 Quorum of Board of Directors:**

At all meetings of the Board of Directors, a majority of the directors shall constitute a quorum for the transaction of business, and the vote of a majority of the directors present at a meeting at which a quorum is present shall constitute the decision of the Board of Directors. If at any meeting of the Board of Directors there shall be less than a quorum present, those present may adjourn the meeting from time to time. At any such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

**Section 4.9 Compensation:**

No director shall receive any compensation from the Association for action as such; however, the Board of Directors may in its discretion reimburse any director for actual expenses incurred, upon a specific vote for such.

**Section 4.10 Conduct of Meetings:**

The President shall preside over all meetings of the Board of Directors and the Secretary shall keep a minute book of the Board of Directors recording therein all resolutions adopted by the Board of Directors and a record of all transactions and proceedings occurring at such meeting.

**Section 4.11 Action Without Meeting:**

Any action by the Board of Directors required or permitted to be taken at any meeting may be taken without a meeting if all of the members of the Board of Directors shall individually or collectively consent in writing to such action. Any such written consent shall be filed with the minutes of the proceedings of the Board of Directors.

**Section 4.12 Telephone Meetings:**

The Board of Directors may permit any or all directors to participate in any meeting by, or conduct the meeting through the use of, any means of communications by which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting.

**ARTICLE V: COMMITTEES**

The Board of Directors may create one or more committees and may appoint members of the Board, officers of the Association or Members to such committees. Committees shall perform such tasks and serve for such periods as may be designated by resolution adopted by the Board. Any member of any committee may be removed by the Board of Directors whenever in their judgment the best interests of the Association shall be served thereby. Each committee shall operate in accordance with the terms of resolution of the Board of Directors designating such committee or with rules adopted by the Board. The provisions

of these Bylaws which govern meetings, action without meetings, notice and waiver of notice, quorum and voting requirements of the Board of Directors shall apply to committees as well.

## **ARTICLE VI: ARCHITECTURAL REVIEW**

There shall be an Architectural Review Committee of the Association as provided in the Declaration. The number of members, the method of their appointment or election and their duties and powers shall be as set forth in the Declaration. The provisions of these Bylaws governing meetings, action without a meeting, notice and waiver of notice and quorum and voting of the Board of Directors shall apply to the Architectural Review Committee as well.

## **ARTICLE VII: OFFICERS**

### **Section 7.1 Designation:**

The principal officers of the Association shall be the President, the Vice President, the Secretary and the Treasurer, all of whom shall be elected by the Board of Directors. The Board of Directors may appoint an assistant treasurer, and an assistant secretary and such other officers as in its judgment may be desirable. The president shall be a member of the Board of Directors. Any other officer may, but need not, be members of the Board of Directors. All Officers must be members of the Association.

**Section 7.2 Election of Officers:** The officers of the Association shall be elected annually by the Board of Directors at the December meeting of the Board following the annual meeting of the Members and shall hold office (unless sooner removed) from the following January Board Meeting until the close of the next December meeting or until their replacements are elected.

### **Section 7.3 Removal of Officers:**

Any officer may be removed, either with or without cause, and a successor may be elected at any regular meeting of the Board of Directors or at any special meeting of the Board of Directors called for such purpose.

### **Section 7.4 President:**

The President shall be the chief executive officer of the Association, preside at all meetings of the Association and the Board of Directors, and have all of the general powers and duties which are incident to the office of president of a corporation organized under the Virginia Nonstock Corporation Act.

### **Section 7.5 Vice President:**

The Vice President shall take the place of the President and perform the duties of the President whenever the President shall be absent or unable to act. If neither the President nor the Vice President is able to act, the Board of Directors shall appoint some other member of the Board of Directors to act in place of the

President, on an interim basis. The Vice President shall also perform such other duties as shall from time to time be imposed upon him or her by the Board of Directors or by the President.

**Section 7.6 Secretary:**

The Secretary shall keep the minutes of all meetings of the Association and of the Board of Directors; have charge of such books and papers as the Board of Directors may direct; maintain a register setting forth the place to which all notices to Owners and Mortgagees requesting notices shall be delivered; upon request by a conveying Owner, deliver statements of all unpaid assessments applicable to the Lot to be conveyed; execute notices of delinquent assessment in accordance with the Declaration; execute notices of and release of the lien for the delinquent assessments as described in the Declaration and, in general, perform all of the duties incident to the office of secretary of a corporation organized under the Virginia Nonstock Corporation Act.

**Section 7.7 Treasurer:**

The Treasurer shall have the responsibility for Association funds and securities and shall be responsible for keeping full and accurate financial records and books of account showing all receipts and disbursements, and for the preparation of all required financial data, and be responsible for the deposit of all monies and other valuables in the name of the Board of Directors, the Association or the Managing Agent, in such depositories as may from time to time be designated by the Board of Directors; and, in general, perform all of the duties incident by the office of treasurer of a corporation organized under the Virginia Nonstock Corporation Act.

**Section 7.8 Compensation of Officers:**

No officer shall receive any compensation from the Association for acting as such; however, any officer may be reimbursed for actual expenses incurred as such officer, upon a specific resolution of the Board of Directors.

**ARTICLE VIII: OPERATION OF THE PROPERTY**

**Section 8.1 Fiscal Year:**

The fiscal year of the Association shall be the calendar year unless otherwise determined by the Board of Directors.

**Section 8.2 Adoption of Budget and Establishment of Assessments:**

The Board of Directors shall adopt a budget (which shall include any proposed capital expenditures) for any fiscal year as set forth in the Declaration and shall establish the amount of the General Assessment for every Member subject thereto. With the exception of the initial annual budget, the Board of Directors shall send written notice of each annual budget and assessment amount to every Member at least fifteen (15) days in advance of adopting the same. The failure or

delay of the Board of Directors to prepare or adopt a budget for any fiscal year after the initial budget is adopted shall not constitute a waiver or release in any manner of an Owner's obligation to pay his assessment as herein provided whenever the same shall be determined and, in the absence of any annual budget, or adjusted budget, each Owner liable therefor shall continue to pay each periodic installment at the rate established for the previous fiscal year until notice of the period payment which is due not more than (10) days after such new annual or adjusted budget shall have been delivered. There shall be no tender or 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.

**Section 8.3 Payment of Assessments:**

Each Owner liable therefor shall pay the assessments established by the Declaration and these Bylaws. No Owner shall be liable for the payment of any part of the assessment against his Lot and due subsequent to the date of recordation of a conveyance by him in fee of such lot to a successor Owner ( except a conveyance as security for the performance of an obligation). Each Owner waives the benefit of the homestead exemption as to any assessments levied against either the Lot or the Owner. Each such assessment, together with the interest, late charges and costs of collection (including attorney's fees) shall also be the personal obligation of the Owner at the time the assessment fell due.

**Section 8.4 Collection of Assessments:**

The Board of Directors, or the Managing Agent at the request of the Board of Directors, may take action to collect any assessments due from any Owner. Each defaulting owner shall also pay all costs of collection including without limitation attorney's fees, incurred in the collection of any unpaid assessment and shall also pay any expense incurred as a result of a check being returned to the Association without payment.

All liens for past-due assessments and/or fines shall be filed/perfected within twelve (12) months of when the assessment or fine was first assessed or levied.

**Section 8.5 Statement of Assessments and Access to Records:**

In addition to complying with the requirements of Section 8.6 of these Bylaws, the Board of Directors shall promptly provide any Owner, contract purchaser or Mortgagee so requesting the same in writing with a written statement of the amount of the general and any special assessment levied against a Lot and all unpaid assessments due from such Owner. The Association shall keep detailed records of its operation and administration and make the same available for inspection as provided in Section 55-510 of the Virginia code. The Association may impose and collect a charge, reflecting the actual cost of materials and labor, before providing copies of any books and records to a Member.

**Section 8.6 Maintenance, Repair, Replacement and Other Expenses:**

The Association shall be responsible for such maintenance, repair and

replacement of the Common Areas and Neighborhood Common Areas as is set forth in the Declaration. Unless otherwise determined by the Board of Directors, all repairs and replacements shall be substantially similar to the original construction and installation and shall be of good quality. The method of approving payment vouchers for repairs and replacements performed by the Association shall be determined by the Board of Directors.

**Section 8.7 Reserve Study:**

The Board of Directors shall cause a Reserve Study to be completed or updated of all improvements on, in or constituting the Common Areas every five (5) years by a person or persons or firm or firms knowledgeable in the areas of facilities construction and repair and maintenance and cost for such.

The aforesaid Reserve Study shall form the basis upon which the Board of Directors shall plan and provide, through reasonable portions of the regular assessments for the orderly replacement of all Common Area depreciable assets based on the estimated useful life of such assets.

The manner and method and formulae and assumptions used to establish the portions of each assessment dedicated to such reserves shall be set forth in each annual budget.

At least once each year, the Board of Directors shall review the basis for such Reserves Study and based on information received during the previous year, make such adjustments as they, in their reasonable judgment, deem necessary, and shall include such adjustment in the next annual budget.

**ARTICLE IX: INSURANCE**

**Section 9.1 General Requirements:**

(a) Purchase of Insurance: All insurance policies relating to Common Areas shall be purchased by the Association. Neither the Board of Directors nor the Managing Agent nor the Declarant shall be liable for failure to obtain any coverage required by the Declaration by this Article IX or for any loss or damage resulting from such failure if such failure is due to the unavailability of such coverage from reputable insurance companies, or if such coverage is available only at unreasonable cost.

(b) Required Provisions in Policies: Each insurance policy for the Common Areas shall provide that:

(i) The insurer waives any right to claim (A) by way of subrogation against the Declarant, the Association, the Board of Directors, the Managing Agent or the Owners, and their respective lessees, and (B) invalidity arising from acts of the insured.

(ii) Such policy may not be canceled not renewed or substantially modified without at least fifteen (15) days prior written notice of the Association

and the Managing Agent, and in the case of physical damage and fidelity insurance, to all Owners and Mortgagees and mortgage loan servicers.

(c) Declarant as Beneficiary: The Declarant, so long as Declarant shall own any Lot, shall benefit from all such policies as an Owner.

(d) Insurance Companies: All policies of insurance shall be written by reputable companies licensed to do business in the Commonwealth of Virginia and, in the case of the physical damage insurance, holding a rating of B/III or better by Best's Insurance Reports.

### **Section 9.2 Physical Damage Insurance:**

(a) All Risk Coverage: If any insurable improvements are constructed on the Common Areas, the Association shall obtain and maintain a policy of insurance against fire and other such hazards within the meaning of "all risk" insuring the improvements to the Common Areas (including fixtures and building service equipment and personal property), naming the Association as insured for the use and benefit of all Owners in an amount equal to not less than 100% of the then current replacement cost of the improvements to the Common Areas (exclusive of land, excavations, foundations and other items usually excluded from such coverage), such amount to be re-determined annually by the Board of Directors with the assistance of the insurance company affording such coverage. Any deductible shall not exceed the lesser of \$10,000 or 1% of the amount of coverage and such deductibles shall be considered in establishing the level of reserves.

(b) Required Provision: Such policy shall also provide (unless otherwise provided):

(1) A waiver of any right of the insured to repair, rebuild or replace any damage or destruction, if a decision is made not to do so.

(2) The following endorsements (or equivalent) if applicable and available:

(A) "contingent liability from operation of building laws," "demolition cost" and "increased cost of construction",

(B) "agreed amount" or its equivalent and "inflation guard", and

(C) "steam boiler and machinery coverage" within minimum liability per accident of not less than the lesser of the insurable value of the building housing boiler or machinery or \$2,000,000.

(3) That any "no other insurance" clause expressly excludes individual Owners' policies from its operation so that the physical damage policy purchased by the Board of Directors shall be deemed primary coverage and any individual Owners' policies shall be deemed excess coverage, and in no event shall the insurance coverage obtained and maintained by the Board of Directors hereunder provide for or be brought into contribution

with insurance purchased by individual Owners or their Mortgagees, unless otherwise required by law.

(c) Delivery of policies to Mortgagees: A copy of the policy of physical damage insurance, all renewals thereof, and any sub-policies or certificates and endorsements issued thereunder together with proof of payment of premiums shall be delivered by the insurer at least (10) days prior to the expiration of the then current policy to any Mortgagee requesting the same. In providing copies of the aforesaid insurance instruments, the Association may impose and collect a charge from the Member, reflecting the costs of materials and labor, before delivering copies of the aforesaid insurance instruments to the Member's Mortgagee. The charge so imposed shall be treated as an assessment under Article VIII above.

(d) Prohibited Provisions: The Association shall not obtain a policy where (1) under the terms of the carrier's charter, bylaws or policy, contributions or assessments may be made against any Owner or Mortgagee or mortgage loan servicer or become a lien on the Properties; or (2) by the terms of the carrier's charter, bylaws or policy, loss payments are contingent upon action by the carrier's board of directors, policyholders or members; or (3) the policy includes any limiting clauses (other than insurance conditions) which could prevent the Association from collecting insurance proceeds.

### **Section 9.3 Liability Insurance:**

The Association shall obtain and maintain comprehensive general public liability and property damage insurance in such limits as the Board of Directors may from time to time determine (but not less than \$1,000,000 for bodily injury or property damage), insuring the Association, each member of the Board of Directors, the Managing Agent, each Owner and the Declarant against any liability to the public or to the Owners (and their invitees, agents and employees) arising out of, or incident to the ownership and/or use of the Common Areas and other areas (if any) under the supervision of the Association including, to the extent applicable and available: host liquor liability, elevator collision liability, comprehensive automobile liability, contractual liability, garage keeper's liability and bailee's liability. Such insurance shall be issued on a comprehensive liability basis and shall contain a "severability of interest" endorsement which shall preclude the insurer from denying liability to an Owner because of negligent acts of the Association or of another Owner. The Board of Directors shall review such limits once each year. "Umbrella" liability insurance in excess of the primary limits may also be obtained.

### **Section 9.4 Other Insurance:**

The Association shall obtain and maintain:

(a) Fidelity Coverage to protect against dishonest acts on the part of

officers, directors, employees and agents (including Managing Agent) or the Association and all others who handle, or are responsible for handling, funds of the Association. Such fidelity bonds shall : (1) name the Association as an obligee; (2) be written in an amount to cover the maximum funds that will be in the custody of the Association or the Managing Agent at any time and in event not less than three (3) months aggregate assessments on all Lots plus reserves; and (3) contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression;

(b) Workmen's compensation and employer's liability insurance if and to the extent necessary to meet the requirements of law and which, if carried, shall name the Managing Agent as an additional insured; and

(c) Such other insurance as the Board of Directors may determine or as may be requested from time to time by Owners of a majority of the Lots.

**Section 9.5 Separate Insurance by Owners:**

Each Owner shall have the right and responsibility, at his own expense, to obtain insurance for his own Lot and improvements thereon and for his own benefit; provided , however, that no Owner shall be entitled to exercise his right to obtain such insurance coverage so as to decrease the amount which the Association, on behalf of all Owners, may realize under any insurance policy maintained by the Association or to cause any insurance coverage maintained by the Association to be brought into contribution with insurance coverage obtained by the Owner. Each Owner shall obtain liability insurance with respect to his Lot in the amount of at least \$100,000.00. All such policies shall contain waivers of subrogation as against the Association and its Board of Directors, the Declarant and the Managing Agent, and their respective agents and employees. No Owner shall obtain separate insurance policies in conflict with this Section 9.5.

**Section 9.6 Board of Directors as Agent:**

The Board of Directors is hereby irrevocably appointed the agent and attorney-in-fact for each Owner, each Mortgagee, other named insured and their beneficiaries and any other holder of a lien or other interest in the Property to adjust and settle all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims and to pursue and settle all claims arising out of the taking by way of eminent domain of any of the Common Areas.

**ARTICLE X: MISCELLANEOUS**

**Section 10.1 Notices:**

All notices, demands, requests, statements or other communications under these Bylaws shall be in writing and shall be either delivered in person or if sent by U.S. first class mail, postage prepaid, (i) if to an Owner, at the address which the



Owner shall designate in writing and filed with the Secretary or, if no such address is designated at the address of the Lot of such Owner, or (ii) if to the Association, at 729 Thimble Shoals Boulevard, Newport, News, Virginia 23606, or at such other address as shall be designated by notice in writing to the Owners pursuant to this Section, or (iii) if to a Mortgagee, to the address provided by the Owner or to such other address as the Mortgagee may specify by written notice to the Association. All such notices, demands, requests statements or other communications shall be deemed to have been given when (i) mailed, or (ii) hand delivered to the appropriate address specified above.

**Section 10.2 Captions:**

The captions herein are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of these Bylaws or the intent of any provision thereof.

**Section 10.3 Gender, Etc.:**

The use of the masculine gender in these Bylaws shall be deemed to include the feminine and neuter genders and the use of the singular shall be deemed to include the plural, and vice versa, whenever the context so requires.

**Section 10.4 Construction:**

These Bylaws are intended to comply with applicable laws and shall be so interpreted and applied. In the event of a conflict between the Declaration or the Articles and these Bylaws, the Declaration or Articles shall control.

**Section 10.5 Amendments:**

These Bylaws may be amended (i) by the Board of Directors during the Declarant Control Period and (ii) thereafter by a vote of at least two-thirds (2/3) of the Class A votes entitled to be cast by Members present at a duly convened meeting at which a quorum is present. For purposes of this Section 10.5, the presence in person or by proxy of Members entitled to cast fifty percent (50% ) of the Aggregate Class A membership votes shall constitute a quorum; however, to the extent any such amendment would be inconsistent with the Declaration, such amendment shall be adopted in the same fashion as an amendment to the Declaration.