

# LANDFALL

at Jamestown

Articles of Incorporation

*As Amended Through October 19, 2010*

**ARTICLES OF INCORPORATION OF LANDFALL AT JAMESTOWN  
COMMUNITY ASSOCIATION**

**ARTICLE I: NAME**

The name of the corporation is LANDFALL AT JAMESTOWN COMMUNITY ASSOCIATION, hereinafter called the "Association".

**ARTICLE II: PURPOSES**

The Association does not contemplate pecuniary gain or profit to the Members hereof, and the specific purposes for which it is formed are to provide for the management, maintenance and care of certain real estate within the development known as "Landfall at Jamestown" located in the County of James City, Virginia, as more particularly described in the Declaration of Covenants, Easements and Restrictions dated January 29, 1998, made by McCale Development – Landfall, L.L.C., a Virginia Limited Liability Corporation, recorded in the Clerk's Office of the Circuit Court of the City of Williamsburg and County of James City, as the same may hereafter be amended or supplemented ("The Declaration"), and to provide for the management, maintenance and care of the Common Areas and for this purpose to:

- (a.) enforce the Declarations and exercise all of the powers and privileges and perform all of the duties and obligations of the Association;
- (b.) fix, levy, collect and enforce payment by any lawful means, of all charges or assessments pursuant to the Declaration and Bylaws;
- (c.) pay all expenses of the Association;
- (d.) subject to the Declaration and the Bylaws, acquire, own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for public use or otherwise dispose of real or personal property in connection with the affairs of the Association; and
- (e.) have and exercise any and all powers, rights and privileges which a corporation organized under the Nonstock Corporation Act of the Commonwealth of Virginia may by law

now or hereafter have or exercise. No part of the net earnings of the Association shall inure (other than by providing management, maintenance and care of the Common Areas and other than by a rebate of excess membership dues, fees and assessments) to the benefit of any private individual.

### **ARTICLE III: DEFINITIONS**

Except as expressly defined herein, all capitalized terms used herein shall have the respective meanings set forth in the Declaration or in the Bylaws of this Association.

### **ARTICLE IV: MEMBERSHIP**

#### **Section 4.1 Membership:**

Every Member 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 closing of the sale of a Lot, the membership of the selling Owner shall cease, and the purchasing Owner shall become a Member of the Association.

#### **Section 4.2 Classes of Membership and Voting Rights:**

The designation of classes of membership and the voting rights of Members shall be provided by the Declaration and the Bylaws.

### **ARTICLE V: BOARD OF DIRECTORS**

#### **Section 5.1 Number:**

Except as provided below, the number of directors shall be as fixed in accordance with the Bylaws, or in the absence of such a bylaw, the number of directors shall be six (6).

#### **Section 5.2 Appointment of Directors During Declarant Control Period:**

Declarant shall have the right to appoint or remove any member or members of the Board of Directors until such time as the Class B membership terminates. The period of time until the Class B membership terminates is hereafter called the "Declarant Control Period". Each Owner, by acceptance of a deed to or other conveyance of a Lot, vests in

Declarant the authority to appoint and remove directors of the Association during the Declarant Control Period. The directors selected by Declarant need not be Owners or residents within the Submitted Land.

**Section 5.3 Election of Directors After Declarant control Period:**

- (a.) Upon the expiration of the Declarant Control Period, the Board of Directors shall call, within ninety (90) days, a special meeting of Members at which meeting all directors appointed by Declarant shall resign and the Class A Members shall elect successor members of the Board. Thereafter, nominations for election to the Board of Directors shall be made from the floor and may also be made by a nominating committee, if such a committee is established by the Board of Directors. All candidates shall have a reasonable opportunity to communicate their qualification to the Members and to solicit votes.
- (b.) At the first meeting of the Association after the termination of the Declarant Control Period, and at each annual meeting thereafter, directors shall be elected. All eligible Members of the Association shall be eligible to vote on all Directors to be elected and the candidate(s) receiving the most votes shall be elected. Directors shall serve until the next annual meeting following their election, unless otherwise provided in The Bylaws. Elections shall be by oral ballot of the Members unless any Member requests a written ballot, in which event elections shall be by written ballot. Votes may be cast by proxy as provided in the Bylaws.
- (c.) Except with respect to Directors appointed by Declarant, at any regular or special meeting of the Association duly called where the meeting notice states that the purpose, or one of the purposes, of the meeting is removal of the director, any one or more of the members of the Board of Directors may be removed, with or without cause, by a majority vote of the Members and a successor may then and there be elected to fill the vacancy this created. A Director whose removal has been proposed shall be given at least seven (7) days notice of the time, place and purpose of the meeting and shall be given an opportunity to be heard at the meeting.
- (d.) Vacancies in the Board of Directors occurring for any reason, other than the removal of a Director by vote of the Association, shall be filled by a vote of the majority of the remaining Directors, even though less than a quorum, at any

meeting of the Board of Directors or, in the absence of any remaining Directors, vacancies may be filled by the Declarant. Each person so selected shall serve the unexpired portion of the term of the Director being replaced. Notwithstanding the foregoing, Declarant shall fill all vacancies in the Board of Directors arising before the termination of the Declarant Control Period.

- (e.) Any representative of Declarant serving on the Board of Directors of the Association shall not be required to disqualify himself or herself upon any vote upon any management contract or other contract or lease between Declarant (or any individual, partnership or corporation having an identity of interest with Declarant) and the Association.

#### **ARTICLE VI: REGISTERED OFFICE AND REGISTERED AGENT**

The address of the initial registered office is located in Newport News, Virginia. The post office address of the initial registered office of the Association is 610 Thimble Shoals Boulevard, Suite 203-C, Newport News, Virginia 23606-4512. The initial registered agent of the Association is Darrell J. Miller, Esquire, whose business address is the same as the initial registered office of the corporation as listed above, and who is a member of the Virginia State Bar and a resident of the Commonwealth of Virginia.

#### **ARTICLE VII: LIMIT ON LIABILITY AND INDEMNIFICATION**

##### **Section 7.1 Limit on Liability:**

In every instance in which the Virginia Nonstock Corporation Act, as it exists on the date hereof or may hereafter be amended, permits the limitation or elimination of liability of directors or officers of a corporation to the corporation or its Members or of the directors or officers of a "community association" (as defined in the Virginia Nonstock Corporation Act), any liability of the directors and officers of the Association shall be so limited or eliminated.

##### **Section 7.2 Mandatory Indemnification:**

The association shall indemnify any individual who is, was or is threatened to be made a party to a civil, criminal, administrative, investigative or other proceeding (including a proceeding by or in the right of the Association or

by or behalf of its Members) because such individual is or was a director or officer of the Association, a member of the Architectural Review Board or of any other legal entity controlled by the Association, against all liabilities and reasonable expenses incurred by him or her on account of the proceeding, except such liabilities and expenses as are incurred because of his or her willful misconduct or knowing violation of the criminal law. Unless a determination has been made that indemnification is not permissible, the Association shall make advances and reimbursement for expenses incurred by any of the persons named above upon receipt of an undertaking from him or her to repay the same if it is ultimately determined that such individual is not entitled to indemnification. The Association is authorized to contract in advance to indemnify any of the persons named above to the extent it is required to indemnify them pursuant to this Section 7.2.

**Section 7.3 Miscellaneous:**

The rights of each person entitled to indemnification under this Article shall inure to the benefit of such person's heirs, executors and administrators. Indemnification pursuant to this Article shall not be exclusive of any other rights of indemnification to which any person may be entitled, including indemnification pursuant to a valid contract, indemnification by legal entities other than the Association and indemnification under policies of insurance purchased and maintained by the Association or others. However, no person shall be entitled to indemnification by the Association to the extent he or she is indemnified by another, including an insurer.

**ARTICLE VIII: AMENDMENT**

These Articles of Incorporation may be amended pursuant to Virginia Code Ann. Section 13.1-886 and with the approval of the Class B Member (until the Class B membership terminates) and the vote of two-thirds (2/3) of the Class A votes (including the Declarant as to Class A votes held by Declarant).

DULY EXECUTED ON THIS THE 29<sup>TH</sup> OF JANUARY 29, 1998.

INCORPORATOR: /s/ Darrell J. Miller  
DARRELL J. MILLER, ESQUIRE