

**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
OF
McDONALD BLUFFS**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

(the "Declarations"), is hereby made as of the 1st day of July, 1999, by McDONALD ASSOCIATES, L.L.C., a Virginia limited liability company (hereinafter referred to as "Declarant"), index as "Grantor".

RECITALS:

WHEREAS, there has been duly approved under the ordinances of York County, Virginia (the "County"), a subdivision known as "McDonald Bluffs" as shown on the subdivision plat entitled "Subdivision Plat of McDonald Bluffs, Bethel Magisterial District, County of York, Virginia", dated March 18, 1999, made by Davis & Associates, P.C., 3630 George Washington Memorial Highway - Suite "G", Yorktown, Virginia, 23693, recorded in Plat Book 13, at pages 17, 18, 19 and 20 in the Clerk's Office of the Circuit Court of the County of York, Virginia (the "Subdivision Plat"), all of said property as shown on the subdivision and re-subdivision plats (collectively, the "Subdivision"); and

WHEREAS, the Declarant now desires to impose on said Subdivision certain covenants, conditions and restrictions declaring Declarant's intentions of protecting the value and desirability of the real property, which covenants, conditions and restrictions shall run with the real property and be binding upon all of the parties hereto, their heirs, successors and assigns and shall inure to the benefit of each owner thereof.

NOW, THEREFORE, Declarant, as owner of all of the property in the Subdivision, hereby declares that all of the property shown on Exhibit A, a copy of which is attached hereto and made a part hereof, shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I
DEFINITIONS

Section 1.1: "Architectural Review Committee" shall mean and refer to the committee by that name, which shall be formed and operated by the Association for the purpose of reviewing, evaluating, negotiating changes or revisions, establishing architectural standards, and approving or rejecting plans for architectural changes to the Lots or improvements thereto. Unless and until all of the Lots are sold by the Declarant to any person or entity other than the Builder, the Declarant shall appoint all of the members of the Architectural Review Committee.

Section 1.2: "Association" shall mean and refer to McDonald Bluffs Homeowners' Association, Inc., a Virginia non-stock corporation, its successors and assigns.

Section 1.3: "Board of Directors" shall mean and refer collectively to the Board of Directors of McDonald Bluffs Homeowners' Association, Inc.

Section 1.4: "Builder" shall mean and refer to any entity that purchases Lots for the purpose of residential home construction.

Section 1.5: "Common Area" shall mean all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the Owners. The Common Area to be owned by the Association at the time of conveyance of the first Lot shall include the areas identified as open space, conservation areas and/or recreation areas on the plat of the Subdivision, together with such additional areas of Common Area as may be annexed thereto from time to time.

Section 1.6: "Declarant" shall mean and refer to McDonald Associates, L.L.C., a Virginia limited liability company, their heirs, successors and assigns, if such heirs, successors or assigns should acquire one or more undeveloped Lots from the Declarant for the purpose of constructing the initial improvements on such lot.

Section 1.7: "Lot" shall mean and refer to the thirty-five (35) numbered lots intended for the purpose of constructing residential homes thereon, as shown in the Subdivision of Lots 1 through 35 of said Subdivision, but "Lot" shall not be deemed to refer to any Common Area. Where the context requires, "Lot" shall also be deemed to include any improvements constructed thereon.

Section 1.8: "Member" shall mean and refer to the Owner of any Lot in the Subdivision.

Section 1.9: "Membership" shall mean and refer to the Members of the Association eligible to vote.

Section 1.10: "Mortgage" as used herein shall mean a mortgage or deed of trust, said terms having the same meaning and may be used interchangeably.

Section 1.11: "Owner" shall mean and refer to the record owner, whether one (1) or more persons or entities, of fee simple title to any Lot which is a part of the Subdivision, including

contract sellers, but excluding those having such interest merely as security for the performance of any obligation.

Section 1.12: "Properties" shall mean and refer to all of the real property within the Subdivision as shown on the plat of McDonald Bluffs and all other property which may be annexed hereto pursuant to the Annexation provisions set forth hereinafter.

ARTICLE II
PROPERTY RIGHTS AS TO COMMON AREAS

AS TO COMMON AREA, the following provisions apply:

Section 2.1: Owners' Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area and the benefits derived therefrom and the adjacent or other property, which is now or subsequently becomes a part of the Common Area, and aesthetic beauty to the Lots within the Subdivision, all of which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) the right of the Association to assess or charge every Owner fees or dues in accordance with covenants and procedures described in Section 4.1 to care for and maintain the Common Areas and improvements located thereon.

(b) the right of the Association to charge reasonable fees for the use of the Common Area and any facilities or improvements constructed or located thereon.

(c) the right of the Association to suspend the voting rights of an Owner for any period during which any assessment against his Lot remains unpaid or during any period not exceeding 60 days for any infraction of the Association's published rules and regulations.

(d) the right of the Association to offer to the appropriate governmental body or agency (subject to their acceptance of the same) 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 agreed to or be authorized by the Board of Directors of the Association. In addition thereto, the Declarant may at anytime hereafter deed, or cause the Association to deed, all or any part of the Common Area to the County of York or other public body, with the prior consent of the York County Board of Supervisors, who shall thereafter maintain the Common Area if agreed to by such public body.

(e) the transfer of a Lot automatically transfers Membership in the Association and all rights of the transferrer with respect to the Common Area and facilities to which ownership of such Lot relates.

(f) the right of the Association to establish reasonable rules and regulations, from time to time, for the use and enjoyment of the Common Area and Properties, and enforce such rules and regulations against the Owners, their family members, guests and invitees.

Section 2.2: Delegation of Use: Any Owner may delegate, in accordance with the bylaws, his right of enjoyment to the Common Area facilities to the members of his family, his tenants or contract purchasers who reside on the Property, subject only to any rules and regulations prescribed from time to time by the Association, which rules may include but not be limited to who may use the Common Area facilities with or without additional charge. The Association may, but shall not be obligated to, offer or allow any person(s) (regardless of whether such person(s) is/are Owners) to use certain Common Areas or improvements thereto,

and the Association may prescribe such fees and require compliance with such rules and regulations as the Association deems prudent, in its sole and absolute discretion.

Section 2.3: Leasing: Any Owner may lease or rent his Lot so long as the use of the Lot is consistent with the restrictions herein and, provided that, the lease agreement between Owner and lessee shall be written, shall be for a term of not less than thirty (30) days and shall provide that the terms of the lease shall be subject in all respects to the provisions of these Declarations and all other documents of the Association and that the failure of the lessee to comply with the terms of such documents shall constitute a default under the lease.

Section 2.4: Association Duties: Upon conveyance of the Common Areas to the Association, the Association shall have the duty to maintain the Common Areas for their intended function in perpetuity, unless and until the Board of Supervisors by ordinance, authorizes and approves revisions.

Section 2.5: Right of County to Intervene in Event Common Areas Not Maintained.

(a) In order to protect the public interest which requires assurance as to adequate maintenance of the Common Areas and improvements, it is hereby provided in accordance with Section 24.1-497(e) of the County Code of York County, Virginia that in the event that the Association (or its successor organization) fails to maintain the Common Areas and/or improvements in reasonable good order and condition in accordance with the approved plans previously submitted to the County, then on behalf of the Board of Supervisors, the County's clerk to the Board of Supervisors, the County Administrator, or the County Attorney may serve written notice on the Association demanding that any and all deficiencies specifically identified by the County be cured within thirty (30) days of the date such notice is delivered to the

Association. In the event that the Association fails or refuses to timely cure such deficiencies, the County may deliver written notice to the Owners setting forth: (1) the manner in which the Association has failed to maintain the Common Areas and/or improvements; (2) the date, time and location of a meeting of the Owners, which notice shall be given at least fourteen (14) days but no more than forty-five (45) days prior to the scheduled meeting of the Owners; (3) an additional demand that the deficiencies be cured within thirty (30) days of delivery of such notice; and (4) a statement reserving the County's rights under this section 2.5. At such meeting of the Owners, the County may modify the terms of the original notice as to the deficiencies and may grant an extension of time within which they shall be cured.

(b) If the deficiencies set forth in the original notice or in the modifications thereof shall not be remedied within thirty (30) days (or any approved extension of time) from the date of the meeting of the Owners called by the County, the County, in order to preserve the taxable values of the Lots within the development and to prevent the Common Areas from becoming a public nuisance, may, but shall not be required, enter upon said Common Areas and maintain or contract to maintain the Common Areas for the benefit of the Association and the Owners and occupants of the Lots.

(c) In the event that the County assumes or performs any maintenance on the Common Areas, then within one (1) year from the date of the meeting of the Owners set forth above, the County shall on its own initiative or at the request of the Association, call a meeting of the Owners to be held and conducted by the Board of Supervisors of the County, at which hearing the ability of the Association to resume maintenance responsibilities shall be assessed. If the Board of Supervisors shall determine that the Association is then-ready to resume all or part of

the maintenance responsibilities, then the County shall cease and desist from performing the maintenance responsibilities being resumed by the Association. In the event the Board of Supervisors determines that the Association is not then-ready to resume maintenance of all or part of the Common Areas, then the County may continue to maintain or contract to maintain the Common Areas for the benefit of the Association.

(d) No part of these Declarations shall be construed to require the County to be responsible for the maintenance of any of the Common Areas.

(e) In the event that the County exercises any of its rights in accordance with this section 2.5, said entry and maintenance is hereby expressly made with the permission of the Association and shall not vest in the general public any rights to use the Common Areas. The cost and expenses of such maintenance and all associated administrative costs incurred by the County shall be assessed against the Association, and shall become a charge against the Association. The Association shall then assess all such costs and expenses incurred against the Lots pursuant to its powers under Article IV herein to levy assessments.

ARTICLE III
MEMBERSHIP AND VOTING RIGHTS

AS TO THE ASSOCIATION, the following Membership and voting rights shall apply:

Section 3.1: Membership; Voting Rights: Every Owner of a Lot shall automatically be a Member of the Association entitled to one (1) vote per Lot owned and shall be subject to assessment in the manner herein set. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment. When more than one (1)

person owns an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one (1) vote be cast with respect to any Lot. In any event, Declarant shall turn over control of the Association to the Owners of Lots on or before the seventh (7th) anniversary following the date of these Declarations first above written.

ARTICLE IV
COVENANT FOR MAINTENANCE ASSESSMENT

AS GENERAL ASSESSMENTS FOR ALL LOTS:

Section 4.1: Creation of the Lien and Personal Obligation of Assessments: The Declarant, for each Lot owned within the Properties, hereby covenants 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 and agree to pay to the Association as general and special assessments the following:

- (a) general annual assessments or charges ("General Assessment"); and
- (b) general special assessments for capital improvements, such assessments to be established and collected as hereinafter provided ("Special Assessments").

The General Assessments and Special Assessments, together with interest, costs and reasonable attorney's fees, if any, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment(s) is/are made in accordance with the Virginia Property Owner's Association Act, being Sections 55-508, et seq., of the Code of Virginia, 1950, as amended (the "Act"). Each such assessment, together with interest, costs and

reasonable attorney's fees, if any, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 4.2: Purpose of Assessments: The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the Properties and for the improvement and maintenance of the Common Area. All assessments shall be payable to the Association. The Mortgagee(s) of any Lot shall not be required to collect any assessment levied by the Association, nor shall any default in the payment of any such assessment constitute an event of default of any such mortgage.

Section 4.3: Maximum General Assessment: Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum General Assessment shall not exceed TWO HUNDRED AND NO/100 DOLLARS (\$200.00) per year per Lot.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum General Assessment may be increased each year **not more than ten percent (10%)** above the maximum assessment for the previous year without a vote of the Membership.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum General Assessment **may be increased above ten percent (10%)** by a majority vote of Members who are voting in person or by proxy, at a meeting duly called for this purpose.

(c) The Board of Directors may fix the General Assessment at an amount not in excess of the maximum without further vote or authorization by the Membership.

Section 4.4: Working Capital Fund: The Declarant, as Agent of the Association, may establish for the Association a Working Capital Fund by collecting from each Owner of an improved Lot up to six (6) months of the annual General Assessment for each improved Lot at the time the improved Lot is purchased to serve as a reserve fund for capital expenditures, replacements or general operating expenses. The Declarant shall not use the Working Capital Fund to pay any construction costs, but shall only use the Working Capital Fund for capital expenditures, replacements and general operating expenses of the Association. The Declarant shall maintain this as a segregated fund separate and apart from other funds of the Association.

Section 4.5: Special Assessment for Capital Improvements: In addition to the General Assessments authorized above, the Association may levy, in any assessment year, a Special Assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, maintenance, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of a **majority** of Members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 4.6: Notice and Quorum for any Action Authorized under Sections 4.3 and 4.5: Written notice of any meeting called for the purpose of taking any action authorized under Section 4.3 or 4.5 shall be sent to all Members not less than twenty-five (25) days nor more than sixty (60) days in advance of the meeting. The presence of Members or of proxies entitled to cast **twenty percent (20%)** of all the votes of Membership shall constitute a quorum.

Section 4.7: Uniform Rate of Assessment: Both General Assessments and Special Assessments must be fixed at a uniform rate for all Lots and may be collected in arrears or in

advance, and on a monthly, quarterly, semi-annual or annual basis as determined from time to time by the Board of Directors of the Association.

Section 4.8: Date of Commencement of General Assessments; Due Dates: The General Assessments provided for herein shall commence as to all Lots on the first day of the month following conveyance of the first Lot by the Declarant to an Owner or to a builder who has acquired such Lot for the purpose of building a residence thereon, or where the Lot has an existing house, at the time of the recordation of the Subdivision Plat including such Lot. The first General Assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the General Assessment against each Lot at least thirty (30) days in advance of each General Assessment period. Written notice of the General Assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessment on a Lot is binding upon the Association as of the date of its issuance.

Section 4.9: Effect of Nonpayment of General Assessments: Remedies of the Association: Any General Assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of **prime rate plus four (4) points per annum**, where the prime rate shall mean and refer to the interest rate established and offered under that name from time to time by Nations Bank, N.A., or its successor bank. The Association may record a memorandum of lien, bring an action at law against the Owner personally obligated to pay the

same, foreclose the lien against the Property, or pursue any other remedy available at law or in equity. No Owner may waive or otherwise escape liability for the General Assessments provided for herein by non-use of the Common Area or by non-use or abandonment of his Lot.

Section 4.10: Subordination of the Lien to Mortgages: The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof. Such subordination shall not release the Owner from personal liability for such assessment.

ARTICLE V PROPERTY RESTRICTIONS

The Declarant does hereby declare, covenant and agree, for itself and its successors and assigns, that all residential Lots and Common Areas shown on the Plat (except such Lots as may be needed for utilities and the like, which may be shown on Plats) shall be hereafter held and/or sold subject to the following conditions and restrictions, to-wit:

Section 5.1: Restrictions on Development of Common Areas. No part of the Common Areas may be developed or appropriated for the private use or benefit of any person or otherwise developed for any purpose in the future which has not been approved by the appropriate local governmental official. All of the Common Areas shall be developed and used to promote the

recreation, health, safety and welfare of the Owners and/or residents of the Lots. In the event that seventy-five percent (75%) or more of the Owners, after the Declarant has conveyed the last Lot, (other than the Declarant and/or the Builder) vote in favor of any use or development of all or any part of the Common Areas, then such use or development shall be deemed for the use and benefit of the Owners, if such use or development is approved by ordinance by the York County Board of Supervisors.

Section 5.2: Land Use and Building Type: No Lot shall be used except for residential purposes; provided, however, this shall in no way restrict the Common Area Lots being used for their intended purposes. Except for buildings or improvements constructed or erected by the Builder or Declarant, no building or improvement may be erected, constructed, altered, placed or permitted to remain on any Lot without the plans, specifications and drawings thereof having been approved in advance in writing by the Architectural Review Committee.

Section 5.3: No Home Businesses: No businesses shall be conducted from these residences or on these Lots wherein any evidence of said businesses is visible from outside the residence. This includes signs, marked vehicles, equipment and materials. Neither may any home business generate a stream of traffic to constitute a nuisance to the neighbors. As long as Declarant owns any Lot, Declarant may maintain a model, sales and/or construction trailer(s) on the Properties.

Section 5.4: No Further Subdivision: No Lots may be subdivided by any person other than the Declarant, except Lot line adjustments may be permitted, provided the total number of Lots is not increased. Notwithstanding the foregoing, the Declarant shall have the right to

subdivide Lots and/or make Lot line adjustments which increase the total number of Lots, subject only to municipal approval.

Section 5.5: Pets: No animals, livestock or poultry of any kind may be kept on any Lot except dogs, cats or other household pets, provided that they are not kept, bred or maintained for any commercial purpose and do not constitute a nuisance to any Owner or the Declarant.

Section 5.6: Construction or Other Debris: No Lot shall be used or maintained as a dumping ground for rubbish or other material prior to construction. During construction the area will be kept in a reasonably neat and clean condition, although some debris must be expected. After occupancy the property shall be kept in a good state of maintenance by the owner. Trash, garbage and other waste shall not be kept in or on the Properties, except in sanitary containers, which shall be located on the Lot such that it can not be viewed from the street(s) in the Subdivision. Incinerators will not be permitted and all trash and refuse must be picked up and hauled away, except as otherwise allowed by local ordinance.

Section 5.7: No Construction without Prior Approval: No construction or improvements shall be permitted within any area designated under the heading "Open Space," "Conservation Area" or "Easement" as reflected on the plat of this subdivision unless approved by Declarant and the County.

Section 5.8: Architectural Review: Until such time as Declarant has conveyed the last Lot as shown on the Subdivision Plat, or any Lot which may be hereafter annexed, Declarant shall designate an Architectural Review Committee consisting of three (3) persons which McDonald Associates, L.L.C. may from time to time change. Upon the last Lot being conveyed by Declarant, or at such earlier time as McDonald Associates, L.L.C. may elect, the Board of

Directors of the Association shall elect an Architectural Review Committee consisting of three (3) persons who may also serve as officers or directors of the Association. All new construction of any improvement, including without limitation residences or fences, shall require the written approval of the Architectural Review Committee. Any subsequent addition to, or change of, or alteration of existing construction shall in like manner, require approval of the Architectural Review Committee, provided, however, that repainting or repairs of what has been previously approved shall not require any subsequent approval. The Architectural Review Committee is authorized to review and determine in its sole discretion, the nature, kind, shape, height, materials, location or design or color of any improvement located upon the Properties to ensure harmony of external design and location in relation to surrounding structures and topography.

All Owners shall submit to the Architectural Review Committee for its review and approval, architectural elevation and floor plans for all dwelling units to be constructed on the Lots, in accordance with the following procedures:

(a) Within thirty (30) days after the Architectural Review Committee shall have received proposed elevations and floor plans for one (1) or more units to be constructed on the Lots, Declarant shall give Owner notice of its approval or disapproval thereof, specifying, in the case of the latter, its reason therefor. Declarant's right to disapprove such plans and specifications shall be exercised in conformance with the following criteria: (1) Subsection (a) of this paragraph; (2) architectural compatibility with units constructed in adjoining sections and (3) adverse impact on marketability of Lots within the Properties.

(b) An Owner, upon receipt of a notice of disapproval given pursuant to the above, may promptly undertake to amend and modify the proposed design so as to meet the

reasons for Declarant's disapproval specified in the notice of disapproval and, upon completion thereof, the same shall be approved or disapproved in writing by Declarant within fifteen (15) days after receipt of same, provided that each submission by Owner shall constitute a new proposal. If there shall be a bona fide dispute between the parties as to whether Declarant's disapproval of any design submitted to it is permitted hereunder, the parties shall enter into discussions of points of disagreement and use their best efforts to resolve such issues to their mutual satisfaction.

(c) If Architectural Review Committee fails to give notice of its approval or disapproval within thirty (30) days after receipt of any architectural elevations or other supporting documentation submitted to it for its approval, or of any required modification or amendment thereof, the same shall be deemed to have been approved by Declarant.

Section 5.9: Underground Utilities: All dwellings shall be served by underground utility service, including sewer, gas, electric, telephone and cable television. No above ground utilities will be permitted.

Section 5.10: Additional Restrictions: The following additional restrictions will be observed in the intent of preserving the architectural integrity of the Properties:

(a) No external antennas of any description, except satellite dishes of less than two feet (2') in diameter, which are located entirely below all roof lines of the house on the Lot and is not visible from the street(s) of the Subdivision in front of the Lot.

(b) No window air conditioners.

(c) No clothes lines, unless said lines are small and well-screened and approved by the Architectural Review Committee in advance of their construction, installation or creation.

(d) All fencing shall be of the same design, style, color and manufacture as are installed on the other Lots on the Properties or, alternatively, as approved by the Architectural Review Committee. No fencing, which is otherwise permitted, shall be erected prior to obtaining the approval of the Architectural Review Committee in accordance with paragraph 5.8 hereof. However, Builder does not need such approval from the Architectural Review Committee.

(e) No solar or energy panels may be visible from the street or to any other residence.

(f) No temporary structure, trailer, tent, shack, shed or other outbuilding shall be built or used on any Lot as a residence or for storage.

(g) No chain link fence is permitted, except around dog runs, which are limited to one hundred twenty (120) square feet of area, and must be located on the Lot so as not to be seen from the streets of the Subdivision.

(h) No sign of any kind shall be displayed to the public view on any Lot except one (1) sign of not more than ten (10) square feet advertising the property for sale or rent, or any sign used by the Builder to advertise or market the Properties.

(i) All driveways shall extend to the street and shall be hard surfaced with either aggregate, asphalt, concrete, paving stones, brick or other like material so as to blend with the streets.

(j) Outbuildings may be constructed or installed only after architectural review and approval in accordance with paragraph 5.8 hereof.

(k) Mailboxes shall be the same design, style, color and manufacture as are installed on the other Lots in the Property.

Section 5.11: Vehicles: Since the unregulated use of vehicles can destroy the appearance of a neighborhood, the following restrictions will apply:

(a) No more than two (2) ungaraged vehicles will be permitted to be consistently parked on the premises, and such vehicles must be in the driveway. These vehicles will be restricted to licensed, operable automobiles, mini-vans and pickup trucks not to exceed one (1) ton in capacity.

(b) No major vehicle maintenance or overhaul of ungaraged vehicles will be permitted.

(c) Unless garaged, no inoperable or unlicensed vehicle may remain on the Properties for more than two (2) days.

(d) All vehicles on the Properties must have all major body panels and doors (except tailgates on trucks) properly installed and closed.

(e) No recreational vehicles, boats, jet skis, trailers, campers, mobile homes or equipment, except passenger automobiles and passenger trucks, may be parked on the streets or on any Lot within the front property set back line.

Section 5.12: Easements: Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat of subdivision. The drainage and utility easements may also be used by the Declarant for ingress and egress to or to benefit the

Common Area and/or the Lots as provided for herein. The Declarant reserves the right to require additional easements not to exceed five (5) feet in width along any property line or any Lot if drainage problems develop at a later date and require such easements as may be necessary in the Declarant's opinion.

Section 5.13: Exterior Maintenance and Use: In addition to the power to promulgate Rules and Regulations to implement the intent and conditions hereof, the Architectural Review Committee may establish Rules and Regulations relating to exterior maintenance and use including without limitation Rules and Regulations to govern and control such matters as preserving the color scheme and harmony of outside design, displays or signage relating to holiday celebrations, sale or rental of dwelling units or political type posters.

Section 5.14: Conservation Easement:

(a) The Declarant does hereby covenant and agree, as a condition running with the land, that no activity will be performed on any applicable portion of property subject to these Declarations, which are designated on the Subdivision Plat or other recorded plat as a "Conservation Easement" involving a "Discharge of Fill Material" as that term is interpreted and applied by the United States Army Corps of Engineers pursuant to its authority under Section 404 of the Clean Water Act (33 U.S.C.A. 1251 et. seq.) unless: (1) such activity is specifically authorized by the Corps of Engineers through issuance of an appropriate permit for the activity, or such activity is exempt from the requirement of a permit under applicable statutes and regulations; (2) such activity is consistent with these Declarations, as applicable to lots in the subdivision known as McDonald Bluffs; and (3) such activity conforms to all other applicable requirements of federal, state and local laws, ordinance and regulations; nothing contained herein

shall prevent the construction of residences or other improvements on portions of Lots which may be partially affected by a Conservation Easement with the residences and other improvements being constructed on the portion of such Lot not subject to the Conservation Easement, provided, however, that the Owner of any such Lot shall be entitled to full and complete use of the portion of the Lot subject to the Conservation Easement and the Lot Owner shall be permitted to use the portion of the Lot affected by the Conservation Easement for normal yard and garden purposes, including without limitations, construction thereon of fences within the affected area.

(b) The covenants herein contained shall lie in addition to all of the covenants, conditions, and restrictions contained in the Declarations.

(c) The Declarant, the Association, the Corps of Engineers, and any other federal, state or local government or agency having jurisdiction over tidal or non-tidal wetlands as defined in the Clean Water Act as hereinabove referred to shall have the right to enforce, by proceeding at law or in equity in the Circuit Court of York County, Virginia, or the United States District Court of the Eastern District of Virginia, the covenants, conditions, restrictions and easements herein contained in this Section 5.14.

Section 5.15: Maintenance and Access Easements: Declarant reserves the right, from time to time, to create Maintenance and Access Easements of varying widths. The method of creation of the same shall be to have the same shown, marked, and identified with the specified width and location on the Subdivision Plat of Section One and the succeeding sections of McDonald Bluffs; such Maintenance and Access Easements when shown shall be for the exclusive use of Declarant and the Association to enter upon the Maintenance and Access

Easement Area for purpose of access by any person or equipment as needed to the Common Area; there is specifically precluded hereunder the right of any Lot Owner member or their guests or visitors to enter upon the area of a Maintenance and Access Easement, the sole purpose and intent hereof being that such right shall extend only to the Declarant and Association.

ARTICLE VI
INSURANCE

Section 6.1: Insurance: As required for VA approval, the Board of Directors is authorized to and is required to secure insurance in the areas of property damage, liability and personnel. Coverage, proceeds and benefits from any such insurance policy shall be equal for all Lot Owners. No director shall be liable for the failure to obtain any such insurance. Each Owner is hereby encouraged and entitled to secure and provide their respective insurance coverage. The Association has no duty to provide any insurance of any type on the Common Areas, the Properties or elsewhere.

ARTICLE VII
GENERAL PROVISIONS

Section 7.1: Enforcement: The Association, the Declarant or any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants reservations, liens and charges now or hereafter imposed by the provisions of these Declarations in accordance with the Act and all other applicable laws. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The Court is hereby specifically empowered and

authorized to use its equitable powers and authorities to correct any arbitrary, capricious or unreasonable act by the Association or any Lot Owner or committee connected therewith.

Section 7.2: Severability: Invalidation of any one of these covenants or restrictions by any judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 7.3: Amendment: The covenants and restrictions of these Declarations shall run with and bind the land for a term of forty (40) years from the date these Declarations are recorded, after which time they shall be automatically extended for successive periods of ten (10) years. These Declarations may be amended by an instrument signed by not less than sixty-seven percent (67%) of the Lot Owners and fifty-one percent (51%) of first mortgagees as hereinafter defined. Any amendment, upon receiving the necessary approval, shall be recorded in a document executed on behalf of the Association by its duly authorized officers. Any amendment must be recorded. In no event shall these covenants and restrictions terminate for so long as the Association owns any Common Area.

Until Declarant turns over control of the Association to the Owners of Lots, all material amendments and extraordinary actions, as defined in VA regulations, must have the approval of VA, if VA has guaranteed any loans secured by units in the project.

Section 7.4: Notice of Meetings and Quorum Requirements: Any meeting of the membership shall require no less than seven (7) days notice unless for a special meeting to approve a material amendment or extraordinary action, as defined by VA regulations, in which case at least twenty-five (25) days advance notice is required. In either case no more than sixty (60) days prior notice shall be given. Such notice shall state the purpose of the meeting and

contain a summary of any proposed amendments or actions. Such notice shall contain a copy of the proxy that can be cast in lieu of attendance at the meeting. The quorum for any such meeting shall be twenty percent (20%) of the total number of votes.

Section 7.5: Association Documents: In accordance with the Act, the Association shall maintain current copies of the Declarations, Articles of Incorporation, Bylaws, Rules and Regulations and budgets and shall provide copies upon request to Owners and Purchasers. The Association shall annually cause to be prepared a statement for each fiscal year which shall be provided to the Owners at each annual meeting.

Section 7.6: Termination of Association: The Association shall not dissolve nor shall the Association sell, transfer or otherwise convey the Common Areas except to any organization conceived and organized for the specific purpose of owning and maintaining the Common Areas without the approval of at least two-thirds (2/3) of the total votes of all members of the Association, including at least a majority of the total votes entitled to be cast by members other than the Declarant. Such action may occur provided that the Common Areas shall not be sold, transferred or conveyed to such successor organization without first offering to sell, transfer or convey such Common Areas to the County at a price not exceeding the appraisal of the Common Areas by a mutually acceptable appraiser, the costs of which shall be borne equally by the County and the Association. In the event that the County fails or refuses to pay its share of the fees for obtaining the appraisal within a reasonable time after receiving an itemized bill for its share of the appraisal fees, then the County shall be deemed to have refused its right of first refusal to purchase the Common Areas.

Section 7.7: Additional Covenants: It is understood and agreed, anything to the contrary contained herein notwithstanding, as follows:

(a) A first mortgagee will be provided written notification of any default by the mortgagor of such Lot in the performance of such mortgagor's obligation under the Subdivision documents which is not cured within thirty (30) days; as used herein, the terms "first mortgage," "mortgage" or "mortgagor" shall have the same meaning and import as "first deed of trust noteholder" or "first deed of trust" or "grantor of a deed of trust"; the terms "mortgage" and "deed of trust" for the purposes herein shall have the same meaning and intent.

(b) Any first mortgagee who comes into possession of a Lot in the Properties pursuant to the remedies provided in the mortgage, or foreclosure of the mortgage, or deed (or assignment) in lieu of foreclosure shall be exempt from all "rights of first refusal," if any.

(c) Any first mortgagee who comes into possession of a Lot pursuant to the remedies provided in the mortgage, foreclosure of the mortgage, or deed (or assignment) in lieu of foreclosure shall take the Property free of any claims for unpaid assessments or charges against the mortgaged Lot which accrue prior to the time such holder comes into possession of the Lot.

(d) Unless at least **fifty-one percent (51%)** of the first mortgagees (based upon one [1] vote for each first mortgagee) of individual Lots in the Properties have given their prior written approval, the Association shall not be entitled to:

(1) By act or omission seek to abandon, petition, subdivide, encumber, sell or transfer real estate or improvements thereon which are owned, directly or indirectly, by such Association for the benefit of the Owners and Lots in the Properties, provided, however,

that the Declarant, or the Association by a vote of its Board of Directors and with the express prior written agreement of the County, at any time may convey all or any part of the Common Areas to the County, who shall thereafter maintain the same. The conveyance to the County or other public body, or the granting of easements for public utilities or for other public purposes consistent with the intended use of such property by the Association shall not be deemed a prohibited transfer within the meaning of this clause.

(2) Change the method of determining the obligations, assessments, dues or other charges which may be levied against an Owner.

(3) Use hazard insurance proceeds for losses to any Common Area property for other than the repair, replacement or reconstruction of such improvements.

(4) By act or omission change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of units, the exterior maintenance of units, the maintenance of party walls or common fences and driveways, or the upkeep of lawns and plantings in the Properties.

(5) Fail to maintain fire and extended coverage on insurable common area property on a current replacement costs basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement cost).

(e) First mortgagees shall have the right to examine the books and records of the Association or any entity which owns the Common Area or the property of the Association.

(f) First mortgagees of Lots in the Properties may, jointly or singly, pay taxes or other charges which are in default and which may have become a charge against any Common Area property and may pay overdue premiums on hazard insurance policies, or secure new

hazard insurance coverage on the lapse of a policy, for such property, and first mortgagees making such payment shall be owed immediate reimbursement therefor from the Association. Entitlement to such reimbursement is hereby agreed to and this instrument shall constitute an agreement in favor of all first mortgagees of Lots in the Properties.

(g) No provision of the Association Articles of Incorporation, or the declaration of easements, restrictions and covenants, or any similar instrument pertaining to the Properties or to Lots therein gives a Lot Owner or any other party priority over any rights of first mortgagees of Lots herein pursuant to their mortgages in the case of a distribution to Lot Owners of insurance proceeds or condemnation awards for losses to or taking of the Association's common property.

(h) Lot Owners have a right to enjoyment of the Common Areas as provided herein and such Property is owned in fee simple by the Association. The Common Area properties were conveyed to the Association unencumbered except for any easements granted for public utilities or for other public purposes consistent with the intended use of such Property by the Association.

(i) In the event that management other than self-management is required of the Association ("Outside Management"), and in the event that the Association elects or decides to terminate said Outside Management, then all first mortgagees shall be given at least thirty (30) days notice of said action.

(j) All first mortgagees shall be entitled to receive reasonable written notice of damage to or condemnation of any part of the Common Area or the improvements located thereon.

(k) Any approval herein required by a first mortgagee shall be implied if a first mortgagee has failed to submit a response within fourteen (14) days to a written proposal or notice, provided the proposal or notice was delivered by certified or registered mail, with a return receipt requested.

(l) The Association shall not be dissolved nor shall the Association dispose of any Common Areas by sale or otherwise, except to an organization conceived and organized to own and to maintain the Common Areas, without the approval of at least two-thirds (2/3) of the total votes of all members of the Association, including at least a majority of the total votes entitled to be cast by members other than the Declarant. Such action may occur provided that the Common Areas shall not be sold, transferred or conveyed to such successor organization without first offering to convey the same to the County or other appropriate governmental agency in exchange for compensation in an amount not exceeding the appraisal of a mutually acceptable appraiser, the costs of which shall be borne equally by the Association and the County or other appropriate governmental agency. In the event the County fails or refuses to pay its share of the fees for obtaining the appraisal within a reasonable time after receiving an itemized bill for its share of the appraisal fees, then the County shall be deemed to have refused its right of first refusal to purchase the Common Areas. It is provided however, that this paragraph shall not restrict or prohibit granting of easements or other conveyances for the benefit of the Lot Owners as may be approved by the Board of Directors or if these Restrictions so require approval, by the Lot Owners in such percentage as may be required hereunder.

(m) Except as otherwise provided herein, neither Declarant nor any other party may further Mortgage or convey all or any part of the Common Areas without the express consent of at least two-thirds (2/3) of the Members.

Section 7.8: Easement for Public Necessity: Upon recordation of these Declarations, there is hereby granted to the County, its employees and agents a perpetual right of ingress and egress over and upon the Common Area in order to assure the performance of all public duties, including but not limited to law enforcement officers, rescue squad personnel, fire fighting personnel and government building officials and inspectors. In addition, Declarant shall have the right to construct storm water management facilities on the Common Area and to have an easement for ingress and egress and for all type easements over, under and upon the Common Area for the benefit of the Lots.

ARTICLE VIII
DECLARANT'S RIGHTS AND REPRESENTATIVES

Section 8.1: Rights: Anything herein to the contrary notwithstanding, the Declarant shall at all times have and does hereby reserve to itself, its successors and assigns:

(a) the right to use Lots for sales models and/or a sales office for sale of all Lots within the Subdivision.

(b) A non-exclusive easement over and upon the Common Area and for purposes of making improvements to the Common Area and on all Lots located within the Subdivision.

ARTICLE IX

CONDEMNATION

Section 9.1: Condemnation: In the event of a condemnation or taking by eminent domain by any local, state or federal authority of all or any part of the Common Area, the Association is hereby designated and appointed as attorney-in-fact for all Owners for purposes of representing all Owners in any proceedings, negotiations, settlements or agreements. Any funds received by the Association shall be held for the benefit of the Association and be used by the Association for the purposes herein set forth, unless there is a total taking of all the Common Area, in which event the funds shall be distributed pro rata among the Owners and their respective first mortgagees.

ARTICLE X

CONSTRUCTION STANDARDS

Section 10.1: Declarant covenants the following:

- (a) Development shall be restricted to single family detached homes together with appropriate open space, green areas and recreational facilities.
- (b) All Lots shall be served by public water and public sewer systems.
- (c) The property subject to these Declarations shall be developed in substantial accordance with the development plan(s) for the Properties approved by the County from time to time (the "Plan").
- (d) Declarant agrees that the recreational facilities associated with the Common Area shall either be constructed or guaranteed for construction through an agreement and surety

acceptable to the county attorney for York County prior to the platting of any lots over fifty percent (50%) of the total number authorized. The recreational facilities shall be completed and available for use prior to the issuance of any certificates of occupancy for dwelling units in the subdivision, unless a phased development schedule for recreational facilities is approved by the County. All Common Areas shall be conveyed to the Association within six (6) months of the recordation of the Subdivision Plat showing such Common Area.

(e) The following requirements as to the size and construction shall apply to all detached single family homes:

- (1) No one-story detached single family home shall have less than 1,700 sq. ft. of living area.
- (2) No two-story detached single family home shall have less than 2,400 sq. ft. of living area.
- (3) Foundations for homes shall be entirely constructed of brick.
- (4) The minimum major roof pitch shall be of 8 in 12.
- (5) Siding shall be brick, Exterior Installation and Finish System, beaded board, beaded vinyl, steel or aluminum.

The Architectural Review Committee shall have the discretion to make any exceptions to the above size and construction requirements.

It is understood and agreed with respect to the building requirements set forth in this paragraph (e) that the size limitations apply only to homes built for sale hereafter and that at any time after such home has been built, the Owner or Owners may from time to time add, change, increase or otherwise modify the original detached or attached homes built upon any of said Lots.

ARTICLE XI
ANNEXATION

Section 11.1: Annexation: All or any part of the following described properties may be annexed hereto at any time hereafter solely by action of the Declarant and without the consent of the Members of the Association, and upon the same happening, Declarant shall be deemed the "Declarant" as herein defined of the annexed properties and shall be entitled to any and subject to all of the privileges, rights and liabilities herein set for Declarant. Said Properties which may be so annexed being described as all or any portion of the property described as follows:

All those certain pieces, parcels or tracts of land as described on the attached Exhibit A, which are hereby made a part hereof by reference thereto, and any and all adjacent parcel or parcels of land now or hereafter acquired by Declarant.

Section 11.2: Method of Annexation: Declarant may cause such annexation to be made by including the provisions of such annexation to be shown on such recordation plat or by an instrument executed by Declarant and duly recorded describing the parcel or parcels to be annexed and referring to and making such parcel or parcels subject to the within Covenants, Conditions and Restrictions, or both, as amended from time to time.

Upon any such annexation being so made, the real estate or "Properties" covered thereby together with the Declarant and all Owners thereof and their heirs, successors and assigns shall be entitled to, and subject to, all of the terms of the within Covenants, Conditions and Restrictions in the same manner as if such annexed parcel had been included within the legal description as contained in said McDonald Bluffs.

It is further understood and agreed that such annexation of all or of any part of the real estate hereinabove described shall be solely at the option of the Declarant, and Declarant may from time to time annex all or any part or parts thereof as determined solely by the Declarant without the necessity of approval of any Lot Owner of the Association, anything to the contrary notwithstanding in the Articles of Incorporation or Bylaws of the Association.

Section 11.3: Encroachments: In the event any portion of any improvement on any Lot encroaches upon the Common Areas and facilities, or an encroachment for an improvement in the Common Areas exists upon a Lot, as result of construction, reconstruction, repair, shifting, settlement or movement of any portion thereof, a valid easement for the encroachment and for the maintenance of the same shall exist so long as the encroachment exists. In addition, there is hereby created an easement for the encroachment of the entrance sign or signs to McDonald Bluffs on any adjacent Lot(s).

[SIGNATURES APPEARS ON NEXT PAGE]

IN WITNESS WHEREOF, the undersigned Declarant, McDonald Associates, L.L.C., a Virginia limited liability company, has caused this instrument to be executed on its behalf as of the date and year first above written.

McDONALD ASSOCIATES, L.L.C.

By: [Signature]
Its: Operating Manager

COMMONWEALTH OF VIRGINIA

City/County of Newport News, to wit:

I, Frances K Barber, a Notary Public in and for the city/county and Commonwealth aforesaid, do hereby certify that Kenneth L. Allen, as Operating Manager of McDonald Associates, L.L.C., a Virginia limited liability company, whose name is signed to the foregoing writing bearing date as of the 15th day of July, 1999, has acknowledged the same before me in my city/county and Commonwealth aforesaid.

Given under my hand this 3rd day of July, 1999.

Frances K Barber
Notary Public

My commission expires: Nov 30, 2002

BK 1109PG0493

Exhibit "A"

Legal Description

All that certain parcel or parcels of land located in the Bethel Magisterial District, County of York, Virginia, and comprised of 40.21 +/- acres, including Lots 1 through 35 (17.33 +/- acres), R/W Area (1.7635 acres) and Common Area (21.12 +/- acres) as shown on that certain subdivision plat entitled "Subdivision Plat of McDonald Bluffs, Bethel Magisterial District, County of York, Virginia", dated March 18, 1999, made by Davis & Associates, P.C., 3630 George Washington Memorial Highway - Suite "G", Yorktown, Virginia, 23693, recorded in Plat Book 13, at pages 17, 18, 19 and 20 in the Clerk's Office of the Circuit Court of the County of York, Virginia.

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Virginia: County of York to-wit:

In the Clerk's Office of the Circuit Court for the County of York, the 21st day of July 1999

This deed was presented with the certificate annexed and admitted to record at 4:04 o'clock pm

Teste: Nancy B. Kane, Clerk

By: Deed S. Hughes Deputy Clerk

UPLOADED

4/27/2021