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AMENDED AND RESTATED MASTER DECLARATION OF PROTECTIVE
COVENANTS AND RESTRICTIONS

NEW TOWN (RESIDENTIAL)

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AMENDED AND RESTATED MASTER DECLARATION OF PROTECTIVE
COVENANTS AND RESTRICTIONS
FOR
NEW TOWN (RESIDENTIAL)

THIS AMENDED AND RESTATED MASTER DECLARATION OF PROTECTIVE COVENANTS AND RESTRICTIONS ("this Declaration") is made this 27th day of June, 2005 by NEW TOWN ASSOCIATES, LLC, a Virginia limited liability company ("Developer"), NEWTOWN OF WILLIAMSBURG, VA., L.L.C., a Virginia limited liability company ("NWV"), G.C.R., INC., a Virginia corporation ("GCR") and HHJV, LLC, a Virginia limited liability company ("HHJV"); [collectively, the foregoing parties are each named herein as "Grantor" and "Grantee" for purposes of recording].

RECITALS

A. By instrument entitled "Master Declaration of Protective Covenants and Restrictions New Town (Residential)," dated May 19, 2004 and recorded in the Clerk's Office of the Circuit Court of the City of Williamsburg and County of James City, Virginia (the "Clerk's Office") as Instrument No. 040013865 (the "Original Declaration"), New Town Associates, LLC, a Virginia limited liability company, as "Developer" subjected certain real property more particularly described in Exhibit A thereto to certain covenants, easements, liens, charges and restrictions set forth therein.

B. Article IX, Section 9.2 of the Original Declaration provides that the Original Declaration may be amended by a vote of two-thirds of the sum of: (A) the Class A votes (including Developer as to Class A votes held by Developer), plus (B) the Class B votes (if any).

C. By Deeds (i) dated June 23, 2004 and recorded in the Clerk's Office as Instrument No. 040016174, and (ii) dated August 11, 2004 and recorded in the Clerk's Office as Instrument No. 040020939, Developer conveyed to NWV certain real property as more particularly described in such Deeds comprising a portion of the property shown on Exhibit A of the Original Declaration.

D. By Deeds (i) dated March 2, 2005 and recorded in the Clerk's Office as Instrument No. 050004591, and (ii) dated April 28, 2005 and recorded in the Clerk's Office as Instrument No. 050010183, NWV conveyed to GCR certain real property as more particularly described in such Deeds comprising a portion of the property shown on Exhibit A of the Original Declaration.

E. By Deed dated April 28, 2005 and recorded in the Clerk's Office as Instrument No. 050010283, NWV conveyed to HHJV certain real property as more

particularly described in such Deed comprising a portion of the property shown on Exhibit A of the Original Declaration.

F. Developer, NWV, GCR and HHJV are all of the owners of the property previously subjected to the Original Declaration and are all of the Class A Members of the "Association" (as hereinafter defined) and Developer is the Sole Class B Member.

G. Developer, NWV, GCR and HHJV desire to amend and restate the Original Declaration in its entirety as set forth herein.

NOW, THEREFORE, Developer and NWV, GCR and HHJV hereby amend and restate the Original Declaration in its entirety as hereinafter provided. Upon recordation of this Declaration in the Clerk's Office, this Declaration shall replace the Original Declaration.

ARTICLE I

DEFINITIONS

Section 1.1. "Additional Area" shall have the meaning set forth in Section 2.1 of this Declaration.

Section 1.2. "Annual Assessment" shall have the meaning set forth in Section 5.3 of this Declaration.

Section 1.3. "Architectural Review Committee" shall have the meaning set forth in Section 6.1 of this Declaration.

Section 1.4. "Articles" means the Articles of Incorporation of New Town Residential Association, Inc., as the same may be amended from time to time.

Section 1.5. "Association" means the New Town Residential Association, Inc., a Virginia nonstock corporation, its successors and assigns.

Section 1.6. "Bylaws" means the Bylaws of New Town Residential Association, Inc., as the same may be amended from time to time.

Section 1.7. "Clerk's Office" means the Clerk's Office of the Circuit Court of the City of Williamsburg and County of James City, Virginia.

Section 1.8. "Common Area" means (i) real estate and or easements specifically designated as "Common Area" or "Common Area Easement" on recorded plats of the Properties (except as may be provided otherwise in a recorded Supplemental Declaration), in any Supplemental Declaration or in any amendment to this Declaration

or in any other instrument executed by Developer and recorded in the Clerk's Office; (ii) the portions of the Properties, if any, designated for "open space," "buffer zones," "scenic easements," "conservation areas," "landscape easement" and "BMP" or similar purposes on recorded plats of the Properties and conveyed (by deed, plat dedication or easement) to and accepted by the Association; and (iii) all other real property easements, and improvements or facilities now or hereafter owned by the Association which are intended to be devoted to the common use and enjoyment of the Owners. The Common Area includes or may in the future include, without limitation, certain streets which are not dedicated to the public, certain alleyways and access drives providing access to and from residential Lots and Parcels, entrance signs and entry features, landscaping easements, certain fencing, medians located within or adjacent to streets within the Properties, certain parks and open space areas, one or more storm water detention ponds or "BMP's", areas set aside for pedestrian and/or bicycle paths and other recreational facilities intended to be used by the Owners. Portions of the Common Area may be designated by the Developer pursuant to Section 4.4 hereof as "Limited Common Areas" for the exclusive use of one or more but less than all of the Owners. At Developer's option, Common Area may be for the benefit of both the Property and any other property (whether residential or commercial in nature) that is part of the Additional Area even if such property is not subjected to this Declaration. At Developer's option, the Property may be served by one or more area-wide BMP's which also serve other property in New Town and which may or may not be designated as "Common Area" of the Association; provided, however, that appropriate cross-easements and cost sharing agreements will be established in such instances.

Section 1.9. "Declaration" means this Amended and Restated Master Declaration of Protective Covenants and Restrictions, as the same may from time to time be supplemented, modified, restated and amended.

Section 1.10. "Developer" means New Town Associates, LLC, a Virginia limited liability company, and its successors as "Developer" of the Properties to whom New Town Associates, LLC, has assigned its rights hereunder by instrument recorded in the Clerks' Office as provided in Section 9.11.

Section 1.11. "General Assessments" shall have the meaning set forth in Section 5.3 of the Declaration.

Section 1.12. "Governing Documents" means the Articles, the Bylaws, this Declaration and any Supplemental Declaration, as the same may be amended or supplemented from time to time.

Section 1.13. "Improvement" shall have the meaning set forth in Section 6.2 of this Declaration.

Section 1.14. "Limited Common Area" means a portion of the Common Area designated by the Developer pursuant to Section 4.4 hereof for the exclusive use of one or more but less than all of the Owners.

Section 1.15. "Lot" means any lot which is shown on a recorded subdivision plat of a Neighborhood (or any subsequently recorded subdivision plat) or, with respect to condominiums, a governmentally approved site plan, and on which is constructed or is to be constructed (i) a single family, detached residence; (ii) a townhouse; (iii) a zero lot line residence or other type of cluster house; or (iv) any residential condominium unit within a condominium created pursuant to the Condominium Act of Virginia, §55-79.39 et seq. of the Virginia Code, as the same may be amended from time to time. The term "Lot" shall not include any portion of the Properties which at the time in question is not included in a recorded subdivision plat of a Neighborhood, nor shall "Lot" include Common Areas, Neighborhood Common Areas, Limited Common Areas, public streets or property dedicated to and accepted by a public authority.

Section 1.16. "Member" means every person or entity who holds membership in the Association.

Section 1.17. "Neighborhood" means one (1) or more Lots identified as a neighborhood in a Supplemental Declaration.

Section 1.18. "Neighborhood Assessment" shall have the meaning set forth in Section 5.3 of this Declaration.

Section 1.19. "Neighborhood Common Area" means the real property and any improvements thereon which is for the primary use and enjoyment of Owners residing in such Neighborhood and which is designated as Neighborhood Common Area on the recorded plat of subdivision for the Neighborhood or described as such in a Supplemental Declaration applicable to the Neighborhood.

Section 1.20. "Owner" means the record holder, whether one or more persons or entities, of fee simple title to any Lot or Parcel, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 1.21. "Person" means any natural person, corporation, limited liability company, joint venture, partnership, association, joint stock company, trust, unincorporated organization or government or any agency or subdivision thereof or any other separate legal entity. "Person" shall also mean and include, without limitation, a property or condominium unit owners association.

Section 1.22. "Parcel" means any portion of the Properties subdivided from the residue thereof for the purpose of either (i) resubdivision into Lots, (ii) the creation of a residential condominium and condominium units pursuant to the Condominium Act of

Virginia, § 55-75.39 et seq. of the Virginia Code, as the same may be amended from time to time, or, (iii) the construction of residential apartments thereon.

Section 1.23. "Parcel Developer" means any person or entity who purchases a Parcel for the purpose of development and sale of Lots (including, without limitation, condominium units) or development of residential apartments.

Section 1.24. "Property" or "Properties" means the real property described on Exhibit A attached hereto, together with such other real property as may from time to time be subjected in whole or in part to this Declaration by Developer pursuant to Article II hereof as and when such other real property is subjected.

Section 1.25. "Supplemental Declaration" shall have the meaning set forth in Section 2.3 hereof.

Section 1.26. "Virginia Code" shall mean the Code of Virginia (1950), as in effect on the first date of recordation of this Declaration and as amended from time to time thereafter. Except as otherwise expressly permitted herein, if any sections of the Virginia Code referred to in this Declaration are hereafter repealed or recodified, each such reference shall be deemed to apply to the section of the Virginia Code that is the successor to the previous section referred to herein, or, if there is no successor section, such reference shall be interpreted as if the section had not been repealed.

Section 1.27. "Zoning Ordinance" means any ordinance, regulation or provision enacted by the applicable governing body of the County of James City, Virginia, regulating, restricting, permitting or prohibiting the use of land and the construction of improvements thereon and, for the purpose of this definition, shall include the conditions and provisions of any conditional use permit affecting any portion of the Property or any other government-controlled or directed process affecting any portion of the Property. Without limiting the generality of the foregoing, "Zoning Ordinance" also includes (i) the New Town Proffers dated as of December 9, 1997 made by Developer's predecessor in title, C.C. Casey Limited Company, and accepted by James City County (the "New Town Proffers"), as the same may be amended, modified, supplemented or amended and restated from time to time (including, without limitation, certain amendments referenced below); and (ii) any other proffers which are applicable to all or any portion of the Property, as the same may be amended, modified, supplemented or amended and restated from time to time. With respect to those certain parcels of land shown and set out as Sections 2 and 4 on the Master Plan entitled "New Town Sections 2 and 4 Amended Master Plan," dated June, 2001, revised September 14, 2001, amended June 23, 2003, and revised September 1, 2004 (hereinafter referred to as "Sections 2 and 4"), the proffers entitled "New Town - Sections 2 and 4 - Proffers" dated November 1, 2001, made by Developer and recorded in the Clerk's Office as Instrument No. 010023715 (the "Sections 2 and 4 Proffers") superceded and amended and restated in their entirety the New Town Proffers as to Sections 2 and 4. Pursuant to the proffers entitled "Supplemental Proffers --

New Town – Sections 2 and 4" dated October 3, 2003, made by Developer and recorded in the Clerk's Office as Instrument No. 030032005, the Sections 2 and 4 Proffers were further supplemented and amended. With respect to those certain parcels of land shown and set out as Sections 3 and 6 on the Master Plan entitled "New Town Sections 3 and 6 Amended Master Plan," dated June 1, 2004 and revised June 21, 2004 (hereinafter referred to as "Sections 3 and 6"), the proffers entitled "New Town – Sections 3 and 6 – Proffers" dated October 25, 2004, made by Developer and recorded in the Clerk's Office as Instrument No. 040027471 (the "Sections 3 and 6 Proffers") superceded and amended and restated in their entirety the New Town Proffers as to Sections 3 and 6. As and when additional parcels of land within the Property and the Additional Area are rezoned, it is anticipated that the New Town Proffers will be amended and restated as to each parcel of land rezoned.

ARTICLE II

ADDITIONS TO THE PROPERTIES

Section 2.1. Additional Area. The real estate which is subject to this Declaration as of the date of its recordation in the Clerks' Office is described in Exhibit A hereto. Developer contemplates the extension of this Declaration to the real estate described in Exhibit B hereto or portions thereof and the possible extension of this Declaration to other real estate located within a two (2) mile radius of the real estate described in Exhibits A and B (collectively, the "Additional Area"). However, Developer shall not be obligated to bring all or any part of the Additional Area within the scheme of development established by this Declaration, and no negative reciprocal easement shall arise out of this Declaration so as to benefit or bind any portion of the Property or the Additional Area until such portion of the Additional Area is expressly subjected to the provisions of this Declaration in accordance with Section 2.2 below and then such portion of the Additional Area shall be subject to any additions, deletions and modifications as are made pursuant to Section 2.2.

Section 2.2. Right to Subject Additional Area to Declaration. Developer reserves the right, at its discretion, at such time or times as it shall determine on or before April 1, 2020, to subject the Additional Area, or such portions thereof as Developer shall determine, together with improvements thereon and easements, rights and appurtenances thereunto belonging or appertaining, to the provisions of this Declaration in whole or in part. Any portion of the Additional Area which is not, on or before April 1, 2020, subjected to the provisions of this Declaration in whole or in part pursuant to this Section 2.2 and thereby constituted a part of the "Properties," shall cease to be Additional Area. Each of the additions authorized pursuant to this Section 2.2 shall be made by Developer's recordation in the Clerk's Office of a supplemental declaration ("Supplemental Declaration") describing the portion(s) of the Additional Area subjected to this Declaration. If record title to the portion of the Additional Area being subjected to this Declaration is held by any Person other than Developer, then such Person shall join

in and execute the Supplemental Declaration along with Developer. Each Supplemental Declaration may contain such additions, deletions and modifications to the provisions of this Declaration as may be desired by Developer. However, no negative reciprocal easement shall arise out of any additions, deletions or modifications to this Declaration made in the instruments which subject the Additional Area to this Declaration except as to the real estate expressly subject to such additions, deletions and modifications. The foregoing notwithstanding, if Developer desires to subject all or any portion of any of the Additional Area not described in Exhibit B hereto, such action will require the approval of the Veterans Administration prior to the annexation of such Additional Area.

Section 2.3. Additional Provisions. In addition to subjecting the Additional Area to this Declaration as provided in Section 2.2, Developer may, in its discretion, execute and record one or more Supplemental Declarations for the purpose of establishing certain additional or different covenants, easements and restrictions (including, without limitation, a different level of assessments and/or the attribution of parking spaces as and when required under the Zoning Ordinance) applicable to a specific Neighborhood or Neighborhoods or certain specified Lot(s) and/or Parcel(s). However, no negative reciprocal easement shall arise out of any Supplemental Declaration so as to bind any real property not expressly subjected thereto.

Section 2.4. Power Not Exhausted by One Exercise, Etc. No exercise of the power granted Developer hereunder as to any portion of the Additional Area shall be deemed to be an exhaustion of such power as to other portion(s) of the Additional Area not so subjected to the provisions hereof or to the provisions of a Supplemental Declaration. The discretionary right of Developer to subject the Additional Area to the provisions of this Declaration or a Supplemental Declaration is not conditioned upon or subject to the approval of other Owners and therefore the requirements set forth in Section 9.2 for amendments to this Declaration shall be inapplicable to this Article II. The failure of Developer to extend the provisions of this Declaration to the Additional Area or any portion(s) thereof shall not be deemed to prohibit the establishment of a separate scheme of development (including provisions substantially similar or identical to those contained herein) for such portion(s) of the Additional Area to which this Declaration is not extended.

Section 2.5. Development of Additional Area. The portion(s) of the Additional Area subjected to the provisions of this Declaration may contain additional Common Areas, Limited Common Areas, Neighborhood Common Areas and facilities to be owned and/or maintained by the Association.

Section 2.6. Withdrawal. Developer shall have the right, in its sole discretion, to remove from the Properties any portion thereof by recording in the applicable Clerk's Office a Supplemental Declaration describing the portion(s) to be removed from the Properties, provided, however, if such portion is owned by any Person other than Developer, then such withdrawal must be with the consent of such Person and Developer.

Section 2.7. Master Plan. The existence of a master plan for the Properties as part of the Zoning Ordinance or as used by Developer in developing and/or selling the Properties, and Lots and Parcels therein shall not be deemed to constitute a representation by Developer that the real estate shown thereon shall be developed as depicted on the master plan, and the master plan may be amended from time to time in the sole discretion of Developer with the consent (to the extent required) of the County of James City, Virginia.

ARTICLE III

OWNERS ASSOCIATION

Section 3.1. Membership. Every Owner of a Lot, and every Owner of a Parcel shall be a member of the Association. Membership shall be appurtenant to and shall not be separated from ownership of any Lot and/or Parcel. Upon the recordation of a deed to a Lot or a Parcel, the membership of the selling Owner shall cease and the purchasing Owner shall become a member of the Association.

Section 3.2. Classes of Membership. The Association shall have two classes of voting membership:

Class A. All Owners of Lots and Parcels including Developer shall be Class A members.

Class B. Developer shall be the Class B member. The Class B membership shall terminate on the earlier of (i) the date on which Developer ceases to own twenty-five percent (25%) or more of the land (including undeveloped Lots and Parcels) lying within New Town and the Additional Area, (ii) the date on which Developer executes and records in the Clerks' Offices an amendment to this Declaration terminating the Class B membership, or (iii) on April 1, 2020.

Section 3.3. Voting Rights.

(a) Each Class A member including Developer shall be entitled to cast one vote for each Lot and Parcel owned.

(b) Developer as the Class B member shall be entitled to cast three votes for each Lot and Parcel owned.

(c) Notwithstanding subsection (a) above, if a Parcel is developed for residential apartment use or an assisted care or other use wherein the owner's Parcel is not subdivided into Lots, the Owner thereof shall be entitled to cast the product of three (3)

Class A votes per acre multiplied by the acreage of the Parcel. If such product is other than a whole number, the product shall be adjusted upward to the nearest whole number.

Section 3.4. Suspension of Voting Rights. The Board of Directors of the Association may suspend the voting rights of any Member subject to assessment under this Declaration during the period when any such assessment shall be delinquent, but upon payment of such assessment the voting rights of such Member shall automatically be restored.

Section 3.5: Articles and Bylaws to Govern; Property Owners' Association Act. Except to the extent expressly provided in this Declaration, all the rights, powers and duties of the Association and the Members, including the Members' voting rights, shall be governed by the Articles and the Bylaws. The Articles provide, among other things, that the Class B member shall appoint the members of the Board of Directors until the Class B membership terminates. However, in the event of any conflict or inconsistency between the provisions of this Declaration or any Supplemental Declaration and the provisions of the Articles or Bylaws, this Declaration and all Supplemental Declarations (to the extent applicable) shall control. In addition to all of the rights, powers and duties of the Association provided in this Declaration, the Association shall have all of the rights, powers and duties provided in the Property Owners' Association Act, § 55-508 et seq of the Virginia Code, as the same may be amended from time to time.

Section 3.6. Neighborhoods. The Lots within a particular Neighborhood or within a particular grouping of Lots subject to its own Supplemental Declaration may be subject to additional covenants other than as set forth in this Declaration (including any Supplemental Declaration), and the Owner of a Lot may be a member of another owners association in addition to the Association. In addition, the Bylaws and/or a Supplemental Declaration may provide for the establishment of a Neighborhood Advisory Committee for each Neighborhood to advise the Board of Directors of the Association with regard to matters affecting such Neighborhood, including, without limitation, making recommendations regarding the proposed annual budget with regard to Neighborhood Assessments payable by Owners within such Neighborhood. In order to serve on such a committee an Owner must not be in default of any obligations under the Governing Documents, including but not limited to timely payment of all assessments, and the Board has the authority to remove any person who is in default from service on a committee.

ARTICLE IV

COMMON AREA

Section 4.1. Obligations of the Association. The Association, subject to the rights of the Members set forth in this Declaration, shall be responsible for the maintenance, management, operation and control, for the benefit of the Members, of the

Common Area, the Limited Common Area and the Neighborhood Common Area conveyed, reserved or dedicated to or for the benefit of the Association and all improvements thereon (including fixtures, personal property and equipment related thereto) and shall keep the Common Area, the Limited Common Area, the Neighborhood Common Area and the improvements thereon in accordance with the requirements of the Zoning Ordinance, this Declaration and any applicable Supplemental Declaration, and the Association shall keep the same in good, clean and attractive condition, order and repair.

The Association shall be responsible for the management, control and maintenance of all street intersection signs (to the extent not maintained by the County of James City and/or the Virginia Department of Transportation), direction signs, plantings, street lights, entrance features and/or "theme areas," lighting, stone, fencing, wood or masonry wall features and/or related landscaping and bicycle/pedestrian paths erected, installed or planted in the Common Areas, Limited Common Areas and Neighborhood Common Areas by the Developer or the Association, for the benefit of the Members or the Association; provided such items are not maintained by the applicable municipality or the Virginia Department of Transportation at its expense and are located within Common Areas, Limited Common Areas, Neighborhood Common Areas and/or within landscaped areas of public right-of-ways for which the Association has assumed maintenance.

In addition to the Association's responsibilities regarding the Common Areas, Limited Common Areas and Neighborhood Common Areas, the Association shall have the express right to enter into cost sharing, use and cross access arrangements with any other Person, including, without limitation, any other property owners association providing services and/or shared facilities in the vicinity of the Property.

Section 4.2. Owners' Rights of Enjoyment and Use of Common Areas. Subject to the provisions of this Declaration and any applicable Supplemental Declaration and the Articles and Bylaws and except to the extent limited by the designation of "Limited Common Area", every Owner shall have a right of enjoyment in and to the Common Areas; which right of enjoyment shall be appurtenant to and shall pass with the title to every Lot and Parcel. The Common Areas shall be used by Owners only for the purpose or purposes for which the Common Areas may have been improved by Developer, the Parcel Developer or the Association and subject to any applicable restrictions in the Zoning Ordinance. Any Common Area which has not been improved for a particular use is intended to remain in its natural condition until so improved, and any use thereof by an Owner shall not damage or disturb such natural condition or the enjoyment thereof by other Owners.

Section 4.3. Owners' Rights of Enjoyment and Use of Neighborhood Common Areas. Subject to the provisions of this Declaration, any applicable Supplemental Declaration and the Articles and Bylaws and such easements and other matters of record in the Clerk's Office, the Owners of Lots within a particular Neighborhood shall have the primary right of enjoyment in and to the Neighborhood Common Areas located within

such Neighborhood, which right of enjoyment shall be appurtenant to and shall pass with the title to every Lot within such Neighborhood. The Neighborhood Common Areas shall be used only for the purpose or purposes for which the Neighborhood Common Areas may have been improved by Developer, the Parcel Developer or the Association and subject to any applicable restrictions in the Zoning Ordinance. Any Neighborhood Common Area which has not been improved for a particular use is intended to remain in its natural condition until so improved; and any use thereof by an Owner shall not damage or disturb such natural condition or the enjoyment thereof by other Owners of Lots within such Neighborhood.

Section 4.4. Limited Common Areas. The Developer shall have the power, for so long as the Developer has the right to add Additional Area under Section 2.2 hereof, to restrict portions of the Common Area for the exclusive use of the Owners of one or more specific Lots by designating such portions of Common Area as "Limited Common Area."

Developer may either: (i) indicate the locations of the Limited Common Area appertaining to one or more Lots by depicting such Limited Common Area and the Lots to which it is appurtenant on a plat attached to or recorded with a Supplemental Declaration; (2) label a portion of the Common Area as "Common Area that may be assigned as Limited Common Area" on a plat attached as an exhibit to the applicable Supplemental Declaration and thereafter assign such Limited Common Area to one or more specific Lots by unilaterally amending the Supplemental Declaration to indicate the assignment depicting the Limited Common Area being assigned and the Lots to which it is appurtenant; or (3) indicating that such Common Area is Limited Common Area by a description in the applicable Supplemental Declaration. The designation of parking spaces for the use of specific Owner(s) or Occupant(s) shall not result in such parking space(s) being deemed Limited Common Area unless otherwise expressly provided in a Supplemental Declaration.

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

Section 4.5. General Limitations on Owners' Rights. The Owners' rights of enjoyment in the Common Areas, the Limited Common Areas and the Neighborhood Common Areas shall be subject to the following:

- (i) the right of the Association to establish reasonable rules and regulations and to charge reasonable admission and other fees for the use of the Common Areas, the Limited Common Areas and the Neighborhood Common Areas;
- (ii) the right of the Association to suspend the right of an Owner to use or benefit from any of the Common Areas, the Limited Common Areas or the Neighborhood Common Areas for the period during which any assessment against his Lot or Parcel is delinquent as limited by the last sentence of § 55-514C of the Virginia Code as in effect on the date hereof;
- (iii) the right of the Association to suspend the right of an Owner to use or benefit from any of the Common Areas, Limited Common Areas or Neighborhood Common Areas for any period during which any other violation by the Owner of this Declaration, a Supplemental Declaration or the rules and/or architectural guidelines promulgated by the Association pursuant to this Declaration remains uncorrected after the last day of a period established for correction by the Association (such period to be stated in a notice to the Owner together with a statement of the violation complained of and the manner of its correction) and for not more than sixty (60) days after such correction;
- (iv) the right of the Association to mortgage any or all of the Common Areas, the Limited Common Areas or the Neighborhood Common Areas for the purpose of making improvements or repairs thereto as further addressed in the Bylaws;
- (v) the right of Developer or the Association to grant or assign utility easements across the Common Areas, the Limited Common Areas and the Neighborhood Common Areas as provided in Section 8.1;
- (vi) the right of the Association to dedicate or transfer all or any part of the Common Areas, the Limited Common Areas or the Neighborhood Common Areas to any public agency, authority or utility for such purposes and subject to such conditions as may be desired by the Association;
- (vii) all of the other easements, covenants and restrictions provided for in this Declaration and any Supplemental Declaration(s) applicable to the Common Areas, the Limited Common Areas and/or the Neighborhood Common Areas; and

(viii) the Developer's designation of certain Common Areas as "Limited Common Areas" for the exclusive use and benefit of the Owners of one or more specified Lots.

Section 4.6. Delegation of Use. Any Owner may delegate his right of enjoyment to the Common Area, the Limited Common Area or to the Neighborhood Common Area to members of his family living on his Lot and to his guests, and he may transfer such right to his tenants, subject to such rules and regulations and fees as may be established from time to time by the Association.

Section 4.7. Damage or Destruction of Common Area, Limited Common Area or Neighborhood Common Area by Owner. In the event any Common Area, Limited Common Area, Neighborhood Common Area or improvement thereon is damaged or destroyed by an Owner, his tenants, guests, licensees, agents or members of his family, and the Owner of the Lot does not repair such damage within fifteen (15) days after the date of written notice from the Association to the Owner of such damage or destruction in a good and workmanlike manner and restore such Common Area, Limited Common Area, Neighborhood Common Area or facility to its existing state preceding such damage or destruction, the Association may repair such damage at the Owner's expense. The Association shall repair such damage in a good and workmanlike manner in conformance with the original plans and specifications of the area or improvement involved, or as the ~~Common Area, Limited Common Area, Neighborhood Common Area~~ or improvement may have been theretofore modified or altered by the Association, in the discretion of the Association. The cost of such repairs shall become a special assessment on the Lot of such Owner and shall constitute a lien on such Owner's Lot and be collectible in the same manner as other assessments set forth herein.

Section 4.8. Rights in Common Areas, Limited Common Areas and Neighborhood Common Areas Reserved by Developer and/or a Parcel Developer. Until such time as Developer or a Parcel Developer conveys a parcel of real estate constituting Common Area, Limited Common Area or Neighborhood Common Area, as the case may be, to the Association, Developer or the Parcel Developer, as the case may be, shall have the right as to that Parcel, but not the obligation, (i) subject to the provisions of Article VI hereof, to construct such improvements thereon as it deems appropriate for the common use and enjoyment of Owners, and (ii) to use the Common Area, Limited Common Area or Neighborhood Common Area for other purposes not inconsistent with the provisions of this Declaration (including, without limitation, for a marketing or sales office, construction control center or hospitality center).

Section 4.9. Title to Common Area, Limited Common Area and Neighborhood Common Area. Developer or a Parcel Developer, as the case may be, may retain legal title to the Common Areas, Limited Common Areas or Neighborhood Common Areas or portions thereof, but notwithstanding any provision herein to the contrary, Developer or the Parcel Developer shall convey each Common Area, Limited Common Area or

Neighborhood Common Area to the Association, in a condition acceptable to the Association, free and clear of all liens but subject to this Declaration and all other easements, conditions and restrictions of record at such time as such improvements are completed and in a condition acceptable to the Association. Regardless of whether the Common Areas, Limited Common Areas or Neighborhood Common Areas actually have been conveyed by the Developer or the Parcel Developer, as the case may be, Owners and the Association shall have all the rights and obligations imposed by this Declaration, any Supplemental Declaration, the Articles and Bylaws with respect to the Common Areas, Limited Common Areas and the Neighborhood Common Areas from and after the date such Common Areas, Limited Common Areas or Neighborhood Common Areas are designated as such by recordation of an appropriate instrument in the Clerk's Office. The Association shall be liable from the date such Common Areas, Limited Common Areas and Neighborhood Common Areas are so designated for payment of insurance and maintenance and other costs with respect thereto.

Section 4.10. Veterans Administration Approval. So long as the Class B Membership exists, Developer shall not do the following without the prior written approval of the Veterans Administration: (i) annex any Additional Area other than described in Exhibit B hereto, (ii) mortgage any Common Areas, Limited Common Areas or Neighborhood Common Areas, (iii) dedicate any Common Areas, Limited Common Areas or Neighborhood Common Areas to general public use, or (iv) consolidate, merge or dissolve the Association.

Section 4.11. Reservation of Rights Regarding Common Area, Limited Common Area and Neighborhood Common Area. Certain of the open space, conservation areas, and historic resources may be better suited for ownership by a private, nonprofit organization among whose purposes is the conservation of open space land and/or natural or historic resources. Notwithstanding anything in this Declaration to the contrary, and regardless of whether such areas have previously been designated as Common Areas, Limited Common Areas or Neighborhood Common Areas, Developer reserves for itself, and its successors and assigns, the right, for so long as Developer has the right to add Additional Area to the Properties pursuant to Section 2.2 hereof, to transfer and convey in fee simple or by easement such open space, conservation areas, and historic resources as Developer deems in the best interests of such areas to one or more private, nonprofit organizations. Any transfer and conveyance shall comply with the specific criteria set forth in the Zoning Ordinance.

ARTICLE V

ASSESSMENTS

Section 5.1: Creation of the Lien and Personal Obligation for Assessments. Developer, for each Lot and Parcel owned within the Properties, hereby covenants (subject to Sections 5.5, 5.8 and 5.9), and each Owner of any Lot or Parcel by acceptance

of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant to pay to the Association assessments as set forth in this Declaration, any Supplemental Declaration and in the Bylaws. The assessments, together with interest thereon, late charges and costs of collection including attorneys' fees, shall be a continuing lien upon the Lot or Parcel against which each such assessment is made in order to secure payment thereof and shall also be the personal obligation of the party who was the Owner of the Lot or Parcel at the time the assessment fell due. No Owner may waive or otherwise avoid liability for the assessments provided herein by nonuse of the Common Areas, the Limited Common Areas, the Neighborhood Common Areas or abandonment of his Lot or Parcel. Each assessment that is not paid when due shall bear interest at the rate established by the Association, which rate shall not exceed the maximum rate permitted by applicable law. Each assessment that is not paid within ten (10) days of its due date shall, at the option of the Association, incur a late charge as may be established from time to time by resolution duly adopted by the Board of Directors of the Association.

Section 5.2. Purpose of Assessments. The assessments levied by the Association shall be used for the management, maintenance, improvement, care, operation, renovation, repair and replacement of the Common Areas, Limited Common Areas and Neighborhood Common Areas and improvements thereon and other property owned or acquired by the Association of whatsoever nature, for the discharge of all taxes and other levies and assessments against the Common Areas, Limited Common Areas and Neighborhood Common Areas and improvements thereon and other property owned or acquired by the Association, for the procurement of insurance by the Association in accordance with the Bylaws, for the establishment of reserves with respect to the Association's obligations, for the discharge of such services and other obligations as may be imposed upon or assumed by the Association pursuant to its Articles or Bylaws or this Declaration or any Supplemental Declaration, or any cost sharing, use or cross access arrangements entered into with any other Person, and for such other purposes as may be authorized by or pursuant to the Articles or Bylaws.

Section 5.3. Annual Assessments. "Annual Assessments" shall mean "General Assessments," "Neighborhood Assessments" and "Limited Common Expense Assessments."

(a) General Assessments.

1. Purpose. "General Assessments" shall mean those assessments used for the general purposes set forth in Section 5.2 above except that the General Assessments shall not be used for those purposes for which Neighborhood Assessments and Limited Common Expense Assessments shall be used.

2. Basis. The General Assessments shall be established upon the basis of an annual budget adopted by the Board of Directors of the Association and

increased or decreased from time to time by the Board of Directors of the Association pursuant to the Bylaws.

(b) Neighborhood Assessments.

1. Purpose. "Neighborhood Assessments" shall mean those assessments used for such purposes as are authorized by the Supplemental Declaration for a given Neighborhood.

2. Basis. The Supplemental Declaration shall set forth the basis by which all Lots within a Neighborhood shall be assessed for Neighborhood Assessments.

(c) Limited Common Expense Assessments.

1. Purpose. "Limited Common Expenses" are those expenses attributable to managing, maintaining, improving, caring, operating, renovating, repairing, establishing appropriate reserves for, insuring and replacing Limited Common Areas, as well as the cost of providing certain services to individual Lots. The purpose of the "Limited Common Expense Assessment" is to provide a means whereby the Owners of Lots which directly benefit from specific Limited Common Area and/or certain services applicable to individual Lots pay their proportionate share of the Limited Common Expenses attributable to such Limited Common Area.

2. Basis. Limited Common Expenses may be assessed by the Association only against the Lots benefited in proportion to their relative General Assessment liability, inter se or based on usage, as appropriate. Such Limited Common Expenses shall be determined as follows:

(i) Any expenses designated in a Supplemental Declaration as Limited Common Expenses to be paid by the Owners of Additional Area being submitted to the Declaration thereby;

(ii) Any expenses proposed by the Board of Directors or a specific group of Owners as Limited Common Expenses against a specific group of Lots and agreed to by Members entitled to cast a majority of the total number of votes with respect to such Lots, assessed against such Lots as such Owners may agree or in proportion to their relative General Assessment liability, inter se;

(iii) Any expenses incurred in the upkeep of or the maintenance of, and reserves for the upkeep and replacement of, common "private" alleys, drives, and/or parking areas serving a limited number of Lots and labeled "private" on the applicable recorded plat and/or described as "private" in the applicable Supplemental Declaration shall be assessed only against the Lots served by such private alley, drive and/or parking area;

(iv) Any expenses incurred in the upkeep of, or the maintenance of reserves for the upkeep of, Limited Common Area may be assessed only against the Lots served by such Limited Common Area; and

(v) Any service to individual Lots based on usage.

Section 5.4. Special Assessments. In addition to the General Assessments, Neighborhood Assessments and Limited Common Expense Assessments, the Board of Directors may levy, in any assessment year, one or more special assessments pursuant to the provisions of Section 55-514 of the Virginia Code, as the same may be amended from time to time, if the purpose in doing so is found by the Board of Directors to be in the best interest of the Association and the proceeds of such assessment are used primarily for the maintenance and upkeep, including capital expenditures, of the Common Area (or of (i) the Neighborhood Common Area, provided the special assessment is levied against only those Lots within such Neighborhood or (ii) the Limited Common Area, provided the special assessment is levied against only those Lots served by such Limited Common Area).

Section 5.5. Date of Commencement of Annual Assessments. Subject to Section 5.9 and except as may be otherwise provided in any applicable Supplemental Declaration, the Annual Assessments shall commence as and when provided in this Section 5.5. Annual Assessments provided for herein shall commence as to each Lot or Parcel on the first day of the month following the recordation of the deed to such Lot or Parcel to an Owner, other than the Developer, who purchases the same. The first Annual Assessment on a Lot or Parcel shall be adjusted according to the number of months remaining in the calendar year. The Annual Assessments shall be paid in such intervals as established by the Board of Directors of the Association from time to time in connection with its adoption of the annual budget pursuant to the Bylaws. If a Parcel is conveyed to a Parcel Developer prior to such Parcel being subdivided into residential Lots, the Parcel shall be treated as one Lot until such time as all or a portion of such parcel is subdivided by the recordation of a subdivision plat. Beginning on the first day of the month following the recordation of a subdivision plat for all or a portion of such Parcel, Annual Assessments shall commence as to each Lot depicted on the applicable recorded subdivision plat. In the case of parcels subjected to a condominium regime pursuant to the Condominium Act of Virginia, § 55-79.39 *et seq* of the Virginia Code, as the same may be amended from time to time, Annual Assessments shall commence as to any condominium unit on the first day of the month following the creation of such condominium unit. The Developer reserves the right to alter the applicable Commencement Date of Annual Assessments applicable to certain Lots in one or more Supplemental Declarations.

Section 5.6. Effect of Nonpayment of Assessments; Remedies of Association. The lien of the assessments provided for in this Declaration may be perfected and enforced in the manner provided in § 55-516 of the Virginia Code. A statement from the

Association showing the balance due on any assessment shall be prima facie proof of the current assessment balance and the delinquency, if any, due on a particular Lot or Parcel. The Association may also bring an action at law against any Owner personally obligated to pay the same, either in the first instance or for deficiency following foreclosure, and interest, late charges and costs of collection including attorney's fees shall be added to the amount of such assessment and secured by the assessment lien.

Section 5.7. Subordination of Lien to Mortgages. The lien upon each of the Lots and Parcels securing the payment of the assessments shall have the priority set forth in § 55-516A of the Virginia Code.

Section 5.8. Exempt Property. The following property subject to this Declaration shall be exempt from the assessments and liens created herein: (i) any property used as a sales or leasing center, model, maintenance center or management facility by Developer or its designee or for similar purposes; (ii) all properties dedicated and accepted by a public authority; (iii) all Common Areas, Limited Common Areas and Neighborhood Common Areas; and (iv) all properties wholly exempt from real estate taxation by state or local governments upon the terms and to the extent of such legal exemption.

Section 5.9. Annual Budget. The Board of Directors shall adopt an annual budget for each fiscal year, which budget shall provide for the annual level of assessments (including provision for reserves and physical damage insurance deductibles) and an allocation of expenses. There shall be no responsibility for the payment of assessments until after the Board of Directors adopts its initial annual budget.

Section 5.10. Contribution to Association. Upon the acquisition of record title to a Lot by the a purchaser thereof (other than Developer, the Parcel Developer or an owner who purchases solely for the purpose of constructing a dwelling thereon for resale), a contribution shall be made by or on behalf of the purchaser to the Association in the amount equal to \$200 or such other amount as may be established by the Board of Directors of the Association in its discretion from time to time. This amount shall be deposited in the purchase and sales escrow at settlement and shall be disbursed therefrom to the Association. The Association may use any such amounts as the Board of Directors determines in its sole and absolute discretion. Amounts payable under this Section 5.10 are in addition to any Assessments, the administrative fee provided for in Section 7.3 and any fees associated with the Association's preparation of the Disclosure Packet pursuant to the Virginia Property Owners Association Act (§ 55-509 et seq. of the Code of Virginia, as amended).

Section 5.11. Loans by Developer. The Developer shall have the option, but not the obligation, to loan money to the Association on such terms and at such rates as are commercially reasonable to enable the Association to comply with its obligations under this Declaration. Such loan or loans may be in lieu of, or in addition to, loans obtained by the Association from other parties. Any such loan shall be represented and secured by

one or more promissory notes of the Association and shall be listed and disclosed as "Loans from Developer" on all annual budgets and year-end financial statements of the Association.

ARTICLE VI

ARCHITECTURAL CONTROL

Section 6.1. Architectural Review Committee. There is hereby established a committee (the "Architectural Review Committee") for the purpose of reviewing and, as appropriate, approving or disapproving all Plans (hereinafter defined) submitted by Owners in accordance with this Article VI. The Architectural Review Committee shall be composed of three persons, who need not be Members of the Association, from time to time appointed by Developer until 100% of the Properties and the Additional Area have been developed and conveyed to Owners other than builders or by the Board of Directors of the Association from and after the date on which Developer delegates this responsibility to the Association by written instrument in recordable form executed by Developer. The Developer or the Board of Directors, as the case may be, may appoint one alternate member to the Architectural Review Committee, which alternate member may vote only in the absence of a regular member. The members of the Architectural Review Committee shall serve for such terms as may be determined by Developer or the Board of Directors of the Association, as the case may be. The Developer reserves the right (which may be exercised at any time or from time to time) to delegate certain, but less than all Architectural Review Committee responsibilities to the Association, and if Developer exercises this right the Board of Directors may appoint its own review board which satisfies the same criteria as set forth herein for the Architectural Review Committee. For example, by way of illustration and not limitation, the Developer may delegate to the Association the authority for reviewing and as appropriate approving or disapproving Plans submitted for modifications, alterations or additions made on or to existing structures on Lots, in which case the Board of Directors shall appoint its own architectural review committee for the purpose of exercising such delegated authority. The Developer appointed Architectural Review Committee and authorized architectural review committee appointed by the Board of Directors shall be collectively referred to herein for ease of reference as the "Architectural Review Committee." References herein to Architectural Review Committee shall apply to either or both committees, as applicable.

Section 6.2. Plans to be Submitted. Before commencing the construction, erection or installation of any building, addition, patio, deck, fence, wall, animal pen or shelter, exterior lighting, sign, mailbox or mailbox support, improvement or other structure (each of the foregoing being hereinafter referred to as an "Improvement") on any Lot or Parcel, including any site work in preparation therefore, and before commencing any alteration, enlargement, demolition or removal of an Improvement or any portion thereof in a manner that alters the exterior appearance (including paint color)

of the Improvement or of the Lot or the Parcel on which it is situated, each Owner shall submit to the Architectural Review Committee a completed application on the form provided by the Architectural Review Committee (the "Application"), a proposed construction schedule and at least three sets of plans and specifications of the proposed construction, erection, installation, alteration, enlargement, demolition or removal, which plans and specifications shall include (unless waived by the Architectural Review Committee): (i) a site plan showing the size, location and configuration of all Improvements, including driveways and landscaped areas, and all setback lines, buffer areas and other features required under the Zoning Ordinance or the guidelines adopted by the Architectural Review Committee, (ii) as to Improvements initially constructed on a Lot or a Parcel, landscaping plans showing the trees to be removed and to be retained and shrubs, plants and ground cover to be installed, (iii) architectural plans of the Improvements showing exterior elevations, construction materials, exterior colors, driveway material, (iv) a sediment and erosion control plan, (v) a tree protection plan, (vi) a certification by the applicant that the proposed final Plans comply with the New Town Design Guidelines and such other information as the Architectural Review Committee in its discretion shall require (collectively, the "Plans"). The Architectural Review Committee may, in its sole discretion, waive the requirement that any or all of the required Plans be submitted in a particular case where it determines such Plans are not necessary to properly evaluate the Application. The Architectural Review Committee shall not be required to review any Plans unless and until the Application has been submitted in completed form with the proposed construction schedule and the Plans contain all of the required items. The Application, Plans and the proposed construction schedule must be submitted to the Architectural Review Committee at the address of Developer in the same manner as notices are to be sent to Developer pursuant to Article XI, for so long as all members of the Architectural Review Committee are appointed by Developer, and thereafter the Application, Plans and the proposed construction schedule may be submitted to the Architectural Review Committee at the address of the Association in the same manner as notices are to be sent to the Association pursuant to Article XI.

Section 6.3. Consultation with Architects, etc.; Administrative Fee. In connection with the discharge of its responsibilities, the Architectural Review Committee may engage or consult with architects, engineers, planners, surveyors, attorneys and others. Any person seeking the approval of the Architectural Review Committee agrees to pay all fees thus incurred by the Architectural Review Committee and further agrees to pay an administrative fee to the Architectural Review Committee in such amount as the Architectural Review Committee may from time to time reasonably establish. The payment of all such fees is a condition to the approval or disapproval by the Architectural Review Committee of any Plans, and the commencement of review of any Plans may be conditioned upon the payment of the Architectural Review Committee's estimate of such fees.

Section 6.4. Approval of Plans. The Architectural Review Committee shall not approve the Plans for any Improvement that would violate any of the provisions of this Declaration or of any Supplemental Declaration applicable thereto. In all other respects, the Architectural Review Committee may exercise its sole discretion in determining whether to approve or disapprove any Plans, including, without limitation, the location of any Improvement on a Lot or Parcel.

Section 6.5. No Structures to be Constructed, etc. Without Approval. No Improvement shall be constructed, erected, installed or maintained on any Lot or Parcel, nor shall any Improvement be altered, enlarged, demolished or removed in a manner that alters the exterior appearance (including paint color) of the Improvement or of the Lot or the Parcel on which it is situated, unless the Application, Plans and construction schedule therefore have been approved by the Architectural Review Committee and the New Town Design Review Board. After the Application, Plans and Construction Schedule therefore have been approved, all Improvements shall be constructed, erected, installed, maintained, altered, enlarged, demolished or removed strictly in accordance with the approved Plans. Upon commencing the construction, erection, installation, alteration, enlargement, demolition or removal of an Improvement, all of the work related thereto shall be carried on with reasonable diligence and dispatch and in accordance with the construction schedule approved by the Architectural Review Committee.

Section 6.6. Guidelines May Be Established. The Architectural Review Committee may, in its discretion, establish guidelines and standards to be used in considering whether to approve or disapprove Plans. Such guidelines may include, without limitation, uniform standards for signage and mailboxes and mailbox supports, and water conservation standards. However, nothing contained in this Declaration shall require the Architectural Review Committee to approve the Plans for Improvements on a Lot or a Parcel on the grounds that the layout, design and other aspects of such Improvements are the same or substantially the same as the layout, design and other aspects of Improvements approved by the Architectural Review Committee for another Lot or Parcel.

Section 6.7. Limitation of Liability. The approval by the Architectural Review Committee of any Plans, and any requirement by the Architectural Review Committee that the Plans be modified, shall not constitute a warranty or representation by the Architectural Review Committee of the adequacy, technical sufficiency or safety of the Improvements described in such Plans, as the same may be modified, and the Architectural Review Committee shall have no liability whatsoever for the failure of the Plans or the Improvements to comply with applicable building codes, laws and ordinances or to comply with sound engineering, architectural or construction practices. In addition, in no event shall the Architectural Review Committee have any liability whatsoever to an Owner, a contractor or any other party for any costs or damages (consequential or otherwise) that may be incurred or suffered on account of the

Architectural Review Committee's approval, disapproval or conditional approval of any Plans.

Section 6.8. Other Responsibilities of Architectural Review Committee. In addition to the responsibilities and authority provided in this Article VI, the Architectural Review Committee shall have such other rights, authority and responsibilities as may be provided elsewhere in this Declaration, in any Supplemental Declaration and in the Bylaws.

Section 6.9. New Town Design Review.

(a) New Town Design Review Board. In addition to obtaining the approval of the Architectural Review Committee as required in this Article VI, each Owner must obtain the approval of the "New Town Design Review Board," a separate board established pursuant to the New Town Proffers, with respect to all subdivision plats, site plans, landscaping plans, architectural plans and elevations and other development plans for such Owner's Lot. The procedures for such design review process are set forth in the New Town Proffers and the rules adopted by the New Town Design Review Board pursuant thereto.

(b) New Town Design Guidelines. The New Town Proffers provide for and incorporate by reference a set of Design Guidelines prepared by Cooper, Robertson & Partners dated September 3, 1997 and revised December 8, 1997; as further amended and restated as to Sections 2 and 4 of New Town by "Amended and Restated New Town Sections 2 and 4 Design Guidelines James City County, Virginia," dated July 31, 2003; and as to Section 3 and 6 of New Town by "New Town Discovery Park, Sections 3 and 6: Design Guidelines," dated September 2, 2004, (as the same may be amended, supplemented or amended and restated in whole or in part from time to time, collectively, the "New Town Design Guidelines"). All property within New Town is subject to the New Town Design Guidelines; however when property within New Town is rezoned, Owners seeking to rezone their property within New Town to a "Mixed Use" zoning designation, must submit to the New Town Design Review Board for its approval, supplemental and/or amended and restated design guidelines applicable to the portion of the Property then being rezoned to be used by the New Town Design Review Board and the County of James City in reviewing, approving or disapproving site development and construction plans for the development of such property.

ARTICLE VII

USE OF PROPERTY

Section 7.1. Protective Covenants.

(a) Nuisances. No nuisance shall be permitted to exist on any Lot or Parcel. Noxious, destructive, or offensive activity, or any activity constituting an

unreasonable source of annoyance, shall not be conducted on any Lot or Parcel or on the Common Area or any part thereof, and the Association shall have standing to initiate legal proceedings to abate such activity. Each Owner shall refrain from any act or use of his or her Lot or Parcel which could reasonably cause embarrassment, discomfort, or annoyance to other Owners, and the Board of Directors shall have the power to make and to enforce reasonable rules in furtherance of this provision.

(b) Restriction on Further Subdivision. No Lot shall be further subdivided or separated into smaller Lots by any Owner, and no portion less than all of any such Lot, nor any easement or other interest herein, shall be conveyed or transferred by an Owner, provided that this shall not prohibit the vacating of boundaries between adjacent Lots to create a bigger Lot, deeds of correction, deeds to resolve boundary line disputes and similar corrective instruments and provided that this shall not prohibit the division or combination of condominium units in accordance with law, or the creation of condominiums. Except for the vacating of boundaries by Developer, the vacating of boundaries between adjacent boundaries does not create one Lot for assessment purposes. Any Owner other than Developer who vacates a boundary between two Lots must pay full assessments for both Lots as such Lots are described in the initial subdivision plat to be recorded in the Clerk's Office.

(c) Rules. From time to time the Board of Directors may adopt general rules, including but not limited to rules to regulate potential problems relating to the use of Properties and the well-being of Members, such as the definition of nuisances, keeping of animals, vehicles and their storage and use, storage and use of machinery, use of outdoor drying lines, antennas, satellite dishes, flags, signs, trash and trash containers, restrictions on sprinkler and irrigation systems, private irrigation wells and uses of lakes, water bodies and wetlands, maintenance and removal of vegetation on the Properties and the type and manner of application of fertilizers or other chemical treatments to the Properties in accord with non-point source pollution control standards (collectively, the "Rules"). Without limiting the generality of the foregoing, the proffers which comprise a portion of the Zoning Ordinance provide that the Association shall be responsible for developing and enforcing water conservation standards to be submitted to and approved by James City Service Authority. Such standards may, by way of illustration and not limitation, address such water conservation measures as limitations on use of irrigation systems and irrigation wells, the use of approved landscaping materials and the use of water conserving fixtures and appliances to promote water conservation and minimize the use of public water resources. Design features, including the use of drought tolerant grasses and plantings, a water conservation plan, and a drought management plan shall be implemented to accomplish the limitation on use of public water and groundwater. Such Rules may govern use and occupancy of Lots as well as Common Areas, Neighborhood Common Areas, Limited Common Areas and any public right-of-ways located within or adjacent to the Property. All such Rules and any subsequent amendments thereto shall be binding on all Members and occupants of the Properties, including their tenants, guests and invitees, except where expressly provided otherwise in such Rule. Such Rules as

adopted from time to time are herein incorporated by reference and shall be as binding as if set forth herein in full; provided, however, that in the event of a conflict between any provision(s) in the Rules and the Governing Documents, the provision(s) set forth in the Governing Documents shall control.

(d) Exceptions. In certain special circumstances, the Board of Directors may issue variances exempting a particular Lot or Parcel from any of the provisions of this Article VII.

(e) Irrigation. Subject to the rights retained by Developer in Section 8.7, no sprinkler or irrigation system of any type which draws upon water from creeks, streams, rivers, lakes, ponds, wetlands, canals or other ground or surface waters within the Properties shall be installed, constructed or operated within the Properties without the written approval of Developer, except that the Association shall have the right to draw upon water from such water bodies for irrigation of the Common Area, the Limited Common Area and/or the Neighborhood Common Area. All sprinkler and irrigation systems shall be subject to approval in accordance with Section 6.5 of this Declaration; provided, however, this paragraph shall not apply to the Developer, and may not be amended without Developer's written consent so long as Developer has the right to add property in accordance with Article II. The foregoing notwithstanding, any sprinkler or irrigation system shall comply with any and all standards as may be approved by the James City County Service Authority as contemplated in the proffers comprising a portion of the Zoning Ordinance for New Town.

(f) Lakes and Water Bodies. There shall be no swimming, use of personal floatation devices, boating or fishing in any lakes or ponds located within the Properties. This paragraph shall not apply to prohibit any use by Developer specifically authorized under this Declaration. The Association shall not be responsible for any loss, damage or injury to any person or property arising out of the authorized or unauthorized use of lakes, ponds, streams or other water bodies within the Properties.

(g) Permitted Uses. Except as otherwise provided in the Governing Documents (including without limitation any applicable Supplemental Declaration), no Lot shall be used for other than residential purposes except as designated by the Developer or as set forth below. Nothing in the Governing Documents shall be construed to prohibit the Developer or its designees from using any Lot owned by the Developer (or any other Lot with the permission of the Owner thereof) or any portion of the Common Area, Limited Common Area or Neighborhood Common Area for promotional, marketing, display or customer service purposes (such as a visitors' center) or for the settlement of sales of Lots. Further, the Developer specifically reserves the right to operate a construction office or a rental, brokerage and management office at any time on Lots owned or leased by the Developer (or any other Lot with the permission of the Owner thereof) and on any portion of the Common Area, Limited Common Area or the Neighborhood Common Area, to the extent permitted by law. The Developer may assign

its rights under this section to or share such rights with one or more other persons, exclusively, simultaneously or consecutively with respect to the Common Area, Limited Common Area or the Neighborhood Common Area and Lots owned or leased by the Developer or such persons.

(h) Hazardous Uses; Waste. Nothing shall be done or kept on the Properties which will increase the rate of insurance applicable for permitted uses for the Common Area, Limited Common Area, the Neighborhood Common Area or any part thereof without the prior written consent of the Board of Directors, including, without limitation, any activities which are unsafe or hazardous with respect to any person or property. No person shall permit anything to be done or kept on the Properties which will result in the cancellation of any insurance on the Common Area, Limited Common Area, the Neighborhood Common Area or any part thereof or which would be in violation of any law, regulation or administrative ruling. No vehicle of any size which transports inflammatory or explosive cargo may be kept or driven on the Properties at any time. Each Owner shall comply with all federal, state and local statutes, regulations, ordinances, or other rules intended to protect the public health and welfare as related to land, water, groundwater, air or other aspects of the natural environment (the "Environmental Laws"). Environmental Laws shall include, but are not limited to, those laws regulating the use, generation, storage or disposal of hazardous substances, toxic wastes and other environmental contaminants (collectively, the "Hazardous Materials"). No Owner shall knowingly use, generate, manufacture, store, release, dispose of or knowingly permit to exist in, on, under or about such Owner's Lot, the Common Area, the Limited Common Area, the Neighborhood Common Area, or any portion of the Properties, or transport to or from any portion of the Properties any Hazardous Materials except in compliance with the Environmental Laws. No waste shall be committed on the Common Area, Limited Common Area or the Neighborhood Common Area.

(i) Lawful Use. No improper, offensive or unlawful use shall be made of the Properties or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental agencies having jurisdiction thereof shall be observed. All laws, orders, rules, regulations or requirements of any governmental agency having jurisdiction thereof relating to any portion of the Properties shall be complied with, by and at the sole expense of the Owner, the Association, the Developer or any owners association or condominium unit owners association, whichever shall have the obligation for the upkeep of such portion of the Properties, and, if the Association, then the cost of such compliance shall be included in the General Assessment, Neighborhood Assessment or Limited Common Expense Assessment, as appropriate.

(j) Emissions. There shall be no emissions of dust, sweepings, dirt, cinders, odors, gases or other substances into the atmosphere except for normal residential chimney emissions, no production, storage or discharge of Hazardous Materials on the Properties or discharges of liquid, solid wastes or other environmental contaminants into the ground or any body of water, if such emission, production, storage

or discharge may adversely affect the use or intended use of any portion of the Properties or may adversely affect the health, safety or comfort of any person.

(k) Noise. No person shall cause any unreasonably loud noise (except for security devices) anywhere on the Properties, nor shall any person permit or engage in any activity, practice or behavior for the purpose of causing annoyance, discomfort or disturbance to any person lawfully present on any portion of the Properties.

(l) Obstructions. No person shall obstruct any of the Common Area, Limited Common Area, Neighborhood Common Area, or otherwise impede the rightful access of any other person on any portion of the Properties upon which such person has the right to enter. No person shall place or cause or permit anything to be placed on or in any of the Common Area, Limited Common Area or Neighborhood Common Area without the approval of the Board of Directors of the Association. Nothing shall be altered or constructed in or removed from the Common Area, Limited Common Area or Neighborhood Common Area except with the proper written approval of the Board of Directors.

(m) Association Property. The Common Area, Limited Common Area and Neighborhood Common Area shall be used only for the furnishing of the services and facilities for which the same is reasonably suited and which are incident to the use and occupancy of the Lots. The improvements located on the Common Area, Limited Common Area and Neighborhood Common Area shall be used only for their intended purposes. Except as otherwise expressly provided in the Governing Documents, no Owner shall make any private, exclusive or proprietary use of any of the Common Area, Limited Common Area or Neighborhood Common Area without the prior written approval of the Board of Directors and then only on a temporary basis.

(n) Mining. No Lot shall be used for the purpose of boring, mining, quarrying, exploring for or removing oil or other hydrocarbons, minerals, gravel or earth except with the prior written approval of the Board of Directors.

(o) Signs. Except for (i) such signs as may be posted by the Developer for promotional or marketing purposes or by the Association, or (ii) one standard for sale sign conforming to the requirements and specifications set forth in the Rules, no signs of any character shall be erected, posted or displayed in a location that is visible from the Common Area, Limited Common Area, Neighborhood Common Area or any other Lot, except as otherwise expressly permitted in the Rules and/or the guidelines adopted from time to time by the Architectural Review Committee.

(p) Trash. Except in connection with construction activities, no burning of any trash and no accumulation or storage of litter, refuse, bulk materials, building materials, garbage, or trash of any other kind shall be permitted on any Lot. Trash containers shall not be permitted to remain in public view from the Common Area,

Limited Common Area, Neighborhood Common Area, or another Lot except on days of trash collection. Trash containers and refuse disposal systems must be maintained in enclosures and screened as approved by the Architectural Review Committee. Trash, leaves and other materials shall not be burned in violation of local ordinances. No incinerator shall be kept or maintained upon the Properties without the prior written approval of the Board of Directors. All trash collection and removal shall be in accordance with the Rules.

(q) Landscaping; Sight-lines. No tree, hedge or other landscape feature shall be planted or maintained in a location which obstructs sight-lines for vehicular traffic on public streets. Pavement, plantings and other landscape materials shall not be placed or permitted to remain upon any Lot: (i) if such materials may damage or interfere with any easement for the installation or maintenance of utilities; (ii) in violation of the requirements of such easements; (iii) unless in conformity with public utility standards; or (iv) if such materials may unreasonably change, obstruct or retard direction or flow of any drainage channels. No water pipe, sewer pipe, gas pipe, drainage pipe, television cable, electrical wire, or other similar transmission line shall be installed or maintained upon any Lot above the surface of the ground.

(r) Vegetation. No live trees with a diameter in excess of five (5) inches, measured ~~three~~ (3) feet above ground, nor trees in excess of three (3) inches in diameter, ~~similarly~~ measured, which are generally known as flowering trees (such as dogwood or redbud) or as broad leaf evergreens (such as holly, laurel, or rhododendron), no live vegetation on slopes of greater than 20 percent (20%) gradient or marked "no cut" areas on approved site plans may be cut without prior approval of the Architectural Review Committee. The Board of Directors may set rules for cutting of trees to allow for selective clearing or cutting.

(s) Temporary Structures. No structure of a temporary character, such as, by way of illustration and not limitation, trailers, tents, shacks, barns, pens, kennels, runs, stables, sheds not anchored on foundations or other temporary accessory buildings shall be erected, used or maintained on any Lot except in connection with construction activities. The guidelines adopted by the Architectural Review Committee, from time to time, may contain further limitations with respect to permanent accessory structures which may be erected, used or maintained on any Lot.

(t) Fences. Except for any fence installed by the Developer or the Association, no fence shall be installed except in conformance with standards established therefore and with the written approval of the Architectural Review Committee. No chain link fencing will be permitted on the Properties, provided, however, that the Developer or its designees may erect a chain link fence for the temporary storage of building materials, for the protection of building sites or around swimming pools or ponds.

(u) Vehicles. Except in connection with construction activities, no trucks (as defined in the Rules), trailers, campers, recreational vehicles, boats or other large vehicles, including grounds maintenance equipment, may be parked on any portion of the Common Area, Limited Common Area, the Neighborhood Common Area, or any portion of a Lot visible from the Common Area, Limited Common Area, the Neighborhood Common Area or any other Lot or on any public right-of-way within or adjacent to the Properties, unless expressly permitted by the Board of Directors and only in such parking areas or for such time periods (if any) as may be designated for such purpose. Parking of all such vehicles and related equipment, other than on a temporary and non-recurring basis, shall be in garages or screened enclosures approved by the Architectural Review Committee (if any) or in areas (if any) designated in the Rules. All vehicles must be parked so as not to impede traffic or damage vegetation. No junk or derelict vehicle or other vehicle on which current registration plates and current city and state inspection permits are not displayed shall be kept upon any portion of the Common Area, Limited Common Area, Neighborhood Common Area, or any portion of a Lot visible from the Common Area, Limited Common Area, Neighborhood Common Area, or another Lot. Vehicle repairs and storage of vehicles are not permitted, except in accordance with the Rules; provided, however, that noncommercial repair of vehicles is permitted within enclosed structures. All motor vehicles including, but not limited to, trail bikes, motorcycles, dune buggies, and snowmobiles shall be driven only upon paved streets and parking lots. No motor vehicles shall be driven on community trails, pathways or unpaved portions of the Common Area, Limited Common Area or Neighborhood Common Area, except (i) such vehicles as are authorized by the Board of Directors as needed to maintain, repair, or improve the Common Area, Limited Common Area or Neighborhood Common Area, and (ii) motorized wheelchair or other devices to assist disabled persons. This prohibition shall not apply to normal vehicular use of designated streets, and alleys constructed on the Common Area, Limited Common Area or Neighborhood Common Area.

(v) Timeshares. No Lot shall be subjected to or used for any timesharing, cooperative, licensing or other arrangement that would entail weekly, monthly, or any other type of revolving or periodic occupancy by multiple Owners, cooperators, licensees, or timesharing participants.

(w) Professional Offices. No Lot containing a dwelling unit shall be used for any business, commercial, manufacturing, mercantile, storing, vending or other non-residential purpose; provided, however, that an Owner may maintain a home occupation as permitted by the County of James City and may maintain an office in the dwelling constructed on such Owner's Lot if (i) such occupation or office generates no significant number of visits (as determined by the Board of Directors) by clients, customers or other persons related to the business, (ii) no equipment or other items related to the business are stored, parked or otherwise kept on such Owner's Lot or the Properties outside of an approved enclosure, and (iii) such Owner has obtained approvals for such use as may be required by the County of James City, Virginia. As a condition to

such use, the Board of Directors may require the Owner to pay any increase in the rate of insurance or other costs for the Association which may result from such use.

(x) Animals. The maintenance, keeping, boarding or raising of animals, livestock, poultry or reptiles of any kind, regardless of number, is prohibited on any Lot or upon the Common Area, Limited Common Area or Neighborhood Common Area, except that the keeping of guide animals and orderly domestic pets (e.g., certain dogs, cats or caged birds) without the approval of the Board of Directors, is permitted, subject to the Rules; provided, however, that such pets are not kept or maintained for commercial purposes or for breeding and that any such pet causing or creating a nuisance or unreasonable disturbance or noise may be permanently removed from the Properties upon ten (10) days written notice from the Board of Directors. Pets shall not be permitted upon the Common Area, Limited Common Area or Neighborhood Common Area unless accompanied by someone who can control the pet and unless carried or leashed. Pet droppings shall be removed by the Owner of the pet. Any Owner who keeps or maintains any pet upon any portion of the Properties agrees to indemnify and hold the Association, each Owner and the Developer free and harmless from any loss, claim or liability of any kind or character whatever arising by reason of keeping or maintaining such pet within the Properties. All pets shall be registered and inoculated as required by law.

(y) Clothes Drying Equipment. No clothes lines or other clothes drying apparatus shall be permitted outside of an enclosed structure on any Lot. No portion of a Lot shall be used for the drying or hanging of laundry.

(z) Mailboxes and Newspaper Tubes. Only mailboxes and newspaper tubes approved by the Architectural Review Committee shall be permitted. The Architectural Review Committee may adopt specific criteria applicable to mailboxes and newspaper tubes, and such criteria may vary by Neighborhood.

(aa) Lighting. No exterior lighting shall be directed outside the boundaries of any Lot.

(bb) Pools. No above-ground swimming pool shall be erected or maintained on any Lot. No inground swimming pool shall be erected or maintained on any Lot unless approved by the Architectural Review Committee and unless screened from view and enclosed by a fence.

(cc) Construction Activities. This section shall not be construed as forbidding any work involved in the construction or maintenance of any portion of the Properties so long as such work is undertaken and carried out (i) with the minimum practical disturbance to persons occupying other portions of the Properties; (ii) in such a way as does not violate the rights of any person under other provisions of this Declaration; and (iii) in accordance with all applicable restrictions in the Rules, any

architectural guidelines, the resolutions of the Board of Directors and the other provisions of this Declaration. The Architectural Review Committee may approve temporary structures for construction purposes which may otherwise be in violation of the Governing Documents or the Rules.

(dd) Leasing. No dwelling unit located on a Lot or any portion thereof shall be used or occupied for transient or hotel purposes or in any event leased for an initial period of less than twelve (12) months; provided, however if a Parcel is developed for residential apartment use or an assisted or special care use, wherein the Owner's Parcel is not subdivided into Lots, such use may be for a period of less than twelve (12) months. No portion of any dwelling unit (other than the entire dwelling unit) shall be leased for any period. No Owner shall lease a Lot other than on a written form of lease: (1) requiring the lessee to comply with the Governing Documents and the Rules; and (2) providing that failure to comply with such documents constitutes a default under the lease. The foregoing notwithstanding, if the Zoning Ordinance is amended to permit "Accessory Apartments" (as defined in the Zoning Ordinance) within the Properties, or a portion of the Properties, then to the extent allowed under the Zoning Ordinance, up to one Accessory Apartment per Lot may be allowed with the written consent of the Board of Directors, which consent may be granted or withheld in its sole and absolute discretion, and subject to approval by the Architectural Review Committee and the Design Review Board and to such rules and regulations as may be set forth in the Rules.

(ee) Archaeological Finds. Subject to applicable state and federal law regarding archaeological finds, all archaeological materials found within the Properties belong to the Association. Upon discovery of archaeological materials during periods of construction or otherwise, the Owner of a Lot shall immediately notify the Board of Directors and cease construction activity. The Board of Directors shall have ten (10) days to notify the Owner if it intends to exercise the Association's right under this section. Thereafter, the Board of Directors shall have a period of sixty (60) days to remove the archaeological materials without compensation to the Owner for the archaeological materials, the use of the Lot or delay in construction. The Association shall not be obligated to remove archaeological materials nor be held liable for failure to remove such materials.

(ff) Septic Tanks. No septic tank shall be installed, used, or maintained on any Lot.

(gg) Antennas. The Board may adopt as a part of its Rules, or the Architectural Review Committee may adopt, standards or criteria regarding the installation of antennas provided such Rules and/or criteria do not conflict with Federal, State or Local law or with Federal Communications Commission rules or regulations.

Section 7.2. Maintenance of Property.

(a) Owner Obligation. To the extent that exterior maintenance is not provided for in a Supplemental Declaration, each Owner shall keep all Lots and Parcels owned by him, and all improvements therein or thereon, in good order and repair, free of debris, all in a manner and with such frequency as is acceptable to the Association and consistent with a first-quality development, any Rules adopted by the Association, and the Architectural Guidelines adopted by the Association.

(b) Reconstruction and Repair. If a building or other major improvement located upon a Lot is damaged or destroyed, the Owner thereof shall restore the site either (i) by repairing or reconstructing such building or other major improvement, or (ii) by clearing away the debris and restoring the site to an acceptable condition compatible with the remainder of the Properties. Unless the Architectural Review Committee permits a longer time period, such work must be commenced within sixty (60) days after the date of the casualty and substantially completed within twelve (12) months after the date of the casualty.

(c) Failure to Maintain. In the event an Owner shall fail to maintain his Lot or Parcel and the improvements situated thereon as provided herein, the Association, after notice to the Owner and approval of the Board of Directors shall have the right to enter upon such Lot or Parcel to correct such failure. All costs related to such correction shall become a special assessment upon such Lot or Parcel and as such shall be regarded as any other assessment with respect to lien rights of the Association and remedies provided herein for non-payment.

Section 7.3. Sales by Parcel Developers and Resales of Lots by Owners Other Than Developer. Upon the acquisition of record title to a Lot from either (i) a Parcel Developer or (ii) an owner other than Developer, an administrative fee in an amount set from time to time by the Board of Directors, which amount shall initially be \$100.00, shall be paid to the Association by or on behalf of the purchaser of the Lot. Such administrative fee shall be deposited in the purchase and sales escrow at settlement and shall be disbursed there from to the Association. Such administrative fee shall be in addition to amounts payable under Section 5.10, any Assessments, and any fees associated with the Association's preparation of the Disclosure Packet pursuant to the Virginia Property Owners Association Act (§ 55-509 et seq. of the Code of Virginia, as amended).

Section 7.4. Security. Neither the Association, nor Developer shall be held liable for any loss or damage by reason of failure to provide security or ineffectiveness of security measures undertaken. All Owners, tenants, guests, and invitees of any Owner, as applicable, acknowledge that the Association and Developer, and committees established by any of the foregoing entities, are not insurers and that each Owner, tenant, guest, and invitee assumes all risk or loss or damage to persons, to structures or other improvements situated on Lots and Parcels, and to the contents of any Improvements situated on Lots and parcels and further acknowledge that Developer has made no representations or

warranties, nor has any Owner, tenant, guest, or invitee relied upon any representations or warranties, expressed or implied, including any warranty of merchantability or fitness for any particular purpose relative to any security measures recommended or undertaken.

ARTICLE VIII

EASEMENTS

Section 8.1. Utility Easements. Developer reserves perpetual easements, rights and privileges to install, maintain, repair, replace and remove poles, wires, cables, conduits, pipes, mains, pumping stations, siltation basins, tanks and other facilities, systems and equipment for the conveyance and use of electricity, telephone service, sanitary and storm sewer, water, gas, cable television, drainage and other public conveniences or utilities, upon, in or over those portions of the Properties (including Lots, Parcels, Common Areas, Limited Common Areas and Neighborhood Common Areas) as Developer, its successors or assigns may consider to be reasonably necessary (the "Utility Easements"). However, after Developer ceases to be the Owner of a Lot or Parcel, no Utility Easements shall be placed on the portion of such Lot or Parcel on which is already located a building which was either constructed by Developer or approved by the Architectural Review Committee or on which a building is to be located pursuant to Plans approved by the Architectural Review Committee or on any portion of a Lot which is not described or shown as an easement area on a recorded subdivision plat or Supplemental Declaration applicable to such Lot or Parcel. The Utility Easements shall include the right to cut trees, bushes or shrubbery and such other rights as Developer or the applicable governmental authority or utility company providing the utilities may require. The utility lines installed pursuant to the Utility Easements may be installed above or below ground, except as otherwise provided in any Supplemental Declaration. Developer shall have the right to convey Utility Easements to other Owners, to Parcel Developers, to governmental authorities or utility companies, to the Association and to any other party or parties.

Section 8.2. Erosion Control. Developer reserves a perpetual easement, right and privilege to enter upon any Lot, Parcel, Common Area, Limited Common Area or Neighborhood Common Area, and the Association is granted a perpetual easement, right and privilege to enter upon any Lot or Parcel, either before or after a building has been constructed thereon or during such construction, for the purpose of taking such erosion control measures as Developer or the Association deems necessary to prevent or correct soil erosion or siltation thereon; provided, however, that Developer or the Association shall not exercise such right unless it has given the Owner of the Lot or Parcel or the Association (as to the Common Area, Limited Common Area and the Neighborhood Common Area) at least ten days' prior notice thereof and the Owner or the Association, as the case may be, has failed to take appropriate action to correct or prevent the erosion or siltation problem. The cost incurred by the Association or by Developer in undertaking such erosion control measures on any Lot or Parcel shall become a special

assessment on such Lot or Parcel and shall constitute a lien against such Lot or Parcel and shall be collectible in the manner provided herein for the payment of assessments. This Section shall not apply to Lots or Parcels owned by Developer.

Section 8.3. Maintenance of Lots and Parcels. Developer reserves the perpetual easement, right and privilege, and the Association is granted the perpetual easement, right and privilege, to enter on any Lot or Parcel, after at least five days' notice to the Owner thereof, for the purpose of mowing, removing, clearing, cutting or pruning underbrush; weeds or other unsightly growth, dispensing pesticides, herbicides and fertilizer and grass seed, removing trash and taking such other action as the Developer or the Association may consider necessary to correct any condition which detracts from the overall beauty of the Properties or which may constitute a hazard or nuisance. The cost incurred by the Association in taking such action (including any overhead costs associated therewith) shall constitute a special assessment on the Lot or Parcel and shall be collectible in the manner provided herein for the payment of assessments. This Section shall not apply to Lots or Parcels owned by Developer.

Section 8.4. Construction Easements and Rights. Notwithstanding any provision of this Declaration or of any Supplemental Declaration, so long as Developer is engaged in developing or improving any portion of the Properties or the Additional Area, Developer shall have an easement of ingress, egress and use over any lands not conveyed to an Owner for (i) movement and storage of building materials and equipment, (ii) erection and maintenance of directional and promotional signs and (iii) conduct of sales activities, including maintenance of model residences.

Section 8.5. Right of Entry for Governmental Personnel. A right of entry on any Common Area, Limited Common Area and Neighborhood Common Area is hereby granted to personnel of the County of James City in the lawful performance of their official duties, including but not limited to: law enforcement officers and fire and rescue personnel as needed to lawfully carry out their duties, including but not limited to enforcement of cleared emergency vehicle access; public utility and public works vehicles in the performance of their installation, maintenance and repair duties; and inspections personnel for the purpose of reviewing the Association's proper maintenance of the Common Area, Limited Common Area and Neighborhood Common Area.

Section 8.6. Easement for Landscaping, Signs and Related Purposes. There shall be and is hereby reserved to Developer for so long as it retains its rights as Developer and to the Association, a non-exclusive easement over all Lots, Parcels, Common Area, Limited Common Area and Neighborhood Common Area for a distance of twenty (20) feet behind any Lot or Parcel line which parallels, and is adjacent to, a street (whether public or private) for the purpose of erecting and maintaining street intersection signs, directional signs, temporary promotional signs, plantings, street lights, entrance features and/or "theme areas," lighting, stone, wood, or masonry wall features and/or related landscaping. Exercise of this easement shall be with the consent of the Owner of the

affected Lot or Parcel, or the Architectural Review Committee if such Owner does not consent.

Section 8.7. Easement for Use of Water Bodies and Irrigation. There is hereby reserved by the Developer a perpetual easement and right to use all lakes, ponds, creeks or water bodies lying within the Common Area, Limited Common Area or Neighborhood Common Area for the purposes of irrigation of other parcels now, or in the future, owned by Developer or third parties.

If Developer develops a commercial park, with commercial, office, industrial or retail sites, or any combination thereof, Developer may irrigate all or portions of these parcels with water drawn from the lakes, ponds, creeks and other water bodies lying within the Common Area, Limited Common Area and Neighborhood Common Area. Developer further retains: (i) the right to lay, install, construct and maintain an irrigation system, including underground irrigation lines, over all Common Areas, Limited Common Areas and Neighborhood Common Areas or landscaping easement areas granted to the Association for the purpose of providing irrigation to other parcels which may or may not be a part of the Properties, and (ii) the right to enter onto the Common Area, Limited Common Area and Neighborhood Common Area and to maintain the lakes, ponds, creeks or water bodies as may be necessary to insure that all such water bodies continue to provide a sufficient source of water to satisfy the irrigation needs described in this section. Nothing described in this section shall impose any obligation on Developer to maintain the lakes, ponds, creeks or water bodies, such obligation being the obligation of the Association.

Pursuant to Section 9.11, Developer shall have the right to transfer all or a portion of the rights retained by Developer under this section to third parties, including (i) the owners and their successors-in-interest of any lots within any commercial office park; or (ii) one or more commercial office park owners association(s), developed on parcels contiguous to the Properties.

Section 8.8. Easement for Encroachment. Each Lot, each Parcel, the Common Areas, the Limited Common Areas and the Neighborhood Common Areas are hereby declared to have an easement over all adjoining Lots, all adjoining Parcels, the Common Areas, the Limited Common Areas and any Neighborhood Common Areas for the purpose of accommodating any encroachment due to engineering errors, errors in original construction, settlement or shifting of a building, or any other similar cause, and any encroachment due to building overhang or projection. There shall be valid easements for the maintenance of said encroachments so long as they shall exist, and the rights and obligations of Owners shall not be altered in any way by said encroachment, settling or shifting; provided, however, that in no event shall a valid easement for encroachment be created in favor of an Owner or Owners if said encroachment occurred due to the willful act or acts with full knowledge of said Owner or Owners. In the event a structure on any Lot or Parcel is partially or totally destroyed, and then repaired or rebuilt, the Owners of

each Lot or Parcel agree that minor unintentional encroachments over adjoining Lots shall be permitted, and that there shall be valid easements for the maintenance of said encroachments so long as they shall exist.

Section 8.9. Easements to Serve Additional Area. The Developer hereby reserves for itself and its duly authorized agents, representatives, employees, successors, assigns, licensees, and mortgagees, an easement over the Common Area, Limited Common Area and Neighborhood Common Area for the purposes of enjoyment, use, access, and development of the property described in Schedule "B," whether or not such property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Area, Limited Common Area and Neighborhood Common Area for construction of roads and for connecting and installing utilities on such property. Developer agrees that it and its successors and assigns shall be responsible for any damage caused to the Common Area, Limited Common Area and Neighborhood Common Area as a result of vehicular traffic connected with development of such property. Developer further agrees that if the easement is exercised for permanent access to such property and such property or any portion thereof is not made subject to this Declaration, the Developer, its successors and assigns shall enter into a reasonable easement agreement with the Association to share the cost of maintenance of any access roadway serving such property.

Section 8.10. Utility, Walkway, Landscaping and Right-of-Way Easement. Developer, for itself and its successor and assigns, and/or for the benefit of the Association, reserves the right to grant any easements for the benefit of the Properties and/or any other property in the vicinity of New Town over, upon, across and under all or any portion of the Common Area, Limited Common Area or Neighborhood Common Area. Without limiting the generality of the foregoing, as of the date of this Declaration, Developer has conveyed to the Association a non-exclusive easement over, upon, across and under certain portions of the Properties, such easement being more particularly described in that certain Utility, Walkway, Landscaping, and Right-of Way Basement dated June 17, 2005; recorded in the Clerk's Office on June 21, 2005 as Instrument Number 050013787.

ARTICLE IX

GENERAL PROVISIONS

Section 9.1. Duration. The covenants and restrictions of this Declaration shall run with and bind the Properties for a term of twenty-five (25) years from the date this Declaration is recorded; after which time they shall be automatically extended for successive periods of twenty-five (25) years, unless at the expiration of any such period the covenants and restrictions are expressly terminated by an instrument signed by Owners of a majority of the Lots and Parcels. Notwithstanding the foregoing, the provisions of Section 4.2, Article VIII, and Section 8.5 shall be perpetual.

Section 9.2. Amendments. Except as otherwise set forth in this Declaration and subject to Section 10.4 of the Bylaws, this Declaration may be amended either (i) by Developer without the consent of any other Owners in order to correct typographical errors, inconsistent references, scrivener's errors, grammatical mistakes, and incorrect or ambiguous punctuation, for so long as Developer's Class B membership continues or (ii) by a vote of two-thirds of the sum of: (A) the Class A votes (including Developer as to Class A votes held by Developer), plus (B) the Class B votes (if any). Notwithstanding the foregoing, the provisions of Articles II and VIII and Sections 3.2, 4.7, 5.8, and this Section 9.2 may not be amended in any event without the written consent of Developer regardless of whether the Class B membership has terminated, and the provisions of Section 8.5 may not be amended without the consent of the Board of Supervisors of the County of James City. In addition, Developer shall have the right without the consent of any other Owners to amend this Declaration in any respect as may be necessary or appropriate in order for this Declaration or the Properties to comply with applicable laws now or hereafter enacted or to satisfy the requirements of any Federal Mortgage Agency, including, without limitation, the Veterans Administration, the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, or the U.S. Department of Housing and Urban Development, as the same may be amended from time to time, with respect to their purchase or guaranty of mortgage loans secured by Lots.

Section 9.3. Enforcement. Developer, the Association or any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, easements, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration or any Supplemental Declaration. Without limiting the generality of the foregoing, if any Owner fails to comply with any of the provisions of this Declaration or any Supplemental Declaration and such failure continues for at least five (5) days after notice thereof is given to the Owner, then either Developer or the Association may, but without any obligation to do so, take such action as either of them considers necessary or appropriate (including, without limitation, entering the Owner's Lot or Parcel) to correct the noncompliance; provided, however, that judicial proceedings are instituted before any Improvements are subsequently altered or demolished. The cost incurred in taking such action shall constitute a special assessment upon the Owner's Lot(s) and/or Parcel(s) and shall be collectible in the manner provided herein for the payment of assessments. Failure by the Developer, the Association or any Owner to enforce any provision of this Declaration or any Supplemental Declaration shall in no event be deemed a waiver of the right to do so thereafter.

Section 9.4. Limitations. As long as the Developer has an interest in developing the Properties, any commercial property adjacent to the Properties and/or the Additional Area, the Association may not use its financial resources to defray any costs of opposing the development activities so long as they remain consistent with the general intent of this

Declaration. Nothing in this Section shall be construed to limit the rights of Members to act as individuals or in affiliation with other Members or groups.

Section 9.5. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 9.6. Conflict. In the event of conflict among the Governing Documents, this Declaration shall control, then applicable Supplemental Declarations, then the Articles, then the Bylaws except that in all cases where the Governing Documents may be found to be in conflict with statute, the statute shall control.

Section 9.7. Interpretation. Unless the context otherwise requires, the use of the singular shall include the plural and vice versa; the use of one gender shall include all genders; and the use of the term "including" shall mean "including, without limitation." The headings used herein are for indexing purposes only and shall not be used as a means of interpreting or construing the substantive provisions hereof.

Section 9.8. Use of the Words "New Town" or "New Town Residential Association." No person or entity shall use the words "New Town" or "New Town Residential Association" or any derivative thereof in any printed or promotional material without the prior written consent of Developer.

Section 9.9. [RESERVED].

Section 9.10. Approvals and Consents. All approvals and consents required or permitted by this Declaration (other than approvals or consents given by Members in a vote conducted in accordance with the Bylaws) shall be in writing, shall be signed by the party from whom the consent or approval is sought and, unless otherwise provided herein, may be withheld by such party in its sole discretion.

Section 9.11. Assignment of Developer's Rights. Any and all rights, powers, easements and reservations of Developer set forth herein may be assigned in whole or in part, at any time or from time to time, to the Association, to another Owner, to a Parcel Developer or to any other party in Developer's sole discretion. Each such assignment shall be evidenced by an instrument which shall be signed by Developer and its assignee and recorded in the Clerk's Office.

Section 9.12. Successors and Assigns. The provisions hereof shall be binding upon and shall inure to the benefit of Developer, the Association and (subject to Article II hereof) the Owners and their respective heirs, legal representatives, successors and assigns.

Section 9.13. Compliance with Property Owners' Association Act. The Association shall be subject to and comply with the Virginia Property Owners' Association Act as set out in § 55-509 et seq., in the Code of Virginia, as amended.

ARTICLE X

DISSOLUTION OF THE ASSOCIATION

The Association may be dissolved at a duly held meeting at which a quorum is present upon the vote of more than two-thirds (2/3) of the votes, in person or by proxy, of the Class A members and the vote of the Class B member. No such dissolution shall occur without the prior consent of the Board of Supervisors of James City County, Virginia. Prior to dissolution of the Association, other than incident to a merger or consolidation, the assets of the Association shall be offered for dedication to the locality in which they are situated. In the event that such dedication is refused acceptance upon dissolution, such assets shall be granted, conveyed and assigned to any nonprofit corporation, association, trust or other organization to be devoted to similar purposes.

ARTICLE XI

NOTICES

All notices, demands, requests and other communications required or permitted hereunder shall be in writing and shall either be delivered in person or sent by overnight express courier or by U.S. first class mail, postage prepaid. Notices to the Developer shall be sent to New Town Associates, LLC, 4801 Courthouse Street, Suite 329, Williamsburg, Virginia 23188, Attention: Secretary, with copies to Elizabeth L. White, Esq., Kaufman & Canoles, 4801 Courthouse Street, Suite 300, Post Office Box 6000, Williamsburg, Virginia 23188 or to such other address as the Developer shall specify by executing and recording an amendment to this Declaration, which amendment shall not require the approval of any other parties as provided in Section 9.2. Notices to the Association or to Owners (other than Developer) may be sent to the address which the Bylaws provide shall be used for them. All such notices, demands, requests and other communications shall be deemed to have been given when sent to the appropriate address specified above. Rejection or other refusal to accept shall not invalidate the effectiveness of any notice, demand, request or other communication. Notwithstanding the foregoing, any notice of the filing of a memorandum of assessment lien shall be sent in the manner required by § 55-516C of the Virginia Code.

[Remainder of page is left intentionally blank. Signatures follow on next page.]