

**DECLARATION OF COVENANTS,
RESTRICTIONS,
RESERVATIONS AND EASEMENTS
OF
BAY BREEZE POINT**

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THIS DECLARATION OF COVENANTS, RESTRICTIONS, RESERVATION AND EASEMENTS is made on this 15th day of January, 1999, by RML Corporation, a Virginia corporation, Grantor, (the "Declarant") of residential lots in the development known as "Bay Breeze Point" which is located in the City of Norfolk, Virginia, PRINCESS ANNE SERVICE CORPORATION, Trustee, of FIRST COASTAL BANK, Grantee for indexing purposes, (the "Trustee"), whose mailing address is: 2101 PARKS AVENUE, VIRGINIA BEACH VA 23451.

RECITALS

Declarant is the owner of certain real property in Norfolk, Virginia more particularly described in Exhibit A attached hereto and desires to create thereon a community of high quality to be known as Bay Breeze Point, to provide for the preservation and enhancement of property values, amenities and opportunities within the community, and to provide for the management, maintenance and care of certain of the improvements within the community.

For the foregoing purposes, the Declarant, with the consent of the undersigned Beneficiaries and Trustees, desires to subject the real estate described in Exhibit A, (together with such additions as may hereafter be made pursuant to Article II hereof), to the covenants, restrictions, reservations, easements, charges and liens hereinafter set forth, all of which are for the benefit of the Bay Breeze Point community and the Owners of property within the community. PRINCESS ANNE SERVICE CORPORATION is the Trustee, under that certain Deed of Trust constituting a first lien on the real estate described in Exhibits A, which is recorded in the Clerk's office of the Circuit Court of the City of Norfolk, in Deed Book 2976, at page 0130 (the "Deed of Trust"). The Trustee joins herein for the sole purpose of evidencing their consent to the provisions hereof, and subjecting the real estate contained in the Deed of Trust to the provisions of this Declaration.

NOW THEREFORE, Declarant, with the consent of the Trustee, hereby declares that the real estate described in Exhibit A and such additions thereto as may be made pursuant to Article II (but as to such additions, subject to any additions, deletions and modifications to the provisions of the Declaration as are made pursuant to Section 2.2), is and shall be held transferred, sold, conveyed and occupied subject to the covenants, restrictions, reservations, easements, charges and liens hereinafter set forth.

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 Board" shall have the meaning set forth in Section 6.1 of this Declaration.

Section 1.4. "Articles" means the Articles of Incorporation of the Bay Breeze Point Owners' Association, as the same may be amended from time to time.

Section 1.5. "Association" means the Bay Breeze Point Owners' Association, a Virginia non-stock corporation, its successors and assigns.

Section 1.6. "Bylaws" means the Bylaws of the Bay Breeze Point Owners' Association, 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 Norfolk, Virginia.

Section 1.8. "Common Area" means (i) all of the real estate specifically designated as "Common Area" on recorded plats of the Properties, in any Supplemental Declaration, or in any amendment to this Declaration or in any other instrument executed by Declarant and recorded in the Clerk's Office; (ii) private streets or rights-of-way, designated on recorded plats of the Properties and conveyed by deed to the Association, if any; and, (iii) all other real property 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, open space, private parks, a lake or other water bodies, a swimming pool, club house, areas set aside for pedestrian and/or bicycle paths and other recreational facilities intended to be used by the Owners, which may be submitted to the provisions of this Declaration. (iv) Property designated as Beach Access common area shall be specifically designated in the recorded plat of the Property.

Section 1.9. "Declaration" means this Declaration of Covenants, Restrictions, Reservations and Easements, as the same may from time to time be supplemented or amended.

Section 1.10. "Declarant" means RML Corporation, a Virginia corporation, and its successors as developers of the Properties to whom RML Corporation may assign its rights hereunder by instrument(s) recorded in the Clerk's Office as provided in Section 9.10.

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. "Lot" means any lot which is shown on a recorded subdivision plat of the Properties, (or any subsequently recorded subdivision plat), and on which is constructed or is to be constructed a single family, detached residence.

Section 1.15. "Member" means every person or entity who holds membership in the Association.

Section 1.16. "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 1.17. "Parcel " means any portion of the Properties which, when subjected to the Declaration in accordance with Article II, has not been subdivided or created into Lots, and which is to be developed by resubdivision or creation into Lots.

Section 1.18. "Properties" means all property subjected herein to this Declaration, together with such other real property as may from time to time be subjected in whole or in part to this Declaration by Declarant pursuant to Article II hereof.

Section 1.19. "Supplemental Declaration" shall have the meaning set forth in Section 2.3 hereof.

Section 1.20. "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 sections 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 1.21. "Visible from Neighboring Property" means, with respect to any given object, that such object is or would be visible to a person six feet (6') tall, standing on any part of such neighboring property at an elevation no greater than the ground elevation of the dwelling on such property.

Section 1.22. "Zoning Ordinance" means the ordinances adopted by the City Council of the City of Norfolk, Virginia, together with all other zoning ordinances, rules and regulations applicable to the Properties. If any applicable ordinance, rule or regulation in effect on the first date of recordation of this Declaration is repealed, amended or supplemented in any respect, or if any variances or waivers are subsequently granted with respect thereto, the term "Zoning Ordinance" when used in interpreting or applying this Declaration at any point in time shall mean such ordinance, rule and regulation as they have been repealed, amended, supplemented, varied or waived as of such point in time.

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 Clerk's Office is described in Exhibit A hereto. Declarant contemplates the extension of this Declaration to the real estate described in Exhibit B hereto, (the "Additional Area"), or portions thereof. However, Declarant 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 Properties 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. Declarant reserves the right, at its discretion, at such time or times as it shall determine on or before December 31, 2008, to subject the Additional Area, or such portions thereof as Declarant 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 December 31, 2008, 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 Declarant's recordation in the Clerk's Office of an appropriate instrument describing the portion(s) of the Additional Area subjected to this Declaration. Each such instrument may contain such additions, deletions and modifications to the provisions of this Declaration as may be desired by Declarant. 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.

Section 2.3. Supplemental Declarations. In addition to subjecting the Additional Area to this Declaration as provided in Section 2.2, Declarant may, in its discretion, execute and record one or more supplemental declarations (each a "Supplemental Declaration") for the purpose of establishing certain additional or different covenants, restrictions, reservations and easements applicable to such specific Additional Area. However, no negative reciprocal easement shall arise out of any Supplemental Declaration so as to bind any real property not expressly subjected thereto.

Section 2.4. Power Not Exhausted by One Exercise, Etc. No exercise of the power granted Declarant hereunder as to any portion of the Additional 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 Declarant 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 Declarant 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, and facilities to be owned and/or maintained by the Association.

Section 2.6. Withdrawal. Provided no Lot or Parcel in the portion of the Additional Area which is subsequently subjected to the Declaration pursuant to the provisions of Article II has been conveyed to an Owner other than Declarant, Declarant shall have the right, in its sole discretion, to remove from the Properties any Additional Area by recording in the Clerk's Office an appropriate instrument describing the portion(s) of the Additional Area to be removed from the Properties.

ARTICLE III BAY BREEZE POINT OWNERS' ASSOCIATION

Section 3.1. Membership. Every Owner of a Lot or a Parcel shall be a member of the Association. Membership shall be appurtenant to and shall not be separated from ownership of any Lot or Parcel. Upon the recordation of a deed to a Lot or 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 (2) classes of voting membership:

Class A. All Owners of Lots or Parcels, other than the Declarant, (until such time as the Declarant becomes Class A member upon termination of Class B as set forth below), shall be Class A members.

Class B. Declarant shall be the Class B member. The Class B membership shall terminate and be converted to Class A membership on the earlier of (i) the date on which Declarant ceases to own any of the Properties and the Additional Area; (ii) the date on which Declarant executes and records in the Clerk's Office an amendment to this Declaration terminating the Class B membership; or (iii) on December 31, 2007.

Section 3.3. Voting Rights.

- (a) Each Class A member shall be entitled to cast one (1) vote for each Lot owned.
- (b) Each Class A member shall be entitled to cast one (1) vote for each Lot possible to be developed under the current Zoning ordinance for any Parcel owned.

(c) The Declarant as the only Class B member shall be entitled to cast three (3) votes for each Lot owned, and three (3) votes for each Lot, or possible to be created or constructed on the Additional Area.

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; Virginia 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 provision 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 Virginia Property Owners Association Act, Section 55-508 *et seq.* of the Virginia Code, as the same may be amended from time to time.

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 conveyed to the Association and all improvements thereon, (including fixtures, personal property and equipment related thereto), and shall keep the Common Area, and the improvements thereon in accordance with the requirements of the 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, direction signs, temporary promotional signs, plantings, street lights, entrance features and/or "theme areas", lighting, sprinkler systems, stone, wood or masonry wall features and/or related landscaping installed or planted in the Common Areas, or in any street or right of way, by the Declarant 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.

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

Subject to the provisions of this Declaration and any applicable Supplemental Declaration and the Articles and Bylaws, every Owner shall have a right of enjoyment in and to the Common Areas which right of enjoyment shall be appurtenant to and shall pass with the title to every Lot 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 Declarant 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. General Limitations on Owners' Rights. The Owners rights of enjoyment in the 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; (ii) subject to the limitation imposed by the last sentence of Section 55-514C of the Virginia Code as in effect on the date hereof, the right of the Association to suspend the right of an Owner to use or benefit from any of the Common Areas for the period during which any assessment against his Lot or Parcel is delinquent; (iii) the right of the Association to suspend the right of an Owner to use or benefit from any of the Common Areas for any period during which any other violation by the Owner of this Declaration, a Supplemental Declaration or the rules 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 ten (10) days after such correction; (iv) subject to the Bylaws, the right of the Association to mortgage any or all of the Common Areas for the purpose of making improvements or repairs thereto; (v) subject to the Bylaws, the right of Declarant or the Association to grant utility easements across the Common Areas as provided in Section 8.1; (vi) subject to the Bylaws, the right of the Association to dedicate or transfer all or any part of the Common Areas to any public agency, authority or utility for such purposes and subject to such conditions as may be desired by the Association; and (vii) all of the other easements, covenants and restrictions provided for in this Declaration and any Supplemental Declaration(s) applicable to the Common Areas.

Section 4.4. Delegation of Use. Any Owner may delegate his right of enjoyment to the Common Area to members of his family living on his Lot or Parcel 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 4.5. Damage or Destruction of Common Area by Owner. In the event any Common Area or improvement thereon is damaged or destroyed by an Owner, his tenants, guests, licensees, agents or members of his family, the Association may repair such damage at the Owner's expense. The Association shall repair such damage in a good and workmanlike manner in conformance with the original plans and specifications of the area or improvement involved, or as the Common Area, or improvement may have been theretofore modified or altered by the Association, in the discretion of the Association. The cost of such repairs shall become a special assessment on the Lot or Parcel of such Owner and shall constitute a lien on such Owner's Lot or Parcel and be collectible in the same manner as other assessments set forth herein.

Section 4.6. Rights in Common Areas Reserved by Declarant. Until such time as Declarant conveys a parcel of real estate constituting Common Area to the Association, Declarant shall have the right as to 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, including, without limitation, directional signs, recreational facilities, and (ii) to use the Common Area for other purposes not inconsistent with the provisions of this Declaration. Until such time as Declarant conveys parcel of real estate constituting Common Area to the Association, Declarant shall maintain such Common Area in neat condition and repair, including mowing and removing underbrush and weeds.

Section 4.7. Title to Common Area. Declarant may retain legal title to the Common Areas, or portions thereof, but notwithstanding any provision herein to the contrary, Declarant shall convey each Common Area to the Association, free and clear of all liens, but subject to this Declaration and all other easements, conditions and restrictions of record at such time as such improvements are completed. Regardless of whether the Common Areas actually have been conveyed by the Declarant, 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 from and after the date such 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 of a deed or deeds to such Common Areas are recorded in the Clerk's Office for payment of taxes, insurance and maintenance costs with respect thereto. (Until the Common Areas are conveyed to the Association, the Declarant shall be liable for payment of taxes, insurance and maintenance costs with respect thereto.)

Section 4.8. Common Areas on the Additional Area. The Declarant may designate additional Common Areas and facilities from any of the land subsequently added to the Declaration.

ARTICLE V ASSESSMENTS

Section 5.1. Creation of the Lien and Personal Obligation for Assessments.

(Declarant, 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 therefor, whether or not it shall be so expressed in such deed, is deemed to covenant, to pay to the Association assessments as set forth in this Declaration, and 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 non-use of the 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 seven (7) days of its due date shall, at the option of the Association, incur a late charge equal to the greater of five percent (5%) of the delinquent assessment, or twenty dollars (\$20.00).

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 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 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 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, 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."

(a) **Purpose.** "General Assessments" shall mean those assessments used for the general purposes set forth in Section 5.2 above.

(b) **Basis.** The General Assessments shall be established and increased or decreased from time to time by the Board of Directors of the Association pursuant to the Bylaws.

(c) **Assessment Levels.** There shall be three (3) levels of assessments to Owners as follows:

(1) **Level I - Improved Lots or Parcels.** All Lots on which a Single family residence have been constructed and which are or have been occupied, shall be assessed at one hundred percent (100%) of the General Assessment. All Parcels on which one or more Lots have been created and on which one or more Single family residences or apartment units have been constructed and which are or have been occupied shall be assessed at one hundred percent (100%) of the General Assessment per Lot or apartment unit.

(2) **Level 2- Unimproved Lots.** All Lots on which no Single family residence has been completed and occupied, shall be assessed at a rate of twenty-five percent (25%) of the General Assessment.

(3) **Level 3 - Unimproved Parcels.** All Parcels added to or subjected to the provisions of the Declaration in accordance with Article II, but that have not been subdivided into Lots, or improved by the creation of Lots or apartment units shall be assessed at a rate equal to twenty-five percent (25%) of the General Assessment times the number of Lots or apartment units which have been approved by the City of Norfolk for such parcel in accordance with the Zoning Ordinance.

Section 5.4. Special Assessments. In addition to the General Assessments, the Board of Directors of the Association may levy a periodic special assessment if the purpose in doing so is found by the Board of Directors to be in the best interest of the Association and the proceeds of such assessment are used primarily for the maintenance and upkeep, including capital expenditures, of the Common Area. If any such special assessment is in an amount greater than the General Assessment for the same year, then no such special assessment shall be levied without the approval of a majority of the votes of the Class A members who are voting in person or by proxy at a meeting duly called for this purpose and the approval of the Class B member; otherwise, such special assessment may be established by the Board of directors of the Association without a vote

of the Membership, provided, however, that any such special assessment may be rescinded by a Majority vote of the Members attending a meeting of the Association, convened in accordance with the Bylaws within sixty (60) days after receipt of the notice of such assessment.

Section 5.5. Date of Commencement of Annual Assessments. Subject to Sections 5.8 and 5.9, the Annual Assessments provided for herein shall commence as to each Lot or Parcel on the first day of the month following the date of recordation of the first Deed conveying such Lot or Parcel to an Owner other than the Declarant. The first Annual Assessment on a Lot or Parcel shall be adjusted according to the number of months remaining in the calendar year. Unless the Board of directors of the Association provides otherwise, the Annual Assessments shall be paid in quarterly installments due on the first day of each January, April, July, and September.

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 Section 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.

In any case where an assessment against a Lot or Parcel is payable in installments, upon a default by such Unit owner in the timely payment of any installment due for thirty (30) days, the maturity of the remaining total of the unpaid installments of such assessment may be accelerated, at the option of the Board of Directors, and the entire balance of the annual assessment may be declared due and payable in full by the service of notice to such effect upon the Owner by the Board of Directors or the managing agent.

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 Section 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 Declarant or for similar purposes; (ii) all properties dedicated and accepted by a public authority; (iii) all 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 deductible), 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. Capitalization of Association. Upon the acquisition of record title to a Lot or Parcel by the first purchaser thereof, (other than Declarant or a Builder who purchases a Lot or Parcel for development and resale to another), a contribution shall be made by or on behalf of the purchaser to the working capital of the Association in the amount equal to one (1) quarterly installment of the amount of the Annual Assessment payable on such Lot or Parcel for that year. This amount shall be deposited in the purchase and sales escrow at settlement and shall be disbursed therefrom to the Association for its reserves and/or operating expenses.

ARTICLE VI ARCHITECTURAL CONTROL

Section 6.1. Architectural Review Board. There is hereby established a board, (the "Architectural Review Board"), for the purpose of reviewing and, as appropriate, approving or disapproving all Plans, (hereinafter defined), submitted by Owners in accordance with this Article VI. The Architectural Review Board shall be composed of between one (1) and three (3) persons, who need not be Members of the Association, from time to time appointed by Declarant (Declarant may be a member of the Board) so long as its Class B membership in the Association continues or by the Board of Directors of the Association from and after the date on which the Class B membership terminates or Declarant delegates this responsibility to the Association. The Declarant or the Board of Directors, as the case may be, may appoint one (1) alternate member to the Architectural Review Board, which alternate member may vote only in the absence of a regular member. The members of the Architectural Review Board shall serve for such terms as may be determined by Declarant or the Board of Directors of the Association, as the case may be.

Section 6.2. Plans to be Submitted. Before commencing the construction, erection or installation of any building, fence, wall, animal pen or shelter, exterior lighting, sign, mailbox or mailbox support, pool or any 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 therefor, and before commencing any alteration, enlargement, demolition or removal of an Improvement or any portion thereof in a manner that alters the exterior appearance, (including paint color), of the Improvement or of the Lot or the Parcel on which it is situated, each Owner, other than the Declarant, shall submit to the Architectural Review Board a completed application on the form provided by the Architectural Review Board, (the "Application"), a proposed construction schedule and at least three (3) 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 Board): (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, (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, and (v) a tree protection plan and such other information as the Architectural Review Board in its discretion shall require, (collectively, the "Plans"). (vi)

The front and side yards to the rear corner of the house shall be sodded with Bermuda grass. The Architectural Review Board may, in its sole discretion, waive the requirement that any or all of the required Plans be submitted in a particular case where it determines such Plans are not necessary to properly evaluate the Application. The Architectural Review Board 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 Board at the address of Declarant in the same manner as notices are to be sent to Declarant pursuant to Article XI, for so long as all members of the Architectural Review Board are appointed by Declarant, and thereafter the Application, Plans and the proposed construction schedule may be submitted to the Architectural Review Board at the address of the Association in the same manner as notices are to be sent to the Association pursuant to Article XI. In no event shall the Declarant be required to submit any plans for approval by the Architectural Review Board, the Declarant being exempt from the provisions of this Section as well as Sections 6.4, 6.5 and 6.6.

Notwithstanding anything contained in this Article VI to the contrary, the Declarant, so long as Declarant retains an interest in any of the real property listed in Exhibits A or B, at Declarant's option, may review Plans presented by a Builder for construction of any Improvements without submission to the Architectural Review Board, and if approved, which approval shall be within the sole discretion of Declarant, such approval shall be deemed to satisfy this Section, as well as Sections 6.4, 6.5 and 6.6. Such approval may be conditioned upon such requirements as Declarant may determine. Provided the Declarant has approved the Plans, submission of such Plans to, and approval of same by, the Architectural Review Board shall not be required.

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

Section 6.4. Approval of Plans. The Architectural Review Board 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 Board 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. Provided the plans are submitted in accordance with this Article, the Architectural Review Board shall approve, approve subject to modification or disapprove the same within thirty (30) days from the date of their receipt. Should no action be taken by the Architectural Review Board within said time period the Plans shall be deemed approved.

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 therefor have been approved by the Architectural Review Board. After the Application, Plans and Construction Schedule therefor have been approved, all Improvements shall be constructed, erected, installed, maintained, altered, enlarged, demolished or removed strictly in accordance with the approved Plans. Upon commencing the construction, erection, installation, alteration, enlargement, demolition or removal of an Improvement, all of the work related thereto shall be carried on with reasonable diligence and dispatch and in accordance with the construction schedule approved by the Architectural Review Board.

Section 6.6. Guidelines May Be Established. The Architectural Review Board, 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, garages and parking enclosures, clothes lines or other drying apparatus, antennae and satellite dishes, mailboxes and mailbox supports, fences and walls, storage of firewood, lighting, size, placement and location of structures, improvements and landscaping. However, nothing contained in this Declaration shall require the Architectural Review Board 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 Board for another Lot or Parcel. The guidelines adopted by the Architectural Review Board may vary between Sections.

Section 6.7. Limitation of Liability. The approval by the Architectural Review Board of any Plans, and any requirement by the Architectural Review Board that the Plans be modified, shall not constitute a warranty or representation by the Architectural Review Board of the adequacy, technical sufficiency of safety of the Improvements described in such Plans, as the same may be modified, and the Architectural Review Board 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 Board 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 Board's approval, disapproval, or conditional approval of any Plans.

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

**ARTICLE VII
USE OF PROPERTY**

Section 7.1. Protective Covenants.

(a) **Nuisances.** No noxious or offensive activity shall be carried on upon any of said lots, nor shall anything be done thereon which may be or become an annoyance or nuisance to any adjoining lot or the neighborhood.

(b) **Land Use; Subdivision and Rezoning; Easements.** None of the real property which is or shall become subject to the provisions of this Declaration shall be subdivided or rezoned without the prior written consent of the Architectural Review Board, and until the termination of the Class B membership the Declarant. The subdivision, site plan and landscape plan of the said property and any changes to the present zoning of the said property shall be subject to the prior approval of the Architectural Review Board, which approval procedure shall be as set forth in Article VI of the Declaration. Further, until the termination of the Class B membership, no dedication, reservation or easement may be made or granted on, through or over any Lot or Parcel without the prior written consent of the Declarant, or its assignees or designees.

(c) **Completion of Structures.** The exterior of any new structure and the grounds related thereto must be substantially completed in accordance with the plans and specifications approved by the Architectural Review Board within twelve (12) months after construction of the same shall have commenced, except that said Board may grant extensions where such completion is impossible or is the result of matters beyond the control of the Owner or Builder, such as strikes, casualty losses, national emergencies or act of God.

(d) **Residential Use.** All Lots and Living Units, now or hereafter created, in the Properties are designated for residential use and shall be used, improved and devoted exclusively to residential use by a Single Family, except home occupations may be pursued: (i) if permitted by the City of Norfolk; and (ii) if in accordance with rules adopted from time to time by the Association. Nothing herein shall be deemed to prevent an Owner from leasing a Living Unit to a Single Family, provided such lease shall be in writing and subject to all of the provisions of the Governing Documents with any failure by a lessee to comply with the terms of the Governing Documents constituting a default under the lease. Each Lot located on the Property described in Exhibit A attached hereto, and each Lot located on any Additional Area subsequently subjected to the Declaration, unless a different use is specifically set forth in the Supplemental Declaration, shall contain no more than one (1) detached single-family residence with a private garage or other accessory structures, not for habitation of any description, for the exclusive use of the occupants of such dwelling. No garage apartment or similar structure shall be permitted nor shall any structure of a temporary character such as a trailer, tent, shack, garage, barn or other out-building be utilized on any lot as a temporary or permanent residence; whereas Declarant and its successors and assigns and agents may utilize trailers and temporary structures in and during the development of the project and construction of residential dwellings and associated structures.

(e) **Size of Structures.** No residence shall be erected with less than Two Thousand (2,000) square feet of floor space exclusive of garages, rooms over garages, porches and breezeways, except that the Declarant shall have the right to vary square footage of floor space by giving its written consent thereto, but, in no event, may such square footage be less than that required by law. No structure shall be erected, altered, placed or permitted to remain on any of said lots other than one (1) detached single-family dwelling with roofing materials equal to or greater than a "40 year" grade composite shingle, not to exceed three (3) stories in height. Declarant shall have absolute discretion for approval of builder's height so as not to limit existing or potential views from nearby properties.

(f) **Vehicles.** No portion of the property subjected hereto shall be used for the repair of motor vehicles. Use and storage of all vehicles and recreational equipment upon the Common Area and Lots or upon any street, public or private, adjacent thereto shall be subject to rules promulgated by the Board of Directors as provided for herein.

(1) **Operation of Vehicles.** All motor vehicles, including, but not limited to, trail bikes, motorcycles and dune buggies shall be driven only upon paved portion of the streets. No motor vehicles shall be driven on pathways or in the Common Area, except such vehicles as are authorized by the Association as needed to maintain, repair, or improve the Common Area. This prohibition shall not apply to normal vehicular use of designated streets and lanes constructed on Common Area.

(2) **Parking.** Parking of all recreational vehicles and commercial vehicles in size in excess of 3/4 ton trucks and related equipment, other than on a temporary and non-recurring basis as determined by the Board of Directors, shall be in garages or screened enclosures approved by the Architectural Review Board or in areas, if any, designated by the Association for such parking. Pursuant to rules and regulations promulgated by the Architectural Review Board, passenger or standard vehicles such as vans which do not exceed in size, the size of 1 3/4 ton truck, which are used for commercial purposes by Members shall be permitted to display commercial signage, however, no equipment shall be visible or displayed outside of said vehicle.

(g) **Pets.** Subject to rules as may from time to time be set by the Association, generally recognized house or yard pets, in reasonable numbers, may be kept and maintained on a Lot, provided such pets are not kept or maintained for commercial purposes. All pets must be kept under the control of their owner when they are outside of the Lot and must not become a nuisance to other residents.

(h) **Clothes Drying Equipment and Laundry.** No clothes lines or other clothes drying apparatus shall be permitted on any Lot. No clothing or other household fabrics or laundry shall be hung in the open on any lot from a clothesline or otherwise.

(i) **Antennae.** Subject to rules as may from time to time be adopted by the Association, exterior television, satellite dishes, or other antennae are prohibited, except as approved in writing by the Architectural Review Board. In the event the Architectural Review Board approves the installation of a satellite dish, only "mini" satellite dishes not exceeding one meter will be allowed.

(j) **Trash, Firewood and Storage.** No lot shall be used or maintained as a dumping ground for rubbish, garbage or other waste. All rubbish, garbage, and other waste shall be kept in sanitary containers at all times, screened from public view, except when placed on or by the street for collection during any regular collection day. All other activities concerning firewood and trash including but not limited to the storage, collection, and disposal of trash, and the storage of firewood shall be in compliance with rules set by the Architectural Review Board. No oil or fuel tanks or barrels of any nature shall be permitted for storage under or upon any of said lots.

(k) **Trash Burning.** Trash, leaves, and other similar material shall not be burned without the written consent of the Association.

(l) **Signs.** No signs of any type shall be displayed to public view on any Lot or the Common Area without the prior written consent of the Architectural Review Board, except the following: (1) one sign of not more than ten (10) square feet advertising the property for sale or rent; (2) signs used by the builder or developer to advertise the property during the construction or sale period; and (3) customary name and address signs meeting established Architectural Review Board standards.

(m) **Mailboxes and Newspaper Tubes.** Only mailboxes and newspaper tubes meeting the design standards of the Architectural Review Board shall be permitted.

(n) **Fences and Walls.** Any fence, wall, tree, hedge, or shrub planting shall be erected or maintained in such a manner as to not obstruct sight lines for vehicular traffic. All fences or enclosures must be approved by the Architectural Review Board as to location, material and design. Any fence or wall built on any of the Lots or Parcels shall be maintained in a proper manner so as not to detract from the value and desirability of surrounding property.

(1) On all lots other than corner lots, no fence shall be installed in front of the rear lines of any house, and those fences in locations where erection is permissible shall not be more than six (6) feet in height.

(2) On all corner lots, no fence shall be installed in front of any rear line of any house nor shall any fence be installed closer to the side street line than the side line of the house. No fence sections shall exceed six (6) feet in height.

(3) No barbed wire or chain link fences shall be permitted and all fences must be approved by the Declarant, their successor(s) or assigns. Plans showing the design and proposed location of any fence the owner wishes to place on any lot shall be submitted to and approved by the Declarant prior to the start of construction. All fences shall be constructed with the smooth side facing out.

(o) **Drainage.** The dwelling erected on any of said lots shall, at the time of construction, be connected to public sewer and water systems. All plans must provide for positive drainage as required by the City of Norfolk. In the event grading and drainage do not comply with

the approved plans, the lot owner shall, at its expense, make all corrections or modifications as required by the Declarant. In addition, the total improved area of a lot (driveways and buildings) shall not exceed the requirements of the City of Norfolk in compliance with the Storm Water Recovery Statute of the Commonwealth of Virginia or its future amendments (currently 2,805 square feet). No driveway shall be constructed or maintained to or on any of said lots in such manner as to obstruct the normal drainage of the street on which said lot fronts, and to that end, such driveway shall have either an apron or proper design, or an adequate drain pipe installed under the driveway for the purpose.

(p) **Lighting.** No exterior lighting shall be directed outside the boundaries of Lot and all exterior lighting shall be subject to such other rules as adopted by the Association from time to time.

(q) **Contractor License Requirements.** All building or swimming pool plans must also provide evidence that the construction being performed is being undertaken by a contractor possessing a Virginia State Class "A" contracting license. Any other structural construction, other than a mailbox, will require a contractor possessing a Virginia State Class "A" or "B" contracting license.

(r) **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, storage and use of all vehicles, storage and use of machinery, use of outdoor drying lines, antennas, signs, trash and trash containers, restrictions on sprinkler and irrigation systems, private irrigation wells and uses of lakes, water bodies and wetlands, use of any Association pool, clubhouse or other recreational amenity, 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. All such rules and any subsequent amendments thereto shall be binding on all Members, except where expressly provided otherwise in such rule.

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

Section 7.2. Maintenance of Property.

(a) **Owner Obligation.** 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.

(b) **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. Resales of Lots by Owners Other Than Declarant or Initial Builder.

Upon the acquisition of record title to Lot from an Owner other than Declarant or the initial Builder of a Single Family Residence, an administrative fee in an amount set from time to time by the Board of Directors, which amount shall initially be \$50.00, 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 therefrom to the Association.

Section 7.4. Security. NEITHER THE ASSOCIATION, NOR DECLARANT SHALL BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OR FAILURE TO PROVIDE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. ALL OWNERS, TENANTS, GUESTS AND INVITEES OF ANY OWNER, AS APPLICABLE, ACKNOWLEDGE THAT THE ASSOCIATION AND DECLARANT, AND COMMITTEES ESTABLISHED BY ANY OF THE FOREGOING ENTITIES, ARE NOT INSURERS AND THAT EACH OWNER, TENANT, GUEST, AND INVITEE ASSUMES ALL RISK OF LOSS OR DAMAGE TO PERSONS, TO STRUCTURES OR OTHER IMPROVEMENTS SITUATED ON LOTS AND PARCELS, AND TO THE CONTENTS OF ANY IMPROVEMENTS SITUATED ON LOTS AND PARCELS AND FURTHER ACKNOWLEDGE THAT DECLARANT HAS MADE NO REPRESENTATIONS OR WARRANTIES, NOR HAS ANY OWNER, TENANT, GUEST OR INVITEE RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE RELATIVE TO ANY SECURITY MEASURES RECOMMENDED OR UNDERTAKEN.

**ARTICLE VIII
EASEMENTS**

Section 8.1. Utility Easements. Declarant 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 and Common Areas), as Declarant, its successors or assigns may consider to be reasonably necessary, (the "Utility Easements"). However, after Declarant 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 Declarant or approved by the Architectural Review Board or on which a building is to be located pursuant to Plans approved by the Architectural Review Board. The Utility Easements shall include the right to cut trees, bushes or shrubbery and such other rights as Declarant 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. Declarant shall have the right to convey Utility Easements to other Owners, to governmental authorities or utility companies, to the Association and to any other party or parties.

Section 8.2. Maintenance of Lots and Parcels. Declarant 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 (5) days notice to the Owner thereof, for the purpose of mowing, removing, clearing, cutting or pruning underbrush, weeds or other unsightly growth, dispensing pesticides, herbicides and fertilizer and grass seed, removing trash and taking such other action as the Declarant or the Association may consider necessary to correct any condition which detracts from the overall beauty of the 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 Declarant.

Section 8.3. Construction Easements and Rights. Notwithstanding any provision of this Declaration or of any Supplemental Declaration, so long as Declarant is engaged in developing or improving any portion of the Properties or the Additional Area, Declarant shall have an easement of ingress, egress and use over any lands not conveyed to an Owner for the (i) moving 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 8.4. Right of Entry for Governmental Personnel. A right of entry on any Lot, Parcel and Common Area is hereby granted to law enforcement officers and fire and rescue personnel as needed to lawfully carry out their duties, including enforcement of cleared emergency vehicle access.

Section 8.5. Easement for Landscaping, Signs and Related Purposes.

There shall be and is hereby reserved to Declarant for so long as it retains its rights as Declarant, a non-exclusive easement over all Lots, Parcels and Common Area for a distance of fifteen (15) 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 Board if such Owner does not consent.

Section 8.6. Easement for Encroachment. Each Lot, each Parcel and the Common Area are hereby declared to have an easement over all adjoining Lots, all adjoining Parcels and the Common Area for the purpose of accommodating any encroachment due to engineering errors, errors in original construction, settlement or shifting of a building, or any other similar cause, and any encroachment due to building overhang or projection. There shall be valid easements for the

maintenance of said encroachments so long as they shall exist, and the rights and obligations of Owners shall not be altered in any way by said encroachment, settling or shifting; provided, however, that in no event shall a valid easement for encroachment be created in favor of an Owner or Owners if said encroachment occurred due to the willful act or acts with full knowledge of said Owner or Owners. In the event a structure on any Lot 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 8.7. Easement for Ingress, Egress, Development and Utilities for the Additional Area, Marketing. The Declarant shall have the unqualified right, prior to the termination of the Class B membership, to grant and reserve easements and right-of-ways through, under, over, and across any portion of the Common Area, for construction purposes, for ingress and egress to and from the Additional Area, and for the installation, maintenance, and inspection of the lines and appurtenances for public or private water, sewer, drainage, gas, electricity, telephone, and other utilities. Said easements and right-of-ways may be for the benefit of any portion of the Properties or any portion of the Additional Area, or for the benefit of any adjacent or proximate property. The Declarant shall also have the unqualified right, prior to the termination of the Class B membership, to use any pool, clubhouse or other recreational or other amenity for promotional, marketing, customer relations, sales and other related purposes for the Declarant and Builders of any Lot or Parcel on the Properties.

Section 8.8. Easement for use of Water Bodies and Irrigation. There is hereby reserved by the Declarant a perpetual easement and unqualified right to use the lake and all water bodies lying within any Common Area for the purpose of irrigation of any Lot or any parcel of land, now or in the future owned by the Declarant or third parties.

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 thirty (30) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless at the expiration of any such period the covenants and restrictions are terminated by consent of the Owners of two-thirds (2/3) of the Lots and Parcels. Notwithstanding the foregoing, the provisions of Section 4.2 and Article VIII 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 Declarant without the consent of any other Owners for so long as Declarant's Class B membership continues, or (ii) by a vote of two-thirds (2/3) of the Class A votes and with the written consent of Declarant for so long as its Class B membership in the Association continues. Notwithstanding the foregoing, the provisions of Articles II and VIII and Sections 3.2, 4.6, 5.8, and this Section 9.2 may not be amended in any event without the written consent of Declarant regardless of whether the Class B

membership has terminated. In addition, Declarant, at Declarant's option, 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, insurance or guaranty of any loan secured by a mortgage or deed of trusts on one or more Lots. Any amendment to this Declaration must be made by an appropriate written duly recorded in the aforesaid Clerk's Office.

Section 9.3. Enforcement. Declarant, the Association, any Owner or any beneficiary or noteholder under a Deed of Trust or mortgage, 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 hereinafter imposed by the provisions of this 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 Declarant 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 Declarant, 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. In addition, should any person violate or attempt to violate any of said covenants, restrictions, conditions, or reservations, Declarant, or any other person or persons owning any of said lots, may prosecute by an proceedings at law or in equity against the person or persons violating or attempting to violate any such covenant, restriction, condition, or reservation, either to prevent him or them from so doing, or to recover damages or other dues for such violation.

Section 9.4. Limitations. As long as the Declarant has an interest in developing the Properties, 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. "Bay Breeze Point" or "Bay Breeze Point Owners' Association." No person or entity shall use the words "Bay Breeze Point", "Bay Breeze Point Owners' Association" or any derivative thereof in any printed or promotional material without the prior written consent of Declarant.

Section 9.9. 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 9.10. Assignment of Declarant's Rights. Any and all rights, powers, easements and reservations of Declarant set forth herein may be assigned in whole or in part, at any time or from time to time, to the Association, to another Owner or to any other party in Declarant's sole discretion. Each such assignment shall be evidenced by an instrument which shall be signed by Declarant and its assignee and recorded in the Clerk's Office.

Section 9.11. Successors and Assigns. The provisions hereof shall be binding upon and shall inure to the benefit of Declarant, the Association and, (subject to Article II hereof), the Owners and their respective heirs, legal representatives, successors and assigns.

ARTICLE X DISSOLUTION OF THE ASSOCIATION

The Association may be dissolved at a duly held meeting upon the affirmative vote, in person or by proxy, of at least two-thirds (2/3) of the Class A members and the vote of the Class B member, (so long as Class B membership exists). 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 Declarant shall be sent to RML

Corporation, 3700 Shore Drive, Virginia Beach, Virginia 23455; with copy to Paulson & Nuckols, P.L.C., 1432 N. Great Neck Road, Suite 101, Virginia Beach, Virginia 23454, Attention: General Counsel; or to such other address as the Declarant shall specify by executing and recording an amendment to this Declaration, which amendment shall not require the approval of any other parties as provided in Section 9.2. Notices to the Association or to Owners, (other than Declarant), 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 Section 55-516C of the Virginia Code.

**ARTICLE XII
APPROVAL OF HUD OR VA**

As long as Class B membership exists, annexation of Additional properties, mergers and consolidations, mortgaging of Common Area, dissolution of the Association and amendment of the Declaration, requires the prior approval of the Department of Housing and Urban Development ("HUD"), or the Veterans Administration (the "VA") in the event any Lot or Parcel in the Property is owned by, or encumbered by a loan insured or guaranteed by HUD or the VA.

WITNESS the following signature and seal as of the date first above written.

RML CORPORATION, a Virginia corporation

By:  (SEAL)
Robert Letchworth, President

PRINCESS ANNE SERVICE CORPORATION
By: [Signature] (SEAL)
AUTHORIZED AGENT FOR PRINCESS ANNE SERVICE CORP., Trustee

COMMONWEALTH OF VIRGINIA
CITY OF VIRGINIA BEACH, to-wit:

The foregoing Declaration of Covenants was acknowledged before me this 21st 1999, by Robert Letchworth, President of RML Corporation, a Virginia corporation, on behalf of such corporation, duly authorized.

[Signature] (SEAL)
Notary Public

My commission expires: 09/30/2001.

COMMONWEALTH OF VIRGINIA
CITY OF VIRGINIA BEACH, to-wit:

The foregoing Declaration of Covenants was acknowledged before me this 15th day of January, 1999, by John M. Reddecliff, Authorized Agent for Princess Anne Service Corp., Trustee, of FIRST COASTAL BANK.

[Signature] (SEAL)
Notary Public

My commission expires: Sept. 30, 2001

**EXHIBIT A
SUBJECTED PROPERTY**

All those certain lots, pieces or parcels of land, with the buildings and improvements thereon, situate, lying and being in the City of Norfolk, Virginia, known, numbered and designated as Lots 1-51, on plat entitled, "SUBDIVISION PLAT OF BAY POINT, PHASE ONE, Norfolk, Virginia", which said plat is duly recorded in the Clerk's Office, Circuit Court, City of Norfolk, Virginia, in Map Book 52 at Page 14-18, reference to said map is hereby for a more particular description of said property, which said plat is a resubdivision of the following described property:

ALL those certain tracts, pieces or parcels of land, with the buildings and improvements thereon, situate, lying and being in the City of Norfolk, Virginia, being more particularly bounded and described as PARCEL 1-A-2, containing 15.456 Acres, and PARCEL 1-A-3, containing 8.048 Acres, as shown on that certain plat entitled "Resubdivision of PARCEL 1-A AND PARCEL 1-B, SUBDIVISION OF PARCEL 1 (M.B. 45, P. 74, 74A, 74B) AND PARCEL 2, RESUBDIVISION OF PARCELS A, B & C as shown on SURVEY OF THE REMAINDER OF THE PROPERTY CONVEYED TO LACY L. REDD AND M. VIRGINIA REDD (D.B. 2781, P. 505-507) FOR R. G. MOORE BUILDING CORP., NORFOLK, VIRGINIA," dated November 20, 1989, which said plat is duly recorded in the Clerk's Office of the Circuit Court of the City of Norfolk, Virginia, in Map Book 46, at pages 70, 71 and 72.

Less, save and except the following:

- (1) Those portions of the aforesaid PARCEL 1-A-2 previously submitted to that certain condominium regime designated and described as BAY POINT CONDOMINIUM (formerly MOORE'S POINT CONDOMINIUM) created pursuant to that Declaration of Condominium of MOORE'S POINT CONDOMINIUM, dated January 30, 1991, and recorded February 1, 1991, in the Clerk's Office aforesaid in Deed Book 2308, page 222, as amended; and
- (2) Those portions of the aforesaid PARCEL 1-A-2 previously conveyed to RML Corporation by deeds dated April 6, 1995, February 1, 1996, June 12, 1996, November 6, 1996, and March 19, 1997, all recorded prior hereto in the Clerk's Office aforesaid.

TOGETHER WITH the rights and benefits, and subject to the burdens, contained in that certain Cross-Easement Agreement dated April 27, 1994, and filed for record May 2, 1994, in Deed Book 2605, page 550, as amended by that certain First Amendment to Cross-Easement Agreement dated September 14, 1994, and recorded in the aforesaid Clerk's Office in Deed Book 2656, at page 61, and as further amended from time to time.

**EXHIBIT B
ADDITIONAL AREA**

Parcel 1-A-1 and the parcel described as now or formerly Farmington Incorporated and a portion of Parcel 1-A-2 on plat entitled "Resubdivision of PARCEL 1-A AND PARCEL 1-B, SUBDIVISION OF PARCEL 1 (MB.B. 45, P. 74, 74A, 74B) AND PARCEL 2, RESUBDIVISION OF PARCELS A, B & C as shown on SURVEY OF THE REMAINDER OF THE PROPERTY CONVEYED TO LACY L. REDD AND M. VIRGINIA REDD (D.B. 2781, P. 505-507) FOR R. G. MOORE BUILDING CORP., NORFOLK, VIRGINIA," dated November 20, 1989, which said plat is duly recorded in the Clerk's Office of the Circuit Court of the City of Norfolk, Virginia, in Map Book 46, at pages 70, 71 and 72.

INSTRUMENT # *990005432*
 RECORDED IN THE CLERK'S OFFICE OF
 NORFOLK ON
Feb. 24, 1999 AT *3:09 p.m.*
 ALBERT TEICH, JR., CLERK
 BY: *S. McCall* (DC)