

# Kiln Creek Owners Association Declaration Section

- 1) First Amendment to Second Amended & Restated  
Declaration of Covenants & Restrictions
- 2) Declaration of Common Area
- 3) Second Amended and Restated Declaration of  
Covenants & Restrictions



Prepared by and return to:  
Elizabeth L. White, Esquire (VSB #27432)  
Sands Anderson PC  
263 McLaws Circle, Suite 205  
Williamsburg, VA 23185

**FIRST AMENDMENT TO SECOND AMENDED AND RESTATED DECLARATION  
OF COVENANTS AND RESTRICTIONS**

**Villages of Kiln Creek**

This FIRST AMENDMENT TO SECOND AMENDED AND RESTATED DECLARATION OF COVENANTS AND RESTRICTIONS ("Amendment") is made this 15 day November, 2018 by VILLAGES OF KILN CREEK OWNERS ASSOCIATION, a Virginia non-stock corporation ("Association") having an address of 970 Brick Kiln Boulevard, Newport News, VA 23602 [index as "Grantor" and "Grantee" for recording purposes].

**RECITALS**

A. By instrument entitled "Villages of Kiln Creek Declaration of Covenants and Restrictions" dated May 25, 1988 and recorded June 3, 1988 in the Clerk's Office of the Circuit Court of the City of Newport News (the "Newport News Clerk's Office") in Deed Book 1176, at page 99, and in the Clerk's Office of the County of York (the "York County Clerk's Office") in Deed Book 545, at page 245 (collectively, the "Original Declaration"), Kiln Creek Associates, a Virginia general partnership ("Kiln Creek Associates"), as "Developer" thereunder subjected certain real property more particularly described in Exhibit A thereto to the covenants, restrictions, easements, charges and liens of the Original Declaration.

B. By various instruments entitled "Supplementary Declaration of Covenants and Restrictions" (collectively, the "Supplemental Declarations"), Kiln Creek Associates

(and its successors and assigns as "Developer") subjected certain additional real property described in Exhibit A of each Supplemental Declaration to the Original Declaration (and later to the "Amended and Restated Declaration" and the "First Amended and Restated Declaration" as hereinafter defined).

C. By instrument entitled "Villages of Kiln Creek Amended and Restated Declaration of Covenants and Restrictions" dated April 1, 1991 and recorded in the Newport News Clerk's Office in Deed Book 1248, at page 719, and in the York County Clerk's Office in Deed Book 612, at page 286, the Original Declaration was amended and restated (the "Amended and Restated Declaration")

D. The Amended and Restated Declaration was subsequently amended by instrument entitled "First Amendment to Amended and Restated Declaration of Covenants and Restrictions" dated August 1, 1991 and recorded in the Newport News Clerk's Office in Deed Book 1263 (1258), at page 1009 (631), and in the York County Clerk's Office in Deed Book 624, at page 565 (the "First Amendment"); and by instrument entitled "Second Amendment to Amended and Restated Declaration of Covenants and Restrictions" dated September 13, 1991 and recorded in the Newport News Clerk's Office in Deed Book 1265, at page 139, and in the York County Clerk's Office in Deed Book 637, at page 577 (the "Second Amendment").

E. By instrument entitled "Third Amendment to Amended and Restated Declaration of Covenants and Restrictions" dated August 18, 2004, and recorded in the Newport News Clerk's Office in Deed Book 1947, at page 1995, and in the York County Clerk's Office as instrument number LR040017641 (the "Third Amendment"), the Amended and Restated Declaration was further amended. The Amended and Restated

Declaration as further amended by the First Amendment, Second Amendment and Third Amendment is hereinafter referred to as the "First Amended and Restated Declaration."

F. By instrument entitled "Second Amended and Restated Declaration of Covenants and Restrictions of Villages of Kiln Creek Owners Association" dated August 25, 2009 (the "Second Declaration"), and recorded in the Newport News Clerk's Office as instrument number 090017258, and in the York County Clerk's Office as instrument number 090018824, the Villages of Kiln Creek Owner's Association amended and restated the First Amended and Restated Declaration in its entirety.

G. At the time of the Second Declaration, the country club and golf course located within the Villages of Kiln Creek were privately owned by an independent unrelated entity, separate and apart from the Association, and the Second Declaration included a provision setting forth this fact. Subsequent to the Second Declaration, in 2013, by instrument entitled "Deed of Bargain and Sale and Reservation of Conservation Easement" dated December 19, 2013, and recorded in the Newport News Clerk's Office as instrument number 140001556, and in the York County Clerk's Office as instrument number LR140002013, the Association acquired title to the golf course (the "the Golf Course") and related land located within the Villages of Kiln Creek as more particularly described in such Deed (collectively the "Golf and Resort Land").

H. By instrument entitled "Declaration of Common Area" dated December 19, 2013, and recorded in the Newport News Clerk's Office as instrument number 130022263, and in the York County Clerk's Office as instrument number LR130025017 (collectively, the "Declaration of Common Area"), the Villages of Kiln Creek Owner's

Association designated the Golf and Resort Land as "Common Area" as defined in the Second Declaration.

I. Article IX, Section 9.2 of the Second Declaration provides that the Second Declaration may be amended "...by a vote of two-thirds (2/3) of the Board of Directors pursuant to the authority set forth in Section 55-515.2 of the Code of Virginia", which Code provision allows for the principal officer of a property owners' association to execute and record a corrective amendment upon a two-third (2/3) vote of the members of the board of directors of said property owners' association.

J. The Board of Directors of the Association, pursuant both to a resolution adopted by a vote of at least two-thirds (2/3) of its Directors and to the authority vested in it by Section 55-515.2 of the Code of Virginia, voted to amend the Second Declaration to correct an inconsistency, to clarify an ambiguity in the Second Declaration with regard to an objectively verifiable fact (i.e., the record ownership of the Golf Course and the Golf and Resort Land), and to correctly disclose the Association's ownership of the Golf Course and the Golf and Resort Land now that the Association owns such property and such property constitutes Common Area of the Association.

#### **AMENDMENT**

NOW, THEREFORE, the Second Declaration is hereby amended to delete Section 9.9 of Article IX in its entirety and to replace it with the following:

Section 9.9. Kiln Creek Golf Club and Resort. The Golf and Resort Land (including but not limited to the Golf Course), together with the facilities and improvements thereon, are owned by the Association and comprise a portion of the Common Area owned, operated and maintained by the Association. The Association

may enter into agreements with non-Owners to utilize the Golf Course and other facilities located within the Golf and Resort Land as authorized in Article IV of this Declaration.

IN WITNESS WHEREOF, this Amendment is executed as of the date and year first written above.

VILLAGES OF KILN CREEK OWNERS  
ASSOCIATION, a Virginia non-stock  
corporation

By:   
David Radcliffe, President

The undersigned president of the Association hereby certifies that he executes this Amendment pursuant to a duly adopted resolution of the Board of Directors of the Association upon the affirmative vote of two-thirds or more of the directors serving on the Board of Directors of the Association to approve this Amendment.

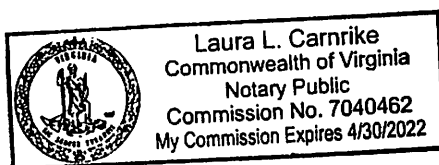
  
David Radcliffe, President

COMMONWEALTH OF VIRGINIA  
AT LARGE, to-wit

The foregoing instrument was acknowledged before me in Newport News, Virginia, this 15 day of November, 2018, by David Radcliffe, President of Villages of Kiln Creek Owners Association, a Virginia non-stock corporation, on its behalf.

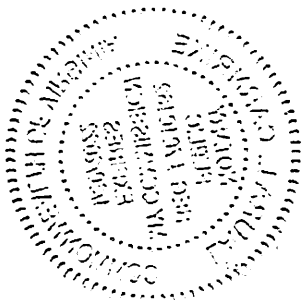
  
Notary Public

My commission expires: 4/30/22  
Registration No.: 7040462



INSTRUMENT 180022148  
RECORDED IN THE CLERK'S OFFICE OF  
YORK COUNTY - POQUOSON CIRCUIT COURT ON  
DECEMBER 6, 2018 AT 10:10 AM  
KRISTEN N. NELSON, CLERK  
RECORDED BY: DMH

*Deborah M. Hestor*



may enter into agreements with non-Owners to utilize the Golf Course and other facilities located within the Golf and Resort Land as authorized in Article IV of this Declaration.

IN WITNESS WHEREOF, this Amendment is executed as of the date and year first written above.

INSTRUMENT 180015895  
RECORDED IN THE CLERK'S OFFICE OF  
NEWPORT NEWS CIRCUIT COURT ON  
DECEMBER 6, 2018 AT 11:26 AM  
GARY S. ANDERSON, CLERK  
RECORDED BY: LXS

VILLAGES OF KILN CREEK OWNERS  
ASSOCIATION, a Virginia non-stock  
corporation

By: David Radcliffe  
David Radcliffe, President

The undersigned president of the Association hereby certifies that he executes this Amendment pursuant to a duly adopted resolution of the Board of Directors of the Association upon the affirmative vote of two-thirds or more of the directors serving on the Board of Directors of the Association to approve this Amendment.

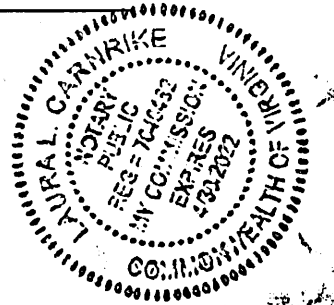
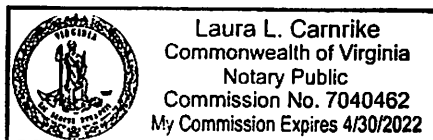
David Radcliffe  
David Radcliffe, President

COMMONWEALTH OF VIRGINIA  
AT LARGE, to-wit

The foregoing instrument was acknowledged before me in Newport News, Virginia, this 15 day of November, 2018, by David Radcliffe, President of Villages of Kiln Creek Owners Association, a Virginia non-stock corporation, on its behalf.

Laura L. Carnrike  
Notary Public

My commission expires: 4/30/22  
Registration No.: 7040462





130022263

Prepared by and return to:  
Lori H. Schweller, Esq.  
VSB No. 42399  
LeClairRyan, P.C.  
5388 Discovery Park Blvd., Third Floor  
Williamsburg, Virginia 23188

York County GPIN/Tax Map parcel Nos: R04c-1305-2400, R04c-1987-2154, R04d-4731-0192, R03b-3961-3650  
City of Newport News GPIN/Tax Map parcel Nos.: 133000590, 113000101, 113000103, 123000426, 132000602,  
142000501

**DECLARATION OF COMMON AREA  
(Open Space)**

THIS DECLARATION OF COMMON AREA ("Declaration") is made this 19th day of December, 2013, by VILLAGES OF KILN CREEK OWNERS ASSOCIATION, a Virginia nonstock corporation (the "Association"), to be indexed both as both "Grantor" and "Grantee" for recording purposes.

**RECITALS:**

A. By deed from KCCC, L.L.C. ("KCCC"), recorded prior to this instrument, the Association acquired that certain real property, containing approximately 288.45 acres, described on Exhibit A attached hereto and incorporated herein (the "Property"). The Property contains an 18-hole golf course, clubhouse and related improvements, as well as an approximately 60-acre natural area formerly the site of a nine-hole golf course.

B. The Association adopted the Second Amended and Restated Declaration of Covenants and Restrictions of Villages of Kiln Creek Owners Association," dated August 25, 2009, and recorded August 28, 2009 in the Clerk's Office of the Circuit Court for the City of Newport News, Virginia and in the Clerk's Office of the Circuit Court for York County as Instrument Number 090018824 (the "Declaration").

C. Section 1.8 of the Declaration provides that the "Common Area" includes all "real estate 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 and such non-Owners, if any, who have been authorized to use such Common Area..."

D. The Association desires to designate the Property as Common Area for the use and enjoyment of the Members of the Association (as defined in the Declaration), and to such non-Owners who have been authorized to use the Property, which use and enjoyment shall be subject to such rights, obligations and limitations set forth in the Declaration with respect to Common Area of the Association.

NOW, THEREFORE, the Association hereby declares that the Property is designated as Common Area pursuant to Section 1.8 of the Declaration, and shall be held, transferred, sold, conveyed and occupied subject to such designation.

A. As to all of the Property other than that described on Exhibit B, attached hereto and incorporated herein:

1. The Association, by the affirmative vote or consent in writing of a majority or more of the Owners of the Lots subject to the Declaration, may authorize the President of the Association to execute a Supplemental Declaration to declare that all or part of the Property is no longer Common Area, evidenced by such Owners joining in an instrument to be recorded in the land records of the jurisdiction(s) in which the land is located, declaring that such property is no longer Common Area; and

2. The Declaration is subordinate to the conservation easement (including the Association's obligation to execute, at the request of KCCC, its deed of gift of easement in order to affirm the Association's agreement to be bound by its covenants and restrictions) reserved by KCCC, L.L.C. in the deed (and exhibits) conveying the Property to the Association.

B. As to only that portion of the Property described on Exhibit B, the Board of Directors of the Association, by the affirmative vote or consent in writing of at least two thirds (2/3) of the Directors, evidenced by adoption of a written resolution or execution of a written consent, may authorize the President of the Association to execute a Supplemental Declaration to declare that all or part of such Property described on Exhibit B is no longer Common Area.


This Declaration may be executed in counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

*[Signature pages follow.]*

[Signature page to Declaration of Common Area]

IN WITNESS WHEREOF, the Association has executed this Declaration as of the date printed above.

**VILLAGES OF KILN CREEK OWNERS ASSOCIATION,**  
a Virginia nonstock corporation

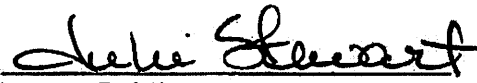
By:   
Name: David P. Radcliffe  
Title: President

COMMONWEALTH OF VIRGINIA

In the City of Navport News, to wit:

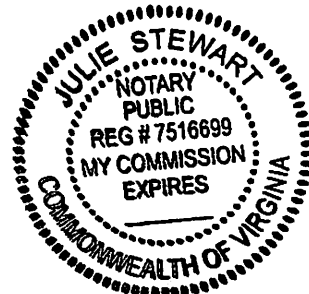
I, a Notary Public for the City and State aforesaid, do hereby certify that David Radcliffe personally appeared before me this day and acknowledged that he is the President of Villages of Kiln Creek Owners Association, a Virginia non-stock corporation, and that as President being authorized to do so, executed the foregoing on behalf of the Association.

Witness my hand and official seal, this 18 day of December 2013.

  
Notary Public

My Commission Expires: 7/31/14

Registration ID No.: 7516699



**JOINDER OF LENDER**

KCCC, L.L.C., a Virginia limited liability company, is the beneficiary (the "Lender") of that certain Deed of Trust dated as of December 19, 2013, from Villages of Kiln Creek Owners Association, a Virginia nonstock corporation, to Bennett L. Stein and M. Scott Stein, Trustees, whose address is 724 Thimble Shoals Blvd, Suite 100, Newport News, Virginia 23606, and recorded in the Clerk's Offices of the Circuit Courts of the City of Newport News, Virginia and County of York, Virginia, immediately preceding this instrument.

By signing below, the Lender hereby joins in and consents to this Declaration of Common Area.

**LENDER:**                      **KCCC, L.L.C.,**  
                                         a Virginia limited liability company

By: H. R. Ashe  
                                         H. R. Ashe, Manager

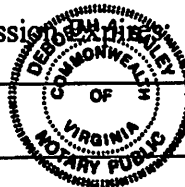
STATE OF VIRGINIA  
CITY  
COUNTY OF NEWPORT NEWS

The foregoing instrument was acknowledged before me this 18<sup>th</sup> day of  
December, 2013, by H. R. Ashe, whose title is  
MANAGER of KCCC, L.L.C., a Virginia limited liability company,  
and who executed the aforesaid instrument on behalf of the company.

Deborah A. Bailey  
Notary Public, State of VIRGINIA  
at Large.

My Commission

Serial No.



Deborah A. Bailey  
NOTARY PUBLIC  
Commonwealth of Virginia  
Reg. #207023  
My Commission Expires  
6/30/2016

Personally known OR produced identification  
Identification produced

## EXHIBIT A

**PARCEL I:** All those pieces or parcels of land lying and being situate in the City of Newport News and the County of York, Virginia, commonly known as the Golf Course of the Kiln Creek Golf and Country Club, and being more particularly shown and designated as:

Parcels D & E on the record plat entitled "Subdivision of the Property of Villages of Kiln Creek Limited Partnership, Villages of Kiln Creek Golf Course, Showing Parcels D & E, York County, Virginia," recorded in the Clerk's Office of the Circuit Court of the County of York, Virginia, in Plat Book 11 at pages 303-308; and

Parcels A, B, C and F on the record plat entitled "Subdivision of Parcels A, B, C & F, Property of Villages of Kiln Creek Limited Partnership, Newport News, Virginia", recorded in the Clerk's Office of the City of Newport News, Virginia, in Deed Book 1246 at pages 1750-1765; and

the "Pump Station Lot at Lake No.1" as designated on the record plat entitled "Subdivision Plat of Lake No.1, The Villages of Kiln Creek, Newport News, Virginia," recorded in the Clerk's Office of the City of Newport News, Virginia, in Deed Book 1259 at page 1334; and

TOGETHER WITH that certain lot or parcel of land lying and being situate in the City of Newport News, Virginia, containing 0.082 acres, more or less, and being more particularly described as Parcel F within the "Subdivision of the Property of R.G. Moore Building Corporation, Westgate, Right-of-Way, Section Two (2), The Villages of Kiln Creek, Newport News, Virginia," as shown on a certain plat prepared by Sledd, Runey and Associates, P.C., dated May 31, 1990 entitled "Subdivision of the Property of R. G. Moore Building Corp., Westgate, Right-of-Way Section Two (2), The Villages of Kiln Creek, Newport News, Virginia," which was recorded August 1, 1990 in the Clerk's Office of the Circuit Court for the City of Newport News, Virginia, in Deed Book 1230 at page 558; and

TOGETHER WITH AND SUBJECT TO all rights, uses, easements, reservations, duties, charges and obligations as are contained in or shown on any attached plat to those certain instruments recorded in Deed Book 1190 at page 505; Deed Book 1230 at page 119; Deed Book 1227 at page 1531; Deed Book 1262 at page 1240; Deed Book 1262 at page 1245; Deed Book 1262 at page 1253 and in Deed Book 1329 at page 1544, among the land records of the City of Newport News, Virginia, and further TOGETHER WITH AND SUBJECT TO all rights, uses, easements, reservations, duties, charges, obligations as are contained in or shown on any attached plat to those certain instruments recorded in Deed Book 633 at page 433, Deed Book 741 at page 239, Deed Book 747 at page 346, Deed Book 790 at page 557 and in Plat Book 11 at page 286, among the land records of York County, Virginia.

LESS AND EXCEPT all of that certain lot or parcel of land lying and being situate in the County of York, Virginia, and being more particularly described on that certain plat entitled "Resubdivision of The Villages of Kiln Creek Golf Course Parcel E and Apt/Condo 2, County of York, Virginia," prepared by Sledd, Runey and Associates, P.C., Engineers, Planners and Surveyors, a copy of which was recorded in the Clerk's Office of the Circuit Court of the County of York, Virginia, in Plat Book 11 at pages 351-352.

LESS AND EXCEPT that portion of the subject property designated as Parcel B1 on plat of resubdivision of Parcels B and F, Kiln Creek Golf and Country Club, The Villages of Kiln Creek, City of Newport News, Virginia, described by metes and bounds as follows: Beginning at a point on the northeasterly right-of-way line of Kiln Creek Parkway, said point being the Intersection of the northeasterly right-of-way line of Kiln Creek Parkway with the southeasterly right-of-way line of Brick Kiln Boulevard; thence N 07° 28' 05" E a distance of 50.00 feet; thence N 64° 50' 16" E a distance of 139.50 feet to a point of curvature of a tangent curve concave to the southeast; thence northeasterly along the arc of said curve to the right, having a radius of 1,600.00 feet and a central angle of 04° 36' 01" for an arc distance of 133.28 feet to a point of reverse curvature of a tangent curve concave to the north; thence easterly along the arc of said curve to the left, having a radius of 839.90 feet and a central angle of 02° 32' 10" for an arc distance of 37.18 feet to a point of reverse curvature of a tangent curve concave to the south; thence easterly along the arc of said curve to the right, having a radius of 839.90 feet and a central angle of 06° 03' 44" for an arc distance of 88.87 feet to a non-tangent line; thence S 02° 08' 12" E a distance of 314.82 feet; thence N 87° 56' 23" E a distance of 38.63 feet; thence S 02° 38' 49" E a distance of 108.86 feet; thence S 53° 54' 36" W a distance of 111.42 feet; thence S 83° 54' 02" W a distance of 16.77 feet to a point on the arc of a non-tangent curve concave to the southwest; thence northwesterly along the arc of said curve to the left, having a radius of 2,551.25 feet and a central angle of 02° 32' 54" for an arc distance of 113.47 feet to a point of tangency; thence N 49° 58' 44" W a distance of 200.00 feet to a point of curvature of a tangent curve concave to the northeast; thence northwesterly along the arc of said curve to the right, having a radius of 834.00 feet and a central angle of 08° 00' 21" for an arc distance of 116.53 feet to the point of beginning, containing 2.710 acres, more or less, as shown on plat entitled "Plat of Resubdivision, Parcels B and F, Kiln Creek Golf and Country Club, The Villages of Kiln Creek, City of Newport News, Virginia," prepared by Sledd, Runey & Associates, P.C., dated January 25, 1994.

LESS AND EXCEPT that portion of the subject property designated Parcel B2 on plat of resubdivision of Parcels B and F, Kiln Creek Golf and Country Club, The Villages of Kiln Creek, City of Newport News, Virginia, described by metes and bounds as follows: Beginning at a point located 259.74 feet in a northerly direction from a second point located on the northerly right-of-way line of Brick Kiln Boulevard, said second point being located 862.13 feet in an easterly and northerly direction from a third point located on the northeasterly right-of-way line of Kiln Creek Parkway, said third point being the intersection of the northeasterly right-of-way line of Kiln Creek Parkway with the southeasterly right-of-way line of Brick Kiln Boulevard; thence northwesterly along the arc of a curve to the left, having a radius of 75.00 feet and a central angle of 25° 18' 55" for an

arc distance of 33.14 feet to a point of reverse curvature of a tangent curve concave to the east; thence northerly along the arc of said curve to the right, having a radius of 100.00 feet and a central angle of  $83^{\circ} 44' 59''$  for an arc distance of 146.17 feet to a point of reverse curvature of a tangent curve concave to the west; thence northerly along the arc of said curve to the left, having a radius of 75.00 feet and a central angle of  $56^{\circ} 06' 41''$  for an arc distance of 73.45 feet to a point of reverse curvature of a tangent curve concave to the east; thence northerly along the arc of said curve to the right, having a radius of 125.00 feet and a central angle of  $07^{\circ} 08' 29''$  for an arc distance of 15.58 feet to a non-tangent line; thence S  $81^{\circ} 01' 00''$  E a distance of 166.00 feet; thence S  $08^{\circ} 59' 00''$  W a distance of 80.00 feet; thence N  $81^{\circ} 01' 00''$  W a distance of 30.06 feet; thence S  $08^{\circ} 59' 00''$  W a distance of 29.17 feet; thence S  $81^{\circ} 01' 00''$  E a distance of 6.59 feet; thence S  $08^{\circ} 59' 00''$  W a distance of 66.65 feet; thence N  $81^{\circ} 01' 00''$  W a distance of 25.00 feet; thence S  $08^{\circ} 59' 00''$  W a distance of 67.00 feet; thence N  $81^{\circ} 01' 00''$  W a distance of 78.11 feet to the point of beginning, containing 0.789 acres, more or less, as shown on the plat entitled "Plat of Resubdivision, Parcels B and F, Kiln Creek Golf and Country Club, The Villages of Kiln Creek, City of Newport News, Virginia," prepared by Sledd, Runey & Associates, P.C., dated January 25, 1994.

LESS AND EXCEPT that portion of the subject property designated Parcel B3 on plat of resubdivision of Parcels B and F, Kiln Creek Golf and Country Club, The Villages of Kiln Creek, City of Newport News, Virginia, described by metes and bounds as follows: Beginning at a point located N  $46^{\circ} 06' 45''$  E a distance of 324.20 feet from a second point located on the northeasterly right-of-way line of Kiln Creek Parkway, said second point being located 663.26 feet in a southeasterly direction from a third point located on the northeasterly right-of-way line of Kiln Creek Parkway, said third point being the intersection of the northeasterly right-of-way line of Kiln Creek Parkway with the southeasterly right-of-way line of Brick Kiln Boulevard; thence N  $53^{\circ} 52' 52''$  E a distance of 280.00 feet; thence S  $36^{\circ} 07' 08''$  E a distance of 136.00 feet; thence S  $53^{\circ} 52' 52''$  W a distance of 280.00 feet; thence N  $36^{\circ} 07' 08''$  W a distance of 136.00 feet to the point of beginning, containing 0.874 acres, more or less, as shown on plat entitled "Plat of Resubdivision, Parcels B and F, Kiln Creek Golf and Country Club, The Villages of Kiln Creek, City of Newport News, Virginia," prepared by Sledd, Runey & Associates, P.C., dated January 25, 1994.

LESS AND EXCEPT that portion of the subject property designated Parcel B4 on plat of resubdivision of Parcels B and F, Kiln Creek Golf and Country Club, The Villages of Kiln Creek, City of Newport News, Virginia, described by metes and bounds as follows: Beginning at a point on the northeasterly right-of-way line of Kiln Creek Parkway a distance of 520.07 feet in a southeasterly direction from a second point on the northeasterly right-of-way line of Kiln Creek Parkway, said second point being the intersection of the northeasterly right-of-way line of Kiln Creek Parkway with the southeasterly right-of-way line of Brick Kiln Boulevard; thence N  $53^{\circ} 57' 31''$  E a distance of 58.66 feet; thence N  $36^{\circ} 02' 29''$  W a distance of 44.28 feet; thence N  $53^{\circ} 57' 31''$  E a distance of 44.36 feet; thence S  $36^{\circ} 03' 51''$  E a distance of 169.48 feet; thence S  $53^{\circ} 57' 31''$  W a distance of 84.93 feet; thence N  $43^{\circ} 53' 15''$  W a distance of 58.82 feet to a point of curvature of a tangent curve

concave to the southwest; thence northwesterly along the arc of said curve to the left, having a radius of 2,551.25 feet and a central angle of  $01^{\circ} 31' 13''$  for an arc distance of 67.70 feet to the point of beginning, containing 0.314 acres, more or less, as shown on plat entitled "Plat of Resubdivision, Parcels B and F, Kiln Creek Golf and Country Club, The Villages of Kiln Creek, City of Newport News, Virginia, prepared by Sledd, Runey & Associates, P.C., dated January 25, 1994.

LESS AND EXCEPT that portion of the subject property conveyed to The Hersand Companies, a Virginia corporation, by deed dated August 25, 1993 and recorded in the Clerk's Office of the Circuit Court of the County of York, Virginia, in Deed Book 747 at page 346.

PARCEL II: That portion of Industrial 1 (One) Area, The Villages of Kiln Creek, York County, Virginia, described by metes and bounds as follows:

Beginning at a point located N  $36^{\circ} 37' 02''$  W a distance of 237.99 feet from the northwest corner of Lexington Subdivision; thence N  $36^{\circ} 37' 02''$  W a distance of 777.06 feet; thence N  $56^{\circ} 35' 53''$  E a distance of 1709.47 feet; thence S  $76^{\circ} 14' 48''$  E a distance of 65.21 feet; thence S  $46^{\circ} 33' 28''$  E a distance of 748.33 feet; thence S  $56^{\circ} 37' 06''$  W a distance of 1880.55 feet to the point of beginning, containing 32.26 acres, more or less.

PARCEL III: Parcel G, Kiln Creek Golf and Country Club Limited Partnership, York County, Virginia, described by metes and bounds as follows:

Beginning at the southeast corner of Kiln Creek Golf and Country Club Fairway No. 12; thence N  $21^{\circ} 09' 02''$  E a distance of 945.88 feet; thence N  $41^{\circ} 40' 21''$  E a distance of 575.47 feet; thence S  $63^{\circ} 41' 24''$  E a distance of 271.00 feet; thence S  $14^{\circ} 29' 03''$  E a distance of 453.01 feet; thence N  $80^{\circ} 28' 45''$  E a distance of 181.17 feet; thence S  $28^{\circ} 03' 06''$  E a distance of 489.13 feet; thence S  $14^{\circ} 29' 58''$  E a distance of 203.80 feet; thence S  $51^{\circ} 00' 14''$  W a distance of 400.10 feet; thence S  $38^{\circ} 59' 46''$  E a distance of 15.00 feet; thence S  $51^{\circ} 00' 14''$  W a distance of 574.26 feet; thence N  $66^{\circ} 36' 50''$  W a distance of 460.04 feet to a point of curvature of a tangent curve concave to the northeast; thence northwesterly along the arc of said curve to the right, having a radius of 910.00 feet and a central angle of  $02^{\circ} 26' 05''$  for an arc distance of 38.67 feet to a point of compound curvature of a tangent curve concave to the east; thence northwesterly and northerly along the arc of said curve to the right, having a radius of 25.00 feet and a central angle of  $92^{\circ} 19' 47''$  for an arc distance of 40.29 feet to a point tangency; thence N  $28^{\circ} 09' 02''$  E a distance of 204.08 feet; thence S  $79^{\circ} 20' 58''$  E a distance of 335.03 feet; thence N  $44^{\circ} 09' 02''$  E a distance of 100.00 feet; thence N  $30^{\circ} 39' 02''$  E a distance of 185.00 feet; thence N  $42^{\circ} 39' 02''$  E a distance of 175.00 feet; thence N  $47^{\circ} 39' 02''$  E a distance of 135.52 feet; thence N  $05^{\circ} 20' 58''$  W a distance of 95.96 feet; thence N  $46^{\circ} 20' 58''$  W a distance of 145.24 feet; thence N  $49^{\circ} 20' 58''$  W a distance of 310.00 feet; thence N  $12^{\circ} 20' 68''$  W a distance of 150.00 feet; thence S  $77^{\circ} 39' 02''$  W a distance of 135.00 feet; thence S  $31^{\circ} 55' 01''$  W a distance of 114.32 feet; thence S  $21^{\circ} 09' 02''$  W a distance of 635.86 feet; thence S  $09^{\circ} 50' 58''$  E a distance of 197.46 feet; thence S  $28^{\circ} 09' 02''$  W a distance of 192.91 feet to a point of curvature of a tangent curve concave to the north; thence southwesterly and westerly along the arc of said curve to the right, having a radius of 25.00 feet and a central angle of



94° 47' 48" for an arc distance of 41.36 feet to a point of compound curvature of a tangent curve concave to the northeast; thence northwesterly along the arc of said curve to the right, having a radius of 910.00 feet and a central angle of 15° 26' 21" for an arc distance of 245.21 feet to a point of tangency; thence N 41° 36' 50" W a distance of 76.25 feet to the point of beginning, containing 25.652 acres, more or less, as shown on plat entitled "Subdivision of the Property of Kiln Creek Golf and Country Club Limited Partnership, Parcel G, York County, Virginia," prepared by Sledd, Runey & Associates, P.C., dated March 25, 1994.

AND

That portion of Industrial 1 (One) Area, The Villages of Kiln Creek, Newport News, Virginia, described by metes and bounds as follows:

Beginning at a point located N 36° 37' 02" W a distance of 237.99 feet from the northwest corner of Lexington Subdivision; thence S 56° 37' 06" W a distance of 164.98 feet; thence N 30° 56' 57" W a distance of 776.48 feet; thence N 56° 35' 53" E a distance of 88.16 feet; thence S 36° 37' 02" E a distance of 777.06 feet to the point of beginning, containing 2.254 acres, more or less.

## EXHIBIT B

Parcel B5 as shown on that certain draft plat of subdivision prepared by Campbell Land Surveying, Inc. dated December 10, 2013 entitled, "Subdivision of the Remainder of Parcel B (D.B. 1363, PG. 1914), PROPERTY OF PROPERTY OF K.C.C.C., LLC (sic), a Virginia limited liability company, City of Newport News, Virginia," recorded in the Clerk's Office of the Circuit Court of Newport News, Virginia as Exhibit B to the deed from KCCC, L.L.C. to the Villages of Kiln Creek Owners Association, as it may be amended pursuant to City subdivision plat approval, more particularly described by the following metes and bounds description:

BEGINNING AT A POINT ON THE NORTHERLY RIGHT OF WAY OF KILN CREEK PARKWAY, A PUBLIC RIGHT OF WAY, WHERE THE COMMON PROPERTY LINE BETWEEN THE NEW PARCEL B-5 AND THE PROPERTY OF MEADOW LAND, LLC ( PARCEL B1B ) INTERSECT THE RIGHT OF WAY LINE; THENCE FROM THE POINT OF BEGINNING THUS ESTABLISHED, ALONG THE COMMON PROPERTY LINE WITH MEADOW LAND, LLC N-83-54-02-E, 16.78' TO A POINT; THENCE N-53-54-36-E, 111.42' TO A POINT ; THENCE N-02-38-49-W, 108.86' TO A POINT ; THENCE S-87-56-23-W, 38.63' TO A POINT; THENCE N-02-08-12-W, 314.82' TO A POINT ON THE EASTERLY RIGHT OF WAY OF BRICK KILN BOULEVARD, A PUBLIC RIGHT OF WAY ; THENCE ALONG THE RIGHT OF WAY OF BRICK KILN BOULEVARD ALONG A CURVE TO THE RIGHT WITH A RADIUS OF 839.90' AND AN ARC LENGTH OF 24.07' TO A POINT; THENCE ALONG A CURVE TO THE RIGHT WITH A RADIUS OF 300.00' AND AN ARC LENGTH OF 169.07' TO A POINT; THENCE ALONG A CURVE TO THE RIGHT WITH A RADIUS OF 50.00' AND AN ARC LENGTH OF 32.63' TO A POINT; THENCE CONTINUING ALONG SAID RIGHT OF WAY ON A CURVE TO THE LEFT WITH A RADIUS OF 50.00' AND AN ARC LENGTH OF 187.53' TO A POINT ON THE RIGHT OF WAY WHERE THE COMMON PROPERTY LINE BETWEEN PARCEL B-5 AND THE WILLOW POINT SUBDIVISION MEET; THENCE ALONG THE COMMON PROPERTY LINE N-19-22-37-E , 20.00' TO A POINT ON THE NEW PROPERTY LINE BETWEEN PARCEL B-5 AND THE REMAINDER OF THE ORIGINAL PARCEL B; THENCE ALONG THE COMMON PROPERTY LINE ON A CURVE TO THE LEFT WITH A RADIUS OF 65.00' AND AN ARC LENGTH OF 117.98' TO A POINT ; THENCE N-05-22-37-E, 93.37' TO A POINT; THENCE ALONG A CURVE TO THE LEFT WITH A RADIUS OF 75.00' AND AN ARC LENGTH OF 28.39' TO A POINT ON THE COMMON PROPERTY LINE WITH THE VILLAS OF KILN CREEK CONDOMINIUMS ( PARCEL B-2); THENCE ALONG THE COMMON PROPERTY LINE S-81-01-00-E, 78.11' TO A POINT ; THENCE N-08-59-00-E, 67.00' TO A POINT; THENCE S-81-01-00-E, 25.00' TO A POINT; THENCE N-08-59-00-E, 66.65' TO A POINT; THENCE N-81-01-00-W, 6.59' TO A POINT; THENCE N-08-59-02-E, 29.17' TO A POINT; THENCE S-81-01-00-E, 30.06' TO A POINT; THENCE N-08-59-00-E, 80.00' TO A POINT ON THE NEW LINE BETWEEN THE NEW PARCEL B-5 AND THE REMAINDER OF PARCEL B; THENCE CONTINUING ALONG THE COMMON PROPERTY LINE S-47-02-00-E, 708.95' TO A POINT; THENCE S-47-21-51-W, 543.82' TO POINT ON THE COMMON CORNER BETWEEN THE NEW PARCEL B-5, THE REMAINDER OF PARCEL B AND THE PROPERTY OF TERRAPIN DEVELOPMENT, KC, LLC ( PARCEL B-3); THENCE ALONG THE COMMON PROPERTY LINE BETWEEN THE NEW PARCEL B-5 AND THE PROPERTY OF TERRAPIN DEVELOPMENT , KC, LLC N-36-07-08-W, 136.00' TO A POINT; THENCE S-53-52-52-W, 280.00' TO A POINT; THENCE S-36-07-08-E, 136.00' TO A POINT ON THE COMMON PROPERTY LINE BETWEEN THE NEW PARCEL B-5 AND THE REMAINDER OF PARCEL B; THENCE ALONG THE COMMON PROPERTY LINE S-48-01-52-W, 305.59' TO A POINT ON THE NORTHERLY RIGHT OF WAY OF KILN CREEK PARKWAY; THENCE ALONG THE RIGHT OF WAY LINE OF KILN

**CREEK PARKWAY**

N-43-53-15-W, 141.18' TO A POINT ON THE COMMON PROPERTY LINE WITH PARCEL B-4; THENCE ALONG THE COMMON PROPERTY LINE N-53-57-31-E, 84.93' TO A POINT; THENCE N-36-03-51-W, 169.48' TO A POINT; THENCE S-53-57-31-W, 44.36' TO A POINT; THENCE S-36-02-29-E, 44.28' TO A POINT; THENCE

S-53-57-31-W, 58.66' TO A POINT ON THE NORTHERLY RIGHT OF WAY OF KILN CREEK PARKWAY; THENCE ALONG THE RIGHT OF WAY ON A CURVE TO THE LEFT WITH A RADIUS OF 2551.25', 90.06' TO THE POINT OF BEGINNING, CONTAINING 13.1850 ACRES BEING KNOWN AS PARCEL B-5, BEING A PORTION OF THE REMAINDER OF PARCEL B SHOWN ON " PLAT OF RESUBDIVISION, PARCELS B AND F , KILN CREEK GOLF AND COUNTRY CLUB " RECORDED IN DEED BOOK 1363, PAGE 1914, BEING BOUNDED ON THE SOUTH BY KILN CREEK BOULEVARD, ON THE WEST BY THE PROPERTY OF MEADOW LAND, LLC , BRICK KILN BOULEVARD, WILLOW POINT SUBDIVISION, VILLAS AT KILN CREEK AND THE REMAINDER OF PARCEL B, ON THE NORTH AND EAST BY THE REMAINDER OF PARCEL B.

130022263

REC'D NO  
RECORDED

2013 DEC 23 PM 1:59

NEWPORT NEWS CIRCUIT COURT  
REX A. DAVIS, CLERK, BY



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Prepared by and return to:  
Lori H. Schweller, Esq.  
VSB No. 42399  
LeClairRyan, P.C.  
5388 Discovery Park Blvd., Third Floor  
Williamsburg, Virginia 23188



York County GPIN/Tax Map parcel Nos: R04c-1305-2400, R04c-1987-2154, R04d-4731-0192, R03b-3961-3650  
City of Newport News GPIN/Tax Map parcel Nos.: 133000590, 113000101, 113000103, 123000426, 132000602, 142000501

**DECLARATION OF COMMON AREA  
(Open Space)**

THIS DECLARATION OF COMMON AREA ("Declaration") is made this 19th day of December, 2013, by **VILLAGES OF KILN CREEK OWNERS ASSOCIATION**, a Virginia nonstock corporation (the "Association"), to be indexed both as both "Grantor" and "Grantee" for recording purposes.

**RECITALS:**

A. By deed from KCCC, L.L.C. ("KCCC"), recorded prior to this instrument, the Association acquired that certain real property, containing approximately 288.45 acres, described on Exhibit A attached hereto and incorporated herein (the "Property"). The Property contains an 18-hole golf course, clubhouse and related improvements, as well as an approximately 60-acre natural area formerly the site of a nine-hole golf course.

B. The Association adopted the Second Amended and Restated Declaration of Covenants and Restrictions of Villages of Kiln Creek Owners Association," dated August 25, 2009, and recorded August 28, 2009 in the Clerk's Office of the Circuit Court for the City of Newport News, Virginia and in the Clerk's Office of the Circuit Court for York County as Instrument Number 090018824 (the "Declaration").

C. Section 1.8 of the Declaration provides that the "Common Area" includes all "real estate 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 and such non-Owners, if any, who have been authorized to use such Common Area..."

D. The Association desires to designate the Property as Common Area for the use and enjoyment of the Members of the Association (as defined in the Declaration), and to such non-Owners who have been authorized to use the Property, which use and enjoyment shall be subject to such rights, obligations and limitations set forth in the Declaration with respect to Common Area of the Association.

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NOW, THEREFORE, the Association hereby declares that the Property is designated as Common Area pursuant to Section 1.8 of the Declaration, and shall be held, transferred, sold, conveyed and occupied subject to such designation.

A. As to all of the Property other than that described on Exhibit B, attached hereto and incorporated herein:

1. The Association, by the affirmative vote or consent in writing of a majority or more of the Owners of the Lots subject to the Declaration, may authorize the President of the Association to execute a Supplemental Declaration to declare that all or part of the Property is no longer Common Area, evidenced by such Owners joining in an instrument to be recorded in the land records of the jurisdiction(s) in which the land is located, declaring that such property is no longer Common Area; and

2. The Declaration is subordinate to the conservation easement (including the Association's obligation to execute, at the request of KCCC, its deed of gift of easement in order to affirm the Association's agreement to be bound by its covenants and restrictions) reserved by KCCC, L.L.C. in the deed (and exhibits) conveying the Property to the Association.

B. As to only that portion of the Property described on Exhibit B, the Board of Directors of the Association, by the affirmative vote or consent in writing of at least two thirds (2/3) of the Directors, evidenced by adoption of a written resolution or execution of a written consent, may authorize the President of the Association to execute a Supplemental Declaration to declare that all or part of such Property described on Exhibit B is no longer Common Area.

This Declaration may be executed in counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

*[Signature pages follow.]*

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*[Signature page to Declaration of Common Area]*

IN WITNESS WHEREOF, the Association has executed this Declaration as of the  
date printed above.

**VILLAGES OF KILN CREEK OWNERS ASSOCIATION,**  
a Virginia nonstock corporation

By: *David D. Radcliffe*

Name: David D. Radcliffe

Title: President

COMMONWEALTH OF VIRGINIA

In the City of Newport News, to wit:

I, a Notary Public for the City and State aforesaid, do hereby certify that  
David Radcliffe, personally appeared before me this day and acknowledged  
that he is the President of Villages of Kiln Creek Owners Association, a Virginia non-  
stock corporation, and that as President being authorized to do so, executed the  
foregoing on behalf of the Association.

Witness my hand and official seal, this 18 day of December

2013.

*Julie Stewart*  
Notary Public

My Commission Expires: 7/31/14

Registration ID No.: 7516699



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JOINDER OF LENDER

KCCC, L.L.C., a Virginia limited liability company, is the beneficiary (the "Lender") of that certain Deed of Trust dated as of December 19, 2013, from Villages of Kiln Creek Owners Association, a Virginia nonstock corporation, to Bennett L. Stein and M. Scott Stein, Trustees, whose address is 724 Thimble Shoals Blvd, Suite 100, Newport News, Virginia 23606, and recorded in the Clerk's Offices of the Circuit Courts of the City of Newport News, Virginia and County of York, Virginia, immediately preceding this instrument.

By signing below, the Lender hereby joins in and consents to this Declaration of Common Area.

LENDER: KCCC, L.L.C.,  
a Virginia limited liability company

By: H. R. Ashe  
H. R. Ashe, Manager

STATE OF VIRGINIA  
CITY  
COUNTY OF NEWPORT NEWS

The foregoing instrument was acknowledged before me this 19th day of  
December, 2013, by H. R. Ashe, whose title is  
MANAGER of KCCC, L.L.C., a Virginia limited liability company,  
and who executed the aforesaid instrument on behalf of the company.

Deborah A. Bailey  
Notary Public, State of VIRGINIA  
at Large.

My Commission Expires:

Serial No. 207023

Deborah A. Bailey  
NOTARY PUBLIC  
Commonwealth of Virginia  
Reg. #207023  
My Commission Expires  
6/30/2016

Personally known DR OR produced identification  
Identification produced \_\_\_\_\_

EXHIBIT A

**PARCEL I:** All those pieces or parcels of land lying and being situate in the City of Newport News and the County of York, Virginia, commonly known as the Golf Course of the Kiln Creek Golf and Country Club, and being more particularly shown and designated as:

Parcels D & E on the record plat entitled "Subdivision of the Property of Villages of Kiln Creek Limited Partnership, Villages of Kiln Creek Golf Course, Showing Parcels D & E, York County, Virginia," recorded in the Clerk's Office of the Circuit Court of the County of York, Virginia, in Plat Book 11 at pages 303-308; and

Parcels A, B, C and F on the record plat entitled "Subdivision of Parcels A, B, C & F, Property of Villages of Kiln Creek Limited Partnership, Newport News, Virginia", recorded in the Clerk's Office of the City of Newport News, Virginia, in Deed Book 1246 at pages 1750-1765; and

the "Pump Station Lot at Lake No.1" as designated on the record plat entitled "Subdivision Plat of Lake No.1, The Villages of Kiln Creek, Newport News, Virginia," recorded in the Clerk's Office of the City of Newport News, Virginia, in Deed Book 1259 at page 1334; and

TOGETHER WITH that certain lot or parcel of land lying and being situate in the City of Newport News, Virginia, containing 0.082 acres, more or less, and being more particularly described as Parcel F within the "Subdivision of the Property of R.G. Moore Building Corporation, Westgate, Right-of-Way, Section Two (2), The Villages of Kiln Creek, Newport News, Virginia," as shown on a certain plat prepared by Sledd, Runey and Associates, P.C., dated May 31, 1990 entitled "Subdivision of the Property of R. G. Moore Building Corp., Westgate, Right-of-Way Section Two (2), The Villages of Kiln Creek, Newport News, Virginia," which was recorded August 1, 1990 in the Clerk's Office of the Circuit Court for the City of Newport News, Virginia, in Deed Book 1230 at page 558; and

TOGETHER WITH AND SUBJECT TO all rights, uses, easements, reservations, duties, charges and obligations as are contained in or shown on any attached plat to those certain instruments recorded in Deed Book 1190 at page 505; Deed Book 1230 at page 119; Deed Book 1227 at page 1531; Deed Book 1262 at page 1240; Deed Book 1262 at page 1245; Deed Book 1262 at page 1253 and in Deed Book 1329 at page 1544, among the land records of the City of Newport News, Virginia, and further TOGETHER WITH AND SUBJECT TO all rights, uses, easements, reservations, duties, charges, obligations as are contained in or shown on any attached plat to those certain instruments recorded in Deed Book 633 at page 433, Deed Book 741 at page 239, Deed Book 747 at page 346, Deed Book 790 at page 557 and in Plat Book 11 at page 286, among the land records of York County, Virginia.



LESS AND EXCEPT all of that certain lot or parcel of land lying and being situate in the County of York, Virginia, and being more particularly described on that certain plat entitled "Resubdivision of The Villages of Kiln Creek Golf Course Parcel E and Apt/Condo 2, County of York, Virginia," prepared by Sledd, Runey and Associates, P.C., Engineers, Planners and Surveyors, a copy of which was recorded in the Clerk's Office of the Circuit Court of the County of York, Virginia, in Plat Book 11 at pages 351-352.

LESS AND EXCEPT that portion of the subject property designated as Parcel B1 on plat of resubdivision of Parcels B and F, Kiln Creek Golf and Country Club, The Villages of Kiln Creek, City of Newport News, Virginia, described by metes and bounds as follows: Beginning at a point on the northeasterly right-of-way line of Kiln Creek Parkway, said point being the Intersection of the northeasterly right-of-way line of Kiln Creek Parkway with the southeasterly right-of-way line of Brick Kiln Boulevard; thence N 07° 28' 05" E a distance of 50.00 feet; thence N 64° 50' 16" E a distance of 139.50 feet to a point of curvature of a tangent curve concave to the southeast; thence northeasterly along the arc of said curve to the right, having a radius of 1,600.00 feet and a central angle of 04° 36' 01" for an arc distance of 133.28 feet to a point of reverse curvature of a tangent curve concave to the north; thence easterly along the arc of said curve to the left, having a radius of 839.90 feet and a central angle of 02° 32' 10" for an arc distance of 37.18 feet to a point of reverse curvature of a tangent curve concave to the south; thence easterly along the arc of said curve to the right, having a radius of 839.90 feet and a central angle of 06° 03' 44" for an arc distance of 88.87 feet to a non-tangent line; thence S 02° 08' 12" E a distance of 314.82 feet; thence N 87° 56' 23" E a distance of 38.63 feet; thence S 02° 38' 49" E a distance of 108.86 feet; thence S 53° 54' 36" W a distance of 111.42 feet; thence S 83° 54' 02" W a distance of 16.77 feet to a point on the arc of a non-tangent curve concave to the southwest; thence northwesterly along the arc of said curve to the left, having a radius of 2,551.25 feet and a central angle of 02° 32' 54" for an arc distance of 113.47 feet to a point of tangency; thence N 49° 58' 44" W a distance of 200.00 feet to a point of curvature of a tangent curve concave to the northeast; thence northwesterly along the arc of said curve to the right, having a radius of 834.00 feet and a central angle of 08° 00' 21" for an arc distance of 116.53 feet to the point of beginning, containing 2.710 acres, more or less, as shown on plat entitled "Plat of Resubdivision, Parcels B and F, Kiln Creek Golf and Country Club, The Villages of Kiln Creek, City of Newport News, Virginia," prepared by Sledd, Runey & Associates, P.C., dated January 25, 1994.

LESS AND EXCEPT that portion of the subject property designated Parcel B2 on plat of resubdivision of Parcels B and F, Kiln Creek Golf and Country Club, The Villages of Kiln Creek, City of Newport News, Virginia, described by metes and bounds as follows: Beginning at a point located 259.74 feet in a northerly direction from a second point located on the northerly right-of-way line of Brick Kiln Boulevard, said second point being located 862.13 feet in an easterly and northerly direction from a third point located on the northeasterly right-of-way line of Kiln Creek Parkway, said third point being the intersection of the northeasterly right-of-way line of Kiln Creek Parkway with the southeasterly right-of-way line of Brick Kiln Boulevard; thence northwesterly along the arc of a curve to the left, having a radius of 75.00 feet and a central angle of 25° 18' 55" for an

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arc distance of 33.14 feet to a point of reverse curvature of a tangent curve concave to the east; thence northerly along the arc of said curve to the right, having a radius of 100.00 feet and a central angle of 83° 44' 59" for an arc distance of 146.17 feet to a point of reverse curvature of a tangent curve concave to the west; thence northerly along the arc of said curve to the left, having a radius of 75.00 feet and a central angle of 56° 06' 41" for an arc distance of 73.45 feet to a point of reverse curvature of a tangent curve concave to the east; thence northerly along the arc of said curve to the right, having a radius of 125.00 feet and a central angle of 07° 08' 29" for an arc distance of 15.58 feet to a non-tangent line; thence S 81° 01' 00" E a distance of 166.00 feet; thence S 08° 59' 00" W a distance of 80.00 feet; thence N 81° 01' 00" W a distance of 30.06 feet; thence S 08° 59' 00" W a distance of 29.17 feet; thence S 81° 01' 00" E a distance of 6.59 feet; thence S 08° 59' 00" W a distance of 66.65 feet; thence N 81° 01' 00" W a distance of 25.00 feet; thence S 08° 59' 00" W a distance of 67.00 feet; thence N 81° 01' 00" W a distance of 78.11 feet to the point of beginning, containing 0.789 acres, more or less, as shown on the plat entitled "Plat of Resubdivision, Parcels B and F, Kiln Creek Golf and Country Club, The Villages of Kiln Creek, City of Newport News, Virginia," prepared by Sledd, Runey & Associates, P.C., dated January 25, 1994.

LESS AND EXCEPT that portion of the subject property designated Parcel B3 on plat of resubdivision of Parcels B and F, Kiln Creek Golf and Country Club, The Villages of Kiln Creek, City of Newport News, Virginia, described by metes and bounds as follows: Beginning at a point located N 46° 06' 45" E a distance of 324.20 feet from a second point located on the northeasterly right-of-way line of Kiln Creek Parkway, said second point being located 663.26 feet in a southeasterly direction from a third point located on the northeasterly right-of-way line of Kiln Creek Parkway, said third point being the intersection of the northeasterly right-of-way line of Kiln Creek Parkway with the southeasterly right-of-way line of Brick Kiln Boulevard; thence N 53° 52' 52" E a distance of 280.00 feet; thence S 36° 07' 08" E a distance of 136.00 feet; thence S 53° 52' 52" W a distance of 280.00 feet; thence N 36° 07' 08" W a distance of 136.00 feet to the point of beginning, containing 0.874 acres, more or less, as shown on plat entitled "Plat of Resubdivision, Parcels B and F, Kiln Creek Golf and Country Club, The Villages of Kiln Creek, City of Newport News, Virginia," prepared by Sledd, Runey & Associates, P.C., dated January 25, 1994.

LESS AND EXCEPT that portion of the subject property designated Parcel B4 on plat of resubdivision of Parcels B and F, Kiln Creek Golf and Country Club, The Villages of Kiln Creek, City of Newport News, Virginia, described by metes and bounds as follows: Beginning at a point on the northeasterly right-of-way line of Kiln Creek Parkway a distance of 520.07 feet in a southeasterly direction from a second point on the northeasterly right-of-way line of Kiln Creek Parkway, said second point being the intersection of the northeasterly right-of-way line of Kiln Creek Parkway with the southeasterly right-of-way line of Brick Kiln Boulevard; thence N 53° 57' 31" E a distance of 58.66 feet; thence N 36° 02' 29" W a distance of 44.28 feet; thence N 53° 57' 31" E a distance of 44.36 feet; thence S 36° 03' 51" E a distance of 169.48 feet; thence S 53° 57' 31" W a distance of 84.93 feet; thence N 43° 53' 15" W a distance of 58.82 feet to a point of curvature of a tangent curve

concave to the southwest; thence northwesterly along the arc of said curve to the left, having a radius of 2,551.25 feet and a central angle of  $01^{\circ} 31' 13''$  for an arc distance of 67.70 feet to the point of beginning, containing 0.314 acres, more or less, as shown on plat entitled "Plat of Resubdivision, Parcels B and F, Kiln Creek Golf and Country Club, The Villages of Kiln Creek, City of Newport News, Virginia, prepared by Sledd, Runey & Associates, P.C., dated January 25, 1994.

LESS AND EXCEPT that portion of the subject property conveyed to The Hersand Companies, a Virginia corporation, by deed dated August 25, 1993 and recorded in the Clerk's Office of the Circuit Court of the County of York, Virginia, in Deed Book 747 at page 346.

**PARCEL II:** That portion of Industrial 1 (One) Area, The Villages of Kiln Creek, York County, Virginia, described by metes and bounds as follows:

Beginning at a point located N  $36^{\circ} 37' 02''$  W a distance of 237.99 feet from the northwest corner of Lexington Subdivision; thence N  $36^{\circ} 37' 02''$  W a distance of 777.06 feet; thence N  $56^{\circ} 35' 53''$  E a distance of 1709.47 feet; thence S  $76^{\circ} 14' 48''$  E a distance of 65.21 feet; thence S  $46^{\circ} 33' 28''$  E a distance of 748.33 feet; thence S  $56^{\circ} 37' 06''$  W a distance of 1880.55 feet to the point of beginning, containing 32.26 acres, more or less.

**PARCEL III:** Parcel G, Kiln Creek Golf and Country Club Limited Partnership, York County, Virginia, described by metes and bounds as follows:

Beginning at the southeast corner of Kiln Creek Golf and Country Club Fairway No. 12; thence N  $21^{\circ} 09' 02''$  E a distance of 945.88 feet; thence N  $41^{\circ} 40' 21''$  E a distance of 575.47 feet; thence S  $63^{\circ} 41' 24''$  E a distance of 271.00 feet; thence S  $14^{\circ} 29' 03''$  E a distance of 453.01 feet; thence N  $80^{\circ} 28' 45''$  E a distance of 181.17 feet; thence S  $28^{\circ} 03' 06''$  E a distance of 489.13 feet; thence S  $14^{\circ} 29' 58''$  E a distance of 203.80 feet; thence S  $51^{\circ} 00' 14''$  W a distance of 400.10 feet; thence S  $38^{\circ} 59' 46''$  E a distance of 15.00 feet; thence S  $51^{\circ} 00' 14''$  W a distance of 574.26 feet; thence N  $66^{\circ} 36' 50''$  W a distance of 460.04 feet to a point of curvature of a tangent curve concave to the northeast; thence northwesterly along the arc of said curve to the right, having a radius of 910.00 feet and a central angle of  $02^{\circ} 26' 05''$  for an arc distance of 38.67 feet to a point of compound curvature of a tangent curve concave to the east; thence northwesterly and northerly along the arc of said curve to the right, having a radius of 25.00 feet and a central angle of  $92^{\circ} 19' 47''$  for an arc distance of 40.29 feet to a point tangency; thence N  $28^{\circ} 09' 02''$  E a distance of 204.08 feet; thence S  $79^{\circ} 20' 58''$  E a distance of 335.03 feet; thence N  $44^{\circ} 09' 02''$  E a distance of 100.00 feet; thence N  $30^{\circ} 39' 02''$  E a distance of 185.00 feet; thence N  $42^{\circ} 39' 02''$  E a distance of 175.00 feet; thence N  $47^{\circ} 39' 02''$  E a distance of 135.52 feet; thence N  $05^{\circ} 20' 58''$  W a distance of 95.96 feet; thence N  $46^{\circ} 20' 58''$  W a distance of 145.24 feet; thence N  $49^{\circ} 20' 58''$  W a distance of 310.00 feet; thence N  $12^{\circ} 20' 68''$  W a distance of 150.00 feet; thence S  $77^{\circ} 39' 02''$  W a distance of 135.00 feet; thence S  $31^{\circ} 55' 01''$  W a distance of 114.32 feet; thence S  $21^{\circ} 09' 02''$  W a distance of 635.86 feet; thence S  $09^{\circ} 50' 58''$  E a distance of 197.46 feet; thence S  $28^{\circ} 09' 02''$  W a distance of 192.91 feet to a point of curvature of a tangent curve concave to the north; thence southwesterly and westerly along the arc of said curve to the right, having a radius of 25.00 feet and a central angle of

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94° 47' 48" for an arc distance of 41.36 feet to a point of compound curvature of a tangent curve concave to the northeast; thence northwesterly along the arc of said curve to the right, having a radius of 910.00 feet and a central angle of 15° 26' 21" for an arc distance of 245.21 feet to a point of tangency; thence N 41° 36' 50" W a distance of 76.25 feet to the point of beginning, containing 25.652 acres, more or less, as shown on plat entitled "Subdivision of the Property of Kiln Creek Golf and Country Club Limited Partnership, Parcel G, York County, Virginia," prepared by Sledd, Runey & Associates, P.C., dated March 25, 1994.

AND

That portion of Industrial 1 (One) Area, The Villages of Kiln Creek, Newport News, Virginia, described by metes and bounds as follows:

Beginning at a point located N 36° 37' 02" W a distance of 237.99 feet from the northwest corner of Lexington Subdivision; thence S 56° 37' 06" W a distance of 164.98 feet; thence N 30° 56' 57" W a distance of 776.48 feet; thence N 56° 35' 53" E a distance of 88.16 feet; thence S 36° 37' 02" E a distance of 777.06 feet to the point of beginning, containing 2.254 acres, more or less.

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EXHIBIT B

Parcel B5 as shown on that certain draft plat of subdivision prepared by Campbell Land Surveying, Inc. dated December 10, 2013 entitled, "Subdivision of the Remainder of Parcel B (D.B. 1363, PG. 1914), PROPERTY OF PROPERTY OF K.C.C.C., LLC (sic), a Virginia limited liability company, City of Newport News, Virginia," recorded in the Clerk's Office of the Circuit Court of Newport News, Virginia as Exhibit B to the deed from KCCC, L.L.C. to the Villages of Kiln Creek Owners Association, as it may be amended pursuant to City subdivision plat approval, more particularly described by the following metes and bounds description:

BEGINNING AT A POINT ON THE NORTHERLY RIGHT OF WAY OF KILN CREEK PARKWAY, A PUBLIC RIGHT OF WAY, WHERE THE COMMON PROPERTY LINE BETWEEN THE NEW PARCEL B-5 AND THE PROPERTY OF MEADOW LAND, LLC ( PARCEL B1B ) INTERSECT THE RIGHT OF WAY LINE; THENCE FROM THE POINT OF BEGINNING THUS ESTABLISHED, ALONG THE COMMON PROPERTY LINE WITH MEADOW LAND, LLC N-83-54-02-E, 16.78' TO A POINT; THENCE N-53-54-36-E, 111.42' TO A POINT ; THENCE N-02-38-49-W, 108.86' TO A POINT ; THENCE S-87-56-23-W, 38.63' TO A POINT; THENCE N-02-08-12-W, 314.82' TO A POINT ON THE EASTERLY RIGHT OF WAY OF BRICK KILN BOULEVARD, A PUBLIC RIGHT OF WAY ; THENCE ALONG THE RIGHT OF WAY OF BRICK KILN BOULEVARD ALONG A CURVE TO THE RIGHT WITH A RADIUS OF 839.90' AND AN ARC LENGTH OF 24.07' TO A POINT; THENCE ALONG A CURVE TO THE RIGHT WITH A RADIUS OF 300.00' AND AN ARC LENGTH OF 169.07' TO A POINT; THENCE ALONG A CURVE TO THE RIGHT WITH A RADIUS OF 50.00' AND AN ARC LENGTH OF 32.63' TO A POINT; THENCE CONTINUING ALONG SAID RIGHT OF WAY ON A CURVE TO THE LEFT WITH A RADIUS OF 50.00' AND AN ARC LENGTH OF 187.53' TO A POINT ON THE RIGHT OF WAY WHERE THE COMMON PROPERTY LINE BETWEEN PARCEL B-5 AND THE WILLOW POINT SUBDIVISION MEET; THENCE ALONG THE COMMON PROPERTY LINE N-19-22-37-E , 20.00' TO A POINT ON THE NEW PROPERTY LINE BETWEEN PARCEL B-5 AND THE REMAINDER OF THE ORIGINAL PARCEL B; THENCE ALONG THE COMMON PROPERTY LINE ON A CURVE TO THE LEFT WITH A RADIUS OF 65.00' AND AN ARC LENGTH OF 117.98' TO A POINT ; THENCE N-05-22-37-E, 93.37' TO A POINT; THENCE ALONG A CURVE TO THE LEFT WITH A RADIUS OF 75.00' AND AN ARC LENGTH OF 28.39' TO A POINT ON THE COMMON PROPERTY LINE WITH THE VILLAS OF KILN CREEK CONDOMINIUMS ( PARCEL B-2); THENCE ALONG THE COMMON PROPERTY LINE S-81-01-00-E, 78.11' TO A POINT ; THENCE N-08-59-00-E, 67.00' TO A POINT; THENCE S-81-01-00-E, 25.00' TO A POINT; THENCE N-08-59-00-E, 66.65' TO A POINT; THENCE N-81-01-00-W, 6.59' TO A POINT; THENCE N-08-59-02-E, 29.17' TO A POINT; THENCE S-81-01-00-E, 30.06' TO A POINT; THENCE N-08-59-00-E, 80.00' TO A POINT ON THE NEW LINE BETWEEN THE NEW PARCEL B-5 AND THE REMAINDER OF PARCEL B; THENCE CONTINUING ALONG THE COMMON PROPERTY LINE S-47-02-00-E, 708.95' TO A POINT; THENCE S-47-21-51-W, 543.82' TO POINT ON THE COMMON CORNER BETWEEN THE NEW PARCEL B-5, THE REMAINDER OF PARCEL B AND THE PROPERTY OF TERRAPIN DEVELOPMENT, KC, LLC ( PARCEL B-3); THENCE ALONG THE COMMON PROPERTY LINE BETWEEN THE NEW PARCEL B-5 AND THE PROPERTY OF TERRAPIN DEVELOPMENT , KC, LLC N-36-07-08-W, 136.00' TO A POINT; THENCE S-53-52-52-W, 280.00' TO A POINT; THENCE S-36-07-08-E, 136.00' TO A POINT ON THE COMMON PROPERTY LINE BETWEEN THE NEW PARCEL B-5 AND THE REMAINDER OF PARCEL B; THENCE ALONG THE COMMON PROPERTY LINE S-48-01-52-W, 305.59' TO A POINT ON THE NORTHERLY RIGHT OF WAY OF KILN CREEK PARKWAY; THENCE ALONG THE RIGHT OF WAY LINE OF KILN

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CREEK PARKWAY

N-43-53-15-W, 141.18' TO A POINT ON THE COMMON PROPERTY LINE WITH PARCEL B-4; THENCE ALONG THE COMMON PROPERTY LINE N-53-57-31-E, 84.93' TO A POINT; THENCE N-36-03-51-W, 169.48' TO A POINT; THENCE S-53-57-31-W, 44.36' TO A POINT; THENCE S-36-02-29-E, 44.28' TO A POINT; THENCE S-53-57-31-W, 58.66' TO A POINT ON THE NORTHERLY RIGHT OF WAY OF KILN CREEK PARKWAY; THENCE ALONG THE RIGHT OF WAY ON A CURVE TO THE LEFT WITH A RADIUS OF 2551.25', 90.06' TO THE POINT OF BEGINNING, CONTAINING 13.1850 ACRES BEING KNOWN AS PARCEL B-5, BEING A PORTION OF THE REMAINDER OF PARCEL B SHOWN ON " PLAT OF RESUBDIVISION, PARCELS B AND F, KILN CREEK GOLF AND COUNTRY CLUB " RECORDED IN DEED BOOK 1363, PAGE 1914, BEING BOUNDED ON THE SOUTH BY KILN CREEK BOULEVARD, ON THE WEST BY THE PROPERTY OF MEADOW LAND, LLC, BRICK KILN BOULEVARD, WILLOW POINT SUBDIVISION, VILLAS AT KILN CREEK AND THE REMAINDER OF PARCEL B, ON THE NORTH AND EAST BY THE REMAINDER OF PARCEL B.

VIRGINIA: In the Clerk's Office of the York County -  
Pasquoton Circuit Court, the 23<sup>rd</sup> day of  
December, 20 13. This deed was  
presented with the certificate annexed and admitted  
to record at 3:13 o'clock P.M.

Teste: LYNN S. MENDIBUR, CLERK

By: Lisa Bragg D.C.

180015895

DOC. NO. 2709490

2010 DEC -6 AM 11:26

GARY S. ANDERSON, CLERK: BY

5 pgs  
#21  
env

090017258

**SECOND AMENDED AND RESTATED**

**DECLARATION OF COVENANTS AND RESTRICTIONS OF**

**VILLAGES OF KILN CREEK OWNERS ASSOCIATION**

After Recording Return To:  
LeClairRyan  
5388 Discovery Park Blvd.  
3<sup>rd</sup> Floor  
Williamsburg, VA 23188



**SECOND AMENDED AND RESTATED**  
**DECLARATION OF COVENANTS AND RESTRICTIONS OF**  
**VILLAGES OF KILN CREEK OWNERS ASSOCIATION**

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**SECOND AMENDED AND RESTATED**  
**DECLARATION OF COVENANTS AND RESTRICTIONS OF**  
**VILLAGES OF KILN CREEK OWNERS ASSOCIATION**

THIS SECOND AMENDED AND RESTATED DECLARATION OF COVENANTS AND RESTRICTIONS ("this Declaration") is made this 25th day of August, 2009, by **VILLAGES OF KILN CREEK OWNERS ASSOCIATION**, a Virginia non-stock corporation ("Association") having an address of 1405-C Kiln Creek Parkway, Newport News, VA 23602 [index as "Grantor" and "Grantee" for recording purposes].

**RECITALS**

A. By instrument entitled "Villages of Kiln Creek Declaration of Covenants and Restrictions," dated May 25, 1988 and recorded June 3, 1988 in the Clerk's Office of the Circuit Court for the City of Newport News, Virginia (the "Newport News Clerk's Office"), in Deed Book 1176, page 0099, and in the Clerk's Office of the Circuit Court for the County of York, Virginia (the "York Clerk's Office"), in Deed Book 545, page 245 (the "Original Declaration"), Kiln Creek Associates, a Virginia general partnership, 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. By various instruments entitled "Supplementary Declaration of Covenants and Restrictions" (collectively, the "Supplemental Declarations"), Kiln Creek Associates (and its successors and assigns as "Developer") subjected certain additional real property described in Exhibit A of each Supplemental Declaration to the Original Declaration (and later to the

“Amended and Restated Declaration” and the “First Amended and Restated Declaration” as hereinafter defined).

C. By Deed dated December 31, 1990, and recorded in the Newport News Clerk’s Office in Deed Book 1241, page 316, and in the York Clerk’s Office in Deed Book 602, page 374, Kiln Creek Associates conveyed to Villages of Kiln Creek Limited Partnership all of its right, title and interest in and to certain of the real property shown on the Development Plan (as defined in the Original Declaration), and comprising the Properties (as defined in the Original Declaration).

D. By Assignment and Assumption Agreement dated December 31, 1990, and recorded in the Newport News Clerk’s Office in Deed Book 1241, page 374, and in the York Clerk’s Office in Deed Book 602, page 432, Kiln Creek Associates assigned all of its right, title and interest as “Developer” under the Original Declaration and the Land Use Matters (as therein defined) to Villages of Kiln Creek Limited Partnership.

E. By instrument entitled “Villages of Kiln Creek Amended and Restated Declaration of Covenants and Restrictions” dated April 1, 1991 and recorded in the Newport News Clerk’s Office in Deed Book 1248, at page 719 and in the York Clerk’s Office in Deed Book 612, at page 286, the Original Declaration was amended and restated (the “Amended and Restated Declaration”).

F. The Amended and Restated Declaration was subsequently amended by instrument entitled “First Amendment to Amended and Restated Declaration of Covenants and Restrictions” dated August 1, 1991 and recorded in the Newport News Clerk’s Office in Deed Book 1263 (1258), at page 1009 (631), and in the York Clerk’s Office in Deed Book 624, at page 565 (the “First Amendment”); and by instrument entitled “Second Amendment to Amended and Restated

Declaration of Covenants and Restrictions” dated September 13, 1991 and recorded in the Newport News Clerk’s Office in Deed Book 1265, at page 139, and in the York County Clerk’s Office in Deed Book 637, at page 577 (the “Second Amendment”).

G. By instrument dated June 30, 1992, and recorded in the Newport News Clerk’s Office, and in the York Clerk’s Office, Villages of Kiln Creek Limited Partnership assigned all of its rights, titles, interest as “Developer” to Kiln Creek Joint Venture, a Virginia general partnership. By instrument dated on or about August 25, 1993 and recorded in the Newport News Clerk’s Office, and in the York Clerk’s Office, Kiln Creek Joint Venture assigned all of its rights, titles and interests as “Developer” to D & B Venture, L.C., a Virginia limited liability company.

H. By Third Amendment (“Third Amendment”) to Amended and Restated Declaration of Covenants and Restrictions dated August 18, 2004, and recorded in the Newport News Clerk’s Office in Deed Book 1947, page 1995, and in the York Clerk’s Office as instrument number LR040017641, the Amended and Restated Declaration was further amended. The Amended and Restated Declaration as further amended by the First Amendment, Second Amendment and Third Amendment is hereinafter referred to as the “First Amended and Restated Declaration.”

I. Article IX, Section 9.2 of the First Amended and Restated Declaration provides that the First Amended and Restated 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.”

J. Article IX, Section 9.2 of the First Amended and Restated Declaration provides that the “provisions of Articles II and VIII and Sections 3.2, 4.7, 5.8, 6.9 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.”

K. The Class B membership has expired and, therefore, there is no Class B Member and no Class B vote. Furthermore, according to the records of the State Corporation Commission of the Commonwealth of Virginia, the Developer, D&B Venture, L.C., no longer exists and, therefore, the consent of D&B Venture, L.C. to the amendments set forth herein is not required.

L. The Association has determined it is in the best interests of the Association to amend and restate the First Amended and Restated Declaration in its entirety and to adopt the amendments set forth in this Second Amended and Restated Declaration, and the Owners of two-thirds or more of the Lots have approved this Second Amended and Restated Declaration.

NOW, THEREFORE, the First Amended and Restated Declaration is amended to delete Articles I through XI in their entirety, and the following Articles I through XI are hereby substituted therefor. This Declaration may be executed in counterparts, all of which shall be read together as one document.

## 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 Second Amended and Restated Articles of Incorporation of Villages of Kiln Creek Owners Association, as the same may be amended from time to time.

Section 1.5. “Association” means the Villages of Kiln Creek Owners Association, a Virginia nonstock corporation, its successors and assigns.

Section 1.6. “Bylaws” means the Second Amended and Restated Bylaws of Villages of Kiln Creek Owners Association, as the same may be amended from time to time.

Section 1.7. “Clerks’ Offices” means collectively the Newport News Clerk’s Office and the York Clerk’s office.

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 Developer and recorded in one or both of the Clerks’ Offices; (ii) the portions of the Properties, if any, designated for “buffer zones,” “scenic easements” or similar purposes on recorded plats of the Properties and conveyed (by deed or easement) to and accepted by the Association; 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 and such non-Owners, if any, who have been authorized to use such Common Area pursuant to Sections 4.1, 4.2 and/or 4.6 hereof. The Common Area includes or may in the future include, without limitation, certain streets which are not dedicated to the public, areas set aside for pedestrian and/or bicycle paths and other recreational facilities intended to be used by the owners. The term “Common Area” shall not be interpreted to include “Neighborhood Common Area.” Portions of the Common Area may be designated by the Association’s Board of Directors pursuant to Section 4.4 hereof

as “Limited Common Area(s)” for the primary or exclusive use of one or more but less than all of the Owners and such non-Owners, if any, who have been authorized to use such Limited Common Area pursuant to Sections 4.1, 4.2 and/or 4.6 hereof. Also, certain Parcels and/or Neighborhoods include open space areas, easements and facilities which are intended to be maintained privately either by private ownership or by separate associations and which are not designated as Common Area, Limited Common Area or Neighborhood Common Area and will not be maintained by the Association.

Section 1.9. “Declaration” means this Second Amended and Restated Declaration of Covenants and Restrictions, as the same may from time to time be supplemented or amended.

Section 1.10. “Developer” means D&B Venture, L.C., a Virginia limited liability company (which was the successor in interest to Kiln Creek Joint Venture, a Virginia general partnership which was the successor in interest to Villages of Kiln Creek Limited Partnership, a Virginia limited partnership, which was the successor in interest to Kiln Creek Associates, a Virginia general partnership).

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 or the Neighborhood Common Area designated by the Association’s Board of Directors pursuant to

Section 4.4 hereof for the exclusive use of one or more but less than all of the Owners and such non-Owners, if any, who have been authorized to use such Limited Common Area pursuant to Sections 4.1, 4.2 and/or 4.6 hereof.

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 condominium unit within a condominium created pursuant to the Condominium Act of Virginia, Section 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, or with respect to condominiums a governmentally approved site plan, 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 which are part of the same subdivision and are subject to the same 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 exclusive of Lots and any improvements thereon which is located within the boundaries of the Neighborhoods of Southlake, Lakeside and Claymill Corner as established by the Supplemental Declaration for the

respective Neighborhood and which is for the primary use and enjoyment of Owners residing in such Neighborhood and has been accepted as such by the Association. Stating further, the real property conveyed to the Association by the Southlake Deed (as defined in the Third Amendment to Amended and Restated Declaration of Covenants and Restrictions) constitutes Neighborhood Common Area for the Neighborhood of Southlake; the real property conveyed to the Association by the Lakeside Deed (as defined in the Third Amendment to Amended and Restated Declaration of Covenants and Restrictions) constitutes Neighborhood Common Area for the Neighborhood of Lakeside; and the real property conveyed to the Association by the Claymill Corner Deed (as defined in the Third Amendment to Amended and Restated Declaration of Covenants and Restrictions) constitutes Neighborhood Common Area for the Neighborhood of Claymill Corner. The term “Neighborhood Common Area” may also include real property, if any, classified as such pursuant to any Supplemental Declaration entered into by the Association pursuant to Article II below.

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. “Parcel” means any portion of the Properties subdivided from the residue thereof for the purpose of either (i) resubdivision into Lots or (ii) the construction of residential apartments thereon.

Section 1.22. “Parcel Developer” means any person or entity who purchases a Parcel for the purpose of development and sale of Lots.

Section 1.23. “Properties” means all property currently subjected 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 pursuant to Article II hereof.

Section 1.24. “Supplemental Declaration” shall have the meaning set forth in Section 2.3 hereof.

Section 1.25. “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 1.26. “Zoning Ordinance” means (i) the Ordinance now set forth and contained in Chapter 24.1 of the County Code of York County, Virginia, as adopted as of the recordation of this Declaration in the York Clerk’s Office as may be amended from time to time (the “York County Zoning Ordinance”); (ii) the Ordinance now set forth and contained in Chapter 45 of the Code of Ordinances City of Newport News, Virginia, as adopted as of the recordation of this Declaration in the Newport News Clerk’s Office as may be amended from time to time (the “Newport News Zoning Ordinance”); (iii) the ordinances adopted by the Board of Supervisors of the County of York on June 2, 1988 [Case No. 088-20(R-1)], as amended on March 7, 1991 [Ordinance No. 091-7] including all proffered conditions incorporated therein, pursuant to which that portion of the Properties located in York County, Virginia was rezoned as a Planned Development - Major Residential Community (“PD-MRC”); (iv) the ordinances adopted by the

City Council of the City of Newport News on January 28, 1986 [Ordinance No. 3416-86], as amended on September 30, 1986 (Ordinance No. 3496-86); on November 24, 1987 [Ordinance No. 3672-87]; and on July 26, 1988 [Ordinance No. 3757-88], including all proffered conditions incorporated therein, pursuant to which that portion of the Properties located in the City of Newport News, Virginia was rezoned as a Planned Residential Development (“PRD”); and (v) all other zoning ordinances, rules and regulations applicable to the Properties. If the York County Zoning Ordinance, the Newport News Zoning Ordinance, the PD-MRC or PRD ordinances or any other applicable ordinances, rules and regulations in effect on the first date of recordation of this Declaration are subsequently 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 the foregoing ordinances and such other ordinances, rules and regulations as such respective ordinances, rules and regulations as 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 Clerks’ Offices is described in Exhibit A hereto. The Developer's right to unilaterally extend the Declaration to portions of the Additional Area has expired. The Additional Area includes real estate located within a two (2) mile radius of the real estate described in Exhibit A (the “Additional Area”). The Association, by (i) the affirmative vote of two-thirds (2/3) or more of the directors serving on the Board of Directors of the Association and (ii) the consent in writing of the Owners of a majority or more of the Lots within

the Properties subject to this Declaration, may authorize the President of the Association to execute a Supplemental Declaration to extend this Declaration to all or portions of the Additional Area provided the Owner(s) of such Additional Area consent to such extension as evidenced by such Owner(s) joining in an instrument of record subjecting such real property to the covenants, liens, restrictions, easements, and other provisions of this Declaration. However, the Association 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. Each of the additions authorized pursuant to this Article II shall be made by Association's recordation in the applicable Clerk's Office of a Supplemental Declaration 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 the Association. 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, the Association 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, easements and restrictions (including without limitation a different level of assessments) 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 Association 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 the Association to subject the Additional Area to the provisions of this Declaration or a Supplemental Declaration is conditioned upon and subject to the prior approval of the Board of Directors of the Association and the required written consent of the requisite amount of Owners as set forth in Section 2.1 and therefore the requirements set forth in Section 9.2 for amendments to this Declaration shall not apply to this Article II. The failure of the Association 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.



### ARTICLE III

#### VILLAGES OF KILN CREEK OWNERS ASSOCIATION

Section 3.1. Membership. Every Owner of a Lot and 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 a Parcel or upon any other transfer or conveyance of the record title to any Lot or Parcel, the membership of the former Owner shall cease and the Owner who acquires record title shall become a member of the Association.

Section 3.2. Classes of Membership. The Developer's Class B Membership has expired, and, therefore, the Association now has one (1) class of voting membership. All Owners of Lots and Parcels including Developer as to any Lots owned by Developer shall be Class A members.

Section 3.3. Voting Rights. (a) Each Class A member shall be entitled to cast one vote for each Lot and Parcel owned.

(b) Notwithstanding subsection (a) above, if a Parcel is developed for residential apartment use, 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 past due, but upon payment of such assessment the voting rights of such Member shall automatically be restored. The Board of Directors, after appropriate due process, may also suspend the voting rights of any Member who is in violation of the Governing Documents or the rules or architectural guidelines promulgated

by the Association and/or who allows a violation to exist on his/her Lot if such violation 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).

Section 3.5. Articles and Bylaws to Govern; Property Owners' Association Act.

Except to the extent expressly provided in this Declaration and in any Supplemental 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. 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 and the Supplemental Declarations, 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.

Section 3.6. Neighborhoods. The Lots within a particular Neighborhood 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 some Supplemental Declarations may provide for the establishment of a Neighborhood Advisory Board or 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. The Board of Directors may adopt rules and procedures to govern Neighborhood Advisory Boards and Neighborhood Advisory Committees, which rules and procedures may include, without limitation, a means by which an Owner who serves on a Neighborhood Advisory Board or a Neighborhood Advisory Committee may be removed by the Board of Directors of the Association after appropriate due process. Neighborhood Advisory Boards and Neighborhood Advisory Committees constitute standing committees of the Association and shall be subject to the same rules and procedures applicable to other committees of the Association.

#### ARTICLE IV

##### COMMON AREA, LIMITED COMMON AREA AND NEIGHBORHOOD COMMON AREA

Section 4.1. Obligations of the Association. The Association, subject to the rights of the Members set forth in this Declaration, and subject to the rights, if any, of non-Owners, but only to the extent non-Owners are granted rights pursuant to 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 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, direction signs, temporary promotional signs, plantings, street lights, entrance features and/or “theme areas,” lighting, stone, wood or masonry wall features and/or

related landscaping and bicycle/pedestrian paths erected, installed or planted in the Common Areas, the Limited Common Areas and the 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: (i) easement areas reserved for the benefit of the Association by virtue of this Declaration, any Supplemental Declaration, any recorded subdivision map of the Properties, or otherwise; or (ii) street right-of-ways, whether public or private.

In addition to the Association's responsibilities regarding the Common Areas, the Limited Common Areas and the Neighborhood Common Areas, the Association, acting through its Board of Directors, shall have the express right to enter into easements, cost sharing, use, maintenance and cross access arrangements with any other person or entity, including, without limitation, the City of Newport News or the County of York, and any other property owners association providing services and/or shared facilities in the vicinity of the Properties. Any costs and/or fees payable pursuant to such arrangements shall be included in the Association's budget as part of the Association's annual costs and expenses for the applicable year.

The Association, acting through its Board of Directors shall have the right to grant licenses for portions of the Common Areas, the Limited Common Areas and/or Neighborhood Common Areas to specified person(s) or entities, who need not be Owners, for the exclusive use of such portions of Common Areas, Limited Common Areas and/or Neighborhood Common Areas.

The Association may provide educational and training opportunities within The Villages of Kiln Creek, including providing funding and permitting use of facilities for such purposes. The Association may provide education and training activities as a tool for fostering Owner

awareness of the Association's governance, operations, and concerns. Appropriate educational topics include, but shall not be limited to, dispute or conflict resolution, issues involving the Governing Documents, and benefiting from and contributing to The Villages of Kiln Creek as a planned community. The Association also may fund and support the education and training for officers and directors of the Association.

Section 4.2. Owners' Rights of Enjoyment and Use of Common Areas. Subject to the provisions of this Declaration, any applicable Supplemental Declaration, the Articles, the Bylaws, and such rules and regulations as may be adopted from time to time by the Association's Board of Directors, 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. The Association reserves for itself the right to grant any person(s) a license and/or similar right to make exclusive use of portions of the Common Areas.

Section 4.3. Owners' Rights of Enjoyment and Use of Neighborhood Common Areas. Subject to the provisions of this Declaration, any applicable Supplemental Declaration, the Articles, the Bylaws, and such rules and regulations as may be adopted from time to time by the Association's Board of Directors, 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 by Owners of Lots within such Neighborhood 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 of a Lot within such Neighborhood shall not damage or disturb such natural condition or the enjoyment thereof by other Owners of Lots within such Neighborhood. The Association reserves for itself the right to grant any person(s) a license and/or similar right to make exclusive use of portions of the Neighborhood Common Areas.

Section 4.4. Limited Common Areas. The Association shall have the power to restrict portions of the Common Area for the primary use of the Owners of one or more specific Lots (and such non-Owners, if any, who have been authorized to use such areas pursuant to Sections 4.1, 4.2 and/or 4.6 hereof) by designating such portions of Common Area as "Limited Common Area".

The Association 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; (ii) 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 (iii) indicating that such Common Area is Limited Common Area by a description in a document recorded in the applicable Clerk's Office.

Subject to the provisions of this Declaration, any applicable Supplemental Declaration, the Articles, the Bylaws, and such rules and regulations as may be adopted from time to time by the Association's Board of Directors, the Owners of Lot(s) to which Limited Common Area has been assigned and such non-Owners, if any, who have been authorized to use such Limited Common Area pursuant to Sections 4.1, 4.2 and/or 4.6 hereof 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 and such non-Owners, if any, who have been authorized to use such Limited Common Area pursuant to Sections 4.1, 4.2 and/or 4.6 hereof 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. Without limiting the generality of the foregoing, the Association reserves for itself the right to grant any person(s) a license and/or similar right to make exclusive use of portions of the Limited Common Areas.

The Association's rights to designate portions of the Common Area as "Limited Common Area" under this Section 4.4, are expressly subject to the regulations of the York County Zoning

Ordinance concerning minimum Common Open Space requirements for the portion of the Properties located within York County, and, therefore, any exercise of such rights by the Association shall ensure that such minimum requirements of the York County Zoning Ordinance shall continue to be met notwithstanding the exercise of such rights hereunder by the Association.

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's Board of Directors 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) 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's Board of Directors 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;

(iii) the right of the Association's Board of Directors 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 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);

(iv) subject to the Bylaws, the right of the Association's Board of Directors to mortgage and/or encumber any or all of the Common Areas, the Limited Common Areas or the Neighborhood Common Areas;

(v) subject to the Bylaws, the right of the Association's Board of Directors 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) subject to the Bylaws, the right of the Association's Board of Directors 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;

(viii) subject to the right of the Association's Board of Directors to grant licenses and/or similar rights to persons to make exclusive use of the Common Areas, the Limited Common Areas and/or the Neighborhood Common Areas on such terms and conditions as deemed in the best interests of the Association by its Board of Directors; and

(ix) subject to the right of the Associations' Board of Directors to permit use of any facilities situated on Common Areas, Limited Common Areas or Neighborhood

Common Areas by persons, other than Owners, their families, lessees and guests upon payment of use fees or other consideration established by the Board of Directors.

Section 4.6. Delegation of Use. Any Owner may delegate his right of enjoyment to the Common Area, the Limited Common Area or 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's Board of Directors.

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 or feature 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, the Limited Common Area, the 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. Failure to Maintain Common Areas, Limited Common Areas or Neighborhood Common Areas in York County. If the Association or its successor(s) shall fail to maintain the Common Areas, the Limited Common Areas or the Neighborhood Common Areas located in York County, Virginia, in accordance with Section 4.1 and the Zoning Ordinance, the

County of York, Virginia may, after giving prior written notice to the Association or to the Owners, exercise the rights set forth in Section 9.13 hereof.

## ARTICLE V

### ASSESSMENTS

Section 5.1. Creation of the Lien and Personal Obligation for Assessments. 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, any Supplemental Declaration and in the Bylaws. The assessments, together with interest thereon, late charges and costs of collection including all 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's Board of Directors, 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 and administration fee as each 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, the Limited Common Areas, the 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, the Limited Common Areas, the 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 provision of services to Lots as may be authorized under applicable Supplemental Declarations; 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 any license, easement, or cost sharing, use, maintenance or cross access arrangement entered into with any other person or entity; for the payment of costs and expenses incurred by the Association in the course of its operations; and for such other purposes as may be authorized by or pursuant to the Articles, Bylaws, this Declaration or any Supplemental Declaration.

Section 5.3. Annual Assessments. "Annual Assessments" shall mean "General Assessments," "Limited Common Expense Assessments" and "Neighborhood 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 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. The Neighborhoods of Southlake, Claymill Corner and Lakeside are subject to Neighborhood Assessments, which assessments are used to fund the costs of managing, owning, operating, maintaining, insuring, repairing and replacing the Neighborhood Common Areas and improvements thereon as well as the provision of services described in the applicable Supplemental Declaration for each of these Neighborhoods.

2. Basis. The respective Supplemental Declarations for the Neighborhoods of Southlake, Claymill Corner, and Lakeside provide the basis by which all Lots within the Neighborhoods of Southlake, Claymill Corner, and Lakeside shall be assessed for Neighborhood Assessments. If additional Neighborhoods are created pursuant to Article II hereof, the Supplemental Declaration applicable to such Neighborhood shall specify whether the Lots within such Neighborhood shall be assessed Neighborhood Assessments, and, if so, the basis of such 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 and/or services.

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 incurred in the managing, maintaining, improving, caring, operating, renovating, repairing, establishing appropriate reserves for, incurring and replacing Limited Common Area may be assessed only against the Lots served by such Limited Common Area; and

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

Section 5.4. Special Assessments. In addition to the General, Neighborhood Assessments and Limited Common Expense 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 for (1) 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]; and (2) the discharge of taxes, the procurement of insurance, the establishment of reserves, payment of costs and expenses incurred by the Association in the course of its operations, and the discharge of such services and other obligations as may be assumed by the Association pursuant to its Articles, Bylaws, the Declaration or any Supplemental Declaration or

any cost sharing, use or cross easement arrangements entered into with any other person, and for such other purposes as authorized by or pursuant to the Articles or Bylaws.

Section 5.5. Date of Commencement of Annual Assessments. Subject to Section 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 recordation of the deed to such Lot or Parcel to an Owner 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. Unless the Board of Directors of the Association amends the Bylaws to provide otherwise, the Annual Assessments shall be paid as provided in the Bylaws.

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 all attorney's fees shall be added to the amount of such assessment and secured by the assessment lien. In addition, if any installment of any assessment is not paid within thirty (30) days after the due date, the Board of Directors shall have the right upon notice to the Owner to accelerate the installments owed and declare the entire balance of any annual assessment or special assessment due and payable in full.

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) all properties dedicated and accepted by a public authority; (ii) all Common Areas, Limited Common Areas and Neighborhood Common Areas; and (iii) all properties (other than Lots) 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.

## ARTICLE VI

### ARCHITECTURAL CONTROL

Section 6.1. Architectural Review Board. The Association shall maintain 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 three persons, who shall be Members of the Association, from time to time appointed by the Board of Directors of the Association. The Board of Directors may appoint one 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 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, addition, patio, deck, pool, 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 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 but not limited to 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 Board a completed application on the form provided by the Architectural Review Board (the “Application”), a proposed construction schedule and a set 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 or guidelines adopted by the Architectural Review Board, (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”). 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 the Association in the same manner as notices are to be sent to the Association pursuant to Article XI.

If the Architectural Review Board shall fail to act upon any Application submitted to it within thirty (30) days after its receipt of a complete Application, Plans and proposed construction schedule, such Application shall be submitted to the Board of Directors for approval. If the Board of Directors shall fail to act within thirty (30) days after its receipt of such complete Application, Plans and approved construction schedule, then such Application, Plans and proposed construction schedule shall be deemed to have been approved as submitted and no further action shall be required; provided, however, that such failure to act by the Board of Directors shall not relieve the Owner of the obligation of complying with applicable federal, state and local building codes and architectural standards, covenants, design guidelines and rules and regulations set forth herein or adopted in accordance herewith in connection with the proposed action which was the subject of the Application, Plans and construction schedule or with the Association's guidelines.

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.

Section 6.5. No Improvements 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 without limitation 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 and in compliance with all applicable federal, state and local building codes. 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, subject to the approval of the Board of Directors, 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. 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.

Section 6.7. Limitation of Liability. The approval by the Architectural Review Board (or by the Association's Board of Directors as applicable) of any Plans, and any requirement by the Architectural Review Board (or by the Association's Board of Directors as applicable) that the Plans be modified, shall not constitute a warranty or representation by the Architectural Review Board (or by the Association's Board of Directors as applicable) of the adequacy, technical sufficiency or safety of the Improvements described in such Plans, as the same may be modified, and the Architectural Review Board (or the Association's Board of Directors as applicable) 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 (or the Association's Board of Directors as applicable) 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 (or the Association's Board of Directors) 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 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, the Common Area, the Limited Common Area or the Neighborhood 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. In the event an Owner vacates a boundary line between two or more adjacent Lots to create a bigger Lot, such Owner shall be liable for and shall continue to owe assessments based on the number of the original Lots shown on the original plat (or, in the case of a condominium, the original approved site plan) for the Neighborhood in which the Lot(s) is/are located.

(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, storage and use of all vehicles, assignment of designated parking spaces for the exclusive use of one (1) or more designated Owners or persons, storage and use of machinery, use of outdoor drying lines, antennas, satellite dishes, over-the-air-reception-devices, 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”). 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 Rules. 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 8.8, and to the extent, if any, such retained rights still exist, 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.

(f) Lakes and Water Bodies. All lakes, ponds and streams within the Properties, if any, shall be aesthetic amenities only, and except for those activities sponsored by the Association no other use thereof, including, without limitation, swimming, boating, playing or use of personal flotation devices, shall be permitted. No piers or docks shall be constructed on any portion of lakes, streams or ponds, nor attached to the shoreline or banks thereof. The Association, upon the affirmative vote of its Board of Directors, may authorize fishing from designated areas of certain specified lakes for specified dates and times. 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.

(h) Hazardous Uses; Waste. Nothing shall be done or kept on the Properties which will increase the rate of insurance over such rates applicable to permitted uses of the Common Area, the 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, the 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 flammable 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, the 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, 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 Annual 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. The foregoing shall not be interpreted to prohibit reasonable emissions associated with normal residential equipment such as barbecue grills, lawn mowers and leaf blowers, nor shall the foregoing be interpreted to prohibit the lawful storage and use of standard household items in customary quantities notwithstanding that such items may constitute Hazardous Materials or environmental contaminants provided such items are used and stored in compliance with Environmental Laws.

(k) Noise. No person shall cause any unreasonably loud noise under normal circumstances 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, the Limited Common Area, the 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, the Limited Common Area or the 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, the Limited Common Area or the Neighborhood Common Area except with the proper written approval of the Board of Directors.

(m) Association Property. The Common Area, the Limited Common Area and the 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 or Parcels. The improvements located on the Common Area, the Limited Common Area and the 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, the Limited Common Area or the Neighborhood Common Area without the prior written approval of the Board of Directors and then only on a temporary basis.

(n) Mining. No Lot or Parcel 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. No signs of any character shall be erected, posted or displayed in a location that is visible from the Common Area, the Limited Common Area, the Neighborhood Common Area, or any other Lot or Parcel, except as otherwise expressly permitted in the Rules and/or the guidelines adopted from time to time by the Architectural Review Board and approved by the Association's Board of Directors. All signage must comply with the City of Newport News and the County of York's sign ordinances.

(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 or Parcel. 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, storage 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 or private streets. Pavement, plantings and other landscape materials shall not be placed or permitted to remain upon any Lot or Parcel: (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 or Parcel above the surface of the ground; provided, however, that temporary lines installed by a utility company shall be permitted provided the same are buried under the surface of the ground within a reasonable time after the temporary installation of the same.

(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, and no street trees (regardless of size) installed pursuant to one or more community-wide street tree plans may be cut without prior approval of the Architectural Review Board. The Board of Directors may set rules for cutting of trees to allow for selective clearing or cutting. Any cutting within the public right-of-way may require approval by the City of Newport News or County of York including, but not limited to, obtaining a pruning permit, if applicable.

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

(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 Board. No chain link fencing will be permitted on the Properties, provided, however, that the Association may erect a chain link fence for the temporary storage of building materials, for the protection of building sites or around swimming pools, ponds, tennis courts, and recreation facilities.

(u) Vehicles. Except in connection with construction activities, no trucks (except for private passenger trucks, including without limitation, extended cab trucks and "Dooleys"), commercial vehicles, construction trucks, trailers, campers, recreational vehicles, all terrain vehicles, personal watercraft, jet skis, boats or other large vehicles, including grounds maintenance equipment, may be parked on any portion of the Common Area, the Limited Common Area, the Neighborhood Common Area, or any portion of a Lot or Parcel visible from the Common Area, the Limited Common Area, the Neighborhood Common Area, or any other Lot or Parcel, on any public streets or private right-of-way within or adjacent to the Properties or any grass area, 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, as approved by the Board of Directors, shall be in garages or screened enclosures approved by the Architectural Review Board or in areas designated in the Rules, if any. 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 or county and state inspection permits are not displayed shall be kept upon any portion of the Common Area, the Limited Common Area, the Neighborhood Common Area, or any portion of a Lot visible from the

Common Area, the Limited Common Area, the Neighborhood Common Area, or another Lot, or any public or private right-of-way. 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, motorized scooters, "Segways" or similar motorized equipment shall be driven on community trails, pathways or unpaved portions of the Common Area, the Limited Common Area or the 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, the Limited Common Area or the Neighborhood Common Area, and (ii) motorized wheelchairs 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, the Limited Common Area or the Neighborhood Common Area.

(v) Timeshares. No Lot or Parcel shall be subjected to or used for any timesharing, cooperative, licensing or other arrangement that would entail daily, weekly, monthly, or any other type of revolving or periodic occupancy by multiple Owners, cooperators, licensees, or timesharing participants. The foregoing sentence shall not be interpreted to limit the leasing of apartment units located within the Parcel currently known as "Featherstone Apartments."

(w) Professional Offices. No Lot or Parcel 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 City of Newport News and/or County of York and may maintain an office in the

dwelling constructed or otherwise located on such Owner's Lot or Parcel 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 Parcel or the Properties outside of an approved enclosure, and (iii) such Owner has obtained approvals for such use as may be required by the City of Newport News or County of York, 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, the Common Area, the Limited Common Area and the Neighborhood Common Area, except that the keeping of guide animals and orderly domestic pets (e.g., dogs, cats or caged birds) 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 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, the Limited Common Area or the 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, defend and hold the Association and each Owner 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. Due to the close proximity of dwellings and Lots or Parcels, no clothes lines or other clothes drying apparatus shall be permitted outside of an enclosed structure on any Lot or Parcel. No portion of a Lot or Parcel (outside of an enclosed structure) shall be used for the drying or hanging of laundry.

(z) Mailboxes. Only mailboxes permitted pursuant to and approved by the Architectural Review Board and/or the Board of Directors shall be permitted. The Architectural Review Board with the approval of the Board of Directors may adopt specific criteria applicable to mailboxes from time to time. Newspaper “tubes” or boxes are not permitted.

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

(bb) Pools. Above ground swimming pools are prohibited. Inground swimming pools require approval by the Architectural Review Board.

(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 Board may approve temporary structures for construction purposes which may otherwise be in violation of the Governing Documents or the rules or the architectural guidelines.

(dd) 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 or Parcel 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 Parcel or delay in construction. The Association shall not be obligated to remove archaeological materials nor be held liable for failure to remove such materials.

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

(ff) Antennas and Similar Devices. Only those antennas expressly permitted under the Federal Communications Commission's Over-the-Air Reception Devices (OTARD) Rule implementing Section 706 of the Telecommunications Act of 1996, as amended from time to time, are allowed. All others are expressly prohibited. As of the date of the recording of this instrument, the following are permitted under OTARD: (a) direct broadcast satellite (DBS) antenna one (1) meter or less in diameter or diagonal measurement; (b) antennas designed to receive Multipoint Distribution Services (MDS) that are 39.37 inches (one (1) meter) or less in diameter; (c) antennas designed to receive television broadcast signals of any size; (d) transmission-only antennas if they are necessary for the use of a covered reception antenna and are one (1) meter or less in diameter; and (e) masts used in conjunction with any of these antennas (collectively, the foregoing are referred to as "Covered Antennas"). The foregoing list is subject to change pursuant to changes in OTARD and/or any other applicable laws. Covered Antennas shall be located in accordance with architectural guidelines adopted by the

Architectural Review Board, to the extent such restrictions are not prohibited by the OTARD Rule, and an application for Architectural Review Board approval must be submitted for any device deviating from the following:

(i) Television broadcast Covered Antennas must be installed inside a dwelling unit whenever possible;

(ii) No roof antenna shall extend more than ten (10) feet above the highest point on the roof;

(iii) Satellite dish antenna if eighteen inches or less, shall be located on the rear of the house either just below the roof ridge or the fascia board below the roof eaves, or if larger than eighteen inches, be located behind the rear foundation of the house.

(iv) Any cable associated with satellite dish or other antenna shall be buried or shall not be visible on the structure to which it is attached or extended.

Section 7.2. Maintenance of Property.

(a) Owner Obligation. To the extent that exterior maintenance is not provided for in this Declaration or 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 any architectural guidelines adopted by the Architectural Review Board.

(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 Board 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. Capital Contribution. Upon the acquisition of record title to a Lot or Parcel from an Owner, a mandatory capital contribution to the Association's working capital shall be made by or on behalf of the "grantee" or Owner who acquires such title in an amount equal to \$500.00 or such other amount as may be established by the Board of Directors in its discretion from time to time. Owners who acquire title to a Lot or Parcel are obligated to pay such Capital Contribution to the Association regardless of whether such new Owner acquired title to such Lot or Parcel by purchase (with or without consideration), gift or devise. This amount shall be deposited in the purchase and sales escrow at settlement and shall be disbursed therefrom to the Association, or, if there is no settlement, shall otherwise be paid directly to the Association upon such new Owner obtaining title. The Association may use all such amounts as the Board of Directors determines in its sole and absolute discretion. Amounts payable under this Section 7.3 are in addition to any assessments and any fees associated with the Association's preparation and delivery of the Disclosure Packet pursuant to the Virginia Property Owners' Association Act (§ 55-509 et. seq., of the Code of Virginia, as amended). The amount of any unpaid Capital Contribution shall constitute a lien on such Owners Lot or Parcel and shall be

deemed 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 7.4. 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 THE BOARD OF DIRECTORS, 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 THE BOARD OF DIRECTORS 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.

Section 7.5 Owner Occupancy. 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. Owners who lease a dwelling unit located on a Lot shall submit a completed tenant information sheet using the form approved by the Association's Board of Directors to the Association prior to the Tenant's occupancy of such dwelling unit. The Supplemental Declarations for individual Neighborhoods may contain additional restrictions regarding leasing.

## ARTICLE VIII

### EASEMENTS

In addition to any easements reserved elsewhere in this Declaration or by separate plats or instruments of record, the following easements may apply to the Properties (including but not limited to Lots, Parcels, Common Areas, Limited Common Areas and Neighborhood Common Areas).

Section 8.1. Utility Easements. Developer has reserved 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 Board or on which a building is to be located pursuant to Plans approved by the Architectural Review Board or on any portion of a Lot or Parcel 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 the owner of any golf course adjacent to the Properties, to governmental authorities or utility companies, to the Association and to any other party or parties.

Section 8.2. Erosion Control. Developer has reserved 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, the 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 has reserved 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 Lot, Parcel, Common Area, Limited Common Area and Neighborhood Common Area is hereby granted 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 utility 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 Areas, the Limited Common Areas and the Neighborhood Common Areas.

Section 8.6. Easement for Landscaping, Signs and Related Purposes. There shall be and is hereby reserved 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. Nothing in this paragraph shall be interpreted to obligate the Association to maintain any landscaping, structures, facilities, equipment or improvements for which the Association is not otherwise obligated to maintain pursuant to this Declaration or separate agreement. 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 8.7. Disclosure and Release Regarding Golf Course. Portions of the Properties may abut or be located beside, within, or close proximity to a golf course. Each Owner, by acceptance of the deed conveying fee simple title to the Lot or Parcel acquired by such Owner,



whether or not expressly stated in such deed, is hereby deemed to acknowledge and accept the following inherent risks associated with the existence of the golf course adjoining or in close proximity to the Properties and the maintenance, use and play on the golf course:

(a) Maintenance on the golf course may begin early in the morning and extend late into the evening, ordinarily occurring from sunrise to sunset;

(b) During certain periods of the year, the golf course may be heavily fertilized;

(c) The maintenance of the golf course may require the use of chemicals and pesticides;

(d) The golf course may be watered with reclaimed water, which may emit certain undesirable odors; and

(e) Golf balls are not susceptible of being easily controlled and accordingly may enter Owner's air space, strike an Owner, an Owner's guests, invitees, licensees, yard, walls, roofs, windows, landscaping and personal property causing personal injury or property damage thereto. Each Owner, for itself, its family members, lessees, guests and invitees, hereby releases the Association and its Members, any successor in interest to the Association, and any agents, servants, employees, directors, officers, affiliates, representatives, receivers, subsidiaries, predecessors, successors and assigns of any such parties (collectively referred to hereafter as the "Released Parties"), and shall not in any way hold the Released Parties responsible for any claims, damages, losses, demands, liabilities, obligations, actions or causes of action whatsoever, including, without limitation, actions based on (i) any invasion of any Owner's use or enjoyment of its Lot or Parcel, (ii) improper design of the Lots or Parcels or dwellings constructed thereon

adjoining or in close proximity to the golf course, (iii) the level of skill of any golfer (regardless of whether such golfer has the permission of the management to use the golf course), or (iv) trespass by any golfer or any golf balls on, over, across or through any Lot or Parcel that may result from or in property damage or personal injury to any person or improvements located within any or adjacent roadways or Common Area, Limited Common Area or Neighborhood Common Area. Further, each Owner hereby assumes the risk inherent in owning real property adjacent to or nearby a golf course, including, without limitation, the risk of personal injury and property damage from errant golf balls, and hereby agrees to hold the Released Parties harmless from any and all loss arising from claims by such Owner or persons using or visiting such Owner's property for any personal injury or property damage.

Section 8.8. Easement for Encroachment. Each Lot, each Parcel, the Common Area, the Limited Common Area, the Neighborhood Common Area and any golf course situated adjacent to the Properties are hereby declared to have an easement over all adjoining Lots, all adjoining Parcels, the Common Area, the Limited Common Area, the Neighborhood Common Area and any golf course situated adjacent to the Properties 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.

## ARTICLE IX

### GENERAL PROVISIONS

Section 9.1. Duration. The covenants and restrictions of this Declaration shall run with and bind the Properties (subject, however, to the right to amend as provided for herein) 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, subject to termination by amendment as provided in Section 9.2. Notwithstanding the foregoing, the provisions of Section 4.2 and Article VIII shall be perpetual except to the extent that a shorter period is specified therein.

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 (i) by an instrument of record after the written consent thereto by the Owners of two-thirds or more of the Lots in accordance with Section 55-515.1 of the Code of Virginia and/or (ii) by a vote of two-thirds (2/3) of the Board of Directors pursuant to the authority set forth in Section 55-515.2 of the Code of Virginia. In addition, in accordance with Section 24.1-497 and Section 24.1-498 of the York County Code for so long as such sections so require (i) all covenant conditions required by Section 24.1-497 shall remain in full force and effect unless the Board of Supervisors shall consent to an amendment to the Declaration, or the County Attorney shall verify that the requested amendment comports with the requirements of Section 24.1-497; and (ii) any proposed amendment to this Declaration that would establish encumbrances of the Common Area shall be

submitted to and reviewed by the County Attorney to ensure compatibility with the terms of Section 24.1-498 and the County Attorney's approval shall be evidenced by his signature on such amendment; however, the granting of Utility Easements in the normal course of the Association's business shall not trigger the need for the consent or approval as set forth in Section 24.1-497 or Section 24.1-498 of the York County Code.

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 major 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 golf course 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 of

Developer 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 “Kiln Creek,” “Villages of Kiln Creek” or “Villages of Kiln Creek Owners Association.” No person or entity shall use the words “Kiln Creek,” “Villages of Kiln Creek” or “Villages of Kiln Creek Owners Association” or any derivative thereof in any printed or promotional material without the prior written consent of Developer or the Association.

Section 9.9. Country Club. As of the date of recordation of this Declaration, the country club and golf courses located within the Villages of Kiln Creek is privately owned by an independent entity separate and apart from the Association and, therefore, neither membership in

the Association nor ownership or occupancy of a Lot or Parcel currently confers any ownership interest in or right to use any country club or golf course ("Country Club"), which lies contiguous to portions of the Properties, even though Developer granted to the owners of the Country Club the right to use "Kiln Creek" in part of its name. Rights to use the Country Club will be granted only to such persons and on such terms and conditions as may be determined from time to time by the respective owners of the Country Club. The owners of the Country Club shall have the right, from time to time in their sole and absolute discretion and without notice, to amend or waive the terms and conditions of use of the Country Club, including, without limitation, eligibility for and duration of use rights, categories of use and extent of use privileges, and number of users, and shall also have the right to reserve use rights and to terminate use rights altogether. All Members are hereby advised that no representations or warranties have been or are made by the Developer, the Association or any other person with regard to the continuing ownership or operation of the Country Club. All Members are further advised that the Country Club and all real property which constitutes the Country Club facilities have not, as of the date of recordation of this Declaration, been submitted to the provisions of this Declaration. No negative reciprocal easement shall arise out of the Declaration or out of any Supplemental Declaration so as to bind any real property not expressly subjected thereto.

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. Aircraft Noise/Accident Disclosure. Each Owner, by acceptance of a deed to his Lot or Parcel, acknowledges that (i) the Properties are located within a noise and/or accident zone adjacent to Newport News/Williamsburg International Airport; (ii) that he has been given an opportunity to fully investigate and satisfy himself or themselves of the impact of the noise likely to occur on and around the Properties; (iii) that he has evaluated the effect on the use and enjoyment of his Lot or Parcel after having voluntarily elected to purchase his Lot or Parcel and having been fully informed concerning such noise and/or possible accidents; and (iv) that he has been given an opportunity to review the Maps and Records of the City of Newport News and the County of York, Virginia, and of the Peninsula Airport Commission. In addition, in the sale and/or conveyance of his Lot or Parcel to a purchaser, each Owner agrees to obtain a written statement from such purchaser certifying the foregoing information.

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. Rights of York County, Virginia.

(a) Failure of Association to Maintain Common Areas, Limited Common Areas and/or Neighborhood Common Areas. In the event the Association, or any successor organization, shall at any time after establishment of the development fail to maintain those Common Areas, Limited Common Areas and/or Neighborhood Common Areas within York County, Virginia, or any improvements thereon, in reasonable order and condition in accordance with the York County Zoning Ordinance and/or the PD-MRC Ordinance, York County, Virginia (the "County"), acting through its County Administrator or his designee, may serve notice in writing upon the Association and upon the Owners of Lots within that portion of the Properties

located within the County setting forth the manner in which the Association has failed to maintain such Common Area, Limited Common Area, Neighborhood Common Area and/or improvements thereon in reasonable condition, and such notice shall contain a demand that such deficiencies of maintenance be cured within thirty (30) days thereof. If such deficiencies of maintenance are not cured within the thirty (30) day cure period, then the County Administrator or his designee should serve a second notice upon the Association and upon the Owners within the County portion of the Properties and shall state the date and place of a public hearing before the County's Board of Supervisors, which shall be held within thirty (30) days after the end of the thirty (30) day cure period specified in the notice served upon the Association.

1. At such hearing the County's Board of Supervisors may modify the terms of the original notice as to the deficiencies and may grant an extension of time within which they shall be cured.

2. If the deficiencies set forth in the original notice or in the modifications thereof shall not be remedied on or before the date of the public hearing of the Board of Supervisors or such later date as may have been established by the Board of Supervisors at its hearing, the County, in order to preserve the taxable values of the properties within the County portion of the development and to prevent those Common Areas, Limited Common Areas, Neighborhood Common Areas and/or improvements thereon located within the County from becoming a public nuisance, may, subject to budgetary limitations, enter upon such Common Areas, Limited Common Areas and Neighborhood Common Areas, and maintain, repair and/or replace, (herein referred to collectively as "maintenance") or contract for the maintenance of, the same for an initial period not to exceed one (1) year.



3. Such entry and maintenance shall not vest in the general public any rights to use such Common Areas, Limited Common Areas and Neighborhood Common Areas, except when the same is/are voluntarily dedicated to the public by the Association.

4. Before the expiration of such period of up to one (1) year, the County shall, upon its initiative or upon the request of the Association, call a public hearing before the County's Board of Supervisors upon thirty (30) days' notice in writing to the Association and to the Owners of Lots within the County portion of the Properties, at which hearing the abilities of the Association to resume maintenance responsibilities shall be assessed by the County's Board of Supervisors.

5. If the County's Board of Supervisors shall determine that the Association is ready and able to maintain such Common Areas, Limited Common Areas and Neighborhood Common Areas in reasonable condition, the County shall cease to maintain such Common Areas, Limited Common Areas and Neighborhood Common Areas.

6. If the County's Board of Supervisors shall determine that the Association is not ready and able to maintain such Common Areas, Limited Common Areas and Neighborhood Common Areas in a reasonable condition, the County may, in its discretion, continue to maintain or contract for the maintenance of, such Common Areas, Limited Common Areas and Neighborhood Common Areas.

7. The cost of such maintenance by the County and all associated administrative costs incurred by the County shall be assessed ratably against the Lots within the County portion of the Properties that have a right of enjoyment of the Common Areas, Limited Common Areas and Neighborhood Common Areas, as applicable, and shall become a charge on such Lots, and may be collected by the County as taxes and levies are collected.

(b) County's Right to Review Records. The County and its duly authorized representatives shall have the right, upon reasonable notice and during the Association's business hours, to review the Association's financial and related records at the offices of the Association for the purpose of ensuring the Association's solvency and capacity to maintain such Common Areas, Limited Common Areas and Neighborhood Common Areas and any improvements located thereon as are located within the County.

## ARTICLE X

### DISSOLUTION OF THE ASSOCIATION

The Zoning Ordinance and proffers submitted by the Developer in connection with the initial rezoning of the Villages of Kiln Creek require that all residential Lots be subject to a residential owners association. Accordingly, the future dissolution of the Association would be conditioned on the prior consent of the governing body of each locality in which the Properties are located. In addition, dissolution of the Association would require the vote of more than two-thirds ( $2/3$ ) of the votes, in person or by proxy, of the Class A Members at a duly held meeting at which a quorum is present. 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 Association or to Owners 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.

The foregoing notwithstanding, at such time, if any, as Virginia law authorizes notices to be sent by means other than as set forth above, the Association may utilize such alternative means of notifying Owners to the fullest extent authorized by law.

WITNESS the following signatures and seals as of the date first above written.

VILLAGES OF KILN OWNERS ASSOCIATION,  
a Virginia non-stock corporation

BY: Charles Behmer  
Title: President

COMMONWEALTH OF VIRGINIA  
COUNTY OF YORK, to-wit:

The foregoing Second Amended and Restated Declaration of Covenants and Restrictions was acknowledged before me this 26th day of August, 2009, by Charles Behmer, President of Villages of Kiln Creek Owners Association, a Virginia nonstock corporation.

[SEAL]

Sara Marie Martin  
Notary Public

My commission expires: 3-31-2012  
Registration No: 294156

**CERTIFICATION PURSUANT TO VIRGINIA CODE SECTION 55-515.1F**

BY: Charles Behmer  
Title: President

COMMONWEALTH OF VIRGINIA  
COUNTY OF YORK, to wit:

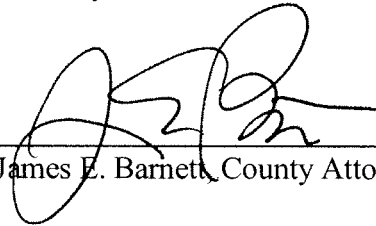
The foregoing instrument was acknowledged before me this 26th day of August, 2009, by Charles Behmer, President of Villages of Kiln Creek Owners Association, a Virginia nonstock corporation, on behalf of the corporation, who did state and certify that the requisite percentage of Owners of Lots have voted to approve and have given their consent to and ratified such Second Amended and Restated Declaration of Covenants and Restrictions by signing a document evidencing their consent to such Second Amended and Restated Declaration of Covenants and Restrictions

[SEAL]

Sara Marie Martin  
Notary Public

My commission expires: 3-31-2012  
Registration No: 294156

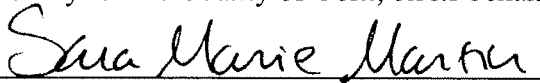
In accordance with York County Code Section 24.1-496 et seq., this Second Amended and Restated Declaration of Covenants and Restrictions of the Villages of Kiln Creek Owners Association has been approved by the County Attorney's Office.

  
James E. Barnett, County Attorney

COMMONWEALTH OF VIRGINIA  
CITY/COUNTY OF York, to wit:

The foregoing instrument was acknowledged before me this 29<sup>th</sup> day of August, 2009, by James E. Barnett, who is either personally known to me or who produced \_\_\_\_\_ as identification, as County Attorney for the County of York, on its behalf.

[SEAL]

  
Notary Public

My commission expires: 3-31-2012  
Registration No: 294156

#3018833v7

## EXHIBIT A

### VILLAGES OF KILN CREEK

All those certain lots, pieces and parcels of land which were subjected to that certain instrument entitled "Villages of Kiln Creek Declaration of Covenants and Restrictions" dated May 25, 1998 and recorded June 3, 1988 in the Clerk's Office in the City of Newport News (the "Newport News Clerk's Office") in Deed Book 1176, at page 99, and in the Clerk's Office of the County of York (the "York County Clerk's Office") in Deed Book 545, at page 245 (the "Original Declaration"); as such document was amended and restated in its entirety by that certain instrument entitled "Villages of Kiln Creek Amended and Restated Declaration of Covenants and Restrictions" dated April 1, 1991 and recorded in the Newport News Clerk's Office in Deed Book 1248, at page 719, and in the York County Clerk's Office in Deed Book 612, at page 286 (the "Amended and Restated Declaration"); as such document was amended by instrument entitled "First Amendment to Amended and Restated Declaration of Covenants and Restrictions" dated August 1, 1991 and recorded in the Newport News Clerk's Office in Deed Book 1263 (1258), at page 1009 (631), and in the York County Clerk's Office in Deed Book 624, at page 565 ("First Amendment"); and by instrument entitled "Second Amendment to Amended and Restated Declaration of Covenants and Restrictions" dated September 13, 1991 and recorded in the Newport News Clerk's Office in Deed Book 1265, at page 139, and in the York County Clerk's Office in Deed Book 637, at page 577 ("Second Amendment"); and by instrument entitled "Third Amendment to Amended and Restated Declaration of Covenants and Restrictions" dated August 18, 2004 and recorded in the Newport News Clerk's Office in Deed Book 1947, at page 1995, and in the York County Clerk's Office as instrument number LR040017641 ("Third Amendment"). The foregoing Amended and Restated Declaration as amended by the First Amendment, Second Amendment and Third Amendment, is hereinafter referred to as the "First Amended and Restated Declaration." The property submitted to this Second Amended and Restated Declaration of Covenants and Restrictions includes, without limitation, all those lots, pieces and parcels of land comprising "Lots", "Common Area", and "Neighborhood Common Area" (as such terms are defined in this Second Amended and Restated Declaration of Covenants and Restrictions) previously subjected to the foregoing instruments of record by the foregoing instruments, deeds and/or by various Supplementary Declarations of Covenants and Restrictions of record in the Newport News Clerk's Office and/or in the York County Clerk's Office as applicable, for the various Neighborhoods comprising the residential subdivisions of the Villages of Kiln Creek located in the City of Newport News and the County of York, Virginia. Such Neighborhoods include, without limitation, the following Neighborhoods: Avery Woods; Cascades; Claymill Corner; Dunhill; Eagle Sound; Edgewater; Fairways; Gleneagles; Highlands; Hollingsworth; Images; Ivystone; Lake Cambridge; Lakeside; Lexington; Masters; Oakwood; Pinehurst; Players Choice; Rock Creek; Royal Coven; Sanctuary; Shoreline; Southlake; Tradewinds; Waterford Pointe; Westgate; Willow Pointe and Windbrook.

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DAVIS, CLERK BY  
D. Davis

COMMONWEALTH OF VIRGINIA



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OFFICIAL RECEIPT  
NEWPORT NEWS CIRCUIT COURT  
DEED RECEIPT

DATE: 08/28/05 TIME: 15:23:57 ACCOUNT: 700CLR090017258 RECEIPT: 09000037824  
CASHIER: DLR REB: NL02 TYPE: DEC PAYMENT: FULL PAYMENT  
INSTRUMENT : 090017258 BOOK: PAGE: RECORDED: 08/28/09 AT 03:21  
GRANTOR: VILLAGES OF KILN CREEK OWNERS ASSOCIATION INC EX: Y LOC: C1  
GRANTEE: VILLAGES OF KILN CREEK OWNERS ASSOCIATION INC EX: Y PCT: 100%  
AND ADDRESS : 1405-C KILN CREEK PARKWAY NEWPORT NEWS, VA, 23602  
RECEIVED OF : LECCLAIRRYAN DATE OF DEED: 08/28/05

CHECK: \$55.00  
DESCRIPTION 1: DECLARATION OF COVENANTS AND RESTRICTIONS PAGES: 71 O/P 0  
2: VILLAGES OF KILN CREEK OWNERS ASSOCIATION NAMES: 0  
CONSIDERATION: .00 A/V/L: .00 MAP: PIN:  
301 DEEDS 48.50 145 VSLF 1.50  
106 TECHNOLOGY TRST FND 5.00

TENDERED : 55.00  
AMOUNT PAID: 55.00  
CHANGE AMT : .00

CLERK OF COURT: REX A. DAVIS

WITNESS the following signatures and seals as of the date first above written.

VILLAGES OF KILN OWNERS ASSOCIATION,  
a Virginia non-stock corporation

BY: Charles Behymer  
Title: President

COMMONWEALTH OF VIRGINIA  
COUNTY OF YORK, to-wit:

The foregoing Second Amended and Restated Declaration of Covenants and Restrictions was acknowledged before me this 26th day of August, 2009, by Charles Behymer, President of Villages of Kiln Creek Owners Association, a Virginia nonstock corporation.

[SEAL]

Sara Marie Martin  
Notary Public

My commission expires: 3-31-2012  
Registration No: 294156

**CERTIFICATION PURSUANT TO VIRGINIA CODE SECTION 55-515.1F**

BY: Charles Behymer  
Title: President

COMMONWEALTH OF VIRGINIA  
COUNTY OF YORK, to wit:

The foregoing instrument was acknowledged before me this 26th day of August, 2009, by Charles Behymer, President of Villages of Kiln Creek Owners Association, a Virginia nonstock corporation, on behalf of the corporation, who did state and certify that the requisite percentage of Owners of Lots have voted to approve and have given their consent to and ratified such Second Amended and Restated Declaration of Covenants and Restrictions by signing a document evidencing their consent to such Second Amended and Restated Declaration of Covenants and Restrictions

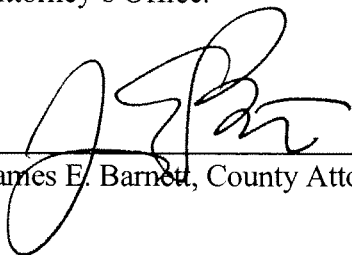
[SEAL]

Sara Marie Martin  
Notary Public

My commission expires: 3-31-2012  
Registration No: 294156



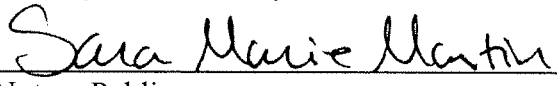
In accordance with York County Code Section 24.1-496 et seq., this Second Amended and Restated Declaration of Covenants and Restrictions of the Villages of Kiln Creek Owners Association has been approved by the County Attorney's Office.

  
James E. Barnett, County Attorney

COMMONWEALTH OF VIRGINIA  
CITY/COUNTY OF York, to wit:

The foregoing instrument was acknowledged before me this 20<sup>th</sup> day of August, 2009, by James E. Barnett, who is either personally known to me or who produced \_\_\_\_\_ as identification, as County Attorney for the County of York, on its behalf.

[SEAL]

  
Sara Marie Martin  
Notary Public

My commission expires: 3-31-2012  
Registration No: 294156

#3018833v7

## EXHIBIT A

## VILLAGES OF KILN CREEK

All those certain lots, pieces and parcels of land which were subjected to that certain instrument entitled "Villages of Kiln Creek Declaration of Covenants and Restrictions" dated May 25, 1998 and recorded June 3, 1988 in the Clerk's Office in the City of Newport News (the "Newport News Clerk's Office") in Deed Book 1176, at page 99, and in the Clerk's Office of the County of York (the "York County Clerk's Office") in Deed Book 545, at page 245 (the "Original Declaration"); as such document was amended and restated in its entirety by that certain instrument entitled "Villages of Kiln Creek Amended and Restated Declaration of Covenants and Restrictions" dated April 1, 1991 and recorded in the Newport News Clerk's Office in Deed Book 1248, at page 719, and in the York County Clerk's Office in Deed Book 612, at page 286 (the "Amended and Restated Declaration"); as such document was amended by instrument entitled "First Amendment to Amended and Restated Declaration of Covenants and Restrictions" dated August 1, 1991 and recorded in the Newport News Clerk's Office in Deed Book 1263 (1258), at page 1009 (631), and in the York County Clerk's Office in Deed Book 624, at page 565 ("First Amendment"); and by instrument entitled "Second Amendment to Amended and Restated Declaration of Covenants and Restrictions" dated September 13, 1991 and recorded in the Newport News Clerk's Office in Deed Book 1265, at page 139, and in the York County Clerk's Office in Deed Book 637, at page 577 ("Second Amendment"); and by instrument entitled "Third Amendment to Amended and Restated Declaration of Covenants and Restrictions" dated August 18, 2004 and recorded in the Newport News Clerk's Office in Deed Book 1947, at page 1995, and in the York County Clerk's Office as instrument number LR040017641 ("Third Amendment"). The foregoing Amended and Restated Declaration as amended by the First Amendment, Second Amendment and Third Amendment, is hereinafter referred to as the "First Amended and Restated Declaration." The property submitted to this Second Amended and Restated Declaration of Covenants and Restrictions includes, without limitation, all those lots, pieces and parcels of land comprising "Lots", "Common Area", and "Neighborhood Common Area" (as such terms are defined in this Second Amended and Restated Declaration of Covenants and Restrictions) previously subjected to the foregoing instruments of record by the foregoing instruments, deeds and/or by various Supplementary Declarations of Covenants and Restrictions of record in the Newport News Clerk's Office and/or in the York County Clerk's Office as applicable, for the various Neighborhoods comprising the residential subdivisions of the Villages of Kiln Creek located in the City of Newport News and the County of York, Virginia. Such Neighborhoods include, without limitation, the following Neighborhoods: Avery Woods; Cascades; Claymill Corner; Dunhill; Eagle Sound; Edgewater; Fairways; Gleneagles; Highlands; Hollingsworth; Images; Ivystone; Lake Cambridge; Lakeside; Lexington; Masters; Oakwood; Pinehurst; Players Choice; Rock Creek; Royal Cloven; Sanctuary; Shoreline; Southlake; Tradewinds; Waterford Pointe; Westgate; Willow Point; and Windbrook.

VIRGINIA: In the Clerk's Office of the York County -  
 Poquoson Circuit Court, the 28th day of  
August, 2004. This deed was  
 presented with the certificate annexed and admitted  
 to record at 9:58 o'clock A.M.

Teste: LYNN S. MENDIBUR, CLERK

By: Renee E. Withers D.C.

COMMONWEALTH OF VIRGINIA



(1143-005 508)

OFFICIAL RECEIPT  
YORK COUNTY - POPPSON CIRCUIT COURT  
DEED RECEIPT

DATE: 08/28/09 TIME: 10:06:54 ACCOUNT: 199CLN090018824 RECEIPT: 09000026000  
CASHIER: REV REG: YK52 TYPE: DEC PAYMENT: FULL PAYMENT  
INSTRUMENT : 090018824 BOOK: PAGE: RECORDED: 08/28/09 AT 09:58  
GRANTOR: VILLAGES OF KILN CREEK OWNERS ASSOCIATION EX: N LOC: CO  
GRANTEE: VILLAGES OF KILN CREEK OWNERS ASSOCIATION EX: N PCT: 100X  
AND ADDRESS :  
RECEIVED OF : Eclair Ryan DATE OF DEED: 08/25/09  
CHECK: \$55.00 1538  
DESCRIPTION 1: SECOND AMENDED AND RESIATED DECLARATION OF CO PAGES: 71 D/P: 0  
2: VENANTS AND RESTRICTIONS KILN CREEK NAMES: 0  
CONSIDERATION: .00 A/V/L: .00 MAP: PIN:  
301 DEEDS 48.50 145 VSLF 1.50  
106 TECHNOLOGY TRST FMD 5.00  
TENDERED : 55.00  
AMOUNT PAID: 55.00  
CHANGE AMT : .00

CLERK OF COURT: LYNN S. MENDIBUR