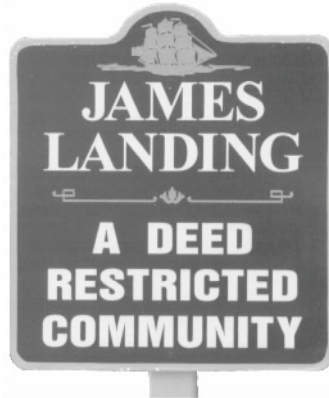


*Declaration of Covenants, Conditions, Restrictions, Reservations and Easements for James Landing (**Deed Restrictions**)*

Published by James Landing Property Owner's Association, Inc. (Version 3.03)



This version of the **James Landing Deed Restrictions** (also called Covenants, or CC&Rs) was reviewed and approved by, and is published by the James Landing Property Owners Association, Inc. (JLPOA). This version of the Deed Restrictions is intended to facilitate quick, easy reference, in a friendly format. There is no intent to change the meaning of the original documents. On the contrary, this version was painstakingly transcribed from the original deed restrictions, with minor exceptions, as noted herein. JLPOA intended, and believes that this version is essentially identical to the recorded documents in all significant aspects. Copies of this document may be requested at any JLPOA meeting for a nominal fee.

Deed Restrictions are essentially a contract between the homeowner and the James Landing Property Owners Association, Inc. The homeowner effectively signed the contract when he/she purchased property in James Landing Subdivision. Florida Statute chapter 720 requires that each James Landing Property Owner comply with James Landing governing documents, which includes these Deed Restrictions.

If a dispute arises, or clarification is needed, please refer to the original document and amendments as recorded with the Brevard County Clerk. The original documents were recorded in the Brevard County Official Records Book (ORB) as shown below. These documents should have been conveyed with the property title. Copies of the recorded documents can be purchased from the Brevard County Clerk at any time.

Notes:

1. Amendments listed below have been incorporated into this document, and the affected text is shown shaded, like this.
2. The original exhibits A-H, pages 1406-1434, surveyor descriptions of the various tracts, are not incorporated herein, but are available from the County Clerk, if needed.
3. Here are references to the original deed restrictions as recorded in the County Clerk Official Records Book (ORB):

Description:	ORB Book:	ORB Page:	ORB Date:	Remarks:
Original CC&R	2965	1361 - 1434	11-16-88	Original Deed Restrictions for James Landing
Amendment 1	2995	2425	05-10-89	Adds gaslights, street ID, Signs, etc to Common Property.
Amendment 2	3184	0468	3-5-92	Many text changes.
Amendment 3	3444	1888	12-23-94	Some text changes.
Amendment 4	3463	4177	3-22-95	Incorporates tract B-2 into CC&R.
Amendment 5	3472	1457	4-27-95	Adds text restricting the use of Common Property.
Amendment 6	3530	3854	12-22-95	Incorporates tract B-1 into CC&R.
Amendment 7	3671	0486	5-12-97	Creates perpetual Conservation Area from Tract A-A

*Declaration of Covenants, Conditions, Restrictions, Reservations and Easements
for James Landing **(Deed Restrictions)***

Published by James Landing Property Owner's Association, Inc. (Version 3.03)

[Editor's Note: An Index was created by JLPOA and inserted at the end of this document.]

Table Of Contents

ARTICLE I DEFINITIONS

1.1	Apartment Recreational Parcel
1.2	Articles
1.3	Association
1.4	Board
1.5	Bylaws
1.6	City
1.7	Commercial Parcel
1.8	Common Expenses
1.9	Common Property
1.10	County
1.11	Design Review Board
1.12	Design Standards Manual
1.13	Developer
1.14	Dwelling Unit
1.15	Government Regulations
1.16	Improvements
1.17	Lot
1.18	Master Drainage System
1.19	Multi-Family-Parcel
1.20	Owner
1.21	Plat
1.22	Signs
1.23	Single Family Parcel A
1.24	Parcel B
1.25	Subject Property
1.26	Tenant
1.27	Parcel C
1.28	Designate Conservation Area (Amendment 7)

ARTICLE II OBJECTS & PURPOSES

ARTICLE III EFFECT OF DECLARATION

3.1	Covenants Running with Land
3.2	Property Affected
3.3	Parties Affected

*Declaration of Covenants, Conditions, Restrictions, Reservations and Easements
for James Landing **(Deed Restrictions)***

Published by James Landing Property Owner's Association, Inc. (Version 3.03)

ARTICLE IV PERMITTED USES

- 4.1 Generally
- 4.2 Subdivision
- 4.3 Change in Zoning
- 4.4 Offensive Activity
- 4.5 Disposal of Waste and Rubbish
- 4.6 Excavation
- 4.7 Mineral Exploration
- 4.8 Wells
- 4.9 Storage Tanks
- 4.10 Storage of Materials and Equipment
- 4.11 Mailboxes
- 4.12 Parking
- 4.13 Maintenance
- 4.14 Drainage
- 4.15 Clotheslines
- 4.16 Window Air Conditioning Units
- 4.17 Livestock
- 4.18 Vehicles and Repair
- 4.19 Swimming Pools

ARTICLE V RESTRICTIONS ON IMPROVEMENTS

- 5.1 Regulations
- 5.2 Approved Plans
- 5.3 Temporary Improvements
- 5.4 Design Review
- 5.5 Completion of Construction

ARTICLE VI EASEMENTS

- 6.1 Utility Easements
- 6.2 Drainage Easements
- 6.3 Landscape Easement
- 6.4 Owner's Easement of Enjoyment
- 6.5 Association Easement
- 6.6 Future Easements
- 6.7 Duration of Easements
- 6.8 Dedication
- 6.9 Duty to Notify and Restore
- 6.10 Administration, Maintenance and Care
- 6.11 Conservation Area (Amendment 7)

*Declaration of Covenants, Conditions, Restrictions, Reservations and Easements
for James Landing **(Deed Restrictions)***

Published by James Landing Property Owner's Association, Inc. (Version 3.03)

ARTICLE VII COMMON PROPERTY

- 7.1 Conveyance by Developer
- 7.2 Additional Property
- 7.3 Restriction on Use
- 7.4 Encumbrance as Security
- 7.5 Use by Owners
- 7.6 Waiver of Use
- 7.7 Exculpation of Liability and Responsibility
- 7.8 Master Drainage System Amendment (Amendment 2)
- 7.9 Common Property Improvement Restrictions (Amendment 5)

ARTICLE VIII ASSOCIATION; PURPOSES, DUTIES AND POWERS

- 8.1 Objects, Purposes and Function
- 8.2 Duties and Powers Generally
- 8.3 Duties of Association
- 8.4 Powers of Association
- 8.5 Limitations and Restrictions on Power of Associations

ARTICLE IX ASSOCIATION; MEMBERSHIP AND VOTING RIGHTS

- 9.1 Membership
- 9.2 Transfer of Membership
- 9.3 Members' Rights
- 9.4 Vesting of Voting Rights
- 9.5 Voting Rights (Amendment 2)
- 9.6 Approval of Members

ARTICLE X ASSESSMENTS

- 10. 1 Assessments for Common Expenses
- 10.2 Common Expenses
- 10.3 Use of Assessments
- 10.4 Lien for Assessments
- 10.5 Personal Liability For Assessments
- 10.6 Assessments
- 10.7 Notice of Assessments
- 10.8 Commencement of Assessments
- 10.9 Insufficient Regular Assessments (Amendment 2)
- 10.10 Limitation on Increases (Amendment 2)
- 10.11 Payment of Assessments

*Declaration of Covenants, Conditions, Restrictions, Reservations and Easements
for James Landing **(Deed Restrictions)***

Published by James Landing Property Owner's Association, Inc. (Version 3.03)

- 10.12 Developer Option This section deleted (Amendment 2).
- 10.13 Reserves
- 10.14 Quorum for Action Authorized under Sections 10.10, 10.15 and 10.16
- 10.15 Capital Expenditure Assessments
- 10.16 Special Assessments
- 10.17 Individual Lot Assessments
- 10.18 Exempt Property
- 10.19 Subordination of Assessment Lien
- 10.20 Certificate of Assessments Due
- 10.21 No Defense or Offsets
- 10.22 Maximum Annual Assessment

ARTICLE XI NON-PAYMENT OF ASSESSMENTS

- 11.1 Delinquency
- 11.2 Notice of Lien
- 11.3 Foreclosure of Assessment Lien
- 11.4 Collection from Owner
- 11.5 Judgment Amount
- 11.6 Satisfaction of Lien

ARTICLE XII ARCHITECTURAL AND LANDSCAPE CONTROL

- 12.1 Design Review Board (Amendment 3)
- 12.2 Appointment of Design Review Board
- 12.3 Purpose and Function of Design Review Board
- 12.4 All Improvements Subject to Approval
- 12.5 Design Standards This section deleted (Amendment 3).
- 12.6 Procedure for Design Review This section deleted (Amendment 3).
- 12.7 Time Limitation on Review
- 12.8 Appeal of Design Review Board Decisions
- 12.9 Duration of Approval
- 12.10 Inspection of Construction
- 12.11 Evidence of Compliance
- 12.12 Interior Construction Exempt
- 12.13 Developer Exempt (Amendment 2)
- 12.14 Exculpation for Approval or Disapproval of Plans
- 12.15 Consistent Construction Style (Amendment 2)

*Declaration of Covenants, Conditions, Restrictions, Reservations and Easements
for James Landing **(Deed Restrictions)***

Published by James Landing Property Owner's Association, Inc. (Version 3.03)

ARTICLE XIII AMENDMENT

- 13.1 Amendment by Developer
- 13.2 Amendment by Association
- 13.3 Manifestation of Requisite Consent
- 13.4 Effectiveness of Amendments
- 13.5 Limitations on Amendments (Amendment 2)

ARTICLE XIV RECREATIONAL PARCEL

ARTICLE XV DURATION

ARTICLE XVI ENFORCEMENT

- 16.1 Parties Entitled to Enforce
- 16.2 Limitations on Enforcement Rights
- 16.3 Attorneys' Fees
- 16.4 No Waiver
- 16.5 Nuisance
- 16.6 Cumulative Rights and Remedies
- 16.7 Effect of Invalidation
- 16.8 Exculpation

ARTICLE XVII MISCELLANEOUS PROVISIONS

- 17.1 Constructive Notice and Acceptance
- 17.2 Personal Covenants
- 17.3 Governing Law
- 17.4 Construction
- 17.5 Article and Section Headings
- 17.6 Singular Includes Plural
- 17.7 Time of Essence
- 17.8 Notice
- 17.9 Development and Construction by Developer
- 17.10 Assignment of Developer's Rights and Interests
- 17.11 No Warranties

[Editor's Note: Index created by JLPOA and inserted at end of document.]

*Declaration of Covenants, Conditions, Restrictions, Reservations and Easements
for James Landing (Deed Restrictions)*

Published by James Landing Property Owner's Association, Inc. (Version 3.03)

Declaration of Covenants, Conditions, Restrictions, Reservations and Easements for James Landing.

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS RESERVATIONS AND EASEMENTS FOR JAMES LANDING (hereinafter referred to as the "Declaration") is made and executed this 16th day of November, 1988, by LINPRO MELBOURNE LAND LIMITED PARTNERSHIP and LINPRO MELBOURNE APARTMENT I LIMITED PARTNERSHIP, both Florida limited partnerships, and LINPRO MELBOURNE SINGLE FAMILY I LIMITED PARTNERSHIP, a Delaware limited partnership (hereinafter referred to as the "Developer"). [Editor's Note: The Developer name changes from time to time. Linpro was the Developer at the time of writing the original Deed Restrictions. As of 9-13-1994, Developer's Rights were assigned to Metro Development Co., Melbourne FL, as recorded in Brevard County Clerk Official Records Book 3420, page 3971.]

WITNESSETH:

WHEREAS, the Developer is the record owner of a fee simple title to certain real property situate in Brevard County, Florida more particularly described on Exhibit "A" attached hereto and by this reference made a part hereof (hereinafter referred to as the "Subject Property"); and

WHEREAS, the developer intends to develop the Subject Property as a planned development encompassing general commercial, single-family residential and multi-family residential uses to be known as "James Landing" (which project is hereinafter referred to as "James Landing"); and

WHEREAS, the Subject Property presently is zoned as a planned development under the applicable zoning regulations of the City of Melbourne, Florida pursuant to a decision of the City Council of Melbourne, Florida made on July 8, 1986 (which approval is hereinafter referred to as the "Zoning Approval"); and

WHEREAS, The Development of the Subject Property also is and shall be subject to: (i) the terms and conditions of approval for James Landing issued by the City Commission of the City of Melbourne, Florida, as set forth in the preliminary plat/subdivision plan approvals for James Landing dated February 10, 1987 and July 24, 1987; (ii) any modifications of or amendments to the foregoing effectuated by appropriate action of the Developer and the City of Melbourne, their successors and assigns; and (iii) any future approvals, conditions, rules, regulations or ordinances relating to the Developer and the City of Melbourne, their successors and assigns (all of the foregoing being hereinafter referred to as the "Development Approvals") (with the Zoning Approval and the Development Approvals being sometimes hereinafter together referred to as the "Land Use Approvals"); and

WHEREAS, the Developer wishes to ensure that the Subject Property is subdivided, developed, improved, occupied, used and enjoyed pursuant to a uniform plan of development with consistently high environmental, architectural, engineering and aesthetic standards so as to

*Declaration of Covenants, Conditions, Restrictions, Reservations and Easements
for James Landing (Deed Restrictions)*

Published by James Landing Property Owner's Association, Inc. (Version 3.03)

create a unique, efficient, pleasant and attractive physical environment which will contribute to and enhance the commercial and residential activities of the owners, occupants and guests of James Landing; and

WHEREAS, the Developer desires that each lot, parcel, piece or tract of real property located within James Landing shall be subject to uniform covenants, conditions, restrictions, reservations, easements and design standards, all as hereinafter set forth; and

WHEREAS, the Developer has deemed it desirable, for the efficient preservation of the values and amenities in James Landing, to create a master, "umbrella" property owners', association to which shall be assigned and delegated the power and authority to operate, maintain and administer certain designated common area properties and facilities within James Landing, to administer and enforce this Declaration and to assess, collect and disburse the assessments and charges hereinafter created; and

WHEREAS, the Developer has incorporated the JAMES LANDING PROPERTY OWNERS' ASSOCIATION, INC., a non-profit corporation existing under the laws of the State of Florida, for the purpose of exercising the aforescribed powers and duties of a master property owners' association; and

WHEREAS, Various development tracts within the Subject Property may be developed by either Developer or other parties into fee simple, single family residential, multi-family residential and commercial developments, each of which may have a property owners' association and a declaration of restrictive covenants for the purpose of governing and administering the development, use and occupancy of said residential and commercial tracts subject in all respects to the terms and conditions of this Declaration;

NOW THEREFORE, for and in consideration of the premises hereof, the Developer does hereby declare that the Subject Property shall be and is hereby made a part of James Landing and does hereby impose upon the Subject Property those covenants, conditions, restrictions, reservations and easements hereinafter set forth, and further declares that the Subject Property shall be owned, held, transferred, sold, conveyed, assigned, leased, subleased, mortgaged and occupied subject to the covenants, conditions, restrictions, reservations and easements hereinafter set forth.

*Declaration of Covenants, Conditions, Restrictions, Reservations and Easements
for James Landing (**Deed Restrictions**)*

Published by James Landing Property Owner's Association, Inc. (Version 3.03)

ARTICLE I Definitions

For purposes of this Declaration, the following terms shall have the following definitions and meanings:

1.1 "Apartment Recreational Parcel" shall mean and be defined as that portion of the Multi-Family Parcel containing approximately 1.55 acres more particularly described and depicted on exhibit "B" attached hereto and by this reference made a part hereof. The Apartment Recreational Parcel shall include such amenities and recreational facilities as may be constructed on the Apartment Recreational Parcel, including, without limitation, one or more pools, a spa, tennis courts and a clubhouse. The Apartment Recreational Parcel is designated on the Plat as "Tract A-R."

1.2 "Articles" shall mean and be defined as the Articles of Incorporation of the Association, together with any amendments or modifications thereto

1.3 "Association" shall mean and be defined as James Landing Property Owners' Association, Inc., a non-profit corporation organized and existing under the laws of the State of Florida, its successors and assigns.

1.4 "Board" shall mean and be defined as the Board of Directors of the Association.

1.5 "Bylaws" shall mean and be defined as the Bylaws of the Association as adopted from time to time, together with any modifications or amendments thereto.

1.6 "City" shall mean and be defined as the City of Melbourne, Florida.

1.7 "Commercial Parcel" shall mean and be defined as that portion of the Subject Property containing approximately 1.65 acres more particularly described on Exhibit "C" attached hereto and by this reference made a part hereof. The Commercial Parcel also is designated on the Plat as "Tract C."

1.8 "Common Expenses" shall mean and be defined as those costs and expenses of the Association more particularly identified and described in Article VIII of this Declaration.

1.9 "Common Property" shall mean and be defined as all real property (including any Improvements thereto) and personal property from time to time owned by the Association for the common use, enjoyment and benefit of all Owners, including, without limitation, such portions of the Subject Property which are conveyed to the Association by the Developer as more particularly provided in Section 7.1 of this Declaration. More specifically, Common Property shall be those portions of the Subject Property more particularly described on Exhibit "D" attached hereto and by this reference made a part hereof. The Common Property also is designated on

*Declaration of Covenants, Conditions, Restrictions, Reservations and Easements
for James Landing **(Deed Restrictions)***

Published by James Landing Property Owner's Association, Inc. (Version 3.03)

the Plat as "Tracts D, E, G, H, J, K, R, S, T, U, V, W and X," inclusively, and furthermore shall include all natural gas street lighting and all street identification and/or traffic signs located within the subject property, whether or not the same are located on common Property or within publicly dedicated rights of way or easements.

1.10 "County" shall mean and be defined as Brevard County, Florida.

1.11 "Design Review Board" shall mean and be defined as the committee of the Association consisting of not less than three (3) persons appointed by the Association, responsible for assuring compliance with and the administration and enforcement of the covenants, conditions, restrictions and reservations set forth in this Declaration. The Design Review Board shall be and hereby is authorized to:

- (a) Promulgate and amend from time to time the Design Standards Manual.
- (b) Review and approve all plans for the construction or placement of Improvements on the Subject Property in accordance with the covenants, conditions, restrictions, reservations and easements herein contained; and
- (c) Undertake such other responsibilities with respect to said covenants, conditions, restrictions, reservations and easements as may from time to time be authorized by the Association.

The specific authority, composition, and procedures of the Design Review Board are more particularly set forth in Article 12 of this Declaration.

1.12 "Design Standards Manual" shall mean and be defined as that document or those documents adopted, promulgated and published by the Design Review Board, as the same shall be amended from time to time, setting forth architectural and landscape design objectives, standards, specifications and other criteria to be used as the standard for determining compliance with this Declaration. The Design Standards Manual shall determine and direct the suitability and acceptability of those components of buildings, structures, landscaping and other improvements constructed, erected or installed upon the Subject Property. The Design Standards Manual shall establish the acceptable objectives, standards, specifications and criteria for typical design elements including, but not limited to, site planning construction, architecture, landscaping, drainage, signage, lighting, parking and utilities.

1.13 "Developer" shall mean and be defined as LINPRO MELBOURNE LAND LIMITED PARTNERSHIP AND LINPRO MELBOURNE APARTMENT I LIMITED PARTNERSHIP, both Florida limited partnerships, and their successors and assigns (whether by merger, consolidation or by purchase of all or substantially all of its assets), if such successors and assigns shall acquire more than one undeveloped Lot from the Developer for the purpose of development.

*Declaration of Covenants, Conditions, Restrictions, Reservations and Easements
for James Landing (**Deed Restrictions**)*

Published by James Landing Property Owner's Association, Inc. (Version 3.03)

1.14 "**Dwelling Unit**" shall mean and be defined as any building or portion thereof constructed on a Lot and intended for use and occupancy as a residence by a single family, as to which Dwelling Unit a certificate of occupancy has been issued by the applicable governmental authority. For the purposes of this Declaration, a Dwelling Unit shall include, without limitation, a single-family detached house, a condominium unit, an apartment, and a townhouse unit.

1.15 "**Governmental Regulations**" shall mean and be defined as all applicable laws, statutes, codes, ordinances, rules, regulations, limitations, restrictions, orders, judgments or other requirements of any governmental authority having Jurisdiction over the Subject Property or any Improvements constructed or located thereon.

1.16 "**Improvements**" shall mean, be defined as and include any buildings, houses, apartments, townhouses, outbuildings, structures, parking or loading areas, roadways, driveways, walkways, storage areas, recreational facilities, poles, pipes, drainage structures, signs, lighting fixtures, antennae and other equipment for the receipt or transmission of radio and television signals, below ground swimming pools, fences, walls and all other structures, facilities and improvements of any kind, 'nature or description constructed, erected, installed or located on a Lot, and any replacements, additions, or alterations thereto.

1.17 "**Lot**" shall mean each separate parcel of real property with the Subject Property which is initially sold or conveyed by the Developer as such parcel is described in the initial instrument of conveyance by the Developer, except that two or more contiguous Lots under common ownership shall be deemed to be a single Lot. The term "Lot" shall not include any of the Common Property. For the purposes thereof, the term "Lot" shall also include the Commercial Parcel and the Multi-Family Parcel, respectively, regardless of whether either is conveyed by Developer to another party.

1.18 "**Master Drainage System**" shall mean and be defined as the overall stormwater drainage system for James Landing as more particularly depicted and described in the plans and specifications therefor as set forth in the Design Standards Manual and approved by the City, as described in the Plat and as provided in any agreement between the Developer and the City or between the Association and the City, all as modified from time to time (with all of the foregoing being hereinafter together referred to as the "Drainage Plans"). The term "Drainage Plans" shall include, without limitation, that certain Storm Water Maintenance Agreement by and between the City and the Developer dated October 23, 1988; all of the terms and conditions of said Storm Water Maintenance Agreement, as amended from time to time, are by this reference made a part hereof as if fully set forth herein.

1.19 "**Multi-Family Parcel**" shall mean and be defined as that portion of the Subject Property containing approximately 20.14 acres more particularly described on Exhibit "E" attached hereto and by this reference made a part hereof. The Multi-Family Parcel also is designated on the Plat as "Tracts A and A-R," inclusive.

*Declaration of Covenants, Conditions, Restrictions, Reservations and Easements
for James Landing (**Deed Restrictions**)*

Published by James Landing Property Owner's Association, Inc. (Version 3.03)

1.20 "Owner" shall mean and be defined as one or more persons or entities who or which are alone, or collectively, the record owner of fee simple title to any lot within the subject Property, including the Developer and its successors and assigns, but excluding those having an interest in any such Lot merely as security for the payment of a debt or the performance of any obligations.

1.21 "Plat" shall mean and be defined as the Plat of James Landing, according to the Plat thereof, as recorded in Plat Book 35, Page 34 of the Public Records of Brevard County, Florida, together with all amendments or modifications thereto and any replats of all or a portion thereof. All of the terms and conditions of the Plat are hereby specifically incorporated herein and by this reference made a part hereof as if the same were set forth in this Declaration in full. In the event of a conflict or ambiguity between the terms and conditions of the Plat and the terms and conditions of this Declaration, the terms and conditions of the Plat shall control.

1.22 "Signs" shall mean all names, insignia, trademarks, logos and descriptive words or material of any kind affixed, inscribed, erected or maintained upon the Subject Property or upon any Improvement located thereon.

1.23 "Single Family Parcel A" shall mean and be defined as that portion of the Subject Property containing approximately 12.14 acres more particularly described on Exhibit "F" attached hereto and by this reference made a part hereof. Single family Parcel A also is designated on the Plat as Blocks 1 through 5, inclusive.

1.24 "Parcel B" shall mean and be defined as that portion of the subject Property containing approximately 14.93 acres more particularly described on Exhibit "G" attached hereto and by this reference made a part hereof. Parcel B also is designated on the Plat as "Tract B-2."

1.25 "Subject Property" Shall mean the land described on Exhibit "A" attached hereto and depicted on Exhibit "A-1" attached hereto and by this reference made a part hereof.

1.26 "Tenant" shall mean and be defined as one or more persons or entities who or which are, alone or collectively, the owner or holder of a leasehold interest in and to all or any portion of a Dwelling Unit or another Improvement. For the purposes of this Declaration: (i) the term "Commercial Tenant" shall mean and be defined as any Tenant of an Improvement which is designated for non-residential use under the Land Use Approvals; and (ii) the term "Residential Tenant" shall mean and be defined as any Tenant of a Dwelling Unit.

1.27 "Parcel C" shall mean and be defined as that portion of the Subject Property containing approximately 10.88 acres more particularly described on Exhibit "H" attached hereto and by this reference made a part hereof. Parcel C also is as designated on the Plat as Tract "B-1."

*Declaration of Covenants, Conditions, Restrictions, Reservations and Easements
for James Landing (**Deed Restrictions**)*

Published by James Landing Property Owner's Association, Inc. (Version 3.03)

1.28 "Conservation Area" That portion of "Tract A-A" shown as Exhibit "A" to this Amendment shall mean and be classified as a conservation area, which is further described in Section 6.11 of this Declaration. (Amendment 7)

ARTICLE II OBJECTS & PURPOSES

The covenants, conditions, restrictions, easements and reservations set forth in this Declaration are hereby imposed upon the Subject Property for the following objects and purposes:

- (a) To establish James Landing, in general, and the Subject Property, in particular, as a premier residential, and commercial development and to foster and contribute to the development of the City;
- (b) To create, develop, foster, maintain and preserve within James Landing a unique, efficient, pleasant and attractive physical environment which will contribute to and enhance the residential and commercial activities of the Owners, Tenants, residents, occupants and guests of James Landing;
- (c) To ensure that the development of James Landing will proceed pursuant to a uniform plan of development with consistently high environmental, architectural and aesthetic standards;
- (d) To ensure the proper and appropriate subdivision, development, improvement, occupation, use and enjoyment of each Lot within James Landing;
- (e) To encourage the development, construction, maintenance and preservation of architecturally and aesthetically attractive and harmonious improvements appropriately designed and properly located on each Lot with James Landing;
- (f) To guard against the development and construction of improper, undesirable, unattractive or inappropriate Improvements constructed of improper, undesirable, unsuitable or unsightly materials;
- (g) To provide for the future ownership, administration, management, improvement, care, maintenance and preservation of all Common Property within James Landing;
- (h) To provide for the establishment, maintenance, preservation and enhancement of consistently high property values within James Landing;
- (i) To ensure and maintain the proper setback of Improvements from Longview Drive and other streets and adjacent Lots and Improvements;

*Declaration of Covenants, Conditions, Restrictions, Reservations and Easements
for James Landing (**Deed Restrictions**)*

Published by James Landing Property Owner's Association, Inc. (Version 3.03)

(j) To ensure that all landscaping, lighting, sign, pedestrian and traffic facilities are constructed and maintained in a uniform, compatible and controlled manner in order to encourage and promote the development and use of James Landing in a pleasant, park-like manner; and

(k) In general, to provide a high quality of development within James Landing and on the Subject Property.

In that regard, the purpose and intent of this Declaration is to establish a master, "umbrella" property owners association to provide facilities and services on a broad basis for the administration and development of the James Landing project in general. It is the intent of the Developer hereunder that, if necessary, a separate "sub-association" will be established for each of the Single Family Parcel A, Parcel B and Parcel C developments.

ARTICLE III EFFECT OF DECLARATION

3.1 Covenants Running with Land. This Declaration and each and every one of the covenants, conditions, easements, restrictions and reservations contained herein are hereby declared to and shall hereafter be covenants running with the title to the lands upon which the same are hereby imposed as an encumbrance.

3.2 Property Affected. This Declaration and the covenants, conditions, easements, restrictions and reservations set forth herein shall be binding upon, inure to the benefit of and constitute a burden upon all of the Subject Property. Accordingly, all Lots, pieces, parcels and tracts of land within the Subject Property shall hereafter be owned, held, transferred, sold, conveyed, assigned, leased, mortgaged, occupied, used and enjoyed subject to and benefited and burdened by this Declaration and the covenants, conditions, easements, restrictions and reservations contained herein.

3.3 Parties Affected. This Declaration shall be binding upon, inure to the benefit of and be enforceable by all Owners and Tenants of such lands, including the Developer and the Association, and all other persons having or claiming any right, title or interest therein. Accordingly, each and every person or party who or which shall hereafter acquire, have or claim any right, title or interest in or to any Lot, piece, parcel or tract of land within the Subject Property, whether by, through or under the Developer or any subsequent Owner shall, by virtue of the acceptance of any such right, title, interest or claim, whether by deed, lease or other instrument, or by operation of law or otherwise, and whether voluntarily or involuntarily, be deemed to have acquired and accepted such right, title, interest or claim in or to any such Lot, piece, parcel or tract of the Subject Property subject to and benefited and burdened by each and every one of the covenants, conditions, easements, restrictions and reservations set forth herein the same as if such person or party had specifically joined in or agreed and consented to each

*Declaration of Covenants, Conditions, Restrictions, Reservations and Easements
for James Landing **(Deed Restrictions)***

Published by James Landing Property Owner's Association, Inc. (Version 3.03)

and every one of the terms and provisions of this Declaration and the same as if each and every one of the covenants, conditions, easements, restrictions and reservations set forth in this Declaration had been fully set forth in any instrument of conveyance or lease pursuant to which such right, title, interest or claim was acquired.

ARTICLE IV PERMITTED USES

4.1 Generally. To the extent that a particular use shall otherwise comply with the covenants, conditions, easements, restrictions and reservations set forth in this Declaration, the Subject Property may be used for those residential and general commercial uses permitted in the Land Use Approvals, together with all other uses reasonably incidental to or in support of any facilities or Improvements located or constructed on the Subject Property and those uses reasonably incidental to or in support of activities or operations conducted on the Subject Property which are devoted to a use permitted pursuant to the terms and provisions of this Declaration or the Land Use Approvals; provided, however, that any such incidental or support uses are Previously approved in writing by the Association. Notwithstanding the foregoing, however, the Owners and Tenants of the Commercial Parcel and the Multi-Family Parcel shall not be required to obtain the approval of the Association for such incidental or support uses.

4.2 Subdivision. A Lot shall not be subdivided, nor shall a portion thereof less than the entire Lot be sold, conveyed, transferred or leased without the prior written consent of the Developer; moreover, in any event any such subdivision shall conform to and comply with all Governmental Regulations.

4.3 Change in Zoning. No zoning variances, special zoning exceptions or conditional uses shall be sought or obtained for any Lot without the prior written approval of the Developer. Such written approval shall be obtained from the Developer prior to the submission of any such zoning request to the governmental authority or agency having jurisdiction over such zoning variances, special zoning exceptions or conditional uses.

4.4 Offensive Activity. No illegal, noxious, unpleasant, unsightly or offensive activity or operation shall be conducted on any Lot or any other portion of the Subject Property, nor shall anything be done or conducted thereon which may be or tend to become or cause an unreasonable annoyance or nuisance, whether public or private, to the Owners, Tenants, residents, occupants or guests of any adjacent or neighboring Lot or which may be or tend to become an interference with the comfortable and quiet use, occupation or enjoyment, of any other Lot or any Common Property. All on-site operations and activities on a Lot shall be conducted with reasonable and appropriate precautions against fire, explosion and other casualties and hazards.

4.5 Disposal of Waste and Rubbish. All garbage, waste and rubbish shall be stored, treated and disposed of in such a manner so as to comply with at all times the terms and conditions of this

*Declaration of Covenants, Conditions, Restrictions, Reservations and Easements
for James Landing (**Deed Restrictions**)*

Published by James Landing Property Owner's Association, Inc. (Version 3.03)

Declaration, the Design Standards manual, the rules and regulations promulgated by the Association and all Governmental Regulation.

4.6 Excavation. No clearing, tree removal or excavation of a Lot shall be done except in connection with the approved construction, maintenance or repair of an Improvement. Upon the completion of any such excavation, exposed openings shall be backfilled and disturbed ground shall be leveled, graded and seeded or planted in accordance with the approved plans for such construction, maintenance or repair.

4.7 Mineral Exploration. No exploration, mining, quarrying or drilling for or exploitation of gas, oil, phosphate or other minerals of any type or kind shall be permitted or conducted on any Lot.

4.8 Wells. No well for the production, of water, whether potable or irrigation or other limited purposes only, shall be dug, drilled or otherwise permitted on a Lot without the prior written consent of the Developer.

4.9 Storage Tanks. No storage tanks, including, but not limited to, these used for the storage of water, propane gas, fuels, chemicals or other hazardous wastes, shall be permitted on a Lot unless first approved in writing by the Design Review Board. The Design Review Board may condition any such approval on such reasonable requirements with respect thereto as it, in its sole discretion, may deem appropriate, taking into account all Governmental Regulations, the nature of the materials to be stored and the nature, size and location of the proposed storage tank.

4.10 Storage of Materials and Equipment. Except during the construction of Improvements, no materials, supplies or equipment shall be stored on a lot except inside a building or structure, or behind a visual barrier, which shall have been previously approved in writing by the Design Review Board. Stored materials supplies and equipment shall at all times be screened from street rights-of-way and adjacent or neighboring properties.

4.11 Mailboxes. Except as may be otherwise approved by the Design Review Board or required by Governmental Regulations, all mailboxes shall be located within or attached to a building or other structure built for the purpose of containing or housing such mailboxes.

4.12 Parking. No parking shall be permitted on a Lot in areas other than parking areas previously approved in writing by the Design Review Board in accordance with the Design Standards Manual.

4.13 Maintenance. Each Lot and all Improvements and landscaping located thereon shall at all times be kept and maintained in a safe, wholesome, attractive and clean condition, and shall not be allowed to deteriorate, fall into disrepair or become unsafe or unsightly. In the event of a violation of or failure to comply with the foregoing requirements or any related rules and regulations promulgated by the Association, and the failure or written refusal of the Owner of the

*Declaration of Covenants, Conditions, Restrictions, Reservations and Easements
for James Landing (**Deed Restrictions**)*

Published by James Landing Property Owner's Association, Inc. (Version 3.03)

affected Lot, within fifteen (15) days following written notice from the Association of such violation or non-compliance and the nature thereof, to cure such violation, then the Association or its appointed agents or employees shall have and are hereby granted the right and privilege and an easement and license to enter upon the affected Lot or any portion or portions thereof or Improvements located thereon for the purpose of undertaking such acts or actions as may be reasonably necessary to cure or eliminate such violation: all at the sole cost and expense of the Owner of the affected Lot. Such costs and expenses, together with an overhead expense equal to fifteen percent (15%) thereof, shall be assessed to and paid by the Owner of the affected Lot to the Association within thirty (30) days after receipt of written notice of the amount due therefor. Any such assessment not paid within said thirty (30) day period shall become a lien on the affected Lot in accordance with the provisions of Article XI of this Declaration.

4.14 Drainage. All stormwater from any Lot shall be removed from such Lot by means of facilities constructed in or on contiguous or adjacent street rights-of-way, drainage easements, retention areas or Common Property, pursuant to the plans and specifications for the Improvements installed or constructed upon such Lot as approved by the Design Review Board in accordance with the Master Drainage System for James Landing, as provided hereunder. Stormwater from any Lot shall not be permitted or allowed to drain or flow onto, over, under, across or upon any contiguous or adjacent Lot unless a drainage easement shall exist therefor. No Owner shall be permitted to alter the grade of or original drainage plan for any Lot, nor shall any Owner alter or remove any drainage or environmental berm or swale on any lot or divert any stormwater drainage over, under, through or around any such berm or swale, except as provided in or permitted by the Design Standards Manual or the Drainage Plans.

4.15 Clotheslines. No clotheslines shall be placed on any Lot at any time.

4.16 Window Air Conditioning Units. No window air conditioning units shall be permitted in any Dwelling Unit.

4.17 Livestock. No livestock, horses, poultry or animals of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other customarily domesticated household pets may be kept, provided that the same are not kept, bred or maintained for any commercial purposes. All Owners and Tenants who own or keep dogs, cats or other customarily domesticated household pets pursuant to this provision shall be obligated to comply with and abide by all Governmental Regulations for the ownership and keeping of such animals. In addition, all Owners and Tenants who own or keep dogs, cats or other customarily domesticated household pets shall maintain all areas in which such animals are kept in a safe, neat, clean and sanitary condition at all times, and no such pet shall be allowed to engage in any activity or behavior which would constitute offensive activity under Section 4.4 of this Declaration. The terms and provisions of this Section 4.17 shall not apply to the Commercial Tract.

4.18 Vehicles and Repair. Parking of commercial vehicles on any streets, driveways or any other portions of the Subject Property at any time is prohibited except for loading or unloading

*Declaration of Covenants, Conditions, Restrictions, Reservations and Easements
for James Landing **(Deed Restrictions)***

Published by James Landing Property Owner's Association, Inc. (Version 3.03)

purposes, or during the progress of construction or repair of improvements constructed on the Subject Property. For the purposes hereof, commercial vehicles shall be deemed to include any trucks, tractor trailers, semi-trailers and commercial trailers and other vehicles and trailers commonly used for commercial purposes; provided, however, the foregoing, shall not be deemed to include pickup trucks of two tons or less, or jeep-type vehicles. Boats, boat trailers and recreational vehicles may be parked only in an enclosed garage or in the backyard of a Dwelling Unit provided that such backyards are fenced and that such boats, boat trailers and recreational vehicles are parked in such a manner so as not to be seen from the street or any other Lot. No recreational vehicle or other vehicle may be used for residential purposes, except that a guest of an Owner or a Tenant of a Lot may use a recreational vehicle for temporary residential purposes, provided that such temporary use does not continue for a period in excess of seventy-two (72) hours and that such recreational vehicle is otherwise parked or stored in accordance with the requirements of this Declaration. There shall be no major repairs performed on any motor vehicle on any portion of the Subject Property, except that such major repairs may be performed inside an enclosed garage or storage room only and provided that such repairs shall not be visible from the street or other Lots and that such repairs do not create excessive noise, odor or other nuisance. Only passenger vehicles (excluding recreational vehicles), pickup trucks of two tons or less and jeep-type vehicles may be parked on any street or driveways within the Subject Property. No vehicles may be parked on lawns at any time. The terms and provisions of this Section 4.18 shall not apply to the Commercial Tract.

4.19 Swimming Pools. No above ground swimming pools shall be placed or permitted to remain on the Subject Property or any part thereof. In addition to the foregoing, the Owner of any Lot upon which a below ground swimming pool is located shall be obligated at all times to maintain such swimming pool in a safe and clean manner in accordance with Section 4.13 and Article IV of this Declaration, provided, however, that nothing in this Declaration shall be deemed to prevent Developer, or any Owner of Single Family Parcel A, Parcel B, or Parcel C (referred to herein collectively as the "Single Family Parcels"), or any successor or assign of any of them, from installing a below ground swimming pool on any portion of any single family Parcel. (Amendment 2)

No uses other than the foregoing shall be permitted except with the express prior written consent and approval of the Developer.

*Declaration of Covenants, Conditions, Restrictions, Reservations and Easements
for James Landing (**Deed Restrictions**)*

Published by James Landing Property Owner's Association, Inc. (Version 3.03)

ARTICLE V RESTRICTIONS ON IMPROVEMENTS

The erection, placement, construction and installation of all buildings, structures, and other improvements or facilities on a Lot or any other portion of the Subject Property shall be subject to and governed by the following covenants, conditions, restrictions and reservations, to wit:

5.1 Regulations. All buildings, structures and other Improvements located or constructed on the Subject Property shall comply with all Governmental Regulations, the Land Use Approvals and all rules and regulations promulgated by the Association.

5.2 Approved Plans. All buildings, structures and other Improvements must be constructed in accordance with detailed plans and specifications prepared by licensed architects and engineers in conformance with all Governmental Regulations and the Design Standards Manual and approved by the Design Review Board prior to the commencement of construction, all as more particularly provided in Article VII of this Declaration. In addition, all buildings, structures and other Improvements shall be located, erected, constructed and installed in conformance with the Design Standards Manual for which provision is made in Article XII of this Declaration.

5.3 Temporary Improvements. No buildings, structures, Improvements or other facilities of a temporary nature, including trailers, tents or shacks, shall be permitted on a Lot. Provided, however, that temporary Improvements or facilities used solely in connection with and during the period of the construction of approved permanent Improvements shall be permitted during the period of the construction of such Improvements so long as the same are located as inconspicuously as possible and are removed immediately following the completion of such construction. The location of such temporary improvements during construction shall be approved by the Design Review Board. The terms and provisions of this Section 5.3 shall not apply to any tent erected in the backyard of any residential Lot, provided, however, that no such tent shall remain erected for a period in excess of seventy-two (72) hours.

In addition, the terms and conditions of this Section 5.3 shall not apply to any temporary Improvements constructed and used by the Developer (or any successor developer or builder) in connection with the development of, construction of permanent Improvements on and marketing of such development on all or a portion of the Subject Property. Provided, however, that the Developer (and any successor developer or builder) shall be obligated to remove such temporary Improvements with reasonable promptness upon the completion of such development, construction or marketing, and all such temporary Improvements at all times shall be maintained in a safe, sanitary and neat condition and shall otherwise comply with the terms and conditions of this Declaration.

5.4 Design Review. Except for repair and restoration of Improvements to their pre-existing

*Declaration of Covenants, Conditions, Restrictions, Reservations and Easements
for James Landing **(Deed Restrictions)***

Published by James Landing Property Owner's Association, Inc. (Version 3.03)

condition, no construction or exterior alteration or painting of buildings, utilities, signs, pavement, fencing, landscaping and other Improvements may be initiated, without the review and prior written approval of the plans and specifications for such construction or alteration by the Design Review Board. The procedure for submission and the content of such plans shall be in conformity with planning and design criteria promulgated and amended from time to time by the Design Review Board and published by it in the Design Standards Manual. The Association shall ensure that the Design Standards Manual is reasonably available for inspection and review by Owners and Tenants.

The Design Review Board shall either approve or disapprove in writing any plans or other materials submitted to it within thirty (30) days from the date of submission. The failure of the Design Review Board to either approve or disapprove the same in writing within such thirty (30) day period shall be deemed to be and constitute an approval of said plans or other materials: subject, however, at all times to the covenants, conditions, restrictions and other requirements contained in this Declaration. Any decision by the Design Review Board may be appealed to the Board. The appeal shall be effected by delivering to the Board within ten (10) calendar days of the decision being appealed a written notice of appeal and the nature thereof. The Board shall schedule a meeting to hear the appeal within fifteen (15) days following its receipt of such notice of appeal and a majority vote of those Board members present and voting shall be dispositive thereof. Approval (by either the Design Review Board or the Board, as the case may be) shall be effective for a period of one (1) year from the date the approval becomes effective. If the approved construction has not commenced within said one (1) year period, the approval shall expire, and no construction shall thereafter commence without a renewal of such prior approval. Nothing herein contained shall be construed so as to require the submission of plans or specifications for the alteration of the interior of an existing building, or the approval thereof, unless any planned interior alteration will substantially change the primary use of the building, structure or Improvement affected by such alteration.

5.5 Completion of Construction. After commencement of construction of any Improvements upon a Lot, such construction shall be diligently and continuously prosecuted to the end that Improvements shall not remain in an unfinished condition any longer than is reasonably necessary for completion thereof. The Owner or Tenant of a Lot on which Improvements are being constructed shall at all times during the construction period keep all streets or roads contiguous or adjacent to the Lot free from any dirt, mud, garbage, trash or other debris which might be occasioned or generated by such construction.

*Declaration of Covenants, Conditions, Restrictions, Reservations and Easements
for James Landing **(Deed Restrictions)***

Published by James Landing Property Owner's Association, Inc. (Version 3.03)

ARTICLE VI EASEMENTS

6.1 Utility Easements. There are hereby created, declared and reserved for the benefit of the Developer, the City, the Association, all Owners and any public or private providers of utility services to the Subject Property and their respective successors and assigns: (1) an easement for utility purposes over, under, within, and upon those portions of the Subject Property designated as utility easement areas on the Plat, and (2) an easement and license to enter upon all such easement areas described on the Plat and adjacent land for the purpose of constructing, installing, inspecting, replacing, maintaining and repairing any and all utility lines and facilities located therein or thereon. The utilities contemplated to be served by such utility easements may include, without limitation, electric power, natural gas, telephone, cable television, sewer, potable water and electronic security systems.

6.2 Drainage Easements. There is hereby created, declared and reserved for the benefit of the Developer, the Association, the City and all Owners an easement for storm water collection, retention, detention and drainage over and upon those portions of the Subject Property designated as drainage easement areas on the Plat (hereinafter referred to as the "Drainage Easement"), together with the easement and license to enter upon such easement areas for the purposes of constructing, installing, inspecting, maintaining, repairing and replacing any and all storm water drainage systems, improvements and facilities from time to time located therein or thereon. Additionally, the Developer, for the benefit of itself, the Association and all Owners, hereby reserves easements over any and all other portions of the Subject Property as may be reasonably required to provide storm water drainage to all or any portions of the Subject Property in accordance with the Drainage Plans and the Master Drainage System; provided, however, that any such additional drainage easements shall not unreasonably interfere with the use and enjoyment by any Owners and Tenants of the particular Lots or the Common Property or any Improvements from time to time constructed, located or installed thereon. The easements hereinabove created, declared and reserved contemplate the construction, operation and maintenance of all storm water drainage improvements and facilities described in and required by the Drainage Plans, which Drainage Plans were approved by the City and by the St. Johns Water Management District, and for such additional or supplemental facilities as reasonably may be required to provide adequate storm water drainage to all portions of the Subject Property. In connection therewith, the terms and conditions of the aforesaid approvals relating to the Drainage Plans and the Master Drainage System are hereby specifically incorporated herein and by this reference made a part hereof.

In addition to the foregoing, at such time as required by the City, the Owner(s) of Tract J (as shown on the Plat), Parcel B and Parcel C, together with the Association, shall execute a stormwater maintenance agreement in form and content acceptable to the City, providing for stormwater maintenance for said Tract J, Parcel B and Parcel C. The foregoing sentence shall not be modified, amended, or removed without the consent of the City of Melbourne, Florida.

*Declaration of Covenants, Conditions, Restrictions, Reservations and Easements
for James Landing (**Deed Restrictions**)*

Published by James Landing Property Owner's Association, Inc. (Version 3.03)

6.3 Landscape Easement. There is hereby created, declared and reserved for the benefit of the Developer and the Association an easement for landscaping purposes over and upon the Common Property [hereinafter referred to as the "Landscape Areas"], together with the easement, and license to enter upon such Landscape Areas for the purposes of installing, maintaining, inspecting, repairing and replacing any and all landscaping, including trees, grasses, shrubs, bushes, ground covers and other plant materials and irrigation systems of any kind, whether the same shall be required by the City and/or deemed necessary or desirable by the Developer or the Association.

6.4 Owner's Easement of Enjoyment. Every Owner and Residential Tenant shall have a right and easement of enjoyment in and to the Common Property which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (a) The right of the Association to charge reasonable admission or other fees for the use of any recreational facility situated upon the Common Property, if any;
- (b) The right of the Association to dedicate or transfer all or any part of the Common Property to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the members of the Association; provided, however, that no such dedication or transfer, shall be effective unless an instrument effectuating such dedication or transfer and signed by not less than two-thirds (2/3) of the voting power of the Association has been recorded among the public records of the County.
- (c) The right of the Association to suspend the voting rights and right to the use of any such recreational facility by an Owner (or any Tenant of an Owner) for any period during which any assessment against his Lot remains unpaid for period of thirty (30) days or more, and for a period not to exceed sixty (60) days for any infraction of the rules and regulations promulgated by the Association.

6.5 Association Easement. There is hereby created and granted to the Association, its agents and employees, including the Design Review Board, such easements over and upon all or any, portion of the Subject Property as may be reasonably necessary to permit the Association and the Design Review Board to carry out and discharge their respective duties, obligations and responsibilities under and pursuant to this Declaration and the Articles, Bylaws and rules and regulations of the Association.

6.6 Future Easements. There is hereby reserved to the developer and its successors and assigns, together with the right to grant and transfer the same, the right, power and privilege to, at any time hereafter, grant, to itself, the Association, the City or any other parties such other further and additional easements as may be reasonably necessary or desirable, in the sole opinion and within the sole discretion of the Developer, for the future orderly development of James Landing in accordance with the objects and purposes set forth in this Declaration. It is expressly provided, however, that no such further or additional easements shall be granted over

*Declaration of Covenants, Conditions, Restrictions, Reservations and Easements
for James Landing **(Deed Restrictions)***

Published by James Landing Property Owner's Association, Inc. (Version 3.03)

and upon Lots pursuant to the provisions of this Section 6.6 if such further or additional easements shall unreasonably interfere with the presently contemplated or future use and development of a particular Lot for its approved use. The easements contemplated this Section 6.6 may include, without limitation, such easements as may be required for utility, drainage, road right-of-way or other purposes reasonably related to the orderly development of James Landing in accordance with the Land Use Approvals and with the objects and purposes specified in this Declaration. Such further or additional easements may be hereafter created, granted or reserved by the Developer without the necessity for the consent or joinder of the Owner or Tenant of the particular portion of the Subject Property over which any such further or additional easement is granted or required.

6.7 Duration of Easements. The easements hereby created and declared shall be perpetual in duration and shall run with the title to the real property benefited and burdened, respectively, thereby. The easements hereby declared shall not be changed, amended or modified except by an instrument in writing executed by the Developer and the Owner of the real property burdened the easement sought to be changed, amended or modified.

6.8 Dedication. Notwithstanding anything in this declaration set forth to the contrary, the Developer and the association shall have, and it is hereby reserved unto the developer and the Association, the right to dedicate all or any other easements herein declared, created and reserved, to the perpetual use of the public for the uses and purposes for which the same have been created, declared and reserved, whether or not such dedication is accompanied by or pursuant to a plat of the same or otherwise effectuated.

6.9 Duty to Notify and Restore. Whenever or wherever any person or entity performs or causes to be performed any construction, installation, inspection, replacement, maintenance or repair upon or in any easement area created, declared or reserved pursuant to the terms of this Declaration, each such person or entity shall be obligated, at their sole cost and expense, to repair, replace and otherwise restore the surface of the easement area affected by such construction, installation, inspection, replacement, maintenance or repair to a condition at least equal in utility, appearance and safety to that which existed prior to such construction, installation, inspection replacement, maintenance or repair.

In addition to the foregoing, any person's or entity's right to enter any easement area and to perform (or cause to be performed) any such construction, installation, inspection, replacement, maintenance or repair shall be subject to, and is hereby specifically conditioned upon, reasonable prior notice by such person or entity to the Owner of the property upon which the easement area is situated.

6.10 Administration, Maintenance and Care. The administration, regulation, care, maintenance, repair, restoration, replacement, preservation and protection of the Common Property shall be

*Declaration of Covenants, Conditions, Restrictions, Reservations and Easements
for James Landing (**Deed Restrictions**)*

Published by James Landing Property Owner's Association, Inc. (Version 3.03)

the responsibility of the Association as more particularly provided in Article VII of this Declaration.

6.11 Conservation Area. The Conservation Area shall and are hereby declared to be subject to the following restrictions:

- (a) The construction, installation, or placement of signs, buildings, fences, walls, roads, or any other structures and improvements on or above the ground of the Conservation Area; and
- (b) The dumping or placing of soil or other substances or materials as landfill or the dumping or placing of trash, waste, or unsightly or offensive materials; and
- (c) The removal or destruction of trees, shrubs or other vegetation from the Conservation Area; and
- (d) The excavation, dredging, or removal of loam, peat, gravel, rock, soil, or other material substance in such a manner as to affect the surface of the Conservation Area; and
- (e) No surface use, except for purposes of open green space consisting of sod, trees, bushes or similar plantings; and
- (f) Activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat preservation, and
- (g) Acts or uses detrimental to such retention of land or water areas.

The Conservation Area hereby created and declared shall be perpetual.

The Developer, and their successors and assigns, shall have the right to enter upon the Conservation Area at all reasonable times and in a reasonable manner, to assure compliance with the aforesaid prohibitions and restrictions.

The Developer, the Association, and all subsequent owners of the Conservation Area shall be responsible for the periodic removal of trash and other debris which may accumulate on such Conservation Area.

The prohibitions and restrictions upon the Conservation Area as set forth in this Section may be enforced by the Association, its successors and assigns by proceedings at law or in equity including, without limitation, actions for injunctive relief. The provisions of this Conservation Area restriction may not be amended.

*Declaration of Covenants, Conditions, Restrictions, Reservations and Easements
for James Landing (**Deed Restrictions**)*

Published by James Landing Property Owner's Association, Inc. (Version 3.03)

All rights and obligations arising hereunder are appurtenances and covenants running with the land of the Conservation Area, and shall be binding upon, and shall inure to the benefit of the Developer, the Association, and to their successors and assigns. Upon conveyance by the Developer to third parties (including the Association) of any land affected by this easement, the Developer shall have no further liability or responsibility hereunder, provided the deed restriction covering the Conservation Area is properly recorded. (Amendment 7)

ARTICLE VII COMMON PROPERTY

7.1 Conveyance by Developer. On or before the date of the first conveyance of any Lot by the Developer to any third party Owner (except in the case of a conveyance to an affiliate or subsidiary of the Developer), the Common Property as hereinabove described and defined in Section 1.9 shall be conveyed by the Developer to the Association by quit-claim deed, free and clear of any and all liens, encumbrances, exceptions or qualifications whatsoever, save and except only for (a) real property taxes for the year of such conveyance, (b) title exceptions of record, if any, (c) the covenants, conditions, restrictions, easements and reservations set forth in this Declaration and any amendments hereto, and (d) any special covenants, conditions, restrictions, easements and reservations which may be contained in the instrument of conveyance pursuant to which title to such Common Property is conveyed by the Developer to the Association.

7.2 Additional Property. In addition to the Common property hereinabove described and defined in Section 1.9 of this Declaration, the Developer shall have the right to convey to the association and the Association shall be obligated to accept any other portion of the Subject property owned by the Developer so long as such property is used or useful for the purposes for which the Association has been established. Should the Developer so convey any such additional property, the same shall thereupon become and thereafter be Common Property which shall be subject all covenants, conditions, restrictions, easements and reservations set forth in this Declaration with respect to all other Common Property.

7.3 Restriction on Use. Subsequent to the conveyance of any Common Property to the Association by the Developer, the same shall, subject only to the easements specified in Article VI of this Declaration, be developed, improved, maintained, used and enjoyed solely for the purposes specified in the instrument of conveyance, for the purposes specified in this Declaration and the Land Use Approvals, and, generally for the common betterment, benefit and passive recreation and enjoyment of the Owners, Tenants, residents, occupants and guests of James Landing and for no other purpose or purposes whatsoever. No other use shall be made of the Common Property without the prior written consent of the Association. In addition, subsequent to such conveyance by the Developer to the Association, the Common Property may not be subdivided, partitioned, sold, transferred, conveyed, alienated, leased, mortgaged or hypothecated by the Association except in accordance with the terms and conditions of this Declaration, the Land Use Approvals and all Governmental Regulations.

*Declaration of Covenants, Conditions, Restrictions, Reservations and Easements
for James Landing **(Deed Restrictions)***

Published by James Landing Property Owner's Association, Inc. (Version 3.03)

7.4 Encumbrance as Security. Notwithstanding the provisions of Section 7.3 above, the Association shall have the right in accordance with the Articles and the Bylaws to borrow money for the purpose of improving, replacing, restoring or expanding the Common Property and to mortgage or otherwise encumber the Common Property solely as security for any such loan or loans; provided, however, that any such mortgage or other encumbrance shall be subject in all respects to the terms and provisions of this Declaration and any amendments hereto and, provided further, that in no event shall the Association be entitled or empowered to mortgage or otherwise encumber any utility, drainage, ingress, egress or any other easements granted to or for the benefit of the Association.

7.5 Use by Owners. Subject to any reasonable rules and regulations adopted and promulgated by the Association pursuant and in accordance with this Declaration or the Articles and laws, and subject always to any and all rights and easements granted by or reserved to the Developer in this Declaration or otherwise, each and every Owner shall have the non-exclusive right, privilege and easement to use the Common Property for the purpose or purposes for which the same is conveyed, designated and intended by the Developer and maintained by the Association, and such non-exclusive right, privilege and easement shall be an appurtenance to and shall pass with the title to each and every Lot within the Subject Property; subject, however, at all times to the terms provisions, covenants, conditions, restrictions, easements and reservations set forth in the Land Use Approvals this Declaration, including, without limitation, the following:

(a) The right of the Association to suspend the right, privilege and easement of any Owner to use the Common Property or any portion thereof designated by the Association during any time in which any assessment levied by the Association against such Owner and such Owner's Lot remains unpaid and delinquent for a period of thirty (30) days or more, or for a period not to exceed sixty (60) days for any single infraction or multiple infractions of the rules and regulations of the Association with respect to the use of the Common Property; provided, however, that except for a suspension of such right, privilege and easement occasioned by the failure of an Owner to pay any assessment within thirty (30) days from the date that the same is levied by the Association, any suspension of the right, privilege and easement to use the Common Property shall be made by the Association or a committee duly appointed by the Association for that purpose, only after appropriate notice and hearing given and held in accordance with the Bylaws.

(b) The right of the Association to limit the number of employees, occupants, tenants or guests of Owners who may use the Common Property from time to time and to limit, the use of the Common Property by persons not in possession of a Lot at a particular time but owning a sufficient interest therein for classification as an Owner and member of the Association.

*Declaration of Covenants, Conditions, Restrictions, Reservations and Easements
for James Landing **(Deed Restrictions)***

Published by James Landing Property Owner's Association, Inc. (Version 3.03)

(c) The right of the Association to establish, promulgate and enforce reasonable rules and regulations pertaining and with respect to the use of the Common Property.

(d) The right of the Association to take such steps as are reasonably necessary to preserve, maintain, and protect the Common Property.

7.6 Waiver of Use. No Owner shall be exempt from personal liability for any assessments duly levied by the Association, nor shall any Lot be exempt or released from any such assessments duly levied by the Association or from the liens, charges and other provisions of this Declaration or the Articles, Bylaws and rules and regulations of the Association by virtue of any of the following events:

(a) The actual or attempted voluntary waiver of the right, privilege and easement by such Owner for the use of the Common Property;

(b) The actual or attempted abandonment of a Lot by such Owner; or

(c) Conduct on the part of the Owner which results in the Association's suspension of such right, privilege and easement for the use of the Common Property as provided in Section 7.5(a) of this Declaration.

7.7 Exculpation of Liability and Responsibility. THE MASTER DRAINAGE SYSTEM AND ALL OTHER COMMON PROPERTY OF JAMES LANDING ARE PRIVATE, NOT PUBLIC. SUCH COMMON PROPERTY HAS NOT BEEN AND IS NOT INTENDED TO BE DEDICATED TO OR ACCEPTED OR MAINTAINED BY ANY GOVERNMENTAL AUTHORITY, INCLUDING THE CITY, UNLESS OTHERWISE PROVIDED OR REQUIRED PURSUANT TO THE DRAINAGE PLANS. AS HEREINABOVE PROVIDED IN SECTION 7.1, IT IS CONTEMPLATED THAT TITLE TO OR EASEMENTS FOR THE MASTER DRAINAGE SYSTEM AND ALL OTHER COMMON PROPERTY OF JAMES LANDING SHALL HEREAFTER BE GRANTED AND CONVEYED BY THE DEVELOPER TO THE ASSOCIATION (EXCEPT TO THE EXTENT RESERVED FOR OR GRANTED TO THE CITY PURSUANT TO THE DRAINAGE PLANS). EXCEPT AS OTHERWISE PROVIDED HEREIN, FOLLOWING SUCH CONVEYANCE THE ASSOCIATION SHALL HAVE SOLE AND EXCLUSIVE JURISDICTION OVER AND RESPONSIBILITY FOR THE ADMINISTRATION, REGULATION, CARE, MAINTENANCE, REPAIR, RESTORATION, REPLACEMENT, IMPROVEMENT, PRESERVATION AND PROTECTION OF SUCH COMMON PROPERTY. ACCORDINGLY, EACH OWNER AND TENANT, BY THE ACCEPTANCE OF A CONVEYANCE TO OR LEASE OF A LOT OR A PORTION OF A LOT SHALL BE DEEMED TO HAVE AGREED THAT NEITHER THE DEVELOPER, THE CITY NOR ANY OTHER GOVERNMENTAL AGENCY SHALL HAVE ANY LIABILITY OR RESPONSIBILITY WHATSOEVER (WHETHER FINANCIAL OR OTHERWISE) WITH RESPECT TO THE MASTER DRAINAGE SYSTEM AND ALL OTHER COMMON PROPERTY OF JAMES LANDING, UNLESS OTHERWISE PROVIDED OR REQUIRED PURSUANT TO THE DRAINAGE PLANS, AND EACH SUCH OWNER SHALL BE DEEMED

*Declaration of Covenants, Conditions, Restrictions, Reservations and Easements
for James Landing (**Deed Restrictions**)*

Published by James Landing Property Owner's Association, Inc. (Version 3.03)

TO HAVE FURTHER AGREED TO LOOK SOLELY AND EXCLUSIVELY TO THE ASSOCIATION WITH RESPECT TO ANY SUCH LIABILITY OR RESPONSIBILITY.

7.8 Master Drainage System Amendment. Simultaneously with this Amendment, the Developer is transferring the Common Property to the Association. Notwithstanding anything to the contrary in the foregoing, and notwithstanding such transfer, the Developer hereby agrees that it shall, at its expense, take such actions as shall be necessary to complete the Master Drainage System in accordance with, and shall otherwise comply with, the terms and conditions of Permit No. 4-009-0262M dated April 12, 1988 issued by the St. Johns River Water Management District (the "District") as said permit is now or may hereafter be amended or modified. As soon as reasonably practicable after the recording of this Amendment, the Developer will request that the District and the City of Melbourne, Florida (the "City") issue their final approvals of the portions of the Master Drainage System which have been completed, or, if such final approvals are not available, that the District and the City issue preliminary approvals of said completed portions of the Master Drainage System, provided, however, that the Developer shall not be obligated to seek such approvals at such time if to do so would: (i) would materially adversely affect the "Development Approvals," as hereinafter defined or (ii) would require the Developer to complete those portions of the Master Drainage System which are located on undeveloped portions of the Subject Property prior to development of those undeveloped portions of the Subject Property. If additional work or modifications of the portions of the Master Drainage System which have been completed are required to obtain such approval, or to bring the Master Drainage System into compliance with the plans of the Master Drainage System submitted to the District in connection with said permit, the Developer shall, at its expense, cause such work or modifications to be completed, provided, however, that nothing in this Section 7.8 shall be deemed to obligate the Developer to pay the cost of ordinary repairs and maintenance of the Master Drainage System, except to the extent that the cost of such ordinary repairs or maintenance are included within the budget of the Association.

In furtherance and not in limitation of the foregoing, the Developer agrees to take such measures as shall be reasonably necessary to comply with the terms of the letter dated January 14, 1992 issued by the District as soon as practicable.

In furtherance and not in limitation of the foregoing, the Developer may assign said obligation to the purchaser of all or substantially all of the portions of the Subject Property presently owned by the Developer as of the date of this Amendment, and, upon such assignment, said purchaser shall be bound by said obligation and the Developer shall be relieved of said obligation. It shall be a condition to any such assignment that the Developer shall have obtained any governmental approvals required for such transfer and that any such transfer shall be accompanied by an assignment of Developer's rights as set forth in section 17.10 of this Declaration.

For purposes of this Section 7.8, the term "Development Approvals" shall mean:

(i) A decision of the City Council of Melbourne, Florida made on July 8, 1986;

*Declaration of Covenants, Conditions, Restrictions, Reservations and Easements
for James Landing (**Deed Restrictions**)*

Published by James Landing Property Owner's Association, Inc. (Version 3.03)

(ii) The terms and conditions of approval for James Landing issued by the City Commission of the City, as set forth in the preliminary plat/subdivision plan approvals for James Landing dated February 10, 1987 and July 24, 1987;

(iii) Any modifications of or amendments to the foregoing effectuated by appropriate action of any prior owner of the Subject Property and the City, their successors and assigns; and

(iv) Any future approvals, conditions, rules, regulations or ordinances relating to any prior owner of the Subject Property and the City, their successors, and assigns. (Amendment 2)

7.9 Common Property Improvement Restrictions. The Homeowners Association shall restrict any and all improvements and structures of any kind and any above or below ground construction on all Tracts as shown on the final plat of James Landing, P.U.D., Tract B-2, as recorded in Plat Book 41, Pages 10, 11 and 12, in the Public Records of Brevard County, Florida. The Tracts are part of the open space requirements for the James Landing P.U.D. and shall always remain as open space. Prior to any landscaping activities taking place on any Tract, the Association shall be responsible to notify the City of Melbourne Utilities Department to locate any and all utilities located in any and all Tracts. Any City of Melbourne utility damaged during the installation, maintenance and/or removal of landscaping shall be the responsibility of the Association to repair (i.e. design and/or construction). The Association shall also be responsible for the cost of restoration of any landscaping located in any and all Tracts that are disturbed should a City of Melbourne utility need to be repaired. (Amendment 5)

ARTICLE VIII ASSOCIATION; PURPOSES, DUTIES AND POWERS

8.1 Objects, Purposes and Function. The Association has been created and established for the objects and purposes of and shall have exclusive jurisdiction over and the sole responsibility for the ownership, administration, management, regulation, care, maintenance, repair, restoration, replacement, preservation and protection of the Common Property, the establishment, levy, enforcement and collection of all assessments for which provision is made in this Declaration, the payment of all Common Expenses as defined in this Declaration and the promotion and advancement of the general welfare of the members of the Association; all as more particularly provided in this Declaration and in the Articles, the Bylaws and the rules and regulations of the Association.

8.2 Duties and Powers Generally. In addition to those duties and powers conferred by law and those specified and enumerated in the Articles and Bylaws, the Association shall also have such duties and powers as are, respectively, imposed and conferred upon it pursuant to this Declaration, including, without limitation, such duties and powers as may be reasonably implied from, necessary for and incidental to the accomplishment of the objects and purposes for which it has been created and established.

*Declaration of Covenants, Conditions, Restrictions, Reservations and Easements
for James Landing **(Deed Restrictions)***

Published by James Landing Property Owner's Association, Inc. (Version 3.03)

8.3 Duties of Association. The Association, acting by and through the Board, shall, among other duties, have the following specific duties, responsibilities and obligations:

8.3.1 Ownership and Management of Common Property. To own, hold, control, administer, manage, regulate, care for, maintain, repair, replace, restore and preserve all Common Property, whether real, personal or mixed, including, without limitation, all easements and facilities, the Master Drainage System (including all lakes within the Subject Property to the extent the same or a portion thereof form a part of or are necessary to the proper operation of the Master Drainage System), walkways, signs, landscaping, landscape irrigation systems, lighting systems and all other common improvements, facilities and appurtenances; subject, at all times, however, to the terms of any document or instrument pursuant to which the Association shall acquire title thereto.

8.3.2 Payment of Common Expenses. To pay all Common Expenses associated with the ownership, administration, management, regulation, care, maintenance, repair, replacement, restoration, preservation and protection of the Common Property, the management and administration of the business and affairs of the Association and all other Common Expenses for which provision is made in this Declaration.

8.3.3 Levy and Collection of Assessments. To establish, make, levy, impose, enforce and collect all assessments for which provision is made in this Declaration or which shall otherwise be necessary to provide and assure the availability of such funds as may be reasonably necessary to pay all Common Expenses, including, without limitation, such funds as may be necessary to care for, maintain, improve, repair, replace, restore, preserve and protect the common easements within and upon the Master Drainage System and Subject Property.

8.3.4 Promotion of General Welfare. To generally advance, promote and enhance the general welfare of the Owners, Tenants, residents, occupants, customers and guests of James Landing; provided, however, that the Association shall be and hereby is specifically precluded from engaging in any political activity or any other activity whereby its status as a corporation not for profit and its exemption from Federal or state income taxation shall be forfeited or Jeopardized.

8.3.5 Enforcement of Declaration. To assure compliance with and adherence to and to otherwise enforce the provisions of this Declaration.

8.4 Powers of Association. The Association, acting by and through the Board, in addition to those general and specific powers conferred upon it by law or specified In the Articles and Bylaws, shall have the following specific powers:

*Declaration of Covenants, Conditions, Restrictions, Reservations and Easements
for James Landing (**Deed Restrictions**)*

Published by James Landing Property Owner's Association, Inc. (Version 3.03)

8.4.1 Own and Deal with Property. Except as may be limited by the terms of this Declaration and the Articles and Bylaws, to acquire, own, hold, manage, buy, sell, lease, transfer, convey, encumber or otherwise deal in or with real or personal property (or any interest therein, including easements) which is, or upon its acquisition by the Association shall thereupon become, Common Property as defined in this Declaration.

8.4.2 Levy and Collect Assessments. To establish, make, levy, impose, enforce and collect all assessments for which provisions are made in this Declaration in accordance with the terms and provisions of this Declaration and The Articles and Bylaws.

8.4.3 Establish Reserves. To create, establish, maintain and administer such capital expenditures and other reserve funds or accounts as shall, in the discretion of the Board, be reasonably necessary to provide and assure the availability of the funds necessary for the care, maintenance, repair, replacement and restoration of the Common Property, including, without limitation, the Master Drainage System and all common facilities and for such other purposes as the Board in its reasonable discretion shall deem necessary or appropriate.

8.4.4 Borrow Money. Subject to the limitations specified elsewhere in this Declaration, to borrow such money as may reasonably be required to discharge and perform the duties, responsibilities and obligations pursuant to this Declaration.

8.4.5 Employ and Contract. To employ such persons or to contract with such independent contractors or managing agents as shall be reasonably required in order for the Association to carry out, perform and discharge all or any part of its duties, obligations and responsibilities pursuant to this Declaration; provided, however, that any such employment contract or contract with any independent contractor or managing agent shall, by its express terms, be terminable: (i) for cause on not more than thirty (30) days written notice by the Association and (ii) without cause on not more than sixty (60) days written notice by either party.

8.4.6 Provided Security. To provide such equipment, facilities and personnel, or to contract with an independent contractor therefor, as may be reasonably necessary to provide internal security and protection within and around James Landing.

8.4.7 Public or Quasi-Public Services. To provide equipment, facilities and personnel for or to contract with an independent contractor or independent contractors for such public or quasi-public services permitted by Governmental Regulations which may be deemed by the Association to be reasonably necessary or desirable for the general welfare of the Owners, Tenants, occupants, customers and guests of James Landing, including, without limitation, internal security and protection services, garbage and trash pickup and disposal services, cable television services and street-lighting services.

*Declaration of Covenants, Conditions, Restrictions, Reservations and Easements
for James Landing **(Deed Restrictions)***

Published by James Landing Property Owner's Association, Inc. (Version 3.03)

8.4.8 Enforce Declaration. To take such steps as may be necessary to enforce the provisions of this Declaration, including, without limitation, the employment of counsel and the institution and prosecution of litigation to enforce the provisions of this Declaration including, without limitation, such litigation as may be necessary to collect assessments and foreclose liens for which provision is made in this Declaration.

8.5 Limitations and Restrictions on Power of Association. In addition to such other restrictions or limitations on the power of the Association as may be imposed by law, elsewhere in this Declaration or in the Articles or Bylaws, and without Limiting the generality thereof, the Association shall be prohibited from taking any of the following actions without the prior approval of three-fourths (3/4) of the total voting power of the Association:

(a) Contracts for a Term in Excess of One Year. The entry into any contracts for the delivery of services or materials to the Association having a term in excess of one (1) year, except in the case of prepaid insurance, casualty, fidelity, or liability contracts or policies for not more than three (3) years duration; provided, however, that the applicable contract or policy provides for and permits short rate cancellation by the insured.

(b) Pledge of Assessment Rights. The borrowing of any funds secured by a pledge or assignment of the right and duty of the Association to exercise its power to establish, make, levy, impose, enforce and collect any assessments for which provision is made in this Declaration, whereby as a result of such pledge or assignment such right and power of assessment may be exercised by a party other than the Association or whereby the Association shall become obligated to establish, levy, enforce and collect any assessment or assessments in a particular amount or within a particular time so as to effectively divest from the Association and its Board the discretion to establish, make, levy, Impose, enforce and collect assessments in such amounts and within such time periods as the Board shall deem to be reasonable. It is expressly provided, however, that the foregoing limitation and restriction upon the pledge or assignment of assessment rights herein contained shall not preclude the Association from pledging or making an assignment of any assessment which is then payable to or which will thereafter, in the ordinary course of the Association's business, become payable to the Association, provided that any such assignment or pledge though then effective shall allow and permit any such assessments to continue to be paid to and used by the Association as set forth in this Declaration unless and until the Association shall default on the repayment of the debt which is secured by such pledged assignment.

(c) Capital Expenditures in Excess of 10% of Common Expenses. The expenditure in any single calendar year of an amount for capital acquisitions or capital improvements to the Common Property in excess of ten percent (10%) of the estimated total Common Expenses for the calendar year as established pursuant to Article X of this Declaration.

*Declaration of Covenants, Conditions, Restrictions, Reservations and Easements
for James Landing (**Deed Restrictions**)*

Published by James Landing Property Owner's Association, Inc. (Version 3.03)

(d) Sale or Transfer of Real Property. The sale, transfer, dedication or other disposition, whether or not for consideration, of any real property owned by the Association.

(e) Payment of Compensation to Officers or Directors. The payment to the elected directors or officers of the Association for services performed in the conduct of their duties as a director or officer of the Association; provided, however, that nothing herein contained shall preclude the Association from reimbursing any such elected officer or director for reasonable expenses actually incurred and paid by any such elected officer or director in the conduct of the business of the Association; and provided further, that nothing herein contained shall preclude the employment by the Association and payment of compensation to a manager or executive director of the Association who shall not be an elected officer or director.

ARTICLE IX ASSOCIATION: MEMBERSHIP AND VOTING RIGHTS

9.1 Membership. Every owner of a Lot which is subject to assessment shall automatically and mandatorily be a member of the Association. Membership may not be refused, waived or surrendered, but a member's voting rights and use and enjoyment of the Common Property may be regulated or suspended as provided in this Declaration and the Articles, Bylaws and rules and regulations of the Association.

9.2 Transfer of Membership. Membership shall be appurtenant to and may not be separated from the ownership interest of an Owner in the Lot, piece, parcel or tract of land within the Subject Property owned by such Owner. The membership of an Owner shall not be transferred, pledged or alienated in any way, except that such membership shall automatically be transferred and assigned to the transferee of the ownership interest of an Owner. The Association shall have the right to record any such automatic transfer upon the books and records of the Association without any further action or consent by the transferring Owner. Any attempt to make a prohibited transfer, however, shall be void and of no force and effect and will not be reflected upon the books and records of the Association.

9.3 Members' Rights. The rights of every member shall be subject to and governed by the terms and provisions not only of this Declaration, but, in addition, shall be subject at all times to the terms and provisions of the Articles, Bylaws and rules and regulations of the Association.

9.4 Vesting of Voting Rights. An Owner's right to vote shall vest immediately upon such Owner's qualification for membership as provided in this Declaration. All voting rights of a member shall be exercised in accordance with and subject to the restrictions and limitations provided in this Declaration and in the Articles, Bylaws and rules and regulations of the Association.

*Declaration of Covenants, Conditions, Restrictions, Reservations and Easements
for James Landing (Deed Restrictions)*

Published by James Landing Property Owner's Association, Inc. (Version 3.03)

9.5 Voting Rights. The voting rights of the members of the Association shall be allocated according to the acreage contained within the respective development parcels constituting the subject Property, all as more particularly described below. For the purposes of this Declaration, a "development parcel" shall mean and refer to any one of the Single family Parcel A, Parcel B, Multi-Family Parcel, Commercial Parcel or Parcel C.

The votes of the members of the Association shall be exercised collectively with other members who are owners of a portion or portions of the particular development parcel, such that each development parcel will be entitled to cast, in a block vote, the following number of votes:

(a)	<u>Single Family Parcel A</u>	20.3 votes
(b)	<u>Parcel B</u>	25.0 votes
(c)	<u>Multi-Family Parcel</u>	33.7 votes
(d)	<u>Commercial Parcel</u>	2.8 votes
(c)	<u>Parcel C</u>	<u>18.2 votes</u>
TOTAL		100 votes

(Note: at this point, a paragraph was deleted by amendment 2).

The purpose and intent of the allocation of voting rights among members of the Association, as set forth in this Section 9.5, is to provide a fair and equitable allocation of such voting rights taking into consideration that the James Landing project will be developed as a mixed-use project containing single-family residential, multi-family residential and commercial uses, and that the exact number of units or Lots to be located in some of the development parcels is not known as of the date of this declaration. Accordingly, each of the development parcels has been allocated a percentage of the overall vote of the Association based on the relative size of each development parcel. It is the intent and purpose of this Declaration that, within each development parcel, any declaration of restrictive covenants, articles of incorporation and bylaws of a sub-association, if any, for such development parcel will allocate and provide for one vote for each Lot owned within such development parcel, so that each owner within each development parcel will have equal voting rights with every other Owner of a Lot within such development parcel. Although each development parcel will be entitled to cast, in a block vote, the number of votes specified hereinabove, the number votes allocated to each development parcel may be divided and cast in order to specifically reflect the voting results of the members of a sub-association, if any, for a particular development parcel. For example, if, with respect to a particular issue before the Association, sixty percent (60%) of the members of the association for Single Family Parcel A elect to vote "no", Single Family Parcel A shall cast 12.18 votes for "yes" (20.3 votes x 60%) and shall cast 8.12 votes for "no" (20.3 votes x 40%) at the Association meeting in question. The actual procedure by which each sub-association, if any, shall cast its allocated votes at meetings of the Association shall be by proxy in accordance with the articles of incorporation and bylaws of such sub-association or by such other procedures as shall be

*Declaration of Covenants, Conditions, Restrictions, Reservations and Easements
for James Landing (**Deed Restrictions**)*

Published by James Landing Property Owner's Association, Inc. (Version 3.03)

established and promulgated by each such sub-association and the Association. (Amendment 2)

9.6 Approval of Members. Unless otherwise specifically provided in this Declaration or in the Bylaws, any provision of this Declaration or the Bylaws which requires the vote or written assent of the voting power of the Association shall be deemed satisfied by the following:

- (a) The vote in person or by proxy of the specified percentage at a meeting duly called and noticed pursuant to the provisions of the Bylaws dealing with annual or special meetings of the members
- (b) Written consents signed by the specified percentage of members as provided in the Bylaws.

ARTICLE X ASSESSMENTS

10.1 Assessments for Common Expenses. In order to provide and assure the availability of the funds necessary to pay Common Expenses associated with the administration, regulation, care, maintenance, repair, restoration, replacement, preservation and protection of the Common Property and such additional Common Expenses as may be associated with and otherwise necessary to carry out and accomplish the objects and purposes for which the Association has been created and established, each Lot and each Owner of such Lot shall, by the acceptance of a deed or other conveyance of title to his or its Lot, whether or not it shall be expressly stated in any such deed or other conveyance, be obligated for and be deemed to have covenanted and agreed to pay to the Association all assessments, whether regular assessments, Capital Expenditure Assessments, Special Assessments or Individual Lot Assessments, established, levied, made and imposed by the Association. All such assessments shall be established, levied, made, imposed, enforced and collected pursuant to the provisions of this Declaration and the Articles, Bylaws and rules and regulations of the Association.

10.2 Common Expenses. The Common Expenses for which assessment shall be established, made, levied, imposed, enforced and collected pursuant to this Declaration shall be all costs and expenses incurred by the Association in the discharge and performance of the duties and obligations of the Association pursuant to this Declaration, the Articles and Bylaws and in furtherance of the objects and purposes for which the Association has been formed, including, without limitation, the following costs and expenses:

- (a) Those incurred in the management and administration of the business of the Association, including, but not limited to, the salaries of any employees of the Association and the fees or other compensation paid to consultants to the Association, including, without limitation, architects, engineers, accountants and attorneys.

*Declaration of Covenants, Conditions, Restrictions, Reservations and Easements
for James Landing **(Deed Restrictions)***

Published by James Landing Property Owner's Association, Inc. (Version 3.03)

- (b) Those incurred in connection with the ownership, administration, management, regulation, care, maintenance, repair, restoration, replacement and protection of the Common Property, including, without limitation, the Master Drainage System and the common easements within and upon the Subject Property.
- (c) Reasonable reserves for repairs to and replacement of the Common Property, including, without limitation, the Master Drainage System and the common easements within and upon the Subject Property.
- (d) Those incurred for utility services to the Association and the Common Property, including, without limitation, electric power for common lighting systems and for water used in connection with the irrigation of landscaping on the Common Property.
- (e) Those Incurred for garbage and trash collection, removal and disposal.
- (f) Those incurred for Common Property landscape maintenance and replacement, including irrigation.
- (g) Those Incurred for internal security services to the Subject Property, if any, including the salaries of security guards and the cost of vehicles and other equipment and facilities necessary for the furnishing of internal security services to the Subject Property, including, without limitation, guardhouses, guard gates, electronic security systems and the like, whether the same are provided directly by the Association or by way of a security services contract with an Independent contractor.
- (h) Those incurred as premiums on or for any insurance obtained by the Association, including, without limitation, fire, casualty, liability, fidelity and other insurance covering the Common Property and health, medical, workman's compensation and other insurance covering employees of the Association, if any.
- (i) All taxes paid by the Association, including, without limitation, ad valorem real and personal property taxes on the Common Property.
- (j) Those Incurred in connection with the payment by the Association for the discharge of any other lien or encumbrance upon the Common Property or any portion thereof.
- (k) Those Incurred by the Design Review Board in the performance of its duties and obligations pursuant to this Declaration, including, without limitation, the fees or other compensation paid to consultants of the Design Review Board, Including architects, Landscape architects, engineers and attorneys.
- (l) Those incurred from time to time by any committees of the Association.

*Declaration of Covenants, Conditions, Restrictions, Reservations and Easements
for James Landing **(Deed Restrictions)***

Published by James Landing Property Owner's Association, Inc. (Version 3.03)

(m) Those incurred in connection with the acquisition and repayment of any loans made to the Association, including the principal of, interest on and closing costs associated with any such loan or loans.

(n) Those incurred in connection with the enforcement of the provisions of this Declaration.

10.3 Use of Assessments. The funds derived from any and all assessments made by the Association shall be used exclusively for the payment of Common Expenses, the improvement of the Common property, the operation and administration of the Association and the promotion of the general welfare and recreation of the owners, Tenants, residents, occupants, customers and guests of James Landing.

10.4 Lien for Assessments. All assessments established, levied, made and imposed by the Association pursuant to this, declaration and the Bylaws, together with interest, late charges, costs and expenses, including attorneys' fees (whether suit be brought or not), shall be a charge and a continuing lien upon each Lot against or with respect to which any such assessment is made or levied.

10.5 Personal Liability for Assessments. In addition to the foregoing lien for such assessments, each such assessment, together with interest, late charges, costs and expenses, including attorneys' fees (whether suit be brought or not), associated with the collection thereof, as aforesaid, shall also be the personal obligation and liability of the Owner of the Lot against or with respect to which any such assessment is made or levied at the time such assessment is made or levied. Such personal liability for assessments made or levied pursuant to this Declaration prior to the sale, transfer or other conveyance of a particular Lot shall not, by virtue of any such sale, transfer or other conveyance, pass to such Owner's successor or successors in title unless the same shall be expressly assumed as the personal obligation of such successor or successors in title.

10.6 Assessments. The Association is hereby authorized and empowered to establish, make, levy, impose, enforce and collect during each calendar year an assessment for Common Expenses to be incurred by the Association during such calendar year in the performance of its duties and obligations pursuant to this Declaration. Such assessments shall be determined by the Board not later than thirty (30) days prior to the beginning of each calendar year. The Board shall establish the assessment for each calendar year based upon a pro forma operating statement or estimated budget for such calendar year based, among other things, upon an estimate of the total Common expenses to be incurred during such calendar year, taking into account the previous operating history of and any surplus funds (not including reserves) held by the Association, and the establishment of reasonable reserves for repairs to and replacements of the Common Property, including the Master Drainage System. The Association shall, at least sixty (60) days prior to the establishment of the assessment for the next succeeding calendar year, provide to each Owner a copy of the pro forma operating statement or estimated budget to

*Declaration of Covenants, Conditions, Restrictions, Reservations and Easements
for James Landing **(Deed Restrictions)***

Published by James Landing Property Owner's Association, Inc. (Version 3.03)

be used by the Association in the establishment of the assessment for the next succeeding calendar year.

The assessment due and owing from each Owner shall be calculated by multiplying the aggregate amount of the Common expenses to be incurred by the Association during such calendar year by a fraction, the numerator of Which shall be the number of acres within each Owner's particular Lot, and the denominator of which shall be the number of acres contained within the Subject Property exclusive of all Common Property. For the purposes of determining the fraction hereinabove described, acreage shall be calculated to the nearest one-hundredth (1/100th) of an acre.

10.7 Notice of Assessments. Not later than thirty (30) days prior to the beginning of each calendar year the Association shall provide written notice to each Owner of the amount of the assessment for the next succeeding calendar year and the dates upon which installments for the same shall become due and payable

10.8 Commencement of Assessments. Assessments shall commence as to all Lots on the first day of the month following the first conveyance of a Lot by the Developer to an individual Owner.

10.9 Insufficient Regular Assessments. In the event that the Association shall determine during any Calendar year that the regular assessment established for such calendar year is or will become inadequate to meet all Common Expenses for such calendar year for whatever reason, the Association shall be entitled to immediately determine the approximate amount of the deficiency or inadequacy of the assessment for such calendar year, issue a supplemental estimate of Common expenses to all members of the Association and within thirty (30) days thereafter establish, make, levy, impose, enforce and collect a supplemental or revised assessment for such calendar year. Notwithstanding the foregoing, the amount of any such supplemental or revised assessment shall not exceed the amount equal to five percent (5%) of the previously authorized assessment for such calendar year except to the extent that the Association determines that such supplemental or revised assessment is necessary for matters of public health or safety. (Amendment 2)

10.10 Limitation on Increases. After the Associations first full year of operation the Association shall not establish, make, levy, impose, enforce, and collect any annual assessment which is increased over the amount of the assessment for the immediately preceding calendar year by more than ten percent (10%), without the prior approval of the members of the Association entitled to cast two-thirds (2/3) of all of the votes of the members who are voting in person or by proxy at a meeting of the association duly called for such purposes and of which written notice specifying the amount of the proposed increase in the assessment over the assessment for the prior calendar year is sent to each member of the association at least thirty (30) days but not more than sixty (60) days in advance of such meeting. For the year beginning on January 1,

*Declaration of Covenants, Conditions, Restrictions, Reservations and Easements
for James Landing (**Deed Restrictions**)*

Published by James Landing Property Owner's Association, Inc. (Version 3.03)

1992 and ending on December 31, 1992, the Association budget shall be in the amount of Thirty-seven Thousand Dollars (\$37,000.00). (Amendment 2)

10.11 Payment of Assessments. Assessments shall be due and payable in monthly or quarterly installments as determined by the Board in its reasonable discretion. Such installments shall be due and payable without any further notice other than that notice specified in Section 10.7 above.

10.12 Developer Option. This section deleted (Amendment 2).

10.13 Reserves. The regular assessments shall include reasonable amounts as determined by the Board to be collected as reserves against and for the future periodic maintenance, repair, replacement of all or a portion of the Common Property including, without limitation, the Master Drainage System and the common area landscaping, or for such other purpose or purposes as shall be determined by the Board. Such portion of regular assessments representing amounts collected as reserves, whether pursuant to this section or otherwise, shall be deposited by the association in a separate bank account to be held in trust for the purpose or purposes for which the same are collected and are to be segregated from and not commingled with any other funds of the association.

10.14 Quorum for Action Authorized under Sections 10.10, 10.15 and 10.16. The quorum required at any meeting of the association for any action authorized pursuant to Sections 10.10, 10.15 and 10.16 hereof shall be as follows: At the first meeting called for the purpose of taking any such action, the presence at such meeting, in person or by proxy, of members of the Association entitled to cast sixty percent (60%) of all of the votes of the members shall constitute a quorum. If the required quorum is not forthcoming at such first meeting, a subsequent meeting may be called for the same purpose subject to the notice requirements set forth in said Sections 10.10, 10.15 and 10.16 and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at the first meeting, provided that no such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

10.15 Capital Expenditure Assessments. In addition to the assessments for which provision is made in Sections 10.6 and 10.9 above, the Association is hereby authorized and empowered to establish, levy, make, impose, enforce and collect from time to time assessments for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction or the unexpected repair or replacement of any capital improvement to or upon the Common Property or the cost of the initial purchase or any subsequent unexpected repair or replacement of any fixtures, equipment or personal property, purchased, repaired or replaced by the Association in furtherance of the discharge of its duties and obligations pursuant to this Declaration (which assessment is hereinafter referred to as a "Capital Expenditure Assessment"). Provided, however, that any such Capital expenditure Assessment shall have the prior approval of the members of the Association entitled to cast two-thirds (2/3) of all of the votes of the members who are voting in person or by proxy at a meeting of the Association duly called for such

*Declaration of Covenants, Conditions, Restrictions, Reservations and Easements
for James Landing (**Deed Restrictions**)*

Published by James Landing Property Owner's Association, Inc. (Version 3.03)

purpose and of which written notice specifying the nature of the proposed capital expenditure and the amount of the proposed Capital Expenditure Assessment is sent to all members of the Association at least thirty (30) days but not more than sixty (60) days in advance of such meeting. All sums collected as Capital Expenditure Assessments shall be used only for capital improvements or purchases and shall be deposited by the Association in a separate bank account to be held in trust for the purpose or purposes for which the same are collected and are to be segregated from and not commingled with any other funds of the Association.

10.16 Special Assessments. In addition to other assessments for which provision is made this Declaration, the Association is hereby authorized to establish, levy, make, impose, enforce and collect from time to time special assessments for any purpose directly related to the discharge of its duties and obligations pursuant to this Declaration (hereinafter referred to as a "Special Assessment"). Provided, however, that any such Special assessment shall have the prior approval of members of the association entitled to cast two-thirds (2/3) of all of the votes of the members of the Association who are voting in person or by proxy at a meeting of the Association duly called for such purpose and in which written notice specifying the nature and amount of the proposed Special Assessment is sent to all members of the Association at least thirty (30) days but not more than sixty (60) days in advance of such meeting. All sums collected as Special Assessments shall be used only for the purpose for which such Special Assessment is established, made, levied, imposed, enforced and collected and shall be deposited by the association in a separate bank account to be held in trust for the purpose or purposes for which the same are collected and are to be segregated from and not commingled with any other funds of the Association.

10.17 Individual Lot Assessments. In addition to any other assessments for which provision is made in this Declaration, the association is hereby authorized and empowered to establish, levy, make, impose, enforce and collect against and from a particular Lot and the Owner of such lot an Individual Lot assessment for:

- (a) costs and expenses incurred by the Association in bringing a particular Owner or a particular Lot into compliance with the provisions of this Declaration, including any action taken or cost or expense incurred by the Association to cure and eliminate any violation of or noncompliance with the provisions of this Declaration, following the failure of such Owner, within fourteen (14) days following written notice from the Association of the nature of the violation of or non-compliance with this Declaration, to cure or remedy such violation or non-compliance;
- (b) costs and expenses, including reasonable attorneys' fees, whether or not suit be brought, incurred by the Association in the enforcement of the provisions of this Declaration against a particular Lot or the Owner of such Lot;
- (c) costs and expenses incurred by the Association in furnishing or providing labor, services and materials which benefit a particular Lot or the Owner of a particular Lot,

*Declaration of Covenants, Conditions, Restrictions, Reservations and Easements
for James Landing **(Deed Restrictions)***

Published by James Landing Property Owner's Association, Inc. (Version 3.03)

provided that such labor, services or materials can be accepted or rejected by such Owner in advance of the Association's furnishing or providing the same, such that upon such Owner's acceptance of any such labor, services or materials such Owner shall be deemed to have agreed that the costs and expenses associated therewith shall be made, levied, imposed, collected and enforced as an individual Lot assessment against such Owner and the Lot; and

(d) reasonable overhead expenses of the Association associated with any Individual Lot Assessment established, made, levied, imposed, collected and enforced pursuant to this Section 10.17, in an amount not to exceed fifteen percent (15%) of the actual costs and expenses incurred by the Association for any Individual Lot Assessment specified in subparagraphs (a), (b) or (c) of this Section 10.17.

10.18 Exempt Property. The Common Property shall be exempt from all assessments of any kind, type or character whatsoever. In addition, any portion of the Subject Property which is owned by or dedicated to and accepted by any governmental authorities all be exempt from any assessments. All property otherwise exempted from taxation by the laws of the State of Florida or The United States of America shall also be exempt from all assessments, but only upon the same terms, subject to the same conditions and only to the extent of any such exemption from taxation.

10.19 Subordination of Assessment Lien. The lien of and for all assessments provided for in this Declaration shall be and is hereby made junior, inferior, and subordinate in all respects to the lien of any bona fide first mortgage upon a particular Lot. The sale, transfer or lease of a particular Lot shall not affect the effectiveness, liability or priority of any assessment lien or the personal liability of the Owner of such Lot; provided, however, that the sale or transfer of title to a particular Lot pursuant to judicial proceedings in foreclosure of a bona fide first mortgage encumbering a Lot shall extinguish the lien of such assessments (but not the personal liability of the Owner of such Lot) as to payments on account thereof which became due and payable prior to such foreclosure sale or transfer. However, no such foreclosure sale or transfer shall relieve such Lot from the lien thereof or the Owner of that Lot from the personal obligation or liability for the payment of any assessments coming due and payable subsequent to such sale or transfer.

10.20 Certificate of Assessments Due. The Association shall, upon the request of an Owner or any other interested party, furnish a certificate executed by its President, Secretary, Treasurer or any other officer thereunto duly authorized, setting forth whether assessments payable with respect to a particular lot have been paid, the amount of the delinquency, if any, and the amounts of any outstanding and unpaid interest, late charges, penalties, costs of collection, including attorneys fees and court costs, if any, associated with any such delinquent assessments. A properly executed certificate of the Association as to the status of assessments, as aforesaid, shall be binding on the Association as conclusive evidence of the status of the payment of any assessment therein stated to have been paid or to delinquent as of the date of

*Declaration of Covenants, Conditions, Restrictions, Reservations and Easements
for James Landing (**Deed Restrictions**)*

Published by James Landing Property Owner's Association, Inc. (Version 3.03)

the issuance of such certificate. The Association shall be entitled to charge and collect a reasonable fee for and as a condition precedent to the issuance any such certificate.

10.21 No Defenses or Offsets. All assessments shall be payable in the amounts and at the times specified in the notice of assessment and no defenses or offsets against the payment of such amount shall be permitted for any reason whatsoever, including, without limitation, any claim by an Owner: (i) that the Association is not properly exercising its rights and powers performing or discharging its duties and obligations as provided in this Declaration or the Bylaws; (ii) that an owner has made or elected to make no use of the Common Property; (iii) that the Owner has otherwise waived or elected to waive its right membership in the Association; (iv) that the Association has suspended the Owner's right, privilege and easement to use the Common Property as provided in Section 7.5 of this Declaration.

10.22 Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment due and payable by an individual Owner of a residential Lot upon which a Dwelling Unit located shall be \$2,000.00 per Lot.

ARTICLE XI NON-PAYMENT OF ASSESSMENTS

11.1 Delinquency. Any assessment made, levied or imposed by Association pursuant to and in accordance with this Declaration which is not paid on the due date thereof shall be delinquent. With reasonable promptness after any assessment becomes delinquent, the Association shall provide written notice such delinquency to the Owner of the Lot with respect to which such delinquent assessment has been made, levied and imposed. If the delinquent assessment is not paid within ten (10) days following the delivery of such notice of delinquency, the Association, in its discretion, shall be entitled to immediately impose a reasonable late charge associated with the administration of such delinquent assessment. Additionally, any such unpaid assessment shall bear interest from the date of delinquency at the rate of six percent (6%) per annum.

11.2 Notice of Lien. The Association, at any time following the expiration of a period of ten (10) days following the aforesaid delivery of the notice of delinquency, shall be entitled to cause a claim of lien to be filed among the public records of the County. Any such claim of lien shall, among other things, state and identify the legal description of the Lot against or with respect to which the lien is claimed, the name of the record Owner of such Lot as best known to the Association as determined from its records, and the amount of the lien claimed, including Interest, late charges, and costs and expenses associated with collection, including attorneys' fees, if any, accrued to the date of the execution of such claim of lien. Such claim of lien shall be executed by the President, Secretary, Treasurer or other officer of the Association thereunto duly authorized by the Association or by the attorney for the association. Within three (3) days of the recording of the same, a copy of such claim of lien shall be sent to the Owner of the Lot against or with respect to which such lien is claimed by United States certified or registered mail, return receipt requested and with postage prepaid.

*Declaration of Covenants, Conditions, Restrictions, Reservations and Easements
for James Landing (**Deed Restrictions**)*

Published by James Landing Property Owner's Association, Inc. (Version 3.03)

11.3 Foreclosure of Assessment Lien. The Association, at any time subsequent to the filing of the aforesaid claim of lien among the public records of the County, against or with respect a particular Lot, shall be entitled to bring an action in the Circuit Court of the Eighteenth Judicial Circuit in and for Brevard County, Florida to foreclose the lien of the Association for delinquent assessments evidenced by such claim of lien in the same manner as mortgage liens are foreclosed. The Association shall have the right and power to bid at any foreclosure sale with respect to any lien foreclosed using Association funds, or funds borrowed by the Association, for that purpose; and if the Association is the successful bidder at such sale, the association shall have the right and power to acquire, own, hold, lease, mortgage and convey any Lot upon which it has foreclosed lien for delinquent assessments.

11.4 Collection from Owner. The Association shall, at any time following the delivery of the aforesaid notice of delinquency, be entitled to bring an action at law for the recovery and collection of such delinquent assessment in the Circuit Court of the Eighteenth Judicial Circuit in and for Brevard County, Florida against the Owner of the Lot personally obligated for the payment of such delinquent assessment. Each Owner of a Lot, by the acceptance of a deed or other conveyance of the Lot, shall be deemed to have agreed and consented to the jurisdiction of said court over the person of such Owner for purposes of any action at law for the recovery and collection of any delinquent assessment for the payment of which such Owner is personally obligated.

11.5 Judgment Amount. Whether in an action at equity to foreclose the lien of the Association for delinquent assessments or in an action at law for the recovery and collection of any such delinquent assessment from the Owner of the Lot personally obligated for the payment of the same, the Association shall be entitled to recover in such proceedings the amount of such delinquent assessment, together with late charges and interest thereon, if any, and such costs and expenses, including reasonable attorneys' fees (at both trial and appellate levels), associated with the enforcement, recovery and collection thereof as may be awarded by the court.

11.6 Satisfaction of Lien. Upon payment or other satisfaction of: (a) all delinquent assessments specified in the claim of lien, (b) interest, late charges, costs and expenses of collection, including attorneys' fees, as aforesaid, which have accrued to the date of such payment or satisfaction, and (c) all other assessments which have become due and payable with respect to the Lot with respect to which a claim of lien has been recorded, the President, Secretary, Treasurer or other officer of the Association thereunto duly authorized or the attorney for the Association shall cause an appropriate release or satisfaction of such claim of lien to be recorded among the public records of the county, upon the payment by the Owner of the Lot with respect to which such claim of lien was recorded of a reasonable fee to be determined by the Association, but not to exceed FIFTY AND NO/100 DOLLARS (\$50.00), to cover the costs associated with the administration of the satisfaction of such lien including, without limitation, the cost of preparing and recording such release.

*Declaration of Covenants, Conditions, Restrictions, Reservations and Easements
for James Landing (**Deed Restrictions**)*

Published by James Landing Property Owner's Association, Inc. (Version 3.03)

ARTICLE XII ARCHITECTURAL AND LANDSCAPE CONTROL

12.1 Design Review Board. The Association shall have a Design Review Board composed of not less than three (3) nor more than seven (7) persons as fixed from time to time by resolution of the Board. One member of the Design Review Board may satisfy any two (2) or more of the foregoing requirements with respect to the composition of the Design Review Board.

(Amendment 3) [Editor's Note: This last sentence doesn't seem to make sense, and probably should have been deleted in Amendment 3, with the other two that were deleted. It appears to refer to the two deleted sentences.]

12.2 Appointment of Design Review Board. Notwithstanding anything to the contrary set forth in or which may be implied from this Declaration or the Articles, Bylaws or rules and regulations of the Association, the Developer hereby reserves and shall hereafter have and retain the right to appoint and replace from time to time all members of the Design Review Board until the later of either: (a) the expiration of a period of ten (10) years [Editor's Note: Ten years is 11-16-1998] from the date of the recordation of this Declaration among the public records of the County [Editor's Note: Recorded 11-16-1988], or (b) the sale by the Developer in the ordinary course of business of ninety-five percent (95%) (by acreage) of all Lots within the Subject Property (exclusive of the Common Property), whichever shall last occur. Following the occurrence of the last of the foregoing events, the Association, acting by and through the Board, shall have the right, but not the obligation, to appoint and replace from time to time all members of the Design Review Board; provided, however, that the Association shall be required at all times to appoint at least one (1) member designated by the Developer for so long as the Developer shall own any development parcel within the James Landing project.

12.3 Purpose and Function of Design Review Board. The purpose and function of the Design Review Board shall be to create, establish, develop, foster, maintain, preserve and protect within James Landing a unique, attractive and harmonious physical environment grounded in and based upon a uniform plan of development and construction of the highest quality and with consistently high architectural and aesthetic standards.

12.4 All Improvements Subject to Approval. No building, structures, walls, fences, pools, paving, Landscaping, irrigation or any other Improvements shall be commenced, constructed, erected, made, placed, installed or maintained upon any Lot, nor shall any change, addition to or alteration or remodeling of the exterior of any such buildings, structures or other Improvements be made or undertaken upon any Lot, except in compliance and conformance with and pursuant to plans and specifications therefor which shall first have been submitted to and reviewed and approved by the Design Review Board (taking into account the objects and purposes of this Declaration and the purposes and function of the Design Review Board). Such review by and approval of the Design Review Board shall also take into account and include the type, kind, nature, design, style, shape, size, height, width, length, scale, color, quality, texture and materials of the proposed building structure or other Improvement, both in its entirety and

*Declaration of Covenants, Conditions, Restrictions, Reservations and Easements
for James Landing (**Deed Restrictions**)*

Published by James Landing Property Owner's Association, Inc. (Version 3.03)

as to its individual or component parts, in relation to its compatibility and harmony with other, contiguous, adjacent and nearby structures and other Improvements, and in relation to the topography, natural vegetation and other physical; characteristics of its proposed location.

12.5 Design Standards. This section deleted (Amendment 3).

12.6 Procedure for Design Review. This section deleted (Amendment 3).

12.7 Time Limitation on Review. The Design Review Board shall either approve or disapprove any plans, specifications or other materials submitted to it within thirty (30) days after the same have been duly submitted in accordance with any rules and regulations regarding such submission as shall be adopted by the Design Review Board. The failure of the Design Review Board to either approve or disapprove the same within such thirty (30) day period shall be deemed to be and constitute an approval of such plans, specifications and other materials; subject, however, at all times to the covenants, conditions, restrictions and other requirements contained in this Declaration.

12.8 Appeal of Design Review Board Decisions. In the event that the Design Review Board shall disapprove any plans, specifications or other materials submitted to it (or any Individual or particular component thereof), the party or parties making such submission may appeal the decision to the Board specifying the reason or reasons for such appeal. Such written appeal shall be filed with the Secretary of the Association not mote than fifteen (15) days following the disapproving decision of the Design Review Board. The Secretary of the Association shall provide written notice of such appeal together with a copy of the written appeal documents to the Design Review Board. The Design Review Board shall be entitled to provide its written response to such appeal to the Board within fifteen (15) days following its receipt of written notice of such appeal. The Board may, but shall not be obligated to, hear oral testimony or other statements of the positions of the appealing party or parties and the Design Review Board. In any event, however, the Board shall render its written decision or the decision on the appeal, specifying its reason or reasons therefor within thirty (30) days following the receipt of the written notice of appeal. The decision of a majority of the Board present and voting on such appeal shall be finally dispositive thereof.

12.9 Duration of Approval. Approval of plans, specifications and other materials, whether by the Design Review Board or the Board, shall, be effective for a period of one (1) year from the effective date of such approval. If construction of the building, structure or other Improvement for which plans, specifications and other materials have been approved, has not commenced within said one (1) year period, such approval shall expire and no construction shall thereafter commence without a resubmission and approval of the plans, specifications and other materials previously approved. Any such prior approval shall not be binding upon the Design Review Board in any respect.

*Declaration of Covenants, Conditions, Restrictions, Reservations and Easements
for James Landing (**Deed Restrictions**)*

Published by James Landing Property Owner's Association, Inc. (Version 3.03)

12.10 Inspection of Construction. Any member of the Design Review Board or any officer, director, employee or agent of the Association may at any reasonable time enter upon, without being deemed guilty of trespass, any Lot and any building structure or other improvement located thereon, after reasonable notice to the Owner, in order to inspect any building, structure or other Improvement constructed, erected or installed or then being constructed, erected or installed thereon in order to ascertain and determine whether or not any such building, structure or other Improvement has been or is being constructed, erected or installed in compliance with the plans, specifications and other materials approved by the Design Review Board.

12.11 Evidence of Compliance. The Design Review Board shall cause such an inspection to be undertaken within thirty (30) days of a request therefor from any Owner upon whose lot construction, erection or installation of any building, structure or other Improvement has been completed or is in the process, and if such inspection reveals that the building, structure or other Improvement located on such Lot is in compliance with plans, specifications and other materials approved by the Design Review Board, the President and Secretary of the Association shall, upon the payment by the requesting Owner of a reasonable fee not exceeding the actual costs associated with such inspection and the preparation of such notice, provide to such Owner a written notice of such compliance in recordable form which, when recorded among the public records of the County, shall be conclusive evidence of compliance with the provisions of this Article XII as to the building, structure and other Improvements described in such notice as of the date thereof.

12.12 Interior Construction Exempt. Nothing contained in this Article XII shall be construed so as to require the submission of plans, specifications or other materials for the construction or alteration of the interior of any building, structure or other Improvement or the approval thereof by the Design Review Board, unless any proposed interior construction or alteration will have the effect of changing or otherwise altering the exterior appearance of such building, structure or other Improvement.

12.13 Developer Exempt. This section deleted (Amendment 2).

12.14

Exculpation for Approval or Disapproval of Plans. The Developer, any and all members of the Design Review Board and any and all officers, directors, employees, agents and members of the Association, shall not be liable or accountable, either jointly or severally, in damages or otherwise to any Owner or other person or party whomsoever or whatsoever by reason or on account of any decision, approval or disapproval of any plans, specifications or other materials required to be submitted for review and approval pursuant to the provisions of this Article XII, or for any mistake in judgment, negligence, misfeasance or nonfeasance related to or in connection with any such decision, approval or disapproval. Each person who shall submit plans, specifications or other materials for consent or approval pursuant to the provisions of this Article XII, by the submission thereof, and each Owner by acquiring title to any Lot or any interest therein, agrees that, except for the appeal process for which provision is made in

*Declaration of Covenants, Conditions, Restrictions, Reservations and Easements
for James Landing (**Deed Restrictions**)*

Published by James Landing Property Owner's Association, Inc. (Version 3.03)

Section 12.8 above, he or it shall not be entitled to and shall not bring any action, proceeding or suit against the Developer, the Design Review Board, the Association or any individual member, officer, director, employee or agent of any of them for the purpose of recovering any damages or other relief on account of any such decision, approval or disapproval. Additionally, plans, specifications and other materials submitted to and approved by the Design Review Board and/or the Board shall be reviewed and approved only as to their exterior design, style, appearance and location, and shall not be reviewed or approved for their engineering design or for compliance with the Land Use Approvals or with applicable Governmental Regulations, and by the approval of any such plans, specifications or materials, neither the Developer, the Design Review Board, the Association or any individual, member, officer, director, employee or agent of any of them shall have or assume any liability or responsibility therefor or for any defect in any building, structure or other Improvement constructed, erected or installed pursuant to or in accordance with any such plans, specifications or other materials approved pursuant to this Article XII.

12.15 Consistent Construction Style. The Developer shall cause members of the Design Review Board appointed or designated by the Developer to vote from time to time to adopt rules and regulations to require that any buildings hereafter constructed upon the Subject Property are in a style consistent with existing buildings in the Subject Property. The provisions of this Section 12.15 shall be enforceable only by the owner from time to time of the Multi-Family Parcel. (Amendment 2)

ARTICLE XIII AMENDMENT

13.1 Amendment by Developer. Subject to the Provisions of Section 13.5 below, until January 1, 2003 the terms and provisions of and the covenants, conditions, restrictions, easements and reservations set forth in this Declaration may be changed, amended or modified from time to time by the Developer in its sole, but reasonable discretion, without requiring the joinder or consent of any person or party whomsoever, including the Association or any Owner or Owners.

13.2 Amendment by Association. Subject to the provisions of Section 13.5 below, the terms and provisions of and the covenants, conditions, restrictions, easements and reservations set forth in this Declaration may be changed, amended or modified at any time and from time to time by the Association upon the affirmative written consent or the vote of not less than seventy-five percent (75%) of the total-voting power of the members of the Association.

13.3 Manifestation of Requisite Consent. In the case of any change, amendment or modification of this Declaration by the Association which requires the affirmative written consent or vote of members of the Association as hereinabove provided in Section 13.2, the acquisition of the requisite written consent or vote of members shall be manifested on the face of the amending instrument in a certificate duly executed and sworn to before a Notary Public by the President and Secretary of the Association, affirmatively stating that such requisite affirmative written consent or vote has, in fact, been acquired or obtained prior to the recordation of such

*Declaration of Covenants, Conditions, Restrictions, Reservations and Easements
for James Landing (**Deed Restrictions**)*

Published by James Landing Property Owner's Association, Inc. (Version 3.03)

amending instrument among the Public records of the County. Such certificate shall be and constitute conclusive evidence of the satisfaction of the provisions of this Declaration with respect to the change, amendment or modification of this Declaration effected by the amending instrument of which such certificate is made a part.

13.4 Effectiveness of Amendments. All changes, amendments or modifications of this Declaration shall be manifested in a written amending instrument duly executed by the Developer or the Association, or both, as may from time to time be required pursuant to the provisions of this Article XIII, and shall be duly recorded among the Public Records of the County. Such change, amendment or modification of this Declaration shall be effective as of the date of such recordation or such later date as may be specified in the date of such recordation or such later date as may be specified in the amending instrument.

13.5 Limitations on Amendments. Notwithstanding anything to the contrary set forth in this Declaration, the rights of the Developer and the Association to change, amend or modify the terms and provisions of and the covenants, conditions, restrictions, easements and reservations set forth in this Declaration shall at all times be subject to and limited as follows:

- (a) To the extent that particular rights or interests are expressly conferred upon or granted to the City pursuant to this Declaration, the particular terms and provisions of this Declaration pursuant to which such rights and interests are conferred upon and granted to the city shall not be changed, amended or modified without the prior written consent and Joinder of the City.
- (b) To the extent that any term or provision of this Declaration may be included herein in satisfaction of the conditions of the Land Use Approvals for James Landing, such terms or provisions shall not be changed, amended, modified or otherwise deleted or eliminated from this declaration without the prior written consent and Joinder of the City.
- (c) This Declaration may not be amended to change, amend, modify, terminate or eliminate any easements granted or reserved herein to the Developer or to the City, respectively, without the prior written approval of the Developer or the City, as the case may be, and any attempt to do so shall be void and of no force and effect.
- (d) This Declaration shall not be changed, amended or modified in any fashion which will result in or facilitate the dissolution of the Association or the abandonment or termination of the obligations of the Association to maintain the Common Property and to levy assessments for such purpose.
- (e) This Declaration may not be changed, amended or modified in such fashion as to change, amend, modify, eliminate or delete the provisions of this Section 13.5 of this Declaration without the prior written consent and Joinder of the Developer (for so long as the Developer owns a development parcel within the James Landing project).

*Declaration of Covenants, Conditions, Restrictions, Reservations and Easements
for James Landing (Deed Restrictions)*

Published by James Landing Property Owner's Association, Inc. (Version 3.03)

(f) This Declaration shall not be changed, amended or modified to such fashion as to adversely affect the interest of any Owner of the Multi-Family Parcel. In furtherance and not in limitation of the foregoing, the Developer shall give not less than fifteen (15) days, prior written notice of any proposed amendment pursuant to Section 13.1, such notice to be given as hereinafter provided. If the Owner of the Multi-Family Parcel does not object to the proposed amendment within fifteen (15) days after its receipt of such notice, such objection to be made by written notice in the manner hereinafter provided, the proposed amendment shall be deemed approved by the Owner of the Multi-Family Parcel. If the Owner of the Multi-Family Parcel does object to the proposed amendment by written notice given as hereinafter provided within said fifteen (15) day period, the proposed amendment shall not be adopted pursuant to Section 13.1. Notwithstanding the foregoing, nothing in this Section 13.5(f) shall be deemed to prohibit or prevent the Developer from amending the Declaration pursuant to Section 13.1 from time to time, without prior notice to the Owner of the Multi-Family Parcel, with respect to any Single Family Parcel, for the purpose of changing the configuration of lots within said Single Family Parcel, reducing the number of lots within said Single Family Parcel (provided that the number of resulting lots shall not be less than twenty (20)), or adding or changing the amenities serving any of the Single Family Parcels. Furthermore, nothing in this Section 13(f) shall be deemed to prohibit the Developer from proposing to amend this Declaration pursuant to Section 13.2.

Any notice required hereunder shall be given by delivery in hand, by delivery by national recognized overnight courier service, or by United States mail, certified or registered mail, return receipt requested, postage prepaid, and addressed to the Developer or to the Owner of the Multi-Family Parcel, as the case may be, at such address as it shall specify, by written notice given from time to time in accordance with this section, for the giving of such notice. (Amendment 2)

ARTICLE XIV RECREATIONAL PARCEL

The Apartment Recreational Parcel, as defined and described in Section 1.1 above, shall be for the use and benefit of the Owner(s) and Residential Tenants of the Multi-Family Parcel only. The operation, maintenance and repair of the Apartment Recreational Parcel shall, in general, be the obligation of and shall be at the expense of the Owner of the Multi-Family Parcel. Notwithstanding the foregoing, however, the Owners and Tenants of Single Family Parcel A, Parcel B and Parcel C shall be entitled on an elective basis, to use the apartment Recreational Parcel under such conditions and upon the payment of such fees as the Owner(s) of the Multi-Family Parcel shall reasonably determine.

ARTICLE XV DURATION

*Declaration of Covenants, Conditions, Restrictions, Reservations and Easements
for James Landing **(Deed Restrictions)***

Published by James Landing Property Owner's Association, Inc. (Version 3.03)

Each of the terms and provisions of and covenants, conditions, restrictions and reservations set forth in this Declaration shall continue and be binding upon the Developer, the Association and each Owner and Tenant from time to time of any portion of the Subject Property and their respective successors and assigns and all other persons, parties or legal entities having or claiming any right, title or interest in the Subject Property, by, through or under any of them, for a period of sixty (60) years [Editor's Note: Sixty years is 11-16-2048] from the date this Declaration is recorded among the Public Records of the County [Editor's Note: Recorded 11-16-1988], after which time this Declaration and the covenants, conditions, restrictions, easements and reservations contained herein, as the same shall have been amended from time to time, shall be automatically extended for successive periods of ten (10) years each unless an instrument of termination executed by the Association upon the affirmative written consent or vote of not less than ninety-five percent (95%) of the total voting power of the members of the Association (certified as provided in Section 13.3 of this Declaration), with the consent and joinder of the City, shall be recorded among the Public Records of the County at least one (1) year prior to the end of the initial term or any subsequent extension term of this Declaration. Each of the easements herein declared to be created, granted or reserved shall continue to be binding upon the Developer and the Association and upon each Owner and Tenant from time to time of any portion of the Subject Property and their respective successors and assigns and all persons, parties and legal entities claiming by, through or under any of them in perpetuity, unless any such easement shall have been properly changed, amended, modified, released or terminated by the execution of a written instrument duly recorded among the Public Records of the County.

ARTICLE XVI ENFORCEMENT

16.1 Parties Entitled to Enforce. Subject to the provisions of Section 16.2 below, the terms, provisions, covenants, conditions, restrictions, easements and reservations set forth in this Declaration, as amended from time to time, shall be enforceable by the Developer, the Association and any Owner. Additionally, to the extent that particular rights or interests are expressly conferred upon or granted to the City pursuant to this Declaration, the particular terms and provisions of this declaration conferring or granting such rights or interests shall also be enforceable by the City. Those persons and entities so entitled to enforce the provisions of this Declaration shall have the right to bring proceedings at law or in equity against the party or parties violating or attempting to violate any of said covenants, conditions, restrictions, easements or reservations or against the party or parties defaulting or attempting to default in his or its obligations hereunder, in order to: (a) enjoin any such violation or attempted violation or any such default or attempted default, (b) cause any such violation or attempted violation or default or attempted default to be cured, remedied or corrected, or (c) recover damages resulting from or occasioned by or on account of any such violation or attempted violation or default or attempted default.

*Declaration of Covenants, Conditions, Restrictions, Reservations and Easements
for James Landing (**Deed Restrictions**)*

Published by James Landing Property Owner's Association, Inc. (Version 3.03)

16.2 Limitations on Enforcement Rights. Notwithstanding the provisions of Section 16.1 above, the right to enforce the provisions of this Declaration shall be subject to and limited by the following provisions:

(a) The Association shall have the exclusive right to collect assessments and enforce assessment liens.

(b) Only the Developer and the Association shall have the right to enforce the provisions of Articles V and XII hereof with respect to architectural and landscape control. It is expressly provided, however, that if both the Developer and the Association fail, refuse or are unable to commence enforcement of such provisions within thirty (30) days following written demand to do so from any owner, any Owner who makes such demand and who otherwise has standing to do so shall have the right to enforce the provisions of said Articles V and XII. Provided, however, that such right of enforcement shall not include the right to seek judicial review of discretionary decisions made either by the Developer, the Association or the Design Review Board where the discretion to make such decision is expressly conferred pursuant to this Declaration.

(c) To the extent that specific rights, interests or reservations are conferred upon or granted or reserved to specific parties pursuant to this Declaration, only those parties upon or to whom or which such rights, interests or reservations are conferred, granted or reserved shall have the right to enforce the provisions of this Declaration relating to such rights, interests or reservations.

16.3 Attorneys' Fees. In the event that legal or equitable proceedings are instituted or brought to enforce any of the provisions set forth in this Declaration as amended from time to time, or to enjoin any violation or default of the same, the prevailing party in such proceeding shall be entitled to recover from the losing party, at all trial and appellate levels, such reasonable attorneys' fees and court costs as may be awarded by the court rendering judgment in such proceedings.

16.4 No Waiver. Failure by the Developer, the Association, any Owner or the City, to the extent specifically provided herein, to enforce any term, provision, covenant, condition, restriction, easement or reservation herein contained in any particular instance or on any particular occasion shall not be deemed a waiver of the right to do so on any subsequent violation or default of the same or any other term, provision, covenant, condition, restriction, easement or reservation contained herein.

16.5 Nuisance. The result of every act or omission, where any term or provision of, or covenant, condition, restriction, easement or reservation set forth in this Declaration is violated, breached or in default in whole or in part, is hereby declared to be and constitute a nuisance, and every remedy allowed by law or equity against a nuisance, either public or private, shall be applicable

*Declaration of Covenants, Conditions, Restrictions, Reservations and Easements
for James Landing (**Deed Restrictions**)*

Published by James Landing Property Owner's Association, Inc. (Version 3.03)

against every such result, and may be exercised by the Developer, the Association or any Owner.

16.6 Cumulative Rights and Remedies. In connection with the enforcement of this Declaration, all rights and remedies of the Developer, the Association, the Owners and the City, to the extent specifically provided herein, shall be cumulative, and no single right or remedy shall be exclusive of any other, and the Developer, the Association, the Owners and the City, to the extent specifically provided, shall have the right to pursue any one or all of such rights or remedies or any other remedy or relief which may be provided by law, whether or not expressly stated in this Declaration or otherwise.

16.7 Effect of Invalidation. If in the course of an attempt to enforce this Declaration, any particular provision of this Declaration is held to be invalid by any court, the invalidity of such provision shall not affect the validity of the remaining provisions hereof.

16.8 Exculpation. The Developer, the Association, the Design Review Board and the individual members and officers, employees or agents of any of them, shall not be liable or accountable, either jointly or severally, in damages or otherwise to any Owner or other party affected by this Declaration, or to anyone submitting plans or other materials for any required consent or approval hereunder, by reason or on account of any decision, approval or disapproval required to be made, given or obtained pursuant to the provisions of this Declaration, or for any mistake in judgment, negligence or nonfeasance related to or in connection with any such decision, approval or disapproval; provided, however, that the foregoing shall not be construed to limit or otherwise negate the liability of the aforescribed persons and entities for damage or injury arising from or caused by the gross negligence or willful misconduct of such persons and entities. Each person who shall submit plans or other materials for consent or approval pursuant to this Declaration, by the submission thereof, and each owner and any Tenant of any Lot, by acquiring title thereto or an interest therein, agrees that, except for the appeal process set forth in Section 12.8 above, he or it shall not be entitled to bring and shall not bring any action, proceeding or suit against the Developer, the Association, the Design Review Board or any individual member or members or officer or officers, employee or employees or agent or agents thereof for the purpose of recovering any such damages or other relief on account of any such decision, approval or disapproval.

ARTICLE XVII MISCELLANEOUS PROVISIONS

17.1 Constructive Notice and Acceptance. Every person, corporation, partnership, limited partnership, trust, association or other legal entity, who or which shall hereafter have, claim, own or acquire any right, title, interest or estate in or to any portion of the Subject Property, whether or not such interest is reflected upon the Public Records of the County, shall be deemed conclusively to have consented and agreed to each and every term, provision, covenant, condition, restriction, easement and reservation contained or by reference incorporated herein (including those matters set forth in the Design Standards Manual), whether or not any

*Declaration of Covenants, Conditions, Restrictions, Reservations and Easements
for James Landing (**Deed Restrictions**)*

Published by James Landing Property Owner's Association, Inc. (Version 3.03)

reference to this Declaration is contained in the document or instrument pursuant to which such person, corporation, partnership, limited partnership, trust, association or other legal entity shall have acquired such right, title, interest or estate in the Subject Property or any portion thereof.

17.2 Personal Covenants. To the extent the acceptance, lease or conveyance of a Lot creates a personal covenant between the Owner or Tenant of such Lot and the Developer, the Association or any other Owner or Owners, such personal covenant shall terminate and be of no further force or effect from or after the date when a person or entity ceases to be an Owner or tenant, except to the extent this Declaration may provide otherwise with respect to the personal obligation of such Owner or Tenant for the payment of Assessments for which provision is expressly made in this Declaration.

17.3 Governing Law. This Declaration and the interpretation and enforcement of the same shall be governed by and construed in accordance with the laws of the State of Florida.

17.4 Construction. The provisions of this Declaration shall be liberally construed to effectuate its object and purpose of creating a uniform plan for the development of James Landing and for the maintenance of the Common Property.

17.5 Article and Section Headings. Article and section headings contained in this Declaration are for convenience and reference only and in no way define, describe, extend or limit the intent, scope or content of the particular Articles or Section in which they are contained or to which they refer and, accordingly, the same shall not be considered or referred to in resolving questions of interpretation or construction.

17.6 Singular Includes Plural. Whenever the context of this Declaration requires the same, the singular shall include the plural and the plural shall include the singular and the masculine shall include both the feminine and the neuter.

17.7 Time of Essence. Time is of the essence of this Declaration and in the performance of all covenants, conditions, covenants and restrictions set forth herein. Whenever a date or the expiration of any time period specified herein shall fall on a Saturday, Sunday or legal holiday, the date shall be extended to the next succeeding business day.

17.8 Notice. Any notice to be given pursuant to the provisions of this Declaration shall be in writing and may be delivered as follows:

(a) Notice to an Owner or Tenant shall be deemed to have been properly delivered when delivered to the Owner's or Tenant's Lot, whether said Owner or Tenant personally receives said notice or not, or placed in the first class United States mail, postage prepaid, to the most recent address furnished by such Owner or Tenant in writing to the Association for the purpose of giving notice, or if no such address shall have been furnished, then to the street address of such Owner's or Tenant's Lot. Any notice so

*Declaration of Covenants, Conditions, Restrictions, Reservations and Easements
for James Landing **(Deed Restrictions)***

Published by James Landing Property Owner's Association, Inc. (Version 3.03)

deposited in the mail within the County shall be deemed delivered forty-eight (48) hours after such deposit. In the case of co-Owners any such notice may be delivered or sent to any one of the co-Owners on behalf of all co-Owners and shall be deemed delivery to all such co-Owners.

(b) Notice to the Association shall be deemed to have been properly delivered when placed in the first class United States mail, postage prepaid, to the address furnished by the Association or the address of its principal place of business.

(c) Notice to the Developer shall be deemed to have been properly delivered when placed in the first class United States mail, postage prepaid, to the address furnished by the Developer to the Association or the address of its principal place of business.

(d) The affidavit of an officer or authorized agent of the Association declaring under penalty of perjury that a notice has been mailed to any Owner or Tenant to the address or addresses shown on the records of the Association, shall be deemed conclusive proof of such mailing, whether or not such notices are actually received.

17.9 Development and Construction by Developer. Nothing in this Declaration shall be deemed, either expressly or impliedly, to limit the right of the Developer to change, alter or amend its development plan or plans for the Subject Property, or to construct such Improvements as the Developer deems advisable prior to the completion of the development of all of the Subject Property. Developer reserves the right to alter its development and construction plans and designs as it deems appropriate.

17.10 Assignment of Developer's Rights and Interests. The rights and interests of the Developer under this Declaration may be transferred and assigned by the Developer to any successor or successors to all or part of the Developer's interest In the Subject Property by an express transfer, conveyance or assignment incorporated into any recorded deed or other instrument, as the case may be, transferring, conveying or assigning such interest to such successor.

Except to the extent assigned or transferred pursuant to the provisions of this Section 17.10, all rights and obligations of the Developer under this Declaration shall terminated (sic) and be of no further force and effect upon the Developer's conveyance of all of its remaining right, title and interest in and to the Subject Property.

17.11 No Warranties. This Declaration is made for the objects and purposes set forth in Article II of this Declaration and the Developer makes no warranties or representations, express or Implied, as to the binding effect or enforceability of all or any portion of the terms and provisions of or the covenants, conditions, restrictions, easements and reservations set forth In this Declaration, or as to the compliance of any of the same with public laws, ordinances and regulations applicable thereto.

*Declaration of Covenants, Conditions, Restrictions, Reservations and Easements
for James Landing **Deed Restrictions***

Published by James Landing Property Owner's Association, Inc. (Version 3.03)

(pages 1406 through 1434 are surveyor descriptions and are not included here.)

(Original signed by Developer on November 16, 1988, and notarized. Recorded with Brevard County Clerk in Book 2965, pages 1361 through 1434.)

*Declaration of Covenants, Conditions, Restrictions, Reservations and Easements
for James Landing **(Deed Restrictions)***

Published by James Landing Property Owner's Association, Inc. (Version 3.03)

INDEX

(Added by JLPOA, Inc.)

administration, 3, 10, 13, 14, 23, 29, 30, 35, 36, 37, 42, 43
amendment, 1, 2, 3, 4, 5, 6, 7, 9, 10, 12, 13, 18, 25, 26, 28,
29, 34, 35, 38, 39, 44, 45, 46, 47, 48, 49, 54
annoyance, 15
appeals, 5, 20, 45, 46, 52
approval, 4, 5, 7, 12, 15, 16, 18, 19, 20, 21, 23, 25, 26, 28,
29, 32, 35, 38, 39, 40, 44, 45, 46, 48, 52
assessment, 4, 5, 8, 17, 22, 26, 30, 31, 32, 33, 35, 37, 38,
39, 40, 41, 42, 43, 51, 53
association, 1, 2, 3, 4, 6, 8, 9, 10, 11, 14, 15, 16, 19, 20, 21,
22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36,
37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 50, 51, 52,
53, 54
authority, 8, 10, 11, 15, 22
binding, 14, 25, 28, 41, 45, 50, 54
board, 2, 5, 9, 10, 16, 17, 19, 20, 22, 30, 31, 32, 36, 37, 39,
44, 45, 46, 47, 51, 52
budget, 28, 37, 39
calculate, 38
charge, 8, 22, 27, 37, 41, 42, 43
city, 2, 7, 9, 11, 13, 21, 22, 28, 29, 48, 50, 51, 52
collect, 8, 30, 31, 32, 35, 37, 38, 39, 40, 41, 42, 51
committee, 10, 26, 36
compliance, 1, 5, 10, 15, 16, 17, 19, 24, 28, 30, 40, 44, 46,
47, 54
consent, 6, 14, 15, 16, 18, 21, 23, 25, 33, 35, 43, 46, 47,
48, 50, 52
cost, 9, 17, 23, 28, 29, 35, 36, 37, 39, 40, 41, 42, 43, 46, 51
county, 1, 2, 7, 10, 12, 22, 29, 42, 43, 44, 46, 48, 50, 52,
54, 55
covenants, 1, 2, 6, 7, 8, 10, 13, 14, 15, 19, 20, 25, 26, 34,
35, 45, 47, 48, 50, 51, 52, 53, 54
date, 1, 20, 25, 26, 28, 34, 38, 41, 42, 43, 44, 45, 46, 48,
50, 53
day, 7, 17, 20, 22, 26, 31, 37, 38, 39, 40, 42, 45, 46, 49, 51,
53
decision, 5, 7, 20, 28, 45, 46, 51, 52
dedication, 3, 22, 23, 33
deemed, 8, 11, 14, 16, 18, 20, 22, 28, 31, 32, 35, 41, 43,
45, 46, 49, 51, 52, 53, 54
design, 2, 3, 5, 8, 10, 11, 16, 17, 19, 20, 22, 29, 36, 44, 45,
46, 47, 51, 52, 54
developer, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18,
19, 21, 22, 23, 24, 25, 26, 28, 38, 39, 44, 46, 47, 48, 49,
50, 51, 52, 53, 54, 55
drainage, 2, 3, 4, 10, 11, 17, 21, 23, 24, 26, 28, 30, 31, 36,
37, 39
duty, 3, 4, 8, 22, 23, 29, 30, 31, 32, 33, 35, 36, 37, 39, 40,
42
easement, 3, 7, 8, 10, 14, 15, 17, 21, 22, 23, 25, 26, 27, 30,
31, 36, 42, 47, 48, 50, 51, 52, 54
enforce, 6, 8, 10, 14, 24, 27, 29, 30, 31, 32, 35, 37, 38, 39,
40, 41, 43, 47, 50, 51, 52, 53, 54
environment, 8, 13, 44
expenses, 2, 4, 9, 17, 23, 28, 29, 30, 32, 33, 35, 37, 38, 40,
41, 42, 43, 49
fee, 1, 6, 7, 8, 12, 22, 35, 36, 37, 40, 41, 42, 43, 46, 49, 51
fiduciary, 16, 17, 18, 19, 20, 23, 25, 26, 28, 32, 35, 40, 43,
45, 51
foreclosure, 5, 32, 41, 43
government, 2, 11, 15, 16, 17, 19, 25, 28, 31, 41, 47
illegal, 15
improvements, 2, 3, 4, 5, 9, 10, 11, 12, 13, 15, 16, 17, 18,
19, 20, 21, 24, 29, 30, 32, 37, 39, 44, 45, 46, 47, 54
incurred, 33, 35, 36, 37, 38, 40, 41
inspect, 5, 20, 21, 22, 23, 46
interest, 12, 14, 26, 31, 33, 37, 41, 42, 43, 46, 49, 50, 52,
54
lake, 30
landscaping, 3, 10, 14, 16, 20, 22, 29, 30, 36, 39, 44, 51
late, 37, 41, 42, 43
later, 37, 38, 44, 48
law, 8, 9, 11, 14, 24, 26, 29, 30, 32, 41, 43, 50, 51, 52, 53,
54
legal, 1, 42, 50, 51, 52, 53
levy, 26, 27, 29, 30, 31, 32, 35, 37, 38, 39, 40, 41, 42, 48
liability, 4, 25, 27, 32, 36, 37, 41, 46, 52
lien, 4, 5, 17, 25, 27, 32, 36, 37, 41, 42, 43, 51
limitations, 4, 5, 6, 9, 11, 21, 23, 24, 26, 28, 29, 30, 31, 32,
33, 35, 36, 38, 39, 42, 43, 45, 48, 49, 51, 52, 53, 54
maintenance, 3, 11, 13, 16, 21, 23, 28, 29, 30, 31, 35, 36,
39, 49, 53
mandatory, 33
manual, 2, 10, 11, 16, 17, 19, 20, 52
master, 2, 4, 8, 11, 14, 17, 21, 28, 30, 31, 36, 37, 39
meeting, 1, 20, 34, 35, 38, 39, 40
member, 4, 20, 22, 26, 29, 33, 34, 35, 38, 39, 40, 44, 46,
47, 50, 52
months, 38
notice, 4, 5, 6, 17, 20, 23, 26, 31, 38, 39, 40, 42, 43, 45, 46,
49, 52, 53, 54
notify, 3, 23, 29
nuisance, 6, 15, 18, 51
object, 4, 13, 22, 29, 35, 44, 49, 53, 54

*Declaration of Covenants, Conditions, Restrictions, Reservations and Easements
for James Landing **(Deed Restrictions)***

Published by James Landing Property Owner's Association, Inc. (Version 3.03)

obligation, 28, 37, 41, 44, 49, 53	shall, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54
offensive, 3, 15, 17, 24	standard, 2, 5, 7, 8, 10, 11, 13, 16, 17, 19, 20, 44, 45, 52
option, 5, 39	state, 8, 9, 30, 41, 42, 53
ordinance, 7, 11, 29, 54	sub, 14, 34
overhead, 17, 41	sub-association, 14, 34
owner, 1, 2, 3, 4, 5, 7, 8, 9, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, 25, 26, 27, 29, 30, 31, 33, 34, 35, 37, 38, 40, 41, 42, 43, 46, 47, 49, 50, 51, 52, 53, 54	suspend, 22, 26, 33, 42
parking, 3, 10, 11, 14, 16, 17	taxes, 25, 36
penalty, 41, 54	title, 1, 7, 12, 14, 22, 23, 25, 26, 30, 35, 37, 41, 46, 50, 52, 54
personal, 4, 6, 9, 27, 30, 31, 36, 37, 39, 41, 53	tree, 16
powers, 4, 8, 21, 22, 29, 30, 32, 35, 36, 42, 43, 47, 50	umbrella, 8, 14
quorum, 5, 39	unsightly, 13, 15, 16, 24
record, 1, 7, 12, 22, 25, 28, 29, 33, 42, 43, 44, 46, 48, 50, 52, 54, 55	use, usage, 1, 4, 7, 8, 9, 11, 12, 13, 14, 15, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 33, 34, 37, 42, 43, 47, 48, 49
regulation, 2, 3, 7, 11, 15, 16, 17, 19, 22, 23, 25, 26, 27, 29, 30, 31, 33, 35, 36, 44, 45, 47, 54	utilities, 3, 10, 20, 21, 22, 23, 26, 29, 36
reserves, 5, 21, 30, 31, 36, 37, 39, 44, 54	variance, 15
responsibility, 4, 10, 22, 24, 25, 27, 29, 30, 31, 47	vehicles, 3, 17, 36
restore, 3, 19, 23, 26, 29, 30, 31, 35, 36	voting, 4, 20, 22, 32, 33, 34, 35, 38, 39, 40, 45, 47, 50
review, 2, 3, 5, 10, 16, 17, 19, 20, 22, 36, 44, 45, 46, 47, 51, 52	waiver, 4, 6, 27, 51
rights, 4, 6, 7, 10, 14, 16, 17, 22, 23, 24, 25, 26, 27, 28, 32, 33, 34, 42, 43, 44, 48, 50, 51, 52, 54	year, 20, 25, 32, 37, 38, 42, 44, 45, 50
rules, 7, 11, 16, 19, 22, 26, 27, 29, 33, 35, 44, 45, 47	zoning, 3, 7, 15