

ARTICLE VII: ASSESSMENTS REMAINS ENFORCEABLE BASED ON COURT RULING.

**FIRST AMENDED AND RESTATED DECLARATION OF RESTRICTIVE COVENANTS  
FOR LANDFALL ASSOCIATION, INC.**

THIS FIRST AMENDED AND RESTATED DECLARATION OF RESTRICTIVE COVENANTS (this "Declaration") is made this 30<sup>th</sup> day of March, 2007, by LANDFALL ASSOCIATION, INC. (the "Association"), a Massachusetts non-profit corporation, after having been duly adopted and approved by the Owners (hereinafter defined) as more particularly hereinafter described.

Background:

- A. Wayne H. Gilmore, Trustee of Gilmore Cape Trust, under declaration of trust dated May 4, 1976, registered as Document No. 206,817 ("Developer") developed the lots shown on plan entitled "Subdivision Plan of Land in Barnstable, Massachusetts, July 18, 1973, drawn by Charles N. Savery, Inc., Surveyors", and said lots are described in Certificates of Title 70073 and 70303 on Land Court Plan 34623B together with any Common Properties (hereinafter defined) associated therewith (such lots and Common Properties collectively herein the "Property"), into a residential subdivision, commonly known as Landfall Subdivision (the "Development").
- B. In the course of developing the Development, Developer subjected the Property to a Declaration of Restrictive Covenants, dated April 22, 1977, registered at the Barnstable County Registry District of the Land Court as Document No. 219,551, as affected by assignments registered as Document Nos. 281,781, 290,913 and 366,398 (the "Original Declaration"), and Developer formed the Association for the purpose of administering the affairs of the Development, including enforcement of the Original Declaration, which Association operated under certain bylaws.
- C. Developer turned over control of the Association to the Owners, in order to provide for the preservation of land values and home values within the Development and to better insure a coordinated and harmonious administration of the Development for the benefit of all Owners.
- D. The Association desires to modify the Original Declaration by replacing the Original Declaration with this Amended Declaration.
- E. This Declaration was duly adopted by the Owners of the Landfall Association, Inc. in accordance with the provisions of the Original Declaration and Association Bylaws.

NOW THEREFORE, the Association subjects the Property and Development, including all lots as described in Paragraph A. above to the terms of this Declaration and declares that same, and any and all portions thereof, are and shall be held, transferred, sold, conveyed, leased, occupied, and used subject to the Covenants (hereinafter defined) hereinafter set forth; and these Covenants shall touch and concern and run with the Property, the Development, and each and every Home Site (hereinafter defined). FURTHERMORE, the Association declares that the Original Declaration is hereby superseded, replaced, and restated by this Declaration and that the Original Declaration, as of the Recording of this Declaration, shall be of no further force or effect (except as to circumstances arising before the Recording of this Declaration and to which this Declaration cannot take effect and except in the event that this Declaration is deemed unenforceable against the Development or any portion thereof, in which case the Original Declaration and/or the Amended Declaration shall retain the same force and effect as to the Development or the portion thereof, as the case may be, as either or both of such instruments had prior to the Recording of this Declaration).

FURTHERMORE, the Association hereby certifies that it has adopted this Declaration in accordance with the terms and provisions of the Original Declaration and Association Bylaws.

FURTHERMORE, the remainder of this Declaration is as follows:

## ARTICLE I

### DEFINITIONS

The following words and terms, when used in this Declaration, or any amendment or supplemental declaration hereto (unless the context shall clearly indicate otherwise) shall have the following meanings:

1.01 Association. "Association" shall mean Landfall Association, Inc., a Massachusetts non-profit corporation.

1.02 Board of Directors or Board. "Board of Directors" or "Board" shall mean the governing body of the Association established pursuant to this Declaration.

1.03 Bylaws. "Bylaws" shall mean the Bylaws of the Association, as they may be amended from time to time.

1.04 Common Expense. "Common Expense" shall mean and include (a) expenses of administration, maintenance, repair or replacement of the Common Properties; (b) expenses agreed upon as Common Expenses by the Board or the Association; (c) expenses declared Common Expenses by the provisions of this Declaration; and (d) all other sums expended by the Board pursuant to the provisions of this Declaration or in administering the Development.

1.05 Common Properties. "Common Properties" shall mean those items of personal property, fixtures, or areas of land, with any improvements thereon, whether owned in fee simple or by virtue of an easement, license or otherwise, which are conveyed to the Association and/or are intended for the common use and enjoyment of all Owners, which may include without limitation, pond, tennis court, street lights, sidewalks, entrance signs, picnic areas, gazebos, swimming pools, recreational areas, and green spaces and walking trails.

1.06 Covenants. "Covenants" shall mean the covenants, restrictions, conditions, easements, charges, assessments, affirmative obligations and liens set forth in this Declaration.

1.07 Declaration. "Declaration" shall mean this Amended Declaration of Covenants and Restrictions for Landfall Subdivision and any amendment or supplemental declaration filed pursuant to the terms hereof.

1.08 Development. "Development" shall mean the whole of Landfall Subdivision.

1.09 First Mortgage. "First Mortgage" shall mean a recorded Mortgage with priority over other Mortgages.

1.10 Home. "Home" shall mean any building situated within the Development designated and intended for use and occupancy by a single family.

1.11 Home Site or Home Sites. "Home Site" or "Home Sites" shall mean any improved or unimproved plat of land shown as a Home Site upon any recorded final subdivision map of any part of the Development, with the exception of Common Properties.

1.12 Member or Members. "Member" or "Members" shall mean any or all Owner or Owners who are Members of the Association.

1.13 Mortgagee. "Mortgagee" shall mean the holder of any Mortgage.

1.14 Owner or Owners. "Owner" or "Owners" shall mean the record owner or owners, whether one or more persons, firms, associations, corporations, or other legal entities, of the fee simple title to any Home Site situated in the Development but, notwithstanding any applicable theory of a Mortgage, shall not mean or refer to the Mortgagee, unless and until such Mortgagee has acquired title pursuant to foreclosure; nor shall the term "Owner" mean or refer to any lessee or tenant of an Owner.

1.15 Property or Properties. "Property" or "Properties" shall mean all of that real property owned by the Association together with any Common Properties associated therewith.

1.16 Record or To Record. "Record" or "To Record" shall mean to record (which term shall include registration with the Land Court) pursuant to the laws of the Commonwealth of Massachusetts relating to the recordation of deeds and other instruments conveying or affecting title to real property.

## ARTICLE II

### PROPERTIES, COMMON PROPERTIES AND IMPROVEMENTS THEREON; ASSOCIATION AND BOARD

2.01 Property. The Property and the Development and any and all portions thereof shall be held, transferred, sold, conveyed, leased and occupied, subject to the Covenants contained in this Declaration.

2.02 Common Properties and Improvements Thereon. The Association is responsible for the operation, maintenance, repair and replacement of all Common Properties.

2.03 Association and Board; Access. The enforcement of this Declaration, the management, maintenance and control of the Common Properties and the other business of the Development shall be conducted by the Association and the Board as provided herein and in the Bylaws.

## ARTICLE III

### PURPOSES, USES AND RESTRICTIONS

3.01 Common Properties. The Common Properties shall be used to benefit the Owners of Home Sites of the Development and to enhance the appearance and liveability of the development.

3.02 Home Site Residential Use.

(a) All of the Home Sites in the Development shall be, and be known and described as, residential Home Sites, and no structure shall be erected, altered, placed or permitted to remain on any Home Site other than one (1) detached single family dwelling, and accessory structures approved pursuant to 3.04 and 3.05 hereof, subject to the terms and conditions as herein specified.

(b) "Residential," refers to a mode of occupancy, as distinguished from "business" or "commerce" or "mercantile" activity and, except where otherwise expressly provided, "residential" shall apply to temporary as well as permanent uses, and shall apply to vacant Home Sites as well as to buildings constructed thereon.

(c) Home Sites, or any portion thereof, shall not be used as a means of service to business establishments or adjacent property, including but not limited to supplementary facilities or an intentional passageway or entrance into a business or another tract of land, whether or not a part of the Property.

3.03 Multi-Family Residences, Business. Homes shall not be designed, patterned, constructed or maintained to serve, or for the use of more than one single family, and Homes shall not be used as a multiple family dwelling at any time, nor used in whole or in part for any business service or commercial activity where patrons or customers come and go, where commercial deliveries of supplies or equipment are made, or which otherwise is inconsistent with ordinary residential uses. Business and residential uses not in conflict with the provisions of Section 3.03 of this Article and not in conflict with Town of Barnstable zoning laws are permitted.

3.04 Detached Buildings; Pools. Detached garages, sheds, pool houses, or any other outbuilding shall not be placed on any Home Site without the prior written consent of the Board, which consent the Board may condition upon the location and size of any such outbuilding and/or upon any such outbuilding being constructed so as to complement the associated Home in style, color, theme, and materials. Above-ground pools are prohibited. All existing Detached Buildings installed prior to the filing of this Amendment may remain and be maintained in perpetuity.

3.05 Fences. All fences and walls constructed on any Home Site must be approved by the Board, and a drawing showing location, height and materials shall be submitted to the Board for approval prior to construction. All fences shall be constructed either of wrought iron or aluminum or shall be wooden or vinyl "privacy fences," not exceeding eight (8) feet in height. Chain link and wire fences are prohibited. No fence may be constructed nearer to the front boundary of any Home Site than the rear elevation of the Home. All existing Fences installed prior to the filing of this Amendment may remain and be maintained in perpetuity.

3.06 Refuse Containers. Garbage and refuse shall be placed in containers, which shall be concealed and contained within a building or garage or shall be concealed by means of a screening wall of material similar to and compatible with that of the Home, or sufficient landscaping to provide a permanent screen at all times of the year.

3.07 Unsightly Conditions. All of the Homes and Home Sites in the Development must, from the date of purchase, be maintained by the Owner in a neat and orderly condition (grass being cut when needed, as well as leaves, broken limbs, dead trees, and other debris being removed when needed, and Homes being kept painted and in a neat and clean condition and in a state of good repair). Tree limbs, rocks and other debris must be kept out of the streets.

3.08 Signs. No sign of any kind shall be displayed from any Home Site, with the exception of a customary "For Sale" sign to facilitate the sale of an Owner's personal residence.

3.09 Animals. No sheep, swine, goats, horses, cattle, burros, fowls (excluding household birds such as parrots and parakeets) or any like animals shall be permitted to be kept or to remain on any of the

Home Sites, or to roam at large at the Development. There shall be no kennels permitted on any Home Site for the commercial breeding or commercial boarding of domestic pets. Pet owners shall not allow pets to roam unattended, and pets shall be leashed if off their master's Home Site.

### 3.10 Vehicle Parking.

(a) Vehicles owned by Owners shall be parked only in the Owner's garage, driveway, or other suitably designated area on their Home Site, except as permitted elsewhere in Section 3.10 of this Article. Recreational vehicles, including but not limited to all-terrain vehicles (ATV's) and off-road motorcycles, commercial vehicles, trailers, campers, camper trailers, boats, or other watercraft (except those permitted under 3.10 (b) and 3.10(c) below) shall be parked only in the Owner's garage or screened from view of streets. If parked in a screened manner, these vehicles shall be located in a reasonably inconspicuous manner as is possible and shall be effectively concealed by means of a screening wall of material similar to and compatible with that of the Home, or sufficient landscaping to provide a permanent screen at all times of the year. No inoperable or unregistered vehicle or other machinery shall be stored on any Home Site at any time, unless kept within a garage.

(b) One (1) commercial vehicle not exceeding the size of a full size Pick-Up Truck or Cargo Van may be parked unscreened only in the Owner's driveway or other suitably designated area on their Home Site.

(c) One (1) registered boat or other watercraft less than twenty feet in length may be parked unscreened, only in the Owner's driveway or other suitably designated area on their Home Site, from April first through October thirty-first. OR One (1) registered, trailer-able boat less than twenty-seven feet in length may be parked on its trailer unscreened, only in the Owner's driveway, for a total period not exceeding thirty (30) days per calendar year.

(d) Any boat or watercraft ( as permitted under 3.10(c) above) parked unscreened on any Home Site must be maintained in a neat, clean, and orderly manner. No cover shall be permitted to be placed over any unscreened boat or watercraft unless the cover is shrink wrapped, custom, or semi custom fitted, and in good condition.

(e) "Other suitably designated area" as defined in Section 3.10 of this Article shall be subject to Board approval; such approval shall not be unreasonably withheld or conditioned.

3.11 Tree Removal. Trees having a height of approximately 20 feet or taller may not be removed from any Home Site without approval by the Board, except where such trees (1) are dead, severely damaged, or uprooted, (2) pose an imminent threat to cause damage to any Home or other improvement in the Development.

3.12 New Construction; Alterations. Any new Homes being constructed within the Development must be completed within twelve (12) months of commencement of construction. Prior to commencing construction of any Home or material alterations to any Home, the Owner of the Home Site on which construction is to commence shall submit to the Board plans and drawings for the Home or the alterations and a site plan showing the proposed location of the Home on the Home Site (with set-backs provided for herein indicated thereon), the colors and exterior materials, the location of the mailbox, driveways, walk ways, retaining walls, fences, exterior lighting, landscaped areas, propane tanks, and other improvements for the written approval of the Board. Construction on the Home may not commence until the Board has approved the plans and drawings and/or the site plan, such approval not to be

unreasonably withheld, conditioned or delayed, and any construction must be done in conformity with the plans and drawings and/or the site plan.

3.13 **Offensive Activity.** No noxious or offensive activity shall be carried on upon any Home Site, nor shall anything be done thereon which may be or may become an annoyance, discomfort, embarrassment or nuisance to the Development or which may disrupt the peaceful and quiet enjoyment of any other Owner, including but not limited to the emanation of foul odors or disruptive noise.

3.14 **Duty to Rebuild or Clear Upon Casualty or Destruction.** In order to preserve the aesthetic and economical value of all Home Sites within the Development, each Owner shall have the affirmative duty to rebuild, replace, repair, or clear, within a reasonable period of time, any building, structure, and improvement or significant vegetation which shall be damaged or destroyed by fire or other casualty. Variations and waivers of this provision may be made only upon the Board establishing that the overall purpose of these Covenants would be best effected by allowing such a variation. Variations to this section are to be strictly construed and the allowance of a variance by the Board shall not be deemed to be a waiver of the binding effect of this section upon all other Owners. In the event of damage or destruction by fire or other casualty, this provision shall control over other provisions contained herein regarding maintenance to and the condition of Homes and Home Sites.

## ARTICLE IV

### VIOLATIONS AND ENFORCEMENT

4.01 **Violations and Enforcement.** In the event of the violation, or attempted violation, of any one or more of the provisions of these Covenants, the Association, its successors or assigns, including the Board acting on behalf of the Association, and any and all Owners, acting individually (but subject to Articles V and VI), of any one or more of the Home Sites to which provisions of these Covenants apply, may bring an action or actions against the Owner in violation, or attempting violation, for specific performance, and the said Owner, if found to be in violation or attempted violation, shall be further liable for such damages as may accrue, including any court costs and reasonable attorneys' fees incident to any such proceeding. In the event the Association, its successors or assigns, including the Board acting on behalf of the Association, deems it necessary to bring an action or actions against an Owner in violation, the Board may utilize the enforcement procedural guideline set forth in Section 4.01(a) of this Article. The Board may grant variances to the covenants set forth in this Declaration, if such variances do not, in the sole discretion of the Board, adversely affect the purposes sought to be obtained hereby.

(a) **Enforcement Procedural Guideline.** In the event of a violation of this Declaration, a designated Director or Directors shall verbally notify the Owner in violation citing violation and establishing the corrective action/remedy necessary, and a timeframe for corrective action/remediation. This notification shall be confirmed in writing and shall be sent via registered mail within three (3) days of verbal notification. If the Owner fails to correct/remedy violation within the established timeframe, the Board may bring legal action as provided in Section 4.01 of this Article, or exercise any other rights the Board may have pursuant to this Declaration or the By-Laws.

## ARTICLE V

### OWNER COMPLAINTS

5.01 **Scope.** The procedures set forth in this Article for Owner complaints shall apply to all complaints regarding the use or enjoyment of the Property or any portion thereof or regarding any matter

within the control or jurisdiction of the Association, including, without limitation, decisions of the Association or of the Board. No Owner shall bring suit against the Board, the Association or another Owner without first complying with the procedures for complaints herein established.

5.02      **Form of Complaint.** All complaints shall be in writing and shall set forth the substance of the complaint and the facts upon which it is based. Complaints are to be addressed to the Board and sent in the manner provided in Section 9.03 for sending notices.

5.03      **Consideration by the Board.** Within twenty (20) days of receipt of a complaint, the Board shall consider the merits of the same and notify the complainant in writing of its decision and the reasons therefor. Within three (3) months after notice of the decision, the complainant may proceed under Section 5.05; but if complainant does not, the decision shall be final and binding upon the complainant.

5.04      **Hearing Before the Board.** Within ten (10) days after notice of the decision of the Board, the complainant may, in a writing, request a hearing before the Board. Such hearing shall be held within twenty (20) days of receipt of complainant's request. The hearing may be adjourned from time to time as the Board in its discretion deems necessary or advisable. The Board shall render its decision and notify the complainant in writing of its decision and the reasons therefor within ten (10) days of the final adjournment of the hearing.

5.05      **Further Relief.** After complying with the provisions of this Article, an Owner may pursue such additional relief at law or in equity as he/she deems himself/herself to be entitled.

## ARTICLE VI

### REMEDIES ON DEFAULT

6.01      **Scope.** Each Owner shall comply with the provisions of this Declaration, the Bylaws and the Rules and Regulations of the Association as they presently exist or as they may be amended from time to time, and each Owner shall be responsible for the actions of his or her family members, servants, guests, occupants, invitees or agents.

6.02      **Grounds for and Form of Relief.** Failure to comply with any of the Covenants of this Declaration, the Bylaws, or the Rules and Regulations promulgated by the Board which may be adopted pursuant thereto shall constitute a breach of this Declaration and shall entitle the Association and/or the Board, to seek relief which may include, without limitation, an action to recover any unpaid assessment, annual or special, together with interest as provided for herein, any sums due for damages, injunctive relief, foreclosure of lien or any combination thereof, and which relief may be sought by the Association and/or the Board, acting on behalf of the Association.

6.03      **Recovery of Association Expenses.** In any proceeding arising because of an alleged breach by an Owner, the party seeking enforcement, if successful, shall, in addition to the relief provided for herein, be entitled to recover the costs of the proceeding and such reasonable attorneys' fees as may be allowed by the court.

6.04      **Waiver.** The failure of the Association or of an Owner to enforce any right, provision, covenant or condition which may be granted herein or the receipt or acceptance by the Association of any part payment of an assessment shall not constitute a waiver of any breach of a Covenant, nor shall same constitute a waiver to enforce such Covenant(s) in the future.

6.05 Election of Remedies. All rights, remedies and privileges granted to the Association, the Board, or an Owner or Owners pursuant to any term, provision, covenant or condition of this Declaration or the Bylaws shall be deemed to be cumulative and in addition to any and every other remedy given herein or otherwise existing, and the exercise of any one or more shall not be deemed to constitute an election of remedies, nor shall it preclude the party thus exercising the same from exercising such other and additional rights, remedies or privileges as may be available to any such party at law or in equity.

## ARTICLE VII

### ASSESSMENTS

7.01 Creation of the Lien and Personal Obligation of Assessments. Each Owner by acceptance of a deed conveying a Home Site, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to all of the terms and provisions of the Covenants contained in this Declaration and to pay to the Association annual assessments and special assessments for the purposes set forth herein, such assessments to be fixed, established and collected from time to time as hereinafter provided. The Owner of each Home Site shall be personally liable, (such liability to be joint and several if there are two or more Owners), to the Association for the payment of all assessments, whether annual or special, which may be levied while such party or parties are Owners of a Home Site. The annual and special assessments, together with such interest thereon and costs of collection therefore as hereinafter provided, shall be a charge and continuing lien on the Home Site and all of the improvements thereon against which each such assessment is made. Unpaid assessments shall incur a 10% late charge, per month, to cover the costs of collection, and shall bear interest from due date to date of payment at the rate set by the Board, and said rate can be changed from time to time so that the rate is reasonably related to the economic situation. In the event that two or more Home Sites are combined into a single Home Site by an Owner, the assessments will continue to be based upon the number of original Home Sites purchased.

7.02 Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the Owners and for the improvement and maintenance of the Common Properties or the Development generally. The special assessments shall be used for the purposes set forth in Section 7.04 of this Article.

7.03 Amount of Annual Assessment. The annual assessment may be adjusted more frequently than annually if necessary. The annual budget for the Association and the amount of the annual assessment shall be set by the Board and the annual assessment shall be in no case less than One Hundred Dollars (\$100.00) per lot per year; provided however, that the Board may not increase the Association's annual assessment without first acquiring the approval of two-thirds (2/3) of those Members of the Association who are present or represented by proxy at the annual or special meeting held to approve such assessment.

7.04 Special Assessments for Improvements and Additions. In addition to the annual assessments authorized by this Article, the Association may levy special assessments for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, or replacement of the Common Properties, including the necessary fixtures and personal property related thereto and capital improvements or additions to the Common Properties or for other unanticipated expenses of the Association. Notwithstanding the foregoing the Board shall not authorize structural alterations or capital additions to the Common Properties which require an expenditure in excess of Five Thousand Dollars (\$5,000.00) without approval of a majority vote of those Members who are present or represented by proxy at any annual or special meeting of the Association; or in excess of Ten Thousand Dollars



(\$10,000.00) without approval of two-thirds of the vote of those Members who are present or represented by proxy at any annual or special meeting of the Association; provided, however, that the Board shall have the power to make any repairs to and to undertake maintenance of an urgent nature on the Common Properties as may be necessary, in the Board's reasonable judgment, to preserve or maintain the integrity thereof without obtaining such approval.

7.05      **Property Subject to Assessment.** Only Home Sites subject to this Declaration shall be subject to these assessments. Common Properties will not be subject to assessment; Unimproved Home Sites will not be subject to assessment unless and until such locations are built upon.

7.06      **Exempt Property.** No Owner may exempt himself from liability for any assessment levied against his Home Site by waiver of the use or enjoyment of any of the Common Properties or by abandonment of his Home Site or in any other way.

7.07      **Date of Commencement of Annual Assessments.** Assessments for any year shall become due and payable the first day of July of said year. Assessments shall be deemed delinquent, and subject to any interest, fees, and collection efforts specified herein, if not paid by the first day of September of said year. The due date of any special assessment shall be fixed in the resolution authorizing such assessment.

7.08      **Sale of Home Site.** Whenever any Home Site may be sold by the Owner thereof, which sale shall be concluded only upon compliance with other provisions of this Declaration, the Association, upon written request of the Owner of such Home Site, shall furnish to the proposed purchaser a statement verifying the status of payment of any assessment which shall be due and payable to the Association by the Owner of such Home Site; and such statement shall also include, if requested, whether there exists any matter in dispute between the Owners of such Home Site and the Association under this Declaration. Such statement shall be executed by any officer of the Association, and any purchaser or mortgagee may rely upon such statement in concluding the proposed purchase transaction, and the Association shall be bound by such statement. In the event that a Home Site is to be sold at the time when payment of any assessment against said Home Site shall be in default, then the proceeds of such purchase shall be applied by the purchaser first to payment of any then delinquent assessment or installments thereof due to the Association before payment of any proceeds of purchase or mortgage to the Owner of any Home Site who is responsible for payment of such delinquent assessment. In any voluntary conveyance of a Home Site, the new Owner shall be jointly and severally liable with the Owner for all unpaid assessments against the Owner and the Home Site made prior to the time of such voluntary conveyance, without prejudice to the rights of the new Owner to recover from the Owner the amounts paid by the new Owner therefor.

## ARTICLE VIII

### MORTGAGES, MORTGAGEES AND PROCEDURES AND RIGHTS RELATING THERETO

8.01      **Register of Owners and Mortgages.** The Association shall at all times maintain a register setting forth the names of the Owners, and, in the event of a sale or transfer of any Home Site to a third party, the purchaser or transferee shall notify the Board in writing of his interest in such Home Site, together with such recording information that shall be pertinent to identify the instrument by which such purchaser or transferee has acquired his interest in any Home Site.

8.02      **Subordination of Lien to First Mortgages.** The liens provided for in this Declaration shall be subordinate to the lien of a First Mortgage on any Home Site if, and only if, all assessments, whether

annual or special, with respect to such Home Site having a due date on or prior to the date such Mortgage is recorded have been paid. In the event any such First Mortgagee (i.e., one who records a Mortgage on a Home Site for which all assessments have been paid prior to recording) shall acquire title to any Home Site by virtue of any foreclosure, deed in lieu of foreclosure, or judicial sale, such Mortgagee acquiring title shall only be liable and obligated for assessments, whether annual or special, as shall accrue and become due and payable for said Home Site subsequent to date of acquisition of such title. In the event of the acquisition of title to a Home Site by foreclosure, deed in lieu of foreclosure, or judicial sale, any assessments, whether annual or special, as to which the party so acquiring title shall not be liable shall be absorbed and paid by all Owners as part of the Common Expense; provided, however, nothing contained herein shall be construed as releasing the party or parties liable for such delinquent assessments from the payment thereof or the enforcement of collection of such payment by means other than foreclosure.

## ARTICLE IX

### GENERAL PROVISIONS

9.01 **Duration.** The Covenants of this Declaration shall run with and bind the land and shall inure to the benefit of and be enforceable by the Board, the Association, the Developer or Owner of any Home Site subject to this Declaration, their respective legal representatives, heirs, successors and assigns for twenty (20) years or until such earlier time as the Association elects to terminate this Declaration entirely in accordance with the amendment provisions hereof.

9.02 **Amendments.** This Declaration may be amended in accordance with the following procedure:

(a) An amendment to this Declaration may be considered at any annual or special meeting of the Association; provided, however, that, if considered at an annual meeting, notice of consideration of the amendment and a general description of the terms of such amendment shall be included in the notice of the annual meeting provided for in the Bylaws, and, if considered at a special meeting, similar notice shall be included in the notice of the special meeting provided for in the Bylaws.

(b) At any such meeting, the amendment must be approved by an affirmative three-fourths (3/4ths) vote of those Owners represented at the meeting at which a quorum, as defined in the By-Laws, is present.

(c) An amendment adopted under Paragraph (b) of this section shall become effective upon its recording in the Barnstable County Registry District of the Land Court, and the President of the Association shall execute, acknowledge and record the amendment and shall certify on its face that it has been adopted in accordance with the provisions of this section. The certificate shall be conclusive evidence to any person who relies thereon in good faith, including, without limitation, any Mortgagee, prospective purchaser, tenant, lienor or title insurance company that the amendment was adopted in accordance with the provisions of this section.

9.03 **Notices.** Any notice required to be sent to any Owner or Mortgagee under the provisions of this Declaration shall be deemed to have been properly sent, and notice thereby given, when mailed, postpaid, to the last known address of the Owner or Mortgagee on the records of the Association at the time of such mailing. Notice to one of two or more co-owners of a Home Site shall constitute notice to all co-owners. It shall be the obligation of every Owner to immediately notify the Board in writing of any change of address. Any notice required to be sent to the Board, the Association or any officer thereof, under the provisions of this Declaration shall likewise be deemed to have been

properly sent, and notice thereby given, when mailed, postpaid, to such entity or person at the following address:

Landfall Association, Inc.  
P.O. Box 2029  
Cotuit, MA 02635-2029

The address for the Board, the Association, or any officer thereof may be changed by the Clerk or President of the Association by executing, acknowledging and recording the new address or addresses with the Commonwealth of Massachusetts. Changes to the Association's / Board's notice address shall not be subject to the voting requirements in Section 9.02.

9.04 Severability. Should any covenant or restriction herein contained, or any article, section, subsection, sentence, clause, phrase or term of this Declaration be declared void, invalid, illegal, or unenforceable, for any reason, by the adjudication of any court or other tribunal having jurisdiction over the parties hereto and the subject matter hereof, such judgment shall in no way affect the other provisions hereof which are hereby declared to be severable, and which shall remain in full force and effect.

9.05 Captions. The captions herein are inserted only as a matter of convenience and for reference and are in no way intended to define, limit or describe the scope of this Declaration nor any provision hereof.

9.06 Use of Terms. Any use herein of the masculine shall include the feminine, and the singular the plural, when such meaning is appropriate.

9.07 Interpretation. The provisions of this Declaration shall be liberally construed to effectuate their purpose. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce said provision or any other provision hereof.

9.08 Law Governing. This Declaration is made in the Commonwealth of Massachusetts, and any question pertaining to its validity, enforceability, construction or administration shall be determined in accordance with the laws of that State.

9.09 Effective Date. This Declaration shall become effective upon its recording.

Witness our hands and seals this 30th day of March , 2007.

Landfall Association, Inc.

David Lockwood  
By: David Lockwood, President

Nathan Rudman  
Nathan Rudman, Treasurer

Attest:

Annemarie Nickerson  
Annemarie Nickerson, Clerk

Commonwealth of Massachusetts  
County of Barnstable

On this 1st day of April, 2007, before me, the undersigned notary public, personally appeared David Lockwood, President, aforesaid, proved to me through satisfactory evidence of identification, which were: Driver's License, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily on behalf of Landfall Association, Inc. for its stated purpose.

Robert B. Seales  
Notary Public  
Name: Robert B. Seales  
My commission expires: 12-10-2010