

**A G E N D A**

**JAMES CITY COUNTY BOARD OF SUPERVISORS**

**READING FILE**

**June 27, 2006**

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**FOR YOUR INFORMATION**

1. Wellington Subdivision Declaration of Covenants, Conditions and Restrictions
2. First Amendment to Wellington Subdivision Declaration of Covenants, Conditions and Restrictions

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WELLINGTON SUBDIVISION

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

This Declaration made this 28th day of February, 2000, by WELLINGTON, LLC, a Virginia limited liability company, hereinafter referred to as "Declarant" to be indexed as Grantor, provides as follows:

**Recitals:**

R1. The Declarant is the owner of certain real property located in the County of James City, Virginia, which is more particularly described on the attached *Schedule A*, and is hereinafter referred to as the "Property."

R2. The Declarant desires to subject the Property to certain covenants, conditions and restrictions establishing a binding master plan of development as hereinafter described, which shall inure to the benefit of all future owners of subdivided lots within the Property and a property owners association more particularly described below.

NOW, THEREFORE, the Declarant hereby declares that the Property shall be held, sold, conveyed and developed subject to the following restrictions, covenants and conditions, which shall run with title to the Property and be binding upon all parties having any right, title or interest in and to the Property or any part thereof, their successors, heirs and/or assigns.

**Provisions:**

1. Terms of Development. Parcel "A" of the Property shall be developed, subdivided and sold substantially in accordance with the following master plan for development.

A. Density. Notwithstanding the provisions of paragraphs 4, 5, 6 and 7 hereof, no more than 396 residential lots shall be created within Parcel "A" of the Property at any time. This restriction shall not be construed to limit the creation of additional pieces or parcels of land not intended for the construction of dwellings, including without limitation, recreation areas, open space areas, common areas, buffers, or parcels created for purposes of containing utilities, infrastructure or other subdivision amenities.

B. Sidewalks. Sidewalks shall be constructed on roads on Parcel "A" of the Property where such sidewalks are required by Section 24-35 of the James City County Code in effect on the date hereof ("Code"). Any such sidewalks shall be constructed to the standards described in said Section 24-35 of the Code.

C. Street Trees. Trees shall be planted along all street right-of-ways established within Parcel "A" of the Property, as follows:

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(i.) Trees shall be planted on both sides of all such street right-of-ways, with not less than one tree per an average of sixty (60) linear feet of street on each side of the street.

(ii.) All trees that are planted shall be native deciduous species and shall have a minimum caliper of one (1) inch at four (4) feet above ground level.

D. Rochambeau Drive Buffer. A 150' natural open space buffer shall be maintained between any dwelling or improvements on any lot created within Parcel "A" of the Property and the edge of the right-of-way of Rochambeau Drive (Virginia State Route 30). Entry roads, utilities, signage, fencing, drainage facilities and entrance landscaping shall be permitted within such buffer.

E. Bicycle Lanes. Paved bicycle lanes shall be constructed by the Declarant at the entrance to Parcel "A" of the Property and/or any subdivision thereof in any areas where turn lanes are created for the entrance to the Property on Rochambeau Drive.

F. Water Conservation Rules.

(i.) Any and all dwellings constructed on Parcel "A" of the Property or any lot subdivided within Parcel "A" of the Property shall be constructed using, at minimum, the following low flow water conserving fixtures:

(a.) Water closets rated at 1.6 gallons per flush,

(b.) Lavatory and/or kitchen faucets rated at 2.0 gallons per minute, and

(c.) Tub and/or shower faucets rates at 2.5 gallons per minute.

(ii.) Automatic underground irrigation systems shall be prohibited on any residential lot created on or within Parcel "A" of the Property. This provision shall not prohibit such an irrigation system serving the entrance to any subdivision created on the Property.

2. Property Owners Association. Prior to conveyance by the Declarant of the first lot within Parcel "A" of the Property, the Declarant shall establish and record a declaration of residential restrictive covenants governing use of Parcel "A" of the Property, and creating a property owners association ("POA") as defined by the Virginia Property Owners Association Act, Section 55. 508 *et seq.* of the Code of Virginia. The following terms and conditions shall be applicable to the POA:

A. Every lot created within Parcel "A" of the Property shall be subject to the declaration establishing the POA.

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B. The owners of any lots located within the existing Mirror Lakes Estates subdivision shall be eligible to become members of the POA, and shall enjoy all benefits inuring to any lot within Parcel "A" of the Property, provided that such lot(s) within Mirror Lakes Estates shall become subject to any and all obligations with regard to dues and rules regulating the use of common area established by the POA.

C. The POA shall maintain and operate, *inter alia*, the following areas or property within Parcel "A" of the Property: common areas, recreation lot(s), and/or the 13.3 acre lake located within Parcel "A" of the Property.

3. Recreation Lot. At such date as is the earlier of (i) the date when 132 lots have been conveyed from the Developer to other owners of lots within Parcel "A" of the Property, or (ii) the date when the Recreation Lot defined below is subdivided and platted of record, the Declarant shall provide for establishment of a recreation area as follows:

A. The Declarant shall dedicate that parcel of land ("Recreation Lot") consisting of approximately 3.75 acres +/- shown as lot 201 on the plan described in paragraph 4 below and located on Parcel "A" of the Property to be used by the POA for establishment of a recreation area. Such parcel shall be for establishment by the POA of fields (e.g., softball, baseball), courts, playgrounds, biking and/or jogging trails.

B. The Declarant shall pay to the POA the sum of \$50,000.00 for funding of the improvements to the Recreation Lot described above, which improvements shall be completed by the POA.

4. Binding Master Plan of Development. Parcel "A" of the Property shall be developed generally in accordance with the conceptual plan entitled: "PRELIMINARY MASTER PLAN OF DEVELOPMENT, WELLINGTON, STONEHOUSE DISTRICT, JAMES CITY COUNTY, VIRGINIA" dated June, 1996, which plan is on file with the James City County Planning Department. The Declarant may, from time to time, in final subdivision plats or site plans submitted to the County of James City, relocate the lots, property lines, roadways or other features of the Property shown on the aforesaid plan, provided that it is determined that said relocation(s) does not alter the basic concept or character of development as provided in paragraph twelve (12) hereof.

5. Binding Water Master Plan. Parcel "A" of the Property shall be developed generally in accordance with the conceptual plan entitled: "PRELIMINARY MASTER WATER PLAN, WELLINGTON, STONEHOUSE DISTRICT, JAMES CITY COUNTY, VIRGINIA" dated June, 1996, which plan is on file with the James City County Planning Department. The Declarant may, from time to time, in final subdivision plats or site plans submitted to the County of James City, relocate the water lines and/or utilities shown on the aforesaid plan, provided that it is determined that said relocation(s) does not alter the basic concept or character of development as provided in paragraph twelve (12) hereof.

6. Binding Sanitary Sewer Master Plan. Parcel "A" of the Property shall be developed generally in accordance with the conceptual plan entitled: "PRELIMINARY MASTER SANITARY SEWER PLAN, WELLINGTON, STONEHOUSE DISTRICT, JAMES

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CITY COUNTY, VIRGINIA" dated 6/8/99, which plan is on file with the James City County Planning Department. The Declarant may, from time to time, in final subdivision plats or site plans submitted to the County of James City, relocate the sewer lines, manholes, clean outs or other elements of the sanitary sewer plan, provided that it is determined that said relocation(s) does not alter the basic concept or character of development as provided in paragraph twelve (12) hereof.

7. Binding Drainage Master Plan. Parcel "A" of the Property shall be developed generally in accordance with the conceptual plan entitled: "PRELIMINARY MASTER DRAINAGE PLAN, WELLINGTON, STONEHOUSE DISTRICT, JAMES CITY COUNTY, VIRGINIA" dated June, 1996, which plan is on file with the James City County Planning Department. The Declarant may, from time to time, in final subdivision plats or site plans submitted to the County of James City, relocate the drainage facilities features and/or amenities of the Property shown on the aforesaid plan, provided that it is determined that said relocation(s) does not alter the basic concept or character of development as provided in paragraph twelve (12) hereof.

8. Construction Traffic. The Declarant shall take all steps reasonably required to direct traffic related to construction on Parcel "A" of the Property to enter Parcel "A" of the Property from Rochambeau Road (Virginia State Route 30) as soon as such access is reasonably available.

9. Enforcement. The covenants, conditions and restrictions contained herein shall inure to the benefit of all future owners of subdivided lots within or portions of the Property, and the POA described above. Each of the foregoing parties shall be entitled to bring an action enforcing the terms hereof.

10. Annexation. Additional residential property, lots and/or common area may be annexed to the Property at any time by the Declarant, its successors and/or assigns, at the discretion of the Declarant, its successors and/or assigns.

11. No Negative Reciprocal Easement/Covenant. The terms hereof shall not be construed to affect property not included within the Property except that property annexed to the Property by a writing in recordable form pursuant to paragraph 8 hereof.

12. Amendments. Amendments to any or all of the provisions above may be made by the Declarant, without the consent and/or approval of any future owner(s) of subdivided lots within the Property, the POA, or any owner of a lot within the Mirror Lakes Estates subdivision provided James City County determines that the subdivision plat(s) and/or site plan(s) submitted for its approval does not alter the basic concept or character of development as herein provided. Approval by James City County of said subdivision plat(s) and/or site plan(s) shall conclusively establish that any amendments contained therein do not in fact alter the basic concept or character of development as herein provided.

13. Declarant. The term "Declarant" as used herein shall refer to Wellington, LLC, its successors, assigns, transferees or future owners or developers of the Property.

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14. Severability. Invalidation of any one of the covenants, terms or provisions above by a judgment or court order shall in nowise affect or invalidate any other provision hereof.

15. Duration. The covenants and restrictions of this declaration shall run with and bind the Property for a term of twenty-five (25) years from the date of recordation of this Declaration among the records contained in the Office of the Clerk of the Circuit Court for the City of Williamsburg and County of James City, after which time they shall be automatically extended for successive periods of twenty-five (25) years each, unless earlier terminated by instrument executed on behalf of the POA.

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

WITNESS the following signatures and seals.

WELLINGTON, LLC

By:  \_\_\_\_\_

Title: CEO \_\_\_\_\_

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STATE OF VIRGINIA

COUNTY OF JAMES CITY, to-wit:

The foregoing Declaration of Covenants, Conditions and Restrictions was acknowledged before me by H. R. Ashe, Manager of Wellington, LLC, this 16 day of March, 2000.

Melaney Thomas  
NOTARY PUBLIC

My commission expires: 3/31/02

Prepared by:

Kaufman & Canoles, P.C.  
1200 Old Colony Lane  
Williamsburg, VA 23185  
(757) 229-7322

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**SCHEDULE A: THE PROPERTY**

**PARCEL "A"**

All that certain lot, piece or parcel of land situate, lying and being in Stonehouse District, County of James City, Virginia, shown as "Parcel A, 274.70 acres" on that certain plat entitled: "PLAT SHOWING PARCELS A & B CONTAINING 291.42 +/- ACRES OWNED BY: NICE PROPERTIES CO., STONEHOUSE DISTRICT, COUNTY OF JAMES CITY, VIRGINIA," dated May 11, 1998, made by AES Consulting Engineers, which said plat is recorded in the Office of the Clerk of the Circuit Court for the City of Williamsburg and County of James City in Plat Book 73, pages 100 through 102, and to which plat reference is made for a more particular description of the subject property.

Being a portion of the same property conveyed to Wellington, LLC, a Virginia limited liability company by deed dated July 15, 1999 of record in the aforesaid Clerk's Office as Instrument No. 990015562.

All those certain lots, pieces or parcels of land situate, lying and being in Stonehouse District, James City County, Virginia known and designated as Lots numbered thirteen (13) and fourteen (14) as shown on that certain plat entitled: "PLAT MIRROR LAKE ESTATES SECTION 6 BEECHWOOD COMPANY - OWNER/DEVELOPER, JAMES CITY COUNTY, VIRGINIA," made by The DeYoung-Johnson Group, Inc., Engineers-Architects-Surveyors, dated June 13, 1989 and recorded in the aforesaid Clerk's Office in Plat Book 51, page 6.

Being the same property conveyed to Wellington, LLC, a Virginia limited liability company, by deed dated July 15, 1999 of record in the aforesaid Clerk's Office as Instrument No. 990015561.

LESS AND EXCEPT all that certain lot, piece or parcel of land situate, lying and being in James City County, Virginia, more particularly described as "Area of Parcel, 653,400 S.F.± or 15.00 Acres± on a plat attached hereto and made a part hereof entitled "Plat Of Subdivision, Being A Portion Of Parcel "A", Containing 15.00± Acres, Owned By Wellington, LLC, Stonehouse District, James City County, Virginia" dated 1/7/2000 made by G. T. Wilson, Jr. of AES, Consulting Engineers, a copy of which is attached hereto, made a part hereof to be recorded herewith.

BEING a portion of the same property conveyed to the Declarant by deed dated July 15, 1999 from Nice Properties Co. of record in the Clerk's Office of the Circuit Court of the City of Williamsburg and County of James City as document no. 990015562.

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**PARCEL "B"**

All that certain lot, piece or parcel of land situate, lying and being in James City County, Virginia, more particularly described as "Area of Parcel, 653,400 S.F.± or 15.00 Acres± on a plat attached hereto and made a part hereof entitled "Plat Of Subdivision, Being A Portion Of Parcel "A", Containing 15.00± Acres, Owned By Wellington, LLC, Stonehouse District, James City County, Virginia" dated 1/7/2000 made by G. T. Wilson, Jr. of AES, Consulting Engineers, a copy of which is attached hereto, made a part hereof to be recorded herewith.

BEING a portion of the same property conveyed to the Declarant by deed dated July 15, 1999 from Nice Properties Co. of record in the Clerk's Office of the Circuit Court of the City of Williamsburg and County of James City as document no. 990015562.

#605753 v4 - Decl. Res/Cov - Wellington

VIRGINIA: City of Williamsburg and County of  
James City, to-wit:  
This Declaration of Conveyance was  
presented with certificate annexed and admitted  
to record on 21 March, 2000,  
at 3:03 PM in the Clerk's Office of the  
Circuit Court of the City of Williamsburg and County  
of James City.  
TESTE: BETSY B. WOOLRIDGE, CLERK  
BY: Quedia H. O'Neil Deputy Clerk

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FIRST AMENDMENT TO WELLINGTON SUBDIVISION  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS FIRST AMENDMENT to the Wellington Subdivision Declaration of Covenants, Conditions and Restrictions made this 11th day of January, 2002, by WELLINGTON, L.L.C., a Virginia limited liability company, (hereinafter referred to as "Declarant"), as developer and owner in fee simple of the real property described herein.

WHEREAS, the Wellington Subdivision Declaration of Covenants, Conditions and Restrictions, dated February 28, 2000 (the "Wellington Subdivision Declaration"), and recorded in the Clerk's Office of the Circuit Court for the City of Williamsburg and County of James City, Virginia, on March 21, 2000, as Instrument No. 000005624, pages 216 to 223, the Declarant did establish a binding master plan of development for the property described therein; and

WHEREAS, in said Declaration, the Declarant did reserve the right to amend the provisions contained therein; and

WHEREAS, the Declarant hereby exercises its option to amend said Wellington Subdivision Declaration.

NOW, THEREFORE, the Declarant does hereby amend the Wellington Subdivision Declaration as follows:

1. Water Conservation Rules: Paragraph 1(F)(ii) is hereby deleted and replaced as follows:

1(ii) Automatic underground drip irrigation systems are allowed in turf and landscaped areas; provided, however, that said system may not irrigate areas in excess of 30% of the Owner's Lot.

(a) The system shall be offered as an option to prospective home buyers in the development; and

(b) The automatic underground drip irrigation system may be installed by any person qualified and familiar with the system; and

(c) No overhead irrigation will be permitted, except to irrigate vegetation in VDOT right of ways. Only pressure regulated heads shall be allowed to irrigate VDOT right of ways.

2. Confirmation of Declaration. All other terms and provisions of the Wellington Subdivision Declaration are expressly ratified and confirmed and shall remain in full force and effect.

IN WITNESS WHEREOF, the Declarant has caused this Amendment to the Wellington Subdivision Declaration of Covenants, Conditions and Restrictions to be executed in its name and on its behalf by its Manager, thereunto duly authorized.

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

WELLINGTON, L.L.C.

BY Charles E. Glisan  
Charles E. Glisan  
Its Manager

COMMONWEALTH OF VIRGINIA  
In the City of Newport News, to wit:

I, the undersigned, a notary public in and for the City and State aforesaid, do hereby certify that CHARLES E. GLISAN, Manager on behalf of WELLINGTON, L.L.C., a Virginia limited liability company, has acknowledged the same before me in my City and State aforesaid.

Given under my hand this 23<sup>rd</sup> day of January, 2002.

Sarah Bailey  
Notary Public

My commission expires: 6/30/2004

APPROVED:

Sandy Wanner  
Sandy Wanner  
County Administrator

COMMONWEALTH OF VIRGINIA  
In the County of James City, to wit:

Prepared By:  
Stein & Smith, P.C.  
740-F Thimble Shoals Blvd  
Newport News, Virginia 23606

I, the undersigned, a notary public in and for the County and State aforesaid, do hereby certify that SANDY WANNER, County Administrator, James City County, Virginia, has acknowledged the same before me in my County and State aforesaid.

Given under my hand this 27<sup>th</sup> day of October, 2004.

Jo Bak  
Notary Public

My commission expires: January 31, 2006

VIRGINIA: CITY OF WILLIAMSBURG & COUNTY OF JAMES CITY  
This document was admitted to record on 4 Nov. 04  
at 12:43 PM. The taxes imposed by Virginia Code  
Section 58.1-801, 58.1-802 & 58.1-814 have been paid.  
STATE TAX LOCAL TAX ADDITIONAL TAX