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DECLARATION OF CONDOMINIUM
OF
THE PROMENADE AT JOHN TYLER,
A CONDOMINIUM

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DECLARATION OF CONDOMINIUM
OF
THE PROMENADE AT JOHN TYLER, A CONDOMINIUM

Franciscus at Promenade LLC, a Virginia limited liability company, duly organized under the laws of the Commonwealth of Virginia, being the owner of record of the fee simple title to the real property situate lying and being in the County of James City, Virginia, as shown and depicted as "Phase 1 The Promenade at John Tyler, a Condominium" on that certain plat attached hereto as Exhibit "A" entitled "Phase 1 Condominium Plat of The Promenade at John Tyler, a Condominium," made by Hayden Frye and Associates, Inc., Land Surveyors, dated February 15, 2017, and being more particularly described by metes and bounds in Exhibit "B", both of which Exhibits are incorporated herein by reference, does hereby state and declare that the realty described in Exhibit "B", together with any improvements thereon, are submitted to condominium ownership pursuant to the Condominium Act of the Commonwealth of Virginia, Title 55, Section 55-79.39 *et seq.*, Code of Virginia of 1950, as the same exists at the time of recording this Declaration in the Clerk's Office of the Circuit Court of the County of James City, Virginia, as set forth more particularly below.

ARTICLE 1. PURPOSE: NAME, ADDRESS AND LOCATION: LEGAL DESCRIPTION: EFFECT.

1.1. PURPOSE. The purpose of this Declaration is to submit the realty and improvements of the above-mentioned property to condominium ownership and use in the manner prescribed by the laws of the Commonwealth of Virginia, subject to the provisions contained herein.

1.2. NAME, ADDRESS AND LOCATION. The name of this Condominium is The Promenade at John Tyler, a Condominium. The Condominium is located in the County of James City, Virginia. The address of the Condominium is 5304 John Tyler Highway, Williamsburg, Virginia 23185.

1.3. THE SUBMITTED LAND. The real property depicted as Phase 1 on Exhibit A, and being more particularly described on Exhibit B is the land hereby submitted to condominium ownership. Such property is subject to such easements, restrictions, reservations and rights of way of record, together with those contained or provided in this instrument and the Exhibits attached hereto.

1.4. JAMES CITY COUNTY PROFFERS. The Declarant has agreed to certain conditions in developing the Condominium through Proffers with James City County. The Proffers, First Amendment to Proffers and Second Amendment to Proffers and any future amendments (the "Proffers") are attached hereto as Exhibit C and incorporated herein by reference.

1.5. EFFECT. All of the provisions of this Declaration and all Exhibits referenced herein and attached hereto, as amended and supplemented from time to time, shall be binding upon all Unit Owners and are enforceable equitable servitudes running with the land and existing in perpetuity

*Declaration of Condominium
Franciscus at Promenade LLC
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until this Declaration is revoked and the Condominium is terminated as provided herein. In consideration of receiving, and by acceptance of a grant, devise or mortgage, all grantees, devisees or mortgagees, their heirs, personal representatives, successors and assigns, and all parties claiming by, through, or under such persons agree to be bound by the provisions hereof. Both the burdens imposed and the benefits granted by this instrument shall run with each Unit as herein defined.

ARTICLE 2. SURVEY AND DESCRIPTION OF IMPROVEMENTS.

On Exhibit "A", Sheet 1 and 2, there is a plat of the land which encompasses both the Submitted Land and the Additional Land. On Exhibit A there is a Plat which shows the location and dimension of the Submitted Land which consists of the roadways within the Condominium. As shown on the Plat, the roadways are "not yet completed." In compliance with § 55-79.54, Code of Virginia of 1950, the Declarant's obligations to complete the roads located on Phase 1 is incremental as the project proceeds. The Declarant anticipates completion of all of the roads by Spring of 2021. The materials to be used to construct the roads are set forth in the site plan records on file with James City County. No Units are located on the Submitted Land. The Plans for the Units shall be recorded with the Phase Amendments as Units are constructed.

ARTICLE 3. DEFINITION OF TERMS.

The terms used in this Declaration and the Exhibits attached hereto shall have the meanings stated as follows, unless the context otherwise requires.

3.1. "Additional Land" means those lands described in Exhibit "D" and shown as "Additional Land" on Exhibit "A", which may subsequently be submitted to condominium ownership hereunder by amendment to this Declaration as provided in Paragraph 6.01 through 6.12 below.

3.2. "Articles of Incorporation" means the Articles of Incorporation of the Association, filed with the State Corporation Commission.

3.3. "Assessment" means a share of the funds required for the payment of Common Expenses which is assessed against the Unit Owners from time to time, and all other amounts lawfully charged to Unit Owners pursuant to the provisions hereof or of the Condominium Act.

3.4. "Association" means Promenade at John Tyler Condominium Association, Inc., a non-stock Virginia corporation which is the entity responsible for the operation of the Condominium.

3.5. "Board" or "Board of Directors" means the Board of Directors of the Association which is the "Executive Organ" designated as the governing body of the Association.

3.6. "Bylaws" means the Bylaws of the Association as they exist from time to time which

are attached as Exhibit "E" and incorporated herein by reference.

3.7. "Capital Components" means those items, whether or not a part of the Common Elements, for which the Association has the obligation for repair, replacement or restoration and for which the Board determines that funding is necessary.

3.8. "Capital Contribution" means the payment required at closing from the Purchaser equal to three (3) months of regular assessment, which sum shall be placed in the Association's account as part of the reserve fund.

3.9. "Common Elements" means all portions of the Condominium Property other than the Units.

3.10 "Common Expenses" means all expenditures lawfully made or incurred by or on behalf of the Association, together with all funds lawfully assessed for the creation and/or maintenance of reserves pursuant to the provisions of the Condominium Instruments.

3.11. "Common Interest Community Manager" means the same as that term is defined in Va. Code Ann. § 54.1-2345.

3.12. "Condominium" means that form of ownership of real property which is created pursuant to the laws of the Commonwealth of Virginia and which is comprised of Units that may be owned by one or more persons, and in which there is appurtenant to each Unit an undivided share in the Common Elements. The term shall also mean The Promenade at John Tyler, a Condominium, as established by this Declaration.

3.13. "Condominium Act" means the Condominium Act of the Commonwealth of Virginia as set forth in § 55-79.39, *et seq.* of the Code of Virginia of 1950, as the same exists at the time of recording this Declaration in the Clerk's Office of the Circuit Court of the County of James City, Virginia.

3.14. "Condominium Instruments" is a collective term referring to this Declaration, Bylaws, and plats and plans, recorded pursuant to the provisions of the Condominium Act. Any exhibit, schedule, or certification accompanying a Condominium Instrument and recorded simultaneously therewith shall be deemed an integral part of that Condominium Instrument. Any amendment or certification of any Condominium Instrument shall, from the time of the recordation of such amendment or certification, be deemed an integral part of the affected Condominium Instrument, so long as such amendment or certification was made in accordance with the provisions of the Condominium Act.

3.15. "Condominium Property" means and includes all lands and personal property hereby or hereafter subjected to condominium ownership and all improvements thereon and all easements and rights appurtenant thereto intended for use in connection with the Condominium.

3.16. "Condominium Unit" means a Unit together with the undivided interest in the Common Elements appertaining to that Unit.

3.17. "Declarant" means Franciscus at Promenade LLC, a Virginia limited liability company, duly organized under the laws of the Commonwealth of Virginia, its successors and assigns, which has created this Condominium.

3.18. "Declaration" means this instrument and all Exhibits attached hereto.

3.19. "Institutional Lender" means one or more commercial or savings banks, savings and loan associations, trust companies, credit unions, industrial loan associations, insurance companies, pension funds, or business trusts, including, but not limited to, real estate investment trust, any other lender regularly engaged in financing the purchase, construction, or improvement of real estate, or any assignee of loans made by such a lender or any combination of the foregoing entities.

3.20. "Limited Common Element" means a portion of the Common Elements reserved for the exclusive use of those entitled to the use of one or more, but less than all, of the Units.

3.21. "Mortgagee" means those Institutional Lenders who have a first deed of trust on a Unit, and who have given notice to the Association.

3.22. "Occupant" means the person or persons other than the Unit Owner in actual possession of a Unit.

3.23. "Person" means a natural person, corporation, partnership, association, trust, or other entity capable of holding title to real property, or any combination thereof.

3.24. "Submitted Lands" means those lands which are hereby and herein submitted to condominium ownership as depicted on Exhibit A and described in Exhibit B.

3.25. "Unit" means a portion of the condominium designed and intended for individual ownership and use, and includes any purchase or a condominium unit at a foreclosure sale, regardless of whether the deed is recorded in the land records where the unit is located.

3.26. "Unit Owner" means one or more persons who own a Condominium Unit. This term shall not include any person or persons holding an interest in a Condominium Unit solely as security for a debt.

The definitions herein contained shall prevail as the context requires whether or not the same are capitalized in their usage herein.

ARTICLE 4. INTEREST IN COMMON ELEMENTS, OWNERSHIP AND BOUNDARIES OF UNITS

4.1. CONDOMINIUM. The Condominium shall consist of the Common Elements, eleven (11) ten-plex buildings and forty (40) duplex buildings.

4.2. COMMON ELEMENTS. Unless specified otherwise in any Phase Amendment, the Fire Protection Sprinkler room and the House Electrical Panel for the 10-plex building shall be Common Elements. Except as otherwise set forth on the Plats, the Common Elements shall mean and include all of the Condominium that is not a Unit.

4.3. INTEREST IN COMMON ELEMENTS AND UNITS. Each Unit Owner shall own, as an appurtenance to his or her Unit, an equal undivided interest in the Common Elements. The percentage of undivided interest of each Unit shall not be changed without the unanimous consent of all Unit Owners, or unless the Condominium is expanded as provided in Paragraphs 6.01 through 6.12 of this Declaration. No Unit Owner shall bring an action for partition or division of his or her undivided interest in the Common Elements. Each Unit Owner shall own his or her Unit in fee simple absolute, in addition to the undivided fee simple interest as a tenant in common with the Unit Owners, in Common Elements.

4.4. LIMITED COMMON ELEMENTS. The Limited Common Elements shall be as shown on the Plats, and include decks, porches, attic space and patios. No storage is permitted in the attic space nor are attic spaces permitted to be improved or finished.

4.5. BOUNDARIES. A Unit consists of an individual structure and adjacent areas lying within the boundaries described in Paragraphs 4.5.1 through 4.5.2.

4.5.1. Horizontal Boundary:

The upper and lower boundaries of the Unit shall be the following boundaries extended to an intersection with the perimetrical boundaries:

- (1) *Upper Boundary* - The horizontal plane of the upper surface of the sheetrock wallboard comprising the undecorated finished ceiling of the upper floor or upper level of the Unit. The pull-down access in any Unit with an attic space is part of the Unit.
- (2) *Lower Boundary* - The horizontal plane of the undecorated upper surface of the sub-floor, immediately below the finished floor.

4.5.2. Perimetrical Boundaries:

The perimetrical boundaries of the Unit shall be the vertical planes of the exterior surface of the sheetrock wallboard comprising the interior walls bounding the Unit extended to

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intersections with each other and with the Upper and Lower Boundaries.

- (1) Where there is an aperture in any perimetrical boundary, including, but not limited to windows and doors, the vertical boundary shall be extended at all such places, at right angles, to the dimension of such aperture, so that the perimetrical boundary at such places shall be coincident with the exterior finished surface of such aperture, including the framework thereto. Exterior walls made of glass or glass fired to metal framing, exterior windows and frames, exterior glass sliding doors, frames and casings, shall be included within the Unit and shall not be deemed a Common Element.
- (2) The interior partitions within a Unit, including the ceilings and floors between the floors within a two story Unit are part of said Unit. Any fencing as originally constructed by the Declarant shall not be included within the Unit, but shall be deemed a Limited Common Element.

4.5.3. Air Conditioning/Heating/Mechanical. Notwithstanding any of the provisions of this Article 4 to the contrary, the air conditioning, refrigerating, heating and electrical lines within the Unit, and the heating/air conditioning unit, heat pump, fan units, water and sewer lines, and other apparatus in connection therewith, which serve an individual unit, but may be located outside or within the Unit, shall be owned by the Unit Owner as a part of the Unit and are not part of the Common Elements.

4.6. RIGHT TO ALTER. Declarant reserves the right to alter the exterior and interior design, boundaries and arrangements of all Units as long as Declarant owns the Units so altered. Declarant reserves the right to subdivide Units pursuant to § 55-79.69 and § 55-79.70 of the Code of Virginia. Said alteration shall be accomplished by an amendment to this Declaration, which need only be signed by Declarant without the approval of any other party. Declarant shall collaterally reapportion, if necessary, the shares of ownership in the Common Elements appurtenant to the Units concerned.

4.7. PARKING. There shall be assigned to each Unit, without charge, the exclusive right to use one single width driveway appurtenant to the Unit for the Duplex Units or a parking space for the 10-plex Units, such assignment to be made as a Limited Common Element by this Declaration or as made on the plat depicting the Unit or by assignment by the Declarant. Such space shall be used only by the Unit Owner and such Unit Owner's guests and invitees. All other unassigned parking spaces located on the Common Elements shall be available to Unit Owners, their guests and invitees on a first-come, first-served basis, however, the Board of Directors, by Rule and Regulations adopted from time to time, may limit the number of cars owned or operated by the occupants of any Unit that may be parked on the Condominium Property. The Board of Directors shall have the right, but not the obligation, to assign parking spaces, or impose further restrictions as the Board deems necessary.

ARTICLE 5. RESTRICTION AGAINST RELOCATION OF BOUNDARIES AND SUBDIVISION OF UNITS.

Except as otherwise provided in Article 4.6 herein, no Unit shall be divided or subdivided into a smaller Unit; no Unit or portion thereof shall be added to or incorporated into any other Unit; and the boundaries between adjoining Units shall not be relocated.

ARTICLE 6. OPTION TO EXPAND THE CONDOMINIUM.

6.1. RESERVATION OF RIGHT. Declarant hereby expressly reserves unto itself and its successors and assigns, the option and right to expand the Condominium pursuant to the Condominium Act and subject to the provisions hereof.

6.2. DECLARANT'S OPTION. The option to expand the Condominium shall be at the sole and exclusive option of Declarant and shall not require the consent of any Unit Owner or Mortgagee.

6.3. DURATION OF OPTION. This option to expand the Condominium shall expire ten (10) years from the date of recordation of this Declaration if not sooner exercised. At any time prior to the expiration of such period, however, Declarant may terminate its option to expand or lessen the period within which it can be exercised by recording among the land records wherein this Declaration is recorded, an executed and notarized document terminating this option or altering the date this option shall expire. After the expiration of the period of Declarant Control reserved pursuant to § 55-74(A) of the Virginia Code, such time limit may be extended by an amendment to this Declaration made pursuant to § 55-79.71 of the Code of Virginia, as authorized by §55-79.54(c)(3) of the Virginia Code.

6.4. THE ADDITIONAL LAND. The real property described in Exhibit "D" and depicted as "Additional Land" on Exhibit "A" is the land which may be added to the Condominium pursuant to Declarant's option to expand, which land is referred to as "Additional Land."

6.5. ADDITION OF PORTIONS OF ADDITIONAL LAND. Declarant expressly reserves the right to add any, all, or any portion or portions of the Additional Land at any time, at different times, in any order, without limitation.

6.6. IMPROVEMENTS ON ADDITIONAL LAND. Declarant may, but shall not be obligated to, place structures and vehicular parking areas and thoroughfares on portions of the Additional Land; however, Declarant reserves the right to make any or all improvements on the Additional Land in any or all locations on the Additional Land, without limitation, and no assurances are made in that regard.

6.7. MAXIMUM NUMBER OF UNITS ON ADDITIONAL LAND. Presently, the zoning density permits the Condominium to be expanded by adding a maximum of One Hundred Ninety (190) Units on Additional Land with an area of 12.584 acres and the total number of Units in the Condominium would be One Hundred Ninety (190) .

6.8. RESIDENTIAL USE. All Units to be created on any portion of the Additional Land shall be restricted exclusively to residential use, except as otherwise provided in paragraph 20.2 of this Declaration.

6.9. COMPATIBLE STRUCTURES. No assurances are made or given, that the structures which may be constructed on any portion of the Additional Land added to the Condominium will be compatible with the structures on the Submitted Land in terms of quality of construction, the principal materials to be used and architectural style.

6.10. OTHER IMPROVEMENTS. In addition to any structures which may be erected on the Additional Land, Declarant may, but shall not be obligated to, construct improvements thereon for recreational and/or service purposes, including vehicular streets. Declarant reserves the right to construct such recreational and service facilities as it desires; however, Declarant makes no assurances that any improvements will be made on any portion of the Additional Land.

6.11. ADDITIONAL UNITS. The Units which may be created on any Additional Land may be as shown on the plans attached as Exhibit A; however, Declarant makes no assurances as to the type or types of Units that may be created thereon, or that such Units will be substantially identical to the Units in the Submitted Land.

6.12. LIMITED COMMON ELEMENTS. Declarant expressly reserves the right to create Common Elements upon the Additional Land which may subsequently be assigned as Limited Common Elements in accordance with § 55-79.57 of the Code of Virginia.

ARTICLE 7. EASEMENTS.

7.1. PERPETUAL NON-EXCLUSIVE EASEMENT. The Common Elements are hereby declared to be subject to a perpetual non-exclusive easement in favor of all of the Unit Owners in the Condominium for their use and the use of their immediate families, guests, and invitees for all proper and normal purposes, including the providing of services for the benefit of all Units, subject to the restrictions herein.

7.2. EASEMENT FOR ENCROACHMENTS. In the event that any Unit or Common Element or Limited Common Element shall encroach upon any other Unit, Common Element or Limited Common Element for any reason other than the willful and intentional act of any person done with the intention to encroach, then an easement appurtenant to such affected shall exist for so long as such encroachment shall naturally exist. If any part of the initial improvements encroach as stated above, it shall be deemed that such encroachment was not a "purposeful act" done with the intention to encroach.

7.3. UTILITY EASEMENTS. Utility easements are reserved and granted through the Condominium Property as may be required for construction and maintenance of utility services in order to adequately serve the Condominium.

7.4. INGRESS AND EGRESS. A non-exclusive easement for ingress and egress is hereby created for pedestrian traffic over, through and across sidewalks, paths, walks, driveways, passageways, and lanes as the same, from time to time, may exist upon the Common Elements; and for vehicular traffic over, through and across such portions of the Common Elements as, from time to time, may be paved and intended for such purposes.

7.5. USE. The use of any easement by a Unit Owner shall be subject to all of the provisions of this Declaration and such rules, regulations and restrictions as may be imposed by the Unit Owners Association, as the same may exist from time to time.

7.6. SURVEY EXHIBIT - EASEMENTS. The Declarant shall have the right to create for others or unto itself, such easements as are necessary to accomplish the purposes referred to in this Article 7. Further, Declarant shall have the unequivocal right without the joinder of any other party to grant such easements (ingress, egress and maintenance) to such parties as Declarant deems fit. If such easement is granted, as of the date hereof, the portion thereof that falls within the confines of the Condominium Property shall be governed by the language thereon or may be created by separate document. The responsibility for the maintenance of such easements, if any, shall be as provided for therein, and if no such provision is made, the Association shall be responsible for the maintenance and care thereof. Declarant, or its designee, shall have the right but not the obligation to enter the Condominium Property for the purpose of constructing, maintaining and repairing said easements and the equipment thereon. Should the Declarant grant additional easements which connect with or are intended to supplement, replace or relocate the easements, the same shall automatically be part of the easements provided therein as if originally set forth.

7.7. EASEMENT TO FACILITATE EXPANSION. The Declarant shall have a transferable easement over and on the Common Elements for the purpose of making improvements on the Submitted Land and the Additional Land pursuant to the provisions of this Declaration and the Condominium Act, and for the purpose of doing all things reasonably necessary and proper in connection therewith.

7.8. ADDITIONAL EASEMENTS. Declarant reserves unto itself, or its designee, the unequivocal right to create and/or grant additional easements over, upon or through the Condominium Property, at any time while Declarant is developing the Condominium and selling units, for any purpose, without the joinder of the Association or any Unit Owners whomsoever, provided, that said easements so created shall not cause a taking of part of the actual buildings. However, if requested, the Association and Unit Owners shall join in the creation thereof.

7.9. STRUCTURAL INTEGRITY EASEMENT. There shall exist, as a Common Element, an easement for structural integrity affecting all of the partitions and floors within each Unit, so that none will be altered rearranged or removed in any manner which would harmfully affect the structural integrity of the building of which it is a part.

7.10. MAINTENANCE EASEMENT. There shall exist, as a Common Element, an easement through each Unit for the ducts, pipes, conduits, plumbing, water meters, wiring or other facilities for the furnishing of utility or other services to the Units and the Common Elements, and for maintaining, repairing, servicing and replacing same. Any pipes, ducts, wires, conduits, electrical panels, plumbing, drains, or any utility services serving only one Unit are appurtenant to and a part of such Unit and are not part of the Common Elements.

ARTICLE 8. FISCAL MANAGEMENT; ASSESSMENTS; LIENS.

8.1. GENERAL AUTHORITY. The Board of Directors shall have the power to make, levy, collect and enforce Annual and Special Assessments for Common Expenses and such other expenses, charges, fines and fees as are provided for in the Condominium Instruments and the Condominium Act (collectively "Assessments").

8.2. UNIT OWNER'S GENERAL LIABILITY. Except as herein specified to the contrary, all Assessments shall be levied against Unit Owners and Units on an equal basis and shall be a lien against each Unit Owner's Unit as provided in the Condominium Instruments and the Condominium Act, and shall also be the personal obligation of the Unit Owner. Should the Association be the owner of any Unit(s), the assessment, which would otherwise be due and payable to the Association by the Owner of such Unit(s), shall be treated as a Common Expense.

8.3. MANNER AND NOTIFICATION. The Board of Directors shall fix and determine the sums necessary to pay all the Common Expenses, and other fees of the Condominium, pursuant to the provisions of the Bylaws. The same shall be assessed against the Unit Owners as provided for herein. In the event the Board fails to prepare or adopt a budget as required by the Bylaws, such failure or delay shall not constitute a waiver or release in any manner of a Unit Owner's obligation to pay his allocable share of the Common Expenses. For a delayed budget, each Unit Owner shall be liable for paying its share of the Common Expense as the same may be adjusted for monthly installment payments. If there is no budget adopted, each Unit Owner shall continue to pay its monthly installment of Annual Assessments in the same amount as the previous fiscal year.

8.4. ANNUAL ASSESSMENTS. The amount of the Annual Assessments shall be based on the annual budget adopted by the Board pursuant to the Bylaws. The annual budget shall include all Common Expenses. Each Unit Owner shall be liable for the Annual Assessments on an equal basis representing the undivided interest of each Unit in the Common Elements. The Annual Assessment shall include Reserves as follows:

8.4.1. Reserve Fund. The Board of Directors of the Association in assessing for Common Expenses shall include therein a sum to be collected as a Reserve Fund for replacement of Common Elements for the purpose of enabling the Association to replace Common Elements, including any personal property which may be a portion of the Condominium Property.

8.4.2. Operating Reserve/Reserves for Contingencies. The Board of Directors of the Association in assessing for Common Expenses shall include therein a sum to be collected and maintained as a general operating reserves, reserves for contingencies, insurance deductible, working capital and operations. Such sums may be used to meet deficiencies from time to time existing as a result of delinquent payment of assessments by Unit Owners or as a result of emergencies.

8.4.3. Proviso. Notwithstanding the foregoing, the Board of Directors shall comply with the requirements of Va. Code Ann. § 55-79.83 regarding reserves for capital components, provided, however, that the Board shall not be personally responsible for the inadequacy of any reserve amounts. The funds for reserves shall be placed in accounts that are separate from the operating accounts of the Association. Unless otherwise provided, no such reserves shall be used or applied for any purpose other than the purpose for which such reserve was established unless such other purpose has been approved by a vote of at least two thirds (2/3rds) or more of the votes appertaining to the Condominium and unless such application of the reserve funds complies with any applicable law. If the reserves are inadequate for any reason, the Board may levy a special assessment as set forth in Section 8.5 below.

8.5. SPECIAL ASSESSMENTS. If assessments levied are, or may prove to be, insufficient to pay the costs of operation and management of the Condominium, or for reserves for replacement, contingencies, working capital or operation, or in the event of emergencies, the Board of Directors shall have the authority to levy such additional assessment or assessments as it shall deem necessary.

8.6. CAPITALIZATION FEE. A three (3) month capitalization fee equal to three (3) months of the then-current Annual Assessment shall be collected at closing from each Purchaser and such fee shall be disbursed to the Association within seventy-two (72) hours of closing. This fee shall be deposited into the Association's operating reserve fund and/or its Reserve Fund as determined by the Board based on the Reserve Study. Failure to pay such fee shall be deemed an assessment delinquency and the amount of such fee shall constitute a continuing lien on the Unit and be subject to collection in the same manner as Assessments.

8.7. METERED UTILITIES. The costs of any utilities that are not metered to a particular Unit shall be a Common Expense and included in the Annual Assessment.

8.8. PAYMENT OF ASSESSMENTS. The Annual Assessments shall be payable in monthly installments commencing on the first day of the month in each fiscal year, without notice. Special Assessments shall be due and payable in the manner and on such schedule as determined by the Board of Directors. Failure to pay any assessment within ten (10) days from the date due shall accrue a late charge of the greater of Thirty Dollars (\$30.00) or ten percent (10%) of the assessment or installment thereof and shall bear interest at the rate of eighteen percent (18%) per annum from the due date.

8.9. LIEN. The Association shall have a lien upon every Unit for unpaid Assessments levied against that Unit in accordance with the Condominium Instruments and the Condominium Act, which lien shall secure the payment of monies from each Unit including all Assessments, late charges, interest, cost of collection, postage fees, reasonable attorney's fees which are due upon the account being turned over to the attorney's office for collection, court costs, and expenses and any sums advanced on behalf of the Unit Owner in payment of the Unit Owner's obligations as set forth in the Condominium Instruments. The lien granted to the Association may be foreclosed as provided in the Condominium Act. The lien granted to the Association shall further secure such advances for taxes and payments on accounts of Institutional Lenders, liens or encumbrances which may be advanced by the Association in order to protect its lien. The lien shall be effective, have priority, and be collected as provided by the Condominium Act, unless, by the provisions of this Declaration, such liens would have a greater priority or dignity.

8.10. SEPARATE PROPERTY. All monies collected by the Association shall, unless the same is collected for the benefit of others, be the separate property of the Association. Such monies may be applied by the Association to the payment of any expense of operating and managing the Condominium Property, or to the proper undertaking of all acts and duties imposed upon it by virtue of the provisions of the Condominium Instruments or by law. Except as otherwise provided herein, all monies received from Assessments may be commingled with other monies held by the Association. All Assessments received by the Association shall be for the benefit of the Unit Owners. No Unit Owner shall have the right to assign, hypothecate, pledge or in any manner transfer his interest therein, except as an appurtenance to his Unit. Such funds shall not be subject to attachment or levy by a creditor or judgment creditor of a Unit Owner. When a Unit Owner shall cease to be a member of the Association by the divestment of his ownership of such Unit, by whatever means, the Association shall not be required to account to such Unit Owner for any share of the funds or assets of the Association.

8.11. NO WAIVER. No Unit Owner is exempt from liability for any assessment levied by waiver of the use or enjoyment of any of the Common Elements or by abandonment of the Unit for which the Assessments are made or in any other manner.

8.12. CERTIFICATE OF STATUS OF ASSESSMENTS. Any Unit Owner or Institutional Lender may request the appropriate certificate as set forth in § 55-79.84(H) of the Condominium Act. The Association may charge a fee for such certificate as allowed by the Condominium Act.

8.13. SUBORDINATION AND MORTGAGE PROTECTION. Notwithstanding anything to the contrary herein, the lien of any assessment levied pursuant to the Condominium Instruments and/or the Condominium Act upon any Unit (and any penalties, interest on assessments, late charges or the like) shall be subordinate to, and shall in no way affect the rights of the holder of a Mortgage recorded prior to the perfection of the lien for assessments; provided, however, that such subordination shall apply only to assessments which have become due and payable prior to a sale or transfer of such Unit pursuant to foreclosure, or any proceeding in lieu of foreclosure. Such sale or transfer shall not relieve the purchaser of the Unit at such sale from liability for any assessments

thereafter becoming due, nor from the lien of any such subsequent assessment, which lien shall have the same effect and be enforced in the same manner as provided herein.

8.14. **DEFAULT IN PAYMENT OF ANY ASSESSMENT; LIEN.** In the event of a default by a Unit Owner in the payment of any Assessment, the Association shall have all rights and remedies provided by law, including, but not limited to, those provided by the Condominium Act, and the liability of the Unit Owner shall include liability for late charges, interest, all costs of collection, postage fees, reasonable attorneys' fees and court costs incurred by the Association incident to the collection of such assessment or enforcement of its lien. Attorney fees shall accrue to the account and be due and payable by the Unit Owner when the account is turned over to the attorney for collection. If a Unit Owner shall be in default in the payment of two consecutive installments of any assessment which is payable in installments, the remaining installments may be accelerated with the entire balance of the unpaid assessment being due and payable in full. Upon written notice to the Unit Owner the accelerated assessment shall immediately become due upon the date stated in the notice, which notice shall not be less than fifteen (15) days after delivery of or the mailing of such notice to the Unit Owner. If the Association elects to enforce its lien by foreclosure, the Unit Owner shall be required to pay a reasonable rent for the Condominium Unit, to be fixed by the Board, and the Association shall be entitled to the appointment of a receiver to collect same.

ARTICLE 9. ADMINISTRATION OF THE CONDOMINIUM: THE ASSOCIATION, MEMBERSHIP, REPORTS TO MEMBERS AND LENDERS, VOTING.

9.1. **THE ASSOCIATION; EXECUTIVE ORGAN.** The Association shall administer the operation and management of the Condominium Property and undertake and perform all acts and duties incident thereto in accordance with the provisions of the Condominium Instruments and the Condominium Act. The Board of Directors shall constitute the "executive organ" as defined in Va. Code Ann. § 55-79.41.

9.2. **MEMBERSHIP.** Each Unit Owner shall automatically become a member of the Association upon his or her acquisition of title to any Unit and said membership shall terminate automatically upon said Unit Owner being divested of title to such Unit, regardless of the means by which such ownership may be divested. No person holding any lien, mortgage or other encumbrance upon any unit shall be entitled, by virtue thereof, to membership in the Association or to any of the rights or privileges of such membership.

9.3. **POWERS OF THE ASSOCIATION.** In the administration of the Condominium, the Association shall have, and is hereby granted, the authority and power to enforce the provisions of the Condominium Instruments, levy and collect assessments, and to adopt, promulgate and enforce such Rules and Regulations governing the use of the Units and Common Elements as the Board of Directors of the Association may deem to be in the best interest of the Condominium. The Association shall have all of the powers and duties set forth in the Condominium Instruments and the Condominium Act. Further, the Association shall have the right, when determined by the Board of Directors to be in the best interest of the Condominium, to grant exclusive licenses, easements,

permits, leases or privileges to any individual or entity, including Non-Unit Owners, which affect Common Elements and to alter, add to, relocate or improve Common Elements, provided that the rights and the exercise thereof are not in abrogation of the requirements of the Condominium Act.

9.4. **REPORTS TO LENDERS.** So long as an Institutional Lender is the owner or holder of a first mortgage or first deed of trust encumbering a Unit in the Condominium, the Association shall furnish said Institutional Lender with one (1) copy of the annual financial statement and report of the Association pertaining to the Unit upon which the mortgage is held, provided said Institutional Lender requests same in writing.

9.5. **REPORT TO STATE.** At the time when Declarant requests that the Common Interest Community Board return Declarant's bond or letter of credit assuring payment of its assessments to the Association, the Association shall, within 48 hours after being requested to do so, report to the Common Interest Community Board the percentage of Units owned by the Declarant and the status of Declarant's payment of assessments. This report shall not be withheld or delayed for any reason.

9.6. **INSURANCE REPORTING.** In any legal action in which the Association may be exposed to liability in excess of insurance coverage protecting it and the Unit Owners, the Association shall give notice of the exposure within a reasonable time to all Unit Owners who may be exposed to the liability and they shall have the right to intervene and defend. A copy of each insurance policy obtained by the Association shall be made available for inspection by Unit Owners at reasonable times.

9.7. **VOTING.** The voting of each Unit Owner shall be governed by the provisions of the Bylaws.

9.8. **MANAGEMENT AGREEMENT.** The Association may enter into an agreement with any person, firm or corporation for the administration, maintenance and repair of the Condominium Property and may delegate to such contractor or manager such of the powers and duties of the Association as the Association and such person, firm or corporation shall agree.

ARTICLE 10. USE AND OCCUPANCY.

10.1. **RESIDENTIAL USE.** Each Unit is hereby restricted to residential use as a single-family residence as defined by the Zoning Ordinance of the County of James City, by the Owner or Owners thereof, their immediate families, guests and invitees. At no time may the Unit be used by more persons than for which it was designated.

10.2. **HOME OCCUPATIONS.** No Unit shall be used for any business, commercial, manufacturing, mercantile, storing, vending or any other non-residential purpose; however, a Unit Owner may maintain a home office in the Unit if (i) the occupation or activity is conducted entirely within the Unit; (ii) the occupation requires no external alterations or the use of outdoor storage of

machinery or equipment that creates noise, odor, smoke, dust or glare or is dangerous or otherwise detrimental to persons residing in the home or in adjacent property; (iii) no exterior evidence of the occupation or activity exists; (iv) no articles are displayed or otherwise offered for sale at the Unit; (v) there is no equipment or process inside that may disrupt neighboring Units; and (vi) such office generates no increase in traffic or requirements for parking by clients, customers or other persons related to the business.

10.3. OWNERSHIP BY ENTITY. In the event that other than a natural person is a Unit Owner said entity shall, prior to the purchase of such Unit, designate the person, if any, who is to be the permanent Occupant of such Unit. Such entity shall not thereafter have the right to designate other persons as the Occupants of such Unit, whether in substitution of or in addition to the persons initially designated, except with the approval of the Association. All provisions of the Declaration shall apply to such designated Occupants as though they had title to such Unit and the entity owning such Unit shall be bound thereby. These provisions of Article 10 of the Declaration shall not be applicable to Declarant or to any corporation formed or controlled by Declarant.

10.4. GENERAL USE RESTRICTION. No person shall use the Condominium Property or any part thereof, in any manner contrary to the Condominium Instruments.

10.5. LAWFUL USE. No immoral, offensive or unlawful use shall be made of any or all the Condominium Property, and all laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed. The responsibility of meeting the requirements of governmental bodies for maintenance, modification or repair of the Condominium Property shall be the same as the responsibility for maintenance and repairs of the property concerned.

10.6. ALTERATIONS AND ADDITIONS.

10.6.1. No Unit Owner shall make or permit to be made any material alteration, addition or modification to his Unit without the prior written consent of the Association. No Unit Owner shall cause any improvements or changes to be made on the exterior of the Unit, including painting or other decoration, without the written permission of the Association. The intended improvement or change must be in substantial conformity with the exterior of the other Units in the Condominium in terms of quality of construction, the principal materials to be used and architectural style. No Unit Owner shall cause to be made any modification or installation of electrical wiring, television antenna systems or connection whether inside or outside of the Unit or in any manner change the appearance of any portion of the Condominium Property without the written permission of the Association and Declarant (during the period of Declarant's control provided in the Bylaws). No Unit Owner may cause any material puncture or break in the boundaries of his Unit without the written permission of the Association and Declarant (during the period of Declarant's control provided in the Bylaws).

10.6.2. At anytime after the Declarant no longer owns one or more Units in the Condominium and no longer has the right to add Units, the Board of Directors may establish and

appoint an Architectural Review Board or Committee to review and approve or disapprove, as appropriate, applications by Unit Owners for consent to erect a fence or to make any material exterior alteration, addition or modification to his or her Unit, including painting and decorations of any type, or to make any modification or installation of electrical wiring, television antenna systems or connections, whether inside or outside of the Unit, or to change the appearance of any portion of the Condominium Property. If such a Board or Committee shall be appointed, no such work as mentioned above shall be undertaken without written approval having been given by the Architectural Review Board or Committee. In establishing such a board or committee, the Board of Directors may also establish rules for its operation.

10.7. **NUISANCES.** No nuisance or any use or practice that is the cause of unreasonable annoyance to other Unit Owners or which interferes with the peaceful possession and proper use of the Condominium Property by the Unit Owners is permitted. No Unit Owner or occupant shall permit or suffer anything to be done or kept upon the Condominium Property or his or her Unit which will increase the rate of insurance on the Condominium.

10.8. **COMMON ELEMENTS.** No Unit Owner shall obstruct any of the Common Elements nor shall any Unit Owner store anything upon any of the Common Elements, except those areas designated for storage by the Board, without the approval of the Board. Nothing shall be altered or constructed in or removed from the Common Elements unless approved in writing by the Board.

10.9. **VEHICLES; PARKING.**

10.9.1. **General.** All parking areas located on the Common Elements are for the use of Unit Owners, occupants and their guests. Nonresidents who are not guests of a Unit Owner or occupant are not permitted to park overnight in parking areas within the Condominium. Vehicular parking upon the Common Elements shall be regulated and/or assigned by the Board. The use of Common Element parking areas for long term or extended parking/storage in excess of thirty days is prohibited. The use of externally visual car covers is prohibited.

10.9.2. **Trailers, Boats, and Recreational Vehicles.** Trailers, campers, recreational vehicles, boats or other similar equipment shall not be parked on the Common Element parking areas or on a Unit Owner's driveway except for a reasonable period of time to permit loading or unloading,

10.9.3. **Commercial Vehicles.** The parking of Commercial vehicles is not permitted on the Common Elements or on a Unit Owner's driveway. Temporary parking is permitted in certain limited instances, including, without limitation parking for delivery of items to Unit Owners or occupants or parking necessary for moving vans or trucks to move a Unit Owner or occupant in or out of a Unit. Commercial vehicles are vehicles which are designed or used for commercial applications, including, but not limited to, vehicles (i) displaying a commercial license plate; (ii) displaying markings, signage, or logos for a business; (iii) carrying equipment, tools, or rubbish on the exterior of the vehicle; or (iv) having a weight capacity exceeding three-quarters of a ton and/or

having three or more axles. Notwithstanding the foregoing; vehicles such as automobiles, minivans, sport utility vehicles and pick-up trucks, which do not exceed three-quarter ton, that are used for both business and personal use and have minimal business markings, signage or logo may be permitted in the reasonable discretion of the Board of Directors.

10.9.4. Vehicle Repair, Derelict Vehicles. Except for emergency repairs and minor maintenance performed in a Unit Owner's garage or on the Unit Owner's driveway, no Unit Owner, guest, tenant, or invitee shall repair or restore any vehicle, trailer, boat, camper, recreational vehicle or similar equipment upon any part of the Condominium Property. No stripped-down, wrecked, inoperable, junk or derelict vehicles or other vehicles, or any sizeable part thereof, on which current license plates or inspection stickers are not displayed shall be kept on any of the Condominium Property except those stored in a Unit Owner's garage with the garage door fully closed.

10.10. PETS, ANIMALS. No animals, livestock, poultry, or reptiles of any kind shall be maintained, boarded, raised, bred or kept in any Unit or on the Common Elements, except that the keeping of orderly domestic pets is permitted subject to rules and regulations adopted by the Board of Directors. All vicious or poisonous animals are prohibited. The Board of Directors shall have the authority to adopt, amend and enforce rules and regulations pertaining to pets, including without limitation, prohibiting specific animals or breeds of dogs. Unit Owners are limited to two domestic pets per Unit. Pets shall not exceed a 45 lb. limit unless authorized by the Board of Directors. Unit Owners, occupants and pet owners who do not comply with the rules and regulations pertaining to pets acknowledge and agree that the Association has the authority to require the Unit Owner, Occupant or pet owner to remove a non-compliant pet within ten (10) days of a written request from the Board, and if the Unit Owner, Occupant or pet owner fails to take such action, the Association may proceed with enforcement as authorized in the Condominium Instruments or by law. By maintaining or allowing a pet to be maintained in his or her Unit, the Unit Owner, Occupant and pet owner, jointly and severally, indemnify and hold the Association, the Declarant, the Board of Directors and other Unit Owners harmless from any and all damages, claims, costs, injuries, or causes of action caused or related in any way to the keeping of any pets at the Condominium, including without limitation, attorneys' fees and costs.

10.11. SIGNS. No signs, posters, lettering, notice or advertisements of any character or type, including without limitation, For Sale signs and For Rent signs shall be erected, posted or displayed upon, in, from or about any Unit or Common Element except as authorized in rules and regulations adopted by the Board of Directors.

10.12. APPLICABILITY TO DECLARANT. Neither the Unit Owners nor the Association, nor their use of the Condominium, shall interfere with the Declarant's sale of the Condominium Units. Anything contained herein to the contrary notwithstanding, the Declarant may make such use of any unsold Unit and the Common Elements as may facilitate the sale or leasing of any Unit in the Condominium, including, but not limited to, the use of signage, which in the sole discretion of the Declarant, is necessary to facilitate the sale and leasing of any Unit in the Condominium.

10.13. RULES AND REGULATIONS. All Unit Owners, occupants, guests and invitees shall use the Condominium Property in accordance with the Rules and Regulations promulgated by the entity in control thereof and the provisions of the Condominium Instruments.

The Association shall have the power to limit the number of persons who occupy a Unit as a dwelling by the adoption of Rules and Regulations by the Board of Directors.

ARTICLE 11. LEASING OF CONDOMINIUM UNITS.

11.1. Unit Owners are permitted to lease their Units in compliance with the Condominium Instruments and any rules and regulations adopted by the Board of Directors. No Unit shall be rented, used or occupied for transient use, hotel purposes, temporary lodging, vacation rental or any other type of short term rental. No Unit shall be rented for an initial period of less than six(6) months. The renewal period after an initial period of 6 months may be on a month-to-month basis which will not violate the short term rental prohibition. No unit shall be subleased. No portion of a Unit, other than the entire Unit shall be leased for any period.

11.2. No Unit Owner shall lease a Unit other than on written form of lease requiring the lessee to: (1) comply with the Condominium Instruments and the Rules and Regulations; and (2) providing that failure to comply shall constitute a default under the lease. The failure of a Unit Owner to use a written lease shall not be determinative of whether the Unit is leased. If the lessee violates the Condominium Instruments or the Rules and Regulations, the Unit Owner shall cause the lessee to vacate the Unit, and in the event the lessee does not vacate the Unit, the Association shall be entitled to undertake action to have the lessee removed from the Unit and shall assess the Unit Owner for any costs and/or attorney's fees expended by the Association in taking such action. Each Unit Owner shall, within ten (10) days of leasing the Unit, provide the names and contact information of the tenants and authorized occupants, and any authorized agent of the Unit Owner, and vehicle information for any tenant or authorized occupant, to the Board of Directors and or the management company. Each Unit Owner is responsible for the lessee's compliance with the Condominium Instruments and the Rules and Regulations, as amended from time to time. In the event that the Unit Owner or lessee does not comply with the Condominium Instruments and the Rules and Regulations, the Association shall be entitled to all rights and remedies against the Unit Owner as set forth in the Condominium Instruments, Rules and Regulations or the Virginia Condominium Act.

11.3. The Board of Directors shall have the power to adopt, amend and/or repeal such rules and regulations to administer and enforce the rental requirements.

None of the provisions of this Article 11 shall apply to any Unit owned, initially or reacquired, by the Declarant or any corporation or entity that is a parent, subsidiary, or affiliate of the Declarant during the period of Declarant's control as set forth in the Bylaws, or to any Declarant Mortgagee.

ARTICLE 12. MAINTENANCE AND REPAIR OF THE CONDOMINIUM PROPERTY, ALTERATIONS AND IMPROVEMENTS.

12.1. MAINTENANCE BY ASSOCIATION. Except as otherwise provided, the Association shall be responsible for and shall maintain, repair and replace all of the Common Elements, including the parking spaces and driveways assigned as Limited Common Elements and any Limited Common Elements serving more than one Unit, and such costs shall be a Common Expense, unless in the opinion of a majority of the Board of Directors such expense was necessitated by the negligence, misuse or neglect of a Unit Owner.

12.2. MAINTENANCE BY UNIT OWNER. Each Unit Owner shall, subject to the other provisions of this Declaration, maintain, repair and replace, at his or her expense, all portions of his or her Unit and any Limited Common Element appurtenant only to such Unit Owner's Unit including, but not limited to, all doors, windows, glass, screens, patios, porches, decks, railings, sheds (for the 10-plex buildings) attic spaces, electrical panels, electric wiring, electric outlets and fixtures, refrigerators, dishwashers and other appliances, drains, plumbing fixtures and connections, the interior surfaces of all walls, floors and ceilings and all other portions of his or her Unit, in a well-maintained, good, clean, sanitary and safe condition. In addition, each Unit Owner shall be responsible for the payment of the cost to repair all damage to any other Units or to the Common Elements resulting from (i) such Unit Owner's failure or negligence to make any of the repairs required by this section; (ii) regardless of fault, the failure or rupture of any water heater, plumbing fixtures, refrigerator ice maker lines, or any other appliance, fixture or pipe which is either located within or is part of, his or her Unit (excluding any appliance, fixture, or pipe which is a part of the Common Elements) including, but not limited to, overflows of water from any such appliance or fixture or a blockage in any air conditioning condensation drain line; or (iii) the intrusion from his or her Unit into any other Unit or the Common Elements of any other harmful or damaging substance including but not limited to, smoke. Each Unit Owner shall perform his maintenance responsibilities in such manner as not to disturb unreasonably or interfere with other Unit Owners. Each Unit Owner shall promptly report to the Board of Directors or the Managing Agent any defect or need for repairs for which the Association is responsible.

12.3. CONFORMITY OF MAINTENANCE, STYLE AND MATERIALS. All repairs, painting replacements and maintenance, whether made by Unit Owners or the Association, to the doors, windows, fences, gates or the exterior surface of any building, including roofs, or to any generally visible portion of the Units and Common Elements shall be carried out in such a manner so as to conform to the materials, architecture, style, color and quality of construction initially provided by the Declarant.

12.4. LIABILITY OF UNIT OWNER. Should a Unit Owner undertake unauthorized additions and modifications to his Unit, as specified above, or refuse, after fifteen (15) days' written notice from the Association, to maintain, paint or make repairs as required, or should a Unit Owner cause any damage to the Common Elements or Limited Common Elements, the Association may undertake such repairs, painting, replacements or maintenance, and levy a special assessment for

the cost thereof, together with a 20% overhead charge, against said Unit Owner which may be collected as set forth in Article 8 herein. In the event a Unit Owner threatens to or violates the provisions hereof, the Association shall also have the right to proceed in court for an injunction to seek compliance with the provisions hereof.

12.5. INSURANCE PROCEEDS. Whenever any maintenance, repairs and replacement of any items for which a Unit Owner is responsible is made necessary by any loss covered by insurance maintained by the Association, the proceeds of the insurance received by the Association, or the Insurance Trustee, shall be used for the purpose of accomplishing such maintenance, repair or replacement in accordance with the Bylaws. The Unit Owner shall be required to pay all of the costs thereof that exceed the amount of the insurance proceeds, and any deductible required of the Association.

12.6. RIGHT OF ENTRY BY ASSOCIATION. Whenever it is necessary to enter any Unit for the purpose of inspection, including inspection to ascertain a Unit Owner's compliance with the provisions of this Declaration or for performing any maintenance, alteration or repair to any portion of the Common Elements or Unit, the Unit Owner shall permit an authorized agent, agents or contractor of the Association to enter such Unit, or to go upon the Common Elements or Limited Common Elements provided, that such entry shall be made only at reasonable times and with reasonable notice. In the case of emergency such as, but not limited to, fire, water or hurricane, entry may be made without notice or permission. Each Unit Owner does hereby appoint the Association as his or her agent for the purposes herein provided and agrees that the Association shall not be liable for any alleged property damage or theft caused or occurring on account of entry.

ARTICLE 13. APPORTIONMENT OF TAX OR SPECIAL ASSESSMENT IF LEVIED OR ASSESSED AGAINST THE CONDOMINIUM PROPERTY.

13.1. RESPONSIBILITY. If any taxing authority levies or assesses any tax or special assessment against the Condominium Property as a whole, and not the individual Units, the same shall be paid as a Common Expense by the Association and assessed to the Unit Owners. In such event, the amount due shall constitute a lien prior to all mortgages and encumbrances upon any Unit to the same extent as though such tax or special assessment had been separately levied by the taxing authority upon each Unit.

13.2. PERSONAL PROPERTY TAXES. All personal property taxes levied or assessed against personal property owned by the Association shall be paid by the Association and shall be a Common Expense.

ARTICLE 14. INSURANCE

14.1. AUTHORITY TO PURCHASE; NOTICE. All insurance policies relating to the Property shall be purchased by the Board of Directors. The Board of Directors, the Managing Agent and the Declarant shall not be liable for failure to obtain any coverages required by this Article 14 or for any

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loss or damage resulting from such failure if such failure is due to the unavailability of such coverages from reputable insurance companies, or if such coverages are available but only at demonstrably unreasonable cost. The Board of Directors shall promptly furnish to each Unit Owner written notice of the procurement of, subsequent changes in, or termination of, insurance coverages obtained on behalf of the Unit Owners' Association, in compliance with § 55-79.81(B) of the Condominium Act. Any claims under the Association's insurance policies shall be made by the Board of Directors and the Board of Directors shall be the decision-maker on whether a claim is to be made. Notwithstanding the foregoing, the Declarant Mortgagee shall be authorized to make such claims under the Association's policies to protect the Declarant Mortgagee's collateral.

14.1.1. Each such policy shall provide that:

(A) The insurer waives any right to claim by way of subrogation against the Association, the Board of Directors, the Managing Agent, or the Unit Owner, and their respective agents, employees, guests and, in the case of the Unit Owners, the members of their households;

(B) Such policy shall not be canceled, invalidated or suspended due to the conduct of any Unit Owner (including his invitees, agents, employees and members of his household) or of any member, officer or employee of the Board of Directors or the Managing Agent without a prior demand in writing that the Board or the Managing Agent cure the defect and neither shall have cured such defect within sixty (60) days after such demand;

(C) Such policy may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least sixty (60) days prior written notice to the Board of Directors, the Managing Agent and all Mortgagees;

14.1.2. The Declarant, so long as Declarant shall own any Unit, shall be protected by all such policies as a Unit Owner. The coverage provided to the Declarant under the insurance policies obtained in compliance with this Article 14 shall not be deemed to protect or be for the benefit of any general contractor engaged by the Declarant nor shall such coverage be deemed to protect the Declarant against liability for, or waive any rights with respect to, warranty claims.

14.1.3. A policy of insurance shall be written by reputable companies licensed to do business in the Commonwealth of Virginia. Physical damage policies shall be in form and substance and with carriers acceptable to Mortgagees holding a majority of the Mortgages (based upon one vote for each mortgage owned); and

14.1.4. The deductible, if any, on any insurance policy purchased by the Board of Directors shall be a Common Expense; provided, however, that upon a majority vote of the Board of Directors, the deductible amount necessitated by the negligence, misuse or neglect of a Unit Owner may be assessed against such Unit Owner.

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14.2. PHYSICAL DAMAGE INSURANCE. The Board of Directors shall obtain and maintain a blanket, "all-risk" or "special risks" form policy of fire insurance with extended coverage, vandalism, malicious mischief, sprinkler leakage, if applicable, debris removal and water damage endorsements, insuring the entire Property (including all of the Units and the bathroom and kitchen fixtures initially installed therein by the Declarant and the replacements thereto installed by the Declarant but not including furniture, wall coverings, furnishings or other personal property supplied or installed by Unit Owners or improvements constructed by a Unit Owner), together with all air-conditioning and heating equipment and other service machinery contained therein and covering the interests of the Association, the Board of Directors and all Unit Owners and their Mortgagees, as their interests may appear, in an amount equal to one hundred percent of the then current replacement cost of the Property, exclusive of the land, excavations, foundations and other items normally excluded from coverage, without deduction for depreciation (such amount to be redetermined annually by the Board with the assistance of the insurance company affording such coverage). The Board of Directors shall also obtain and maintain such coverage on all real and personal property owned by the Association.

14.2.1. Such policy shall also provide:

(A) A waiver of any right of the insurer to repair, rebuild or replace any damage or destruction, if a decision is made pursuant to these Bylaws not to do so;

(B) The following endorsement, or equivalent: (i) "no control", to the effect that coverage shall not be prejudiced by any act or neglect of any occupant or Unit Owner or their agents when such act or neglect is not within the control of the insured, or the Unit Owners collectively; nor by any failure of the insured, or the Unit Owners collectively, to comply with any warranty or condition with regard to any portion of the Condominium over which the insured, or the Unit Owners collectively, have no control; (ii) "cost of demolition"; (iii) "contingent liability from operation of building laws or codes"; (iv) "increased cost of construction"; (v) "condominium replacement cost"; and (vi) "agreed amount" or elimination of co-insurance clause; and

(C) That any "no other insurance" clause expressly exclude individual Unit Owners' policies from its operation so that the physical damage policy purchased by the Board of Directors shall be deemed primary coverage and any individual Unit Owners' policies shall be deemed excess coverage, and in no event shall the insurance coverage obtained and maintained by the Board of Directors hereunder provide for or be brought into contribution with insurance purchased by individual Unit Owners or their Mortgagees, unless otherwise required by law.

(D) A duplicate original of the policy of physical damage insurance, all renewals thereof, and any subpolicies or certificates and endorsements issued thereunder, together with proof or premium payments shall be delivered by the insurer to any Mortgagee requesting the same, at least thirty (30) days prior to expiration of the then current policy. Prior to obtaining any policy of physical damage insurance or any renewal thereof, the Board of Directors shall contain an appraisal from an insurance company, or such other sources as the Board may determine, of the

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then current replacement cost of the Property (exclusive of the Land, excavations, foundations and other items normally excluded from such coverage), without deduction for depreciation, for the purpose of determining the amount of physical damage insurance to be secured pursuant to this section.

14.3. **LIABILITY INSURANCE.** The Board of Directors shall obtain and maintain comprehensive general liability, including without limitation libel, slander, false arrest and invasion of privacy coverage, and property damage liability insurance in such limits as the Board may from time to time determine, insuring each director, each Officer, the Managing Agent and each Unit Owner against any liability to the public or to the Unit Owners (and their invitees, agents and employees) arising out of, or incident to the ownership or use of the Common Elements. Such insurance shall be issued on a "comprehensive liability basis" and shall contain: (i) a cross liability endorsement under which the rights of a named insured under the policy shall not be prejudiced with respect to his action against another named insured; (ii) hired and non-owned vehicle coverage; (iii) host liquor liability coverage with respect to events sponsored by the Association; (iv) deletion of the normal products exclusion with respect to events sponsored by the Association; and (v) a "severability of interest" endorsement which shall preclude the insurer from denying liability coverage to a Unit Owner because of negligent acts of the Association or of another Unit Owner. The Board of Director shall review such limits once each year, but in no event shall such insurance be less than one million dollars (\$1,000,000.00) covering all claims for bodily injury or property damage and personal injury arising out of one occurrence. Reasonable amounts of "umbrella" liability insurance in excess of the primary limits shall also be obtained in an amount not less than three million dollars (\$3,000,000.00). The Declarant shall be named as an additional insured on the Association's liability insurance policy during the Declarant Control Period.

14.4. **OTHER INSURANCE.** The Board of Directors shall obtain and maintain:

14.4.1. a blanket fidelity bond coverage or a policy of employee dishonesty insurance to protect against theft or dishonest acts on the part of the officers, directors, trustees and employees of the Association and all others who handle, or are responsible for handling, funds of the Association, including the Managing Agent and employees of the Managing Agent provided that the Association need not duplicate any coverage provided by the Managing Agent. Such fidelity coverage shall, in all events, be written in an amount not less than required by the Condominium Act;

14.4.2. if required by any governmental or quasi-governmental agency, including without limitation the Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, Veterans Administration, or Federal Housing Administration, flood insurance in accordance with the then applicable regulations of such agency.

14.4.3. workmen's compensation insurance if and to the extent necessary to meet the requirements of law, including a voluntary employees endorsement and an "all states" endorsement;

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14.4.4. broad form machinery and pressure vessel explosion insurance, if applicable, in an amount not less than five hundred thousand dollars (\$500,000.00) per accident per location.

14.4.5. directors and officers liability insurance in an amount not less than one million dollars (\$1,000,000.00); and

14.4.6. such other insurance as the Board of Directors may determine or as may be requested from time to time by a Majority Vote.

14.5. **SEPARATE INSURANCE.** Each Unit Owner shall obtain insurance for such Unit Owner's benefit, at such Unit Owner's expense, commonly known as a condominium unit owners' or HO6 policy, covering the Unit Owner's personal property and personal liability (with a minimum coverage amount as established by the Board from time to time), as well as any "improvements and betterments coverage". The policy to be obtained by the Unit Owner shall include coverage against sewer backup and water damage unless the cost of such coverage is, in the Board's determination, prohibitive. No such insurance coverage shall operate to decrease the amount which the Board of Directors, on behalf of all Unit Owners, may realize under any insurance policy maintained by the Board or to cause any insurance coverage maintained by the Board to be brought into contribution with insurance coverage obtained by a Unit Owner. No Unit Owner shall obtain separate insurance policies on the Condominium except as provided in this section. Each Unit Owner shall list the Promenade at John Tyler Condominium Association, Inc. as an additional insured and provide evidence of its Unit Owners' policy to the Association upon acquisition of the Unit and upon each renewal.

14.6. INSURANCE TRUSTEE

14.6.1. Proceeds in Excess of \$100,000.00. All physical damage insurance policies purchased by the Board of Directors shall be for the benefit of the Association, the Unit Owners, their Mortgagees, as their interests may appear, and shall provide that all proceeds of such policies in excess of One Hundred Thousand Dollars (\$100,000.00) shall be paid in trust to a bank or savings and loan association with trust powers and with at least one office in Williamsburg, Virginia as "insurance trustee" to be applied pursuant to the terms of Article 15. All proceeds of such policies not in excess of One Hundred Thousand Dollars (\$100,000.00) shall be paid to the Board of Directors in trust to be applied pursuant to the terms of Article 15.

14.6.2. Sole Duty of Insurance Trustee. The sole duty of the insurance trustee shall be to receive such proceeds as are paid to it and to hold the same in trust for the purposes elsewhere stated in these Bylaws, for the benefit of the insured and their fiduciaries thereunder. The Association may enter into an insurance trust agreement with the insurance trustee upon such terms and conditions as the Association shall deem appropriate; provided, however, such insurance trust agreement shall not contain any term, provision or condition inconsistent with this Declaration or the Bylaws. Such insurance trust agreement shall provide that the insurance trustee shall not be liable for the payment of premiums, the renewal of the policies, the sufficiency of insurance

coverage, the form or content of the policies, the correctness of any amounts received on account of the proceeds of any such insurance policies or for failure to collect the insurance proceeds. The duties of the insurance trustee shall be only to receive any proceeds of the physical damage or flood insurance policies purchased by the Association, as paid, and to hold and disburse such proceeds in trust for the benefit of the Association, the Unit Owners and their respective Mortgagees.

ARTICLE 15. REPAIR AND RECONSTRUCTION AFTER FIRE OR OTHER CASUALTY.

15.1. **WHEN REPAIR AND RECONSTRUCTION ARE REQUIRED.** In the event of damage to or destruction of all or any part of any building, or other improvement as a result of fire or other casualty, the Board of Directors shall arrange for and supervise the prompt repair and restoration thereof, including any damaged Units, and the floor coverings, kitchen or bathroom fixtures, and appliances initially installed by the Declarant, (but not including any furniture, furnishings, fixtures, equipments or other personal property supplied or installed by the Unit Owners in the Units). Notwithstanding the foregoing, each Unit Owner shall have the right to supervise the redecorating of his Unit.

15.2. **PROCEDURE FOR RECONSTRUCTION AND REPAIR.**

15.2.1. **Cost Estimates.** Immediately after a fire or other casualty causing damage to any portion of any building, the Board of Directors shall obtain reliable and detailed estimates of the cost of repairing and restoring such portion, including any damaged Units, and the floor coverings, kitchen or bathroom fixtures, and appliances initially installed by the Declarant, (but not including any furniture, furnishings, fixtures, equipments or other personal property supplied or installed by the Unit Owner in the Unit) to a condition as good as that existing before such casualty. Such costs may also include professional fees and premiums for such bonds as the insurance trustee determines to be necessary.

15.2.2. **Assessments.** If the proceeds of the master casualty policy are not sufficient to defray the estimated costs of reconstruction and repair of the Common Elements, or if at any time during such reconstruction and repair, the proceeds of insurance are insufficient to defray the then estimated costs of such reconstruction and repair, or if upon completion of reconstruction and repair the funds for the payment of the costs thereof are insufficient, or if coverage is denied and the Common Element, is to be repaired or reconstructed, the amount necessary to complete such reconstruction and repair may be immediately obtained from the appropriate reserves for replacement and/or shall be deemed a Common Expense and a special assessment therefor shall be levied immediately which shall not require the approval of the Unit Owners. The proceeds from such reserves and special assessments shall be deposited with the insurance trustee if the costs of such reconstruction and repair exceed \$100,000.00, for disbursement by the insurance trustee in accordance with this Article.

15.2.3. **Plans and Specifications.** Any such reconstruction or repair shall be substantially in accordance with the original construction of the Property, subject to any

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modifications required by changes in applicable governmental regulations, and using contemporary building materials and technology to the extent feasible as approved by the Board of Directors.

15.3. DISBURSEMENTS OF CONSTRUCTION FUNDS.

15.3.1. Construction Fund and Disbursement. The proceeds of insurance collected on account of casualty, and the sums received by the insurance trustee from collection of assessments against Unit Owners on account of such casualty, shall constitute a construction fund which shall be disbursed in payment of the costs of reconstruction and repair in the following manner:

(A) If the estimated cost of reconstruction and repair is less than One Hundred Thousand Dollars (\$100,000.00), then the construction fund shall be disbursed in payment of such costs upon order of the Board of Directors.

(B) If the estimated cost of reconstruction and repair is at or in excess of One Hundred Thousand Dollars (\$100,000.00) then the construction fund shall be disbursed in payment of such costs upon approval of a licensed architect or engineer qualified to practice in Virginia and employed by the Board of Directors to supervise such work, with payment to be made from time to time as the work progresses. The architect or engineer shall be required to furnish a certificate giving a brief description of the services and materials furnished by various contractors, subcontractors, materialmen, architect, and engineer and other persons which are rendered services or furnished materials in connection with the work stating that (i) the sums requested by them in payment are justly due and owing and that such sums do not exceed the value of the services and materials furnished; (ii) there is no other outstanding indebtedness known to such architect or engineer for the services and materials described; and (iii) the cost as estimated by the architect or engineer for the work remaining to be done subsequent to the date of such certificate does not exceed the amount of the construction fund remaining after payment of the sum so requested.

15.3.2. Surplus. The first monies disbursed in payment of the cost of reconstruction and repair shall be from the insurance proceeds and, if there is a balance in the construction fund after the payment of all of the costs of the reconstruction and repair for which the fund is established, such balance shall be placed in the Reserve Fund.

15.3.3. Common Elements. When the damage is to both Common Elements and Units, the insurance proceeds shall be applied first to the cost of repairing those portions of the Common Elements which enclose and service the Units, then to the cost of repairing the other Common Elements and thereafter to the cost of repairing the Units.

15.3.4. Certificate. The insurance trustee shall be entitled to rely upon a certificate executed by the President or Vice President, and the Secretary, certifying: (i) whether the damaged Property is required to be reconstructed and repaired; (ii) the name of the payee and the amount to be paid with respect to disbursement from any construction fund whether or not surplus funds to be

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distributed are less than the assessments paid by the Unit Owners; and (iii) all other matters concerning the holding and disbursing of any construction fund. Any such certificate shall be delivered to the insurance trustee promptly after request.

15.3.5. When Reconstruction Is Not Required. If the Board of Directors elects not to repair insubstantial damage to the Common Elements, the Board of Directors shall remove all remains of the damaged improvements and restore the site thereof to an acceptable condition compatible with the remainder of the Condominium and the balance of any insurance proceeds received on account of such damage shall be distributed among all Unit Owners in proportion to their respective Common Element Interests. If the Condominium shall be terminated pursuant to § 55-79.72:1 of the Condominium Act, the net assets of the Condominium, together with the net proceeds of insurance policies, if any, shall be divided by the insurance trustee among all Unit Owners in proportion to their respective Common Element Interest after first paying out of the share of each Unit Owner, to the extent sufficient therefor, the amount of any unpaid liens on his Unit in the order of priority of such liens.

ARTICLE 16. TERMINATION.

The Condominium may be terminated in accordance with Va Code Ann. § 79.72:1 in the following manner:

16.1. **DECLARANT TERMINATION.** If there is no other Unit Owner other than the Declarant, the Declarant may unilaterally terminate the Condominium.

16.2. **AGREEMENT.** The Condominium may be terminated only by the approval of the Unit Owners to which four-fifths (4/5) of the votes in the Association appertain and with the consent of all Institutional Lenders.

16.3. **CERTIFICATE.** Agreement of the required majority of Unit Owners and all Institutional Lenders to termination of the Condominium shall be evidenced by a certificate of the Association executed by its President and Secretary certifying the fact of the termination, which shall become effective upon the certificate being recorded in the Clerk's Office.

16.4. **INTEREST OF OWNERS AFTER TERMINATION.** After termination of the Condominium the Unit Owners shall own the Condominium Property and all assets of the Association as tenants in common in proportion to their respective undivided interest in the Common Elements immediately prior to the termination.

16.5. **EXCLUSIVE RIGHTS EXTINGUISHED BY TERMINATION.** All exclusive rights of use of Common Elements shall be extinguished by virtue of the termination of the Condominium.

16.6. **AMENDMENT.** This Article 16 concerning termination cannot be amended without written consent of all Unit Owners and all Institutional Lenders.

ARTICLE 17. MORTGAGES

17.1. NOTICE TO BOARD OF DIRECTORS. A Unit Owner who mortgages his Unit shall notify the Board of Directors of the name and address of the Mortgagee and shall file a conformed copy of the Note and Deed of Trust with the Board.

17.2. MORTGAGEE APPROVAL. An Institutional Lender, upon written request to the Association (such request to state the name and address of the Institutional Lender and the Unit Number secured by the mortgage of the Institutional Lender), shall have the right to timely written notice of the following:

A. Any condemnation or casualty loss that affects either a material portion of the Condominium or the Unit securing the mortgage.

B. Any sixty (60) day delinquency in the payment of assessments or charges owed by the Owner of any Unit which is subject to a mortgage.

C. A lapse, cancellation or material modification of any insurance policy maintained by the Association.

17.3. NOTICE OF PROPOSED ACTION REQUIRING MORTGAGEE APPROVAL. The Board of Directors shall give notice to all Mortgagees seven (7) days prior to the date on which the Unit Owners' Association proposes to take any action requiring Mortgagee approval pursuant to these Bylaws.

17.4. MORTGAGEES' APPROVALS

(a) Majority Vote Unless at least fifty-one percent (51%) of the Mortgagees and at least sixty-seven percent (67%) of the Unit Owners have given their prior written approval, the Association shall not (i) amend the provisions of the Declaration, these Bylaws or any of the other Condominium Instruments governing the following: (1) voting rights; (2) assessment liens, or the priority of assessment liens; (3) reductions in reserves for maintenance, repair, and replacement of Common Elements; (4) responsibility for maintenance and repairs; (5) reallocation of interests in the general or Limited Common Elements, or rights to their use; (6) redefinition of any Unit boundaries; (7) convertibility of Units into Common Elements or vice versa; (8) expansion or contraction of the project, or the addition, annexation, or withdrawal of property to or from the project; (9) hazard or fidelity insurance requirements; (10) imposition of any restrictions on a Unit Owner's right to sell or transfer his or her Unit; or (11) any provision that expressly benefits Mortgage holders, insurers or guarantors; or (ii) take any of the following actions: (1) a decision by the Association to establish self-management if the Condominium consists of fifty (50) or more Units; (2) restoration or repair of the project (after damage or partial condemnation) in a manner other than that specified in the documents; or (3) any termination of the legal status of the Condominium after a substantial destruction or condemnation occurs.

(b) Presumptive Approval. A Mortgagee who is notified of additions or amendments and who does not submit to the requesting party a negative response within sixty (60) days after receipt of such notice (provided the notice was delivered by certified or registered mail, return receipt requested) shall be deemed to have approved such request.

17.5. OTHER RIGHTS OF MORTGAGEES. All Mortgagees or their representatives shall have the right to attend and to speak at meetings of the Unit Owners' Association, but shall not have the right to vote at such meetings unless so provided by the Condominium Instruments or the Condominium Act. All such Mortgagees shall have the right to examine the Condominium Instruments, the Rules and books and records of the Condominium during regular business hours and after reasonable advance written notice, to receive the annual report filed by the Declaration pursuant to Section 55-79.93 of the Condominium Act, and to require the submission of annual financial reports and other budgetary information. If the Condominium contains less than fifty (50) Units and the Association has not prepared an audited financial statement, a Mortgagee shall have the right to have one prepared at its own expense.

ARTICLE 18. AMENDMENTS.

18.1. AMENDMENT. No amendment of the Declaration may be made without the prior written consent of the required percentage of Mortgagees where such approval is provided for in Section 17.4 of this Declaration or where such approval is required elsewhere in the Condominium Instruments or by the Condominium Act. No amendment shall be made to any Condominium Instrument either during the Declarant Control Period or while the Declarant is the owner of any Unit without the prior written consent of the Declarant. Except as provided in the Bylaws, no amendment to the Condominium Instruments shall diminish or impair the rights of Mortgagees under the Condominium Instruments without the prior written consent of all Mortgagees, nor diminish or impair the rights of the Declarant under the Condominium Instruments including, but not limited to, the rights reserved to the Declarant herein, without the prior written consent of the Declarant. Except as specifically provided in the Condominium Instruments, no provision of the Condominium Instruments shall be construed to grant to any Unit Owner, or to any other person, any priority over the rights of Mortgagees.

18.2. MEMBER APPROVAL. Except as provided in Article 17.1, this Declaration may be amended by the agreement of Unit Owners of Units to which two-thirds (2/3) of the votes in the Association appertain, provided, however, that no amendment shall change (i) the boundaries of any Unit; (ii) the undivided interest in the Common Elements; (iii) the liability for Common Expenses; or (iv) the number of votes in the Association that appertains to any Unit unless approved by one hundred percent (100%) of the Unit Owners.

18.3. RECORDED AMENDMENT. Any amendment by the Unit Owners shall be recorded and such amendment shall be executed by a principal officer of the Association who shall certify that the Association received written ballots/proxies from the required 2/3rd of the votes in the Association.

18.4. OMISSION OR ERROR. Notwithstanding the requirements of this Article 17, whenever it shall appear that there is an omission or error in the Condominium Instruments the correction of which would not materially or adversely affect the property rights of any Unit Owners, the Condominium Instruments may be amended in the following manner: Such amendment may be proposed by the Board of Directors at any duly called and noticed regular or special meeting of the Board and shall become effective when unanimously approved by the entire Board. In the event the property rights of any Unit Owners are materially or adversely affected, the error or omission may be adopted in this manner if such affected Unit Owner(s) joins in the execution of the amendment to be recorded. Should the Condominium Instruments need to be amended at any time in order to meet the requirements of the Veterans Administration, Federal Housing Authority, other governmental agency or the secondary mortgage market to permit financing, including the guarantees, insurance, transfer of assignment of the same, the Declarant or the Board, subject to approval by the Veterans Administration, the Federal Housing Authority, or such other governmental agency, may amend the Condominium Instruments to comply with any requirements.

ARTICLE 19. REMEDIES.

19.1. RELIEF. Each Unit Owner and the Association shall be governed by and shall comply with the provisions of the Condominium Instruments and the Condominium Act as they may exist from time to time. A violation thereof shall entitle the appropriate party to the following relief: An action to recover sums due for damages, injunctive relief, foreclosure of lien or any combination thereof, or any other action available pursuant to the Condominium Instruments, the Condominium Act or law. Suit may be sought by the Association, the Managing Agent, if any, or, if appropriate, by one or more Unit Owners, and the prevailing party shall be entitled to recover its costs and reasonable attorneys' fees. Each Unit Owner acknowledges that the failure to comply with any of the provisions of the Condominium Instruments, Rules and Regulations or the Condominium Act shall or may constitute an injury to the Association, the Managing Agent, if any, or the other Unit Owners, and that such injury may be irreparable.

19.2. LIABILITY OF UNIT OWNERS. All Unit Owners shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his or her negligence, gross negligence or willful misconduct, or by that of any member of his or her family, or his or her guests, invitees, employees, agents, or lessees, but only to the extent that such expense is not met by the proceeds of insurance carried by the Association or by the Unit Owner, provided that the Unit Owner shall pay the deductible on such insurance claim. Such liability shall include any increase in insurance rates occasioned by use, misuse, occupancy or abandonment of any Unit or its appurtenances. Nothing herein contained, however, shall be construed so as to modify any waiver by insurance companies of rights or subrogation. The expense of any maintenance, repair or replacement required shall be charged to said Unit Owner as a specific item and shall be a lien against said Unit Owner with the same force and effect as if the charge was a part of the Common Expenses attributable to such Unit Owner's Unit.

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19.3. COSTS AND ATTORNEYS' FEES. In any dispute or proceeding arising because of an alleged default, act, failure to act, or violation by the Unit Owner or Association, including the enforcement of any lien granted pursuant to the Condominium Instruments or the Condominium Act, the Association, the Managing Agent, if any, whichever is appropriate, shall be entitled to recover the costs of the proceedings or dispute, including reasonable attorneys' fees.

19.4. NO WAIVER. The failure of Association, the Managing Agent, a Unit Owner, to enforce any right, provision, covenant, or condition created or granted by the Condominium Instruments or the Condominium Act shall not constitute a waiver of the right of said party to enforce such right, provision, covenant or condition in the future.

19.5. RIGHTS CUMULATIVE. All rights, remedies and privileges granted to the Association, the Managing Agent, if any, or Unit Owner pursuant to any of the provisions of the Condominium Instruments shall be deemed to be cumulative 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 such party at law or in equity. Each Unit Owner agrees in any proceeding brought pursuant to the provisions hereof not to plead or defend the same on the theory of "election of remedies."

19.6. VENUE; WAIVER OF TRIAL BY JURY. Every Unit Owner or Occupant and all persons claiming any interest in a Unit does agree that in any suit or proceeding brought pursuant to the provisions of the Condominium Instruments, such suit shall be brought in the County of James City, Virginia. All such parties do further waive the right to trial by jury and consent to a trial by the court without a jury. All such parties do further waive the right to trial by jury and consent to a trial by the court without a jury.

19.7. SURVIVING LIABILITY. Termination of membership in the Association shall not relieve said party from any liability, financial or otherwise, incurred by said party while a member and shall in no way impair any rights that the Association has, or may have had, against the terminating member.

19.8. CHARGES FOR VIOLATION OF RULES, ETC. The Association shall have the power, in accordance with the provisions of § 55-79.80:2 (or any subsequent applicable provision) of the Condominium Act, as amended from time to time, to assess charges against any Unit Owner for any violation of the Condominium Act, the Condominium Instruments, or of the Rules and Regulations promulgated pursuant thereto for which such Unit Owner or his family members, tenants, guests, or other invitees are responsible. Before any such charges may be assessed, the Unit Owner shall be given an opportunity to cure the violation, and an opportunity to be heard and to be represented by counsel before the Board. Notice of such hearing shall, at least fourteen (14) days in advance thereof, be hand delivered or mailed by registered or certified United States mail, return receipt requested, to such Unit Owner at the address or addresses required for notices of meetings pursuant to § 55-79.75 of the Condominium Act. The amount of any charges so assessed shall not exceed fifty dollars for a single offense or ten dollars per diem for any offense of a continuing nature, and

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shall be treated as an assessment against such Unit Owners' Condominium Unit for the purpose of § 55-79.84 of the Condominium Act.

19.9. **ARBITRATION OF WARRANTY DISPUTES.** With respect to the Units and Common Elements herein submitted, and for all Units and Common Elements submitted in subsequent phases of the Condominium, the Declarant, the Association and each Unit Owner acknowledge and agree that any dispute between a Unit Owner and the Declarant or the Association and the Declarant arising out of or relating to the Declarant's warranty pursuant to Section 55-79.79(B) of the Virginia Condominium Act or Declarant's warranty under any other written warranty made and delivered by Declarant to the Association and/or the Unit Owner, shall be settled by final and binding arbitration in accordance with the Construction Arbitration Services or other National Home Insurance Company/Home Buyers Warranty approved rules applicable to the home warranty industry in effect at the time of the arbitration.

19.10 **LIMITATION OF LIABILITY.** To the extent that the Declarant, the Association, its Board or any of its committees undertake certain voluntary functions, or make certain services available, to enhance the quality of life in The Promenade at John Tyler, including, but not limited to (i) implementing plans to make the Property safer or maintaining lists of those who need assistance in the event of disasters; or (ii) performing or facilitating other services to enhance the safety, health and welfare of Unit Owners, Occupants, family members, guests, or invitees; or (iii) coordinating clubs and groups, and social functions, such undertaking(s) shall not create a duty on the Association to perform such functions and the Declarant and its representatives, agents, and members, and the Association, its Board, its committees, and its Members shall have no liability whatsoever to any Unit Owner, Occupant, family members or guests, invitees, mortgagee, contractor, or subcontractor, or any other party for any costs or damages, consequential or otherwise, that may be incurred or suffered.

ARTICLE 20. NOTICES.

Whenever notices are required to be sent to Unit Owners as set forth herein, the same may be hand-delivered or mailed to the Unit Owner's Unit in the Condominium, or such other address designated in writing by the Unit Owner to the Association. Notice may be sent by electronic transmission to the Unit Owner to the address provided by the Unit Owner to the Association. Notices to the Association shall be delivered or mailed to the Secretary of the Association, or in case of the Secretary's absence, then to the President of the Association. Notwithstanding the foregoing, the Association shall not be required to hand-deliver, mail or electronically transmit any notice to Unit Owners where a statute provides for a different type of notice.

ARTICLE 21. RIGHTS OF DECLARANT.

21.1. **CONFLICT OF INTEREST.** No representatives of the Declarant serving on the Board of Directors of the Association shall be required to disqualify himself upon any vote upon any

management contract, lease, or other matter between Declarant, or Managing Agent, if any, and the Association where Declarant, or Managing Agent, if any, may have a pecuniary or other interest. Declarant, as a member of Association, shall not be required to disqualify itself in any vote which may come before the membership of the Association upon any management contract, lease, or other matter where Declarant may have a pecuniary or other interest, nor shall any conflict of interests be a cause of partial or total invalidity of the matter voted upon whether or not such vote was necessary for the adoption, ratification, or execution of the same.

21.2. **RIGHT TO USE FACILITIES.** Notwithstanding any provisions of this Declaration to the contrary, the Declarant shall have the right to use and occupy any, all, or any number of unsold Units and the Common Elements, the exclusive use of which have not been assigned, for the purpose of a Sales Office, Model Unit, or for any other purpose. Until the Declarant has conveyed the last Unit in the Condominium, or Units in other condominiums in the area developed by Declarant, the Declarant shall not be subject to the use or other restrictions contained in any of the provisions of this Declaration or Exhibits attached hereof. Notwithstanding this paragraph, Declarant must pay assessments on Units owned by Declarant, just like any other Unit Owner.

21.3. **ASSIGNMENT.** The Declarant may, upon conveyance of all or a portion of the Units it owns and/or all or a portion of the Additional Land, prior to or subsequent to any such conveyance, designate the grantee thereof as a successor Declarant or Declarant who shall then be deemed to have all rights granted and reserved to Declarant herein.

21.4. **DECLARANT'S MORTGAGEE.** Any person or entity which holds a mortgage executed by Declarant, either prior to or subsequent to the recordation of this Declaration, encumbering any part or all of the Condominium Property ("Declarant Mortgage"), shall be deemed to be an Institutional Lender and Mortgagee for the purposes of this Declaration and shall have all rights and privileges appertaining thereto. Notwithstanding anything contained in the Declaration to the contrary, the lien and security interests of the deed of trust securing a Declarant Mortgage shall always be prior and superior to the lien of any unpaid condominium assessments and charges provided herein; and without the prior written consent of all Declarant Mortgagees, the Association or Declarant shall not cause or consent to the abandonment or termination of the Condominium regime created by the Declaration, the reassignment or conveyance of any common elements or limited common elements of the Condominium, or any action which would adversely affect any insurance coverage maintained by the Association acceptable to the Declarant Mortgagee.

21.5. **DECLARANT LOANS.** The Declarant shall have the option, but not the obligation, to loan money to the Association for the purpose of funding any cash operating deficits of the Association and such other purposes as Declarant shall deem necessary or desirable in Declarant's sole and absolute discretion. Any such loans shall be on such terms and at such rates as are commercially reasonable to enable the Association to comply with its obligations under the Condominium Instruments. Such loan or loans may be in lieu of, or in addition to, loans obtained by the Association from other parties. Any such loan shall be represented and secured by one or more promissory notes of the Association and shall be listed and disclosed as "Loans from

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Declarant" on all annual budgets and year-end financial statements of the Association. The foregoing loans are collectively referred to as "Declarant Loans." Declarant shall have the express right, but not the obligation, to forgive, extend the term or reduce in whole or in part, any amounts due and payable by the Association to Declarant under the Declarant Loans.

21.6. SPECIAL DECLARANT RIGHTS. Special Declarant Rights are those rights reserved for the benefit of the Declarant as provided for in the Condominium Act and the Condominium Instruments, and shall include without limitation the following rights: (i) to complete improvements indicated on the Plat and Plans recorded with the Declaration; (ii) to maintain sales offices, management offices, customer service offices, signs advertising the Condominium and models; (iii) to use or grant easements through the Common Elements for the purpose of making improvements within the Condominium or for the benefit of the Additional Land; (iv) to appoint or remove any officer or director of the Association during the Declarant Control Period; and (v) to expand the Condominium.

21.7. TRANSFER OF SPECIAL DECLARANT RIGHTS. The transfer of special Declarant rights shall be governed by § 55-79.74:3 of the Condominium Act.

ARTICLE 22. USE OF TECHNOLOGY.

Notwithstanding any requirement in the Condominium Instruments that requires the signature, vote, consent or approval of a Unit Owner to be an original or to be provided in person, or by proxy, or that any notice required to be sent or delivered to a Unit Owner be hand-delivered or mailed, the Association has the right, as set forth in Va. Code Ann. § 55-79.71:1, to provide notice or obtain signatures, votes, consents or approval required to be obtained under the Condominium Instruments of the Condominium Act by use of the most advanced technology available at the time, if such use is a generally accepted business practice.

ARTICLE 23. CONSTRUCTION.

The Condominium Instruments shall be construed together and shall be deemed to incorporate one another to the extent that any requirement of the Condominium Act as to the content of one shall be deemed satisfied if the deficiency can be cured by reference to any of the others. In the event of any conflict between the Condominium Instruments, the Declaration shall control; but particular provisions shall control more general provisions, except that a construction conformable with the statute shall in all cases control over any construction inconsistent therewith.

ARTICLE 24. GENDER.

Unless the contrary appears to have been intended, words in the plural number shall include the singular and words in the singular shall including the plural, the words of the male gender shall include the female gender and the neuter gender.

ARTICLE 25. CAPTIONS.

The captions to paragraphs of this Declaration are intended for convenience only and are not deemed to be all inclusive as to the matters contained in such paragraphs or considered in connection with the construction of any of the provisions of this Declaration.

ARTICLE 26. SEVERABILITY.

If any term or provision of this Declaration, or the application thereof to any person or circumstance, shall, to any extent, be determined to be invalid or unenforceable, the remainder of this Declaration, or the application of such terms or provision to persons or circumstances other than those to which such term may be held invalid or unenforceable, shall not be affected thereof and each term and provision of this Declaration shall be invalid and enforceable to the fullest extent permitted by law.

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IN WITNESS WHEREOF, the Declarant has executed this Declaration on this 6th day of June, 2017.

FRANCISCUS AT PROMENADE LLC
A Virginia limited liability company

By: Franciscus Homes, Inc.
a Virginia corporation, Manager

By: Carol L. Werner (Seal)

COMMONWEALTH OF VIRGINIA
County of James City, to wit:

I, Kimberly G. Lowery, a Notary Public in and for the City and State aforesaid, do hereby certify that Carol L. Werner, President of Franciscus Homes, Inc., Manager or Franciscus at Promenade LLC a Virginia limited liability company, whose name as such is signed to the foregoing Declaration bearing date on the 6th day of June, 2017, has acknowledged the same before me in my City and State aforesaid.

Given under my hand this 6th day of June, 2017.

Kimberly G. Lowery
Notary Public

My commission expires:

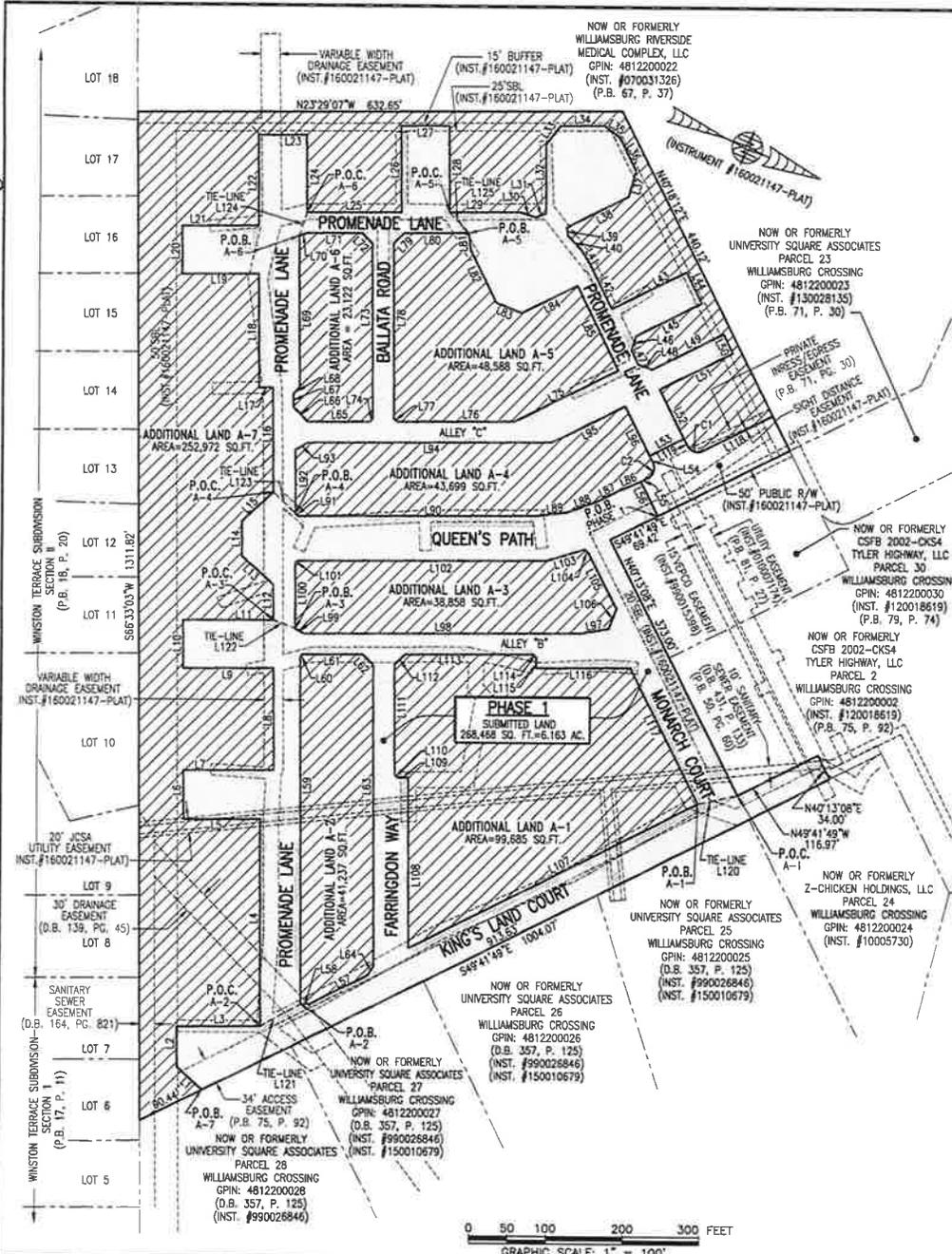


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EXHIBIT A

437-93

450293



LINE TABLE											
NO.	BEARING	DISTANCE	NO.	BEARING	DISTANCE	NO.	BEARING	DISTANCE	NO.	BEARING	DISTANCE
L1	S27°01'13"W	44.97'	L26	S66°33'03"W	113.01'	L51	S49°17'28"E	106.06'	L76	S23°26'57"E	153.56'
L2	S66°33'03"W	53.15'	L27	N23°26'57"W	63.00'	L52	N40°18'11"E	70.86'	L77	S21°33'03"W	4.95'
L3	N23°26'57"W	109.47'	L28	N66°33'03"E	113.01'	L53	S49°41'49"E	50.00'	L78	S66°33'03"W	226.04'
L4	S66°33'03"W	269.00'	L29	N23°26'49"W	91.87'	L54	N40°18'11"E	10.00'	L79	N68°27'04"W	19.09'
L5	S23°26'57"E	100.00'	L30	N04°56'59"W	20.95'	L55	S49°41'49"E	10.00'	L80	N23°27'12"W	84.32'
L6	S66°33'03"W	63.00'	L31	N43°09'18"W	14.72'	L56	N40°18'11"E	50.00'	L81	N59°51'39"E	22.83'
L7	N23°26'57"W	118.00'	L32	S66°30'53"W	90.51'	L57	S49°41'49"E	84.74'	L82	N40°42'28"E	75.00'
L8	S66°33'03"W	132.68'	L33	N74°30'33"W	30.87'	L58	S24°33'07"E	11.47'	L83	N00°46'13"W	36.04'
L9	S23°26'57"E	118.00'	L34	N23°29'07"W	57.00'	L59	S66°33'03"W	450.73'	L84	N49°17'32"W	81.13'
L10	S66°33'03"W	63.00'	L35	N13°08'50"E	24.93'	L60	N68°26'57"W	4.24'	L85	N40°42'32"E	121.00'
L11	N23°26'57"W	118.00'	L36	N40°41'49"E	48.00'	L61	N23°26'57"W	78.50'	L86	S45°45'02"E	26.95'
L12	S66°33'03"W	46.52'	L37	N81°38'35"E	36.41'	L62	N21°33'03"E	19.09'	L87	S49°41'49"E	35.15'
L13	S18°43'43"W	55.33'	L38	S49°18'11"E	90.11'	L63	N66°33'03"E	390.42'	L88	S43°08'04"E	41.26'
L14	S66°33'03"W	46.52'	L39	N58°03'08"E	10.81'	L64	S81°34'23"E	14.26'	L89	S30°00'34"E	41.26'
L15	N65°37'37"W	55.33'	L40	N23°26'55"E	25.94'	L65	S23°26'57"E	81.00'	L90	S23°26'49"E	310.88'
L16	S66°33'03"W	135.69'	L41	N34°57'20"E	20.26'	L66	S21°33'03"W	26.16'	L91	S21°33'07"W	4.24'
L17	S23°26'57"E	18.00'	L42	N40°43'30"E	65.92'	L67	S66°33'03"W	17.38'	L92	S66°33'03"W	82.68'
L18	S66°33'03"W	145.93'	L43	N49°17'28"W	108.73'	L68	N68°26'57"W	11.31'	L93	N53°08'03"W	18.83'
L19	S23°26'57"E	100.00'	L44	N40°42'32"E	45.00'	L69	S66°33'03"W	195.90'	L94	N23°26'57"W	317.18'
L20	S66°33'03"W	63.00'	L45	S49°17'28"E	95.23'	L70	N40°44'18"W	11.00'	L95	N49°17'28"E	107.22'
L21	N23°26'57"W	100.00'	L46	N85°40'58"E	19.10'	L71	N23°26'49"W	71.00'	L96	N40°18'11"E	81.23'
L22	S66°33'03"W	118.31'	L47	N40°39'25"E	20.64'	L72	N21°33'07"E	18.09'	L97	S33°14'07"E	36.03'
L23	N23°28'23"W	63.00'	L48	N04°19'02"W	19.08'	L73	N66°33'03"E	225.70'	L98	S23°26'57"E	361.32'
L24	N66°33'03"E	101.24'	L49	N49°17'28"W	103.50'	L74	S71°09'13"E	5.20'	L99	S06°21'20"W	12.95'
L25	N23°26'49"W	123.00'	L50	N40°42'32"E	27.52'	L75	S49°17'28"E	150.14'	L100	S66°39'51"W	85.57'

CURVE TABLE						
NO.	RADIUS	DELTA	LENGTH	TANGENT	CHORD	CH. BEARING
C1	15.00'	90°00'00"	23.56'	15.00'	21.21'	S04°41'49"E
C2	15.00'	90°00'00"	23.56'	15.00'	21.21'	N85°18'11"E

I HEREBY CERTIFY THAT THIS PLAN IS ACCURATE AND THAT IT COMPLIES WITH THE PROVISIONS OF THE CODE OF VIRGINIA OF 1950 AS AMENDED, § 55-79.58 AND I FURTHER CERTIFY THAT ALL IMPROVEMENTS THEREOF DEPICTED HEREON, PURSUANT TO THE CODE OF VIRGINIA § 55-79.58A, ARE SUBSTANTIALLY COMPLETE.

-INDICATES SUBMITTED LAND
 -INDICATES ADDITIONAL LAND
 P.O.C. = POINT OF COMMENCEMENT
 P.O.B. = POINT OF BEGINNING

THIS SHEET: PROPERTY DATA, EASEMENTS, CURVE AND LINE TABLE

PHASE 1
CONDOMINIUM PLAT
 OF
THE PROMENADE
 AT
JOHN TYLER
 A CONDOMINIUM
 JAMES CITY COUNTY, VIRGINIA

Hayden Frye and Associates, Inc.
Land Surveyors
 333 KIRKMAN ROAD, SUITE 300
 VIRGINIA BEACH, VA, 23462
 PH: (757) 491-7228 FAX: (757) 491-7229

DATE: FEBRUARY 15, 2017
 SCALE: 1"=100'
 SHEET 2 OF 2 THIS PHASE

SEE SHEET 1 FOR OVERALL SITE LAYOUT AND AREAS

EXHIBIT B
Submitted Land

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THE PROMENADE AT JOHN TYLER

PHASE 1 - SUBMITTED LAND

All that certain parcel of land, lying and being situated in James City County, Virginia, as shown on that certain plat entitled "Phase 1 Condominium Plat of The Promenade at John Tyler, a Condominium, James City County, Virginia, dated February 15, 2017, and prepared by Hayden Frye and Associates, Inc., Land Surveyors", being designated as Phase 1 - Submitted Land and being more particularly described as follows:

Beginning at a point along the northern boundary line of the property herein described at its intersection with the southern right-of-way line of that certain 50' Public Right-of-Way (Instrument No. 160021147-Plat) as shown on the aforesaid plat, thence leaving said right-of-way line in a southeasterly direction S49°41'49"E a distance of 69.42 feet to a point, thence N40°13'08"E 373.00 feet to a point, said point being the Point of Commencement of the below described Additional Land A-1, thence N49°41'49"W 116.97 feet to a point, thence N40°13'08"E 34.00 feet to a point, thence S49°41'49"E 913.63 feet to a point, said point being the Point of Beginning of the below described Additional Land A-7, thence S20°01'13"W 44.97 feet to a point, thence S66°33'03"W 53.15 feet to a point, thence N23°26'57"W 109.47 feet to a point, said point being the Point of Commencement of the below described Additional Land A-2, thence S66°33'03"W 269.00 feet to a point, thence S23°26'57"E 100.00 feet to a point, thence S66°33'03"W 63.00 feet to a point, thence N23°26'57"W 118.00 feet to a point, thence S66°33'03"W 132.68 feet to a point, thence S23°26'57"E 118.00 feet to a point, thence S66°33'03"W 63.00 feet to a point, thence N23°26'57"W 118.00 feet to a point, said point being the Point of Commencement of the below described Additional Land A-3, thence S66°33'03"W 46.52 feet to a point, thence S18°43'43"W 55.33 feet to a point, thence S66°33'03"W 46.52 feet to a point, thence N65°37'37"W 55.33 feet to a point, said point being the Point of Commencement of the below described Additional Land A-4, thence S66°33'03"W 135.69 feet to a point, thence S23°26'57"E 18.00 feet to a point, thence S66°33'03"W 145.93 feet to a point, thence S23°26'57"E 100.00 feet to a point, thence S66°33'03"W 63.00 feet to a point, thence N23°26'57"W 100.00 feet to a point, thence S66°33'03"W 118.31 feet to a point, thence N23°28'23"W 63.00 feet to a point, thence N66°33'03"E 101.24 feet to a point, said point being the Point of Commencement of the below described Additional Land A-6, thence N23°26'49"W 123.00 feet to a point, thence S66°33'03"W 113.01 feet to a point, thence N23°26'57"W 63.00 feet to a point, thence N66°33'03"E 113.01 feet to a point, said point being the Point of Commencement of the below described Additional Land A-5, thence N23°26'49"W 91.87 feet to a point, thence N04°56'59"W 20.95 feet to a point, thence N43°09'18"W 14.72 feet to a point, thence S66°30'53"W 90.51 feet to a point, thence N74°30'33"W 30.87 feet to a point, thence N23°29'07"W 57.00 feet to a point, thence N13°08'50"E 24.93 feet to a point, thence N40°41'49"E 48.00 feet to a point, thence N81°38'35"E 36.41 feet to a point, thence S49°18'11"E 90.11 feet to a point, thence N58°03'08"E 10.61 feet to a point, thence N23°26'55"E 25.94 feet to a point, thence N34°57'20"E 20.26 feet to a point, thence N40°43'30"E 65.92 feet to a point, thence N49°17'28"W 108.73 feet to a point, thence N40°42'32"E 45.00 feet to a point, thence S49°17'28"E 95.23 feet to a point, thence N85°40'58"E 19.10 feet to a point, thence N40°39'25"E 20.64 feet to a point, thence N04°19'02"W 19.08 feet to a point, thence N49°17'28"W 103.50 feet to a point, thence N40°42'32"E 27.52 feet to a point, thence S49°17'28"E 106.06 feet to a point, thence N40°18'11"E 70.86 feet to a point, said point being on the western right-of-way line of the aforementioned 50' Public Right-of-Way, thence turning in a southerly direction along the aforementioned right-of-way line S49°41'49"E 50.00 feet to a point, thence continuing along the aforementioned right-of-way line N40°18'11"E 10.00 feet to a point, thence continuing along the aforementioned right-of-way line along a curve to the right having a radius of 15.00 feet and an arc length of 23.56 feet to a point, thence continuing along the aforementioned right-of-way line S49°41'49"E 10.00 feet to a point, thence continuing along the aforementioned right-of-way line N40°18'11"E 50.00 feet to a point, said point being the aforementioned Point of Beginning of the herein described Phase One - Submitted Land containing 563,657 Square Feet or 12.940 Acres of land, more or less. Less and Except the following 6 parcels;

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Less and Except that certain parcel of land shown on the above referenced plat, designated as Additional Land A-1 and being more particularly described as follows: Commencing at the aforementioned Point of Commencement Additional Land A-1, thence continuing in a southeasterly direction along a Tie-Line S35°02'48"E 53.18' to a point, said point being the Point of Beginning of the below described Additional Land A-1, thence S49°43'59"E 420.48 feet to a point, thence S66°33'03"W 220.39 feet to a point, thence S23°26'57"E 14.00 feet to a point, thence S21°33'04"W 4.95 feet to a point, thence S66°33'04"W 143.47 feet to a point, thence N68°26'56"W 19.09 feet to a point, thence N23°26'57"W 167.28 feet to a point, thence N21°33'03"E 4.95 feet to a point, thence N66°33'03"E 14.50 feet to a point, thence N23°26'57"W 122.79 feet to a point, thence N40°13'08"E 197.12 feet to a point, said point being the Point of Beginning of the below described Additional Land A-1 containing 99,685 Square Feet or 2.289 Acres of land, more or less.

Less and Except that certain parcel of land shown on the above referenced plat, designated as Additional Land A-2 and being more particularly described as follows: Commencing at the aforementioned Point of Commencement Additional Land A-2, thence continuing in a northwesterly direction along a Tie-Line N52°05'49"W 60.39 feet to a point, said point being the Point of Beginning of the below described Additional Land A-2, thence S66°33'03"W 450.73 feet to a point, thence N68°26'57"W 4.24 feet to a point, thence, N23°26'57"W 78.50 feet to a point, thence N21°33'03"E 19.09 feet to a point, thence N66°33'03"E 390.42 feet to a point, thence S81°34'23"E 14.26 feet to a point, thence S49°41'49"E 84.74 feet to a point, thence S24°33'07"E 11.47 feet to a point, said point being the Point of Beginning of the below described Additional Land A-2 containing 41,237 Square Feet or 0.947 Acres of land, more or less.

Less and Except that certain parcel of land shown on the above referenced plat, designated as Additional Land A-3 and being more particularly described as follows: Commencing at the aforementioned Point of Commencement Additional Land A-3, thence continuing in a northerly direction along a Tie-Line N02°22'49"W 30.77 feet to a point, said point being the Point of Beginning of the below described Additional Land A-3, thence S66°39'51"W 85.57 feet to a point, thence N68°23'33"W 4.24 feet to a point, thence N23°26'57"W 324.98 feet to a point, thence N40°12'30"W 51.55 feet to a point, thence N25°45'15"E 8.23 feet to a point, thence N40°13'08"E 80.19 feet to a point, thence N88°35'55"E 27.66 feet to a point, thence S33°14'07"E 36.03 feet to a point, thence S23°26'57"E 361.32 feet to a point, thence S06°21'20"W 12.95 feet to a point, said point being the Point of Beginning of the below described Additional Land A-3 containing 38,858 Square Feet or 0.892 Acres of land, more or less.

Less and Except that certain parcel of land shown on the above referenced plat, designated as Additional Land A-4 and being more particularly described as follows: Commencing at the aforementioned Point of Commencement Additional Land A-4, thence continuing in a northeasterly direction along a Tie-Line N20°14'54"E 40.29 feet to a point, said point being the Point of Beginning of the below described Additional Land A-4, thence S66°33'03"W 82.68 feet to a point, thence N53°08'03"W 18.83 feet to a point, thence N23°26'57"W 317.18 feet to a point, thence N49°17'28"W 107.22 feet to a point, thence N40°18'11"E 81.23 feet to a point, said point being along the southern right-of-way line of the aforementioned 50' Public Right-of-Way, thence continuing along the aforementioned right-of-way line along a curve to the right having a radius of 15.00 feet and an arc length of 23.56 feet, thence continuing along the aforementioned right-of-way line S49°41'49"E 10.00 feet to a point, thence departing the aforementioned right-of-way line S45°45'02"E 26.95 feet to a point, thence S49°41'49"E 35.15 feet to a point, thence S43°08'04"E 41.26 feet to a point, thence S30°00'34"E 41.26 feet to a point, thence S23°26'49"E 310.88 feet to a point, thence S21°33'07"W 4.24 feet to a point, said point being the Point of Beginning of the below described Additional Land A-4 containing 43,699 Square Feet or 1.003 Acres of land, more or less.

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Less and Except that certain parcel of land shown on the above referenced plat, designated as Additional Land A-5 and being more particularly described as follows: Commencing at the aforementioned Point of Commencement Additional Land A-5, thence continuing in a northeasterly direction along a Tie-Line N23°57'14"E 36.67 feet to a point, said point being the Point of Beginning of the below described Additional Land A-5, thence N59°51'39"E 22.83 feet to a point, thence N40°42'28"E 75.00 feet to a point, thence N00°46'13"W 36.04 feet to a point, thence N49°17'32"W 81.13 feet to a point, thence N40°42'32"E 121.00 feet to a point, thence S49°17'28"E 150.14 feet to a point, thence S23°26'57"E 153.56 feet to a point, thence S21°33'03"W 4.95 feet to a point, thence S66°33'03"W 226.04 feet to a point, thence N68°27'04"W 19.09 feet to a point, thence N23°27'12"W 84.32 feet to a point, said point being the Point of Beginning of the below described Additional Land A-5 containing 48,588 Square Feet or 1.115 Acres of land, more or less.

Less and Except that certain parcel of land shown on the above referenced plat, designated as Additional Land A-6 and being more particularly described as follows: Commencing at the aforementioned Point of Commencement Additional Land A-6, thence continuing in a easterly direction along a Tie-Line N84°50'00"E 31.88 feet to a point, said point being the Point of Beginning of the below described Additional Land A-6, thence N40°44'18"W 11.00 feet to a point, thence N23°26'49"W 71.00 feet to a point, thence N21°33'07"E 19.09 feet to a point, thence N66°33'03"E 225.70 feet to a point, thence S71°09'13"E 5.20 feet to a point, thence S23°26'57"E 81.00 feet to a point, thence S21°33'03"W 26.16 feet to a point, thence S66°33'03"W 17.38 feet to a point, thence N68°26'57"W 11.31 feet to a point, thence S66°33'03"W 195.90 feet to a point, said point being the Point of Beginning of the below described Additional Land A-6 containing 23,122 Square Feet or 0.531 Acres of land, more or less.

Together, the above described Phase One – Submitted Land as shown on the aforementioned plat contains 268,468 Square Feet or 6.163 Acres of land, more or less and is primarily the drive aisles and parking areas only. No building duplex or 10-plex areas are included.

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EXHIBIT C

Proffers

509⁹³

150010679

Tax Parcels: 4812200020, 4812200025, 4812200026, 4812200027, 4812200028 and 4812200029

Prepared By: Vernon M. Geddy, III, Esquire (VSB No: 21902)
Geddy, Harris, Franck & Hickman
1177 Jamestown Road
Williamsburg, VA 2318

PROFFERS

THESE PROFFERS are made this 15th day of October, 2014 by UNIVERSITY SQUARE ASSOCIATES, a Virginia general partnership (together with its successors in title and assigns, the "Owner").

RECITALS

A. Owner is the owner of six parcels of land located in James City County, Virginia, being Tax Parcel No's. 4812200020, 4812200025, 4812200026, 4812200027, 4812200028 and 4812200029, containing approximately 24.54 acres, more or less, and being more particularly described on Schedule A hereto (the "Property").

B. Franciscus Homes has contracted to purchase Tax Parcels 4812200020 and 4812200029 of the Property contingent upon approval of the requested rezoning. Upon taking title to that portion of the Property, Franciscus Homes shall be an "Owner" as defined herein.

C. The Property is designated Mixed Use on the County's Comprehensive Plan Land Use Map and is now zoned B-1 and is subject to the approved special use permit Master Plan for Williamsburg Crossing Shopping Center. Owner has applied to rezone the Property from B-1 to MU, Mixed Use, with proffers.

C. Owner has submitted to the County a master plan entitled "The Promenade at John Tyler" prepared by Clark Nexsen dated October 6, 2014 (the "Master Plan") for the Property in accordance with the County Zoning Ordinance.

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D. Owners desire to offer to the County certain conditions on the development of the Property not generally applicable to land zoned MU in the form of the following Proffers.

NOW, THEREFORE, for and in consideration of the approval of the requested rezoning, and pursuant to Section 15.2-2303 of the Code of Virginia, 1950, as amended, and the County Zoning Ordinance, Owner agrees that it shall meet and comply with all of the following conditions in developing the Property. If the requested rezoning is not granted by the County, these Proffers shall be null and void.

CONDITIONS

1. Cash Contributions. (a) A one-time contribution shall be made to the County of \$5,556.67 for each single family attached dwelling unit constructed on the Property, subject to paragraph (f) below. Such contributions shall be used by the County for school uses.
- (b) A one-time contribution shall be made to the County of \$61.00 for each dwelling unit constructed on the Property, subject to paragraph (f) below. Such contributions shall be used by the County for library uses.
- (c) A one-time contribution shall be made to the County of \$71.00 for each dwelling unit constructed on the Property, subject to paragraph (f) below. Such contributions shall be used by the County for fire/EMS uses.
- (d) A one-time contribution shall be made to the County of \$324.63 for each dwelling unit constructed on the Property, subject to paragraph (f) below. Such contributions shall be used by the County for parks and recreational purposes.
- (e) A one-time contribution shall be made to the James City Service Authority of \$1,030.00 for each dwelling unit constructed on the Property, subject to paragraph (f) below. Such contributions shall be used by the County for water system uses.

52A-93

(f) The cash contributions proffered in paragraphs (a) through (e) above shall be reduced in accordance with Section 3 of the County's Housing Opportunities Policy as shown in the table in Proffer 2 below.

(g) Such per unit contributions shall be paid to the County after completion of the final inspection and prior to the time of the issuance of any certificate of occupancy for the unit in question.

(h) The per unit contribution amounts shall consist of the amounts set forth in paragraphs (a) through (e) plus any adjustments included in the Marshall and Swift Building Costs Index, Section 98, Comparative Cost Multipliers, Regional City Averages (the "Index") from 2014 to the year a payment is made if payments are made after on or after January 1, 2015, subject to reduction as provided in paragraph (f). The per unit contribution amount shall be adjusted once a year with the January supplement of the Index of the payment year. In no event shall the per unit contribution be adjusted to a sum less than the amounts set forth in the preceding paragraphs of this Section. In the event that the Index is not available, a reliable government or other independent publication evaluating information heretofore used in determining the Index (approved in advance by the County Manager of Financial Management Services) shall be relied upon in establishing an inflationary factor for purposes of increasing the per unit contribution to approximate the rate of annual inflation in the County.

2. Housing Opportunities. All of the dwelling units permitted on the Property shall be offered for sale or made available for rent at prices that are targeted at households earning 30% to 120% of the Area Median Income ("AMI") as provided below:

Table 1 - 190 units on Parcels 4812200020 and 4812200029

Units targeted to (percent of	Percent of dwelling units	Number of units	Percentage cash proffer	2014 Price ranges per
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AMI)	required		reduction	Housing Opportunities Policy Guide*
30% to 60%	16%	30	100%	\$99,436 to \$173,376
Over 60% to 80%	64%	120	60%	\$173,377 to \$242,386
Over 80% to 120%	20%	40	30%	\$242,387 to \$380,407

Table 2 – 14 units on Parcels 4812200025, 4812200026, 4812200027 and 4812200028

Units targeted to (percent of AMI)	Percent of dwelling units required	Number of units	Percentage cash proffer reduction	2014 Price ranges per Housing Opportunities Policy Guide*
30% to 60%	16%	2	100%	\$99,436 to \$173,376
Over 60% to 80%	64%	9	60%	\$173,377 to \$242,386
Over 80% to 120%	20%	3	30%	\$242,387 to \$380,407

* Per the Housing Opportunities Policy Guide price ranges are set annually by the County's Office of Housing and Community Development based on the definitions in the Policy.

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The forgoing affordable/workforce dwelling units shall be provided consistent with the criteria established by the Housing Opportunities Policy and Housing Opportunities Policy Guide adopted by the Board of Supervisors on November 27, 2012 and in effect as of the date of approval of the requested rezoning to provide affordable and workforce housing opportunities at different price ranges to achieve the greater housing diversity goal of the 2009 Comprehensive Plan; provided, however, that if the County amends the Housing Opportunities Policy as in effect as of the date of approval of the requested rezoning to increase the targeted income ranges or otherwise make the Policy otherwise less burdensome on the Owner, the Owner shall only be required to comply with the amended Policy. With respect to affordable and workforce rental units provided pursuant to this proffer, if any, Owner shall submit an annual report for each year of the required 30 year term to the County Director of Planning on or before January 30 of the current year identifying the location of the units and the rental rates charged demonstrating such rates are within the specified affordable and workforce housing income range. With respect to affordable/workforce rental units, at the time such units are provided in accordance with this Proffer a notice in form approved by the County Attorney shall be recorded in the County land records providing notice that the units are subject to the County's Housing Opportunities Policy adopted by the Board of Supervisors on November 27, 2012 and in effect as of the date of approval of the requested rezoning. If an affordable/workforce rental unit is subsequently sold in accordance with the sale requirements of this proffer, the notice will be released from the unit sold. With respect to for sale affordable and workforce units provided pursuant to this proffer, a soft second mortgage meeting the requirements of the Housing Opportunities Policy or other instrument approved in advance by the County Attorney shall be executed by the initial purchaser thereof and recorded against the unit to assure the unit continues to meet the

requirements of the Housing Opportunities Policy and a copy of the settlement statement for the sale shall be provided to the Director of Planning. In addition, each deed to an affordable or workforce for sale unit shall include a right of first refusal in favor of the County in the event a subsequent owner desires to sell the unit. All affordable or workforce units provided pursuant to this Proffer shall be rented or sold to persons whose incomes fall within the qualifying income ranges used to determine the prices/rental rates under the Housing Opportunities Policy.

3. Archaeology. A Phase I Archaeological Study for the Property shall be submitted to the Director of Planning for review and approval prior to issuance of a land disturbing permit. A treatment plan shall be submitted and approved by the Director of Planning for all sites in the Phase I study that are recommended for a Phase II evaluation and/or identified as eligible for inclusion on the National Register of Historic Places. If a Phase II study is undertaken, such a study shall be approved by the Director of Planning and a treatment plan for said sites shall be submitted to, and approved by, the Director of Planning for sites that are determined to be eligible for inclusion on the National Register of Historic Places and/or those sites that require a Phase III study. If in the Phase II study, a site is determined eligible for nomination to the National Register of Historic Places and said site is to be preserved in place, the treatment plan shall include nomination of the site to the National Register of Historic Places. If a Phase III study is undertaken for said sites, such studies shall be approved by the Director of Planning prior to land disturbance within the study areas. All Phase I, Phase II, and Phase III studies shall meet the Virginia Department of Historic Resources' *Guidelines for Preparing Archaeological Resource Management Reports* and the Secretary of the Interior's *Standards and Guidelines for Archaeological Documentation*, as applicable, and shall be conducted under the supervision of a qualified archaeologist who meets the qualifications set forth in the Secretary of the Interior's

56993

Professional Qualification Standards. All approved treatment plans shall be incorporated into the plan of development for the Property and the clearing, grading or construction activities thereon. This proffer shall be interpreted in accordance with the County's Archaeological Policy adopted by the County on September 22, 1998.

4. Nutrient Management Plan. The Owner shall be responsible for contacting an agent of the Virginia Cooperative Extension Office ("VCEO") or, if a VCEO agent is unavailable, a Virginia Certified Nutrient Management Planner to conduct soil tests and to develop, based upon the results of the soil tests, customized nutrient management plans (the "Plans") for the Property. The Plan shall be submitted to the County's Engineering and Resource Protection Director for his review and approval prior to the issuance of the 50th certificate of occupancy for buildings on the Property by the County. The property owners association for the Property shall be responsible for ensuring that any nutrients applied to common areas owned or controlled by the association within the Property are applied in accordance with the Plan.

5. Water Conservation. The Owner shall be responsible for developing water conservation standards for the Property to be submitted to and approved by the James City Service Authority ("JCSA"). The standards shall address such water conservation measures as limitations on the installation and use of irrigation systems and irrigation wells, the use of drought resistant native and other adopted low water use landscaping materials and warm season turf on lots in areas with appropriate growing conditions for such turf and the use of water conserving fixtures and appliances to promote water conservation and minimize the use of public water resources. The standards shall be approved by the JCSA prior to final subdivision or site plan approval.

6. Road Repair and Dedication. Prior to issuance of the first certificate of occupancy for a dwelling unit on the Property, (i) either the deficiencies listed in the punch list dated September

15 made by the Virginia Department of Transportation ("VDOT") for Kingsway and "Road A" shall have been corrected and inspected by VDOT such that the roads are eligible for acceptance into the Commonwealth's secondary road system or the work necessary to correct such deficiencies shall have been bonded in form satisfactory to the County Attorney and (ii) the plat necessary to dedicate the right of way for such roads for public use shall have prepared and submitted to the County, with all required property owner signatures.

7. Architectural Guidelines. Prior to final approval of a site plan for development of the Property, Owner shall prepare and submit design guidelines to the Director of Planning for review and approval setting forth design and architectural standards for the development of the Property generally consistent with the typical architectural elevations included in the Community Impact Statement submitted with the Application for Rezoning and addressing items such as architectural features, color scheme, roof lines, building materials, streetscape improvements and landscaping (the "Guidelines") and requiring architectural consistency between the residential and commercial buildings developed on the Property. Once approved, the Guidelines may not be amended without the approval of the Director of Planning. All building plans and building elevations shall be generally consistent with the Guidelines. Prior to the issuance of final site plan approval for each building on the Property, architectural plans for such building shall be submitted to the Director of Planning for his review for general consistency with the Guidelines. The Director of Planning shall review and either approve or provide written comments settings forth changes necessary to obtain approval within 30 days of the date of submission of the plans in question. All buildings shall be constructed in accordance with the approved plans. In the case of plans that will be used on more than one building, Director of Planning approval need only be obtained for the initial building permit.

8. Community Character Corridor Buffer. The Community Character Corridor buffer along Route 199 shall have an average width of at least 50 feet. A landscaping plan for this buffer shall be shown as part of the initial building site plan, or shall be submitted as a separate plan concurrent with the initial building site plan. The buffers shall contain enhanced landscaping in accordance with the County's Enhanced Landscaping Policy as adopted April 9, 2013 and shall be consistent with the narrative description and conceptual cross-section of the buffer submitted with the Application for Rezoning. The landscaping shown on the approved landscape plan(s) shall be installed or its installation during the next appropriate growing season bonded in form approved by the County Attorney prior to issuance of a certificate of occupancy for the initial building on the Property, unless other arrangements are approved by the Planning Director, or his designee, in writing.

9. Condominium Owners Association. There shall be organized a condominium owner's association or associations (the "Association") as required by the Virginia Condominium Act (the "Act") in accordance with Virginia law in which all residential condominium unit owners in the Property, by virtue of their property ownership, shall be members.

10. Private Streets. Any and all streets on the Property may be private. Pursuant to Section 24-528 of the Zoning Ordinance, private streets within the Property shall be maintained by the Association. The condominium instruments shall require the Association to create, fund and maintain a reserve for capital components, including private roads, in amounts determined in accordance with the Act and conduct capital reserve studies and adjust such reserves in accordance with the Act.

11. Community Spaces. The clubhouse and pool, two welcome parks, pocket park and community park shown on the Master Plan shall be installed prior to the County being obligated

to issue certificates of occupancy for more than 48 residential units on the Property. The Public Square shown on the Master Plan shall be installed prior to the County being obligated to issue certificates of occupancy for the first building in the area designated on the Master Plan as M (EGC).

12. Bus Pull-Off/Shelter. Prior to final development plan approval for development of the Property, Owner shall have consulted with Williamsburg Area Transit Authority ("WATA") regarding the need for a bus pull-off area and a bus shelter on the Property. If the Williamsburg Area Transit Authority determines there is a need for a bus pull-off area and a bus shelter on the Property, such bus pull-off area and bus stop shelter shall be shown on the development plans for the Property in a location approved by Owner and WATA. Such bus pull-off area and bus stop shelter shall be installed prior to the County being obligated to issue certificates of occupancy for more than 48 residential units on the Property.

13. Severability. In the event that any clause, sentence, paragraph, section or subsection of these Proffers shall be adjudged by any court of competent jurisdiction to be invalid or unenforceable for any reason, including a declaration that it is contrary to the Constitution of the Commonwealth of Virginia or of the United States, or if the application thereof to any owner of any portion of the Property or to any government agency is held invalid, such judgment or holding shall be confined in its operation to the clause, sentence, paragraph, section or subsection hereof, or the specific application thereof directly involved in the controversy in which the judgment or holding shall have been rendered or made, and shall not in any way affect the validity of any other clause, sentence, paragraph, section or provision hereof.

14. Successors and Assigns. These Proffers shall be binding upon and shall inure to the benefit of the parties hereto, and their respective heirs, successors and/or assigns.

WITNESS the following signature.

UNIVERSITY SQUARE ASSOCIATES

By:

Title:

[Handwritten Signature]
Partner

STATE OF Virginia
CITY/COUNTY OF Virginia Beach to-wit:

The foregoing instrument was acknowledged before me this 15 day of October, 2014, by Frank R. Spadee as Partner of UNIVERSITY SQUARE ASSOCIATES, a Virginia general partnership, on behalf of the partnership.

[Handwritten Signature]

NOTARY PUBLIC

My commission expires: April 30, 2017
Registration No.: 7562623

HEIDI MARIE MACEMORE
NOTARY PUBLIC
REGISTRATION # 7562623
COMMONWEALTH OF VIRGINIA
MY COMMISSION EXPIRES
APRIL 30, 2017

6/9/13

Schedule A

Property Description

Those certain parcels or lots of land located in James City County, Virginia shown and set out as (i) "New Parcel 25," "New Parcel 26," "New Parcel 27," "New Parcel 28," and "New Parcel 29" on the plat entitled "PLAT OF RESUBDIVISION AND LOT LINE EXTINGUISHMENT SHOWING NEW PARCELS 2, 24-29, WILLIAMSBURG CROSSING" made by AES Consulting Engineers dated November 2, 1999 which plat is recorded in the Clerk's Office of the Circuit Court for the City of Williamsburg and County of James City in James City Plat Book 75 at page 92 and (ii) "Residual Parcel 20" on the plat entitled "RESUBDIVISION OF PARCEL 20, WILLIAMSBURG CROSSING" made by Langley and McDonald, P.C. and dated July 30, 1997, which plat is recorded in the aforesaid Clerk's Office in James City Plat Book 67 at page 37.

VIRGINIA: CITY OF WILLIAMSBURG & COUNTY OF JAMES CITY
This document was admitted to record on 10-2-2015
at 8:51 AM/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
\$ _____ \$ _____ \$ _____
TESTE: BETSY B. WOOLRIDGE, CLERK
BY: Betsy B. Woolridge Clerk

62993

Tax Parcels: 4812200020, 4812200025, 4812200026, 4812200027, 4812200028 and 4812200029

Prepared By: Vernon M. Geddy, III, Esquire (VSB No: 21902)
Geddy, Harris, Franck & Hickman
1177 Jamestown Road
Williamsburg, VA 2318

Return to: James City County Attorney's Office
101-C Mounts Bay Road
Williamsburg, Virginia 23185

FIRST AMENDMENT TO
PROFFERS

This First Amendment to Proffers is made this 12TH day of February, 2016 by UNIVERSITY SQUARE ASSOCIATES, a Virginia general partnership (together with its successors in title and assigns, the "Owner"), to be indexed as "Grantor." James City County, Virginia shall be indexed as "Grantee."

RECITALS

A. Owner is the owner of certain real property (the "Property") in James City County, Virginia now zoned MU – Mixed Use, and subject to Proffers dated October 15, 2014, which Proffers are recorded in the Clerk's Office of the Circuit Court for the City of Williamsburg and County of James City as Instrument No. 150010679 (the "Existing Proffers"). The Property is more particularly described in the Existing Proffers.

B. Owner desires to amend and restate Condition 2 of the Existing Proffers as set forth below. All capitalized terms used herein not otherwise defined shall have the definition set forth in the Existing Proffers.

AMENDMENTS TO CONDITIONS

6309 a3

1. Condition 2 of the Existing Proffers is hereby deleted and replaced in its entirety with the following;

2. Housing Opportunities. All of the dwelling units permitted on the Property shall be offered for sale or made available for rent at prices determined in accordance with the Housing Opportunities Policy and Housing Opportunities Policy Guide adopted by the Board of Supervisors on November 27, 2012 as provided below for units offered for sale:

Table 1 – 190 units on Parcels 4812200020 and 4812200029

Percent of dwelling units required	Number of units	Percentage cash proffer reduction	2015 maximum price per Housing Opportunities Policy Guide*
16%	30	100%	\$188,125
64%	120	60%	\$228,648
20%	40	30%	\$358,605

Table 2 – 14 units on Parcels 4812200025, 4812200026, 4812200027 and 4812200028

Percent of dwelling units required	Number of units	Percentage cash proffer reduction	2015 maximum price per Housing Opportunities Policy Guide*
16%	2	100%	\$188,125
64%	9	60%	\$228,648
20%	3	30%	\$358,605

* Per the Housing Opportunities Policy Guide price ranges are set annually by the County's Office of Housing and Community Development based on the definitions in the Policy.

The forgoing affordable/workforce dwelling units shall be provided consistent with the criteria established by the Housing Opportunities Policy and Housing Opportunities Policy Guide adopted by the Board of Supervisors on November 27, 2012 and in effect as of the date of

64093

approval of the requested rezoning to provide affordable and workforce housing opportunities at different price ranges to achieve the greater housing diversity goal of the 2035 Comprehensive Plan; provided, however, that if the County amends the Housing Opportunities Policy as in effect as of the date of approval of the requested rezoning to increase the targeted income ranges or otherwise make the Policy otherwise less burdensome on the Owner, the Owner shall only be required to comply with the amended Policy.

2. Except as specifically amended herein, the Existing Proffers remain unchanged and in full force and effect.

65073

WITNESS the following signature.

UNIVERSITY SQUARE ASSOCIATES

By:

Title:

Partner

STATE OF Virginia
CITY/COUNTY OF Virginia Beach, to-wit:

The foregoing instrument was acknowledged before me this 12 day of February, 2016, by Frank Sandoz as Partner of UNIVERSITY SQUARE ASSOCIATES, a Virginia general partnership, on behalf of the partnership.

Heidi M. Macmore
NOTARY PUBLIC

My commission expires: April 30, 2017
Registration No.: 7562623

HEIDI MARIE MACMORE
NOTARY PUBLIC
REGISTRATION # 7562623
COMMONWEALTH OF VIRGINIA
MY COMMISSION EXPIRES
APRIL 30, 2017

66793

Tax Parcels: 4812200020, 4812200025, 4812200026, 4812200027, 4812200028 and 4812200029

Prepared By: Vernon M. Geddy, III, Esquire (VSB No: 21902)
Geddy, Harris, Franck & Hickman
1177 Jamestown Road
Williamsburg, VA 23185

Return to: James City County Attorney's Office
101-C Mounts Bay Road
Williamsburg, Virginia 23185

SECOND AMENDMENT TO
PROFFERS

This Second Amendment to Proffers is made this 3rd day of April, 2016 by UNIVERSITY SQUARE ASSOCIATES, a Virginia general partnership (together with its successors in title and assigns, the "Owner"), to be indexed as "Grantor." James City County, Virginia shall be indexed as "Grantee."

RECITALS

A. Owner is the owner of certain real property (the "Property") in James City County, Virginia now zoned MU – Mixed Use, and subject to Proffers dated October 15, 2014, which Proffers are recorded in the Clerk's Office of the Circuit Court for the City of Williamsburg and County of James City as Instrument No. 150010679, as amended by First Amendment to Proffers dated February 12, 2016 (the "Existing Proffers"). The Property is more particularly described in the Existing Proffers.

B. Owner desires to amend Condition 8 of the Existing Proffers as set forth below. All capitalized terms used herein not otherwise defined shall have the definition set forth in the Existing Proffers.

670993

AMENDMENTS TO CONDITIONS

1. The third sentence of Condition 8 of the Existing Proffers is hereby amended to read as follows:

"The buffers shall contain enhanced landscaping in accordance with the County's Enhanced Landscaping Policy as adopted April 9, 2013 and shall be consistent with the narrative description and conceptual cross-section of the buffer dated April 13, 2016 submitted to and on file with the County Planning Department."

2. Except as specifically amended herein, the Existing Proffers remain unchanged and in full force and effect.

[remainder of page intentionally left blank – signatures appear on following page]

68693

WITNESS the following signature.

UNIVERSITY SQUARE ASSOCIATES

By: [Signature]
Title: MANAGER

STATE OF Virginia
CITY/COUNTY OF Virginia Beach, to-wit:

The foregoing instrument was acknowledged before me this 13 day of April,
2016, by Gary L. Werner as Manager of UNIVERSITY SQUARE
ASSOCIATES, a Virginia general partnership, on behalf of the partnership.

[Signature]
NOTARY PUBLIC

My commission expires: April 30, 2017
Registration No.: 7562623

HEIDI MARIE MACEMORE
NOTARY PUBLIC
REGISTRATION # 7562623
COMMONWEALTH OF VIRGINIA
MY COMMISSION EXPIRES
APRIL 30, 2017

69093

EXHIBIT D

Additional Land

NOV 93

ADDITIONAL LAND A-1

All that certain parcel of land, lying and being situated in James City County, Virginia, as shown on that certain plat entitled "Phase 1 Condominium Plat of The Promenade at John Tyler, a Condominium, James City County, Virginia, dated February 15, 2017, and prepared by Hayden Frye and Associates, Inc., Land Surveyors", being designated as Additional Land A-1 and being more particularly described as follows:

Commencing at the aforementioned Point of Commencement Additional Land A-1, thence continuing in a southeasterly direction along a Tie-Line S35°02'48"E 53.18' to a point, said point being the Point of Beginning of the herein described Additional Land A-1, thence S49°43'59"E 420.48 feet to a point, thence S66°33'03"W 220.39 feet to a point, thence S23°26'57"E 14.00 feet to a point, thence S21°33'04"W 4.95 feet to a point, thence S66°33'04"W 143.47 feet to a point, thence N68°26'56"W 19.09 feet to a point, thence N23°26'57"W 167.28 feet to a point, thence N21°33'03"E 4.95 feet to a point, thence N66°33'03"E 14.50 feet to a point, thence N23°26'57"W 122.79 feet to a point, thence N40°13'08"E 197.12 feet to a point, said point being the Point of Beginning of the herein described Additional Land A-1 containing 99,685 Square Feet or 2.289 Acres of land, more or less.

ADDITIONAL LAND A-2

All that certain parcel of land, lying and being situated in James City County, Virginia, as shown on that certain plat entitled "Phase 1 Condominium Plat of The Promenade at John Tyler, a Condominium, James City County, Virginia, dated February 15, 2017, and prepared by Hayden Frye and Associates, Inc., Land Surveyors", being designated as Additional Land A-2 and being more particularly described as follows:

Commencing at the aforementioned Point of Commencement Additional Land A-2, thence continuing in a northwesterly direction along a Tie-Line N52°05'49"W 60.39 feet to a point, said point being the Point of Beginning of the herein described Additional Land A-2, thence S66°33'03"W 450.73 feet to a point, thence N68°26'57"W 4.24 feet to a point, thence, N23°26'57"W 78.50 feet to a point, thence N21°33'03"E 19.09 feet to a point, thence N66°33'03"E 390.42 feet to a point, thence S81°34'23"E 14.26 feet to a point, thence S49°41'49"E 84.74 feet to a point, thence S24°33'07"E 11.47 feet to a point, said point being the Point of Beginning of the herein described Additional Land A-2 containing 41,237 Square Feet or 0.947 Acres of land, more or less.

26893

ADDITIONAL LAND A-3

All that certain parcel of land, lying and being situated in James City County, Virginia, as shown on that certain plat entitled "Phase 1 Condominium Plat of The Promenade at John Tyler, a Condominium, James City County, Virginia, dated February 15, 2017, and prepared by Hayden Frye and Associates, Inc., Land Surveyors", being designated as Additional Land A-3 and being more particularly described as follows:

Commencing at the aforementioned Point of Commencement Additional Land A-3, thence continuing in a northerly direction along a Tie-Line $N02^{\circ}22'49''W$ 30.77 feet to a point, said point being the Point of Beginning of the herein described Additional Land A-3, thence $S66^{\circ}39'51''W$ 85.57 feet to a point, thence $N68^{\circ}23'33''W$ 4.24 feet to a point, thence $N23^{\circ}26'57''W$ 324.98 feet to a point, thence $N40^{\circ}12'30''W$ 51.55 feet to a point, thence $N25^{\circ}45'15''E$ 8.23 feet to a point, thence $N40^{\circ}13'08''E$ 80.19 feet to a point, thence $N88^{\circ}35'55''E$ 27.66 feet to a point, thence $S33^{\circ}14'07''E$ 36.03 feet to a point, thence $S23^{\circ}26'57''E$ 361.32 feet to a point, thence $S06^{\circ}21'20''W$ 12.95 feet to a point, said point being the Point of Beginning of the herein described Additional Land A-3 containing 38,858 Square Feet or 0.892 Acres of land, more or less.

ADDITIONAL LAND A-4

All that certain parcel of land, lying and being situated in James City County, Virginia, as shown on that certain plat entitled "Phase 1 Condominium Plat of The Promenade at John Tyler, a Condominium, James City County, Virginia, dated February 15, 2017, and prepared by Hayden Frye and Associates, Inc., Land Surveyors", being designated as Additional Land A-4 and being more particularly described as follows:

Commencing at the aforementioned Point of Commencement Additional Land A-4, thence continuing in a northeasterly direction along a Tie-Line $N20^{\circ}14'54''E$ 40.29 feet to a point, said point being the Point of Beginning of the herein described Additional Land A-4, thence $S66^{\circ}33'03''W$ 82.68 feet to a point, thence $N53^{\circ}08'03''W$ 18.83 feet to a point, thence $N23^{\circ}26'57''W$ 317.18 feet to a point, thence $N49^{\circ}17'28''W$ 107.22 feet to a point, thence $N40^{\circ}18'11''E$ 81.23 feet to a point, said point being along the southern right-of-way line of the aforementioned 50' Public Right-of-Way, thence continuing along the aforementioned right-of-way line along a curve to the right having a radius of 15.00 feet and an arc length of 23.56 feet, thence continuing along the aforementioned right-of-way line $S49^{\circ}41'49''E$ 10.00 feet to a point, thence departing the aforementioned right-of-way line $S45^{\circ}45'02''E$ 26.95 feet to a point, thence $S49^{\circ}41'49''E$ 35.15 feet to a point, thence $S43^{\circ}08'04''E$ 41.26 feet to a point, thence $S30^{\circ}00'34''E$ 41.26 feet to a point, thence $S23^{\circ}26'49''E$ 310.88 feet to a point, thence $S21^{\circ}33'07''W$ 4.24 feet to a point, said point being the Point of Beginning of the herein described Additional Land A-4 containing 43,699 Square Feet or 1.003 Acres of land, more or less.

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ADDITIONAL LAND A-5

All that certain parcel of land, lying and being situated in James City County, Virginia, as shown on that certain plat entitled "Phase 1 Condominium Plat of The Promenade at John Tyler, a Condominium, James City County, Virginia, dated February 15, 2017, and prepared by Hayden Frye and Associates, Inc., Land Surveyors", being designated as Additional Land A-5 and being more particularly described as follows:

Commencing at the aforementioned Point of Commencement Additional Land A-5, thence continuing in a northeasterly direction along a Tie-Line N23°57'14"E 36.67 feet to a point, said point being the Point of Beginning of the herein described Additional Land A-5, thence N59°51'39"E 22.83 feet to a point, thence N40°42'28"E 75.00 feet to a point, thence N00°46'13"W 36.04 feet to a point, thence N49°17'32"W 81.13 feet to a point, thence N40°42'32"E 121.00 feet to a point, thence S49°17'28"E 150.14 feet to a point, thence S23°26'57"E 153.56 feet to a point, thence S21°33'03"W 4.95 feet to a point, thence S66°33'03"W 226.04 feet to a point, thence N68°27'04"W 19.09 feet to a point, thence N23°27'12"W 84.32 feet to a point, said point being the Point of Beginning of the herein described Additional Land A-5 containing 48,588 Square Feet or 1.115 Acres of land, more or less.

ADDITIONAL LAND A-6

All that certain parcel of land, lying and being situated in James City County, Virginia, as shown on that certain plat entitled "Phase 1 Condominium Plat of The Promenade at John Tyler, a Condominium, James City County, Virginia, dated February 15, 2017, and prepared by Hayden Frye and Associates, Inc., Land Surveyors", being designated as Additional Land A-6 and being more particularly described as follows:

Commencing at the aforementioned Point of Commencement Additional Land A-6, thence continuing in a easterly direction along a Tie-Line N84°50'00"E 31.88 feet to a point, said point being the Point of Beginning of the herein described Additional Land A-6, thence N40°44'18"W 11.00 feet to a point, thence N23°26'49"W 71.00 feet to a point, thence N21°33'07"E 19.09 feet to a point, thence N66°33'03"E 225.70 feet to a point, thence S71°09'13"E 5.20 feet to a point, thence S23°26'57"E 81.00 feet to a point, thence S21°33'03"W 26.16 feet to a point, thence S66°33'03"W 17.38 feet to a point, thence N68°26'57"W 11.31 feet to a point, thence S66°33'03"W 195.90 feet to a point, said point being the Point of Beginning of the herein described Additional Land A-6 containing 23,122 Square Feet or 0.531 Acres of land, more or less.

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ADDITIONAL LAND A-7

All that certain parcel of land, lying and being situated in James City County, Virginia, as shown on that certain plat entitled "Phase 1 Condominium Plat of The Promenade at John Tyler, a Condominium, James City County, Virginia, dated February 15, 2017, and prepared by Hayden Frye and Associates, Inc., Land Surveyors", being designated as Additional Land A-7 and being more particularly described as follows:

Beginning at the aforementioned Point of Beginning Additional Land A-7, thence S49°41'49"E 90.44 feet to a point, thence S66°33'03"W 1311.82 feet to a point, thence N23°29'07"W 632.65 feet to a point, thence N40°18'12"E 440.12 feet to a point, said point being located on the western right-of-way line of the aforementioned 50' Public Right-of-Way, thence continuing along the aforementioned right-of-way line S49°41'49"E 101.83 feet to a point, thence continuing along the aforementioned right-of-way line along a curve to the right having a radius of 15.00 feet and an arc length of 23.56 feet to a point, thence continuing along the aforementioned right-of-way line S40°18'11"W 10.00 feet to a point, thence departing from the aforementioned right-of-way line S40°18'11"W 70.86 feet to a point, thence N49°17'28"W 106.06 feet to a point, thence S40°42'32"W 27.52 feet to a point, thence S49°17'28"E 103.50 feet to a point, thence S04°19'02"E 19.08 feet to a point, thence S40°39'25"W 20.64 feet to a point, thence S85°40'58"W 19.10 feet to a point, thence N49°17'28"W 95.23 feet to a point, thence S40°42'32"W 45.00 feet to a point, thence S49°17'28"E 108.73 feet to a point, thence S40°43'30"W 65.92 feet to a point, thence S34°57'20"W 20.26 feet to a point, thence S23°26'55"W 25.94 feet to a point, thence S58°03'08"W 10.61 feet to a point, thence N49°18'11"W 90.11 feet to a point, thence S81°38'35"W 36.41 feet to a point, thence S40°41'49"W 48.00 feet to a point, thence S13°08'50"W 24.93 feet to a point, thence S23°29'07"E 57.00 feet to a point, thence S74°30'33"E 30.87 feet to a point, thence N66°30'53"E 90.51 feet to a point, thence S43°09'18"E 14.72 feet to a point, thence S04°56'59"E 20.95 feet to a point, thence S23°26'49"E 91.87 feet to a point, thence S66°33'03"W 113.01 feet to a point, thence S23°26'57"E 63.00 feet to a point, thence N66°33'03"E 113.01 feet to a point, thence S23°26'49"E 123.00 feet to a point, thence S66°33'03"W 101.24 feet to a point, thence S23°28'23"E 63.00 feet to a point, thence N66°33'03"E 118.31 feet to a point, thence S23°26'57"E 100.00 feet to a point, thence N66°33'03"E 63.00 feet to a point, thence N23°26'57"W 100.00 feet to a point, thence N66°33'03"E 145.93 feet to a point, thence N23°26'57"W 18.00 feet to a point, thence N66°33'03"E 135.69 feet to a point, thence S65°37'37"E 55.33 feet to a point, thence N66°33'03"E 46.52 feet to a point, thence N18°43'43"E 55.33 feet to a point, thence N66°33'03"E 46.52 feet to a point, thence S23°26'57"E 118.00 feet to a point, thence N66°33'03"E 63.00 feet to a point, thence N23°26'57"W 118.00 feet to a point, thence N66°33'03"E 132.68 feet to a point, thence S23°26'57"E 118.00 feet to a point, thence N66°33'03"E 63.00 feet to a point, thence N23°26'57"W 100.00 feet to a point, thence N66°33'03"E 269.00 feet to a point, thence S23°26'57"E 109.47 feet to a point, thence N66°33'03"E 53.15 feet to a point, thence N20°01'13"E 44.97 feet to a point, said point being the Point of Beginning of the herein described Additional Land A-7 containing 252,972 Square Feet or 5.807 Acres of land, more or less.

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EXHIBIT E

Bylaws

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BYLAWS
OF
PROMENADE AT JOHN
TYLER CONDOMINIUM
ASSOCIATION, INC.

Prepared by and return to:
Susan B. Tarley, Esquire
VSB 28896
Tarley Robinson, PLC
4808 Courthouse Street, Suite 102
Williamsburg, VA 23188

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BYLAWS
OF
PROMENADE AT JOHN TYLER CONDOMINIUM ASSOCIATION, INC.

ARTICLE 1. GENERAL PROVISIONS

1.1. IDENTITY-PURPOSE. These are the Bylaws of Promenade at John Tyler Condominium Association, Inc., a nonstock Virginia corporation (the "Association"). The Association has been organized for the purpose of administering the affairs of Promenade at John Tyler, a Condominium.

1.2. BYLAWS SUBJECT TO OTHER DOCUMENTS. The provisions of these Bylaws are applicable to the Condominium and are expressly subject to the terms, provisions and conditions contained in the Articles of Incorporation of the Association, (the "Articles") and the Declaration of Condominium ("Declaration"), recorded in the Clerk's Office of the Circuit Court for the County of James City, Virginia (the "Clerk's Office"), as the same may be amended from time to time.

1.3. APPLICABILITY. Pursuant to Va. Code Ann. § 55-79.53, every Unit Owner and all those entitled to occupy a Unit shall comply with these Bylaws.

1.4. DEFINITIONS. All definitions set forth in the Declaration are hereby adopted by reference as though set forth herein.

ARTICLE 2. MEMBERSHIP, VOTING, QUORUM, PROXIES.

2.1. MEMBERSHIP. Each Unit Owner shall automatically become a Member of the Association upon his or her acquisition of title to any Unit and such membership shall terminate automatically upon such Unit Owner being divested of title to such Unit, regardless of the means by which such ownership may be divested. No person holding any lien, mortgage or other encumbrance upon any Unit shall be entitled, by virtue thereof, to membership in the Association or to any of the rights or privileges of such membership.

2.2. VOTING. Voting shall be on a per unit basis with each Unit having one (1) vote. Since a Unit Owner may be more than one person, if only one of the Unit Owners is present at a meeting of the Association, that person shall be entitled to cast the votes appertaining to the Unit. But if more than one Unit Owner of the Unit is present, the vote appertaining to that Unit shall be cast only in accordance with their unanimous agreement pursuant to Va. Code Ann. § 55-79.77 C, and such consent shall be conclusively presumed if any one of the Unit Owners purports to cast the vote appertaining to that Unit without protest being made by any of the other Unit Owners of the Unit to the person presiding over the meeting.

2.3. MAJORITY VOTE. Except where a greater percentage is required by the Condominium Act or the Condominium Instruments, the affirmative vote of a majority of Unit

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Owners at any duly called meeting at which a quorum is present shall be binding upon the Members. The term "majority of Unit Owners" shall mean those Unit Owners having more than fifty percent (50%) of the total authorized votes of all Unit Owners present in person or by proxy and voting at any meeting of the Unit Owners at which a quorum is present.

2.4. QUORUM. Persons having more than twenty-five percent (25%) of the total authorized votes of all Unit Owners shall constitute a quorum at all meetings of the membership of the Association. In the event of an adjourned meeting as set forth in Section 3.4, a reduced quorum of ten percent (10%) of the total authorized votes of all Unit Owners shall constitute a quorum.

2.5. VOTING BY PROXY. Votes may be cast pursuant to a proxy or proxies duly executed by or on behalf of the Unit Owner, or, in cases where the Unit Owner is more than one person, by or on behalf of all such persons. No such proxy shall be revocable except by actual notice from the Unit Owner to the person presiding over the meeting, that it be revoked. Except to the extent otherwise provided in the Condominium Instruments, any proxy shall be void if it is not dated, or if it purports to be revocable without notice as aforesaid. The proxy of any person shall be void if not signed by a person having authority, at the time of the execution thereof, to execute deeds on behalf of that person. Any proxy shall terminate after the first meeting held on or after the date of that proxy or any recess or adjournment of that meeting. The proxy shall include a brief explanation of the effect of leaving the proxy uninstructed. A vote or proxy may be submitted by electronic transmission, provided that any such electronic transmission shall either set forth or be submitted with information from which it can be determined that the electronic transmission was authorized by the Unit Owner or the Unit Owner's proxy.

ARTICLE 3. ANNUAL AND SPECIAL MEETINGS OF THE UNIT OWNERS

3.1. ANNUAL MEETING. The annual meeting of the Unit Owners shall be held during the month of January of each year, at such date, time and place as is designated by the Board of Directors in the notice thereof. At each annual meeting after the period of Declarant Control has expired or terminated, the Board of Directors shall be elected by the Unit Owners in accordance with Article 4 of these Bylaws and the Association may transact any other business authorized to be transacted by the Unit Owners.

3.2. SPECIAL MEETING. Special meetings of the Unit Owners may be called at any time by the President or Vice-President. It shall be the duty of the President or the Vice-President to call a special meeting of the Unit Owners if so directed by resolution of the Board of Directors, or upon a petition signed and presented to the Secretary by Unit Owners having at least twenty-five percent (25%) of the total authorized votes in the Association. No business shall be transacted at a special meeting except as stated in the notice.

3.3. NOTICE OF MEETING; WAIVER. Notice of all Unit Owners' meetings shall be given by, or at the direction of, the Secretary or such other appointed officer of the Association, or the Secretary's designee, to each Unit Owner, unless such notice is waived in writing. Such notice will

be written and will state the place, date and time of the meeting, and in the case of a special meeting, the purpose of the meeting. Such notice shall be hand-delivered or mailed to each Unit Owner at their respective Units or such other address as the Unit Owner may have designated by notice, in writing, to the Association, or it may be electronically transmitted to the address provided to the Association by the Unit Owner, not less than twenty-one (21) days prior to the date set for a regular meeting, and not less than seven (7) days for a special meeting. If hand-delivered, the appointed officer shall certify in writing that notice was hand-delivered to the Unit Owner's designated address. Notice that is mailed shall be deemed to be properly given when deposited in the United States mail, postage prepaid, addressed to the Unit Owner at his post office address as it appears on the records of the Association. Notwithstanding the foregoing, notice of any meeting at which there shall be voted upon any amendment to the Articles of Incorporation, a plan of merger, domestication, a proposed sale of assets pursuant to Va. Code Ann. 13.1-900, or the dissolution of the Association, shall be given not less than twenty-five (25) days and not more than sixty (60) days before the meeting date.

3.4. ADJOURNED MEETINGS. If any Unit Owners' meeting cannot be held because a quorum is not present, the Unit Owners who are present, either in person or by proxy, may adjourn the meeting from time to time, without notice other than an announcement at the meeting, until a quorum shall be present or be represented. Valid proxies for the meeting shall continue to be valid until a quorum is present. Should a meeting be adjourned for failure to obtain a quorum, such rescheduled meeting shall be convened if those Unit Owners attending either in person or by proxy, represent ten percent (10%) of the total authorized votes in the Association.

3.5. CONDUCT OF MEETINGS. The President shall preside over all meetings of the Association. In the absence of the President, the Vice President shall chair the meeting. The President may appoint a parliamentarian at any meeting of the Unit Owners. The most recent edition of Robert's Rules of Order shall govern the conduct of all meetings of the Association when not in conflict with the Condominium Instruments or the Condominium Act.

ARTICLE 4. BOARD OF DIRECTORS

4.1. NUMBER; TERM. After the expiration or termination of the period of Declarant Control, the affairs of the Association shall be managed by a Board of Directors, (the "Board") consisting of at least three (3) persons and no more than five (5) persons as determined by the Board of Directors in advance of the Annual Meeting at which the election shall occur. After the expiration or termination of the period of Declarant Control, directors shall be elected annually by the Unit Owners and serve for a two (2) year term which shall commence on January 1 following their election and run until December 31 when the term will end. A Director shall serve until his or her respective successor shall have been elected by the Unit Owners of the Association.

4.2. ELIGIBILITY. No person shall be eligible for election as a member of the Board of Directors unless he or she is (alone or together with one or more other persons) a Unit Owner. Only one person from a Unit may serve as an officer or director at any given time. No person shall be

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elected as a member of the Board of Directors or shall continue to serve as a member of the Board of Directors if he or she is delinquent in his or her financial obligations to the Association or if a violation of the Condominium Instruments or Rules and Regulations concerning the Unit Owner or the Unit has not been remedied in the time allowed for correction in the written notice provided to the Unit Owner by the Association.

4.3. PERIOD OF DECLARANT CONTROL. "The period of Declarant Control" means the period ending on the earliest of (1) the date when Units to which three-fourths of the undivided interests in Common Elements appertain have been conveyed; (2) the fifth anniversary of the date the Declarant ceases to be the only Unit Owner; or (3) the date specified by the Declarant in a notice to each Unit Owner that the Declarant is relinquishing the rights by the Declarant under § 55-79.74(A) of the Code of Virginia of 1950. For the purpose of the preceding sentence, the calculation of Common Element interests shall be based, at any given time, on the Common Element interests to be assigned to all Units then registered with the Virginia Common Interest Community Board, including all Units which can be added to the Condominium pursuant to the Declaration.

4.4. DESIGNATED BOARD. Notwithstanding any provision to the contrary herein, during the period of Declarant Control, the Board of Directors shall consist of three (3) persons, none of whom need to be members of the Association. The initial Board of Directors shall be designated by the Declarant and shall serve until replaced by the Declarant or until their successors have been elected.

4.5. ELECTION OF DIRECTORS. Except for designation of Directors by the Declarant during the period of Declarant Control, election of Directors shall be by the Unit Owners at the annual meeting. The election shall be by written ballot, unless dispensed with by unanimous consent of those present at the meeting, and by a plurality of the votes cast. Votes may be cast in accordance with Article 2. Votes may also be cast electronically or by mail when approved by the Board of Directors. There shall be no cumulative voting.

4.6. RESIGNATION. A Director may resign by giving written notice to the President or Vice-President. A resignation is effective when the notice is delivered unless it specifies a later effective date. A Director's resignation is automatically effected if the Director becomes ineligible to serve. (See Section 4.2 herein).

4.7. REMOVAL OF DIRECTORS. Removal of a Director, with or without cause, will be effected if at any duly convened regular or special meeting, a majority of the Unit Owners vote in favor of removal. A successor who agrees to be considered may immediately be elected by a majority vote of the Unit Owners to fill the vacancy created by the removal. Should the Unit Owners fail to elect a successor, the Board may appoint a successor, who will serve until the next election. Any Director whose removal has been proposed by the Unit Owners shall be given at least seven (7) days' notice of the calling of the meeting and the purpose thereof, and shall be given an opportunity to be heard at the meeting.

4.8. VACANCIES. Except as to vacancies created by removal of Directors by Unit Owners, vacancies in the Board occurring between annual meetings of Unit Owners shall be filled by a majority vote of a quorum of the Board at a regular or special meeting of the Board. A Director elected by the Board to fill such a vacancy shall serve until the next election.

4.9. ORGANIZATIONAL MEETING. The organizational meeting of a newly elected Board shall be held immediately following the Annual Meeting or within ten (10) days of the Annual Meeting. Officers shall be elected at the organizational meeting and they shall serve for a one (1) year term.

4.10. REGULAR MEETINGS. Regular meetings of the Board shall be held on at least a quarterly basis. Notice of each Board meeting shall be given to each director by mail or electronic delivery at least three (3) business days prior to the meeting. Meetings shall be open to all Unit Owners except in those circumstances for which the Condominium Act allows certain portions of meetings of the Board to be closed to the Unit Owners.

4.11. SPECIAL MEETINGS. Special meetings of the Board may be called by the President or by any Director upon at least three (3) business days notice to each Director by mail or electronic transmission. Notice for any special meeting shall include the place, time, date and purpose of the meeting.

4.12. WAIVER. Any Director may waive notice of a meeting before or after the meeting and such waiver shall be deemed equivalent to the giving of notice. Attendance by a Director, in person or by telephone communication, shall be deemed a waiver of the notice requirement unless the Director at the beginning of the meeting, or promptly upon his or her arrival, objects to holding the meeting and does not thereafter vote or assent to any action taken at the meeting. If all Directors are present at any meeting of the Board of Directors, no notice shall be required and any business may be transacted at the meeting.

4.13. QUORUM AND DECISION OF BOARD. At all meetings of the Board, a majority of the Directors shall constitute a quorum for the transaction of business, and the votes of a majority of the Directors present at a meeting at which a quorum is present shall constitute the decision of the Board.

4.14. REMOTE ATTENDANCE BY DIRECTOR. The Board may conduct the meeting, and a Director may attend the meeting, through the use of, video conference or telephone conference or similar electronic means provided that all Directors participating may simultaneously hear each other during the meeting and at least two (2) Directors are present at the meeting. The audio equipment shall be sufficient for the Unit Owners in attendance to hear what is said by any Director participating in the meeting who is not physically present at the meeting location. A Director who participates in a meeting by means of such communication shall be deemed present at the meeting for all purposes.

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4.15. ADJOURNMENT OF MEETING. If any Directors' meeting cannot be held because a quorum has not attended, or because the greater percentage of the Directors required to constitute a quorum for particular purposes have not attended, the Directors who are present may adjourn the meeting, from time to time, until the requisite quorum is present. At any adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice. The joinder of a Director in the action of a meeting by signing and concurring in the minutes thereof shall constitute the presence of such Director for all purposes including determining a quorum, provided that the same be accomplished within ten (10) days from the date of the meeting.

4.16. CONDUCT OF MEETINGS. The President shall preside at all Directors' meetings. In the absence of the President, the Vice President shall preside. The Secretary, or such other designee, shall keep a minute book of the Directors' meetings recording all resolutions adopted by the Board.

4.17. POWERS AND DUTIES. The Board of Directors shall have all of the powers and duties necessary for the administration of the affairs of the Condominium. The powers and duties of the Association may, subject to the limitations set forth herein and in the Condominium Act, be exercised by the Board, in the Board's sole discretion. Such powers shall include, without limiting the generality of the foregoing, the following:

A. To prepare and adopt an annual budget of the Association in which there shall be established the assessments of each Unit Owner for the Common Expenses as determined necessary by the Board.

B. To make, levy and collect assessments against Unit Owners and Unit Owners' Units to defray the costs and expenses of the Condominium and Common Expenses, and to use the proceeds of said assessments in the exercise of the powers and duties granted to the Association, and to adopt Special Assessments providing for any previously unanticipated expenses. Special Assessments shall be limited to those items which are necessary and all other items which can reasonably be deferred to the regular budgetary meeting shall be so deferred.

C. To provide for the maintenance, repair, replacement, operations, improvements and management of the Common Elements and those portions of Units for which the Association is responsible wherever the same is required to be done and accomplished by the Association for the benefit of its Unit Owners.

D. To make or contract for the making of repairs, additions and improvements to or alterations, replacements and restoration of the Common Elements and those portions of the Units for which the Association is responsible, in accordance with the Condominium Instruments, after casualty, or as a result of condemnation or eminent domain proceedings.

E. To adopt, amend, promulgate and enforce rules and regulations governing the details of the operation and use of the Units and Common Elements, provided that they do not

conflict with the Condominium Act or the Condominium Instruments.

F. To acquire, operate, lease, manage and otherwise trade and deal with property, real and personal, including Units in the Condominium on behalf of the Association, as may be necessary or convenient in the operation and management of the Condominium and in accomplishing the purposes set forth in the Declaration.

G. To contract on behalf of the Association for the management of the Condominium and to delegate to such manager such powers and duties of the Association as the Directors deem fit as set forth in Section 4.20 below.

H. To borrow money and encumber the Common Elements or pledge the assets of the Association for Common Element repairs and replacements as deemed necessary by the Board.

I. To enforce, by legal means, the provisions of the Condominium Instruments and the Rules and Regulations promulgated governing the use of the Condominium, including, without limitation, the assessment of charges against Unit Owners for violations of the Condominium Instruments and the Rules and Regulations in accordance with the provisions of § 55-79.80:2 of the Condominium Act.

J. To cause the Association to pay all taxes and assessments of any type which affect any part of the Condominium, other than Units (unless owned by the Association) and the appurtenances thereto, and to assess the same against the Unit Owners of and their respective Units.

K. To cause the Association to carry insurance as set forth in the Declaration against casualty and liability.

L. To cause the Association to pay all costs of power, water, sewer and other utility services rendered to the Condominium which is not the specific responsibility of a Unit Owner.

M. To cause the Association to employ personnel, for reasonable compensation, to perform services required for proper administration of the purposes of the Association, including accountants, attorneys, contractors and other professionals.

N. To grant and accept exclusive licenses, easements, permits, leases, or privileges to any individual or entity, including non-Unit Owners, which affect Common Elements and to alter, add to, relocate or improve Common Elements when determined by the Board of Directors to be in the best interests of the Association.

O. To obtain an annual audit of the financial records of the Association.

P. To do such other things and acts not inconsistent with the Condominium Act and the Condominium Instruments, including, without limitation, such things or acts which it may be authorized to do by a resolution of the Association.

4.18. COMPENSATION. No Director shall be entitled to compensation, provided, however, that upon written approval by the Board, a Director may be reimbursed for reasonable, ordinary and necessary expenses incurred in serving as a Director, including reasonable expenses for education and continuing education in managing and operating a condominium association.

4.19. CONFLICT OF INTEREST. As set forth in Va. Code Ann. 13.1-871, a conflict of interests transaction is a transaction with the Association in which a Director has an interest that precludes him or her from being a disinterested Director. A conflict of interests transaction is not voidable by the Association solely because of the Director's interest in the transaction if any one of the following is true: 1. The material facts of the transaction and the Director's interest were disclosed or known to the Board of Directors and the board of directors authorized, approved or ratified the transaction; 2. The material facts of the transaction and the Director's interest were disclosed to the members entitled to vote and they authorized, approved or ratified the transaction; or 3. The transaction was fair to the Association.

For purposes of 1, a conflict of interest transaction is authorized, approved, or ratified if it receives the affirmative vote of a majority of the disinterested Directors on the Board of Directors. A transaction shall not be authorized, approved, or ratified under this section by a single Director. If a majority of the disinterested Directors vote to authorize, approve or ratify the transaction, a quorum is present for the purpose of taking action under this section. The presence of, or a vote cast by, a Director who is not disinterested does not affect the validity of any action taken under section 1 if the transaction is otherwise authorized, approved or ratified as provided in that section.

For purposes of 2, a conflict of interest transaction is authorized, approved, or ratified if it receives the vote of a majority of the votes entitled to be counted under this section. The vote controlled by a Director who is not disinterested may not be counted in a vote of members to determine whether to authorize, approve, or ratify a conflict of interests transaction under section 2. The Director's votes, however, may be counted in determining whether the transaction is approved under other sections of the Nonstock Corporation Act. A majority of the members, whether or not present, that are entitled to be counted in a vote on the transaction under this section constitutes a quorum for the purpose of taking action under this section.

In addition, no remuneration shall be accepted by a Director from vendors, contractors or others providing goods and services to the Unit Owners' Association, whether in the form of commissions, finders fees, service fees or otherwise, and any discounts received shall benefit the Association; and any financial or other interest which the Director may have in any firm or company providing goods or services to the Association shall be disclosed promptly to the Board of Directors.

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4.20. MANAGING AGENT. The Board of Directors shall employ for the Condominium a Common Interest Community Manager as the "Managing Agent" at a rate or compensation to be established by the Board of Directors. Any Managing Agent must be registered with the Virginia Common Interest Community Board and be covered by its own fidelity bond, naming the Association as an additional insured.

A. The Managing Agent shall perform such duties and services as the Board of Directors shall authorize. The Board of Directors may delegate to the Managing Agent all of the Powers granted to the Board of Directors by these Bylaws other than the powers set forth in paragraphs (A) (as it pertains to the adoption, but not the preparation of the annual budget), (B), (E), (F), (G), (H), (I), and (N) of Section 4.17 of this Article 4. The Managing Agent may perform the obligations, duties and services relating to the management of the Condominium, the rights of Mortgagees and make recommendations concerning the maintenance of reserve funds in compliance with the provisions of these Bylaws.

B. The Board of Directors may impose appropriate standards upon the Managing Agent. Unless the Managing Agent is instructed otherwise by the Board of Directors:

(1) no remuneration shall be accepted by the Managing Agent from vendors, contractors or others providing goods and services to the Unit Owners' Association, whether in the form of commissions, finders fees, service fees or otherwise, and any discounts received shall benefit the Unit Owners' Association;

(2) any financial or other interest which the Managing Agent may have in any firm or company providing goods or services to the Unit Owners' Association shall be disclosed promptly to the Board of Directors; and

(3) a monthly financial report shall be prepared for the Unit Owners' Association disclosing such financial information as requested and in the form specified by the Board of Directors.

C. The Board of Directors may designate one of its members as a liaison who shall be authorized to direct and/or interact with the Managing Agent on any matter relating to the Condominium.

ARTICLE 5. OFFICERS.

5.1. GENERALLY. The principal officers of the Association shall be a President, a Vice President, a Treasurer and a Secretary. The President and Vice-President shall be Directors. The officers shall be elected annually by the Directors at the Organizational Meeting for a one (1) year term and shall serve until their successors are elected. The Board may, from time to time, elect such other officers to manage the affairs of the Association, as it deems appropriate. The positions of Treasurer and Secretary may be combined.

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5.2. ELIGIBILITY. No person shall be eligible for election as an officer unless he or she is (alone or together with one or more other persons) a Unit Owner. Only one person from a Unit may serve at any given time. No person shall be elected as an officer or shall continue to serve as an officer if he or she is delinquent in financial obligations to the Association or if a violation of the Condominium Instruments or Rules and Regulations concerning the Officer or their Unit has not been remedied in the time allowed for correction as provided in the written notice to the Unit Owner from the Association. Notwithstanding the foregoing, during the period of Declarant Control, an officer need not be a Unit Owner.

5.3. PRESIDENT. The President shall be the chief executive officer of the Association, and shall preside over all meetings of the Association, and shall have all of the powers and duties which are incident to the office of President of an association. The President shall be a member of the Board.

5.4. VICE PRESIDENT. The Vice President shall in the absence or disability of the President, exercise the power and perform the duties of President, and shall also generally assist the President and exercise such other powers and perform such other duties as shall be prescribed by the directors or President.

5.5. SECRETARY. The Secretary shall assure that minutes of all meetings of the Directors and the Members are kept, attend to the giving and serving of all notices to the Members, Directors and mortgagees, if required, keep the nonfinancial records of the Association, and shall perform all other duties incident to the office of Secretary of an association and as may be required by the Directors or President. The Assistant Secretary, if any, shall perform the duties of Secretary when the Secretary is absent.

5.6. TREASURER. The Treasurer shall be responsible for reviewing all financial statements prepared by the Management Agent or Manager; shall coordinate with the Management Agent or Manager the opening of all accounts; shall have the authority to sign checks; coordinate the annual preparation of tax returns; and monitor the proper deposit and disbursement of funds by the Management Agent or Manager. The Treasurer shall oversee the keeping of proper books of account and shall provide such financial reports as requested by the President or the Board.

5.7. RESIGNATION. An officer may resign by giving written notice to the President or Vice-President. A resignation is effective when the notice is delivered unless it specifies a later effective date. An officer's resignation is automatically effected if the officer becomes ineligible to serve. (See Section 5.2 herein).

5.8. REMOVAL. Removal of an officer, with or without cause, will be effected if at any regular or special meeting of the Board, a majority of the Board votes in favor of removal. A successor who agrees to be considered may immediately be elected by a majority vote of the Board to fill the vacancy thus created. The officer elected to such vacancy shall serve the remainder of the

term.

5.9. COMPENSATION. No officer shall be entitled to compensation, provided, however, that upon written approval by the Board, an officer may be reimbursed for reasonable, ordinary and necessary expenses incurred in serving as an officer, including reasonable expenses for education and continuing education in managing and operating a condominium association.

ARTICLE 6. INDEMNIFICATION

6.1. DIRECTORS; OFFICERS. The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (including an action or suit by or in the right of the Association) by reason of the fact that he or she is or was a director or officer of the Association, or is or was serving at the request of the Association as a director, officer, partner or trustee of another association, partnership, joint venture, trust or other enterprise, against judgments, fines, amounts paid in settlement and expenses (including attorneys' fees) actually and reasonably incurred by him or her in connection with such action, suit or proceeding, excepting from such indemnification only such judgments, fines, amounts paid in settlement and expenses (including attorneys' fees) in relation to any claim, issue or matter as to which such person shall have been finally adjudged to be liable for his or her gross negligence or willful misconduct in the performance of his or her duties. Each such indemnity shall inure to the benefit of the heirs, executors and administrators of such person.

6.2. APPROVAL BY BOARD OF DIRECTORS. Any indemnity under Article 6.1 above shall (unless authorized by a court) be made by the Association only as authorized in a specific case upon determination that the director, officer, partner or trustee was not guilty of gross negligence or willful misconduct in the performance of his or her duties, and, in the case of a settlement, that such settlement was, or if still to be made is, consistent with the best interests of the Association. Such determination shall be made (i) by the Board of Directors by a majority vote of a quorum consisting of directors who are not parties to such action, suit or proceeding; (ii) by independent legal counsel in a written opinion if such quorum is not obtainable; or (iii) by the members of the Association. If the determination is to be made by the Board of Directors, it may rely as to all questions of law on the advice of independent counsel.

6.3. EXPENSES. Expenses incurred in defending an action, suit, or proceeding, whether civil, criminal, administrative or investigative, may be made by the Association in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of the director, officer, partner or trustee to repay such amount, unless it shall be ultimately determined that he or she is entitled to be indemnified by the Association as authorized in this Article.

6.4. REMEDY NOT EXCLUSIVE. The right of indemnification provided by this Article shall not be exclusive of any other rights to which any person may be entitled, including any right under

policies of insurance that may be purchased and maintained by the Association or others, even as to claims, issues or matters in relation to which the Association would not have the power to indemnify such person under the provisions of this Article.

6.5. EMPLOYEES AND AGENTS. The Board of Directors shall, generally and in specific cases, indemnify employees and agents of the Association to the same extent as provided in this Article with respect to officers and directors.

6.6. INSURANCE. The Association may purchase and maintain errors and omissions insurance at its sole expense in such amounts and on such terms and conditions as the Board of Directors may deem reasonable and as required by the Declaration, against all liabilities or losses it may sustain in consequence of the indemnification provided for in this Article. Such insurance shall list the Association as the name of the insured.

ARTICLE 7. COMMITTEES

7.1. BOARD AUTHORITY. The Board may delegate portions of its responsibilities to committees established for that purpose; appoint and remove committee members, in its sole discretion; and adopt committee charters detailing the responsibilities of the committee and standards of conduct for committee members as deemed necessary by the Board of Directors, provided, however, that the Board shall not delegate any authority to any committee or committee member to enter into any contract or agreement on behalf of the Association, or make any other sort of binding promise on behalf of the Association, or authorize the expenditure of any funds of the Association, or modify or change any existing contract or agreement of the Association. Each committee shall have two or more committee members who shall be Unit Owners and who shall serve at the pleasure of the Board. The creation of a committee and the appointment of committee members shall be approved by a majority of the Directors. A committee shall exercise its powers as the same are set forth in a committee charter or as determined by the resolution of the Board.

ARTICLE 8. FISCAL MANAGEMENT

8.1. BUDGET. At least sixty (60) days before the beginning of each fiscal year, the Board of Directors shall adopt a budget for the Association containing an estimate of the total amount considered necessary to pay the cost of maintenance, management, operation, repair and replacement of the Common Elements which the Association is obligated to maintain and for such other areas of Association responsibility. The budget shall contain estimates of the income and expenses of the Association for such fiscal year, including, without limitation, the following: (i) the cost of all operating expenses of the Condominium and services furnished, including charges by the Association, if any, for facilities and services furnished by it; (ii) the cost of wages, materials, and supplies; (iii) the costs of necessary management and administration, including any fees paid to any management agent; (iv) the amount of all taxes and assessments levied against the Association or which the Association is otherwise required to pay, if any; (v) the costs of any insurance coverage as may be required or carried by the Association; (vi) the cost of furnishing utilities to the extent

furnished by the Association and not billed directly to a Unit Owner; and (vii) the cost of funding all reserves established by the Association, including, when appropriate, a general operating reserve and/or reserve for replacements; and (viii) the estimated cost of repairs, maintenance and replacement of the Condominium to the extent required to be made by the Association. The budget shall include a proposed breakdown of the annual assessment against each Unit for the aforesaid expenses.

8.2. DEPOSITORY; WITHDRAWALS. The depository of the Association shall be such federally insured bank or banks as shall be designated, from time to time, by the Directors and in which the monies of the Association shall be deposited. Withdrawal of monies from such accounts shall be only by checks signed by such persons as are authorized by the Board. Should the Association employ a Managing Agent, and should in the course of such employment said Managing Agent be charged with any responsibilities concerning control of any of the funds of the Association, then, and in such event, any agreement with such Managing Agent pertaining to the deposit and withdrawal of monies shall supersede the provisions hereof during the term of any such agreement.

8.3. FISCAL YEAR. The fiscal year of the Association shall begin on the first day of January of each year; provided, however, that the Board is expressly authorized to adopt a different fiscal year in accordance with the provisions and regulations established from time to time by the Internal Revenue Code of the United States of America, at such time as the Board deems advisable. The budget year shall begin on January 1st of each year.

ARTICLE 9. AMENDMENTS TO BYLAWS

9.1. AMENDMENT. No amendment of these Bylaws may be made without the prior written consent of the required percentage of Mortgagees where such approval is provided for in Article 10.3 herein or where such approval is required elsewhere in the Condominium Instruments or by the Condominium Act. No amendment shall be made to any Condominium Instrument either during the Declarant Control Period or while the Declarant is the owner of any Unit without the prior written consent of the Declarant. Except for Phase Amendments or amendments annexing additional plats, any amendment of the Declaration during the Declarant Control Period shall require the approval of VA. No amendment to the Condominium Instruments shall diminish or impair the rights of the Declarant under the Condominium Instruments including, but not limited to, the rights reserved to the Declarant herein, without the prior written consent of the Declarant. Except as specifically provided in the Condominium Instruments, no provision of the Condominium Instruments shall be construed to grant to any Unit Owner, or to any other person, any priority over the rights of Mortgagees.

9.2. UNIT OWNER APPROVAL. Any amendment of these Bylaws shall require the approval of not less than two-thirds (2/3) of the total votes authorized in the Association, provided, however, that no amendment shall change (i) the boundaries of any Unit; (ii) the undivided interest in the Common Elements; (iii) the liability for Common Expenses; or (iv) the number of votes in the

Association that appertains to any Unit unless approved by one hundred percent (100%) of the Unit Owners.

ARTICLE 10. MORTGAGEES.

10.1. NOTICE TO BOARD OF DIRECTORS. A Unit Owner who mortgages his Unit shall notify the Board of Directors of the name and address of the Mortgagee and shall file a conformed copy of the Note and Deed of Trust with the Board.

10.2. MORTGAGEE APPROVAL. An Institutional Lender, upon written request to the Association (such request to state the name and address of the Institutional Lender and the Unit Number secured by the mortgage of the Institutional Lender), shall have the right to timely written notice of the following:

A. Any condemnation or casualty loss that affects either a material portion of the Condominium or the Unit securing the mortgage.

B. Any sixty (60) day delinquency in the payment of assessments or charges owed by the Owner of any Unit which is subject to a mortgage.

C. A lapse, cancellation or material modification of any insurance policy maintained by the Association.

10.3. NOTICE OF PROPOSED ACTION REQUIRING MORTGAGEE APPROVAL. The Board of Directors shall give notice to all Mortgagees seven (7) days prior to the date on which the Unit Owners' Association proposes to take any action requiring Mortgagee approval pursuant to these Bylaws.

10.4. MORTGAGEES' APPROVALS

(a) Majority Vote Unless at least fifty-one percent (51%) of the Mortgagees and at least sixty-seven percent (67%) of the Unit Owners have given their prior written approval, the Association shall not (i) amend the provisions of the Declaration, these Bylaws or any of the other Condominium Instruments governing the following: (1) voting rights; (2) assessment liens, or the priority of assessment liens; (3) reductions in reserves for maintenance, repair, and replacement of Common Elements; (4) responsibility for maintenance and repairs; (5) reallocation of interests in the general or Limited Common Elements, or rights to their use; (6) redefinition of any Unit boundaries; (7) convertibility of Units into Common Elements or vice versa; (8) expansion or contraction of the project, or the addition, annexation, or withdrawal of property to or from the project; (9) hazard or fidelity insurance requirements; (10) imposition of any restrictions on a Unit Owner's right to sell or transfer his or her Unit; or (11) any provision that expressly benefits Mortgage holders, insurers or guarantors; or (ii) take any of the following actions: (1) a decision by the Association to establish self-management if the Condominium consists of fifty (50) or more

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Units; (2) restoration or repair of the project (after damage or partial condemnation) in a manner other than that specified in the documents; or (3) any termination of the legal status of the Condominium after a substantial destruction or condemnation occurs.

(b) Presumptive Approval. A Mortgagee who is notified of additions or amendments and who does not submit to the requesting party a negative response within sixty (60) days after receipt of such notice (provided the notice was delivered by certified or registered mail, return receipt requested) shall be deemed to have approved such request.

10.5. OTHER RIGHTS OF MORTGAGEES. All Mortgagees or their representatives shall have the right to attend and to speak at meetings of the Unit Owners' Association, but shall not have the right to vote at such meetings unless so provided by the Condominium Instruments or the Condominium Act. All such Mortgagees shall have the right to examine the Condominium Instruments, the Rules and books and records of the Condominium during regular business hours and after reasonable advance written notice, to receive the annual report filed by the Declarant pursuant to Section 55-79.93 of the Condominium Act, and to require the submission of annual financial reports and other budgetary information. If the Condominium contains less than fifty (50) Units and the Association has not prepared an audited financial statement, a Mortgagee shall have the right to have one prepared at its own expense.

ARTICLE 11. GENDER.

Unless the contrary appears to have been intended, words in the plural number shall include the singular and words in the singular shall including the plural, the words of the male gender shall include the female gender and the neuter gender.

ARTICLE 12. CAPTIONS.

The captions to paragraphs of these Bylaws are intended for convenience only and are not deemed to be all inclusive as to the matters contained in such paragraphs or considered in connection with the construction of any of the provisions of these Bylaws.

INSTRUMENT 170011679
RECORDED IN THE CLERK'S OFFICE OF
WILLIAMSBURG/JAMES CITY COUNTY ON
June 6, 2017 AT 02:19 PM
MONA A. FOLEY, CLERK
RECORDED BY: AXS

2 Large/Small Plat(s) Recorded
herewith as # 170011679

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