

BY-LAWS
OF
THE TIDES AT NEWMARKET CREEK CONDOMINIUM ASSOCIATION, INC.

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BY-LAWS

OF

THE TIDES AT NEWMARKET CREEK CONDOMINIUM ASSOCIATION, INC.

ARTICLE 1. GENERAL PROVISIONS.

1.1 IDENTITY--PURPOSE.

These are the By-laws of The Tides at Newmarket Creek Condominium Association, Inc., a non-stock, non-profit Virginia corporation (the "Association"). This Association has been organized for the purpose of administering the affairs of The Tides at Newmarket Creek Condominium.

1.2 BY-LAWS SUBJECT TO OTHER DOCUMENTS.

The provisions of these By-laws are applicable to said Condominium and are expressly subject to the terms, provisions and conditions contained in the Articles of Incorporation of said Association, (referred to herein as the "Articles"), and the Declaration of Condominium (referred to herein as "Declaration") which will be recorded in the Clerk's Office of the Circuit Court of the City of Hampton, Virginia, at the time said property is submitted to condominium ownership.

1.3 APPLICABILITY.

All Unit Owners, tenants and occupants, their agents, servants, invitees, licensees and employees and others that use the Condominium Property, or any part thereof, are subject to these By-laws and the documents referred to in Article 1.2 hereof.

1.4 OFFICE.

The office of the Association shall be at the Condominium Property or such other place designated by the Board of Directors of the Association.

1.5 SEAL.

The seal of the Association shall bear the name of the Association, the word "Virginia", and the year of incorporation.

1.6 DEFINITIONS.

All definitions set forth in the Declaration and Exhibits attached thereto are hereby adopted by reference as though set forth herein verbatim.

ARTICLE 2. MEMBERSHIP, VOTING, QUORUM, PROXIES.

2.1 QUALIFICATION OF MEMBERS, ETC.

The qualification of members, the manner of their admission to membership and termina-

tion of such membership, and voting by members shall be as set forth in the Declaration, Articles and in these By-laws.

2.2 QUORUM.

Persons having more than fifty percent (50%) of the total votes of the Association shall constitute a quorum. The joinder of a member in the action of a meeting by signing and concurring in the minutes thereof, within ten (10) days from the date thereof, shall constitute the presence of such person for the purpose of determining a quorum.

2.3 CORPORATE OR MULTIPLE OWNERSHIP OF A UNIT.

The vote of the owners of a Unit owned by more than one person or by a corporation, except Declarant, or other entity shall be cast by the person named in a certificate designating the "Voting Member". Such certificate will be signed by all of the owners of such Unit, or the proper corporate officer, filed with the Secretary of the Association, and shall be valid until revoked by subsequent certificate. Where the ownership of the Unit is in more than one person, if the person designated in such certificate is not present or if such a certificate is not so filed, then any person having an ownership interest in such Unit who is present shall be entitled to cast the vote of such Unit. In such event, if more than one owner is present, then the vote of the Unit shall be cast only in accordance with their unanimous consent.

2.4 VOTING; PROXY.

Votes may be cast in person or by proxy. Any proxy must be filed with the Secretary before the appointed time of the meeting. The proxy must be 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 to the person presiding over the meeting, by the Unit Owner or by any of such persons, that it be revoked. Any proxy shall be void if it is not dated, if it purports to be revocable without notice as aforesaid, or if the signatures of any of those executing the same have not been witnessed by a person who signed his full name and address. 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 held within 30 days. The proxy shall include a brief explanation of the effect of leaving the proxy uninstructed.

2.5 VOTING.

In any meeting, each Unit Owner, including Declarant, subject to the provisions of Article 2.3 hereof, shall be entitled to cast one vote for each Unit owned. The vote of such Unit shall not be divisible.

2.6 MAJORITY.

Except where otherwise required by the provisions of the Articles, these By-laws, the Declaration, or where the same may otherwise be required by law, the affirmative vote of the Unit Owners having a majority of the votes represented at any duly called meeting at which a quorum is

present shall be binding upon the members.

ARTICLE 3. ANNUAL AND SPECIAL MEETINGS OF MEMBERSHIP.

3.1 ANNUAL MEETING.

The annual members' meeting shall be held at least once each calendar year at the office of the Association at the time designated on the notice thereof, for the purpose of electing directors and transacting any other business authorized to be transacted by members. The first annual meeting shall be held within a year after the conveyance of the first Unit by the Declarant.

3.2 SPECIAL MEETING.

Special meetings shall be held when called by the President or Vice President or by a majority of the Board of Directors. Special meetings must be called by such officers upon a majority of the votes in the Association. Notices of special meetings shall be given as set forth below except that in the case of an emergency fourteen (14) days notice will be deemed sufficient.

3.3 NOTICE OF MEETING; WAIVER.

Notice of all members' meetings shall be given by the Secretary of the Association, to each member, unless such notice is waived in writing. Such notice will be written and will state the time, place and object for which the meeting is called. Such notice shall be given or mailed to each member not less than twenty-one (21) days or more than sixty (60) days prior to the date set for such meeting. If hand delivered, receipt of such notice shall be signed by the member. If mailed, such notice shall be deemed to be properly given when deposited in the United States mails, postage prepaid, addressed to the member at his post office address as it appears on the records of the Association. The post office certificate of mailing shall be retained as proof of such mailing. Notice shall also be conspicuously posted on the Condominium Property.

3.4 NOTICE TO OTHERS.

The Declarant (and Managing Agent, if any) shall forever be entitled to notice of all Association meetings, entitled to attend the Association meetings, and they may designate such persons as they desire to attend such meetings on their behalf and such persons may act with the full authority and power of Declarant.

3.5 ADJOURNED MEETINGS.

If any members' meeting cannot be convened because a quorum has not attended, the members who are present, either in person or by proxy, may adjourn the meeting, from time to time, to a time certain until a quorum is present. Valid proxies for the meeting shall continue to be valid until a quorum is present.

3.6 CHAIRMAN.

At meetings of membership, the President shall preside, or in his absence, the Board of Directors shall select a chairman.

3.7 ORDER OF BUSINESS.

The order of business at annual members' meetings, and, as far as practical, at any other members' meeting, shall be:

- a. Calling of the roll and certifying of proxies;
- b. Proof of notice of meeting or waiver of notice;
- c. Reading of minutes;
- d. Reports of Officers;
- e. Reports of Committees;
- f. Election of Directors; SUBJECT, HOWEVER, to all provisions of these By-laws, the Articles and the Declaration;
- g. Unfinished business;
- h. New business;
- i. Adjournment.

ARTICLE 4. BOARD OF DIRECTORS.

4.1 MANAGEMENT OF ASSOCIATION.

The affairs of the Association shall be managed by a Board of Directors (hereinafter referred to as Board) consisting of not less than three (3) persons and not more than five (5) persons. The number of Directors to serve for the ensuing year shall be established by the Board then serving at the time it causes the notice of the annual members' meeting to be provided to the members. Notwithstanding the foregoing, the Board shall always consist of an odd number of persons.

4.2 FIRST BOARD.

The Board shall, during the period of Declarant's control, consist of three (3) persons, none of whom need be members of the Association. The first Board shall consist of persons designated by the Declarant and they shall serve until replaced by Declarant or until their successors are elected.

- a. The Declarant shall have the absolute right, at any time, in its sole discretion, to remove any member of the Board designated by Declarant and replace any such person with another person to serve on the Board. Notice of such action shall be given to the Association.

- b. "The period of Declarant's control" means the period ending on the earliest of (1) the date when Units to which a total of at least three-fourths of the Common Element Interests are allocated are not owned by Declarant, (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 reserved by the Declarant under Section 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 or in the future intended to be registered with the Virginia Common Interest Community Board, including all Units that can be added to the Condominium pursuant to the Declaration. Notwithstanding the foregoing, the resignation of all of the members of the Board of Directors at a meeting of the Association shall end the period of Declarant's control.

4.3 ELECTION OF DIRECTORS.

Except for designation of Directors by Declarant, as hereinbefore provided, election of Directors shall be by the members of the Association and conducted in the following manner:

- a. Election of directors shall be held at the annual meeting. Each director so elected shall serve a term of one year until the next annual meeting at which new directors will be elected. Serving Directors may be reelected by the membership.
- b. A nominating committee of three (3) members shall be appointed by the then existing Board not less than thirty (30) days prior to the annual members' meeting. The Committee shall nominate one for each director to be elected. Nominations may be made from the floor.
- c. The election shall be by secret ballot (unless dispensed with by unanimous consent) and by a plurality of the votes cast. There shall be no cumulative voting.
- d. Except as to vacancies created by removal of directors by members, vacancies in the Board occurring between annual meetings of members shall be filled by the remaining directors.

4.4 ORGANIZATIONAL MEETING.

The organizational meeting of a newly elected Board shall be held within ten (10) days of its election, at such time and at such place as shall be fixed by the directors at the meeting at which they were elected and no further notice of the organizational meeting shall be necessary, PROVIDED, a quorum shall be present.

4.5 REGULAR MEETINGS.

Regular meetings of the Board may be held at such time and place as shall be determined, from

time to time, by a majority of the directors. Notice of the time and purpose of regular meetings shall be given to each director, personally or by mail, telephone or telegram, at least three (3) days prior to the day named for such meeting, unless notice is waived. Meetings shall be open to all Unit Owners except in those circumstances for which the Condominium Act allows meetings of the Board to be closed to the Unit Owners, and notice thereof shall be posted conspicuously on the Condominium Property at least three (3) days in advance, except in an emergency.

4.6 SPECIAL MEETINGS.

Special meetings of the Board may be called by the chairman or President. Except in an emergency the notice shall be given as provided in Article 4.5 above and shall state the time, place and purpose of the meeting.

4.7 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 shall be deemed a waiver.

4.8 QUORUM.

A quorum at a directors' meeting shall consist of the directors entitled to cast a majority of the votes of the entire Board. The acts of the Board approved by a majority of the votes present at a meeting at which a quorum is present shall constitute the acts of the Board except as specifically otherwise provided for in the Articles, these By-laws or the Declaration. If any directors' meeting cannot be convened 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, (wherever the latter percentage of attendance may be required as set forth in the Articles, these By-laws, or the Declaration) the directors who are present may adjourn the meeting, from time to time, until a quorum, or the required percentage of attendance if greater than a 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.

4.9 PRESIDING OFFICER.

The presiding officer at directors' meetings shall be the Chairman of the Board, if such an officer has been elected; and if not, then the President shall preside. In the absence of the presiding officer, the directors present shall designate one of their number to preside.

4.10 RESIGNATION.

A director may resign by giving written notice thereof. A director shall be deemed to have resigned upon his termination of membership in the Association (excepting the first Board) or upon his default for thirty (30) days of any of the provisions or covenants of the Declaration and Exhibits attached thereto.

4.11 POWERS AND DUTIES.

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 adopt the budget of the Association upon majority vote of the directors.
- b. To make, levy and collect assessments against members and members' Units to defray the costs 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.
- c. To provide for the maintenance, repair, replacement, operation, improvement and management of the Condominium wherever the same is required to be done and accomplished by the Association for the benefit of its members.
- d. It is understood that assessments must be sufficient to provide for the payment of all anticipated current operating expenses and for all of the unpaid operating expenses previously incurred. Accordingly, the Board is given the power 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.
- e. Upon consent of the membership to administer the reconstruction of improvements after casualty and the further improvement of the property, real and personal.
- f. To adopt and amend administrative rules and regulations governing the details of the operation and use of the Common Elements, real and personal, in the Condominium, so long as such rules and regulations or amendments thereto do not conflict with the rights, privileges, restrictions and limitations which may be placed upon the use of such property under the terms of the Declaration and Exhibits attached thereto.
- g. 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.
- h. To contract on behalf of the Association for the management of the Condominium Property and to delegate to such contractor such powers and duties of the Association as the directors deem fit, to lease or concession such portions thereof and to ratify and confirm any existing leases or concessions of any part of the

Condominium Property.

- i. To enforce, by legal means, the provisions of the Declaration and any Exhibits attached thereto and the Rules and Regulations promulgated governing the use of the Condominium Property, including, without limitation, the assessment of fines against Unit Owners for violations of the Condominium Instruments and the Rules and Regulations in accordance with the provisions of Section 55-79.80:2.B. 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 Property, other than Units (unless owned by the Association) and the appurtenances thereto, and to assess the same against the members and their respective Units.
- k. To cause the Association to carry insurance for the protection of the members and the Association against casualty and liability as required by the Declaration.
- 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 the owners of the separate Units.
- 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. The Association shall have the right, when determined by the Board of Directors to be in the best interests 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.

4.12 AUTHORITY OF FIRST BOARD.

The undertakings and contracts authorized by the first Board, including the first budget, shall be binding upon the Association in the same manner as though such undertakings and contracts had been authorized by a Board duly elected by the membership.

4.13 REMOVAL OF DIRECTORS.

Should the members of the Association at any duly convened regular or special meeting convened desire, they may remove any director except directors designated by Declarant with or without cause by the vote or agreement in writing by a majority of all members and a successor may immediately be elected to fill the vacancy thus created. Should the membership fail to elect a successor, the Board may fill the vacancy.

4.14 PROVISIO.

Notwithstanding anything herein contained to the contrary, the directors shall not have the right or authority to do any act or take any action wherein the same would limit, modify or abridge the rights, privileges and immunities of the Declarant as set forth in the Declaration, the Articles and these By-laws.

4.15 COMMITTEES.

The Board may delegate portions of its responsibilities to committees established for that purpose.

4.16 MANNER OF COLLECTION OF COMMON EXPENSES.

The provisions of Section 16 of the Declaration of Condominium setting forth the manner of collection of Common Expenses and other charges are incorporated herein by reference.

ARTICLE 5. OFFICERS.

5.1 GENERALLY.

The officers of the Association shall be a President, one or more Vice Presidents, a Treasurer, a Secretary, and, if desired, one or more Assistant Secretaries, all of whom shall be elected annually by the Board and who may be peremptorily removed by a majority vote of the directors at any meeting. Any person may hold two or more offices, except that the President shall not also be the Secretary or an Assistant Secretary. The Board may, from time to time, elect such other officers and designate to manage the affairs of the Association, as it deems appropriate.

5.2 PRESIDENT.

The President shall be the chief executive officer of the Association. He shall have all of the powers and duties which are usually vested in the office of President of an association, including, but not limited to, the power to appoint committees from among the members, from time to time, as he may, in his discretion, determine appropriate to assist in the conduct of the affairs of the Association. The President shall be a member of the Board.

5.3 VICE PRESIDENT.

The Vice President shall in the absence or disability of the President, exercise the powers and perform the duties of President. He 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.

5.4 SECRETARY.

The Secretary shall keep the minutes of all proceedings of the directors and the members, attend to the giving and serving of all notices to the members and directors, have custody of the seal of the Association and affix the same to instruments requiring a seal when duly signed, keep the non-financial 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.

5.5 TREASURER.

The Treasurer shall have custody of all of the funds, securities and evidences of indebtedness of the Association. He shall keep the assessment rolls and accounts of the members and the books of the Association in accordance with good accounting practice and shall perform all other duties incident to the office of Treasurer.

ARTICLE 6. FISCAL MANAGEMENT; ASSESSMENTS; LIENS.

The provisions for fiscal management of the Association set forth in the Declaration shall be supplemented by the following provisions:

6.1 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, including maintenance of proper reserves, pursuant to the provisions of the Declaration, Articles and these By-laws. The same shall be assessed against the Unit Owners as provided in the Declaration and all the Exhibits attached thereto. Assessments for the first year (or prorata portion thereof) of the operation of the Condominium Property shall be as set forth in a projected budget established by the Declarant as the same may be amended by the Board from time to time.

6.2 PAYMENTS OF ASSESSMENTS.

Except as specified to the contrary, funds for the payment of Common Expenses shall be assessed against the Unit Owners in the proportions provided in the Declaration. Said assessments shall be payable monthly, three months in advance, without notice, unless otherwise required by the Board. Special assessments, should such be required by the Board, shall be levied in the same manner as hereinbefore provided for regular assessments, except notice thereof shall be given, and shall be payable in the manner determined by the Board. **FAILURE TO PAY ANY ASSESSMENT WITHIN TEN (10) DAYS FROM THE DATE DUE, SHALL ENTITLE THE ASSOCIATION TO LEVY A LATE CHARGE AGAINST THE DEFAULTING UNIT OWNER OF THIRTY AND 00/100 DOLLARS (\$30.00) AND A LIKE AMOUNT EACH THIRTY DAYS THEREAFTER IF SUCH ASSESSMENT IS NOT PAID. THE PARTIES AGREE THAT THE LATE CHARGE IS NOT A PENALTY BUT IS VALID LIQUIDATED DAMAGES.**

6.3 PROPOSED BUDGET.

A copy of the proposed one (1) year budget shall be mailed to Unit Owners not less than thirty (30) days prior to the meeting at which the budget will be considered together with a notice of the meeting. If the proposed budget is not adopted prior to the start of the new budget period, an assessment shall be presumed to be made in the amount of the last prior assessment and monthly installments on such assessments shall be due upon each installment payment date until changed by an amended assessment. In the event the assessments prove to be insufficient, the budget and assessments shall be amended at a meeting called for that purpose.

6.4 DEPOSITORY; WITHDRAWALS.

The depository of the Association shall be such 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 directors. 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.

6.5 RECORDS.

The Association shall maintain those records and make available written summaries thereof as required by the Condominium Act and the Declaration. In addition, a financial statement shall be prepared annually and supplied to the membership prior to the adoption of the next ensuing year's budget.

6.6 FIDELITY BONDS; PROVISIO.

Fidelity bonds shall be obtained by the Board for the Treasurer, Assistant Treasurer, if any, and all officers and employees of the Association handling or responsible for Association's funds, and for any contractor handling or responsible for Association's funds. In no event shall such coverage be less than the lesser of (i) One Million Dollars (\$1,000,000.00), or (ii) the amount of reserve balances of the Association plus one-fourth of the aggregate annual assessment of the Association; provided that such coverage shall in no event be less than Ten Thousand Dollars (\$10,000.00). The premiums on such bonds shall be paid by the Association.

6.7 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 from time to time prescribed 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.

6.8 ACCELERATION OF PAYMENT OF INSTALLMENTS OF ASSESSMENTS.

If a Unit Owner shall be in default in the payment of an for a period of sixty (60) days or more, the Board may accelerate the remaining installments for, in its discretion, the next twelve-month period. Upon notice thereof to the Unit Owner the accelerated assessment shall immediately become due upon the date stated in the notice, which shall not be less than fifteen (15) days after delivery of or the mailing of such notice to the Unit Owner.

6.9 ACQUISITION OF UNITS.

At any foreclosure sale of a Unit, the Association or its designee may acquire the Unit being foreclosed. The term "foreclosure" as used in this Article, shall mean and include any foreclosure of any lien, including a lien for assessments. The power of the Association to acquire a Unit at any

foreclose sale shall never be interpreted as a requirement or obligation on the part of the Association to do so at any foreclosure sale--the provisions hereof being permissive in nature and for the purpose of setting forth the power of the Association.

6.10 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 owner of the Condominium Unit shall include liability for a reasonable attorneys' fee and for court costs incurred by the Association incident to the collection of such assessment or enforcement of its lien. If the Association elects to enforce its lien by foreclosure, the Unit Owner shall be required to pay a reasonable rental 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. Nothing herein contained shall bar a suit to recover a money judgment for unpaid assessments without waiving the lien securing the same.

ARTICLE 7. COMPLIANCE.

7.1 VIOLATION BY MEMBER; REMEDIES.

In the event of a violation (other than the nonpayment of an assessment) by the Unit Owner of any of the provisions of the Declaration, these By-laws, or Rules and Regulations adopted pursuant to any of same, the Association shall notify the Unit Owner by written notice of said breach, transmitted by mail, and if such violation shall continue for a period of ten (10) days from the date of notice, the Association shall have the right to treat such violation as an intentional, inexcusable and material breach thereof, and the Association may then pursue any remedy available. No action taken shall be deemed an "election of remedies". Upon a finding by the Court that the violation complained of has occurred, the offending Unit Owner shall reimburse the Association (or Managing Agent, if any) for all costs and losses including reasonable attorneys' fees and costs incurred in bringing such action. Failure on the part of the Association to maintain such action at law or in equity within thirty (30) days from date of a written request, signed by a Unit Owner and sent to the Association, shall authorize any Unit Owner to bring an action in equity or suit at law, on account of the violation, in the manner provided in the Condominium Act. Any violations which are deemed by the Board to be a hazard to public health or safety may be corrected immediately as an emergency matter by the Association and the cost thereof shall be charged to the Unit Owner as a specific item and shall be a lien against said Unit with the same force and effect as if the charge was a part of the Common Expenses attributable to such Unit Owner. In the event of a non-continuing default making the notice period impractical, the Association may take such punitive action, including, but not limited to, the suspension of privileges for reasonable periods of time without a corresponding reduction in assessments.

7.2 LIABILITY OF UNIT OWNERS.

All Unit Owners shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his act, neglect or carelessness, or by that of any member of his family, or his or their guests, employees, agents or lessees, but only to the extent that such expense is not met by

the proceeds of insurance carried by the Association. 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 of 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 with the same force and effect as if the charge was a part of the Common Expenses attributable to such Unit Owner's Unit.

7.3 LIABILITY OF UNIT OWNERS TO MANAGING AGENT.

Paragraph 6.10 above shall include any assessment due by virtue of a Management Agreement with a Managing Agent (if any) and such Managing Agent shall also have the right to bring such actions and the right to obtain such relief in its own name, including damages, attorneys' fees and costs, to enforce the provisions thereof.

7.4 NO WAIVER.

The failure of the Association or of a Unit Owner to enforce any right, provision, covenant or condition which may be granted by any of the provisions of the Declaration shall not constitute a waiver of the right of the Association or Unit Owner to enforce such right, provision, covenant or condition in the future.

7.5 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.

7.6 CHARGES FOR VIOLATION OF RULES , ETC.

The Association shall have the power, in accordance with the provisions of Section 55-79.80:2.B. of the Condominium Act, as amended from time to time, to assess charges against any Unit Owner for any violation of 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 be heard and to be represented by counsel before the Board. Notice of such hearing shall, at least fourteen 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 Section 55-79.75 of the Condominium Act. The amount of any charges so assessed shall not exceed fifty dollars (\$50.00) for a single offense or ten dollars (\$10.00) per diem for any offense of a continuing nature, and shall be treated as an assessment against such Unit Owners' Condominium Unit for the purpose of Section 55-79.84 of the Condominium Act.

ARTICLE 8. LIMITATION OF LIABILITY.

Notwithstanding the duty of the Association to maintain and repair the Condominium Property, it

shall not be liable for injury or damage caused by a latent condition in the property nor for injury or damage caused by the elements, or by other owners or persons.

ARTICLE 9. PARLIAMENTARY RULES.

Roberts Rules of Order (latest edition) shall govern the conduct of Association proceedings when not in conflict with the Declaration, the Articles, these By-laws, or with the Condominium Act.

ARTICLE 10. AMENDMENTS TO BY-LAWS.

Amendments to By-laws as hereinafter defined and provided for, shall be proposed and adopted in the following manner:

10.1 PROPOSAL.

Amendments to these By-laws may be proposed by the Board acting upon vote of the majority of the directors or by members of the Association having twenty-five percent (25%) of the votes in the Association, whether meeting as members or by an instrument in writing signed by them.

10.2 CALL FOR MEETING.

Upon any amendment or amendments to these By-laws being proposed by said Board or members, such proposed amendment or amendments shall be transmitted to the President of the Association, or other officer of the Association in the absence of the President, who shall thereupon call a Special Joint Meeting of the members of the Board and the membership for a date not sooner than fourteen (14) days or later than sixty (60) days from receipt by such officer of the proposed amendment or amendments. It shall be the duty of the Secretary to give to each member written or printed notice of such meeting in the same form and in the same manner as notice of the call of a special meeting of the membership is required as herein set forth. Notice shall be posted at a conspicuous location on the Condominium Property.

10.3 VOTE NECESSARY; RECORDING.

In order for such amendment or amendments to become effective, the same must be approved by an affirmative vote of sixty-six and two thirds percent (66-2/3%) of the entire membership of the Board and by an affirmative vote of the members having sixty-six and two thirds percent (66-2/3%) of the votes in the Association. Thereupon, such amendment or amendments to these By-laws shall be transcribed, certified by the President or a Vice President and Secretary or Assistant Secretary of the Association, and a copy thereof shall be recorded in the Clerk's Office of the Circuit Court of the City of Hampton, Virginia, within ten (10) days from the date on which any amendment has been affirmatively approved by the directors and members.

10.4 PROVISIO.

Notwithstanding the foregoing provisions of this Article 10, no amendment to these By-laws which affects the Declarant may be adopted or become effective without the prior written

consent of the Declarant.

ARTICLE 11. BY-LAWS PERTAINING TO USE AND DECORUM.

11.1 DEFINITION.

"Use" and "Decorum" as used herein shall refer to matters pertaining to dress, decorum, noise, use of Units and use of Common Elements.

11.2 SCOPE; REMEDY FOR VIOLATION.

These By-laws are reasonably calculated to promote the welfare of the Unit Owners. The violation of such By-laws shall bar any Unit Owner or his family and invitees from the use of the Common Elements, as the Board may deem appropriate, and shall subject any person violating the same to any liability imposed by the Declaration and these By-laws.

11.3 RULES AND REGULATIONS.

The Association may promulgate Rules and Regulations concerning the use of the Condominium Property. Said Rules and Regulations shall have effect upon posting in a conspicuous place on the Condominium Property and shall have the dignity of By-laws.

ARTICLE 12. INDEMNIFICATION.

12.1 OFFICERS AND DIRECTORS.

The Association shall and does hereby indemnify and hold harmless every director and every officer, including the first officers and directors, his heirs, executors and administrators, against all loss, cost and expenses reasonably incurred by him in connection with any action, suit or proceeding to which he may be made a party by reason of his being or having been a director or officer of the Association, including reasonable counsel fees, except as to matters wherein he shall be finally adjudged in such action, suit or proceeding, to be liable for or guilty of gross negligence or willful misconduct. The foregoing rights shall be in addition to, and not exclusive of, all other rights to which such director or officer may be entitled.

12.2 INSURANCE.

The Association may, if available, at the Association's expense, purchase officer's and director's liability insurance and shall cause the officers and directors, from time to time serving, to be named insureds.

ARTICLE 13. UNIT OWNERS RESPONSIBILITY CONCERNING LIENS AND TAXES.

13.1 LIENS AND TAXES.

All liens against a Condominium Unit, other than for permitted mortgages, taxes or special assessments, shall be satisfied or otherwise removed within ten (10) days of the date the lien attaches. All taxes and special assessments upon a Condominium Unit shall be paid at least thirty (30) days before becoming delinquent or as provided in the Declaration, or these By-laws,

whichever is sooner.

13.2 NOTICE TO ASSOCIATION.

A Unit Owner shall give notice to the Association of every lien upon his Unit, other than for permitted mortgages, taxes and special assessments, within five (5) days after the attaching of the lien.

ARTICLE 14. MORTGAGES.

14.1 NOTICE TO BOARD OF DIRECTORS.

A Unit Owner who mortgages his Unit shall notify the Board of Directors of the name and address of his mortgagee. The Board of Directors shall maintain such information in a book entitled "Mortgagees of Units."

14.2 NOTICE OF UNPAID ASSESSMENTS.

The Board of Directors, whenever so requested in writing by an Institutional Lender holding a first mortgage on a Condominium Unit, shall promptly report any then unpaid assessments due from, or any other default by, the owner of the mortgaged Unit.

14.3 EXAMINATION OF BOOKS.

Each Unit Owner and each Institutional Lender holding a first mortgage on a Condominium Unit shall be permitted to examine the books of account of the Association at reasonable times and upon reasonable notice, on a business day, but not more often than once a month.

14.4 NOTICE OF TERMINATION OF MANAGEMENT CONTRACTS.

The Board of Directors shall notify the Institutional Lender having the maximum number of first mortgages on Condominium Units in the Condominium in writing of the termination of any management contract within ten (10) days of receipt or issuance of any notice of such termination by either the Association or the Managing Agent. Notwithstanding the foregoing, the prior written approval of the Institutional Lender having the maximum number of first mortgages on Condominium Units in the Condominium shall be required to effectuate any decision by the Unit Owners Association to terminate professional management and assume self-management of the Condominium.

14.5 AUDITED FINANCIAL STATEMENT.

Every Institutional Lender holding a first mortgage on a Condominium Unit shall be entitled to receive, upon written request, a copy of the annual financial statement within sixty (60) days following the end of the Association's fiscal year.

14.6 OTHER MORTGAGEES RIGHTS.

Every Institutional Lender holding a first mortgage on a Condominium Unit or their representatives shall be entitled to attend meetings of the Unit Owners Association and shall have the right to speak thereat. In addition thereto, every Institutional Lender holding a first mortgage on

a Condominium Unit shall have the right to examine the books and records of the Condominium and require the submission of annual financial reports and other budgetary information.

14.7 AMENDMENT TO THE DECLARATION OR TO THE BY-LAWS.

Except as otherwise expressly permitted by the Condominium Instruments, the prior written approval of the required number of Institutional Lenders as provided in the Declaration will be required for any material amendment to the Declaration or By-Laws of the Unit Owners Association.

14.8 NOTICE OF DEFAULT, CASUALTY OR CONDEMNATION.

The Board of Directors, when giving notice to any Unit Owner of any default in the performance by the Unit Owner of any obligation under the Condominium Instruments, including any default in paying assessments for Common Expenses which default remains uncured for sixty (60) days, shall simultaneously send a copy of such notice to the Mortgagee of such Unit. Each Mortgagee shall also be notified promptly of (i) any casualty which affects a material portion of the Condominium or the Unit securing the Mortgage, (ii) any taking or proposed taking in condemnation or eminent domain of a material portion of the Condominium or the Unit securing the Mortgage and (iii) any lapse, cancellation or material modification of any insurance policy maintained by the Association.

ARTICLE 15. CONFLICT.


In the event of any conflict between the By-laws contained herein, or from time to time amended or adopted, and the Declaration, the Declaration shall prevail.

The foregoing were adopted as the By-laws of The Tides at Newmarket Creek Condominium Association, Inc., a non-stock, non-profit corporation established under the Laws of the Commonwealth of Virginia at the first meeting of the Board of Directors on the day of June, 2019.

THE TIDES AT NEWMARKET CREEK
CONDOMINIUM ASSOCIATION, INC.

By:  PRESIDENT

ATTEST:

By: 
Secretary

INSTRUMENT 190009399
RECORDED IN THE CLERK'S OFFICE OF
HAMPTON CIRCUIT COURT ON
JULY 24, 2019 AT 10:49 AM
LINDA B. SMITH, CLERK
RECORDED BY: NJB