

**DECLARATION OF CONDOMINIUM
OF
THE TIDES AT NEWMARKET CREEK CONDOMINIUM**

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DECLARATION OF CONDOMINIUM
OF
THE TIDES AT NEWMARKET CREEK CONDOMINIUM

Franciscus at Tides 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 City of Hampton, Virginia, more particularly described in Exhibit A, and being more particularly shown and depicted as on that certain plat entitled "PHASE 1 CONDOMINIUM PLAT OF THE TIDES AT NEWMARKET CREEK A CONDOMINIUM", prepared by Hayden Frye and Associates, Inc., designated as Exhibit C, both of which Exhibits are incorporated herein by reference, does hereby state and declare that the realty described in Exhibit A, together with the improvements thereon, is 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 City of Hampton, Virginia, as hereinbelow more particularly set forth.

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.

1.2 NAME, ADDRESS AND LOCATION. The name of this Condominium is The Tides at Newmarket Creek Condominium. The Condominium is located in the City of Hampton, Virginia. The address of the Condominium is 1625 Power Plant Parkway, Hampton, Virginia 23666.

1.3 THE SUBMITTED LAND. The real property described in Exhibit A and depicted as "PHASE 1" on Exhibit C 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 at such time as they become subject to the terms hereof.

1.4 EFFECT. All of the provisions of this Declaration of Condominium and all Exhibits referenced herein and attached hereto shall be binding upon all Unit Owners and are enforceable equitable servitudes running with the Land and existing in perpetuity 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.

2. SURVEY AND DESCRIPTION OF IMPROVEMENTS. On Exhibit C there is a plat of the land which encompasses both the Submitted Land and the Additional Land. On Exhibit C there is a Plat which shows the location and dimension of the Submitted Land, which consists of the roadways within the Condominium. No units are located on the Submitted Land. The Plans for the Units shall be recorded with the Phase Amendments as Units are constructed and added to the Condominium.

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.

"Additional Land" means those lands described in Exhibit B and shown as "ADDITIONAL LAND" on Exhibit C, which may subsequently be submitted to condominium ownership hereunder by amendment to this Declaration as provided in paragraphs 6.1 through 6.12, below.

3.2 ARTICLES OF INCORPORATION.

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

3.3 ASSESSMENT.

"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.

3.4 ASSOCIATION.

"Association" means The Tides at Newmarket Creek Condominium Association, Inc., a non-stock, non-profit Virginia corporation which is the entity responsible for the operation of the Condominium.

3.5 BOARD or BOARD OF DIRECTORS.

"Board" or "Board of Directors" means the Board of Directors of the Association responsible for the administration of the Association.

3.6 BYLAWS.

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

3.7 CAPITAL CONTRIBUTION.

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

3.8 COMMON ELEMENT INTEREST or COMMON ELEMENT INTERESTS.

"Common Element Interest" or "Common Element Interests" means the proportionate interest of a Unit and the Unit Owner of the Unit in the Common Elements of the Condominium. The sum of the Common Element Interest of all of the Units and the Unit Owners shall always equal one.

3.9 COMMON ELEMENTS.

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

3.10 COMMON EXPENSES.

"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.

"Common Interest Community Manager" means the same as that term is defined in Section 54.1-2345 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 City of Hampton, Virginia.

3.12 COMMON PROFITS.

"Common Profits" means the excess of all receipts of the Association, including but not limited to, assessments, rents, profits, and revenues on account of the Common Elements, in excess of the amount of Common Expenses.

3.13 CONDOMINIUM.

"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 Tides at Newmarket Creek Condominium, as established by this Declaration.

3.14 CONDOMINIUM ACT.

"Condominium Act" means the Condominium Act of the Commonwealth of Virginia as set forth in Section 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 City of Hampton, Virginia.

3.15 CONDOMINIUM INSTRUMENTS.

"Condominium Instruments" shall be a collective term referring to this Declaration, By-laws, 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 and this Declaration.

3.16 CONDOMINIUM PROPERTY.

"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.

3.17 CONDOMINIUM UNIT.

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

3.18 DECLARANT.

"Declarant" means Franciscus at Tides 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.

3.19 DECLARATION.

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

3.20 INSTITUTIONAL LENDER.

"Institutional Lender" means a state or federal savings or commercial bank or savings and loan association or trust company, insurance company, real estate investment trust, pension fund, or an agency of the United States Government, mortgage company or like entity holding a mortgage on a Unit, and their successors and assigns.

3.21 LIMITED COMMON ELEMENT.

"Limited Common Element" shall mean 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.

3.22 OCCUPANT.

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

3.23 PERSON.

"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.

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

3.25 UNIT.

"Unit" means a portion of the Condominium designed and intended for individual ownership and use.

3.26 UNIT OWNER.

"Unit Owner" means one or more persons who own a Condominium Unit.

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

4. INTEREST IN COMMON ELEMENTS, OWNERSHIP AND BOUNDARIES

OF UNITS.

4.1 CONDOMINIUM. The Condominium shall consist of the Common Elements, 14 five-plex buildings and five (5) ten-plex 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 buildings 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 Unit, an equal undivided interest as tenants in common with all other Unit Owners in the Common Elements (with respect to each Unit, its "Common Element Interest"). The Common Element Interest of each Unit shall not be changed without the unanimous consent of all Unit Owners. No Unit Owner shall bring an action for partition or division of his undivided interest in the Common Elements. Each Unit Owner shall own his 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 Plans, 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. 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 BOUNDARIES. A Unit consists of an individual structure and adjacent areas lying within the boundaries described in Paragraphs 4.5.1 through 4.5.5.

4.5.1 HORIZONTAL BOUNDARY:

UPPER AND LOWER BOUNDARIES. The upper and lower boundaries of the Unit shall be the following boundaries extended to an intersection with the perimetrical boundaries:

(A) 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.

(B) 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 intersections with each other and with the Upper and Lower Boundaries.

(A) 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.

(B) The interior vertical and horizontal partitions within a Unit are part of said Unit.

4.5.3 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.

4.5.4 MAINTENANCE EASEMENT. There shall exist, as a Common Element, an easement through each Unit for the ducts, pipes, conduits, plumbing, 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.

4.5.5 AIR CONDITIONING/HEATING/MECHANICAL. Notwithstanding any of the provisions of this paragraph 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 (wherever located), 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 interior design, boundaries and arrangements of all Units as long as Declarant owns the Units so altered. 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 reappportion, 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 parking space, 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 parking space shall be used only by the unit Owner and such 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 limited the number of cars owned or operated by the occupants of any Unit that may be parked in on the Condominium Property. The Board of Directors shall have the right, but not the obligation, to assign parking spaces or imposes further restrictions as the Board sees fit.

5. RESTRICTION AGAINST FURTHER SUBDIVIDING OF UNITS. No Unit may be divided or subdivided into a smaller Unit. No Unit, or portion thereof, shall be added to or incorporated into any other Unit.

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 Section 55-79.74 of the Virginia Code of 1950 such time limit may be extended by an amendment to this Declaration made pursuant to Section 55-79.71 of the Code of Virginia of 1950 as authorized by Section 55-79.54 (c)(3) of the Code of Virginia of 1950.

6.4 THE ADDITIONAL LAND. The real property described in Exhibit B and depicted as "ADDITIONAL LAND" on Exhibit C is the land which may be added to the Condominium pursuant to Declarant's option to expand, which land is hereafter and heretofore 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 additional structures, and other improvements on portions of the Additional Land or add the Additional Land in its current improved state, 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. The maximum number of Units which may be created on the Additional Land is one hundred twenty (120). If any portion or portions of the Additional Land are added at any time or times, the maximum number of Units per acre which may be created on such portion or portions when combined with all other Submitted Land within the Condominium is thirty-eight (38) Units per acre.

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 exist or 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 constructed as shown on the plans attached as a part of Exhibit C; 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 will subsequently be assigned as Limited Common Elements. Such Limited Common Elements shall not otherwise be assigned or reassignable.

7. EASEMENTS.

7.1 PERPETUAL NON-EXCLUSIVE EASEMENT. The Common Elements are hereby declared to be subject to a perpetual nonexclusive 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.

7.2 EASEMENT FOR UNINTENTIONAL AND NON-NEGLIGENT ENCROACHMENTS. In the event that any Unit or Common Element shall encroach upon any other Unit or Common Element for any reason other than the willful knowing act of any person, then an easement appurtenant to such affected Unit or Common Element shall exist for so long as such encroachment shall naturally exist.

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 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, 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 reserve unto itself, such easements as are necessary to accomplish the purposes referred to in this Paragraph 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 ADDITIONAL EASEMENTS. Declarant reserves unto itself, or its designee, the unequivocal right to create additional easements over, upon, or through the Condominium Property, at any time during the period of Declarant's control provided in the By-laws, 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 shall join in the creation thereof.

7.8 EASEMENT TO FACILITATE EXPANSION. The Declarant shall have a transferable easement over and upon 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 doing all things reasonably necessary and proper in connection therewith.

8. COMMON EXPENSE; COMMON PROFITS.

Each Unit shall share in the Common Profits and be liable for the Common Expenses in the same percentage as the percentage representing the undivided interest of each Unit in the Common Elements. The right to share in the Common Profits does not include the right to withdraw or to require payment or distribution thereof except upon termination and dissolution of the Condominium.

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

9.1 THE ASSOCIATION. 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 this Declaration and the Condominium Act.

9.2 MEMBERSHIP. Each Unit Owner shall automatically become a member of the Association upon his 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 ASSOCIATION. In the administration of the Condominium, the Association shall have, and is hereby granted, the authority and power to enforce the provisions of this Declaration, levy and collect assessments in the manner hereinafter provided, 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 Act. Further, 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, 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 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.

9.6 VOTING. The voting of each Unit Owner shall be governed by the provisions of the By-laws.

9.7 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.

9.8 REPORT TO STATE. At the time 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 that percentage of Units owned by the Declarant and the status of Declarant's payment of assessments.

10. USE AND OCCUPANCY.

10.1 RESIDENTIAL USE. Each Unit is hereby restricted to residential use. At no time may the Unit be used by more persons than for which it was designated.

10.2 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 Occupant of such Unit. All provisions of the Declaration shall apply to such designated Occupants as though they had title to such Unit and the entity owing such Unit shall be bound thereby. These provisions of Paragraph 10 of the Declaration shall not be applicable to Declarant or to any Corporation formed or controlled by Declarant.

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

10.4 LAWFUL USE. No immoral, improper, 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 repair of the property concerned.

10.5 ALTERATIONS AND ADDITIONS. 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 and Declarant (during the period of Declarant's control provided in the By-laws). 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 connections 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 By-laws). 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 By-laws).

10.6 NUISANCES. No nuisance or any use or practice that is the source 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 Unit which will increase the rate of insurance on the Condominium.

10.7 HOME OCCUPATIONS. No Unit shall be used for any business, commercial, manufacturing, 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 of 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 Unit 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.

10.8 VEHICLES; PARKING

10.8.1 General. All parking areas located on the Common Elements are for 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 of Directors.

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

10.8.3 Commercial Vehicles. Parking of commercial vehicles is not permitted on the Common Elements. 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 plates, (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 exceed 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 logos, may be permitted in the reasonable discretion of the Board of Directors.

10.8.4 Vehicle Repair, Derelict Vehicles. 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 sizable part thereof, on which current license plates or inspection stickers are not displayed shall be kept on any of the Condominium Property.

10.9 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.

10.10 RULES AND REGULATIONS. All Unit Owners and other persons shall use the Condominium Property in accordance with the Rules and Regulations promulgated by the entity in control thereof and the provisions of this Declaration and the By-laws of the Association.

11. MAINTENANCE AND REPAIR OF THE CONDOMINIUM PROPERTY,
ALTERATIONS AND IMPROVEMENTS.

11.1 MAINTENANCE BY ASSOCIATION. Except as otherwise provided, the Association, at its expense, shall be responsible for and shall maintain, repair and replace all of the Common Elements, other than the Limited Common Elements.

11.2 MAINTENANCE OF UNIT OWNER. Each Unit Owner shall, subject to the other provisions of this Declaration, maintain, repair and replace, at his expense, all portions of his 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, balconies, gutters and downspouts, electrical panels, electric wiring, electric outlets and fixtures, refrigerators, dishwashers and other appliances, drains, plumbing fixtures and connections, the interior and exterior surfaces of all walls, floors, sheds, attic space, fences and ceilings and all other portions of his Unit in a well-maintained, good, clean and sanitary condition and state or repair.

11.3 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.

11.4 LIABILITY OF UNIT OWNER. Should a Unit Owner undertake unauthorized additions and modifications to his Unit, as specified above, or refuse to maintain, paint and make repairs as required, or should a Unit Owner cause any damage to the Common Elements, the Association may undertake such repairs, painting, replacements or maintenance, and levy a special assessment for the cost thereof against said Unit Owner. In the event a Unit Owner threatens to or violates the provisions hereof, the Association shall also have the right to proceed in a court of equity for an injunction to seek compliance with the provisions hereof.

11.5 INSURANCE PROCEEDS. Whenever any maintenance, repair 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 Association, or the Insurance Trustee, shall be used for the purpose of accomplishing such maintenance, repair or replacement. The Unit Owner shall be required to pay all of the costs thereof that exceed the amount of the insurance proceeds.

11.6 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 PROVIDED, that such entry shall be made only at reasonable times and with reasonable advance notice. In the case of emergency such as, but not limited to, fire or hurricane, entry may be made without notice or permission. Each Unit Owner does hereby appoint the Association as his 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.

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

12.1 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.

12.2 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.

13. LEASING OF CONDOMINIUM UNITS. The leasing of Condominium Units shall be subject to such reasonable Rules and Regulations as may be established, from time to time, by the Association. Subject only to the conditions set forth herein, the Association shall not have the right, however, to restrict, regulate or determine the period, rent or lessees of any lease of a Condominium Unit. No Unit may be leased for transient purposes or for a period of less than six (6) month's duration. No more than twenty five percent (25%) of the Units in the Condominium may be leased at any one time (the "Rental Ceiling"). Before entering into a lease for a Unit a Unit Owner shall inform the Association of its desire to rent the Unit. If the Rental Ceiling has been reached the Unit Owner will not be able to rent the Unit. If the Rental Ceiling has been reached the Association shall maintain a list of Unit Owners desiring to rent a Unit (the "Rental Waiting List"), on a first come, first served basis. At such time as Units may again be leased and not exceed the Rental Ceiling, the Association shall inform Owner(s) on the list who would then be allowed to lease their Unit(s). Any Unit Owner who has leased its Unit shall notify the Association of the date of termination of its lease. Such Unit Owner shall have 60 days from the date of termination of the lease to relet the Unit to another tenant. If no new lease for the Unit is submitted to the Association within such 60 day period, then that Unit Owner shall be placed at the bottom of the Rental Waiting List and the opportunity to rent shall be afforded to the highest person on the Rental Waiting List. That person shall then have 60 days from the date of such notification to lease its Unit and if it fails to do so, then that Unit shall be placed at the bottom of the Rental Waiting List and the opportunity to lease shall be afforded to the next highest person on the Rental Waiting List. NOTWITHSTANDING

the foregoing, the Rental Ceiling restriction and provisions shall not apply to any Unit that is encumbered by a deed of trust or mortgage that is guaranteed or insured under Title 38, United States Code (a "VA Mortgage"). At such time as a Unit exempted from the Rental Ceiling restrictions by virtue thereof is no longer encumbered by a VA Mortgage, such Unit shall continue to be exempt for so long as the tenant(s) occupying the Unit under a lease at the time the Unit was released from the VA Mortgage remains in occupancy; however, once such tenant(s) no longer occupies that Unit, then the Rental Ceiling restriction shall thereafter apply to such Unit. The Unit Owner shall provide the Association a copy of any lease entered into with respect to its Unit and such reasonable information as the Association requires with respect to the tenants of the Unit. It shall be the responsibility of the lessor of a Condominium Unit to transfer to its lessees all of the Condominium Instruments originally provided to said lessor and to provide in all leases for a Condominium Unit that the lessee shall be bound by the Condominium Instruments and that a breach of the Condominium Instruments by the lessee shall be a breach of the lease. Notwithstanding this paragraph 13, the Lessee shall be bound by the terms of this instrument even though the lessor has failed to comply herewith, including, without limitation, Section 10.1.3 hereof. None of the provisions of this Paragraph 13 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 and said firms may lease any such Units as they deem fit (during the period of Declarant's control provided in the By-laws) or to any Declarant Mortgagee.

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 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.C 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 Mortgagees (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.

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 sub policies 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 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 employee's endorsement and an "all states" endorsement;

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 officer's 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 H06 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 The Tides at Newmarket Creek 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 Hampton, 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.

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, equipment 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, equipment 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 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 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.

16. ASSESSMENTS; LIABILITY, LIEN AND ENFORCEMENT.

16.1 GENERAL AUTHORITY. The Association shall have the power to make, levy and collect regular and special assessments for Common Expenses and such other assessments as are provided for by the Condominium Act and the provisions of this Declaration and all other expenses declared by the Directors of the Association to be Common Expenses from time to time.

16.2 UNIT OWNER'S GENERAL LIABILITY. Except as herein specified to the contrary, all assessments levied against Unit Owners and Units shall be 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 a Common Expense. Any common expenses benefiting less than all of the condominium units, or caused by the conduct of

less than all of those entitled to occupy the same or by their licensees or invitees, shall be specially assessed against the condominium unit or units involved, as determined by the Board, and such special assessments shall be due, payable, collectible and subject to line in the same manner as the regular assessments due from such parties.

16.3 WATER AND SEWER ASSESSMENT. The City of Hampton may bill the Association for all water and sewer usage of the Condominium. The Unit Owner of each Unit, if any, that is sub-metered for water and sewer usage will be billed by the Association directly on a monthly or such other periodic basis as the Association determines for such Unit's actual usage of water and sewer services and for a processing charge. Such billing shall constitute a special assessment against the Unit and Unit Owner and the Unit Owner's obligation for such special assessment shall be the same as the assessment of the Unit Owner for Common Expenses provided herein.

16.4 PAYMENT. The assessment levied against the Unit Owner and his Unit shall be payable in such installments, and at such times, as may be determined by the Board of Directors of the Association.

16.5 EMERGENCIES. If assessments levied are, or may prove to be insufficient to pay the costs of operation and management of the Condominium, 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.

16.6 RESERVES.

16.6.1 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 structural elements and mechanical equipment for which it has the responsibility to maintain and repair, as well as the replacement of personal property which may be a portion of the Condominium Property.

16.6.2 OPERATING RESERVE FUND. The Board of Directors of the Association in assessing for Common Expenses may include therein a sum to be collected and maintained as a general operating reserve which shall be used to provide a measure of financial security during periods of special stress. Such sums may be used to meet deficiencies from time to time existing as a result of delinquent payment of assessment by Unit Owners or as a result of emergencies.

16.6.3 PROVISIO. Notwithstanding the foregoing, the Board of Directors shall comply with the requirements of Section 55-79.83:1 of the Code of Virginia of 1950 regarding reserves for capital components; provided, however, that the Board shall not be

personally responsible for the inadequacy of any reserve accounts. 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 reserved account was established unless such other use has been approved by a vote of at least two third (2/3) or more of the votes of Owners in 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 of Directors may levy a special assessment.

16.7 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 this Declaration. 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 the owner of a Unit 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 owner for any share of the funds or assets of the Association.

16.8 DEFAULT IN PAYMENT OF ANY ASSESSMENT. In the event of default by a Unit Owner in payment of any Assessment, the Association shall have all rights and remedies provided by law, including, but not limited, those provide by the Condominium Act, and the liability of the Unit Owner shall include liability for all 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. Attorneys' fees shall accrue to the account and shall be due and payable by the Unit Owner when the account is turned over to an attorney for collection. If a Unit Owner shall be in default in 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 date shall be not less than fifteen (15) days after delivery or 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 for the Condominium Unit, to be fixed by the Board of Directors, and the Association shall be entitled to the appointment of a receiver to collect same.

16.9 NO WAIVER. No Unit Owner may exempt himself 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.

16.10 LIEN. The Association is hereby granted a lien upon each Condominium Unit, together with a lien on all tangible personal property located within said Unit (except that such lien upon the aforesaid tangible personal property shall be subordinate to prior bona fide liens of record), which lien shall secure the payment of monies from each Unit Owner for which he is liable to the Association, including all assessments, interest and expenses provided for in this Declaration and sums advanced on behalf of the Unit Owner in payment of his obligations as set forth in the Condominium Instruments, reasonable attorney's fees incurred as an incident to the enforcement of said lien and charges and costs of the maintenance of the Common Elements. 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 preserve and 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, in which event, the lien rights in favor of the Association having the highest priority and dignity shall be the lien of the Association. The liens shall be inferior only to the liens for real estate taxes and the liens for bona fide recorded first deeds of trust on each Unit.

16.11 LATE CHARGE. If any monies from a Unit Owner, including assessments, are not paid within ten days from their due date there shall automatically be assessed a late charge of \$30.00 for each thirty days during which such monies are not paid. Each monthly assessment or other sum due from a Unit Owner shall be considered a different obligation for the purposes of this paragraph.

16.12 PROVISIO. In the event that any person or Institutional Lender shall acquire title to any Unit by virtue of either foreclosure of a first mortgage or deed of trust, or a deed in lieu thereof, such acquirer of title, his successors and assigns, shall not be liable for the share of Common Expenses or assessments by the Association pertaining to the Condominium Unit or chargeable to the former Unit Owner to the Unit which became due prior to acquisition of title as a result of the foreclosure, unless the share is secured by a claim of lien for assessments that is recorded prior to the recording of the foreclosed mortgage or deed of trust. Nothing herein contained shall be construed as releasing the party liable for such delinquent assessments from the payment thereof or the enforcement of collection of such payment by means other than foreclosure. Following said acquisition, all Unit Owners of any nature, including, without limitation, a purchaser at a judicial sale or Institutional Lender, shall be liable for all assessments coming due while they are Unit Owners.

16.13 CERTIFICATE OF STATUS OF ASSESSMENTS. Any Unit Owner, mortgagee or lienor may require the appropriate certificate as set forth in Section 55-79.84(h) of the Condominium Act. The Association may charge a fee for such certificate as allowed by the Condominium Act.

16.14 EVIDENCE OF ASSESSMENTS PAID. Any person who acquires an interest in a

Unit, including acquisition through foreclosure of a first mortgage, deed of trust or by deed in lieu thereof, and including without limitation, persons acquiring title by operation of law, may request the certificate as set forth in Section 55-79.84(h) of the Condominium Act as evidence of the status of unpaid assessments levied against the Unit, and such statement shall be binding upon the Association and all Unit Owners. The personal obligation for delinquent assessments shall not pass to successors in title or interest unless assumed by them or required by law.

16.15 NO ELECTION OF REMEDIES. The institution of a suit at law for collection of any delinquent assessment may be maintained without waiving the lien securing the same. Proceeding by foreclosure to attempt to affect such collection shall not be deemed an election precluding the institution of suit at law for collection of the same. All Unit Owners do hereby waive pleading the theory of "elections of remedies" in any such proceedings.

16.16 INITIAL CAPITAL PAYMENT. The Declarant, as the agent of the Board of Directors, will collect from each initial purchaser at the time of settlement an "initial capital payment" equal to three (3) times the estimated monthly installment of the Common Expense Assessment for such purchaser's Unit. The Declarant will deliver the funds so collected to the Board of Directors. Such funds may be used for certain prepaid items, initial equipment, supplies, organizational costs and other start-up costs, and for such other purposes as the Board of Directors may determine. Such initial capital payment shall be in addition to and not in lieu of the regular monthly installments of the common Expense Assessment. The Declarant shall be authorized to reimburse itself out of such funds for costs paid by it on behalf of the Association.

16.17 LIENS - MECHANICS. The creation and enforcement of mechanic's, and other, liens against the Units and Condominium Property, except those created by this Declaration, shall be governed by the provisions of the Condominium Act and the laws of the Commonwealth of Virginia.

17. TERMINATION. The Condominium may be terminated in the following manner:

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

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

17.3 CERTIFICATE. The 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 Circuit Court of the City of Hampton, Virginia.

17.4 SHARES 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 of undivided shares that shall be equal to the sum of the undivided shares in the Common Elements appurtenant to the Units prior to termination so that the sum total of the ownership shall equal one hundred percent (100%).

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

17.6 AMENDMENT. This Paragraph 16 concerning termination cannot be amended without written consent of all Unit Owners and all record owners of mortgages upon the Units.

18. AMENDMENT.

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 required in Section 20 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 shall to the Condominium Instruments shall diminish or impair the rights of Mortgagees or diminish or impair the rights of the Declarant under the Condominium Instruments including, without limitation, the rights reserved by the Declarant under the Condominium Instruments 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 any Unit Owner or any other any priority over the rights of Mortgagees.

18.2 MEMBER APPROVAL. Except as provided in Section 18.4, this Declaration may be amended by the agreement of Unit Owners of Units to which two-third (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 of any Unit 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 executed by a principal officer of the Association who shall certify that the Association received written ballots/proxies from the required 2/3rds of the votes in the Association.

18.4 OMISSION OR ERROR. Notwithstanding the requirements of this Article 18, 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 Certificate of Amendment to be recorded. In addition, the Condominium Instruments may be amended by the Declarant unilaterally pursuant to and in accordance with Section 55-79.71.F. of the Condominium Act. Should the Condominium Instruments need to be amended at any time 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 or 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 such requirements.

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 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 Act or law. Suit may be sought by the Association, the managing agent, if any, Declarant, or, if appropriate, by one or more Unit Owners, and the prevailing party shall be entitled to recover reasonable attorney's fees. Each Unit Owners acknowledges that the failure to comply with any of the provisions of the Condominium Instruments shall or may constitute an injury to the Association, the managing agent, if any, Declarant 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 made necessary by his or her negligence, gross negligence or willful misconduct, or by that of any member of his or her family, 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 caused by use, misuse, occupancy or abandonment of any Unit or its appurtenances. Nothing herein contained, however, shall be construed 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 alien against said Unit with the same force and effect as if the charge were a part of the Common Expenses attributable to such Unit Owner's Unit.

19.3 COSTS AND ATTORNEY'S FEES. In any 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 this Instrument or its exhibits, the Association, the managing agent, if any, or the Declarant, whichever is appropriate, shall be entitled to recover the costs of the proceedings, including reasonable attorney's fees. In any action by or against Declarant, where Declarant is the prevailing party, arising out of or concerning the Condominium Instruments or Declarant's obligations thereunder, Declarant shall be entitled to recover all costs of the proceedings, including reasonable attorney's fees at all levels including the trial and appellate level.

19.4 NO WAIVER. The failure of Association, the managing agent, if any, a Unit Owner, or the Declarant to enforce any right, provision, covenant, or condition created or granted by the Condominium Instruments 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 Association, the managing agent, if any, Declarant, or Unit Owner pursuant to any of the provisions of this Declaration 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 this Declaration, such suit shall be brought in the Circuit Court in and for the City of Hampton, Virginia, as the same is now constituted or any court in the future that may be the successor to the court contemplated herein. 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 any 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 Section 55-79.80:2 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 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 be hand delivered or mailed by registered or certified mail, return receipt requested to such Unit Owner at the address or addresses required for notice of meeting pursuant to

Section 55-79.75 of the Condominium Act at least fourteen (14) days in advance of such hearing. The amount of any charges so assessed shall not exceed Fifty Dollars (\$50.00) for a single offense of Ten Dollars (\$10.00) per diem for any offense of a continuing nature, and be treated as an assessment against such Unit Owner's Condominium Unit for the purpose of Section 55-79.84 of the Condominium Act.

19.9 ARBITRATION OF WARRANTY CLAIMS. 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 Condominium Act or the Declarant's warranty under any other written warranty made and delivered by Declarant and/or a third party warranty company to the Association and/or the Unit Owner, shall be settled in accordance with the procedures set forth herein. Any such dispute 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.

20. MORTGAGES.

20.1 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 Deed of Trust with the Board.

20.2 MORTGAGEE NOTICE. 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 payment of assessments or charges owed by the Owner of any Unit which is subject to the mortgage.

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

20.3 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 this Declaration or the Bylaws.

20.4 MORTGAGEES' APPROVALS

(A) Majority Votes. 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, 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 the 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 restriction 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 of the Association to establish self-management if the Condominium consists of 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 Condominium Instruments; 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.

20.5 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 pursuant to Section 55-79.93 of the Condominium Act, and to require 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.

21. MISCELLANEOUS RIGHTS OF DECLARANT.

21.1 CONFLICT OF INTERESTS. 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 the 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, parking, 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 or all or a portion of the Units it owns and or a portion of the Additional Land, prior 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 the Declarant herein.

21.4 DECLARANT'S MORTGAGEE. Any person or entity which holds a mortgage executed by Declarant, either prior or subsequent to recordation of this Declaration, encumbering any part of all of the Condominium Property ("Declarant's 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 herein to the contrary, the lien and security interests of the deed of trust securing a Declarant's Mortgagee 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 hereby, the reassignment or conveyance of any common elements or limited common elements, 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 fulfill 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 Declarant" on

all annual budgets and financial statements of the Association. The foregoing loans are collectively referred to as "Declarant Loans". Declarant shall have the 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.

22. NOTICES. Whenever notices are required to be sent hereunder, the same may be delivered to Unit Owners, either personally or by mail, at their place of residence in the Condominium. 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. Notices to the Declarant shall be made by delivery to Declarant at: 616 Village Drive, Suite G, Virginia Beach, Virginia 23454.

23. CONSTRUCTION. All of the provisions of this Declaration shall be construed in accordance with the Laws of the Commonwealth of Virginia.

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 include the plural, and words of the male gender shall include the female gender and the neuter gender.

25. CAPTIONS. The captions to the 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.

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 term or provision to persons or circumstances other than those to which such term may be held invalid or unenforceable, shall not be affected thereby and each term and provision of this Declaration shall be valid and enforceable to the fullest extent permitted by law.


27. 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 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.

28. 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, shall be deemed to be an Institutional Lender for the purposes of this Declaration and shall have all rights and privileges appertaining thereto.

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18th IN WITNESS WHEREOF, the Declarant has executed this Declaration on this day of July, 2019.

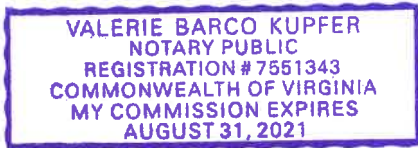
FRANCISCUS AT TIDES LLC, a Virginia limited liability company
By: Franciscus Homes Inc., its Operating Manager

By: 
Russell S. Clark, Vice-President

STATE OF VIRGINIA
CITY OF VIRGINIA BEACH, to-wit:

I, Valerie Barco Kupfer, a Notary Public in and for the City/County and State aforesaid, do hereby certify that Russell S. Clark, in his capacity as Vice-President of Franciscus Homes, Inc., in its capacity as Operating Manager of Franciscus at Tides LLC, a Virginia limited liability company, has acknowledged the due execution of the aforesaid instrument. This person is personally known to me.

GIVEN under my hand this 18th day of July, 2019.



Valerie Barco Kupfer
Notary Public

My commission expires: 8-31-21

Registration No.: 7551343

EXHIBIT A

Submitted Land

All that certain parcel of land, lying and being situated in the city of Hampton, Virginia, as shown on that certain plat entitled "Phase 1 Condominium Plat of The Tides at Newmarket Creek, a Condominium, Hampton, Virginia, dated February 19, 2019, and prepared by Hayden Frye and Associates, Inc., Land Surveyors", being designated as Phase 1 – Submitted Land and being more particularly described as follows:

Commencing at a point, said point being a pipe found along the western Right-of-Way line of Power Plant Parkway with its intersection with the northern boundary line of Parcel A1 as recorded in M.P.B. 5, P. 34 in the Clerk's office of the Circuit Court of the City of Hampton, Virginia and shown on the aforesaid Phase 1 Condominium Plat... as "P.O.C.", thence continuing along the aforesaid western Right-of-Way line of Power Plant Parkway in a southerly direction $S46^{\circ}43'28''E$ 33.80 feet to a point, thence continuing along the aforesaid western Right-of-Way line of Power Plant Parkway in a southerly direction along a curve to the right having a radius of 350.00 feet and a length of 145.36 feet to a point, thence continuing along the aforesaid western Right-of-Way line of Power Plant Parkway in a southerly direction $S22^{\circ}55'41''E$ 83.69 feet to a point, thence continuing along the aforesaid western Right-of-Way line of Power Plant Parkway in a southerly direction along a curve to the right having a radius of 780.00 feet and a length of 43.27 feet to a point, said point being the Point of Beginning of the herein described Phase 1 – Submitted Land and shown on the aforesaid Phase 1 Condominium Plat... as "P.O.B.", thence departing from the aforesaid western Right-of-Way line of Power Plant Parkway in a westerly direction along a curve to the left having a radius of 23.50 feet and a length of 9.10 feet to a point, thence the following 34 courses: $S82^{\circ}06'04''W$ 61.04 feet; $S07^{\circ}53'56''E$ 8.00 feet; $S82^{\circ}06'04''W$ 194.05 feet; $S37^{\circ}06'04''W$ 7.00 feet; $S07^{\circ}53'56''E$ 107.65 feet; $N82^{\circ}06'04''E$ 93.93 feet; $N07^{\circ}53'56''W$ 10.04 feet; $N82^{\circ}06'04''E$ 79.53 feet; $S07^{\circ}53'56''E$ 100.00 feet; $N82^{\circ}06'04''E$ 23.00 feet; $S07^{\circ}53'56''E$ 63.53 feet; $S82^{\circ}06'04''W$ 68.00 feet; $N07^{\circ}53'56''W$ 110.50 feet; $S82^{\circ}06'04''W$ 123.44 feet; $S07^{\circ}53'56''E$ 110.50 feet; $S82^{\circ}06'04''W$ 36.66 feet; $N52^{\circ}33'51''W$ 37.47 feet; $N07^{\circ}53'56''W$ 126.84 feet; $N82^{\circ}06'04''E$ 30.98 feet; $N07^{\circ}53'56''W$ 107.65 feet; $N52^{\circ}53'56''W$ 7.00 feet; $S82^{\circ}06'04''W$ 177.96 feet; $S37^{\circ}06'04''W$ 7.00 feet; $S07^{\circ}53'56''E$ 107.65 feet; $N82^{\circ}06'04''E$ 18.00 feet; $S07^{\circ}53'56''E$ 120.73 feet; $S82^{\circ}06'04''W$ 45.00 feet; $N07^{\circ}53'56''W$ 228.38 feet; $N52^{\circ}53'56''W$ 7.00 feet; $S82^{\circ}06'04''W$ 172.91 feet; $S37^{\circ}06'04''W$ 14.14 feet; $S07^{\circ}53'56''E$ 106.10 feet; $S82^{\circ}06'04''W$ 27.00 feet; $N07^{\circ}53'56''W$ 69.95 feet to a point, thence along a curve to the left having a radius of 18.50 feet and a length of 27.17 feet to a point, thence along a curve to the right having a radius of 49.50 feet and a length of 144.00 feet to a point, thence the following 32 courses: $N07^{\circ}53'56''W$ 30.48 feet; $S82^{\circ}06'04''W$ 104.66 feet; $N07^{\circ}53'56''W$ 45.00 feet; $N82^{\circ}06'04''E$ 104.66 feet; $N07^{\circ}53'56''W$ 123.95 feet; $N82^{\circ}05'49''E$ 63.00 feet; $S07^{\circ}53'54''E$ 114.42 feet; $S82^{\circ}06'04''W$ 18.00 feet; $S07^{\circ}53'56''E$ 102.60 feet; $S52^{\circ}53'56''E$ 14.14 feet; $N82^{\circ}06'04''E$ 172.91 feet; $N37^{\circ}06'04''E$ 7.00 feet; $N07^{\circ}53'56''W$ 107.65 feet; $S82^{\circ}06'04''W$ 18.00 feet;

N07°53'56"W 114.43 feet; N82°05'49"E 63.00 feet; S07°53'54"E 114.44 feet; S82°06'04"W 18.00 feet; S07°53'56"E 107.65 feet; S52°53'56"E 7.00 feet; N82°06'04"E 177.96 feet; N37°06'04"E 7.00 feet; N07°53'56"W 107.65 feet; S82°06'04"W 18.00 feet; N07°53'56"W 114.45 feet; N82°05'49"E 45.00 feet; S07°53'55"E 222.10 feet; S52°53'56"E 7.00 feet; N82°06'04"E 88.98 feet; N07°53'56"W 77.03 feet; N82°06'04"E 63.82 feet; S37°53'56"E 28.57 feet to a point, thence along a curve to the right having a radius of 35.50 feet and a length of 37.39 feet to a point, thence S07°53'57"E 7.95 feet to a point, thence along a curve to the left having a radius of 18.50 feet and a length of 32.18 feet to a point, thence along a curve to the left having a radius of 290.50 feet and a length of 35.74 feet to a point, thence along a curve to the left having a radius of 23.50 feet and a length of 13.35 feet to a point, said point being on the aforesaid western Right-of-Way line of Power Plant Parkway, thence along the aforesaid western Right-of-Way line of Power Plant Parkway S22°55'41"E 5.54 feet to a point, thence along the aforesaid western Right-of-Way line of Power Plant Parkway along a curve to the right having a radius of 780.00 feet and a length of 43.27 feet to a point, said point being the Point of Beginning of the herein described Phase 1 –Submitted Land containing 115,745 Square Feet or 2.657 Acres of Land, more or less.

EXHIBIT B

Additional Land

All that certain parcel of land, lying and being situated in the city of Hampton, Virginia, as shown on that certain plat entitled "Phase 1 Condominium Plat of The Tides at Newmarket Creek, a Condominium, Hampton, Virginia, dated February 19, 2019, and prepared by Hayden Frye and Associates, Inc., Land Surveyors", being designated as Additional Land AL-1 and being more particularly described as follows:

Beginning at a point along the western Right-of-Way line of Power Plant Parkway, said point being the Point of Beginning of the previously described Phase 1 – Submitted Land and shown on the aforesaid Phase 1 Condominium Plat... as "P.O.B.", thence departing from the aforesaid western Right-of-Way line of Power Plant Parkway in a westerly direction along a curve to the left having a radius of 23.50 feet and a length of 9.10 feet to a point, thence the following 34 courses: S82°06'04"W 61.04 feet; S07°53'56"E 8.00 feet; S82°06'04"W 194.05 feet; S37°06'04"W 7.00 feet; S07°53'56"E 107.65 feet; N82°06'04"E 93.93 feet; N07°53'56"W 10.04 feet; N82°06'04"E 79.53 feet; S07°53'56"E 100.00 feet; N82°06'04"E 23.00 feet; S07°53'56"E 63.53 feet; S82°06'04"W 68.00 feet; N07°53'56"W 110.50 feet; S82°06'04"W 123.44 feet; S07°53'56"E 110.50 feet; S82°06'04"W 36.66 feet; N52°33'51"W 37.47 feet; N07°53'56"W 126.84 feet; N82°06'04"E 30.98 feet; N07°53'56"W 107.65 feet; N52°53'56"W 7.00 feet; S82°06'04"W 177.96 feet; S37°06'04"W 7.00 feet; S07°53'56"E 107.65 feet; N82°06'04"E 18.00 feet; S07°53'56"E 120.73 feet; S82°06'04"W 45.00 feet; N07°53'56"W 228.38 feet; N52°53'56"W 7.00 feet; S82°06'04"W 172.91 feet; S37°06'04"W 14.14 feet; S07°53'56"E 106.10 feet; S82°06'04"W 27.00 feet; N07°53'56"W 69.95 feet to a point, thence along a curve to the left having a radius of 18.50 feet and a length of 27.17 feet to a point, thence along a curve to the right having a radius of 49.50 feet and a length of 144.00 feet to a point, thence the following 32 courses: N07°53'56"W 30.48 feet; S82°06'04"W 104.66 feet; N07°53'56"W 45.00 feet; N82°06'04"E 104.66 feet; N07°53'56"W 123.95 feet; N82°05'49"E 63.00 feet; S07°53'54"E 114.42 feet; S82°06'04"W 18.00 feet; S07°53'56"E 102.60 feet; S52°53'56"E 14.14 feet; N82°06'04"E 172.91 feet; N37°06'04"E 7.00 feet; N07°53'56"W 107.65 feet; S82°06'04"W 18.00 feet; N07°53'56"W 114.43 feet; N82°05'49"E 63.00 feet; S07°53'54"E 114.44 feet; S82°06'04"W 18.00 feet; S07°53'56"E 107.65 feet; S52°53'56"E 7.00 feet; N82°06'04"E 177.96 feet; N37°06'04"E 7.00 feet; N07°53'56"W 107.65 feet; S82°06'04"W 18.00 feet; N07°53'56"W 114.45 feet; N82°05'49"E 45.00 feet; S07°53'55"E 222.10 feet; S52°53'56"E 7.00 feet; N82°06'04"E 88.98 feet; N07°53'56"W 77.03 feet; N82°06'04"E 63.82 feet; S37°53'56"E 28.57 feet to a point, thence along a curve to the right having a radius of 35.50 feet and a length of 37.39 feet to a point, thence S07°53'57"E 7.95 feet to a point, thence along a curve to the left having a radius of 18.50 feet and a length of 32.18 feet to a point, thence along a curve to the left having a radius of 290.50 feet and a length of 35.74 feet to a point, thence along a curve to the left having a radius of 23.50 feet and a length

of 13.35 feet to a point, said point being on the aforesaid western Right-of-Way line of Power Plant Parkway, thence turning in a northerly direction and along the aforesaid western Right-of-Way line of Power Plant Parkway N22°55'41"W 78.15 feet to a point, thence continuing along the aforesaid western Right-of-Way line of Power Plant Parkway along a curve to the left having a radius of 350.00 feet and a length of 145.36 feet to a point, thence continuing along aforesaid western Right-of-Way line of Power Plant Parkway N46°43'28"W 33.80 feet to a point, said point being a pipe found, thence departing the aforesaid western Right-of-Way line of Power Plant Parkway in a westerly direction S82°05'49"W 747.85 feet to a point, thence turning in a southerly direction S08°14'03"E 295.45 feet to a point, thence turning in a westerly direction S81°45'57"W 257.47 feet to a point, said point being an iron pin found, thence turning in a southerly direction S08°13'53"E 613.86 feet to a point, thence continuing in a southerly direction S51°26'56"E 20 feet more or less to the Mean Low Water Mark along the northern edge of water of Newmarket Creek, thence meandering along the aforesaid Mean Low Water Mark along the northern edge of Newmarket Creek to its intersection with the aforesaid western Right-of-Way line of Power Plant Parkway, thence continuing along the aforesaid western Right-of-Way line of Power Plant Parkway N06°10'47"W 188.7 feet more or less to a point, thence continuing along the aforesaid western Right-of-Way line of Power Plant Parkway N09°39'32"W 57.68 feet to a point, thence continuing along the aforesaid western Right-of-Way line of Power Plant Parkway N06°10'47"W 402.49 feet to a point, thence continuing along the aforesaid western Right-of-Way line of Power Plant Parkway N14°43'12"W 135.42 feet to a point, thence continuing along the aforesaid western Right-of-Way line of Power Plant Parkway along a curve to the left having a radius of 780.00 feet and a length of 68.47 feet to a point, said point being the Point of Beginning of the herein described Additional Land AL-1 containing 22.873 +/- Acres of Land, more or less.

The property described herein is the same as Parcel A1 as recorded in M.P.B. 5, P. 34 in the Clerk's office of the Circuit Court of the City of Hampton, Virginia, less and except the previously described Phase 1 – Submitted Land.