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 City of Virginia Beach
 12/09/2015
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 Tina E. Sinnen, Clerk

**DECLARATION OF CONDOMINIUM
 OF
 HALSTEAD AT SPENCE CROSSING, a Condominium**

SPENCE CROSSING RESIDENTIAL, INC., a Virginia corporation, 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 Virginia Beach, Virginia more particularly described in Exhibit A, and being more particularly shown and depicted as "Exhibit C-1 Plat of Phase 1 HALSTEAD AT SPENCE CROSSING, a Condominium, Virginia Beach, Virginia", Scale 1"=150', dated September 12, 2015, made by Rouse-Sirine Associates, Ltd., both of which Exhibits are incorporated herein by reference, does hereby state and declare that the realty described in Exhibit A, together with 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 Virginia Beach, 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 Halstead at Spence Crossing, a Condominium. The Condominium is located in the City of Virginia Beach, Virginia. The address of the Condominium is Beckenham Drive, Virginia Beach, Virginia 23456. The addresses of the individual Units within the Condominium are shown on Exhibit C-1. Each Unit's "Unit Designation" or "Unit Number" are designated on plats and plans, and all are at Virginia Beach, Virginia 23456.

1.3 **THE SUBMITTED LAND.** The real property described in Exhibit A and depicted as "Phase 1, Submitted Land" on "Exhibit C-1 Plat of Phase 1 HALSTEAD AT SPENCE CROSSING, a Condominium, Virginia Beach, Virginia" 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, land 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-1 there is a Plat of the land which encompasses both the Submitted Land and the Additional Land. On Exhibit C-1 there is a Plat which shows the location and dimension of the Submitted Land, the location of the Common Elements and the location, dimension and Unit Number designation of the Units located thereon. No Unit bears the same number as any other Unit. The plans of the various units are depicted on Exhibit E-1. On Exhibit E-1 there are graphic descriptions of the exterior styles and elevations.

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Plat # 20151209001184860

Unit #	Address	GPIN	Unit#	Address	GPIN
604	4180 Archstone Dr.	1475-94-6766-0604	605	4184 Archstone Dr.	1475-94-6766-0605
606	4188 Archstone Dr.	1475-94-6766-0606	607	4192 Archstone Dr.	1475-94-6766-0607
608	4200 Archstone Dr.	1475-94-6766-0608	609	4201 Archstone Dr.	1475-94-6766-0609
610	4205 Archstone Dr.	1475-94-6766-0610			

PREPARED BY & RETURN TO: HOWARD R. SYKES, JR. (#15539)
 SYKES, BOURDON, AHERN & LEVY, P.C.
 281 INDEPENDENCE BLVD., 5TH FL
 VIRGINIA BEACH, VA 23462-2989

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

3.1 "Additional Land" means those lands described in Exhibit C and shown as "ADDITIONAL LAND" on Exhibit C-1, which may subsequently be submitted to condominium ownership hereunder by amendment to this Declaration as provided in paragraphs 6.1 through 6.13, below.

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

3.3 "Assessment" means a share of the funds required for the payment of Common Expenses which is assessed against the Unit Owners from time to time.

3.4 "Association" means Spence Crossing 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" means the Board of Directors of the Association responsible for the administration of the Association.

3.6 "By-laws" means the By-laws of the Association as they exist from time to time.

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

3.8 "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.

3.9 "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.

3.10 "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 Halstead at Spence Crossing, a Condominium, as established by this Declaration.

3.11 "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 Virginia Beach, Virginia.

3.12 "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.

3.13 "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.

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

3.15 "Declarant" means Spence Crossing Residential, Inc., a Virginia corporation, duly organized under the laws of the Commonwealth of Virginia, its successors and assigns, which has created this Condominium.

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

3.17 "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.

3.18 "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. There are no Limited Common Elements in Phase One of the Condominium.

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

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

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

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

3.23 "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 INTEREST IN COMMON ELEMENTS AND UNITS. Each Unit Owner shall own, as an appurtenance to his Unit, an undivided one-seventh (1/7) interest in the Common Elements. The percentage of undivided interest of each Unit shall not be changed without the unanimous consent of all Unit Owners, or unless the Condominium, is expanded as provided in paragraphs 6.1 through 6.13 of this Declaration. 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.

4.2 BOUNDARIES. A Unit consists of an individual dwelling unit and adjacent areas lying within the boundaries described in Paragraphs 4.2.1 through 4.2.5.

4.2.1 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:

(1) UPPER BOUNDARY - - The plane of the outer surface of the roof of the Building containing the Unit; except that portion of the Unit over which the Building roof does not extend, such as the driveway, patio and fenced-in lawn, for which portion there shall be no upper horizontal boundary;

(2) LOWER BOUNDARY -- The Unit's lower horizontal boundary is the surface of land on which the foundation of the Unit rests

4.2.2. PERIMETRICAL BOUNDARIES:

The perimetrical boundaries of the Unit shall be the vertical planes of the finished exterior surface of the exterior walls and the interior wall of the fences bounding the Unit, as the case may be. Extended to intersections with each other and with the Upper and Lower Boundaries, and where necessary extended through or along the concrete slab and attic space to such intersections.

(1) Where there is an aperture in any perimetrical boundary, including, but not limited to, windows and doors, the vertical boundary shall be extended at all such places, at right angles, to the dimension of such aperture, so that the perimetrical boundary at such places shall be coincident with the exterior finished surface of such aperture, including the framework thereto. Exterior walls made of glass or glass fired to metal framing, exterior windows and frames, exterior glass sliding doors, frames and casings, shall be included within the Unit and shall not be deemed a Common Element. The fence enclosing the rear yard is a common element.

(2) The patio, individual driveway, sidewalk and rear yard inside the fence, which service a particular Unit, are a part of the Unit.

4.2.3 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.

4.2.4 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.

4.2.5 AIR CONDITIONING/HEATING.

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 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.

4.3 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 reapportion, if necessary, the shares of ownership in the Common Elements appurtenant to the Units concerned.

4.4 PARKING. Each Unit shall have one (1) to two (2) garage parking spaces and two (2) driveway spaces. Any parking spaces created on the Common Elements shall be unassigned and available on a first-come basis.

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.

6.4 THE ADDITIONAL LAND. The real property described in Exhibit C and depicted as "Additional Land" on Exhibit C-1, together with Parcel B-1-B described 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 structures and vehicular parking areas and thoroughfares to be located on portions of the Additional Land. 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 two hundred forty-three (243). 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 is eighteen (18) 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 19.2 of this Declaration.

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

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

6.11 ADDITIONAL UNITS. The Units which may be created on any Additional Land may be as shown on the plans attached as Exhibit E-1; 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. The Declarant also intends to construct on the Additional Land a three-story townhouse unit with a garage and driveway, but is not required or obligated to do so.

6.12 LIMITED COMMON ELEMENTS. Declarant expressly reserves the right to create Common Elements upon the Additional Land which may subsequently be assigned as Limited Common Elements. Declarant makes no assurances as to the type, size or maximum number of such Common Elements or Limited Common Elements.

6.13 PLATS AND PLANS. Exhibit C which relate to the Additional Land depicted on Exhibit C-1 and Parcel B-1-B are included herein and recorded herewith to supplement the matters contained in this Paragraph 6.

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 purposeful negligent 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 in order to adequately serve the Condominium.

7.4 INGRESS AND EGRESS. A non-exclusive easement for ingress and egress is hereby created for pedestrian traffic over, through and across sidewalks, paths, walks, driveways, passageways and lanes as the same, from time to time, may exist upon the Common Elements; and for vehicular traffic over, through and across such portions of the Common Elements as, from time to time, may be paved and intended for such purposes together with an easement from Salem Road to the Condominium over and along Beckenham Boulevard a private road owned by the Declarant which will be maintained and owned in the future by the Spence Crossing Homeowners Association.

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

7.8 ACCESS EASEMENTS. Declarant reserves unto itself, its successors and/or assigns, an easement over the Submitted Land for access, ingress and egress to and from the land which is Additional Land. As such time, if any, as the Additional Land, or portions thereof, are submitted to the Condominium, then the easement reserved by this subparagraph shall end with respect to the portion of the Additional Land so submitted to the Condominium.

7.9 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 and Unit Owners shall join in the creation thereof.

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 said 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.

A first mortgagee, upon request, will be entitled to written notification from the Association of any default in performance by the individual Unit Owner of any obligation under the Condominium Instruments which is not cured within sixty (60) days.

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.

10. USE AND OCCUPANCY.

10.1.1 RESIDENTIAL USE. Each Unit is hereby restricted to residential use as a single-family residence by the owner or owners thereof, their immediate families, guests and invitees. At no time may the Unit be used by more persons than for which it was designated.

10.1.2 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 permanent Occupant of such Unit. Such entity shall not thereafter have the right to designate other persons as the Occupants of such Unit, whether in substitution of or in addition to the persons initially designated, except with the approval of the Association. All provisions of the Declaration

shall apply to such designated Occupants as though they had title to such Unit and the entity 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.

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

10.1.4 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.

10.1.5 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).

10.1.6 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.

10.1.7 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.

10.2 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. The Association, at its expense, shall be responsible for and shall maintain, repair and replace all of the 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 including, but not limited to, all doors, windows' glass, screens, patios, gutters and downspouts, electrical panels, electric wiring, electric outlets and fixtures, refrigerators, dishwashers and other appliances, drains, plumbing fixtures and connections, the interior surfaces of all walls, floors, fences and ceilings and all other portions of his Unit.

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.

11.7 **MAINTENANCE OF STORM WATER MANAGEMENT AREA.** The Association shall maintain and repair the storm water maintenance ponds and other storm water facilities located in the Common Elements of the Condominium to the standards required by the City of Virginia Beach. At the time of submission to the Condominium of the Common Elements containing the storm water maintenance area and facilities the Association shall assume all obligations of the Declarant under any storm water maintenance agreement with the City of Virginia Beach.

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. 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, except that no Unit may be leased for transient purposes, hotel purposes or for a period of less than six (6) month's duration. The Unit Owner shall provide the Association a copy of any lease entered into with respect to his 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 his 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. 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), except that no Unit may be leased for a period of less than thirty (30) days or for transient or hotel purposes.

14. **INSURANCE PROVISIONS.** The insurance which shall be purchased and maintained for the benefit of the Condominium shall be governed by the following provisions:

14.1 **PURCHASE OF INSURANCE.** All insurance purchased pursuant to this Paragraph 14 shall be purchased by the Association for the benefit of the Association, the Unit Owners and their respective Mortgagees, as their interest may appear, and shall provide for the issuance of certificates of insurance and mortgagee endorsements to any or all of the holders of first mortgages. The policies shall provide that the insurer waives its rights of subrogation as to any claims against Unit Owners and the Association, their respective servants, agents and guests. Each Unit Owner and the Association hereby agree to waive any claim against each other and against other Unit Owners for any loss or damage for which insurance hereunder is carried where the insurer has waived its rights of subrogation as aforesaid. All Institutional Lenders which hold first mortgages on Units totaling more than \$1,000,000.00 shall, if they so request, have the right to reasonably approve the policies and the amount of insurance thereof. In the event the Association fails or refuses to provide the insurance herein provided, said Institutional Lenders shall have the right to pay for same and be subrogated to the lien rights of the Association as herein provided against all the Units in order to recover any such payments.

14.2 **COST AND PAYMENT OF PREMIUMS.** The cost of obtaining all insurance hereunder, excluding only the insurance as may be purchased by individual Unit Owners, is declared to be a Common Expense, as are any other fees or expenses incurred which may be necessary or incidental to carry out the provisions hereof.

14.3 **UNIT OWNER'S RESPONSIBILITY.** Each Unit Owner shall obtain insurance, at his own expense, affording coverage upon his own property and for his own liability and living expenses as he deems advisable. All such insurance shall contain the same waiver of subrogation referred to herein and shall waive any right to contribution. The buildings and all other insurable improvements upon the land, including the Unit as originally constructed, furnished and equipped by Declarant shall be insured in an amount equal to the maximum insurable replacement value thereof as determined annually by the Unit Owner in consultation with the insurance company providing the coverage. Said coverage shall afford protection against loss or damage by fire and other hazards, including, but not limited to, vandalism, malicious mischief, windstorm, war damage and war risk insurance, if available.

14.4 **COVERAGE.** The following coverage shall be obtained by the Association:

a. Comprehensive general public liability and property damage insurance in such an amount and in such form as shall be required by the Association in limits of not less than \$1,000,000.00 for bodily injury or death to any person; not less than \$1,000,000.00 for bodily injury or death resulting from any one accident or occurrence, and not less than \$1,000,000.00 for property damage. Said coverage shall include, but not be limited to, water damage, legal liability, hired automobile, non-owned automobile, and off premises employee coverage. All liability insurance shall contain cross liability endorsements to cover liabilities of the Unit Owners as a group to an individual Unit Owner, and one Unit Owner to another.

b. A blanket fidelity bond or employee dishonesty insurance policy shall be obtained insuring the Association against losses resulting from theft or dishonesty committed by the officers, directors, or persons employed by the Association, or committed by any common interest community manager or employees of the common interest community manager. Such bond or insurance policy shall provide coverage in an amount equal to the lesser of \$1 million or the amount of reserve balances of the Association plus one-fourth of the aggregate annual assessment of the Association. The minimum coverage amount shall be \$10,000. The board of directors or common interest community manager may obtain such bond or insurance on behalf of the Association.

c. Workmen's compensation policies shall be obtained to meet the requirements of law.

d. Such other insurance as the Board of the Association may determine to be necessary from time to time.

14.5 DETERMINATION TO RECONSTRUCT. If any part of the Condominium Property shall be damaged by casualty the determination as to whether or not it shall be reconstructed shall be made in the following manner:

a. COMMON ELEMENT. If the damage is only to a Common Element the damaged property shall be reconstructed.

b. DAMAGE TO UNITS: If the damages could be repaired for \$1,000,000.00 or less the property shall be reconstructed.

14.6 RESPONSIBILITY. If the damage is only to those parts of a Unit for which the responsibility of maintenance and repair is that of the Unit Owner then the Unit Owner shall be responsible for reconstruction after casualty. The Unit shall be repaired immediately.

14.7 NATURE OF RECONSTRUCTION. Any reconstruction included hereunder shall be substantially in accordance with the plans and specifications of the original building or as the building was last constructed, subject to modification to conform with the then current governmental restrictions and codes, if required, or as may otherwise be agreed upon by the Association and all Institutional Lenders.

14.8 ESTIMATES. In all instances hereunder, immediately after a casualty causing damage to the property for which the Association has the responsibility of maintenance and repair, the Association shall obtain a reliable, detailed estimate of the cost to reconstruct. Such cost may include professional fees and premiums for such bonds as the Board may desire or those required by any Institutional Lender involved.

14.9 ASSESSMENTS. If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction by the Association, or if, at any time during reconstruction or upon completion of reconstruction, the funds for the payment of the costs of reconstruction are insufficient, assessments shall be made against all Unit Owners in sufficient amounts to provide funds for the payment of such costs. Such assessments against Unit Owners for damage to Units shall be in proportion to the cost of reconstruction of their respective Units. Such assessments on account of damage to Common Elements shall be in proportion to the Unit Owner's share in the Common Elements. If, prior to commencement of any reconstruction, the insurance proceeds are not sufficient to defray the estimated costs of reconstruction, the special assessments against Unit Owners as herein provided must be paid in full before any of said insurance proceeds may be disbursed as hereinafter provided, so as to ensure there are sufficient funds currently available to complete said reconstruction. This requirement may be waived by the Association, but only upon approval by all Institutional Lenders.

14.10 EFFECT OF MORTGAGEE ENDORSEMENTS CONCERNING INSURANCE PROCEEDS. In the event a mortgagee endorsement has been issued relative to any Unit, the share of the Unit Owner shall be held in trust for the mortgagee as heretofore provided; provided, however, that no mortgagee shall have the right to determine or participate in the determination whether the damaged property shall be reconstructed, and no mortgagee shall have the right to apply, or have applied to, the reduction of its mortgage debt any insurance proceeds except distributions of such proceeds made to the Unit Owner and mortgagee where the responsibility for reconstruction is that of the Unit Owner. All mortgagees agree to waive the rights to said proceeds if the same are used pursuant to the provisions of this Declaration to pay for the restoration of such damage. The provisions hereof shall not effect the rights of the mortgagee, if any, to require any surplus proceeds to be distributed to it, over and above the amounts actually used for such restoration. All covenants contained herein for the benefit of any mortgagee may be enforced by such mortgagee. Nothing contained herein, however, shall be construed as relieving the Unit Owner from his duty to reconstruct damage to his Unit as heretofore provided.

14.11 AUTHORITY OF ASSOCIATION. In all instances herein, except when a vote of the membership of the Association or of a particular building is specifically required, all decisions, duties and obligations of the Association hereunder may be made by the Board. The Association and its members shall jointly and severally be bound thereby.

14.12 REPAIR OF LAND. In the event, pursuant to the provisions of Paragraph 14.5.b, the Condominium is not terminated but a building is not to be restored, the remains of said building shall

be razed and the land thereunder restored to a landscaped green area at the sole prorata expense of the Unit Owners who own Units in said building. The expense thereof may be deducted from any insurance proceeds payable on account of casualty to said building.

15. ASSESSMENTS; LIABILITY, LIEN AND ENFORCEMENT.

15.1 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.

15.2 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. 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.

15.3 WATER AND SEWER ASSESSMENT. The City of Virginia Beach will bill the Association for all water and sewer usage of the Condominium.

15.4 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.

15.5 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.

15.6 RESERVES.

a. **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.

b. **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 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.

15.7 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 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.

15.8 DEFAULT. The payment of any assessment or installation thereof due to the Association shall be in default if such payment is not paid to the Association when due. In the event that any Unit Owner is in default in payment of any assessments or installments thereof, owed to the Association, said Unit Owner shall be liable for all costs of collecting the same, including reasonable attorney's fees and court costs.

15.9 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.

15.10 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 and reasonable attorney's fees incurred as an incident to the enforcement of said lien. 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.

15.11 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 \$10.00 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.

If a Unit Owner shall be in default in the payment of any assessment or any installment of an assessment, the Board may accelerate the assessments or installments thereof due during the balance of the fiscal year. Upon notice thereof to the Unit Owner, the accelerated assessment shall immediately become due upon the date stated in the notice, which shall not be less than fifteen (15) days after delivery of or the mailing of such notice to the Unit Owner.

15.12 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.

15.13 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.

15.14 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.

15.15 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 effect 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.

15.16 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.

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

16.1 DESTRUCTION. If it is determined because of the circumstances and in the manner provided in Paragraph 14 that the Condominium Property shall not be reconstructed, the Condominium will be terminated.

16.2 AGREEMENT. The Condominium may be terminated at any time by the approval in writing of all Unit Owners and all record owners of mortgages on Units.

If the proposed termination is submitted to a meeting of the Association, and if the approval of the owners of not less than eighty percent (80%) of the Common Elements and their Institutional Lenders is obtained, in writing, not later than sixty (60) days from the date of such meeting, then the approving Unit Owners (through the Association), shall have the option to buy all of the Units of the disapproving Unit Owners for the period of one hundred twenty (120) days from the date of such meeting. The vote of those Unit Owners approving the termination shall be irrevocable until the expiration of the option. Any Unit Owner voting against termination, or not voting, may, within fifteen (15) days from the date the vote was taken, change or cast his vote in favor of termination by delivering written notification thereof to the Secretary of the Association. The option shall be upon the following terms:

a. **EXERCISE OF OPTION.** The option shall be exercised by delivery, or the mailing by registered mail, of an agreement to purchase, signed by the Association, to each of the Unit Owners of the Units voting against termination. The agreement shall be subject to the purchase of all Units owned by Unit Owners not approving the termination.

b. **PRICE.** The sale price for each Unit shall be the fair market value as determined between the Unit Owner and the Association within thirty (30) days from the delivery of said agreement. In the absence of agreement on the price of any Unit, the price shall be determined by an appraiser appointed by the Chairman of the local Board of Realtors. A judgment of specific performance of the sale, at the price determined by the appraiser, may be entered in any court of competent jurisdiction.

c. **PAYMENT.** The purchase price shall be paid in cash.

d. **FORM.** The contract shall be in the form of the Contract for Sale and Purchase then in use in Virginia Beach, Virginia.

e. **CLOSING.** The sale of all Units shall be closed simultaneously and within thirty (30) days following the determination of the sale price of the last Unit to be purchased.

16.3 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 Public Records.

16.4 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%).

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

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

17. **AMENDMENTS.** Except as herein or elsewhere provided, this Declaration may be amended in the following manner:

17.1 **NOTICE.** Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting at which a proposed amendment is to be considered.

17.2 **PROPOSAL OF AMENDMENT.** An amendment may be proposed by either a sixty-six and two thirds percent (66-2/3%) vote of the entire Board of Directors of the Association, or by a sixty-six and two thirds percent (66-2/3%) vote of the members at a duly called and noticed meeting. Directors and members not present in person or by proxy at the meeting considering the amendment may express their approval in writing, provided such approval is delivered to the Secretary within ten (10) days after the meeting. Except as elsewhere provided, a resolution adopting the proposed amendment must be approved by either:

a. Not less than sixty-six and two thirds percent (66-2/3%) of the entire membership of the Board of Directors and by not less than sixty-six and two thirds percent (66-2/3%) of the votes of the entire membership of the Association; or,

b. Not less than ninety percent (90%) of the votes of the entire membership of the Association; or,

c. Until the first election of a majority of the directors of the membership other than Declarant, by all of the Directors.

17.3 **OMISSION OR ERROR.** 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.

17.4 **PROVISO.**

a. Except as otherwise provided in this document, no amendment shall alter a Unit Owner's percentage in the Common Elements, alter his proportionate share in the Common Expense or Common Surplus, change a Unit Owner's voting rights, or alter the basis for apportionment of assessment which may be levied by the Association against a Unit Owner without the written consent of the Unit Owner.

b. No amendment shall be passed which shall impair or prejudice the rights and priorities of any Institutional Lender without the written consent of the Institutional Lender affected.

c. No material amendment shall be passed without the prior written approval of the Institutional Lender having the maximum number of first mortgages on Condominium Units in the Condominium as provided in Paragraph 14.7 of the By-laws.

d. During the period when Declarant owns one or more Units, Declarant and thereafter the Association acting by its Board, may acting alone, amend the Condominium Instruments, to make any changes required by the Veteran's Administration, the Federal Housing Authority or other governmental or quasi-governmental agency in order to make the Units and Unit Owners eligible for mortgage loans for the programs of such agency.

18. **REMEDIES.**

18.1 **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: Any action to recover sums due for damages, injunctive, 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 ail injury to the Association, the managing agent, if any, Declarant or the other Unit Owners, and that such injury may be irreparable.

18.2 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.

18.3 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.

18.4 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".

18.5 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 Virginia Beach, 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.

18.6 APPOINTMENT OF AGENT; PROVISIO. Should suit be instituted, the Unit Owners or Occupants do hereby irrevocably appoint the Secretary of the Commonwealth of Virginia as their Agent for the acceptance of service of process should, at the time of such service of process, any such person not be residing in this Condominium and if service cannot be accomplished in any other reasonable fashion. The provisions hereof shall not be applicable to service upon the Declarant.

19. MISCELLANEOUS RIGHTS OF DECLARANT.

19.1 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.

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

20. **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: 4538 Bonney Road, Virginia Beach, Virginia 23462.

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

22. **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.

23. **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.

24. **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.

25. **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.

26. **MORTGAGEE RIGHTS.** A. During the Declarant control period: (i) the Declarant must provide a copy of all amendments to VA; and (ii) the Association may not make any Material Amendments or take any Extraordinary Actions as defined in subparagraphs B and C below without the approval of VA. The following rights and protections (including notice and approval rights) are granted to only those mortgagees who have provided written notice to the Board of Directors of their interest and requested rights under the Association documents ("Eligible Mortgagee". Rights granted to Eligible Mortgagees are as follows:

1. Right to inspect Association documents and records on the same terms as the members;
2. Notice of all Material Amendments to the Association documents;
3. Notice of any Extraordinary Actions of the Association;
4. Notice of any property loss, condemnation or eminent domain proceeding affecting the common areas resulting in losses greater than 10 percent of the annual budget or any unit insured by the Association in which the mortgagee has an interest;
5. Notice of termination, lapse or material modification of an insurance policy held by the Association;
6. Notice of any default by an owner of a unit subject to a mortgage held by the eligible mortgagee in paying assessments or charges to the Association which remains unsecured for sixty consecutive days;
7. Notice of any proposal to terminate the declaration or dissolve the Association at least 30 days before any action is taken;
8. Right of a majority of the eligible mortgagees to demand professional management; and
9. Right of a majority of the eligible mortgagees to demand an audit of the Association's financial records.

B. A Material Amendment includes adding, deleting or modifying any provision regarding the following:

1. Assessment basis or assessment liens;
2. Any method of imposing or determining any charges to be levied against individual Unit Owners;
3. Reserves for maintenance; repair or replacement of common area improvements;
4. Maintenance obligations;
5. Allocation of rights to use common areas;
6. Any scheme of regulation or enforcement of standards for maintenance, architectural design or exterior appearance of improvements on units;
7. Reduction of insurance requirements;
8. Restoration or repair of common area improvements;
9. The addition, annexation or withdrawal of land to or from the project;
10. Voting rights;
11. Restrictions affecting leasing or sale of a unit; or
12. Any provision which is for the express benefit of mortgagees.

C. An Extraordinary Action includes:

1. Merging or consolidating the Association (other than with another nonprofit entity formed for purposes similar to the subject Association);
2. Determining not to require professional management if that management had been required by the Association documents, a majority of eligible mortgagees or a majority vote of the members;
3. Expanding the Association to include land not previously described as additional land which increases the overall land area of the project or number of units by more than 10 percent;
4. Abandoning, partitioning, encumbering, mortgaging, conveying, selling or otherwise transferring or relocating the boundaries of common areas (except for (i) granting easements which are not inconsistent with or which do not interfere with the intended common area use; (ii) dedicating common area as required by a public authority; (iii) limited boundary-line adjustments made in accordance with the provisions of the declaration or (iv) transferring common area pursuant to a merger or consolidation with a nonprofit entity formed for purposes similar to the subject Association);
5. Using insurance proceeds for purposes other than construction or repair of the insured improvements; or
6. Making capital expenditures (other than for repair or replacement of existing improvements) during any period of 12 consecutive months costing more than 20 percent of the annual operating budget).

All amendments of the types mentioned in Subparagraph C above shall require the approval of Eligible Mortgagees who represent at least 51.0% of the votes of the unit estates that are subject to mortgages held by the Eligible Mortgagees (FNMA Requirement).

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.

IN WITNESS WHEREOF, the Declarant has executed this Declaration on this 2nd
day of December, 2015.

SPENCE CROSSING RESIDENTIAL, INC.,
a Virginia corporation

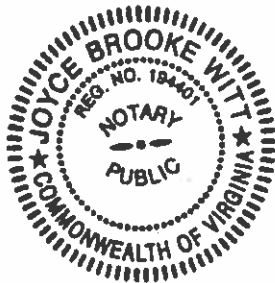
By: Helen E. Dragas
Helen E. Dragas, President

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

The foregoing instrument was acknowledged before me this 2nd day of December
2015, by Helen E. Dragas, President of Spence Crossing Residential, Inc., a Virginia
corporation, on behalf of the Corporation.

Joyce Brooke Witt
Notary Public

My commission expires: 11/30/2019
Notary Registration Number: 194401
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**EXHIBIT A
SUBMITTED LAND**

**HALSTEAD AT SPENCE CROSSING, A CONDOMINIUM
PHASE 1 – VIRGINIA BEACH, VIRGINIA**

ALL THAT certain lot, piece or parcel of land situate, lying and being in the City of Virginia Beach, Virginia, and known, numbered and designated as "Phase 1" as shown on plat entitled "Exhibit C-1 Plat of Phase 1, Halstead at Spence Crossing, a Condominium, Virginia Beach, Virginia" dated September 12, 2015, prepared by Rouse-Sirine Associates, Ltd.; said property being more particularly described as follows:

Beginning at a point being the northwestern corner of Phase 1 at its intersection with Parcel B-1-D and from said point of beginning running along the concurrent boundary line of Phase 1 and Parcel B-1-D easterly along the arc of a curve having a radius of 893.50 feet, an arc distance of 15.74 feet to a point; thence continuing N 63°32'18" E 140.27 feet to a point; thence running easterly along the arc of a curve having a radius of 233.50 feet, an arc distance of 134.44 feet to a point; thence running S 82°10'18" E 105.20 feet to a point; thence turning and running S 07°49'42" W 124.50 feet to a point; thence turning and running N 82°10'18" W 86.57 feet to a point; thence continuing westerly along the arc of a curve having a radius of 109.00 feet, an arc distance of 78.66 feet to a point; thence continuing southwesterly along the arc of a curve having a radius of 24.00 feet, an arc distance of 34.42 feet; thence continuing southerly along the arc of a curve having a radius of 70.00 feet, an arc distance of 63.00 feet to a point; thence S 25°52'57" W 40.90 feet to a point; thence turning and running N 64°07'03" W 28.50 feet to a point; thence running westerly along the arc of a curve having a radius of 1,099.00 feet, an arc distance of 105.81 feet to a point; thence turning and running N 21°15'10" W 113.00 feet to a point; thence turning and running easterly along the arc of a curve having a radius of 986.00 feet, an arc distance of 50.63 feet to a point; thence turning and running N 24°11'41" W 92.50 feet to the point of beginning.

TOGETHER WITH a right of vehicular and pedestrian ingress and egress along Beckenham Boulevard to Salem Road as shown on the above-described plat.

**EXHIBIT C
ADDITIONAL LAND**

HALSTEAD AT SPENCE CROSSING, A CONDOMINIUM

PARCEL ONE:

ALL THAT certain lot, piece or parcel of land situate, lying and being in the City of Virginia Beach, Virginia, and known, numbered and designated as "Parcel B-1-A" as shown on plat entitled "Subdivision Plat of Spence Crossing (Instr. No. 20121221001461400) (MB 291, P 72) Virginia Beach, Virginia" recorded in the Clerk's Office of the Circuit Court of the City of Virginia Beach, Virginia as Instrument Number 20140812000748710. Said property being more particularly described as follows:

Beginning at a point in the eastern right-of-way line of Salem Road at the line dividing Parcel B-1-A and Parcel B-1-D as shown on the aforementioned recorded subdivision plat; thence from said Point of Beginning, leaving the eastern right-of-way line of Salem Road and running N80°27'02"E a distance of 155.00 feet to a point; thence running along a curve to the right having a radius of 2,645.29 feet and an arc distance of 19.70 feet said curve having a chord bearing N09°20'11"W and a chord distance of 19.70 feet to a point; thence turning and running N78°17'16"E a distance of 125.27 feet to a point; thence running along a curve to the left having a radius of 893.50 feet and an arc distance of 206.18 feet said curve having a chord bearing N71°24'23"E and a chord distance of 205.72 feet to a point; thence turning and running N63°32'18"E a distance of 140.27 feet to a point; thence running along a curve to the right having a radius of 233.50 feet and an arc distance of 136.44 feet said curve having a chord bearing N81°05'18"E and a chord distance of 134.51 feet to a point; thence turning and running S82°10'18"E a distance of 105.20 feet to a point; thence running along a curve to the left having a radius of 291.50 feet and an arc distance of 209.66 feet said curve having a chord bearing N77°13'25"E and a chord distance of 205.17 feet to a point; thence turning and running N56°37'09"E a distance of 65.96 feet to a point; thence running along a curve to the right having a radius of 408.50 feet and an arc distance of 139.76 feet said curve having a chord bearing N66°25'12"E and a chord distance of 139.08 feet to a point; thence turning and running N76°13'16"E a distance of 792.86 feet to a point; thence turning and running S13°46'44"E a distance of 134.50 feet to a point; thence running along a curve to the left having a radius of 186.50 feet and an arc distance of 324.16 feet said curve having a chord bearing S63°34'24"E and a chord distance of 284.87 feet to a point; thence turning and running S23°21'53"E a distance of 124.49 feet to a point; thence running along a curve to the right having a radius of 405.12 feet and an arc distance of 31.34 feet said curve having a chord bearing S69°12'48"W and a chord distance of 31.33 feet to a point; thence turning and running S00°57'48"W a distance of 129.79 feet to a point; thence turning and running S48°41'08"E a distance of 317.93 feet to a point; thence turning and running S41°18'59"W a distance of 60.00 feet to a point; thence turning and running S48°41'01"E a distance of 95.00 feet to a point in the northern right-of-way line of South Independence Boulevard; thence turning and running along the northern right-of-way line of South Independence Boulevard S41°18'59"W a distance of 231.55 feet to a point; thence turning and running leaving the northern right-of-way line of South Independence Boulevard N76°11'06"W a distance of 524.42 feet to a point; thence turning and running N16°36'06"W a distance of 185.00 feet to a point; thence turning and running S66°41'20"W a distance of 439.32 feet to a point; thence turning and running S68°35'54"W a distance of 416.57 feet to a point; thence turning and running S67°53'54"W a distance of 614.84 feet to a point; thence turning and running N27°26'20"W a distance of 160.14 feet to a point; thence turning and running S66°09'46"W a distance of 223.66 feet to a point in the eastern right-of-way line of Salem Road; thence turning and running along the eastern right-of-way line of Salem Road along a curve to the right having a radius of 2,800.29 feet and an arc distance of 707.77 feet said curve having a chord bearing N16°47'26"W and a chord distance of 705.89 feet to a point; the Point of Beginning.

The above described Parcel B-1-A contains 1,751,541 square feet or 40.210 acres.

LESS AND EXCEPT Phase I containing 59,175 sq. ft. (1.359 ac.).

PARCEL TWO:

ALL THAT certain lot, piece or parcel of land situate, lying and being in the City of Virginia Beach, Virginia, and known, numbered and designated as "Parcel B-1-B" as shown on plat entitled "Subdivision Plat of Spence Crossing (Instr. No. 20121221001461400) (MB 291, P 72) Virginia Beach, Virginia" recorded in the Clerk's Office of the Circuit Court of the City of Virginia Beach, Virginia as Instrument Number 20140812000748710. Said property being more particularly described as follows:

BEGINNING AT A POINT in the western right-of-way line of South Independence Boulevard at the terminus of a curve at the intersection of the southern right-of-way line of Princess Anne Road; thence from said Point of Beginning running along the aforementioned western right-of-way line of South Independence Boulevard S36°50'59"W a distance of 236.52 feet to a point; thence running along a curve to the left having a radius of 4,149.91 feet and an arc distance of 257.72 feet through a central angle of 03°33'30" said curve having a chord distance of 257.68 feet and a chord bearing of S35°04'16"W to a point; thence running along a curve to the right having a radius of 4,149.91 feet and an arc distance of 257.73 feet through a central angle of 03°33'30" said curve having a chord distance of 257.69 feet and a chord bearing of S35°04'13"W to a point; thence running along a curve to the right having a radius of 5,674.58 feet and an arc distance of 442.38 feet through a central angle of 04°28'00" said curve having a chord distance of 442.27 feet and a chord bearing of S39°05'00"W to a point; thence turning and running S41°18'59"W a distance of 27.95 feet to a point; thence turning and running, leaving the western right-of-way line of South Independence Boulevard N48°41'01"W a distance of 95.00 feet to a point; thence turning and running N48°41'08"W a distance of 317.93 feet to a point; thence turning and running N00°57'48"E a distance of 129.79 feet to a point; thence running along a curve to the left having a radius of 405.12 feet and an arc distance of 31.34 feet through a central angle of 04°25'56" said curve having a chord distance of 31.33 feet and a chord bearing of N69°12'48"E to a point; thence turning and running N23°21'53"W a distance of 41.00 feet to a point; thence running along a curve to the left having a radius of 270.00 feet and an arc distance of 63.05 feet through a central angle of 13°22'47" said curve having a chord distance of 62.91 feet and a chord bearing of N59°56'39"E to a point; thence turning and running N53°15'16"E a distance of 186.83 feet to a point; thence turning and running N36°44'44"W a distance of 634.26 feet to a point; thence turning and running N53°15'16"E a distance of 164.69 feet to a point; thence turning and running N17°28'58"W a distance of 486.61 feet to a point; thence turning and running N70°27'24"E a distance of 128.36 feet to a point; thence turning and running N73°15'33"E a distance of 184.95 feet to a point in the southern right-of-way line of Princess Anne Road; thence turning and running along the southern right-of-way line of Princess Anne Road, S53°05'02"E a distance of 321.83 feet to a point; thence running along a curve to the right having a radius of 3,759.72 feet and an arc distance of 210.76 feet through a central angle of 03°12'43" said curve having a chord distance of 210.73 feet and a chord bearing of S51°28'37"E to a point; thence running along a curve to the left having a radius of 3,879.72 feet and an arc distance of 124.26 feet through a central angle of 01°50'06" said curve having a chord distance of 124.25 feet and a chord bearing of S50°47'22"E to a point; thence running along a curve to the right having a radius of 929.00 feet and an arc distance of 93.52 feet through a central angle of 05°46'05" said curve having a chord distance of 93.48 feet and a chord bearing of S48°49'12"E to a point; thence running along a curve to the left having a radius of 947.00 feet and an arc distance of 108.45 feet through a central angle of 06°33'40" said curve having a chord distance of 108.39 feet and a chord bearing of S49°49'13"E to a point; thence turning and running S53°05'02"E a distance of 300.00 feet to a point; thence running along a curve to the right having a radius of 51.00 feet and an arc distance of 80.08 feet through a central angle of 89°57'59" said curve having a chord distance of 72.10 feet and a chord bearing of S08°05'53"E to a point in the western right-of-way line of South Independence Boulevard, the Point of Beginning.

The above described Parcel B-1-B contains 1,145,670 square feet or 26.301 acres.