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City of Virginia Beach
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Tina E. Sinnen, Clerk

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
SPENCE CROSSING HOMEOWNERS ASSOCIATION, INC.**

THIS DECLARATION made this 12th day of March, 2015, by SPENCE CROSSING RESIDENTIAL, INC., a Virginia corporation, being referred to hereinafter as the "Declarant" GRANTOR.

WITNESSETH:

RECITALS:

WHEREAS, the Declarant is the Owner of certain property ("Existing Property") in the City of Virginia Beach, Commonwealth of Virginia, which is described on attached Exhibit A on which the Declarant desires to develop into a residential community known as "SPENCE CROSSING" with open spaces and other common facilities for the benefit of said community; and

WHEREAS, the Declarant desires to provide for the preservation of the values and amenities in said community and for the maintenance of said open spaces and other common facilities; and, to this end, desires to subject the real property described Exhibit B to the covenants, conditions and restrictions, hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof; and

WHEREAS, the Declarant desires that such real property be subdivided into parcels for condominium development with units which will be individually owned and the Declarant desires that such open spaces and other common facilities shall remain available for the benefit of all members of the community; and

WHEREAS, the Declarant has deemed it desirable, for the efficient preservation of the values and amenities in said community to create an agency to which should be delegated and assigned the powers of maintaining and administering the community, property and facilities and administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, the Declarant has incorporated **SPENCE CROSSING HOMEOWNERS ASSOCIATION, INC.**, under the Non Stock Corporation Law of the State of Virginia for the purpose of exercising the aforesaid functions.

NOW THEREFORE, the Declarant, for itself, its successors and assigns, declares that the real property described in Section 2.01 hereof, is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions and restrictions hereinafter set forth.

GPINS: Parcel B-1-A: 1475-94-6766-0000
Parcel B-1-C: 1475-95-6633-0000

Parcel B-1- D: 1475-95-4187-0000

Prepared by & Return to: Howard R. Sykes, Jr. (VSB#15539), Sykes, Bourdon, Ahert & Levy, P.C., 281 Independence Blvd., 5th Floor, Virginia Beach, Virginia 23462-2989

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ARTICLE I - DEFINITIONS

Section 1.01. Definitions

The following words, phrases or terms when used in this Declaration or in any instrument supplemental to this Declaration shall, unless the context otherwise prohibits, have the following meanings:

- A. "Association" shall mean and refer to the **SPENCE CROSSING HOMEOWNERS ASSOCIATION, INC.**, its successors and assigns.
- B. "Association Property" means and includes the land and easements including the Common Area, areas on which a revocable license to use the property has been granted and personal property subjected to association ownership and all improvements thereon and all easements and rights appurtenant thereto intended for use in connection with the Association.
- C. "Common Area" shall mean all real property (including the improvements thereto) owned by the Association or which the Association has an easement upon for the common use and enjoyment of the owners.
- D. "Declaration" shall mean and refer to this document of Covenants, Conditions and Restrictions as it may from time to time be supplemented, extended, or amended in the manner provided for herein.
- E. "Lot" shall mean and refer to any portion of the Property (with the exception of Association Property as heretofore defined) under the scope of this Declaration and (i) identified as a separate parcel on the tax records of the City of Virginia Beach or (ii) a condominium unit created under a recorded declaration of condominium.
- F. "Declarant" shall mean and refer to **SPENCE CROSSING RESIDENTIAL, INC.**, a Virginia corporation, its successors and assigns.
- G. "Developer" shall mean a builder, contractor, investor or other person or entity who purchases an undeveloped lot or parcel for the purpose of constructing improvements thereon for resale to a public purchaser.
- H. "Member" shall mean and refer to each holder of a membership interest in the Association, as such interests are set forth in Article III of this Declaration.
- I. "Owner(s)" shall mean and refer to the record Owner, whether one or more persons or entities, of equitable or beneficial title (or legal title if same has merged) of any Lot. The foregoing does not include persons or entities who hold an interest in any Lot merely as security for the performance of an obligation. Except as stated otherwise herein, "Owner" shall not include one who has merely contracted to purchase a condominium unit. For the purpose of the enforcement of the rules and regulations of

the Association including but not limited to this Declaration and the Bylaws, "Owner" shall also include the family, invitees, licenses, and lessees of any Owner, together with any other person or parties holding any possessory interest granted by such Owner in any Lot.

- J. "Property" shall mean and refer to all properties as are subject to this Declaration.
- K. "FHA" and "VA" shall mean the Federal Housing Administration and the Department of Veterans Affairs, respectively.
- L. "Public Purchaser" shall mean any person or other legal entity who becomes an Owner of any Lot within SPENCE CROSSING.
- M. "Single Family Residence" shall refer to a structure containing a dwelling located on a separate unit where the individual dwellings are not attached or a Unit in an attached structure containing multiple units.
- N. "Subdivision Plat" shall mean a recorded plat covering any or all the property referred to in this Declaration or annexed thereto.
- O. "Tract" means any parcel of land which becomes part of SPENCE CROSSING and which contains a subdivision of one or more Lots or a condominium and may or may not contain Common Area.
- P. "Tract Declarations" shall mean any Declarations of Covenants, Conditions and Restrictions which may be recorded by the Declarant, its successors or assigns, relating to all or part of SPENCE CROSSING, whether such documents are referred to as a Declaration, Amendment or supplement, which document may amend the Declaration or subject additional Tracts to the scheme to this Declaration, both as provided in this Declaration.
- Q. "Unit" means a portion of a condominium designed and intended for individual ownership and use.
- R. "Visible from Neighboring Property" shall mean, with respect to any given object, that such object is or would be visible to a person six (6) feet tall, standing on any part of such neighboring property at an elevation no greater than the elevation of the base of the object being viewed.

ARTICLE II - PROPERTY SUBJECT TO THIS DECLARATION ADDITIONS THERE TO

Section 2.01. Property.

The real property which is, and shall be, held, transferred, sold, conveyed and occupied subject to this Declaration is located in the City of Virginia Beach and State of Virginia, all

of which property shall be hereinafter referred to as "Property". The real property initially subject to this Declaration is known and described in Exhibit B attached hereto.

Section 2.02. Additional Property.

Other lands ("Additional Property") in addition to the lands described in Exhibit B, may become subject to this Declaration in the following manner:

- A. Lands added by Declarant without consent of Owners. The Declarant may, without the consent of Lot Owners, within fifteen (15) years of the date of recording of this Declaration, being within the scope of this Declaration add all or any portion of the lands described in Exhibit A of this Declaration.
- B. Lands added with consent of Owners. The Owners of any lands who desire to add such lands to the scope of this Declaration and to subject them to the jurisdiction of the Association may do so upon (i) approval in writing of the Association pursuant to a vote of its Members as provided in its By-Laws and (ii) an amendment to this Declaration.

Such additional lands shall be added to this Declaration by the recording of a supplemental extending declaration which shall extend the scope of the covenants and restrictions of this Declaration to such additional lands and thereby subject to such additional lands and the owners of such lands to assessments for their fair share of the expenses of the Association. The supplemental extending declaration may also contain such complementary additions and modifications of the covenants and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added properties and as are not inconsistent with the provisions of this Declaration.

Section 2.03. Withdrawal of Property.

The Declarant without the consent of Lot Owners may withdraw all or any part of the land which has been submitted to the jurisdiction of the Association by recording of a supplemental declaration describing the property being withdrawn. The withdrawal shall be effective upon recordation of the supplemental declaration.

Section 2.04. Mergers.

Upon a merger or consolidation of this Association with another Association as provided in its Articles of Incorporation of Bylaws, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated Association or, alternatively, the properties, rights and obligations of another Association may, by operation of law, be added to the properties, rights and obligations of this Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants and restrictions established by this Declaration within the Property together with the covenants, conditions and restrictions established upon any other properties. No such merger or consolidation, however shall effect any revocation, change or addition to the covenants established by this Declaration within the Property except as hereinafter provided.

ARTICLE III - THE ASSOCIATION STRUCTURE, MEMBERSHIP, VOTING RIGHTS AND DIRECTORS

Section 3.01. Formation of the Association.

Pursuant to the Non Stock Corporation Law of Virginia, the Declarant has formed SPENCE CROSSING Homeowners Association, Inc. (the "Association"), to own, operate, and maintain the Common Area, enforce the covenants, conditions and restrictions set forth in this Declaration and to have such other specific rights, obligations, duties and functions as are set forth in this Declaration and in the Articles of Incorporation and Bylaws of the Association, as the same may be amended from time to time. Subject to the additional limitations provided in this Declaration and the Articles of Incorporation, the Association shall have all the powers and be subject to the limitations of a non-stock corporation as contained in the Virginia Non-Stock Corporation Law as the same may be amended from time to time.

Section 3.02. Membership.

The Association shall have as members only Owners and the Declarant. All Owners shall, upon becoming such, be deemed automatically to have become members and there shall be no other qualifications for membership. Membership shall be appurtenant to, and shall not be separated from the ownership of any of the interests described in the definitions of the words "Owner" and "Declarant" as found in Article I of this Declaration.

The Association shall have two (2) classes of voting membership with voting privileges as stated in the Articles of Incorporation.

Upon the termination of Declarant membership, no action may be taken by the Association which would serve to impede the installation of Common Area facilities substantially represented in plans of public record particularly as they may have been required and/or approved by public agencies except with the assent of such principal parties including the Declarant, the Federal Housing Administration, the Department of Veterans Affairs, and the City of Virginia Beach.

Section 3.03. Voting: Mortgagee's Control of Votes.

Each owner shall be entitled to one (1) vote for each Lot owned in any portion of the Property covered by this Declaration and the Declarant shall have three votes for each Lot owned in any portion of the Property covered by the Declaration or which may be created on the property described on Exhibit A. There are 1,043 Lots on the property initially covered by this Declaration which may be created from property on Exhibit A. Accordingly, there shall initially be a maximum of 3,129 votes in the Association. Notwithstanding anything to the contrary which may be contained in this Declaration, if a mortgage lender whose name appears on the records of the Association (i) holds a mortgage on a Lot which prohibits the mortgagor from voting contrary to the interest of the mortgage, and (ii) notifies the Association prior to the date or initial date of canvass on the vote to be taken of its position on the matter being voted upon, a vote of the Lot Owner contrary to the position of such mortgage lender shall not be counted in such canvass.

Section 3.04. Interest in More Than One Lot.

If any person or entity owns or holds more than one Lot such Owner shall be entitled to the appropriate number of votes for each Lot.

Section 3.05. Lots Owned or Held by More than One Person or by a Corporation.

When any Lot is owned or held by more than one person as tenants by the entirety, in joint or in common ownership or interest, such owners shall collectively be entitled to only that number of votes prescribed therein for such Lot and if such owners cannot jointly agree as to how that vote should be cast, no vote shall be allowed with respect to such Lot. In the case of a corporate Owner, votes may be cast by an appropriate officer of such corporation.

Section 3.06. Holder of Security Interest Not a Member.

Any person or entity which holds an interest in a Lot merely as security for the performance of an obligation shall not be a Member.

Section 3.07. Assigning Right to Vote.

The Declarant may assign its membership in the Association to any person, corporation, association, trust or other entity, and such assignee of such membership, may make successive like assignments.

Any other Owner shall be entitled to assign his right to vote, by power of Attorney, by proxy or otherwise, provided that such assignment is made pursuant to the Bylaws of the Association. The Bylaws may require that the assignment specify the meeting or issue to which the assignment applies.

Section 3.08. Meeting and Voting Regulations.

The Board of Directors of the Association may make such regulations, consistent with the terms of this Declaration, the Articles of Incorporation and Bylaws of the Association and the Not for profit Corporation Law of the State of Virginia as it may deem advisable for any meeting of its Members, in regard to proof of membership in the Association, evidence of right to vote, the appointment and duties inspectors of votes, registration of Members for voting purposes, the establishment of representative voting procedures, the establishment of extended canvass periods for voting and such other matters concerning the conduct of meetings and voting as it shall deem appropriate.

Section 3.09. Selection of Directors.

The nomination and election of Directors and the filling of vacancies on the Board of Directors shall be governed by the Bylaws of the Association.

Section 3.10. Powers and Duties of Directors.

The powers and duties of the Board of Directors shall be as set forth in the Bylaws of the Association.

Section 3.11. Indemnification of Officers and Directors.

Every director and officer of the Association shall be, and is hereby, indemnified by the Association against all expenses and liabilities, including fees of counsel, reasonably incurred by or imposed upon such director or officer in connection with any proceeding to which such officer or director may be a party, or in which such officer or director may become involved, by reason of being or having been a director or officer of the Association, or, any settlement thereof, whether or not such person is a director or officer at the time such expenses are incurred, except in such cases wherein the director or officer is adjudged guilty of willful misfeasance or malfeasance in the performance of duties; provided, that in the event of a settlement, the indemnification herein shall apply only when the board approves such settlement as being in the best interests of the Association. The foregoing right of indemnification shall be in addition to, and shall not be exclusive of, all rights to which each such director or each such officer may otherwise be entitled.

Section 3.12. Declarant's Written Consent Necessary for Certain Actions Taken by Board of Directors.

Notwithstanding anything to the contrary contained in this Declaration, so long as the Declarant or its successor owns or has under construction on lands described in Exhibit A to this Declaration (whether or not covered by this Declaration) lots equal in number to 25% or more of the number of Lots to which title has been transferred to purchasers for occupancy, but in no event more than ten years from the date of recording of the Declaration, the Board of Directors may not, without the Declarant's written consent (i) except for necessary repairs or any repairs required by law, make any addition, alteration, or improvement to Association Property; (ii) assess any amount for the creation of, addition to or replacement of all or part of a reserve, contingency or surplus fund in excess of an amount equal to the proportion of the then existing budget which the amount of reserves in the initial budget of estimated expenses for the relevant phase or phases of the development; (iii) hire any employee in addition to the employees, if any, provided for in the initial budget of the Association, except as may be necessary to maintain the quantity or quality of services or maintenance; (iv) enter into any service or maintenance contract for work not provided for in the initial budget of the Association, except for service or maintenance to facilities not in existence or not owned by the Association at the time of the first conveyance of a Lot; (v) borrow money on behalf of the Association; or (vi) reduce the quantity or quality of services or maintenance of the Property. Until ten years from the date of recording of this Declaration, if the Declarant owns or has under construction on lands described in Exhibit A to this Declaration (whether or not such lands are then subject to this Declaration) lots equal in number to 25% or more of the number of Lots to which title has been transferred to purchasers for occupancy, this Section shall not be amended without the written consent of the Declarant.

ARTICLE IV - PROPERTY RIGHTS AND EASEMENTS

Section 4.01. Dedication of Association Property.

The Declarant intends to convey to the Association or the City of Virginia Beach, subsequent to the recordation of this Declaration, and subject to the provisions of this Declaration, certain tracts of land within the Property for the use and enjoyment of the Members. Said

tracts of land conveyed to the Association shall hereinafter be referred to as "Common Area". The Association must accept any such conveyance made by the Declarant provided such conveyance is made without consideration. After installation, the Association shall maintain the signage, landscape areas, trees, plantings, storm water retention areas, drainage, easements, roads and other improvements.

Section 4.02. Right and Easement of Enjoyment in Association Property.

Every member (and such Member's guests, licenses, tenants and invitees) shall have a right and easement of enjoyment in and to all Association Property, subject however, to the rights of the Association as set forth in Section 4.03 herein and the right of the Declarant as set forth in Section 4.04 herein. Such easements shall be appurtenant to and shall pass with the interests of an owner, as defined in Article I, Section 1.01 hereof.

Section 4.03. Rights of Association.

With respect to the Association Property owned, and in accordance with the Articles of Incorporation and Bylaws of the Association, the Association shall have the right to:

- A. Promulgate rules and regulations relating to the use, operation and maintenance of the Association Property for the safety and convenience of the users thereof or to enhance the preservation of such facilities or which, in the discretion of the Association, shall serve to promote the best interest of the Members;
- B. Grant easements or rights of way to any public or private utility corporation, governmental agency, political subdivision, or adjoining property owner with or without consideration;
- C. Dedicate, sell, transfer, abandon, partition, or encumber (except for any transfer or encumbrance to a public utility or for other public purposes consistent with the intended use of such land by or for the benefit the members) all or any part of the land which it owns for such purposes and subject to such conditions as may be agreed to by the Association and the transferee;
- D. Enter into agreements, reciprocal or otherwise, with other homeowners' and residents' associations, condominiums and cooperatives for the use of, or sharing of facilities.

Section 4.04. Rights of Declarant.

With respect to Association Property, the Declarant shall have the right, until the completion of the construction, marketing and sale of all dwelling Lots to be constructed on lands described in Exhibit A to this Declaration to:

- A. Grant and reserve easements and rights of way for the installation, maintenance, repair, replacement and inspection of utility lines, wires, pipes and conduits, including, but not necessarily limited to, water, gas, electric, telephone, cable television and sewer.

- B. Connect with and make use of utility lines, wires, pipes, conduits and related facilities located on the Association Property.
- C. Use the Association Property for ingress and egress to those portions of the Property (as described in Section 2.01 of this Declaration) and any Additional Property added pursuant to this Declaration or the development of the adjoining property, Parcel B-1-B, Subdivision Plat of Spence Crossing.
- D. Operate a sales center and to have prospective purchasers and others visit such sales center and use certain portions of Association Property, including, but not necessarily limited to, the parking spaces; and
- E. Grant to itself or to others such easements and rights of way as may be reasonably needed for the orderly development of any adjoining property (Parcel B-1-B) or Additional Property added pursuant to this Declaration.

The easements, rights-of-way and other rights reserved herein shall be permanent, shall run with the land and shall be binding upon and for the benefit of the Association, the Declarant and its successors and assigns. With respect to its exercise of the above rights, the Declarant agrees (i) to repair any damages resulting within a reasonable time after the completion of development or when such rights are no longer needed, whichever first occurs, and (ii) until development has been completed, to hold the Association harmless from all liabilities which are a direct result of the Declarant's exercise of its rights hereunder. This Section shall not be amended without the written consent of the Declarant.

Section 4.05. Maintenance of Association Facilities.

In order to preserve and enhance the property values and amenities of the Property, the Association shall at all times maintain the facilities in good repair and condition and shall operate such facilities in accordance with high standards.

Section 4.06. Right of Association to Contract Duties and Functions.

The Association may contract with any person, corporation, firm, trust company, bank or other entity for the performance of its various duties and functions. Without limiting the foregoing, this right shall entitle the Association to enter into common management agreements with other associations, condominiums and cooperatives.

The Association shall at all times maintain professional management of Association duties and functions.

Section 4.07. Easements Reserved to Declarant for Benefit of Additional Property.

Easements are reserved herein over all Property covered by this Declaration for the benefit of lands described as Additional Property in Section 2.02 of this Declaration for the following purposes:

- A. Pedestrian and vehicular ingress and egress over roadways; and
- B. Use and connection with utility lines, drainage easements, storm water retention areas and related facilities including, but not necessarily limited to: telephone, water, gas, electric, sewer, cable television, and surface water drainage. This easement shall not include the right to consume any water, gas, or electricity for which individual Lot Owners are billed directly without the consent of the individual Lot Owners affected.

Section 4.8. Distribution of Condemnation Awards.

In the event all or part of the Association Property is taken in condemnation or eminent domain proceedings, the award from such proceedings shall be paid to the Association. The Board of Directors of the Association shall arrange for the repair and restoration of such Association Property and shall disburse the proceeds of such award to the contractors engaged in such repair and restoration in appropriate progress payments. If there shall be a surplus of such proceeds, or if the Board of Directors shall elect not to repair or restore the Association Property, then the proceeds shall be distributed in the same manner as insurance proceeds, in accordance with Article VIII of this Declaration.

The Board of Directors shall promptly send written notice of any pending condemnation or eminent domain proceeding to all institutional first mortgagees of Lots whose names appear on the books or records of the Association.

In the event of any dispute with respect to the allocation of the award, the matter shall be submitted to arbitration in accordance with the arbitration statutes of the State of Virginia.

Section 4.09. Maintenance of Storm water Facilities.

The Association shall maintain and perform all of the duties of the Declarant under any storm water management agreement entered into as a part of the development with the City of Virginia Beach. The Association shall also maintain the maintenance easement which surrounds the five lakes used as the storm water retention pond(s). The Association shall maintain the drainage easements running to the storm water retention ponds.

ARTICLE V - ASSESSMENTS AND RIGHT OF ASSOCIATION TO BORROW

Section 5.01. Imposition, Personal Obligation, Lien.

Each Lot Owner, by becoming an Owner by the acceptance of a deed or otherwise, whether or not such deed or any other instrument pursuant to which title was obtained so provides, shall be deemed to covenant and agree to pay to the Association: (a) annual assessments or charges for the maintenance and operation of (i) Association Property, (ii) the green areas; and (iii) traffic control signage and signage posts located within the bounds of SPENCE CROSSING ("Maintenance Assessments"), and (b) special assessments for capital improvements ("Special Assessments"); together hereinafter being referred to as "Assessments".

The Assessments shall be fixed, established and collected from time to time as hereinafter provided. Each Assessment (or installment payment thereof) together with such late charges, interest thereon and costs of collection as hereinafter provided, shall be a charge and continuing lien upon the Lot against which the Assessment is made and shall also be the personal obligation of the Owner of such Lot at the time the Assessment falls due.

Section 5.02. Purpose of Maintenance Assessment.

The purpose of the Maintenance Assessment shall be to fund the maintenance, preservation, operation and improvement of the Association Property and the promotion of the recreation, safety and welfare of the Members of the Association, including but not limited to, the payment of taxes on Association Property, any utility services to the Property which are commonly metered or billed, all casualty, liability and other insurance covering the Property, and the Association's officers, directors, Members and employees obtained pursuant to Article VIII of this Declaration, for the maintenance, repair and replacement of all facilities commonly servicing the Members, whether on or off the Lots, such as landscaped areas, and management. The amount of any reserves shall be not less than the reasonable requirements of existing or proposed lenders, holders and insurers of first mortgages of the Lots. The purpose of the Maintenance Assessment shall also be to fund the replacement of all traffic control signage and signage posts within the common areas of SPENCE CROSSING, as the same may be required by the appropriate official(s) of the City of Virginia Beach.

Section 5.03. Date of Commencement and Notice of Assessments and Changes in Annual Assessments.

The Assessments provided for herein shall commence on the day on which each Lot is conveyed to a Public Purchaser or on such date thereafter as determined by the Declarant. The first Assessments shall be adjusted according to the number of months remaining in the fiscal year as established by the Board of Directors and such Assessments shall thereafter be on a full year basis. The Board of Directors of the Association shall fix the amount of the Assessment against each Lot at least thirty (30) days in advance of the beginning of each fiscal year. The Assessments shall be due and payable semi-annually unless the Board of Directors establishes other periods for payment. Separate due dates may be established by the Board for partial annual Assessments as long as said Assessments are established at least thirty (30) days before due. Written notice of the annual Assessments shall be sent to every Owner subject thereto. At settlement the Public Purchaser shall pay a capital contribution to the operating reserve of the Association equal to one half of the annual assessment.

Section 5.04. Assessments for Specific Lots.

Once Assessments have commenced pursuant to Section 5.03 above, the Owner of each Lot subject to this Declaration shall be liable for the payment of full Maintenance Assessments, and Special Assessments.

Section 5.05. Basis for Maintenance Assessment.

Subject to Section 5.04 above, the annual Maintenance Assessment shall be the same for all Lots subject to this Declaration so that the number of Assessed Lots divided into the total amount which the Board of Directors shall deem to be necessary to fully fund the current

budget of estimated expenses and reserves (and any operating deficits previously sustained) shall determine the annual Maintenance Assessment for each Lot.

Section 5.06. Change in Basis of Assessments.

The Association may change the basis of determining the maintenance Assessment by obtaining the written consent of not less than two-thirds (2/3) of the total votes of all Lot Owners, excluding the Declarant, voting in person or by proxy, written notice of which change shall be sent to all Lot Owners and lending institution first mortgagees of Lots whose names appear on the records of the Association at least forty (40) days in advance of the date or initial date set for voting thereon, except that: (i) until fifteen (15) years from the date of recording of this Declaration, if the Declarant owns or has under construction on lands described in Schedules to this Declaration (whether or not such lands are then subject to this Declaration) lots equal in number to 15% or more of the number of all Lots to which title has been transferred to purchasers for occupancy, any change in the basis of Assessment which adversely affects a substantial interest or right of the Declarant with respect to unsold lots shall require the specific consent of the Declarant in writing, which consent shall not be unreasonably withheld; and (ii) no such change shall be made if lending institutions which together are first mortgagees on 33 1/3% or more of the Lots advise the Association in writing, prior to the date or initial date set for voting on the proposed change, that they are opposed to such change, which opposition must not be unreasonable. A written certification of any such change shall be executed by the Board of Directors and recorded in the Office of the Clerk of the Court.

Any change in the basis of Assessments shall be equitable and nondiscriminatory.

Section 5.07. Special Assessments for Capital Improvements.

In addition to the annual Maintenance Assessment, the Association may levy in any assessment year a Special Assessment, payable in that year and/or the following year only, for the purpose of defraying in whole or in part, the cost of any capital improvements, including without limitation, the construction, reconstruction or replacement of, or repair of a capital nature to, the Association Property or to any Property on the Lots which the Association has the responsibility to maintain, including the necessary fixtures and personal property related thereto, provided that for any Special Assessment for the construction (rather than the reconstruction or replacement of any capital improvement, and for any Special Assessment amounting to more than 20% of the then current amount of annual Maintenance Assessments, the consent is obtained of two-thirds (2/3) of the total votes of Lot Owners who are voting in person or by proxy at a meeting duly called to this purpose, written notice of which shall be sent to all voting Lot Owners at least thirty (30) days in advance, setting forth the purpose of the meeting. The Association shall establish one or more due dates for each payment or partial payment of each Special Assessment and shall notify each Owner thereof in writing at least thirty (30) days prior to the first such due date.

Section 5.08. Non-Payment of Assessment.

If an Annual Assessment, or installment thereof, is not paid on the due date, established pursuant to Section 5.03 hereof, then the balance of the annual assessment shall be deemed

delinquent. Any delinquent assessment payment, together with such interest thereon, accelerated future installments, if any, and cost of collection thereof as herein provided, shall thereupon become a continuing lien on the property which shall bind such property in the hands of the then Owner and such owner's heirs, devisees, personal representatives, successors and assigns. In addition to the lien rights, the personal obligation of the then Owner to pay such assessment shall remain such Owner's personal obligation and shall not pass to such Owner's successors in title unless expressly assumed by them.

If the Assessment or any installment thereof is not paid within ten (10) days after the due date, the Association may impose a late charge or charges in such amount or amounts as the Board of Directors deems reasonable, not to exceed 10% of the amount of such overdue Assessment or installment thereof, provided such late charges are equitable and uniformly applied.

If the Assessment or any installment thereof, is not paid within thirty (30) days after the due date, (i) the Association may impose a late charge or charges in such amount or amounts as the Board of Directors deems reasonable, not to exceed 10% of the amount of such overdue Assessment or installment thereof, and, if not paid within thirty (30) days after the due date; (ii) the Assessment shall bear interest from the due date at such rate as may be fixed by the Board of Directors from time to time, such rate not to exceed the maximum rate of interest then permitted by law; (iii) the Board of Directors may accelerate the remaining installments, if any, of such Assessment upon notice thereof to the Owner; and (iv) the Association may bring legal action against the Owner personally obligated to pay the same or foreclose the lien against the property, and the cost of such proceedings, including reasonable attorneys' fees, shall be added to the amount of such Assessment, accelerated installments, if any, late charges and interest.

Once an Assessment is deemed delinquent as described above, any payments received from the Owner shall be applied in the following order: Attorney's fees, other costs of collection, late charges, interest, and then the delinquent Assessment or installments thereof beginning with the amounts past due for the longest period.

Dissatisfaction with the quantity or quality of maintenance services furnished by the Association shall, under no circumstances, entitle any Lot Owner to withhold or fail to pay the Assessments due to the Association for the Lot or Lots owned by such Owner.

There is hereby created a lien, with power of sale, on each and every Lot within the Development to secure payment to the Association of any and all assessments levied against any and all owners of such Lots under the Restrictions, together with interest thereon. If any assessment remains delinquent for thirty (30) days the Association may elect to record in the deed records a lien on behalf of the Association against the Lot of the defaulting Owner in the appropriate Clerk's Office. Such a claim of lien shall be executed by any officer or managing agent of the Association, and shall contain substantially the following information:

- (i) The name of the delinquent Owner;

- (ii) The legal description and street address of the Lot against which claim of lien is made;
- (iii) The total amount claimed to be due and owing for the amount of the delinquency, interest thereon, collection costs, and reasonable attorney's fees (with any proper offset thereof);
- (iv) That the claim of lien is made by the Association pursuant to this Declaration; and
- (v) That a lien is claimed against said Lot in an amount equal to the amount stated.

Upon recordation of a duly executed original or copy of such a claim of lien, and mailing a copy thereof to said Owner, the lien claimed therein shall immediately attach and become effective in favor of the Association as a lien upon the Lot against which such assessment was levied. Such a lien shall have a priority over all liens or claims subsequent to the recordation of the claim of lien thereof, except only tax liens for real property taxes on any Lot, assessments on any Lot in favor of any municipal or other governmental assessing body, and the liens which are specifically described hereinafter. Any such lien may be foreclosed by appropriate action in court or in the manner provided by law for the foreclosure of a realty mortgage or trust deed as set forth by the laws of the Commonwealth of Virginia, as the same may be changed or amended. The lien provided for herein shall be in favor of the Association and shall be for the benefit of all other Lot Owners. The Association shall have the power to bid in at any foreclosure sale and to purchase, acquire, hold, lease, mortgage, and convey such Lot. In the event such foreclosure is by action in court, reasonable attorney's fees, court costs, title search fees, interest, and all other costs and expenses shall be allowed to the extent permitted by law. Each owner, by becoming an Owner of a Lot in the Development, hereby expressly waives any objection to the enforcement and foreclosure of this lien in this matter.

Section 5.09. Notice of Default.

The Board of Directors, when giving notice to a Lot Owner of a default in paying Assessments, may, at its option, or shall, at the request of a mortgagee, send a copy of such notice to each holder of a mortgage covering such Lot whose name and address appears on the Board's records. The mortgagee shall have the right to cure the Lot owner's default with respect to the payment of said Assessments.

Section 5.10. Payment Designation.

Each Tract which becomes a part of SPENCE CROSSING is required to have either a homeowners association or a condominium association ("Tract Association") governing the particular Tract as may be applicable. The Tract Association maintains the common areas within the Tract and shall assess and collect assessments to pay for the maintenance, repair and replacement of the common areas and the improvements therein. The Association may

require the Tract Association to collect for the Association the assessments of The Association with the assessments of the Tract Association and to account and remit them to the Association. Each Tract Association shall be responsible for the payment of the assessments and any failure to pay may result in liens or suits being filed against the Tract Association and/or its members. Nothing herein shall release or waive the right of the Association, as herein stated to, collect directly from each Owner, to file suit, file liens or take such other action at law or in equity against the Owner for collection of assessments and other amounts due as the Association in its sole discretion may deem necessary.

Section 5.11. Right to Maintain Surplus.

The Association shall not be obligated in any calendar year to spend all the sums collected in such year by way of Maintenance Assessments or otherwise, and may carry forward as surplus any balances remaining; nor shall the Association be obligated to apply any such surpluses to the reduction of the amount of the Maintenance assessments in the succeeding year, but may carry forward from year to year such surplus as the Board of Directors in its absolute discretion may determine to be desirable for the greater financial security and the effectuation of the purposes of the Association.

Section 5.12. Assessment Certificates.

Upon written demand of an Owner or lessee with respect to a Lot which he or she owns or any mortgagee or title insurer of such Lot, the Association shall, within a reasonable period of time, issue and furnish a certificate in writing signed by an officer or designee of the Association setting forth with respect to each Lot as of the date of such certificate, (i) whether the Assessments, if any, have been paid; (ii) the amount of such Assessments, including interest and costs, if any, due and payable as of such date; and (iii) whether any other amounts or charges are owing to the Association, e.g. for the cost of extinguishing a violation of this Declaration. A reasonable charge, as determined by the Board of Directors, may be made for the issuance of such certificates. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with regard to any matter therein stated as between the Association and any bona fide purchaser, or title insurer of, or lender on the Lot on which such certificate has been furnished.

Section 5.13. Subordination of Assessment Lien to Mortgages.

The lien of the Assessments provided for herein shall be subordinate to the lien of any first mortgage of record now or hereafter placed upon any Lot subject to such Assessments; provided, however, that such subordination shall apply only to the Assessments which have become due and payable prior to a sale or transfer of such Lot pursuant to a decree of foreclosure. Such sale or transfer shall not relieve such property from liability for any Assessments thereafter becoming due, nor from the lien of any such subsequent Assessment.

Section 5.14. Right to Borrow and Mortgage.

In order to fulfill the purposes set forth herein, the Association may borrow funds from any recognized lending institution, and in conjunction therewith mortgage its properties. The amount, terms, rate or rates of all borrowing and the provisions of all agreements with note holders shall be subject solely to the discretion, except that (i) any member of the Board of

Directors of the Association who has been elected or appointed by the Declarant shall not be permitted to vote affirmatively for any borrowing and the quorum of the Board of Directors in any such vote shall be a majority of those Directors not elected or appointed by the Declarant; and (ii) any consent of the Declarant as required by Section 3.12 of this Declaration must be obtained.

Section 5.15. Repayment of Monies Borrowed.

In order to secure the repayment of any and all sums borrowed from time to time, the Association is hereby granted the right and power to:

- A. Assign and pledge all revenues received and to be received by it under any provision of this Declaration including, but not limited to, the proceeds of the maintenance assessments hereunder;
- B. Enter into agreements with note holders with respect to the collection and disbursements of funds, including, but not limited to, agreements wherein the Association covenants to:
 - (1) Assess the maintenance assessments on a given day in each year and to assess the same at a particular rate or rates;
 - (2) Establish sinking funds and/or other security deposits;
 - (3) Apply all funds received by it first to the payment of all principal and interest on such when due, or to apply the same to such purpose after providing for costs of collection;
 - (4) Establish such collection, payment and lien enforcement procedures as may be required by the noteholders;
 - (5) Provide for the custody and safeguarding of all funds received by it.

ARTICLE VI - LAND USE CLASSIFICATIONS, PERMITTED USES AND RESTRICTIONS

Section 6.01. Land Use Classifications.

As each Tract or portion thereof within SPENCE CROSSING is developed and annexed, the use classifications, restrictions, easements, rights of way, and other matters including new or different uses and restrictions thereof, including any number of subclassifications thereof for any special uses, shall be fixed by the Declarant in any Tract Declaration which may be recorded for that Tract. In exercising such authority as granted herein, Declarant shall not impose any new land use classifications or new restrictions which are not generally in consonance with existing uses and restrictions applicable to SPENCE CROSSING. When property is annexed to SPENCE CROSSING the use classifications thereof shall be established by the Tract Declaration covering said Property. No restrictive covenants set

forth herein nor any other provisions shall in any way apply to land of Declarant not described herein nor annexed by following the procedures set forth herein.

Section 6.02. Permitted Use-Multi-Family, Condominium.

The permitted uses for all property in this classification within SPENCE CROSSING are multi-family housing consisting of buildings containing multiple units. Each Tract shall be governed by restrictions contained in the amendment adding the Tract to the Association and also by the restrictions, rules and regulations contained in the condominium declaration, bylaws and other documents governing the Tract.

Section 6.03. Permitted Use-Detached Single-Family, Condominium

The permitted uses for all property in this classification within SPENCE CROSSING are single-family housing consisting detached buildings containing a single unit. Each Tract shall be governed by restrictions contained in the amendment adding the Tract to the Association and also by the restrictions, rules and regulations contained in the condominium declaration, by laws and other documents governing the Tract.

Section 6.04. Commercial Use.

The permitted uses for all property in this classification within SPENCE CROSSING are commercial consisting of commercial uses including, but not limited to, retail, office, anchor tenant, hotel or other permitted uses under the City of Virginia Beach zoning ordinances. Each Tract shall be governed by restrictions contained in the amendment adding the Tract to the Association and also by the restrictions, rules and regulations contained in the condominium declaration, bylaws and other documents governing the Tract.

ARTICLE VII - INSURANCE AND RECONSTRUCTION

Section 7.01. Insurance to be Carried.

To the extent reasonably obtained and to the extent obtainable at a reasonable cost, and in such amounts as the Board of Directors of the Association shall determine to be appropriate unless otherwise required herein, the Board of Directors of the Association shall obtain and maintain (1) fire and casualty insurance on Common Areas, (2) liability insurance, (3) directors' and officers' liability insurance, (4) fidelity bond, and (5) workmen's compensation insurance, with coverage to be as follows:

1. Fire and Casualty. The policy shall cover the interests of the Association, the Board of Directors and all Lot Owners and mortgagees as their interests may appear. Coverage shall be for the full replacement value.
2. Liability. The liability insurance shall cover the directors and officers of the Association, the managing agent, if any, and all Owner's, but not the liability of Owners arising from occurrences on such Owner's Lot. The policy shall include the following endorsements: (i) comprehensive general liability (including libel, slander, false arrest and invasion of privacy); (ii) personal injury; (iii) medical payments; (iv) cross liability under which the rights of a named insurer under the policy shall not be

prejudiced with respect to such insured's action against another named insured; (v) "severability of interest" precluding the insurer from denying coverage to a Lot Owner because of negligent acts of the Association or any other Lot Owner; (vi) contractual liability; (vii) water damage liability; (viii) hired and non-owned vehicle coverage; (ix) liability for the property of others; (x) host liquor liability coverage with respect to events sponsored by Association; (xi) deletion of the normal products exclusion with respect to events sponsored by the Association.

Coverage may not be canceled or suspended (including cancellation for nonpayment of premium) or substantially modified without at least thirty (30) days written notice to the insured, including all known mortgagees of Lots or Lots as shown on the records of the Association. Any deductible provision shall apply only to each occurrence rather than to each item of damage. The Board of Directors shall review such coverage at least once each year.

Until the first meeting of the Board of Directors elected by the Owner, this public liability insurance shall be in a combined single limit of \$1,000,000.00 covering all claims for bodily injury and property damage arising out of a single occurrence

3. Directors' and Officers' Liability. The directors' and officers' liability insurance shall cover the "wrongful" acts of a director or officer of the Association. The policy shall be on a "claims made" basis so as to cover all prior officers and members of the Board of Directors, and any deductible provision shall apply only to each occurrence and not to each item of damage. If obtainable at reasonable cost, the policy shall not provide for "participation" by the Association or by the officers or directors of the Association.

Until the first meeting of the Board of Directors elected by the Owners, the directors' and officers' liability coverage shall be in the amount of \$250,000.00.

4. Fidelity Bond. The fidelity bond shall cover all directors, officers and employees of the Association and the Association's managing agent, if any, who handle Association funds. The bond shall name the Association as Obligee and be in an amount not less than the estimated maximum of funds, including reserves, in the custody of the Association or managing agent at any given time, but in no event less than a sum equal to three months' aggregate assessments on all Lots, plus the amount of reserves and other funds on hand. It shall contain waivers of any defense based on the exclusion of persons who serve without compensation from any definition of "employee" or similar expression, and shall provide that the bond may not be canceled or substantially modified (including cancellation for non-payment of premium) without at least thirty (30) days prior written notice to the Association and to all institutional first mortgagees of any Lot(s) whose names appear on the records of the Association.

Until the first meeting of the Board of Directors elected by the Owners, the coverage shall be \$10,000.00 for dishonest acts and \$5,000.00 for forgery. Notwithstanding the above, the Board of Directors shall, at the request of any Lot Owner, Lot mortgagee, or prospective Lot Owner or Lot mortgagee, increase the amount of such bond to meet the reasonable requirements of any existing or proposed holder or insured of any mortgage made or to be made on any Lot.

- 5 Workmen's Compensation. To the extent deemed reasonable and necessary by the Board of Directors, workmen's compensation insurance shall be obtained. Such insurance shall cover any employees of the Association, as well as any other person performing work on behalf of the Association.
- a. Other Insurance. The Board of Directors may also obtain such other insurance as it shall deem necessary or desirable from time to time including "umbrella" catastrophe coverage.
- b. No Liability for Failure to Obtain Above Coverage. The Board of Directors shall not be liable for failure to obtain any of the coverage required by this Section or for any loss or damage resulting from such failure if such failure is due to the unavailability of such coverage from reputable insurance companies, or if such coverage are so available only at demonstrably unreasonable cost.
- c. Deductible. The deductible, if any, on insurance policy purchased by the Board of Directors shall be a common expense, provided, however, that the Board of Directors of the Association may assess any deductible amount necessitated by the gross negligence or wantonly malicious act of an Owner against such Owner. The Association may pay the deductible portion for which such owner is responsible and the amount so paid, together with interest and costs of collection (including attorney's fees), shall be a charge and continuing lien upon the Lot involved, shall constitute a personal obligation of such Owner, and shall be collectible in the same manner as assessments under Article V of this Declaration.

Section 7.02. Restoration or Reconstruction After Fire or Other Casualty.

In the event of damage to or destruction of any Common Area insured through insurance obtained by the Board of Directors, as a result of fire or other casualty, the Board of Directors shall arrange for the prompt repair and restoration of the damaged property.

Any repair or restoration as hereinabove described shall be in substantial accordance with the plans and specifications of the damaged improvements as originally built.

ARTICLE VIII - ENFORCEMENT, AMENDMENT AND DURATION OF DECLARATION

Section 8.01. Declaration Runs With The Land.

Each person or entity acquiring an interest in a Lot or other portion of the Property or otherwise occupying any portion of the Property (whether or not the deed, lease or any other instrument incorporates or refers to the Declaration) covenants and agrees for him, her, or itself, and for his, her or its heirs, successors and assigns, to observe, perform and be bound by the provisions of the Declaration including personal responsibility for the payment of all charges and may become liens against his, her or its property and which become due while he, she or it is the owner thereof, and also covenants to incorporate this Declaration by reference in any deed, lease or other instrument further transferring an interest in such Lot or other portion of the Property.

Section 8.02. Enforceability.

- A. **Actions at Law or Suits in Equity.** The provisions of the Declaration shall bind the Property and shall be construed as running with the Land and shall be for the benefit of and be enforceable by the Declarant and the Association (being hereby deemed the agent for all of its Members) and by any Member or owner, their respective legal representatives, heirs, successors and assigns, by actions at law or by suits in equity. As it may be impossible to measure monetarily the damages which may accrue to the beneficiaries hereof by reason of a violation of the Declaration, any beneficiary hereof shall be entitled to relief by way of injunction or specific performance, as well as any other relief available at law or in equity, to enforce the provisions hereof.
- B. **Penalties and Fines.** In addition or as an alternative to an action at law or suit in equity, the Board of Directors of the Association may, with respect to any violation or of any committee of the Association, and after affording the alleged violator a reasonable opportunity to appear and be heard, establish monetary and non-monetary penalties, the amount and/or severity of which shall be reasonably related to the violation and to the aim of deterring similar future violations by the same or any other person. Monetary penalties imposed against a Lot Owner or occupant shall be deemed a Special Assessment against the Lot of such owner or on which the home occupied by such occupant is located and, as such, shall be a charge and continuing lien upon such Lot, shall constitute a personal obligation of the Lot Owner, and shall be collectible in the same manner as Assessments under Article V of this Declaration.

Section 8.03. No Waiver by Failure to Enforce.

The failure of any beneficiary hereof to enforce any provision of the Declaration shall in no event, be construed as a waiver of the right by that beneficiary or any other to do so thereafter, as to the same or a similar violation, occurring prior or subsequent thereto. No liability shall attach to the Declarant, the Association (or any officer, director, employee, Member, agent, committee or committee member) or to any other person or organization for failure to enforce the provisions of the Declaration.

**SPENCE CROSSING
HOMEOWNERS ASSOCIATION, INC.**

By: Joyce B. Witt
President

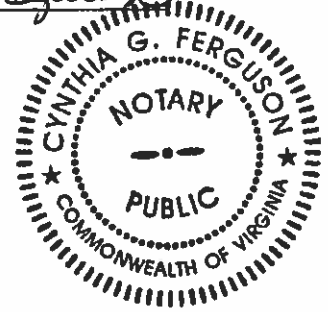
By: Joyce B. Witt
Secretary

COMMONWEALTH OF VIRGINIA;
CITY OF VIRGINIA BEACH, to-wit:

I, the undersigned, a Notary Public in and for the City and State aforesaid, do hereby certify that Joyce B. Witt, as President of Spence Crossing Homeowners Association, Inc., whose name as such is signed to the foregoing writing, has acknowledged the same before me this 12th day of March, 2015.

Cynthia G. Ferguson
Notary Public

My Commission Expires: 1-31-17
Notary Registration Number: 197430



COMMONWEALTH OF VIRGINIA;
CITY OF VIRGINIA BEACH, to-wit:

I, the undersigned, a Notary Public in and for the City and State aforesaid, do hereby certify that Joyce B. Witt, as Secretary of Spence Crossing Homeowners Association, Inc., whose name as such is signed to the foregoing writing, has acknowledged the same before me this 12th day of March 2015.

Cynthia G. Ferguson
Notary Public

My Commission Expires: 1-31-17
Notary Registration Number: 197430
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