

DECLARATION OF COVENANTS, EASEMENTS AND RESTRICTIONS

by

CONDOR PROPERTIES IN WILLIAMSBURG, L.L.C.

a Virginia limited liability company

for

Brandywyne

November 19, 1999

UPLOADED

3/6/2022

THIS DECLARATION OF COVENANTS, EASEMENTS AND RESTRICTIONS is made as of this ~19th day of November, 1999 by **CONDOR PROPERTIES IN WILLIAMSBURG, L.L.C.**, a Virginia limited liability company (the "Declarant").

RECITALS

A. Declarant is the owner of certain real estate located in the City of Williamsburg, Virginia on which Declarant intends to develop a single family residential community, the initial phase of which is shown and set out on the Plat of Subdivision entitled "Plat of Subdivision, Brandywyne at Williamsburg, Phase 1A, Lots 1 - 7" dated October 8, 1999 and made by AES Consulting Engineers (the "Subdivision Plat") and is more particularly described on Exhibit A hereto and which constitutes the initial Submitted Land (as herein defined). It is the intent of the Declarant to establish a general plan and uniform scheme of development and improvement of the Submitted Land.

B. To provide for the preservation and enhancement of property values and for the maintenance and care of common areas within the Submitted Land, to enhance the general health, safety and welfare of the property owners and residents therein, Declarant desires to subject the Submitted Land to the covenants, restrictions, easements, charges and liens hereinafter set forth, all of which are for the benefit of the Submitted Land and the owners of lots and units therein.

DECLARATION

NOW, THEREFORE, Declarant hereby declares that the Submitted Land described in Exhibit A hereto, is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges, liens and other provisions set forth herein, as the same may be amended or supplemented from time to time.

ARTICLE I DEFINITIONS

As used in this Declaration, the terms listed below shall have the indicated meanings:

"Additional Land" shall have the meaning set forth in Section 2.1.

"Applicable Zoning" means all zoning ordinances, conditions and City rules and regulations as may be applicable to the Submitted Land from time to time.

"Articles" means the Articles of Incorporation of the Brandywyne Owners Association, as the same may be amended from time to time.

"Association" means the Brandywyne Owners Association, a Virginia nonstock corporation, its successors and assigns.

"Association Documents" means this Declaration and all Supplemental Declarations together with all supplements or amendments thereto, and all rules, regulations and guidelines adopted hereunder or thereunder, the Articles and the Bylaws.

"Board of Directors" means the Board of Directors of the Association.

"Bylaws" means the Bylaws of the Association, as the same may be amended from time to time.

"Clerks Office" means the Clerk's Office for the Circuit Court for the City of Williamsburg and County of James City.

"Common Area means (i) all of the real estate specifically designated as "Common Area" on recorded plats of the Submitted Land, in any Supplemental Declaration or in any amendment to this Declaration or in any other instrument executed by Declarant and recorded in the Clerk's Office; and (ii) all other real property or easement interest therein and improvements or facilities now or hereafter owned by the Association which are intended to be devoted to the common use and enjoyment of the Owners, including the streets within the Submitted Land if the same are not dedicated to and accepted by the City and or the Virginia Department of Transportation and all grinder pumps providing sewer service to all or any part of the Submitted Land. The Common Area includes or may in the future include, without limitation, areas set aside for pedestrian paths and other recreational facilities intended to be used by the Owners.

"Common Expenses means all expenditures (other than expenditures for Limited Common Expenses) lawfully made and incurred on behalf of the Association, together with all funds determined by the Board of Directors of the Association to be necessary for the creation and maintenance of reserves pursuant to the Association Documents.

"City" means the City of Williamsburg, Virginia.

"Declarant" means Condor Properties in Williamsburg, L.L.C., a Virginia limited liability company, and in addition to or instead of Condor Properties in Williamsburg, L.L.C. as the case may be, any person or entity to whom Condor Properties in Williamsburg, L.L.C. has assigned its rights as "Declarant" hereunder by instrument recorded in the Clerk's Office as provided in Section 11.7 hereof.

"Declarant Control Period" means the period ending on the earlier of: (1) the tenth anniversary of the date of recordation of this Declaration or (2) the date seventy-five percent of the Lots permitted to be located on the Submitted Land and the Additional Land under the Applicable Zoning are owned by Owners other than the Declarant; (3) the date specified by the Declarant in a written notice to the Association that the Declarant Control Period is to terminate on that date; or (4) the end of the Development Period.

"Declaration" means this Declaration of Covenants, Easements and Restrictions, as the same from time to time may be supplemented or amended.

"Development Period" means the period of time that the Declarant is engaged in development or sales of the Submitted Land or in activities related thereto, during which time the Declarant is entitled to exercise certain rights under the Association Documents. When all the Submitted Land is owned by Owners other than the Declarant (or a lender holding rights under the Association Documents assigned to it by Declarant), and all the Declarant's bonds held by governmental agencies with respect to the Submitted Land have been released, then the Development Period shall end.

"Federal Mortgage Agencies" means those federal agencies, if any, which have an interest in the Submitted Land and which have notified the Board of Directors of such interest, such as the Federal Housing Administration, the Veterans Administration, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation, or their successors.

"General Assessments" shall have the meaning set forth in Section 5.4.

"Improvement" shall mean any building, shed, fence, wall, animal pen or shelter, exterior lighting, sign, antenna, clothesline, mailbox or mailbox support, improvement or other device or structure.

"Limited Common Area" means a portion of the Common Areas designated by Declarant pursuant to Section 4.3 for the exclusive use of some but less than all of the Owners.

"Limited Common Expenses" means expenses incurred by the Association benefiting one or more but less than all Lots as set forth in Section 5.5.

"Lot" means any portion of the Submitted Land which is designated as a separate lot on the Subdivision Plat. The term "Lot" shall not include any portion of the Submitted Land which at the time in question is not included in a recorded plat of subdivision, resubdivision or boundary line adjustment, nor shall "Lot" include Common Areas, public streets or property dedicated to and accepted by a public authority.

"Member" means every person or entity who holds membership in the Association.

"Mortgagee" means an institutional lender holding a first deed of trust on a Lot which has notified the Association of its status and requested all rights under the Association Documents.

"Owner" means the record holder, whether one or more persons or entities, of fee simple title to any Lot, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

"Special Assessment" shall have the meaning set forth in Section 5.6.

"Submitted Land" means all property currently subjected to this Declaration, together with such other real property as may from time to time be subjected in whole or in part to this Declaration by Declarant pursuant to Article II hereof.

"Supplemental Declaration" shall have the meaning set forth in Section 2.3 hereof.

"Virginia Code" shall mean the Code of Virginia (1950), as in effect on the first date of recordation of this Declaration and as amended from time to time thereafter. Except as otherwise expressly permitted herein, if any sections of the Virginia Code referred to in this Declaration are hereafter repealed or recodified, each such reference shall be deemed to apply to the section of the Virginia Code that is the successor to the previous section referred to herein, or, if there is no successor section, such reference shall be interpreted as if the section had not been repealed.

ARTICLE II

ADDITIONS TO THE SUBMITTED LAND

Section 2.1. Additional Land. Declarant contemplates the extension of this Declaration to the real estate described in Exhibit B hereto or portions thereof (the "Additional Land") Declarant shall not be obligated to bring all or any part of the Additional Land within the scheme of development established by this Declaration, and no negative reciprocal easement shall arise out of this Declaration so as to benefit or bind any portion of the Submitted Land or the Additional Land until such portion of the Additional Land is expressly subjected to the provisions of this Declaration in accordance with Section 2.2 below and then such portion of the Additional Land shall be subject to any additions, deletions and modifications to the provisions of this Declaration as are made pursuant to Section 2.2.

Section 2.2. Right to Subject Additional Land to Declaration. Declarant reserves the right, at its sole discretion and without the consent of any Owner, Mortgagee or the Association,

at such time or times as it shall determine on or before the fifteenth anniversary of the recordation of this Declaration, to subject the Additional Land, or such portions thereof as Declarant shall determine, together with improvements thereon and easements, rights and appurtenances thereunto belonging or appertaining, to the provisions of this Declaration in whole or in part. Any portion of the Additional Land which is not, on or before the fifteenth anniversary of the recordation of this Declaration, subjected to the provisions of this Declaration in whole or in part pursuant to this Section 2.2 and thereby constituted a part of the "Submitted Land", shall cease to be Additional Land. Each of the additions authorized pursuant to this Section 2.2 shall be made by Declarant's recordation in the Clerk's Office of an appropriate instrument describing the portion(s) of the Additional Land subjected to this Declaration, and containing such additional, amended or different covenants, easements and restrictions as Declarant determines may be necessary to reflect the different characteristics of such portion of the Additional Land. No negative reciprocal easement shall arise out of any additions, deletions or modifications to this Declaration made in the instruments which subject the Additional Land to this Declaration except as to the real estate expressly subject to such additions, deletions and modifications.

Section 2.3. Supplemental Declarations. In addition to subjecting the Additional Land to this Declaration as provided in Section 2.2, Declarant may, in its discretion, execute and record one or more supplemental declarations (each a "Supplemental Declaration") for the purpose of establishing certain additional, amended or different covenants, easements and restrictions (including without limitation a different level of assessments) applicable to different portions of the Submitted Land as Declarant determines may be necessary to reflect the different characteristics of any portion of the Submitted Land covered thereby; provided, however, no such Supplemental Declaration shall apply to any real estate previously submitted to this Declaration after conveyance of a Lot to an Owner other than Declarant without the consent of the Owner of the Lot subjected to the additional Supplement Declaration. No negative reciprocal easement shall arise out of any Supplemental Declaration so as to bind any real property not expressly subjected thereto.

Section 2.4. Power Not Exhausted by One Exercise, Etc. No exercise of the power granted Declarant hereunder as to any portion of the Additional Land shall be deemed to be an exhaustion of such power as to other portion(s) of the Additional Land not so subjected to the provisions hereof or to the provisions of a Supplemental Declaration. The discretionary right of Declarant to subject the Additional Land to the provisions of this Declaration or a Supplemental Declaration is not conditioned upon or subject to the approval of other Owners or Mortgagees and therefore the requirements set forth in Section 9.4 for amendments to this Declaration shall not apply to this Article II. The failure of Declarant to extend the provisions of this Declaration to the Additional Land or any portion(s) thereof shall not be deemed to prohibit the establishment of a separate scheme of development (including provisions substantially similar or identical to those contained herein) for such portion(s) of the Additional Land to which this Declaration is not extended.

Section 2.5. Development of Additional Land. The portion(s) of the Additional Land subjected to the provisions of this Declaration may contain additional Common Areas, and facilities to be owned and/or maintained by the Association.

ARTICLE III
BRANDYWYNE OWNERS ASSOCIATION

Section 3.1. Membership. Every Owner of a Lot shall be a member of the Association. Membership shall be appurtenant to and shall not be separated from ownership of any Lot. Upon the recordation of a deed to a Lot, the membership of the selling Owner shall cease and the purchasing Owner shall become a member of the Association.

Section 3.2. Classes of Membership. The Association shall have two classes of voting membership:

Class A. All Owners of Lots other than the Declarant during the Declarant Control Period shall be Class A Members.

Class B. Developer shall be the Class B Member. The Class B membership shall terminate upon the termination of the Declarant Control Period and Declarant shall thereupon be treated as a Class A Member as to each Lot then owned by Declarant.

Section 3.3. Voting Rights.

(a) Each Class A Member shall be entitled to cast one vote for each Lot owned.

(b) Declarant as the Class B Member shall have 120 votes. (being equal to one and one-half times the number of votes of the Class A Members when the Submitted Land and the Additional Land is fully developed under the Applicable Zoning); less the number of votes held by the Class A Members when a vote is taken. The intent of this voting scheme is to give the Declarant a majority of votes until 75% of the 80 planned Lots are conveyed to Owners other than Declarant. If the Applicable Zoning and/or Subdivision Plat is amended to permit a greater number of lots on the Submitted Land and the Additional Land than permitted on the date of recordation of this Declaration, the number of votes of the Class B Member set forth above prior to adjustment for Class A Members shall be increased by the number of votes equal to one and one-half times the number of Lots that could be created on the Submitted Land under Applicable Zoning, as amended.

Section 3.4. Suspension of Voting Rights. The Board of Directors of the Association may suspend the voting rights of any Member subject to assessment under this Declaration during the period when any such assessment or other charge due the Association shall be delinquent, but upon payment of such assessment or other charge the voting rights of such Member shall automatically be restored.

Section 3.5. Articles and Bylaws to Govern; Property Owners' Association Act. Except to the extent expressly provided in this Declaration, all the rights, powers and duties of the Association and the Members, shall be governed by the Articles and the Bylaws. The Articles provide, among other things, that the Class B member shall appoint the members of the Board of Directors until the Declarant Control Period terminates. However, in the event of any conflict or inconsistency between the provisions of this Declaration or any Supplemental Declaration and the provisions of the Articles or Bylaws, this Declaration and all Supplemental Declarations (to the extent applicable) shall control. In addition to all of the rights, powers and duties of the Association provided in this Declaration, the Association shall have all of the rights, powers and duties provided in the Property Owners' Association Act, Section 55-508 et seq of the Virginia Code, as the same may be amended from time to time (the 'Act')

ARTICLE IV COMMON AREA

Section 4.1. Obligations of the Association. The Association, subject to the rights of the Members set forth in this Declaration, shall be responsible for the maintenance, repair, management, operation and control, for the benefit of the Members, of the Common Area and the Limited Common Area, if any, and all improvements thereon (including fixtures, personal property and equipment related thereto) and shall keep the Common Area, the Limited Common Area and the improvements thereon in accordance with the requirements of the Applicable Zoning, this Declaration and any applicable Supplemental Declaration, and the Association shall keep the same in good, clean, and attractive condition, order and repair.

The Association shall be responsible for the management, control, repair and maintenance of all (a) street intersection signs, directional signs, temporary promotional signs, plantings, street lights, entrance features and/or landscaped islands, lighting, stone, wood or masonry wall features and/or related landscaping and bicycle/pedestrian paths erected, installed or planted in the Common Areas by the Declarant or the Association or located within: (i) easement areas reserved for the benefit of the Association by virtue of this Declaration, any Supplemental Declaration, any recorded subdivision plat of the Submitted Land, or otherwise; or (ii) street right-of-ways, whether public or private, immediately adjacent to the Submitted Lands; so long as such items are not maintained by Virginia Power, the City or the Virginia Department of Transportation at their expense and (b) grinder pumps serving all or any part of the Submitted Land. The costs of such management, control, repair and maintenance shall be a Common Expense

Section 4.2. Owners' Rights of Enjoyment and Use of Common Areas. Subject to the provisions of this Declaration and any applicable Supplemental Declaration and the Articles and Bylaws, every Owner shall have a right of enjoyment in and to the Common Areas which right of enjoyment shall be appurtenant to and shall pass with the title to every Lot and Parcel. The Common Areas shall be used by Owners only for the purpose or purposes for which the Common Areas may have been improved by Declarant or the Association and subject to any applicable restrictions in the Applicable Zoning. Any Common Area or Limited Common Area which has not been improved for a particular use is intended to remain in its natural condition until so improved, and any use thereof by an Owner shall not damage or disturb such natural condition or the enjoyment thereof by other Owners.

Section 4.3. Owners' Rights of Enjoyment and Use of Limited Common Areas. Declarant shall have the power, so long as Declarant has the right to add Additional Land under Article II hereof, to restrict the use of portions of the Common Areas owned by the Association in the nature of an easement for the exclusive use of the Owners of one or more specific lots by designating such portions of the Common Area as Limited Common Areas. The Declarant may either: (1) indicate the Limited Common Area appertaining to one or more Lots by depicting the Limited Common Area and the Lots to which it is appurtenant on a plat attached to a Supplemental Declaration; (2) label a portion of the Common Area as "Common Area that may be assigned as Limited Common Area" on a plat attached to a Supplemental Declaration and thereafter assign such Limited Common Area to one or more specific Lots by recording a unilateral amendment to the Supplemental Declaration setting forth the assignment and indicating the Limited Common Area being assigned and the Lots to which it is appurtenant; or (3) indicating that a Common Area is a Limited Common Area by narrative description in this Declaration or in a Supplemental Declaration. The Owners of Lots to which Limited Common Areas appertain shall have the exclusive right of enjoyment in and to such Limited Common Areas which right of enjoyment shall be appurtenant to and shall pass with the title to the Lots to which the Limited Common Areas appertain. The Limited Common Areas shall be used by such Owners only for the purpose or purposes for which the Limited Common Areas may have been improved by Declarant or the Association and subject to any applicable restrictions in the Applicable

Zoning. Any Limited Common Area which has not been improved for a particular use is intended to remain in its natural condition until so improved, and any use thereof by an Owner shall not damage or disturb such natural condition or the enjoyment thereof by other Owners entitled to use the same.

Section 4.4 Private Cul-de-Sacs.

(a) Definitions.

"Private Cul-de-Sacs" shall be the areas shown as "Private on subdivision or other plats of the Submitted Land recorded herewith or with a Supplemental Declaration.

"Affected Lots" shall be the Lots that adjacent to each Private Cul-de-sac that use the Private Cul-de-Sac for access to the dwellings constructed on such Lots.

(b) Designation as Limited Common Area. Each Private Cul-de-Sac is hereby designated as a Limited Common Area and shall appertain to the Affected Lots using that Private Cul-de-sac. The Owners of such Affected Lots shall have a perpetual non- exclusive easement over the Private Cul-de-Sac for access to the dwellings constructed on such Affected Lots which easement rights shall be appurtenant to and shall pass with the title to the Affected Lots.

(c) Restrictions.

(i) Private Cul-de-Sacs shall be used exclusively for the purpose of ingress and egress to the Affected Lots and for the construction and maintenance of utilities for the Affected Lots.

(ii) No act shall be performed by any Owner, member of such Owners' household or their tenants, guests or agents which would in any manner affect or jeopardize the free and continuous use and enjoyment of any other Owner of an Affected Lot in and to the Private Cul-de-Sac.

(iii) There shall be no parking within Private Cul-de-Sacs at any time except for delivery and/or emergency vehicles.

(d) Maintenance, Damage or Destruction. In the event that any Private Cul-de-sac needs maintenance or is damaged or destroyed (including deterioration from ordinary wear and tear and lapse of time):

(i) through the act or omission of an owner or member of such Owner's household or any of such Owner's agents, tenants or guests, (whether or not such act or omission is negligent or otherwise culpable, it shall be the obligation of such Owner to maintain, rebuild and repair the Private Cul-de-sac without cost to the other Owners of Affected Lots served by that Private Cul-de-Sac;

(ii) other than by the act or omission of an Owner for which such owner is responsible, it shall be the obligation of the Association to maintain, rebuild and repair such Private Cul-de-Sac at the joint and equal expense of the Owners of the Affected Lots. Such expense shall constitute a Limited Common Expense.

(e) Maintenance Reserve.

(i) For the purpose of meeting the cost of maintaining, rebuilding and repairing a Private Cul-de-sac, each Affected Lot shall be subject to an annual assessment as determined by the Board of Directors. The initial annual assessment shall be \$100.00. The amount of the annual assessment may be increased or decreased by the Board of Directors based on the estimated costs of maintaining, rebuilding and repairing the Private Cul-de-Sacs.

(ii) The failure of any Owner to pay the annual charge within thirty days from the start of each fiscal year shall result in an assessment being levied against such Owner's Lot.

(iii) The Association shall hold the annual charge in escrow and shall maintain a separate accounting for the escrowed funds for each Private Cul-de-Sac.

(iv) The escrowed funds will be disbursed at the request of the Owners of a majority of the Affected Lots served by a Private Cul-de-Sac. If escrowed funds are not adequate to pay all costs of maintenance, rebuilding and repair, all Owners of Affected Lots served by such Private Cul-de-Sac shall pay the excess costs equally.

(v) If the Owners of Affected Lots do not perform all necessary maintenance, rebuilding and repairs to any Private Cul-de-Sac, the Association may do so as their agent, using the funds escrowed for that Private Cul-de-sac and such individual assessments levied pursuant to this section and Section 5.5 of the Declaration against the Affected Lots served by such Private Cul-de-sac as may be needed to cover the cost of the work.

(f) Access Easements. The Owners of each of the Affected Lots on each Private Cul-de-Sac shall have a perpetual, non-exclusive easement for vehicular traffic over the portions of the Affected Lots shown and set out as "Access Easement" on subdivision or other plats of the Submitted Land recorded herewith or with a Supplemental Declaration to the extent necessary for reasonably convenient access to and from the driveways on the Affected Lots and the Private Cul-de-Sac, which easement rights shall be appurtenant to and shall pass with the title to the Affected Lots.

Section 4.5. General Limitations on Owners' Rights. The Owners' rights of enjoyment in the Common Areas and the Limited Common Areas shall be subject to the following:

(i) the right of the Association to establish reasonable rules and regulations for the use of the Common Areas and the Limited Common Areas and to charge reasonable admission and other fees for the use of recreational facilities within the Common Areas;

(ii) subject to the limitations imposed by the Act, the right of the Association to suspend the right of an Owner to use or benefit from any of the Common Areas or the Limited Common Areas for the period during which any assessment against his Lot is delinquent;

(iii) subject to the limitations imposed by the Act, the right of the Association to suspend the right of an Owner to use or benefit from any of the Common Areas or Limited Common Areas for any period during which any other violation by the Owner of this Declaration, a Supplemental Declaration or the rules and regulations promulgated by the Association pursuant to this Declaration remains uncorrected after the last day of a period established for correction by the Association (such period to be stated in a notice to the Owner together with a statement of the violation complained of and the manner of its correction) and for not more than sixty (60) days after such correction;

(iv) subject to the Bylaws, the right of the Association to mortgage any or all of the Common Areas or the Limited Common Areas for the purpose of making improvements or repairs thereto;

(v) subject to the Bylaws, the right of Declarant or the Association to grant utility easements across the Common Areas and the Limited Common Areas as provided in Article VIII;

(vi) subject to the Bylaws, the right of the Association to dedicate or transfer all or any part of the Common Areas or the Limited Common Areas to any public agency, authority or utility for such purposes and subject to such conditions as may be desired by the Association; and

(vii) all of the other easements, covenants and restrictions provided for in this Declaration and any Supplemental Declaration(s) applicable to the Common Areas and/or the Limited Common Areas.

Section 4.6. Delegation of Use. Any Owner may delegate his right of enjoyment to the Common Area or to the Limited Common Area to members of his family living on his Lot and to his guests, and he may transfer such right to his tenants, subject to such rules and regulations and fees as may be established from time to time by the Association.

Section 4.7. Damage or Destruction of Common Area or Limited Common Area by Owner. In the event any Common Area, Limited Common Area or improvement thereon is damaged or destroyed by an Owner, his tenants, guests, licensees, agents or members of his family, the Association may repair such damage at the Owner's expense. The Association shall repair such damage in a good and workmanlike manner in conformance with the original plans and specifications of the area or improvement involved, or as the Common Area, Limited Common Area or improvement may have been theretofore modified or altered by the Association, in the discretion of the Association. The cost of such repairs shall become a individual assessment on the Lot of such owner and shall constitute a lien on such Owner's Lot and be collectible in the same manner as other assessments set forth herein.

Section 4.8. Rights in Common Areas Reserved by Declarant. During the Development Period, Declarant shall have the right, but not the obligation, (i) to construct such improvements on the Common Area or Limited Common Area as it deems appropriate and as permitted by the Applicable Zoning for the common use and enjoyment of Owners, including, without limitation, directional signs, pedestrian trails, and recreational facilities, and (ii) to use the Common Area or Limited Common Area for other purposes not inconsistent with the provisions of this Declaration. Until such time as Declarant conveys a parcel of real estate constituting Common Area or Limited Common Area, as the case may be, to the Association, Declarant shall maintain such Common Area or Limited Common Area in good condition and repair in light of its use or intended use.

Section 4.9. Title to Common Area. Declarant may retain legal title to the Common Areas or Limited Common Areas, as the case may be, or portions thereof, but notwithstanding any provision herein to the contrary, Declarant shall convey each Common Area or Limited Common Area to the Association free and clear of all liens but subject to this Declaration and all other easements, conditions and restrictions of record prior to the end of the Development Period. Regardless of whether the Common Areas or Limited Common Areas actually have been conveyed by the Declarant, Owners and the Association shall have all the rights and obligations imposed by this Declaration, any Supplemental Declaration, the Articles and Bylaws with respect to the Common Areas and the Limited Common Areas from and after the date such Common Areas or Limited Common Areas are designated as such by recordation of an appropriate instrument in the Clerk's Office. The Association shall be liable from the date a deed or deeds to such Common Areas and Limited Common Areas is/are recorded in the Clerk's Office for payment of taxes, insurance and maintenance costs with respect thereto. Until the Common

Areas or Limited Common Areas are conveyed to the Association, the Declarant shall be liable for payment of taxes, insurance and maintenance costs with respect thereto.

ARTICLE V ASSESSMENTS

Section 5.1. Establishment of Assessments. There are hereby created assessments for expenses of the Association as set forth in the Association Documents and as may from time to time be specifically authorized by the Board of Directors of the Association to be commenced as to each Lot at the time set forth in Section 5.9. There shall be four types of assessments; (a) General Assessments to fund Common Expenses for the benefit of all Owners as described in Section 5.4 below; (b) assessments for Limited Common Expenses benefiting one or more but not all Owners as described in Section 5.5 below; (c) Special Assessments as described in Section 5.6 below; and (d) individual assessments as described in Section 5.7.

Section 5.2. Adoption of Annual Budget. The Board of Directors of the Association shall adopt a budget containing an estimate of the total amount of Association expenses, including any proposed capital expenditures for each fiscal year of the Association and shall establish in such budget the level of General Assessments and assessments for Limited Common Expenses for every Lot subject thereto. The Board of Directors shall send written notice of each annual budget and assessment level set forth therein to each Owner at least fifteen days in advance of adopting the same. In adopting the budget, the Board or Directors shall provide for reasonable reserves, including, without limitation, a general operating reserve, a contingency reserve, a replacement reserve and a reserve for the deductible on physical damage insurance policies. Reserves related to Limited Common Areas shall be separately reflected and funded only from assessments for Limited Common Expenses. There shall be no responsibility for the payment of assessments until the Board of Directors adopts the initial annual budget. The failure or delay of the Board of Directors to prepare or adopt a budget for any fiscal year after the initial annual budget is adopted shall not constitute a waiver or release in any manner of an Owner's obligation to pay assessments as herein provided whenever the same shall be determined and, in the absence of any annual budget or adjusted budget, each Owner liable for assessments shall continue to pay each periodic installment at the rate established for the previous fiscal year until the new or adjusted annual budget is adopted and new level of assessment established.

Section 5.3. Creation of the Lien and Personal Obligation for Assessments. Declarant, for each Lot owned within the Submitted Land, hereby covenants (subject to Sections 5.2, 5.7 and 5.10), and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant, to pay to the Association assessments as set forth in this Declaration, any Supplemental Declaration and in the Bylaws. The assessments, together with interest thereon, late charges and costs of collection including attorneys fees, shall be a continuing lien upon the Lot against which each such assessment is made in order to secure payment thereof and shall also be the personal obligation of the party who was the Owner of the Lot at the time the assessment fell due. No Owner may waive or otherwise avoid liability for the assessments provided herein by nonuse of the Common Areas, the Limited Common Areas or abandonment of his Lot. Each assessment that is not paid when due shall bear interest at the rate established by the Association, which rate shall not exceed the maximum rate permitted by applicable law. Each assessment that is not paid within fifteen (15) days of its due date shall, at the option of the Association, incur a late charge of in an amount established by the

Board of Directors from time to time. No Owner shall be liable for any part of the assessment against his Lot or Parcel and due subsequent to the date of recordation of a deed conveying in fee his Lot to a successor Owner.

Section 5.4. General Assessments. The Board of Directors shall establish and levy General Assessments to pay Common Expenses, including expenses for the management, maintenance, improvement, care, operation, renovation, repair and replacement of the Common Areas and improvements thereon and other property owned or acquired by the Association of whatever nature, for the discharge of all taxes and levies or other assessments against the Common Areas and improvements thereon and any other property owned or hereafter acquired by the Association, for the procurement and maintenance of insurance by the Association in accordance with the Association Documents, for the establishment of reserves with respect to the Association's obligations, for the discharge of such other obligations as may be imposed upon or assumed by the Association pursuant to the Association Documents, and for such other purposes as may be authorized by the Association Documents provided, however, that General Assessments shall not be used to pay Limited Common Expenses.

Section 5.5. Assessments for Limited Common Expenses. The Board of Directors may establish and levy assessments tot. - Limited Common Expenses only against the Lots benefited thereby in proportion to their relative General Assessment liability among themselves or based on usage, as deemed appropriate by the Board of Directors. Such Limited Common Expenses shall be determined as follows:

(i) Any expenses designated in a Supplemental Declaration as Limited Common Expenses to be paid by the Owners of specified Lots being submitted to the Declaration thereby;

(ii) Any expenses proposed by the Board of Directors or a specific group of Owners as Limited Common Expenses against a specific group of Lots and agreed to by Owners entitled to cast a majority of the total number of votes with respect to such Lots, assessed against such Lots as such Owners may agree or on the basis of their relative General Assessment liability among themselves;

(iii) Any expenses incurred in the maintenance, management, improvement, care, operation, renovation, repair or replacement of Limited Common Area or any reserves with respect thereto may be assessed only against the Lots served by such Limited Common Areas; and

(iv) Any service to individual Lots based on usage.

Section 5.6. Special Assessments. In addition to the General Assessments and assessments for Limited Common Expenses, the Board of Directors of the Association may levy a periodic special assessment if the purpose in doing so is found by the of Association. The lien of the assessments provided for in this Declaration may be perfected and enforced in the manner provided in Section 55-516 of the Virginia Code or as otherwise permitted by law. A statement from the Association showing the balance due on any assessment shall be prima facie proof of the current assessment balance and the delinquency, if any, due on a particular Lot. The Association may also bring an action at law against any Owner personally obligated to pay the same, either in the first instance or for deficiency following foreclosure or judicial sale, and interest, late charges and costs of collection including attorney's fees shall be added to the amount of such assessment and secured by the assessment lien.

Section 5.7, Individual Assessments. The Board of Directors may levy assessments against an owner's Lot individually:

- (a) for the costs of repairs pursuant to Section 4.7;
- (b) for the amount of any costs incurred by the Association pursuant to Sections 8.3 or 10.2. Each such assessment shall be due ten days after the notice thereof is given to the homeowner unless the notice specifies a later date.

Section 5.8. Date of Commencement of Annual Assessments. Subject to Section 5.2 and 5.11, the General Assessments and assessments for Limited Common Expenses provided for herein shall commence as to each Lot on the date of the recordation of the deed to such Lot to an Owner (other than Declarant) who purchases the same. Unless the Board of Directors of the Association amends the Bylaws to provide otherwise, the General Assessments shall be paid as provided in the Bylaws.

Section 5.9. Effect of Nonpayment of Assessments; Remedies of Association. The lien Of the assessments provided for in this Declaration may be perfected and enforced in the manner provided in Section 55-516 of the Virginia Code or as otherwise permitted by law. A statement from the Association showing the balance due on any assessment balance shall be prima facie proof of the current assessment balance and the delinquency, if any, due on a particular Lot. The Association may also bring an action at law against any Owner personally obligated to pay the same, either in the first instance or for deficiency following foreclosure or judicial sale and interest, late charges and costs of collection including attorney's fees shall be added to the amount of such assessment and secured by the assessment lien.

Section 5.10. Subordination of Lien to Mortgages. The lien upon each of the Lots securing the payment of the assessments shall have the priority set forth in Section 55-516A of the Virginia Code. The sale or transfer of any Lot shall not affect the assessment lien. Each Mortgagee who comes into possession of a Lot through a foreclosure or by deed in lieu of foreclosure, or any purchaser at a foreclosure sale, shall take the Lot free of any liens or claims for unpaid assessments against such Lot which accrue before such Mortgagee or person comes into possession of such Lot. Any such Mortgagee or person shall be liable for all assessments against such Lot accruing after such Mortgagee or person comes into possession of the Lot. All assessments which are extinguished by a foreclosure or deed in lieu of foreclosure pursuant to this Section shall become Common Expenses or Limited Common Expenses, as the case may be, and shall be assessed as such.

Section 5.11. Exempt Property. The following property subject to this Declaration shall be exempt from the assessments and liens created herein: (i) any property used as a sales or leasing center, model, maintenance center, management facility or for similar purposes by Declarant; (ii) all property owned by Declarant; (iii) all properties dedicated and accepted by a public authority; and (iv) all Common Areas and Limited Common Areas.

Section 5.12. Capitalization of Association. Upon the acquisition of record title to a Lot by the first purchaser thereof (other than Declarant), a contribution shall be made by or on behalf of the purchaser to the working capital of the Association in the amount equal to one-sixth (1/6) of the amount of the General Assessment payable on such Lot for that year. This amount shall be deposited in the purchase and sales escrow at settlement and shall be disbursed therefrom to the Association for its reserves.

ARTICLE VI ARCHITECTURAL REVIEW

Section 6.1. No Improvements to be constructed by Owners, etc. Without Approval.

During the Development Period no Improvement shall be constructed, erected, installed or maintained on any Lot, nor shall any Improvement be altered, enlarged, demolished or removed in a manner that alters the exterior appearance (including paint color) of the Improvement or of the Lot on which it is situated, unless the plans and specifications therefor showing the nature, kind, shape, height, color, materials, and location of the same have been approved in writing by the Declarant. The Declarant may act in its sole discretion when considering a request under this Section. If approved by the Declarant, all Improvements shall be constructed, erected, installed, maintained, altered, enlarged, demolished or removed strictly in accordance with the approved plans and specifications. Upon commencing the construction, erection, installation, alteration, enlargement, demolition or removal of an Improvement, all of the work related thereto shall be carried on with reasonable diligence and dispatch. If construction, erection, installation, alteration, enlargement, demolition or removal does not commence within 12 months of approval by the Declarant, such approval shall be deemed withdrawn and the Owner must reapply for a new approval.

Section 6.2. Limitation of Liability; other Requirements. The approval by the Declarant of any Plans submitted by an Owner, and any requirement by the Declarant that the Plans be modified, shall not constitute a warranty or representation by the Declarant of the adequacy, technical sufficiency or safety of the Improvements described in such Plans, as the same may be modified, and the Declarant shall have no liability whatsoever for the failure of the Plans or the Improvements to comply with applicable building codes, laws and ordinances or to comply with sound engineering, architectural or construction practices. In addition, in no event shall the Declarant have any liability whatsoever to an Owner, a contractor or any other party for any costs or damages (consequential or otherwise) that may be incurred or suffered on account of the Declarant's approval, disapproval or conditional approval of any Plans submitted by or on behalf of an Owner. Compliance with this Article is not a substitute for compliance with city of Williamsburg building, zoning, subdivision and architectural review regulations, and each Owner is required to obtain all approvals, licenses, and permits as may be required prior to commencing construction or alteration of any Improvement.

**ARTICLE VII
USE OF PROPERTY**

Section 7.1. Use. All Lots shall be used only for uses as permitted by the Applicable zoning and the Association Documents, except as set forth below. Nothing in the Association Documents shall prohibit the Declarant or its assigns from using any Lot owned by Declarant or its assigns (or any other Lot with the permission of the Owner thereof) or any portion of the Common Area for promotional, marketing, construction, sales, display or customer services purposes (such as visitors or sales center, a model home or a construction, brokerage or management office).

Section 7.2. Quiet Enjoyment; No Nuisance. No obnoxious or offensive activity shall be carried on upon the Submitted Land, nor shall anything be kept or done upon any Lot that will emit foul or obnoxious odors, fumes or other emissions or that will cause any excessive noise or other condition that will or might disturb the peace, quiet enjoyment, safety or comfort of other Owners. No unlawful use shall be made of any part of the submitted Land.

Section 7.3. Maintenance and Appearance of Lots. All Lots and the Improvements thereon shall at all times be maintained by the Owner thereof in good order and repair and in a clean and attractive condition, free of all debris or other unclean, unsightly or unkempt materials or conditions.

Section 7.4. Signs Except for signs erected by the Declarant, no signs of any kind other than "for sale" signs approved by the Declarant shall be erected or displayed that are visible from the Common Area, any other Lot or from any public road within or adjacent to the Submitted Land.

Section 7.5. Obstruction of and Dumping on Common Areas. No person shall obstruct any of the Common Area or otherwise impede the rightful access of any person on any portion of the Submitted Land upon which such person has the right to be. No person shall place or dump or cause to be placed or dumped any trash, debris or other material of any kind in any Common Area. No Owner other than Declarant shall have any right to construct or alter improvements in the Common Area except with the prior approval of the Board of Directors.

Section 7.7. Animals. The maintenance, keeping, boarding or raising of animals, livestock, poultry or reptiles of any kind, regardless of number, is prohibited on any tot or ii-)on the Common Area, except that the keeping of guide animals and orderly domestic pets (e.g., dogs, cats or caged birds) without the approval of the Board of Directors, is permitted, subject to the Rules and Regulations adopted by the Board of Directors; provided, however, that such pets are not kept or maintained for commercial purposes or for breeding. Any such pet causin9 or creating a nuisance or unreasonable disturbance or noise must be permanently removed from the Submitted Land upon ten days written notice from the Board of Directors. Pets shall not be permitted upon the Common Area unless accompanied by someone who can control the pet and unless carried or leashed. Pet droppings shall be cleaned up by the Owner of the pet. Any Owner who keeps or maintains any pet upon any portion of the Submitted Land shall be deemed to have indemnified and agreed to hold the Association, each Owner and the Declarant free and harmless from any loss, claim or liability of any kind or character whatever arising by reason of keeping or maintaining such pet within the Submitted Land. All pets shall be registered and inoculated as required by law.

Section 7.8. No Further Subdivision. No Lot may be further subdivided or separated into smaller Lots by any Owner, and no portion less than all of such Lot shall be transferred or conveyed by such Owner; provided, however this Section shall not prohibit deeds of correction; deeds or plats of resubdivision or boundary line adjustment and similar corrective instruments.

Section 7.9. Rules and Regulations. The Board of Directors shall have the power to adopt, amend and repeal Rules and Regulations restricting and regulating the use and enjoyment: of the Submitted Land or of any portion thereof, which may supplement, but may not be inconsistent with the provisions of the Association Documents, including, but not limited to, rules and regulations regarding use of machinery, outdoor drying lines, antennas, trash and trash containers, basketball equipment, discharge of firearms, parking, trailers, boats, tents, trailers and temporary structures, tree removal, outdoor lighting, fences, mailboxes, newspaper tubes, playground equipment, exterior sculpture and other similar matters. The Submitted Land shall be occupied and used in compliance with the Rules and Regulations. Copies of the Rules and Regulations shall be furnished by the Board of Directors to each Owner. Changes to the Rules and Regulations shall be published prior to the time when the same shall become effective and copies thereof shall be provided to each Owner.

Section 7.10. Exclusion for the Declarant and Designees of the Declarant. Notwithstanding any other provision of the Association Documents, neither the restrictions in this

Article nor the Rules and Regulations of the Association shall apply to any otherwise lawful acts or omissions of the Declarant

Section 7.11. Resales of Lots by Owners Other Than Declarant. Upon the acquisition of record title to a Lot from an owner other than Declarant, an administrative fee in an amount set from time to time by the Board of Directors, which amount shall initially be \$100.00, shall be paid to the Association by or on behalf of the purchaser of the Lot. Such administrative fee shall be deposited in the purchase and sales escrow at settlement and shall be disbursed therefrom to the Association.

Section 7.12. Security. NEITHER THE ASSOCIATION, NOR DECLARANT SHALL BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. ALL OWNERS, TENANTS, GUESTS, AND INVITEES OF ANY OWNER, AS APPLICABLE, ACKNOWLEDGE THAT THE ASSOCIATION AND DECLARANT, AND COMMITTEES ESTABLISHED BY ANY OF THE FOREGOING ENTITIES, ARE NOT INSURERS AND THAT EACH OWNER, TENANT, GUEST, AND INVITEE ASSUMES ALL RISK OF LOSS OR DAMAGE TO PERSONS, TO STRUCTURES OR OTHER IMPROVEMENTS SITUATED ON LOTS AND PARCELS, AND TO THE CONTENTS OF ANY IMPROVEMENTS SITUATED ON LOTS AND PARCELS AND FURTHER ACKNOWLEDGE THAT DECLARANT HAS MADE NO REPRESENTATIONS OR WARRANTIES, NOR HAS ANY OWNER, TENANT, GUEST, OR INVITEE RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE RELATIVE TO ANY SECURITY MEASURES RECOMMENDED OR UNDERTAKEN.

ARTICLE VIII EASEMENTS

Section 8.1. Development Easements

(a) The Declarant hereby reserves to itself and its successors and assigns and grants to the Association a perpetual, nonexclusive blanket easement over, under and through the Common Area and each Lot within five feet of any Lot boundary-line for all purposes reasonably related to the development and completion of improvements on the Submitted Land (the "Development Easements"), including without limitation: (i) temporary slope and construction easements; (ii) erosion control and storm drainage easements (including the right to cut or remove trees, bushes or shrubbery, to regrade the soil and to take any similar actions reasonably necessary; provided, however, that thereafter the Declarant shall restore the affected area as near as practicable to its original condition); (iii) easements for the temporary storage (in a sightly manner) of reasonable supplies of building materials and equipment necessary to complete the improvements; (iv) easements for the construction installation and maintenance of improvements (e.g., buildings, landscaping, street lights, signage, etc.) on the Submitted Land or reasonably necessary to serve the Submitted Land; (v) easements and the right to reserve easements for storm water management; and (vi) easements and the right to reserve or grant easements for ingress, egress, installation, operation and service of the equipment for providing to any portion of the Submitted Land any utilities, including without limitation water, sewer, drainage, gas, electricity, telephone and television service, whether public or private. Declarant reserves the right to convey and

dedicate easements reserved to it under this Section to the Association, other Owners, governmental entities, utility companies and others.

(b) The Declarant hereby reserves to itself and its successors and assigns and grants to the Association (i) a perpetual, nonexclusive easement over, under and through the areas shown and set out as "10' Utility Easement to Home Owners Assoc. (Typical)" on subdivision or other plats of the Submitted Land recorded herewith or with a Supplemental Declaration for ingress, egress, installation, operation and service of the equipment for providing to any portion of the Submitted Land any utilities, including without limitation water, sewer, drainage, gas, electricity, telephone and television service, whether public or private; (ii) a perpetual, nonexclusive easement over, under and through the areas shown and set out as "10' Landscape Maintenance and Access Easement to Be Dedicated to the Home Owners Association" on subdivision or other plats of the Submitted Land recorded herewith or with a Supplemental Declaration for the installation and maintenance of landscaping; and (iii) a perpetual, nonexclusive easement over, under and through the areas shown and set out as "15' Private Drainage Easement to Be Dedicated to the Home Owners Assoc." or "15' Drainage Easement to Be Dedicated to the Home Owners Assoc." on subdivision or other plats of the Submitted Land recorded herewith or with a Supplemental Declaration for ingress, egress, installation, operation and service of the equipment for providing to any portion of the submitted Land stormwater drainage or for the surface flow of stormwater.

Section 8.2. Erosion Control. Declarant reserves a perpetual easement, right and privilege to enter upon any Lot, or Common Area, and the Association is granted a perpetual easement, right and privilege to enter upon any Lot, either before or after a building has been constructed thereon or during such construction, for the purpose of taking such erosion control measures as Declarant or the Association deems necessary to prevent or correct soil erosion or siltation thereon; provided, however, that Declarant or the Association shall not exercise such right unless it has given the Owner of the Lot or the Association (as to the Common Area) at least ten days' prior notice thereof and the Owner or the Association, as the case may be, has failed to take appropriate action to correct or prevent the erosion or siltation problem. The cost incurred by the Association or by Declarant in undertaking such erosion control measures on any Lot or Parcel shall become an individual assessment on such Lot or Parcel and shall constitute a lien against such Lot or Parcel and shall be collectible in the manner provided herein for the payment of assessments. This Section shall not apply to Lots owned by Declarant.

Section 8.3. Maintenance of Lots. Declarant reserves the perpetual easement, right and privilege, and the Association is granted the perpetual easement, right and privilege, to enter on any Lot, after at least five days' notice to the Owner thereof, for the purpose of mowing, removing, clearing, cutting or pruning underbrush, weeds or other unsightly growth, dispensing pesticides, herbicides and fertilizer and grass seed, removing trash and taking such other action as the Declarant or the Association may consider necessary to correct any condition which detracts from the overall beauty of the Submitted Land or which may constitute a hazard or nuisance. The cost incurred by the Association in taking such action (including any overhead costs associated therewith) shall constitute a individual assessment on the Lot and shall be collectible in the manner provided herein for the payment of assessments. This section shall not apply to Lots owned by Declarant.

Section 8.4. Sales Easements and Rights. Notwithstanding any provision of this Declaration or of any supplemental Declaration, during the Development Period Declarant shall have an easement of ingress, egress and use over any lands not conveyed to an Owner for (i) erection and maintenance of directional and promotional signs and (ii) conduct of sales activities, including maintenance of model residences.

Section 8.5. Right of Entry for Governmental Personnel. A right of entry on all Lots and Common Areas is hereby granted to law enforcement officers and fire and rescue personnel as needed to lawfully carry out their duties, including enforcement of cleared emergency vehicle access.

Section 8.6. Easement for Landscaping, Signs and Related Purposes. There shall be and is hereby reserved to Declarant during the Development period and thereafter the Association is granted a non-exclusive easement over all Lots, Parcels and Common Area for a distance of ten (10) feet behind any Lot line which parallels, and is adjacent to, a public street for the purpose of erecting and maintaining street intersection signs, directional signs, temporary promotional signs, plantings, street lights, entrance features, lighting, stone, wood, or masonry wall features and/or related landscaping.

Section 8.7. Easement for Encroachment. Each Lot, and the Common Area situated adjacent to the Submitted Land are hereby declared to have an easement over all adjoining Lots, and the Common Area for the purpose of accommodating any encroachment due to engineering errors, errors in original construction, settlement or shifting of a building, or any other similar cause, and any encroachment due to building overhang or projection. There shall be valid easements for the maintenance of said encroachments so long as they shall exist, and the rights and obligations of Owners shall not be altered in any way by said encroachment, settling or shifting; provided, however, that in no event shall a valid easement for encroachment be created in favor of an Owner or Owners if said encroachment occurred due to the willful act or acts with full knowledge of said Owner or Owners. In the event a structure on any Lot is partially or totally destroyed, and then repaired or rebuilt, the Owners of each Lot agree that minor unintentional encroachments over adjoining Lots shall be permitted, and that there shall be valid easements for the maintenance of said encroachments so long as they shall exist.

ARTICLE TX MORTGAGEES

Section 9.1. Notice to Board of Directors. An Owner who mortgages such Owner's Lot shall notify the Board of Directors of the name and addresses of the Mortgagee. No Mortgagee shall be entitled to any Mortgagee rights under the Association Documents unless such Mortgagee has notified the Board of its address as required by Section 9.2 below and has requested all rights under the Association Documents.

Section 9.2. Notices to Mortgagees. Any Mortgagee who desires any notice from the Association shall notify the Association to that effect by certified or registered United States Mail. Any such notice shall contain the name and address (including post office address) of such Mortgagee and the name of the person to whom notices from the Association should be directed. The Board of Directors shall advise Mortgagees requesting notice of the following:

- (1) Any default of an Owner of a Lot, upon which the Mortgagee has a mortgage, in paying assessments for Common Expenses (which remains uncured for sixty days) or any other default under the Association Documents, simultaneously with the notice sent to the defaulting Owner;
- (2) Any casualty, if required by the Bylaws;
- (3) All actions taken by the Association with respect to reconstruction of the Common Area or a Lot upon which the Mortgagee has a mortgage;

(4) Any termination, lapse or material modification of an insurance policy held by the Association;

(5) Any taking in condemnation or by eminent domain of the Common Area and the actions of the Association;

(6) Any proposal to terminate the Declaration, at least fifty days before any action is taken; and

(7) Any proposal to amend materially the Articles of Incorporation, this Declaration or the Bylaws which requires approval of Mortgagees under this Article, at least seven days before any action is taken.

Section 9.3. Other Rights of Mortgagees. All Mortgagees or their representatives shall have the additional right to request to receive notice of and to attend and to speak at meetings of the Association. All such Mortgagees shall have the right to examine the Association Documents and books and records of the Association and to require the submission of annual financial reports and other budgetary information. Any Mortgagee who makes a request shall be entitled to a financial statement for the preceding fiscal year of the Association prepared at the Association's expense and provided within a reasonable time. After fourteen days notice to the Association, a Mortgagee may, jointly or singly, pay taxes or other charges levied against the Common Area and may pay overdue premiums or hazard insurance policies or secure new hazard insurance coverage upon the lapse of a policy for such Common Area. Any Mortgagees giving such notice and making such payments shall be reimbursed by the Association.

Section 9.4. Amendments to Association Documents. -

(a) The consent of Owners representing a least 67% of the Class "A" votes and of the Declarant, so long as it owns any land subject to this Declaration, and the approval of at least 67% of Mortgagees, shall be required to terminate this Declaration or dissolve the Association.

(b) The consent of Owners representing at least 67% of the Class "A" votes and of the Declarant, so long as it owns any land subject to this Declaration, and the approval of at least 51% of Mortgagees, shall be required to;

(i) amend in any material respect any provisions of the Declaration, Bylaws, or Articles of Incorporation, or to add any material provisions thereto which establish, provide for govern, or regulate any of the following: (1) voting; (2) assessments, assessment liens, or subordination of such liens; (3) reserves for maintenance, repair, and replacement of the Common Area; (4) insurance or fidelity bonds; (5) rights to use the Common Area; (6) responsibility for maintenance and repair of the Submitted Land; (7) Expansion or contraction of the Submitted Land or the addition, annexation, or withdrawal of Submitted Land to or from the Association; (8) boundaries of any Lots; (9) leasing of Lots; (10) imposition of any right of first refusal or similar restriction of the right of any Owner to sell, transfer, or otherwise convey his or her Lot; (11) establishment of self-management by the Association where professional management has been required by a Mortgagee; or (12) any provisions included in the Declaration, Bylaws, or Articles of Incorporation which are for the express benefit of holders, guarantors, or insurers of first mortgages on Lots.

(ii) By act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer all or any portion of the real property comprising the Common Area which the Association owns, directly or indirectly (the granting of easements for public utilities or other similar purposes consistent with the intended use of the Common Area shall not be deemed a transfer within the meaning of this subsection)

(iii) Change the method of determining the obligations, assessments, dues, or other charges which may be levied against an Owner of a Lot;

(iv) By act or omission change, waive, or abandon any scheme of regulations or enforcement pertaining to architectural design, exterior appearance or maintenance of Lots and the Common Area (The issuance and amendment of architectural standards, procedures, rules and regulation, or use restrictions shall constitute a change, waiver, or abandonment within the meaning of this provision);

(v) Fail to maintain insurance, as required by this Declaration or the Bylaws; or

(vi) Use hazard insurance proceeds for any Common Area losses for other than the repair1 replacement, or reconstruction of such property in accordance with the Association Documents and the original plans and specifications.

Section 9.5. No Priority. No provision of this Declaration or the Bylaws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

Section 9.6. Amendment by Declarant or Board. Should any Federal Mortgage Agency subsequently delete any of its respective requirements which necessitate the provisions of this Article or make any such requirements less stringent, the Declarant or the Board of Directors, without approval of the Owners, may record a unilateral amendment to this Article to reflect such changes.

Section 9.7. Failure of Mortgagee to Respond. Any Mortgagee who receives a written request from the Association to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

Section 9.8. Veterans Administration Approval. If and so long as the Veterans Administration has an interest in the Submitted Land, during the Declarant Control Period, Declarant shall not do the following without the prior written approval of the Department of Veterans Affairs: (i) annex any additional land (other than the Additional Land) : (ii) mortgage any Common Area; (iii) dedicate any Common Area to general public use; or (iv) consolidate, merge or dissolve the Association.

ARTICLE X

COMPLIANCE AND REMEDIES

Section 10.1. Compliance. Each Owner shall be governed by, and shall comply with, all of the terms of the Association Documents and the Rules and Regulations as they may be amended from time to time.

Section 10.2. Remedies. A default by an Owner under the Governing Documents shall entitle the Association, acting through its Board of Directors or through the managing agent, to the following remedies.

(a) Additional Liability. Each Owner shall be liable to the Association or to any affected Owner for the expense of all maintenance, repairs, renovation, re-construction, replacement, care, inspection or alteration, rendered necessary by such Owner's act or omission regardless of neglect or culpability but only to the extent that such expense is not covered by the proceeds of insurance carried by the Association. Such liability shall include any increase in casualty insurance rates occasioned by use, misuse, occupancy or abandonment of any Lot or its appurtenances. Nothing contained herein, however, shall be construed as modifying any waiver by any insurance company of its rights of subrogation. Any costs, including without limitation legal fees, incurred as a result of a failure to comply with the Association Documents or the Rules and Regulations by any Owner may be assessed against such Owner's Lot.

(b) Costs and Attorney's Fees. In any proceedings arising out of any alleged default by an Owner, the prevailing party shall be entitled to recover the costs of such proceeding and such reasonable attorney's fees as may be determined by the court.

(c) No Waiver of Rights. The failure of the Association, the Board of Directors or an Owner to enforce any right, provision, covenant or condition which may be granted by the Association Documents shall not constitute a waiver of the right of the Association, the Board or any Owner to enforce such right, provision, covenant or condition in the future. All rights, remedies and privileges granted to the Association, the Board of Directors or any Owner pursuant to any term, provision, covenant or condition of the Association Documents shall be deemed to be cumulative and the exercise of any one or more thereof shall not be deemed to constitute an election of remedies, nor shall it preclude the party exercising the same from exercising such other privileges as may be granted to such party by the Association Documents, the Act or at law or in equity.

(d) Interest. If a default by any Owner in paying any sum assessed against such Owners Lot, except for Common Expenses, continues for a period in excess of ten days, interest from the due date at a rate not to exceed the lesser of the maximum interest rate permitted by applicable law or eighteen percent per annum may be imposed in the discretion of the Board of Directors on the principal amount unpaid from the date due until paid.

(e) Abating and Enjoying Violations. The violation of any of the Rules and Regulations adopted by the Board of Directors or the breach of any other provision of the Association Documents shall give the Board of Directors the right, in addition to any other rights set forth in the Association Documents or provided by law: (1) to enter the portion of the Submitted Land (excluding any occupied dwelling) on which, or as to which, such violation or breach exists and summarily to abate and remove, at the expense of the defaulting Owner, any structure, thing or condition that may exist therein contrary to the intent and meaning of the provisions of the Association Documents or the Rules and Regulations, and the Board of Directors shall not thereby be deemed guilty in any manner of trespass; (2) to use self-help to remove or cure any violation of the Association Documents or the Rules and Regulations on the Submitted Land (including without limitation the towing of vehicles); or (3) to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such breach; provided, however, that before any construction may be altered or demolished (except in emergencies) judicial proceedings shall be instituted. The Board of Directors shall follow the due process procedures set forth in Subsections 10.2 (g) and (h) hereof.

(f) Legal Proceedings. Failure to comply with any of the terms of the Association Documents or the Rules and Regulations shall be grounds for relief, including without limitation an action to recover any sums due for money damages, injunctive relief, foreclosure of the lien for payment of all assessments, any other relief provided for in the Association Documents and any

other relief afforded by applicable law, all of which relief may be sought by the Association, the Board of Directors, the managing agent or, if appropriate, by any aggrieved Owner or Member and shall not constitute an election of remedies. Before injunctive relief may be sought, the Owner against whom such action would be brought shall be given an opportunity to be heard and to be represented by counsel, at such Owner's expense if such Owner so desires before the Board of Directors, in accordance with the provisions of Subsections 10.1(g) and (h) hereof.

(g) Charges and Suspension of Rights. The Board of Directors, has the power to impose charges and to suspend the right to vote in the Association or other rights in the case of an Owner found to be responsible for a violation of the Association Documents or the Rules and Regulations. Charges may not exceed the maximum amounts permitted by the Act. No charge may be imposed for failure to pay an assessment except as otherwise provided in the Declaration. Charges are individual assessments and shall be collectible as such and shall also constitute a lien against a Lot in accordance with Article IV hereof. The Board of Directors shall also have the power to suspend, subject to the limitations set forth in the Act, the right of an Owner or the rights of such person's household, tenants or guests, to use the Common Areas for a reasonable period, not to exceed sixty days for any violation of any provision of any of the Association Documents or the Rules and Regulations or for any period during which any assessment against an Owner's Lot remains unpaid. No charge shall be imposed, no legal action brought and no construction altered or demolished until the person charged with such a violation has been given notice and an opportunity for a hearing as set forth in subsection (h) below. In addition, voting rights and the right to use Common Area may not be suspended until the person charged with the violation has been given notice and an opportunity for a hearing pursuant to subsection (h) below, unless such rights are suspended due to non-payment of assessments, in which case the person charged with the violation is not entitled to notice and an opportunity for a hearing. The Board may deliberate privately, but shall either announce its decision in the presence of the respondent or give the respondent notice thereof. A decision adverse to the respondent shall require a two-thirds vote of the Board.

(h) Due Process. The Board of Directors, before imposing any charge or before taking any action affecting one or more specific Owners, shall afford such person the following basic due process rights.

(1) Notice. The respondent shall be afforded prior written notice of any action (except when an emergency requires immediate action) and, if notice is of default or violation, an opportunity to cure which is reasonable under the circumstances, prior to the imposition of any sanction. The notice shall also state that the respondent is entitled to a hearing, if a hearing is required pursuant to Subsection (g) above. Notice of any violation or of any hearing shall be mailed by registered or certified mail, return receipt requested, to the Owner at such Owner's address of record with the Association at least fourteen days prior to such hearing.

(2) Hearing. If the respondent is entitled to a hearing pursuant to Subsection (g) above and requests in writing a hearing before any charge is imposed or action taken, then the imposition of the charge or the taking of the action shall be suspended until a hearing set by the Board of Directors at which the respondent has an opportunity to be heard if the Respondent attends the hearing and the Board of Directors discusses such charge or action. Each person so appearing shall have the right to be represented by such person's counsel, at such person's own expense.

ARTICLE XI

GENERAL PROVISIONS

Section 11.1. Duration. The covenants and restrictions of this Declaration shall run with and bind the Submitted Land for a term of twenty-five (25) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of twenty-five (25) years, unless at the expiration of any such period the covenants and restrictions are expressly terminated by an instrument signed by Owners of a majority of the Lots.

Section 11.2. Amendments. Except as otherwise set forth in this Declaration and subject to Section 9.4, this Declaration may be amended either (i) by Declarant without the consent of any other Owners during the Declarant Control Period or (ii) by a vote of 67% of the Class A votes and with the written consent of Declarant during the Declarant Control Period. Notwithstanding the foregoing, the provisions of Articles II and VIII and Sections 4.8, 5.11 and this Section 11.2 may not be amended in any event without the written consent of Declarant regardless of whether the Declarant Control Period has terminated so long as Declarant owns any property subject to this Declaration. In addition, Declarant shall have the right without the consent of any other Owners to amend this Declaration in any respect as may be necessary or appropriate in order for this Declaration or the Submitted Land to comply with applicable laws now or hereafter enacted or to satisfy the requirements of any Federal Mortgage Agency, as the same may be amended from time to time, with respect to their purchase of mortgage loans secured by Lots.

Section 11.3. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 11.4. Conflict. In the event of conflict among the Association Documents, this Declaration shall control, then applicable Supplemental Declarations, if any, then the Articles, then the Bylaws except that in all cases where the Governing Documents may be found to be in conflict with statute, the statute shall control.

Section 11.5. Interpretation. Unless the context otherwise requires, the use of the singular shall include the plural and vice versa; the use of one gender shall include all genders; and the use of the term "including" shall mean "including, without limitation." The headings used herein are for ease of reference only and shall not be used as a means of interpreting or construing the substantive provisions hereof.

Section 11.6. Approvals and Consents. All approvals and consents required or permitted by this Declaration (other than approvals or consents given by Members in a vote conducted in accordance with the Bylaws) shall be in writing, shall be signed by the party from whom the consent or approval is sought and, unless otherwise provided herein, may be withheld by such party in its sole discretion.

Section 11.7. Assignment of Declarant's Rights. Any and all rights, powers, easements and reservations of Declarant set forth herein may be assigned in whole or in part, at any time or from time to time, to the Association, to another Owner, or to any other party in Declarant's sole discretion. Each such assignment shall be evidenced by an instrument which shall be signed by Declarant and its assignee and recorded in the Clerk's Office.

Section 11.8. Successors and Assigns. The provisions hereof shall be binding upon and shall inure to the benefit of Declarant, the Association and (subject to Article II hereof) the Owners and their respective heirs, legal representatives, successors and assigns.

Section 11.9. Notices. All notices, demands, requests and other communications required or permitted hereunder shall be in writing and shall either be delivered in person or sent by overnight express courier or by U.S. first class mail, postage prepaid. Notices to the Declarant shall be sent to _____ or to such other address as the Declarant shall specify by executing and recording an amendment to this Declaration, which amendment shall not require the approval of any other parties as provided in Section 11.2. Notices to the Association or to Owners (other than Declarant) may be sent to the address which the Bylaws provide shall be used for them. All such notices, demands, requests and other communications shall be deemed to have been given when sent to the appropriate address specified above. Rejection or other refusal to accept shall not invalidate the effectiveness of any notice, demand, request or other communication. Notwithstanding the foregoing, any notice of the filing of a memorandum of assessment lien shall be sent in the manner required by Section 55-516C of the Virginia Code.

WITNESS the following signature and seal as of the date first above written.

CONDOR PROPERTXES IN WILLIAMBURG L.L.C.

By _____

COMMONWEALTH OF VIRGINIA

CITY/~ OF Williamsburg to-wit:

The foregoing Declaration of Covenants and Restrictions was acknowledged before me this 19 day of November, 1999, by Paula Hertzberg as Manager of Condor Properites in Williamsburg, L.L.C.

Vernon M. Geddy III [SEAL]

NOTARY PUBLIC

My commission expires: 12/31/99.

EXHIBIT A

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PROPERTY DESCRIPTION - BRANDYWYNE PHASE 1A

All those certain lots, pieces and parcels of land located in the City of Williamsburg, Virginia shown and set out on the plat entitled "Plat of Subdivision, Brandywyne at Williamsburg, Phase 1A, Lots 1-7" made by ASS Consulting Engineers and dated 10/8/99 and recorded herewith in Plat Book at page ~, less and except that certain piece of land shown and set out on the aforesaid plat as "Sun Drive 50' R/W.

[Clerk's Office Signatures and seals follow]

THIS AMENDMENT TO DECLARATION OF COVENANTS, EASEMENTS AND RESTRICTIONS is made as of this 1st day of August, 2000 by CONDOR PROPERTIES IN WILLIAMSBURG, L.L.C., a Virginia limited liability company (the "Declarant").

WHEREAS, the Declarant executed that certain Declaration of Covenants, Easements and Restrictions (the "Declaration") dated November 19, 1999 and recorded in the Clerk's Office of the Circuit Court of the City of Williamsburg, Virginia on December 15, 1999 as Instrument No. 991589 subjecting certain property described therein (the "Property") to the scheme of ownership created pursuant to the Declaration; and

WHEREAS, Declarant is the owner of the Property as well as all of the Additional Land which may be subjected to the terms and conditions of the Declaration; and

WHEREAS, desires to amend certain provisions of the Declaration as more particularly set forth below:

NOW, THEREFORE, WITNESSETH that pursuant to and in accordance with the provisions of Section 11.2 of the Declaration, the Declarant hereby amends the Declaration as follows:

1. The first sentence of Section 5.12. of the Declaration shall be amended by deleting the first sentence as previously written and substituting the following sentence in lieu thereof:

Upon the acquisition of record title to a Lot by the first purchaser thereof (other than the Declarant), a contribution shall be made by or on behalf of the purchaser to the working capital of the Association in the amount of \$375.00.

2. Except as herein revised and amended, Declaration shall remain in full force and effect.

[The next page is the signature page.]

SECOND AMENDMENT TO THE
DECLARATION OF COVENANTS, EASEMENTS AND RESTRICTIONS

FOR

BRANDYWYNE

THIS SECOND AMENDMENT to the Declaration of Covenants, Easements and Restrictions for Brandywyne is made this 7th day of January, 2002 by CONDOR PROPERTIES IN WILLIAMSBURG, L.L.C., a Virginia Limited Liability Company ("Declarant") with the consent of the Owners, who have signed the consents attached hereto.

WHEREAS, there is recorded in the Clerk's Office of the Circuit Court for Williamsburg and County of James City as Instrument No.991589 a Declaration of Easements and Restrictions ("Declaration") dated November 19, 1999, and;

WHEREAS, Section 9.4(b)(i) of the Declaration states that its provisions regarding reserves for maintenance, repair and replacement of the Common Area and the assessments, assessment liens or subordination of such liens may be amended only by the Declarant with the consent of the Owners of at least sixty seven percent (67%) of lots subject to the Declaration which are not owned by the Declarant, and;

WHEREAS, the Declarant wishes to amend the Declaration with regard to assessments and reserves for maintenance, and;

WHEREAS, the Owners of more than sixty seven percent (67%) of the lots which are not owned by the Declarant have agreed to such amendment as is evidenced by their written consents attached as Exhibits hereto.

NOW THEREFORE, the Declaration is hereby amended as follows:

1. The phrase "Limited Common Area" where it appears in Paragraph (b) of Section 4.4 of the Declaration is amended to read "Common Area".
2. Subparagraph (ii) of Paragraph (d) of Section 4.4 is amended in its entirety to read:
 - (ii) Other than by the act or omission of an Owner for which such Owner is responsible, it shall be the obligation of the Association to maintain, rebuild and repair such Private Cul-de-Sac as a Common Expense
3. Sub-paragraph (i) of Paragraph (e) of Section 4.4 is amended by deleting the word "Affected".
4. Sub-paragraph (iii) of Paragraph (e) of Section 4.4 is amended in its entirety to read:
 - (iii) The Association shall hold the annual charge in escrow and shall maintain a separate account for the escrowed funds for all of the Private Cul-de-Sacs.
5. Sub-paragraph (iv) of Paragraph (e) of Section 4.4 is amended in its entirety to read:
 - (iii) The escrowed funds will be disbursed as determined by the Board of Directors of the Association to maintain, rebuild and repair the Private Cut-de-Sacs.
6. Sub-paragraph (v) of Paragraph (e) of Section 4.4 is deleted.
7. Section 5.4 is amended by adding the following sentence:

"Common Expenses" shall include watering and maintenance of lawns on Lots, including, but not limited to, installation and maintenance of a common irrigation system and payment of water charges for said irrigation system.

Except as expressly revised and amended herein and by the First Amendment to the recorded August 3, 2000 in the Clerk's Office of the Circuit Court for the City of Williamsburg and County of James City as Instrument No. 000811, the Declaration shall remain in full force and effect.

WITNESS the following signature hereto:

CONDOR PROPERTIES IN WILLIAMSBURG, L.L.C.

By

Paula Hertzberg, Manager

STATE OF VIRGINIA CITY/COUNTY OF York

to-wit:

This instrument was acknowledged before me by Paula Hertzberg, Manager of Condor Properties in Williamsburg, L.L.C., a Virginia Limited Liability Company, this 1st day of March, 2002.

NOTARY PUBLIC

My commission expires: 9/30/03

BYLAWS OF
BRANDYWYNE OWNERS ASSOCIATION

ARTICLE I
Plan of Ownership

Section 1.1. Applicability. These Bylaws provide for the governance of the Brandywyne Owners Association, a Virginia nonstock corporation (the "Association"). Capitalized terms used herein without definition shall have the meanings specified for such terms in the Articles of Incorporation of the Association (the "Articles") or in the Declaration of Covenants, Easements and Restrictions made or to be made by Condor Properties in ~Williamsburg, L.L.C., a Virginia limited liability company (the "Declarant"), and recorded or to be recorded in the Clerk's Office of the Circuit Court of the City of Williamsburg and County of James City, Virginia, as the same may hereafter be amended or supplemented, (the "Declaration")

Section 1.2. Compliance. Every Owner and all those entitled to occupy a Lot shall comply with these Bylaws.

Section 1.3. Office. The principal office of the Association shall be located at the Submitted Land or at such other place as may be designated from time to time by the Board of Directors.

ARTICLE II
Membership

Section 2.1. Membership. Every Owner of a Lot shall be a Member of the Association. Membership shall be appurtenant to, and shall not be separated from, ownership of any Lot. Upon recordation of a deed to a Lot, the membership of the selling Owner shall cease and the purchasing Owner shall become a member of the Association.

Section 2.1. Classes of Members. There shall be two classes of Members of the Association.

Class A. All Owners of Lots other than the Declarant during the Declarant Control period shall be Class A Members.

Class B. The Declarant shall be the Class B Member. The Class B membership shall terminate upon the termination of the Declarant Control period and Declarant shall thereupon be treated as a Class A Member as to each Lot then owned by Declarant.

Section 2.2. Voting Rights.

Members shall have the voting rights set forth in the Declaration.

ARTICLE III
Meetings of Members

Section 3.1. Annual Meeting The annual meeting of Members of the Association shall be held on the fifteenth day of April of each year unless the same shall fall on a legal holiday, in which case the annual meeting shall be held on the next ensuing weekday which is not a legal holiday or on such other date set by the Board of Directors.

Section 3.2. Special Meeting

(a) The President shall call a special meeting of the Association if so directed by resolution of the Board of Directors, upon the request of the Declarant or upon a petition signed and presented to the Secretary by Owners holding not less than ten percent of the Class A membership votes. The notice of any special meeting shall state the time, place and purpose thereof. Only business within the purpose or purposes described on the notice of a special meeting shall be transacted at the meeting.

(b) Within 90 days after the expiration of the Declarant Control Period, notice shall be given of a special meeting of the Members of the Association at which all of the members of the Board of Directors designated by the Declarant shall resign, and the Class A Members shall thereupon elect successor members of the Board of Directors as provided in the Articles.

Section 3.3. Place of Meeting. Meetings of the Members shall be held at the principal office of the Association or at such other suitable place as may be designated by the Board of Directors.

Section 3.4. Notice of Meetings The Secretary shall mail to each Owner a notice of each annual or regularly scheduled meeting of the Association at least 14 but not more than 60 days before such meeting, stating the time, date and place thereof.

Notice of any other meeting shall be given at least 25 but not more than 60 days prior to such meeting, stating the time, place and the purpose thereof. Notwithstanding the foregoing, notice of any meeting at which there shall be voted upon any amendment to the Articles, a plan of merger, a proposed sale of assets pursuant to Section 13.1-900 of the Virginia Code or the dissolution of the Association shall be given as required by Section 13.1-842 of the Virginia Code. The mailing or personal delivery of a notice of meeting in the manner provided in these Bylaws shall be considered service of notice.

Section 3.5. Adjournment of Meetings. If at any meeting of the Members a quorum is not present, Owners holding a majority of the votes who are present at such meeting in person or by proxy may adjourn the meeting to a time not less than forty-eight hours after the time the original meeting was called. Notice of an adjournment of any meeting of the Association shall be posted at a community communications board or other conspicuous location - and shall state the time and place for the meeting to be reconvened.

Section 3.6. Voting. Voting at all meetings of the Association shall be on the basis set forth in these Bylaws. Where the ownership of a Lot is in more than one person, the person who shall be entitled to cast the vote appurtenant to such Lot shall be the person named in a certificate executed by all of the Owners of such Lot and filed with the Secretary or, in the absence of such person from the meeting, the person entitled to cast the vote appurtenant to such Lot shall be the person owning such Lot who is present. If more than one person owning such Lot is present, then such vote shall be cast only in accordance with their unanimous agreement. Such certificate shall be valid until revoked by a subsequent certificate similarly executed. Wherever the approval or disapproval of an Owner is required by the Declaration, the Articles or these Bylaws, such approval or disapproval shall be made only by the person who would be entitled to cast the vote of such Lot at any meeting of the Association. Except where a greater number is required by law, the Declaration, the Articles or these Bylaws, the Class B Member (so long as the Class B.

membership exists) and Owners holding more than one-half of the aggregate Class A membership votes present in person or by proxy at a duly convened meeting at which a quorum is present ("Majority of Owners") are required to adopt decisions at any meeting of the Association. Declarant, as a Member of the Association, shall not be required to disqualify itself in any vote which may come before the Association upon any management contract or other agreement, lease or matter between Declarant or any individual, partnership or corporation having an entity of interest with Declarant and the Association.

Section 3.7. Proxies. A vote may be cast in person or by proxy. Proxies shall be duly executed in writing by one with authority to execute deeds pursuant to the requirements of Section 13.1-847 of the Virginia Code and must be filed with the Secretary before the appointed time of the meeting. Such proxy will be deemed revoked only upon actual receipt of notice of revocation by the person presiding over the meeting from any of the persons owning such Lot. Except with respect to proxies in favor of a Mortgagee (hereinafter defined), no proxy shall in any event be valid for a period in excess of eleven months after the execution thereof and, in any event, any proxy shall terminate automatically upon the adjournment of the first meeting held on after the date of the proxy.

Section 3.8 Quorum. Except as otherwise provided in these (laws, the presence in person or by proxy of the Class B Member 30 long as the Class B membership exists) and Owners holding ten percent of the aggregate Class A membership votes shall constitute a quorum at all meetings of the Members of Association.

Section 3.9 Conduct of Meetings. The President shall preside over all meetings of the Association, and the Secretary shall keep the minutes of the meeting and record in a minute book all resolutions adopted and a record of all other transactions occurring, at the meeting. The President may appoint a person to serve as parliamentarian at any meeting of the Association. The then current edition of Robert's Rules of Order shall govern the conduct of all meetings of the Association when not in conflict with the Declaration, the Articles, these Bylaws or applicable law.

ARTICLE IV

Board of Directors

Section 4.1. Number and Election. The affairs of the Association shall be managed under the direction of its Board of Directors. During the Declarant Control Period, the Board of Directors shall consist of at least 3 directors but not more than 5 directors, none of whom need be Members. During the Declarant Control Period, Declarant shall have the right to appoint or remove any member or members of the Board of Directors. At the special meeting of the Association to be held after the expiration of the Declarant Control Period, as provided in the Articles, the directors appointed by Declarant shall resign and the Class A Members (including Declarant if it owns one or more Lots or Parcels) shall elect 5 members of the Board of Directors. The method of nominating and electing such directors at the special meeting and at subsequent annual meetings and the term for which each director is to be elected shall be as provided in the Articles. The removal of directors and the filling of vacancies in the Board of Directors after the expiration of the Declarant Control Period shall also be as provided in the Articles.

Section 4.2. Powers and Duties. The Board of Directors shall have all of the powers and duties necessary for the administration of the affairs of the Association and may do all such acts and things as are by applicable law, the Declaration, the Articles or by these Bylaws required to be

exercised and done by the Association. The Board of Directors shall have the power from time to time to adopt any rules and regulations deemed necessary for the benefit and enjoyment of the Common Areas; provided however, such rules and regulations shall not be in conflict with the Declarations, the Articles or these Bylaws. The Board of Directors may from time to time elect to have the Association treated as a "homeowner's association" within the meaning of Section 528 of the Internal Revenue Code of 1966, as amended. In addition to the duties imposed by these Bylaws or by any resolution of the Association that may hereafter be adopted, the Board of Directors on behalf of the Association shall have the power and duty to:

- (i) Prepare an annual budget in which there shall be established the General Assessments of each Owner.
- (ii) Make assessments as provided in the Declaration, establish the means and methods of collecting such assessments from the Owners and establish the period of the installment payments of the assessments. Unless otherwise determined by the Board of Directors and except as set forth in the Declaration, the regular assessment against each Lot shall be payable in installments, each such installment to be due and payable in advance on the 1st day of each year.
- (iii) Provide for the operation, care, upkeep, maintenance and servicing of the Common Areas.
- (iv) Designate, hire and dismiss the personnel necessary for the operation, care, upkeep, maintenance and servicing of the Common Areas and, where appropriate, provide for the compensation of such personnel and for the purchase of equipment, supplies and material to be used by such personnel in the performance of their duties.
- (v) Collect the assessments against the Owners, deposit the proceeds thereof in bank depositories designated by the Board of Directors or prudently invest the same (for which purpose the Board of Directors may retain an investment adviser) to the extent such proceeds are not immediately required, and use the proceeds to carry out the administration of the Association.
- (vi) Enact and amend rules and regulations from time to time for the use of the Common Areas and establish fees for the use of Common Areas; provided however, that no such rules and regulations so adopted shall be in conflict with the Declarations, the Articles or these Bylaws and provided further that no such rules and regulations shall bind or be construed so as to impair in any manner the lien of any mortgage or deed of trust with respect to any Lot and/or the Common Areas.
- (vii) Open bank accounts on behalf of the Association and designate the signatories thereon.
- (viii) Make, or contract for the making of, repairs, additions and improvements to or alterations of the Common Areas in accordance with the Declaration.
- (ix) Enforce by legal means the provisions of the Declaration, the Articles, these Bylaws and the rules and regulations promulgated pursuant thereto.
- (x) Obtain and carry insurance as provided in Article IX of these Bylaws.
- (xi) Pay the cost of all authorized services rendered to the Association and not billed to Owners or otherwise provided for.
- (xii) Keep books with detailed accounts of the receipts and expenditures affecting the Association and the administration of the Common Areas, specifying the expenses

of maintenance and repair of the Common Areas and any other expenses incurred. All books and records shall be kept in accordance with generally accepted accounting principles consistently applied (but may be on the cash method of accounting) Common Areas.

- (xiii) Acquirer hold and dispose of Lots and
- (xiv) Do such other things and acts not inconsistent with the Declaration, the Articles or these Bylaws which the Board of Directors may be authorized to do under applicable law or by a resolution of the Association.
- (xv) Subject to the Declaration, grant permits, licenses and easements under, through and over the Common Areas for drainage, utilities, roads and access and other purposes which are reasonably necessary to the ongoing development and operation of the submitted Land.

Section 4.3. Managing Agent.

(a) Employment of Management Agent. The Board of Directors may employ for the Association a "Managing Agent" at a compensation to be established by the Board of Directors. The Declarant or an affiliate of the Declarant may be employed as Managing Agent. Any agreement with a Managing Agent shall be for a term not exceeding one year and must permit termination by either party without cause and without termination fee upon no more than 90 days written notice.

(b) Duties. The Managing Agent shall perform such duties and services as the Board of Directors shall authorize, which may include but are not limited to the duties listed in Section 4.2(i), (iii), (iv), (v), (viii), (ix), (x), (xi), (xii) and (xvi) of these Bylaws. The Board of Directors may delegate to the Managing Agent all of the powers granted to the Board of Directors by these Bylaws other than the powers set forth in Section 4.2(u), (vi), (vii), (xiii), (xv) and (xvi) of these Bylaws.

(c) Standards. The Board of Directors may impose appropriate standards of performance upon the Managing Agent.

(d) Liaison. The Board of Directors may designate one of its members as liaison officer who shall be authorized to instruct and deal with the Managing Agent on any matter.

Section 4.4. Annual Meeting. The annual meeting of the Board of Directors shall be held promptly following the annual meeting of the Members of the Association. No notice shall be necessary to the newly elected members of the Board of Directors in order legally to constitute such meeting, providing a quorum of the Board of Directors shall be present.

Section 4.5 Regular Meetings. Regular meetings of the Board or Directors may be held at such time and place as shall be determined from time to time by a majority of the directors. Notice of regular meetings of the Board of Directors shall be given to each director, by mail or hand delivery, at least three business days before the day named for such meeting.

Section 4.6. Special Meetings. Special meetings of the Board of Directors may be called by the President on one business days notice to each director, given by mail or hand delivery, which notice shall state the time, place and purpose of the meeting. Special meetings of the Board of Directors shall be called by the President or Secretary in like manner and with like notice on the written request of at least two directors.

Section 4.7. Waiver of Notice. Any director may at any time, in writing signed by such director, waive notice of any meeting of the Board of Directors, and such waiver shall be deemed equivalent to the giving of such notice. Except in the circumstances described in Section 13.1-

867B of the Virginia Code, attendance by a director at any meeting of the Board of Directors shall constitute a waiver of notice by him of the time, place and purpose of such meeting. If all directors are present at any meeting of the Board of Directors, no notice shall be required and any business may be transacted at such meeting.

Section 4.8. Quorum of Board of Directors. At all meetings of the Board of Directors a majority of the directors shall constitute a quorum for the transaction of business, and the vote of a majority of the directors present at a meeting at which a quorum is present shall constitute the decision of the Board of Directors. If at any meeting of the Board of Directors there shall be less than a quorum present, those present may adjourn the meeting from time to time. At any such adjourned meeting at which a quorum is present~ any business which might have been transacted at the meeting originally called may be transacted without further notice.

Section 4.9 Compensation. No director shall receive any compensation from the Association for acting as such; however, the Board of Directors may in its discretion reimburse any director for actual expenses incurred.

Section 4.10. Conduct of Meetings. The President shall preside over all meetings of the Board of Directors and the Secretary shall keep a minute book of the Board of Directors recording therein all resolutions adopted by the Board of Directors and a record of all transactions and proceedings occurring at such meetings.

Section 4.11. Action Without Meeting. Any action by the Board of Directors required or permitted to be taken at any meeting may be taken without a meeting if all of the members of the Board of Directors shall individually or collectively consent in writing to such action. Any such written consent shall be filed with the minutes of the proceedings of the Board of Directors.

Section 4.12. Telephone Meetings; The Board of Directors may permit any or all directors to participate in any meeting by, or conduct the meeting through the use of, any means of communication by which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting.

ARTICLE V

Committees

The Board of Directors may create one or more committees and may appoint members of the Board, officers of the Association or Members to such committees. Committees shall perform such tasks and serve for such periods as may be designated by resolution adopted by the Board. Each committee shall operate in accordance with the terms of resolution of the Board of Directors designating such committee or with rules adopted by the Board. The provisions of these Bylaws which govern meetings, action without meetings, notice and waiver of notice, quorum and voting requirements of the Board of Directors shall apply to committees as well.

ARTICLE VI

Officers

Section 6.1. Designation. The principal officers of the Association shall be the President, the Vice President, the Secretary and the Treasurer, all of whom shall be elected by the Board of Directors. The Board of Directors may appoint an assistant treasurer, an assistant secretary and

such other officers as in its judgment: may be desirable. The President shall be a member of the Board of Directors. Any other officers may, but need not, be members of the Board of Directors. Officers need not be members of the Association.

Section 6.2 Election of Officers. The officers of the Association shall be elected annually by the Board of Directors at the annual meeting of the Board of Directors and shall hold office (unless sooner removed) until the next annual meeting of the Board or until their replacements are elected.

Section 6.3 Removal of Officers. Any officer may be removed, either with or without cause, and a successor may be elected at any regular meeting of the Board of Directors or at any special meeting of the Board of Directors called for such purpose.

Section 6.4 President. The President shall be the chief executive officer of the Association, preside at all meetings of the Association and of the Board of Directors, and have all of the general powers and duties which are incident to the office of president of a corporation organized under the Virginia Nonstock Corporation Act.

Section 6.5 Vice President. The Vice President shall take the place of the President and perform the duties of the President whenever the President shall be absent or unable to act. If neither the President nor the Vice President is able to act, the Board of Directors shall appoint some other member of the Board of Directors to act in the place of the President, on an interim basis. The Vice President shall also perform such other duties as shall from time to time be imposed upon him or her by the Board of Directors or by the President.

Section 6.6. Secretary. The Secretary shall keep the minutes of all meetings of the Association and of the Board of Directors; have charge of such books and papers as the Board of Directors may direct; maintain a register setting forth the place to which all notices to Owners and Mortgagees requesting notices shall be delivered; upon request by a conveying Owner, deliver statements of all unpaid assessments applicable to the Lot to be conveyed; execute notices of delinquent assessment in accordance with the Declaration; execute notices of and releases of the lien for delinquent assessments as described in the Declaration and, in general, perform all the duties incident to the office of secretary of a corporation organized under the Virginia Nonstock Corporation Act.

Section 6.7. Treasurer. The Treasurer shall have the responsibility for Association funds and securities and shall be responsible for keeping full and accurate financial records and books of account showing all receipts and disbursements, and for the preparation of all required financial data, and be responsible for the deposit of all monies and other valuables in the name of the Board of Directors, the Association or the Managing Agent, in such depositories as may from time to time be designated by the Board of Directors; and, in general, perform all the duties incident to the office of treasurer of a corporation organized under the Virginia Nonstock Corporation Act.

Section 6.8. Compensation of Officers. No officer shall receive any compensation from the Association for acting as such; however, any officer may be reimbursed for actual expenses incurred as such officer.

ARTICLE VII

Operation of the Property

Section 7.1. Fiscal Year. The fiscal year of the Association shall be the calendar year unless otherwise determined by the Board of Directors.

Section 7.2 Adoption of Budget and Establishment of Assessments. The Board of Directors of the Association shall adopt a budget containing an estimate of the total amount of Association expenses, including any proposed capital expenditures for each fiscal year of the Association and shall establish in such budget the level of General Assessments and assessments for Limited Common Expenses for every Lot subject thereto. The Board of Directors shall send written notice of each annual budget and assessment level set forth therein to each Owner at least fifteen days in advance of adopting the same. In adopting the budget, the Board of Directors shall provide for reasonable reserves, including, without limitation, a general operating reserve, a contingency reserve, a replacement reserve and a reserve for the deductible on physical damage insurance policies. Reserves related to Limited Common Areas shall be separately reflected and funded only from assessments for Limited Common Expenses. There shall be no responsibility for the payment of assessments until the Board of Directors adopts the initial annual budget. The failure or delay of the Board of Directors to prepare or adopt a budget for any fiscal year after the initial annual budget is adopted shall not constitute a waiver or release in any manner of an Owner's obligation to pay assessments as herein provided whenever the same shall be determined and, in the absence of any annual budget or adjusted budget, each Owner liable for assessments shall continue to pay each periodic installment at the rate established for the previous fiscal year until the new or adjusted annual budget is adopted and new level of assessment established.

Section 7.3 Payment of Assessments. Each Owner liable therefor shall pay the assessments established by the Declaration and these Bylaws. No Owner shall be liable for the payment of any part of the assessment against his Lot and due subsequent to the date of recordation of a conveyance by him in fee of such Lot to a successor Owner (except a conveyance as security for the performance of an obligation). Each Owner waives the benefit of the homestead exemption as to any assessments levied against either the Lot or the Owner. Each such assessment, together with the interest, late charges and costs of collection (including attorneys' fees) shall also be the personal obligation of the Owner at the time the assessment fell due.

Section 7.4 Collection of Assessments. The Board of Directors, or the Managing Agent at the request of the Board of Directors, may take action to collect any assessments due from any Owner. Each defaulting Owner shall also pay all costs of collection, including without limitation attorneys fees, incurred in the collection of any unpaid assessment and shall also pay any expense incurred as a result of a check being returned to the Association without payment.

Section 7.5 Statement of Assessments and Access to Records. In addition to complying with the requirements of Section 7.6 of these Bylaws, the Board of Directors shall promptly provide any Owner, contract purchaser or Mortgagee so requesting the same in writing with a written statement of the amount of all assessments levied against a Lot and all unpaid assessments due from such Owner. The Association shall keep detailed records of its operation and administration and make the same available for inspection as provided in Section 55-510 of the Virginia Code. The Association may impose and collect a charge, reflecting the actual cost of materials and labor, before providing copies of any books and records to a Member.

Section 7.6 Maintenance, Repair Replacement and Other Expenses. The Association shall be responsible for such maintenance, repair and replacement of the Common Areas as is set forth in the Declaration. unless otherwise determined by the Board of Directors, all repairs and replacements shall be substantially similar to the original construction and installation and shall be of good quality. The method of approving payment vouchers for repairs and replacements performed by the Association shall be determined by the Board of Directors.

ARTICLE VIII

Insurance

Section 8.1. General Requirements.

(a) Purchase of Insurance. All insurance policies relating to Common Areas shall be purchased by the Association. Neither the Board of Directors nor the Managing Agent nor the Declarant shall be liable for failure to obtain any coverage required by the Declaration by this Article VIII or for any loss or damage resulting from such failure if such failure is due to the unavailability of such coverages from reputable insurance companies, or if such coverage is available only at unreasonable cost.

(b) Required Provisions in Policies Each insurance policy for the Common Areas shall provide that:

(i) The insurer waives any right to claim (A) by way of subrogation against the Declarant, the Association, the Board of Directors, the Managing Agent or the Owners, and their respective lessees, and (B) invalidity arising from acts of the insured.

(ii) Such policy may not be canceled, not renewed or substantially modified without at least fifteen (15) days prior written notice of the Association and the Managing Agent, and in the case of physical damage and fidelity insurance, to all Owners and Mortgagees and mortgage loan servicers.

(c) Declarant as Beneficiary The Declarant, so long as Declarant shall own any Lot, shall benefit from all such policies as an Owner.

(d) Insurance Companies. All policies of insurance shall be written by reputable companies licensed to do business in the Commonwealth of Virginia and, in the case of the physical Damage insurance, holding a rating of B/III or better by Best's Insurance Reports.

Section 9.2 Physical Damage Insurance.

(e) All Risk Coverage. If any insurable improvements are constructed on the Common Areas, the Association shall obtain and maintain a policy of insurance against fire and such other hazards within the meaning of "all risk" insuring the improvements to the Common Areas (including fixtures and building service equipment and personal property), naming the Association as insured for the use and benefit of all Owners in an amount equal to not less than 100% of the then current replacement cost of the improvements to the Common Areas (exclusive of land, excavations, foundations and other items usually excluded from such Coverage) amount to be redetermined annually by the Board of Directors with the assistance of the insurance company, affording such coverage. Any deductible shall not exceed the lesser of \$10,000 or 1% of the amount of coverage and such deductible shall be considered in establishing the level of reserves.

(f) Required Provisions. Such policy shall also provide (unless otherwise provided):

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

(ii) The following endorsements (or equivalent) if applicable and available: (A) "contingent liability from operation of building laws", "demolition cost" and increased cost of construction", (B) "agreed amount" or its equivalent and "inflation guard," and (C) "steam boiler and machinery coverage" within minimum liability per accident of not less than the lesser of the insurable value of the building housing the boiler or machinery or \$2,000,000.

(iii) That any "no other insurance" clause expressly excludes 'individual Owners'

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

(g) Delivery of Policies to Mortgagees. A duplicate original of the policy of physical damage insurance, all renewals thereof, and any subpolicies or certificates and endorsements issued thereunder together with proof of payment of premiums shall be delivered by the insurer at least ten days prior to the expiration of the then current policy to any Mortgagee requesting the same.

(h) Prohibited Provisions. The Association shall not obtain a policy where (i) under the terms of the carrier's charter, bylaws or policy, contributions or assessments may be made against any Owner or Mortgagee or mortgage loan servicer or become a lien on the Properties; or (ii) by the terms of the carrier's charter, bylaws or policy, loss payments are contingent upon action by the carrier's board of directors, policyholders or members; or (iii) the policy includes any limiting clauses (other than insurance conditions) which could prevent the Association from collecting insurance proceeds.

Section 8.3 Liability Insurance. The Association shall obtain and maintain comprehensive general public liability and property damage insurance in such limits as the Board of Directors may from time to time determine (but not less than \$1,000,000 for bodily injury or property damage), insuring the Association, each member of the Board of Directors, the Managing Agent, each Owner and the Declarant against any liability to the public or to the Owners (and their invitees, agents and employees) arising out of, or incident to the ownership and or use of the Common Areas and other areas (if any) under the supervision of the Association including, to the extent applicable and available: host liquor liability, elevator collision liability, comprehensive automobile liability, contractual liability, garage keeper's liability and bailee's liability. Such insurance shall be issued on a comprehensive liability basis and shall contain a "severability of interest" endorsement which shall preclude the insurer from denying liability to an Owner because of negligent acts of the Association or of another Owner. The Board of Directors shall review such limits once each year. "Umbrella" liability insurance in excess of the primary limits may also be obtained.

Section 8.4 Other Insurance. The Association shall obtain and maintain:

- (i) Fidelity coverage to protect against dishonest acts on the part of officers, directors, employees and agents (including the Managing Agent) of the Association and all others who handle, or are responsible for handling funds of the Association. Such fidelity bonds shall: (A) name the Association as an obligee; (B) be written in an amendment to cover the maximum funds that will be in the custody of the Association or the Managing Agent at any time and in any event not less than three (3) months' aggregate assessments on all Lots and Parcels plus reserves; and (C) contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression;
- (ii) Workmen's compensation and employer's liability insurance if and to the extent necessary to meet the requirements of law and which, if carried, shall name the Managing Agent as an additional insured; and
- (iii) Such other insurance as the Board of Directors may determine or as

may be requested from time to time by Owners of a majority of the Lots and Parcels.

Section 8.5 Separate Insurance by Owners. Each Owner shall have the right and responsibility, at his own expense, to obtain insurance for his own Lot and improvements thereon and for his own benefit; provided, however, that no Owner shall be entitled to exercise his right to obtain such insurance coverage so as to decrease the amount which the Association, on behalf of all Owners, may realize under any insurance policy maintained by the Association or to cause any insurance coverage maintained by the Association to be brought into contribution with insurance coverage obtained by an Owner. Each Owner shall obtain liability insurance with respect to his Lot or Parcel in the amount of at least \$100,000. All such policies shall contain waivers of subrogation as against the Association and its Board of Directors, the Declarant and the Managing Agent, and their respective agents and employees. No Owner shall obtain separate insurance policies in conflict with this Section 8.5.

Section 8.6 Board of Directors as Agent. The Board of Directors is hereby irrevocably appointed the agent and attorney-in-fact for each Owner, each Mortgagee, other named insureds and their beneficiaries and any other holder of a lien or other interest in the Property to adjust and settle all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims and to pursue and settle all claims arising out of the taking by way of eminent domain of any of the Common Area.

ARTICLE IX

Miscellaneous

Section 9.1. Notices. All notices, demands, requests, statements or other communications under these Bylaws shall be in writing and shall be either delivered in person or if sent by U.S. first class mail, postage prepaid, (i) if to an Owner, at the address which the Owner shall designate in writing and file with the Secretary or, if no such address is designated, at the address of the Lot of such Owner, or (ii) if to the Association, at 200 Suri Drive, Williamsburg, Virginia, 23185 or at such other address as shall be designated by notice in writing to the Owners pursuant to this Section, or (iii) if to a Mortgagee, to the address provided by the Owner or to such other address as the Mortgagee may specify by written notice to the Association. All such notices, demands, requests, statements or other communications shall be deemed to have been given upon the earlier of (i) delivery at the appropriate address above, whether in person, by express courier or by mail or (ii) three days after the postmark date of mailing. Rejection or other refusal to accept shall not invalidate the effectiveness of any notice, demand, request, statement or other communication.

Section 9.2. Captions. The captions herein are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of these Bylaws or the intent of any provision thereof.

Section 9.3. Gender, Etc. The use of the masculine gender in these Bylaws shall be deemed to include the feminine and neuter genders and the use of the singular shall be deemed to include the plural, and vice versa, whenever the context so requires.

Section 9.4. Construction. These Bylaws are intended to comply with applicable laws and shall be so interpreted and applied. In the event of conflict between the Declaration or the Articles and these Bylaws, the Declaration or Articles shall control.

Section 9.5. Amendments. These Bylaws may be amended (i) by the Board of Directors during

the Declarant Control Period and (ii) thereafter by a vote of at least two-thirds (2/3) of the Class A votes entitled to be cast by Members present at a duly convened meeting at which a quorum is present. For purposes of this Section 9.5, the presence in person or by proxy of Members entitled to cast 50% of the aggregate Class A membership votes shall constitute a quorum; however, to the extent any such amendment would be inconsistent with the Declaration, such Amendment: shall be adopted in the same fashion as an amendment to the Declaration.

000811

THIS AMENDMENT TO DECLARATION OF COVENANTS, EASEMENTS AND RESTRICTIONS is made as of this 1st day of August, 2000 by **CONDODR PROPERTIES IN WILLIAMSBURG, L.L.C.**, a Virginia limited liability company (the "Declarant").

WHEREAS, the Declarant executed that certain Declaration of Covenants, Easements and Restrictions (the "Declaration") dated November 19, 1999 and recorded in the Clerk's Office of the Circuit Court of the City of Williamsburg, Virginia on December 15, 1999 as Instrument No. 991589 subjecting certain property described therein (the "Property") to the scheme of ownership created pursuant to the Declaration; and

WHEREAS, Declarant is the owner of the Property as well as all of the Additional Land which may be subjected to the terms and conditions of the Declaration; and

WHEREAS, desires to amend certain provisions of the Declaration as more particularly set forth below:

NOW, THEREFORE, WITNESSETH that pursuant to and in accordance with the provisions of Section 11.2 of the Declaration, the Declarant hereby amends the Declaration as follows:

1. The first sentence of Section 5.12. of the Declaration shall be amended by deleting the first sentence as previously written and substituting the following sentence in lieu thereof:

Upon the acquisition of record title to a Lot by the first purchaser thereof (other than the Declarant), a contribution shall be made by or on behalf of the purchaser to the working capital of the Association in the amount of \$375.00.

2. Except as herein revised and amended, the Declaration shall remain in full force and effect.

[The next page is the signature page.]

Prepared by: Faggert & Frieden, P.C.
1435 Crossways Blvd. Suite 200
Chesapeake VA 23320-2840
757-424-3232

AUG-38 0066

WITNESS the following signature and seal as of the date first above written.

CONDOR PROPERTIES IN
WILLIAMSBURG, L.L.C., a
Virginia limited liability
company

By: *Paula Hertzberg*
Name: PAULA HERTZBERG
Title: mgr

COMMONWEALTH OF VIRGINIA
CITY/COUNTY OF Williamsburg, to-wit:

The foregoing instrument was acknowledged before me this 3 day of August, 2000 by PAULA HERTZBERG, as MANAGER of Condor Properties in Williamsburg, L.L.C.

Billie L. Edwards
Notary Public

[SEAL]

My Commission Expires: 10/31/04

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VIRGINIA: City of Williamsburg and County of James City, to-wit:
This Declaration of Consent was presented with certificate annexed and admitted to record on 3 Aug, 2000, at 11:30 AM in the Clerk's Office of the Circuit Court of the City of Williamsburg and County of James City.

TESTE: BETSY B. WOOLRIDGE, CLERK

BY: *Betsy B. Woolridge* Deputy Clerk

AUG-38 0067

This instrument was prepared by Vandeventer Black LLP, 500 World Trade Center, Norfolk, Virginia 23510

**AMENDMENT TO
DECLARATION OF COVENANTS, EASEMENTS AND RESTRICTIONS
FOR
BRANDYWYNE OWNERS ASSOCIATION**

(LEASING AMENDMENT)

THIS AMENDMENT TO DECLARATION OF COVENANTS, EASEMENTS AND RESTRICTIONS made as of _____, 20__ by BRANDYWYNE OWNERS ASSOCIATION, a Virginia nonstock corporation and property owners association (the "Association") (Grantor and Grantee for recording purposes).

W I T N E S S E T H:

WHEREAS, the Declaration of Covenants, Easements and Restrictions For Brandywyne dated November 19, 1999, was recorded in the Clerk's Office of the Circuit Court of the City of Williamsburg, Virginia on December 15, 1999, as Instrument No. 991589, as amended (the "Declaration");

WHEREAS, in order to maintain the primarily owner-occupied status of the Submitted Land, so as to enhance the market value of the Lots therein, to preserve the ability of Owner-Occupants to obtain favorable, owner-occupied mortgage financing for their Lots and to maintain the sense of community that can suffer when a disproportionate percentage of Lots become occupied by tenants, the Board of Directors, in the best interest of the Association, has proposed an amendment to the Declaration to add restrictions regarding the leasing of Lots as set forth herein;

WHEREAS, pursuant to Section 9.4(b)(i), the Declaration may be amended to add a material provision regulating the leasing of Lots;

WHEREAS, consent of Owners representing at least 67% of the Class A votes has been obtained;

WHEREAS, Declarant still owns land subject to the Declaration and has consented to this amendment;

WHEREAS, approval of at least 51% of Mortgagees has been obtained; and

WHEREAS, notice having been given and a meeting having been duly called and held.

GPIN # See attached

NOW, THEREFORE, pursuant to the rights given to and reserved by the Association and the Owners to amend the Declaration and in accordance with the Virginia Property Owners Association Act, Va. Code Ann. Section 55-508 *et. seq.*, as amended (the “Act”), the Declaration is hereby amended as follows:

Article VII is hereby amended to add Section 7.6 as follows:

Section 7.6. Restrictions on Leasing of Lots. No Lot may be leased or used for transient or hotel purposes or for other than single-family residential purposes. No portion of any Lot (other than the entire Lot) shall be leased for any period. No Lot shall be rented to or occupied by more persons than that for which it was intended or by anyone other than the tenant and his family, guests or invitees. No Lot shall be rented for any period of less than one year. The maximum number of Lots that may be rented at any one time shall not exceed 12, which is approximately 15% of the number of Lots (the “Rental Ceiling”). If a person or persons acquire a Unit through inheritance, that person or persons shall be deemed to have owned and occupied that Lot during the period which their decedent owned and occupied the Lot. No Lease entered into after the date of recordation of this Amendment shall be valid unless it has been approved by the Board of Directors prior to the occupancy by the tenant. The occupancy of a Lot and every Lease shall be deemed to include, and shall be subject to, the Declaration, Bylaws, rules and regulations of and any other documents governing the Association, as the same may be amended and a failure to comply thereby shall be deemed a default under any lease.

For purposes of this provision, the term “renting,” “rental,” “rent,” “lease,” “leasing” or similar terms means the granting of a right to use or occupy a Lot, for a specified term, or an indefinite term with rent reserved on a periodic basis, in exchange for the payment of rent (that is money, property or other goods or services of value), and the occupancy of a Lot solely by a person or persons other than the Owner, his family or non-business-related guests, whether or not rent is paid; but does not mean and include joint ownership of a Lot by means of joint tenancy, tenancy-in-common or other forms of co-ownership, or the occupancy of a Lot by any person who resides in a Lot with the Owner, whether or not rent is charged therefore, or any first deed of trust holder in possession of a Lot following a default under a first deed of trust, a foreclosure proceeding or any deed or other arrangement in lieu of foreclosure.

The provisions of this subsection shall apply to any tenant who subleases a Lot or enters into an assignment of a Lease for a Lot.

Except as modified by this Amendment, the Declaration, as amended, is expressly ratified, affirmed and shall remain in full force and effect.

This Amendment shall be filed in the Clerk’s Office of the Circuit Court of the City of Williamsburg and attached to the Declaration of the Association upon recordation.

BRANDYWYNE OWNERS
ASSOCIATION

By _____
_____, President

**CERTIFICATION PURSUANT TO
VIRGINIA CODE §55-515.1**

COMMONWEALTH OF VIRGINIA,
CITY OF _____ to-wit:

The foregoing instrument was acknowledged before me, the undersigned Notary Public, by _____, President of Brandywyne Owners Association, who did state that Owners of record of at least 67% of the Class A votes approved the foregoing amendment or ratifications thereof.

Given under my hand this ___ day of _____, 20____.

Notary Public

My commission expires: _____

GPIN # See attached