

**WILLIAMSBURG BUSINESS CENTER  
PHASE II, A CONDOMINIUM  
DECLARATION OF CONDOMINIUMS**

**CHARTER, L.L.C.  
A VIRGINIA LIMITED LIABILITY COMPANY  
DECLARANT**

WILLIAMSBURG BUSINESS CENTER  
PHASE II  
A Condominium  
Declaration of Condominiums

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THIS DECLARATION, made this 28th day of November, 1995, by CHARTER, L.L.C., a Virginia limited liability company, hereinafter called the "Declarant", as developer and sole owner in fee simple absolute of the real property described hereinafter, hereinafter called the "Property".

ARTICLE ONE

CREATION AND ESTABLISHMENT OF THE CONDOMINIUM AND RECORDATION

This Declaration and the accompanying ByLaws and plats and plans attached hereto as an integral part hereof and recorded simultaneously herewith as Exhibits A and B, respectively, all such instruments hereinafter referred to by the collective term "condominium instruments", records the property of a condominium, and through recordation hereof the Declarant, undertaking to develop a real estate condominium project in the form of structures consisting of three (3) buildings to be known as Williamsburg Business Center, Phase II, a condominium, located in James City County, Virginia, hereby expressly declares its desire to submit, and does hereby submit, the Property to the regime established by the Condominium Act, Title 55, Chapter 4.2, Sections 55-70.39 through 55-79.103 of the Code of Virginia of 1950, as amended, and does hereby create and establish a condominium form of ownership for the Property and does constitute the Property into a condominium to be known as Williamsburg Business Center, Phase II,

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a condominium, the particulars of which are set forth hereinafter. These condominium instruments shall be complementary and shall be construed together and shall be deemed to incorporate one another to the extent that any requirement of the Condominium Act as to the content of one shall be deemed satisfied if the deficiency can be cured by reference to any one or more of the other. Any amendment or certification of any condominium shall, from the time of the recordation of such amendment or certification, be deemed an integral part of the affected condominium instrument, so long as such instrument or certification was made in accordance with the provisions of the Condominium Act.

This Declaration is recorded also for the purpose of complying with the provisions of Section 55-79.39, et seq., of the Code of Virginia of 1950, as amended, and hereafter provision shall be made for the recordation of the individual condominium units or subsequent resales, mortgages and other encumbrances, as is done with all other real estate recordation, and each condominium unit shall be constitute a separate parcel of real property, distinct from all other condominium units.

## ARTICLE TWO

### DESCRIPTION AND STATUTORY PARTICULARS

As used herein, the "Property" means and includes the land described hereinafter, which is owned by the Declarant in fee simple, together with the proposed three (3) buildings and all improvements and structures to be erected thereon, to be known as Williamsburg Business Center, Phase II, a condominium, in accord

with the plats attached hereto as Exhibit B and recorded herewith drawn by AES Consulting Engineers, Williamsburg, Virginia, hereinafter called the "plats and plans", all incidents thereto or interest therein.

A. Legal Description of the Land.

Incorporated by reference is the plat prepared by AES, Consulting Engineers, Williamsburg, Virginia, attached hereto as Exhibit B and a legal description by metes and bounds of the land submitted to this Declaration attached hereto as Exhibit C.

B. Description of Buildings and General Description and Number of Each Unit.

The Declarant is undertaking to develop a real estate condominium project on the Property whereby three (3) commercial buildings with units as defined hereinafter within the three (3) buildings, are to be individually offered for sale and sold and conveyed to unit owners, and thereafter individually owned, possessed, sold, conveyed, encumbered and disposed of by unit owners under condominium ownership. The buildings, to be called Williamsburg Business Center, Phase II, a condominium, shall have the street address of 5000 New Point Road, Williamsburg, Virginia, and shall be three (3) structures with four (4) units in Building D; four (4) units in Building E; and four (4) units in Building F.

The size of each unit, that is, the number of square feet within each unit, shall be computed by reference to the plats and plans and rounded off to a whole number. The same basis of calculation is employed for all buildings in the condominium, or



any expansion of the condominium.

D. Description of the Common Elements and Prohibition Against Partition.

The common elements of the Property are all portions of the condominium other than the units.

Each unit owner shall have an equal undivided ownership interest in all common elements.

The common elements remain undivided and shall not be subject to any suit for partition until and unless the condominium is terminated. No unit owner, nor any other persons, shall bring any suit or other proceeding for partition or division of the co-ownership of the common elements until and unless the condominium is terminated.

Nothing contained herein shall be construed as a limitation on partition by the unit owners of one condominium unit in the regime as to the individual ownership of such condominium unit without terminating the regime or as the ownership of Property outside the regime, provided that upon partition of any such individual condominium unit the same shall be sold as an entity and not be partitioned in kind.

New Point Road as shown on Exhibit B shall constitute common area of the condominium and shall be maintained by Williamsburg Business Center, Phase II, a condominium.

## ARTICLE THREE

DEFINITIONS, OWNERSHIP, RIGHTS, TITLE AND INTEREST,  
DEEDS TO INDIVIDUAL UNITS, PROHIBITION AGAINST SUBDIVISION,  
EXPANSION OF CONDOMINIUM

Except to the extent otherwise provided by the condominium instruments, the terms defined in Section 55-79.41 of the Code of Virginia of 1950, as amended, shall be deemed to have the meanings therein specified and ascribed to them wherever they appear in the condominium instruments, unless the context clearly otherwise requires.

"Unit", as used herein, shall generally mean a portion of the condominium designated and intended for individual ownership and use, and specifically, shall mean a commercial unit which is an enclosed space with a total enclosed area, as shown on the plats and plans, consisting of and the boundaries of which are designated, delineated and described as extending to the middle of any interior wall which abuts any other unit, and extending up to, but not including, the exterior surface of any outside wall (the vertical, lateral or perimetric boundaries of the unit), the bottom of the floors (the lower, horizontal boundaries of the unit), and up to, but not including, the exterior surface of the roof (the upper horizontal boundaries of the unit), of each separately designated self-contained commercial business unit, consisting specifically of the rooms, designed, proposed, intended and restricted to be used solely for independent, individual ownership and commercial use. All doors and windows in a unit shall be

deemed a part of that unit.

If any chutes, flues, ducts, conduits, wires, bearing columns, or any other apparatus lies partially within and partially outside of the designated boundaries of a unit, any portion thereof serving only that unit shall be deemed a part of that unit, while any portions thereof serving other units or any portion of the common elements shall be deemed a part of the common elements. Subject to the provisions of the foregoing sentence, all space, interior partitions and other fixtures and improvements within the boundaries of a unit shall be deemed a part of that unit.

"Common area" or "common elements" as used herein means common elements to which all unit owners in the regime are entitled to use and enjoy. All elements which are not part of any unit shall be common elements.

Ownership of each unit shall entitle the owner or owners thereof to the use of the parking spaces located in the Common Area, said parking spaces to be used only by the unit owners, their guests and invitees. Any disabled automobile must be removed from the Common Area within five (5) days or be removed by the Association at owner's expense.

The Declarant expressly reserves an easement for itself or its assignees pursuant to Section 55-79.66 of the Code of Virginia to facilitate sales, and may maintain a model unit and/or sales office in any unit owned by the Declarant or its assignees. Said easement shall include the reasonable use of common areas for sales and promotion of any unit or units.

The number of votes in the Unit Owners' Association, the undivided interest in the common elements, rights to common profits and liability for common expenses, allocated and appurtenant to each unit and vested in each unit owner are based upon the proportionate number of square feet owned by the unit owner, as related to total square footage of all units, exclusive of common elements, and same may not be altered or changed except by unanimous agreement of all unit owners and any purported transfer, encumbrance or other disposition of the undivided interest in the common elements allocated to a unit without the unit to which it is appurtenant shall be void.

"Unit owner" shall mean one or more persons ("person" meaning natural person, firm, corporation, partnership, association, trust or other legal entity capable of holding title to real property, or any combination thereof) who own a condominium unit. Each unit owner shall own in fee simple absolute (in addition to an undivided fee simple share, as a tenant in common with the other unit owners, of common elements of the Property) that part of the walls, floors and roof that enclose the space which each unit occupies and which are not a part of the common elements. The undivided interest in common elements are vested in the unit owners.

"Condominium unit" shall mean a unit together with an undivided interest in the common elements.

Each unit shall not have the same par value for the purposes of this Declaration. The units have each been assigned a different par value based upon the proportionate number of square feet of

each unit as relates to the total square footage of the aggregate of all units in the condominium, and for this purpose are considered of different par values. Being considered of different par values within the meaning of this Declaration is not deemed to reflect or control the sales price or fair market value of any unit, and no opinion, appraisal or fair market transaction at a different figure shall affect the par value of any unit, or any undivided interest in the common elements, voting rights in the Unit Owners' Association, liability for common expenses, or rights to common profits, assigned on the basis thereof.

There shall pass with each unit as an appurtenance thereto an exclusive easement or right to and for the use of the air space enclosed by the unit as it exists at any particular time and as the unit may lawfully be altered or reconstructed from time to time. The exclusive easement or right for and to the use of the air space enclosed or occupied by the unit owner shall be terminated automatically in any air space which is vacated from time to time, e.g., upon destruction of the building. Each unit and all common areas shall have and be subject to nonexclusive easements for purposes such as ingress and egress for utility services, and for support, maintenance and repair of each unit and common element.

If any part of the common elements encroaches upon any unit, a valid easement for such encroachment and maintenance thereof, so long as it continues, shall and does exist. In the event any portion of the building shall be partially or totally destroyed and then rebuilt, minor encroachments of any parts of the common

elements or of any unit due to construction shall be permitted and valid easements for such encroachments and the maintenance thereof shall exist.

To the extent that any unit or common element encroaches on any other unit or common element, whether by reason of any deviation from the plats and plans in the construction, repair, renovation, restoration, or replacement of any improvement, or by reason of the settling or shifting of any land or improvement, a valid easement for such encroachment shall exist. The purpose of this section is to protect the unit owners, except in cases of willful and intentional misconduct by them or their agents or employees, and not to relieve the Declarant or any contractor, subcontractor, or materialman of any liability which any of them may have by reason or any failure to adhere strictly to the plats and plans.

The Declarant shall have a transferable easement over and on the common elements for the purpose of making improvements on the submitted land pursuant to the provisions of the condominium instruments and of the Condominium Act, and for the purpose of doing all things reasonably necessary and proper in connection therewith.

To the extent that damage is inflicted on any part of the condominium by any person or persons utilizing the easement created by the preceding paragraph, the Declarant, together with the person or persons causing the same, shall be jointly and severally liable for the prompt repair thereof and for the restoration of the same

to a condition compatible with the remainder of the condominium.

The Unit Owners' Association shall have the right, which may be exercised by its Board of Directors or the managing agent, to enter each unit from time to time during reasonable hours as may be necessary for the operation of the project or for making repairs therein necessary to prevent damage to any units or common elements.

Each unit owner shall afford to the other unit owners and to the Unit Owners' Association, and to any agents or employees of either, such access to his unit as may be reasonably necessary to enable them to exercise and discharge their respective powers and responsibilities. But to the extent that damage is inflicted on the common elements or any unit to which access is taken, the unit owner causing the same, or the Unit Owners' Association, if it caused the same, shall be liable for the prompt repair thereof.

The Board of Directors of the Unit Owners' Association, shall have the irrevocable power as attorney-in-fact on behalf of all the unit owners and their successors in title to grant easements through the common elements and accept easements benefiting the condominium or any portion thereof.

Any unit may be jointly or commonly owned by more than one person.

A unit owner shall have an exclusive right to his unit and shall have as an appurtenance to his unit a common right to a proportionate share, with the other unit owners, in the common elements of the Property and in the common profits. This right to

common elements is subject to limitations as to use and enjoyment as more fully set forth in this Declaration.

Subsequent to the establishment of this condominium, each unit and the common areas attributable thereto shall be subject to individual ownership. A condominium unit may be individually sold, conveyed, mortgaged, encumbered and disposed of and may be the subject of ownership, possession or sale, and of all judicial acts *inter vivos* or *mortiscausa*, as if it were sole and entirely independent of any other condominium unit, and the corresponding individual titles and interest shall be recordable pursuant to the laws of the State of Virginia relating to the recordation of deeds.

A unit may not be sold, conveyed, encumbered or otherwise disposed of or alienated independently or separate or apart from the unit owner's interest in the common elements or vice versa.

Hereafter, no description of a condominium unit shall be deemed vague, uncertain, or otherwise insufficient or infirm which sets forth the identifying number of that unit, the name of the condominium, the name of the city wherein the condominium is situated, and the deed book and page number where the first page of this Declaration is recorded. Any such description shall be deemed to include the undivided interest in the common elements appertaining to such unit, even if such interest is not defined or referred to therein.

No unit may be subdivided so as to make two or more smaller units, nor may a unit be changed in size or the rooms exchanged with the other unit without the recordation of a properly executed



amendment to this Declaration.

The boundaries between the units may be relocated in accordance with the provisions of Section 55-79.69 of the Code of Virginia of 1950, as amended, and the restrictions and limitations which the condominium instruments specify. If the unit owners of adjoining units so desire to relocate their mutual boundaries, then the principal officer of the Unit Owners' Association, or such other officer or officers as the condominium instruments may specify, shall, upon written application of such unit owners, forthwith prepare and execute appropriate instruments pursuant to the following three paragraphs.

An amendment to the Declaration shall identify the units involved and shall state that the boundaries between those units are being relocated by agreement of the unit owners thereof, which amendment shall contain conveyancing between those unit owners. If the unit owners of the units involved have specified in their written application a reasonable reallocation as between the units involved of the aggregate undivided interest in the common elements appertaining to those units, the amendment to the Declaration shall reflect that reallocation.

If the unit owners of the units involved have specified in their written application a reasonable reallocation as between the units involved of the aggregate number of votes in the Unit Owners' Association allocated to those units, an amendment to the ByLaws shall reflect that reallocation and a proportionate reallocation of liability for common expenses and rights to common profits as

between those units. This reallocation of votes and expenses shall be subject to unanimous approval of the other unit owners.

Such plats and plans as may be necessary to show the altered boundaries between the units involved, together with their other boundaries, shall be prepared, and the units depicted thereon shall bear their identifying numbers. Such plats and plans shall indicate the new dimensions of the units involved, and any change in the horizontal boundaries of either as a result of the relocation of their boundaries shall be identified with reference to establish datum. Such plats and plans shall be certified as to their accuracy and compliance with the provisions of this paragraph by a registered land surveyor in the case of any plat and by a registered architect or registered engineer in the case of any plans.

When appropriate instruments in accordance with the preceding three paragraphs have been prepared, executed and acknowledged, they shall be delivered forthwith to the unit owners of the units involved upon payment by them of all reasonable costs for the preparation and acknowledgment thereof. Said instruments shall become effective when the unit owners of the units involved have executed and recorded them, and the recordation thereof shall be conclusive evidence that the relocation of boundaries as effectuated did not violate any restrictions or limitations specified by the condominium instruments and that any reallocations made pursuant to the preceding two paragraphs hereof were reasonable.

Any relocation of boundaries between adjoining units shall be governed by the foregoing provisions and not be Section 55-79.70 of the Code of Virginia of 1950, as amended, which said section shall apply only to such subdivisions of units as are intended to result in the creation of two or more new units in place of the subdivided unit.

Units may be subdivided in accordance with the following provisions of the condominium instruments, provided such subdivision shall be lawful, considering applicable zoning, subdivision, land use and site plan regulations of the County of James City, Virginia.

If the unit owner of any unit desires to subdivide such unit, then the principal officer of the Unit Owners' Association, or such other officer or officers as the condominium instruments may specify, shall, upon written application of the subdivider, as such unit owner shall henceforth be referred to herein, forthwith prepare and execute appropriate instruments pursuant to the following three sections.

An amendment to the Declaration shall assign new identifying numbers to the new units created by the subdivision of a unit and shall allocate to those units, on a proportionate basis, all of the undivided interest in the common elements appertaining to the subdivided unit.

An amendment to the ByLaws shall allocate to the new units, on a proportionate basis, the votes in the Unit Owners' Association allocated to the subdivided unit, and shall reflect a proportionate

allocation to the new units of the liability for common expenses and rights to common profits formerly appertaining to the subdivided unit.

Such plats and plans as may be necessary to show the boundary separating the new units, together with their other boundaries, shall be prepared, and the new units depicted thereon shall bear their new identifying numbers. Such plats and plans shall indicate the dimensions of the new units and the horizontal boundaries thereof, if any, shall be identified thereon with reference to the established datum. Such plats and plans shall be certified as to their accuracy and compliance with the provisions hereof by a registered land surveyor in the case of any plat, and by a registered architect or registered engineer in the case of any plan.

When appropriate instruments in accordance with the preceding sections hereof shall have been prepared, executed and acknowledged, they shall be delivered forthwith to the subdivider upon payment by the subdivider of all reasonable costs for the preparation and acknowledgment thereof. Said instruments shall become effective when the subdivider has executed and recorded them, and the recordation thereof shall be conclusive evidence that the subdivision thus effectuated did not violate any restrictions or limitations specified by the condominium instruments and that any reallocations made pursuant to the foregoing paragraphs hereof were reasonable.

Any provision of this Declaration to the contrary

notwithstanding, the prior written approval of the holders of all first mortgages on any unit shall be required for the abandonment of condominium status, the partition or subdivision of any unit or common element, expansion of the condominium, or change in the percentage interest of the unit owners.

The foreclosure of any mortgage, deed of trust, or other lien shall not be deeded, *ex proprio vigore* to terminate the condominium.

#### ARTICLE FOUR

##### CONTRIBUTIONS AND ASSESSMENTS OF UNIT OWNERS

##### WARRANTY AGAINST STRUCTURAL DEFECTS

"Common expenses" shall mean all expenditures lawfully made or incurred by or on behalf of the Unit Owners' Association, together with all funds lawfully assessed for the creation and/or maintenance of reserves pursuant to the provisions of the condominium instruments; "future common expenses" shall mean common expenses for which assessments are not yet due and payable.

"Common profits" shall mean all income collected or accrued by or on behalf of the Unit Owners' Association, other than income derived from assessments pursuant to Article 4 of this Declaration.

"Declarant" shall mean the Declarant on whose behalf this Declaration is executed and any successors of that Declarant who come to stand in the same relation to the condominium as their predecessor did.

"Dispose" or "disposition" shall refer to any sale, contract, lease, assignment, or any other transaction concerning a

condominium unit.

"Board of Directors" shall mean the executive and administrative entity herein designated as the governing body of the Unit Owners' Association.

"Officer" shall mean any member of the Board of Directors or official of the Unit Owners' Association.

"Proportionately" shall mean the portion attributable to each individual unit owner or unit based upon the ratio that a particular unit or unit owner bears to the aggregate of all units or unit owners.

All unit owners are bound to maintain and repair their own respective units and to contribute proportionately toward the expenses of administration and of maintenance and repairs of the general common elements, and toward any other expenses lawfully agreed upon by the Unit Owners' Association.

If a unit owner fails to maintain or repair his own unit or fails to contribute his proportionate share towards such expenses as set forth above, the manager or Board of Directors of the Unit Owners' Association or, in the proper case, an aggrieved unit owner, may maintain an action at law on behalf of the Unit Owners' Association to recover sums due, for damages, and in equity for injunctive relief, and may file a memorandum of lien and/or *lis pendens* therefore against the individual unit and its appurtenances.

Any unit owner may make any improvements or alterations within his unit that do not impair the structural integrity of any

structure or otherwise lessen the support of any portion of the condominium. But no unit owner shall do anything which would change the exterior appearance, color, or decor of his unit, or of any other exterior portion of the condominium, except to such extent and subject to such conditions as these condominium instruments specify, and in accordance with the permission of the Association.

If a unit owner acquires an adjoining unit, or an adjoining part of an adjoining unit, then such unit owner shall have the right to remove all or any part of any intervening partition, or to create doorways or other apertures therein, so long as no portion of any bearing wall or bearing column is weakened or removed, and as long as no portion of any other common element is damaged, destroyed, or endangered. Such creation of doorways or other apertures shall not be deemed an alteration of boundaries within the meaning of Section 55-79.69 of the Code of Virginia of 1950, as amended, or of the provisions of Article 3 of this Declaration relative to relocation of boundaries between units.

No unit owner, including the Declarant or any mortgagee who acquires title to the unit, shall be exempt from maintaining or repairing his unit or from contributing towards such expenses by waiver or nonuse of the use or enjoyment of the common elements, both general and limited, or by abandonment of the unit belonging to him. However, the liability of any unit owner for future assessments for such expenses shall cease upon the termination of his ownership of the unit belonging to him.

Express consent and a request by the unit owner of any unit shall be deemed to be given in the case of emergency repairs to his unit and the expenses thereof shall be that of the unit owner. Labor performed and materials furnished for the common areas and facilities, duly authorized by the Unit Owners' Association, the manager, or Board of Directors, shall also be deemed to be performed or furnished with the express consent of each unit owner and the expense thereof shall be deemed a common expense.

All powers and responsibilities with regard to maintenance, repair, renovation, restoration and replacement of the condominium shall belong (1) to the Unit Owners' Association in the case of the common elements, and (2) to the individual unit owner in the case of any unit or any part thereof. Each unit owner shall afford to the other unit owners and to the Unit Owners' Association and to any agent or employee of either such access through his unit as may be reasonably necessary to enable them to exercise and discharge their respective powers and responsibilities. But to the extent that damage is inflicted on the common elements or any unit through which access is taken, the unit owner causing the same, or the Unit Owners' Association, if it caused the same, shall be liable for the prompt repair thereof.

The Declarant warrants and guarantees, against structural defects, each of the units for two years from the date it is conveyed, and all of the common elements for two years as provided by Section 55-79.79 of the Code of Virginia of 1950, as amended. Nothing in this paragraph shall be construed to make the Declarant



responsible for any items of maintenance relating to the units or common elements.

The Unit Owners' Association shall have the power to employ, dismiss and replace agents and employees to exercise and discharge the powers and responsibilities of the Unit Owners' Association arising under the preceding paragraph relative to upkeep of the condominium, to make or cause to be made additional improvements on and as a part of the common elements, and to grant or withhold approval of any action by one or more unit owners or other persons entitled to the occupancy of any unit which would change the exterior appearance of any unit or of any other portion of the condominium, or elect or provide for the appointment of an architectural control committee, the members of which must have the same qualifications as officer, to grant or withhold such approval.

The Board of Directors of the Unit Owners' Association, if any, and if not, then the Unit Owners' Association itself, shall have the irrevocable power as attorney-in-fact, on behalf of all the unit owners and their successors in title, to grant easements through the common elements and accept easements benefiting the condominium or any portion thereof.

Nothing contained in the foregoing shall be construed to prohibit the grant, by the condominium instruments, including the ByLaws, of other powers and responsibilities to the Unit Owners' Association or the Board of Directors thereof.

The common profits shall be applied to the payment of common expenses, and rights in any surplus remaining shall accrue to the

condominium units proportionately. Any such surplus shall be distributed accordingly to the unit owners, except to such extent as the condominium instruments may require the same to be added to reserves to maintain pursuant to those instruments.

The amount of all common expenses, less the amount of all common profits, shall be assessed proportionately against all the condominium units. Such assessment shall be made by the Unit Owners' Association annually, or more often, if the ByLaws so provide. No change in the number of votes in the Unit Owners' Association appertaining to any condominium unit shall enlarge, diminish or otherwise affect any liabilities arising from assessments made prior to such change.

The Unit Owners' Association shall have a lien on every condominium unit for unpaid assessments levied against that condominium unit in accordance with the provisions of the Condominium Act and all lawful provisions of the condominium instruments, if perfected as hereinafter provided. The said lien once perfected shall be prior to all other liens and encumbrances, except real estate tax liens on that condominium unit and sums unpaid on any first mortgage or first deed of trust encumbering that condominium unit, and securing an institutional lender. The Unit Owners' Association, in order to perfect the lien given by the foregoing provision and by Section 55-79 of the Code of Virginia of 1950, as amended, shall file before the expiration of ninety (90) days from the time such assessment became due and payable in the Clerk's Office of the Circuit Court for the City of Williamsburg

and County of James City, Virginia, a memorandum, verified by the oath of the principal officer of the Unit Owners' Association, or such other officer or officers as the ByLaws may specify, which contains a description of the condominium unit in accordance with the provisions of Section 55-79.47 of the Code of Virginia of 1950, as amended, the names of the record owners of that condominium unit, the amount of unpaid assessments currently due or past due, together with the date when each fell due, and the date of issuance of the memorandum.

When payment or satisfaction is made of a debt secured by the lien perfected by the foregoing section, said lien shall be released in accordance with the provisions of Section 55-66.3 of the Code of Virginia of 1950, as amended. For the purposes of that section, the principal officer of the Unit Owners' Association, or such other officer or officers as the ByLaws may specify, shall be deemed the duly authorized agent of the lien creditor.

Nothing herein shall be construed to prohibit actions at law to recover sums for which Section 55-79.84(a) creates a lien, maintainable pursuant to Section 55-79.53 of the Code of Virginia of 1950, as amended.

Any unit owner or purchaser of a condominium unit, having executed a contract for the disposition of the same, shall be entitled upon request to a recordable statement setting forth the amount of unpaid assessments currently levied against that unit. Such a request shall be in writing, directed to the principal officer of the Unit Owner's Association, or to such other officer

as the ByLaws may specify. Failure to furnish or make available such a statement within five (5) business days from the receipt of such request shall extinguish the lien created hereby and by Section 55-79.84(a) of the Code of Virginia of 1950, as amended, as to the condominium unit involved. Such statement shall be binding on the Unit Owners' Association, the Board of Directors, and every unit owner. Payment of a fee not exceeding Ten Dollars (\$10.00) may be required as a prerequisite to the issuance of such a statement.

Upon the sale or conveyance of a unit, all unpaid assessments against a unit owner for his proportionate share in the expenses of administration and of maintenance and repairs of the common elements and in any other expenses lawfully agreed upon by the Unit Owners' Association shall first be paid out of the sale price or by the purchaser in preference over any other assessments or charges of whatever nature, except real estate tax liens on that condominium unit and sums unpaid on any first mortgage or first deed of trust encumbering that condominium unit and securing an institutional lender. The liability of the owner of a unit to the Unit Owners' Association for the proportionate expenses shall be limited to the amounts which he is assessed from time to time in accordance with the Condominium Act and the condominium instruments. The administrator or Board of Directors, or the person appointed by the ByLaws of the regime, shall keep, in accordance with good and generally accepted accounting procedures, a book, to be audited at least annually by an independent outside

auditor, with a detailed account of the receipts and expenditures affecting the building and its administration and specifying the maintenance and repair expenses of the common elements and any other expenses incurred by or in behalf of the regime, with the vouchers accrediting the entries made thereon, and specifying the maintenance and repair expenses of the common elements and any other expenses incurred by or in behalf of the regime. Both the book and vouchers shall be available for examination by all of the unit owners and mortgagees of record at convenient hours on working days that shall be set and announced in writing for general knowledge by the Unit Owners' Association.

#### ARTICLE FIVE

##### COMPLIANCE BY UNIT OWNERS WITH COVENANT, CONDITIONS AND RESTRICTIONS OF INDIVIDUAL UNIT DEEDS AND THESE CONDOMINIUM INSTRUMENTS

The Declarant, every unit owner, the Unit Owners' Association itself (as it may be applicable) and all those entitled to occupy a unit, shall comply with all lawful provisions of the condominium instruments. Any lack of such compliance shall be grounds for an action or suit to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, maintainable by the Unit Owners' Association, or, in any proper case, by one or more aggrieved unit owners on their behalf, or as an action or by any mortgage lender on its own behalf, who holds a first mortgage on any unit or units.

There is recorded simultaneously with this Declaration Exhibit

A hereto a set of ByLaws providing for the self-government of the condominium by an association of all the unit owners.

The ByLaws shall provide whether or not the Unit Owners' Association shall elect an executive organ or Board of Directors. If there is to be such an organ, the ByLaws shall specify the powers and responsibilities of the same and the number and the terms of its member. The ByLaws may delegate to such organ, among other things, any of the powers and responsibilities assigned by the Condominium Act to the Unit Owners' Association. The ByLaws shall also specify which, if any, of its powers and responsibilities, the Unit Owners' Association or its Board of Directors may delegate to a managing agent.

The administration of the building and regime shall be governed by the ByLaws approved and adopted by the Unit Owners' Association. The initial ByLaws, which are attached hereto as Exhibit A, may be amended from time to time provided any such amendments shall be duly executed by or on behalf of all the owners of the submitted land, provided that said amendment shall be recorded in the Clerk's Office of the Circuit Court for the City of Williamsburg and the County of James City, Virginia, and provided that the amendment shall set forth the name of the condominium, the name of the city in which the condominium is located, and the deed book and page number where the first page of the Declaration is recorded.

Each unit owner shall comply strictly with the condominium instruments and the Condominium Act, as either of the same may be

lawfully amended from time to time, and with the covenants, conditions and restrictions set forth in the deed of his individual unit and in the condominium instruments. Failure to comply with any of the same shall be grounds for an action by the manager or Board of Directors of the Unit Owners' Association, or, in a proper case, an aggrieved unit owner, on behalf of the Unit Owners' Association to recover sums due, or damages, and for injunctive relief.

#### ARTICLE SIX

##### REGROUPING OR MERGER FILIAL ESTATES WITH PRINCIPAL

##### PROPERTY: AMENDMENT OF CONDOMINIUM INSTRUMENTS:

##### TERMINATION

If there is no unit owner other than the Declarant, the Declarant may unilaterally terminate the condominium or amend the condominium instruments, and any such termination or amendment shall become effective upon the recordation thereof, if the same has been executed by the Declarant.

If there is any unit owner other than the Declarant, then the condominium shall be terminated only by the unanimous agreement of all unit owners.

If there is any unit owner other than the Declarant, then the condominium instruments shall be amended only by agreement of unit owners of units to which three-fourths (3/4) of the votes in the Unit Owners' Association appertain, except in cases for which the Condominium Act provides different methods of amendment.

Agreement of the required majority of unit owners to

termination of the condominium or to amendment of the condominium instruments shall be evidenced by the execution of the termination agreement or amendment, or ratification thereof, and the same shall become effective only when such agreement is so evidenced of record. For the purposes of this section and Section 55-79.71 of the Code of Virginia of 1950, as amended, an instrument terminating the condominium shall be deemed a condominium instrument subject to the provisions of Section 55-79.49 of the Code of Virginia of 1950, as amended, and for the purposes of this section, any ratification of such an amendment shall also be deemed such an instrument.

Except to the extent expressly permitted or expressly required by other provisions of the condominium instruments or of the Condominium Act, no amendment to the condominium instruments shall change the boundaries of any unit, the undivided interest in the common elements appertaining thereto, the liability for common expenses or rights to common profits appertaining thereto, or the number of votes in the Unit Owners' Association appertaining thereto.

Upon recordation of an instrument terminating this condominium, all the Property constituting the same shall be owned by the unit owners as tenants in common in proportion to their respective undivided interest in the common elements immediately prior to such recordation. But as long as such tenancy in common lasts, each unit owner or the heirs, personal representatives, successors, or assigns thereof, shall have an exclusive right of occupancy of that portion of said Property which formerly



constituted his unit.

Upon recordation of an instrument terminating this condominium, any rights the unit owners may have to the assets of the Unit Owners' Association shall be in proportion to their respective undivided interests in the common elements immediately prior to such recordation, except that common profits shall be distributed in accordance with the provisions of Section 55-79.82 of the Code of Virginia of 1950, as amended.

The merger or termination provided for in the preceding section shall in no way bar the subsequent constitution of the Property into another condominium whenever so desired and upon the observance of the Condominium Act.

In the event of termination of the regime, any unit owner may maintain a partition suit for the sale of the whole Property. The net proceeds of the partition sale, together with the common funds, common profits and insurance proceeds, shall be distributed proportionately to the unit owners in accordance with the economic interest of each unit owner after liens and encumbrances on his unit are paid and released.

Notwithstanding the foregoing relating to any amendment of the condominium documents, the concurrence of three-fourth (3/4) of the holders of the first mortgages must be obtained.

#### ARTICLE SEVEN

##### DAMAGE OR DESTRUCTION: INSURANCE

If any part of the common elements shall be damaged by casualty, the determination of whether or not to reconstruct or

repair the same shall be made as follows:

1. "Partial destruction", which shall be deemed to mean destruction which does not render more than fifty percent (50%) of the units of each building untenable, shall be reconstructed or repaired by the Unit Owners' Association with the expenses of reconstruction being an expense assessable among the unit owners whose units or common elements attributable thereto are affected, pro rata according to the proportion of damage to each unit or common element, to the extent not covered by the master casualty insurance policy maintained by the Unit Owners' Association as required herein; provided, unless at a meeting of the Unit Owners' Association as required herein; provided, unless at a meeting of the Unit Owners' Association which shall be called prior to commencement of such reconstruction or repair, the regime is terminated as provided in Article 6. If the regime is not so terminated, such reconstruction or repair shall be commenced within a reasonable time, and in no event later than ninety (90) days after the occurrence of the casualty and shall be completed within a reasonable time, with provisions to be made in the construction contract for liquidated damages in the event of failure to complete within the time specified therein.

2. "Total destruction", which shall be deemed to mean the destruction which renders over fifty percent (50%) of the units of each building untenable, shall not be reconstructed or repaired and the regime shall be terminated, unless at a meeting of the Unit Owners' Association which shall be called within ninety (90) days

after the occurrence of the casualty, or, if by such date the insurance loss has not been finally adjusted, then within thirty (30) days thereafter, at least unit owners of units to which at least three-fourths (3/4) of the votes in the Unit Owners' Association appertain vote in favor of reconstruction or repair.

If the destruction exceeds Forty Thousand Dollars (\$40,000.00), then the Board of Directors shall employ an independent estimator who shall determine and/or confirm the amount needed to repair the destruction and also the certification of the funds for repair, if the insurance company does not disburse funds. When an independent estimator is employed, a copy of his estimate of damage is to be furnished, if requested, to any unit mortgagee.

The Unit Owners' Association shall, and is hereby required to, obtain and maintain casualty and liability insurance on the condominium. In order to minimize the problems arising from destruction caused by casualty, the Unit Owners' Association, as a common expense, shall obtain and maintain a master casualty policy affording fire and extended coverage in an amount consonant with the full replacement value of the structures within the condominium, or of such structures that, in whole or in part, comprise portions of the common elements, without restricting the policy to coverage of the common elements, thus assuring sufficient funds for reconstruction and replacement, without prejudice to the right of any unit owner to insure his own unit at his own expense, for his own benefit, and in the event of reconstruction and replacement, all proceeds from the master casualty insurance policy

must be used for reconstruction of the building.

The fire and extended coverage insurance shall be in an amount necessary to comply with any co-insurance percentage stipulated in the policy, but in any event, not less than eighty percent (80%) of the insurable value (based upon replacement cost) without deduction for depreciation.

The Unit Owners' Association shall obtain and maintain a master liability policy in the amount of at least Five Hundred Thousand Dollars (\$500,000.00) for bodily injury either to one person or to multiple persons injured as a result of a common accident or occurrence, including death, and Ten Thousand Dollars (\$10,000.00) for Property damage, covering the Unit Owners' Association, the Board of Directors, the managing agent, if any, all persons acting or who may come to act as agents or employees of any of the foregoing.

The Board of Directors shall have the right to change the limits of insurance from time to time and such requirements shall be at their discretion.

As soon as any policy of insurance has been obtained by or on behalf of the Unit Owners' Association, written notice of the obtainment thereof and of any subsequent changes therein or termination thereof shall be promptly furnished each unit owner by the officer required to send notices of meetings of the Unit Owners' Association, which notices shall be sent in accordance with the provisions of the last sentence of Section 55-79.75 of the Code of Virginia of 1950, as amended, that is, such notices shall be

sent by United States mail, return receipt requested, to all unit owners of record at the address of their respective units, and to such other addresses as any of them may have designated to such officer; or such notice may be hand delivered by the said officer, provided he obtains a receipt of acceptance of such notice from the unit owner.

#### ARTICLE EIGHT

##### RIGHTS OF MORTGAGEES AND RELATED MATTERS

Notwithstanding any provision of the Declaration to the contrary, the provisions contained in this Article shall apply to the regime.

An adequate reserve fund for replacement of common element components shall be established, and will be funded by monthly payments. There shall be established a working capital fund for the initial months of operation of the project equal to at least two months' estimated common area charge for each unit.

The Unit Owners' Association shall give the holders of first mortgages prompt notice of any default in a unit mortgagor's obligations under the condominium documents not cured within thirty (30) days of default.

The holders of the first mortgages shall have the right to examine the books and records of the Unit Owners' Association and to require annual reports and other financial data, said report to be furnished within ninety (90) days of the end of the regime's fiscal year.

Prior approval of three-fourths (3/4) of the holders of all

first mortgagees shall be required before the Unit Owners' Association can abandon condominium status, partition or subdivide a unit or common element, change the percentage interest of unit owners, materially amend the legal documents, or terminate any existing management agreement and attempt self-management.

Timely written notice shall be given to each first mortgagee of any condemnation or eminent domain proceeding, or of any substantial damage, or of destruction to common elements or to any unit.

Upon request, any first mortgagees shall be entitled to receive timely written notice of all meetings of the Unit Owners' Association, and each first mortgagee shall be entitled to designate a representative to attend such meeting.

#### ARTICLE NINE

##### LEASING BY UNIT OWNER

No unit owner shall be permitted to lease his unit for a period of less than thirty (30) consecutive days.

Any lease agreement shall be required to provide that the terms of the lease shall be subject in all respects to the provisions of the Declaration, Covenants and Restrictions, and the ByLaws, and that any failure by the lessee to comply with the terms of such documents shall be a default under the lease. All leases shall be required to be in writing. Other than the foregoing, there is no restriction on the right of any unit owner to lease his unit.

## ARTICLE TEN

CONDEMNATION: MISCELLANEOUS

A reasonable method for dealing with any condemnation of the project shall be provided, and written notice shall be given immediately by the Unit Owners' Association to first mortgagees of any such proceedings, and the priority of any mortgagee's first lien shall not be disturbed by any such proceedings.

In the event of any condemnation award, first mortgagees shall share pro rata in the award based upon the reduction of their respective security and shall be made whole before distribution to any other interested party of the condemnation proceeds. The Unit Owners' Association shall have the authority to retain legal counsel in the event condemnation proceedings are instituted or anticipated which affect directly or indirectly any part of the Property subject to this regime. Legal fees may be assessed by the Unit Owners' Association against unit owners if reasonably incurred in connection with such proceedings.

The Unit Owners' Association shall have the right to maintain existing improvements, regardless of any present or future encroachments of the common elements upon another unit.

No unit shall be subject to any unreasonable restraints or alienation which would adversely affect the title or marketability of the unit, or the ability of the mortgage holder to foreclose its first mortgage lien and thereafter to sell or lease the mortgage unit.

Appropriate fidelity bond coverage shall be required for any

person or entity handling funds of the Unit Owners' Association, including, but not limited to, employees of professional managers. Such fidelity bonds shall name the Unit Owners' Association as obligee, and be written in an amount equal to at least one hundred fifty percent (150%) of the estimated annual operating expenses of the condominium project, including reserves.

ARTICLE ELEVEN

CONTROL BY THE DECLARANT

The Declarant, or a managing agent, or some other person or persons selected or to be selected by the Declarant, is authorized to appoint and remove all of the officers of the Unit Owners' Association and/or its Board of Directors, and to exercise powers and responsibilities otherwise assigned by these condominium instruments and by the Condominium Act to the Unit Owners' Association, their officers, or the Board of Directors, for the period of two years, or until three-fourth (3/4) of the units have been conveyed, whichever occurs first. During this interim period, the Declarant agrees to maintain the common area and all unsold units.

The management contract entered into during the period of control contemplated by the foregoing paragraph shall be binding after such period of control, unless the unit owners comprising a majority of the votes in the Unit Owners' Association vote to deny ratification of the same.

Since the Unit Owners' Association is not in existence at the time of the creation of this condominium, the Declarant shall,



until there is such an association with officers, have the power and the responsibility to act in all instances where the Condominium Act requires action by the Unit Owners' Association, its Board of Directors, or any officer or officers or until the period of control contemplated by the foregoing section expires, whichever occurs first.

The foregoing shall be strictly construed to protect the rights of the unit owners.

IN WITNESS WHEREOF, the Declarant, ROBERT S. HORNSBY, President, CHARTER, L.L.C., a Virginia limited liability company, has caused this Declaration, and the ByLaws attached hereto to be executed in his name.

CHARTER, L.L.C., a Virginia limited liability company

BY:

Robert S. Hornsby  
ROBERT S. HORNSBY, President

STATE OF VIRGINIA  
COUNTY OF JAMES CITY, to-wit:

The foregoing instrument was acknowledged before me by ROBERT S. HORNSBY, President of CHARTER, L.L.C., a Virginia limited liability company, on behalf of the company, this 28<sup>th</sup> day of November, 1995.

My Commission expires: 3-31-96.

Ann Owen Esq.  
Notary Public

## EXHIBIT C - PROPERTY DESCRIPTION

All that certain lot, piece or parcel of land situate in the Powhatan District of James City County, Virginia and being described as follows:

Beginning at a point on the easterly right-of-way line of Longhill Road (S.R. 612), and on the westerly line of New Point Road (private), said point also being the southerly corner of the property shown as "Additional Land - 0.311 Acres", on a plat by AES, Consulting Engineers, entitled "Plat of Condominium, Williamsburg Business Center," dated January 1995; thence with the line of New Point Road (private), the "Additional Land" as described above, and the line of Phase I, Williamsburg Business Center, the following courses and distances, N 44° 21' 42" W, 168.17 feet to a point; thence on a curve to the left having a length of 148.20 feet and a radius of 125.00 feet to a point; thence N 23° 33' 59" W, 232.51 feet to a point, said point being the northerly corner of Phase I, Williamsburg Business Center; thence continuing with the line of New Point Road (private) N 23° 33' 59" W, 98.30 feet to a point; thence on a curve to the left having a length of 34.91 feet and a radius of 25.00 feet to a point; thence S 76° 26' 01" W, 18.05 feet to a point; thence N 13° 33' 59" W, 50.00 feet to a point; thence N 76° 26' 01" E, 119.59 feet to a point; thence on a curve to the right having a length of 268.02 feet and a radius of 2025.00 feet to a point; thence N 84° 01' 01" E, 147.69 feet to a point; thence S 05° 58' 59" E, 50.00 feet to a point; thence S 84° 01' 01" W, 85.11 feet to a point; thence leaving said New Point Road (private) S 29° 58' 58" W, 139.63 feet to a point, said point being the most northerly point of the James City County Human Services Site; thence along the property line of the James City County Human Services Site, S 29° 58' 58" W, 285.00 feet to a point; thence leaving said James City County Human Services Site S 29° 58' 58" W, 1.38 feet to a point, said point being on the easterly line of New Point Road (private); thence along the line of New Point Road S 23° 33' 59" E, 3.50 feet to a point; thence on a curve to the right having a length of 207.47 feet and a radius of 175.00 feet to a point; thence S 44° 21' 42" W, 171.78 feet to a point, said point being the easterly right-of-way line of Longhill Road (Route 612); thence with said right-of-way line of Longhill Road on a curve to the left having a length of 50.11 feet and a radius of 984.93 feet to the aforesaid Point of Beginning.

The above lot, piece or parcel of land herein described contains 2.784 acres, more or less.

Together with all and singular the buildings and improvements thereon, the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining.

Subject, however, to any restrictions, easements or conditions of record or visible upon the ground or any facts which an accurate survey would disclose.

In the Clerk's office of the Circuit Court of the City of Williamsburg and County of James City, Virginia, this 30<sup>th</sup> day of November, 1995. This [Signature]

was presented with certificate annexed and admitted to record at 3:12 o'clock

Teste: Helene S. Ward, Clerk

by [Signature]  
Deputy Clerk

PLAT RECORDED IN

P.B. NO. 63 PAGE 24-30

37-37

## BYLAWS

015960

## WILLIAMSBURG BUSINESS CENTER, PHASE II

## A CONDOMINIUM

## ARTICLE I

## PLAN OF COMMERCIAL UNIT OWNERSHIP

SECTION ONE: COMMERCIAL UNIT OWNERSHIP. The condominium located in the County of James City, State of Virginia, known as Williamsburg Business Center, Phase II, a condominium, submitted to the provisions of the Condominium Act, Title 55, Chapter 4.2, Sections 55-79.39, et seq. of the Code of Virginia of 1950, as amended.

SECTION TWO: BYLAWS OF APPLICABILITY. The provisions of these ByLaws are applicable to the condominium. (The term "condominium" as used herein shall mean the real property, and any incidents thereto or interest therein, submitted to the provisions of the Condominium Act by the Declaration to which this set of ByLaws is an exhibit.) This set of ByLaws provides for the self-government of the condominium by an Association of all the unit owners.

SECTION THREE: PERSONAL APPLICATION. All present or future unit owners, tenants and their employees or any other person entitled to use or occupy a unit or any of the facilities of the condominium in any manner, are subject to the regulations set forth in these ByLaws which are attached as Exhibit "A" to the recorded plan of unit ownership (The Declaration).

The mere acquisition or rental of any of the commercial Units, hereinafter referred to as "Units", of the condominium or the mere act of occupancy of any of the Units will signify that these ByLaws are accepted, ratified, and will be complied with.

Any lack of such compliance with the provisions of these ByLaws or of the Declaration shall be grounds for an action or suit to recover sums due for damages or injunctive relief, or for any other remedy available at law or in damages or in equity, maintainable by the Unit Owners' Association, or by its executive organ or any managing agent on behalf of such Association or, in a proper case, by one or more aggrieved unit owners on their own behalf as a class action.

## ARTICLE II

## VOTING, MAJORITY OF OWNERS, QUORUM, PROXIES, DEFINITIONS

1-19

BYLAWS  
WILLIAMSBURG BUSINESS CENTER  
A CONDOMINIUM

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SECTION THREE: PERSONAL APPLICATION. All present or future unit owners, tenants and their employees or any other person entitled to use or occupy a unit or any of the facilities of the condominium in any manner, are subject to the regulations set forth in these ByLaws which are attached as Exhibit "A" to the recorded plan of unit ownership (The Declaration).

The mere acquisition or rental of any of the commercial Units, hereinafter referred to as "Units", of the condominium or the mere act of occupancy of any of the Units will signify that these ByLaws are accepted, ratified, and will be complied with.

Any lack of such compliance with the provisions of these ByLaws or of the Declaration shall be grounds for an action or suit to recover sums due for damages or injunctive relief, or for any other remedy available at law or in damages or in equity, maintainable by the Unit Owners' Association, or by its executive organ or any managing agent on behalf of such Association or, in a proper case, by one or more aggrieved unit owners on their own behalf as a class action.

ARTICLE II

VOTING, MAJORITY OF OWNERS, QUORUM, PROXIES, DEFINITIONS

SECTION ONE: VOTING. Voting shall be on a percentage basis.

That is, these ByLaws hereby allocate to each Unit depicted on the plats and plans a number of votes in the Unit Owners' Association proportionate to the undivided interest in the common elements appertaining to each such Unit. Accordingly, there is allocated to each such Unit a proportionate number of votes in the Unit Owners' Association.

Since a Unit owner may be more than one person, if only one of such persons is present at a meeting of the Unit Owners' Association, that person shall be entitled to cast the votes appertaining to that Unit, but if more than one of such persons is present, the vote appertaining to that Unit shall be cast only in accordance with their unanimous agreement, and such consent shall be conclusively presumed if any one of them purports to cast the votes appertaining to that Unit without protest being made forthwith by any of the others to the person presiding over the meeting. Since a person need not be a natural person, the word "person" shall be deemed for the purposes of this subsection to include, without limitation, any natural person having authority to execute deeds on behalf of any person, excluding natural persons, which is, either alone or in conjunction with another person or persons, a Unit owner.

The votes appertaining to any Unit may be cast pursuant to a proxy or proxies duly executed by or on behalf of the Unit owner or, in cases where the owner is more than one person, by or on behalf of all such persons. No such proxy shall be revocable except by actual notice to the person presiding over the meeting, by the Unit owner or by any of such persons, that it be revoked. Any proxy shall be void if it is not dated, if it purports to be revocable without notice as aforesaid, or if the signature of any of those executing the same has not been duly acknowledged. The proxy of any person shall be void if not signed by a person having authority, at the time of the execution thereof, to execute deeds on behalf of that person. Any proxy shall terminate automatically upon the adjournment of the first meeting held on or after the date of that proxy. Votes may be cast in person or by proxy. Proxies must be filed with the secretary before the appointed time of each meeting.

SECTION TWO: MAJORITY OF OWNERS. As used in these ByLaws, the term "majority of owners" shall mean those owners holding more than fifty percent (50%) of the votes in accordance with the percentages assigned in the Declaration.

If fifty percent (50%) or more of the votes in the Unit Owners' Association appertains to twenty-five percent (25%) or less of the Units, then in any case where a majority vote is required by the condominium instruments or by the Condominium Act, the requirement for such majority shall be deemed to include, in addition to the specified majority of the votes, assent by the Unit owners of a like majority of the Units.

Anything in these ByLaws to the contrary notwithstanding, no votes in the Unit Owners' Association shall be deemed to appertain to any condominium Unit during such time as the Unit owner thereof is the Unit Owners' Association.

SECTION THREE: QUORUMS. A quorum shall be deemed to be present throughout any meeting of the Unit Owners' Association until adjourned if persons entitled to cast more than fifty percent (50%) of the votes are present at the beginning of such meeting.

### ARTICLE III

#### ADMINISTRATION

SECTION ONE: POWERS AND RESPONSIBILITIES OF THE UNIT OWNERS' ASSOCIATION. The owners of the Units will constitute the Unit Owners' Association, hereinafter referred to as "Association", who will have the responsibility of administering and insuring the condominium, approving the annual budget, establishing and collecting monthly assessments, establishing and maintaining the reserve funds mentioned hereinafter, maintaining the common elements in good repair and in such condition as will preserve the health and safety of the owners and the value of the condominium, and providing and arranging for the management of the condominium pursuant to an arrangement and in a manner approved by mortgagees as hereinafter provided. Except as otherwise provided, decisions and resolutions of the Association shall require approval by a majority of the owners.

The Association shall have the power to:

(1) employ, dismiss and replace agents and employees to exercise and discharge the powers and responsibilities of the Association arising under Article III, Section II;

(2) make or cause to be made additional improvements on and as a part of the common elements; and

(3) grant or withhold approval of any action by one or more Unit owners or other persons entitled to the occupancy of any Unit which would change the exterior appearance of any Unit or of any other portion of the condominium, or elect or provide for the appointment of an architectural control committee, the members of which must have the same qualifications as officers to grant or withhold such approval.

The executive organ of the Unit Owners' Association (herein sometimes called the "Board of Directors"), if any, and if not, then the Unit Owners' Association itself, shall have the irrevocable power as attorney-in-fact on behalf of all the Unit owners and their successors entitled to grant easements through the common elements and accept easements benefiting the condominium or



any portion thereof.

SECTION TWO: UPKEEP OF THE CONDOMINIUM. All powers and responsibilities with regard to maintenance, repair, renovation, restoration and replacement of the condominium shall belong (1) to the unit Owners' Association in the case of the common elements, and (2) to the individual Unit owner in the case of any Unit or any part thereof. Each Unit owner shall afford to the other Unit owners and to the Unit Owners' Association, and to any agents or employees of either such access through his Unit as may be reasonably necessary to enable them to exercise and discharge their respective powers and responsibilities. But to the extent that damage is inflicted on the common elements or any Unit through which access is taken, the Unit owner causing the same, or the Unit Owners' Association, if it caused the same, shall be liable for the prompt repair thereof.

SECTION THREE: RESERVE FOR REPLACEMENTS AND GENERAL OPERATING RESERVE. The Association shall establish and maintain two separate reserve funds, which shall at all times be under the control of the Association, one to be a Reserve Fund For Replacements and the other to be a General Operating Reserve Fund, by the allocation and payment monthly to each of said reserve funds of a sum equivalent to not less than three percent (3%) of the monthly assessments chargeable to the owners pursuant to the ByLaws, each of such funds to be deposited by the Association in a separate special account with an insured, safe and responsible bank or savings and loan association. The share of an owner in the funds and other assets of the Association cannot be assigned, hypothecated or transferred except as an appurtenance to his Unit. Upon accrual in the Reserve For Replacements Account of an amount equal to three hundred percent (300%) of the then current annual amount of assessments chargeable to the owners pursuant to the ByLaws or upon accrual in the General Operating Reserve Account of an amount equal to twenty-five percent (25%) of the then current annual amount of assessments chargeable to the owners pursuant to the ByLaws, the rate of such monthly allocation and such monthly deposit to the Reserve For Replacements Account, or to the General Operating Reserve Account, as the case may be, may, by appropriate action of the Association, be reduced or be discontinued and no further deposits need be made into that particular Reserve Account so long as, in the case of the Reserve For Replacements Account, said three hundred percent (300%) level is maintained, and in the case of the General Operating Reserve Account, said twenty-five percent (25%) level is maintained; and provided, further, that in the event withdrawals from either of such Reserve Accounts reduce it below the said level, then upon reduction of such Reserve below said level, the rate of such monthly assessments and deposits shall forthwith be immediately restored to three per cent (3%) and made at the three percent (3%) rate until the said level is restored.

The Reserve Fund For Replacements is for the purpose of

effecting replacements of structural elements and mechanical equipment of the condominium, and the General Operating Reserve Fund is for the purpose of meeting deficiencies arising from time to time as a result of delinquent payments of assessments by owners in the condominium and other contingencies, provided, however, reimbursements shall be made to the General Operating Reserve Account upon payment of delinquencies for which funds were withdrawn from the General Operating Reserve.

Disbursements from either of the Reserve Funds may be made by the Association, provided, however, that disbursements from either Reserve Fund totalling in excess of twenty percent (20%) of the total balance in that Reserve Fund as of the close of the preceding annual period may not be made during any annual period without the prior written consent of mortgagees holding first mortgages of record on at least one-half (1/2) of the Units. The Association shall not fail to establish and maintain the Reserve Fund For Replacements and General Operating Reserve Fund, as set forth hereinabove.

The Association shall not, without the prior written approval of mortgagees holding first mortgages of record on more than seventy-five percent ((75%) of the Units, remodel, reconstruct, demolish, expand or subtract from the premises constituting the condominium project.

The Association may mortgage or cause a deed of trust to be placed on any portion of the condominium in which no Units are located.

SECTION FOUR: PLACE OF MEETINGS. Meetings of the Unit Owners' Association shall be held at the principal office of the condominium or such other suitable place convenient to the Unit owners as may be designated by the Board of Directors and shall be held at least once each year after the formation of said Association.

SECTION FIVE: ANNUAL MEETINGS. The first annual meeting of the Association shall be held on the first day of the month following the month in which there is first any Unit owner other than the Declarant. Thereafter, annual meetings shall be held on the first Monday of June of each succeeding year. At such meetings there shall be elected by ballot a Board of Directors in accordance with the requirements of Section Six of Article IV of these ByLaws. The Unit owners may also transact such other business of the Association as may properly come before them.

SECTION SIX: SPECIAL MEETINGS. It shall be the duty of the president to call a special meeting of the Unit owners as directed by resolution of the Board of Directors or on a petition signed by a majority of the Unit owners and having been presented to the secretary, or at the request of mortgagees holding first mortgages



of record on at least one-tenth (1/10) of the Units. No business shall be transacted at a special meeting except as stated in the notice unless by consent of more than half of the owners present, either in person or by proxy.

SECTION SEVEN: NOTICE OF MEETINGS. The secretary shall, at least twenty-one (21) days in advance of any annual or regularly scheduled meeting, and at least ten (10) days in advance of any annual or regularly scheduled meeting, send to each Unit owner of record, and to each mortgagee shown in the book hereinafter mentioned entitled "Mortgagees of Units", notice of the time, place and purpose or purposes of such meeting. Such notice shall be sent by United States mail, return receipt requested, to all Unit owners and mortgagees of record at the address of their respective Units and to such other addresses as any of them may have designated to the secretary, or such notice may be hand delivered by the secretary, provided he obtains a receipt of acceptance of such notice from the Unit owner or mortgagee to such meeting. The mailing or delivery of notice in the manner provided in this section shall be considered notice served.

SECTION EIGHT: ADJOURNED MEETINGS. If any meeting of owners cannot be organized because a quorum has not attended, the owners who are present either in person or by proxy may adjourn the meeting to a time not less than forty-eight (48) hours from the time the original meeting was called.

SECTION NINE: ORDER OF BUSINESS. The order of business at all Association meetings shall be as follows:

- (a) Role call.
- (b) Proof of notice of meeting or waiver of notices.
- (c) Reading of minutes of preceding meeting.
- (d) Reports of officers.
- (e) Reports of committees.
- (f) Election of inspectors of election.
- (g) Election of directors.
- (h) Unfinished business.
- (i) New business.

The Association shall elect an executive organ i.e., an executive and administrative entity, denominated herein by the name "Board of Directors", and designated herein as the governing body of the Association. The powers and responsibilities of the same,

and the number and the terms of its members are specified herein.

#### ARTICLE IV

##### BOARD OF DIRECTORS

SECTION ONE: NUMBER AND QUALIFICATION. Association's affairs shall be governed by a Board of Directors composed of three (3) persons, all of whom must be owners of units in the project.

SECTION TWO: POWERS AND DUTIES. The Board of Directors shall have and are hereby delegated all of the powers, responsibilities, and duties necessary for the administration of the Association's affairs and may do all such acts and things as are not by law or by these ByLaws exclusively assigned to and directed to be exercised and done only by the Unit owners or the Association.

SECTION THREE: BUDGET. The Board of Directors shall at least annually, prior to December 31 of each year, prepare a budget for the project, determine the amount of the common charges required to meet the common expenses of the project, and allocate and assess such common charges against the Unit owners according to their respective percentages of common ownership as stipulated in the Declaration. The common expenses shall include, among other things, without limitation, the cost of all insurance premiums on all policies of insurance required to be or which have been obtained by the Board of Directors pursuant to these ByLaws, the fees and disbursements of the insurance trustee, such amounts as the Board of Directors deems proper, and subject to the mandatory requirements of these ByLaws, for the operation and maintenance of the project, including, without limitation, an amount for working capital, for the reserve for replacements, for the general operating reserve, to make up any deficit in the common expenses for any prior year, and to purchase or lease on behalf of the Association the Unit of any owner who has elected to sell or lease his Unit or whose Unit is to be sold at a foreclosure or judicial sale. The Board of Directors shall advise each Unit owner in writing of his share of common charges and shall mail copies of each proposed budget to all Unit owners and their mortgagees at least ten (10) days in advance of its adoption and of each approved budget immediately after adoption thereof.

SECTION FOUR: OTHER DUTIES. In addition to the duties imposed by these ByLaws or by resolutions of the Association, the Board of Directors shall be responsible for the following:

(a) Care, upkeep and surveillance of the project and common areas and facilities, including the restricted common area facilities.

(b) Collection of monthly assessments from the owners.

(c) Designation and dismissal of the personnel necessary for the maintenance and operation of the project, the common areas and facilities and the restricted common areas and facilities.

SECTION FIVE: MANAGEMENT. The Board of Directors must, and shall not fail to, provide for the management of the project in a manner approved or required by mortgagees holding first mortgages of record on more than one-half (1/2) of the Units, including, if required, the employment of a "professional" management agent or entering into management contract, for the project rather than undertaking "self-management." The Board of Directors may employ for the Association a management agent at a compensation established by the Board to perform such duties and services as the Board shall authorize, including, but not limited to, the duties listed in Section Four of this Article. Provided, however, the Board of Directors shall not employ a management agent nor enter into management contract for the project nor undertake "self-management" unless mortgagees holding first mortgages of record on more than one-half (1/2) of the Units have approved in writing the proposed management agent, form of management contract and other management arrangements.

SECTION SIX: ELECTION AND TERM OF OFFICE. The term of office of Directors shall be fixed at one (1) year. At the expiration of the term of office of each respective Director, his successor shall be elected to serve a term of one (1) year. The Directors shall hold office until their successors have been elected and hold their first meeting.

SECTION SEVEN: VACANCIES. Vacancies in the Board of Directors caused by any reason other than the removal of a Director by a vote of the Association shall be filled by vote of the majority of the remaining Directors, even though they may constitute less than a quorum; and each person so elected shall be a Director until a successor is elected at the Association's next annual meeting.

SECTION EIGHT: REMOVAL OF DIRECTORS. At any regular or special meeting duly called, any one or more of the Directors may be removed with or without cause by a majority of the owners, and a successor may then and there be elected to fill the vacancy thus created. Any Director whose removal has been proposed by the owners shall be given an opportunity to be heard at the meeting.

SECTION NINE: ORGANIZATIONAL MEETING. The first meeting of the newly elected Board of Directors shall be held within ten (10) days of election at such place as shall be fixed by the Directors at the meeting at which the Directors were elected, and no notice shall be necessary to the newly elected Directors in order to legally constitute such meeting, provided a majority of the whole Board shall be present.

SECTION TEN: REGULAR MEETINGS. Regular meetings of the Board of Directors may be held at such time and place as shall be determined, from time to time, by a majority of the Directors, but at least two (2) such meetings shall be held during each fiscal year. Notice of regular meetings of the Board of Directors shall be given to each Director, personally or by mail, telephone, or telegraph, at least ten (10) days prior to the day named for such meeting.

SECTION ELEVEN: SPECIAL MEETINGS. Special meetings of the Board of Directors may be called by the president on three (3) days' notice to each Director, given personally or by mail, telephone, or telegraph, which notice shall state the time, place (as hereinabove provided), and purpose of the meeting. Special meetings of the Board of Directors shall be called by the president or secretary in like manner and on like notice on the written request of at least two (2) Directors.

SECTION TWELVE: WAIVER OF NOTICE. Before or at any meeting of the Board of Directors any Director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Director at any meeting of the Board shall be a waiver of notice by him of the time and place thereof. If all Directors are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.

SECTION THIRTEEN: BOARD OF DIRECTOR'S QUORUM. At all meetings of the Board of Directors a majority of the Directors shall constitute a quorum for the transaction of business, and the acts of the quorum shall be the acts of the Board of Directors. If at any meeting of the Board of Directors there be less than a quorum present, the members present may adjourn the meeting from time to time. At any such meeting any business that might be transacted at the meeting as originally called may be transacted without further notice. A quorum shall be deemed to be present throughout any meeting of the Board of Directors if persons entitled to cast more than half the votes in that body are present at the beginning of such meeting.

SECTION FOURTEEN: FIDELITY BONDS. The Board of Directors shall require that all officers and employees of the Association handling or responsible for Association funds shall furnish adequate fidelity bonds. The premiums of such bonds shall be paid by the Association.

## ARTICLE V

### OFFICERS

SECTION ONE: DESIGNATION AND QUALIFICATIONS. The officers of the Unit Owners' Association shall be a president and a secretary-

treasurer, both of whom shall be elected by and from the Board of Directors. The Directors may appoint an assistant treasurer and an assistant secretary, and such other officers as in their judgment may be necessary. The offices of treasurer and secretary shall be filled by the same person. All officers must be Unit owners and any officer who disposes of all of his Units in fee and/or for a term or terms of six (6) months or more shall be deemed to have disqualified himself from continuing in office, unless he acquires or contracts to acquire another Unit in the condominium under terms giving him a right of occupancy under such disposition or dispositions.

Since all officers must be Unit owners, then notwithstanding the fact that the term "Unit Owner" normally means one (1) or more persons who own a condominium Unit, the term "Unit Owner" in such context shall be deemed to include, without limitation, any Director, officer, partner in, or trustee of any person which is, either alone or in conjunction with another person or persons, a Unit Owner. Any officer who would not be eligible to serve as such were he not a Director, officer, partner in, or trustee of such a person, shall be deemed to have disqualified himself from continuing in office if he ceases to have any such affiliation with that person, or with that person would itself have been deemed to have disqualified itself from continuing in such office under the preceding subparagraph two of this Section One of Article Five were it a natural person holding such office.

SECTION TWO: ELECTION AND TERM OF OFFICERS. The officers of the Association shall be elected annually by the Board of Directors at the organizational meeting of each new Board and shall hold office at the pleasure of the Board.

SECTION THREE: REMOVAL OF OFFICERS. On an affirmative vote of a majority of the members of the Board of Directors, any officer may be removed, either with or without cause and his successor elected at any regular meeting of the Board of Directors, or at any special meeting of the Board called for such purpose.

SECTION FOUR: PRESIDENT. The president shall be the chief executive officer of the Association. He shall preside at all meetings of the Association and of the Board of Directors. He shall have all of the general powers and duties that are usually vested in the office of president of an Association, including, but not limited to, the power to appoint committees from among the owners from time to time as he may in his discretion decide is appropriate to assist in the conduct of the Association's affairs.

SECTION FIVE: SECRETARY. The secretary shall keep the minutes of all meetings of the Board of Directors and the minutes of all meetings of the Association; he shall have charge of such books and papers as the Board of Directors may direct; and he shall, in general, perform all the duties incident to the office of



secretary.

SECTION SIX: TREASURER. The treasurer shall have responsibility for Association funds and securities and shall be responsible for keeping full and accurate accounts of all receipts and disbursements in books belonging to the Association. He shall be responsible for the deposit of all moneys and other valuable effects in the name, and to the credit of the Association in such depositories as may from time to time be designated by the Board of Directors.

## ARTICLE VI

### OBLIGATIONS OF THE OWNERS

SECTION ONE: ASSESSMENTS. All owners are obligated to pay monthly assessments imposed by the Association to meet all project communal expenses, which shall include a liability insurance policy premium and an insurance premium for a blanket policy to cover replacement, repair and reconstruction work in case of flood, hurricane, fire, earthquake or other hazard. The assessments shall be made pro rata according to the Unit owned, as stipulated in the Declaration. Such assessments shall include monthly payments to a general operating reserve and a reserve fund for replacements.

The amount of all common expenses, less the amount of all common profits, shall be assessed against the condominium Units in proportion to the number of votes in the Unit Owners' Association appertaining to each such Unit. Such assessments shall be made by the Unit Owners' Association annually, or more often if the Board of Directors so provide. No change in the number of votes in the Unit Owners' Association appertaining to any condominium Unit shall enlarge, diminish, or otherwise affect any liabilities arising from assessments made prior to such change.

SECTION TWO: LIEN FOR ASSESSMENTS. The Unit Owners' Association shall have a lien on every condominium Unit for unpaid assessments levied against the condominium Unit in accordance with the provisions of the Condominium Act and all lawful provisions of the condominium instruments, if perfected as hereinafter provided. The said lien, once perfected, shall be prior to all other liens and encumbrances except (1) real estate taxes on that condominium Unit and (2) sums unpaid on any first mortgages or first deeds of trust recorded prior to the perfection of said lien for assessments and securing institutional lenders.

The Unit Owners' Association, in order to perfect the said lien for assessments, shall file before the expiration of ninety (90) days from the time such assessment became due and payable in the Clerk's Office for the City of Williamsburg and County of James City, Virginia, a memorandum, verified by the oath of the principal officer of the Unit Owners' Association or such other officer or

officers as the Board of Directors may specify by resolution which contains the information required by the Code of Virginia, Section 55-79, 84 (C).

Any Unit owner or purchaser of a condominium Unit having executed a contract for the disposition of the same shall be entitled upon request to a recordable statement setting forth the amount of unpaid assessments currently levied against that Unit. Such request shall be in writing, directed to the principal officer of the Unit Owners' Association or to such other officer as the Board of Directors may specify. Failure to furnish or make available such a statement within five (5) business days from the receipt of such request shall extinguish the lien for such assessments as to the condominium Unit involved. Such statement shall be binding on the Unit Owners' Association, the Board of Directors, and every Unit owner. Payment of a fee of Ten Dollars (\$10.00) may be required as a prerequisite to issuance of such a statement.

SECTION THREE: UNPAID ASSESSMENTS UPON FORECLOSURE. When the mortgagee of a duly recorded first mortgage securing an institutional lender or other purchaser of a Unit obtains title to such Unit by reason of foreclosure of the duly recorded first mortgage securing an institutional lender covering the Unit, such acquirer of title, his successors, heirs, personal representative and assigns, shall not be liable for any unpaid assessments against an owner of the Unit for his pro rata share or for expenses assessed by the Association which became due prior to the acquisition of title to such Unit by such acquirer. Such unpaid assessments shall be deemed to be common expenses collectable from all the owners excluding such acquirer, his successors, heirs, personal representatives and assigns. Provided, however, that the above shall not be interpreted to prevent the Association from the filing and claiming liens for such assessments and enforcing same as provided by law, and provided further, however, that such assessment liens shall be subordinate to payments due under such institutional record of first mortgage and to assessments, liens and charges in favor of the State of Virginia or any municipality for real estate taxes past due and unpaid on the Unit.

SECTION FOUR: MAINTENANCE AND REPAIRS.

(a) Each owner of a Unit shall maintain the Unit in good repair and in such condition as will preserve the health and safety of the Unit owners and the value of the project.

(b) Every owner must perform promptly all maintenance and repair work within his own Unit which, if omitted, would affect the project in its entirety or in a part belonging to other owners, being expressly responsible for the damages and liabilities that his failure to do so may engender.

(c) All the repairs of internal installations of the Unit, such as water, light, gas, power, sewage, telephones, air conditioners, sanitary installations, interior doors and windows, lamps, and all other accessories belonging to the Unit area shall be at the owner's expense.

(d) An owner shall reimburse the Association for any expenditures incurred in repairing or replacing any common area and facility damaged through his fault or in performing any obligations of an owner which he fails, refuses or neglects to perform.

(e) If at any time the owner of a Unit fails to pay his monthly assessment as provided in these ByLaws or fails to perform the maintenance, repair, or other obligations imposed upon him by the Declaration, these ByLaws or the administrative rules and regulations adopted pursuant thereto, the Association shall perform such obligation and initiate legal action to collect the assessment or to effect reimbursement for the expenditures made in carrying out the delinquent owner's obligation.

(f) Only the Association may repair, maintain and replace the balconies and the parking lots and the same shall be paid for out of common assessments therefore.

#### SECTION FIVE: USE OF UNITS - CHANGES.

(a) All Units shall be utilized for commercial purposes only.

(b) An owner shall not make structural modifications or alterations in his Unit or installations located therein without the prior consent of the Association in writing, through the management agent, if any, or president of the Board of Directors if no management agent is employed. The Association shall have the obligation to answer within thirty (30) days, and failure to do so within the stipulated time shall mean that there is no objection to the proposed modification or alteration.

(c) An owner shall not paint or structurally or aesthetically change the exterior appearance of his Unit without the prior written consent of the Association as indicated above.

(d) No Unit may be leased for a period of less than thirty (30) days.

#### SECTION SIX: USE OF COMMON AREAS AND FACILITIES.

(a) An owner shall not place or cause to be placed in the entrance, stairways, and other project areas and facilities of a similar common nature, any furniture, packages, or object of any kind. Such areas shall be used for no other purpose than for normal transit through them.



SECTION SEVEN: RIGHT OF ENTRY.

(a) Each owner hereby grants the right of entry to the management agent or to any other person authorized by the Board of Directors of the Association in case of any emergency originating in or threatening his Unit, whether the owner is present at the time or not.

(b) An owner shall permit other owners, or their representatives, when so required, to enter his Unit for the purpose of installing, altering, or repairing the mechanical or electrical services, provided that requests for entry are made in advance and that such entry is at a time convenient to the owner. In case of an emergency, such right of entry shall be immediate.

SECTION EIGHT: RULES OF CONDUCT.

(a) No owner or guest of the project shall post any advertisements or posters of any kind in or on the project except as authorized by the Association.

(b) Throwing of garbage or trash outside the disposal installations provided for such purposes in the service area is prohibited.

(c) No owner, lessee, or other person shall install wiring for electrical or telephone installation, television antennae, machines, air conditioning units, or the like on the exterior of the project or that protrude through the walls or the roof of the project except as authorized by the Association.

(d) No owner or other person shall paint the exterior of his Unit without authority and approval of the Association, it being intended to preserve and present a uniform appearance for the project.

ARTICLE VII

AMENDMENTS TO PLAN OF UNIT OWNERSHIP

SECTION ONE: BYLAWS. These ByLaws may be amended by the Association in a duly constituted meeting for such purpose, and no amendment shall take effect unless approved by agreement of Unit owners of Units to which three-fourth (3/4) of the votes in the Unit Owners' Association appertain as shown in the Declaration and by compliance with the provisions of Article Six of the Declaration. Such amendment shall be recorded in the Clerk's Office of the Circuit Court for the City of Williamsburg and County of James City, Virginia. Prior written notice of any proposed ByLaws change shall be given in accord with Article III, Section Seven of these ByLaws.

## ARTICLE VIII

### MORTGAGEES

SECTION ONE: NOTICE TO ASSOCIATION. An owner who mortgages his Unit shall, in writing, notify the Association through the management agent, if any, or the president of the Board of Directors in the event there is no management agent, the name and address of his mortgagee; and the Association shall maintain such information in a book entitled "Mortgagees of Units."

SECTION TWO: NOTICE OF UNPAID ASSESSMENTS. Mortgagees under any first mortgage or first deed of trust of record encumbering a condominium unit and securing an institutional lender shall be provided written notification setting forth the amount of unpaid assessments currently levied against the Unit securing its mortgage and a first mortgagee will be provided notice specifying any default under the condominium instruments which is not cured within thirty (30) days. Such notice shall be in writing and sent by the principal officer of the Unit Owners' Association or such other officer as the Board of Directors may specify.

Any institutional first mortgagee who comes into possession of the Unit pursuant to the remedies provided in the mortgage, or foreclosure of the mortgage, or deed (or assignment) in lieu of foreclosure, shall take the property free of any claims for unpaid assessments or charges against the mortgaged Unit which accrue prior to the time such holder comes into possession of the Unit (except for claims for a pro rata share of such assessments or charges resulting from a pro rata reallocation of such assessments or charges to all Units including the mortgaged Unit).

SECTION THREE: RIGHT OF INSPECTION AND EXAMINATION. The books, contracts, records, documents, bank statements, budget, audit reports, and papers of the Association and all of the property of the project shall be subject to inspection, examination and copying by all institutional first mortgagees of record or their duly authorized agents at all reasonable times.

SECTION FOUR: MORTGAGEE APPROVAL OF CERTAIN ACTS OF UNIT OWNERS' ASSOCIATION. Unless at least seventy-five percent (75%) of the institutional first mortgagees (based upon one (1) vote for each first mortgage owned) of condominium Units have given their prior written approval, the Unit Owners' Association shall not be entitled to:

(1) by act or omission, seek to abandon or terminate the condominium regime;

(2) change the pro rata interest or obligations of any condominium Unit for (i) purposes of levying assessments or charges or allocating distributions of hazard insurance proceeds or

condemnation awards and for(ii) determining the pro rata share of ownership of each Unit in appurtenant real estate and any improvements thereon which are owned by the Unit owners in the condominium project in undivided pro rata interest ("common elements");

(3) partition or subdivide any condominium Unit;

(4) by act or omission, seek to abandon, partition, subdivide, encumber, sell, or transfer the common elements. The granting of easements for public utilities or for other public purposes consistent with the intended use of the common elements by the condominium project shall not be deemed a transfer within the meaning of this clause;

(5) use hazard insurance proceeds for losses to any condominium property (whether to Units or to common elements) for other than the repair, replacement or reconstruction of such improvements except as provided by statute in case of substantial loss to the Units and/or common elements of the condominium project;

(6) effect an expansion of the condominium.

## ARTICLE IX

### INSURANCE

The Board on behalf of the Association at its common expense shall at all times buy a master casualty policy affording fire and extended coverage in an amount consonant with the full replacement value of the structures within the condominium, or of such structures that in whole or in part comprise portions of the common elements, keep the building of the project insured against loss of damage, the project insured against loss or damage by fire, with extended coverage, in an insurance company authorized to do business in the State of Virginia and satisfactory to institutional mortgagees holding first mortgages of record on all Units in an amount as near practicable to the full replacement value thereof without deduction for depreciation, in the name of the Board as trustee for all Unit owners and institutional first mortgagees of record according to the loss or damage to their respective Units and appurtenant common interests and payable in case of loss to such bank or trust company authorized to do business in the State of Virginia as the Board shall designate for the custody and disposition as herein provided of all proceeds of such insurance, and from time to time upon receipt thereof cause to be deposited promptly with the Unit owners and such institutional mortgagees of the Units or interests therein, true copies of such insurance policies or current certificates thereof, without prejudice to the right of each owner to insure his Unit for his own benefit. In every case of such loss or damage, all insurance proceeds shall be

used as soon as reasonably possible by the Association for rebuilding, repairing, or otherwise reinstating the same building in a good and substantial manner according to the original plan and elevation thereof or such modified plans conforming to laws and ordinances then in effect as shall be first approved by the Association and all mortgagees of the Units or interests therein, and the Association at its common expense shall make up any deficiency in such insurance proceeds. Any loss or damage, whether or not covered by insurance, shall be repaired or restored by the Association unless otherwise determined in accord with the Declaration.

The fire and extended coverage insurance shall be in the amount necessary to comply with any co-insurance percentage stipulated in the policy, but in any event, not less than eighty percent (80%) of the insurable value (based upon replacement cost) without deduction for depreciation.

If the destruction exceeds \$40,000.00, then the Board of Directors shall employ an independent estimator who shall determine and/or confirm the amount needed to repair the destruction and also the certification of the funds for repair if the insurance company does not disburse funds. When an independent estimator is employed, a copy of his estimate of damage is to be furnished, if requested, by any mortgage lender holding three (3) or more first mortgages on Units.

Every such policy of insurance shall:

(1) provide that the liability of the insurer thereunder shall not be affected by, and that the insurer shall not claim any right of set-off, counterclaim, apportionment, proration, or contribution by reason of any other insurance obtained by or for any Unit owner;

(2) containing no provision relieving the insurer from liability for loss occurring while the hazard to such building is increased, whether or not within the knowledge or control of the Board, or because of any breach of warranty or condition or any other act or neglect by the Board or any owner or any other person under either of them;

(3) provide that such policy may not be canceled (whether or not requested by the Board) except by the insurer giving at least thirty (30) days' prior written notice thereof to the Board, owners, and every other person in interest who shall have requested such notice of the insurer, including all mortgage lenders;

(4) contain a waiver by the insurer of any right of subrogation to any right of the Board or owners;

(5) contain a standard mortgage clause which shall

(a) provide that any preference to a mortgagee in such policy shall mean and include all holders of mortgages of any Unit of the project, in their respective order and preference, whether or not named therein;

(b) provide that such insurance as to the interest of any mortgagee shall not be invalidated by any act or neglect of the Board or owners or any persons under any of them;

(c) waive any provision invalidating such mortgagee clauses by reason of the failure of any mortgagee to notify the insurer of any hazardous use or vacancy, and requirement that the mortgagee pay any premium thereon, and any contribution clause; and

(d) provide that without affection any protection afforded by such mortgagee clause, any proceeds payable under such policy shall be payable to said bank or trust company designated by the Board.

The Board, on behalf of the Association at its common expense, shall also effect and maintain at all times comprehensive master general liability insurance covering the Association, the Board of Directors, the managing agent, all persons acting or who may come to act as agents or employees of any of the foregoing with respect to the condominium, and all Unit owners and all others entitled to occupy any Unit or other portions of the condominium in a responsible insurance company with minimum limits of not less than \$500,000.00 for bodily injury either to one person or to multiple persons injured as a result of a common accident or occurrence and \$10,000.00 for property damage and from time to time upon receipt thereof deposit promptly with the owners current certificates of such insurance, without prejudice to the right of any owners to maintain additional liability insurance for their respective Units.

The Board of Directors shall have the right to change the limits of insurance from time to time and such requirements shall be at their discretion.

As soon as any policy of insurance has been obtained by or on behalf of the Unit Owners' Association, written notice of the obtainment thereof and of any subsequent changes therein or termination thereof shall be promptly furnished each Unit owner by the officer required to send notices of meetings of the Unit Owners' Association, which notices shall be sent in accordance with the provisions of the last sentence of Section 55-79.75 of the Code of Virginia of 1950, as amended, that is, such notices shall be sent by United States mail, return receipt requested, to all Unit owners of record at the address of their respective Units and to such other addresses as any of them may have designated to such officer; or such notice may be hand delivered by the said officer, provided he obtains a receipt of acceptance of such notice from the Unit owner.

## ARTICLE X

## COMPLIANCE

These ByLaws are set forth to comply with the requirements of The Virginia Condominium Act. In case any of the ByLaws conflict with the provisions of that statute, it is hereby agreed and accepted that the provisions of the statute will apply.

IN WITNESS WHEREOF, the Declarant, ROBERT S. HORNSBY, President, CHARTER, L.L.C., a Virginia limited liability company, has caused these ByLaws to be executed in his name this 28<sup>th</sup> day of November, 1995.

CHARTER, L.L.C., a Virginia  
limited liability company

BY:

Robert S. Hornsby  
ROBERT S. HORNSBY, President

STATE OF VIRGINIA  
COUNTY OF JAMES CITY, to-wit:

The foregoing instrument was acknowledged before me by ROBERT S. HORNSBY, President of CHARTER, L.L.C., a Virginia limited liability company, on behalf of the company this 28<sup>th</sup> day of November, 1995.

My Commission expires: 3-31-96

Ann Owen Esq.  
Notary Public

VIRGINIA: City of Williamsburg and County of  
James City, to Wit:

In the Clerk's office of the Circuit Court of the  
City of Williamsburg and County of James City

30 day of Nov, 1995 Bylaws  
was presented with certificate of filing and  
admitted to record at 3:17 o'clock

Teste: Helene S. Ward, Clerk

by Helene S. Ward  
Deputy Clerk

19-19



**AMENDMENT TO CONDOMINIUM DECLARATION OF**  
**WILLIAMSBURG BUSINESS CENTER, PHASE II**

THIS AMENDMENT is made this 8th day of July, 2003 to the condominium declaration of Williamsburg Business Center, Phase II dated November 28, 1995 by **CHARTER, L.L.C.**, sometimes referred to as "Declarant" and Mark M. **NEALE** and Elizabeth H. **NEALE**, Trustees of the Mark M. Neale Living Trust ("Neale Trust").

WHEREAS, the Declarant recorded the original declaration of the Williamsburg Business Center, Phase II condominium on November 30, 1995 in the Clerk's Office of the Circuit Court of James City County, Virginia in Book 765, Page 1 ("Declaration"), and;

WHEREAS, Declarant and the Neale Trust are the owners of all of the units of the condominium subject to the Declaration, and;

WHEREAS, the original description of units and common elements contained in the Declaration is incomplete and erroneous in certain respects.

NOW THEREFORE, the Declaration is amended as follows:

1. Exhibit B attached to the Declaration and recorded in Plat Book 63, Pages 24 through 30 is deleted and replaced by Exhibit B attached to this Amendment and recorded concurrently herewith.

2. Section D is amended by adding the following:

The entrance foyer of each building within the Condominium is a limited common element appertaining to those units within the building in which the foyer is located exclusively. Any common expenses associated with the maintenance, repairs, renovation, restoration or replacement of limited common elements shall be specially assessed in equal proportions against the condominium units

to which that limited common element is assigned at the time such expenses were incurred.

3. The definition of "Unit" set out in Article Three is deleted and replaced with the following:

"Unit", as used herein, shall generally mean a portion of the condominium designated and intended for individual ownership and use, and specifically, shall mean a commercial Unit which is an enclosed space with a total enclosed area, as shown on the plats and plans attached hereto as Exhibit B, consisting of and the boundaries of which are designated, delineated and described as extending to the middle of any interior wall which abuts any other Unit and extending up to, but not including, the interior surface of any outside wall studs (the vertical, lateral or parametric boundaries of the Unit), the upper surface of the sub-floor or joists supporting the floor of the Unit (the lower, horizontal boundaries of the unit), and up to, but not including, the lower surface of the ceiling joists (the upper, horizontal boundaries of the Unit), of each separately designated, self-contained commercial business Unit, consisting specifically of the rooms, designed, proposed, intended and restricted to be used solely for independent, individual ownership and commercial use. All doors and windows in a Unit shall be deemed part of that unit. If any chutes, flues, ducts, conduits, wires, bearing columns or any other apparatus lies partially within and partially outside of the designated boundaries of the Unit, any portion thereof serving only that Unit shall be deemed a part of that Unit, while any portions thereof serving other Units or any portion of the common element shall be deemed a part of the common elements. Subject to the provisions of the foregoing sentence, all space, interior partitions and other fixtures and improvements within the boundaries of a Unit shall be deemed a part of that Unit. Heating, air conditioning and ventilation equipment which serves only one Unit shall be deemed a part of that Unit.

Except as expressly modified herein, the Declaration shall remain in full force and effect.



WITNESS the following signature this 15<sup>TH</sup> day of JULY, 2003.

CHARTER, L.L.C.

By Lois S. Hornsby  
Lois S. Hornsby, Member

By Robert Saunier Hornsby  
Robert Saunier Hornsby, Member

Mark M. Neale  
MARK M. NEALE, TRUSTEE of the  
Mark M. Neale Living Trust

Elizabeth H. Neale  
ELIZABETH H. NEALE, TRUSTEE of the  
Mark M. Neale Living Trust

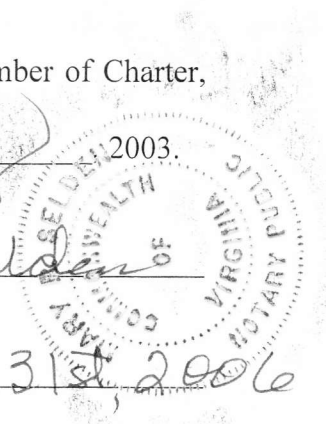
STATE OF VIRGINIA

CITY/COUNTY OF James City, to-wit:

This instrument was acknowledged before me by Lois S. Hornsby, Member of Charter,  
L.L.C., a Virginia Limited Liability Company, this 15<sup>th</sup> day of July, 2003.

Mary R. Selden  
NOTARY PUBLIC

My commission expires: July 31st, 2006



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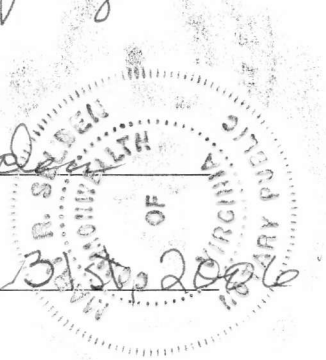
STATE OF VIRGINIA

CITY/COUNTY OF James City, to-wit:

This instrument was acknowledged before me by Robert Saunier Hornsby, Member of Charter, L.L.C., a Virginia Limited Liability Company, this 15<sup>th</sup> day of July, 2003.

Mary R. Selden  
NOTARY PUBLIC

My commission expires: July 31st, 2006



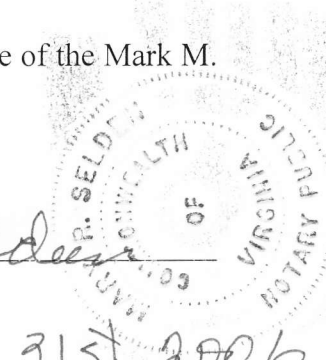
STATE OF VIRGINIA

CITY/COUNTY OF James City, to-wit:

This instrument was acknowledged before me by Mark M. Neale, Trustee of the Mark M. Neale Living Trust, this 15<sup>th</sup> day of July, 2003.

Mary R. Selden  
NOTARY PUBLIC

My commission expires: July 31st, 2006



JUL 18 01 78

STATE OF VIRGINIA

CITY/COUNTY OF James City, to-wit:

This instrument was acknowledged before me by Elizabeth H. Neale, Trustee of the Mark M. Neale Living Trust, this 15th day of July, 2003.

Mary R. Soldner  
NOTARY PUBLIC

My commission expires: July 31st, 2006



JUL 18 01 79

PLAT RECORDED IN  
P.B. NO. 90 PAGE 92-104

VIRGINIA: CITY OF WILLIAMSBURG & COUNTY OF JAMES CITY  
This document was admitted to record on 18 July 03  
at 9:38 AM/PM. The taxes imposed by Virginia Code  
Section 58.1-801, 58.1-802 & 58.1-814 have been paid.

STATE TAX	LOCAL TAX	ADDITIONAL TAX
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\$ <u>          </u>	\$ <u>          </u>	\$ <u>          </u>
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TESTE: BETSY B. WOOLRIDGE, CLERK

BY: Betsy B. Woolridge Clerk

030 021217

MAINTENANCE AGREEMENT

THIS MAINTENANCE AGREEMENT is made by and between the WILLIAMSBURG BUSINESS CENTER UNIT OWNERS ASSOCIATION ("Phase I Association"), the WILLIAMSBURG BUSINESS CENTER PHASE II UNIT OWNERS ASSOCIATION ("Phase II Association") and CHARTER, L.L.C., a Virginia Limited Liability Company ("Owner").

WHEREAS, New Point Road is a private road in James City County, Virginia which is currently located exclusively within the common area of the Williamsburg Business Center, Phase II condominium, and;

WHEREAS, an easement has been recorded in the land records of James City County, Virginia in Deed Book 765, Page 57 which establishes a right of access over New Point Road for the benefit of unit owners in Williamsburg Business Center Phase I condominium and the Owner ("Easement"), and;

WHEREAS, the Easement refers to an agreement for apportioning the costs of maintaining New Point Road, and;

WHEREAS, the parties hereto wish to memorialize that agreement in written form.

NOW THEREFORE, in consideration of the mutual covenants and promises contained herein, it is hereby agreed:

1. The owners of all property to which there is appurtenant a right of access over New Point Road shall share in the cost of maintaining New Point Road.

2. The cost of maintaining New Point Road shall be apportioned among all of the Users. Each User shall pay a fraction of the costs. The numerator of the fraction will be the total number of square feet of building area for which a certificate of occupancy has been issued and a right of access over New Point Road is appurtenant. The denominator will be the total number of square feet of buildings for which a certificate of occupancy has been issued owned by all Users.

JUL 18 01 70

3. Each of the Phase I Association, the Phase II Association and Owner, or Owner's designee shall appoint one member of a committee to manage maintenance of New Point Road and assess and collect the costs of said maintenance in accordance with this Agreement. The committee shall maintain the surface of New Point Road in a serviceable and passable condition at all times. All decisions of the committee shall be by majority vote.

4. Other than expenses of an emergency nature, the committee shall notify all Users of the estimated amount of any expense of maintaining New Point Road prior to incurring said expense. Such notice shall be given not less than sixty (60) days prior to the date on which payment of the assessment for any expense is due.

5. The Owners contemplate extending New Point Road to serve adjoining property owned by them. The initial cost of construction of road surface which does not exist on June 1, 2003 shall be paid entirely by the Owners, their successors or assigns. The cost of maintaining any part of New Point Road after its initial construction has been completed to the standards of the currently existing portion of New Point Road shall be subject to the terms of this Agreement.

6. The committee is specifically authorized to enforce the provisions of this Agreement, including the collection of any assessments for costs of maintaining New Point Road by all appropriate means, including legal process. In the event that litigation is instituted to enforce the provisions of this Agreement, the prevailing party shall be entitled to recover all of its costs expended, including reasonable attorney's fees.

7. No provision contained in this Agreement shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

8. This Agreement represents the entire agreement between the parties with respect to the subject matter hereof and may not be modified or changed except by written instrument executed by all parties. This Agreement shall be construed, interpreted and applied according to the laws of the Commonwealth of Virginia and shall be binding upon and inure to the benefit of the heirs, personal representatives, successors and assigns of the parties. The provisions of this Agreement shall run with the land and apply to all subsequent owners of property to which an easement of access over New Point Road is appurtenant.

WITNESS the following signatures and seals this 10<sup>th</sup> day of JULY,  
2003.

WILLIAMSBURG BUSINESS CENTER  
UNIT OWNERS ASSOCIATION

By Robert S. Hornsby

WILLIAMSBURG BUSINESS CENTER PHASE II  
UNIT OWNERS ASSOCIATION

By Robert S. Hornsby

CHARTER, L.L.C.

By Lois S. Hornsby  
Lois S. Hornsby, Member

By Robert Saunier Hornsby  
Robert Saunier Hornsby, Member

JUL 18 2003 01:72

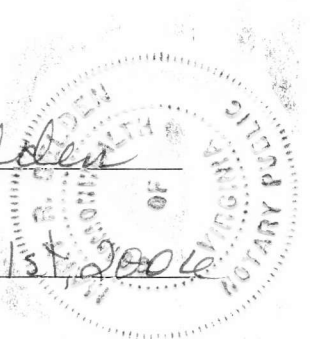
STATE OF VIRGINIA

CITY/COUNTY OF James City, to-wit:

This instrument was acknowledged before me by ROBERT S. HORNSBY  
of the Williamsburg Business Center Unit Owners Association, this 10th day of  
July, 2003.

Mary R. Selden  
NOTARY PUBLIC

My commission expires: July 31st, 2006



STATE OF VIRGINIA

CITY/COUNTY OF James City, to-wit:

This instrument was acknowledged before me by ROBERT S. HORNSBY  
of the Williamsburg Business Center Phase II Unit Owners Association, this 10th day of  
July, 2003.

Mary R. Selden  
NOTARY PUBLIC

My commission expires: July 31st, 2006



JUL 18 2003 0173

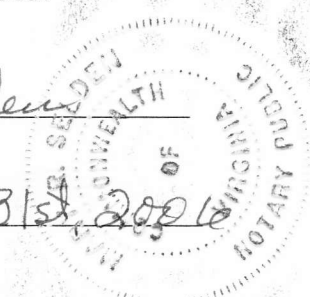
STATE OF VIRGINIA

CITY/COUNTY OF James City, to-wit:

This instrument was acknowledged before me by Lois S. Hornsby, Member of Charter, L.L.C.,  
a Virginia Limited Liability Company, this 10th day of July, 2003.

Mary R. Selden  
NOTARY PUBLIC

My commission expires: July 31st, 2006



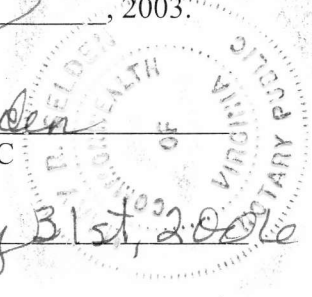
STATE OF VIRGINIA

CITY/COUNTY OF James City, to-wit:

This instrument was acknowledged before me by Robert Saunier Hornsby, Member of Charter,  
L.L.C., a Virginia Limited Liability Company, this 10th day of July, 2003.

Mary R. Selden  
NOTARY PUBLIC

My commission expires: July 31st, 2006



VIRGINIA: CITY OF WILLIAMSBURG & COUNTY OF JAMES CITY

This document was admitted to record on 18 July 03  
at 9:24 AM/PM. The taxes imposed by Virginia Code  
Section 58.1-801, 58.1-802 & 58.1-814 have been paid.

STATE TAX LOCAL TAX ADDITIONAL TAX

\$ \_\_\_\_\_ \$ \_\_\_\_\_ \$ \_\_\_\_\_

TESTE: BETSY B. WOOLRIDGE, CLERK

BY: Betsy B. Woolridge Clerk

JUL 18 01 74