

BK7113 0365

EXHIBIT "B" TO THE DECLARATION  
FAIRFAX COMMONS: A CONDOMINIUM

BY-LAWS  
RULES AND REGULATIONS  
CHART OF MAINTENANCE RESPONSIBILITIES  
PERMITTED USES

## FAIRFAX COMMONS: A CONDOMINIUM

## BY-LAWS

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9. "Declaration" means the Declaration of Fairfax Commons: A Condominium to which these By-Laws are attached as Exhibit "D" and such amendments as may be recorded from time to time.

10. "Majority Approval" means a simple majority of Unit Owners owning Condominium Units to which more than fifty percent of the aggregate Undivided Interests belong. A Majority Approval of the Association may be evidenced by a combination of votes made in person or by proxy at a duly convened meeting of the Association and separate written ratifications or approvals pursuant to Section 2.13. Any specified percentage of the Unit Owners shall mean the Unit Owners owning Condominium Units to which such percentage of Undivided Interests appertain.

11. "Maintenance" shall include care, operation, repair, renovation, alteration, remodeling, restoration, replacement, improvement or any combination thereof.

12. "Mortgage" means a first mortgage or first Deed of Trust unless the section specifically includes junior liens.

13. "Mortgagee" means the holder of a first mortgage or first Deed of Trust lien unless the section specifically includes junior lienors.

14. "Property" means all land, together with all improvements, easements, rights and appurtenances thereunto belonging which is submitted to the Declaration.

15. "Undivided Interest" means the percentage assigned to each Unit by Section 2.4. of the Declaration which establishes each Unit's undivided interest in the Common Elements, Common Expenses and Common Profits and votes in the Unit Owners Association.

16. "Reserved Common Elements" means Common Elements which have been designated by the Board of Directors for the exclusive use of less than all of the Unit Owners on a temporary basis.

17. "Unit" shall be deemed to include the undivided interest in the Common Elements and be interchangeable with "Condominium Unit" if required for the sense of the provision.

18. "Unit Owners Association" means the unincorporated association of all the Unit Owners owning Condominium Units in the Condominium.

19. Also see Section 14.3 "Interchangeable Terms".

## ARTICLE II

### UNIT OWNERS ASSOCIATION

**SECTION 2.1. COMPOSITION.** All of the Unit Owners of Units contained in the Condominium, acting as a group in accordance with the Condominium Act, the Declaration and these By-Laws, shall constitute the "Association," which as Agent for the Unit Owners shall have the responsibility of administering the Condominium, establishing the means and methods of collecting the assessments for the Common Expenses and Charges, arranging for the management of the Condominium and performing all of the other acts that may be required to be performed by the Association, by the Condominium Act and the Declaration. Except as to those matters which either the Condominium Act or the Declaration specifically require to be performed by the vote of the Unit Owners, the administration of the foregoing responsibilities shall be performed by the Board of Directors as more particularly set forth in Article III. The Association may acquire, hold and transfer full legal title to one or more units in the Condominium in its own name.

**SECTION 2.2. OFFICE.** The office of the Association and the Board of Directors shall be located at the Condominium or at such other place as may be designated from time to time by the Board of Directors.

**SECTION 2.3. ANNUAL MEETINGS.** The annual meetings of the Association shall be held at least sixty (60) days before the beginning of each fiscal year on a date determined by the Board of Directors other than a Saturday, Sunday or Legal Holiday. The Board of Directors shall be elected by a written ballot of the Unit Owners at the annual meetings after the expiration of the Declarant Control Period. If the special meeting provided for in Section 2.5(b) of this Article is held within four months of a scheduled annual meeting that special meeting shall be deemed to be the annual meeting for that year.

**SECTION 2.4. PLACE OF MEETINGS.** Meetings of the Association shall be held at the principal office of the Condominium or at such other suitable place convenient to the Unit Owners as may be designated by the Board of Directors.



**SECTION 2.5. SPECIAL MEETINGS.**

(a) It shall be the duty of the President to call a special meeting of the Association if so directed by resolution of the Board of Directors or, after the expiration of the Declarant Control Period, upon a petition signed and presented to the Secretary by Unit Owners owning not less than twenty-five percent (25%) of the total Undivided Interests of all Unit Owners. The notice of any special meeting shall state the time, place and purpose of such meeting. No business shall be transacted at a special meeting except as stated in the notice.

(b) Within ten (10) days after the end of the Declarant Control Period, the Declarant shall notify the Unit Owners and a special meeting of the Association shall be held within thirty (30) days thereafter on a call issued by the President. The terms of office of the persons designated by the Declarant as members of the Board of Directors shall be deemed to have expired at such meeting, and all of the Unit Owners, including the Declarant, shall elect a new Board of Directors.

**SECTION 2.6. NOTICE OF MEETINGS.** The Secretary shall be responsible for mailing a notice of each annual or special meeting of the Unit Owners pursuant to the provisions of Section 55-79.75, Code of Virginia, as amended, and Section 14.1 of these By-Laws.

**SECTION 2.7. ADJOURNMENT OF MEETINGS.** If any meetings of the Association cannot be held because a quorum is not present, Unit Owners owning a majority of the Percentage Interests who are present at such meeting, 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 2.8. ORDER OF BUSINESS.** The order of business at all meetings of the Association shall be as follows:

1. Roll Call or Proof of Quorum
2. Proof of notice of meeting
3. Reading of minutes of preceding material
4. Election or appointment of inspectors of election  
(when so required)
5. Election of members of the Board of Directors  
(when so required)
6. Reports officers and Board of Directors
7. Reports of Committees
8. Report of managing agent, if any, and if present
9. Unfinished business
10. New business
11. Adjournment

The meeting may proceed pending, and subject to, proof of quorum.

**SECTION 2.9. VOTING.** At every meeting of the Unit Owners, each of the Unit Owners shall have the right to cast a vote in proportion to the Undivided Interest of his Unit as set forth in the Declaration. No Unit Owner shall be eligible to vote, either in person or by proxy, or be elected to the Board of Directors, who is shown on the books or management accounts of the Association to be more than sixty (60) days delinquent in any payment due the Association.

If a Unit is owned by a corporation, the vote may be exercised by any corporate officer present or by a person designated in writing by a resolution of the corporation's Board of Directors. If a Unit is owned by more than one person the vote for that Unit shall be cast by the person designated to do so in a certificate executed by all the owners of such Unit and filed with the secretary or, in the absence of any such designated person, by the owner present at the meeting. Such certificate executed according to the same requirements. Without such certificate the vote for such Unit shall be cast as provided in Section 55-79.77(c) of the Condominium Act.

If the Declarant owns or holds title to one or more Units, the Declarant shall have the right to cast the votes to which such Unit or Units are entitled.

**SECTION 2.10. PROXIES.** The votes appertaining to any Unit may be cast pursuant to a proxy or proxies duly executed on behalf of the Unit Owner, or, in cases where the Unit Owner is more than one person, by or on behalf of all such persons. No proxy shall be revocable except by actual notice to the person presiding over the meeting, by the Unit Owner or by any such persons, that it be revoked. Any proxy 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 proxy. A proxy may be instructed or uninstructed. Any proxy shall comply with the requirements of Section 55-79.77(d) of the Condominium Act, as amended.

**SECTION 2.11. CONDUCT OF MEETING.** The President shall preside over all meetings of the Association and the Secretary shall be responsible for keeping the minutes of the meeting and recording in a Minute Book all resolutions adopted by the meeting as well as a record of all transactions occurring thereat. The President may appoint a person to serve as Parliamentarian at any meeting of the Association. Questions of conduct and procedure shall be determined by (1) the Condominium Act, (2) the Declaration, (3) these By-Laws and (4) the then current edition of Roberts Rules of Order.

**SECTION 2.12. QUORUM.** The presence, either in person or by proxy, of members representing at least twenty-five percent (25%) of the total votes of the Association shall be requisite for, and shall constitute a quorum for the transaction of business at all meetings of members.

**SECTION 2.13. MAJORITY APPROVAL.** Majority Approval may be evidenced by a combination of votes cast in person or by proxy at a duly convened meeting of the Association and separate written ratifications or approvals. Such ratifications shall comply with the requirements for a proxy as provided in Section 2.10. During the period a Majority Approval is pending a Unit Owner can withdraw any proxy or ratification he has previously submitted and submit a new proxy or ratification, provided that any such withdrawal must also comply with the requirements for a proxy. No votes, ratifications or withdrawals and new votes or ratifications may be made after a question has either received Majority Approval or failed. A question shall be deemed to have failed if it does not receive Majority Approval within sixty (60) days after it is first submitted to the Unit Owners by notice of a meeting to discuss the question or the mailing of a request for ratifications.

### ARTICLE III

#### BOARD OF DIRECTORS

**SECTION 3.1. NUMBER AND QUALIFICATION.** The affairs of the Condominium shall be governed by a Board of Directors. Until the expiration of the Declarant Control Period and thereafter until the Board of Directors shall be designated and appointed by the Declarant. The initial Board of Directors shall consist of three (3) persons who may be, but are not required to be, officers, directors, or designees of the Declarant, Unit Owners or spouses of Unit Owners, or Mortgagees (or designees of mortgagees) of Units. The term of each designee shall be fixed by the Declarant. The successor board elected at the special meeting called pursuant to Section 2.5(b) shall consist of three (3) persons. The member receiving the largest total of votes shall be elected to a three year term. The member receiving the second largest total shall be elected to a two year term and the member receiving the third largest total shall be elected to a one year term. Except for Directors designated by the Declarant, Directors must own an interest, other than a security interest, in a Unit or own an interest in or be an officer of an entity which is a Unit Owner.

**SECTION 3.2. TERM OF OFFICE.** Except as provided above, the Board Members of the Association shall be elected to a term of three (3) years.

At the expiration of the initial term of office of each member of the Board of Directors elected at the meeting called pursuant to Section 2.5(b), his successor shall be elected to serve for a term of three (3) years. The members of the Board of Directors shall continue in office until their respective successors shall have been elected by the Association.

## SECTION 3.3. POWERS AND DUTIES.

(a) The Board of Directors shall have all of the powers and duties necessary for the administration of the affairs of the Condominium and may do all such acts and things which neither the Condominium Act nor these By-Laws require to be exercised and done by a vote of the Association.

(b) Without prejudice to the foregoing general powers and duties or such powers and duties conferred by the Condominium act, law, or the Condominium Instruments, the Board of Directors shall be vested with, and responsible for, the following powers and duties:

(i) The Board of Directors shall have the power:

1. From time to time to adopt any Rules and Regulations deemed necessary for the benefit and enjoyment of the Condominium provided such Rules and Regulations shall not be in conflict with the Condominium Act, or the Declaration, or these By-Laws.

2. To establish and change the principal office and fiscal year of the Association.

3. To establish committees and determine the scope of their duties.

4. To accomplish, and be responsible for, those duties and functions set forth in Sections 55-79.79 and 80, of the Condominium Act, as amended.

5. To borrow money on behalf of the Association, provided, however, that Majority Approval shall be required to borrow any sum in excess of Fifteen Thousand Dollars (\$15,000.00).

6. To acquire, hold, mortgage and dispose of real and personal property in the name of the Association, subject to Paragraph 5 above and, provided, further, that any acquisition of real property, including a Condominium Unit, except when pursuant to Paragraph 3.3(b) (i) 7 below, must have Majority Approval.

7. To acquire Condominium Units in foreclosure and to take any and all steps necessary to repair or renovate any Condominium Unit so acquired, offer such Unit for sale or lease, or take any other steps regarding such Unit as shall be deemed proper by the Board of Directors.

8. To grant exclusive or nonexclusive licenses for the use of designated Common Elements to the Unit Owners of designated Units.

9. To limit the use of the Common Elements for promotional events not sponsored by the Association and benefiting or sponsored by less than all the Unit Owners when, in the opinion of sixty-six percent (66%) of the Board, such promotional events become an excessive use of the Common Elements.

(ii) The Board of Directors shall have the power and the duty:

1. To enforce, or cause to be enforced, the provisions of the Condominium Act, the Condominium Instruments and the Rules and Regulations.

2. To select, appoint and remove all officers, agents and employees of the Association, to prescribe such powers and duties for them as may be consistent with the Condominium Act, law, and the Condominium Instruments; to fix their compensation and to require from them security for faithful service when deemed advisable by the Board.

3. To do, or cause to be done by an appropriate officer, all acts and things required by the Condominium Act, law, the Condominium Instruments or Board Resolution to be performed by an officer.

4. To establish the Association's budget, and to levy assessments and charges.

5. To keep, or cause to be kept, a complete record of all acts and affairs of the Association.

(iii) In addition to the above powers and duties the Board shall have all those powers and duties set forth elsewhere in the Condominium Instruments.

**SECTION 3.4. MANAGING AGENT.** The Board of Directors shall employ for the Condominium a professional Managing Agent at a compensation established by the Board of Directors, to perform such duties and services as the Board of Directors shall authorize.

(a) **REQUIREMENTS.** The Managing Agent shall be a bona fide business enterprise, which may be affiliated with the Declarant, which manages commercial properties or communities. Such firm shall have a minimum of two years experience in real estate management and shall employ persons possessing a high level of competence in the technical skills necessary to proper management of the Condominium. The Managing Agent must be able to advise the Board of Directors regarding the administrative operation of the Condominium.

(b) DUTIES. The Managing Agent shall perform such duties and services as the Board of Directors shall authorize. The Board of Directors may delegate to the Managing Agent all of the powers granted to the Board of Directors by these By-Laws other than the powers of establishing a budget, levying assessments, establishing policy, borrowing money and owning property. The Managing Agent shall perform the obligations, duties and services relating to management of the property, the rights of Mortgagees and the maintenance of reserve funds in compliance with the provisions of the Condominium Instruments.

(c) STANDARDS. The Board of Directors shall impose appropriate standards of performance upon the Managing Agent. Unless the Managing Agent is instructed otherwise by the Board of Directors;

(1) the accrual method of accounting shall be employed. Expenses charged to more than one but less than all of the Unit Owners pursuant to these By-Laws shall be accounted for separately;

(2) two or more persons shall be responsible for handling cash to maintain adequate financial control procedures;

(3) cash accounts of the Association shall not be commingled with any other accounts;

(4) no remuneration shall be accepted by the Managing Agent from vendors, independent contractors or others providing goods or services to the Association whether in the form of commissions, finder's fees, service fees or otherwise; any discounts received shall benefit the Association;

(5) any financial or other interest which the Managing Agent may have in any firm providing goods or services to the Association shall be disclosed promptly to the Board of Directors; and

(6) a monthly financial report shall be prepared for the Association disclosing:

(i) all income and disbursement activity for the preceding month;

(ii) expense and disbursement activity for the preceding month on a cash basis;

(iii) the status of all accounts in an "actual" versus "projected" (budget) format; and

(iv) any actual or pending obligations which are in excess of budgeted amounts by an amount exceeding the operating reserves or ten percent;

(v) the names of all Unit Owners who are delinquent in paying condominium assessments and describing the status of any actions to collect such assessments.

(d) **LIMITATIONS.** Subject to the provisions of Section 55.79-74(b) of the Condominium Act, during the Declarant Control Period, the Board of Directors may employ a Managing Agent for an initial term not to exceed two years. The Association and the Board shall not undertake "Self Management" or fail to employ a Managing Agent without notice to the Unit Owners and those Mortgagees who request such notice. Any contract with the Managing Agent must provide that it may be terminated with cause on no more than thirty (30) days' written notice and without cause and without payment of a termination fee on no more than ninety (90) days' written notice. The term of any such contract may not exceed two years.

**SECTION 3.5. REMOVAL OF MEMBERS OF BOARD OF DIRECTORS.** Except for Directors designated by the Declarant, at any regular or special meeting of the Association duly called any one or more of the Board of Directors may be removed with or without cause by a vote of the majority of the Unit 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 Unit Owners shall be given at least ten (10) days notice of the calling of the meeting and the purpose thereof and he shall be given an opportunity to be heard at the meeting.

During the Declarant Control Period the Declarant may remove any Director previously designated by the Declarant.

Notwithstanding anything in this section to the contrary, until the end of the Declarant Control Period no person selected and designated by the Declarant as a member of the Board of Directors may be removed without the consent of the Declarant and in such event the Declarant shall have the right to select and designate the successor to such removed Director.

Directors may resign at any time, and, except for Directors designated by the Declarant, shall be deemed to have resigned pursuant to Section 55-79.78 of the Condominium Act upon disposition of his unit or after absences at three consecutive regular meetings of the Board unless the minutes reflect consent to such absences.

**SECTION 3.6. 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 a vote of a majority of the remaining directors at a special meeting of the Board of Directors for that purpose, promptly after the occurrence of any such vacancy, even though the Directors present constitute less than a majority. Each person so elected shall be a member of the Board of Directors until the expiration of the term of the member whose vacancy the new member fills. During the Declarant Control Period the Declarant shall designate the successor for any Director designated by the Declarant.

**SECTION 3.7. ORGANIZATION MEETING.** The date of the first meeting of the members of the Board of Directors elected at the annual meeting of the Association shall be determined by the Board immediately following the Association meeting and no further notice shall be necessary to the newly elected members of the Board of Directors. Such meeting shall occur within thirty (30) days.

**SECTION 3.8. 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 such meetings shall be held at least once every two (2) months during each fiscal year. Notice of regular meetings of the Board of Directors shall be given to each director personally, by mail, telephone or telegraph, at least three (3) business days prior to the day set for such meeting. Meetings of the Board may be held by means of a conference telephone or similar communications equipment whereby all persons participating in the meeting can hear each other, and participation by such means shall constitute presence in person at such meeting.

**SECTION 3.9. SPECIAL MEETINGS.** Special meetings of the Board of Directors may be called by the President or three (3) members of the Board of Directors on three (3) business days notice to each director, given personally, by mail, telephone or telegraph, which notice shall state the time, place, and purpose of the meeting.

**SECTION 3.10. WAIVER OF NOTICE.** Any director may, at any time, in writing, waive notice of any meeting of the Board of Directors, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a director at any meeting of the Board of Directors shall constitute a waiver of notice by him of the time and place of such meeting. If all directors are present at any meeting of the Board of Directors, no notice shall be required and any business may be transacted at such meeting.

**SECTION 3.11. COMPENSATION.** No director shall receive any compensation from the Condominium for exercising his duties and obligations as a director.

**SECTION 3.12. CONDUCT OF MEETINGS.** The President shall preside over all meetings of the Board of Directors and the Secretary shall keep a Minute Book of the Board of Directors recording therein all resolutions adopted by the Board of Directors and a record of all transactions and proceedings occurring at such meetings. Questions of conduct and procedure shall be determined by (1) The Condominium Act, (2) The Declaration, (3) These By-Laws and (4) The then current edition of Roberts Rules of Order.



**SECTION 3.13. ACTION WITHOUT MEETING.** Any action by the Board of Directors required or permitted to be taken at any meeting may be taken without a meeting if all of the members of the Board of Directors shall individually or collectively consent in writing to such action. Such written consent or consents shall be filed with the minutes of the proceedings of the Board of Directors.

**SECTION 3.14. QUORUM.** The presence of a majority of the Board shall constitute a quorum and the vote of a majority of the directors present at a meeting at which a quorum is present shall constitute a decision of the Board of Directors. If any meeting of the Board there shall be less than a quorum present a majority of those present may adjourn the meeting from time to time. At any such adjourned meeting at which a quorum is present any business which may have been transacted at the meeting originally called may be transacted without further notice.

**SECTION 3.15. BOARD OF DIRECTORS AS ATTORNEY-IN-FACT.** The Board of Directors is hereby irrevocably appointed as agent and attorney-in-fact for the Unit Owners of all of the Units and for each of them, to manage, control and deal with the interests of such Unit Owners in the Common Elements of the Condominium to permit the Board of Directors to fulfill all of its powers, rights, functions and duties. The Board of Directors is hereby irrevocably appointed as agent and attorney-in-fact for each Unit Owner, each Mortgagee, other named insureds and their beneficiaries and any other holder of a lien or other interest in the Condominium or the Property to adjust and settle all claims arising under insurance policies purchased by the Board of Directors and to execute and deliver releases upon the payment of claims. The Board of Directors may grant and accept easements and licenses pursuant to Section 55-79.80(b) of the Condominium Act. The Board of Directors shall have full powers to assert, defend, compromise, adjust and settle claims or actions related to Common Elements pursuant to Section 55-79.80(b1) of the Condominium Act.

**SECTION 3.16. COVENANTS COMMITTEE.**

(a) **PURPOSE.** The Board of Directors shall establish a Covenants Committee, consisting of three or five members, of employees, shareholders, Board members or officers of members, appointed by the Board of Directors, each to serve for a term of one year, in order to assure that the Condominium shall always be maintained in a manner: (1) providing for visual harmony and soundness of repair; (2) avoiding activities deleterious to the aesthetic or property values of the Condominium; (3) furthering the comfort of the Unit Owners, their guests and tenants; and (4) promoting the general welfare and safety of the Condominium community.

(b) **POWERS.** The Covenants Committee shall regulate the external design, appearance, use and maintenance of the Common Elements. The Covenants Committee shall control signage on the Property. It shall review and regulate all signage installed by Unit Owners which is visible from the Common Elements, except for signs permitted by right pursuant to Section 6 of the Rules and Regulations (Exhibit "B"). It shall be responsible for establishing any common signage schemes and signage designs for the Condominium generally. The Covenants Committee shall have the power to impose reasonable charges upon and issue a cease and desist request to a Unit Owner, his guests, invitees, or lessees whose actions are inconsistent with the provisions of the Condominium Act, the Condominium Instruments, the Rules and Regulations or resolutions of the Board of Directors (upon petition of any Unit Owner or upon its own motion). Such actions shall be in accordance with the procedures specified in Section 55-79.80(b2) of the Condominium Act. The Covenants Committee shall from time to time, as required provide interpretations of the Condominium Instruments, Rules and Regulations and resolutions pursuant to the intents, provisions and qualifications thereof when requested to do so by a Unit Owner or the Board of Directors. Any action, ruling or decision of the Covenants Committee may be appealed to the Board of Directors by any party deemed by the Board of Directors to have standing as an aggrieved party and the Board of Directors may modify or reverse any such action, ruling or decision.

(c) **AUTHORITY.** The Covenants Committee shall have such additional duties, power and authority as the Board of Directors may from time to time provide by resolution. The Board of Directors may relieve the Covenants Committee of any of its duties, powers and authority either generally or on a case by case basis. The Covenants Committee shall carry out its duties and exercise its powers and authority in the manner provided for in the Rules and Regulations or by resolution of the Board of Directors.

## ARTICLE IV

### OFFICERS

**SECTION 4.1. DESIGNATION.** The principal officers of the Condominium shall be the President, Vice President, the Secretary and the Treasurer, all of whom shall be elected by the Board of Directors. The Board of Directors may appoint other officers as in its judgment may be necessary. The President and Vice President, but no other officers, shall be required to be members of the Board of Directors. Except for the offices of President and Vice President, the same person may hold more than one office.

**SECTION 4.2. ELECTION OF OFFICERS.** The officers of the Condominium shall be elected annually by the Board of Directors at the organization meeting of each new Board of Directors and shall hold office at the pleasure of the Board of Directors and until a successor is elected.

**SECTION 4.3. REMOVAL OF OFFICERS.** Upon the affirmative vote of a majority of the members of the Board of Directors, any officer may be removed, either with or without cause, and a successor may be elected at any regular meeting of the Board of Directors, or at a special meeting of the Board of Directors.

**SECTION 4.4. PRESIDENT.** The President shall be the chief executive officer of the Condominium. 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 which are incident to the office of president necessary for the active management of the Association, including, but not limited to, the power to appoint committees from among the Unit Owners from time to time as he may in his discretion decide is appropriate to assist in the conduct of the affairs of the Condominium. He shall appoint a secretary pro tem at any meeting at which the Secretary is absent.

**SECTION 4.5. VICE PRESIDENT.** The Vice President shall take the place of the President and perform his duties whenever the President shall be absent or unable to act. If neither the President nor the Vice President is able to act, the Board of Directors shall appoint some other member of the Board of Directors to act in the place of the President on an interim basis. The Vice President shall also perform such other duties as shall from time to time be imposed upon him by the Board of Directors or by the President.

**SECTION 4.6. SECRETARY.** The Secretary shall be responsible for keeping minutes of all meetings of the Association, and of the Board of Directors; 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. He shall be responsible for giving notices to Directors, Unit Owners, and Mortgagees as provided in Sections 5.2 of the Declaration and 2.3, 2.5, 2.6, 2.13, 6.1, 10.2, 10.7, 10.8 and 10.9; for giving the Unit Owners notice and a copy of any Rules and Regulations or amendments thereto as soon as practical after adoption by the Board of Directors; and for making the Minutes of the Association and the Board of Directors available, at reasonable times and by appointment, to the Unit Owners or Mortgagees for inspection or copying.

**SECTION 4.7. TREASURER.** The Treasurer shall have the responsibility for Condominium funds and securities and shall be responsible for keeping full and accurate financial records and books of account showing all receipts and disbursements, and for the preparation of all required financial data; he shall be responsible for the deposit of all monies and other valuable effects in the name of the Board of Directors, the Association or the Managing Agent, in such depositories as may from time to time be designated by the Board of Directors and in general perform the duties incident to the office of treasurer.

**SECTION 4.8. AGREEMENTS, CONTRACTS, DEEDS, CHECKS, ETC.** Unless authorized to the contrary by an adopted Resolution of the Board of Directors, all agreements, contracts, deeds, leases, checks and other instruments of the Condominium for expenditures greater than One Thousand Dollars (\$1,000.00) shall be executed by two (2) officers of the Condominium, or by such other persons as may be designated by the Board of Directors. Instruments for obligations of less than One Thousand Dollars (\$1,000.00) shall be executed by one person designated by the Board of Directors.

**SECTION 4.9. COMPENSATION OF OFFICERS.** No officer shall receive any compensation from the Condominium solely for exercising his duties and obligations as an officer.

#### ARTICLE V

#### LIABILITY AND INDEMNIFICATION OF OFFICERS, DIRECTORS, UNIT OWNERS AND THE UNIT OWNERS ASSOCIATION

**SECTION 5.1. LIABILITY OF THE ASSOCIATION.** The Association shall not be liable for any failure of water supply or other services to be obtained by the Association or paid for as a Common Expense, or for injury or damage to persons or property caused by the elements or by the Unit Owner of any Condominium Unit, or any other person, or resulting from electricity, water, snow or ice which may leak or flow from any portion of the Common Elements or from any pipe, drain, conduit, appliance or equipment. The Association shall not be liable to any Unit Owner for loss or damage, by theft or otherwise, or articles which may be stored upon any of the Common Elements. No diminution or abatement of any assessments, as herein elsewhere provided, shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements to the Common Elements or from any action taken by the Association to comply with any law, ordinance or with the order or directive of any municipal or other governmental authority.

**SECTION 5.2. LIABILITY AND INDEMNIFICATION OF OFFICERS AND DIRECTORS.** The Association shall indemnify every officer and director of the Condominium and member of the Covenants Committee against any and all expenses, including counsel fees, reasonably incurred by or imposed upon any officer or director in connection with any action, suit or other proceeding (including settlement of any suit or proceeding if approved by the then Board of Directors of the Condominium) to which he may be made a party by reason of being or having been an officer or director of the Condominium or member of the Covenants Committee whether or not such person is an officer or director or committee member at the time such expenses are incurred.

The officers and directors of the Condominium and Covenants Committee members shall not be liable to the Unit Owners for any mistake of judgment, negligence, or otherwise, except for their own individual willful misconduct or bad faith. The officers and directors of the Condominium shall have no personal liability (except to the extent that such officers or directors may also be owners of condominium units) with respect to any contract or other commitment made by them, in good faith, on behalf of the Condominium and the Condominium shall indemnify and forever hold each such officer and director free and harmless against any and all liabilities to others on account of any such contract or commitment (unless any such contract shall have been made in bad faith or contrary to the provisions of the Condominium Act, the Declaration or these By-Laws, except to the extent that such liability is satisfied by directors and officers liability insurance). Every agreement made by the officers, the Board of Directors or the Managing Agent on behalf of the Association shall, if obtainable, provide that the officers, the members of the Board of Directors or the Managing Agent, as the case may be, are acting only as agents for the Association and shall have no personal liability thereunder (except as Unit Owners), and that each Unit Owner's liability thereunder shall be limited to the total liability thereunder multiplied by his Undivided Interest.

Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer or director of the Condominium or Covenants Committee member, or former officer, director or committee member, may be entitled.

**SECTION 5.3. COMMON OR INTERESTED DIRECTORS.** The Directors shall exercise their powers and duties in good faith and with a view to the interests of the Condominium. No contract or other transaction between the Condominium and one or more of its Directors, or between the Condominium and any corporation, firm or association (including the Declarant), in which one or more of the Directors of the Condominium are directors or officers or are pecuniarily or otherwise interested, is either void or voidable because such Director or Directors are present at the meeting of the Board of Directors or any committee thereof which authorizes or approves the contract or transaction, or because his or their votes are counted for such purpose, if any of the conditions specified in any of the following paragraphs exists:

1. The fact of the common directorate or interest is disclosed or known to the Board of Directors or majority thereof or noted in the Minutes and the Board authorizes, approves or ratifies such contract or transaction in good faith by a vote sufficient for the purpose; or
2. The fact of the common directorate or interest is disclosed or known to the Unit Owners, or a majority thereof, and they approve or ratify the contract or transaction in good faith by a vote sufficient for the purpose; or

3. The contract or transaction is commercially reasonable to the Condominium at the time it is authorized, ratified, approved or executed.

Common or interested Directors may be counted in determining the presence of a quorum of any meeting of the Board of Directors or committee thereof which authorized, approves or ratifies any contract or transaction, and may vote thereat to authorize any contract or transaction with like force and effect as if he were not such director or officer of such Condominium or not so interested.

## ARTICLE VI

### OPERATION OF THE PROPERTY

#### SECTION 6.1. DETERMINATION OF COMMON EXPENSES AND ASSESSMENTS AGAINST UNIT OWNERS.

(a) **FISCAL YEAR.** The fiscal year of the Condominium shall consist of the twelve (12) month period commencing on October 1 of each calendar year and terminating on September 30 of the following year, or as the same may be changed hereafter by the Board of Directors.

(b) **PREPARATION AND APPROVAL OF BUDGET.** Each year on or before thirty (30) days prior to the end of the fiscal year, the Board of Directors shall adopt a budget for the Condominium containing an estimate of the total amount which it considers necessary to pay for the cost of utility services, maintenance, management, operation, repair and replacement of the Common Elements and those parts of the [REDACTED] as to which it is the responsibility of the Board of Directors to maintain, repair, and replace, and the cost of water charges, materials, insurance premiums, services, supplies and other expenses that may be declared to be Common Expenses by the Condominium Act, these By-Laws or a Resolution of the Association, and which will be required during the ensuing fiscal year for the administration, operation, maintenance and repair for the Condominium and the rendering to the Unit Owners of all related services.

(i) The Budget may also include:

1. The cost of the Maintenance of any Condominium Unit in the event such Maintenance is reasonably necessary in the discretion of the Board of Directors to protect the Common Elements or to preserve the appearance or value of the Condominium or is otherwise in the interest of the general welfare of all owners of the Condominium Units; provided, however, that no such Maintenance shall be undertaken without a resolution by the Board of Directors and not without reasonable written notice to the owner of the Condominium Unit proposed to be maintained and provided further that the cost thereof shall be assessed against the Condominium Unit on which such Maintenance is performed

and, when so assessed, a statement for the amount thereof shall be rendered promptly to the then owner of said Condominium Unit at which time the assessment shall become due and payable and a continuing lien and obligation of said owner in all respects as provided in Article XI of these By-Laws.

2. Any amount necessary to discharge any lien or encumbrance levied against the Condominium, or any portion thereof, which may, in the opinion of the Board of Directors, constitute a lien against the Common Elements rather than the interest therein of the owner of any individual Condominium Unit.

(ii) The Budget shall also include:

1. Such reasonable amounts as the Board of Directors considers necessary to provide working funds for the Condominium, a general operating reserve and reserves for contingencies and replacements.

(c) **NOTICE TO UNIT OWNERS.** The Board of Directors shall provide each Unit Owner a copy of the budget, in a reasonably itemized form which sets forth the amount of the Common Expenses payable by each Owner, at least ten (10) days prior to the beginning of the fiscal year to which the budget applies. The said budget shall constitute the basis for determining each Unit Owner's contribution for the Common Expenses of the Condominium.

(d) **REALLOCATION OF ASSESSMENTS.** Within thirty (30) days after any change in the number of Units in the Condominium, the Board of Directors shall adjust the budget, allocating assessments against all the Condominium Units, and the Secretary shall send to each Unit Owner a copy of the adjusted budget reflecting the liability of all condominium Units for Common Expenses for the remainder of the fiscal year; provided, however, that if the assessments necessary to fund the budget will not be modified as to any particular Units, such notification need not be given to the Unit Owners thereof. The amount of assessments attributable to each Condominium Unit shall thereafter be the amount specified in the adjusted budget until a new budget shall have been adopted by the Board of Directors.

(e) **ASSESSMENT AND PAYMENT OF COMMON EXPENSES.** Except for those common expenses which are specially assessed against the Condominium Unit or Units involved pursuant to the provisions of subparagraphs (b) (i) (1) and (f) (i) of this Section 6.1, the total amount of the estimated funds required for the operation of the Property set forth in the budget for the fiscal year adopted by the Board of Directors shall be assessed against each Unit Owner in proportion to his respective Undivided Interest in the Common Elements and shall be a lien against each Unit Owner's Unit as provided in Section 55-79.84 of the Condominium Act. On or before the first day of each fiscal year and the first day of each of the succeeding eleven (11) months in such fiscal year, such Unit Owner shall be obligated to pay to the Board of

Directors or the Managing Agent (as determined by the Board of Directors), one-twelfth (1/12) of the assessment for such fiscal year made pursuant to the foregoing provisions. Provided, however, that the Board, prior to the notice given pursuant to Section 6.1(c), may establish quarterly due dates for assessments. Any amount accumulated in excess of the amount required for actual expenses and reserves may, if the Board of Directors deems it advisable, be credited according to each Unit Owners's Undivided Interest to the installments due in the succeeding months of that fiscal year. Any net shortage shall be assessed promptly in accordance with the provisions of this section provided that the Board of Directors may require payment either (i) in full with the payment of the next monthly assessment due, or (ii) in twelve (12) or fewer monthly installments.

In the event any legal action is required to collect assessments hereunder, then and at the discretion of the Board of Directors, the entire balance of assessments due on account of said unit for the remainder of the fiscal year shall be due in full.

**(f) COMMON EXPENSES BENEFITING LESS THAN ALL UNITS.**

(i) Pursuant to Section 55-79.83(b) of the Condominium Act, any common expenses benefiting less than all of the Condominium Units or caused by the conduct of less than all those entitled to occupy the same or by their licenses or invitees may be specially assessed against the Condominium Unit or Units involved by the affirmative unanimous vote of the Board of Directors and in accordance with such reasonable provisions as may be made by the Board of Directors for such cases.

(ii) The payment and collection of the assessment made pursuant to this Subsection 6.1(f) shall be in accordance with the terms providing for the payment and collection of assessments in these By-Laws and the Condominium Act, including, without limitation, the right reserved to the Board to accelerate payment of assessments and the right to recover attorney's fees and costs and the right to impose a late charge.

**(g) RESERVES AND ADDITIONAL ASSESSMENTS.** The Board of Directors shall build up and maintain reasonable reserves for working capital, operations, contingencies and replacements. Extraordinary expenditures not originally included in the annual budget which may become necessary during the year shall be charged first against operating reserves. If the operating reserves are inadequate for any reason, including non-payment of any Unit Owner's assessment, the Board of Directors may at any time levy a further assessment, which shall be assessed against the Unit Owners according to their respective Undivided Interests, and which may be payable in a lump sum or in installments as the Board of Directors may determine.



The Board of Directors shall serve notice of any such further assessment on all Unit Owners by a statement in writing giving the amount and reason therefor, and such further assessment shall, unless otherwise specified in the notice, become effective with the next monthly payment which is due after the delivery or mailing of such notice of further assessment. All Unit Owners shall be obligated to pay the adjusted monthly amount whenever the additional assessment becomes payable. Collection of the assessment made pursuant to the foregoing provisions shall be in accordance with the terms providing for payment and collection of assessments in these By-Laws and the Condominium Act, including without limitation, the right reserved to the Board to accelerate payment of assessments and the right to recovery of attorney's fees and costs.

(h) REPAIR AND REPLACEMENT RESERVE. The Board of Directors shall obtain from members contributions to capital on a regular basis, which contributions will be used to establish a replacement and repair reserve. Such contributions shall be paid monthly and be in an amount to be designated from time to time by the Board of Directors. Such funds shall be conclusively deemed to be a common expense and contributions to capital. Such funds shall be deposited in a special account with a lending institution, the accounts of which are insured by an agency of the United States of America, or may, in the discretion of the Board of Directors, be invested in obligations of, or fully guaranteed as to principal by, the United States of America.

Common expenses may be charged against the replacement and repair reserves as determined by the Board of Directors. The amounts required to be allocated to the replacement reserve may be reduced by appropriate resolution of the Board of Directors, upon the accumulation in such replacement reserve of a sum equal to the full replacement value of the items for which the reserve is established or the maximum expenditure anticipated for a major repair. Full replacement value shall be regularly reviewed by the Board of Directors for casualty insurance purposes.

The proportionate interest of any member in any replacement reserve shall be considered an appurtenance of his Condominium Unit and shall not be separately withdrawn, assigned or transferred or otherwise separated from the Condominium Unit to which it appertains and shall be deemed to be transferred with such Condominium Unit. The payment and collection of the assessment made pursuant to the foregoing provisions shall be in accordance with the terms providing for payment and collection of assessments in these By-Laws and the Condominium Act, including without limitation, the right reserved to the Board of Directors to accelerate payment of assessments and the right to recovery of attorney's fees and costs.

**SECTION 6.5. ADDITIONS, ALTERATIONS OR IMPROVEMENTS BY UNIT OWNERS.** No Unit Owner shall make any structural alteration or addition in or to his Unit, except as provided in Section 4.2 of the Declaration, without the written approval of the Board of Directors or the Covenants Committee as appropriate. No Unit Owner shall do anything which would change the exterior appearance of his Unit without the written consent of the Board of Directors or Covenants Committee as appropriate. The failure of the Board of Directors or the Covenants Committee to answer a Unit Owner's written request for such approval within forty-five (45) days will be deemed to be sufficient consent. Each Unit Owner shall notify the Association of any improvements to his Unit of greater than One Thousand Dollars (\$1,000.00) in value.

The provisions of this section shall not apply to Units owned by the Declarant until recordation of deeds of conveyance for each Unit. The Declarant shall be deemed to have the continuing consent of the Board of Directors to alter Units, subdivide Units, relocate boundaries and alter, improve, modify and add to the exterior of the Condominium.

The Board of Directors shall execute applications to governmental authorities for alterations, additions and improvements which require execution on behalf of the Association when such applications are proposed by the Declarant or have been approved by the Board of Directors. No such execution shall incur any liability on the part of the Board of Directors to any contractor, subcontractor, materialman, or person having a claim for injury or property damage arising from any work carried out pursuant to such application. Every Unit Owner making any alterations to his Unit shall maintain the fire resistance standards between Units required by the Fairfax County, Virginia Building Codes, subject, however, to the rights provided in Section 55-79.68(b) of the Condominium Act.

**SECTION 6.6. DUTY TO MAINTAIN THE PROPERTY.**

(a) **MAINTENANCE BY THE ASSOCIATION.** Subject to paragraph (b) of this Section, the Association shall be responsible for the maintenance of all Common Elements, and the cost of such maintenance shall be a Common Expense.

(b) **MAINTENANCE BY THE UNIT OWNER.**

(1) Each Unit Owner shall be responsible for the maintenance of his Unit, including keeping it and its equipment, appliances and appurtenances in good order, condition and repair and in a clean and sanitary condition, and shall do all redecorating, painting and varnishing which may at any time be necessary to maintain the good appearance and condition of his Unit. In addition, each Unit Owner shall be responsible for all damage to any other Unit or to any Common Element resulting from his failure to perform any of the maintenance

required by this Section. Each Unit Owner shall perform his responsibility in such manner as shall not unreasonably disturb or interfere with the other Unit Owners. Each Unit Owner shall promptly report to a Director or the Managing Agent any defect or need for maintenance for which the Association is responsible.

(2) The Unit Owner of any Unit to which a Limited Common Element is exclusively assigned shall be responsible for keeping it in a clean and sanitary condition.

(c) **CHART OF MAINTENANCE RESPONSIBILITIES.** Notwithstanding the provisions of Subsections (a) and (b), specific maintenance responsibilities shall, to the extent set forth thereon, be governed by the Chart of Maintenance Responsibilities set forth as Schedule A hereto.

(d) **MANNER OF REPAIR AND REPLACEMENT.** All repairs and replacements shall be substantially similar to the original construction and installation and shall be of the same or better quality.

#### **SECTION 6.7. EASEMENTS.**

(a) Easements are reserved through each of the Units for the benefit of any adjoining Unit as may be required for structural repair and for electrical lines and conduits, gas lines, heating, air conditioning and ventilating ducts, water lines, drain pipes and other appurtenances to such utility and service systems in order to adequately serve each of such Units.

(b) There is reserved to the Association or its delegate the right of entry after reasonable notice to any Unit and an easement for access therein, when and as necessary, in connection with any repairs, maintenance, landscaping or construction for which the Association is responsible or for which any Unit Owner is responsible hereunder. Any damage caused by such entry shall be repaired at the expense of the Association. Provided, however, that if such entry is made to perform any obligations for which the Unit Owner is responsible, such entry and all work done shall be at the risk and expense of such Unit Owner.

**SECTION 6.8. CHARGES AGAINST UNIT OWNERS.** The Board of Directors by a unanimous affirmative vote may charge each Unit Owner for the expense of all maintenance, repair or replacement to the Common Elements rendered necessary by his act, neglect or carelessness or the act, neglect or carelessness of any of his employees, agents, licensees or lessees. The payment and collection of any charge made pursuant to the foregoing provisions shall be in accordance with the terms providing for payment and collection of assessments in these By-Laws and the Condominium Act, including without limitation, the right reserved to the Board to accelerate payment of assessment and the right

to recovery of attorney's fees and costs. Each Unit Owner shall be responsible for all damage to other Units or to the Common Elements resulting from his failure to make, or negligence in making, any repairs required by the Declaration, these By-Laws or the Condominium Act.

**SECTION 6.9. PERSONNEL AND EQUIPMENT.** The Board of Directors, and the Managing Agent and any Officer(s) to the extent authorized by the Board, may, on behalf of the Association in connection with the operation and a maintenance of the Condominium and the operation of the Association, employ and dismiss any Persons and purchase any equipment, supplies or material. Such equipment, supplies and material, to the extent that any of it remains personal property rather than becoming part of the Condominium, shall be the property of the Association.

**SECTION 6.10. ANNUAL AUDIT AND FINANCIAL STATEMENTS.** All books and records of the Association shall be kept in accordance with good accounting procedures and shall be audited at least once a year by an independent auditor. Such annual audited financial statement of the Condominium shall be made available to all the Unit Owners and Mortgagees. Such financial statements shall include the status of reserve accounts. The Board of Directors shall, upon request, provide any Unit Owner with copies of the monthly financial reports pursuant to Section 3.4 (c) (6) and may, at its discretion, provide all Unit Owners with quarterly financial reports.

**SECTION 6.11. DISCLAIMER OF BAILEE LIABILITY.** The Board of Directors, the Association, any Unit Owner and the Declarant shall not be considered a bailee of any personal property placed anywhere within the Property and vehicles parked on the Condominium, whether or not exclusive use or possession of the particular area is given to a Unit Owner for storage or parking purposes and shall not be responsible for the security of such personal property or for any loss or damage thereto from any cause.

**SECTION 6.12. USER FEES.** The Board of Directors may establish reasonable user fees and security deposits for the use of reserved Common Elements or Association personal property and services.

## ARTICLE VII

### INSURANCE

**SECTION 7.1. INSURANCE REQUIREMENTS.** The Association shall obtain and maintain at all times insurance, as set forth herein, with endorsement for extended coverage for the full insurable replacement value, as required by Section 55-79.81 of the Condominium Act. Such insurance shall run to the benefit of the Association, the respective Unit Owners and their respective Mortgagees, as their interests may appear, which insurance shall be governed by the following provisions:

(a) The Board of Directors, the Managing Agent and the Declarant shall not be liable for failure to obtain any coverages required by this Article or for loss or damage resulting from such failure if such failure is due to the unavailability of such coverages from reputable insurance companies or if such coverage is available only at a demonstrably unreasonable cost.

(b) Each such policy, if appropriate, will provide that:

(1) That the insurer waives its rights of subrogation to any claims against the Declarant, the Unit Owners Association, the Board of Directors, the Managing Agent, the Unit Owners and their respective agents, employees and invitees;

(2) That the master policy on the Property can not be cancelled, invalidated or suspended on account of the conduct of any Unit Owner (including invitees, agents and employees) any member of the Board, officer or employee of the Board of Directors without a prior demand in writing that the Board of Directors or the Managing Agent cure the defect and a failure to cure such defect within sixty (60) days;

(3) That any "no other insurance" clause contained in the master policy shall expressly exclude individual Unit Owners' policies from its operation;

(4) That the policy may not be cancelled or substantially modified without at least sixty (60) days prior written notice to the Board of Directors and, in the case of hazard insurance, first Mortgagees of Units;

(5) That the net proceeds of such policies, if less than Twenty-Five Thousand Dollars (\$25,000.00) shall be payable to the Board of Directors and if more than Twenty-Five Thousand Dollars (\$25,000.00) shall be payable, in trust, to the insurance Trustee designated in Section 7.6 of this Article;

(6) The name of the insured must be stated in form and substance similar to "Association of the Owners of Fairfax Commons: A Condominium, "for the use and benefit of the individual Owners";

(7) All policies of insurance shall be written with a reputable company licensed to do business in the State of Virginia.

(c) The deductible, if any, on any insurance policy purchased by the Board of Directors shall be a Common Expense except where a claim is for components of a Unit. The amount of the deductible may be assessed against a Unit pursuant to Section 6.1(e).

(d) The Declarant, so long as the Declarant shall own any Unit, shall be protected by all such policies as a Unit Owner.

(e) Any Unit Owner who obtains individual insurance policies covering any portion of the Property, other than personal property belonging to such Unit Owner, shall be required to file a copy of such individual policy or policies with the Board of Directors within thirty (30) days after the purchase of such insurance. Such Unit Owner shall also promptly notify, in writing, the Board of Directors in the event such policy is cancelled.

**SECTION 7.2. CASUALTY INSURANCE.** The Board of Directors shall be required to the extent available to obtain and maintain a blanket, "all-risk" form of fire insurance with extended coverage, with vandalism, malicious mischief, sprinkler damage, windstorm, debris removal, cost of demolition and water damage endorsements, insuring the entire Property (other than curbs, gutters and other items not normally insured) (including all of the Units and fixtures, flooring, floor coverings and appliances installed therein by the Declarant and all replacements thereof but not to exceed the value of the original installation, including furniture, furnishings or other personal property supplied or installed by Unit Owners), together with HVAC and other service machinery contained therein and covering the interests of the Board of Directors and all Unit Owners and their Mortgagees, as their interests may appear, in the amount equal to at least one hundred percent (100%) of replacement value of the property (exclusive of land excavations, foundations and other items normally excluded from such coverage) without deduction for depreciation. The Board of Directors shall periodically obtain an appraisal from an insurance company, or such other source as the Board of Directors may determine, of the full replacement value of the Property without deduction for depreciation for the purpose of determining the amount of physical damage insurance to be effected pursuant to this Section. Such policy shall also provide:

(1) That the master policy shall contain a standard Mortgagee clause in favor of each Mortgagee of a Unit to the extent of the portion of the coverage of the master policy allocated to such Unit which shall provide that the loss, if any, thereunder shall be payable to such Mortgagee and the Unit Owner as their interests may appear, subject, however, to the loss payment and adjustment provisions in favor of the Board of Directors and the Insurance Trustee contained in Section 7.4 and 7.5 of this Article;

(2) That any "no other insurance" clause excludes individual Unit Owners' policies from its operation so that the physical damage policy purchased on behalf of the Association shall be deemed primary coverage and any individual Unit Owners' policies shall be deemed excess coverage, and in no event shall the insurance coverage obtained and maintained by the Board of Directors hereunder be brought into contribution with insurance purchased by individual Unit Owners or their Mortgagees.

(3) A waiver of any right of the insurer to repair, rebuild or replace any damage or destruction, if a decision is made pursuant to these By-Laws not to do so and, in such event, the insurer shall pay on the basis of the agreed amount endorsement;

(4) The following endorsements (or equivalent), (i) "no control" (to the effect that a coverage shall not be prejudiced by any act or neglect of any occupant or Unit Owner or their agents when such act or neglect is not within the control of the insured, or the Unit Owners collectively; nor by failure of the insured, or the Unit Owners collectively, to comply with any warranty or condition with regard to any portion of the Condominium over which the insured, or the Unit Owners collectively, have no control); (ii) "contingent liability from operation of building laws or codes"; (iii) "increased cost of construction" or "condominium replacement cost"; (iv) "agreed amount" or elimination of co-insurance clause; and (v) "cost of demolition"; and,

(5) That a duplicate original of the master policy of physical damage insurance, all renewals thereof and all sub-policies or certificates issued thereunder, together with proof of payment of premiums, shall be delivered to all Mortgagees of Units upon request at least thirty (30) days prior to expiration of the then current policies.

**SECTION 7.3. LIABILITY INSURANCE.** The Board of Directors shall also be required to obtain and maintain, to the extent obtainable, comprehensive general public liability and property damage insurance (including, without limitation, coverage of all Officers against libel, slander, false arrest, invasion of privacy and errors and omissions) in such limits as the Board of Directors may from time to time determine, insuring the Declarant, each member of the Board of Directors, the Managing Agent and each Unit Owner against any liability to the public or to the Unit Owners (and their invitees, agents and employees arising out of, or incident to, the ownership and/or use of the Common Elements). Said insurance shall be issued on a comprehensive liability basis and shall contain; (i) a cross liability endorsement under which the rights of a named insured under the policy shall not be prejudiced with respect to his action against another named insured; (ii) hired and non-owned vehicle coverage; (iii) host liquor liability coverage with respect to events sponsored by the Association; (iv) deletion of the normal products exclusion with respect to events sponsored by the Association; and (v) a "severability of interest" endorsement which shall preclude the insurer from denying liability to a Unit Owner because of negligent acts of the Association, any Officer, or another Unit Owner. The Board of Directors shall review such limits once a year, but in no event shall such insurance be less than One Million Dollars (\$1,000,000.00) with respect to any one accident or occurrence for personal injury and for property damage. Reasonable amounts of excess-liability insurance above the primary limits shall also be obtained. It shall be the responsibility of each Unit Owner to obtain,

at his own expense, liability insurance with respect to his ownership and/or use of his Unit and the Board of Directors shall not be responsible for obtaining such insurance.

#### SECTION 7.4. OTHER INSURANCE.

(a) The Board of Directors shall also be required to the extent available to obtain and maintain the following insurance coverages.

(1) Workman's Compensation, if and to the extent necessary to meet the requirements of law.

(2) Adequate fidelity coverage to protect against dishonest acts on the part of Officers, Directors, Trustees and Employees of the Association and all others who handle, or are responsible for handling funds of the Association, including the Managing Agent. Such fidelity bonds shall:

(i) Name the Association as an obligee;

(ii) Be written in an amount not less than one hundred fifty percent (150%) of the annual Condominium operating expenses and reserves for the year;

(iii) Contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" of similar expression.

(3) Broad form machinery and pressure vessel explosion insurance, if applicable.

(4) Garage keepers and automobile/garage liability insurance if appropriate and not provided by the liability policy obtained pursuant to Section 7.3.

(5) Advertiser's liability insurance, if appropriate, which shall be regularly amended and updated.

(b) The Association may also obtain the following insurance coverages providing that notice as provided for in Section 14.1 is given to all Unit Owners and the obtaining of such coverage is approved by Majority Approval. Once obtained, such insurance shall be maintained until termination of such coverage or coverages is approved by a Majority Approval.

(1) Business interruption insurance.

(2) Papers and records replacement insurance.

(3) Electronic data processing insurance.



(c) The Association shall also obtain and maintain such other insurance as the Board of Directors may determine or as may be requested by a majority of the Unit Owners.

**SECTION 7.5. SEPARATE INSURANCE.** Each Unit Owner shall have the right, at his own expense, to obtain additional insurance for his own Unit and for his own benefit and to obtain insurance coverage upon his personal property and for his personal liability, as well as any improvements made to his unit (commonly referred to as "improvements and betterments insurance"), provided that no Unit Owner shall be entitled to exercise his right to acquire or maintain such additional insurance coverage so as to decrease the amount which the Board of Directors, on behalf of all Unit Owners, may realize under any insurance policy which it may have in force on the Property at any particular time or to cause any insurance coverage maintained by the Board of Directors to be brought into contribution with such additional insurance coverage obtained by the Unit Owner. All such additional policies shall contain waivers of subrogation. It shall be the responsibility of each Unit Owner to obtain, at his own expense, liability insurance with respect to his ownership and/or use of his Unit and the Board of Directors shall not be responsible for obtaining such insurance.

**SECTION 7.6. INSURANCE TRUSTEE.**

(a) All physical damage insurance policies purchased by the Board of Directors shall be for the benefit of the Association, the Unit Owners, the Mortgagees and the Declarant as their interests may appear and shall provide that all proceeds of such policies shall be paid in trust to the Board of Directors as "insurance trustee" to be applied pursuant to the terms of Article VIII.

(b) The sole duty of the Insurance Trustee shall be to receive such proceeds as are paid to it and to hold the same in trust for the purposes elsewhere stated in these By-Laws for the benefit of the insureds and their beneficiaries.

**SECTION 7.7. BOARD OF DIRECTORS AS AGENT.** The Board of Directors is hereby irrevocably appointed the agent for each Unit Owner of a Unit and for each Mortgagee of a Unit and for each owner of any other interest in the Property to adjust all claims arising under insurance policies purchased by the Board of Directors and to execute and deliver releases upon the payment of claims.

**SECTION 7.8. PREMIUMS.** Premiums upon all insurance policies purchased by the Board of Directors shall be deemed to be a Common Expense except for premiums specially assessed pursuant to Paragraph 2(a) of the Rules and Regulations.

**SECTION 7.9. HAZARD INSURANCE PROCEEDS.** The Association shall use hazard insurance proceeds for losses to any of the Condominium's property for repair, replacement and reconstruction, except as provided in Section 8.4.

#### ARTICLE VIII

#### REPAIR AND RECONSTRUCTION AFTER FIRE OR OTHER CASUALTY

**SECTION 8.1. WHEN REPAIR AND RECONSTRUCTION ARE REQUIRED.** Except when not required as provided in Section 8.4, in the event of damage to or destruction of all or any part of the Building as a result of fire or other casualty the Board of Directors shall arrange for the supervise and prompt repair and restoration of the building (including any damaged Unit or Units and any flooring, floor coverings or any fixtures or appliances installed therein by the Declarant and replacements thereof installed by the Unit Owners, but not including any other furniture, furnishings, fixtures, equipment or personal property installed by the Unit Owners in the Units). Notwithstanding the foregoing, each Unit Owner shall have the right to supervise the redecorating of his own Unit.

#### SECTION 8.2. PROCEDURE FOR RECONSTRUCTION AND REPAIR.

(a) **COST ESTIMATES.** Immediately after a fire or other casualty causing damage to the Building, the Board of Directors shall obtain reliable and detailed estimates of the cost of repairing and restoring the Building pursuant to Section 8.1 to a condition as good as that existing before such casualty. Such costs may also include professional fees and premiums for such bonds as the Board of Directors determine to be necessary.

(b) **ASSESSMENTS.** If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction and repair as determined by the Board of Directors or, if at any time during reconstruction and repair or upon completion of reconstruction and repair, the funds for the payment of the costs thereof are insufficient, additional funds may be obtained from the appropriate reserves for replacement and special assessments may be made against all the Unit Owners as the Board of Directors may decide.

(c) **PLANS AND SPECIFICATIONS.** Any such reconstruction or repair shall be substantially in accordance with the original construction and installation, subject to modifications required by applicable governmental regulations or made desirable by contemporary building materials and technology.

(d) **ENCROACHMENTS.** Encroachments upon or in favor of Units which may be created as a result of such reconstruction or repair shall not constitute a claim or basis for any proceeding or action by the Unit Owner upon whose property such encroachment exists, provided that such reconstruction was substantially in accordance with the Plan of the Property as originally constructed and renovated. Such encroachments shall be allowed to continue in existence for so long as the reconstructed Building shall stand.

### SECTION 8.3. DISBURSEMENTS OF CONSTRUCTION FUNDS.

(a) **CONSTRUCTION FUND.** The net proceeds of insurance collected on account of a casualty, any funds assigned from reserves, and the funds collected by the Board of Directors from special assessments against Unit Owners on account of such casualty shall constitute a construction fund which shall be disbursed in payment of the cost of reconstruction and repair in the manner set forth in this Section.

(b) If the estimated cost of reconstruction and repair is less than Twenty-Five Thousand Dollars (\$25,000.00), the construction fund shall be disbursed in payment of such costs upon resolutions of the Board of Directors; provided, however, that upon the written request of one-fifth (1/5) of the Mortgagees (based upon one vote for each mortgage owned), such fund shall be disbursed in accordance with the following paragraph (c).

(c) If the estimated cost of reconstruction and repair is Twenty-Five Thousand Dollars (\$25,000.00) or more, then the construction fund shall be disbursed in payment of such costs upon approval of an architect qualified to practice in Virginia and employed by the Insurance Trustee to supervise such work, payment to be made from time to time as the work progresses. The architect shall be required to furnish a certificate giving a brief description of the services and materials furnished by various contractors, subcontractors, materialmen, the architect and others who have rendered services or furnished materials in connection with the work stating that: (i) the sums requested by them in payment are justly due and owing and that such sums do not exceed the value of the services and materials furnished; (ii) there is no other outstanding indebtedness known to such architect for the services and materials described; and (iii) the cost as estimated by such architect for the work remaining to be done subsequent to the date of such certificate does not exceed the amount of the construction fund remaining after payment of the sum so requested.

(d) **SURPLUS.** If there is a balance in a construction fund after the payment of all the costs of the reconstruction and repair for which the fund is established, such balance shall be deposited in the Association general operating account or credited among the Unit Owners in proportion to their Undivided Interests.

(e) **PRIORITY OF COMMON ELEMENTS.** When the damage is to both Common Elements and Units, the construction fund shall be applied first to the cost of repairing the Common Elements that enclose and service Units, then to the cost of repairing other Common Elements and the balance to the cost of repairing the Units in the shares set forth above.

(f) **CERTIFICATE.** The Insurance Trustee shall be entitled to rely upon a certificate executed by the President or Vice President and the Secretary of the Association certifying: (i) Whether or not the damaged property is required to be reconstructed and repaired; (ii) The name of the payee and the amount to be paid with respect to disbursements from any construction fund held by it or whether surplus funds to be distributed are less than the assessments paid by the Unit Owners; (iii) All other matters concerning the holding and disbursing of any construction fund held by it. Any such certificate shall be delivered to the Insurance Trustee promptly after request.

**SECTION 8.4. WHEN RECONSTRUCTION IS NOT REQUIRED.** In the case of substantial damage, reconstruction and repair shall not be required if ninety percent (90%) of the Unit Owners with the approval of at least three-quarters (3/4) of the Mortgagees (based on one vote for each Condominium Unit securing a first mortgage) vote not to proceed with repair or restoration. In the event of insubstantial damage to the Common Elements the Board of Directors may elect not to repair in which case the damaged area shall be cleaned and restored to a condition compatible with the Condominium and the balance of the insurance proceeds distributed as provided in Section 8.3(d).

## ARTICLE IX

### TERMINATION

The Condominium shall be terminated only by the written agreement of Unit Owners of Units to which ninety percent (90%) of the votes in the Association appertain and by the prior written approval of at least three-quarters (3/4) of the Mortgagees of the Units in the Condominium calculated on the basis stated in Section 8.4. Such termination shall be effective only upon the recordation of such agreement and, if required, such approval pursuant to Section 55-79.72 of the Condominium Act. Termination shall be governed by Section 55-79.72(f) of the Condominium Act. If, in the event of termination, the net assets of the Condominium, including net insurance proceeds, are distributed to the Unit Owners in proportion to their Undivided Interests such distribution shall be subject to Article V of the Declaration and other unpaid liens on each Unit in the priority of such liens.

## ARTICLE X

## MORTGAGES

SECTION 10.1. NOTICE OF BOARD OF DIRECTORS. A Unit Owner who mortgages his Unit shall notify the Board of Directors of the name and address of his Mortgagee.

SECTION 10.2. NOTICE OF UNPAID ASSESSMENTS FOR COMMON EXPENSES OR DEFAULT. Upon a request to do so, the Board of Directors shall provide the Mortgagee of any Unit with a copy of the notification of any unpaid assessments for Common Expenses or other default by the Owner of that Unit in the performance of any obligation under these By-Laws, the Declaration or the Condominium Act sent to the Unit Owner.

SECTION 10.3. RIGHT TO EXAMINE BOOKS AND RECORDS. Mortgagees of any Condominium Unit shall have the right to examine the Condominium Instruments, Rules and the books and records of the Association during regular and normal business hours after reasonable notice.

SECTION 10.4. AMENDMENT TO THE DECLARATION OR TO THE BY-LAWS OF THE ASSOCIATION. All amendments to the Declaration or these By-Laws will be in accordance with Article V, RIGHTS OF LENDERS, and Article VI, AMENDMENTS, of the Declaration.

SECTION 10.5. PARTITION OR SUBDIVISION OF UNITS. No Unit in the Condominium may be partitioned or subdivided without the prior written approval of the holder of any mortgage on such Unit.

SECTION 10.6. RELOCATION OF BOUNDARIES. No boundaries between adjoining Units may be relocated in accordance with the provisions of Section 55-79.69 of the Condominium Act without the prior written approval of the holder of any mortgage or Deed of Trust lien or liens on such Units.

SECTION 10.7. ANNUAL AUDITED FINANCIAL STATEMENTS AND NOTICE OF ALL MEETINGS. Mortgagees shall be entitled, upon request, to receive an annual audited financial statement of the Condominium, to receive written notice of all meetings of the Association, and, further, shall be permitted to designate a representative to attend and speak at all such meetings.

SECTION 10.8. SUBSTANTIAL DAMAGE TO OR DESTRUCTION OF ANY UNIT OR ANY PART OF THE COMMON ELEMENTS. In the event of substantial damage to or destruction of any Unit or any part of the Common Elements, the Mortgagees of the affected Units will be entitled to timely written notice of any such damage or destruction.

**SECTION 10.9. CONDEMNATION OR EMINENT DOMAIN PROCEEDINGS.** If any Unit or portion thereof, or the Common Elements, or any portion thereof, is made the subject matter of any condemnation or eminent domain proceeding, or is otherwise sought to be acquired by the condemning authority, then the Mortgagees will be entitled to timely written notice of any such proceeding or proposed acquisition and the proceeds of such condemnation proceeding shall be deemed to be assigned to such Mortgagee or Mortgagees to the extent of the balance owing to such Mortgagee.

**SECTION 10.10. OTHER RIGHTS.** Mortgagees shall have such other rights and be entitled to notices upon request, provided Mortgagees have a written request for notices, with their addresses and unit numbers for those unit(s) which their lien(s) incumbers, as provided in Article V of the Declaration.

## ARTICLE XI

### COMPLIANCE AND DEFAULT

**SECTION 11.1. RELIEF.** As set forth in Section 55-79.53 of the Condominium Act, each Unit Owner shall be governed by and shall comply with all of the terms of the Condominium Instruments, the Rules and Regulations and any amendments of the same. A default by a Unit Owner shall entitle the Association, acting through its Board of Directors, its officers or through the Managing Agent, to relief as follows.

(a) **LEGAL PROCEEDINGS.** Failure to comply with any of the terms of the Condominium Instruments and the Rules and Regulations shall be grounds for relief which may include, (without limitation): (1) an action to recover any sums due, (2) for money damages, (3) for injunctive relief, (4) foreclosure of the lien for payment of all assessments, (5) any other relief provided for in these By-Laws or by statute or any combination thereof and (6) any other relief afforded by a court of competent jurisdiction, all of which relief may be sought by the Association, the Board of Directors, the Managing Agent or, if appropriate, by an aggrieved Unit Owner and shall not constitute an election of remedies.

(b) **ADDITIONAL LIABILITY.** Each Unit Owner, shall be liable for the expense of all maintenance, repair or replacement rendered necessary by his act, neglect or carelessness or the act, neglect or carelessness of any of his employees, agents, licensees or lessees, but only to the extent that such expense is not covered by the proceeds of insurance carried by the Board of Directors. Such liability shall include any increase in casualty insurance rates occasioned by use, misuse, occupancy or abandonment of any Unit or its appurtenances. Nothing contained herein, however, shall be construed as modifying any waiver of insurance company of its rights of subrogation.

(c) **COST AND ATTORNEYS' FEES.** In any proceeding arising out of any alleged default by a Unit Owner, the prevailing party shall be entitled to recover the costs of the proceeding and reasonable attorneys' fees, not exceeding thirty-three and one-third percent (33 1/3%).

(d) **NO WAIVER OF RIGHTS.** The failure of the Association, the Board of Directors or of a Unit Owner to enforce any right, provision, covenant or condition which may be granted by the Condominium Instruments or the Rules and Regulations shall not constitute a waiver of the right of the Association, the Board of Directors or the Unit Owner to enforce such right, provision, covenant or condition in the future. All rights, remedies and privileges granted to the Association, the Board of Directors or any Unit Owner pursuant to any term, provision, covenant or condition of the Condominium Instruments or the Rules and Regulations shall be deemed to be cumulative and the exercise of any one or more thereof shall not be deemed to constitute an election of remedies nor shall it preclude the party exercising the same from exercising such privileges as may be granted to such party by the Condominium Instruments or the Rules and Regulations or at law or in equity.

(e) **INTEREST, LATE CHARGES AND ACCELERATION.**

(i) In the event of a default by any Unit Owner in paying any Common Expense or other sum assessed against him which continues for a period in excess of fifteen (15) days, such Unit Owner may, at the option of the Board of Directors, be obligated to pay interest on the amounts due at the current prime rate plus five (5) percentage points at the due date thereof until complete payment is made;

(ii) Except as otherwise determined by a resolution of the Board of Directors, any assessment or any installment thereof, which is not paid within nine (9) days after it is due, shall be subject to a late charge of not more than twenty-five percent (25%) of the assessment for each monthly assessment in arrears or such other amounts as the Board of Directors may fix from time to time; and,

(iii) In the event of a default in the timely payment of two installments, the Board of Directors may declare the installments which would otherwise be due during the remaining fiscal year immediately due and payable and may take those actions to collect such accelerated amounts as are provided in these By-Laws for the collection of assessments.

(f) **ABATEMENT AND ENJOINMENT OF VIOLATIONS BY UNIT OWNERS.** The violation of any rule or regulation adopted by the Board of Directors or the breach of any provision of the Condominium Instruments shall give the Board of Directors the right, in addition to any other rights set forth in these By-Laws: (1) to enter the Unit in which, or as to which, such violation or breach exists and summarily to abate and remove at the expense of the defaulting Unit Owner, any structure,

thing or condition that may exist therein contrary to the intent and meaning of the provisions hereof and the Board of Directors shall not thereby be deemed guilty in any manner of trespass; or (2) to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such breach.

(g) **CHARGES AND OTHER SANCTIONS.** Failure by any Unit Owner to comply with any of the terms of the Condominium Instruments and the Rules and Regulation, shall subject such Unit Owner to other sanctions that may be established by resolution of the Board of Directors, including but not limited to, the imposition of charges pursuant to and in accordance with Section 55-79.80(b2) of the Condominium Act.

#### SECTION 11.2. LIEN FOR ASSESSMENTS.

(a) Any sum assessed pursuant to the Condominium Instruments by the Association for the share of the expenses chargeable to any Unit shall constitute a lien on such Unit as of the first day of the fiscal year with respect to annual assessments and the date due and payable with respect to all other assessments and shall be enforceable pursuant to the provisions of Section 55-79.84 of the Condominium Act.

(b) The lien for assessments may be enforced and foreclosed in any manner provided by law by any proceeding in the name of the Association, or by the Board of Directors, the officers or the Managing Agent acting on behalf of the Association. During the pendency of such proceeding the Unit Owner shall be charged by the Association with a reasonable rental of the Unit for the period from the initiation of such proceeding until satisfaction of or sale pursuant to any judgment or order obtained in such proceeding. The plaintiff in such proceeding shall have the right to the appointment of a receiver if available under law.

**SECTION 11.3. SUPPLEMENTAL ENFORCEMENT OF THE LIEN.** In addition to the proceedings for the enforcement of the lien established or permitted by the Condominium Act or the Condominium Instruments, and Unit Owner may be required by the Declarant or the resolution of the Board of Directors to execute bonds conditioned upon the faithful performance and payment of any assessments or any installments thereof and to secure such payment by a declaration of trust recorded among the land records of the jurisdiction in which the Condominium is located, granting unto a trustee or trustees appropriate powers to the end that, upon default in the performance of such bond, such declaration of trust may be foreclosed by such trustee or trustees acting at the direction of the Board of Directors. If any such bonds are executed or such declaration of trust is recorded, then any subsequent Purchaser of a Unit shall take title subject thereto and shall assume the obligations therein provided for.



## ARTICLE XII

## USE RESTRICTIONS

SECTION 12.1. RESTRICTIONS ON USE. All Units are subject to the rules, regulations and restrictions attached hereto as Exhibit "B", provided that:

(a) These rules, regulations and restrictions shall not apply to the Declarant so long as it owns any Units and is engaged in marketing the Units or in construction on the Property or any Additional or Convertible Land, including post construction activities such as warranty work.

(b) The Rules and Regulations attached as Schedule "B" are intended to establish initial basic standards for the operation of the Condominium. Pursuant to its authority the Board of Directors may adopt further Rules and Regulations for the Condominium. Such Rules and Regulations shall be enforceable as adopted. In the event of an apparent conflict, such Rules and Regulations shall be interpreted, if possible, in a manner consistent with the Condominium Act and the Condominium Instruments.

## ARTICLE XIII

## CONDEMNATION

SECTION 13.1. CONDEMNATION. In the event of a taking in condemnation or by eminent domain, the provisions of Article V of the Declaration and Section 55-79.44 of the Condominium Act shall prevail and govern.

SECTION 13.2. BOARD OF DIRECTORS AS ATTORNEY-IN-FACT. Pursuant to Section 3.15 and Section 55-79.80(b1) of the Condominium Act, the Board of Directors is hereby appointed agent and attorney-in-fact for all Unit Owners, Mortgagees, including junior mortgagees and others having interests in the Units to claim, adjust, settle, compromise and prosecute all claims arising from a taking of any Common Elements in condemnation or eminent domain. Notwithstanding the fact that parking spaces in the Condominium are not assigned as Limited Common Elements, in the event a Common Element parking lot, or portion thereof, is taken, the award of compensation therefor shall be distributed so as to provide additional compensation to those Units whose occupants had primarily used the parking areas so taken.

## ARTICLE XIV

## MISCELLANEOUS

SECTION 14.1. NOTICES. All notices, demands, bills, requests, statements or communications under these By-Laws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by United States mail, postage prepaid (pursuant to section 55-79.75 of the Condominium Act). Notification of a default or a lien shall be sent Certified Mail, Return Receipt Requested, Postage Prepaid.

(i) If to a Unit Owner, at the address which the Unit Owner shall designate in writing and file with the Secretary or, if no such address is designated, at the address of any Unit owned by such Unit Owner; or if a Unit is owned by two or more persons with different addresses, each such person who so designates in writing with the Secretary an address for notices shall be entitled to receive all notices hereunder; or

(ii) If to the Association or the Board of Directors, then to such address as shall be designated by the Board of Directors for such notice.

SECTION 14.2. RESALE BY UNIT OWNER. The Association or the Managing Agent shall furnish the appropriate statements in compliance with Section 55-79.84(h) of the Condominium Act. The Board of Directors may from time to time fix a reasonable charge for such statements as provided in said section.

## SECTION 14.3. INTERCHANGEABLE TERMS.

(a) As used in these By-Laws and in the Declaration, the terms mortgage and deed of trust are interchangeable with each other and terms Mortgagee and holder of a deed of trust lien are interchangeable with each other. All such terms shall refer to First Trusts and First Mortgages unless the provision expressly includes junior liens.

(b) The use of the masculine gender in these By-Laws shall be deemed to include the feminine and neuter genders and vice versa whenever the context so requires. The use of the singular shall be deemed to include the plural and vice versa, whenever the context so requires.

SECTION 14.4. CONSTRUCTION. These Condominium Instruments are intended to comply with all applicable provisions of the Virginia Condominium Act, as it may be amended from time to time, and shall be so interpreted and applied.

**SECTION 14.5. CAPTIONS.** The captions herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of these By-Laws or the intent of any provisions thereof.

**SECTION 14.6. SEVERABILITY.** If any provisions of these By-Laws or any section, sentence, clause, phrase or word, or the application thereof in any circumstances is held invalid, the validity of the remainder of these By-Laws or the applicability of other circumstances shall not be affected thereby and to this end, the provisions hereof are declared to be severable.

**SECTION 14.7. WAIVER.** No restriction, condition, obligation or provision of these By-Laws shall be deemed to have been abrogated or waived by reason of any failure or failures to enforce the same.

#### ARTICLE XV

#### AMENDMENTS TO BY-LAWS

**SECTION 15.1. AMENDMENTS.** Except as otherwise provided in this Section and subject to the provisions of Articles V and VI of the Declaration, these By-Laws may be modified or amended either:

(a) Pursuant to a written instrument duly executed by the owners of at least sixty-seven percent (67%) of the Undivided Interests in the Common Elements.

(b) By such other means as may be provided for in the Virginia Condominium Act provided that the owners of no less than sixty-seven percent (67%) of the Undivided Interests in the Common Elements assent thereto.

**SECTION 15.2. RECORDING.** An amendment of these By-Laws shall become effective only if such amendment is recorded in the Land Records of the County of Fairfax, Virginia.

**SECTION 15.3. CONFLICTS.** No amendment of these By-Laws may be adopted which shall be inconsistent with the provisions of the Condominium Act. An amendment, once adopted and recorded as provided for herein, shall then constitute part of the official By-Laws of the Condominium and all Unit Owners shall be bound to abide by such amendment.

FAIRFAX COMMONS: A CONDOMINIUM  
Certain General Maintenance Responsibilities

(Footnotes are Incorporated Herein and Made a Part Hereto)

I	II	III	IV	V
ITEMS	GENERAL COMMON ELEMENTS UNDER ASSOCIATION RESPONSIBILITY	LIMITED COMMON ELEMENTS UNDER ASSOCIATION RESPONSIBILITY	UNIT ELEMENTS UNDER ASSOCIATION RESPONSIBILITY	CERTAIN OTHER ELEMENTS UNDER UNIT OWNER'S RESPONSIBILITY WITHOUT RESPECT TO NATURE OF OWNERSHIP OF THE ELEMENT
Electrical and related systems and components thereof excluding appliances, fixtures and lights serving the unit.	All, in all regards.	All, in all regards.	Each Unit's main circuit breakers which connect to Common Elements are the Association's responsibility.	All unit elements except Column IV elements.
Water pump systems and components thereof which serve the separate units.	All, in all regards.			
Parking Spaces.	All parking spaces in all regards.			Each Unit Heat Pump System.
Telephone and Electrical Lines.	All, in all regards.			

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NOTESMAINTENANCE RESPONSIBILITIES:

This chart of the titles and headings used herein are not intended to describe or encompass all maintenance functions nor to delineate all respective responsibilities between the Unit Owners, severally, and the Association. The placement of responsibility under any specific column does not always accurately reflect the precise character and nature of ownership. The appropriate sections of the Declaration determine ownership.

**COLUMN I: ITEMS.** Items appearing in this column are illustrative and not exhaustive.

**COLUMN II: GENERAL COMMON ELEMENTS UNDER ASSOCIATION RESPONSIBILITY.** Responsibility for determining and providing for the maintenance, repair and replacement requirements of the General Common Elements and determining the costs thereof shall be primarily the responsibility of the Association and such designees to which it may delegate certain such responsibilities.

**COLUMN III: LIMITED COMMON ELEMENTS UNDER ASSOCIATION RESPONSIBILITY.** Responsibility for determining the maintenance, repair and replacement requirements of the Limited Common Elements shall be a shared responsibility between the Association and the Unit Owner of a Unit to which a specific Limited Common Element is exclusively appurtenant; provided, however, that the Association shall have the final responsibility for determining the need for and accomplishing such maintenance, repair and replacement activities. The Association may perform work and allocate costs to the Unit Owner.

**COLUMN IV: UNIT COMPONENTS UNDER ASSOCIATION RESPONSIBILITY.** The items in this column are legally and by definition a part of a Unit but are attached or directly connected to or associated with the General Common Elements and Common Expense items in such a way that a clear distinction between Unit Owner and Association responsibility cannot be made. Moreover, such items frequently involve matters of concern relative to the general health, safety and welfare of all of the occupants of the building. Thus, certain costs which appear to benefit a single Unit Owner but which affect other Unit Owners are declared a Common Expense, especially when the correct functioning of an activity or element is integral to or supportive of the legally defined Common Elements and Common Expenses. Such Common Expenses may be assessed against the Unit as provided in the By-Laws.

**COLUMN V: CERTAIN OTHER COMPONENTS UNDER UNIT OWNER'S RESPONSIBILITY WITHOUT RESPECT TO OWNERSHIP OF THE COMPONENT.** The items in this column are not intended to be exclusive or all-encompassing and do not affect responsibilities provided for otherwise.

## EXHIBIT "B"

## RULES AND REGULATIONS

1. **COMMERCIAL USE.** Each Unit and each Common Element shall be used for nonresidential purposes only and shall be limited to the uses permitted in Exhibit "C" attached hereto.

2. **PROHIBITED USES.**

(a) Nothing shall be done or kept in any Unit or in the Common Elements which will increase the rate of insurance for the Condominium except pursuant to a prior resolution of the Board of Directors. Such increase may be specially assessed to the responsible Unit Owner pursuant to Section 6.1(f) of the By-Laws. No Unit Owner shall permit anything to be done or kept in his Unit or in the Common Elements which could result in the cancellation of insurance on the Condominium or any part thereof, or which would be in violation of any applicable law, ordinance, or other governmental regulation. No waste shall be committed in any Unit or in the Common Elements. The Board of Directors shall have the power to assess any increase in insurance premiums caused by Unit Owner(s) against the Unit(s) involved pursuant to Sections 6.1(f) and 6.8 of the By-Laws.

(b) No improper, offensive or unlawful use shall be made of the Condominium or any part thereof, and all applicable laws, ordinances and other governmental regulations shall be complied with, by and at the sole expense of the Unit Owner(s) and/or the Association having responsibility for maintenance of the affected portion(s) of the Condominium. No noxious or offensive activities shall be carried on upon the Property. Where appropriate, Units shall be furnished and equipped with sufficient protective shielding to shield other Units and the Common Elements from the effects of x-rays and other radiation or radioactive substances. No excessive or unreasonable loud noises, electro-mechanical disturbance, radiation, electromagnetic disturbance, vibrations or noxious orders shall be permitted on the Property, and the Board of Directors or the Covenants Committee shall have the right to determine if any noise, vibration, radiation, odor, or activity producing such noise, vibration, radiation or odor is excessive, unreasonable or constitutes a nuisance or a potential hazard to others. The Board of Directors or the Covenants Committee shall have the authority to give a tentative advisory opinion in advance upon the request of an owner or contract purchaser.

(c) The Common Elements shall be used for the furnishing of the services and facilities for which the same are reasonably suited and which are incident to the use and occupancy of the Units.

(d) Each Unit Owner shall be accountable to the Association and the other Unit Owners for the conduct and behavior of his guests, tenants, employees, patrons, licensees or invitees transacting business in or visiting his Unit; and any damage to the Common Elements, the Association's Property or the property of another Unit Owner caused by such persons.

(e) No auction, fire, or bankruptcy sales shall be conducted on the Property without the prior approval of the Board of Directors and pursuant to such restrictions as it may impose.

(f) The maintenance, keeping, breeding, boarding and/or raising of animals, livestock or poultry of any kind, regardless of number, shall be and is hereby prohibited within any Unit or upon any Common Elements. Provided that guide dogs for handicapped persons and laboratory animals used for routine medical testing purposes, but not for research purposes, shall be permitted. Furthermore, a Unit Owner shall be absolutely liable to each and all other Unit Owners, their guests, tenants, employees, patrons, licensees or invitees for any damages to persons or Property caused by any animals brought or kept upon the Property by the Unit Owner or those occupying the Unit through him.

3. **STORAGE.** No Unit Owner shall obstruct any of the Common Elements, nor shall any Unit Owner store anything upon any of the Common Elements except within any areas designated for such storage by resolution of the Board of Directors. There shall be no storage on the Property exposed to public view except in locations, if any, specifically authorized by the Board of Directors.

4. **PARKING.** Vehicular parking upon the Common Elements shall be subject to such rules and regulations as the Board of Directors may from time to time adopt. All vehicles parked on the Common Elements must fit within an eight foot by sixteen foot (8' x 16') parking space with adequate clearance for adjacent vehicles. No vehicle other than passenger vehicles may be parked on the Common Elements provided that trucks making deliveries to Unit Owners may park temporarily as necessary. Trucks, trailers, boats, recreational vehicle campers, by example and not by limitation, are specifically prohibited from parking upon the Common Elements, including the thirty (30) foot ingress and egress easement.

5. **LEASES OF UNITS.** No Unit Owner shall rent or lease a Unit other than on a written lease providing that failure of the lessee to comply with the Condominium Instruments and the Rules and Regulations shall constitute a default under the lease and that, in the event of such default, the Board of Directors or any Officer designated by the Board shall have the power as attorney-in-fact for the Unit Owner to terminate the lease and bring summary eviction proceedings against the tenant if such default is not cured within seven (7) days of sending written notice of the default to the Unit Owner. No leases will be permitted to physicians, dentists, or other uses which require parking

in excess of four (4) spaces per unit. No leases for a retail use will be allowed in the Condominium and shall be further subject to the Use Restrictions in Exhibit "C". The Board of Directors may provide a suggested standard form lease or lease addendum for use by Unit Owners. Each Unit Owner shall, promptly following the execution of any lease of a Unit, forward a conformed copy thereof to the Secretary. The provisions of this subsection shall not apply to the Declarant.

6. SIGNS. Except for such signs as may be approved by the Declarant and/or Condominium Association, no signs shall be posted in any place within the Condominium visible from any portion of the Common Elements except pursuant to Section 3.16 of the By-Laws. The provisions of this paragraph shall not apply to any sign or notice of customary and reasonable dimensions which states that a Unit is for rent or sale or to such signs as may be required for legal or governmental proceedings. Such sign or notice may be placed within a Unit, but not upon the Common Elements except with the consent of the Unit Owners' Association pursuant to Section 3.16 of the By-Laws.

(1) Signs shall only be permitted as allowed by Fairfax City Code and approved by Declarant in it's sole discretion.

(2) Number of square feet of sign allowed per unit shall not exceed seventeen square feet unless approved in advance by Declarant in it's sole discretion.

(3) Color - black.

(4) Size - Twelve inch individual letters maximum.

(5) Signs shall be non-illuminated.

(6) Signs shall have individual letters.

(7) Signs shall be maintained by Tenant.

(8) Signs shall be allowed only on the terrace level and 1st floor level units on one (1) side of the building unless approved by Declarant in it's sole discretion.

(9) All signs locations must be approved in advance by Declarant or subsequently the Condominium Association.

(10) Signs shall only be permitted for Unit owners in good standing. The Board of Directors shall have the authority to remove the signs of any Unit Owner or occupant who is more than thirty (30) days delinquent in payment of any Assessment or otherwise in violation of any of the Condominium Instruments.



7. **ELECTRICAL EQUIPMENT.** If a Unit Owner installs or operates any equipment which requires any modifications, replacements or additions to the Condominium's electrical system, plumbing system or structure, the Unit Owner shall be responsible for all costs therefor. No such work may be done without the prior written consent of the Board of Directors and obtaining all necessary permits from the County of Fairfax and Inspections.

8. **REFUSE AND WASTE.** All rubbish, trash, garbage and other waste shall be regularly removed from each Unit by the Unit Owner and shall not be allowed to accumulate therein. No refuse container shall be maintained on the Common Elements other than in the location and manner provided for by the Board of Directors in accordance with its rules adopted from time to time, and no such container shall be kept or maintained in any Unit so as to be visible from the Common Elements. The toilets and urinals in the Condominium shall not be used for any purposes other than those for which they were constructed, and no rubbish or other substance shall be thrown into them so as to obstruct the plumbing system in the Condominium. Traps shall be used and properly maintained at all times by the Unit Owner in the Units where necessary to collect debris in order to protect the plumbing system of the Condominium.

9. **ANTENNAS.** No outside television or radio aerial or antenna, or other aerial or antenna, for reception or transmission, shall be maintained upon any Unit or upon any Common Elements without prior written consent of the Covenants Committee.

10. **ASSOCIATION EMPLOYEES.** No Unit Owner shall engage or direct any employee of the Association on any private business of the Unit Owner during the hours such employee is employed by the Association nor shall any Unit Owner, except an officer of the Association acting in his official capacity, direct, supervise, or in any manner attempt to assert control over any employee of the Association.

## EXHIBIT "C"

## PERMITTED USES

All uses allowed under C-1 and C-2 zones in the City of Fairfax, except no unit may be used by physicians, dentists, retail, or other uses which require parking in excess of four (4) parking spaces per unit, without the express written consent of the Declarant in its sole and absolute discretion so long as Declarant owns any units in the Condominium, or thereafter without the written approval of the Condominium Unit Association in its sole and absolute discretion.