

AMENDED AND RESTATED DECLARATION OF
LESNER POINTE CONDOMINIUM
ON THE CHESAPEAKE BAY ASSOCIATION, INC.



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City of Virginia Beach
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**AMENDED AND RESTATED DECLARATION OF CONDOMINIUM
LESNER POINTE CONDOMINIUM ON THE CHESAPEAKE BAY**

THIS AMENDMENT AND RESTATEMENT of Declaration of Condominium of Lesner Pointe Condominium on the Chesapeake Bay Association, Inc. (hereinafter "the Condominium") is made this 18th day of December, 2007 by consent of the requisite majority of Unit Owners;

WHEREAS, 13 years have elapsed since the creation of the Condominium and the owners desire to update and modify this Declaration to correct certain deficiencies in the original document recorded in the Clerk's Office of the Circuit Court of the City of Virginia Beach, Virginia as Instrument Number 19930630013679130, and to better reflect current law and customary practices,

NOW THEREFORE the Association, as directed by the requisite majority of Unit Owners, does hereby set forth this amended and restatement of Declaration of the Condominium:

HARBOUR POINT BUILDING CORP., a Virginia Corporation (herein referred to as "Declarant") Grantor, duly, organized under the Laws of the Commonwealth of Virginia, being the owner of record of the fee simple title to the real property situate, lying and being in the City of Virginia Beach, Virginia, more particularly described in Exhibit A, attached hereto, and being more particularly shown and depicted on Exhibit C-I attached hereto, which Exhibits are incorporated herein by reference, does hereby state and declare that the realty described in Exhibit A, together with the improvements thereon, is submitted to condominium ownership pursuant to the Condominium Act of the Commonwealth of Virginia, Title 55, Section 55-79.39 et seq., Code of Virginia of 1950, as the same exists at the time of recording this Declaration in the Clerk's Office of the Circuit Court of the City of Virginia Beach, Virginia, as hereinbelow more particularly set forth.

1. PURPOSE: NAME, ADDRESS AND LOCATION: LEGAL DESCRIPTION: EFFECT.

1.1 PURPOSE. The purpose of this Declaration is to submit the realty and improvements of the above mentioned property to condominium ownership and use in the manner prescribed by the Laws of the Commonwealth of Virginia.

1.2 NAME, ADDRESS AND LOCATION. The name of the Condominium is Lesner Pointe Condominium On The Chesapeake Bay. The Condominium is located in the City of Virginia Beach, Virginia. The address of the Condominium is 3200 Silver Sands Circle, Virginia Beach, Virginia 23451. Each Unit's "Unit Designation" is also its street number, and all are in Virginia Beach, Virginia 23451.

1.3 THE SUBMITTED LAND. The real property described in Exhibit A and all property incorporated as additional land by later amendments was submitted to condominium ownership. Such property is subject to such easements, restrictions, reservations and rights of way of record together with those contained or provided in this instrument and the Exhibits attached hereto at such time as they become subject to the terms hereof.

1.4 EFFECT. All of the provisions of this Declaration of Condominium and all Exhibits referenced herein and attached hereto shall be binding upon all Unit Owners and are enforceable equitable servitudes running with the Land and existing in perpetuity until this Declaration is revoked and the Condominium is terminated as provided herein. In consideration

of receiving, and by acceptance of a grant, devise or mortgage, all grantees, devisees or mortgagees, their heirs, personal representatives, successors and assigns, and all parties claiming by, through, or under such persons agree to be bound by the provisions hereof. Both the burdens imposed and the benefits granted by this instrument shall run with each Unit as herein defined.

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

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

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

2.3 "Association" means the Lesner Pointe Condominium On The Chesapeake Bay Association Inc., a non-stock, non-profit Virginia corporation which is the entity responsible for the operation of the Condominium.

2.4 "Board" or "Board of Directors" means the Board of Directors of the Association responsible for the administration of the Association.

2.5 "By-Laws" means the By-Laws of the Association as they exist from time to time.

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

2.7 "Common Expenses" means all expenditures lawfully made or incurred by or on behalf of the Association, together with all funds lawfully assessed for the creating and/or maintenance of reserves pursuant to the provisions of the Condominium Instruments.

2.8 "Common Profits" means the excess of all receipts of the Association, including but not limited to, assessments, rents, profits, and revenues on account of the Common Elements, in excess of the amount of Common Expenses.

2.9 "Condominium" means that form of ownership of real property which is created pursuant to the laws of the Commonwealth of Virginia and which is comprised of Units that may be owned by one or more persons, and in which there is appurtenant to each Unit an undivided share of the Common Elements. The term shall also mean Lesner Pointe Condominium On The Chesapeake Bay as established by this Declaration.

2.10 "Condominium Act" means the Condominium Act of the Commonwealth of Virginia as set forth in Section 55-79.39, et seq. of the Code of Virginia of 1950, as the same exists at the time of recording this Declaration in the Clerk's Office of the Circuit Court of the City of Virginia Beach, Virginia.

2.11 "Condominium Instruments" shall be a collective term referring to this Declaration, By-Laws, and plats and plans, recorded pursuant to the provisions of the Condominium Act. Any exhibit, schedule, or certification accompanying a Condominium Instrument and recorded simultaneously therewith shall be deemed an integral part of that

Condominium Instrument. Any amendment or certification of any Condominium Instrument shall, from the time of the recordation of such amendment or certification, be deemed an integral part of the affected Condominium Instrument, so long as such amendment or certification was made in accordance with the provisions of the Condominium Act and this Declaration.

2.12 "Condominium Property" means and includes all lands and personal property hereby or hereafter subjected to condominium ownership and all improvements thereon and all easements and rights appurtenant thereto intended for use in connection with the Condominium.

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

2.14 "Declarant" means Harbour Point Building Corp., a Virginia Corporation, duly organized under the laws of the Commonwealth of Virginia, its successors and assigns, which has created this Condominium.

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

2.16 "Institutional Lender" means a state or federal savings or commercial bank or savings and loan association or trust company, insurance company, real estate investment trust, pension fund, or an agency of the United State Government, mortgage company or like entity holding a mortgage on a Unit, and their successors and assigns.

2.17 "Limited Common Element" shall mean a portion of the Common Elements reserved for the exclusive use of those entitled to the use of one or more, but less than all, of the Units.

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

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

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

2.21 "Unit Owner" means one or more persons who own a Condominium Unit.

The definitions herein contained shall prevail as the context requires whether or not the same are capitalized in their usage herein.

3. INTEREST IN COMMON ELEMENTS, OWNERSHIP AND BOUNDARIES OF UNITS.

3.1 INTEREST IN COMMON ELEMENTS AND UNITS. Each Unit Owner shall own, as an appurtenance to his Unit, an equal undivided interest in the Common Elements. The percentage of undivided interest of each Unit shall not be changed without the unanimous consent of all Unit Owners. No Unit Owner shall bring an action for partition or division of his undivided interest in the Common Elements. Each Unit Owner shall own his Unit in fee simple

absolute, in addition to the undivided fee simple interest as a tenant in common with the Unit Owners, in Common Elements.

3.2 BOUNDARIES. Unit Boundaries.

A Unit consists of the privately owned spaces lying within the boundaries described in Paragraph 3.2.1 through 3.2.5.

3.2.1 HORIZONTAL BOUNDARY: Upper and Lower Boundaries.

The upper and lower boundaries of the Unit shall be the following boundaries extended to an intersection with the perimetrical boundaries:

3.2.1.1. Upper Boundary: The horizontal plane of the unfinished ceiling material, including the unfinished surface of all cathedral, tray or other architectural styles of ceilings, of each unit, which shall not include any paint, wallpaper, decorative ceiling finish or other additions;

3.2.1.2. Lower Boundary: The horizontal plane of the unfinished floor of each unit, which shall not include any paint, carpeting, decorative finish or other additions;

3.2.2. Perimetrical Boundary: The perimetrical (perimeter) boundaries of the Unit shall be the vertical planes of the inner surfaces of the undecorated drywall bounding the Unit extended to intersections with each other and with the Upper and Lower Boundaries, provided, however, a Unit shall be deemed to include all pipes, other than pipes related to or a part of the sprinkler system, and including, but not limited to, all gas and water pipes, conduits, wiring, flues, hot water heaters and HVAC equipment which serve only one Unit, wherever located;

Where there is an aperture in any perimetrical boundary, including, but not limited to, windows and doors, the vertical boundary shall be deemed not to include any window or door (including the frame therefore) in such aperture. All windows, doors, frames therefore and other such apertures shall be a part of the unit. Such apertures shall still require prior approval for their replacement as more fully set forth in Sections 9.2 through 9.4 of this Declaration.

The Unit shall further be deemed to include all interior walls, from the interior of same radiating outward up to the unfinished surface, that were in existence at the time of initial construction.

Limited Common Elements shall include, but not be limited to all sprinkler heads present in any unit and the patios and balconies appurtenant to each such unit. The duty of repair or replacement of each of these limited common elements shall remain with the Association and the cost for such maintenance and repair of those limited common elements. However, each unit owner shall additionally be responsible for any damage caused to the limited common elements, and any damages flowing therefrom, as the result of the negligence, carelessness or intentional act of the owner or any guest, occupant or agent.

3.2.3 STRUCTURAL INTEGRITY EASEMENT. There shall exist as a Common Element, an easement for structural integrity affecting all of the partitions and floors within each Unit, so that none will be altered, rearranged or removed in any manner which would harmfully affect the structural integrity of the building of which it is a part.

3.2.4 MAINTENANCE EASEMENT. There shall exist, as a Common Element, an easement through each Unit for the ducts, pipes, conduits, plumbing, wiring or other facilities for the furnishing of utility services to the Units and the Common Elements, and for maintaining, repairing, servicing and replacing same. Any pipes, ducts, wires, conduits, electrical panels, plumbing, drains, or any utility services serving only one Unit including all portions of such pipes, wires, ducts, conduits, plumbing, drains, or utility services exterior to the unit from the point at which it ceases to serve only one Unit are appurtenant to and a part of such Unit and are not part of the Common Elements.

3.2.5 AIR CONDITIONING/HEATING. Notwithstanding any of the provisions of this paragraph 3 to the contrary, the air conditioning, refrigerating, heating and electrical lines within, the Unit, and the hydro-heat system and air conditioning compressor, fan and other apparatus in connection therewith, which serve an individual unit (wherever located), shall be owned by the Unit Owner as a part of the Unit and are not part of the Common Elements.

3.3 PARKING. There shall be assigned to each Unit, without charge, the exclusive right to use one automobile parking space. Such parking space shall be used only by the Unit Owner and such Unit Owner's guests and invitees. The Board of Directors shall have the right to reassign parking spaces among the units; however, each Unit shall always be entitled to one assigned parking space. All other unassigned parking spaces located on the Common Elements shall be available to unit Owners, their guests and invitees on a first-come, first-served basis.

4. RESTRICTION AGAINST FURTHER SUBDIVIDING OF UNITS. No Unit may be divided or subdivided into a smaller Unit. No Unit, or portion thereof, shall be added to or incorporated into any other Unit.

5. EASEMENTS.

5.1 PERPETUAL NON-EXCLUSIVE EASEMENT. The Common Elements and Limited Common Elements are hereby declared to be subject to a perpetual nonexclusive easement in favor of all of the Unit Owners in the Condominium for their use and the use of their immediate families, guests and invitees, for all proper and normal purposes, including the providing of services for the benefit of all Units. Limited Common Elements, including all elevators, are hereby declared to be subject to perpetual non-exclusive easements in favor of all Unit Owners for their use and the use of their immediate families, guests and invitees, for all proper and normal purposes, including the providing of services for the benefit of such Units.

A special limited common expense assessment for elevator use shall be assessed on a monthly basis for all units on the second and third floors of the bay front buildings. All of said assessments shall be payable monthly without notice, unless otherwise required by the Board.

5.2 EASEMENT FOR UNINTENTIONAL AND NON-NEGLIGENT ENCROACHMENTS. In the event that any Unit or Common Element shall encroach upon any other Unit or Common Element for any reason other than the purposeful negligent act of any person, then an easement appurtenant to such affected Unit or Common Element shall exist for so long as such encroachment shall naturally exist.

5.3 UTILITY EASEMENTS. Utility easements are reserved and granted through the Condominium Property as may be required for construction and maintenance or utility services in order to adequately serve the Condominium.

5.4 INGRESS AND EGRESS. A non-exclusive easement for ingress and egress is hereby created for pedestrian traffic over, through and across sidewalks, paths, walks, driveways, passageways and lanes as the same, from time to time, may exist upon the Common Elements; and for vehicular, traffic over, through and across such portions of the Common Elements as, from time to time, may be paved and intended for such purposes.

5.5 USE. The use of any easement by a Unit Owner shall be subject to all of the provisions of this Declaration, as the same may exist from time to time.

5.6 SURVEY EXHIBIT—EASEMENTS. There shall exist, as a Common Element, an easement through each Unit for the ducts, pipes, conduits, plumbing, wiring or other facilities for the furnishing of utility services to the Units, ties for the furnishing of utility services to the Units and the Common Elements, and for maintaining, repairing, servicing and replacing same. Any pipes, ducts, wires, conduits, electrical panels, plumbing, drains or other utility services serving only one Unit are appurtenant to such Unit and are not part of the Common Elements.

6. COMMON EXPENSE; COMMON PROFITS. Each Unit shall share in the Common Profits and be liable for the Common Expenses in the same percentage as the percentage representing the undivided interest of each Unit in the Common Elements. The right to share in the Common Profits does not include the right to withdraw or to require payment or distribution thereof except upon termination and dissolution of the Condominium. Each owner of a Unit to which Limited Common Elements are appurtenant shall also be liable for the Common Expenses incurred by virtue of said appurtenance.

7. ADMINISTRATION OF THE CONDOMINIUM: THE ASSOCIATION, MEMBERSHIP, REPORTS TO MEMBERS AND LENDERS, VOTING.

7.1 THE ASSOCIATION. The Association shall administer the operation and management of the Condominium Property and undertake and perform all acts and duties, incident thereto in accordance with the provisions of this Declaration and the Condominium Act.

7.2 MEMBERSHIP. Each Unit Owner shall automatically become a member of the Association upon his acquisition of title to any Unit and said membership shall terminate automatically upon said Unit Owner being divested of title to such Unit, regardless of the means by which such ownership may be divested. No person holding any lien, mortgage or other encumbrance upon any Unit shall be entitled, by virtue thereof, to membership in the Association or to any of the rights or privileges of such membership.

7.3 POWERS OF ASSOCIATION. In the administration of the Condominium, the Association shall have, and is hereby granted, the authority and power to enforce the provisions of this Declaration, levy and collect assessments in the manner hereinafter provided, and to

adopt, promulgate and enforce such Rules and Regulations governing the use of the Units, Limited Common Elements, if created by Declarant, and the Common Elements as the Board of Directors of the Association may deem to be in the best interest of the Condominium. The Association shall have all of the powers and duties set forth in the Condominium Act. Further, the Association shall have the right, when determined by the Board of Directors to be in the best interests of the Condominium, to grant exclusive licenses, easements, permits, leases or privileges to any individual or entity, including Non-Unit Owners, which affect Common Elements said to alter, add to, relocate or improve Limited Common Elements, if created by Declarant, and the Common Elements, provided that the rights and the exercise thereof are not in abrogation of the requirements of the Condominium Act.

7.4 REPORTS TO LENDERS. So long as an Institutional Lender is the owner or holder of a mortgage or deed of trust encumbering a Unit in the Condominium, the Association shall furnish said Institutional Lender with one (1) copy of the annual financial statement and report of the Association pertaining to the Unit upon which the mortgage is held, provided said institutional Lender requests same in writing.

7.5 INSURANCE REPORTING. In any legal action in which the Association may be exposed to liability in excess of insurance coverage protecting it and the Unit Owners, the Association shall give notice of the exposure within a reasonable time to all Unit Owners who may be exposed to the liability and Unit Owners shall have the right to intervene and defend.

A copy of each insurance policy obtained by the Association shall be made available for inspection by Unit Owners at reasonable times.

7.6 VOTING. The voting of each Unit Owner shall be governed by the provisions of the By-Laws.

7.7 MANAGEMENT AGREEMENT. The Association may enter into an agreement, with any person, firm or corporation for the administration, maintenance and repair of the Condominium Property and may delegate to such contractor or manager such of the powers and duties of the Association as the Association and such person, firm or corporation shall agree.

8. USE AND OCCUPANCY.

8.1 RESIDENTIAL USE. Each Unit is hereby restricted to residential use as a single-family residence by the owner or owners thereof, their immediate families, guests, and invitees. At no time may the Unit be used by more persons than permitted by applicable law.

8.2 OWNERSHIP BY ENTITY. In the event that other than a natural person is a Unit Owner, said entity shall, prior to the purchase of such Unit, designate the person, if any, who is to be the permanent Occupant of such Unit. Such entity shall not thereafter have the right to designate other persons as the Occupants of such Unit, whether in substitution of or in addition to the persons initially designated, except with the approval of the Association. All provisions of the Declaration shall apply to such designated Occupants as though they had title to such Unit and the entity owning such Unit shall be bound thereby.

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

8.4 **LAWFUL USE.** No immoral, improper, offensive or unlawful use shall be made of any or all the Condominium Property, and all laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed. The responsibility of meeting the requirements of governmental bodies for maintenance, modification or repair of the Condominium Property shall be the same as the responsibility for maintenance and repair of the property concerned.

8.5 **ALTERATIONS AND ADDITIONS.** No Unit Owner shall make or permit to be made any material alteration, addition or modification to his Unit without the prior written consent of the Board of Directors. A material change does not include painting, wallpaper, flooring, cabinets, fixtures or other cosmetic changes. No Unit Owner shall cause any improvements or changes to be made on the exterior of the Unit, whether material or otherwise, including painting or other decoration. The intended improvement or change must be in substantial conformity with the exterior of the other Units in the Condominium in terms of quality of construction, the principal materials to be used and architectural style. No Unit Owner shall cause to be made any modification or installation of electrical wiring, television antenna systems or connections whether inside or outside the Unit or in any manner change the appearance of any portion of the Condominium property without the written permission of the the Board. No Unit Owner may cause any material puncture or break in the boundaries of his Unit without the written permission of the Association.

8.6 **NUISANCES.** No nuisance or any use or practice that is the source of unreasonable annoyance to other Unit Owners or which interferes with the peaceful possession and proper use of the condominium property by the Unit Owners is permitted. No Unit Owner or Occupant shall permit or suffer anything to be done or kept upon the Condominium Property or his Unit which will increase the rate of insurance of the Condominium.

8.7 **RULES AND REGULATIONS.** All Unit Owners and other persons shall use the Condominium Property in accordance with the Rules and Regulations and the provisions of this Declaration and the By-Laws of the Association.

9. **MAINTENANCE AND REPAIR OF THE CONDOMINIUM PROPERTY, ALTERATIONS AND IMPROVEMENTS.**

9.1 **MAINTENANCE BY ASSOCIATION.** The Association, at its expense, shall be responsible for and shall maintain, repair and replace all of the Common Elements. The Association shall maintain, repair and replace the perimeter fence which is located along the perimeter of the Condominium Property. The Association shall also maintain, repair and replace exterior of all buildings, all stairways and all hallways. The Limited Common Elements shall be subject to repair and replacement by the Association. However, the elevators in any building shall constitute a special limited common element for which the owners of the second and third floor units in such building shall be separately assessed for all costs of repair and maintenance, with the responsibility for supervising and obtaining such maintenance and repair to remain with the Association.

9.2 **MAINTENANCE BY UNIT OWNER.** Each Unit Owner shall, subject to the other provisions of this Declaration, maintain, repair and replace, at his expense, all portions of his Unit including, but not limited to, all doors, windows, glass, screens, electrical panels, electric wiring, electric outlets and fixtures, refrigerators, dishwashers and other appliances, drains, plumbing fixtures and connections, the interior and exterior surfaces within the unit, of all walls, floors and ceilings and all other portions of his Unit.

9.3 CONFORMITY OF MAINTENANCE, STYLE AND MATERIALS. All repairs, painting, replacements and maintenance, whether made by Unit Owners or the Association, to the doors, windows, fences, gates or the exterior surface of any building, including roofs, or to any generally visible portion of the Units and Common Elements shall be carried out in such a manner so as to conform to the materials, architecture, style, color and quality of construction as approved by the Board of Directors.

9.4 LIABILITY OF UNIT OWNER. Should a Unit Owner undertake authorized or unauthorized additions and/or modifications to his Unit, as specified above, or refuse to maintain, paint and make repairs as required, or should a Unit Owner cause any damage to the Common Elements, the Association may undertake such repairs, painting, replacements or maintenance, and levy a special assessment for the cost thereof against said Unit Owner. In the event a Unit Owner threatens to or violates the provisions hereof, the Association shall also have the right to proceed in a court of equity for an injunction to seek compliance with the provisions hereof.

9.5 INSURANCE PROCEEDS. Whenever any maintenance, repair and replacement of any items for which a Unit Owner is responsible is made necessary for any loss covered by insurance maintained by the Association, the proceeds of the insurance received by Association shall be used for the purpose of accomplishing such maintenance, repair or replacement. The Unit Owner shall be required to pay, through assessment, for all costs that exceed the amount of the insurance proceeds. Whenever used herein, the term "amounts in excess of insurance," or comparable language, shall include, but not be limited to, all deductibles and amounts greater than the available policy limits.

9.6 RIGHT OF ENTRY BY ASSOCIATION. Whenever it is necessary to enter any unit for the purpose of inspection, including inspection to ascertain a Unit Owner's compliance with the provisions of this Declaration, or for performing any maintenance, alteration or repair to any portion of the Limited Common Elements and the Common Elements or Unit, the Unit Owner shall permit authorized agents of the Association to enter such Unit, or to go upon the Limited Common Elements and the Common Elements PROVIDED, that such entry shall be made only at reasonable times and with reasonable advance notice. In the case of emergency such as, but not limited to, fire, hurricane, or running water, entry may be made without notice or permission. Any such entry by the Association, whether emergency or otherwise, shall include a minimum of 2 persons as designated agents of the Association and no single person is authorized to make such entry. Each Unit Owner does hereby appoint the Association as his agent for the purposes herein provided and agrees that the Association shall not be liable for any alleged property damage or theft caused or occurring on account of entry.

10. APPORTIONMENT OF TAX OR SPECIAL ASSESSMENT IF LEVIED OR ASSESSED AGAINST THE CONDOMINIUM PROPERTY.

10.1 RESPONSIBILITY. If any taxing authority levies or assesses any tax or special assessment against the Condominium property as a whole, and not the individual Units, the same shall be paid as a Common Expense by the Association and assessed to the Unit Owners. In such event, the amount due shall constitute a lien prior to all mortgages and encumbrances upon any unit to the same extent as though such tax or special assessment had been separately levied by the taxing authority upon each Unit.

10.2 PERSONAL PROPERTY TAXES. All personal property taxes levied or assessed against personal property owned by the Association shall be paid by the Association and shall be a Common Expense.

11. LEASING OF CONDOMINIUM UNITS. The leasing of Condominium Units shall be subject to such reasonable Rules and Regulations as may be established, from time to time, by the Association. It shall be the responsibility of the lessor of a Condominium Unit to transfer to his Lessees a copy of the Declaration, Bylaws, any amendments thereto and the Rules and Regulations in effect at the time of commencement of the Lease and to provide in all leases for a Condominium Unit that the Lessee shall be bound by the Condominium Instruments and that a breach of the Condominium Instruments by the Lessee shall be a breach of the lease. Notwithstanding this Paragraph 11, the Lessee shall be bound by the terms of this instrument even though the lessor has failed to comply herewith. No Unit shall be leased for a period of less than One (1) year.

11.1 Restrictions on Leasing Units:

- 11.1.1 The maximum number of Units that may be leased at any time is limited to twenty (20) percent of all Units. This limit may be exceeded only under conditions stated in the "grandfather" and "hardship" provisions that follow.
- 11.1.2 No unit owner shall rent more than one (1) unit and a unit owner may not avoid this rule by ownership through another entity.
- 11.1.3 All unit owners who desire to lease a Unit must have owned the Unit for a minimum period of twelve (12) continuous months prior to submitting a request to lease the Unit.
- 11.1.4 All leases shall be for an initial term of not less than twelve (12) consecutive months. A lease shall include any agreement which does not require the lessor/purchaser to exercise their option to buy within 24 months. The owner shall further certify to the Association in writing that any rent to own or similar agreement is intended to effectuate a sale of the property.
- 11.1.5 No unit owner may lease less than the entire unit or allow the unit to be sublet.
- 11.1.6 Any Unit Owner whose Unit is leased as of the effective date of this Amendment shall submit a copy of the lease currently in effect to the Board of Directors or the Association Manager within thirty (30) days of the recordation of this Amendment.
- 11.1.7 The leasing of units shall also be subject to all rules and regulations promulgated by the Board of Directors not in conflict with any provisions of the Declaration or Bylaws.
- 11.1.8 No pets shall be allowed in leased units except with approval of the Board of Directors.

11.1.9 No unit may be leased to a partnership or corporation. Units may only be leased to individual unit occupants for residential purposes only.

11.2 Grandfather Provisions:

Unit Owners of record with existing leases on the effective date of this Amendment are grandfathered. These Owners shall not be restricted in renting their Units by the limit on the maximum number of Units to be rented until the departure of the current named tenant(s) on the lease or other document furnished to the Association designating the current tenant(s)

11.3 Rental Procedures:

11.3.1 Any Unit Owner intending to lease the Unit shall submit a written request to the Board of Directors indicating the Unit Owner's intent to lease the Unit, along with a copy of the lease to be used.

The Unit shall not be leased until the Board of Directors responds with written permission to lease the Unit.

11.3.2 The Board of Directors shall respond within thirty (30) days of the written request of the Unit Owner. Permission will be based solely on the number of Units leased at the time of application and other applicable provisions contained in the Declaration and all Amendments hereto.

11.3.3 If the maximum numbers of Units are leased at the time of the request, Unit Owners will be placed on a waiting list and will be notified when a leasing slot is available.

11.3.4 Upon being notified of an available slot, the Unit Owner will then have sixty (60) days to enter into a lease.

11.3.5 After sixty (60) days, the Unit Owner will forfeit his position and, if the Unit Owner wishes to remain on the list, he shall submit a new written request to the Board of Directors

11.3.6 Any Unit Owner who leases his Unit shall provide to the tenant, at the Unit Owner's expense, a copy of the Association's Declaration, Bylaws and Rules and Regulations and shall have the tenant execute a Lease Addendum which requires the tenant to comply with the covenants, conditions and restrictions contained in those documents. Said Lease Addendum to be provided by Lesner Pointe Condominium Association.

11.4 Hardship Provision:

The Board of Directors may, in its sole discretion, authorize a lease which will exceed the maximum of twenty (20) percent of leased Units restriction only upon a showing by a Unit Owner of a hardship which will result from the Board's denial of the lease request. Hardship cases will be decided on an individual basis with specific, but not mandatory, consideration of military service requirements. Each

case will be presented to the Board of Directors and/or a special committee appointed for this purpose.

12. INSURANCE PROVISIONS.

12.1 PURCHASE OF INSURANCE. The insurance which shall be purchased and maintained for the benefit of the Condominium shall be governed by the following provisions.

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

12.3 UNIT OWNER'S RESPONSIBILITY. Each Unit Owner shall obtain insurance, at his own expense, affording coverage upon his own property and for his own liability and living expenses. All such insurance shall contain the same waiver of subrogation that is referred to herein and shall waive any right to contribution.

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

12.4.1 The building and all other insurable improvements upon the land shall be insured for loss, destruction or damage by fire or other hazards with such coverages as shall be determined annually by the Association Board of Directors in consultation with such insurance advisors as they may deem necessary and appropriate, provided, however, such coverage for destruction of the building, or part thereof, shall be full replacement cost coverage available at the time of obtaining such coverage. After such consultation, the Board of Directors shall have the authority to modify, add or delete any type of coverage (exclusive of the determination to maintain full replacement cost coverage) or deductible associated therewith by Resolution and such changes shall be published to the members not less than thirty (30) days prior to the effective date. The Master Policy shall not cover the cost to repair or restore any portion of a Unit as defined herein except to the extent provided in Paragraph 12.9 regarding reconstruction.

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

12.4.3 Fidelity insurance or fidelity bond coverage shall be obtained in such an amount and in such form as required by the Association, but in no event shall such coverage be less than the greater of (i) the maximum amount of funds in the Association's custody at any one time, or (ii) the sum of three (3) months assessments on the entire Condominium plus reserves held by the Association. Such coverage shall

afford protection against dishonest acts on the part of directors, managers, managing agents, trustees, employees or volunteers responsible for handling funds belonging to, or to be administered by, the Association.

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

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

12.5 DISTRIBUTION OF PROCEEDS. Proceeds of insurance policies received by the Association shall be distributed to, or for the benefit of, the Unit Owners in the following manner:

12.5.1 If the damage for which the proceeds were paid is to be reconstructed, the proceeds shall be paid to defray the costs thereof. Any proceeds remaining after defraying said costs shall be distributed to the Association.

12.5.2 If it is determined that the damage for which the proceeds are paid shall not be reconstructed, the proceeds shall be distributed to the Unit Owners for whom it is being held and their mortgagees as their interests may appear.

12.6 ASSOCIATION AS AGENT. The Association is irrevocably appointed agent for each Unit Owner, for each owner of a mortgage upon a Unit and for each owner of any other interest in the Condominium Property to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims.

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

12.7.1 COMMON ELEMENT. If the damage is only to a Limited Common Element and/or a Common Element the damaged property shall be reconstructed.

12.7.2 DAMAGE TO UNITS:

(1) If the damage is to more than one building and eighty percent (80%) of all Units are found by the Board of Directors to be uninhabitable, then the damaged property will be reconstructed unless within sixty (60) days after the casualty Unit Owners owning one hundred percent (100%) of all of the existing Units in such Association agree in writing not to reconstruct. Notwithstanding the foregoing, if the damages could be repaired for \$1.5 Million or less the property shall be reconstructed.

(2) If the damage is to Units in less than all buildings, then reconstruction shall be determined on a building-by-building basis. If any Units in a particular building are found by the Board of Directors to be uninhabitable, the damaged property shall be reconstructed unless within sixty (60) days after the casualty the Owners of Units which represent one hundred percent (100%) of the Units in said building agree in writing not to reconstruct. Upon receipt of such writing the Units in the building will be removed from the Condominium. Notwithstanding the

foregoing, if such property may be constructed for 1.5 Million Dollars or less, the property shall be reconstructed.

12.8 RESPONSIBILITY. If the damage is only to those parts of a Unit for which the responsibility of maintenance and repair is that of the Unit Owner then the Unit Owner shall be responsible for reconstruction after casualty. The Unit shall be repaired immediately. In all other instances, the responsibility of reconstruction after casualty shall be that of the Association.

12.9 NATURE OF RECONSTRUCTION. Any reconstruction included hereunder shall be substantially in accordance with the plans and specifications of the original building, or as the building was last constructed, subject to modification to conform with the then current governmental restrictions and codes, if required. Upon reconstruction the Association shall be responsible to restore original fixtures including, but not limited to, cabinetry, flooring, and interior walls of each unit but in no event shall the Association be responsible for any upgrades, alterations, modifications or improvements made by any Unit Owner prior to the casualty requiring such reconstruction.

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

12.11. ASSESSMENTS. If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction by the Association, or if, at any time during reconstruction or upon completion of reconstruction, the funds for the payment of the costs of reconstruction are insufficient, assessments shall be made against all Unit Owners in sufficient amounts to provide funds for the payment of such costs. Such assessments against Unit Owners for damage to Units shall be in proportion to the cost of reconstruction of their respective Units as provided in Paragraph 12.9. Such assessments on account of damage to Limited Common Elements and the Common Elements shall be in proportions to the Unit Owner's share of the Limited Common Elements and the Common Elements. If, prior to commencement of any reconstruction, the insurance proceeds are not sufficient to defray the estimated costs of reconstruction, the special assessments against Unit Owners as herein provided must be paid in full before any of said insurance proceeds may be disbursed as hereinafter provided, so as to ensure there are sufficient funds currently available to complete said reconstruction. This requirement may be waived by the Association, but only upon approval by all Institutional Lenders.

12.12 EFFECT OF MORTGAGEE ENDORSEMENTS CONCERNING INSURANCE PROCEEDS. In the event a mortgagee endorsement has been issued relative to any Unit, the share of the Unit Owner shall be held in trust for the mortgagee as heretofore provided; provided, however, that no mortgagee shall have the right to determine or participate in the determination whether or not the damaged property shall be reconstructed, and no mortgagee shall have the right to apply, or have applied to, the reduction of its mortgage debt any insurance proceeds except distributions of such proceeds made to the Unit Owner and mortgagee where the responsibility for reconstruction is that of the unit Owner. All mortgagees agree to waive the rights to said proceeds if the same are used pursuant to the provisions of this Declaration to pay for the restoration of such damage. The provisions hereof shall not affect the

rights of the mortgagee, if any, to require any surplus proceeds to be distributed to it, over and above the amounts actually used for such restoration. All covenants contained herein for the benefit of any mortgagee may be enforced by such mortgagee. Nothing contained herein, however, shall be construed as relieving the Unit Owner from his duty to reconstruct damage to his Unit as heretofore provided.

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

12.14 REPAIR OF LAND. In the event the Condominium is not terminated but a building is not to be restored, the remains of said building shall be razed and the land thereunder restored to a landscaped green area.

12.15 CONVEYANCE TO ASSOCIATION. In the event, pursuant to the provisions of Paragraph 12.7 hereof, the Condominium is not terminated but a building is not to be restored, the payment of any insurance funds to the Unit Owners and/or their Mortgagees of said building on account of casualty to said building, shall be contingent upon such Unit Owners' conveying by Quit-claim Deed, executed in recordable form, all Units in said building to the Association, and further contingent upon the mortgagees thereof executing Deeds of Release, in recordable form, for all mortgages encumbering Units in said building. The share of Common Expenses of said Units conveyed to the Association shall be a Common Expense to be shared by the remaining Unit Owners of the Condominium. Since said remaining Unit Owners will not own one hundred percent (100%) of the Common Elements due to the fact that the Association will own the Units of said building which are not restored, and in order to collect said Common Expenses attributable to the Units owned by the Association, there shall be added as a Common Expense by an amount entitled "Common Expenses of Association's Units" which shall be mathematically determined to equal an amount such that when added to the actual expenses and assessments of the Association, the amount to be collected from the remaining Unit Owners according to their percentage of ownership interest at the time of such determination.

13. ASSESSMENTS: LIABILITY, LIEN AND ENFORCEMENT

13.1 GENERAL AUTHORITY. The Board of Directors shall have the power to make, levy and collect regular and special assessments for Common Expenses and such other assessments as are provided for by the Condominium Act and the provisions of this Declaration and all other expenses declared by the Directors of the Association to be Common Expenses from time to time.

13.2 UNIT OWNER'S GENERAL LIABILITY. Except as herein specified to the contrary, all assessments levied against Unit Owners and Units shall be on an equal basis. Should the Association be the owner of any Unit(s), the assessment, which would otherwise be due and payable to the Association by the owner of such Unit(s), shall be a Common Expense.

13.3 PAYMENT. The assessment levied against the Unit Owner and his Unit shall be payable in such installments, and at such times, as may be determined by the Board of Directors of the Association.

13.4 EMERGENCIES. If assessments levied are, or may prove to be insufficient to pay the costs of operation and management of the Condominium, or in the event of emergencies, the Board of Directors shall have the authority to levy such additional assessment or assessments as it shall deem necessary.

13.5 RESERVES.

13.5.1 RESERVE FUND. The Board of Directors of the Association in assessing for Common Expenses shall include therein a sum to be collected as a reserve fund for replacement of Limited Common Elements and the Common Elements for the purpose of enabling the Association to replace structure elements and mechanical equipment for which it has the responsibility to maintain and repair, as well as the replacement of personal property which may be a portion of the Condominium Property.

13.5.2 OPERATING RESERVE FUND. The Board of Directors of the Association in assessing for Common Expenses shall include therein a sum to be collected and maintained as a general operating reserve which shall be used to provide a measure of financial security during periods of special stress. Such sums may be used to meet deficiencies from time to time existing as a result of delinquent payment of assessment by Unit Owners or as a result of emergencies.

13.6 SEPARATE PROPERTY. All monies collected by the Association shall, unless the same is collected for the benefit of others, be the separate property of the Association. Such monies may be applied by the Association to the payment of any expense of operating and managing the Condominium Property, or to the property undertaking of all acts and duties imposed upon it by virtue of the provisions of this Declaration. All monies received from assessments may be commingled with other monies held by the Association. All assessments received by the Association shall be for the benefit of the Unit Owners. No Unit Owner shall have the right to assign, hypothecate, pledge or in any manner transfer his interest therein, except as an appurtenance to his Unit. Such funds shall not be subject to attachment or levy by a creditor or judgment creditor of a Unit Owner. When the owner of a Unit shall cease to be a member of the Association by the divestment of his ownership of such Unit by whatever means the Association shall not be required to account to such owner for any share of the funds or assets of the Association.

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

13.8 NO WAIVER. No Unit Owner may exempt himself from liability for any assessment levied by waiver of the use or enjoyment of any of the Limited Common Elements, if created by Declarant, and the Common Elements or by abandonment of the Unit for which the assessments are made or in any other manner.

13.9 LIEN. The Association is hereby granted a lien upon each Condominium Unit, together with a lien on all tangible personal property located within said Unit (except that such lien upon the aforesaid tangible personal property shall be subordinate to prior bona fide liens of record), which lien shall secure the payment of monies from each Unit Owner for which he is liable to the Association, including all assessments, interest and expenses provided for in this

Declaration and sums advanced on behalf of the Unit Owner in payment of his obligations as set forth in the Condominium Instruments and reasonable attorney's fees incurred as an incident to the enforcement of said lien. The lien granted to the Association may be foreclosed as provided in the Condominium Act. The lien granted to the Association shall further secure such advances for taxes and payments on accounts of Institutional Lenders, liens or encumbrances which may be advanced by the Association in order to preserve and protect its lien. The lien shall be effective, have priority, and be collected as provided by the Condominium Act, unless, by the provisions of this Declaration, such liens would have a greater priority or dignity, in which event, the lien rights in favor of the Association having the highest priority and dignity shall be the lien of the Association.

13.10 LATE CHARGE. If any monies from a Unit Owner, including assessments, are not paid within ten days from their due date there shall automatically be assessed a late charge of \$10.00 for each thirty days during which said monies are not paid. Each monthly assessment or other sum due from a Unit Owner shall be considered a different obligation for the purposes of this paragraph.

13.11 PROVISIO. In the event that any person or Institutional Lender shall acquire title to any Unit by virtue of either foreclosure of a first mortgage or deed of trust, or a deed in lieu thereof, such acquirer of title, his successors and assigns, shall not be liable for the share of Common Expenses or assessments by the Association pertaining to the Condominium unit or chargeable to the former Unit Owner to the Unit which become due prior to acquisition of title as a result of the foreclosure, unless the share is secured by a claim of lien for assessments that is recorded prior to the recording of the foreclosed mortgage or deed of trust. Nothing herein contained shall be construed as releasing the party liable for such delinquent assessments from the payment thereof or the enforcement of collection of such payment by means other than foreclosure. Following said acquisition, all Unit Owners of any nature, including, without limitation, a purchaser at a judicial sale or Institutional Lender, shall be liable for all assessments coming due while they are Unit Owners.

13.12 CERTIFICATE OF STATUS OF ASSESSMENTS. Any Unit Owner, mortgagee or lienor may require the appropriate certificate as set forth in Section 55-79.84(h) of the Condominium Act. The Association may charge a fee for such certificate as allowed by the Condominium Act.

13.13 EVIDENCE OF ASSESSMENTS PAID. Any person who acquires an interest in a Unit, including acquisition through foreclosure of a first mortgage, deed of trust or by deed in lieu thereof, and including without limitation, persons acquiring title by operation of law, may request the certificate as set forth in Section 55-79.84(h) of the Condominium Act as evidence of the status of unpaid assessments levied against the Unit, and such statement shall be binding upon the Association and all Unit Owners. The personal obligation for delinquent assessments shall not pass to successors in title or interest unless assumed by them or required by law.

13.14 NO ELECTION OF REMEDIES. The institution of a suit at law for collection of any delinquent assessment may be maintained without waiving the lien securing the same. Proceeding by foreclosure to attempt to effect such collection shall not be deemed an election precluding the institution of suit at law for collection of the same. All Unit Owners do hereby waive pleading the theory of "elections of remedies" in any such proceedings.

13.15 LIENS—MECHANICS. The creation and enforcement of mechanic's, and other, liens against the Units and Condominium Property, except those created by this Declaration, shall be governed by the provisions of the Condominium Act.

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

14.1 DESTRUCTION. If it is determined because of the circumstances and in the manner provided in Paragraph 12 that the Condominium property shall not be reconstructed, the Condominium will be terminated.

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

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

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

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

14.2.3 PAYMENT. The purchase price shall be paid in cash.

14.2.4 FORM. The contract shall be in the form of the Contract for Sale and purchase then in use in Virginia Beach, Virginia.

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

14.3 CERTIFICATE. The termination of the Condominium shall be evidenced by a certificate of the Association executed by its President and Secretary certifying the fact of the termination, which shall become effective upon the certificate being recorded in the public Records.

14.4 **SHARES OF OWNERS AFTER TERMINATION.** After termination of the Condominium the Unit Owners shall own the Condominium Property and all assets of the Association as tenants in common of undivided shares that shall be equal to the sum of the undivided shares in the Common Elements, appurtenant to the Units prior to termination so that the sum total of the ownership shall equal one hundred percent (100%).

14.5 **EXCLUSIVE RIGHTS EXTINGUISHED BY TERMINATION.** All exclusive rights of use of Limited Common Elements, if created by Declarant, and the Common elements shall be extinguished by virtue of the termination of the Condominium.

14.6 **AMENDMENT.** This Paragraph 14 concerning termination cannot be amended without written consent of all Unit Owners and all record owners of mortgages upon the units.

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

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

15.2 **PROPOSAL AND PASSAGE OF AMENDMENT.** An amendment may be proposed by either a majority vote of the Board of Directors of the Association, or by a majority vote of the members present at a duly called and noticed meeting. Except as elsewhere provided, a resolution adopting the proposed amendment must be approved by not less than sixty-six and two thirds percent (66-2/3%) of the votes of the entire membership of the Association.

15.3 **OMISSION OR ERROR.** Whenever it shall appear that there is an omission or error in the Condominium Instruments the correction of which would not materially or adversely affect the property rights of any Unit Owners, the Condominium Instruments may be amended in the following manner: Such amendment may be proposed by the board of Directors at any duly called and noticed regular or special meeting of the Board and shall become effective when unanimously approved by the entire Board. In the event the property rights of any Unit Owners are materially or adversely affected, the error or omission may be adopted in this manner if such affected Unit Owner(s) joins in the execution of the Certificate of Amendment to be recorded.

15.4 **PROVISO.**

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

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

16. **REMEDIES.**

16.1 RELIEF. Each Unit Owner of the Association shall be governed by and shall comply with the provisions of the Condominium Instruments as they may exist from time to time. A violation thereof shall entitle the appropriate party to the following relief: An action to recover sums due for damages, injunctive relief, foreclosure of lien or any combination thereof, or any other action available pursuant to the Condominium Act or law. Suit may be sought by the Association, the managing agent, if any, or, if appropriate, by one or more Unit Owners, and the prevailing party shall be entitled to recover reasonable attorney's fees. Each Unit Owner acknowledges that the failure to comply with any of the provisions of the Condominium Instrument shall or may constitute an injury to the Association, the managing agent, if any, Declarant or the other Unit Owners, and that such injury may be irreparable.

16.2 COSTS AND ATTORNEY'S FEES. In any proceeding arising because of an alleged default, act, failure to act, or violation by the Unit Owner or Association, including the enforcement of any lien granted pursuant to this Instrument or its exhibits, the Association or the managing agent, if any, shall be entitled to recover the costs of the proceedings, including reasonable attorney's fees.

16.3 NO WAIVER. The failure of Association, the managing agent, if any, or a Unit Owner, to enforce any right, provision, covenant, or condition created or granted by the Condominium Instruments shall not constitute a waiver of the right of said party to enforce such right, provision, covenant or condition in the future.

16.4 RIGHTS CUMULATIVE. All rights, remedies and privileges granted to the Association, the managing agent, if any, or Unit Owner pursuant to any of the provisions of this Declaration shall be deemed to be cumulative and the exercise of any one or more shall not be deemed to constitute an election of remedies, nor shall it preclude the party thus exercising the same from exercising such other and additional rights, remedies, or privileges as may be available to such party at law or in equity. Each Unit owner agrees in any proceeding brought pursuant to the provisions hereof not to plead or defend the same on the theory of "election of remedies".

16.5 VENUE; WAIVER OF TRIAL BY JURY. Every Unit Owner or Occupant and all persons claiming any interest in a Unit does agree that in any suit or proceeding brought pursuant to the provisions of this Declaration, such suit shall be brought in the Circuit Court in and for the City of Virginia Beach, Virginia, as the same is now constituted or any court in the future that may be the successor to the court contemplated herein. All such parties do further waive the right to trial by jury and consent to a trial by the court without a jury.

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

17. NOTICES. Whenever notices are required to be sent hereunder, the same may be delivered to Unit Owners, either personally or by mail, at their place of residence in the Condominium. Notices to the Association shall be delivered or mailed to the Secretary of the Association, or in case of the Secretary's absence, then to the president of the Association.

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

19. GENDER. Unless the contrary appears to have been intended, words in the plural number shall include the singular and words in the singular shall include the plural, and words of the male gender shall include the female gender and the neuter gender.

20. CAPTIONS. The captions to the paragraphs of this Declaration are intended for convenience only and are not deemed to be all inclusive as to the matters contained in such paragraphs or considered in connection with the construction of any of the provisions of this Declaration.

21. SEVERABILITY. If any term or provision of this Declaration, or the application thereof to any person or circumstance, shall, to any extent, be determined to be invalid or unenforceable, the remainder of this Declaration, or the application of such term or provision to persons or circumstances other than those to which such term may be held invalid or unenforceable, shall not be affected thereby and each term and provision of this Declaration shall be valid and enforceable to the fullest extent permitted by law.

The President of Lesner Pointe Condominium on The Chesapeake Bay Association, Inc., executes this Amendment to the Declaration dated December 18, 2007, to certify that the requisite majority of unit owners have signed and approved the foregoing Amendment and to signify ratification of the Amendment by Lesner Pointe Condominium on The Chesapeake Bay Association, Inc..

IN WITNESS WHEREOF, the President of the Lesner Pointe Condominium on The Chesapeake Bay Association, Inc. has executed this Declaration on this 18 day of December, 2007.

LESNER POINTE CONDOMINIUM
ON THE CHESAPEAKE BAY ASSOCIATION, INC.

By: Lynn Seitzer
LYNN SEITZER, President

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

I, Susan M. Smith a Notary Public in and for the City and State aforesaid, do hereby certify that Lynn Seitzer, President of Lesner Pointe Condominium on The Chesapeake Bay Association, Inc., whose name is signed to the foregoing Declaration bearing date on the 18th day of December, 2007, have acknowledged the same before me in my City and State aforesaid.

Given under my hand this 18th day of December, 2007.

My Commission Expires: 2/28/2010

Susan M. Smith
Notary Public

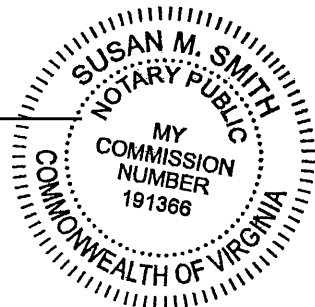


EXHIBIT A SUBMITTED LAND

All that certain parcel of land, situate, lying and being in the City of Virginia Beach, Virginia, being a part of the parcel of land known, numbered and designated as Lots 1,2,3,4,5,6,6A,7 & 8, Corrected Plat of Block 3 of Lynnhaven Shores, recorded in the Clerk's Office of the City of Virginia Beach, Virginia, in Map Book 29 at Page 32; and that portion of Ocean Avenue north of Lots 1,2,3,4,5,6,6a, 7 & 8, Block 3, between the eastern line of Lot 8 extended northwardly and the western line of Lot 1 extended northwardly; and that portion of property located north of Ocean Avenue extending to the mean low water line of the Chesapeake Bay between the eastern line of Lot 8 extended northwardly and the western line of Lot 1 extended northwardly of Block 3; and that portion of property located north of Ocean Avenue which would be formed by extending the right-of-way lines of Jade Street, formerly Jordan Street, northwardly to the mean low water line of the Chesapeake Bay; said portion of property being shown and designated as "Phase 1" on that certain plat entitled "Exhibit C-2" Plat of Lesner Pointe Condominium On The Chesapeake Bay, Phase 1, located in Lynnhaven Borough-Virginia Beach, Virginia, dated January 1993, and prepared by Rouse-Sirine Associates, Ltd., with reference to which said property being more particularly described as follows:

Begin at a point of the northeast intersection of Page Avenue and Jade Street, thence running along the northern right-of-way line of Page Avenue along a curve to the right having a radius of 1872.07 feet and an arc distance of 172.09 feet to a point, the True Point of Beginning; thence from the said True Point of Beginning, turning and running, leaving the aforementioned right-of-way line, N 19° 45' 44" W, 26.44 feet to a point; thence turning and running S 70° 14' 16" W 26.31 feet to a point; thence turning and running N 27° 08' 10" W 223.81 feet to a point; thence turning and running N 62° -51' 50" E, 65.74 feet to a point; thence turning and running N 51° 21' 50" E 78.47 feet to a point; thence turning and running N 70° 14' 16" E 91.57 feet to a point; thence turning and running S 13° 17' 52" E 257.35 feet to a point; thence turning and running S 70° 14' 16" W 52.57 feet to a point; thence turning and running S 19° 45' 44" E 26.92 feet to a point in the northern right-of-way line of Page Avenue; thence turning and running along the northern right-of-way line of Page Avenue, along a curve to the left having a radius of 1872.07 feet and an arc distance of 94.46 feet to a point, the True Point of Beginning.

The above described Submitted Land contains 1.189 acres.

EXHIBIT B ADDITIONAL LAND

All that certain parcel of land, situate, lying and being in the City of Virginia Beach, Virginia, being a part of the parcel of land known, numbered and designated as Lots 1,2,3,4,5,6,6A,7 & 8, Corrected Plat of Block 3 of Lynnhaven Shores, recorded in the Clerk's Office of the City of Virginia Beach, Virginia, in Map Book 29 at Page 32; and that portion of Ocean Avenue north of Lots 1,2,3,4,5,6,6a, 7 & 8, Block 3, between the eastern line of Lot 8 extended northwardly and the western line of Lot 1 extended northwardly; and that portion of property located north of Ocean Avenue extending to the mean low water line of the Chesapeake Bay between the eastern line of Lot 8 extended northwardly and the western line of Lot 1 extended northwardly of Block 3; and that portion of property located north of Ocean Avenue which would be formed by extending the right-of-way lines of Jade Street, formerly Jordan Street, northwardly to the mean low water line of the Chesapeake Bay; said portion of property being shown and designated as "Phase 2 thru 11", inclusive on that certain plat entitled "Exhibit C-1" Plat of Lesner Pointe Condominium On The Chesapeake Bay, located in Lynnhaven Borough-Virginia Beach, Virginia, dated January 1993, and prepared by Rouse-Sirine Associates, Ltd., with reference to which said property being more particularly described as follows:

Beginning at a point at the northeast intersection of Page Avenue and Jade Street, thence from said point running along the eastern right-of-way line of Jade Street, N 27° 08' 10" W 275.03 feet to a point; thence turning and running across the northern terminus of Jade Street, S 62° 51' 50" W 60.00 feet to a point on the dividing line between Lesner Pointe Condominium and Bay's Edge Condominium; thence turning and running along said dividing line N 27° 08' 10" W 320± feet to the approximate mean low water line of the Chesapeake Bay; thence turning and running in an easterly direction along the meanderings of the mean low water line of the Chesapeake Bay to a point on the line formed by extending the eastern lot line of Lot 8, Block 3, as shown on the aforementioned Corrected Plat; thence turning and running along the extended eastern lot line of Lot 8, S 13° 17' 52" E 570± feet to a point on the northern right-of-way line of Page Avenue, at the dividing line between Lot 8 and 9, Block 3; thence running along the right-of-way line of Page Avenue along a curve to the left having a radius of 1872.07 feet and an arc distance of 155.88 feet to a point; thence turning and running, leaving the right-of-way line of Page Avenue, N 19° 45' 44" W 26.92 feet to a point; thence turning and running N 70° 14' 16" E 52.57 feet to a point; thence turning and running N 13° 17' 52" W 257.35 feet to a point; thence turning and running S 70° 14' 16" W 91.57 feet to a point; thence turning and running S 51° 21' 50" W 78.47 feet to a point; thence turning and running S 62° 51' 50" W 65.74 feet to a point; thence turning and running S 27° 08' 10" E 223.81 feet to a point; thence turning and running N 70° 14' 16" E 26.31 feet to a point; thence turning and running S 19° 45' 44" E 26.44 feet to a point in the northern right-of-way line of Page Avenue; thence turning and running along the northern right-of-way line of Page Avenue along a curve to the left having a radius of 1872.07 feet and an arc distance of 172.09 feet to a point at the northeast intersection of Page Avenue and Jade Street, the Point of Beginning.

The above described Additional Land contains 5.91 ± acres. (To the mean low water line.)

EXHIBIT A
GPINS

GPIN	Address
15809033240701	3150 SILVER SANDS CIR # 100
15809033240707	3150 SILVER SANDS CIR # 101
15809033240702	3150 SILVER SANDS CIR # 102
15809033240708	3150 SILVER SANDS CIR # 103
15809033240703	3150 SILVER SANDS CIR # 200
15809033240709	3150 SILVER SANDS CIR # 201
15809033240704	3150 SILVER SANDS CIR # 202
15809033240710	3150 SILVER SANDS CIR # 203
15809033240705	3150 SILVER SANDS CIR # 300
15809033240711	3150 SILVER SANDS CIR # 301
15809033240706	3150 SILVER SANDS CIR # 302
15809033240712	3150 SILVER SANDS CIR # 303
15809033240785	3159 SILVER SANDS CIR # 100
15809033240791	3159 SILVER SANDS CIR # 101
15809033240786	3159 SILVER SANDS CIR # 102
15809033240792	3159 SILVER SANDS CIR # 103
15809033240787	3159 SILVER SANDS CIR # 200
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15809033240795	3159 SILVER SANDS CIR # 301
15809033240790	3159 SILVER SANDS CIR # 302
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15809033240773	3167 SILVER SANDS CIR # 100
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15809033240774	3167 SILVER SANDS CIR # 102
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15809033240775	3167 SILVER SANDS CIR # 200
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15809033240776	3167 SILVER SANDS CIR # 202
15809033240782	3167 SILVER SANDS CIR # 203
15809033240777	3167 SILVER SANDS CIR # 300
15809033240783	3167 SILVER SANDS CIR # 301

GPIN	Address
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15809033240768	3176 SILVER SANDS CIR # 101
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15809033240762	3184 SILVER SANDS CIR # 101
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15809033240719	3212 SILVER SANDS CIR # 100
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GPIN	Address
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15809033240741	3232 SILVER SANDS CIR # 301

GPIN	Address
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15809033240743	3236 SILVER SANDS CIR # 100
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15809033240744	3236 SILVER SANDS CIR # 102
15809033240750	3236 SILVER SANDS CIR # 103
15809033240745	3236 SILVER SANDS CIR # 200
15809033240751	3236 SILVER SANDS CIR # 201
15809033240746	3236 SILVER SANDS CIR # 202
15809033240752	3236 SILVER SANDS CIR # 203
15809033240747	3236 SILVER SANDS CIR # 300
15809033240753	3236 SILVER SANDS CIR # 301
15809033240748	3236 SILVER SANDS CIR # 302
15809033240754	3236 SILVER SANDS CIR # 303



Receipt for Services

TINA A. SINNEN
 CLERK

TRACEY B. ENTWISLE
 CHIEF DEPUTY CLERK

Cashier GFARR

Batch # 468885

Date: 12/28/2007 Time: 10:27:11AM

Date	Instrument No	Document Type	Transaction Type	Grantor Cons.	Grantee Cons.	Assum. Val.	Pg/Amt
12/28/2007 10:27:11AM	20071228001703030	DECL		0.00	0.00	0.00	30
Party 1: LESNER POINTE CONDOMINIUM ON THE CHESAPEAKE BAY ASSOCIATION INC		Party 2:					
		Equipment Fund Fee					5.00
		State Library					1.50
		Pages 1 to 10					14.50
		Pages 11 to 30					14.00
		DECL		Total:			35.00
		Fee Total:					35.00
CHECK	45025	INMAN & STRICKLER PLC					35.00
Payment Total:							35.00



20071105001490370 Pg. 1 OF 19

City of Virginia Beach

11/05/2007 10:43:03 AM DECL

Tina E. Sinnen, Clerk

**FIRST AMENDED AND RESTATED BYLAWS
OF
LESNER POINTE CONDOMINIUM ON THE CHESAPEAKE BAY
ASSOCIATION, INC.**

PREPARED BY:

**INMAN & STRICKLER, P.L.C.
575 LYNNHAVEN PARKWAY, SUITE 200
VIRGINIA BEACH VA 23452**

GPINS: SEE EXHIBIT A ATTACHED

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FIRST AMENDED AND RESTATED BY-LAWS
OF
LESNER POINTE CONDOMINIUM ON THE
CHESAPEAKE BAY ASSOCIATION, INC.

THESE AMENDED AND RESTATED BYLAWS ("Bylaws") are adopted this 2 day of November, 2007 by the Owners of residential Units in the development known as "Lesner Pointe Condominium on the Chesapeake Bay" located in the City of Virginia Beach, Virginia.

RECITALS

WHEREAS, by instrument entitled "Declaration of Condominium of Lesner Pointe Condominium on the Chesapeake Bay" ("Original Declaration") and Bylaws ("Original Bylaws"), dated June 29, 2003, and recorded June 30, 1993, in the Clerk's Office of the Circuit Court of the City of Virginia Beach, Virginia ("Clerk's Office"), in Deed Book 3237, Page 37, Harbour Point Building Corp., a Virginia Corporation ("Declarant"), subjected certain real property more particularly described therein to certain covenants, easements, liens, charges and restrictions set forth therein.

WHEREAS, the Declaration may be amended pursuant to Section 55-79.71(B) of the Condominium Act, Article 10 of the Bylaws entitled "Amendments", Section 10.1 which allows amendment by not less than sixty-six and two thirds percent (66-2/3%) of the entire membership of the Board of Directors and by not less than sixty-six and two thirds percent (66-2/3%) of the votes of the entire membership of the Association; and

NOW, THEREFORE, the requisite signatures have been obtained to adopt the foregoing First Amended and Restated Bylaws which shall replace all prior Bylaws and amendments thereto:

ARTICLE 1. GENERAL PROVISIONS.

1.1 IDENTITY—PURPOSE. These are the First Amended and Restated By-Laws of Lesner Pointe Condominium On The Chesapeake Bay Association, Inc., a non-stock, non-profit Virginia corporation (the "Association"). This Association has been organized for the purpose of administering the affairs of Lesner Pointe Condominium On The Chesapeake Bay.

1.2 BY-LAWS SUBJECT TO OTHER DOCUMENTS. The provisions of these By-Laws are applicable to said Condominium and are expressly subject to the terms, provisions and conditions contained in the Articles of Incorporation and said Association, (referred to herein as the "Articles"), and the Declaration of Condominium (referred to herein as "Declaration") which will be recorded in the Clerk's Office of the Circuit Court of the City of Virginia Beach, Virginia, at the time said property is submitted to condominium ownership.

1.3 APPLICABILITY. All Unit Owners, tenants and occupants, their agents, servants, invitees, licensees and employees and others that use the Condominium Property, or any part thereof, are subject to these By-Laws and the documents referred to in Article 1.2 hereof.

1.4 OFFICE. The office of the Association shall be at the Condominium property or such other place designated by the Board of Directors of the Association.

1.5 DEFINITIONS. All definitions set forth in the Declaration and Exhibits attached thereto are hereby adopted by reference as though set forth herein verbatim.

ARTICLE 2. MEMBERSHIP, VOTING, QUORUM, PROXIES.

2.1 QUALIFICATION OF MEMBERS, ETC. The qualification of members, the manner of their admission to membership and termination of such membership, and voting by members shall be as set forth in the Declaration, Articles and in these By-Laws.

2.2 QUORUM. Persons having more than fifty-one percent (51%), in person or by proxy, of the total votes of the Association shall constitute a quorum.

2.3 CORPORATE OR MULTIPLE OWNERSHIP OF A UNIT. Subject to the restrictions of entity ownership, the vote of the owners of a Unit owned by more than one person or by a corporation or other entity shall be cast by the person named in the certificate designating the "Voting Member". Such certificate will be signed by all of the owners of such Unit, or the proper corporate officer, filed with the Secretary of the Association, and shall be valid until revoked by subsequent certificate. Where the ownership of the Unit is in more than one person, if the person designated in such certificate is not present or if such a certificate is not so filed, then any person having an ownership interest in such Unit who is present shall be entitled to cast the vote of such Unit. In such event, if more than one owner is present, then the vote of the Unit shall be cast only in accordance with their unanimous consent.

2.4 VOTING; PROXY. Votes may be cast in person or by proxy. Proxies shall be valid only for the particular meeting designated thereon, except as provided in Article 3.5 below, and must be filed with the Secretary before the appointed time of the meeting. Where a Unit is owned by more than one person or a corporation or other entity the proxy must be signed by the "Voting Member", or by all the owners of such Unit, or the proper corporate officer. No such proxy shall be revocable except by actual notice to the Secretary or person presiding over the meeting, by the Unit Owner or by any of such persons, that it be revoked. Any proxy shall be void if it is not dated or if it purports to be revocable without notice as aforesaid. The proxy of any person shall be void if not signed by a person having authority, at the time of the execution thereof, to execute deeds on behalf of that person.

2.5 VOTING. In any meeting, each Unit Owner subject to the provisions of Article 2.3 hereof, shall be entitled to cast one (1) vote for each Unit owned. The vote of such Unit shall not be divisible.

2.6 MAJORITY. Except where otherwise required by the provisions of the Articles, these By-Laws, the Declaration or where the same may otherwise be required by law, the affirmative vote of the Unit Owners having a majority of the votes represented at any duly called meeting at which a quorum is present shall be binding upon the members.

ARTICLE 3. ANNUAL AND SPECIAL MEETINGS OF MEMBERSHIP.

3.1 ANNUAL MEETING. The annual members' meeting shall be held at least once each calendar year at the place and time designated on the notice thereof, for the purpose of electing directors and transacting any other business authorized to be transacted by members.

3.2 SPECIAL MEETING. Special meetings shall be held when called by the President or Vice President or by a majority of the Board of Directors. Special meetings must be called by such officers upon a majority of the votes in the Association. Notices of special meetings shall be given as set forth below except that in the case of an emergency fourteen (14) days' notice will be deemed sufficient.

3.3 NOTICE OF MEETING; WAIVER. Notice of all members' meetings shall be given by the Secretary of the Association, or their agent, to each member, unless such notice is waived in writing. Such notice will be written and will state the time, place and object for which the meeting is called. Such notice shall be given as permitted by the Virginia Condominium Act or mailed to each member not less than twenty-one (21) days or more than sixty (60) days prior to the date set for such meeting. If mailed, such notice shall be deemed to be properly given when deposited in the United States mail, postage prepaid, addressed to the member at his post office address as it appears on the records of the Association. Notice shall also be conspicuously posted on the Condominium Property.

3.4 ADJOURNED MEETINGS. If any members' meeting cannot be convened because a quorum has not attended, the members who are present, either in person or by proxy, may adjourn the meeting, from time to time, to a time certain until a quorum is present. Valid proxies for the meeting shall continue to be valid until a quorum is present.

3.5 CHAIRMAN. At meetings of membership, the President shall preside. In his absence, the Vice President shall preside and in his absence the Board of Directors shall select a chairman.

3.6 ORDER OF BUSINESS. The order of business at annual members' meetings, and, as far as practical, at any other members' meeting, shall be:

1. Calling of the roll and certifying of proxies;
2. Proof of notice of meeting or waiver of notice;
3. Reading of minutes;
4. Reports of Officers;
5. Reports of Committees;
6. Election of Directors; SUBJECT, HOWEVER, to all provisions of these By-Laws, the Articles and the Declaration;
7. Unfinished business;
8. New business;

9. Adjournment.

ARTICLE 4. BOARD OF DIRECTORS.

4.1 MANAGEMENT OF ASSOCIATION. The affairs of the Association shall be managed by a Board of Directors (hereinafter referred to as Board) consisting of five (5) persons who are unit owners.

4.2 ELECTION OF DIRECTORS. Election of Directors shall be conducted in the following manner:

4.2.1 Election of directors shall be held at the annual meeting. At each annual meeting members shall elect for three year terms the number of Board members whose term expires.

4.2.2 A nominating committee of three (3) members shall be appointed by the then existing Board not less than thirty (30) days prior to the annual members' meeting. The Committee shall certify the eligibility of all unit owners for whom a candidate information form is submitted. Nominations may also be made from the floor during any meeting convened for the purpose of electing a director(s). Election shall be by simple majority vote and cumulative voting shall not be permitted.

4.2.3 Except as to vacancies created by removal of directors by members, vacancies in the Board occurring between annual meetings of members shall be filled by a person selected by the remaining directors.

4.3 ORGANIZATIONAL MEETING. The organizational meeting of a newly elected Board shall be held within ten (10) days of their election, at such time and at such place as shall be fixed by the directors at the meeting at which they were elected and not further notice of the organizational meeting shall be necessary, PROVIDED, a quorum of elected Directors shall be present.

4.4 REGULAR MEETINGS. Regular meetings of the Board may be held at such time and place as shall be determined, from time to time, by a majority of the directors. Notice of the time and purpose of regular meetings shall be given to each director, personally or by mail, telephone or telegram, or by electronic transmission, at least three (3) days prior to the day named for such meeting, unless notice is waived. Meetings shall be open to all Unit Owners and notice thereof shall be posted conspicuously on the Condominium Property at least three (3) days in advance, except in an emergency.

4.5 SPECIAL MEETINGS. Special meetings of the Board may be called by the chairman or President. Except in an emergency the notice shall be given as provided in Article 4.4 above and shall state the time, place and purpose of the meeting.

4.6 WAIVER. Any director may waive notice of a meeting before or after the meeting, and such waiver shall be deemed equivalent to the giving of notice. Attendance shall be deemed a waiver.

4.7 QUORUM. A quorum at a directors' meeting shall consist of the directors entitled to cast a majority of the votes of the entire Board. The acts of the Board approved by a majority of the votes present at a meeting at which a quorum is present shall constitute the acts of the Board except as specifically otherwise provided for in the Articles, these By-Laws or the Declaration. If any directors' meeting cannot be convened because a quorum has not attended, or because the greater percentage of the directors required, to-constitute a quorum for particular purposes have not attended, (wherever the latter percentage of attendance may be required as set forth in the Articles, these By-Laws, or the Declaration) the directors who are present may adjourn the meeting, from time to time, until a quorum, or the required percentage of attendance is greater than a quorum, is present. At any adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice. The joinder of a director in the action of a meeting by signing and concurring in the minutes thereof shall constitute the presence of such director for all purposes including determining a quorum, provided that the same be accomplished within ten (10) days from the date of the meeting.

4.8 PRESIDING OFFICER. The presiding officer at directors' meetings shall be the President. In the absence of the presiding officer, the directors present shall designate one of their numbers to preside.

4.9 RESIGNATION. A Director may resign by giving written notice thereof. A Director shall be deemed to have resigned upon his termination of membership in the Association or upon his default in compliance for thirty (30) days or more with any of the provisions or covenants of the Declaration, Bylaws, or Rules and Regulations.

4.10 POWERS AND DUTIES. The powers and duties of the Association may, subject to the limitations set forth herein and in the Condominium Act, be exercised by the Board, in the Board's sole discretion. Such powers shall include, without limiting the generality of the foregoing, the following:

- 4.10.1 To adopt the budget of the Association upon majority vote of the directors.
- 4.10.2 To make, levy and collect assignments against members and members' Units to defray the costs of the Condominium and Common Expenses, and to use the proceeds of said assessments in the exercise of the powers and duties granted to the Association.
- 4.10.3 To provide for the maintenance, repair, replacement, operation, improvement and management of the Condominium wherever the same is required to be done and accomplished by the Association for the benefit of its members.
- 4.10.4 It is understood that assessments must be sufficient to provide for the payment of all anticipated current operating expenses and for all of the unpaid operating expenses previously incurred. Accordingly, the Board is given the power to adopt special assessments providing for any previously unanticipated expenses. Special assessments shall be limited to those items which are necessary and all other items which can reasonably be deterred to the regular budgetary meeting shall be so deferred.

- 4.10.5 To adopt and amend administrative rules and regulations governing the details of the operation and use of the Limited Common elements and the Common Elements, real and personal; in the Condominium and units, so long as such rules and regulations or amendments thereto do not conflict with the rights, privileges, restrictions and limitations which may be placed upon the use of such property under the terms of the Declaration and Exhibits attached thereto.
- 4.10.6 To acquire, operate, lease, manage and otherwise trade and deal with property, real and personal, including Units of the Condominium on behalf of the Association, as may be necessary or convenient in the operating and management of the Condominium and in accomplishing the purposes set forth in the Declaration.
- 4.10.7 To contract on behalf of the Association for the management of the Condominium property and to delegate to such contractor such powers and duties of the Association as the directors deem fit, to lease or concession such portions thereof and to ratify and confirm any existing leases or concessions of any part of the Condominium Property.
- 4.10.8 To enforce, by legal means, the provisions of the Declaration and any Exhibits attached thereto and the Rules and Regulations promulgated governing the use of the Condominium property.
- 4.10.9 To cause the Association to pay all taxes and assessments of any type which affect any part of the Condominium property, other than units (unless owned by the Association) and the appurtenances thereto, and to assess the same against the members and their respective Units.
- 4.10.11 To cause the Association to carry insurance for the protection of the members and the Association against casualty and liability as required by the Declaration.
- 4.10.12 To cause the Association to pay all costs of power, water, sewer and other utility services rendered to the Condominium which is not the specific responsibility of the owners of the separate Units.
- 4.10.13 To cause the Association to employ personnel, for reasonable compensation, to perform services required for proper administration of the purposes of the Association, including accountants, attorneys, contractors and other professionals.
- 4.10.14 To borrow money for the maintenance or renovation of the assets of the Association in the event that the reserves of the Association are not available to pay for maintenance or renovation which the Board deems to require immediate attention. The Board may, if required by the lender, pledge the assessment income and other assets of the Association as collateral. Such borrowing power shall not extend to the addition of new capital assets unless written consent is obtained from Owners of two-thirds (2/3) of the interests in the common elements. The Association shall have the right, when determined by the Board of Directors to be in the best interests of the Condominium, to grant exclusive licenses, easements, permits, leases, or privileges to any individual or entity,

including Non-Unit Owners, which affect Limited Common Elements and the Common Elements and to alter, add to, relocate or improve Limited Common Elements and the Common Elements.

4.11 REMOVAL OF DIRECTORS. Should the members of the Association at any duly convened regular or special meeting convened desire, they may remove any director with or without cause by the vote or agreement in writing by a majority of all members and a successor may immediately be elected to fill the vacancy thus created. Should the membership fail to elect a successor, the Board may fill the vacancy.

4.12 PROVISIO. Notwithstanding anything herein contained to the contrary, the directors shall not have the right or authority to do any act or take any action wherein the same would limit, modify or abridge the rights, privileges and immunities as set forth in the Declaration, the Articles and these By-Laws.

4.13 COMMITTEES. The Board may delegate portions of its responsibilities to committees established for that purpose.

4.14 MANNER OF COLLECTION OF COMMON EXPENSES. The provisions of paragraph 13 of the Declaration of Condominium setting forth the manner of collection of Common Expenses and other charges are incorporated herein by reference.

ARTICLE 5. OFFICERS.

5.1 GENERALLY. The officers of the Association shall be a President, one or more Vice Presidents, a Treasurer, a Secretary, and, if desired, one or more Assistant Secretaries, all of whom shall be elected annually by the Board and who may be peremptorily removed by a majority vote of the directors at any meeting. Any person may hold two or more offices, except that the President shall not also be the Secretary or an Assistant Secretary. The board may, from time to time, elect such other officers and designate to manage the affairs of the Association, as it deems appropriate.

5.2 PRESIDENT. The President shall be the chief executive officer of the Association. He shall have all of the powers and duties which are usually vested in the office of president of an association, including, but not limited to, the power to appoint committees from among the members. The President shall be a member of the Board.

5.3 VICE PRESIDENT. The Vice President shall serve in the absence or disability of the President and exercise the powers and perform the duties of President. He shall also generally assist the President and exercise such other powers and perform such other duties as shall be prescribed by the directors or President.

5.4 SECRETARY. The Secretary shall keep the minutes of all proceedings of the directors and the members, attend to the giving and serving of all notices to the members and directors, have custody of the seal when duly signed, keep the nonfinancial records of the Association, and shall perform all other duties incident to the office of Secretary of an association and as may be required by the directors or president. The Assistant Secretary, if any, shall perform the duties of Secretary when the Secretary is absent.

5.5 TREASURER. The Treasurer shall have custody of all of the funds, securities and evidences of indebtedness of the Association. He shall keep the assessment rolls and accounts of the members and the books of the Association in accordance with good accounting practice and shall perform all other duties incident to the office of Treasurer.

ARTICLE 6. FISCAL MANAGEMENT; ASSESSMENTS; LIENS. The provisions for fiscal management of the Association set forth in the Declaration shall be supplemented by the following provisions:

6.1 MANNER AND NOTIFICATION. The Board of Directors shall fix and determine the sums necessary to pay all the Common Expenses, and other fees of the Condominium, including maintenance of proper reserves, pursuant to the provisions of the Declaration, Articles and these By-Laws. The same shall be assessed against the Unit Owners as provided in the Declaration and all the Exhibits attached thereto.

6.2 PAYMENTS OF ASSESSMENTS. Except as specified to the contrary, funds for the payment of Common Expenses shall be assessed against the Unit Owners in the proportions provided in the Declaration. A special limited common expense assessment for elevator use shall be assessed on a monthly basis for all units on the second and third floors of the bay front buildings. All of said assessments shall be payable monthly without notice, unless otherwise required by the Board. Special assessments, should such be required by the Board, shall be levied in the same manner as hereinbefore provided for regular assessments, except notice thereof shall be given, and shall be payable in the manner determined by the Board. FAILURE TO PAY ANY ASSESSMENT WITHIN TEN (10) DAYS FROM THE DATE DUE, SHALL ENTITLE THE ASSOCIATION TO LEVY A LATE CHARGE AGAINST THE DEFAULTING UNIT OWNER OF TEN AND NO/100 DOLLARS (\$10.00) AND A LIKE AMOUNT EACH THIRTY DAYS THEREAFTER IF SUCH ASSESSMENT IS NOT PAID. THE PARTIES AGREE THAT THE LATE CHARGE IS NOT A PENALTY BUT IS VALID LIQUIDATED DAMAGES.

6.3 PROPOSED BUDGET. A copy of the proposed one (1) year budget shall be mailed to Unit Owners not less than thirty (30) days prior to the meeting of the Board of Directors at which the budget will be considered together with a notice of the meeting. If the proposed budget is not approved and adopted by the Board of Directors prior to the start of the new budget period, an assessment shall be presumed to be made in the amount of the last prior assessment and monthly installments on such assessments shall be due upon each installment payment date until changed by an amended assessment. In the event the assessments prove to be insufficient, the budget and assessments shall be amended at a meeting called for that purpose.

6.4 DEPOSITORY; WITHDRAWALS. The depository of the Association shall be such bank or banks as shall be designated, from time to time, by the directors and in which the monies of the Association shall be deposited. Withdrawal of monies from such accounts shall be only by checks signed by such persons as are authorized by the directors. Should the Association employ a Managing Agent, and should in the course of such employment said Managing Agent be charged with any responsibilities concerning control of any of the funds of the Association, then, and in such event, any Agreement with such Managing Agent pertaining to the deposit and withdrawal of monies shall supersede the provisions hereof during the term of any such agreement.

6.5 RECORDS. The Association shall maintain those records and make available written summaries thereof as required by the Condominium Act and the Declaration. In addition, a financial statement shall be prepared annually and supplied to the membership prior to the adoption of the next ensuing year's budget.

6.6 FIDELITY BONDS; PROVISIO. Fidelity bonds shall be obtained by the Board for the Treasurer, Assistant Treasurer, if any, and all officers and employees of the Association handling or responsible for Association's funds, and for any contractor handling or responsible for Association's funds. The amount of such bonds shall be determined by the directors, subject to the minimum requirement of the Declaration. The premiums on such bonds shall be paid by the Association.

6.7 FISCAL YEAR. The fiscal year of the Association shall begin on the first day of January of each year; PROVIDED HOWEVER, that the Board is expressly authorized to adopt a different fiscal year in accordance with the provisions and regulations from time to time prescribed by the Internal Revenue Code of the United States of America, at such time as the Board deems advisable. The budget year shall begin on January 1st of each year.

6.8 ACCELERATION OF PAYMENT OF INSTALLMENTS OF ASSESSMENTS. If a Unit Owner shall be in default in the payment of an installment upon an assessment, the Board may accelerate the remaining installments for, in its discretion, the next twelve-month period. Upon notice thereof to the Unit Owner the accelerated assessment shall immediately become due upon the date stated in the notice, which shall not be less than fifteen (15) days after delivery of or the mailing of such notice to the Unit Owner.

6.9 ACQUISITION OF UNITS. At any foreclosure sale of a Unit, the Association or its designee may acquire the Unit being foreclosed. The term "foreclosure" as used in this Article, shall mean and include any foreclosure of any lien, including a lien for assessments. The power of the Association to acquire a Unit at any foreclosure sale shall never be interpreted as a requirement or obligation on the part of the Association to do so at any foreclosure sale -- the provisions hereof being permissive in nature and for the purpose of setting forth the power of the Association. The Association may also acquire Units in the event damaged Units are not restored pursuant to the provisions of paragraph 14 of the Declaration.

6.10 DEFAULT IN PAYMENT OF ANY ASSESSMENT; LIEN. In the event of a default by a Unit Owner in the payment of any assessment, the Association shall have all rights and remedies provided by law, including, but not limited to, those provided by the Condominium Act, and the liability of the owner of the Condominium Unit shall include liability for a reasonable attorneys' fee and for court costs incurred by the Association incident to the collection of such assessment or enforcement of its lien. If the Association elects to enforce its lien by foreclosure, the Unit Owner shall be required to pay a reasonable rental for the Condominium Unit, to be fixed by the Board, and the Association shall be entitled to the appointment of a receiver to collect same. Nothing herein contained shall bar a suit to recover a money judgment for unpaid assessments without waiving the lien securing the same.

ARTICLE 7. COMPLIANCE.

7.1 VIOLATION BY MEMBER; REMEDIES. In the event of a violation (other than the nonpayment of an assessment) by the Unit Owner of any of the provisions of the Declaration, these By-Laws, or Rules and Regulations adopted pursuant to any of same, the Association

shall notify the Unit Owner by written notice of said breach, transmitted by mail, and if such violation shall continue for a period of ten (10) days from the date of notice, the Association shall have the right to treat such violation as an intentional, inexcusable and material breach thereof, and the Association may then pursue any remedy available. No action taken shall be deemed an "election of remedies". Upon a finding by the Court that the violation complained of has occurred, the offending Unit Owner shall reimburse the Association (or Managing Agent, if any) for all costs and losses including reasonable attorneys' fees and costs incurred in bringing such action. Failure on the part of the Association to maintain such action at law or in equity within thirty (30) days from date of a written request, signed by a Unit Owner and sent to the Association, shall authorize any Unit Owner to bring an action in equity or suit at law, on account of the violation, in the manner provided for the Condominium Act. Any violations which are deemed by the Board to be a hazard to public health or safety may be corrected immediately as an emergency matter by the Association and the cost thereof shall be charged to the Unit Owner as a specific item and shall be a lien against said Unit with the same force and effect as if the charge was a part of the Common Expenses attributable to such Unit Owner. In the event of a noncontinuing default making the notice period impractical, the Association may take such punitive action, including, but not limited to, the suspension of privileges for reasonable periods of time without a corresponding reduction in assessments.

The Unit Owners Association shall have the power to (i) suspend a unit owners' right to use facilities or services, including utility services, provided directly through the Unit Owners' Association for nonpayment of assessments which are more than sixty (60) days past due, to the extent that access to the unit through the Common Elements is not precluded and provided that such suspension shall not endanger the health, safety, or property of any unit owner, tenant, or occupant and (ii) assess charges against any Unit Owner for any violation of the condominium instruments or of the rules or regulations promulgated pursuant thereto for which such Unit Owner or his family members, tenants, guests or other invitees are responsible. Before any such suspension or charges may be imposed, the Unit Owner shall be given an opportunity to be heard and to be represented by counsel before the executive organ or such other tribunal as the condominium instruments or rules adopted pursuant thereto specify. Notice of such hearing, including the charges or other sanctions that may be imposed, shall, at least fourteen (14) days in advance thereof, be hand delivered or mailed by registered or certified United States mail, return receipt requested, to such unit owner at the address or addresses required for notices of meetings pursuant to Section 55-79.75 of the Virginia Condominium Act. The amount of any charges so assessed shall not exceed fifty dollars for a single offence, or ten dollars per diem for any offense of a continuing nature, and shall be treated as an assessment against such unit owner's condominium unit for the purposes of Section 55-79.84 of the Virginia Condominium Act. However, the total charges for any offense of a continuing nature shall not be assessed for a period exceeding ninety days. After the date a lawsuit is filed challenging any such charges, no additional charges shall accrue. If the court rules in favor of the Unit Owners' Association, it shall be entitled to collect such charges from the date the action was filed as well as all other charges assessed pursuant to Section 55-79.80 of the Virginia Condominium Act against the Unit Owner prior to the action. The hearing result shall be hand delivered or mailed by registered or certified mail, return receipt requested, to such Unit Owner at the address required for notices of meetings pursuant to Section 55-79.75 of the Virginia Condominium Act within seven (7) days of the hearing.

7.2 LIABILITY OF UNIT OWNERS. All Unit Owners shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his act, neglect or carelessness, or by that of any member of his family, or his or their guests, employees, agents or lessees. Such liability shall include any increase in insurance rates occasioned by use,

misuse, occupancy or abandonment of any Unit or its appurtenances. Nothing herein contained, however, shall be construed so as to modify any waiver by insurance companies of rights of subrogation. The expense of any maintenance, repair or replacement required shall be charged to said Unit Owner as a specific item and shall be a lien against said Unit with the same force and effect as if the charge was a part of the Common Expenses attributable to such Unit Owner's Unit.

7.3 **LIABILITY OF UNIT OWNERS TO MANAGING AGENT.** Paragraph 6.10 above shall include any assessment due by virtue of a Management Agreement with a Managing Agent (if any) and such Managing Agent shall also have the right to bring such actions and the right to obtain such relief in its own name, including damages, attorneys' fees and costs, to enforce the provisions thereof.

7.4 **NO WAIVER.** The failure of the Association or of a Unit Owner to enforce any right, provision, covenant or condition which may be granted by any of the provisions of the Declaration shall not constitute a waiver of the right of the Association or Unit Owner to enforce such right, provision, covenant or condition in the future.

7.5 **SURVIVING LIABILITY.** Termination of membership in the Association shall not relieve said party from any liability, financial or otherwise, incurred by said party while a member and shall in no way impair any rights that the Association has, or may have had, against the terminating member.

ARTICLE 8. LIMITATION OF LIABILITY. Notwithstanding the duty of the Association to maintain and repair the Condominium Property, it shall not be liable for injury or damage caused by a latent condition in the property nor for injury or damage caused by the elements, or by other owners or persons.

ARTICLE 9. PARLIAMENTARY RULES. Roberts Rules of Order (latest edition) shall govern the conduct of Association proceedings when not in conflict with the Declaration, The Articles, these By-Laws, or with the Condominium Act.

ARTICLE 10. AMENDMENTS TO BY-LAWS. Amendments to By-laws as hereinafter defined and provided for, shall be proposed and adopted in the following manner to the extent that such provisions do not conflict with Section 55-79.71 of the Code of Virginia (1950), as amended, and the provisions of the Declaration.

10.1. Procedure for Amendments. An amendment may be proposed by either a majority vote of the Board of Directors of the Association, or by a majority vote of the members present at a duly called and noticed meeting. The proposed amendment shall be distributed to the members along with a notice of the date, time, and place of the meeting at which the amendment will be discussed. Notice shall be given in a manner provided for in the Bylaws. The meeting shall be informational only; no vote shall be taken at the meeting and no quorum is required. The proposed amendment shall be approved in writing by the unit owners of the units to which two thirds of the votes in the Association appertain pursuant to §55-79.71 of the Code of Virginia.

10.2. Approval Necessary; Recording. In order for such amendment or amendments to become effective, the same must be approved in writing in the manner provided for in the Declaration. Agreement of the required majority of unit owners to any amendment of the condominium instruments shall be evidenced by their execution of the amendment, or ratifications thereof, and the same shall become effective when a copy of the amendment is recorded together with a certification, signed by the principal officer of the unit owners' association or by such other officer or officers as the condominium instruments may specify, that the requisite majority of the unit owners signed the amendment or ratifications thereof.

ARTICLE 11. BY-LAWS PERTAINING TO USE AND DECORUM.

11.1 DEFINITION. "Use" and "Decorum" as used herein shall refer to matters pertaining to dress, decorum, noise, use of Units and Use of Limited Common Elements and the Common Elements.

11.2 SCOPE; REMEDY FOR VIOLATION. These By-Laws are reasonably calculated to promote the welfare of the Unit Owners. The violation of such By-Laws shall bar any Unit Owner or his family and invitees from the use of the Common Elements, as the Board may deem appropriate, and shall subject any person violating the same to any liability imposed by the Declaration of these By-Laws.

11.3 RULES AND REGULATIONS. The Association may promulgate Rules and Regulations concerning the use of the Condominium Property. Said Rules and Regulations shall have effect upon posting in a conspicuous place on the Condominium Property and shall have the dignity of By-Laws.

ARTICLE 12. INDEMNIFICATION.

12.1 OFFICERS AND DIRECTORS. The Association shall and does hereby indemnify and hold harmless every director and every officer, including the first officers and directors, his heirs, executors and administrators, against all loss, cost and expenses reasonably incurred by him in connection with any action, suit or proceeding to which he may be made a party by reason of his being or having been a director or officer of the Association, including reasonable counsel fees, except as to matters herein he shall be finally adjudged in such action, suit or proceeding, to be liable for or guilty of gross negligence or willful misconduct. The foregoing rights shall be in addition to, and not exclusive of, all other rights to which such director or officer may be entitled.

12.2 INSURANCE. The Association shall, if available, at the Association's expense, purchase director's liability insurance and shall cause the directors, from time to time serving, to be named insureds.

ARTICLE 13. UNIT OWNERS RESPONSIBILITY CONCERNING LIENS AND TAXES.

13.1 LIENS AND TAXES. All liens against a Condominium Unit, other than for permitted mortgages, taxes or special assessments, shall be satisfied or otherwise removed within ten (10) days of the date the lien attaches. All taxes and special assessments upon a

Condominium Unit shall be paid at least thirty (30) days before becoming delinquent or as provided in the Declaration, or these By-Laws, whichever is sooner.

13.2 NOTICE TO ASSOCIATION. A Unit Owner shall give notice to the Association of every lien upon his Unit, other than for permitted mortgages, taxes and special assessments, within five (5) days after the attaching of the lien.

ARTICLE 14. MORTGAGEES.

14.1 NOTICE OF UNPAID ASSESSMENTS. The Board of Directors, whenever so requested in writing by an Institutional Lender holding a first mortgage on a Condominium Unit, shall promptly report any then unpaid assessments due from, or any other default by, the owner of the mortgaged Unit.

14.2 EXAMINATION OF BOOKS. Each Unit Owner and each Institutional Lender holding a first mortgage on a Condominium Unit shall be permitted to examine the books of account of the Association at reasonable times and upon reasonable notice, on a business day, but not more often than once a month.

14.3 NOTICE OF TERMINATION OF MANAGEMENT CONTRACTS. The Board of Directors shall notify the Institutional Lender having the maximum number of first mortgages on Condominium Units in the Condominium in writing of the termination of any management contract within ten (10) days of receipt of issuance of any notice of such termination by either the Association or the Managing Agent. Notwithstanding the foregoing, the prior written approval of the Institutional Lender having the maximum number of first mortgages on Condominium Units in the Condominium shall be required to effectuate any decision by the Unit Owners Association to terminate professional management and assume self management of the Condominium.

14.4 AUDITED FINANCIAL STATEMENT. Every Institutional Lender holding a first mortgage on a Condominium Unit shall be entitled to receive, upon request, a copy of the annual audited financial statement within sixty (60) days following the end of the Association's fiscal year.

14.5 OTHER MORTGAGEES RIGHTS. Every Institutional Lender holding a first mortgage on a Condominium Unit or their representatives shall be entitled to attend meetings of the Unit Owners Association and shall have the right to speak during an owners' forum. In addition thereto, every Institutional Lender holding a first mortgage on a Condominium Unit shall have the right to examine the books and records of the Condominium and require the submission of annual financial reports and other budgetary information.

14.6 AMENDMENT TO THE DECLARATION OR TO THE BY-LAWS. Except as otherwise permitted by the Condominium Instruments, the prior written approval of the Institutional Lenders having first mortgages aggregating more than \$1,000,000 on Condominium Units in the Condominium will be required for any amendment to the Declaration or By-Laws of the Unit Owners Association which materially affect their rights.

14.7 NOTICE OF ADDRESS BY MORTGAGEES. A mortgagee will be accorded the foregoing rights requiring written information only if a mortgagee furnishes to the Association written notice of a current mailing address.

ARTICLE 15. CONFLICT. In the event of any conflict between the By-Laws contained herein, or from time to time amended or adopted, and the Declaration, the Declaration shall prevail.

The undersigned President of the Association does hereby certify that this Amended and Restated Declaration has been agreed to by the Members of the Association to which two-thirds of the votes in the Association appertain, as is required by the Association's Original Bylaws and the provisions of Section 55-79.71.D of the Code of Virginia, 1950, as amended (the Condominium Act), as evidenced by their signatures on file with the Association.

EXECUTED on the date first written above by the duly authorized officer of the Association.

LESNER POINTE CONDOMINIUM
ON THE CHESAPEAKE BAY
ASSOCIATION, INC.

By:

Lynn Seltzer
Lynn Seltzer, President

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

I hereby certify that Lynn Seltzer, President of LESNER POINTE CONDOMINIUM ON THE CHESAPEAKE BAY ASSOCIATION, INC. has acknowledged this instrument before me in my said jurisdiction.

GIVEN under my hand this 2 day of November, 2007.

Susan M. Smith
Notary Public

My Commission Expires: 2/28/2010

My Commission Number is: 191366

