



Tax Map Numbers: 125-(A)-L222 (portion); 125H-(28)-L1 through L26 (inclusive); 125H-(28)-LA

**FIRST AMENDED AND RESTATED
DECLARATION OF PROTECTIVE COVENANTS
CONGERS CREEK TOWNHOMES**

THIS DECLARATION is made this 20th day of January, 2022, by **THE TOWNES AT CONGERS CREEK LLC**, a Virginia limited liability company ("Declarant"), as grantor **ROBERT R. CHAPMAN, III** and **THOMAS D. REA**, Trustees (index as grantor) (either of whom may act) and **BANK OF THE JAMES**, a banking corporation, ("Beneficiary"), also index as grantor. Also index the following names in the grantor index: **STEVE BILUGE BALUNGWE**; **BANAZ FATHALLA** and **SAYA S. SATAR**; **TONY J. KIM**; **IGOR S. KUSHNAR**; **RYAN JAMES ROBERTS**; **DANIEL ADAM LANPHIER** and **STEPHANIE OLGA LANPHIER**, husband and wife; **MICHAEL V. RAMSEY** and **KRISTEN S. RAMSEY**, husband and wife; **EKP, LLC**, a Virginia limited liability company; **KRISTO PAPA** and **ELMIRA KHAKIMOVA**, husband and wife; **BERNARD HAMANN** and **JULIE HAMANN**, husband and wife; **THOMAS D. REA** and **JENNIFER L. REA**, husband and wife; **OLEG V. SYCH** and **DARYA V. SYCH**, husband and wife; **CHRISTOPHER K. KELTY** and **KATHERINE S. KELTY**, husband and wife; **JEFFREY BROTHERS**; **JOSE ANTONIO MORALES MONSALVE** and **SHERRIE COLBY**, husband and wife; **DALE DAVID SAGER** and **VICTORIA LANDIS**, husband and wife; **BRIDGET E. M. SMITH**; **GEOFFREY J. BURT**; **DOMINIQUE D. OBERLI** and **MARIA OBERLI**, husband and wife; **OUR 3 INVESTMENTS, LLC**, a Virginia limited liability company; **SHANW ZANGANA**; **BENJAMIN H. MILLER** and **CHRISTINE MILLER**, husband and wife; **THOMAS D. URGLAVITCH**; and **CHRISTOPHER PEREZ-LEON** and **ELLEN LEWIS**, husband and wife.

P R E A M B L E:

A. Declarant conveyed a parcel of land containing 2.574 acres, situate in Central District, Rockingham County, Virginia, to Robert R. Chapman, III and Thomas D. Rea, Trustees, by deed of trust dated July 22, 2020, which is recorded in the Clerk's Office in Deed Book 5273, page 347, securing a loan from Bank of The James.

B. The 2.574 acres has been subdivided and dedicated as Congers Creek Townhomes by an Owner's Consent and Dedication which is recorded in the Clerk's Office of the Circuit Court of Rockingham County, Virginia (the "Clerk's Office"), in Deed Book 5321, page 588.

C. The Lots are subject to a Declaration of Covenants, Conditions and Restrictions which was recorded on January 21, 2021, in the Clerk's Office of the Circuit Court of Rockingham County, Virginia (the "Clerk's Office"), in Deed Book 5359, page 192 (the "Declaration").

D. Pursuant to § 8.3 of the Declaration, the Declarant has the right to amend the Declaration at any time within two (2) years of the recordation of the Declaration without the consent of any other Owner.

E. Declarant now desires to amend and restate the Declaration as follows:

NOW THEREFORE, Declarant declares that all of the Property shall be held, transferred, sold, conveyed and occupied subject to the following limitations, restrictions and uses which shall run with the real estate and shall be binding on and inure to the benefit of all present and future Owners thereof. This declaration, however, shall not apply to any other "phases" or "sections" of **Congers Creek Townhomes** or any other land owned by Declarant, except for such land as may be added under § 8.5.

ARTICLE 1

Definitions

§1.1 "**Association**" shall mean and refer to Congers Creek Property Owners Association, and its successors and assigns.

§1.2 **"Common Areas"** shall mean and refer to all portions of the Property and all interest therein, including easements and improvements therein, owned or leased by the Association for the use and enjoyment of the Owners.

§1.3 **"Declarant"** shall mean The Townes at Congers Creek LLC and its successors and assigns, but shall not include the purchaser of any Lot.

§1.4 **"Lot"** shall mean and refer to the individually numbered plots of land shown upon the recorded subdivision plat of the Property.

§1.5 **"Owner"** shall mean or refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot, whether acquired by purchase, gift, foreclosure or otherwise, but excluding those persons or entities having such interest merely as a security for the performance of an obligation. The address of an Owner (or Owners in case a Lot is owned by more than one person) for the purpose of notices required herein shall be the address as indicated on the tax records for the current year maintained by Rockingham County, Virginia, unless an Owner notifies the Association of a different address.

§1.6 **"Property"** shall mean and refer to i) the property containing 2.574 acres, more or less, shown and described on the Owner's Consent and Plat, and being all of the real estate dedicated to **Congers Creek Townhomes**, and ii) subsequent sections added to this Declaration pursuant to §8.5 hereof.

ARTICLE 2

Association

§2.1 Every Owner shall be a member of the Association. The membership shall be appurtenant with and may not be separated from ownership of any Lot.

§2.2 The Association shall have two (2) classes of members:

Class A. Class A members shall include all Owners except the Declarant. Class A members shall be entitled to one (1) vote for each Lot owned. When a Lot is owned by more than one person or entity, the one (1) vote for such Lot may be cast by any Owner thereof unless an objection or protest by another co-owner is made prior to the completion of a vote. Upon such

objection or protest, the one (1) vote shall be cast according to the majority vote (based on each Owner's percentage ownership interest) of the Owners of such Lot, but in no event shall more than one (1) vote be cast with respect to any Lot.

Class B. The Class B member shall be the Declarant. The Class B member shall be entitled to three (3) votes for each Lot it owns.

§2.3 The Association may be an unincorporated association or a non-stock corporation organized under the laws of the Commonwealth of Virginia. The Association is charged with the duties and vested with the powers prescribed by law and set forth in its organizational documents, as such may be amended from time to time, provided no such organizational documents shall be amended for any reason or otherwise changed or interpreted so as to be inconsistent with this declaration.

§2.4 The Association shall be governed by a board of directors consisting of at least three (3) members elected by plurality vote of the members.

§2.5 By way of example, and without limiting the generality thereof, the Association shall have the power and obligation to perform the following duties:

(a) *Real and Personal Property.* To acquire, own, hold, improve, maintain, manage, lease, pledge, convey, transfer, mortgage, create a lien on or dedicate real or personal property for the benefit of the Association; and

(b) *Rule Making.* To establish rules and regulations for the use of the Common Areas; and

(c) *Assessments.* To fix, levy and collect assessments as provided in Article 4; and

(d) *Easements.* To grant and convey easements over and across the Common Areas as may become necessary.

ARTICLE 3

Architectural Control

§ 3.1 Except for the original dwellings constructed by Declarant, no building, fence, or other improvements shall be erected or placed on any Lot and no exterior addition, change or alteration to any improvements on any Lot shall be made until the plans and specifications showing the nature, color, kind, shape, height and materials and a plat showing the location of the same shall have been submitted to and approved in writing as to the harmony of external design and location in relation to surrounding structures and topography by an Architectural Control Committee ("ACC"). The ACC shall be composed of three members. The three members shall be appointed by the Declarant until the date on which the last Lot in the Property is sold by the Declarant.

After such time, the Association shall appoint the three members. The members appointed shall hold office until removed by the entity then entitled to appoint members or their successors are elected.

§ 3.2 The ACC shall have full and complete discretion to approve or disapprove proposed buildings, fences, and other improvements and alterations on the Lots except for original dwellings constructed by Declarant, and in the exercise of its discretion, the committee shall not be bound to approve any proposed buildings and improvements solely because they comply with the other restrictions and covenants or are equal in cost or value to buildings and improvements on other Lots. In the event the ACC fails to approve or disapprove the plans and specifications within thirty (30) days after submission, the plans and specifications shall be deemed to be approved, but the failure of the ACC to act shall not be construed to waive any violation of these covenants.

§ 3.3 The ACC may base its approval or rejection of plans or specifications upon any grounds, including purely aesthetic considerations, which in the sole discretion of the committee shall seem sufficient. Representatives of the ACC shall have the right to inspect the building

during construction to ensure that it complies with the approved plans and specifications. Where discrepancies exist, the ACC may require corrective work, or, where warranted in its opinion, it may issue a notice to cease construction until compliance is assured to its satisfaction. Failure to heed such a notice from the ACC shall operate as a default under this covenant and shall give the ACC, in addition to any rights under general law, all of the rights and powers set out in this declaration.

§ 3.4 The exterior of any dwelling or building constructed on any Lot shall be completed within nine (9) months after the commencement of construction.

§ 3.5 *Intentionally Omitted.*

§ 3.6 The plans and specifications of any improvements shall be deemed approved under § 3.1 if the ACC has not notified the Owner of a violation of this Article within six (6) months after issuance of an occupancy permit or final inspection in case of improvements to an existing structure.

ARTICLE 4

Covenant for Maintenance Assessment

§4.1 Each Owner (except for the Declarant as provided in § 4.2 below) by acceptance of any Lot, whether or not it shall be so expressed in any document conveying title to the Lot, shall be deemed to covenant and agree to pay to the Association:

- a. Regular assessments or charges;
- b. Special assessments for capital improvements;

which may be fixed, established and collected from time to time. Each type of assessment shall be a uniform rate. The regular and special assessments, together with such interest thereon as determined by the Association and costs of collection thereof, including attorney's fees, shall be a charge on each Lot and shall be a continuing lien upon each Lot until payment. Each such assessment, together with such interest thereon and costs of collection thereof, also shall be the personal obligation of the Owner (jointly and severally in the case of multiple Owners) of each

Lot at the time when the assessment fell due and shall not pass as a personal obligation to his successors in title unless expressly assumed by such successor.

§4.2 No assessment shall be due or payable for any Lot owned by the Declarant which is held for sale. This exemption shall not apply to any Lot which has been initially sold by Declarant and subsequently reacquired.

§4.3 The regular and special assessments levied by the Association shall be used exclusively for a) the purpose of promoting the permitted uses of the Property in a safe and orderly manner; b) the improvement, management, care and maintenance of services and facilities related to the use and enjoyment of the Common Areas; c) the improvement, management, care and maintenance of stormwater facilities; and d) exterior maintenance of any building or Lot as provided in § 4.6 and § 7.3.

§4.4 Until the first day of the fiscal year following commencement of assessments, the maximum regular assessment shall be \$75 per month. The levy of a regular assessment less than the maximum in any month shall not affect the Association's right to levy a regular assessment equal to the maximum assessment in subsequent months.

Change in Maximum. From and after the first day of the fiscal year immediately following the commencement of assessments, the Association may increase the maximum assessment each year, without Member approval, by a factor of not more than ten percent (10%) of the maximum regular assessment for the previous fiscal year.

From and after the first day of the fiscal year immediately following the commencement of assessments, the maximum regular assessment may be increased above the amount which can be set by the Association with the affirmative vote of at least sixty-seven percent (67%) of the members who are present and voting, in person or by proxy, at a meeting at which a quorum of members is present.

§4.5 In the event that any maintenance or repair is caused by the willful or negligent act of any Lot Owner or the employees, agents, guests or invitees of any Lot Owner, the cost of such maintenance and repair shall be paid for by such Lot Owner. Every Owner shall maintain his or

her Lot and the buildings thereon in a neat and structurally sound condition. The exterior of all buildings shall be routinely painted. If any building is totally or partially damaged by fire, wind or other hazard, the Owner shall within a period of nine months after the damage a) repair the damage or b) tear the building down and remove the debris from the Lot.

§4.6 If any Owner fails to make any required repairs or maintenance after notice from the Association, the Association may make such repairs on behalf of the Owner, and the cost thereof shall be deemed a special assessment as to such Lot. Each Owner authorizes the Association and its agents to enter the Lot at reasonable hours to perform any required repair or maintenance on behalf of the Owner.

§4.7 The assessments may be collected for any time period the Association desires, including but not limited to monthly, quarter-annually or annually.

§4.8 *Intentionally omitted.*

§4.9 The provisions of the Property Owner's Association Act (§55.1-1800, *et seq.* of the Code of Virginia, 1950) shall apply to the extent not inconsistent herewith.

§4.10 The regular assessments shall commence when the first Lot is sold by the Declarant. The first assessment on any Lot shall be collected at the time of conveyance of the Lot and shall be prorated based on the number of days remaining in the month or fiscal year as appropriate.

ARTICLE 5

Common Areas

§5.1 The Association, subject to the rights of the Owners set forth in this Declaration, shall be responsible for the management and control for the benefit of the Owners of the Common Areas conveyed to it.

§5.2 Easement of Enjoyment.

Subject to the provisions herein, every Owner shall have a right and nonexclusive easement of enjoyment in and to the Common Areas, which shall be appurtenant to and shall pass with the title to every Lot, and every member shall have a right of enjoyment to the Common Areas.

A member's spouse, parents and children who reside with such member shall have the same easement of enjoyment hereunder as a member.

§5.3 Extent of Members' Easement. The members' easement of enjoyment created hereby shall be subject to the following:

(a) The right of the Association to establish reasonable admission and other fees for the use of the Common Areas.

(b) The right of the Association to suspend the right of a member to use the Common Areas other than private streets for any period during which any assessment against his Lot remains unpaid for more than thirty (30) days after notice until such default has been remedied; the right of the Association to suspend the right of a member to use the Common Areas for a period not to exceed sixty (60) days for any other infraction.

(c) The right of the Association to mortgage any or all of the Common Areas with the prior assent of at least sixty-seven percent (67%) of the Class A members.

(d) The right of the Association to convey, or transfer, all or any part of the Common Areas, other than the private streets subject to the prior assent of at least sixty-seven percent (67%) of the Class A members.

(e) *Intentionally omitted.*

(f) The right of the Association to regulate the use of the Common Areas for the benefit of members;

(g) The right of the Association to establish rules and regulations for the use of the Common Areas, including use of any recreational facilities by members and nonmembers.

(h) No Owner or member shall obstruct any common driveway, parking area or sidewalks, and no act shall be done which would affect the free and continuous use and enjoyment thereof by the other Owners.

§5.4 Delegation of Use. Any member may delegate to the members of his family and to his guests his right of enjoyment to the Common Areas and facilities subject to such general regulations as may be established from time to time by the Association.

§5.5 Title to Common Areas. The Declarant hereby covenants that areas designated as open space, or Common Areas which the Declarant conveys to the Association as Common Areas shall be free and clear of all liens and financial encumbrances at the time of conveyance. In the event a lien or encumbrance shall attach to all or a portion of the Common Areas, one or more of the lien holders and/or mortgagees shall have the right to discharge said lien or encumbrance after reasonable notice to the Association and to seek reimbursement for amounts paid to discharge the lien or encumbrance.

ARTICLE 6

General Use Restrictions

§6.1 No Lot shall be used except for residential purposes. Single-Family Residential Lots may be rented only in their entirety; no fraction or portion may be rented. All leases shall be in writing and shall be for an initial term of no less than six months, except with the prior written consent of the Association. Notice of any lease, together with such additional information as may be required by the Association, shall be given to the Association by the Owner within ten days of execution of the lease. The Owner must make available to the lessee current copies of the Declaration, Bylaws, and the rules and regulations available from the Association. The Association may adopt reasonable rules regulating leasing and subleasing.

§6.2 No dwelling exceeding three stories in height above ground including the garage level and only a private garage for not more than two vehicles and such other outbuildings as may be approved by the ACC shall be erected on any Lot.

§6.3 The minimum above ground square footage (excluding porches, decks and garages) shall be 1,600 finished square feet. Carports are not permitted on any Lot.

§6.4 All roofing material must have an expected life of at least 25 years.

§6.5 Outside storage units shall be permitted at the discretion of the ACC. Size, exterior finishes and location shall further be at the discretion of the ACC.

§6.6 *Intentionally omitted.*

§6.7 The location of antennae or satellite receiving devices on any Lot shall be approved by the ACC.

§6.8 There shall be no fencing or hedges in the front of any of the townhouse units, and all fencing to the rear of the townhouse units shall be attached to the individual unit. Except as otherwise approved by the ACC, all fences shall be constructed of durable materials as approved by the ACC and shall not be higher than four feet. All fences (except privacy screens on patios or decks) shall be of a visually open style, such as classic wrought iron; however, owing to the propensity of wrought iron to rust quickly, alternative materials such as extruded aluminum with black epoxy or vinyl coating shall be acceptable materials for fencing. Fence support posts may be up to four feet and ten inches in height. Privacy screening shall not exceed six feet in height and ten feet in length and must abut the building. Privacy screening support posts may be up to six feet and ten inches in height. Such fence or privacy screening shall contain a gate at the rear to enable access. No fence or privacy screening shall be constructed until the ACC has approved the same.

§6.9 Swimming pools (which shall not include hot tubs, jacuzzis and portable pools) are prohibited.

§6.10 Each Lot shall have an all-weather surface driveway within three months after issuance of the certificate of occupancy for the dwelling erected on such Lot.

§6.11 No sign of any kind shall be displayed to the public view on any Lot except one sign of not more than five square feet advertising the property for sale or rent, or signs used by the builder to advertise the property during construction. Nevertheless, one sign not exceeding one-half square foot displaying the name of the Owner or occupant of the property shall be permitted on any Lot. This covenant shall not prohibit the erection of an appropriate sign at the entrance(s) to the development, which sign shall comply with all Rockingham County ordinances and regulations.

§6.12 No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any Lot, except that dogs, cats, or other household pets may be kept, provided they are not kept, bred,

or maintained for any commercial purpose. In any event, there is a limit of two dogs per Lot and two (2) cats per Lot.

§6.13 Whenever animals are permitted outside a building or other enclosed area approved by the ACC for the maintenance and confinement of animals, they must be secured by a leash or lead. All permitted animals must be confined to an approved area by the ACC in the rear of the Lot. No animals are allowed to be kept on a chain/run nor are such animals allowed to be kept outside on a permanent basis. All animals must be basically inside house pets and maintained as such.

§6.14 All Lots shall be kept at all times in a sanitary, healthful, attractive and safe condition, and the Owner and occupants of all Lots shall keep all weeds, grass, and dead trees thereon cut. Notwithstanding the foregoing, however, the Association shall mow all grassy areas on any lot, which are not behind an owner's fencing. All dwellings, decks, fences, etc. must be well maintained in an attractive condition.

§6.15 Trash, garbage, or other waste shall be kept in sanitary enclosed containers. All containers shall be appropriately screened from view and kept out of public view, except during days for trash collection.

§6.16 No motor vehicle shall be kept on any lot or parking area unless it bears a valid state license plate and current inspection sticker with a limitation of two (2) vehicles per household unless otherwise approved by the Association.

§6.17 *Intentionally omitted.*

§6.18 No trailer, basement, tent, shack, barn, or other outbuilding erected on any Lot shall be used at any time as a residence, temporarily or permanently, nor shall any residence of a temporary character be permitted.

§6.19 No trailer, bus, camper, motor home, truck larger than three-quarter ton, commercial equipment, commercial vehicle (including, but not limited to, any tractor trailer, or combination of tractor and trailer), or disabled or unlicensed vehicle, or any portion thereof may be parked or stored within **Congers Creek Townhomes** except for commercial equipment and vehicles temporarily located therein for the purpose of performing necessary construction or

repairs. No stripped down or junk vehicles (licensed or unlicensed) or any sizable parts thereof shall be permitted to be parked on any street or Lot.

§6.20 No more than two unrelated persons may occupy any dwelling on any Lot. Unrelated persons shall mean persons who do not have a familial relationship. As used herein, "familial relationship" shall mean i) persons related by either blood, marriage or adoption or ii) persons deemed to have a familial status as defined in the Fair Housing Act.

§6.21 No noxious or offensive use or activity shall be carried on upon any Lot, nor shall any practice be engaged in by the Owners of the Lots, their tenants, agents, guests, or assigns, that shall become an annoyance or nuisance to the neighborhood including, but not limited to, excessive dog barking and loud music.

§6.22 No improvement which has been partially or totally destroyed by fire or other casualty shall remain in such condition for more than three months from the date of such destruction.

§6.23 The drying of clothes in public view is prohibited.

§6.24 No skateboard or rollerblade ramps or structures of any kind shall be constructed, placed, or used on any Lot, street or parking area.

§6.25 No exterior watch light shall be erected on any Lot without the prior approval by the ACC. For the purposes of this section, a watch light is an exterior light of a type typically mounted on a telephone pole, utility pole, or street light pole, or any other light which the ACC determines casts an unacceptable level of light on neighboring Lots.

§6.26 No dirt bikes, ATVs, three or four wheelers or other non-licensed vehicles shall be operated on any Lot, Common Areas, street or driveway.

§6.27 No incinerator or other device for the burning of trash shall be permitted on any Lot, Common Areas, street or driveway within **Congers Creek Townhomes**.

§6.28 No propane, oil or other storage tank or cylinder shall be permitted on any Lot, Common Areas, street or driveway within **Congers Creek Townhomes** unless i) it is buried or enclosed within the residential dwelling or ii) it is a propane tank used for an outdoor grill and

such tank does not exceed 20 lbs (“Grill Propane Tanks). No more than two Grill Propane Tanks, which are not enclosed within the residential dwelling or buried, shall be permitted on any Lot, Common Areas, street or driveway.

§6.29 *Intentionally omitted.*

§6.30 All children’s toys, lawn maintenance equipment, motor bikes, mopeds, scooters, barbecue grills, trash receptacles, rubbish and other unsightly objects and equipment shall be stored inside or in the rear yard overnight. Storage of such items in the front or side yards is expressly prohibited. “Children’s toys” includes without limitation bicycles, tricycles, wagons, sandboxes, baby carriages, sliding boards, basketball goals, sleds and snow related toys, and sports related equipment.

ARTICLE 7

Townhome Lots

In addition to the other covenants, conditions and restrictions provided in the other Articles herein, each Lot on which a dwelling is erected which has a common wall with a dwelling on the adjacent Lot (herein called "townhome Lot") shall be held, sold and conveyed subject to the following:

Easements

§7.1 Easements are reserved and created across and under each townhome Lot (except as to that portion covered by buildings) for the installation, maintenance and repair of normal utilities and drainage facilities.

§7.2 Each townhome Lot shall be subject to an easement for encroachments (and repairs thereto) created by normal overhangs of structures. In the event that a dwelling on one or more townhome Lots should be partially or totally destroyed, and then rebuilt, the Owner of the townhome Lot affected agrees that minor encroachments on parts of the adjacent dwelling due to construction shall be permitted and that a valid easement for such encroachment and the maintenance thereof shall exist. Every portion of a building contributing to the support of an

abutting building shall be burdened with an easement of support for the benefit of such abutting building.

§7.3 The Association shall provide i) cutting and maintenance of grass for all Common Areas, ii) normal shrubbery maintenance and general landscaping for all Common Areas, iii) cutting and maintenance of grass for accessible and unfenced areas of the Lots, iv) snow removal (after a reasonable accumulation as determined by the Association) from the private streets and roads within the subdivision, v) electricity for all street lights. To effect orderly and economic collection of trash, the Association will be responsible for trash removal. Each Owner of a townhome Lot shall be deemed to have granted to the Association and its agents an easement of access to such townhome Lot for such purposes. Except as otherwise provided herein, each Owner shall maintain, repair and replace all portions of his Lot, including but not limited to, lawn maintenance and grass cutting of any inaccessible or fenced areas, snow removal from individual driveways and sidewalks, and shrubbery maintenance.

Party Walls

§7.4 Each wall which is built as a part of the original construction of the improvements upon townhome Lots, and placed on the dividing line between the townhome Lots shall constitute a party wall, and to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and of liability for property damage due to negligence or willful acts or omissions shall apply thereto.

§7.5 The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

§7.6 If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owner to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

§7.7 Notwithstanding any other provision of this Article, any Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

§7.8 The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to each Owner's successors in title.

§7.9 In the event of any dispute arising concerning a party wall, or the provisions of this Article, each party shall choose one arbitrator, and such arbitrator shall choose one additional arbitrator, and the decision of the majority of all the arbitrators shall be final and binding upon all parties.

ARTICLE 8

Miscellaneous Provisions

§8.1 *Intentionally omitted.*

§8.2 All drainage, access and utility easements shown on the subdivision plat are hereby reserved to Declarant. A release by Declarant to any Lot Owner of any easement so reserved shall operate as a complete release to such Lot and no other party shall be entitled to assert any claim or right to the use of such easement. Declarant may convey to the Association title to the property included in such drainage, access and utility easements.

§8.3 The Declarant reserves the right to amend this Declaration at any time within two (2) years after recordation of this Declaration without the consent of any other Owner. Otherwise, these restrictions, conditions, covenants, and limitations shall continue in force until October 1, 2030, at which time they will expire. Nevertheless, upon the expiration of this term and any subsequent term, they shall be automatically renewed for ten (10) year periods unless terminated or amended by the Owners (with each Lot having one (1) vote) of at least 75% of the Lots.

§8.4 Any water drainage or detention system traversing or abutting any Lot shall be maintained by the Owner of the Lot.

§8.5 The Declarant shall have the absolute and unqualified right (but shall not be obligated) to bring within the terms of this declaration additional property, so long as the property is adjacent to the property shown on the subdivision plat or on later plats brought within the declaration. Such additions shall be made by recording a supplemental declaration in the Clerk's Office of the Circuit Court of Rockingham County, Virginia, indicating the additional property which shall be subject to this declaration. Property added to this declaration shall be treated for all purposes as if it had been shown on the original subdivision plat, but the added property may be subject to other restrictions in addition to this declaration.

§8.6 The Declarant may appoint a successor Declarant by an instrument recorded in the Clerk's Office of the Circuit Court of Rockingham County, Virginia. The sale of Lots to a successor Declarant shall not be deemed a sale for purposes of § 3.1 (a).

§8.7 The Declarant, the ACC and the Association shall not be liable to any Owner or other person on account of any claim, liability, damage, or expense suffered or incurred by or threatened against an Owner or other person arising out of or in any way related to the subject matter of any reviews, acceptances, inspections, permissions, consents, or required approvals which must be obtained from the Declarant, the ACC or the Association, whether given, granted, or withheld.

§8.8 If any part of any provision of this Declaration shall be invalid or unenforceable under applicable law, such part shall be ineffective to the extent of such invalidity or unenforceability only, without in any way affecting the remaining parts of such provisions or the remaining provisions of this declaration.

§8.9 The Trustee and Beneficiary join herein to evidence their consents to this Declaration and to the Owners Consent and Dedication described in paragraph A of the Preamble.

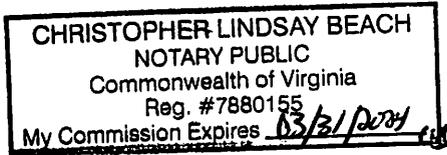
ARTICLE 9

Validity and Enforcement

§9.1 The failure on the part of the Declarant or any Owner to enforce any restrictions contained in this instrument shall not be deemed a waiver of the right to do so thereafter for the same breach or one occurring prior or subsequent thereto.

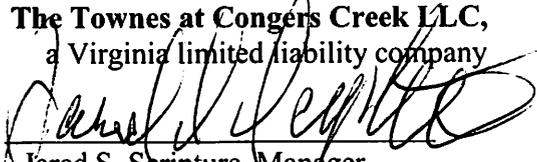
§9.2 Enforcement of this instrument shall be by proceedings instituted by any Owner at law or in equity against any persons or other entities violating or attempting to violate any covenant, either to restrain violation or to recover damages therefor. In any such proceeding, an Owner found to have breached any covenant contained in this instrument shall be responsible for the cost of the enforcement proceeding, including the prevailing party's attorney's fees.

WITNESS the following signatures.



The Townes at Congers Creek LLC,
a Virginia limited liability company

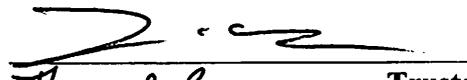
By:


Jared S. Scripture, Manager

The Bank of The James, a Banking
corporation

By:


its: AVP

 (SEAL)
Thomas D. Rice, Trustee

STATE OF VIRGINIA

CITY/COUNTY OF Harrisonburg, to-wit:

3rd The foregoing instrument was acknowledged before me in the aforesaid jurisdiction this day of February, 2022, by Jared S. Scripture, Manager of The Townes at Congers Creek LLC, a Virginia limited liability company, on behalf of the company.

My commission expires: 03/31/2024.

Registration No. 7880155.

[Signature]

Notary Public

STATE OF VIRGINIA

CITY/COUNTY OF Harrisonburg, to-wit:

3rd The foregoing instrument was acknowledged before me in the aforesaid jurisdiction this day of February, 2022, by Thomas Rea, Trustee.

My commission expires: 03/31/2024.

Registration No. 7880155.

[Signature]

Notary Public

STATE OF VIRGINIA

CITY/COUNTY OF Harrisonburg, to-wit:

3rd The foregoing instrument was acknowledged before me in the aforesaid jurisdiction this day of February, 2022, by Nancy Smith its AVP of The Bank of James, a banking corporation, on behalf of the corporation.

My commission expires: 03/31/2021.

Registration No. 788015.

[Signature]

Notary Public