

027460

BK 2781 PG 1673

DECLARATION OF CONDOMINIUM

OF

KEMPSVILLE GREENS CONDOMINIUM

DECLARATION OF CONDOMINIUM
OF
KEMPSVILLE GREENS CONDOMINIUM

INDEPENDENT DEVELOPERS, LTD. (the "Declarant"), a Virginia corporation, does hereby declare:

1. Submission of Property. The Declarant hereby submits that certain parcel of real property located in the City of Virginia Beach, Virginia, and described on Exhibit A attached hereto and incorporated herein by this reference, together with the improvements now or hereafter erected thereon and all the rights, privileges, and appurtenances thereunto belonging, to the provisions of the Condominium Act of the Commonwealth of Virginia, Title 55, Chapter 4.2, Code of Virginia, 1950, as amended, in order to create a plan of condominium ownership for the Property. The Declarant is the fee simple owner of the Property, and upon recordation of this Declaration, the Property shall be known as the Kempsville Greens Condominium. The Units comprising the Condominium are described on the Condominium Plat and Plans recorded simultaneously herewith and incorporated in this Declaration as Exhibit B and made a part hereof by this reference.

2. Definitions. The terms used in this Declaration and in the Bylaws for the Condominium shall have the following meanings:

(a) "Board of Directors" means the persons elected as such in accordance with the Bylaws, who shall be the executive organ and governing body of the Unit Owners' Association.

(b) "Bylaws" mean the Bylaws of Kempsville Greens Condominium recorded simultaneously herewith and any amendments thereto duly adopted, executed and recorded.

(c) "Common Elements" mean all portions of the Condominium other than the Units.

(d) "Common Expenses" mean and include:

(i) All expenditures lawfully made or incurred by or on behalf of the Association, together with all funds lawfully assessed for the creation and/or maintenance of reserves pursuant to the provisions of the Condominium Instruments;

(ii) Expenses declared Common Expenses by the provisions of the Condominium Act, this Declaration, the By-laws, or the Association.

(e) "Condominium" means the Kempsville Greens Condominium that is established by this Declaration.

(f) "Condominium Act" or "Act" means Chapter 4.2, Title 55, Code of Virginia, 1950, as amended.

(g) "Condominium Instruments" or "Condominium Documents" is a collective term referring to the Declaration, the Bylaws, the Condominium Plat and Plans, the exhibits and schedules recorded therewith, and any amendments thereto which are duly adopted, executed and recorded.

(h) "Condominium Plat and Plans" means the condominium plat of the Property and the plans depicting the individual Units on Exhibit B, and any amendments thereto duly adopted, executed and recorded.

(i) "Condominium Unit" or "Unit" means a Unit together with the undivided interest in the Common Elements appertaining to that Unit.

(j) "Declarant" means Independent Developers, Ltd., a Virginia corporation, and its successors and assigns.

(k) "Declaration" means this Declaration of Condominium of Kempsville Greens Condominium.

(l) "Land" means the real property described on Exhibit A to this Declaration.

(m) "Limited Common Element" means a portion of the Common Elements reserved for the exclusive use of one or more, but less than all, of the Units, as defined in paragraph 6(b).

(n) "Majority of the Owners" means the owners of Units to which more than fifty (50) percent of the votes in the Association appertain. Any specified percentage of the Unit Owners means the owners of such number of Units to which the specified percentage of the votes in the Association appertains.

(o) "Managing Agent" means the managing agent, if any, employed by the Association to manage such portion of the business and affairs of the Condominium and to perform such duties and services as the Board of Directors shall authorize in conformity with the Act, this Declaration and the Bylaws.

(p) "Owner" or "Unit Owner" means any natural person, corporation, partnership, association, trust, or other entity capable of holding title to real property, or any combination thereof, who or which owns one or more Units in the Condominium. No mortgagee, as such, shall be deemed a Unit Owner.

(q) "Percentage Interest" means the number assigned to each Unit which establishes each Unit's (i) undivided interest in the Common Elements, (ii) proportionate share of the Common Expenses, and (iii) number of votes in the Unit Owner's Association. Each Unit in the Condominium is assigned an equal, undivided interest in the Common Elements.

(r) "Property" means the Land described in Exhibit A to this Declaration and the improvements thereon and to be erected thereon and all easements, privileges, rights and appurtenances thereunto belonging, and all articles of personal property on the Land and improvements intended for use with or as a part of the Condominium. The term "Property" does not include the personal property of any Unit Owner or any improvements, fixtures or equipment constructed or installed in a Unit by a Unit Owner.

(s) "Rules and Regulations" means those rules and regulations adopted from time to time by the Board of Directors for the administration, use, regulation and enjoyment of the Condominium provided that such Rules and Regulations are not in conflict with the Act, this Declaration or the Bylaws.

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

(u) "Unit Owners' Association" or "Association" means the Kempsville Greens Condominium Unit Owners' Association, whose members shall consist of all the Unit Owners in the Condominium, and which, under the Bylaws, is the organ of self government of the Condominium.

3. Name and Location of the Condominium. The name of the Condominium is Kempsville Greens Condominium. The Condominium is located at 4848 Kempsville Greens Parkway, Virginia Beach, Virginia 23462.

4. Units. The separate identifying number of each Unit is shown on Exhibit B. Each Unit in the Condominium is hereby allocated an equal, undivided interest in the Common Elements, and the number of votes in the Unit Owners' Association, the undivided interest in the Common Elements, and the rights to

common profits and liability for Common Expenses allocated and appurtenant to each Unit and vested in each Unit Owner shall be equal. The Percentage Interest in the Common Elements may not be altered or changed except by the unanimous agreement of all the Unit Owners. Any purported transfer, encumbrance or other disposition of the undivided interest in the Common Elements allocated to a Unit without the Unit to which it is appurtenant shall be void. The undivided interest in the Common Elements, and the right to common profits and liability for Common Expenses allocated and appurtenant to each Unit, shall at all times be in proportion to the number of votes in the Unit Owners' Association appertaining to that Unit.

5. Dimensions of Units.

(a) The location of the Units, the identifying number of the Units, and the size and dimensions of the Units are shown on Exhibit B, except to the extent otherwise provided herein.

(b) The Units include (1) the space enclosed by the unfinished inner surfaces of perimeter walls of the Units, by the unfinished surfaces of interior walls necessary for the support, upkeep and safety of the building, and by the unfinished surfaces of ceilings and floors in the Units, including vents, doors, windows, and other structural components regarded as enclosures of space; (2) all nonstructural interior dividing walls and partitions (excluding the Common Elements); and (3) the undecorated inner surfaces of all interior or perimeter structural walls, floors, and ceilings.

(c) If any chutes, flues, ducts, conduits, wires, or any other apparatus lies partially within and partially outside of the designated boundaries of a Unit, any portions thereof serving only that Unit shall be deemed a part of that Unit, while any portions thereof serving more than one Unit or any portion of the Common Elements shall be deemed a part of the Common Elements.

(d) Subject to the provisions of the preceding paragraphs, all space, interior partitions, and other fixtures and improvements within the boundaries of a Unit shall be deemed a part of that Unit.

6. Common Elements.

(a) Common Elements. Each Unit Owner shall own his Unit in fee simple absolute, together with an undivided fee simple interest, as a tenant-in-common with the other Unit

Owners, in the Common Elements. It is anticipated that all of the Common Elements shall be substantially completed at the time of conveyance of the first Unit. The Common Elements consist of the entire Property other than the Units and the individual personal property of Unit Owners and include, without limitation, the following:

- (1) The Land described in Exhibit A;
- (2) All foundations, columns, girders, beams, supports and exterior of the building;
- (3) All landscaped areas, fences, recreational areas, if any, walkways, and similar improvements;
- (4) All other recreational or community facilities, if any, parking areas (subject to the rights of Unit Owners in those parking spaces assigned to the Units), driveway areas, and private streets;
- (5) All pumps, pipes, wires, cables, conduits and other apparatus relating to the water distribution, power, light, telephone, gas, sewer, and plumbing systems and any other utility not within an easement dedicated to the City of Virginia Beach, Virginia, a public utility or any other person or entity;
- (6) All apparatus and installations existing on the Property for common use or necessary or convenient to the existence, or the common maintenance or safety of, the Property.

(b) Limited Common Elements. The Limited Common Elements consist of those Common Elements which are reserved for the use of one or more Units, to the exclusion of all other Units, either by the Condominium Documents or by action of the Board of Directors and shall include, without limitation, those patios, balconies, and parking spaces designated as Limited Common Elements in the Condominium Documents and which shall be appurtenant to the Unit exclusively serviced thereby. Exhibit C attached hereto and incorporated herein by this reference sets forth the Limited Common Element Parking Spaces that have been assigned to a particular Unit in the Condominium.

(c) Vote in Association. Each Unit shall have an undivided interest in the Common Elements and a vote in all matters coming before the Association equal to the Percentage Interest in the Common Elements appertaining to that Unit.

7. Insurance.(a) Insurance Coverage.

(1) The Board of Directors shall be required to obtain and maintain the following insurance: (A) fire insurance with extended coverage, including standard "all-risk", vandalism, malicious mischief, and windstorm endorsements and insuring the entire Property in an amount equal to one hundred percent (100%) of replacement cost, without deduction for depreciation, and also including the following endorsements (or equivalent): (i) "no control" -- to the effect that insurance coverage shall not be prejudiced by any act or neglect of (a) any Unit Owner or his family members, agents, employees, lessees, licensees, or invitees, when such act or neglect is not within the control of the insured, or (b) the Unit Owners collectively, nor by any failure of the Association, or the Unit Owners collectively, to comply with any warranty or condition with regard to any portion of the Condominium over which the Association, or the Unit Owners collectively, have no control; (ii) "demolition costs"; (iii) "contingent liability from operation of building laws or code"; (iv) "increased cost of construction" or "condominium replacement cost"; (v) "agreed amount" or elimination of co-insurance clause; and (vi) steam boiler and machinery coverage; (B) comprehensive general public liability insurance as set forth below; (C) workmen's compensation insurance if and to the extent necessary to meet the requirements of law; (D) if the Property is located in a Flood Hazard Area as defined by an official Flood Hazard Boundary Map published pursuant to the Flood Disaster Protection Act of 1973 (the "Insurance Act") or in an area not covered by such a map but within or contiguous to any part of a Flood Prone Area, as defined by the applicable Flood Prone Area Map published by the U.S. Geological Survey and the sale of flood insurance has been made available under the Insurance Act, a "blanket" policy of flood insurance on the Property in an amount which is the maximum amount of insurance available under the Insurance Act; and (E) such other insurance as the Board of Directors may determine or as may be requested from time to time by a majority of the Unit Owners.

(2) The Board of Directors shall also be required to obtain and maintain, comprehensive general public liability and property damage insurance in such amounts as the Board of Directors may determine from time to time but in no event less than \$1,000,000.00 for bodily injury and property damage for any single occurrence, insuring each member of the Board of Directors, the Managing Agent, the Association, its agents and employees, and each Unit Owner against any liability

to the public or to the Unit Owners arising out of, or incident to, the ownership, operation, maintenance and/or use of the Common Elements. Such insurance shall also cover any legal liability that results from law suits related to employment contracts to which the Association is a party. Such insurance shall be issued on a comprehensive liability basis and shall contain a "severability of interest" endorsement which shall preclude the insurer from denying the claim of a Unit Owner because of negligent acts of the Association, the Board of Directors, the Managing Agent or other Unit Owners. It shall be the responsibility of each Unit Owner to obtain, at his expense, liability insurance with respect to his ownership and/or use of his Unit, and the Board of Directors shall not be responsible for obtaining such insurance.

(3) Evidence of physical damage insurance coverage, together with proof of payment of premiums, shall be delivered to all mortgagees of Units at least ten (10) days prior to expiration of the then current policies. Prior to obtaining any policy of fire insurance or any renewal thereof, the Board of Directors shall obtain an appraisal from an insurance company, or such other source as the Board of Directors may determine, of the full replacement value of the Property, without deduction for depreciation, for the purpose of determining the amount of physical damage insurance to be effected pursuant to this subparagraph.

(b) Separate Insurance. Each Unit Owner shall have the right, at his expense, to obtain for his benefit additional insurance for his Unit and upon his personal property, provided that no Unit Owner shall be entitled to exercise his right to acquire or maintain such additional insurance coverage so as to decrease the amount which the Board of Directors, on behalf of all Unit Owners, may realize under any insurance policy which it may have in force on the Property at any time or to cause any insurance coverage maintained by the Board of Directors to be brought into contribution with such additional insurance coverage obtained by the Unit Owner. All such additional policies shall contain waivers of subrogation. Any Unit Owner who obtains individual insurance policies covering any portion of the Property, other than personal property belonging to such Unit Owner, shall file a copy of such individual policy or policies with the Board of Directors within thirty (30) days after the purchase of such insurance.

(c) Authority to Purchase. Except as otherwise provided in subparagraph (b) of this Paragraph 7, all insurance policies relating to the Property shall be purchased by the Board of Directors, naming as insured the Association for the

use and benefit of the Unit Owners, which insurance shall be governed by the following provisions:

(1) The Board of Directors shall obtain and maintain a single master policy covering physical damage for the entire Property under which the insurance company will issue to each Unit Owner a certificate or sub-policy specifying the portion of the master policy allocated to the Unit owned by each Unit Owner and his Percentage Interest in the Common Elements. The master policy shall also provide that (a) each Unit Owner shall have the right to request an increase in the coverage allocated to his Unit by reason of improvements made solely to his Unit, but any additional premium resulting from such additional coverage shall be billed by the insurance company directly to, and shall be paid by, such Unit Owner; and (b) each Unit Owner shall have the right to obtain, at his expense, an endorsement to the master policy insuring him for the cost of emergency shelter in the event of damage rendering his Unit uninhabitable.

(2) In addition, the Board of Directors shall obtain and maintain a master policy covering physical damage that will provide the following:

(i) That the insurer waives its rights of subrogation to any claims against the Board of Directors, the officers of the Association, the Managing Agent, the Unit Owners and their respective agents, employees, guests and, in the case of the Unit Owners, the members of their households;

(ii) That the master policy cannot be cancelled, invalidated, or suspended on account of the conduct of any Unit Owner, officer, member of the Board of Directors, Managing Agent, or employee, without a prior demand in writing that the Board of Directors or the Managing Agent cure the defect;

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

(iv) That until the expiration of ten (10) days after the insurer gives notice in writing to the mortgagee of any Unit, the mortgagee's insurance coverage will not be affected or jeopardized by any act or conduct of the Unit Owner of such Unit, the other Unit Owners, the Board of Directors, or any of their agents, employees or household members, nor cancelled for nonpayment of premium;

(v) That the master policy coverage may not be cancelled or reduced without at least ten (10) days' prior written notice to the Board of Directors and all first mortgagees of the Units;

(vi) That any insurance trust agreement will be recognized and that the net proceeds of such policies, if Twenty-five Thousand Dollars (\$25,000.00) or less for any single loss, shall be paid to the Board of Directors, and if more than Twenty-five Thousand Dollars (\$25,000.00) shall be paid to the Insurance Trustee designated in subparagraph (d) of this Paragraph 7;

(vii) That the master policy shall contain the standard mortgagee clause, customarily used by private institutional investors in the area in which the Property is located, which shall be endorsed to provide that the loss, if any, thereunder shall be payable to the Association for the use and benefit of mortgagees as their interest may appear subject, however, to the loss payment and adjustment provisions in favor of the Board of Directors and the Insurance Trustee contained in subparagraphs (d) and (e) of this Paragraph 7;

(viii) That the insurance coverage obtained and maintained by the Board of Directors hereunder shall not be brought into contribution with insurance purchased by Unit Owners or their mortgagees, unless otherwise required by Virginia or other applicable law; and

(ix) That unless a higher maximum amount is required by state law, the maximum deductible amount shall be the lesser of \$10,000.00 or one (1) percent of the face amount of the policy.

(3) All policies of insurance shall be written with a company licensed or authorized by law to do business in the Commonwealth of Virginia and holding a financial rating of "BBB+" or better by Best's Insurance Reports.

(d) Insurance Trustee.

(1) The Insurance Trustee shall be a bank, trust company, savings and loan association, or insurance company, designated by the Board of Directors, and all parties beneficially interested in such insurance coverage shall be bound by the provisions of any agreement between the Insurance Trustee and the Association. All policies of insurance and endorsements thereto shall be deposited with the Insurance Trustee. At the time of the deposit of such policies and

endorsements the Insurance Trustee shall acknowledge that the policies and any proceeds thereof will be held in accordance with the terms of these insurance provisions.

(2) The Insurance Trustee shall not be liable for payment of premiums, the renewal of the policies, the sufficiency of coverage, the form or contents of the policies, the correctness of any amount received by it on account of the proceeds of any insurance policy, nor for the failure to collect any insurance proceeds. The sole duty of the Insurance Trustee shall be to receive such proceeds as are paid to it, to hold the same in trust for the purposes paid to it and for the purposes elsewhere stated in this Declaration and the Bylaws, for the benefit of the Unit Owners and their respective mortgagees.

(e) Board of Directors as Agent. The Board of Directors is hereby irrevocably appointed the agent for each Unit Owner and for each mortgagee of a Unit and for each owner of any other interest in the Property to adjust all claims arising under insurance policies and to execute and deliver releases upon the payment of claims.

(f) Premiums. Premiums upon all insurance policies purchased by the Board of Directors for the Association shall be deemed to be a Common Expense.

(g) Notice to Unit Owners and First Mortgagees. When any policy of insurance has been obtained on behalf of the Association, written notice thereof and of any subsequent reduction or termination thereof shall be promptly furnished by the Secretary of the Association to each Unit Owner and to each first mortgagee of a Unit who shall have requested the same. Such notice (i) if to Unit Owners, shall be sent by United States mail, addressed to their respective Units or to such other address as any of them may have designated to the Secretary or such notice may be hand-delivered by the Secretary, provided the Secretary obtains a receipt of acceptance of such notice from the Unit Owners to whom hand delivery is made, and (ii) if to a first mortgagee, shall be sent to the address which such first mortgagee shall have designated in writing to the Secretary.

8. Units Subject to Easements for Ingress and Egress Through, and Use of, Common Elements. Each Unit Owner shall have an easement in common with all other Unit Owners for ingress and egress through, and use and enjoyment of all Common Elements. The Property shall be subject to all covenants, limitations and restrictions of record and to the following easements and conditions:

(a) Easement For Ingress and Egress. The Units and the Common Elements shall be subject to an easement for ingress and egress through, and use and enjoyment of, all Common Elements by persons lawfully using or entitled to use same, including, without limitation, officers, employees, and agents of public utility companies in the performance of their duties.

(b) Pipes, Ducts, Cables, Wires, etc. Each Unit Owner shall have an easement in common with all other Unit Owners to use all pipes, wires, ducts, cables, conduits, public utility lines and other Common Elements located in any of the other Units and serving his Unit. Each Unit shall be subject to an easement in favor of all other Unit Owners to use the pipes, ducts, cables, wires, conduits, public utility lines and other Common Elements serving such other Units and located in such Unit.

(c) Water, Sewer and Gas Lines. The Declarant expressly reserves the right to lay water, sanitary and storm sewer, electricity, gas and telephone lines that may be hereafter placed on the Property and expressly reserves the easements therefor.

(d) Easement for Repair. The Declarant and the Board of Directors shall have a right of access to each Unit to inspect the same, to remove violations therefrom, and to maintain, repair or replace the Common Elements contained therein or elsewhere on the Property.

(e) Easement to Facilitate Sales. The Declarant, and its duly authorized agents, representatives and employees, shall have the right, exercisable in the sole discretion of the Declarant, to use any and all unsold Units as sales offices and/or model units, regardless of the location of same, and to place such signs upon the Common Elements as may be reasonably necessary to advertise the sale of such Units. Such Units shall be Units within the meaning of this Declaration and the Act, and not part of the Common Elements. The Declarant shall have the absolute right to convey or lease such Units.

(f) Easement for Improvements. The Declarant shall have a transferable easement over, under and across the Common Elements and any Unit for the purpose of making improvements on the Land pursuant to the provisions of the Condominium Instruments and the Act, and for the purpose of doing all things reasonably necessary and proper in connection therewith.

(g) Easement for Installation and Maintenance of Utilities. Prior to the completion of construction of

improvements, the Declarant and its successors and assigns shall have the unqualified right to grant easements for installation and maintenance of drainage and utility facilities over, under and across any Common Elements.

(h) Easement for Support. Every Unit shall be burdened with an easement of structural support for the benefit of all other Units and the Common Elements.

To the extent that damage is inflicted on any part of the Condominium by any person utilizing, pursuant to authorization from the Declarant, the easements created above, the person causing such damage shall be liable for the prompt repair thereof.

9. Units Subject to Declaration, Bylaws and Rules and Regulations.

(a) All present and future Unit Owners, and their family members, guests, agents, employees, lessees, licensees and any other person who shall use or occupy a Unit shall be subject to, and shall comply with, the provisions of this Declaration, the Bylaws, and the Rules and Regulations, as they may be amended from time to time.

(b) The acceptance of a deed of conveyance or the entering into of a lease or the occupancy of any Unit shall constitute an agreement that the provisions of this Declaration, the Bylaws, and the Rules and Regulations, as they may be amended from time to time, are accepted and ratified by such Unit Owner and all such other persons, and all of such provisions shall be deemed and taken to be enforceable equitable servitudes and covenants running with the land and shall bind any person having at any time any interest or estate in such Unit or the use thereof, as though such provisions were recited and stipulated at length in each and every deed of conveyance or lease thereof.

(c) If the Unit Owners' Association or any Unit Owner or other person shall fail or refuse to comply with any applicable law or regulation relating to the Condominium, any provision of the Condominium Instruments, or any of the Rules and Regulations, then the Declarant, the Unit Owners' Association, and each of the Unit Owners shall have standing to bring a suit or action in any court of competent jurisdiction (i) to obtain injunctive relief to enforce compliance with the Condominium Instruments, the Rules and Regulations, and/or any such applicable laws or regulations and/or (ii) to recover damages arising out of any such failure or refusal to comply with the

Condominium Instruments, the Rules and Regulations and/or any such applicable laws or regulations. If any such suit or action is brought, each party who substantially prevails in any such suit or action shall be entitled to payment on demand from any party to such suit or action who shall not substantially prevail in such suit or action all costs and expenses, including, but not limited to, attorney's fees and court costs, suffered or incurred in such suit or action by such prevailing party and shall be entitled to seek and receive in any such suit or action a joint and several judgment against each such non-prevailing party for all such costs and expenses suffered or incurred in such suit or action by the prevailing party.

10. Declarant's Right to Lease or Sell Units. The Declarant shall own in fee simple each Unit which has not been conveyed or otherwise transferred to another person. The Declarant shall have the right to sell or lease each such Unit owned by the Declarant in any manner which the Declarant in its sole discretion shall deem appropriate.

11. Warranty.

(a) Warranty against Structural Defects. The Declarant warrants that each Unit will be free from Structural Defects, as hereinafter defined, for a period of two (2) years from the date on which the Unit is first conveyed by the Declarant to a bona fide purchaser. The Declarant also warrants that as of the date on which a Unit is first conveyed by the Declarant to a bona fide purchaser, the Unit will be fit for habitation and will have been constructed in a workmanlike manner so as to pass without objection in the trade. The Declarant further warrants that each of the Common Elements will be free from Structural Defects for a period of two (2) years from the later of the date of completion of such Common Elements or the date of conveyance of the first Unit. The phrase "Structural Defects" means those defects in components of the Condominium constituting any Unit or Common Element which reduce the stability or safety of the structure below accepted standards or restrict the normal intended use of all or part of the structure and which require repair, renovation, restoration or replacement. The Declarant shall not be responsible for any items of maintenance relating to the Units or the Common Elements. THE DECLARANT MAKES NO OTHER EXPRESS OR IMPLIED WARRANTY OR REPRESENTATION INCLUDING, BUT NOT LIMITED TO, A WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE IN CONNECTION WITH ANY UNIT, THE COMMON ELEMENTS, OR ANY GOODS PROVIDED BY THE DECLARANT AND CONTAINED WITHIN ANY UNIT OR THE COMMON ELEMENTS, INCLUDING, BUT NOT LIMITED TO, STOVES, RANGES, REFRIGERATORS AND DISHWASHERS, EXCEPT AS EXPRESSLY SET FORTH IN THIS DECLARATION.

(b) Limitation of Liability. Notwithstanding anything in this section or in the Condominium Instruments to the contrary, the sole liability of the Declarant for any Structural Defects in any Unit or the Common Elements shall be to repair promptly any such Structural Defects of which the Declarant has received written notice from the Unit Owner with respect to any such Structural Defects in a Unit covered by such warranty, or from the Unit Owners' Association with respect to any portion of the Common Elements covered by such warranty, as the case may be, within the respective time periods set forth above.

12. Indemnity.

(a) The Unit Owners' Association shall indemnify and hold the Declarant harmless against all claims, actions, suits, judgments, losses, costs and expenses of every kind or nature, including, but not limited to, attorney's fees and court costs, suffered or incurred by the Declarant by reason of the actual or alleged non-observance or non-performance by the Unit Owners' Association or its Board of Directors or any of its directors, officers or agents after the period of Declarant control of any provision of the Condominium Instruments or of any law, ordinance, rule or regulation now or hereafter promulgated by any governmental agency or authority and applicable to all or any part of the Property, the Condominium, or the use thereof.

(b) The Unit Owners' Association shall indemnify and hold the Declarant harmless against all claims, actions, suits, judgments, losses, costs and expenses of every kind or nature, including, but not limited to, attorney's fees and court costs, (except for claims, actions, suits, judgments, losses, costs and expenses resulting solely from a breach of a legal duty of the Declarant, including, but not limited to, any breach by the Declarant of the warranty contained in Paragraph 11 hereof) suffered or incurred by the Declarant and arising out of any actual or alleged transaction, event or occurrence involving the use or occupancy of any Unit or the Common Elements by the Unit Owners' Association, by any Unit Owner, by any person claiming by, through or under any Unit Owner or the Unit Owners' Association, by any agent, employee, lessee, licensee, invitee, or family member of any Unit Owner, or by any agent, employee, lessee, licensee, or invitee of the Unit Owners' Association.

13. Amendment of Declaration or Termination of Condominium.

(a) If there is no Unit Owner other than the

Declarant, the Declarant may unilaterally terminate the Condominium or amend the Condominium Documents, and any such termination or amendment shall become effective upon the recordation thereof if the same has been executed by the Declarant.

(b) If there is any Unit Owner other than the Declarant, then the Condominium shall be terminated only by the agreement of Unit Owners to which four-fifths (4/5ths) of the votes in the Association appertain.

(c) If there is any Unit Owner other than the Declarant, then the Condominium Documents shall be amended only by the agreement of Unit Owners to which two-thirds (2/3rds) of the votes in the Association appertain.

14. No Revocation or Partition. The Common Elements shall remain undivided and no Unit Owner or any other person shall bring any action for partition or division thereof, nor shall the Common Elements be abandoned by act or omission, unless the condominium regime is terminated in accordance with the provisions of Paragraphs 13 and 15 hereof.

15. Consent of First Mortgagees. Notwithstanding any other provision of this Declaration, the Bylaws or the Rules and Regulations, unless first mortgagees holding first mortgages on Units to which at least two-thirds (2/3rds) of the Percentage Interests in the Common Elements appertain have given their prior written approval, the Association and the Board of Directors shall not be entitled: (a) by act or omission to seek to abandon or terminate the condominium regime; (b) to change the prorata ownership interest or obligations of any Unit for purposes of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards; (c) by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Elements (the granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Elements by the Condominium not being deemed to be a transfer within the meaning of this clause); (d) modify the method of determining and collecting assessments or allocating distributions of hazard insurance proceeds or condemnation awards; or (e) use hazard insurance proceeds for losses to the Property (whether to Units or to Common Elements) for other than the repair, replacement or reconstruction of such improvements, except as provided by statute in case of substantial loss to the Units and/or Common Elements.

16. Priority of First Mortgagees. No provision of this Declaration, the Bylaws, or the Rules and Regulations shall be

construed over the rights of first mortgagees of the Units pursuant to their first mortgages in the case of the distribution to Unit Owners of insurance proceeds or condemnation awards for losses to or a taking of Units or the Common Elements or any portions or combinations thereof.

17. Provisions for Benefit of Mortgagees. All provisions of this Declaration and the Exhibits hereto requiring the Association to maintain Common Elements and portions of a Unit, to collect assessments, to maintain insurance, and to make any repairs, and all restrictions in this Declaration and any Exhibits hereto are intended for the benefit of, and may be enforced by, either a Unit Owner, the Association, or any Mortgagee holding a mortgage constituting a first lien on any Unit.

18. Changes by Declarant. Nothing contained in this Declaration shall be deemed to impose upon the Declarant or its successors and assigns any obligation of any nature to build, construct or provide any additions to the condominium regime hereby created.

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

20. Gender. The use of the masculine gender in this Declaration shall be deemed to refer to the feminine gender and the use of the singular shall be deemed to refer to the plural, and vice versa, whenever the context so requires.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed this 21st day of October, 1988.

INDEPENDENT DEVELOPERS, LTD., a
Virginia corporation

By William R. Gostine
Title: President

COMMONWEALTH OF VIRGINIA
CITY/COUNTY OF Norfolk :

The foregoing instrument was acknowledged before me this
21st day of October, 1988, by William R. Epstein
President of Independent Developers, Ltd., a
Virginia corporation, on behalf of the corporation.

Barbara B. Hoeking
Notary Public

My Commission Expires: January 6, 1989

Exhibit A

Land Submitted to a Regime of Condominium Ownership

ALL THAT certain lot, piece or parcel of land together with the building and improvements thereon and the privileges and appurtenances thereunto belonging, lying, situate, and being in the City of Virginia Beach, Virginia and commencing at the northeastern corner of the intersection of Princess Anne Road and Kempsville Greens Parkway and thence 812.60' more or less along the northern right of way of Kempsville Greens Parkway to the point of beginning so marked by an old pin in the northern right of way of Kempsville Greens Parkway; thence from the said point of beginning N 17°23'57" W 180.00' to a point; thence N 49°30'00" E 239.38' to a point; thence S 34°56'46" E 119.66' to a point; thence 24.00' along a curve to the left having radius of 1109.10' to a point; thence S 38°24'05" E 37.69' to a point; thence S 51°00'43" W 21.48' to a point; thence S 39°45'11" E 41.50' to a point; thence 84.46' along a curve to the left having radius of 1030.00' to a point; thence 172.07' along a curve to the right having radius of 320.00' to the said point of beginning.

IT BEING the same property identified and described as "PARCEL B-1, 1.140 ACRES" on that certain plat entitled "SUBDIVISION OF PARCEL B, KEMPSVILLE GREENS, SECTION ONE (M.B. 188, P. 13), KEMPSVILLE BOROUGH, VIRGINIA BEACH, VIRGINIA, SCALE: 1"=40', APRIL, 1987" as prepared by John E. Sirine and Associates, Ltd., finally revised May 19, 1987, and recorded in the Clerk's Office of the Circuit Court of the City of Virginia Beach, Virginia in Deed Book 2657, at Page 0723.

Exhibit B

The original Condominium Plat and Plans of Kempsville Greens Condominium are recorded simultaneously herewith in the Clerk's Office of the Circuit Court of the City of Virginia Beach, Virginia in Deed Book 2781, at Page 1694. The Condominium Plat and Plans are expressly incorporated in and made a part of this Exhibit B, and the Declaration of Condominium of Kempsville Greens Condominium to which it is attached, by this reference.

Exhibit C

Assignment of Limited Common Element Parking Spaces

<u>Unit</u>	<u>Parking Space(s)</u>
101	4 and 33
102	9
103	30
104	32
105	7
106	20 and 23
201	8 and 34
202	10
203	14
204	29
205	35
206	19 and 24
301	12 and 31
302	11
303	5
304	6
305	21
306	18 and 25
401	15 and 28
402	13
403	26
404	22
405	17
406	16 and 27

Parking Spaces Available for Guest Parking

1, 2, 3, 36, 37, 38, 39, and 40.

VIRGINIA: In the Clerk's Office of the Circuit Court of Virginia Beach 2 day
of Nov 19 88 at 9:57 this instrument was received and upon the
certificate of acknowledgment thereto annexed, admitted to record. The tax imposed by §58.1-802 of the Code,
has been paid, in the amount of \$

TESTE: J. CURTIS FRUIT, Clerk

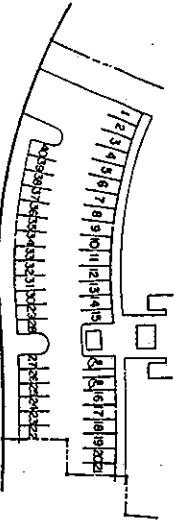
By: J. Bonacc D. C.

C.C. 21 REV. 3/85

THE UNDESIGNED CERTIFIES THAT THIS PLAT AND THE WORKING IN THE CONDOMINIUM DECLARATION CONSTITUTE A TRUE AND ACCURATE REPRESENTATION OF THE IMPROVEMENTS DESCRIBED HEREON AND THERE CAN BE DETERMINED THEREFROM THE IDENTIFY, LOCUS OF EACH AND EVERY OF THE COMMON ELEMENTS, PORTION OF THE CODE OF VIRGINIA, SECTION 55-79.39(A) AND THAT ALL UNITS OR PORTIONS THEREOF AND ALL COMMON FACILITIES HAVE BEEN SUBSTANTIALLY COMPLETED.

SIGNED: *Paul E. Gannett*
PAUL E. GANNETT, L.L.S.

- NOTES:
1. THE PORTION OF THE IMPROVEMENTS DESIGNATED AS "UNIT AREA" IS SUBJECT TO THE DEFINITION OF THE TERM "UNIT" IN THE DECLARATION.
 2. ALL AREAS OUTSIDE THE BOUNDARIES OF EACH UNIT ARE COMMON ELEMENTS OR LIMITED COMMON ELEMENTS.
 3. AREAS SHOWN WITH [] DESIGNATE PARKING SPACES WHICH ARE LIMITED COMMON ELEMENTS THAT HAVE BEEN ASSIGNED TO AN INDIVIDUAL UNIT.
 4. SUBDIVISION OF PARCEL B, KEMPVILLE GREENS, SECTION ONE IS RECORDED IN DEED BOOK 2857, AT PAGE 723.

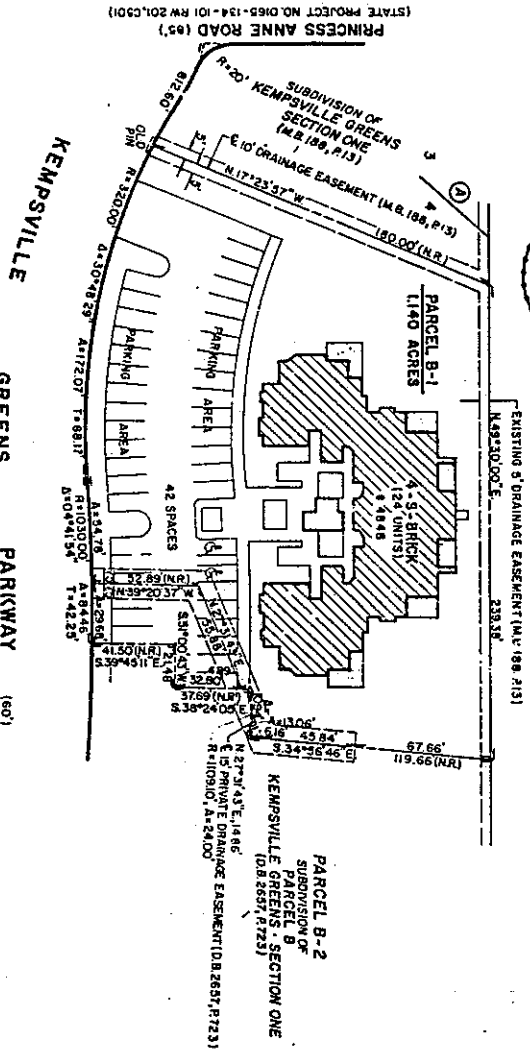


PARKING SPACE DESIGNATIONS
SCALE: 1"=50'



NOW OR FORMERLY
KEMPVILLE PROPERTIES, LTD.
(08.8464, P.268)(08.2366, P.561)(08.176, P.40)

PARCEL 2



- LEGEND
- UNIT AREA
 - COMMON ELEMENTS
 - LIMITED COMMON ELEMENTS
 - LIMIT OF AREA OR ELEMENTS
 - PROPERTY LINE BOUNDARY

VIRGINIA,
IN THE CLERK'S OFFICE OF THE CIRCUIT COURT OF VIRGINIA, IN AND FOR THE COUNTY OF MIDDLESEX, THIS PLAT WAS RECEIVED AND ADMITTED TO RECORD IN DEED BOOK _____, AT PAGE _____, ON THE _____ DAY OF _____, 1998, BY _____, CLERK.

REVISED OCTOBER 14, 1998
REVISED NOVEMBER 20, 1997

SHEET 1 OF 8
EXHIBIT B
CONDOMINIUM PLAT
FOR
KEMPVILLE GREENS CONDOMINIUM
INDEPENDENT DEVELOPERS, LTD.
KEMPVILLE BOROUGH - VIRGINIA BEACH, VIRGINIA
SCALE: 1"=40'
JOHN E. SHINE AND ASSOCIATES, LTD.
SURVEYORS - ENGINEERS - PLANNERS
VIRGINIA BEACH, VIRGINIA

