

TAX MAP #1-34-17.00-14  
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HAB/MMM

DECLARATION ESTABLISHING A PLAN FOR CONDOMINIUM  
OWNERSHIP OF PREMISES SITUATED IN BALTIMORE  
HUNDRED, SUSSEX COUNTY, DELAWARE PURSUANT TO THE  
UNIT PROPERTY ACT OF THE STATE OF DELAWARE FOR

TOWNHOMES OF WATERSIDE II, PHASE 3  
"CANAL WOODS AT WATERSIDE"

CIRCLE J DEVELOPERS, LLC, A DELAWARE LIMITED LIABILITY  
COMPANY, SUCCESSOR TO BETHANY PROPER LIMITED PARTNERSHIP, a  
Delaware limited partnership, of P.O. Box 309, Bethany Beach, Delaware 19930,  
(hereinafter referred to as the "Developer"), does hereby declare:

1. **Intent of Submission and Description of Property.** CIRCLE J  
DEVELOPERS, LLC, a Delaware limited liability company, successor to BETHANY  
PROPER LIMITED PARTNERSHIP, a Delaware limited partnership, as holder of legal  
title to the land herein described, hereby submits certain real property described in *Schedule*  
*"A"* annexed hereto, together with the buildings and improvements thereon erected and  
owned by the Developer in fee simple absolute (referred to as the "Property"), to the  
provisions of the Unit Property Act of The State of Delaware, 25 Del. C. Section 2201, et  
seq. (referred to as the "Act"), in order to create a plan of condominium ownership of the  
Property. The Property consists of Units and Common Elements as shown on the  
Declaration Plan dated the \_\_\_\_ day of \_\_\_\_\_, A.D. 2005, recorded in the  
Office of the Recorder of Deeds, in and for Sussex County, Georgetown, Delaware in Plot  
Book \_\_\_\_\_, page \_\_\_\_\_.

2. **Definitions.** The terms used in this Declaration and in the accompanying Code  
of Regulations shall have the following meanings:

(a) "**Additional Land**" means that part of the property identified as Stages and Phases of the Development Plan for **TOWNHOMES OF WATERSIDE II, PHASE 3, "CANAL WOODS AT WATERSIDE"**, as shown on a Plat entitled "TOWNHOMES OF WATERSIDE II, PHASE 3, 'CANAL WOODS AT WATERSIDE' Declaration Plan" as recorded in the Office of the Recorder of Deeds of Sussex County in Georgetown, Delaware, in Plot Book \_\_\_\_\_ at page \_\_\_\_\_, which may be acquired in further phases or not at all, and is described in *Schedule "B"* which is attached hereto and incorporated herein by reference.

(b) "**Annexable Land**" means that property described in *Schedule "C"* not yet identified on the Record Master Plan but which is contiguous to the property described in *Schedules "A" and "B"* and which the Declarant may acquire or, pursuant to agreement with the owner of such property, may acquire the right to annex to **TOWNHOMES OF WATERSIDE II, PHASE 3, "CANAL WOODS AT WATERSIDE"** and subject to this Declaration, in accordance with the Declaration, by the recordation of one (1) or more Declarations of Annexation.

(c) "**Association of Owners**" means all of the Unit Owners acting as a group in accordance with the Code of Regulations, which shall be incorporated as "**CANAL WOODS AT WATERSIDE Condominium Association, Inc.**", a Delaware non-profit corporation.

(d) "**Buildings**" means the single unit buildings used or intended to be used for residential purposes (including leasing of Units for residential purposes) or for any other lawful purpose or for any combination of such uses.

(e) "**Code of Regulations**" means such governing regulations as are adopted pursuant to the Act for the regulation and management of the Property, including such amendments thereof as may be adopted from time to time.

(f) "**Common Elements**" means those parts of the Property as more fully set forth on the Declaration Plan and in Section 8 of this Declaration.

(g) "**Common Expenses**" means and includes:

(1) All sums lawfully assessed against the Unit Owners by the Council;

(2) Expenses of administration, maintenance, repair and replacement of the Common Elements, including repair and replacement reserves as may be established;

(3) Expenses agreed upon as Common Expenses by the Unit Owners;

(4) Expenses declared Common Expenses by the provisions of the Act or by this Declaration or the Code of Regulations;

(5) Premiums for insurance policies required to be purchased by the Council pursuant to the Code of Regulations; and

(6) All valid charges against the condominium as a whole.

(h) "**Council**" means a board of natural persons of the number stated in the Code of Regulations, all of whom shall be either residents of The State of Delaware or Unit Owners as defined herein, but need not be both, who shall be elected by the Unit Owners, as hereinafter defined, and who shall manage the business operations and affairs of the Property on behalf of the Unit Owners and in compliance with and subject to the provisions of the Act, this Declaration and the Code of Regulations, and such other regulations as may be promulgated. "Council" shall be the name for the board of directors of the association of owners and shall be composed by the same individuals.

(i) "**Declaration**" means this document by which the Developer of the Property submits it to the provisions of the Act and all amendments thereof.

(j) "**Declaration Plan**" means a survey showing the Property, the location of the Building and the layout of the floors of the Buildings which is recorded simultaneously with this Declaration in the Office of the Recorder of Deeds, in and for Sussex County, Delaware, and which complies with Section 2220 of the Act.

(k) "**Developer**" means **CIRCLE J DEVELOPERS, LLC, a Delaware limited liability company**, and its successors and assigns.

(l) "**Land**" means the real property, exclusive of buildings or other improvements thereon, as described in *Schedule "A"*.

(m) "**Limited Common Elements**" means that portion of the Common Elements allocated in the Declaration and identified on the Declaration Plan for the use and benefit of the Unit intended to be served to the exclusion of all other use.

(n) "**Majority**" or "**Majority of Unit Owners**" means the owners of more than fifty (50) percent of the aggregate in interest of the undivided ownership of the Common Elements as specified herein.

(o) "**Managing Agent**" means a professional managing agent employed by the Developer or Council to perform such duties and services as the Council shall authorize in conformance with this Declaration and the Code of Regulations.

(p) "**Master Declaration**" means the Declaration of Covenants, Conditions and Restrictions dated January 17, 2002, and recorded in the Office of the Recorder of Deeds of Sussex County in Georgetown, Delaware, in Deed Book 2676, at page 267.

(q) "**Master Plan**" means a plat entitled "WaterSide Revised Preliminary Site Plan", also referred to as "WaterSide R.P.C.", dated February 18, 2000, and is recorded in the Office of the Recorder of Deeds of Sussex County in Georgetown, Delaware, in Plot Book 67 at page 128; which may be acquired in further phases or not at all, and described in *Schedule "D"*.

(r) "**Percentage Interest**" means the Percentage Interest of each Unit in the Common Elements as set forth in *Schedule "E"* attached hereto and subject to specified reductions upon subsequent amendments thereto as provided for in *Schedule "F"* attached hereto.

(s) "**Property**" means the Land and the Buildings and all other improvements and structures thereon and all easements, rights and appurtenances belonging thereto which have been or are intended to be submitted to the provisions of the Act, and all articles of personal property intended for use in connection therewith.

(t) "**Recorded**" means that an instrument has been duly entered of record in the Office of the Recorder of Deeds, in and for Sussex County, the County in which the Property is situate.

(u) "**Recorder**" means the Office of the Recorder of Deeds, in and for Sussex County, Delaware, located in Georgetown, Delaware.

(v) "**Revocation**" means an instrument signed by all of the Unit Owners and by all holders of liens against the Units by which the Property is removed from the provisions of this Chapter.

(w) "**Rules and Regulations**" means such rules and regulations as may be adopted from time to time by the Developer or Council that are deemed necessary for the enjoyment of the condominium, provided they are not in conflict with the Act, this Declaration or the Code of Regulations.

(x) "**Unit**" means a Unit as defined by Section 2202(14) of the Act and consists of any one of those parts of the Buildings which are separately described on the Declaration Plan, in *Schedule "E"* and *Schedule "F"* attached hereto.

(y) "**Unit Designation**" means the number, letter or combination thereof designating a Unit in the Declaration Plan.

(z) "**Unit Owner**" means any natural person, corporation, partnership, association, trust or other legal entity or any combination thereof which owns title to a Unit.

(aa) "**Unit Property Act**" means Title 25 Delaware Code, Sections 2201-2240, as amended (referred to as the "Act").

3. **Name of Condominium.** This Condominium shall be known as "**CANAL WOODS AT WATERSIDE**" and shall be an expandable condominium as hereinafter provided.

4. **Buildings.** There is presently one (1) Building consisting of seven (7) units, erected upon the Property. A total of three (3) Buildings consisting of a maximum of eight (8) units each such that there shall be a total of twenty-three (23) Units; additional units may be included if the Annexable Land is developed as part of this Condominium. Each Building shall be one, two, three, or four stories in height. The Buildings will be in substantial conformity to plans prepared by **CIRCLE J DEVELOPERS, LLC, a Delaware limited liability company**, dated \_\_\_\_\_, 2005. The first Building (*Stage 1*) have been located as shown upon the Declaration Plan prepared by Land Tech, Inc., Registered Surveyors, dated \_\_\_\_\_, 2005. The additional sixteen (16) Units and those on Annexable Land, as they are constructed, will be located in substantial conformity to the Declaration Plan; provided, however, that the Developer may effect minor changes in the location of the proposed Buildings in order to improve views to and from the Buildings, improve parking areas and harmonize the Property to the sewer and water service distribution plan; and further provided that the Declaration Plan shall not be substantially changed and no interest in any Building, Unit or Common Element shall be changed thereby, except as provided herein. To accomplish the purpose set forth herein, the Developer has filed for record a Deed of Easement (a copy of which is attached hereto as *Schedule "G"*), which is of record in the Office of the Recorder of Deeds, in and for Sussex County, Delaware.

5. **Expansion.** The existing Building is located in and on *Stage 1* of WaterSide R.P.C. Plan Phase 3 as shown on the Declaration Plan. The expansion and annexation of additional land and improvements to **TOWNHOMES OF WATERSIDE II, PHASE 3, "CANAL WOODS AT WATERSIDE"** shall be accomplished in a maximum of two (2) additional stages unless Developer annexes property as described in *Schedule "C"*. The

stages shall consist of the annexation of land which underlies them, as the same are delineated upon the Declaration Plan and TOWNHOMES OF WATERSIDE II, PHASE 3, "CANAL WOODS AT WATERSIDE" Declaration Plan, together with the improvements thereon, which annexation shall be accomplished in accordance with Section 6 hereof.

**6. Expansion Stages.**

(a) Right to Expand.

(1) The Developer shall have the right in its sole discretion without consent of the Council or any Unit Owner or the holder of any lien upon any Unit, at any time and from time to time, to annex to the land and improvements, constituting the Property of TOWNHOMES OF WATERSIDE II, PHASE 3, "CANAL WOODS AT WATERSIDE" as the same are described and identified by legal description on *Schedule "A"* and as identified as Annexable Land and thereby to submit to the provisions of the Act and subject to and include within the provisions of, the Declaration and Code of Regulations, by amendment and form hereinafter mentioned, certain property which is more particularly described in *Schedule "B"*, *Schedule "C"* and *Schedule "D"*, together with the Buildings and other improvements thereon erected. The design and construction of the Buildings to be erected in the expansion stages and phases shall be of at least as good quality and shall have architectural harmony with the Buildings erected upon the lands described in *Schedule "A"* as shown upon the plan of Land Tech, Inc., dated \_\_\_\_\_, 2005, described and identified hereinabove. Upon submission of additional stages and phases, an additional sixteen (16) units will become a part of the condominium property and upon submission of Annexable Land, additional units as permitted by the appropriate local authority will become a part of the condominium project.. This right to expand by Developer shall be in effect until December 31, 2020. Nothing herein shall be construed as requiring the Developer to expand the condominium and annex any Additional Land or Annexable Land on *Schedules "B"*, *"C"* or *"D"* and construct Units thereon.

(2) Any such expansion or annexation shall be accomplished by the recordation in the Office of the Recorder of Deeds, in and for Sussex County, Delaware, of an amendment to this Declaration, an amendment to *Schedule "A"* of this Declaration, an amendment to *Schedule "E"* of this Declaration which shall conform to the schedule contained in *Schedule "F"* hereof, and an amended Declaration Plan showing, *inter alia*, the Buildings and improvements constructed upon the land being annexed.

(b) Adjustments to Common Element Percentages. Upon the recordation of an amendment to this Declaration for the purpose of annexing to the land and improvements described in *Schedule "A"* attached hereto, each Unit Owner, by operation of law, shall have the undivided percentage interests in the Common Elements, Common

Expenses and Common Profits and shall have the number of votes set forth on *Schedule "E"* attached hereto. Upon the recordation of such amendment, the percentage interests in the Common Elements and Common Expenses and voting rights provided for under the Act, the Code of Regulations and this Declaration shall be reallocated as set forth in *Schedule "F"* and amended on *Schedule "E"*. Any deed for any condominium Unit shall be delivered subject to the conditional limitation that the percentage interests appurtenant to such Unit shall be automatically reallocated *pro tanto* upon the recordation of such amendment.

(c) Execution and Recordation of Amendments. There is reserved unto **CIRCLE J DEVELOPERS, LLC, a Delaware limited liability company**, the Developer, its successors or assigns, an irrevocable power of attorney coupled with an interest as set forth in *Schedule "H"* for the purpose of reallocating the common element percentage interests and voting rights appurtenant to each of the condominium Units in accordance with this Section and executing, acknowledging and delivering such further instruments as may from time to time be required in order to accomplish the purposes of this Section. Each Unit Owner and each mortgagee of a condominium Unit shall be deemed to have acquiesced in the amendment of this Declaration and in the amendment of the Declaration Plan for the purpose of addition additional Units and Common Elements to the condominium in the manner set forth in this Section and shall be deemed to have granted unto the Developer an irrevocable power of attorney coupled with an interest to effectuate, execute, acknowledge and deliver any such amendments; and each such Unit Owner and mortgagee shall be deemed to have agreed and covenanted to execute such further instruments, if any, as may be required by the Developer to properly accomplish such amendments.

(d) Status Prior to Expansion. During the interval of time between the filing of this Declaration and the construction of the additional Buildings, the Developer shall not use any of said additional land proposed for annexation for any purpose whatsoever, except to construct Buildings thereon and hold the same in inventory for annexation as provided for herein.

(e) The expenses, taxes and any other burdens of ownership of the land proposed for annexation shall be at the sole expense of the Developer. Any necessary amendments to this Declaration and the Declaration Plan under this Section shall be at the sole expense of the Developer.

(f) Effect of Expansion. Upon the annexation of the land into the property of **TOWNHOMES OF WATERSIDE II, PHASE 3, "CANAL WOODS AT WATERSIDE"** *Schedule "A"* shall be amended to describe all of the land contained within **TOWNHOMES OF WATERSIDE II, PHASE 3, "CANAL WOODS AT WATERSIDE"** which legal description in its entirety is set forth in *Schedule "D"* attached hereto and incorporated herein by reference.

(g) Percentage of Ownership in Common Elements. Until the additional Buildings are constructed upon the Property described in *Schedule "B"* and *Schedule "C"*, as hereinbefore provided, the respective percentages of ownership in the Common Elements for each Unit which shall be used for purposes of determining voting rights and the percentage share of each Unit for the expenses of and relating to the various rights in the Common Elements, irrespective of any market or sales value, is shown on *Schedule "E"* attached hereto.

(h) Changes in Percentage of Ownership in Common Elements, Voting Rights and Expenses or Profits. Notwithstanding the provisions of Section 6(f) of this Declaration, the proportionate undivided interest in the Common Elements by one or more Unit Owners may be reduced, altered or changed by the recordation of an amendment to this Declaration duly executed by all Unit Owners, their agents or attorneys, affected by such changes pursuant to the provisions of Section 2219 (6) of the Act. Any alteration or change in the proportionate voting rights of any Unit Owner shall be made only in accordance with the provisions of the Code of Regulations.

(i) Change in Percentage of Ownership in Common Elements, Voting Rights and Expenses by Expansion and Annexation, and Method of Implementing Any Such Change. Notwithstanding the provisions of Sections 6(g) and 6(h) of this Declaration, upon annexation of land into the Property of **TOWNHOMES OF WATERSIDE II, PHASE 3, "CANAL WOODS AT WATERSIDE"** as provided for in this Section, the percentage interest of each Unit Owner in the Common Elements and the voting rights provided for in the Act and the Code of Regulations shall be reallocated as provided for and authorized in this Section and in accordance with the formula listed upon *Schedule "F"* attached hereto. Upon completion of construction of the Buildings and upon annexation of the land and Common Elements into this condominium as provided for in this Section, evidence of which shall be the issuance of a certificate of occupancy from Sussex County, all Units and Buildings shall be liable for the condominium charge assessed against like Units in the existing condominium, whether said Units have been sold by the Developer or remain unsold. At the time of completion of construction of the Buildings upon the land described in *Schedule "B"*, *Schedule "C"* and *Schedule "D"*, the Developer shall promptly file an *Amended Schedule "A"* and an *Amended Schedule "E"* in accordance with the formula contained in *Schedule "F"* and shall, as needed, amend this Declaration and the Declaration Plan of record in the Office of the Recorder of Deeds, in and for Sussex County, Delaware, as provided for herein.

## 7. Units.

(a) As of this date hereof, the condominium known as **TOWNHOMES OF WATERSIDE II, PHASE 3, "CANAL WOODS AT WATERSIDE"** consists of seven (7) Units located in one (1) Building. The Unit number designations and the



percentage interests of each Unit in the Common Elements and the share of each Unit in the Common Expenses are listed on *Schedule "E"* hereto attached. The location of said Unit is substantially delineated on the Declaration Plan which is of record in the Office of the Recorder of Deed, aforesaid. The remaining proposed Units are provided for in Section 6 of this Declaration.

(b) Construction of the Units

(i) The foundation, exterior walls and party walls of each Unit are constructed and structurally supported by standard building construction blocks; the exterior walls of each Unit above the foundation are constructed and structurally supported by wood frame construction. Each Unit consists of the space measured horizontally between the Unit side of all of said block walls, and in the case of wood frame construction, between the studs or other framing materials to which the interior surfaces finishing the inside of the Unit, consisting of dry wall, interior wood paneling or other alternative finishing materials, are affixed (i.e., the furring strips, rigid insulation or any other materials affixed to any block wall are part of the Unit, and all materials affixed to the studs of a wood frame construction walls are also part of the Unit). Each Unit consists of the space measured vertically from the plywood or other alternative materials constituting the unfinished surface of the Unit side of the floor, which surface is affixed to the floor joist on the first floor of such Unit, and to the unfinished or upper surface of the Unit side of the ceiling on the second floor of such Unit (i.e., the bottom of the vertical side of the Unit shall be the entire floor deck to which any padding, carpeting, sheet goods or other floor finishing material is affixed, and the top of the vertical side of the Unit shall be the dry wall, paneling or other alternative material, the exterior side or unfinished side of which is affixed to any roof truss or rafter). Included as part of the Unit are (a) the sliding glass door to the rear patio of the Unit, (b) the front entrance door of the Unit, and (c) all windows, skylights, screens and storm windows of a Unit.

(ii) Each Unit consists of the interior of the Building, including, but not limited to (1) the entrance doors and garage door(s), (2) non-structural walls, (3) electrical panel (4) hot water heater, (5) window units, skylight units (if any) and screens, (6) all electrical outlets and lights serving the unit whether within or without the unit, (7) stoves, dishwashers, refrigerators, air conditioning units, washers, dryers, sinks, baths and other plumbing, heating and other possible cooling facilities located within or without the unit, (8) the plumbing and water lines serving each Unit, including any part but not the space it occupies (9) outside water faucets, (10) storage area, (11) interior stairs, (12) fireplace, chimney and flue, if any, (13) a self-contained heating and air conditioning unit, which is located within the Unit, except for an air conditioning compressor which is located outside the Unit but is considered part of the Unit, (14) outside steps, a hand rail and decking leading into the front entrance of a Unit, together with a patio deck, if any, and the percentage of undivided interest in the common elements specified in *Schedule "E"*.

## **8. Common Elements; Limited Common Elements.**

(a) "Common Elements" means and includes the definition thereof as set forth in Section 2203(3) of the Act and as defined in this Declaration. It includes all land, together with all improvements, subject to any public utility easements now of record or to be given in the future either by the Developer or the Council for sanitary and storm sewer use, water line, electric, telephone and cable television transmission lines, sewage lift stations or other similar necessary or desirable utility functions, excepting, however, the land designated for future construction of two (2) Buildings, and those on Annexable Land, by the Developer described in *Schedules "B", "C", and "D"*, consisting of a total of sixteen (16) additional Units and any additional units on the Annexable Land.

(b) The driveways on the Declaration Plan, leading into parking areas and the parking areas shall be Common Elements.

(c) The sanitary sewage facilities and water pipes up to the collectors for the individual Units shall be Common Elements.

(d) All lighting fixtures and equipment and wiring installed to illuminate any of the Common Elements shall be Common Elements.

(e) Charges for water meters, water service, water bond sinking fund, charges for regional sewage use and regional sewage bond redemption, if any, shall be Common Elements, if the same are billed or charged to the condominium as a whole.

(f) All central services and utilities which serve as the main distribution lines shall be Common Elements.

(g) All apparatus and installations existing for common use shall be Common Elements.

(h) All other elements of the Building necessary or convenient to its existence, operation, maintenance and safety or normally used in common use shall be a common element.

(i) The structural parts of the building, the foundation, supports, main walls, roof, exterior or shared stairways, outside showers, entry decks and entry porches, front walkway, porch/balcony/deck, if any, not usable as separate entryway, as well as that part of the Property designated on the Declaration Plan as Limited Common Elements shall be Limited Common Elements appurtenant to the Units attached thereto and shall be restricted to the use and occupancy by the Unit Owners thereof.

(j) Each Unit shall have an exclusive right to the use of two (2) parking spaces, located in front of the Unit, which exterior parking space shall be and remain a part of the Common Elements. Each Unit shall have an exclusive right to the use of two (2)

parking spaces, located in front of the Unit, which exterior parking space shall be and remain a part of the Common Elements.

**9. Use of Units.** Each Unit and the Common Elements shall be occupied and used as follows:

(a) No part of the Property shall be used for other than housing and the related common purposes for which the Property was designated. Each Unit shall be used only for residential purposes and shall be occupied only by as many persons as do not burden the Unit or Common Elements.

(b) Nothing shall be done or kept in any Unit or in the Common Elements which will increase the rate of insurance for the Property or the contents thereof applicable for residential use without the prior written consent of the Council. No Unit Owner shall permit anything to be done or kept in, on or to his Unit or the Common Elements which will result in the cancellation of insurance on the Property or the contents thereof or which would be in violation of any law.

(c) No immoral, improper, offensive or unlawful use shall be made of the Property or any part thereof. All laws, ordinances, orders, rules, regulations or requirements of any governmental agency having jurisdiction thereof relating to any portion of the Property shall be observed and complied with by and at the sole expense of the Unit Owner or the Council, whichever shall have the obligation to maintain or repair such portion of the Property.

(d) Nothing shall be done in any Unit or in, on or to the Common Elements which will impair the structural integrity of the Property or which would structurally change any Building or improvements thereon, except as is otherwise provided in the Code of Regulations or this Declaration.

(e) Except for residential use permitted by paragraph (a) of this Section, no industry, business, trade, occupation or otherwise designed for profit, altruism, exploration or otherwise shall be conducted, maintained or permitted on any part of the Property; provided, however, that nothing contained herein shall be construed so as to prohibit home offices so long as there are no employees working from the Unit and no patrons, customers, clients or business visitors who frequent the Unit, no temporary parking needs, no commercial deliveries and no signs. No "For Sale" or "For Rent" signs or other window displays or advertising shall be maintained or permitted on any part of the Property or in any Unit therein. The right is reserved by the Developer or its agents to place "For Sale" or "For Rent" signs on any unsold or unoccupied Units or at suitable places in the Common Elements, and the right is hereby given to any mortgagee who may become the owner of any Unit to place such signs on any Unit owned by such mortgagee.

(f) Nothing shall be altered or constructed in or removed from the Common Elements except upon the prior written consent of the Council.

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

**10. Decoration and Fixturing of Interior Surfaces of Walls and Ceilings.** Each Unit Owner shall have the right, at any time and from time to time, to install, at his own cost and expense, such decorations, additions, fixtures and coverings (including without limitation painting, finishing, wallpapering and carpeting) to the surfaces of walls and ceilings which face the interior of his Unit.

**11. Members of the Council.** The names of the first members of the Council, to serve until their successors are chosen and qualified pursuant to the Code of Regulations, are:

(a) Robin James

(b) Barry Joseph

**12. Encroachments.** If any portion of the Common Elements now encroaches upon any Unit, or if any Unit now encroaches upon any other Unit or upon any portion of the Common Elements, as a result of the construction of any Building, or if any such encroachment shall occur after the recording of this Declaration as a result of settling or shifting of any Building, a valid easement for such encroachment and for the maintenance of the same shall exist so long as such Building shall stand. In the event the Building, any Unit, any adjoining Unit, or any adjoining Common Elements shall be partially or totally destroyed as a result of fire or other casualty or as a result of condemnation or eminent domain proceedings and then rebuilt, encroachments of parts of the Common Elements upon any Unit or of any Unit upon any other unit or upon any portion of the Common Elements due to such rebuilding shall be permitted, and valid easements for such encroachments and for the maintenance of the same shall exist so long as such reconstructed Building shall stand.

**13. Pipe Ducts, Cables, Wires, Conduits, Public Utility Lines, and Other Common Elements Located Inside of Units; Support.** Each Unit Owner shall have an easement in common with the owners of all other Units 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 the owners of all other Units to use pipes, ducts, cables, wires, conduits, public utility lines and other Common Elements serving such other Units and located in such Unit. The Council or its representative 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 thereon or elsewhere in the Buildings.

**14. Units Subject to Easement for Ingress and Egress Through Common Elements.** Each Unit Owner shall have an easement in common with the owners of all other Units for ingress and egress through all Common Elements, but subject to other provisions of this Declaration, the Code of Regulations and such other Rules as Council may from time to time adopt. Each Unit shall be subject to an easement for ingress and egress through all Common Elements by persons lawfully using or entitled to same.

**15. Units Subject to Construction Easements in Common Elements.** Each Unit shall be subject to an easement of ingress and egress through all Common Elements, and an easement for construction of all improvements to be built on the Common Elements as outlined on the Declaration Plan and for completion of certain Units, by all construction personnel, personnel of Developer, and their employees, agents and invitees and all necessary equipment in connection therewith.

**16. Units Subject to Declaration, Code of Regulations and Rules and Regulations.** All present and future Unit Owners, lessees, mortgagees, tenants and occupants of Units shall be subject to and shall comply with the provisions of this Declaration, the Code of Regulations and the rules and regulations, as they may be amended from time to time. The acceptance of a deed of conveyance or other transfer document or the entering into of a lease or the entering into occupancy of any Unit shall constitute an agreement that the provisions of this Declaration, the Code of Regulations, and the rules and regulations, as they may be amended from time to time, are accepted and ratified by such owner, tenant or occupant, 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, as though such provisions were recited at length in each and every such document.

**17. Units Subject to Master Declaration, Declaration, Code of Regulations and Rules and Regulations.** All present and future Unit Owners, lessees, mortgagees, tenants and occupants of Units shall be subject to, and shall comply with, the provisions of this Declaration, the Code of Regulations, the Rules and Regulations, and the Master Declaration, as they may be amended from time to time. The acceptance of a deed of conveyance or other transfer document or the entering into of a lease or the entering into occupancy of any Unit shall constitute an agreement that the provisions of this Declaration, the Code of Regulations, the Rules and Regulations, and the Master Declaration as they may be amended from time to time, are accepted and ratified by such owner, tenant, or occupant 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, as though such provisions were recited and stipulated at length in each and every deed or conveyance or lease thereof.

**18. Unit Ownership and Ownership of Common Elements.** Each Unit Owner shall own his Unit and the Percentage Interest of such Unit in the Common Elements, including the Land.

**19. Amendment of Declaration.**

(a) This Declaration, except as otherwise herein provided, may be amended by the vote of a majority of the Unit Owners, cast in person or by proxy at a meeting duly held in accordance with the provisions of the Code of Regulations; provided, however, that amendments of a material nature, as defined in Article XIII, Section 4 of the Code of Regulations, shall be approved by the vote of at least sixty-seven percent (67%) of the Unit Owners. Furthermore, any such proposed amendment shall have been approved in writing by the mortgagee or mortgagees holding mortgages constituting first liens of at least fifty-one percent (51%) of the Units subject to mortgages. No such amendment shall be effective until duly recorded; provided, however, except as otherwise herein provided, the Percentage Interest shall not be changed except by unanimous consent of all of the Unit

Owners affected thereby and the consent of at least fifty-one (51%) of the mortgagees holding mortgages constituting first liens on units, which change shall be evidenced by an appropriate amendatory declaration to such effect, duly recorded. Consent by eligible mortgagees shall be deemed received when an eligible mortgagee fails to submit a response to any written proposal sent by certified mail, return receipt requested, within thirty (30) days following its receipt of said proposal.

(b)Notwithstanding the foregoing provisions for the amendment of the Declaration, the Developer shall have an irrevocable power of attorney coupled with an interest for the purpose of amending the Declaration and *Schedules "B" and "C"* attached thereto and the Declaration Plan under the reservation and powers given unto the Developer in Sections 5 and 6 of this Declaration for the purposes stated in Section 5 and in strict accordance with the procedures specified in Sections 5 and 6 of the Declaration. The provisions for the annexation of land and improvements into **TOWNHOMES OF WATERSIDE II, PHASE 3, "CANAL WOODS AT WATERSIDE"** and all other provisions of Sections 5 and 6 of this Declaration are incorporated into this Section by reference as though each and every statement contained in Sections 5 and 6 were fully set forth herein.

**20. 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, except in the event of substantial destruction as provided in the Code of Regulations and the Act. Except in the event of substantial destruction as provided in the Code of Regulations and the Act, the dedication of the Property under the Act shall not be waived or revoked unless all of the Unit Owners and the mortgagees of all of the mortgages covering the Units and all other lien holders unanimously agree to such revocation or waiver. The Percentage Interests shall not be separated from the Unit to which they appertain and shall be deemed conveyed, leased, or encumbered with the Unit though the interest is not expressly mentioned or described in the conveyance or other instrument.

**21. Invalidity.** The invalidity of any provision of this Declaration shall not be deemed to impair or affect in any manner the validity, enforceability or affect of the remainder of this Declaration, and in such event all of the other provisions of this Declaration shall continue in full force and effect as if such invalid provision had never been included herein.

**22. 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.

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

24. Successors and Assigns. Whenever **CIRCLE J DEVELOPERS, LLC, Delaware limited liability company**, is used, such reference shall also refer to its successors and assigns.

**IN WITNESS WHEREOF**, the Developer has caused these presents to be signed by the general partners the day and year aforesaid.

CIRCLE J DEVELOPERS, LLC

By \_\_\_\_\_  
Member

By \_\_\_\_\_  
Member

STATE OF DELAWARE :  
: SS.  
COUNTY OF SUSSEX :

BE IT REMEMBERED, That on this \_\_\_\_\_ day of \_\_\_\_\_ A.D. 2005, personally came before me, the Subscriber, a Notary Public for the State and County aforesaid, Robin James and Barry Joseph, Members of **CIRCLE J DEVELOPERS, LLC**, a limited liability company of the State of Delaware, parties to this Indenture, known to me personally to be such, and acknowledged the foregoing Instrument to be his act and deed and the act and deed of the said limited liability company; and that the signature of the Member is in his/her own proper handwriting and by his/her authority to act; and that the act of signing, sealing, acknowledging and delivering the said Indenture was first duly authorized by resolution of the limited liability company.

GIVEN under my Hand and Seal of Office, the day and year aforesaid.

\_\_\_\_\_  
Notary Public  
Date Commission Expires:

\_\_\_\_\_  
Notary Public (Please Type)



**SCHEDULE "A"**

**TOWNHOMES OF WATERSIDE II, PHASE 3–Stage 1  
UNITS 58-64 and LIMITED COMMON ELEMENTS;**

**SCHEDULE "B"**  
**Additional Land**

**FOR: UNITS 65-80 and LIMITED COMMON ELEMENTS;**

**SCHEDULE "C"**

**Annexable Land**

Lands now or formerly of Talivaldis and Gaida Berzins, Tax Map No. 1-34-17-11; lands now or formerly of George M. Parrot, Tax Map No. 1-34-17-14.01; lands now or formerly of Rancel C. Evans, et ux., Tax Map No. 1-34-17-15.01; and lands now or formerly of Joseph A. and Jane E. Phillips, Tax Map No. 1-34-17-15.02.

**SCHEDULE "D"**

**Total Project**

**SCHEDULE "E"**

**Percentage of Ownership**

The following represents the respective percentages of ownership in the Common Elements for each Unit which shall be utilized for purposes of determining voting rights and the percentage share of each Unit for the expenses of and relating to the various rights in the Common Elements, irrespective of any market or sales value:

Percentage

Units 65-72

If units are added on Annexable Land, this percentage shall be reduced so that each unit shall have an equal percentage interest.

**SCHEDULE "F"**

**Total Percentage of Ownership**

**TOWNHOMES OF WATERSIDE II, PHASE 3, "CANAL WOODS AT WATERSIDE"**, as an expandable condominium which will consist of twenty-three (23) individual unit buildings and additional units on the Annexable Land. As each building is built and completed, it will be added to the condominium regime of **TOWNHOMES OF WATERSIDE II, PHASE 3, "CANAL WOODS AT WATERSIDE"** as provided for in the Declaration and Code of Regulations. As each building is added to the Condominium, each Unit Owner's percentage of ownership in the Common Elements and the share of each Unit in the Common Expenses will be decreased proportionately in relation to the new additional units being added. Each unit shall have an equal percentage interest in the ownership in Common Elements and Common Expenses so that, as any new unit is added, the total, 100%, shall be divided by the new total number of individual units to calculate the new individual percentage ownership and responsibility. Whenever the individual percentages, when totaled, do not equal 100%, the necessary proportionate number necessary to equal 100% shall be allocated first to Unit 1, thence to Unit 2 and in consecutive order until the total of all units shall equal 100%.

<b>Units 58-64</b>	<b>%</b>
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<b>Total</b>	<b>100%</b>
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**SCHEDULE "G"**

**SAMPLE**

**DEED OF EASEMENT**

THIS DEED OF EASEMENT, made this \_\_\_\_ day of \_\_\_\_, A.D. \_\_\_\_, is reserved unto **CIRCLE J DEVELOPERS, LLC, A DELAWARE LIMITED LIABILITY COMPANY, SUCCESSOR TO BETHANY PROPER LIMITED PARTNERSHIP**, a Delaware limited partnership, of P.O. Box 309, Bethany Beach, Delaware 19930, its successors and assigns ("Grantor").

**RECITALS**

WHEREAS, Grantor is the owner of certain real property located in Baltimore Hundred, Sussex County, Delaware, commonly known as **TOWNHOMES OF WATERSIDE II, PHASE 3, "CANAL WOODS AT WATERSIDE"** a condominium, which property is more particularly described in Exhibit "A" attached hereto and made a part hereof; and

WHEREAS, said property is to be submitted by Grantor to a plan of condominium ownership under the Unit Property Act by Declaration to be filed of record in the Office of the Recorder of Deeds, in and for Sussex County, at Georgetown, Delaware, immediately after the filing of this Deed of Easement; and

WHEREAS, Grantor will offer condominium units for sale to the public as **TOWNHOMES OF WATERSIDE II, PHASE 3, "CANAL WOODS AT WATERSIDE"** and

WHEREAS, Grantor has constructed a building, consisting of seven (7) individual units each, which will constitute the condominium as provided for in the Declaration and designated and numbered on *Schedule "B"* of the Declaration, and further as delineated and numbered on the Declaration Plan of the said **TOWNHOMES OF WATERSIDE II, PHASE 3, "CANAL WOODS AT WATERSIDE"** which will be filed for record in the Office of the Recorder of Deeds, aforesaid, immediately after the filing of this Deed of Easement; and

WHEREAS, Grantor proposes to build two (2) more buildings, consisting of individual units, for a maximum total of sixteen (16) additional units and those units on the Annexable Land, as more particularly identified and numbered on the Declaration Plan and *Schedules "A" through "F"* of the Declaration; and

WHEREAS, Grantor intends to and has retained ownership of the land upon which the additional two (2) buildings, designated and numbered upon the Declaration Plan and *Schedules "A" through "F"* of the Declaration, are to be constructed; and

-SAMPLE-

WHEREAS, the Declaration, in Sections 4, 5 and 6, reserves to the Grantor the right by and unto itself to make minor changes in the location of the proposed buildings to be constructed upon the land in order to improve views to and from the buildings, improve parking areas and harmonize the property to the sewer and water service distribution plan; and

WHEREAS, it is intended that the Common Elements be subject to this easement in order to facilitate the possible minor relocation of said buildings,

**T H E R E F O R E**, for and in consideration of the matters hereinabove set forth:

Grantor does hereby reserve unto itself a perpetual easement to construct two (2) additional buildings of sixteen (16) additional units on Additional Land and additional buildings and units on Annexable Land, as delineated upon the Declaration Plan, and all of the necessary parking lots, walks and other appurtenances requisite to service some or all of the buildings which are or will be constructed upon the property known as **TOWNHOMES OF WATERSIDE II, PHASE 3, "CANAL WOODS AT WATERSIDE"** and to provide for the necessary ingress and egress to said buildings.

TERMS

(1) The square and cubic footage of the Common Elements used by the Grantor to accomplish the purpose of this Easement shall not diminish the square and cubic footage of the Common Elements as delineated upon the Declaration Plan.

(2) In the event of any minor relocation, as aforesaid, utilizing this easement, the fee simple interest of the Grantor in the land underlying the Unit, so designated in *Schedule "A"* of the Declaration, shall become part of the Common Elements of **TOWNHOMES OF WATERSIDE II, PHASE 3, "CANAL WOODS AT WATERSIDE"**, if any or if all of said Unit is relocated and constructed upon this easement so that the fee simple interest of the Grantor will diminish in exact proportion to the square and cubic footage utilized under this easement.

(3) This reservation of easement shall be perpetual during the continued existence of **TOWNHOMES OF WATERSIDE II, PHASE 3, "CANAL WOODS AT WATERSIDE"**.

(4) This reservation of easement shall run with the land and shall be binding upon each owner and mortgagee of a Unit in the condominium, and shall be deemed to have granted unto the said Grantor, its successors and assigns, an irrevocable power of attorney



**SAMPLE-**

coupled with an interest to effectuate, execute, acknowledge and deliver any such amendment; and each such Unit Owner and mortgagee shall be deemed to have agreed and covenanted to execute and such further instruments, if any, as may be required by the Grantor, its successors or assigns, to properly accomplish the purposes of this easement.

**IN WITNESS WHEREOF**, the Grantor has caused these presents to be signed by its general partners the day and year aforesaid.

**CIRCLE J DEVELOPERS, LLC,**

By \_\_\_\_\_  
MEMBER

STATE OF DELAWARE :  
: SS.  
COUNTY OF SUSSEX :

BE IT REMEMBERED, That on this \_\_\_\_\_ day of \_\_\_\_\_ A.D. 2005, personally came before me, the Subscriber, a Notary Public for the State and County aforesaid, ROBIN JAMES, MEMBER of **CIRCLE J DEVELOPERS, LLC**, , a limited liability company of the State of Delaware, parties to this Indenture, known to me personally to be such, and acknowledged the foregoing Instrument to be his act and deed and the act and deed of the said limited liability company; and that the signature of the Member is in his/her own proper handwriting and by his/her authority to act; and that the act of signing, sealing, acknowledging and delivering the said Indenture was first duly authorized by resolution of the limited liability company.

GIVEN under my Hand and Seal of Office, the day and year aforesaid.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Date Commission Expires

\_\_\_\_\_  
Notary Public (Please Type)

**-SAMPLE-**

~~-SAMPLE-~~

EXHIBIT A TO SCHEDULE "G"

Description of Dev. Stage 1 of Condominium

~~-SAMPLE-~~  
SCHEDULE "H"

*SAMPLE*

TAX MAP #1-17.00-14  
Prepared By: Tunnell & Raysor, P.A.  
P.O. Box 151  
Georgetown, DE 19947  
HAB/MMM

**IRREVOCABLE POWER OF ATTORNEY  
COUPLED WITH AN INTEREST**

KNOW ALL MEN BY THESE PRESENTS, that we, \_\_\_\_\_,  
\_\_\_\_\_, owners of Unit \_\_\_\_\_, Stage 1, Phase 2, **TOWNHOMES OF  
WATERSIDE II, PHASE 3, "CANAL WOODS AT WATERSIDE", WATERSIDE  
R.P.C.**, hereby make constitute and appoint **CIRCLE J DEVELOPERS, LLC, a  
delaware limited liability company** of the State of Delaware, hereinafter referred to as the  
Developer, and its successors and assigns, to be our true and lawful attorney, and in our  
name, place and stead and in our behalf, to do and execute all or any of the following acts,  
deeds and things, that is to say:

To execute, acknowledge, deliver and record any instruments as may be required to  
amend the Declaration and/or Declaration Plan of **TOWNHOMES OF WATERSIDE II**,

**PHASE 3, "CANAL WOODS AT WATERSIDE"** for the purpose of constructing additional condominium units and for the purpose of reallocation of the percentage interests of the common elements and for the purpose of reallocating voting rights appurtenant to each of the condominium units, construction of roads, installation of utilities, including, telephone, cable television, sewer, water, electric; all to be accomplished in accordance with the terms and conditions of the Declaration and Declaration Plan, and recorded in the Sussex County Recorder of Deeds' Office at Deed Record Book \_\_\_\_\_, page \_\_\_\_, and Plot Book \_\_\_\_, page \_\_\_\_, respectively.

Without in any way detracting from the hereinabove authorized powers, we specifically request and authorize that our hereinabove designated true and lawful attorney be authorized and directed to take any and all such action which it deems necessary for the purpose of constructing additional condominium units and for the purpose of reallocation of the percentage interest of the common elements by reduction of the percentage interest of the common elements for the purpose of reallocating voting rights appurtenant to each of the condominium units in **TOWNHOMES OF WATERSIDE II, PHASE 3, "CANAL WOODS AT WATERSIDE"**.

HEREBY giving unto my said attorney full power to do and perform every act whatsoever requisite or convenient to be done in the premises as fully to all intents and purposes as we could do if personally present and acting.

And we hereby, for ourselves, our heirs, executors, administrators and assigns, ratify and confirm and agree to ratify and confirm whatsoever our said attorney may lawfully do by virtue of these presents, it being understood that this instrument is intended to be and is an Irrevocable Power of Attorney Coupled With An Interest, and that this instrument shall bind all future owners of Unit \_\_\_\_, Stage 1, Phase 2, **TOWNHOMES OF WATERSIDE II, PHASE 3, "CANAL WOODS AT WATERSIDE"**, WaterSide R.P.C., until December 31, 2020.

Whenever used, the singular number shall include the plural, the plural the singular and the use of any gender shall include all genders.

IN WITNESS WHEREOF, we have hereunto set our Hands and Seals, this \_\_\_\_\_ day of A.D. \_\_\_\_\_.

\_\_\_\_\_  
Witness

\_\_\_\_\_(SEAL)

\_\_\_\_\_  
Witness

\_\_\_\_\_(SEAL)

STATE OF DELAWARE :  
  :SS.  
COUNTY OF SUSSEX :

BE IT REMEMBERED, that on this \_\_\_ day of \_\_\_\_\_, personally came before me, the Subscriber, a Notary Public for the State and County aforesaid, \_\_\_\_\_, parties to this foregoing Irrevocable Power of Attorney Coupled With An Interest, known to me personally to be such, and acknowledged said Irrevocable Power of Attorney Coupled With An Interest to be their voluntary act and deed.

GIVEN under my Hand and Seal of Office, the day and year aforesaid.

\_\_\_\_\_  
NOTARY PUBLIC

\_\_\_\_\_  
Date Commission Expires

\_\_\_\_\_  
Notary Public (Please Type)  
-SAMPLE-