

11/22/16

**BY-LAWS**  
**OF**  
**OLDTOWNE COMMONS HOMEOWNERS ASSOCIATION, INC.**

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**ARTICLE I  
DEFINITIONS**

1.01 Declaration.

As used herein "Declaration" means the Declaration of Restrictive Covenants of Old Town Commons for OldTowne Commons, of record in the Office of the Clerk of the Circuit Court of the City of Winchester, Virginia as Instrument No. 160002336, and Amendment to Subdivision Plat, Deed of Boundary Line Adjustments and Easements, and Declaration of Restrictive Covenants of Old Town Commons, of record in the aforesaid Clerk's Office as Instrument No. 160002405, as amended and supplemented from time to time.

1.02 Act.

As used herein "Act" means the Property Owners' Association Act, Chapter 26 of Title 55 of the Code of Virginia (1950, as amended), as amended and supplemented from time to time.

1.03 Articles of Incorporation.

As used herein "Articles of Incorporation" means Articles of Incorporation on file with the Virginia State Corporation Commission for OldTowne Commons Homeowners Association, Inc., a nonstock corporation organized under the laws of the Commonwealth of Virginia.

1.04 Association.

As used herein "Association" means the OldTowne Commons Homeowners Association, Inc., a nonstock corporation organized under the laws of the Commonwealth of Virginia.

1.05 Mortgagee.

As used herein "Mortgagee" means the holder the indebtedness secured by a deed of trust encumbering any Lot in OldTowne Commons as set forth in that certain deed of trust duly recorded among the land records in the Clerk's Office of the Circuit Court of the City of Winchester, Virginia.

1.06 Declarant. As used herein "Declarant" means Oakcrest Builders, Inc., a Virginia corporation, the original developer of OldTowne Commons.

1.07 Other Definitions.

Unless otherwise defined herein, all capitalized terms have the meanings given to them in the Declaration or the Act.

**ARTICLE II**  
**OFFICES**

The Association is a Virginia nonstock corporation, whose initial mailing address is 126 North Kent Street, Winchester, Virginia 22601, Telephone 540/504-0715. The mailing address of the Association may be changed upon written notice to all owners of Lots in OldTowne Commons.

**ARTICLE III**  
**MEMBERSHIP, VOTING, QUORUM AND PROXIES**

3.01 Membership.

The Members of the Association are as set forth in the Articles of Incorporation and the Declaration.

3.02 Voting Rights.

The Association shall have a single class of voting membership as set forth in the Articles of Incorporation and the Declaration. As provided in Article IV, Section 1(b) of the Declaration, the Board of Directors may suspend the voting rights and the right to the use of the Common Area by a Member for a period not to exceed thirty (30) days for any infraction of its published rules and regulations.

3.03 Quorum. Except as otherwise required by law, the presence of Members or of proxies entitled to cast two-thirds (2/3) of all votes shall constitute as quorum for purposes of voting on a proposed increase in the amount of annual assessment or charges and special assessments for capital improvements, as set forth in Article V, Section 6 of the Declaration. If the required quorum is not forthcoming at any meeting, another meeting may be called, and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting.

3.04 Proxies.

Votes may be cast in person or by proxy. Every proxy must be executed in writing by the Member or his or her duly authorized attorney-in-fact. Such proxy shall be filed with the Secretary of the Association before or at the time of the meeting. No proxy shall be valid after the expiration of eleven months from the date of its execution unless otherwise provided in the

proxy. If a Lot is owned by more than one Member, any such Member may execute a proxy on behalf of all such Members, and it will be conclusively presumed for all purposes that such Member acted with the authority and consent of all Members with whom such Member shares the membership, unless objection thereto is made to the chairperson of the meeting at the time of the vote to which the proxy relates. If more than one proxy is executed for any particular membership and such proxies contain contrary instructions regarding any vote, no such proxy shall be counted and all such proxies shall be deemed null and void for purpose of the vote as to which such proxies conflict.

### 3.05 Ballots.

When desired by the Board of Directors, there shall be sent with the notices of regular or special meetings of the Association, a statement of certain motions to be introduced for vote of the Members and a ballot on which each Member may vote "for" or "against" such motion. Each ballot which is presented at such meeting shall be counted as a vote as well as for purposes of satisfying quorum requirements for the particular ballot motion, but shall not be counted for quorum purposes as to issues not appearing on the ballot.

### 3.06 Majority Vote.

At any meeting of the Members, if a quorum is present, the affirmative vote of a majority of the votes represented at the meeting, in person or by proxy, shall be the act of the Members, unless the vote of a greater number is required by law, the Articles of Incorporation, the Declaration or these By-Laws.

### 3.07 Election of Directors.

a. In election of Directors, each Member shall be entitled to as many votes as equals the total number of votes such Member is entitled to based on the number of Lots owned or proxies held. Each Member may cast the total number of votes to which such Member is entitled for each vacancy to be filled.

b. In election of Directors, such voting by Members shall be by secret ballot unless a motion is passed at such meeting allowing election of a slate of candidates by acclamation (e.g. 2 vacancies, 2 candidates).

## **ARTICLE IV ADMINISTRATION**

### 4.01 Annual Meeting.

The annual meeting of the Members shall be held on a date and at a time designated by the Board of Directors of the Association in May of each year, beginning with the year 2017, for

the purpose of electing Directors and for the transaction of such other business as may come before the meeting.

**4.02 Special Meetings.**

Special meetings of the Members, for any purpose, unless otherwise prescribed by statute, shall be called by the President at the written request by the majority of the Directors of the Board of Directors, and shall be called by the President at the request of Members entitled to vote fifty-one percent (51%) or more of the total votes of all Members holding memberships.

**4.03 Place of Meeting.**

The Board of Directors may designate any place within the Commonwealth of Virginia as the place for any annual meeting or for any special meeting called by the Board of Directors.

**4.04 Notice of Meeting.**

a. Written or printed notice of any meeting of the Members, stating the place, day and hour of the meeting, and as to special meetings the purpose or purposes for which the meeting is called, shall be delivered personally, by facsimile, electronically (e-mail) or by mail to each Member entitled to vote at such meeting by the Secretary or his agent.

b. The Secretary or his agent shall, at least fourteen (14) days in advance of any annual or regularly scheduled meeting, and at least seven (7) days in advance of any other meeting, send to each Member notice of the time, place and purposes of such meeting (except that notice of a Member's meeting to act on an amendment of the Articles of Incorporation, a plan of merger, a proposed sale of assets pursuant to Virginia Code Section 13.1-900 or the dissolution of the Association shall be given not less than twenty-five (25) nor more than sixty (60) days before the meeting).

c. Notices shall be sent by United States Mail to all Members at the address of their respective Lots, unless the Member has provided to such officer or his agent an address other than the address of the Members Lot; or notice may be hand delivered by the officer or his agent, provided the officer or his agent certifies in writing that notice was delivered to the Member. In the alternative, notice may be given by publication as permitted by applicable law. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, postage prepaid and addressed to the Member at his or her address within the subdivision created by the Declaration or such other address as such Member designates as the address for notice in a written notice to the Secretary of the Association pursuant to Section 8.02 below.

d. For the purpose of determining Members entitled to notice of or to vote at any meeting of the Members, the Board of Directors may set a record date for such determination of Members, in accordance with the laws of the Commonwealth of Virginia but no more than seventy (70) days before the meeting. If no record date is set for a meeting, then the

record date shall be the close of business on the day before the date on which the first notice of the meeting is mailed by the Association.

e. If a meeting is adjourned to a different date, time or place, notice need not be given again if the new date, time or place is announced at the meeting before adjournment. However, if a new record date for an adjournment is fixed, notice of the adjourned meeting shall be given to members as of the new record date. A new record date shall be fixed for any meeting that is adjourned to a date more than one hundred twenty (120) days after the date of the original meeting.

**4.05 Cumulative Voting.**

Cumulative voting shall not be allowed in the election of Directors, or for any other purpose.

**4.06 Member Lists.** In connection with each Member meeting, the Secretary of the Association shall compile and make available to Members a "member list" complying with the requirements of Section 13.1-845 of the Virginia Nonstock Corporation Act.

**ARTICLE V  
BOARD OF DIRECTORS**

**5.01 Number, Tenure and Qualifications.**

a. The business and affairs of the Association shall be managed by a Board of Directors comprised of not less than two (2) but no more than four (4) Directors.

b. The initial Board of Directors shall be appointed by Oakcrest Builders, Inc., as Declarant, and shall serve until the first annual meeting following conveyance of the first Lot in OldTowne Commons.

c. After appointment of the initial Board of Directors, any subsequent Board of Directors shall be elected by the Members and shall serve one-year terms and shall be elected or appointed annually.

d. Each Director shall hold office until the election and qualification of his or her successor or until his or her earlier death, resignation or removal.

e. The initial Board of Directors may or may not be Members of the Association; after appointment of the initial Board of Directors, any subsequent Board of Directors must be Members of the Association.

## 5.02 Powers.

Except as provided in the Declaration, the Articles and these By-Laws, the Board of Directors may act on behalf of the Association in all instances. By resolution, the Board of Directors may delegate portions of its authority to an executive committee or other committees, or to officers, agents, employees or managers of the Association. No such delegation shall relieve the Board of Directors of ultimate responsibility for management of the Association's affairs.

## 5.03 Managing Agent.

The Board of Directors may employ a manager or managing agent, or both, for the Association at a compensation established by the Board of Directors to perform such duties and services as the Board of Directors shall authorize. If, and to the extent that, the Board of Directors delegates its powers relating to the collection, deposit, transfer or disbursement of Association funds to a manager or managing agent, or both, such manager or managing agent, or both shall:

(a) maintain fidelity insurance coverage or a bond in an amount established by the Board of Directors but in no event shall such insurance coverage or bond be less than as provided by the Act;

(b) maintain all funds and accounts of the Association separate from the funds and accounts of any other associations managed by the manager or managing agent, and maintain all reserve accounts of each association so managed separate from operational accounts of the Association; and

(c) have prepared and present to the Association an annual accounting for Association funds and a financial statement, which accounting and financial statement shall be prepared by the managing agent, a public accountant, or a certified public accountant.

## 5.04 Regular Meetings.

Regular meetings of the Board of Directors shall be held upon notice as required by the Act at such times as the Board of Directors from time to time by vote may determine. Any business may be transacted at a regular meeting of the Board of Directors. The regular meeting of the Board of Directors for the election of Officers and for such other business as may come before the meeting shall be held upon Notice as required by the Act and these By-Laws and may be held immediately after, and at the same place as, the annual meeting of Members, or any special meeting of Members at which a member of the Board of Directors is elected. All meetings of the Board of Directors, including any subcommittee or other committee thereof, shall be open to all Members of record. Notice of the time, date and place of each meeting of the Board of Directors, or of any subcommittee or other committee thereof, shall be published where it is reasonably calculated to be available to a majority of the Lot Owners. Notice, reasonably under the circumstances, of special or emergency meetings shall be given contemporaneously

with the notice provided Members of the Association's Board of Directors, or any subcommittee or other committee thereof, conducting the meeting. If a meeting is conducted by telephone conference or video conference or similar electronic means, at least two (2) Members of the Board of Directors shall be physically present at the meeting place included in the notice. Voting by secret or written ballot in an open meeting shall be a violation of this Chapter except for the election of officers.

**5.05 Quorum.**

A majority of the number of Directors fixed by the Articles of Incorporation and the Declaration, as amended from time to time, shall constitute a quorum for the transaction of business, but a lesser number may adjourn any meeting. When a quorum is present at any meeting, a majority of the Directors in attendance shall, except where a larger number is required by law, the Declaration, the Articles of Incorporation or these By-Laws, decide any question brought before such meeting.

**5.06 Waiver of Notice.**

Before, at or after any meeting of the Board of Directors, any Director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Director at any meeting of the Board of Directors shall be a waiver of notice by him or her except when such Director attends the meeting for the express purpose of objecting to the transaction of business because the meeting is not lawfully called or convened.

**5.07 Intentionally Omitted.**

**5.08 Open Meetings.** To the extent required by the Act and/or the Virginia Non-Stock Corporation Act, meetings of the Board of Directors shall be open to all Members, and at each meeting, a period of time shall be designated to allow Members an opportunity to comment on any matter relating to the Association in general (or as to special meetings, the topics on the agenda for that meeting), subject to reasonable rules adopted by the Board of Directors. Meeting minutes shall be available for review by Members (subject to certain matters that may be held confidential or discussed in executive session in accordance with such Act). Notice of the time, date and place of each meeting of the Board of Directors shall be published where it is reasonably calculated to be available to a majority of Members and shall be sent by mail or e-mail to any Member requesting such notice. Any Member may request in writing to be notified on a continual basis of Director meetings, but such request shall be valid for one year only, unless renewed in writing.

**5.09 Compensation.** Directors shall not receive compensation for their services, but by resolution of the Board of Directors, any or all Directors may be reimbursed for actual expenses incurred in the performance of his or her duties. Nothing in these By-Laws shall preclude any Director from serving the Association in any other capacity and receiving compensation for such service.



5.10 Annual Budget. At least sixty (60) days prior to the first day of each fiscal year, the Board of Directors shall prepare and make available to all Members a budget outlining anticipated receipts and expenses for the coming fiscal year, including reserves. The financial books of the Association shall be kept in accordance with generally accepted accounting principles and shall be available for inspection by Members at all reasonable times.

5.11 Fidelity Bond. The Association shall obtain and maintain a blanket fidelity bond or employee dishonesty insurance policy insuring the Association against losses resulting from theft or dishonesty committed by the officers, directors or persons employed by the Association or committed by any managing agent or employees of the managing agent, as required by the Act.

## **ARTICLE VI**

### **OFFICERS AND AGENTS**

#### 6.01 General.

The officers of the Association shall be a President (who shall be chosen from among the members of the Board of Directors), one or more Vice Presidents (not required), a Secretary and a Treasurer. The offices of Secretary and Treasurer may be combined and held by one person. The Board of Directors may appoint such other officers, assistant officers, committees and agents, including assistant secretaries and assistant treasurers, as they may consider necessary or advisable, which other officers and/or assistant officers shall be chosen in such manner and hold their offices for such terms and have such authority and duties as from time to time may be determined by the Board of Directors. In all cases where the duties of any officer, agent or employee are not prescribed by the By-Laws or by the Board of Directors, such officer, agent or employee shall follow the orders and instructions of the President.

#### 6.02 Removal of Officers.

The Board of Directors may remove any officer, either with or without cause, and elect a successor at any regular meeting of the Board of Directors, or at any special meeting of the Board of Directors called for such purpose.

#### 6.03 Vacancies.

A vacancy in any office, however occurring, shall be filled by appointment by the Board of Directors for the unexpired portion of the term.

**6.04 President.**

The President shall be the chief executive officer of the Association. He or she shall preside at all meetings of the Association and of the Board of Directors, and shall oversee the affairs and business of the Association and cause general supervision of its officers, agents and employees. The President of the Association is designated as the officer with the power to prepare, execute, certify and record amendments to the Declaration on behalf of the Association.

**6.05 Vice Presidents.**

The Vice Presidents, if any, shall assist the President and shall perform such duties as may be assigned to them by the President or by the Board of Directors. In the absence of the President, the Vice President designated by the Board of Directors or (if there be no such designation) designated in writing by the President shall have the powers and perform the duties of the President. If no such designation shall be made, all Vice Presidents may exercise such powers and perform such duties.

**6.06 Secretary.**

The Secretary shall:

- (a) keep the minutes of the proceedings of the Members and the Board of Directors;
- (b) see that all notices are duly given in accordance with the provisions of these By-Laws, the Declaration and as required by law;
- (c) be custodian of the corporate records and of the seal of the Association and affix the seal to all documents when authorized by the Board of Directors;
- (d) keep at the Association's principal offices a record containing the names and registered addresses of all Members, the designation of the Lot owned by each Member, and, if such Lot is mortgaged and the Association has received written notice of such mortgage from the Mortgagee, the name and address of such Mortgagee; and
- (e) in general, perform all duties incident to the office of secretary and such other duties as from time to time may be assigned to him or her by the President or by the Board of Directors. Assistant secretaries, if any, shall have the same duties and powers, subject to supervision by the Secretary.

**6.07 Treasurer.**

The Treasurer shall be the principal financial officer of the Association and shall have the care and custody of all funds, securities, evidences of indebtedness and other personal property of the Association and shall deposit the same in accordance with the instructions of the Board of

Directors. The Treasurer shall receive and give receipts for moneys paid in on account of the Association, and shall pay out of the funds on hand all bills, payrolls and other just debts of the Association, upon maturity, to the extent shown in an approved budget or approved by the Board of Directors. The Treasurer shall perform all other duties incident to the office of the Treasurer and, upon request of the Board of Directors, shall make such reports to it as may be required at any time. The Treasurer, if required by the Board of Directors, give the Association a bond in such sums and with such sureties as shall be satisfactory to the Board of Directors, conditioned upon the faithful performance of the Treasurer's duties and for the restoration to the Association of all books, papers, vouchers, money and other property of whatever kind in the Treasurer's possession or under the Treasurer's control belonging to the Association. The Treasurer shall have such other powers and perform such other duties as may be from time to time prescribed by the Board of Directors or the President. The Assistant Treasurers, if any, shall have the same powers and duties, subject to the supervision of the Treasurer and the same bonding requirements as apply to the Treasurer unless otherwise approved by the Board of Directors.

## **ARTICLE VII RIGHTS AND OBLIGATIONS OF THE MEMBERS**

Each Member shall have the rights, duties and obligations set forth in the Declaration, the Act and these By-Laws.

## **ARTICLE VIII EVIDENCE OF OWNERSHIP, REGISTRATION OF MAILING ADDRESS AND LIEN HOLDERS**

### **8.01 Proof of Ownership.**

Except for those Members who initially contracted to purchase a Lot from Declarant, any person on becoming an Member shall furnish to the Association a photocopy or a certified copy of the recorded instrument vesting that person with an ownership interest in the Lot. Such copy shall remain in the files of the Association. An Member shall not be deemed to be in good standing and shall not be entitled to vote at any annual or special meeting of Members unless this requirement is first satisfied.

### **8.02 Registration of Mailing Address.**

The address of the Lot owned by a given Member or group of Members shall be used as the registered address for purposes of notice to such Member(s), unless such Member(s) furnish to the Secretary of the Association a written notice setting forth another address as the registered address.

**8.03 Address of the Association.**

The address of the Association shall be 126 North Kent Street, Winchester, Virginia 22601. Such address may be changed from time to time upon written notice to all Members and all listed Mortgagees, or in the alternative, by recordation of a statement of address in the Office of the Clerk of the Circuit Court of the City of Winchester, Virginia.

**ARTICLE IX  
SECURITY INTEREST IN MEMBERSHIP**

The Member as owner of any Lot entitled to vote shall have the right irrevocably to constitute and appoint a Mortgagee their true and lawful attorney-in-fact to vote their Membership in the Association at any and all meetings of the Association and to vest in the Mortgagee any and all rights, privileges and powers that they have as Members under the Act, the Articles of Incorporation and these By-Laws or by virtue of the Declaration. Such proxy shall become effective upon the filing of notice by the Mortgagee with the Secretary of the Association at such time or times as the Mortgagee shall deem its security in jeopardy by reason of the failure, neglect or refusal of the Association, the Board of Directors or the Members to carry out their duties as set forth in the Declaration. A release of the Deed of Trust covering the subject Lot shall operate to revoke such proxy. Nothing herein contained shall be construed to relieve Members, as grantors of a deed of trust upon a Lot, of their duties and obligations as Members or to impose upon the Mortgagee the duties and obligations of an Member.

**ARTICLE X  
COMMON INTEREST COMMUNITY COMPLAINT PROCEDURE**

In the event that a Member or other citizen shall have a complaint about the Association or its management, the Member or other citizen may file a written complaint upon written forms provided by the Association. The Association shall forward a Common Interest Community Complaint Form to the Member or other citizen upon written request submitted to the Association whose mailing address and telephone is set forth in Article II, above. The Common Interest Community Complaint Form shall include the mailing address, telephone number and electronic address of the Office of the Common Interest Community Ombudsman. The Association shall make a determination of any complaint filed by any Member or other citizen within thirty (30) days after receipt of the Common Interest Community Complaint Form. The Association shall maintain a record of each complaint for not less than one (1) year after the Association acts upon the complaint. In the event that the Association makes a determination that is adverse to the Member or other citizen filing a complaint, the Member or other citizen shall have the right to give notice to the Office of the Common Interest Community Ombudsman in accordance with the provisions set forth on the Common Interest Community Complaint

Form, which shall be provided to the Member or other citizen upon written request submitted to the Association.

## **ARTICLE XI** **AMENDMENTS**

### 11.01 By Directors.

Except as limited by applicable law, the Articles of Incorporation, the Declaration or these By-Laws, the Board of Directors, with the approval of the Members, may make, alter or repeal the By-Laws of the Association at any regular meeting of the Board of Directors or at any special meeting called for that purpose at which a quorum is represented. If, however, the Members entitled to vote shall make, amend or repeal any By-Law, the Directors shall not thereafter amend the same in such manner as to defeat or impair the object of the Members in taking such action.

### 11.02 Members.

The Members may make, alter, amend or repeal the By-Laws of the Association at any annual meeting or at any special meeting called for that purpose at which a quorum shall be represented, by the vote of the holders of at least two-thirds (2/3) of the votes of the Members entitled to vote, unless a greater percentage is expressly required by law, the Articles, the Declaration or these By-Laws.

## **ARTICLE XII** **MISCELLANEOUS**

### 12.01 Seal.

The corporate seal of the Association shall be circular in form and shall contain the name of the Association, the year of its organization and the words "Seal, Virginia."

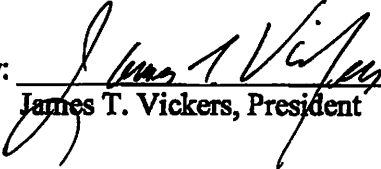
### 12.02 Fiscal Year.

The fiscal year shall initially be from January 1 through December 31 of each calendar year, which may from time to time be revised by the Board of Directors.

12.03 Construction with Other Documents.

The provisions of the Act, the Declaration and the Articles of Incorporation shall control in the event of an irreconcilable conflict with the provisions of these By-Laws. The Rules and Regulations adopted by the Board of Directors, as such Rules and Regulations may be amended or supplemented from time to time, are incorporated herein.

OLDTOWNE COMMONS HOMEOWNERS  
ASSOCIATION, INC.

By:  (SEAL)  
James T. Vickers, President

Corporations\OldTown Commons By-Laws  
11/22/16