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THIS DECLARATION OF RESTRICTIVE COVENANTS OF OLD TOWN COMMONS ("Declaration"), made and dated this 30th day of September, 2016, by **OAKCREST BUILDERS, INC.**, a Virginia corporation, hereinafter called "**Declarant**" and **SUMMIT COMMUNITY BANK**, hereinafter called "**Bank**".

RECITALS:

A. The Declarant is the owner of that certain parcel of land lying and being situate at the intersection of South Braddock Street and West Pall Mall Street, in the City of Winchester, Virginia, containing 17,100 square feet or 0.393 acre, more or less, and more particularly described as "Consolidated Tax Parcel 212-1-C-8", as shown on that certain "Final Plat For Lot Consolidation Of The Land Of Hable Theatres, Incorporated" dated October 31, 2013, drawn by Richard A. Edens, L.S., of record in the Clerk's Office of the Circuit Court of the City of Winchester, Virginia as Instrument No. 130003238. This is the same property conveyed to the Declarant by Deed dated December 24, 2014, from Hable Theatres, Incorporated, a Virginia corporation, which Deed is of record in the aforesaid Clerk's Office as Instrument No. 140002849 (the "**Property**").

B. The Declarant has previously subdivided the Property into Lots 1 through 9, inclusive, and Open Space Parcel A, as more fully set forth on that certain plat titled "Major Subdivision - Old Town Commons" dated August 26, 2015, of record in the aforesaid Clerk's Office as Instrument No. 160000079. The boundaries of Lot 2, Lot 3 and Open Space Parcel A were adjusted by that certain plat titled "Boundary Line Adjustment of Three parcels Lots 2, 3, and Open Space Parcel A Old Town Commons" dated January 12, 2016, drawn by Michael M. Artz, L.S., which plat is attached to and made a part of that certain Deed of Boundary Line Adjustments and Easements dated September 30, 2016, of record in the aforesaid Clerk's Office as Instrument No. 160002335 (collectively, the "**Subdivision Plat**").

C. Lots 1 through 9, inclusive, and Open Space Parcel A are subject to that certain Credit Line Deed of Trust dated November 30, 2015, executed by the Declarant, of record in the aforesaid Clerk's Office as Instrument No. 150002904, given to secure Summit

TAX MAP NO. 212-1-C-8

Michael L. Bryan
VSB #15737
116 S. Braddock St.
Winchester, VA

Community Bank that certain indebtedness in the sum of \$1,600,000.00.

D. The Declarant desires and intends to create a single-family residential townhouse development community, to be known as Old Town Commons, to provide for the preservation and enhancement of the value of said community and for the maintenance, upkeep and repair of the Common Area, as more fully set forth hereinafter.

NOW, THEREFORE, THIS DECLARATION OF RESTRICTIVE COVENANTS WITNESSETH: That for and in consideration of the premises and the benefits which will accrue by reason of this Declaration and in order to provide for the preservation and enhancement of the value of the residential townhouse community known as Old Town Commons and for the maintenance, upkeep and repair of the Common Area, the Declarant hereby imposes the restrictive covenants, assessments, conditions and easements upon Lots 1 through 9, inclusive, and Open Space Parcel A, as more fully set forth on the Subdivision Plat of Old Town Commons.

All of the Lots shown on the aforesaid Subdivision Plat shall be subject to the following restrictions, covenants and easements, which shall constitute covenants real running with the land, and shall be binding upon all parties having any right, title and interest in and to the aforesaid Lots 1 through 9, inclusive, and Open Space Parcel A, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

ARTICLE I

DEFINITIONS

Section 1. “**Association**” shall mean and refer to Old Town Commons Homeowners Association, Inc., a non-stock Virginia Corporation, its successors and assigns.

Section 2. “**Common Area**” shall mean and refer to that certain real property described herein as common open space and parking areas, designated as Open Space Parcel A on the Subdivision Plat.

Section 3. “**Lot**” shall mean and refer to any of the lots designated as Lots 1 through 9, inclusive, of Old Town Commons, with the exception of Open Space Parcel A, which is designated as “Common Area”, below.

Section 4. **“Member”** shall mean and refer to every person or entity who holds membership in the Association.

Section 5. **“Owner”** shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Lot which is part of Old Town Commons, as shown on the Subdivision Plat, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 6. **“Declarant”** shall mean and refer to Oakcrest Builders, Inc., a Virginia Corporation, its successors and assigns.

Section 7. **“Townhouse”** shall mean and refer to the townhouses erected by the Declarant on each Lot in Old Town Commons.

Section 8. **“Common Area”** shall mean and refer to Open Space Parcel A as more fully set forth on the Subdivision Plat.

Section 9. **“City”** shall mean and refer to the City of Winchester, Virginia.

Section 10. **“Common Council”** shall mean and refer to the Common Council of the City of Winchester, Virginia.

ARTICLE II

MEMBERSHIP

Every Owner of a Lot, including contract sellers, shall be a member of the Association and subject to the restrictive covenants and assessments set forth in this Declaration. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Only one membership shall be accorded per Lot. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association. Ownership of such Lot shall be the sole qualification for membership.

ARTICLE III

VOTING RIGHTS

Each Lot shall have one vote for each lot owned in which said Member shall hold the interest required for membership in Article II. When more than one person holds such

interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

BOARD OF DIRECTORS

Section 1. The affairs of the Association shall be managed by a Board of not less than two (2), but no more than four (4) directors.

Section 2. The initial Board of Directors shall be appointed by the Declarant and shall serve until the first annual meeting following conveyance of the first Lot in Old Town Commons. The initial Board of Directors may or may not be members of the Association.

Section 3. After appointment of the initial Board of Directors, any subsequent Board of Directors shall be elected by the Membership as determined in the By-Laws of the Association, and must be members of the Association.

TREASURER

The Treasurer of the Association shall be bonded, with the expense of such a fidelity bond for said officer to be borne by the Association.

ARTICLE IV

PROPERTY RIGHTS IN COMMON PROPERTIES

Section 1. **Members' Easements of Enjoyment**: Every Member shall have a right and easement of enjoyment in and to the Common Area, specifically including but not limited to the rights of ingress and egress across the aforesaid Common Area and such easement shall be appurtenant to and shall pass with the title to every assessed Lot, subject to the following provisions:

- (a) The rights of the Association, in accordance with its Articles and By-Laws, to borrow money for the purpose of improving the aforesaid Common Area and in aid thereof to mortgage said Common Area and the rights of such mortgagee in said Common Area shall be subordinate to the rights of the Homeowners hereunder.
- (b) The rights of the Association to suspend the voting rights and the right to the use of the Common Area by a Member for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed thirty (30) days for any infraction of its published rules and regulations.

- (c) The rights of the Association to dedicate or transfer all or part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective unless an instrument signed by Members entitled to cast two-thirds (2/3) of the votes has been recorded agreeing to such dedication or transfer, and unless written notice of the proposed action is sent to every Member not less than thirty (30) nor more than sixty (60) days in advance of the meeting.

Section 2. **Delegation of Use:** Any Member may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area to the members of his family, his tenants, or contract purchasers who reside on the Lot.

Section 3. **Title to the Common Area:**

(a) The Declarant hereby covenants that it will convey fee simple title to the Common Area (referred to hereinabove as the "Common Area") to the Association prior to the conveyance of the first Lot.

(b) The Common Area is not dedicated hereby for use by the general public but is dedicated to the common use and enjoyment of the Owners of Lots in Old Town Commons.

(c) The Owner of each Lot shall be assigned one parking space in the parking areas located upon the Common Area.

ARTICLE V

**COVENANTS FOR MAINTENANCE
ASSESSMENTS FOR THE ASSOCIATION**

Section 1. **Assessments:** The Declarant, for each Lot owned, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Association (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be fixed, established, and collected from time to time as hereinafter provided. The annual assessments and special assessments, together with such interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with such interest, costs and reasonable attorney's fee,

shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fee was due. The personal obligation shall not pass to his successors in title unless expressly assumed by such successors in title.

Section 2. **Purpose of Assessments:** The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents in the Common Area and, in particular, for the improvement, repair and maintenance of the Common Area, payment of real estate taxes, repairs, snow removal, storm drainage repair, maintenance, repair and reconstruction of underground roof drains, lighting for the Common Area and services and facilities devoted to the aforesaid purposes and related to the use of and enjoyment of the Common Area for the Old Town Commons development.

Section 3. **Basis and Maximum of Annual Assessments:**

(a) Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be \$600.00 per year per Lot.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, after consideration of the current maintenance costs and further needs of the Association, the maximum annual assessment per Lot may be increased above that set forth hereinabove by a vote of the Members for the next succeeding year and at the end of each year's period, for each succeeding period of one year; provided that any such change shall have the assent of two-thirds (2/3) of the votes of Members who are voting in person or by proxy, at a meeting duly called for this purpose, written notice of which shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting, setting forth the purpose of the meeting.

(c) After consideration of current maintenance costs and future needs of the Association, the Board of Directors may fix the annual assessments at an amount not in excess of the maximum.

Section 4. **Special Assessments for Capital Improvements:** In addition to the annual assessments authorized above, the Association may levy in any assessment year a

special assessment applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the Common Area, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of Members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting, setting forth the purpose of the meeting.

Section 5. **Uniform Rate of Assessment:** Both annual and special assessments must be fixed at a uniform rate for all Lots, and may be collected on a monthly basis.

Section 6. **Quorum for any Action Authority Under Sections 3 and 4:** At the first meeting called, as provided in Sections 3 and 4 hereof, the presence at the meeting of Members or of proxies entitled to cast two-thirds (2/3) of all votes shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the notice requirement set forth in Sections 3 and 4 and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than ninety (90) days following the preceding meeting.

Section 7. **Date of Commencement of Annual Assessments:** The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the first lot to an Owner. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand at any time, furnish a certificate in writing signed by an officer of the Association, setting forth whether the assessments on a specified Lot have been paid. A reasonable charge may be made by the Board for the issuance of these

certificates. Such certificates shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 8. Effect of Non-Payment of Assessments: Remedies of the Association:

Any assessments which are not paid when due shall be delinquent. If the assessments are not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of twelve percent (12%) per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property, and interest, costs and reasonable attorney's fees on any such action shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 9. Subordination of the Lien to Mortgages: The lien of the assessments provided for herein shall be subordinated to the lien of any Deed of Trust or Deeds of Trust now or hereafter encumbering any Lot. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot which is subject to any Deed of Trust, pursuant to a judicial or non-judicial foreclosure thereof, shall extinguish the lien of such assessments which remain unpaid after such foreclosure sale occurs. No sale or transfers shall relieve such Lot from liability for any assessments thereafter becoming due from the lien thereof.

Section 10. Exempt Property: The following property subject to this Declaration shall be exempt from the assessments created herein; (a) the Common Area; (b) all Lots owned by the Declarant, unless the Declarant leases the Townhouse constructed upon such Lot, in which case such leased Lot or Lots shall be subject to the assessments imposed by this Declaration.

Section 11. Failure to Maintain Common Area:

(a) In the event that the Association, or any successor organization, shall at any time fail to maintain the Common Area in reasonable order and condition in accordance with the site plan previously filed with the City, Common Council may serve written notice upon the

Association or upon the residents of Old Town Commons setting forth the manner in which the Association has failed to maintain the Common Area in reasonable condition, and said notice shall include a demand that such deficiencies of maintenance be remedied within thirty (30) days thereof, and shall state the date and place of a hearing thereon which shall be held within fourteen (14) days of the notice. At such hearing, Common Council may modify the terms of the original notice as to the deficiencies and may give an extension of time in which they shall be remedied. If the deficiency set forth in the original notice or the modifications thereof shall not be remedied within said thirty (30) days or any extension thereof, the City, in order to preserve the taxable values of the Lots within Old Town Commons and to prevent the Common Area from becoming a public nuisance, may enter upon said Common Area and maintain the same for a period of one (1) year. Said entry and maintenance shall not vest in the public any rights to use the Common Area. Before the expiration of said year, the City shall, upon its initiative or upon the request of the Association, call a public hearing upon notice to the Association, or to the residents of Old Town Commons, to be held by Common Council, at which hearing the Association or the residents of Old Town Commons shall show cause why such maintenance by the City shall not at the election of the Common Council continue for a succeeding year. If the Common Council shall determine that the Association is ready and able to maintain said Common Area in reasonable condition, the Common Council shall cease to maintain said Common Area at the end of said year. If the Common Council shall determine that the Association is not ready or able to maintain the Common Area in a good, clean and safe condition, the Common Council may, in its discretion, continue to maintain said Open Space, subject to a similar hearing and determination in the next succeeding year and in each year thereafter.

(b) The cost of such maintenance by the City shall be assessed ratably against the Lots within Old Town Commons that have the right of enjoyment of the Common Area and shall become a tax lien on said Lots. The City at the time of entering upon said Common Area for the purpose of maintenance shall file a notice of such lien in the Office of the Clerk of the Circuit Court for the City of Winchester, Virginia.

Section 12. **Supplemental Transfer Assessment:** The Owner of any Lot (including the Declarant) shall at the closing upon the sale and conveyance of such Lot, pay unto the Association the sum of Two Hundred Fifty Dollars (\$250.00) for each Lot sold and conveyed (the "**Supplemental Transfer Assessment**"), which sum shall be added to and become part of the funds collected by the Association as Capital Assessments for future capital improvements.

ARTICLE VI

USE, RESTRICTIONS AND COVENANTS

The Lots in Old Town Commons shall be subject to the following restrictions, covenants and conditions, which shall constitute covenants real running with the title to the Lots, or any part thereof. The restrictions, covenants and conditions shall be binding upon all parties residing upon or having any right, title or interest in and to said Lots or any part thereof (including, but not limited to any tenants of any Townhouse that is leased by the Owner thereof), their heirs, successors and/or assigns. The restrictions, covenants and conditions set forth hereinafter shall inure to the benefit of the Owner of any Lot in Old Town Commons and to the benefit of the Association:

1. All Lots shall be used for single-family residential purposes only.
2. No signs or advertising of any nature shall be erected or maintained on any Lot except "For Sale" signs for said Lot, which signs shall not exceed five (5) square feet in area; provided, however, that the signs used by the Declarant to advertise the Property during construction and sale shall not be subject to the terms of this restriction. No "For Rent" signs shall be allowed or displayed on any Lot which is offered for rent by the Owner.
3. No boats, mobile homes, motor homes, campers, commercial buses, trailers of any type, tractors, trucks or other motor vehicles (other than automobiles, motorcycles, pickup trucks, and 3/4 ton [or less] vans) shall be permitted on any Lot or upon the Common Area. No motor vehicle, or material portion thereof, which does not have a current license and current inspection sticker, if applicable, shall be permitted on any Lot or the Common Area.
4. (a) No animals of any kind (including livestock, poultry or birds) shall be permitted on any Lot,

except that dogs, cats and other usual household pets may be kept, provided that they are not kept, bred or maintained for commercial or charitable purposes or in unusual numbers. No outdoor kennels shall be permitted on any Lot.

(b) No dogs, cats or other household pets shall be allowed to run at large.

5. No noxious or offensive activities shall be carried on upon any Lot nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to the other Owners of Lots in Old Town Commons.

6. (a) In the event that a Townhouse situate upon any Lot is destroyed, the Owner of the Townhouse, within thirty (30) days from said destruction, shall clear away any debris and the remaining portion of the Townhouse and maintain the Lot in a neat and orderly condition.

(b) The Owner shall reconstruct the Townhouse in substantial conformity with the plans and specifications applicable to the original Townhouse constructed by the Declarant upon the Lot. Such reconstruction shall be completed within twelve (12) months from the date of destruction of the Townhouse, unless the completion of such Townhouse is delayed due to strikes, casualty, losses, national emergencies or other causes beyond the control of the Owner.

(c) The exterior colors of any Townhouse on any Lot shall not be changed from the original exterior color applied by the Declarant.

7. In the event a Townhouse or other appurtenant structure situate upon the Lot is damaged, or has materially deteriorated, the Owner shall immediately repair the damage or deterioration.

8. (a) No Lot shall be used or maintained as a dumping ground for rubbish.

(b) Trash, garbage or other waste shall at all times be kept in closed sanitary containers. Except on the date of garbage pickup, at which time all sanitary containers shall be placed curbside, no refuse or any container for same shall be placed or stored in front of any Townhouse.

9. No exterior clothes lines, or hanging device, shall be permitted on any Lot.

10. No business, commercial enterprise or occupation of

any kind shall be carried on, conducted or permitted in or on any Lot.

11. Each Owner shall keep the Townhouse and all other improvements located upon each Lot owned by him in good order and repair and free of debris, including, but not limited to, the painting (or other appropriate external care) of the Townhouse constructed thereon, all in a manner and with such frequency as is consistent with good property management.
12. (a) All Owners shall comply with the landscaping plans and standards established by the Declarant and its designee(s)/assignee to insure an orderly and uniform landscaping scheme for Old Town Commons. No modification or change in the landscaping plan shall be permitted without the prior written approval of the Declarant, its designee(s)/assignee (specifically including the Association).

(b) Lot Owners shall be permitted to plant flowers in the mulched areas (but not within the yard) of each Lot. No birdbaths, swing sets, flag poles, statues or other items shall be placed within the lawn area of each Lot. No gardens shall be permitted within the lawn area of each Lot.
13. (a) No satellite dish or antenna with a diameter greater than 40 inches shall be erected, used or maintained outdoors on any Lot for the purpose of receiving video programming, television, radio, electronic, wireless or other signals.

(b) Any satellite dish or antenna must be installed on the rear of the Townhouse constructed upon the Lot, and shall be located upon the roof above the eaves.

(c) No cell tower, including monopoles or towers of other design shall be erected, used or maintained outdoors on any Lot or Common Area.
14. No tree shall be planted or other digging undertaken upon any Lot without first securing the approval of the local utility companies and without first being advised as to the location of all underground electrical, telephone, cable or other lines or conduits.
15. (a) No separate or detached building or garage shall be permitted on any Lot.

- (b) No expansion of the Townhouse located on any Lot shall be permitted, including, but not limited to, the addition of decks, porches, and/or additional rooms.
- (c) No basketball backboard rims or nets shall be permitted upon any Lot or the Common Area.
- (d) No additional patio (other than the patio installed at the time of the initial construction of the Townhouse) shall be constructed on any Lot.
- (e) Mailboxes shall be restricted to those approved by the Association.
- (f) Any fence constructed on any Lot must be a picket fence, no higher than 42 inches, white in color, and made of composite material only.
16. No motorcycle, snowmobile, all terrain vehicle, "dirt bike", moped, scooter, golf cart or other motorized recreational vehicle shall be operated upon any Lot or Common Area, except that properly licensed and inspected motorcycles may be used as a means for transportation directly to and from a Townhouse located upon any Lot. No repair of motor vehicles shall be permitted on any Lot or the Common Area. No recreational vehicles, house trailers, or commercial or industrial vehicles, including, but not limited to, moving vans, tractors, trailers, wreckers, buses, boats, boating equipment, travel trailers, golf carts, horse trailers or camping equipment shall be allowed to be parked on any Lot or the Common Area. The provisions of this Section 17 shall not apply to any ongoing construction, development or improvement on any Lot by the Declarant or any builder.
17. No Lot may be further subdivided or conveyed except as a whole. This restriction shall not be construed so as to prohibit the conveyance of such minimal amounts of land as may be necessary to resolve boundary adjustments between contiguous Lots.
18. The Declarant or its designee(s)/assignee (specifically including the Association) shall not be liable to any person or entity whatsoever for any exercise or non-exercise of the powers herein accorded.
19. The covenants and restrictions set forth in this Article IX may be amended by instrument signed by not less than two-thirds vote of the Owners. Any amendment must be properly recorded among the

land records in the Clerk's Office of the Circuit Court of the City of Winchester, Virginia in order to become binding and effective.

- 20. The invalidation of any one of the covenants or restrictions contained herein by judgment or Court Order shall in no wise affect any of the other provisions which shall remain in full force and effect. The failure of the Owners of Lots in Old Town Commons or the Declarant herein to enforce any covenants or restrictions shall not be deemed to be a waiver of the right to do so thereafter as to a default occurring prior or subsequent thereto.

- 21. The Declarant herein reserves and shall have the right alone to waive any one or more of the restrictive covenants and conditions contained herein as to any Lot owned by the Declarant, except for Restriction No. 1 under this Article VI of this Deed of Dedication pertaining to single family residential use of the Lots located in Old Town Commons, which Restriction No. 1 shall not be waived hereafter by the Declarant as to the Lots in Old Town Commons. Any such waiver shall not affect the binding effect of the remaining covenants and restrictions upon any other Lot. The Declarant further reserves the right alone to impose additional restrictive covenants and restrictions as to any Lot or Lots owned by it at the time of the imposition and such imposition shall not affect the binding effect of these provisions upon any other Lot or Lots owned by the Declarant.

ARTICLE VII

EASEMENTS

Declarant, for a period of five (5) years from the date of conveyance of the first Lot in Old Town Commons, reserves a blanket easement and right on, over and under the ground within the Old Town Commons development to maintain and correct drainage of surface water in order to maintain reasonable standards of health, safety and appearance. Such right expressly includes the right to cut any trees, bushes or shrubbery, make any grading of the soil, or to take any other similar action deemed reasonably necessary by the Declarant, following which the Declarant shall restore the affected property within the Old Town Commons development to substantially its

original condition. The Declarant shall give reasonable notice of intent to take such action to all affected Owners, unless in the opinion of the Declarant an emergency exists which precludes the giving of such notice.

ARTICLE VIII

GENERAL PROVISIONS

Section 1. Enforcement: The Declarant (so long as the Declarant is vested with the title to a Lot), the Association and/or any Owner shall have the right to enforce, by a proceeding filed in the appropriate Court having jurisdiction thereof, all restrictions, conditions, covenants, reservations, liens and charges, now or hereafter, imposed by the provisions of this Declaration. Failure by the Declarant (so long as the Declarant is vested with the title to a Lot), the Association, and/or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. All costs which may be incurred in the successful enforcement of the restrictions, conditions, covenants, reservations, liens, and charges, now or hereafter imposed, whether incurred by the Declarant, the Association or by any Owner, shall be borne by the party against which action is taken and such costs shall include reasonable attorney's fees, costs, and expenses, provided that the Declarant, the Association, and/or the Owner substantially prevails in such proceeding.

Section 2. Severability: Invalidation of any one of the terms, conditions, covenants and/or restrictions set forth in this Declaration by judgment or Court Order shall in no way affect any other provision hereof, which shall remain in full force and effect.

Section 3. Amendment: The covenants and restrictions of this Declaration shall run with the land and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of thirty (30) years from the date this Declaration is recorded, after which time, said covenants shall be automatically extended for successive periods of ten (10) years. The covenants

and restrictions of this Declaration may be amended during the first thirty (30) year period by an instrument signed by not less than ninety percent (90%) of the Lot Owners, and thereafter, by an instrument signed by not less than seventy-five percent (75) of the Lot Owners. Any amendment must be properly recorded.

Section 4. Dissolution: Upon dissolution of the Association, other than incident to a merger or consolidation, the assets of the Association shall be dedicated to an appropriate public agency to be used for purposes similar to those for which the Association was created or for general welfare of the residents of Old Town Commons. In the event that such dedication is refused acceptance, such assets shall be deemed vested in the Members of the Association as tenants in common.

Section 5. Bank's Consent: The Bank joins herein to evidence its consent to the terms of this Declaration. The Bank shall have no responsibility, liability or obligation whatsoever to grant any approvals or take any action under the terms of this Declaration.

The terms of this Declaration of Restrictive Covenants of Old Town Commons is made with the free consent and in accordance with the desire of the undersigned Declarant.

WITNESS the following signatures and seals:

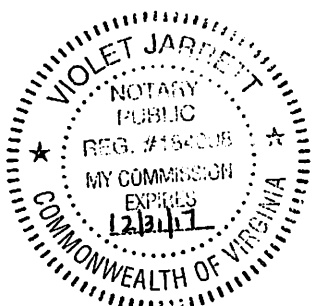
OAKCREST BUILDERS, INC.
By: James T. Vickers (SEAL)
James T. Vickers, President

STATE OF VIRGINIA, AT LARGE,
CITY/COUNTY OF Winchester, to-wit:

The foregoing instrument was acknowledged before me on the 30 day of Sept, 2016, by James T. Vickers, President of Oakcrest Builders, Inc., a Virginia corporation, and whose name is signed to the foregoing Deed of Dedication dated the 30 day of Sept, 2016.

My commission expires 12.31.17.

Violet Garrett
NOTARY PUBLIC



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SUMMIT COMMUNITY BANK

By: *Steve Janner* (SEAL)
Senior Vice President

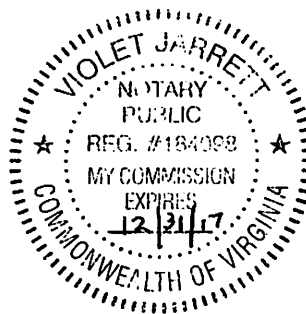
STATE OF VIRGINIA, AT LARGE,
CITY/COUNTY OF Winchester, to-wit:

The foregoing instrument was acknowledged before me on the 30 day of Sept, 2016, by Steve Janner, who is Senior Vice President of Summit Community Bank, and whose name is signed to the foregoing Deed of Dedication dated the 30 day of Sept, 2016.

My commission expires 12-31-17.

Violet Jarrett
NOTARY PUBLIC

Deeds\Old Town Commons
Declaration of Restrictive Covenants
9/15/16



INSTRUMENT #160002336
RECORDED IN THE CLERK'S OFFICE OF
WINCHESTER ON
SEPTEMBER 30, 2016 AT 12:34PM

TERRY H. WHITTLE, CLERK
RECORDED BY: MRS

Michael L. Bryan
VSB #15737
116 S. Braddock St.
Winchester, VA

160002335

000 0041

THIS DEED OF BOUNDARY LINE ADJUSTMENTS AND EASEMENTS,
made and dated this 30th day of September, 2016, by OAKCREST BUILDERS, INC., a Virginia corporation, hereinafter called "Owner", and SUMMIT COMMUNITY BANK, hereinafter called "Bank".

R E C I T A L S:

A. The Owner is vested with fee simple title to that certain parcel or tract of land lying and being situate at the intersection of South Braddock Street and West Pall Mall Street, in the City of Winchester, Virginia, containing 17,100 square feet or 0.393 acre, more or less, and more particularly described as "Consolidated Tax Parcel 212-1-C-8", as shown on that certain "Final Plat For Lot Consolidation Of The Land Of Hable Theatres, Incorporated", dated October 31, 2013, drawn by Richard A. Edens, L.S., of record in the Clerk's Office of the Circuit Court of the City of Winchester, Virginia as Instrument No. 130003238; and being the same lands conveyed to Oakcrest Builders, Inc., a Virginia Corporation, by that certain Deed dated December 24, 2014, from Hable Theatres, Incorporated, a Virginia Corporation, which Deed is of record in the aforesaid Clerk's as Instrument No. 140002849 (the "Property").

B. The Owner has previously subdivided the Property into Lots 1 - 9, inclusive, and Open Space A, as more fully set forth on that certain plat titled "Major Subdivision - Old Town Commons" dated August 26, 2015, of record in the Clerk's Office of the Circuit Court of the City of Winchester, Virginia as Instrument No. 160000079 (the "Subdivision Plat").

C. The Owner is vested with fee simple title to Lots 1 through 9, inclusive, and Open Space Parcel A of Old Town

TAX MAP NO. 212-1-C-8

Commons, as more fully set forth on the Subdivision Plat.

D. The Owner intends to adjust the boundaries of Lot 2, Lot 3 and Open Space Parcel A, as more fully set forth on that certain plat titled "Boundary Line Adjustment of Three parcels Lots 2, 3, and Open Space Parcel A Old Town Commons" dated January 12, 2016, drawn by Michael M. Artz, L.S. (the "**BLA Plat**").

E. The Owner intends to impress and create those certain utilities easements over a portion of Lot 1, Lot 2 and Lot 3, Old Town Commons, as more fully set forth on that certain plat titled "Easement Detail, Boundary Line Adjustment of Three parcels Lots 2, 3, and Open Space Parcel A Old Town Commons" dated January 12, 2016, drawn by Michael M. Artz, L.S. (the "**Easement Plat**") and further to impress and create upon a portion of Lot 3 that certain patio easement for the benefit of Lot 2, as more fully set forth on the aforesaid Easement Plat.

F. The BLA Plat and the Easement Plat are attached to that certain cover sheet titled "Boundary Line Adjustment of Lots 2, 3 and Open Space Parcel A - Old Town Commons" dated January 13, 2016, copies of which are attached hereto and incorporated herein by reference as if set out in full (collectively, the "**Plat**").

G. The property is subject to that certain Credit Line Deed of Trust dated November 30, 2015, executed by the Owner, given to secure Summit Community Bank the sum of \$1,600,000.00, of record in the aforesaid Clerk's Office as Instrument No. 150002904 (the "**Summit Bank Deed of Trust**").

NOW, THEREFORE, WITNESSETH: That for and in consideration

of the sum of Ten Dollars (\$10.00), cash in hand paid, and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

1. **RECITALS:** The Recitals are made a material part hereof and incorporated herein by reference as if set out in full.

2. **BOUNDARY LINE ADJUSTMENTS:** The Owner hereby adjusts the boundaries of Lot 2, Lot 3 and Open Space Parcel A so as to create Lot 2, containing 1,114 square feet, more or less, Lot 3, containing 1,401 square feet, more or less, and Open Space Parcel A, containing 7,899 square feet, more or less, as more fully set forth on the attached Plat.

3. **UTILITIES/PATIO EASEMENTS:**

(a) The Owner hereby creates and impresses those certain utilities easements upon a portion of Lot 1, Lot 2 and Lot 3, Old Town Commons, designated as "Variable Width Utilities Easement" on the attached Easement Plat, which easements shall be non-exclusive, perpetual, appurtenant and permanent easements and run with the title to Lot 1, Lot 2 and Lot 3 for the benefit of Lot 1, Lot 2 and Lot 3 (the "**Utilities Easements**").

(b) The Owner hereby creates a patio easement over a portion of Lot 3 for the benefit of Lot 2, designated as "Patio Easement on Lot 3 for benefit of Lot 2" on the attached Easement Plat, for purposes of construction, repair, maintenance, removal and/or reconstruction of a patio upon Lot 3 (the "**Patio Easement**"). The Patio Easement shall be a perpetual, appurtenant and permanent easement and shall run with the title to Lot 3 for the benefit of Lot 2. **(Any**

reasonable right of access necessary to the Patio Easement - ask John Barker).

4. CONSENT TO BOUNDARY LINE ADJUSTMENTS AND EASEMENTS:

(a) Summit Community Bank joins herein to evidence its consent to the adjustment of the boundaries of Lot 2, Lot 3 and Open Space Parcel A, Old Town Commons, as more fully set forth in this instrument.

(b) Summit Community Bank joins herein to evidence its consent to the creation of the Utilities Easements and the Patio Easement as created by this instrument and subordinates the lien of the Summit Bank Deed of Trust to the Utilities Easements and the Patio Easement.

WITNESS the following signatures and seals:

OAKCREST BUILDERS, INC.

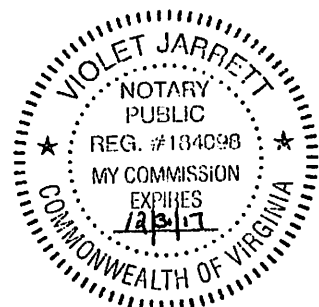
By: James T. Vickers (SEAL)
James T. Vickers, President

STATE OF VIRGINIA, AT LARGE,
CITY/COUNTY OF Winchester, to-wit:

The foregoing instrument was acknowledged before me on the 30 day of Sept, 2016, by James T. Vickers, President of Oakcrest Builders, Inc., a Virginia corporation, and whose name is signed to the foregoing Vacation of Plat dated the 30 day of Sept, 2016.

My commission expires 12.31.17.

Violet Jarrett
NOTARY PUBLIC



Michael L. Bryan
VSB #15737
116 S. Braddock St.
Winchester, VA

000 0045

SUMMIT COMMUNITY BANK

By: [Signature] (SEAL)
Senior Vice President

STATE OF VIRGINIA, AT LARGE,

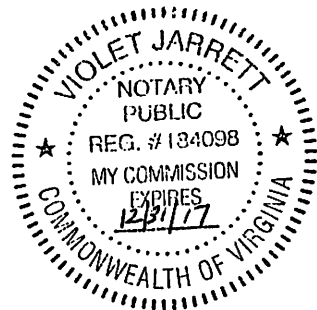
CITY/COUNTY OF Winchester, to-wit:

The foregoing instrument was acknowledged before me on the 30 day of Sept, 2016, by Steve Janssen, who is Senior Vice-president of Summit Community Bank, and whose name is signed to the foregoing Vacation of Plat dated the 30 day of Sept, 2016.

My commission expires 12.31.17.

[Signature]
NOTARY PUBLIC

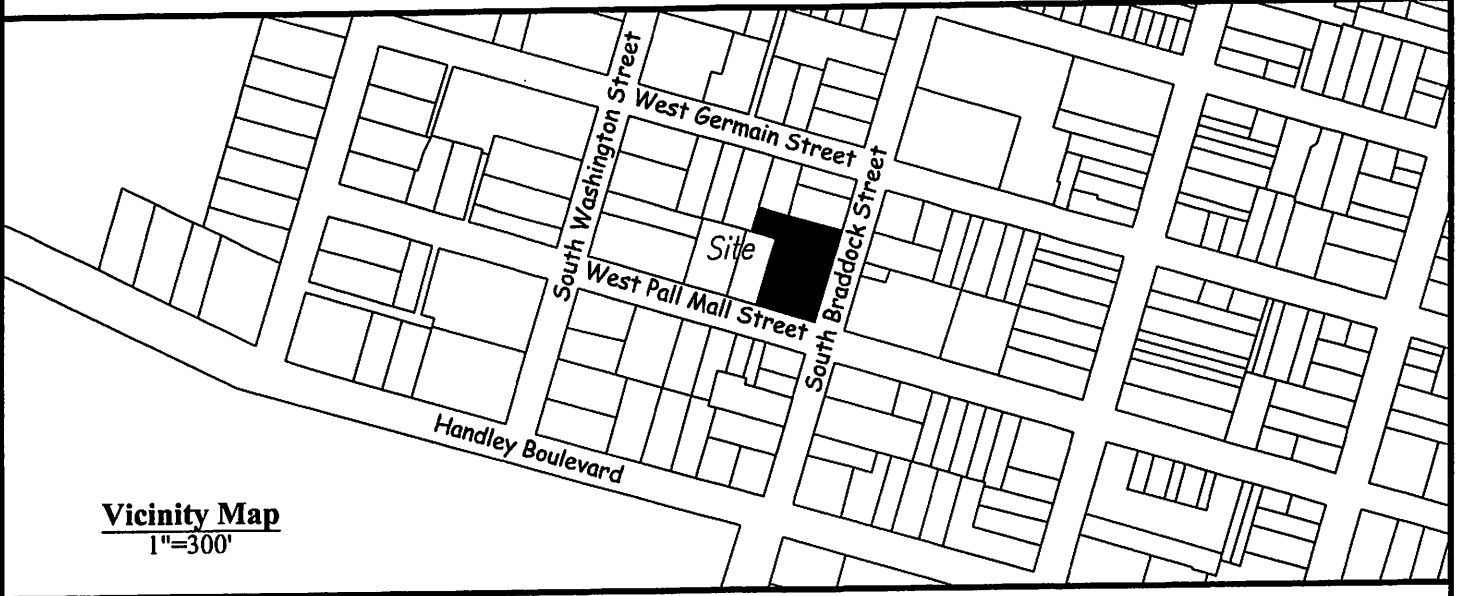
Deeds\Oakcrest Builders
Deed of Boundary Line Adjustments
9/12/16



Michael L. Bryan
VSB #15737
116 S. Braddock St.
Winchester, VA

Boundary Line Adjustment of Lots 2, 3 and Open Space Parcel A ~ Old Town Commons

Oakcrest Builders, Inc.
715 South Braddock Street Part of TM #212-1-C-8 Instrument #140002849 & 160000079
January 13, 2016 City of Winchester, Virginia



Vicinity Map
1"=300'

SURVEYOR'S CERTIFICATE:

I, Michael M. Artz, a duly authorized land surveyor, do hereby certify that the land hereby subdivided is in the name of Oakcrest Builders, Inc. and was acquired as stated in the Owner's Certificate. I further certify that these tracts are properly and accurately described and are within the boundaries of the original tracts.

Michael M. Artz
Certified Land Surveyor

OWNER'S CERTIFICATE:

The undersigned fee simple owner hereby certifies that the land herein adjusted is part of the property conveyed to Oakcrest Builders, Inc. by deed dated December 24, 2014 and recorded in Instrument #140002849. and further shown on a plat recorded in Instrument #160000079. Said deeds being of record in the Clerk's Office of the City of Winchester, Virginia.

This boundary line adjustment as it appears on the accompanying plat is with the free consent and in accordance with the desires of the undersigned owner of said land and the same is hereby confirmed and submitted for record in the Clerk's Office of the City of Winchester, Virginia.

John Barker
John Barker, President

NOTARY CERTIFICATE:

STATE OF VIRGINIA; CITY/COUNTY OF Winchester, to-wit:

The foregoing owners consent and dedication was acknowledged before me by John Barker this 20th day of January, 2016.

My commission expires 10-31-19 *Pamela Burke*
Notary Public

PAMELA BURKE
NOTARY PUBLIC
REG. #7631140
COMMONWEALTH OF VIRGINIA
MY COMMISSION EXPIRES OCT. 31, 2019

CERTIFICATE OF APPROVAL

This boundary line adjustment is approved by the undersigned in accordance with existing subdivision regulations and may be admitted to record.

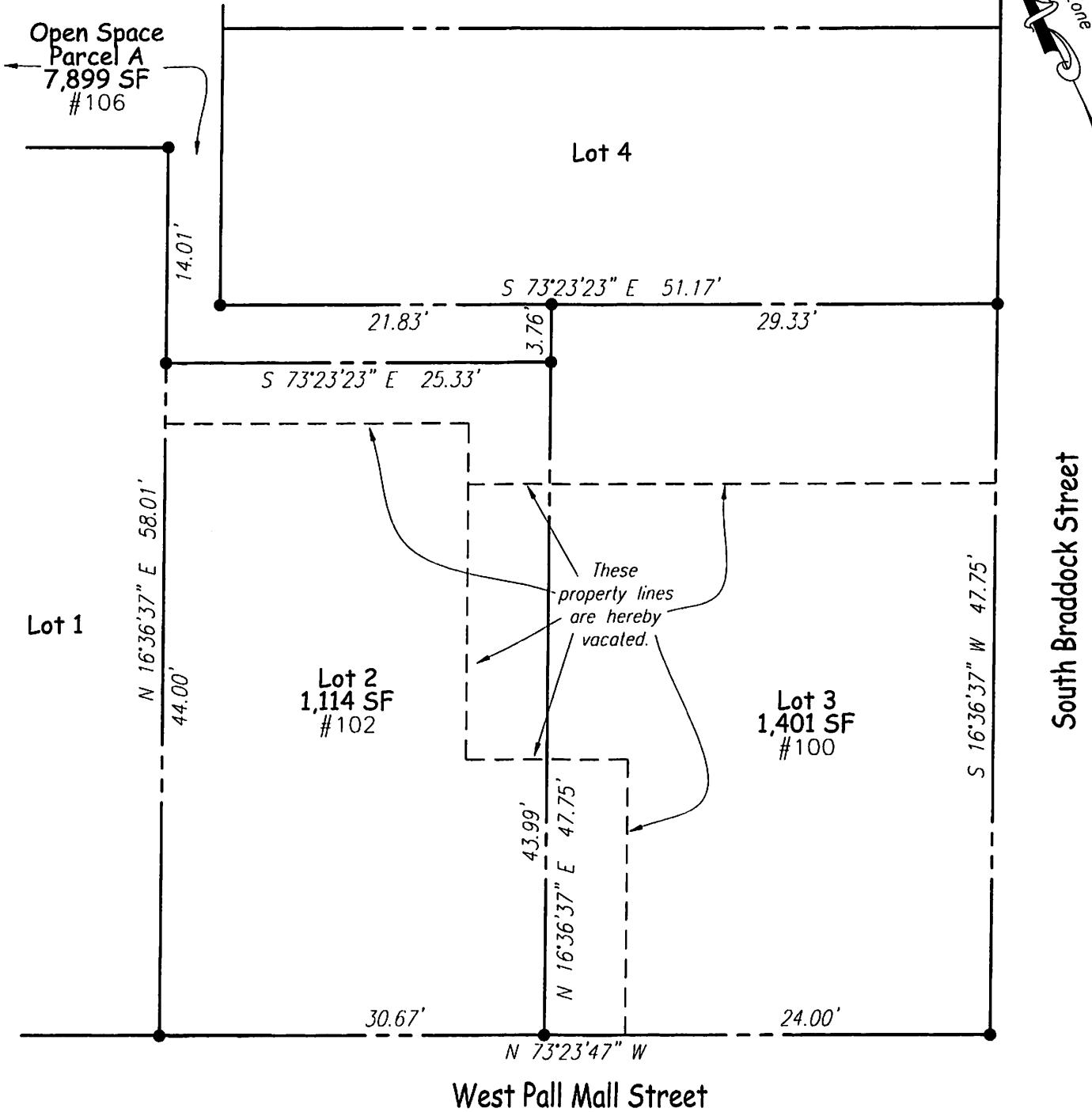
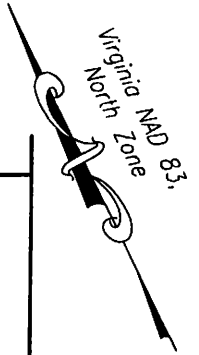
8/27/16 date *[Signature]*
Subdivision Administrator

50-16-44

Notes:

1. Boundary shown hereon was taken from deeds of record.
2. This plat is subject to easements and restrictions of record.
3. No title report furnished.
4. All property corners to be set unless otherwise specified.
5. Subject property is Zoned B1.

000 0047



AREA TABULATION

EXISTING:

Lot 2	992 sf
Lot 3	1,056 sf
Open Space A	8,361 sf

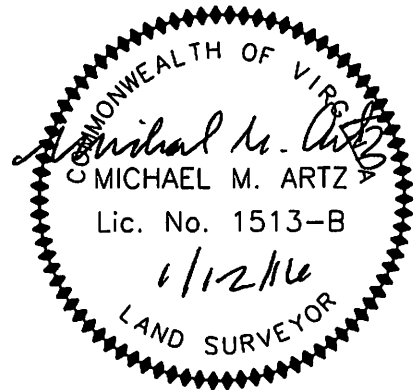
PROPOSED:

Lot 2	1,114 sf
Lot 3	1,401 sf
Open Space A	7,894 sf

Boundary Line Adjustment of
Three parcels
 Lots 2, 3, and Open Space Parcel A
 Old Town Commons

City of Winchester, Virginia
 Scale: 1" = 10' Date: January 12, 2016

Present Owner:
 Oakcrest Builders, Inc.
 TM #212-1-C-8 Inst. #140002849 & #160000079



PREPARED BY:
PENNONI ASSOCIATES INC.



117 East Piccadilly Street
 Winchester, VA 22601
 T 540.667.2139
 F 540.665.0493

160002405

000 0101

**THIS AMENDMENT TO SUBDIVISION PLAT, DEED OF BOUNDARY
LINE ADJUSTMENTS AND EASEMENTS, AND DECLARATION OF
RESTRICTIVE COVENANTS OF OLD TOWN COMMONS** made and dated this 6th
day of October, 2016 by **OAKCREST BUILDERS, INC.**, a Virginia corporation,
hereinafter called "Owner/Declarant".

RECITALS:

A. The Owner/Declarant has previously executed and recorded that certain plat titled "Major Subdivision - Old Town Commons" dated August 26, 2015, drawn by Michael M. Artz, Certified Land Surveyor, of record in the Clerk's Office of the Circuit Court for the City of Winchester, Virginia 160000079 (the "Subdivision Plat").

B. The Owner/Declarant has previously executed and recorded that certain Deed of Boundary Line Adjustments and Easements dated September 30, 2016, of record in the aforesaid Clerk's Office as Instrument No. 160002335, wherein the boundaries of Lot 3, Lot 3 and Open Space Parcel A, Old Town Commons were adjusted, as more fully set forth on that certain plat titled "Boundary Line Adjustment of Lots 2, 3 and Open Space Parcel A - Old Town Commons" dated January 13, 2016, drawn by Michael M. Artz, Certified Land Surveyor, which plat is attached to and made a part of the aforesaid Deed of Boundary Line Adjustments and Easements (the "BLA Deed").

C. The Owner/Declarant has previously executed and recorded that certain Declaration of Restrictive Covenants of Old Town Commons dated September 30, 2016, of record in the aforesaid Clerk's Office as Instrument No. 160002336, wherein certain restrictive covenants and conditions were imposed upon a single-family residential townhouse development community known as Old Town Commons (the "Declaration").

D. The Owner/Declarant hereby amends the Subdivision Plat, the BLA Deed and the Declaration to change the name of the residential townhouse development community from "Old Town Commons" to "OldTowne Commons", as more fully set forth hereinafter.

NOW THEREFORE WITNESSETH: That for and in consideration of the sum of Ten Dollars (\$10.00), cash in hand paid by each of the parties hereto unto the other, the receipt and sufficiency of which is hereby acknowledged, and other consideration deemed adequate at law, the parties do hereby agree as follows:

1. Recitals: The Recitals are incorporated herein and made a material part hereof as if set out in full.

2. Amendment: The Subdivision Plat, the BLA Deed and the Declaration are hereby amended to change the name of the single-family residential townhouse development community from "Old Town Commons" to "OldTowne Commons".

WITNESS the following signature and seal:

OAKCREST BUILDERS, INC.

By: [Signature] (SEAL)
James T. Vickers, President

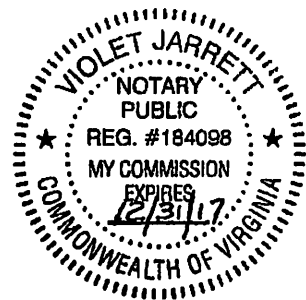
STATE OF VIRGINIA, AT LARGE,
CITY OF WINCHESTER, to-wit:

The foregoing instrument was acknowledged before me on the 6 day of October, 2016 by James T. Vickers as President of Oakcrest Builders, Inc., whose name is signed to the foregoing instrument dated the 6 day of October, 2016.

My commission expires Dec. 31, 2017

[Signature]
Notary Public

MLB/pmm
c:\Agreements\Old Town Commons Amendment
10/6/16



INSTRUMENT #160002405
RECORDED IN THE CLERK'S OFFICE OF
WINCHESTER ON
OCTOBER 7, 2016 AT 10:06AM

TERRY H. WHITTLE, CLERK
RECORDED BY: MRS



OFFICIAL RECEIPT
WINCHESTER CIRCUIT COURT
DEED RECEIPT

DATE: 10/07/16 TIME: 10:06:01 ACCOUNT: 840CLR160002405 RECEIPT: 16000010029
CASHIER: MRS REG: WE52 TYPE: AMEND PAYMENT: FULL PAYMENT
INSTRUMENT : 160002405 BOOK: PAGE: RECORDED: 10/07/16 AT 10:06
GRANTOR: OLD TOWN COMMONS EX: N LOC: CI
GRANTEE: OLTOWNE COMMOMS EX: N PCT: 100%
AND ADDRESS : , .
RECEIVED OF : MICHAEL BRYAN
CHECK: \$21.00 9833
DESCRIPTION 1: LR: 160002335 PAGES: 2 OP: 0
2: NAMES: 0
CONSIDERATION: .00 A/VAL: .00 MAP: 212-1-C-8
PIN:
301 DEEDS 14.50 145 VSLF 1.50
106 TECHNOLOGY TRST FND 5.00
TENDERED : 21.00
AMOUNT PAID: 21.00
CHANGE AMT : .00

CLERK OF COURT: TERRY H. WHITTLE

PAYOR'S COPY
RECEIPT COPY 1 OF 2

170000102

000 0006

THIS DEED OF GIFT, made and dated this 13th day of January, 2017, by and between **OAKCREST BUILDERS, INC.**, a Virginia corporation, hereinafter called the Grantor; and **OLDTOWNE COMMONS HOMEOWNERS ASSOCIATION, INC.**, a Virginia non-stock corporation, hereinafter called the Grantee.

The Grantor desires to convey the described property to the Grantee. There is no consideration for this conveyance, and this conveyance is exempt from the recording tax in accordance with Virginia Code Section 58.1-811.

WITNESSETH:

In consideration of the foregoing, the Grantor does hereby grant and convey, with special warranty of title, unto the Grantee, in fee simple, all of that certain lot or parcel of land, together with all improvements thereon and all rights, rights of way and appurtenances thereunto belonging, lying and being situate in the City of Winchester, Virginia, containing 8.361 square feet, more or less, designated as "Open Space Parcel A 8,361 SF #106" on that certain plat titled "Final Plat, Major Subdivision Old Town Commons" dated August 26, 2015, drawn by Michael M. Artz, L.S., which plat is of record in the Clerk's Office of the Circuit Court of the City of Winchester, Virginia as Instrument No. 160000079; and being a portion of the property acquired by the Grantor by that certain Deed dated December 24, 2014, of record in the aforesaid Clerk's Office as Instrument No. 140002849.

TAX MAP NO. 212-01-C--8-A

Reference is hereby made to the aforesaid instruments and the references therein contained for a more particular description of the property conveyed hereby.

This conveyance is made subject to all easements, rights of way and restrictions of record affecting the subject property; provided, however, that the foregoing shall not be deemed in any way to reinstitute or republish any restrictions of record that may have expired or lapsed.

Title Insurance: None

Address: 126 North Kent Street
Winchester, VA 22601

Assessed Value: \$112,900.00
Tax Map No. 212-01-C--8-A

Michael L. Bryan
VSB #15737
116 S. Braddock St.
Winchester, VA

000 0007

This instrument is a Deed of Gift and is not to secure a debt or to indemnify a surety.

WITNESS the following signature and seal:

OAKCREST BUILDERS, INC.

By: James T. Vickers (SEAL)
James T. Vickers, President

STATE OF VIRGINIA, AT LARGE,

CITY/COUNTY OF Winchester, to-wit

The foregoing instrument was acknowledged before me, a Notary Public in and for the State and Jurisdiction aforesaid, this 13th day of January, 2017, by James T.

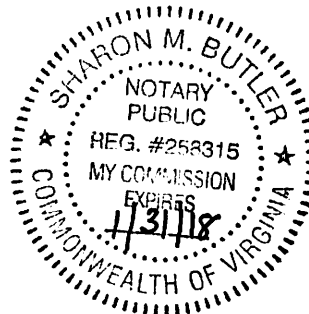
Vickers, President of Oakcrest Builders, Inc., a Virginia corporation.

My commission expires January 31, 2018

Sharon M. Butler
NOTARY PUBLIC

THIS INSTRUMENT PREPARED BY:

Michael L. Bryan, Esquire
VSB #15737
Bryan & Coleman, P.L.C.
116 South Braddock Street
Winchester, Virginia 22601



MLB/smb
Deeds\Oakcrest Builders to OldTowne Commons HOA

INSTRUMENT #170000102
RECORDED IN THE CLERK'S OFFICE OF
WINCHESTER ON
JANUARY 18, 2017 AT 12:25PM

TERRY H. WHITTLE, CLERK
RECORDED BY: MRS

Michael L. Bryan
VSB #15737
116 S. Braddock St.
Winchester, VA