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# 2021 Federal Low Income Housing Tax Credit Program

## Application For Reservation

### Deadline for Submission

#### 9% Competitive Credits

Applications Must Be Received At VHDA No Later Than **12:00 PM**  
Richmond, VA Time On **March 18, 2021**

#### Tax Exempt Bonds

Applications should be received at VHDA at least one month  
before the bonds are *priced* (if bonds issued by VHDA), or 75 days  
before the bonds are *issued* (if bonds are not issued by VHDA)



Virginia Housing  
601 South Belvidere Street  
Richmond, Virginia 23220-6500

## INSTRUCTIONS FOR THE VIRGINIA 2021 LIHTC APPLICATION FOR RESERVATION

This application was prepared using Excel, Microsoft Office 2016. Please note that using the active Excel workbook does not eliminate the need to submit the required PDF of the signed hardcopy of the application and related documentation. A more detailed explanation of application submission requirements is provided below and in the Application Manual.

**An electronic copy of your completed application is a mandatory submission item.**

### Applications For 9% Competitive Credits

Applicants should submit an electronic copy of the application package prior to the application deadline, which is **12:00 PM** Richmond Virginia time on **March 18, 2021**. Failure to submit an electronic copy of the application by the deadline will cause the application to be disqualified.

### **Please Note:**

**Applicants should submit all application materials in electronic format only.**

**There should be distinct files which should include the following:**

- 1. Application For Reservation – the active Microsoft Excel workbook**
- 2. A PDF file which includes the following:**
  - Application For Reservation – Signed version of hardcopy
  - All application attachments (i.e. tab documents, excluding market study and plans & specs)
- 3. Market Study – PDF or Microsoft Word format**
- 4. Plans - PDF or other readable electronic format**
- 5. Specifications - PDF or other readable electronic format (may be combined into the same file as the plans if necessary)**
- 6. Unit-By-Unit work write up (rehab only) - PDF or other readable electronic format**

### **IMPORTANT:**

**Virginia Housing only accepts files via our work center sites on Procorem. Contact [TaxCreditApps@virginiahousing.com](mailto:TaxCreditApps@virginiahousing.com) for access to Procorem or for the creation of a new deal workcenter. Do not submit any application materials to any email address unless specifically requested by the Virginia Housing LIHTC Allocation Department staff.**

### Disclaimer:

Virginia Housing assumes no responsibility for any problems incurred in using this spreadsheet or for the accuracy of calculations. Check your application for correctness and completeness before submitting the application to Virginia Housing.

### Entering Data:

Enter numbers or text as appropriate in the blank spaces highlighted in yellow. Cells have been formatted as appropriate for the data expected. All other cells are protected and will not allow changes.

### **Please Note:**

- ▶ **VERY IMPORTANT! : Do not** use the copy/cut/paste functions within this document. Pasting fields will corrupt the application and may result in penalties. You may use links to other cells or other documents but do not paste data from one document or field to another.
- ▶ Some fields provide a dropdown of options to select from, indicated by a down arrow that appears when the cell is selected. Click on the arrow to select a value within the dropdown for these fields.
- ▶ The spreadsheet contains multiple error checks to assist in identifying potential mistakes in the application. These may appear as data is entered but are dependent on values entered later in the application. Do not be concerned with these messages until all data within the
- ▶ Also note that some cells contain error messages such as “#DIV/0!” as you begin. These warnings will disappear as the numbers necessary for the calculation are entered.

### Assistance:

If you have any questions, please contact the Virginia Housing LIHTC Allocation Department. Please note that we cannot release the copy protection password.

### Virginia Housing LIHTC Allocation Staff Contact Information

Name	Email	Phone Number
JD Bondurant	<a href="mailto: johndavid.bondurant@virginiahousing.com">johndavid.bondurant@virginiahousing.com</a>	(804) 343-5725
Sheila Stone	<a href="mailto: sheila.stone@virginiahousing.com">sheila.stone@virginiahousing.com</a>	(804) 343-5582
Stephanie Flanders	<a href="mailto: stephanie.flanders@virginiahousing.com">stephanie.flanders@virginiahousing.com</a>	(804) 343-5939
Phil Cunningham	<a href="mailto: phillip.cunningham@virginiahousing.com">phillip.cunningham@virginiahousing.com</a>	(804) 343-5514
Pamela Freeth	<a href="mailto: pamela.freeth@virginiahousing.com">pamela.freeth@virginiahousing.com</a>	(804) 343-5563
Aniyah Moaney	<a href="mailto: aniyah.moaney@virginiahousing.com">aniyah.moaney@virginiahousing.com</a>	(804) 343-5518

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## 2021 Low-Income Housing Tax Credit Application For Reservation

Please indicate if the following items are included with your application by putting an 'X' in the appropriate boxes. Your assistance in organizing the submission in the following order, and actually using tabs to mark them as shown, will facilitate review of your application. Please note that all mandatory items must be included for the application to be processed. The inclusion of other items may increase the number of points for which you are eligible under Virginia Housing's point system of ranking applications, and may assist Virginia Housing in its determination of the appropriate amount of credits that may be reserved for the development.

- |                                     |   |
|-------------------------------------|---|
| <input checked="" type="checkbox"/> | \$1,000 Application Fee <b>(MANDATORY)</b>  |
| <input checked="" type="checkbox"/> | Electronic Copy of the Microsoft Excel Based Application <b>(MANDATORY)</b>   |
| <input checked="" type="checkbox"/> | Scanned Copy of the <b>Signed</b> Tax Credit Application with Attachments (excluding market study and plans & specifications) <b>(MANDATORY)</b>              |
| <input checked="" type="checkbox"/> | Electronic Copy of the Market Study <b>(MANDATORY - Application will be disqualified if study is not submitted with application)</b>                          |
| <input checked="" type="checkbox"/> | Electronic Copy of the Plans and Unit by Unit writeup <b>(MANDATORY)</b>  |
| <input checked="" type="checkbox"/> | Electronic Copy of the Specifications <b>(MANDATORY)</b>  |
| <input type="checkbox"/>            | Electronic Copy of the Existing Condition questionnaire <b>(MANDATORY if Rehab)</b>   |
| <input type="checkbox"/>            | Electronic Copy of the Physical Needs Assessment <b>(MANDATORY at reservation for a 4% rehab request)</b>   |
| <input type="checkbox"/>            | Electronic Copy of Appraisal <b>(MANDATORY if acquisition credits requested)</b>  |
| <input checked="" type="checkbox"/> | Electronic Copy of Environmental Site Assessment (Phase I) <b>(MANDATORY if 4% credits requested)</b>   |
| <input checked="" type="checkbox"/> | Tab A: Partnership or Operating Agreement, including chart of ownership structure with percentage of interests and Developer Fee Agreement <b>(MANDATORY)</b> |
| <input checked="" type="checkbox"/> | Tab B: Virginia State Corporation Commission Certification <b>(MANDATORY)</b>   |
| <input checked="" type="checkbox"/> | Tab C: Principal's Previous Participation Certification <b>(MANDATORY)</b>  |
| <input checked="" type="checkbox"/> | Tab D: List of LIHTC Developments (Schedule A) <b>(MANDATORY)</b>   |
| <input checked="" type="checkbox"/> | Tab E: Site Control Documentation & Most Recent Real Estate Tax Assessment <b>(MANDATORY)</b>   |
| <input checked="" type="checkbox"/> | Tab F: RESNET Rater Certification <b>(MANDATORY)</b>  |
| <input checked="" type="checkbox"/> | Tab G: Zoning Certification Letter <b>(MANDATORY)</b>   |
| <input checked="" type="checkbox"/> | Tab H: Attorney's Opinion <b>(MANDATORY)</b>  |
| <input type="checkbox"/>            | Tab I: Nonprofit Questionnaire <b>(MANDATORY for points or pool)</b>  |
|                                     | The following documents need not be submitted unless requested by Virginia Housing:   |
|                                     | -Nonprofit Articles of Incorporation      -IRS Documentation of Nonprofit Status  |
|                                     | -Joint Venture Agreement (if applicable)      -For-profit Consulting Agreement (if applicable)  |
| <input type="checkbox"/>            | Tab J: Relocation Plan and Unit Delivery Schedule <b>(MANDATORY)</b>  |
| <input type="checkbox"/>            | Tab K: Documentation of Development Location:   |
|                                     | K.1 Revitalization Area Certification   |
| <input checked="" type="checkbox"/> | K.2 Location Map  |
| <input checked="" type="checkbox"/> | K.3 Surveyor's Certification of Proximity To Public Transportation  |
| <input checked="" type="checkbox"/> | Tab L: PHA / Section 8 Notification Letter  |
| <input type="checkbox"/>            | Tab M: Locality CEO Response Letter   |
| <input type="checkbox"/>            | Tab N: Homeownership Plan   |
| <input type="checkbox"/>            | Tab O: Plan of Development Certification Letter   |
| <input type="checkbox"/>            | Tab P: Developer Experience documentation and Partnership agreements  |
| <input type="checkbox"/>            | Tab Q: Documentation of Rental Assistance, Tax Abatement and/or existing RD or HUD Property   |
| <input checked="" type="checkbox"/> | Tab R: Documentation of Operating Budget and Utility Allowances   |
| <input type="checkbox"/>            | Tab S: Supportive Housing Certification   |
| <input type="checkbox"/>            | Tab T: Funding Documentation  |
| <input type="checkbox"/>            | Tab U: Documentation to Request Exception to Restriction-Pools With Little/No Increase in Rent Burdened Population  |
| <input type="checkbox"/>            | Tab V: Nonprofit or LHA Purchase Option or Right of First Refusal   |
| <input type="checkbox"/>            | Tab W: Internet Safety Plan and Resident Information Form (if internet amenities selected)  |
| <input type="checkbox"/>            | Tab X: Marketing Plan for units meeting accessibility requirements of HUD section 504   |
| <input type="checkbox"/>            | Tab Y: Inducement Resolution for Tax Exempt Bonds   |

A. GENERAL INFORMATION ABOUT PROPOSED DEVELOPMENT

Application Date: 12/16/21

1. Development Name: Arbors at Pembroke
2. Address (line 1): 1963 W. Pembroke Avenue  
 Address (line 2): \_\_\_\_\_  
 City: Hampton State: VA Zip: 23661
3. If complete address is not available, provide longitude and latitude coordinates (x,y) from a location on site that your surveyor deems appropriate. Longitude: 00.00000 Latitude: 00.00000  
 (Only necessary if street address or street intersections are not available.)
4. The Circuit Court Clerk's office in which the deed to the development is or will be recorded:  
 City/County of ▶ Hampton City
5. The site overlaps one or more jurisdictional boundaries..... FALSE  
 If true, what other City/County is the site located in besides response to #4?..... \_\_\_\_\_
6. Development is located in the census tract of: 119.00
7. Development is located in a **Qualified Census Tract**..... TRUE
8. Development is located in a **Difficult Development Area**..... FALSE
9. Development is located in a **Revitalization Area based on QCT** ..... FALSE
10. Development is located in a **Revitalization Area designated by resolution** ..... FALSE
11. Development is located in an **Opportunity Zone** (with a binding commitment for funding)..... FALSE  
 (If 9, 10 or 11 are True, **Action:** Provide required form in **TAB K1**)
12. Development is located in a census tract with a poverty rate of.....
 

3%	10%	12%
FALSE	FALSE	TRUE

Enter only Numeric Values below:

13. Congressional District: 3
- Planning District: 23
- State Senate District: 2
- State House District: 92

Click on the following link for assistance in determining the districts related to this development:

[Link to Virginia Housing's HOME - Select Virginia LIHTC Reference Map](#)

14. **ACTION:** Provide Location Map (**TAB K2**)

15. Development Description: In the space provided below, give a brief description of the proposed development

The Arbors at Pembroke will be a single interior corridor age restricted community. The community will feature a wide variety of amenities and resident activities.

A. GENERAL INFORMATION ABOUT PROPOSED DEVELOPMENT

Application Date: 11/1/21

16. Local Needs and Support

- a. Provide the name and the address of the chief executive officer (City Manager, Town Manager, or County Administrator) of the political jurisdiction in which the development will be located:

Chief Executive Officer's Name: Mary Bunting  
 Chief Executive Officer's Title: City Manager Phone: (757) 727-6392  
 Street Address: 8th Floor, City Hall, 22 Lincoln Street  
 City: Hampton State: VA Zip: 23669

Name and title of local official you have discussed this project with who could answer questions for the local CEO: Olivia Askew, City Planner

- b. If the development overlaps another jurisdiction, please fill in the following:

Chief Executive Officer's Name: \_\_\_\_\_  
 Chief Executive Officer's Title: \_\_\_\_\_ Phone: \_\_\_\_\_  
 Street Address: \_\_\_\_\_  
 City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Name and title of local official you have discussed this project with who could answer questions for the local CEO: \_\_\_\_\_

**ACTION:** Provide Locality Notification Letter at **Tab M** if applicable.

**B. RESERVATION REQUEST INFORMATION**

1. Requesting Credits From:

a. If requesting 9% Credits, select credit pool:

or

b. If requesting Tax Exempt Bonds, select development type:

For Tax Exempt Bonds, where are bonds being issued?

**ACTION:** Provide Inducement Resolution at **TAB Y** (if available)

**Skip to Number 4 below.**

2. Type(s) of Allocation/Allocation Year

Definitions of types:

a. **Regular Allocation** means all of the buildings in the development are expected to be placed in service this calendar year, 2021.

b. **Carryforward Allocation** means all of the buildings in the development are expected to be placed in service within two years after the end of this calendar year, 2021, but the owner will have more than 10% basis in development before the end of twelve months following allocation of credits. For those buildings, the owner requests a carryforward allocation of 2021 credits pursuant to Section 42(h)(1)(E).

3. Select Building Allocation type:

**Note** regarding Type = Acquisition and Rehabilitation: Even if you acquired a building this year and "placed it in service" for the purpose of the acquisition credit, you cannot receive its acquisition 8609 form until the rehab 8609 is issued for that building.

4. Is this an additional allocation for a development that has buildings not yet placed in service?

5. Planned Combined 9% and 4% Developments

A site plan has been submitted with this application indicating two developments on the same or contiguous site. One development relates to this 9% allocation request and the remaining development will be a 4% tax exempt bond application. (25, 35 or 45 pts)

Name of companion development:

a. Has the developer met with Virginia Housing regarding the 4% tax exempt bond deal?

b. List below the number of units planned for each allocation request. This stated count cannot be changed or 9% Credits will

Total Units within 9% allocation request?	0
Total Units within 4% Tax Exempt allocation Request?	0
<b>Total Units:</b>	<b>0</b>

% of units in 4% Tax Exempt Allocation Request: 0.00%

6. Extended Use Restriction

**Note:** Each recipient of an allocation of credits will be required to record an **Extended Use Agreement** as required by the IRC governing the use of the development for low-income housing for at least 30 years. Applicant waives the right to pursue a Qualified Contract.

**Must Select One:**

**Definition of selection:**

Development will be subject to an extended use agreement of 25 additional years after the 15-year compliance period for a total of 40 years.

**C. OWNERSHIP INFORMATION**

NOTE: Virginia Housing may allocate credits only to the tax-paying entity which owns the development at the time of the allocation. The term "Owner" herein refers to that entity. Please fill in the legal name of the owner. The ownership entity must be formed prior to submitting this application. Any transfer, direct or indirect, of partnership interests (except those involving the admission of limited partners) prior to the placed-in-service date of the proposed development shall be prohibited, unless the transfer is consented to by Virginia Housing in its sole discretion. **IMPORTANT: The Owner name listed on this page must exactly match the owner name listed on the Virginia State Corporation Commission Certification.**

**1. Owner Information:**

*Must be an individual or legally formed entity.*

Owner Name: Pembroke Senior, LP

Developer Name: Pembroke Senior Developers, LLC

Contact: M/M ▶ Mr. First: Brian MI: L Last: Staub

Address: 308 35th Street, Suite 101

City: Virginia Beach St. ▶ VA Zip: 23451

Phone: (757) 437-1677 Ext.            Fax:           

Email address: bstaub@marlyndv.com

Federal I.D. No. 87656029 (If not available, obtain prior to Carryover Allocation.)

Select type of entity: ▶ Limited Partnership Formation State: ▶ VA

Additional Contact: Please Provide Name, Email and Phone number.

Ben Rountree, brountree@marlyndv.com, 757-437-1677

- ACTION:** a. Provide Owner's organizational documents (e.g. Partnership agreements and Developer Fe agreement) (Mandatory TAB A)  
 b. Provide Certification from Virginia State Corporation Commission (**Mandatory TAB B**)

**2. Principal(s) of the General Partner:** List names of individuals and ownership interest.

<u>Names **</u>	<u>Phone</u>	<u>Type Ownership</u>	<u>% Ownership</u>
<u>M. David Jester</u>	<u>(757) 437-1677</u>	<u>Member of GP</u>	<u>20.000%</u>
<u>Scott A. Troutman</u>	<u>(757) 437-1677</u>	<u>Member of GP</u>	<u>20.000%</u>
<u>Christian Gardner</u>	<u>(757) 437-1677</u>	<u>Member of GP</u>	<u>20.000%</u>
<u>Brian Staub</u>	<u>(757) 437-1677</u>	<u>Member of GP</u>	<u>20.000%</u>
<u>Hussein Easmeil</u>	<u>(757) 437-1677</u>	<u>Member of GP</u>	<u>20.000%</u>
			<u>0.000%</u>
			<u>0.000%</u>

The above should include 100% of the GP or LLC member interest.

\*\* These should be the names of individuals who make up the General Partnership, not simply the names of entities which may comprise those components.



C. OWNERSHIP INFORMATION

- ACTION:**
  - a. Provide Principals' Previous Participation Certification (**Mandatory TAB C**)
  - b. Provide a chart of ownership structure (Org Chart) and a list of all LIHTC Developments within the last 15 years. (**Mandatory at TABS A/D**)

**3. Developer Experience:** Provide evidence that the principal or principals of the controlling general partner or managing member for the proposed development have developed:

- a. as a controlling general partner or managing member, (i) at least three tax credit developments that contain at least three times the number of housing units in the proposed development or (ii) at least six tax credit developments. .... **TRUE**

**Action:** Must be included on Virginia Housing Experienced LIHTC Developer List or provide copies of 8609s, partnership agreements and organizational charts (**Tab P**)

- b. at least three deals as principal and have at \$500,000 in liquid assets..... **FALSE**

**Action:** Must be included on the Virginia Housing Experienced LIHTC Developer List or provide Audited Financial Statements and copies of 8609s (**Tab P**)

- c. The development's principal(s), as a group or individually, have developed as controlling general partner or managing member, at least one tax credit development that contains at least the same number of units of this proposed development (can include Market units). .... **FALSE**

**Action:** Must provide copies of 8609s and partnership agreements (**Tab P**)

**D. SITE CONTROL**

**NOTE:** Site control by the Owner identified herein is a mandatory precondition of review of this application. Documentary evidence in the form of either a deed, option, purchase contract or lease for a term longer than the period of time the property will be subject to occupancy restrictions must be included herewith. (For 9% Competitive Credits - An option or contract must extend beyond the application deadline by a minimum of four months.)

**Warning:** Site control by an entity other than the Owner, even if it is a closely related party, is not sufficient. Anticipated future transfers to the Owner are not sufficient. The Owner, as identified previously, must have site control at the time this Application is submitted.

**NOTE:** If the Owner receives a reservation of credits, the property must be titled in the name of or leased by (pursuant to a long-term lease) the Owner before the allocation of credits is made.

Contact Virginia Housing before submitting this application if there are any questions about this requirement.

**1. Type of Site Control by Owner:**

Applicant controls site by (select one):

Select Type:  Purchase Contract

Expiration Date: 9/1/21

In the Option or Purchase contract - Any contract for the acquisition of a site with an existing residential property may not require an empty building as a condition of such contract, unless relocation assistance is provided to displaced households, if any, at such level required by Virginia Housing. See QAP for further details.

**ACTION:** Provide documentation and most recent real estate tax assessment - **Mandatory TAB E**

FALSE ..... There is more than one site for development and more than one form of site control.

(If **True**, provide documentation for each site specifying number of existing buildings on the site (if any) type of control of each site, and applicable expiration date of stated site control. A site control document is required for each site (**Tab E**.)

**2. Timing of Acquisition by Owner:**

Only one of the following statement should be True.

a. TRUE ..... Owner already controls site by either deed or long-term lease.

b. FALSE ..... Owner is to acquire property by deed (or lease for period no shorter than period property will be subject to occupancy restrictions) no later than..... 00/00/0000 .

c. FALSE ..... There is more than one site for development and more than one expected date of acquisition by Owner

(If c is **True**, provide documentation for each site specifying number of existing buildings on the site, if any, and expected date of acquisition of each site by Owner (**Tab E**.)

**D. SITE CONTROL**

**3. Seller Information:**

Name: Hampton Bay Associates, LLC

Address: 1706 Neptune Drive

City: Hampton St.: VA Zip: 23669

Contact Person: Ty Wharton Phone: (757) 827-4459

There is an identity of interest between the seller and the owner/applicant..... FALSE

If above statement is **TRUE**, complete the following:

Principal(s) involved (e.g. general partners, controlling shareholders, etc.)

<u>Names</u>	<u>Phone</u>	<u>Type Ownership</u>	<u>% Ownership</u>
			0.00%
			0.00%
			0.00%
			0.00%
			0.00%
			0.00%
			0.00%

**E. DEVELOPMENT TEAM INFORMATION**

Complete the following as applicable to your development team. Provide Contact and Firm Name

1. Tax Attorney: Timothy O. Trant This is a Related Entity. FALSE  
 Firm Name: Kaufman & Canoles, P.C.  
 Address: 11815 Fountain Way, Suite 400, Newport News, VA 23606  
 Email: totrant@Kaufman.com Phone: (757) 259-3823
  
2. Tax Accountant: Angela Kerns This is a Related Entity. FALSE  
 Firm Name: Wall, Einhorn & Chernitzer, P.C.  
 Address: 150 W. Main Street, Norfolk, VA 23510  
 Email: akerns@wec-cpa.com Phone: (757) 625-4700
  
3. Consultant: Ryan Stephenson This is a Related Entity. FALSE  
 Firm Name: AES Consulting Engineers Role: Engineer  
 Address: 5248 Olde Towne Road  
 Email: ryan.stephenson@aesva.com Phone: (757) 253-0040
  
4. Management Entity: Taylor Franklin This is a Related Entity. FALSE  
 Firm Name: The Franklin Johnston Group  
 Address: 300 32nd Street, Suite 310, Virginia Beach, VA 23451  
 Email: tfranklin@tfjgroup.com Phone: (757) 965-6200
  
5. Contractor: Scott Troutman This is a Related Entity. TRUE  
 Firm Name: Marlyn Development Corporation  
 Address: 308 35th Street, Suite 101  
 Email: stroutman@marlyndv.com Phone: (757) 437-1677
  
6. Architect: Craig Miller This is a Related Entity. FALSE  
 Firm Name: Cox, Kliewer & Company  
 Address: 2533 Virginia Beach Blvd, Virginia Beach, VA 23452  
 Email: craigm@coxkliewer.com Phone: (757) 431-0033
  
7. Real Estate Attorney: Timothy O. Trant This is a Related Entity. FALSE  
 Firm Name: Kaufman & Canoles, P.C.  
 Address: 11815 Fountain Way, Suite 400, Newport News, VA 23606  
 Email: totrant@Kaufman.com Phone: (757) 259-3823
  
8. Mortgage Banker: Brian Staub This is a Related Entity. TRUE  
 Firm Name: Marlyn Mortgage, LLC  
 Address: 308 35th Street, Suite 101, Virginia Beach, VA 23451  
 Email: bstaub@marlyndv.com Phone: (757) 437-1677
  
9. Other:  This is a Related Entity. FALSE  
 Firm Name:  Role:   
 Address:   
 Email:  Phone:

**F. REHAB INFORMATION**

**1. Acquisition Credit Information**

- a. Credits are being requested for existing buildings being acquired for development. FALSE
- b. This development has received a previous allocation of credits..... FALSE  
If so, in what year did this development receive credits? .....
- c. The development is listed on the RD 515 Rehabilitation Priority List?..... FALSE
- d. This development is an existing RD or HUD S8/236 development..... FALSE

**Action:** (If True, provide required form in **TAB Q**)

Note: If there is an identity of interest between the applicant and the seller in this proposal, and the applicant is seeking points in this category, then the applicant must either waive their rights to the developer's fee or other fees associated with acquisition, or obtain a waiver of this requirement from Virginia Housing prior to application submission to receive these points

- i. Applicant agrees to waive all rights to any developer's fee or other fees associated with acquisition..... FALSE
- ii. Applicant has obtained a waiver of this requirement from Virginia Housing prior to the application submission deadline..... FALSE

**2. Ten-Year Rule For Acquisition Credits**

- a. All buildings satisfy the 10-year look-back rule of IRC Section 42 (d)(2)(B), including the 10% basis/ \$15,000 rehab costs (\$10,000 for Tax Exempt Bonds) per unit requirement..... FALSE
- b. All buildings qualify for an exception to the 10-year rule under IRC Section 42(d)(2)(D)(i),..... FALSE
  - i. Subsection (I)..... FALSE
  - ii. Subsection (II)..... FALSE
  - iii. Subsection (III)..... FALSE
  - iv. Subsection (IV)..... FALSE
  - v. Subsection (V)..... FALSE
- c. The 10-year rule in IRC Section 42 (d)(2)(B) for all buildings does not apply pursuant to IRC Section 42(d)(6)..... FALSE

- d. There are different circumstances for different buildings..... FALSE  
**Action:** (If True, provide an explanation for each building in Tab K)

**F. REHAB INFORMATION**

**3. Rehabilitation Credit Information**

- a. Credits are being requested for rehabilitation expenditures..... **FALSE**
- b. **Minimum Expenditure Requirements**
  - i. All buildings in the development satisfy the rehab costs per unit requirement of IRS Section 42(e)(3)(A)(ii)..... **FALSE**
  - ii. All buildings in the development qualify for the IRC Section 42(e)(3)(B) exception to the 10% basis requirement (4% credit only)..... **FALSE**
  - iii. All buildings in the development qualify for the IRC Section 42(f)(5)(B)(ii)(II) exception..... **FALSE**
  - iv. There are different circumstances for different buildings..... **FALSE**  
**Action:** (If True, provide an explanation for each building in Tab K)

**4. Request For Exception**

- a. The proposed new construction development (including adaptive reuse and rehabilitation that creates additional rental space) is subject to an assessment of up to minus 20 points for being located in a pool identified by the Authority as a pool with little or no increase in rent burdened population..... **FALSE**
- b. Applicant seeks an exception to this restriction in accordance with one of the following provisions under 13VAC10-180-60:
  - i. Proposed development is specialized housing designed to meet special needs that cannot readily be addressed utilizing existing residential structures..... **FALSE**
  - ii. Proposed development is designed to serve as a replacement for housing being demolished through redevelopment..... **FALSE**
  - iii. Proposed development is housing that is an integral part of a neighborhood revitalization project sponsored by a local housing authority..... **FALSE**

**Action:** If any of 4(b) responses are true, provide documentation at Tab U.

G. NONPROFIT INVOLVEMENT

Applications for 9% Credits - Section must be completed in order to compete in the Non Profit tax credit pool.

All Applicants - Section must be completed to obtain points for nonprofit involvement.

1. Tax Credit Nonprofit Pool Applicants: To qualify for the nonprofit pool, an organization (described in IRC Section 501(c)(3) or 501(c)(4) and exempt from taxation under IRC Section 501(a)) should answer the following questions as TRUE:

- FALSE a. Be authorized to do business in Virginia.
FALSE b. Be substantially based or active in the community of the development.
FALSE c. Materially participate in the development and operation of the development throughout compliance period...
FALSE d. Own, either directly or through a partnership or limited liability company, 100% of the partnership or managing member interest.
FALSE e. Not be affiliated with or controlled by a for-profit organization.
FALSE f. Not have been formed for the principal purpose of competition in the Non Profit Pool.
FALSE g. Not have any staff member, officer or member of the board of directors materially participate, directly or indirectly, in the proposed development as a for profit entity.

2. All Applicants: To qualify for points under the ranking system, the nonprofit's involvement need not necessarily satisfy all of the requirements for participation in the nonprofit tax credit pool.

A. Nonprofit Involvement (All Applicants)

There is nonprofit involvement in this development. FALSE (If false, go on to #3.)

Action: If there is nonprofit involvement, provide completed Non Profit Questionnaire (Mandatory TAB

B. Type of involvement:

Nonprofit meets eligibility requirement for points only, not pool..... FALSE

or

Nonprofit meets eligibility requirements for nonprofit pool and points. FALSE

C. Identity of Nonprofit (All nonprofit applicants):

The nonprofit organization involved in this development is: [Yellow box]

Name: [Yellow box] (Please fit NP name within available space)

Contact Person: [Yellow box]

Street Address: [Yellow box]

City: [Yellow box] State: [Yellow box] Zip: [Yellow box]

Phone: [Yellow box] Extension: [Yellow box] Contact Email: [Yellow box]

**G. NONPROFIT INVOLVEMENT**

D. Percentage of Nonprofit Ownership (All nonprofit applicants):

Specify the nonprofit entity's percentage ownership of the general partnership interest 0.0%

**3. Nonprofit/Local Housing Authority Purchase Option/Right of First Refusal**

A. FALSE After the mandatory 15-year compliance period, a qualified nonprofit or local housing authority will have the option to purchase or the right of first refusal to acquire the development for a price not to exceed the outstanding debt and exit taxes. Such debt must be limited to the original mortgage(s) unless any refinancing is approved by the nonprofit.

**Action:** Provide Option or Right of First Refusal in Recordable Form **(TAB V)**  
 Provide Nonprofit Questionnaire (if applicable) **(TAB I)**

**Name of qualified nonprofit:** \_\_\_\_\_

or indicate true if Local Housing Authority FALSE  
**Name of Local Housing Authority** \_\_\_\_\_

2. FALSE A qualified nonprofit or local housing authority submits a homeownership plan committing to sell the units in the development after the mandatory 15-year compliance period to tenants whose incomes shall not exceed the applicable income limit at the time of their initial occupancy.

**Do not select if extended compliance is selected on Request Info Tab**

**Action:** Provide Homeownership Plan **(TAB N)**

**NOTE:** Applicant waives the right to pursue a Qualified Contract.



**H. STRUCTURE AND UNITS INFORMATION**

**# General Information**

a. Total number of <b>all</b> units in development	<u>150</u>	bedrooms	<u>245</u>
Total number of <b>rental</b> units in development	<u>150</u>	bedrooms	<u>245</u>
Number of low-income rental units	<u>120</u>	bedrooms	<u>212</u>
Percentage of rental units designated low-income	<u>80.00%</u>		
b. Number of new units:.....	<u>150</u>	bedrooms	<u>245</u>
Number of adaptive reuse units: .....	<u>0</u>	bedrooms	<u>0</u>
Number of rehab units:.....	<u>0</u>	bedrooms	<u>0</u>
c. If any, indicate number of planned exempt units (included in total of all units in development)			<u>0</u>
d. Total Floor Area For The Entire Development.....		<u>213,894.00</u>	(Sq. ft.)
e. Unheated Floor Area (i.e. Breezeways, Balconies, Storage).....		<u>11,491.00</u>	(Sq. ft.)
f. Nonresidential Commercial Floor Area (Not eligible for funding).....		<u>0.00</u>	
g. Total Usable Residential Heated Area.....		<u>202,403.00</u>	(Sq. ft.)
h. Percentage of Net Rentable Square Feet Deemed To Be <b>New Rental Space</b> .		<u>100.00%</u>	
i. Exact area of site in acres .....	<u>7.800</u>		
j. Locality has approved a final site plan or plan of development.....		<u>FALSE</u>	
If <b>True</b> , Provide required documentation ( <b>TAB O</b> ).			
k. Requirement as of 2016: Site must be properly zoned for proposed development.			
<b>ACTION:</b> Provide required zoning documentation ( <b>MANDATORY TAB G</b> )			
l. Development is eligible for Historic Rehab credits.....		<u>FALSE</u>	

**Definition:**

The structure is historic, by virtue of being listed individually in the National Register of Historic Places, or due to its location in a registered historic district and certified by the Secretary of the Interior as being of historical significance to the district, and the rehabilitation will be completed in such a manner as to be eligible for historic rehabilitation tax credits.

**H. STRUCTURE AND UNITS INFORMATION**

**# UNIT MIX**

a. Specify the average size and number per unit type (as indicated in the Architect's Certification):

*Note: Average sq foot should include the prorata of common space.*

Unit Type	Average Sq Foot		# of LIHTC Units	Total Rental Units
Supportive Housing	0.00	SF	0	0
1 Story Eff - Elderly	0.00	SF	0	0
1 Story 1BR - Elderly	0.00	SF	0	0
1 Story 2BR - Elderly	0.00	SF	0	0
Eff - Elderly	0.00	SF	0	0
1BR Elderly	1374.34	SF	49	55
2BR Elderly	1450.25	SF	71	95
Eff - Garden	0.00	SF	0	0
1BR Garden	0.00	SF	0	0
2BR Garden	0.00	SF	0	0
3BR Garden	0.00	SF	0	0
4BR Garden	0.00	SF	0	0
2+ Story 2BR Townhouse	0.00	SF	0	0
2+ Story 3BR Townhouse	0.00	SF	0	0
2+ Story 4BR Townhouse	0.00	SF	0	0
			120	150

Note: Please be sure to enter the values in the appropriate unit category. If not, errors will occur on the self scoresheet.

**# Structures**

- a. Number of Buildings (containing rental units)..... 1
- b. Age of Structure:..... 0 years
- c. Number of stories:..... 4

d. The development is a scattered site development..... FALSE

e. Commercial Area Intended Use:

f. Development consists primarily of : (Only One Option Below Can Be True)

- i. Low Rise Building(s) - (1-5 stories with any structural elements made of wood)..... TRUE
- ii. Mid Rise Building(s) - (5-7 stories with no structural elements made of wood)..... FALSE
- iii. High Rise Building(s) - (8 or more stories with no structural elements made of wood)..... FALSE

**H. STRUCTURE AND UNITS INFORMATION**

g. Indicate **True** for all development's structural features that apply:

i. Row House/Townhouse	<u>FALSE</u>	v. Detached Single-family	<u>FALSE</u>
ii. Garden Apartments	<u>TRUE</u>	vi. Detached Two-family	<u>FALSE</u>
iii. Slab on Grade	<u>FALSE</u>	vii. Basement	<u>FALSE</u>
iv. Crawl space	<u>FALSE</u>		

h. Development contains an elevator(s). FALSE  
 If true, # of Elevators. 3  
 Elevator Type (if known)

i. Roof Type ▶ Pitched  
 j. Construction Type ▶ Frame  
 k. Primary Exterior Finish ▶ Brick

**# Site Amenities (indicate all proposed)**

a. Business Center.....	<u>TRUE</u>	f. Limited Access.....	<u>FALSE</u>
b. Covered Parking.....	<u>FALSE</u>	g. Playground.....	<u>FALSE</u>
c. Exercise Room.....	<u>TRUE</u>	h. Pool.....	<u>FALSE</u>
d. Gated access to Site.....	<u>FALSE</u>	i. Rental Office.....	<u>TRUE</u>
e. Laundry facilities.....	<u>FALSE</u>	j. Sports Activity Ct.	<u>FALSE</u>
		k. Other:	<u>beauty salon, grilling area</u>

l. Describe Community Facilities: dog park, raised garden plots, billiards room, media room

m. Number of Proposed Parking Spaces... 201  
 Parking is shared with another entity FALSE

n. Development located within 1/2 mile of an existing commuter rail, light rail or subway station or 1/4 mile from existing public bus stop. .... TRUE  
 If **True**, Provide required documentation (**TAB K3**).

**H. STRUCTURE AND UNITS INFORMATION**

**# Plans and Specifications**

**a. Minimum submission requirements for all properties (new construction, rehabilitation and adaptive reuse):**

- i. A location map with development clearly defined.
- ii. Sketch plan of the site showing overall dimensions of all building(s), major site elements (e.g., parking lots and location of existing utilities, and water, sewer, electric, gas in the streets adjacent to the site). Contour lines and elevations are not required.
- iii. Sketch plans of all building(s) reflecting overall dimensions of:
  - a. Typical floor plan(s) showing apartment types and placement
  - b. Ground floor plan(s) showing common areas
  - c. Sketch floor plan(s) of typical dwelling unit(s)
  - d. Typical wall section(s) showing footing, foundation, wall and floor structure
 Notes must indicate basic materials in structure, floor and exterior finish.

- b. The following are due at reservation for Tax Exempt 4% Applications and at allocation for 9% Applications:
  - i. Phase I environmental assessment.
  - ii. Physical needs assessment for any rehab only development.

**NOTE:** All developments must meet Virginia Housing's **Minimum Design and Construction Requirements**. By signing and submitting the Application for Reservation of LIHTC, the applicant certifies that the proposed project budget, plans & specifications and work write-ups incorporate all necessary elements to fulfill these requirements.

**# Market Study Data:**

Obtain the following information from the **Market Study** conducted in connection with this tax credit application:

Project Wide Capture Rate - LIHTC Units	23.50%
Project Wide Capture Rate - Market Units	1.90%
Project Wide Capture Rate - All Units	7.10%
Project Wide Absorption Period (Months)	8

**J. ENHANCEMENTS**

Each development must meet the following baseline energy performance standard applicable to the development's construction category.

- a. **New Construction:** must meet all criteria for EPA EnergyStar certification.
- b. **Rehabilitation:** renovation must result in at least a 30% performance increase or score an 80 or lower on the HERS
- c. **Adaptive Reuse:** must score a 95 or lower on the HERS Index.

Certification and HERS Index score must be verified by a third-party, independent, non-affiliated, certified RESNET home energy rater.

Indicate **True** for the following items that apply to the proposed development:

**ACTION:** Provide RESNET rater certification (**TAB F**)

**ACTION:** Provide Internet Safety Plan and Resident Information Form (Tab W) if options selected below.

**1. For any development, upon completion of construction/rehabilitation:**

- FALSE a. A community/meeting room with a minimum of 749 square feet is provided.
- 41.60% b. Percentage of brick or other similar low-maintenance material approved by the Authority covering the exterior walls. Community buildings are to be included in percentage calculations.
- FALSE c. Water expense is sub-metered (the tenant will pay monthly or bi-monthly bill).
- TRUE d. All faucets, toilets and showerheads in each bathroom are WaterSense labeled products.
- FALSE e. Each unit is provided with the necessary infrastructure for high-speed internet/broadband service.
- FALSE f. Free WiFi access will be provided in community room for resident only usage.
- FALSE g. Each unit is provided free individual high speed internet access.
- or
- FALSE h. Each unit is provided free individual WiFi access.
- FALSE i. Full bath fans are wired to primary light with delayed timer or has continuous exhaust by ERV/DOAS.
- or
- FALSE j. Full bath fans are equipped with a humidistat.
- FALSE k. Cooking surfaces are equipped with fire prevention features
- or
- FALSE l. Cooking surfaces are equipped with fire suppression features.
- FALSE m. Rehab only: Each unit has dedicated space, drain and electrical hook-ups to accept a permanently installed dehumidification system.
- or
- FALSE n. All Construction types: each unit is equipped with a permanent dehumidification system.
- FALSE o. All interior doors within units are solid core.
- FALSE p. Every kitchen, living room and bedroom contains, at minimum, one USB charging port.
- FALSE q. All kitchen light fixtures are LED and meet MDCR lighting guidelines.
- FALSE r. Each unit has a shelf or ledge outside the primary entry door located in an interior hallway.
- FALSE s. New construction only: Each unit to have balcony or patio with a minimum depth of 5 feet clear from face of building and a minimum size of 30 square feet.

**For all developments exclusively serving elderly tenants upon completion of construction/rehabilitation:**

**J. ENHANCEMENTS**

FALSE a. All cooking ranges have front controls.

FALSE b. Bathrooms have an independent or supplemental heat source.

FALSE c. All entrance doors have two eye viewers, one at 42" inches and the other at standard height.

**2. Green Certification**

a. Applicant agrees to meet the base line energy performance standard applicable to the development's construction category as listed above.

The applicant will also obtain one of the following:

FALSE Earthcraft Gold or higher certification

FALSE National Green Building Standard (NGBS) certification of Silver or higher.

FALSE U.S. Green Building Council LEED certification

FALSE Enterprise Green Communities (EGC) Certification

**Action:** If seeking any points associated Green certification, provide appropriate documentation at TAB F.

b. Applicant will pursue one of the following certifications to be awarded points on a future development application. (Failure to reach this goal will not result in a penalty.)

FALSE Zero Energy Ready Home Requirements

FALSE Passive House Standards


**3. Universal Design - Units Meeting Universal Design Standards (units must be shown on Plans)**

FALSE a. Architect of record certifies that units will be constructed to meet Virginia Housing's Universal Design Standards.

0 b. Number of Rental Units constructed to meet Virginia Housing's Universal Design standards:  
0% of Total Rental Units

4. TRUE Market-rate units' amenities are substantially equivalent to those of the low income units.

If not, please explain: \_\_\_\_\_

 Architect of Record initial here that the above information is accurate per certification statement within this application.

**I. UTILITIES**

1. Utilities Types:

- a. Heating Type Heat Pump
- b. Cooking Type Electric
- c. AC Type Central Air
- d. Hot Water Type Electric

2. Indicate True if the following services will be included in Rent:

- |                 |              |                  |              |
|-----------------|--------------|------------------|--------------|
| Water?.....     | <u>TRUE</u>  | Heat?.....       | <u>FALSE</u> |
| Hot Water?..... | <u>FALSE</u> | AC?.....         | <u>FALSE</u> |
| Lighting?.....  | <u>FALSE</u> | Sewer?.....      | <u>TRUE</u>  |
| Cooking? .....  | <u>FALSE</u> | Trash Removal? . | <u>TRUE</u>  |

Utilities	Enter Allowances by Bedroom Size				
	0-BR	1-BR	2-BR	3-BR	4-BR
Heating	0	7	12	0	0
Air Conditioning	0	10	18	0	0
Cooking	0	5	7	0	0
Lighting	0	5	7	0	0
Hot Water	0	5	7	0	0
Water	0	0	0	0	0
Sewer	0	0	0	0	0
Trash	0	0	0	0	0
Total utility allowance for costs paid by tenant	\$0	\$32	\$51	\$0	\$0

3. The following sources were used for Utility Allowance Calculation (Provide documentation **TAB R**).

- a. FALSE HUD
- b. FALSE Utility Company (Estimate)
- c. FALSE Utility Company (Actual Survey)
- d. FALSE Local PHA
- e. TRUE Other Energy Consumption Mode

**Warning:** The Virginia Housing housing choice voucher program utility schedule shown on VirginiaHousing.com should not be used unless directed to do so by the local housing authority.

**K. SPECIAL HOUSING NEEDS**

**NOTE:** Any Applicant commits to providing first preference to members of targeted populations having state rental assistance and will not impose any eligibility requirements or lease terms for such individuals that are more restrictive than its standard requirements and terms, the terms of the MOU establishing the target population, or the eligibility requirements for the state rental assistance.

# **Accessibility** Indicate **True** for the following point categories, as appropriate.

**Action:** Provide appropriate documentation (**Tab X**)

**FALSE**

- a. Any development in which (i) the greater of 5 units or 10% of units will be assisted by HUD project-based vouchers (as evidenced by the submission of a letter satisfactory to the Authority from an authorized public housing authority (PHA) that the development meets all prerequisites for such assistance), or another form of documented and binding federal project-based rent subsidies in order to ensure occupancy by extremely low-income persons. Locality project based rental subsidy meets the definition of state project based
- (ii) will conform to HUD regulations interpreting the accessibility requirements of section 504 of the Rehabilitation Act; and be actively marketed to persons with disabilities as defined in the Fair Housing Act in accordance with a plan submitted as part of the
- (iii) above must include roll-in showers, roll under sinks and front control ranges, unless agreed to by the Authority prior to the applicant's submission of its application.

Documentation from source of assistance must be provided with the application.

**Note:** Subsidies may apply to any units, not only those built to satisfy Section 504.

(60 points)

**FALSE**

- b. Any development in which the greater of 5 units or 10% of the units (i) have rents within HUD's Housing Choice Voucher ("HCV") payment standard; (ii) conform to HUD regulations interpreting the accessibility requirements of section 504 of the Rehabilitation Act; and (iii) are actively marketed to persons with disabilities as defined in the Fair Housing Act in accordance with a plan submitted as part of the application for credits (30 points)

**FALSE**

- c. Any development in which 5% of the units (i) conform to HUD regulations interpreting the accessibility requirements of section 504 of the Rehabilitation Act and (ii) are actively marketed to persons with disabilities as defined in the Fair Housing Act in accordance with a plan submitted as part of this application for credits. (15 points)

**For items a,b or c, all common space must also conform to HUD regulations interpreting the accessibility requirements of section 504 of the Rehabilitation Act.**



Architect of Record initial here that the above information is accurate per certification statement within this application.



**K. SPECIAL HOUSING NEEDS**

**# Special Housing Needs/Leasing Preference:**

a. If not general population, select applicable special population:

- TRUE Elderly (as defined by the United States Fair Housing Act.)
- Persons with Disabilities (must meet the requirements of the Federal Americans with Disabilities Act) - Accessible Supportive Housing Pool only
- Supportive Housing (as described in the Tax Credit Manual)

**Action:** Provide Permanent Supportive Housing Certification (**Tab S**)

b. The development has existing tenants and a relocation plan has been developed.  FALSE

(If **True**, Virginia Housing policy requires that the impact of economic and/or physical displacement on those tenants be minimized, in which Owners agree to abide by the Authority's Relocation Guidelines for LIHTC properties.)

**Action:** Provide Relocation Plan and Unit Delivery Schedule (**Mandatory if tenants are displaced -**

**# Leasing Preferences**

a. Will leasing preference be given to applicants on a public housing waiting list and/or Section 8 waiting list? select  Yes

Organization which holds waiting list:  Hampton Redevelopment and Housing Authority

Contact person:  Tammy Emerson

Title:  Chief Housing Officer

Phone Number:  (757) 727-2695

**Action:** Provide required notification documentation (**TAB L**)

b. Leasing preference will be given to individuals and families with children.....  FALSE  
(Less than or equal to 20% of the units must have of 1 or less bedrooms).

c. Specify the number of low-income units that will serve individuals and families with children by providing three or more bedrooms:  0  
% of total Low Income Units  0%

**NOTE:** Development must utilize a **Virginia Housing Certified Management Agent**. Proof of management certification must be provided before 8609s are issued.

K. SPECIAL HOUSING NEEDS

# Target Population Leasing Preference

Unless prohibited by an applicable federal subsidy program, each applicant shall commit to provide a leasing preference to individuals (i) in a target population identified in a memorandum of understanding between the Authority and one or more participating agencies of the Commonwealth, (ii) having a voucher or other binding commitment for rental assistance from the Commonwealth, and (iii) referred to the development by a referring agent approved by the Authority. The leasing preference shall not be applied to more than ten percent (10%) of the units in the development at any given time. The applicant may not impose tenant selection criteria or leasing terms with respect to individuals receiving this preference that are more restrictive than the applicant’s tenant selection criteria or leasing terms applicable to prospective tenants in the development that do not receive this preference, the eligibility criteria for the rental assistance from the Commonwealth, or any eligibility criteria contained in a memorandum of understanding between the Authority and one or more participating agencies of the Commonwealth.

Primary Contact for Target Population leasing preference. The agency will contact as needed.

First Name: Chris
Last Name: McKee

Phone Number: (757) 965-6200 Email: cmckee@tfjgroup.com

# Rental Assistance

a. Some of the low-income units do or will receive rental assistance..... FALSE

b. Indicate True if rental assistance will be available from the following

#### Rental Assistance Demonstration (RAD) or other PHA conversion to based rental assistance.

#### Section 8 New Construction Substantial Rehabilitation

#### Section 8 Moderate Rehabilitation

#### Section 8 Certificates

#### Section 8 Project Based Assistance

#### RD 515 Rental Assistance

#### Section 8 Vouchers
\*Administering Organization

#### State Assistance
\*Administering Organization

#### Other:

**K. SPECIAL HOUSING NEEDS**

c. The Project Based vouchers above are applicable to the 30% units seeking points.

FALSE

i. If True above, how many of the 30% units will not have project based vouchers: 0

d. Number of units receiving assistance:

How many years in rental assistance contract?

Expiration date of contract:

There is an Option to Renew..... FALSE

**Action:** Contract or other agreement provided (TAB Q).

**L. UNIT DETAILS**

**1. Set-Aside Election: UNITS SELECTED IN INCOME AND RENT DETERMINE POINTS FOR THE BONUS POINT CATEG**

Note: In order to qualify for any tax credits, a development must meet one of two minimum threshold occupancy tests. Either (i) at least 20% of the units must be rent-restricted and occupied by persons whose incomes are 50% or less of the area median income adjusted for family size (this is called the 20/50 test) or (ii) at least 40% of the units must be rent-restricted and occupied by persons whose incomes are 60% or less of the area median income adjusted for family size (this is called the 40/60 test), all as described in Section 42 of the IRC. Rent-and income-restricted units are known as low-income units. If you have more low-income units than required, you qualify for more credits. If you serve lower incomes than required, you receive more points under the ranking system.

**a. Units Provided Per Household Type:**


Income Levels			Avg Inc.
# of Units	% of Units		
0	0.00%	20% Area Median	
0	0.00%	30% Area Median	
0	0.00%	40% Area Median	
0	0.00%	50% Area Median	
120	80.00%	60% Area Median	
0	0.00%	70% Area Median	
0	0.00%	80% Area Median	
30	20.00%	Market Units	
150	100.00%	<b>Total</b>	

Rent Levels			Avg Inc.
# of Units	% of Units		
0	0.00%	20% Area Median	
0	0.00%	30% Area Median	
0	0.00%	40% Area Median	
0	0.00%	50% Area Median	
120	80.00%	60% Area Median	
0	0.00%	70% Area Median	
0	0.00%	80% Area Median	
30	20.00%	Market Units	
150	100.00%	<b>Total</b>	

- b. The development plans to utilize average income..... **FALSE**  
 If true, should the points based on the units assigned to the levels above **be waived** and therefore not required for con  
 20-30% Levels **FALSE**      40% Levels **FALSE**      50% levels **FALSE**

**2. Unit Detail FOR YOUR CONVENIENCE, COPY AND PASTE IS ALLOWED WITHIN UNIT MIX GRID**

In the following grid, add a row for each unique unit type planned within the development. Enter the appropriate data for both tax credit and market rate units.


**Architect of Record initial here that the information below is accurate per certification statement within this application.**

	Unit Type (Select One)	Rent Target (Select One)	Number of Units	# of Units 504 compliant	Net Rentable Square Feet	Monthly Rent Per Unit	Total Monthly Rent
Mix 1	1 BR - 1 Bath	60% AMI	2		778.00	\$900.00	\$1,800
Mix 2	1 BR - 1 Bath	60% AMI	20		648.00	\$900.00	\$18,000
Mix 3	1 BR - 1 Bath	60% AMI	13		781.00	\$900.00	\$11,700
Mix 4	1 BR - 1 Bath	60% AMI	6		781.00	\$900.00	\$5,400
Mix 5	1 BR - 1 Bath	60% AMI	4		844.00	\$900.00	\$3,600
Mix 6	1 BR - 1 Bath	60% AMI	4		860.00	\$900.00	\$3,600
Mix 7	1 BR - 1 Bath	Market 100%	3		957.00	\$1,400.00	\$4,200
Mix 8	1 BR - 1 Bath	Market 100%	3		1068.00	\$1,400.00	\$4,200
Mix 9	2 BR - 1.5 Bath	60% AMI	1		1023.00	\$1,050.00	\$1,050
Mix 10	2 BR - 1.5 Bath	60% AMI	31		1029.00	\$1,050.00	\$32,550
Mix 11	2 BR - 1.5 Bath	60% AMI	3		1023.00	\$1,050.00	\$3,150
Mix 12	2 BR - 2 Bath	60% AMI	6		1069.00	\$1,050.00	\$6,300
Mix 13	2 BR - 2 Bath	Market 100%	14		1069.00	\$1,600.00	\$22,400
Mix 14	2 BR - 1.5 Bath	Market 100%	3		1164.00	\$1,500.00	\$4,500
Mix 15	2 BR - 1.5 Bath	Market 100%	1		1143.00	\$1,500.00	\$1,500

L. UNIT DETAILS

Mix 16	2 BR - 1.5 Bath	Market 100%	3	1143.00	\$1,500.00	\$4,500
Mix 17	2 BR - 1.5 Bath	60% AMI	4	1020.00	\$1,050.00	\$4,200
Mix 18	2 BR - 2 Bath	60% AMI	6	1029.00	\$1,050.00	\$6,300
Mix 19	2 BR - 1.5 Bath	60% AMI	20	937.00	\$1,050.00	\$21,000
Mix 20	2 BR - 1.5 Bath	Market 100%	3	1029.00	\$1,500.00	\$4,500
Mix 21						\$0
Mix 22						\$0
Mix 23						\$0
Mix 24						\$0
Mix 25						\$0
Mix 26						\$0
Mix 27						\$0
Mix 28						\$0
Mix 29						\$0
Mix 30						\$0
Mix 31						\$0
Mix 32						\$0
Mix 33						\$0
Mix 34						\$0
Mix 35						\$0
Mix 36						\$0
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Mix 49						\$0
Mix 50						\$0
Mix 51						\$0
Mix 52						\$0
Mix 53						\$0
Mix 54						\$0
Mix 55						\$0
Mix 56						\$0
Mix 57						\$0
Mix 58						\$0
Mix 59						\$0
Mix 60						\$0
Mix 61						\$0
Mix 62						\$0
Mix 63						\$0
Mix 64						\$0
Mix 65						\$0
Mix 66						\$0
Mix 67						\$0
Mix 68						\$0
Mix 69						\$0
Mix 70						\$0
Mix 71						\$0

**L. UNIT DETAILS**

Mix 72									\$0
Mix 73									\$0
Mix 74									\$0
Mix 75									\$0
Mix 76									\$0
Mix 77									\$0
Mix 78									\$0
Mix 79									\$0
Mix 80									\$0
Mix 81									\$0
Mix 82									\$0
Mix 83									\$0
Mix 84									\$0
Mix 85									\$0
Mix 86									\$0
Mix 87									\$0
Mix 88									\$0
Mix 89									\$0
Mix 90									\$0
Mix 91									\$0
Mix 92									\$0
Mix 93									\$0
Mix 94									\$0
Mix 95									\$0
Mix 96									\$0
Mix 97									\$0
Mix 98									\$0
Mix 99									\$0
Mix 100									\$0
<b>TOTALS</b>			150	0					\$164,450

<b>Total Units</b>	150	<b>Net Rentable SF: TC Units</b>	107,570.00
		<b>MKT Units</b>	32,192.00
		<b>Total NR SF:</b>	139,762.00

**Floor Space Fraction (to 7 decimals)** 76.96656%

**M. OPERATING EXPENSES**

**Administrative:**

Use Whole Numbers Only!

1. Advertising/Marketing			\$7,500
2. Office Salaries			\$70,000
3. Office Supplies			\$6,000
4. Office/Model Apartment	(type _____)		\$0
5. Management Fee			\$88,368
	<u>4.75%</u> of EGI	<u>\$589.12</u>	Per Unit
6. Manager Salaries			\$55,000
7. Staff Unit (s)	(type _____)		\$0
8. Legal			\$2,000
9. Auditing			\$15,000
## Bookkeeping/Accounting Fees			\$0
## Telephone & Answering Service			\$2,500
## Tax Credit Monitoring Fee			\$2,500
## Miscellaneous Administrative			\$9,000
<b>Total Administrative</b>			<b>\$257,868</b>

**Utilities**

## Fuel Oil			\$0
## Electricity			\$23,000
## Water			\$90,000
## Gas			\$0
## Sewer			\$0
<b>Total Utility</b>			<b>\$113,000</b>

**Operating:**

## Janitor/Cleaning Payroll			\$30,000
## Janitor/Cleaning Supplies			\$4,000
## Janitor/Cleaning Contract			\$0
## Exterminating			\$5,000
## Trash Removal			\$11,000
## Security Payroll/Contract			\$0
## Grounds Payroll			\$0
## Grounds Supplies			\$6,000
## Grounds Contract			\$20,000
## Maintenance/Repairs Payroll			\$50,000
## Repairs/Material			\$28,000
## Repairs Contract			\$7,000
## Elevator Maintenance/Contract			\$7,000
## Heating/Cooling Repairs & Maintenance			\$5,000
## Pool Maintenance/Contract/Staff			\$0
## Snow Removal			\$2,000
## Decorating/Payroll/Contract			\$2,000
## Decorating Supplies			\$1,000
## Miscellaneous			\$32,500
<b>Totals Operating &amp; Maintenance</b>			<b>\$210,500</b>

**M. OPERATING EXPENSES**

**Taxes & Insurance**

## Real Estate Taxes	\$195,000
## Payroll Taxes	\$13,000
## Miscellaneous Taxes/Licenses/Permits	\$1,500
## Property & Liability Insurance	\$40,000
## Fidelity Bond	\$1,000
## Workman's Compensation	\$1,300
## Health Insurance & Employee Benefits	\$10,000
## Other Insurance	\$0
<b>Total Taxes &amp; Insurance</b>	<b>\$261,800</b>

**Total Operating Expense** **\$843,168**

<b>Total Operating Expenses Per Unit</b>	<b>\$5,621</b>	<b>C. Total Operating Expenses as % of</b>	<b>45.32%</b>
--	----------------	--	---------------

**Replacement Reserves** (Total # Units X \$300 or \$250 New Const. Elderly Mini **\$45,000**

<b>Total Expenses</b>	<b>\$888,168</b>
-----------------------	------------------

**ACTION:** Provide Documentation of Operating Budget at **Tab R** if applicable.



**N. PROJECT SCHEDULE**

ACTIVITY	ACTUAL OR ANTICIPATED DATE	NAME OF RESPONSIBLE PERSON
<b>1. SITE</b>		
a. Option/Contract		
b. Site Acquisition	9/1/21	Brian Staub
c. Zoning Approval		
d. Site Plan Approval		
<b>2. Financing</b>		
<b>a. Construction Loan</b>		
i. Loan Application	10/6/21	Brian Staub
ii. Conditional Commitment		
iii. Firm Commitment		
<b>b. Permanent Loan - First Lien</b>		
i. Loan Application	10/6/21	Brian Staub
ii. Conditional Commitment		
iii. Firm Commitment		
<b>c. Permanent Loan-Second Lien</b>		
i. Loan Application		
ii. Conditional Commitment		
iii. Firm Commitment		
<b>d. Other Loans &amp; Grants</b>		
i. Type & Source, List		
ii. Application		
iii. Award/Commitment		
<b>2. Formation of Owner</b>	8/27/21	Tim Trant
<b>3. IRS Approval of Nonprofit Status</b>		
<b>4. Closing and Transfer of Property to Owner</b>		
<b>5. Plans and Specifications, Working Drawings</b>		
<b>6. Building Permit Issued by Local Government</b>	2/1/22	Scott Troutman
<b>7. Start Construction</b>	4/1/22	Scott Troutman
<b>8. Begin Lease-up</b>	5/1/23	Chris McKee
<b>9. Complete Construction</b>	8/1/23	Scott Troutman
<b>10. Complete Lease-Up</b>	4/1/24	Chris McKee
<b>11. Credit Placed in Service Date</b>	7/1/23	Brian Staub

**O. PROJECT BUDGET - HARD COSTS**

**Cost/Basis/Maximum Allowable Credit**

Complete cost column and basis column(s) as appropriate

Note: Attorney must opine, among other things, as to correctness of the inclusion of each cost item in eligible basis, type of credit and numerical calculations included in Project Budget.

<b>Must Use Whole Numbers Only!</b>	Amount of Cost up to 100% Includable in Eligible Basis--Use Applicable Column(s):				
	Item	(A) Cost	"30% Present Value Credit"		(D)
			(B) Acquisition	(C) Rehab/ New Construction	"70 % Present Value Credit"
<b>1. Contractor Cost</b>					
a. Unit Structures (New)	15,675,000	0	15,675,000	0	
b. Unit Structures (Rehab)	0	0	0	0	
c. Non Residential Structures	0	0	0	0	
d. Commercial Space Costs	0	0	0	0	
e. Structured Parking Garage	0	0	0	0	
<b>Total Structure</b>	<b>15,675,000</b>	<b>0</b>	<b>15,675,000</b>	<b>0</b>	
f. Earthwork	0	0	0	0	
g. Site Utilities	0	0	0	0	
h. Roads & Walks	0	0	0	0	
i. Site Improvements	3,350,000	0	3,350,000	0	
j. Lawns & Planting	205,000	0	205,000	0	
k. Engineering	0	0	0	0	
l. Off-Site Improvements	0	0	0	0	
m. Site Environmental Mitigation	0	0	0	0	
n. Demolition	0	0	0	0	
o. Site Work	0	0	0	0	
p. Other Site work	0	0	0	0	
<b>Total Land Improvements</b>	<b>3,555,000</b>	<b>0</b>	<b>3,555,000</b>	<b>0</b>	
<b>Total Structure and Land</b>	<b>19,230,000</b>	<b>0</b>	<b>19,230,000</b>	<b>0</b>	
q. General Requirements	600,000	0	600,000	0	
r. Builder's Overhead ( 1.6% Contract)	310,000	0	310,000	0	
s. Builder's Profit ( 2.6% Contract)	500,000	0	500,000	0	
t. Bonds	0	0	0	0	
u. Building Permits	0	0	0	0	
v. Special Construction	0	0	0	0	
w. Special Equipment	0	0	0	0	
x. Other 1:	0	0	0	0	
y. Other 2:	0	0	0	0	
z. Other 3:	0	0	0	0	
<b>Contractor Costs</b>	<b>\$20,640,000</b>	<b>\$0</b>	<b>\$20,640,000</b>	<b>\$0</b>	

**O. PROJECT BUDGET - OWNER COSTS**

**MUST USE WHOLE NUMBERS ONLY!**

Item	(A) Cost	Amount of Cost up to 100% Includable in Eligible Basis--Use Applicable Column(s):		
		"30% Present Value Credit"		(D)
		(B) Acquisition	(C) Rehab/ New Construction	"70 % Present Value Credit"
<b>2. Owner Costs</b>				
a. Building Permit	35,000	0	35,000	0
b. Architecture/Engineering Design Fee \$3,200 /Unit)	480,000	0	480,000	0
c. Architecture Supervision Fee \$133 /Unit)	20,000	0	20,000	0
d. Tap Fees	100,000	0	100,000	0
e. Environmental	12,500	0	12,500	0
f. Soil Borings	12,500	0	12,500	0
g. Green Building (Earthcraft, LEED, etc.)	0	0	0	0
h. Appraisal	4,000	0	4,000	0
i. Market Study	7,000	0	7,000	0
j. Site Engineering / Survey	30,000	0	30,000	0
k. Construction/Development Mgt	0	0	0	0
l. Structural/Mechanical Study	0	0	0	0
m. Construction Loan Origination Fee				
n. Construction Interest ( 0.0% fo 0 months)	619,522	0	464,642	0
o. Taxes During Construction	25,000	0	0	0
p. Insurance During Construction	70,000	0	20,000	0
q. Permanent Loan Fee ( 0.0% )	82,750	0	0	0
r. Other Permanent Loan Fees	169,063	0	0	0
s. Letter of Credit	35,000	0	0	0
t. Cost Certification Fee	0	0	0	0
u. Accounting	25,000	0	25,000	0
v. Title and Recording	80,000	0	0	0
w. Legal Fees for Closing	125,000	0	50,000	0
x. Mortgage Banker	50,000	0	0	0
y. Tax Credit Fee	72,462			
z. Tenant Relocation	0	0	0	0
aa. Fixtures, Furnitures and Equipment	150,000	0	75,000	0
ab. Organization Costs	0	0	0	0
ac. Operating Reserve	300,000	0	0	0
ad. Contingency	50,000	0	0	0
ae. Security	0	0	0	0
af. Utilities	80,000	0	80,000	0

**O. PROJECT BUDGET - OWNER COSTS**

(1) Other* specify	Hard Cost Contingency	1,032,000	0	1,032,000	0
(2) Other* specify	Lender/Third Party Repd	30,000	0	15,000	0
(3) Other* specify	Nutrient Credit	5,000	0	5,000	0
(4) Other* specify	Wetlands Mitigation	100,000	0	100,000	0
(5) Other* specify	Marketing and Lease Up	100,000	0	0	0
(6) Other* specify		0	0	0	0
(7) Other* specify		0	0	0	0
(8) Other* specify		0	0	0	0
(9) Other* specify		0	0	0	0
### Other* specify		0	0	0	0
Owner Costs Subtotal (Sum 2A..2(10))		\$3,901,797	\$0	\$2,567,642	\$0
<b>Subtotal 1 + 2</b> (Owner + Contractor Costs)		\$24,541,797	\$0	\$23,207,642	\$0
<b>3. Developer's Fees</b>		2,300,000	0	2,300,000	0
Action: Provide Developer Fee Agreement (Tab A)					
<b>4. Owner's Acquisition Costs</b>					
Land		700,000			
Existing Improvements		0	0		
Subtotal 4:		\$700,000	\$0		
<b>5. Total Development Costs</b>					
Subtotal 1+2+3+4:		\$27,541,797	\$0	\$25,507,642	\$0

If this application seeks rehab credits only, in which there is no acquisition and **no change in ownership**, enter the greater of appraised value or tax assessment value here:

(Provide documentation at Tab E)

\$0	Land
\$0	Building

**Maximum Developer Fee:**

**\$2,449,344**

Proposed Development's Cost per Sq Foot  
Applicable Cost Limit by Square Foot:

\$125    **Meets Limits**  
\$262

**2021 Low-Income Housing Tax Credit Application For Reservation**

**P. ELIGIBLE BASIS CALCULATION**

Item	(A) Cost	Amount of Cost up to 100% Includable in Eligible Basis--Use Applicable Column(s):		
		"30 % Present Value Credit"		(D) "70 % Present Value Credit"
		(B) Acquisition	(C) Rehab/ New Construction	
<b>1. Total Development Costs</b>	27,541,797	0	25,507,642	0

**2. Reductions in Eligible Basis**

a. Amount of federal grant(s) used to finance qualifying development costs	0	0	0
b. Amount of nonqualified, nonrecourse financing	0	0	0
c. Costs of nonqualifying units of higher quality (or excess portion thereof)	0	0	0
d. Historic Tax Credit (residential portion)	0	0	0

**3. Total Eligible Basis (1 - 2 above)**

0	25,507,642	0
---	------------	---

**4. Adjustment(s) to Eligible Basis (For non-acquisition costs in eligible basis)**

a. For QCT or DDA (Eligible Basis x 30%) <i>State Designated Basis Boosts:</i>	7,652,293	0
b. For Revitalization or Supportive Housing (Eligible Basis x 30%)	0	0
c. For Green Certification (Eligible Basis x 10%)		0

<b>Total Adjusted Eligible basis</b>	33,159,935	0
--------------------------------------	------------	---

**5. Applicable Fraction**

76.96656%	76.96656%	76.96656%
-----------	-----------	-----------

**6. Total Qualified Basis**  
(Eligible Basis x Applicable Fraction)

0	25,522,061	0
---	------------	---

**7. Applicable Percentage**

0.00%	4.00%	0.00%
-------	-------	-------

(Beginning in 2021, All Tax Exempt requests should use the standard 4% rate and all 9% requests should use the standard 9% rate.)

**8. Maximum Allowable Credit under IRC §42**

\$0	\$1,020,882	\$0
-----	-------------	-----

(Qualified Basis x Applicable Percentage)

(Must be same as BIN total and equal to or less than credit amount allowed)

\$1,020,882
Combined 30% & 70% P. V. Credit

**Q. SOURCES OF FUNDS**

**Action:** Provide Documentation for all Funding Sources at **Tab T**

**1. Construction Financing:** List individually the sources of construction financing, including any such loans financed through grant sources:

	Source of Funds	Date of Application	Date of Commitment	Amount of Funds	Name of Contact Person
1.	Virginia Housing			\$16,550,000	Sean Campbell
2.					
3.					
Total Construction Funding:				\$16,550,000	

**2. Permanent Financing:** List individually the sources of all permanent financing in order of lien position:

	Source of Funds	Date of Application	Date of Commitment	Amount of Funds	Annual Debt Service Cost	Interest Rate of Loan	Amortization Period IN YEARS	Term of Loan (years)
1.	VH Tax Exempt			\$13,100,000	\$672,667	3.75%	35.00	35.00
2.	VH Reach			\$3,450,000	\$158,175	2.95%	35.00	35.00
3.								
4.								
5.								
6.								
7.								
8.								
9.								
10.								
Total Permanent Funding:				\$16,550,000	\$830,842			

**3. Grants:** List all grants provided for the development:

	Source of Funds	Date of Application	Date of Commitment	Amount of Funds	Name of Contact Person
1.					
2.					
3.					
4.					
5.					
6.					

**Q. SOURCES OF FUNDS**

Total Permanent Grants:

\$0

**Q. SOURCES OF FUNDS**

**4. Subsidized Funding**

	Source of Funds	Date of Commitment	Amount of Funds
1.			
2.			
3.			
4.			
5.			
Total Subsidized Funding			\$0

**5. Recap of Federal, State, and Local Funds**

Portions of the sources of funds described above for the development are financed directly or indirectly with Federal, State, or Local Government Funds..... **FALSE**

If above is **True**, then list the amount of money involved by all appropriate types.

Below-Market Loans

TE: See Below For 50% Test Status

a.	Tax Exempt Bonds	#####
b.	RD 515	\$0
c.	Section 221(d)(3)	\$0
d.	Section 312	\$0
e.	Section 236	\$0
f.	VHDA SPARC/REACH	\$0
g.	HOME Funds	\$0
h.	Other:	\$0
i.	Other:	\$0

Market-Rate Loans

a.	Taxable Bonds	\$0
b.	Section 220	\$0
c.	Section 221(d)(3)	\$0
d.	Section 221(d)(4)	\$0
e.	Section 236	\$0
f.	Section 223(f)	\$0
g.	Other:	\$0

Grants\*

a.	CDBG	\$0
b.	UDAG	\$0

Grants

c.	State	
d.	Local	
e.	Other:	

\*This means grants to the partnership. If you received a loan financed by a locality which received one of the listed grants, please list it in the appropriate loan column as "other" and describe the applicable grant program which funded it.



**Q. SOURCES OF FUNDS**

**6. For Transactions Using Tax-Exempt Bonds Seeking 4% Credits:**

For purposes of the 50% Test, and based only on the data entered to this application, the portion of the aggregate basis of buildings and land financed with tax-exempt funds is: **63.15%**

7. Some of the development's financing has credit enhancements..... **FALSE**

If **True**, list which financing and describe the credit enhancement:

[Empty text box for listing financing and credit enhancements]

**8. Other Subsidies** **Action: Provide documentation (Tab Q)**

a. **FALSE** Real Estate Tax Abatement on the increase in the value of the development.

b. **FALSE** **New** project based subsidy from HUD or Rural Development for the greater of 5 or 10% of the units in the development.

c. **FALSE** Other [Empty text box]

9. A HUD approval for transfer of physical asset is required..... **FALSE**

**R. EQUITY**

**1. Equity**

a. Portion of Syndication Proceeds Attributable to Historic Tax Credit

Amount of Federal historic credits	\$0	x Equity \$	\$0.000	=	\$0
Amount of Virginia historic credits	\$0	x Equity \$	\$0.000	=	\$0

b. Equity that Sponsor will Fund:

i. Cash Investment	\$0	
ii. Contributed Land/Building	\$0	
iii. Deferred Developer Fee	\$1,599,683	(Note: Deferred Developer Fee cannot be negative.)
iv. Other:	\$0	

**ACTION:** If Deferred Developer Fee is greater than 50% of overall Developer Fee, provide a cash flow statement showing payoff within 15 years at **TAB A.**

**Equity Total** \$1,599,683

**2. Equity Gap Calculation**

a. Total Development Cost	\$27,541,797
b. Total of Permanent Funding, Grants and Equity	- <u>\$18,149,683</u>
c. Equity Gap	\$9,392,114
d. Developer Equity	- <u>\$0</u>
e. Equity gap to be funded with low-income tax credit proceeds	\$9,392,114

**3. Syndication Information (If Applicable)**

a. Actual or Anticipated Name of Syndicator: \_\_\_\_\_  
 Contact Person: \_\_\_\_\_ Phone: \_\_\_\_\_  
 Street Address: \_\_\_\_\_  
 City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

b. Syndication Equity

i. Anticipated Annual Credits	\$1,020,882.00
ii. Equity Dollars Per Credit (e.g., \$0.85 per dollar of credit)	\$0.920
iii. Percent of ownership entity (e.g., 99% or 99.9%)	99.99999%
iv. Syndication costs not included in Total Development Costs (e.g., advisory fees)	_____
v. Net credit amount anticipated by user of credits	\$1,020,882
vi. Total to be paid by anticipated users of credit (e.g., limited partners)	<u>\$9,392,114</u>

c. Syndication: Private  
 d. Investors: Corporate

**4. Net Syndication Amount** \$9,392,114  
 Which will be used to pay for Total Development Costs

**5. Net Equity Factor** 92.0000052818%  
 Must be equal to or greater than 85%

**S. DETERMINATION OF RESERVATION AMOUNT NEEDED**

The following calculation of the amount of credits needed is substantially the same as the calculation which will be made by Virginia Housing to determine, as required by the IRC, the amount of credits which may be allocated for the development. However, Virginia Housing at all times retains the right to substitute such information and assumptions as are determined by Virginia Housing to be reasonable for the information and assumptions provided herein as to costs (including development fees, profits, etc.), sources for funding, expected equity, etc. Accordingly, if the development is selected by Virginia Housing for a reservation of credits, the amount of such reservation may differ significantly from the amount you compute below.

1. Total Development Costs		<u>\$27,541,797</u>
2. Less Total of Permanent Funding, Grants and Equity	-	<u>\$18,149,683</u>
3. Equals Equity Gap		<u>\$9,392,114</u>
4. Divided by Net Equity Factor (Percent of 10-year credit expected to be raised as equity investment)		<u>92.0000052818%</u>
5. Equals Ten-Year Credit Amount Needed to Fund Gap		<u>\$10,208,819</u>
Divided by ten years		<u>10</u>
6. Equals Annual Tax Credit Required to Fund the Equity Gap		<u>\$1,020,882</u>
7. Maximum Allowable Credit Amount (from Eligible Basis Calculation)		<u>\$1,020,882</u>
8. Requested Credit Amount	For 30% PV Credit:	<u>\$1,020,882</u>
	For 70% PV Credit:	<u>\$0</u>
Credit per LI Units	<u>\$8,507.3500</u>	<b>Combined 30% &amp; 70% PV Credit Requested</b>
Credit per LI Bedroom	<u>\$4,815.4811</u>	
		<b>\$1,020,882</b>

9. **Action:** Provide Attorney’s Opinion (**Mandatory Tab H**)

**T. CASH FLOW**

**1. Revenue**

Indicate the estimated monthly income for the **Low-Income Units** (based on Unit Details tab):

Total Monthly Rental Income for LIHTC Units	\$118,650
Plus Other Income Source (list) <u>pet fees, late rent, etc.</u>	<u>\$1,800</u>
Equals Total Monthly Income:	<u>\$120,450</u>
Twelve Months	x12
Equals Annual Gross Potential Income	<u>\$1,445,400</u>
Less Vacancy Allowance <u>7.0%</u>	<u>\$101,178</u>
<b>Equals Annual Effective Gross Income (EGI) - Low Income Units</b>	<b><u>\$1,344,222</u></b>

2. Indicate the estimated monthly income for the **Market Rate Units** (based on Unit Details tab):

Total Monthly Income for Market Rate Units:	\$45,800
Plus Other Income Source (list): <u></u>	<u>\$450</u>
Equals Total Monthly Income:	<u>\$46,250</u>
Twelve Months	x12
Equals Annual Gross Potential Income	<u>\$555,000</u>
Less Vacancy Allowance <u>7.0%</u>	<u>\$38,850</u>
<b>Equals Annual Effective Gross Income (EGI) - Market Rate Units</b>	<b><u>\$516,150</u></b>

**Action:** Provide documentation in support of Operating Budget (**TAB R**)

**3. Cash Flow (First Year)**

a. Annual EGI Low-Income Units	<u>\$1,344,222</u>
b. Annual EGI Market Units	<u>\$516,150</u>
c. Total Effective Gross Income	<u>\$1,860,372</u>
d. Total Expenses	<u>\$888,168</u>
e. Net Operating Income	<u>\$972,204</u>
f. Total Annual Debt Service	<u>\$830,842</u>
g. Cash Flow Available for Distribution	<u>\$141,362</u>

**T. CASH FLOW**

**4. Projections for Financial Feasibility - 15 Year Projections of Cash Flow**

	Stabilized Year 1	Year 2	Year 3	Year 4	Year 5
<b>Eff. Gross Income</b>	1,860,372	1,897,579	1,935,531	1,974,242	2,013,726
<b>Less Oper. Expenses</b>	888,168	914,813	942,257	970,525	999,641
<b>Net Income</b>	972,204	982,766	993,274	1,003,716	1,014,086
<b>Less Debt Service</b>	830,842	830,842	830,842	830,842	830,842
<b>Cash Flow</b>	141,362	151,924	162,432	172,874	183,244
<b>Debt Coverage Ratio</b>	1.17	1.18	1.20	1.21	1.22

	Year 6	Year 7	Year 8	Year 9	Year 10
<b>Eff. Gross Income</b>	2,054,001	2,095,081	2,136,983	2,179,722	2,223,317
<b>Less Oper. Expenses</b>	1,029,630	1,060,519	1,092,335	1,125,105	1,158,858
<b>Net Income</b>	1,024,371	1,034,562	1,044,648	1,054,618	1,064,459
<b>Less Debt Service</b>	830,842	830,842	830,842	830,842	830,842
<b>Cash Flow</b>	193,529	203,720	213,806	223,776	233,617
<b>Debt Coverage Ratio</b>	1.23	1.25	1.26	1.27	1.28

	Year 11	Year 12	Year 13	Year 14	Year 15
<b>Eff. Gross Income</b>	2,267,783	2,313,139	2,359,402	2,406,590	2,454,721
<b>Less Oper. Expenses</b>	1,193,624	1,229,432	1,266,315	1,304,305	1,343,434
<b>Net Income</b>	1,074,160	1,083,707	1,093,086	1,102,285	1,111,288
<b>Less Debt Service</b>	830,842	830,842	830,842	830,842	830,842
<b>Cash Flow</b>	243,318	252,865	262,244	271,443	280,446
<b>Debt Coverage Ratio</b>	1.29	1.30	1.32	1.33	1.34

Estimated Annual Percentage Increase in Revenue 2.00% (Must be < 2%)  
 Estimated Annual Percentage Increase in Expenses 3.00% (Must be > 3%)

**U. Building-by-Building Information**

**Must Complete**

Number of BINS: 1

Qualified basis must be determined on a building-by building basis. Complete the section below. Building street addresses are required by the IRS (must have them by the time of allocation request).

**FOR YOUR CONVENIENCE, COPY AND PASTE IS ALLOWED WITHIN BUILDING GRID**

**DO NOT use the CUT feature**

Bldg #	BIN if known	NUMBER OF		Street Address 1	Street Address 2	City	State	Zip	30% Present Value Credit for Acquisition				30% Present Value Credit for Rehab / New Construction				70% Present Value Credit			
		TAX CREDIT UNITS	MARKET RATE UNITS						Estimate Qualified Basis	Actual or Anticipated In-Service Date	Applicable Percentage	Credit Amount	Estimate Qualified Basis	Actual or Anticipated In-Service Date	Applicable Percentage	Credit Amount	Estimate Qualified Basis	Actual or Anticipated In-Service Date	Applicable Percentage	Credit Amount
1.		120	30	1963 W. Pembroke Ave		Hampton	VA	23661				\$0	\$25,522,061		4.00%	\$1,020,882				\$0
2.												\$0				\$0				\$0
3.												\$0				\$0				\$0
4.												\$0				\$0				\$0
5.												\$0				\$0				\$0
6.												\$0				\$0				\$0
7.												\$0				\$0				\$0
8.												\$0				\$0				\$0
9.												\$0				\$0				\$0
10.												\$0				\$0				\$0
11.												\$0				\$0				\$0
12.												\$0				\$0				\$0
13.												\$0				\$0				\$0
14.												\$0				\$0				\$0
15.												\$0				\$0				\$0
16.												\$0				\$0				\$0
17.												\$0				\$0				\$0
18.												\$0				\$0				\$0
19.												\$0				\$0				\$0
20.												\$0				\$0				\$0
21.												\$0				\$0				\$0
22.												\$0				\$0				\$0
23.												\$0				\$0				\$0
24.												\$0				\$0				\$0
25.												\$0				\$0				\$0
26.												\$0				\$0				\$0
27.												\$0				\$0				\$0
28.												\$0				\$0				\$0
29.												\$0				\$0				\$0
30.												\$0				\$0				\$0
31.												\$0				\$0				\$0
32.												\$0				\$0				\$0
33.												\$0				\$0				\$0
34.												\$0				\$0				\$0
35.												\$0				\$0				\$0
				Totals from all buildings				\$0				\$0				\$1,020,882				\$0

Number of BINS: 1

**V. STATEMENT OF OWNER**

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The undersigned hereby acknowledges the following:

1. that, to the best of its knowledge and belief, all factual information provided herein or in connection herewith is true and correct, and all estimates are reasonable.
2. that it will at all times indemnify and hold harmless Virginia Housing and its assigns against all losses, costs, damages, Virginia Housing's expenses, and liabilities of any nature directly or indirectly resulting from, arising out of, or relating to Virginia Housing's acceptance, consideration, approval, or disapproval of this reservation request and the issuance or nonissuance of an allocation of credits, grants and/or loan funds in connection herewith.
3. that points will be assigned only for representations made herein for which satisfactory documentation is submitted herewith and that no revised representations may be made in connection with this application once the deadline for applications has passed.
4. that this application form, provided by Virginia Housing to applicants for tax credits, including all sections herein relative to basis, credit calculations, and determination of the amount of the credit necessary to make the development financially feasible, is provided only for the convenience of Virginia Housing in reviewing reservation requests; that completion hereof in no way guarantees eligibility for the credits or ensures that the amount of credits applied for has been computed in accordance with IRC requirements; and that any notations herein describing IRC requirements are offered only as general guides and not as legal authority.
5. that the undersigned is responsible for ensuring that the proposed development will be comprised of qualified low-income buildings and that it will in all respects satisfy all applicable requirements of federal tax law and any other requirements imposed upon it by Virginia Housing prior to allocation, should one be issued.
6. that the undersigned commits to providing first preference to members of targeted populations having state rental assistance and will not impose any eligibility requirements or lease terms for such individuals that are more restrictive than its standard requirements and terms, the terms of the MOU establishing the target population, or the eligibility requirements for the state rental assistance.
7. that, for the purposes of reviewing this application, Virginia Housing is entitled to rely upon representations of the undersigned as to the inclusion of costs in eligible basis and as to all of the figures and calculations relative to the determination of qualified basis for the development as a whole and/or each building therein individually as well as the amounts and types of credit applicable thereof, but that the issuance of a reservation based on such representation in no way warrants their correctness or compliance with IRC requirements.
8. that Virginia Housing may request or require changes in the information submitted herewith, may substitute its own figures which it deems reasonable for any or all figures provided herein by the undersigned and may reserve credits, if any, in an amount significantly different from the amount requested.
9. that reservations of credits are not transferable without prior written approval by Virginia Housing at its sole discretion.

V. STATEMENT OF OWNER

- 10. that the requirements for applying for the credits and the terms of any reservation or allocation thereof are subject to change at any time by federal or state law, federal, state or Virginia Housing regulations, or other binding authority.
- 11. that reservations may be made subject to certain conditions to be satisfied prior to allocation and shall in all cases be contingent upon the receipt of a nonrefundable application fee of \$1000 and a nonrefundable reservation fee equal to 7% of the annual credit amount reserved.
- 12. that a true, exact, and complete copy of this application, including all the supporting documentation enclosed herewith, has been provided to the tax attorney who has provided the required attorney's opinion accompanying this submission.
- 13. that the undersigned has provided a complete list of all residential real estate developments in which the general partner(s) has (have) or had a controlling ownership interest and, in the case of those projects allocated credits under Section 42 of the IRC, complete information on the status of compliance with Section 42 and an explanation of any noncompliance. The undersigned hereby authorizes the Housing Credit Agencies of states in which these projects are located to share compliance information with the Authority.
- 14. that any principal of undersigned has not participated in a planned foreclosure or Qualified Contract request in Virginia after January 1, 2019.
- 15. that undersigned waives the right to pursue a Qualified Contract on this development.
- 16. that the information in this application may be disseminated to others for purposes of verification or other purposes consistent with the Virginia Freedom of Information Act. However, all information will be maintained, used or disseminated in accordance with the Government Data Collection and Dissemination Practices Act. The undersigned may refuse to supply the information requested, however, such refusal will result in Virginia Housing's inability to process the application. The original or copy of this application may be retained by Virginia Housing, even if tax credits are not allocated to the undersigned.

In Witness Whereof, the undersigned, being authorized, has caused this document to be executed in its name on the date of this application set forth in DEV Info tab hereof.

Legal Name of Owner Pembroke Senior, L.P.  
by its general partner  
Pembroke Senior GP, LLC

By:   
 Its: Manager (Title)




**V. STATEMENT OF ARCHITECT**

The architect signing this document is certifying that the development plans and specifications incorporate all Virginia Housing Minimum Design and Construction Requirements (MDCR), selected LIHTC enhancements and amenities, applicable building codes and accessibility requirements.

In Witness Whereof, the undersigned, being authorized, has caused this document to be executed in its name on the date of this application set forth in DEV Info tab hereof.

Legal Name of Architect:	<u>CRAIG C MILLER</u>
Virginia License#:	<u>0401011907</u>
Architecture Firm or Company:	<u>COX, KLEINER &amp; COMPANY</u>

By: 

Its: PRINCIPAL (Title)

Initials by Architect are also required on the following Tabs: Enhancement, Special Housing Needs and Unit Details

**LIHTC SELF SCORE SHEET**

**Self Scoring Process**  
 This Self Scoring Process is intended to provide you with an estimate of your application's score based on the information included within reservation application. Other items, denoted below in the yellow shaded cells, are typically evaluated by Virginia Housing's staff during the application review and feasibility process. For purposes of self scoring, we have made certain assumptions about your application. Edit the appropriate responses (Y or N) in the yellow shaded cells, if applicable. Item 5f requires a numeric value to be entered.  
 Please remember that this score is only an estimate. Virginia Housing reserves the right to change application data and/or score sheet resp where appropriate, which may change the final score.

MANDATORY ITEMS:	Included	Score
a. Signed, completed application with attached tabs in PDF format	Y	0
b. Active Excel copy of application	Y	0
c. Partnership agreement	Y	0
d. SCC Certification	Y	0
e. Previous participation form	Y	0
f. Site control document	Y	0
g. RESNET Certification	Y	0
h. Attorney's opinion	Y	0
i. Nonprofit questionnaire (if applicable)	Y	0
j. Appraisal	Y	0
k. Zoning document	Y	0
l. Universal Design Plans	Y	0
m. List of LIHTC Developments (Schedule A)	Y	0
<b>Total:</b>		<b>0.00</b>

<b>1. READINESS:</b>			
a. Virginia Housing notification letter to CEO (via Locality Notification Information App)	Y	0 or -50	0.00
b. Local CEO Opposition Letter	N	0 or -25	0.00
c. Plan of development	N	0 or 40	0.00
d. Location in a revitalization area based on Qualified Census Tract	N	0 or 10	0.00
e. Location in a revitalization area with resolution	N	0 or 15	0.00
f. Location in a Opportunity Zone	N	0 or 15	0.00
<b>Total:</b>			<b>0.00</b>

<b>2. HOUSING NEEDS CHARACTERISTICS:</b>			
a. Sec 8 or PHA waiting list preference	Y	0 or up to 5	5.00
b. Existing RD, HUD Section 8 or 236 program	N	0 or 20	0.00
c. Subsidized funding commitments	0.00%	Up to 40	0.00
d. Tax abatement on increase of property's value	N	0 or 5	0.00
e. New project based rental subsidy (HUD or RD)	N	0 or 10	0.00
f. Census tract with <12% poverty rate	12%	0, 20, 25 or 30	20.00
g. Development listed on the Rural Development Rehab Priority List	N	0 or 15	0.00
h. Dev. located in area with little or no increase in rent burdened population	N	Up to -20	0.00
i. Dev. located in area with increasing rent burdened population	Y	Up to 20	20.00
<b>Total:</b>			<b>45.00</b>

<b>3. DEVELOPMENT CHARACTERISTICS:</b>			
a. Enhancements (See calculations below)			17.15
b. Project subsidies/ HUD 504 accessibility for 5 or 10% of units	N	0 or 60	0.00
c. HCV Payment Standard/ HUD 504 accessibility for 5 or 10% of units	N	0 or 30	0.00
d. HUD 504 accessibility for 5% of units	N	0 or 15	0.00
e. Proximity to public transportation (within Northern VA or Tidewater)	Y10	0, 10 or 20	10.00
f. Development will be Green Certified	N	0 or 10	0.00
g. Units constructed to meet Virginia Housing's Universal Design standards	0%	Up to 15	0.00
h. Developments with less than 100 units	N	up to 20	0.00
i. Historic Structure	N	0 or 5	0.00
<b>Total:</b>			<b>27.15</b>

4. TENANT POPULATION CHARACTERISTICS:	Locality AMI	State AMI		
	\$82,500	\$62,300		
a. Less than or equal to 20% of units having 1 or less bedrooms	N	0 or 15	0.00	
b. <plus> Percent of Low Income units with 3 or more bedrooms	0.00%	Up to 15	0.00	
c. 10% of LI units	0.00%	Up to 10	0.00	
d. Units with rents at or below 40% of AMI (up to 10% of LI units)	0.00%	Up to 10	0.00	
e. Units with rent and income at or below 50% of AMI	0.00%	Up to 50	0.00	
f. Units with rents at or below 50% rented to tenants at or below 60% of AMI	0.00%	Up to 25	0.00	
g. Units in LI Jurisdictions with rents <= 50% rented to tenants with <= 60% of AMI	0.00%	Up to 50	0.00	
<b>Total:</b>			<b>0.00</b>	

<b>5. SPONSOR CHARACTERISTICS:</b>			
a. Developer experience - 3 developments with 3 x units or 6 developments with 1 x unit	Y	0 or 50	50.00
b. Developer experience - 3 developments and at least 500,000 in liquid assets	N	0 or 50	0.00
c. Developer experience - 1 development with 1 x units	N	0 or 10	0.00
d. Developer experience - life threatening hazard	N	0 or -50	0.00
e. Developer experience - non-compliance	N	0 or -15	0.00
f. Developer experience - did not build as represented	0	0 or -2x	0.00
g. Developer experience - failure to provide minimum building requirements	N	0 or -20	0.00
h. Developer experience - termination of credits by Virginia Housing	N	0 or -10	0.00
i. Developer experience - exceeds cost limits at certification	N	0 or -50	0.00
j. Management company rated unsatisfactory	N	0 or -25	0.00
<b>Total:</b>			<b>50.00</b>

<b>6. EFFICIENT USE OF RESOURCES:</b>			
a. Credit per unit		Up to 200	138.14
b. Cost per unit		Up to 100	25.91
<b>Total:</b>			<b>164.05</b>

<b>7. BONUS POINTS:</b>				
a. Extended compliance	25	Years	40 or 50	40.00
b. Nonprofit or LHA purchase option	N		0 or 60	0.00
c. Nonprofit or LHA Home Ownership option	N		0 or 5	0.00
d. Combined 9% and 4% Tax Exempt Bond Site Plan	N		Up to 45	0.00
e. RAD or PHA Conversion participation and competing in Local Housing Authority pool	N		0 or 10	0.00
<b>Total:</b>				<b>40.00</b>

425 Point Threshold - all 9% Tax Credits **TOTAL SCORE: 326.20**  
 325 Point Threshold - Tax Exempt Bonds

Enhancements:	Max Pts	Score
All units have:		
a. Community Room	5	0.00
b. Exterior walls constructed with brick and other low maintenance material	25	14.15
c. Sub metered water expense	5	0.00
d. Watersense labeled faucets, toilets and showerheads	3	3.00
e. Infrastructure for high speed internet/broadband	1	0.00
f. Free WiFi Access in community room	4	0.00
g. Each unit provided free individual high speed internet access	6	0.00
h. Each unit provided free individual WiFi	8	0.00
i. Bath Fan - Delayed timer or continuous exhaust	3	0.00
j. Baths equipped with humidistat	3	0.00
k. Cooking Surfaces equipped with fire prevention features	4	0.00
l. Cooking surfaces equipped with fire suppression features	2	0.00
m. Rehab only, dedicated space to accept permanent dehumidification system	2	0.00
n. Provides Permanently installed dehumidification system	5	0.00
o. All interior doors within units are solid core	3	0.00
p. USB in kitchen, living room and all bedrooms	1	0.00
q. LED Kitchen Light Fixtures	2	0.00
r. Shelf or ledge at entrance within interior hallway	2	0.00
s. New Construction: Balcony or patio	4	0.00
		17.15
All elderly units have:		
t. Front-control ranges	1	0.00
u. independent/suppl. heat source	1	0.00
v. Two eye viewers	1	0.00
		0.00
<b>Total amenities:</b>		<b>17.15</b>

X. Development Summary

Summary Information 2021 Low-Income Housing Tax Credit Application For Reservation

**Deal Name:** Arbors at Pembroke

**Cycle Type:** 4% Tax Exempt Bonds Credits      **Requested Credit Amount:** \$1,020,882  
**Allocation Type:** New Construction      **Jurisdiction:** Hampton City  
**Total Units:** 150      **Population Target:** Elderly  
**Total LI Units:** 120  
**Project Gross Sq Ft:** 213,894.00      **Owner Contact:** Brian Staub  
**Green Certified?** FALSE

**Total Score**  
**326.20**

Source of Funds	Amount	Per Unit	Per Sq Ft	Annual Debt Service
Permanent Financing	\$16,550,000	\$110,333	\$77	\$830,842

Uses of Funds - Actual Costs				
Type of Uses	Amount	Per Unit	Sq Ft	% of TDC
Improvements	\$19,230,000	\$128,200	\$90	69.82%
General Req/Overhead/Profit	\$1,410,000	\$9,400	\$7	5.12%
Other Contract Costs	\$0	\$0	\$0	0.00%
Owner Costs	\$3,901,797	\$26,012	\$18	14.17%
Acquisition	\$700,000	\$4,667	\$3	2.54%
Developer Fee	\$2,300,000	\$15,333	\$11	8.35%
<b>Total Uses</b>	<b>\$27,541,797</b>	<b>\$183,612</b>		

Total Development Costs	
Total Improvements	\$24,541,797
Land Acquisition	\$700,000
Developer Fee	\$2,300,000
<b>Total Development Costs</b>	<b>\$27,541,797</b>

Income	
Gross Potential Income - LI Units	\$1,445,400
Gross Potential Income - Mkt Unit:	\$555,000
Subtotal	\$2,000,400
Less Vacancy %	7.00%
	\$140,028
<b>Effective Gross Income</b>	<b>\$1,860,372</b>

**Proposed Cost Limit/Sq Ft:** \$125  
**Applicable Cost Limit/Sq Ft:** \$262

Unit Breakdown	
Supp Hsg	0
# of Eff	0
# of 1BR	55
# of 2BR	95
# of 3BR	0
# of 4+ BR	0
<b>Total Units</b>	<b>150</b>

**Rental Assistance?** FALSE

Expenses		
Category	Total	Per Unit
Administrative	\$257,868	\$1,719
Utilities	\$113,000	\$753
Operating & Maintenance	\$210,500	\$1,403
Taxes & Insurance	\$261,800	\$1,745
<b>Total Operating Expenses</b>	<b>\$843,168</b>	<b>\$5,621</b>
Replacement Reserves	\$45,000	\$300
<b>Total Expenses</b>	<b>\$888,168</b>	<b>\$5,921</b>

	Income Levels	Rent Levels
	# of Units	# of Units
<=30% AMI	0	0
40% AMI	0	0
50% AMI	0	0
60% AMI	120	120
>60% AMI	0	0
<b>Market</b>	<b>30</b>	<b>30</b>

Cash Flow	
EGI	\$1,860,372
Total Expenses	\$888,168
<b>Net Income</b>	<b>\$972,204</b>
Debt Service	\$830,842
<b>Debt Coverage Ratio (YR1):</b>	<b>1.17</b>

**Income Averaging?** FALSE

**Extended Use Restriction?** 40

## 2021 Low-Income Housing Tax Credit Application For Reservation

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Virginia Housing is running a BETA test of new EUR calculations that will be considered for implementation in 2022. These points are only a test and will not be used for scoring purposes in 2021. Please contact [taxcreditapps@virginiahousing.com](mailto:taxcreditapps@virginiahousing.com) with questions or

### Credit Points:

If the Combined Max Allowable is \$500,000 and the annual credit requested is \$200,000, you are providing a 60% savings for the program. This deal would receive all 200 credit points.

For another example, the annual credit requested is \$300,000 or a 40% savings for the program. Using a sliding scale, the credit points would be calculated by the difference between your savings and the desired 60% savings. Your savings divided by the goal of 60% times the max points of 200. In this example,  $(40\%/60\%) \times 200$  or 133.33 points.

<b>Using Current E-U-R method (up to 200)</b>		138.14
<b>Using proposed method:</b>		
Combined Max	\$1,020,882	
Credit Requested	\$1,020,882	
% of Savings	0.00%	
Sliding Scale Points		0
<i>Difference</i>		<i>-138.14</i>

### Cost Points:

If the Applicable Cost by Square foot is \$238 and the deal's Proposed Cost by Square Foot was \$119, you are saving 50% of the applicable cost. This deal would receive all 100 credit points.

For another example, the Applicable Cost by SqFt is \$238 and the deal's Proposed Cost is \$153.04 or a savings of 35.70%. Using a sliding scale, your points would be calculated by the difference between your savings and the desired 50% savings. Your savings divided by the goal of 50% times the max points 100. In this example,  $(35.7\%/50\%) \times 100$  or 71.40 points.

<b>Using Current E-U-R method (up to 100)</b>		25.91
<b>Using proposed method:</b>		
Total Costs Less Acquisition	\$26,841,797	
Total Square Feet	213,894.00	
Proposed Cost per SqFt	\$125.49	
Applicable Cost Limit per Sq Ft	\$262.00	
% of Savings	52.10%	
Sliding Scale Points		100.00
<i>Difference</i>		<i>74.09</i>

\$/SF = **\$130.64** Credits/SF = **5.99424** Const \$/unit = **\$137,600.000**

TYPE OF PROJECT GENERAL = 11000; ELDERLY = 12000  
 LOCATION Inner-NVA=100; Outer-NV=200; NWNc=300; Rich=400; Tid=500; Balance=600  
 TYPE OF CONSTRUCTION N C=1; ADPT=2; REHAB(35,000+)=3; REHAB\*(15,000-35,000)=4

**12000**  
**500**  
**1**

In  
 Nova  
**500**  
**1**

\*REHABS LOCATED IN BELTWAY (\$15,000-\$50,000) See Below

	GENERAL		Elderly				
	Supportive Hsg	EFF-E	1 BR-E	2 BR-E	EFF-E-1 ST	1 BR-E-1 ST	2 BR-E-1 ST
AVG UNIT SIZE	0.00	0.00	1,374.34	1,450.25	0.00	0.00	0.00
NUMBER OF UNITS	0	0	49	71	0	0	0
PARAMETER-(COSTS=>35,000)	0	0	215,078	280,253	0	0	0
PARAMETER-(COSTS<35,000)	0	0	0	0	0	0	0
PARAMETER-(COSTS=>50,000)	0	0	215,078	280,253	0	0	0
PARAMETER-(COSTS<50,000)	0	0	0	0	0	0	0
COST PARAMETER	0	0	215,078	280,253	0	0	0
PROJECT COST PER UNIT	0	0	179,543	189,460	0	0	0
PARAMETER-(CREDITS=>35,000)	0	0	19,404	25,284	0	0	0
PARAMETER-(CREDITS<35,000)	0	0	0	0	0	0	0
PARAMETER-(CREDITS=>50,000)	0	0	19,404	25,284	0	0	0
PARAMETER-(CREDITS<50,000)	0	0	0	0	0	0	0
CREDIT PARAMETER	0	0	19,404	25,284	0	0	0
PROJECT CREDIT PER UNIT	0	0	8,238	8,693	0	0	0
COST PER UNIT POINTS	0.00	0.00	6.75	19.17	0.00	0.00	0.00
CREDIT PER UNIT POINTS	0.00	0.00	46.99	77.65	0.00	0.00	0.00

	GENERAL							
	EFF-G	1 BR-G	2 BR-G	3 BR-G	4 BR-G	2 BR-TH	3 BR-TH	4 BR-TH
AVG UNIT SIZE	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
NUMBER OF UNITS	0	0	0	0	0	0	0	0
PARAMETER-(COSTS=>35,000)	0	0	0	0	0	0	0	0
PARAMETER-(COSTS<35,000)	0	0	0	0	0	0	0	0
PARAMETER-(COSTS=>50,000)	0	0	0	0	0	0	0	0
PARAMETER-(COSTS<50,000)	0	0	0	0	0	0	0	0
COST PARAMETER	0	0	0	0	0	0	0	0
PROJECT COST PER UNIT	0	0	0	0	0	0	0	0
PARAMETER-(CREDITS=>35,000)	0	0	0	0	0	0	0	0
PARAMETER-(CREDITS<35,000)	0	0	0	0	0	0	0	0
PARAMETER-(CREDITS=>50,000)	0	0	0	0	0	0	0	0
PARAMETER-(CREDITS<50,000)	0	0	0	0	0	0	0	0
CREDIT PARAMETER	0	0	0	0	0	0	0	0
PROJECT CREDIT PER UNIT	0	0	0	0	0	0	0	0
COST PER UNIT POINTS	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
CREDIT PER UNIT POINTS	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00

TOTAL COST PER UNIT POINTS **25.91**

TOTAL CREDIT PER UNIT POINTS **124.64**

**Cost Parameters - Elderly**

	Supportive Hsg	EFF-E	1 BR-E	2 BR-E	EFF-E-1 ST	1 BR-E-1 ST	2 BR-E-1 ST
Standard Cost Parameter - low rise	0	0	215,078	280,253	0	0	0
Parameter Adjustment - mid rise	0	0	0	0	0	0	0
Parameter Adjustment - high rise	0	0	0	0	0	0	0
<b>Adjusted Cost Parameter</b>	<b>0</b>	<b>0</b>	<b>215,078</b>	<b>280,253</b>	<b>0</b>	<b>0</b>	<b>0</b>

**Credit Parameters - Elderly**

	Supportive Hsg	EFF-E	1 BR-E	2 BR-E	EFF-E-1 ST	1 BR-E-1 ST	2 BR-E-1 ST
Standard Credit Parameter - low rise	0	0	19,404	25,284	0	0	0
Parameter Adjustment - mid rise	0	0	0	0	0	0	0
Parameter Adjustment - high rise	0	0	0	0	0	0	0
<b>Adjusted Credit Parameter</b>	<b>0</b>	<b>0</b>	<b>19,404</b>	<b>25,284</b>	<b>0</b>	<b>0</b>	<b>0</b>

**Cost Parameters - General**

	EFF-G	1 BR-G	2 BR-G	3 BR-G	4 BR-G	2 BR-TH	3 BR-TH	4 BR-TH
Standard Parameter - low rise	0	0	0	0	0	0	0	0
Parameter Adjustment - mid rise	0	0	0	0	0	0	0	0
Parameter Adjustment - high rise	0	0	0	0	0	0	0	0
<b>Adjusted Cost Parameter</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

**Credit Parameters - General**

	EFF-G	1 BR-G	2 BR-G	3 BR-G	4 BR-G	2 BR-TH	3 BR-TH	4 BR-TH
Standard Credit Parameter - low rise	0	0	0	0	0	0	0	0
Parameter Adjustment - mid rise	0	0	0	0	0	0	0	0
Parameter Adjustment - high rise	0	0	0	0	0	0	0	0
<b>Adjusted Credit Parameter</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

**Northern Virginia Beltway** (Rehab costs \$15,000-\$50,000)

**Cost Parameters - Elderly**

	Supportive Hsg	EFF-E	1 BR-E	2 BR-E	EFF-E-1 ST	1 BR-E-1 ST	2 BR-E-1 ST
Standard Cost Parameter - low rise	0	0	215,078	280,253	0	0	0
Parameter Adjustment - mid rise	0	0	0	0	0	0	0
Parameter Adjustment - high rise	0	0	0	0	0	0	0
<b>Adjusted Cost Parameter</b>	<b>0</b>	<b>0</b>	<b>215,078</b>	<b>280,253</b>	<b>0</b>	<b>0</b>	<b>0</b>

**Credit Parameters - Elderly**

	Supportive Hsg	EFF-E	1 BR-E	2 BR-E	EFF-E-1 ST	1 BR-E-1 ST	2 BR-E-1 ST
Standard Cost Parameter - low rise	0	0	19,404	25,284	0	0	0
Parameter Adjustment - mid rise	0	0	0	0	0	0	0
Parameter Adjustment - high rise	0	0	0	0	0	0	0
<b>Adjusted Cost Parameter</b>	<b>0</b>	<b>0</b>	<b>19,404</b>	<b>25,284</b>	<b>0</b>	<b>0</b>	<b>0</b>

**Cost Parameters - General**

	EFF-G	1 BR-G	2 BR-G	3 BR-G	4 BR-G	2 BR-TH	3 BR-TH	4 BR-TH
Standard Cost Parameter - low rise	0	0	0	0	0	0	0	0
Parameter Adjustment - mid rise	0	0	0	0	0	0	0	0
Parameter Adjustment - high rise	0	0	0	0	0	0	0	0
<b>Adjusted Cost Parameter</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

**Credit Parameters - General**

	EFF-G	1 BR-G	2 BR-G	3 BR-G	4 BR-G	2 BR-TH	3 BR-TH	4 BR-TH
Standard Cost Parameter - low rise	0	0	0	0	0	0	0	0
Parameter Adjustment - mid rise	0	0	0	0	0	0	0	0
Parameter Adjustment - high rise	0	0	0	0	0	0	0	0
<b>Adjusted Cost Parameter</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

\$/SF = **\$130.64** Credits/SF = **5.99424** Const \$/unit = **\$137,600.00**

TYPE OF PROJECT  
LOCATION  
TYPE OF CONSTRUCTION

GENERAL = 11000; ELDERLY = 12000  
Inner-NVA=100; Outer-NV=200; NWN=300; Rich=400; Tid=500; Balance=600  
N C=1; ADPT=2; REHAB(35,000+)=3; REHAB (10,000-35,000)=4

**12000**  
**500**  
**1**

**500**  
**1**

\*REHABS LOCATED IN BELTWAY (\$10,000-\$50,000) See Below

	GENERAL		Elderly				
	Supportive Hsg	EFF-E	1 BR-E	2 BR-E	EFF-E-1 ST	1 BR-E-1 ST	2 BR-E-1 ST
AVG UNIT SIZE	0.00	0.00	1,374.34	1,450.25	0.00	0.00	0.00
NUMBER OF UNITS	0	0	49	71	0	0	0
PARAMETER-(COSTS=>35,000)	0	0	215,078	280,253	0	0	0
PARAMETER-(COSTS<35,000)	0	0	0	0	0	0	0
PARAMETER-(COSTS=>50,000)	0	0	215,078	280,253	0	0	0
PARAMETER-(COSTS<50,000)	0	0	0	0	0	0	0
COST PARAMETER	0	0	215,078	280,253	0	0	0
PROJECT COST PER UNIT	0	0	179,543	189,460	0	0	0
PARAMETER-(CREDITS=>35,000)	0	0	19,404	25,284	0	0	0
PARAMETER-(CREDITS<35,000)	0	0	0	0	0	0	0
PARAMETER-(CREDITS=>50,000)	0	0	19,404	25,284	0	0	0
PARAMETER-(CREDITS<50,000)	0	0	0	0	0	0	0
CREDIT PARAMETER	0	0	19,404	25,284	0	0	0
PROJECT CREDIT PER UNIT	0	0	8,238	8,693	0	0	0
<b>COST PER UNIT POINTS</b>	<b>0.00</b>	<b>0.00</b>	<b>6.75</b>	<b>19.17</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>
<b>CREDIT PER UNIT POINTS</b>	<b>0.00</b>	<b>0.00</b>	<b>46.99</b>	<b>77.65</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>

	GENERAL							
	EFF-G	1 BR-G	2 BR-G	3 BR-G	4 BR-G	2 BR-TH	3 BR-TH	4 BR-TH
AVG UNIT SIZE	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
NUMBER OF UNITS	0	0	0	0	0	0	0	0
PARAMETER-(COSTS=>35,000)	0	0	0	0	0	0	0	0
PARAMETER-(COSTS<35,000)	0	0	0	0	0	0	0	0
PARAMETER-(COSTS=>50,000)	0	0	0	0	0	0	0	0
PARAMETER-(COSTS<50,000)	0	0	0	0	0	0	0	0
COST PARAMETER	0	0	0	0	0	0	0	0
PROJECT COST PER UNIT	0	0	0	0	0	0	0	0
PARAMETER-(CREDITS=>35,000)	0	0	0	0	0	0	0	0
PARAMETER-(CREDITS<35,000)	0	0	0	0	0	0	0	0
PARAMETER-(CREDITS=>50,000)	0	0	0	0	0	0	0	0
PARAMETER-(CREDITS<50,000)	0	0	0	0	0	0	0	0
CREDIT PARAMETER	0	0	0	0	0	0	0	0
PROJECT CREDIT PER UNIT	0	0	0	0	0	0	0	0
<b>COST PER UNIT POINTS</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>
<b>CREDIT PER UNIT POINTS</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>

TOTAL COST PER UNIT POINTS **25.91**

TOTAL CREDIT PER UNIT POINTS **138.14**

**Cost Parameters - Elderly**

	Supportive Hsg	EFF-E	1 BR-E	2 BR-E	EFF-E-1 ST	1 BR-E-1 ST	2 BR-E-1 ST
Standard Cost Parameter - low rise	0	0	215,078	280,253	0	0	0
Parameter Adjustment - mid rise	0	0	0	0	0	0	0
Parameter Adjustment - high rise	0	0	0	0	0	0	0
<b>Adjusted Cost Parameter</b>	<b>0</b>	<b>0</b>	<b>215,078</b>	<b>280,253</b>	<b>0</b>	<b>0</b>	<b>0</b>

**Credit Parameters - Elderly**

	Supportive Hsg	EFF-E	1 BR-E	2 BR-E	EFF-E-1 ST	1 BR-E-1 ST	2 BR-E-1 ST
Standard Credit Parameter - low rise	0	0	19,404	25,284	0	0	0
Parameter Adjustment - mid rise	0	0	0	0	0	0	0
Parameter Adjustment - high rise	0	0	0	0	0	0	0
<b>Adjusted Credit Parameter</b>	<b>0</b>	<b>0</b>	<b>19,404</b>	<b>25,284</b>	<b>0</b>	<b>0</b>	<b>0</b>

**Cost Parameters - General**

	EFF-G	1 BR-G	2 BR-G	3 BR-G	4 BR-G	2 BR-TH	3 BR-TH	4 BR-TH
Standard Parameter - low rise	0	0	0	0	0	0	0	0
Parameter Adjustment - mid rise	0	0	0	0	0	0	0	0
Parameter Adjustment - high rise	0	0	0	0	0	0	0	0
<b>Adjusted Cost Parameter</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

**Credit Parameters - General**

	EFF-G	1 BR-G	2 BR-G	3 BR-G	4 BR-G	2 BR-TH	3 BR-TH	4 BR-TH
Standard Credit Parameter - low rise	0	0	0	0	0	0	0	0
Parameter Adjustment - mid rise	0	0	0	0	0	0	0	0
Parameter Adjustment - high rise	0	0	0	0	0	0	0	0
<b>Adjusted Credit Parameter</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

**Northern Virginia Beltway** (Rehab costs \$10,000-\$50,000)

**Cost Parameters - Elderly**

	Supportive Hsg	EFF-E	1 BR-E	2 BR-E	EFF-E-1 ST	1 BR-E-1 ST	2 BR-E-1 ST
Standard Cost Parameter - low rise	0	0	215,078	280,253	0	0	0
Parameter Adjustment - mid rise	0	0	0	0	0	0	0
Parameter Adjustment - high rise	0	0	0	0	0	0	0
<b>Adjusted Cost Parameter</b>	<b>0</b>	<b>0</b>	<b>215,078</b>	<b>280,253</b>	<b>0</b>	<b>0</b>	<b>0</b>

**Credit Parameters - Elderly**

	Supportive Hsg	EFF-E	1 BR-E	2 BR-E	EFF-E-1 ST	1 BR-E-1 ST	2 BR-E-1 ST
Standard Cost Parameter - low rise	0	0	19,404	25,284	0	0	0
Parameter Adjustment - mid rise	0	0	0	0	0	0	0
Parameter Adjustment - high rise	0	0	0	0	0	0	0
<b>Adjusted Cost Parameter</b>	<b>0</b>	<b>0</b>	<b>19,404</b>	<b>25,284</b>	<b>0</b>	<b>0</b>	<b>0</b>

**Cost Parameters - General**

	EFF-G	1 BR-G	2 BR-G	3 BR-G	4 BR-G	2 BR-TH	3 BR-TH	4 BR-TH
Standard Cost Parameter - low rise	0	0	0	0	0	0	0	0
Parameter Adjustment - mid rise	0	0	0	0	0	0	0	0
Parameter Adjustment - high rise	0	0	0	0	0	0	0	0
<b>Adjusted Cost Parameter</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

**Credit Parameters - General**

	EFF-G	1 BR-G	2 BR-G	3 BR-G	4 BR-G	2 BR-TH	3 BR-TH	4 BR-TH
Standard Cost Parameter - low rise	0	0	0	0	0	0	0	0
Parameter Adjustment - mid rise	0	0	0	0	0	0	0	0
Parameter Adjustment - high rise	0	0	0	0	0	0	0	0
<b>Adjusted Cost Parameter</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

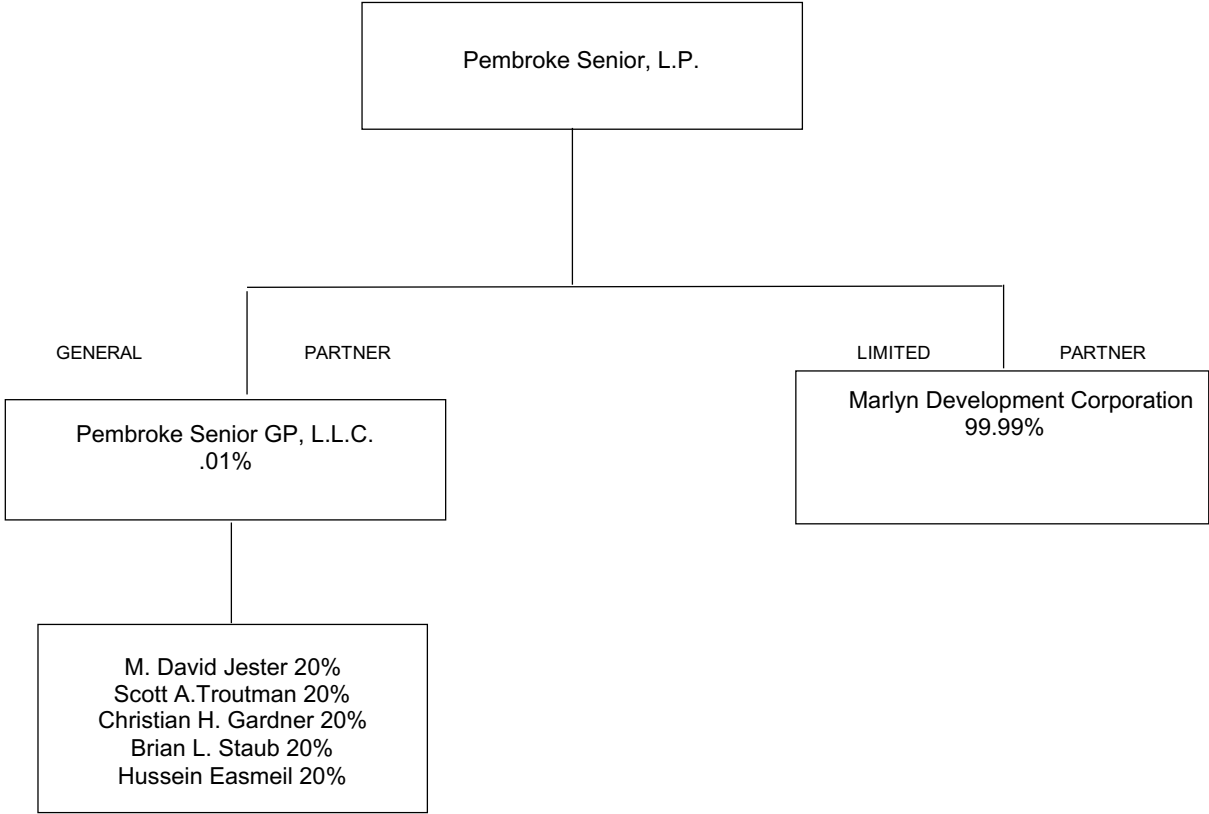


A

# Partnership or Operating Agreement

Including **chart of ownership structure with percentage of interests** and **draft developer fee agreement**  
(MANDATORY)

**Pembroke Senior, L.P.  
Ownership Structure**



**AGREEMENT OF LIMITED PARTNERSHIP  
OF  
PEMBROKE SENIOR, LP**

**THIS AGREEMENT OF LIMITED PARTNERSHIP**, made as of the 27th day of August, 2021, by and among the undersigned partners, who hereby organize **Pembroke Senior, LP**, a Virginia limited partnership (the “Partnership”) pursuant to the Revised Uniform Limited Partnership Act of Virginia upon the following terms and conditions.

**WITNESSETH:**

**WHEREAS**, the undersigned partners desire to organize the Partnership for the purpose of developing, constructing, owning, and operating an affordable apartment project for residents 62 years of age or older located in the City of Hampton, Virginia.

**NOW, THEREFORE**, the Partners hereby agree as follows:

**1. NAME; PLACE OF BUSINESS AND SPECIFIED OFFICE; REGISTERED AGENT; RECORDS.**

The name of the Partnership is **Pembroke Senior, LP**, and the post office address of its principal place of business and specified office is 308 35th Street, Suite 101, in the City of Virginia Beach, Virginia 23451. The name of the registered agent is Timothy O. Trant II, who is a resident of the Commonwealth of Virginia and a member of the Virginia State Bar. The registered agent’s post office address is 11815 Fountain Way, Suite 400, Newport News, Virginia 23606. The Partnership shall keep the following records at its specified office: (i) a current list of the full name and last known business address of each Partner set forth in alphabetical order, (ii) a copy of the Certificate of Limited Partnership and all Certificates of Amendment thereto, together with executed copies of any powers of attorney pursuant to which any Certificate has been executed, (iii) copies of the Partnership’s federal, state, and local income tax returns and reports, if any, for the three most recent years, and (iv) copies of any then effective written Partnership Agreements and any financial statements of the Partnership for the three most recent years. Such records are subject to inspection and copying at the reasonable request, and at the expense, of any Partner during ordinary business hours.

**2. DEFINITIONS.**

The following terms used in this Agreement shall (unless otherwise expressly provided herein or unless the context otherwise requires) have the following respective meanings:

A. Act.

The Revised Uniform Limited Partnership Act of Virginia.

B. Affiliate or Affiliated Persons.

When used with reference to a specified person, (1) any person that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common

control with the specified person, (2) any person that is an officer of, partner in, or trustee of, or serves in a similar capacity with respect to, the specified person or of which the specified person is an officer, partner or trustee, or with respect to which the specified person serves in a similar capacity, (3) any person that, directly or indirectly, is the beneficial owner of 10% or more of any class of equity securities of, or otherwise has a substantial beneficial interest in, the specified person or of which the specified person is directly or indirectly the owner of 10% or more of any class of equity securities or in which the specified person has a substantial beneficial interest and (4) any spouse or lineal descendant of the specified person.

C. Agreement.

This Agreement of Limited Partnership, as originally executed and as amended from time to time, as the context requires.

D. Capital Account.

As of any date, the aggregate of the Capital Contributions by a Partner or his predecessor in interest, increased by his distributive share of Taxable Income and of Gain from Sale, reduced by his distributive share of Taxable Loss and of Loss from Sale, and by the amount of any distributions of cash to him or by the Gross Asset Value of any property distributed to him. The foregoing provisions and the other provisions of this Agreement relating to the maintenance of Capital Accounts, make-up of deficit capital accounts upon liquidation, and allocations of tax items are intended to comply with Treasury Regulation Section 1.704-1(b), and shall be interpreted and applied in a manner consistent with the Regulations.

E. Capital Calls.

The assessments for additional contributions described in Section 5C.

F. Capital Contributions.

With respect to any Partner, the amount of money (including any Capital Calls) and the initial Gross Asset Value of any property (other than money) contributed to the Partnership with respect to the Interest held by such Partner pursuant to the terms of this Agreement. The principal amount of a promissory note which is not readily traded on an established securities market and which is contributed to the Partnership by the maker of the note shall not be included in the Capital Contribution of any Partner until the Partnership makes a taxable disposition of the note or until (and to the extent) principal payments are made on the note, all in accordance with Regulations Section 1.704-1(b)(2)(iv)(d)(2).

G. Code.

The Internal Revenue Code of 1986, as amended from time to time.

H. Credits.

Low income housing tax credits arising pursuant to Section 42 of the Code.

I. Gain or Loss from Sale.

Any gain or loss for federal income tax purposes resulting from the sale or other disposition of the Project not in the ordinary course of the Partnership's business.

J. General Partner.

Pembroke Senior GP, LLC, a Virginia limited liability company, and such other person or firm as may become General Partner hereunder, or any successors appointed under this Agreement.

K. Gross Asset Value.

With respect to any asset, the asset's adjusted basis for federal income tax purposes, except as follows:

(1) The initial Gross Asset Value of any asset contributed by a Partner to the Partnership shall be the gross fair market value of such asset, as determined by the contributing Partner and the Partnership;

(2) The Gross Asset Value of all Partnership assets shall be adjusted to equal their respective gross fair market values, as determined by the Partners, as of the following times: (a) the acquisition of an additional interest in the Partnership by any new or existing Partner in exchange for more than a de minimis Capital Contribution; (b) the distribution by the Partnership to a Partner of more than a de minimis amount of property as consideration for an interest in the Partnership; and (c) the liquidation of the Partnership within the meaning of Regulations Section 1.704-1(b)(2)(ii)(g); provided, however, that adjustments pursuant to clauses (a) and (b) above shall be made only if the Partners reasonably determine that such adjustments are necessary or appropriate to reflect the relative economic interests of the Partners in the Partnership;

(3) The Gross Asset Value of any Partnership asset distributed to any Partner shall be the gross fair market value of such asset on the date of distribution; and

(4) The Gross Asset Values of partnership assets shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such assets pursuant to Code Section 734(b) or Code Section 743(b), but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Regulations Section 1.704-1(b)(2)(iv)(m); provided, however, that Gross Asset Values shall not be adjusted pursuant this Section 2K(4) to the extent the Partners determine that an adjustment pursuant to Section 2K(2) hereof is necessary or appropriate in connection with a transaction that would otherwise result in an adjustment pursuant to this Section 2K(4). If the Gross Asset Value of an asset has been determined or adjusted pursuant to Section 2K(1), Section 2K(2), or Section 2K(4) hereof, such Gross Asset Value shall thereafter be adjusted by the depreciation taken into account with respect to such asset for purposes of computing Taxable Income or Taxable Loss.

L. Interest.

Generally, a Partner's Interest refers to his percentage set forth on Exhibit A. However, a Partner's Interest includes his Capital Account and percentage set forth on Exhibit A when used in the context of a Partner's ownership rights in the Partnership.

M. Limited Partner.

The original Limited Partner and any persons who are admitted to the Partnership as additional or substituted Limited Partners.

N. Minimum Gain.

As of any date, the "partnership minimum gain" as defined in Treasury Regulations Section 1.704-2(b)(2).

O. Modified Negative Capital Account.

The deficit balance of a Capital Account, excluding the portion of the deficit that must be restored to the Partnership upon liquidation under Section 5E(7).

P. Net Cash from Operations.

For any taxable year, the excess of cash revenue from the operation of the Project (which may include proceeds from the sale of Partnership property in the ordinary course of business), interest income received during the year, and reserves set aside in prior years and no longer deemed necessary by the General Partner for the Partnership's business, over the sum of (1) development and operating expenses of the Partnership paid in cash during the year, (2) payments made in connection with any loan to the Partnership or any indebtedness secured by a lien on any portion of the Project, and (3) any reasonable reserves, as determined by the General Partner, for development and operating expenses, the repair, replacement or preservation during the current or subsequent years of any Partnership asset, or for contingencies and unanticipated obligations (including debt service).

Q. Net Proceeds from Refinancing.

Net cash realized by the Partnership from the refinancing of indebtedness of the Partnership, reduced by (1) all expenses related to the transactions, (2) the amount applied, at the sole discretion of the General Partner, toward the payment of any indebtedness of the Partnership, and (3) reasonable reserves to satisfy other obligations of the Partnership, as determined by the General Partner.

R. Net Proceeds from Sale.

Net cash realized by the Partnership from the sale, exchange, condemnation, or other disposition of all or substantially all of the Project or from policies of insurance payable as a result of damage to or destruction of, or defects of title to the Project (to the extent the proceeds exceed (1) the actual or estimated costs of repairing or replacing the Project or other assets

damaged or destroyed or curing defects of title, plus all expenses related to the transactions, (2) the amount applied, at the sole discretion of the General Partner, toward the payment of any indebtedness of the Partnership, and (3) reasonable reserves to satisfy other obligations of the Partnership, as determined by the General Partner).

S. Partner.

Partners of all classes.

T. Project.

The property described in Section 3.

U. Regulations.

The federal income tax regulations issued under the Code, as the same may be amended from time to time.

V. Taxable Income or Taxable Loss.

The income or loss of the Partnership for federal income tax purposes, including each item of income, gain, loss or deduction, but excluding Gain or Loss from Sale.

**3. BUSINESS OF THE PARTNERSHIP.**

The business of the Partnership shall be developing, constructing, owning, and operating an affordable apartment project for residents 62 years of age or older located in the City of Hampton, Virginia, and engaging in any and all business activities related or incidental thereto.

**4. TERM.**

The Partnership is formed on the date hereof and shall continue until terminated in accordance with this Agreement.

**5. PARTNERS AND CAPITAL.**

A. General Partner; Capital Contributions.

The name and business address of each general partner is as follows:

Pembroke Senior GP, LLC  
308 35th Street, Suite 101  
Virginia Beach, Virginia 23451

The Interest and Capital Contribution of each General Partner is as set forth on Exhibit A.

B. Limited Partner; Capital Contribution.

The Limited Partner, as a Capital Contribution, has contributed to the Partnership the amount set forth on Exhibit A. Upon the execution of the Agreement, the Limited Partner shall have the applicable Interest set forth on Exhibit A. The business address of the Limited Partner is as set forth on Exhibit A.

C. Additional Assessments.

The General Partner shall not have the right to require any Partner to make additional Capital Contributions.

D. Additional Provisions on Capital and Obligations of Partners.

(1) A Capital Account shall be established and maintained for each Partner. The Capital Account of a substituted Partner shall include his allocable portion of the Capital Account of the Partner whose Interest he acquired without regard to any basis adjustment under Section 754 of the Code.

(2) No Partner gives up any of his rights to be repaid his Capital Contributions in favor of any other Partner.

(3) No Partner shall be paid interest on his Capital Account.

(4) No Partner shall have the right to demand and receive property other than cash in return of his Capital Contributions.

(5) No Partner shall have the right to demand and receive the return of his Capital Contributions until the termination of the Partnership.

(6) The General Partner shall have no liability or responsibility for the repayment of the capital contributions of any Limited Partner.

(7) The liability of each Limited Partner for the losses, debts, liabilities and obligations of the Partnership shall be limited to his Capital Contributions, his share of additional capital for which he may be assessed, and his share of any undistributed profits of the Partnership.

**6. ALLOCATIONS AND DISTRIBUTIONS.**

A. Net Cash from Operations.

Net Cash from Operations for any year shall be allocated and distributed among the Partners in proportion to their respective Interests.

B. Taxable Income, Taxable Loss and Credits.

Taxable Income, Taxable Loss and Credits each year shall be allocated among the Partners in proportion to their respective Interests.



C. Mid-Year Transfers.

Unless otherwise agreed between the transferor and transferee, all Taxable Income or Taxable Loss for a Partnership year allocable to any Interest which has been transferred during the year shall be allocated between the transferor and transferee in the ratio of the number of days in the year before and after the effective date of the assignment without regard to the dates during the year on which income was earned, losses incurred, or distributions made.

D. Net Proceeds from Refinancing.

Net Proceeds from Refinancing shall be allocated and distributed among the Partners in the following order of priority:

(1) To each partner who has a Capital Account balance greater, in proportion to the aggregate of all capital account balances, than his Interest, in the ratio of the Interests of each such Partner, until the Capital Account balance of each such Partner is the same in proportion to the aggregate of all Capital Account balances as his Interest.

(2) The balance, to the Partners in proportion to their respective Interests.

E. Gain from Sale.

Gain from Sale shall be allocated among the Partners in the following order of priority:

(1) To each Partner who has a negative Capital Account immediately preceding the transaction giving rise to the gain, in the ratio which the negative Capital Account of each bears to the aggregate of all negative Capital Accounts, until all negative Capital Accounts have been increased to zero.

(2) Next, to each Partner who has a Capital Account balance after the adjustment in Section 6E(1) lesser, in proportion to the aggregate of all Capital Account balances, than his Interest, in the ratio of the Interests of each such Partner, until the Capital Account balance of each such Partner is the same in proportion to the aggregate of all Capital Account balances as his Interest.

(3) The balance, to the Partners in proportion to their respective Interests.

F. Loss from Sale.

Loss from Sale shall be allocated among the Partners in the following order of priority:

(1) To each Partner who has a positive Capital Account immediately preceding the transaction giving rise to the loss, in the ratio which the positive Capital Account of

each bears to the aggregate positive Capital Accounts, until each Partner's Capital Account is reduced to zero.

(2) The balance, to the Partners in proportion to their respective Interests.

G. Net Proceeds from Sale.

Net Proceeds from Sale shall be allocated and distributed among the Partners in the proportion that the positive Capital Account of each bears to the aggregate positive Capital Accounts (after the allocations and distributions otherwise provided in this Section) until all Capital Accounts have been reduced to zero; and the balance in proportion to their Interests.

H. Mid-Year Transfers.

All Gain or Loss from Sale and distributions of Net Proceeds from Sale or Net Proceeds from Refinancing allocable to any Interest which has been transferred during the year shall be allocated and distributed, respectively, to the holder of the Interest on the date of the Sale or Refinancing. Gains or Losses attributable to, and Net Proceeds which represent, Net Proceeds not received by the Partnership as cash upon a Sale or Refinancing but which will be received later by the Partnership as a result of an installment or other deferred sale shall be allocated or distributed, as the case may be, to the holder of the Interest on the date the proceeds are received by the Partnership.

I. Minimum Allocation to General Partner.

Notwithstanding anything to the contrary that may be expressed or implied in this Agreement, there shall be allocated to the General Partner at least 1% of every item of income, gain, loss, deduction or credit at all times during the existence of the Partnership.

J. Minimum Gain Charge-back.

(1) Notwithstanding any other provision of this Agreement, if there is a net decrease in the Partnership's Minimum Gain during any Partnership fiscal year, each Partner who would otherwise have a Modified Negative Capital Account at the end of such year shall be specially allocated items of Partnership income and gain for such year (and, if necessary, subsequent years) in an amount and manner sufficient to eliminate such Modified Negative Capital Account as quickly as possible. The items to be so allocated shall be determined in accordance with Treasury Regulation Sections 1.704-2(f)(e) and 1.704-2(j)(2). This Section 6J is intended to comply with the minimum gain charge-back requirement in the Regulations and shall be interpreted consistently therewith.

(2) Notwithstanding any other provision of this Agreement, if there is a net decrease in a Partner's nonrecourse debt minimum gain as defined in Treasury Regulation Section 1.704-2(i)(3) during any Partnership fiscal year, there shall be allocated to such partner items of income and gain in accordance with Treasury Regulation Section 1.704-2(i)(4).

K. Qualified Income Offset.

Except as provided in Section 6J hereof, in the event any Limited Partner unexpectedly received any adjustments, allocations or distributions described in Treasury Regulation Section 1.704-1(b)(2)(ii)(d)(4), (5) or (6), items of Partnership income and gain shall be specifically allocated to each such Limited Partner in an amount and manner sufficient to eliminate, to the extent required by the Regulations, the Modified Negative Capital Account of such Limited Partner as quickly as possible.

L. Tax Allocations: Code Section 704(c).

In accordance with Code Section 704(c) and the Regulations thereunder, income, gain, loss, and deduction with respect to any property contributed to the capital of the Partnership shall, solely for tax purposes, be allocated among the Partners so as to take account of any variation between the adjusted basis of such property to the Partnership for federal income tax purposes and its initial Gross Asset Value of such property.

In the event the Gross Asset Value of any Partnership asset is adjusted pursuant to Section 2K(2) hereof, subsequent allocations of income, gain, loss, and deduction with respect to such asset shall take account of any variation between the adjusted basis of such asset for federal income tax purposes and its Gross Asset Value in the same manner as under Code Section 704(c) and the Regulations thereunder.

Any elections or other decisions relating to such allocations shall be made by the General Partner in any manner that reasonably reflects the purpose and intention of this Agreement and the requirements of Code Section 704(c). Allocations pursuant to this Section 6L are solely for purposes of federal, state, and local taxes and shall not affect, or in any way be taken into account in computing, any Partner's Capital Account or share of Taxable Income, Taxable Loss, other items, or distributions pursuant to any provision of this Agreement.

**7. RIGHTS, POWERS AND DUTIES OF THE GENERAL PARTNER**

A. The General Partner shall have the exclusive right to manage the business of the Partnership, and to make all decisions regarding the business of the Partnership. No Limited Partner (except one who may also be a General Partner, and then only in its capacity as General Partner) shall participate in or have any control over the Partnership business or have any authority or right to act for or bind the Partnership.

B. Subject to the consent of the Limited Partner when expressly required by this Agreement, the General Partner shall have all the rights and powers of a general partner as provided in the Act and as otherwise provided by law, and any action taken by the General Partner shall constitute the act of and bind the Partnership. The General Partner is granted the right, power and authority to do in the name of, and on behalf of, the Partnership all things which, in its sole judgment, are necessary, proper or desirable to carry out the purposes of the Partnership, including, but not limited to the right, power and authority:

(1) To own, acquire by lease or purchase, develop, maintain, improve, grant options with respect to, sell, convey, assign, mortgage or lease any real estate and any

personal property, and to cause to have constructed improvements upon any real property necessary, convenient or incidental to the accomplishment of the purposes of the Partnership.

(2) To execute any and all agreements, contracts, documents, certifications and instruments necessary or convenient in connection with the development, management, maintenance and operation of any properties in which the Partnership has an interest, including without limitation, necessary easements to public or quasi-public bodies or public utilities.

(3) To employ or retain persons, including their or any Limited Partner's Affiliates, to provide property acquisition, management, leasing or other services for the Partnership (it being understood and agreed that the provision of such services does not constitute a part of the duties or obligations of the General Partner as general partner of the Partnership).

(4) To borrow money and issue evidences of indebtedness in furtherance of any or all Partnership purposes, and to secure the same by deed of trust, mortgage, security interest, negative pledge, pledge or other lien or encumbrance on the Project or any other assets of the Partnership.

(5) To repay when due or in advance, in whole or in part, negotiate, refinance, recast, increase, renew, modify or extend any secured or other indebtedness affecting Partnership properties and in connection therewith to execute any extensions, renewals or modifications of any evidences of indebtedness secured by deeds of trust, mortgages, security interests, pledges or other encumbrances covering such properties.

(6) To engage a real estate broker, whether an Affiliate of theirs or of any Limited Partner or otherwise, to sell or engage in other real estate activities in relation to any Partnership property upon such terms and conditions as are deemed appropriate by the General Partner and in the best interests of the Partnership, and to pay reasonable compensation for such services.

(7) To enter into any kind of activity and to perform and carry out contracts of any kind necessary to, or in connection with, or incidental to the accomplishment of the purposes of the Partnership, so long as those activities and contracts may be lawfully carried on or performed by a limited partnership under applicable laws and regulations.

(8) To lend money to the Partnership, as a creditor of the Partnership and not as an additional capital contribution; provided that any such loan shall be on terms and at an interest rate which are as favorable to the Partnership as those which could have been obtained by it on the same type of loan in the same locality from a lending institution.

C. Notwithstanding any other provision of this Agreement, the General Partner may not sell all or substantially all of the Project, which shall not include refinancing of any deed of trust indebtedness, without the consent of all of the Interests owned by all the Partners, including the Interests owned by the General Partner. Upon the receipt of the requisite consent, the General Partner shall be authorized to sell the Project notwithstanding that such act would make it

impossible thereafter to carry on the ordinary business of the Partnership, and each Limited Partner shall be deemed to have given his written consent to the specific act.

D. Each Limited Partner specifically authorizes the General Partner to execute and file any certificate complying with Article 2 of the Act, as it may be amended from time to time.

E. Pembroke Senior GP, LLC designated as the Partnership's "Tax Matters Manager."

(1) The Tax Matters Manager is authorized to represent the Partnership in connection with all examinations of the Partnership's affairs by tax authorities or any administrative or judicial tax proceedings with respect to the Partnership, and to expend Partnership funds for professional services and costs associated therewith, and the Partnership will reimburse the Tax Matters Manager for any such costs or other costs associated with carrying out its role as Tax Matters Manager that it incurs directly. The Tax Matters Manager will have sole discretion to determine whether the Partnership (either on its own behalf or on behalf of the Partners) will contest or continue to contest any tax deficiencies assessed or proposed to be assessed by any tax authority with respect to the Partnership and whether the Partnership will make any elections with respect to any tax assessment or proceeding.

(2) To the extent that the Partnership is an "eligible partnership" (as such term is used in Regulations § 301.6221(b)-1) and is permitted to make an election under Code Section 6221(b) and Regulations § 301.6221(b)-1 (an "Opt-Out Election"), the Partnership shall make an Opt-Out Election on its federal income tax return for each taxable year of the Partnership to elect out of the application of the new partnership audit laws and procedures set forth in Subchapter C of Chapter 63 of Subtitle F of the Code, as modified by Section 1101 of the Bipartisan Budget Act of 2015, Pub. L. No. 114-74, and including any successor statutes thereto or Regulations promulgated or official guidance issued thereunder (the "Partnership Audit Procedures").

(3) For each taxable year of the Partnership for which no Opt-Out Election is made, the Partnership shall designate, pursuant to Regulations § 301.6223-1 (and any successor Regulations and other applicable guidance) on its United States federal income tax return for each such taxable year of the Partnership, the Tax Matters Manager as the "partnership representative" for the Partnership (the "Partnership Representative"), and shall make such corresponding designations under any corresponding provisions of applicable foreign, state, or local tax law. To the extent that the Tax Matters Manager is not an individual, the Tax Matters Manager shall select any Person to serve as its "designated individual" pursuant to the Partnership Audit Procedures. The Tax Matters Manager, in its capacity as the Partnership Representative, shall (i) determine all matters with respect to any examination of the Partnership by any taxing authority (including, without limitation, the allocation of any resulting taxes, penalties, and interest among the Partners and whether to make an election under Code § 6226 (and any similar provision under applicable foreign, state, or local tax law) with respect to any audit or other examination of the Partnership) and, (ii) notwithstanding anything herein to the contrary, make such elections as it deems appropriate pursuant to the provisions of the Partnership Audit Procedures.

(4) Each Partner and former Partner agrees to cooperate, and to cause its direct and indirect owners to cooperate, with the Partnership Representative and to do or refrain from doing any or all things reasonably requested by the Partnership Representative with respect to the conduct of any tax proceedings, in each case regardless whether then a Partner or after ceasing to be a Partner. Any deficiency for taxes imposed on any Partner or former Partner or its direct or indirect owners (including penalties, additions to tax, or interest imposed with respect to such taxes) will be paid by such Partner or former Partner or its direct or indirect owners as applicable, and if required to be paid (and actually paid) by the Partnership, such Partner or former Partner shall indemnify the Partnership for such amounts within thirty days of such payment by the Partnership, in each case regardless of whether then a Partner or after ceasing to be a Partner.

(5) At the request of the Partnership Representative, in connection with an adjustment of any item of income, gain, loss, deduction, or credit of the Partnership or any subsidiary entity in which the Partnership has an interest, directly or indirectly, each Partner and former Partner shall, and shall cause its direct and indirect owners, as applicable, to, promptly file one or more amended tax returns in the manner contemplated by Code § 6225(c) (and any Regulations or official guidance relating thereto, and, if applicable, any corresponding or similar provisions under state or local law) and pay any tax due with respect to such returns. If the Partnership Representative makes an election for the Partnership pursuant to Code § 6226 with respect to an imputed underpayment, each Partner and former Partner shall, and shall cause its direct and indirect owners, as applicable, to, comply with the requirements under such section (and any Regulations or official guidance relating thereto). At the request of the Partnership Representative, each Partner and former Partner shall, and shall cause its direct and indirect owners, as applicable, to, provide the Partnership Representative and the Partnership with any information available to such Partner or former Partner (or its direct or indirect owners or representatives) and with such representations, certificates, or forms relating to such Partner or former Partner (or its direct or indirect owners or representatives) and any other documentation, in each case, that the Partnership Representative determines, in its reasonable discretion, are necessary to modify an imputed underpayment under Code § 6225(c) or the Regulations or other official guidance thereunder. In the event that any imputed underpayment is paid or payable by the Partnership under Code § 6225(a)(1), each Partner and former Partner shall indemnify the Partnership in an amount equal to such Partner's or former Partner's share (as determined by the Partnership Representative with the advice of the Partnership's tax counsel) of the imputed underpayment and any associated interest and penalties) paid or payable by the Partnership; provided, however, that the Partnership Representative may determine, in its discretion, to allocate the burden of such amount to such Partner without requiring payment by such Partner to the Partnership.

(6) Each Partner's obligations to comply with the requirements of this Section 7E shall survive the Partner's transfer of all or any portion of the Partner's interest in the Partnership, otherwise ceasing to be a Partner and/or the termination, dissolution, liquidation, and winding up of the Partnership, to the extent applicable.

(7) Any Person acting as a Tax Matters Manager, Partnership Representative or designated individual pursuant to this Section 7E shall, when acting in such capacity, be deemed to be a General Partner for purposes of the Virginia Revised Uniform Limited Partnership Act, and as such their liability shall be eliminated to the same extent as a General

Partner's liability is eliminated under this Agreement and they shall be entitled to indemnification to the same extent as a General Partner is entitled to indemnification under this Agreement.

F. Any person dealing with the Partnership or the General Partner may rely upon a certificate signed by the General Partner hereinafter named as to:

- (1) the identity of the General Partner or a Limited Partner,
- (2) the existence or non-existence of any fact or facts which constitute conditions precedent to acts by the General Partner or which in any other manner are germane to the affairs of the Partnership,
- (3) the authorization of persons who execute and deliver any instrument or document of the Partnership, or
- (4) any act or failure to act by the Partnership or as to any other matter whatsoever involving the Partnership or any Partner.

## **8. RIGHTS AND POWERS OF THE LIMITED PARTNER.**

No Limited Partner shall have or exercise any rights in connection with the management of the Partnership business, but may exercise only the rights and powers of a Limited Partner under the Agreement, including without limitation, the giving of consents and approvals provided for in the Agreement. The exercise of such rights and powers is deemed to be a matter affecting the basic structure of the Partnership and not the control of its business.

## **9. AUTHORITY OF THE PARTNERS AND AFFILIATED PERSONS TO DEAL WITH THE PARTNERSHIP**

### **A. Dealings with Affiliates.**

The General Partner, in its discretion, may engage any person, firm or corporation in which it, any Partner, or any Affiliate thereof may have an interest, at reasonable and competitive rates of compensation for the performance of any and all services or purchase of goods or other property which may at any time be necessary, proper, convenient, or advisable in carrying on the business and affairs of the Partnership or disposing of some or all of its assets; provided, that the compensation or price therefor shall not exceed those prevailing in arm's length transactions by others rendering similar services in comparable transactions as an on-going activity in the same geographical area.

### **B. Reimbursement for Expenses.**

The General Partner shall be entitled to charge the Partnership, or to be reimbursed by the Partnership, for all expenses reasonably incurred by it in connection with Partnership business.

**10. AUTHORITY OF THE PARTNERS TO ENGAGE IN OTHER BUSINESS.**

Any of the Partners may engage in and/or possess an interest in other business ventures of any nature and description, independently or with others, including but not being limited to, the ownership, financing, leasing, operation, management, brokerage and development of real property; and neither the Partnership nor the Partners shall have any right by virtue of this Agreement in and to any independent venture or to any income or profits derived therefrom. Neither the General Partner nor any Affiliate of the General Partner shall be obligated to present any particular investment opportunity to the Partnership even if such opportunity is of a character which, if presented to the Partnership, could be taken by the Partnership. Neither the General Partner nor any Affiliate of the General Partner shall be obligated to offer to lease or sell, as the case may be, any Partnership property to any person seeking to lease or purchase real property even if the Partnership property is available for lease or sale and is of a character which might be suitable for the purposes of the prospective lessee or purchaser, and they shall have the right to offer to lease or sell to any such person any non-Partnership property held for the account of the General Partner or Affiliate or any other person.

**11. BANK ACCOUNTS.**

The funds of the Partnership shall be deposited in the name of the Partnership in such bank or savings and loan accounts as may be required, and the General Partner shall arrange for the appropriate conduct of such account.

**12. BOOKS OF ACCOUNT, ACCOUNTING PRACTICES, REPORTS AND TAX ELECTIONS.**

A. The General Partner shall maintain and keep at the principal office of the Partnership books of account, in which shall be entered fully and accurately each and every transaction of the Partnership. Each Partner shall at all reasonable times have access thereto and the right to inspect and copy.

B. The books shall be kept on the cash receipts and disbursements method or the accrual method, as the General Partner may determine.

C. Any Partner shall have the right to a private audit of the books and records of the Partnership, provided such audit is made at the expense of the Partner desiring it and is made at reasonable times after due notice.

D. Within ninety (90) days after the close of the Partnership accounting year, the General Partner shall send to all Partners an annual report containing a statement of income, expenses and deductions of the Partnership which reflects the Taxable Income or Loss for the year and the allocation thereof to each Partner. The General Partner may also send to all Partners such



quarterly, semi-annual or other reports or information, audited or unaudited, as it in its sole discretion may determine to be the best interest of the Partnership.

E. The General Partner is authorized to make or revoke on behalf of the Partnership an election under Section 754 of the Code and any other elections with respect to tax matters it deems advisable.

**13. MEETINGS.**

Meetings of the Partners shall be held at the principal office of the Partnership or at such other place as is designated, upon call of the General Partner or Limited Partner owning 20% of the Interests then outstanding, upon written notice of at least ten (10) days.

**14. INDEMNIFICATION AND EXCULPATION OF GENERAL PARTNER.**

A. Indemnification.

The General Partner shall be indemnified and held harmless by the Partnership from any liability resulting from any act performed by it within the scope of the authority conferred upon it by this Agreement, except for acts of gross negligence or willful misconduct or for damages arising from any material misrepresentation; provided, however, that any indemnity under this Article shall be paid out of the Partnership assets only, and no Limited Partner shall have any personal liability therefor.

B. Exculpation.

The General Partner shall not be liable to the Partnership or any other Partners for or as a result of any act, omission or error in judgment which was taken, omitted or made by it in the exercise of its judgment in good faith under this Agreement, provided such act, omission or error does not constitute willful misconduct or gross negligence.

**15. ASSIGNABILITY OF PARTNERSHIP INTERESTS.**

A. General Partner.

The General Partner may not assign its Interest in the Partnership without the prior written consent of Partners owning 51% of the total Interests. Provided said consent is obtained and unless otherwise agreed in writing by all Partners, the assignee of any portion of the Interest of the General Partner shall become a Limited Partner with the rights of the General Partner before the assignment, except any right to manage and control the Partnership's business and to receive the minimum allocations under Section 61.

B. Limited Partner.

(1) Assignment.

(a) Subject to the other subsections of this Section 15B(1), a Limited Partner may assign some or all of his Interest by a duly executed, written instrument of

assignment, upon obtaining the written consent of the General Partner, which consent shall not be unreasonably withheld. The effective date of the assignment shall be the first day of the month following the date on which the General Partner has received a duly executed counterpart of the instrument of assignment and has consented to the assignment. Until that date, the General Partner and the Partnership shall treat the assignor as the owner of the Interest in all respects.

(b) If a Limited Partner wishes to assign all or a part of his Interest in the Partnership, he shall notify the Partnership and the Partners in writing of the price and terms thereof. The Partnership shall have the option, within fifteen (15) days after receipt of the notice, to purchase the entire Interest offered upon the terms of the offer. The option may be exercised by giving notice to the offering Limited Partner within the fifteen (15) day period. If the Partnership does not exercise its option, then the Partners shall have the option, within fifteen (15) days after lapse of the Partnership's option, to purchase the entire Interest offered upon the terms of the offer. The option may be exercised by giving notice to the selling Limited Partner within the fifteen (15) day period commencing the day after the lapse of the Partnership's option. If more than one Partner desires to exercise the option, they may purchase the offered Interest in proportion to their respective Interests set forth on Exhibit A unless they otherwise agree. If the Partners do not elect to purchase the entire Interest being offered, then the offering Limited Partner may assign his Interest to persons other than Partners at a price not below nor upon terms more advantageous to the buyer than those contained in the offer; provided, however, that all of the other conditions of this Section 15B(1) shall have been satisfied. If the assignment is not made and consummated within six (6) months after the date of notice of the offer to the Partnership and the Partners, the selling Limited Partner may not thereafter dispose of his Interest without again giving the Partners the option to purchase his Interest as aforesaid.

(c) No assignment may be made if the assignment of the Interest sought to be assigned, when added to the total of all other Interests sold or exchanged within the period of 12 consecutive months prior thereto, would in the opinion of counsel for the Partnership, result in the Partnership being considered to have terminated within the meaning of Section 708 of the Code.

(d) No assignment may be made except pursuant to registration under the applicable securities laws or the opinion of counsel for the Partnership that an assignment may be effected without registration. The restrictions on resale shall be fully set forth on any certificate representing the ownership of any Interest which may be issued by the Partnership and shall also be fully set forth in any transfer records of the Partnership maintained with respect to any such certificates.

(e) No assignment may be made to a minor or incompetent person except by will, intestate succession, or gift under the Uniform Gifts to Minors Act or pursuant to the terms of any inter vivos trust.

(f) Unless named in this Agreement, admitted to the Partnership under other provisions of this Agreement, or admitted to the Partnership by the unanimous agreement of the Partners, no person shall be considered a Partner; and the Partnership, each Partner, and any other person having business with the Partnership need deal only with Partners so named and so admitted. They shall not be required to deal with any other person by reason of

any assignment by a Partner or by reason of the death of a Partner, except as otherwise provided in this Agreement. In the absence of substitution of a Limited Partner for an assigning or deceased Limited Partner, any payment to a Partner, or to his executors or administrators, shall acquit the Partnership of all liability to any other person who may be interested in such payment by reason of any assignment by the Partner or by reason of his death or incompetency.

(g) Notwithstanding an assignment, the assignor shall remain liable for any amounts payable under Sections 5C and 5D, unless released by the General Partner

(2) Substituted Limited Partners.

An assignee may become a substituted Limited Partner in place of his assignor only if all of the following conditions are satisfied:

(a) The requirements of Section 15B(1) have been fulfilled.

(b) The instrument of assignment sets forth the intention of the assignor that the assignee shall succeed to the assignor's interest as a substituted Limited Partner in his place.

(c) The assignor and assignee shall execute and deliver such other instruments as the General Partner may require, including written acceptance by the assignee of the Agreement.

(d) The written consent of the General Partner to the substitution shall have been obtained, which consent may be withheld for any reason in the General Partner's sole determination even if said determination is unreasonable.

(e) The assignee shall have paid all reasonable fees and costs incurred by the Partnership in connection with his substitution as a Limited Partner, as determined by the General Partner.

Until such time, if any, as an assignee becomes a substituted Limited Partner, the assignee shall have none of the rights of a Limited Partner other than the right of his assignor to receive distributions from the Partnership in accordance with the terms of this Agreement.

(3) Excluded Transfer.

(a) Section 15B(1) shall not apply to any transfer or assignment of an Interest of a bankrupt, deceased or incompetent Partner to the trustee, executor, administrator or guardian of his estate, but shall apply to such trustee, executor, administrator or guardian to the same extent that, under the circumstances of any particular, transfer, sale, assignment, gift, bequest or other disposition, such provision would have applied to the bankrupt, deceased or incompetent Partner.

(b) The restrictions of Section 15B(1) and the requirement of the General Partner's consent under Section 15B(2) shall not apply to the transfer or assignment (in trust or otherwise) by a Partner, whether on death or inter vivos, of all or any part of his Interest

(i) to another Partner, (ii) to or for the benefit of any trust for himself, or to or for the benefit of his spouse, his siblings, any of his natural or adopted descendants or the spouse of any such descendants, or (iii) in the case of a corporate Partner, to a parent, subsidiary, stockholder, officer, director or corporation under common control with such corporate Partner, except that a transfer described in this subsection may be deferred or restricted as required by any applicable federal or state securities and/or tax laws.

C. Tax Credit Syndication.

The Partners acknowledge that the business of the Partnership may involve the construction of the Project funded in part through Credits, allocated in accordance with the Partners' Interests, and that the General Partner may seek a tax credit investor ("Investor") which will contribute capital to the Partnership in exchange for substantially all of the Interests in the Partnership. The General Partner shall have sole discretion to determine the terms upon which the Investor becomes a Partner in the Partnership. The Limited Partner agrees to withdraw from the Partnership upon the admission of an Investor if required by the General Partner, provided that the Limited Partner receives (i) the return of any Capital Contributions not previously repaid, (ii) payment of any loans extended to the Partnership and (iii) indemnification from any liabilities arising out of the operation of the Partnership subsequent to its withdrawal, and provided that the Limited Partner shall not be required to make any representations or warranties to any Investor except that it has not encumbered its Interest and that upon its withdrawal, it has no claims against the Partnership other than for indemnification as provided in clause (iii) above.

**16. DEATH, LEGAL DISABILITY OR INCOMPETENCY, OR BANKRUPTCY OF A LIMITED PARTNER.**

Death, legal disability or adjudication of disability, incompetency or bankruptcy of a Limited Partner shall not dissolve the Partnership. In such event, the personal representative of the deceased Limited Partner, or the committee or other legal representatives of the estate of the disabled or incompetent Limited Partner or the trustee or receiver of a bankrupt Limited Partner shall, for purposes of settling the estate, have all of the rights of a Limited Partner but may not become a substituted Limited Partner unless the General Partner consents in writing. In addition, such personal representative, committee or other legal representative, or trustee or receiver shall have the same rights (subject to the same limitations) as its predecessor would have had under Section 15 to assign the predecessor's Partnership interest, but the assignee shall not become a substituted Limited Partner unless the General Partner consents in writing.

**17. DISSOLUTION OF THE PARTNERSHIP.**

A. Events Causing Dissolution.

Any of the following acts shall dissolve the Partnership:

- (1) Agreement in writing by Partners owning 51% of the total Interests;
- (2) Withdrawal of a sole remaining General Partner;

(3) The death, incompetency, liquidation, dissolution or bankruptcy of a sole remaining General Partner or the occurrence of any other event causing the dissolution of the Partnership under the laws of the Commonwealth of Virginia. Notice of such death, incompetency, liquidation, dissolution or bankruptcy shall be given to each of the other Partners by the executor, personal representative or other legal representative of the deceased, incompetent, liquidated, dissolved or bankrupt Partner within sixty (60) days after the date of death or declaration of incompetency, liquidation, dissolution or bankruptcy. The death, incompetency, liquidation, dissolution or bankruptcy of a General Partner shall not cause a dissolution of the Partnership if there remains a legally competent General Partner.

(4) The sale or other disposition of all or substantially all of the Project.

B. Election to Continue Partnership.

Notwithstanding the preceding provisions of Section 17, the events set forth in Section 17A(2) and 17A(3) shall not result in the winding up and termination of the Partnership if, within ninety (90) days after one of those events, all Partners elect to reconstitute the Partnership and continue the Partnership business.

If an election to continue the Partnership business is made, a successor General Partner or General Partners shall be elected by Limited Partners owning a majority of the Interests, and the Partnership shall continue until the end of the term for which it is formed or until the subsequent death, incapacity, dissolution, withdrawal or bankruptcy of the General Partner, in which event, the Partners shall again elect whether they wish to continue the Partnership.

If an election to reconstitute the Partnership is made, or in the event of the death, incompetency, liquidation, dissolution or bankruptcy of a General Partner while there remains a legally competent General Partner, then the General Partner as to which the event described in Section 17A(2) or (3) occurred shall cease to be a General Partner, and the former General Partner or its successor shall become a special Limited Partner with respect to its Interest, with the same rights as it possessed before the dissolution, except any right to manage and control the Partnership's business and affairs.

C. Failure to Continue Partnership.

If the Limited Partners do not elect to continue the Partnership, as set forth in Section 17B, Partners owning in the aggregate a majority of the Interests shall select a person to wind up the Partnership's affairs. The person so selected shall proceed to sell or otherwise liquidate all of the Partnership property in a bona fide sale or sales to outsiders at such prices and upon such terms as that person may deem most advisable. Such sales shall be deemed to be proper acts in the winding up of the affairs of the dissolved Partnership and the Net Proceeds of Sale, after paying or providing for the payment of all Partnership debts, shall be distributed to the Partners in accordance with Section 6G. Upon the termination of the Partnership, the General Partner shall contribute to the Partnership an amount equal to the deficit balance in their Capital Account at such time and in such manner as shall comply with the requirements of Treasury Regulation Section 1.704-1(b)(2)(ii)(b)(3).

D. Withdrawal of a General Partner if There Remains One or More General Partners.

The withdrawal of a General Partner shall not dissolve the Partnership if there is at the time at least one other General Partner, in which case the business of the Partnership shall be carried on by the remaining General Partner or General Partners. In such event, the withdrawing General Partner shall become a special Limited Partner with respect to its Interest, with the same rights as it possessed before the event of withdrawal, except any right to manage and control the Partnership's business end affairs.

**18. COUNTERPARTS.**

This Agreement may be executed in several counterparts, all of which together shall constitute one agreement binding on all parties hereto, notwithstanding that all of the parties have not signed the same counterpart, except that no counterpart shall be binding unless signed by the General Partner.

**19. MISCELLANEOUS PROVISIONS.**

A. Governing Law.

This Agreement and the rights and liabilities of the parties shall be determined in accordance with the laws of the Commonwealth of Virginia.

B. Captions.

Captions contained in this Agreement are inserted only as a matter of convenience and in no way define, limit, extend or describe the scope of this Agreement or the intent of any provision hereof.

C. Construction.

Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

D. Survival of Representations and Warranties.

All representations and warranties herein shall survive until the termination of the Partnership, except to the extent that a representation or warranty expressly provides otherwise.

E. Severability.

Every provision of this Agreement is intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the terms or provisions within this Agreement.

F. Successors.

Subject to the limits on transferability contained herein, each and all of the covenants, terms, provisions and agreements herein contained shall be binding upon and inure to the benefit of the successors, heirs, and assigns of the respective parties hereto.

**20. NOTICES.**

Each Partner shall keep the General Partner informed of his current business address. The General Partner shall keep the business addresses furnished by the Partners on file at the Partnership offices; and any and all notices required under this Agreement which are in writing and mailed, by registered or certified mail, return receipt requested, to a Partner at the last address given by him to the General Partner, or to the Partnership at its specified office, shall constitute the notice required under this Agreement.

**21. AMENDMENT.**

A. This Agreement may be amended by the General Partner without the approval of any Limited Partner, if the amendment is solely for the purpose of clarification and does not change the substance hereof.

B. This Agreement may further be amended by the General Partner without the approval of any Limited Partner if such amendment is for the purpose of admitting substituted Limited Partners, and/or reflecting the withdrawal, reduction or return of all or part of the capital contributions of a Partner.

C. This Agreement may further be amended by the General Partner without the approval of any Limited Partner, if the amendment is, in the opinion of counsel for the Partnership, necessary or appropriate to satisfy requirements of the Code with respect to partnerships or of any federal or state securities law or regulations. Any amendment made pursuant to this Section may be made effective as of the date of this Agreement.

D. Notwithstanding Sections 21A, 21B and 21C, any amendment to this Agreement which would adversely affect the federal income tax treatment to be afforded a Limited Partner, adversely affect the liabilities of a Limited Partner, or change the method of allocation of Taxable Income or Taxable Loss, Gain or Loss from Sale, or the distribution of Net Cash from Operations, Net Proceeds from Sale or Net Proceeds from Refinancing as provided in Section 6, shall require the approval of the Limited Partner affected; provided, however, that the General Partner is authorized to modify Section 6, without the consent of the Limited Partner, if, upon advice of counsel, the modification is necessary to cause the allocations under Section 6 to have substantial economic effect or to be in accordance with the Partners' deemed interests under Section 704 of the Code and the most recently proposed or final regulations thereunder, so long as the modification does not, by its terms, alter the limited liability of the Limited Partner.

E. Except as otherwise specifically provided in Section 21, amendments to this Agreement shall require the approval of the Partners owning all of the Interests then owned by them.

F. A copy of any amendment to be approved by the Limited Partner pursuant to Sections 21D and 21E shall be mailed in advance to the Limited Partner. Partners shall be notified as to the substance of any amendment pursuant to Section 21A, 21B and 21C, and upon request shall be furnished a copy thereof.

**22. VHDA.**

Notwithstanding any other provision of this Agreement, this Partnership and the Partners shall be subject to regulation and supervision by the Virginia Housing Development Authority (the "Authority") in accordance with the Virginia Housing Development Authority Act, the Rules and Regulations of the Authority, and the Regulatory Agreement executed or to be executed between this Partnership and the Authority and shall be further subject to the exercise by the Authority of the rights and powers conferred on the Authority thereby. Notwithstanding any other provision of this Agreement, the Authority may rely upon the continuing effect of this Section 22, which shall not be amended, altered, waived, supplemented or otherwise changed without the prior written consent of the Authority.


**[REMAINDER OF PAGE LEFT BLANK;  
SIGNATURE PAGE FOLLOWS]**



IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

**GENERAL PARTNER:**

**Pembroke Senior GP, LLC**

By:  \_\_\_\_\_

Name: Brian Staub

Title: Manager

**LIMITED PARTNER:**

**Marlyn Development Corporation**

By:  \_\_\_\_\_

Name: M. DAVID JESTER

Title: PRESIDENT

**EXHIBIT A  
TO  
AGREEMENT OF LIMITED PARTNERSHIP  
OF  
PEMBROKE SENIOR, LP**

<b><u>NAME AND ADDRESS OF GENERAL PARTNER</u></b>	<b><u>CAPITAL CONTRIBUTION</u></b>	<b><u>INTEREST</u></b>
Pembroke Senior GP, LLC 308 35th Street, Suite 101 Virginia Beach, Virginia 23451	\$100.00	0.01%
<b><u>NAME AND ADDRESS OF LIMITED PARTNER</u></b>	<b><u>CAPITAL CONTRIBUTION</u></b>	<b><u>INTEREST</u></b>
Marlyn Development Corporation 308 35th Street, Suite 101 Virginia Beach, Virginia 23451	\$900.00	99.99%
	<u>\$1,000.00</u>	<u>100%</u>

**OPERATING AGREEMENT  
OF  
PEMBROKE SENIOR GP, LLC**

**THIS OPERATING AGREEMENT** is made as of August 26, 2021, by and among the undersigned persons (collectively, the “Members”).

**WHEREAS**, Pembroke Senior, LP (the “Partnership”) has been established for the purpose of developing, constructing, owning and operating an affordable apartment project for residents 62 years of age or older, located in the City of Hampton, Virginia (the “Project”) to be financed in part by low income housing tax credits pursuant to Section 42 of the Federal Internal Revenue Code (“Tax Credits”) and by tax-exempt bonds; and

**WHEREAS**, the Members have formed a limited liability company under the laws of the Commonwealth of Virginia known as Pembroke Senior GP, LLC (the “Company”), which is intended to serve as General Partner of the Partnership; and

**WHEREAS**, the Members desire to, and do hereby, adopt the provisions of this Operating Agreement as the expression of their mutual undertakings and agreements with respect to the operation of the Company; and

**WHEREAS**, the Company will enter into various agreements on behalf of the Partnership relating to the ownership, development, construction and operation of the Project.

**NOW, THEREFORE**, intending to be legally bound, and in consideration of the mutual covenants and conditions set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Members hereby agree as follows:

**ARTICLE 1  
THE COMPANY**

1.1 **Organization; Effective Date.** The parties have formed the Company pursuant to the Act, as defined below, by filing Articles of Organization with the Virginia State Corporation Commission. The effective date of the formation of the Company is August 26, 2021.

1.2 **Name.** The name of the Company is Pembroke Senior GP, LLC, and the business of the Company shall be conducted under that name.

1.3 **Principal Office and Records.** The principal office of the Company, which will also be the place at which will be kept the records required to be maintained by the Company under the Act, shall be located at 308 35th Street, Suite 101, in the City of Virginia Beach, Virginia 23451, unless such office is changed by action of the Managers pursuant to this Agreement.

1.4 Registered Agent and Registered Office. The initial registered agent of the Company is Timothy O. Trant II, who is a resident of Virginia and a member of the Virginia State Bar and whose post office address is 11815 Fountain Way, Suite 400, Newport News, Virginia 23606, which said address shall also be the registered office of the Company required by the Act.

1.5 Purpose of the Company. The Company has been formed and will be operated for the purpose of serving as General Partner of the Partnership, which will develop, construct, own and operate the Project.

## **ARTICLE 2 DEFINED TERMS**

Certain terms used in this Agreement shall have the following meanings:

2.1 “Act.” The Virginia Limited Liability Company Act, as contained in Chapter 12 of Title 13.1 of the Code of Virginia of 1950, as the same may be amended from time to time.

2.2 “Adjusted Capital Account Deficit.” With respect to any Member, the deficit balance, if any, in such Member’s Capital Account as of the end of the relevant fiscal year, after giving effect to the following adjustments:

(a) Credit to such Capital Account any amount which such Member is obligated to restore under any provision of this Agreement or is deemed to be obligated to restore pursuant to the penultimate sentences of Regulations Sections 1.704-2(g)(1), 1.704-1(b)(2)(ii)(c) and 1.704-2(i)(5); and

(b) Debit to such Capital Account the items described in Sections 1.704-1(b)(2)(ii)(d)(4), (5) and (6) of the Regulations.

The foregoing definition of Adjusted Capital Account Deficit is intended to comply with the provisions of Section 1.704-1(b)(2)(ii)(d) of the Regulations and shall be interpreted consistently therewith.

2.3 “Agreement.” This Operating Agreement as the same may be amended from time to time.

2.4 “Capital Account.” With respect to any Member, the Capital Account maintained for such Member in accordance with Section 3.7.

2.5 “Capital Contributions.” With respect to any Member, the total amount of money or property contributed to the Company with respect to the Company Interest held by such Member. Except as provided in Section 8.5, no in kind contributions of property other than cash shall be accepted by the Company.

2.6 “Code.” The Internal Revenue Code of 1986, as amended.

2.7 “Company.” Pembroke Senior GP, LLC, a Virginia limited liability company.

2.8 “Company Minimum Gain.” The amount determined under Regulations Sections 1.704-2(b)(2) and 1.704-2(d).

2.9 “Depreciation.” For each fiscal year or other period, an amount equal to the depreciation, amortization or other cost recovery deduction determined for federal income tax purposes, allowable with respect to an asset for such year or other period, except that if the Gross Asset Value of an asset differs from its adjusted basis for federal income tax purposes at the beginning of such year or other period, Depreciation shall be an amount which bears the same ratio to such beginning Gross Asset Value as the federal income tax depreciation, amortization or other cost recovery deduction for such year or other period bears to such beginning adjusted tax basis.

2.10 “Disability.” shall mean a physical or mental impairment that, in the written opinion of a physician approved or selected by the Managers (in their discretion) to examine a Member, can be expected to continue for at least one (1) year, or actually continues for one (1) year, and would render (or actually renders, as the case may be) the Member unable to perform his or her customary duties as an employee of Marlyn Development Corporation.

2.11 “General Partner.” The general partner of the Partnership.

2.12 “Gross Asset Value.” With respect to any asset, the asset’s adjusted basis for federal income tax purposes (i.e., the initial cost basis for the asset adjusted for various tax-related items such as depreciation, capital investment, etc.), except as follows:

(a) The initial Gross Asset Value of any asset contributed by a Member to the Company shall be the gross fair market value of such asset, as determined by the contributing Member and the Company;

(b) The Gross Asset Values of all Company assets shall be adjusted to equal their respective gross fair market values, as determined by the Members, as of the following times: (i) the acquisition of an additional Interest in the Company by any new or existing Member in exchange for more than a de minimis Capital Contribution; (ii) the distribution by the Company to a Member of more than a de minimis amount of Company property as consideration for an Interest in the Company if the Members reasonably determine that such adjustment is necessary or appropriate to reflect the relative economic interests of the Members in the Company; and (iii) the liquidation of the Company within the meaning of Regulations Section 1.704-1(b)(2)(ii)(g);

(c) The Gross Asset Value of any Company asset distributed to any Member shall be the gross fair market value of such asset on the date of distribution; and

(d) The Gross Asset Values of Company assets shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such assets pursuant to Code Section 734(b) or Code Section 743(b), but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Regulation Section 1.704-1(b)(2)(iv)(m); provided,

however, that Gross Asset Values shall not be adjusted pursuant to this Section 2.12(d) to the extent the Members determine that an adjustment pursuant to Section 2.12(b) is necessary or appropriate in connection with such transaction.

If the Gross Asset Value of an asset has been determined, or adjusted pursuant to Section 2.12(a), 2.12(b) or 2.12(d) hereof, such Gross Asset Value shall thereafter be adjusted by the Depreciation taken into account with respect to such asset for purposes of computing Profits and Losses.

2.13 “Interest.” When used in the context of a specific percentage of profits, losses, capital or other items to be allocated or a percentage of distributions to be made, Interest means the percentage ownership interest of a Member (or a non-Member assignee or successor in interest thereof as may be provided for in this Agreement) in the Company at any particular time as set forth on Exhibit A. In other contexts, “Interest” means all proprietary rights of the Member in the Company, including, without limitation, his Interest and his rights to profits, losses, distributions, and capital.

2.14 “Majority in Interest.” Members holding more than fifty percent (50%) of the “Relevant Interests in the Company” (as hereinafter defined), including both profits and capital interests calculated separately. The “Relevant Interests in the Company” shall in all instances be the aggregate Interests of all of the Voting Members of the Company, except in the following cases:

(a) When written consent of “other Members” is required prior to Transfer of a Member’s Interest pursuant to Article 7 of this Agreement, the “Relevant Interests in the Company” shall be aggregate Interests of all Voting Members of the Company excluding the Interest which is the subject of the Transfer.

(b) When written consent of “remaining Members” is required in order to elect to continue the Company following an event causing dissolution pursuant to Article 8 of this Agreement, the “Relevant Interests in the Company” shall be the aggregate Interests of all the remaining Voting Members of the Company.

For purposes of this Section 2.14, profits interests are those Interests defined in Section 2.13 and capital interests, as of any date, are the ratios (expressed as a percentage) of each Member’s Capital Account to the aggregate Capital Accounts of all relevant Members.

2.15 “Managers.” A person or persons appointed pursuant to Section 6.1, and any person or entity appointed as successor managers under this Agreement.

2.16 “Member Minimum Gain.” An amount, with respect to each Member Nonrecourse Debt, equal to the Company Minimum Gain that would result if such Member Nonrecourse Debt were treated as Nonrecourse Debt, determined in accordance with Section 1.704-2(i)(3) of the Regulations.

2.17 “Member Nonrecourse Debt.” A nonrecourse debt of the Company as set forth in Section 1.704-2(b)(4) of the Regulations.

2.18 “Member Nonrecourse Deductions.” The deductions defined in Section 1.704-2(i)(1) and 1.704-2(i)(2) of the Regulations.

2.19 “Members.” The Members of this Company. All references in this Agreement to a specified percentage of the Members shall mean Members holding the specified percentage of all the Interests then held by the Members.

2.20 “Nonrecourse Debt.” The same as the term “nonrecourse liability” used in Section 1.704-2(b)(3) of the Regulations.

2.21 “Nonrecourse Deductions.” The deductions defined in Section 1.704-2(b)(1) of the Regulations.

2.22 “Non-voting Member.” A Member owning less than 8% of the Interest in the Company.

2.23 “Partnership.” Pembroke Senior, LP, a Virginia limited partnership.

2.24 “Partnership Agreement.” The Agreement of Limited Partnership of the Partnership, as the same may be amended.

2.25 “Person.” Any individual, partnership, corporation, trust, or other entity.

2.26 Prime Rate. The prime rate (or base rate) reported in the “Money Rates” column or section of The Wall Street Journal as being the base rate on corporate loans at larger U.S. Money Center banks on the first date on which The Wall Street Journal is published in each month. In the event The Wall Street Journal ceases publication of the Prime Rate, then the “Prime Rate” shall mean the “prime rate” or “base rate” announced by the bank with which the Company has its principal banking relationship (whether or not such rate has actually been charged by that bank). In the event that bank discontinues the practice of announcing that rate, Prime Rate shall mean the highest rate charged by that bank on short-term, unsecured loans to its most credit-worthy large corporate borrowers.

2.27 “Profits” and “Losses.” For each fiscal year or other period, an amount equal to the Company’s taxable income or loss for such year or period, determined in accordance with Code Section 703(a) (for this purpose, all items of income, gain, loss, or deduction required to be stated separately pursuant to Code Section 703(a)(1) shall be included in taxable income or loss), with the following adjustments:

(a) Any income of the Company that is exempt from federal income tax and not otherwise taken into account in computing Profits or Losses pursuant to this Article 2 shall be added to such taxable income or loss;

(b) Any expenditures of the Company described in Code Section 705(a)(2)(B) or treated as Code Section 705(a)(2)(B) expenditures pursuant to Regulations Section 1.704-1(b)(2)(iv)(i), and not otherwise taken into account in computing Profits or Losses pursuant to this Section 2.27 shall be subtracted from such taxable income or loss;

(c) In the event the Gross Asset Value of any Company asset is adjusted pursuant to Section 2.12(b) or Section 2.12(c) hereof, the amount of such adjustment shall be taken into account as gain or loss from the disposition of such asset for purposes of computing Profits or Losses;

(d) Gain or loss resulting from any disposition of property with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the Gross Asset Value of the property disposed of, notwithstanding that the adjusted basis of such property differs from its Gross Asset Value;

(e) In lieu of the depreciation, amortization, and other cost recovery deductions taken into account in computing such taxable income or loss, there shall be taken into account Depreciation for such fiscal year or other period, computed in accordance with Section 2.9 hereof;

(f) To the extent an adjustment to the adjusted tax basis of any Company asset pursuant to Code Section 734(b) or Code Section 743(b) is required pursuant to Regulations Section 1.704-1(b)(2)(iv)(m)(4) to be taken into account in determining Capital Accounts as a result of a distribution other than in complete liquidation of a Member's Interest, the amount of such adjustment shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases the basis of the Asset) from the disposition of the asset and shall be taken into account for purposes of computing Profits or Losses; and

(g) Notwithstanding any other provision of this Article 2, any items which are specially allocated pursuant to Section 10.1 or Section 10.2 hereof shall not be taken into account in computing Profits or Losses.

2.28 “Regulations.” The Income Tax Regulations, including Temporary Regulations, promulgated under the Code, as amended from time to time.

2.29 “Substituted Member.” Any person or entity admitted to the Company as a Member pursuant to Section 7.4 hereof.

2.30 “Transfer.” Any sale, assignment, gift, bequest, disposition, exchange, pledge, encumbrance or other transfer of any kind or description and however made, whether voluntary or involuntary, by death, by divorce, by court decree, operation of law, or otherwise, to include without limitation, any change of ownership in or control of the owner of any Interest in the Company (such as (a) the transfer of membership interest in or stock in an entity which owns Interest in the Company, or (b) the change of the beneficiaries of a trust which owns Interest in the Company).



2.31 “Voting Member.” A Member owning 8% or more of the Interest in the Company.

2.32 “Withdrawal Event.” The Termination, death, dissolution, or bankruptcy of a Non-voting Member, or as may otherwise be provided in this Agreement.

2.34 “Withdrawing Member.” A Member (or his/her successor in interest) with respect to whom a Withdrawal Event relates.

### **ARTICLE 3 INTERESTS OF MEMBERS AND CAPITAL CONTRIBUTIONS**

3.1 Interests of Members and Initial Capital Contributions. The names of the Members, the Interests belonging to each of them, and the initial Capital Contribution of each Member are set forth on Exhibit A. Unless approved in writing in advance by the Managers, only individuals may be Members or Substituted Members of the Company. Accordingly, partnerships, limited liability companies, corporations, trustees/trusts and other forms of ownership may not be Members or Substituted Members of the Company without the prior written consent of the Managers.

3.2 Additional Capital Contributions. The Members shall not be required to make any additional Capital Contributions to the Company except upon the written call of the Managers, specifying the amount of the additional Capital Contribution and the specific purpose for which such additional Capital Contribution shall be used, which purpose must be to satisfy the obligations of the Company to the Partnership or as may otherwise be determined by the Managers. Any such additional Capital Contribution shall be in proportion to each Member’s Interest in the Company.

(a) The Managers shall have the right to borrow funds to cover any call for capital made under this Section to which a Member has not responded, and such amount borrowed shall not be deemed a Capital Contribution to the Company but, rather, a debt due by any Member (an “Indebted Member”) who has failed to contribute his pro rata share directly to the Company.

(b) Any advance of money to the Company by a Member in response to a call for capital or otherwise, and which advance is in excess of that Member’s pro rata share of the funds called for, shall not be deemed a Capital Contribution to the Company but, rather, a debt due by an Indebted Member to the Member who has made such advance (a “Lending Member”).

(c) Any debt incurred by an Indebted Member shall be payable on demand, or at such other time as the Managers (in the case of a debt incurred pursuant to Section 3.2(a)) or Lending Member (in the case of a debt incurred pursuant to Section 3.2(b)) shall designate and shall bear interest at the rate of 3% plus the Prime Rate; provided, however such rate shall not be higher than the highest rate permitted between contracting parties under the usury laws of Virginia.

(d) So long as the debt of any Indebted Member is outstanding, all distributions to which such Indebted Member would otherwise be entitled shall be distributed to the Company

or to the Lending Member to whom such Indebted Member is indebted, to be applied to the reduction of such indebtedness, first to interest and then to principal.

(e) If any indebtedness is not paid in full within thirty (30) days after proper demand for the payment thereof, the Company or any Lending Member shall have all of the rights and remedies, at law or in equity, which a creditor may have against a debtor, which rights and remedies shall not be stayed or abated on account of the fact that the Company's affairs have not been wound up, nor shall such Lending Member's rights be limited to having an accounting of the Company's affairs.

(f) If any indebtedness incurred pursuant to Section 3.2(b) is not paid in full within thirty (30) days after proper demand for the payment thereof, any Lending Member shall have the option to elect, by written notice to the Indebted Member and to the Company, at any time prior to the full payment of such indebtedness, that the Indebted Member shall be deemed to have transferred all of his Interest in the Company to the Lending Member, or if there is more than one Lending Member, to such Lending Member in proportion to the indebtedness due such Lending Member by the Indebted Member, and such transfer of Interest shall be in lieu of the remedies available under Section 3.2(e) and shall constitute full payment of all monies due in respect of the debt to such Lending Member.

(g) In the event the Company or any Lending Member elects to pursue his rights and remedies against the Indebted Member, the Indebted Member shall pay the Company's or such Lending Member's reasonable attorney's fees and court costs incurred in addition to the amount of the aforesaid indebtedness.

3.3 Interest. No interest shall be paid on any Capital Contribution.

3.4 Withdrawals. Except as otherwise provided in this Agreement, no Member shall resign from the Company or make any withdrawals therefrom without the consent of the Managers. Under circumstances requiring a return of any Capital Contribution, no Member shall have the right to receive property other than cash except as may be specifically provided in Article 8.

3.5 Limited Liability. No Member shall be liable for the debts, liabilities, contracts or any other obligations of the Company. Except as otherwise provided by applicable state law, a Member shall be liable only to make any additional Capital Contributions which are called for strictly in accordance with the provisions of Section 3.2. The Managers shall not have any personal liability for the repayment of any Capital Contributions of any Member. No person not a party to this Agreement shall be deemed a third party beneficiary hereof, and no such person shall have the right to enforce any provision of this Agreement against any Member.

3.6 Guaranty of Company Obligations. Upon the request of the Managers, each Voting Member shall be required to provide his personal guarantee to any lender, limited partner of the Partnership, or other party designated by the Managers that (a) is financing the Company's and/or the Partnership's indebtedness for borrowed money, and/or (b) otherwise requires such assurance

as consideration for its business relationship with the Company and/or the Partnership (collectively, the “Guaranteed Obligations”). If a Member is subsequently called upon by such person or other creditor holding such Guaranteed Obligations to pay on his guarantee and accordingly does so such Member shall be deemed a Lending Member and shall be entitled to indemnification from the other Members for the amount by which the portion of the Guaranteed Obligations that the Lending Member actually pays exceeds his share of the Guaranteed Obligations then being paid out of the personal funds of all Members (“Discharged Guaranteed Obligations”). (A Member’s “share” of the Guaranteed Obligations or Discharged Guaranteed Obligations, as the case may be, shall be determined by multiplying (i) the Interest then held by such Member, by (ii) the amount of Guaranteed Obligations or Discharged Guaranteed Obligations, as the case may be.) Any and all other Members shall be deemed Indebted Members and shall, within thirty (30) days of the Lending Member’s demand therefor, indemnify and reimburse any Lending Member who has paid more than his respective share of Discharged Guaranteed Obligations such amount(s) (up to the Indemnifying Members’ respective shares of Discharged Guaranteed Obligations) as shall cause each of the Lending Members and the Indebted Members to bear his respective share of the Discharged Guaranteed Obligations. Interest shall accrue on the amount owed at the rate of 3% plus the Prime Rate in effect from time to time (but not higher than the maximum rate legally permitted). Thereafter, any Indebted Member that does not reimburse the Lending Member for his proportionate share of the Discharged Guaranteed Obligations, shall be subject to the sanctions and remedies set forth in Section 3.2 in the same manner as a Lending Member would have against an Indebted Member thereunder, which provisions shall apply as though the Lending Member’s excess payment under this Section 3.6 were a payment in excess of his pro rata share of the funds called for under Section 3.2.

### 3.7 Capital Accounts.

(a) A Capital Account shall be established and maintained for each Member. A Member shall have a single Capital Account, regardless of class of Interests owned by such Member and regardless of the time or manner in which such Interests were acquired.

(b) To each Member’s Capital Account there shall be credited such Member’s Capital Contributions, such Member’s distributive share of Profits and any items in the nature of income or gain which are specially allocated pursuant to Article 10 hereof, and the amount of any Company liabilities assumed by such Member or which are secured by any property distributed to such Member.

(c) To each Member’s Capital Account there shall be debited the amount of cash and the Gross Asset Value of any property distributed to such Member pursuant to any provision of this Agreement, such Member’s distributive share of Losses and any items in the nature of expenses or losses which are specially allocated pursuant to Article 10 hereof, and the amount of any liabilities of such Member assumed by the Company or which are secured by any property contributed by such Member to the Company.

(d) In the event all or a portion of an Interest in the Company is transferred in accordance with the terms of this Agreement, the transferee shall succeed to the Capital Account of the transferor to the extent it relates to the transferred Interest.

(e) In determining the amount of any liability for purposes of Sections 3.7(b) and 3.7(c) hereof, there shall be taken into account Code Section 752(c) and any other applicable provisions of the Code and Regulations.

The foregoing provisions and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Regulations Section 1.704-1(b), and shall be interpreted and applied in a manner consistent with such Regulations. In the event the Members shall determine that it is prudent to modify the manner in which the Capital Accounts, or any debits or credits thereto (including, without limitation, debits or credits relating to liabilities which are secured by contributed or distributed property or which are assumed by the Company or Member), are computed in order to comply with such Regulations, the Members may make such modification, provided that it is not likely to have a material effect on the amounts distributable to any Member pursuant to Article 8 hereof upon the dissolution of the Company. The Members also shall (i) make any adjustments that are necessary or appropriate to maintain equality among the Capital Accounts of the Members and the amount of Company capital reflected on the Company's balance sheet, as computed for book purposes, in accordance with Regulations Section 1.704-1(b)(2)(iv)(g), and (ii) make any appropriate modifications in the event unanticipated events might otherwise cause this Agreement not to comply with Regulations Section 1.704-1(b).

#### **ARTICLE 4 PROFITS AND LOSSES**

After giving effect to the allocations set forth in Article 10 hereof, Profits and Losses for any fiscal year shall be allocated among the Members in proportion to their respective Interests. The Losses allocated shall not exceed the maximum amount of Losses that can be allocated without causing any Member to have an Adjusted Capital Account Deficit at the end of any fiscal year.

#### **ARTICLE 5 DISTRIBUTIONS**

5.1 Distributions Generally. All distributions, other than in connection with the winding up of the Company subject to Article 8, shall be made in cash and shall be divided among the Members in accordance with their respective Interests as set forth in Exhibit A, subject to Sections 3.2 and 3.6. Distributions shall be made from time to time in such amounts and at such times as the Managers may determine; provided, however, that the aggregate amount of each such distribution shall be that amount which the Managers determine is not required to be retained by the Company to meet the reasonably foreseeable cash requirements and needs of the business and activities of the Company and to establish an adequate reserve for the payment of Company liabilities and contingencies.

## **ARTICLE 6 MANAGEMENT**

6.1 Managers. The Company's business shall be managed by the Managers, who initially shall be M. David Jester, Scott A. Troutman and Brian L. Staub. Upon the death, resignation, or removal of any of the Managers, the Voting Members holding a Majority in Interest may elect a successor or successors as they may determine from time-to-time, provided there is always at least one Manager. A Manager need not be a Member of the Company. One or more Managers shall be entitled to receive a fee or other compensation for serving as Manager of the Company as the Managers may determine from time to time. Additionally, they may charge the Company for all expenses reasonably incurred by them directly in connection with Company business, not including office or other overhead, salaries of administrative personnel, etc. Voting Members shall have the right to remove a Manager at any time for any reason by two-thirds (2/3rds) vote of the Relevant Interests in the Company.

6.2 Management of the Company. Except as provided below, the Managers shall have full charge of the management, conduct and operation of the Company business in all respects and all matters and shall have the authority to do all things and acts of every nature whatever, not illegal or contrary to the provisions of this Agreement, which the Managers shall deem necessary or convenient to achieve the purposes of this Agreement and of the Company. Unless otherwise provided herein, decisions of the Managers shall be based upon a majority vote of the Managers without requirement for notice or meeting, each Manager having one (1) vote. Notwithstanding the foregoing, any decision or action of the Managers that entails the (i) expenditure of Company resources, or (ii) Company incurring an obligation, which equates to an amount greater than \$25,000.00 shall require the signature of two (2) Managers (but only if there is more than one Manager) or a written consent of a majority of the Managers.

6.3 Proportionate Voting. On any matter requiring action by the Members, only the Voting Members shall be entitled to vote, which Voting Members shall vote in proportion to their respective Interests in the Company as set forth in Exhibit A attached hereto relative to the total of the Interests of all Voting Members.

6.4 Authority of Members; Indemnity. Except as otherwise expressly provided in this Agreement, the Members shall take no part in the operation, management, conduct or control of the property of the Company, and shall have no right or authority, either expressed or implied, to act for or bind the Company, without the prior written authorization of the Managers. If any Member shall, without authority, bind or attempt to bind the Company, such Member shall indemnify the Company for any loss suffered or expense incurred by the Company in connection therewith.

6.5 Meetings of the Members. Meetings of the Members may be held by in person, telephonically, electronically, or by any other means deemed appropriate by the Managers on not less than twenty-four (24) hours advance notice to all of the Members. Any action required or permitted to be taken at a meeting of the Members, after not less than twenty-four (24) hours

advance notice to all of the Members of the action to be taken, may be taken without a meeting if the action is taken by Members holding a Majority in Interests. Such action without meeting shall be evidenced by one or more written consents to be filed with the Company's records.

6.6 Tax Credit Investor. The Members acknowledge that the Managers will conduct negotiations with parties interested in making an investment in the Partnership to acquire the limited partnership interests and enable the investor to enjoy the benefits of the Tax Credits. The Managers shall advise the Members regarding the commencement and conduct of such negotiations, and shall provide them with copies of all term sheets, offers, pro forma projections and other correspondence exchanged during such negotiations.

6.7 Development Services. The parties agree that in connection with developing the Project, the Partnership may engage a development company, Pembroke Senior Developers, LLC (the "Developer"), to provide certain development services to the Partnership. Unless approved in writing by the Managers in advance, the identity of the owners and the amount of each owner's Interest in the Company shall be identical to the ownership of the Developer.

6.8 Dealing with Affiliates. The Managers, in their discretion, may engage on behalf of the Company (to include as General Partner of the Partnership) any person, firm or corporation in which they, any Member, or any Affiliate thereof may have an interest, at reasonable and competitive rates of compensation for the performance of any and all services or purchase of goods or other property which may at any time be necessary, proper, convenient, or advisable in carrying on the business and affairs of the Partnership or disposing of some or all of its assets; provided, that the compensation or price therefor shall not exceed those prevailing in arm's length transactions by others rendering similar services in comparable transactions as an on-going activity in the same geographical area. For purposes of this Agreement, an Affiliate shall be with respect to a specified person (1) any person that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with the specified person, (2) any person that is an officer of, partner in, or trustee of, or serves in a similar capacity with respect to, the specified person or of which the specified person is an officer, partner or trustee, or with respect to which the specified person serves in a similar capacity, (3) any person that, directly or indirectly, is the beneficial owner of 10% or more of any class of equity securities of, or otherwise has a substantial beneficial interest in, the specified person or of which the specified person is directly or indirectly the owner of 10% or more of any class of equity securities or in which the specified person has a substantial beneficial interest and (4) any spouse or lineal descendant of the specified person.

## **ARTICLE 7 ASSIGNMENT OF INTERESTS**

### 7.1 In General.

(a) No person shall be considered a Member unless named in this Agreement, or unless admitted to the Company as a Substituted Member as provided in this Agreement. No

Member, Substituted Member, or assignee or other successor in interest thereto shall, except as provided below, Transfer any Interest in the Company without the prior written consent of the Managers. The Company, the Managers, each Member and any other person having business with the Company need only deal with Members or Substituted Members. They shall not be required to deal with any person by reason of any Transfer by a Member, except as otherwise provided in this Agreement. As provided in Section 3.1, unless approved in writing in advance by the Managers, only individuals may be Members or Substituted Members of the Company. Partnerships, limited liability companies, corporations, trustees/trusts and other forms of ownership may not be Members or Substituted Members of the Company without the prior written consent of the Managers. Notwithstanding any other provision of this Agreement, the Members of the Company have determined that, unless approved in writing by the Managers in advance, (i) the identity of the owners and the amount of each owner's Interest in the Company shall be identical to that of the Developer, and (ii) except for the Transfer of Interests between Members, no Transfer of Interest in the Company shall result in a division of the Interest owned by the transferor (i.e., no Transfer of Interest shall be for less than 100% of the Interest owned by such transferor, and such Transfer of Interest may only be to a single individual, trust, or limited liability company). Accordingly, unless approved in writing by the Managers in advance, no Transfer of Interest in the Company shall be made independent of the corresponding interest in Developer and each Transfer of Interest in the Company shall automatically trigger the identical Transfer of the corresponding interest in the Developer. Any purported Transfer that violates the terms of this Section 7.1 shall be void ab initio. Any legal expense incurred in enforcing the foregoing provisions may be offset by the Company against any distribution to which the purported assignor or assignee may otherwise be entitled. In the absence of the substitution of a Member for an assigning, deceased or terminated Member, any payment to a Member, or to his successors, executors or administrators, shall acquit the Company of all liability to any other person who may be interested in such payment by reason of an assignment by the Member or by reason of his death or termination.

(b) Upon the death or termination of a Voting Member, the estate, executor(s), administrator(s), personal legal representative(s), trustee(s), designated transfer on death beneficiary(ies), or other successor in interest of such Member, as determined under applicable law, may succeed to such Member's Interest in the Company as an assignee in accordance with the provisions of Section 7.1(e) below; provided such Transfer of Interest is (i) to another Member, and/or (ii) for 100% of the Interest owned by such Member (excluding any Transfer of Interest to an existing Member or Members), and to a single individual, trust, or limited liability company. Any purported Transfer of Interest upon the death or dissolution of a Member or upon the death or dissolution of an assignee or other successor in interest to a Member, that is not (1) to another Member, and/or (2) for 100% of the Interest owned by such Member or assignee or other successor in interest to a Member (excluding any Transfer of Interest to an existing Member or Members), and to a single individual, trust, or limited liability company, unless cured to the satisfaction of the Managers within 90 days after receipt by each such successor in interest of notice thereof from a Manager, shall be considered a Withdrawal Event.

(c) If a Voting Member or an assignee thereof or other successor in interest thereto desires to sell all or any portion of his Interest (an “Offeror”), then such Offeror may do so; provided (i) any such sale and resulting Transfer is subject to the terms of this Agreement, (ii) such sale is subject to the satisfaction of, in the Managers’ discretion, any approvals required by creditors of the Company or the Partnership or by a limited partner of the Partnership, including any conditions of such approvals, and (iii) before making any such sale, the Offeror must first give the other Voting Members notice (with a copy to the Managers), specifying in writing the price, conditions and terms upon which the Offeror is willing to sell such Interest. The other Voting Members shall have the option to purchase all of the offered Interest upon the conditions and terms set forth in the notice and for a price which is the lesser of that contained in the notice or the amount determined by the Purchase Price Calculation (“hereinafter defined”), in the manner described below:

(i) The other Voting Members shall have thirty (30) days from the date of the notice within which to elect to purchase all of the offered Interest. The option may be exercised by giving notice to the Offeror and Managers within such thirty (30) day period. If more than one Voting Member elects to purchase the Offeror’s Interest, then such Voting Members may purchase the offered Interests in proportions that their respective Interests bear to the aggregate Interests of all purchasing Voting Members, unless they otherwise agree. The closing of the purchase shall be not more than ninety (90) days from the date of the notice from the Offeror.

(ii) If the Voting Members do not elect to purchase all of the offered Interests, then the Offeror may sell such Interest, to which the Voting Members have not committed, at a price not below nor upon other terms more advantageous to the purchaser than the price and terms contained in the notice from the Offeror. If such sale is not made and consummated within ninety (90) days after the date of the notice from the Offeror, the Offeror may not thereafter sell or otherwise dispose of any of his Interest without again complying with this Section.

(d) A Non-Voting Member may sell all or any portion of his Interest to another Member or Members of the Company for an amount equal to that determined by the Purchase Price Calculation; provided (i) any such sale and resulting Transfer is subject to the terms of this Agreement, (ii) such sale is subject to the satisfaction of, in the Managers’ discretion, any approvals required by creditors of the Company or the Partnership or by a limited partner, including any conditions of such approvals, and (iii) before making any such sale, such Non-Voting Member must first give notice to all other Members (with a copy to the Managers). The other Members shall have thirty (30) days from the date of the notice within which to elect to purchase all of the offered Interest. The option to purchase may be exercised by giving notice to such Non-Voting Member and the Managers within such thirty (30) day period. If more than one Member elects to purchase such Non-Voting Member’s Interest, then such Members may purchase the offered Interests in proportions that their respective Interests bear to the aggregate Interests of all purchasing Members, unless they otherwise agree. The closing of the purchase shall be not more than ninety (90) days from the date of the notice from such Non-Voting Member.



(e) Notwithstanding any other provision of this Agreement, unless and until established as a Substituted Member in accordance with the terms of this Agreement, the assignee of or other successor in interest to any Interest in the Company shall not be a Member and shall only be entitled to receive the share of the profits or other distributions, or the return of the contribution, to which his or her assignor or predecessor in interest would otherwise be entitled, but shall otherwise be subject to the terms, conditions and restrictions of this Agreement as if a Member, to include without limitation the obligation to make capital contributions as may be called for in accordance with the terms of this Agreement. Notwithstanding any other provision of this Agreement, as a condition to the right to receive any distribution or payment hereunder, the assignee of or other successor in interest to any Interest in the Company shall, within ten (10) days after notice of demand from any Manager, execute a written agreement(s) satisfactory to the Manager(s) acknowledging, among other things, that such assignee of or other successor in interest to any Interest in the Company shall be bound by the obligations, conditions and restrictions of this Agreement as the same applies to Members.

(f) The Transfer of any Interest to a Voting Member in accordance with the terms of this Agreement from a Non-Voting Member or a non-Member owner (such as the assignee of or a successor in interest of a Member that has not been admitted as a Substituted Member) shall accrue to such Voting Member as voting Interest.

7.2 No Encumbrance. No Member shall subject his Interest to any lien, charge, encumbrance, mortgage, security interest or similar rights of others, without the prior written consent of all other Members.

7.3 Transfer of Right to Distributions. Notwithstanding the foregoing, during his life, a Member may assign, in whole or in part, his rights to receive Company distributions, with the consent of the Managers.

7.4 Procedure for Substitution of Assignee as Member.

(a) No assignee of the whole or any portion of a Member's Interest in the Company shall become a Substituted Member unless:

(i) The assignor transfers such Interest to the assignee in accordance with the terms of this Agreement and in such a manner as not to preclude the option for assignee to become a Substituted Member;

(ii) The assignee pays to the Company all costs and expenses (including attorney's fees) incurred in connection with such substitution;

(iii) The assignee executes and acknowledges, in form and substance satisfactory to the Managers, all instruments which the Managers shall deem necessary or desirable to effectuate such substitution and to confirm the agreement of the assignee to be bound by all the terms and provisions of this Agreement;

(iv) The assignee obtains the written consent of the Managers; and

(v) The assignee shall, as a condition of holding such Interest, within thirty (30) days after notice of demand from the Managers, (A) obtain the approval, as a full substitute guarantor, from any creditor of the Company and/or other party designated by the Managers which has been given a personal guarantee of Guaranteed Obligations by the Member for which the assignee would be the successor in Interest, and (B) execute a written agreement(s) satisfactory to the Managers and such creditor(s) or other party acknowledging that such assignee shall be bound by, and take the applicable Interests subject to, the obligations, conditions and restrictions of such guarantee.

(b) An assignee who does not become a Substituted Member has no right to require any information or account of the Company transactions or to inspect the Company books. He shall only be entitled to receive the share of the profits or other distributions, or the return of the contribution, to which his assignor would otherwise be entitled. The failure or refusal of the Members to grant consent to the substitution of an assignee as a Member shall not prevent the assignee from receiving Company distributions attributable to the assigning Member, even though such assignee shall not be deemed to be a Member, provided (i) the assignee has properly received such assignment pursuant to the terms of this Agreement, (ii) the instrument of assignment is in form and substance satisfactory to the Managers and assignee has complied with all other applicable provisions of this Agreement, (iii) a duly executed and acknowledged counterpart of such instrument is filed with the Company, and (iv) the assignee is not, except as otherwise provided below, a person below the age of eighteen (18) years or a person theretofore adjudged to be incompetent. Any attempted assignment to a person below the age of eighteen (18) years or to a person theretofore adjudged to be incompetent shall be void and ineffectual and shall not bind the Company except to the extent such assignment is duly made to a trustee, guardian, custodian or personal representative for the assignee.

7.5 Distributions and Allocations in Respect to Transferred Interests. If any Interest in the Company is Transferred during any fiscal year in compliance with the provisions of this Agreement, all items of Profit and Loss, each item thereof and all other items attributable to such Interest in the Company for such fiscal year shall be divided and allocated between the transferor and the transferee by taking into account their varying interests during the fiscal year in accordance with Code Section 706(d), using any conventions permitted by law and selected by the Managers. All distributions on or before the date of such Transfer shall be made to the transferor, and all distributions thereafter shall be made to the transferee. Solely for purposes of making such allocations and distributions, the Company shall recognize such Transfer not later than the end of the calendar month during which it is given notice of such Transfer, provided that if the Company does not receive a notice stating the date such Interest in the Company was Transferred and such other information as the Managers may reasonably require within thirty (30) days after the end of the fiscal year during which the Transfer occurs, then all of such items shall be allocated, and all distributions shall be made, to the party who was the owner of the Transferred Interest, according to the books and records of the Company, on the last day of the fiscal year during which the Transfer occurred. Neither the Company nor the Managers shall incur any liability for making

allocations and distributions in accordance with the provisions of this Section 7.5, whether or not the Company or the Managers has knowledge of any Transfer of ownership of any Interest in the Company.

7.6 Forfeiture of Non-Voting Member Interest. The Non-Voting Members acknowledge that they have received the opportunity to become Members of the Company as a result of their service as employees of Marlyn Development Corporation (“Marlyn”). Therefore, each Non-Voting Member who is a Marlyn employee at the time he acquires such Interest in the Company agrees that, in the event of his Termination, his Interest as a Member will be deemed automatically transferred without compensation to the Voting Members of the Company at that time (pro rata, in accordance with their relative amounts of Interests) according to the following schedule:

<u>Termination Occurs</u>	<u>Percentage Forfeited</u>
Any time prior to or during the first 3 years after the “Determinative Date” (defined below)	100%
During the 4 <sup>th</sup> year after the Determinative Date	66 2/3%
During the 5 <sup>th</sup> year after the Determinative Date	33 1/3%

“Termination” shall mean ceasing to be an employee of Marlyn for any reason other than (i) Disability, (ii) death or (iii) retirement after 20 years of service to Marlyn or reaching the age of 62, if sooner.

The “Determinative Date” shall be the later of (A) the placed in service date of the Project, or (B) the date such Non-Voting Member became a Member of the Company.

Each Non-Voting Member hereby irrevocably appoints each Manager, any of whom may act, as his attorney-in-fact, which appointment shall not expire upon such Non-Voting Member’s disability, for the specific purpose of executing such documents as the Managers deem necessary to memorialize the foregoing forfeiture. After 5 years from the Determinative Date, Non-Voting Members’ Interests in the Company shall no longer be subject to the forfeiture of their Interest provided in this Section 7.6.

7.7 Withdrawing Member. A Withdrawing Member shall cease to be a Member as of the effective date of the applicable Withdrawal Event and such Withdrawing Member shall cease to have any rights or privileges, but (a) such Withdrawing Member shall not be released or discharged from any of the obligations of a Member under the provisions of this Agreement, unless provided otherwise by the written consent of the Managers, and (b) such Withdrawing Member shall be entitled to continue to receive his share of the profits or other distributions of the Company unless and until such Withdrawing Member’s Membership Interest is purchased as provided in Section 7.8.

7.8 Purchasing of Withdrawing Member's Membership Interest.

(a) After the occurrence of a Withdrawal Event, the Company and/or the Voting Members shall have the option to purchase all of the Withdrawing Member's Interest at a price determined as set forth below. The Company's option shall be exercised by written notice to the Withdrawing Member or his successor in interest, as the case may be, given within thirty (30) days after the Managers provide notice to the Members of the Withdrawal Event; provided, the closing of such purchase shall not occur until the purchase price of the Withdrawing Member's Interest has been determined as set forth below. If the Company does not so exercise its option within such time period, any or all of the Voting Members may exercise their option by giving written notice thereof to the Withdrawing Member or his successor in interest and the Managers at any time after the first to occur of (i) the expiration of the Company's option or (ii) the Company giving written notice that it declines to exercise its option. In the event that more than one Voting Member desires to purchase the Withdrawing Member's Interest, such Interest and associated purchase price shall be divided among such Voting Members proportionate to the percentage that each of such Voting Member's Interest represents to the aggregate of all such Voting Members' Interest.

(b) Upon the exercise of any option under Section 7.8(a), the Company shall promptly determine the purchase price of the Withdrawing Member's Interest. Except as otherwise provided in Section 7.6, the purchase price for a Withdrawing Member's Interest shall be calculated as indicated below (the "Purchase Price Calculation" or "PPC"):

- (i) If DSCR less than 1.15, then  $PPC = ((85\% \times EV) \times PSD) \times I$
- (ii) If DSCR of 1.15 to 1.25, then  $PPC = ((90\% \times EV) \times PSD) \times I$
- (iii) If DSCR of 1.26 to 1.35, then  $PPC = ((95\% \times EV) \times PSD) \times I$
- (iv) If DSCR greater than 1.35, then  $PPC = (EV \times PSD) \times I$

"DSCR" means the debt service coverage ratio of the Partnership as determined by the Managers.

"EV" means the estimated fair market value of the Company as determined by the Managers.

"PSD" means a 80% in order to reflect a 20% private sale discount.

"I" means the percentage Interest proposed for sale

(c) Each Withdrawing Member hereby irrevocably appoints each Manager, any of whom may act, as his attorney-in-fact, which appointment shall not expire upon such Member's disability, for the specific purpose of executing such documents as the Managers deem necessary to memorialize any Transfer pursuant to this Section 7.8.

## **ARTICLE 8 TERMINATION**

8.1 Events Causing Dissolution and Winding Up. Any of the following events shall cause the dissolution and winding up of the Company:

(a) The consent in writing to do so by either all of the Managers or Voting Members owning 75% of the Voting Members' Interests in the Company.

(b) Any other event causing dissolution under the Act, except as provided in Section 8.2.

8.2 Election to Continue Company. An event set forth in Section 8.1(b) shall not result in the dissolution, winding up and termination of the Company if, within ninety (90) days after the occurrence of that event, the Managers or a Majority in Interest of the remaining Voting Members elect to continue the Company.

8.3 Winding Up. Upon the occurrence of an event set forth in Section 8.1, and in the absence of an election under Section 8.2, the Company shall continue solely for the purposes of winding up its affairs in an orderly manner, liquidating its assets, and satisfying the claims of its creditors and Members. No Member shall take any action that is inconsistent with, or not necessary to or appropriate for, the winding up of the Company's business and affairs. The Managers shall be responsible for overseeing the winding up and dissolution of the Company and shall take full account of the Company's liabilities and assets. The assets shall be liquidated as promptly as is consistent with obtaining the fair value thereof, and the proceeds therefrom, to the extent sufficient therefor, shall be applied and distributed in the following order:

(a) First, to the payment and discharge of all of the Company's debts and liabilities to creditors other than Members;

(b) Second, to the payment and discharge of all of the Company's debts and liabilities to Members; and

(c) The balance, if any, to the Members in accordance with the positive value in their Capital Accounts, after giving effect to all contributions, distributions, adjustments and allocations for all periods.

When all assets of the Company, after payment of or due provision for the payment of all Company liabilities, have been distributed among the Members as provided in this Agreement, the Company shall terminate and the Members shall execute and file a certificate appropriate to indicate such termination.

8.4 Compliance with Timing Requirements of Regulations. In the event the Company is "liquidated" within the meaning of Regulations Section 1.704-1(b)(2)(ii)(g), distributions shall be made pursuant to this Article 8 to the Members who have positive Capital Accounts in

compliance with Regulations Section 1.704-1(b)(2)(ii)(b)(2). If any Member has a deficit balance in his Capital Account (after giving effect to all contributions, distributions and allocations for all taxable years, including the year during which such liquidation occurs), such Member shall have no obligation to make any contribution to the capital of the Company with respect to such deficit, and such deficit shall not be considered a debt owed to the Company or to any other Person for any purpose whatsoever.

8.5 Deemed Distribution and Recontribution. Notwithstanding any other provision of this Article 8, in the event the Company is “liquidated” within the meaning of Regulations Section 1.704-1(b)(2)(ii)(g) but no event set forth in Section 8.1 has occurred, the assets of the Company shall not be liquidated, the Company’s liabilities shall not be paid or discharged, and the Company’s affairs shall not be wound up. Instead, solely for federal income tax purposes, the Company shall be deemed to have distributed the Property in kind to the Members, who shall be deemed to have assumed and taken subject to all Company liabilities, all in accordance with their respective Capital Accounts. Immediately thereafter, the Members shall be deemed to have recontributed the assets in kind to the Company, which shall be deemed to have assumed and taken subject to all such liabilities.

## **ARTICLE 9 AMENDMENTS**

This Agreement is subject to amendment only by the written consent of Voting Members owning 75% of the Interests in the Company held by the Voting Members. Each Member hereby irrevocably appoints each Manager, any of whom may act, as his attorney-in-fact, which appointment shall not expire upon such Member’s disability, for the specific purpose of executing such documents as the Managers deem necessary to memorialize any amendment made pursuant to the first sentence of this Article.

## **ARTICLE 10 TAX ALLOCATIONS**

10.1 Special Allocations. The following special allocations shall be made in the following order, if and only to the extent required to make the regular allocations set forth herein comply with the provisions of Section 704(b) of the Code and the Regulations promulgated thereunder:

(a) Company Minimum Gain Chargeback. Notwithstanding any other provision of Article 4 or 10, if there is a net decrease in Company Minimum Gain during any Company fiscal year or other period, each Member shall be specially allocated items of Company income and gain for such year or other period (and, if necessary, subsequent years), in an amount equal to such Member’s share of the net decrease in Company Minimum Gain, determined in accordance with Regulations Section 1.704-2(g). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to the various Members pursuant thereto. The items to be so allocated shall be determined in accordance with

Regulations Sections 1.704-2(f)(6) and 1.704-2(j)(2). This Section 10.1(a) is intended to comply with the minimum gain chargeback requirement in Section 1.704-2(f) of the Regulations and shall be interpreted consistently therewith. To the extent permitted by said Section of the Regulations and for purposes of this Section 10.1 only, each Member's Adjusted Capital Account Deficit shall be determined prior to any other allocations pursuant to Articles 4 or 10 with respect to such fiscal year and without regard to any net decrease in Member Minimum Gain during such fiscal year.

(b) Member Minimum Gain Chargeback. Notwithstanding any other provision of Articles 4 or 10 except Section 10.1(a), if there is a net decrease in Member Minimum Gain attributable to a Member Nonrecourse Debt during any Company fiscal year or other period, each Member with a share of the Member Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Regulations Section 1.704-2(i)(5), shall be specially allocated items of Company income and gain for such year or other period (and, if necessary, subsequent years) in an amount equal to such Member's share of the net decrease in Member Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Regulations Section 1.704-2(i)(4). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to the various Members pursuant thereto. The items to be so allocated shall be determined in accordance with Regulations Sections 1.704-2(i)(4) and 1.704-2(j)(2). This Section 10.1(b) is intended to comply with the minimum gain chargeback requirement in Section 1.704-2(i)(4) of the Regulations and shall be interpreted consistently therewith.

(c) Qualified Income Offset. In the event any Member unexpectedly receives any adjustments, allocations or distributions described in Section 1.704-1(b)(2)(ii)(d)(4), (5) or (6) of the Regulations, items of Company income and gain shall be specially allocated to each such Member in an amount and manner sufficient to eliminate, to the extent required by the Regulations, the Adjusted Capital Account Deficit of such Member as quickly as possible, provided that an allocation pursuant to this Section 10.1(c) shall be made only if and to the extent that such Member would have an Adjusted Capital Account Deficit after all other allocations provided for in Articles 4 or 10 have been tentatively made as if this Section 10.1(c) were not in this Agreement. This Section 10.1(c) is intended to comply with the "qualified income offset" requirement in Section 1.704-1(b)(2)(ii)(d) of the Regulations and shall be interpreted consistently therewith.

(d) Gross Income Allocation. In the event any Member has a deficit Capital Account at the end of any Company fiscal year which is in excess of the sum of (i) the amount such Member is obligated to restore pursuant to any provision of this Agreement, and (ii) the amount such Member is deemed to be obligated to restore pursuant to Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5), each such Member shall be specially allocated items of Company income and gain in the amount of such excess as quickly as possible, provided that an allocation pursuant to this Section 10.1(d) shall be made only if and to the extent that such Member would have a deficit Capital Account in excess of such sum after all other allocations provided for in Articles 4 or 10 have been tentatively made as if Section 10.1(d) and Section 10.1(c) hereof were not in this Agreement.

(e) Nonrecourse Deductions. Nonrecourse deductions for any fiscal year shall be allocated among the Members in accordance with their Interests.

(f) Member Nonrecourse Deductions. Any Member Nonrecourse Deductions for any fiscal year shall be specially allocated to the Member who bears the economic risk of loss with respect to the Member Nonrecourse Debt to which such Member Nonrecourse Deductions are attributable in accordance with Regulations Section 1.704-2(i)(1).

(g) Section 754 Adjustments. To the extent an adjustment to the adjusted tax basis of any Company asset pursuant to Code Section 734(b) or Code Section 743(b) is required, pursuant to Regulations Section 1.704-1(b)(2)(iv)(m), to be taken into account in determining Capital Accounts as the result of a distribution to a Member in complete liquidation of his Interest in the Company, the amount of such adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) and such gain or loss shall be specially allocated to the Members in a manner consistent with the manner in which their Capital Accounts are required to be adjusted pursuant to Section 1.704-1(b)(2)(iv)(m) of the Regulations. If a Member so requests, the Company shall file an election under Code Section 754 to adjust the basis of Company assets as provided in the preceding sentence, in the event of a distribution of one or more Company assets or the Transfer of an Interest in the Company. The cost of the Section 754 election (including all accounting fees and expenses) shall be borne by the Member requesting the election.

10.2 Curative Allocations. The Allocations set forth in Section 10.1 hereof (the “Regulatory Allocations”) are intended to comply with certain requirements of the Regulations. It is the intent of the Members that, to the extent possible, all Regulatory Allocations will be offset either with other Regulatory Allocations or with special allocations of other items of Company income, gain, loss or deduction pursuant to this Section 10.2. Therefore, notwithstanding any other provisions of Article 4, the Managers shall make such offsetting special deductions in whatever manner they determine appropriate, so that, after offsetting allocations are made, each Member’s Capital Account balance is to the extent possible, equal to the Capital Account balance such Member would have had if the Regulatory Allocations were not part of this Agreement and all Company items were allocated pursuant to Article 4 hereof. In exercising their discretion under this Section 10.2, the Managers shall take into account future Regulatory Allocations under Section 10.1 that, although not yet made, are likely to offset other Regulatory Allocations previously made under Section 10.1.

10.3 Code Section 704(c). In accordance with Code Section 704(c) and the Regulations thereunder, income, gain, loss, and deduction with respect to any property contributed to the capital of the Company shall, solely for tax purposes, be allocated among the Members so as to take account of any variation between the adjusted basis of such property to the Company for federal income tax purposes and its initial Gross Asset Value.

In the event the Gross Asset Value of any Company asset is adjusted pursuant to Section 2.12 hereof, subsequent allocations of income, gain, loss, and deduction with respect to such asset



shall take account of any variation between the adjusted basis of such asset for federal income tax purposes and its Gross Asset Value in the same manner as under Code Section 704(c) and the Regulations thereunder.

Any elections or other decisions relating to such allocations shall be made by the Members in any manner that reasonably reflects the purpose and intention of this Agreement. Allocations pursuant to this Section 10.3 are solely for purposes of federal, state, and local taxes and shall not affect, or in any way be taken into account in computing Capital Accounts or shares of Profits, Losses, other items, or distributions pursuant to any provision of this Agreement.

10.4 Economic Consistency. The Members intend that the tax allocation provisions of Article 10 shall result in final Capital Account balances of the Members that permit liquidating distributions to be made in accordance with final Capital Account balances under Section 8.3.

The tax allocation provisions of Article 10 shall be applied (and amended) by the Managers, if and to the extent necessary, to produce that result even if those amendments require the amendment of prior tax returns of the Company to do so.

## **ARTICLE 11 BOOKS AND RECORDS**

11.1 Company Books. The Managers shall maintain at the principal office of the Company complete and accurate books of account, in which shall be entered, fully and accurately, each and every transaction of the Company and the records required to be maintained by the Company pursuant to the Act. The books shall be kept according to such generally accepted method of accounting as the Members may select, and the fiscal year of the Company shall be the calendar year. Within ninety (90) days of the end of each fiscal year of the Company, each Member shall be provided with a balance sheet and income statement reflecting such fiscal year's operations. A Schedule K-1 shall be delivered to each Member after the end of each fiscal year of the Company so that each Member may timely file his personal income tax return.

11.2 Inspection of Books. The Members shall each have the right, at their own expense, upon reasonable notice, to examine the books of account of the Company for any reasonable purpose, provided that any such examination shall be conducted during normal business hours and without disruption of the Company's business.

11.3 Checking Accounts. The Company shall maintain a checking account or accounts at such bank or banks as shall be most conducive to the proper conduct of the business of the Company. Checks drawn on any such account shall be valid only when signed by one (1) of the Managers or a managing agent for the Company designated by the Members.

11.4 Tax Matters Manager.

(a) Designation and Authority of the Tax Matters Manager. Brian Staub is designated as the Company's "Tax Matters Manager." The Tax Matters Manager is authorized to

represent the Company in connection with all examinations of the Company's affairs by tax authorities or any administrative or judicial tax proceedings with respect to the Company, and to expend Company funds for professional services and costs associated therewith, and the Company will reimburse the Tax Matters Manager for any such costs or other costs associated with carrying out its role as Tax Matters Manager that it incurs directly. The Tax Matters Manager will have sole discretion to determine whether the Company (either on its own behalf or on behalf of the Members) will contest or continue to contest any tax deficiencies assessed or proposed to be assessed by any tax authority with respect to the Company and whether the Company will make any elections with respect to any tax assessment or proceeding.

(b) To the extent that the Company is an "eligible partnership" (as such term is used in Regulations § 301.6221(b)-1) and is permitted to make an election under Code Section 6221(b) and Regulations § 301.6221(b)-1 (an "Opt-Out Election"), the Company shall make an Opt-Out Election on its federal income tax return for each taxable year of the Company to elect out of the application of the new partnership audit laws and procedures set forth in Subchapter C of Chapter 63 of Subtitle F of the Code, as modified by Section 1101 of the Bipartisan Budget Act of 2015, Pub. L. No. 114-74, and including any successor statutes thereto or Regulations promulgated or official guidance issued thereunder (the "Partnership Audit Procedures").

(c) For each taxable year of the Company for which no Opt-Out Election is made, the Company shall designate, pursuant to Regulations § 301.6223-1 (and any successor Regulations and other applicable guidance) on its United States federal income tax return for each such taxable year of the Company, the Tax Matters Manager as the "partnership representative" for the Company (the "Partnership Representative"), and shall make such corresponding designations under any corresponding provisions of applicable foreign, state, or local tax law. To the extent that the Tax Matters Manager is not an individual, the Tax Matters Manager shall select any Person to serve as its "designated individual" pursuant to the Partnership Audit Procedures. The Tax Matters Manager, in its capacity as the Partnership Representative, shall (i) determine all matters with respect to any examination of the Company by any taxing authority (including, without limitation, the allocation of any resulting taxes, penalties, and interest among the Members and whether to make an election under Code § 6226 (and any similar provision under applicable foreign, state, or local tax law) with respect to any audit or other examination of the Company) and, (ii) notwithstanding anything herein to the contrary, make such elections as it deems appropriate pursuant to the provisions of the Partnership Audit Procedures.

(d) Each Member and former Member agrees to cooperate, and to cause its direct and indirect owners to cooperate, with the Partnership Representative and to do or refrain from doing any or all things reasonably requested by the Partnership Representative with respect to the conduct of any tax proceedings, in each case regardless whether then a Member or after ceasing to be a Member. Any deficiency for taxes imposed on any Member or former Member or its direct or indirect owners (including penalties, additions to tax, or interest imposed with respect to such taxes) will be paid by such Member or former Member or its direct or indirect owners as applicable, and if required to be paid (and actually paid) by the Company, such Member or former

Member shall indemnify the Company for such amounts within thirty days of such payment by the Company, in each case regardless of whether then a Member or after ceasing to be a Member.

(e) At the request of the Partnership Representative, in connection with an adjustment of any item of income, gain, loss, deduction, or credit of the Company or any subsidiary entity in which the Company has an interest, directly or indirectly, each Member and former Member shall, and shall cause its direct and indirect owners, as applicable, to, promptly file one or more amended tax returns in the manner contemplated by Code § 6225(c) (and any Regulations or official guidance relating thereto, and, if applicable, any corresponding or similar provisions under state or local law) and pay any tax due with respect to such returns. If the Partnership Representative makes an election for the Company pursuant to Code § 6226 with respect to an imputed underpayment, each Member and former Member shall, and shall cause its direct and indirect owners, as applicable, to, comply with the requirements under such section (and any Regulations or official guidance relating thereto). At the request of the Partnership Representative, each Member and former Member shall, and shall cause its direct and indirect owners, as applicable, to, provide the Partnership Representative and the Company with any information available to such Member or former Member (or its direct or indirect owners or representatives) and with such representations, certificates, or forms relating to such Member or former Member (or its direct or indirect owners or representatives) and any other documentation, in each case, that the Partnership Representative determines, in its reasonable discretion, are necessary to modify an imputed underpayment under Code § 6225(c) or the Regulations or other official guidance thereunder. In the event that any imputed underpayment is paid or payable by the Company under Code § 6225(a)(1), each Member and former Member shall indemnify the Company in an amount equal to such Member's or former Member's share (as determined by the Partnership Representative with the advice of the Company's tax counsel) of the imputed underpayment and any associated interest and penalties) paid or payable by the Company; provided, however, that the Partnership Representative may determine, in its discretion, to allocate the burden of such amount to such Member without requiring payment by such Member to the Company.

(f) Each Member's obligations to comply with the requirements of this Section 11.4 shall survive the Member's transfer of all or any portion of the Member's interest in the Company, otherwise ceasing to be a Member and/or the termination, dissolution, liquidation, and winding up of the Company, to the extent applicable.

(g) Any Person acting as a Tax Matters Manager, Partnership Representative or designated individual pursuant to this Section 11.4 shall, when acting in such capacity, be deemed to be a Manager for purposes of the Virginia Limited Liability Company Act, and as such their liability shall be eliminated to the same extent as Manager's liability is eliminated under this Agreement and they shall be entitled to indemnification to the same extent as a Manager is entitled to indemnification under this Agreement.

**ARTICLE 12**  
**INDEMNIFICATION AND EXCULPATION OF MANAGERS AND MEMBERS**

12.1 Indemnification. The Managers and the Members shall be indemnified and held harmless by the Company from any liability resulting from any act performed by or omission made by them on behalf of the Company (except for acts or omissions of gross negligence or willful misconduct) to the fullest extent that a director or officer of a stock corporation may be indemnified and held harmless under Chapter 9 of Title 13.1 of the Code of Virginia of 1950, as amended.

12.2 Exculpation. The Managers and the Members shall not be liable to the Company or to any Member for or as a result of any act, omission or error in judgment that was taken, omitted or made by the Managers or the Members in accordance with the standards established by Section 13.1-1024.1 of the Act.

**ARTICLE 13**  
**MISCELLANEOUS**

13.1 Notice. Any notice provided for in this Agreement to a Member shall be deemed given if sent by electronic mail, hand delivery, overnight delivery service, or by registered or certified mail to such Member at the address shown for such Member on the books and records of the Company or at such other address as may have been given in writing to the Company, at its principal office by registered or certified mail, return receipt requested.

13.2 Entire Agreement. This Agreement contains the entire agreement among the parties with regard to the operations of the Company and supersedes any prior understanding and/or written or oral agreements among them respecting the subject matter hereof.

13.3 Severable. In the event any provision of this Agreement shall be held to be invalid or unenforceable, the remaining provisions of this Agreement shall nevertheless remain in full force and effect.

13.4 Governing Law. This Agreement is made in, and shall be governed by, and construed and enforced in accordance with, the laws of the Commonwealth of Virginia.

13.5 Captions. Any title or captions contained in this Agreement are for convenience only, and shall not be deemed a part of the context of this Agreement.

13.6 Interpretation. When the context in which the words are used in this Agreement indicates that such is the intent, words in the singular number shall include the plural and vice versa, and words in the masculine gender shall include the feminine and neuter genders and vice versa.

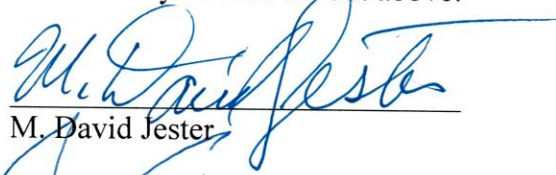
13.7 Successors. This Agreement shall be binding upon the parties hereto, and, if and when assigned in accordance with the provisions hereof, their respective assigns, successors in interest, personal or legal representatives, estates, heirs, and legatees.

13.8 Waiver of Compliance. Any failure of any Member to comply with any obligation, covenant, agreement or condition herein may be waived by other parties hereto, but such waiver or failure to insist upon strict compliance with such obligation, covenant, agreement or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

13.9 Counterparts. This document may be executed in several facsimile counterparts and such counterparts, when taken together, shall be as valid and binding and have the same effect, as if all signatures were original and on one document.

**[SIGNATURE PAGE FOLLOWS]**

WITNESS the following signatures and seals as of the date and year first set out above:



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M. David Jester



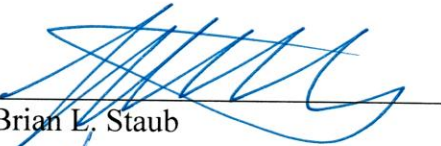
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Scott A. Troutman



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Christian H. Gardner



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Brian L. Staub



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Hussein Easmeil

**EXHIBIT A  
TO  
OPERATING AGREEMENT  
OF  
PEMBROKE SENIOR GP, LLC**

<b><u>MEMBER NAME AND ADDRESS</u></b>	<b><u>INITIAL CAPITAL CONTRIBUTION</u></b>	<b><u>INTEREST</u></b>
M. David Jester 308 35th Street, Suite 101 Virginia Beach, Virginia 23451	\$200.00	20.00%
Scott A. Troutman 308 35th Street, Suite 101 Virginia Beach, Virginia 23451	\$200.00	20.00%
Christian H. Gardner 308 35th Street, Suite 101 Virginia Beach, Virginia 23451	\$200.00	20.00%
Brian L. Staub 308 35th Street, Suite 101 Virginia Beach, Virginia 23451	\$200.00	20.00%
Hussein Easmeil 308 35th Street, Suite 101 Virginia Beach, Virginia 23451	\$200.00	20.00%
	<u>\$1,000.00</u>	<u>100.00%</u>

**OPERATING AGREEMENT  
OF  
PEMBROKE SENIOR DEVELOPERS, LLC**

**THIS OPERATING AGREEMENT** is made as of August 26, 2021, by and among the undersigned persons (collectively, the “Members”).

**WHEREAS**, Pembroke Senior, LP (the “Partnership”) has been established for the purpose of developing, constructing, owning and operating an affordable apartment project for residents 62 years of age or older, located in the City of Hampton, Virginia (the “Project”) to be financed in part by low income housing tax credits pursuant to Section 42 of the Federal Internal Revenue Code (“Tax Credits”) and by tax-exempt bonds; and

**WHEREAS**, the Members have formed a limited liability company under the laws of the Commonwealth of Virginia known as **Pembroke Senior Developers, LLC** (the “Company”); and

**WHEREAS**, the Company will enter into a Development Services Agreement with the Partnership; and

**WHEREAS**, the Members desire to, and do hereby, adopt the provisions of this Operating Agreement as the expression of their mutual undertakings and agreements with respect to the operation of the Company.

**NOW, THEREFORE**, intending to be legally bound, and in consideration of the mutual covenants and conditions set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Members hereby agree as follows:

**ARTICLE 1  
THE COMPANY**

1.1 Organization; Effective Date. The parties have formed the Company pursuant to the Act, as defined below, by filing Articles of Organization with the Virginia State Corporation Commission. The effective date of the formation of the Company is August 26, 2021.

1.2 Name. The name of the Company is Pembroke Senior Developers, LLC, and the business of the Company shall be conducted under that name.

1.3 Principal Office and Records. The principal office of the Company, which will also be the place at which will be kept the records required to be maintained by the Company under the Act, shall be located at 308 35th Street, Suite 101, in the City of Virginia Beach, Virginia 23451, unless such office is changed by action of the Managers pursuant to this Agreement.

1.4 Registered Agent and Registered Office. The initial registered agent of the Company is Timothy O. Trant II, who is a resident of Virginia and a member of the Virginia State Bar and whose post office address is 11815 Fountain Way, Suite 400, Newport News, Virginia 23606, which said address shall also be the registered office of the Company required by the Act.



1.5 Purpose of the Company. The Company has been formed and will be operated for the purpose of developing the Project.

## **ARTICLE 2 DEFINED TERMS**

Certain terms used in this Agreement shall have the following meanings:

2.1 “Act.” The Virginia Limited Liability Company Act, as contained in Chapter 12 of Title 13.1 of the Code of Virginia of 1950, as the same may be amended from time to time.

2.2 “Adjusted Capital Account Deficit.” With respect to any Member, the deficit balance, if any, in such Member’s Capital Account as of the end of the relevant fiscal year, after giving effect to the following adjustments:

(a) Credit to such Capital Account any amount which such Member is obligated to restore under any provision of this Agreement or is deemed to be obligated to restore pursuant to the penultimate sentences of Regulations Sections 1.704-2(g)(1), 1.704-1(b)(2)(ii)(c) and 1.704-2(i)(5); and

(b) Debit to such Capital Account the items described in Sections 1.704-1(b)(2)(ii)(d)(4), (5) and (6) of the Regulations.

The foregoing definition of Adjusted Capital Account Deficit is intended to comply with the provisions of Section 1.704-1(b)(2)(ii)(d) of the Regulations and shall be interpreted consistently therewith.

2.3 “Agreement.” This Operating Agreement as the same may be amended from time to time.

2.4 “Capital Account.” With respect to any Member, the Capital Account maintained for such Member in accordance with Section 3.7.

2.5 “Capital Contributions.” With respect to any Member, the total amount of money or property contributed to the Company with respect to the Company Interest held by such Member. Except as provided in Section 8.5, no in kind contributions of property other than cash shall be accepted by the Company.

2.6 “Code.” The Internal Revenue Code of 1986, as amended.

2.7 “Company.” Pembroke Senior Developers, LLC, a Virginia limited liability company.

2.8 “Company Minimum Gain.” The amount determined under Regulations Sections 1.704-2(b)(2) and 1.704-2(d).

2.9 “Depreciation.” For each fiscal year or other period, an amount equal to the depreciation, amortization or other cost recovery deduction determined for federal income tax

purposes, allowable with respect to an asset for such year or other period, except that if the Gross Asset Value of an asset differs from its adjusted basis for federal income tax purposes at the beginning of such year or other period, Depreciation shall be an amount which bears the same ratio to such beginning Gross Asset Value as the federal income tax depreciation, amortization or other cost recovery deduction for such year or other period bears to such beginning adjusted tax basis.

2.10 “Disability.” shall mean a physical or mental impairment that, in the written opinion of a physician approved or selected by the Managers (in their discretion) to examine a Member, can be expected to continue for at least one (1) year, or actually continues for one (1) year, and would render (or actually renders, as the case may be) the Member unable to perform his or her customary duties as an employee of Marlyn Development Corporation.

2.11 “General Partner.” Pembroke Senior GP, LLC, a Virginia limited liability company, as the general partner of the Partnership.

2.12 “Gross Asset Value.” With respect to any asset, the asset’s adjusted basis for federal income tax purposes (i.e., the initial cost basis for the asset adjusted for various tax-related items such as depreciation, capital investment, etc.), except as follows:

(a) The initial Gross Asset Value of any asset contributed by a Member to the Company shall be the gross fair market value of such asset, as determined by the contributing Member and the Company;

(b) The Gross Asset Values of all Company assets shall be adjusted to equal their respective gross fair market values, as determined by the Members, as of the following times: (i) the acquisition of an additional Interest in the Company by any new or existing Member in exchange for more than a de minimis Capital Contribution; (ii) the distribution by the Company to a Member of more than a de minimis amount of Company property as consideration for an Interest in the Company if the Members reasonably determine that such adjustment is necessary or appropriate to reflect the relative economic interests of the Members in the Company; and (iii) the liquidation of the Company within the meaning of Regulations Section 1.704-1(b)(2)(ii)(g);

(c) The Gross Asset Value of any Company asset distributed to any Member shall be the gross fair market value of such asset on the date of distribution; and

(d) The Gross Asset Values of Company assets shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such assets pursuant to Code Section 734(b) or Code Section 743(b), but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Regulation Section 1.704-1(b)(2)(iv)(m); provided, however, that Gross Asset Values shall not be adjusted pursuant to this Section 2.12(d) to the extent the Members determine that an adjustment pursuant to Section 2.12(b) is necessary or appropriate in connection with such transaction.

If the Gross Asset Value of an asset has been determined, or adjusted pursuant to Section 2.12(a), 2.12(b) or 2.12(d) hereof, such Gross Asset Value shall thereafter be adjusted by the Depreciation taken into account with respect to such asset for purposes of computing Profits and Losses.

2.13 “Interest.” When used in the context of a specific percentage of profits, losses, capital or other items to be allocated or a percentage of distributions to be made, Interest means the percentage ownership interest of a Member (or a non-Member assignee or successor in interest thereof as may be provided for in this Agreement) in the Company at any particular time as set forth on Exhibit A. In other contexts, “Interest” means all proprietary rights of the Member in the Company, including, without limitation, his Interest and his rights to profits, losses, distributions, and capital.

2.14 “Majority in Interest.” Members holding more than fifty percent (50%) of the “Relevant Interests in the Company” (as hereinafter defined), including both profits and capital interests calculated separately. The “Relevant Interests in the Company” shall in all instances be the aggregate Interests of all of the Voting Members of the Company, except in the following cases:

(a) When written consent of “other Members” is required prior to Transfer of a Member’s Interest pursuant to Article 7 of this Agreement, the “Relevant Interests in the Company” shall be aggregate Interests of all Voting Members of the Company excluding the Interest which is the subject of the Transfer.

(b) When written consent of “remaining Members” is required in order to elect to continue the Company following an event causing dissolution pursuant to Article 8 of this Agreement, the “Relevant Interests in the Company” shall be the aggregate Interests of all the remaining Voting Members of the Company.

For purposes of this Section 2.14, profits interests are those Interests defined in Section 2.13 and capital interests, as of any date, are the ratios (expressed as a percentage) of each Member’s Capital Account to the aggregate Capital Accounts of all relevant Members.

2.15 “Managers.” A person or persons appointed pursuant to Section 6.1, and any person or entity appointed as successor managers under this Agreement.

2.16 “Member Minimum Gain.” An amount, with respect to each Member Nonrecourse Debt, equal to the Company Minimum Gain that would result if such Member Nonrecourse Debt were treated as Nonrecourse Debt, determined in accordance with Section 1.704-2(i)(3) of the Regulations.

2.17 “Member Nonrecourse Debt.” A nonrecourse debt of the Company as set forth in Section 1.704-2(b)(4) of the Regulations.

2.18 “Member Nonrecourse Deductions.” The deductions defined in Section 1.704-2(i)(1) and 1.704-2(i)(2) of the Regulations.

2.19 “Members.” The Members of this Company. All references in this Agreement to a specified percentage of the Members shall mean Members holding the specified percentage of all the Interests then held by the Members.

2.20 “Nonrecourse Debt.” The same as the term “nonrecourse liability” used in Section 1.704-2(b)(3) of the Regulations.

2.21 “Nonrecourse Deductions.” The deductions defined in Section 1.704-2(b)(1) of the Regulations.

2.22 “Non-voting Member.” A Member owning less than 8% of the Interest in the Company.

2.23 “Partnership.” Pembroke Senior, LP, a Virginia limited partnership.

2.24 “Partnership Agreement.” The Agreement of Limited Partnership of the Partnership, as the same may be amended.

2.25 “Person.” Any individual, partnership, corporation, trust, or other entity.

2.26 Prime Rate. The prime rate (or base rate) reported in the “Money Rates” column or section of The Wall Street Journal as being the base rate on corporate loans at larger U.S. Money Center banks on the first date on which The Wall Street Journal is published in each month. In the event The Wall Street Journal ceases publication of the Prime Rate, then the “Prime Rate” shall mean the “prime rate” or “base rate” announced by the bank with which the Company has its principal banking relationship (whether or not such rate has actually been charged by that bank). In the event that bank discontinues the practice of announcing that rate, Prime Rate shall mean the highest rate charged by that bank on short-term, unsecured loans to its most credit-worthy large corporate borrowers.

2.27 “Profits” and “Losses.” For each fiscal year or other period, an amount equal to the Company’s taxable income or loss for such year or period, determined in accordance with Code Section 703(a) (for this purpose, all items of income, gain, loss, or deduction required to be stated separately pursuant to Code Section 703(a)(1) shall be included in taxable income or loss), with the following adjustments:

(a) Any income of the Company that is exempt from federal income tax and not otherwise taken into account in computing Profits or Losses pursuant to this Article 2 shall be added to such taxable income or loss;

(b) Any expenditures of the Company described in Code Section 705(a)(2)(B) or treated as Code Section 705(a)(2)(B) expenditures pursuant to Regulations Section 1.704-1(b)(2)(iv)(i), and not otherwise taken into account in computing Profits or Losses pursuant to this Section 2.27 shall be subtracted from such taxable income or loss;

(c) In the event the Gross Asset Value of any Company asset is adjusted pursuant to Section 2.12(b) or Section 2.12(c) hereof, the amount of such adjustment shall be taken into account as gain or loss from the disposition of such asset for purposes of computing Profits or Losses;

(d) Gain or loss resulting from any disposition of property with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the Gross Asset Value of the property disposed of, notwithstanding that the adjusted basis of such property differs from its Gross Asset Value;

(e) In lieu of the depreciation, amortization, and other cost recovery deductions taken into account in computing such taxable income or loss, there shall be taken into account Depreciation for such fiscal year or other period, computed in accordance with Section 2.9 hereof;

(f) To the extent an adjustment to the adjusted tax basis of any Company asset pursuant to Code Section 734(b) or Code Section 743(b) is required pursuant to Regulations Section 1.704-1(b)(2)(iv)(m)(4) to be taken into account in determining Capital Accounts as a result of a distribution other than in complete liquidation of a Member's Interest, the amount of such adjustment shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases the basis of the Asset) from the disposition of the asset and shall be taken into account for purposes of computing Profits or Losses; and

(g) Notwithstanding any other provision of this Article 2, any items which are specially allocated pursuant to Section 10.1 or Section 10.2 hereof shall not be taken into account in computing Profits or Losses.

2.28 "Regulations." The Income Tax Regulations, including Temporary Regulations, promulgated under the Code, as amended from time to time.

2.29 "Substituted Member." Any person or entity admitted to the Company as a Member pursuant to Section 7.4 hereof.

2.30 "Transfer." Any sale, assignment, gift, bequest, disposition, exchange, pledge, encumbrance or other transfer of any kind or description and however made, whether voluntary or involuntary, by death, by divorce, by court decree, operation of law, or otherwise, to include without limitation, any change of ownership in or control of the owner of any Interest in the Company (such as (a) the transfer of membership interest in or stock in an entity which owns Interest in the Company, or (b) the change of the beneficiaries of a trust which owns Interest in the Company).

2.31 "Voting Member." A Member owning 8% or more of the Interest in the Company.

2.32 "Withdrawal Event." The Termination, death, dissolution, or bankruptcy of a Non-voting Member, or as may otherwise be provided in this Agreement.

2.34 "Withdrawing Member." A Member (or his/her successor in interest) with respect to whom a Withdrawal Event relates.

### **ARTICLE 3 INTERESTS OF MEMBERS AND CAPITAL CONTRIBUTIONS**

3.1 Interests of Members and Initial Capital Contributions. The names of the Members, the Interests belonging to each of them, and the initial Capital Contribution of each Member are set forth on Exhibit A. Unless approved in writing in advance by the Managers, only individuals may be Members or Substituted Members of the Company. Accordingly, partnerships, limited liability companies, corporations, trustees/trusts and other forms of ownership may not be Members or Substituted Members of the Company without the prior written consent of the Managers.

3.2 Additional Capital Contributions. The Members shall not be required to make any additional Capital Contributions to the Company except upon the written call of the Managers, specifying the amount of the additional Capital Contribution and the specific purpose for which such additional Capital Contribution shall be used, which purpose must be to satisfy the obligations of the Company to the Partnership or as may otherwise be determined by the Managers. Any such additional Capital Contribution shall be in proportion to each Member's Interest in the Company.

(a) The Managers shall have the right to borrow funds to cover any call for capital made under this Section to which a Member has not responded, and such amount borrowed shall not be deemed a Capital Contribution to the Company but, rather, a debt due by any Member (an "Indebted Member") who has failed to contribute his pro rata share directly to the Company.

(b) Any advance of money to the Company by a Member in response to a call for capital or otherwise, and which advance is in excess of that Member's pro rata share of the funds called for, shall not be deemed a Capital Contribution to the Company but, rather, a debt due by an Indebted Member to the Member who has made such advance (a "Lending Member").

(c) Any debt incurred by an Indebted Member shall be payable on demand, or at such other time as the Managers (in the case of a debt incurred pursuant to Section 3.2(a)) or Lending Member (in the case of a debt incurred pursuant to Section 3.2(b)) shall designate and shall bear interest at the rate of 3% plus the Prime Rate; provided, however such rate shall not be higher than the highest rate permitted between contracting parties under the usury laws of Virginia.

(d) So long as the debt of any Indebted Member is outstanding, all distributions to which such Indebted Member would otherwise be entitled shall be distributed to the Company or to the Lending Member to whom such Indebted Member is indebted, to be applied to the reduction of such indebtedness, first to interest and then to principal.

(e) If any indebtedness is not paid in full within thirty (30) days after proper demand for the payment thereof, the Company or any Lending Member shall have all of the rights and remedies, at law or in equity, which a creditor may have against a debtor, which rights and remedies shall not be stayed or abated on account of the fact that the Company's affairs have not been wound up, nor shall such Lending Member's rights be limited to having an accounting of the Company's affairs.

(f) If any indebtedness incurred pursuant to Section 3.2(b) is not paid in full within thirty (30) days after proper demand for the payment thereof, any Lending Member shall have the option to elect, by written notice to the Indebted Member and to the Company, at any time prior to the full payment of such indebtedness, that the Indebted Member shall be deemed to have transferred all of his Interest in the Company to the Lending Member, or if there is more than one Lending Member, to such Lending Member in proportion to the indebtedness due such Lending Member by the Indebted Member, and such transfer of Interest shall be in lieu of the remedies available under Section 3.2(e) and shall constitute full payment of all monies due in respect of the debt to such Lending Member.

(g) In the event the Company or any Lending Member elects to pursue his rights and remedies against the Indebted Member, the Indebted Member shall pay the Company's or such

Lending Member's reasonable attorney's fees and court costs incurred in addition to the amount of the aforesaid indebtedness.

3.3 Interest. No interest shall be paid on any Capital Contribution.

3.4 Withdrawals. Except as otherwise provided in this Agreement, no Member shall resign from the Company or make any withdrawals therefrom without the consent of the Managers. Under circumstances requiring a return of any Capital Contribution, no Member shall have the right to receive property other than cash except as may be specifically provided in Article 8.

3.5 Limited Liability. No Member shall be liable for the debts, liabilities, contracts or any other obligations of the Company. Except as otherwise provided by applicable state law, a Member shall be liable only to make any additional Capital Contributions which are called for strictly in accordance with the provisions of Section 3.2. The Managers shall not have any personal liability for the repayment of any Capital Contributions of any Member. No person not a party to this Agreement shall be deemed a third party beneficiary hereof, and no such person shall have the right to enforce any provision of this Agreement against any Member.

3.6 Guaranty of Company Obligations. Upon the request of the Managers, each Voting Member shall be required to provide his personal guaranty to any lender, or other party designated by the Managers that (a) is financing the Company's and/or the Partnership's indebtedness for borrowed money, and/or (b) otherwise requires such assurance as consideration for its business relationship with the Company and/or the Partnership (collectively, the "Guaranteed Obligations"). If a Member is subsequently called upon by such person or other creditor holding such Guaranteed Obligations to pay on his guaranty and accordingly does so such Member shall be deemed a Lending Member and shall be entitled to indemnification from the other Members for the amount by which the portion of the Guaranteed Obligations that the Lending Member actually pays exceeds his share of the Guaranteed Obligations then being paid out of the personal funds of all Members ("Discharged Guaranteed Obligations"). (A Member's "share" of the Guaranteed Obligations or Discharged Guaranteed Obligations, as the case may be, shall be determined by multiplying (i) the Interest then held by such Member, by (ii) the amount of Guaranteed Obligations or Discharged Guaranteed Obligations, as the case may be.) Any and all other Members shall be deemed Indebted Members and shall, within thirty (30) days of the Lending Member's demand therefor, indemnify and reimburse any Lending Member who has paid more than his respective share of Discharged Guaranteed Obligations such amount(s) (up to the Indemnifying Members' respective shares of Discharged Guaranteed Obligations) as shall cause each of the Lending Members and the Indebted Members to bear his respective share of the Discharged Guaranteed Obligations. Interest shall accrue on the amount owed at the rate of 3% plus the Prime Rate in effect from time to time (but not higher than the maximum rate legally permitted). Thereafter, any Indebted Member that does not reimburse the Lending Member for his proportionate share of the Discharged Guaranteed Obligations, shall be subject to the sanctions and remedies set forth in Section 3.2 in the same manner as a Lending Member would have against an Indebted Member thereunder, which provisions shall apply as though the Lending Member's excess payment under this Section 3.6 were a payment in excess of his pro rata share of the funds called for under Section 3.2.

### 3.7 Capital Accounts.

(a) A Capital Account shall be established and maintained for each Member. A Member shall have a single Capital Account, regardless of class of Interests owned by such Member and regardless of the time or manner in which such Interests were acquired.

(b) To each Member's Capital Account there shall be credited such Member's Capital Contributions, such Member's distributive share of Profits and any items in the nature of income or gain which are specially allocated pursuant to Article 10 hereof, and the amount of any Company liabilities assumed by such Member or which are secured by any property distributed to such Member.

(c) To each Member's Capital Account there shall be debited the amount of cash and the Gross Asset Value of any property distributed to such Member pursuant to any provision of this Agreement, such Member's distributive share of Losses and any items in the nature of expenses or losses which are specially allocated pursuant to Article 10 hereof, and the amount of any liabilities of such Member assumed by the Company or which are secured by any property contributed by such Member to the Company.

(d) In the event all or a portion of an Interest in the Company is transferred in accordance with the terms of this Agreement, the transferee shall succeed to the Capital Account of the transferor to the extent it relates to the transferred Interest.

(e) In determining the amount of any liability for purposes of Sections 3.7(b) and 3.7(c) hereof, there shall be taken into account Code Section 752(c) and any other applicable provisions of the Code and Regulations.

The foregoing provisions and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Regulations Section 1.704-1(b), and shall be interpreted and applied in a manner consistent with such Regulations. In the event the Members shall determine that it is prudent to modify the manner in which the Capital Accounts, or any debits or credits thereto (including, without limitation, debits or credits relating to liabilities which are secured by contributed or distributed property or which are assumed by the Company or Member), are computed in order to comply with such Regulations, the Members may make such modification, provided that it is not likely to have a material effect on the amounts distributable to any Member pursuant to Article 8 hereof upon the dissolution of the Company. The Members also shall (i) make any adjustments that are necessary or appropriate to maintain equality among the Capital Accounts of the Members and the amount of Company capital reflected on the Company's balance sheet, as computed for book purposes, in accordance with Regulations Section 1.704-1(b)(2)(iv)(g), and (ii) make any appropriate modifications in the event unanticipated events might otherwise cause this Agreement not to comply with Regulations Section 1.704-1(b).

## **ARTICLE 4 PROFITS AND LOSSES**

After giving effect to the allocations set forth in Article 10 hereof, Profits and Losses for any fiscal year shall be allocated among the Members in proportion to their respective Interests.



The Losses allocated shall not exceed the maximum amount of Losses that can be allocated without causing any Member to have an Adjusted Capital Account Deficit at the end of any fiscal year.

## **ARTICLE 5 DISTRIBUTIONS**

5.1 Distributions Generally. All distributions, other than in connection with the winding up of the Company subject to Article 8, shall be made in cash and shall be divided among the Members in accordance with their respective Interests as set forth in Exhibit A, subject to Sections 3.2 and 3.6. Distributions shall be made from time to time in such amounts and at such times as the Managers may determine; provided, however, that the aggregate amount of each such distribution shall be that amount which the Managers determine is not required to be retained by the Company to meet the reasonably foreseeable cash requirements and needs of the business and activities of the Company and to establish an adequate reserve for the payment of Company liabilities and contingencies.

## **ARTICLE 6 MANAGEMENT**

6.1 Managers. The Company's business shall be managed by the Managers, who initially shall be M. David Jester, Scott A. Troutman and Brian L. Staub. Upon the death, resignation, or removal of any of the Managers, the Voting Members holding a Majority in Interest may elect a successor or successors as they may determine from time-to-time, provided there is always at least one Manager. A Manager need not be a Member of the Company. One or more Managers shall be entitled to receive a fee or other compensation for serving as Manager of the Company as the Managers may determine from time to time. Additionally, they may charge the Company for all expenses reasonably incurred by them directly in connection with Company business, not including office or other overhead, salaries of administrative personnel, etc. Voting Members shall have the right to remove a Manager at any time for any reason by two-thirds (2/3rds) vote of the Relevant Interests in the Company.

6.2 Management of the Company. Except as provided below, the Managers shall have full charge of the management, conduct and operation of the Company business in all respects and all matters and shall have the authority to do all things and acts of every nature whatever, not illegal or contrary to the provisions of this Agreement, which the Managers shall deem necessary or convenient to achieve the purposes of this Agreement and of the Company. Unless otherwise provided herein, decisions of the Managers shall be based upon a majority vote of the Managers without requirement for notice or meeting, each Manager having one (1) vote. Notwithstanding the foregoing, any decision or action of the Managers that entails the (i) expenditure of Company resources, or (ii) Company incurring an obligation, which equates to an amount greater than \$25,000.00 shall require the signature of two (2) Managers (but only if there is more than one Manager) or a written consent of a majority of the Managers.

6.3 Proportionate Voting. On any matter requiring action by the Members, only the Voting Members shall be entitled to vote, which Voting Members shall vote in proportion to their respective Interests in the Company as set forth in Exhibit A attached hereto relative to the total of the Interests of all Voting Members.

6.4 Authority of Members; Indemnity. Except as otherwise expressly provided in this Agreement, the Members shall take no part in the operation, management, conduct or control of the property of the Company, and shall have no right or authority, either expressed or implied, to act for or bind the Company, without the prior written authorization of the Managers. If any Member shall, without authority, bind or attempt to bind the Company, such Member shall indemnify the Company for any loss suffered or expense incurred by the Company in connection therewith.

6.5 Meetings of the Members. Meetings of the Members may be held by in person, telephonically, electronically, or by any other means deemed appropriate by the Managers on not less than twenty-four (24) hours advance notice to all of the Members. Any action required or permitted to be taken at a meeting of the Members, after not less than twenty-four (24) hours advance notice to all of the Members of the action to be taken, may be taken without a meeting if the action is taken by Members holding a Majority in Interests. Such action without meeting shall be evidenced by one or more written consents to be filed with the Company's records.

6.6 Dealing with Affiliates. The Managers, in their discretion, may engage on behalf of the Company any person, firm or corporation in which they, any Member, or any Affiliate thereof may have an interest, at reasonable and competitive rates of compensation for the performance of any and all services or purchase of goods or other property which may at any time be necessary, proper, convenient, or advisable in carrying on the business and affairs of the Partnership or disposing of some or all of its assets; provided, that the compensation or price therefor shall not exceed those prevailing in arm's length transactions by others rendering similar services in comparable transactions as an on-going activity in the same geographical area. For purposes of this Agreement, an Affiliate shall be with respect to a specified person (1) any person that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with the specified person, (2) any person that is an officer of, partner in, or trustee of, or serves in a similar capacity with respect to, the specified person or of which the specified person is an officer, partner or trustee, or with respect to which the specified person serves in a similar capacity, (3) any person that, directly or indirectly, is the beneficial owner of 10% or more of any class of equity securities of, or otherwise has a substantial beneficial interest in, the specified person or of which the specified person is directly or indirectly the owner of 10% or more of any class of equity securities or in which the specified person has a substantial beneficial interest and (4) any spouse or lineal descendant of the specified person.

## **ARTICLE 7 ASSIGNMENT OF INTERESTS**

### 7.1 In General.

(a) No person shall be considered a Member unless named in this Agreement, or unless admitted to the Company as a Substituted Member as provided in this Agreement. No Member, Substituted Member, or assignee or other successor in interest thereto shall, except as provided below, Transfer any Interest in the Company without the prior written consent of the Managers. The Company, the Managers, each Member and any other person having business with the Company need only deal with Members or Substituted Members. They shall not be required to deal with any person by reason of any Transfer by a Member, except as otherwise provided in

this Agreement. As provided in Section 3.1, unless approved in writing in advance by the Managers, only individuals may be Members or Substituted Members of the Company. Partnerships, limited liability companies, corporations, trustees/trusts and other forms of ownership may not be Members or Substituted Members of the Company without the prior written consent of the Managers. Notwithstanding any other provision of this Agreement, the Members of the Company have determined that, unless approved in writing by the Managers in advance, (i) the identity of the owners and the amount of each owner's Interest in the Company shall be identical to the ownership of the General Partner, and (ii) except for the Transfer of Interests between Members, no Transfer of Interest in the Company shall result in a division of the Interest owned by the transferor (i.e., no Transfer of Interest shall be for less than 100% of the Interest owned by such transferor, and such Transfer of Interest may only be to a single individual, trust, or limited liability company). Accordingly, unless approved in writing by the Managers in advance, no Transfer of Interest in the Company shall be made independent of the corresponding interest in the General Partner and each Transfer of Interest in the Company shall automatically trigger the identical Transfer of the corresponding interest in the General Partner. Any purported Transfer that violates the terms of this Section 7.1 shall be void ab initio. Any legal expense incurred in enforcing the foregoing provisions may be offset by the Company against any distribution to which the purported assignor or assignee may otherwise be entitled. In the absence of the substitution of a Member for an assigning, deceased or terminated Member, any payment to a Member, or to his successors, executors or administrators, shall acquit the Company of all liability to any other person who may be interested in such payment by reason of an assignment by the Member or by reason of his death or termination.

(b) Upon the death or termination of a Voting Member, the estate, executor(s), administrator(s), personal legal representative(s), trustee(s), designated transfer on death beneficiary(ies), or other successor in interest of such Member, as determined under applicable law, may succeed to such Member's Interest in the Company as an assignee in accordance with the provisions of Section 7.1(e) below; provided such Transfer of Interest is (i) to another Member, and/or (ii) for 100% of the Interest owned by such Member (excluding any Transfer of Interest to an existing Member or Members), and to a single individual, trust, or limited liability company. Any purported Transfer of Interest upon the death or dissolution of a Member or upon the death or dissolution of an assignee or other successor in interest to a Member, that is not (1) to another Member, and/or (2) for 100% of the Interest owned by such Member or assignee or other successor in interest to a Member (excluding any Transfer of Interest to an existing Member or Members), and to a single individual, trust, or limited liability company, unless cured to the satisfaction of the Managers within 90 days after receipt by each such successor in interest of notice thereof from a Manager, shall be considered a Withdrawal Event.

(c) If a Voting Member or an assignee thereof or other successor in interest thereto desires to sell all or any portion of his Interest (an "Offeror"), then such Offeror may do so; provided (i) any such sale and resulting Transfer is subject to the terms of this Agreement, (ii) such sale is subject to the satisfaction of, in the Managers' discretion, any approvals required by creditors of the Company or the Partnership, including any conditions of such approvals, and (iii) before making any such sale, the Offeror must first give the other Voting Members notice (with a copy to the Managers), specifying in writing the price, conditions and terms upon which the Offeror is willing to sell such Interest. The other Voting Members shall have the option to purchase all of the offered Interest upon the conditions and terms set forth in the notice and for a price which

is the lesser of that contained in the notice or the amount determined by the Purchase Price Calculation (“hereinafter defined”), in the manner described below:

(i) The other Voting Members shall have thirty (30) days from the date of the notice within which to elect to purchase all of the offered Interest. The option may be exercised by giving notice to the Offeror and Managers within such thirty (30) day period. If more than one Voting Member elects to purchase the Offeror’s Interest, then such Voting Members may purchase the offered Interests in proportions that their respective Interests bear to the aggregate Interests of all purchasing Voting Members, unless they otherwise agree. The closing of the purchase shall be not more than ninety (90) days from the date of the notice from the Offeror.

(ii) If the Voting Members do not elect to purchase all of the offered Interests, then the Offeror may sell such Interest, to which the Voting Members have not committed, at a price not below nor upon other terms more advantageous to the purchaser than the price and terms contained in the notice from the Offeror. If such sale is not made and consummated within ninety (90) days after the date of the notice from the Offeror, the Offeror may not thereafter sell or otherwise dispose of any of his Interest without again complying with this Section.

(d) A Non-Voting Member may sell all or any portion of his Interest to another Member or Members of the Company for an amount equal to that determined by the Purchase Price Calculation; provided (i) any such sale and resulting Transfer is subject to the terms of this Agreement, (ii) such sale is subject to the satisfaction of, in the Managers’ discretion, any approvals required by creditors of the Company or the Partnership or by a limited partner, including any conditions of such approvals, and (iii) before making any such sale, such Non-Voting Member must first give notice to all other Members (with a copy to the Managers). The other Members shall have thirty (30) days from the date of the notice within which to elect to purchase all of the offered Interest. The option to purchase may be exercised by giving notice to such Non-Voting Member and the Managers within such thirty (30) day period. If more than one Member elects to purchase such Non-Voting Member’s Interest, then such Members may purchase the offered Interests in proportions that their respective Interests bear to the aggregate Interests of all purchasing Members, unless they otherwise agree. The closing of the purchase shall be not more than ninety (90) days from the date of the notice from such Non-Voting Member.

(e) Notwithstanding any other provision of this Agreement, unless and until established as a Substituted Member in accordance with the terms of this Agreement, the assignee of or other successor in interest to any Interest in the Company shall not be a Member and shall only be entitled to receive the share of the profits or other distributions, or the return of the contribution, to which his or her assignor or predecessor in interest would otherwise be entitled, but shall otherwise be subject to the terms, conditions and restrictions of this Agreement as if a Member, to include without limitation the obligation to make capital contributions as may be called for in accordance with the terms of this Agreement. Notwithstanding any other provision of this Agreement, as a condition to the right to receive any distribution or payment hereunder, the assignee of or other successor in interest to any Interest in the Company shall, within ten (10) days after notice of demand from any Manager, execute a written agreement(s) satisfactory to the Manager(s) acknowledging, among other things, that such assignee of or other successor in interest to any Interest in the Company shall be bound by the obligations, conditions and restrictions of this Agreement as the same applies to Members.

(f) The Transfer of any Interest to a Voting Member in accordance with the terms of this Agreement from a Non-Voting Member or a non-Member owner (such as the assignee of or a successor in interest of a Member that has not been admitted as a Substituted Member) shall accrue to such Voting Member as voting Interest.

7.2 No Encumbrance. No Member shall subject his Interest to any lien, charge, encumbrance, mortgage, security interest or similar rights of others, without the prior written consent of all other Members.

7.3 Transfer of Right to Distributions. Notwithstanding the foregoing, during his life, a Member may assign, in whole or in part, his rights to receive Company distributions, with the consent of the Managers.

7.4 Procedure for Substitution of Assignee as Member.

(a) No assignee of the whole or any portion of a Member's Interest in the Company shall become a Substituted Member unless:

(i) The assignor transfers such Interest to the assignee in accordance with the terms of this Agreement and in such a manner as not to preclude the option for assignee to become a Substituted Member;

(ii) The assignee pays to the Company all costs and expenses (including attorney's fees) incurred in connection with such substitution;

(iii) The assignee executes and acknowledges, in form and substance satisfactory to the Managers, all instruments which the Managers shall deem necessary or desirable to effectuate such substitution and to confirm the agreement of the assignee to be bound by all the terms and provisions of this Agreement;

(iv) The assignee obtains the written consent of the Managers; and

(v) The assignee shall, as a condition of holding such Interest, within thirty (30) days after notice of demand from the Managers, (A) obtain the approval, as a full substitute guarantor, from any creditor of the Company and/or other party designated by the Managers which has been given a personal guarantee of Guaranteed Obligations by the Member for which the assignee would be the successor in Interest, and (B) execute a written agreement(s) satisfactory to the Managers and such creditor(s) or other party acknowledging that such assignee shall be bound by, and take the applicable Interests subject to, the obligations, conditions and restrictions of such guarantee.

(b) An assignee who does not become a Substituted Member has no right to require any information or account of the Company transactions or to inspect the Company books. He shall only be entitled to receive the share of the profits or other distributions, or the return of the contribution, to which his assignor would otherwise be entitled. The failure or refusal of the Members to grant consent to the substitution of an assignee as a Member shall not prevent the assignee from receiving Company distributions attributable to the assigning Member, even though such assignee shall not be deemed to be a Member, provided (i) the assignee has properly received

such assignment pursuant to the terms of this Agreement, (ii) the instrument of assignment is in form and substance satisfactory to the Managers and assignee has complied with all other applicable provisions of this Agreement, (iii) a duly executed and acknowledged counterpart of such instrument is filed with the Company, and (iv) the assignee is not, except as otherwise provided below, a person below the age of eighteen (18) years or a person theretofore adjudged to be incompetent. Any attempted assignment to a person below the age of eighteen (18) years or to a person theretofore adjudged to be incompetent shall be void and ineffectual and shall not bind the Company except to the extent such assignment is duly made to a trustee, guardian, custodian or personal representative for the assignee.

7.5 Distributions and Allocations in Respect to Transferred Interests. If any Interest in the Company is Transferred during any fiscal year in compliance with the provisions of this Agreement, all items of Profit and Loss, each item thereof and all other items attributable to such Interest in the Company for such fiscal year shall be divided and allocated between the transferor and the transferee by taking into account their varying interests during the fiscal year in accordance with Code Section 706(d), using any conventions permitted by law and selected by the Managers. All distributions on or before the date of such Transfer shall be made to the transferor, and all distributions thereafter shall be made to the transferee. Solely for purposes of making such allocations and distributions, the Company shall recognize such Transfer not later than the end of the calendar month during which it is given notice of such Transfer, provided that if the Company does not receive a notice stating the date such Interest in the Company was Transferred and such other information as the Managers may reasonably require within thirty (30) days after the end of the fiscal year during which the Transfer occurs, then all of such items shall be allocated, and all distributions shall be made, to the party who was the owner of the Transferred Interest, according to the books and records of the Company, on the last day of the fiscal year during which the Transfer occurred. Neither the Company nor the Managers shall incur any liability for making allocations and distributions in accordance with the provisions of this Section 7.5, whether or not the Company or the Managers has knowledge of any Transfer of ownership of any Interest in the Company.

7.6 Forfeiture of Non-Voting Member Interest. The Non-Voting Members acknowledge that they have received the opportunity to become Members of the Company as a result of their service as employees of Marlyn Development Corporation (“Marlyn”). Therefore, each Non-Voting Member who is a Marlyn employee at the time he acquires such Interest in the Company agrees that, in the event of his Termination, his Interest as a Member will be deemed automatically transferred without compensation to the Voting Members of the Company at that time (pro rata, in accordance with their relative amounts of Interests) according to the following schedule:

<b><u>Termination Occurs</u></b>	<b><u>Percentage Forfeited</u></b>
Any time prior to or during the first 3 years after the “Determinative Date” (defined below)	100%
During the 4 <sup>th</sup> year after the Determinative Date	66 2/3%
During the 5 <sup>th</sup> year after the Determinative Date	33 1/3%

“Termination” shall mean ceasing to be an employee of Marlyn for any reason other than (i) Disability, (ii) death or (iii) retirement after 20 years of service to Marlyn or reaching the age of 62, if sooner.

The “Determinative Date” shall be the later of (A) the placed in service date of the Project, or (B) the date such Non-Voting Member became a Member of the Company.

Each Non-Voting Member hereby irrevocably appoints each Manager, any of whom may act, as his attorney-in-fact, which appointment shall not expire upon such Non-Voting Member’s disability, for the specific purpose of executing such documents as the Managers deem necessary to memorialize the foregoing forfeiture. After 5 years from the Determinative Date, Non-Voting Members’ Interests in the Company shall no longer be subject to the forfeiture of their Interest provided in this Section 7.6.

7.7 Withdrawing Member. A Withdrawing Member shall cease to be a Member as of the effective date of the applicable Withdrawal Event and such Withdrawing Member shall cease to have any rights or privileges, but (a) such Withdrawing Member shall not be released or discharged from any of the obligations of a Member under the provisions of this Agreement, unless provided otherwise by the written consent of the Managers, and (b) such Withdrawing Member shall be entitled to continue to receive his share of the profits or other distributions of the Company unless and until such Withdrawing Member’s Membership Interest is purchased as provided in Section 7.8.

7.8 Purchasing of Withdrawing Member’s Membership Interest.

(a) After the occurrence of a Withdrawal Event, the Company and/or the Voting Members shall have the option to purchase all of the Withdrawing Member’s Interest at a price determined as set forth below. The Company’s option shall be exercised by written notice to the Withdrawing Member or his successor in interest, as the case may be, given within thirty (30) days after the Managers provide notice to the Members of the Withdrawal Event; provided, the closing of such purchase shall not occur until the purchase price of the Withdrawing Member’s Interest has been determined as set forth below. If the Company does not so exercise its option within such time period, any or all of the Voting Members may exercise their option by giving written notice thereof to the Withdrawing Member or his successor in interest and the Managers at any time after the first to occur of (i) the expiration of the Company’s option or (ii) the Company giving written notice that it declines to exercise its option. In the event that more than one Voting Member desires to purchase the Withdrawing Member’s Interest, such Interest and associated purchase price shall be divided among such Voting Members proportionate to the percentage that each of such Voting Member’s Interest represents to the aggregate of all such Voting Members’ Interest.

(b) Upon the exercise of any option under Section 7.8(a), the Company shall promptly determine the purchase price of the Withdrawing Member’s Interest. Except as otherwise provided in Section 7.6, the purchase price for a Withdrawing Member’s Interest shall be calculated as indicated below (the “Purchase Price Calculation” or “PPC”):

(i) If DSCR less than 1.15, then  $PPC = ((85\% \times EV) \times PSD) \times I$

- (ii) If DSCR of 1.15 to 1.25, then  $PPC = ((90\% \times EV) \times PSD) \times I$
- (iii) If DSCR of 1.26 to 1.35, then  $PPC = ((95\% \times EV) \times PSD) \times I$
- (iv) If DSCR greater than 1.35, then  $PPC = (EV \times PSD) \times I$

“DSCR” means the debt service coverage ratio of the Partnership as determined by the Managers.

“EV” means the estimated fair market value of the Company as determined by the Managers.

“PSD” means a 80% in order to reflect a 20% private sale discount.

“I” means the percentage Interest proposed for sale

(c) Each Withdrawing Member hereby irrevocably appoints each Manager, any of whom may act, as his attorney-in-fact, which appointment shall not expire upon such Member’s disability, for the specific purpose of executing such documents as the Managers deem necessary to memorialize any Transfer pursuant to this Section 7.8.

## **ARTICLE 8 TERMINATION**

8.1 Events Causing Dissolution and Winding Up. Any of the following events shall cause the dissolution and winding up of the Company:

(a) The consent in writing to do so by either all of the Managers or Voting Members owning 75% of the Voting Members’ Interests in the Company.

(b) Any other event causing dissolution under the Act, except as provided in Section 8.2.

8.2 Election to Continue Company. An event set forth in Section 8.1(b) shall not result in the dissolution, winding up and termination of the Company if, within ninety (90) days after the occurrence of that event, the Managers or a Majority in Interest of the remaining Voting Members elect to continue the Company.

8.3 Winding Up. Upon the occurrence of an event set forth in Section 8.1, and in the absence of an election under Section 8.2, the Company shall continue solely for the purposes of winding up its affairs in an orderly manner, liquidating its assets, and satisfying the claims of its creditors and Members. No Member shall take any action that is inconsistent with, or not necessary to or appropriate for, the winding up of the Company’s business and affairs. The Managers shall be responsible for overseeing the winding up and dissolution of the Company and shall take full account of the Company’s liabilities and assets. The assets shall be liquidated as promptly as is consistent with obtaining the fair value thereof, and the proceeds therefrom, to the extent sufficient therefor, shall be applied and distributed in the following order:

(a) First, to the payment and discharge of all of the Company’s debts and liabilities to creditors other than Members;



(b) Second, to the payment and discharge of all of the Company's debts and liabilities to Members; and

(c) The balance, if any, to the Members in accordance with the positive value in their Capital Accounts, after giving effect to all contributions, distributions, adjustments and allocations for all periods.

When all assets of the Company, after payment of or due provision for the payment of all Company liabilities, have been distributed among the Members as provided in this Agreement, the Company shall terminate and the Members shall execute and file a certificate appropriate to indicate such termination.

8.4 Compliance with Timing Requirements of Regulations. In the event the Company is "liquidated" within the meaning of Regulations Section 1.704-1(b)(2)(ii)(g), distributions shall be made pursuant to this Article 8 to the Members who have positive Capital Accounts in compliance with Regulations Section 1.704-1(b)(2)(ii)(b)(2). If any Member has a deficit balance in his Capital Account (after giving effect to all contributions, distributions and allocations for all taxable years, including the year during which such liquidation occurs), such Member shall have no obligation to make any contribution to the capital of the Company with respect to such deficit, and such deficit shall not be considered a debt owed to the Company or to any other Person for any purpose whatsoever.

8.5 Deemed Distribution and Recontribution. Notwithstanding any other provision of this Article 8, in the event the Company is "liquidated" within the meaning of Regulations Section 1.704-1(b)(2)(ii)(g) but no event set forth in Section 8.1 has occurred, the assets of the Company shall not be liquidated, the Company's liabilities shall not be paid or discharged, and the Company's affairs shall not be wound up. Instead, solely for federal income tax purposes, the Company shall be deemed to have distributed the Property in kind to the Members, who shall be deemed to have assumed and taken subject to all Company liabilities, all in accordance with their respective Capital Accounts. Immediately thereafter, the Members shall be deemed to have recontributed the assets in kind to the Company, which shall be deemed to have assumed and taken subject to all such liabilities.

## **ARTICLE 9 AMENDMENTS**

This Agreement is subject to amendment only by the written consent of Voting Members owning 75% of the Interests in the Company held by the Voting Members. Each Member hereby irrevocably appoints each Manager, any of whom may act, as his attorney-in-fact, which appointment shall not expire upon such Member's disability, for the specific purpose of executing such documents as the Managers deem necessary to memorialize any amendment made pursuant to the first sentence of this Article.

## **ARTICLE 10 TAX ALLOCATIONS**

10.1 Special Allocations. The following special allocations shall be made in the following order, if and only to the extent required to make the regular allocations set forth herein

comply with the provisions of Section 704(b) of the Code and the Regulations promulgated thereunder:

(a) Company Minimum Gain Chargeback. Notwithstanding any other provision of Article 4 or 10, if there is a net decrease in Company Minimum Gain during any Company fiscal year or other period, each Member shall be specially allocated items of Company income and gain for such year or other period (and, if necessary, subsequent years), in an amount equal to such Member's share of the net decrease in Company Minimum Gain, determined in accordance with Regulations Section 1.704-2(g). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to the various Members pursuant thereto. The items to be so allocated shall be determined in accordance with Regulations Sections 1.704-2(f)(6) and 1.704-2(j)(2). This Section 10.1(a) is intended to comply with the minimum gain chargeback requirement in Section 1.704-2(f) of the Regulations and shall be interpreted consistently therewith. To the extent permitted by said Section of the Regulations and for purposes of this Section 10.1 only, each Member's Adjusted Capital Account Deficit shall be determined prior to any other allocations pursuant to Articles 4 or 10 with respect to such fiscal year and without regard to any net decrease in Member Minimum Gain during such fiscal year.

(b) Member Minimum Gain Chargeback. Notwithstanding any other provision of Articles 4 or 10 except Section 10.1(a), if there is a net decrease in Member Minimum Gain attributable to a Member Nonrecourse Debt during any Company fiscal year or other period, each Member with a share of the Member Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Regulations Section 1.704-2(i)(5), shall be specially allocated items of Company income and gain for such year or other period (and, if necessary, subsequent years) in an amount equal to such Member's share of the net decrease in Member Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Regulations Section 1.704-2(i)(4). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to the various Members pursuant thereto. The items to be so allocated shall be determined in accordance with Regulations Sections 1.704-2(i)(4) and 1.704-2(j)(2). This Section 10.1(b) is intended to comply with the minimum gain chargeback requirement in Section 1.704-2(i)(4) of the Regulations and shall be interpreted consistently therewith.

(c) Qualified Income Offset. In the event any Member unexpectedly receives any adjustments, allocations or distributions described in Section 1.704-1(b)(2)(ii)(d)(4), (5) or (6) of the Regulations, items of Company income and gain shall be specially allocated to each such Member in an amount and manner sufficient to eliminate, to the extent required by the Regulations, the Adjusted Capital Account Deficit of such Member as quickly as possible, provided that an allocation pursuant to this Section 10.1(c) shall be made only if and to the extent that such Member would have an Adjusted Capital Account Deficit after all other allocations provided for in Articles 4 or 10 have been tentatively made as if this Section 10.1(c) were not in this Agreement. This Section 10.1(c) is intended to comply with the "qualified income offset" requirement in Section 1.704-1(b)(2)(ii)(d) of the Regulations and shall be interpreted consistently therewith.

(d) Gross Income Allocation. In the event any Member has a deficit Capital Account at the end of any Company fiscal year which is in excess of the sum of (i) the amount such Member is obligated to restore pursuant to any provision of this Agreement, and (ii) the

amount such Member is deemed to be obligated to restore pursuant to Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5), each such Member shall be specially allocated items of Company income and gain in the amount of such excess as quickly as possible, provided that an allocation pursuant to this Section 10.1(d) shall be made only if and to the extent that such Member would have a deficit Capital Account in excess of such sum after all other allocations provided for in Articles 4 or 10 have been tentatively made as if Section 10.1(d) and Section 10.1(c) hereof were not in this Agreement.

(e) Nonrecourse Deductions. Nonrecourse deductions for any fiscal year shall be allocated among the Members in accordance with their Interests.

(f) Member Nonrecourse Deductions. Any Member Nonrecourse Deductions for any fiscal year shall be specially allocated to the Member who bears the economic risk of loss with respect to the Member Nonrecourse Debt to which such Member Nonrecourse Deductions are attributable in accordance with Regulations Section 1.704-2(i)(1).

(g) Section 754 Adjustments. To the extent an adjustment to the adjusted tax basis of any Company asset pursuant to Code Section 734(b) or Code Section 743(b) is required, pursuant to Regulations Section 1.704-1(b)(2)(iv)(m), to be taken into account in determining Capital Accounts as the result of a distribution to a Member in complete liquidation of his Interest in the Company, the amount of such adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) and such gain or loss shall be specially allocated to the Members in a manner consistent with the manner in which their Capital Accounts are required to be adjusted pursuant to Section 1.704-1(b)(2)(iv)(m) of the Regulations. If a Member so requests, the Company shall file an election under Code Section 754 to adjust the basis of Company assets as provided in the preceding sentence, in the event of a distribution of one or more Company assets or the Transfer of an Interest in the Company. The cost of the Section 754 election (including all accounting fees and expenses) shall be borne by the Member requesting the election.

10.2 Curative Allocations. The Allocations set forth in Section 10.1 hereof (the “Regulatory Allocations”) are intended to comply with certain requirements of the Regulations. It is the intent of the Members that, to the extent possible, all Regulatory Allocations will be offset either with other Regulatory Allocations or with special allocations of other items of Company income, gain, loss or deduction pursuant to this Section 10.2. Therefore, notwithstanding any other provisions of Article 4, the Managers shall make such offsetting special deductions in whatever manner they determine appropriate, so that, after offsetting allocations are made, each Member’s Capital Account balance is to the extent possible, equal to the Capital Account balance such Member would have had if the Regulatory Allocations were not part of this Agreement and all Company items were allocated pursuant to Article 4 hereof. In exercising their discretion under this Section 10.2, the Managers shall take into account future Regulatory Allocations under Section 10.1 that, although not yet made, are likely to offset other Regulatory Allocations previously made under Section 10.1.

10.3 Code Section 704(c). In accordance with Code Section 704(c) and the Regulations thereunder, income, gain, loss, and deduction with respect to any property contributed to the capital of the Company shall, solely for tax purposes, be allocated among the Members so as to take

account of any variation between the adjusted basis of such property to the Company for federal income tax purposes and its initial Gross Asset Value.

In the event the Gross Asset Value of any Company asset is adjusted pursuant to Section 2.12 hereof, subsequent allocations of income, gain, loss, and deduction with respect to such asset shall take account of any variation between the adjusted basis of such asset for federal income tax purposes and its Gross Asset Value in the same manner as under Code Section 704(c) and the Regulations thereunder.

Any elections or other decisions relating to such allocations shall be made by the Members in any manner that reasonably reflects the purpose and intention of this Agreement. Allocations pursuant to this Section 10.3 are solely for purposes of federal, state, and local taxes and shall not affect, or in any way be taken into account in computing Capital Accounts or shares of Profits, Losses, other items, or distributions pursuant to any provision of this Agreement.

10.4 Economic Consistency. The Members intend that the tax allocation provisions of Article 10 shall result in final Capital Account balances of the Members that permit liquidating distributions to be made in accordance with final Capital Account balances under Section 8.3.

The tax allocation provisions of Article 10 shall be applied (and amended) by the Managers, if and to the extent necessary, to produce that result even if those amendments require the amendment of prior tax returns of the Company to do so.

## **ARTICLE 11 BOOKS AND RECORDS**

11.1 Company Books. The Managers shall maintain at the principal office of the Company complete and accurate books of account, in which shall be entered, fully and accurately, each and every transaction of the Company and the records required to be maintained by the Company pursuant to the Act. The books shall be kept according to such generally accepted method of accounting as the Members may select, and the fiscal year of the Company shall be the calendar year. Within ninety (90) days of the end of each fiscal year of the Company, each Member shall be provided with a balance sheet and income statement reflecting such fiscal year's operations. A Schedule K-1 shall be delivered to each Member after the end of each fiscal year of the Company so that each Member may timely file his personal income tax return.

11.2 Inspection of Books. The Members shall each have the right, at their own expense, upon reasonable notice, to examine the books of account of the Company for any reasonable purpose, provided that any such examination shall be conducted during normal business hours and without disruption of the Company's business.

11.3 Checking Accounts. The Company shall maintain a checking account or accounts at such bank or banks as shall be most conducive to the proper conduct of the business of the Company. Checks drawn on any such account shall be valid only when signed by one (1) of the Managers or a managing agent for the Company designated by the Members.

#### 11.4 Tax Matters Manager.

(a) Designation and Authority of the Tax Matters Manager. Brian Staub is designated as the Company's "Tax Matters Manager." The Tax Matters Manager is authorized to represent the Company in connection with all examinations of the Company's affairs by tax authorities or any administrative or judicial tax proceedings with respect to the Company, and to expend Company funds for professional services and costs associated therewith, and the Company will reimburse the Tax Matters Manager for any such costs or other costs associated with carrying out its role as Tax Matters Manager that it incurs directly. The Tax Matters Manager will have sole discretion to determine whether the Company (either on its own behalf or on behalf of the Members) will contest or continue to contest any tax deficiencies assessed or proposed to be assessed by any tax authority with respect to the Company and whether the Company will make any elections with respect to any tax assessment or proceeding.

(b) To the extent that the Company is an "eligible partnership" (as such term is used in Regulations § 301.6221(b)-1) and is permitted to make an election under Code Section 6221(b) and Regulations § 301.6221(b)-1 (an "Opt-Out Election"), the Company shall make an Opt-Out Election on its federal income tax return for each taxable year of the Company to elect out of the application of the new partnership audit laws and procedures set forth in Subchapter C of Chapter 63 of Subtitle F of the Code, as modified by Section 1101 of the Bipartisan Budget Act of 2015, Pub. L. No. 114-74, and including any successor statutes thereto or Regulations promulgated or official guidance issued thereunder (the "Partnership Audit Procedures").

(c) For each taxable year of the Company for which no Opt-Out Election is made, the Company shall designate, pursuant to Regulations § 301.6223-1 (and any successor Regulations and other applicable guidance) on its United States federal income tax return for each such taxable year of the Company, the Tax Matters Manager as the "partnership representative" for the Company (the "Partnership Representative"), and shall make such corresponding designations under any corresponding provisions of applicable foreign, state, or local tax law. To the extent that the Tax Matters Manager is not an individual, the Tax Matters Manager shall select any Person to serve as its "designated individual" pursuant to the Partnership Audit Procedures. The Tax Matters Manager, in its capacity as the Partnership Representative, shall (i) determine all matters with respect to any examination of the Company by any taxing authority (including, without limitation, the allocation of any resulting taxes, penalties, and interest among the Members and whether to make an election under Code § 6226 (and any similar provision under applicable foreign, state, or local tax law) with respect to any audit or other examination of the Company) and, (ii) notwithstanding anything herein to the contrary, make such elections as it deems appropriate pursuant to the provisions of the Partnership Audit Procedures.

(d) Each Member and former Member agrees to cooperate, and to cause its direct and indirect owners to cooperate, with the Partnership Representative and to do or refrain from doing any or all things reasonably requested by the Partnership Representative with respect to the conduct of any tax proceedings, in each case regardless whether then a Member or after ceasing to be a Member. Any deficiency for taxes imposed on any Member or former Member or its direct or indirect owners (including penalties, additions to tax, or interest imposed with respect to such taxes) will be paid by such Member or former Member or its direct or indirect owners as applicable, and if required to be paid (and actually paid) by the Company, such Member or former

Member shall indemnify the Company for such amounts within thirty days of such payment by the Company, in each case regardless of whether then a Member or after ceasing to be a Member.

(e) At the request of the Partnership Representative, in connection with an adjustment of any item of income, gain, loss, deduction, or credit of the Company or any subsidiary entity in which the Company has an interest, directly or indirectly, each Member and former Member shall, and shall cause its direct and indirect owners, as applicable, to, promptly file one or more amended tax returns in the manner contemplated by Code § 6225(c) (and any Regulations or official guidance relating thereto, and, if applicable, any corresponding or similar provisions under state or local law) and pay any tax due with respect to such returns. If the Partnership Representative makes an election for the Company pursuant to Code § 6226 with respect to an imputed underpayment, each Member and former Member shall, and shall cause its direct and indirect owners, as applicable, to, comply with the requirements under such section (and any Regulations or official guidance relating thereto). At the request of the Partnership Representative, each Member and former Member shall, and shall cause its direct and indirect owners, as applicable, to, provide the Partnership Representative and the Company with any information available to such Member or former Member (or its direct or indirect owners or representatives) and with such representations, certificates, or forms relating to such Member or former Member (or its direct or indirect owners or representatives) and any other documentation, in each case, that the Partnership Representative determines, in its reasonable discretion, are necessary to modify an imputed underpayment under Code § 6225(c) or the Regulations or other official guidance thereunder. In the event that any imputed underpayment is paid or payable by the Company under Code § 6225(a)(1), each Member and former Member shall indemnify the Company in an amount equal to such Member's or former Member's share (as determined by the Partnership Representative with the advice of the Company's tax counsel) of the imputed underpayment and any associated interest and penalties) paid or payable by the Company; provided, however, that the Partnership Representative may determine, in its discretion, to allocate the burden of such amount to such Member without requiring payment by such Member to the Company.

(f) Each Member's obligations to comply with the requirements of this Section 11.4 shall survive the Member's transfer of all or any portion of the Member's interest in the Company, otherwise ceasing to be a Member and/or the termination, dissolution, liquidation, and winding up of the Company, to the extent applicable.

(g) Any Person acting as a Tax Matters Manager, Partnership Representative or designated individual pursuant to this Section 11.4 shall, when acting in such capacity, be deemed to be a Manager for purposes of the Virginia Limited Liability Company Act, and as such their liability shall be eliminated to the same extent as Manager's liability is eliminated under this Agreement and they shall be entitled to indemnification to the same extent as a Manager is entitled to indemnification under this Agreement.

## **ARTICLE 12 INDEMNIFICATION AND EXCULPATION OF MANAGERS AND MEMBERS**

12.1 Indemnification. The Managers and the Members shall be indemnified and held harmless by the Company from any liability resulting from any act performed by or omission made by them on behalf of the Company (except for acts or omissions of gross negligence or willful

misconduct) to the fullest extent that a director or officer of a stock corporation may be indemnified and held harmless under Chapter 9 of Title 13.1 of the Code of Virginia of 1950, as amended.

12.2 Exculpation. The Managers and the Members shall not be liable to the Company or to any Member for or as a result of any act, omission or error in judgment that was taken, omitted or made by the Managers or the Members in accordance with the standards established by Section 13.1-1024.1 of the Act.

### **ARTICLE 13 MISCELLANEOUS**

13.1 Notice. Any notice provided for in this Agreement to a Member shall be deemed given if sent by electronic mail, hand delivery, overnight delivery service, or by registered or certified mail to such Member at the address shown for such Member on the books and records of the Company or at such other address as may have been given in writing to the Company, at its principal office by registered or certified mail, return receipt requested.

13.2 Entire Agreement. This Agreement contains the entire agreement among the parties with regard to the operations of the Company and supersedes any prior understanding and/or written or oral agreements among them respecting the subject matter hereof.

13.3 Severable. In the event any provision of this Agreement shall be held to be invalid or unenforceable, the remaining provisions of this Agreement shall nevertheless remain in full force and effect.

13.4 Governing Law. This Agreement is made in, and shall be governed by, and construed and enforced in accordance with, the laws of the Commonwealth of Virginia.

13.5 Captions. Any title or captions contained in this Agreement are for convenience only, and shall not be deemed a part of the context of this Agreement.

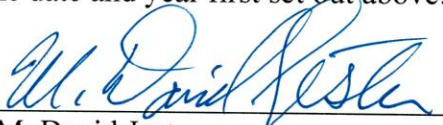
13.6 Interpretation. When the context in which the words are used in this Agreement indicates that such is the intent, words in the singular number shall include the plural and vice versa, and words in the masculine gender shall include the feminine and neuter genders and vice versa.

13.7 Successors. This Agreement shall be binding upon the parties hereto, and, if and when assigned in accordance with the provisions hereof, their respective assigns, successors in interest, personal or legal representatives, estates, heirs, and legatees.

13.8 Waiver of Compliance. Any failure of any Member to comply with any obligation, covenant, agreement or condition herein may be waived by other parties hereto, but such waiver or failure to insist upon strict compliance with such obligation, covenant, agreement or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

13.9 Counterparts. This document may be executed in several facsimile counterparts and such counterparts, when taken together, shall be as valid and binding and have the same effect, as if all signatures were original and on one document.

WITNESS the following signatures and seals as of the date and year first set out above:



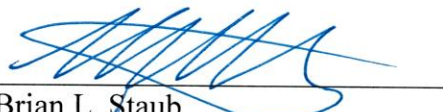
M. David Jester



Scott A. Troutman



Christian H. Gardner



Brian L. Staub



Hussein Easmeil



**EXHIBIT A  
TO  
OPERATING AGREEMENT  
OF  
PEMBROKE SENIOR DEVELOPERS, LLC**

<b><u>MEMBER NAME AND ADDRESS</u></b>	<b><u>INITIAL CAPITAL CONTRIBUTION</u></b>	<b><u>INTEREST</u></b>
M. David Jester 308 35th Street, Suite 101 Virginia Beach, Virginia 23451	\$200.00	20.00%
Scott A. Troutman 308 35th Street, Suite 101 Virginia Beach, Virginia 23451	\$200.00	20.00%
Christian H. Gardner 308 35th Street, Suite 101 Virginia Beach, Virginia 23451	\$200.00	20.00%
Brian L. Staub 308 35th Street, Suite 101 Virginia Beach, Virginia 23451	\$200.00	20.00%
Hussein Easmeil 308 35th Street, Suite 101 Virginia Beach, Virginia 23451	\$200.00	20.00%
	<u>\$1,000.00</u>	<u>100.00%</u>

B

Virginia State Corporation  
Commission Certification  
(MANDATORY)

# Commonwealth of Virginia



## STATE CORPORATION COMMISSION

Richmond, August 27, 2021

This is to certify that the certificate of limited partnership of

### **Pembroke Senior, LP**

was this day admitted to record in this office and that the said limited partnership is authorized to transact its business subject to all Virginia laws applicable to the limited partnership and its business.

Effective date: August 27, 2021



STATE CORPORATION COMMISSION

Attest:

A handwritten signature in cursive script, appearing to read "Bernard J. St. John".

Clerk of the Commission

C

Principal's Previous  
Participation Certification  
(MANDATORY)



## Previous Participation Certification

Development Name: Arbors at Pembroke  
Name of Applicant (entity): Pembroke Senior, LP  
Pembroke Senior GP, LLC

I hereby certify that:

1. All the statements made by me are true, complete and correct to the best of my knowledge and belief and are made in good faith, including the data contained in Schedule A and any statements attached to this certification.
2. During any time that any of the participants were principals in any multifamily rental property, no property has been foreclosed upon, in default or assigned to the mortgage insurer (governmental or private); nor has mortgage relief by the mortgagee been given;
3. During any time that any of the participants were principals in any multifamily rental property, there has not been any breach by the owner of any agreements relating to the construction or rehabilitation, use, operation, management or disposition of the property, including removal from a partnership;
4. That at no time have any principals listed in this certification been required to turn in a property to the investor or have been removed from a multifamily rental property ownership structure;
5. That to the best of my knowledge, there are no unresolved findings raised as a result of state or federal audits, management reviews or other governmental investigations concerning any multifamily rental property in which any of the participants were principals;
6. During any time that any of the participants were principals in any multifamily rental property, there has not been a suspension or termination of payments under any state or federal assistance contract for the property;
7. None of the participants has been convicted of a felony and is not presently, to my knowledge, the subject of a complaint or indictment charging a felony. A felony is defined as any offense punishable by imprisonment for a term exceeding one year, but does not include any offense classified as a misdemeanor under the laws of a state and punishable by imprisonment of two years or less;
8. None of the participants has been suspended, debarred or otherwise restricted by any federal or state governmental entity from doing business with such governmental entity; and

**Previous Participation Certification, cont'd**

9. None of the participants has defaulted on an obligation covered by a surety or performance bond and has not been the subject of a claim under an employee fidelity bond.
10. None of the participants is a Virginia Housing employee or a member of the immediate household of any of its employees.
11. None of the participants is participating in the ownership of a multifamily rental housing property as of this date on which construction has stopped for a period in excess of 20 days or, in the case of a multifamily rental housing property assisted by any federal or state governmental entity, which has been substantially completed for more than 90 days but for which requisite documents for closing, such as the final cost certification, have not been filed with such governmental entity.
12. None of the participants has been found by any federal or state governmental entity or court to be in noncompliance with any applicable civil rights, equal employment opportunity or fair housing laws or regulations.
13. None of the participants was a principal in any multifamily rental property which has been found by any federal or state governmental entity or court to have failed to comply with Section 42 of the Internal Revenue Code of 1986, as amended, during the period of time in which the participant was a principal in such property. This does not refer to corrected 8823's.
14. None of the participants is currently named as a defendant in a civil lawsuit arising out of their ownership or other participation in a multi-family housing development where the amount of damages sought by plaintiffs (i.e., the ad damnum clause) exceeds One Million Dollars (\$1,000,000).
15. None of the participants has pursued a Qualified Contract or planned foreclosure in Virginia after January 1, 2019.

Statements above (if any) to which I cannot certify have been deleted by striking through the words. In the case of any such deletion, I have attached a true and accurate statement to explain the relevant facts and circumstances.

Failure to disclose information about properties which have been found to be out of compliance or any material misrepresentations are grounds for rejection of an application and prohibition against future applications.

  
\_\_\_\_\_  
Signature

Brian L. Staub

Printed Name

10/29/21

Date (no more than 30 days prior to submission of the Application)

D

# List of LIHTC Developments

(Schedule A)  
**(MANDATORY)**

# List of LIHTC Developments (Schedule A)



Development Name: Arbors at Pembroke  
 Name of Applicant: Pembroke Senior, L.P.  
 Controlling General Partner or Managing Member: Pembroke Senior GP, LLC

**INSTRUCTIONS:**

- 1 **A Schedule A is required for every individual that makes up the GP or Managing Member** - does not apply to principals of publicly traded corporations.
- 2 A resume is required for each principal of the General Partnership or Limited Liability Company (LLC).
- 3 For each property for which an uncorrected 8823 has been issued, provide a detailed explanation of the nature of the non-compliance, as well as a status statement.
- 4 List only tax credit development experience since 1999 (i.e. for the past 15 years)
- 5 Use separate pages as needed, for each principal.

Principal's Name: Hussein Easmeil Controlling GP (CGP) or 'Named' Managing Member of Proposed property? N Y or N

Development Name/Location	Name of Ownership Entity and Phone Number	CGP or 'Named' Managing Member at the time of dev.? (Y/N)*	Total Dev. Units	Total Low Income Units	Placed in Service Date	8609(s) Issue Date	Uncorrected 8823's? (Y/N) Explain "Y"
1 Potomac Crest Apartments Stafford, VA	Potomac Church, LP 757-437-1677	N	144	144	TBD	TBD	N
2 The Arbors at Western Branch Chesapeake, VA	Chesapeake Senior, LP 757-437-1677	N	163	33	TBD	TBD	N
3 The Arbors at Williamsburg Williamsburg, VA	Williamsburg Senior, LP 757-437-1677	N	150	30	TBD	TBD	N
4 Sunset Creek Apartments, Hampton, VA	Sunset Hampton, L.P. 757-437-1677	N	132	132	1/17/20	8/18/20	N
5 Suffolk Senior Apartments, Suffolk, VA	Suffolk Senior, L.P. 757-437-1677	N	138	111	4/25/19	12/20/19	N
6 York Senior Apartments Williamsburg, VA	York Senior, L.P. 757-437-1677	N	130	110	4/12/19	12/16/19	N
7 The Arbors of Culpeper Culpeper, VA	Culpeper Senior, L.P. 757-437-1676	N	132	117	7/6/18	3/15/19	N
8 Forrest Landing Apartments, Phase II, Newport News, VA	FL2, L.P. 757-437-1677	N	64	64	6/11/18	1/3/19	N
9 Catalina Crossing Chesapeake, VA	Catalina Crossing, L.P. 757-437-1677	N	124	124	7/15/16	3/1/17	N
10 The Woodlands Hampton, VA	Woodlands Hampton, L.P. 757-437-1677	N	132	27	8/28/15	3/24/16	N
11 Waterford Pointe Apartments Newport News, VA	Waterford Pointe, L.P. 757-437-1677	N	120	120	11/3/14	8/24/15	N
12 Forrest Pines Seniors Newport News, VA	Forrest Pines Seniors, L.P. 757-437-1677	N	123	123	10/12/14	4/28/15	N
13 Pavilion Apartments Newport News, VA	Pavilion Investors, L.P. 757-437-1677	N	32	32	3/1/13	4/3/14	N
14 Sharps Landing Apartments Newport News, VA	Sharps Landing, L.P. 757-437-1677	N	180	180	6/30/11	3/6/13	N
15 Forrest Landing Apartments, Newport News, VA	Forrest Landing Associates, L.P. 757-437-1677	N	120	120	1/14/10	7/27/10	N
16 Somerset Apartments at Town Center, Hampton, VA	Heritage Hampton, L.P. 757-437-1677	N	151	114	6/26/08	4/8/09	N
17 Chester Village Green, Chesterfield, VA	Chester Village, L.P. 757-437-1677	N	163	125	Sept-Dec 2005	9/1/06	N
18 Sinclair Commons Apts., Hampton, VA	Sinclair Commons, L.P. 757-437-1677	N	138	138	7/1/04	6/1/05	N
19 Lynnhaven Cove Apts., Virginia Beach, VA	Lynnhaven Cove, L.P. 757-437-1677	N	115	115	7/1/03	5/1/04	N
20 Shorewood Cove Apts., Norfolk, VA	Shorewood Cove, L.P. 757-437-1677	N	132	129	11/1/11	12/2/11	N
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\* Must have the ability to bind the LIHTC entity; document with partnership/operating agreements and one 8609 (per entity/development) for a total of 6.

1st PAGE TOTAL: 1,994 1,749 LIHTC as % of Total Units 88%

ADD ADDITIONAL PROPERTIES USING NEXT TAB



# List of LIHTC Developments (Schedule A)



Development Name: Arbors at Pembroke  
 Name of Applicant: Pembroke Senior, L.P.  
 Controlling General Partner or Managing Member: Pembroke Senior GP, LLC

**INSTRUCTIONS:**

- 1 **A Schedule A is required for every individual that makes up the GP or Managing Member** - does not apply to principals of publicly traded corporations.
- 2 A resume is required for each principal of the General Partnership or Limited Liability Company (LLC).
- 3 For each property for which an uncorrected 8823 has been issued, provide a detailed explanation of the nature of the non-compliance, as well as a status statement.
- 4 List only tax credit development experience since 1999 (i.e. for the past 15 years)
- 5 Use separate pages as needed, for each principal.

Principal's Name: Christian H. Gardner Controlling GP (CGP) or 'Named' Managing Member of Proposed property? N Y or N

Development Name/Location	Name of Ownership Entity and Phone Number	CGP or 'Named' Managing Member at the time of dev.? (Y/N)*	Total Dev. Units	Total Low Income Units	Placed in Service Date	8609(s) Issue Date	Uncorrected 8823's? (Y/N) Explain "Y"	
1	Potomac Crest Apartments Stafford, VA	Potomac Church, LP 757-437-1677	N	144	144	TBD	TBD	N
2	The Arbors at Western Branch Chesapeake, VA	Chesapeake Senior, LP 757-437-1677	N	163	33	TBD	TBD	N
3	The Arbors at Williamsburg Williamsburg, VA	Williamsburg Senior, LP 757-437-1677	N	150	30	TBD	TBD	N
4	Sunset Creek Apartments, Hampton, VA	Sunset Hampton, L.P. 757-437-1677	N	132	132	1/17/20	8/18/20	N
5	Suffolk Senior Apartments, Suffolk, VA	Suffolk Senior, L.P. 757-437-1677	N	138	111	4/25/19	12/20/19	N
6	York Senior Apartments Williamsburg, VA	York Senior, L.P. 757-437-1677	N	130	110	4/12/19	12/16/19	N
7	The Arbors of Culpeper Culpeper, VA	Culpeper Senior, L.P. 757-437-1676	N	132	117	7/6/18	3/15/19	N
8	Forrest Landing Apartments, Phase II, Newport News, VA	FL2, L.P. 757-437-1677	N	64	64	6/11/18	1/3/19	N
9	Catalina Crossing Chesapeake, VA	Catalina Crossing, L.P. 757-437-1677	N	124	124	7/15/16	3/1/17	N
10	The Woodlands Hampton, VA	Woodlands Hampton, L.P. 757-437-1677	N	132	27	8/28/15	3/24/16	N
11	Waterford Pointe Apartments Newport News, VA	Waterford Pointe, L.P. 757-437-1677	N	120	120	11/3/14	8/24/15	N
12	Forrest Pines Seniors Newport News, VA	Forrest Pines Seniors, L.P. 757-437-1677	N	123	123	10/12/14	4/28/15	N
13	Pavilion Apartments Newport News, VA	Pavilion Investors, L.P. 757-437-1677	N	32	32	3/1/13	4/3/14	N
14	Sharps Landing Apartments Newport News, VA	Sharps Landing, L.P. 757-437-1677	N	180	180	6/30/11	3/6/13	N
15	Forrest Landing Apartments, Newport News, VA	Forrest Landing Associates, L.P. 757-437-1677	N	120	120	1/14/10	7/27/10	N
16	Somerset Apartments at Town Center, Hampton, VA	Heritage Hampton, L.P. 757-437-1677	N	151	114	6/26/08	4/8/09	N
17	Chester Village Green, Chesterfield, VA	Chester Village, L.P. 757-437-1677	N	163	125	Sept-Dec 2005	9/1/06	N
18	Sinclair Commons Apts., Hampton, VA	Sinclair Commons, L.P. 757-437-1677	N	138	138	7/1/04	6/1/05	N
19	Lynnhaven Cove Apts., Virginia Beach, VA	Lynnhaven Cove, L.P. 757-437-1677	N	115	115	7/1/03	5/1/04	N
20	Shorewood Cove Apts., Norfolk, VA	Shorewood Cove, L.P. 757-437-1677	N	132	129	11/1/11	12/2/11	N
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\* Must have the ability to bind the LIHTC entity; document with partnership/operating agreements and one 8609 (per entity/development) for a total of 6.

1st PAGE  
 TOTAL: 1,994 1,749 LIHTC as % of Total Units 88%

ADD ADDITIONAL PROPERTIES USING NEXT TAB

# List of LIHTC Developments (Schedule A)



Development Name: Arbors at Pembroke  
 Name of Applicant: Pembroke Senior, L.P.  
 Controlling General Partner or Managing Member: Pembroke Senior GP, LLC

**INSTRUCTIONS:**

- 1 **A Schedule A is required for every individual that makes up the GP or Managing Member** - does not apply to principals of publicly traded corporations.
- 2 A resume is required for each principal of the General Partnership or Limited Liability Company (LLC).
- 3 For each property for which an uncorrected 8823 has been issued, provide a detailed explanation of the nature of the non-compliance, as well as a status statement.
- 4 List only tax credit development experience since 1999 (i.e. for the past 15 years)
- 5 Use separate pages as needed, for each principal.

Principal's Name: Scott A. Troutman Controlling GP (CGP) or 'Named' Managing Member of Proposed property? Y Y or N

Development Name/Location	Name of Ownership Entity and Phone Number	CGP or 'Named' Managing Member at the time of dev.?( Y/N)*	Total Dev. Units	Total Low Income Units	Placed in Service Date	8609(s) Issue Date	Uncorrected 8823's? (Y/N) Explain "Y"	
1	Potomac Crest Apartments Stafford, VA	Potomac Church, LP 757-437-1677	Y	144	144	TBD	TBD	N
2	The Arbors at Western Branch Chesapeake, VA	Chesapeake Senior, LP 757-437-1677	Y	163	33	TBD	TBD	N
3	The Arbors at Williamsburg Williamsburg, VA	Williamsburg Senior, LP 757-437-1677	Y	150	30	TBD	TBD	N
4	Sunset Creek Apartments, Hampton, VA	Sunset Hampton, L.P. 757-437-1677	Y	132	132	1/17/20	8/18/20	N
5	Suffolk Senior Apartments, Suffolk, VA	Suffolk Senior, L.P. 757-437-1677	Y	138	111	4/25/19	12/20/19	N
6	York Senior Apartments Williamsburg, VA	York Senior, L.P. 757-437-1677	Y	130	110	4/12/19	12/16/19	N
7	The Arbors of Culpeper Culpeper, VA	Culpeper Senior, L.P. 757-437-1676	Y	132	117	7/6/18	3/15/19	N
8	Forrest Landing Apartments, Phase II, Newport News, VA	FL2, L.P. 757-437-1677	Y	64	64	6/11/18	1/3/19	N
9	Catalina Crossing Chesapeake, VA	Catalina Crossing, L.P. 757-437-1677	Y	124	124	7/15/16	3/1/17	N
10	The Woodlands Hampton, VA	Woodlands Hampton, L.P. 757-437-1677	Y	132	27	8/28/15	3/24/16	N
11	Waterford Pointe Apartments Newport News, VA	Waterford Pointe, L.P. 757-437-1677	Y	120	120	11/3/14	8/24/15	N
12	Forrest Pines Seniors Newport News, VA	Forrest Pines Seniors, L.P. 757-437-1677	Y	123	123	10/12/14	4/28/15	N
13	Pavilion Apartments Newport News, VA	Pavilion Investors, L.P. 757-437-1677	Y	32	32	3/1/13	4/3/14	N
14	Sharps Landing Apartments Newport News, VA	Sharps Landing, L.P. 757-437-1677	Y	180	180	6/30/11	3/6/13	N
15	Forrest Landing Apartments, Newport News, VA	Forrest Landing Associates, L.P. 757-437-1677	Y	120	120	1/14/10	7/27/10	N
16	Somerset Apartments at Town Center, Hampton, VA	Heritage Hampton, L.P. 757-437-1677	N	151	114	6/26/08	4/8/09	N
17	Chester Village Green, Chesterfield, VA	Chester Village, L.P. 757-437-1677	N	163	125	Sept-Dec 2005	9/1/06	N
18	Sinclair Commons Apts., Hampton, VA	Sinclair Commons, L.P. 757-437-1677	N	138	138	7/1/04	6/1/05	N
19	Lynnhaven Cove Apts., Virginia Beach, VA	Lynnhaven Cove, L.P. 757-437-1677	N	115	115	7/1/03	5/1/04	N
20	Shorewood Cove Apts., Norfolk, VA	Shorewood Cove, L.P. 757-437-1677	N	132	129	11/1/11	12/2/11	N
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\* Must have the ability to bind the LIHTC entity; document with partnership/operating agreements and one 8609 (per entity/development) for a total of 6.

1st PAGE  
 TOTAL: 1,994 1,749 LIHTC as % of  
88% Total Units

# List of LIHTC Developments (Schedule A)



Development Name: Arbors at Pembroke  
 Name of Applicant: Pembroke Senior, L.P.  
 Controlling General Partner or Managing Member: Pembroke Senior GP, LLC

**INSTRUCTIONS:**

- 1 A Schedule A is required for **every** individual that makes up the GP or Managing Member - does not apply to principals of publicly traded corporations.
- 2 A resume is required for each principal of the General Partnership or Limited Liability Company (LLC).
- 3 For each property for which an uncorrected 8823 has been issued, provide a detailed explanation of the nature of the non-compliance, as well as a status statement.
- 4 List only tax credit development experience since 1999 (i.e. for the past 15 years)
- 5 Use separate pages as needed, for each principal.

Principal's Name: Brian L. Staub Controlling GP (CGP) or 'Named' Managing Member of Proposed property? Y Y or N

Development Name/Location	Name of Ownership Entity and Phone Number	CGP or 'Named' Managing Member at the time of dev.? (Y/N)*	Total Dev. Units	Total Low Income Units	Placed in Service Date	8609(s) Issue Date	Uncorrected 8823's? (Y/N) Explain "Y"
1 Potomac Crest Apartments Stafford, VA	Potomac Church, LP 757-437-1677	Y	144	144	TBD	TBD	N
2 The Arbors at Western Branch Chesapeake, VA	Chesapeake Senior, LP 757-437-1677	Y	163	33	TBD	TBD	N
3 The Arbors at Williamsburg Williamsburg, VA	Williamsburg Senior, LP 757-437-1677	Y	150	30	TBD	TBD	N
4 Sunset Creek Apartments, Hampton, VA	Sunset Hampton, L.P. 757-437-1677	Y	132	132	1/17/20	8/18/20	N
5 Suffolk Senior Apartments, Suffolk, VA	Suffolk Senior, L.P. 757-437-1677	Y	138	111	4/25/19	12/20/19	N
6 York Senior Apartments Williamsburg, VA	York Senior, L.P. 757-437-1677	Y	130	110	4/12/19	12/16/19	N
7 The Arbors of Culpeper Culpeper, VA	Culpeper Senior, L.P. 757-437-1676	Y	132	117	7/6/18	3/15/19	N
8 Forrest Landing Apartments, Phase II, Newport News, VA	FL2, L.P. 757-437-1677	Y	64	64	6/11/18	1/3/19	N
9 Catalina Crossing Chesapeake, VA	Catalina Crossing, L.P. 757-437-1677	Y	124	124	7/15/16	3/1/17	N
10 The Woodlands Hampton, VA	Woodlands Hampton, L.P. 757-437-1677	Y	132	27	8/28/15	3/24/16	N
11 Waterford Pointe Apartments Newport News, VA	Waterford Pointe, L.P. 757-437-1677	Y	120	120	11/3/14	8/24/15	N
12 Forrest Pines Seniors Newport News, VA	Forrest Pines Seniors, L.P. 757-437-1677	Y	123	123	10/12/14	4/28/15	N
13 Pavilion Apartments Newport News, VA	Pavilion Investors, L.P. 757-437-1677	Y	32	32	3/1/13	4/3/14	N
14 Sharps Landing Apartments Newport News, VA	Sharps Landing, L.P. 757-437-1677	Y	180	180	6/30/11	3/6/13	N
15 Forrest Landing Apartments, Newport News, VA	Forrest Landing Associates, L.P. 757-437-1677	N	120	120	1/14/10	7/27/10	N
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\* Must have the ability to bind the LIHTC entity; document with partnership/operating agreements and one 8609 (per entity/development) for a total of 6.

ADD ADDITIONAL PROPERTIES USING NEXT TAB

# List of LIHTC Developments (Schedule A)



Development Name: Arbors at Pembroke  
 Name of Applicant: Pembroke Senior, L.P.  
 Controlling General Partner or Managing Member: Pembroke Senior GP, LLC

**INSTRUCTIONS:**

- 1 A Schedule A is required for every individual that makes up the GP or Managing Member - does not apply to principals of publicly traded corporations.
- 2 A resume is required for each principal of the General Partnership or Limited Liability Company (LLC).
- 3 For each property for which an uncorrected 8823 has been issued, provide a detailed explanation of the nature of the non-compliance, as well as a status statement.
- 4 List only tax credit development experience since 1999 (i.e. for the past 15 years)
- 5 Use separate pages as needed, for each principal.

M. David Jester Controlling GP (CGP) or 'Named' Managing Member of Proposed property? Y  
 Principal's Name: Y or N

Development #	Development Name/Location	Name of Ownership Entity and Phone Number	CGP or 'Named' Managing Member of the time of dev.? (Y/N)*	Total Dev. Units	Total Low Income Units	Placed in Service Date	8609(s) Issue Date	Uncorrected 8823's? (Y/N) Explain "Y"
1	Potomac Crest Apartments Stafford, VA	Potomac Church, LP 757-437-1677	Y	144	144	TBD	TBD	N
2	The Arbors at Western Branch Chesapeake, VA	Chesapeake Senior, LP 757-437-1677	Y	163	33	TBD	TBD	N
3	The Arbors at Williamsburg Williamsburg, VA	Williamsburg Senior, LP 757-437-1677	Y	150	30	TBD	TBD	N
4	Sunset Creek Apartments, Hampton, VA	Sunset Hampton, L.P. 757-437-1677	Y	132	132	1/17/20	8/18/20	N
5	Suffolk Senior Apartments, Suffolk, VA	Suffolk Senior, L.P. 757-437-1677	Y	138	111	4/25/19	12/20/19	N
6	York Senior Apartments Williamsburg, VA	York Senior, L.P. 757-437-1677	Y	130	110	4/12/19	12/16/19	N
7	The Arbors of Culpeper Culpeper, VA	Culpeper Senior, L.P. 757-437-1676	Y	132	117	7/6/18	3/15/19	N
8	Forrest Landing Apartments, Phase II, Newport News, VA	FL2, L.P. 757-437-1677	Y	64	64	6/11/18	1/3/19	N
9	Catalina Crossing Chesapeake, VA	Catalina Crossing, L.P. 757-437-1677	Y	124	124	7/15/16	3/1/17	N
10	The Woodlands Hampton, VA	Woodlands Hampton, L.P. 757-437-1677	Y	132	27	8/28/15	3/24/16	N
11	Waterford Pointe Apartments Newport News, VA	Waterford Pointe, L.P. 757-437-1677	Y	120	120	11/3/14	8/24/15	N
12	Forrest Pines Seniors Newport News, VA	Forrest Pines Seniors, L.P. 757-437-1677	Y	123	123	10/12/14	4/28/15	N
13	Pavilion Apartments Newport News, VA	Pavilion Investors, L.P. 757-437-1677	Y	32	32	3/1/13	4/3/14	N
14	Sharps Landing Apartments Newport News, VA	Sharps Landing, L.P. 757-437-1677	Y	180	180	6/30/11	3/6/13	N
15	Forrest Landing Apartments, Newport News, VA	Forrest Landing Associates, L.P. 757-437-1677	Y	120	120	1/14/10	7/27/10	N
16	Somerset Apartments at Town Center, Hampton, VA	Heritage Hampton, L.P. 757-437-1677	Y	151	114	6/26/08	4/8/09	N
17	Chester Village Green, Chesterfield, VA	Chester Village, L.P. 757-437-1677	Y	163	125	Sept-Dec 2005	9/1/06	N
18	Sinclair Commons Apts., Hampton, VA	Sinclair Commons, L.P. 757-437-1677	Y	138	138	7/1/04	6/1/05	N
19	Lynnhaven Cove Apts., Virginia Beach, VA	Lynnhaven Cove, L.P. 757-437-1677	Y	115	115	7/1/03	5/1/04	N
20	The Crossings at Summerland, Woodbridge, Va	Summerland Heights III, L.P. 757-437-1677	Y	126	126	4/11/03	12/5/03	N
21	Shorewood Cove Apts., Norfolk, VA	Shorewood Cove, L.P. 757-437-1677	Y	132	129	11/1/11	12/2/11	N
22	Somerset, Phase I, Gainesville, VA	Somerset Apts., L.P. 757-437-1677	Y	172	172	1/31/02	6/20/02	N
23	Somerset, Phase II, Gainesville, VA	Somerset Apts., L.P. 757-437-1677	Y	104	104	1/31/02	6/20/02	N
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\* Must have the ability to bind the LIHTC entity; document with partnership/operating agreements and one 8609 (per entity/development) for a total of 6.

1st PAGE  
 TOTAL: 2,396 2,151 90% LIHTC as % of Total Units

Previous Participation Certification continued

	Development Name/Location	Name of Ownership Entity and Phone Number	Controlling General Partner? (Y/N)	Total Units	Low Income Units	Placed in Service Date	8609 Date	Non-compliance Found? Y/N (Explain Yes)
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GRAND TOTAL: 1,994 1,749

LHHC as % of 88% Total Unit

E

Site Control  
Documentation & Most  
Recent Real Estate Tax  
Assessment  
(MANDATORY)

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT ("Agreement") is made as of the 27<sup>th</sup> day of January, 2021, by and between **HAMPTON BAY ASSOCIATES, L.L.C.**, a Virginia limited liability company ("Seller"), and **MARLYN DEVELOPMENT CORPORATION**, a Virginia corporation, or assigns ("Buyer").

WITNESSETH

For and in consideration of the **sum of \$10.00 cash in hand paid** by Buyer to Seller, the mutual covenants and agreements hereinafter set forth, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties hereto do hereby agree as follows:

1. Sale. Seller agrees to sell and convey to Buyer and Buyer agrees to purchase from Seller subject the terms and conditions herein provided, the following property, rights and interests in property located at 1963 W. Pembroke Avenue, Hampton, VA 23666, Hampton Parcel Identification Number 13004215 containing approximately 7.8 contiguous acres located in the City of Hampton, Virginia, together with (i) all and singular the rights, tenements, hereditaments, privileges, easements, and appurtenances pertaining thereto (including without limitation all riparian, timber, oil, gas, and mineral rights) and all improvements thereon, and (ii) all designs, calculations, plans, drawings, elevations, approvals, licenses, and permits associated therewith (collectively, the "Property"). A more particular description of the Property shall be developed in connection with Buyer's title search and survey, which description shall be substituted for the one contained herein and which shall be used in the Deed at Closing. Notwithstanding the foregoing, Buyer covenants and agrees that it will not develop the Property pursuant to Seller's site plan entitled "SITE PLAN NO. 2014-0029 Wharton Center of Commerce Parcel A-3 Professional Business Park A New Development Site City of Hampton, Virginia", dated November 7, 2014, prepared by T.J. Savage, Jr., LS ("Seller's Site Plan"); provided, however, Buyer may utilize Seller's Site Plan and/or components thereof (e.g., wetland delineations, jurisdictional determinations, and permits) in order to obtain Buyer's Approvals.

2. Purchase Price

(a) The total purchase price ("**Purchase Price**") for the Property shall be in the amount of **\$699,000.00**.

(b) Purchase Price shall be payable by Buyer to Seller as follows:

(i) The sum of \$50,000.00 (the "Deposit") shall be deposited by Buyer in escrow with the Title Company (hereinafter defined and also known, with respect to the

Initials:

Buyer: BS  
Seller: WTW

Deposit, as "Escrow Agent") within 5 business days after the date (the "Execution Date") Buyer receives from Seller a fully executed original of this Agreement, which Deposit shall not earn interest and shall be held and applied in accordance with paragraph 2(b)(iv);

(ii) Following the expiration of the Inspection Period and continuing through Closing or earlier termination of this Agreement, Buyer shall reimburse Seller for Seller's payment of the real estate taxes assessed by the City of Hampton against the Property beginning as of and prorated from the Execution Date (the "R/E Tax Payments"). The R/E Tax Payments shall be non-refundable, except in the event of a default by Seller. Real Estate tax payments shall NOT be credited to the Purchase Price.

(iii) The balance of the Purchase Price shall be paid by federally wired funds upon "Closing" (hereinafter defined) and recordation of the "Deed" (hereinafter defined); and

(iv) The Deposit shall be applied toward payment of the Purchase Price on the date of Closing, unless otherwise disbursed in accordance with the terms of this Agreement.

3. Closing. The consummation of the sale and purchase of the Property and the delivery of possession (the "Closing") shall occur on or before the date (the "Closing Date") which is the earlier to occur of (a) the date which is 30 days after expiration of the Approval Period, and (b) the date specified by Buyer in a written notice given to Seller at least 7 days prior to the specified date, at the offices of Buyer's counsel; provided, unless waived by Buyer, (i) title is shown to be good and marketable and in accordance with the provisions of this Agreement or is otherwise accepted by Buyer, (ii) there shall have been no material, adverse change after the Execution Date and prior to Closing in the nature or condition of or circumstances affecting the Property, including, without limitation, actual or potential condemnation, any change in areas determined to be flood prone, designated wetlands, governmental zoning ordinances, or restrictions and requirements affecting ownership and development of the Property, (iii) all representations and warranties of Seller contained in this Agreement are true and correct in all respects, (iv) all other conditions precedent to Buyer's obligations under this Agreement have been satisfied, and (v) Seller has performed all its obligations under this Agreement. Risk of loss to the Property by casualty, subsidence or otherwise shall remain with Seller until Closing.

4. Conveyance and Permitted Exceptions. On the date of Closing, Seller shall convey to Buyer good, marketable, and fee simple title to the Property by a recordable special warranty deed (the "Deed"), insurable under a current ALTA form owner's title insurance policy, free and clear of all monetary liens and encumbrances and subject only to the "Permitted Exceptions" (as defined in paragraph 6 below).

Initials:

Buyer: BJ  
Seller: WTW



WTW 

5. Initial Documents to be Furnished to Buyer. Within <sup>15</sup>~~5~~ business days after the Execution Date, Seller, at its sole cost and expense, shall furnish to Buyer the following documents:

(a) Copies of all surveys, title commitments, appraisals, title policies, engineering, environmental, and feasibility studies, wetlands, soils, drainage and flood plain evaluations, plans, reports, permits, approvals, contracts and other similar documents in the possession of Seller, which relate to all or any portion of the Property, it being understood that such documents are provided to Buyer "AS IS/WHERE IS" with all faults and without representation or warranty of any kind; and

(b) Evidence of Seller's right, power and due authority to enter into this Agreement and to sell the Property in accordance with the terms hereof, which evidence shall be satisfactory to the "Title Company" (hereinafter defined).

6. Buyer's Objections to Title; Defects in Title. In the event, at any time prior to the end of the Inspection Period, Buyer delivers to Seller in writing its objections (the "Objections") to any exceptions or conditions to title contained in a title binder or commitment (the "Title Binder") for the Property obtained by Buyer from a title company (the "Title Company") acceptable to Buyer, any matters ("Survey Matters") disclosed by a survey (the "Survey") of the Property obtained by Buyer, or any other title matters discovered by Buyer which Buyer deems objectionable, Seller may, without obligation, within a period of 30 days following notice of the Objections, cause to be corrected or removed such title defect, exception or condition to which Buyer objected and cause the Title Company to delete such exceptions to title. In the event Seller fails or refuses to correct or remove such title defect, exception or condition and to cause the Title Company to delete such exceptions to title within such 30 day period, Buyer, at Buyer's option, may by written notice to Seller after the expiration of such 30 day period elect to (i) terminate this Agreement, in which event the entire Deposit paid by Buyer (less \$10.00 consideration to be paid to Seller) shall promptly be returned to Buyer and no party shall have any further rights, obligations, or liabilities hereunder, or (ii) accept the condition of title to the Property and the Title Binder with such endorsements as then exist. Any exceptions or conditions to title constituting easements, covenants and restrictions listed in the Title Binder or disclosed on the Survey which are not objected to by Buyer prior to the end of the Inspection Period shall constitute "Permitted Exceptions." If Seller does not correct or remove any title defect, exception or condition to the satisfaction of Buyer pursuant to Seller's right under this paragraph, Seller agrees to fully cooperate in Buyer's effort to correct such title objections.

7. Inspection and Approval Periods.

(a) Buyer, its agents, contractors, engineers, surveyors, attorneys, representatives and employees shall have the right, at its sole cost and expense, at any time and from

Initials:

Buyer: BZ

Seller: WTW

time to time to conduct such due diligence investigations as Buyer may deem appropriate and, in connection therewith, shall have the right to, enter into or upon the Property with machinery and equipment to conduct and make any and all studies, tests, examinations, inspections and investigations of or concerning the Property (including, without limitation, engineering studies, soil tests, surveys, including topographical surveys and environmental assessments) and to confirm any and all matters which Buyer may desire to confirm with respect to the Property to include, without limitation, Buyer's ability to construct and operate of a minimum of a 150 unit, 4 story, age-restricted apartment community with a parking requirement not to exceed 1.2 spaces per unit (the "Intended Use"). Buyer agrees to hold harmless, protect, defend, and indemnify, and hereby releases Seller from and against any and all claims, demands, causes of action, losses, liabilities, liens, encumbrances, costs, or expenses for property damage or bodily injury (including death) (collectively, "Liabilities") arising out of, connected with, or incidental to activities conducted on the Property by Buyer, its agents, representatives or contractors; provided, however, the preceding obligation of Buyer shall not apply to any Liabilities arising out of, connected with, or incidental to, in whole or in part, (1) pre-existing conditions of the Property, (2) the information generated by or from Buyer's due diligence investigations, to include, without limitation, response costs, regulatory action, tort claims, or diminution in the value of the Property, and/or (3) the negligent, reckless, or willful act(s) or omission(s) of Seller. If Buyer terminates this Agreement in accordance with the terms hereof, or if Closing does not occur due to any reason except default by Seller, Buyer shall (i) at its sole cost and expense, repair any damage to the Property resulting from Buyer's activities, in whatever manner necessary so that the Property shall be returned to substantially the same condition in which it existed prior to entry by Buyer or its agents or representatives, and (ii) within 10 business days after Buyer's termination, provide to Seller a copy of any and all information, materials, and data that Buyer and/or its agents or representatives discover, obtain or generate in connection with or resulting from its inspections or investigations of the Property, provided however such information is not restricted by third party providers from being given to Seller, and that all such information will be in its "AS IS/WHERE IS" condition without warranty or representation.

(b) If, during the period (the "Inspection Period") commencing on the Execution Date and expiring at 5:00 p.m. ninety (90) days after the Execution Date, Buyer determines, for any reason, in Buyer's sole and absolute discretion, that it does not wish to proceed with the acquisition of the Property, then Buyer shall have the absolute right to terminate this Agreement by giving written notice to that effect to Seller on or before the expiration of the Inspection Period. If Buyer exercises such right to terminate, this Agreement shall terminate and be of no further force or effect and, except as otherwise provided in this Agreement, no party shall have any further rights, obligations or liabilities under this Agreement, and the Deposit (less \$10.00 consideration to be paid to Seller) shall be returned immediately to Buyer. In the event Buyer does not exercise its right to terminate the Agreement as provided herein, the Deposit shall become non-refundable (except in the

Initials:

Buyer: BZ

Seller: WTW

event of a default by Seller or as otherwise provided in this Agreement) but shall be applied to and credited against the Purchase Price at Closing.

(c) Upon the expiration of the Inspection Period, Buyer shall have a period of time (the "Approval Period") in which to obtain all unappealable approvals, upon terms and conditions acceptable to Buyer in its sole discretion, from all applicable governmental entities, agencies, and authorities of all rezonings, special use permits, wetland delineations, wetland impact permits, and other approvals necessary to construct, occupy, and operate its Intended Use on the Property, (collectively, the "Approvals"). The Approval Period shall commence upon the expiration of the Inspection Period and shall expire at 5:00 p.m. on the date which is 180 days after expiration of the Inspection Period. Buyer agrees to diligently pursue the Approvals during the Approval Period. If the Approvals have not been obtained prior to the expiration of the Approval Period, then Buyer shall have the absolute right to terminate this Agreement by giving written notice to that effect to Seller on or before the expiration of the Approval Period. If Buyer exercises such right to terminate, this Agreement shall terminate and be of no further force or effect and, except as otherwise provided in this Agreement, no party shall have any further rights, obligations or liabilities under this Agreement, and the Deposit (less \$10.00 consideration to be paid to Seller) shall be returned immediately to Buyer. Buyer shall have the right to extend the Approval Period for up to two periods of 45 days each and one period of 30 days (a total of 3 extensions) by providing notice to Seller prior to the then current Approval Period expiration date. As consideration for each extension of the Approval Period, Buyer shall pay to the Escrow Agent an additional \$25,000.00 which shall be deemed to be a part of the Deposit and applied to the Purchase Price at Closing. In the event Buyer does not exercise its right to terminate the Agreement as provided herein or, notwithstanding any other provision of this Agreement, upon Buyer's receipt of the Approvals, the entire Deposit shall be non-refundable (except in the event of a default by Seller) but shall be applied to and credited against the Purchase Price at Closing.

8. Documents and Instruments to be Furnished by Seller on or before Closing Date. On or before 5 days prior to the Closing Date, Seller shall furnish Buyer the following documents, each of which shall be in form and substance reasonably satisfactory to Buyer's counsel:

- (a) The Deed;
- (b) An Assignment and/or Bill of Sale, assigning to Buyer all designs, calculations, plans, drawings, elevations, approvals, licenses, and permits associated with the Property (or any portion thereof) and/or Buyer's Intended Use;
- (c) A Certification of Non-Foreign Status conforming with the requirements of Section 1445 of the Internal Revenue Code and a complete Virginia Form R5;

Initials:

Buyer: BJ  
Seller: WTW

(d) An owner's affidavit as to, among other things, no liens or conflicting rights of possession in customary form required by the Title Company and executed by Seller;

(e) A Bring Down Certificate certifying that all representations, warranties, and other certifications of Seller set forth herein are true and correct in all material respects as of the date of Closing; and

(f) Any and all other documentation reasonably required by Buyer's counsel, Buyer's lender, and/or the Title Company to consummate Buyer's acquisition of the Property and the issuance of an owner's and lender's title insurance policies.

9. Prorations; Closing Costs.

(a) General real estate taxes assessed against the Property for the current fiscal year shall be prorated on a settlement statement as of the Closing Date. Seller shall be responsible for payment of all prior taxes due on the Property regardless of when such taxes become due, to include but not be limited to any "roll-back" taxes or tax penalty imposed upon the transfer of title at Closing. Buyer may require reasonable security to ensure payment by Seller of such taxes if and when they become due.

(b) Buyer shall pay the cost of recording the Deed, any documents recorded at Buyer's request and any documents in connection with any mortgage to be placed on the Property by Buyer. Seller shall pay the grantor's tax on the Deed and the costs of correcting title matters as provided in paragraph 6, which Seller is obligated, or has elected to attempt, to cure. Each party shall pay its own attorneys' fees incurred in connection with this Agreement and the consummation of the transaction contemplated hereby.

10. Representations, Warranties and Covenants.

(a) Seller hereby represents and warrants to and covenants with Buyer on the date hereof (all of which shall be deemed confirmed and remade by Seller as of the Closing Date) as follows:

(i) Seller owns good, marketable, and fee simple title to the Property and will convey to Buyer the Property free and clear of all liens, monetary encumbrances, third-party claims, and any claims of adverse possession and prescriptive easements, and conveyance of the Property to Buyer will be in accordance with all applicable subdivision and related ordinances. The Property is directly accessible from a public street or right-of-way or is directly accessible via recorded easement from a public street or right-of-way. Seller has not entered into any agreement (other than this Agreement) to sell or further encumber or dispose of any interest in the Property or any portion thereof or any agreement which imposes restrictions on the ability or right

Initials:

Buyer: BJ  
Seller: WTW

of Seller to sell and/or transfer the Property or any interest therein, including without limitation, any options or rights of first refusal in favor of third parties, except that Seller may continue to market the Property and accept "back-up" contracts contingent upon Buyer's termination of this Agreement.

(ii) There are no unrecorded agreements (other than this Agreement), contracts, licenses, leases, rental agreements, invoices, bills, undertakings or understandings affecting all or any portion of the Property that shall survive closing;

(iii) The Property has not during Seller's ownership of it, or, to the best of Seller's knowledge, during any prior period at any time been used for the manufacture, processing, distribution, use, treatment, release, discharge, storage, disposal, transport or handling of any flammable materials, explosives, radioactive materials, corrosive, reactive or poisonous materials, hazardous or toxic wastes or substances, including, without limitation, any substances (collectively, "Hazardous Substances") now defined as or now included in the definition of "hazardous substances", "hazardous wastes", "hazardous materials", or "toxic substances" under any applicable federal, state or local law, ordinance, statute, code, rule or regulation in effect on or prior to Closing. Seller is not, nor has Seller ever been, subject to any administrative plan, order, decree or judgment relating to any of the foregoing with respect to the Property. During Seller's ownership of the Property, and, to the best of Seller's knowledge, during any prior periods, (1) there have been no underground storage tanks present on the Property, (2) no petroleum products have spilled or leaked upon or in the Property, other than immaterial quantities in connection with operation of motor vehicles on the Property, (3) no tidal or nontidal wetlands (as defined by federal, state or local law or regulation) on the Property have been drained, filled or otherwise modified, (4) the Property has not had thereon or therein accumulations of solid waste, or dredge materials or fill materials containing any Hazardous Substances, asbestos or petroleum, and (5) there have been no violations of any environmental laws, rules and regulations with respect to the Property which have not been cured;

(iv) No labor, material or services have been furnished by or at the direction of Seller, Seller's licensees, employees or agents, on or about the Property or any portion thereof which have not heretofore been paid for in full and no mechanic's, laborer's or materialmen's liens or claims therefor might arise on account thereof;

(v) There are no outstanding options or other contracts or claims giving any party other than Buyer a right to occupy, use, access or purchase the Property, or any portion thereof, or interest therein. From and after the Execution Date (except as provided in this Agreement), Seller shall not transfer any interest in, or grant any easement or apply for or enter into any application, permit, contractual agreement, consent decree or understanding, written or oral, with respect to the Property or any portion thereof or any interest therein;

Initials:

Buyer: BZ

Seller: WTW

(vi) No assessments for public improvements have been made against the Property or any portion thereof, which remain unpaid;

(vii) There are no pending or threatened assessments, or to the best of Seller's knowledge, condemnation or eminent domain proceedings against the Property, or any portion thereof, and there is no change or proposed change in the route, grade, or width of, or otherwise affecting, any street or road and is contiguous to the Property or any portion thereof. Seller shall give Buyer prompt notice of any such actual or threatened condemnation proceedings of which Seller has knowledge;

(viii) To the best of Seller's knowledge, no portion of the Property contains historic, cultural, or natural resources (to include, without limitation, rare, threatened, or endangered species); and no property adjoining the Property has been used as a landfill or dumping ground, nor has there been any release, threat of release, discharge, storage, treatment, generation or disposal of any hazardous substance or petroleum product on any adjoining property;

(ix) There is no pending or, to Seller's knowledge, threatened notice of violation, action, suit or proceeding in any court or by any governmental body or agency or other party affecting the Property;

(x) The Property is now, and on the Closing Date shall be, in full compliance with all laws and regulations of applicable federal, state, municipal, and other governmental authorities having jurisdiction over or governing the use of the Property including, without limitation, all zoning, subdivision, and building restrictions and ordinances, all fire and health codes, and all laws and regulations relating to environmental protection, sanitation, and pollution control. Seller has not received any notice of, nor has any knowledge of, any condition which may give rise to any violation of any law, rule, regulation, order, or ordinance applicable to the Property;

(xi) Seller shall not alter the condition of the Property at any time after the execution of this Agreement, nor shall Seller further encumber the Property in any way without Buyer's prior written approval;

(xii) Seller has all requisite power and authority to execute and deliver this Agreement and consummate the transactions contemplated thereby; and

(xiii) This Agreement has been duly and validly authorized, executed and delivered by Seller, and constitutes the valid and binding obligation of Seller; and

Initials:

Buyer: 39

Seller: WTW

(xiv) Seller is not in bankruptcy or contemplating filing for bankruptcy and is not in default of any obligation which would give rise to a claim of a third party in or to the Property. The proceeds from the transaction contemplated by this Agreement are sufficient to satisfy all monetary liens and encumbrances on the Property and all deed of trust or other lien holders shall provide Buyer a full and complete release of their respective liens upon receipt of the applicable payoff at Closing.

(b) Buyer hereby represents and warrants to Seller on the date hereof (all of which shall be confirmed and remade by corporate resolution at the Closing Date) as follows:

(i) Buyer has all requisite power and authority to execute and deliver this Agreement and consummate the transactions contemplated thereby; and

(ii) This Agreement has been duly and validly authorized, executed and delivered by Buyer, and constitutes the valid and binding obligation of Buyer.

11. Real Estate Commissions. Seller and Buyer represent and warrant that no broker or finder has acted for it in connection with this Agreement or the transactions contemplated by this Agreement other than Campana Waltz Commercial Real Estate, LLC representing the Seller. Campana Waltz Commercial Real Estate, LLC will be paid a commission in the amount of 6% of the Purchase Price by Seller at Closing. Each party hereby agrees to indemnify and hold the other party harmless against any loss, liability, or expense, including attorney's fees, arising from or in any manner connected with any other claims for commissions or compensation for bringing about this Agreement or the transactions contemplated hereby made by any broker, finder or like agent.

12. Condemnation. Upon receipt of an offer or any notice or communication from any governmental or quasigovernmental body seeking to take under its power of eminent domain all or any part of the Property, Seller shall promptly notify Buyer of receipt of same and shall promptly send such communication, or a copy thereof, to Buyer. Upon receipt of such notice Buyer shall have the right to rescind this Agreement by delivery of written notice thereof to Seller within 30 days thereafter. If the Closing Date would occur prior to the expiration of said 30 day period, then the Closing Date shall be automatically extended to the date that is 5 days after the expiration of said 30 day period. In the event that Buyer elects to rescind, then this Agreement shall be null and void and have no further force and effect and the Deposit (less \$10.00 consideration to be paid to Seller) shall be returned immediately to Buyer. In the event that Buyer does not elect to rescind and the portion of the Property so required by the condemning authority is taken on or before the Closing, then: (i) the proceeds of such condemnation or sale in lieu thereof shall, at Buyer's election, be paid to Buyer or retained by Seller in which event the Purchase Price shall be reduced by the amount of such proceeds retained by Seller, and (ii) the Property so taken or sold shall not be

Initials:

Buyer: BS

Seller: WTW

subject to this Agreement. In the event that Buyer does not elect to rescind and the portion of Property so required by the condemning authority is taken after closing, then all Proceeds of such condemnation or sale in lieu thereof shall be the sole and exclusive property of Buyer. Seller and Buyer agree to cooperate with each other to obtain the highest and best price for the condemned Property.

13. Seller's Remedy Upon Default. In the event Buyer fails to keep or observe any covenant, agreement or obligation to be kept or observed by Buyer under this Agreement, and Buyer does not cure such failure within 30 days after written notice from Seller, Seller, as Seller's sole and exclusive remedy, may terminate this Agreement by giving written notice to that effect to Buyer, in which event the Deposit shall be forfeited to Seller as adequate liquidated damages for Buyer's default and Seller shall have no other rights or remedies at law or in equity.

14. Buyer's Remedies Upon Default. In the event Buyer discovers prior to Closing that any representation or warranty of Seller contained in this Agreement is inaccurate or misleading in any material respect, or in the event that Seller fails to keep or perform any covenant, agreement or obligation to be kept or performed by Seller under this Agreement, Buyer may, at its election, (a) waive such claims and proceed to Closing, (b) terminate this Agreement, receive a refund of the Deposit (less \$10.00 consideration to be paid to Seller), and pursue a claim for its damages, or (c) enforce specific performance of this Agreement, as its sole and exclusive remedies. In the event that Buyer discovers after Closing that any representation or warranty of Seller contained in this Agreement is inaccurate or misleading in any material respect, then Buyer shall be entitled to recover its reasonable damages associated therewith.

15. Survival. The representations, warranties, provisions, covenants and agreements contained in this Agreement shall survive the Closing of the sale and purchase of the Property pursuant to this Agreement for a period of 6 months and shall not be merged into any deed or document.

16. Notices. Any notices required or permitted to be given hereunder shall be deemed given when emailed, personally delivered, deposited with a nationally recognized courier for overnight delivery, or deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed to Buyer or Seller, as the case may be, as follows:

If to Buyer:

Marlyn Development Corporation  
Attn: Brian Staub  
308 35<sup>th</sup> Street, Suite 101  
Virginia Beach, Virginia 23451

Page 10 of 14

Initials:

Buyer: BS

Seller: WTW



bstaub@marlyndv.com

With a copy to:

Timothy O. Trant II, Esq.  
Kaufman & Canoles, P.C.  
11815 Fountain Way, Suite 400  
Newport News, VA 23606  
T: 757-259-3823  
totrant@kaufcan.com

If to Seller:

Hampton Bay Associates  
1706 Neptune Drive  
Hampton, VA 23669  
Email: ty@wcciva.com

With a copy to:

J. Robert Harris  
34 West Queens Way  
Hampton, VA 23669  
jrobertharrisiii@yahoo.com

Any party to this Agreement may change its address for notice purposes by giving notice thereof to the other parties hereto, except that such change of address notice shall not be deemed to have been given until actually received by the addressee thereof.

17. Miscellaneous.

(a) This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legatees, legal representatives, successors and assigns.

(b) This Agreement may be executed and delivered in any number of facsimile (including email, .pdf, or other electronic format) counterparts, each constituting an original but all together only one Agreement.

Initials:

Buyer: BS

Seller: WTW

(c) This Agreement constitutes the entire agreement and understanding between the parties hereto and it is agreed that any change in, addition to, amendment or modification of the terms hereof shall be of no effect unless reduced to writing and executed by both parties hereto.

(d) In the event that the last day for the expiration of any time period, the exercise of any right, or the performance of any obligation hereunder occurs on a Saturday, Sunday or legal holiday, then the time for such expiration, exercise, or performance shall be extended to the next following business day.

(e) If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

(f) In the event that any litigation is commenced by either party to enforce its rights under this Agreement, the substantially prevailing party shall be entitled to recover from the other the cost incurred by it in prosecuting or defending such litigation, including reasonable attorneys' fees, expert witness fees, and costs.

(g) This Agreement shall be governed by and interpreted in accordance with the laws of the Commonwealth of Virginia without regard to its conflict of laws principles. The parties irrevocably agree to non-exclusive personal jurisdiction in the Commonwealth of Virginia and that venue shall be proper only in the Courts of the City of Hampton, Virginia.

(h) This Agreement may not be assigned by either party without the written consent of the other, which consent shall not be unreasonably withheld, conditioned, or delayed; provided, however, Seller's consent shall not be required for Buyer to assign this Agreement to a subsidiary or affiliate of Buyer, or an entity under common ownership or control with Buyer.

(i) Any failure of either party hereto to insist upon strict observance of any covenant, provision or condition of this Agreement in any one or more instances shall not constitute or be construed to be a waiver at that time or thereafter, of such or any other covenant, provision or condition of this Agreement.

(j) The headings and captions hereof are for convenience only and shall not be considered in interpreting the provisions hereof.

(k) Each party and each person signing below on behalf of such party in their individual capacity represents and warrants to the other party that it is fully authorized to enter into this Agreement without the joinder of any other person or entity, and the person executing this

Initials:

Buyer: BS  
Seller: WTW

Agreement on behalf of such party has full authority to do so and that any and all required corporate action has been taken.

(l) Anything contained herein to the contrary notwithstanding, this Agreement shall, if not sooner withdrawn by Buyer, become null and void if the parties hereto have not executed and returned this Agreement to Buyer on or before January 29, 2021.

[Signatures appear on the following page]

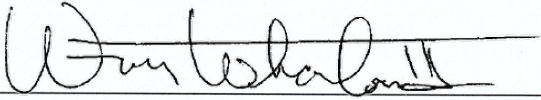
Initials:  
Buyer: BS  
Seller: WTW

[Signature Page to Purchase and Sale Agreement]

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement:

SELLER:

HAMPTON BAY ASSOCIATES, L.L.C.

By: 

Name: WILLIAM T. WHARTON III

Title: Managing Partner

Date: 1/27/2021

BUYER:


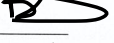
MARLYN DEVELOPMENT CORPORATION

By: 

Name: Brian Staub

Title: CFO

Date: 1/26/21

Initials:   
Buyer:   
Seller: WTW

## FIRST AMENDMENT TO PURCHASE AND SALE AGREEMENT

This First Amendment to Purchase and Sale Agreement (the "Amendment") is made this 27<sup>th</sup> day of April, 2021, by and between **HAMPTON BAY ASSOCIATES, L.L.C.** ("Seller"), and **MARLYN DEVELOPMENT CORPORATION** ("Buyer").

### RECITALS:

A. Seller and Buyer entered into a Purchase and Sale Agreement (the "Contract"), dated as of January 27, 2021, for the purchase and sale of certain real property located in the City of Hampton, Virginia and more particularly described in the Contract as the Property.

B. Buyer and Seller desire to amend and supplement the Contract as more particularly provided below.

### AGREEMENT:

For and in consideration of the above recitals which are incorporated herein by reference, the mutual promises contained herein, the sum of ten dollars cash in hand paid by Buyer to Seller, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. Notwithstanding any other provision of the Contract, if Buyer determines that the Intended Use is infeasible based upon the results of its geotechnical analysis of the Property, then Buyer may terminate this Agreement by notifying Seller of same on or before July 27, 2021, in which event this Agreement shall terminate and be of no further force or effect and no party shall have any further rights, obligations or liabilities under this Agreement, and the Deposit (less \$10.00 consideration to be paid to Seller) shall be returned immediately to Buyer.

2. Buyer agrees to apply for rezoning on or before May 3, 2021.

3. Buyer's inspection of the Property has revealed that tires (the "Debris") have been deposited on the Property in the central eastern portion of the Property. Seller agrees to remove the Debris from the Property prior to Closing to Buyer's reasonable satisfaction and in accordance with all applicable laws, ordinances, and regulations (the "Removal"). Notwithstanding any other provision of the Contract and in addition to any other remedy available to Buyer, if Seller fails to complete the Removal prior to Closing, then Buyer may, in its sole discretion, proceed to Closing and receive a credit against the Purchase Price at Closing in the amount of \$8,000.00.

4. Except as otherwise defined or as supplemented herein, all capitalized terms shall have the same meaning as in the Contract.

5. Except as modified herein, the Contract shall remain in full force and effect.

6. In the event of any conflict between the provisions of this Amendment and the provisions of the Contract, the provisions of this Amendment shall prevail.

7. This Amendment may be executed and delivered in any number of facsimile counterparts, each constituting an original but all together only one Amendment. This Amendment shall not be effective unless it is executed by all parties.

[Signatures Located on the Following Pages]

[Signature Page to First Amendment to Purchase and Sale Agreement]

IN WITNESS WHEREOF, the parties have set their signatures as of the date indicated below.

SELLER:

Hampton Bay Associates, L.L.C.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

BUYER:

Marlyn Development Corporation

By:  \_\_\_\_\_

Name: Brian L. Staub

Title: CFO

Date: 4/27/21

## SECOND AMENDMENT TO PURCHASE AND SALE AGREEMENT

This Second Amendment to Purchase and Sale Agreement (the "Amendment") is made this 16th day of June, 2021, by and between **HAMPTON BAY ASSOCIATES, L.L.C.** ("Seller"), and **MARLYN DEVELOPMENT CORPORATION** ("Buyer").

### RECITALS:

A. Seller and Buyer entered into a Purchase and Sale Agreement, dated as of January 27, 2021, as amended by that First Amendment to Purchase and Sale Agreement dated April 27, 2021 (collectively, the "Contract") for the purchase and sale of certain real property located in the City of Hampton, Virginia and more particularly described in the Contract as the Property.

B. Buyer and Seller desire to amend and supplement the Contract as more particularly provided below.

### AGREEMENT:

For and in consideration of the above recitals which are incorporated herein by reference, the mutual promises contained herein, the sum of ten dollars cash in hand paid by Buyer to Seller, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. Section 2(a) of the Contract is hereby amended and restated to be as follows:

"The total purchase price ("Purchase Price") for the Property shall be in the amount of \$669,00.00."

2. Section 3 of the Contract is hereby amended and restated to be as follows:

"Closing. The consummation of the sale and purchase of the Property and the delivery of possession (the "Closing") shall occur on or before the date (the "Closing Date") which is the earlier to occur of (a) 30 days after the unappealable approval by Hampton City Council of a rezoning of the property for the Intended Use, or (b) the date which is 30 days after expiration of the Approval Period; provided, unless waived by Buyer, (i) title is shown to be good and marketable and in accordance with the provisions of this Agreement or is otherwise accepted by Buyer, (ii) there shall have been no material, adverse change after the Execution Date and prior to Closing in the nature or condition of or circumstances affecting the Property, including, without limitation, actual or potential condemnation, any change in areas determined to be flood prone, designated wetlands, governmental zoning ordinances, or restrictions and requirements affecting ownership and development of the Property, (iii) all representations and warranties of Seller contained in this Agreement are true and correct in all respects, (iv) all other conditions precedent to Buyer's obligations under this Agreement have been satisfied, and (v) Seller has performed all its obligations under this Agreement. Risk of loss to the Property by casualty, subsidence or otherwise shall remain with Seller until Closing."

3. Section 7(c) of the Contract is hereby amended and restated as follows:

Upon the expiration of the Inspection Period, Buyer shall have a period of time (the "Approval Period") in which to obtain all unappealable approvals, upon terms and conditions acceptable to Buyer in its sole discretion, from all applicable governmental entities, agencies, and authorities of all rezonings, special use permits, wetland delineations, wetland impact permits, and other approvals necessary to construct, occupy, and operate its Intended Use on the Property, (collectively, the "Approvals"). The Approval Period shall commence upon the expiration of the Inspection Period and shall expire at 5:00 p.m. on the date which is 180 days after expiration of the Inspection Period. Buyer agrees to diligently pursue the Approvals during the Approval Period. If the Approvals have not been obtained prior to the expiration of the Approval Period, then Buyer shall have the absolute right to terminate this Agreement by giving written notice to that effect to Seller on or before the expiration of the Approval Period. If Buyer exercises such right to terminate, this Agreement shall terminate and be of no further force or effect and, except as otherwise provided in the Agreement, no party shall have any further rights, obligations, or liabilities under this Agreement, and the Deposit (less \$10.00 consideration to be paid to Seller) shall be returned immediately to Buyer.

4. Seller agrees to reasonably cooperate with Buyer in obtaining the Approvals to include, without limitation, joining in applications, if necessary; provided, however, Seller shall not be obligated to incur any out-of-pocket expenses in conjunction therewith.

5. Buyer shall, commence land disturbance and other site work activities in accordance with the Approvals within ten (10) days of such approvals, provided such activities are conducted in compliance with all applicable laws, ordinances, and regulations. Should Buyer terminate this agreement, any land disturbance or other site work activities that have commenced will be stabilized by Buyer in a condition that is in compliance with City of Hampton codes.

6. Except as otherwise defined or as supplemented herein, all capitalized terms shall have the same meaning as in the Contract.

7. Except as modified herein, the Contract shall remain in full force and effect.

8. In the event of any conflict between the provisions of this Amendment and the provisions of the Contract, the provisions of this Amendment shall prevail.

9. This Amendment may be executed and delivered in any number of facsimile counterparts, each constituting an original but all together only one Amendment. This Amendment shall not be effective unless it is executed by all parties.

[Signatures Located on the Following Pages]

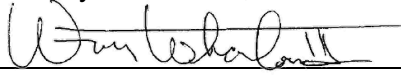


[Signature Page to Second Amendment to Purchase and Sale Agreement]

IN WITNESS WHEREOF, the parties have set their signatures as of the date indicated below.

SELLER:

Hampton Bay Associates, L.L.C.

By: 

Name: WILLIAM T. WHARTON III

Title: MANAGING PARTNER

Date: 6/16/2021

BUYER:

Marlyn Development Corporation

By: 

Name: Brian L. Staub

Title: CFO

Date: 6/16/21

# Hampton, Virginia

---

**Property Address:** 1963 W PEMBROKE AVE  
HAMPTON, VA 23666

**Mailing Address:** 308 35TH ST  
VIRGINIA BEACH, VA 23451

**PIN/LRSN/RPC :** 13004215

## General Information

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**Owner's Name:** PEMBROKE SENIOR LP

**Assessment Neighborhood:** 9020

**Legal Description:** GAINSVILLE PCA3. 8.163 AC

**Subdivision Number:** 500042

**Deeded Acreage:** 8.16

**Deeded SqFt:** 355580

**GIS Acreage:** 7.8

**Old Map No:** 01M001 00 00000PCA3

## Assessment Information

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Fiscal Year	Land Value	Improvement Value	Total Value
FY2022	\$622,300	\$0	\$622,300
FY2021	\$622,300	\$0	\$622,300
FY2020	\$622,300	\$0	\$622,300
FY2019	\$622,300	\$0	\$622,300
FY2018	\$622,300	\$0	\$622,300
FY2017	\$622,300	\$0	\$622,300
FY2016	\$622,300	\$0	\$622,300

## Transfer History

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Grantor	Transfer Date	Consideration	Doc # or Deed Book/Pg
PEMBROKE SENIOR LP	9/2/2021 12:00:00 AM	669000	210 017218

## City Resources

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Land Development	
Zoning:	MD-3
SPI:	Yes
Wetlands:	Not in Zone
RMA:	Not in Zone
IDA:	Not in Zone
Noise:	<i>No Data</i>
Soil Type:	TOMOTLEY
Master Plan Area:	<i>No Data</i>

Neighborhood Services	
Census Tract:	11900
District:	Greater Wythe, District 9
Representative:	Deena Franklin

Police Dept	
District:	107
Traffic Zone:	87

Codes	
District:	3B
Inspector:	CHESSON
New Construction Inspector:	CHESSON

Public Works	
Street Sweeping:	3rd MONDAY
Trash Day:	FRIDAY
Recycling:	GREEN FRIDAY
Pump Station Area:	100
Watershed:	HR2

Fire Dept	
District:	ST03
Inspector:	1
Battalion:	1

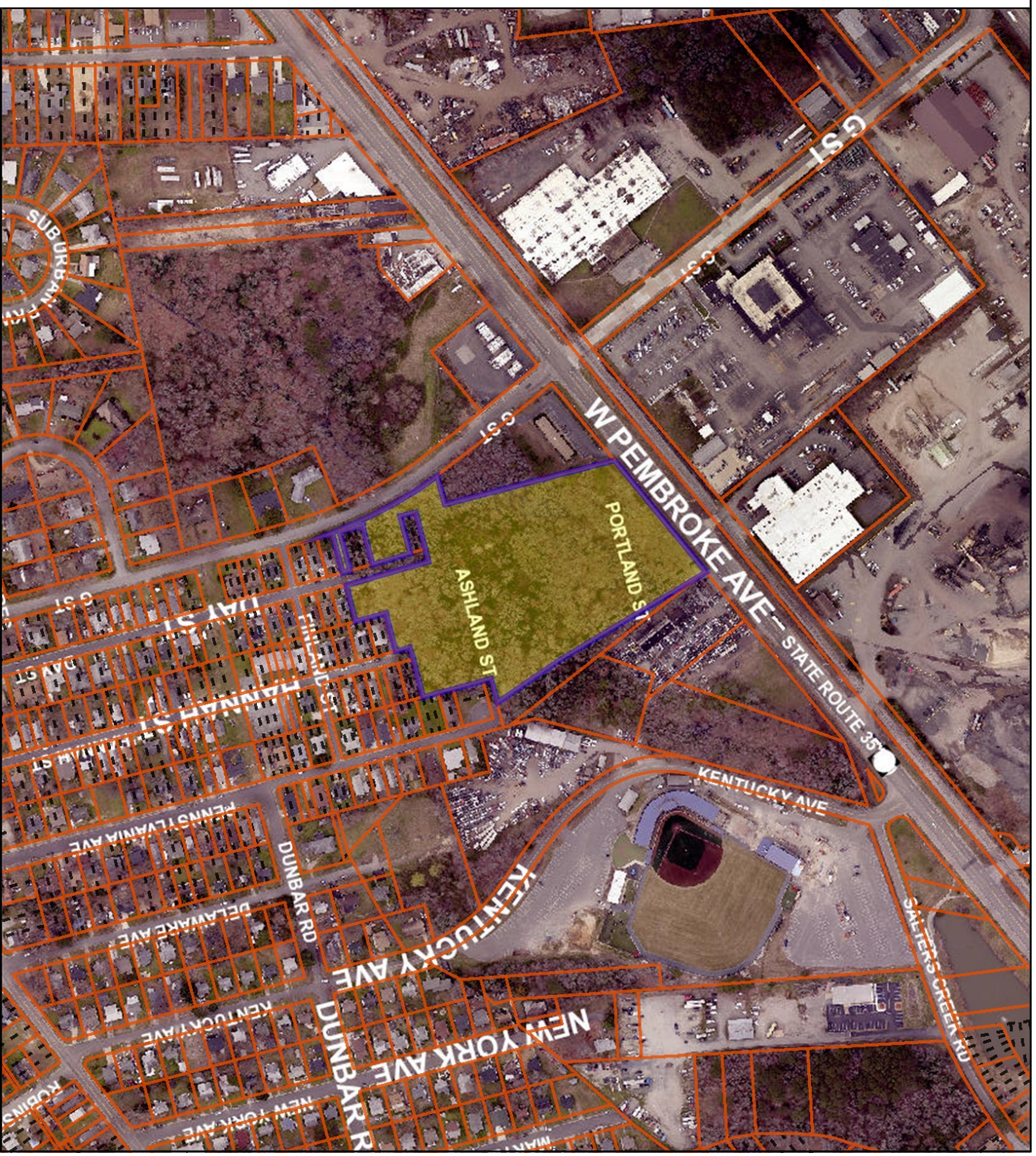
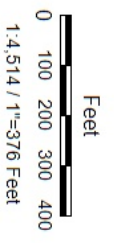
Land Development	
Office Park:	Not in Park
Urban Enterprise Zone:	In Zone
Hampton Roads Center Enterprise Zone:	Not in Zone
Hampton Roads Center Technology Zone:	Not in Zone
Downtown Technology Zone:	Not in Zone

Voting Information	
Congress:	3
House of Representative:	92
Senate:	2
Poll Precinct:	PHENIX
Poll Location:	NEIGHBORHOOD RESOURCE CTR

Sherriff's Office	
Warrant Services:	CP1

# Hampton, Virginia

- Legend**
- Parcels
  - Lot Lines
  - Boundary



**Title: Parcels**

**Date: 9/23/2021**

*DISCLAIMER: This drawing is neither a legally recorded map nor a survey and is not intended to be used as such. The information displayed is a compilation of records, information, and data obtained from various sources, and City of Hampton is not responsible for its accuracy or how current it may be.*

F

Third-Party RESNET  
Rater Certification  
(MANDATORY)



Appendix F
RESNET Rater Certification of Development Plans

I certify that the development's plans and specifications incorporate all items for the required baseline energy performance as indicated in Virginia's Qualified Allocation Plan (QAP). In the event the plans and specifications do not include requirements to meet the QAP baseline energy performance, then those requirements still must be met, even though the application is accepted for credits.

\*\*\*Please note that this may cause the Application to be ineligible for credits. The Requirements apply to any new, adaptive reuse or rehabilitated development (including those serving elderly and/or physically disabled households).

In addition provide HERS rating documentation as specified in the manual

X New Construction - EnergyStar Certification
The development's design meets the criteria for the EnergyStar certification. Rater understands that before issuance of IRS Form 8609, applicant will obtain and provide EnergyStar Certification to VHDA.

Rehabilitation -30% performance increase over existing, based on HERS Index
Or Must evidence a HERS Index of 80 or better
Rater understands that before issuance of IRS Form 8609, rater must provide Certification to VHDA of energy performance.

Adaptive Reuse - Must evidence a HERS Index of 95 or better.
Rater understands that before issuance of IRS Form 8609, rater must provide Certification to VHDA of energy performance.

Additional Optional Certifications

I certify that the development's plans and specifications incorporate all items for the certification as indicated below, and I am a certified verifier of said certification. In the event the plans and specifications do not include requirements to obtain the certification, then those requirements still must be met, even though the application is accepted for credits. Rater understands that before issuance of IRS Form 8609, applicant will obtain and provide Certification to VHDA.

FALSE Earthcraft Certification - The development's design meets the criteria to obtain Viridian's EarthCraft Multifamily program Gold certification or higher

FALSE LEED Certification - The development's design meets the criteria for the U.S. Green Building Council LEED green building certification.

FALSE National Green Building Standard (NGBS) - The development's design meets the criteria for meeting the NGBS Silver or higher standards to obtain certification

FALSE Enterprise Green Communities - The developmen's design meets the criteria for meeting meeting the requirements as stated in the Enterprise Green Communities Criteria for this developments construction type to obtain certification.

\*\*\*Please Note Raters must have completed 500+ ratings in order to certify this form

Signed: [Signature]

Date: 10/19/21

Printed Name: Stacey Smith

Resnet Provider Agency
Viridian

RESNET Rater
[Signature]

Provider Contact and Phone/Email Sean Evensen-Shanley (804)212-1934 /sean.shanley@viridian.org

## The Arbors at Pembroke 2021 LIHTC Pre-Review Comments

### Project Address

1963 West Pembroke Ave  
Hampton, VA 23451

### Project Summary

The Arbors at Pembroke is a new construction low-rise multifamily development, comprised of 150 units located in Hampton, VA. Marlyn Development plans to construct the project utilizing 4% LIHTC. As part of their funding application the project is seeking certification under the Energy Star Multifamily New Construction program. This level of certification requires the project to meet unit specific HERS targets and completion of all the Energy Star checklists. Craig Miller of Cox, Kliever & Co. is the primary architect contact for the project.

### Unit-Level Energy Modeling

Unit-level models were generated using Ekotrope v4.0.0 based on the proposed scope and plans provided by the project team dated October 1<sup>st</sup>, 2021. With the current scope of work, the worst case units in the development are obtaining a projected HERS index of 69 and is meeting the Energy Star target HERS. The following outlines the scope as it is currently modeled.

#### Enclosure:

- R-10 Grade II slab insulation
- R-19 Grade II cavity insulation in exterior above grade walls and rim & band
- R-11 Grade II cavity insulation in party walls and adiabatic ceilings/floors
- R-49 Grade I attic insulation
- 0.21 U-Value for opaque doors
- 0.34 U-Value/0.40 SHGC windows & glass doors

#### Mechanicals:

- SEER 15, HSPF 8.5, 18k air source heat pump, programmable thermostat
- 0.95 EF storage electric water heaters, 40 gallon
- 5 ACH<sub>50</sub> for infiltration threshold/blower door test
- 4% duct leakage to the outside, 8% total duct leakage
- Ducts in conditioned space insulated to R-6, ducts in unconditioned attic insulated to R-8
- AirCycler G2K mechanical ventilation utilizing 1/3 HP AHU fan

#### Lights & Appliances:

- ES rated kitchen appliances
  - 691 kWh/yr refrigerator
  - 270 kWh/yr dishwasher

The Arbors at Pembroke  
October 19<sup>th</sup>, 2021



- Advanced lighting 100% LED

Please let me know if you have any question or if the above information does not accurately capture your current scope.

Sincerely,

A handwritten signature in black ink that reads "Katy Maher".

Katy Maher  
*Project Manager, Viridiant*





viridiant

**Project Name:** The Arbors at Pembroke  
**Construction Type:** New Construction  
**Energy Efficiency Path:** Energy Star

Unit Type	Quantity	HERS
1BR Bottom/Middle	44	67
1BR Top	11	69
2BR Bottom/Middle	69	67
2BR Top	26	70
<b>Projected Project HERS - Weighted Average</b>		<b>68</b>

# Home Energy Rating Certificate Projected Report

Rating Date:  
Registry ID:  
Ekotrope ID: yvPgKJVd

## HERS® Index Score:

Your home's HERS score is a relative performance score. The lower the number, the more energy efficient the home. To learn more, visit [www.hersindex.com](http://www.hersindex.com)

# 67

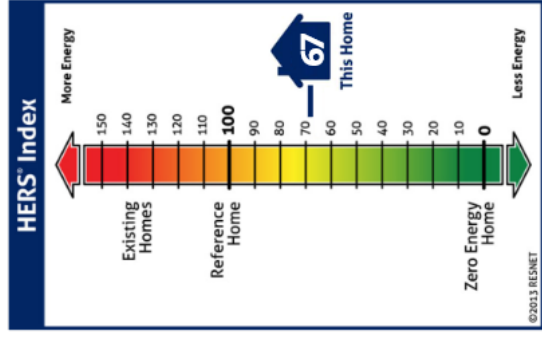
## Annual Savings

# \$627

\*Relative to an average U.S. home

**Home:**  
West Pembroke Avenue  
Hampton, VA  
**Builder:**

**This home meets or exceeds the criteria of the following:**



### Home Feature Summary:

Home Type: Apartment, inside unit  
 Model: N/A  
 Community: N/A  
 Conditioned Floor Area: 958 ft<sup>2</sup>  
 Number of Bedrooms: 1  
 Primary Heating System: Air Source Heat Pump • Electric • 8.5 HSPF  
 Primary Cooling System: Air Source Heat Pump • Electric • 15 SEER  
 Primary Water Heating: Residential Water Heater • Electric • 0.95 Energy Factor  
 House Tightness: 5 ACH50  
 Ventilation: 60 CFM • 249 Watts  
 Duct Leakage to Outside: 4 CFM @ 25Pa (0.34 / 100 ft<sup>2</sup>)  
 Above Grade Walls: R-25  
 Ceiling: Adiabatic, R-13  
 Window Type: U-Value: 0.34, SHGC: 0.4  
 Foundation Walls: N/A

### Rating Completed by:

**Energy Rater:** Katy Maher  
 RESNET ID: 2430236  
**Rating Company:** Viridian  
 1431 W. Main Street, Richmond, VA 23220  
**Rating Provider:** Viridian  
 1431 W. Main Street, Richmond, VA 23220

*Katy Maher*

Katy Maher, Certified Energy Rater  
 Digitally signed: 10/21/21 at 4:44 PM



# Home Energy Rating Certificate

## Projected Report

Rating Date:  
Registry ID:  
Ekotrope ID: VdGGQQKd

### HERS® Index Score:

Your home's HERS score is a relative performance score. The lower the number, the more energy efficient the home. To learn more, visit [www.hersindex.com](http://www.hersindex.com)

# 67

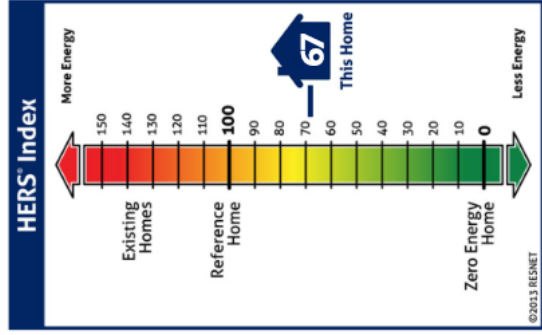
### Annual Savings

# \$799

\*Relative to an average U.S. home

**Home:**  
West Pembroke Avenue  
Hampton, VA  
**Builder:**

**This home meets or exceeds the criteria of the following:**



### Home Feature Summary:

Home Type: Apartment, end unit  
Model: N/A  
Community: N/A  
Conditioned Floor Area: 1,163 ft<sup>2</sup>  
Number of Bedrooms: 2  
Primary Heating System: Air Source Heat Pump • Electric • 8.5 HSPF  
Primary Cooling System: Air Source Heat Pump • Electric • 15 SEER  
Primary Water Heating: Residential Water Heater • Electric • 0.95 Energy Factor  
House Tightness: 5 ACH50  
Ventilation: 60 CFM • 249 Watts  
Duct Leakage to Outside: 4 CFM @ 25Pa (0.34 / 100 ft<sup>2</sup>)  
Above Grade Walls: R-25  
Ceiling: Adiabatic, R-13  
Window Type: U-Value: 0.34, SHGC: 0.4  
Foundation Walls: N/A

### Rating Completed by:

**Energy Rater:** Katy Maher  
RESNET ID: 2430236  
**Rating Company:** Viridian  
1431 W. Main Street, Richmond, VA 23220  
**Rating Provider:** Viridian  
1431 W. Main Street, Richmond, VA 23220

*Katy Maher*

Katy Maher, Certified Energy Rater  
Digitally signed: 10/21/21 at 4:43 PM



# Home Energy Rating Certificate

## Projected Report

Rating Date:  
 Registry ID:  
 Ekotrope ID: 9vgPo8X2

### HERS® Index Score:

Your home's HERS score is a relative performance score. The lower the number, the more energy efficient the home. To learn more, visit [www.hersindex.com](http://www.hersindex.com)

# 69

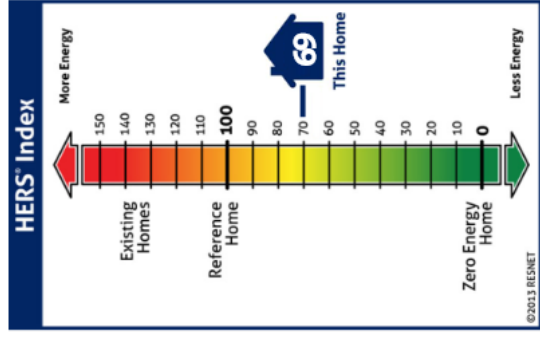
### Annual Savings

# \$623

\*Relative to an average U.S. home

**Home:**  
 West Pembroke Avenue  
 Hampton, VA  
**Builder:**

**This home meets or exceeds the criteria of the following:**



### Home Feature Summary:

Home Type: Apartment, inside unit  
 Model: N/A  
 Community: N/A  
 Conditioned Floor Area: 958 ft<sup>2</sup>  
 Number of Bedrooms: 1  
 Primary Heating System: Air Source Heat Pump • Electric • 8.5 HSPF  
 Primary Cooling System: Air Source Heat Pump • Electric • 15 SEER  
 Primary Water Heating: Residential Water Heater • Electric • 0.95 Energy Factor  
 House Tightness: 5 ACH50  
 Ventilation: 60 CFM • 249 Watts  
 Duct Leakage to Outside: 4 CFM @ 25Pa (0.34 / 100 ft<sup>2</sup>)  
 Above Grade Walls: R-25  
 Ceiling: Attic, R-49  
 Window Type: U-Value: 0.34, SHGC: 0.4  
 Foundation Walls: N/A

### Rating Completed by:

**Energy Rater:** Katy Maher  
 RESNET ID: 2430236  
**Rating Company:** Viridian  
 1431 W. Main Street, Richmond, VA 23220  
**Rating Provider:** Viridian  
 1431 W. Main Street, Richmond, VA 23220

*Katy Maher*

Katy Maher, Certified Energy Rater  
 Digitally signed: 10/21/21 at 4:45 PM



# Home Energy Rating Certificate Projected Report

Rating Date:  
Registry ID:  
Ekotrope ID: b2J60Ok2

## HERS® Index Score:

Your home's HERS score is a relative performance score. The lower the number, the more energy efficient the home. To learn more, visit [www.hersindex.com](http://www.hersindex.com)

# 70

## Annual Savings

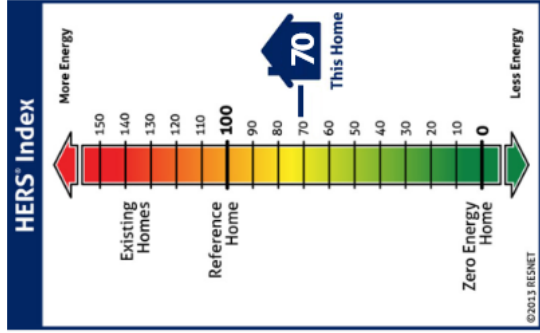
# \$779

\*Relative to an average U.S. home

**Home:**  
West Pembroke Avenue  
Hampton, VA  
**Builder:**

**This home meets or exceeds the criteria of the following:**

ENERGY STAR MF v1.0



### Home Feature Summary:

Home Type:	Apartment, end unit
Model:	N/A
Community:	N/A
Conditioned Floor Area:	1,163 ft <sup>2</sup>
Number of Bedrooms:	2
Primary Heating System:	Air Source Heat Pump • Electric • 8.5 HSPF
Primary Cooling System:	Air Source Heat Pump • Electric • 15 SEER
Primary Water Heating:	Residential Water Heater • Electric • 0.95 Energy Factor
House Tightness:	5 ACH50
Ventilation:	60 CFM • 249 Watts
Duct Leakage to Outside:	4 CFM @ 25Pa (0.34 / 100 ft <sup>2</sup> )
Above Grade Walls:	R-25
Ceiling:	Attic, R-49
Window Type:	U-Value: 0.34, SHGC: 0.4
Foundation Walls:	N/A

### Rating Completed by:

**Energy Rater:** Katy Maher  
RESNET ID: 2430236  
**Rating Company:** Viridian  
1431 W. Main Street, Richmond, VA 23220  
**Rating Provider:** Viridian  
1431 W. Main Street, Richmond, VA 23220



*Katy Maher*

Katy Maher, Certified Energy Rater  
Digitally signed: 10/21/21 at 4:42 PM



G

Zoning Certification Letter  
(MANDATORY)



# Zoning Certification

**DATE:** October 4, 2021

**TO:** Virginia Housing Development Authority  
601 South Belvidere Street  
Richmond, Virginia 23220  
Attention: JD Bondurant

**RE:** ZONING CERTIFICATION

Name of Development: Arbors at Pembroke

Name of Owner/Applicant: Pembroke Senior, LP

Name of Seller/Current Owner: Pembroke Senior, LP

The above-referenced Owner/Applicant has asked this office to complete this form letter regarding the zoning of the proposed Development (more fully described below). This certification is rendered solely for the purpose of confirming proper zoning for the site of the Development. It is understood that this letter will be used by the Virginia Housing Development Authority solely for the purpose of determining whether the Development qualifies for credits available under VHDA's Qualified Allocation Plan.

**DEVELOPMENT DESCRIPTION:**

Development Address:  
1963 W. Pembroke Avenue, Hampton, VA 23661  
\_\_\_\_\_  
\_\_\_\_\_

Legal Description:  
Please reference 'Exhibit A' attached to this Zoning Certification.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Proposed Improvements:**

<input checked="" type="checkbox"/> New Construction:	<u>150</u> # Units	<u>1</u> # Buildings	<u>213894</u> Approx. Total Floor Area Sq. Ft.
<input type="checkbox"/> Adaptive Reuse:	_____ # Units	_____ # Buildings	_____ Approx. Total Floor Area Sq. Ft.
<input type="checkbox"/> Rehabilitation:	_____ # Units	_____ # Buildings	_____ Approx. Total Floor Area Sq. Ft.

**Zoning Certification, cont'd**

Current Zoning: MD-3 (Multifamily Residential District) allowing a density of 20 units per acre, and the following other applicable conditions: \_\_\_\_\_

Other Descriptive Information: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**LOCAL CERTIFICATION:**

Check one of the following as appropriate:

- The zoning for the proposed development described above is proper for the proposed residential development. To the best of my knowledge, there are presently no zoning violations outstanding on this property. No further zoning approvals and/or special use permits are required.
- The development described above is an approved non-conforming use. To the best of my knowledge, there are presently no zoning violations outstanding on this property. No further zoning approvals and/or special use permits are required.

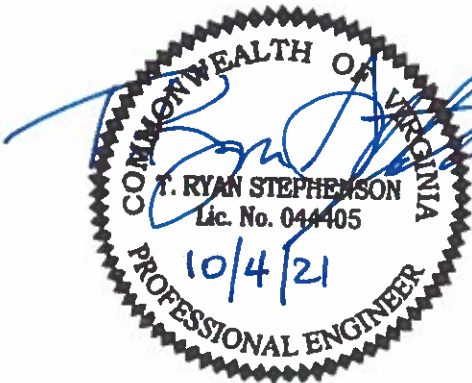
T. Ryan Stephenson  
Signature

T. RYAN STEPHENSON  
Printed Name

Senior Project Manager  
Title of Local Official or Civil Engineer

(757) 253-0040  
Phone:

October 4, 2021  
Date:



**NOTES TO LOCALITY:**

1. Return this certification to the developer for inclusion in the tax credit application package.
2. Any change in this form may result in disqualification of the application.
3. If you have any questions, please call the Tax Credit Allocation Department at (804) 343-5518.



EXHIBIT "A"

LEGAL DESCRIPTION

All those certain lots, pieces or parcels of land, situate, lying and being in the City of Hampton, Virginia, known and designated as follows: GAINSVILLE. BLOCK 1, LOTS 20-29 & PART OF LOTS 15-19; BLOCK 3, LOTS 1-15; BLOCK 4, LOTS 1-41; BLOCK 5, LOTS 3-20; BLOCK 7, LOTS 1-8 & 22, 23; BLOCK 8, LOTS 3-14 & 21-30; and BLOCK 9, LOTS 1, 2, 3, 6, 7, 8, 9, 10 & 14, as shown on that certain plat entitled, "PLAT OF THE PROPERTY OF JAMES A. BICKFORD", which plat is dated February 22, 2000, made by Becouvarakis and Associates, Land Surveying, which said plat is attached to instrument recorded on November 18, 2004 as Instrument No. 040031150.

Together with any right, title and interest in the streets platted as Hanna Street, Ashland Street, Day Street and Portland Street, as shown on the attached plat.

Less and Except Gainsville Block 7, Lots 22 and 23 as conveyed by deed dated March 20, 2006 from Hampton Bay Associates, LLC to Melva N. Woods-Merrell, recorded March 21, 2006 in the Circuit Court of the City of Hampton, Virginia, as Instrument No. 060007332.

It Being a portion of the same property conveyed by deed dated November 3, 2004 from William R. Burnette, Trustee, Old Point Trust and Financial Services, N.A., Trustee as Successor to Virginia National Bank of Norfolk, James V. Bickford, III, Paul R. Bickfold, Jr., Carolyn B. McCulloch and Betsy B. Burnette, to Hampton Bay Associates, LLC, a Virginia limited liability company, recorded November 18, 2004 in the Clerk's Office of the Circuit Court of the City of Hampton, Virginia, as Instrument No. 040031150.

Ordinance adopted May 14, 2014 vacating a portion of Subdivision Plat entitled "Plat of Gainsville", recorded in Deed Book 26 at Pages 112-114 and located at the corner of West Pembroke Avenue and G. Street with the Vacation Area comprising 50, 204 +/- S.F. or 1.1525 acres if unimproved right-of-way, vacating a portion of Ashland Street, Portland Street, Hannah Street and Day Street, recorded March 12, 2015 in the Clerk's Office of the Circuit Court of the City of Hampton, Virginia, as Instrument No. 150002796.

All those certain lots, pieces or parcels of land situate, lying and being in the City of Hampton (formerly Elizabeth City County), Virginia, known and designated as: that portion of lots 15, 16, 17, 18 & 19 in Block 1, that are located on the south-east side of Route 351 - West Pembroke Avenue, outside of the existing street right of way as shown on the attached plat title "PLAT SHOWING A PORTION OF PROPERTY STANDING IN THE NAME OF VIRGINIA DEPARTMENT OF TRANSPORTATION EAST RIGHT OF WAY LINE ROUTE 351 WEST PEMBROKE AVENUE" prepared by Robert O. Harmon for Edward C. Can, II dated January 10, 2006 duly recorded in the Clerk's Office of the Circuit Court for the City of Hampton, Virginia, in Misc. Plat Book 2, at Page 135; all of lots 20, 21, 24, 25 & 26 in Block 1; that portion of lots 22, 23 & 24 in Block 2, that are located on the south-east side of Route 351 - West Pembroke Avenue, outside of the existing street right of way as shown on said plat; all of lot 25 in Block 2; all of Lot 5 in Block 5; all as shown on the aforesaid plat.

It Being the same property conveyed by deed dated September 21, 2006 from the Commonwealth of Virginia, acting by and through the Commonwealth Transportation Commissioner, and William R. Burnette, Trustee, Old Point Trust and Financial Services, N.A., Trustee as Successor to Virginia National Bank of Norfolk, James V. Bickford, III, Paul R. Bickfold, Jr., Carolyn B. McCulloch and Betsy B. Burnette, to Hampton Bay Associates, LLC, recorded March 7, 2007 in the Clerk's Office of the Circuit Court of the City of Hampton, Virginia, as Instrument No. 070005915.

All that certain lots, pieces or parcels of land situated, lying and being in the City of Hampton (formerly Elizabeth City County), Virginia, known and designated as: Block 5, all of lots 1 and 2, and portions of Lots 22 and 23, Block 1, that are located on the southeast side of Route 351 - West Pembroke Avenue, outside of the existing street right of way as shown on the attached plat titled "PLAT SHOWING A PORTION OF

PROPERTY STANDING IN THE NAME OF VIRGINIA DEPARTMENT OF TRANSPORTATION EAST RIGHT OF WAY LINE ROUTE 351 WEST PEMBROKE AVENUE prepared by Robert O. Harmon for R. Dean Minnix dated November 28, 2007; and being the same property conveyed to the Commonwealth of Virginia by Agreement dated March 7, 1946 and recorded in Deed Book 132 Page 314 in the aforesaid Clerk's Office of the County of Elizabeth City.

It Being the same property conveyed by deed dated December 28, 2007 from the Commonwealth of Virginia, acting by and through the Commonwealth Transportation Commissioner, to Hampton Bay Associates, LLC, recorded March 7, 2007 in the Clerk's Office of the Circuit Court of the City of Hampton, Virginia, as Instrument No. 080013041.

All that certain lot, piece or parcel of land, lying, situate and being in the City of Hampton, Virginia being know, designated and described as Lots Numbered 1 and 2 in Block Numbered 8, as shown on that certain plat entitled "Map of Gainesville in the County of Elizabeth City, Va" made by E. A. Semple, Civil Engineer, a copy of which said plat is recorded in the Clerk's Office of the Circuit Court for the City of Hampton in Deed Book 26, page 112.

It Being the same property conveyed by deed dated November 14, 2013 from Ronald Warren Clyburn, Sr. to Hampton Bay Associates, LLC, recorded December 19, 2013 in the Clerk's Office of the Circuit Court of the City of Hampton, Virginia, as Instrument No. 130019284.

All that certain lot, piece or parcel of land situate, lying and being in the City of Hampton, Virginia, known and designated as Parcel A-1 10,672 S.F., as shown on that certain plat entitled, "SUBDIVISION OF THE PROPERTY OF HAMPTON ROADS INDEPENDENT BAPTIST CHURCH, CITY OF HAMPTON, VIRGINIA", made by T. J. Savage, Jr., Surveyor and Land Planner, Hampton, Virginia, dated June 18, 2012, and recorded in the Clerk's Office of the Circuit Court for the City of Hampton, Virginia, in Miscellaneous Plat. Book 4, at Page 9, to which plat reference is here made.

It Being the same property conveyed by deed dated February 20, 2014 from Douglas C. Butler, Sr., Milton Gatling, Kevin R. Wilson, Sr. and Ned H. Kelley, Jr., Trustees of the Hampton Roads Independent Baptist Church, to Hampton Bay Associates, LLC, recorded February 21, 2014 in the Clerk's Office of the Circuit Court of the City of Hampton, Virginia, as Instrument No. 140002106.

INSTRUMENT 210017218  
RECORDED IN THE CLERK'S OFFICE OF  
HAMPTON CIRCUIT COURT ON  
SEPTEMBER 2, 2021 AT 02:06 PM  
\$669.00 GRANTOR TAX WAS PAID AS  
REQUIRED BY SEC 58.1-802 OF THE VA. CODE  
STATE: \$334.50 LOCAL: \$334.50  
LINDA B. SMITH, CLERK  
RECORDED BY: JXR

H

Attorney's Opinion  
(MANDATORY)

November 1, 2021

Virginia Housing Development Authority  
601 South Belvidere Street  
Richmond, Virginia 23220-6500

RE: 2021 Tax Credit Reservation Request

Name of Development: Arbors at Pembroke  
Name of Owner: Pembroke Senior, LP

Ladies and Gentlemen:

This undersigned firm represents the above-referenced Owner as its counsel. It has received a copy of and has reviewed the completed application package dated November 1, 2021 (of which this opinion is a part) (the "Application") submitted to you for the purpose of requesting, in connection with the captioned Development, a reservation of low income housing tax credits ("Credits") available under Section 42 of the Internal Revenue Code of 1986, as amended (the "Code"). It has also reviewed Section 42 of the Code, the regulations issued pursuant thereto and such other binding authority as it believes to be applicable to the issuance hereof (the regulations and binding authority hereinafter collectively referred to as the "Regulations").

Based upon the foregoing reviews and upon due investigation of such matters as it deems necessary in order to render this opinion, but without expressing any opinion as to either the reasonableness of the estimated or projected figures or the veracity or accuracy of the factual representations set forth in the Application, the undersigned is of the opinion that:

1. It is more likely than not that the inclusion in eligible basis of the Development of such cost items or portions thereof, as set forth in Hard Costs and Owners Costs section of the Application form, complies with all applicable requirements of the Code and Regulations.

2. The calculations (a) of the Maximum Allowable Credit available under the Code with respect to the Development and (b) of the Estimated Qualified Basis of each building in the Development comply with all applicable requirements of the Code and Regulations, including the selection of credit type implicit in such calculations.

3. The information set forth in the Unit Details section of the Application form as to proposed rents satisfies all applicable requirements of the Code and Regulations.


4. The site of the captioned Development is controlled by the Owner, as identified in the Site Control section of the Application.

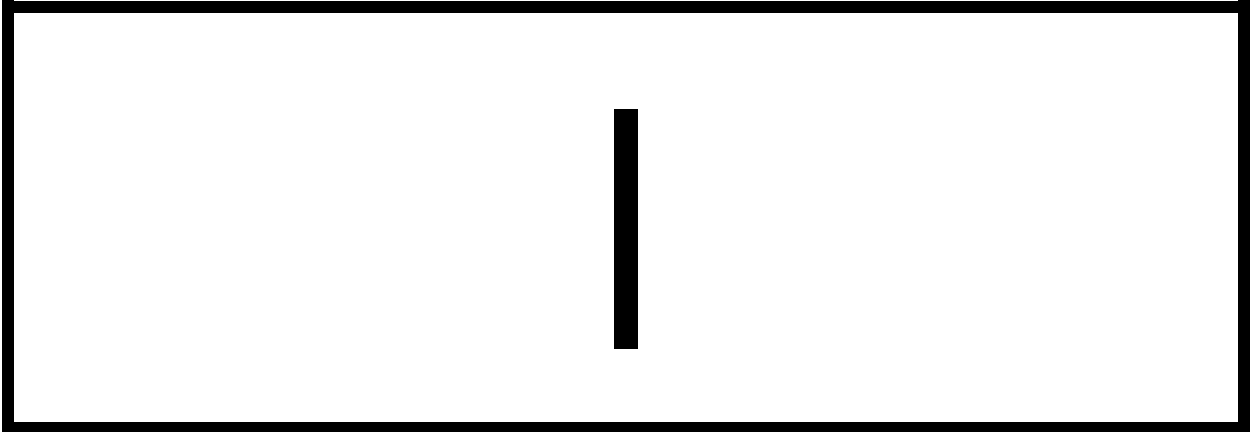
Finally, the undersigned is of the opinion that, if all information and representations contained in the Application and all current law were to remain unchanged, upon the placement in service of each building of the Development, the Owner would be eligible under the applicable provisions of the Code and the Regulations to an allocation of Credits in the amount(s) requested in the Application.

This opinion is rendered solely for the purpose of inducing the Virginia Housing Development Authority ("VHDA") to issue a reservation of Credits to the Owner. Accordingly, it may be relied upon only by VHDA and may not be relied upon by any other party for any other purpose.

This opinion was not prepared in accordance with the requirements of Treasury Department Circular No. 230. Accordingly, it may not be relied upon for the purpose of avoiding U.S. Federal tax penalties or to support the promotion or marketing of the transaction or matters addressed herein.

KAUFMAN & CANOLES,  
a Professional Corporation

By:   
\_\_\_\_\_  
Timothy O. Trant II, Member



# Nonprofit Questionnaire

**(MANDATORY for points or pool)**

**Not Applicable**

J

Relocation Plan  
Including Unit  
Delivery Schedule  
(MANDATORY, if tenants are displaced)



**Not Applicable**

K

Documentation of  
Development Location

**Not Applicable**

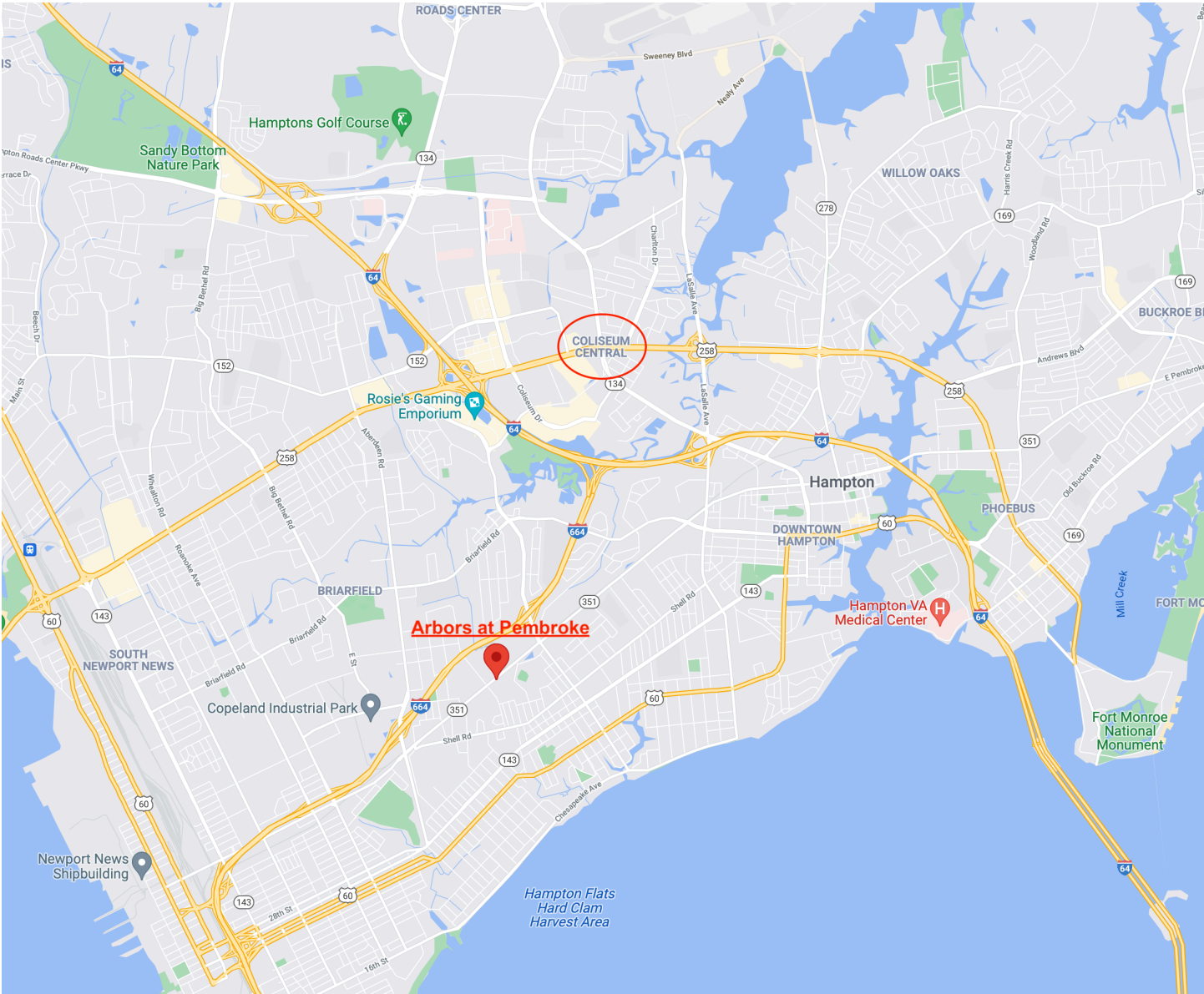
**K.1**

Revitalization Area  
Certification

**Not Applicable**

K.2

Location Map



K.3

Surveyor's Certification of  
Proximity to Public  
Transportation



**Surveyor's Certification of Proximity to Transportation**

DATE: October 8, 2021

TO: Virginia Housing Development Authority  
601 South Belvidere Street  
Richmond, VA 23220-6500

RE: 2021 Tax Credit Reservation Request

Name of Development: Arbors at Pembroke

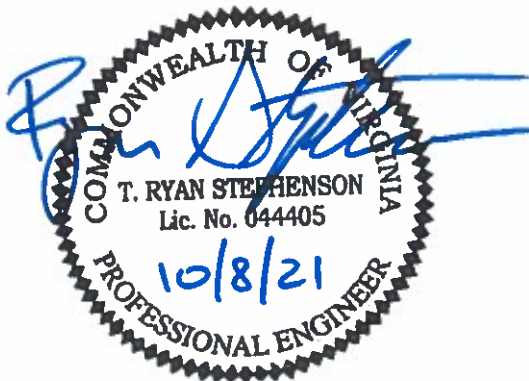
Name of Owner: Pembroke Senior, LP

Gentlemen:

This letter is submitted to you in support of the Owner's Application for Reservation of Low Income Housing Tax Credits under Section 42 of the Internal Revenue Code of 1986, as amended.

Based upon due investigation of the site and any other matters as it deemed necessary this firm certifies that: the main street boundary entrance to the property is within:

- 2,640 feet or ½ mile of the nearest access point to an existing commuter rail, light rail or subway station; or
- 1,320 feet or ¼ mile of the nearest access point to an existing public bus stop.



AES Consulting Engineers

Firm Name

By: T. Ryan Stephenson

Its: Sr. Project Manager

Title



L

PHA/Section 8 Notification  
Letter



## PHA or Section 8 Notification Letter

Development Name: Arbors at Pembroke

Tracking #: 2021 - TEB - 120

If you have any questions, please call the Tax Credit Department at (804) 343-5518.

### General Instructions

1. Because of conflicting program requirements regarding waiting list procedures, this letter is not applicable to those developments that have 100% project-based Section 8 or project-based vouchers.
2. This PHA or Section 8 Notification letter must be included with the application.
3. 'Development Address' should correspond to the application.
4. 'Proposed Improvements' should correspond with the Application.
5. 'Proposed Rents' should correspond with the Application.
6. 'Other Descriptive Information' should correspond with information in the application.

**NOTE:** Any change to this form letter may result in a reduction of points under the scoring system.

# PHA or Section 8 Notification Letter

**DATE:** September 27, 2021

**TO:** Tammy Emerson

**RE:** PROPOSED AFFORDABLE HOUSING DEVELOPMENT

Name of Development: Arbors at Pembroke

Name of Owner: Pembroke Senior, LP

I would like to take this opportunity to notify you of a proposed affordable housing development to be completed in your jurisdiction. We are in the process of applying for federal low-income housing tax credits from Virginia Housing. We expect to make a representation in that application that we will give leasing preference to households on the local PHA or Section 8 waiting list. Units are expected to be completed and available for occupancy beginning on May 1, 2023 (date).

The following is a brief description of the proposed development:

Development Address:

1963 W. Pembroke Avenue, Hampton, VA 23661

Proposed Improvements:

<input checked="" type="checkbox"/> New Constr.:	<u>150</u>	# units	<u>1</u>	# Bldgs
<input type="checkbox"/> Adaptive Reuse:	<u>          </u>	# units	<u>          </u>	# Bldgs
<input type="checkbox"/> Rehabilitation:	<u>          </u>	# units	<u>          </u>	# Bldgs

Proposed Rents:

<input type="checkbox"/> Efficiencies:	\$ <u>          </u>	/ month
<input checked="" type="checkbox"/> 1 Bedroom Units:	\$ <u>900</u>	/ month
<input checked="" type="checkbox"/> 2 Bedroom Units:	\$ <u>1050</u>	/ month
<input type="checkbox"/> 3 Bedroom Units:	\$ <u>          </u>	/ month
<input type="checkbox"/> 4 Bedroom Units:	\$ <u>          </u>	/ month

Other Descriptive Information:

The community will be age-restricted independent living apartments. Amenities include (but not limited to) a business center/library, gym, beauty salon, billiards room, media room, grilling area, dog park and raised garden plots. The community will be mostly restricted to the 60% AMI rent and income levels. Only 20 units

## PHA or Section 8 Notification Letter

will not have those restrictions in place.

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We appreciate your assistance with identifying qualified tenants.

If you have any questions about the proposed development, please call me at (757) 437-1677.

Please acknowledge receipt of this letter by signing below and returning it to me.

Sincerely yours,

Brian Staub

Name

Manager of Pembroke Senior GP, LLC

Title

### To be completed by the Local Housing Authority or Sec 8 Administrator:

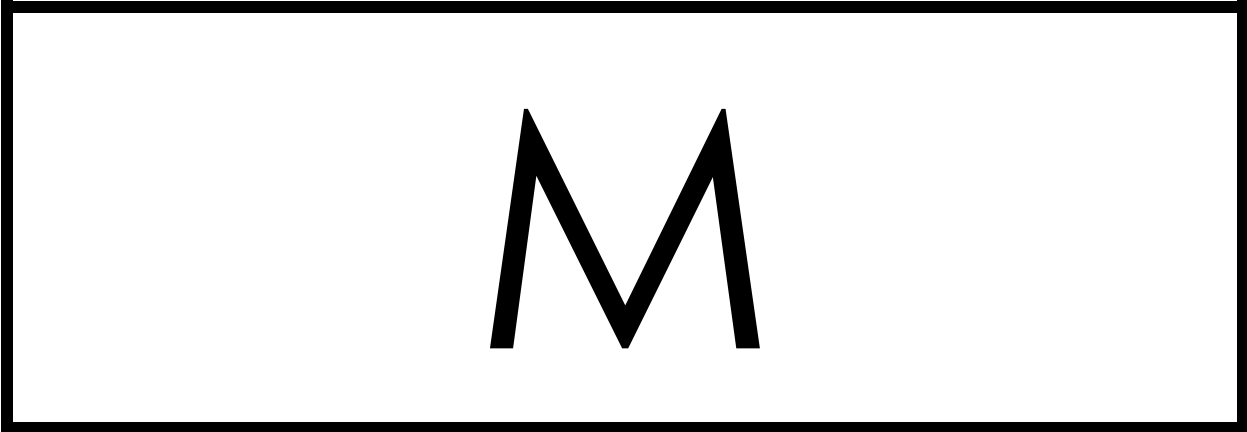
Seen and Acknowledged By: 

Printed Name: Tammy Emerson

Title: Chief Housing Officer

Phone: 757-727-2695

Date: 10/1/2021



M

Locality CEO Response  
Letter

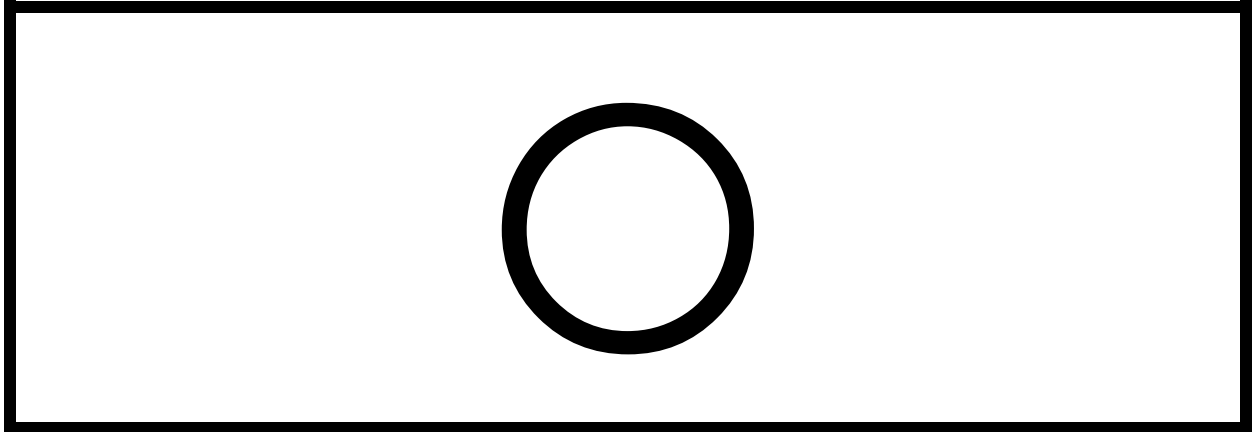
**Tab M – Submitted Separately**

N

Homeownership Plan



**Not Applicable**



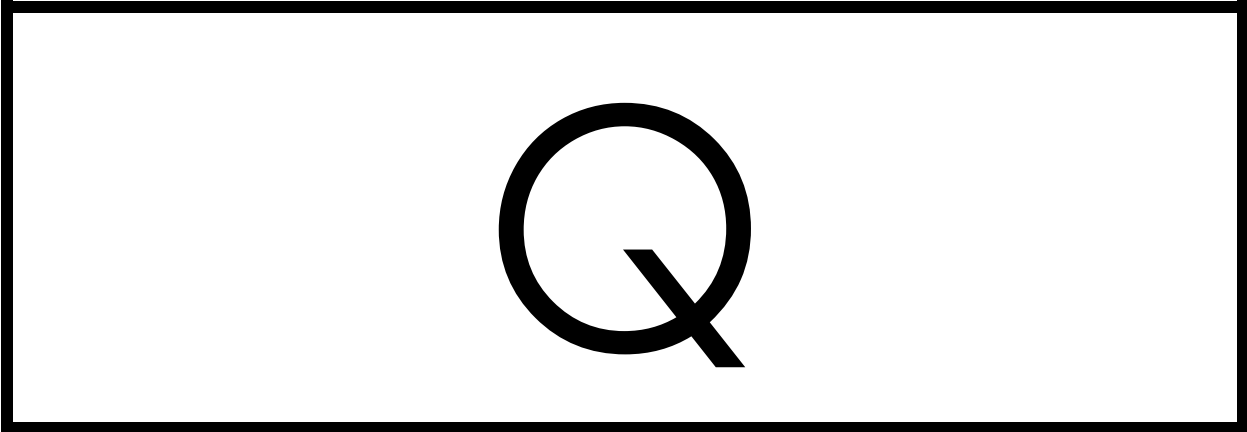
Plan of Development  
Certification Letter

**Not Applicable**

P

Copies of 8609s to  
Certify Developer  
Experience and  
Partnership agreements

**M. David Jester has been pre-approved for Developer Experience**



Q

Documentation of  
Rental Assistance, Tax  
Abatement and/or  
Existing HUD/RD

**Not Applicable**

R

Documentation of  
Operating Budget  
and Utility Allowance



# ProCraft Inspection Services

757.362.2300 • www.procraftinspections.com

September 28, 2021

Re: The Arbors at Pembroke Utility Allowance

The monthly average electric cost The Arbors at Birchwood new construction units has been estimated to be:

\$34 for a one bedroom

\$54 for a two bedroom

\*One bedroom assumes 2 occupants; two bedrooms assume 3 occupants and three bedrooms assume 4 occupants.

Pursuant to Option 2 in the VHDA Utility Allowance Options and Procedures issued on February 12, 2009, the utilities were estimated by an unrelated RESNET professional using an energy consumption model. The estimate reflects current rates as of August 2021.

Respectfully,



Brad Brinke  
ProCraft Inspection Services  
HERS Rater #7280903



Energy audits • energy ratings • weatherization • property inspections

# ProCraft Inspection Services

757.362.2300 • [www.procraftinspections.com](http://www.procraftinspections.com)

## Units include:

- AO Smith Electric Water Heater ENT-40 (.95 efficiency)
- GE Refrigerator Model # GTE19JTNRBB Energy Star
- GE Dishwasher Model GSDF510PGRBB Energy Star
- GE Clothes Washer Model GTW220ACKWW
- GE Clothes Dryer Model GTX22EASKWW
- Split System –15 SEER and 8.5 HSPF (Model number not yet determined)
- Energy Star Certified
- All LED lighting
- Grade 1 insulation
- 0.30 U-Value/0.30 SHGC windows & glass doors (using Energy Star rated window)
- 0.21 U-Value for opaque doors
- 5% duct leakage to the outside, 8% total duct leakage
- Ducts within conditioned space insulated to R-6, ducts within unconditioned space insulated to R-9

Electric rates at \$.02 for the first 800 KWH and \$.012 for over 800 KWH  
Monthly Meter Fee \$7.00



Energy audits • energy ratings • weatherization • property inspections



## Utility Allowance Estimate Certification

VHDA #: \_\_\_\_\_ Property name: Arbors at Pembroke

Utilities residents are responsible for:  ELECTRIC  GAS  WATER  SEWER  TRASH

YES  NO Are there additional fees passed on to residents?

If YES, list Fee Type: \_\_\_\_\_ and Fee Amount: \$ \_\_\_\_\_

YES  NO A copy of the 90-day notice sent to residents is attached.

YES  NO Utility Allowance Estimates by BIN Number Spreadsheet, including each bedroom size and type using the utility allowance estimate, is attached.

YES  NO Will a combination of utility allowance options be used? If YES, check options below and include documentation for all utility allowance estimates:

PHA  Local Utility Company  Energy Consumption Model  HUD Utility Schedule Model

**The following utility allowance option has been selected:**

UTILITY OPTIONS	DOCUMENTS REQUIRED
<input type="checkbox"/> Local Utility Company Estimate	Documents provided by local utility company supporting estimates for each unit size and type by square feet
<input checked="" type="checkbox"/> Energy Consumption Model	Documents provided by the professional engineer supporting estimates for each unit size and type
<input type="checkbox"/> HUD Utility Schedule Model (HUSM)	The completed HUSM, along with the supporting rates, schedules, taxes, fees, and riders

**Send utility allowance submission to VHDA:**

<p><b>Email:</b> Forms and documents scanned together in <b>one pdf package</b> to: <a href="mailto:utilityallowances@vhda.com">utilityallowances@vhda.com</a></p>	<p><b>Mail:</b> VHDA Compliance &amp; Asset Management Dept. P.O. Box 4630 Richmond, VA 23220-8630</p>	<p><b>Inquiries:</b> Regarding utility allowance approvals must be directed to: <a href="mailto:utilityallowances@vhda.com">utilityallowances@vhda.com</a></p>
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I understand that VHDA may require additional information to substantiate the estimates provided herein. Also, I certify the following:

1. I have personally reviewed the documentation for each building/BIN (Building Identification Number) provided in this estimate.
2. For estimates based on utilities that are sub-metered, tenants only pay for utility consumption specific to their unit. Administrative fees of \$5.00 or less per month may be charged to the tenants. For administrative fees greater than \$5.00 per month, the difference must be included in gross rent and a utility allowance given and indicated on the Utility Allowance Estimates by BIN Number spreadsheet.
3. Cable television, telephone and internet costs are excluded from utility allowance calculations.
4. The estimate is based on available historical data from the most recent 12-month period. For New Construction, 12 months of data from similar units in similarly-constructed buildings in the project's geographic area was used.
5. Data is not more than 60 days old at the time of this submission.
6. All unit sizes and types in the property are listed on the enclosed Utility Allowance Estimate by BIN Number Spreadsheet, along with their correct, combined monthly average utility estimates. For any units not included in the estimate, the reason for exclusion is noted on the spreadsheet.
7. The documentation provided in this submission is complete and accurate.

**In addition to the owner's certifications above, if the owner used a RESNET professional or engineer to complete the HUD Model or determine an Energy Consumption estimate, the owner and professional/engineer certify the following:**

8. The owner and professional/engineer are not related, as defined in IRC section 267(b) or 707(b).
9. If using the Energy Consumption Model, it takes into account specific factors including, but not limited to, unit size, building orientation, design and materials, mechanical systems, appliances, and characteristics of the building location.
10. Utility rates are based on local rates and utility supplier(s) for the above-named property and are no older than the rates in place 60 days prior to the date of this submission.
11. A copy of the professional/engineer's current Virginia business license or current Virginia SCC certificate is attached.

**RESNET Professional or Engineer:**

**Brad Brinke**

*Printed Name*

*Brad Brinke*

*Signature*

**9/28/21**

*Date*

**7280903**

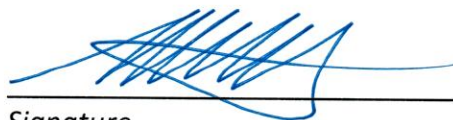
*License #*

**ProCraft Inspection Services**

*Name of Firm*

**Owner/Authorized Signatory:**

*Printed Name*



*Signature*

*Date*

S

Supportive Housing  
Certification

**Not Applicable**

T

Funding Documentation

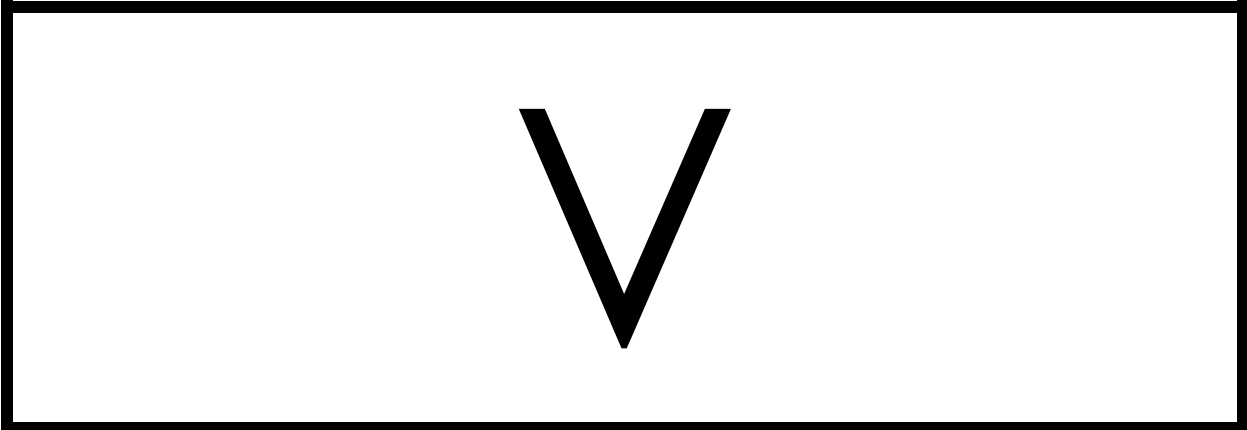
**Not Applicable**



U

Documentation to  
Request Exception to  
Restriction-Pools with  
Little/No Increase in Rent  
Burdened Population

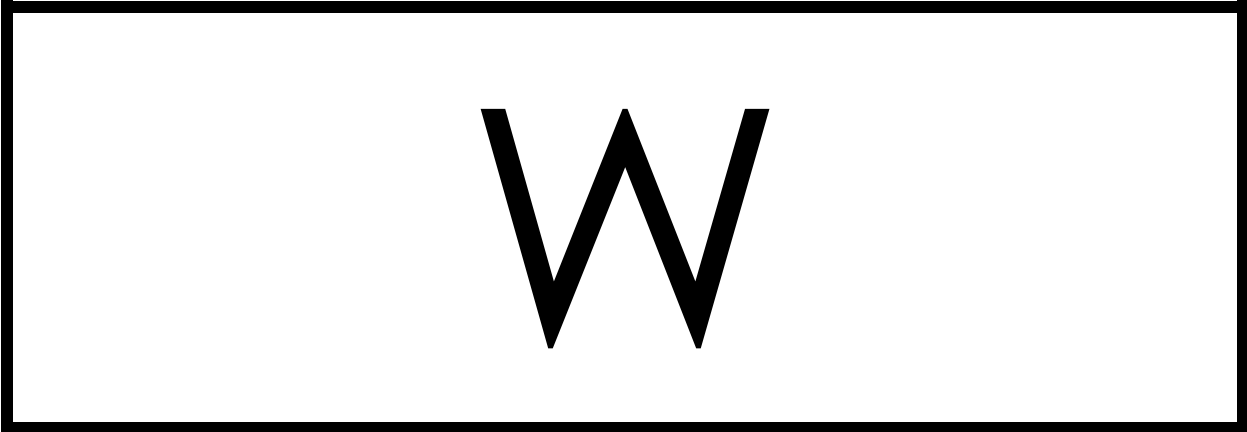
**Not Applicable**



V

Nonprofit or LHA Purchase  
Option or Right of First  
Refusal

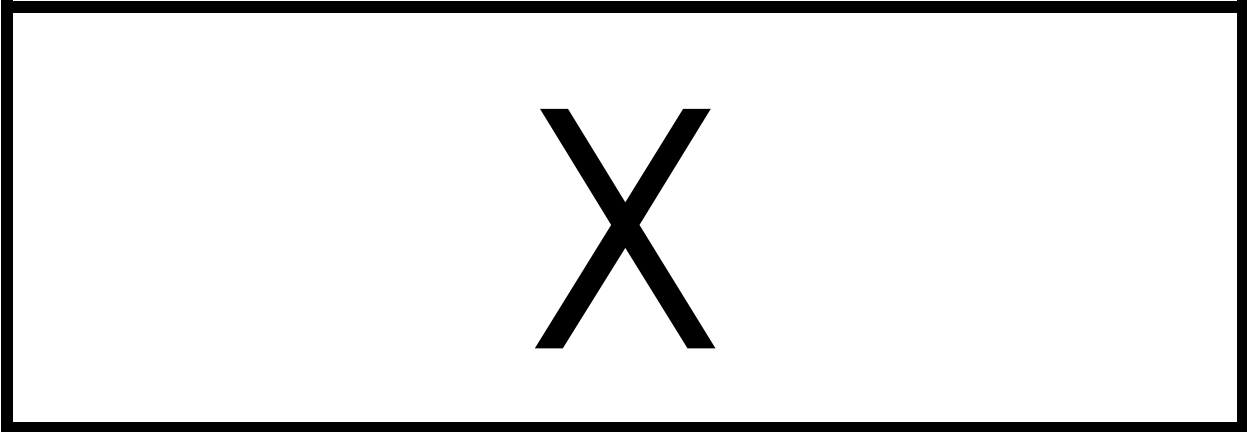
**Not Applicable**



W

Internet Safety Plan and  
Resident Information  
Form

**Not Applicable**



X

# Marketing Plan

For units meeting accessibility requirements of HUD section

504

**Not Applicable**



Y

Inducement Resolution  
for Tax Exempt Bonds

Virginia Housing is the bond issuer.