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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: 10/27/21

1. Development Name: Arbors at Birchwood
  
2. Address (line 1): 3820 Virginia Beach Blvd.  
 Address (line 2): \_\_\_\_\_  
 City: Virginia Beach State: VA Zip: 23452
  
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 Virginia Beach 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: 424.00
  
7. Development is located in a **Qualified Census Tract**..... FALSE
  
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%
<u>FALSE</u>	<u>TRUE</u>	<u>FALSE</u>

Enter only Numeric Values below:

13. Congressional District: 2
- Planning District: 23
- State Senate District: 7
- State House District: 82

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 Birchwood 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: 10/26/21

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: Patrick A. Duhaney  
 Chief Executive Officer's Title: City Manager Phone: (757) 385-4242  
 Street Address: 2401 Courthouse Dr  
 City: Virginia Beach State: VA Zip: 23456

Name and title of local official you have discussed this project with who could answer questions for the local CEO: Carolyn A.K. Smith, Planning Administrator

- 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 the standard extended use agreement of 15 extended use period (after the mandatory 15-year compliance period.)

**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: Birchwood Senior, LP

Developer Name: Birchwood 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. 873106498 (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>10.000%</u>
<u>Scott A. Troutman</u>	<u>(757) 437-1677</u>	<u>Member of GP</u>	<u>10.000%</u>
<u>Christian Gardner</u>	<u>(757) 437-1677</u>	<u>Member of GP</u>	<u>10.000%</u>
<u>Brian Staub</u>	<u>(757) 437-1677</u>	<u>Member of GP</u>	<u>10.000%</u>
<u>Wendell C. Franklin</u>	<u>(757) 351-6645</u>	<u>Member of GP</u>	<u>15.000%</u>
<u>Thomas M. Johnston</u>	<u>(757) 351-6646</u>	<u>Member of GP</u>	<u>16.000%</u>
<u>W. Taylor Franklin</u>	<u>(757) 351-6647</u>	<u>Member of GP</u>	<u>16.500%</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: 10/15/21

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: Birchwood Associates, LLC

Address: 307 Birchwood Park Drive

City: Virginia Beach St.: VA Zip: 23452

Contact Person: Larry Sancilio Phone:

**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: John Zaszewski This is a Related Entity. FALSE  
 Firm Name: Timmons Group Role: Engineer  
 Address: 2901 S. Lynnhaven Rd Suite 200  
 Email: john.zaszewski@timmons.com Phone: (757) 213-6679
  
- 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.

**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>237</u>
Total number of <b>rental</b> units in development	<u>150</u>	bedrooms	<u>237</u>
Number of low-income rental units	<u>105</u>	bedrooms	<u>150</u>
Percentage of rental units designated low-income	<u>70.00%</u>		
b. Number of new units:.....	<u>150</u>	bedrooms	<u>237</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>209,736.00</u>	(Sq. ft.)
e. Unheated Floor Area (i.e. Breezeways, Balconies, Storage).....		<u>13,454.00</u>	(Sq. ft.)
f. Nonresidential Commercial Floor Area (Not eligible for funding).....		<u>0.00</u>	
g. Total Usable Residential Heated Area.....		<u>196,282.00</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>4.820</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	1374.76	SF	60	63
2BR Elderly	1415.24	SF	45	87
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
			105	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 ▶ Flat  
 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... 186  
 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	20.20%
Project Wide Capture Rate - Market Units	1.70%
Project Wide Capture Rate - All Units	4.80%
Project Wide Absorption Period (Months)	7

**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:**

- TRUE** a. A community/meeting room with a minimum of 749 square feet is provided.
- 37.60%** 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).
- FALSE** d. All faucets, toilets and showerheads in each bathroom are WaterSense labeled products.
- TRUE** e. Each unit is provided with the necessary infrastructure for high-speed internet/broadband service.
- TRUE** 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.
- TRUE** 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.
- TRUE** q. All kitchen light fixtures are LED and meet MDCR lighting guidelines.
- TRUE** 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.
- TRUE 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:

- |                                |  |                                |  |
|--------------------------------|--|--------------------------------|--|
| <input type="checkbox"/> TRUE  | Earthcraft Gold or higher certification        | <input type="checkbox"/> FALSE | National Green Building Standard (NGBS) certification of Silver or higher. |
| <input type="checkbox"/> FALSE | U.S. Green Building Council LEED certification | <input type="checkbox"/> 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.)

- TRUE 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.
- 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?..... TRUE
- Hot Water?..... FALSE
- Lighting?..... FALSE
- Cooking? ..... FALSE
- Heat?..... FALSE
- AC?..... FALSE
- Sewer?..... TRUE
- Trash Removal? . TRUE

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: City of Virginia Beach Department of Housing

Contact person: David. R. Grigsby

Title: Administrator, Rental Housing

Phone Number: (757) 385-5746

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	
105	70.00%	60% Area Median	
0	0.00%	70% Area Median	
0	0.00%	80% Area Median	
45	30.00%	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	
105	70.00%	60% Area Median	
0	0.00%	70% Area Median	
0	0.00%	80% Area Median	
45	30.00%	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 co  
 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	\$910.00	\$1,820
Mix 2	1 BR - 1 Bath	60% AMI	20		648.00	\$910.00	\$18,200
Mix 3	1 BR - 1 Bath	60% AMI	24		781.00	\$910.00	\$21,840
Mix 4	1 BR - 1 Bath	60% AMI	6		781.00	\$910.00	\$5,460
Mix 5	1 BR - 1 Bath	60% AMI	4		860.00	\$910.00	\$3,640
Mix 6	1 BR - 1 Bath	Market 100%	3		957.00	\$1,550.00	\$4,650
Mix 7	1 BR - 1 Bath	60% AMI	4		844.00	\$910.00	\$3,640
Mix 8	2 BR - 1.5 Bath	60% AMI	1		1029.00	\$1,080.00	\$1,080
Mix 9	2 BR - 1.5 Bath	60% AMI	17		1029.00	\$1,080.00	\$18,360
Mix 10	2 BR - 1.5 Bath	60% AMI	3		1023.00	\$1,080.00	\$3,240
Mix 11	2 BR - 2 Bath	Market 100%	20		1069.00	\$1,750.00	\$35,000
Mix 12	2 BR - 1.5 Bath	Market 100%	3		1164.00	\$1,750.00	\$5,250
Mix 13	2 BR - 1.5 Bath	60% AMI	4		1020.00	\$1,080.00	\$4,320
Mix 14	2 BR - 1.5 Bath	Market 100%	1		1271.00	\$1,750.00	\$1,750
Mix 15	2 BR - 1.5 Bath	60% AMI	20		937.00	\$1,080.00	\$21,600

**L. UNIT DETAILS**

Mix 16	2 BR - 2 Bath	Market 100%	6	1222.00	\$1,750.00	\$10,500
Mix 17	2 BR - 1.5 Bath	Market 100%	3	1271.00	\$1,750.00	\$5,250
Mix 18	2 BR - 1.5 Bath	Market 100%	9	1029.00	\$1,750.00	\$15,750
Mix 19						\$0
Mix 20						\$0
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
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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		\$181,350

<b>Total Units</b>	150	<b>Net Rentable SF: TC Units</b>	89,173.00
		<b>MKT Units</b>	49,420.00
		<b>Total NR SF:</b>	138,593.00

**Floor Space Fraction (to 7 decimals)** 64.34163%

**M. OPERATING EXPENSES**

**Administrative:**

Use Whole Numbers Only!

1. Advertising/Marketing			\$7,500
2. Office Salaries			\$50,000
3. Office Supplies			\$6,000
4. Office/Model Apartment	(type _____)		\$0
5. Management Fee			\$91,827
<u>4.50%</u> of EGI	<u>\$612.18</u>	Per Unit	
6. Manager Salaries			\$55,000
7. Staff Unit (s)	(type _____)		\$0
8. Legal			\$2,000
9. Auditing			\$14,000
## Bookkeeping/Accounting Fees			\$0
## Telephone & Answering Service			\$2,500
## Tax Credit Monitoring Fee			\$2,500
## Miscellaneous Administrative			\$18,000
<b>Total Administrative</b>			<b>\$249,327</b>

**Utilities**

## Fuel Oil			\$0
## Electricity			\$20,000
## Water			\$85,000
## Gas			\$0
## Sewer			\$0
<b>Total Utility</b>			<b>\$105,000</b>

**Operating:**

## Janitor/Cleaning Payroll			\$30,000
## Janitor/Cleaning Supplies			\$4,000
## Janitor/Cleaning Contract			\$0
## Exterminating			\$3,000
## Trash Removal			\$8,000
## Security Payroll/Contract			\$0
## Grounds Payroll			\$0
## Grounds Supplies			\$0
## Grounds Contract			\$15,000
## Maintenance/Repairs Payroll			\$40,000
## 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			\$40,000
<b>Totals Operating &amp; Maintenance</b>			<b>\$192,000</b>

**M. OPERATING EXPENSES**

**Taxes & Insurance**

## Real Estate Taxes	\$180,000
## Payroll Taxes	\$12,000
## Miscellaneous Taxes/Licenses/Permits	\$1,500
## Property & Liability Insurance	\$40,000
## Fidelity Bond	\$1,000
## Workman's Compensation	\$1,200
## Health Insurance & Employee Benefits	\$10,000
## Other Insurance	\$0
<b>Total Taxes &amp; Insurance</b>	<b>\$245,700</b>

**Total Operating Expense** **\$792,027**

**Total Operating Expenses Per Unit** **\$5,280** **C. Total Operating Expenses as % of** **38.81%**

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

<b>Total Expenses</b>	<b>\$837,027</b>
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**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	10/15/21	Brian Staub
c. Zoning Approval		
d. Site Plan Approval		
<b>2. Financing</b>		
<b>a. Construction Loan</b>		
i. Loan Application	10/22/21	Brian Staub
ii. Conditional Commitment		
iii. Firm Commitment		
<b>b. Permanent Loan - First Lien</b>		
i. Loan Application	10/22/21	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>	10/11/21	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>	1/15/22	Scott Troutman
<b>7. Start Construction</b>	4/1/22	Scott Troutman
<b>8. Begin Lease-up</b>	8/1/23	Chris McKee
<b>9. Complete Construction</b>	11/1/23	Scott Troutman
<b>10. Complete Lease-Up</b>	5/1/24	Chris McKee
<b>11. Credit Placed in Service Date</b>	11/1/23	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.

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>1. Contractor Cost</b>				
a. Unit Structures (New)	15,450,000	0	15,450,000	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>	15,450,000	0	15,450,000	0
f. Earthwork	0	0	0	0
g. Site Utilities	0	0	0	0
h. Roads & Walks	0	0	0	0
i. Site Improvements	3,100,000	0	3,100,000	0
j. Lawns & Planting	200,000	0	200,000	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	400,000	0	0	0
o. Site Work	0	0	0	0
p. Other Site work	0	0	0	0
<b>Total Land Improvements</b>	3,700,000	0	3,300,000	0
<b>Total Structure and Land</b>	19,150,000	0	18,750,000	0
q. General Requirements	675,000	0	675,000	0
r. Builder's Overhead ( 2.1% Contract)	402,150	0	402,150	0
s. Builder's Profit ( 4.7% Contract)	904,838	0	904,838	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>\$21,131,988</b>	<b>\$0</b>	<b>\$20,731,988</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	25,000	0	25,000	0
b. Architecture/Engineering Design Fee \$3,309 /Unit)	496,300	0	496,300	0
c. Architecture Supervision Fee \$133 /Unit)	20,000	0	20,000	0
d. Tap Fees	486,750	0	486,750	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	5,000	0	5,000	0
i. Market Study	9,000	0	9,000	0
j. Site Engineering / Survey	20,000	0	20,000	0
k. Construction/Development Mgt	0	0	0	0
l. Structural/Mechanical Study	0	0	0	0
m. Construction Loan Origination Fee		0	0	0
n. Construction Interest ( 0.0% fo 0 months)	545,000	0	463,250	0
o. Taxes During Construction	80,000	0	20,000	0
p. Insurance During Construction	70,000	0	60,000	0
q. Permanent Loan Fee ( 0.0% )	105,500	0	0	0
r. Other Permanent Loan Fees	197,500	0	0	0
s. Letter of Credit	30,000	0	30,000	0
t. Cost Certification Fee	0	0	0	0
u. Accounting	20,000	0	20,000	0
v. Title and Recording	90,000	0	0	0
w. Legal Fees for Closing	155,000	0	72,500	0
x. Mortgage Banker	116,000	0	58,000	0
y. Tax Credit Fee	48,580			
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	200,000	0	0	0
ad. Contingency	75,000	0	0	0
ae. Security	0	0	0	0
af. Utilities	40,000	0	40,000	0

**O. PROJECT BUDGET - OWNER COSTS**

(1) Other* specify	Hard Cost Contingency	957,500	0	957,500	0
(2) Other* specify	Lender/Third Party Repd	40,000	0	20,000	0
(3) Other* specify	Rezoning Fee	300,000	0		0
(4) Other* specify	Land Acquisition Cost	25,000	0		0
(5) Other* specify	Marketing and Lease Up	75,000	0	0	0
(6) Other* specify	Viridian Assessments/0	75,000	0	75,000	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))		\$4,482,130	\$0	\$2,978,300	\$0
<b>Subtotal 1 + 2</b> (Owner + Contractor Costs)		\$25,614,118	\$0	\$23,710,288	\$0
<b>3. Developer's Fees</b>		2,700,000	0	2,700,000	0
Action: Provide Developer Fee Agreement (Tab A)					
<b>4. Owner's Acquisition Costs</b>					
Land		3,200,000			
Existing Improvements		0	0		
Subtotal 4:		\$3,200,000	\$0		
<b>5. Total Development Costs</b>					
Subtotal 1+2+3+4:		\$31,514,118	\$0	\$26,410,288	\$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:** \$2,735,129

Proposed Development's Cost per Sq Foot \$135 **Meets Limits**  
 Applicable Cost Limit by Square Foot: \$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>	31,514,118	0	26,410,288	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	26,410,288	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>	0	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>	26,410,288	0
--------------------------------------	------------	---

**5. Applicable Fraction**

64.34163%	64.34163%	64.34163%
-----------	-----------	-----------

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

0	16,992,810	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	\$679,712	\$0
-----	-----------	-----

(Qualified Basis x Applicable Percentage)  
(Must be same as BIN total and equal to or less than credit amount allowed)

\$679,712	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			\$21,100,000	Sean Campbell
2.					
3.					
Total Construction Funding:				\$21,100,000	

**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			\$14,600,000	\$724,085	3.50%	35.00	35.00
2.	VH Reach			\$6,500,000	\$298,011	2.95%	35.00	35.00
3.	VHTF			\$100,000	\$3,000	3.00%	10000.00	30.00
4.	HIEE			\$2,000,000	\$20,000	1.00%	10000.00	30.00
5.								
6.								
7.								
8.								
9.								
10.								
Total Permanent Funding:				\$23,200,000	\$1,045,096			

**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: Virginia Housing Trust Fund	\$100,000
i.	Other: HIEE	\$2,000,000

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: **71.26%**

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	\$2,060,768	(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** \$2,060,768

**2. Equity Gap Calculation**

a. Total Development Cost	\$31,514,118
b. Total of Permanent Funding, Grants and Equity	- \$25,260,768
c. Equity Gap	\$6,253,350
d. Developer Equity	- \$0
e. Equity gap to be funded with low-income tax credit proceeds	\$6,253,350

**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	\$679,712.00
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	\$679,712
vi. Total to be paid by anticipated users of credit (e.g., limited partners)	\$6,253,350

c. Syndication: Private  
 d. Investors: Corporate

**4. Net Syndication Amount** \$6,253,350  
 Which will be used to pay for Total Development Costs

**5. Net Equity Factor** 92.0000033152%  
 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>\$31,514,118</u>
2. Less Total of Permanent Funding, Grants and Equity	-	<u>\$25,260,768</u>
3. Equals Equity Gap		<u>\$6,253,350</u>
4. Divided by Net Equity Factor (Percent of 10-year credit expected to be raised as equity investment)		<u>92.0000033152%</u>
5. Equals Ten-Year Credit Amount Needed to Fund Gap		<u>\$6,797,119</u>
Divided by ten years		<u>10</u>
6. Equals Annual Tax Credit Required to Fund the Equity Gap		<u>\$679,712</u>
7. Maximum Allowable Credit Amount (from Eligible Basis Calculation)		<u>\$679,712</u>
8. Requested Credit Amount	For 30% PV Credit:	<u>\$679,712</u>
	For 70% PV Credit:	<u>\$0</u>
Credit per LI Units	<u>\$6,473.4476</u>	<b>Combined 30% &amp; 70% PV Credit Requested</b>
Credit per LI Bedroom	<u>\$4,531.4133</u>	
		<b>\$679,712</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	\$103,200
Plus Other Income Source (list) <u>pet fees, late rent, etc.</u>	<u>\$1,050</u>
Equals Total Monthly Income:	<u>\$104,250</u>
Twelve Months	x12
Equals Annual Gross Potential Income	<u>\$1,251,000</u>
Less Vacancy Allowance <u>7.0%</u>	<u>\$87,570</u>
<b>Equals Annual Effective Gross Income (EGI) - Low Income Units</b>	<b><u>\$1,163,430</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:	\$78,150
Plus Other Income Source (list): <u></u>	<u>\$450</u>
Equals Total Monthly Income:	<u>\$78,600</u>
Twelve Months	x12
Equals Annual Gross Potential Income	<u>\$943,200</u>
Less Vacancy Allowance <u>7.0%</u>	<u>\$66,024</u>
<b>Equals Annual Effective Gross Income (EGI) - Market Rate Units</b>	<b><u>\$877,176</u></b>

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

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

a. Annual EGI Low-Income Units	<u>\$1,163,430</u>
b. Annual EGI Market Units	<u>\$877,176</u>
c. Total Effective Gross Income	<u>\$2,040,606</u>
d. Total Expenses	<u>\$837,027</u>
e. Net Operating Income	<u>\$1,203,579</u>
f. Total Annual Debt Service	<u>\$1,045,096</u>
g. Cash Flow Available for Distribution	<u>\$158,483</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>	2,040,606	2,081,418	2,123,046	2,165,507	2,208,818
<b>Less Oper. Expenses</b>	837,027	862,138	888,002	914,642	942,081
<b>Net Income</b>	1,203,579	1,219,280	1,235,045	1,250,865	1,266,736
<b>Less Debt Service</b>	1,045,096	1,045,096	1,045,096	1,045,096	1,045,096
<b>Cash Flow</b>	158,483	174,184	189,949	205,769	221,640
<b>Debt Coverage Ratio</b>	1.15	1.17	1.18	1.20	1.21

	Year 6	Year 7	Year 8	Year 9	Year 10
<b>Eff. Gross Income</b>	2,252,994	2,298,054	2,344,015	2,390,895	2,438,713
<b>Less Oper. Expenses</b>	970,344	999,454	1,029,438	1,060,321	1,092,130
<b>Net Income</b>	1,282,650	1,298,600	1,314,577	1,330,574	1,346,583
<b>Less Debt Service</b>	1,045,096	1,045,096	1,045,096	1,045,096	1,045,096
<b>Cash Flow</b>	237,554	253,504	269,481	285,478	301,487
<b>Debt Coverage Ratio</b>	1.23	1.24	1.26	1.27	1.29

	Year 11	Year 12	Year 13	Year 14	Year 15
<b>Eff. Gross Income</b>	2,487,487	2,537,237	2,587,982	2,639,741	2,692,536
<b>Less Oper. Expenses</b>	1,124,894	1,158,641	1,193,400	1,229,202	1,266,078
<b>Net Income</b>	1,362,593	1,378,596	1,394,581	1,410,539	1,426,458
<b>Less Debt Service</b>	1,045,096	1,045,096	1,045,096	1,045,096	1,045,096
<b>Cash Flow</b>	317,497	333,500	349,485	365,443	381,362
<b>Debt Coverage Ratio</b>	1.30	1.32	1.33	1.35	1.36

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**

<b>Number of BINS:</b>	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.		105	45	3820 Virginia Beach Blvd		Virginia Beach	VA	23452				\$0	\$16,992,810	11/01/23	4.00%	\$679,712				\$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
		105	45																	
				Totals from all buildings				\$0				#####				\$0				
								\$0				\$679,712				\$0				

<b>Number of BINS:</b>	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 Birchwood Senior, LP  
by its general partner  
Birchwood 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: CRAIG C MILLER  
Virginia License#: 0401011907  
Architecture Firm or Company: COX, KLIEWER & COMPANY

By: [Signature]  
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
b. Local CEO Opposition Letter	N	0 or -25
c. Plan of development	N	0 or 40
d. Location in a revitalization area based on Qualified Census Tract	N	0 or 10
e. Location in a revitalization area with resolution	N	0 or 15
f. Location in a Opportunity Zone	N	0 or 15
<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
b. Existing RD, HUD Section 8 or 236 program	N	0 or 20
c. Subsidized funding commitments	0.00%	Up to 40
d. Tax abatement on increase of property's value	N	0 or 5
e. New project based rental subsidy (HUD or RD)	N	0 or 10
f. Census tract with <12% poverty rate	10%	0, 20, 25 or 30
g. Development listed on the Rural Development Rehab Priority List	N	0 or 15
h. Dev. located in area with little or no increase in rent burdened population	N	Up to -20
i. Dev. located in area with increasing rent burdened population	Y	Up to 20
<b>Total:</b>		<b>50.00</b>

<b>3. DEVELOPMENT CHARACTERISTICS:</b>		
a. Enhancements (See calculations below)		32.15
b. Project subsidies/ HUD 504 accessibility for 5 or 10% of units	N	0 or 60
c. HCV Payment Standard/ HUD 504 accessibility for 5 or 10% of units	N	0 or 30
d. HUD 504 accessibility for 5% of units	N	0 or 15
e. Proximity to public transportation (within Northern VA or Tidewater)	Y10	0, 10 or 20
f. Development will be Green Certified	Y	0 or 10
g. Units constructed to meet Virginia Housing's Universal Design standards	0%	Up to 15
h. Developments with less than 100 units	N	up to 20
i. Historic Structure	N	0 or 5
<b>Total:</b>		<b>52.15</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
b. Developer experience - 3 developments and at least 500,000 in liquid assets	N	0 or 50
c. Developer experience - 1 development with 1 x units	N	0 or 10
d. Developer experience - life threatening hazard	N	0 or -50
e. Developer experience - non-compliance	N	0 or -15
f. Developer experience - did not build as represented	0	0 or -2x
g. Developer experience - failure to provide minimum building requirements	N	0 or -20
h. Developer experience - termination of credits by Virginia Housing	N	0 or -10
i. Developer experience - exceeds cost limits at certification	N	0 or -50
j. Management company rated unsatisfactory	N	0 or -25
<b>Total:</b>		<b>50.00</b>

<b>6. EFFICIENT USE OF RESOURCES:</b>		
a. Credit per unit		Up to 200
b. Cost per unit		Up to 100
<b>Total:</b>		<b>174.05</b>

<b>7. BONUS POINTS:</b>		
a. Extended compliance	0 Years	40 or 50
b. Nonprofit or LHA purchase option	N	0 or 60
c. Nonprofit or LHA Home Ownership option	N	0 or 5
d. Combined 9% and 4% Tax Exempt Bond Site Plan	N	Up to 45
e. RAD or PHA Conversion participation and competing in Local Housing Authority pool	N	0 or 10
<b>Total:</b>		<b>0.00</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	5.00
b. Exterior walls constructed with brick and other low maintenance material	25	13.15
c. Sub metered water expense	5	0.00
d. Watersense labeled faucets, toilets and showerheads	3	0.00
e. Infrastructure for high speed internet/broadband	1	1.00
f. Free WiFi Access in community room	4	4.00
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	4.00
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	2.00
r. Shelf or ledge at entrance within interior hallway	2	2.00
s. New Construction: Balcony or patio	4	0.00
		<b>31.15</b>
All elderly units have:		
t. Front-control ranges	1	0.00
u. independent/suppl. heat source	1	0.00
v. Two eye viewers	1	1.00
		<b>1.00</b>
<b>Total amenities:</b>		<b>32.15</b>

X. Development Summary

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

**Deal Name:** Arbors at Birchwood

**Cycle Type:** 4% Tax Exempt Bonds Credits **Requested Credit Amount:** \$679,712  
**Allocation Type:** New Construction **Jurisdiction:** Virginia Beach City  
**Total Units:** 150 **Population Target:** Elderly  
**Total LI Units:** 105  
**Project Gross Sq Ft:** 209,736.00 **Owner Contact:** Brian Staub  
**Green Certified?** TRUE

**Total Score**  
326.20

Source of Funds	Amount	Per Unit	Per Sq Ft	Annual Debt Service
Permanent Financing	\$23,200,000	\$154,667	\$111	\$1,045,096

Uses of Funds - Actual Costs				
Type of Uses	Amount	Per Unit	Sq Ft	% of TDC
Improvements	\$19,150,000	\$127,667	\$91	60.77%
General Req/Overhead/Profit	\$1,981,988	\$13,213	\$9	6.29%
Other Contract Costs	\$0	\$0	\$0	0.00%
Owner Costs	\$4,482,130	\$29,881	\$21	14.22%
Acquisition	\$3,200,000	\$21,333	\$15	10.15%
Developer Fee	\$2,700,000	\$18,000	\$13	8.57%
<b>Total Uses</b>	<b>\$31,514,118</b>	<b>\$210,094</b>		

Total Development Costs	
Total Improvements	\$25,614,118
Land Acquisition	\$3,200,000
Developer Fee	\$2,700,000
<b>Total Development Costs</b>	<b>\$31,514,118</b>

Income	
Gross Potential Income - LI Units	\$1,251,000
Gross Potential Income - Mkt Unit:	\$943,200
Subtotal	\$2,194,200
Less Vacancy %	7.00%
	\$153,594
<b>Effective Gross Income</b>	<b>\$2,040,606</b>

**Proposed Cost Limit/Sq Ft:** \$135  
**Applicable Cost Limit/Sq Ft:** \$262

Unit Breakdown	
Supp Hsg	0
# of Eff	0
# of 1BR	63
# of 2BR	87
# of 3BR	0
# of 4+ BR	0
<b>Total Units</b>	<b>150</b>

**Rental Assistance?** FALSE

Expenses		
Category	Total	Per Unit
Administrative	\$249,327	\$1,662
Utilities	\$105,000	\$700
Operating & Maintenance	\$192,000	\$1,280
Taxes & Insurance	\$245,700	\$1,638
<b>Total Operating Expenses</b>	<b>\$792,027</b>	<b>\$5,280</b>
Replacement Reserves	\$45,000	\$300
<b>Total Expenses</b>	<b>\$837,027</b>	<b>\$5,580</b>

	Income Levels	Rent Levels
	# of Units	# of Units
<=30% AMI	0	0
40% AMI	0	0
50% AMI	0	0
60% AMI	105	105
>60% AMI	0	0
<b>Market</b>	<b>45</b>	<b>45</b>

Cash Flow	
EGI	\$2,040,606
Total Expenses	\$837,027
<b>Net Income</b>	<b>\$1,203,579</b>
Debt Service	\$1,045,096
<b>Debt Coverage Ratio (YR1):</b>	<b>1.15</b>

**Income Averaging?** FALSE

**Extended Use Restriction?** 30

## 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>		155.92
<b>Using proposed method:</b>		
Combined Max	\$679,712	
Credit Requested	\$679,712	
% of Savings	0.00%	
Sliding Scale Points		0
<i>Difference</i>		<i>-155.92</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>		18.13
<b>Using proposed method:</b>		
Total Costs Less Acquisition	\$28,314,118	
Total Square Feet	209,736.00	
Proposed Cost per SqFt	\$135.00	
Applicable Cost Limit per Sq Ft	\$262.00	
% of Savings	48.47%	
Sliding Scale Points		96.94
<i>Difference</i>		<i>78.81</i>

\$/SF = **\$140.75** Credits/SF = **4.6501** Const \$/unit = **\$140,879.9200**

TYPE OF PROJECT GENERAL = 11000; ELDERLY = 12000  
 LOCATION Inner-NVA=100; Outer-NV=200; NWN=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	1,374.76	1,415.24	0.00	0.00	0.00
NUMBER OF UNITS	0	0	60	45	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	193,502	199,200	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	6,393	6,581	0	0	0
COST PER UNIT POINTS	0.00	0.00	5.73	12.39	0.00	0.00	0.00
CREDIT PER UNIT POINTS	0.00	0.00	76.63	63.40	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 **18.13**

TOTAL CREDIT PER UNIT POINTS **140.04**

**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 = **\$140.75** Credits/SF = **4.6501** Const \$/unit = **\$140,879.92**

TYPE OF PROJECT: GENERAL = 11000; ELDERLY = 12000  
 LOCATION: Inner-NVA=100; Outer-NV=200; NWN-C=300; Rich=400; Tid=500; Balance=600  
 TYPE OF CONSTRUCTION: 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	1,374.76	1,415.24	0.00	0.00	0.00
NUMBER OF UNITS	0	0	60	45	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	193,502	199,200	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	6,393	6,581	0	0	0
<b>COST PER UNIT POINTS</b>	<b>0.00</b>	<b>0.00</b>	<b>5.73</b>	<b>12.39</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>76.63</b>	<b>63.40</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 **18.13**

TOTAL CREDIT PER UNIT POINTS **155.92**

**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>

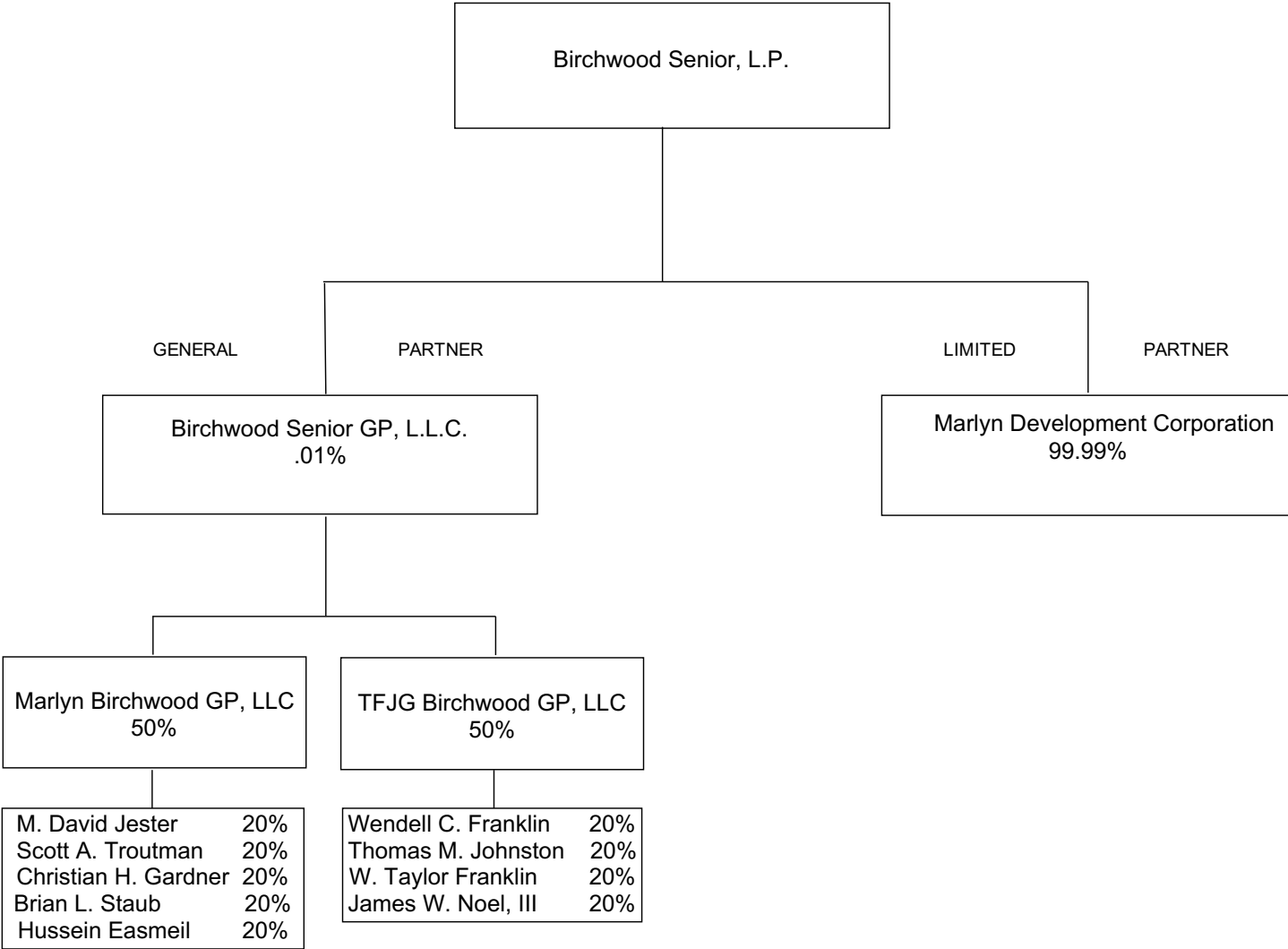


A

# Partnership or Operating Agreement

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

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



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

**THIS AGREEMENT OF LIMITED PARTNERSHIP**, made as of the 13<sup>th</sup> day of October, 2021, by and among the undersigned partners, who hereby organize **BIRCHWOOD 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, operating an affordable apartment project for residents 62 years of age or older located in Virginia Beach, Virginia to be financed in part by low income housing tax credits pursuant to Section 42 of the Federal Internal Revenue Code and by tax-exempt bonds.

**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 **BIRCHWOOD SENIOR, LP**, and the post office address of its principal place of business and specified office is 308 35<sup>th</sup> Street, Suite 101, Virginia Beach, VA 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, VA 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 its predecessor in interest, increased by its distributive share of Taxable Income and of Gain from Sale, reduced by its distributive share of Taxable Loss and of Loss from Sale, and by the amount of any distributions of cash to it or by the Gross Asset Value of any property distributed to it. 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.

Birchwood 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 its percentage set forth on Exhibit A. However, a Partner's Interest includes its 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 Partners.

The original Limited Partners 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 Virginia Beach, Virginia to be financed in part by Credits and by tax-exempt bonds, 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:

Birchwood Senior GP, LLC  
308 35<sup>th</sup> Street, Suite 101

Virginia Beach, VA 23451

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

B. Limited Partners; Capital Contribution.

Each Limited Partner, as a Capital Contribution, has contributed to the Partnership the amount set forth on Exhibit A. Upon the execution of the Agreement, each Limited Partner shall have the applicable Interest set forth on Exhibit A. The business addresses of the Limited Partners are 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 its allocable portion of the Capital Account of the Partner whose Interest it acquired without regard to any basis adjustment under Section 754 of the Code.

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

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

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

(5) No Partner shall have the right to demand and receive the return of its 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 its Capital Contributions, its share of additional capital for which it may be assessed, and its 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 its 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 its 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 its 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 its 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 Partners 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 its 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. TFJG Birchwood 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 PARTNERS.**

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 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.

### **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 Partners 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 Partners.

(1) Assignment.

(a) Subject to the other subsections of this Section 15B(1), a Limited Partner may assign some or all of its 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 its Interest in the Partnership, it 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 its 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 its Interest without again giving the Partners the option to purchase its 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 or entity by

reason of any assignment by a Partner or by reason of the dissolution of a Partner, except as otherwise provided in this Agreement. In the absence of substitution of a Limited Partner for an assigning or dissolved Limited Partner, any payment to a Partner, or to trustees in liquidation, 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 its dissolution.

(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 its 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 its 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 its 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 its 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 Partner to the bankruptcy trustee, but shall apply to such trustee to the same extent that, under the circumstances of any particular, transfer, sale, assignment, or other disposition, such provision would have applied to the bankrupt 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 of all or any part of its Interest (i) to another Partner, or (ii) to a parent, subsidiary, or company under common control with such 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 its 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 it 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 Partners, 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 Partners.

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 Partners pursuant to Sections 21D and 21E shall be mailed in advance to the Limited Partners. 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:**

**BIRCHWOOD SENIOR GP, LLC**

By: \_\_\_\_\_  
Brian L. Staub, Manager

By:  \_\_\_\_\_  
W. Taylor Franklin, Manager

**LIMITED PARTNERS:**

**MARLYN DEVELOPMENT CORPORATION**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

**GENERAL PARTNER:**

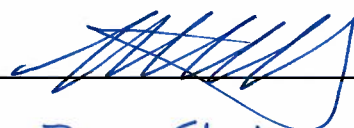
**BIRCHWOOD SENIOR GP, LLC**

By:   
\_\_\_\_\_  
Brian L. Staub, Manager

By: \_\_\_\_\_  
W. Taylor Franklin, Manager

**LIMITED PARTNERS:**

**MARLYN DEVELOPMENT CORPORATION**

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

Name: Brian Staub

Title: Chief Financial Officer

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

**NAME AND ADDRESS  
OF GENERAL PARTNER**

**CAPITAL CONTRIBUTION**

**INTEREST**

Birchwood Senior GP, LLC  
308 35<sup>th</sup> Street, Suite 101  
Virginia Beach, VA 23451

\$ \_\_\_\_\_

0.01%

**NAME AND ADDRESS  
OF LIMITED PARTNER**

**CAPITAL CONTRIBUTION**

**INTEREST**

Marlyn Development Corporation  
308 35<sup>th</sup> Street, Suite 101  
Virginia Beach, VA 23451

\$ \_\_\_\_\_

99.99%

\$ \_\_\_\_\_

100%

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

**THIS OPERATING AGREEMENT** is made as of October 11, 2021, by and among the undersigned persons (collectively, the “Members”).

**WHEREAS**, Birchwood 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 Virginia Beach, 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 Birchwood Senior GP, LLC (the “Company”), which is intended to serve as the 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 October 11, 2021.

1.2 Name. The name of the Company is Birchwood 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 35<sup>th</sup> Street, Suite 101, Virginia Beach, VA 23451, 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, VA 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 the 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.” Birchwood 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 “General Partner.” The general partner of the Partnership.

2.11 “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 2.11(d) to the extent the Members determine that an adjustment pursuant to Section 2.11(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 2.11(a), 2.11(b) or 2.11(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.

2.12 “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, its Interest and its rights to profits, losses, distributions, and capital.

2.13 “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 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 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 Members of the Company.

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

2.15 “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.

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

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

2.18 “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.

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

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

2.21 “Partnership.” Birchwood Senior, LP, a Virginia limited partnership.

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

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

2.24 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 2.11(b) or Section 2.11(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 tax 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).

### **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.

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. Notwithstanding the foregoing, the Managers may not require capital contributions from the Members in excess of \$500,000.00 in the aggregate without the prior consent of the Members holding a Majority in Interest.

(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 its 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 a Lending Member makes an advance to an Indebted Member under the provisions of this Section 3.2(b) and such indebtedness is not repaid in full on or before the date which is ninety (90) days after the date such advance is made, such Lending Member may elect to succeed to certain of the Interest of the Indebted Member as determined in accordance with this Section 3.2(f), and the Indebted Member shall therewith be deemed to assign and transfer without any further action or instrument such Interest to the Lending Member(s) making such advance. Upon the aforementioned election by the Lending Member, the Interest of each Member shall be recalculated through the use of a fraction, the numerator of which shall be the Capital Account of such Member and the denominator of which shall be the aggregate Capital Accounts of all of the Members (and successors in interest). For purposes of this recalculation, Capital Accounts shall reflect credit to each Lending Member for the amount of his advance. Each Member shall then be reallocated such amount of the outstanding Interest as shall be consistent with his recalculated percentage Interest. By way of example, if each of five Members has a \$2,000 Capital Account and a 20% Interest as of the date on which an additional Capital Contribution of \$1,000 each is required to be made, and only one Member (Member A) fails to make his additional Capital Contribution, any or all Members B, C, D and E may elect to make an advance equal in the aggregate to the \$1,000 in default. If, immediately prior to the making of such advance, Member A has a Capital Account of \$2,000 and Members B, C, D and E have Capital Accounts of \$3,000 each (after giving effect to the additional Capital Contributions), then if Members B, C, D and E each make an advance of \$250 to cover the amount of Member A's default, Member A would then have a Capital Account of \$2,000 and upon the election of Members B, C, D, and E to succeed to certain Interest of Member A in accordance with the terms hereof, then the advance by Members B, C, D and E shall be deemed an additional Capital Contribution and each would have a Capital Account of \$3,250. As a result of this transaction, therefore, Member A would have an Interest of 13.33% (\$2,000 divided by \$15,000) and Members B, C, D and E would each have an Interest of 21.67% (\$3,250 divided by \$15,000).

(g) In the event the Company or any Lending Member elects to pursue its 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 Member and/or principals thereof shall be required to provide its personal guaranty 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 or a principal thereof is subsequently called upon by such person or other creditor holding such Guaranteed Obligations to pay on its 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 its 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 its 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 its 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 its 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 its 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.

## **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 (i) 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, and (ii) the Company shall repay any loans from Members prior to making distributions to the Members with respect to their Interests.

## **ARTICLE 6 MANAGEMENT**

6.1 Managers. The Company's business shall be managed by **two (2) Managers**. Each Member shall have the right to appoint one (1) Manager and shall have the right to remove and replace such Manager from time to time as it may determine in its sole discretion. The Managers initially shall be **Brian L. Staub** as the initial Manager appointed by Marlyn Birchwood GP, LLC, and **W. Taylor Franklin** as the initial Manager appointed by TFJG Birchwood GP, LLC. Upon the death, resignation, disability, or removal of a Manager, the appointing Member for such Manager shall have the unilateral right to appoint a replacement Manager. A Manager need not be a Member of the Company. The 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.

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 less than \$250,000.00 shall only require the approval or signature of one (1) Manager.

6.3 Proportionate Voting. On any matter requiring action by the Members, 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 Members entitled to vote.

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, Birchwood 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 Property Management Services. The parties agree that the Partnership will engage the following property managers to assist in the Project's operation and management: Franklin Johnston Group Management & Development, LLC ("FJGMD"), Franklin Asset Management, LLC ("FAM"), and Marlyn Management, LLC ("MM"). The foregoing property managers shall receive as compensation for their services an amount equal to the following percentage of gross rents received during the current month: FJGMD = 3.5%, FAM = 0.5%, and MM = 0.5%.

## 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. Notwithstanding any other provision of this Agreement, except for the Transfer

of Interests between Members or as otherwise may be approved by the Managers, 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 one or more limited liability companies). 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 or dissolved Member, any payment to a Member, or its trustee(s) in liquidation, 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 its dissolution.

(b) Upon the dissolution of a Member, the trustee(s) in liquidation or other successor in interest of such Member as determined under applicable law, may succeed to such dissolved Member's Interest in the Company as an assignee in accordance with the provisions of Section 7.1(d) 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 one or more limited liability companies. Any purported Transfer of Interest upon the dissolution of a Member or upon the 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 one or more limited liability companies, 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 void ab initio.

(c) If a Member or an assignee thereof or other successor in interest thereto desires to sell all or any portion of its 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 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 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 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 in the manner described below:

(i) 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 may be exercised by giving notice to the Offeror and Managers within such thirty (30) day period. If more than one Member elects to purchase the Offeror'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 the Offeror.

(ii) If the Members do not elect to purchase all of the offered Interests, then the Offeror may sell such Interest, to which the 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 its Interest without again complying with this Section.

(d) 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 its 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.

7.2 No Encumbrance. No Member shall subject its 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, a Member may assign, in whole or in part, its 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 guarantee of Guaranteed Obligations by or on behalf of 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. It shall only be entitled to receive the share of the profits or other distributions, or the return of the contribution, to which its 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, and (iii) a duly executed and acknowledged counterpart of such instrument is filed with the Company.

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.

## **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 Members owning 51% of the 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 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 its 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 Members owning 51% of the Interests in the Company held by the Members. Each Member hereby irrevocably appoints each Manager, any of whom may act, as its 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 its 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 2.11 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 its 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 the Managers in accordance with Section 6.2; provided, however, the Managers may by mutual agreement delegate such signature authority to one or more persons for individual amounts up to \$100,000.00.

11.4 Tax Matters Manager.

(a) Designation and Authority of the Tax Matters Manager. W. Taylor Franklin 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 Dispute Resolution. In the event of a dispute (including without limitation a claim for money or relief) among the Members and/or Manager based on, or arising out of, or relating to this Agreement or the business of the Company, then the party seeking relief shall, prior to filing suit or proceeding in state or federal court or any other forum, give written notice to the other party of such dispute, and the parties shall within sixty (60) days thereafter have the issue mediated before a mediator acceptable to all parties at a mutually agreeable location. If such mediation reaches impasse in the opinion of the mediator, then the parties shall be permitted to pursue a judicial or other resolution of the dispute.

13.5 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.

13.6 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.

13.7 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.

13.8 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.

13.9 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.

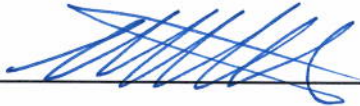
13.10 Counterparts. This document may be executed in several facsimile counterparts and such counterparts, when taken together, shall be as valid and binding and have the same effect, as if all signatures were original and on one document.

**[SIGNATURE PAGE FOLLOWS]**

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

**MEMBERS:**

**MARLYN BIRCHWOOD GP, LLC**

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

Name: Brian Staub \_\_\_\_\_

Title: Manager \_\_\_\_\_

**TFJG BIRCHWOOD GP, LLC**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**COMPANY:**

**BIRCHWOOD SENIOR GP, LLC**

By:  \_\_\_\_\_  
Brian L. Staub, Manager

By: \_\_\_\_\_  
W. Taylor Franklin, Manager

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

**MEMBERS:**

**MARLYN BIRCHWOOD GP, LLC**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**TFJG BIRCHWOOD GP, LLC**

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

Name: W. Taylor Franklin

Title: Manager

**COMPANY:**

**BIRCHWOOD SENIOR GP, LLC**

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

Brian L. Staub, Manager

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

W. Taylor Franklin, Manager

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

<b><u>MEMBER NAME AND ADDRESS</u></b>	<b><u>INITIAL CAPITAL CONTRIBUTION</u></b>	<b><u>INTEREST</u></b>
Marlyn Birchwood GP, LLC 308 35th Street, Suite 101 Virginia Beach, Virginia 23451	\$ _____	50%
TFJG Birchwood GP, LLC 300 32nd Street, Suite 310 Virginia Beach, VA 23451	\$ _____	50%

**OPERATING AGREEMENT  
OF  
MARLYN BIRCHWOOD GP, LLC**

**THIS OPERATING AGREEMENT** is made as of October 12, 2021, by and among the undersigned persons (collectively, the “Members”).

**WHEREAS**, Birchwood Senior, LP, a Virginia limited partnership (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 Virginia Beach, 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**, Birchwood Senior GP, LLC, a Virginia limited liability company (the “General Partner”) has been established for the purpose of serving as the general partner of the Partnership; and

**WHEREAS**, the Members have formed a limited liability company under the laws of the Commonwealth of Virginia known as Marlyn Birchwood GP, LLC (the “Company”), which is intended to own and control 50% of the membership interest in the 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 February 9, 2021.

1.2 Name. The name of the Company is Marlyn Birchwood 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 a member of the 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.” Marlyn Birchwood 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.” Birchwood 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, 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 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 Other Members of General Partner. The Members acknowledge that the Managers will conduct negotiations with and share control of the General Partner with one or more other members of the General Partner.

6.7 Development Services. The parties agree that in connection with developing the Project, the Partnership may engage a development company, Birchwood Senior Developers, LLC (the "Developer"), to provide certain development services to the Partnership. It is anticipated that Marlyn Birchwood Developers, LLC (the "Developer Member") would be the owner of 50% of the membership interest in the Developer. 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 Member.

**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 Member, 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 Member and each Transfer of Interest in the Company shall automatically trigger the identical Transfer of the corresponding interest in the Developer Member. 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:

**Termination Occurs**

**Percentage Forfeited**

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.

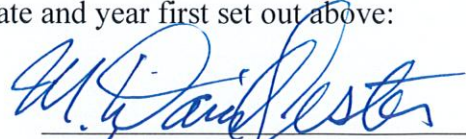
13.7 Successors. This Agreement shall be binding upon the parties hereto, and, if and when assigned in accordance with the provisions hereof, their respective assigns, successors in interest, personal or legal representatives, estates, heirs, and legatees.

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.

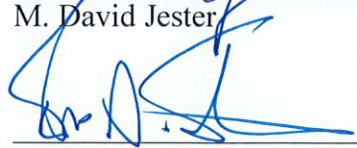
13.9 Counterparts. This document may be executed in several facsimile counterparts and such counterparts, when taken together, shall be as valid and binding and have the same effect, as if all signatures were original and on one document.

**[SIGNATURE PAGE FOLLOWS]**

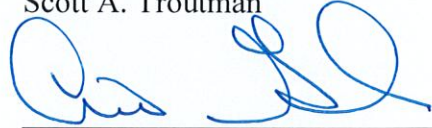
WITNESS the following signatures and seals as of the date and year first set out above:



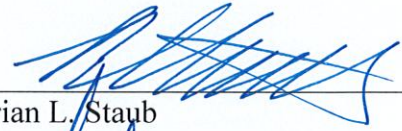
M. David Jester



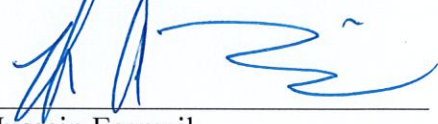
Scott A. Troutman



Christian H. Gardner



Brian L. Staub



Hussein Easmeil

**EXHIBIT A  
TO  
OPERATING AGREEMENT  
OF  
MARLYN BIRCHWOOD 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  
TFJG BIRCHWOOD GP, LLC**

**THIS OPERATING AGREEMENT**, made as of the 13th day of October, 2021, by and among the undersigned (collectively, the “Members”).

**WHEREAS**, Birchwood Senior, LP (the “Partnership”), has been established for the purpose of constructing and owning a multi-family housing project to be financed in part by low income housing tax credits pursuant to Section 42 of the Federal Internal Revenue Code; and

**WHEREAS**, Birchwood Senior GP, LLC (the “General Partner”), has been established for the purpose of serving as General Partner of the Partnership; and

**WHEREAS**, the Members have formed a limited liability company under the laws of the Commonwealth of Virginia known as TFJG Birchwood GP, LLC (“the Company”), which is intended to serve as a member of the General Partner; 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 with the Partnership, the General Partner and others relating to the ownership, development, and operation of Birchwood Senior Apartments.

**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 October 13, 2021.

1.2 Name. The name of the Company is TFJG Birchwood 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 300 32<sup>nd</sup> Street, Suite 310, Virginia Beach, Virginia 23451, unless such office is changed by action of the Manager pursuant to this Agreement.

1.4 Registered Agent and Registered Office. The initial registered agent of the Company is James W. Noel, III, who is a resident of Virginia and a member of the Virginia State Bar and whose post office address is 300 32<sup>nd</sup> Street, Suite 310, Virginia Beach, Virginia 23451, 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 a member of the General Partner of the Partnership, which will construct and own Birchwood Senior Apartments.

## 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:

2.2.1 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) and 1.704-2(i)(5); and

2.2.2 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 amended and/or restated from time to time.

2.4 “Capital Account.” With respect to any Member, the Capital Account maintained for such Member in accordance with Section 3.6.

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.” TFJG Birchwood 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 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 “General Partner.” The general partner of the Partnership.

2.11 “Gross Asset Value.” With respect to any asset, the asset’s adjusted basis for federal income tax purposes, except as follows:

2.11.1 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;

2.11.2 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: (a) 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; (b) 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 (c) the liquidation of the Company within the meaning of Regulations Section 1.704-1(b)(2)(ii)(g);

2.11.3 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

2.11.4 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 2.11.4 to the extent the Members determine that an adjustment pursuant to Section 2.11.2 is necessary or appropriate in connection with a transaction that would otherwise result in an adjustment pursuant to this Section 2.11.4.

If the Gross Asset Value of an asset has been determined, or adjusted pursuant to Section 2.11.1, 2.11.2 or 2.11.4 hereof, such Gross Asset Value shall thereafter be adjusted by the Depreciation taken into account with respect to such asset for purposes of computing Profits and Losses.

2.12 “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 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.

2.13 “Majority in Interest.” Members holding more than sixty percent (60%) 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 every Member of the Company, except in the following cases:

2.13.1 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 Members of the Company excluding the Interest which is the subject of the Transfer.

2.13.2 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 Members of the Company.

For purposes of this Section 2.13, profits interests are those Interests defined in Section 2.12 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.

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

2.15 “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.

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

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

2.18 “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.

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

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

2.21 “Partnership.” Birchwood Senior, LP, a Virginia limited partnership.

2.22 “Partnership Agreement.” The Agreement of Limited Partnership of the Partnership.

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

2.24 “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:

2.24.1 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;

2.24.2 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 2.24 shall be subtracted from such taxable income or loss;

2.24.3 In the event the Gross Asset Value of any Company asset is adjusted pursuant to Section 2.11.2 or Section 2.11.3 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;

2.24.4 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 tax basis of such property differs from its Gross Asset Value;

2.24.5 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;

2.24.6 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

2.24.7 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.

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



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

2.27 “Transfer.” Any sale, assignment, gift, bequest, disposition, or other transfer of any kind or description and however made, whether voluntary or involuntary, by death, by divorce, by court decree, or otherwise.

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.

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 Manager, 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. Any such additional Capital Contribution shall be in proportion to each Member’s Interest in the Company.

3.2.1 The Manager 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.

3.2.2 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 any Member who has failed to contribute his pro rata share (an “Indebted Member”) to the Member who has made such advance (a “Lending Member”).

3.2.3 Any debt incurred by an Indebted Member shall be payable on demand, or at such other time as the Manager (in the case of a debt incurred pursuant to Section 3.2.1) or Lending Member (in the case of a debt incurred pursuant to Section 3.2.2) shall designate and shall bear interest at 3% above the prime interest rate published from time to time by the Wall Street Journal; provided, however such rate shall not be higher than the highest rate permitted between contracting parties under the usury laws of Virginia.

3.2.4 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.

3.2.5 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

3.2.6 If any indebtedness incurred pursuant to Section 3.2.2 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 3.2.5 and shall constitute full payment of all monies due in respect of the debt to such Lending Member.

3.2.7 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 Manager. 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 Manager 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 Capital Accounts.

3.6.1 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.

3.6.2 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.

3.6.3 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.

3.6.4 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.

3.6.5 In determining the amount of any liability for purposes of Sections 3.6.2 and 3.6.3 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

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. Distributions shall be made from time to time in such amounts and at such times as the Manager may determine; provided, however, that (i) the aggregate amount of each such distribution shall be that amount which the Manager 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; and (ii) the Company shall repay any loans from Members prior to making distributions to the Members with respect to their Interests.

## ARTICLE 6

### MANAGEMENT

6.1 Manager. The Company's business shall be managed by one or more Managers, who initially shall be W. Taylor Franklin.

6.2 Management of the Company. Except as provided below, the Manager 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 Manager shall deem necessary or convenient to achieve the purposes of this Agreement. No other actions or signatures shall be required and all persons may rely thereon and shall be exonerated from any and all liability if they deal with the Company on the basis of the actions of or documents approved and executed on behalf of the Company by the Manager. The preceding sentence notwithstanding, the signature requirements for checks shall be governed by Section 11.3.

6.3 Proportionate Voting. On any matter requiring action by the Members, the Members shall vote in proportion to their respective Interests in the Company as set forth in Exhibit A attached hereto. Notwithstanding the foregoing, the selection of a new Manager shall

require the vote of Members owning sixty percent (60%) of the Interests in the Company. A Manager may resign as a manager by written notice to the Members.

6.4 Removal of Manager. A Manager may be removed at any time, with or without cause, by the affirmative vote of Members owning sixty percent (60%) of the Interests in the Company.

6.5 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 Manager. 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.

## ARTICLE 7

### ASSIGNMENT OF INTERESTS

7.1 In General. No person shall be considered a Member unless named in this Agreement, or unless admitted to the Company as provided in this Agreement. No Member shall, except as provided below, Transfer any Interest in the Company without the prior written consent of the Manager and the substitution of such assignee as a Member in accordance with the terms hereof. The Company, each Member and any other person having business with the Company need only deal with Members so named and so substituted as a Member. They shall not be required to deal with any person by reason of any Transfer by a Member or by reason of the death or termination of a Member, except as otherwise provided in this Agreement. 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.

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, a Member may assign, in whole or in part, his rights to receive Company distributions, with the consent of a Manager.

7.4 Procedure for Substitution of Assignee as Member.

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

7.4.1.1 The assignor gives the assignee such right;

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

7.4.1.3 The assignee executes and acknowledges, in form and substance satisfactory to the Manager, all instruments which the Manager 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; and

7.4.1.4 The assignee obtains the written consent of the Manager.



7.4.2 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 Manager or the Members to grant consent to the substitution of an assignee as a Member or the failure of such assignee to comply with any other requirements provided in this Agreement 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 Manager, (iii) a duly executed and acknowledged counterpart of such instrument is filed with the Company, and (iv) the assignee is not a person below the age of eighteen (18) years or a person theretofore adjudged to be incompetent. Any such 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.

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 Manager. 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 Manager 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 Manager 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 Manager has knowledge of any Transfer of ownership of any Interest in the Company.

7.6 Right of First Refusal. If a Member desires to transfer all or any portion of his Interest, he shall provide written notice (“Selling Notice”) to the Manager and the Members of the terms on which he proposes to make the Transfer, along with the name and address of the proposed transferee. The Manager shall have thirty (30) days after receipt of the Selling Notice in which to elect in writing to (i) purchase all such Interest among themselves as they shall determine, or (ii) cause the Company to purchase all such Interest, in either case on the same terms and conditions provided in the Selling Notice. If the Manager and the Company do not elect to purchase such Interest during such thirty (30) day period, the Members shall have the right for an additional fourteen (14) days to elect in writing to purchase all such Interest on the same terms and conditions provided in the Selling Notice. Any such purchase shall be closed not later than thirty (30) days after the purchaser makes its written election to purchase. If neither the Manager, the Company nor the Members elect to purchase the offered Interest, the Member may complete the transfer as

provided in the Selling Notice, within ninety (90) days after giving the Selling Notice. The foregoing right of first refusal shall not apply to a transfer from a Member to his spouse or lineal descendants, or a trust for their benefit, or a limited liability company or partnership having only the Member, his spouse or lineal descendants, or trusts for their benefit, as the members or partners.

7.7 Agreement Regarding Decedent's Estates. Members acknowledge that the Company has no obligation to admit new Members as a result of the death of a Member, because such assignment and substitution requires the consent of the Manager and a Majority in Interest of the Members in accordance with Section 7.4.1.4 of the Agreement. The parties acknowledge and agree that, upon the death of any Member, the assignee or assignees of the deceased Member shall not become Substituted Members unless they organize a single limited liability company or other entity at their expense which will be admitted to the Company as a single substituted Member with perpetual existence. Each limited liability company to be admitted as a Substituted Member shall designate a manager, trustee or attorney-in-fact to act on behalf of and to handle the affairs of the limited liability company with respect to such company's Interest, and the Company and the Manager shall not be required to deal with any person other than such designated manager, trustee, or attorney-in-fact. The Members further agree that the sale, assignment, gift, bequest, disposition or other transfer of any kind of a beneficial interest in such limited liability company or other entity shall constitute a Transfer requiring written consent of the Manager as provided in Section 7.1.

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:

8.1.1 The consent in writing to do so by Members owning sixty percent (60%) of the Interests in the Company.

8.1.2 Any other event causing dissolution under the Act unless a Majority in Interest of the remaining Members agrees to continue the business of the Company pursuant to Section 8.2.

8.2 Election to Continue Company. An event set forth in Section 8.1.2 shall not result in the dissolution, winding up and termination of the Company if, within ninety (90) days after the occurrence of that event, a Majority in Interest of the remaining Members elects 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 Manager 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:

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

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

8.3.3 The balance, if any, to the Members in accordance with their Capital Accounts, after giving effect to all contributions, distributions, 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 contributed all of its assets and liabilities to a new company in exchange for an interest in the new company; and immediately thereafter, the Company distributed

the interests in the new company to the Members. The parties intend that this provision shall comply with Regulations Section 1.708-1 (b) (4) and that such section shall govern.

## ARTICLE 9

### AMENDMENTS

This Agreement is subject to amendment only by the written consent of Members owning sixty percent (60%) of the Interests in the Company.

## 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:

10.1.1 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 10.1.1 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.

10.1.2 Member Minimum Gain Chargeback. Notwithstanding any other provision of Articles 4 or 10 except Section 10.1.1, 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 10.1.2 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.

10.1.3 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 10.1.3 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 10.1.3 were not in this Agreement.

10.1.4 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 10.1.4 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 10.1.4 and Section 10.1.3 hereof were not in this Agreement.

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

10.1.6 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).

10.1.7 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 Manager 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 Manager 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 2.11 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 Manager, 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 Manager 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 or savings and loan association or associations 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 a Manager or a managing agent for the Company designated by the Manager.

11.4 Partnership Representative.

11.4.1 Designation and Authority of the Tax Matters Manager. W. Taylor Franklin 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.

11.4.2 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”).

11.4.3 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.

11.4.4 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.

11.4.5 At the request of the Partnership Representative, in connection with an adjustment of any item of income, gain, loss, deduction, or credit of the 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.

11.4.6 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.

11.4.7 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 MEMBERS

12.1 Indemnification. The Manager 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 Manager 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 Manager 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 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.



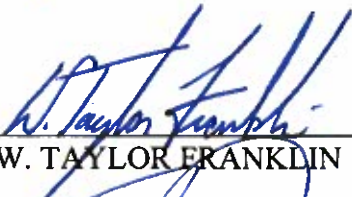
13.9 Counterparts. This document may be executed in several counterparts and such counterparts, when taken together, shall be as valid and binding and have the same effect, as if all signatures were on one document.

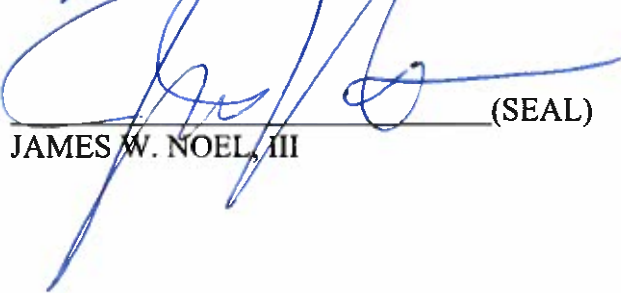
**[REMAINDER OF PAGE LEFT BLANK;  
SIGNATURE PAGE FOLLOWS]**

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

  
\_\_\_\_\_(SEAL)  
WENDELL C. FRANKLIN

  
\_\_\_\_\_(SEAL)  
THOMAS M. JOHNSTON

  
\_\_\_\_\_(SEAL)  
W. TAYLOR FRANKLIN

  
\_\_\_\_\_(SEAL)  
JAMES W. NOEL, III

**EXHIBIT A  
TO  
OPERATING AGREEMENT  
OF  
TFJG BIRCHWOOD GP, LLC**

<b>MEMBER NAME AND ADDRESS</b>	<b>INITIAL CAPITAL CONTRIBUTION</b>	<b>INTEREST</b>
Wendell C. Franklin 300 32nd Street, Suite 310 Virginia Beach, VA 23451	\$300.00	30.00%
Thomas M. Johnston 300 32nd Street, Suite 310 Virginia Beach, VA 23451	\$320.00	32.00%
W. Taylor Franklin 300 32nd Street, Suite 310 Virginia Beach, VA 23451	\$330.00	33.00%
James W. Noel, III 300 32nd Street, Suite 310 Virginia Beach, VA 23451	\$50.00	5.00%
	<hr/>	
	\$1,000.00	100%

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

**THIS OPERATING AGREEMENT** is made as of October 11, 2021, by and among the undersigned persons (collectively, the “Members”).

**WHEREAS**, Birchwood 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 Virginia Beach, 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 Birchwood 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 October 11, 2021.

1.2 Name. The name of the Company is Birchwood 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 35<sup>th</sup> Street, Suite 101, Virginia Beach, VA 23451, 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.” Birchwood 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 “General Partner.” Birchwood Senior GP, LLC, a Virginia limited liability company, as the general partner of the Partnership.

2.11 “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)(i)(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 2.11(d) to the extent the Members determine that an adjustment pursuant to Section 2.11(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 2.11(a), 2.11(b) or 2.11(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.

2.12 “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, its Interest and its rights to profits, losses, distributions, and capital.

2.13 “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 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 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 Members of the Company.

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

2.15 “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.

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

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

2.18 “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.

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

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

2.21 “Partnership.” Birchwood Senior, LP, a Virginia limited partnership.

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

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

2.24 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 2.11(b) or Section 2.11(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 tax 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).

### **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.

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. Notwithstanding the foregoing, the Managers may not require capital contributions from the Members in excess of \$500,000.00 in the aggregate without the prior consent of the Members holding a Majority in Interest.

(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 its 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 a Lending Member makes an advance to an Indebted Member under the provisions of this Section 3.2(b) and such indebtedness is not repaid in full on or before the date which is ninety (90) days after the date such advance is made, such Lending Member may elect to succeed to certain of the Interest of the Indebted Member as determined in accordance with this Section 3.2(f), and the Indebted Member shall therewith be deemed to assign and transfer without any further action or instrument such Interest to the Lending Member(s) making such advance. Upon the aforementioned election by the Lending Member, the Interest of each Member shall be recalculated through the use of a fraction, the numerator of which shall be the Capital Account of such Member and the denominator of which shall be the aggregate Capital Accounts of all of the Members (and successors in interest). For purposes of this recalculation, Capital Accounts shall reflect credit to each Lending Member for the amount of his advance. Each Member shall then be reallocated such amount of the outstanding Interest as shall be consistent with his recalculated percentage Interest. By way of example, if each of five Members has a \$2,000 Capital Account and a 20% Interest as of the date on which an additional Capital Contribution of \$1,000 each is required to be made, and only one Member (Member A) fails to make his additional Capital Contribution, any or all Members B, C, D and E may elect to make an advance equal in the aggregate to the \$1,000 in default. If, immediately prior to the making of such advance, Member A has a Capital Account of \$2,000 and Members B, C, D and E have Capital Accounts of \$3,000 each (after giving effect to the additional Capital Contributions), then if Members B, C, D and E each make an advance of \$250 to cover the amount of Member A's default, Member A would then have a Capital Account of \$2,000 and upon the election of Members B, C, D, and E to succeed to certain Interest of Member A in accordance with the terms hereof, then the advance by Members B, C, D and E shall be deemed an additional Capital Contribution and each would have a Capital Account of \$3,250. As a result of this transaction, therefore, Member A would have an Interest of 13.33% (\$2,000 divided by \$15,000) and Members B, C, D and E would each have an Interest of 21.67% (\$3,250 divided by \$15,000).

(g) In the event the Company or any Lending Member elects to pursue its 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 Member and/or principals thereof shall be required to provide its 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 or a principal thereof is subsequently called upon by such person or other creditor holding such Guaranteed Obligations to pay on its 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 its 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 its 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 its 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 its 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 its 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.

#### **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 (i) 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, and (ii) the Company shall repay any loans from Members prior to making distributions to the Members with respect to their Interests.

## **ARTICLE 6 MANAGEMENT**

6.1 Managers. The Company's business shall be managed by two (2) Managers. Each Member shall have the right to appoint one (1) Manager and shall have the right to remove and replace such Manager from time to time as it may determine in its sole discretion. The Managers initially shall be Brian L. Staub as the initial Manager appointed by Marlyn Birchwood Developers, LLC, and W. Taylor Franklin as the initial Manager appointed by TFJG Birchwood Developers, LLC. Upon the death, resignation, disability, or removal of a Manager, the appointing Member for such Manager shall have the unilateral right to appoint a replacement Manager. A Manager need not be a Member of the Company. The 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.

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 less than \$250,000.00 shall only require the approval or signature of one (1) Manager.

6.3 Proportionate Voting. On any matter requiring action by the Members, 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 Members entitled to vote.

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.

## **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. Notwithstanding any other provision of this Agreement, except for the Transfer of Interests between Members or as otherwise may be approved by the Managers, 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 one or more limited liability companies). 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 or dissolved Member, any payment to a Member, or its trustee(s) in liquidation, 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 its dissolution.

(b) Upon the dissolution of a Member, the trustee(s) in liquidation or other successor in interest of such Member as determined under applicable law, may succeed to such dissolved Member's Interest in the Company as an assignee in accordance with the provisions of Section 7.1(d) 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 one or more limited liability companies. Any purported Transfer of Interest upon the dissolution of a Member or upon the 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 one or more limited liability companies, 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 void ab initio.

(c) If a Member or an assignee thereof or other successor in interest thereto desires to sell all or any portion of its 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 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 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 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 in the manner described below:

(i) 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 may be exercised by giving notice to the Offeror and Managers within such thirty (30) day period. If more than one Member elects to purchase the Offeror'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 the Offeror.

(ii) If the Members do not elect to purchase all of the offered Interests, then the Offeror may sell such Interest, to which the 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 its Interest without again complying with this Section.

(d) 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 its 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.

7.2 No Encumbrance. No Member shall subject its 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, a Member may assign, in whole or in part, its 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 guarantee of Guaranteed Obligations by or on behalf of 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. It shall only be entitled to receive the share of the profits or other distributions, or the return of the contribution, to which its 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, and (iii) a duly executed and acknowledged counterpart of such instrument is filed with the Company.

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.

## **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 Members owning 51% of the 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 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 its 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 Members owning 51% of the Interests in the Company held by the Members. Each Member hereby irrevocably appoints each Manager, any of whom may act, as its 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 its 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 2.11 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 its 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 the Managers in accordance with Section 6.2; provided, however, the Managers may by mutual agreement delegate such signature authority to one or more persons for individual amounts up to \$100,000.00.

11.4 Tax Matters Manager.

(a) Designation and Authority of the Tax Matters Manager. W. Taylor Franklin 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.

13.2 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 Dispute Resolution. In the event of a dispute (including without limitation a claim for money or relief) among the Members and/or Manager based on, or arising out of, or relating to this Agreement or the business of the Company, then the party seeking relief shall, prior to filing suit or proceeding in state or federal court or any other forum, give written notice to the other party of such dispute, and the parties shall within sixty (60) days thereafter have the issue mediated before a mediator acceptable to all parties at a mutually agreeable location. If such mediation reaches impasse in the opinion of the mediator, then the parties shall be permitted to pursue a judicial or other resolution of the dispute.

13.5 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.

13.6 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.

13.7 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.

13.8 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.

13.9 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.

13.10 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:

**MEMBERS:**

**MARLYN BIRCHWOOD DEVELOPERS, LLC**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**TFJG BIRCHWOOD DEVELOPERS, LLC**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**COMPANY:**

**BIRCHWOOD SENIOR DEVELOPERS, LLC**

By: \_\_\_\_\_  
Brian L. Staub, Manager

By: \_\_\_\_\_  
W. Taylor Franklin, Manager

**EXHIBIT A  
TO  
OPERATING AGREEMENT  
OF  
BIRCHWOOD SENIOR DEVELOPERS, LLC**

<b><u>MEMBER NAME AND ADDRESS</u></b>	<b><u>INITIAL CAPITAL CONTRIBUTION</u></b>	<b><u>INTEREST</u></b>
Marlyn Birchwood Developers, LLC 308 35th Street, Suite 101 Virginia Beach, Virginia 23451	\$ _____	50%
TFJG Birchwood Developers, LLC 300 32nd Street, Suite 310 Virginia Beach, VA 23451	\$ _____	50%

B

Virginia State Corporation  
Commission Certification  
(MANDATORY)

# Commonwealth of Virginia



## STATE CORPORATION COMMISSION

Richmond, October 13, 2021

This is to certify that the certificate of limited partnership of

### **Birchwood 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: October 13, 2021



STATE CORPORATION COMMISSION

Attest:

A handwritten signature in cursive script, appearing to read "Bernard J. St. John".

Clerk of the Commission

## Limited Partnership - Certificate of Limited Partnership

### Entity Information

Entity Name: Entity Type: Limited Partnership  
LLP Status: No

### Business Type

Industry Code: 0 - General

### Duration

Perpetual(never)

### Registered Agent Information

RA Type: An Individual who is a resident of Virginia Locality: NEWPORT NEWS CITY  
RA Qualification: Member of the Virginia State Bar  
Name: Timothy O. Trant II Email Address: N/A

The limited partnership's initial registered office address, including the street and number, if any, which is identical to the business office of the initial registered agent, is:

11815 Fountain Way Ste  
Registered Office 400, Kaufman & Canoles,  
Address: P.C., NEWPORT NEWS, Contact Number: N/A  
VA, 23606 - 4448, USA

### Principal Office Address

Address: 308 35th St Ste 101, Virginia Beach, VA, 23451 - 2869, USA

### Principal Information

Title	Name	Address
General Partner	Birchwood Senior GP, LLC	308 35th St Ste 101, Virginia Beach, VA, 23451 - 2869, USA

### Signature Information

Date Signed: 10/13/2021

Printed Name	Signature	Title
Timothy O. Trant II	Timothy O. Trant II	Organizer



**COMMONWEALTH OF VIRGINIA  
STATE CORPORATION COMMISSION**

**Office of the Clerk**

October 13, 2021

Rebecca Lambert  
11815 Fountain Way  
Suite 400  
Newport News, VA, 23606

**RECEIPT**

RE: Birchwood Senior, LP  
ID: 11293663  
FILING NO: 2110133758759  
WORK ORDER NO: 202110132074756

Dear Customer:

This is your receipt for \$100.00 to cover the fee for filing a certificate of limited partnership with this office.

The effective date of the certificate is October 13, 2021.

If you have any questions, please call (804) 371-9733 or toll-free 1-866-722-2551.

Sincerely,

Bernard J. Logan  
Clerk of the Commission

Delivery Method: Email

C

Principal's Previous  
Participation Certification  
(MANDATORY)





## Previous Participation Certification

Development Name: Arbors at Birchwood  
Name of Applicant (entity): Birchwood Senior, LP  
Birchwood 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

10/26/21  
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 Birchwood  
 Name of Applicant: Birchwood Senior, L.P.  
 Controlling General Partner or Managing Member: Birchwood 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  
88% Total Units

# List of LIHTC Developments (Schedule A)



Development Name: Arbors at Birchwood  
 Name of Applicant: Birchwood Senior, L.P.  
 Controlling General Partner or Managing Member: Birchwood 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 Birchwood  
 Name of Applicant: Birchwood Senior, L.P.  
 Controlling General Partner or Managing Member: Birchwood 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.

**1st PAGE**  
**TOTAL:** 1,295 1,128 LIHTC as % of Total Units 87%

ADD ADDITIONAL PROPERTIES USING NEXT TAB

# List of LIHTC Developments (Schedule A)



Development Name: Arbors at Birchwood  
 Name of Applicant: Birchwood Senior, L.P.  
 Controlling General Partner or Managing Member: Birchwood 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: M. David Jester 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	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 LIHTC as % of Total Units 90%



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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2nd PAGE TOTAL: 0 0

GRAND TOTAL: 1,994 1,749

LHHC as % of 88% Total Unit

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Site Control  
Documentation & Most  
Recent Real Estate Tax  
Assessment  
(MANDATORY)

## PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT (this "Agreement"), is made as of this 24<sup>th</sup> day of July, 2019, by and between **BIRCHWOOD ASSOCIATES, LLC**, a Virginia limited liability company ("Seller"); and **FRANKLIN JOHNSTON GROUP MANAGEMENT & DEVELOPMENT, LLC**, a Virginia limited liability company, and/or assigns ("Buyer").

### RECITALS

A. Seller owns **five (5)** parcels totaling approximately **4.8 acres** of land with existing improvements thereon being located in the City of Virginia Beach, Virginia and being identified as GPINs 1487-34-**1324-0000**, 1487-34-**2560-0000**, 1487-34-**3369-0000**, 1487-34-**1778-0000** and 1487-34-**2381-0000** (together, the "Property"), which Property is more particularly described on the attached Exhibit A.

B. Buyer desires to purchase from Seller, and Seller desires to sell to Buyer, all of Seller's right, title and interest in and to the Property for the purpose of constructing certain buildings, infrastructure, and other improvements associated with a multifamily residential development consisting of a minimum of 120 units (each a "Unit"), which Buyer intends to develop on the Property (the "Intended Use" or the "Project").

### AGREEMENT

For and in consideration of the sum of Ten Dollars (\$10.00) cash in hand paid, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer agree and covenant as follows:

#### Article 1.

#### Sale and Purchase of Property

**Section 1.1. Sale and Purchase.** Pursuant to the terms and conditions of this Agreement, Seller agrees to sell, and Buyer agrees to purchase the Property, together with all easements, licenses, approvals, permits, rights-of-way, and appurtenances belonging to the Property, provided the same do not render title uninsurable or unmarketable.

**Section 1.2. Purchase Price.** The purchase price of the Property (the "Purchase Price") shall be Three Million Two Hundred Thousand and No/100 Dollars (**\$3,200,000.00**); provided, however, for each Unit above 120 approved by the City of Virginia Beach for the Project during the Approvals Period (as hereinafter defined), **the Purchase Price shall increase by \$26,666.67<sup>1</sup>** (the "Per Unit Price"). At Closing (as hereinafter defined) Buyer shall pay in cash or other immediately available funds the Purchase Price less the Deposit and any Extension Fee(s) (as hereinafter defined), if applicable.

**Section 1.3. Deposit.** Within five (5) business days after full execution of this Agreement, Buyer shall deposit One Hundred Thousand and No/100 Dollars (\$100,000.00) (the "Deposit") with BridgeTrust title Group, ("Escrow Agent") who shall hold the Deposit in a non-interest bearing, federally insured account. Except as otherwise expressly provided herein, (a) a

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<sup>1</sup> Buyer shall have the right, but no obligation, to request City approval of more than 120 Units.

Twenty-Five Thousand Dollar (\$25,000.00) portion of the Deposit (the "Study Period Deposit Portion") shall become nonrefundable upon the expiration of the Study Period (as hereinafter defined) without termination by Buyer, and (b) the remaining Seventy-Five Thousand Dollar (\$75,000.00) portion of the Deposit (the "Re-Zoning Period Deposit Portion") shall become non-refundable upon expiration of the Re-Zoning Period (as hereinafter defined) without termination by Buyer. The Deposit shall be applied to the Purchase Price at Closing.

**Section 1.4. Prorations.** Subject to Section 1.5 below, Buyer and Seller shall prorate and apportion all the following costs and expenses as of the Closing Date (as hereinafter defined) according to their respective periods of ownership of the Property: state and local ad valorem taxes (with any applicable penalties, late fees, or interest accruing thereon being paid by Seller); special or general assessments; utility charges including, but not limited to, water, storm and sanitary sewer charges; rents (if any), and all other items customarily prorated.

**Section 1.5. Taxes.** Seller shall be responsible for any and all rollback taxes applicable to the Property as a result of the Re-Zoning (as hereinafter defined) or the transaction contemplated herein.

## **Article 2. Study Period**

### **Section 2.1. Buyer's Studies/Wetlands Confirmation.**

a. **Study Period.** Upon the full execution of this Agreement and for a period of sixty (60) days thereafter (the "Study Period"), Buyer and its agents may enter and access the Property and perform any tests, evaluations, studies or reports including, without limitation, the following: title examination, appraisal, physical survey, soil borings or testing, compaction tests, environmental inspections, engineering studies, topographic inspections, economic feasibility studies and any other studies or reports Buyer shall deem necessary or desirable in connection with Buyer's contemplated purchase of the Property (collectively, "Studies"). All Studies shall be conducted at Buyer's sole cost and expense. Buyer shall be responsible for any and all damages to the Property caused by any Studies.

b. **Conduct of Studies.** Buyer shall not permit any mechanics' or materialmen's liens or any other liens to attach to the Property by reason of the performance of any work or the purchase of any materials by Buyer or any other party in connection with any Studies conducted by or for Buyer. Buyer shall give reasonable advance notice to Seller prior to any entry onto the Property and shall permit Seller to have a representative present during all Studies conducted at the Property. Buyer shall take all reasonable actions and implement all protections necessary to ensure that all actions taken in connection with the Studies, and all equipment, materials and substances generated, used or brought onto the Property pose no material threat to the safety of persons, property or the environment. In the event that any of the Studies involve intrusive physical or environmental testing which disturbs the physical condition of the Property, written notice of such Study which includes a detailed description of the type, scope, manner and duration of the Study to be conducted shall be furnished to Seller. Buyer and its Consultants shall endeavor to refrain from interfering with the activities of tenants and occupants and any persons providing services to or at the Property. Upon completion of the Studies, Buyer and/or its Consultants, at Buyer's expense, shall cause any portion of the Property

damaged or altered by or in connection with any of the Studies to be repaired and/or restored to the condition the Property was in prior to such Studies.

c. **Insurance.** Buyer shall maintain commercial general liability insurance with respect to Buyer's activities on the Property. Such liability insurance shall be on an occurrence basis and shall provide combined single limit coverage of not less than \$1,000,000 (per occurrence and in the aggregate) for bodily injury, death and property damage, and Buyer shall provide evidence of same to Seller prior to entry onto the Property. All non-public information obtained by Buyer in connection with Buyer's Studies shall be confidential and will not be disclosed to third parties; provided, however, Buyer may disclose such information to parties such as Buyer's consultants, lenders, attorneys and investors, and to applicable governmental agencies in connection with the Re-Zoning and the Approvals.

d. **Seller's Provision of Studies.** Within ten (10) days after full execution of this Agreement, Seller shall deliver to Buyer all Studies in possession of Seller, or any other party controlled by or related to Seller including, without limitation, the following: the most recent title policy and survey of the Property, the organizational and/or governing documents of Seller, any environmental reports performed with respect to the Property, any engineering reports performed with respect to the Property, any wetlands studies, delineations, or determinations performed with respect to the Property, and any other documents or agreements affecting or encumbering the Property whether or not they appear in the public land records.

**Section 2.2. Indemnification.** Buyer shall indemnify, defend and hold Seller harmless from and against all cost, loss, damage and expense, including reasonable attorneys' fees, arising out of any Studies conducted by or at the request of Buyer upon the Property; however, no individual member or manager of Buyer shall be held liable in accordance with the aforementioned indemnification. The indemnification contained in this Section does not include indemnification for loss, cost or expense resulting from any unfavorable test results or the discovery of any undesirable existing conditions on the Property, including, without limitation, any loss resulting from any decrease in the fair market value of all or any portion of the Property, or the inability of Seller to market the Property due to any such discovery or unfavorable test results. The obligations of Buyer under this Section 2.2 shall survive Closing and/or the earlier termination of this Agreement.

**Section 2.3. Termination During Study Period.** If Buyer is dissatisfied with the results of any of the Studies for any or no reason, or if Buyer determines, in Buyer's sole discretion, that all or a portion of the Property is unsuitable to Buyer for any reason including, without limitation, economic feasibility, then Buyer may terminate this Agreement on or before the expiration of the Study Period by giving written notice to Seller. In such event, the Escrow Agent shall refund the entire Deposit to Buyer, and this Agreement shall terminate and become null and void, at which time the parties shall have no further rights or obligations to one another other than those that expressly survive the termination of this Agreement pursuant to the terms hereof. If Buyer does not terminate this Agreement prior to the expiration of the Study Period, then Buyer shall be deemed to have waived its right to terminate this Agreement pursuant to this Section 2.3.

**Section 2.4. Title Objections.** Notwithstanding Buyer's right to terminate this Agreement during the Study Period, if Buyer determines there are objectionable matters

discovered during a title examination and/or survey of the Property (collectively, “Objections”), then, before the expiration of the Study Period, Buyer shall have the right to notify Seller of its Objections in writing. Within five (5) days after receipt of Buyer’s notice, Seller shall elect in writing to either (a) cure one or more of the Objections, in which case Seller shall have a reasonable period of time to complete its cure, or (b) not cure the Objections. If Seller fails to make an election within such five (5) day period or elects not to cure one or more of the Objections, then Buyer may elect to terminate this Agreement by giving Seller written notice thereof within five (5) days after Seller fails to make an election or Seller’s election not to cure the Objection(s), in which event Escrow Agent shall refund the entire Deposit to Buyer, and this Agreement shall terminate and become null and void and the parties shall have no further rights or obligations hereunder except for Buyer’s indemnification obligation under Section 2.2. If Buyer does not inform Seller of its election to terminate within the five (5) day period set forth in the immediately preceding sentence, then Buyer shall be deemed to have waived the Objection(s).

**Section 2.5. Leases.** Seller shall cause all Leases (as defined below) affecting the Property to be terminated prior to the Closing Date, and shall be responsible for all costs associated with such termination.

### **Article 3. Governmental Approvals**

**Section 3.1. Re-Zoning Period.** Seller and Buyer acknowledge that the development of Buyer’s Intended Use will require approval by the Virginia Beach City Council of a conditional re-zoning to an appropriate zoning classification subject to terms and conditions acceptable to Buyer in its sole discretion (the “Re-Zoning”). Buyer shall have a period of two hundred forty (240) days after the full execution of this Agreement (the “Re-Zoning Period”) within which to obtain the Re-Zoning at Buyer’s sole cost and expense. If Buyer determines in its sole discretion at any time during the Re-Zoning Period that it will be unable to obtain the Re-Zoning before the expiration of the Re-Zoning Period, then Buyer may elect to terminate this Agreement by giving Seller written notice thereof prior to the expiration of the Re-Zoning Period, in which event this Agreement shall become null and void, the Study Period Deposit Portion shall be paid to Seller and the Re-Zoning Period Deposit Portion shall be returned to Buyer, and the parties shall have no further rights or obligations to one another hereunder except for Buyer’s indemnification obligation under Section 2.2. If Buyer does not terminate this Agreement prior to the expiration of the Re-Zoning Period, then Buyer shall be deemed to have waived its right to terminate this Agreement pursuant to this Section 3.1.

**Section 3.2. Approvals Period.** Buyer shall have a period of one hundred fifty (150) days after the expiration of the Re-Zoning Period (“Approvals Period”) to obtain any other governmental approvals Buyer deems necessary for development of Buyer’s Intended Use of the Property, including, without limitation, final site plan approval and building permits (the “Approvals”) at Buyer’s sole cost and expense. If Buyer determines in its sole discretion at any time during the Approvals Period that it will be unable to obtain the Approvals (subject to conditions and/or exactions acceptable to Buyer in Buyer’s sole discretion) before the expiration of the Approvals Period, then Buyer may elect to terminate this Agreement by giving Seller written notice thereof prior to the expiration of the Approvals Period, in which event this Agreement shall become null and void, the Deposit shall be paid to Buyer, and the parties shall

have no further rights or obligations to one another hereunder except for Buyer's indemnification obligation under Section 2.2. If Buyer does not terminate this Agreement prior to the expiration of the Approvals Period, then Buyer shall be deemed to have waived its right to terminate this Agreement pursuant to this Section 3.2.

**Section 3.3. Cooperation.** Seller and Buyer, and their respective agents, employees and contractors, shall act in good faith and use commercially reasonable efforts to cooperate in the preparation, submission and approval of an application (and other associated materials) for the Re-Zoning and the other Approvals. Such cooperation shall include, but not be limited to, the signing and returning of any application or agreement reasonably required to obtain the Re-Zoning and other Approvals. Notwithstanding the foregoing provisions of this Section 3.3, Seller shall have the right to approve any proffer or other requirement of the Rezoning that would impose upon Seller or the Property any additional financial obligation in the event Closing does not occur.

#### **Article 4. Conveyance of Property**

**Section 4.1. Closing.** The consummation of the transaction contemplated by this Agreement ("Closing") shall occur no later than thirty (30) days after the expiration of the Approvals Period ("Closing Date"). Closing shall occur at the offices of Buyer's counsel or the offices of the Escrow Agent, as Buyer may direct, and all deliveries required by Seller and Buyer hereunder shall be made to the Escrow Agent, who shall settle the transaction contemplated by this Agreement. Buyer may extend the Closing date for up to two (2) periods of thirty (30) days each (each an "Extension Period") by delivering to Seller a written notice of extension at least ten (10) days prior to the then current Closing Date, and simultaneously delivering to Seller the sum of Twenty Five Thousand an 00/100 (\$25,000.00) (each an "Extension Fee") (which Extension Fee(s) shall be immediately nonrefundable to Buyer and shall be applied to the Purchase Price at Closing).

**Section 4.2. Buyer's Right to Expedite Closing Date.** Notwithstanding any other provision contained in Section 4.1, above, Buyer shall have the right to settle this transaction prior to the Closing Date on a date assigned by Buyer, provided that (a) all conditions contained in Article 6 of this Agreement have been either satisfied or waived in writing by the party having authority to do so, and (b) Buyer has given Seller at least sixty (60) days' written notice prior to the new date of Closing.

**Section 4.3. Seller's Deliveries at Closing.** Unless an earlier date is specified in this Section, on or before the Closing Date, Seller shall, at its own expense, prepare and deliver, in addition to any other document required to be delivered by Seller under the terms of this Agreement, the following to the settlement agent conducting the Closing:

a. **Deed and Possession.** A duly-executed and authorized special warranty deed conveying the Property to Buyer, as set forth herein, together with possession of the Property in an "AS-IS" condition, free and clear any liens, encumbrances, or rights of possession (including but not limited to Objections Seller elects to cure but fails to cure prior to Closing, and/or title matters arising after the expiration of the Study Period) other than those deemed

waived by Buyer pursuant to Article Two, above. Seller shall submit a deed for Buyer's review prior to Closing.

b. Leases. Intentionally deleted.

c. Owner's Affidavit. A duly-executed affidavit, in a reasonable form prescribed by the title insurance company used by Buyer, certifying that the Property is not subject to any unrecorded agreements, leases or rights of possession, and that no work has been performed upon the Property by or on behalf of Seller prior to Closing that would allow a mechanic's, laborers' or materialmen's lien to attach to the Property.

d. Tax Forms. A duly-executed residency status tax reporting form reasonably required by Buyer, Buyer's title company, or the settlement agent conducting Closing, including, without limitation, Virginia Form R-5 or R-5E, a FIRPTA form certifying Seller is not a "foreign person," as defined by Section 1445 of the Internal Revenue Code, an IRS Form 1099 or 1099-S, and any other forms required to be produced to tax authorities in connection with the transfer of the Property.

e. Seller's Closing Costs. Seller shall pay Seller's attorney's fees, any applicable grantor's taxes, and any prorations due from Seller for the period of Seller's ownership of the Property prior to and including the Closing Date.

f. Authorizations. Prior to Closing, Seller shall deliver (to the extent applicable and not previously delivered pursuant to Section 2.1(b)) copies of Seller's organizational documents, resolutions, or other evidence acceptable to Buyer's counsel and its title company demonstrating Seller's authority to convey the Property to Buyer.

g. Settlement Statement. An approved settlement statement signed by Seller.

h. Miscellaneous Documents. Prior to or at Closing, Seller shall deliver any other document(s) reasonably required by Buyer's title company or lender.

**Section 4.4. Buyer's Deliveries at Closing**. At Closing, and in addition to any other items required to be delivered under the terms of this Agreement, Buyer shall deliver or cause to be delivered to the Escrow Agent the following:

a. Purchase Price. By wire transfer, certified check, or other immediately-available funds, the balance of the Purchase Price due from Buyer, as adjusted by the amount of the Deposit (and any Extension Fee(s), if applicable).

b. Buyer's Closing Costs. In addition to the Purchase Price, Buyer shall pay the cost of recording the deed, any transfer taxes, and costs and expenses of Buyer's attorneys, engineers, surveyors, title insurers or other professionals engaged by Buyer in connection with the Studies or other evaluations of the Property.

c. Assignment of Leases. Intentionally deleted.

d. Settlement Statement. An approved settlement statement signed by Buyer.



e. Miscellaneous Documents. Prior to or at Closing, Buyer shall deliver any other document(s) reasonably required by Seller, Buyer's title company or Buyer's lender.

**Article 5.  
Representations and Warranties**

**Section 5.1. Seller's Representations.** Seller represents and warrants to Buyer as follows with respect to the Property (which representations and warranties shall be true and accurate on the date of full execution of this Agreement and shall remain true and accurate until the Closing Date):

a. Authorization. Seller has the lawful right, power, authority and capacity to sell the Property to Buyer in accordance with the terms of this Agreement, without the approval or authorization of any other party.

b. Ownership. Seller owns good and marketable fee simple title to the Property, and the Property is not subject to any (i) unrecorded deeds, easements, licenses, or other rights; (ii) rights of parties in possession other than Seller, except for eight (8) existing leases, six (6) of which are currently on month-to-month terms, one of which has a term expiring on February 29, 2020, and one of which has a term expiring on December 31, 2022, with one (1) renewal option of two (2) years (the "Leases"), which Leases will be terminated prior to the Closing Date; or (iii) option contract, right of first refusal, or other contract pursuant to which any other party has any right to purchase an interest in the Property.

c. No Agreements Violated. The execution of this Agreement, and the consummation of the purchase contemplated hereby, are consistent with and not in violation of any contract, agreement, or other obligation to which Seller is a party

d. Violations of Law. To the best of Seller's knowledge as of the date of this Agreement, there are no current, pending, or threatened actions against the Seller or the Property arising out of the violation or alleged violation of any federal, state or local law, regulation, rule, or ordinance including, but not limited to, any environmental law, subdivision ordinance or zoning ordinance. As of the date of this Agreement, Seller is unaware of any present or threatened condemnation or eminent domain proceeding affecting the Property.

e. Environmental Matters.

i. Definitions. When used in this Agreement, the following capitalized terms shall have the following definitions:

1. "Environmental Condition" means any condition including, without limitation, the Release of Hazardous Materials, located on or affecting the Property that could require remedial action or which may result in claims, demands, liabilities, costs or expenses to Buyer.

2. "Hazardous Materials" means asbestos and any and all pollutants, dangerous substances, toxic substances, hazardous wastes, hazardous materials and hazardous substances as referenced or defined in, or pursuant to, any federal, state, local or other applicable environmental law, statute, ordinance, rule, order, regulation or standard in effect on

the date hereof including, without limitation, the Resource Conservation and Recovery Act (42 U.S.C. 6901, et seq.), as amended, the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 135, et seq.), as amended, the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. 9601, et seq.), as amended, and the Toxic Substance Control Act (15 U.S.C. 2601, et seq.), as amended.

3. “Notice” means any written, civil, administrative or criminal summons, citation, directive, order, claim, litigation, investigation, proceeding, judgment, letter or other communication from the United States Environmental Protection Agency, the Virginia Department of Environmental Quality, or any other federal, state or local agency or authority, or any other entity or any individual, concerning any intentional or unintentional act or omission which has resulted or which may result in the Release of Hazardous Materials on or into the Property, a violation of an Environmental Law, or otherwise relate to an Environmental Condition.

4. “Release” means placing, releasing, depositing, spilling, leaking, pumping, emitting, emptying, discharging, injecting, escaping, leaching, disposing or dumping.

ii. Representation. Subject to the proviso at the end of this subsection 5.1(e)(ii), Seller represents to the best of its actual knowledge without independent investigation as of the date of this Agreement that (i) there are no Hazardous Materials unlawfully existing above, on or beneath the Property; (ii) there has been no unlawful Release of Hazardous Materials above, on or beneath the Property; (iii) there has been no illegal filling of the Property, nor has the Property been used as a public or private landfill, dump or site for refuse disposal; (iv) no solid waste units, equipment or underground storage tanks are currently located on the Property, and (v) Seller has received no Notice nor is Seller aware of an Environmental Condition affecting the Property. Notwithstanding the foregoing, Seller has informed Buyer that certain of the improvements located on the Property contain asbestos and that while Seller is not aware to its actual knowledge without independent investigation of the unlawful presence of Hazardous Materials on the Property, or of a past unlawful Release, it is aware of the fact that Hazardous Substances are and have been present upon and handled on the Property in the past.

f. Bankruptcy. No bankruptcy, insolvency, rearrangement, or similar action or proceeding, whether voluntary, is pending or threatened against Seller, and Seller has no intention of filing or commencing any such action or proceeding, and Seller represents and warrants there shall be none at closing.

g. Taxes. Seller remains responsible for and shall continue to pay any and all taxes required to be paid in relation to the Property at all times before the Closing Date. Seller remains responsible for and shall continue to pay any and all taxes required to be paid in relation to the Property at all times before the Closing of its transfer to Buyer.

h. Binding Nature. This Agreement constitutes the valid and binding obligation of Seller, and is enforceable in accordance with its terms.

i. Continuing Obligation. The representations, warranties, and covenants set forth in this Agreement constitute the continuing obligations of Seller and shall survive Closing for a period of one (1) year. Prior to the Closing Date, Seller shall take no action which would

cause any of the representations to become misleading in any respect and, if Seller becomes aware of any inaccuracies in the representations set forth herein prior to the Closing Date, it shall immediately notify Buyer of those inaccuracies and the facts or circumstances surrounding the inaccuracies, and Buyer shall have the right to exercise any remedy available under Section 7.1 of this Agreement, below. Notwithstanding the foregoing, as the Property is being acquired by Buyer in an "AS-IS" condition, upon Closing, Buyer waives all claims against Seller related to the condition of the Property other than claims arising from the inaccuracy or violation of any of Seller's representations, warranties, and covenants under this Agreement.

**Section 5.2. Buyer's Representations.** Buyer represents and warrants to Seller as follows:

- a. Authorization. Buyer has the lawful right, power, authority, and capacity to purchase the Property in accordance with the terms, provisions and conditions of this Agreement.
- b. No Agreements Violated. The execution of this Agreement, and the consummation of the purchase contemplated hereby, are consistent with and not in violation of any contract, agreement, or other obligation to which Buyer is a party.
- c. Binding Nature. This Agreement constitutes the valid and binding obligation of Buyer, and is enforceable in accordance with its terms.
- d. Continuing Obligation. Prior to the Closing Date, Buyer shall take no action which would cause any of the representations to become misleading in any respect and, if Buyer becomes aware of any inaccuracies in the representations set forth herein prior to the Closing Date, Buyer shall immediately notify Seller of those inaccuracies and the facts or circumstances surrounding the inaccuracies.

## **Article 6.**

### **Conditions of Buyer's and Seller's Obligations**

**Section 6.1. Conditions of Buyer's Obligations.** Buyer's obligation to consummate the purchase and sale of the Property on the Closing Date shall be subject to the satisfaction or performance of the following terms and conditions, items c, d and e of which may be waived in writing by Buyer, in whole or in part, on or as of the Closing Date:

- a. Buyer shall not have terminated this Agreement during the Study Period;
- b. Buyer shall not have terminated this Agreement during the Rezoning Period or the Approvals Period;
- c. Title to the Property shall be (i) subject to all Objections waived by Buyer pursuant to Section 2.4, (ii) insurable under a full coverage ALTA owner's title policy at standard rates by Buyer's title insurance company, with such endorsements (including contiguity endorsements) as Buyer may reasonably request, and (iii) free and clear of Objections Seller elects to cure pursuant to Section 2.4 and liens, encumbrances or rights of possession arising after the Study Period adversely affecting the marketability of the Property or the Intended Use unless waived by Buyer;

d. Seller shall have fully and completely kept, observed, performed, satisfied and complied in all material ways with all terms and conditions required by this Agreement to be kept, observed, performed, satisfied or complied with by Seller before, on, or as of the Closing Date; and

e. The representations of Seller in this Agreement shall be true and correct in all material respects on and as of the Closing Date except for changes thereto consented to by Buyer under the terms of this Agreement.

If items c, d or e of the foregoing conditions have not been satisfied or performed as of Closing, Buyer, at Buyer's option, shall have the right to (i) waive one or more of the conditions, in writing, and proceed to Closing, notwithstanding that the conditions have not been satisfied or performed, terminate this Agreement in which case Seller will return the Deposit to Buyer and the parties shall have no further rights or obligations hereunder except for Buyer's indemnification obligation under Section 2.2, or (ii) exercise any of its other rights and remedies set forth in Section 7.1 below.

**Section 6.2. Conditions of Seller's Obligations.** Seller's obligation to consummate the purchase and sale of the Property on the Closing Date shall be subject to the satisfaction or performance of the following terms and conditions, any one or more of which may be waived in writing by Seller, in whole or in part, on or as of the Closing Date:

a. Buyer shall have fully and completely kept, observed, performed, satisfied and complied in all material ways with all terms and conditions required by this Agreement to be kept, observed, performed, satisfied or complied with by Buyer before, on, or as of the Closing Date;

b. The representations and warranties of Buyer in this Agreement shall be true and correct in all material respects on and as of the Closing Date; and

c. Buyer shall not have terminated this Agreement pursuant to the express terms hereof prior to the Closing Date.

If any of the foregoing conditions (other than Section 6.2.c.) have not been satisfied or performed as of the Closing Date, Seller, at Seller's option, shall have the right to (i) waive one or more of the conditions, in writing, and proceed to Closing, notwithstanding that the conditions have not been satisfied or performed, or (ii) exercise any of its rights and remedies set forth in Section 7.1 below.

## **Article 7. Default and Remedies**

**Section 7.1. Seller's Default.** In the event Seller is in breach of or fails or refuses to perform its obligations under this Agreement, Buyer shall be entitled to exercise, in its sole discretion, any of the following remedies: (a) to purchase the Property notwithstanding such default pursuant to the remaining terms and provisions of this Agreement, in which event such default shall be deemed waived; (b) to terminate this Agreement, in which event the Escrow Agent shall return the entire Deposit to Buyer, and the parties shall have no further rights or obligations hereunder; (c) seek specific performance of Seller's obligation to convey title to the

Property hereunder; or (d) in the event of Seller's breach of a representation or warranty that survives Closing pursuant to Section 5.1, above, that is discovered after Closing, Buyer may pursue any remedy available at law or equity. Furthermore, if Seller's default is an intentional default resulting from Seller's desire to sell the Property to another party for more than the Purchase Price, Seller shall reimburse Buyer for any Extension Fee(s) paid by Buyer and for any actual costs and expenses Buyer incurred in connection with any Studies and Approvals hereunder (up to a maximum reimbursement of \$250,000). Notwithstanding the foregoing, Buyer shall first give Seller ten (10) days prior written notice and an opportunity to cure such default prior to exercising its remedy.

**Section 7.2. Buyer's Default.** In the event Buyer is in breach of or fails or refuses to perform its obligations under this Agreement, other than its indemnity obligation under Section 2.2, Seller's sole and absolute remedy shall be to direct the Escrow Agent to pay to it the Deposit and retain any Extension Fee(s) paid by Buyer, as liquidated damages, in which event this Agreement shall terminate and become null and void and the parties shall have no further rights or obligations hereunder except for Buyer's indemnification obligation under Section 2.2; and additionally, unless previously provided to Buyer, Buyer shall deliver to Seller copies of all of its Studies, title commitment and related title information, plans, Rezoning materials and Approvals. Notwithstanding the foregoing, Seller shall first give Buyer ten (10) days prior written notice and an opportunity to cure such default prior to exercising its remedy.

**Section 7.3. Attorney's Fees.** If any legal action is commenced to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and costs in addition to any other relief to which the prevailing party may be entitled.

**Section 7.4. Limitation of Liability.** Seller shall look solely to the assets of Buyer as to any rights it may have under this Agreement, and hereby waives any right to assert claims against the member(s) and/or manager(s) of Buyer. Buyer shall look solely to Seller's interest in the property as to any rights it may have under this Agreement, and hereby waives any right to assert claims against the member(s) and/or manager(s) of Buyer.

## **Article 8. Condemnation and Casualty**

**Section 8.1. Condemnation.** In the event that any eminent domain proceeding (including a temporary taking) affecting the Property, or any part thereof, is commenced by a governmental body or quasi-governmental body, public service corporation, or other entity having the power of eminent domain (a "Condemnation") (which shall include, but not be limited to, the initial approval of such body to proceed with the acquisition of all or a part of the Property by negotiation or eminent domain), within fifteen (15) days after Seller becomes aware of a Condemnation, Seller shall give Buyer written notice thereof, and Buyer shall have the option to terminate this Agreement by written notice to Seller given within fifteen (15) days after Seller notifies Buyer of such Condemnation, and upon such termination, the Escrow Agent shall return the entire Deposit, Seller shall reimburse Buyer for any Extension Fee(s) paid by Buyer, and neither party shall have any further obligation to the other hereunder except for Buyer's indemnification obligation under Section 2.2, and all rights to the Condemnation award shall belong to Seller. In the event of a partial Condemnation that would reduce the number of Units Buyer can develop on the Property to less than 120, Buyer shall have the alternative option to

proceed with the purchase of the Property with the Purchase Price to be reduced by an amount equal to the number of Units less than 120 multiplied by the Per Unit Price, and all rights to the Condemnation award shall belong to Seller. Seller represents and warrants that it has received no notice, nor is Seller aware, of any pending or threatened acts of Condemnation. Seller covenants and agrees not to solicit, request, support, or otherwise encourage a Condemnation of the Property during the effective period of this Agreement.

**Section 8.2. Insurance; Risk of Loss.** If all or any portion of the Property is destroyed or damaged by one or more fires, windstorms, hurricanes, hailstorms, floods, explosions, earthquakes or other casualties prior to Closing, Seller shall give Buyer prompt notice thereof, and Buyer shall have the option (a) to proceed to Closing for the full Purchase Price, and Seller shall receive the insurance proceeds recovered by reason of such damage or destruction, and this transaction shall be consummated as though no such damage or destruction had occurred; or (b) if such damage or destruction impairs the ability of Buyer to develop the Project, to terminate this Agreement by written notice to Seller given within fifteen (15) days after Seller notifies Buyer of such destruction or damage, and upon such termination, this Agreement shall terminate, the Escrow Agent shall return the entire Deposit to Buyer, Seller shall reimburse Buyer for any Extension Fee(s) paid by Buyer, and neither party shall have any further obligation to the other hereunder except for Buyer's indemnification obligation under Section 2.2.

## **Article 9. Miscellaneous**

**Section 9.1. Governing Law.** This Agreement is executed under seal and shall be governed by and construed and enforced in accordance with the laws of the Commonwealth of Virginia, notwithstanding its choice of law rules.

**Section 9.2. Assignment.** Buyer may assign its rights and obligations under this Agreement to any entity or entities affiliated with or controlled by Buyer or Buyer's principals without the prior written consent of Seller; provided, (a) Buyer shall not be released from its liability hereunder, and (b) Seller shall be provided with a copy of a fully executed assignment agreement pursuant to which the assignee has assumed all of Buyer's obligations under this Agreement.

**Section 9.3. Brokers.** Buyer warrants that it has not dealt with any broker, agent or finder that would require the payment of a commission, charge or other compensation. Seller warrants that it will pay its broker's fee or consulting fee at Closing pursuant to a separate agreement. Seller and Buyer shall hold harmless and indemnify each other from and against all claims, costs, expenses or liability (including, without limitation, the cost of counsel fees in connection therewith) for any commissions, charges or other compensation claimed by any agent, broker or finder as a result of the breach of their respective parts of the representations contained in this paragraph.

**Section 9.4. Entire Understanding.** This Agreement sets forth the entire agreement and understanding between the parties with respect to the transaction contemplated hereby and supersedes all prior or contemporaneous, oral or written agreements, arrangements and understandings between the parties regarding the subject matter hereof. No representation, promise, inducement or statement of intention has been made by Seller or Buyer which is not

embodied in this Agreement, the exhibits hereto or the statements, deeds, certificates, schedules or other documents delivered pursuant hereto or in connection with the transaction contemplated hereby.

**Section 9.5. Binding Nature.** All the terms, representations, and conditions of this Agreement shall be binding upon, and inure to the benefit of and be enforceable by the parties hereto and their respective successors and assigns.

**Section 9.6. Waiver or Modification.** No waiver by any party of any condition, or the breach of any term, representation or warranty set forth in this Agreement, shall be deemed a waiver of any such term, representation or warranty, unless the same shall be in writing. Any modification or amendment to this Agreement shall be made only by a writing executed by both parties hereto.

**Section 9.7. Business Days.** If the final day of any period of time set out in any provision of this Agreement falls on a Saturday, Sunday or holiday recognized by the federal government of the United States, then in such case, such period shall be deemed extended to the next day which is not a Saturday, Sunday or holiday recognized by the federal government of the United States. Time is of the essence with respect to the performance by each party of its obligations hereunder.

**Section 9.8. Gender.** Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural and vice versa, unless the context requires otherwise.

**Section 9.9. Captions.** The captions used in connection with the Sections and subsections of this Agreement are for reference and convenience only and shall not be deemed to construe or limit the meaning of the language contained in this Agreement or be used in interpreting the terms and provisions of this Agreement.

**Section 9.10. Counterparts.** This Agreement may be executed in two or more counterparts and by PDF and shall be deemed to have become effective when and only when one or more of such counterparts or PDF shall have been signed by or on behalf of each of the parties hereto (although it shall not be necessary that any single counterpart be signed by or on behalf of each of the parties hereto, and all such counterparts shall be deemed to constitute but one and the same instrument), and shall have been delivered by each of the parties to the other.

**Section 9.11. Severability.** If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable, and this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement.

**Section 9.12. Notices.** Unless otherwise expressed herein, all notices permitted or required hereunder, including changes of address, shall be in writing and shall be given by: (a) an established express delivery service which maintains delivery records; (b) hand delivery; or, (c) certified or registered mail, postage prepaid, return receipt requested. Notices are effective upon receipt, or upon attempted delivery if delivery is refused or if delivery is impossible because of failure to provide reasonable means for accomplishing delivery. The notices shall be sent to the

parties at the following addresses, or such different addresses as the parties may, by notice, specify:

Seller: Birchwood Associates, LLC  
c/o Larry Michael Sancilio  
307 Birchwood Park Drive  
Virginia Beach, Virginia 23452

Copies to: Michael H. Nuckols, Esq.  
Faggert & Frieden, P.C.  
222 Central Park Avenue, Suite 1300  
Virginia Beach, Virginia 23462

Buyer: Franklin Johnston Group Management & Development, LLC  
c/o W. Taylor Franklin, Chief Operating Officer  
300 32nd Street, Suite 310  
Virginia Beach, Virginia 23451

Copy to: James W. Noel III, Esq.  
300 32nd Street, Suite 310  
Virginia Beach, Virginia 23451

**Section 9.13. Force Majeure.** As used in this Agreement, the term “Force Majeure” means any cause beyond the parties’ control including, but not limited to, strikes, lockouts, actions of labor unions, riots, storms, floods, litigation, explosions, acts of God or the public enemy, acts of government, insurrection, mob violence, civil commotion, sabotage, terrorism, malicious mischief, vandalism, inability (notwithstanding good faith efforts) to procure, or general shortage of, labor, equipment, materials, facilities, or supplies in the open market, defaults of independent contractors or subcontractors (provided that remedies are being diligently pursued against the same), failures of transportation, fires, other casualties, epidemics, quarantine restrictions, freight embargoes, severe weather, or inability (notwithstanding good faith efforts) to obtain governmental permits and approvals. In the event of any Force Majeure that results in a delay in the performance of either party’s obligations under this Agreement, the time period specified for such performance shall be extended by one (1) day for every day of delay resulting from Force Majeure.

**Section 9.14. Disclosure.** Buyer hereby discloses to Seller, and Seller hereby acknowledges, that Buyer (and/or one or more principals of Buyer) is a licensed real estate agent. Buyer and Seller acknowledge that Buyer does not represent either Buyer or Seller with respect to the transaction contemplated in this Agreement. Seller hereby discloses to Buyer, and Buyer hereby acknowledges, that one or more principals having an interest in Seller is/are a licensed real estate agent(s).

**Section 9.15. Escrow Agent.** The duties of Escrow Agent in its capacity as an escrow agent for the Deposit are only those as are herein specifically provided and Escrow Agent shall incur no liability whatsoever in the performance of said duties, except for acts of bad faith, negligence or willful disregard of this Agreement. Seller and Buyer hereby release Escrow Agent



from any act done or omitted to be done by Escrow Agent in good faith in the performance of its duties hereunder. Seller and Buyer shall indemnify and hold Escrow Agent harmless against all costs, damages, fees, expenses and liabilities which, in good faith, Escrow Agent may incur in connection with its duties as escrow agent under this Agreement.

*[Remainder of this page intentionally left blank. Signature pages to follow.]*

IN WITNESS WHEREOF, the parties execute this Agreement as of the date set forth above:

**SELLER:**

**BIRCHWOOD ASSOCIATES, LLC**  
a Virginia limited liability company

By: Umge, mgr.  
Name: Larry Michael Sancilio  
Title: Manager

Date: 7-29-19

**BUYER:**

**FRANKLIN JOHNSTON GROUP  
MANAGEMENT & DEVELOPMENT, LLC,**  
a Virginia limited liability company

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

Date: \_\_\_\_\_

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

Date: \_\_\_\_\_

IN WITNESS WHEREOF, the parties execute this Agreement as of the date set forth above:

**SELLER:**

**BIRCHWOOD ASSOCIATES, LLC**  
a Virginia limited liability company

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

Name: Larry Michael Sancilio

Title: Manager

Date: \_\_\_\_\_

**BUYER:**

**FRANKLIN JOHNSTON GROUP  
MANAGEMENT & DEVELOPMENT, LLC,**  
a Virginia limited liability company

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

Manager

Date: 7-25-19

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

Manager

Date: 7/25/19

**Exhibit A**  
**Legal Description**

**Parcel One (GPIN: 1487-34-1324-0000)**

All that certain tract, piece or parcel of land, situate, lying and being in the City of Virginia Beach, Virginia and designated as parcel "S-1", as shown on a plat entitled "Plat of Property for Birchwood Associates, Inc." dated January, 1970, and revised March 8, 1971, Frank D. Tarrall, Jr. & Associates, Surveyors and Engineers, Virginia Beach, Virginia, which said plat is attached to a deed recorded in the Clerk's Office of the Circuit Court of the City of Virginia Beach, Virginia, in Deed Book 1249, at Page 364, and which said parcel "S-1" is more particularly bounded and described as follows:

Beginning at a point on the north side of Virginia Beach Boulevard, said point being the following courses and distances from the northwest intersection of the western line of Caren Drive, with the northern line of Virginia Beach Boulevard; thence running in a westerly direction north 84° 28' 11" west, 149.88 feet to a point; thence turning and running in a northerly direction north 10° 08' 11" west, 2.08 feet to a point; thence turning and running in a westerly direction north 84° 28' 11" west, 145.82 feet to a point, the point of beginning; thence running from said point of beginning in a westerly direction north 84° 28' 11" west, 50 feet to a point; thence continuing in a westerly direction north 82° 44' west 58.77 feet to a point; thence turning and running in a northerly direction north 5° 31' 49" east 324.88 feet to a point; thence turning and running in an easterly direction south 39° 28' 11" east, 265 feet to a point; thence turning and running in a southerly direction south 34° 58' 55" west 159.94 feet to the point of beginning.

IT BEING the same property conveyed to Birchwood Associates, a general partnership (the "Partnership"), from Birchwood Associates, Inc., a Virginia corporation, by Deed dated November 6, 1970, recorded in the aforesaid Clerk's Office in Deed Book 1249, at page 364. On May 29, 2008, the Partnership was converted to Birchwood Associates, LLC, a Virginia limited liability company, upon the filing of Articles of Organization for Conversion with the Virginia State Corporation Commission.

**Parcel Two (GPINs: 1487-34-2560-0000, 1487-34-3369-0000, 1487-34-1778-0000 and 1487-34-2381-0000)**

All those certain tracts, pieces or parcels of land, situate, lying and being in the City of Virginia Beach, Virginia and designated as Parcels "S-2A", "S-2B", "S-3" and "S-4" as shown on a plat entitled "Plat of Property for Birchwood Associates, Inc." dated January, 1970, and revised March 8, 1971, Frank D. Tarrall, Jr. & Associates, Surveyors and Engineers, Virginia Beach, Virginia, which said plat is attached to a deed recorded in the Clerk's Office of the Circuit Court of the City of Virginia Beach, Virginia in Deed Book 1249, at Page 372.

TOGETHER WITH a perpetual non-exclusive easement for ingress and egress over and along a 20 foot wide parcel adjoining the eastern boundary of parcel "S-2A".

IT BEING the same property conveyed to Birchwood Associates, a general partnership (the "Partnership"), from Birchwood Associates, Inc., a Virginia corporation, by Deed dated April 10, 1971, recorded in the aforesaid Clerk's Office in Deed Book 1249, at page 372. On May 29, 2008, the Partnership was converted to Birchwood Associates, LLC, a Virginia limited liability company, upon the filing of Articles of Organization for Conversion with the Virginia State Corporation Commission.

S:\Clients\10826\002\Purchase Agreement\Purchase Agreement v7.docx

**FIRST AMENDMENT TO PURCHASE AGREEMENT**

**THIS FIRST AMENDMENT TO PURCHASE AGREEMENT** (the "**First Amendment**") is made and entered into as of this \_\_\_ day of September, 2019 (the "**Effective Date**") by and between **BIRCHWOOD ASSOCIATES, LLC**, a Virginia limited liability company ("**Buyer**"), and **FRANKLIN JOHNSTON GROUP MANAGEMENT & DEVELOPMENT, LLC**, a Virginia limited liability company ("**Seller**").

**WITNESSETH:**

**WHEREAS**, Buyer and Seller entered into that certain Purchase Agreement dated as of July 24, 2019 and fully executed on July 29, 2019 (the "**Agreement**") for the purchase of that certain property known as GPINs 1487-34-1324-0000, 1487-34-2560-0000, 1487-34-3369-0000, 1487-34-1778-0000 and 1487-34-2381-0000, all in the City of Virginia Beach, Virginia, as more particularly described in the Agreement (the "**Property**"); and

**WHEREAS**, the parties desire to modify and amend the Agreement as expressly set forth below.

**NOW THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Capitalized terms not otherwise defined herein shall have the meaning set forth in the Agreement.

2. **Study Period**. The first sentence of Section 2.1(a) of the Agreement is hereby deleted and replaced with the following:

Upon the full execution of this Agreement and for a period of ninety (90) days thereafter (the "**Study Period**"), Buyer and its agents may enter and access the Property and perform any tests, evaluations, studies or reports including, without limitation, the following: title examination, appraisal, physical survey, soil borings or testing, compaction tests, environmental inspections, engineering studies, topographic inspections, economic feasibility studies and any other studies or reports Buyer shall deem necessary or desirable in connection with Buyer's contemplated purchase of the Property (collectively, "**Studies**").

3. Except as otherwise provided herein, the Agreement shall remain in full force and effect.

4. This First Amendment may be executed in multiple counterparts all of which when taken together shall constitute one and the same instrument. Delivery of this First Amendment or a counterpart thereof by email or facsimile will constitute valid delivery.

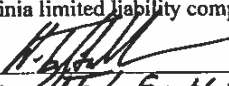
*[Signature Page Follows]*



IN WITNESS WHEREOF, the parties have executed and delivered this First Amendment effective as of the day and year set forth above.

BUYER:

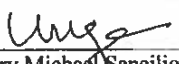
**FRANKLIN JOHNSTON GROUP MANAGEMENT & DEVELOPMENT, LLC,**  
a Virginia limited liability company

By:   
Name: W. Taylor Franklin  
Title: Manager

By:   
Name: Thomas N. Johnston  
Title: Manager

SELLER:

**BIRCHWOOD ASSOCIATES, LLC,**  
a Virginia limited liability company

By:   
Name: Larry Michael Sancilio  
Title: Manager





## SECOND AMENDMENT TO PURCHASE AGREEMENT

**THIS SECOND AMENDMENT TO PURCHASE AGREEMENT** (the "Second Amendment") is made and entered into as of this 29<sup>th</sup> day of October, 2019 (the "Effective Date") by and between **BIRCHWOOD ASSOCIATES, LLC**, a Virginia limited liability company ("Buyer"), and **FRANKLIN JOHNSTON GROUP MANAGEMENT & DEVELOPMENT, LLC**, a Virginia limited liability company ("Seller").

### WITNESSETH:

**WHEREAS**, Buyer and Seller entered into that certain Purchase Agreement dated as of July 24, 2019 and fully executed on July 29, 2019, as amended by that certain First Amendment to Purchase Agreement dated as of September 20, 2019 (collectively, the "Agreement") for the purchase of that certain property known as GPINs 1487-34-1324-0000, 1487-34-2560-0000, 1487-34-3369-0000, 1487-34-1778-0000 and 1487-34-2381-0000, all in the City of Virginia Beach, Virginia, as more particularly described in the Agreement (the "Property"); and

**WHEREAS**, the parties desire to modify and amend the Agreement as expressly set forth below.

**NOW THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Capitalized terms not otherwise defined herein shall have the meaning set forth in the Agreement.

2. Study Period. The first sentence of Section 2.1(a) of the Agreement is hereby deleted and replaced with the following:

Upon the full execution of this Agreement and for a period of one hundred fifty (150) days thereafter (the "Study Period"), Buyer and its agents may enter and access the Property and perform any tests, evaluations, studies or reports including, without limitation, the following: title examination, appraisal, physical survey, soil borings or testing, compaction tests, environmental inspections, engineering studies, topographic inspections, economic feasibility studies and any other studies or reports Buyer shall deem necessary or desirable in connection with Buyer's contemplated purchase of the Property (collectively, "Studies").

3. Except as otherwise provided herein, the Agreement shall remain in full force and effect.


4. This Second Amendment may be executed in multiple counterparts all of which when taken together shall constitute one and the same instrument. Delivery of this Second Amendment or a counterpart thereof by email or facsimile will constitute valid delivery.


*[Signature Page Follows]*

**IN WITNESS WHEREOF**, the parties have executed and delivered this Second Amendment effective as of the day and year set forth above.

BUYER:

**FRANKLIN JOHNSTON GROUP MANAGEMENT & DEVELOPMENT, LLC,**  
a Virginia limited liability company

By:   
Name: Thomas M. Johnston  
Title: Manager

By:   
Name: W. Taylor Franklin  
Title: Manager

SELLER:

**BIRCHWOOD ASSOCIATES, LLC,**  
a Virginia limited liability company

By: \_\_\_\_\_  
Name: Larry Michael Sancilio  
Title: Manager

IN WITNESS WHEREOF, the parties have executed and delivered this *Second Amendment* effective as of the day and year set forth above.

BUYER:

FRANKLIN JOHNSTON GROUP MANAGEMENT &  
DEVELOPMENT, LLC,  
a Virginia limited liability company

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

Name: \_\_\_\_\_

Title: Manager

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

Name: \_\_\_\_\_

Title: Manager

SELLER:

BIRCHWOOD ASSOCIATES, LLC,  
a Virginia limited liability company

By: LM

Name: Larry Michael Sancillo

Title: Manager

## PROPERTY DETAILS

# 3820 Virginia Beach Blvd

LEGAL DESCRIPTION	Birchwood Gardens Parcel S1 .875 Ac.
GPIN (PARCEL ID)	14873413240000
SERVICE DISTRICT	50 : Lynnhaven

## FY20/21 ASSESSMENT

LAND VALUE	\$1,125,900
IMPROVEMENT VALUE	\$355,300
TOTAL VALUE	\$1,481,200

## LAND INFORMATION

UNOFFICIAL ZONING DISTRICT	O2
PROPERTY CODE/CATEGORY	409 Day Care Centers
LAND USE	No
WATERSHED	Chesapeake Bay
PLATS (MAP BOOK/INSTRUMENT #)	Download ( <a href="https://media.vbgov.com/rea/plats/039_0051.PDF">https://media.vbgov.com/rea/plats/039_0051.PDF</a> )
LAND SQUARE FOOTAGE	39,093.9 sq ft

## BUILDING INFORMATION

USE CODE	DESCRIPTION	ID #	CONSTRUCTED YR.	SIZE
DAYCARE	Day Care Facility	C	1970	6,724 SF
PAVING	Paving	01	1970	20,700 SF

FLOORS	FINISHED AREA	DESCRIPTION
1	6,724 SF	Day Care Facility
Total	6,724 SF	

## SALES HISTORY

DOCUMENT #	SALES DATE	SALES PRICE	DEED BOOK/PAGE
0000000000000000	01/04/1972	\$150,000	1249 / 364

## TAX ASSESSMENTS

FISCAL YEAR	LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	TAX PER \$100	ANNUAL TAXES
2021	\$1,125,900	\$355,300	\$1,481,200	\$1.0175	\$15,071.22
2020	\$1,055,500	\$350,000	\$1,405,500	\$1.0175	\$14,300.96
2019	\$1,020,300	\$337,700	\$1,358,000	\$1.0025	\$13,613.96
2018	\$950,000	\$335,600	\$1,285,600	\$1.0025	\$12,888.14
2017	\$950,000	\$332,300	\$1,282,300	\$0.99	\$12,694.78
2016	\$738,900	\$325,600	\$1,064,500	\$0.99	\$10,538.56
2015	\$646,300	\$322,900	\$969,200	\$0.93	\$9,013.56
2014	\$584,100	\$306,800	\$890,900	\$0.93	\$8,285.38
2013	\$603,000	\$299,000	\$902,000	\$0.95	\$8,569.00
2012	\$614,800	\$289,400	\$904,200	\$0.89	\$8,047.38
2011	\$553,400	\$282,000	\$835,400	\$0.89	\$7,435.06
2010	\$553,400	\$276,700	\$830,100	\$0.89	\$7,387.90
2009	\$461,200	\$269,000	\$730,200	\$0.89	\$6,498.78
2008	\$419,265	\$253,970	\$673,235	\$0.89	\$5,991.80

Exemption programs such as Seniors, Disabled Persons, Veterans, Energy Efficient Buildings, etc. are not reflected in the Annual Taxes.

## ANNUAL TAXES

## ANNUAL ASSESSMENTS



## CLOSEST LIBRARY

Central Library

0.8 miles away



## CLOSEST RECREATION CENTER

Bow Creek Recreation Center

2.2 miles away



## CLOSEST PARK

Plaza Park

3.1 miles away



## CLOSEST SHELTER

Green Run High School

5.2 miles away

Landstown High School

5.6 miles away



## CLOSEST POLICE STATION

3rd Precinct

4.1 miles away

## CLOSEST FIRE STATION

FIRE 16 / Plaza

1.6 miles away



## TRASH PICKUP SERVICES

Trash Collection

Every Wednesday





Next Recycling Day

Wednesday, November 4, 2020

## VOTING PRECINCT

Precinct

Malibu - 014

Polling Location

Malibu ES District: 5

## VOTING DISTRICTS

Local Election

District 5 - Lynnhaven

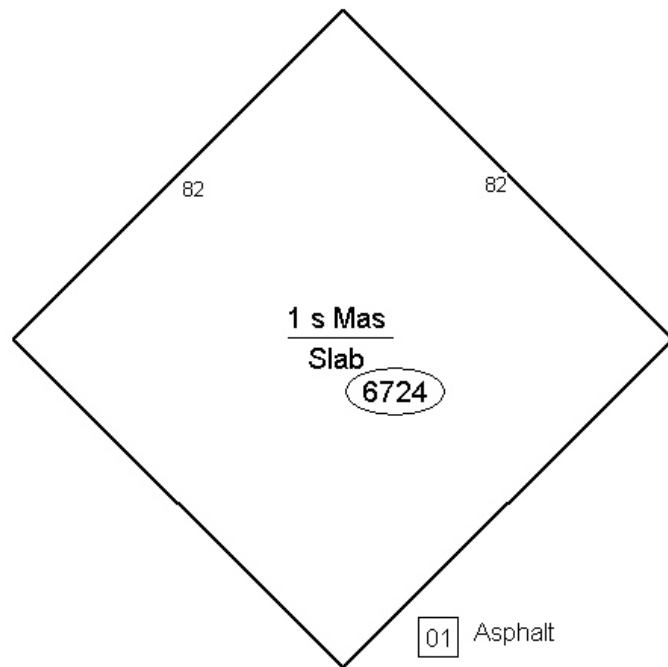
State Senate

District 7

House of Delegates

District 82

STATE PLANE X,Y	12183121.5289417, 3474377.34057909
GEOGRAPHIC COORDINATES	36.84054936, -76.10700704
2010 CENSUS TRACT NO.	042400
2010 BLOCK GROUP NO.	0424003
POLICE BEAT	322
ESTIMATED LAND AREA	39093.9 sq ft
AGRID	G7
SOIL TYPE	42 - Urban
APZ ZONE	N/A
NOISE ZONE	N/A
FLOOD ZONE	X



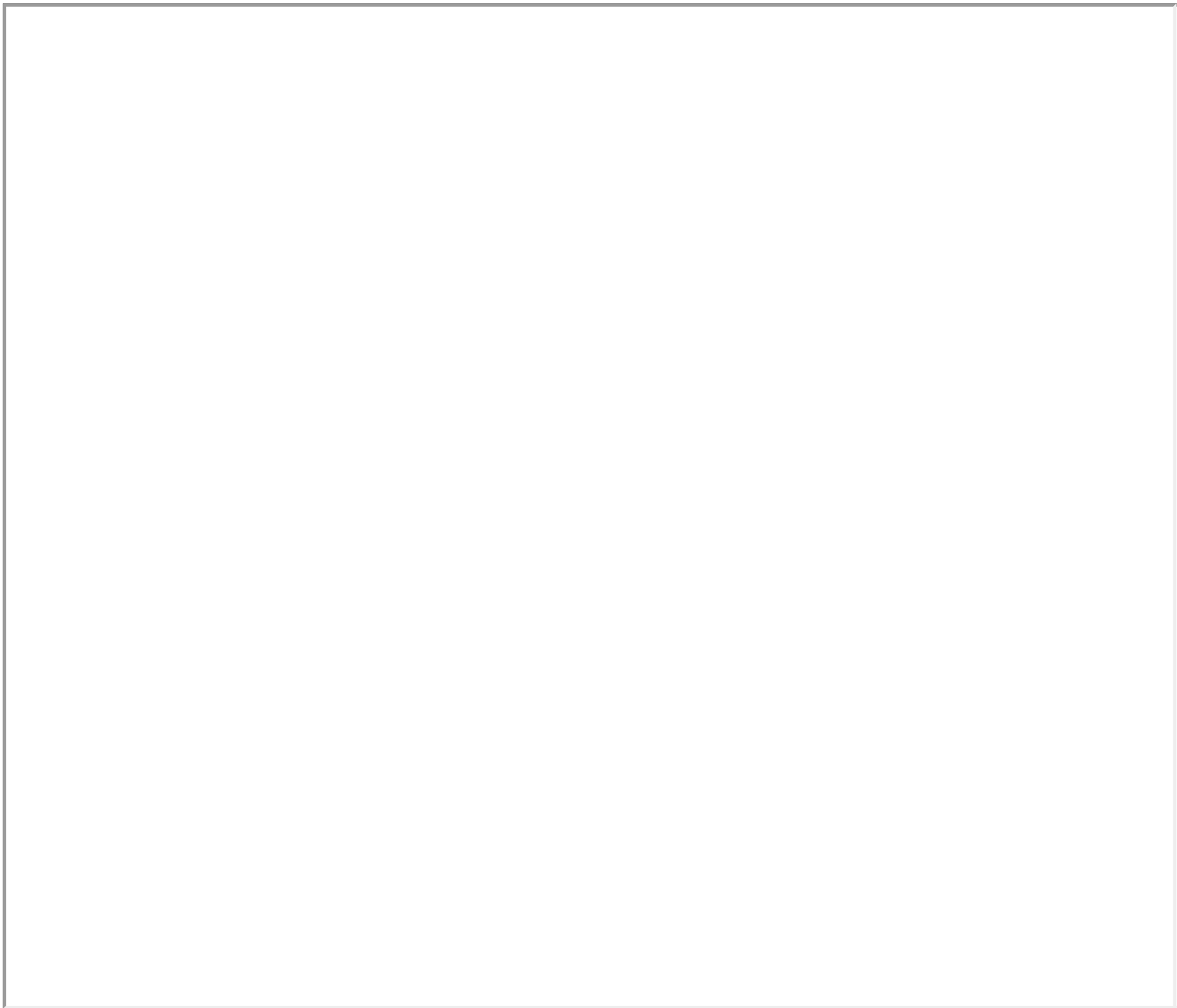
3820 Virginia Beach Blvd







 PICTOMETRY  
INTELLIGENT IMAGES © 2013



## PROPERTY DETAILS

# 329 Birchwood Park Dr

LEGAL DESCRIPTION	Birchwood Gardens Parcel S-3 2.346 Ac
GPIN (PARCEL ID)	14873417780000
SERVICE DISTRICT	50 : Lynnhaven

## FY20/21 ASSESSMENT

LAND VALUE	\$1,016,700
IMPROVEMENT VALUE	\$522,900
TOTAL VALUE	\$1,539,600

## LAND INFORMATION

UNOFFICIAL ZONING DISTRICT	O2
PROPERTY CODE/CATEGORY	401 General Commercial
LAND USE	No
WATERSHED	Chesapeake Bay
PLATS (MAP BOOK/INSTRUMENT #)	Download ( <a href="https://media.vbgov.com/rea/plats/_PDF">https://media.vbgov.com/rea/plats/_PDF</a> )
LAND SQUARE FOOTAGE	103,831.74 sq ft

## BUILDING INFORMATION

USE CODE	DESCRIPTION	ID #	CONSTRUCTED YR.	SIZE
CHURCH	Church	C	1960	11,970 SF
PAVING	Paving	02	1981	54,400 SF

FLOORS	FINISHED AREA	DESCRIPTION
1	11,970 SF	Church
Total	11,970 SF	



## SALES HISTORY

DOCUMENT #	SALES DATE	SALES PRICE	DEED BOOK/PAGE
0000000000000000	01/04/1972	\$300,000	1249 / 372

## TAX ASSESSMENTS

FISCAL YEAR	LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	TAX PER \$100	ANNUAL TAXES
2021	\$1,016,700	\$522,900	\$1,539,600	\$1.0175	\$15,665.44
2020	\$953,200	\$516,900	\$1,470,100	\$1.0175	\$14,958.28
2019	\$826,100	\$492,300	\$1,318,400	\$1.0025	\$13,216.96
2018	\$826,100	\$495,300	\$1,321,400	\$1.0025	\$13,247.04
2017	\$826,100	\$490,800	\$1,316,900	\$0.99	\$13,037.32
2016	\$944,900	\$480,400	\$1,425,300	\$0.99	\$14,110.48
2015	\$923,100	\$480,300	\$1,403,400	\$0.93	\$13,051.62
2014	\$879,500	\$474,600	\$1,354,100	\$0.93	\$12,593.14
2013	\$908,500	\$526,700	\$1,435,200	\$0.95	\$13,634.40
2012	\$959,400	\$510,600	\$1,470,000	\$0.89	\$13,083.00
2011	\$786,900	\$523,300	\$1,310,200	\$0.89	\$11,660.78
2010	\$786,900	\$533,100	\$1,320,000	\$0.89	\$11,748.00
2009	\$786,900	\$533,100	\$1,320,000	\$0.89	\$11,748.00
2008	\$715,344	\$533,200	\$1,248,544	\$0.89	\$11,112.04

Exemption programs such as Seniors, Disabled Persons, Veterans, Energy Efficient Buildings, etc. are not reflected in the Annual Taxes.

## ANNUAL TAXES

## ANNUAL ASSESSMENTS



## CLOSEST LIBRARY

Central Library

0.6 miles away



## CLOSEST RECREATION CENTER

Bow Creek Recreation Center

2 miles away



## CLOSEST PARK

Plaza Park

2.9 miles away



## CLOSEST SHELTER

Green Run High School

4.4 miles away

Landstown High School

5.4 miles away



## CLOSEST POLICE STATION

3rd Precinct

4.3 miles away

## CLOSEST FIRE STATION

FIRE 16 / Plaza

1.5 miles away



## TRASH PICKUP SERVICES

Trash Collection

Every Wednesday



Next Recycling Day

Wednesday, November 4, 2020

## VOTING PRECINCT

Precinct

Malibu - 014

Polling Location

Malibu ES District: 5

## VOTING DISTRICTS

Local Election

District 5 - Lynnhaven

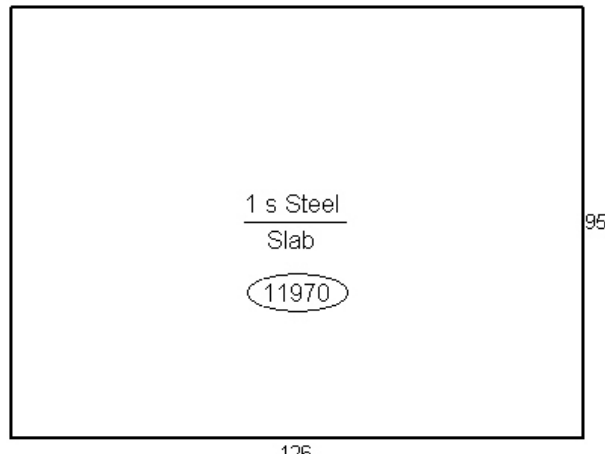
State Senate

District 7

House of Delegates

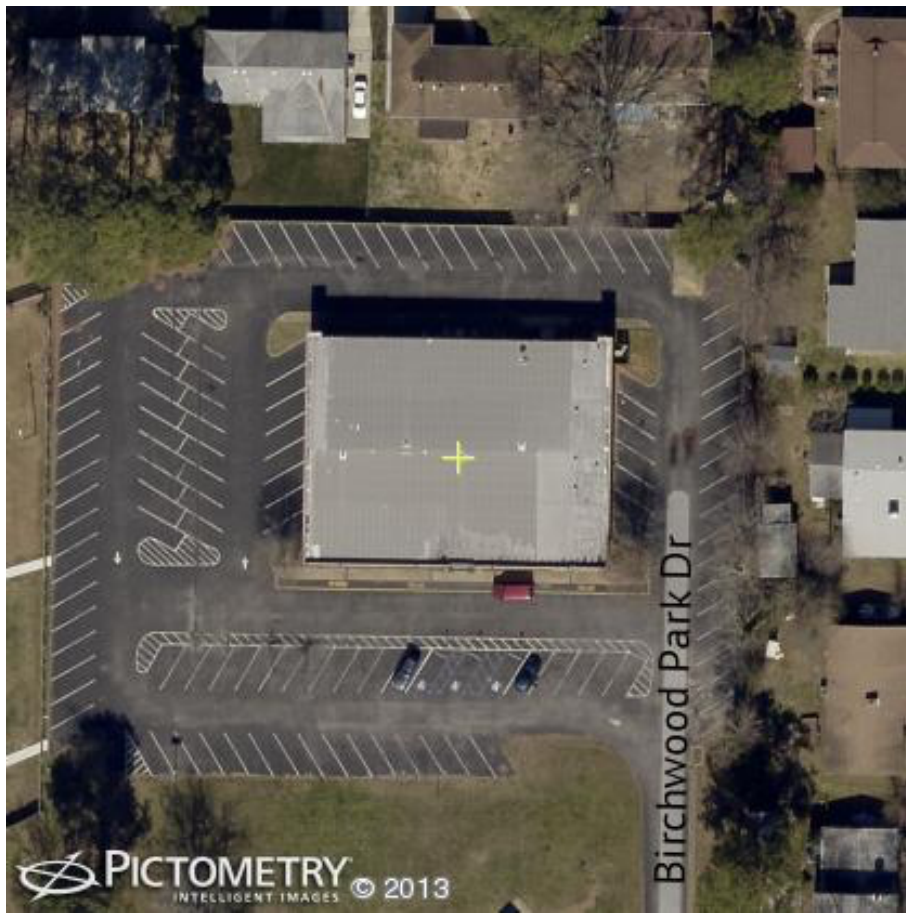
District 82

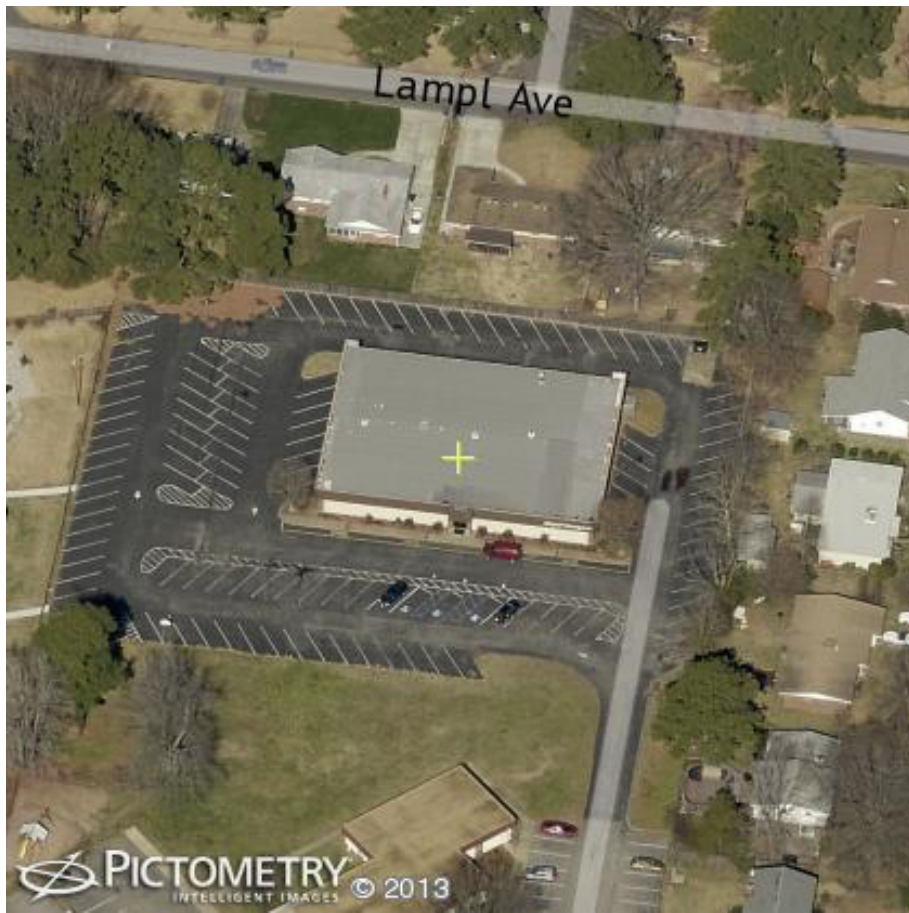
STATE PLANE X,Y	12183228.4837936, 3474841.74980445
GEOGRAPHIC COORDINATES	36.84181705, -76.10660144
2010 CENSUS TRACT NO.	042400
2010 BLOCK GROUP NO.	0424003
POLICE BEAT	322
ESTIMATED LAND AREA	103831.74 sq ft
AGRID	G7
SOIL TYPE	2 - Acredale-Urban
APZ ZONE	N/A
NOISE ZONE	N/A
FLOOD ZONE	X



02 Asphalt

329 Birchwood Park Drive



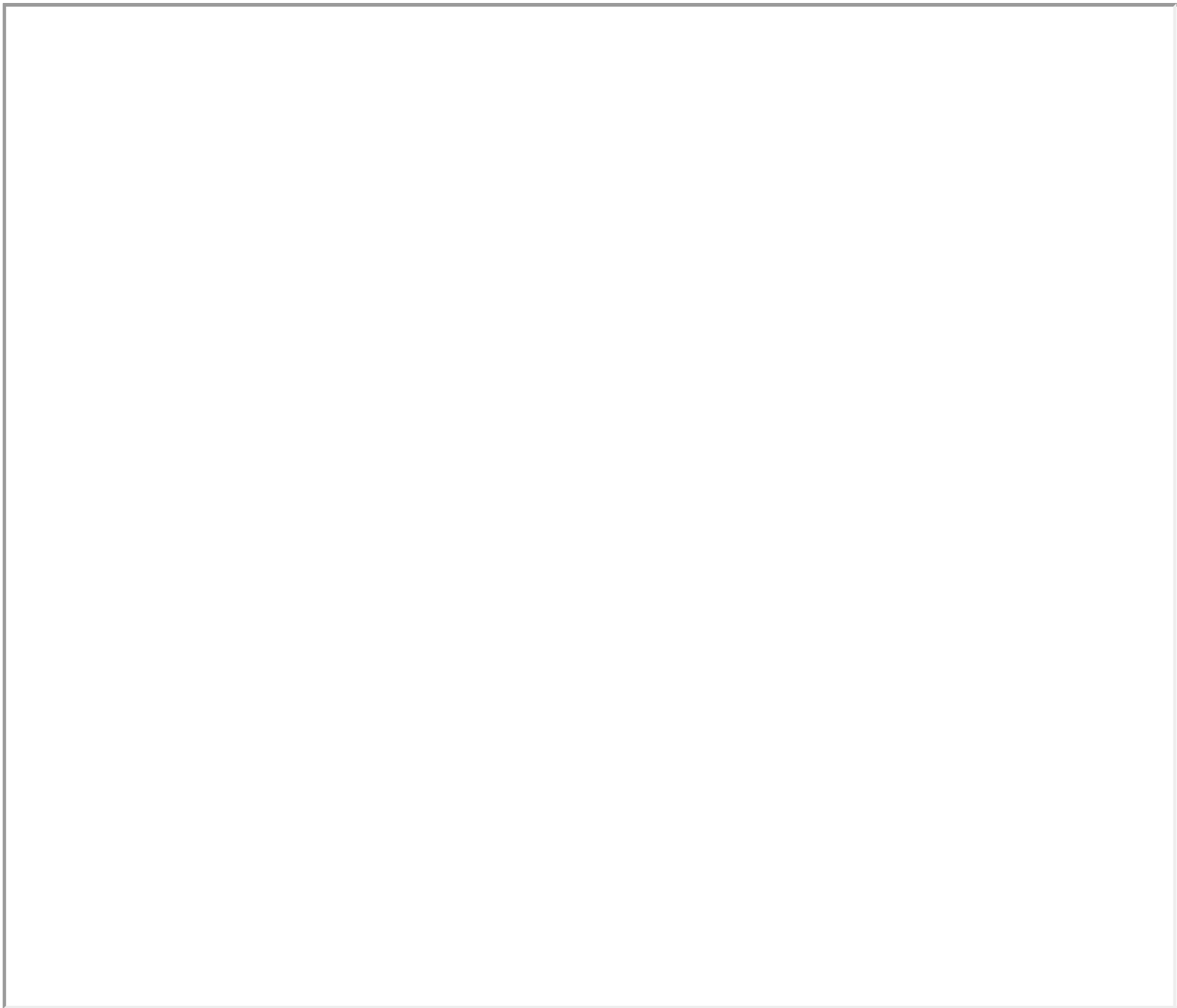






Caren Dr

PICTOMETRY  
INTELLIGENT IMAGES © 2013



## PROPERTY DETAILS

# 3808 Virginia Beach Blvd

LEGAL DESCRIPTION	Birchwood Gardens Parcel S-4 .385 Ac
GPIN (PARCEL ID)	14873423810000
SERVICE DISTRICT	50 : Lynnhaven

## FY20/21 ASSESSMENT

LAND VALUE	\$531,200
IMPROVEMENT VALUE	\$11,500
TOTAL VALUE	\$542,700

## LAND INFORMATION

UNOFFICIAL ZONING DISTRICT	O2
PROPERTY CODE/CATEGORY	411 Office Building
LAND USE	No
WATERSHED	Chesapeake Bay
PLATS (MAP BOOK/INSTRUMENT #)	Download ( <a href="https://media.vbgov.com/rea/plats/_PDF">https://media.vbgov.com/rea/plats/_PDF</a> )
LAND SQUARE FOOTAGE	17,194.4 sq ft

## BUILDING INFORMATION

USE CODE	DESCRIPTION	ID #	CONSTRUCTED YR.	SIZE
GENOFF	General Office	C	1984	5,337 SF
PAVING	Paving	O2	1984	6,700 SF

FLOORS	FINISHED AREA	DESCRIPTION
1	5,337 SF	General Office
Total	5,337 SF	

INTERIOR & EXTERIOR FEATURES	SIZE/COUNT
------------------------------	------------

Roof Extension Canopy	45
Roof Extension Canopy	120
Roof Extension Canopy	60

## SALES HISTORY

DOCUMENT #	SALES DATE	SALES PRICE	DEED BOOK/PAGE
0000000000000000	01/04/1972	\$300,000	1249 / 372

## TAX ASSESSMENTS

FISCAL YEAR	LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	TAX PER \$100	ANNUAL TAXES
2021	\$531,200	\$11,500	\$542,700	\$1.0175	\$5,521.98
2020	\$498,100	\$56,700	\$554,800	\$1.0175	\$5,645.10
2019	\$481,400	\$57,500	\$538,900	\$1.0025	\$5,402.48
2018	\$448,300	\$107,000	\$555,300	\$1.0025	\$5,566.88
2017	\$448,300	\$107,000	\$555,300	\$0.99	\$5,497.48
2016	\$184,500	\$370,800	\$555,300	\$0.99	\$5,497.48
2015	\$184,500	\$326,300	\$510,800	\$0.93	\$4,750.44
2014	\$184,500	\$284,700	\$469,200	\$0.93	\$4,363.56
2013	\$184,500	\$242,100	\$426,600	\$0.95	\$4,052.70
2012	\$184,500	\$204,600	\$389,100	\$0.89	\$3,463.00
2011	\$184,500	\$220,100	\$404,600	\$0.89	\$3,600.94
2010	\$184,500	\$267,700	\$452,200	\$0.89	\$4,024.58
2009	\$184,500	\$267,700	\$452,200	\$0.89	\$4,024.58
2008	\$167,700	\$237,200	\$404,900	\$0.89	\$3,603.62

Exemption programs such as Seniors, Disabled Persons, Veterans, Energy Efficient Buildings, etc. are not reflected in the Annual Taxes.

## ANNUAL TAXES

## ANNUAL ASSESSMENTS



## CLOSEST LIBRARY

Central Library

0.8 miles away



## CLOSEST RECREATION CENTER

Bow Creek Recreation Center

2.2 miles away



## CLOSEST PARK

Plaza Park

3.1 miles away



## CLOSEST SHELTER

Green Run High School

5.1 miles away

Landstown High School

5.6 miles away



## CLOSEST POLICE STATION

3rd Precinct

4 miles away

## CLOSEST FIRE STATION

FIRE 16 / Plaza

1.6 miles away



## TRASH PICKUP SERVICES

Trash Collection

Every Wednesday



Next Recycling Day

Wednesday, November 4, 2020

## VOTING PRECINCT

Precinct

Malibu - 014

Polling Location

Malibu ES District: 5

## VOTING DISTRICTS

Local Election

District 5 - Lynnhaven

State Senate

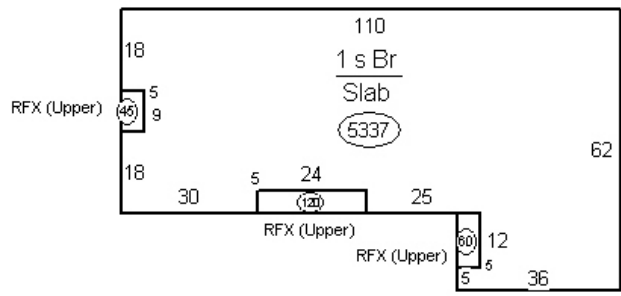
District 7

House of Delegates

District 82

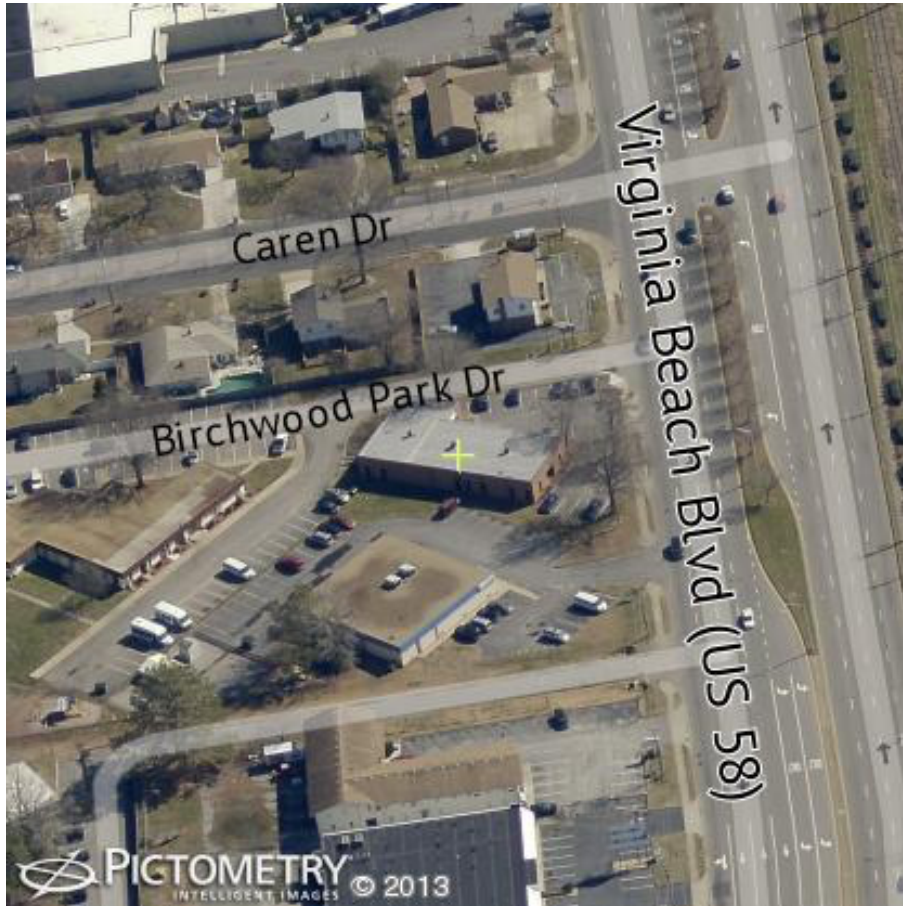


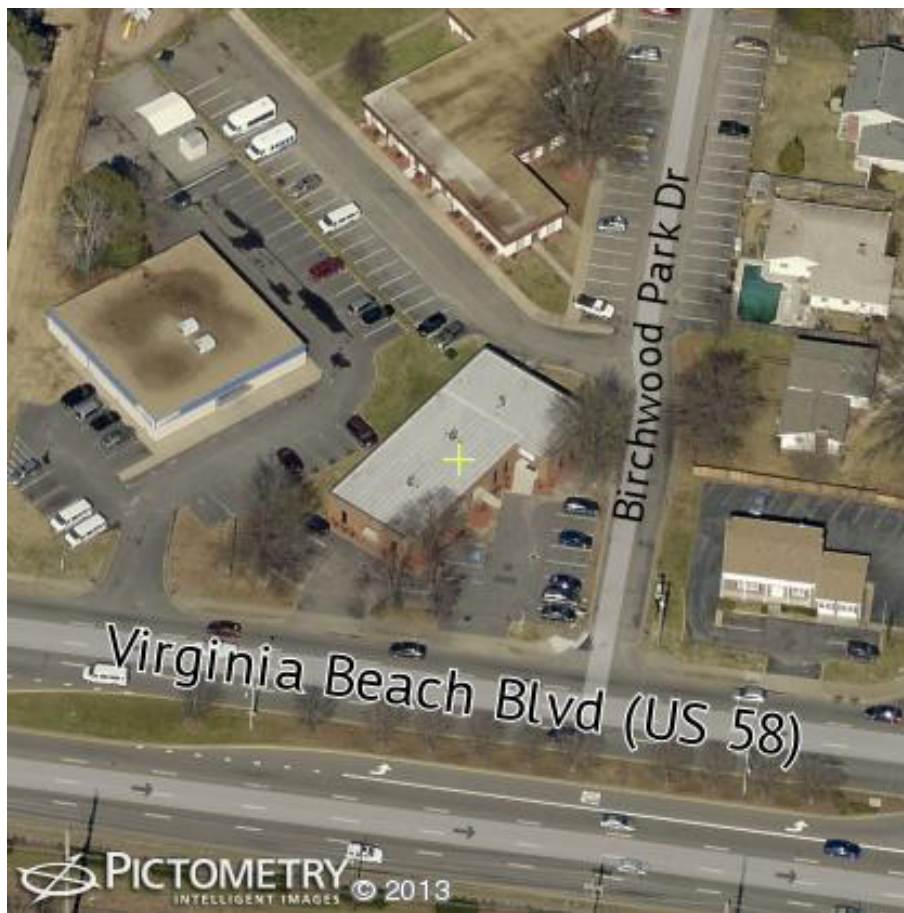
STATE PLANE X,Y	12183232.7056956, 3474306.97554494
GEOGRAPHIC COORDINATES	36.84034841, -76.10663335
2010 CENSUS TRACT NO.	042400
2010 BLOCK GROUP NO.	0424003
POLICE BEAT	322
ESTIMATED LAND AREA	17194.4 sq ft
AGRID	G7
SOIL TYPE	42 - Urban
APZ ZONE	N/A
NOISE ZONE	N/A
FLOOD ZONE	X



02 Asphalt

3808 Virginia Beach Blvd.





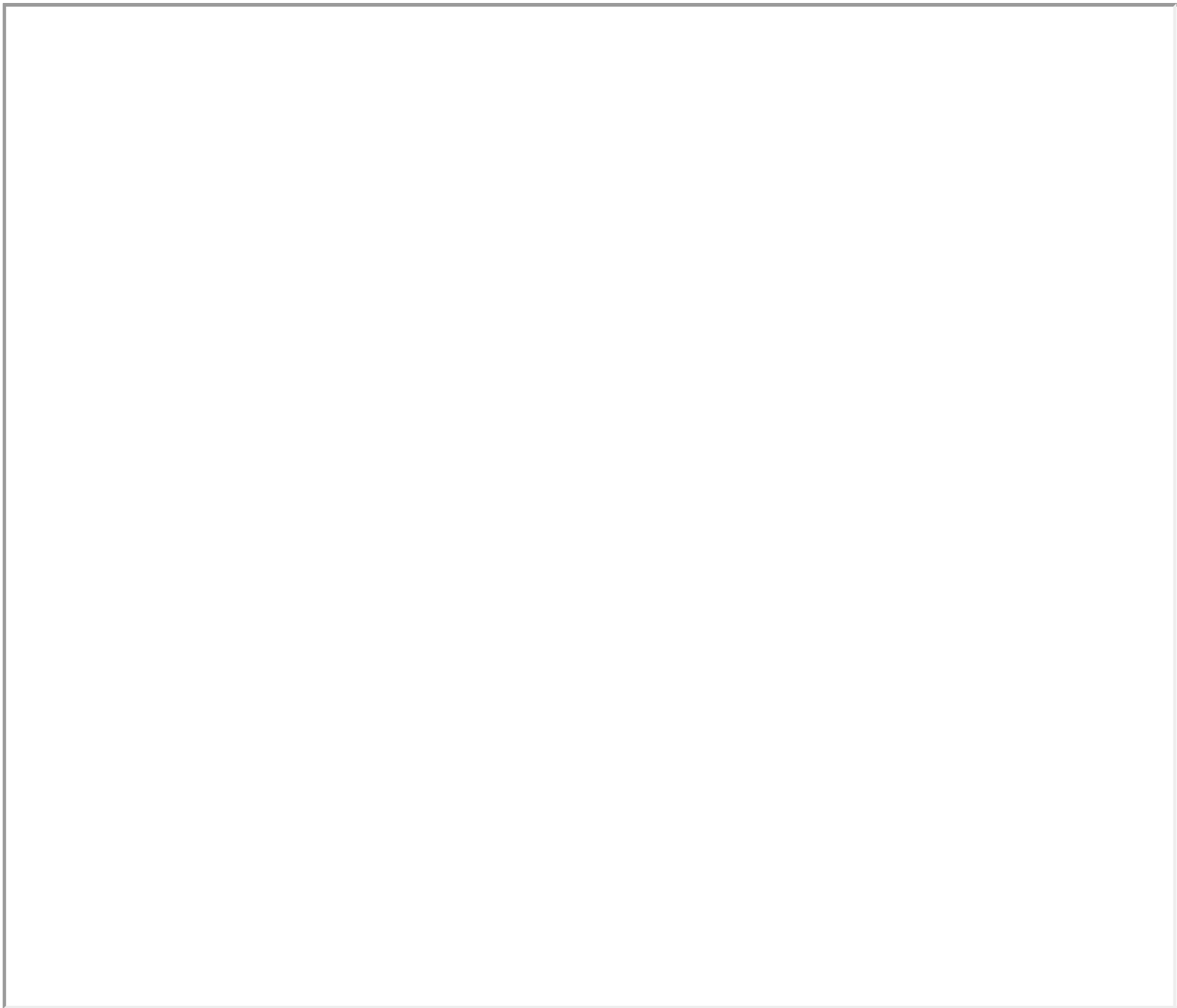


Virginia Beach Blvd (US 58)

Birchwood Park Dr

Caren Dr

PICTOMETRY  
INTELLIGENT IMAGES © 2013



## PROPERTY DETAILS

# 309 Birchwood Park Dr A

LEGAL DESCRIPTION	Birchwood Gardens Parcel S-2a 1.028 Ac
GPIN (PARCEL ID)	14873425600000
SERVICE DISTRICT	50 : Lynnhaven

## FY20/21 ASSESSMENT

LAND VALUE	\$438,500
IMPROVEMENT VALUE	\$165,200
TOTAL VALUE	\$603,700

## LAND INFORMATION

UNOFFICIAL ZONING DISTRICT	O2
PROPERTY CODE/CATEGORY	411 Office Building
LAND USE	No
WATERSHED	Chesapeake Bay
PLATS (MAP BOOK/INSTRUMENT #)	Download ( <a href="https://media.vbgov.com/rea/plats/_PDF">https://media.vbgov.com/rea/plats/_PDF</a> )
LAND SQUARE FOOTAGE	44,084.48 sq ft

## BUILDING INFORMATION

USE CODE	DESCRIPTION	ID #	CONSTRUCTED YR.	SIZE
GENOFF	General Office	C	1973	8,930 SF
PAVING	Paving	02	1973	27,800 SF

FLOORS	FINISHED AREA	DESCRIPTION
1	8,930 SF	General Office
Total	8,930 SF	

## SALES HISTORY

DOCUMENT #	SALES DATE	SALES PRICE	DEED BOOK/PAGE
0000000000000000	01/04/1972	\$300,000	1249 / 372

## TAX ASSESSMENTS

FISCAL YEAR	LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	TAX PER \$100	ANNUAL TAXES
2021	\$438,500	\$165,200	\$603,700	\$1.0175	\$6,142.66
2020	\$411,100	\$153,900	\$565,000	\$1.0175	\$5,748.88
2019	\$356,200	\$183,500	\$539,700	\$1.0025	\$5,410.50
2018	\$356,200	\$187,800	\$544,000	\$1.0025	\$5,453.60
2017	\$356,200	\$187,800	\$544,000	\$0.99	\$5,385.60
2016	\$344,800	\$199,200	\$544,000	\$0.99	\$5,385.60
2015	\$344,800	\$157,700	\$502,500	\$0.93	\$4,673.26
2014	\$344,800	\$120,500	\$465,300	\$0.93	\$4,327.30
2013	\$344,800	\$78,500	\$423,300	\$0.95	\$4,021.36
2012	\$344,800	\$40,200	\$385,000	\$0.89	\$3,426.50
2011	\$344,800	\$59,300	\$404,100	\$0.89	\$3,596.50
2010	\$344,800	\$150,600	\$495,400	\$0.89	\$4,409.06
2009	\$344,800	\$150,600	\$495,400	\$0.89	\$4,409.06
2008	\$313,460	\$172,740	\$486,200	\$0.89	\$4,327.18

Exemption programs such as Seniors, Disabled Persons, Veterans, Energy Efficient Buildings, etc. are not reflected in the Annual Taxes.

## ANNUAL TAXES

## ANNUAL ASSESSMENTS





## CLOSEST LIBRARY



0 miles away

## CLOSEST RECREATION CENTER



0 miles away

## CLOSEST PARK



0 miles away

## CLOSEST SHELTER



## CLOSEST POLICE STATION

0 miles away

## CLOSEST FIRE STATION



0 miles away

## TRASH PICKUP SERVICES



Trash Collection

Every Wednesday

Next Recycling Day

Wednesday, November 4, 2020

## VOTING PRECINCT

Precinct

Malibu - 014

Polling Location

Malibu ES District: 5

## VOTING DISTRICTS

Local Election

District 5 - Lynnhaven

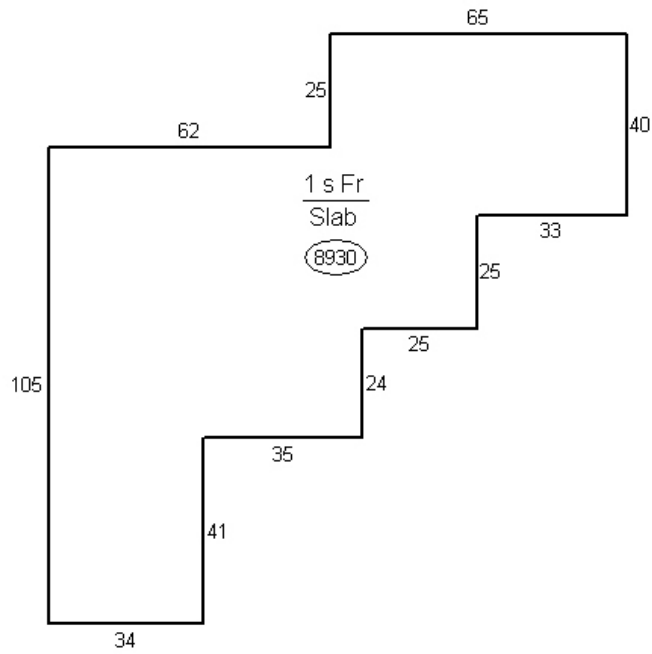
State Senate

District 7

House of Delegates

District 82

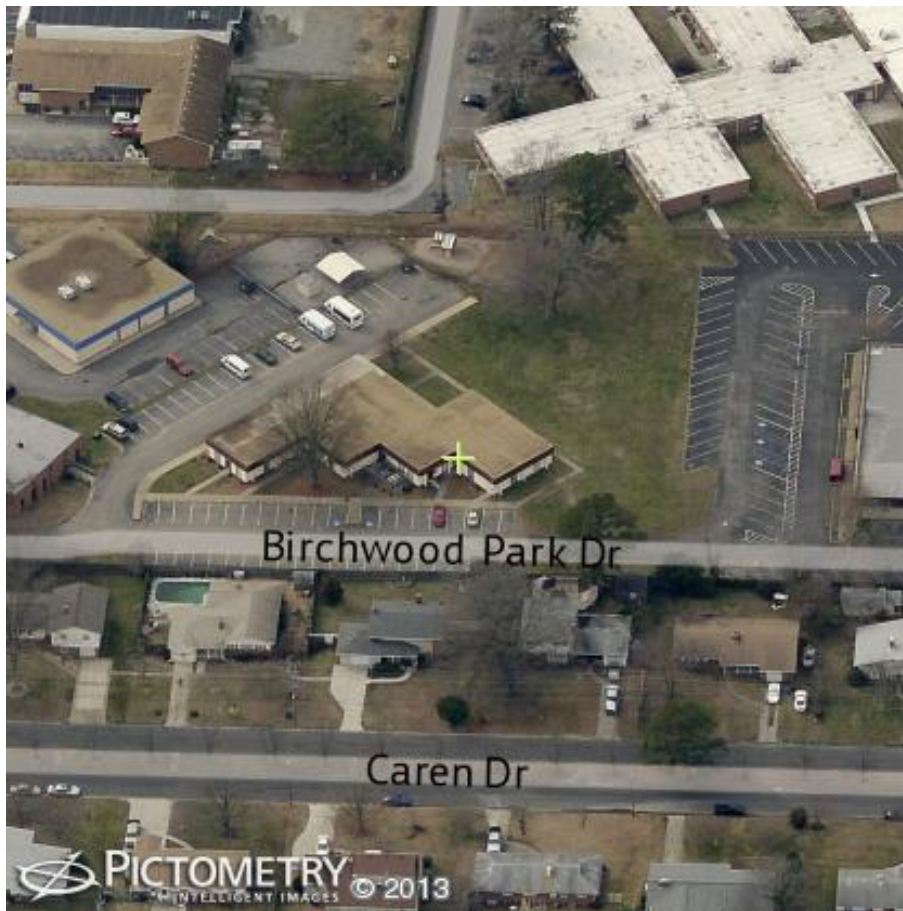
STATE PLANE X,Y	12183255.1612997, 3474474.76604044
GEOGRAPHIC COORDINATES	36.84080756, -76.1065421
2010 CENSUS TRACT NO.	042400
2010 BLOCK GROUP NO.	0424003
POLICE BEAT	322
ESTIMATED LAND AREA	44084.48 sq ft
AGRID	G7
SOIL TYPE	42 - Urban
APZ ZONE	N/A
NOISE ZONE	N/A
FLOOD ZONE	X



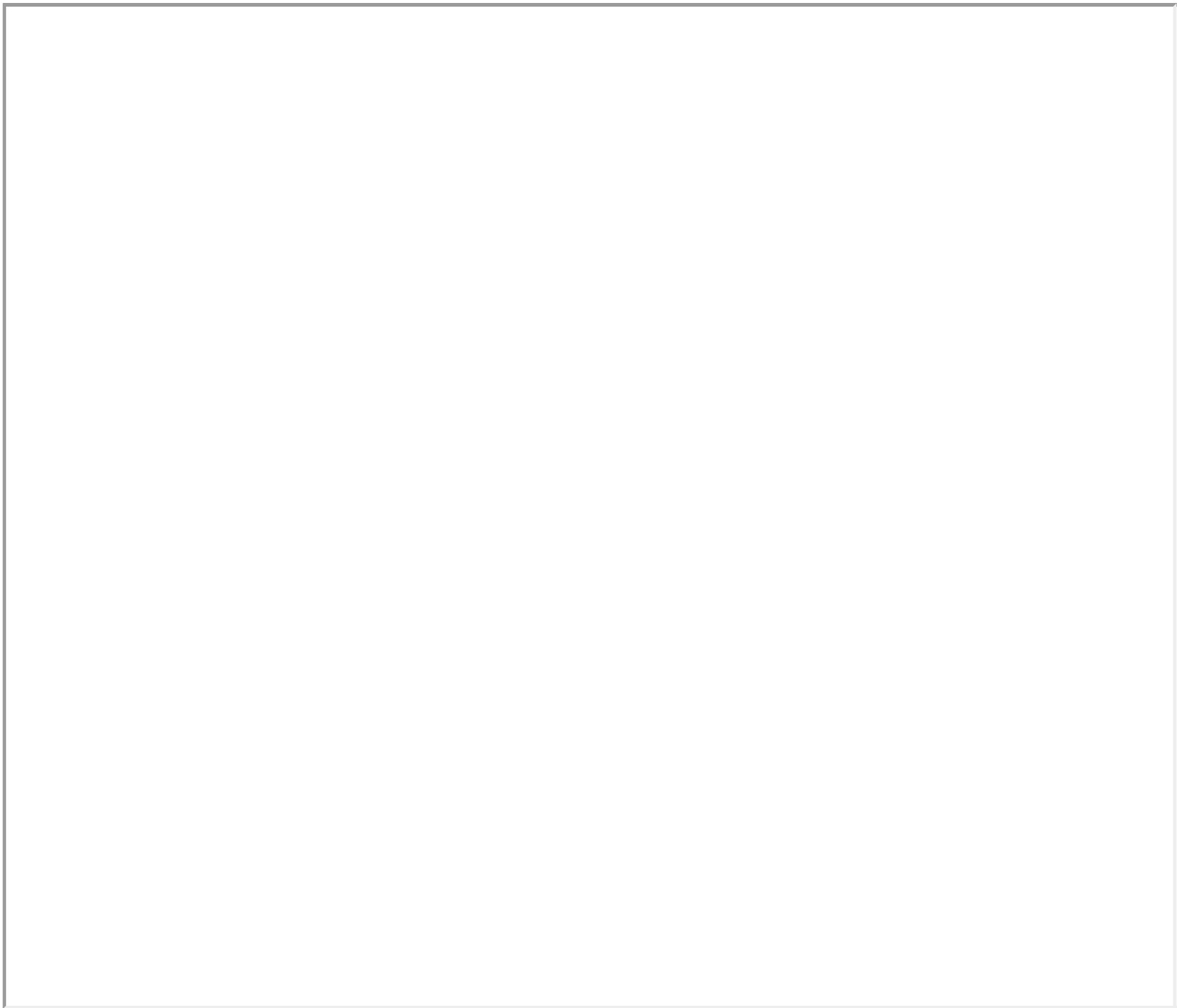
309 Birchwood Park Drive 02 Asphalt











# PROPERTY DETAILS

LEGAL DESCRIPTION	Birchwood Gardens Parcel S-2b .174 Ac
GPIN (PARCEL ID)	14873433690000
SERVICE DISTRICT	50 : Lynnhaven

## FY20/21 ASSESSMENT

LAND VALUE	\$24,300
IMPROVEMENT VALUE	\$0
TOTAL VALUE	\$24,300

## LAND INFORMATION

UNOFFICIAL ZONING DISTRICT	O2
PROPERTY CODE/CATEGORY	410 Vacant Office Land
LAND USE	No
WATERSHED	Chesapeake Bay
PLATS (MAP BOOK/INSTRUMENT #)	Download ( <a href="https://media.vbgov.com/rea/plats/_PDF">https://media.vbgov.com/rea/plats/_PDF</a> )
LAND SQUARE FOOTAGE	7,916.7 sq ft

## BUILDING INFORMATION

# SALES HISTORY

DOCUMENT #	SALES DATE	SALES PRICE	DEED BOOK/PAGE
0000000000000000	01/04/1972	\$300,000	1249 / 372

# TAX ASSESSMENTS

FISCAL YEAR	LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	TAX PER \$100	ANNUAL TAXES
2021	\$24,300	\$0	\$24,300	\$1.0175	\$247.26
2020	\$22,700	\$0	\$22,700	\$1.0175	\$230.98
2019	\$22,000	\$0	\$22,000	\$1.0025	\$220.56
2018	\$20,500	\$0	\$20,500	\$1.0025	\$205.52
2017	\$20,500	\$0	\$20,500	\$0.99	\$202.96
2016	\$25,000	\$0	\$25,000	\$0.99	\$247.50
2015	\$25,000	\$0	\$25,000	\$0.93	\$232.50
2014	\$25,000	\$0	\$25,000	\$0.93	\$232.50
2013	\$25,000	\$0	\$25,000	\$0.95	\$237.50
2012	\$25,000	\$0	\$25,000	\$0.89	\$222.50
2011	\$25,000	\$0	\$25,000	\$0.89	\$222.50
2010	\$25,000	\$0	\$25,000	\$0.89	\$222.50
2009	\$25,000	\$0	\$25,000	\$0.89	\$222.50
2008	\$22,740	\$0	\$22,740	\$0.89	\$202.40

Exemption programs such as Seniors, Disabled Persons, Veterans, Energy Efficient Buildings, etc. are not reflected in the Annual Taxes.

# ANNUAL TAXES

# ANNUAL ASSESSMENTS



## CLOSEST LIBRARY



0 miles away

## CLOSEST RECREATION CENTER



0 miles away

## CLOSEST PARK



0 miles away

## CLOSEST SHELTER



## CLOSEST POLICE STATION

0 miles away

## CLOSEST FIRE STATION



0 miles away

## TRASH PICKUP SERVICES



Trash Collection  
Every Wednesday

Next Recycling Day  
Wednesday, November 4, 2020

## VOTING PRECINCT

Precinct

Malibu - 014

Polling Location

Malibu ES District: 5

## VOTING DISTRICTS

Local Election

District 5 - Lynnhaven

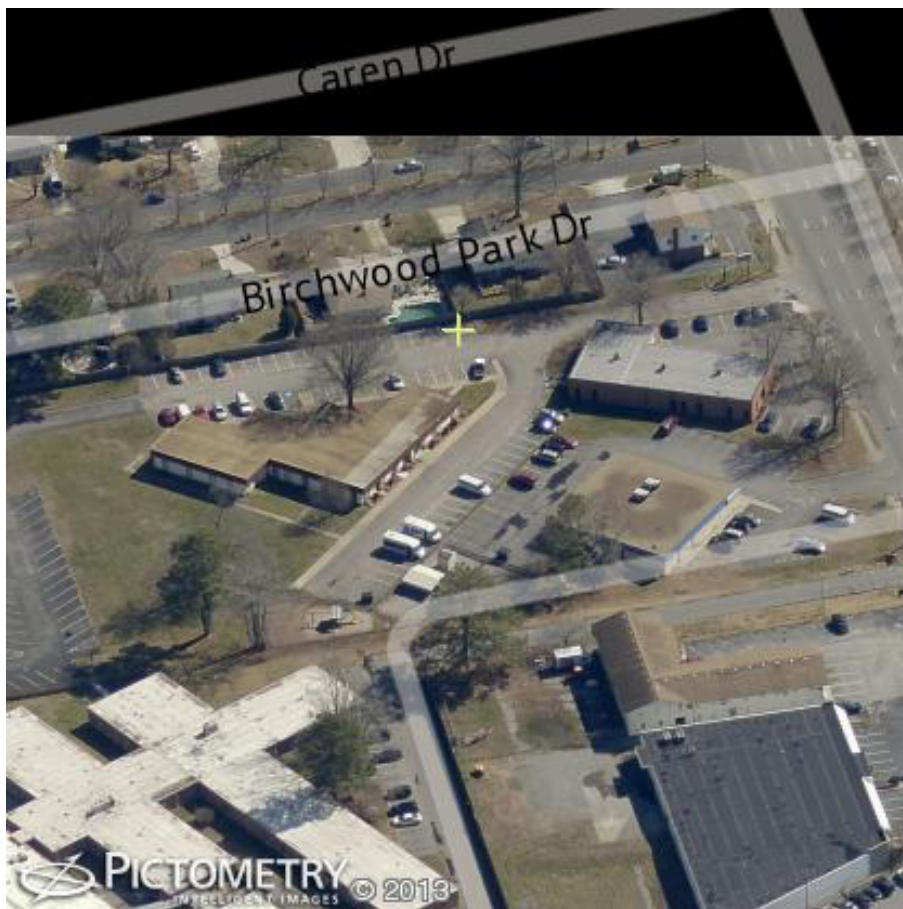
State Senate

District 7

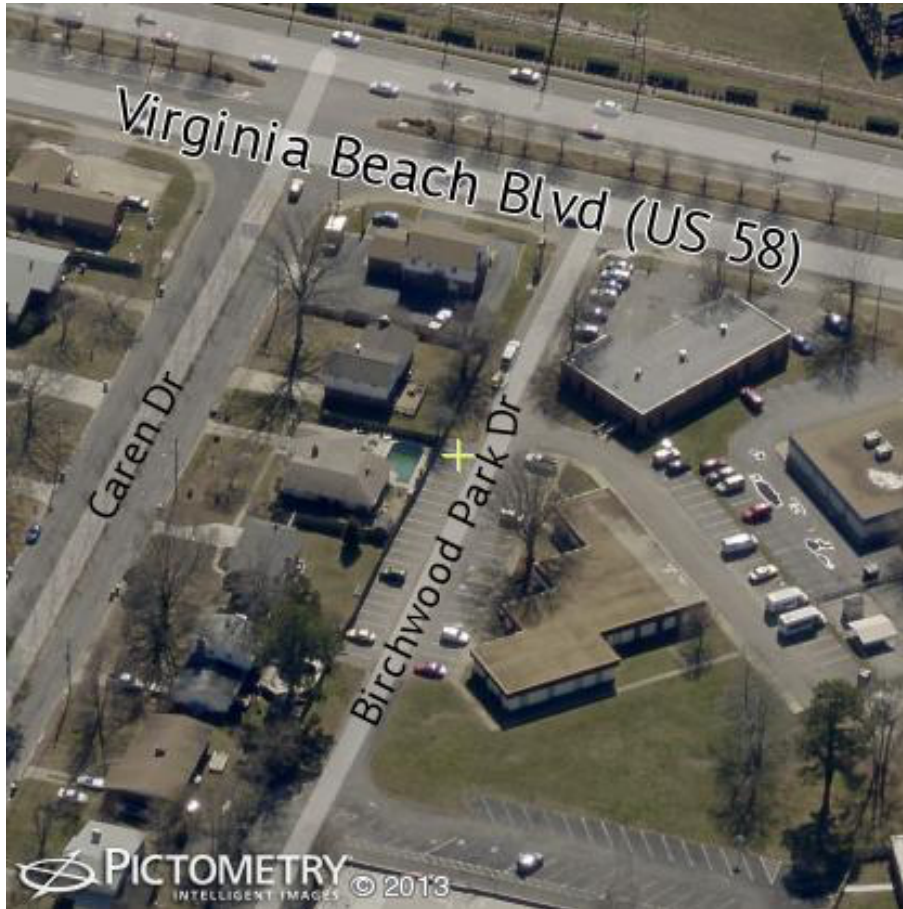
House of Delegates

District 82

STATE PLANE X,Y	12183340.89766222, 3474437.70052501
GEOGRAPHIC COORDINATES	36.84069981, -76.10625243
2010 CENSUS TRACT NO.	042400
2010 BLOCK GROUP NO.	0424003
POLICE BEAT	322
ESTIMATED LAND AREA	7916.7 sq ft
AGRID	G7
SOIL TYPE	42 - Urban
APZ ZONE	N/A
NOISE ZONE	N/A
FLOOD ZONE	X









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.

TRUE 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: 10/21/21

Printed Name: Stacey Smith

RESNET Rater

Resnet Provider Agency
Viridian

Signature [Signature]

Provider Contact and Phone/Email

Sean Evensen-Shanley (804)212-1934 /sean.shanley@viridian.org

## Birchwood Senior Apartments 2021 LIHTC Pre-Review Comments

### Project Address

Virginia Beach Boulevard  
Virginia Beach, VA 23452

### Project Summary

Birchwood Senior Apartments is a new construction low-rise multifamily development, comprised of 150 units located in Virginia Beach, 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 May 28<sup>th</sup>, 2021. With the current scope of work, the worst case units in the development are obtaining a projected HERS index of 57 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-13 Grade II cavity insulation in party walls and adiabatic ceilings/floors
- R-30 continuous roof deck
- 0.16 U-Value for opaque doors
- 0.34 U-Value/0.35 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
- Spot ERV providing fresh air

#### Lights & Appliances:

- ES rated kitchen appliances
  - 352 kWh/yr refrigerator
  - 270 kWh/yr dishwasher

Birchwood Senior Apartments  
October 19<sup>th</sup>, 2021



- Energy Star rated Washing Machine
- 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:** Birchwood Senior Apartments  
**Construction Type:** New Construction  
**Energy Efficiency Path:** Energy Star

Unit Type	Quantity	HERS
1bd bottom/mid	46	57
1bd top floor	17	56
2bd bottom/mid	64	56
2bd top	23	55
<b>Projected Project HERS - Weighted Average</b>		<b>56</b>

# Home Energy Rating Certificate Projected Report

Rating Date:  
Registry ID:  
Ekotrope ID: Od4X3Yyd

## 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)

# 57

## Annual Savings

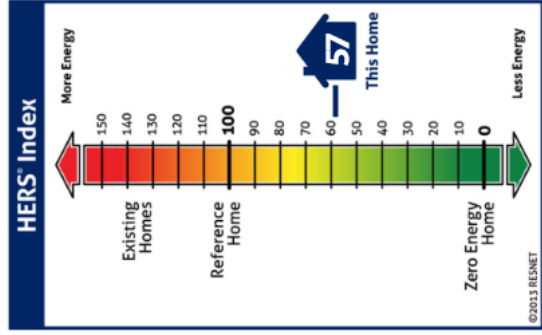
# \$699

\*Relative to an average U.S. home

**Home:**  
Virginia Beach Boulevard  
Virginia Beach, VA 23452  
**Builder:**  
Marlyn

**This home meets or exceeds the criteria of the following:**

ENERGY STAR MF v1.1  
ENERGY STAR MF v1.0



### Home Feature Summary:

Home Type:	Apartment, inside unit
Model:	N/A
Community:	N/A
Conditioned Floor Area:	946 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:	40 CFM • 24 Watts
Duct Leakage to Outside:	5 CFM25 / 100 ft <sup>2</sup>
Above Grade Walls:	R-19
Ceiling:	Adiabatic, R-13
Window Type:	U-Value: 0.34, SHGC: 0.35
Foundation Walls:	N/A

### Rating Completed by:

**Energy Rater:** Katy Maher  
RESNET ID: 2430236  
**Rating Company:** Viridiant  
1431 W. Main Street, Richmond, VA 23220  
**Rating Provider:** Viridiant  
1431 W. Main Street, Richmond, VA 23220

*Katy Maher*

Katy Maher, Certified Energy Rater  
Digitally signed: 10/21/21 at 2:22 PM



Ekotrope RATER - Version:4.0.0.2766  
The Energy Rating Disclosure for this home is available from the Approved Rating Provider.  
This report does not constitute any warranty or guarantee.



# Home Energy Rating Certificate

## Projected Report

Rating Date:  
 Registry ID:  
 Ekotrope ID: KLZ0AERv

### 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)

# 56

### Annual Savings

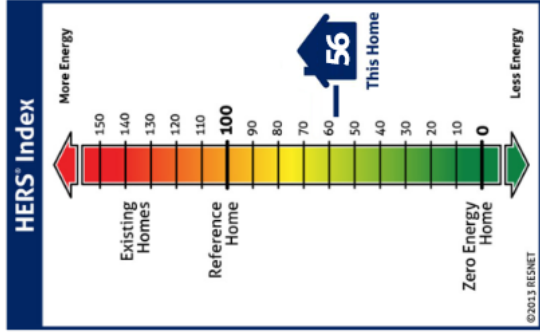
# \$736

\*Relative to an average U.S. home

**Home:**  
 Virginia Beach Boulevard  
 Virginia Beach, VA 23452  
**Builder:**  
 Marlyn

**This home meets or exceeds the criteria of the following:**

ENERGY STAR MF v1.1  
 ENERGY STAR MF v1.0



### Home Feature Summary:

Home Type:	Apartment, inside unit
Model:	N/A
Community:	N/A
Conditioned Floor Area:	946 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:	40 CFM • 24 Watts
Duct Leakage to Outside:	5 CFM25 / 100 ft <sup>2</sup>
Above Grade Walls:	R-19
Ceiling:	Vaulted Roof, R-28
Window Type:	U-Value: 0.34, SHGC: 0.35
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 2:24 PM



# Home Energy Rating Certificate

## Projected Report

Rating Date:  
Registry ID:  
Ekotrope ID: ILXPpE8L

### 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)

# 56

### Annual Savings

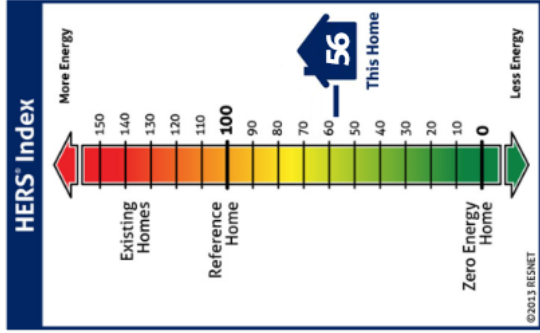
# \$857

\*Relative to an average U.S. home

**Home:**  
Virginia Beach Boulevard  
Virginia Beach, VA 23452  
**Builder:**  
Marlyn

**This home meets or exceeds the criteria of the following:**

ENERGY STAR MF v1.1  
ENERGY STAR MF v1.0



### Home Feature Summary:

Home Type:	Apartment, end unit
Model:	N/A
Community:	N/A
Conditioned Floor Area:	1,117 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:	40 CFM • 23 Watts
Duct Leakage to Outside:	4 CFM25 / 100 ft <sup>2</sup>
Above Grade Walls:	R-19
Ceiling:	Adiabatic, R-13
Window Type:	U-Value: 0.34, SHGC: 0.35
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 2:22 PM



# Home Energy Rating Certificate

## Projected Report

Rating Date:  
 Registry ID:  
 Ekotrope ID: VvnEAlod

### 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)

# 55

### Annual Savings

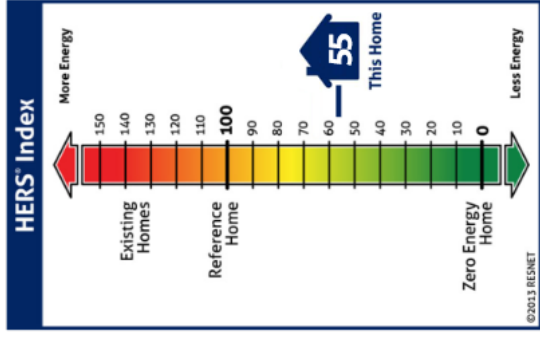
# \$898

\*Relative to an average U.S. home

**Home:**  
 Virginia Beach Boulevard  
 Virginia Beach, VA 23452  
**Builder:**  
 Marilyn

**This home meets or exceeds the criteria of the following:**

ENERGY STAR MF v1.1  
 ENERGY STAR MF v1.0



### Home Feature Summary:

Home Type:	Apartment, end unit
Model:	N/A
Community:	N/A
Conditioned Floor Area:	1,117 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:	40 CFM • 24 Watts
Duct Leakage to Outside:	5 CFM25 / 100 ft <sup>2</sup>
Above Grade Walls:	R-19
Ceiling:	Vaulted Roof, R-28
Window Type:	U-Value: 0.34, SHGC: 0.35
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 2:23 PM



G

Zoning Certification Letter  
(MANDATORY)



2901 S. Lynnhaven Rd.  
Suite 200  
Virginia Beach, VA 23452

P 757.213.6679  
F 757.340.1415  
[www.timmons.com](http://www.timmons.com)

## Zoning Certification

**DATE:** October 22, 2021

**TO:** Virginia Housing Development Authority  
601 South Belvidere Street  
Richmond, Virginia 23220  
Attention: JD Bondurant

**RE:** ZONING CERTIFICATION

Name of Development: Arbors at Birchwood

Name of Owner/Applicant: Birchwood Senior, LP

Name of Seller/Current Owner: Birchwood 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:  
3820 Virginia Beach Blvd. Virginia Beach, VA 23451

Legal Description:  
Please see Exhibit A attached separately.

### Proposed Improvements:

<input checked="" type="checkbox"/> New Construction:	<u>150</u>	# Units	<u>1</u>	# Buildings	<u>2097366</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: O-2 (Office District) allowing a density of  
36 units per acre, and the following other applicable conditions: Conditional Use Permit  
to construct no more than 150 dwelling units, restricted to age 62 and over.

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Other Descriptive Information:

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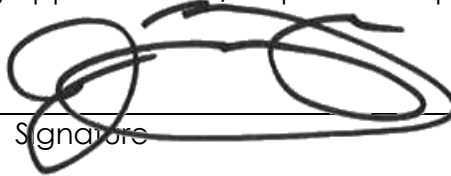
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### LOCAL CERTIFICATION:

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.



  
\_\_\_\_\_  
Signature

John Zaszewski, PE

\_\_\_\_\_  
Printed Name

Group Leader

\_\_\_\_\_  
Title of Local Official or Civil Engineer

(757) 213-6674

\_\_\_\_\_  
Phone:

October 22, 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**

**Parcel One (GPIN: 1487-34-1324-0000)**

All that certain tract, piece or parcel of land, situate, lying and being in the City of Virginia Beach, Virginia and designated as parcel "S-1", as shown on a plat entitled "Plat of Property for Birchwood Associates, Inc." dated January, 1970, and revised March 8, 1971, Frank D. Tarrall, Jr. & Associates, Surveyors and Engineers, Virginia Beach, Virginia, which said plat is attached to a deed recorded in the Clerk's Office of the Circuit Court of the City of Virginia Beach, Virginia, in Deed Book 1249, at Page 364, and which said parcel "S-1" is more particularly bounded and described as follows:

Beginning at a point on the north side of Virginia Beach Boulevard, said point being the following courses and distances from the northwest intersection of the western line of Caren Drive, with the northern line of Virginia Beach Boulevard; thence running in a westerly direction north 84° 28' 11" west, 149.88 feet to a point; thence turning and running in a northerly direction north 10° 08' 11" west, 2.08 feet to a point; thence turning and running in a westerly direction north 84° 28' 11" west, 145.82 feet to a point, the point of beginning; thence running from said point of beginning in a westerly direction north 84° 28' 11" west, 50 feet to a point; thence continuing in a westerly direction north 82° 44' west 58.77 feet to a point; thence turning and running in a northerly direction north 5° 31' 49" east 324.88 feet to a point; thence turning and running in an easterly direction south 39° 28' 11" east, 265 feet to a point; thence turning and running in a southerly direction south 34° 58' 55" west 159.94 feet to the point of beginning.

IT BEING the same property conveyed to Birchwood Associates, a general partnership (the "Partnership"), from Birchwood Associates, Inc., a Virginia corporation, by Deed dated November 6, 1970, recorded in the aforesaid Clerk's Office in Deed Book 1249, at page 364. On May 29, 2008, the Partnership was converted to Birchwood Associates, LLC, a Virginia limited liability company, upon the filing of Articles of Organization for Conversion with the Virginia State Corporation Commission.

**Parcel Two (GPINs: 1487-34-2560-0000, 1487-34-3369-0000, 1487-34-1778-0000 and 1487-34-2381-0000)**

All those certain tracts, pieces or parcels of land, situate, lying and being in the City of Virginia Beach, Virginia and designated as Parcels "S-2A", "S-2B", "S-3" and "S-4" as shown on a plat entitled "Plat of Property for Birchwood Associates, Inc." dated January, 1970, and revised March 8, 1971, Frank D. Tarrall, Jr. & Associates, Surveyors and Engineers, Virginia Beach, Virginia, which said plat is attached to a deed recorded in the Clerk's Office of the Circuit Court of the City of Virginia Beach, Virginia in Deed Book 1249, at Page 372.

TOGETHER WITH a perpetual non-exclusive easement for ingress and egress over and along a 20 foot wide parcel adjoining the eastern boundary of parcel "S-2A".

IT BEING the same property conveyed to Birchwood Associates, a general partnership (the "Partnership"), from Birchwood Associates, Inc., a Virginia corporation, by Deed dated April 10, 1971, recorded in the aforesaid Clerk's Office in Deed Book 1249, at page 372. On May 29, 2008, the Partnership was converted to Birchwood Associates, LLC, a Virginia limited liability company, upon the filing of Articles of Organization for Conversion with the Virginia State Corporation Commission.

S:\Clients\10826\002\Purchase Agreement\Purchase Agreement v7.docx



H

Attorney's Opinion  
(MANDATORY)

October 26, 2021

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

RE: 2021 Tax Credit Reservation Request

Name of Development: Arbors at Birchwood  
Name of Owner: Birchwood 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 October 26, 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.

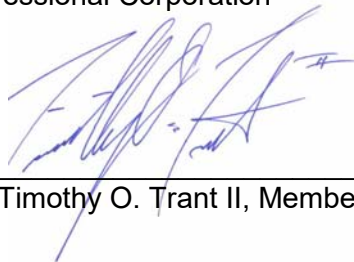
4. The site of the captioned Development is controlled by the Owner, as identified in the Site Control section of the Application.

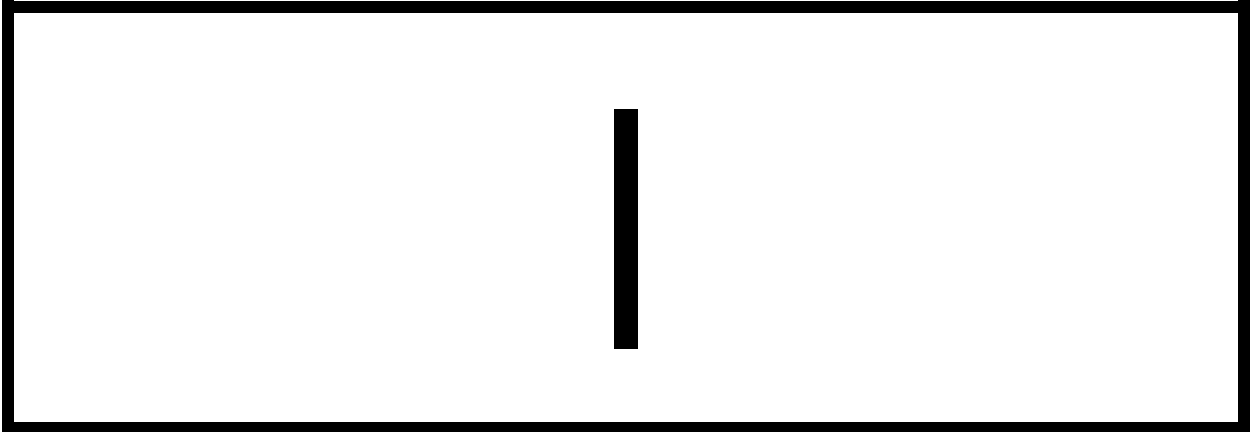
Finally, the undersigned is of the opinion that, if all information and representations contained in the Application and all current law were to remain unchanged, upon the placement in service of each building of the Development, the Owner would be eligible under the applicable provisions of the Code 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



2901 S. Lynnhaven Rd.  
Suite 200  
Virginia Beach, VA 23452

P 757.213.6679  
F 757.340.1415  
[www.timmons.com](http://www.timmons.com)

### Engineer's Certification of Proximity to Transportation

DATE: October 22, 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 Birchwood

Name of Owner: Birchwood 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 1/2 mile of the nearest access point to an existing commuter rail, light rail or subway station; **or**
- 1,320 feet or 1/4 mile of the nearest access point to an existing public bus stop.



Timmons Group

Firm Name

By:

Its:

Group Leader

Title



L

PHA/Section 8 Notification  
Letter





## PHA or Section 8 Notification Letter

Development Name: The Arbors at Birchwood

Tracking #: 2021-TEB-119

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:** 10/25/21

**TO:** David R. Grigsby

**RE:** PROPOSED AFFORDABLE HOUSING DEVELOPMENT

Name of Development: Arbors at Birchwood  
Name of Owner: Birchwood 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 8/1/23 (date).

The following is a brief description of the proposed development:

Development Address:  
3080 Virginia Beach Blvd, Virginia Beach, VA 23452

Proposed Improvements:

<input checked="" type="checkbox"/> New Constr.:	<u>150</u>	# units	<u>1</u>	# Bldgs
<input type="checkbox"/> Adaptive Reuse:	_____	# units	_____	# Bldgs
<input type="checkbox"/> Rehabilitation:	_____	# units	_____	# Bldgs

Proposed Rents:

<input type="checkbox"/> Efficiencies:	\$ _____	/ month
<input checked="" type="checkbox"/> 1 Bedroom Units:	\$ <u>910</u>	/ month
<input checked="" type="checkbox"/> 2 Bedroom Units:	\$ <u>1080</u>	/ month
<input type="checkbox"/> 3 Bedroom Units:	\$ _____	/ month
<input type="checkbox"/> 4 Bedroom Units:	\$ _____	/ month

Other Descriptive Information:

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# PHA or Section 8 Notification Letter

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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**

\_\_\_\_\_  
Title

**To be completed by the Local Housing Authority or Sec 8 Administrator:**

Seen and Acknowledged By: \_\_\_\_\_  \_\_\_\_\_

Printed Name: David Grigsby

Title: Administrator, Rental Housing, VB DHNP

Phone: 385-5745

Date: 10/27/21

M

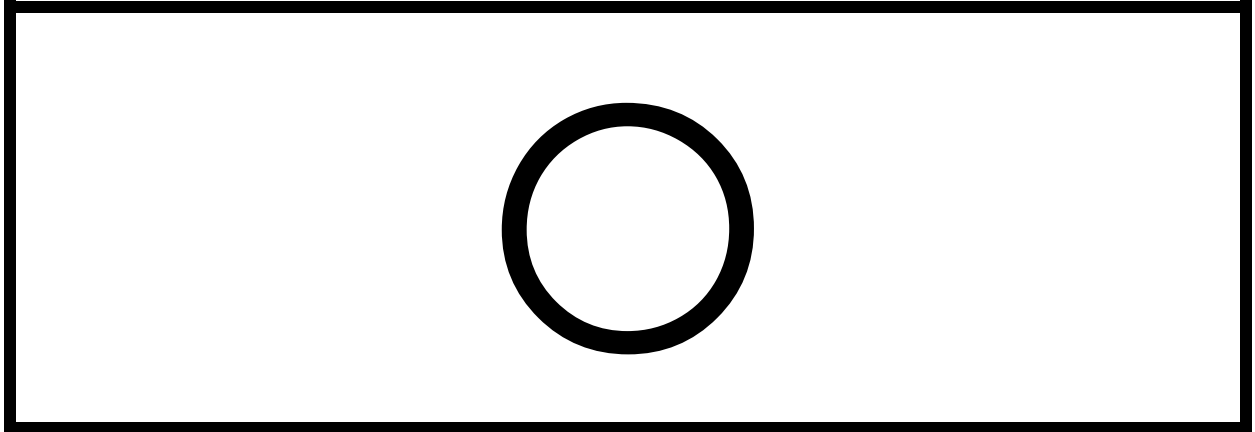
Locality CEO Response  
Letter

**Tab M – Submitted Separately**

N

Homeownership Plan

**Not Applicable**



Plan of Development  
Certification Letter

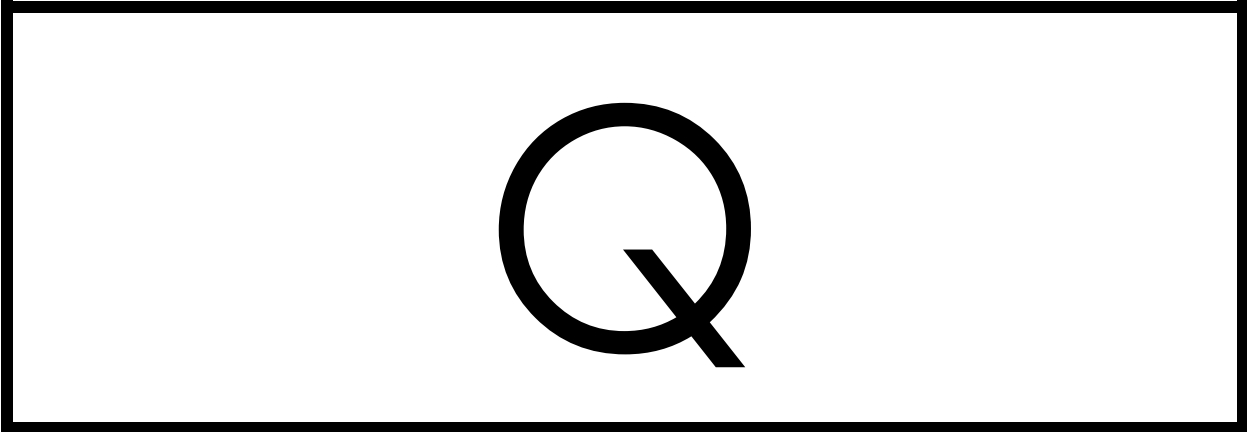


**Not Applicable**

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 20, 2021

Re: The Arbors at Birchwood Utility Allowance

The monthly average electric cost The Arbors at Birchwood new construction units has been estimated to be:

\$32 for a one bedroom

\$51 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

## Units include:

- AO Smith Electric Water Heater ENT-40 (.95 efficiency)
- GE Refrigerator Model # GTE19JTNRBB Energy Star
- GE Dishwasher Model GSD510PGRBB 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
- Panasonic ERV model FV-04VE1
- 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
- 5 ACH<sub>50</sub> for infiltration threshold/blower door test

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



**Birchwood Senior, L.P.**

Cash Flow Analysis

**Assumptions:**

- 7% Vacancy
- 2% Annual Income Increase
- 3% Annual Expense Increase

**Total Developer Fee** \$ 2,700,000  
**Annual Debt Service** \$ 1,045,096

Year	Eff. Gross Income	Expenses	Cash Flow	Cumulative Developer Fee
	Non-deferred Developer Fee		\$ 639,232	\$ 639,232
1	\$ 2,040,606	\$ 837,027	\$ 158,483	\$ 797,715
2	\$ 2,081,418	\$ 862,138	\$ 174,184	\$ 971,899
3	\$ 2,123,046	\$ 888,002	\$ 189,949	\$ 1,161,848
4	\$ 2,165,507	\$ 914,642	\$ 205,769	\$ 1,367,617
5	\$ 2,208,818	\$ 942,081	\$ 221,640	\$ 1,589,258
	Operating Reserve Release		\$ 200,000	\$ 1,789,258
6	\$ 2,252,994	\$ 970,344	\$ 237,554	\$ 2,026,812
7	\$ 2,298,054	\$ 999,454	\$ 253,504	\$ 2,280,316
8	\$ 2,344,015	\$ 1,029,438	\$ 269,481	\$ 2,549,797
9	\$ 2,390,895	\$ 1,060,321	\$ 285,478	\$ 2,835,275
10	\$ 2,438,713	\$ 1,092,130	\$ 301,487	\$ 3,136,762
11	\$ 2,487,487	\$ 1,124,894	\$ 317,497	\$ 3,454,259
12	\$ 2,537,237	\$ 1,158,641	\$ 333,500	\$ 3,787,759
13	\$ 2,587,982	\$ 1,193,400	\$ 349,485	\$ 4,137,244
14	\$ 2,639,741	\$ 1,229,202	\$ 365,443	\$ 4,502,687
15	\$ 2,692,536	\$ 1,266,078	\$ 381,362	\$ 4,884,049

Dev. Fee Paid Off

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**

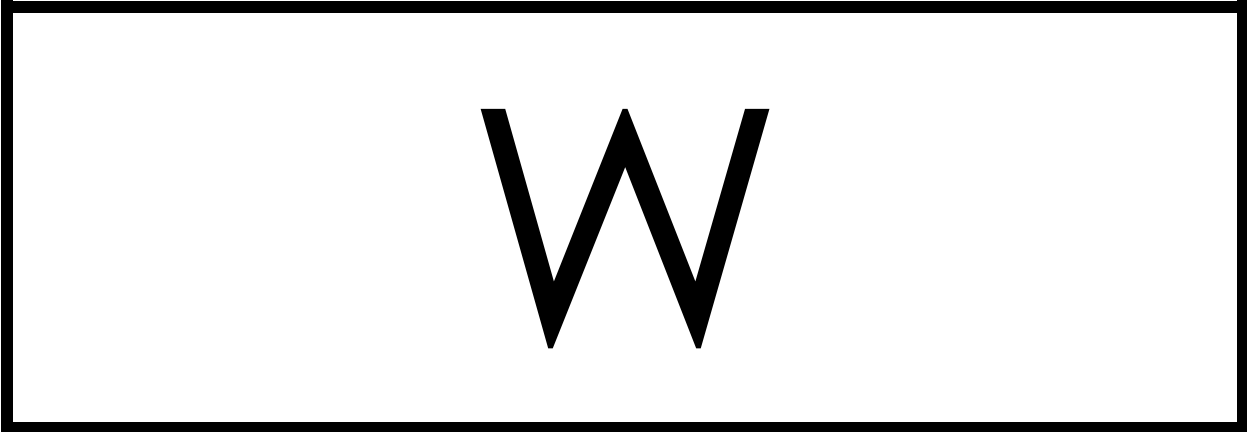


V

Nonprofit or LHA Purchase  
Option or Right of First  
Refusal



**Not Applicable**



W

Internet Safety Plan and  
Resident Information  
Form

# Resident Internet Information Education Tips and Advice

## Why is internet safety important?

Playing it safe online can help prevent you — and your kids — from being exposed to unwanted information, materials, or risks on the internet that might harm your devices, personal information, or your family. It's smart to teach children computer safety so that they don't fall victim to some common dangers of the internet.

It's worth noting there are federal laws in place, like the Children's Online Privacy Protection Act, that have been enacted to protect kids when online. COPPA applies to children younger than 13 and it requires websites to explain their privacy policies and get parental consent before collecting or using a child's personal information. Importantly, it prohibits sites from requiring children to provide excess personal information to play a game. Still, laws are sometimes broken online, which is why the best defense is practicing computer safety and internet safety.

## What are the dangers of the internet?

One of the prevalent dangers of the internet is cybercriminals and the ever-evolving cybercrimes they create. Because so many cybercrimes are launched to target any internet user, it's likely that no family member is exempt of such attacks, either. There are many threats children face online, as well as adults and teens.

Educating the whole family on how to identify and avoid each cyberthreat is an important part of internet safety. Here are at least 10 risks or dangers of the internet to know, but be aware that new cyberthreats are constantly evolving.

- Identity theft
- Cyberbullying
- Online predators
- Faulty privacy setting
- Phishing

- Online scams
- Malware
- Inappropriate content
- Bait and switch
- Etc....

## Internet safety tips for kids

There are many cyber safety tips parents should know, but internet safety doesn't stop there. Every family member has to play their part in creating a cyber-safe household. We've listed pointers to help your family stay safer online.

### **Tip #1: Login passwords**

The easiest computer to hack is one with no password to login. Secure your personal internet device. Use strong device login passwords.

### **Tip #2: Know the dangers of the internet**

When it comes to cybersecurity, kids are often one of your family's weakest links — and that can be for lack of knowing the dangers of the internet. Teach kids about suspicious activity online and encourage them to ask for help if something seems unusual.

### **Tip #3: Remember your identity is important**

Sometimes kids make themselves vulnerable to identity theft by disclosing personal information online because they believe they have nothing to lose. A child's identity can have as much value as an adult's identity, if not more. Scammers can trick kids into disclosing their Social Security number and other details that can be used to commit identity theft. Remind children not to reveal too much information about themselves. Their date of birth, address, and SSN are all examples of personal information, and they shouldn't share them freely.

### **Tip #4: Beware of strangers**

Offline, you've probably already introduced the idea to your kids that all strangers can be potentially dangerous. Remind them this also applies to their online activities and strangers are on the internet. While teens may be more prone to advances from online predators, kids can be targeted, as well. It's

important to teach them at a young age to be cautious online and tell an adult if someone they don't know communicates with them or makes them uncomfortable.

### **Tip #5: Watch out for phishing**

You may be sophisticated enough to know not to click on a URL that's supposedly from your bank or a friend, but does everyone in your household know that? Teach your kids about phishing scams and warn them not to click on URLs in an email or social network message.

### **Tip #6: Choose strong passwords**

Passwords are the primary defense against hackers. Yet, many people reuse the same password for multiple accounts and use passwords that are easy to guess, because they're also easy to remember. Teach your kids to create a hack-proof password by selecting a combination of uppercase and lowercase letters, numbers, and symbols, and make sure it's at least 12 characters long. Never use common words, phrases, or personal information like a phone number or family members' names.

## **Internet safety tips for teens**

Some teens are often more tech savvy than their parents, but that doesn't mean they have a strong sense of judgment or have access to all of the tools that can help protect them online. Help keep your tweens and teens cyber safe by introducing them to the following internet safety tips.

### **Tip #7: Use a password management system**

Bolster your password protection with a password management program, which can remember unique passwords for all your accounts. Best of all, with a password manager, you only need to remember one password.

### **Tip #8: Keep your social media accounts secure**

There's a good chance someone in your house is on a social network. But social media can also attract cyber snoops and identity thieves. Keep a close eye on your social accounts. If someone messages you who hasn't done so in a while, be suspicious. Your friend's account may have been hacked. Parents should remind

teens to also never meet in person with someone they met online and tell an adult if a stranger is messaging them.

### **Tip #9: Be careful what you post**

It's important for children, teens, and family members to know how much information is too much information. In their excitement to share milestones, teens may sometimes post their personal information online. For example, a driver's license or a travel itinerary shared online could be valuable information for identity thieves or burglars. Also personal or inappropriate photos can attract online predators, or could affect future educational or employment opportunities.

### **Tip #10: Shop online only from secure sites**

Whether teens are allowed to shop online is up to their parents. Whether teens will listen is another story. Teach yours how to shop safely online by acquainting them with some indicators of a secure website. One of the best indicators is whether a site is running on HTTPS, which means the site has a security certificate that safeguards visitors' personal information by encrypting their data. You can verify if a site runs on HTTPS by double-checking the beginning of a URL in the address bar and also confirming if there's a padlock next to it.

### **Tip #11: Keep privacy settings on**

Web browsers, mobile operations systems, and social media channels all have settings in place to protect your privacy, and it's up to you to adjust them. Keeping them turned off means your information might be shared with marketers to help your browsing experience, but it also could be intercepted by hackers. Play it safe and keep your privacy settings on. Parents should adjust kids' devices accordingly and teach teens how to keep the settings on themselves.

## **Internet safety tips for parents**

There are some computer safety tools and best practices that your kids simply don't need to worry about. Parents, reference these housekeeping tips to ensure your home is cyber safe.

### **Tip #12: Understand privacy policies ...**

... and know that privacy policies may not be private. With more websites and applications collecting information and using it for advertising and marketing purposes, make sure your family knows the value of online privacy. Many apps have privacy policies that disclose that the apps collect and share their users' information. Kids and many adults often accept these policies without reading them. Even if your settings are set to private, remember nothing is private. Even the so-called private browser is not private. Law enforcement, website administrators, and hackers could have access to your so-called private information.

### **Tip #13: Backup data regularly**

A type of malware, ransomware is popular among cybercriminals who can lock your computer so you can't access your valuable files, like your private photos or tax information. One of the best ways to combat the threat of ransomware is to backup your data regularly. Backup your kids' devices, too, and teach your teens to do the same.

### **Tip #14: Keep your internet connection secure**

Almost every member of the family might access your internet connection, and each person may have devices also vying for your Wi-Fi's attention. It should come as no surprise that hackers also want to use your home Wi-Fi network. Cybercriminals can hack home routers and gain access to various internet-connected devices like home security systems and smart doorbells. Make sure your home Wi-Fi system has a hard-to-crack password and consider cybersecurity software that identifies "intruders" on your network.

### **Tip #15: Monitor online activities**

Monitoring your kids offline is enough stress. Thankfully, there's some cybersecurity tools to help you monitor their online activities. Install a cybersecurity software with parental controls on your kids' devices to block certain features on games, track kids' location, backup their data, and manage their screen time.

### **Tip #16: Install a comprehensive cybersecurity suite**

To help every family member from clicking on the wrong links and visiting the wrong sites, install a comprehensive cyber safety solution that provides protection for all your family members and their devices. Your smartphone and

tablet need as much protection as your computer and laptops. So do your thermostat, smart doorbell, home security system, and other internet-connected devices.

### **Tip #17: When in doubt, call support**

The best security software programs offer 24x7 support. If you have any suspicion you've been hacked, call for help. If you think your device is under malware, spyware, or ransomware attack, call for help. A good security suite will have experts to help you resolve your problem.

## **Internet safety tips for the whole family**

It takes a whole family to make a home more cyber safe. The following internet safety tips apply to everyone under your roof.

### **Tip #18: Be careful what you download**

There are more than 1.8 billion websites worldwide, and it's no secret that some of them have malicious intent. A malicious website is a site that attempts to install malware on your device, meaning anything that will disrupt computer operation, gather your personal information, or allow unauthorized access to your machine. This usually requires some action on your part, but there are also drive-by downloads, whereby a website will attempt to install software on your computer without asking for permission first. Downloading and running security software can help defend against these threats, but it's also worth knowing how to diagnose if your computer has malware so you can remove malware.

### **Tip #19: Close unused accounts**

Unused accounts can be a rich source of personal information for cybercriminals. Sometimes kids create an account with their first and last name or their birthday in the username.

Cybercriminals can patch these data points together and steal information from other sites that the individual uses. If you think you won't be revisiting the site, it's best to close the account.

### **Tip #20: Internet device updates**



Keep your machine's software updated to the latest versions to reduce risk of infection from ransomware and malware.

**Internet Service Resident Acknowledgement Form**

<b>RESIDENT (s):</b>	<b>LANDLORD:</b>	<b>UNIT ADDRESS:</b>
----------------------	------------------	----------------------

This form is an Addendum and is hereby incorporated and made a part of the Lease Contract and sets out the terms and conditions on which internet service is provided free of charge. By signing this Addendum, you acknowledge that your apartment is equipped with a device that provides internet service with WIFI broadcasted throughout the unit for your use and you have received and acknowledged the Resident Internet Education Information Manual from an onsite management team member.

The service provided includes internet speed of up to 150Mbps download/150 Mbps upload and may vary at peak times of the day. Should you wish to purchase your own internet service for your unit, you will need to contact the provider Skywire at 1-804-591-0500 or visit [www.vaskywire.com](http://www.vaskywire.com).

You further acknowledge that this service may not be uninterrupted, error-free, nor guarantee the security of the service and/or harmful applications your device may be exposed to.

Resident(s) must not use the service for any unlawful or inappropriate purposes. Management reserves the right to terminate this service without notice at any time.

Resident(s) agree to report any repairs or maintenance needed to this equipment directly to the internet service provider at 1-804-591-0500 or visit [www.vaskywire.com](http://www.vaskywire.com). If you cause damage to the equipment or remove the equipment from the dwelling, we will assess the cost and you must pay us for damages and/or the actual cost of replacement of the equipment device. If not previously paid, we will apply the cost against your security deposit and/or account statement upon move-out.

_____	_____	_____	_____
Resident Signature	Date	Resident Signature	Date
_____	_____	_____	_____
Resident Signature	Date	Resident Signature	Date
_____	_____	_____	_____
Resident Signature	Date	Resident Signature	Date
_____	_____		
Authorized Agent for Owner	Date		



## Internet Security Plan

All internet support, including issues, education, and security, will be handled by SkyWire 1-804-591-0500 or visit [www.vaskywire.com](http://www.vaskywire.com).

Support, Education, and Security Tasks handled by SkyWire are:

- Individualized SSID/ Password per unit.
- WIFI Password reset assistance.
- Wifi performance education, training, and channel tweaking.
- Reset Router Settings to factory default at each unit turn.
- Performance monitoring and assistance.
- Device connectivity issues.
- Access to certain services issues.
- Copyright issues such as downloading or sharing illegal content.

Below is a list of Security features that would come with the Skywire managed internet in each unit.

Network segregation / port isolation.

MAC based network authentication.

Customizable firewall security levels.

Intrusion detection and prevention.

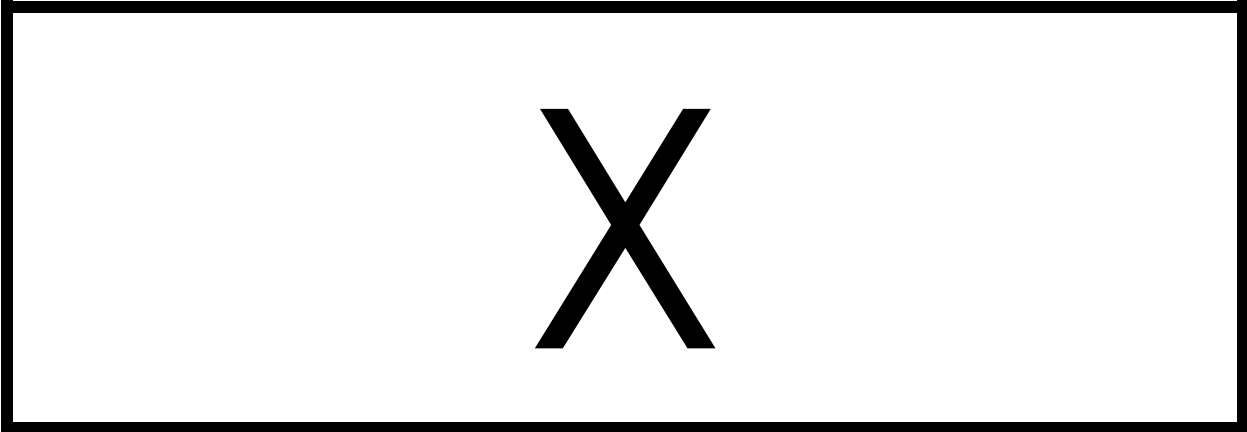
DeMilitarized Zone (DMZ).

Multilevel access policy.

Security and service segregation per SSID.

Parental control - device time and access control.

24/ 7 Network and Device Stability and Performance Monitoring.



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.