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Ord. No. 12-1(R)



BOARD OF SUPERVISORS  
COUNTY OF YORK  
YORKTOWN, VIRGINIA

Ordinance

At a regular meeting of the York County Board of Supervisors held in York Hall, Yorktown, Virginia, on the 21st day of February, 2012:

| <u>Present</u>                    | <u>Vote</u> |
|-----------------------------------|-------------|
| Thomas G. Shepperd, Jr., Chairman | Yea         |
| Sheila S. Noll, Vice Chairman     | Nay         |
| Walter C. Zaremba                 | Yea         |
| Donald E. Wiggins                 | Yea         |
| George S. Hrichak                 | Yea         |

On motion of Mr. Wiggins, which carried 4:1, the following resolution was adopted:

AN ORDINANCE TO APPROVE AN APPLICATION TO REZONE APPROXIMATELY 45.9 ACRES LOCATED AT 501 COMMONWEALTH DRIVE FROM ECONOMIC OPPORTUNITY TO PLANNED DEVELOPMENT MIXED USE

WHEREAS, Commonwealth Green, LLLP, has submitted Application No. PD-31-12, which is a request to amend the York County Zoning Map by reclassifying approximately 45.9 acres of land located at the end of Commonwealth Drive (Route 1839) on the east side of the York County-City of Newport News boundary, further identified as Assessor's Parcel Nos. 36-1-A (GPIN S02a-2195-3879), from Economic Opportunity (EO) to Planned Development Mixed Use (PDMU) for the purpose of developing a mixed-use development consisting of a maximum of 334 rental apartments, 94 townhouses, 16 "live-above" condominium or rental units, and a minimum of 40,610 square feet of commercial space; and

WHEREAS, said application has been forwarded to the York County Planning Commission in accordance with applicable procedure; and

WHEREAS, the Planning Commission recommends approval of this application; and

WHEREAS, the York County Board of Supervisors has conducted a duly advertised public hearing on this application; and

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WHEREAS, the Board has carefully considered the public comments and Planning Commission recommendation with respect to this application;

NOW, THEREFORE, BE IT ORDAINED by the York County Board of Supervisors this the 21st day of February, 2012, that Application No. PD-31-12 be, and it is hereby, approved to amend the York County Zoning Map by reclassifying approximately 45.9 acres of land located at the end of Commonwealth Drive (Route 1839) on the east side of the York County-City of Newport News boundary, further identified as Assessor's Parcel Nos. 36-1-A (GPIN S02a-2195-3879), from Economic Opportunity (EO) to Planned Development Mixed Use (PDMU) for the purpose of developing a mixed-use development consisting of a maximum of 334 rental apartments, 94 townhouses, 16 "live-above" condominium or rental units, and a minimum of 40,610 square feet of commercial space, subject to the following conditions:

I. General Layout, Design, and Density

- a) The development shall be designed and constructed in accordance with the provisions of 24.1-361.1, Planned Development Mixed Use district, except as modified herein.
- b) A site plan, prepared in accordance with the provisions of Article V of the Zoning Ordinance, shall be submitted to and approved by the Department of Environmental and Development Services, Division of Development and Compliance prior to the commencement of any land clearing or construction activities on the site. Except as modified herein, said site plan shall be in substantial conformance with the overall development master plan titled "Master Concept Plan of Commonwealth Green," prepared by Davis & Associates, P.C., dated October 25, 2011, and received by the York County Planning Division December 2, 2011, supplemented by the Narrative Description, Residential Design Guidelines, Sign Guidelines, and Building Materials Palette, with revisions through February 6, 2012, copies of which shall be kept on file in the office of the York County Planning Division.
- c) The maximum number of residential units shall be 444, including 334 rental apartments, 94 townhouses, and 16 "live-above" units. No accessory apartment, as defined by Sections 24.1-104 and 24.1-407 of the Zoning Ordinance, shall be permitted in conjunction with any residential unit in the development.
- d) The development shall include a minimum of 40,610 square feet of commercial/office/civic/institutional (i.e., non-residential) floor area.
- e) Architectural design of all buildings shall be in substantial conformance with the building elevations and "Building Materials Palette" submitted by

the applicant, copies of which shall be kept on file in the office of the York County Planning Division, and with the standards set forth in Zoning Ordinance Section 24.1-361.1(f), Planned Development Mixed Use district.

- f) Off-street and on-street parking for the rental apartment buildings shall be provided in accordance with the minimum numerical standards set forth in Section 24.1-606(a) of the Zoning Ordinance (1.5 spaces per unit plus one space for every 3 units for visitor parking). Any proposed deviation from this minimum standard shall be subject to approval by the Zoning Administrator following the submission of a site- and use-specific parking space analysis and plan in accordance with the provisions set forth in Section 24.1-604(b) of the Zoning Ordinance.

2. Signs

- a) Freestanding signage shall be limited to one development identification sign at each entrance to the project. Said signs shall be monument-style and shall not exceed forty (40) square feet in area and six feet (6') in height. Materials and colors shall be compatible with overall development architecture. In addition, the apartment component of the project may be identified by a monument-style community identification sign at each of its entrances from Commonwealth Drive with such signs not to exceed twenty-four (24) square feet and six (6) feet in height.
- b) In accordance with the Zoning Ordinance standards applicable to development in the LB (Limited Business) district, wall and marquee/canopy signs having a maximum cumulative area of 1.25 square feet for each linear foot of principal building width shall be permitted for the mixed-use and commercial buildings.

3. Streets and Roads

Subject to approval by the Virginia Department of Transportation (VDOT), the developer shall install a 200-foot southbound right-turn lane on George Washington Memorial Highway (Route 17) at the entrance to the project. All public road improvements shall be constructed in accordance with all applicable VDOT standards.

4. Fire and Life Safety

- a) In accordance with Section 503.1.1 of the 2009 International Fire Code, approved fire apparatus access roads shall be provided for every facility, building or portion of a building hereafter constructed or moved into or within the jurisdiction. The fire apparatus access road shall comply with

the requirements of this section and shall extend to within 150 feet of all portions of the facility and all portions of the exterior walls of the first story of the building as measured by an approved route around the exterior of the building or facility.

- b) The roundabout, sidewalks, inside and outside curbs, traffic islands, parking lot islands, etc. shall be designed to accommodate the turning radius (33' inside) of large fire and rescue apparatus.
- c) A water supply shall be established with a minimum of 2500 GPM (gallons per minute) in accordance with Newport News Waterworks requirements.

5. Open Space and Recreation

- a) A minimum of 10.16 acres of common open space shall be provided as depicted on the overall development master plan and in accordance with the provisions set forth in Section 24.1-361.1(g)(2) of the Zoning Ordinance.
- b) Indoor recreational amenities shall consist of, at a minimum, a 1,800-square foot town center with a kitchenette, dining area, exercise area, and restrooms. Said facility shall be available to all property owners and residents of the development and their guests and shall be completed and available to residents.

6. Utilities

The proposed gravity sanitary sewer system shall connect into the existing York County Manhole #039208 at the lowest invert possible. The sanitary sewer pipeline shall be designed with the minimum slope allowed in accordance with York County Standards.

7. Environment

- a) Prior to the approval of any site plans for this development, the developer shall submit a Natural Resources Inventory of the property prepared in accordance with Section 23.2-6 and evidence of all environmental permits.
- b) Any proposed disturbance of wetlands on the property shall require a permit from the U.S. Army Corps of Engineers and/or Virginia Department of Environmental Quality.

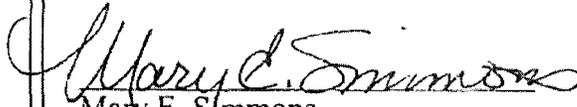
- c) Development of the property shall be in accordance with the provisions of the Watershed Management and Protection Area overlay district set forth in Section 24.1-376 of the Zoning Ordinance.

8. Proffered Conditions

The reclassification shall be subject to the conditions listed in the proffer statement titled "Commonwealth Green Proffers" dated October 25, 2011, and amended through February 21, 2012, and signed by Jeanette J. Keener and Thomas R. Tucker.

BE IT STILL FURTHER RESOLVED that in accordance with Section 24.1-114(e)(1) of the York County Zoning Ordinance, a certified copy of this ordinance, together with a duly signed copy of the proffer statement, shall be recorded at the expense of the applicant in the name of the property owner as grantor in the office of the Clerk of the Circuit Court prior to application for site plan approval.

A Copy Teste:

  
Mary E. Simmons  
Deputy Clerk

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## COMMONWEALTH GREEN

### Proffers

These Proffers are made this 25 day of October, 2011 and amended through the 21st day of February, 2012 by and among: Commonwealth Green, LLLP, a Virginia Limited Partnership) (to be indexed as Grantor); County of York, Virginia, a political subdivision of the Commonwealth of Virginia ("County") (to be indexed as Grantee).

#### Recitals:

R-1. Jeanette J. Keener, individually, and Jeanette J. Keener, as Trustee of the Charles F. Keener Trust, dated December 21, 1998, are the owners of record, hereinafter referred to as "Owner", of certain real property located in York County, Virginia, shown and depicted as "51.8557 Acres" (of which 45.76 acres are in the County of York) on the attached Exhibit Plat (hereinafter referred to as "Exhibit Plat") dated October 25, 2011, attached hereto and made part hereof.

R-2. First Financial Consulting Corporation is the Contract Purchaser (as defined in R-9 below) of the property mentioned above and has now assigned its interest in the purchase contract to Commonwealth Green, LLLP as shown on the attached Exhibit Plat.

R-3. Commonwealth Green, LLLP (hereinafter referred to as the "Applicant") has filed an application for Rezoning (hereinafter referred to as the "Application") of the property, and has consented to the Application as evidenced by their duly authorized signatures. The Application has been designated by the County as Case No. PD-31-12.

R-4. In the Application, Commonwealth Green, LLLP, in its capacity as the applicant and Contract Purchaser, has requested that the Zoning Classification of the property be changed from Zone EO, Economic Opportunity, to Zone PDMU, Planned Mixed Use Development (Minor), as described in Section 24.1-361.1 et seq. of the York County Zoning Ordinance in effect on the date hereof in order to permit the construction of a Planned Mixed Use Development, comprised of certain residential and non-residential developments. The Owner of the respective parcels comprising the property has consented to such change of zoning.

R-5. A conceptual plan of development entitled "Master Concept Plan - Commonwealth Green", dated October 25, 2011 and prepared by Davis & Associates, P.C. Surveyors & Planners (hereinafter referred to as the "Master Plan"), has been submitted to the York County Planning Commission for review in connection with the Application. The Master Plan is on file with the Office of the County Planning Division.

R-6. Plan renderings (hereinafter referred to as the "Plans") have been submitted to the York County Planning Division for review in connection with the Application. The Plans are on file in the Office of the County Planning Division.

R-7. A Community Impact Statement entitled "Commonwealth Green, Fiscal Impact on York County, Virginia", dated October 20, 2011, prepared by The Wessex Group, Ltd. has been submitted to the York County Planning Division for review by the County in connection with the Application. The Community Impact Statement is on file in the Office of the County Planning Division.

R-8. A Traffic Impact Analysis dated October 2011, and prepared by URS, Inc., has been submitted to the York County Planning Division for review in connection with the Application. The Traffic Impact Analysis is on file in the Office of the County Planning Division.

R-9. Commonwealth Green, LLLP and its collective successors and assigns' right to purchase the property, and any subsequent purchasers of any portion of the property are collectively referred to herein as "Contract Purchaser".

R-10. The provisions of the York County Zoning Ordinance may be deemed inadequate for protecting and enhancing orderly development of the property. Accordingly, the Owner and Contract Purchaser, in furtherance of the Application, desire to proffer certain conditions which are limited solely to those set forth herein in addition to the regulations provided for by the York County Zoning Ordinance for the protection and enhancement of the development of the property, in accordance with the provisions of Section 15.2-2296, et seq. of the Code of Virginia (1950), as amended (hereinafter referred to as the "Virginia Code") and Section 24.1-361 of the York County Zoning Ordinance.

R-11. The County constitutes a high-growth locality as defined by Section 15.2-2298 of the Virginia Code.

R-12. All capitalized terms used herein but not otherwise defined in these Proffers shall have the meaning ascribed hereto in the Residential Design Guidelines dated October 25, 2011 and amended through February 6, 2012.

Furthermore, for and in consideration of the approval by York County of the Application, and pursuant to the Virginia Code and Section 24.1-361 of the York County Zoning Ordinance, the Owner and Contract Purchaser hereby agree that if the Application is approved and the York County Board of Supervisors allows the rezoning of the property from EO, Economic Opportunity, to PDMU, Planned Mixed Use Development (Minor), then any subsequent development of the property shall be in conformance with the following Proffers:

#### **Proffers**

1. **Plan of Development.** The property shall be developed generally in accordance with the Master Plan and in substantial conformance with the Plans (hereinafter referred to as the "Project"). The Master Plan is a conceptual plan for the proposed development of the property and provides only for the general location of buildings, proposed streets, parking, drainage facilities, areas of open space and buffer areas. Any deviations from the Master Plan and/or the Plans shall be allowed only in accordance with the provisions of Section 24.1-361.1 of the York County Zoning Ordinance.
2. **Property Owners Association.** One or more Property Owners Associations and/or Townhome Unit Owners Associations shall be established pursuant to and in accordance with the Virginia Property Owners Association Act, Sec.55-79.508 et seq., of the Virginia Code or the Virginia Condominium Act, Sec. 55-79.39 et seq., of the Virginia Code, as applicable (hereinafter, each association shall be referred to as an "Owners Association"), in which all owners of Townhomes, the Apartment Site, and the Condominium Units within the Project shall be members of at least one of such Owners Association(s) by virtue of their property ownership. The articles of incorporation and bylaws of each such Owners Association and Declaration of Covenants enforceable by each Owners Association (collectively the "Governing Documents") shall be submitted to and reviewed by the York County Attorney for consistency with this Proffer and the requirements of Section 24.1-497 and Section 24.1-

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498 of the York County Zoning Ordinance prior to final Site Plan approval. Notwithstanding the forgoing, the Apartment Site shall not be required to establish an independent Owners Association.

3. **Exterior Building Materials.** The exterior facade of buildings constructed on the property shall be constructed of any of the following: brick, stone, cement-board siding, dryvit or the equivalent of the same. The foregoing notwithstanding, trim, soffit, balcony railings, and accent features of such buildings and related improvements may be composed of or contain vinyl, aluminum or other materials than those materials listed above.
4. **Interior Finishes.** Townhomes shall be constructed with a minimum of 9-foot ceilings on the main floor and 8-9-foot ceilings on the second floor and third floor. Ceiling heights of the apartments will be 9 feet on the third floor, and will be 8-9 feet on the first and second floors.
5. Intentionally left blank.
6. **Residential Units.** The residential portion of the Project shall be comprised of a maximum of three hundred eighty four (384) apartment units for rent (fifty or more of which will be in the City of Newport News) and a maximum of ninety four (94) townhomes for sale. In addition, there would be a total of up to sixteen (16) Condominium Units above the mixed-use buildings of which there will be three, or in the alternative, two buildings large enough to have sixteen (16) total units. In the event some or all Condominium Units cannot be sold, then the applicant would be able to rent the "live above" Condominium Units.
7. **Commercial Space.** The commercial portion of the Project shall be comprised of a minimum of 40,610 square feet of commercial space. Additional commercial space may be constructed provided it complies with the design requirements of the Minor PDMU Zoning.
8. **Sidewalks.** Sidewalks shall be provided within the boundaries of the property, in the locations shown on the Master Plan.
9. **Vehicular connections to the adjacent K-Mart Center Square shopping via Commonwealth Drive and U.S. Route 17 (George Washington Memorial Highway)** shall be provided in the locations shown on the Master Plan upon written approval by York County.
10. A pedestrian sidewalk shall be provided, extending from the Commonwealth Green development along Commonwealth Drive to the Regal Theatre area. The sidewalk shall be constructed in conjunction with the first extension of Commonwealth Drive.

### **Sequencing**

- a. **Sequencing,** as it has been traditionally used in a PDMU district, is different in this project due to the number of Residential Units to be built at one time. As to the Apartment Site, containing approximately 20.6 acres, the Apartment Site owner would be fully permitted to proceed with the proposed construction of the Class A Apartments based on its construction schedule and no phase or section would be subject to any sort of sequencing. In return for this accommodation, the Apartment Site owner will be constructing a clubhouse of approximately 5,000 square feet, a

two story maintenance building of approximately 1,800 square feet, and a pool. The clubhouse would be built facing Commonwealth Drive to contribute to the creation of a commercial hub near the entrance of the Project, and would be architecturally compatible with the commercial space. This clubhouse would be constructed before the 150<sup>th</sup> apartment Certificate of Occupancy is received. Although no credit is claimed for these accessory uses, if it were counted, the actual commercial square footage calculations will be greater than the Minor PDMU guidelines.

- b. The Applicant, at its sole expense, would construct Keener Drive, leading from Commonwealth Drive to George Washington Memorial Highway (U.S. Route 17), within 24 months of the issuance of the first Townhome or Apartment building permit. The construction of Keener Drive would also include the extension of a public waterline and a gravity sanitary sewer line. The new gravity sanitary sewer line extension would allow for future development of approximately 70 acres of commercial land, which is not currently served by a public sewer connection. The sanitary sewer extension by the Applicant would have a major positive economic impact on the York County tax base and future commercial development in this area.
- c. The Applicants' targeted construction schedule on Buildings # 19 & 20 (to include eight Condo Units that would be for-sale or for-rent) containing 7,400 square feet of commercial/retail space is anticipated to be completed prior to the 89<sup>th</sup> Apartment Unit receiving a Certificate of Occupancy. In the event the Townhomes are constructed first, then the benchmark event for Buildings #19 & 20 would be the issuance of the 34<sup>th</sup> Townhome unit Certificate of Occupancy. Notwithstanding the foregoing, if the commercial market generates sufficient demand for the Condo Units or commercial space than construction may begin any time before the above deadlines.
- d. The Applicant would commence construction of the mixed-use commercial/retail and Condo Unit building identified on the Master Plan as Building #18, containing 11,000 square feet of commercial/retail space for-sale, or for-rent, and eight (8) Condo Units for-sale or for-rent prior to the issuance of the 60<sup>th</sup> Townhome Certificate of Occupancy, or the 266<sup>th</sup> Apartment Unit Certificate of Occupancy, whichever occurs first.
- e. The Applicant would commence construction of a mixed-use building containing approximately 1,800 square feet and associated accessory uses which would include an open area, fountain, walkways, community meeting area, and picnic areas (hereinafter referred to as the "Town Center") prior to the issuance of 72<sup>nd</sup> Townhome Certificate of Occupancy or the 355<sup>th</sup> Apartment Unit Certificate of Occupancy, whichever occurs first. It is hereby proffered that the Town Center and the listed accessory uses and features will be available to all owners, occupants, and residents in the Project. The Town Center would be a multi-use building providing areas for uses such as meetings, social events, weddings and similar events. Prohibited uses not allowed by these Proffers would not be allowed within Town Center.
- f. Finally, in order to complete the required commercial space, the Applicant would commence construction of the last Building #17 consisting of 20,800 square feet within eighteen (18) months of completion of Building #18. If the previous three buildings have not achieved at least 50% occupancy, then the Applicant would be able to defer construction until such time as the market justifies the commencement of construction on Building # 17. However, it is agreed, that all

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buildings would be completed no later than two years from the issuance of the last Certificate of Occupancy of the 444<sup>th</sup> Residential Unit regardless of market conditions.

- g. Notwithstanding anything in the foregoing to the contrary, it is agreed that the failure to (i) construct or complete any improvements; or (ii) satisfy any requirement; set forth in Subsections a, b, c, d, e, and f above with regard to any portion of Commonwealth Green (other than the Apartment Site), shall not prevent, preclude or delay the issuance of any building permit or Certificate of Occupancy for the Apartment Site; it being agreed that building permits and Certificates of Occupancy for the Apartment Site shall not be delayed, withheld, or conditioned on the construction or completion of any improvements on any other portions of Commonwealth Green.

**Amenities:** The following amenities will be constructed as a part of the overall development.

- a. Walking Trails and Nature Preserve Conservation Area
- b. Town Center mixed-use building and associated accessory uses.
- c. Concrete Paver Crosswalks as depicted on the Master Plan
- d. Bike Paths, Emergency Access Lanes on Commonwealth Drive extending to the easterly side of the property.
- e. Sidewalks – public areas
- f. Streetscape Lighting, both public and private areas
- g. Minimum of two (2) aerated pond fountains

**Prohibited Uses:** Commercial uses within the Project shall be as specified in Section 24.1-361.1 (c) (1) of the York County Zoning Ordinance which are effective at the time of the Project's approval. In addition, the following commercial uses shall not be allowed in the Project:

- a.. Flea Market
- b. Church
- c. Animal Hospital with outside runs
- d. Indoor Theater
- e. Health Club with Outdoor Facility (Notwithstanding the fitness facility and other amenities in the Apartment Site clubhouse.)
- f. Video Arcade/Pool Hall/Bingo
- g. Indoor Firing Range
- h. Outdoor Commercial Amusement
- i. Auction House
- j. Funeral Home
- k. Pawn Shop/Tattoo Parlor/Fortune Teller
- l. Night Club
- m. Commercial Reception Hall

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- n. Gas/Service Station
- o. Helipad
- p. Tourist Homes
- q. Bus Terminal
- r. Taxi/Limousine Service
- s. Towing Service/Auto Storage
- t. Bulk Warehousing
- u. Truck Distribution Centers
- v. Plant Nursery
- w. Correctional Facility
- x. Bowling Alley
- y. Skating Rink
- z. Golf Driving Range
- aa. Grocery Store
- bb. Boat Sales
- cc. Recycling Plant
- dd. Reclamation of Borrow Pits

10. Successors and Assigns. These Proffers shall run with the title to the property and shall be binding on the parties hereto and their respective successors and assigns; provided, however once a party ceases to own any all or any portion of the property, such party shall have no personal liability hereunder.
11. Severability. In the event that any clause, sentence, paragraph, subparagraph, section or subsection of these Proffers shall be judged by any court of competent jurisdiction to be invalid or unenforceable for any reason, including a declaration that it is contrary to the Constitution of the Commonwealth of Virginia or the United States, or if the application thereof to any owner of any portion of the property or to any government agency is held invalid, such judgment or holding shall be confined to its operation to the clause, sentence, paragraph, subparagraph, section or subsection hereof, or the specific application thereof directly involved in the controversy in which the judgment or holding shall have been rendered or made, and shall not in any way affect the validity of any other clause, sentence, paragraph, subparagraph, section, subsection or provision hereof.
12. Headings. All paragraph and subparagraph headings of the Proffers herein are for convenience only and are not a part of these Proffers.
13. Conflicts. In the event that there is any conflict between these Proffers and the York County Zoning Ordinance, the conflict shall be resolved by the York County Zoning Administrator subject to the appeal process to the Board of Zoning Appeals and the Courts as otherwise provided by law.
14. Void if Application not approved. In the event that the Applicatio" is not approved by York County, these Proffers, the Master Plan, the Plans, and the Project shall be null and void.

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*Signatures Continue on Following Pages.*

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Jeanette J. Keener  
Jeanette J. Keener

6-5-12  
Date

Jeanette J. Keener Trustee  
Jeanette J. Keener, Trustee  
for Charles F. Keener Trust

6-5-12  
Date

Jeanette J. Keener Trustee  
Jeanette J. Keener, Trustee  
for Family Trust Created under the Charles F. Keener Trust

6-5-12  
Date

Jeanette J. Keener Manager  
Jeanette J. Keener,  
It's Manager JLK, LLC

6-5-12  
Date

Thomas R. Tucker  
Thomas R. Tucker  
President First Financial Consulting Corporation

6-5-12  
Date

Thomas R. Tucker  
Thomas R. Tucker  
Manager Commonwealth Green, LLLP

6-5-12  
Date

VIRGINIA: In the Clerk's Office of the York County -  
Pocahontas Circuit Court, the 15<sup>th</sup> day of  
August, 20 12. This deed was  
presented with the certificate annexed and admitted  
to record at 1:51 o'clock P.M.

Teste: LYNN S. MENDIBUR, CLERK  
By: Shari Brogden D.C.