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AMENDED AND RESTATED DECLARATION

OF

PROTECTIVE COVENANTS, CONDITIONS,

RESTRICTIONS AND EASEMENTS

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TABLE OF CONTENTS

	Page
ARTICLE I GENERAL PROVISIONS	2
Section 1.1 Establishment of Covenants.....	2
Section 1.2 Purpose of Declaration.....	2
Section 1.3 Definitions	2
ARTICLE II PROPERTY SUBJECT TO THIS DECLARATION	5
Section 2.1 Property.....	5
Section 2.2 Right to Subject Additional Property to Declaration.....	6
Section 2.3 Supplemental Declarations	6
Section 2.4 Development of Additional Property.....	6
Section 2.5 Withdrawal.....	6
Section 2.6 Exceptions.....	6
Section 2.7 Enforcement.....	7
ARTICLE III OWNERS ASSOCIATION	8
Section 3.1 Formation of Association.....	8
Section 3.2 Membership	8
Section 3.3 Creation of Board of Directors	8
Section 3.4 Voting Rights and Election of Directors.....	8
Section 3.5 Responsibilities of the Association.....	8
ARTICLE IV ARCHITECTURAL REVIEW COMMITTEE AND DESIGN GUIDELINES.....	8
Section 4.1 Duration of Appointment Rights	9
Section 4.2 Architectural Review Committee Review and Control	9
Section 4.3 Plan Approval Required.....	9
Section 4.4 Exemption From Plan Approval	9
Section 4.5 Submission of Plans.....	9
Section 4.6 Plans Submission	9
Section 4.7 Requirements	9
Section 4.8 Review Standards	10
Section 4.9 Time for Approval	10
Section 4.10 Disapproval.....	10
Section 4.11 Period Approval Effective	10

TABLE OF CONTENTS
(continued)

		Page
Section 4.12	Limitation of Liability	10
Section 4.13	Plan of Development Approval - Rezoning.....	10
ARTICLE V COMMON AREAS		11
Section 5.1	Dedication of Common Area.....	11
Section 5.2	Obligations of the Association.....	11
Section 5.3	Limited Common Area	11
Section 5.4	General Limitations on Owners' Rights	12
Section 5.5	Delegation of Use	13
Section 5.6	Damage or Destruction of Common Area or Limited Common Area by Owner.....	13
Section 5.7	Rights in Common Area and Limited Common Area.....	13
Section 5.8	Title to Common Area and Limited Common Area.....	14
Section 5.9	Reservation of Rights Regarding Common Area and Limited Common Area.....	14
ARTICLE VI ASSESSMENTS.....		14
Section 6.1	Imposition; Personal Obligation; Lien.....	14
Section 6.2	Purpose of Assessments.....	15
Section 6.3	Assessments for Parking Garages and Surface Parking Areas (collectively "Parking Areas") within Summit Pointe.....	15
Section 6.4	Annual Assessments.	16
Section 6.5	Special Assessments	18
Section 6.6	Subordination of Lien to Mortgages.....	18
Section 6.7	Exempt Property	18
ARTICLE VII	18	
USE OF PROPERTY		18
Section 7.1	Use of Property	19
Section 7.2	Permitted and Prohibited Uses.....	19
Section 7.3	Rules and Regulations	19
Section 7.4	Prohibited Effects	19
Section 7.5	Site Maintenance.....	19
Section 7.6	Temporary Improvements.....	20
Section 7.7	Failure to Comply	20

TABLE OF CONTENTS
(continued)

	Page
Section 7.8 Completion of Construction.....	20
Section 7.9 Excavation	20
Section 7.10 Storage and Loading Areas.....	20
ARTICLE VIII EASEMENTS AND OTHER RESTRICTIONS	20
Section 8.1 Reserved Easements	20
Section 8.2 Easements to Serve Additional Portion(s) of the Property	21
ARTICLE IX GENERAL PROVISIONS	21
Section 9.1 Duration	21
Section 9.2 Amendments	22
Section 9.3 Enforcement.....	22
Section 9.4 Severability	22
Section 9.5 Conflict	22
Section 9.6 Interpretation.....	22
Section 9.7 Approvals and Consents	22
Section 9.8 Assignment of Declarant’s Rights	23
Section 9.9 Successors and Assigns	23
Section 9.10 Compliance with Property Owners’ Association Act.....	23
Section 9.11 Variance	23
Section 9.12 Constructive Notice and Acceptance.....	23
ARTICLE X DISSOLUTION OF THE ASSOCIATION.....	23
ARTICLE XI NOTICES	23

**AMENDED AND RESTATED DECLARATION OF
PROTECTIVE COVENANTS, CONDITIONS,
RESTRICTIONS AND EASEMENTS**

THIS AMENDED AND RESTATED DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS (this “Declaration”) is made this 31st day of January, 2020, by **SUMMIT POINTE BLOCK 1, LLC**, a Virginia limited liability company, **SUMMIT POINTE BLOCK 2, LLC**, a Virginia limited liability company, **SUMMIT POINTE BLOCK 3, LLC**, a Virginia limited liability company, **SUMMIT POINTE BLOCK 4, LLC**, a Virginia limited liability company, **SUMMIT POINTE BLOCK 5, LLC**, a Virginia limited liability company, **SUMMIT POINTE GARAGE I, LLC**, a Virginia limited liability company, **DOLLAR TREE, INC.**, a Virginia corporation, **DOLLAR TREE DISTRIBUTION, INC.**, a Virginia corporation, **DOLLAR TREE PROPERTIES, INC.**, a Virginia corporation, and **SUMMIT POINTE PROPERTIES, LLC**, a Virginia limited liability company, as “Declarant” (and all of the foregoing are collectively and individually referred to herein as GRANTOR(S) and GRANTEE(S) and shall be GRANTOR(S) and GRANTEE(S) for indexing purposes).

RECITALS

A. Grantors are the owners of certain parcels of real property and improvements thereon located at 500 Volvo Parkway in the City of Chesapeake, Virginia, and identified as APN Nos. 0280000001280, 0280000001290, 0280000001300, 0280000001301, 0280000001302, 0280000001303, 0280000001304 and 0280000001305 as more particularly described on **Exhibit A** attached to this Declaration (together the “Property”).

B. Whereas **DOLLAR TREE PROPERTIES, INC.** now desires to submit its property to the covenants, conditions, restrictions, and easements contained herein despite not having done so previously.

C. This Declaration amends and restates that certain Declaration of Protective Covenants, Conditions, Restrictions and Easements dated May 25, 2017 recorded in the Clerk’s Office of the Circuit Court of the City of Chesapeake, Virginia on May 30, 2017 in Deed Book 9792 at page 1135 (the “Original Declaration”) and the respective rights, obligations and responsibilities of Dollar Tree Distribution, Inc. and Dollar Tree, Inc. as set out in the Original Declaration are hereby extinguished and superseded with the respective rights, obligations and responsibilities of Summit Pointe Properties, LLC as the sole Declarant as set forth herein.

D. It is the intent and desire of the Grantors to subject the Property to the construction, maintenance and operation as a mixed-use development, to be known hereafter as Summit Pointe, and to that end to subject the Property to the covenants, restrictions, easements and other terms of this Declaration.

E. Dollar Tree, Inc. wholly owns Declarant and joins herein with respect to certain rights granted to it in the PUD Approval regarding the development of the Property.

NOW, THEREFORE, Declarant declares that the Property (and any Additional Property that may be brought under the scope of this Declaration from time to time pursuant to Article II hereof), is and shall be held, sold, transferred, conveyed and occupied subject to the restrictions, covenants, easements and conditions hereafter set forth, which shall run with the land and be binding upon all Owner(s) of the Property, and their heirs, successors and assigns, and upon all other parties, heirs, successors and assigns having any right, title or interest in all or any part of the Property.

ARTICLE I **GENERAL PROVISIONS**

Section 1.1 Establishment of Covenants. Declarant executes this Declaration in order to amend and restate the Declaration in its entirety, except as otherwise expressly set forth in this Declaration.

Section 1.2 Purpose of Declaration. The general purpose of this Declaration is to insure that the Property, and any additional land as shall be added thereto, as provided herein, which together is and shall be known as "Summit Pointe", will be developed, improved and used in such a manner that:

(a) Improvements (as defined below) located therein will provide a harmonious and appealing appearance and function;

(b) Land uses and functions therein will be compatible and complimentary to a high-quality urban mixed use development with such uses that are consistent with the master plan of Declarant and with the standards established by Declarant's predecessors in interest, as permitted by applicable zoning classifications; and

The specific purpose of this Declaration is to provide for creating, maintaining, controlling and preserving the Property (and additions thereto) as a high-quality urban mixed use development and with such other uses as are consistent with the master plan of Declarant and with standards established prior hereto by Declarant's predecessors in interest, and as permitted by applicable zoning classifications.

Section 1.3 Definitions.

"Additional Property": the meaning set forth in Section 2.1 of this Declaration.

"Additional Property Submission": the meaning set forth in Section 2.2 of this Declaration.

"Annual Assessment": the General Assessments and any Limited Common Expense Assessments.

“Design Guidelines”: guidelines and standards approved on August 4, 2016, as required by the September 17, 2013, Chesapeake City Council Dollar Tree PUD Approval, as amended.

“Architectural Review Committee”: the Committee established for the purpose of reviewing and approving or disapproving plans submitted by Owners for construction of Improvements in accordance with the Design Guidelines and the Urban Mixed-Use Plan.

“Articles of Incorporation”: the Articles of Incorporation of Summit Pointe Owners’ Association, Inc., as the same may be amended from time to time.

“Association”: The Summit Pointe Owners’ Association, Inc. created pursuant to this Declaration.

“Board of Directors”: the Board of Directors of the Association.

“Bylaws”: the Bylaws of the Association as the same may be amended from time to time.

“City”: the City of Chesapeake, Virginia.

“Clerk’s Office”: the Clerk’s Office of the Circuit Court of the City of Chesapeake, Virginia.

“Common Area”: the real property, easements, improvements and facilities within the Property now or hereafter owned by the Association or for which the Association has easement rights thereon which are intended to be devoted to the common use and enjoyment of the Owners and are designated as “*Common Area*” on exhibits available in the Association's offices. The Common Areas may include streets, parking areas, walkways, sidewalks, landscaped areas, entrance signs, entry features, landscaping easements, service drives, alleys, certain fencing, medians located within or adjacent to streets within the Property, certain open space areas, certain landscape buffer areas, one or more storm water retention ponds or “BMP’s”, areas set aside for pedestrian paths and other passive and active recreational facilities intended to be used by the Owners and shall include those areas designated as “*private utility easement*”, “*private drainage easement*” and “*private ingress/egress easement*” on recorded plats of the Property. Also, certain Parcels may include open space areas, easements and facilities which are intended to be maintained privately by private ownership and which will not be designated as Common Area and will not be maintained by the Association unless specifically accepted by the Association following a vote of the Association's Board of Directors. Parking Garage 1 and Exempt Parcels as specified in Section 4.4 hereof shall not be included as or defined as Common Area.

“Declarant”: Summit Pointe Properties, LLC.

“Dollar Tree”: Dollar Tree, Inc., the parent company of Declarant, and its successors, assign and affiliates.

“Environmental Laws”: all federal, state and local statutes, regulations, ordinances, or other rules intended to protect the public health and welfare as related to land, water,

groundwater, air or other aspects of the natural environment, including without limitation, those regulating the use, generation, storage or disposal of Hazardous Materials.

“General Assessments”: the meaning set forth in Section 6.3 of this Declaration.

“Governing Documents”: the Articles of Incorporation, the Bylaws, this Declaration, and any Supplemental Declaration, as the same may be amended or supplemented from time to time.

“Hazardous Materials”: hazardous substances, toxic wastes and other environmental contaminants.

“Improvement”: any building, outbuilding, loading area, slope alteration, addition, porch, patio, stair, deck, windbreak, fence, wall, screening wall, retaining wall, road, driveway, parking area, parking garage, antenna, satellite dish, solar panel, plantings of any kind, fountain, awning, flower box, statue, outdoor ornamentation, exterior lighting, sign, pole, flag pole, mailbox or mailbox support, underground installations, utilities, water lines, sewer lines, electrical lines, gas distribution lines and facilities, and all other structures or landscaping Improvements of every type and kind.

“Limited Common Area”: a portion of the Common Area designated by Declarant pursuant to Section 5.3 hereof for the exclusive use of one or more but less than all of the Owners.

“Limited Common Area Expenses”: the meaning set forth in Section 6.3(b) of this Declaration.

“Limited Common Area Expense Assessment”: the meaning set forth in Section 6.3(b) of this Declaration.

“Member”: every Person who holds membership in the Association.

“Occupant”: any person, corporation, partnership or organization who or which has purchased, leased, rented or is otherwise legally entitled to occupy and use any Parcel or part thereof.

“Owner”: the record owner, whether one or more Persons, of fee simple title to any Parcel. An Owner includes a seller, but does not include a Person having an interest in a Parcel merely as security for the performance of an obligation. In the event any Parcel is subjected to a condominium regime, the Condominium Owners’ Association shall be the Owner with respect to such Parcel.

“Parcel”: any parcel or plot of land designated for separate ownership or occupancy including within the Property. The term “Parcel” shall not include any Common Area, Limited Common Area, public streets or property dedicated to and accepted by a public authority, nor any portion of the Property which at the time in question is not created by a recorded subdivision plat.

“Parking Garage 1”: the six (6) story, approximate 1,500 space parking garage located on the Property and owned by Summit Pointe Garage I, LLC.

“Person”: any natural person, corporation, limited liability company, joint venture, partnership, association, joint stock company, trust, unincorporated organization or government or any agency or subdivision thereof or any other separate legal entity.

“Property”: the Property as described in Exhibit A together with any Additional Property that may be subjected to this Declaration by any Person pursuant to Article II hereof.

“PUD Approval”: collectively the Planned Unit Development (PUD) approved by the City Council on September 17, 2013, as amended, and the PUD Urban Design Guidelines, as such may be amended from time to time.

“Summit Pointe Properties, LLC”: Summit Pointe Properties, LLC, the Declarant and the parent company of Summit Pointe Block 1, LLC, Summit Pointe Block 2, LLC, Summit Pointe Block 3, LLC, Summit Pointe Block, 4, LLC, Summit Pointe Block 5, LLC, and Summit Pointe Garage I, LLC

“Urban Mixed-Use Plan”: the development and operation of the Property as a mixed-use development such that the development of the Property is uniform, united and complementary in appearance, character and quality in accordance with the vision of Declarant and in compliance with the PUD Approval.

“Virginia Code”: the Code of Virginia (1950), as in effect on the first date of recordation of this Declaration and as amended from time to time thereafter. Except as otherwise expressly permitted herein, if any sections of the Virginia Code referred to in this Declaration are hereafter repealed or recodified, each reference shall be deemed to apply to the section of the Virginia Code that is the successor to the previous section referred to herein, or, if there is no successor section, such reference shall be interpreted as if the section had not been repealed.

“Zoning Ordinance” shall mean the zoning ordinances adopted by the Chesapeake City Council as may hereafter be amended, including all proffered conditions incorporated therein, pursuant to which the Property was rezoned, together with all other zoning ordinances, rules and regulations applicable to the Property.

ARTICLE II **PROPERTY SUBJECT TO THIS DECLARATION**

Section 2.1 Property. The Property is hereby subjected to this Declaration, except to the extent expressly excluded, exempted, or limited in application by provisions in the PUD Approval including but not limited to Sections 1.4.3, 2.3.2, and 12.2 of the PUD Approval as of the date of its recordation in the Clerk’s Office. Declarant shall have the right to add to the scope of this Declaration (a) other property contiguous to the Property but not part of it, (b) other property with a reasonable relationship to the Property, and/or (c) other property located within two (2) miles of the Property (the “Additional Property”). Accordingly, Declarant hereby declares that the Property shall hereafter be held, transferred, sold, leased, conveyed and occupied subject to the covenants herein set forth, each and all of which is for, and shall inure to the benefit of and pass with, each and every parcel of the Property, and shall apply to and bind the heirs, assignees and successors in interest of any owner thereof.

Section 2.2 Right to Subject Additional Property to Declaration. Declarant reserves the right, at its discretion, for a twenty-five (25) year period beginning on the date this Amended and Restated Declaration is recorded in the Clerk's Office, to subject Additional Property (together with any improvements and any easements or rights that benefit it), to the provisions of this Declaration by recording in the Clerk's Office an appropriate document (each, an "Additional Property Submission") that describes the Additional Property to be subjected to this Declaration. If a Person other than Declarant or one of its affiliates owns title to the Additional Property that will be subjected to this Declaration, then such Person shall join in and execute the Additional Property Submission along with Declarant. Each Additional Property Submission may add, delete and/or modify provisions of this Declaration that Declarant desires to reflect differences in the Additional Property.

Section 2.3 Supplemental Declarations. Declarant may, in its discretion, execute and record one or more supplemental declarations (each a "Supplemental Declaration") for the purpose of establishing certain additional or different covenants, easements and restrictions (including without limitation a different level of assessments) applicable to certain specified Parcels.

Section 2.4 Development of Additional Property. The portion(s) of the Additional Property subjected to the provisions of this Declaration may contain additional Common Area, Limited Common Area and facilities to be owned and/or maintained by the Association.

Section 2.5 Withdrawal. Declarant shall have the right, in its sole discretion, to remove portions of the Property, any Additional Property, or portions thereof, from the operation of this Declaration by recording an appropriate document in the Clerk's Office with the written consent of at least two-thirds (2/3) of all of the Owners of the Property subject to this Declaration. However, any property removed or desiring to be removed must be developed in accordance with the PUD Approval unless modified by Chesapeake City Council as to the removed parcel.

Section 2.6 Exceptions.

(a) General. The Declarant reserves the right to grant exceptions to any of the provisions contained in this Declaration, however, any exception must comply with the criteria in the PUD Approval. Such exceptions shall be granted by the Declarant only when, in its sole opinion, the exception will not violate the general intent or purpose of this Declaration. Every exception granted by the Declarant shall be made in writing in recordable form, and shall be recorded in the office of the Association. The granting of any exception with respect to any Parcel or part thereof shall not be deemed an amendment of this Declaration except to the extent specifically set forth in such exception, shall not entitle any Owner or Occupant to similar rights or privileges, and shall create no negative reciprocal easements in favor of any other party.

(b) PUD Modification, Rezoning or Conditional Use Permit hereinafter "Rezoning". Any Owner who desires a Rezoning of all or a portion of a Parcel subject to this Declaration, may do so in accordance with the provisions of this Section 2.6(b), as long as such Rezoning is consistent with the general intent of the Declaration, as determined by the Declarant as set forth below. Any Owner desiring such a Rezoning shall first submit four (4) complete copies of its Rezoning application (including any proffered conditions) to the Declarant, in writing, for approval by the Declarant prior to submitting the Rezoning application to the City. The Declarant

shall review the Rezoning application within thirty (30) days after receipt of the Rezoning application and request for review. The approval by the Declarant shall be based upon the review standards set forth in Section 4.8 herein. If the Declarant fails to approve or to disapprove such Rezoning application specifying in writing the reason for disapproval, within such thirty (30) day period, the Owner may submit a second request for approval to the Declarant, and if the Rezoning application has not been approved or disapproved specifying in writing the reasons for disapproval, within thirty (30) days after the second notice has been received by the Declarant, the Rezoning application will be deemed approved by the Declarant. If the Declarant approves the Rezoning application, the Owner may submit the Rezoning application to the City for approval, provided, however, that any material modification, amendment to or conditions to the Rezoning application must be approved by the Declarant in the manner set forth in this Section 2.6(c). At the request of the Owner, the Declarant shall provide a written certificate, in recordable form, confirming approval by the Declarant of the Rezoning application, provided that such certificate will not be given unless and until the Rezoning application has first been approved by the City without material modification or amendment.

Section 2.7 Enforcement.

(a) Declarant's Right to Cure Violations. In the event any Owner or Occupant of a Parcel or part thereof violates any of the provisions hereof and fails to cure same within thirty (30) days (or such shorter time as may be provided elsewhere herein as to specific matters) after the receipt of written notice from Declarant to do so, then Declarant hereby expressly reserves the right, privilege and license to enter upon the Site and take any action to cure such violation, and all reasonable costs thereof shall be at the expense of the Owner. If the cost of so doing is not paid within ten (10) days after written notice to the Owner of the amount, it shall become a lien upon the Site and be enforceable as provided herein. In addition, Declarant may pursue any other legal remedies available to it to enforce the covenants and restrictions set forth herein.

(b) Attorney's Fees. In any legal or equitable proceeding for the enforcement of, or to remedy the violation of these covenants or any provision hereof, the losing party or parties shall pay the reasonable attorney's fees of the prevailing party, or parties, in such amount as may be fixed by the court in such proceeding. Such fees shall become a lien against the Parcel owned by the losing party and be enforceable as provided herein. All remedies provided herein and/or otherwise available, at law or in equity, shall be cumulative and not exclusive.

(c) Inspection. Declarant may from time to time during normal business hours, enter upon and inspect any property or Improvements subject to these restrictions to ascertain compliance therewith.

(d) By Whom Enforceable. These covenants may be enforced by the Declarant, but Declarant shall have no obligation to do so, or be liable to any one in the event of their failure so to do.

(e) Specific Enforcement. All provisions of these covenants shall be specifically enforced by any court of competent jurisdiction upon petition by any party entitled to enforce them as herein provided.

(f) Failure to Enforce Not a Waiver of Rights. The failure of Declarant to enforce any covenants herein contained shall in no event be deemed to be a waiver of the right to do so thereafter, nor a waiver of the right to enforce any other provision of this Declaration.

ARTICLE III **OWNERS ASSOCIATION**

Section 3.1 Formation of Association. The Association to be formed will own and/or have easement rights in the manner set forth in the Section 5.1 herein, operate, maintain and manage the Common Area and the Limited Common Area for the following purposes: to enforce the covenants, conditions and restrictions as more particularly set forth in this Declaration and in the Governing Documents; to ensure the maintenance of the Urban Mixed-Use Plan for the benefit of all Owners; to administer billing, payment and collection of the Annual Assessments and for such other purposes as set forth in this Declaration and the Governing Documents. The Association shall include within its organizational documents such provisions as required by Section 13-1803 of the City Zoning Ordinance.

Section 3.2 Membership Rights. Every Owner of a Parcel shall be a Member of the Association. Membership is appurtenant to and cannot be separated from ownership of a Parcel. Upon the recordation in the Clerk's Office of a deed to a Parcel, the membership of the selling Owner shall cease and the purchasing Owner shall become a Member of the Association. In the event any Parcel is subjected to a condominium regime, the Condominium Owner's Association shall be the Member with respect to such parcel. Residential and commercial tenants shall not be eligible for membership. Membership rights and obligations shall only apply to a lienholder, mortgagee or trustee in the event of default by their respective Owners and transfer of their respective Owner's fee simple interests in the Owner's parcel to the lienholder, mortgagee, or trustee.

Section 3.3 Creation of Board of Directors. The Association is governed by a board of directors consisting of members in the number required by the By-Laws of the Association, as properly amended from time to time. The Board of Directors shall be elected in accordance with the By-Laws of the Association as currently in effect, or as properly amended from time to time. Declarant shall appoint the initial members of the Board of Directors.

Section 3.4 Voting Rights and Election of Directors. Each member of the Association shall be entitled to one vote for each acre of land, or fraction of an acre equal to one-half acre or more, in the election of directors, and in all other matters on which the members are entitled to act and vote. Directors shall be elected to serve for three (3) year terms.

Section 3.5 Responsibilities of the Association. The Association shall be responsible for, *inter alia*, regulating and enforcing the minimum development and operational standards for each Parcel, including but not limited to the maintenance of individual Parcels. Additionally, the Association shall maintain all common areas, open space areas, and private streets, as required by Section 5.2 of the PUD Approval.

ARTICLE IV **ARCHITECTURAL REVIEW COMMITTEE AND DESIGN GUIDELINES**

Section 4.1 Duration of Appointment Rights. Declarant shall, for so long as Declarant owns any Parcel(s) within the Property or has the right to add Additional Property to the Property, retain the right to appoint the members of the Architectural Review Committee.

Section 4.2 Architectural Review Committee Review and Control. The Architectural Review Committee shall have and perform such review and control rights as set forth in Section 12 of the PUD Approval.

Section 4.3 Plan Approval Required. No Improvement shall be constructed, erected, used, placed, altered, repainted a different color, added to, maintained or permitted to remain on a Parcel and no Open Space or Common Area on a particular parcel of land shall be approved, constructed or altered in any way until the plans required under Section 12.2 of the PUD Approval have been submitted to and approved in writing by the Architectural Review Committee as provided in this Article and Section 12 of the PUD Approval. Approval by the Architectural Review Committee shall not eliminate the need for such Owner to obtain any required approvals or permits from the City for such Improvement. Each Owner is responsible for ensuring that the development of its Parcel complies with the PUD Approval and any and all other applicable City standards, ordinances, and laws.

Section 4.4 Exemption From Plan Approval. The approval requirements contained in this Section IV shall not apply to any portion of the Property that comprises the Corporate Office Lot or the Distribution Center Lot as specified in the PUD Approval, and specifically in Sections 1.4.3, 2.3.2, and 12.2 of the PUD Approval (an "Exempt Parcel").

Section 4.5 Submission of Plans. Any Owner, except those that own an Exempt Parcel, must prepare and submit to the Architectural Review Committee preliminary and final plans as required by Section 12 of the PUD Approval. All such plans shall be reviewed based on conformance with the Design Guidelines and the Urban Mixed Use Plan, as those documents may be modified from time to time.

Section 4.6 Plans Submission. Before commencing the construction or alteration of any Improvements, landscaping or any other structures on or to any Parcel or part thereof, the Owner of every such Parcel or part thereof shall first submit four (4) sets of plans, specifications, and landscape plans to the Architectural Review Committee for its written approval, as hereinafter provided. One such copy of said plans, specifications, and landscape plans will become the sole property of the Architectural Review Committee.

Section 4.7 Requirements. No Improvements shall be erected, placed or altered on any Parcel or part thereof until plans and specifications showing plot layout and all exterior elevations, with materials and colors therefore and structural design, signs and landscaping, shall have been submitted to and approved in writing by the Architectural Review Committee. Such plans and specifications shall be submitted in writing over the signature of the Owner of the Parcel or part thereof, or his or its authorized agent, and shall be accompanied by the request of such Owner or agent specifying for which part of such plans and specifications approval is sought. Nothing herein shall be construed to require the submission of plans for the alternation of the interior of an existing building, or approval thereof, unless any planned interior alteration will substantially change the primary use of the Improvements.

Section 4.8 Review Standards. Approval shall be based, among other things, on adequacy of Parcel dimensions; storm drainage considerations; conformity and harmony of external design with neighboring structures, Improvements, operations and uses; relation of topography, grade and finished ground elevation of the Parcel being improved to that of neighboring Parcels; proper facing of main elevation with respect to nearby streets; the Design Guidelines; the PUD requirements; the Urban Mixed-Use Plan; and general conformity of the plans and specifications to the use, purpose and intent of these covenants.

Section 4.9 Time for Approval. If the Architectural Review Committee fails either to approve or to disapprove such plans and specifications within sixty (60) days after the same have been submitted in writing to it, the approval required by this Section shall no longer be required for such plans and specifications.

Section 4.10 Disapproval. Whenever the Architectural Review Committee disapproves such plans and specifications, the disapproval shall be accompanied by a written statement of the reason or reasons for disapproval.

Section 4.11 Period Approval Effective. Approval granted by the Architectural Review Committee shall be effective for a period of one year from the date the approval is given, or one year from the expiration of the sixty (60) day period specified in Section 4.9 hereof where approval is not expressly granted or denied. If construction has not commenced with the intent to complete the Improvements by diligently pursuing such construction within the said one year period, the approval shall be deemed expired, and no construction shall thereafter commence without a written renewal of such prior approval or approval of an alternate submission.

Section 4.12 Limitation of Liability. Neither Declarant, the Architectural Review Committee, nor their successors or assigns shall be liable in damages to anyone submitting plans to them for approval, or to any Owner or Occupant of land affected by this Declaration, by reason of a mistake in judgment, negligence or malfeasance arising out of or in connection with the approval or disapproval or failure to approve any such plans. Every person, corporation, partnership or organization who submits plans to the Architectural Review Committee for approval agrees, by submission of such plans, and every Owner or Occupant of any of the Property agrees by acquiring title thereto or an interest therein, that it will not bring any action, proceeding or suit against Declarant or the Architectural Review Committee to recover any such damages. In case of conflict between plan review and the provisions of this Declaration, this Declaration shall govern the rights and obligations of the parties. The Architectural Review Committee's approval of any building plans, specifications, site or landscape plans or elevations or any other approvals or consents given by the Architectural Review Committee pursuant hereto or otherwise, is given solely to protect the aesthetics of Summit Pointe and shall not be deemed a warranty, representation or covenant that such buildings, Improvements, landscaping or other actions taken pursuant thereto or in reliance thereon, complies with, or is not in violation of any applicable laws, rules or regulations.

Section 4.13 Plan of Development Approval - Rezoning. If all or any portion of a Parcel has been Rezoned as approved by the Declarant in accordance with the procedures set forth in Section 2.6 above, and if the Owner desires to develop the Parcel, the Owner shall follow the approval process described in this Section.

ARTICLE V
COMMON AREAS

Section 5.1 Dedication of Common Area. Declarant intends to convey to the Association, upon completion of the installation of associated infrastructure and other public and private improvements for the phase of development relating to each Common Area, certain Common Areas within the Property for the use and enjoyment of the Members. The Common Areas may be conveyed to the Association in fee simple or by easement at the discretion of the Declarant. The amount of open space contributed by Declarant shall be in compliance with Section 10.1.1 of the PUD Approval. The foregoing conveyance may be by Declarant, or Declarant may cause such to be conveyed to the Association by a respective Owner affiliate of Declarant with Declarant's prior written consent, or Declarant may permit such to be conveyed by any other respective Owner to the Association with Declarant's prior written consent, but in no event shall any conveyance or assignment of rights to the Association with regard to any proposed Common Area occur without Declarant's prior written consent.

Section 5.2 Obligations of the Association. With the exception of Exempt Parcels as set forth in Section 4.4 herein, the Association, subject to the acceptance by the Association's Board of Directors of any offered Open Space, Common Areas or Limited Common Areas, shall be responsible for the maintenance, management, operation and control, for the benefit of the Members, of the Common Area and any Limited Common Area conveyed, reserved or dedicated to or for the benefit of the Association (including all improvements thereon and all fixtures, personal property and equipment related thereto). The Association shall keep such Open Space, Common Areas and any Limited Common Areas (including all improvements thereon) in good, clean and attractive condition, order and repair and in accordance with the Urban Mixed-Use Plan. Parking Garage 1 shall not be included as Common Area. Exempt Parcels and any Common Areas within them shall be owned, maintained, and operated by the respective Owners of the Exempt Parcels. The Association shall bear no financial obligation for the maintenance, operation, management or control of the Exempt Parcels.

In addition to the Association's responsibilities for the Common Area and Limited Common Area as set out above, the Association shall have the express right and authority to enter into cost sharing, shared use, common maintenance, cross access arrangements and the like with any Person, including without limitation, any other property owners' association providing services and/or shared facilities in the vicinity of the Property and/or any other property owner providing services and/or shared facilities in the vicinity of the Property.

The Association performance of its obligations under this Section 5.2 shall be for the benefit of its members. The use of Common Areas or Limited Common Areas by residential or commercial tenants of any Members shall be governed solely by the terms of the tenants' respective leases, and their agreement to comply with this Declaration, the Rules and Regulations adopted by the Association and all of the Governing Documents.

Section 5.3 Limited Common Area. With the exception of Exempt Parcels, Declarant shall have the power to restrict portions of the Common Area for the exclusive use of the Owners of one or more specific Parcels by designating such portions of Common Area as "*Limited Common Area*".

Limited Common Area may be designated by (a) depicting it, and the Parcels to which it is appurtenant, on a plat attached to or recorded with a Supplemental Declaration, (b) labeling a portion of the Common Area as “*Common Area that may be assigned as Limited Common Area*” on a plat attached as an exhibit to a Supplemental Declaration and thereafter assigning the Limited Common Area to one or more specific Parcels by unilaterally amending the Supplemental Declaration to indicate and depict such assignment; or (3) indicating that Common Area is Limited Common Area by a description in the applicable Supplemental Declaration.

Subject to the provisions of this Declaration, any applicable Supplemental Declaration and the Articles of Incorporation and Bylaws, the Owners of Parcels to which Limited Common Area has been assigned shall have the exclusive right of enjoyment in and to the Limited Common Area assigned, appurtenant to the Parcel to which such Limited Common Area is appurtenant. The Limited Common Area shall be used by Owners of Parcels to which it has been assigned only for the purpose or purposes for which the Limited Common Area may have been improved. Any Limited Common Area which has not been improved for a particular use is intended to remain in its natural condition until so improved, and any use thereof by an Owner of an appurtenant Parcel shall not damage or disturb such natural condition or the enjoyment thereof by other Owners. Without limiting the generality of the foregoing, Declarant reserves, for itself and any of its affiliates, and for the Association, the right to grant to any Person or Persons a license and/or similar right to make exclusive use of portions of the Limited Common Area; provided that any such grant is evidenced (i) in a writing executed by the applicable Owner and recorded in the Clerk’s Office, or (ii) by duly adopted resolution of the Board of Directors if granted by the Association.

Section 5.4 General Limitations on Owners’ Rights. With the exception of Exempt Parcels as set forth in Section 4.4 herein, the Owners’ rights of enjoyment in the Common Area and Limited Common Area shall be subject to the following:

(a) the right of the Board of Directors to establish reasonable rules and regulations for the use of the Common Area and the Limited Common Area;

(b) subject to the limitations imposed by Section 55-513 and by the last sentence of Section 55-514C of the Virginia Code as in effect on the date hereof, the right of the Association to suspend the right of an Owner to use or benefit from any of the Common Area or the Limited Common Area for the period during which any assessment against his Parcel is delinquent;

(c) subject to the limitations imposed by Section 55-513 of the Virginia Code as in effect on the date hereof, the right of the Association to suspend the right of an Owner to use or benefit from any of the Common Area or Limited Common Area for any period during which any other violation by the Owner of this Declaration, a Supplemental Declaration or the Rules remains uncorrected after the last day of a period established for correction by the Association (such period to be stated in a notice to the Owner together with a statement of the violation complained of and the manner of its correction) and for not more than sixty (60) days after such correction;

(d) subject to the Bylaws, the right of Declarant or the Association to grant utility and other easements across the Common Area or the Limited Common Area as provided in Section 8.1;

(e) all of the other easements, covenants and restrictions provided for in this Declaration and any Supplemental Declaration(s) applicable to the Common Area and Limited Common Area;

(f) Board of Director's designation of certain Common Area as "*Limited Common Area*" for the exclusive use and benefit of the Owners of one or more specified Parcels; and

(g) the right of Declarant to grant to any Person or Persons licenses and/or similar rights to make exclusive use of such areas as more particularly set forth and described in Section 5.3 hereof.

Section 5.5 Delegation of Use. Any Owner may delegate his right of enjoyment to the Common Area to his tenants or Occupants, subject to such rules and regulations and fees as may be established from time to time by the Association. All Owners shall include within their leases to tenants for any portion of the Property an affirmative obligation on the tenant acknowledging (a) that the tenant will comply with the terms of this Declaration and all rules and regulations established by the Association as may be amended; and (b) that the Declarant is a third party beneficiary with respect to tenant's compliance with the rules and regulations adopted by the Association.

Section 5.6 Damage or Destruction of Common Area or Limited Common Area by Owner. Excluding any Exempt Parcels, in the event any Common Area, Limited Common Area or Improvement thereon is damaged or destroyed by an Owner, his tenants, guests, licensees, agents or members of his family or Occupants, the Association may repair such damage at the Owner's expense. The Association shall repair such damage in a good and workmanlike manner in conformance with the original plans and specifications of the area or improvement involved, or as the Common Area, Limited Common Area or Improvement may have been theretofore modified or altered by the Association, in the discretion of the Association. The cost of such repairs shall become a special assessment on the Parcel of such Owner and shall constitute a lien on such Owner's Parcel and be collectible in the same manner as other assessments set forth herein.

Section 5.7 Rights in Common Area and Limited Common Area. Until such time as Declarant, or such respective Owner in accordance with Section 5.1, conveys such respective Common Area or Limited Common Area to the Association, such respective Owner shall have the right, but not the obligation, (i) to construct such improvements thereon as it deems appropriate for the common use and enjoyment of Owners, and (ii) to use such areas for other purposes not inconsistent with the provisions of this Declaration. Until such time as such respective Owner in accordance with Section 5.1 conveys such Common Area or Limited Common Area to the Association, such respective Owner shall maintain such areas in neat condition and repair, including mowing and removing underbrush and weeds.

Section 5.8 Title to Common Area and Limited Common Area. Declarant, or such respective Owner in accordance with Section 5.1, may retain legal title to the Common Area or Limited Common Area, or portions thereof, but notwithstanding any provision herein to the contrary, Declarant or such respective Owner in accordance with Section 5.1, may convey, in fee simple or by easement, all or portions of each Common Area or Limited Common Area to the Association, in a condition acceptable to the Association, free and clear of all liens but subject to this Declaration and all other easements, conditions and restrictions of record at such time as such Improvements are completed and in a condition acceptable to the Association. Regardless of whether the Common Area or Limited Common Area actually has been conveyed in fee or by easement by Declarant or such respective Owner in accordance with Section 5.1, the Owners and the Association shall have all the rights and obligations imposed by this Declaration, any Supplemental Declaration, the Articles of Incorporation and Bylaws with respect to the Common Area and Limited Common Area from and after the date such Common Area and Limited Common Area are so designated by recordation of an appropriate instrument in the Clerk's Office. The Association shall be liable from the date a deed to such Common Area or Limited Common Area is recorded in the Clerk's Office for payment of taxes, insurance and maintenance costs with respect thereto. Until the Common Area or Limited Common Area is conveyed to the Association, Declarant shall be liable for payment of taxes, insurance and maintenance costs with respect thereto.

Section 5.9 Reservation of Rights Regarding Common Area and Limited Common Area. Certain portions of the Property may be better suited for ownership by a private organization. Notwithstanding anything in this Declaration to the contrary, and regardless of whether such areas have previously been designated as Common Area or Limited Common Area, Declarant reserves for itself, and its respective successors and assigns, the right to transfer and convey in fee simple Property as Declarant deems in the best interests of such Property to one or more private organizations. In the event of any transfer of the Property in fee simple or any grant of easements to a private organization, the private organization shall be responsible for complying fully with the provisions of this Declaration and PUD Approval.

ARTICLE VI ASSESSMENTS

Section 6.1 Imposition; Personal Obligation; Lien. Declarant and each of Declarant's affiliate Owners, for each Parcel owned within the Property, other than Exempt Parcels and Parking Garage 1, hereby covenant, and each Owner of any Parcel, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant to pay to the Association assessments as set forth in this Declaration, any Supplemental Declaration and in the Bylaws. The assessments, together with interest thereon, late charges and costs of collection, including attorneys' fees, shall be a continuing lien upon the Parcel against which the assessment is made in order to secure payment thereof and shall also be the personal obligation of the party who was the Owner of the Parcel at the time the assessment fell due. No Owner may waive or otherwise avoid liability for the assessments provided herein by nonuse of the Common Area, the Limited Common Area or by abandonment of his Parcel. Each assessment that is not paid when due shall bear interest at the rate established by the Association, which rate shall not exceed the maximum rate permitted by applicable law. Each assessment that is not paid within ten (10) days of its due date shall, at the option of the Association, incur a late charge in the amount of (i) five

(5.0%) percent of the amount owed or (ii) one hundred dollars (\$100.00), whichever is greater, or as may be otherwise established from time to time by resolution duly adopted by the Board of Directors. The Owners of Exempt Parcels shall be solely responsible for the cost of operating, maintaining, and improving their Property, including Limited Common Areas located therein.

Section 6.2 Purpose of Assessments. The assessments levied by the Association shall be used for the management, maintenance, improvement, care, operation, renovation, repair and replacement of the Common Area, Limited Common Area and Improvements thereon and other property owned or acquired by the Association of whatsoever nature; for the discharge of all taxes and other levies and assessments against the Common Area, Limited Common Area and Improvements thereon and other property owned or acquired by the Association; for the procurement of insurance by the Association in accordance with the Bylaws; for the provision of security services for the Property; for the marketing of the Property through various means, including but not limited to print material, websites, social media platforms and similar methods; for the support of social and entertainment activities and events within the Property (which may be vested in a separate non-profit entity as and when deemed appropriate by the Association); for the services of a management company to oversee the operations of the Association (which may include a Member of the Association); for the establishment of reserves with respect to the Association's obligations; for the discharge of such other obligations as may be imposed upon or assumed by the Association pursuant to its Articles of Incorporation, Bylaws, this Declaration, or any Supplemental Declaration; for the discharge of such other obligations as may be imposed upon or assumed by the Association on behalf of the Owners; and for such other purposes as may be authorized by the Board of Directors or pursuant to the Articles of Incorporation or Bylaws. Notwithstanding foregoing, assessments shall not be collected or due for operation, maintenance, management, or capital costs for Exempt Parcels. The Owners of Exempt Parcels shall be solely responsible for the cost of operating, maintaining, managing, improving, landscaping, including any capital costs of all improvements on their Property.

Section 6.3 Assessments for Parking Garages and Surface Parking Areas (collectively "Parking Areas") within Summit Pointe.

(a) Parking Areas within Summit Pointe will not be subject to or responsible for the payment of any dues or assessments to the Association, except as set out below:

(b) Excluding any Parking Areas on the Exempt Parcels within Summit Pointe, if Parking Areas are being managed by the Association, then the costs as set out herein shall be determined in the agreement between the Association and the Owners of any parcels on which the Parking Areas are located for such period that the agreement is in effect. Such agreement shall make the Owner's Association responsible for operating, managing, and maintaining the Parking Areas as applicable and for making and collecting assessments from the Members for the purpose of paying taxes, maintenance, security and management and any required capital costs and expenses, (including but not limited to capital reserves, insurance deductibles and insurance reserves, the "Parking Costs") and shall control the Owner's Association's right to use the respective Parking Areas or any portions thereof. The tax assessed value of the Parking Areas managed by the Association shall be excluded from the Owner's assessment calculation set forth in Section 6.4 herein.

During any such period that Parking Areas within Summit Pointe are not managed by the Association pursuant to an agreement between the Association and the Owner of the parcels on which the Parking Areas are located, then the tax assessed value of the Parking Areas shall be included and allocated to the Owner of any parcel on which the Parking Areas are located for purposes of the assessment calculation and determination of Percentage Interests pursuant to Section 6.4. The Owners of any parcel on which Parking Areas are located and which are not managed by the Association, shall be solely responsible for the operation, maintenance, management, and Parking Costs of any Parking Areas located on their Property.

(c) Dollar Tree shall be responsible to reimburse Association for forty percent (40%) of any Parking Costs costs associated with Parking Garage 1. This percentage is based on the ownership and/or exclusive use by Dollar Tree of five hundred (500) parking spaces in Parking Garage 1 and an additional two hundred-fifty (250) shared parking spaces in Parking Garage 1 that are reserved for Dollar Tree use during the hours of 7:00 a.m. to 5:30 p.m. Monday through Friday (“Business Hours”).

Section 6.4 Annual Assessments.

(a) General Assessments.

(1) Purpose. “General Assessments” shall mean those assessments used for the general purposes set forth in Section 6.2 above, except that the General Assessments shall not be used for those purposes for which Limited Common Area Expense Assessments shall be used.

(2) Basis. The General Assessments shall be established and increased or decreased from time to time by the Board of Directors pursuant to the Bylaws and subject to the terms of this Declaration. The amount of such General Assessment shall be fixed from time to time by a meeting of the Members called by the Board of Directors for the purpose. At such meeting, the Board of Directors shall submit to the Members for approval its estimate of the total cost to be incurred by the Association for the ensuing year, or such other period as shall be acceptable to the Members (the “Annual Budget”), and each Member shall thereupon become liable for its pro rata share of such total based upon the formula contained in Section 6.3.3 below, which shall be payable as determined by the Board of Directors. For this purpose, Common Areas, Limited Common Areas, including easements, and publicly owned streets or other public property shall only be counted if they are located on a Member’s property or are maintained by a member. For purposes of such assessment, Declarant shall be deemed a Member to the same extent as an Owner with respect to any Parcel owned by it in the area for which the Association has become responsible for maintenance.

(3) Assessment Calculation. All expenses of the Association, other than Limited Common Area Assessments, shall be allocated to each Member based on the assessed value of each Member’s Parcel as of the first day of January of each year, as compared to the assessed value of all Parcels within the Property, as of the first day of January of each year. The Association shall determine the assessed value for each Parcel within the Property, as reflected in the real estate tax records of the City of Chesapeake, Virginia (“City”) as of the first day of each year (the “City Assessment”). The percentage that the City Assessment for each Parcel bears to

the City Assessment for all of the Parcels within the Property shall be the percentage interest for which the Owner of each Parcel shall be responsible for payment of General Assessments made by the Association in such calendar year (the "Percentage Interests"). The Association shall allocate all of the expenses associated with the maintenance and capital costs of Limited Common Areas to the respective Owner who has exclusive use of a Limited Common Area.

(4) Partial City Assessment. If any Improvements are constructed on a Parcel after the first day of any year and are assessed with a partial assessment by the City in such calendar year in which the Association has previously approved an Annual Budget and sent notices of dues payments to the Owners, the Owner of such Parcel with a partial City assessment shall be responsible for payment of General Assessments on a prorated basis for the period commencing on the date that the partial assessment is made by the City, and continuing through the end of the calendar year. The partial assessment for which the Owner of such Parcel shall be responsible for shall be calculated as follows:

(i) For the applicable calendar year, the Association shall calculate the total amount of General Assessments and divide that number by the total City Assessment for all Parcels within the Property, which number shall be referred to herein as the "Millage Rate".

(ii) The City assessed value of any Parcel receiving a partial assessment from the City shall be multiplied by the Millage Rate to determine the amount that such Parcel would be responsible to pay for General Assessments for a full calendar year.

(iii) The figure determined in (ii) above will then be prorated to reflect the partial calendar year for which General Assessments are attributable to such Parcel from the date that the partial assessment is made by the City through the last day of the calendar year.

(iv) If any Improvements are constructed on a Parcel and are assessed with a partial assessment by the City in any calendar year in which the Association has previously approved a budget, and if, within the same calendar year, the City subsequently issues an additional partial assessment or assessments, or a final assessment upon completion of the Improvements, the General Assessment of such Parcel will be recalculated in the same manner as provided above, based upon the increased assessment from the City, and the Parcel's General Assessment will be re-prorated from the date of the increased partial or full assessment from the City through the end of the calendar year.

(b) Limited Common Area Expense Assessments.

(1) Purpose. "Limited Common Area Expenses" are those expenses attributable to managing, maintaining, improving, caring, operating, renovating, repairing, establishing appropriate reserves for, insuring and replacing Limited Common Area, as well as the cost of providing certain services to individual Parcels. The purpose of the "Limited Common Area Expense Assessment" is to provide a means whereby the Owners of Parcels which directly benefit from specific Limited Common Area and/or certain services applicable to individual Parcels pay their appropriate share of the Limited Common Area Expenses attributable to such Limited Common Area.

(2) Basis. Limited Common Area Expenses may be assessed by the Association only against the Parcels benefited in proportion to their relative General Assessment liability, *inter se* or based on usage, as appropriate. Such Limited Common Area Expenses shall be determined as follows:

(i) Any expenses designated in a Supplemental Declaration as Limited Common Area Expenses to be paid by the Owners of Additional Property being submitted to the Declaration thereby;

(ii) Any expenses proposed by the Board of Directors or a specific group of Owners as Limited Common Area Expenses against a specific group of Parcels and agreed to by Members entitled to cast a majority of the total number of votes with respect to such Parcels, assessed against such Parcels as such Owners may agree or in proportion to their relative General Assessment liability, *inter se*;

(iii) Any expenses incurred in the upkeep of, or the maintenance of reserves for the upkeep of, Limited Common Area may be assessed only against the Parcels served by such Limited Common Area; and

(iv) any service to individual Parcels based on usage.

Section 6.5 Special Assessments. With exception of Exempt Parcels, the Board of Directors may also levy a periodic special assessment if the purpose in doing so is found by the Board of Directors to be in the best interest of the Association and the proceeds of such assessment are used primarily for one or more of the purposes set forth in Section 6.2 above. Special assessments shall be assessed against individual Parcels in accordance with Sections 6.3(a)(2) above (based upon the purpose of such assessments), except that special assessments benefitting a Limited Common Area shall be assessed against individual Parcels in accordance with Section 6.3(b), above (based upon the purpose and beneficiaries of such assessments). Any such special assessment may be rescinded by (i) in case of a general special assessment, two-thirds (2/3) of the votes of the Members, who are voting in person or by proxy at a meeting duly called for this purpose, or (ii) in the case of a special Limited Common Area Expense Assessment, two-thirds (2/3) of the votes of the Members benefitted by such Limited Common Area attending a meeting of such Members, convened in accordance with the Bylaws, in person or by proxy.

Section 6.6 Subordination of Lien to Mortgages. The lien upon any of the Parcels securing the payment of the assessments shall have the priority set forth in Section 55-516 of the Virginia Code.

Section 6.7 Exempt Property. The following portion(s) of the Property shall be exempt from the assessments and liens created herein: (i) all properties dedicated and accepted by a public authority; (ii) all Common Area other than those portions that are Limited Common Areas (iii) Parking Garage 1; and (iv) Exempt Parcels including but not limited to any Parking Areas on any Exempt Parcels.

ARTICLE VII **USE OF PROPERTY**

Section 7.1 Use of Property. Excluding the Exempt Parcels, the provisions of ARTICLE VII shall apply to all property within Summit Pointe including all Common Areas and portions of the Common Areas that are Limited Common Areas.

Section 7.2 Permitted and Prohibited Uses. Any use permitted pursuant to the PUD Approval as amended and approved by the Declarant pursuant to Section 2.6 herein is a permitted use; (ii) Any use not permitted in the PUD Approval as amended and not approved by the Declarant pursuant to Section 2.6 herein is a prohibited use.

Section 7.3 Rules and Regulations. The Association shall prepare Rules and Regulations which shall apply to all Owners within Summit Pointe, excluding the Exempt Parcels. Rules and Regulations may be amended from time to time as needed.

Section 7.4 Prohibited Effects. Dollar Tree Distribution, Inc. operates a warehouse and distribution center on a portion of the Property and as part of the Exempt Parcels and the prohibited uses set forth in Section 7.1 above and the effects set forth below shall not apply to its warehouse and distribution center operations or any other portion of the Exempt Parcels. Dollar Tree Distribution, Inc. and its successors in title may continue to operate the warehouse and distribution center on the Property in perpetuity if so desired. Except as set out above, the following effects are prohibited on all or any portion of the Property.

- (a) Noise or sound that is unreasonably objectionable because of a consistent problem with the volume, duration, intermittent beat, frequency or shrillness;
- (b) Excessive or reoccurring smoke;
- (c) Noxious, toxic, or corrosive fumes or gases;
- (d) Obnoxious odors;
- (e) Dust, dirt or fly ash;
- (f) Unusual fire or explosive hazards;
- (g) Excessive or reoccurring vibrations resulting on adjacent parcels;
- (h) Any other activity that creates a nuisance or is not harmonious with the intent of this Declaration.

Section 7.5 Site Maintenance.

(a) Vacant Parcel. The Owner of every Parcel or part thereof shall, after acquisition and before commencement of construction, keep the Parcel free of weeds and underbrush, and shall have it mowed regularly so that it will at all times present a neat, safe, and attractive appearance and in accordance with the requirements of the PUD Approval.

(b) Improved Parcel. The Owner of every Parcel or part thereof shall, during and after completion of construction, at all times keep the premises, buildings, improvements and

appurtenances in a safe, clean, attractive condition and comply in all respects with all governmental, health, fire and police requirements and regulations; and in accordance with the requirements of the PUD Approval; and shall remove at its own expense any rubbish of any character whatsoever which may accumulate on its Parcel or part thereof. Where the property line of any Parcel or part thereof abuts a public street or sidewalk, the obligations imposed hereunder shall extend to the edge of the street pavement or to the edge of the curb contiguous to the street, as applicable for such respective property line.

Section 7.6 Temporary Improvements. Except as approved by the Association for special events, no temporary buildings or other Improvements of a temporary nature, including without limitation trailers, tents and shacks (the "Temporary Improvements"), shall be permitted on the Property. Temporary Improvements used solely in connection with the construction of permanent approved Improvements may be permitted provided they are located as inconspicuously as possible, are appropriate in appearance and are removed immediately after completion of such construction.

Section 7.7 Failure to Comply. In the event any Owner fails to comply with any or all of the aforesaid requirements, as reasonably determined by Declarant or the Association, as the case may be, within ten (10) days after written notice thereof, the Declarant or the Association shall have the right, privilege and license to enter upon the Parcel and make any and all corrections or Improvements that may be reasonably necessary to meet such requirements, all at the sole cost and reasonable expense of such Owner. If any such cost is not paid within ten (10) days after such Owner is notified of the amount, it shall become a lien upon the Parcel and be enforceable as provided herein. The failure of the Declarant or the Association to enforce any of the aforesaid requirements or rules and regulations shall not be deemed a waiver of such right of enforcement.

Section 7.8 Completion of Construction. After commencement of construction of any Improvements, the work thereon shall be diligently prosecuted, to the end that the Improvements shall not remain in a partly finished condition any longer than reasonably necessary for completion thereof. The Owner of every Parcel, or part thereof, shall at all times keep contiguous public and private streets free from any dirt, mud, garbage, trash or other debris which is occasioned by construction of Improvements.

Section 7.9 Excavation. No clearing or excavation shall be made except in connection with the construction, maintenance or repair of an Improvement; and upon completion thereof exposed openings shall be backfilled, and disturbed ground shall be leveled, graded and seeded, as provided on the approved plans for landscaping as required herein.

Section 7.10 Storage and Loading Areas. No materials, supplies or equipment, except during construction of Improvements, shall be stored in any areas except inside an approved enclosed building.

ARTICLE VIII **EASEMENTS AND OTHER RESTRICTIONS**

Section 8.1 Reserved Easements. Declarant, and its successors and assigns, reserve perpetual easements over, across, under and through the Property reasonably necessary to permit

Declarant or any of its affiliates to commence, continue and complete the development and construction of the Property pursuant to the Urban Mixed-Use Plan. Without limiting the generality of the foregoing, Declarant and its affiliates reserve the following easements:

(a) Utility Easements. A perpetual blanket easement over areas without building structures to install, maintain, repair, replace and remove poles, wires, cables, conduits, pipes, mains, pumping stations, siltation basins, tanks and other facilities, systems and equipment for all public and private utility and service systems. These systems and services include, but are not limited to, electricity, telephone, sanitary sewer, storm sewer, water, gas, cable television, drainage, security, irrigation, collection of garage and recyclable materials, communications and other public conveniences or utilities. By virtue of this easement, Declarant or any of its affiliates, as the case may be, may cut trees, bushes or shrubbery and may exercise such other rights as Declarant (or any of its affiliates) or the applicable governmental authority or utility company providing the utilities may require. The utility lines installed pursuant to this easement may be installed above or below ground. Declarant or any of its affiliate Owners shall have the right to convey this easement (or portions of it) to other Owners, to governmental authorities or utility companies, to the Association and to any other Person. In the event any easement is abandoned or proposed to be withdrawn from the Association's control, Declarant or any of its affiliates shall have the option for such easement to revert back to the appropriate Declarant entity.

(b) Maintenance of Parcels. A perpetual easement, right and privilege to enter on any Parcel, after at least five days' notice to the Owner thereof, for the purpose of mowing, removing, clearing, cutting or pruning underbrush, weeds or other unsightly growth, dispensing pesticides, herbicides and fertilizer and grass seed, removing trash and taking such other action as Declarant may consider necessary to correct any condition which detracts from the overall beauty of the Property or which may constitute a hazard or nuisance. Such easement, right and privilege shall specifically include, without limitation, the right to enter within the limits of any fencing (whether approved or not) on any Parcel as well as the right to remove, permanently or temporarily, as determined by Declarant, any fencing (whether approved or not). In the event Declarant exercises its option under this Section 8.1(b) as it pertains to portions of any Parcel under the Association's control, Declarant may bill the Association for its actual and reasonable expenses incurred in performing the required maintenance, and in Declarant's sole discretion such amounts may be used to offset future assessments due from Declarant or any of its affiliates.

Section 8.2 Easements to Serve Additional Portion(s) of the Property. Declarant hereby reserves for itself and its respective duly authorized agents, representatives, employees, affiliate Owners, successors, assigns, licensees, and mortgagees, an easement over the Common Area for the purposes of enjoyment, use, access, and development of any Additional Property. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for construction of roads and for connecting and installing utilities on the Property and Additional Property.

ARTICLE IX **GENERAL PROVISIONS**

Section 9.1 Duration. The covenants and restrictions of this Declaration shall run with and bind the Property for a term of twenty-five (25) years from the date this Declaration is

recorded, after which time they shall be automatically extended for successive periods of twenty-five (25) years, unless at the expiration of any such period the covenants and restrictions are expressly terminated by an instrument signed by Owners of a majority of the Parcels.

Section 9.2 Amendments. Except as otherwise set forth in this Declaration, this Declaration may be amended unilaterally by Declarant, without the consent of any other Owner, for so long as Declarant or any of its affiliate Owners, owns any portion of the Property, or any contiguous property, or is entitled to add Additional Property pursuant to Article II (i) to correct typographical errors, inconsistent references, scrivener's errors, grammatical mistakes, and incorrect or ambiguous punctuation, (ii) to comply with applicable laws now or hereafter enacted, (iii) to satisfy the requirements of any federal mortgage agency or other generally recognized institution involved in the guarantee or purchase and sale of mortgages, or (iv) for any other reason approved by 2/3rd's of all of the Owner's of Property subject to this Declaration.

Section 9.3 Enforcement. Declarant or the Association shall have the right to enforce, by any proceeding at law or in equity, all restrictions, easements, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration or any Supplemental Declaration. Without limiting the generality of the foregoing, if any Owner fails to comply with any of the provisions of this Declaration or any Supplemental Declaration and such failure continues for at least five (5) days after notice thereof is given to the Owner, then either Declarant or the Association may, but without any obligation to do so, take such action as any of them considers necessary or appropriate (including, without limitation, entering the Owner's Parcel) to correct the noncompliance; provided, however, that judicial proceedings are instituted before any Improvements are subsequently altered or demolished. The cost incurred in taking such action shall constitute a special assessment upon the Owner's Parcel(s) and shall be collectible in the manner provided herein for the payment of assessments. Failure by Declarant or the Association to enforce any provision of this Declaration or any Supplemental Declaration shall in no event be deemed a waiver of the right to do so thereafter.

Section 9.4 Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 9.5 Conflict. In the event of conflict among the Governing Documents, the PUD Approval shall control, then this Declaration, then applicable Supplemental Declarations, then the Articles of Incorporation, then the Bylaws except that in all cases where the Governing Documents may be found to be in conflict with statute, the statute shall control.

Section 9.6 Interpretation. Unless the context otherwise requires, the use of the singular shall include the plural and vice versa; the use of one gender shall include all genders; and the use of the term "including" shall mean "including, without limitation." The headings used herein are for indexing purposes only and shall not be used as a means of interpreting or construing the substantive provisions hereof.

Section 9.7 Approvals and Consents. All approvals and consents required or permitted by this Declaration (other than approvals or consents given by Members in a vote conducted in accordance with the Bylaws) shall be in writing, shall be signed by the party from whom the

consent or approval is sought and, unless otherwise provided herein, may be withheld by such party in its sole discretion.

Section 9.8 Assignment of Declarant's Rights. Any and all rights, powers, easements and reservations of Declarant set forth herein may be assigned in whole or in part, at any time or from time to time, to the Association, to another Owner or to any other Person in Declarant's sole discretion. Each assignment shall be evidenced by an instrument which shall be signed by Declarant and its assignee and recorded in the Clerk's Office.

Section 9.9 Successors and Assigns. The provisions hereof shall be binding upon and shall inure to the benefit of Declarant, the Association and (subject to Article II hereof) the Owners and their respective heirs, legal representatives, successors and assigns.

Section 9.10 Compliance with Property Owners' Association Act. The Association shall be subject to and comply with the Virginia Property Owners' Association Act as set out in §55-508 *et seq.*, of the Virginia Code.

Section 9.11 Variance. Declarant shall have the right to unilaterally grant reasonable written variances from provisions of this Declaration or any portion hereof, in order to overcome practical difficulties and to prevent unnecessary hardship in the application of the provisions contained herein; provided, however, that such variances shall not, in the opinion of the Architectural Review Committee, materially injure or adversely impact any of the real property or improvements within the Property. No variance granted pursuant to the authority herein reserved shall constitute a waiver of any provisions of this Declaration as applied to any other Person or property. Variances granted by Declarant shall not eliminate the need, if applicable, to apply for a variance or a deviation from the City of Chesapeake.

Section 9.12 Constructive Notice and Acceptance. Every person, corporation, partnership or organization, who or which now or hereafter owns or acquires any right, title or interest in or to any portion of the Property is and shall be conclusively deemed to have consented and agreed to every covenant, condition and restriction contained herein, whether or not any reference to this Declaration is contained in the instrument by which such person, corporation, partnership or organization acquired such right, title or interest.

ARTICLE X **DISSOLUTION OF THE ASSOCIATION**

The Association may be dissolved upon written consent of at least two-thirds (2/3) of the Members entitled to vote. Prior to dissolution of the Association, other than incident to a merger or consolidation, the assets of the Association may be offered for dedication to the locality in which they are situated. In the event that such dedication is refused acceptance upon dissolution, such assets shall be granted, conveyed and assigned to any nonprofit corporation, association, trust or other organization to be devoted to similar purposes.

ARTICLE XI **NOTICES**

All notices, demands, requests and other communications required or permitted hereunder shall be in writing and shall either be delivered in person or sent by overnight express courier or by U.S. first class mail, postage prepaid. Notices to Dollar Tree or any of its affiliates to Dollar Tree, Inc., 500 Volvo Parkway, Chesapeake, Virginia 23320, Attention: Chief Legal Officer/General Counsel; or to such other address as Dollar Tree shall specify by executing and recording an amendment to this Declaration, which amendment shall not require the approval of any other parties as provided in Section 9.2. Notices to the Declarant, Association or to Owners (other than Dollar Tree) may be sent to the address which the Bylaws provide shall be used for them. All such notices, demands, requests and other communications shall be deemed to have been given when sent to the appropriate address specified above. Rejection or other refusal to accept shall not invalidate the effectiveness of any notice, demand, request or other communication. Notwithstanding the foregoing, any notice of the filing of a memorandum of assessment lien shall be sent in the manner required by Section 55-516C of the Virginia Code.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

WITNESS the following signatures and seals as of the date first above written.

SUMMIT POINTE BLOCK 1, LLC
a Virginia limited liability company

By: Kevin S. Wampler (SEAL)
Kevin S. Wampler
Its: Chief Financial Officer

COMMONWEALTH OF VIRGINIA
CITY OF Chesapeake, to wit:

I, Cynthia Marie Bertucci, a Notary Public in and for the jurisdiction aforesaid, does hereby certify that Kevin S. Wampler, who is either personally known to me or who produced _____ as identification. as Chief Financial Officer of Summit Pointe Block 1, LLC, a Virginia limited liability company, has acknowledged the same before me in my jurisdiction aforesaid.

GIVEN under my hand this 31 day of January, 2020.

Cynthia Marie Bertucci
Notary Public

My Commission Expires: March 31, 2021
Registration Number: 357546



Cynthia Marie Bertucci
NOTARY PUBLIC
Commonwealth of Virginia
Reg. #357546
My Commission Expires
March 31, 2021

WITNESS the following signatures and seals as of the date first above written.

SUMMIT POINTE BLOCK 2, LLC
a Virginia limited liability company

By: Kevin S. Wampler (SEAL)
Kevin S. Wampler
Its: Chief Financial Officer

COMMONWEALTH OF VIRGINIA
CITY OF Chesapeake. to wit:

I, Cynthia Marie Bertucci, a Notary Public in and for the jurisdiction aforesaid, does hereby certify that Kevin S. Wampler, who is either personally known to me or who produced _____ as identification, as Chief Financial Officer of Summit Pointe Block 2, LLC, a Virginia limited liability company, has acknowledged the same before me in my jurisdiction aforesaid.

GIVEN under my hand this 3rd day of January, 2020.

Cynthia Marie Bertucci
Notary Public

My Commission Expires: March 31, 2021
Registration Number: 357546



Cynthia Marie Bertucci
NOTARY PUBLIC
Commonwealth of Virginia
Reg. #357546
My Commission Expires
March 31, 2021

WITNESS the following signatures and seals as of the date first above written.

SUMMIT POINTE BLOCK 3, LLC
a Virginia limited liability company

By: Kevin S. Wampler (SEAL)
Kevin S. Wampler
Its: Chief Financial Officer

COMMONWEALTH OF VIRGINIA
CITY OF Chesapeake, to wit:

I, Cynthia Marie Bertucci, a Notary Public in and for the jurisdiction aforesaid, does hereby certify that Kevin S. Wampler, who is either personally known to me or who produced _____ as identification, as Chief Financial Officer of Summit Pointe Block 3, LLC, a Virginia limited liability company, has acknowledged the same before me in my jurisdiction aforesaid.

GIVEN under my hand this 3rd day of January, 2020.

Cynthia Marie Bertucci
Notary Public

My Commission Expires: March 31, 2021
Registration Number: 357546



Cynthia Marie Bertucci
NOTARY PUBLIC
Commonwealth of Virginia
Reg. #357546
My Commission Expires
March 31, 2021

WITNESS the following signatures and seals as of the date first above written.

SUMMIT POINTE BLOCK 4, LLC
a Virginia limited liability company

By: *Kevin S. Wampler* (SEAL)
Kevin S. Wampler
Its: Chief Financial Officer

COMMONWEALTH OF VIRGINIA
CITY OF Chesapeake, to wit:

I, Cynthia Marie Bertucci, a Notary Public in and for the jurisdiction aforesaid, does hereby certify that Kevin S. Wampler, who is either personally known to me or who produced _____ as identification, as Chief Financial Officer of Summit Pointe Block 4, LLC, a Virginia limited liability company, has acknowledged the same before me in my jurisdiction aforesaid.

GIVEN under my hand this 31st day of January, 2020.

Cynthia Marie Bertucci
Notary Public

My Commission Expires: March 31, 2021
Registration Number: 357546



Cynthia Marie Bertucci
NOTARY PUBLIC
Commonwealth of Virginia
Reg. #357546
My Commission Expires
March 31, 2021

WITNESS the following signatures and seals as of the date first above written.

SUMMIT POINTE BLOCK 5, LLC
a Virginia limited liability company

By: *Kevin S. Wampler* (SEAL)
Kevin S. Wampler
Its: Chief Financial Officer

COMMONWEALTH OF VIRGINIA
CITY OF Chesapeake, to wit:

I, Cynthia Marie Bertucci, a Notary Public in and for the jurisdiction aforesaid, does hereby certify that Kevin S. Wampler, who is either personally known to me or who produced _____ as identification, as Chief Financial Officer of Summit Pointe Block 5, LLC, a Virginia limited liability company, has acknowledged the same before me in my jurisdiction aforesaid.

GIVEN under my hand this 31st day of January, 2020.

Cynthia Marie Bertucci
Notary Public

My Commission Expires: March 31, 2021
Registration Number: 357546



Cynthia Marie Bertucci
NOTARY PUBLIC
Commonwealth of Virginia
Reg. #357546
My Commission Expires
March 31, 2021

WITNESS the following signatures and seals as of the date first above written.

SUMMIT POINTE GARAGE I, LLC
a Virginia limited liability company

By: *Kevin S. Wampler* (SEAL)
Kevin S. Wampler
Its: Chief Financial Officer

COMMONWEALTH OF VIRGINIA
CITY OF Chesapeake, to wit:

I, Cynthia Marie Bertucci, a Notary Public in and for the jurisdiction aforesaid, does hereby certify that Kevin S. Wampler, who is either personally known to me or who produced _____ as identification, as Chief Financial Officer of Summit Pointe Garage I, LLC, a Virginia limited liability company, has acknowledged the same before me in my jurisdiction aforesaid.

GIVEN under my hand this 31st day of January, 2020.

Cynthia Marie Bertucci
Notary Public

My Commission Expires: March 31, 2021
Registration Number: 357546



Cynthia Marie Bertucci
NOTARY PUBLIC
Commonwealth of Virginia
Reg. #357546
My Commission Expires
March 31, 2021

WITNESS the following signatures and seals as of the date first above written.

DOLLAR TREE DISTRIBUTION, INC.
a Virginia corporation

By: *Kevin S. Wampler* (SEAL)
Kevin S. Wampler
Its: Chief Financial Officer

COMMONWEALTH OF VIRGINIA
CITY OF Chesapeake, to wit:

I, Cynthia Marie Bertucci, a Notary Public in and for the jurisdiction aforesaid, does hereby certify that Kevin S. Wampler, who is either personally known to me or who produced _____ as identification, as Chief Financial Officer of Dollar Tree Distribution, Inc., a Virginia corporation, has acknowledged the same before me in my jurisdiction aforesaid.

GIVEN under my hand this 31st day of January, 2020.

Cynthia Marie Bertucci
Notary Public

My Commission Expires: March 31, 2021
Registration Number: 357546



Cynthia Marie Bertucci
NOTARY PUBLIC
Commonwealth of Virginia
Reg. #357546
My Commission Expires
March 31, 2021

WITNESS the following signatures and seals as of the date first above written.

DOLLAR TREE PROPERTIES, INC.
a Virginia corporation

By: *Kevin S. Wampler* (SEAL)
Kevin S. Wampler
Its: Chief Financial Officer

COMMONWEALTH OF VIRGINIA
CITY OF Chesapeake, to wit:

I, Cynthia Marie Bertucci, a Notary Public in and for the jurisdiction aforesaid, does hereby certify that Kevin S. Wampler, who is either personally known to me or who produced _____ as identification, as Chief Financial Officer of Dollar Tree Properties, Inc., a Virginia corporation, has acknowledged the same before me in my jurisdiction aforesaid.

GIVEN under my hand this 31st day of January, 2020.

Cynthia Marie Bertucci
Notary Public

My Commission Expires: March 31, 2021
Registration Number: 357546



Cynthia Marie Bertucci
NOTARY PUBLIC
Commonwealth of Virginia
Reg. #357546
My Commission Expires
March 31, 2021

WITNESS the following signatures and seals as of the date first above written.

DOLLAR TREE, INC.
a Virginia corporation

By: *Kevin S. Wampler* (SEAL)
Kevin S. Wampler
Its: Chief Financial Officer

COMMONWEALTH OF VIRGINIA
CITY OF Chesapeake, to wit:

I, Cynthia Marie Bertucci, a Notary Public in and for the jurisdiction aforesaid, does hereby certify that Kevin S. Wampler, who is either personally known to me or who produced _____ as identification, as Chief Financial Officer of Dollar Tree, Inc., a Virginia corporation, has acknowledged the same before me in my jurisdiction aforesaid.

GIVEN under my hand this 31st day of January, 2020.

Cynthia Marie Bertucci
Notary Public

My Commission Expires: March 31, 2021
Registration Number: 357546



Cynthia Marie Bertucci
NOTARY PUBLIC
Commonwealth of Virginia
Reg. #357546
My Commission Expires
March 31, 2021

Exhibit A

Summit Pointe Block 1. LLC

ALL THAT CERTAIN Parcel 10B-3C as shown on that certain subdivision plat entitled "SUBDIVISION PLAT OF PARCELS 10B-1A AND 10B-3A DOLLAR TREE PUD" recorded in the Clerk's Office of the City of Chesapeake, Virginia as Instrument Number 180019250, in Plat Book 00168 Page 0026, recorded on July 19, 2018.

Tax Account # 0280000001303

Summit Pointe Block 2. LLC

ALL THAT CERTAIN Parcel 10B-3B as shown on that certain subdivision plat entitled "SUBDIVISION PLAT OF PARCELS 10B-1A AND 10B-3A DOLLAR TREE PUD" recorded in the Clerk's Office of the City of Chesapeake, Virginia as Instrument Number 180019250, in Plat Book 00168 Page 0026, recorded on July 19, 2018.

Tax Account # 0280000001302

Summit Pointe Block 3. LLC

ALL THAT CERTAIN Parcel 10B-3D as shown on that certain subdivision plat entitled "SUBDIVISION PLAT OF PARCELS 10B-1A AND 10B-3A DOLLAR TREE PUD" recorded in the Clerk's Office of the City of Chesapeake, Virginia as Instrument Number 180019250, in Plat Book 00168 Page 0026, recorded on July 19, 2018.

Tax Account # 0280000001304

Summit Pointe Block 4. LLC

ALL THAT CERTAIN Parcel 10B-3E as shown on that certain subdivision plat entitled "SUBDIVISION PLAT OF PARCELS 10B-1A AND 10B-3A DOLLAR TREE PUD" recorded in the Clerk's Office of the City of Chesapeake, Virginia as Instrument Number 180019250, in Plat Book 00168 Page 0026, recorded on July 19, 2018.

Tax Account # 0280000001305

Summit Pointe Block 5. LLC

ALL THAT CERTAIN Parcel 10B-3AR as shown on that certain subdivision plat entitled "SUBDIVISION PLAT OF PARCELS 10B-1A AND 10B-3A DOLLAR TREE PUD" recorded in the Clerk's Office of the City of Chesapeake, Virginia as Instrument Number 180019250, in Plat Book 00168 Page 0026, recorded on July 19, 2018.

Tax Account # 0280000001300

Summit Pointe Garage I. LLC

ALL THAT CERTAIN Parcel 10B-1B as shown on that certain subdivision plat entitled "SUBDIVISION PLAT OF PARCELS 10B-1A AND 10B-3A DOLLAR TREE PUD" recorded in the Clerk's Office of the City of Chesapeake, Virginia as Instrument Number 180019250, in Plat Book 00168 Page 0026, recorded on July 19, 2018.

Tax Account # 0280000001301

Dollar Tree Properties, Inc.

ALL THAT CERTAIN Parcel 10B-2A as shown on that certain subdivision plat entitled "SUBDIVISION PLAT OF PARCELS 10B-1, 10B-2, 10B-3 AND THE REMAINDER OF PARCEL 10, VOLVO TRACT, WASHINGTON BOROUGH, CHESAPEAKE, VIRGINIA" dated June 4, 1997 and recorded in the Clerk's Office of the City of Chesapeake, Virginia in Plat Book 00123 Page 0054.

Tax Account # 0280000001290

Dollar Tree Distribution, Inc.

ALL THAT CERTAIN Parcel 10B-1AR as shown on that certain subdivision plat entitled "SUBDIVISION PLAT OF PARCELS 10B-1, 10B-2, 10B-3 AND THE REMAINDER OF PARCEL 10, VOLVO TRACT, WASHINGTON BOROUGH, CHESAPEAKE, VIRGINIA" dated June 4, 1997 and recorded in the Clerk's Office of the City of Chesapeake, Virginia in Plat Book 00123 Page 0054.

Tax Account # 0280000001280

INSTRUMENT # 200007481
RECORDED CHESAPEAKE CIRCUIT COURT CLERK'S OFFICE
Mar 09, 2020 AT 11:51 am
ALAN P. KRASNOFF, CLERK by RCH
BOOK 10122 PAGE 0504 - 00542