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**DECLARATION OF CONDOMINIUM  
FOR  
OPUS MYERS PARK CONDOMINIUM**

Plans recorded in Unit Ownership File No. 1061 Page 1

**THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF THE FLAG OF THE UNITED STATES OF AMERICA OR STATE OF NORTH CAROLINA**

**THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF POLITICAL SIGNS**

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**DECLARATION OF CONDOMINIUM  
FOR OPUS MYERS PARK CONDOMINIUM**

THIS DECLARATION OF CONDOMINIUM FOR OPUS MYERS PARK CONDOMINIUM (this "Declaration") is made this 27 day of June, 2019, by **OPUS MYERS PARK, LLC**, a North Carolina limited liability company ("Declarant"), pursuant to the provisions of Chapter 47C of the North Carolina General Statutes, entitled the "North Carolina Condominium Act".

**BACKGROUND STATEMENT**

Declarant is the owner of a parcel of land containing approximately 0.7379 acres, located at 1333 Queens Road, in the City of Charlotte, Mecklenburg County, North Carolina, as more particularly described on Exhibit A attached hereto (the "Land"). Declarant has constructed on the Land five (5) separate buildings containing a total of twenty-four (24) residential condominium units. Declarant also has constructed a parking facility and related amenities and other improvements on the Land. Declarant desires to submit the Land and the improvements located on the Land (collectively, the "Property") to the terms and provisions of the North Carolina Condominium Act.

In addition, Declarant has deemed it desirable to create a nonprofit, incorporated owners' association which will be delegated and assigned powers of maintaining and administering the common areas and facilities on the Property, of administering and enforcing the covenants and restrictions created in this Declaration, and of levying, collecting and disbursing the assessments and charges created in this Declaration, and of taking any steps or performing any acts deemed necessary or appropriate to preserve the values of condominium units within the Property and to promote the recreation, health, safety and welfare of the unit owners. In order to accomplish the foregoing, Declarant is entering into this Declaration.

**STATEMENT OF DECLARATION**

NOW, THEREFORE, Declarant hereby declares that all of the Property shall be held, transferred, sold, conveyed, occupied and used subject to the following covenants, conditions, easements, uses, limitations, obligations, and restrictions, all of which are declared and agreed to be in furtherance of a plan for the division of the Property into condominium units, and shall be deemed to run with the land and shall be a burden and benefit to Declarant, its successors and assigns, and any person or entity acquiring or owning an interest in the Property, and their grantees, successors, heirs, executors, administrators, devisees and assigns.

**ARTICLE I  
DEFINITIONS**

Unless it is plainly evident from the context that a different meaning is intended, the following terms, words, and phrases shall have the following meanings when used in this Declaration:

Section 1.1 "Association" shall mean and refer to Opus Myers Park Condominium Owners Association, Inc., a corporation organized and existing under the North Carolina Non-Profit Corporation Act pursuant to and in accordance with this Declaration, its Articles of Incorporation, the Bylaws, and the North Carolina Condominium Act.

Section 1.2 "Buildings" shall mean and refer to the five (5) buildings located upon the Land, which contain a total of twenty-four (24) Units.

Section 1.3 "Bylaws" shall mean and refer to the bylaws of the Association, a copy of which is attached hereto as Exhibit C, as they may be amended from time to time.

Section 1.4 “Common Elements” shall mean and refer to all portions of the Condominium other than the Units, as depicted on the Plat and the Plans, and as more particularly described in Section 5.1 of this Declaration.

Section 1.5 “Common Elements Interest” shall mean and refer to the undivided percentage interest in the Common Elements allocated to each Unit, as set forth on Exhibit B attached hereto. The Common Elements Interest allocated to each Unit is based on the square footage of the Unit and is calculated by dividing the square footage of that Unit by the total square footage of all Units and multiplying such quotient by 100. The Common Elements Interests shall be used to allocate the division of proceeds, if any, resulting from any casualty loss or eminent domain proceedings, but shall not be used to determine voting rights in the Association, which shall be allocated equally among all Units. For purposes of this Section and Exhibit B, the square footage of a Unit is determined by a system of measurement that measures to the outside surfaces of all exterior walls of the Unit and includes areas within all vertical shafts within the Unit (including elevators but excluding interior fire stairwells (A1, A2, A3, A4 and A5)), and includes the area of private exterior terraces to that Unit.

Section 1.6 “Common Expenses” shall mean and refer to any and all expenditures made by or financial liabilities of the Association, together with any allocations to reserves, pursuant to and in accordance with this Declaration, the Bylaws, and N.C.G.S. §47C-1-103(5).

Section 1.7 “Condominium” shall mean and refer to the Opus Myers Park Condominium, as established by the submission of the Property to the terms of the North Carolina Condominium Act by this Declaration.

Section 1.8 “Condominium Documents” shall mean and refer to this Declaration, the Plans, the Articles of Incorporation of the Association, the Bylaws, and the rules and regulations governing the use of the Property, as the foregoing may be amended and supplemented from time to time, and all attachments and exhibits thereto.

Section 1.9 “Declarant” shall mean and refer to Opus Myers Park, LLC, a North Carolina limited liability company. Following recordation of a document transferring to another person or entity, all or some of the Special Declarant Rights, pursuant to Section 6.4 of this Declaration, the term “Declarant” also shall mean and refer to that transferee.

Section 1.10 “Declarant Control Period” shall mean and refer to the period commencing on the date hereof and continuing until the earlier of (i) three (3) years after the date of the first conveyance of a Unit to an Owner other than Declarant; (ii) one hundred twenty (120) days after conveyance of seventy-five percent (75%) of the Units to Owners other than Declarant; (iii) two (2) years after Declarant ceases to offer Units for sale in the ordinary course of business; or (iv) the date upon which Declarant voluntarily surrenders control of the Condominium in writing.

Section 1.11 “Declaration” shall mean and refer to this Declaration of Condominium, as it may be amended or supplemented in the future.

Section 1.12 “Executive Board” shall mean and refer to the governing body from time to time of the Association as constituted in accordance with the Articles of Incorporation of the Association, the Bylaws and the North Carolina Condominium Act.

Section 1.13 “Land” shall mean and refer to the real property subject to this Declaration, exclusive of any improvements located thereon or incorporated therein, which is more particularly described on Exhibit A attached hereto.

Section 1.14 “Limited Common Elements” shall mean and refer to those portions of the Common Elements allocated by this Declaration, or the terms of N.C.G.S. §47C-2-102(2) or (4), for the

exclusive use and benefit of one or more, but fewer than all, of the Units, to the exclusion of all other Units, as more fully described in Section 5.2 of this Declaration, and as depicted on the Plans.

Section 1.15 "Mortgage" shall mean and refer to a mortgage or deed of trust constituting a first lien on a Unit.

Section 1.16 "Mortgagee" shall mean and refer to the owner and holder of a Mortgage that has notified the Association in writing of its name and address, and that it holds a Mortgage on a Unit. Such notice will be deemed to include a request that the Mortgagee be given the notices and other rights described in Article XVI.

Section 1.17 "North Carolina Condominium Act" shall mean and refer to Chapter 47C of the North Carolina General Statutes.

Section 1.18 "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Unit but shall exclude those persons or entities having an interest in any Unit as merely security for the payment or performance of an obligation.

Section 1.19 "Parking Facility" shall mean the one (1) level parking facility located underneath the Buildings as shown on the Plans. The steel frame and composite concrete structure that forms the first floor of the Buildings also forms the ceiling of the Parking Facility.

Section 1.20 "Plans" shall mean and refer to the surveys, plans and specifications of the Buildings, Parking Facility and Property recorded under the name of the Condominium in the Unit Ownership File in the Office of the Register of Deeds of Mecklenburg County, North Carolina.

Section 1.21 "Property" shall mean and refer to the Land, all improvements and structures located on the Land, and all easements, rights and appurtenances belonging or appertaining to the Land.

Section 1.22 "Registry" shall mean the Office of the Register of Deeds for Mecklenburg County, North Carolina.

Section 1.23 "Special Declarant Rights" shall mean and refer to the rights reserved for the benefit of Declarant in the Condominium Documents, as more particularly described in Article VI of this Declaration.

Section 1.24 "Special Declarant Rights Period" shall commence as of the recordation of this Declaration and shall continue for a period of sixty (60) years thereafter, unless Declarant records a statement terminating its Special Declarant Rights in the Registry prior to such time.

Section 1.25 "Unit" shall mean and refer to a portion of the Property, as more particularly described in Article IV of this Declaration, that is the subject of individual ownership by an Owner.

In addition, the definitions set forth in N.C.G.S. §47C-1-103 are incorporated in this Declaration by reference, and the terms defined therein shall have the meanings set forth therein when used in this Declaration or the Condominium Documents, unless those terms are expressly defined otherwise in this Declaration or unless it is plainly evident from the context that a different meaning is intended.

## **ARTICLE II**

### **DESIGNATION OF CONDOMINIUM**

The Land on which the Buildings, Parking Facility and other improvements are located is located entirely in Mecklenburg County, North Carolina, contains approximately 0.7379 acres, and is more particularly described on Exhibit A attached hereto and incorporated herein by reference. The Property is

subjected to the terms of the North Carolina Condominium Act by this Declaration. The name of the Condominium is "Opus Myers Park Condominium".

**ARTICLE III**  
**DESCRIPTION OF BUILDINGS**

Section 3.1 Buildings. There are five (5) Buildings located on the Property, each consisting principally of a steel frame and composite concrete construction; glass, limestone, brick and EFIS exteriors; and a membrane roof. The Building labeled "Building E" on the Plans is a four-story building; the other four (4) Buildings (labeled "A", "B", "C" and "D" on the Plans) are each five (5) stories. Each Building contains one (1) Unit per floor. The Buildings contain an aggregate of twenty-four (24) Units. The location and dimensions of the Buildings are more particularly described in the Plans. The steel frame and composite concrete structure forms all floors of the Buildings and also the ceiling of the Parking Facility, excluding the roofs of all Buildings which are metal deck without composite concrete. Each Building and the Units located therein are accessible from the Parking Facility by one of five elevators. The Plans show all particulars of each Building and the Parking Facility. The Plans contain a certification by a North Carolina Registered Land Surveyor and a North Carolina Licensed Architect, that the Plans contain all the information required by N.C.G.S. §47C-2-109, and have been recorded under the name of the Condominium in the Unit Ownership File of the Registry.

Section 3.2 Disclosures. Each Owner, by acquiring title to his Unit, acknowledges the following:

- (a) The Property is located adjacent to or near streets that may produce traffic and noise.
- (b) The views from a Unit may change over time due to various circumstances, including neighboring development and the removal or addition of landscaping.
- (c) Declarant makes no representations regarding the zoning of adjacent property or that the adjacent property's zoning may not change in the future.
- (d) Declarant makes no representations regarding the schools that currently or may in the future serve any Unit.
- (e) Since in every community there are conditions that different people may find objectionable, there may be conditions outside of the Property that an Owner or occupant may find objectionable. It shall be the sole responsibility of each Owner to become acquainted with community conditions that could affect the Units.
- (f) Exposed concrete surfaces in portions of the Improvements and other improvements that are not heated and cooled are subject to cracking due to (i) water penetration, (ii) expansion and contraction of concrete with temperature changes, and (iii) building settlement.
- (g) Concrete surfaces in heated and cooled portions of the Improvements are subject to cracking due to building settlement.
- (h) Concrete and hardwood surfaces in a Unit may transmit noise, and that noise shall not be deemed to interfere with or cause disruption to the use and quiet enjoyment of another Unit by its respective Owner or occupant.
- (i) No representations are made that a Unit is or will be soundproof or that sound will not be transmitted from one Unit to another.

- (j) The dimensions and square footage calculations shown on any preliminary floor plans and on the Plans are only approximations. Declarant has disclosed that the square footages for each Unit are approximate and utilized a system of measurement that measures to the outside surfaces of all exterior walls of the Unit and includes areas within all vertical shafts within the Unit (including elevators but excluding interior fire stairwells), and includes the area of private exterior terraces adjacent to the Unit. Any Owner that is concerned about exact, as-built measurements should measure the Unit prior to purchase.
- (k) Declarant will be constructing portions of the Condominium and engaging in other construction activities related to the construction of Units and Common Elements. Those construction activities may, from time to time, cause noise, fumes, odors, dust and dirt. Conditions on the Property resulting from construction activities shall not be deemed a nuisance and shall not cause Declarant or its agents to be in violation of this Declaration.
- (l) A Unit may trap humidity because of cooking, bathing, laundering, or other activities. As a result, condensation may appear on the surfaces of windows due to temperature differences between the interior and exterior portions of the window glass. If left unattended and not properly addressed by the Owner, trapped humidity and condensation may cause (i) staining; (ii) damage to surrounding seals, caulk, paint, woodwork and sheetrock; (iii) mold and mildew; and (iv) may adversely affect applicable warranties offered or required by the North Carolina Condominium Act.
- (m) The Improvements were constructed pursuant to plans prepared by licensed professionals and permits issued by applicable governmental authorities. During the course of construction of the Improvements, variations from the original plans and specifications may occur, some of which may add, reduce or alter scope. While the Improvements were constructed according to building codes existing at the time Declarant submitted the plans for permit, some code requirements may have changed during the interim period that were not incorporated into the construction of the Improvements.
- (n) Each Owner, by acquiring title to a Unit, acknowledges that sound transmission in the Improvements is difficult to control, and that noises from Units or Common Areas can often be heard in other Units. Declarant makes no representation or warranty as to the level of sound transmission between Units or between Units and other portions of the Property, and each Owner waives and releases any claim against Declarant, the Association or other Owners for loss or damages resulting from sound transmission.

#### **ARTICLE IV**

#### **DESCRIPTION OF UNITS**

Section 4.1 Units. The location of Units within the Buildings and their dimensions are shown on the Plans. There are a total of twenty-four (24) Units in the Buildings. The identifying number for each Unit is set forth on Exhibit B and on the Plans.

Section 4.2 Unit Boundaries. The boundaries of each Unit are as follows:

- (a) Upper Boundary: The upper boundary is the horizontal plane of the top surface of the wallboard in the ceilings within each Unit. If any Unit contains ceilings that are not horizontal, or if the ceilings within different portions of the Unit are at different elevations, then the upper boundary of such Unit shall not be a single horizontal plane, but shall vary with the different ceiling elevations within the Unit.

- (b) Lower Boundary: The lower boundary is the horizontal plane of the top surface of the subflooring within each Unit. If any Unit contains floors within different portions of the Unit that are at different elevations, then the lower boundary of such Unit shall not be a single horizontal plan, but shall vary with the different finished floor elevations within the Unit.
- (c) Vertical Boundaries: The vertical boundaries are the vertical planes which include the back surface of the wallboard of all walls bounding the Unit, extended to intersections with each other, and with the Upper Boundary and Lower Boundary of the Unit.

#### Section 4.3 Additional Items Included in a Unit.

- (a) All lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring and any other materials constituting any part of the finished surfaces of the perimeter walls, floors, and ceilings shall be part of the Unit.
- (b) All windows, window sashes, window frames and interior and exterior window trim and molding; all doors including door frames in the interior and perimeter walls and doorsills together with all glass therein; all parts of any sliding glass doors and of any dual glaze window glass or other multi-thickness glass; and the space occupied by all of the foregoing items shall be part of the Unit.
- (c) All interior walls (except load bearing walls), partitions, and fixtures, including, without limitation, built-in bathroom cabinets and kitchen cabinets, smoke detectors, carbon monoxide detectors, built-in fireplaces, built-in appliances, refrigerators, ranges, dishwashers, utility and service lines, mechanical, electrical, plumbing and all other equipment and systems installed for the sole and exclusive use of the Unit lying within the boundaries of the Unit, and all heating and air cooling systems and equipment installed for the sole and exclusive use of the Unit and located within or outside the boundaries of the Unit shall be part of the Unit, including the two individual roof-mounted air conditioning compressors for each unit.
- (d) The space within all fixtures located within the boundaries of a Unit and the space occupied by the fixtures themselves shall be part of the Unit.
- (e) All unenclosed space, if any, within or occupied by structural parts of the Buildings which may project into the Unit, as defined above, from the top side of the floor of the Unit to the underside of the finished surface, or if unfinished, the interior surface of the ceiling of the Unit and including, by way of illustration, but not by way of limitation, the space within any built-in cabinets or attics.
- (f) Any portion of any chute, flue, duct, wire, pipe for water or sewer, conduit, bearing wall, bearing column, or any other fixture lying partially within and partially outside the designated boundaries of a Unit, that serves only that Unit, shall be part of the Unit.
- (g) The exterior doors and exterior windows shall part of the Unit.
- (h) To the extent that any heating, ventilating, and air conditioning systems, including fans, compressors, return air grills, piping and thermostats, whether located inside or located outside the designated boundaries of a Unit, exclusively serve a Unit, they shall be part of the Unit.

Section 4.4 Items Not Included in a Unit. Supporting walls and other parts of the Buildings and equipment that are within the boundaries of a Unit but which are necessary for the existence, support, maintenance or safety of any other part of the Property are not part of a Unit.

**ARTICLE V**  
**COMMON ELEMENTS**

Section 5.1 Common Elements. The Common Elements include all portions of the Condominium that are not part of the Units, including without limitation:

- (a) The Land.
- (b) All easement rights and other property rights appurtenant to the Property.
- (c) All improvements located on the Land outside of the Buildings including without limitation the Parking Facility, the paved entrance drive into the Parking Facility, the exterior landscaped courtyard area located on grade with the first floors of the Buildings (over the Parking Facility) and sidewalks.
- (d) All other portions of the Buildings located outside of the Units including without limitation corridors, stairs and fire escapes.
- (e) The foundations, roofs, columns, girders, beams, supports, exterior and interior load-bearing walls, floors within and between Units, and all other structural elements of the Buildings.
- (f) Any fences, gardens, landscaping and grassy areas installed by Declarant and replacements thereof.
- (g) Any public connections and meters for utility services that are not owned by the public utility or municipal agency providing such services.
- (h) Any pumps, motors, fans, compressors, ducts, and in general all apparatus and installations existing for common use by all the Units in the Condominium.
- (i) All tangible personal property required for the operation and maintenance of the Condominium that may be owned by the Association.
- (j) The Limited Common Elements described in Section 5.2.

Section 5.2 Limited Common Elements. The Limited Common Elements shall be composed of the following:

- (a) Those portions of any chute, flue, duct, wire, pipe for water or sewer, conduit, bearing wall, bearing column, or any other fixture lying partially within and partially outside the designated boundaries of a Unit, but serving exclusively that Unit, which shall be Limited Common Elements allocated exclusively to that Unit.
- (b) Any portions of the heating, ventilating, and air conditioning systems, including fans, compressors, return air grills and thermostats, whether located inside or located outside the designated boundaries of a Unit, which shall be Limited Common Elements allocated exclusively to the Unit or Units that they serve.
- (c) The private exterior terraces adjacent to each Unit, as depicted on the Plans.
- (d) Each of the five (5) elevators and elevator shafts which connects the Parking Facility to one of the five (5) Buildings and thereby serves only the Units in such Building, as depicted on the Plans; including the entrance vestibule area located on the ground floor level.



- (e) The Parking Spaces (as defined in Section 5.6).
- (f) The Storage Units (as defined in Section 5.7).
- (g) All corridors and stairs, fire escapes and bridges to fire escapes outside of Units serving less than all of the Units, as depicted on the Plans.
- (h) All other areas indicated as Limited Common Elements on the Plans.

References in this Declaration to "Common Elements" shall include Limited Common Elements unless the context clearly indicates otherwise. The allocation of use of Limited Common Elements to the Units as provided for in this Declaration shall not be altered without the unanimous consent of the Owners whose Units are affected.

Section 5.3 Undivided Interests of Owners in Common Elements. The percentage interest in the Common Elements allocated to each Unit shall be the Common Elements Interest for that Unit as set forth on Exhibit B attached hereto. The Common Elements Interest allocated to each Unit shall not be changed except with the unanimous consent of all the Owners of all the Units and with the consent of all the Mortgagees, except as may be specifically authorized by the North Carolina Condominium Act or elsewhere in this Declaration.

Section 5.4 Maintenance of Common Elements. The Association shall be responsible for the maintenance and repair of all Common Elements, except as set forth in the next sentence and except for maintenance or repairs caused by the negligence or intentional misconduct of any Owner, his agents, invitees or family members, which shall be the responsibility of that Owner. The Association shall not be responsible for the maintenance and repair of Limited Common Elements except the Association shall maintain the following (the "Association Limited Common Elements Maintenance Items"): structural elements of terraces, the Parking Spaces, the exterior of the Storage Units, the elevators and elevator shafts, and those corridors, fire escapes and bridges to fire escapes and stairs identified as Limited Common Elements on the Plans. The Association shall periodically have the Common Elements, Parking Spaces, elevators and elevator shafts allocated to Units, and the structural elements of terraces inspected by professional construction, mechanical and environmental inspectors or consultants and shall provide reasonable periodic maintenance to the same.

Section 5.5 Maintenance Responsibilities of the Unit Owner. Except in the event of fire or other casualty which is covered by the Association's insurance policy, are more particularly described in Article XI, each Owner shall be responsible for the cleanliness, orderliness, maintenance, repair and replacement of his Unit and the Limited Common Elements allocated to his Unit (other than the Association Limited Common Elements Maintenance Items). In particular, the obligation for maintenance, repair, or replacement of any portions of the heating, ventilating, and air conditioning systems including the two individual roof-mounted air conditioning compressors for each unit and for the cleaning, repair and replacement of any glass surfaces of windows or doors that are Limited Common Elements shall be the sole responsibility of the Owners of the Units to which such Limited Common Elements are allocated.

Section 5.6 Parking Rights. There are fifty-seven (57) striped parking spaces located in the Parking Facility, which are shown and numbered on the Plans (the "Parking Spaces"). Some of the Parking Spaces are "tandem" parking spaces consisting of two parking spaces in which cars will be parked one in front of the other. Three (3) of the Parking Spaces – the Parking Spaces numbered 3, 4 and 2A on the Plans - are hereby allocated to Unit D4 as Limited Common Elements appurtenant to Unit D4. Forty-six (46) of the Parking Spaces are to be allocated to a specific Unit other than Unit D4 (two Parking Spaces per Unit as Limited Common Elements). At the time that Declarant conveys a Unit other than Unit D4 to a third party, it shall allocate two (2) of the unallocated Parking Spaces as a Limited Common Element appurtenant to that Unit. Each pair of "tandem" parking spaces will be allocated to the same Unit. Parking Spaces that are not allocated to Units shall be available to all Owners and their invitees on a first-come, first-served basis; provided, however, that any handicap parking spaces in the Parking Facility will be available to all Owners and their invitees on a first-come, first-served basis for handicap parking.

As Declarant allocates each of the unallocated Parking Spaces, it shall notify the Association in writing of that allocation. Once a Parking Space has been allocated as a Limited Common Element to a particular Unit, that Parking Space may not be transferred by the Owner of that Unit except in connection with a conveyance of his Unit, or a conveyance to another Owner, and any such attempted transfer in violation of this provision shall be null and void. In addition, two Owners of Units may exchange the Parking Spaces allocated to their Units in the manner provided in Section 9.5(d) of this Declaration. Any Owner transferring a Parking Space to the Owner of another Unit in accordance with the provisions of this Section shall immediately notify the Association in writing of the transfer, and a supplement to this Declaration confirming the transfer shall be prepared and recorded in the manner contemplated by Section 9.5(d).

Use of the Parking Facility by all Owners shall be subject to rules and regulations that may be imposed by the Association. In particular, access to the Parking Facility, or to particular areas within the Parking Facility, may be controlled by a gate and card access system (or similar such restricted-entry system), in order to discourage parking by persons who are not Owners and/or their invitees.

Section 5.7 Storage Units. There are twenty-four (24) storage units located in the Parking Facility, which are shown and numbered on the Plans (the "Storage Units"). One Storage Unit shall be allocated to a specific Unit as a Limited Common Element. At the time that Declarant conveys a Unit to a third party, it shall allocate one (1) of the unallocated Storage Units as a Limited Common Element appurtenant to that Unit.

As Declarant allocates each of the unallocated Storage Units, it shall notify the Association in writing of that allocation. Once a Storage Unit has been allocated as a Limited Common Element to a particular Unit, that Storage Unit may not be transferred by the Owner of that Unit except in connection with a conveyance of his Unit, or a conveyance to another Owner, and any such attempted transfer in violation of this provision shall be null and void. In addition, two Owners of Units may exchange the Storage Units allocated to their Units in the manner provided in Section 9.5(d) of this Declaration. Any Owner transferring a Storage Unit to the Owner of another Unit in accordance with the provisions of this Section shall immediately notify the Association in writing of the transfer, and a supplement to this Declaration confirming the transfer shall be prepared and recorded in the manner contemplated by Section 9.5(d).

Section 5.8 Rules and Regulations. The Association shall have the right to promulgate reasonable rules and regulations governing the use of the Common Elements.

## **ARTICLE VI**

### **SPECIAL DECLARANT RIGHTS**

Section 6.1 Special Declarant Rights. Until the expiration of the Special Declarant Rights Period, Declarant will have the following Special Declarant Rights with respect to all of the Property, in addition to all other rights reserved for the benefit of Declarant in the Condominium Documents:

- (a) The right to complete the Buildings, the Parking Facility and any other Improvements on the Property.
- (b) The right to maintain one (1) sales offices, one (1) management office, up to (six) model Units and signs advertising the Condominium. The offices, model Units and signs will be of sizes and styles determined by Declarant, and may be relocated by Declarant, from time to time. At all times, the offices, model Units and signs shall remain the property of Declarant and may be removed from the Property by Declarant at any time during or promptly after the expiration of the Special Declarant Period.
- (c) The right to use easements through the Common Elements for the purpose of completing construction.

- (d) The right to appoint or remove officers of the Association or members of the Executive Board during the Declarant Control Period.
- (e) The right to exercise any other rights granted to or reserved to or by Declarant in the Condominium Documents or the North Carolina Condominium Act.
- (f) The right to lease any or all un-sold units.
- (g) The rights set forth in Section 6.2.

Section 6.2 Easements to Facilitate the Exercise of Special Declarant Rights. Declarant hereby reserves for itself, and its successors and assigns, a non-exclusive easement upon, across, over, in and under the Property as may be reasonably necessary for the purpose of discharging Declarant's obligations or exercising Special Declarant Rights, whether arising under the North Carolina Condominium Act or this Declaration, including (i) easements for ingress, egress and for installation, replacement, repair and maintenance of all utilities including but not limited to water, sewer, gas, telephone, electrical, cable and other communication systems, indoor sprinkler systems, life safety systems and security systems, and (ii) easements to store materials on the Common Elements and to make such other use of the Common Elements as may be reasonably necessary or incident to the construction of the Units and other improvements within the Property.

Section 6.3 Order of Exercise of Declarant's Rights. The fact that Declarant may exercise one or more of the Special Declarant Rights on a portion of the Property will not operate to require Declarant to exercise one or more Special Declarant Rights with respect to any other portion of the Property.

Section 6.4 Transfer of Special Declarant Rights. Declarant may transfer any Special Declarant Rights created or reserved under the Condominium Documents to any person or entity, by an instrument evidencing the transfer duly recorded in the Registry. The instrument shall not be effective unless it is executed by the transferor and the transferee. Upon the transfer of any Special Declarant Rights, the liability of the transferor and the transferee shall be as set forth in N.C.G.S. §47C-3-104.

## **ARTICLE VII** **RESTRICTIONS ON USE**

The following covenants, restrictions, conditions and limitations as to use and occupancy shall run with the land and shall be binding upon each Owner, his or her family members residing in or occupying his or her Unit, guests, invitees, tenants, licensees, heirs, executors, administrators, successors and assigns.

Section 7.1 Residential Use. Except as specifically set forth herein, all Units shall be used only for single-family residential purposes. Except for the construction, sales and management activities of the Declarant and/or the Association, no business, trade, industry, occupation or profession of any kind, whether for profit or not for profit, may be conducted, maintained or permitted on any part of the Property, unless specifically permitted by the Association. To the extent permitted by law, an Owner may use a portion of his Unit for a home office or studio (other than a music or dance studio) provided that the activities conducted therein do not interfere with the quiet enjoyment or comfort of any other Owner and if such activities do not increase the normal flow of traffic in and out of the Property, or in and out of the Owner's Unit, or any type of parking problem, as determined by the Association.

Section 7.2 Nuisance. No obnoxious, offensive or unlawful activity shall be conducted within any Unit, or on or about the Common Elements, nor shall anything be done thereon or therein which way be or which may become an annoyance or nuisance to the other Owners, or endanger the health and safety of any Owner. Nothing shall be done or kept in any Unit or in the Common Elements that will result in the termination of, or an increase in the premium for, the policy of property insurance for the Property.

Section 7.3 Noise and Disorderly Conduct. No Owner shall engage in any disorderly conduct on the Property, or cause or allow any disturbance, including, but not limited to, shouting, singing or playing any musical instruments or electronic equipment (including radios, stereos, televisions, and computer equipment) in a manner that unreasonably disturbs other Owners. Each Owner shall be responsible for the conduct of such Owner's family members, guests, invitees and tenants. It shall be the responsibility of an individual Owner causing unreasonable sound transmission to promptly remedy the disturbance. For example, the installation of floor covering may minimize sound transmissions to adjacent Units. In cases where a justifiable complaint exists and is confirmed by the Association, the Association is authorized to engage the services of a qualified engineer to recommend a solution, and the Owner causing the unreasonable sound transmission shall be responsible for the reasonable expenses of the engineer, as well as for the expense of implementing the solution recommended by the engineer.

Section 7.4 Prohibitions on Use of Common Elements. The Common Elements (other than the Storage Units and other storage areas, if any, designated by the Association) shall not used for the storage of personal property of any kind including, without limitation, baby carriages, playpens, bicycles, wagons, toys, vehicles, benches or chairs. Stairs, elevators, entrances, lobbies, hallways, sidewalks, courtyards, driveways, and parking areas shall not be obstructed in any way, or used for other than their intended purposes. In general, no activity shall be carried on nor conditions maintained by any Owner either in his Unit or upon the Common Elements which despoils the appearance of the Property or interferes with the quiet enjoyment of other Owners with respect to their Units.

Section 7.5 Garbage. Trash, garbage and other waste shall be kept in sanitary containers within each Unit or deposited in the common trash receptacles. Materials for recycling shall be kept in separate containers provided for such purpose. No trash or garbage shall be kept or stored on terraces or elsewhere in the Common Elements except in the areas designated by the Association for the storage of garbage. The Association shall be responsible for the maintenance of the common trash facilities and all trash removal, and the expenses incurred by the Association in doing so shall be Common Expenses.

Section 7.6 Parking. Each Owner is expected to park his vehicle or vehicles in the Parking Spaces allocated to such Owner's Unit as Limited Common Elements. No Owner or any employee, agent, or invitee of any Owner, shall park, store or keep any vehicle on the Property except wholly within those portions of the Parking Facility designated as parking areas by the Association, and in particular shall not block the Parking Space of any other Owner, the entrance drive, access ramps, drive aisles and fire lanes in the Parking Facility. The parking rights of Owners or their guests in the Parking Spaces are described in Section 5.6 of this Declaration. The Parking Spaces allocated to each Unit may be used only by the Owner of the Unit to which those Parking Spaces are allocated as a Limited Common Element, and his agents and invitees. No boat, boat trailer, motor home, travel trailer, camper or other recreational vehicle may be stored on the Property at any time. No significant automobile repair shall be allowed in the Parking Facility. The Association shall have the right to tow any vehicle in violation of this Section at its owner's expense.

Section 7.7 Leases of Units. Any lease of a Unit or portion thereof shall be in writing and shall provide that the terms of the lease shall be subject in all respects to the Condominium Documents and that any failure by the lessee to comply with all of the terms of such Condominium Documents shall constitute a default under the lease. No Unit may be leased for a period shorter than twelve (12) months; provided, however, that a Unit may be leased for a period of seven (7) days or less up to two (2) times per year. Promptly following the execution of any lease for a Unit, the Owner of such Unit shall forward a true and correct copy of the lease to the Association.

Section 7.8 No Timeshares. No interest in any Unit may be subjected to a time share program, as that term is defined in the North Carolina Condominium Act.

Section 7.9 Animals. No animals, livestock, or poultry of any kind shall be kept or maintained on the Property or in any Unit, except for a maximum of two (2) common household pets (weighing no more than seventy-five (75) pounds each; provided that one of these pets may weigh not more than one hundred and twenty-five (125) pounds), provided that it is not kept for breeding or commercial purposes,

and further provided that it is kept subject to the rules and regulations of the Association. Dogs, cats or other household pets must be kept within the confines of the Owner's Unit, except when being held on hand leash by the person attending the animal. Each Owner shall be responsible for cleaning up after such Owner's household pet. Notwithstanding the above, the Association shall have the right to promulgate rules and regulations pertaining to the size, number and type of such household pets and the right to levy fines and enforcement charges against persons who do not clean up after their pets. In addition, the right to maintain an animal in the Units shall be subject to termination if the Association determines, in its sole discretion, that maintenance of the animal constitutes a threat to others, a nuisance, an unreasonable disturbance, or creates a detrimental effect on the Condominium or other Units or occupants. No dog house, pen, run, or other structure used or intended for the housing or keeping of the animals may be constructed, placed or maintained on any part of the Common Elements, including the Limited Common Elements. All pets shall be registered and/or inoculated as required by law. Each Owner shall indemnify, defend and hold the Association harmless from any claim resulting from any action of such Owner's pet, and shall repair, at such Owner's expense, any damage to the Common Elements caused by such Owner's pet. If any Owner violates these rules more than twice in any twelve (12) month period, then in addition to any fines levied under Section 8.7 of the Bylaws or individual Unit assessments which may be levied as provided in Section 8.1 of the Bylaws, the Association shall have the right to require the Owner to remove the pet permanently from the Property upon not less than ten (10) days prior written notice.

Section 7.10 Utilities. Total electrical usage in any Unit shall not exceed the capacity of the circuits for that Unit as labeled on the circuit breaker boxes, and no electrical device causing overloading of the standard circuits may be used in any Unit without permission of the Association. All clothes dryers will have lint filters, and all stove venting and hoods will have grease screens, and such screens and filters shall be used at all times and kept clean, and in good order and repair, by the Owner of the Unit in which they are located.

Section 7.11 Floor Load. No Owner shall permit floor loads in excess of the stated design loads for the Buildings, nor shall any Owner permit concentrated loads of any sort (e.g., safes, display facilities, filing systems or other heavy equipment) unless and until the adequacy of the structure to support such floor loads is verified by a structural engineer to the satisfaction of the Association and under such reasonable conditions and circumstance as the Association may require.

Section 7.12 Exterior Surfaces of Buildings. Unless specifically approved in writing by the Association, which approval may be conditioned upon compliance with applicable rules, regulations and installation guidelines promulgated by the Association, Owners shall not (a) permit any curtains, shades or other window coverings to be hung inside or outside any windows and/or terrace doors which will show any color other than white or beige tones on the outside; and (b) cause or permit anything to be hung, affixed or displayed on the inside and/or outside of windows, doors, walls or on the roof of any Building, including, but not limited to, reflective-type materials, awnings, canopies, shutters, decorative door arrangements, radio or television antenna (except as permitted under Section 7.20), signs and flags (except as permitted under Section 7.14).

Section 7.13 Architectural Control. During the Special Declarant Rights Period, Declarant shall have the sole architectural control over the Property and the Association shall have no power or authority with respect thereto. Except as set forth in the preceding sentence, no building, landscaping, fence, wall or other structure (other than a satellite dish or antenna permitted by Section 7.20) shall be commenced, erected or maintained upon the Property, nor shall any exterior addition to or change or alteration to either the Unit or the Common Elements be made, until the plans and specification showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing by the Association, in its sole discretion.

Section 7.14 Signs and Flags. Unless specifically approved in writing by the Association, which approval may be conditioned upon compliance with applicable rules, regulations and installation guidelines promulgated by the Association, no signs or other advertising devices shall be displayed by Owners on or about the exterior of any Unit (including any window or door thereof) or in the Common

Elements (including terraces adjacent to Units). Notwithstanding the foregoing, as provided in Section 6.1, Declarant shall have the right to maintain advertising signs upon the Property (including but not limited to banners on the Buildings, free-standing project signs and signs within the windows of unsold Units or within the Common Elements) until the last Unit owned by Declarant is sold, provided those signs comply with applicable governmental regulations. Unless specifically approved in writing by the Association, which approval may be conditioned upon compliance with applicable rules, regulations and installation guidelines promulgated by the Association, no pole or other device for the display of decorative flags, including without limitation, the flag of the United States of America or the State of North Carolina, shall be erected or displayed on or about the exterior of any Unit (including any window or door thereof), or in the Common Elements (including terraces adjacent to Units). In the event the Association approves the installation of a pole or device for the display of decorative flags, any such flags displayed by an Owner shall be in good taste and shall not contain lewd or offensive displays or material.

Section 7.15 Maintenance. The Owner of each Unit is responsible for maintaining his Unit as well as the Limited Common Elements appurtenant thereto, except as otherwise provided in Sections 5.4 and 5.5. Each Owner shall keep his respective Unit and its appurtenant Limited Common Elements in a clean, neat and orderly condition and in a good state of maintenance and repair. If an Owner fails to comply with the reasonable maintenance standards or requirements of the Association, the Association may undertake such maintenance and repair at the expense of the Owner and shall levy an individual Unit assessment pursuant to Section 8.1 of the Bylaws.

Section 7.16 Nondiscrimination. No Owner (including Declarant), or any employee, agent or representative thereof, shall discriminate upon the basis of sex, race, age, color, sexual orientation, creed or national origin in the sale, lease or rental of any Unit or in the use of the Common Elements.

Section 7.17 Distributing Materials and Picketing. No person shall engage in the distributing of any materials on any portion of the Common Elements without the prior written consent of the Association. Additionally, no person shall engage in any demonstration on any part of the Common Elements, including, but not limited to, picketing of any Unit or any facilities which comprise the Property, marching on the Common Elements, carrying signs or gathering for the purpose of demonstrating without the prior written consent of the Association.

Section 7.18 Sale of Units. The right of an Owner to sell, transfer or otherwise convey that Owner's Unit is not subject to any right of first refusal or similar restriction, and any Owner may transfer that Owner's Unit free of any such limitation. To enable the Association to maintain accurate records of the names and addresses of the Owners, each Owner agrees to notify the Association, in writing, within thirty (30) days after an interest in that Owner's Unit has been transferred to another person. In addition, each Owner agrees to provide to a purchaser of that Owner's Unit a copy of the Declaration and the current rules and regulations of the Association.

Section 7.19 Handicap Accessibility. Notwithstanding the other provisions herein, an Owner may, at such Owner's expense, have such reasonable modifications made to the interior and exterior of such Owner's Unit and the Limited Common Elements associated with such Unit as may be necessary to afford physically handicapped persons full enjoyment of such Owner's Unit. Any and all modifications to the exterior of a Unit or Limited Common Elements shall comply with the guidelines and regulations of the United States Department of Housing and Urban Development for buildings and facilities providing accessibility and usability for physically handicapped people and shall be undertaken at the Owner's expense, pursuant to a written contract with a licensed contractor, and based upon plans and specifications approved by the Association. At the request of the Association, the Owner and the approved contractor shall provide an adequate performance bond for the benefit of the Association based on the value of the work being performed. The Association is permitted the discretion to make reasonable accommodations to any rules and regulations, policies, practices or services as may be necessary to afford a handicapped person equal opportunity to use and enjoy such Owner's Unit, including the Common Elements and Limited Common Elements.

