

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

Plans recorded in Unit Ownership File No. _____ Page _____

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 ____ day of _____, 2018, 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.
- (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 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.
- (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 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 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 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. Forty-eight (48) of the Parking Spaces are to be allocated to a specific Unit (two Parking Spaces per Unit) as Limited Common Elements. At the time that Declarant conveys a Unit 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 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 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, 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.

Section 7.20 Antennas; Satellite Dishes and Discs. No exterior satellite dish or antenna may be placed by an Owner on any portion of the Common Elements without the prior written approval of the Association which approval may be conditioned upon compliance with applicable rules, regulations and installation guidelines promulgated by the Association. Declarant or the Association may provide for the installation of central cable service or a central dish or antenna on the Common Elements to serve the entire Property ("Central Service"), and may require that Owners use the Central Service provided that it gives commercially acceptable signals that an individual Owner wishes to obtain at no greater cost than the cost of individual service that the Owner could obtain privately. If adequate Central Service is not available, an Owner may install in its Unit or on the terrace of his Unit (a) a satellite dish or antenna no larger than one meter diagonally or in diameter, (b) there shall be no holes drilled in the Common Elements unless this requirement prevents an acceptable quality signal or unreasonably increases the cost of antenna installation and/or (c) a mast that is 12 feet or less in height and does not extend higher than the upper boundary of the Unit or beyond the boundary of the terrace and over the Common Elements. In lieu of drilling holes in the Common Elements, Owners shall use devices that permit the transmission of telecommunications signals through a glass pane without cutting or drilling a hole or devices such as ribbon cable that permit the transmission of telecommunications signals into the Unit through window or doors without penetrating the Common Elements. If a penetration into the Common Elements is approved by the

Association, the penetration shall be properly sealed and waterproofed in accordance with applicable industry standards and building codes. The Association may require that an antenna or satellite dish be screened from public view, provided that (i) the cost of screening is reasonable, (ii) the screening does not impair reception, and (iii) the screening requirements are the same as for HVAC units or similar installations. The Owner shall also be responsible for any damage to the Limited Common Elements caused by the installation or removal of the antenna or satellite dish. Any Owner installing an antenna or satellite dish under this Section shall indemnify, defend and hold the Association harmless from and against any loss, damage, claim or other liability resulting from the installation, maintenance, repair, use and/or removal of the antenna or satellite dish.

Section 7.21 Terraces. The terraces adjacent to each Unit shall be kept in a clean, neat, and orderly condition at all times, and shall not be used for the overnight storage of garbage or for the drying of laundry. In particular, lights, hanging baskets, pots, planters, umbrellas, garden hoses, wreaths, towels, clothing, flags (including the flags of the United States or North Carolina) or banners shall not be hung on the railings of any terrace, and any dead plants shall be removed promptly. No indoor-outdoor carpeting, hot tub, or other pool shall be installed on any terrace. Terraces shall not be used for the storage of bicycles or exercise equipment. Except for properly contained fires in conventional household charcoal grills or gas grills which are constantly attended or supervised, no open fires shall be permitted in any part of the Property, the Common Elements or Limited Common Elements. Each Owner is solely responsible for any fire or other damage which results from the negligent, careless or improper use of a charcoal grill or gas grill, and agrees to properly maintain and service such grills so that they do not violate any applicable laws or the Association's rules and regulations.

Section 7.22 Fencing. Except for fencing installed by Declarant, no fencing (including invisible dog-type fencing) or walls shall be permitted on the Common Elements or Limited Common Elements, without the prior written consent of the Association.

Section 7.23 Insurance. Nothing shall be done or kept in any Unit or in the Common Elements which will increase the rate of insurance of the Buildings and the Common Elements, without the prior written consent of the Association. No Owner shall permit anything to be done or kept in his or her Unit or in the Common Elements which will result in the cancellation of insurance on the Buildings and the Common Elements, increase the insurance premiums, or which would be in violation of any law.

Section 7.24 Landscaping. No Owner shall install any landscaping and/or plant any vegetable or herb garden in the Common Elements or the Limited Common Elements (except for the planting of minor flowers) unless the prior written consent of the Association is obtained.

Section 7.25 Rules and Regulations. In addition to the use restrictions set forth in this Declaration, reasonable rules and regulations governing the use of the Property may be made and amended from time to time by the Association. Copies of such regulations and amendments thereto shall be posted prominently prior to their effective date, and shall be furnished by the Association to all Owners upon request.

Section 7.26 Environmental Toxins: Mitigation of Dampness and Humidity.

(a) Radon is a naturally occurring radioactive gas that, when trapped in buildings, can be harmful at elevated levels. Declarant makes no claims as to the presence or absence of radon at the Condominium. Further, Declarant does not warrant that any building material used in the Condominium will be free from toxicity.

(b) All Owners shall set the automatic thermostat to run the air conditioning system to maintain the Unit temperature, whether or not occupied, at no greater than 78°F, to minimize humidity in the Unit. Leaks, leaving exterior doors or windows open, wet flooring and moisture will contribute to the growth of mold, mildew, fungus or spores. Each Owner, by acquiring title to a Unit, shall be deemed to have agreed that (i) Declarant is not responsible for any illness, personal injury, death or allergic reactions that may be experienced by the Owner or any pets as a result of mold, mildew, fungus or spores; (ii) the Owner shall

keep the Unit clean, dry, well-ventilated and free of contamination; and (iii) there is no method for completely eliminating the development of mold, mildew, fungus or spores. Declarant does not make any representations or warranties regarding the existence or development of mold, mildew, fungus or spores. Each Owner shall be deemed to waive and expressly release any claim for loss or damages resulting from the existence and/or development of mold, mildew, fungus or spores. If the Association reasonably believes that the provisions of this Section are not being complied with for a Unit, then the Association may (but need not) enter the Unit (without requiring the consent of the Owner or any other party) to turn on the air conditioning in an effort to cause the temperature of the Unit to be maintained as required in this Section (with all utility consumption costs to be paid and assumed by the Owner). If electric service is not then available to the Unit, the Association may (without requiring the consent of the Owner or any other party) connect electric service to the Unit at the Owner's expense.

(c) Each Owner, by acquiring title to a Unit, assumes the risk of, and agrees to hold Declarant harmless and indemnify Declarant from and against, any claims made by the Owner, its guests or invitees on account of (i) any risks associated with radon, toxins, mold, mildew, fungus or spores, and (ii) any illness, allergic reactions, personal injury and death to Owner or those persons and to any pets of Owner or those persons, including all costs associated with those claims including inconvenience, relocation and moving expenses, lost time, lost earning power, hotel and other accommodation expenses for room and board, all attorneys' fees and other legal and associated expenses during the time of any legal proceedings, concerning any matters mentioned in this Section.

Section 7.27 Compliance with Covenants, Conditions and Restrictions.

(a) Every Owner and other party described in the first paragraph of this Article VII shall strictly comply with the covenants, conditions and restrictions set forth in this Declaration, with the Bylaws and with the Association's rules and regulations in relation to the use and operation of the Property. A violation committed by any persons residing in, occupying or visiting a Unit, or committed by any agent, employee, invitee, contractor or subcontractor of the Owner or of any person occupying a Unit, shall be attributed to that Unit and its Owner.

(b) The Association may also authorize entry into a Unit or any Limited Common Element to perform maintenance or make repairs which are the responsibility of an Owner who has failed to perform such maintenance or make such repairs (i) after having given such Owner at least ten (10) days prior notice, or (ii) without notice, in the event of an emergency.

(c) The Association is empowered to levy reasonable fines against any Owner in the form of Individual Unit Assessments for the failure of such Owner to comply with any such covenants, conditions and/or restrictions, and any and all expenses incurred by the Association in enforcing any of the terms and provisions of the Condominium Documents, including without limitation, reasonable attorneys' fees to the extent permitted by North Carolina law.

(d) Pursuant to Section 19.1, but subject to the other provisions of Article XIX, any action brought by the Association may be brought in its own name, in the name of its Association, or in the name of its Independent Manager.

ARTICLE VIII THE ASSOCIATION

Section 8.1 Organization of Association. The Association has been organized to provide for the administration of the Property, and the Association shall administer the operation and maintenance of the Property and undertake and perform all acts and duties incident thereto in accordance with the terms of its Articles of Incorporation, the Bylaws, and the North Carolina Condominium Act. A true copy of the Bylaws of the Association is attached hereto as Exhibit C. Every Owner shall be required to be and shall automatically be a member of the Association by virtue of his ownership interest in a Unit.

Section 8.2 Powers; Lien for Assessment. In the administration of the operation and management of the Property, the Association shall have and it is hereby granted the authority and power to enforce the provisions of this Declaration, to levy and collect assessments in the manner provided in Article X below and in Section 8 of the Bylaws, and adopt, promulgate and enforce such rules and regulations governing the use of the Units and Common Elements as the Association may deem to be in the best interest of the Owners in accordance with the Bylaws. Any sum assessed by the Association remaining unpaid for a period of thirty (30) days or longer shall constitute a lien on the Unit with respect to which such sum was assessed upon filing in accordance with N.C.G.S. §47C-3-116, and shall be enforceable by the Association in accordance with the Act, this Declaration and the Bylaws. Any lien established pursuant to this Section shall not be affected by the transfer of the Unit, other than a transfer as a result of a foreclosure of a first lien Mortgage pursuant to N.C.G.S. §47C-3-116(f).

Section 8.3 Declarant Control Period. During the Declarant Control Period, Declarant reserves the right to appoint and remove any Executive Board members; provided, however, (i) that not later than 60 days after conveyance of twenty-five percent (25%) of the Units to Owners other than Declarant, at least one member and not less than twenty-five percent (25%) of the members of the Executive Board shall be elected by Owners other than Declarant; and (ii) that not later than 60 days after conveyance of fifty percent (50%) of the Units to Owners other than Declarant, not less than thirty-three percent (33%) of the members of the Executive Board shall be elected by Owners other than Declarant.

Section 8.4 Books and Records: The Association shall maintain current copies of: (a) the Condominium Documents, as they may be amended from time to time, (b) any rules and regulations adopted under Section 7.25 from time to time; and (c) all financial records of the Association, as required by N.C.G.S. §47C-3-118. These items shall be available for inspection, during normal business hours and upon reasonable advance notice, by any Owner, any Mortgagee, and any insurer or guarantor of a loan secured by a Mortgage.

ARTICLE IX

EASEMENTS AND PROPERTY RIGHTS

Section 9.1 Access by the Association. The Association, or any person authorized by it, shall have the right of access to each Unit and to the Limited Common Elements to the extent necessary for performance by the Association of its obligations of maintenance, repair, or replacement of the Property.

Section 9.2 Encroachment Easements. If any portion of the Common Elements now encroaches upon any Unit, or if any Unit now encroaches upon any other Unit or upon any portion of the Common Elements, or if such encroachment shall occur hereafter as a result of the settling or shifting of any Building or Parking Facility, there shall exist a valid easement for the encroachment and for the maintenance of same for so long as such Building and Parking Facility shall stand. If any Building, any Unit, or any portion of the Parking Facility or other Common Elements is partially or totally destroyed by fire or other casualty or as a result of condemnation or eminent domain proceedings, and subsequently is rebuilt, any encroachment of parts of the Common Elements upon any Unit, or of parts of any Unit upon the Common Elements, due to such rebuilding shall be permitted, and valid easements for such encroachments and the maintenance thereof shall exist so long as the Buildings and Parking Facility shall stand.

Section 9.3 Easements over Common Elements. Declarant, during the Declarant Control Period, and the Association, at any time, may grant easements for utility purposes for the benefit of the Property, including the right to install, lay, maintain, repair and replace water lines; pipes; ducts; sewer lines; storm water lines; gas mains; telephone and television or cable television wires, cables and equipment; electrical conduits; and wires over, under, along and on any portion of the Common Elements (other than the Limited Common Elements); and each Owner hereby grants to Declarant or the Association, as applicable, an irrevocable power of attorney to execute, acknowledge and record for and in the name of each Owner such instruments as may be necessary to effectuate the foregoing. In addition, Declarant shall have an easement over the Common Elements (other than the Limited Common Elements) as may be reasonably necessary to complete the construction of the Buildings, Parking Facility and the other

improvements within the Property, or to make any repairs that may be required during any applicable warranty period.

Section 9.4 Emergency Access. In case of any emergency originating in or threatening any Unit or the Common Elements, regardless of whether the Owner is present at the time of such emergency, the Association, or any other person authorized by it, shall have the right to enter any Unit or its Limited Common Elements for the purpose of remedying or abating the cause of such emergency and making any other necessary repairs not performed by the Owners, and such right of entry shall be immediate.

Section 9.5 Relocation of Boundaries; Combination; Subdivision; Exchange; Partitioning.

(a) Relocation of Boundaries. The boundaries between adjoining Units may be relocated upon application to the Association by the Owners of such adjoining Units ("Adjoining Owners") and upon approval by the Association of such application; provided, however, that no such relocation of boundaries shall be binding upon any Mortgagee holding a Mortgage on any Unit whose boundaries are relocated, unless consented to in writing by such Mortgagee. Any such application to the Association must be in such form and contain such information as may be reasonably required by the Association, and shall be accompanied by a plat detailing the proposed relocation of boundaries. Unless the Association determines within thirty (30) days after submission to it of the application that the proposed relocation of boundaries is unreasonable, the application shall be deemed approved. Any relocation of boundaries shall not affect the interests in the Common Elements allocated to each Unit. Upon approval of the proposed relocation of boundaries, the Association shall cause to be prepared and filed, at the Adjoining Owners' expense, an amendment to this Declaration and a plat which identifies the Units involved, describes and depicts the altered boundaries, and gives the dimensions of the altered Units. Such amendment shall also contain operative words of conveyance and be signed by the Adjoining Owners and consented to by their Mortgagees, if any, and shall be indexed by the Registry in the names of the Adjoining Owners.

(b) Combination of Two Adjoining Units by the Same Owner. Pursuant to N.C.G.S. §47C-2-112, if the same Owner owns two adjoining Units, the Owner may apply to the Association for permission to remove any intervening partition or create an aperture between the Units, so long as this does not impair the structural integrity or support of the Building or the Units. The two Units shall continue to be two Units for purposes of voting and payment of Assessments and this shall not be considered an alteration of boundaries.

(c) Subdivision of Units. No Unit may be subdivided.

(d) Exchange of Parking Spaces and Storage Units. Parking Spaces and Storage Units may be exchanged upon application to the Association by the Owners of such Parking Spaces and Storage Units ("Exchanging Owners") and upon approval by the Association of such application; provided, however, that no such exchange shall be binding upon any Mortgagee holding a Mortgage on any Unit unless consented to in writing by such Mortgagee. Any such application to the Association must be in such form and contain such information as may be reasonably required by the Association, and shall be accompanied by a plat identifying the Parking Spaces and/or Storage Units to be exchanged. Unless the Association determines within thirty (30) days after submission to it of the application that the proposed exchange of Parking Spaces and/or Storage Units is unreasonable, the application shall be deemed approved. Any exchange of Parking Spaces and Storage Units shall not affect the interests in the Common Elements allocated to each Unit. Upon approval of the proposed exchange of Parking Spaces and/or Storage Units, the Association shall cause to be prepared and filed, at the Exchanging Owners' expense, an amendment to this Declaration and a plat which identifies the Parking Spaces and/or Storage Units involved. Such amendment shall also contain operative words of conveyance and be signed by the Exchanging Owners and consented to by their Mortgagees, if any, and shall be indexed by the Register of Deeds in the names of the Exchanging Owners.

(e) Partitioning. Except for the transfer or exchange of Parking Spaces and Storage Units expressly permitted by Section 5.6 and Section 5.7, the interests in the Common Elements allocated to each Unit shall not be conveyed, devised, encumbered, partitioned or otherwise dealt with separately from

said Unit, and the interests in the Common Elements allocated to each Unit shall be deemed conveyed, devised, encumbered or otherwise included with the Unit even though such interests are not expressly mentioned or described in the instrument conveying, devising, encumbering or otherwise dealing with such Unit. Any conveyance, mortgage or other instrument which purports to grant any right, interest or lien in, to or upon the Unit, shall be null, void and of no effect insofar as the same purports to affect any interest in a Unit's allocated interests in the Common Elements unless the same purports to convey, devise, encumber or otherwise deal with the entire Unit. Any instrument conveying, devising, encumbering or otherwise dealing with any Unit, which describes said Unit by the identifying number assigned thereto on the Plans and herein without limitation or exception shall be deemed and construed to affect the entire Unit and its allocated interest in the Common Elements. Nothing herein contained shall be construed as limiting or preventing ownership of any Unit and its allocated interest in the Common Elements by more than one person or entity as tenants in common, joint tenants, or as tenants by the entirety or any other form by law permitted.

Section 9.6 Conveyance or Encumbrance of Common Elements. While the Property remains subject to this Declaration and to the provisions of the North Carolina Condominium Act, no conveyances of or security interests or liens of any nature shall arise or be created against the Common Elements without the prior written consent of at least eighty percent (80%) of all Owners, including at least eighty percent (80%) of all Owners other than Declarant, and at least eighty percent (80%) of all Mortgagees; provided, however, that all of the Owners of Units to which any Limited Common Element is allocated must agree in writing to any conveyance of that Limited Common Element or any grant of a security interest therein. Every agreement for the performance of labor or the furnishing of materials to the Common Elements, whether oral or in writing, must provide that it is subject to the provisions of this Declaration and that the right to file a mechanic's lien or other similar lien by reason of labor performed or material furnished is subordinated to this Declaration and to the lien of assessments for Common Expenses provided for in Section 8.2 of this Declaration. Nothing in this Section shall be construed to limit the right of any Owner to convey or to encumber his allocated interest in the Common Elements as an appurtenance to and in connection with the conveyance or mortgaging of his Unit.

Section 9.7 Nature of Interest in Unit. Every Unit, together with its allocated interest in the Common Elements, shall for all purposes be and it is hereby declared to be and to constitute a separate parcel of real property. The Owner of each Unit shall be entitled to the exclusive fee simple ownership and possession of his Unit subject only to the covenants, conditions, restrictions, easements, uses, limitations, obligations, rules and regulations set forth in the Condominium Documents, or adopted by the Association. During the period in which Declarant still owns unsold Units, Declarant enjoys the same rights and assumes the same duties as they related to each individual unsold Unit as any other Owner.

Section 9.8 Access Easements to Unit Owners. Each Owner is hereby granted an unrestricted right and easement of access, ingress and egress with respect to his Unit.

Section 9.9 Restriction Instruments and Consent Agreement. The Property, including each of the Units, is encumbered by and subject to those certain restrictions contained in the following deeds: (a) deed from George Stephens and Sophie Myers Stephens, his wife, to J. Arthur Henderson, filed for recorded in Book 345 at Page 326 of the Registry, (b) deed from George Stephens and Sophie M. Stephens, his wife, to Ella H. Sullivan, filed for recorded in Book 367 at Page 263 of the Registry, and (c) deed from Mrs. Mary H. Brenizer and husband, Addison G. Brenizer, to Charles Creighton and R.C. Boyce, filed for record in Book 1172 at Page 141 of the Registry (collectively, the "Restriction Instruments"), as such restrictions have been modified and supplemented by that certain Restriction Modification and Consent Agreement recorded in Book 31613 at Page 426 of the Registry (the "Consent Agreement"). The Consent Agreement contains, among other things, a requirement that Declarant obtain the approval of the "Advisory Group" (as such term is defined in the Consent Agreement) to Declarant's (i) final schematic drawings, (ii) final design development drawings, and (iii) construction (permit set) drawings, all inclusive of then current elevations and planned exterior materials. Such approval must be obtained prior to construction of any improvements on the Property. Paragraph 2 of the Consent Agreement also contains certain requirements regarding parking which requirements are incorporated herein by reference and shall be enforceable by the Association and the Owners.

ARTICLE X **ASSESSMENTS**

Section 10.1 Taxes. Every Unit, together with its allocated interest in the Common Elements, shall be separately assessed and taxed by each assessing authority for all types of taxes authorized by law. Each Owner shall be liable solely for the amount taxed against his individual Unit, provided, however, the Units will not be separately assessed with respect to Mecklenburg County ad valorem property taxes until the first full calendar year following recordation of the Declaration, and any such taxes for the calendar year in which the Declaration is recorded shall be paid by Declarant (subject to reimbursement from each Owner for its pro rata share at closing).

Section 10.2 Common Expenses. Except as otherwise provided in this Declaration or in the Bylaws, each Owner shall contribute its percentage share (i.e., based upon its allocated Common Elements Interest) of the Common Expenses, all in accordance with the Bylaws and the provisions of the North Carolina Condominium Act. Assessments for all Units shall begin as of the date of the first conveyance of a Unit to an Owner other than Declarant, or at any time thereafter as determined by Declarant; provided, however, that until the Association levies an assessment, Declarant shall be solely responsible for the Common Expenses. Due dates for payment of such assessments shall be established by the Association and shall be collected at least monthly. The Bylaws grant the Association the right to impose special assessments and individual Unit assessments against the Owners. With respect to Units owned by it, Declarant's obligations to pay assessments for Common Expenses may be satisfied in the form of cash payments to the Association or "in kind" contributions of services that would otherwise be included within Common Expenses, or a combination of these.

Section 10.3 Common Surplus. The term "Common Surplus" means and refers to all funds and other assets of the Association, including excess of receipts of the Association from assessments, rents, profits and revenues from whatever source, over the amount of Common Expenses. The Common Surplus shall be owned by the Owners in the same proportion as their respective shares of the Common Expenses, provided, however, that the Common Surplus shall be held by the Association in the manner and subject to the terms, provisions and conditions of this Declaration imposing certain limitations and restrictions upon the use and distribution thereof. Except for distribution of any insurance proceeds, which shall be made in the manner provided in Section 11.6, or upon termination of the Condominium, any attribution or distribution of Common Surplus which may be made from time to time shall be made to the then Owners in proportion to their respective allocated Common Elements Interest.

ARTICLE XI **INSURANCE**

Section 11.1 Property Insurance.

(a) The Association shall obtain and maintain, for the benefit of all Owners and Mortgagees, insurance on all Buildings, the Parking Facility, structures or other Improvements, now or at any time hereafter constituting a part of the Property, against loss or damage by vandalism, malicious mischief, windstorm, sprinkler leakage (if applicable), fire, lightning, cost of debris removal and such perils as are covered by an "all risk" form of fire insurance policy, with extended coverage. The policy shall be issued by an insurance carrier (a) authorized to do business in North Carolina, and (b) that maintains a general policyholder's rating of "A" and a financial size category of "VII" or better in Best's Insurance Reports International Edition. The policy may include a commercially reasonable deductible agreed to by the Association (which shall not exceed \$10,000.00) and shall be in an amount not less than one hundred percent (100%) of the then current replacement cost of the Improvements, through the issuance of a Guaranteed Replacement Cost Endorsement or a Replacement Cost Endorsement. The policy shall cover cost of demolition, water damage (excluding floods, backing up of sewers and drains, the running off of surface water, and the overflow of a body of water), and agreed amount endorsements and a deductible on any single loss or group of losses within one year in such amounts as shall be found reasonable by the Association, after carefully considering and comparing the relative premium and deductible costs, together with all other pertinent factors. The policy providing such coverage shall provide that no Mortgagee shall

have any right to apply the proceeds thereof to the reduction of any Mortgage debt. Such policy shall provide coverage for built-in fixtures and equipment in an amount not less than one hundred percent (100%) of the replacement cost thereof (subject to the deductible provisions described above). Such policy shall also contain either a waiver by the insurer of any increased hazard clause, a severability of interest endorsement, or a provision stating that the coverage will not be affected by the act, omission or neglect of any person, unless such act, omission or neglect is within the knowledge and control of the Association prior to the occurrence of the loss. Such policy shall not provide coverage for any items of personal property installed by or for any Owner or for any "betterments" to a Unit made by an Owner following the initial purchase of a Unit.

(b) Such policy of insurance shall contain provisions requiring the issuance of certificates of coverage and the issuance of written notice to the Association and to any Mortgagee or Mortgagees of any Unit not less than thirty (30) days prior to any expiration, substantial modification, non-renewal or cancellation of such coverage.

(c) Such insurance by the Association shall be without prejudice to the right of the Owner of a Unit to obtain individual contents, personal property insurance, or betterments coverage.

(d) All policies purchased under this Section 11.1 shall provide for the release by the issuer thereof of any and all rights of subrogation or assignment and all causes and rights of recovery against any Owner, members of his or her family, or other occupant of the Property for recovery against anyone of them for any loss occurring to the insured property resulting from any of the perils insured against under such insurance policy.

(e) The insurance coverage required under this Section 11.1 shall be reviewed at least annually by the Association, and if any of such insurance coverage becomes impossible or impractical to obtain, the Association shall obtain coverage which most closely approximates the required coverage with the deductible provisions as reasonably determined by the Association.

Section 11.2 Liability Insurance. The Association shall obtain and maintain one or more policies of commercial general liability insurance in such limits as the Association may, from time to time, determine, covering each member of the Executive Board, the Independent Manager, if any, and each Owner with respect to liability arising out of the use, ownership, maintenance, or repair of the Common Elements; provided, however, that in no event shall the limits of such policy ever be less than \$5,000,000.00 per occurrence. The Association may satisfy its liability insurance coverage requirements under this Section by means of a primary policy with per occurrence coverage limits of less than \$1,000,000.00, so long as it also maintains one or more "umbrella" or excess liability policies sufficient to provide total coverage in excess of \$5,000,000.00 per occurrence. The liability insurance policies shall include endorsements covering cross liability claims of one insured against another, including the liability of the Executive Board or the Owners as a group to one or more Owners, and shall provide that it may not be canceled or substantially modified without at least thirty (30) days' prior written notice to the Association and to all insureds, including all Owners and Mortgagees. The Association shall annually review such liability insurance coverage and limits.

Section 11.3 Fidelity Coverage. The Association shall obtain fidelity coverage against dishonest acts on the part of all persons handling or responsible for handling funds belonging to or administered by the Association meeting at least the most current minimum coverages required by law. Any such fidelity insurance policy must name the Association as the named insured and shall be written in an amount as may be determined by the Executive Board, but in no event less than one-half the annual budgeted amount of Common Expenses, the amount required by any Mortgagee, or the amount required by law, whichever is greater. Additionally, the policy must include a provision that calls for no less than ten (10) days' written notice to the Association prior to cancellation or substantial modification. Any Independent Manager hired by the Association shall be required to provide its own fidelity insurance policy which must provide the same coverage and contain the same terms as required by this Section.

Section 11.4 Other Insurance Policies. The Association shall be authorized to obtain such other insurance coverage, including worker's compensation or employee liability insurance, as the Association shall determine from time to time desirable or necessary, from time to time.

Section 11.5 Premiums and Deductibles. Premiums upon insurance policies purchased by the Association, and any amounts paid as a result of a deductible, shall be paid by the Association and charged as a Common Expense. The Association shall maintain at all times sufficient funds in its reserve account in order to cover the cost of any deductible amounts required under the property insurance policy maintained pursuant to Section 11.1. The foregoing notwithstanding, each Owner agrees that if any portion of the Property which is covered under the Association's insurance policy is damaged or destroyed by the negligent acts or omissions or willful misconduct of an Owner or his or her family, invitees, or tenants, then such Owner shall be responsible for paying the lesser of: (a) the insurance deductible due under the Association's insurance policy; or (b) the cost to repair and/or replace any damage to such property or Improvements, which amount shall be due within ten (10) days after the delivery of written notice of such costs to the responsible Owner(s) or twenty (20) days after mailing of such notice to the responsible Owner(s) by certified mail, whichever occurs first. In the event, an Owner refuses or fails to pay the insurance deductible or replacement/repair costs in the time period provided in the preceding sentence, the amount thereof may be advanced by the Association and the amount so advanced shall be assessed to such Owner as an individual Unit assessment.

Section 11.6 Distribution of Insurance Proceeds. All insurance policies procured by the Association shall provide that all losses shall be adjusted with and all proceeds shall be payable to the Association as insurance trustee and each Owner irrevocably appoints the Association as its attorney-in-fact for that purpose. The sole duty of the Association as insurance trustee shall be to receive such proceeds as are paid and to hold the same in trust to restore the damage as described in Article XII or distribution as set forth herein and for the benefit of the Owners and their Mortgagees in the following shares:

- (a) Proceeds on account of damage to the Common Elements shall be held in undivided shares for each Owner and his mortgage, if any, each Owner's share to be the same as such Owner's allocated Common Elements Interest.
- (b) Proceeds on account of damage to Units shall be held in the following undivided shares:
 - (i) When the damage is to be restored, for the Owners of damaged Units in proportion to the cost of repairing the damage to each such Owner's Unit, which cost shall be determined by the Association.
 - (ii) When the damage is not to be restored, an undivided share for each Owner, such share being the same as each such Owner's allocated Common Elements Interest.
- (c) In the event a mortgagee endorsement or certificate has been issued with respect to a Unit, the share of the Owner shall be held in trust for the Mortgagee and the Owner as their respective interests may appear.
- (d) Proceeds of insurance policies received by the Association as insurance trustee shall be distributed to or for the benefit of the Owners in the following manner:
 - (i) If it is determined, as provided in Article XII below, that the damaged property with respect to which the proceeds are paid shall not be reconstructed or repaired,
 - (A) the proceeds attributable to the damaged Common Elements shall be used to restore the damaged area to a condition compatible with the rest of the Condominium;

(B) the insurance proceeds attributable to Units and Limited Common Elements which are not rebuilt shall be distributed to the owners of these Units and Units to which those Limited Common Elements were allocated or to their Mortgagees, in proportion to their respective Common Elements Interests; and

(C) the remainder of the proceeds shall be distributed to all Owners or Mortgagees, as their interests may appear, in proportion to their respective Common Elements Interests.

(ii) If the damage for which the proceeds were paid is to be repaired or reconstructed, the proceeds shall be paid to defray the costs thereof. Any proceeds remaining after payment of such repair costs shall be distributed to the beneficial Owners and their Mortgagees, if any, jointly, in proportion to their respective Common Elements Interests.

Section 11.7 Insurance Obtained by Owners. Each Owner shall obtain and keep continuously in force additional fire and casualty and extended coverage insurance upon any betterment made to an Owner's Unit, such Owner's personal property, loss of use of the Unit, general liability insurance, and such other insurance coverage as such Owner may desire. Each Owner's HO-6 policy coverage amount must be no less than 20% of the Unit's appraised value with a deductible of not more than 5% of such appraised value. Each Owner shall obtain and maintain public liability insurance coverage in the amount of at least \$300,000/500,000 for bodily injury, including deaths of persons and property damage, arising out of a single occurrence. Each Owner shall file a copy of each such individual policy with the Association within thirty (30) days after purchase of a Unit.

Section 11.8 Insurance Certificates. The Association shall furnish certificates evidencing the insurance coverages maintained by it under this Article XI to each Owner within five (5) business days after written request therefor.

ARTICLE XII **DUTY TO REPAIR OR RECONSTRUCT**

Section 12.1 Reconstruction and Repair. In the event of damage to or destruction of any Building or the Parking Facility as a result of fire or other casualty, the Association shall arrange for the prompt restoration and replacement of the damaged or destroyed Building or Parking Facility unless (1) the Condominium is terminated in accordance with the provisions of Article XV below, or (2) repair or replacement would be illegal under any state or local health or safety statute or ordinance, or (3) the Owners decide not to rebuild by an eighty percent (80%) vote (including one hundred percent (100%) of Owners of Units not to be rebuilt and one hundred percent (100%) of Owners of Units to which are assigned Limited Common Elements not to be rebuilt) and not less than fifty-one percent (51%) of the Mortgagees. Unless one of the preceding three conditions occurs, the Association shall arrange for the prompt repair and restoration of the damaged or destroyed Building or Parking Facility, not including any decoration or covering for walls, ceilings, or floors, or furniture, furnishings, fixtures or equipment (unless the subject insurance policy covers a portion or all of such loss, in which event the Association shall repair or replace such damaged property), and the Association shall disburse the proceeds of all insurance policies to the contractors engaged in such repair and restoration in appropriate progress payments and in accordance with the provisions of Section 11.6(d)(ii) of this Declaration. Any payment for repair and restoration in excess of the insurance proceeds shall constitute a Common Expense. Any reconstruction or repair shall be in accordance with the Plans. If the Owners vote not to rebuild any Unit, that Unit's allocated Common Elements Interests shall be automatically reallocated upon the vote as if the Unit had been condemned under N.C.G.S. §47C-1-107(a).

Section 12.2 Obligations of Owners. Each Owner will, at his sole cost and expense, keep and maintain his Unit in good order and repair in accordance with the Plans, and will make no structural addition, alteration or improvement to his Unit without the prior written consent of the Association, except as specifically permitted by this Declaration or authorized under N.C.G.S. §47C-2-111. Upon the failure of an

Owner to so maintain his Unit, the Association shall be authorized to maintain, repair or restore such Unit, and the cost thereof shall be charged to such Owner and constitute a lien on the Unit until paid.

ARTICLE XIII
UNITS SUBJECT TO CONDOMINIUM DOCUMENTS

All present and future Owners, tenants, and occupants of the Units shall be subject to and shall comply with the provisions of the Condominium Documents, as amended and supplemented from time to time. The acceptance of a deed of conveyance or the entering into of a lease or the entering into occupancy of any Unit shall constitute an agreement that the provisions of this Declaration, the Bylaws and any rules and regulations which may be adopted are accepted and ratified by such Owner, tenant or occupant, and an agreement that such provisions shall be deemed and taken to be covenants running with the Land and shall bind any person having at any time any interest or estate in such Unit as though such provisions were made a part of each and every deed of conveyance or lease.

ARTICLE XIV
AMENDMENT TO AND SUPPLEMENT OF DECLARATION

Section 14.1 Except in the cases of amendment by (i) the Declarant under N.C.G.S. §47C-2-109(d) or §47C-2-110, (ii) or the Association under §47C-2-107, §47C-2-112(a) or §47C-2-113, or (iii) certain Owners under §47C-2-108(b), §47C-2-112(a), §47C-2-113(b), §47C-2-118(b), and/or (iv) except as is otherwise specifically authorized herein, this Declaration may be amended only by the vote not less than sixty-seven percent (67%) of the Owners of Units, and not less than fifty-one percent (51%) of the Mortgagees, cast in person or by proxy at a meeting duly held in accordance with the provisions of the Bylaws. Except to the extent expressly permitted by the North Carolina Condominium Act or other provisions of this Declaration, any amendment which amends or alters the percentage of Common Elements Interest of any Unit, increases the number of Units, changes the use to which any Unit is restricted, changes the boundaries of any Unit, or modifies the terms of this Article XIV, shall require the written approval of all Owners, together with the consent of all their respective Mortgagees. No amendment to the Declaration shall be effective until executed on behalf of the Association by any officer designated for that purpose and recorded in the Registry. No amendment to this Declaration shall be adopted or passed which shall impair or prejudice the rights and priorities of any Mortgagee without the written consent of such Mortgagee. During the Declarant Control Period, no amendment to this Declaration shall be effective without the written consent of Declarant.

Section 14.2 Declarant may, at Declarant's option, amend this Declaration without obtaining the consent or approval of any other person or entity if such amendment is necessary to cause this Declaration to comply with the requirements of FHA, VA, the Federal National Mortgage Association ("FNMA") or other similar agency. Declarant, without obtaining the approval of any other person or entity, also reserves the right to make (a) amendments or modifications which are correctional in nature and do not involve a change which materially adversely affects the substantive rights, duties or obligations specified herein; and/or (b) any addition or amendment that Declarant is authorized to make under other Section of this Declaration.

ARTICLE XV
TERMINATION

The Condominium may be terminated and the Property removed from the provisions of the North Carolina Condominium Act only by the vote not less than eighty percent (80%) of the Owners of Units, and not less than eighty percent (80%) of the Mortgagees, cast in person or by proxy at a meeting duly held in accordance with the provisions of the Bylaws, and as evidenced by execution of a termination agreement, or ratification thereof, by the requisite number of Owners and Mortgagees. The termination shall comply with the requirements of N.C.G.S. §47C-2-118, and must be recorded in the Registry before it becomes effective. Following the recordation of the termination agreement, the interests of the Owners and Mortgagees in the Property shall be as provided in N.C.G.S. §47C-2-118. The failure of any Mortgagee to respond within thirty (30) days to any written request of the Association, sent by registered or certified mail,

return receipt requested, for consent to termination of the Condominium shall constitute an implied approval by that Mortgagee of the proposed termination.

ARTICLE XVI **MORTGAGEE PROTECTION**

Section 16.1 General Provisions. This Article XVI establishes certain standards and covenants for the benefit of Mortgagees. This Article XVI is supplemental to, and not in substitution for, any other provisions of the Condominium Documents, but in the event of any conflict between the provisions of the Condominium Documents and the provisions of this Article XVI, the provisions of this Article XVI shall control.

Section 16.2 Percentage of Mortgagees. Wherever in the Condominium Documents the approval or consent of a specified percentage of Mortgagees is required, it shall mean the approval or consent of Mortgagees holding Mortgages on Units which have allocated to them that specified percentage of votes in the Association, as compared to the total votes in the Association allocated to all Units then subject to Mortgages held by Mortgagees. In order to maintain compliance with FNMA regulations, Declarant reserves the right to change the percentage of votes specified in this Declaration in order to maintain compliance if FNMA regulations change in the future.

Section 16.3 Rights to Examine Books and Records. Any Mortgagee, and any insurer or guarantor of a loan secured by a Mortgage, shall have the right to examine, during normal business hours and upon reasonable notice, the books and records of the Association, including copies of the Condominium Documents, as amended, and the financial statements of the Association, and to be furnished, upon written request, at least one copy of the annual financial statement and report of the Association, such annual statement and report to be furnished within one hundred twenty (120) days following the end of each fiscal year. If any Mortgagee requests, and agrees to pay the cost of the audit, the financial statement shall be audited by an independent certified public accountant.

Section 16.4 Mortgagee's Rights to Notice. Any Mortgagee (including, for purposes of this Section, any insurer or guarantor of a loan secured by a Mortgage that has notified the Association in writing of its name and address, and that it insures or guarantees a Mortgage) shall have the right to receive from the Association prompt written notice of the following:

- (a) Default under any of the terms and provisions of the Condominium Documents by any Owner owning a Unit encumbered by a Mortgage held, insured, or guaranteed by such Mortgagee, which default remains uncured for a period of sixty (60) days.
- (b) Any loss or damage to or condemnation or taking of the Common Elements or any loss or damage to or condemnation or taking of a Unit encumbered by a Mortgage held, insured or guaranteed by such Mortgagee.
- (c) Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association.
- (d) Any proposed action by the Association, the Executive Board, or the Owners, which under the terms of the Condominium Documents requires the consent of all or any portion of the Mortgagees.

The failure of any Mortgagee to respond within thirty (30) days to any written request of the Association, sent by registered or certified mail, return receipt requested, for approval of an addition or amendment to the Condominium Documents or other action described herein that expressly requires Mortgagee approval shall constitute an implied approval by that Mortgagee of the proposed addition or amendment.

Section 16.5 Other Mortgagee Rights. Notwithstanding any other provision of this Declaration or the Bylaws, the Association may not change the period for collection of regularly budgeted Common Expenses to other than monthly without the consent of all Mortgagees that have served written notice to the Association as provided in Section 16.4. Any representative of a Mortgagee may attend and address any meeting that an Owner may attend.

Section 16.6 Consent and Notice Required. Notwithstanding any other provision of this Declaration or the Condominium Documents, no amendment of any material provision of the Condominium Documents described in this Section shall be effective without notice to all Mortgagees, as required by Section 16.4, the vote of at least sixty-seven percent (67%) of the Owners (or any greater percentage required by the terms of the Condominium Documents), and the approval of at least fifty-one percent (51%) of the Mortgagees (or any greater percentage required by the terms of the Condominium Documents). A change to any of the following items will be considered material:

- (a) Voting rights.
- (b) Increases in assessments that raise the previously assessed amount by more than twenty-five percent (25%), assessment liens, or the priority of assessment liens.
- (c) Reductions in reserves for maintenance, repair, and replacement of the Common Elements.
- (d) Responsibility for maintenance and repairs of the Units, the Limited Common Elements, or the Common Elements.
- (e) Reallocation of interests in the Common Elements or the Limited Common Elements, except that when Limited Common Elements are reallocated by agreement between Owners of Units, then only those Owners and only the Mortgagees holding Mortgages on those Units need approve such reallocations.
- (f) Redefinition of boundaries of Units, except that when the boundaries of only adjoining Units are involved, then only the Owners of those Units and the Mortgagees holding Mortgages on those Units must approve such action.
- (g) Convertibility of Units into Common Elements, or Common Elements into Units.
- (h) The expansion or contraction of Condominium, or the addition, annexation or withdrawal of property to or from the Condominium.
- (i) The requirements for insurance and fidelity bonds.
- (j) The imposition of any additional restrictions on the leasing of Units.
- (k) The imposition of any additional restrictions on an Owner's right to sell or transfer his Unit.
- (l) The restoration or repair of the Property after casualty damage or partial condemnation in a manner other than that specified in the Condominium Documents.
- (m) Any termination of the Condominium after occurrence of substantial destruction or condemnation.
- (n) Any provision that expressly benefits the Mortgagees, insurers or guarantors of Mortgages on Units.

Section 16.7 Enforcement. The provisions of this Article XVI are for the benefit of all Mortgagees and their successors, and may be enforced by any of them by any available means.

ARTICLE XVII CONDEMNATION

If all or any part of the Property is taken in condemnation or by eminent domain, the award for such taking shall be distributed in accordance with the procedure set forth in N.C.G.S. §47C-1-107. The proceeds of any award payable to the Association for the benefit of the Owners and their Mortgagees as a result of condemnation of all or a portion of the Common Elements shall first be used to restore the damaged area to a condition compatible with the rest of the Condominium or to raze the remaining damaged Improvements and distribute any remaining proceeds as required by the Act, and shall be based on the relative value of each Unit and in accordance with the formula used to determine each Unit's Common Elements Interest. In the event that all of the Property is taken in condemnation, the provisions of Article XV of this Declaration shall apply with respect to termination of the legal status of the Condominium.

ARTICLE XVIII MISCELLANEOUS PROVISIONS

Section 18.1 Invalidity. The invalidity of any provision of this Declaration shall not be deemed to impair or affect in any manner the validity and enforceability of the remainder of this Declaration, and in such event, all the other provisions of this Declaration shall continue in full force and effect as if such invalid provision had never been included herein.

Section 18.2 Waiver. No provisions contained in the Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

Section 18.3 Captions. The captions herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Declaration or the intent of any provision hereof.

Section 18.4 Law Controlling. This Declaration and the Condominium Documents shall be construed and controlled by and under the laws of the State of North Carolina, without regard to its conflict of laws rules.

Section 18.5 Liberal Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan of condominium ownership as provided in the North Carolina Condominium Act. Throughout this Declaration wherever appropriate, the singular shall include the plural and the masculine gender the feminine or neuter as the context permits or requires. In the event of a conflict between the provisions of this Declaration and the provisions of the Articles of Incorporation or the Bylaws of the Association, the provisions of this Declaration shall prevail.

Section 18.6 Percentage of Owners. Wherever in the Condominium Documents the approval or consent of a specified percentage of Owners is required, it shall mean the approval or consent of Owners of Units which have allocated to them that specified percentage of votes in the Association, as compared to the total votes in the Association allocated to all Units.

Section 18.7 Notice Address. When an Owner purchases a Unit, the Owner must give written notice to the Association or the Manager, specifying the name of the Owner and such Owner's Unit number, address and phone number (which may or may not be the address and phone number of the Unit). The Association and the Manager shall be entitled to rely upon such notices for the purpose of all correspondence or notices to the Owner until receipt of subsequent written notice which provides new information.

ARTICLE XIX
ENFORCEMENT; ARBITRATION

Section 19.1 Actions by the Association. The Association, or the Executive Board acting on its behalf, shall have the right, in addition to any other remedies provided for in the Condominium Documents, to bring a civil action against any Owner to enforce any obligation, covenant or restriction set forth in this Declaration or the other Condominium Documents or an injunction to enjoin a violation of this Declaration.

Section 19.2 Actions by Owners. Any Owner may also bring a civil action against any other Owner, or against the Association, or against the Executive Board, or any one or more of them, to enforce any obligation, covenant or restriction set forth in this Declaration or the other Condominium Documents.

Section 19.3 Action against Declarant. In no event shall the Association assert a claim against, or institute any legal proceeding against, the Declarant, nor shall the Association file any complaint with any governmental agency or authority which has regulatory or judicial authority over the Condominium on account of any alleged act or omission of Declarant, unless the asserting of such claim, or the filing of such complaint, shall be approved by the Owners of no less than seventy-five percent (75%) of the Owners of Units prior to the date any such is asserted or complaint is filed, as the case may be. In the event that such claim is asserted, legal proceeding instituted or complaint filed without the approval of the Owners of the Units that is herein required, then the Declarant shall have the right to require that the claim or complaint be dismissed. No amendment to this Section shall be effective unless such amendment is approved in writing by the Declarant.

Section 19.4 Agreement to Encourage Resolution of Disputes without Litigation.

(a) Notwithstanding Sections 19.1 and 19.2, Declarant, the Owners, the Executive Board, the Association and its Officers, Directors and committee members, and any person not otherwise subject to this Declaration who agrees to submit to this Section 19.4 (collectively, "Bound Parties"), agree that it is in the best interest of all concerned to encourage the amicable resolution of disputes involving the Condominium without the emotional and financial costs of litigation. Accordingly, every Claim described in 19.4(b) shall be resolved by the alternative dispute resolution procedures described in Section 19.5.

(b) As used in this Section 19.4, but subject to Section 19.4(c), the term "Claim" shall refer to any claim, grievance, or dispute relating to any of the following:

- (i) The interpretation, application, or enforcement of the Condominium Documents.
- (ii) The rights, obligations, and duties of any Bound Party under the Condominium Documents.
- (iii) The design, construction, quality or habitability of the Improvements, or their suitability for any particular purpose, including any Claim based on any alleged implied or express warranty.
- (iv) The asserted breach of any other duty or obligation allegedly owed by Declarant, the Executive Board, any member of the Executive Board or any officer of the Association.

(c) The following shall not be considered "Claims" unless all parties to the matter otherwise agree to submit the matter to the procedures under Section 19.5:

- (i) Any suit by the Association to collect assessments or other amounts due from any Owner.

(ii) Any suit by the Association to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the court may deem necessary to allow the Association to enforce the provisions relating to creation and maintenance of community standards.

(iii) Any suit between Owners that does not include Declarant or the Association as a party, if such suit asserts a Claim that would constitute a cause of action independent of the Condominium Documents.

(iv) Any suit in which any indispensable party is not a Bound Party.

(d) This Section 19.4 may not be modified or amended without the written consent of all Bound Parties.

Section 19.5 Dispute Resolution Procedures.

(a) *Notice.* The Bound Party asserting a Claim ("Claimant") against another Bound Party ("Respondent") shall give written notice to each Respondent and to the Executive Board stating the following:

(i) The nature of the Claim, including the parties involved and Respondent's role in the Claim.

(ii) The legal basis of the Claim.

(iii) Claimant's proposed resolution or remedy.

(iv) Claimant's desire to meet with Respondent to discuss in good faith ways to resolve the Claim.

(b) *Negotiation.* Claimant and Respondent shall make reasonable efforts to meet in person and resolve the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Executive Board may appoint a representative to assist the parties in negotiating a resolution of the Claim.

(c) *Arbitration.* If the parties have not resolved the Claim through negotiation within 30 days after the date of the notice described in Section 19.5(a), then Claimant shall have 30 additional days to submit the Claim to binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association then in effect.

(d) *Waiver.* If Claimant does not submit the Claim to arbitration within that time, or does not appear for the arbitration hearing when scheduled, then Claimant shall be deemed to have waived the Claim, and Respondent shall be relieved of all liability to Claimant (but not third parties) on account of the Claim.

(e) *Fees and Expenses.* The fees and expenses of arbitration shall be paid as stated in the award and the Association shall not make a Claim against a Bound Party with regard to the matters listed in Section 19.4(b) unless 80% of all Owners approve (in writing) of the Association bringing the claim (and incurring the Common Expense to do so).

(f) *Settlement.* Any resolution of the Claim through negotiation or arbitration shall be documented in writing and signed by the parties. If any party fails to abide by the agreement, then any other party may file suit or initiate administrative proceedings to enforce the agreement without the need to again comply with the procedures described in this Section 19.5. The arbitrator may award to the prevailing party in the enforcement action all costs incurred in enforcing the agreement or the award, including attorneys' fees and court costs.

(g) *Limits on Arbitrator's Authority.* The arbitrator shall not have authority to do any of the following: (i) join the Claims of multiple Claimants in a single proceeding or certify an arbitration class action or similar proceeding; (ii) award punitive or exemplary damages of any sort; or (iii) award treble damages or any other damages that are greater than compensatory damages or that are based on a multiple of compensatory damages.

(h) *Modification of Statutes of Limitation and Repose.* Notwithstanding any provision of law (including any statute of limitations or repose) to the contrary, and without limiting the exclusiveness of arbitration as a remedy for resolving Claims, any Claim must be asserted in arbitration no later than one year following the date that the essential facts giving rise to the Claim were or reasonably should have been discovered. Further, a Claim shall be valid only if asserted within three years after the last act of the Respondent giving rise to the claim.

(i) *Conflicts between Arbitration Clauses.* If a Claim falls within the scope of a valid arbitration clause contained in a sales contract for an individual Unit, then this Declaration shall control to the extent of any inconsistency.

(j) *No Amendment.* Any amendment to this Section 19.5 shall not bind the parties to a Claim that was asserted prior to the amendment.

[The remainder of this page is left blank intentionally.]

IN WITNESS WHEREOF, Declarant has executed this Declaration the day and year first above written.

OPUS MYERS PARK, LLC, a North Carolina limited liability company

By: _____
James J. Gross, Manager

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

I, _____, a Notary Public for said County and State, do hereby certify that James J. Gross, personally appeared before me this day, stated that he is a Manager of Opus Myers Park, LLC, a North Carolina limited liability company, is authorized to execute this Declaration, and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and official seal, this the _____ day of _____, 2018.

Notary Public

My commission expires:

[NOTARIAL SEAL]

JOINDER AND CONSENT OF LENDER AND TRUSTEE

Gothic Ventures Fund, LLC ("Lender"), is the beneficiary under a deed of trust recorded in the Office of the Register of Deeds for Mecklenburg County (the "Registry"), in Book 31613 at Page 451 (the "Deed of Trust"), and Gothic Ventures, LLP, in its capacity as trustee under the Deed of Trust (the "Trustee"), hereby consents to the execution and delivery of the foregoing Declaration (the "Declaration") and to the filing thereof in the Registry, and further subjects and subordinates the Deed of Trust to the provisions of the Declaration. Accordingly, Lender and Trustee each agrees and acknowledges that, upon recordation of the Declaration, the covenants contained in the Declaration will run with the land which serves as security for the debt evidenced by the Deed of Trust and further agrees that any foreclosure or enforcement of any other remedy available to Lender under the Deed of Trust will not render void or otherwise impair the validity of the Declaration.

IN WITNESS WHEREOF, Lender and Trustee have caused this Joinder and Consent to be executed this ____ day of _____, 2018.

LENDER:

GOTHIC VENTURES FUND, LLC, a Delaware limited liability company

By: _____
Name: _____
Title: _____

STATE OF _____
COUNTY OF _____

I, _____, a Notary Public for said County and State, do hereby certify that _____, personally appeared before me this day, stated that he is a _____ of Gothic Ventures Funds, LLC, a Delaware limited liability company, is authorized to execute this Joinder and Consent, and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and official seal, this the ____ day of _____, 2018.

Notary Public

My commission expires:

[NOTARIAL SEAL]

TRUSTEE:

GOTHIC VENTURES, LLP, a _____ limited liability partnership

By: _____
Name: _____
Title: _____

STATE OF _____
COUNTY OF _____

I, _____, a Notary Public for said County and State, do hereby certify that _____, personally appeared before me this day, stated that he is a _____ of Gothic Ventures, LLP, a _____ limited liability partnership, is authorized to execute this Joinder and Consent, and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and official seal, this the _____ day of _____, 2018.

Notary Public

My commission expires:

[NOTARIAL SEAL]

EXHIBIT A
TO
DECLARATION OF CONDOMINIUM

Legal Description of Land

Being all that tract or parcel of land located in the City of Charlotte, Mecklenburg County, North Carolina, and being more particularly described as follows:

BEGINNING at an iron pin found in the western margin of the right-of-way of Providence Road (70' public right-of-way), said iron pin found being the southeastern corner of the property of Charlotte House Condominium (now or formerly) as described in Deed Book 4294, Page 522 and as shown in Unit File 83, both in the Mecklenburg County Public Registry (hereinafter the "Registry"); thence, with and along the western margin of the right-of-way of Providence Road, S. 20-34-47 W. 100.00 feet to an iron pin set, a corner of the property of The Public Library of Charlotte and Mecklenburg County (now or formerly) as described in Deed Book 1747, Page 43 in the Registry (said iron pin set also being located N. 20-53-37 E. 108.70 feet from an iron pin found at the eastern terminus of the curve formed by the intersection of the western margin of the right-of-way of Providence Road and the eastern margin of the right-of-way of Queens Road (110' right-of-way)); thence, with and along the boundary line of the property of The Public Library of Charlotte and Mecklenburg County, the following two (2) courses and distances: (1) N. 69-16-24 W. 132.59 feet to an iron pin found; and (2) S. 66-43-30 W. 145.46 feet to a PK nail set in the eastern margin of the right-of-way of Queens Road (said PK nail set also being located the following two (2) courses and distances from an iron pin found at the western terminus of the curve formed by the intersection of the western margin of the right-of-way of Providence Road and the eastern margin of the right-of-way of Queens Road: (1) N. 51-08-30 W. 45.73 feet to an iron pin found; and (2) N. 41-59-02 W. 99.27 feet); thence, with and along the eastern margin of the right-of-way of Queens Road, the following two (2) courses and distances: (1) with the arc of a circular curve to the right having a radius of 311.86 feet, an arc length of 70.86 feet and a chord bearing and distance of N. 26-20-38 W. 70.71 feet to a PK nail set; and (2) with the arc of a circular curve to the right having a radius of 1,267.53 feet, an arc length of 29.47 feet and a chord bearing and distance of N. 19-04-18 W. 29.47 feet to a PK nail set, a corner of the property of Charlotte House Condominium (now or formerly) as described in Deed Book 4294, Page 522 and as shown in Unit File 83 in the Registry; thence, with and along the boundary line of the property of Charlotte House Condominium, the following two (2) courses and distances: (1) N. 66-43-30 E. 187.60 feet to an iron pin set; and (2) S. 69-14-54 E. 172.66 feet to an iron pin found in the western margin of the right-of-way of Providence Road, the point and place of **BEGINNING**, containing 0.7379 acre, more or less, as shown on ALTA/ACSM Land Title Survey "1333 Queens Road" for Queens University of Charlotte, prepared by A.G. Zoutewelle Surveyors, dated October 16, 2007.

Also being all of Lot 10B and a portion of Lot 10A, Block 7 of Queens University of Charlotte as shown on plat recorded in Map Book 230, Page 128 in the Mecklenburg County Public Registry.

**EXHIBIT B
TO
DECLARATION OF CONDOMINIUM**

Schedule of Units and Common Elements Interest

The following is a schedule of the number and types of units available at the Condominium, the square footage of each type of unit, and the undivided percentage interest in the common elements allocated to each unit:

<u>Unit</u>	<u>Unit SF</u>	<u>Unit Percent Of All Units</u>
Unit A1	2,630	3.83
Unit A2	2,753	4.01
Unit A3	2,753	4.01
Unit A4	2,700	3.93
Unit A5	2,700	3.93
Unit B1	2,787	4.06
Unit B2	2,898	4.22
Unit B3	2,898	4.22
Unit B4	2,844	4.14
Unit B5	2,844	4.14
Unit C1	2,716	3.96
Unit C2	2,837	4.13
Unit C3	2,837	4.13
Unit C4	2,993	4.36
Unit C5	2,535	3.69
Unit D1	3,035	4.42
Unit D2	3,100	4.52
Unit D3	3,262	4.75
Unit D4	2,924	4.26
Unit D5	2,815	4.10
Unit E1	2,885	4.20
Unit E2	2,978	4.34
Unit E3	2,978	4.34
Unit E4	2,926	4.26
Totals	68,628	100.00

Declarant discloses that the square footages for each unit set forth on this exhibit 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 (A1, A2, A3, A4 and A5)), and includes the area of private exterior terraces adjacent to that unit. The actual square footages of each unit may vary from those shown on this exhibit.

EXHIBIT C
TO
DECLARATION OF CONDOMINIUM

BYLAWS OF
OPUS MYERS PARK
CONDOMINIUM OWNERS ASSOCIATION, INC.

Section 1

Definitions

The words, phrases and terms used in these Bylaws shall have the meanings as set forth in the Declaration of Condominium for Opus Myers Park Condominium, recorded in the Office of the Register of Deeds for Mecklenburg County, North Carolina, to which a copy of these Bylaws is attached as Exhibit C.

Section 2

Administration of Condominium

Section 2.1 Authority and Responsibility: Except as otherwise specifically provided in the Condominium Documents, the Association shall be responsible for administering, operating and managing the Common Elements.

Section 2.2 Official Action: Unless specifically required in the Condominium Documents, all actions taken or to be taken by the Association shall be valid when such are approved by the Executive Board as hereinafter set forth or when taken by the committee, person or entity to whom such authority has been duly delegated by the Executive Board as set forth in the Condominium Documents or these Bylaws. The Association, its Executive Board, officers and members shall at all times act in conformity with the Nonprofit Corporation Act of the State of North Carolina, the Condominium Documents, and the North Carolina Condominium Act.

Section 3

Offices - Seal - Fiscal Year

Section 3.1 Principal Office and Registered Office: The initial principal office and registered office of the Association shall be located at 1617 Queens Road West, Charlotte, Mecklenburg County, North Carolina 28207.

Section 3.2 Other Offices: The Association may have other offices at such other places within the State of North Carolina as the Executive Board may from time to time determine or as the affairs of the Association may require.

Section 3.3 Seal: The seal of the Association shall contain the name of the Association, the word "Seal", year of incorporation and such other words and figures as desired by the Executive Board.

Section 3.4 Fiscal Year: The fiscal year of the Association shall be the calendar year.

Section 4

Membership

Section 4.1 Qualification: Membership in the Association shall be limited to the Owners, and every Owner of a Unit shall automatically be a member of the Association. Membership in the Association shall be appurtenant to and may not be separated from Unit ownership.

Membership in the Association shall inure automatically to Owners upon acquisition of the fee simple title (whether encumbered or not) to any one or more Units. The date of recordation in the Office of the Register of Deeds of Mecklenburg County, North Carolina of the conveyance of the Unit in question shall govern the date of ownership of each particular Unit. However, in the case of death, the transfer of ownership shall occur on date of death in the case of intestacy or date of probate of the will in the case of testacy. Until a decedent's will is probated, the Association may rely on the presumption that a deceased Owner died intestate.

Section 4.2 Place of Meetings: All meetings of the membership shall be held at a place in Mecklenburg County, North Carolina designated by the Executive Board.

Section 4.3 Annual Meetings: A meeting of the Association shall be held at least once each year. The first Annual Meeting of the Association shall be held on the date and hour designated by Declarant. Thereafter, the Annual Meeting of the Association shall be held on the second Monday in February of each year at 8:00 p.m., Eastern Standard Time. If the second Monday in February shall be a legal holiday, the Annual Meeting shall be held at the same hour on the first day following which is not a legal holiday. At such meetings, the Executive Board shall be elected in accordance with Section of these Bylaws, and the Members shall transact such other business as may properly come before them.

Section 4.4 Substitute Annual Meetings: If an Annual Meeting shall not be held on the day designated by these Bylaws, a Substitute Annual Meeting may be called in accordance with the provisions of Sections 4.5 and 4.6. A meeting so called shall be designated and treated for all purposes as the Annual Meeting.

Section 4.5 Special Meetings: After the first Annual Meeting of the Members, special Meetings of the Members may be called at any time by the President; by not less than twenty percent (20%) of all Owners; or by not less than fifty-one percent (51%) of the Executive Board members. Business to be acted upon at all Special Meetings shall be confined to the subjects stated in the notice of such meeting.

Section 4.6 Notices of Meetings: Written or printed notice stating the time and place of a membership meeting, including Annual Meetings, and the items on the agenda, including the general nature of any proposed amendment to the Declaration or these Bylaws, any budget changes, and any proposal to remove a director or officer, shall be delivered not less than ten (10) nor more than fifty (50) days before the date of any such membership meeting, either personally or by mail, by or at the discretion of the President or the Secretary, to the address of each Unit. Notice shall be deemed given upon deposit in the mail depository of each Unit.

Notice given to any one tenant in common, tenant by entirety or other joint Owner of a Unit shall be deemed notice to all joint Owners of the subject Unit.

The notice of meeting shall specifically state the purpose or purposes for which the meeting is called.

Section 4.7 Quorum: Except as otherwise provided in these Bylaws, the presence in person or by proxy of Members entitled to cast twenty percent (20%) of the votes which may be cast for election of the Executive Board shall, constitute a quorum at all meetings of the Members. If a quorum is not present or represented at any meeting, the Members entitled to vote thereat shall have the power to adjourn the

meeting from time to time, without notice other than the announcement at the meeting, until a quorum is present or is represented. The Members at any meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum.

Section 4.8 Voting Rights: The total number of votes of the Association Membership shall be equal to the number of Units contained within the Condominium from time to time, and each Member shall be entitled to one (1) vote. If fee simple title to a Unit is owned of record by more than one person or entity, all such persons or entities shall be Members of the Association, but the vote with respect to any such jointly owned Unit shall be cast as hereinafter provided.

If the fee simple title to any Unit is owned of record by two or more persons or entities (whether individually or in a fiduciary capacity), the vote with respect to any such jointly owned Unit may be cast by any one of the joint Owners in person or by proxy, except that the holder or holders of a life estate in a Unit shall have the sole right to cast the votes allocated to the Unit. If more than one of the joint Owners vote or more than one life estate holder in a Unit vote, the unanimous action of all joint Owners or joint life estate holders voting shall be necessary to effectively cast the votes allocated to the particular Unit.

Such unanimous action shall be conclusively presumed if any one of such multiple Owners casts the votes allocated to that Unit without protest being made promptly to the person presiding over the meeting by any of the other of such joint Owners.

In no event may the vote which may cast with respect to any Unit be divided among joint Owners of the Unit or cast in any manner other than as a whole, it being the intention of this Section 4.8 that there be no "splitting" of votes that may be cast by any Member or Members.

Section 4.9 Proxies: Members may vote either in person or by agents duly authorized by written proxy executed by the subject Member or by his duly authorized attorney-in-fact. A proxy is not valid after the earlier of the term stated therein or the expiration of twelve (12) months from the date of its execution. Unless a proxy otherwise provides, any proxy holder may appoint in writing a substitute to act in his place. In order to be effective, all proxies must be filed with the Secretary or duly acting Secretary either during or prior to the meeting in question. A member may not revoke a proxy given pursuant to this Section 4.9 except by written notice of revocation delivered to the person presiding over a meeting of the Association.

All of the above provisions concerning voting by joint Owners shall apply to the vote cast for any one Unit by two or more proxy holders.

Section 4.10 Majority-Vote: The casting of a majority of the votes represented at a meeting at which a quorum is present, in person or by proxy, shall be binding for all purposes except where a different percentage vote is stipulated by these Bylaws, the Declaration, the Articles of Incorporation of the Association, or the North Carolina Condominium Act.

Section 4.11 Actions Without Meeting: Any action which may be taken at a meeting of the membership may be taken without a meeting if consent or ratification, in writing, setting forth the action so taken or to be taken shall be signed by all of the persons who would be entitled to vote upon such action at a meeting and such consent is filed with the Secretary of the Association and inserted in the minute book of the Association.

Section 5

Executive Board

Section 5.1 General Powers: The business and affairs of the Association shall be managed by the Executive Board or by such committees as the Executive Board may establish pursuant to Section 6

of these Bylaws. Provided, however, the Executive Board may not act on behalf of the Association to amend the Declaration, to terminate the Condominium, to elect members of the Executive Board, or to determine the qualifications, powers and duties, or terms of office of Executive Board members. The Executive Board may, however, fill vacancies in its membership for the unexpired portion of any term.

Section 5.2 Number, Term and Qualification: The initial Executive Board shall consist of the three (3) individuals appointed by Declarant whose names are set forth in the Articles of Incorporation of the Association. During the Declarant Control Period, the Executive Board shall have three (3) members, and Declarant may appoint and remove members of the Executive Board; subject, however to the limitations contained in Section 8.3 of the Declaration. Prior to the expiration of the Declarant Control Period, the Members shall elect three (3) Board members, each to serve for a term of one (1) year, and thereafter the Executive Board shall have three (3) members. Not later than the termination of the Declarant Control Period, a majority of the members of the Executive Board shall be Owners. Board members may succeed themselves in office.

Section 5.3 Election of Board Members: The election of all Board members shall be by ballot. Persons receiving the highest number of votes (see Section 4.8) shall be elected. Cumulative voting is not permitted. The Association shall publish the names of all officers and Board members within thirty (30) days after election.

Section 5.4 Removal: Any Board member, other than a member appointed by Declarant, may be removed from the Board, with or without cause, by a vote of at least sixty-seven percent (67%) of the votes entitled to be cast by all Members present and entitled to vote at any meeting of the Membership at which a quorum is present. Provided, the notice of the meeting must state that the question of such removal will be acted upon at the subject meeting. If any Board members are so removed, their successors as Board members may be elected by the membership at the same meeting to fill the unexpired terms of the Board members so removed.

Section 5.5 Vacancies: A vacancy occurring in the Executive Board may only be filled by a majority of the remaining Board members, though less than a quorum, or by the sole remaining Board member; but a vacancy created by an increase in the authorized number of Board members shall be filled only by election at an Annual or substitute Annual Meeting or at a Special Meeting of Members called for that purpose or by unanimous consent of the Members without meeting. The Members may elect a Board member at any time to fill any vacancy not filled by the Board members. As indicated in Section 5.4, the Membership shall have the first right to fill any vacancy created by the Membership's removal of a Board member.

Section 5.6 Chairman: A member of the Executive Board shall be elected as Chairman of the Executive Board by the Board members at the first meeting of the Board. The Chairman shall preside at all meetings of the Executive Board and perform such other duties as may be directed by the Board. Prior to election of a Chairman and/or in the event that the Chairman is not present at any meeting of the Executive Board, the President shall preside.

Section 5.7 Compensation: No Member of the Executive Board shall receive any compensation from the Association for acting as such. Provided, however, each Board member shall be reimbursed for reasonable out-of-pocket expenses incurred and paid by him on behalf of the Association, and nothing herein shall prohibit the Board from compensating a Board member for unusual and extraordinary services rendered on the basis of quantum meruit. Further provided, each Board member, by assuming office, waives his right to institute suit against or make claim upon the Association for compensation based upon quantum meruit.

Section 5.8 Loans to Board Members and Officers: No loans shall be made by the Association to its Board members or officers. The Board members who vote for or assent to the making of a loan to a Board member or officer of the Association, and any officer or officers participating in the making of such loan, shall be jointly and severally liable to the Association for the amount of such loan until the repayment thereof.

Section 5.9 Liability of Board Members: To the extent permitted by the provisions of the North Carolina Nonprofit Corporation Act in effect at the applicable time, each Board member is hereby indemnified by the Association with respect to any liability and expense of litigation arising out of his activities as a Board member. Such indemnity shall be subject to approval by the Members only when such approval is required by said Act.

Section 5.10 Meetings of the Executive Board:

A. Regular Meetings: Regular Meetings shall be held, without notice, at such hour and address as may be fixed from time to time by resolution of the Board. Should any such meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

B. Special Meetings: Special Meetings shall be held when called by the President of the Association, or by any board member, after not less than three (3) or more than thirty (30) days written notice to each Board member.

C. Notices of Special Meetings: The notice provided for herein may be waived by written instrument signed by those Board members who do not receive said notice. Except to the extent otherwise required by law, the purpose of a Board members' special meeting need not be stated in the notice. Notices shall be deemed received upon the happening of any one of the following events: (1) one day following deposit of same in the United States mail with proper postage paid and addressed to the Board member at his last known address on file with the Association; (2) deposit of same in his Unit mail box; (3) delivery to the Board member. Attendance by a Board member at a meeting shall constitute a waiver of notice of such meeting unless the subject Board member gives a written statement at the meeting to the person presiding objecting to the transaction of any business because the meeting is not lawfully called and gives such notice prior to the vote on any resolution.

D. Approved Meeting Place: All Board meetings shall be held in Mecklenburg County, North Carolina.

E. Quorum: A majority of the Board members then holding office shall constitute a quorum for the transaction of business and every act or decision done or made by a majority of the Board members present at a duly held meeting at which a quorum is present shall be regarded as the act or decision of the Board.

Section 5.11 Action Without Meeting: The Board members shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the Board members. Any action so approved shall have the same effect as though taken at a meeting of the Board. Said written approval shall be filed with the minutes of the proceedings of the Board, whether done before or after the action so taken.

Section 5.12 Presumption of Assent: A Board member who is present at a meeting of the Board at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless his contrary vote is recorded or his dissent is otherwise entered in the minutes of the meeting or unless he shall file his written dissent to such action with the person acting as the Secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the Secretary of the Association immediately after the adjournment of the meeting. Such right to dissent shall not apply to a Board member who voted in favor of such action.

Section 5.13 Powers and Duties: The Executive Board shall have the authority to exercise all powers and duties of the Association necessary for the administration of the affairs of the Condominium except such powers and duties as by law or by the Condominium Documents may not be delegated by the Owners to the Board. The powers and duties to be exercised by the Board shall include, but shall not be limited to, the following:

- A. Operation, care, upkeep and maintenance of the Common Elements to the extent such operation, care, upkeep, and maintenance is not the obligation of the Owners;
- B. Determination of the funds required for operation, administration, maintenance and other affairs of the Condominium and collection of the Common Expenses from the Owners, as provided in the Condominium Documents;
- C. Employment and dismissal of personnel (including without limitation the Independent Manager) necessary for the efficient operation, maintenance, repair, and replacement of the Common Elements;
- D. Adoption of rules and regulations covering the details of the operation, maintenance, repair, replacement, use and modification of the Common Elements;
- E. Opening of bank accounts on behalf of the Association and designating the signatories required therefor;
- F. Obtaining insurance as required or permitted under the terms of the applicable provisions of the Declaration;
- G. Keeping detailed, accurate records of the receipts and expenditures of the Association; obtaining annual audits of the financial records of the Association from the Association's public accountant; furnishing the annual reports; and furnishing current budgets. All books and records shall be kept in accordance with good and accepted accounting practices and the same shall be available for examination by all Owners or their duly authorized agents or attorneys, at convenient hours on working days;
- H. Keeping a complete record of the minutes of all meetings of the Board and Membership in which minute book shall be inserted actions taken by the Board and/or Members by consent without meeting;
- I. Supervising all officers, agents and employees of the Association and insuring that their duties are properly performed;
- J. Enforcing, on behalf of the Association, the obligations and assessments provided in the Declaration, including, but not limited to, the institution of civil actions to enforce payment of the assessments as provided in the Declaration, the institution of actions to foreclose liens for such assessments in accordance with the terms of N.C.G.S. §47C-3-116, the imposition of charges for late payment of assessments, and after notice and an opportunity to be heard, levying reasonable fines not to exceed One Hundred and No/100 Dollars (\$100.00) for violations of the Declaration, Bylaws and rules and regulations of the Association and, without further hearing, an additional One Hundred and No/100 Dollars (\$100.00) for each day more than five days after the decision that the violation occurs;
- K. Enforcing by any legal means or proceeding the provisions of the Articles of Incorporation of the Association, these Bylaws, the Declaration or the rules and regulations hereinafter promulgated governing use of the Common Elements;
- L. Enforcing, on behalf of the Association, any other rights or remedies of the Association, including, but not limited to, the institution of civil actions; provided, however, that no civil action may be brought by the Association that seeks more than \$25,000.00 in damages without the written consent of at least sixty-seven (67%) of the Owners;
- M. Hiring attorneys and other professionals;

N. Paying all taxes and assessments which are or may become liens against any part of the Condominium, other than the Units, and to assess the same against the Owners in the manner herein provided;

O. Making of repairs, additions, and improvements to or alterations or restoration of the Property in accordance with the other provisions of these Bylaws and the Declaration, after damage or destruction by fire or other casualty, or as a result of a condemnation or eminent domain proceeding;

P. Maintaining and repairing any Unit, if such maintenance or repair is required by the Declaration or is necessary in the discretion of the Board to protect the Common Elements or any other Unit or if the Owner of such Unit has failed or refused to perform such maintenance or repair within a reasonable time after written notice of the necessity of said maintenance or repair has been delivered or mailed by the Board to said Owner, provided that the Board shall levy a special assessment against such Owner for the costs of said maintenance or repair;

Q. Entering any Unit when necessary in connection with any maintenance or construction for which the Board is responsible; provided, such entry shall be made during reasonable hours with as little inconvenience to the Owner as practicable, and any damage caused thereby shall be repaired by the Board and such expenses shall be treated as a Common Expense; and entering any Unit for the purpose of correcting or abating any condition or situation deemed by the Executive Board to be an emergency;

R. Signing all agreements, contracts, deeds and vouchers for payment of expenditures and other instruments in such manner as from time to time shall be determined by written resolution of the Board. In the absence of such determination by the Board, such documents shall be signed by either the Treasurer or the Assistant Treasurer of the Association, and countersigned by any Board member;

S. Furnishing certificates setting forth the amounts of unpaid assessments that have been levied upon a Unit to the Owner or Mortgagee of such Unit, or a proposed purchaser or Mortgagee of such Unit, and imposing and collecting reasonable charges therefor; and

T. Exercising any other powers and duties reserved to the Association exercisable by the Executive Board in the Declaration, the Articles of Incorporation, these Bylaws, or the North Carolina Condominium Act.

Section 5.14 Independent Manager: The Executive Board may employ or enter into a management contract with any individual, firm or entity it deems appropriate and in the best interest of the Association concerning the routine management of the condominium. The Executive Board may delegate to such person, firm or entity (referred to in these Bylaws as "Independent Manager") such duties and responsibilities in the management of the Property as the Executive Board deems appropriate. Provided, the Executive Board may not delegate to the Independent Manager the complete and total responsibilities and duties of the Association in violation of the Nonprofit Corporation Act of North Carolina or the North Carolina Condominium Act. The Independent Manager's contract shall be for a term not to exceed three (3) years, renewable by agreement between the Executive Board and such Independent Manager for successive one-year terms; provided, however, that any such contract shall provide that it is terminable by the Association, with or without cause, upon not more than ninety (90) days' prior written notice and without payment of any penalty, and any such contract entered into during the Declarant Control Period also shall be terminable as required by N.C.G.S. §47C-3-105. The Executive Board shall have authority to fix the reasonable compensation for the Independent Manager. The Independent Manager shall at all times be answerable to the Executive Board and subject to its direction.

Section 6

Committees

Section 6.1 Creation: The Executive Board, by resolutions adopted by a majority of the number of Board members then holding office, may create such committees as they deem necessary and appropriate in aiding the Executive Board to carry out its duties and responsibilities with respect to the management of the Condominium. Each committee so created shall have such authorities and responsibilities as the Board members deem appropriate and as set forth in the resolutions creating such committee. The Executive Board shall elect the members of each such committee. Provided, each committee shall have in its membership at least one (1) member of the Executive Board.

Section 6.2 Vacancy: Any vacancy occurring on a committee shall be filled by a majority of the number of Board members then holding office at a regular or special meeting of the Executive Board.

Section 6.3 Removal: Any member of a committee may be removed at any time with or without cause by a majority of the number of Board members then holding office.

Section 6.4 Minutes: Each committee shall keep regular minutes of its proceedings and report the same to the Board when required.

Section 6.5 Responsibility of Board Members: The designation of committees and the delegation thereto of authority shall not operate to relieve the Executive Board or any member thereof of any responsibility or liability imposed upon it or him by law.

If action taken by a committee is not thereafter formally considered by the Board, a Board member may dissent from such action by filing his written objection with the Secretary with reasonable promptness after learning of such action.

Section 7

Officers

Section 7.1 Enumeration of Officers: The officers of the Association shall consist of a President, a Secretary, a Treasurer and such Vice Presidents, Assistant Secretaries, Assistant Treasurers and other officers as the Executive Board may from time to time elect. Except for the President, no officer need be a member of the Executive Board.

Section 7.2 Election and Term: The officers of the Association shall be elected annually by the Executive Board. Such elections shall be held at the first meeting of the board next following the Annual or Substitute Annual Meeting of the Members. Each officer shall hold office until his death, resignation, removal or until his successor is elected and qualified.

Section 7.3 Removal: Any officer elected or appointed by the Executive Board may be removed by the Board whenever in its judgment the best interest of the Association will be served thereby.

Section 7.4 Vacancy: A vacancy in any office may be filled by the election by the Executive Board of a successor to such office. Such election may be held at any meeting of the Board. The officer elected to such vacancy shall serve for the remaining term of the officer he replaces.

Section 7.5 Multiple Offices: The person holding the office of President shall not also hold the office of Secretary or Treasurer at the same time. Any other offices may be simultaneously held by one person. Any officer may also be a member of the Executive Board.

Section 7.6 President: The President shall be the chief executive officer of the Association and shall preside at all meetings of the Members. In the absence of an elected Chairman, he shall also preside at all meetings of the Executive Board. He shall see that the orders and resolutions of the Executive Board are carried out; he shall sign on behalf of the Association all written instruments regarding the Common Elements and all promissory notes of the Association, if any; and he shall have all of the general powers and duties which are incident to the office of President of a corporation organized under Chapter 55A of the North Carolina General Statutes in the supervision and control of the management of the Association in accordance with these Bylaws.

Section 7.7 Vice Presidents: The Vice Presidents in the order of their election, unless otherwise determined by the Executive Board shall, in the absence or disability of the President, perform the duties and exercise the powers of that office. In addition, they shall perform such other duties and have such other powers as the Executive Board shall prescribe.

Section 7.8 Secretary: The Secretary shall keep the minutes of all meetings of Members and of the Executive Board; he shall have charge of such books and papers as the Executive Board may direct; and he shall, in general, perform all duties incident to the Office of Secretary of a corporation organized under Chapter 55A of the General Statutes of North Carolina.

Section 7.9 Treasurer: The Treasurer shall have the responsibility for the Association's funds and securities and shall be responsible for keeping full and accurate financial records and books of account showing all receipts and disbursements, and for the preparation of all required financial statements. He shall prepare a proposed annual budget (to be approved by the Board) and the other reports to be furnished to the Members as required in the Declaration. He shall perform all duties incident to the office of Treasurer of a corporation organized under Chapter 55A of the General Statutes of North Carolina.

Section 7.10 Assistant Secretaries and Treasurers: The Assistant Secretaries and Treasurers shall, in the absence or disability of the Secretary or the Treasurer, respectively, perform the duties and exercise the powers of those offices, and they shall, in general, perform such other duties as shall be assigned to them by the Secretary or the Treasurer, respectively, or by the President or the Executive Board.

Section 7.11 Compensation: Officers shall not be compensated on a regular basis for the usual and ordinary services rendered to the Association incident to the offices held by such officers. The Executive Board may, however, compensate any officer or officers who render unusual and extraordinary services to the Association beyond that called for to be rendered by such person or persons on a regular basis. Each officer, by assuming office, waives his right to institute suit against or make claim upon the Association for compensation based upon quantum meruit.

Section 7.12 Indemnification: To the extent permitted by the provisions of the North Carolina Nonprofit Corporation Act in effect at the applicable times, each officer is hereby indemnified by the Association with respect to any liability and expense of litigation arising out of his activities as an officer. Such indemnity shall be subject to approval by the Members only when such approval is required by said Act.

Section 8

Operation of the Property

Section 8.1 Determination of Common Expenses and Fixing of the Common Charges: The Executive Board shall from time to time, and at least annually, prepare and adopt a proposed budget for the Condominium, determine the amount of the Common Expenses payable by the Owners to meet the proposed budget of the Condominium, and allocate and assess such proposed Common Expenses among the Owners in equal shares (based upon the total number of Units in the Condominium), all in accordance with the procedure set forth in this Section 8, but subject to the limitations set forth in Article XVI of the

Declaration. The Common Expenses shall include, among other things, the cost of all insurance premiums on all policies of insurance required to be or which have been obtained by the Executive Board pursuant to the provisions of the Declaration. The Common Expenses shall also include such amounts as the Executive Board deems necessary for the operation and maintenance of the Property, including without limitation, an amount for working capital of the Condominium; an amount for a general operating reserve; an amount for a reserve fund for losses due to insurance deductibles; an amount for a reserve fund for repair and replacement of the Common Elements; and such amounts as may be necessary to make up any deficit in the Common Expenses for any prior year. Within thirty (30) days after adoption of any proposed budget for the Condominium, the Executive Board shall provide a summary of the budget to all the Owners, and shall set a date for a meeting of the Owners to consider ratification of the budget no less than fourteen (14) nor more than thirty (30) days after mailing of the summary. Notwithstanding any other provisions of these Bylaws, there shall be no requirement that a quorum be present at such meeting. Notwithstanding any other provision of these Bylaws, the proposed budget shall be deemed ratified unless at that Meeting a majority of all the Owners present and entitled to cast a vote reject the budget. In the event the proposed budget is rejected, the periodic budget last ratified shall be continued until such time as the Owners ratify a subsequent budget proposed by the Executive Board.

The Association, acting through the Executive Board, may levy a special assessment during any calendar year for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any capital improvement comprising or to comprise a portion of the Common Elements, including fixtures and personal property; provided, however, that any such special assessment must be approved by the vote of Owners of Units to which at least sixty-seven percent (67%) of the votes in the Association are allocated cast in person or by proxy at a meeting duly held in accordance with the provisions of these Bylaws.

In addition to the above assessments, the Association, acting through the Executive Board, may assess individual Owners ("individual Unit assessment") for (i) any cost incurred by the Association by reason of the Owner's failure to maintain its Unit, if the Association takes action to do so as authorized herein, and/or (ii) any cost incurred by the Association as a result of the Owner's (or its tenants, agents, contractors, family members or invitees) negligence, willful misconduct, or default under its obligations under the Declaration, these Bylaws or the Executive Board's rules and regulations, including any cost for repair or maintenance and reasonable attorneys' fees.

The Declarant, as the agent of the Association, shall collect from each initial purchaser of a Unit at the time of closing an "initial capital assessment" equal to twice the estimated monthly assessment for Common Expenses. Such funds shall not be considered advance payments of assessments. The Declarant will deliver the funds so collected to the Association to provide the necessary working capital for the Association. In addition, upon the expiration of the Declarant Control Period, the Declarant shall forward to the Association a contribution to the working capital fund, in the amount specified above, for each unsold Unit in the Condominium held by Declarant, and in that event, Declarant shall be entitled to retain as a reimbursement the working capital contributions ultimately made by the initial purchasers of such Units. Such funds may be used for certain prepaid items, initial equipment and supplies, organizational expenses and other start-up costs, and for such other purposes as the Executive Board may determine. Except for the permitted reimbursement of prepaid contributions referred to above, the Declarant may not use the working capital fund to defray any of the Declarant's expenses, reserve contributions, or construction costs, or to make up any budget deficits of the Association during the Declarant Control Period.

Section 8.2 Payment of Common Expenses: All Owners shall be obligated to pay the Common Expenses assessed by the Executive Board pursuant to the provisions of Section 8.1 hereof at such time or times as the Board shall determine.

No Owner shall be liable for the payment of any part of the Common Expenses assessed against his Unit subsequent to a sale, transfer or other conveyance by him (made in accordance with the provisions of the Declaration and applicable restrictions of record) of such Unit. A purchaser of a Unit shall be jointly and severally liable with the seller for the payment of Common Expenses assessed against such Unit prior

to the acquisition by the purchaser of such Unit without prejudice to the purchaser's rights to recover from the seller the amounts paid by the purchaser therefor.

Section 8.3 Collection of Assessments: The Executive Board shall assess Common Expenses against the Units from time to time and at least monthly in accordance with the allocations set forth in the Declaration. The Executive Board shall take prompt action to collect any Common Expenses which remain unpaid for more than thirty (30) days from the due date for payment thereof.

The Executive Board shall notify the holder of the Mortgage on any Unit (of which it has notice) for which any Common Expenses assessed pursuant to these Bylaws remain unpaid for more than thirty (30) days from the due date for payment thereof and in any other case where the Owner of such Unit is in default with respect to the performance of any other obligation hereunder for a period in excess of thirty (30) days.

Section 8.4 Default in Payment of Common Expenses; Remedies: In the event of default by any Owner in paying to the Executive Board the Common Expenses as determined by the Board, such Owner shall be obligated to pay interest on such Common Expenses from the due date thereof at the rate of eighteen percent (18%) per annum, together with all expenses, including reasonable attorney's fees (if permitted by law), incurred by the Executive Board in any proceeding brought to collect such unpaid Common Expenses. In addition, the Board shall have the authority to levy a late charge on any assessment not paid within fifteen (15) days after its due date, in the amount of four percent (4%) of the overdue assessment.

The Executive Board shall have the right and duty to attempt to recover such Common Expenses, together with interest thereon, and the expenses of the proceedings, including reasonable attorneys' fees (if permitted by law), in an action to recover a money judgment for the same brought against such Owner, or by foreclosure of the lien on such Unit in like manner as a deed of trust or mortgage of real property. The Executive Board shall also have the right to impose uniform late payment charges for delinquent Common Expense payments, which charges shall be recoverable by the proceedings specified above.

In the event of the failure of an Owner to pay any assessment imposed hereunder, or any installment thereof, for more than sixty (60) days after such assessment or installment thereof shall become due, in addition to the other remedies available under the Condominium Documents and the North Carolina Condominium Act, the Executive Board shall have the right to declare all other Common Expense assessments, and installments thereof, with respect to such Owner's Unit that are to fall due during the then current fiscal year of the Association to be immediately due and payable.

Section 8.5 Lien and Personal Obligations: All Common Expenses provided for in this Section 8, together with the interest and expenses, including reasonable attorneys' fees (if permitted by law), as provided for herein, shall be a charge on and a continuing lien upon the Unit against which the assessment is made, which such lien shall be prior to all other liens excepting only (i) assessments, liens and charges for real estate taxes due and unpaid on the Unit and (ii) all sums unpaid on Mortgages and other liens and encumbrances duly recorded against the Unit prior to the docketing of such lien. Such lien shall become effective when a notice thereof has been filed in the office of the Clerk of Superior Court for Mecklenburg County, North Carolina, provided such notice of lien shall not be recorded until such sums assessed remain unpaid for a period of more than thirty (30) days after the same shall become due. Such notice of lien shall also secure all assessments against the Unit becoming due thereafter until the lien has been satisfied.

The lien for unpaid assessments shall not be affected by the sale or transfer of the Unit, except in the case of a foreclosure of a Mortgage, in which event the purchaser at foreclosure shall not be liable for any assessments against such Unit that became due prior to the date of acquisition of title by such purchaser. Such unpaid assessments shall be deemed Common Expenses collectible from all Owners of Units, including the purchaser at foreclosure. In addition, each Owner shall be personally liable for any assessment against his Unit. No Owner may exempt himself from such liability by non-use or enjoyment of any portion of the Common Elements or by the abandonment or sale of his Unit.

Section 8.6 Foreclosure of Liens for Unpaid Common Expenses: In any action brought by the Executive Board to foreclose on a Unit because of unpaid Common Expenses, the Owner shall be required to pay a reasonable rental for the use of his Unit and the plaintiff in such foreclosure action shall be entitled to the appointment of a receiver to collect the same.

Section 8.7 Abatement and Enjoyment of Violations by Owners: The violation of any rule or regulation adopted by the Executive Board or the breach of any Bylaw contained herein, or the breach of any provision of the Declaration, shall give the Board the right, in addition to any other rights set forth in the Declaration, these Bylaws or at law or in equity: (a) to enter the Unit in which or as to which such violation or breach exists and to summarily abate and remove, at the expense of the defaulting Owner, any structure, thing or condition that may exist therein contrary to the intent and meaning of the provisions hereof, and the Board shall not thereby be deemed guilty in any manner of trespass; provided, however, that the Executive Board shall be obligated to institute judicial proceedings before any item of construction can be altered or demolished; (b) to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such breach at the expense of the defaulting Owner; and/or (c) after notice and opportunity to be heard, to levy reasonable fines not to exceed One Hundred and No/100 Dollars (\$100.00) and, without further hearing, an additional One Hundred and No/100 Dollars (\$100.00) for each day thereafter that such violation is continuing.

Section 8.8 Maintenance and Repair: (a) Except as is specifically provided in the Declaration, all maintenance and any repairs to any Unit and the Limited Common Elements allocated thereto, whether ordinary or extraordinary, shall be made by the Owner of such Unit. Each Owner shall be responsible for all damages to any and all other Units and/or to the Common Elements that his failure to do so may engender; and (b) except as is specifically provided in the Declaration, all maintenance, repairs and replacements to the Common Elements (unless necessitated by the negligence, misuse or neglect of an Owner, in which case such expense shall be charged to and paid by such Owner), shall be made by the Board; provided, however, there is excluded from the provisions contained in this section any repairs necessitated by casualty insured against by the Executive Board to the extent the Executive Board receives insurance proceeds for such repairs.

Section 8.9 Additions, Alterations or Improvements by Owners: No Owner shall make any structural addition, alteration, or improvement in or to his Unit or to any Limited Common Element, or any change in the exterior appearance thereof, except in accordance with N.C.G.S. §47C-2-111 and in accordance with the terms of the Declaration.

Section 8.10 Use of Common Elements: An Owner shall not interfere with the use of the Common Elements by the remaining Owners and their employees and invitees.

Section 8.11 Right of Access: An Owner shall grant a right of access to his Unit and the Limited Common Elements appurtenant thereto to the Independent Manager and/or any other person authorized by the Executive Board or the Independent Manager for the purpose of making inspections, or for the purpose of correcting any condition originating in his Unit and threatening another Unit or the Common Elements, or for the purpose of performing installations, alterations or repairs to the mechanical or electrical equipment or other Common Elements, or for the purpose of performing installations, alterations or repairs to the mechanical or electrical equipment or other Common Elements in or adjoining his Unit; provided, however, such requests for entry (except in the case of emergencies where no request shall be required) are made in advance and any such entry is at a time reasonably convenient to the Owner. In the case of an emergency, such right of entry shall be immediate whether the Owner is present at the time or not.

Section 8.12 Rules of Conduct: Rules and regulations concerning the use of the Units and the Common Elements shall be promulgated and amended by the Board in the manner provided in the Declaration. Copies of such rules and regulations shall be furnished by the Board to each Owner prior to the time when the same shall become effective.

Section 8.13 Common Expenses for Utilities: Any utilities which may be provided to the Units through a single or common meter or facility, and utilities furnished to any portion of the Common Elements,

shall be paid by each Owner as and when billed according to the extent of such Owner's use or, at the option of the Board, such may be paid by the Board and assessed against the Units as a Common Expense.

Section 9

Amendments

Subject to the provisions of Article XVI of the Declaration, these Bylaws may be amended at any time by an instrument in writing signed and acknowledged by Owners holding at least sixty-seven percent (67%) of the votes in the Association, which instrument shall be effective only upon recordation in the Office of the Register of Deeds of Mecklenburg County, North Carolina. Provided, however, where a larger vote in the Association is required for the Association to take or refrain from taking a specific action, as set forth in the Condominium Documents, no amendment of these Bylaws shall be made unless and until the Owners holding such larger percentage of the vote in the Association execute said amending instrument. All persons or entities who own or hereafter acquire any interest in the Property shall be bound to abide by any amendment to these Bylaws which is duly passed, signed, acknowledged and recorded as provided herein. No amendment to these Bylaws shall be adopted or passed which shall impair or prejudice the rights and priorities of any Mortgagee without the consent of such Mortgagee. No amendment to these Bylaws shall be adopted or passed which shall impair or prejudice the rights of Declarant provided for in the Condominium Documents, without the consent of Declarant.

Section 10

Miscellaneous

Section 10.1 **Severability**: Invalidation of any covenant, condition, restriction or other provisions of the Declaration or these Bylaws shall not affect the validity of the remaining portions thereof which shall remain in full force and effect.

Section 10.2 **Successors Bound**: The rights, privileges, duties and responsibilities set forth in the Condominium Documents, as amended from time to time, shall run with the ownership of the Property and shall be binding upon all persons who own or hereafter acquire any interest in the Property.

Section 10.3 **Gender, Singular, Plural**: Whenever the context so permits, the use of the singular or plural shall be interchangeable in meaning and the use of any gender shall be deemed to include all genders.

Section 10.4 **Nonprofit Corporation**: No part of the Association's assets or net income shall inure to the benefit of any of the Members, the officers of the Association, or the members of the Executive Board, or any other private individual either during its existence or upon dissolution except as reasonable compensation paid or distributions made in carrying out its declared nonprofit purposes as set forth in the Articles of Incorporation of the Association and these Bylaws.

Section 10.5 **Compliance**: These Bylaws are set forth to comply with the requirements of the North Carolina Condominium Act, Chapter 47C of the General Statutes of the State of North Carolina. In the event that any of these Bylaws conflict with the provisions of said statute, it is hereby agreed and accepted that the provisions of the statute will apply.

Section 10.6 **Electronic Transactions**: For all purposes permitted under N.C. Gen. Stat. §55A, including, without limitation, §§1-41, 1-70, 7-04, 7-08, 7-24, and 8-21, the Association may conduct transactions via electronic means. An Owner's provision or designation of an email address, or other information processing system for electronic records, to the Association, or any Board Member or Officer, shall be deemed such Owner's agreement to receive all communications from the Association via electronic transmission.

The foregoing were adopted as the Bylaws of Opus Myers Park Condominium Owners Association, Inc., a non-profit corporation under the laws of the State of North Carolina, at the first meeting of the Executive Board on _____, 2018.

Secretary

APPROVED:

President