

WAKE COUNTY, NC 370
LAURA M RIDDICK
REGISTER OF DEEDS
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**DECLARATION OF CONDOMINIUM
FOR
WEST CONDOMINIUM**

October 3, 2008

Drawn by and Return to:
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STATE OF NORTH CAROLINA

COUNTY OF WAKE

**DECLARATION OF CONDOMINIUM
FOR WEST CONDOMINIUM**

This Declaration of Condominium (this "Declaration") is made this 3rd day of October, 2008, by WEST DEVELOPERS 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."

STATEMENT OF PURPOSE:

Declarant is the owner of a parcel of real estate containing approximately .9658 acres located in Raleigh, Wake County, North Carolina, as more particularly described on Exhibit A attached hereto (the "Land"). Declarant has constructed on the Land one (1) building (the "Building") containing a total of one hundred seventy (170) residential condominium units and three (3) commercial units. Declarant has also constructed common amenities on the Land such as sidewalks, landscaped areas, storage areas and other improvements. 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, administering and enforcing the covenants and restrictions created in this Declaration, levying, collecting and disbursing the assessments and charges created in this Declaration, and taking any steps or performing any acts deemed necessary or appropriate to preserve the values of condominium units within the Property and promote the recreation, health, safety and welfare of the Owners. In order to accomplish the foregoing, Declarant is entering into this 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 to both burden and benefit Declarant, its successors and assigns, and any person or entity acquiring or owning an interest in the Property, and his successors, heirs 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 “Articles of Incorporation” shall mean and refer to the articles of incorporation of the Association filed with the North Carolina Secretary of State.

Section 1.2 “Association” shall mean and refer to West Condominium Owners Association Inc., a corporation organized and existing under the North Carolina Nonprofit Corporation Act pursuant to and in accordance with this Declaration, the Bylaws and the North Carolina Condominium Act.

Section 1.3 “Building” shall mean and refer to the one (1) building located upon the Land which contains a total of one hundred seventy (170) residential condominium units and three (3) commercial units.

Section 1.4 “Bylaws” shall mean and refer to the bylaws of the Association, a copy of which is attached hereto as Exhibit C, and all amendments to such bylaws which may from time to time be adopted.

Section 1.5 “Common Elements” shall mean and refer to all portions of the Condominium other than the Units, as depicted on the Plans, and as more particularly described in Section 5.1 of this Declaration.

Section 1.6 “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. In the event that Declarant elects to exercise its Development Right under Article VI of this Declaration to create additional Units, this Declaration shall be revised by a Supplemental Declaration as set forth under Article VI to provide for a new allocation of Common Elements Interests which shall substitute and replace Exhibit B attached hereto. 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 except as otherwise set forth herein.

Section 1.7 “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 the North Carolina Condominium Act.

Section 1.8 “Condominium” shall mean and refer to West Condominium as established by the submission of the Property to the terms of the North Carolina Condominium Act by this Declaration.

Section 1.9 “Condominium Documents” shall mean and refer to this Declaration, the Articles of Incorporation, 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 1.10 “Declarant” shall mean and refer to West Developers 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 7.2 of this Declaration, the term “Declarant” also shall mean and refer to that transferee.

Section 1.11 “Declarant Control Period” shall mean and refer to the period commencing on the date hereof and continuing until the earlier of (i) one hundred twenty (120) days after conveyance of seventy five percent (75%) of the Units (including Units annexed by Supplemental Declarations) to an Owner other than Declarant; (ii) two (2) years after Declarant ceases to offer Units for sale in the ordinary course of business; (iii) two (2) years after any Development Right provided in Article VI was last exercised; or (iv) the date upon which Declarant voluntarily surrenders control of the Condominium to the Association.

Section 1.12 “Declaration” shall mean and refer to this Declaration of Condominium as it may be amended from time to time in the future.

Section 1.13 “Development Rights” shall mean and refer to the rights preserved by Declarant in Article VI of this Declaration to create additional Units in accordance with the terms and conditions set forth in Article VI.

Section 1.14 “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, the Bylaws and the North Carolina Condominium Act.

Section 1.15 “General Contractor” shall mean and refer to Choate Construction Company, a Georgia corporation, its employees, officers, directors, agents, subsidiaries, affiliates and assigns as well as all subcontractors hired by General Contractor (or subcontractors of such subcontractors) to perform work on the Property, the Common Elements and any Unit.

Section 1.16 “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 1.17 “Limited Common Elements” shall mean and refer to those portions of the Common Elements allocated by this Declaration, or the terms of N.C. Gen. Stat. §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 including, without limitation, the Retail Limited Common Elements, the Residential Limited Common Elements, the Individual Residential Limited Common Elements and the Residential/Retail Limited Common Elements as depicted on the Plans.

Section 1.18 “Mortgage” shall mean and refer to a mortgage or deed of trust constituting a first lien on a Unit.

Section 1.19 “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 XVII.

Section 1.20 “North Carolina Condominium Act” shall mean and refer to Chapter 47C of the North Carolina General Statutes.

Section 1.21 “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 merely as security for the payment or performance of an obligation.

Section 1.22 “Plans” shall mean and refer to the surveys, plans and specifications of the Building and Property prepared by (i) J. Davis Architects, and (ii) BSC Group, and recorded in Condominium Map Book 2008, Pages 496 A1 through E5 in the office of the Register of Deeds of Wake County, North Carolina, and any amendments or supplements to those Plans that may be attached to the Supplemental Declaration required by Article VI of this Declaration if Declarant exercises its Development Rights to create additional Units. The Plans, including all notes and easements set forth therein, are hereby incorporated herein by reference as if the same were attached to this Declaration.

Section 1.23 “Property” shall mean and refer to the Land, the Building and all other improvements and structures located on the Land, and all easements, rights and appurtenances belonging or appertaining to the Land.

Section 1.24 “Related Parties” shall mean and refer to a party’s managers, members, shareholders, officers, directors, employees, agents, attorneys, successors, assigns and affiliates.

Section 1.25 “Special Declarant Rights” shall mean the rights reserved for the benefit of Declarant in the Condominium Documents as more particularly described in Article VI of this Declaration.

Section 1.26 “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. Gen. Stat. §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

Section 2.1 Location and Designation. The Land on which the Building and other improvements are located is located entirely in Wake County, North Carolina, contains approximately .9658 acres, and is more particularly described on Exhibit A attached hereto and incorporated herein by reference. The Land is subjected to the terms of the North Carolina Condominium Act by this Declaration.

incorporated herein by reference. The Land is subjected to the terms of the North Carolina Condominium Act by this Declaration.

Section 2.2 Name. The name of the Condominium is West Condominium.

ARTICLE III DESCRIPTION OF BUILDING

Section 3.1 Existing Building. The Building is a fifteen (15) story post tension concrete frame building with brick, block, precast concrete, glass, metal, EFIS (exterior finishing insulation system) and other exterior skin finishes. The Building currently contains four (4) levels of limited access parking, retail/commercial/office units located on the ground floor, and residential living areas on the remaining floors of the Building. The Building currently contains an aggregate of one hundred seventy (170) residential condominium units and three (3) commercial units. The Building is more particularly described in the Plans, which show all particulars of the Building. The Plans contain a certification by Michael D. Barr of BSC Group, a North Carolina Registered Land Surveyor, and by Neil T. Gray of J. Davis Architects, a North Carolina Licensed Architect, that the Plans contain all the information required by N.C. Gen. Stat. §47C-2-109.

ARTICLE IV DESCRIPTION OF UNITS

Section 4.1 Location of Building. The location and dimensions of the Building are shown on the Plans. If Declarant exercises its Development Right to create additional Units and Limited Common Elements, the Amendment to this Declaration required by N.C. Gen. Stat. §47C-2-110 shall contain a revised set of Plans, which shall show the location of any new Building.

Section 4.2 Units. The location of Units within the existing Building and their dimensions are shown on the Plans. There are currently a total of one hundred seventy (170) residential condominium units and three (3) commercial units in the existing Building. Pursuant to Article VI of this Declaration, Declarant reserves a Development Right to create up to an additional fifty (50) residential Units so that the maximum number of residential Units that may be created by Declarant is two hundred twenty (220) and an additional fourteen (14) commercial Units so that the maximum number of commercial Units that may be created by Declarant is sixteen (16). The identifying number for each Unit is set forth on Exhibit B and on the Plans. If Declarant exercises its Development Right to create additional Units and Limited Common Elements, the Supplemental Declaration required by Section 6.2 of this Declaration shall contain a new Exhibit B and revised set of Plans, which shall contain new identifying numbers for the Units thereby created.

Section 4.3 Unit Boundaries. The boundaries of each Unit are as follows:

(a) Upper Boundary: The horizontal plane of the top surface of the wallboard in the ceilings within the Unit. As depicted on the Plans, the ceilings in certain portions of the Unit may be at different elevations. In such cases, the upper boundary of such Unit shall not be a single horizontal plane but shall vary with the differing finished ceiling elevations within different portions of the Unit.

(b) Lower Boundary: The horizontal plane of the top surface of the subflooring within each Unit. As depicted on the Plans, the floor in certain portions of the Unit may be at different elevations. In such cases, the lower boundary of such Unit shall not be a single horizontal plane but shall vary with the differing finished floor elevations within different portions of the Unit.

(c) Vertical Boundaries: 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 and lower boundaries.

As provided in N.C. Gen. Stat. §47C-2-102(1), all lath, flooring, 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 are part of the Unit.

Furthermore, all interior walls (except load bearing walls), partitions, fixtures, appliances, cabinets and other facilities or improvements lying completely within the boundaries of a Unit shall be a part of such Unit. As provided in N.C. Gen. Stat. §47C-2-102(2), if any chute, flue, duct, wire, pipe for water or sewer, conduit, load bearing wall, load bearing column or any other fixture lies partially within and partially outside the designated boundaries of a Unit, any portion thereof serving only that Unit shall be a Limited Common Element allocated to that Unit, as provided in Section 5.2 below.

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 improvements located on the Land outside of the Building including, without limitation, landscaped areas, surfaced parking areas, paved access roads and walkways.
- (c) All portions of the Building located outside of the Units including, without limitation, the Limited Common Elements described in Section 5.2 below, as well as the areas designated on the Plans as General Common Elements.
- (d) All portions of the Building's central air conditioning system (including, without limitation, the rooftop cooling tower and chiller system) and all roof drain leaders, together with all piping and trunk lines associated therewith, wherever located throughout the Building, shall be General Common Elements.

(e) The foundation, roof, columns, girders, beams, supports, exterior and interior load bearing walls, floors within and between Units and all other structural elements of the Building.

(f) Any public connections and meters, vaults and manholes for utility services that are not owned by the public utility or municipal agency providing such services.

(g) All tangible personal property required for the operation and maintenance of the Condominium that may be owned by the Association.

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, load bearing wall, load 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 shutters, awnings, window boxes and all exterior doors and windows or other fixtures designed to serve a single Unit, but located outside that Unit's boundaries, which shall be Limited Common Elements allocated exclusively to that Unit.

(c) Private balconies shown on the Plans (including the 5th floor terrace) shall be Residential Limited Common Elements, but, except as provided in Article X below, access to such balconies shall be limited to the directly abutting Unit(s).

(d) Any portions of the heating, ventilating and air conditioning systems (except those described in Section 5.1(d) above), 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.

(e) Those areas indicated as Individual Residential Limited Common Elements on the Plans, if any, which shall be allocated to the Unit to which such Limited Common Elements are servicing.

(f) All areas designated on the Plans as Residential Limited Common Elements and not otherwise allocated to a specific residential Unit shall be deemed Limited Common Elements allocated to all residential Units.

(g) All areas designated on the Plans as Retail Limited Common Elements and not otherwise allocated to a specific commercial Unit shall be deemed Limited Common Elements allocated to all commercial Units.

(h) All areas designated on the Plans as Residential/Retail Limited Common Elements, including certain 1st and 2nd floor drive aisles and parking areas, and a rooftop communications area, and not otherwise allocated to a specific residential Unit or commercial

Unit shall be deemed Limited Common Elements allocated to all residential Units and all commercial Units. Notwithstanding the foregoing, Declarant may allocate portions of such Residential/Retail Limited Common Elements to a specific Unit or Units via a license agreement (in the manner described in sub-section (i) below), or cause them to be reconfigured as another category of Common Elements pursuant to Article VI below.

(i) Parking spaces are located on the first (1st), second (2nd), third (3rd) and fourth (4th) levels of the Building and (subject to sub-section (h) above) shall be allocated to each Unit as a Limited Common Element of that Unit. In addition, storage units are located in the Building on the basement level or elsewhere as identified on the Plans and shall be allocated as Limited Common Element of a certain number but not necessarily each of the Units to which they are assigned. Every residential Unit shall receive a minimum of one (1) parking space, to be assigned by the Declarant in its sole and exclusive judgment, and most but not all residential Units shall receive one (1) storage unit, to be assigned by Declarant in its sole and exclusive judgment. The parking spaces and storage units, once allocated to an individual Unit, as documented in the form of a license agreement, shall remain associated with that Unit and the Owner's right to use the same shall pass to any successor Owner of such Unit. Declarant, in its discretion, during the Declarant Control Period, shall have the right (but not the obligation) to record a document identifying such allocations, which may be modified and re-recorded in the event such allocations are altered as herein permitted. Notwithstanding the foregoing, Declarant, during the Declarant Control Period, shall have the right to recapture and/or relocate parking spaces and storage units in the reasonable discretion of the Declarant, as more particularly described in Article VI below, provided the same does not materially, adversely affect any Owner's rights hereunder. Until such time as they are allocated to a specific Unit, parking spaces and storage units shall remain under the exclusive control and ownership of the Declarant, and Declarant may sell, lease, and/or transfer the right to use said parking spaces and storage units to any third party in Declarant's sole discretion.

The cleanliness and orderliness of the areas designated on the Plans as General Common Elements, Retail Limited Common Elements, Residential Limited Common Elements, Individual Residential Limited Common Elements and Residential/Retail Limited Common Elements shall be the responsibility of the Association and the cost thereof shall be considered a Common Expense of the Association, provided, however, the cost of the maintenance, repair or replacement of any portion of the Retail Limited Common Elements, Residential Limited Common Elements, Individual Residential Limited Common Elements and/or Residential/Retail Limited Common Elements, the right to the use and enjoyment of which is limited to a particular Unit or class of Units shall be the exclusive responsibility of the Owners of the Units or class of Units to which such Limited Common Elements are allocated. In the case of Residential Limited Common Elements, costs of maintenance, repair and replacement shall be allocated to all residential Units, in the percentages set forth in the "Residential Percent Interest" column on Exhibit B attached hereto. In the case of Retail Limited Common Elements, costs of maintenance, repair and replacement shall be allocated to all commercial Units, in the percentages set forth in the "Commercial Percent Interest" column on Exhibit B attached hereto. References in this Declaration to "Common Elements" shall include Limited Common Elements unless the context clearly indicates otherwise. Except as otherwise set forth herein, 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. Notwithstanding anything contained herein to the contrary, the Association shall have the right to contract with a landscape maintenance company to maintain all of the landscaping and lawns on the Land and a heating and air conditioning company to maintain, repair and replace all portions of the heating, ventilation and air conditioning systems serving the Building and all Units including as defined in Section 5.2(c) above. Furthermore, the Association shall have the right to contract with a maintenance company to maintain all parking areas, elevators, fire protection, security access, and other systems serving the Building, as well as common corridors constructed as a part of the Building and the Owners acknowledge and agree that Declarant and its Related Parties shall have no responsibility with respect thereto, or liability for the failure to perform, or properly perform, such maintenance. The cost of maintaining these items and systems shall be considered a Common Expense of the Association. The Association shall not be liable for injury or damage to person or property caused by the elements or by the Owner of any Unit or any other person or resulting from any utility, rain, snow or ice which may leak or flow from any portion of the Common Elements or from any pipe, drain, conduit, appliance or equipment which the Association is responsible to maintain hereunder, except for injuries or damages arising after the Owner of a Unit has put the Association on written notice of a specific water leak or water flow from any portion of the Common Elements and the Association has failed to exercise due care to correct the water leak or water flow within a commercially reasonable time thereafter. Neither the Association nor the Declarant nor its Related Parties shall be liable to any Owner of any Unit or such Owner's occupant or permittee for loss or damage by theft or otherwise, of any property which may be stored in or upon any of the Common Elements or any Unit. The Association shall not be liable to any Owner, occupant or permittee for any damage or injury caused in whole or in part by the Association's failure to discharge its responsibilities under this Article V where such damage or injury is not a foreseeable, natural and direct result of the Association's failure to discharge its responsibilities. No diminution or abatement of assessments shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken or performed by the Association under this Declaration or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association or from any action taken by the Association to comply with any law ordinance or with any order or directive of any municipal or other governmental authority.

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 elsewhere in this Declaration. In particular, if Declarant exercises its Development Rights to create additional and/or combine Units and Limited Common Elements, Declarant shall have the right to adjust the Common Elements Interest for each Unit in accordance with the formula provided for in Exhibit B. The Supplemental Declaration required by Section 6.2 of this Declaration shall contain a new allocation of Common Elements Interest calculated in accordance with the foregoing formula which shall be substituted for Exhibit B attached to this Declaration in the event that Declarant exercises this Development Right. For purposes of this calculation, square footage shall mean the Unit dimensions measured from exterior faces of

exterior walls and to the center of common walls with other Units, excluding any Common or Limited Common Elements.

Section 5.4 Maintenance of Common Elements Necessitated by an Owner's Misconduct. The Association's responsibility for the maintenance and repair of Common Elements, as hereinabove described, shall in all events exclude 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.

Section 5.5 Use of Common Elements. All Owners shall have the right, in common with all other Owners, to the non-exclusive use of the General Common Elements depicted on the Plans or otherwise described herein. Except as otherwise set forth herein, all Owners of commercial Units shall have the right, in common with all other Owners of commercial Units, to the non-exclusive use of the Retail Limited Common Elements depicted on the Plans. Except as otherwise set forth herein, all Owners of residential Units shall have the right, in common with all other Owners of residential Units, to the non-exclusive use of the Residential Limited Common Elements depicted on the Plans. Except as otherwise set forth herein, all Owners of residential Units and commercial Units shall have the right, in common with all other Owners of residential Units and commercial Units, to the non-exclusive use of those portions of the Residential/Retail Limited Common Elements depicted on the Plans which have not otherwise been allocated to a specific Unit or Units. Owners of residential Units shall have the exclusive right to use Individual Residential Limited Common Elements, if any, Residential Limited Common Elements (e.g., parking spaces and storage units) and Residential/Retail Limited Common Elements (e.g., parking spaces) depicted on the Plans which have been specifically allocated to that Unit. Owners of commercial Units shall have the exclusive right to use Residential/Retail Limited Common Elements (e.g., parking spaces) depicted on the Plans which have been specifically allocated to that Unit. Notwithstanding the foregoing, the Owners of commercial Units shall also have the right to reasonably use certain Residential Limited Common Elements, as noted and depicted on the Plans, as may be reasonably necessary for such Owners to access Common Elements located on the roof of and inside the Building, at times and in such manner as Declarant may approve, in its discretion.

ARTICLE VI DEVELOPMENT RIGHTS

Section 6.1 Creation of New Units and Limited Common Elements; Combination of Existing Units. Declarant reserves an option, in its sole and absolute discretion, until the eighth anniversary of the date of recording of this Declaration, to create and construct new residential or commercial Units; reconfigure, refurbish, renovate, subdivide, combine or recombine existing residential or commercial Units; and/or create or construct new, or reconfigure existing, Common Elements and/or Limited Common Elements in accordance with the provisions of this Article VI, and to have access to and use of all portions of the Building and Land except inside individual residential Units without Owner's prior permission not to be unreasonably withheld or conditioned. The maximum number of residential Units within the Condominium that Declarant reserves the right to create or subdivide, including residential Units in existence as of the date of recording of this Declaration, is two hundred twenty (220) and the maximum number of

commercial Units within the Condominium that Declarant reserves the right to create or subdivide, including commercial Units in existence as of the date of recording of this Declaration, is sixteen (16). Declarant may exercise this Development Right within the eight (8) year period specified above, without the consent or approval of the Association or any other Owner or Mortgagee, by executing and recording a Supplemental Declaration in the manner provided in Section 6.2 below. A Supplemental Declaration shall not be required for any work (reconfiguring, refurbishing, or renovating) performed by Declarant inside the perimeter demising walls of existing Units. If Declarant exercises its Development Right to construct additional, or subdivide existing, Units, Declarant shall not be obligated to construct or subdivide up to the maximum number of Units and Limited Common Elements as specified above but may create any number less than the maximum number specified above.

Section 6.2 Supplemental Declaration. In order to exercise any Development Right reserved under this Article VI, Declarant shall execute and record an amendment to this Declaration in accordance with N.C. Gen. Stat. §47C-2-110 (a "Supplemental Declaration"). Any Supplemental Declaration executed and recorded by Declarant to exercise the Development Right of creating new or subdividing existing Units or Limited Common Elements shall contain an amendment or supplement to the Plans identifying the new Units and Limited Common Elements so created, as well as in an amendment to Exhibit B attached to this Declaration, assigning and identifying numbers to each new Unit and reallocating the Common Elements Interests among all Units in accordance with the formula set forth in Section 5.3 of this Declaration. Any such Supplemental Declaration may also contain such additions to the provisions of this Declaration as may be necessary to reflect the different character of the new Units created by Declarant, so long as such additions are not inconsistent with the overall scheme of the Declaration, and provided that such additions shall not apply to any Unit created prior to recordation of the Supplemental Declaration or to the Owner or Mortgagee of any such Unit.

ARTICLE VII SPECIAL DECLARANT RIGHTS

Section 7.1 Special Declarant Rights. Special Declarant Rights are those rights reserved for the benefit of Declarant in the Condominium Documents and shall include, without limitation, the following rights:

- (a) the right to complete any improvements shown on the Plans;
- (b) the right to maintain sales offices, model units and signs advertising the Condominium;
- (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; and

(e) the right to exercise any other rights granted to or reserved by Declarant in the Condominium Documents expressly including, without limitation, the Development Rights set forth in Section 6.1 above.

Section 7.2 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 office of the Register of Deeds of Wake County, North Carolina. 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. Gen. Stat. §47C-3 -104.

ARTICLE VIII RESTRICTIONS ON USE

Section 8.1 Residential Use. All residential Units shall be used for residential purposes only, with a home office within the confines of a Unit being a permitted use. Notwithstanding the foregoing, Declarant may maintain any Unit(s) owned by Declarant as a sales office(s) or model Unit(s) and Declarant or Declarant's successors and assigns may use all first floor commercial Units for any commercial purposes allowed by applicable zoning or other regulations of the City of Raleigh.

Section 8.2 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 may 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 8.3 Prohibitions on Use of Common Elements. The Common Elements (other than storage areas, if any, designated by the Association) shall not be used for the storage of personal property of any kind. Stairs, entrances, lobbies, hallways, sidewalks, yards, 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 detracts from the appearance of the Property.

Section 8.4 Garbage. Trash, garbage and other waste shall be kept in sanitary containers within each Unit, and deposited only in the common trash receptacles located within the Common Elements or as otherwise directed by the Association.

Section 8.5 Parking. 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 Limited Common Elements designated as Owner's allocated parking space(s) per Section 5.2(g) and in particular shall not block any entrances, drive aisles or fire lanes. Parking spaces allocated to each Unit may be used only by the Owner of the Unit to which the parking spaces are allocated as a Limited Common Element and his agent 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 areas on the Property. The Association shall have the right to tow any vehicle in violation of this Section 8.5 at its owner's expense.

Specifically, but not by way of limitation, the Association shall have the right, and so intends, to enforce the parking restrictions in this Section 8.5. In addition to having the right to tow any vehicle in violation of this Section, the Association shall have the right to levy fines as follows: (i) Fifty and No/100 Dollars (\$50.00) for the first offense during any twelve (12) month period; (ii) Seventy Five and No/100 Dollars (\$75.00) for the second offense during any twelve (12) month period; and (iii) One Hundred and No/100 Dollars (\$100.00) for more than two (2) violations in any twelve (12) month period. Fines imposed for violation of the parking restrictions shall be considered special assessments and shall be due and payable upon receipt of the parking violation. The Association shall have the right to enforce payment of such special assessment in the same manner as it may enforce the collection of any assessments under this Declaration and the Bylaws including charging of interest, payment of late fees and imposing of a lien against the Unit. Each Owner shall be responsible for any parking violation by Owner or anyone in Owner's family, or by any guests or invitees of the Owner.

Section 8.6 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 six (6) months. A copy of the lease, along with full personal contact information for landlord and tenant, shall be delivered to the Association prior to tenant's occupancy, along with evidence of insurance as required under this Declaration.

Section 8.7 No Timeshares. No interest in any Unit may be subjected to a time share program as that term is defined in N.C. Gen. Stat. §93A-41(10).

Section 8.8 Animals. No animals, livestock or poultry of any kind shall be kept or maintained on the Property or in any dwelling located thereon except that small, common, domestic household pets (less than seventy five (75) pounds each, except as may be reasonable and customary for certain large breeds of domesticated dogs) may be kept or maintained in each Unit, provided they are not kept or maintained for commercial purposes and provided that no Owner may have more than two (2) such pets at any one time (excluding fish). No pet shall be permitted upon the Common Elements unless carried or leashed by a person that can control the pet. All pets shall be controlled so as not to create a nuisance or unreasonable disturbance (including loud and excessive barking) on the Property. Pets shall not be permitted to defecate in the Common Elements, and each Owner shall clean up immediately after his pet if an accident occurs. All pets shall be registered, licensed and inoculated as required by law. Each Owner shall hold the Association harmless from any claim resulting from any action of his pet and shall repair at his expense any damage to the Common Elements caused by his pet. If any Owner violates these rules more than twice in any twelve (12) month period, then in addition to any fines provided in 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 written notice.

Section 8.9 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 hoods will have grease screens. 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 8.10 Floor Load. There shall be no floor load in any Unit in excess of forty (40) pounds per square foot, unless an engineering determination of the floor load capacity in the area of heavy use is approved by the Association. Such engineering determinations shall be obtained by the Association at the requesting Owner's expense.

Section 8.11 Windows. If Declarant installs mini blinds in any Unit, such mini blinds must be maintained and shall not be removed. No curtains or draperies shall be installed or hung in any window of any Unit unless they have a white lining or backing on the side exposed to the window. No storm windows shall be installed in any Unit.

Section 8.12 Architectural Control. No building, landscaping, fence, wall or other structure shall be commenced, erected or maintained upon the Property, nor shall any exterior addition to, change or alteration to either a 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. Review and approval of any application hereunder may be made on any basis, including solely the basis of aesthetic considerations only and the Association shall not bear any responsibility for ensuring the design quality, structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes, zoning regulations and other governmental requirements.

Section 8.13 Signs and Flags. No signs or other advertising devices shall be displayed on or about the exterior of any Unit or in the Common Elements except for one building standard name plate or sign not exceeding twenty four (24) square inches in area on the main door to each Unit, marquis identification signage on the ground floor of the Building, security system call box signage, and exterior signage for commercial Units as permitted by municipal code. The security system call box signage may have space for contact information to be listed by Owners leasing or selling Units in the Building. Each Owner shall have the right to have his Selling Agent or Managing Agent for his Unit listed in lieu of the Owner. Notwithstanding the foregoing, Declarant shall have the right to maintain upon the Property advertising signs independent of this standard during the Declarant Control Period or until all Units owned by Declarant are sold, provided those signs comply with applicable government regulations. Further, no pole or other device for the display of decorative flags shall be erected or displayed on or about the exterior of any Unit or in the Common Elements unless approved in advance by the Association, excluding the display of one (1) standard sized (not to exceed three feet by five feet) flag of the United States of America, not to hang or extend over any perimeter vertical plane of any balcony railing, which form of attachment shall be approved or disapproved by the Association. In the event that the Association approves 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. Notwithstanding any other provision of this Declaration or the Condominium Documents, Declarant shall implement a signage program for the Property which shall provide signage for the Owner of the retail or office Unit as determined in Declarant's reasonable discretion. Such signage shall be reflected in the Plans.

Section 8.14 Maintenance. The Owner of each Unit is responsible for maintaining his Unit as well as the Limited Common Elements appurtenant thereto. 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 standards or requirements of the Association relative thereto, the Association shall assess the defaulting Owner the cost thereof and shall undertake to effect said compliance. In addition, each Owner shall keep a key to the Owner's Unit with the Association for use in general maintenance and for emergency purposes. No Owner shall have the right to deny or withhold a Unit access key to the Association for its use in its responsibilities for maintenance and emergency needs.

Section 8.15 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. Specifically, and not by way of limitation, the Association shall have the right to make reasonable rules and regulations governing the use of the ground floor parking in the Building, elevators, lobby, common corridors and access to the roof of the Building. No Owner shall be entitled to penetrate the roof of the Building without first providing detailed plans and specifications for the reason of any such penetration to the Association and obtaining prior written approval from the Association, to be granted in the Association's sole discretion and whose refusal to grant permission shall not be subject to appeal or challenge.

Section 8.16 Satellite Dishes and Antennas. In no event shall any exterior television antenna or satellite dish or other similar device be mounted or placed on the exterior surface or patio balcony of any Unit, nor shall any Unit or Owner be permitted to install any exterior television antenna or satellite dish or other similar device on the Building roof. The Association may, but is not obligated to, contract with one (1) satellite television service vendor to provide building-wide subscription services for all Owners. In the event an Owner desires satellite service, that Owner shall obtain satellite service solely from this vendor according to the program then established by the Association.

Section 8.17 Balconies. The balconies adjacent to each Unit, if any, shall be kept in a clean, neat and orderly condition at all times and shall not be used for storage, cooking or for the drying of laundry. In particular, towels or banners shall not be hung on the balcony railings and any dead plants shall be removed promptly. No indoor-outdoor carpeting, hot tub or other pool shall be installed on any balcony, nor any furniture that is of such insufficient weight that aloft winds may dislodge them from the balcony and thus cause a hazard.

Section 8.18 Owner's Indemnity. Each Owner and the Association (hereinafter referred to as the "Indemnifying Owner") covenants and agrees, at its sole cost and expense, to indemnify, defend and hold harmless the other Owners, the Association and the Declarant and its Related Parties (hereinafter referred to collectively as the "Indemnitee") from and against any and all actions or proceedings arising out of the Indemnifying Owner's use, possession or management of the Indemnifying Owner's Unit or activities therein or arising out of the Indemnifying Owner's use, exercise or enjoyment of the easements and licenses granted hereunder and from and against all costs, fees (including attorneys fees) expenses and liabilities incurred with respect to any such claim, action or proceeding arising therefrom.

ARTICLE IX THE ASSOCIATION

Section 9.1 Organization of Association. The Association has been organized to provide for the administration of the Property. 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 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 9.2 Power Lien for Assessment. In the administration of the operation and management of the Property, the Association shall have and is hereby granted the authority and power to enforce the provisions of this Declaration, levy and collect assessments in the manner provided in Article XI 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. Gen. Stat. §47C-3-116 and shall be enforceable by the Association in accordance with N.C. Gen. Stat. §47C-3-116 and Section 8 of the Bylaws.

Section 9.3 Declarant Control Period. During the Declarant Control Period, Declarant reserves the right to appoint and remove any Executive Board members; provided, however, that (i) not later than sixty (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 may be elected by Owners other than Declarant; and (ii) not later than sixty (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 may be elected by Owners other than Declarant. Following expiration of the Declarant Control Period (as described in Section 1.11 above), one hundred percent (100%) of the members of the Executive Board may be elected by Owners other than Declarant, all as more particularly described in Section 5.2 of the Bylaws.

Section 9.4 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 8.15 from time to time, and (c) all financial records of the Association, as required by N.C. Gen. Stat. §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 X EASEMENTS AND PROPERTY RIGHTS

Section 10.1 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. Each Owner is required to make one (1) key available to the Association for this purpose, and no Owner is permitted to install new locks or rekey a Unit unless authorized by the Association (which authorization shall not be unreasonably withheld provided the work meets municipal codes and regulations) and provided Owner makes one (1) new key available to the Association as described above.

Section 10.2 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 the Building, there shall exist a valid easement for the encroachment and for the maintenance of same for so long as the Building shall stand. If the Building, any Unit, or any portion of the 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 thereafter exist.

Section 10.3 Easements over Common Elements. Declarant, during the Declarant Control Period, and the Association may at any time 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, gas mains, telephone and television or cable television wires, cables and equipment, electrical conduits, fiber optic lines and other wires over, under, along and on any portion of the Common Elements and Limited Common Elements outside Unit Boundaries. 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. For so long as Declarant owns and/or controls at least one Unit, Declarant shall have an easement over the Common Elements and Limited Common Elements (and subset distinctions thereof) outside Unit Boundaries as may be reasonably necessary to complete the construction of the Building as well as post-construction improvements and modifications within the Property.

Section 10.4 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.

Notwithstanding anything in this Declaration to the contrary, each Owner, by acquisition of his Unit, acknowledges that all streets and roadways located within the Property shall be private streets and shall not be maintained by the City of Raleigh or any government entity. The following disclosure is made in accordance with Raleigh City Code §10-3074(b):

In no case shall the City be responsible for failing to provide any emergency or regular fire, police or other public service to any condominium development or their occupants when such failure is due to lack of access to such areas due to inadequate design or construction, blocking of access routes, inadequate maintenance, or any other factor within the control of the developer, homeowners association or occupants. In no case shall the City or the State be responsible for maintaining any private street. Such responsibility shall rest with the homeowners association and occupants in that such private streets will not be constructed to the minimum standards sufficient to allow their inclusion for public maintenance. Declarant hereby reserves for the City and its emergency personnel the right, without liability, to enter into the Property when emergency personnel reasonably believe that doing so is urgently necessary to save life, prevent serious bodily harm, put out a fire or to avert or control a public catastrophe.

Section 10.5 Easements Shown on Plans. Any easements depicted or described on the Plans shall be valid easements hereunder, for the benefit of the Association and/or other parties identified in the Plans.

Section 10.6 Relocation of Boundaries; Subdivision; Partitioning.

(a) Relocation of Boundaries between Adjoining Units. 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 Register of Deeds in the names of the Adjoining Owners.

(b) Subdivision of Units. No Unit may be subdivided except as permitted in Article VI and Article VII of this Declaration.

(c) Partitioning. 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 shall, without limitation or exception, 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, as tenants by the entirety or any other form permitted by law.

Section 10.7 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. 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 9.2 of this Declaration. Nothing in this Section 10.6 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 10.8 Nature of Interest in Unit. Every Unit, together with its allocated interest in the Common Elements, shall for all purposes be and is hereby declared to be 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 Executive Board of the Association.

Section 10.9 No Easement for Light, View or Air. It is expressly agreed that no Unit or Owner shall have any right, easement or license for light, view or air, and neither Declarant nor the Association shall be liable for any damage any Owner may sustain, nor shall any Owner be entitled to any compensation as a result of light, views or air being altered, obstructed or blocked, including as a result of construction on adjacent or nearby lots (including, without limitation, the lot located at 413 N. Harrington Street).

Section 10.10 Security. The Association or the Declarant may, but shall not be required to, from time to time, provide measures or take actions that directly or indirectly improve security on the Property; however, each Owner and occupancy, for himself or herself and his or her tenants, guests, licensees, invitees, and other permittees, acknowledges and agrees that neither the Association nor the Declarant is a provider of security and neither party shall have a duty to provide security on the Property. Furthermore, the Association does not guarantee that non-owners and non-occupants will not gain access to the Property and commit criminal acts on the Property nor does the Association guarantee that criminal acts on the Property will not be committed by other Owners or occupants. It shall be the responsibility of each Owner and occupant to protect his or her person and property and all responsibility to provide such security shall lie solely with each Owner and occupant. Neither Declarant nor its Related Parties nor the Association shall be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of measures undertaken.

ARTICLE XI ASSESSMENTS

Section 11.1 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 until transfer of title from Declarant to Owner. As construction lender, Wachovia Bank, National Association, currently has a first position priority lien on the Property under a Deed of Trust and Security Agreement executed by Declarant and dated as of November 21, 2006 and recorded on November 28, 2006, in Book 12283, Page 2076, Wake County Registry, as amended by that First Amendment of Deed of Trust and Security Agreement dated as of July 11, 2007 and recorded on July 13, 2007 in Book 12652, Page 663, Wake County Registry and further amended by that Second Amendment of Deed of Trust and Security Agreement dated as of October 3, 2008 and recorded on October 3, 2008 in Book 13265, Page 264, Wake County Registry (collectively the "Wachovia Deed of Trust"). In the event Wachovia forecloses on its secured interest and becomes the owner of any unreleased property secured by the Wachovia Deed of Trust, it shall not be deemed an Owner with regard to the payment of any assessments hereunder.

Section 11.2 Common Expenses. Except as otherwise provided in this Declaration or in the Bylaws, each Owner on a monthly basis, and as special assessments may require in addition to, shall contribute an equal base amount plus a proportionate percentage share of the Common Expenses in accordance with the definition of "Common Expenses" set forth in Section 1.7 above, the Bylaws and the provisions of the North Carolina Condominium Act. Based on the initial number of one hundred seventy (170) residential condominium units and three (3) commercial units, each Owner's percentage share of Common Expenses is outlined the "Total Percent Interest" column on Exhibit B attached hereto. Assessments for all Units shall begin as of the date Declarant notifies all Owners, in writing, that assessments shall commence which shall be not earlier than the date of the first conveyance of a Unit to a party other than Declarant. Due dates for payment of such Common Expenses shall be established by the Association and shall be collected at least quarterly and may be collected monthly. Until such time as assessments are commenced, Declarant shall pay all of the Common Expenses of the

Association. Furthermore, notwithstanding when assessments are commenced, for calendar year 2007, Declarant agrees to pay any excess of Common Expenses of the Association over the amount of assessments collected from Owners. It is acknowledged and agreed that the budget, including reserve amounts, is merely an estimate and shall not affect the Association's ability to levy assessments as herein provided, and all Owners are therefore advised to maintain sufficient personal reserves in order to pay any such assessments.

Section 11.3 Additional Assessment. Once a Unit has been conveyed by Declarant to an Owner, upon each subsequent sale of the Unit, the then current Owner shall pay to the Association a fee to cover the Association's costs in repairing any damage to the Common Areas of the Building and rekeying or reprogramming the security systems for the Building and secured parking area ("Additional Assessment"). Such Additional Assessment must be paid prior to or at closing on the sale of the Unit and shall be subject to the Association's power of lien with respect to assessments as provided in Section 9.2 of this Declaration.

Section 11.4 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 shares equal to the mathematical proportions shown on Exhibit B, based upon the total number of Units in the Condominium from time to time; 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 12.6, 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 equal shares, based upon the total number of Units in the Condominium at that time.

ARTICLE XII INSURANCE

Section 12.1 Property Insurance. The Association shall cause to be obtained and maintain at all times a policy of property insurance on all Buildings (ISO special form or its equivalent) and all improvements on the Property owned either by the Association or the Owners, except such personal property as may be owned by the Owners, without deduction or allowance for depreciation (as determined annually by the Board of Directors with the assistance of the insurance company such coverage in an amount not less than one hundred percent (100%) of the replacement cost of the Buildings at the time such insurance is purchased and at the time of each renewal thereof with a commercially reasonable deductible not in excess of Twenty Thousand and No/100 Dollars (\$20,000.00). The policy shall be issued by an insurance company properly licensed to do business in the State of North Carolina, with a general policyholder's rating of at least "A" in the most recent edition of the Best's Key Rating Guide. The policy shall provide that each Owner is an insured person with respect to his or her Unit and his or her allocated interest in the Common Elements. The policy shall contain an inflation guard endorsement, if available, and a construction code endorsement, if available, as well as a special condominium endorsement providing as follows: (i) for waiver of subrogation against

any Owner, and any Owner's employees or agents; (ii) that it may not be cancelled or substantially modified without at least thirty (30) days' prior written notice to the Association and all insureds, including all Owners and Mortgagees; (iii) that no act or omission by any Owner will preclude recovery upon such policy; and (iv) that if, at the time of a loss under the policy, there is other insurance in the name of an Owner covering the same risk covered by the policy, the Association's policy provides primary insurance. Each property insurance policy shall provide that adjustment of loss shall be made by the Association as insurance trustee. Each property insurance policy shall provide for the issuance of certificates or mortgagee endorsements to Mortgagees.

Section 12.2 Liability Insurance. The Association shall obtain and maintain a policy of commercial general liability insurance (current ISO form or its equivalent) in such limits as the Executive Board may from time to time determine, covering each member of the Executive Board, the managing agent, 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 One Million and No/100 Dollars (\$1,000,000.00) per occurrence. The liability insurance policy shall include endorsements covering cross liability claims of one insured against another, including the liability of the Owners as a group to a single Owner, 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 Executive Board shall review such limits annually.

Section 12.3 Fidelity Coverage. The Association may obtain such fidelity coverage against dishonest acts on the part of all persons responsible for handling funds belonging to or administered by the Association as it may deem necessary. 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, or the amount required by any Mortgagee, whichever is greater.

Section 12.4 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.

Section 12.5 Premiums. 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.

Notwithstanding the preceding sentence to the contrary, in the event that a casualty occurs wholly within the boundaries of a Unit and does not affect any other Units or Common Elements, the Owner of such Unit shall be wholly responsible for any deductible amount in such policy of insurance relating to such claims.

Section 12.6 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. 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 for the purposes 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 Mortgagee, 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:

(1) 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.

(2) 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:

(1) If it is determined, as provided in Article XIII below, that the damaged property with respect to which the proceeds are paid shall not be reconstructed or repaired:

(i) 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;

(ii) 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

(iii) 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.

(2) 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.

Section 12.7 Insurance Obtained by Owners. Each Owner shall obtain and keep continuously in force additional fire and casualty and extended coverage insurance upon his personal property, public liability insurance and such other insurance coverage as he may desire. Each Owner shall obtain and maintain public liability insurance coverage in the amount of at least One Hundred Thousand and No/100 Dollars (\$100,000.00) for bodily injury, including deaths of persons and property damage, arising out of a single occurrence..

ARTICLE XIII DUTY TO REPAIR OR RECONSTRUCT

Section 13.1 Reconstruction and Repair. In the event of damage to or destruction of the Building as a result of fire or other casualty, the Association shall arrange for the prompt restoration and replacement of the Building unless (i) the Condominium is terminated in accordance with the provisions of Article XVI below, (ii) repair or replacement would be illegal under any state or local health or safety statute or ordinance, or (iii) the Owners decide not to rebuild by an eighty percent (80%) vote, including one hundred percent (100%) of Owners not to be rebuilt and one hundred percent (100%) of Owners to which are assigned Limited Common Elements not to be rebuilt. Unless one of the preceding conditions occurs, the Association shall arrange for the prompt repair and restoration of the Building, 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 12.6(d)(2) 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. Gen. Stat. §47C-1-107(a).

Section 13.2 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. Gen. Stat. §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 XIV UNITS SUBJECT TO CONDOMINIUM DOCUMENTS

All present and future Owners, tenants, occupants and guests of the Units shall be subject to and shall comply with the provisions of this Declaration, the Bylaws and any rules and regulations as may be adopted in accordance with the Bylaws, as all of the foregoing may be

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 XV AMENDMENT TO AND SUPPLEMENT OF DECLARATION

Except in cases of amendments that may be permitted by N.C. Gen. Stat. §§47C-1-107, 47C-2-112(a) or 47C-2-108(b), decisions, alterations and changes made by Declarant as provided for in the Declarant Control Period, or as is otherwise specifically authorized herein, this Declaration may be amended only by the vote of not less than seventy percent (70%) of the Owners, 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 other provisions of this Declaration, any amendment which amends or alters the Common Elements Interest of any Unit, increases the number of Units, changes the boundaries of any Unit, changes the use to which any Unit is restricted, or modifies the terms of this Article XV, shall require the written approval of all Owners, together with the consent of all their respective Mortgagees. Notwithstanding any other provision of this Declaration or the Condominium Documents, any amendment which materially alters the use of any commercial Unit or makes special limited assessments against the Owner of any commercial Unit, shall require the consent of the Owner of that particular commercial Unit. 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 office of the Register of Deeds of Wake County, North Carolina. 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.

ARTICLE XVI TERMINATION

The Condominium may be terminated and the Property removed from the provisions of the North Carolina Condominium Act only by the vote of not less than eighty percent (80%) of the Owners, 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. Gen. Stat. §47C-2-118, and must be recorded in the office of the Register of Deeds of Wake County, North Carolina 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. Gen. Stat. §47C-2-118.

ARTICLE XVII
MORTGAGEE PROTECTION

Section 17.1 General Provisions. This Article XVII establishes certain standards and covenants for the benefit of Mortgagees. This Article XVII 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 XVII, the provisions of this Article XVII shall control.

Section 17.2 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.

Section 17.3 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 ninety (90) 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 17.4 Mortgagee's Rights to Notice. Any Mortgagee (including, for purposes of this Section 17.4, 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 thirty (30) 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; and

(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 sixty (60) 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 wherever Mortgagee approval is required shall constitute an implied approval by that Mortgagee of the proposed addition or amendment.

Section 17.5 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 17.5 shall be effective without notice to all Mortgagees, as required by Section 17.4, the vote of at least seventy percent (70%) 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 previous calendar year's 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) except for the Development Rights of Declarant reserved as Special Declarant Rights under Article VII above, reallocation of interests in the Common Elements or the Limited Common Elements, except that when Limited Common Elements are reallocated by agreement between Owners, 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) except for the Development Rights of Declarant reserved as Special Declarant Rights under Article VII above, the expansion or contraction of the 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 restrictions on the leasing of Units;

- Unit;
- (k) the imposition of any 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; and
 - (n) any provision that expressly benefits the Mortgagees.

Section 17.6 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. Any representative of a Mortgagee may attend and address any meeting that an Owner may attend.

Section 17.7 Enforcement. The provisions of this Article XVII are for the benefit of all Mortgagees and their successors, and may be enforced by any of them by any available means.

ARTICLE XVIII 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. Gen. Stat. §47C-1-107.

ARTICLE XIX MISCELLANEOUS PROVISIONS

Section 19.1 Invalid. 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 19.2 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 19.3 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 19.4 Law Controlling. This Declaration and the Condominium Documents shall be construed and controlled by and under the laws of the State of North Carolina.

Section 19.5 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.

ARTICLE XX DISPUTE RESOLUTIONS AND LIMITATION ON LITIGATION

Section 20.1 Agreement to Avoid Costs of Litigation and to Limit Rights to Litigate Disputes. The Association, Declarant and its Related Parties, all Owners, all other persons or entities subject to this Declaration, and any person or entity not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "Bound Parties") agree to encourage the amicable resolution of disputes involving the Condominium in order to avoid the emotional and financial costs of litigation. Accordingly, to the extent permitted under applicable law, each Bound Party covenants and agrees that all claims, grievances or disputes between such Bound Party and any other Bound Party involving the Property including, without limitation, claims, grievances or disputes arising out of or relating to the interpretation, application or enforcement of this Declaration, the Bylaws, the Association rules, or the Articles of Incorporation (collectively "Claim"), except for those Claims authorized in Section 2, shall be resolved using the procedures set forth in Section 3 below in lieu of filing suit in any court or initiating proceedings before any administrative tribunal seeking redress or resolution of such Claim.

Section 20.2 Exempt Claims. The following Claims ("Exempt Claims") shall be exempt from the provisions of Section 1 above:

- (a) Any suit by the Association against any Bound Party to enforce the provisions relating to assessments;
- (b) Any suit by the Association to obtain a temporary restraining order or equivalent emergency equitable relief and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions relating to architectural control or use restrictions;
- (c) Any suit between Owners (other than Declarant) seeking redress on the basis of a Claim which would constitute a cause of action under federal law or the laws of the State of North Carolina in the absence of a claim based on the Declaration, Bylaws, Articles of Incorporation or rules of the Association, if the amount in controversy exceeds \$5,000.00;
- (d) Any suit arising out of any written contract between Owners and which would constitute a cause of action under the laws of the State of North Carolina in the absence of the Declaration, Bylaws, and Articles of Incorporation; and
- (e) Any suit in which all parties are not Bound Parties.

Any Bound Party having an Exempt Claim may submit it to the alternative dispute resolution procedures set forth in Section 3, but there shall be no obligation to do so. The

submission of an Exempt Claim involving the Association to the alternative dispute resolution procedures of Section 3 shall require the approval of the Association.

Section 20.3 Mandatory Procedures for All Other Claims. To the extent permitted under applicable law, all claims other than Exempt Claims shall be resolved using the following procedures:

(a) Notice. Any Bound Party having a claim (“Claimant”) against any other Bound Party (“Respondent”), other than an Exempt Claim, shall notify each respondent in writing of the Claim (the “Notice”), stating plainly and concisely:

(1) The nature of the Claim, including date, time, location, persons involved and respondent’s role in Claim;

(2) The basis of the Claim (i.e., the provisions of this Declaration, the Bylaws, the Articles of Incorporation or rules or other authority out of which the claim arises);

(3) What Claimant wants Respondent to do or not to do to resolve the Claim;

(4) That the Claimant wishes to resolve the Claim by mutual agreement with Respondent and is willing to meet in person with Respondent at a mutually agreeable time and place to discuss in good faith ways to resolve the Claim.

(b) Negotiation.

(1) Each Claimant and Respondent (the “Parties”) shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good negotiation.

(2) Upon receipt of a written request from any Party, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in resolving the dispute by negotiation, if it believes its efforts will be beneficial to the Parties and to the welfare of the community.

(c) Mediation.

(1) If the Parties do not resolve the Claim through negotiation within 30 days of the date of the Notice (or within such other period as may be agreed upon by the Parties) (“Termination of Negotiations”), Claimant shall have 30 additional days within which to submit the Claim to mediation under the auspices of any dispute resolution center or other such independent agency providing similar services in the same geographical area upon which the Parties may mutually agree.

(2) If Claimant does not submit the Claim to mediation within 30 days after Termination of Negotiations, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of

such claim; provided, nothing herein shall release or discharge Respondent from any liability to Persons not a Party to the foregoing proceedings.

(3) If the Parties do not settle the Claim within 30 days after submission of the matter to the mediation process, or within such time as determined reasonable or appropriate by the mediator, the mediator shall issue a notice of termination of the mediation proceedings ("Termination of Mediation"). The Termination of Mediation notice shall set forth when and where the Parties met, that the parties are at an impasse, and the date that mediation was terminated.

(4) Each Party shall, within five days of the Termination of Mediation, make a written offer of settlement in an effort to resolve the Claim. The Claimant shall make a final written settlement demand ("Settlement Demand") to the Respondent. The Respondent shall make a formal written settlement offer ("Settlement Offer") to the Claimant. If the Claimant fails to make a Settlement Demand, Claimant's original Notice shall constitute the Settlement Demand. If the Respondent fails to make a Settlement Offer, Respondent shall be deemed to have made a "zero" or "take nothing" Settlement Offer.

(d) Final and Binding Arbitration. To the extent permitted under applicable law, any and all claims, disputes and controversies by and between the Declarant, Association and/or Owners or any combination thereof arising from or related to the Condominium (including Units and Common Elements), any improvements to the Land, the sale of the Land, including, without limitation, any claim of breach of contract or warranty, negligence, negligent or intentional misrepresentation or nondisclosure in the inducement, execution or performance of any contract, including this arbitration agreement, and breach of any alleged duty of good faith and fair dealings, shall be submitted to arbitration by and pursuant to the rules of the AAA in effect at the time of the request for arbitration or by such other arbitration service as Declarant shall, in its sole discretion select, and pursuant to the rules of that arbitration service in effect at the time of the request for arbitration. This arbitration agreement shall inure to the benefit of, and be enforceable by, all successors and assigns of the parties. Any party shall be entitled to recover reasonable attorneys' fees and costs incurred in enforcing this arbitration agreement, and the arbitrator shall have sole authority to award such fees and costs. The decision of the arbitrator shall be final and binding and may be entered as a judgment in any state or federal court of competent jurisdiction. This arbitration agreement shall be deemed to be a self executing arbitration agreement. Any disputes concerning interpretation or the enforceability of this arbitration agreement, including without limitation, its revocability or voidability for any cause, the scope of arbitrable issues, and any defense based on waiver, estoppel or laches shall be decided by the arbitrator. The initiation of or participation by any party in any judicial proceedings concerning this arbitration agreement or any matter arbitrable hereunder shall not be deemed a waiver of the right to enforce this arbitration agreement and, notwithstanding provision of law to the contrary, shall not be asserted or accepted as a reason to delay, to refuse to participate in, or to refuse to enforce this arbitration agreement. Any party who shall commence a judicial proceeding concerning a dispute that is arbitrable, however, shall also be deemed a party requesting arbitration within the meaning of this arbitration agreement. The arbitrator's compensation shall be borne equally by the arbitrating parties. Any additional fees may be assessed in accordance with the arbitration rules and fees. Parties expressly agree that this

arbitration agreement involves and concerns interstate commerce and is governed by the provisions of the Federal Arbitration Act (9 USC §1 *et seq.*) now in effect as the same may from time to time be amended, supplanted or replaced, to the exclusion of any different or inconsistent state or local law, ordinance or judicial rule; and to the extent that any local law, ordinance or judicial rule may be inconsistent with any provision of the rules of the arbitration service under which the arbitration proceeding shall be conducted, the latter rule shall govern the conduct of the proceedings. If any provision of this arbitration agreement shall be determined by arbitrator or by any court to be (i) non-enforceable or (ii) have been waived, the remaining provision shall be deemed to be severable therefrom and enforceable according to their terms.

(e) **Enforcement of Resolution.** If the Parties agree to a resolution of any Claim through negotiation or mediation in accordance with the above and any Party thereafter fails to abide by the terms of such agreement, or if any Party fails to comply with the terms of any Award following arbitration, then any other Party may file suit or initiate administrative proceedings to enforce such agreement or Award without the need to again comply with the procedures set forth above and, in such event, the Party taking action to enforce the agreement or Award shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement or Award, including, without limitation, attorneys fees and court costs.

Section 20.4 **Litigation.** To the extent permitted under applicable law, (a) any litigation by the Association other than the Exempt Claims set out above, or (b) any arbitration against the Declarant or its Related Parties shall both require an affirmative vote of seventy-five percent (75%) of the members of the Association prior to the institution of such litigation. If and to the extent allowed by applicable law, no lawsuit shall be permitted against the Declarant or its Related Parties.

ARTICLE XXI LIMITATION OF LIABILITY; DISCLOSURES; GENERAL CONTRACTOR PROVISION

Section 21.1 **Limitation of Liability.** Owners are informed that Declarant has hired an architect to design, and the General Contractor to construct, the Condominium, and Declarant makes no, and to the maximum extent permitted by applicable law hereby disclaims, any representation or warranty with respect to the design or construction of the Condominium. Owners shall look solely to the architect and/or General Contractor with respect thereto and, in furtherance thereof, Declarant shall furnish to the Owners or to the Association, all warranties, if any, furnished by the architect or the General Contractor with respect thereto, and the Owners agree to be bound by, and abide by, the terms thereof. To the maximum extent permitted by applicable law, Declarant expressly disclaims any other implied warranty of habitability or suitability related to the Condominium and any Unit thereof. Declarant further expressly disclaims any implied warranties relating to all building systems and functions including, but not limited to, electrical wiring, fixtures, all materials comprising or supporting the roof, the exterior skin including window systems, all other structural components, all appliances, heating and air conditioning systems (HVAC), plumbing, fire sprinkler, elevators, other equipment and other personal property located in the Condominium and any Unit thereof, but will furnish to the

Purchaser or to the Association all manufacturers' warranties, if any and as available, with respect to those items. In addition, Declarant makes no representations or warranties as to the condition or health or appropriateness of any shrubs, trees, or plantings located within the Condominium, but will deliver to the Association any nursery's warranties with respect to those plants. No additional express or implied warranties of any sort or type regarding any Unit or the Condominium are or will be made by Declarant.

Section 21.2 Disclosures. Owners, present and future, are also informed and by purchasing a Unit thereby acknowledge and accept that the Condominium is a commercial structure in an urban setting. This commercial structure in this urban setting may offer certain benefits to Owners but may also pose certain limitations and/or disadvantages to Owners. Condominium living is a form of shared living, with each Owner purchasing a separate living space that shares many common elements with other units, other people and other building systems: walls, hallways, elevators, fire protection, security, steel and concrete structure, internal building equipment and systems, and the like. As such, Owners may hear sounds from their neighbors, whether next door or above or below or from the street level due to traffic, pedestrians, trains, and other urban activities; Owners may hear sounds or feel vibrations from building systems transmitting through the structure or exterior or from unit to unit of the building; Owners may hear noises or smell odors or feel vibrations from other Units and/or ground floor commercial businesses; Owners may experience variability in performance of building systems, including but not limited to common systems such as hvac chilled water availability and potable water pressure; Owners actual unit square footage may not be the anticipated square footage noted on the unit plan and/or in the plans and specifications for the Unit and/or Condominium, nor may locations and dimensions of walls, doors, electrical outlets, appliances, cabinetry and other items be installed as shown on the plans and specifications, as large scale commercial construction is inherently imprecise due to inexact field measurements, material unavailability and/or labor shortages, substitutions or alterations in designs or materials, and field conditions that result in departures from written plans and specifications to accommodate construction considerations at the discretion of the architect, general contractor, and/or Declarant, as well as departures from plans and specifications made to comply with then-current code and field instructions from municipal building inspections during construction. Owners are purchasing a Unit of general size in a Condominium of general size and general construction quality, not a specific amount of square footage nor according to any specific plans and specifications, and Owners shall not make any future claim that nor be entitled to collect any monetary award or damage from any departure or deviation from specific plans and specifications, or any claim that said plans and specifications were incomplete or inappropriate for the application of construction; Owners may experience, as in any urban environment, building construction on a nearby or adjacent lot (including, without limitation, at 413 N. Harrington Street) that creates noise, dust, nighttime artificial light, view obstructions, changes in public road patterns that affect access to the property, street noise with pedestrian and vehicular traffic at any time, higher levels of necessary building operation and maintenance expense over time, and other such characteristics. These and other circumstances are common to commercial structures in urban settings and therefore the Declarant makes no expressed or implied warranties or representations therefor.

Section 21.3 City of Raleigh Provisions. Owners hereby agree to abide by the terms and provisions set forth on Exhibit D attached hereto in connection with all dealings with the City of Raleigh.

Section 21.4 General Contractor Provisions. Owners hereby agree to abide by the terms and provisions set forth on Exhibit E attached hereto in connection with all dealings with the General Contractor.

ARTICLE XXII CONSENT OF MORTGAGEE

The Land and the Building are currently encumbered by the lien of a Deed of Trust and Security Agreement dated November 21, 2006, executed and delivered by Declarant to TRSTE, Inc., as Trustee for Wachovia Bank, National Association. A Consent of Mortgagee executed by TRSTE, Inc. as Trustee, and Wachovia Bank, National Association, as the mortgage lender for the Project, and SS-West at North, LLC, the mezzanine lender for the Project, consenting to the execution and recordation of this Declaration is attached to and made a part of this Declaration.

(The remainder of this page is intentionally left blank. Signature page follows.)

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

WEST DEVELOPERS LLC,
a North Carolina limited liability company

By: West Street Partners LLC, its Manager

By: 

Gregg E. Sandreuter, Manager

STATE OF NORTH CAROLINA

COUNTY OF WAKE

I, the undersigned, a Notary Public of the County and State aforesaid, certify that Gregg E. Sandreuter, whose identity has been proven by satisfactory evidence, said evidence being:

- I have personal knowledge of the identity of the principal(s)
- I have seen satisfactory evidence of the principal's identity, by a current state or federal identification with the principal's photograph in the form of a _____
- A credible witness has sworn to the identity of the principal(s);

personally came before me this day and acknowledged that he is Manager of West Street Partners, LLC, a North Carolina limited liability company, the Manager of West Developers, LLC, a North Carolina limited liability company, and that he, in such capacity and being authorized to do so, voluntarily executed the foregoing on behalf of the limited liability company for the purpose stated therein and in the capacity indicated.

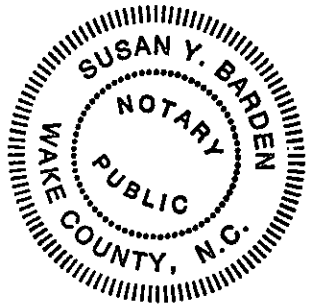
Witness my hand and seal, this the 3rd day of October, 2008.

Susan Y. Barden
Notary Public

Print Name: Susan Y. Barden

My Commission Expires: 9/12/09

[AFFIX NOTARY SEAL BELOW-NOTE THAT SEAL MUST BE **FULLY LEGIBLE**]



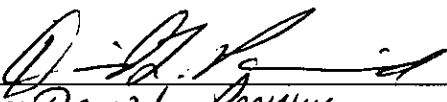
CONSENT OF MORTGAGEE

**ATTACHED TO DECLARATION OF CONDOMINIUM
FOR WEST CONDOMINIUM**

Wachovia Bank, National Association, a national banking association, being the Beneficiary under that certain Deed of Trust and Security Agreement from Declarant to TRSTE, Inc., a Virginia corporation, as Trustee, recorded in Book 12283, Page 2076, Wake County Registry, as amended by First Amendment of Deed of Trust and Security Agreement recorded in Book 12652, Page 663, Wake County Registry, conveying the property described on Exhibit A attached to this Declaration, does consent to the recordation of this Declaration and the imposition of the provisions hereof and the provisions of the North Carolina Condominium Act to the real property described in such Exhibit A. The execution of this Consent of Mortgagee by the Beneficiary shall not be deemed or construed to have the effect of creating between the Beneficiary and Declarant the relationship of partnership or of joint venture, nor shall it be deemed to impose upon the Beneficiary any of the liabilities, duties or obligations of Declarant under the Declaration. Beneficiary executes this Consent of Mortgagee solely for the purposes set forth above. The Trustee also joins in and executes this Consent as Trustee for the purposes set forth above.

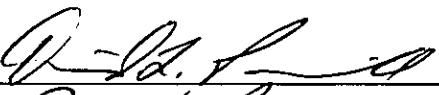
TRUSTEE:

TRSTE, INC.,
a Virginia corporation

By: 
Name: DAVID L. PANNIK
Title: VICE PRESIDENT

BENEFICIARY:

**WACHOVIA BANK, NATIONAL
ASSOCIATION,**
a national banking association

By: 
Name: DAVID L. PANNIK
Title: VICE PRESIDENT

STATE OF NORTH CAROLINA

COUNTY OF WAKE

I, the undersigned, a Notary Public of the County and State aforesaid, certify that David L. Parrill, whose identity has been proven by satisfactory evidence, said evidence being:

- I have personal knowledge of the identity of the principal(s)
- I have seen satisfactory evidence of the principal's identity, by a current state or federal identification with the principal's photograph in the form of a _____
- A credible witness has sworn to the identity of the principal(s);

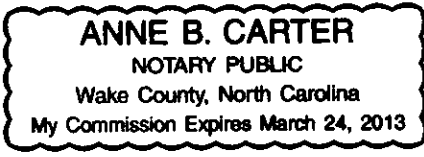
personally came before me this day and acknowledged that he is V.P. of TRSTE, Inc., a Virginia corporation, and that he, in such capacity and being authorized to do so, voluntarily executed the foregoing on behalf of the corporation for the purpose stated therein and in the capacity indicated.

Witness my hand and seal, this the 3 day of October, 2008.

Anne B. Carter
Notary Public

Print Name: Anne B. Carter

My Commission Expires: 3-24-13



[AFFIX NOTARY SEAL BELOW-NOTE THAT SEAL MUST BE FULLY LEGIBLE]

STATE OF NORTH CAROLINA

COUNTY OF WAKE

I, the undersigned, a Notary Public of the County and State aforesaid, certify that David L. Powell, whose identity has been proven by satisfactory evidence, said evidence being:

- I have personal knowledge of the identity of the principal(s)
- I have seen satisfactory evidence of the principal's identity, by a current state or federal identification with the principal's photograph in the form of a _____
- A credible witness has sworn to the identity of the principal(s);

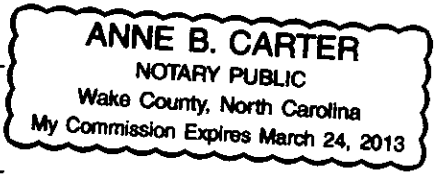
personally came before me this day and acknowledged that he is _____ of Wachovia Bank, National Association, a national banking association, and that he, in such capacity and being authorized to do so, voluntarily executed the foregoing on behalf of the association for the purpose stated therein and in the capacity indicated.

Witness my hand and seal, this the 3 day of October, 2008.

Anne B. Carter
Notary Public

Print Name: Anne B. Carter

My Commission Expires: 3-24-13



[AFFIX NOTARY SEAL BELOW-NOTE THAT SEAL MUST BE **FULLY LEGIBLE**]

CONSENT OF MEZZANINE LENDER

**ATTACHED TO DECLARATION OF CONDOMINIUM
FOR WEST CONDOMINIUM**

Oaklane Investment-West Developers, LLC, a North Carolina limited liability company, being the mezzanine lender for the Project described in this Declaration, does consent to the recordation of this Declaration and the imposition of the provisions hereof and the provisions of the North Carolina Condominium Act to the real property described in Exhibit A to the Declaration. The execution of this Consent of Mezzanine Lender by the undersigned shall not be deemed or construed to have the effect of creating between the undersigned and Declarant the relationship of partnership or of joint venture, nor shall it be deemed to impose upon the undersigned any of the liabilities, duties or obligations of Declarant under the Declaration. The undersigned executes this Consent of Mezzanine Lender solely for the purposes set forth above.

MEZZANINE LENDER:

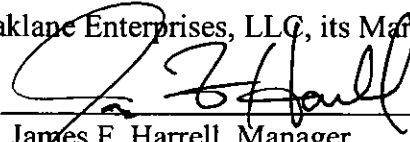
OAKLANE INVESTMENT-WEST DEVELOPERS, LLC,
a North Carolina limited liability company

By: Oaklane Fund I, LLC, its Manager

By: Oaklane Capital, LLC, its Manager

By: Oaklane Enterprises, LLC, its Manager

By:


James F. Harrell, Manager

STATE OF NORTH CAROLINA

COUNTY OF WAKE

I, the undersigned, a Notary Public of the County and State aforesaid, certify that James F. Harrell, whose identity has been proven by satisfactory evidence, said evidence being:

- I have personal knowledge of the identity of the principal(s)
- I have seen satisfactory evidence of the principal's identity, by a current state or federal identification with the principal's photograph in the form of a _____
- A credible witness has sworn to the identity of the principal(s);

personally came before me this day and acknowledged that he is manager of Oaklane Investment-West Developers, LLC, a North Carolina limited liability company, and that he, in such capacity and being authorized to do so, voluntarily executed the foregoing on behalf of the limited liability company for the purpose stated therein and in the capacity indicated.

Witness my hand and seal, this the 2nd day of October, 2008.

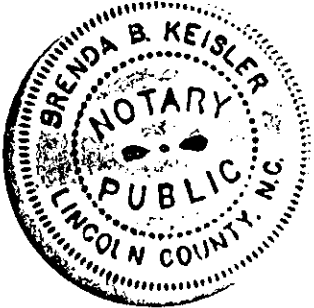
Brenda B. Keisler

Notary Public

Print Name: BRENDA B. KEISLER

My Commission Expires: April 03, 2010

[AFFIX NOTARY SEAL BELOW-NOTE THAT SEAL MUST BE **FULLY LEGIBLE**]



**EXHIBIT A
TO THE DECLARATION**

LEGAL DESCRIPTION OF LAND

BEING all of Lot 1, containing .9658 acres, as shown on a Recombination Plat entitled "Property of State Employees Association of North Carolina, Raleigh, Wake County, North Carolina", prepared by John A. Edwards & Company, Consulting Engineers, dated February 9, 1999, recorded in Book of Maps 1999, Page 512, Wake County Registry.

LESS AND EXCEPT the air rights as described below:

Beginning at a point in the eastern right of way on North West Street and in the western property line of Lot 1 as recorded and shown on the Recombination plat of State Employees Association of North Carolina property which is recorded in Wake County Book of Maps 1999, page 512, said point also being located North 02°04'57" East, a distance of 139.45 feet from an Iron Pipe at the intersection of the northern right of way of West North Street and the eastern right of way of North West Street as shown on the ALTA/ACSM Survey prepare for Harrington Street Partners, LLC by Rice and Associates, dated March 16, 2005; thence, from said point of beginning, along the eastern right of way of North West Street and the western property line of Lot 1 as described above North 02°04'57" East, a distance of 50.00 feet to a iron pipe; thence along the dividing line between Lot 1 and Lot 2, as shown on the recombination map referenced above, South 87°52'26" East, a distance of 236.15 feet to a iron pipe, said point being located in the western right of way of North Harrington Street and the eastern property line of Lot 1 as described above; thence along the western right of way of North Harrington Street and the eastern property line of Lot 1 as described above, along a curve to the left, having a radius of 422.75 feet, an arc distance of 51.36' feet, a chord bearing of South 15°11'43" West, an a chord distance of 51.33' feet to a point; thence along a line 50' feet from and parallel to said northern property line of Lot 1 North 87°52'26" West, a distance of 224.51 feet to the POINT OF BEGINNING. Containing 11,489.7 square feet or 0.2638 acres, more or less, being the northern 50 feet of Lot 1 as described above.

**EXHIBIT B
TO THE DECLARATION**

**COMMON ELEMENTS INTEREST
(reference P5.2, P5.3 and P11.2)**

*** SOME UNITS ON CERTAIN FLOORS HAVE EXTERIOR WALL DIMENSIONS THAT REDUCE THE SQUARE FOOTAGE NOTED. THESE SQUARE FOOT REDUCTIONS ARE NOT SHOWN HERE NOR DO THEY AFFECT ANY CALCULATION OF COMMON ELEMENTS INTEREST, MONTHLY ASSESSMENTS, PURCHASE PRICE, OR ANY UNIT/OWNER OBLIGATION. THE TABLE BELOW APPLIES TO ALL UNIT TYPES REGARDLESS OF ACTUAL SQUARE FOOTAGE.**

unit #	unit type	approx sq. ft.	residential percent interest	commercial percent interest	total percent interest
001	commercial	5,959	0.00%	36.08%	2.75%
118	commercial	6,563	0.00%	39.73%	3.02%
112	commercial	3,996	0.00%	24.19%	1.84%

500	e-1	963	0.48%	0.00%	0.44%
502	d	1,167	0.58%	0.00%	0.54%
504	c-1	1,034	0.52%	0.00%	0.48%
506	g	1,827	0.91%	0.00%	0.84%
508	e	929	0.46%	0.00%	0.43%
510	f	1,238	0.62%	0.00%	0.57%
514	a	718	0.36%	0.00%	0.33%
516	b-1	1,094	0.55%	0.00%	0.50%
518	b	1,214	0.61%	0.00%	0.56%
520	b-1	1,094	0.55%	0.00%	0.50%
522	a	718	0.36%	0.00%	0.33%
526	f	1,238	0.62%	0.00%	0.57%
528	e	929	0.46%	0.00%	0.43%
530	g	1,827	0.91%	0.00%	0.84%
532	c	987	0.49%	0.00%	0.45%
534	d	1,167	0.58%	0.00%	0.54%

600	e-1	963	0.48%	0.00%	0.44%
602	d	1,167	0.58%	0.00%	0.54%
604	c-1	1,034	0.52%	0.00%	0.48%
606	g	1,827	0.91%	0.00%	0.84%
608	e	929	0.46%	0.00%	0.43%
610	f	1,238	0.62%	0.00%	0.57%
614	a	718	0.36%	0.00%	0.33%
616	b-1	1,094	0.55%	0.00%	0.50%
618	b	1,214	0.61%	0.00%	0.56%
620	b-1	1,094	0.55%	0.00%	0.50%
622	a	718	0.36%	0.00%	0.33%
626	f	1,238	0.62%	0.00%	0.57%
628	e	929	0.46%	0.00%	0.43%
630	g	1,827	0.91%	0.00%	0.84%
632	c	987	0.49%	0.00%	0.45%
634	d	1,167	0.58%	0.00%	0.54%

unit #	unit type	approx sq. ft.	residential percent interest	commercial percent interest	total percent interest
700	c-1	963	0.48%	0.00%	0.44%
702	d	1,167	0.58%	0.00%	0.54%
704	c-1	1,034	0.52%	0.00%	0.48%
706	g	1,827	0.91%	0.00%	0.84%
708	e	929	0.46%	0.00%	0.43%
710	f	1,238	0.62%	0.00%	0.57%
714	a	718	0.36%	0.00%	0.33%
716	b-1	1,094	0.55%	0.00%	0.50%
718	b	1,214	0.61%	0.00%	0.56%
720	b-1	1,094	0.55%	0.00%	0.50%
722	a	718	0.36%	0.00%	0.33%
726	f	1,238	0.62%	0.00%	0.57%
728	e	929	0.46%	0.00%	0.43%
730	g	1,827	0.91%	0.00%	0.84%
732	c	987	0.49%	0.00%	0.45%
734	d	1,167	0.58%	0.00%	0.54%

800	e-1	963	0.48%	0.00%	0.44%
802	d	1,167	0.58%	0.00%	0.54%
804	c-1	1,034	0.52%	0.00%	0.48%
806	g	1,827	0.91%	0.00%	0.84%
808	e	929	0.46%	0.00%	0.43%
810	f	1,238	0.62%	0.00%	0.57%
814	a	718	0.36%	0.00%	0.33%
816	b-1	1,094	0.55%	0.00%	0.50%
818	b	1,214	0.61%	0.00%	0.56%
820	b-1	1,094	0.55%	0.00%	0.50%
822	a	718	0.36%	0.00%	0.33%
826	f	1,238	0.62%	0.00%	0.57%
828	e	929	0.46%	0.00%	0.43%
830	g	1,827	0.91%	0.00%	0.84%
832	c	987	0.49%	0.00%	0.45%
834	d	1,167	0.58%	0.00%	0.54%

900	e-1	963	0.48%	0.00%	0.44%
902	d	1,167	0.58%	0.00%	0.54%
904	c-1	1,034	0.52%	0.00%	0.48%
906	g	1,827	0.91%	0.00%	0.84%
908	e	929	0.46%	0.00%	0.43%
910	f	1,238	0.62%	0.00%	0.57%
914	a	718	0.36%	0.00%	0.33%
916	b-1	1,094	0.55%	0.00%	0.50%
918	b	1,214	0.61%	0.00%	0.56%
920	b-1	1,094	0.55%	0.00%	0.50%
922	a	718	0.36%	0.00%	0.33%
926	f	1,238	0.62%	0.00%	0.57%
928	e	929	0.46%	0.00%	0.43%
930	g	1,827	0.91%	0.00%	0.84%
932	c	987	0.49%	0.00%	0.45%
934	d	1,167	0.58%	0.00%	0.54%

unit #	unit type	approx sq. ft.	residential percent interest	commercial percent interest	total percent interest
1000	e-l	963	0.48%	0.00%	0.44%
1002	d	1,167	0.58%	0.00%	0.54%
1004	c-l	1,034	0.52%	0.00%	0.48%
1006	g	1,827	0.91%	0.00%	0.84%
1008	e	929	0.46%	0.00%	0.43%
1010	f	1,238	0.62%	0.00%	0.57%
1014	a	718	0.36%	0.00%	0.33%
1016	b-l	1,094	0.55%	0.00%	0.50%
1018	b	1,214	0.61%	0.00%	0.56%
1020	b-l	1,094	0.55%	0.00%	0.50%
1022	a	718	0.36%	0.00%	0.33%
1026	f	1,238	0.62%	0.00%	0.57%
1028	e	929	0.46%	0.00%	0.43%
1030	g	1,827	0.91%	0.00%	0.84%
1032	c	987	0.49%	0.00%	0.45%
1034	d	1,167	0.58%	0.00%	0.54%

1100	e-l	963	0.48%	0.00%	0.44%
1102	d	1,167	0.58%	0.00%	0.54%
1104	c-l	1,034	0.52%	0.00%	0.48%
1106	g	1,827	0.91%	0.00%	0.84%
1108	e	929	0.46%	0.00%	0.43%
1110	f	1,238	0.62%	0.00%	0.57%
1114	a	718	0.36%	0.00%	0.33%
1116	b-l	1,094	0.55%	0.00%	0.50%
1118	b	1,214	0.61%	0.00%	0.56%
1120	b-l	1,094	0.55%	0.00%	0.50%
1122	a	718	0.36%	0.00%	0.33%
1126	f	1,238	0.62%	0.00%	0.57%
1128	e	929	0.46%	0.00%	0.43%
1130	g	1,827	0.91%	0.00%	0.84%
1132	c	987	0.49%	0.00%	0.45%
1134	d	1,167	0.58%	0.00%	0.54%

1200	e-l	963	0.48%	0.00%	0.44%
1202	d	1,167	0.58%	0.00%	0.54%
1204	c-l	1,034	0.52%	0.00%	0.48%
1206	g	1,827	0.91%	0.00%	0.84%
1208	e	929	0.46%	0.00%	0.43%
1210	f	1,238	0.62%	0.00%	0.57%
1214	a	718	0.36%	0.00%	0.33%
1216	b-l	1,094	0.55%	0.00%	0.50%
1218	b	1,214	0.61%	0.00%	0.56%
1220	b-l	1,094	0.55%	0.00%	0.50%
1222	a	718	0.36%	0.00%	0.33%
1226	f	1,238	0.62%	0.00%	0.57%
1228	e	929	0.46%	0.00%	0.43%
1230	g	1,827	0.91%	0.00%	0.84%
1232	c	987	0.49%	0.00%	0.45%
1234	d	1,167	0.58%	0.00%	0.54%

unit #	unit type	approx sq. ft.	residential percent interest	commercial percent interest	total percent interest
1400	c-l	963	0.48%	0.00%	0.44%
1402	d	1,167	0.58%	0.00%	0.54%
1404	c-l	1,034	0.52%	0.00%	0.48%
1406	g	1,827	0.91%	0.00%	0.84%
1408	e	929	0.46%	0.00%	0.43%
1410	j	1,659	0.83%	0.00%	0.76%
1416	h	1,553	0.77%	0.00%	0.72%
1418	b	1,214	0.61%	0.00%	0.56%
1420	h	1,553	0.77%	0.00%	0.72%
1426	j	1,659	0.83%	0.00%	0.76%
1428	e	929	0.46%	0.00%	0.43%
1430	g	1,827	0.91%	0.00%	0.84%
1432	c	987	0.49%	0.00%	0.45%
1434	d	1,167	0.58%	0.00%	0.54%

1500	c-l	963	0.48%	0.00%	0.44%
1502	d	1,167	0.58%	0.00%	0.54%
1504	c-l	1,034	0.52%	0.00%	0.48%
1506	g	1,827	0.91%	0.00%	0.84%
1508	e	929	0.46%	0.00%	0.43%
1510	j	1,659	0.83%	0.00%	0.76%
1516	h	1,553	0.77%	0.00%	0.72%
1518	b	1,214	0.61%	0.00%	0.56%
1520	h	1,553	0.77%	0.00%	0.72%
1526	j	1,659	0.83%	0.00%	0.76%
1528	e	929	0.46%	0.00%	0.43%
1530	g	1,827	0.91%	0.00%	0.84%
1532	c	987	0.49%	0.00%	0.45%
1534	d	1,167	0.58%	0.00%	0.54%

1600	c-l	963	0.48%	0.00%	0.44%
1602	d	1,167	0.58%	0.00%	0.54%
1604	c-l	1,034	0.52%	0.00%	0.48%
1606	g	1,827	0.91%	0.00%	0.84%
1608	e	929	0.46%	0.00%	0.43%
1610	j	1,659	0.83%	0.00%	0.76%
1616	h	1,553	0.77%	0.00%	0.72%
1618	b	1,214	0.61%	0.00%	0.56%
1620	h	1,553	0.77%	0.00%	0.72%
1626	j	1,659	0.83%	0.00%	0.76%
1628	e	929	0.46%	0.00%	0.43%
1630	g	1,827	0.91%	0.00%	0.84%
1632	c	987	0.49%	0.00%	0.45%
1634	d	1,167	0.58%	0.00%	0.54%

total residential		200,556	100.00%		92.39%
total commercial		16,518		100.00%	7.61%
grand total		217,074			100.00%

- * ground floor/first floor commercial is not part of the residential sf calcs
- * ground floor/first floor commercial sq ft may increase or decrease based on actual usable area
- * residential percentages may change if unit size(s) change

**EXHIBIT C
TO THE DECLARATION**

**BYLAWS
OF
WEST CONDOMINIUM OWNERS ASSOCIATION INC.**

**ARTICLE I
DEFINITIONS**

The words, phrases and terms used in these Bylaws shall have the meanings as set forth in the Declaration of Condominium for West Condominium, recorded in the office of the Register of Deeds of Wake County, North Carolina.

**ARTICLE II
ADMINISTRATION OF CONDOMINIUM**

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.

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.

**ARTICLE III
OFFICES - SEAL - FISCAL YEAR**

3.1 Principal Office and Registered Office. The initial principal office and registered office of the Association shall be located at 1500 Sunday Drive, Suite 300, Raleigh, Wake County, North Carolina 27607.

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.

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.

3.4 Fiscal Year. The fiscal year of the Association shall be January 1 to December 31.

ARTICLE IV MEMBERSHIP

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 Wake 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.

4.2 Place of Meetings. All meetings of the Members shall be held at a place in Wake County, North Carolina designated by the Executive Board.

4.3 Annual Meeting. A meeting of the Members shall be held at least once each year. The first annual meeting of the Members shall be held on the date and hour designated by Declarant. Thereafter, the annual meeting of the Members shall be held on the third Monday in June of each year at 8:00 p.m., Eastern Standard Time. If the third Monday in June 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 5.3 of these Bylaws and the Members shall transact such other business as may properly come before them.

4.4 Substitute Annual Meeting. 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.

4.5 Special Meeting. 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 sixty percent (60%) 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.

4.6 Notice of Meeting. The delivery of any item and the giving of notice in compliance with these Bylaws shall be accomplished in writing by personal delivery, facsimile/fax or email with evidence of recipient receipt, or by certified mail addressed to each Unit. Such notice shall state the time and place of the meeting of the Members, including an annual meeting, 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, and shall be delivered not less than ten (10) nor more than thirty (30) days before the date of any such meeting of the Members. Any notice given in accordance with the

provisions of this Section 4.6 shall be deemed to be effective, if personally delivered or faxed or emailed, on the date of such delivery, or if mailed by registered or certified mail, on the date upon which the return receipt is signed or delivery is refused or the notice is designated by the postal authorities as not deliverable, as the case may be.

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.

4.7 Quorum. Except as otherwise provided in these Bylaws, the presence in person or by proxy of the Members entitled to cast fifty one percent (51%) 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 a 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.

4.8 Voting Right. The total number of votes of the Members 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 (2) 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 be 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.

4.9 Proxies. The 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 of the Association or duly acting secretary of the meeting 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 Members.

All of the above provisions concerning voting by joint Owners shall apply to the vote cast for any one Unit by two (2) or more proxy holders.

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, or the North Carolina Condominium Act.

4.11 Actions Without Meeting. Any action which may be taken at a meeting of the Members 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.

ARTICLE V EXECUTIVE BOARD

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, duties or terms of office of Executive Board members. The Executive Board may, however, fill vacancies in the Executive Board for the unexpired portion of any term.

5.2 Number, Term and Qualification. The initial Executive Board shall consist of the five (5) individuals appointed by Declarant whose names are set forth in the Articles of Incorporation. During the Declarant Control Period, the Executive Board shall have one (1) member and Declarant may appoint and remove such member of the Executive Board in Declarant's sole discretion, subject to the limitations contained in Section 7.1 of the Declaration. Following the expiration of the Declarant Control Period, the Members of the Association shall elect five (5) Executive Board members. Executive Board members may succeed themselves in office but in no event shall an Executive Board member serve for a term exceeding three (3) years. After a one (1) year absence from the Executive Board, a person is eligible for reelection. The President, Secretary and Treasurer shall each serve a one (1) year term on the Executive Board. The Vice President and the Assistant Secretary shall each serve a two (2) year term on the Executive Board and, during their second year as Executive Board members, shall also serve as the President and Secretary, respectively, of the Association.

5.3 Election of Executive Board Members. The election of all Executive Board members shall be by ballot. Persons receiving the highest number of votes shall be elected. Cumulative voting is not permitted.

5.4 Removal. Any Executive Board member, other than a member appointed by Declarant, may be removed from the Executive Board, with or without cause, by a vote of at least seventy percent (70%) of the votes entitled to be cast by all Members present and entitled to vote at any meeting of the Members at which a quorum is present; provided, however, the notice of the meeting must state that the question of such removal will be acted upon at the subject meeting. If any Executive Board members are so removed, their successors as Executive Board members may be elected by the Members at the same meeting to fill the unexpired terms of the Executive Board members so removed.

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

5.6 Chairman. A member of the Executive Board shall be elected as Chairman of the Executive Board by the Executive Board members at the first meeting of the Executive Board. The Chairman shall preside at all meetings of the Executive Board and perform such other duties as may be directed by the Executive 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 of the Association shall preside.

5.7 Compensation. No member of the Executive Board shall receive any compensation from the Association for acting as such; provided, however, each Executive 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 Executive Board from compensating a Executive Board member for unusual and extraordinary services rendered on the basis of *quantum meruit*. Each Executive Board member, by assuming office, waives his right to institute suit against or make claim upon the Association for compensation based upon *quantum meruit*.

5.8 Loans to Executive Board Members and Officers. No loans shall be made by the Association to its Executive Board members or officers. The Executive Board members who vote for or assent to the making of a loan to a Executive 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

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

5.10 Meetings of the Executive Board.

(a) Regular Meeting. Regular meetings of the Executive Board shall be held monthly at such hour and address as may be fixed from time to time by resolution of the Executive 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 Executive Board member, after not less than three (3) or more than thirty (30) days written notice to each Executive Board member.

(c) Notices of Special Meetings. The notice provided for herein may be waived by written instrument signed by those Executive Board members who do not receive said notice. Except to the extent otherwise required by law, the purpose of a special meeting of the Executive Board members need not be stated in the notice. Notices shall be deemed received upon that date the notice is personally delivered or faxed or emailed, or if mailed by registered or certified mail, on the date upon which the return receipt is signed or delivery is refused or the notice is designated by the postal authorities as not deliverable, as the case may be. Attendance by a Executive Board member at a meeting shall constitute a waiver of notice of such meeting unless the subject Executive 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 Executive Board meetings shall be held in Wake County, North Carolina.

(e) Quorum. A majority of the Executive Board members then holding office shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the Executive Board members present at a duly held meeting at which a quorum is present shall be regarded as the act or decision of the Executive Board.

5.11 Action Without Meeting. The Executive 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 unanimous written approval of all the Executive Board members. Such written approval shall be valid if obtained via facsimile or electronic mail. Any action so approved shall have the same effect as though taken at a meeting of the Executive Board. Said written approval shall be filed with the minutes of the proceedings of the Executive Board, whether done before or after the action so taken.

5.12 Presumption of Assent. A Executive Board member who is present at a meeting of the Executive 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 Executive Board member who voted in favor of such action.

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 Executive Board. The powers and duties to be exercised by the Executive 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, as defined in Section 5.18 below) 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 reviews of the financial records of the Association certified by 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 Executive Board and the Members in which minute book shall be inserted actions taken by the Executive Board and/or the Members by consent without meeting;

(i) supervising all officers, agents and employees of the Association and insuring that their duties are properly performed;

(j) 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;

(k) maintaining and repairing any Unit, if such maintenance or repair is required by the Declaration or is necessary in the discretion of the Executive 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 Executive Board to said Owner, provided that the Executive Board shall levy a special assessment against such Owner for the costs of said maintenance or repair;

(l) entering any Unit when necessary in connection with any maintenance or construction for which the Executive Board is responsible; provided, however, 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 Executive 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;

(m) 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 Executive Board (In the absence of such determination by the Executive Board, such documents shall be signed by either the Treasurer or the Assistant Treasurer of the Association, and countersigned by any Executive Board member.);

(n) 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;

(o) 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. Gen. Stat. §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 Fifty and No/100 Dollars (\$150.00), or the highest amount permitted by law, for violations of the Declaration, these Bylaws or the rules and regulations of the Association;

(p) enforcing by any legal means or proceeding the provisions of the Articles of Incorporation, these Bylaws, the Declaration or the rules and regulations hereinafter promulgated governing use of the Common Elements;

(q) 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;

(r) hiring attorneys and other professionals; and

(s) 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.

5.14 Independent Manager. Prior to expiration of the Declarant Control Period, the Declarant may employ or enter into a management contract with any individual, firm or entity (the "Independent Manager") it deems appropriate and in the best interest of the Association concerning the routine management of the Condominium. After expiration of the Declarant Control Period, the Executive Board may delegate to the Independent Manager such duties and responsibilities in the management of the Property as the Executive Board deems appropriate; provided, however, 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. Gen. Stat. §47C-3105. 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.

ARTICLE VI COMMITTEES

6.1 Creation. The Executive Board, by resolution adopted by a majority of the number of Executive 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 Executive 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, however, each committee shall have in its membership at least one (1) member of the Executive Board.

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

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 Executive Board members then holding office.

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

6.5 Responsibility of Executive Board Members. The designation of committees and the delegation of authority thereto 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 Executive Board, a Executive Board member may dissent from such action by filing his written objection with the Secretary with reasonable promptness after learning of such action.

ARTICLE VII OFFICERS

7.1 Enumeration of Officers. The officers of the Association shall consist of a President, Vice President, Secretary, Assistant Secretary, and Treasurer, all of whom shall be members of the Executive Board. The Executive Board may in its discretion elect such Assistant Vice Presidents, Assistant Treasurers and other officers as the Executive Board may from time to time deem necessary or advisable.

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 Executive 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. These Bylaws contemplate the Vice President shall the subsequent year's President and the Assistant Secretary shall be the subsequent year's Secretary unless so otherwise voted by the Executive Board.

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

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

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.

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, sign all written instruments regarding the Common Elements and co-sign all promissory notes of the Association, if any, and 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.

7.7 Vice President. The Vice President shall, in the absence or disability of the President, perform the duties and exercise the powers of that office. In addition, the Vice President shall perform such other duties and have such other powers as the Executive Board shall prescribe.

7.8 Secretary. The Secretary shall keep the minutes of all meetings of the Members and of the Executive Board, have charge of such books and papers as the Executive Board may direct and, 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.

7.9 Assistant Secretary. The Assistant Secretary shall, in the absence or disability of the Secretary, perform the duties and exercise the powers of that office and, in general, perform such other duties as shall be assigned to him by the Vice President, Secretary, Treasurer, President or Executive Board.

7.10 Treasurer. The Treasurer shall have the responsibility for the Association's funds and securities, be responsible for keeping full and accurate financial records and books of account showing all receipts and disbursements, and be responsible for the preparation of all required financial statements. He shall co-sign promissory notes of the Association, prepare a proposed annual budget (to be approved by the Executive Board) and 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.

7.11 Assistant Vice Presidents and Treasurers. The Assistant Vice Presidents and Treasurers shall, in the absence or disability of the Vice President or the Treasurer, respectively, perform the duties and exercise the powers of those offices. They shall, in general, perform such other duties as shall be assigned to them by the Vice President, Secretary, Treasurer, President or Executive Board.

7.12 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*.

7.13 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.

ARTICLE VIII OPERATION OF THE PROPERTY

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 XI 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. It is acknowledged and agreed that the budget, including reserve amounts, is merely an estimate and shall not affect the Association's ability to levy assessments as herein provided, and all Owners are therefore advised to maintain sufficient personal reserves in order to pay any such assessments.

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 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 seventy percent (70%) 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 the event that any Owner fails to maintain his Unit and the Association takes action to do so as set forth in Section 5.13 hereof, or any Owner defaults under his obligations under the Declaration or these Bylaws and the Association incurs any additional costs and expenses as a result of such default, the Association shall have the right to levy a special assessment against such Owner for the purposes of defraying, in whole or in part, such costs or expenses.

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 but not to exceed one thousand dollars (\$1,000.00). 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.

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 Executive 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.

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.

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 Executive 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 Executive 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 five percent (5%) of the overdue assessment or \$20, in the Executive Board's discretion.

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.

8.5 Lien and Personal Obligations. All Common Expenses and special assessments provided for in this Article, 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 of Wake 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 nonuse or enjoyment of any portion of the Common Elements or by the abandonment or sale of his Unit.

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 or special assessments, 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.

8.7 Abatement and Enjoyment of Violations by Owners. The violation of any rule or regulation adopted by the Executive Board, the breach of any provision of these Bylaws, or the

breach of any provision of the Declaration shall give the Executive 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 Executive Board shall not thereby be deemed guilty in any manner of trespass; (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 Fifty and No/100 Dollars (\$150.00) per day, or the highest amount permitted by law, for continuing violations.

8.8 Maintenance and Repair. 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. 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 Executive 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.

8.9 Additions, Alterations or Improvements by Owners. No Owner shall make any improvements or alterations in or to his Unit that impair the structural integrity or mechanical systems or lessen the support of any portion of the Condominium or to any Limited Common Element, or any change in the exterior appearance thereof, except in accordance with N.C. Gen. Stat. §47C-2-111 and in accordance with the terms of the Declaration.

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

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/or threatening another Unit or the Common Elements, or for the purpose of performing installations, alterations or repairs to any building system or element (including, but not limited to, the mechanical, plumbing 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. Each Owner shall provide a key to access his Unit to the Independent Manager for safekeeping and access use. In the case of an emergency, such right of entry shall be immediate whether the Owner is present at the time or not.

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 Executive Board with the approval of a majority of Owners. Copies of such rules and regulations shall be furnished by the Executive Board to each Owner prior to the time when the same shall become effective.

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 Executive Board, such may be paid by the Executive Board and assessed against the Units as a Common Expense.

8.14 Approval of Members Required for Certain Transactions. The Association shall not, without the prior written approval of a Supermajority in Interest of the Members, institute any legal action in the name of the Association, other than lawsuits for the payment of Common Expenses, special assessments or other assessments, or for the enforcement of any rules and regulations or breach of any provision in the Declaration, all of which are expressly permitted under these Bylaws. For the purposes of this section 8.14, "Supermajority in Interest" shall mean a combination of any Members who, in the aggregate, own eighty percent (80%) or more of the Units.

ARTICLE IX AMENDMENTS

Subject to the provisions of Article XV of the Declaration, these Bylaws may be amended at any time by an instrument in writing signed and acknowledged by Owners holding at least seventy percent (70%) of the votes in the Association, which instrument shall be effective only upon recordation in the office of the Register of Deeds of Wake 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.

ARTICLE X MISCELLANEOUS

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.

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.

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.

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, 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 and these Bylaws.

End of Document

**EXHIBIT D
TO THE DECLARATION**

CITY OF RALEIGH PROVISIONS

In no case shall the City be responsible for failing to provide any emergency or regular fire, police or other public service to any unit ownership (condominium) development or their occupants when such failure is due to lack of access to such areas due to inadequate design or construction, blocking of access routes, inadequate maintenance, or any other factor within the control of the developer, homeowners association, or occupants.

In no case shall the City or the State be responsible for maintaining any private street. Such responsibility shall rest with the homeowners association and occupants in that such private streets will not be constructed to the minimum standards sufficient to allow their inclusion for public maintenance.

**EXHIBIT E
TO THE DECLARATION**

GENERAL CONTRACTOR PROVISIONS

Notwithstanding any other terms to the contrary within the above Declaration, the following terms and conditions are hereby incorporated into the terms of the Declaration by this reference and shall control over any other inconsistent terms set forth therein. Unless otherwise defined below, all capitalized terms shall have the meaning ascribed to them in the North Carolina Condominium Act, N.C. Rev. Stat. §47C-1 *et. seq.*

1 Easement to Inspect and Right to Correct.

A. Easement. Declarant reserves for itself, General Contractor (defined below) and such other persons as each may designate, perpetual, non-exclusive easements throughout the Property to the extent reasonably necessary for the purposes of access, inspecting, testing, redesigning, correcting, modifying or improving any portion of the Property, including Units and the Common Elements. Pursuant to this Section and any express warranty provided by General Contractor shall have the unilateral right, at any time, to redesign, correct, modify or improve any part of the Property, including Units and the Common Elements, to the extent reasonably necessary to correct any design defect, construction-related defect or other construction-related problem, to change or improve the operational efficiency and structural integrity of any improvement located on the Property, and to otherwise provide a modified, superior or enhanced housing product within the Property. In the event that any person has received a notice of claim pursuant to the to this Declaration (defined below), then the rights under the aforementioned easement shall be exercised by such person in accordance with the notice of defect and “opportunity to cure” provisions of the Declaration.

B. Right of Entry. In addition to the above easement, Declarant for itself and General Contractor reserves a right of entry onto any Unit upon reasonable notice to the Owner; provided, however, notice shall not be required in an emergency. Entry into a Unit shall be only after Declarant or General Contractor notifies the Owner (or occupant) and agrees with the Owner regarding a reasonable time to enter the Unit to perform such activities. Owner agrees to cooperate in a reasonable manner with Declarant and General Contractor in their exercise of the rights provided to it by this Section. Entry onto the Common Elements and into any improvements and structures thereon may be made by Declarant or General Contractor at any time with advance notice to the Association; provided, however, in an emergency, such notice shall not be required and Declarant and General Contractor shall be permitted to enter upon any portion of the Property without advance notice or consent. In the event that any person receives a notice of claim pursuant to the Declaration, then the above right of entry shall be exercised by such person in accordance with the statutory notice and “opportunity to cure” provisions of this Declaration.

C. Notice Requirement. Upon notice, observation, allegation, or suspicion of a design defect, construction-related defect or other construction-related problem with any improvement located on the Property, including the Common Elements and any Unit, the Association immediately shall notify Declarant and General Contractor of such issue in writing and, in the case of a condition posing an imminent threat of damage to person or property, telephonically. Upon such notice, Declarant or General Contractor shall have the right to come onto the Property to observe the defect or problem and General Contractor shall have the right unilaterally to undertake any corrective measures that it deems appropriate without the additional consent or participation of the Association or the Owner(s). The rights of notice, inspection and correction granted to Declarant and General Contractor pursuant to this Section shall be provided by the Association and any affected Owner prior to the Association and any affected Owner consulting with, hiring or retaining, in any capacity whatsoever, any third party to examine, correct, repair or improve any design defect, construction-related defect or other construction-related problem with the Property, any Common Element or Unit. Failure by the Association or any Owner to provide Declarant and General Contractor with the above described notice, inspection and cure rights granted to it by this Section, automatically shall constitute an absolute and unconditional waiver of any legal claim or other claim or remedy whatsoever, including any warranty claims and any right to file a claim in arbitration, that the Association or the Owner(s) otherwise may have regarding such defect or problem absent such waiver.

D. Damage. Any damage to the Property, a Unit or the Common Elements resulting from the exercise of the easement and right of entry described in the above subsections of this Section promptly shall be repaired by, and at the expense of, the party exercising this easement; provided, however, the obligation to repair shall be limited to restoring the affected area to the same approximate condition and state of repair which existed prior to the undertaking of the work permitted by this easement and after taking into account the nature of any corrective work or improvement so performed by General Contractor pursuant to this Section.

E. No Implied Warranty and Enforcement. THE TERMS OF THIS SECTION SHALL NOT BE DEEMED TO PROVIDE ANY IMPLIED OR EXPRESS WARRANTY RIGHTS WHATSOEVER BY DECLARANT AND GENERAL CONTRACTOR TO THE ASSOCIATION OR ANY OWNER, AND DECLARANT AND GENERAL CONTRACTOR EXPRESSLY DISCLAIM ANY AND ALL IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, TO THE FULLEST EXTENT PERMITTED BY NORTH CAROLINA LAW. Declarant and General Contractor may seek enforcement of the rights afforded to each of them under this Section by filing an action at law or in equity, including specifically the remedy of specific performance, in the appropriate court of competent jurisdiction in the State of North Carolina and notwithstanding to the contrary any arbitration provision set forth in this Declaration or any other instrument whatsoever.

F. General Contractor, Notices and Amendment. As used in this Section, the term "General Contractor" shall mean Choate Construction Company, a Georgia corporation, its employees, officers, directors, agents, subsidiaries, affiliates and assigns as well as all subcontractors hired by General Contractor (or subcontractors of such subcontractors) to perform work on the Property, the Common Elements and any Unit. Notices to General Contractor shall

be delivered as follows: Choate Construction Company, 8200 Roberts Drive, Suite 600, Atlanta, Georgia 30350, Phone: (770) 892-1200 as such notice address and phone number may be amended from time to time by General Contractor upon the filing of a new notice address in the appropriate land records where the Condominium is located with cross-reference to this Declaration. General Contractor is an express beneficiary of the terms set forth in this Section, and the terms of this Section may not be amended in any manner whatsoever without General Contractor's prior written consent. Declarant covenants with General Contractor that it immediately shall forward to General Contractor any notice whatsoever that Declarant receives from the Association or any Owner regarding any alleged design defect, construction-related defect or other construction-related problem whatsoever regardless of whether or not such notice also shall be addressed to General Contractor and regardless of whether or not Declarant determines that such complaint is without merit.

2 ARBITRATION AND ACTIONS AGAINST THE GENERAL CONTRACTOR.

A. Prerequisites to Actions Against General Contractor.

Prior to filing a civil action or arbitration claim of any nature whatsoever against General Contractor, and prior to consulting with, retaining or hiring in any capacity whatsoever, any third party consultant, advisor, property inspector, architect, engineer, contractor or repairmen to correct the problem or to examine, investigate, or advise the Association or any Owner with respect to any suspected or reasonably inferable design defect, construction-related defect or other construction-related problem with the Property, Common Elements and any Unit, the Association and Owner shall first notify General Contractor of the alleged or suspected problem and shall first provide General Contractor with a reasonable opportunity to inspect and repair the problem pursuant to the terms of Section 1, above. For the purposes of this Section, a minimum of sixty (60) days from first notice to General Contractor shall be deemed a reasonable opportunity for General Contractor to inspect and repair any alleged or suspected problem; provided, however, in certain circumstances, this period of time may be longer depending on the complexity of the condition and the length of time reasonably necessary to obtain parts and services from third parties as such additional time shall be communicated to the Association and Owner by General Contractor.

After the above right to inspect and correct period elapses, the Association may bring an action against General Contractor to recover damages resulting from construction defects in any of the Common Elements or Limited Common Elements only. Such action may be maintained by the Association only after compliance with the requirements of this Declaration, including, but not limited to, the following conditions precedent:

- i. The Association obtains the written approval of each Owner whose interest in the Common Elements or Limited Common Elements will be the subject of the action;
- ii. The Association obtains the affirmative vote of the Owners to which at least a majority of the votes of the members of the Association are allocated;

iii. The full Executive Board and the General Contractor have met in person and conferred in a good faith attempt to resolve the Association's Claim or the General Contractor has definitively declined or ignored the requests to meet with the Executive Board; and

iv. The Association has otherwise satisfied all of the preaction requirements for a claimant to commence an action as set forth in this Declaration.

At least three business days in advance of any vote to commence an action by the Association to recover damages resulting from construction defects in any of the Common Elements or Limited Common Elements, the attorney representing the Association shall provide to each Owner a written statement that includes, in reasonable detail:

1. The defects and damages or injuries to the affected Common Elements or Limited Common Elements;
2. The cause of the defects, if the cause is known;
3. The nature and the extent that is known of the damage or injury resulting from the defects;
4. The location of each defect within the affected Common Elements or Limited Common Elements, if known;
5. A reasonable estimate of the cost of the action or mediation, including reasonable attorneys' fees and costs, expert fees, and the costs of testing; and
6. All disclosures that the Owner is required to make upon the sale of the unit.

The Association or an attorney for the Association shall not employ a person to perform destructive tests to determine any damage or injury to a Unit, Common Element, or Limited Common Element caused by a construction defect unless:

- I. The person is licensed as a contractor pursuant to law;
- II. The Association has obtained the prior written approval of each Owner whose Unit or interest in the Common Element or Limited Common Element will be affected by such testing;
- III. The person performing the tests has provided a written schedule for repairs;
- IV. The person performing the tests is required to repair all damage resulting from such tests in accordance with state laws and local ordinances relating thereto;

V. The Association or the person so employed obtains all permits required to conduct such tests and to repair any damage resulting from such tests; and

VI. Reasonable prior notice and opportunity to observe the tests is given to General Contractor and any other party against whom an action may be brought as a result of the tests.

The Association may commence an action only upon a vote or written agreement of the Owners to which at least a majority of the votes of the members of the Association are allocated. In such a case, and at least 21 calendar days before the meeting, the Association shall provide written notice to the Owner of each Unit of the meeting at which the commencement of an action is to be considered or action is to be taken.

The Association may, without giving notice to the Owners, employ a contractor and such other persons as are necessary to make such immediate repairs to a Unit or Common Element as are required to protect the health, safety, and welfare of the Owners and Occupants.

Similarly, prior to any Owner(s) bringing any Claim against the General Contractor, the affected Owner(s) shall first notify the Association of their intent to do so, shall meet with the Association's Executive Board to discuss the nature and merit of their Claim and whether such Claim concerns the Common Elements, and shall provide the Association with at least sixty (60) days (if requested by the Executive Board) to obtain the consent of the Owners for the Association to join-in such Claim against the General Contractor with respect any affected Common Elements only.

B. Notice.

After first complying with the terms and conditions set forth above in subsection A, if the Association and/or a Owner(s) (singularly or collectively as the context requires, the "Claimant") desires to pursue a legal claim of any nature whatsoever against General Contractor (the "Respondent"), then the Claimant shall, no later than ninety (90) days before initiating an action against Respondent, provide service of written notice of claim on Respondent (the "Notice of Claim"). The Notice of Claim shall state that the Claimant asserts a construction defect claim or claims and is providing notice of the claim or claims pursuant to the requirements of this Declaration. The Notice of Claim shall describe the claim or claims in detail sufficient to explain the nature of the alleged construction defects and the results of the defects. In addition, the claimant shall provide to the General Contractor any evidence that depicts the nature and cause of the construction defect, including expert reports, photographs, and videotapes, if that evidence otherwise would be discoverable under evidentiary rules.

For purposes of clarification of the above terms and conditions, a Owner may file a Claim against Respondent for problems or deficiencies with his or her Unit only; a Owner may not file a Claim against Respondent for problems or deficiencies with the Common Elements as all Owners covenant and agree that all such Claim rights are exclusively those of the Association. The Association only may file Claims against Respondent for problems or deficiencies with the Common Elements or for problems and deficiencies affecting more than 10% of all Units in the

Property and, in such case, all Owners covenant and agree that the Association shall serve in a representative capacity on behalf of all such affected Owners should the Association elect to do so. In the event that two proceedings are brought, one by the Association and another by individual Owners alleging the same Claims, the Association and the involved Owners hereby consent to joinder of those Claims into one proceeding.

C. Negotiation and Mediation.

Following Claimant's service of its Notice of Claim, the parties acknowledge that their dispute shall be governed by the procedural framework set forth in this Declaration.

If the parties do not resolve the Claim amongst themselves in accordance with the notice and opportunity to cure provisions set forth in this Declaration ("Termination of Negotiations"), then Claimant shall have thirty (30) additional days to submit the Claim to mediation under the auspices of an independent, mutually acceptable agency providing dispute resolution services in the Metropolitan Raleigh, North Carolina area.

If Claimant does not submit the Claim to mediation within such time period, or does not appear for the mediation, Claimant shall be deemed to have absolutely, unconditionally and forever waived the Claim, and Declarant and General Contractor shall be released and discharged from any and all liability whatsoever to Claimant on account of such Claim.

Any settlement of the Claim through mediation shall be documented in writing by the mediator and signed by the parties. If the parties do not settle the Claim within thirty (30) days after submission of the matter to mediation, or within such additional time as determined by the mediator, the mediator shall issue to all parties a written notice of termination of the mediation proceedings ("Termination of Mediation"). The Termination of Mediation notice shall set forth that the parties are at an impasse and the date that such mediation was terminated.

Within five (5) days of the Termination of Mediation, the Claimant shall make a final written settlement demand ("Settlement Demand") to Respondent, and Respondent shall make a final written settlement offer ("Settlement Offer") to Claimant. If Claimant fails to make a Settlement Demand, Claimant's original Notice shall constitute the Settlement Demand. If Respondent fails to make a Settlement Offer, they shall be deemed to have made a "zero" or "take nothing" Settlement Offer.

D. Final and Binding Arbitration.

If the parties do not agree in writing to a settlement of the Claim within fifteen (15) days of the Termination of Mediation, then the Claimant shall have fifteen (15) additional days thereafter (i.e., thirty (30) days from the date of Termination of Mediation) to submit the Claim to arbitration before the American Arbitration Association pursuant to the Construction Industry Arbitration Rules of the American Arbitration Association.

If not timely submitted to arbitration or if the Claimant fails to appear for the arbitration proceeding, then the Claim shall be deemed abandoned, and Respondent shall be released and discharged from any and all liability whatsoever to Claimant arising out of such Claim.

This Section E-2 is an agreement to arbitrate and is specifically enforceable under the applicable arbitration laws of the State of North Carolina. The arbitration award (the "Award") shall be final and binding, and judgment may be entered upon it to the fullest extent permitted under the laws of the State of North Carolina.

E. Allocation of Costs of Resolving Claims.

Each party (regardless of the outcome of the arbitration proceeding) shall bear its own costs, including attorneys' fees, arbitration filing fees and arbitration case service fees. The parties shall share equally in all arbitrator compensation and expenses and compensation of the mediator and mediation service. Under no circumstances whatsoever shall one party be entitled to receive reimbursement from the other party for the above described costs, expenses and fees, including but not limited to attorneys' fees.

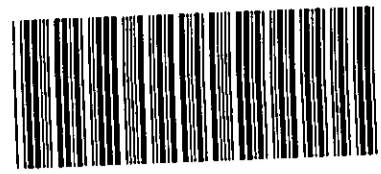
F. Enforcement of Resolution.

After resolution of any Claim, if any party fails to abide by the terms of any settlement agreement or Award, then any other party may file suit or initiate administrative proceedings to enforce such agreement or Award without the need to again comply with the procedures set forth above. In such event, the party taking action to enforce the agreement or Award shall be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties jointly and severally) all costs incurred in enforcing such agreement or Award, including, without limitation, attorneys' fees and court costs.

G. General Contractor, Amendment, Miscellaneous.

As used in this Section, the term "General Contractor" shall mean Choate Construction Company, a Georgia corporation, its employees, officers, directors, agents, subsidiaries, affiliates and assigns as well as all subcontractors hired by General Contractor (or subcontractors of such subcontractors) to perform work on the Property, the Common Elements and any Unit. Notices to General Contractor shall be delivered as follows: Choate Construction Company, 8200 Roberts Drive, Suite 600, Atlanta, Georgia 30350, Phone: (770) 892-1200, as such notice address and phone number may be amended from time to time by General Contractor upon the filing of a new notice address in the appropriate land records where the Condominium is located with cross-reference to this Declaration. Any Notice of Claim furnished to Respondent pursuant to this Declaration shall be served in accordance with Rule 4 of the North Carolina Rules of Civil Procedure. General Contractor is an express beneficiary of the terms set forth in this Section, and the terms of this Section may not be amended in any manner whatsoever without General Contractor's prior written consent. THE TERMS OF THIS SECTION SHALL NOT BE DEEMED TO PROVIDE ANY IMPLIED OR EXPRESS WARRANTY RIGHTS WHATSOEVER BY DECLARANT AND GENERAL CONTRACTOR TO THE

ASSOCIATION OR ANY OWNER, AND DECLARANT AND GENERAL CONTRACTOR EXPRESSLY DISCLAIM ANY AND ALL IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, TO THE FULLEST EXTENT PERMITTED BY NORTH CAROLINA LAW. General Contractor may seek enforcement of the rights afforded to it under this Section by filing an action at law or in equity, including specifically the remedy of specific performance, in the appropriate court of competent jurisdiction in the State of North Carolina and notwithstanding to the contrary any arbitration provision set forth in this Declaration or any other instrument whatsoever.



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**Yellow probate sheet is a vital part of your recorded document.
Please retain with original document and submit for rerecording.**



**Wake County Register of Deeds
Laura M. Riddick
Register of Deeds**

This Customer Group
_____ # of Time Stamps Needed

This Document
_____ 173 _____ New Time Stamp
_____ # of Pages