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DECLARATION OF CONDOMINIUM
for
FIFTH AND POPLAR RESIDENTIAL CONDOMINIUM

Date: August 3, 2005

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STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

DECLARATION OF CONDOMINIUM
FOR
FIFTH AND POPLAR RESIDENTIAL
CONDOMINIUM

This Declaration of Condominium for Fifth and Poplar Residential Condominium (this "**Declaration**") is made this 3rd day of August, 2005, by Fifth And Poplar Associates, LLC, a Delaware limited liability company ("**Declarant**"), pursuant to the provisions of Chapter 47C of the North Carolina General Statutes, entitled the "North Carolina Condominium Act."

BACKGROUND STATEMENT

*[All capitalized terms in this Declaration of Condominium shall have the definitions set forth in **Article 1** below or as set forth elsewhere in this Declaration of Condominium.]*

Declarant is the owner of the Real Property and improvements more particularly described on **Exhibit "A"** attached hereto (collectively, the "**Condominium Property**") located in the City of Charlotte, Mecklenburg County, North Carolina.

Declarant desires to submit the Condominium 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 that will be delegated and assigned powers of maintaining and administering the Common Elements located within the Condominium Property, of administering and enforcing the covenants and restrictions created in this Declaration, of levying, collecting and disbursing the Assessments and charges created in this Declaration, and of taking any steps or performing any acts deemed necessary or appropriate to preserve the values of Condominium Units within the Condominium Property and to promote the recreation, health, safety and welfare of the Unit Owners. In order to accomplish the foregoing, Declarant is entering into this Declaration.

STATEMENT OF DECLARATION

NOW, THEREFORE, Declarant hereby declares that all of the Condominium 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 Condominium Property into condominium units, and shall be deemed to run with the land and shall be a burden and benefit to Declarant, its successors and assigns, and any person or entity acquiring or owning an interest in the Condominium Property, and their grantees, successors, heirs, executors, administrators, devisees and assigns.

ARTICLE I
DEFINITIONS

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

Section 1.1 “Annual Meeting” shall mean the annual meeting of the Members of the Association held within the fourth quarter of each calendar year, upon proper notice, at a date, time and at a place from time to time designated by the Executive Board. The first Annual Meeting of the Members shall be held within one (1) year from the date of incorporation on such date as the initial Executive Board shall determine.

Section 1.2 “Assessments” shall mean the Common Assessment, Special Assessment, Individual Unit Assessment and Initial Working Capital Assessment, all as more fully defined in **Article VIII** of the Bylaws.

Section 1.3 “Association” shall mean and refer to Fifth and Poplar Residential Condominium Owners Association, Inc., a corporation organized and existing under the North Carolina Non-Profit Corporation Act pursuant to and in accordance with this Declaration, the Bylaws, and the North Carolina Condominium Act.

Section 1.4 “Base Assessment” shall mean a portion of the monthly Common Assessment charged to each Unit Owner. The initial monthly Base Assessment applicable to each Unit is set forth on **Exhibit “B”**. Each calendar year, the Base Assessment shall increase or decrease in proportion to the overall increase or decrease in the Common Expenses Budget from the prior year. For example, if the Common Expense Budget increases by 10%, then the Base Assessment applicable to each Unit shall increase by 10%.

Section 1.5 “Building” shall mean and refer to the building within which the Condominium Property is located which contains the Units and the entrances and lobbies, stairways, hallways, mechanical rooms and utility systems and certain other Common Elements.

Section 1.6 “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 1.7 “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 1.8 “Common Elements Interest” shall mean and refer to the undivided percentage interest in the Common Elements allocated to each Unit, as set forth on **Exhibit “B”** attached hereto. The Common Elements Interest shall be used to determine each Unit’s share of Common Expenses in the Association, and to allocate the division of proceeds, if any, resulting from any casualty loss or eminent domain proceedings. Common Elements Interests shall be recalculated in the manner described in **Section 5.3** or **Section 9.5** if Units are combined or subdivided in accordance with those provisions.

Section 1.9 “Common Expenses” shall mean and refer to any and all expenditures made by or financial liabilities of the Association, together with any allocations to reserves, pursuant to and in accordance with this Declaration, the Bylaws, and N.C.G.S. §47C-1-103(5).

Section 1.10 “Condominium” shall mean and refer to the Fifth and Poplar Residential Condominium, as established by the submission of the Condominium Property to the terms of the North Carolina Condominium Act by this Declaration.

Section 1.11 “Condominium Documents” shall mean and refer to this Declaration, the Master Declaration, the Articles of Incorporation of the Association, the Bylaws, and the Rules and Regulations governing the use of the Condominium Property, as well as the articles of incorporation, bylaws and rules and regulations of the Master Association, all as amended and supplemented from time to time, and all attachments and exhibits thereto.

Section 1.12 “Condominium Property” shall mean and refer to the “Residential Unit” as defined in the Master Declaration, which is hereby subjected to this Declaration.

Section 1.13 “Declarant” shall mean and refer to Fifth And Poplar Associates, LLC, a Delaware limited liability company, its successors, or any party to which it assigns its rights as Declarant under this Declaration.

Section 1.14 “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 the conveyance of seventy-five percent (75%) of the Units to an Owner other than Declarant; (ii) two (2) years after Declarant ceases to offer Units for sale in the ordinary course of business; or (iii) the date upon which Declarant voluntarily surrenders control of the Condominium in writing.

Section 1.15 “Declaration” shall mean and refer to this Declaration of Condominium, as it may be amended in the future.

Section 1.16 “Executive Board” shall mean and refer to the governing body from time to time of the Association, as constituted in accordance with the Articles of Incorporation of the Association, the Bylaws and the North Carolina Condominium Act.

Section 1.17 “Limited Common Elements” shall mean and refer to those portions of the Common Elements allocated by this Declaration, or by the terms of N.C.G.S. §47C-2-102(2) or (4), for the exclusive use and benefit of one or more, but fewer than all, of the Units, to the exclusion of all other Units, as more fully described in **Section 5.2** of this Declaration, and as depicted on the Plans.

Section 1.18 “Master Association” shall mean and refer to Fifth and Poplar Master Condominium Owners Association, Inc., a corporation organized and existing under the North Carolina Non-Profit Corporation Act pursuant to and in accordance with the Master Declaration, and the North Carolina Condominium Act.

Section 1.19 “Master Condominium” shall mean and refer to the Fifth and Poplar Master Condominium, as established by this Master Declaration.

Section 1.20 “Master Declaration” shall mean the Declaration of Fifth and Poplar Master Condominium and any amendments thereto recorded in the Office of the Mecklenburg County Register of Deeds.

Section 1.21 “Member” shall mean any person or entity entitled to membership in the Association as provided herein.

Section 1.22 “Mortgage” shall mean and refer to a mortgage or deed of trust constituting a lien on a Unit.

Section 1.23 “Mortgagee” shall mean and refer to the owner and holder of the indebtedness secured by a Mortgage that has notified the Association in writing of its name and address, and that it holds a Mortgage on a Unit. Such notice will be deemed to include a request that the Mortgagee be given the notices and other rights described in **Article XVI**.

Section 1.24 “North Carolina Condominium Act” shall mean and refer to Chapter 47C of the North Carolina General Statutes, as it may be amended from time to time.

Section 1.25 “Office Unit” shall mean unit number 144 as shown on the Plans, as are more particularly described in **Article IV** below.

Section 1.26 “Owner” shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Unit, but shall exclude those persons or entities having an interest in any Unit as merely security for the payment or performance of an obligation.

Section 1.27 “Plans” shall mean and refer to the plat, plans and specifications for the Building and Condominium Property, including any amendments thereto, recorded under the name of the Condominium in the Unit Ownership File in the Office of the Register of Deeds of Mecklenburg County.

Section 1.28 “Real Property” shall mean the real property described on **Exhibit “A”**.

Section 1.29 “Residential Units” shall mean all of the units located within the Condominium other than the Office Unit, as more particularly described in **Article IV** below.

Section 1.30 “Rules and Regulations” shall mean all rules and regulations adopted by the Executive Board in accordance with the terms of this Declaration and the Bylaws.

Section 1.31 “Special Declarant Rights” shall have the meaning set forth in N.C.G.S. §47C-1-103 and as more particularly described in **Article VI** below.

Section 1.32 “Special Declarant Rights Period” shall commence as of the recordation of this Declaration and shall continue for fifteen (15) years thereafter unless Declarant records a statement of termination of such rights in the Mecklenburg Public Registry prior to such time.

Section 1.33 “Units” shall mean the three hundred four (304) Residential Units and the one (1) Office Unit as are more particularly described in **Article IV** below.

In addition, the definitions set forth in N.C.G.S. §47C-1-103 are incorporated in this Declaration by reference, and the terms defined therein shall have the meanings set forth therein when used in this Declaration or the Condominium Documents; unless those terms are expressly

defined otherwise in this Declaration or unless it is plainly evident from the context that a different meaning is intended.

ARTICLE II
DESIGNATION OF CONDOMINIUM

The Condominium Property is located in Mecklenburg County, North Carolina. The Condominium Property is subjected to the terms of the North Carolina Condominium Act by this Declaration. The name of the Condominium is "Fifth and Poplar Residential Condominium."

ARTICLE III
DESCRIPTION OF BUILDING

The Building constructed on the Real Property is a post-tension concrete flat plate structure with exterior heavy gauge steel stud walls. The Building contains the residential Units, parking deck, residential amenities and common areas as well as certain commercial space and amenities (which are not included in the Condominium, but are part of the Master Condominium as described in the Master Declaration). The Building is more particularly described in the Plans. The Plans contain a certification by a North Carolina Registered Land Surveyor, and by a North Carolina Licensed Architect, that the Plans contain all the information required by N.C.G.S. §47C-2-109, and have been recorded under the name of the Condominium in the Unit Ownership File of the Mecklenburg County Public Registry.

ARTICLE IV
DESCRIPTION OF UNITS

Section 4.1 Location of Building. The location and dimensions of the Building are shown on the Plans.

Section 4.2 Units. The location of Units within the Building, their dimensions, and their floor and ceiling elevations, are shown on the Plans. There are a total of three hundred five (305) Units within the Condominium. The identification number for each Unit is set forth on the Plans.

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. In certain Units, as depicted on the Plans, the ceilings within different portions of the Unit may be at different elevations; in such cases, the upper boundary of the Unit shall not be a single 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 the Unit. In certain Units, as depicted on the Plans, the floors within different portions of the Unit may be at different elevations; in such cases the lower boundary of a Unit shall not be a single 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. Certain Units as shown on the Plans, may be initially combined by Declarant, or subsequently combined pursuant to the terms of this Declaration. Notwithstanding the fact that such Units may be physically combined, they shall still contemplate multiple Units for all purposes hereunder and the vertical boundaries of each such Unit shall be shown on the Plans (notwithstanding the fact that there may be no physical boundary).

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, and any portion thereof serving more than one Unit, or any portion of the Common Elements, shall be a Common Element.

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 Real Property.
- (b) All improvements located within the Real Property outside of the Units, including without limitation the Limited Common Elements described in **Section 5.2** below and the elevators, elevator lobbies, interior stairwells and interior corridors within the Condominium Building.
- (c) The foundations, roofs, columns, girders, beams, supports, exterior and interior load-bearing walls, floors within and between Units, and all other structural elements of the Condominium Building.
- (d) Any public connections and facilities for utility services serving the Condominium Building and located within the Real Property that are not owned by the public utility or municipal agency providing such services, until owned or maintained by the public utility or municipal agency providing such service.
- (e) 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, bearing wall, bearing column, or any other fixture lying partially within and partially outside the designated boundaries of the Units, but serving exclusively fewer than all of the Units, which shall be Limited Common Elements allocated exclusively to the Unit(s) served.

(b) Any shutters, awnings, window boxes, non-structural components of balconies and terraces, 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) Any portions of the heating, ventilating, and air conditioning systems, including fans, compressors, return air grills and thermostats, whether located inside or located outside the designated boundaries of a Unit, but serving less than all of the Units in the Building, which shall be Limited Common Elements allocated exclusively to the Unit or Units that they serve.

(d) One (1) parking space shall be allocated to each Residential Unit as a Limited Common Element appurtenant to the Unit, all as identified on the Plans and as allocated in the initial deed from Declarant to each Unit Owner.

(e) One or more storage closets may be allocated to a Unit by deed from the Declarant, following which time such storage closet(s) shall constitute a Limited Common Element appurtenant to the Unit, all as identified on the Plans and as allocated in the initial deed from Declarant to each Unit Owner.

(f) Those areas indicated as Limited Common Elements on the Plans.

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

Section 5.3 Undivided Interests of Owners in Common Elements. The percentage interest in the Common Elements allocated to each Unit shall be the Common Elements Interest for that Unit as set forth on **Exhibit "B"** attached hereto. Except as set forth in **Section 9.5** and **Section 6.3**, the Common Elements Interest allocated to each Unit shall not be changed except with the unanimous consent of all the Owners of all the Units and with the consent of all the Mortgagees, except as may be specifically authorized by the Condominium Act or elsewhere in this Declaration. In particular, if Declarant exercises its development right to subdivide, combine and/or create additional Units and Limited Common Elements, Declarant shall have the right to adjust the Common Elements Interest for each Unit in accordance with the following formula: the Common Elements Interest allocated to each Unit is based on the heated square footage of that Unit, as shown on the Plans, calculated by dividing the heated square footage of that Unit by the total heated square footage of all Units, and by multiplying the quotient so calculated by one hundred (100). The Supplemental Declarations required by **Section 6.3** 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.

Section 5.4 Maintenance of Common Elements.

(a) Except as specified herein, the Association shall be responsible for the maintenance and repair of all Common Elements, including all structural elements of balconies and terraces and other Limited Common Elements, but excluding non - structural elements of Limited Common Elements and maintenance or repairs caused by the negligence or intentional misconduct of any Unit Owner, his agents, invitees or family members, which shall be the responsibility of that Unit Owner.

(b) The cleanliness and orderliness of any Limited Common Elements that serve a single Unit, including terraces and balconies, but excluding the parking spaces, shall be the sole responsibility of the individual Owner having the right to the use and enjoyment of such Limited Common Elements. Notwithstanding any other provisions of this Declaration, or any provision of the Bylaws or the North Carolina Condominium Act, the obligation for maintenance, repair, or replacement of any portions of the heating, ventilating, air conditioning systems, or other non-structural improvements that are Limited Common Elements serving fewer than all of the Units shall be the sole responsibility of the Owner(s) of the Unit(s) to which such Limited Common Elements are allocated. Notwithstanding each Owner's obligation to maintain any Limited Common Elements which serve his or her Unit, each such Owner shall obtain the written consent of the Executive Board (or Independent Manager) in accordance with **Section 8.8** of the Bylaws, prior to performing any repairs or alterations.

Section 5.5 Maintenance Responsibilities of the Unit Owner. Each Unit Owner shall be responsible for the maintenance and repair of all portions of his or her Unit and (except as specified herein) their Limited Common Elements appurtenant thereto, excluding all structural elements (for example, structural elements of balconies and terraces).

ARTICLE VI
SPECIAL DECLARANT RIGHTS

Section 6.1 Special Declarant Rights. Until the expiration of the Special Declarant Rights Period, Declarant will have the following Special Declarant Rights with respect to all of the Property, in addition to any other such rights reserved in this Declaration:

(a) Development Rights. The right to exercise all "development rights" (hereinafter, "**Development Rights**") as defined from time to time in the North Carolina Condominium Act with respect to all of the Property, including without limitation the right or combination of rights hereby reserved by Declarant, as follows:

- (1) The right to complete any improvements shown on the Plans.
- (2) The right to subdivide Units, combine Units and alter Unit boundaries, so long as the maximum number of Units does not exceed three hundred fifty (350) Units. If Declarant chooses to physically combine two (2) or more Units, the combined Units

shall still contemplate multiple Units for all other purposes hereunder (i.e. voting, assessment, parking space assignment, etc.).

(3) The right to maintain within the Condominium, one sales office, one management office, up to five model Units, and signs advertising the Condominium. The offices, model Units and signs will be of sizes and styles determined by Declarant, and may be relocated by Declarant from time to time. At all times, the offices, model Units and signs will remain the property of Declarant and may be removed from the Property by Declarant at any time during or promptly after the expiration of the Special Declarant Rights Period.

(4) The right to appoint any officer or director of the Association, as provided in this Declaration or the Bylaws, but subject to the limitations of the Act.

(5) The right to allocate parking spaces and storage closets located on the Condominium Property to specific Units as Limited Common Elements in the initial deed of conveyance of a Unit by Declarant or in a subsequent deed from Declarant to an Owner.

(b) Easements to Facilitate the Exercise of Special Declarant Rights. Declarant hereby reserves for itself and its successors and assigns a non-exclusive easement upon, across, over, in, and under the Property as may be reasonably necessary for the purpose of discharging Declarant's obligations or exercising Special Declarant Rights, whether arising under the North Carolina Condominium Act or this Declaration, including, without limitation: (i) easements for ingress and egress and for installation, replacement, repair and maintenance of drainage ditches and facilities, all utilities, including but not limited to water, sewer, gas, telephone, and electrical, cable and other communications systems and indoor sprinkler systems; (ii) easements to store materials on the Common Elements and to make such other use of the Common Elements as may be reasonably necessary or incident to the construction and renovation of the Building and other improvements on the Property; and (iii) the location of these easements and rights-of-way may be made certain by Declarant and the Association by instruments recorded in the Mecklenburg County Public Registry. Declarant further reserves the right to establish from time to time, by dedication or otherwise, utility and other easements, reservations, exceptions and exclusions necessary or convenient for the development, use and operation of any other property of Declarant, as long as such action does not unreasonably hamper the enjoyment of the Project by the Owners.

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

(d) Supplemental Provisions Regarding Declarant's Rights. Without limiting the generality of the foregoing, certain of these Special Declarant Rights are explained more fully in this Section below. Declarant reserves the right to amend this Declaration and any Plans in connection with the exercise of any Development Rights or any other Special Declarant Rights to the extent permitted by the Act, and Declarant also reserves the additional rights retained for the benefit of Declarant in this Article and in other provisions of this Declaration.

Section 6.2 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 for Mecklenburg County. 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.

Section 6.3 Supplemental Declaration. In order to exercise the development right to combine and subdivide Units, 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 subdividing or combining Units and creating new Units and 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 Interest among all Units in accordance with the formula set forth in **Section 5.3** of this Declaration. Declarant may exercise the development right to subdivide, combine, or create new Units without the consent or approval of the Association, or any other Owner or Mortgagee, by executing and recording a Supplemental Declaration in accordance with this **Section 6.3**.

ARTICLE VII
RESTRICTIONS ON USE

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

Section 7.1 Use.

(a) Residential Units. Except as specifically set forth herein, all Residential Units shall be used only for single-family residential purposes. Except for the construction, sales and management activities of the Declarant, no business, trade, industry, occupation or profession of any kind, whether for profit or not for profit, may be conducted, maintained or permitted on any part of the Condominium Property (except within the Office Unit) unless permitted by the Executive Board.

(b) Office Unit. The Office Unit shall be used for either general office purposes or for single-family residential purposes. The Office Unit may also be used by Declarant as a sales office or model units.

Section 7.2 Nuisance. No obnoxious, offensive or unlawful activity shall be conducted within any Unit, or on or about the Common Elements, nor shall anything be done thereon or therein which 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 Condominium.

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

Section 7.4 Prohibitions on Use of Common Elements and Limited Common Elements. The Common Elements (other than the Limited Common Elements and storage areas, if any, designated by the Executive Board) shall not be used for storage of personal property of any kind, including, without limitation, baby carriages, playpens, bicycles, wagons, toys, vehicles, benches or chairs. Entrances, lobbies, stairwells, corridors, hallways, sidewalks, driveways, and parking areas shall not be obstructed in any way, or used for other than their intended purposes. Terraces and balconies may be used only for their intended purposes. In general, no activity shall be carried on nor conditions maintained by any Owner either in such Unit Owner's Unit or upon the Common Elements which despoils the appearance of the Condominium Property or which interferes with the quiet enjoyment of other Owners with respect to their Units.

Section 7.5 Garbage. Trash, garbage and other waste shall be kept in sanitary containers within each Unit, or deposited in the appropriate trash chute located on each story of the Building. No trash or garbage shall be kept or stored on terraces or balconies.

Section 7.6 Parking. No Owner or any employee, agent, or invitee of any Owner, shall park, store or keep any vehicle on the Condominium Property except wholly within designated parking areas, and in particular shall not block any entrances, drive aisles, or fire lanes. Except for vehicles being used by persons providing services to the Declarant, the Association, the Unit Owners, or otherwise used or authorized to be used at the Condominium Property by the Declarant, no part of the Condominium Property may be used for the parking of any trailer coaches, house trailers, mobile homes, automobile trailers, camp cars, recreational vehicles, campers, commercial trucks, ¾ ton or larger pick-up trucks, boats, jet skis, boat trailers or any other similar vehicles (collectively the "**Special Vehicles**"). Operative vehicles other than Special Vehicles used by a resident of a Unit as a primary source of transportation may be parked only in the assigned parking spaces for such Unit Owner. Inoperative vehicles may not be parked on the Condominium Property. No auto maintenance and/or repairs may be performed on the Condominium Property. The Association shall have the right to tow any vehicle in violation of this **Section 7.6** at its owner's expense. Likewise, the Executive Board shall have the right to establish Rules and Regulations pertaining to the use of any parking spaces which are not assigned to Unit Owners as Limited Common Elements. Without limiting the foregoing, the Executive Board may elect to rent spaces (which are not assigned as Limited Common Elements)

to Unit Owners or the public upon such terms and conditions that the Executive Board deems appropriate.

Section 7.7 Leases of Units. Any lease of a Unit or portion thereof shall be in writing and shall provide that the terms of the lease shall be subject in all respects to the Condominium Documents and that any failure by the lessee to comply with all of the terms of such Condominium Documents shall constitute a default under the lease. No Unit may be leased for a period shorter than thirty (30) days without the express written consent of the Executive Board, which may be withheld for any reason. Additionally, no Unit shall be rented for transient or hotel purposes, which shall be defined as (i) rental for any period less than thirty (30) days; or (ii) any rental if the occupants of the Unit rented are provided any customary hotel services, such as room service, food and beverage service, maid service, or furnishing of laundry and linen. This restriction shall not prevent a person or entity from allowing a guest or employee to occupy the Unit as a temporary residence for less than thirty (30) days provided that such guest or employee does not pay rent and further provided that such occupant complies with all of the terms of the Condominium Documents.

Section 7.8 No Timeshares. No interest in any Unit may be subjected to a time share program, as that term is defined in N.C.G.S. §93A-41(10).

Section 7.9 Animals. No animals, livestock, or poultry of any kind shall be kept or maintained in the Condominium or in any Unit except that common household pets 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 (including balconies or terraces) unless carried or leashed and accompanied 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) in the Condominium. Pets shall not be permitted to defecate in the Common Elements or to urinate in any portion of the Common Elements except for any grassed areas, and each Owner shall clean up immediately after his pet if an accident occurs. All pets shall be registered or 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 Condominium upon not less than ten (10) days' written notice.

Section 7.10 Utilities. Total electrical usage in any Unit shall not exceed the capacity of the circuits for that Unit as labeled on the circuit breaker boxes, and no electrical device causing overloading of the standard circuits may be used in any Unit without permission of the Executive Board. All clothes dryers will have lint filters, and all stove hoods will have grease screens, and such screens and filters shall be used at all times and kept clean, and in good order and repair, by the Owner of the Unit in which they are located. The Master Condominium will have a single meter for water and sanitary sewer service provided to the Condominium and a portion of such costs for water and sewer service shall be allocated to the Association in accordance with the Master Declaration and shall constitute a Common Expense. The Association shall have the right to separately meter or submeter water and sanitary sewer service

to any or all Units and costs of such utility service shall be allocated to the Unit for which such meter applies.

Section 7.11 Floor Load. There shall be no floor load in any Unit in excess of forty (40) pounds per square foot live load (excluding partitions), unless an engineering determination of the floor load capacity in the area of heavy use is approved by the Executive Board.

Section 7.12 Windows. 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 7.13 Architectural Control. No building, landscaping, fence, wall or other structure (other than a satellite dish or antenna, to the extent permitted by **Section 7.19**) shall be commenced, erected or maintained upon the Condominium Property, nor shall any exterior addition to or change or alteration to either the Unit or the Common Elements be made, until the plans and specification showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing as to the harmony of the external design and location in relation to surrounding structures and topography by the Executive Board.

Section 7.14 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: (a) one name plate or sign not exceeding twenty-four (24) square inches in area on the main door to each Residential Unit; (b) a temporary professionally printed "For Sale" sign not to exceed three (3) square feet in one (1) window of a Unit; and (c) one or more signs for the Office Unit, erected in conformance with applicable sign ordinances and plans approved by the Association as provided in **Section 7.13**. The Office Unit shall submit the plans for such signage to the Executive Board; provided, however, the Executive Board must approve or disapprove such signage within fifteen (15) business days and, if the Executive Board disapproves such signage, it must include with such disapproval specific reasons for disapproval and suggestions of alterations to the signage that will be approved by the Executive Board.. Any signs permitted by the Executive Board for the Office Unit shall be maintained solely by the Owner of such Unit and shall be maintained in a neat and clean condition and shall not be permitted to become worn, tattered, faded or otherwise in disrepair. Notwithstanding the foregoing, Declarant shall have the right to maintain within the Condominium advertising signs during the Declarant Control Period, provided those signs comply with applicable governmental 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 Executive Board. In the event that the Executive Board 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.

Section 7.15 Balconies and Terraces. The balconies and terraces shall be kept in a clean, neat and orderly condition at all times, and shall not be used for the overnight storage of garbage, or the drying of laundry. No floor covering of any sort (including but not limited to indoor/outdoor carpeting) may be installed on any balcony or terrace, without the prior written consent of the Executive Board. No hot tub or above-ground pool may be installed on any balcony or terrace. Towels or banners shall not be hung on the balcony or terrace railings, and

any dead plants shall be removed promptly. The balconies shall not be used for the storage of bicycles or exercise equipment. No open fires shall be permitted on any part of the Condominium Property, including balconies or terraces, other than fires in charcoal grills or other similar cooking devices located within the Limited Common Elements provided that the use of such devices does not violate any applicable laws or the Rules and Regulations (as defined in **Section 7.24** below).

Section 7.16 Nondiscrimination. No Owner (including the Declarant), or any employee, agent or representative thereof, shall discriminate upon the basis of sex, race, age, color, creed or national origin in the sale, lease or rental of any Unit nor in the use of the Common Elements.

Section 7.17 Sale of Units. Except as hereafter set forth, the right of a Unit Owner to sell, transfer or otherwise convey that Owner's Unit is not subject to any right of first refusal or similar restriction, and any Unit Owner may transfer that Owner's Unit free of any such limitation. To enable the Association to maintain accurate records of the names and addresses of the Unit Owners, each Unit Owner agrees to notify the Association, in writing, within five (5) days after interest in that Unit Owner's Unit has been transferred to another person. In addition, each Unit Owner agrees to provide to a purchaser of that Owner's Unit a copy of the Condominium Documents and all effective Rules and Regulations.

Section 7.18 Handicap Accessibility. Notwithstanding the other provisions herein, a Unit Owner may, at such Unit Owner's expense, have such reasonable modifications made to the interior and exterior of such Unit Owner's Unit and the Common Elements or Limited Common Elements as may be necessary to afford physically handicapped persons full enjoyment of such Unit Owner's premises. Any modifications to be undertaken to the exterior of a Unit or the Common Elements or Limited Common Elements shall comply with the guidelines and regulations of the United States Department of Housing and Urban Development for buildings and facilities providing accessibility and usability for physically handicapped people; and shall be undertaken pursuant to a contract and such plans and specifications as are approved by the Executive Board. The Unit Owner and the approved contractor shall provide an adequate performance bond for the benefit of the Association.

Notwithstanding the other provisions herein, including those requiring approval of the Members of the Association, the Executive Board is authorized to make reasonable accommodations to any rules, policies, practices or services as may be necessary to afford a handicapped person equal opportunity to use and enjoy such Unit Owner's Unit, including the Common Elements and Limited Common Elements.

Section 7.19 Antennas. Unless required by law, no exterior satellite dish or antenna may be placed on the exterior of any Unit or in the Common Elements (including balconies) without the prior written approval of the Executive Board, which may be withheld in its sole discretion and which, in any event, shall be no larger than eighteen inches (18") in diameter. The location of any exterior antenna, or satellite dish, which is permitted pursuant to the previous sentence shall be subject to the reasonable prior approval of the Executive Board, taking into account the appropriate standards set forth in the regulations of the Federal Communications Commission, and to the extent reasonably practical, the Executive Board may require that such antenna or satellite dish be screened from public view. Prior to installing the antenna or satellite

dish, the Owner shall furnish to the Executive Board a copy of his installation plans. The Association shall have the right to perform any portion of the installation work at the expense of the Owner, or to require that any portion of the work be performed by contractors designated by the Executive Board. In no event shall such antenna or satellite dish be installed on the roof unless required by law or otherwise approved by the Executive Board in its sole discretion, and then, any roof penetration that is required to install any antenna or satellite dish shall be performed only by the roofing contractor designated by the Executive Board. The Owner shall also be responsible for any damage caused by the removal of the antenna or satellite dish, including the sealing of conduits or other roof penetrations. Any Owner installing an antenna or satellite dish under this **Section 7.19** shall indemnify, defend and hold the Association harmless from and against any loss, damage, claim or other liability resulting from the installation, maintenance, repair, use and/or removal of the antenna or satellite dish, including any damage to the roof of the Building or other property damage caused by roof leaks.

Section 7.20 Maintenance. Each Owner shall keep such Unit Owner's respective Unit and its appurtenant Limited Common Elements in a clean, neat and orderly condition and (excluding its parking space and the structural elements of the balcony, terrace or other Limited Common Elements appurtenant to such Unit) 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.

Section 7.21 Fencing. No fencing (including invisible dog-type fencing) or walls shall be permitted on the Common Elements or Limited Common Elements with the exception of those installed by Declarant without the prior written consent of the Executive Board.

Section 7.22 Insurance. Nothing shall be done or kept in any Unit or in the Common Elements which will increase the rate of insurance of the Building or contents thereof, applicable for residential use, without the prior written consent of the Executive Board. No Unit Owner shall permit anything to be done or kept in his or her Unit or in the Common Elements which will result in the cancellation of insurance on the Building, or contents thereof, or which would be in violation of any law. No waste will be committed in the Common Elements.

Section 7.23 Landscaping. No Unit Owner shall install any landscaping and/or plant any vegetable or herb garden in the Common Elements or the Limited Common Elements unless the prior written consent of the Executive Board is obtained.

Section 7.24 Rules and Regulations. In addition to the use restrictions set forth in this Declaration, reasonable rules and regulations governing the use of the Condominium Property may be established and amended from time to time by the Executive Board ("**Rules and Regulations**"); provided, however, that, notwithstanding any other provision herein to the contrary, any Rules and Regulations (or amendment thereto) that materially restrict a use then being conducted in an Office Unit or which is not otherwise prohibited by the terms of this Declaration, shall not be enforceable against the Owner or tenant of the Office Unit in a manner which materially restricts such use unless the Owner of such Unit consents to the Rules and Regulations in writing. Copies of such regulations and amendments thereto shall be posted

prominently prior to their effective date, and shall be furnished by the Association to all Owners upon request.

Section 7.25 Compliance with Covenants, Conditions and Restrictions. Every Unit Owner and other party described in the first paragraph of this **Article VII** shall comply strictly with the covenants, conditions and restrictions set forth in this Declaration, with the Bylaws and with the Rules and Regulations in relation to the use and operation of the Condominium Property. A violation committed by any persons residing in, occupying or visiting a Unit at the behest or with the implied or express permission of the Unit Owner or any other occupant of the Unit, or committed by any agent, employee, business invitee, or contractor of the Unit Owner or of any person occupying a Unit, shall be attributed to that Unit and the Owner thereof.

In addition to the above rights, the Executive Board may also enter upon a Unit or any portion of the Condominium Property perform maintenance or make repairs thereon which is the responsibility of a Unit Owner who has failed to perform such maintenance or make such repairs (i) after having given such Owner at least ten (10) days prior notice, or (ii) without giving notice in the event of an emergency.

Any fines imposed by the Executive Board, which is hereby empowered to levy reasonable fines against any Unit Owner for the failure of such Unit Owner to comply with any such covenants, conditions and/or restrictions, and any and all expenses incurred by the Association in enforcing any of the terms and provisions of the Condominium Documents, including reasonable attorneys' fees to the extent permitted by North Carolina law, may be levied as an Individual Unit Assessment against the Unit Owner in question and his or her Unit.

Any action brought by the Association hereunder may be brought in its own name, in the name of its Executive Board or in the name of its managing agent. In any case, of flagrant or repeated violation by a Unit Owner, he or she may be required by the Executive Board to give sufficient surety or sureties for his or her future compliance with the covenants, conditions and restrictions contained in this Declaration and with the Bylaws and Rules and Regulations.

ARTICLE VIII THE ASSOCIATION

Section 8.1 Organization of Association. A nonprofit North Carolina corporation known and designated as Fifth and Poplar Residential Condominium Owners Association, Inc. (the "**Association**") has been organized to provide for the administration of the Condominium Property, and the Association shall administer the operation and maintenance of the Condominium Property and undertake and perform all acts and duties incident thereto in accordance with the terms of its Articles of Incorporation, the Bylaws, and the North Carolina Condominium Act. A true copy of the Bylaws of the Association is attached hereto as **Exhibit "C"**. Every Owner shall be required to be and shall automatically be a Member of the Association by virtue of his/her ownership interest in a Unit.

Section 8.2 Powers; Lien for Assessment. In the administration of the operation and management of the Condominium Property, the Association shall have and it is hereby granted the authority and power to enforce the provisions of this Declaration, to levy and collect

Assessments in the manner provided in **Article X** below and in **Article VIII** of the Bylaws, and adopt, promulgate and enforce such Rules and Regulations governing the use of the Units, Common Elements as the Executive Board may deem to be in the best interest of the Association in accordance with the Bylaws. Any sum assessed by the Association remaining unpaid for a period of thirty (30) days or longer shall constitute a lien on the Unit with respect to which such sum was assessed upon filing in accordance with N.C.G.S. §47C-3-116, and shall be enforceable by the Association in accordance with N.C.G.S. §47C-3-116 and **Article VIII** of the Bylaws. Any lien established pursuant to this **Section 8.2** shall be subordinate to the lien of any bona fide mortgage recorded prior to the docketing of the lien and shall not be affected by the transfer of the Unit other than a transfer as a result of the foreclosure of a first lien deed of trust pursuant to N.C.G.S. § 47C-3-116 (f) which shall extinguish the lien for any Assessments that were payable prior to the foreclosure sale, but will not relieve any subsequent Owner from paying future Assessments.

Section 8.3 Declarant Control Period. During the Declarant Control Period, Declarant reserves the right to appoint and remove any Director; provided, however, (i) that not later than sixty (60) days after conveyance of twenty-five percent (25%) of the Units to Owners other than Declarant, the President of the Association shall call a special membership meeting, at which meeting the Unit Owners other than the Declarant shall elect at least one Director (and not less than twenty-five percent 25% of the Directors) to the Executive Board who shall be a Unit Owner or who shall otherwise meet the qualifications as provided in the Bylaws; and (ii) that 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 Directors of the Executive Board must be elected by the Owners other than Declarant, and if this is not the case, the President of the Association shall call a special membership meeting, at which meeting the Unit Owners other than the Declarant shall elect at least less than thirty-three percent 33% of the Directors, each of whom shall be a Unit Owner or whom shall otherwise meet the qualifications as provided in the Bylaws.

Not more than sixty (60) days after the earlier of the following events occurs, the President of the Association shall call a special membership meeting ("**Declarant Control Period Special Meeting**"):

- (a) the expiration of the Declarant Control Period; or
- (b) Declarant gives up, in writing, the right to appoint the Executive Board.

Notwithstanding anything above to the contrary, the Declarant may, by written notice to the Executive Board, at or before any Annual Meeting, relinquish to the Owners, the Declarant's right to elect one or more Directors at such annual meeting pursuant to this Section.

At the Declarant Control Period Special Meeting, the Unit Owners (including the Declarant) shall elect a new Executive Board consisting of three (3) Directors who all shall be Unit Owners or who shall otherwise be qualified pursuant to the Bylaws. The persons so elected shall take office immediately upon election and the three (3) Directors of the Executive Board previously appointed or elected shall step down from their positions.

Section 8.4 Post-Development Period. After the Declarant Control Period Special Meeting, the Unit Owners shall elect the Directors of the Executive Board at the Annual Meeting of Unit Owners.

Section 8.5 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 by the Executive Board from time to time; and (c) all financial records of the Association, as required by N.C.G.S. §47C-3-118. These items shall be available for inspection, during normal business hours and upon reasonable advance notice, by any Owner, any Mortgagee, any Unit prospective purchaser and any insurer or guarantor of a loan secured by a Mortgage. The Association shall cause audited financial statements to be prepared for the preceding fiscal year within 120 days following the end of the Association's fiscal year (beginning with the first complete fiscal year following the recordation of this Declaration).

ARTICLE IX EASEMENTS AND PROPERTY RIGHTS

Section 9.1 Access by the Association. The Association, or any person authorized by the Executive Board, 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 Common Elements.

Section 9.2 Encroachment Easements. If any portion of the Common Elements now encroaches upon any Unit, or if any Unit now encroaches upon any other Unit or upon any portion of the Common Elements, or if such encroachment shall occur hereafter as a result of the settling or shifting of 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 or 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, encroachments of parts of the Common Elements upon any Unit, or of any Unit upon any other Unit or parts of the Common Elements due to such rebuilding shall be permitted, and valid easements for such encroachments and the maintenance thereof shall exist so long as the Building shall stand.

Section 9.3 Easements Over Common Elements. Declarant, during the Declarant Control Period, and the Executive Board, at any time, may grant easements for utility purposes for the benefit of the Condominium 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, fiber optic lines and equipment; electrical conduits; and wires over, under, along and on any portion of the Common Elements; and each Owner hereby grants to Declarant or the Executive Board, 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. During the Declarant Control Period, Declarant shall have an easement over the Common Elements as may be reasonably necessary to complete the construction of the Building and the other improvements within the Condominium Property.

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

Section 9.5 Relocation of Boundaries: Subdivision; Partitioning.

(a) Relocation of Boundaries Between Adjoining Units.

(1) Following the recordation of this Declaration, except for the relocation of boundaries between adjoining Units by Declarant pursuant to **Section 6.1**, the boundaries between adjoining Units may be relocated only upon application to the Executive Board by the Owners of such adjoining Units ("**Adjoining Owners**") and upon approval by the Executive Board 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.

(2) Any such application to the Executive Board must be in such form and contain such information as may be reasonably required by the Executive Board, and shall be accompanied by a plat detailing the proposed relocation of boundaries. Unless the Executive Board determines within thirty (30) days after submission to it of the application (including any supporting plans, engineering reports or other information that the Executive Board may reasonably request) that the proposed relocation of boundaries is unreasonable, the application shall be deemed approved. Upon approval of the proposed relocation of boundaries, the Executive Board 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 and reallocates among the Adjoining Owners (based upon the resulting square footage of the altered Units) the interests in the Common Elements which were formerly allocated to each affected Unit. 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.

(1) Following the recordation of this Declaration, except for the subdivision of Units by Declarant pursuant to **Section 6.1**, Units may be subdivided only upon application to the Executive Board by the Owner of the Unit to be subdivided ("**Subdividing Owner**") and upon approval by the Executive Board of such application; provided, however, that no such subdivision shall be binding upon any mortgagee holding a Mortgage on any subdivided Unit, unless consented to in writing by such Mortgagee.

(2) Any such application to the Executive Board must be in such form and contain such information as may be reasonably required by the Executive Board, and shall be accompanied by, a plat detailing the proposed relocation of boundaries and an opinion letter

from an attorney, acceptable to the Executive Board, confirming that the proposed subdivision and the resulting Units shall comply with the terms of the Declaration and applicable zoning and subdivision ordinances, including any applicable laws regarding minimum parking requirements. Unless the Executive Board determines within thirty (30) days after submission to it of the application (including any supporting plans, engineering reports or other information that the Executive Board may reasonably request) that the proposed subdivision is unreasonable, the application shall be deemed approved. Upon approval of the subdivision, the Executive Board shall cause to be prepared and filed, at the Subdividing Owner's expense, an amendment to this Declaration and a plat which identifies the Unit involved, describes and depicts the new Units created, and gives the dimensions of the altered Units and reallocates among the created units (based upon the resulting square footage of the created Units) the vote, and the interests in the Common Elements which were formerly allocated to the subdivided Unit. Such amendment shall also contain operative words of conveyance and be signed by the Subdividing Owner and consented to by its mortgagee, if any, and shall be indexed by the Register of Deeds in the name of the Subdividing Owner.

(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 and herein without limitation or exception shall be deemed and construed to affect the entire Unit and its allocated interest in the Common Elements. Nothing herein contained shall be construed as limiting or preventing ownership of any Unit and its allocated interest in the Common Elements by more than one person or entity as tenants in common, joint tenants, or as tenants by the entirety or any other form permitted by law.

Section 9.6 Conveyance or Encumbrance of Common Elements. While the Condominium Property remains subject to this Declaration and to the provisions of the North Carolina Condominium Act, no conveyances of (except for easements which may be granted or reserved by Declarant or the Association pursuant to the terms hereof) or security interests or liens of any nature shall arise or be created against the Common Elements without the prior written consent of the Owners entitled to cast at least eighty percent (80%) of the votes in the Association, including at least eighty percent (80%) of the votes entitled to be cast by 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 provided for in **Section 8.2** of this Declaration. Nothing in this **Section 9.6** shall be construed to limit the right of any Owner to convey or to encumber such Unit Owner's allocated interest in the Common Elements as an

appurtenance to and in connection with the conveyance or mortgaging of such Unit Owner's Unit.

Section 9.7 Nature of Interest in Unit. Every Unit, together with its allocated interest in the Common Elements, shall for all purposes be and it is hereby declared to be and to constitute a separate parcel of real property. The Owner of each Unit shall be entitled to the exclusive fee simple ownership, access to and possession of such Unit Owner's 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.

Section 9.8 St. Peters Homeowners Association, Inc. In order to obtain certain approvals in conjunction with the initial development of the property upon which the Condominium is located, certain proffers were made to St. Peters Homeowners Association, Inc., a North Carolina non-profit corporation ("St. Peters Association") which shall be binding upon the Condominium and which shall run with the title to the Condominium Property as follows:

(a) Right to Rent Parking Spaces. The Association shall make up to fifteen unreserved parking spaces available for lease by the St. Peter's Association. The Association may require St. Peter's Association to enter into separate agreements with respect to any such leases. The maximum monthly rate to be charged by the Association for each such space for calendar year 2005 shall be \$100.00 per month. In each year following 2005, the maximum monthly rate shall increase at the rate of three percent (3%) per year, compounded annually.

(b) Right to Use Amenities. The owners and occupants of St. Peters Condominiums shall have the right to use the Condominiums common amenities, including the pool and fitness center for a monthly fee equal to the cost of a YMCA family membership in Charlotte, and under the same rules and regulations as are generally applicable to the residents or occupants of the Condominium. In addition to the payment of the monthly fee, such use shall also be conditioned upon each such user entering into such agreements (including liability waivers) as may be required by the Executive Board in connection with the use of such amenities.

(c) Right to Use Dumpster. Provided that St. Peters Association enters into a separate agreement with the Association and pays such an annual fee as is required by the Association, then St. Peters Association shall have the non-exclusive right to use a garbage dumpster located upon the Condominium Property.

(d) West End Easement. Declarant hereby reserves a non-exclusive easement for the owners and occupants of St. Peters Condominium for pedestrian access across the sidewalks located on the portion of the Condominium Property adjacent to the northwest corner of the St. Peters Condominium Property as more particularly shown on **Exhibit D**. The use of such sidewalks shall be subject to the same rules and regulations as are otherwise applicable to the Owners.

ARTICLE X
ASSESSMENTS

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

Section 10.2 Common Expenses.

(a) Allocation of Common Expenses. Except as otherwise provided in this Declaration or in the Bylaws, each Owner shall contribute as its share of the Common Expenses, all in accordance with the definition of "**Common Expenses**" set forth above, the Bylaws, and the provisions of the North Carolina Condominium Act, an amount equal to the Owner's applicable Base Assessment plus the amount of Common Expenses (in excess of the aggregate amount of the Base Assessments) multiplied by the respective Owner's share of Common Elements Interest.

(b) Commencement of Assessments. Assessments for all Units may begin as of the date of the first conveyance of a Unit to an Owner other than Declarant, or at any time within sixty (60) days thereafter as determined by the Declarant; provided that until the Executive Board levies a Common Assessment, Declarant shall be solely responsible for the Common Expenses in accordance with the terms of the North Carolina Condominium Act. The due dates for payment of such Common Assessments shall be established by the Executive Board and shall be collected at least monthly. The Bylaws also grant the Executive Board the right to impose a Special Assessment and Individual Unit Assessment against the Unit Owners as more particularly described therein.

Section 10.3 Common Surplus. The term "**Common Surplus**" means and refers to all funds and other assets of the Executive Board, including excess of receipts of the Executive Board 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 proportion to their respective allocated Common Elements Interests; provided, however, that the Common Surplus shall be held by the Executive Board and either: (i) deposited in the reserve fund; (ii) credited toward Common Expenses for subsequent year(s); or (iii) distributed to the Owners in proportion to their respective allocated Common Elements Interests, subject to the terms, provisions and conditions of this Declaration imposing certain limitations and restrictions upon the use and distribution thereof. Except for distribution of any insurance proceeds, which shall be made in the manner provided in **Section 11.6** below, or upon termination of the Condominium, any attribution or distribution of Common Surplus which may be made from time to time shall be made to the then Owners in proportion to their respective allocated Common Elements Interests.

ARTICLE XI
INSURANCE

Section 11.1 Property Insurance. The Association shall obtain and maintain (either directly or through coverage obtained by the Master Association) at all times a policy of property insurance on the Building and Common Elements (ISO special form or its equivalent) in an amount not less than one hundred percent (100%) of the replacement cost of the Building and Common Elements at the time such insurance is purchased and at the time of each renewal thereof (excluding the cost of foundations and footings, and the cost of any personal property supplied or installed by Owners), with a commercially reasonable deductible not in excess of \$10,000.00. The policy shall be issued by an insurance company properly licensed to do business in the State of North Carolina, with either (i) "B" or better general policyholder's rating or a "6" or better financial performance index rating in Best's *Insurance Reports*, (ii) an "A" or better general policyholder's rating and a financial size category of "VIII" or better in Best's *Insurance Reports - International Edition*, (iii) an "A" or better rating in Demotech's *Hazard Insurance Financial Stability Ratings*, a "BBBq" qualified solvency ratio or a "BBB" or better claims-paying ability rating in Standard and Poor's *Insurer Solvency Review*, or (iv) a "BBB" or better claims-paying ability rating in Standard and Poor's *International Confidential Rating Service*. The policy shall provide that the Association is a named insured and that each Owner is an insured person with respect to his Unit and his allocated interest in the Common Elements. The policy shall contain a standard extended coverage endorsement and a standard "all risk" endorsement (unless the policy contains "broad form" covered causes of loss), and an inflation guard endorsement, if available, an earthquake endorsement, if available, and a building ordinance or law endorsement, if available, as well as a special condominium endorsement providing as follows: for waiver of subrogation against any Owner, and any Owner's employees and agents that it may not be canceled or substantially modified without at least thirty (30) days' prior written notice to the Association and all insureds, including all Owners and mortgagees named in the mortgage clause; that no act or omission by any Owner will preclude recovery upon such policy; and 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 each mortgagee.

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

Section 11.2 Liability Insurance. The Executive Board shall obtain and maintain (either directly or through coverage obtained by the Master Association) one or more policies of commercial general liability insurance 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 \$1,000,000.00 per occurrence. The Executive Board may satisfy its liability insurance coverage requirements under this **Section 11.2** by means of a primary policy with per

occurrence coverage limits of less than \$1,000,000.00, so long as it also maintains one or more "umbrella" or excess liability policies sufficient to provide total coverage in excess of \$1,000,000.00 per occurrence. The liability insurance policies shall include endorsements covering cross liability claims of one insured against another, including the liability of the Executive Board or the Owners as a group to one or more Owners, and shall provide that it may not be canceled or substantially modified without at least thirty (30) days' prior written notice to the Executive Board and to all insureds, including all Owners and mortgagees. The Executive Board shall review such limits annually.

Section 11.3 Fidelity Coverage. The Executive Board shall obtain fidelity coverage against dishonest acts on the part of all persons handling, or responsible for handling funds belonging to or administered by the Executive Board. Any such fidelity insurance policy must name the Executive Board 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, plus the amount of any reserves maintained by the Association, or the amount required by any Mortgagee, whichever is greater. Additionally, the policy must include a provision that calls for no less than ten (10) days' written notice to the Executive Board prior to cancellation or substantial modification. Any manager hired by the Executive Board shall be required to provide its own fidelity insurance policy which must provide the same coverage and contain the same terms as required by this **Section 11.3**.

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

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

Section 11.6 Distribution of Insurance Proceeds. All insurance policies procured by the Executive Board (as opposed to policies procured by the Executive Board of the Master Association) shall provide that all losses shall be adjusted with and all proceeds shall be payable to the Executive Board as insurance trustee, and each Owner irrevocably appoints the Executive Board as its attorney-in-fact for that purpose. The sole duty of the Executive Board as insurance

trustee shall be to receive such proceeds as are paid and deposit the same with a bank or trust company to be held in trust until either applied to restore the damage as described in **Article XII** below or distributed as set forth herein and for the benefit of the Owners and their mortgagees in the following shares:

(a) Proceeds on account of damage to the Common Elements shall be held in undivided shares for each Owner and his 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 Executive Board.

(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 Executive Board as insurance trustee shall be distributed by the Executive Board to or for the benefit of the Owners in the following manner:

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

(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 or to raze the remaining damaged improvements;

(ii) the insurance proceeds attributable to Units and Limited Common Elements which are not rebuilt shall be distributed to the owners of such Units and the 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, in proportion to their respective Common Elements Interests.

Section 11.7 Insurance Obtained by Owners. Each Owner shall obtain and keep continuously in force additional fire and casualty and extended coverage insurance upon such Unit Owner's Unit, the improvements therein, and such Unit Owner's personal property as well as public liability insurance, and such other insurance coverage as such Unit Owner may desire. Each Owner shall obtain and maintain public liability insurance coverage in the amount of at least \$100,000.00 for bodily injury, including deaths of persons and property damage, arising out of a single occurrence. Each Owner shall file a copy of each such individual policy with the Executive Board within thirty (30) days after purchase of a Unit and shall provide, upon renewal, evidence of such renewal.

ARTICLE XII DUTY TO REPAIR OR RECONSTRUCT

Section 12.1 Reconstruction and Repair. In the event of damage to or destruction of the Building or any Common Element as a result of fire or other casualty, the Executive Board shall arrange for the prompt restoration and replacement of the damaged or destroyed Building or Common Element unless (1) the Condominium is terminated in accordance with the provisions of **Article XV** below, or (2) repair or replacement would be illegal under any state or local health or safety statute or ordinance, or (3) the Owners decided not to rebuild by an eighty percent (80%) vote, including one hundred percent (100%) of owners of Units not to be rebuilt and one hundred percent (100%) of Owners of Units to which are assigned Limited Common Elements not to be rebuilt. Unless one of the preceding three conditions occurs, the Executive Board shall arrange for the prompt repair and restoration of the damaged or destroyed Building or Common Elements, 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 Executive Board shall repair or replace such damaged property), and the Executive Board shall disburse the proceeds of all insurance policies to the contractors engaged in such repair and restoration in appropriate progress payments and in accordance with the provisions of **Section 11.6(d)(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 Unit Owners vote not to rebuild any Unit, that Unit's allocated interests are automatically reallocated upon the vote as if the Unit had been condemned under N.C.G.S. §47C-1-107(a).

Section 12.2 Obligations of Owners. Each Owner will, at such Unit Owner's sole cost and expense, keep and maintain such Unit Owner's Unit and the Limited Common Elements allocated solely to such individual Unit Owner 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 Executive Board, except as authorized under N.C.G.S. §47C-2-111. Upon the failure of an Owner to so maintain such Unit Owner's Unit the Executive Board shall be authorized to maintain, repair or restore such Unit, and the cost thereof shall be charged to such Owner and constitute a lien on the Unit until paid.

ARTICLE XIII
UNITS SUBJECT TO CONDOMINIUM DOCUMENTS

All present and future Owners, tenants, and occupants of the Units shall be subject to and shall comply with the provisions of 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 Condominium Property and shall bind any person having at any time any interest or estate in such Unit as though such provisions were made a part of each and every deed of conveyance or lease.

ARTICLE XIV
AMENDMENT TO DECLARATION

Except in cases of amendment by the Declarant under **Article VI**, N.C.G.S. § 47C-2-109(d) or 47C-2-110, or the Association under N.C.G.S § 47C-1-107, 47C-2-112(a) or certain Unit Owners under N.C.G.S. § 47C-2-108(b), 47C-2-112(a), 47C-2-113(b) or 47C-2-118(b), and except as is otherwise specifically authorized herein, this Declaration may be amended only by the vote of not less than sixty-seven percent (67%) of the votes in the Association, and not less than fifty-one percent (51%) of the Mortgagees, cast in person or by proxy at a meeting duly held in accordance with the provisions of the Bylaws. Except to the extent expressly permitted by the North Carolina Condominium Act or other provisions of this Declaration (including the first sentence of this **Article XIV**), any amendment which amends or alters the percentage of allocated interests of any Unit in the Common Elements, 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 XIV**, shall require the written approval of all Owners, together with the consent of all their respective Mortgagees. Unless otherwise provided herein or in the Condominium Act, no amendment to the Declaration shall be effective until executed on behalf of the Executive Board by any officer designated for that purpose and recorded in the office of the Register of Deeds of Mecklenburg County, North Carolina. During the Declarant Control Period, no amendment to this Declaration shall be effective without the written consent of Declarant. Notwithstanding the foregoing, any amendment which would have the effect of prohibiting a use of the Office Unit which would otherwise be permitted prior to such amendment, or which would materially and negatively impact such use, shall require the written consent of each of the Owner of the Office Unit and its respective Mortgagee. Anything to the contrary set forth herein, or in any of the other Condominium Documents, neither the provisions of **Section 19.3** hereof nor the provisions of **Section 19.4** hereof may be modified or amended without the written consent of all "Bound Parties" (as defined in **Section 19.3** hereof).

ARTICLE XV
TERMINATION

The Condominium may be terminated and the Condominium Property removed from the provisions of the North Carolina Condominium Act only by the vote not less than eighty percent

(80%) of the votes in the Association, and not less than eighty percent (80%) of the Mortgagees, cast in person or by proxy at a meeting duly held in accordance with the provisions of the Bylaws, and as evidenced by execution of a termination agreement, or ratification thereof, by the requisite number of Owners and Mortgagees. The termination shall comply with the requirements of N.C.G.S. §47C-2-118, and must be recorded in the Office of the Register of Deeds for Mecklenburg County before it becomes effective. Following the recordation of the termination agreement, the interests of the Owners and Mortgagees in the Condominium Property shall be as provided in N.C.G.S. §47C-2-118.

The failure of any Mortgagee to respond within thirty (30) days to any written request of the Executive Board, sent by registered or certified mail, return receipt requested, for consent to termination of the condominium shall constitute an implied approval by that Mortgagee of the proposed termination.

ARTICLE XVI RIGHTS RESERVED TO MORTGAGEES

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

Section 16.2 Percentage of Mortgagees. Wherever in the Condominium Documents the approval or consent of a specified percentage of Mortgagees is required, it shall mean the approval or consent of Mortgagees holding Mortgages on Units which have allocated to them that specified percentage of votes in the Association, as compared to the total votes in the Association allocated to all Units then subject to Mortgages held by Mortgagees.

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

Section 16.4 Mortgagee's Rights to Notice. Any Mortgagee (including, for purposes of this **Section 16.4**, any insurer or guarantor of a loan secured by a Mortgage that has notified the Executive Board in writing of its name and address, the address and Unit number of the Unit encumbered by the Mortgage, and that it holds, insures or guarantees a Mortgage on the specified Unit) 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 party, which default remains uncured for a period of sixty (60) days.

(b) Any loss or damage to or condemnation or taking of the Common Elements or any loss or damage to or condemnation or taking of a Unit encumbered by a Mortgage held, insured or guaranteed by such Mortgagee.

(c) Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association.

(d) Any proposed action by the Association, the Executive Board, or the Owners, which under the terms of the Condominium Documents requires the consent of all or any portion of the Mortgagees.

The failure of any Mortgagee to respond within thirty (30) days to any written request of the Executive Board, 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 16.5 Other Mortgagee Rights. Notwithstanding any other provision of this Declaration or the Bylaws, the Association may not change the period for collection of regularly budgeted Common Expenses to other than monthly without the consent of all Mortgagees that have served written notice to the Association as provided in **Section 16.4** above. Any representative of a Mortgagee may attend and address any meeting that an Owner may attend.

Section 16.6 Consent and Notice Required. Notwithstanding any other provision of this Declaration or the Condominium Documents, no amendment of any material provision of the Condominium Documents described in this **Section 16.6** shall be effective without notice to all Mortgagees, as required by **Section 16.4**, the vote of at least sixty-seven percent (67%) of the votes in the Association (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, except for reallocations resulting from the reallocation of votes among certain Unit Owners as described in **Section 6.3** or **Section 9.5**.

(b) Increases in Assessments that raise the previously assessed amount by more than twenty-five percent (25%), assessment liens, or the priority of assessment liens.

(c) Reductions in reserves for maintenance, repair, and replacement of the Common Elements.

(d) Responsibility for maintenance and repairs of the Units, the Limited Common Elements, or the Common Elements.

(e) Reallocation of interests in the Common Elements or the Limited Common Elements, except that when Limited Common Elements are reallocated by agreement between Owners of Units in accordance with **Section 6.3** or **Section 9.5**, then only those Owners and only the Mortgagees holding Mortgages on those Units need approve such reallocations.

(f) Redefinition of boundaries of Units, except that when the boundaries of only adjoining Units are involved, then only the Owners of those Units and the Mortgagees holding Mortgages on those Units must approve such action.

(g) Convertibility of Units into Common Elements, or Common Elements into Units.

(h) The expansion or contraction of Condominium or the addition, annexation or withdrawal of property to or from the Condominium.

(i) The requirements for insurance and fidelity bonds.

(j) The imposition of any restrictions on the leasing of Units.

(k) The imposition of any restrictions on an Owner's right to sell or transfer his Unit.

(l) The restoration or repair of the Condominium Property after casualty damage or partial condemnation in a manner other than that specified in the Condominium Documents.

(m) Any termination of the Condominium after occurrence of substantial destruction or condemnation.

(n) Any provision that expressly benefits the Mortgagees.

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

ARTICLE XVII CONDEMNATION

If all or any part of the Condominium Property is taken in condemnation or by eminent domain, the award for such taking shall be distributed in accordance with the procedure set forth in N.C.G.S. §47C-1-107. Provided, however that the proceeds of any award payable to the Association as a result of condemnation of all or a portion of the Common Elements shall first be used to restore the damaged area to a condition compatible with the rest of the Condominium or to raze the remaining damaged improvements and thereafter, any remaining proceeds shall be distributed as set forth above.

ARTICLE XVIII
MISCELLANEOUS PROVISIONS

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

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

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

Section 18.4 Law Controlling. This Declaration and the Condominium Documents shall be construed and controlled by and under the laws of the State of North Carolina.

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

Section 18.6 Notice Address. Each Owner upon acquisition of its Unit shall be responsible for providing written notice to the Association or any manager hired by the Association, which notice shall specify the name of the Owner and such Owner's Unit number address and phone number (which may or may not be the address and phone number of the Unit). The Association and the manager shall be entitled to rely upon such notices for the purpose of all correspondence or notices to such Owner until such Owner provides the Association or its manager with a subsequent written notice which amends the previous notice.

ARTICLE XIX
ENFORCEMENT

Section 19.1 Actions by the Association. In addition to and not in lieu of the other remedies for default provided in this Declaration and the other Condominium Documents, the Executive Board may bring a civil action against any Owner to enforce any obligation, covenant or restriction set forth in this Declaration or the other Condominium Documents.

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

Section 19.3 Agreement to Encourage Resolution of Disputes Without Litigation.

(a) Notwithstanding **Sections 19.1** and **19.2** above, Declarant, the Owners, the Executive Board, the Association and its officers, directors and committee members, and any person not otherwise subject to this Declaration who agrees to submit to this Article, including without limitation, DunnSoutheast, Inc. d/b/a R.J. Griffin & Company, LS3P Associates, Ltd., or any other contractors, architects, consultants, or engineers retained by Declarant in connection with the design and construction of the Building (collectively, "Bound Parties"), agree that it is in the best interest of all concerned to encourage the amicable resolution of disputes involving the Condominium without the emotional and financial costs of litigation. Accordingly, every Claim described in subsection (b) shall be resolved by the alternative dispute resolution procedures set forth in **Section 19.4**.

(b) As used in this Article, the term "Claim" shall refer to any claim, grievance, or dispute arising out of or relating to:

(i) the interpretation, application, or enforcement of the Condominium Documents;

(ii) the rights, obligations, and duties of any Bound Party under the Condominium Documents;

(iii) the design, construction, or quality of improvements within or comprising any portion of the Condominium, or the habitability thereof, or the suitability thereof for any particular purpose, including without limitation any Claim based upon any alleged implied or express warranty; and

(iv) the asserted breach of any other duty or obligation owed by Declarant, the Executive Board, any member of the Executive Board or any officer of the Association

except that the following shall not be considered "Claims" unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in **Section 19.4**:

(v) any suit by the Association to collect assessments or other amounts due from any Owner;

(vi) any suit by the Association to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions relating to creation and maintenance of community standards;

(vii) any suit between Owners, which does not include Declarant or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Condominium Documents; and

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

(c) The provisions of this **Section 19.3** may not be modified or amended without the written consent of all Bound Parties.

Section 19.4 Dispute Resolution Procedures.

(a) Notice. The Bound Party asserting a Claim (“Claimant”) against another Bound Party (“Respondent”) shall give written notice to each Respondent and to the Executive Board stating plainly and concisely:

- (i) the nature of the Claim, including the Persons involved and the Respondent’s role in the Claim;
- (ii) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises);
- (iii) The Claimant’s proposed resolution or remedy; and
- (iv) the Claimant’s desire to meet with the Respondent to discuss in good faith ways to resolve the Claim.

(b) Negotiation. The Claimant and Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Executive Board may appoint a representative to assist the parties in negotiating a resolution of the Claim.

(c) Arbitration. If the parties have not resolved the Claim through negotiation within thirty (30) days of the date of the notice described in **Section 19.4(a)** (or within such other period as the parties may agree upon), the Claimant shall have thirty (30) additional days to submit the Claim to binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association then in effect.

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

(e) Fees and Expenses. The fees and expenses of arbitration shall be paid as set forth in the award and the Association shall not make a Claim against a Bound Party with regard to the matters listed in **Section 19.3(b)(i-iv)** above unless 80% of all Owners approve (in writing) the Association’s bringing such claim (and incurring the Common Expense to do so).

(f) Settlement. Any resolution of the Claim through negotiation or arbitration shall be documented in writing and signed by the parties. If any party thereafter fails to abide by the terms of such agreement, then any other party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in this Article. In such event, the party taking action to enforce the agreement or award shall, upon prevailing, be entitled to recover from the non-complying party (or if more than one

non-complying party, from all such parties in equal proportions) all costs incurred in enforcing such agreement or award, including, without limitation, attorneys' fees and court costs.

(g) Limits on Arbitrator's Authority. Notwithstanding any provision of law to the contrary, and without in any way limiting the exclusiveness of arbitration as a remedy for resolving Claims, the Bound Parties acknowledge and agree that the arbitrator in any arbitration proceeding hereunder shall not have authority to do any of the following: (1) join the Claims of multiple Claimants in a single proceeding or certify an arbitration class action or similar proceeding; (2) award punitive or exemplary damages of any sort; or (3) award treble damages or any other damages which are greater than compensatory damages or which are based on a multiple of compensatory damages.

(h) Modification of Statutes of Limitation and Repose. Notwithstanding any provision of law (including any statute of limitations or repose) to the contrary, and without in any way limiting the exclusiveness of arbitration as a remedy for resolving Claims, the Bound Parties agree that any Claim must be asserted in arbitration no later than one (1) year following the date that the essential facts giving rise to the Claim were or reasonably should have been discovered, provided, however, in no event shall any Claim be valid unless it is asserted within three (3) years after the last act of the Respondent giving rise to the claim.

(i) Conflicts Between Arbitration Clauses. In the event that a Claim also falls within the scope of a valid arbitration clause contained in a sales contract for an individual Unit, this Declaration shall control to the extent of any inconsistency.

(j) No Amendment. The provisions of this **Section 19.4** may not be modified or amended without the written consent of all Bound Parties.

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

FIFTH AND POPLAR ASSOCIATES, LLC, a Delaware limited liability company

By: **FIFTH AND POPLAR PARTNERS, LLC**, a North Carolina limited liability company, its managing member

By: James M. Dullin
Name: Managing Member
Its: James M. Dullin

STATE OF North Carolina

COUNTY OF Mecklenburg

I, JUDITH M. ROLLEK, a Notary Public of MECKLENBURG County and State of NORTH CAROLINA, do hereby certify that JAMES M. DULLIN, MANAGING MEMBER of Fifth and Poplar Partners, LLC, a North Carolina limited liability company, which is Managing Member of Fifth and Poplar Associates, LLC, a Delaware limited liability company, personally appeared before me this day, by authority duly given, and acknowledged the due execution of the foregoing instrument on behalf of Fifth and Poplar Partners, LLC, as Managing Member of Fifth and Poplar Associates, LLC.

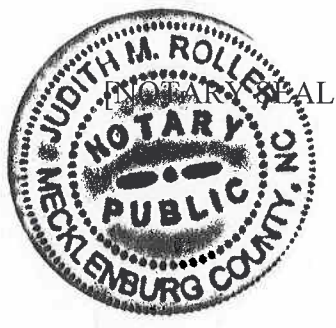
Witness my hand and official stamp or seal this 3 day of August, 2004. 2005

Judith M. Rollek
Notary Public

Print: Name: JUDITH M. ROLLEK

[Note: Notary Public must sign exactly as on notary seal]

My Commission Expires: My Commission Expires June 30, 2008



OHIO SAVINGS BANK, a federal savings bank and the holder of a deed of trust recorded in the Office of the Mecklenburg County, North Carolina Register of Deeds ("Registry"), in Book 12340, Page 874, as amended by amendments recorded in Book 14920, Page 713, Book 17443, Page 881 and Book 18940, Page 729 recorded in the Registry (as amended, "Deed of Trust), and Eric D. Edlund and Steven S. Swartz, in their capacities as trustees under the aforesaid Deed of Trust, hereby consent to the execution and delivery of the foregoing Declaration of Condominium, with exhibits thereto (the "**Declaration**"), and to the filing thereof, in the office of the Registry, and further subject and subordinate the above-described deed of trust to the provisions of the foregoing Declaration with attached exhibits (including, without limitation, any easements reserved therein).

IN WITNESS WHEREOF, OHIO SAVINGS BANK, by its authorized officer, and the undersigned Trustees have caused this Consent to be executed this 27th day of July, 2005.

[SIGNATURES ON FOLLOWING PAGES]

OHIO SAVINGS BANK, a federal savings bank

By: [Signature]

Print Name: JEFFREY L. MORGAN

Title: VICE PRESIDENT

(Must be chairman, president, chief executive officer, a vice-president or an assistant vice-president, treasurer, or chief financial officer)

STATE OF OHIO

COUNTY OF CUYAHOGA

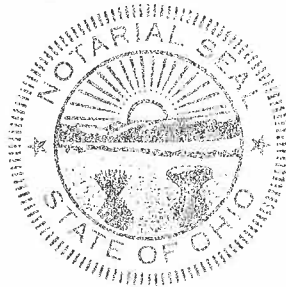
I, LINDA J. PETRANEK, a Notary Public of CUYAHOGA County, State of OHIO, certify that JEFFREY L. MORGAN, personally came before me this day and acknowledged that he/she is VICE PRESIDENT of OHIO SAVINGS BANK, a federal savings bank, and that he/she, in such capacity and being authorized to do so, executed the foregoing on behalf of the corporation.

Witness my hand and official stamp or seal this 27th day of JULY, 2005.

[Signature]
Notary Public

Print: Name: LINDA J. PETRANEK
[Note: Notary Public must sign exactly as on notary seal]

My Commission Expires: 6/13/09



[NOTARY SEAL] (MUST BE FULLY LEGIBLE)

LINDA J. PETRANEK, Notary Public
State of Ohio, Recorded in Lake County
My Commission Expires June 13, 2009

Eric D. Edlund

Name: Eric D. Edlund

Title: Trustee under the aforesaid Deed of Trust

STATE OF Florida

COUNTY OF Palm Beach

I, JAMES SADOCK, JR., a Notary Public of Palm Beach County, State of Florida, do hereby certify that Eric D. Edlund, personally appeared before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and official stamp or seal this 27th day of July, 2005.

James Sadock Jr.

Notary Public

Print: Name: JAMES SADOCK, JR.

[Note: Notary Public must sign exactly as on notary seal]

My Commission Expires: 8/26/08



[NOTARY SEAL] (MUST BE FULLY LEGIBLE)

Name: Steven S. Swartz

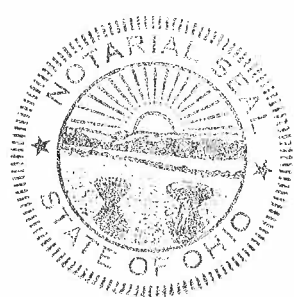
Title: Trustee under the aforesaid Deed of Trust

STATE OF OHIO

COUNTY OF CUYAHOGA

I, LINDA J. PETRANEK, a Notary Public of CUYAHOGA County, State of OHIO, do hereby certify that Steven S. Swartz personally appeared before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and official stamp or seal this 27TH day of JULY, 2005.



Linda J. Petranek

Notary Public

Print Name: LINDA J. PETRANEK

[Note: Notary Public must sign exactly as on notary seal]

My Commission Expires: 6/13/09

[NOTARY SEAL]

(MUST BE FULLY LEGIBLE)

LINDA J. PETRANEK, Notary Public
State of Ohio, Recorded in Lake County
My Commission Expires June 13, 2009

EXHIBIT A
TO
DECLARATION OF CONDOMINIUM

“Real Property”

BEING, all of that certain property located in Mecklenburg County, North Carolina, and being more particularly described as all of “Unit 2,” the “Residential Unit,” located within the Fifth and Poplar Master Condominium as shown on a plat and plans recorded in Unit File Number 752 in the Mecklenburg County Public Registry, which plat and plans are incorporated herein by reference; said property having the metes and bounds as depicted thereon.

A plat and plans showing the Units, Common Elements, and Limited Common Elements established within the above-referenced “Residential Unit” pursuant to this Declaration of Condominium are recorded in Unit File Number 763 in the Mecklenburg County Public Registry, which plat and plans are incorporated herein by reference

TOGETHER WITH, all easements, rights and appurtenances thereto.

EXHIBIT B
TO
DECLARATION OF CONDOMINIUM

SCHEDULE OF COMMON ELEMENTS INTERESTS AND INITIAL BASE ASSESSMENTS

Unit Number	(Based Upon Preliminary Plans and Rounded to Nearest Whole Foot)	Common Elements Interest	Initial Base Assessment (Monthly)
1	1,003	0.35%	\$100.00
2	781	0.27%	\$100.00
3	1,210	0.42%	\$125.00
101	687	0.24%	\$100.00
102	1,092	0.38%	\$100.00
103	687	0.24%	\$100.00
104	772	0.27%	\$100.00
105	1,074	0.38%	\$125.00
106	1,210	0.42%	\$125.00
107	1,210	0.42%	\$125.00
108	1,210	0.42%	\$125.00
109	781	0.27%	\$100.00
110	1,068	0.37%	\$100.00
111	1,244	0.44%	\$125.00
113	1,244	0.44%	\$125.00
115	781	0.27%	\$100.00
116	1,154	0.40%	\$100.00
117	781	0.27%	\$100.00
118	1,210	0.42%	\$125.00
119	781	0.27%	\$100.00
121	781	0.27%	\$100.00
122	1,210	0.42%	\$125.00
123	559	0.20%	\$75.00
124	781	0.27%	\$100.00
125	781	0.27%	\$100.00
126	781	0.27%	\$100.00
127	781	0.27%	\$100.00
128	1,232	0.43%	\$125.00
129	1,344	0.47%	\$100.00
131	1,344	0.47%	\$100.00
133	781	0.27%	\$100.00
134	1,107	0.39%	\$100.00
135	687	0.24%	\$100.00
136	1,210	0.42%	\$125.00
137	687	0.24%	\$100.00
138	944	0.33%	\$100.00
139	687	0.24%	\$100.00
141	686	0.24%	\$100.00
143	687	0.24%	\$100.00
144	1,692	0.59%	\$150.00
145	687	0.24%	\$100.00
201	687	0.24%	\$100.00
202	923	0.32%	\$100.00
203	687	0.24%	\$100.00

EXHIBIT B
TO
DECLARATION OF CONDOMINIUM

SCHEDULE OF COMMON ELEMENTS INTERESTS AND INITIAL BASE ASSESSMENTS

Unit Number	(Based Upon Preliminary Plans and Rounded to Nearest Whole Foot)	Common Elements Interest	Initial Base Assessment (Monthly)
204	772	0.27%	\$100.00
205	1,074	0.38%	\$125.00
206	1,074	0.38%	\$125.00
207	1,074	0.38%	\$125.00
208	1,074	0.38%	\$125.00
209	781	0.27%	\$100.00
210	941	0.33%	\$100.00
211	1,191	0.42%	\$125.00
213	1,191	0.42%	\$125.00
215	781	0.27%	\$100.00
216	925	0.32%	\$100.00
217	687	0.24%	\$100.00
218	1,074	0.38%	\$125.00
219	687	0.24%	\$100.00
221	687	0.24%	\$100.00
222	1,074	0.38%	\$125.00
223	686	0.24%	\$100.00
224	687	0.24%	\$100.00
225	687	0.24%	\$100.00
226	687	0.24%	\$100.00
227	687	0.24%	\$100.00
228	1,103	0.39%	\$125.00
229	1,302	0.46%	\$100.00
231	1,302	0.46%	\$100.00
233	687	0.24%	\$100.00
234	979	0.34%	\$100.00
235	687	0.24%	\$100.00
236	1,074	0.38%	\$125.00
237	687	0.24%	\$100.00
238	1,074	0.38%	\$125.00
239	687	0.24%	\$100.00
241	686	0.24%	\$100.00
243	686	0.24%	\$100.00
244	1,072	0.38%	\$125.00
245	686	0.24%	\$100.00
246	581	0.20%	\$75.00
247	1,147	0.40%	\$125.00
248	655	0.23%	\$75.00
249	1,147	0.40%	\$125.00
250	581	0.20%	\$75.00
251	794	0.28%	\$100.00
252	1,072	0.38%	\$125.00
253	1,251	0.44%	\$125.00

EXHIBIT B
TO
DECLARATION OF CONDOMINIUM

SCHEDULE OF COMMON ELEMENTS INTERESTS AND INITIAL BASE ASSESSMENTS

Unit Number	(Based Upon Preliminary Plans and Rounded to Nearest Whole Foot)	Common Elements Interest	Initial Base Assessment (Monthly)
301	687	0.24%	\$100.00
302	923	0.32%	\$100.00
303	687	0.24%	\$100.00
304	772	0.27%	\$100.00
305	1,074	0.38%	\$125.00
306	1,074	0.38%	\$125.00
307	1,074	0.38%	\$125.00
308	1,074	0.38%	\$125.00
309	1,031	0.36%	\$125.00
310	643	0.23%	\$75.00
311	1,344	0.47%	\$125.00
312	1,002	0.35%	\$100.00
313	1,148	0.40%	\$125.00
315	1,031	0.36%	\$125.00
316	737	0.26%	\$100.00
317	687	0.24%	\$100.00
318	1,074	0.38%	\$125.00
319	687	0.24%	\$100.00
321	687	0.24%	\$100.00
322	1,074	0.38%	\$125.00
323	686	0.24%	\$100.00
324	687	0.24%	\$100.00
325	687	0.24%	\$100.00
326	687	0.24%	\$100.00
327	687	0.24%	\$100.00
328	1,103	0.39%	\$125.00
329	1,385	0.49%	\$150.00
331	1,385	0.49%	\$150.00
333	687	0.24%	\$100.00
334	979	0.34%	\$100.00
335	687	0.24%	\$100.00
336	1,074	0.38%	\$125.00
337	687	0.24%	\$100.00
338	1,074	0.38%	\$125.00
339	687	0.24%	\$100.00
341	686	0.24%	\$100.00
343	686	0.24%	\$100.00
344	1,058	0.37%	\$125.00
345	686	0.24%	\$100.00
346	581	0.20%	\$75.00
347	1,147	0.40%	\$125.00
348	655	0.23%	\$75.00
349	1,147	0.40%	\$125.00
350	581	0.20%	\$75.00
351	794	0.28%	\$100.00
352	1,058	0.37%	\$125.00
353	1,251	0.44%	\$125.00

EXHIBIT B
TO
DECLARATION OF CONDOMINIUM

SCHEDULE OF COMMON ELEMENTS INTERESTS AND INITIAL BASE ASSESSMENTS

Unit Number	(Based Upon Preliminary Plans and Rounded to Nearest Whole Foot)	Common Elements Interest	Initial Base Assessment (Monthly)
401	687	0.24%	\$100.00
402	923	0.32%	\$100.00
403	687	0.24%	\$100.00
404	772	0.27%	\$100.00
405	1,074	0.38%	\$125.00
406	1,132	0.40%	\$125.00
407	1,074	0.38%	\$125.00
408	1,132	0.40%	\$125.00
409	1,031	0.36%	\$125.00
410	643	0.23%	\$75.00
411	1,148	0.40%	\$125.00
412	1,002	0.35%	\$100.00
413	1,148	0.40%	\$125.00
415	1,031	0.36%	\$125.00
416	737	0.26%	\$100.00
417	687	0.24%	\$100.00
418	1,074	0.38%	\$125.00
419	687	0.24%	\$100.00
421	687	0.24%	\$100.00
422	1,074	0.38%	\$125.00
423	686	0.24%	\$100.00
424	687	0.24%	\$100.00
425	687	0.24%	\$100.00
426	687	0.24%	\$100.00
427	687	0.24%	\$100.00
428	1,103	0.39%	\$125.00
429	1,385	0.49%	\$150.00
431	1,385	0.49%	\$150.00
433	687	0.24%	\$100.00
434	979	0.34%	\$100.00
435	687	0.24%	\$100.00
436	1,074	0.38%	\$125.00
437	687	0.24%	\$100.00
438	1,074	0.38%	\$125.00
439	687	0.24%	\$100.00
441	686	0.24%	\$100.00
443	686	0.24%	\$100.00
444	1,058	0.37%	\$125.00
445	687	0.24%	\$100.00
446	581	0.20%	\$75.00
447	1,147	0.40%	\$125.00
448	655	0.23%	\$75.00
449	1,147	0.40%	\$125.00
450	581	0.20%	\$75.00
451	786	0.28%	\$100.00
452	1,058	0.37%	\$125.00
453	1,115	0.39%	\$125.00

EXHIBIT B
TO
DECLARATION OF CONDOMINIUM

SCHEDULE OF COMMON ELEMENTS INTERESTS AND INITIAL BASE ASSESSMENTS

Unit Number	(Based Upon Preliminary Plans and Rounded to Nearest Whole Foot)	Common Elements Interest	Initial Base Assessment (Monthly)
501	687	0.24%	\$100.00
502	923	0.32%	\$100.00
503	687	0.24%	\$100.00
504	772	0.27%	\$100.00
505	1,074	0.38%	\$125.00
506	1,074	0.38%	\$125.00
507	1,074	0.38%	\$125.00
508	1,074	0.38%	\$125.00
509	1,031	0.36%	\$125.00
510	643	0.23%	\$75.00
511	1,148	0.40%	\$125.00
512	1,002	0.35%	\$100.00
513	1,148	0.40%	\$125.00
515	1,031	0.36%	\$125.00
516	737	0.26%	\$100.00
517	687	0.24%	\$100.00
518	1,074	0.38%	\$125.00
519	687	0.24%	\$100.00
521	687	0.24%	\$100.00
522	1,074	0.38%	\$125.00
523	686	0.24%	\$100.00
524	687	0.24%	\$100.00
525	687	0.24%	\$100.00
526	687	0.24%	\$100.00
527	687	0.24%	\$100.00
528	1,103	0.39%	\$125.00
529	1,385	0.49%	\$150.00
531	1,385	0.49%	\$150.00
533	687	0.24%	\$100.00
534	979	0.34%	\$100.00
535	687	0.24%	\$100.00
536	1,074	0.38%	\$125.00
537	687	0.24%	\$100.00
538	1,074	0.38%	\$125.00
539	687	0.24%	\$100.00
541	686	0.24%	\$100.00
543	1,170	0.41%	\$125.00
544	1,058	0.37%	\$125.00
545	1,170	0.41%	\$125.00
546	581	0.20%	\$75.00
547	1,147	0.40%	\$125.00

EXHIBIT B
TO
DECLARATION OF CONDOMINIUM

SCHEDULE OF COMMON ELEMENTS INTERESTS AND INITIAL BASE ASSESSMENTS

Unit Number	(Based Upon Preliminary Plans and Rounded to Nearest Whole Foot)	Common Elements Interest	Initial Base Assessment (Monthly)
548	655	0.23%	\$75.00
549	1,147	0.40%	\$125.00
550	581	0.20%	\$75.00
551	687	0.24%	\$100.00
552	1,058	0.37%	\$125.00
553	1,019	0.36%	\$125.00
601	1,020	0.36%	\$125.00
602	1,485	0.52%	\$150.00
603	1,170	0.41%	\$125.00
604	1,238	0.43%	\$125.00
605	1,074	0.38%	\$125.00
606	1,074	0.38%	\$125.00
607	1,074	0.38%	\$125.00
608	1,074	0.38%	\$125.00
609	1,031	0.36%	\$125.00
610	643	0.23%	\$75.00
611	1,148	0.40%	\$125.00
612	1,002	0.35%	\$100.00
613	1,148	0.40%	\$125.00
615	1,031	0.36%	\$125.00
616	737	0.26%	\$100.00
617	687	0.24%	\$100.00
618	1,074	0.38%	\$125.00
619	687	0.24%	\$100.00
621	687	0.24%	\$100.00
622	1,074	0.38%	\$125.00
623	686	0.24%	\$100.00
624	1,170	0.41%	\$125.00
625	1,170	0.41%	\$125.00
626	1,170	0.41%	\$125.00
627	1,170	0.41%	\$125.00
628	1,103	0.39%	\$125.00
629	1,385	0.49%	\$150.00
631	1,385	0.49%	\$150.00
633	1,170	0.41%	\$125.00
634	979	0.34%	\$100.00
635	1,170	0.41%	\$125.00
636	1,074	0.38%	\$125.00
637	1,170	0.41%	\$125.00
638	1,074	0.38%	\$125.00
639	1,170	0.41%	\$125.00
641	1,160	0.41%	\$125.00
644	1,002	0.35%	\$100.00
646	581	0.20%	\$75.00
647	1,079	0.38%	\$125.00
648	655	0.23%	\$75.00
649	1,079	0.38%	\$125.00

EXHIBIT B
TO
DECLARATION OF CONDOMINIUM

SCHEDULE OF COMMON ELEMENTS INTERESTS AND INITIAL BASE ASSESSMENTS

Unit Number	(Based Upon Preliminary Plans and Rounded to Nearest Whole Foot)	Common Elements Interest	Initial Base Assessment (Monthly)
650	553	0.19%	\$75.00
651	639	0.22%	\$100.00
652	821	0.29%	\$100.00
653	819	0.29%	\$75.00
705	1,074	0.38%	\$125.00
706	1,074	0.38%	\$125.00
707	1,074	0.38%	\$125.00
708	1,074	0.38%	\$125.00
709	1,031	0.36%	\$125.00
710	643	0.23%	\$75.00
711	1,148	0.40%	\$125.00
712	1,002	0.35%	\$100.00
713	1,148	0.40%	\$125.00
715	1,031	0.36%	\$125.00
716	737	0.26%	\$100.00
717	1,170	0.41%	\$125.00
718	1,074	0.38%	\$125.00
719	1,170	0.41%	\$125.00
721	1,170	0.41%	\$125.00
722	1,074	0.38%	\$125.00
723	1,160	0.41%	\$125.00
728	1,103	0.39%	\$125.00
729	1,385	0.49%	\$150.00
731	1,385	0.49%	\$150.00
734	979	0.34%	\$100.00
736	969	0.34%	\$100.00
738	969	0.34%	\$100.00
809	1,031	0.36%	\$125.00
810	643	0.23%	\$75.00
811	1,056	0.37%	\$125.00
812	920	0.32%	\$100.00
813	1,056	0.37%	\$125.00
815	1,031	0.36%	\$125.00
816	737	0.26%	\$100.00
818	969	0.34%	\$100.00
822	969	0.34%	\$100.00
Total:	285111	100.00%	\$33,750.00

EXHIBIT C
TO
DECLARATION OF CONDOMINIUM

BYLAWS OF
FIFTH AND POPLAR RESIDENTIAL 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 Fifth and Poplar Residential Condominium ("**Declaration**"), recorded in the Office of the Register of Deeds for Mecklenburg County, North Carolina, to which a copy of these Bylaws is attached as an Exhibit.

ARTICLE II
ADMINISTRATION OF CONDOMINIUM

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

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

ARTICLE III
OFFICES - SEAL - FISCAL YEAR

Section 3.1. Principal Office and Registered Office. The initial principal office and registered office of the Association shall be located at 201 S. Tryon Street Suite 550, Charlotte, NC, 28202.

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

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

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

ARTICLE IV MEMBERSHIP

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

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

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

Section 4.3. Annual Meetings. The first meeting of the Members, whether a regular or special meeting, shall be held within one (1) year from the date of incorporation of the Association. Each subsequent Annual Meeting of the Members shall be held within the fourth quarter of each calendar year, upon proper notice, at a date, time and place as may be reasonably set by the Executive Board. If the day for the Annual Meeting of the Members is a legal holiday, the meeting will be held at the same hour on the first day following which is not a legal holiday. Each Annual Meeting shall be open to all Members. 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.

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

Section 4.5. Special Meetings. After the first Annual Meeting of the Members, special meetings of the Members may be called at any time by the President; by not less than thirty percent (30%) of the voting power of all Unit Owners; or by not less than fifty-one percent (51%) of the Directors (“**Special Meetings**”). Upon receipt of a request for a Special Meeting by the Owners holding the requisite voting power or the requisite number of Directors, the President shall immediately cause written notice to be given of the meeting to be held on a date not less than seven (7) nor more than thirty (30) days after receipt of this request. If written notice is not given within ten (10) days after the delivery of the request, the Unit Owners making the request may call the meeting and give written notice of it. Business to be acted upon at all Special Meetings shall be confined to the subjects stated in the notice of such meeting.

Section 4.6. Notices of Meetings. Written or printed notice stating the time and place of a membership meeting, including Annual Meetings, and the items on the agenda, including the general nature of any proposed amendment to the Declaration or these Bylaws, any budget changes, and any proposal to remove a director or officer, shall be delivered not less than ten (10) or more than thirty (30) days before the date of any such membership meeting, either personally or by mail, by or at the discretion of the President or the Secretary, to the address of each Unit. Notice shall be deemed given upon deposit in the mail depository of each Unit unless prior written notification has been given to the Executive Board of the Association or manager pursuant to **Section 18.6** of the Declaration in which case notice shall be deemed given upon deposit in the U.S. mail, first-class, postage pre-paid and addressed as requested in the notification given to the Executive Board or manager.

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 a meeting shall specifically state the purpose or purposes for which the meeting is called. Notice of the date, time, place, and purpose(s) of any meeting of Unit Owners may be waived by any Unit Owner, before or after the meeting, by a writing filed with the records of the Association. The attendance of any Unit Owner at any meeting without protesting, before or at the beginning of the meeting, the lack of proper notice shall be deemed a waiver by the Unit Owner of notice of the meeting.

Section 4.7. Quorum. Except as may be otherwise provided by law, the Articles of Incorporation, the Declaration, or these Bylaws, there shall be a quorum at any meeting of Unit Owners where Unit Owners who hold thirty percent (30%) of the total voting power in the Association are present in person or by proxy. For a vote on any matter to be valid, the quorum requirement must be met at the time of completion of that vote. If such quorum shall not be present or represented at any meeting, a majority of the Members entitled to vote thereat, shall have power to adjourn that meeting to a day which is not more than one (1) week from the day the original meeting was called. Notice of the adjournment may not be given if the time and place to which the meeting is adjourned are fixed and announced at the original meeting. When the meeting reconvenes, the quorum requirement shall be lowered to twenty percent (20%) of the total voting power of the Members in good standing which must be present, in person or by proxy.

Section 4.8. Proxies. At all meetings of Members of the Association, each Member may vote in person or by proxy. The person designated a proxy need not be a Unit Owner. All proxies shall be in writing and filed with the Secretary at least twenty-four (24) hours prior to the meeting, except that the Executive Board may waive this time requirement for a particular meeting if the waiver would not delay the meeting and would otherwise be fair and reasonable. Every proxy shall be revocable and shall automatically cease upon conveyance by the Member of his/her Unit, except as otherwise provided in the Declaration or the Articles of Incorporation, about the proxy given to the Declarant. If a first mortgagee has been designated a proxy under the terms of a first mortgage covering a Unit, the presentation to the Executive Board of a copy of the mortgage containing the proxy designation shall be notice of that designation, and, if the mortgage so states, of the irrevocability of that designation.

Section 4.9. Voting by Mail by Association Members. Any Member may cast his written vote by mail on any proposal voted upon at any meeting of the Members of the Association by sending such written vote to the Secretary of the Association within the period seven (7) days before the date of the meeting. Such written votes shall be filed with the records of the Association and, in no event, shall any action be taken or approved by the Association with the approval of any less than the percentage of voting power required by the provisions of the Declaration or without the consent of any party that is required by any of said provisions. Members who have voted by mail shall not be counted in determining whether the quorum has been met at a meeting of the Members.

Section 4.10. Voting. Each Member shall be entitled to one (1) vote for each Unit owned by such Member; provided that any Member with respect to whom a notice of default or violation has been issued by the Board with respect to any default or violation under the Declaration or any rules or regulations adopted by the Executive Board, or who has had his right or privilege of use and enjoyment of the Common Elements suspended pursuant to the Condominium Documents, shall not be entitled to vote during any period in which any such default, violation or suspension continues; and further provided that if a Unit shall be owned by more than one (1) Unit Owner, such Unit Owners shall be deemed to constitute a single Member as to such Unit for purposes of this Section.

Unless otherwise expressly set forth by law, the Declaration, the Articles of Incorporation or these Bylaws, the affirmative vote of fifty-one percent (51%) of the voting power of the Members voting on any matter at a meeting of Members shall be sufficient to determine that matter, provided that any quorum requirement is met at the time of completion of that vote.

Section 4.11. Order of Business. The order of business at all meetings of Members shall be as follows. (1) calling of meeting to order; (2) roll call; determination of whether there is a quorum; (3) proof of notice of meeting or waiver of notice; (4) reading of minutes of previous meeting; (5) report of Directors; (6) report of committees; (7) election of the Executive Board (when appropriate); (8) unfinished and/or old business; (9) new business; (10) adjournment.

Section 4.12. Action by Association Members Without a Meeting. Any action which may be authorized or taken at a meeting of the Members may be authorized or taken without a meeting in a writing or writings signed by Members having a simple majority of the total voting power of all Members in good standing which writing(s) shall be filed with the records of the Association. Written notice of any action proposed to be taken by such written consent of Members shall be sent to all parties who are entitled to notices under the Declaration not less than seven (7) days prior to commencing the circulation of the action for written consent among the Members.

ARTICLE V EXECUTIVE BOARD

Section 5.1. General Powers. The business and affairs of the Association shall be managed by the Executive Board or by such committees as the Executive Board may establish pursuant to **Article VI** 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 (“**Director(s)**”) of the Executive Board, or to determine the qualifications, powers and duties, or terms of office of Directors. The Executive Board may, however, fill vacancies in its membership for the unexpired portion of any term.

Section 5.2. Number, Term and Qualification. There shall be initially three (3) Directors of the Executive Board. During the Declarant Control Period, the Executive Board shall have three (3) Directors, and Declarant may appoint and remove Directors; subject, however to the limitations contained in **Section 8.3** of the Declaration. A Director appointed by the Declarant need not be a Unit Owner. A Director elected by Unit Owners shall be a Unit Owner or a spouse of a Unit Owner except that if a Unit Owner is a corporation, partnership, joint venturer, or other entity, the Unit Owners may elect as a Director an officer, partner, joint venturer, or like individual affiliated with this Unit Owner. Directors shall serve without compensation.

Section 5.3. Election of Directors. The election of all Directors shall be by ballot. Persons receiving the highest number of votes (see **Section 4.10**) shall be elected. Cumulative voting is not permitted.

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

Section 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 Directors, though less than a quorum, or by the sole remaining Director; but a vacancy created by an increase in the authorized number of Directors shall be filled only by election at an Annual or substitute Annual Meeting or at a Special Meeting of Members called for that purpose or by unanimous consent of the Members without meeting. The Members may elect a Director at any time to fill any vacancy not filled by the Directors. As indicated in **Section 5.4**, the Membership shall have the first right to fill any vacancy created by the Membership’s removal of a Director.

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

Section 5.7. Compensation. No Director shall receive any compensation from the Association for acting as such. Provided, however, each Director 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 Director for unusual and extraordinary services rendered on the basis of quantum meruit. Further provided, each Director,

by assuming office, waives his/her right to institute suit against or make claim upon the Association for compensation based upon quantum meruit.

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

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

Section 5.10. Meetings of the Executive Board.

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

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

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

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

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

Section 5.11. Action Without Meeting. The Executive Board Directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by

obtaining the written approval of all the Directors of the Executive Board. 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.

Section 5.12. Presumption of Assent. A Director 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/her 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 Director who voted in favor of such action.

Section 5.13. Powers and Duties. The Executive Board shall have the authority to exercise all powers and duties of the Association necessary for the administration of the affairs of the Condominium except such powers and duties as by law or by the Condominium Documents may not be delegated by the Owners to the 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) 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 Units and Common Elements;

E. Opening of bank accounts on behalf of the Association and designating the signatories required therefor (provided, however, that two (2) Directors of the Executive Board must sign any checks (or approve any transfers) from any reserve account);

F. Obtaining insurance as required or permitted under the terms of the applicable provisions of the Declaration;

G. Keeping detailed, accurate records of the receipts and expenditures of the Association; obtaining annual audits of the financial records of the Association from the Association's public accountant; furnishing the annual reports; and furnishing current budgets. All books and records shall be kept in accordance with good and accepted accounting practices and the same shall be available for examination by all Owners or their duly authorized agents or attorneys, at convenient hours on working days;

H. Keeping a complete record of the minutes of all meetings of the Executive Board and Membership in which minute book shall be inserted actions taken by the Executive Board and/or Directors by consent without meeting;

I. Supervising all officers, agents and employees of the Association and insuring that their duties are properly performed;

J. Enforcing, on behalf of the Association, the obligations and assessments provided in the Declaration, including, but not limited to, the institution of civil actions to enforce payment of the Assessments as provided in the Declaration, the institution of actions to foreclose liens for such Assessments in accordance with the terms of N.C.G.S. §47C-3-116, the imposition of changes 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 such higher amount as is permitted by law, for violations of the Declaration, Bylaws and rules and regulations of the Association;

K. Making of repairs, additions, and improvements to or alterations or restoration of the Condominium 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;

L. Enforcing by any legal means or proceeding the provisions of the Articles of Incorporation of the Association, these Bylaws, the Declaration or the Rules and Regulations hereinafter promulgated governing use of the Common Elements;

M. 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;

N. Hiring attorneys and other professionals;

O. 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 an Individual Unit Assessment (as hereinafter defined) against such Owner for the costs of said maintenance or repair;

P. Entering any Unit when necessary in connection with any maintenance or construction for which the Executive Board is responsible; provided, such entry shall be made during reasonable hours with as little inconvenience to the Owner as practicable, and any damage caused thereby shall be repaired by the 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;

Q. 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 Director;

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

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.

Section 5.14. Independent Manager. The Executive Board may employ or enter into a management contract with any individual, firm or entity it deems appropriate and in the best interest of the Association concerning the routine management of the condominium. The Executive Board may delegate to such person, firm or entity (referred to in these Bylaws as “**Independent Manager**”) such duties and responsibilities in the management of the Condominium Property as the Executive Board deems appropriate. Provided, the Executive Board may not delegate to the Independent Manager the complete and total responsibilities and duties of the Association in violation of the Nonprofit Corporation Act of North Carolina or the North Carolina Condominium Act. Furthermore, in no event shall the Independent Manager be authorized to draw checks on or transfer funds from any reserve account maintained by the Association. 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 provided further that any such contract entered into during the Declarant Control Period shall be terminable as required by N.C.G.S. §47C-3-105. The Executive Board shall have authority to fix the reasonable compensation for the Independent Manager. The Independent Manager shall at all times be answerable to the Executive Board and subject to its direction.

ARTICLE VI COMMITTEES

Section 6.1. Creation. The Executive Board, by resolutions adopted by a majority of the number of Executive Board Directors 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 Directors deem appropriate and as set forth in the resolutions creating such committee until such time as the committee is terminated by the Executive Board. The Executive Board shall elect the members of each such committee. Provided, each committee shall have in its membership at least one (1) Director.

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

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

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

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

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

ARTICLE VII OFFICERS

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

Section 7.2. Election and Term. The officers of the Association shall be elected annually by the Executive Board. Such elections shall be held at the first meeting of the 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.

Section 7.3. Resignation and Removal. The Executive Board may remove any officer at any time, with or without cause, by a majority vote of the Directors. Any officer may resign at any time by giving written notice to the Executive Board, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 7.4. Vacancy. A vacancy in any office may be filled by appointment of the Executive Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he or she replaces.

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

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

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

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

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

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

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

Section 7.12. Indemnification. To the extent permitted by the provisions of the North Carolina Nonprofit Corporation Act in effect at the applicable times, each officer is hereby indemnified by the Association with respect to any liability and expense of litigation arising out

of his activities as an officer. Such indemnity shall be subject to approval by the Members only when such approval is required by said Act.

ARTICLE VIII OPERATION OF THE CONDOMINIUM PROPERTY

Section 8.1. Determination of Common Expenses; Types of Assessments. 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 accordance with the procedure set forth in this **Article VIII**, but subject to the terms and limitations set forth in 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 as well as the costs of all common utilities (that are not individually metered with respect to each Unit). 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. Each Owner shall be required to pay an amount ("**Common Assessment**") equal to its Base Assessment plus an amount equal to its share of the Common Expenses (in excess of the aggregate amount of the Base Assessments) based upon such Owner's proportionate share of the Common Elements Interests.

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

In addition to the Common Assessment and the Special Assessment, the Association, acting through the Executive Board may assess individual Unit Owners (“**Individual Unit Assessment**”) for: (i) any costs incurred by the Association by reason of the Owner’s failure to maintain its Unit, if the Association takes actions to do so as authorized herein; (ii) any costs incurred by the Association as a result of such Unit Owner’s (or its tenant’s, agent’s, contractor’s, family member’s or invitee’s) negligence, willful misconduct, or default under its obligations under the Declaration, these Bylaws, or the Rules and Regulations, including any costs for maintenance or repair and reasonable attorney’s fees.

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

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

No Owner shall be liable for the payment of any part of the Common Expenses assessed against his Unit subsequent to a sale, transfer or other conveyance by him (made in accordance with the provisions of the Declaration and applicable restrictions of record) of such Unit. A purchaser of a Unit shall be jointly and severally liable with the seller for the payment of Common Expenses assessed against such Unit prior to the acquisition by the purchaser of such Unit without prejudice to the purchaser’s rights to recover from the seller the amounts paid by the purchaser therefor.

Section 8.3. Collection of Assessments. The Executive Board shall take prompt action to collect any Assessments which remain unpaid for more than thirty (30) days from the due date for payment thereof. The Executive Board shall notify any Mortgagee holding a Mortgage on a Unit if any Assessments charged to such Unit remain unpaid for more than thirty (30) days from the due date for payment thereof and in any other case where the Owner of such Unit is in default with respect to the performance of any other obligation hereunder for a period in excess of thirty (30) days.

Section 8.4. Default in Payment of Assessments. In the event of default by any Owner in paying to the Executive Board the Assessments as provided above, such Owner shall be

obligated to pay interest on such amount of said Assessments 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 Association in any proceeding brought to collect such unpaid Assessments. In addition, the Executive Board shall have the authority to levy a late charge on any Assessment, or installment thereof, not paid within fifteen (15) days after its due date, in the amount of four percent (4%) of the overdue Assessment.

The Executive Board shall have the right and duty to attempt to recover any Assessment, or installment thereof, which remains unpaid, 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 Assessments, 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 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 Assessments, and installments thereof, with respect to such Owner's Unit that are to fall due during the then current fiscal year of the Association to be immediately due and payable.

Section 8.5. Lien and Personal Obligations. All 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 for Mecklenburg County, North Carolina, provided such notice of lien shall not be recorded until such sums assessed remain unpaid for a period of more than thirty (30) days after the same shall become due. Such notice of lien shall also secure all Assessments against the Unit becoming due thereafter until the lien has been satisfied.

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

Section 8.6. Foreclosure of Liens for Unpaid Common Expenses. In any action brought by the Executive Board to foreclose on a Unit because of unpaid 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.

Section 8.7. Abatement and Enjoyment of Violations by Owners. The violation of any rule or regulation adopted by the Executive Board or the breach of any Bylaw contained herein, or the breach of any provision of the Declaration, shall give the 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; provided, however, that the Executive Board shall be obligated to institute judicial proceedings before any items of construction can be altered or demolished; (b) to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such breach at the expense of the defaulting Owner; and/or (c) after notice and opportunity to be heard, to levy reasonable fines not to exceed One Hundred Fifty and No/100 Dollars (\$150.00) or such higher amount as may be allowed by law.

Section 8.8. Additions, Alterations or Improvements by Owners. No Owner shall make any structural addition, alteration, or improvement in or to his Unit or to any Limited Common Element, or any change in the exterior appearance thereof, except in accordance with N.C.G.S. §47C-2-111 and in accordance with the terms of the Declaration. Likewise, any maintenance, repair, alteration or replacement of any Limited Common Element shall not be performed without the prior written approval of the Executive Board (or, if authorized by the Executive Board, the Independent Manager). Such consent may be conditioned, among other things, upon the approval of the plans for the proposed work, the contractor performing the work (as well as such contractor's insurance coverage), and the manner in which the work is performed (including the time such work is performed). In no event shall the Executive Board (or Independent Manager) be responsible to the Unit Owner requesting approval for faulty design, materials or workmanship or for other claims arising out of any approval hereunder.

Section 8.9. Use of Common Elements. An Owner shall not interfere with the use of the Common Elements by the remaining Owners and their families, employees and invitees.

Section 8.10. 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 inspection of or for the purpose of correcting any condition originating in his Unit and threatening another Unit or the Common Elements, or for the purpose of performing installations, alterations or repairs to the mechanical or electrical equipment or other Common Elements, or for the purpose of performing installations, alterations or repairs to the mechanical or electrical equipment or other Common Elements in or adjoining his Unit; provided, however, such requests for entry (except in the case of emergencies where no request shall be required) are made in advance and any such entry is at a time reasonably convenient to the Owner. In the case of an emergency, such right of entry shall be immediate whether the Owner is present at the time or not.

Section 8.11. 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. The Executive Board shall have the right to levy a fixed additional monthly assessment, as an Individual Unit Assessment, against classes of Units that will consume disproportionate shares of certain utilities. Additionally, the Executive Board may elect to separately meter the Units with respect to certain utilities and to assess each Unit based upon its usage of such utilities.

Section 8.12. Rules and Regulations. Rules and regulations concerning the use of the Units and the Common Elements shall be promulgated and amended by the Executive Board. 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.

ARTICLE IX AMENDMENTS

Subject to the provisions of **Article XIV** of the Declaration, these Bylaws may be amended at any time by an instrument in writing signed and acknowledged by Owners holding at least sixty-seven percent (67%) of the votes in the Association, which instrument shall be effective only upon recordation in the Office of the Register of Deeds of Mecklenburg County, North Carolina. Provided, however, where a larger vote in the Association is required for the Association to take or refrain from taking a specific action, as set forth in the Condominium Documents, no amendment of these Bylaws shall be made unless and until the Owners holding such larger percentage of the vote in the Association execute said amending instrument. All persons or entities who own or hereafter acquire any interest in the Condominium 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. Notwithstanding the foregoing, any amendment which would have the effect of prohibiting a use of the Office Unit which would otherwise be permitted prior to such amendment, or which would materially and negatively impact such use, shall require the written consent of each of the Owner of the Office Unit and its respective Mortgagee.

ARTICLE X MISCELLANEOUS

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

Section 10.2. Successors Bound. The rights, privileges, duties and responsibilities set forth in the Condominium Documents, as amended from time to time, shall run with the

ownership of the Condominium Property and shall be binding upon all persons who own or hereafter acquire any interest in the Condominium Property.

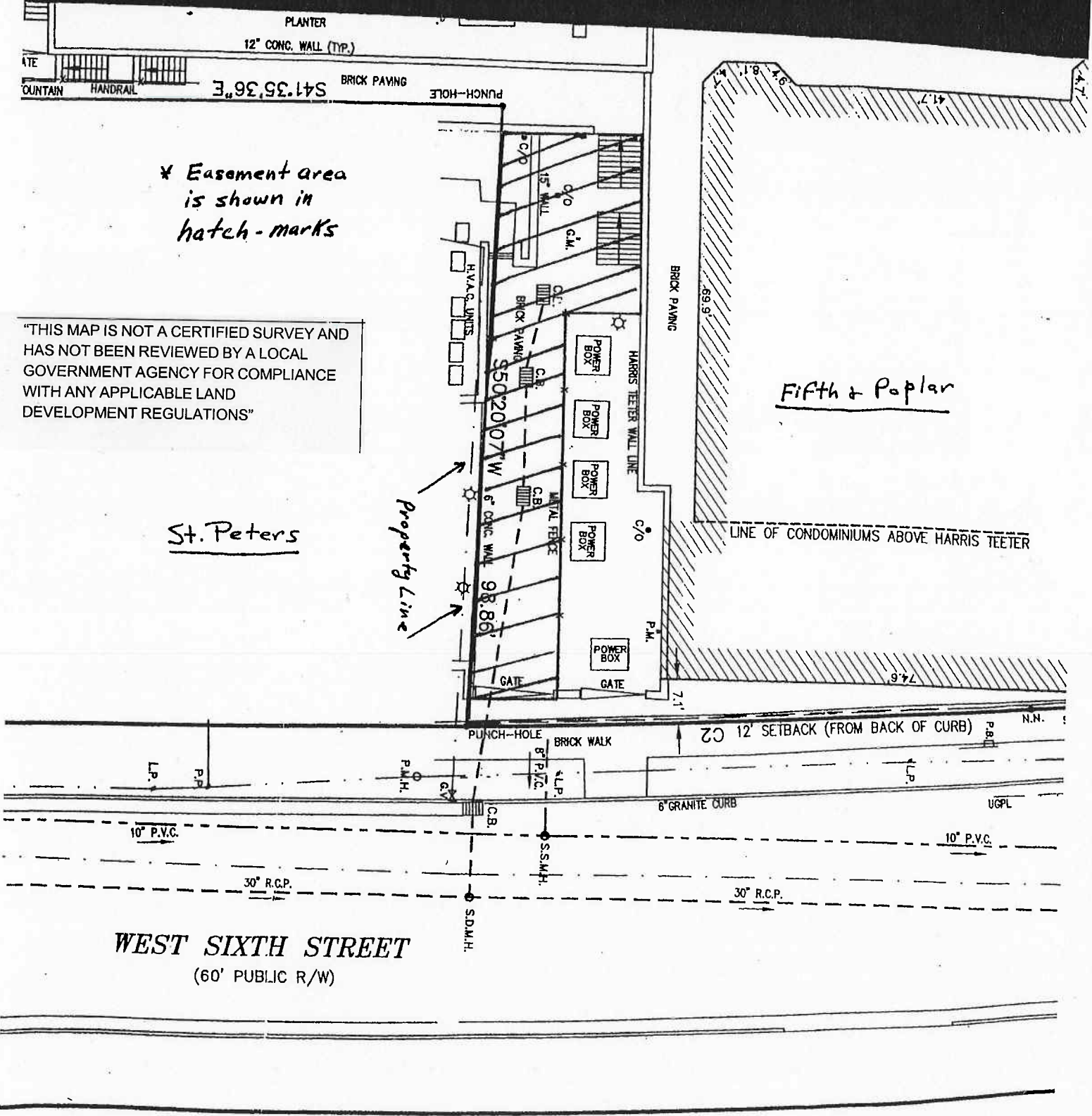
Section 10.3. Gender, Singular, Plural. Whenever the context so permits, the use of the singular or plural shall be interchangeable in meaning and the use of any gender shall be deemed to include all genders (including entities, as applicable).

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

EXHIBIT

D

TEBARRER



* Easement area is shown in hatch-marks

"THIS MAP IS NOT A CERTIFIED SURVEY AND HAS NOT BEEN REVIEWED BY A LOCAL GOVERNMENT AGENCY FOR COMPLIANCE WITH ANY APPLICABLE LAND DEVELOPMENT REGULATIONS"

St. Peters

Fifth & Poplar

Property Line

LINE OF CONDOMINIUMS ABOVE HARRIS TEETER

WEST SIXTH STREET
(60' PUBLIC R/W)



JUDITH A. GIBSON
REGISTER OF DEEDS, MECKLENBURG
COUNTY & COURTS OFFICE BUILDING
720 EAST FOURTH STREET
CHARLOTTE, NC 28202

PLEASE RETAIN YELLOW TRAILER PAGE

It is part of the recorded document, and must be submitted with original for re-recording
and/or cancellation.

Filed For Registration: 08/11/2005 10:53 AM
Book: RE 19170 Page: 897-967
Document No.: 2005153880
DEC/U 71 PGS \$221.00

Recorder: TERESITA BYRUM

State of North Carolina, County of Mecklenburg

The foregoing certificate of JUDITH M. ROLLER , LINDA J. PETRANEK , JAMES SADOCK JR Notaries are
certified to be correct. This 11TH of August 2005

JUDITH A. GIBSON, REGISTER OF DEEDS By: _____
Deputy/Assistant Register of Deeds

Teresita Byrum



2005153880