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WILLIE L. LOVINGTON
REGISTER OF DEEDS

NORTH CAROLINA
DURHAM COUNTY

DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS FOR KEYSTONE
TECHNOLOGY PARK

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR
KEYSTONE TECHNOLOGY PARK (the "Declaration" or "Protective Covenants"), made on
APRIL 10, 1997 by DAVIS DRIVE ASSOCIATES, LTD. LIMITED
PARTNERSHIP, a North Carolina Limited Partnership, (the "Declarant")

Durham County, NC 357
Laura H. Ridick, Register of Deeds

RECITALS

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Declarant currently owns all of that certain property located in Durham County, North Carolina, described in Exhibit A attached (the "Property"). The Declarant has agreed to subject the Property to this Declaration. The Property is made subject to the Protective Covenants for the purpose of insuring the best use and most appropriate development and improvement of each Lot; to protect the Owners against such improper use of surrounding Lots as will depreciate the value of the Property; to preserve, so far as practicable, the natural beauty of the Property; to guard against the erection of poorly designed or proportioned structures and structures built of improper and unsuitable materials; to insure the highest and best development of the Property; to encourage and secure the erection of attractive buildings with appropriate locations on the Lots; to secure and maintain proper set backs from streets and adequate free spaces between structures; and in general to provide adequately for a high type and quality of improvements in the Property and thereby to enhance the values of investments made by the Owners. THEREFORE, the parties declare that all of the Property together with such additions subsequently made shall be held, transferred and used subject to the Protective Covenants which shall run with the land and be binding on all parties having any right, title, or interest in the Property or any part thereof, their heirs, successors, and assigns and shall inure to the benefit of each Owner thereof.

1. DEFINITIONS.

- 1.1. "Additional Properties" means any real property added to or annexed to the Property pursuant to the terms of this Declaration.
- 1.2. "Adjoining Property" means the real property, or any portion thereof, described on Exhibit B attached.
- 1.3. "Annual Assessments" means the assessments described in Section 6.4.
- 1.4. "Architectural Committee" means the committee which may be appointed by the Association's Board to approve plans and specifications for Improvements to be constructed

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within the Development.

- 1.5. "**Articles**" means the Association's Articles of Incorporation.
- 1.6. "**Assessment**" means an owner's share of the Common Expenses or other charges from time to time assessed against an Owner by the Association pursuant to the terms of this Declaration; including, but not limited to the Annual Assessments and the Special Assessments.
- 1.7. "**Association**" means Keystone Technology Park Owners Association, Inc., a non-profit North Carolina corporation.
- 1.8. "**Association's Board**" means the Board of Directors for the Association.
- 1.9. "**Budget**" means the budget adopted by the Association pursuant to Section 6.4.2.
- 1.10. "**Bylaws**" means the Association's Bylaws.
- 1.11. "**Common Area**" means all real property owned by the Association and the easements granted thereto for the common use and enjoyment of the Owners. The Common Area to be owned by the Association shall be described in deeds to the Association and designated as such on each recorded plat of the Property. Common areas shall also mean all streets (including the Private Streets), parking areas, water lines, sewer lines, sewer easements, storm water ponds, and water retention and detention devices located within the Property which are not otherwise dedicated to a governmental entity or serving only a single Lot.
- 1.12. "**Common Expenses**" means all expenditures lawfully made or incurred by or on behalf of the Association and as otherwise described in Section 6.2.
- 1.13. "**County**" means the county or counties in which the Property is located.
- 1.14. "**Declarant**" or "**Developer**" means Davis Drive Associates, Ltd. Limited Partnership and its successors and assigns to which Declarant has expressly transferred its rights as Declarant.
- 1.15. "**Declarant Rights**" all rights of control and/or approval granted to Declarant, as Declarant, under this Declaration, including, but not limited to, the rights granted under Articles 3, 5, 8 and 9.
- 1.16. "**Development**" means the Property and Additional Properties.
- 1.17. "**Foreclosure**" means, without limitation, the judicial foreclosure of a Mortgage or the conveyance of the secured property by a deed in lieu of foreclosure of a Mortgage.

1.18. **"Improvements"** means any structure of any type or kind, including, but not limited to buildings, outbuildings, parking areas, loading areas, screening walls, retaining walls, hedges, mass plantings, lawns, sidewalks, poles, signs, and utility lines and facilities.

1.19. **"Lot"** means any plot of land described by a metes and bounds description shown upon any recorded subdivision plat of the Property with the exception of the Common Area.

1.20. **"Member"** means every Person who holds membership in the Association.

1.21. **"Mortgage"** means a mortgage, deed of trust, installment land sales contract, security agreement or other similar security instrument granting, creating or conveying a first lien upon a Lot.

1.22. **"Mortgagee"** means the holder of a Mortgage.

1.23. **"Owner"** means the record owner, whether one or more Persons, of a fee simple title to any Lot, except those having an interest merely as security for the performance of an obligation, and will include Declarant for so long as it owns one or more Lots.

1.24. **"Person"** means an individual, a trust, an estate, or a domestic corporation, a foreign corporation, a professional corporation, a partnership, a limited partnership, a limited liability company, a foreign limited liability company, an unincorporated association, or other entity.

1.25. **"Private Streets"** means the streets designated as private on the recorded plat(s) for the Development. The Private Streets have not been accepted for maintenance by the Zoning Entity. Maintenance of the Private Streets shall be the Association's sole responsibility.

1.26. **"Property"** is as defined above, but shall also include any Additional Properties once annexed to the Property pursuant to the terms of this Agreement.

1.27. **"Special Assessments"** means the assessments described in Section 6.5.

1.28. **"Zoning Entity"** means the governmental entity having zoning jurisdiction over the Property as of the date of determination.

2. **PROPERTY RIGHTS.**

2.1. **Title the Common Area:** The Declarant shall, from time to time, and subject to matters of record, convey to the Association fee simple title in the Common Area and/or convey to or reserve easements in the Association. Area

2.2. **Owners' Easement of Enjoyment:** Every Owner shall have a right and easement of use and enjoyment in and to the Common Area (the "Owners' Easement"), including specifically an easement for access, ingress and egress from and to public streets and walkways. The Owners' Easement shall be appurtenant to and shall pass with the title to every Lot subject to the following provisions:

A. **Dedication and Transfer of Common Area:** Subject to all applicable governmental ordinances, the Association's right to dedicate or transfer all or any part of the Common Area to any public agency, authority, utility, or non-profit corporation. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of the Members agreeing to the dedication or transfer has been recorded in the County registry. Any dedication or transfer shall be made subject to that portion of the Owners' Easement providing for access, ingress and egress to public streets and walkways.

B. **Borrowing for Improvements:** The Association's right, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Area and facilities and to mortgage those properties to secure those borrowings; provided the mortgage is subordinate to the Owners' Easement.

2.3. **Delegation of Use:** Any Owner may delegate its right of enjoyment to the Common Area and facilities to its tenants who occupy its Lot.

3. DECLARANT RIGHTS.

3.1. **Development Rights.** The Declarant reserves the following development rights: (i) to add real estate to the Property in accordance with Section 5.2 of this Declaration; (ii) to add Common Areas; and (iii) prior to a conveyance of that real estate to an Owner, to relocate Lots within or withdraw real estate from the Property.

3.2. **Repurchase Rights.** If, after the expiration of thirteen (13) months from the date of execution of a warranty deed by Developer conveying any Lot, the grantee or its assigns shall not have substantially commenced the construction of a permanent building on that Lot, the Developer shall have an option to repurchase the Lot for the original price. This option to repurchase must be exercised in writing within ninety (90) days after the expiration of the thirteen (13) month period specified above. If exercised, closing of the repurchase shall take place within sixty (60) days of the exercise of the option at a location designated by the Developer. All costs of recording, transfer taxes, documentary stamps and all other excise taxes will be paid for by the grantee or assigns.

3.3. **Termination.** Until the earlier of:

- (a) December 31, 2006,

- (b) The Declarant or its successors no longer owns any of the Property or Adjoining Property, or
- (c) The Declarant transfers, in writing, the Declarant Rights to the Association, (as applicable, the "Rights Termination Date"),

the Declarant shall exercise any and all Declarant Rights. Until that time, no amendment to or modification of the Declarant Rights may be made without the Declarant's prior, written consent, which it may arbitrarily withhold. After the Rights Termination Date any and all Declarant Rights shall be exercised by the Architectural Committee and/or Association's Board as designated by the Association. If at any time the Declarant Rights have expired without an assignment by Declarant, the Declarant will be deemed to have assigned the Declarant Rights to the Association.

3.4 **Assignment.** Declarant reserves the right to assign the Declarant Rights to any Person which acquires title to all or any portion of the Property, the Additional Properties, and/or the Adjoining Property. The assignment shall not be effective unless it is in writing (specifically describing the Declarant Rights being assigned), signed by the Declarant, is accepted, in writing, by the assignee, and recorded with the County registry.

3.5 **Delegation.** The Developer may from time to time delegate any or all of its Declarant Rights to such agents as it may nominate, on such terms as Declarant chooses.

4. **MEMBERSHIP AND VOTING RIGHTS.** Ownership of a Lot shall be the sole qualification for membership in the Association. The Association's Board may make reasonable rules relating to the proof of ownership of a Lot. Membership shall be appurtenant to and may not be separated from ownership of any Lot. Each Member shall be entitled to one (1) vote for each Lot owned. When more than one Person holds an interest in any one Lot, all such Persons shall be Members. The vote of that Lot shall be exercised as those Persons, among themselves, determine, but in no event shall more than one (1) vote be cast with respect to any Lot. Fractional voting is prohibited.

5. **ANNEXATION OF ADDITIONAL PROPERTIES.**

5.1. **Annexation by Members:** Except as provided in 5.2, Additional Properties may be added and annexed to the Property only if two-thirds (2/3) of the Members approve the annexation.

5.2. **Annexation by Declarant:** The Declarant may, from time to time, annex Additional Properties to the Property without the consent of the Members, if the Declarant should develop an additional tract or tracts of land consisting of any property contiguous to the Property, including the Adjoining Property. The annexation will be accomplished by recording with the appropriate Register of Deeds a Declaration of Annexation, duly executed by Declarant, describing the lands annexed and incorporating the provisions of this Declaration. No other

action or consent shall be necessary. Subsequent to recordation of the Declaration of Annexation, the Declarant shall deliver to the Association a copy of the recorded Declaration of Annexation and one or more deeds conveying any property that will be designated as Common Area within the Additional Properties as such designated property is developed. The Association shall provide each Member with copies of these documents provided by the Declarant.

5.3. **Governmental Approval:** Notwithstanding the language of Sections 5.1 and 5.2 to the contrary, any addition or annexation of Additional Properties must, to the extent legally required, be approved by the Zoning Entity.

6. **COVENANT FOR MAINTENANCE ASSESSMENTS.**

6.1. **Lien of Assessments:**

6.1.1. Each Owner of any Lot by acceptance of a deed therefor (whether or not it shall be so expressed in such deed) is deemed to covenant and agree to pay to the Association the Assessments. In addition to the Annual Assessments and the Special Assessments, the Association shall have the authority, through the Association's Board, to establish, fix and levy an individual assessment on any Lot to secure the liability of that Owner to the Association arising from Owner's breach of any of the provisions of this Declaration.

6.1.2. The Assessments shall be set on a calendar year basis (the "Annual Assessment Period") and may be collected on a monthly, quarterly or yearly basis as determined by the Association's Board. Assessments, together with interest thereon and the costs of collection (including reasonable attorney fees), shall be a lien on the applicable Lot, continuing until paid in full, as well as a personal obligation of the person who was the Owner of the Lot at the time when the Assessment fell due. While any unpaid amounts shall remain a lien on the applicable Lot, the personal obligation shall not pass to that Owner's successors in title unless expressly assumed by the successor.

6.2. **Purpose of Assessments.** The Assessments shall be used exclusively for funding all costs, expenses, damages, repairs and liabilities reasonably incurred by the Association in fulfilling the purposes of these Protective Covenants (together, the "Common Expenses"). "Common Expenses" shall include, but not be limited to, taxes and assessments, liability insurance, Association operational costs, management fees, maintenance costs (including those for the Common Areas, the Private Streets, and any easements granted to the Association), the landscaped areas of the public rights-of-way in the Development, and the fire protection easements, and reserves for these purposes.

6.3. **Notice/Due Dates.** Written notice of a Special Assessment or a change in the Annual Assessment shall be sent to every Owner subject thereto at least fifteen (15) days in advance of its due date. The due date for an Assessment shall be established by the Board of Directors, in the case of an Annual Assessment, or by the Members, in the case of a Special Assessment.

6.4. Annual Assessments.

6.4.1. Annual Assessments shall be charged to each Owner of a Lot and shall equal that Owner's Proportionate Share (as defined below) of the Budget for the applicable Annual Assessment Period. An Owner's "Proportionate Share" shall be a fraction, the numerator being the gross acreage within the Owner's Lot and the denominator being the total gross acreage for all of the Lots within the Property.

6.4.2. Starting in 1998, on or before January 1st of each year, the Association's Board shall adopt the Budget. The "Budget" shall include all anticipated revenues (including revenues from Annual Assessments to be charged in the next Annual Assessment Period - the "Anticipated Annual Assessments"), the anticipated Common Expenses for the Association for that same period, and any surplus or deficit in the Annual Assessments from the prior years. The Anticipated Annual Assessments for the Budget approved by the Association's Board shall be the basis for calculating the Annual Assessment to be charged for the upcoming Annual Assessment Period.

6.4.3. Notwithstanding the above to the contrary, an annual increase in the Anticipated Annual Assessments shall not be more than twenty (20%) percent except by approval by two-thirds (2/3) of the votes of the Members who are voting in person or by proxy at a meeting duly called for this purpose.

6.4.4. Declarant may, but shall not be obligated to, loan the Association money to the extent that Annual Assessments paid by the Owners are inadequate. This advance shall be to the Association and on terms generally available to Declarant from its lending institution. Declarant, if also an Owner, shall also be responsible for the payment of Assessments as otherwise required by this Article.

6.4.5. The Annual Assessments shall commence as to a Lot on the first day of the seventh month following the date the plat creating the Lot is recorded with the County registry. The first Annual Assessment shall be adjusted according to the number of months remaining in the calendar year after that commencement date.

6.5. Special Assessments: In addition to the Annual Assessments, the Association may, from time to time, levy a special assessment (the "Special Assessment") for the purpose of defraying in whole or in part the cost of any unexpected expense. A Special Assessment shall require the assent of two-thirds (2/3) of the votes of the Members. An Owner's Proportionate Share of each Special Assessment shall be calculated in the same manner as its share of Annual Assessments is calculated. A Special Assessment shall be collected from those Lots which exist as of the date the Special Assessment is approved by the Members.

6.6. **Non-Payment of Assessment Remedies of the Association.** Any Assessments which are not paid when due shall be delinquent. The Association shall have the option to declare the entire outstanding balance of any Assessment immediately due and payable if any installment thereof becomes delinquent. If the Assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the greater of the rate set by the Association's Board or twelve percent (12%) per annum. The Association may bring an action at law against the responsible Owner and/or foreclose the lien against the applicable Lot. Interest, costs, and reasonable attorney fees of any such action shall be added to the amount of the delinquent Assessment. Each Owner, by the acceptance of a deed to a Lot, expressly vests in the Association, its agents or assigns, the right and power to bring all actions against the Owner, personally, for the collection of all debts due by it to the Association and to enforce the lien by all methods available for the enforcement of such liens, including foreclosure by an action brought in the name of the Association in a like manner as a mortgage or a deed of trust lien on real property. Each Owner also expressly grants to the Association a power of sale in connection with foreclosure of a lien for Assessments. The lien provided for in this Article shall be in favor of the Association acting on behalf of the Owners, which shall have the power to bid in at foreclosure and to acquire and hold, lease, mortgage and convey the foreclosed Lot. No Owner may waive or otherwise escape liability for Assessments by non-use of the Common Area or abandonment of his Lot. The Association shall, upon demand at any time, furnish a certificate in writing signed by an officer of the Association setting forth whether the Assessments on a specified Lot have been paid. A reasonable charge may be made by the Board for the issuance of these certificates. These certificates shall be conclusive evidence of payment of any Assessment as to third parties acting in reliance on the statement.

6.7. **Subordination of the Lien.** The lien of the Assessments shall be subordinated to the lien of the Mortgage on a Lot. Provided the Association is given prior written notice of such, the sale or transfer of a Lot pursuant to a Foreclosure shall extinguish the lien of the delinquent Assessments for that Lot. Otherwise, the sale or transfer of a Lot shall not release or otherwise affect the lien of delinquent Assessments. In no event, however, shall any sale or transfer, whether pursuant to a Foreclosure or not, relieve the prior Owner from personal liability for the delinquent Assessments or the Lot from liability for any Assessments subsequently becoming due or from the lien therefor.

6.8. **Exempt Property.** All Lots dedicated to and accepted by a local public authority and the Common Area shall be exempt from the Assessments.

6.9. **Insurance.** The Association shall obtain a broad-form public liability policy covering all Common Area and all damage or injury caused by the negligence of the Association or any of its agents. This insurance may include coverage against vandalism. Premiums for this insurance shall be included in the Common Expenses.

6.10. **Reporting on Use of Funds.** The Association shall provide an annual detailed accounting report to its Members regarding the use of the Assessments by the Association

(including a schedule of amounts paid and collected). Any Member shall have the right, upon fifteen (15) days prior written notice to the Association to inspect and review all records thereof as to the Assessments and this Declaration, and to conduct any audit of the records of the Association by such Member or by a certified public accountant.

7. EASEMENTS.

7.1. Blanket Easement.

7.1.1. A blanket easement upon, across, over, and under all of the Common Area is reserved for ingress and egress, installation, replacing, repairing and maintaining all utilities, including, but not limited to water, sewer, gas, telephones, and electricity. Notwithstanding such, no sewers, electrical lines, water lines, or other utility equipment or facilities may be installed or relocated in the Common Area except as approved by the Declarant. Should any utility furnishing a service covered by this general easement request a specific easement by separate recordable documents, Declarant will have the right and authority to grant such easement. The easement provided for in this Article shall in no way affect other recorded easements on the Property. An easement is also granted to all police, fire protection, garbage, mail delivery, ambulance, and all similar persons to enter upon the streets and Common Area in the performance of their duties.

7.1.2. The Declarant reserves unto itself, its successors and assigns, a perpetual, alienable, and releasable easement and right, on, over and under the Property to erect, maintain, and use electric, community antenna television, and telephone poles, wires, cables, conduits, drainage ways, sewers, water mains, and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, sewer, water drainage, or other public conveniences or utilities on, in or over those portions of the Property as may be reasonably required for utility line purposes. No such utility easement shall, however, be applicable to any portion of the Property as may: (a) have been used prior to the installation of such utilities for construction of Improvements whose plans were approved pursuant to these covenants by the Declarant, or (b) such portion of the Property as may be designated as the site for Improvements on a plot plan which has been filed with the Declarant and which has been approved in writing by the Declarant. These easements and rights expressly include the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or to take any other similar action reasonably necessary to provide economical and safe utility installation to maintain reasonable standards of health, safety, and appearance. Such rights may be exercised by any licensee of the Declarant. This reservation shall not create any obligation on the part of the Declarant to provide or maintain any such utility or service. Whenever possible, utilities within the Property, whether located within the Common Area or not, shall be installed and maintained underground. Declarant shall give each affected Owner thirty (30) days' advance written notice each time it plans to exercise its rights pursuant to this Section 7.1.2.

7.2. **Governmental Easements.** Declarant reserves an easement for the benefit of the appropriate governmental entity over all Common Area and over an area thirty feet (30') behind the curb line of any street or roadway in the Property existing now or in the future for the setting, removal, and reading of water meters, the maintenance and replacement of water, sewage, and drainage facilities and the collection of garbage.

7.3. **Drainage Easement.** For a period of twenty (20) years from the date of this Declaration, the Declarant reserves an easement over and under the Development to maintain and to correct drainage or surface water runoff in order to maintain reasonable standards of health, safety and appearance. Such right expressly includes the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or take any other similar action reasonably necessary. After such action has been completed, the Declarant shall restore the affected property to its original condition to the extent practicable. Declarant shall give each affected Owner thirty (30) days' advance written notice of Declarant's intent each time it plans to exercise its rights pursuant to this Subsection 7.3.

7.4. **Access Easement.** The Declarant reserves, in the name and for the benefit of the Association, a perpetual, non-exclusive easement over the areas of the Property consisting of the strips of land fifty feet (50') wide along the interior of, and parallel to, each Lot's boundary lines (the "Access Easement Area"). This easement over the Access Easement Area shall be for the following purposes:

- (a) to provide ingress, egress, and regress from the Lots to dedicated right-of-way for the Owners and their tenants and their respective employees and invitees;
- (b) the installation, inspection, replacement, repair, operation, and maintenance by the Declarant and/or Association of the Private Streets and related facilities and landscaping; and
- (c) the installation, inspection, replacement, repair, operation, and maintenance by the Declarant and/or Association of one or more signs identifying the Development and related facilities and landscaping.

The initial installation of the Private Streets, signage, and the related facilities and landscaping shall be the Declarant's sole responsibility and expense. After the initial installation, the repair, replacement and maintenance obligations for those items shall be the Association's sole responsibility and expense. Only those Improvements installed by Declarant or otherwise approved by Declarant, in writing, shall be located within any of the Access Easement Area.

8. LAND USE REGULATIONS.

8.1. Uses.

8.1.1. The Property shall be used only for those purposes permitted by this Declaration. Except as further restricted below, the Property and each Lot may be used as permitted under the I-2 zoning classification as defined under the Zoning Entity's zoning ordinances and

associated regulations as of the date of this Declaration (the "Zoning Code"); excluding, however, those uses otherwise permitted which require a special exception or permit under the Zoning Code. Notwithstanding anything in this Declaration or the Zoning Code to the contrary, no portion of any of the Property or any Lot shall be used for any of the following purposes without the Declarant's prior written consent, which it may arbitrarily withhold:

- Adult Establishments
- Artist Galleries or Studios
- Commercial Laundries
- Convenience Stores
- Dinner Theaters
- Funeral Homes
- Government Facilities (Jails, etc.)
- Heavy Equipment Sales/Service
- Heliports
- Hospitals
- Junkyards
- Manufactured Home Sales
- Medical Clinics
- Parking (as an independent use)
- Pilot Plants
- Public Utility Facilities
- Recreation Vehicle Sales
- Residential
- Service Stations
- Stadiums and Arenas
- Temporary Outdoor Events
- Towers (transmitting/receiving)
- Treatment Plants (water/sewer)
- Vehicle Sales and Rentals
- Airports
- Auditoriums
- Contractors
- Crematoriums
- Food Processing
- Golf Course
- Health Club & Athletic Facilities
- Heavy Equipment Storage
- Hellstops
- Hotels & Motels
- Kennels
- Manufacturing
- Movie Theaters
- Passenger Transportation Terminals
- Public Parks and Playgrounds
- Recreation Facilities
- Repair Shops
- Restaurant
- Slaughter Plants
- Storage Yards
- Theaters
- Travel Trailer Sales
- Vehicle Repair Shops
- Veterinary Clinics

8.1.2. Uses which are not specifically authorized by this Declaration may be permitted in a specific case if operational plans and specifications describing the proposed use, in such detail as Declarant requires, are submitted to and approved in writing by Declarant. Approval or disapproval of those operational plans and specifications shall be based, in part, upon the effect of the proposed uses on other portions of the Property and/or their occupants. If Declarant fails either to approve or to disapprove the operational plans and specifications within thirty (30) days after their submission, they shall be deemed disapproved. Neither Developer nor its successors or assigns shall be liable in damages to anyone submitting operational plans and specifications to them for approval, or to any owner or occupant of any portion of the Property, by reason of mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve any such operational plans and specifications.

8.1.3. Notwithstanding the fact that a use may be otherwise permitted or approved under this Section 8.1, the Owner of any Property shall nevertheless be required to comply with all other restrictions of this Declaration, including, but not limited to the regulations set out in this Article 8.

8.2. **Parking.** Prior to the occupancy of any Improvement on the Property by Owner or its tenants, each Owner shall provide adequate vehicular circulation areas and parking areas. No parking will be permitted on the streets in the Development. Each Owner shall provide adequate off-street parking on its Lot to accommodate all parking needs for employees', visitors' and company vehicles. If parking requirements increase as a result of a change in use or number of employees, additional off-street parking shall be provided by Owner to satisfy the intent of this Section. All driveways and parking areas shall be paved and curbed in accordance with architectural, aesthetic, and other reasonable standards established by the Declarant.

8.3. **Temporary Structures.** No tents, trailers, vans, shacks, tanks or temporary or accessory buildings or structures shall be erected or permitted to remain within the Property except those needed during construction. During construction, all temporary structures shall be located as inconspicuously as possible. After the completion of construction of the main structure and issuance of a certificate of occupancy, all such tents, trailers, vans, shacks, tanks, temporary and accessory buildings or structures shall be immediately removed. Underground storage tanks shall be permitted only upon delivery to the Declarant and Association of such environmental indemnifications as may be deemed appropriate by Declarant.

8.4. **Construction Debris.** At all times during the course of construction of Improvements and landscaping upon any Lot, the Owner shall cause all construction debris of all kinds (including, but not limited to, in the case of streets, dirt and mud) to be promptly removed from the Property and adjoining Property and streets. When such construction is substantially completed, the Owner shall cause all debris, equipment and excess, surplus or remaining construction materials, of whatever nature, to be promptly cleared and removed from the Lot and all adjacent Property and streets.

8.5. **Excavation.** Only those excavations made in connection with the construction of Improvements constructed pursuant to approved Plans are permitted. Upon completion of construction all exposed openings shall be backfilled and disturbed ground shall be graded and landscaped.

8.6. **Sewage Disposal Connections.** Prior to the occupancy of any Improvement within the Property by an Owner or its tenants, proper and suitable provisions shall be made for the disposal of sewage by connection with the sewer mains of the Zoning Entity's public sewer system or to a system approved by the Zoning Entity. In the event connection to such a system is not feasible at the time a certificate of occupancy or completion is issued, Declarant may, but is not obligated to, approve in writing use of a temporary alternate sewage disposal system until connection with the Zoning Entity's public sewer system or a system approved by the Zoning

Entity is feasible. Except as provided above, no individual sewage disposal system shall be permitted on any portion of the Property.

8.7. **Water Supply Connections.** Prior to the occupancy of any Improvement within the Property by an Owner or its tenants, proper and suitable provisions for water shall be made by connection with the water lines of the Zoning Entity. In the event connection to such a water supply system is not feasible at the time a certificate of occupancy or completion is issued, Declarant may, but is not obligated to, approve in writing use of a temporary alternate water supply system until connection with the Zoning Entity water lines is feasible. Except as provided above, no individual water supply system shall be permitted within any portion of the Property. Prior to installation, any individual water supply system must be approved by Declarant and applicable governmental authority.

8.8. **Utility Devices.** No lines, wires, or other devices for the communication or transmission of electric current or power, including telephone, television and radio signals, shall be constructed, placed or maintained anywhere in or upon the Property unless the same shall be contained in conduits or cables constructed, placed and maintained underground or concealed in, under or on buildings or other approved Improvements. Electrical transformers, exterior television or radio antennas, satellite dishes, and solar panels may be permitted if properly screened and approved by the Developer. The above restrictions shall not be deemed to prohibit the erection and use of temporary electric or telephone services incident to the construction of approved Improvements.

8.9. **Mechanical Equipment.** No air conditioning or other mechanical equipment, if visible from ground level of the Lot, shall be permitted to extend from any Improvement. All such equipment located by Owner on its Lot or its Improvements shall be enclosed or screened by the Owner as required by Declarant.

8.10. **Lighting Guidelines.** Restrictions regarding the Owner's ability to erect and maintain lighting fixtures on its Lot or its Improvements (including, but not limited to, the location, size, color and exterior design of such fixtures) shall be as set out in lighting regulations promulgated and amended from time to time by Declarant and shall otherwise be subject to Declarant's approval.

8.11. **Trash Disposal.** No weeds, underbrush or other unsightly growth shall be permitted to grow or remain within an Owner's Lot. An Owner shall not permit any wastepaper, trash, refuse pile or unsightly objects to be placed or remain on its Lot. An Owner shall cause all garbage or trash containers to be continually kept in a clean and sanitary condition. Garbage and refuse containers shall be concealed by means of a screening wall of material similar to and compatible with that of the building on the Lot so that they shall not be visible from any adjacent properties or from any street. These elements shall be integral with the concept of the building plan, be designed so as not to attract attention, and shall be located in the most inconspicuous manner possible. No portion of the Property shall be used or maintained as a dumping ground for

rubbish or junk. Trash, garbage or other waste shall not be kept except in sanitary containers.

8.12. **Outside Storage.** Unless specifically approved by the Developer in writing, no materials, supplies or equipment shall be stored on the Property except inside a closed building or behind a visual barrier screening such areas so that they are not visible from neighboring streets of Lots. Except during the permitted construction period, no storage tanks, including but not limited to those used for storage of water or propane gas or other fuel or chemical, shall be permitted on the Property unless approved by the Developer in writing. No trailer shall be used for storage purposes on the Site.

8.13. **Nuisances.** No part of an Owner's Lot or its Improvements shall be used for any purpose or in such manner which shall be a nuisance to the occupants or owners of any neighboring lands or buildings by reason of the emission, or creation, of odors, gases, dust, smoke, noise, fumes, cinders, soot, glare, reflected sunlight, vibrations, radiation or waste or otherwise. The Declarant is vested with the authority to issue, amend and cancel from time to time specific emission performance standards for any portion of the Property. No use will be made of any Lot or any Improvement which, in the Declarant's opinion, shall cause an undue fire or health hazard to other property in the Development, or which shall constitute a violation of any applicable governmental law, regulation, or ordinance.

8.14. **Hazardous Wastes, Etc.** During its ownership of a Lot, no Owner, its lessees, employees, contractors, or agents shall engage in or allow the engagement in any conduct or activities upon or with respect to the Property which will constitute or result in a violation of or liability under any federal, state, county or municipal law, ordinance or regulation which is applicable to the Property and which pertains to hazardous substances, hazardous waste or other environmental matters. If an Owner shall breach this covenant, that Owner shall, at its sole expense: (i) perform any necessary corrective work, including (without limitation) investigation, clean-up or other remedial or responsive action, testing or monitoring; (ii) perform any other work required by federal, state or local governmental authorities, including (without limitation) preparing permit applications and other documents and providing any required financial assurances; and (iii) indemnify and hold harmless Declarant, the Association and other Owners and occupants from any liability and claims, including reasonable costs and attorney's fees, based upon any alleged or actual breach of the covenant contained in this Section. The covenants contained in this Section shall only be applicable to the actions and conduct of each Owner, its lessees, employees, contractors and agents regarding the Property and occurring during the period of Owner's ownership of its Lot. These covenants shall be continuing covenants and obligations of all Owners which shall survive Owner's subsequent sale, transfer or disposal of the Property.

8.15. **Future Subdivision or Rezoning.** Prior to subdividing or applying with any governmental authority for the rezoning of any of the Property, an Owner must: (a) provide thirty (30) days' prior written notice to the Association and Declarant, which notice shall contain all pertinent facts concerning the Owner's intent to subdivide or apply for rezoning of the Property;

and (b) obtain Declarant's prior written consent.

8.16. **Exterior Maintenance.** An Owner shall maintain its Lot, including all Improvements, paved areas, landscaping, and grounds within its Lot, in a neat and attractive manner and otherwise in compliance with all health safety and other governmental regulations. Upon the failure of the Owner to maintain the exterior of any building, structure, paved area, landscaping, driveway or sidewalk all in good repair and appearance, the Declarant or Association may, at its option, after giving thirty (30) days' written notice sent to the Owner's last known address, make the required repairs and/or to take the necessary corrective action in a reasonable and workmanlike manner. These repairs and/or corrective action shall include, but are not limited to, painting, external repairs and replacements, the removal, hauling away and disposing of abandoned property, and having the grass, weeds and vegetation cut and the landscaping maintained. The Owner of the subject Lot shall pay the Declarant or the Association, as the case may be, an amount equal to the cost of such repairs and corrective action, plus a service charge of twenty percent (20%) of such costs. Any unpaid amounts shall be added to that Lot's Assessment and shall be a lien thereon to the same extent as an Assessment. The Declarant or the Association and its respective agents shall have an easement over and to all Lots for performing these repair and maintenance services.

9. ARCHITECTURAL REVIEW/CONSTRUCTION

9.1. Architectural Review:

9.1.1. Prior to constructing or altering any Improvements (other than interior alterations which are not visible from outside the Improvements) on any of the Property, the appropriate Owner shall first submit plans and specifications and landscape plans for the Improvements (together the "Plans") to the Developer for its written approval. The Plans shall detail plot layout, all exterior elevations, materials, colors, structural design, signs and landscaping for the Improvements. The Plans must be prepared by licensed architects and/or engineers and submitted to the Developer over the signature of the Owner or its authorized agent. Developer's approval shall be based, among other things, on adequacy of site dimensions; storm drainage considerations; adequacy of structural design; conformity and harmony of external design with neighboring structures; effect of location and use of Improvements on neighboring Lots, Improvements, operations and uses; relation of topography, grade and finished ground elevation to that of neighboring Lots; proper facing of main elevation with respect to nearby streets; and conformity of the plans and specifications to the purpose and general plan and intent of this Declaration.

9.1.2. Developer shall review the Plans and shall, in writing, either approve, suggest modifications to, or reject the Plans submitted. The Developer shall have the right to refuse to approve any Plans or portions thereof for any reason which the Developer, in its sole discretion, may deem in the best interests of the Development and the other Owners or occupants of the other Lots. If the Developer fails either to approve or disapprove the Plans within thirty (30)

days after they have been submitted, it shall be conclusively presumed that Developer has approved the Plans as submitted.

9.1.3. Developer shall not be liable in damages to anyone submitting Plans to it for approval, or to any Owner or lessee of a Lot, by reason of mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve any Plans. Every person who submits Plans, and every Owner or Lessee of any Lot agrees, by acquiring title thereto or interest therein, that it will not bring any such action or suit against Developer.

9.1.4. The construction/alteration of the Improvements must be in strict accordance with the Developer approved Plans and, in any event, shall be in accordance with the requirements of all applicable governmental building, zoning and other codes and regulations. In the event of any conflict between any provision of those governmental codes and the approved Plans, the governmental codes shall control. In the event of any conflict between any provision of those governmental codes and the provisions of this Declaration, the more restrictive provision shall apply. Any modification to the Developer approved Plans must be approved before the modification can be constructed. After commencement of the construction/alteration of any Improvements, the Owner shall diligently prosecute the work thereon, to the end that the structure shall not remain in a partly finished condition any longer than reasonably necessary. In no event shall the Improvements remain incomplete or partly finished longer than twelve (12) months.

9.2 **Exterior Construction.** Exterior walls for any Improvement constructed on a Lot must be finished on the exterior with architectural masonry units (excluding concrete block and cinder block), natural stone, aluminum or glass materials or their equivalent as approved by Developer. Such finish building materials shall be applied to all sides of a building which are visible to the general public, as well as from neighboring property and streets. Colors shall be harmonious and compatible with colors of the natural surroundings and other adjacent buildings. The Developer shall have the sole right to approve or disapprove materials and colors.

9.3. **Signs.**

9.3.1. Except as may be required by law, no sign shall be erected or maintained within the Property by anyone including, but not limited to, an Owner, a tenant, a realtor, a contractor, or a subcontractor, except such signs which comply with this Declaration or regulations promulgated and amended from time to time by Declarant. The Declarant shall have the right to enter upon the Property and summarily remove any sign which is in violation of these restrictions at the expense of the Owner.

9.3.2 Plans and specifications for the construction, installation or alteration of all outdoor signs (including traffic or directional signs) shall be submitted with the Plans for Developer's review. Developer may, in its discretion, restrict the size, color, manner of

construction and lighting, content, and placement of all signs. Subject to the Developer's prior written approval, the Owner may erect the following signs on its Lot:

- a. Those offering the premises for sale or lease, those directing pedestrian or vehicular traffic, and those identifying the project during construction.
- b. Those identifying the name and business of the Person occupying the Improvements on the Lot subject to the following criteria:
 - All signs mounted on a building must identify the primary company name only and shall not be an advertising vehicle or subsidiary and division notification device. Generally an identifying sign may be mounted only on one wall. At the discretion of Developer, a smaller sign or logo may be permitted on another exposure.
 - The length of the entire sign shall not be more than 80% of the length of the architectural panel or division on which the sign is mounted.
 - The height of any letter shall be no larger than 1" of letter height per one foot of building height measured from final grade to roof top.
 - If a sign must have two lines of copy, then the permissible height from the top of the upper line to the bottom of the lower line may not exceed 2" of height for every foot of building height, measured on the wall on which the sign is mounted, and the length of the sign copy may not exceed 60% of the length of the architectural panel on which same is mounted.
 - A logo for a single line sign or a logo to be mounted separately, may not be larger in diameter than two times the permissible copy letter height and if placed adjacent to the beginning or end of the sign copy, must fall within the 80% limit. A logo for a two line sign may not exceed in diameter the height from the top of the upper line to the bottom of the lower line, must be placed adjacent to either beginning or end of the sign copy, and must still, when so placed, fall within the 60% limit. No logos or other identification displays may be mounted so as to project above the roof line or any facility.

All the above criteria are guidelines only. The Developer's final approval for a sign will be based not only on the above, but also by reasonable architectural standards and overall balance to the other Improvements (and particularly signs) located on the Development.

9.4. **Landscape Guidelines.** Every Lot on which Improvement shall have been erected shall be landscaped according to approved Plans. Each Owner shall landscape and maintain unpaved areas between the property lines and the building on its Lot. The area between

paved streets and the setback lines shall be used exclusively for landscaping except for walks, parking lots, and driveways crossing the required landscape area. Landscaping as approved by Developer shall be installed within ninety (90) days of occupancy or completion of the building, whichever occurs first, or as soon as weather will allow if such period falls within winter months. Owner shall at all times keep the landscaping in good order and condition. The Declarant shall have the right to promulgate and amend from time to time landscape guidelines which shall establish approved standards, methods, and procedures for landscape management in the Development (the "Landscape Guidelines"). Such Landscape Guidelines may be utilized by the Owners without prior written approval by the Declarant if such utilization is consistent with landscape plans submitted to and approved by Declarant. Except as approved as part of the approved Plans, no trees measuring six (6) inches or more in diameter at a point two (2) feet above ground level may be removed without the prior written approval of the Declarant. Approval for the removal of trees located within ten (10) feet of any building or within ten (10) feet of the approved site for such building will be granted unless such removal will, as Declarant's reasonable opinion, substantially decrease the beauty of the Property.

9.5. **Fees:** An architectural review fee not to exceed \$1,000.00 shall be paid, in advance, by an Owner each time Plans are submitted for approval. Preliminary and final plans shall count as one (1) submittal for the purposes of this Section. Notwithstanding anything in this Section to the contrary, the maximum architectural review fee charged may be modified from time to time by the Declarant to reflect changed circumstances such as inflation. The Declarant shall have the power, in its sole discretion, to waive any required architectural review fee.

9.6. **Enforcement:** These covenants and restrictions shall be jointly and severally enforceable by the Developer and by any Owner and its successors and assigns; provided, however, that prior to the Rights Termination Date only the Developer shall have the right to exercise the Declarant's Rights. Declarant and the Association, upon prior written or oral notice to the Owner, shall have the right to inspect any Lot or Improvements at any reasonable hour for the purpose of determining compliance with these Protective Covenants. Violation of any restrictions or conditions shall give the Developer, in addition to all other remedies, the right (but not obligation) to enter upon the Lot upon which such violation exists and summarily to abate and remove any structure or correct any condition that may constitute such violation or breach at the expense of the then Owner of such Lot. The costs incurred in correcting a violation (including reasonable attorney fees) shall be a lien on the applicable Lot, enforceable in accordance with the provisions of this Declaration. No such corrective action shall be taken unless the violation has not been remedied within thirty (30) days after delivery of written notice of such violation by the Developer to the Owner of the Lot. In any legal or equitable proceeding for the enforcement of the provisions of this Declaration, the losing party or parties shall pay the attorney's fees of the prevailing party or parties, in such amount as may be fixed by the Court in such proceedings. In the case of an Owner, the costs of enforcement (including reasonable attorney fees) shall be a lien on the applicable Lot, enforceable in accordance with the provisions of this Declaration.

9.7. **Estoppel Certificate.** Within thirty (30) days after written demand is delivered to the Developer by an Owner, the Developer shall provide an estoppel certificate certifying that, as of the date thereof, all Improvements or other work done on or within a Lot either complies or does not comply with this Declaration. In the latter event, the certificate shall identify the non-complying Improvements or work and set forth with particularity the cause or causes of that non-compliance. Any lessee, purchaser or encumbrancer of that Lot shall be entitled to reasonably rely on the certificate with respect to the matters set forth, such matters being conclusive as between the Declarant and all parties in interest.

9.8. **Additional Restrictions.** The Declarant (until the Rights Termination Date), and thereafter, the Association, the Association's Board, or the Architectural Committee shall have the power to formulate, amend, publish and enforce other reasonable rules and regulations concerning the architectural control and use of the Property.

10. GENERAL PROVISIONS.

10.1. **Anti-Discrimination.** No action shall at any time be taken in the enforcement or interpretation of these Protective Covenants which in any manner would unfairly discriminate against any Owner in favor of any of the other Owners.

10.2. **Waiver.** The Declarant (until the Rights Termination Date) and thereafter the Association, Association's Board, or the Architectural Committee shall have the right, in the exercise of their reasonable discretion, to waive one or more violations of the requirements of this Declaration. No waiver shall be effective unless in writing and nevertheless shall not operate as a waiver of any other requirement respecting the Lot in question or any other Lots subject to this Declaration. No waiver shall be effective if it shall cause the Lot or its Improvements to be in non-conformance with any applicable governmental ordinances.

10.3. **Enforcement.** The Declarant (until the Rights Termination Date), the Association or any Owner shall have the right to enforce, by a proceeding at law or in equity, the terms of the Protective Covenants. Failure by the Association or by any Owner to enforce any covenant or restriction herein shall in no event be deemed a waiver of the right to do so thereafter.

10.4. **Severability.** Invalidation of any one or more of these covenants or restrictions by judgment or court order shall in no way affect any other provision which shall remain in full force and effect.

10.5. **Term.** The Protective Covenants shall run with the land for a term of twenty (20) years from the date of their recording and shall inure to the benefit of the Declarant, the Association or any Owner or their respective legal representatives, heirs, successors, and assigns. Unless terminated by a vote of not less than seventy-five percent (75.0%) of the Lots, these Protective Covenants shall thereafter automatically be extended for an unlimited number of

successive periods of ten (10) years.

10.6. **Amendment.** Except as specifically otherwise provided, the Protective Covenants may be amended by a vote of not less than seventy-five percent (75.0%) of the Lots. If an amendment is properly adopted, the Board shall, within thirty (30) days cause the amendment to be recorded with the County Registry. All amendments shall be effective from the date of recordation in the appropriate Register of Deeds. Notwithstanding the above provisions to the contrary, until the Rights Termination Date, an amendment, to be effective, must also obtain the Declarant's written approval. No amendment shall affect any Plans for Improvements or use of a Lot which was approved pursuant to the terms of this Declaration prior to the effective date of the Amendment.

10.7. **Disputes.** In the event of any dispute concerning a provision of this Declaration, such dispute shall be settled by legal proceedings or the parties may, by mutual agreement, submit the dispute to a committee appointed by the Association for this purpose, and once submitted, the parties agree to be bound by the decision of that committee.

10.8. **Voting.** Voting by Members of the Association shall be in accordance with the applicable provisions set forth in the Association's Bylaws.

10.9. **Member Addresses.** Each Member agrees to keep the Association informed of his address at any time and any notice sent or delivered to that address shall be sufficient. Each new Member agrees to provide the Association with evidence of his ownership for preparation of a membership roster and the roster as so completed shall be sufficient evidence as to the ownership of each Lot.

10.10. **Notice.** All notices under this Declaration shall be in writing. Unless delivered personally, all notices shall either be delivered by a nationally recognized overnight express delivery service or be given by certified mail, postage prepaid, return receipt requested, addressed to the addresses maintained pursuant to Section 10.9 or, if none, to the address noted on the most recent Durham County tax records for the Owner of the Lot.

10.11. **Gender and Grammar.** All words and phrases in this Declaration shall be construed to include the singular or plural number, and the masculine, feminine, or neuter gender, as the context requires.

10.12. **Owner Responsibility.** Notwithstanding anything in this Declaration to the contrary, an Owner shall be responsible for any and all violations of these Declarations by its employees, agents, tenants, guests and invitees. When a party to this Declaration consists of more than one individual or entity, such party's liability shall be joint and several.

10.13. **Construction.** This Declaration shall be construed in accordance with the laws of North Carolina without giving effect to its conflict of laws principles.

10.14. **Exhibits.** All Exhibits and Schedules, if any, attached to this Declaration are incorporated by reference and made a part of this Declaration. The term "Declaration" as used in this document shall include all such Exhibits and Schedules.

10.15. **Remedies.** In the event of any default in and/or breach of any of the terms, conditions and provisions of this Declaration (either actual or threatened) the aggrieved party shall have the right to specific performance and/or injunction in addition to any and all other rights and remedies at law or in equity. The right and remedies provided by this Declaration are distinct and cumulative and the use of any one right or remedy by any party shall not preclude or waive its right to use any or all other remedies. No delay or omission of a party to exercise any right or power arising from another's default shall impair any such right or power, or shall be construed to be a waiver of any such default or an acquiescence therein. The rights and remedies provided in this Declaration are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

IN WITNESS WHEREOF, the undersigned have executed, sealed and delivered this Declaration on the date first above written.

DAVIS DRIVE ASSOCIATES, LTD. LIMITED PARTNERSHIP,
a North Carolina Limited Partnership
BY ITS GENERAL PARTNER:

By: J. Patrick Gavaghan
J. Patrick Gavaghan

NORTH CAROLINA
WAKE COUNTY

I, the undersigned Notary Public in and for the aforesaid County and State, certify that J. Patrick Gavaghan, General Partner of Davis Drive Associates, Ltd. Limited Partnership, personally came before me this day and acknowledged the due execution of the foregoing instrument on behalf of and as the act of the partnership.

Witness my hand and notarial seal this APRIL 10, 1997.

State of North Carolina - Durham County
My Commission expires: _____
The foregoing or annexed certificate(s) of _____
Notary Public for the Designated Governmental
Entity is(are) certified to be correct

James M. Day
Notary Public
7/26/2001



This the 25 day of April A.D. 19 97
WILLIE L. COVINGTON
Register of Deeds
By: James M. Day
Assistant / Deputy
Register of Deeds

EXHIBIT A
PROPERTY

Being all of that property described as Tract Nos. 1 and 1-A according to that plat entitled "Subdivision For Tract 1-A, Keystone Technology Park", recorded in Book of Maps 137, Page 204, Durham County Registry.

EXHIBIT B
ADJOINING PROPERTY

Being all of the property conveyed to Davis Drive Associates, Ltd. by that deed recorded at Book 1170, Page 88, Durham County Registry; save and excepting that portion described in Exhibit A above and that portion previously conveyed to Davis Park Associates Limited Partnership by that deed recorded at Book 1880, Page 43, Durham County Registry.

Laura M Riddick
Register of Deeds
Wake County, NC



Book : 008630 Page : 01592 - 01614

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



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

North Carolina - Wake County

The foregoing certificate ___ of _____
James L. Day

____ Notary(ies) Public is (are) certified to be correct. This instrument and this certificate are duly registered at the date and time and in the book and page shown on the first page hereof.

Laura M. Riddick, Register of Deeds

By: *[Signature]*
Assistant/Deputy Register of Deeds

This Customer Group
2 # of Time Stamps Needed

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23 New Time Stamp
of Pages