

4851  
0669

FILED  
UNION COUNTY  
**CRYSTAL CRUMP**  
**REGISTER OF DEEDS**

FILED Mar 28, 2008  
AT 03:20 pm  
BOOK 04851  
START PAGE 0669  
END PAGE 0705  
INSTRUMENT # 11954  
EXCISE TAX (None)  
MPT

DECLARATION  
OF  
1009 FORSYTH AVENUE CONDOMINIUM

Filed for Record on the  
28 day of March, 2008

PREPARED BY AND MAIL TO:

Susan K. Irvin  
Attorney at Law  
P.O. Box 2376  
Davidson, North Carolina 28036

DECLARATION OF CONDOMINIUM FOR  
1009 FORSYTH AVENUE CONDOMINIUM

THIS DECLARATION, made this 21 day of March, 2008, by NJV INVESTMENT, LLC, a North Carolina limited liability company ("Declarant"), pursuant to the North Carolina Condominium Act, Chapter 47C, North Carolina General Statutes ("Act").

WITNESSETH:

WHEREAS, Declarant is the owner in fee simple of certain real estate situated in or near the Town of Indian Trail, County of Union and State of North Carolina, more particularly described on Exhibit A attached hereto and made a part hereof, together with all buildings and improvements now or hereafter constructed or located thereon, and all rights, privileges, easements and appurtenances belonging to or in any way pertaining to said real estate; and

WHEREAS, Declarant desires to submit all of said property to the Act.

NOW, THEREFORE, Declarant, as the owner of said property, hereby declares as follows:

ARTICLE I.

Definitions

Definitions. As used herein, the following words and terms shall have the following meanings:

1.1 Act. The North Carolina Condominium Act, Chapter 47C, North Carolina General Statutes.

1.2 Association. 1009 Forsyth Avenue Condominium Association, Inc., a nonprofit corporation organized under Section 47C-3-101, North Carolina General Statutes. The Articles of Incorporation of the Association are attached hereto as Exhibit D.

1.3 Board. The Executive Board of the Association.

1.4 Building. That building containing approximately 24,288 square feet located on the Property, as shown on the Plat and Plans.

1.5 Bylaws. The Bylaws of the Association which are attached hereto as Exhibit E and incorporated herein and made a part hereof by this reference.

1.6 Common Elements. All portions of the Condominium except the Units. Limited Common Elements are Common Elements.

1.7 Common Expenses. Expenditures made or liabilities incurred by or on behalf of the Association, together with any allocations to reserves.

1.8 Condominium. The condominium created by this Declaration.

1.9 Declarant. NJV Investment, LLC, a North Carolina limited liability company, and any Person who succeeds to any Special Declarant Rights as defined in Section 47C-1-103(23) of the Act.

1.10 Declarant Control Period. The period commencing on the date hereof and continuing until the earlier of (i) the date two (2) years after Declarant has ceased to offer Units for sale in the ordinary course of business or (ii) the date upon which Declarant surrenders control of the Condominium; or (iii) the date one hundred twenty (120) days after the Declarant has conveyed seventy-five percent (75%) of the maximum number of Units which Declarant may create on the Property to Unit Owners other than Declarant.

1.11 First Mortgage and First Mortgagee. A First Mortgage is a mortgage or deed of trust which has been recorded so as to give constructive notice thereof, and which is a first lien on the Unit or Units described therein. A First Mortgagee is the holder, from time to time, of a First Mortgage as shown by the records of the Office of the Register of Deeds for Union County, North Carolina, in which the First Mortgage is recorded, including a purchaser at a foreclosure sale upon foreclosure of a First Mortgage until the expiration of the mortgagor's period of redemption. If there be more than one holder of a First Mortgage, they shall be considered as, and act as, one First Mortgagee for all purposes under this Declaration and the Bylaws.

1.12 Limited Common Elements. Those portions of the Common Elements allocated by this Declaration, the Plans or by operation of Section 47C-2-102(2) or (4) of the Act for the exclusive use of one but fewer than all of the Units, including, but not limited to, any balcony, porch or patio appurtenant to a Unit. That portion of the Property upon which heating and air conditioning equipment serving a Unit is located shall constitute a Limited Common Element allocated specifically to the Unit served by such equipment.

1.13 Master Declaration. Declaration of Protective Covenants for Old Hickory Business Park, recorded in Book 1773, Page 308, as amended and supplemented, in the Union County Public Registry.

1.14 Member. Every Person who holds membership in the Association.

1.15 Occupant. Any person or persons in possession of a Unit, including Unit Owners, the family members, lessees, guests and invitees of such person or persons, and family members, guests and invitees of such lessees.

1.16 Person. A natural person, corporation, partnership, trust or other legal or commercial entity, or any combination thereof.

1.17 Plans. The plans of the Condominium, including a survey map depicting the Condominium (the "Map") recorded in unit Ownership File No. C-1 Page 173, in the Office of the Register of Deeds for Union County, North Carolina, and by the Act made a part of this Declaration.

1.18 Property. The real estate described on Exhibit A, together with all building and improvements now or hereafter constructed or located thereon, and all rights, privileges, easements and appurtenances belonging to or in any way pertaining to said real estate.

1.19 Rules and Regulations. The rules and regulations of the Condominium promulgated by the Executive Board from time to time.

1.20 Special Declarant Rights. The rights as defined in Section 47C-1-103(231) of the Act for the benefit of a Declarant, including but not limited to the following: to maintain sales offices, management offices, models and signs advertising the Condominium; to exercise any development right as defined in Section 47C-2-110 of the Act; to use easements through the Common Elements; to elect, appoint or remove members of the Board during the Declarant Control Period; to withdraw any portion of the Property from the Condominium, and to add additional real estate to the Condominium.

1.21 Unit. A portion of the Condominium, whether or not contained solely or partially within a building, together with its percentage of undivided interest in the Common Elements as set forth on Exhibit B. Each Unit is designated and delineated on the Plans.

1.22 Unit Boundaries. The boundaries of each Unit, both as to vertical and horizontal planes, as shown on the Plans, are the undecorated surfaces of the perimeter walls, exterior doors and exterior windows facing the interior of the Unit, the undecorated surfaces of the roof facing the interior of the Unit, and the topmost surfaces of the subflooring, and include the decoration on all such interior and topmost surfaces, including, without limitation, all paneling, tiles, wallpaper, paint, finished flooring and any other materials constituting any part of the decorated surfaces thereof, and also includes all spaces, interior partitions and other fixtures and improvements within such boundaries. Also included as a part of the Unit shall be those portions of the heating, and air conditioning system for the Unit which are located within the perimeter walls of the Unit and those portions of the heating and air conditioning system located in the Common Elements, wherever located.

1.23 Unit Owner. The person or persons, including the Declarant, owning a Unit in fee simple.

## ARTICLE II.

### Submission of Property to the Act

2.1 Submission. Declarant hereby submits the Property to the Act.

2.2 Name. The Property shall hereafter be known as 1009 Forsyth Avenue Condominium.

2.3 Division of Property into Separately Owned Units. Declarant, pursuant to the Act, and to establish a plan of condominium ownership for the Condominium, does hereby establish three (3) Units within the Building, and does hereby designate such Units for separate ownership, subject, however, to the provisions of this Section. Notwithstanding the foregoing, Declarant or any subsequent Unit Owner reserves the right to alter any Unit pursuant to Section 2.4 hereof.

2.4 Alterations of Units. Subject to the provisions of the Bylaws, a Unit may be altered pursuant to the provisions of Section 47C-2-111 and 47C-2-112 of the Act.

2.5 Limited Common Elements. The Limited Common Elements serving or designed to serve each Unit are hereby allocated solely and exclusively to each such Unit.

2.6 Unit Allocations. The allocations to each Unit of a percentage of undivided interest in the Common Elements and of a percentage of the Common Expenses are as stated on Exhibit B. The allocation of undivided interest in the Common Elements and of the Common Expenses has been determined by a ratio formulated upon the relation that the square foot area of each Unit bears to the then aggregate square foot area of all Units.

2.7 Encumbrances. The liens, defects and encumbrances affecting the Property to which the rights of Unit Owners and Occupants are hereby made subject are set out on Exhibit C.

2.7 Condominium Ordinances. The Condominium is not subject to any code, real estate use law, ordinance, charter provisions, or regulation (i) prohibiting the condominium form of ownership, or (ii) imposing conditions or requirements upon a condominium which are not imposed upon physically similar developments under a different form of ownership. This statement is made pursuant to Section 47C-1-106 of the Act for the purpose of providing marketable title to the Units in the Condominium.

2.8 Reservation of Special Declarant Rights. Declarant hereby reserves all Special Declarant Rights, as defined in Article 1.17, including the right to subdivide a Unit or convert a Unit previously created into additional Units, Common Elements or both pursuant to the provisions of Section 47C-2-110 of the Act. Each Unit created in the Condominium shall be assigned a letter.

### ARTICLE III.

#### Easements

3.1 Encroachments. In the event that, by reason of the construction, reconstruction, rehabilitation, alteration or improvement of the buildings or improvements comprising a part of the Property, any part of the Common Elements now or hereafter encroaches upon any part of any Unit, or any part of Common Elements, or upon any part of another Unit, an easement for

the continued existence and maintenance of each such encroachment is hereby declared and granted and shall continue for so long as each such encroachment exists; provided that in no event shall an easement for such encroachment be created if such encroachment is detrimental to or interferes with the reasonable use and enjoyment of the Common Elements or Units so encroached upon.

3.2 Easements Through Walls. Easements are hereby declared and granted to the Association and to such persons as are authorized by the Association, to install, lay, maintain, repair and replace any chutes, flues, ducts, vents, pipes, wires, conduits and other utility installations, and structural components running through the walls of the Units, whether or not such walls lie in whole or in part within the boundaries of any Unit.

3.3 Easements to Repair, Maintain, Restore and Reconstruct. Wherever in, and whenever by, this Declaration, the Bylaws or the Act, a Unit Owner, the Association, the Board or any other person, is authorized to enter upon a Unit or the Common Elements to inspect, repair, maintain, restore, construct or reconstruct all or any part of a Unit or the Common Elements, such easements as are reasonably necessary for such entry and such repair, maintenance, restoration or reconstruction are hereby declared and granted upon written or oral notice to its Unit Owner and during reasonable business hours.

3.4 Easements for Utilities. The Units and Common Elements shall be, and are hereby, made subject to easements in favor of the Declarant (until Declarant shall have satisfied all of its obligations under the Declaration and Bylaws and all commitments in favor of any Unit Owner and the Association), the Association, appropriate utility and service companies and governmental agencies or authorities for such utility and service lines and equipment as may be necessary or desirable to serve any portion of the Property. The easements provided for by this Section 3.4 shall include, without limitation, rights of Declarant, the Association, any providing utility, any service company, and any governmental agency or authority and any of them to install, lay, maintain, repair, relocate and replace gas lines, pipes and conduits, water mains and pipes, sewer and drain lines, telephone wires and equipment, television and equipment facilities (cable or otherwise), electrical wires, conduits and equipment and ducts and vents and any other appropriate equipment and facilities over, under, through, along and on the Units and Common Elements. Notwithstanding the foregoing provisions of this Section 3.4, unless approved in writing by the Unit Owner or Unit Owners affected thereby, any such easement through a Unit shall be located either in substantially the same location as such facilities or similar facilities existed at the time of first conveyance of the Unit by the Declarant to a grantee other than the Declarant, or so as not to materially interfere with the use of occupancy of the Unit by its owners.

3.5 Declarant's Easement. Declarant hereby reserves such easements through the Common Elements as may be reasonably necessary for the purposes of discharging its obligations, exercising Special Declarant Rights, and completing the development and construction of the Condominium, which easements shall exist as long as reasonably necessary for such purpose.

3.6 Easements to Run With Land. All easements and rights described in this Article III are appurtenant easements running with the land, and except as otherwise expressly provided in this Article III shall be perpetually in full force and effect, and shall inure to the benefit of and be binding upon Declarant, its successors and assigns owning the Property, or any portion thereof, Declarant's mortgagees, the Association, Unit Owners, Occupants, First Mortgagees and any other person having any interest in the Condominium or any part thereof. The Condominium and every part thereof shall be conveyed and encumbered subject to and together with all easements and rights described in this Article III, whether or not specifically mentioned in any such conveyance or encumbrance.

#### ARTICLE IV.

##### Restrictions, Conditions and Covenants

4.1 Compliance with Declaration, Bylaws and Rules and Regulations. Each Unit Owner and Occupant shall comply with all applicable provisions of the Act, this Declaration, the Bylaws, the Articles of Incorporation of the Association, and the reasonable Rules and Regulations promulgated by the Board or the Association, as amended. Failure to comply shall be grounds for an action by the Association, an aggrieved Unit Owner, or any person adversely affected, for recovery of damages injunction, or other relief.

4.2 Administration of Condominium The Condominium shall be administered in accordance with the provisions of the Act, this Declaration and the Bylaws.

4.3 Use.

(a) Each Unit shall be used solely for distribution, light manufacturing and light assembly and ancillary office uses, as such terms are defined in the Indian Trail Zoning Ordinance and in compliance with the Master Declaration.

(b) No advertising signs, billboards, unsightly objects, or nuisances shall be erected, placed or permitted to remain on the Property without the prior written approval of Declarant, during the Declarant Control Period, or thereafter, the Association. All signage must be approved by Declarant during the Declarant Control Period and thereafter by the Association prior to installation. Signage must be in accordance with all applicable zoning ordinances and the development plan for the Property.

(c) The foregoing provisions of this Section or any other provision of this Declaration or the Bylaws notwithstanding, Declarant shall have an easement to maintain sales offices and models for sales of Units throughout the Condominium. Declarant shall have the right to, and may, relocate, from time to time, and to discontinue and reestablish, from time to time, within the Condominium, any such offices or models until all of the Units have been conveyed to a Unit Owner other than Declarant.

(d) Declarant shall have an easement to maintain signs on the Common Elements advertising the Condominium until all of the Units have been conveyed to Unit Owners other than Declarant.

4.4 Hazardous Use and Waste. Nothing shall be done to or kept in any Unit or the Common Elements that will increase any rate of insurance maintained with respect to the Condominium without the prior written consent of the Board. No Unit Owner or Occupant shall permit anything to be done to or kept in his Unit or the Common Elements that will result in the cancellation of insurance maintained with respect to the Condominium, or that would be in violation of any law, or that will result in the commitment of waste (damage, abuse, or destruction) to or in his Unit or the Common Elements. No Unit or other portion of the Property shall be used for any business the operation of which would result in the generation, storage or disposal of any flammable explosives, radioactive materials, infectious substances or raw materials which include hazardous constituents or any other substances or materials which are included under or regulated by Environmental Laws (as hereinafter defined) (collectively, "Hazardous Substances"), including, but not limited to, (i) any asbestos or insulation or other material composed of or containing asbestos, or (ii) any hazardous, toxic or dangerous substance, material or waste defined as such in (or for the purposes of) the Comprehensive Environmental Response Compensation and Liability Act, as amended, 42 U.S.C. § 9601 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., the Clean Air Act, 42 U.S.C. § 7401 et seq., the Clean Water Act, 33 U.S.C. § 1251 et seq., the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq., the Safe Drinking Water Act, 15 U.S.C. § 2601 et seq., the Occupational Safety and Health Act, 29 U.S.C. § 651 et seq., the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq., any so-called state or local "Superfund" or "Superlien" laws, or any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning any hazardous substance ("Environmental Laws"); provided, however, a Unit or other portion of the Property may be used for a business the operation of which would result in the generation, storage or disposal of Hazardous Substances if such Hazardous Substances are used by any Unit Owner in the ordinary course of his respective business, in compliance with all Environmental Laws and where such use could not reasonably be expected to give rise to liability under Environmental Laws. Each Unit Owner shall comply with all applicable Environmental Laws. Each Unit Owner shall keep or cause the Properties to be kept free from Hazardous Substances (except those substances used by any Unit Owner in the ordinary course of his respective business and except in compliance with all Environmental Laws and where such could not reasonably be expected to give rise to liability under Environmental Laws) and in compliance with all Environmental Laws. Unit Owners shall not install or use any underground storage tanks ("USTs"), shall expressly prohibit the use, generation, handling, storage, production, processing and disposal of Hazardous Substances on the Properties in quantities or conditions that would violate or give rise to any obligation to take remedial or other action under any applicable Environmental Laws. Without limiting the generality of the foregoing, during the term of this Declaration, no Unit Owner shall install or permit to be installed in the Properties any asbestos or asbestos-containing materials. A Unit Owner shall remedy or cause to be remedied in a timely manner (and in any event within the time period permitted by applicable Environmental Laws) any violation of Environmental Laws by such Unit Owner or any condition that could give rise to liability under Environmental Laws resulting from the acts or omissions of such Unit Owner, its officers, directors, members,



agents or invitees concerning (i) the Property or (ii) other affected property. In the event any Unit Owner fails to perform any of such Unit Owner's obligations set out in this Section 4.4, the Association may, but shall not be obligated to, cause such portion of the Property to be freed from any Hazardous Substances or otherwise brought into conformance with Environmental Laws, and all expenses of the Association incurred as a result of action taken by the Association pursuant to this Section 4.4 shall be immediately due and owing from such Unit Owner and shall be a lien and charge against the Lot on which the work was done and shall be the obligation of the then Unit Owner of such Lot and subject to collection pursuant to the same methods available hereunder for Assessments. Unit Owners hereby grant to the Association and its agents and employees access to the Units and the Property and a license to remove any items deemed by the Association to be Hazardous Substances and to do all things the Association shall deem necessary to bring the Properties into conformance with Environmental Laws.

4.5 Alterations of Common Elements. No Unit Owner or Occupant, except Declarant during the Declarant Control Period, shall alter, construct anything upon, or remove anything from, the Common Elements, or paint, decorate, landscape or adorn any portion of the Common Elements, without the prior written consent of the Board.

4.6 Lease 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 the terms of such Condominium Documents shall constitute a default under the lease.

4.7 Rules and Regulations. In addition to the foregoing restrictions, conditions and covenants concerning the use of the Condominium, reasonable rules and regulations not in conflict therewith and supplementary thereto may be promulgated and amended from time to time by the Board or the Association, as more fully provided in the Bylaws.

4.8 Restrictions, Conditions and Covenants to Run With Land. Each Unit Owner and Occupant shall be subject to all restrictions, conditions and covenants of this Declaration, and all such restrictions, conditions and covenants shall be deemed to be covenants running with the land, and shall bind every person having any interest in the Property, and shall inure to the benefit of every Unit Owner.

4.9 Master Declaration Easements. Each Unit Owner shall have the easement rights and privileges for use and enjoyment of Owners as set forth in the Master Declaration. Notwithstanding the foregoing, each Unit shall be allocated two (2) parking spaces for every one thousand (1,000) square feet of such Unit. Declarant or the Association may, but shall not be obligated, to take enforcement measures to curb excessive use, including levying fines.

4.10 Use of the Easements and Property Rights. The use of the easements and property rights granted herein shall be subject in all respects to the restrictions, conditions and covenants of the Master Declaration and the expenses therefore shall be an obligation of the Association.

4.11 Access to Units. The Association and its agent shall have access to each Unit from time to time during reasonable working hours, upon oral or written notice to its Unit Owner or occupant of the Unit, as may be necessary for the construction, maintenance, repair or replacement of any of the Common Elements and any HVAC system and electric, telephone and other utility lines. The Association and its agents shall also have access to each Unit at all times without notice, as may be necessary to make emergency repairs to prevent damage to Common Elements any HVAC system and electric, telephone and other utility lines. In addition, Declarant, or its assigns, shall have reasonable access to each Unit as necessary for the completion of the upfit and construction within the other Units.

## ARTICLE V.

### Assessments

5.1 Assessment Liens. The Declarant, for each Unit owned, and each Owner by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, hereby covenants and agrees to pay the Association annual assessments or charges levied by the Association and special assessments for capital improvements levied by the Association, such assessments to be established and collected as hereinafter provided. The Association has the power to levy such annual and special assessments against the Units for Common Expenses. Such assessments, together with a late payment charge of one hundred fifty dollars (\$150.00) for assessment which remains unpaid for more than thirty (30) days past the due date with interest at the rate of eighteen percent (18%) per annum, costs and reasonable attorney's fees shall constitute a lien on the Units against which they are assessed when filed of record in the office of the Clerk of Superior Court of Union County. If any assessment payment becomes delinquent, in addition to any other remedies available to the Association by law for the collection thereof, the Association may enforce the lien by bringing an action at law against the Unit Owner personally, or by foreclosing the lien against the Unit.

### 5.2 Transferees: First Mortgagees.

(a) The personal obligation for assessments which are delinquent at the time of transfer of a Unit shall not pass to the transferee of said Unit unless said delinquent assessments are expressly assumed by said transferee; provided, however, each assessment shall be the personal obligation of the person who was the Unit Owner of such property at the time when the assessment became due.

(b) Any transferee referred to in (a) above shall be entitled to a statement from the Board, pursuant to section 6.2 of the Bylaws, and such transferee's Unit shall not be subject to a lien for any unpaid assessments against such Unit in excess of the amount therein set forth.

(c) Where a First Mortgagee, or other person claiming through such First Mortgagee, obtains title to a Unit pursuant to the remedies provided in a mortgage, deed of trust or by foreclosure, or by deed or assignment in lieu of such foreclosure, the liability of such First Mortgagee or such other person for assessments shall be only for the portion of such assessments

that would become delinquent, if not paid, after acquisition of title. For purposes hereof, title to a Unit shall be deemed acquired by foreclosure upon expiration of the applicable period of redemption.

(d) Without releasing the transferor from any liability therefore, any unpaid portion of assessments which is not a lien under (a) above, or, resulting, as provided in (c) above, from the exercise of remedies in a mortgage or deed of trust, or by foreclosure thereof or by deed, or assignment, in lieu of such foreclosure, shall be a Common Expense collectible from all Unit Owners, including the transferee under (b) above and the First Mortgagee of such other person under (c) above who acquires ownership by foreclosure or by deed, or assignment, in lieu of foreclosure.

5.3 Prohibition of Exemption from Liability for Contribution Toward Common Expenses. No Unit Owner may exempt himself from liability for his share of the Common Expenses assessed by the Association by waiver of the use or enjoyment of any of the Common Elements or by abandonment of his Unit or otherwise.

5.4 Date of Commencement of Annual Assessments. The annual assessments provided for herein shall commence as to all Units on the first day of the month following the conveyance of the first Unit by the Declarant. The first annual assessment shall be adjusted for the number of months then remaining in that fiscal year.

5.5 Levying of Assessments. Assessments shall be due and payable in advance annually. As provided in Article VI of the Bylaws and as legally required by Section 47C-1-115 of the Act, Declarant shall pay all accrued expenses of the Condominium until assessments are levied against the Units. An assessment shall be deemed levied against a Unit upon the giving of notice by the Board to a member of the Association who is a Unit Owner of that Unit. Unit Owners shall have no obligation to pay assessments until an assessment is levied.

## ARTICLE VI.

### Management, Maintenance, Repairs, Replacements, Alterations and Improvements

#### 6.1 Common Elements

(a) By the Association. The management, replacement, maintenance, repair, alteration, and improvement of the Common Elements shall be the responsibility of the Association provided such responsibility may be assigned by the Association to the Old Hickory Property Owners' Association described in the Master Declaration with regard to the Common Elements that are not Limited Common Elements, and so long as the Association pays for the costs associated with the assumption of such responsibilities, and subject to the provisions of Section 6.2 hereof, the cost thereof shall be a Common Expense to the extent not paid by Unit Owners pursuant to Section 6.1 (b) hereof. In addition, the Association shall be responsible for providing and paying for water and sewer for all Units. All damage caused to a Unit by any

work on or to the Common Elements done by or for the Association shall be repaired by the Association, and the cost thereof shall be a Common Expense.

(b) By Unit Owners. Each Unit Owner shall pay all costs to repair and replace all portions of the Common Elements that may become damaged or destroyed by reason of his intentional acts or the intentional acts of any Occupant of his Unit. Such payment shall be made upon demand made by the Association.

6.2 Common Expenses Associated with Limited Common Elements or Benefiting Less Than All Units

(a) Any Common Expenses associated with the maintenance, repair, or replacement of a Limited Common Element shall be assessed against the Unit, or in equal shares to the Units, to which such Limited Common Element was allocated at the time the expense was incurred.

(b) In addition, the Association may assess any Common Expense benefiting less than all of the Units against the Units benefited in proportion to their Common Expense liability.

6.3 Units. Each Unit Owner shall maintain his Unit, and any Limited Common Elements appurtenant thereto, at all times in a good and clean condition, and repair and replace, at his expense, all portion of his Unit; shall perform his responsibilities in such manner as not to unreasonably disturb other Occupants; shall promptly report to the Board; or its agents, any defect or need for repairs the responsibility for which is that of the Association; and, to the extent that such expense is not covered by the proceeds of insurance carried by the Association, shall pay all costs to repair and replace any portion of another Unit that has become damaged or destroyed by reason of his own acts or omissions, or the acts or omissions of the any Occupant of his Unit. Such payment shall be made upon demand by the Unit Owner of such other Unit. Nothing herein contained shall modify any waiver by insurance companies of rights of subrogation.

6.4 Waiver of Claims. Except only as provided in Section 6.5(a) and (b), the Association agrees that it shall make no claim against a Unit Owner or Occupant, and each Unit Owner and Occupant agrees that he shall make no claim against the Association, the members of the Board, officers of the Association, or employees or agents of any thereof, or against any manager retained by the Board, or his or its officers, directors, employees or agents, or other Unit Owners or Occupants, for any loss or damage to any of the Property, or to a unit of personal property therein, even if caused by the omission or neglect of any one or more of such persons and all such claims are hereby waived and released; provided, that this waiver shall not apply to any such loss or damage due to intentional acts.

6.5 Right of Entry.

(a) By the Association. The Association, and any person authorized by the Association, may enter any Unit or any of the Limited Common Elements in case of any

emergency or dangerous conditions or situation originating in or threatening that Unit or any of the Limited Common Elements. The Association, and any person authorized by the Association, after reasonable notice to a Unit Owner or Occupant, may enter that Unit or any of the Limited Common Elements for the purposes of performing any of the Association's powers under the Act, this Declaration or the Bylaws with respect to that or any other Unit, any Limited Common Elements, or the Common Elements. Notwithstanding Section 6.4, the Association shall be responsible for the repair of any damage caused by the Association or its authorized person to the entered Unit, and the cost thereof shall be a Common Expense. All such entries shall be made and done so as to cause as little inconvenience as possible to the Unit Owner and Occupant of the entered Unit or any portion of the Limited Common Elements allocated to the Unit Owner.

(b) By Unit Owners. Each Unit Owner and Occupant shall allow other Unit Owners and Occupants, and their representatives, to enter his Unit, or Limited Common Elements allocated to his Unit, when reasonably necessary for the purpose of altering, maintaining, repairing or replacing the Unit, or performing the duties and obligations under the Act, this Declaration or the Bylaws, of the Unit Owner or Occupant making such entry, provided that requests for entry are made in advance and that such entry is at a time convenient to the Unit Owner or Occupant whose Unit or Limited Common Element is to be entered. In case of an emergency or dangerous condition or situation, such right of entry shall be immediate. Notwithstanding Section 6.4, the person making such entry shall be responsible for repair of any damage caused by such person to the entered Unit or Limited Common Element.

## ARTICLE VII

### Intentionally Deleted

## ARTICLE VII.

### Insurance

8.1 Casualty Insurance. The Association shall maintain, to the extent available, casualty insurance upon the Property (including all Units and Common Elements) in the name of, and the proceeds thereof shall be payable to, the Association as trustee for all Unit Owners and First Mortgagees as their interest may appear, and be disbursed pursuant to the Act. Such insurance shall be in an amount equal to not less than one hundred percent (100%) of the full insurable value of the Property on a replacement cost basis exclusive of land, excavations, foundations and other items normally excluded from property policies, and shall insure against such risks and contain such provisions as the Board from time to time shall determine, but at a minimum shall conform in all respects to the requirements of the Act, and shall provide that, notwithstanding any provision thereof that gives the insurer an election to restore damage in lieu of making a cash settlement, such option shall not be exercisable if such restoration is prohibited pursuant to Section 47C-3-113(h) of the Act.

7.2 Public Liability Insurance. The Association shall maintain public liability insurance for the benefit of the Unit Owners, Occupants, the Association, the Board, the managing agent, if any, the Declarant, and their respective officers, directors, agents and

employees, in such amounts and with such coverage as shall be determined by the Board; provided that the public liability insurance shall be for at least One Million and No/ 100 Dollars (\$1,000,000.00) per occurrence for death, bodily injury and property damage. Said insurance shall comply in all respects with the requirements of the Act and shall contain a severability of interest endorsement precluding the insurer from denying liability because of negligent acts of any insured; insure all of such benefited parties against such liability arising out of or in connection with the use, ownership or maintenance of the Common Elements, and the streets, sidewalks and public spaces adjoining the Condominium; and insure the Association, the Board, the managing agent, if any, and their respective officers, directors, agents and employees against such liability arising out of or in connection with the use or maintenance of the Units.

7.3 Insurance Unavailable. If the insurance described in Sections 8.1 or 8.2 is not reasonably available, the Association shall promptly cause notice of such fact to be hand-delivered or sent prepaid by United States mail to all Unit Owners.

7.4 Other Insurance. The Association may procure such other insurance, including worker's compensation insurance, as it may from time to time deem appropriate to protect the Association or the Unit Owners. If at least one Unit is subject to mortgage financing, the Association shall obtain and keep in force such insurance as such mortgagee shall reasonably require from time to time.

7.5 Insurance Trustee. The Board may engage, and pay as a Common Expense, any appropriate person to act as an insurance trustee to receive and disburse insurance proceeds upon such terms as the Board shall determine, consistent with the provisions of the Act and this Declaration.

7.6 Individual Policy for Unit Owners. Each Unit Owner may obtain insurance, at his own expense, affording personal property, additional living expense, condominium assessment, personal liability, and any other coverage obtainable, to the extent and in the amounts such Unit Owner deems necessary to protect his own interest; provided that any such insurance shall contain waivers pursuant to Section 7.4 and shall provide that it is without contribution as against the insurance purchased by the Association. If a casualty loss is sustained and there is a reduction in the amount of the proceeds that would otherwise be payable on the insurance purchased by the Association due to the proration of the insurance purchased by a Unit Owner under this Section, such Unit Owner shall be liable to the Association to the extent of such reduction and shall pay the proceeds of his insurance, to the extent of such reduction, to the Association. If a casualty loss is sustained as to an improvement or betterment installed by a Unit Owner or to the personal property of a Unit Owner, the Unit Owner is required to both insure and repair or replace same and there is a reduction in the amount of the proceeds that would otherwise be payable on the insurance purchased by the Unit Owner as to such personal property, improvements and/or betterments due to the proration of the insurance purchased by the Association under this Section, the Association shall be liable to the Unit Owner to the extent of such reduction and shall pay the proceeds of its insurance, to the extent of such reduction, to the Unit Owner.

ARTICLE VIII.

Casualty Damage

If all or any part of the Property shall be damaged or destroyed, the same shall be repaired or replaced unless: (1) the Condominium is terminated, (2) repair or replacement would be illegal under any State or local health or safety statute or ordinance, or (3) the Unit Owners elect not to rebuild or replace by a ninety percent (90%) vote, including one hundred percent (100%) approval of Owners of Units not to be rebuilt or Owners assigned to Limited Common Elements not to be rebuilt. All proceeds of insurance shall be used and applied in accordance with the provisions of Section 47C-3-113(e) and (h) of the Act.

ARTICLE IX.

Condemnation

In the event of a taking by eminent domain, or by a conveyance in lieu thereof, of all or any part of the Property, the awards paid on account thereof shall be applied in accordance with Section 47C-1-107 of the Act and Section 9.2 of the Bylaws.

ARTICLE X.

Termination

The Condominium may be terminated by unanimous consent only in strict compliance with Section 47C-2-118 of the Act.

ARTICLE XI.

Amendment

This Declaration may be amended only in strict compliance with the Act, including, without limitation, Sections 47C-2-105 and 47C-2-117 of the Act, except that no amendment altering or impairing Special Declarant Rights may be made without the written consent of Declarant.

ARTICLE XII.

Rights of First Mortgagees

The following provisions shall take precedence over all other provisions of this Declaration and the Bylaws:

12.1 Availability of Condominium Documents, Books, Records and Financial Statements. The Association shall, upon request and during normal business hours make available for inspection by Unit Owners and the First Mortgagees and the insurers and guarantors

of a First Mortgage on any Unit, current copies of the Declaration, the Bylaws, other rules and regulations governing the Condominium and the books, records and financial statements of the Association. The Association shall provide a financial statement for the preceding fiscal year if requested in writing by a First Mortgagee or insurer or guarantor of a First Mortgage. The Association shall, upon request and during normal business hours, make available for inspection by prospective purchasers of Units, current copies of the Declaration, Bylaws, the Rules and Regulations governing the Condominium, and the most recent annual financial statement.

12.2 Rights of Action. The Association and any aggrieved Unit Owner shall have a right of action against Unit Owners and any aggrieved Unit Owner shall have a right of action against the Association for failure to comply with the provisions of this Declaration, the Bylaws and the Rules and Regulations, and decisions of the Association made pursuant to authority granted to the Association in this Declaration and the Bylaws.

12.3 Notice. Each First Mortgagee and each insurer or guarantor of a First Mortgage, upon written request stating its name and address and describing the Unit encumbered by the First Mortgage, held, insured or guaranteed, shall be entitled to timely written notification by the Association of (i) any condemnation or casualty loss that affects either a material portion of the Condominium or the Unit securing its First Mortgagees; (ii) any 60-day delinquency in the payment of assessments or charges owed by the Unit Owner of the Unit on which the First Mortgagee held its First Mortgage or in the performance of any obligation under this Declaration or the Bylaws by said Unit Owner; or (iii) any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association.

### ARTICLE XIII.

#### General Provisions

13.1 Conflict With the Act; Severability. Should any of the terms, conditions, provisions, paragraphs, or clauses of this Declaration conflict with any provisions of the Act, the provisions of the Act shall control unless the Act permits the Declaration to override the Act, in which event the Declaration shall control. The invalidity of any covenant, restriction, condition, limitation, provision, paragraph or clause of this Declaration, or of any part of the same, or the application thereof to any person or circumstance, shall not impair or affect in any manner the validity, enforceability or effect of the rest of this Declaration, or the application of any such covenant, restriction, condition, limitation, provision, paragraph or clause to any other person or circumstance.

13.2 Interpretation of Declaration. Whenever appropriate, singular may be read as plural, plural may be read as singular, and the masculine gender may be read as the feminine or neuter gender. Compound words beginning with the prefix "here" shall refer to this entire Declaration and not merely to the part in which they appear.

13.3 Captions. The captions herein are only for convenience and reference and do not define, limit or describe the scope of this Declaration or the intent of any provision.



14.4 Exhibits. Exhibits A, B, C, D and E attached hereto are hereby made a part hereof.

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

13.6 Waiver. No provision of this 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.

13.7 Law Controlling. This Declaration shall be construed and controlled by and under the laws of the State of North Carolina.

[SIGNATURE AND ACKNOWLEDGEMENT ON FOLLOWING PAGE]

IN WITNESS WHEREOF, Declarant hereby executes this Declaration by and through its authorized representatives on the day and year first above written.

NJV INVESTMENT, LLC,  
a North Carolina limited liability company

By: ITF COMMERCIAL, INC., its Manager, a  
North Carolina corporation

By: [Signature]  
Name: James E. Merrifield  
Title: President

STATE OF NORTH CAROLINA  
COUNTY OF Mecklenburg

I, Kimberly B. Young, a Notary Public of the County and State aforesaid, certify that James E. Merrifield personally came before me this day, and acknowledged that he is \_\_\_\_\_ President of ITF Commercial, Inc., Manager of NJV Investment, LLC, a North Carolina limited liability company, and that he as \_\_\_\_\_ President, being authorized to do so, executed the foregoing on behalf of ITF Commercial, Inc., acting as Manager of the limited liability company.

I do hereby certify that James E. Merrifield personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

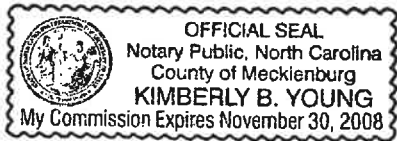
March 21, 2008

[Signature]  
(Official Signature of Notary)

Notary's printed name: Kimberly B. Young  
Notary Public

STAMP/SEAL

My commission expires: 11/30/08



4851.  
0687

**Exhibit A**

Being all of Lot 47, as shown on Plat Book or Slide J, at Page 404, Union County  
Public Registry, consisting of 2.23 acres.

**Exhibit B**

Percentage of Undivided Interest in the Common Elements

<u>Unit Number</u>	<u>Percentage Of Ownership</u>	<u>Square Feet</u>
A	33.5%	8,130
B	18.5%	4,498
C	48%	11,660

**Exhibit C**

**Encumbrances**

All easements, covenants, conditions and restrictions of record in Union County, North Carolina, and matters of survey

**Exhibit D**

Articles of Incorporation

ARTICLES OF INCORPORATION

OF

1009 FORSYTH AVENUE CONDOMINIUM ASSOCIATION, INC.

In compliance with the requirements of Chapter 55A of the North Carolina General Statutes, the undersigned, who is a resident of Mecklenburg County, North Carolina and is of the age of eighteen (18) years or more, does hereby make and acknowledge these Articles of Incorporation for the purpose of forming a corporation not for profit and does hereby certify:

ARTICLE I

Name

The name of the corporation is 1009 FORSYTH AVENUE CONDOMINIUM ASSOCIATION, INC., (hereinafter called the "Association").

ARTICLE II

Duration

The corporation shall have perpetual duration.

ARTICLE III

Applicable Statute

The corporation is organized pursuant to the provisions of Chapter 55A of the North Carolina General Statutes.

ARTICLE IV

Registered Office and Agent

The principal and registered office of the Association is located at 125 Scaleybark Road, Charlotte, Mecklenburg County, North Carolina 28209, and the initial registered agent of the Association is James E. Merrifield, whose address is 125 Scaleybark Road, Charlotte, Mecklenburg County, North Carolina 28209.

ARTICLE V

Purposes and Powers

The Association does not contemplate pecuniary gain or benefit, direct or indirect, to its members. In way of explanation and not of limitation, the purposes for which it is formed are:

- (a) to be and constitute the Association to which reference is made in the Declaration of 1009 FORSYTH AVENUE Condominium, as amended (hereinafter the "Declaration") recorded or to be recorded in the Office of the Register of Deeds of Union County, North Carolina; to perform all obligations and duties of the Association and to exercise all rights and powers of the Association, as specified therein, in the Bylaws, and as provided by law; and
- (b) to provide an entity for the furtherance of the interests of the owners of units in the development.

In furtherance of its purposes, the Association shall have the following powers, which, unless indicated otherwise by the Declaration or Bylaws, may be exercised by the Executive Board of the Association,

- (a) all the powers conferred upon non-profit corporations by common law and the Statutes of the State of North Carolina in effect from time to time;
- (b) all the powers necessary or desirable to perform the obligations and duties and to exercise the rights and powers set out in these Articles, the Bylaws, or the Declaration, including without limitation the following:
  - (i) to fix and to collect assessments or other charges to be levied against the properties;
  - (ii) to manage, control, operate, maintain, repair and improve the common elements, and any property subsequently acquired by the Association, or any property owned by another, for which the Association, by rule, regulation, Declaration, or contract, has a right or duty to provide such services;
  - (iii) to enforce covenants, conditions, or restrictions affecting any property to the extent the Association may be authorized to do so under the Declaration or Bylaws;
  - (iv) to engage in activities which will actively foster, promote and advance the common interests of all owners of units at the development;
  - (v) to buy or otherwise acquire, sell, or otherwise dispose of mortgage, or otherwise encumber, exchange, lease, hold, use, operate and otherwise deal in and with real

personal and mixed property of all kinds and any right or interest therein for any purpose of the Association;

- (vi) to borrow money for any purpose except as may be limited by law, the Declaration or Bylaws;
- (vii) to enter into, make, perform, or enforce contracts of every kind and description and to do all other acts necessary, appropriate or advisable in carrying out any purpose of the Association, with or in association with any other Association, corporation, or other entity or agency, public or private;
- (ix) to adopt, alter, and amend or repeal such Bylaws as may be necessary or desirable for the proper management of the affairs of the Association; provided, however, such Bylaws may not be inconsistent with or contrary to any provisions of the Declaration;
- (x) to provide any and all supplemental municipal services as may be necessary or proper; and
- (xi) the foregoing enumeration of powers shall not limit or restrict in any manner the exercise of other and further rights and powers which may now or hereafter be allowed or permitted by law; and the powers specified in each of the paragraphs of this Article V are independent powers, not to be restricted by reference to or inference from the terms of any other paragraph or provisions of this Article V.

## ARTICLE VI

### Membership

The Association shall be a membership corporation without certificates or shares of stock. All unit owners, by virtue of their ownership of units in the condominium, are members of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation.

## ARTICLE VII

### Executive Board

The affairs of this Association shall be managed by an Executive Board of three (3) directors who need not be members of the Association. The number of directors may be changed by amendment of the Bylaws of the Association. The names and addresses of the persons who will serve as members of the Executive Board until the selection of their successors are:



<u>Name</u>	<u>Address</u>
James E. Merrifield	Merrifield Partners, LLC 125 Scaleybark Road Charlotte, North Carolina 28209
Ian H. Bruce	Merrifield Partners, LLC 125 Scaleybark Road Charlotte, North Carolina 28209
Jonathan B. Jarrett	Merrifield Partners, LLC 125 Scaleybark Road, Charlotte, North Carolina 28209

The method of election and term of office, removal and filling of vacancies shall be as set forth in the Bylaws. The Executive Board may delegate such operating authority to such companies, individuals, or committees as it, in its discretion, may determine.

#### ARTICLE VIII

##### Dissolution

The Association may be dissolved only as provided in the Declaration, Bylaws and by the laws of the State of North Carolina.

#### ARTICLE IX

##### Amendments

These Articles may be amended as provided by the provisions of Chapter 55A of the North Carolina General Statutes, provided that no amendment shall conflict with the Declaration or the North Carolina Condominium Act, Chapter 47C of the North Carolina General Statutes.

#### ARTICLE X

The name and address of the incorporator are as follows:

Cathleen N. Hardman  
Crosland, LLC  
227 West Trade Street, Suite 800  
Charlotte, NC 28202

IN WITNESS WHEREOF, for the purpose of forming this Association under the laws of the State of North Carolina, I, the undersigned, being the incorporator of this Association, have executed these Articles of Incorporation this \_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
Cathleen N. Hardman, Incorporator

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

I do hereby certify that James E. Merrifield personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

March \_\_\_\_, 2008

\_\_\_\_\_  
(Official Signature of Notary)

Notary's printed name: \_\_\_\_\_

Notary Public

STAMP/SEAL

My commission expires: \_\_\_\_\_

**Exhibit E**

Bylaws

BYLAWS OF  
1009 FORSYTH AVENUE CONDOMINIUM ASSOCIATION, INC.

ARTICLE I.

Name, Membership, Applicability and Definitions

Section 4. Name. The name of the Association shall be 1009 FORSYTH AVENUE CONDOMINIUM ASSOCIATION, INC., hereinafter referred to as the "Association."

Section 5. Definitions. All capitalized terms when used in these Bylaws, or any amendment hereto (unless the context shall otherwise require or unless otherwise specified herein) shall have the meanings set forth in that certain Declaration of Condominium for 1009 FORSYTH AVENUE Condominium executed by NJV Investment, LLC, a North Carolina limited liability company (collectively "Declarant") and duly recorded in the Union County, North Carolina, Public Registry as the same may be supplemented and amended from time to time (the "Declaration").

Section 6. Membership. All Unit Owners shall be members ("Members") of the Association and the terms of the above referenced Declaration which pertain to membership are specifically incorporated herein by reference.

Section 7. Location. The principal office of the Association shall be located in Mecklenburg County, North Carolina. The registered office of the Association may be, but need not be, identical with the principal office.

ARTICLE II.

Association: Meetings, Quorum, Voting, Proxies

Section 8. Place of Meetings. Meetings of the Association shall be held at the principal office of the Association or at such other suitable place within Union County, North Carolina as may be designated by the Board.

Section 9. Annual Meeting. A meeting of the Members shall be held at least once annually for the purpose of electing members of the Board and for the transaction of such other business as may be properly brought before the meeting. The date of the meeting shall be designated by the Board.

Section 10. Special Meetings. Special meetings of the Members may be called at any time by the Board, the chairman or upon the written request of the Members who are entitled to vote twenty percent (20%) of all of the votes appurtenant to the Units.

Section 11. Notice of Meetings. Except as otherwise provided in the Declaration, Articles of Incorporation or these Bylaws, written notice of each meeting of the Members shall be given by or at the direction of the Secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, not less than ten (10) days nor more than fifty (50) days before the date of such meeting to each Member entitled to vote thereat, addressed to the Member's address last appearing on the books of the Association, or supplied by such Member to the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting or a meeting at which shall be considered a proposed amendment to the Declaration or these Bylaws, any budget changes or any proposal to remove a director or officer, the purpose of the meeting.

Section 12. Quorum. The presence at the meeting of Members entitled to cast, or of proxies entitled to cast, two-thirds (2/3) of the votes appurtenant to the Units shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation, the Declaration, or these Bylaws. If, however, such quorum shall not be present or represented at any meeting, subsequent meetings may be called, subject to the same notice requirement, until the required quorum is present. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 13. Voting Rights. The voting rights of the Members shall be appurtenant to the ownership of Units. Each Member's voting percentage shall be based upon each Member's undivided interest in the Common Elements, which interest shall total one hundred percent (100%). Provided, when two (2) or more Persons own or hold interests in any Unit, all such Persons shall be Members, and the votes for such Unit shall be exercised as they, among themselves, determine (including the division thereof into fractional votes).

Section 14. Action by Members. Except as provided otherwise in the Articles of Incorporation, the Declaration or these Bylaws, any act or decision approved by a vote of a majority of all votes present at a duly held meeting of the Members at which a quorum is present shall be regarded as the act of the Members.

Section 15. Proxies. At all meetings of Members, each Member may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary. Every proxy shall be revocable and shall automatically cease upon conveyance by the Member of his Unit.

Section 16. Waiver of Notice. Any Member may, at any time, waive notice of any meeting of the Association in writing, and such waiver shall be deemed to be equivalent to the giving of such notice. Attendance by a Member at any meeting of the Association shall constitute a waiver of notice by him of the time and place thereof, except where a Member attends a meeting for the express purpose of objecting to the transaction of any business because the meeting was not lawfully called. If all of the Members are present at any meeting of the Members, no notice shall be required, and any business may be transacted at said meeting.

Section 17. Informal Action by Members. Any action which may be taken at a meeting of the Association may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the Members and filed with the Secretary of the Association to be kept in the Association's minute book.

Section 18. Termination Of Membership. The membership of a "Person" (which, for purposes hereof, includes entities as well as persons) in the Association shall terminate automatically whenever such Person ceases to be an Owner, but such termination shall not release or relieve any such Person from any liability or obligation incurred under or in any way connected with the Association or the Declaration during the period of such Person's ownership of a Unit, or impair any rights or remedies which the Association or any other Member has with regard to such former Member.

### ARTICLE III.

#### Executive Board

Section 19. Number. The business and affairs of the Association shall be managed and directed by the Executive Board (the "Board"), composed of three (3) persons, who need not be Members of the Association.

Section 20. Initial Directors. The initial members of the Board (referred to as "directors" herein) shall be selected by the Declarant, and need not be Unit Owners. Such initial directors shall serve at the election of the Declarant from the date upon which the Declaration is recorded in the Union County Public Registry, until such time as their successors are duly elected and qualified.

The names of the persons who shall serve on the initial Board from the date upon which the Declaration is recorded in the Union County Public Registry until such time as their successors are duly elected and qualified, are as follows:

James E. Merrifield  
Ian H. Bruce  
Jonathan B. Jarrett

Section 21. Election. Except as provided herein, the directors shall be elected at the annual meeting of the Association, and those persons who receive the highest number of votes shall be deemed to have been elected. Notwithstanding anything herein to the contrary, the Board shall consist of three (3) directors during the Declarant Control Period.

Within sixty (60) days after conveyance of twenty-five percent (25%) of the Units to Unit Owners other than the Declarant, at least one director and not less than twenty-five percent (25%) of the directors shall be elected by Unit Owners other than the Declarant. Within sixty (60) days after conveyance of fifty percent (50%) of said Units to Unit Owners other than

Declarant, not less than thirty-three percent (33%) of the directors shall be elected by Unit Owners other than the Declarant.

Effective upon the termination of the Declarant Control Period, the Members shall elect a Board of at least three (3) members, a majority of whom must be Unit Owners or officers, directors, shareholders, members, managers or partners of a Unit Owner. Nomination for election to the Executive Board shall be made from the floor at the first meeting of the Members. After the first election of directors, nomination for election to the Executive Board shall be made from the floor at the annual meeting.

Section 22. Term and Qualification. Each director shall hold office for the term for which he was elected, or until his death, resignation, retirement, removal, disqualification or until his successor is elected and qualified. Nothing herein contained shall be construed to prevent the election of a director to succeed himself. A majority of the directors, except those initial directors selected by the Declarant pursuant to Section 2 of these Bylaws, shall be one of the Unit Owners; provided, however, that in the event a Unit Owner is a corporation, partnership, trust or other legal entity other than a natural person or persons, then an officer or director of such corporation, partner of such partnership, beneficiary of such trust or manager of such other legal entity, shall be eligible to serve as a director.

Section 23. Removal. Directors may be removed from office with or without cause by the affirmative vote of at least sixty-seven (67%) percent of votes cast by the Members. If any directors are so removed, new Board members may be elected at the same meeting; provided, however, that the person(s) selected by Declarant during the Declarant Control Period cannot be removed without the prior written consent of Declarant.

Section 24. Vacancies. A vacancy occurring in the Board may be filled by a majority vote of the remaining directors, though less than a quorum.

In the event that Declarant, in accordance with the rights herein established, selects any person to serve on any Executive Board of the Association, Declarant shall have the absolute right at any time in its sole discretion, to replace such person with another person to serve on any Board. Replacement of any person designated by Declarant to serve on the Board shall be made by written instrument delivered to any officer of the Association, which instrument shall specify the name of the person to be replaced and the name of the person designated as successor to the person so removed from the Board. The removal of any such Board member and the designation of his successor shall be effective immediately upon delivery of such written instrument by Declarant to any officer of the Association.

Section 25. Compensation. The Board Members shall receive no compensation for their services. However, Board Members may be reimbursed for their actual expenses incurred in the performance of their duties.

Section 26. Committees. The Board may create such committees as it deems necessary and appropriate in aiding the Board to carry out its duties and responsibilities with respect to the management of the Condominium.

Section 27. Powers and Duties. The Board shall have the powers and duties necessary for the administration of the affairs of the Condominium, and may do all such acts and things, except such acts as by law, the Declaration or these Bylaws may not be delegated to the Board. Such powers and duties of the Board shall include but shall not be limited to, the following:

- (a) Determining the Common Expenses required for the affairs, operation and maintenance of the Condominium, and collecting the Common Expenses from the Unit Owners.
- (b) Supervising the operation, care, upkeep and maintenance of the Common Elements.
- (c) Employing a manager, independent contractors, or such other employees and personnel necessary for the maintenance and operation of the Common Elements, and prescribing their duties.
- (d) Employing professionals to represent the Association when deemed necessary.
- (e) Adopting and amending such reasonable rules and regulations as it may deem advisable governing the maintenance and use of the Condominium and for the health, comfort, safety and general welfare of the Unit Owners, and establishing penalties for the infraction thereof.
- (f) Opening bank accounts on behalf of the Condominium and designating the signatories required therefor.
- (g) Maintaining and repairing any Unit, if such maintenance or repair is necessary in the discretion of the Board or by operation of applicable restrictions to protect the Common Elements or any other portion of the Property, and a Unit Owner has failed or refused to perform such maintenance or repair within a reasonable time after written notice of the necessity of said maintenance or repair has been delivered or mailed by the Board to said Unit Owner; provided, that the Board shall levy a special assessment against such Unit Owner for the costs of said maintenance or repair.
- (h) Entering any Unit when necessary in connection with any maintenance or construction for which the Board is responsible; provided, that except in the event of emergencies, such entry shall be made during reasonable hours with as little inconvenience to the Unit Owner as practical, and any damage caused thereby shall be repaired by the Board, with such expenses being treated as a Common Expense.
- (i) Signing all agreements, contracts, deeds and vouchers for the payment of expenditures and other instruments in such manner as from time to time shall be determined by written resolution of the Board. However, any contracts or leases

executed on behalf of the Association prior to the passage of control of the Board to the Association must be terminable by the Association without penalty on not more than ninety (90) days' written notice. In the absence of such determination by the Board such document shall be signed by the treasurer and countersigned by the chairman.

- (j) To pay the premiums on all insurance carried by the Association in connection with the Common Elements pursuant hereto, pursuant to the Bylaws and/or pursuant to the Declaration.
- (k) Making or contracting for repairs, additions and improvements to or alterations or restoration of the Condominium 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 condemnation or eminent domain proceeding.
- (l) Instituting, defending, or intervening in litigation or administrative proceedings in the name or of on behalf of the Association or two or more Unit Owners on matters affecting the Condominium.
- (m) Borrowing money on behalf of the Condominium when required in connection with the operation, care, upkeep and maintenance of the Common Elements or the acquisition of property; provided, however, that the affirmative vote of two-thirds (2/3) of the votes appurtenant to the Units at a meeting at which a quorum has been attained shall be required for the borrowing of any sum in excess of \$10,000.00.
- (n) Imposing charges for late payment of assessments and, after notice and an opportunity to be heard, levying reasonable fines for violations of the Declaration, the Bylaws, or rules and regulations established by the Association, all in accordance with Sections 47C-3-107 and 47C-3-107A of the Act.
- (o) Exercising (i) all powers specifically set forth in the Declaration, the Articles of Incorporation, these Bylaws and in the Act, (ii) all powers incident thereto, and (iii) all other powers of a non-profit North Carolina corporation.
- (p) Suspending the voting rights of any Unit Owner as long as said Unit Owner is delinquent in the payment of any assessment levied by the Association or is otherwise in violation of the Declaration or any exhibits thereto or applicable rules and regulations.
- (q) Declaring the office of a Board Member to be vacant in the event such Member shall be absent from three (3) consecutive regular meetings of the Board.
- (r) Enforcing the provisions of the Declaration and any amendments or supplements and any rules or regulations made hereunder or thereunder, and to enjoin and/or, at its discretion, seek damages or other relief for violation of such provisions or



rules and/or to impose assessments against any Owner for violation of such provisions, rules or regulations pursuant to the provisions of the Declaration.

#### ARTICLE IV.

##### Meetings of Directors

Section 28. Regular Meeting. Meetings of the Board shall be held without notice on a regular basis as often as the Board sees fit, but no less often than annually, on such days and at such place and hour as may be fixed from time to time by resolution of the Board.

Section 29. Special Meetings. Special meetings of the Board may be called by or with the request of the Chairman, or by any two (2) Directors, with not less than three (3) days notice to each Director. Such meetings may be held either within or without the State of North Carolina.

Section 30. Quorum. A majority of the number of Directors fixed by these Bylaws shall be required for and constitute a quorum for the transaction of business at any meeting of the Board.

Section 31. Manner of Acting. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the Board.

Section 32. Organization. Each meeting of the Board shall be presided over by the Chairman, and in the absence of the Chairman, by a person selected to preside by vote of the majority of the Board members present. The secretary, or in his absence, an assistant secretary, or in the absence of both the secretary and the assistant secretary, any person designated by the chairman of the meeting shall act as secretary of the meeting.

Section 33. Informal Action of Board. Action taken by a majority of the directors without a meeting is nevertheless Board action if written consent to the action in question is signed by all of the Directors and filed with the minutes of the proceedings of the Board, whether done before or after the action so taken.

Section 34. Minutes. The Board shall keep minutes of its proceedings, which shall be available for inspection by the Unit owners during reasonable business hours.

Section 35. Liability of the Board and Officers. The Directors and the officers provided for in Article V hereof shall not be liable to the Unit Owners for any mistake of judgment, negligence or otherwise, except for their own individual willful misconduct or bad faith. The Unit Owners shall indemnify and hold harmless each of the Directors and the officers against all contractual liability to others arising out of contracts made by the Board or the officers on behalf of the Condominium, unless any such contract shall have been made in bad faith or contrary to the provisions of the Declaration or these Bylaws. It is intended that the directors or any officer shall have no personal liability with respect to any contract made by them on behalf of the Condominium, except to the extent that they are Unit Owners and have liability as such. It

is also intended that the liability of any Unit Owner arising out of any contract made by the Board or the officers, or out of the aforesaid indemnity in favor of the directors of the officers, shall be limited to such proportion of the total liability thereunder as his interest in the Common Elements bears to the interests of all the Unit Owners in the Common Elements. Every agreement made by the Board, by the managing agent or by the officers on behalf of the Condominium shall provide that the members of the Board, by the managing agent or the officers, as the case may be, are acting only as agents for the Unit Owners, and shall have no personal liability thereunder.

## ARTICLE V.

### Officers

Section 36. Number. The principal officers of the Condominium shall consist of a Chairman of the Board, a secretary, and a treasurer. In its discretion, and from time to time, the Board may elect such vice chairmen, assistant secretaries, and other officers as it deems necessary. Any two or more offices may be held by the same person, except the offices of chairman and secretary.

Section 37. Election and Term. The officers of the Condominium shall be elected by the Board. The chairman, vice chairman, secretary and treasurer shall be elected from among the Board and all other officers, if any, must be a Unit Owner. The officers elected by the initial Board are not required to be Unit Owners. The election of officers may be held at the regular annual meeting of the Board.

Each officer shall hold office for a period of one year or until his death, resignation, retirement, removal, disqualification, or until his successor is elected and qualifies.

Section 38. Removal. Any officer or agent elected or appointed by the Board may be removed by the Board, with or without cause.

Section 39. Compensation. No officer shall receive any compensation from the Condominium for acting as such.

Section 40. Chairman of the Board. The Chairman of the Board shall be the principal executive officer of the Condominium, and, subject to the control of the Board, shall supervise and control the management of the Condominium. The chairman shall, when present, preside at all meetings of the Board and of the Unit Owners and, in general, shall perform all duties incident to the office of chairman of the Board, and such other duties as may be prescribed from time to time by the Board.

Section 41. Vice Chairman. The vice chairman, if any, and if there be more than one, the vice chairmen, designated by the Board, shall, in the absence or disability of the chairman, have the powers and perform the duties of said office. In addition, each vice chairman shall perform such other duties and have such other powers as shall be prescribed by the Chairman of the Board.

Section 42. Secretary. The secretary shall keep accurate records of the acts and proceedings of all meeting of the Unit Owners and directors. He shall give, or cause to be given, all notice required by law and by these Bylaws. He shall have general charge of the minute books and records of both the Association and the board. He shall sign such instruments as may require his signature, and, in general, shall perform all duties incident to the office of secretary, and such other duties as may be assigned from him from time to time by the chairman of the Board or by the Board.

Section 43. Treasurer. The treasurer shall have custody of all Condominium funds and securities, and shall receive, deposit or disburse the same under the direction of the Board. He shall keep full and accurate accounts of the finances of the Condominium in books especially provided for that purpose. He shall cause a true statement of its assets and liabilities as of the close of each fiscal year, and of the results of its operations and changes in surplus for each fiscal year, all in reasonable detail, to be prepared and distributed to all Unit Owners and members of the Board on or before the 15th day of the second month following the close of each fiscal year. The statement so filed shall be kept available for inspection by an Unit Owner for a period of three (3) years. The treasurer shall also prepare and file all reports and returns required by federal, state or local law, and shall generally perform all other duties as may be assigned to him from time to time by the chairman of the Board.

Section 44. Assistant Secretaries and Treasurers. The assistant secretaries and assistant treasurers, if any, shall, in the absence of the secretary and treasurer, respectively, have all the powers and perform all of the duties of those officers, 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 chairman of the Board or the Board.

## ARTICLE VI.

### Assessments and Budget

As more fully provided in the Declaration, each Member is obligated to pay the assessments, which are secured by a continuing lien upon the Unit against which such assessments are made. Any assessments which are not paid when due shall be delinquent. If, as set forth in the Declaration, any assessment is not paid by its due date, the assessment shall bear interest from such due date at eighteen percent (18%) per annum, unless a lesser rate is required under applicable law, and the Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the Unit. Interest, late payment charges, costs and reasonable attorneys' fees related to any such action or foreclosure shall be added to the amount of such assessment, all in accordance with the provisions of the Declaration. No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Elements or by abandoning his Unit.

The Executive Board shall adopt an annual budget for the Condominium, and shall, within thirty (30) days after such adoption, provide a summary of the budget to all Owners. The Board shall then set a date for a meeting of Owners to consider ratification of the budget not less

than fourteen (14) nor more than thirty (30) days after mailing of the summary. The budget is ratified unless at that meeting a majority of all Owners rejects the budget, in which case the previously approved budget shall continue in effect until a new budget is ratified pursuant to this Article VI.

## ARTICLE VII.

### Books and Records

The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any Member and his or her agents. The Declaration, the Articles of Incorporation and the Bylaws of the Association shall be available for inspection by any Member at the principal office of the Association, where copies may be purchased at reasonable cost.

## ARTICLE VIII.

### Amendments to Bylaws

Section 45. Adoption. A resolution for the adoption of a proposed amendment may be proposed either by a majority of the Board or by not less than one-third (1/3) of the total votes of the members of the Association. Directors and Members not present in person or by proxy at the meeting considering the amendment may express their approval in writing, provided that such approval is delivered to the Secretary at or prior to the Meeting. The approval must be by not less than a majority of the votes of all Members represented at a meeting at which a quorum has been attained.

Section 46. Limitation. No amendment may be adopted which would eliminate, modify, prejudice, abridge or otherwise adversely affect any rights, benefits, privileges or priorities granted or reserved to the Declarant without the consent of said Declarant in each instance. No amendment shall be made that is in conflict with the Articles of Incorporation of the Association or Declaration without satisfaction of the requirements therein contained.

Section 47. Execution and Recording. A copy of each amendment shall be attached to a certificate certifying that the amendment was duly adopted as an amendment to the Declaration and bylaws, which certificate shall be executed by the Chairman or vice chairman and attested by the Secretary or Assistant Secretary of the Association with the formalities of a deed, or by the Declarant alone if the amendment has been adopted consistent with the provisions of the Declaration allowing such action by the Declarant.

## ARTICLE IX.

### Miscellaneous

Section 48. Ad Valorem Taxes. Each Unit shall be deemed to be a separate parcel and shall be separately assessed and taxed. Each Unit Owner shall be liable solely for the amount of

tax assessed against his Unit and shall not be affected by the consequences resulting from the tax delinquency of other Unit Owners. All tangible personal property owned by the Association in connection with the maintenance, upkeep and repair of the Common Elements shall be listed for said taxes in the name of and paid by the Association. Each Unit Owner is also responsible for his pro rata share of taxes assessed on his portion of the Common Elements, if any.

Section 49. Severability. Invalidation of any covenant, condition, restriction or other provision 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 50. Successors Bound. The rights, privileges, duties and responsibilities set forth in the Declaration of these bylaws, 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 51. Gender, Singular, Plural. Whenever the context so permits, the use of the singular or plural shall be interchangeable in meaning and the use of any gender shall be deemed to include all genders.

Section 52. Principal Office--Registered Office. The initial principal office and registered office of the Association shall be located at 125 Scaleybark Road, Charlotte, North Carolina 28209.

Section 53. Seal. The seal of the Association shall contain the name of the Association, the word "Seal", the year of incorporation and such other words and figures as is desired by the Board of Directors. When obtained, the seal shall be impressed in the margin of this Section of the Bylaws.

Section 54. Fiscal Year. The fiscal year of the Association shall be the calendar year.