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DECLARATION OF EASTOVER MEDICAL PARK II CONDOMINIUM

ARTICLE 1. SUBMISSION; DEFINITIONS

Section 1.1. Submission of Property. Elizabeth Square Associates, ("Declarant"), owner in fee simple of the real estate described in Exhibit A, located within Mecklenburg County, North Carolina, hereby submits such real estate, including all improvements, easements, rights and appurtenances thereunto belonging to the provisions of Chapter 47C of the General Statutes of North Carolina, known as the North Carolina Condominium Act ("Condominium Act"), and hereby creates with respect to said real estate a condominium to be known as "Eastover Medical Park II Condominium" ("Condominium").

Section 1.2. Definitions. As used in the Condominium Documents, the following words and phrases shall have the following meanings:

a. "Allocated Interests" means the undivided interest in the Common Elements and Common Expense liability, and votes in the Association, allocated to Units in the Condominium. The Allocated Interests are described in Article 7 of this Declaration and shown on Exhibit B.

b. "Association" means Eastover Medical Park II Condominium Association, Inc., a non-profit corporation organized under Chapter 55A of the General Statutes of North Carolina. It is the Association of the Unit Owners pursuant to Section 47C-3-101 of the Condominium Act.

c. "Bylaws" means the Bylaws of the Association, as they may be amended from time to time.

d. "Common Elements" means all portions of the Condominium other than the Units.

e. "Common Expenses" means the expenses or financial liabilities for the operation of the Condominium. These include:

(i) expenses of administration, maintenance, repair or replacement of the Common Elements;

(ii) expenses declared to be Common Expenses by the Condominium Documents or by the Condominium Act;

(iii) expenses agreed upon as Common Expenses by the Association; and

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PETREE STOCKTON & ROBINSON  
217 NORTH TRYON STREET  
CHARLOTTE, NC 28232

(iv) such reasonable reserves as may be established by the Association, whether held in trust or by the Association, for repair, replacement or addition to the Common Elements or any other real or personal property acquired or held by the Association.

f. "Condominium" means the real property described in Exhibit A subject to this Declaration.

g. "Declarant" means Elizabeth Square Associates, a North Carolina limited partnership or its successor as defined in Section 47C-1-103(9) of the Condominium Act.

h. "Development Rights" means the rights reserved by the Declarant under Article 6 of this Declaration to add real estate to the Condominium, to create Units, Common Elements, and Limited Common Elements within the Condominium, to subdivide Units or convert Units into Common Elements, and to withdraw real estate from the Condominium.

i. "Declarant Control Period" means the period prior to the earlier of:

(i) one hundred twenty (120) days after conveyance to Unit Owners other than a Declarant of seventy-five percent (75%) of the Units which may be created under this Declaration;

(ii) two (2) years after all Declarants have ceased to offer Units for sale in the ordinary course of business;

(iii) two (2) years after any right to add real estate to the Condominium, including any Units or Improvements located thereon was last exercised; or

(iv) five (5) years after the first Unit is conveyed to a Unit Owner other than a Declarant.

j. "Director" means a member of the Executive Board.

k. "Condominium Documents" means this Declaration, the Plats and Plans recorded and filed pursuant to the

provisions of the Condominium Act, the Bylaws, and the Rules and Regulations as they may be amended from time to time. Any exhibit, schedule, or certification accompanying a Condominium Document is a part of that Condominium Document.

l. "Eligible Mortgagee" means an institutional lender holding a first mortgage or first deed of trust ("First Mortgage") encumbering a Unit that has notified the Association in writing of its status, stating both its name and address and the Unit number or address of the Unit its First Mortgage encumbers, and has requested all rights under the Condominium Documents. For purposes of Article 16 only, when any right is to be given to an Eligible Mortgagee, such right shall also be given to the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Veterans Administration, the Federal Housing Administration, the Farmers Home Administration, the Government National Mortgage Association and any other public or private secondary mortgage market entity participating in purchasing or guarantying mortgages if the Association has notice of such participation.

m. "Executive Board" means the board of directors of the Association.

n. "Improvements" means any construction, structure, fixture or facilities existing or to be constructed on the land included in the Condominium, including but not limited to, buildings, trees and shrubbery planted by the Declarant or the Association, paving, utility lines, pipes, and light poles.

o. "Limited Common Elements" means the portion of the Common Elements allocated for the exclusive use of one or more but fewer than all of the Units by the Declaration or by operation of Sections 47C-2-102(2) and (4) of the Condominium Act. The Limited Common Elements in the Condominium are described in Article 3 of this Declaration.

p. "Majority or Majority of Unit Owners" means the owners of more than fifty percent (50%) of the votes in the Association.

q. "Manager" means a person, firm or corporation employed or engaged to perform management services for the Condominium and the Association.

r. "Notice and Comment" means the right of a Unit Owner to receive notice of an action proposed to be taken by or on behalf of the Association, and the right to comment thereon. The procedures for Notice and Comment are set forth in Section 22.1 of this Declaration.

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s. "Notice and Hearing" means the right of a Unit Owner to receive notice of an action proposed to be taken by the Association, and the right to be heard thereon. The procedures for Notice and Hearing are set forth in Section 22.2 of this Declaration.

t. "Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, government subdivision or agency, or other legal or commercial entity.

u. "Plats and Plans" means the Plats and Plans recorded simultaneously with this Declaration in Unit Ownership File Number 341 and constituting a part hereof, as the same may be amended from time to time.

v. "Property" means the land, all Improvements, easements, rights and appurtenances, which have been submitted to the provisions of the Condominium Act by this Declaration.

w. "Public Offering Statement" means the current document prepared pursuant to Section 47C-4-103 of the Condominium Act as it may be amended from time to time, and provided to purchasers prior to the time of execution of a purchase agreement, if and as required by said Section 47C-4-103 of the Condominium Act.

x. "Rules and Regulations" means Rules and Regulations for the use of Units and Common Elements and for the conduct of Unit Owners and persons within the Condominium, adopted by the Executive Board pursuant to this Declaration.

y. "Security Interest" means an interest in real estate or personal property, created by contract or conveyance which secures payment or performance of an obligation. The term includes a lien created by a mortgage, deed of trust, contract for deed, land sales contract, lease intended as security, assignment of lease or rents intended as security, pledge of an ownership interest in the Association, and any other consensual lien or title retention contract intended as security for an obligation.

z. "Special Declarant Rights" means the rights reserved for the benefit of a Declarant to:

(i) complete Improvements indicated on the Plats and Plans filed with the Declaration;

(ii) exercise any Development Rights;

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(iii) maintain sales offices, management offices, signs advertising the Condominium, and models;

(iv) use easements through the Common Elements for the purpose of making Improvements within the Condominium or within real estate that may be added to the Condominium; or

(v) appoint or remove any officer of the Association or any Executive Board member during the Declarant Control Period.

a.a. "Trustee" means the entity which may be designated by the Executive Board as the Trustee for the receipt, administration, and disbursement of funds derived from insured losses, condemnation awards, special assessments for uninsured losses, and other like sources as defined in the Bylaws. If no Trustee has been designated, the Trustee will be the Executive Board from time to time constituted, acting by majority vote, as executed by the president and attested by the secretary.

b.b. "Unit" means a physical portion of the Condominium designated for separate ownership or occupancy, the boundaries of which are described in Section 2.2 of this Declaration.

c.c. "Unit Owner" means the Declarant or other Person who owns a Unit. Unit Owner does not include a Person having an interest in a Unit solely as security for an obligation. The Declarant is the initial owner of any Unit created by this Declaration.

## ARTICLE 2. MAXIMUM NUMBER OF UNITS; BOUNDARIES

Section 2.1. Maximum Number of Units. The Condominium upon creation contains five (5) Units. As additional Units are added, the Condominium shall contain the number of Units listed in the most current amendment to Exhibit B as set forth in the most current amendment to this Declaration. The Declarant reserves the right to create up to a total of twenty (20) Units.

Section 2.2. Boundaries. Boundaries of each Unit created by this Declaration are shown on the Plats and Plans as numbered Units with their identifying number and are described as follows:

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a. Upper Boundary: The horizontal or sloping plane or planes of the unfinished lower surfaces of the ceiling bearing structure surfaces, beams, and rafters and of closed fire-place dampers, extended to an intersection with the vertical perimeter boundaries.

b. Lower Boundary: The horizontal plane or planes of the undecorated or unfinished upper surfaces of the floors extended to an intersection with the vertical perimeter boundaries and open, horizontal, unfinished surfaces of trim, seals and structural components.

c. Vertical Perimeter Boundary: The planes defined by the inner surfaces of the studs and framing of the perimeter walls; the unfinished inner surfaces of the masonry walls; the unfinished surfaces of the interior trim, fireplaces (if any); and thresholds along perimeter walls and floors; the unfinished inner surfaces of closed windows and closed perimeter doors; and the innermost unfinished planes of all interior bearing studs and framing of bearing walls, columns, bearing partitions, and partition walls between separate Units.

d. Inclusions: Each Unit will include the spaces and Improvements lying within the boundaries described in Subsections 2.2a, b, and c, above, and will also include the spaces and Improvements within such spaces containing any space heating, water heating and air conditioning apparatus, smoke detector systems and all electrical switches, wiring, pipes, ducts, conduits, smoke detector systems and television, telephone, and electrical receptacles and light fixtures and boxes serving that Unit exclusively, the surface of the foregoing being the boundaries of such Unit, whether or not such spaces are contiguous.

e. Exclusions: Except when specifically included by other provisions of Section 2.2, the following are excluded from each Unit: The spaces and Improvements lying outside of the boundaries described in Subsections 2.2a, b, and c, above; and all chutes, pipes, flues, ducts, wires, conduits, skylights and other facilities running through or within any interior wall or partition for the purpose of furnishing utility and similar services to other Units and Common Elements or both.

f. Non-Contiguous Portions: Certain Units may include special portions, pieces or equipment such as air conditioning compressors, meter boxes, utility connection structures and storage portions situated outside the boundaries of the Unit or in buildings or structures that are detached or semidetached from the buildings containing the principal occupied portion of the Units. Such special equipment and storage portions are a part of the Unit notwithstanding their non-contiguity.

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g. Inconsistency with Plats and Plans: If this definition is inconsistent with the Plats and Plans, then this definition will control.

ARTICLE 3. LIMITED COMMON ELEMENTS

The following portions of the Common Elements are Limited Common Elements assigned to the Units as stated:

a. If a chute, flue, pipe, duct, wire, conduit, bearing wall, bearing column, or other fixture lies partially within and partially outside the designated boundaries of a Unit, the portion serving only the Unit is a Limited Common Element, allocated solely to the Unit, the use of which is limited to that Unit, and any portion thereof serving more than one Unit or a portion of the Common Elements is a part of the Common Elements.

b. Any shutters, awnings, window boxes, doorsteps, stoops, porches, decks, balconies, patios and each exterior door and window or other fixture designed to serve a single Unit that is located outside of the boundaries of the Unit, are Limited Common Elements allocated exclusively to the Unit and their use is limited to that Unit.

c. Stoops and steps and walls at or around the door openings at the entrances to each building, which provide access to less than all Units, the use of which is limited to the Units to which they provide access.

d. Attic space above each Unit with an attic, the use of which is limited to the Unit beneath it.

e. Stairways, the use of which is limited to certain Units as shown on the Plats and Plans.

f. Chimneys, the use of which is limited to the Unit in which its fireplace is located. In the event of a multiple flue chimney, each flue will be a Limited Common Element allocated to the Unit containing its fireplace while the chimney will be a Limited Common Element allocated to both Units.

g. Utility areas, the use of which is limited to the Unit or Units as shown on the Plats and Plans.

h. Storm windows and storm doors, if any, will be Limited Common Elements of the Unit to which they service.

i. Certain planting areas and patios and decks, the use of which is limited to the Unit or Units which they adjoin as shown on the Plats and Plans.

j. Exterior surfaces, trim, siding, doors and windows will be the Limited Common Elements allocated to the Units sheltered.

k. Mailboxes, nameplates, and exterior lighting affixed to the building will be Limited Common Elements allocated to the Unit served.

ARTICLE 4. MAINTENANCE, REPAIR AND REPLACEMENT

Section 4.1. Common Elements. The Association will maintain, repair and replace all of the Common Elements, except the portions of the Limited Common Elements which are required by this Declaration to be maintained, repaired or replaced by the Unit Owners.

Section 4.2. Units. Each Unit Owner shall maintain, repair and replace, at such Unit Owner's own expense, all portions of the Unit Owner's Unit, except the portions thereof to be maintained, repaired or replaced by the Association.

Section 4.3. Limited Common Elements. Any Common Expense associated with the maintenance, repair or replacement of heat exchanger, heat outlet, enclosures and mechanical attachments will be assessed against the Unit or Units to which the Limited Common Element is assigned.

Common Expenses associated with the maintenance, repair or replacement of components and elements attached to, planted on or a part of planting areas, patios, decks, exterior surfaces, trim, siding, doors and windows will be assessed against the Unit or Units to which the Limited Common Element is assigned. No additional component or element may be attached without consent of the Executive Board upon approval by the covenants control committee, if any. In the event such additional component or element becomes deteriorated or unsightly or is inconsistent with conditions of installation it may be removed or repaired at the Unit Owner's expense as a Common Expense assessment under this Section, after Notice and Hearing.

If any such Limited Common Element is assigned to more than one Unit, the Common Expenses attributable to the Limited Common Element will be assessed among the Units to which it is assigned in proportion to the Allocated Interests in the common expenses for such Units.

Common Expenses associated with the cleaning, maintenance, repair or replacement of all other Limited Common Elements will be assessed against all Units in accordance with their Allocated Interests in the Common Expenses.



Each Unit Owner shall be responsible for removing all snow, leaves and debris from all patios and balconies which are Limited Common Elements appurtenant to such Unit Owner's Unit. If any such Limited Common Element is appurtenant to two or more Units, the owners of those Units will be jointly responsible for such removal.

Section 4.4. Access. Any Person authorized by the Executive Board shall have the right of access to all portions of the Property for the purpose of correcting any condition threatening a Unit or the Common Elements, and for the purpose of performing installations, alterations or repairs, and for the purpose of reading, repairing, replacing utility meters and related pipes, valves, wires and equipment, provided that such requests for entry are made in advance and that any such entry is at a time reasonably convenient to the affected Unit Owner. In case of an emergency, no such request or notice is required and such right of entry shall be immediate, whether or not the Unit Owner is present at the time.

Section 4.5. Repairs Resulting from Negligence. Each Unit Owner will reimburse the Association for any damages to any other Unit or to the Common Elements caused intentionally, negligently or by such Unit Owner's failure to properly maintain, repair or make replacements to such Unit Owner's Unit. The Association will be responsible for damage to Units caused intentionally, negligently or by its failure to maintain, repair or make replacements to the Common Elements. If such expense is incurred as a result of such misconduct, it will be assessed by the Association following Notice and Hearing.

ARTICLE 5. SUBSEQUENTLY ALLOCATED LIMITED COMMON ELEMENTS

Those portions of the Common Elements shown as parking spaces on the Plats and Plans may be subsequently allocated as Limited Common Elements in accordance with Subsection 6.1b and Article 10 of this Declaration, or may be assigned by Rules and Regulations of the Executive Board, or may be limited in part to use by visitors only by Rules and Regulations.

ARTICLE 6. DEVELOPMENT RIGHTS AND OTHER SPECIAL DECLARANT RIGHTS

Section 6.1. Reservation of Development Rights. The Declarant reserves the following Development Rights:

- a. The right by amendment, to withdraw real estate from the Condominium in the locations shown as "Development Rights Reserved" on the Plats and Plans.

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b. The right by amendment, to add real estate to the Condominium and Units, Common Elements, and Limited Common Elements in the locations shown as "Development Rights Reserved" on the Plats and Plans.

c. The right by amendment, to allocate as Limited Common Elements not more than thirty (30) of the parking spaces as shown on the Plats and Plans and assign them to particular Units. No assurance is given that such spaces will be allocated however.

d. The right to subdivide Units or convert Units into Common Elements.

e. The right to construct underground utility lines, pipes, wires, ducts, conduits and other facilities across the land not designated "Development Rights Reserved" on the Plats and Plans for the purpose of furnishing utility and other services to buildings and Improvements to be constructed on the land designated "Development Rights Reserved" on the Plats and Plans. The Declarant also reserves the right to grant easements to public utility companies and to convey Improvements within those easements anywhere in the Condominium for the above-mentioned purposes. If the Declarant grants any such easements, Exhibit A will be amended to include reference to the recorded easement.

Section 6.2. Limitations on Development Rights. The Development Rights reserved in Section 6.1 are limited as follows:

a. The Development Rights may be exercised at any or at different times but not more than seven (7) years after the recording of the initial Declaration;

b. Not more than fifteen (15) additional Units may be created under the Development Rights;

c. The quality of construction of any buildings and Improvements to be created on the Property shall be consistent with the quality of those constructed pursuant to this Declaration as initially recorded.

d. All Units and Common Elements created pursuant to the Development Rights will be restricted to non-residential use in the same manner and to the same extent as the Units created under this Declaration as initially recorded.

e. No Development Rights may be exercised unless approved pursuant to Section 16.5 of this Declaration.

Section 6.3. Phasing of Development Rights. Development Rights may be exercised by Declarant with respect to different parcels of real estate at different times, and no assurances are made by the Declarant regarding the areas shown as "Development Rights Reserved" on the Plats and Plans as to the boundaries of the portions where the Declarant will exercise its Development Rights or the order in which such portions, or all of the areas, will be developed or withdrawn. The exercise of Development Rights as to some portions will not obligate the Declarant to exercise them as to other portions, but no part of a portion may be withdrawn after a Unit in that portion has been conveyed to a purchaser.

Section 6.4. Special Declarant Rights. The Declarant reserves the following Special Declarant Rights, to the maximum extent permitted by law, which may be exercised, where applicable, anywhere within the Condominium:

- a. To complete Improvements indicated on the Plats and Plans filed with the Declaration;
- b. To exercise a Development Right reserved in the Declaration;
- c. To maintain sales offices, management offices, signs advertising the Condominium, and models;
- d. To use easements through the Common Elements for the purpose of making Improvements within the Condominium or within real estate which may be added to the Condominium;
- e. To appoint or remove an officer of the Association or an Executive Board member during the Declarant Control Period subject to the provisions of Section 6.9 of this Declaration.

Section 6.5. Models, Sales Offices and Management Offices. As long as the Declarant is a Unit Owner or owns real property subject to the Development Right to add real estate to the Condominium, the Declarant and its duly authorized agents, representatives and employees may maintain any Unit owned by the Declarant or any portion of the Common Elements as a model unit or sales office or management office in accordance with the Condominium Act and by appropriate amendment to this Declaration or the Plats and Plans, if required. Declarant hereby reserves the right to remove any such model unit, sales office or management office and such shall not be deemed a Common Element unless so designated by Declarant in an amendment hereto.

Section 6.6. Construction; Declarant's Easements. The Declarant reserves the right to perform repairs and construction work, and to store materials in secure areas, in Units and Common Elements, and the further right to control all such

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work and repairs, and the right of access thereto, until its completion. All work may be performed by the Declarant without the consent or approval of the Executive Board. The Declarant has such an easement through the Common Elements as may be reasonably necessary for the purpose of discharging the Declarant's obligations for exercising special Declarant rights, whether arising under the Condominium Act or reserved in the Declaration. Such easement includes the right to convey utility and drainage easements to public utilities, municipalities, the State of North Carolina, riparian owners or upland owners to fulfill the plan of development.

Section 6.7. Signs and Marketing. The Declarant reserves the right to post signs and displays in the Common Elements to promote sales of Units, and to conduct general sales activities, in a manner as will not unreasonably disturb the rights of Unit Owners.

Section 6.8. Declarant's Personal Property. The Declarant reserves the right to retain all personal property and equipment used in the sales, management, construction and maintenance of the premises that has not been represented as Property of the Association. The Declarant reserves the right to remove from the Property, any and all of the goods and Improvements used in development, marketing and construction, whether or not they have become fixtures.

Section 6.9. Declarant Control of the Association.

a. Subject to Subsection 6.9b, during the Declarant Control Period, a Declarant or persons designated by the Declarant may appoint and remove the officers and members of the Executive Board. A Declarant may voluntarily surrender the right to appoint and remove officers and members of the Executive Board before the termination of the Declarant Control Period, but in that event the Declarant may require, for the duration of the Declarant Control Period, that specified actions of the Association or Executive Board, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before they become effective.

b. Not later than sixty (60) days after conveyance of twenty-five percent (25%) of the Units that may be created (including those created under Development Rights) to Unit Owners other than a Declarant, at least one member and not less than twenty-five percent (25%) of the members of the Executive Board shall be elected by Unit Owners other than the Declarant. Not later than sixty (60) days after conveyance of fifty percent (50%) of the Units that may be created (including those created under Development Rights) to Unit Owners other than a Declarant, not less than thirty-three percent (33%) of the members of the Executive Board must be elected by Unit Owners other than the Declarant.

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c. Not later than the termination of the Declarant Control Period, the Unit Owners shall elect an Executive Board of at least three (3) members, at least a majority of whom shall be Unit Owners. The Executive Board shall elect the officers. The Executive Board members and officers shall take office upon election.

d. Notwithstanding any provision of this Declaration or the Bylaws to the contrary, following notice under Section 47C-3-108 of the Condominium Act, the Unit Owners, by a sixty-seven percent (67%) vote of all persons present and entitled to vote at a meeting of the Unit Owners at which a quorum is present, may remove a member of the Executive Board with or without cause, other than a member appointed by the Declarant.

Section 6.10. Limitations on Special Declarant Rights. Unless sooner terminated by an amendment to the Declaration executed by the Declarant, any Special Declarant Right may be exercised by the Declarant:

(i) so long as the Declarant holds a Development Right to create additional Units or Common Elements or to withdraw real estate from the Condominium; or

(ii) so long as the Declarant owns any Unit; or

(iii) seven (7) years after recording this Declaration.

Section 6.11. Interference with Special Declarant Rights. Neither the Association nor any Unit Owner may take any action or adopt any rule that will interfere with or diminish any Special Declarant Right without the prior written consent of the Declarant.

#### ARTICLE 7. ALLOCATED INTERESTS

Section 7.1. Allocation of Interests. The table showing Unit numbers and their Allocated Interests is attached as Exhibit B. These interests have been allocated in accordance with the formulas set out in this Article 7. These formulas are to be used in reallocating interests if Units are added to the Condominium.

Section 7.2. Formulas for the Allocation of Interests. The interests allocated to each Unit have been calculated on the following formulas:

a. Undivided Interest in the Common Elements. The share of the undivided interest in the Common Elements allocated to each Unit is based on the relative floor area of each Unit as compared to the floor area of all of the Units in the Condominium. For the purpose of this calculation, the floor areas of basements and attics, if any, are not to be counted.

b. Liability for the Common Expenses. The share of liability for the Common Expenses allocated to each Unit is based on the relative floor area of each Unit as compared to the floor area of all of the Units in the Condominium. For the purpose of this calculation, the floor areas of basements and attics, if any, are not to be counted. Nothing contained in this Subsection shall prohibit certain Common Expenses from being apportioned to particular Units under Article 17 of this Declaration.

c. Votes. Each Unit in the Condominium shall have the number of votes equal to such Units' share of Common Expenses. Any specified percentage portion or fraction of Unit Owners, unless otherwise stated in the Condominium Documents, means the specified percentage, portion, or fraction of all the votes as allocated in Exhibit B.

Section 7.3. Assignment of Allocated Interests Upon Creation of Units Pursuant to Exercise of Development Rights. The effective date for assigning Allocated Interests to Units created pursuant to Section 6.1 of this Declaration shall be the date on which the amendment creating the Units is recorded in the Office of the Register of Deeds of each county in which the Condominium is located.

ARTICLE 8. RESTRICTIONS ON USE, ALIENATION AND OCCUPANCY

Section 8.1. Use and Occupancy Restrictions. Subject to the Special Declarant Rights reserved under Article 6, the following use restrictions apply to all Units and to the Common Elements:

a. Each Unit is restricted to non-residential use and such office and/or business use as may be allowable under the zoning designation of the Condominium.

b. The use of Units and Common Elements is subject to the Bylaws and the Rules and Regulations of the Association.

Section 8.2. Restrictions on Alienation. A Unit may not be conveyed pursuant to a time-sharing plan.

A Unit may not be leased or rented for a term of less than sixty (60) days. All leases and rental agreements shall be

in writing and subject to the requirements of the Condominium Documents and the Association.

All leases of a Unit shall be deemed to include a provision that the tenant will recognize and attorn to the Association as landlord, solely for the purpose of having the power to enforce a violation of the provisions of the Condominium Documents against the tenant, provided the Association gives the landlord notice of its intent to so enforce, and a reasonable opportunity to cure the violation directly, prior to the commencement of an enforcement action.

#### ARTICLE 9. EASEMENTS AND LICENSES

All easements or licenses to which the Condominium is presently subject are recited in Exhibit A to this Declaration. In addition, the Condominium may be subject to other easements or licenses granted by the Declarant pursuant to its powers under Article 6 of this Declaration.

#### ARTICLE 10. ALLOCATION AND REALLOCATION OF LIMITED COMMON ELEMENTS

A Common Element not previously allocated as a Limited Common Element may be so allocated only pursuant to provisions of Article 5 of the Declaration. The allocations will be made by amendments to the Declaration, specifying to which Unit or Units the Limited Common Element is allocated.

The Declarant has reserved the right, under Subsection 6.1b of this Declaration, to allocate as Limited Common Elements not more than thirty (30) of the parking spaces shown on the Plats and Plans. If any such parking spaces are so allocated, they shall be assigned to particular Units by amendment to this Declaration. Any parking spaces which are not allocated as Limited Common Elements at the termination of the Development Rights period may be so allocated by the Association by amendment to this Declaration. All amendments shall specify to which Unit or Units the Limited Common Element is allocated.

No Limited Common Element depicted on the Plats and Plans may be reallocated by an amendment to this Declaration pursuant to this Article 10 except as part of a relocation of boundaries of Units pursuant to Article 12 of this Declaration. Such amendment shall require the approval of all holders of Security Interests in the affected Units, which approval shall be endorsed thereon. The Person executing the amendment shall provide an executed copy thereof to the Association which, if the amendment complies with the provisions of this Declaration and the Condominium Act, shall record it. The amendment shall contain words of conveyance and must be recorded and indexed in

the names of the parties and the Condominium. The parties executing the amendment shall be responsible for the preparation of the amendment and shall reimburse the Association for its reasonable attorneys' fees in connection with the review of the amendment and for the recording costs.

ARTICLE 11. ADDITIONS, ALTERATIONS AND IMPROVEMENTS

Section 11.1. Additions, Alterations and Improvements by Unit Owners.

a. No Unit Owner will make any structural addition, structural alteration, or structural Improvement in or to the Condominium without the prior written consent thereto of the Executive Board in accordance with Subsection 11.1c.

b. Subject to Subsection 11.1a, a Unit Owner:

(i) may make any other Improvements or alterations to the interior of such Unit Owner's Unit that do not impair the structural integrity or mechanical systems or lessen the support of any portion of the Condominium;

(ii) may not change the appearance of the Common Elements, or the exterior appearance of a Unit or any other portion of the Condominium, without permission of the Association;

(iii) after acquiring an adjoining Unit or an adjoining part of an adjoining Unit, may remove or alter any intervening partition or create apertures therein, even if the partition in whole or in part is a Common Element, if those acts do not impair the structural integrity or mechanical systems or lessen the support of any portion of the Condominium. Removal of partitions or creation of apertures under this Subsection is not an alteration of the boundaries of any Unit.

c. A Unit Owner may submit a written request to the Executive Board for approval to do anything forbidden under Subsection 11.1a or 11.1b(ii). The Executive Board shall answer any written request for such approval, after Notice and Hearing, within sixty (60) days after the request thereof. Failure to do so within such time shall not constitute a consent by the



Executive Board to the proposed action. The Executive Board shall review requests in accordance with the provisions of its Rules and Regulations.

d. Any applications to any department or to any governmental authority for a permit to make any addition, alteration or Improvement in or to any Unit shall be executed by the Association only. Such execution will not, however, create any liability on the part of the Association or any of its members to any contractor, subcontractor or materialman on account of such addition, alteration or Improvement or to any person having any claim for injury to persons or damage to property arising therefrom.

e. All additions, alterations and Improvements to the Units and Common Elements shall not, except pursuant to prior approval by the Executive Board, cause any increase in the premium of any insurance policies carried by the Association or by the owners of any Units other than those affected by such change.

The provisions of this Section shall not apply to the Declarant in the exercise of any Special Declarant Right.

Section 11.2. Additions, Alterations and Improvements by Executive Board. Subject to the limitations of Sections 17.5 and 17.6 of this Declaration, the Executive Board may make any additions, alterations or Improvements to the Common Elements which, in its judgment, it deems necessary.

Section 11.3. Exterior Improvements and Landscaping Within Limited Common Elements. Unit Owners may make exterior Improvements within or as a part of Limited Common Elements constituting balconies or patios consisting of repainting, restaining, addition of architectural detailing, changing of doors and fenestration, planting of gardens, hedges, shrubs, construction of fences, walks, benches, and architectural conceits, provided they are undertaken with the permission of the Executive Board or a covenants control committee established for such purpose, if any, following submission of complete plans prepared by an architect or landscape architect and a review of such board or committee as to consistency with Improvements originally constructed by the Declarant, and consistent with the style and character of the community. No approval will be awarded without Notice and Comment given to the Unit Owners. It is the intent to provide for limited individualization of the appearance of the buildings while retaining a character consistent with the overall plan of the Condominium community.

The applicant will pay for the cost of preparation of the application, the cost of professional review, if deemed

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required by the review entity, and all costs of permits and fees.

ARTICLE 12. RELOCATION OF BOUNDARIES BETWEEN ADJOINING UNITS

Section 12.1. Application and Amendment. Subject to approval of any structural changes and required permits pursuant to Article 11, the boundaries between adjoining Units may be relocated by an amendment to the Declaration upon application to the Association by the owners of the Units affected by the relocation. If the owners of the adjoining Units have specified a relocation between their Units of their Allocated Interests, the application shall state the proposed reallocations. Unless the Executive Board determines, within thirty (30) days after receipt of the application, that the reallocations are unreasonable, the Association shall consent to the reallocation and prepare an amendment that identifies the Units involved, states the reallocations and indicates the Association's consent. The amendment must be executed by the owners of the affected Units and contain words of conveyance between them, and the approval of all holders of Security Interests in the affected Units shall be endorsed thereon. On recordation, the amendment shall be indexed in the name of the grantor and the grantee, and in the grantee's index in the name of the Association.

Section 12.2. Recording Amendments. The Association shall prepare and record plats or plans necessary to show the altered boundaries between adjoining Units, and their dimensions and identifying numbers.

The applicants will pay for the costs of preparation of the amendment and its recording, and the reasonable consultant fees of the Association if it is deemed necessary to employ a consultant by the Executive Board.

ARTICLE 13. AMENDMENTS TO DECLARATION

Section 13.1. General. Except in cases of amendments that may be executed by the Declarant in the exercise of its Development Rights or by the Association under Article 10 of this Declaration and Section 47C-1-107 of the Condominium Act, or by certain Unit Owners under Article 10 and Section 12.1 of this Declaration and Section 47C-2-118 of the Condominium Act, and except as limited by Section 13.4 and Article 16 of this Declaration, this Declaration, including the Plats and Plans, may be amended only by vote or agreement of Unit Owners of Units to which at least sixty-seven percent (67%) of the votes in the Association are allocated.

Section 13.2. Limitation of Actions. An action to challenge the validity of an amendment adopted by the

Association pursuant to this Article may not be brought more than one year after the amendment is recorded.

Section 13.3. Recordation of Amendments. Each amendment to the Declaration must be recorded in every county in which a portion of the Condominium is located and the amendment is effective only upon recording. An amendment, except an amendment pursuant to Article 12 of this Declaration, must be indexed in the grantee's index in the name of the Condominium and the Association and in the grantor's index in the name of the parties executing the amendment.

Section 13.4. Unanimous Consent Required. Except to the extent expressly permitted or required by other provisions of the Condominium Act, an amendment may not create or increase Special Declarant Rights, increase the number of Units, change the boundaries of a Unit, the Allocated Interests of a Unit, or the uses to which a Unit is restricted, in the absence of the unanimous consent of the Unit Owners.

Section 13.5. Execution of Amendments. An amendment to the Declaration required by the Condominium Act to be recorded by the Association, which has been adopted in accordance with this Declaration and the Condominium Act, must be prepared, executed, recorded and certified on behalf of the Association by an officer of the Association designated for that purpose, or in the absence of designation, by the president of the Association.

Section 13.6. Special Declarant Rights. Provisions in this Declaration creating Special Declarant Rights may not be amended without the consent of the Declarant.

Section 13.7. Consent of Holders of Security Interests. Amendments are subject to the consent requirements of Article 16 of this Declaration.

Section 13.8. Amendments to Create Units or Withdraw Real Estate. To exercise any Development Rights reserved under Section 6.1 of this Declaration, the Declarant shall prepare, execute and record an amendment to the Declaration. The Declarant shall also record either new Plats and Plans necessary to conform to the requirements of Section 47C-2-109(a), (b), and (c) of the Condominium Act or new certifications of the Plats and Plans previously recorded if those Plats and Plans otherwise conform to the requirements of those Sections.

The amendment to the Declaration shall assign an identifying number to each new Unit created and reallocate the Allocated Interests among all Units. The amendment shall describe any Common Elements and any Limited Common Elements created thereby and designate the Unit to which each Limited

Common Element is allocated to the extent required by Section 47C-2-110(a) of the Condominium Act.

ARTICLE 14. AMENDMENTS TO BYLAWS

The Bylaws may be amended only by a vote of two-thirds (2/3) of the members of the Executive Board, following Notice and Comment to all Unit Owners, at any meeting duly called for such purpose.

ARTICLE 15. TERMINATION

Termination of the Condominium may be accomplished only in accordance with Section 47C-2-118 of the Condominium Act.

ARTICLE 16. MORTGAGEE PROTECTION

Section 16.1. Introduction. This Article establishes certain standards and covenants which are for the benefit of Eligible Mortgagees. This Article is supplemental to, and not in substitution for, any other provisions of the Condominium Documents, but in the case of conflict, this Article shall control.

Section 16.2. Percentage of Eligible Mortgagees. Wherever in this Declaration the approval or consent of a specified percentage of Eligible Mortgagees is required, it shall mean the approval or consent of Eligible Mortgagees holding First Mortgages in Units which in the aggregate have allocated to them such specified percentage of votes in the Association when compared to the total allocated to all Units then subject to First Mortgages held by Eligible Mortgagees.

Section 16.3. Notice of Actions. The Association shall give prompt written notice to each Eligible Mortgagee of:

a. Any condemnation loss or any casualty loss which affects a material portion of the Condominium or any Unit in which there is a First Mortgage held, insured, or guaranteed by such Eligible Mortgagee, as applicable;

b. Any delinquency in the payment of Common Expense assessments owed by an Owner whose Unit is subject to a First Mortgage held, insured, or guaranteed, by such Eligible Mortgagee, which remains uncured for a period of sixty (60) days;

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

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d. Any proposed action which would require the consent of a specified percentage of Eligible Mortgagees as specified in Section 16.4; and

e. Any judgment rendered against the Association.

Section 16.4. Consent Required.

a. Changes in the Condominium Documents. Notwithstanding any lower requirement permitted by this Declaration or the Condominium Act, no amendment of any material provision of the Condominium Documents by the Association or Unit Owners described in this Subsection 16.4a may be effective without the vote of at least sixty-seven percent (67%) of the Unit Owners (or any greater Unit Owner vote required in this Declaration or the Condominium Act) and until approved in writing by at least fifty-one percent (51%) of the Eligible Mortgagees (or any greater Eligible Mortgagee approval required by this Declaration). The foregoing approval requirements do not apply to amendments effected by the exercise of any Development Right. "Material" includes, but is not limited to, any provision affecting:

(i) assessments, assessment liens or subordination of assessments liens;

(ii) voting rights;

(iii) reserves for maintenance, repair and replacement of Common Elements;

(iv) responsibility for maintenance and repairs;

(v) reallocation of interests in the Common Elements or Limited Common Elements except that when Limited Common Elements are reallocated by agreement between Unit Owners, only those Units Owners and only the Eligible Mortgagees holding First Mortgages in such Units must approve such action;

(vi) rights to use Common Elements and Limited Common Elements;

(vii) boundaries of Units except that when boundaries of only adjoining Units are involved, or a Unit is being subdivided, then only those Unit Owners and the Eligible Mortgagees holding First Mortgages in such Unit or Units must prove such action;

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(viii) convertibility of Units into Common Elements or Common Elements into Units;

(ix) expansion or contraction of the Condominium, or the addition, annexation or withdrawal of property to or from the Condominium;

(x) insurance or fidelity bonds;

(xi) leasing of units

(xii) imposition of restrictions on a Unit Owner's right to sell or transfer a Unit;

(xiii) establishment of self-management when professional management had been required previously by any Eligible Mortgagee;

(xiv) restoration or repair of the project after a hazard damage or partial condemnation in a manner other than that specified in the Condominium Documents;

(xv) termination of the Condominium after occurrence of substantial destruction or condemnation; and

(xvi) the benefits of Eligible Mortgagees.

b. Actions. Notwithstanding any lower requirement permitted by the Declaration or the Condominium Act, the Association may not take any of the following actions other than rights reserved to the Declarant as Special Declarant Rights without the approval of at least fifty-one percent (51%) of the Eligible Mortgagees:

(i) convey or encumber the Common Elements or any portion thereof (as to which an eighty percent (80%) Eligible Mortgagee approval is required). (The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Elements by the Condominium will not be deemed a transfer within the meaning of this clause);

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(ii) the establishment of self-management when professional management had been required previously by any Eligible Mortgagee;

(iii) the restoration or repair of the Property (after a hazard damage or partial condemnation) in a manner other than that specified in the Condominium Documents;

(iv) the termination of the Condominium for reasons other than substantial destruction or condemnation, as to which a sixty-seven percent (67%) Eligible Mortgagee approval is required;

(v) the alteration of any partition or creation of any aperture between adjoining Units (when Unit boundaries are not otherwise being affected), in which case only the owners of Units affected and Eligible Mortgagees of those Units need approve the action;

(vi) the merger of this Condominium with any other condominium;

(vii) the granting of any easements, leases, licenses and concessions through or over the Common Elements (excluding, however, any utility easements serving or to serve the Condominium and excluding any leases, licenses or concessions for no more than one year);

(viii) the assignment of the future income of the Association, including its rights to receive Common Expense assessments; and

(ix) any action taken not to repair or replace the Property.

c. The Association may not change the period for collection of regularly budgeted Common Expense assessments to other than monthly without the consent of all Eligible Mortgagees.

d. The failure of an Eligible Mortgagee to respond within thirty (30) days to any written request of the

Association for approval of a non-material addition or amendment to the Condominium Documents shall constitute an implied approval of the addition or amendment.

Section 16.5. Development Rights. No Development Rights may be exercised or voluntarily abandoned or terminated by the Declarant unless all persons holding Security Interests in the Development Rights consent to the exercise, abandonment, or termination.

Section 16.6. Inspection of Books. The Association shall permit any Eligible Mortgagee to inspect the books and records of the Association during normal business hours.

Section 16.7. Financial Statements. The Association shall provide any Eligible Mortgagee which submits a written request, with a copy of an annual financial statement within ninety (90) days following the end of each fiscal year of the Association. Such financial statement shall be audited by an independent certified public accountant if any Eligible Mortgagee requests it and pays the cost of such audit.

Section 16.8. Enforcement. The provisions of this Article are for the benefit of Eligible Mortgagees and their successors, and may be enforced by any of them by any available means, at law, or in equity.

Section 16.9. Attendance at Meetings. Any representative of an Eligible Mortgagee may attend and address any meeting which a Unit Owner may attend.

Section 16.10. Appointment of Trustee. In the event of damage or destruction under Article 20 or 21 or condemnation of all or a portion of the Condominium, any Eligible Mortgagee may require that such proceeds be payable to a Trustee established pursuant to Subsection 1.2a.a. Proceeds will thereafter be distributed pursuant to Article 21 or pursuant to a condemnation award. Unless otherwise required, the members of the Executive Board acting by majority vote through the president may act as Trustee.

#### ARTICLE 17. ASSESSMENT AND COLLECTION OF COMMON EXPENSES

Section 17.1. Apportionment of Common Expenses. Except as provided in Section 17.2, all Common Expenses shall be assessed against all Units in accordance with their percentage interest in the Common Expenses as shown on Exhibit B to this Declaration.

Section 17.2. Common Expenses Attributable to Fewer Than All Units.



a. Any Common Expense associated with the maintenance, repair or replacement of a Limited Common Element shall be assessed against the Unit or Units to which the Limited Common Element is assigned. If any such Limited Common Element is assigned to more than one Unit, the Common Expenses attributable to the Limited Common Element shall be assessed among the Units to which it is assigned in proportion to the Allocated Interests in the common expenses for such Units.

b. Any Common Expense for services provided by the Association to an individual Unit at the request of the Unit Owner shall be assessed against the Unit which benefits from service.

c. Any insurance premium increase attributable to a particular Unit by virtue of activities in or construction of the Unit shall be assessed against that Unit.

d. An assessment to pay a judgment against the Association may be made only against the Units in the Condominium at the time the judgment was entered, in proportion to their Common Expense liabilities.

e. If Common Expense is caused by the misconduct of a Unit Owner, the Association may assess that expense exclusively against the Unit.

f. Fees, charges, late charges, fines, collection costs, and interest charged against a Unit Owner pursuant to the Condominium Documents and the Condominium Act are enforceable as Common Expense assessments.

Section 17.3. Lien.

a. The Association has a lien on a Unit for an assessment levied against the Unit which remains unpaid for a period of thirty (30) days or longer from the time it is filed of record in the Office of the Clerk of Superior Court of each county in which the Condominium is located. Fees, charges, late charges, fines and interest charged pursuant to the Condominium Act and the Condominium Documents are enforceable as assessments under this Section. If an assessment is payable in installments, the full amount of the assessment becomes immediately due and payable when the first installment thereof remains unpaid in such manner, and the full amount of the assessment shall constitute a lien from the time of such filing.

b. A lien under this section is prior to all other liens and encumbrances on a Unit except:

(i) liens and encumbrances (including, but not limited to, a mortgage or deed of trust on the Unit) recorded before the docketing of the lien in the Office of the Clerk of Superior Court; and

(ii) liens for real estate taxes and other governmental assessments or charges against the Unit. This Subsection does not affect the priority of mechanics' or materialmen's liens.

c. A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three (3) years after the docketing thereof in the Office of the Clerk of Superior Court.

d. This section does not prohibit an action to recover sums for which Subsection 17.3a of this section creates a lien or prohibit the Association from taking a deed in lieu of foreclosure.

e. A judgment, decree or order in any action brought under this Section shall include costs and reasonable attorneys' fees for the prevailing party.

f. The Association's lien may be foreclosed as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the General Statutes of North Carolina.

g. If a holder of a first mortgage or first deed of trust of record, or other purchaser of a Unit, obtains title to the Unit as a result of foreclosure of a first mortgage or first deed of trust, such purchasers, and its heirs, successors and assigns, shall not be liable for the assessments against such Unit which became due prior to acquisition of title to such Unit by such purchaser. Such unpaid assessments shall be deemed to be Common Expenses collectable from all the Unit Owners including such purchaser, and its heirs, successors and assigns.

h. Any payments received by the Association in the discharge of a Unit Owner's obligation may be applied to the oldest balance due.

Section 17.4. Budget Adoption and Ratification.  
Within thirty (30) days after adoption of a proposed budget for the Condominium, the Executive Board shall provide a summary of the budget to each Unit Owner, and shall set a date for a meeting of the Unit Owners to consider ratification of the budget not less than fourteen (14) nor more than thirty (30) days after

mailing of the summary. Unless at that meeting eighty percent (80%) of all Unit Owners reject the budget, the budget is ratified, whether or not a quorum is present. If the proposed budget is rejected, the periodic budget last ratified by the Unit Owners continues until the Unit Owners ratify a budget proposed by the Executive Board.

Section 17.5. Ratification of Non-Budgeted Common Expense Assessments. If the Executive Board votes to levy a Common Expense assessment not included in the current budget, other than one enumerated in Section 17.2 of this Declaration, in an amount greater than fifteen (15) percent of the current annual operating budget, the Executive Board shall submit such Common Expense to the Unit Owners for ratification in the same manner as a budget under Section 17.4.

Section 17.6. Certificate of Payment of Common Expense Assessments. The Association upon written request shall furnish to a Unit Owner a statement setting out the amount of unpaid assessments against the Unit. The statement must be furnished within ten (10) business days after receipt of the request and is binding on the Association, the Executive Board and each Unit Owner.

Section 17.7. Monthly Payment of Common Expenses. All Common Expenses assessed under Sections 17.1 and 17.2 shall be due and payable monthly.

Section 17.8. Acceleration of Common Expense Assessments. In the event of default for a period of thirty (30) days by any Unit Owner in the payment of any Common Expense assessment levied against such Unit Owner's Unit, the Executive Board shall have the right, after Notice and Hearing, to declare all unpaid assessments for the pertinent fiscal year to be immediately due and payable.

Section 17.9. Commencement of Common Expense Assessments. Common Expense assessments shall begin on the first day of the month in which conveyance of the first Unit to a Unit Owner other than the Declarant occurs.

Section 17.10. No Waiver of Liability for Common Expenses. No Unit Owner is or may become exempt from liability for payment of the Common Expenses by waiver of the use and enjoyment of the Common Elements or by abandonment of the Unit against which the assessments are made.

Section 17.11. Personal Liability of Unit Owners. The owner of a Unit at the time a Common Expense assessment or portion thereof is due and payable is personally liable for the assessment. Personal liability for the assessment shall not

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pass to a successor in title to the Unit unless such successor agrees to assume the obligation.

ARTICLE 18. RIGHT TO ASSIGN FUTURE INCOME

The Association may assign its future income, including its right to receive Common Expense assessments, only by the affirmative vote of Unit Owners of Units to which at least fifty-one percent (51%) of the votes in the Association are allocated, at a meeting called for that purpose, and the Eligible Mortgagee consent described in Article 16.

ARTICLE 19. PERSONS AND UNITS SUBJECT TO THE CONDOMINIUM DOCUMENTS

Section 19.1. Compliance with Condominium Documents. All Unit Owners, tenants, mortgagees and occupants of Units shall comply with the Condominium Documents. The acceptance of a deed or the exercise of any incident of ownership or the entering into of a lease or the entering into occupancy of a Unit constitutes agreement that the provisions of the Condominium Documents are accepted and ratified by such Unit Owner, tenant, mortgagee or occupant, and all such provisions of the Condominium Documents are covenants running with the land and shall bind any persons having at any time any interest or estate in such Unit.

Section 19.2. Adoption of Rules and Regulations. The Executive Board may adopt Rules and Regulations regarding the use and occupancy of Units affecting the Common Elements, Limited Common Elements and the activities of occupants, subject to Notice and Comment.

ARTICLE 20. INSURANCE

Section 20.1. Coverage. To the extent reasonably available, the Executive Board shall obtain and maintain insurance coverage as set forth in this Article. If such insurance is not reasonably available, and the Executive Board determines that any insurance described herein will not be maintained, the Executive Board shall cause notice of that fact to be hand-delivered or sent prepaid by United States mail to all Unit Owners and Eligible Mortgagees at their respective last known addresses.

Section 20.2. Property Insurance.

a. Property insurance covering:

(i) the project facilities (which term means all buildings on the Property,

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including the Units and all fixtures, equipment and any Improvements and betterments whether part of a Unit or a Common Element, and such personal property of Unit Owners as is normally insured under building coverage), but excluding land, excavations, portions of foundations below the under surfaces of the lowest floors, underground pilings, pipes, flues and drains and other items normally excluded from property policies; and

(ii) all personal property owned by the Association.

b. Amounts. The project facilities for an amount (after application of any deductions) equal to one hundred percent (100%) of their actual cash value at the time the insurance is purchased and at each renewal date. Personal property owned by the Association for an amount equal to its actual cash value.

The Executive Board is authorized to obtain appraisals periodically for the purpose of establishing said replacement costs of the project facilities and the actual cash value of the personal property, and the cost of such appraisals shall be a Common Expense.

The maximum deductible for insurance policies shall be \$10,000 or one percent (1%) of the policy face amount.

The difference between the policy deductible and \$250 shall be paid by the Association as a Common Expense. Of the deductible portion \$250 as per Unit Owner affected shall be paid by each of the Unit Owner(s) suffering a loss.

c. Risks Insured Against. The insurance shall afford protection against "all risks" of direct physical loss commonly insured against.

d. Other Provisions. Insurance policies required by this Section shall provide that:

(i) the insurer waives the right to subrogation under the policy against a Unit Owner, a tenant of a Unit Owner, and any employee of a Unit Owner or of a tenant of a Unit Owner.

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(ii) an act or omission by a Unit Owner, unless acting within the scope of the Unit Owner's authority on behalf of the Association, will not void the policy or be a condition to recovery under the policy.

(iii) if, at the time of a loss under the policy, there is other insurance in the name of a Unit Owner covering the same risk covered by the policy, the policy of the Association provides primary insurance.

(iv) loss must be adjusted with the Association.

(v) insurance proceeds shall be paid to an insurance trustee designated in the policy for that purpose, and in the absence of such designation to the Association, in either case to be held in trust for each Unit Owner and such Unit Owner's mortgagee.

(vi) the insurer may not cancel or refuse to renew the policy until thirty (30) days after notice of the proposed cancellation or non-renewal has been mailed to the Association, each Unit Owner and each holder of a Security Interest to whom a certificate or memorandum of insurance has been issued, at their respective last known addresses.

(vii) the name of the insured shall be shown, substantially, as the Association "for the use and benefit of the individual owners".

**Section 20.3. Liability Insurance.** Liability insurance, including medical payments insurance, in an amount determined by the Executive Board but in no event less than \$1,000,000 covering all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Common Elements, and the activities of the Association.

a. **Other Provisions.** Insurance policies carried pursuant to this section shall provide that:

(i) each Unit Owner is an insured person under the policy with respect to liability arising out of interest of the

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Unit Owner in the Common Elements or membership in the Association.

(ii) the insurer waives the right to subrogation under the policy against a Unit Owner, a tenant of a Unit Owner, and any employee of a Unit Owner or a tenant of a Unit Owner.

(iii) an act or omission by a Unit Owner, unless acting within the scope of the Unit Owner's authority on behalf of the Association, will not void the policy or be a condition to recovery under the policy.

(iv) if, at the time of a loss under the policy, there is other insurance in the name of a Unit Owner covering the same risk covered by the policy, the policy of the Association provides primary insurance.

(v) the insurer issuing the policy may not cancel or refuse to renew it until thirty (30) days after notice of the proposed cancellation or non-renewal has been mailed to the Association, each Unit Owner and each holder of a Security Interest to whom a certificate or memorandum of insurance has been issued at their last known addresses.

**Section 20.4. Fidelity Bonds.** A blanket fidelity bond may be provided for anyone who either handles or is responsible for funds held or administered by the Association, whether or not they receive compensation for their services.

**Section 20.5. Unit Owner Policies.** An insurance policy issued to the Association does not prevent a Unit Owner from obtaining insurance for such Unit Owner's own benefit.

**Section 20.6. Workers' Compensation Insurance.** The Executive Board shall obtain and maintain workers' compensation insurance to meet the requirements of the laws of the State of North Carolina.

**Section 20.7. Directors' and Officers' Liability Insurance.** The Executive Board shall obtain and maintain directors' and officers' liability insurance, if available, covering all of the Directors and officers of the Association in such limits as the Executive Board may, from time to time, determine.

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Section 20.8. Other Insurance. The Association may carry other insurance which the Executive Board considers appropriate to protect the Association or the Unit Owners.

Section 20.9. Premiums. Insurance premiums shall be a Common Expense.

ARTICLE 21. DAMAGE TO OR DESTRUCTION OF PROPERTY

Section 21.1. Duty to Restore. A portion of the Condominium for which insurance is required under Section 47C-3-113 of the Condominium Act or for which insurance carried by the Association is in effect, whichever is more extensive, that is damaged or destroyed must be repaired or replaced promptly by the Association unless:

- a. the Condominium is terminated;
- b. repair or replacement would be illegal under a state statute or municipal ordinance governing health or safety; or
- c. eighty percent (80%) of the Unit Owners, including each owner of a Unit or assigned Limited Common Element that will not be rebuilt, vote not to rebuild.

Section 21.2. Cost. The cost of repair or replacement in excess of insurance proceeds and reserves is a Common Expense.

Section 21.3. Plans. The Property must be repaired and restored in accordance with either the original plans and specification or other plans and specifications which have been approved by the Executive Board, a majority of Unit Owners and fifty-one percent (51%) of Eligible Mortgagees.

Section 21.4. Replacement of Less than Entire Property.

a. The insurance proceeds attributable to the damaged Common Elements shall be used to restore the damaged area to a condition compatible with the remainder of the Condominium.

b. Except to the extent that other persons will be distributees:

- (i) the insurance proceeds attributable to a Unit and Limited Common Elements that is not rebuilt must be distributed to the owner of the Unit and the owner of the Unit to which the Limited Common Elements



were allocated, or to lienholders, as their interests may appear; and

(ii) the remainder of the proceeds must be distributed to each Unit Owner or lienholder, as their interests may appear, in proportion to the Common Element interests of all the Units.

c. If the Unit Owners vote not to rebuild a Unit, the allocated interests of the Unit are reallocated upon the vote as if the Unit had been condemned under Section 47C-1-107(a) of the Condominium Act, and the Association promptly shall prepare, execute and record an amendment to the Declaration reflecting the reallocations.

Section 21.5. Insurance Proceeds. The Trustee, or if there is no Trustee, then the Executive Board of the Association, acting by the president, shall hold any insurance proceeds in trust for the Association, Unit Owners and lienholders as their interests may appear. Subject to the provisions of Subsection 21.1a through Subsection 21.1c, the proceeds shall be disbursed first for the repair or restoration of the damaged property, and the Association, Unit Owners and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored, or the Condominium is terminated.

Section 21.6. Certificates by the Executive Board. The Trustee, if any, may rely on the following certifications in writing made by the Executive Board:

a. whether or not damaged or destroyed property is to be repaired or restored;

b. the amount or amounts to be paid for repairs or restoration and the names and addresses of the parties to whom such amounts are to be paid.

ARTICLE 22. RIGHTS TO NOTICE AND COMMENT; NOTICE AND HEARING

Section 22.1. Right to Notice and Comment. Before the Executive Board amends the Bylaws or the Rules and Regulations, whenever the Condominium Documents require that an action be taken after "Notice and Comment", and at any other time the Executive Board determines, the Unit Owners have the right to receive notice of the proposed action and the right to comment orally or in writing. Notice of the proposed action shall be given to each Unit Owner in writing and shall be delivered

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personally or by mail to all Unit Owners at such address as appears in the records of the Association, or published in a newsletter or similar publication which is routinely circulated to all Unit Owners. The notice shall be given not less than five (5) days before the proposed action is to be taken. It shall invite comment to the Executive Board orally or in writing before the scheduled time of the meeting. The right to Notice and Comment does not entitle a Unit Owner to be heard at a formally constituted meeting.

Section 22.2. Right to Notice and Hearing. Whenever the Condominium Documents require that an action be taken after "Notice and Hearing", the following procedures shall be observed: the party proposing to take the action (e.g., the Executive Board, a committee, an officer, the manager, etc.) shall give written notice of the proposed action to all Unit Owners or occupants of Units whose interest would be significantly affected by the proposed action. The notice shall include a general statement of the proposed action and the date, time and place of the hearing. At the hearing, the affected person shall have the right, personally or by a representative, to give testimony orally, in writing or both (as specified in the notice), subject to reasonable rules of procedure established by the party conducting the meeting to insure a prompt and orderly resolution of the issues. Such evidence shall be considered in making the decision but shall not bind the decision makers. The affected person shall be notified of the decision in the manner in which notice of the meeting was given.

Section 22.3. Appeals. Any person having a right to Notice and Hearing shall have the right to appeal to the Executive Board from a decision of persons other than the Executive Board by filing a written notice of appeal with the Executive Board within ten (10) days after being notified of the decision. The Executive Board shall conduct a hearing within thirty (30) days, giving the same notice and observing the same procedures as were required for the original meeting.

#### ARTICLE 23. EXECUTIVE BOARD

Section 23.1. Minutes of Executive Board Meetings. The Executive Board shall permit any Unit Owner to inspect the minutes of Executive Board meetings during normal business hours. The minutes shall be available for inspection within fifteen (15) days after any such meeting.

Section 23.2. Powers and Duties. The Executive Board may act in all instances on behalf of the Association, except as provided in this Declaration, the Bylaws or the Condominium Act. The Executive Board shall have, subject to the limitations contained in this Declaration and the Condominium Act, the

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powers and duties necessary for the administration of the affairs of the Association and of the Condominium which shall include, but not be limited to, the following:

- a. adopt and amend Bylaws, Rules and Regulations;
- b. adopt and amend budgets for revenues, expenditures and reserves;
- c. collect assessments for Common Expenses from Unit Owners;
- d. hire and discharge managing agents;
- e. hire and discharge employees, agents other than managing agents, and independent contractors;
- f. institute, defend or intervene in litigation or administrative proceedings or seek injunctive relief for violation of the Declaration, Bylaws or Rules and Regulations in the Association's name on behalf of the Association or two or more Unit Owners on matters affecting the Condominium;
- g. make contracts and incur liabilities;
- h. regulate the use, maintenance, repair, replacement and modification of the Common Elements;
- i. cause additional Improvements to be made as a part of the Common Elements;
- j. acquire, hold, encumber and convey in the Association's name any right, title or interest to real property or personal property, but Common Elements may be conveyed or subjected to a Security Interest only pursuant to Section 47C-3-112 of the Condominium Act;
- k. grant easements for any period of time including permanent easements, and leases, licenses and concessions for no more than one year, through or over the Common Elements;
- l. impose and receive a payment, fee or charge for the use, rental or operation of the Common Elements, other than Limited Common Elements described in Section 47C-2-102(2) and (4) of the Condominium Act, and for services provided to Unit Owners;
- m. impose a reasonable charge for late payment of assessments and, after Notice and Hearing, levy reasonable fines for violations of this Declaration, Bylaws, and the Rules and Regulations of the Association;

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- n. impose a reasonable charge for the preparation and recordation of amendments to this Declaration, and resale certificates required by Section 47C-4-109 of the Condominium Act or a statement of unpaid assessments;
- o. provide for the indemnification of the Association's officers and the Executive Board and maintain directors' and officers' liability insurance;
- p. assign the Association's right to future income, including the right to receive Common Expense assessments;
- q. exercise any other powers conferred by this Declaration or the Bylaws;
- r. exercise any other power that may be exercised in this state by legal entities of the same type as the Association;
- s. exercise any other power necessary and proper for the governance and operation of the Association; and
- t. by resolution, establish committees of Directors, permanent and standing, to perform any of the above functions under specifically delegated administrative standards, as designated in the resolution establishing the committee. All committees must maintain and publish notice of their actions to Unit Owners and the Executive Board. However, actions taken by a committee may be appealed to the Executive Board by any Unit Owner within forty-five (45) days of publication of such notice, and such committee action must be ratified, modified or rejected by the Executive Board at its next regular meeting.

Section 23.3. Executive Board Limitations. The Executive Board may not act on behalf of the Association to amend this Declaration, to terminate the Condominium or to elect members of the Executive Board or determine the qualifications, powers and duties, or terms of office of Executive Board members, but the Executive Board may fill vacancies in its membership for the unexpired portion of any term.

ARTICLE 24. CONDEMNATION

If part or all of the Condominium is taken by any power having the authority of eminent domain, all compensation and damages for and on account of the taking shall be payable in accordance with Section 47C-1-107 of the Condominium Act.

ARTICLE 25. MISCELLANEOUS

Section 25.1. Captions. The captions contained in the Condominium Documents are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of the Condominium Documents nor the intent of any provision thereof.

Section 25.2. Gender. The use of the masculine gender refers to the feminine and neuter genders and the use of the singular includes the plural, and vice versa, whenever the context of the Condominium Documents so require.

Section 25.3. Waiver. No provision contained in the Condominium Documents is abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

Section 25.4. Invalidity. The invalidity of any provision of the Condominium Documents does not impair or affect in any manner the validity, enforceability or effect of the remainder, and in such event, all of the other provisions of the Condominium Documents shall continue in full force and effect.

Section 25.5. Conflict. The Condominium Documents are intended to comply with the requirements of the Condominium Act. In the event of any conflict between the Condominium Documents and the provisions of the Condominium Act, the provisions of the Condominium Act shall control. In the event of any conflict between this Declaration and any other Condominium Document, this Declaration shall control.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed this 21st day of JANUARY, 1987.

ELIZABETH SQUARE ASSOCIATES, a North Carolina limited partnership

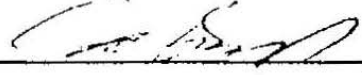
BY: [Signature]  
E. Allen Brown, Jr., a general partner

BY: [Signature]  
F.W. Aldred, Jr., a general partner

DEED BOOK PAGE

5422 0921

BY: FIRST COLONY CORPORATION, a general partner

By:   
\_\_\_\_\_  
President

ATTEST:

  
Secretary

(CORPORATE SEAL)



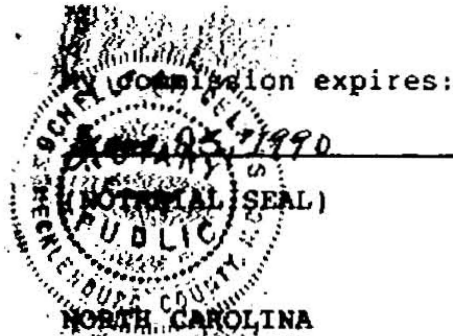
NORTH CAROLINA

Mecklenburg COUNTY

This 21st day of JANUARY, 1986, personally came before me E. ALLEN BROWN, JR., who acknowledged that he is a general partner of Elizabeth Square Associates, a North Carolina limited partnership, and that by authority duly given and as the act of the limited partnership, the foregoing instrument was signed in its name by him as a general partner.

WITNESS my hand and official seal this 21st day of JANUARY, 1986.

Rochelle St. Helois  
Notary Public

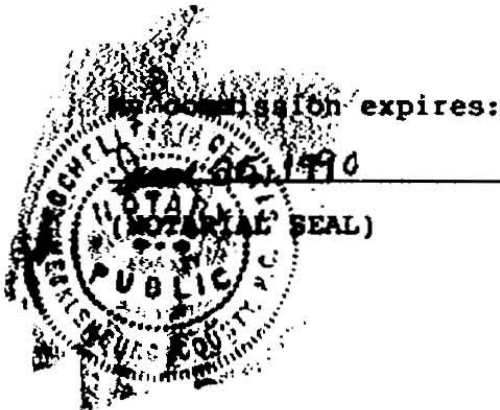


mecklenburg COUNTY

This 21st day of JANUARY, 1986, personally came before me T.W. ALDRED, JR., who acknowledged that he is a general partner of Elizabeth Square Associates, a North Carolina limited partnership, and that by authority duly given and as the act of the limited partnership, the foregoing instrument was signed in its name by him as a general partner.

WITNESS my hand and official seal this 21st day of JANUARY, 1986.

Rochelle St. Helois  
Notary Public



5422 0923

NORTH CAROLINA

Mecklenburg COUNTY

This 21st day of JANUARY, 1986, personally came before me E. ALLEN BROWN JR., who acknowledged that (s)he is President of First Colony Corporation, a North Carolina corporation, and that by authority duly given and as the act of the corporation as general partner in Elizabeth Square Associates, the foregoing instrument was signed in its name by its President, sealed with its corporate seal, and attested by Cynthia J. Brown as its ASST. Secretary.

WITNESS my hand and official seal this 21st day of JANUARY, 1986.

Rochelle St. Gelais  
Notary Public

My commission expires:

June 25, 1990



FEE 69.50  
<> 69.50  
CASH 69.50

02710/87 #3036 000

State of North Carolina, County of Mecklenburg  
The foregoing certificate(s) of Rochelle St. Gelais

I, Notary (last) Public of Mecklenburg County and State of North Carolina  
are certified to be correct. This 10 day of February, 1987  
Charles E. Crowder, Register of Deeds, By: Mary A. Poiry

See Pages 924 thru 927



5422 0924

EXHIBIT A

Eastover Medical Park II Condominium  
Charlotte, Mecklenburg County, North Carolina

Phase I:

BEGINNING at a point located at the intersection of the westerly margin of the right-of-way of East Seventh Street and the southerly margin of the right-of-way of East Fifth Street, Charlotte, Mecklenburg County, North Carolina, said point being the northeasterly corner of Lot 6 of the H. H. Todd property as described on a map recorded in Map Book 4, Page 253 of the Mecklenburg Public Registry, and running thence in a southeasterly direction with the westerly margin of the right-of-way of East Seventh Street South 35-36-30 East 250.69 feet to a point; thence continuing in a southeasterly direction with the westerly margin of the right-of-way of East Seventh Street following the arc of a circular curve to the left said arc having a radius of 960.93 feet an arc distance of 139.84 feet to a point; thence continuing with the westerly margin of the right-of-way of East Seventh Street following the arc of a circular curve to the left said arc having a radius of 777.71 feet an arc distance of 100.64 feet to a point; thence South 36-52-00 West 138.31 feet to a point; thence North 75-13-00 West 165.0 feet to a point; thence South 14-47-00 West 9.84 feet to a point; thence North 75-13-00 West 167.80 feet to a point in the southeasterly boundary of the property of B & W (now or formerly) as described in deed recorded in Book 4281, Page 406 of the Mecklenburg Public Registry; thence with the southeasterly boundary of said property of B & W North 14-47-00 East 213.84 feet to a point, a corner of said B & W property; thence with a northeasterly boundary of said B & W property South 87-11-11 West 223.30 feet to a point, a corner of said B & W property; thence with a northeasterly boundary of said B & W property North 07-48-00 East 200.11 feet to a point in the southerly margin of the right-of-way of East Fifth Street; thence with the southerly margin of the right-of-way of East Fifth Street along the arc of a circular curve to the left said arc having a chord of North 85-11-00 East 239.74 feet and having a radius of 697.70 feet according to the map of the property of H. H. Todd as shown on a map recorded in Map Book 4, Page 253 of the Mecklenburg Public Registry, to the point and place of Beginning, being a portion of the property conveyed to Elizabeth Square Associates, a North Carolina limited partnership by Deeds recorded in Book 4913, Page 549 and Book 4913, Page 566 of the Mecklenburg Public Registry, and being the property shown on a map of Eastover Medical Park II Condominium prepared by Robert E. Rembert dated January 13, 1987.

5422 0925

Tract Subject to Development Rights:

The following tract is subject to certain development rights reserved unto Declarant as are more particularly described in Article 6 of the Declaration, said tract being described as follows:

TO LOCATE THE BEGINNING POINT begin at the point of intersection of the westerly margin of the right-of-way of East Seventh Street and the southerly margin of the right-of-way of East Fifth Street, said point being the northeasterly corner of Lot 6 of the H. H. Todd property as described on a map recorded in Map Book 4, Page 253 of the Mecklenburg Public Registry, and running thence with the westerly margin of the right-of-way of East Seventh Street South 35-36-30 East 250.69 feet to a point; thence continuing in a southeasterly direction with the westerly margin of the right-of-way of East Seventh Street with the arc of a circular curve to the left said arc having a radius of 960.93 feet an arc distance of 139.84 feet to a point; thence continuing in a southeasterly direction with the westerly margin of the right-of-way of East Seventh Street following the arc of a circular curve to the left said arc having a radius of 777.71 feet an arc distance of 100.64 feet to the point and place of Beginning;

THENCE FROM SAID BEGINNING AS SO LOCATED, in a southeasterly direction with the westerly margin of the right-of-way of East Seventh Street following the arc of circular curve to the left said arc having a radius of 777.71 feet, an arc distance of 55.54 feet to a point, a corner of the property of Eastover Manor, Ltd. (now or formerly) as described in a deed recorded in Book 5115, Page 58 of the Mecklenburg Public Registry; thence with a boundary of said Eastover Manor, Ltd. property South 36-52-00 West 740.86 feet to a corner of said Eastover Manor, Ltd. property; thence with a boundary of said Eastover Manor, Ltd. property North 33-25-00 West 211.71 feet to a point, a common corner of said Eastover Manor, Ltd. property and the property of B & W (now or formerly) as described in a deed recorded in Book 4281, Page 406 of the Mecklenburg Public Registry; thence with the southeasterly boundary of said B & W property North 14-47-00 East 428.01 feet to a point, the southwest corner of Phase I of Eastover Medical Park II Condominium; thence with a southwest boundary of said Phase I South 75-13-00 East 167.80 feet to a point; thence continuing with a southeasterly boundary of said Phase I North 14-47-00 East 9.84 feet to a point; thence continuing with a southeasterly boundary of said Phase I South 75-13-00 East 165.00 feet to a point; thence with a southeasterly boundary of Phase I North 36-52-00 East 138.31 feet to a point in the westerly margin in the right-of-way of East Seventh Street, the point and place of Beginning, and being a portion of the property conveyed to Elizabeth Square Associates, a North

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Carolina limited partnership by deeds recorded in Book 4913, Page 549 and Book 4913, Page 566 of the Mecklenburg Public Registry, and being the property shown on map of Eastover Medical Park II Condominium prepared by Robert E. Rembert dated January 13, 1987.

Easements and Exceptions:

The following are the easements and exceptions appurtenant to or included in the Condominium or to which any portion of the Condominium is or may become subject:

1. Mutual Easement recorded in Book 5024, Page 907, Mecklenburg Public Registry.
2. Easements for access granted to Eastover Manor, Ltd. in deed recorded in Book 5155, Page 58, Mecklenburg Public Registry.
3. Rights-of-way to State Highway Commission recorded in Book 2876, Page 447; Book 2869, Page 453; and Book 2904, Page 544, Mecklenburg Public Registry.
4. Easement to Southern Power Company recorded in Book 394, Page 148, Mecklenburg Public Registry.
5. Easements to Southern Bell Telephone and Telegraph Company recorded in Book 628, Page 298; Book 628, Page 369; Book 788, Page 137; and, Book 814, Page 332, Mecklenburg Public Registry.
6. Easement to Southern Public Utilities recorded in Book 748, Page 331, Mecklenburg Public Registry.
7. Rights-of-way reserved to the City of Charlotte in Book 2176, Page 435 and Hermitage Shopping Center, Inc. in Book 2475, Page 245 for sewer lines, Mecklenburg Public Registry.
8. Sewer easements to City of Charlotte recorded in Book 748, Page 104 and Book 1424, Page 400, Mecklenburg Public Registry.
9. Easement to County of Mecklenburg relating to improvements along Briar Creek recorded in Book 3839, Page 166.
10. Rights of upper and lower riparian owners in and to the waters of Briar Creek and any branch crossing or adjoining the Condominium and the natural flow thereof.
11. Conditions imposed upon the subject property under the 0-6(CD) and B-1(CD) zoning designations applicable to the subject property or portions thereof.
12. Underground utilities and storm drain lines serving the subject property.

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## EXHIBIT B

TABLE OF INTERESTS

<u>Unit No.</u>	<u>Floor Area</u>	<u>Share of Common Elements</u>	<u>Share of Common Expenses</u>	<u>Vote in the Association</u>
2600	15,750	15,750/31,859	15,750/31,859	15,750/31,859
2608	8,255	8,255/31,859	8,255/31,859	8,255/31,859
2614-A	1,364	1,364/31,859	1,364/31,859	1,364/31,859
2614-B	6,490	6,490/31,859	6,490/31,859	6,490/31,859