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**DECLARATION OF  
CONDOMINIUM  
FOR  
THE CARSON CONDOMINIUM  
WAKE COUNTY, NORTH CAROLINA**

Date: September 4, 2020

THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF THE FLAG OF THE UNITED STATES OF AMERICA OR STATE OF NORTH CAROLINA. (See Section 8.13)

THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF POLITICAL SIGNS. (See Section 8.13)

NOTE:

The Plans, including a plat and architectural drawings, are recorded in Condominium Map Book \_\_\_\_\_, Pages \_\_\_\_\_ through \_\_\_\_\_ in the Office of the Register of Deeds of Wake County, North Carolina

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**DECLARATION OF  
CONDOMINIUM  
FOR THE CARSON CONDOMINIUM  
WAKE COUNTY, NORTH CAROLINA**

THIS DECLARATION OF CONDOMINIUM FOR THE CARSON CONDOMINIUM (the "Declaration") is made this 4<sup>th</sup> day of September, 2020 by CARSON STREET PARTNERS, LLC, a North Carolina limited liability company (the "Declarant"), pursuant to the provisions of Chapter 47C of the North Carolina General Statutes, as the same may be amended from time to time, being referred to herein as, the "North Carolina Condominium Act."

**W I T N E S S E T H:**

Declarant is the owner of certain parcels of real estate containing approximately 1.704 acres located in the City of Raleigh, Wake County, North Carolina, as more particularly described on Exhibit A attached hereto (the "Land"). Declarant has constructed or anticipates constructing on the Land seven (7) buildings (the "Buildings") containing a total of thirty-two (32) residential condominium units. Declarant has constructed or anticipates constructing common amenities on the Land such as sidewalks, private roads, landscaped areas and other improvements. Declarant desires to submit the Land and the improvements located on the Land (collectively, the "Property") to the terms and provisions of the Act.

In addition, Declarant has deemed it desirable to create a nonprofit incorporated owners association which will be delegated and assigned powers of maintaining and administering the common areas and facilities on the Property, administering and enforcing the covenants and restrictions created in this Declaration, levying, collecting and disbursing the assessments and charges created in this Declaration, and taking any steps or performing any acts deemed necessary or appropriate to preserve the values of condominium units within the Property and promote the recreation, health, safety and welfare of the Owners. In order to accomplish the foregoing, Declarant is entering into this Declaration.

NOW, THEREFORE, Declarant hereby declares all of the Property shall be held, transferred, sold, conveyed, occupied and used subject to the following covenants, conditions, easements, uses, limitations, obligations and restrictions, all of which are declared and agreed to be in furtherance of a plan for the division of the Property to the form of ownership as a condominium pursuant to Act and shall be deemed to run with the land to both burden and benefit Declarant, its successors and assigns, and any person or entity acquiring or owning an interest in the Property, and his successors, heirs and assigns.

NOW THEREFORE, Declarant does hereby submit the Property to the provisions of this Declaration and the provisions of the North Carolina Condominium Act, N.C. Gen. Stat. §§ 47C-1-101, et seq.

**ARTICLE I  
DEFINITIONS**

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

1.1 "Allocated Interest" shall mean and refer to the undivided percentage interest in the Common Elements allocated to each Unit, as set forth on **Exhibit B** attached hereto. In the event that the Declarant elects to exercise its Development Rights under Article VI of this Declaration to create Additional Units, this Declaration shall be revised by a Supplementary Declaration as set forth under Article VI to

provide for a new allocation of Allocated Interests which shall substitute and replace **Exhibit B** attached hereto. The Allocated Interests shall be used to allocate the division of proceeds, if any, resulting from any casualty loss or eminent domain proceedings and shall also be used to determine each Unit's share of Common Expenses.

1.2 "Association" shall mean and refer to The Carson Condominium Association, Inc., a corporation organized and existing under the North Carolina Non-Profit Corporation Act pursuant to and in accordance with this Declaration, the Bylaws, and the North Carolina Condominium Act.

1.3 "Building" or "Buildings" shall mean and refer to, collectively or individually, the buildings that may be constructed on the Land by Declarant in accordance with its Development Rights. "New Buildings" shall mean or refer to, collectively or individually, the buildings that may be constructed on the Land or Additional Land by Declarant in accordance with its Development Rights and Special Declarant Rights.

1.4 "Bylaws" shall mean and refer to the bylaws of the Association and all amendments to such bylaws which may from time to time be adopted.

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

1.6 "Common Expenses" shall mean and refer to any and all expenditures made by or financial liabilities of the Association, together with any allocations to reserves, pursuant to and in accordance with this Declaration, the Bylaws, and the North Carolina Condominium Act.

1.7 "Condominium" shall mean and refer to The Carson Condominium, as established by the submission of the Property to the terms of the North Carolina Condominium Act by this Declaration.

1.8 "Condominium Documents" shall mean and refer to this Declaration, the Articles of Incorporation of the Association, the Bylaws and the rules and regulations governing the use of the Property, as the foregoing may be amended and supplemented from time to time, and all attachments and exhibits thereto.

1.9 "Declarant" shall mean and refer to Carson Street Partners, LLC, a North Carolina limited liability company. Following recordation of a document transferring to another Person all or some of the Special Declarant Rights, pursuant to Section 7.2 of this Declaration, the term "Declarant" shall mean and refer to that transferee, with respect to the Special Declarant Rights so transferred.

1.10 "Declarant Control Period" shall mean the shorter of: (a) period of time during which Declarant owns any property or reserved Development Rights that are subject to this Declaration, or that date which is the fifteenth (15<sup>th</sup>) annual anniversary of the recording of this Declaration. Declarant may, but shall not be obligated to, unilaterally relinquish its rights under this Declaration and terminate the Declarant Control Period by recording a written instrument with the Wake County, North Carolina Register of Deeds.

1.11 "Declaration" shall mean and refer to this Declaration of Condominium, as it may be amended and/or supplemented in the future.

1.12 "Development Right" or "Development Rights" shall mean and refer to the rights preserved by Declarant in Article VI of this Declaration.

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

1.14 "Family Members" shall mean and refer to the spouse, parents, parents-in-law, brothers, sisters, children and grandchildren of a natural person.

1.15 "Land" shall mean and refer to the real property subject to this Declaration, exclusive of improvements located thereon or incorporated therein, which is more particularly described on **Exhibit A** attached hereto, together with such additional real property as is made subject to the terms of this Declaration pursuant to Article VI.

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

1.17 "Limited Common Expense" shall mean and refer to an expense incurred by the Association for the benefit of some, but fewer than all Owners and which is collected through an assessment as provided in Section 12.3.

1.18 "Manager" shall mean any Person appointed or employed by the Association to operate, maintain and manage the Condominium.

1.19 "Mortgage" shall mean and refer to a mortgage or deed of trust constituting a lien on a Unit.

1.20 "Mortgagee" or "Lender" shall mean and refer to the owner and holder of a Mortgage that has notified the Association in writing delivered to the Association as set forth in the Bylaws of such owner and holder's name and address, and that it holds a Mortgage on a Unit. Such notice will be deemed to include a request that the Mortgagee be given the notices and other rights described in Article XVIII.

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

1.22 "Occupants" shall mean any natural person(s) in possession of a Unit, including Owners, Family Members, lessees, guests and invitees of such natural person(s).

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

1.24 "Permittees" shall mean and refer to tenants, subtenants, occupants, contractors, subcontractors, agents, employees, licensees and invitees, and their respective officers, directors, contractors, subcontractors, agents, employees, licensees, invitees and visitors; provided, however, nothing contained herein shall imply that Owners may rent or lease their Units to any such Permittee.

1.25 "Person" shall mean a natural person, corporation, municipal corporation, partnership, limited liability company, association, firm, business trust, estate, trust, joint venture, government, governmental subdivision or agency, or other legal or commercial entity.

1.26 "Plans" shall mean and refer to the surveys, plans and specifications of the Condominium, Buildings and Property recorded in the Condominium Map Book \_\_\_\_\_, Pages \_\_\_\_\_ through \_\_\_\_\_ in the Office of the Register of Deeds, Wake County, North Carolina, and any amendments or supplements to those Plans. The Plans are hereby incorporated herein by reference as if the same were attached to this Declaration.

1.27 "Private Street(s)" shall mean any paved street or roadway on the Land subject to the Declaration intended for vehicular ingress and egress, and not being designated on the Plans as either parking area or public right-of-way.

1.28 "Property" shall mean and refer to the Land, which is more particularly described on **Exhibit A** attached hereto, and such future improvements as may be constructed thereon or on Additional Land, consistent with this Declaration, including but not limited to the Buildings and New Buildings, if any.

1.29 "Related Parties" shall mean and refer to shall mean and refer to a party's managers, members, shareholders, officers, directors, employees, agents, attorneys, successors, assigns and affiliates.

1.30 "Special Declarant Rights" shall mean and refer to the rights reserved for the benefit of Declarant in the Condominium Documents, as more particularly described in Article VII of this Declaration.

1.31 "Unit" shall mean and refer to a portion of the Property, as more particularly described in Article IV of this Declaration, that is the subject of individual ownership by an Owner, and which is restricted to residential use.

In addition, the definitions set forth in N.C. Gen. Stat. §47C-1-103 are incorporated in this Declaration by reference, and the terms defined therein shall have the meanings set forth therein when used in this Declaration or the Condominium Documents, unless those terms are expressly defined otherwise in this Declaration or unless it is plainly evident from the context that a different meaning is intended.

## **ARTICLE II DESIGNATION OF CONDOMINIUM**

2.1 Location and Designation. The Land on which the Buildings and other improvements are located or will be located is in Wake County, North Carolina and is more particularly described on **Exhibit A** attached hereto and incorporated herein by reference. The Land is subjected to the terms of the North Carolina Condominium Act by this Declaration.

2.2 Name. The name of the Condominium is The Carson Condominium.

## **ARTICLE III DESCRIPTION OF BUILDINGS**

3.1 Existing Buildings. The existing Buildings consist of two (2) buildings containing six (6) Units for a total of twelve (12) Units (the "Existing Buildings") as shown on the Plans. The Existing Buildings are three stories with cementitious board siding, standard painted brick, metal roof and wood trim accents with a pitched shingled roof and a mixture of fixed, single hung and casement black windows. The Existing Buildings are more particularly described in the Plans, which show all particulars of the Existing Buildings.

3.2 Potential New Buildings. As provided in Article VI, Declarant reserves Development Rights to construct up to ten (10) additional Buildings (the “New Buildings”) containing an aggregate of up to forty (40) additional Units (“Additional Units”) on the Land or on any additional land Declarant owns or may acquire (“Additional Land”). As provided in Section 6.2, any New Buildings constructed by Declarant will be substantially similar in architectural style to that of a townhome. If Declarant exercises its Development Rights to construct such additional New Buildings containing Additional Units on the Land or Additional Land and submit same to this Declaration, the Supplementary Declaration required by Section 6.5 of this Declaration shall contain a revised set of Plans which shall describe the New Buildings and Additional Units and contain certifications require by N.C. Gen. Stat. §47C-2-109.

#### **ARTICLE IV DESCRIPTION OF UNITS**

4.1 Location of Buildings. The location and dimensions of the Existing Buildings are shown on the Plans. If the Declarant exercises its Development Rights to create Additional Units and Limited Common Elements, the Amendment to this Declaration required by N.C. Gen. Stat. §47C-2-110 shall contain a revised set of Plans, which shall show the location of the New Building(s).

4.2 Units. The location of Units within the Existing Buildings and their dimensions are shown on the Plans. There are a total of twelve (12) Units in the Existing Buildings. Pursuant to Article VI of this Declaration, Declarant reserves the Development Right to create up to an additional forty (40) Units, for a total of fifty-two (52) Units upon the Land or upon the Additional Land. The identifying number for each Unit is set forth on **Exhibit B**, attached hereto and incorporated herein by reference, and on the Plans. If Declarant exercises its Development Right to create Additional Units and Limited Common Elements, the Supplementary Declaration required by Section 6.5 of this Declaration shall contain a new **Exhibit B** and revised set of Plans, which shall contain new identifying numbers for the Units thereby created.

4.3 Unit Boundaries. The boundaries of each Unit are shown on the Plans and further described as follows:

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

(b) Lower Boundary. The lower boundary is the horizontal plane of the top surface of the concrete slab, extended to intersections with each other and with the Perimeter Boundaries. The floor in the bottom story of a Unit may be at different elevations; in such cases, the lower boundary of such Unit shall not be a single horizontal plane, but shall vary with the differing floor elevations within different portions of the Unit.

(c) Perimeter Boundary. The perimeter boundary is the vertical plane formed by the outermost surface of the wallboard of the interior walls of the Unit, extended to intersections with each other and with the Upper Boundary and Lower Boundary as defined above.

(d) The Act. In determining whether materials or items are Common Elements, Limited Common Elements or parts of a Unit, except as otherwise provided in this Declaration the terms and provisions in Section 47C-2-102 of the Act shall apply, and those provisions are as follows on the Effective Date of this Declaration:

“(1) If walls, floors or ceilings are designated as boundaries of a unit, then all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring and any other materials constituting any part of the finished flooring, and any other materials constituting any part of the finished surfaces thereof are a part of the unit; and all other portions of such walls, floors, or ceilings are a part of the common elements.” Note: This Declaration extends the Upper Boundaries of Units to the uppermost surfaces of wallboards or ceiling tiles, the Lower Boundaries of Units to the bottom of flooring materials adjacent to the concrete slab, and the Perimeter Boundaries of Units to the outermost surfaces of wallboards of the interior walls.”

“(2) If any chute, flue, duct, wire, conduit, bearing wall, bearing column or any other fixture lies partially within and partially outside the designated boundaries of a unit, any portion thereof serving only that unit is a limited common element allocated exclusively to that unit, and any portion thereof serving more than one unit or any portion of the common elements is a part of the common elements.”

“(3) Subject to the provisions of paragraph (2), all spaces, interior partitions, and other fixtures and improvements within the boundaries of a unit are a part of the unit.”

“(4) Any shutters, awnings, window boxes, doorsteps, stoops, decks, porches, balconies, patios, and all exterior doors and windows or other fixtures designed to serve a single unit but located outside the unit’s boundaries are limited common elements allocated exclusively to that unit.”

## **ARTICLE V COMMON ELEMENTS**

5.1 Common Elements. The Common Elements include all portions of the Condominium that are not part of the Units, including, without limitation:

- (a) The Land and the easement rights and other property rights appurtenant to the Land that are included within the Property and subjected to this Declaration;
- (b) All improvements located on the Land outside of the Buildings, including without limitation landscaped areas, surfaced parking areas (if any), paved access roads, private roads, patios (unless such are designated as Limited Common Elements) and walkways.
- (c) Any public connections and meters, vaults and manholes for utility services that are not owned by the public utility or municipal agency providing such services, until owned or maintained by the public utility or municipal agency providing such service, if applicable.
- (d) All tangible personal property required for the operation and maintenance of the Condominium that may be owned by the Association.
- (e) The Limited Common Elements described in Section 5.2 below.

5.2 Limited Common Elements. The Limited Common Elements shall be composed of the following:

- (a) The foundations, roofs, columns, girders, beams, supports, exterior and interior load-bearing walls, and all other structural elements of the Existing Buildings.
- (b) Those portions of any chute, flue, duct, wire, pipe for water or sewer, conduit, bearing wall, bearing column, or any other fixture lying partially within and partially outside the

designated boundaries of a Unit, but serving exclusively that Unit, which shall be Limited Common Elements allocated exclusively to that Unit.

- (c) Any shutters, awnings, window boxes, balconies, and all exterior doors and windows or other fixtures designed to serve a single Unit, but located outside that Unit's boundaries, which shall be Limited Common Elements allocated exclusively to that Unit.
- (d) Any portions of the heating, ventilating, and air conditioning systems, and all fans, compressors, return air grills and thermostats, whether located inside or located outside the designated boundaries of a Unit, which shall be Limited Common Elements allocated exclusively to the Unit or Units that they serve.
- (e) Those areas indicated as Limited Common Elements on the Plans, including but not limited to balconies and porches serving an individual Unit, which shall be allocated to the Unit to which such Limited Common Elements are servicing on the Plans or conveyed as a Limited Common Element in the Deed from Declarant, together with the Unit. Notwithstanding anything to the contrary in this Declaration, during the Declarant Control Period, Declarant shall not have the right granted in the foregoing sentence with respect to Units no longer owned by Declarant.

5.3 Undivided Interests of Owners in Common Elements. The percentage interest in the Common Elements allocated to each Unit shall be the Allocated Interest for that Unit as set forth on **Exhibit B** attached hereto. The Allocated Interest allocated to each Unit shall not be changed except with the unanimous consent of all the Owners of all the Units and with the consent of all the Mortgagees, except as may be specifically authorized elsewhere in this Declaration. In particular, if Declarant exercised its Development Rights to create Additional Units and Limited Common Elements, Declarant shall adjust the Allocated Interest for each Unit in accordance with the following formula: The Allocated Interest allocated to each Unit shall be calculated by dividing the number 100 by the total number of Units in the Condominium. The Supplementary Declaration required by Section 6.5 of this Declaration shall contain a new allocation of Allocated Interest calculated in accordance with the foregoing formula which shall be substituted for **Exhibit B** attached to this Declaration in the event that Declarant exercises its Development Rights.

5.4 Maintenance of Common Elements.

- (a) The Association shall be responsible for the maintenance and repair of all Common Elements, except for: (i) routine maintenance of the Limited Common Elements, which shall be the responsibility of the Owner of the Unit to which they are allocated; and (ii) any maintenance or repairs caused by the negligence or intentional misconduct of any Owner, his agents, invitees or Family Members, which shall be the responsibility of that Owner.
- (b) The cleanliness and orderliness of the Limited Common Elements shall be the responsibility of the individual Owner(s) having the right to the use and enjoyment of such Limited Common Elements. Notwithstanding any other provisions of this Declaration, or any provision of the Bylaws or the North Carolina Condominium Act, the obligation for maintenance, repair, or replacement of any portions of the heating, ventilating, and air conditioning systems that are Limited Common Elements, shall be the sole responsibility of the Owners of the Units to which such Limited Common Elements are allocated. References in this Declaration to "Common Elements" shall include Limited Common Elements unless the context clearly indicates otherwise. The allocation of use of Limited

Common Elements to the Units as provided for in this Declaration shall not be altered without the unanimous consent of the Owners whose Units are affected.

## **ARTICLE VI DEVELOPMENT RIGHTS**

6.1 Creation of New Units and Limited Common Elements. Declarant reserves an option, in its sole and absolute discretion, until the fifteenth (15<sup>th</sup>) annual anniversary of the date of the recordation of this Declaration, to create and construct new Additional Units, reconfigure, refurbish, renovate, subdivide, combine or recombine existing Units; and/or create or construct new, or reconfigure existing Common Elements and Limited Common Elements allocated to those Units, within the Land or Additional Land, as shown on the Plans in accordance with the provisions of this Article VI and to have access to and use of all portions of the Buildings and Land except inside Units without such Owner's permission, which such permission shall not be unreasonably withheld, conditioned or delayed. The maximum number of Units within the Condominium that Declarant reserves the right to create, including Units in existence as of the date of recording this Declaration, is fifty-two (52). Declarant may exercise this Development Right within the fifteen (15) year period specified above, without the consent or approval of the Association or any other Owner or Mortgagee, by executing and recording a Supplemental Declaration in the manner provided in Section 6.5 below. A Supplemental Declaration shall not be required for any work (reconfiguring, refurbishing, or renovating) performed by Declarant inside the perimeter demising walls of existing Units. If Declarant exercises its Development Right to construct additional, or subdivide existing Units, Declarant shall not be obligated to construct or subdivide up to the maximum number of Units as specified above but may create any number less than the maximum number specified above. Declarant reserves the right to exercise the Development Rights with respect to any portion or portions of the Property subject hereto as it deems appropriate or desirable, in its sole discretion, including, without limitation, exercising Development Rights with respect to different parcels or portions of such Land or Additional Land at different times. No assurances are provided as to the exercise of any Development Rights or as to the order in which such Land, Additional Land or portions thereof may be subjected to the exercise of any Development Rights. If a Development Right is exercised with respect to any portion of the Land or Additional Land subject to such right, it is not necessary that such right be exercised with respect to all of the Land or Additional Land or any other portion of the same. It is the intention of Declarant to create Additional Units on the Land, Additional Land, or on portions thereof, at different times (in phases); however, no assurance is made by Declarant in regard to boundaries of the specific areas within the Common Elements or within the Land, Additional Land, or any portion thereof, on which new Units may be created, and no assurance is made by Declarant in regard to the order in which those portions of the Common Elements and the Land and/or Additional Land may be subjected to the exercise of Declarant's Development Rights.

6.2 Quality of Construction. Any New Building constructed by Declarant within the area described on Section 6.1 shall be substantially similar to the Existing Buildings in terms of architectural appearance and quality of construction. Declarant reserves the right to substitute materials of similar durability, quality and strength in Declarant's sole discretion, so long as the foregoing standard is complied with. The Units within the New Buildings created by the Declarant need not be of the same type and design of the existing Units, so long as the construction and appearance of each New Building satisfies the requirements set forth above. Declarant shall have the right to allocate Limited Common Elements to the new Units in the manner similar to the allocation of Limited Common Elements to the existing Units under Section 5.2 of this Declaration.

6.3 Pre-Sale Modification. Declarant reserves an option, prior to conveying a particular Unit to a purchaser other than Declarant, to: (a) relocate Units within the Condominium (provided all affected Units are owned by Declarant at such time), (b) alter the size of or subdivide such Unit, and (c) combine or merge two such Units (provided such are adjacent and are both owned by Declarant at such time).

6.4 Expansion, Creation and Conversion of Common Elements. Declarant reserves an option, until that certain date which is the fifteenth (15<sup>th</sup>) annual anniversary of the recordation of this Declaration to: (a) expand the Condominium by adding additional real property thereto, provided such additional real property is previously subjected to the Declaration, (b) create additional Common Elements, and (c) convert Units, or any part thereof (still owned by Declarant) into Common Elements.

6.5 Supplementary Declaration. In order to exercise the Development Rights reserved under this Article VI, Declarant shall execute and record an amendment to this Declaration in accordance with N.C. Gen. Stat. §47C-2-110 (a "Supplementary Declaration"). Any Supplementary Declaration executed and recorded by Declarant to exercise the Development Rights described in Section 6.1, 6.2 or 6.3 shall contain an amendment or supplement to the Plans identifying the changes and, if necessary, recording an amendment to **Exhibit B** attached to this Declaration, assigning and identifying numbers to any new Units and reallocating the Allocated Interests among all Units in accordance with the formula set forth in Section 5.3. Any such Supplementary Declaration also may contain such additions to the provisions of this Declaration as may be necessary to reflect the different character of the new Units created by Declarant, so long as such additions are not inconsistent with the overall scheme of the Declaration, and provided that such additions shall not apply to any Unit created prior to recordation of the Supplementary Declaration or to the Owner or Mortgagee of any such Unit. Declarant must comply with all applicable laws, ordinances and regulations implicated in exercising its Development Rights.

## **ARTICLE VII SPECIAL DECLARANT RIGHTS**

7.1 Special Declarant Rights. Declarant reserves an option in its sole and absolute discretion, until that certain date which is the fifteenth (15<sup>th</sup>) annual anniversary of the date of recordation of this Declaration, to exercise Special Declarant Rights. The Special Declarant Rights described in this Declaration shall apply to the Property as described herein. "Special Declarant Rights" are those rights reserved for the benefit of Declarant in the Condominium Documents, and shall include, without limitation, the following rights:

- (a) The right to construction or complete construction of any improvements upon the Common Elements or Land or Additional Land including but not limited to the New Buildings.
- (b) The right to use easements through the Common Elements for the purpose of completing construction.
- (c) Subject to Section 9.3, the right to appoint or remove officers of the Association or members of the Executive Board during the Declarant Control Period.
- (d) The right to maintain one (1) sales office, one (1) management office, and up to three (3) model Units in the Condominium. The offices, model Units and signs will be of sizes and styles determined by Declarant, and may be relocated by Declarant from time to time. At all times, the offices, model Units and signs will remain the property of Declarant and may be removed from the Property by Declarant.
- (e) The right to exercise any other rights granted to or reserved by Declarant in the Condominium Documents; expressly including, without limitation, the Development Rights set forth in Article VI above.

- (f) The right, at its sole discretion, to designate or allocate specific, reserved parking spaces for each Unit, or some of the Units.
- (g) The right of Declarant to use (Declarant hereby reserving for itself and its successors and assigns) a non-exclusive easement upon, across, over, in, and under the Property as may be reasonably necessary for the purpose of discharging Declarant's obligations or exercising Special Declarant Rights, whether arising under the North Carolina Condominium Act or this Declaration, including, without limitation:
  - (i) easements for ingress and egress and for installation, replacement, repair and maintenance of drainage ditches and facilities, all utilities, including but not limited to water, sewer, gas, telephone, and electrical, cable and other communications systems;
  - (ii) easements to store materials on the Common Elements and to make such other use of the Common Elements as may be reasonably necessary or incident to the construction of the Buildings and other improvements on the Property; and
  - (iii) the location of these easements and rights-of-way may be made certain by Declarant and the Association by instruments recorded in the Office of the Register of Deeds of Wake County, North Carolina.

7.2 Transfer of Special Declarant Rights. Declarant may transfer any Special Declarant Rights created or reserved under the Condominium Documents to any Person or entity, by an instrument evidencing the transfer duly recorded in the Office of the Register of Deeds of Wake County, North Carolina. Except for the transfer of declarant rights as provided in N.C. Gen. Stat. §47C-3-104(c), the instrument shall not be effective unless it is executed by the transferor and the transferee. Upon the transfer of any Special Declarant Rights, the liability of the transferor and the transferee shall be as set forth in N.C. Gen. Stat. §47C-3-104.

7.3 Application of Special Declarant Rights. Declarant reserves the Special Declarant Rights as to the Land, Additional Land and the Property, or any portion thereof it deems appropriate or desirable, in its sole discretion including, without limitation, applying any Special Declarant Right to different parcels or portions of the Land or Additional Land at different times. No assurances are provided as to exercise of Special Declarant Rights or the order in which those parcels or portions may be subjected to the exercise of any Special Declarant Rights. If a Special Declarant Right is exercised with respect to any portion of the Land or Additional Land subject to such right, it is not necessary that such right be exercised with respect to all of the Land, Additional Land or any other portion of the same. Unless expressly stated to the contrary, the Special Declarant Rights shall expire on upon the fifteenth (15<sup>th</sup>) annual anniversary of the recordation of this Declaration.

## **ARTICLE VIII RESTRICTIONS ON USE**

Section 8.1 Residential Use. All Units shall be used for residential purposes only, with a home office within the confines of a Unit being a permitted use. Notwithstanding the foregoing, Declarant may maintain any Unit(s) owned by Declarant as a sales office(s) or model Unit(s).

Section 8.2 Nuisance. No obnoxious, offensive or unlawful activity shall be conducted within any Unit or on or about the Common Elements, nor shall anything be done thereon or therein which may be or which may become an annoyance or nuisance to the other Owners or endanger the health and safety

of any Owner. Nothing shall be done or kept in any Unit or in the Common Elements that will result in the termination of, or an increase in the premium for, the policy of property insurance for the Property.

Section 8.3 Prohibitions on Use of Common Elements. The Common Elements shall not be used for the storage of personal property of any kind. Stairs, entrances, lobbies, hallways, sidewalks, yards, driveways and parking areas shall not be obstructed in any way or used for other than their intended purposes. In general, no activity shall be carried on nor conditions maintained by any Owner either in his Unit or upon the Common Elements which detracts from the appearance of the Property.

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

Section 8.5 Parking. No Owner or any employee, agent or invitee of any Owner shall park, store or keep any vehicle on the Property except wholly within the garages located within such Owner's Unit. No Owner shall not block any entrances, drive aisles or fire lanes within the Property. Any Parking Space(s) designated exclusively to a Unit may be used only by the Owner of the Unit to which the Parking Spaces are allocated as a Limited Common Element and his agent and invitees. The Property will have parking spaces to be used by guests only; in no event shall an Owner park, store or keep any vehicle in those parking spaces designated for guests. No boat, boat trailer, motor home, travel trailer, camper or other recreational vehicle may be stored on the Property at any time. No significant automobile repair shall be allowed in the parking areas on the Property. The Association shall have the right to tow any vehicle in violation of this Section 8.5 at its owner's expense.

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

Section 8.6 Leases of Units. In no event may fifty percent (50%) or more of all the Units, or any portion thereof, of the Condominium be leased by a third party or parties where the Units are subject to financing as investment property. No single entity can own more than twenty percent (20%) of the Units at any given time other than Declarant. Any lease of a Unit or portion thereof shall be in writing and shall provide that the terms of the lease shall be subject in all respects to the Condominium Documents and that any failure by the lessee to comply with all of the terms of such Condominium Documents shall constitute a default under the lease. Provided, all such leases are subject to the Declaration of Condominium and the Bylaws, rules and regulations of the Association, whether or not specifically stated in the lease. A copy of the lease, along with full personal contact information for landlord and tenant, shall be delivered to the Association prior to tenant's occupancy, along with evidence of insurance as required under this Declaration. The Condominium Documents may also require a minimum lease term of up to twelve (12) months and the use of lease forms approved by the board of the Association.

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

Section 8.8 Animals. No animals, livestock or poultry of any kind shall be kept or maintained on the Property or in any dwelling located thereon except that domestic household pets may be kept or maintained in each Unit, provided they are not kept or maintained for commercial purposes and provided that no Owner may have more than two (2) cats and two (2) dogs at any one time (excluding fish). No pet shall be permitted upon the Common Elements unless carried or leashed by a person that can control the pet. All pets shall be controlled so as not to create a nuisance or unreasonable disturbance (including loud and excessive barking) on the Property. Pets shall not be permitted to defecate in the Common Elements, and each Owner shall clean up immediately after his pet if an accident occurs. All pets shall be registered, licensed and inoculated as required by law. If any Owner violates these rules more than twice in any twelve (12) month period, then in addition to any fines provided in the Bylaws, the Association shall have the right to require the Owner to remove the pet permanently from the Property upon not less than ten (10) days written notice. Each Owner who keeps any animal on any portion of the Property agrees to indemnify and hold harmless the Association, Declarant and all other Owners from and against any loss, claim for damages to person or property, cause of action, or liability of any kind, and all costs of defending against the same (including reasonable attorneys' fees), arising out of or resulting from any action of an Owner's animal and shall repair at Owner's expense any damage to the Common Elements caused by an Owner's animal. An easement over and upon any Unit, the Common Elements or the Limited Common Elements is reserved for the applicable governmental authority to exercise and enforce Legal Requirements relating to animal control.

Section 8.9 Utilities. The Condominium's water usage and sewer usage are measured by a master-meter controlling all Units in the Condominium. All submeters will report to the Association and each Unit Owner will be billed accordingly. Total electrical usage in any Unit shall not exceed the capacity of the circuits for that Unit as labeled on the circuit breaker boxes, and no electrical device causing overloading of the standard circuits may be used in any Unit without permission of the Association. All clothes dryers will have lint filters and all stove hoods will have grease screens. Such screens and filters shall be used at all times and kept clean and in good order and repair by the Owner of the Unit in which they are located.

Section 8.10 Floor Load. There shall be no floor load in any Unit in excess of 30 pounds per square foot, unless an engineering determination of the floor load capacity in the area of heavy use is approved by the Association. Such engineering determinations shall be obtained by the Association at the requesting Owner's expense.

Section 8.11 Windows. No curtains, draperies, or blinds shall be installed or hung in any window of any Unit unless they (i) have an off-white lining or backing on the side exposed to the window and (ii) cover the full length and width of such window. No blinds shall be less than two inches in width. No storm windows shall be installed in any Unit.

Section 8.12 Architectural Control. No building, landscaping, fence, wall or other structure shall be commenced, erected or maintained upon the Property, nor shall any exterior addition to, change or alteration to either a Unit or the Common Elements be made, until the plans and specification showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing by the Association, in its sole discretion. Review and approval of any application hereunder may be made on any basis, including solely the basis of aesthetic considerations only, and the Association shall not bear any responsibility for ensuring the design quality, structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with any building codes, zoning regulations and other governmental requirements.

Section 8.13 Signs and Flags. No signs or other advertising devices shall be displayed on or about the exterior of any Unit or in the Common Elements except for signage typically used in the marketing and sale of real estate and signage as permitted by municipal code and governmental authorities. The security system call box signage may have space for contact information to be listed by Owners leasing or selling Units in the Building. Each Owner shall have the right to have the Owner's selling agent or managing agent for the Owner's Unit listed in lieu of the Owner. Notwithstanding the foregoing, Declarant shall have the right to maintain upon the Property advertising signs independent of this standard during the Declarant Control Period or until all Units owned by Declarant are sold, provided those signs comply with applicable government regulations. Further, no pole or other device for the display of decorative flags shall be erected or displayed on or about the exterior of any Unit or in the Common Elements unless approved in advance by the Association, excluding the display of one (1) standard sized (not to exceed three feet by five feet) flag of the United States of America, not to hang or extend over any perimeter vertical plane of any balcony railing, which form of attachment shall be approved or disapproved by the Association. In the event that the Association approves installation of a pole or device for the display of decorative flags, any such flags displayed by an Owner shall be in good taste and shall not contain lewd or offensive displays or material. Notwithstanding any other provision of this Declaration or the Condominium Documents, Declarant may implement a signage program for the Property as determined in Declarant's reasonable discretion.

Section 8.14 Maintenance. The Owner of each Unit is responsible for maintaining his Unit as well as the Limited Common Elements appurtenant thereto. Each Owner shall keep his respective Unit and its appurtenant Limited Common Elements in a clean, neat and orderly condition and in a good state of maintenance and repair. If an Owner fails to comply with the standards or requirements of the Association relative thereto, the Association shall assess the defaulting Owner the cost thereof and shall undertake to effect said compliance.

Section 8.15 Rules and Regulations. In addition to the use restrictions set forth in this Declaration, reasonable rules and regulations governing the use of the Property may be made and amended from time to time by the Association. Copies of such regulations and amendments thereto shall be delivered to all Owners prior to their effective date and shall thereafter be furnished by the Association to all Owners upon request. Specifically, and not by way of limitation, the Association shall have the right to make reasonable rules and regulations governing the use of the parking on the Property, and access to the roof of the Buildings. No Owner shall be entitled to penetrate the roof of the Building without first providing detailed plans and specifications for the reason of any such penetration to the Association and obtaining prior written approval from the Association, to be granted in the Association's sole discretion and whose refusal to grant permission shall not be subject to appeal or challenge.

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

Section 8.17 Balconies and Terraces. The balconies and terraces, if any, adjacent to each Unit shall be kept in a clean, neat and orderly condition at all times and shall not be used for storage, cooking or for the drying of laundry. In particular, towels or banners shall not be hung on the balcony railings and any dead plants shall be removed promptly. No grills or cooking devices of any type shall be placed or used for any reason on the balconies. No indoor-outdoor carpeting, hot tub or other pool shall be installed on any

balcony, nor any furniture that is of such insufficient weight that winds may dislodge them from the balcony and thus cause a hazard. Access to the rooftop terrace, if any, shall be available to Unit Owners and shall be subject to the rules and regulations governing the use of the Property, including but not limited to any restrictions on loud noises during evening and morning hours.

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

## **ARTICLE IX THE ASSOCIATION**

9.1 Organization of Association. A nonprofit North Carolina corporation known and designated as The Carson Condominium Association, Inc., has been organized to provide for the administration of the Property, and the Association shall administer the operation and maintenance of the Property and undertake and perform all acts and duties incident thereto in accordance with the terms of its Articles of Incorporation, the Bylaws, and the North Carolina Condominium Act. A true copy of the Bylaws is attached hereto as **Exhibit C**. Every Owner shall be required to be and shall automatically be a member of the Association by virtue of his ownership interest in a Unit. With respect to matters on which the members of the Association are entitled to cast a vote, the total number of votes shall be equal to the number of Units contained within the Condominium from time to time; and the owners of each Unit will be entitled to one (1) vote. If fee simple title to a Unit is owned of record by more than one person or entity, all such persons or entities shall be members of the Association, but the vote with respect to any such jointly owned Unit shall be cast as hereinafter provided

9.2 Powers; Lien for Assessment. In the administration of the operation and management of the Property, the Association shall have and it is hereby granted the authority and power to enforce the provisions of this Declaration, to levy and collect assessments in the manner provided in Article XII below and in the Bylaws, and adopt, promulgate and enforce such rules and regulations governing the use of the Units and Common Elements as the Association may deem to be in the best interest of the Owners in accordance with the Bylaws. Any sum assessed by the Association remaining unpaid for a period of thirty (30) days or longer shall constitute a lien on the Unit with respect to which such sum was assessed upon filing in accordance with N.C. Gen. Stat. §47C-3-116, and shall be enforceable by the Association in accordance with N.C. Gen. Stat. §47C-3-116 and the Bylaws.

9.3 Executive Board during Declarant Control Period. During the Declarant Control Period, Declarant reserves the right to appoint and remove any Executive Board members and Officers of the Association; provided, however, (i) that not later than sixty (60) days after conveyance by Declarant to Owners other than Declarant of twenty-five percent (25%) of the total twelve (12) Units reserved to Declarant for construction hereunder, at least one member and not less than twenty-five percent (25%) of the members of the Executive Board shall be elected by Owners other than Declarant; and (ii) that not later than sixty (60) days after conveyance of fifty percent (50%) of the total twelve (12) Units reserved to Declarant for construction hereunder by Declarant to Owners other than Declarant, not less than thirty-three percent (33%) of the members of the Executive Board shall be elected by Owners other than Declarant.

9.4 Books and Records. The Association shall maintain current copies of: (a) the Condominium Documents, as they may be amended from time to time, (b) any rules and regulations adopted by the Executive Board from time to time; (c) records of meetings of the Association and the Executive Board; and (d) all financial records of the Association, as required by N.C. Gen. Stat. §47C-3-118. These items shall be available for inspection, during normal business hours and upon reasonable advance notice, by any Owner, any Mortgagee, any prospective purchaser of a Unit, any insurer or guarantor of a loan secured by a Mortgage and any authorized agent of an Owner.

## **ARTICLE X EASEMENTS AND PROPERTY RIGHTS**

10.1 Access by the Association. The Association, or any Person authorized by it, shall have the right of access to each Unit and to the Limited Common Elements to the extent necessary for performance by the Association of its obligations of maintenance, repair, or replacement of the Property.

10.2 Encroachment Easements. If any portion of the Common Elements now encroaches upon any Unit, or if any Unit now encroaches upon any other Unit or upon any portion of the Common Elements, or if such encroachment shall occur hereafter as a result of the settling or shifting of any Building, there shall exist a valid easement for the encroachment and for the maintenance of same for so long as such Building shall stand. If any Building, any Unit, or any portion of the Common Elements is partially or totally destroyed by fire or other casualty or as a result of condemnation or eminent domain proceedings, and subsequently is rebuilt, any encroachment of parts of the Common Elements upon any Unit, or of parts of any Unit upon the Common Elements, due to such rebuilding shall be permitted, and valid easements for such encroachments and the maintenance thereof shall exist.

10.3 Easements over Common Elements. Declarant, during the Declarant Control Period, and the Association, at any time, may grant easements for utility purposes for the benefit of the Property, including the right to install, lay, maintain, repair and replace water lines; pipes; ducts; sewer lines; water lines; gas mains and lines; telephone broadband and television or cable television wires, cables and equipment; electrical conduits; fiber optic lines; and wires over, under, along and on any portion of the Common Elements and Limited Common Elements outside Unit Boundaries. Each Owner hereby grants to Declarant or the Association, as applicable, an irrevocable power of attorney to execute, acknowledge and record for and in the name of each Owner such instruments as may be necessary to effectuate the foregoing. During the Declarant Control Period, and for a period of two (2) years after Declarant exercises its Development Rights to add additional land to the Condominium in accordance with Section 6.1 above, Declarant shall have an easement over the Common Elements and the Limited Common Elements outside Unit Boundaries as may be reasonably necessary to complete the construction of the Buildings as well as post-construction improvements and modifications within the Property or within such additional land. Any easements depicted or described on the Plans shall be valid easements hereunder for the benefit of the Association and/or other parties identified in the Plans.

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

Notwithstanding anything in this Declaration to the contrary, each Owner, by acquisition of his Unit, acknowledges that any drive isles located within the Property shall be private and shall not be maintained by the City of Raleigh or any government entity.

10.5 Drainage Easement. Until that date which is the fifteenth (15<sup>th</sup>) annual anniversary of the recordation of this Declaration, Declarant reserves an easement over and under the Property to maintain and to correct drainage or surface water runoff in order to maintain reasonable standards of health, safety and appearance. Such right expressly includes the right to cut any trees, bushes or shrubbery, make any grading of the soil, or take any other similar action reasonably necessary. After such action has been completed, Declarant shall restore the affected property to its original condition to the extent practicable. Declarant shall give the Association thirty (30) days' advance written notice of Declarant's intent each time it plans to exercise its rights pursuant to this Section.

10.6 Relocation of Boundaries; Subdivision; Partitioning.

- (a) Relocation of Boundaries Between Adjoining Units. The boundaries between adjoining Units may be relocated upon application to the Association by the Owners of such adjoining Units ("Adjoining Owners") and upon approval by the Association of such application; provided, however, that no such relocation of boundaries and interests, if applicable, shall be binding upon any Mortgagee holding a Mortgage on any Unit whose boundaries are relocated, unless consented to in writing by such Mortgagee. Any such application to the Association must be in such form and contain such information as may be reasonably required by the Association, and shall be accompanied by, a plat detailing the proposed relocation of boundaries. Unless the Association determines within thirty (30) days after submission to it of the application that the proposed relocation of boundaries is unreasonable, the application shall be deemed approved. Any relocation of boundaries shall not affect the interests in the Common Elements allocated to each Unit. Upon approval of the proposed relocation of boundaries, the Association shall cause to be prepared and filed, at the Adjoining Owners' expense, an amendment to this Declaration and a plat which identifies the Units involved, describes and depicts the altered boundaries, and gives the dimensions of the altered Units. Such amendment shall also contain operative words of conveyance and be signed by the Adjoining Owners and consented to by their Mortgagees, if any, and shall be indexed in the Wake Registry in the names of the Adjoining Owners.
- (b) Subdivision of Units. No Unit may be subdivided except as permitted in Article VI and Article VII of this Declaration.
- (c) Partitioning. The interests in the Common Elements allocated to each Unit shall not be conveyed, devised, encumbered, partitioned or otherwise dealt with separately from each such Unit, and the interests in the Common Elements allocated to each Unit shall be deemed conveyed, devised, encumbered or otherwise included with the Unit even though such interests are not expressly mentioned or described in the instrument conveying, devising, encumbering or otherwise dealing with such Unit. Any conveyance, mortgage or other instrument which purports to grant any right, interest or lien in, to or upon the Unit, shall be null, void and of no effect insofar as the same purports to affect any interest in a Unit's Allocated Interests unless the same purports to convey, devise, encumber or otherwise deal with the entire Unit. Any instrument conveying, devising, encumbering or otherwise dealing with any Unit, which describes said Unit by the identifying number assigned thereto on the Plans shall, without limitation or exception, be deemed and construed to affect the entire Unit and its Allocated Interest. Nothing herein contained shall be construed as limiting or preventing ownership of any Unit and its Allocated Interest by more than one Person or entity as tenants in common, joint tenants, or as tenants by the entirety or any other form permitted by law.

10.7 Conveyance or Encumbrance of Common Elements. While the Property remains subject to this Declaration and to the provisions of the North Carolina Condominium Act, no conveyances of or security interests or liens of any nature shall arise or be created against the Common Elements without the consent by vote of at least eighty percent (80%) of the votes in the Association, including at least eighty percent (80%) of all votes held by Owners other than Declarant and at least eighty percent (80%) of all Mortgagees. Every agreement for the performance of labor or the furnishing of materials to the Common Elements, whether oral or in writing, must provide that it is subject to the provisions of this Declaration and that the right to file a mechanic's lien or other similar lien by reason of labor performed or material furnished is subordinated to this Declaration and to the lien of assessments for Common Expenses provided for in Section 9.2 of this Declaration. Nothing in this Section 10.7 shall be construed to limit the right of any Owner to convey or to encumber its Allocated Interest as an appurtenance to and in connection with the conveyance or mortgaging of his Unit.

10.8 Nature of Interest in Unit. Every Unit, together with its Allocated Interest, shall for all purposes be and it is hereby declared to be and constitute a separate parcel of real property. The Owner of each Unit shall be entitled to the exclusive fee simple ownership and possession of his Unit subject only to the covenants, conditions, restrictions, easements, uses, limitations, obligations, rules and regulations set forth in the Condominium Documents, or as otherwise adopted by the Executive Board of the Association.

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

## ARTICLE XI CITY OF RALEIGH PROVISIONS

11.1 Stormwater Control Measures. The Raleigh City Code of Ordinances (the "Code") requires that stormwater runoff from the Property be controlled and nitrogen loading from stormwater runoff from the Property be reduced. To comply with the Code, stormwater control measures have been installed by Declarant and shall be maintained by the Association as Common Elements or Limited Common Elements in strict compliance with the Stormwater Operations and Maintenance Manual and Budget attached to the Stormwater Agreement for the Property as listed in **Exhibit D** attached hereto, so at all times, the stormwater control measures shall perform as designed and shall comply with the Stormwater Agreement, the Code and applicable regulations, rules and directives of the City of Raleigh. The expenses for maintenance of such stormwater control measures by the Association shall be Common Expenses (or, if applicable, Limited Common Expenses). Failure to maintain the stormwater control measures constitutes a violation of the Code potentially subjecting the Association to significant civil penalties and other enforcement actions. The Declarant reserves the right to amend this Declaration without the consent of any other party to comply with the Code.

## **ARTICLE XII ASSESSMENTS**

12.1 Taxes. Every Unit, together with its Allocated Interest shall be separately assessed and taxed by each assessing authority for all types of taxes authorized by law. Each Owner shall be liable solely for the amount taxed against his individual Unit; provided, however, some Units may not initially be separately assessed with respect to Wake County ad valorem property taxes until transfer of title from Declarant to an Owner.

12.2 Common Expenses. Except as otherwise provided in this Declaration or in the Bylaws, each Owner on a monthly basis, and as special assessments may require, shall contribute an equal base amount plus a proportionate percentage share of all Common Expenses in accordance with the definition of "Common Expenses" set forth in Article I herein, the Bylaws, and the provisions of the North Carolina Condominium Act. If Declarant exercises its Development Rights to create Additional Units and Limited Common Elements, Declarant shall adjust the Allocated Interest for each Unit in accordance with the following formula: The Allocated Interest allocated to each Unit will be calculated by dividing the number 100 by the number of Units in the Condominium. Due dates for payment of Common Expenses shall be established by the Association and shall be collected at least quarterly and may be collected monthly. Until such time as assessments are commenced, Declarant shall pay all of the Common Expenses of the Association. Furthermore, notwithstanding when assessments are commenced, for the calendar year in which the assessments are commenced, Declarant agrees to pay any excess of Common Expenses of the Association over the amount of assessments collected from Owners. It is acknowledged and agreed that the budget, including reserve amounts, is merely an estimate and shall not affect the Association's ability to levy assessments as herein provided, and all Owners are therefore advised to maintain sufficient personal reserves in order to pay any such assessments. The Association also has the right to impose additional assessments for shortfalls in the budget versus actual Common Expenses (upon approval by no less than sixty-seven percent (67%) of the votes in the Association), for damage or loss caused by one Owner in particular, and for Units that require extra utility services to the extent not separately metered.

No Owner shall be exempted from liability for by waiving the use or enjoyment of any or all of the Common Elements or by abandoning its Unit. No Owner shall be entitled to a diminution or abatement in its Allocated Interest of Common Expenses for any inconvenience or discomfort arising from: (i) the failure or interruption of any utility or other services; (ii) the making of repairs or improvements to the Common Elements or any Unit; or (iii) any action taken by the Executive Board to comply with law. Declarant may, but shall not be obligated to, loan the Association money to the extent that Common Expenses paid by the Owners are inadequate. This advance shall be to the Association and on terms generally available to Declarant from its lending institution. Declarant, if also an Owner, shall also be responsible for the payment of assessments as otherwise required by this Article.

12.3 Assessment for Limited Common Expenses. The Association shall assess the costs it incurs or reasonably expects to incur in connection with the maintenance, repair and, when necessary, replacement of the Limited Common Elements. Each Owner who uses or benefits from the Limited Common Element maintained, repaired or replaced by the Association shall pay an amount based upon a formula in which the numerator is the number of Units owned by the Owner which benefitted from the maintenance, repair or replacement, and the denominator is the total number of such Units.

12.4 Budget. On or before January 1 of each year, the Executive Board shall adopt a proposed budget for Common Expenses. This proposed budget shall include all anticipated revenues, the anticipated Common Expenses, and any surplus or deficit in the budget from the prior years. Within thirty (30) days after adoption of any proposed budget, the Executive Board shall send each Owner a copy of that proposed

budget along with notice of a scheduled meeting of the Association to consider ratification of the budget. The date of that meeting shall be not less than ten (10) nor more than sixty (60) days following the notice of the meeting. The proposed budget shall be deemed ratified unless a majority of the votes of the Association reject the budget. A quorum need not be present at the ratification meeting. The budget as ratified shall be the basis for calculating the Owners' liability for Common Expenses during the calendar year. Following ratification of the budget, the Executive Board shall calculate the amount of each Unit's Allocated Interest of Common Expenses and shall send a notice of that amount to each Owner of a Unit. The failure or delay of the Executive Board to prepare or adopt a budget or to determine the Common Expenses for any calendar year shall not be deemed a waiver, modification or release of the Owners' obligation to pay its Allocated Interest of Common Expenses. In such event, the Allocated Interests in Common Expenses that were computed on the basis of the Common Expenses for the prior calendar year shall continue to be payable until a new budget is adopted and ratified.

12.5 Surplus Funds. The term " Surplus Funds" means and refers to all funds and other assets of the Association, including excess of receipts of the Association from assessments, rents, profits and revenues from whatever source, over the amount of Common Expenses. The Surplus Funds shall be owned by the Owners in equal shares, based upon the total number of Units in the Condominium from time to time; provided, however, that the Surplus Funds shall be held by the Association in the manner and subject to the terms, provisions and conditions of this Declaration imposing certain limitations and restrictions upon the use and distribution thereof. Except for distribution of any insurance proceeds, which shall be made in the manner provided in Section 13.6, or upon termination of the Condominium, any attribution or distribution of Surplus Funds which may be made from time to time shall be made to the then Owners in equal shares, based upon the total number of Units in the Condominium at that time.

12.6 Fines. The Executive Board may impose fines on any Owner, Occupant or Unit for a failure to comply with this Declaration. Fines shall be paid not later than thirty (30) days after notice of the assessment is given to the offending Owner. These fines shall not be construed to be exclusive, and shall exist in addition to all other rights and remedies to which the Association may be otherwise entitled under law. Any fine paid by the offending Owner shall nevertheless be deducted from or offset against any damages that the Association may otherwise be entitled to recover by law from that Owner. Fines shall be as follows:

- (a) First non-compliance or violation: a fine not in excess of Fifty Dollars (\$50.00).
- (b) Second non-compliance or violation: a fine not in excess of One Hundred Dollars (\$100.00).
- (c) Third and subsequent non-compliance or violation, or violations that are of a continuing nature: a fine not in excess of One Hundred Dollars (\$100.00) for each week of continued violation or non-compliance.

12.7 Working Capital Contribution. When Declarant first conveys a particular Unit to a purchaser other than Declarant, an amount equal to two months of the Allocated Interest in Common Expenses for Unit shall be collected from the purchaser and paid to the Association's working capital fund. The foregoing shall not constitute an advance payment of Common Expenses by such Owner.

12.8 Foreclosure. As construction lender, TowneBank (previously known as Paragon Bank, a division of TowneBank), ("TowneBank") currently has a first priority lien on the Property pursuant to a Deed of Trust Securing Future Advances executed by Declarant and recorded on December 21, 2018 in Book 17324, Page 817, as modified by that certain Modification recorded on April 12, 2019 in Book 17410, Page 1258, Wake County Registry (collectively, the "Deed of Trust"). In the event TowneBank

foreclosures on its secured interest and becomes the owner of any unreleased property secured by the Deed of Trust, it shall not be deemed an Owner with regard to the payment of any assessments hereunder.

### **ARTICLE XIII INSURANCE**

13.1 Property Insurance. The Association shall cause to be obtained and maintain at all times a policy of property insurance on all Buildings (ISO special form or its equivalent) and all improvements on the Property as originally constructed, without deduction or allowance for depreciation, as determined annually by the Board of Directors with the assistance of the insurance company such coverage in an amount not less than one hundred percent (100%) of the replacement cost of the Buildings at the time such insurance is purchased and at the time of each renewal thereof with a commercially reasonable deductible not in excess of Twenty-Five Thousand and No/100 Dollars (\$25,000.00). The policy shall be issued by an insurance company properly licensed to do business in the State of North Carolina, with a general policyholder's rating of at least "A" in the most recent edition of the Best's Key Rating Guide. The policy shall provide that each Owner is an insured person with respect to his or her Unit and his or her allocated interest in the Common Elements. The policy shall contain an inflation guard endorsement, if available, and a construction code endorsement, if available, as well as a special condominium endorsement providing as follows: (i) for waiver of subrogation against any Owner, and any Owner's employees or agents; (ii) that it may not be cancelled or substantially modified without at least thirty (30) days' prior written notice to the Association and all insureds, including all Owners and Mortgagees; (iii) that no act or omission by any Owner will preclude recovery upon such policy; and (iv) that if, at the time of a loss under the policy, there is other insurance in the name of an Owner covering the same risk covered by the policy, the Association's policy provides primary insurance. Each property insurance policy shall provide that adjustment of loss shall be made by the Association as insurance trustee. Each property insurance policy shall provide for the issuance of certificates or mortgagee endorsements to Mortgagees. Any improvements or betterments made by Owners must be insured by said Owner's insurance policy.

13.2 Liability Insurance. The Association shall obtain and maintain a policy of commercial general liability insurance (current ISO form or its equivalent) in such limits as the Executive Board may from time to time determine, covering each member of the Executive Board, the managing agent, if any, and each Owner with respect to liability arising out of the use, ownership, maintenance or repair of the Common Elements; provided, however, that in no event shall the limits of such policy ever be less than One Million and No/100 Dollars (\$1,000,000.00) per occurrence. The liability insurance policy shall include endorsements covering cross liability claims of one insured against another, including the liability of the Owners as a group to a single Owner, and shall provide that it may not be canceled or substantially modified without at least thirty (30) days prior written notice to the Association and to all insureds, including all Owners and Mortgagees. The Executive Board shall review such limits annually.

13.3 Fidelity Coverage. The Association may obtain such fidelity coverage against dishonest acts on the part of all persons responsible for handling funds belonging to or administered by the Association as it may deem necessary. Any such fidelity insurance policy must name the Association as the named insured and shall be written in an amount as may be determined by the Executive Board, but in no event less than one half the annual budgeted amount of Common Expenses, or the amount required by any Mortgagee, whichever is greater.

13.4 Other Insurance Policies. The Association shall be authorized to obtain such other insurance coverage, including worker's compensation or employee liability insurance, as the Association shall determine from time to time desirable or necessary.

13.5 Premiums. Premiums upon insurance policies purchased by the Association, and any amounts paid as a result of a deductible, shall be paid by the Association and charged as a Common Expense. Notwithstanding the preceding sentence to the contrary, in the event that a casualty occurs wholly within the boundaries of a Unit and does not affect any other Units or Common Elements, the Owner of such Unit shall be wholly responsible for any deductible amount in such policy of insurance relating to such claims

13.6 Distribution of Insurance Proceeds. All insurance policies procured by the Association shall provide that all losses shall be adjusted with and all proceeds shall be payable to the Association as insurance trustee. The sole duty of the Association as insurance trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes set forth herein and for the benefit of the Owners and their Mortgagees in the following shares:

- (a) Proceeds on account of damage to the Common Elements shall be held in undivided shares for each Owner and his Mortgagee, if any, each Owner's share to be the same as such Owner's Allocated Interest.
- (b) Proceeds on account of damage to Units shall be held in the following undivided shares:
  - (i) When the damage is to be restored, for the Owners of damaged Units in proportion to the cost of repairing the damage to each such Owner's Unit, which cost shall be determined by the Association.
  - (ii) When the damage is not to be restored, an undivided share for each Owner, such share being the same as each such Owner's Allocated Interest.
- (c) In the event that a mortgagee endorsement or certificate has been issued with respect to a Unit, the share of the Owner shall be held in trust for the Mortgagee and the Owner as their respective interests may appear.
- (d) Proceeds of insurance policies received by the Association as insurance trustee shall be distributed to or for the benefit of the Owners in the following manner:
  - (i) If it is determined, as provided in Article XIV below, that the damaged property with respect to which the proceeds are paid shall not be reconstructed or repaired,
    - A. the proceeds attributable to the damaged Common Elements shall be used to restore the damaged area to a condition compatible with the rest of the Condominium;
    - B. the insurance proceeds attributable to Units and Limited Common Elements which are not rebuilt shall be distributed to the owners of those Units and of the Units to which those Limited Common Elements were allocated or to their Mortgagees, in proportion to their respective Allocated Interests; and
    - C. the remainder of the proceeds shall be distributed to all Owners or Mortgagees, as their interests may appear, in proportion to their respective Allocated Interests.
  - (ii) if the damage for which the proceeds were paid is to be repaired or reconstructed, the proceeds shall be paid to defray the costs thereof. Any proceeds remaining

after payment of such repair costs shall be distributed to the beneficial Owners and their Mortgagees, if any, jointly in proportion to each Owner's Allocated Interest.

13.7 Insurance Obtained by Owners. Each Owner shall obtain and keep continuously in force additional fire and casualty and extended coverage insurance upon its personal property, any and all fixtures, improvements or betterments made or installed in a Unit by or for an Owner after such Unit has been conveyed to such Owner by the Declarant, and any other items that are not expressly required to be insured by the Association pursuant to N.C. Gen. Stat. § 47C-3-113, public liability insurance, and such other insurance coverage as he may desire. Each Owner shall obtain and maintain public liability insurance coverage in the amount of at least \$100,000.00 for bodily injury, including deaths of Persons and property damage, arising out of a single occurrence. Each Owner shall file a copy of each such individual policy with the Association within thirty (30) days after purchase and shall provide, upon renewal, evidence of such renewal. Each such policy shall also provide that such policy cannot be terminated or cancelled without thirty (30) days' notice to the Association.

13.8 Miscellaneous. All insurance obtained pursuant to this Declaration shall be in accordance with the provisions and requirements of the Act.

#### **ARTICLE XIV DUTY TO REPAIR OR RECONSTRUCT**

14.1 Reconstruction and Repair. In the event of damage to or destruction of any Building as a result of fire or other casualty, the Association shall arrange for the prompt restoration and replacement of the damaged or destroyed Building unless: (a) the Condominium is terminated in accordance with the provisions of Article XVII below, or (b) repair or replacement would be illegal under any state or local health or safety statute or ordinance, or (c) the Owners decide not to rebuild by a vote of eighty percent (80%) of the votes in the Association, including one hundred percent (100%) of the votes held by Owners of Units not to be rebuilt and one hundred percent (100%) of Owners of Units to which are assigned Limited Common Elements not to be rebuilt. Unless one of the preceding three conditions occurs, the Association shall arrange for the prompt repair and restoration of the damaged or destroyed Building, not including any decoration or covering for walls, ceilings, or floors, or furniture, furnishings, fixtures or equipment (unless the subject insurance policy covers a portion or all of such loss, in which event the Association shall repair or replace such covered property if damaged), and the Association shall disburse the proceeds of all insurance policies to the contractors engaged in such repair and restoration in appropriate progress payments and in accordance with the provisions of Section 13.6(d)(ii) of this Declaration. Any payment for repair and restoration in excess of the insurance proceeds shall constitute a Common Expense. Any reconstruction or repair shall be in accordance with the Plans. If the Owners vote not to rebuild any Unit, that Unit's Allocated Interest shall be automatically reallocated upon the vote as if the Unit had been condemned under N.C. Gen. Stat. §47C-1-107(a).

14.2 Obligations of Owners. Each Owner will, at his sole cost and expense, keep and maintain his Unit in good order and repair in accordance with the Plans, and will make no structural addition, alteration or improvement to his Unit without the prior written consent of the Architectural Committee, except as specifically permitted by this Declaration or authorized under N.C. Gen. Stat. §47C-2-111. Upon the failure of an Owner to so maintain his Unit, the Association shall be authorized to maintain, repair or restore such Unit, and the cost thereof shall be charged to such Owner and constitute a lien on the Unit until paid.

**ARTICLE XV  
UNITS SUBJECT TO CONDOMINIUM DOCUMENTS**

15.1 Condominium Documents. All present and future Owners and occupants of the Units shall be subject to and shall comply with the provisions of the Condominium Documents, as each of the foregoing may be amended and supplemented from time to time. The acceptance of a deed of conveyance or the entering into occupancy of any Unit shall constitute an agreement that the provisions of the Condominium Documents are accepted and ratified by such Owner or Occupant, and an agreement that such provisions shall be deemed and taken to be covenants running with the Property and shall bind any Person having at any time any interest or estate in such Unit as though such provisions were made a part of each and every deed of conveyance.

**ARTICLE XVI  
AMENDMENT TO AND SUPPLEMENT OF DECLARATION**

Except in cases of amendments that may be permitted by N.C. Gen. Stat. §§47C-1-107, 47C-2-108(b) or 47C-2-112(a), decisions, alterations and changes made by Declarant as provided for in the Declarant Control Period, or as is otherwise specifically authorized herein, this Declaration may be amended only by the vote of not less than sixty-seven percent (67%) of the Owners cast in person or by proxy at a meeting duly held in accordance with the provisions of the Bylaws. Except to the extent expressly permitted by the other provisions of this Declaration, any amendment which amends or alters the Common Elements Interest of any Unit, increases the number of Units, changes the boundaries of any Unit, changes the use to which any Unit is restricted, or modifies the terms of this Article XV, shall require the written approval of all Owners, together with the consent of all their respective Mortgagees. No amendment to the Declaration shall be effective until executed on behalf of the Association by any officer designated for that purpose and recorded in the office of the Register of Deeds of Wake County, North Carolina. No amendment to this Declaration shall be adopted or passed which shall impair or prejudice the rights and priorities of any Mortgagee without the written consent of such Mortgagee. During the Declarant Control Period, no amendment to this Declaration shall be effective without the written consent of Declarant.

**ARTICLE XVII  
TERMINATION**

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

**ARTICLE XVIII  
MORTGAGEE PROTECTION**

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

18.2 Rights to Examine Books and Records. Any Mortgagee, and any insurer or guarantor of a loan secured by a Mortgage, shall have the right to examine, during normal business hours and upon reasonable notice, the books and records of the Association, including copies of the Condominium Documents, as amended, and the financial statements of the Association, and to be furnished, upon written request, at least one copy of the annual financial statement and report of the Association, such annual statement and report to be furnished within ninety (90) days following the end of each fiscal year. The financial statement and report shall be audited by an independent certified public accountant.

18.3 Mortgagee's Rights to Notice. Any Mortgagee (including, for purposes of this Section 18.3, any insurer or guarantor of a loan secured by a Mortgage that has notified the Association in writing of its name and address, and that it insures or guarantees a Mortgage) shall have the right to receive from the Association prompt written notice of the following:

- (a) Default under any of the terms and provisions of the Condominium Documents by any Owner owning a Unit encumbered by a Mortgage held, insured, or guaranteed by such Mortgagee, which default remains uncured for a period of sixty (60) days.
- (b) Any loss or damage to or condemnation or taking of the Common Elements or any loss or damage to or condemnation or taking of a Unit encumbered by a Mortgage held, insured or guaranteed by such Mortgagee.
- (c) Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association.
- (d) Any proposed action by the Association, the Executive Board, or the Owners, which under the terms of the Condominium Documents requires the consent of all or any portion of the Mortgagees.

18.4 Other Mortgagee Rights.

- (a) Notwithstanding anything contained herein to the contrary, any Mortgagee or other purchaser at a foreclosure sale who obtains fee ownership of a Unit pursuant to foreclosure under power of sale, judicially or under any other remedy contained in a Mortgage shall not be liable for unpaid assessments which accrued against the Unit prior to such Mortgagee or purchaser obtaining title to such Unit. Any representative of a Mortgagee may attend and address any meeting that an Owner may attend.
- (b) Any amendment to the Condominium Documents resulting in a material adverse nature to Mortgagees must be agreed upon by Mortgagees representing at least fifty-one percent (51%) of the votes of Units subject to Mortgages. Written notice of the proposed amendments must be sent to Mortgagees by certified or registered mail, return receipt requested. In the event Mortgagees do not respond within sixty (60) days after receipt of said notice, Mortgagees consent shall be implied.
- (c) Any action to terminate the legal status of the Condominium after substantial destruction or condemnation occurs or for other reasons must be agreed to by Mortgagees representing fifty-one percent (51%) of the votes of Units subject to mortgages.

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

**ARTICLE XIX  
CONDEMNATION**

If all or any part of the Condominium is taken in condemnation or by eminent domain, the award for such taking shall be distributed in accordance with the procedure set forth in N.C. Gen. Stat. §47C-1-107.

**ARTICLE XX  
MISCELLANEOUS PROVISIONS**

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

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

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

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

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

**ARTICLE XXI  
DISPUTE RESOLUTIONS AND LIMITATION ON LITIGATION**

21.1 Agreement to Avoid Costs of Litigation and to Limit Rights to Litigate Disputes. The Association, Declarant and its Related Parties, all Owners, all other persons or entities subject to this Declaration, and any person or entity not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "Bound Parties") agree to encourage the amicable resolution of disputes involving the Condominium in order to avoid the emotional and financial costs of litigation. Accordingly, to the extent permitted under applicable law, each Bound Party covenants and agrees that all claims, grievances or disputes between such Bound Party and any other Bound Party involving the Property including, without limitation, claims, grievances or disputes arising out of or relating to the interpretation, application or enforcement of this Declaration, the Bylaws, the Association rules, or the Articles of Incorporation (collectively "Claim"), except for those Claims authorized in Section 2, shall be resolved using the procedures set forth in Section 21.3 below in lieu of filing suit in any court or initiating proceedings before any administrative tribunal seeking redress or resolution of such Claim.

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

(a) Any suit by the Association against any Bound Party to enforce the provisions relating to assessments;

(b) Any suit by the Association to obtain a temporary restraining order or equivalent emergency equitable relief and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions relating to architectural control or use restrictions;

(c) Any suit between Owners (other than Declarant) seeking redress on the basis of a Claim which would constitute a cause of action under federal law or the laws of the State of North Carolina in the absence of a claim based on the Declaration, Bylaws, Articles of Incorporation or rules of the Association, if the amount in controversy exceeds \$5,000.00;

(d) Any suit arising out of any written contract between Owners and which would constitute a cause of action under the laws of the State of North Carolina in the absence of the Declaration, Bylaws, and Articles of Incorporation; and

(e) Any suit in which all parties are not Bound Parties.

Any Bound Party having an Exempt Claim may submit it to the alternative dispute resolution procedures set forth in Section 3, but there shall be no obligation to do so. The submission of an Exempt Claim involving the Association to the alternative dispute resolution procedures of Section 20.3 shall require the approval of the Association.

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

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

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

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

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

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

(b) Negotiation.

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

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

(c) Mediation.

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

(ii) If Claimant does not submit the Claim to mediation within 30 days after Termination of Negotiations, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such claim; provided, nothing herein shall release or discharge Respondent from any liability to Persons not a Party to the foregoing proceedings.

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

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

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

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

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

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

**ARTICLE XXII  
LIMITATION OF LIABILITY; DISCLOSURES;  
GENERAL CONTRACTOR PROVISIONS**

22.1 Limitation of Liability. Owners are informed that Declarant has hired an architect to design, and the General Contractor to construct, the Condominium, and Declarant makes no, and to the maximum extent permitted by applicable law hereby disclaims, any representation or warranty with respect to the design or construction of the Condominium. Owners shall look solely to the architect and/or General Contractor with respect thereto and, in furtherance thereof, Declarant shall furnish to the Owners or to the Association, all warranties, if any, furnished by the architect or the General Contractor with respect thereto, and the Owners agree to be bound by, and abide by, the terms thereof. To the maximum extent permitted by applicable law, Declarant expressly disclaims any other implied warranty of habitability or suitability related to the Condominium and any Unit thereof. Declarant further expressly disclaims any implied warranties relating to all building systems and functions including, but not limited to, electrical wiring, fixtures, all materials comprising or supporting the roof, the exterior skin including window systems, all other structural components, all appliances, heating and air conditioning systems (HVAC), plumbing, fire sprinkler, elevators, other equipment and other personal property located in the Condominium and any Unit thereof, but will furnish to the Purchaser or to the Association all manufacturers' warranties, if any and as available, with respect to those items. In addition, Declarant makes no representations or warranties as to the condition or health or appropriateness of any shrubs, trees, or plantings located within the Condominium, but will deliver to the Association any nursery's warranties with respect to those plants. No additional express or implied warranties of any sort or type regarding any Unit or the Condominium are or will be made by Declarant.

22.2 Disclosures. Owners, present and future, are also informed and by purchasing a Unit thereby acknowledge and accept that the Condominium is a structure in an urban setting. This structure in this urban setting may offer certain benefits to Owners but may also pose certain limitations and/or disadvantages to Owners. Condominium living is a form of shared living, with each Owner purchasing a separate living space that shares many common elements with other units, other people and other building systems: walls, hallways, elevators, fire protection, security, steel and concrete structure, internal building equipment and systems, and the like. As such, Owners may hear sounds from their neighbors, whether next door or above or below or from the street level due to traffic, pedestrians, trains, and other urban activities; Owners may hear sounds or feel vibrations from building systems transmitting through the structure or exterior or from unit to unit of the building; Owners may hear noises or smell odors or feel vibrations from other Units; Owners may experience variability in performance of building systems, including but not limited to common systems such as HVAC chilled water availability and potable water pressure; Owners actual unit square footage may not be the anticipated square footage noted on the unit plan and/or in the plans and specifications for the Unit and/or Condominium, nor may locations and dimensions of walls, doors, electrical outlets, appliances, cabinetry and other items be installed as shown on the plans and specifications, as large scale commercial construction is inherently imprecise due to inexact field measurements, material unavailability and/or labor shortages, substitutions or alterations in designs or materials, and field conditions that result in departures from written plans and specifications to accommodate construction considerations at the discretion of the architect, general contractor, and/or Declarant, as well as departures from plans and specifications made to comply with then-current code and field instructions from municipal building inspections during construction. Owners are purchasing a Unit of general size in a Condominium of general size and general construction quality, not a specific amount of square footage nor according to any specific plans and specifications, and Owners shall not make any future claim that nor be entitled to collect any monetary award or damage from any departure or deviation from specific plans and specifications, or any claim that said plans and specifications were incomplete or inappropriate for the application of construction; Owners may experience, as in any urban environment, building construction on a nearby or adjacent lot that creates noise, dust, nighttime artificial light, view obstructions, changes in public road patterns that affect access to the property, street noise with pedestrian and vehicular traffic at any time, higher levels of necessary building operation and maintenance expense over time, and other such characteristics. These and other circumstances are common to condominium living in urban settings and therefore the Declarant makes no expressed or implied warranties or representations therefor.

22.3 City of Raleigh Provisions. Owners hereby agree to abide by the terms and provisions, if any, set forth on **Exhibit D** attached hereto in connection with all dealings with the City of Raleigh.

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

### **ARTICLE XXIII CONSENT OF MORTGAGEE**

The Land and the Buildings are currently encumbered by the Deed of Trust. A Consent of Mortgagee executed by TBVAT, LLC, as Trustee, and TowneBank, as a mortgage lender for the Property, consenting to the execution and recordation of this Declaration are attached to and made a part of this Declaration. Lender's or Mortgagee's express written consent is required for any subordination of a Deed of Trust.

**ARTICLE XXIV**  
**EXHIBITS**

The following exhibits are attached to and are an integral part of this Declaration:

- (a) Exhibit A Legal Description of Land
- (b) Exhibit B Schedule of Units and Percentage Interests
- (c) Exhibit C Bylaws
- (d) Exhibit D City of Raleigh Provisions
- (e) Exhibit E General Contractor Provisions

[The remainder of this page is intentionally left blank. Signature page follows.]

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

**DECLARANT:**

**CARSON STREET PARTNERS, LLC,**  
a North Carolina limited liability company

By: Thomas A. Saeed Jr

Name: Thomas A. Saeed Jr

Title: manager

County of Wake

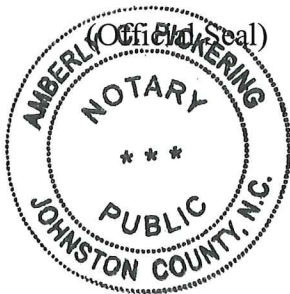
State of North Carolina

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document:

Thomas A. Saeed, Jr.

*Name(s) of principal(s)*

Witness my hand and official seal, this the 14<sup>th</sup> day of August, 2020.



Amberly C. Pickering

*Official Signature of Notary*

Amberly C. Pickering, Notary Public  
*Notary's printed or typed name*

My commission expires: March 23<sup>rd</sup>, 2024.

**CONSENT OF MORTGAGEE**

TOWNEBANK


(previously known as Paragon Bank, a division of Townebank)

The Land described on Exhibit A attached hereto is subject to a Deed of Trust recorded in the Wake County, North Carolina Registry in Book 17324, Page 817, as modified by the Modification recorded in Book 17410, Page 1258, Wake County, North Carolina Registry, and the Trustee (or Substitute Trustee) and Beneficiary under said Deed of Trust, have joined in the execution of this Declaration for the sole purpose of expressing their consent hereto and of binding, subjecting and subordinating said Deed of Trust and their interest in the Land described on Exhibit A to the terms of this Declaration.

**BENEFICIARY:**

TOWNEBANK

By:

  
Martin W. Borden, Sr., Vice President

**TRUSTEE:**

TBVAT, LLC,  
a Virginia limited liability company

By:

Name:

  
MARTIN W. BORDEN

Title:

SR VICE PRESIDENT

**Acknowledgment of Deed of Trust Beneficiary:**

County of Wake

State of NC

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document  
Martin W. Borden  
*(Name of individual signing above)*

Witness my hand and official seal, this the 18<sup>th</sup> day of August, 2020

(Official Seal)



Breeann Barnes  
*Official Signature of Notary*

Breeann Barnes, Notary Public  
*Notary's printed or typed name*

My commission expires: 11.04.2024

**Acknowledgment of Deed of Trust Trustee:**

County of Wake

State of NC

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document  
Martin W. Borden  
*(Name of individual signing above)*

Witness my hand and official seal, this the 18<sup>th</sup> day of August, 2020

(Official Seal)



Breeann Barnes  
*Official Signature of Notary*

Breeann Barnes, Notary Public  
*Notary's printed or typed name*

My commission expires: 11.04.2024

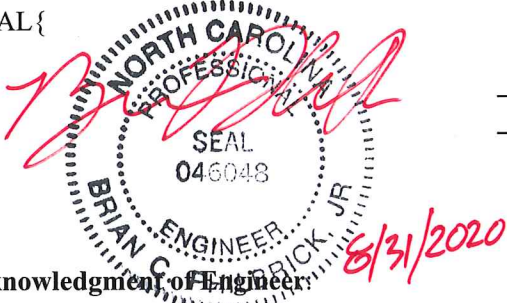
**ENGINEER'S CERTIFICATE**

**THE CARSON CONDOMINIUM**

I, Brian C. Philbrick Jr., P.E., an engineer registered under the provisions of Chapter 89C of the North Carolina General Statutes, hereby certify in accordance with Section 47C-2-101(b) of the North Carolina General Statutes the plans for such buildings located at 1610 Draper View Loop, Raleigh, North Carolina and 1611 Draper View Loop, Raleigh, North Carolina fully and accurately depict the structural components required for the construction of all buildings containing or comprising any units thereby created.

This the 31 day of August, 2020.

[SEAL {



Brian C. Philbrick Jr., PE  
8/31/2020

Acknowledgment of Engineer:

County of York  
State of South Carolina

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document  
Brian C. Philbrick Jr.

(Name of individual signing above)

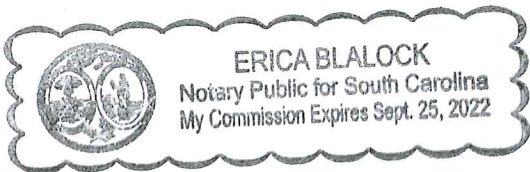
Witness my hand and official seal, this the ~~28~~<sup>31</sup> day of August, 2020.

(Official Seal)

Erica Blalock  
Official Signature of Notary

Erica Blalock Notary Public  
Notary's printed or typed name

My commission expires: 9/25/22



ENGINEER'S CERTIFICATE

THE CARSON CONDOMINIUM

I, Jonathan D. Lehman, an engineer registered under the provisions of Chapter 89C of the North Carolina General Statutes, hereby certify in accordance with Section 47C-2-101(b) of the North Carolina General Statutes the plans for such buildings located at 1610 Draper View Loop, Raleigh, North Carolina and 1611 Draper View Loop, Raleigh, North Carolina fully and accurately depict the mechanical systems required for the construction of all buildings containing or comprising any units thereby created.

This the 31st day of August, 2020.



Jonathan D. Lehman  
August 31, 2020

Acknowledgment of Engineer:

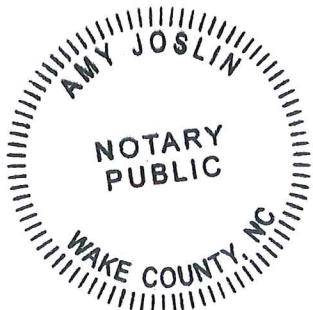
County of Wake

State of NC

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document  
Jonathan D. Lehman  
(Name of individual signing above)

Witness my hand and official seal, this the 31 day of August, 2020.

(Official Seal)



Amy Joslin  
Official Signature of Notary

Amy Joslin, Notary Public  
Notary's printed or typed name

My commission expires: 1/10/23

## **EXHIBIT A**

### **LEGAL DESCRIPTION OF LAND SUBJECTED TO THE DECLARATION**

BEING all of New Lot 3 as shown on a certain plat entitled "Recombination Plat for Norfolk Southern Railway Company" dated November 28, 2018 and recorded in Book of Maps 2018, Page 2510, Wake County Registry;

TOGETHER WITH a permanent, non-exclusive easement over, on, upon, through and across that certain portion of New Lot 4 identified as the "Private Drainage Easement" on the plat recorded in Book of Maps 2019, Page 1407, Wake County Registry to construct and maintain underground stormwater detention facilities within the Private Drainage Easement, including reasonable rights of ingress and egress for maintenance purposes. Grantor covenants and agrees to work in a commercially reasonable manner with Grantee, its successors and assigns to execute any future construction easements or stormwater agreements required by Grantee or the City of Raleigh relative to the underground stormwater detention facilities, provided that: a) any such agreements are acceptable to Granter in relation to its rail safety and operations, and b) are executed pursuant to standard Granter approvals and procedures at the sole expense of Grantee (including without limitation, flagging and insurance requirements), and c) Grantee shall be solely responsible for repairing any drainage conditions that affect Grantor's rail safety or operations along its adjacent retained right of way. The Private Drainage Easement is recorded in Book 17324, Page 805 Wake County Registry and more particularly described as follows:

Beginning at an iron pipe found at the northeast corner of said Lot 4; said point also being on the westerly right-of-way of the Norfolk Southern Railway Wye Track right-of-way of record in Book of Maps 1915, Page 49 and having North Carolina State Plane Coordinates (NAD 83 - 2011 Adjustment) Northing 747244.4910, Easting 2108470.8895; thence along said westerly railway right-of-way with a curve to the right, having a chord bearing and distance of S 12° 44' 51" W, 87.08 feet, a radius of 345.00 feet, a central angle of 14° 30' 03", and an arc length of 87 .31 feet to a point; thence N 29° 34' 34" W across said Lot 4 a distance of 101.44 feet to a point in the northerly line of said Lot 4; thence S 87° 17' 02" E along the northerly line of said Lot 4 a distance of 69.36 feet to the POINT OF BEGINNING, and containing 0.072 acres of land, more or less, as calculated by the above courses.

LESS AND EXCEPT that portion of the Land dedicated to the City of Raleigh for right of way purposes as shown on that certain plat entitled "Slope, Utility Placement & Waterline Easement and Right-of-Way Dedication Plat for Carson Street Partners, LLC" dated July 9, 2019 and recorded in Book of Maps 2019, Page 1407, Wake County Registry.

**EXHIBIT B**

**SCHEDULE OF UNITS AND ALLOCATED INTERESTS**

	<b>Unit Number</b>	<b>Allocated Interest</b>
<b>Building 1610</b>	101	8.333%
	102	8.333%
	103	8.333%
	104	8.333%
	105	8.333%
	106	8.333%
<b>Building 1611</b>	101	8.333%
	102	8.333%
	103	8.333%
	104	8.333%
	105	8.333%
	106	8.337%

**EXHIBIT C**  
**BYLAWS**

**[see attached]**

**BYLAWS OF  
THE CARSON CONDOMINIUM ASSOCIATION, INC.**

**ARTICLE I  
Definitions**

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

**ARTICLE II  
Administration of Condominium**

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

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

**ARTICLE III  
Offices- Seal- Fiscal Year**

Section 3.1 Principal Office and Registered Office: The initial principal office and registered office of the Association shall be located at 3301 Benson Drive, Suite 103, Raleigh, North Carolina 27609.

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

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

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

**ARTICLE IV  
Membership**

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

Membership in the Association shall inure automatically to Owners upon acquisition of the fee simple title (whether encumbered or not) to any one or more Units. The date of recordation in the Office of the Register of Deeds of Wake County of the conveyance of the Unit in question shall govern the date of

ownership of each particular Unit. However, in the case of death, the transfer of ownership shall occur on date of death in the case of intestacy or date of probate of the will in the case of testacy. Until a decedent's will is probated, the Association may rely on the presumption that a deceased Owner died intestate.

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

Section 4.3 Annual Meetings: A meeting of the Association shall be held at least once each year. The first Annual Meeting of the Association shall be held on the date and hour designated by Declarant. Thereafter, the Annual Meeting of the Association shall be held on the date and hour designated by the Board of Directors. At such meetings, the Board of Directors shall be elected in accordance with Section 5.3 of these Bylaws, and the Members shall transact such other business as may properly come before them.

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

Section 4.5 Special Meeting: After the first Annual Meeting of the Members, special Meetings of the Members may be called at any time by the President; by not less than twenty percent (20%) of all Owners; or by not less than fifty-one percent (51%) of the Board of Directors members. Business to be acted upon at all Special Meetings shall be confined to the subjects stated in the notice of such meeting.

Section 4.6 Notices of Meeting: Written or printed notice stating the time and place of a membership meeting, including Annual Meetings, and the items on the agenda, including the general nature of any proposed amendment to the Declaration or these Bylaws, any budget changes, and any proposal to remove a director or officer, shall be delivered not less than ten (10) nor more than fifty (50) days before the date of any such membership meeting, either personally or by mail, by or at the discretion of the President or the Secretary, to the mailing address of each Unit, to any other mailing address designed in writing by the Unit Owner, or by electronic mail sent over the Internet to an electronic mailing address designated in writing by the Unit Owner. Notice shall be deemed given upon deposit prepaid in the United States mail, or upon successful delivery of electronic mail to the intended recipient.

Notice given to any one tenant in common, tenant by entirety or other joint Owner of a Unit shall be deemed notice to all joint Owners of the subject Unit.

The notice of meeting shall specifically state the purpose or purposes for which the meeting is called.

Section 4.7 Quorum: Except as otherwise provided in these Bylaws, the presence in person of or by proxy of Members entitled to cast twenty percent (20%) of the votes which may be cast for election of the Board of Directors shall, constitute a quorum at all meetings of the Members. If a quorum is not present or represented at any meeting, the Members entitled to vote thereat shall have the power to adjourn the meeting from time to time, without notice other than the announcement at the meeting, until a quorum is present or is represented. The Members at any meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum.

Section 4.8 Voting Right: The total number of votes of the Association Membership shall be equal to the number of Units contained within the Condominium from time to time; and the owners of each Unit will be entitled to one (1) vote. If fee simple title to a Unit is owned of record by more than one person

or entity, all such persons or entities shall be Members of the Association, but the vote with respect to any such jointly owned Unit shall be cast as hereinafter provided.

If the fee simple title to any Unit is owned of record by two or more persons or entities (whether individually or in a fiduciary capacity), the vote with respect to any such jointly owned Unit may be cast by any one of the joint Owners in person or by proxy, except that the holder or holders of a life estate in a Unit shall have the sole right to cast the votes allocated to the Unit. If more than one of the joint Owners vote or more than one life estate holder in a Unit vote, the unanimous action of all joint Owners or joint life estate holders voting shall be necessary to effectively cast the votes allocated to the particular Unit.

Such unanimous action shall be conclusively presumed if any one of such multiple Owners casts the votes allocated to that Unit without protest being made promptly to the person presiding over the meeting by any of the other of such joint Owners.

In no event may the vote that may be cast with respect to any Unit be divided among joint Owners of the Unit or cast in any manner other than as a whole, it being the intention of this Section 4.8 that there be no "splitting" of votes that may be cast by any Member or Members.

Section 4.9 Proxie: Members may vote either in person or by agents duly authorized by written proxy executed by the subject Member or by his duly authorized attorney-in-fact. A proxy is not valid after the earlier of the term stated therein or the expiration of twelve (12) months from the date of its execution. Unless a proxy otherwise provides, any proxy holder may appoint in writing a substitute to act in his place. In order to be effective, all proxies must be filed with the Secretary or duly acting Secretary either during or prior to the meeting in question. A member may not revoke a proxy given pursuant to this Section 4.9 except by written notice of revocation delivered to the person presiding over a meeting of the Members.

Section 4.10 Majority Vote: The casting of a majority of the votes represented at a meeting at which a quorum is present, in person or by proxy, shall be binding for all purposes except where a different percentage vote is stipulated by these Bylaws, the Declaration, the Articles of Incorporation of the Association, or the North Carolina Condominium Act.

Section 4.11 Actions Without Meeting: Any action which may be taken at a meeting of the membership may be taken without a meeting if consent or ratification, in writing, setting forth the action so taken or to be taken shall be signed by all of the persons who would be entitled to vote upon such action at a meeting and such consent is filed with the Secretary of the Association and inserted in the minute book of the Association.

## **ARTICLE V Board of Directors**

Section 5.1 General Power: The business and affairs of the Association shall be managed by the Board of Directors or by such committees as the Board of Directors may establish pursuant to Section 6.1 of these Bylaws. Provided, however, the Board of Directors may not act on behalf of the Association to amend the Declaration, to terminate the Condominium, to elect members of the Board of Directors, or to determine the qualifications, powers and duties, or terms of office of Board of Directors members. The Board of Directors may, however, fill vacancies in its membership for the unexpired portion of any term.

Section 5.2 Number, Term and Qualification: The initial Board of Directors shall consist of the three (3) individuals appointed by Declarant whose names are set forth in the Articles of Incorporation of the Association. During the Declarant Control Period, the Board of Directors shall have three (3)

members, and Declarant may appoint and remove members of the Board of Directors; provided, however that not later than sixty (60) days after conveyance of twenty-five percent (25%) of the Units (including Units that may be created pursuant to Special Declarant Rights) to owners other than Declarant, at least one member and not less than twenty-five percent (25%) of the members of the Board shall be elected by Members other than Declarant; and, provided further, that not later than sixty (60) after conveyance of fifty percent (50%) of the Units (including Units that may be created pursuant to Special Declarant Rights) to Owners other than Declarant, not less than thirty-three percent (33%) of the members of the Board shall be elected by Members other than Declarant. Prior to the expiration of the Declarant Control Period, the Members shall elect five (5) Board members, each to serve for a term of one (1) year, and thereafter the Board of Directors shall have five (5) members. Board members may succeed themselves in office.

Section 5.3 Election of Board Members: The election of all Board members shall be by ballot. Persons receiving the highest number of votes (see Section 4.8) shall be elected. Cumulative voting is not permitted.

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

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

Section 5.6 Chairman: The President shall preside at all meetings of the Board of Directors and perform such other duties as may be directed by the Board.

Section 5.7 Compensation: No Member of the Board of Directors shall receive any compensation from the Association for acting as such. Provided, however, each Board member shall be reimbursed for reasonable out-of-pocket expenses incurred and paid by him on behalf of the Association, and nothing herein shall prohibit the Board from compensating a Board member for unusual and extraordinary services rendered on the basis of *quantum meruit*. Further provided, each Board member, by assuming office, waives his right to institute suit against or make claim upon the Association for compensation based upon *quantum meruit*.

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

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

Section 5.10 Meetings of the Board of Directors:

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

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

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

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

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

Section 5.11 Action Without Meeting: The Board members shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the Board members. Any action so approved shall have the same effect as though taken at a meeting of the Board. Said written approval shall be filed with the minutes of the proceedings of the Board, whether done before or after the action so taken.

Section 5.12 Presumption of Assent: A Board member who is present at a meeting of the Board at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless his contrary vote is recorded or his dissent is otherwise entered in the minutes of the meeting or unless he shall file his written dissent to such action with the person acting as the Secretary of the meeting before the adjournment thereof or shall forward such dissent by certified mail, return receipt requested, to the Secretary of the Association immediately after the adjournment of the meeting. Such right to dissent shall not apply to a Board member who voted in favor of such action.

Section 5.13      Powers and Duties: The Board of Directors shall have the authority to exercise all powers and duties of the Association necessary for the administration of the affairs of the Condominium except such powers and duties as by law or by the Condominium Documents may not be delegated by the Owners to the Board. The powers and duties to be exercised by the Board shall include, but shall not be limited to, the following:

A.            Operation, care, upkeep and maintenance of the Common Elements to the extent such operation, care, upkeep, and maintenance is not the obligation of the Owners;

B.            Determination of the funds required for operation, administration, maintenance and other affairs of the Condominium and collection of the Common Expenses from the Owners, as provided in the Condominium Documents;

C.            Employment and dismissal of personnel (including without limitation the Independent Manager) necessary for the efficient operation, maintenance, repair, and replacement of the Common Elements;

D.            Adoption of rules and regulations covering the details of the operation, maintenance, repair, replacement, use and modification of the Common Elements;

E.            Opening of bank accounts on behalf of the Association and designating the signatories required therefor;

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

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

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

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

J.            Enforcing, on behalf of the Association, the obligations and assessments provided in the Declaration, including, but not limited to, the institution of civil actions to enforce payment of the assessments as provided in the Declaration, the institution of actions to foreclose liens for such assessments in accordance with the terms of N.C. Gen. Stat. §47C-3-116, the imposition of charges for late payment of assessments, and after notice and an opportunity to be heard, levying fines, as provided Article XII of the Declaration, for violations of the Declaration, Bylaws and rules and regulations of the Association;

K.            Making of repairs, additions, and improvements to or alterations or restoration of the Property, in accordance with the other provisions of these Bylaws and the Declaration, after damage or destruction by fire or other casualty, or as a result of a condemnation or eminent domain proceeding;

L.            Enforcing by any legal means or proceeding the provisions of the Articles of

Incorporation of the Association, these Bylaws, the Declaration or the rules and regulations hereinafter promulgated governing use of the Common Elements;

M. Paying all taxes and assessments that are or may become liens against any part of the Condominium, other than the Units, and to assess the same against the Owners in the manner herein provided;

N. Hiring attorneys and other professionals;

O. Maintaining and repairing any Unit, if such maintenance or repair is required by the Declaration or is necessary in the discretion of the Board to protect the Common Elements or any other Unit or if the Owner of such Unit has failed or refused to perform such maintenance or repair within a reasonable time after written notice of the necessity of said maintenance or repair has been delivered or mailed by the Board to said Owner, provided that the Board shall levy a special assessment against such Owner for the costs of said maintenance or repair;

P. Entering any Unit when necessary in connection with any maintenance or construction for which the Board is responsible; provided, such entry shall be made during reasonable hours with as little inconvenience to the Owner as practicable, and any damage caused thereby shall be repaired by the Board and such expenses shall be treated as a Common Expense; and entering any Unit for the purpose of correcting or abating any condition or situation deemed by the Board of Directors to be an emergency;

Q. Signing all agreements, contracts, deeds and vouchers for payment of expenditures and other instruments in such manner as from time to time shall be determined by written resolution of the Board. In the absence of such determination by the Board, such documents shall be signed by either the Treasurer or the Assistant Treasurer of the Association, and countersigned by any Board member;

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

S. Exercising any other powers and duties reserved to the Association exercisable by the Board of Directors in the Declaration, the Articles of Incorporation, these Bylaws, or the North Carolina Condominium Act.

Section 5.14 Independent Manager: The Board of Directors may employ or enter into a management contract with any individual, firm or entity it deems appropriate and in the best interest of the Association concerning the routine management of the Condominium. The Board of Directors may delegate to such person, firm or entity (referred to in these Bylaws as "Independent Manager") such duties and responsibilities in the management of the Property as the Board of Directors deems appropriate. Provided, the Board of Directors may not delegate to the Independent Manager the complete and total responsibilities and duties of the Association in violation of the Nonprofit Corporation Act of North Carolina or the North Carolina Condominium Act. The Independent Manager's contract shall be for a term not to exceed three (3) years, renewable by agreement between the Board of Directors and such Independent Manager for successive one-year terms; provided, however, that any such contract shall provide that it is terminable by the Association, with or without cause, upon not more than ninety (90) days' prior written notice and without payment of any penalty, and any such contract entered into during the Declarant Control Period also shall be terminable as required by N.C. Gen. Stat. §47C-3-105. The Board of Directors shall have authority to fix the reasonable compensation for the Independent Manager. The Independent Manager shall at all times be answerable to the Board of Directors and subject to its direction.

## ARTICLE VI Committees

Section 6.1 Creation: The Board of Directors, by resolutions adopted by a majority of the number of Board members then holding office, may create such committees as they deem necessary and appropriate in aiding the Board of Directors to carry out its duties and responsibilities with respect to the management of the Condominium. Each committee so created shall have such authorities and responsibilities as the Board members deem appropriate and as set forth in the resolutions creating such committee. The Board of Directors shall elect the members of each such committee. Provided, each committee shall have in its membership at least one (1) member of the Board of Directors.

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

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

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

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

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

## **ARTICLE VII Officers**

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

Section 7.2 Election and Term: The officers of the Association shall be elected annually by the Board of Directors. Such elections shall be held at the first meeting of the Board next following the Annual or Substitute Annual Meeting of the Members. Each officer shall hold office until his death, resignation, removal or until his successor is elected and qualified.

Section 7.3 Removal: Any officer elected or appointed by the Board of Directors may be removed by the Board whenever in its judgment the best interest of the Association will be served thereby.

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

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

Section 7.6 President: The President shall be the chief executive officer of the Association

and shall preside at all meetings of the Members. If not disabled, the President shall preside at all meetings of the Board of Directors and see that the orders and resolutions of the Board of Directors are carried out. The President shall sign all written instruments regarding the Common Elements and sign for the corporation all promissory notes of the Association, if any; and s/he shall have all of the general powers and duties which are incident to the office of President of a corporation organized under Chapter 55A of the North Carolina General Statutes in the supervision and control of the management of the Association in accordance with these Bylaws.

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

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

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

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

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

Section 7.12 Indemnification: To the extent permitted by the provisions of the North Carolina Nonprofit Corporation Act in effect at the applicable times, each officer is hereby indemnified by the Association with respect to any liability and expense of litigation arising out of his activities as an officer. Such indemnity shall be subject to approval by the Members only when such approval is required by the Act.

## **ARTICLE VIII Operation of the Property**

Section 8.1 Determination of Common Expenses and Fixing of the Common Charges: The Board of Directors shall from time to time, and at least annually, prepare and adopt a proposed budget for the Condominium, determine the amount of the Common Expenses payable by the Owners to meet the proposed budget of the Condominium, and allocate and assess such proposed Common Expenses among the Owners

in accordance with the formula of allocation set forth in Article V of the Declaration. The Common Expenses shall include, among other things, the cost of all insurance premiums on all policies of insurance required to be or which have been obtained by the Board of Directors pursuant to the provisions of the Declaration. The Common Expenses shall also include such amounts as the Board of Directors deems necessary for the operation and maintenance of the Property, including without limitation, an amount for working capital of the Condominium; an amount for a general operating reserve; an amount for a reserve fund for losses due to insurance deductibles; an amount for a reserve fund for repair and replacement of the Common Elements; and such amounts as may be necessary to make up any deficit in the Common Expenses for any prior year. Within thirty (30) days after adoption of any proposed budget for the Condominium, the Board of Directors shall provide a summary of the budget to all the Owners, and shall set a date for a meeting of the Owners to consider ratification of the budget no less than fourteen (14) nor more than thirty (30) days after mailing of the summary. Notwithstanding any other provisions of these Bylaws, there shall be no requirement that a quorum be present at such meeting. Notwithstanding any other provision of these Bylaws, the proposed budget shall be deemed ratified unless at that Meeting ninety percent (90%) of all Unit Owners reject the budget. In the event the proposed budget is rejected, the periodic budget last ratified shall be continued until such time as the Owners ratify a subsequent budget proposed by the Board of Directors.

The Association, acting through the Board of Directors, may levy a special assessment during any calendar year for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any capital improvement comprising or to comprise a portion of the Common Elements, including fixtures and personal property; provided, however, that any such special assessment must be approved by the vote of Owners of Units to which at least sixty-seven percent (67%) of the votes in the Association are allocated cast in person or by proxy at a meeting duly held in accordance with the provisions of these Bylaws. In the event that any Owner fails to maintain its Unit and the Association takes actions to do so as set forth in Section 5.13 hereof, or any Owner defaults under its obligations under the Declaration or these Bylaws and the Association incurs any additional costs and expenses as a result of such default, the Association shall have the right to levy a special assessment against such Owner for the purposes of defraying, in whole or in part, such costs or expenses.

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

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

No Owner shall be liable for the payment of any part of the Common Expenses assessed against

his Unit subsequent to a sale, transfer or other conveyance by him (made in accordance with the provisions of the Declaration and applicable restrictions of record) of such Unit. A purchaser of a Unit shall be jointly and severally liable with the seller for the payment of Common Expenses assessed against such Unit prior to the acquisition by the purchaser of such Unit without prejudice to the purchaser's rights to recover from the seller the amounts paid by the purchaser therefor.

Section 8.3 Collection of Assessments: The Board of Directors shall assess Common Expenses against the Units from time to time in accordance with the allocations set forth in the Declaration. The Board of Directors shall take prompt action to collect any Common Expenses which are due and unpaid.

The Board of Directors may notify the holder of the Mortgage on any Unit (from which it has received notice) for which any Common Expenses assessed pursuant to these Bylaws remain unpaid for more than thirty (30) days from the due date for payment thereof and in any other case where the Owner of such Unit is in default with respect to the performance of any other obligation hereunder for a period in excess of thirty (30) days.

Section 8.4 Default in Payment of Common Expenses, Remedies: In the event of default by any Owner in paying to the Board of Directors the Common Expenses as determined by the Board, such Owner shall be obligated to pay interest on such Common Expenses from the due date thereof at the rate of eighteen percent (18%) per annum, together with all expenses, including reasonable attorney's fees (if permitted by law), incurred by the Board of Directors in any proceeding brought to collect such unpaid Common Expenses. In addition, the Board shall have the authority to levy a late charge on any assessment not paid within fifteen (15) days after its due date, in the amount of four percent (4%) of the overdue assessment.

The Board of Directors shall have the right and duty to attempt to recover such Common Expenses, together with interest thereon, and the expenses of the proceedings, including reasonable attorneys' fees (if permitted by law), in an action to recover a money judgment for the same brought against such Owner, or by foreclosure of the lien on such Unit in like manner as a deed of trust or mortgage of real property. The Board of Directors shall also have the right to impose uniform late payment charges for delinquent Common Expense payments, which charges shall be recoverable by the proceedings specified above.

In the event of the failure of an Owner to pay any assessment imposed hereunder, or any installment thereof, for more than sixty (60) days after such assessment or installment thereof shall become due, in addition to the other remedies available under the Condominium Documents and the North Carolina Condominium Act, the Board of Directors shall have the right to declare all other Common Expense assessments, and installments thereof, with respect to such Owner's Unit that are to fall due during the then current fiscal year of the Association to be immediately due and payable.

Section 8.5 Lien and Personal Obligations: All Common Expenses and special assessments provided for in this Article, together with the interest and expenses, including reasonable attorneys' fees (if permitted by law), as provided for herein, shall be a charge on and a continuing lien upon the Unit against which the assessment is made, which such lien shall be prior to all other liens excepting only (i) assessments, liens and charges for real estate taxes due and unpaid on the Unit and (ii) all sums unpaid on Mortgages and other liens and encumbrances duly recorded against the Unit prior to the docketing of such lien. Such lien shall become effective when a notice thereof has been filed in the office of the Clerk of Superior Court for Wake County, North Carolina, provided such notice of lien shall not be recorded until such sums assessed remain unpaid for a period of more than thirty (30) days after the same shall become due. Such notice of lien shall also secure all assessments against the Unit becoming due thereafter

until the lien has been satisfied.

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

Section 8.6 Foreclosure of Liens for Unpaid Common Expenses: In any action brought by the Board of Directors to foreclose on a Unit because of unpaid Common Expenses or special assessments, the Owner shall be required to pay a reasonable rental for the use of his Unit and the plaintiff in such foreclosure action shall be entitled to the appointment of a receiver to collect the same.

Section 8.7 Abatement and Enjoinment of Violations by Owners: The violation of any rule or regulation adopted by the Board of Directors or the breach of any Bylaw contained herein, or the breach of any provision of the Declaration, shall give the Board the right, in addition to any other rights set forth in the Declaration, these Bylaws or at law or in equity: (a) to enter the Unit in which or as to which such violation or breach exists and to summarily abate and remove, at the expense of the defaulting Owner, any structure, thing or condition that may exist therein contrary to the intent and meaning of the provisions hereof, and the Board shall not thereby be deemed guilty in any manner of trespass; (b) to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such breach at the expense of the defaulting Owner; and/or (c) after notice and opportunity to be heard, to levy reasonable fines in accordance with the provisions of Article XII of the Declaration.

Section 8.8 Maintenance and Repair: (a) Except as is specifically provided in the Declaration, all maintenance and any repairs to any Unit and the Limited Common Elements allocated thereto, whether ordinary or extraordinary, shall be made by the Owner of such Unit. Each Owner shall be responsible for all damages to any and all other Units and/or to the Common Elements that his/her failure to do so may engender; and (b) except as is specifically provided in the Declaration, all maintenance, repairs and replacements to the Common Elements (unless necessitated by the negligence, misuse or neglect of an Owner, in which case such expense shall be charged to and paid by such Owner), shall be made by the Board; provided, however, there is excluded from the provisions contained in this section any repairs necessitated by casualty insured against by the Association to the extent the Association receives insurance proceeds for such repairs.

Section 8.9 Additions, Alterations or Improvements by Owners: No Owner shall make any structural addition, alteration, or improvement in or to his Unit or to any Limited Common Element, or any change in the exterior appearance thereof, except in accordance with N.C. Gen. Stat. §47C-2-111 and in accordance with the terms of the Declaration.

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

Section 8.11 Right of Access: An Owner shall grant a right of access to his Unit and the Limited Common Elements appurtenant thereto to the Independent Manager and/or any other person authorized by the Board of Directors or the Independent Manager for the purpose of making inspections, or for the purpose of correcting any condition originating in his Unit and threatening another Unit or the Common Elements,

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

Section 8.12 Rules of Conduct: Rules and regulations concerning the use of the Units and the Common Elements may be promulgated and amended by the Board. Copies of such rules and regulations shall be furnished by the Board to each Owner prior to the time when the same shall become effective.

Section 8.13 Common Expenses for Utilities: Any utilities which may be provided to the Units through a single or common meter or facility, and utilities furnished to any portion of the Common Elements, shall be paid by each Owner as and when billed according to the extent of such Owner's use or, at the option of the Board, such may be paid by the Board and assessed against the Units as a Common Expense.

## **ARTICLE IX Amendments**

Unless the Declaration expressly provides to the contrary, these Bylaws may be amended at any time by the Board of Directors; provided, however, where a certain vote in the Association is required for the Association to take or refrain from taking a specific action, as set forth in the Condominium Documents, no amendment of these Bylaws shall be made unless and until the Owners holding such percentage of the vote in the Association execute said amending instrument. All persons or entities who own or hereafter acquire any interest in the Property shall be bound to abide by any amendment to these Bylaws which is duly passed, signed, acknowledged and recorded as provided herein. No amendment to these Bylaws shall be adopted or passed which shall impair or prejudice the rights and priorities of any Mortgagee without the consent of such Mortgagee. No amendment to these Bylaws shall be adopted or passed which shall impair or prejudice the rights of Declarant provided for in the Condominium Documents, without the consent of Declarant. Declarant shall have the right to amend these Bylaws for the purpose of exercising any Development Right or Special Declarant Right.

## **ARTICLE X Miscellaneous**

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

Section 10.2 Successors Bound: The rights, privileges, duties and responsibilities set forth in the Condominium Documents, as amended from time to time, shall run with the ownership of the Property and shall be binding upon all persons who own or hereafter acquire any interest in the Property.

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

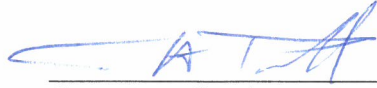
Section 10.4 Nonprofit Corporation: No part of the Association's assets or net income shall inure to the benefit of any of the Members, the officers of the Association, or the members of the Board of Directors, or any other private individual either during its existence or upon dissolution except as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

Section 10.5. Conflicting Provisions. If any provision in these Bylaws conflicts with a provision in the Act, the other Condominium Documents or the Declaration, the provisions in the Act, the other Condominium Documents and the Declaration shall override the conflicting provisions in these Bylaws.


[The remainder of the page is intentionally left blank. Signature page follows.]

IN WITNESS WHEREOF, we, being all of the directors of THE CARSON CONDOMINIUM ASSOCIATION, INC., have executed these Bylaws effective this 5<sup>th</sup> day of September, 2019.

THE CARSON CONDOMINIUM ASSOCIATION, INC.

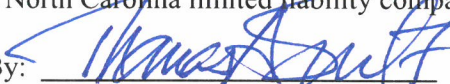
  
\_\_\_\_\_  
Casey Pernell, Director

  
\_\_\_\_\_  
Connor Saieed, Director

  
\_\_\_\_\_  
Todd Saieed, Director

Consented to by:

CARSON STREET PARTNERS, LLC,  
a North Carolina limited liability company

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

Name: Thomas A. Smith

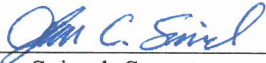
Title: manager

**CERTIFICATION**

I, the undersigned, hereby certify:

THAT I am the Secretary of THE CARSON CONDOMINIUM ASSOCIATION, INC.;

THAT the foregoing Bylaws constitute the original Bylaws of said Association, as duly adopted pursuant to a consent to action in lieu of the organizational meeting of the Board of Directors thereof, held on the 5<sup>th</sup> day of September, 2019.

  
\_\_\_\_\_  
Connor Saieed, Secretary

## **EXHIBIT D**

### **CITY OF RALEIGH PROVISIONS**

Declaration of City of Raleigh Required City Code Provisions for Developments with Common Elements and Common Expenses by Carson Street Partners, LLC, a North Carolina limited liability company, recorded in Book 17548, Page 788, Wake County Registry and re-recorded in Book 18056, Page 1799, Wake County Registry.

Declaration of Maintenance Covenant and Grant of Protection Easements for Stormwater Control Facilities by Carson Street Partners, LLC, a North Carolina limited liability company, recorded in Book 17548, Page 767, Wake County Registry and re-recorded in Book 18056, Page 1838, Wake County Registry.

Deed of Easement for Slope Easement to the City of Raleigh recorded in Book 17548, Page 826, Wake County Registry.

Deed of Easement for Utility Placement Purposes to the City of Raleigh recorded in Book 17548, Page 835, Wake County Registry.

## EXHIBIT E

### GENERAL CONTRACTOR PROVISIONS

Notwithstanding any other terms to the contrary within the above Declaration, the following terms and conditions are hereby incorporated into the terms of the Declaration by this reference and shall control over any other inconsistent terms set forth therein. Unless otherwise defined below, all capitalized terms shall have the meaning ascribed to them in the Act.

1 **Easement to Inspect and Right to Correct.**

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

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

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

constitute an absolute and unconditional waiver of any legal claim or other claim or remedy whatsoever, including any warranty claims and any right to file a claim in arbitration, that the Association or the Owner(s) otherwise may have regarding such defect or problem absent such waiver.

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

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

F. General Contractor, Notices and Amendment. As used in this Section, the term "General Contractor" shall mean Carson Street Builders, LLC, its employees, officers, directors, agents, subsidiaries, affiliates and assigns as well as all subcontractors hired by General Contractor (or subcontractors of such subcontractors) to perform work on the Property, the Common Elements and any Unit. Notices to General Contractor shall be delivered to such notice address and phone number as may be provided or amended from time to time by General Contractor upon the filing of a notice address in the appropriate public records of the county where the Condominium is located. General Contractor is an express beneficiary of the terms set forth in this Section, and the terms of this Section may not be amended in any manner whatsoever without General Contractor's prior written consent. Declarant covenants with General Contractor that it immediately shall forward to General Contractor any notice whatsoever that Declarant receives from the Association or any Owner regarding any alleged design defect, construction-related defect or other construction-related problem whatsoever regardless of whether or not such notice also shall be addressed to General Contractor and regardless of whether or not Declarant determines that such complaint is without merit.

## 2 Arbitration and Actions Against the General Contractor.

### A. Prerequisites to Actions Against General Contractor.

Prior to filing a civil action or arbitration claim of any nature whatsoever against General Contractor, and prior to consulting with, retaining or hiring in any capacity whatsoever, any third party consultant, advisor, property inspector, architect, engineer, contractor or repairmen to correct the problem or to examine, investigate, or advise the Association or any Owner with respect to any suspected or reasonably inferable design defect, construction-related defect or other construction-related problem with the Property, Common Elements and any Unit, the Association and Owner shall first notify General Contractor of the alleged or suspected problem and shall first provide General Contractor with a reasonable opportunity to inspect and repair the problem pursuant to the terms of Section 1, above. For the purposes of this Section, a minimum of sixty (60) days from first notice to General Contractor shall be deemed a

reasonable opportunity for General Contractor to inspect and repair any alleged or suspected problem; provided, however, in certain circumstances, this period of time may be longer depending on the complexity of the condition and the length of time reasonably necessary to obtain parts and services from third parties as such additional time shall be communicated to the Association and Owner by General Contractor.

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

- i. The Association obtains the written approval of each Owner whose interest in the Common Elements or Limited Common Elements will be the subject of the action;
- ii. The Association obtains the affirmative vote of the Owners to which at least a majority of the votes of the members of the Association are allocated;
- iii. The full Executive Board and the General Contractor have met in person and conferred in a good faith attempt to resolve the Association's Claim or the General Contractor has definitively declined or ignored the requests to meet with the Executive Board; and
- iv. The Association has otherwise satisfied all of the preaction requirements for a claimant to commence an action as set forth in this Declaration.

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

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

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

- I. The person is licensed as a contractor pursuant to law;

II. The Association has obtained the prior written approval of each Owner whose Unit or interest in the Common Element or Limited Common Element will be affected by such testing;

III. The person performing the tests has provided a written schedule for repairs;

IV. The person performing the tests is required to repair all damage resulting from such tests in accordance with state laws and local ordinances relating thereto;

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

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

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

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

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

B. Notice.

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

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

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

C. Negotiation and Mediation.

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

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

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

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

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

D. Final and Binding Arbitration.

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

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

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

E. Allocation of Costs of Resolving Claims.

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

F. Enforcement of Resolution.

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