

**DECLARATION OF**  
**BOARDWALK OFFICE CONDOMINIUM**  
*Phase 1*

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Prepared by and after recording mail to

Timothy W. Gilbert  
NEXSEN PRUET JACOBS & POLLARD, PLLC  
201 South Tryon Street  
Suite 1200  
Charlotte, North Carolina 28202

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**DECLARATION OF  
BOARDWALK OFFICE CONDOMINIUM, Phase 1**

THIS DECLARATION, made this 18th day of January, 2002 by KENNERLY DEVELOPMENT SERVICES, LLC ("Developer"), pursuant to the North Carolina Condominium Act, Chapter 47C, North Carolina General Statutes ("Act").

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

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

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

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

**ARTICLE I**

**Definitions**

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

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

1.2. Additional Real Estate. The real estate described on Exhibit A-1 together with all buildings and improvements now or hereafter constructed or located thereon, and all rights, privileges, easements and appurtenances belonging to or in any way pertaining to said real estate.

1.3. Articles of Incorporation. The articles of incorporation of the Association filed with the Office of the Secretary of State of North Carolina which are incorporated herein and made a part hereof by this reference, and attached as Exhibit G.

1.4. Association. Boardwalk Office Association, Inc., a nonprofit corporation organized under Section 47C-3-101 of the Act.

1.5. Board. The Executive Board of the Association.

1.6. Building. One or more improved structures containing the Units and which comprises a portion of the Property and is more particularly described in the Plans.

1.7. Bylaws. The Bylaws of the Association which are hereby incorporated herein and made a part hereof by this reference, and attached as Exhibit B.

1.8. Common Elements. All portions of the Condominium except the Units. Limited Common Elements are Common Elements. The Common Elements include all portions of the Condominium that are not part of the Units, including, without limitation, the land, improvements that are not part of the Units including all foundations, columns, load bearing walls, girders, beams, supports, walls, roofs, corridors, lobbies, stairs, elevators and elevator shafts, fire escapes, and entrances and exits of the Building, the yards, gardens, parking areas and driveways and all installations of central services for the furnishing of utilities.

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

1.10. Condominium. The condominium created by this Declaration.

1.11. Declarant. Developer and (i) any other person who has executed this Declaration, or who hereafter executes an amendment to this Declaration except First Mortgagees and except persons whose interests in the Property will not be conveyed to Unit Owners, and (ii) any person who succeeds to any Special Declarant Rights as defined in Section 47C-1-103(23) of the Act.

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



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

1.14. Limited Common Elements. Those portions of the Common Elements allocated by this Declaration, the Plans or by operation of Section 47C-2-102(2) or (4) of the Act for the exclusive use of one or more but fewer than all of the Units, to the exclusion of all other Units. The Limited Common Elements shall include, but shall not be limited to, the following:

(a) Those portions of any chute, flue, duct, wire, conduit, bearing wall, bearing column, or any other fixture lying partially within and partially without the designated boundaries of a Unit serving exclusively that Unit shall be Limited Common Elements allocated exclusively to that Unit; and

(b) Any shutters, awnings, doorsteps, stoops, porches, balconies, patios, decks and all exterior doors, windows, and skylights designed to serve a single Unit, but located outside the Unit's boundaries, shall be Limited Common Elements allocated exclusively to that Unit; and

(c) Any portions of the heating, ventilating and air conditioning systems, including fans, compressors, return air grills and thermostats, whether located inside or located outside the designated boundaries of a Unit, including individual electricity and gas meters, shall be Limited Common Elements allocated exclusively to the Unit or Units that they serve.

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

1.16. Office Unit. A Unit in a Building restricted as designated on Exhibit E hereto or in any Supplemental Declaration and on the Plans solely to office use as such usage is more particularly described in Article V, Section 5.3(a) hereof.

1.17. Person. A natural person, corporation, limited liability company, partnership, trust or other legal or commercial entity, or any combination thereof.

1.18. Plans. The plans of the Condominium recorded with, and by the Act made a part of, this Declaration, as the same may hereafter be amended, and described on Exhibit C.

1.19. Plat. The survey plat depicting the Condominium and the location of the Building on the Property recorded with, and by the Act made a part of, this Declaration, as the same may hereafter be amended, and described on Exhibit D.

1.20. Property. The real estate described on Exhibit A, and the Additional Real Estate if added to the Condominium, together with the Buildings and all other improvements now or hereafter constructed or located thereon, and all rights, privileges, easements and appurtenances belonging to or in any way pertaining to said real estate.

1.21. Residential Unit. A Unit in a Building restricted as designated on Exhibit E hereto or in a Supplemental Declaration and on the Plans solely to residential use as such usage is more particularly described in Article V, Section 5.3(b) hereof.

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

1.23. Special Declarant Rights. The rights as defined in Section 47C-1-103(23) of the Act for the benefit of a Declarant, including as follows: to complete the improvements indicated on the Plans; to maintain sales offices, models and signs advertising the Condominium on the Property; to exercise any development right as defined in Section 47C-2-110 of the Act; the right to add Additional Real Estate; to use easements over the Common Elements; to elect, appoint or remove members of the Board during the Declarant Control Period; to make the Condominium part of a larger condominium; and to withdraw any portion of the Property from the Condominium. Declarant shall have the right to subdivide or convert Units owned by Declarant.

1.24. Supplemental Declaration. Any supplement or amendment to this Declaration recorded in the Mecklenburg County Public Registry which adds the Additional Real Estate to the Condominium.

1.25. Unit. A portion of the Condominium, whether or not contained solely or partially within the Building, together with its percentage of undivided interest in the

Common Elements as set forth on Exhibit E. Each Unit is designated and delineated on the Plans.

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

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

## ARTICLE II

### Submission of Property to the Act

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

2.2. Name. The Property shall hereafter be known as Boardwalk Office Condominium.

2.3. Division of Property into Separately Owned Units. Developer, pursuant to the Act, and to establish a plan of condominium ownership for the Condominium, does hereby divide the Property into eight (8) Units and does hereby designate all such Units for separate ownership, subject however, to the provisions of Section 2.4 hereof.

2.4. Alterations of Units. Subject to the provisions of the Declaration and the Bylaws, a Unit may be altered pursuant to the provisions of Sections 47C-2-111, 47C-2-112 and 47C-2-113 of the Act.

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

2.6. Unit Allocations. The allocation to each Unit of a percentage of undivided interest in the Common Elements is as stated on Exhibit E. The allocation of undivided interests in the Common Elements has been determined by a ratio formulated upon the relation that the square foot floor area of each Unit bears to the then aggregate square foot floor area of all Units. The allocation to each Unit of a percentage of undivided interest in the Common Expenses is as stated on Exhibit E and may be different than the allocation to each Unit of an undivided interest in the Common Elements.

The votes in the Association are allocated to all Units in accordance with the provisions of the Bylaws.

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

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

2.9. Reservation of Special Declarant Rights. Declarant hereby reserves all Special Declarant Rights for a period not to exceed five (5) years from the date of this Declaration.

### ARTICLE III

#### Additional Real Estate

3.1. Declarant's Right to Add Additional Real Estate. Declarant expressly reserves the right to add the Additional Real Estate to the Condominium. All or part of the Additional Real Estate identified and described on Exhibit A-1 may be added to the Condominium at different times, but no assurances are made in regard to the order in which such portions may be added. Declarant is not obligated to add any or all of the Additional Real Estate. The method of adding the Additional Real Estate to the Condominium shall be pursuant to Section 47C-2-110 of the Act.

3.2. Maximum Number of Additional Units. The maximum number of additional Units that may be created within the Additional Real Estate is sixteen (16) Units.

3.3. Compatibility of Style, Etc. It is the Declarant's present intent that any Buildings and Units that may be erected upon the Additional Real Estate or a portion thereof will be compatible with the other Buildings and Units in the Condominium in terms of architectural style, quality of construction, principal materials employed in construction, and size. Declarant, however, expressly reserves the right to change the architectural style and size of any Buildings and Units which may be erected upon the Additional Real Estate.

3.4. Applicability of Restrictions, Etc. All restrictions set forth in this Declaration in Section 5.3 and in the Bylaws affecting use, occupancy and alienation of Units will apply to any and all additional Units that may be created within the Additional Real Estate.

3.5. Other Improvements and Common Elements. In addition to the Buildings and Units that may be erected upon the Additional Real Estate or a portion thereof, the other improvements and Common Elements that may be made or created upon or within the Additional Real Estate or each portion thereof which may be added to the Condominium will be generally similar in quality and quantity to the improvements and Common Elements located in the Condominium.

3.6. Applicability of Assurances to Additional Real Estate. The assurances made in this Article III will apply with respect to any Additional Real Estate that is added to the Condominium.

3.7. Allocation of Interest in Common Elements and Common Expenses. At such time as Declarant adds the Additional Real Estate to the Condominium, the percentage interest of each Unit Owner in the Common Elements and the Common Expenses will be determined by using the same ratio formulas applicable to previous phases of the Condominium.

## **ARTICLE IV**

### **Easements**

4.1. Encroachments. In the event that, by reason of the construction, reconstruction, rehabilitation, alteration or improvement of the Buildings or other improvements comprising a part of the Property, any part of the Common Elements now

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

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

4.3. Easements of Owners and Association With Respect To Common Elements. Each Unit Owner shall have a perpetual, non-exclusive easement in common with all other Unit Owners to use all pipes, chutes, wires, ducts, cables, conduits, public utility lines, and other Common Elements located in any of the other Units and serving his Unit. Each Unit shall be subject to a perpetual non-exclusive easement in favor of all other Unit Owners to use the pipes, chutes, wires, ducts, cables, conduits, public utility lines, and other Common Elements serving such other Units and located in such Units. The Association, or any person authorized by it, shall have the right of access to each Unit and to the Limited Common Elements upon reasonable advanced notice to the Unit Owner (except in cases of emergencies, in which cases no advanced notice shall be required) to the extent necessary for performance by the Association of its obligations of maintenance, repair, or replacement of the Common Elements. Such person shall use good faith efforts to conduct such maintenance, repair and replacement operations at such times and in such a manner as to minimize to the extent reasonably possible any intrusion on or interference with the activities of the Unit Owner.

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

4.5. Easements for Utilities. The Units and Common Elements shall be, and are hereby, made subject to easements in favor of the Declarant (until Declarant shall have satisfied all of its obligations under the Declaration and Bylaws and all commitments in

favor of any Unit Owner and the Association), the Association, appropriate utility and service companies and governmental agencies or authorities for such utility and service lines and equipment as may be necessary or desirable to serve any portion of the Property. The easements provided for by this Section 4.5 shall include, without limitation, rights of Declarant, the Association, any providing utility, any service company, and any governmental agency or authority and any of them to install, lay, maintain, repair, relocate and replace gas lines, pipes and conduits, water mains and pipes, sewer and drain lines, telephone wires and equipment, television equipment and facilities (cable or otherwise), electrical wires, conduits and equipment and ducts and vents and any other appropriate equipment and facilities over, under, through, along and on the Units and Common Elements. Notwithstanding the foregoing provisions of this Section 4.5, unless approved in writing by the Unit Owner or Unit Owners affected thereby, any such easement through a Unit shall be located either in substantially the same location as such facilities or similar facilities existed at the time of first conveyance of the Unit by the Declarant to a grantee other than the Declarant, or so as not to materially interfere with the use or occupancy of the Unit by its Occupants.

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

4.7. Easement for Entrance Monumentation. Declarant hereby reserves perpetual easements for itself, its successors and assigns, and the Association, and their employees and agents in and over the Common Elements for the construction, installation, maintenance and replacement of signage and entrance monumentation for the Deer Park Community along Southeast Drive, including lighting and landscaping for such monumentation. The foregoing easements shall include a right of access for construction and maintenance vehicles and personnel employed by the Declarant or the Association in exercising its easement rights hereunder.

4.8. Granting of Easements by the Executive Board. The Executive Board may hereafter grant easements encumbering the Common Elements for utility purposes for the benefit of the Property, including the right to install, lay, maintain, repair and replace water lines, sewer lines, pipes, ducts, gas mains, telephone, and television or cable television wires, cables, and equipment, electrical conduits, and wires over, under and along and upon any portion of the Common Elements, and may grant such other easements encumbering the Common Elements as the Executive Board deems in its discretion

necessary for the benefit of the Condominium; and each Unit Owner hereby grants the Executive Board an irrevocable power of attorney to execute, acknowledge, and record for and in the name of each Unit Owner such instruments as may be necessary to effectuate the foregoing.

4.9. Easements To Run With Land. All easements and rights described in this Article IV are appurtenant easements running with the land, and except as otherwise expressly provided in this Article IV shall be non-exclusive and perpetually in full force and effect, and shall inure to the benefit of and be binding upon Declarant, the Association, Unit Owners, Occupants, First Mortgagees and any other person having any interest in the Condominium or any part thereof. The Condominium and every part thereof shall be conveyed and encumbered subject to and together with all easements and rights described in this Article IV, whether or not specifically mentioned in any such conveyance or encumbrance.

## ARTICLE V

### Restrictions, Conditions and Covenants

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

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

5.3. Use Restrictions.

(a) All Office Units shall be used for general office purposes only. All office use by an Owner or Occupant of his or her Office Unit shall comply in all respects with all zoning ordinance regulations and requirements applicable to the Property. Notwithstanding the foregoing, however, Declarant may use Units owned by Declarant for the storage of equipment and construction materials during construction of the Condominium.



(b) The Residential Units shall be occupied and used by Owners and Occupants for residential purposes only and no trade or business may be conducted in or from any Residential Unit, except that an Owner or Occupant residing in a Residential Unit may conduct business activities within the Residential Unit so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Residential Unit; (b) the business activity conforms to all zoning requirements for the Property; (c) the business activity does not involve persons coming onto the Property who do not reside in the Property or door-to-door solicitation of residents of the Property; and (d) the business activity is consistent with the residential character of the Property and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Property, as may be determined in the sole discretion of the Board.

The term "business" and "trade", as used in this provision, shall be construed to have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required therefor. Notwithstanding the above, the leasing of a Residential Unit shall not be considered a trade or business within the meaning of this section. This section shall not apply to any activity conducted by the Declarant or a builder approved by the Declarant with respect to its development and sale of the Property or its use of any Units which it owns within the Property.

5.4. Prohibited Uses. 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 a nuisance to the other Unit Owners. Further, and without limiting the generality of the foregoing, each Unit Owner shall use his Unit and the Common Elements in such a manner as to comply with all laws, ordinances, orders, regulations and zoning classifications of any governmental authority, agency or other public or private regulatory authority (including insurance underwriters and rating bureaus) having jurisdiction over the Property. In addition, no Unit may be used for the treatment, storage, use or disposal of toxic or hazardous waste or substances or any other substance that is prohibited, limited, or regulated by any governmental or quasi-governmental authority or that, even if not so regulated does pose a hazard to health and safety of the Occupants and patrons of the Units or of surrounding property; provided, however, any Office Unit may be used for the treatment,

storage, use or disposal of toxic or hazardous substances provided that such treatment, storage, use or disposal is incident to a lawful and permitted activity being conducted within such Unit and is conducted in compliance with all necessary permits and authorizations and in accordance with all applicable laws, ordinances, orders, rules and regulations. Each Unit Owner shall indemnify and save every other Unit Owner and the Association harmless from and against any claims, liabilities, penalties, fines, costs, expenses or damages resulting from any violations of the provisions of this Section 4.4.

5.5. Prohibitions and Use of Common Elements. The Common Elements shall not be used for storage of supplies, personal property or trash or refuse of any kind, except that common trash receptacles may be placed at various locations on the Common Elements at the discretion of the Board. Stairs, entrances, sidewalks, yards, driveways, and parking areas shall not be obstructed in any way. In general, no activity shall be carried on or conditions maintained by any Unit Owner either in his Unit or upon the Common Elements which despoils the appearance of the Property.

5.6. Shrubbery. No Unit Owner shall plant or permit to remain on the Property any type of hedge, shrubbery or other plantings, except with the prior written permission of the Association.

5.7. Parking. No Unit Owner and no employee, agent or invitee of any Unit Owner shall park, store, or keep any vehicle on the Property, except wholly within those portions of the Common Elements designated by the Association for such use. The Board may promulgate rules and regulations regarding the size, type and location of motor vehicles, trailers, campers, boats and other watercraft and other commercial or recreational vehicles permitted on the Common Elements. The foregoing restriction shall not apply to sales trailers, construction trailers or other vehicles which may be used by Declarant and its agents and contractors in the conduct of their business prior to completion of the Condominium, and shall not apply to service vehicles which are temporarily parked while service contractors are providing temporary service work in one or more Units in the Condominium or on the Common Elements.

5.8. Signs. Subject to the rights of Declarant under Section 5.9 hereof, no sign, flag, banner or pennant of any kind shall be displayed to the public view from any Unit or from the Common Elements without the prior written consent of the Executive Board; provided however, the Executive Board shall issue rules and regulations permitting each Office Unit Owner to have signs advertising his or her place of business in certain specific locations. Further, the size, design, color scheme, style and other aesthetic characteristics of such signs shall be uniform for all Office Units and shall be determined and approved by the Executive Board.

No "For Sale" or "For Rent" signs or other window displays or advertising shall be maintained or permitted by any Unit Owner or Occupant on any part of the Condominium without the prior written consent of the Executive Board.

5.9. Declarant's Offices and Models. The foregoing provisions of this Section or any other provision of this Declaration or the Bylaws notwithstanding, Declarant shall have an easement to maintain sales offices and models for sales of Units throughout the Condominium. Declarant shall have the right to relocate, from time to time, and to discontinue and reestablish, from time to time, within the Condominium, until all of the Units have been conveyed to a Unit Owner other than a Declarant, any one or more of such offices or models. Declarant also shall have the right to change the use or combination of uses of such offices or models, provided that such offices or models shall be used only for sales offices or models. The total number of such offices or models maintained at any time by a Declarant shall not exceed two (2), and the size of any such relocated or reestablished office or model shall not exceed the size of the largest Unit in the Condominium.

Declarant shall also have an easement to maintain signs, flags, banners and pennants on the Common Elements advertising the Condominium until all of the Units have been conveyed to Unit Owners other than a Declarant. Declarant shall remove all such signs, flags, banners and pennants not later than thirty (30) days after all of the Units have been conveyed to Unit Owners other than Declarant and shall repair or pay for the repair of all damage done by removal of such signs, flags, banners and pennants.

The foregoing provisions of this Section or any other provision of this Declaration or the Bylaws notwithstanding, the Association may maintain an office in the Condominium for management of the Condominium.

5.10. Hazardous Use and Waste. Nothing shall be done to or kept in any Unit or the Common Elements that will increase any rate of insurance maintained with respect to the Condominium without the prior written consent of the Board. No Unit Owner or Occupant shall permit anything to be done to or kept in his Unit or the Common Elements that will result in the cancellation of insurance maintained with respect to the Condominium, or that would be in violation of any law, or that will result in the commitment of waste (damage, abuse, or destruction) to or in his Unit or the Common Elements.

5.11. Alterations of Common Elements. No Unit Owner or Occupant, except Declarant during the Declarant Control Period, shall alter, construct anything upon, or

remove anything from, the Common Elements, or paint, decorate, landscape or adorn any portion of the Common Elements, without the prior written consent of the Board.

5.12. Leases. Any lease of a Unit or a portion of a Unit shall be in writing, and shall be subject to this Declaration and the Bylaws, and any failure of the lessee to comply with the terms of such documents shall be a default under the lease. Any lease of a Residential Unit shall be for a period of not less than six (6) months. Any Unit Owner who enters into a lease of his Unit shall promptly notify the Association of the name and address of each lessee, the Unit rented, and the term of the lease. Other than the foregoing restrictions, each Unit Owner shall have the full right to lease his Unit. Declarant may lease any Unit owned by Declarant subject to the provisions of this Declaration.

5.13. Television, Aerials, Antennas and Satellite Dishes. No radio, television or other aerial, antenna, satellite dish, tower or other transmitting or receiving structure or support thereof, of whatever size, shall be erected, installed, placed or maintained within the Condominium unless so erected, installed, placed or maintained entirely out of sight within a Unit; provided, however, television dishes 24 inches or less in diameter may be installed by a Unit Owner on the rear balcony or patio comprising a Limited Common Element of his or her Unit provided such dish is installed out of sight in a location approved by the Board. Prior to installing a television dish, a Unit Owner must submit to the Board for its approval the proposed location for the television dish within sixty (60) days prior to the proposed installation. The Board, in its sole discretion, may approve or disapprove of the proposed location of the dish. If the Board disapproves of the proposed location of the dish, the Board shall provide to the Unit Owner a suggested alternate location for the dish that will be acceptable to the Board.

5.14. Pets. No animals, live stock or poultry of any kind shall be raised, bred or kept on the Property, and no domestic pets shall be allowed in the Condominium except as may be provided by the Rules and Regulations promulgated from time to time from the Board or the Association or in the Bylaws.

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

5.16. Restrictions, Conditions and Covenants To Run With Land. Each Unit Owner and Occupant shall be subject to all restrictions, conditions and covenants of this Declaration, and all such restrictions, conditions and covenants shall be deemed to be

covenants running with the land, and shall bind every person having any interest in the Property, and shall inure to the benefit of every Unit Owner.

## ARTICLE VI

### Assessments

6.1. Assessment Liens. The Board has the power to levy assessments against the Units for Common Expenses. Such assessments shall be a lien on the Units against which they are assessed, and if any payment thereof becomes delinquent, the lien may be foreclosed and the Unit sold, or a money judgment obtained against the persons liable therefor, all as set forth in the Bylaws.

6.2. Personal Liability of Transferees; Statement; Liability of First Mortgagee.

(a) The personal obligation for assessments which are delinquent at the time of transfer of a Unit shall not pass to the transferee of said Unit unless said delinquent assessments are expressly assumed by said transferee.

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

(c) Where a First Mortgagee, or other person claiming through such First Mortgagee, pursuant to the remedies provided in a deed of trust, or by foreclosure or by deed, or assignment, in lieu of foreclosure, obtains title to a Unit, the liability of such First Mortgagee or such other person for assessments shall be only for the assessments, or installments thereof, that would become delinquent, if not paid, after acquisition of title. For purposes hereof, title to a Unit shall be deemed acquired by foreclosure upon expiration of the applicable period of redemption.

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

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

## ARTICLE VII

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

#### 7.1. Common Elements.

(a) By the Association. The management, replacement, maintenance, repair, alteration, and improvement of the Common Elements shall be the responsibility of the Association, and, subject to the provisions of Section 7.2 hereof, the cost thereof shall be a Common Expense to the extent not paid by Unit Owners pursuant to Section 7.1(b) hereof. All damage caused to a Unit by any work on or to the Common Elements done by or for the Association shall be repaired by the Association, and the cost thereof shall be a Common Expense.

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

#### 7.2. Common Expenses Associated with Limited Common Elements or Benefitting Less Than All Units.

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

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

(c) The cleanliness and orderliness of the Limited Common Elements shall be the responsibility of the individual Unit Owner or Unit Owners having the right to the use and enjoyment of such Limited Common Elements, but the responsibility for maintenance,

painting, repair and replacement, together with control over the exterior decoration of the Limited Common Elements visible from any other Unit or from the Common Elements, shall remain with the Association. Notwithstanding any other provisions of this Declaration, or any provision of the Bylaws or the 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 Unit Owners to which such Limited Common Elements are allocated. Electricity and gas service to each Unit shall be individually metered and each Unit Owner shall pay all charges assessed against his Unit for the use of such services.

7.3. Units. Each Unit Owner shall maintain his Unit at all times in a good and clean condition, and repair and replace, at his expense, all portions of his Unit. All windows and doors within the walls enclosing a Unit shall be a part of that Unit, but the authority and responsibility for maintenance and painting, together with control over the exterior decoration, of all portions of doors and windows visible from the exterior of the Building or from any Common Element, shall remain with the Association. Replacement of any broken glass in a window that is part of a Unit shall be the sole responsibility and expense of the Unit Owner of that Unit. Routine maintenance and repair of all lath, furring, wallboard, plasterboard, plaster, and subflooring beneath, above, and/or beyond the finished surfaces of the perimeter walls, floor and ceiling of each Unit shall be the sole responsibility of the Unit Owner. Each Unit Owner shall perform his responsibilities in such manner as not to unreasonably disturb other Occupants; shall promptly report to the Board, or its agents, any defect or need for repairs the responsibility for which is that of the Association; and, to the extent that such expense is not covered by the proceeds of insurance carried by the Association, shall pay all costs to repair and replace any portion of another Unit that has become damaged or destroyed by reason of his own acts or omissions, or the acts or omissions of any Occupant of his Unit. Such payment shall be made upon demand by the Unit Owners of such other Unit. Nothing herein contained shall modify any waiver by insurance companies of rights of subrogation.

7.4. Right of Entry.

(a) By the Association. The Association, and any person authorized by the Association, may enter any Unit or any of the Limited Common Elements in case of any emergency or dangerous condition or situation originating in or threatening that Unit or any of the Limited Common Elements. The Association, and any person authorized by the Association, after reasonable notice to a Unit Owner or Occupant, may enter that Unit or any of the Limited Common Elements for the purposes of performing any of the Association's powers under the Act, this Declaration or the Bylaws with respect to that or any other Unit, any Limited Common Elements, or the Common Elements. The

Association shall be responsible for the repair of any damage caused by the Association or its authorized person to the entered Unit, and the cost thereof shall be a Common Expense. All such entries shall be made and done so as to cause as little inconvenience as possible to the Unit Owner and Occupant of the entered Unit or any portion of the Limited Common Elements allocated to the Unit Owner.

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

7.5. Relocation of Boundaries. The boundaries between adjoining Office Units may be relocated upon application to the Association by the owners of such adjoining Office Units ("Adjoining Owners") and upon approval by the Association of such application; provided, however, no such relocation of boundaries shall be binding upon any First Mortgagee holding a First Mortgage on any Office Unit whose boundaries are relocated, unless consented to in writing by such First 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. If the Adjoining Owners have agreed upon a reallocation of the allocated interests in the Common Elements between their Office Units, the application should state the proposed reallocation of the allocated interest. Unless the Association determines within thirty (30) days after submission to it of the application that the proposed relocation of boundaries or proposed reallocation of allocated interests is unreasonable, the application shall be deemed approved. If the Adjoining Owners did not specify reallocation of the allocated interests between their Office Units, then the Association shall determine such reallocation. Upon approval of the proposed relocation of boundaries and reallocation of allocated interests, 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 Office Units involved, describes and depicts the altered boundaries, gives the dimensions of the altered Office Units, and specifies the reallocation of the allocated interests between the adjoining Office Units. Such amendment shall also contain operative words of conveyance and be signed by the adjoining Owners and consented to by their



First Mortgagees, if any, and shall be indexed by the Register of Deeds in the names of the Adjoining Owners.

7.6. Subdivision of Units. An Office Unit may be subdivided into two (2) or more Office Units upon application to the Association by the owner of such Office Unit and upon approval by the Association of such application. Provided, however, no such subdivision shall be binding upon any First Mortgagee holding a First Mortgage on any Office Unit which is subdivided, unless consented to in writing by such First Mortgagee. Any such application to the Association shall 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 subdivision of the Office Unit. Unless the Association determines within thirty (30) days after submission to it of the application that the proposed subdivision is unreasonable, the application shall be deemed approved. Upon approval of the application, the Association shall cause to be prepared and filed, at the Office Unit Owner's sole expense, an amendment to this Declaration, together with plats and plans, which shall identify the Office Unit which is subdivided, assign an identifying number to each new Office Unit created, describe and depict the location, dimensions, area and boundaries of each new Office Unit created, and reallocate among the new Office Units the allocated interest of the subdivided Office Unit in the approximate relation that the size of each new Office Unit bears to the aggregate size of all new Office Units created. Such amendment shall be executed by the owner of the Office Unit being subdivided and consented to by such Office Unit Owner's First Mortgagee, if any, and shall be indexed under such owner's name by the Register of Deeds.

7.7. Partitioning. The interest in the Common Elements allocated to each Unit shall not be conveyed, devised, encumbered, partitioned, or otherwise dealt with separately from said Unit, and the interest 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 interest in the Common Elements unless the same purports to convey, devise, encumber or otherwise deal with the entire Unit. Any instrument conveying, devising, encumbering or otherwise dealing with any Unit, which describes said Unit by the identifying number assigned thereto in the Plans and herein without limitation or exception shall be deemed and construed to affect the entire Unit and its allocated interest in the Common Elements. Nothing herein contained shall be construed as limiting or preventing ownership of any Unit and its allocated interest in the Common Elements by

more than one person or entity as tenants in common, joint tenants, or as tenants by the entirety or any other form by law permitted.

**7.8. Conveyance of or Lien Against Common Elements.** For such time as the Property remains subject to this Declaration and to the provisions of the Act, no conveyances of or security interests or liens of any nature shall arise or be created against the Common Elements unless the Unit Owners holding at least eighty percent (80%) of the total allocated interests in the Common Elements agree to that action; provided, however, all the owners of Units to which any Limited Common Element is allocated must agree in order to convey that Limited Common Element or subject it to a security interest or lien. 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 mechanics' 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 Article VII of this Declaration. Provided, however, nothing in this Section shall be construed to limit the right of any Unit Owner to convey or to encumber his allocated interest in the Common Elements as an appurtenance to and in connection with the conveyance or mortgaging of his Unit.

**7.9. Nature of Interest in Unit.** Every Unit, together with its allocated interest in the Common Elements, shall for all purposes be, and it is hereby declared to be, and to constitute a separate parcel of real property, and the Unit Owner thereof 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, regulations, resolutions and decisions adopted pursuant hereto and as may be contained herein and in the accompanying Bylaws and in the minutes of the Executive Board of the Association.

## **ARTICLE VIII**

### **Insurance**

**8.1. Casualty Insurance.** The Association shall maintain, to the extent available, casualty insurance upon the Property in the name of, and the proceeds thereof shall be payable to, the Association, as trustee for all Unit Owners and First Mortgagees as their interests may appear, and be disbursed pursuant to the Act. Such insurance shall be in an amount equal to not less than one hundred percent (100%) full insurable value of the Property on a replacement cost basis exclusive of land, excavations, foundations and other items normally excluded from property policies, and shall insure against such risks and

contain such provisions as the Board from time to time shall determine, but at a minimum shall conform in all respects to the requirements of the Act, and shall provide that, notwithstanding any provision thereof that gives the insurer an election to restore damage in lieu of making a cash settlement, such option shall not be exercisable if such restoration is prohibited pursuant to Section 47C-3-113(h) of the Act. In addition, if any fixtures, property or equipment used or kept in a Unit are financed by the proceeds of any First Mortgage on such Unit, then the Association, at its option, may obtain insurance coverage for such fixtures, property or equipment.

8.2. Public Liability Insurance. The Association shall maintain public liability insurance for the benefit of the Unit Owners, Occupants, the Association, the Board, the managing agent, if any, the Declarant, and their respective officers, directors, agents and employees, in such amounts and with such coverage as shall be determined by the Board; provided that the public liability insurance shall be for at least Five Hundred Thousand Dollars (\$500,000.00) per person and One Million Dollars (\$1,000,000) per occurrence for death, bodily injury and property damage. Such insurance shall comply in all respects to the requirements of the Act and shall contain a severability-of-interest endorsement precluding the insurer from denying liability because of negligent acts of any insured; insure all of such benefited parties against such liability arising out of or in connection with the use, ownership or maintenance of the Common Elements, and the streets, sidewalks and public spaces adjoining the Condominium; and insure the Association, the Board, the manager, if any, and their respective officers, directors, agents and employees against such liability arising out of or in connection with the use or maintenance of the Units.

8.3. Fidelity Coverage. If available at reasonable cost, fidelity coverage shall be maintained by the Association in commercial blanket form covering each director and officer of the Association, any employee or agent of the Association and any other person handling or responsible for handling funds of the Association in the face amount of at least the greater of (i) one and one-half (1-1/2) times the estimated annual operating expenses and reserves of the Association, or (ii) the sum of three months' aggregate assessments on all Units plus the Association's reserve funds. Such bonds shall contain an appropriate endorsement to cover persons who serve without compensation. The premium on such bonds shall be a Common Expense.

8.4. Insurance Unavailable. If the insurance described in Section 8.1, 8.2 or 8.3 is not reasonably available, the Association shall promptly cause notice of such fact to be hand-delivered or sent prepaid by United States mail to all Unit Owners and First Mortgagees.

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

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

8.7. Individual Policy for Unit Owners. Each Unit Owner may obtain insurance, at his own expense, affording personal property, condominium assessment, personal liability, and any other coverage obtainable, to the extent and in the amounts such Unit Owner deems necessary to protect his own interests; provided that any such insurance shall provide that it is without contribution as against the insurance purchased by the Association. If a casualty loss is sustained and there is a reduction in the amount of the proceeds that would otherwise be payable on the insurance purchased by the Association due to the proration of insurance purchased by a Unit Owner under this Section, such Unit Owner shall be liable to the Association to the extent of such reduction and shall pay the amount of such reduction to the Association upon demand, and assigns the proceeds of his insurance, to the extent of such reduction, to the Association.

## **ARTICLE IX**

### **Casualty Damage**

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

## ARTICLE X

### Condemnation

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

## ARTICLE XI

### Termination

The Condominium may be terminated only in strict compliance with Section 47C-2-118 of the Act. Any termination of the Condominium shall be subject to the prior approval of at least fifty-one percent (51%) of the First Mortgagees; provided, however, that if any First Mortgagee fails to respond to a written request for approval within thirty (30) days of said request made in accordance with the notice requirements of such First Mortgage, approval shall be deemed to have been given by such First Mortgagee.

## ARTICLE XII

### Amendment

This Declaration may be amended only in strict compliance with the Act, including, without limitation, Sections 47C-2-105 and 47C-2-117 of the Act, except that no amendment altering or impairing Special Declarant Rights may be made without the written consent of Declarant. Notwithstanding the foregoing, no amendment of this Declaration may be made specifically abridging, altering, modifying or terminating the rights of Owners of Office Units in the Condominium unless such amendment is consented to by at least sixty-seven percent (67%) of all Office Unit Owners and at least fifty-one percent (51%) of the First Mortgagees; provided, however, that if any First Mortgagee fails to respond to a written request for approval within thirty (30) days of said request made in accordance with the notice requirements of such First Mortgage, approval shall be deemed to have been given by such First Mortgagee.

## ARTICLE XIII

### Rights of First Mortgagees

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

13.1. Amendments during Declarant Control Period. Any amendments to this Declaration or to the Bylaws during the Declarant Control Period shall be subject to the prior approval of all First Mortgagees provided, however, that, if any First Mortgagee fails to respond to a written request for approval within thirty (30) days of said request made in accordance with the notice requirements of such First Mortgage, approval shall be deemed to have been given by such First Mortgagee.

13.2. Availability of Condominium Documents, Books, Records and Financial Statements. The Association shall, upon request and during normal business hours, make available for inspection by Unit Owners and the First Mortgagees, current copies of the Declaration, the Bylaws, other rules and regulations governing the Condominium and the books, records and financial statements of the Association. The Association shall provide an unaudited accountant prepared financial statement for the preceding fiscal year if requested in writing by a First Mortgagee. The Association shall, upon request and during normal business hours, make available for inspection by prospective purchasers of Units, current copies of the Declaration, Bylaws, the Rules and Regulations governing the Condominium, and the most recent annual financial statement.

13.3. Successors' Personal Obligation for Delinquent Assessments. The personal obligation for assessments which are delinquent at the time of transfer of a Unit shall not pass to the successors in title or interest to said Unit unless said delinquent assessments are expressly assumed by them.

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

13.5. Rights to Notice. If any First Mortgagee has served written notice upon the Association of its desire to receive notices under this section by certified mail, return receipt requested, addressed to the Association and sent to its current address, identifying the First Mortgage that it holds, which notice designates the place to which notices are to

be given by the Association to such party, then such party 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 Declaration and the Bylaws by any Unit Owner owning a Unit encumbered by a First Mortgage held by such party.
- (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 First Mortgage held by such First 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 Board or the Unit Owners, which under the terms of the Declaration or Bylaws requires the consent of all or any portion of the First Mortgagees.

13.6. Assessments. Assessments shall be due and payable in installments as determined by the Board. As legally required by Section 47C-3-115 of the Act, Declarant shall pay all accrued expenses of the Condominium until assessments are levied against the Units. An assessment shall be deemed levied against a Unit upon the giving of notice by the Board to a member of the Association who is a Unit Owner of that Unit. Unit Owners shall have no obligation to pay assessments until an assessment is levied. Assessments will begin at such time as the Board elects.

13.7. Rights of First Mortgagee; Insurance Proceeds or Condemnation Awards. With respect to First Mortgages held by or for the benefit of First Mortgagees, no provision of this Declaration or the Bylaws shall be deemed to give a Unit Owner, or any other party, priority over any rights of a First Mortgagee pursuant to its First Mortgage on said Unit Owner's Unit, in the case of a distribution to said Unit Owner of insurance proceeds or condemnation awards for losses to or a taking of Units and/or Common Elements.

## ARTICLE XIV

### Waiver of Article IV of the North Carolina Condominium Act

By acceptance of a deed or other conveyance or transfer of an Office Unit, each Office Unit Owner agrees that such Office Unit Owner has waived any and all protections,

rights and benefits conferred under Article IV of the North Carolina Condominium Act which Article is entitled "Protection of Purchasers," including, without limitation, the right to receive a public offering statement, the right to receive a resale certificate, and the right to cancel any contract to purchase an Office Unit pursuant to Section 47C-4-108 of the Act.

## ARTICLE XV

### Master Association

Pursuant to that certain Master Declaration of Covenants, Conditions and Restrictions for Deer Park recorded in the Mecklenburg County Public Registry and all supplemental declarations and amendments thereto (the "Master Declaration") certain land and facilities located adjacent to or in close proximity of the Condominium have been or will hereinafter be dedicated to the use and benefit of the Condominium and other property which is developed or will be developed as part of the Deer Park community. Under the Master Declaration, a community park will be dedicated for the non-exclusive use of Unit Owners of the Condominium together with the owners, occupants, or users of other developments within the Deer Park Community. The community park and any other amenities which are established, dedicated or constructed, now or hereafter, pursuant to the Master Declaration and/or any supplements or amendments thereto are hereinafter referred to as the "Off Site Amenities". A portion of the expenses of operation, maintenance, repair and replacement of the Off Site Amenities is assessable against the Association as a member of the Deer Park Community Association, Inc. and the Association shall be entitled to charge and assess its share of such expenses to the Unit Owners in the Condominium as Common Expenses. The Association's expenses relating to the Off Site Amenities is determinable in accordance with the terms and conditions of the Master Declaration.

## ARTICLE XVI

### General Provisions

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



rest of this Declaration, or the application of any such covenant, restriction, condition, limitation, provision, paragraph or clause to any other person or circumstances.

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

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

16.4. Exhibits. Exhibits A, A-1, B, C, D, E, F and G attached hereto are hereby made a part hereof.

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

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

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

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

KENNERLY DEVELOPMENT SERVICES, LLC, a  
North Carolina limited liability company

(SEAL)

By:  (SEAL)

J. Christopher Kennerly  
Manager

STATE OF NORTH CAROLINA

COUNTY OF Mecklenburg

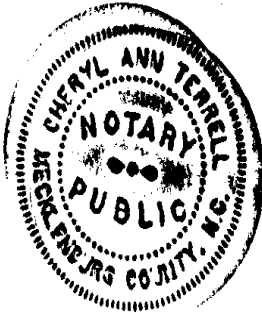
I, Cheryl Ann Terrell, a Notary Public of the County and State aforesaid, certify that J. Christopher Kennerly, Manager of KENNERLY DEVELOPMENT SERVICES, LLC, a North Carolina limited liability company, personally appeared before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and official stamp or seal, this 18 day of January, 2002.

Cheryl Ann Terrell  
Notary Public

My Commission Expires:

Sept. 17, 2006



**ATTACHMENT TO DECLARATION OF  
BOARDWALK OFFICE CONDOMINIUM** *Phase 1*

**CONSENT AND SUBORDINATION OF MORTGAGEE**

CENTURA BANK, holder of that certain Note secured by that certain Deed of Trust dated November 16, 2000 and recorded in Book 11723 at Page 1 in the Mecklenburg County Public Registry and CB SERVICES CORP., Trustee, do hereby consent to the terms, conditions, and covenants in the foregoing Declaration of Boardwalk Office Condominium and the Bylaws described therein, and agree that the lien of said deed of trust, and the interest of the beneficiary therein, are subject and subordinate, in all respects, to the terms, conditions, and covenants contained in said Declaration, including all exhibits, supplemental declarations and other amendments thereto.

IN WITNESS WHEREOF, the undersigned has caused this Consent to be duly executed this 18th day of January, 2002.

CENTURA BANK

By: *Paul H. Bingham*  
Its: Vice President

CB SERVICES CORP.

By: *Bruce B. Burt*  
Its: Vice President

STATE OF NORTH CAROLINA

COUNTY OF Mecklenburg

This 18 day of January, 2002, before me, the undersigned Notary Public in and for the County and State aforesaid, personally came Fred H. Brumgardner, who, being duly sworn, says that s/he is vice - President of CENTURA BANK, and that s/he as vice - President being authorized to do so, executed the foregoing on behalf of the corporation.

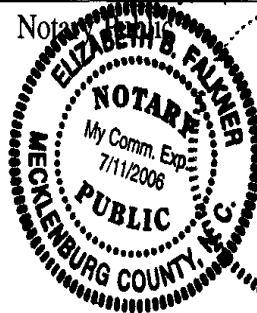
AKA Fred H. Brumgardner

WITNESS my hand and seal this 18 day of January, 2002.

Elizabeth B. Falkner

Notary Public

My Commission Expires: 07-11-06



STATE OF NORTH CAROLINA

COUNTY OF Mecklenburg

This 18 day of January, 2002, before me, the undersigned Notary Public in and for the County and State aforesaid, personally came Bill Bickett, who, being duly sworn, says that s/he is vice President of CB SERVICES CORP., and that s/he as vice President being authorized to so, executed the foregoing on behalf of the corporation.

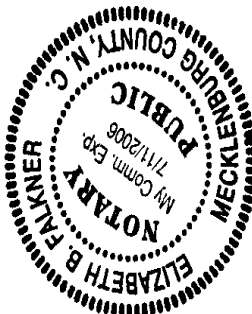
AKA Bill B. Bickett

WITNESS my hand and seal this 18 day of January, 2002.

Elizabeth B. Falkner

Notary Public

My Commission Expires: 07-11-06



## EXHIBIT A

### To Declaration

Lying and being in the Town of Davidson, Mecklenburg County, North Carolina, being more particularly described as follows:

#### Tract 1:

BEGINNING at an iron pin marking the intersection of the westerly margin of the 60 foot public right of way of Southeast Drive and the southerly margin of the public right of way of Peninsula Lane, and running thence along the aforesaid margin of Southeast Drive the following three (3) courses and distances: (1) with the arc of a circular curve to the left having a radius of 681.14 feet, an arc distance of 23.60 feet and a chord bearing and distance of S 31-28-56 E 23.60 feet to an iron pin, (2) N 57-31-30 E 4.50 feet to an iron pin, and (3) with the arc of a circular curve to the left having a radius of 676.64 feet, an arc distance of 35.02 feet and a chord bearing and distance of S 33-57-28 E 35.02 feet to an iron pin; thence leaving said margin of Southeast Drive, S 51-16-57 W 55.42 feet to an iron pin; thence S 30-02-35 W 78.25 feet to an iron pin; thence S 02-29-39 E 77.93 feet to an iron pin; thence S 65-42-45 W 20.00 feet to an iron pin; thence N 26-08-02 W 178.40 feet to an iron pin in the southerly margin of Peninsula Lane; thence along said margin of Peninsula Lane the following two (2) courses and distances: (1) with the arc of a circular curve to the right having a radius of 322.35 feet, an arc distance of 13.26 feet and a chord bearing and distance of N 60-45-10 E 13.26 feet to an iron pin and (2) N 61-55-53 E 145.74 feet to the Point and Place of Beginning, and containing approximately 16,984 square feet and being 0.3899 acre, more or less, as shown on survey entitled "Survey for Kennerly Development Services, LLC As Built Survey of Boardwalk Office Condominium Phase I" dated December 12, 2001 by James H. Mauney, Jr., NCRLS of R.B. Pharr & Associates, P.A. (File No. 55123.DWG), to which survey reference is hereby made for a more particular description of the property.

#### Tract 2:

BEGINNING at an iron pin marking the intersection of the easterly right of way margin of the 60 foot public right of way of Southeast Drive and the southerly margin of the public right of way of Peninsula Drive, said pin being located S 25-26-48 E 1,329.75 feet from North Carolina Grid System Monument "Star Drill" having North Carolina Grid System Coordinates of N = 643,450.356 feet and E = 1,444,676.116 feet (NAD 1983), and running thence along the aforesaid margin of the right of way of Peninsula Drive the following two (2) courses and distances: (1) N 61-56-29 E 26.55 feet to an iron pin and (2) with the arc of a circular curve to the right having a radius of 221.45 feet, an arc distance of 94.97 feet and a chord bearing and distance of N 74-06-57 E 94.24 feet to an iron pin; thence leaving said margin of Peninsula Drive S 33-26-56 E 65.83 feet to an iron pin; thence S 46-23-40 W 58.75 feet to an iron pin; thence N 77-44-29 W 8.91 feet to an iron pin; thence S 51-01-25 W 56.27 feet to an iron pin in the aforesaid margin of Southeast Drive; thence along said

margin of Southeast Drive the following four (4) courses and distances: (1) with the arc of a circular curve to the right having a radius of 616.64 feet, an arc distance of 77.61 feet and a chord bearing and distance of N 36-54-05 W 77.56 feet to an iron pin, (2) N 56-42-51 E 4.50 feet to an iron pin, (3) with the arc of a circular curve to the right having a radius of 612.14 feet, an arc distance of 25.92 feet and a chord bearing and distance of N 32-04-59 W 25.91 feet to an iron pin, and (4) with the arc of a circular curve to the right having a radius of 3.00 feet, an arc distance of 4.86 feet and a chord bearing and distance of N 15-32-26 E 4.35 feet to the Point and Place of Beginning, and containing approximately 11,360 square feet and being 0.2608 acre, more or less, as shown on survey entitled "Survey for Kennerly Development Services LLC As Built Survey of Boardwalk Office Condominium Phase I" dated December 12, 2001 by James H. Mauney, Jr., NCRLS of R.B. Pharr & Associates, P.A. (File No. 55123.DWG), to which survey reference is hereby made for a more particular description of the property.

**EXHIBIT A-1**

**To Declaration**

Lying and being in the Town of Davidson, Mecklenburg County, North Carolina, being more particularly described as follows:

**Tract 1:**

BEGINNING at a iron pin in the westerly margin of the 60 foot right of way of Southeast Drive, said iron being located the following four (4) courses and distances from North Carolina Grid System Monument "StarDrill" having North Carolina Grid System Coordinates of N = 643,450.356 feet and E = 1,444,676.116 feet (NAD 1983): (1) S 22-21-42 E 1,336.98 feet to an iron pin in the westerly margin of Southeast Drive, (2) along said margin of Southeast Drive with the arc of a circular curve to the left having a radius of 681.14 feet, an arc distance of 23.60 feet and a chord bearing and distance of S 31-28-56 E 23.60 feet to a point, (3) continuing along said margin of Southeast Drive N 57-31-30 E 4.50 feet to an existing iron, and (4) continuing along said margin of Southeast Drive, with the arc of a circular curve to the left having a radius of 676.64 feet, an arc distance of 35.03 feet and a chord bearing and distance of S 33-57-28 E 35.02 feet to the Beginning Point, and running thence from said Beginning Point along said margin of Southeast Drive the following two (2) courses and distances: (1) with the arc of a circular curve to the left having a radius of 676.64 feet, an arc distance of 142.43 feet and a chord bearing and distance of S 41-28-16 E 142.17 feet to a point and (2) S 47-30-06 E 90.98 feet to an iron pin; thence leaving said margin of Southeast Drive, S 42-29-54 W 118.51 feet to a point; thence N 47-26-35 W 93.06 feet to a point; thence N 45-32-58 W 52.36 feet to a point; thence S 65-42-45 W 59.54 feet to an iron pin; thence N 02-29-38 W 77.93 feet to a point; thence N 30-02-36 E 78.25 feet to a point; thence N 51-16-58 E 55.42 feet to the Point and Place of Beginning, and containing approximately 30,390 square feet and being 0.6977 acre, more or less, as shown on survey entitled "Survey Prepared for Kennerly Development Group" dated July 6, 2000 by Michael J. Lucas, NCRLS of R.B. Pharr & Associates, P.A. (File No. LN-314AB), to which survey referenced is hereby made for a more particular description of the property.

**Tract 2:**

BEGINNING at an iron pin the easterly right of way margin of Southeast Drive, said pin marking a southwesterly corner of the property conveyed to Gethsemane Baptist Church by Deed recorded in Deed Book 3717 at Page 538 in the Mecklenburg County Public Registry, said iron being located the following six (6) courses and distances from North Carolina Grid System Monument "StarDrill" having North Carolina Grid System Coordinates of N = 643,450.356 feet and E = 1,444,676.116 feet (NAD 1983): (1) S 25-26-48 E 1,329.75 feet to a point marking the intersection of the southerly margin of a 56 foot proposed street right of way and the easterly margin of Southeast Drive, (2) along the aforesaid margin of Southeast Drive with the arc of a circular curve to the left having a radius of 3.00 feet, an arc distance of 4.86 feet and a chord bearing and distance of S 15-31-51 W 4.35 feet to a point,

(3) continuing along said margin of Southeast Drive with the arc of a circular curve to the left having a radius of 612.14 feet, an arc distance of 25.92 feet, and a chord bearing and distance of S 32-04-58 E 25.91 feet to an existing iron pin, (4) continuing along said margin of Southeast Drive S 56-42-15 W 4.50 feet to a point, (5) continuing along said margin of Southeast Drive with the arc of a circular curve to the left having a radius of 616.64 feet, an arc distance of 152.89 feet and a chord bearing and distance of S 40-23-55 E 152.50 feet to a point, and (6) S 47-30-06 E 59.62 feet to the Beginning Point, and running thence from said Beginning Point along the aforesaid margin of Southeast Drive the following two (2) courses and distances: (1) N 47-30-06 W 59.62 feet to a point and (2) with the arc of a circular curve to the right having a radius of 616.64 feet, an arc distance of 75.28 feet and a chord bearing and distance of N 44-00-15 W 75.23 feet to an iron pin; thence N 51-01-25 E 56.27 feet to a point; thence S 77-44-29 E 8.91 feet to a point; thence N 46-23-40 E 58.75 feet to a point; thence N 33-26-55 W 65.83 feet to an iron pin in the southerly margin of the aforesaid 56 foot proposed street right of way; thence along said margin of the aforesaid street right of way the following two (2) courses and distances: (1) with the arc of a circular curve to the right having a radius of 221.45 feet, an arc distance of 81.43 feet and a chord bearing and distance of S 83-03-48 E 80.98 feet to a point and (2) S 72-38-44 E 22.77 feet to an iron pin in the westerly margin of the aforesaid Gethsemanie Baptist Church property (now or formerly); thence along a westerly line of the aforesaid Gethsemanie Baptist Church property (now or formerly), S 17-21-16 W 216.62 feet to the Point and Place of Beginning, and containing approximately 16,525 square feet and being 0.3794 acre, more or less, as shown on survey entitled "Survey Prepared for Kennerly Development Group" dated July 6, 2000 by Michael J. Lucas, NCRES of R.B. Pharr & Associates, P.A. (File No. LN- 314AB) to which survey referenced is hereby made for a more particular description of the property.



## **EXHIBIT B**

To Declaration

### **BYLAWS** **OF** **BOARDWALK OFFICE ASSOCIATION, INC.**

#### **ARTICLE I.**

##### **Plan of Condominium**

1.1 **Unit Ownership.** The property located in Mecklenburg County, State of North Carolina, and more particularly described in the Declaration of Boardwalk Office Condominium, (the "Declaration") has been submitted to the provisions of the North Carolina Condominium Act (the "Act") by instrument recorded in the Office of the Register of Deeds for Mecklenburg County, North Carolina, simultaneously herewith, and shall be known as Boardwalk Office Condominium (the "Condominium").

1.2 **Application.** All present and future owners, mortgagees, lessees and occupants of Units and their employees, and any other persons who may use the facilities of the Property in any manner are subject to the Declaration, these Bylaws and rules and regulations made pursuant hereto, and any amendment to these Bylaws or the Declaration upon the same being passed and recorded in the manner set forth in the respective Condominium Documents.

The acceptance of a deed of conveyance or the entering into of a lease or the act of occupancy of a Unit shall constitute an agreement that these Bylaws (and any rules and regulations made pursuant hereto) and the provisions of the Declaration, as they may be amended from time to time, are accepted, ratified and will be complied with.

#### **ARTICLE II.**

##### **Unit Owners**

2.1 **Name and Nature of Association.** BOARDWALK OFFICE ASSOCIATION, INC. (the "Association") shall be a nonprofit corporation, organized under the laws of the State of North Carolina, and the membership shall be comprised of all of the Unit Owners

as herein provided, which Association shall be governed by the Executive Board (the "Board") as herein provided.

2.2 Place of Meetings. All meetings of the Association shall be held at the Property, or at such other place, within the State of North Carolina, as shall be designated in a notice of the meeting.

2.3 Annual Meeting. There shall be a regular annual meeting of the Unit Owners held each year during the same month of each succeeding year, for the purpose of electing members of the Board and for the transaction of such other business as may be properly brought before the meeting.

2.4 Substitute Annual Meetings. If the annual meeting shall not be held in the month designated by the Bylaws, a substitute annual meeting may be called in accordance with the provisions of Section 2.5 of this Article. A meeting so called shall be designated and treated for all purposes as the annual meeting.

2.5 Special Meetings. Special meetings of the Unit Owners may be called at any time by the Board, the Chairman or upon the written request of the Unit Owners owning at least twenty percent (20%) in common interest in the Common Elements other than those Units held by the Declarant.

2.6 Notice of Meetings. Written or printed notice stating the place, day and hour of any meeting shall be delivered or mailed not less than ten (10) days nor more than fifty (50) days prior to the date thereof, either personally or by postage prepaid mail, at the direction of the Board, the Chairman or Unit Owners calling the meeting, to each person entitled to vote at such meeting, and, to all First Mortgagees so requesting under the provisions of Article XIII of the Declaration, who may request a representative to attend the meeting of Unit Owners.

Notice given to any one tenant-in-common, tenant by the entirety or other joint owner of a Unit shall be deemed valid notice to all joint owners of such Unit.

The notice of any meeting must state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the Declaration or these Bylaws, and budget changes, and any proposal to remove Board members or officers.

When a meeting is adjourned for less than thirty (30) days in any one adjournment, it is not necessary to give any notice of the adjourned meeting, other than by announcement at the meeting at which the adjournment is effective.

**2.7 Quorum.** The presence in person or by proxy at any meeting of the Voting Members (as defined in Section 2.8 of this Article) having at least twenty percent (20%) of the total votes shall constitute a quorum. If there is no quorum at the opening of the meeting of Unit Owners, such meeting may be adjourned from time to time by the vote of a majority of the Voting Members present, either in person or by proxy; and at any adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted at the original meeting.

The Voting Members at a meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough Voting Members to leave less than a quorum.

**2.8 Voting Rights.** There shall be one person with respect to each Unit ownership who shall be entitled to vote at any meeting of the Unit Owners (the "Voting Member"). The Voting Member may be the Owner, or one of a group composed of all of the Owners of a Unit, or may be some other person designated by such Owner(s) to act as proxy on his or their behalf, and who need not be an Owner. Each Unit Owner or group of Owners (including the Board, if the Board or its designee shall then hold title to one or more Units) shall be entitled to one (1) vote for each Unit owned by such Owner.

**2.9 Majority Vote.** The vote of a majority of the votes represented at a meeting at which a quorum shall be present, in person or by proxy, shall be binding upon all Unit Owners for all purposes except where a higher percentage vote is required by the Declaration, these Bylaws or by law.

**2.10 Proxies.** The Voting Members may vote either in person or by agents duly authorized by written proxy executed by such Unit Owner or his duly authorized attorney-in-fact. A proxy shall be valid only for the particular meeting designated therein, unless the person executing it specifies therein the length of time for which it is to continue in force, which time shall not extend beyond eleven 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 of the Association, either during or prior to the meeting in question.

**2.11 Waiver of Notice.** Any Voting Member may, at any time, waive notice of any meeting of the Association in writing, and such waiver shall be deemed to be

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

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

### ARTICLE III.

#### Executive Board

3.1 Number. The business and property of the Condominium shall be managed and directed by the Executive Board (the "Board"), composed of three (3) persons, or by such executive committees as the Board may establish pursuant to the Bylaws; provided, however, that the Board may not act on behalf of the Association to amend the Declaration, to terminate the Condominium, to exercise the Association's right of first refusal under the Declaration, to elect members of the Executive Board, or to determine the qualifications, powers, duties or terms of office of Board members. The Board may, however, fill vacancies in its membership for the unexpired portion of any term.

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

3.3 Election. Except as provided herein, the directors shall be elected at the annual meeting of the Association, and those persons who receive the highest number of votes shall be deemed to have been elected. Notwithstanding anything herein to the contrary, the Board shall consist of three (3) directors during the period that Declarant is entitled to appoint a majority of the directors. The Declarant shall have the right to appoint all of the directors until the earlier of the following three dates: (a) within 120 days after the date by which 75% of the Units have been conveyed to Unit purchasers, or (b) the date upon which Declarant surrenders control of the Condominium to the Unit Owners,

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

The Declarant can turn over control of the Association to such Unit Owners other than the Declarant prior to such dates in its sole discretion by causing all or part of its appointed directors to resign, whereupon it shall be the affirmative obligation of Unit Owners other than the Declarant to elect directors and assume control of the Association. Provided at least thirty (30) days' notice of Declarant's decision to cause its appointees to resign is given to Unit Owners, neither the Declarant, nor such appointees, shall be liable in any manner in connection with such resignations even if the Unit Owners other than the Declarant refuse or fail to assume control.

Within sixty (60) days after conveyance of twenty-five percent (25%) of the Units (including Units which may be created pursuant to special rights as provided in Section 1.23 of the Declaration) to Unit Owners other than the Declarant, at least one director and not less than twenty-five percent (25%) of the directors of the Board shall be elected by Unit Owners other than the Declarant. Within sixty (60) days after conveyance of fifty percent (50%) of the Units (including Units which may be created pursuant to special rights as provided in Section 1.23 of the Declaration) to Unit Owners other than the Declarant, not less than thirty-three percent (33%) of the directors of the Board shall be elected by Unit Owners other than the Declarant.

Within sixty (60) days after the Unit Owners other than the Declarant are entitled to elect such director or directors, or sooner if the Declarant has elected to accelerate such event as aforesaid, the Association shall call, and give not less than ten (10) days' nor more than fifty (50) days' notice of a meeting of the Unit Owners to elect such director or directors of the Board. The meeting may be called and the notice given by any Unit Owner if the Association fails to do so.

The size of the Board may be increased or decreased from time to time upon the affirmative vote of three-fourths (3/4) of all Unit Owners, provided that said Board shall not be less than three (3) in number.

**3.4 Term and Qualification.** Each director shall hold office for the term for which he was elected, or until his death, resignation, retirement, removal, disqualification or until his successor is elected and qualified. At the meeting of the Association in which the Unit Owners other than the Declarant are entitled to elect a majority of the directors, the directors of the Board shall remain at three (3) and divided into three (3) classes, the first class to consist of one (1) director, the second class to consist of one (1) director, and the third class to consist of one (1) director. The director of the first class shall initially

hold office for a term of three years; the director of the second class shall initially hold office for a term of two years; and the director of the third class shall initially hold office for a term of one year. At all annual elections thereafter, a number of directors shall be elected by the Voting Members to succeed the director whose term then expires. Each such director shall serve for a three-year term. So long as Declarant shall own one or more Units, the director of the Board which Declarant has the right to designate shall be a member(s) of the third class. Nothing herein contained shall be construed to prevent the election of a director to succeed himself. Each director, except those selected by the Declarant pursuant to the Bylaws, shall be one of the Unit Owners or co-owners, or a spouse of a Unit Owner or co-owner, provided, however, that in the event a Unit Owner is a corporation, partnership, trust or other legal entity other than a natural person or persons, then an officer or director of such corporation, partner of such partnership, beneficiary of such trust or manager of such other legal entity, shall be eligible to serve as a director. At least one (1) director at all times shall be a Residential Unit Owner.

3.5 Removal. Directors may be removed from office with or without cause by the affirmative vote of at least sixty-seven percent (67%) of the votes entitled to be cast by all Voting Members present and entitled to vote at any meeting of the Voting Members at which a quorum is present. If any directors are so removed, new Board members may be elected at the same meeting; provided, however, that the person(s) selected by Declarant cannot be removed without the prior written consent of Declarant.

3.6 Vacancies. A vacancy occurring in the Board may be filled by a majority of the remaining directors, though less than a quorum, or by the sole remaining director; but a vacancy created by an increase in the authorized number of directors shall be filled only by election at an annual meeting or a special meeting of Unit Owners called for that purpose. The Voting Members may elect a director at any time to fill any vacancy not filled by the Board.

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

3.7 Compensation. The Board shall receive no compensation for their services unless expressly allowed by the Board at the direction of the Unit Owners other than the Declarant having two-thirds (2/3) of the total votes.

3.8 Executive Committees. The Board may, by resolution adopted by a majority of the number of directors fixed by these Bylaws, designate two or more of its members to constitute an executive committee, which committee, to the extent provided in such resolution, shall have and may exercise all of the authority of the Board in the management of the Condominium.

The Board may, in like manner, create such other committees as it deems necessary and appropriate in aiding the Board to carry out its duties and responsibilities with respect to the management of the Condominium.

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

- (a) Determining the Common Expenses required for the affairs of the Condominium, including, without limitation, the operation and maintenance of the Property.
- (b) Collecting the Common Expenses from the Unit Owners.
- (c) Supervising the operation, care, upkeep and maintenance of the Common Elements.
- (d) Employing and dismissing the personnel necessary for the maintenance and operation of the Common Elements.
- (e) Adopting and amending such reasonable Rules and Regulations as it may deem advisable for the maintenance, conservation and beautification of the Property, and for the health, comfort, safety and general welfare of the owners and occupants of the Property. Written notice of such Rules and Regulations shall be given to all Unit Owners and occupants, and the entire Property shall at all times be maintained subject to such Rules and Regulations.

(f) Opening bank accounts on behalf of the Condominium and designating the signatories required therefor.

(g) Selling, mortgaging, voting the votes appurtenant to or otherwise dealing with Units acquired by the Association, or its designee, corporate or otherwise, on behalf of all Unit Owners, subject to the Declaration and other applicable restrictions, and organizing corporations to act as designees of the Board in acquiring title to Units on behalf of all Unit Owners.

(h) Maintaining and repairing any Unit, if such maintenance or repair is necessary in the discretion of the Board or by operation of applicable restrictions to protect the Common Elements, or any other portion of the Property, and a Unit Owner has failed or refused to perform such maintenance or repair within a reasonable time after written notice of the necessity of said maintenance or repair has been delivered or mailed by the Board to said Unit Owner; provided, that the Board shall levy a specific assessment against such Unit Owner for the costs of said maintenance or repair, including a reasonable amount of supervision.

(i) Entering any Unit when necessary in connection with any maintenance or construction for which the Board is responsible; provided that, except in the event of emergencies, such entry shall be made during reasonable hours with as little inconvenience to the Unit Owner as practical, and any damage caused thereby shall be repaired by the Board, with such expenses being treated as a Common Expense.

(j) Signing all agreements, contracts, deeds, easement agreements, and vouchers for the payment of expenditures and other instruments in such manner as from time to time shall be determined by written resolution of the Board. However, any contracts or leases executed on behalf of the Association prior to the passage of control of the Board to the Association must be terminable by the Association without penalty on not more than ninety (90) days written notice. In the absence of such determination by the Board, such document shall be signed by the treasurer and countersigned by the Chairman.

(k) Obtaining insurance for the Property, including the Units, pursuant to the applicable provisions of the Declaration.

(l) Making or contracting for repairs, additions and improvements to or alterations or restorations 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 condemnation or eminent domain proceeding.

(m) Contracting for all goods, services and insurance, payment for which is to be made from the Common Expense fund.

(n) Instituting, defending, or intervening in litigation or administrative proceedings in the name of or on behalf of the Association or two or more Unit Owners on matters affecting the Condominium.

(o) Borrowing money on behalf of the Condominium when required in connection with the operation, care, upkeep and maintenance of the Common Elements or the acquisition of property, and granting mortgages on and/or security interests in Association owned property; provided, however, that the consent of the Unit Owners of at least two-thirds (2/3rds) the votes represented at a meeting at which a quorum has been attained in accordance with the provisions of these Bylaws shall be required for the borrowing of any sum in excess of \$5,000.

(p) Imposing charges for late payment of assessments and, after notice and an opportunity to be heard, levy reasonable fines for violations of the Declaration, the Bylaws, or rules and regulations established by the Association, including the right to file a lien on a Unit, all in accordance with Sections 47C-3-107 and 47C-3-107A of the Act.

(q) At its discretion, authorizing Unit Owners or other persons to use portions of the Common Elements for private functions and gatherings and imposing reasonable charges for such private use.

(r) Exercising (i) all powers specifically set forth in the Declaration, the Articles of Incorporation, these Bylaws and in the Act, (ii) all powers incidental thereto, and (iii) all other powers of a non-profit North Carolina corporation.

(s) Suspending the right of any Unit Owner to vote or use the Common Elements of the Condominium as long as said Unit Owner is delinquent in the payment of Common Expenses or is otherwise in violation of the Declaration or any exhibits thereto or applicable rules and regulations.

(t) Grant easements for the installation and maintenance of electrical, natural gas, telephone, cable television, water and sewerage utilities and drainage facilities upon, over, under and across the Common Elements without the assent of

the Unit Owners if such easements are requisite for the convenient use and enjoyment of the Condominium as determined in the sole discretion of the Board.

**3.10 Managing Agent.** The Board may engage the services of any person, firm, or corporation to act as managing agent at a compensation established by the Board, to perform such duties and services as the Board shall authorize, other than the powers set forth in subdivisions (a), (e), (g), (h), (i), (p) and (q) of Section 9 of this Article III. Any management agreement for the Condominium shall be terminable by either party without cause and without payment of a termination fee or penalty upon 90 days or less written notice thereof and the terms of such agreement may not exceed one year, renewable by agreement of the parties for successive one year periods. Any management agreement shall be terminable by either party for cause upon the giving of not more than thirty (30) days written notice. When professional management has been previously required, any decision to establish self-management by the Association shall require the prior consent of 67 percent of the Unit Owners.

**3.11 Duties of Declarant.** Within a reasonable time after Unit Owners other than the Declarant elect a majority of the members of the Board (but not more than sixty (60) days after such event), the Declarant shall deliver control of the Association and shall deliver to the Association all property [noted in Subsections (a) through (o)] of the Unit Owners and of the Association held or controlled by the Declarant, including, if applicable:

- (a) The original or a photocopy of the recorded Declaration of Condominium, and all amendments thereto. If a photocopy is provided, the Declarant must certify by affidavit that it is a complete copy of the actual recorded Declaration.
- (b) A copy of the Articles of Incorporation of the Association.
- (c) A copy of the Bylaws of the Association.
- (d) The minute books, including all minutes, and other books and records of the Association.
- (e) Any rules and regulations which have been adopted.
- (f) Resignations of resigning officers and Board members.
- (g) Association funds or the control thereof.

(h) A copy of the plans and specifications utilized in the construction or remodeling of improvements on the Property and the supplying of equipment; and for the construction and installation of all mechanical components servicing the improvements and the Condominium, with a certificate, in affidavit form, of the Declarant or an architect or engineer authorized to practice in North Carolina, that such plans and specifications represent, to the best of their knowledge and belief, the actual plans and specifications utilized in the construction and improvement of the Condominium and the construction and installation of the mechanical components serving the Improvements and the Condominium.

(i) Insurance policies.

(j) Copies of any Certificates of Occupancy which may have been issued for the Condominium.

(k) Any other permits issued by governmental bodies applicable to the Condominium in force or issued within one (1) year prior to the date the Unit Owners take control of the Association.

(l) All written warranties of contractors, subcontractors, suppliers and manufacturers, if any, that are still effective.

(m) A roster of Unit Owners and their addresses and telephone numbers, if known, as shown on the Declarant's records.

(n) Employment contracts or service contracts in which the Association is one of the contracting parties, or service contracts in which the Association or Unit Owners have an obligation or responsibility, directly or indirectly, to pay some or all of the fee or charge of the person or persons performing the service.

(o) All other contracts to which the Association is a party.

## **ARTICLE IV.**

### **Meetings of Directors**

4.1 **Organizational Meeting.** The first meeting of the initial Board shall be held at such time as the Declarant shall determine, but in no event later than one year from the date of incorporation of the Association. The first meeting of a newly elected Board shall be held within fifteen (15) days following the meeting of the Unit Owners at which the

Board was elected. No notice shall be necessary to the newly elected members of the Board in order to legally constitute such meeting, providing that a quorum is present.

4.2 Regular Meeting. A regular meeting of the Board shall be held immediately after, and at the same place as, the annual meeting or substitute annual meeting of the Unit Owners. In addition, the Board may provide by resolution the time and place, either within or without the State of North Carolina, for the holding of a regular meeting of the Board.

4.3 Special Meetings. Special meetings of the Board may be called by or with the request of the chairman, or by any two (2) directors. Such meetings may be held either within or without the State of North Carolina.

4.4 Notice of Meetings. Regular meetings of the Executive Board may be held without notice. The person(s) who called a special meeting of directors shall, at least two (2) days prior to said meeting, give notice thereof by any usual means of communication. Such notice need not specify the purpose for which the meeting is called.

Attendance by a director at a meeting shall constitute a waiver of notice of such meeting except where a member attends the meeting for the express purpose of objecting to the transaction of any business because the meeting was not lawfully called. Meetings of the Board shall be open to all Unit Owners and notices of meetings shall be posted conspicuously for the attention of Unit Owners in advance of the meeting, except for regular meetings of the Board, which may be held without notice.

4.5 Waiver of Notice. Any member of the Board may at any time waive notice of any meeting of the Board in writing, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a director at any meeting of the Board shall constitute a waiver of notice by him of the time and place thereof. If all of the directors are present at any meeting of the Board, no notice shall be required, and any business may be transacted at such meeting.

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

4.7 Manner of Acting. Except as otherwise provided in this section, the act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the Board. A vote of a majority of the number of directors fixed by these Bylaws

shall be required to adopt a resolution constituting an executive committee. Vacancies in the Board may be filled as provided in Section 3.6 of these Bylaws.

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

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

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

4.11 Liability of the Board and Officers. The directors and the officers provided for in Article V hereof shall not be liable to the Unit Owners for any mistake of judgment, negligence or otherwise, except for their own individual willful misconduct or bad faith. The Unit Owners shall indemnify and hold harmless each of the directors and the officers against all contractual liability to others arising out of contracts made by the Board or the officers on behalf of the Condominium, unless any such contract shall have been made in bad faith or contrary to the provisions of the Declaration or these Bylaws. It is intended that the directors or any officer shall have no personal liability with respect to any contract made by them on behalf of the Condominium, except to the extent that they are Unit Owners and have liability as such. It is also intended that the liability of any Unit Owner arising out of any contract made by the Board or the officers, or out of the aforesaid indemnity in favor of the directors or the officers, shall be limited to such proportion of the total liability thereunder as his interest in the Common Elements bears to the interests of all the Unit Owners in the Common Elements. Every agreement made by the Board, by the managing agent or by the officers on behalf of the Condominium shall provide that the members of the Board, the managing agent or the officers, as the case may be, are acting only as agents for the Unit Owners, and shall have no personal liability thereunder.

## ARTICLE V.

### Officers

5.1 Number. The principal officers of the Condominium shall consist of a chairman of the Board, a secretary, a treasurer, and such vice chairmen, assistant secretaries, assistant treasurers and other officers as the Board may from time to time elect. Any two or more offices may be held by the same person, except the offices of chairman and secretary.

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

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

5.3 Removal. Any officer or agent elected or appointed by the Board may be removed by the Board, with or without cause; but such removal shall be without prejudice to the contract rights, if any, of the person so removed.

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

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

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

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

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

5.9 Assistant Secretaries and Treasurers. The assistant secretaries and assistant treasurers, if any, shall, in the absence of the secretary and treasurer, respectively, have all the powers and perform all of the duties of those officers, and they shall in general perform such other duties as shall be assigned to them by the secretary or the treasurer, respectively, or by the chairman of the Board or the Board.

## ARTICLE VI.

### Operation of the Property

6.1 Assessment and Determination of Common Expenses. The Board shall from time to time, and at least annually, prepare a budget for the Condominium, for the purpose of determining the amount of the Assessments to be collected from the Unit Owners in order to provide for the Common Expenses of the Condominium, and allocate and assess such Common Expenses among the Unit Owners, according to their percentage of interest in the Common Elements as set forth in the Declaration, taking into consideration any expected income and any surplus from the prior year's operation. The Common Expenses shall include, without limitation, the expenses, costs and charges incurred in connection with the administration, operation and management of the Condominium Property; the cost

of maintenance, repair, replacement and restoration of the Common Elements, or any part thereof; the cost of all insurance premiums on all policies of insurance required to be or which have been obtained by the Board pursuant to the provisions of the Declaration; such amounts as the Board may deem proper for the convenience, comfort and well-being of the Unit Owners, and for the operation, management and maintenance of the Property, including, without limitation, an amount for working capital of the Condominium, for a general operating reserve, for a reserve fund for replacements, to make up any deficit in the Common Expenses for any prior year, in proper cases, the cost of administration and of maintenance and repair of the Limited Common Elements for payments of assessments owing by the Association to the Deer Park Community Association, Inc. pursuant to the terms of the Master Declaration of Covenants, Conditions and Restrictions for Deer Park duly recorded in the Mecklenburg County Public Registry, and any other expenses lawfully agreed upon.

In establishing a reserve fund for replacements, the Board shall take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board shall then set the required capital contribution in an amount sufficient to permit meeting the projected capital needs of the Association with respect to both amount and timing by equal annual installments over the applicable period.

Within thirty (30) days after adoption by the Board of any proposed budget for the Condominium, the Board shall provide a summary of the budget to all Unit Owners and shall give notice of a date for a meeting of the Unit Owners to consider ratification of the budget not less than fourteen (14) nor more than thirty (30) days after mailing of the summary and notice. A quorum need not be present at the meeting. The budget is ratified unless at the meeting a majority of all the Unit Owners present and entitled to cast a vote reject the budget. In the event the proposed budget is rejected, the periodic budget last ratified shall be continued until such time as the Unit Owners ratify a subsequent budget proposed by the Board.

**6.2 Payment of Assessments.** All Unit Owners shall be obligated to pay (1) General Assessments for Common Expenses assessed by the Board from time to time, and at least quarterly in accordance with the percentage interest allocations set forth in the Declaration; (2) special assessments to be established and collected as provided herein, and (3) specific assessments against any Unit which are established pursuant to the terms of these Bylaws. A late payment charge in an amount to be determined by the Board shall be assessed for any assessment installment not paid within fifteen (15) days of its due date. Any installment not paid within fifteen (15) days of its due date shall be subject to the late



payment charge and shall accrue interest as provided in Section 6.5, and shall constitute a lien on the Unit as provided in Section 6.6 of this Article VI.

No Unit 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, together with his interest in the Common Elements (and Limited Common Elements, if any). A purchaser of a Unit shall be jointly and severally liable with the seller for the payment of Assessments assessed against such Unit prior to the acquisition by the purchaser of such Unit only if the purchaser expressly assumes such obligation in writing; provided, however the lien assessed against such Unit shall remain in full force and effect. Any such purchaser shall be entitled to a statement from the Board setting forth the amount of the unpaid Assessments against the seller, and the Unit conveyed shall not be subject to a lien for any unpaid assessments in excess of the amount shown on the statement. Provided, however, that a First Mortgagee or other purchaser of a Unit at a foreclosure sale of such Unit or a First Mortgagee who takes a deed in lieu of foreclosure shall not be liable for, and such Unit shall not be subject to, a lien for the payment of Common Expenses assessed prior to the foreclosure sale or deed in lieu of foreclosure. Such unpaid Common Expenses shall be deemed to be Common Expenses collectible from all of the Unit Owners, including such purchaser, his successors and assigns.

Upon acquisition of record title to a Unit, each Unit Owner shall contribute to the working capital reserve fund of the Association an amount equal to one-fourth (1/4) of the amount of the Annual Assessment for that Unit as determined by the Board. Such contributions are to be used by the Association solely for the maintenance, repair and replacement of the Common Elements and Declarant is prohibited from using the contributions to defray any of its expenses, reserve contributions or construction costs or to make up any budget deficit during the Declarant Control Period. Such contribution shall not be considered as advanced payment of the General Assessment applicable to the Unit. Declarant shall transfer control of the working capital reserve fund to a segregated fund of the Association upon expiration of the Declarant Control Period.

**6.3 Special Assessments.** The Association may levy Special Assessments for Common Expenses not covered by the General Assessment, applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Elements, including fixtures and personal property related thereto, provided that any such Assessment must be approved by the vote of Owners of Units to which at least two-thirds (2/3) of the votes in the Association are allocated cast in person or proxy at a meeting duly called for this purpose. Such Special Assessments shall be charged to the Units according to their

percentage interests in the Common Elements. In addition, the Board may levy Special Assessments against one or more, but less than all, of the Units to cover repairs or maintenance for which such Unit Owner or Owners are responsible and which they have failed to make, or for repairs or maintenance required of a Unit Owner or Unit Owners which impair the value of the Common Elements or the Unit or Units, or expenses which are incurred in the abatement of or as a result of a violation by a Unit Owner or Owners of the provisions of the Declaration, the Bylaws or the rules, regulations, or for fines levied for said violations, or where the Board has purchased a Unit on behalf of one or more Unit Owners. The period of assessment and manner of payment of such assessment shall be determined by the Board.

6.4 Collection of Assessments. The Board shall determine Common Expenses against the Unit Owners from time to time, at least quarterly, and may, as the Board shall determine, take prompt action to collect any Assessments due from any Unit Owner which remain unpaid for more than fifteen (15) days from their due date.

The Board shall notify First Mortgagees pursuant to the provisions of the Declaration for which any amount assessed pursuant to these Bylaws remains unpaid for more than sixty (60) days from their due date, and in any other case where the Unit Owner of such Unit is in default with respect to the performance of any obligation hereunder for a period in excess of sixty (60) days.

6.5 Default in Payment of Assessment. In the event of default by any Unit Owner in paying to the Board any amounts assessed by the Board, such Unit Owner shall be obligated to pay a late payment charge as established by the Board from time to time, and interest at the rate of twelve percent (12%) on such amounts which remain unpaid thirty (30) days from their due date; together with all expenses, including attorneys' fees (if permitted by law), incurred by the Board in collecting such unpaid sums. If a Unit Owner shall be in default in payment of an installment of an Assessment, the Board may accelerate the remaining installments upon ten (10) days' written notice to such Unit Owner, whereupon the entire unpaid balance of such Assessment shall become due upon the date stated in such notice.

6.6 Lien and Personal Obligation. Each Assessment provided for in this Article, together with late payment charges, interest and expenses, including attorneys' fees (as permitted by law), shall be a charge on and a continuing lien upon the Unit against which the Assessment is made when a notice of such lien has been filed of record in the office of the Clerk of Superior Court of Mecklenburg County, North Carolina, in the manner provided by Article 8, Chapter 44, of the North Carolina General Statutes, provided such notice of lien shall not be recorded until such sums assessed remain unpaid for a period of

fifteen (15) days after the same shall become due. Said notice of lien shall also secure all Assessments against the Unit becoming due thereafter until the lien has been satisfied. Said lien may be foreclosed in the manner as a deed of trust on real property. In addition, each Unit Owner shall be personally liable for any Assessment against his Unit becoming due and payable while he is the Owner of such Unit.

**6.7 Priority of Assessment Lien.** The lien of the Assessments provided for in this Article shall be prior and superior to all other liens except (a) ad valorem taxes, and (b) all sums unpaid on deeds of trust, mortgages or other encumbrances against the Unit prior to the docketing of the Assessment lien. The sale or transfer of any Unit shall not affect the Assessment lien against such Unit. Provided, however, the sale of a Unit pursuant to the foreclosure sale or execution sale instituted by a superior lien holder or conveyance to a First Mortgagee by deed in lieu of foreclosure shall extinguish the inferior Assessment lien against the subject Unit but no such sale or transfer shall relieve each Unit from liability for any Assessments thereafter becoming due or for any future lien in connection therewith. The Association shall share in the excess, if any, realized by the sale of any Unit pursuant to a foreclosure or action instituted by a superior lien holder, to the extent of its lien.

**6.8 Owner's Non-Use.** No Unit Owner may exempt himself from liability for Assessments and his other obligations to the Association by waiver of the use or enjoyment of any portion of the Common Elements or by the abandonment or sale of his Unit.

**6.9 Foreclosure of Liens for Unpaid Assessments.** Following the institution of any action by the Board to foreclose on a Unit because of unpaid Assessments, the Unit Owner shall 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 rental. The Board, acting on behalf of the Association, or on behalf of any one or more individual Unit Owners, if so instructed, shall have the power to purchase such Unit at the foreclosure sale and to acquire, hold, lease, mortgage, vote the votes appurtenant to, convey or otherwise deal with the same, subject, however, to applicable restrictions of record. A suit to recover a money judgment for unpaid Assessments shall be maintainable without foreclosing or waiver of the Assessment lien. Where a First Mortgagee or the purchaser of a Unit obtains title to the Unit as a result of foreclosure of the First Mortgage, such purchaser, its successors and assigns, shall not be liable for the share of the Common Expenses or Assessments by the Board chargeable to such Unit which became due prior to the acquisition of title to such Unit by such purchaser. Such unpaid share of Common Expenses or Assessments shall be deemed to be a Common Expense collectible from all Unit Owners, including such purchaser, its successors and assigns.

6.10 Statement of Common Expenses. The Board shall promptly provide any Unit Owner so requesting the same in writing with a written statement of all unpaid charges due from such Unit Owner, for which it may institute a reasonable charge at its discretion.

6.11 Abatement and Enjoinment of Violations by Unit Owners. The violation of any rule or regulation adopted by the Board 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 these Bylaws: (a) to enter the Unit in which, or as to which, such violation or breach exists, and to make any repairs, and to summarily abate and remove, at the expense of the defaulting Unit Owner, any structure, thing or condition which 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; or, (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 Unit Owner; (c) in any case of flagrant or repeated violation by a Unit Owner, to require such Unit Owner to give sufficient sureties for his future compliance with such Condominium documents; or (d) after notice and an opportunity to be heard, to levy reasonable assessments and fines in accordance with Sections 47C-3-107 and 47C-3-107A of the Act for such violations. The failure of the Board to so act with respect to any such violation or breach shall not be deemed a waiver of the Board's right to act with respect to the same or any other breach or violation.

6.12 Maintenance and Repair.

(a) Each Unit Owner shall maintain, repair and replace, at his sole cost and expense, all portions of his Unit which may become in need thereof, including the components of the heating and air conditioning system within and appurtenant to each Unit, if any, all bathroom and kitchen fixtures and appliances, light fixtures, interior, non-loadbearing walls, doors, floors, ceilings, carpeting, drapes and other items within the Unit, whether structural or non-structural, ordinary or extraordinary (other than maintenance of and repairs to any Common Elements not specifically set forth herein contained therein and not necessitated by the negligence, misuse or neglect of the Unit Owner, his invitees, guests, agents, servants, lessees, employees or contractors). Each Unit Owner shall clean the Limited Common Elements appurtenant to his Unit and replace all light bulbs in fixtures (if any) located in such Limited Common Elements. Each Unit Owner shall be responsible for replacing all heating and air conditioning filters, if any, required in his Unit. Each Unit Owner shall further be responsible for all damages to any and all other Units and/or to the Common Elements which his failure to undertake his maintenance responsibility may engender. All damages to the Common

Elements or other Units intentionally or negligently caused by the Unit Owner, his invitees, guests, agents, servants, lessees, employees or contractors shall be promptly repaired by the Unit Owner at his sole cost and expense; provided that there is excluded from the provisions contained in this section such repairs necessitated by casualties insured against by the Association to the extent the Association receives insurance proceeds for such repairs, the Unit Owner shall be in said instance, required to pay such portion of the costs of such maintenance, repair and replacement as shall exceed the amount of the applicable insurance proceeds. If the Unit Owner does not make those repairs to be made by him within thirty (30) days from written demand by the Board, the same may be repaired by the Board, and the cost thereof shall be assessed against the Unit owned by the subject Unit Owner.

(b) The Association, through its Board, shall maintain, repair and replace all portions of the Common Elements and Limited Common Elements (except as provided in Section 6.12(a) above) which shall require same, whether located inside or outside of the Units (unless necessitated by the negligence, misuse or neglect of a Unit Owner, his invitees, guests, agents, servants, lessees, employees or contractors, in which case such expense shall be charged to such Unit Owner, or unless herein provided to the contrary), and the cost thereof shall be charged to all the Unit Owners as a Common Expense.

6.13 Restrictions on Unit Owners. No Unit Owner shall perform or cause to be performed any maintenance, repair or replacement work which disturbs the rights of the other Unit Owners, jeopardizes the soundness or the safety of the Condominium property, or reduces the value thereof. Each Unit Owner shall cause any work so performed or being performed on the Unit, which, in the sole opinion of the Board, violates the terms of this section, to be immediately corrected, and he shall refrain from recommencing or continuing any such work without written consent of the Board.

6.14 Duty to Report. Each Unit Owner shall promptly report to the Board or its agent any defect or need for repairs or replacement the responsibility for which is that of the Association.

6.15 Additions, Alterations or Improvements by the Association. Whenever in the judgment of the Board the Common Elements shall require additions, alterations or improvements, the Board shall proceed with such additions, alterations or improvements, and shall assess all Unit Owners for the costs thereof, as a Common Expense, subject, however, to the provisions of Sections 6.1 and 6.3 of this Article VI.

6.16 Additions, Alterations or Improvements by Unit Owners. No Unit Owner shall make any addition, alteration or improvement in or to his Unit, which impairs the structural integrity or mechanical systems or lessens the support of any part of the Condominium. No Unit Owner shall make any addition, alteration or improvement which affects the exterior portion or outward appearance of such Unit, without the prior written consent thereto of the Board. The Board shall have the obligation to answer any written request by a Unit Owner for approval of a proposed addition, alteration or improvement in or to such Unit Owner's Unit within thirty (30) days after such request, and failure to do so within the stipulated time shall constitute a consent by the Board to the proposed addition, alteration or improvement.

6.17 Use of Common Elements. A Unit Owner shall not interfere with the use of the Common Elements by the remaining Unit Owners and their guests and invitees.

6.18 Right of Access. A Unit Owner shall grant a right of access to his Unit to the managing agent and/or any other person authorized by the Board or the managing agent, for the purpose of making inspections or for the purpose of correcting any condition originating in his Unit and threatening another Unit or a Common Element, or for the purpose of performing installations, alterations or repairs to the mechanical or electrical services or other Common Elements in his Unit or elsewhere in the Building, or to correct any condition which violates the provisions of any First Mortgage covering another Unit, provided that requests for entry are made in advance, and that any such entry is at a time reasonably convenient to the Unit Owner. In the case of an emergency, such right of entry shall be immediate, whether or not the Unit Owner is present at the time such request for entry is made, or such entry is at a time reasonably convenient to the Unit Owner.

6.19 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 Unit Owner as and when billed according to the extent of such Unit Owner's use or, at the option of the Board, such may be paid by the Association and assessed against the Units as a Common Expense.

6.20 Rules of Conduct. Rules and regulations concerning the use of the Units and the Common Elements may be promulgated and amended by the Board. Such Rules and Regulations shall be equally applicable to all Unit Owners similarly situated and shall be uniform in their application and effect. Copies of such Rules and Regulations shall be furnished by the Board to each Unit Owner prior to their effective date.

6.21 Remedies Cumulative. All rights, remedies and privileges granted to the Association or the Owner or Owners of a Unit pursuant to any terms, provisions,

covenants or condition of the Declaration or other above-mentioned documents, shall be cumulative, and the exercise of any one or more shall not constitute an election of remedies, nor shall it preclude the party thus exercising the same from exercising such other and additional rights, remedies or privileges as may be available to such party at law or in equity.

**6.22 Nonwaiver of Remedies.**

(a) The failure of the Association or any Unit Owner to enforce any right, provision, covenant or condition which may be granted by the Declaration or the other above-mentioned documents shall not constitute a waiver of the right of the Association or the Unit Owner to enforce such right, provision, covenant or condition in the future.

(b) The failure of Declarant to enforce any right, privilege, covenant or condition which may be granted to it by the Declaration or other above-mentioned documents shall not constitute a waiver of the right of Declarant to thereafter enforce such right, provision, covenant or condition in the future.

(c) The failure of a First Mortgagee to enforce any right, provision, privilege, covenant or condition which may be granted to it or them by the Declaration or other above-mentioned documents, shall not constitute a waiver of the right of said party or parties to thereafter enforce such right, privilege, covenant or condition in the future.

**ARTICLE VII.**

**Financial Records and Statements**

7.1 Reports. The Board shall keep detailed records of the actions of the Board and the managing agent, minutes of the meetings of the Board, minutes of the meetings of the Association, and financing records and books of account of the Condominium, including a chronological listing of receipts and expenditures, as well as a separate account for each Unit, which, among other things, shall contain the amount of each Assessment against each Unit, the date when due, the amounts paid and the balance remaining unpaid. The financial records and books of account shall be available for examination by all Unit Owners, their duly authorized agents or attorneys, and all lien holders, their attorneys and authorized agents, at convenient hours that shall be set and announced for general knowledge. A written annual summary of all receipts and expenditures of the Condominium shall be rendered by the Board to all Unit Owners on or before the 15th day

of the third month following the close of each fiscal year. In addition, an annual report of the receipts and expenditures of the Condominium shall be rendered by the Board to all Unit Owners and to all First Mortgagees who have requested the same, promptly after the end of each fiscal year.

**7.2 Common Expense Funds.** All sums collected by the Association, either as Assessments for the Common Expenses or Special Assessments may be commingled in a single fund, but they shall be held for the Owners for the purposes for which they are paid, and shall, subject to the right of withdrawal or refund provided herein, be credited to accounts from which shall be paid the charges for which the Assessments are made. Such accounts shall include the following, or such other and further accounts as the Board from time to time shall determine:

- (a) General Common Expense Account--to which shall be credited collection of that portion of the Common Expense Assessments received for defraying the costs of operating the Condominium on a day-to-day basis, including normal maintenance and repairs, insurance and related charges;
- (b) Capital Reserve Account--to which shall be credited, all sums collected which are to be allocated for capital expenditures for the reconstruction, repair and replacement of Common Elements at a future date.

All sums collected by the Association, either as Assessments of the Common Expenses or Special Assessments, during any fiscal year and allocated to the General Common Expense Account or to any other account from which non-capital expenditures may be made, in excess of expenditures during such fiscal year made from or chargeable to said account or accounts shall be deemed contributions to capital at the end of said fiscal year, and shall be transferred to the Capital Reserve Account. All amounts credited to said Capital Reserve Account shall be contributions to capital, and shall be held in trust by the Association for future expenditures of a capital nature, and shall serve to reduce the Assessments required for said capital expenditures.

**7.3 Records.** All books of account and financial records shall be kept in accordance with good and acceptable accounting practices. The Board may, in its discretion, have a certified public accountant prepared annual financial statement made available for inspection by all Unit Owners and all First Mortgagees on or before the 15th day of the second month following the close of each fiscal year.



## ARTICLE VIII.

### Amendments to Bylaws

8.1 Notice. Notice of the subject matter of a proposed amendment shall be included in the notice of a meeting at which a proposed amendment is to be considered.

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

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

8.4 Execution and Recording. A copy of each amendment shall be attached to a certificate certifying that the amendment was duly adopted as an amendment to the Declaration and Bylaws, which certificate shall be executed by the Chairman or Vice Chairman and attested by the Secretary or Assistant Secretary of the Association with the formalities of a deed, or by the Declarant alone if the amendment has been adopted consistent with the provisions of the Declaration allowing such action by the Declarant. The amendment shall be effective when the certificate and a copy of the amendment is recorded in the Register of Deeds for Mecklenburg County, North Carolina.

## ARTICLE IX.

### Condemnation

9.1 General. Whenever all or any part of the Condominium Property shall be taken over by any authority having the power of condemnation or eminent domain, each Unit Owner and all First Mortgagees shall be entitled to notice thereof and to participate in the proceedings incident thereto unless otherwise prohibited by law. The award made

for such taking shall be payable to the Association. Unless otherwise provided by law at the time of such taking, any award made therefor shall be disbursed by the Association as provided in this Article IX.

**9.2 Common Elements.** If the taking is confined to the Common Elements (general or limited) on which improvements shall have been constructed, and at least ninety (90%) per cent of the total vote of the members of the Association entitled to vote shall vote within sixty (60) days after such taking to replace the improvements, or any part thereof, on the remaining land included in the Common Elements (general or limited) and according to the plans therefor first approved by the Association, then the Board shall arrange for such replacement and the Association shall disburse the proceeds of such award in the same manner as they are required to disburse insurance proceeds where damage or destruction to the Common Elements (general or limited) is to be repaired or reconstructed as provided for in the Declaration or herein; subject, however, to the right hereby reserved to the Association by a majority vote of the Voting Members, to provide for the disbursement by the Association of the remaining proceeds held by it (after the payment of all costs incident to such replacement) to the Unit Owners or any one or more of them or to their First Mortgagees as their interests may appear in amounts disproportionate to their percentages of undivided interest in the Common Elements (general or limited) established herein, which disproportionate amounts shall correspond with the disproportionate damage sustained by the Unit Owners or any one or more of them as the Association may determine. If at least ninety (90%) per cent of the Voting Members shall not decide within sixty (60) days after such taking to replace said improvements or if the taking is confined to the Common Elements (general or limited) on which no improvements shall have been constructed, then the Association shall disburse the proceeds of the award in the manner hereinabove provided for the disbursement of the remaining proceeds of an award after payment of all costs incident to replacement of improvements taken has been made, including the right reserved to the Association to provide for the disbursement of the remaining proceeds held by it to the Unit Owners in disproportionate amounts. All disbursements made under this Section 9.2 shall be in strict compliance with Section 47C-1-107 of the Act.

**9.3 Units.** If the taking includes one or more Units, or any part or parts thereof, whether or not there is included in the taking any part of the Common Elements (limited or general), then the award shall be disbursed and all related matters shall be handled pursuant to and in accordance with the consent of all Unit Owners and First Mortgagees affected and the Executive Board of the Association thereafter, expressed in a duly recorded amendment to the Declaration of Condominium, all in accordance with Section 47C-1-107 of the Act.

9.4 Termination. The Executive Board shall call a meeting of all Unit Owners at least forty-five (45) days prior to any final taking by the condemning authority to determine the action to be taken pursuant to Sections 9.2 and 9.3 above. Except in the event of a taking of all the Units by eminent domain, in the event the condemnation involves more than ten per cent (10%) of the value of the Common Elements (limited or general) and/or more than fifteen per cent (15%) of the total value of all Units, the Condominium may be terminated at such meeting by written approval of not less than ninety per cent (90%) of the Voting Members. Any termination agreement shall be in strict compliance with 47C-2-118 of the Act.

## ARTICLE X.

### Miscellaneous

10.1 Ad Valorem Taxes. Each Unit shall be deemed to be a separate parcel and shall be separately assessed and taxed. Each Unit Owner shall be liable solely for the amount of tax assessed against his Unit and shall not be affected by the consequences resulting from the tax delinquency of other Unit Owners. All tangible personal property owned by the Association in connection with the maintenance, upkeep and repair of the Common Elements shall be listed for said taxes in the name of and paid by the Association. Each Unit Owner is also responsible for his pro rata share of taxes assessed on his portion of the Common Elements, if any.

10.2 Notification to Mortgagees. Any Owner who mortgages his Unit shall notify the Association of the name and address of the Mortgagee, and the Association shall maintain such information in a book entitled "Mortgagees of Condominiums." In addition to any other notification provided for in the Declaration of these Bylaws, the Association may, at the written request of a Mortgagee of any such Unit, report any unpaid assessments due from the Owner of such Unit. The Association shall notify each Mortgagee appearing in said book the name of each company insuring the Condominium Property under the master policy and the amounts of the coverages thereunder.

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

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

10.5 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.

10.6 Principal Office--Registered Office. The initial principal office and registered office of the Association shall be located at 18147 W. Catawba Avenue, Cornelius, North Carolina 28031.

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

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

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

10.10 Definitions. The Definitions contained in Article I of the Declaration are incorporated herein by this reference, unless the context clearly indicates a different meaning therefor.

\*\*\*\*\*

#### CERTIFICATION

I, the undersigned, do hereby certify:

THAT I am the duly elected and acting secretary of Boardwalk Office Association, Inc., a North Carolina non-profit corporation, and

THAT the foregoing Bylaws constitute the original Bylaws of said Association, as duly adopted at a meeting of the initial Executive Board thereof held on the \_\_\_\_ day of \_\_\_\_\_, 2002.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Association, this \_\_\_\_ day of \_\_\_\_\_, 2002.

\_\_\_\_\_  
Secretary

**EXHIBIT C**

To Declaration

**Plans**

The Plans for BOARDWALK OFFICE CONDOMINIUM, <sup>Amse1</sup> prepared by David F. Fulman, Registered Architect, were attached to this Declaration at the time it was filed for record, and are duly filed in the Office of the Register of Deeds for Mecklenburg County, North Carolina in Condominium Unit Ownership File No. 590, reference to which is hereby made, and said Plans are incorporated herein by reference as though fully set out herein.

**EXHIBIT D**

To Declaration

Plat

The plat of survey for BOARDWALK OFFICE CONDOMINIUM PHASE I dated December 12, 2001, prepared by James H. Mauney, N.C.P.L.S., entitled "SURVEY FOR KENNERLY DEVELOPMENT SERVICES, LLC AS-BUILT SURVEY OF BOARDWALK OFFICE CONDOMINIUM PHASE I" and consisting of one (1) sheet, which was attached to this Declaration at the time it was filed for record, is duly filed in the Office of the Register of Deeds for Mecklenburg County, North Carolina in Condominium Unit Ownership File No. 590. Said survey is incorporated herein by reference as though fully set out herein.

## **EXHIBIT E**

### To Declaration

<u>Unit Number</u>	<u>Unit Type</u>	<u>Unit Area (Square Ft)</u>	<u>Percentage of Undivided Interest in Common Elements</u>	<u>Percentage of Undivided Interest in Common Expenses</u>
580	Office	1207	12.5	12.5
582	Office	1207	12.5	12.5
584	Office	1207	12.5	12.5
586	Office	1207	12.5	12.5
705	Office	1207	12.5	12.5
707	Office	1207	12.5	12.5
709	Office	1207	12.5	12.5
711	Office	1207	12.5	12.5
		9656	100%	100%

## **EXHIBIT F**

### **To Declaration**

#### **Liens, Defects and Encumbrances**

1. Terms, conditions and restrictions of this Declaration, the Bylaws, the Plans and the Rules and Regulations, as each may be amended from time to time.
2. Restrictions, conditions and easements of public record.
3. Unrecorded easements, discrepancies or conflicts in boundary lines, shortages in area and encroachments which an accurate and complete survey would disclose, including easements and encroachments, if any, shown on the Plat and Plans.
4. Easements and restrictions described in Articles IV and V of this Declaration including, but not limited to,
  - (i) easements in favor of the appropriate utility companies to serve the Property and all appurtenances thereto;
  - (ii) easements in favor of the Association and to such persons as authorized by the Association for utility installations within the walls of the Units;
  - (iii) an easement in favor of the Declarant, the Association, appropriate utility, sewage disposal and service companies and governmental agencies and authorities for such service lines and equipment as may be necessary or desirable over the Units and Common Elements to serve any portion of the Property;
  - (iv) easements reserved by the Declarant through the Common Elements as reasonably necessary for discharging its obligations under this Declaration and completion of construction of the improvements in the Condominium;
  - (v) easements reserved by the Declarant to maintain sales offices or models in the Condominium and to place advertising signs for the Condominium on the Property;



(vi) an easement in favor of the Association, a Unit Owner, the Executive Board or any other person as permitted under the Declaration and Bylaws to inspect, maintain, repair and replace the Common Elements;

(vii) an easement for the encroachment of improvements upon any Unit or the Common Elements; and

(viii) the right of the Executive Board of the Association to grant easements encumbering the Common Elements for utility purposes and other purposes the Board deems for the benefit of the Condominium.

(ix) easements reserved to the Declarant and the Association over the Common Elements for the construction, installation, maintenance and replacement of signage and entrance monumentation, including lighting and landscaping, along Southeast Drive.

5. Terms and conditions of that certain Master Declaration of Covenants, Conditions and Restrictions for Deer Park recorded in Book 11338 at Page 402 in the Mecklenburg County Public Registry, as may be amended from time to time.

6. Sanitary sewer and water line right of way to the City of Charlotte recorded in Book 6301 at page 283 in the Mecklenburg County Public Registry.

7. Duke Power Company transmission line right of way recorded in Book 3087 at Page 297 and Book 3344 at Page 569 in the Mecklenburg County Public Registry.

8. Easement to Bell South Telecommunications, Inc. recorded in Book 717 at Page 423 in the Mecklenburg County Public Registry.

9. General utility easements of record.

**EXHIBIT G**

To Declaration

**ARTICLES OF INCORPORATION**  
**OF**  
**BOARDWALK OFFICE ASSOCIATION, INC.**

I, the undersigned, being a natural person of full age, make these Articles of Incorporation for the purpose of forming a nonprofit corporation pursuant to the provisions of Chapter 55A of the North Carolina General Statutes.

**ARTICLE I**

**NAME**

The name of the corporation is Boardwalk Office Association, Inc.

**ARTICLE II**

**DURATION**

The period of duration of the corporation shall be perpetual.

**ARTICLE III**

**PURPOSES**

The purpose for which the corporation is organized are:

(a) To provide for the management, maintenance, preservation, administration and operation of Boardwalk Office Condominium, a condominium organized pursuant to Chapter 47C of the North Carolina General Statutes, the North Carolina Condominium Act, as set forth in that certain Declaration of Condominium to be recorded in the Office of the Register of Deeds for Mecklenburg County, North Carolina (the "Declaration").

(b) To promote the health, safety and welfare of the "Unit Owners" (as defined in the Declaration) and residents within the jurisdiction of this corporation.

- (c) To engage in any and all lawful activities incidental to the foregoing purposes, except as restricted herein.

## ARTICLE IV

### POWERS

In order to carry out the purposes for which this corporation has been formed, the corporation shall have all of the powers set forth in Chapter 55A of the North Carolina General Statutes, including, but not by way of limitation, the power:

- (a) To exercise all of the privileges and powers and to perform all of the duties and obligations of the corporation as set forth in the Declaration and the Bylaws attached thereto;
- (b) To fix, levy, collect and enforce payment of (by any lawful means) all charges or assessments pursuant to the terms of the Declaration and Chapter 47C of the North Carolina General Statutes, the North Carolina Condominium Act; to pay all expenses in connection therewith and all office and other expenses incident to the conduct of the business of the corporation, including all licenses, taxes or governmental charges levied or imposed against the property of the corporation;
- (c) To acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for public use or otherwise dispose of real or personal property in connection with the affairs of the corporation;
- (d) To borrow money, and, in accordance with the terms of the Declaration and the North Carolina Condominium Act, to mortgage, pledge, grant a deed of trust or hypothecate any or all of the Common Elements (as defined in the Declaration) as security for money borrowed or debts incurred, subject to the property rights of the members of the corporation as provided in the Declaration and the Bylaws attached thereto;
- (e) To dedicate, sell or transfer all of any part of the Common Elements to any public agency, authority or utility or other entity for such purposes and subject to such conditions as may be agreed upon by the members of the corporation as provided in the Declaration and the Bylaws attached thereto.

In addition, the corporation shall have all of the powers set forth in North Carolina General Statutes Section 47C-3-102.

## ARTICLE V

### NO PECUNIARY GAIN

This corporation is a nonprofit corporation, and no part of the net earnings (if any) of the corporation shall inure to the pecuniary benefit of its Members (as defined hereinbelow), officers, or directors.

## ARTICLE VI

### MEMBERSHIP AND VOTING RIGHTS

Membership in the corporation ("Membership") shall be limited to the Owners of Units (as defined in the Declaration) in Boardwalk Office Condominium, and every Owner of a Unit shall automatically be a member (a "Member") of the corporation. Members shall not include persons or entities who hold an interest in a Unit merely as security for the payment or performance of an obligation. Membership in the corporation shall be appurtenant to and may not be separated from Unit ownership.

Each Member shall be entitled to cast one (1) vote for each Unit owned by such Member. In the event 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, but the votes 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 votes 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 votes which 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 that there be no "splitting" of votes that may be cast by any Member or Members.

## ARTICLE VII

### DISSOLUTION

The Association may be dissolved with the assent given in writing and signed by not less than two-thirds (2/3) of each class of voting members. Upon dissolution of the Association, other than incident to a merger or consolidation, the assets of the Association shall be dedicated to an appropriate public agency to be used for purposes similar to those for which this Association was created. In the event that such dedication is refused acceptance, such assets shall be granted, conveyed and assigned to any non-profit corporation, association, trust or other organization to be devoted to such similar purposes.

## ARTICLE VIII

### REGISTERED AGENT AND OFFICE

The address of the initial registered office in the State of North Carolina is 18147 W. Catawba Avenue, Cornelius, Mecklenburg County, North Carolina, 28031, and the name of the initial registered agent at such address is J. Christopher Kennerly.

## ARTICLE IX

### EXECUTIVE BOARD OF DIRECTORS

The affairs of the corporation shall be managed by an Executive Board of no less than three (3) members who need not be Members of the corporation. The number of members of the Executive Board may be changed from time to time in accordance with the Bylaws of the corporation. The number of persons constituting the initial Executive Board is three (3), and the names and addresses of the persons who are to act as initial directors of the Executive Board until the first annual meeting of the Members or until their successors are elected and qualified are:

<u>Name</u>	<u>Address</u>
Timothy W. Gilbert	201 South Tryon Street, Suite 1200 Charlotte, N.C. 28202
J. Christopher Kennerly	18147 W. Catawba Avenue Cornelius, N.C. 28031

Oscar B. Hawkins, III

18147 West Catawba Avenue  
Cornelius, N.C. 28031

The Members of the corporation shall elect members to serve on the Executive Board at each annual meeting, such members of the Executive Board to serve for a term or the terms as set forth in the Bylaws. Members of the Executive Board may succeed themselves in office.

#### ARTICLE X

#### AMENDMENTS

Amendments of these Articles of Incorporation shall require the assent of the Members entitled to exercise at least three-fourths (3/4ths) of the entire vote of the Membership. Provided, however, no amendment to these Articles of Incorporation shall be adopted or passed which shall impair or prejudice the rights of Declarant provided for in these Articles of Incorporation, in the Declaration, or in the Bylaws, without the consent of Declarant.

#### ARTICLE XI

#### INCORPORATOR

The name and address of the incorporator is: Timothy W. Gilbert, 201 S. Tryon Street, Suite 1200, Charlotte, North Carolina 28202.

IN WITNESS WHEREOF, I, the undersigned incorporator, have hereunto set my hand and seal, this \_\_\_\_ day of \_\_\_\_\_, 2002.

\_\_\_\_\_(SEAL)  
Timothy W. Gilbert

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

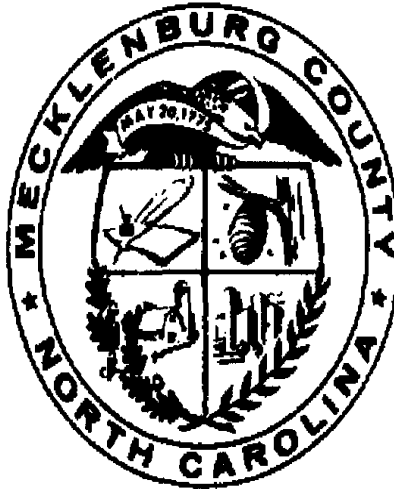
This is to certify that on this \_\_\_\_ day of \_\_\_\_\_, 2002 before me, \_\_\_\_\_, a Notary Public of Mecklenburg County, North Carolina, personally appeared Timothy W. Gilbert, who executed the foregoing Articles of Incorporation of Boardwalk Office Association, Inc., and, after having first made known to him the contents thereof, he did acknowledge that he signed, sealed and delivered the same as his voluntary act and deed for the uses and purposes therein expressed.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, this \_\_\_\_ day of \_\_\_\_\_, 2002.

\_\_\_\_\_  
Notary Public

My commission expires:

\_\_\_\_\_  
(Notarial Seal)



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

\*\*\*\*\*  
Filed For Registration: 01/22/2002 11:32 AM

Book: RE 13161 Page: 1-80

Document No.: 2002011479

DEC/U 80 PGS \$248.00

Recorder: JESSIE YOUNG

\*\*\*\*\*  
State of North Carolina, County of Mecklenburg

The foregoing certificate of CHERYL ANN TERRELL, ELIZABETH B. FALKNER Notaries are certified to be correct. This 22 ND of January 2002

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



2002011479