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AMENDED AND RESTATED DECLARATION
OF
BRAWLEY COMMERCE PARK CONDOMINIUM

*Pursuant to the Laws of the
State of North Carolina*

✓ Prepared by and Return to:

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NORTH CAROLINA

IREDELL COUNTY

AMENDED AND RESTATED DECLARATION OF CONDOMINIUM
FOR
BRAWLEY COMMERCE PARK CONDOMINIUM

This AMENDED AND RESTATED DECLARATION OF CONDOMINIUM {the "Declaration"} is made this 30th day of March, 2006, by **TOP PROPERTIES, LLC**, a North Carolina limited liability company with its principal office and place of business in Iredell County, North Carolina (the "Declarant"); and joined by **Brawley Commerce Condominium Owners Association, Inc.**, a North Carolina non-profit corporation (the "Association"); **Ashtin Properties, LLC**, a North Carolina limited liability company with its principal office and place of business in Iredell County, North Carolina ("Ashtin"); **Sierra Asset Management, LLC**, a North Carolina limited liability company with its principal office and place of business in Iredell County, North Carolina ("Sierra"); **Steven Harwell** and wife, **Tracy Harwell**, citizens and residents of Iredell County, North Carolina ("Harwell"); **A&T Real Estate, LLC**, a North Carolina limited liability company ("A&T"); and **FIRST CHARTER BANK**, a North Carolina state banking association ("Mortgagee") (Ashtin, Sierra, Harwell and A&T being all of the owners of Units in the Condominium as of the date of this Declaration, and Mortgagee being the holder of the deeds of trust of record regarding said Units as of the date of this Declaration), pursuant to Chapter 47C of the North Carolina General Statutes entitled the "North Carolina Condominium Act."

WITNESSETH:

WHEREAS, Declarant heretofore owned certain real property located in the Town of Mooresville, Coddle Creek Township, Iredell County, North Carolina known as Lot 2 of Brawley Commerce Park, as more particularly described in Plat Book 40, page 42, upon which Declarant caused to be developed and constructed a building and related improvements which were platted, planned and declared to be a condominium under the North Carolina Condominium Act as set forth in Chapter 47C of the North Carolina General Statutes (the "Act"), via the execution and recording of a certain Declaration of Condominium recorded at Book 1569, page 308, *et seq.* (the "Original Declaration") and a certain map recorded at Condominium Book 2, page 39 in the Office of the Iredell County Register of Deeds (the "Original Map");

WHEREAS, Declarant has heretofore caused the Original Declaration and the Original Map to be amended in certain respects as shown and described in that certain Amendment to Declaration of Condominium recorded at Book 1630, page 794 *et seq.* (the "Amended Declaration") and a certain amended map recorded at Condominium Book 2, page 55 in the Office of the Iredell County Register of Deeds (the "Amended Map");

WHEREAS, Declarant has heretofore conveyed several of the Units in the Condominium, and Ashtin, Sierra, Harwell, and A&T are all of the owners, other than Declarant, of Units in the Condominium as of the date of the entry of this amended and restated Declaration, and execute this Declaration to state their joinder in and consent to all of the matters and things stated herein;

WHEREAS, Mortgagee is the sole mortgagee regarding Units in the Condominium as of the date of execution of this amended and restated Declaration, as reflected upon the records of the Iredell County Register of Deeds, and joins and consents to this amended and restated Declaration as mandated by Article XIV and Article XVI of the Original Declaration;

WHEREAS, the Association is the entity organized under the North Carolina Non-profit Corporation Act and empowered by the Declaration as the owners' association for the Condominium in accordance with the Act, and joins this Amendment per the requirements of Article XIV of the Declaration;

WHEREAS, the Original Declaration inadvertently omitted certain special Declarant rights (as defined by the Act), including, but not limited to, Declarant's intended reservation of the ability (but not the obligation) to add other adjacent real property owned by Declarant to the Condominium at a future date, and contained other inadvertent clerical errors and omissions which Declarant, the Association, the current Unit Owners, and Mortgagee now desire to correct.

WHEREAS, therefore, the Declarant, the Association, the current Unit Owners, and Mortgagee desire now to enter into this amended and restated Declaration in order to consolidate into this amended and restated Declaration all of the various amendments and corrections which they mutually desire, and to make clear that all of their respective rights and obligations shall henceforth be governed and controlled by the contents of this amended and restated Declaration and that the Original Declaration and the Amended Declaration are superseded hereby;

WHEREAS, Declarant is the owner in fee simple of certain real estate situated in the Town of Mooresville, Coddle Creek Township, County of Iredell, State of North Carolina, legally described on Exhibit A, 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 thereto.

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

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

ARTICLE I Definitions

As used herein, the following words and terms shall have the following meanings; and for any terms not defined hereinbelow, reference is hereby made to N.C. Gen. Stat. §47C-1-103.

1.1. **Act.** The North Carolina Condominium Act, Chapter 47C, North Carolina General Statutes, as same may be amended from time to time.

1.2. **Additional Real Estate.** The real estate described in 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. **Association.** Brawley Commerce Condominium Owner's Association, Inc., a nonprofit corporation organized under the Act and Chapter 55A of the North Carolina General Statutes.

1.4. **Board.** The Executive Board of the Association.

1.5. **Bylaws.** The Bylaws of the Association which are attached to the Declaration as Exhibit B and incorporated herein by this reference.

1.6. **Common Elements.** All portions of the Condominium except the Units. Limited Common Elements are Common Elements. The Common Elements shall consist of all of the Property (including all parts of the buildings constructed on the Property other than the Units) including, but not limited to, the following: (a) the land; (b) the foundation, load bearing walls, columns, girders, beams, supports and other structural members; (c) the roof, exterior building walls and all walls and partitioning separating Units (except for those portions of any such walls and partitions which are included within a Unit); (d) all stairways, landings and hallways; (e) the elevators and all equipment and apparatuses appurtenant thereto; (f) all parking and driveway areas, sidewalks and common walkways; (g) all installations, apparatus and equipment designed and intended for providing common services to the Property such as telephone, electricity, cable television, internet service, gas, water, hot water heater, plumbing, sewer, and trash removal and all apparatus and equipment used in connection therewith including, but not limited to, all tanks, motors, pumps, fans, cables, antennas, conduits, flues, ducts, plumbing, wiring and storm drainage facilities except for such apparatus and equipment as are included as part of a Unit; (h) all yards,

grass, trees, shrubs and landscaping; (i) easements for access, maintenance, repair, reconstruction and replacement of the Common Elements and, where applicable, Limited Common Elements, and for all other services necessary or convenient to the existence, safety and use of the Condominium Property.

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

1.8. **Condominium.** The condominium created by this Declaration, to be known as "Brawley Commerce Park Condominium."

1.9. **Declarant.** (i) TOP Properties, LLC, its successors and assigns (not to include Unit Owners to which Declarant conveys individual Units in the Condominium) and (ii) any person who succeeds to any Special Declarant Rights pursuant to § 47C-3-104 of the Act.

1.10. **Declarant Control Period.** The period commencing on the date hereof and continuing until the earlier of (i) the date seven (7) years after the date of the first conveyance of a Unit to a Unit Owner other than a Declarant; 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 eighty percent (80%) of the Units to Unit Owners other than Declarant.

1.11. **Declaration.** This Amended and Restated Declaration of Condominium for Brawley Commerce Park Condominium

1.12. **Layout of Unit.** The layout of the Condominium Units recorded with and, by the Act, made a part of this Declaration as the same may hereafter be amended, all as shown on the Map(s) of the Condominium recorded upon the records of the Iredell County, North Carolina Register of Deeds.

1.13. **Limited Common Elements.** Those portions of the Common Elements, if any, allocated by operation of North Carolina General Statutes § 47C-2-102(2) and (4) of the Act for the exclusive use of one but fewer than all of the Units.

1.14. **Map(s).** The recorded plats of the Condominium, as any of same may be amended from time to time, including, but not limited to, that certain revised plat entitled "Revised Record Plat of 107 BRAWLEY COMMERCE PARK CONDOMINIUM" recorded at Condominium Book 2, Page 55 of the Iredell County Registry and any plat as may be recorded upon the Condominium records in the Iredell County Registry as concerns the Additional Real Estate.

1.15. **Mortgagee.** Mortgagee(s) shall mean the owner(s) and holder(s) of the promissory note(s) secured by first or subordinate lien deed(s) of trust and/or mortgage(s) on the Unit(s).

1.16. **Occupant.** Any person or persons in possession of a Unit, including Unit Owners, lessees, guests and invitee of such lessees.

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

1.18. **Property.** The real property described on Exhibit A, and the real estate described on Exhibit A-1 if added in whole or in part by Declarant pursuant hereto, 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 property.

1.19. **Security for an Obligation.** The vendor's interest in a contract for deed, mortgagee's interest in a mortgage, trustee's interest in a deed of trust, purchaser's interest under a sheriff's certificate of sale during the period of redemption or the holder's interest in a lien.

1.20. **Security Holder.** Any person owning a security instrument wherein any interest in a Unit is pledged as collateral or security for an obligation.

1.21. **Special Declarant Rights.** The rights reserved herein and in the Bylaws for the benefit of Declarant as follows: to complete the improvements indicated on the Map(s); to maintain

sales offices, management offices, models and signs advertising the Condominium; to create, grant and use easements through the Common Elements for the purpose of making improvements within the Condominium and the Additional Real Estate, such easements including, but not being limited to, drainage and utility easements as shown on the recorded Map(s), and easements (which may, in Declarant's sole discretion, be in the nature of cross-easements) for ingress, egress, regress, parking, construction and for gaining access to adjacent real property which may or may not be the site of the Additional Real Estate, for future development of the Condominium, said easements being for the use of the Declarant, its successors and assigns; to elect, appoint or remove members of the Board during the Declarant Control Period; to add the Additional Real Estate to the Condominium; to make the Condominium part of a larger condominium, and to subdivide or convert Units owned by Declarant.

1.22. **Unit.** A physical portion of the Condominium designated for separate ownership or occupancy, whether or not contained solely or partially within a building, together with its percentage of undivided interest in the Common Elements as set forth on Exhibit B. Such Unit is designated, delineated and laid out on the recorded Map(s).

1.23. **Unit Boundaries.** The boundaries of each Unit, both as to vertical and horizontal planes, as shown on the record Map(s), are the undecorated surfaces of the perimeter walls, exterior doors and exterior windows facing the interior of the Unit, the ceiling of the Unit, and the topmost surfaces of the sub-flooring, and including the decoration on all such interior and topmost surfaces including, without limitation, all paneling, tiles, wallpaper, paint, finished flooring and any other materials constituting any part of the decorated surfaces thereof and also includes all spaces, interior partitions and other fixtures and improvements within such boundaries. There shall be included within each Unit: (a) all entrance doors to each Unit; (b) all windows and panes in the Unit; (c) the interior ceilings and flooring; (d) all interior partitioning, fixtures and other improvements (including, without limitation, sinks, faucets, toilets and other plumbing facilities and built-in appliances) located within each Unit; (e) any flues, ducts, conduits, wires and other apparatus located totally within such Unit and serving such Unit or located partially within and partially outside of the boundaries of such Unit but serving only that Unit. There shall be excluded from any Unit any portion of any flues, ducts, conduits, wires or other apparatus located within a Unit but serving more than one Unit or serving the Common Elements. There shall also be excluded from any Unit any load bearing columns or weight supporting interior walls as shown on the Plans.

1.24. **Unit Owner.** The person or persons, including the Declarant, owning a Unit in fee simple, including contract-for-deed purchasers of a Unit, but excluding contract-for-deed purchasers of a Unit who are Security Holders and also excluding all other Security Holders

ARTICLE II

Submission of Property to the Act

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

2.2. **Name.** The Property shall hereafter be known as the Brawley Commerce Park Condominium.

2.3. **Division of Property into Separately Owned Units.** Declarant, pursuant to the Act and to establish a plan of condominium ownership for the Condominium, does hereby divide the Property into Units as depicted on the Maps and described herein and does hereby designate all such Units for separate ownership, subject, however, to the provisions of Section 2.4 hereof. Every Unit, together with its allocated interest in the Common Elements, shall, and it is hereby declared to, be and constitute for all purposes a separate parcel of real property. The Owner of each Unit shall be entitled to the exclusive fee simple ownership and possession of his Unit subject only to covenants, conditions, restrictions, easements, uses, limitations, obligations, rules and regulations set forth in or adopted pursuant to the Declaration, the Bylaws, and the recorded Map(s) of the Condominium, or otherwise appearing of record.

2.4. **Alterations of Units.** Subject to the provisions of the Bylaws, a Unit may be altered pursuant to the provisions of N. C. Gen. Stat. § 47C-2-113(a) and (b) except that no Unit shall be altered except by Declarant to reduce its size to less than Four Hundred (400) square feet of floor

space; Units may be temporarily altered to permit the leasing of portions of a Unit with such leased Units being no less than Four Hundred (400) square feet of floor space, and such subdivision for lease purposes shall not be deemed a subdivision of a Unit within the meaning of N. C. Gen. Stat. § 47C-2-113. It is expressly provided that Units may be combined to increase the size of a Unit into no larger than Four Thousand (4,000) square feet of floor space.

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

2.6. **Unit Allocations.** The allocations to each Unit of a percentage of undivided interest in the Common Elements, of votes in the Association, and of a percentage of the Common Expenses, are as stated on Exhibit B. The allocation of undivided interests in the Common Elements and of the Common Expenses is according to the floor space area of each Unit as a percentage of the total floor space area of all Units. The votes in the Association are equally allocated to all Units, and each Unit shall be entitled to one vote per Unit.

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

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, (ii) imposing conditions or requirements upon a condominium which are not imposed upon substantially similar developments under a different form of ownership. This statement is made pursuant to N.C. Gen. Stat. § 47C-1-106 for the purpose of providing marketable title to the Units in the Condominium.

2.9. **Reservation and Transfer of Special Declarant Rights.** Declarant hereby reserves all Special Declarant Rights. Declarant may transfer any or all of the Special Declarant Rights to any person or entity, by an instrument evidencing the transfer of duty recorded in the Office of the Register of Deeds for Iredell County. The instrument shall not be effective unless it is executed by both the transferor and the transferee. Upon the transfer of any Special Declarant Rights, the liability of the transferor and the transferee shall be set forth in N.C.G.S. §47C-3-104.

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 shall have no duty or obligation of any kind 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 N.C. Gen. Stat. § 47C-2-110.

3.2. **Maximum Number of Additional Units; Units Restricted to Commercial Use.** The maximum number of additional Units that may be created within the Additional Real Estate is Twenty (20). All of such Units will be restricted exclusively to commercial use.

3.3. **Compatibility of Style.** Any buildings and Units that may be erected upon the Additional Real Estate or a portion thereof will be reasonably compatible, in Declarant's sole judgment, with the other buildings and Units in the Condominium in terms of architectural style, quality of construction, principal materials employed in construction, and size.

3.4. **Applicability of Restrictions.** All restrictions in this Declaration and 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 original Condominium.

3.6. **Applicability of Assurances if Additional Real Estate Not Added** The assurances made in this Article III will not apply with respect to any Additional Real Estate that is not added to the Condominium.

ARTICLE IV *Easements*

4.1. **Easements Through Walls and Between Roof and Ceiling** Each Unit Owner shall have an easement in common with all of the other Unit Owners to use all pipes, wires, ducts, cables, conduits, public utility lines and other Common Elements located in any of the other Units and serving his Unit. Likewise, each Unit shall be subject to an easement in favor of the Owners of all other Units to use the pipes, ducts, cables, wires, conduits, public utility lines and other Common Elements serving other Units and located in, under, adjacent to or above such Unit Owner's Unit.

4.2. **Easements to Repair, Maintain, and Restore** Declarant hereby reserves for itself and for the Association and their duly appointed agents and contractors the right to have access to each Unit for the purpose of inspecting such Unit, removing violations therefrom, making emergency repairs and maintaining, repairing or replacing the Common Elements contained therein and elsewhere in any Building.

4.3. **Easement Across Common Elements** Each Unit Owner shall have, as an appurtenance to his Unit, a perpetual easement, in common with all other Unit Owners, for unrestricted ingress and egress over and across the Common Elements (excluding, however, the Limited Common Elements) to such Unit Owner's Unit and appurtenant Limited Common Elements. Each Unit Owner shall have an easement in common with all other Unit Owners for the use and enjoyment of all Common Elements (excluding the Limited Common Elements) and the Limited Common Elements shall also be subject to easements of use and enjoyment and for ingress and egress by all persons lawfully entitled to use the same.

4.4. **Declarant's Easement** Declarant, for as long as it owns a Unit, hereby reserves for itself the right to hereafter grant easements, licenses and permits for roads, unrestricted utilities and other purposes reasonably necessary or useful for the proper maintenance or operation of the Property (including the Additional Real Estate), and any portion thereof, including, but not limited to, easements granting to public utilities and/or private entities for the right to install, lay, maintain, repair and replace water lines, pipes, sewer and septic lines, tanks and pumps, gas mains, electrical wires, cables and conduits, telephone wires and equipment, data and internet access lines, satellite dishes and appurtenant equipment, cable television, and digital communications equipment over, under, along or on any portion of the Common Elements; these easements shall likewise apply to and are hereby reserved for the Declarant and the Association in any additional phases.

4.5. **Easements Granted by Association** The Association may hereafter grant easements for utility purposes for the benefit of the Property and any portion thereof, including the right to install, lay, maintain, repair and replace water lines, pipes, sewer and septic lines, tanks and pumps, gas mains, electrical wires, cables and conduits, telephone wires and equipment, data and internet access lines, satellite dishes and appurtenant equipment, cable television, and digital communications equipment over, under, along and on any portion of the Common Elements; and each Unit Owner hereby grants to the Board for the Association 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.

4.6. **Structural Support Easement** Each portion of a Unit which contributes to the structural support of a Building, a Unit or the Common Elements shall be burdened with an easement of structural support for the benefit of the Building, the Unit and/or the Common Elements.

4.7. **Easements for Governmental Authorities** An easement is hereby established over the Common Elements for the benefit of applicable governmental agencies, public utility companies and public service agencies as necessary for setting, removing and reading meters, replacing and

maintaining water, sewer and drainage facilities, electrical, telephone, gas and cable antenna lines, fire fighting, garbage collection, postal delivery, emergency and rescue activities and law enforcement activities.

4.8. **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 perpetually in full force and effect and shall inure to the benefit of and be binding upon Declarant, the Association, Unit Owners, Occupants, Security Holders 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 conveyances or encumbrances.

4.9. **Encroachments.** If any portion of the Common Elements (including the Limited Common Elements) now encroaches upon any Unit or if any Unit now encroaches upon any other Unit or upon any portion of the Common Elements (including the Limited Common Elements) as a result of the construction of any Building or if any such encroachment shall occur after the recordation of this Declaration as a result of the settling, movement or shifting of a Building, or any portion thereof, a valid easement for such encroachment and for the maintenance of the same shall exist so long as the encroachment shall exist. In the event a Building, a Unit, the Common Elements or the Limited Common Elements shall be partially or totally destroyed as a result of fire or other casualty or as a result of condemnation or eminent domain proceedings and then rebuilt and restored, encroachments of parts of the Common Elements upon any Unit or of any Unit upon any other unit or upon any portion of the Common Elements) due to such rebuilding shall be permitted and valid easements for such encroachments and for the maintenance of the same shall exist so long as such encroachment shall exist.

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 Executive Board of the Association, as amended. Failure to comply shall be grounds for a civil action by the Declarant, the Association, an aggrieved Unit Owner, or any person adversely affected, for recovery of damages, injunction or other legal or equitable relief.

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

5.3. **Commercial Uses.** The Units shall be occupied and used by Unit Owners and Occupants for commercial purposes only and in no event for residential purposes.

5.4. **Use by Declarant.** (a) Any other provision of this Declaration or the Bylaws notwithstanding, Declarant may maintain and/or relocate sales offices, management offices and models in any Units which are unsold by Declarant without the prior written consent of the Board or any other Unit Owner. As aforesaid, 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 or management offices or models. The total number of such offices or models maintained at any time by a Declarant shall not exceed One (1) Unit, and the size of any such relocated or re-established office or model shall not exceed the size of the largest Unit in the Condominium.

(b) Declarant may, without the consent of the Board, maintain signs on the Common Elements advertising the Condominium until all of the Units have been conveyed to Unit Owners other than Declarant. Declarant shall remove all such signs not later than sixty (60) 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. Declarant may thereafter reconstruct and replace said advertising signs in connection with construction and sale of additional phases.

5.5 **Signage.** (a) No signs or other advertising devices shall be displayed on or about the exterior of any Unit, or in the Common Elements, except for (a) one name plate or sign not exceeding twenty-four (24) square inches in area on the main door to each Unit, and (b) one or more exterior signs for each Unit, erected in conformance with applicable sign ordinances and plans approved by the Association. The presence and number of exterior signs shall be at the sole discretion of the Association once established; until then, Declarant shall make all decisions regarding exterior signage in its sole discretion. Notwithstanding the foregoing, Declarant shall have the right to maintain upon the Property advertising signs during the Declarant Control Period, provided those signs comply with applicable governmental regulations.

(b) 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 Declarant and/or the Board.

5.6 **Leases.** No Unit Owner other than Declarant may lease any Unit without the prior consent of the Board, which said consent will not be unreasonably withheld. Any Unit Owner other than Declarant desiring to lease all or a portion of his Unit shall first provide the Board with a copy of the proposed lease along with the name and address of the proposed tenant whereupon the Board shall have ten (10) days after receipt of the said information within which to reject or approve the proposed lease; in the event the Board makes no decision on either accepting or rejecting the proposed lease within the said ten-day period, then upon the expiration thereof it shall be conclusively presumed that the Board has approved the said lease and the Owner may proceed to consummate the lease agreement. Any lease of a Unit or portion thereof shall be in writing and shall provide that the terms of the lease shall be subject in all respects to the terms, conditions and restrictions of the Declaration, and that any failure by the lessee to comply with the Declaration shall constitute a default under the lease.

5.7. **Noxious or Offensive Activities.** No noxious, offensive activity shall be conducted within any Unit, or on or about the Common Elements, nor shall anything be done thereon or therein which may be or which may become an annoyance or nuisance to the Owners or occupants of the other Units, or endanger the health and safety of any Unit Owner or Occupant. No activity shall be carried on nor condition maintained or permitted by any Owner either in his Unit or upon the Common Elements which despoils the appearance of the Property.

5.8. **Use of Common Elements.** No portion of the Common Elements (other than common storage areas, if any, specifically designated as such by the Association) shall be used for the storage of personal property of any kind. Stairs, entrances, lobbies, hallways, parking areas, and walkways shall not be obstructed in any way, or used for anything other than their intended purposes. The parking areas located in the Common Elements of the Condominium are for temporary parking of Unit Owners, Occupants and their customers and guests in the ordinary course of the operation of their approved business enterprises within the Units, and shall not be used at any time for vehicle storage, repair, maintenance or sales.

5.9. **Waste Disposal.** Trash, garbage, and other waste shall be kept in sanitary containers within each Unit, and properly deposited in the common trash receptacles for the Condominium. No trash or garbage shall be kept or stored on the balconies, rooftop terrace (if applicable), halls, or other Common Elements. Any Unit Owner found in violation of this section shall be subject to immediate fines and penalties assessed by the Association or Declarant.

5.10. **No Timeshare.** No interest in any Unit may be subjected to a time-share program, as that term is defined in N.C.G.S §93A-41(10).

5.11. **Electrical Overload.** Total electrical usage in any Unit shall not exceed the capacity of the circuits for that Unit as labeled on the circuit breaker boxes, and no electrical device causing overloading of the standard circuits may be used in any Unit without the permission of the Association.

5.12. **Floor Load.** There shall be no floor load in any upper-level Unit in excess of that set forth within the engineering plans drawn and prepared by the structural engineer for the building, unless an engineering determination of the floor load capacity in the area of heavy use is approved

by the Association. The Association shall require the payment of any and all costs, by the applicant, associated with any application for excess floor load.

5.13. **Windows.** No curtains or draperies shall be installed or hung in any window of any Unit unless they have a white lining or backing on the side exposed to the window. No owner may in any way change or modify the windows. The windows are inoperable, and are an integral part of the exterior of the building.

5.14. **Unit Maintenance.** The Owner of each Unit is responsible for maintaining his Unit in a clean, neat, and orderly condition and in a good state of maintenance and repair. If an Owner fails to comply with the standards or requirements of the Association relative thereto, the Association shall assess the defaulting Owner the cost thereof and shall undertake to effect said compliance.

5.15. **Satellite Dishes.** No exterior satellite dish in excess of one meter in diameter may be placed on the exterior of any Unit or in the Common Elements without the prior approval of the Executive Board, taking into account the appropriate standards set forth in the regulations of the Federal Communications Commission, and to the extent reasonably practical, the Owner shall provide to the Board a copy of his installation plans. The Association shall have the right, but not the obligation, to perform any portion of the installation work at the sole expense of the Owner, or to require that any portion of the work be performed by contractors designated by the Board. The Owner shall also be responsible for any damage caused by the removal of the antenna or the satellite dish, including the sealing of conduits or other roof penetrations. Again, the Association shall have the right, but not the obligation, to require that any part of the removal work, including the sealing of roof penetrations, be performed by the roofing contractor designated by the Board, at the Owner's expense. Any Owner installing an antenna or satellite dish under this Section shall indemnify, defend and hold the Declarant, the Association and all other Unit Owners harmless from and against any loss, damage, claim or other liability resulting from the installation, maintenance, repair, use and/or removal of the antenna or satellite dish, including any damage to the roof of the building or other property damage to the Common Elements or the Units caused by roof leaks.

5.16. **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; any increase in the rate of insurance shall be borne by the Unit Owner causing such increase. No hazardous or toxic waste, as defined from time to time by applicable local, state and federal environmental laws, rules and regulations shall be kept, stored, maintained or disposed of, in or about any Unit or the Common Elements without the express, prior written approval of the Association (or the Declarant during the Declarant Control Period).

5.17. **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, by signage or otherwise, any portion of the Common Elements, without the prior written consent of the Board, except that Declarant may place such signs as are authorized in Section 5.3(d).

5.18. **Animals.** No pets, animals, livestock or poultry shall be allowed in or upon any portion of the Condominium, except as may be provided by the rules and regulations promulgated from time to time by the Board of the Association, as more fully provided in the Bylaws.

5.19. **Rules and Regulations.** In addition to the other 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 of the Association, as more fully provided in the Bylaws. Copies of such regulations and amendments thereto shall be posted prominently prior to their effective date, and shall be furnished by the Association to all Owners upon request. Notwithstanding the foregoing, the Association shall not have the right to adopt a rule or regulation that materially restricts a then-existing lawful use being conducted in a Unit without the prior written consent of the Unit Owner.

5.20. 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.

5.21. Transfer of Units. Any Unit Owner desiring to sell his Unit shall first offer to sell such Unit to the Declarant at the same price and on the same terms under which the highest acceptable *bona fide* offer has been made to such Unit Owner. The Unit Owner desiring to sell a Unit shall give the Declarant written notice by registered mail, return receipt requested, of the Unit Owner's desire to sell such Unit and shall further advise the Declarant of the name and address of the person, firm or corporation making said highest acceptable *bona fide* offer as well as the amount and terms of said offer. The Declarant shall have a period of ten (10) days after receipt of said written notice within which to exercise this right of first refusal to purchase such Unit at the same price and on the same terms as the highest acceptable *bona fide* offer and shall have an additional period of not less than thirty (30) days within which to close the said transaction. The Declarant, upon the request of a selling Unit Owner, shall execute in recordable form an instrument indicating compliance with the terms and provisions of this Declaration by the selling Unit Owner. The aforementioned right of first refusal of Declarant to purchase a Unit shall extend until such time as it transfers all of its Units, at which time it shall automatically terminate and become void. This said right of first refusal of the Declarant shall apply to all additional phases (if any) of the Condominium.

Any Unit Owner desiring to sell his Unit subsequent to the termination of the right of first refusal of the Declarant, shall first offer the said Unit to the Association at the same price and on the same terms under which the said Owner has received his highest acceptable *bona fide* offer. The procedure for providing notice to the Association, the acceptance of notice, the response to said notice and the closing of said transaction, along with the other procedures hereinabove set forth as for Declarant, shall be followed by the parties and adhered to in all respects. This said right of first refusal of the Association shall likewise apply to all additional phases of the Condominium upon the termination of the right of the Declarant to purchase.

Any sale, voluntary transfer or conveyance which is not authorized by the terms of this Declaration or for which authorization has not been obtained pursuant to the terms hereof is voidable and may be voided by certificates of the Declarant or the Board duly recorded in the Office of the Register of Deeds for Iredell County.

The following transfers, sales or conveyances are specifically excluded from the provisions of this paragraph:

- (a) Transfers, sales or conveyances involving a foreclosure sale or other judicial sale or transfer to a Mortgage in lieu of foreclosure;
- (b) Any transfer, sale, or conveyance by a Mortgagee following foreclosure or any proceeding or arrangement in lieu thereof;
- (c) Transfers, sales, leases or conveyances by Declarant;
- (d) Conveyances of gift or as are made without consideration to the grantor; and
- (e) Transfer or conveyances upon death.

It is understood that first lien and any other junior lien mortgages (subject to the provisions of paragraph 5.21 below) shall not be deemed a "transfer, sale or conveyance of a Unit" within the meaning of this paragraph; and that any Unit subject to a first or junior mortgage, first or junior deed of trust or other security instrument, the holder of which becomes the Owner of such Unit through whatever means said holder, or the trustee at any sale through foreclosure under said instrument, shall have the unqualified right to sell, lease or otherwise dispose of the fee ownership of said Unit without offer to the Declarant, notwithstanding the above provisions, so that purchasers at such sales are deemed approved, and said holder, upon being high bidder at a sale for its benefit, can resell said Unit without restriction.

5.22. **Mortgaging of Unit.** No Unit Owner may mortgage his Unit or any interest therein without the prior written approval of the Board, except as to a first mortgage lien made to a bank, mortgage banker, life insurance company or savings and loan association. The Board may, and it is hereby authorized to, impose reasonable conditions upon which approval as to any other mortgage shall be given. No Unit Owner may mortgage or otherwise encumber his Unit or any interest therein unless such mortgage or encumbrance shall provide for written notice to the Board in the event of a default and foreclosure under such mortgage or other encumbrance. Each Unit Owner who shall mortgage or otherwise encumber his Unit or any interest therein shall furnish to the Board a copy of all such mortgages, deeds of trust or other instruments creating such encumbrance.

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 and required by the authority of N.C. Gen. Stat. § 47C-3-115 and N.C. Gen. Stat. § 47C-3-116 of the Act.

6.2. **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.

6.3. **Assessments.** Assessments shall be due and payable at least annually. As provided in the Bylaws and as legally required by N. C. Gen. Stat. § 47C-3-115, 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.

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.** To the extent such damage is not covered by insurance, 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 acts and for which he is legally liable, and such acts of any Occupant of his Unit. Such payment shall be made within thirty (30) days after demand is made by the Association.

(c) **Maintenance of Condominium Property.** The management, operation and administration of the Condominium shall be performed by the Association. Membership in the Association shall be limited to and consist of all Unit Owners, and every Unit Owner shall automatically be a member of the Association. Membership in the Association shall be appurtenant to and may not be separated from Unit ownership. The Association shall be entitled to engage a managing agent to perform services related to the management, operation and administration of the Condominium Property. The Association shall procure and maintain insurance on the Condominium Property as provided in the Bylaws. The Association shall assess the Unit Owners for their pro-rata share of the Common Expenses as set forth in the Bylaws, and the pro-rata share of such Common Expenses shall constitute the personal obligation of each Unit Owner and shall also

constitute a lien on each Unit, which lien shall be enforceable by the Association in the manner set forth in the Bylaws. The Association is authorized to adopt rules and regulations pertaining to the use of the Common Elements by the Unit Owners and other persons entitled to use the same.

7.2. Common Expenses Associated with Limited Common Elements or Benefiting 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 benefiting less than all of the Units against the Units benefited in proportion to their Common Expense liability.

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; 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 within thirty (30) days after demand by the Unit Owner(s) 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 duties or obligations or exercising 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 reasonably 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 of, 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.

ARTICLE VIII
Insurance

8.1. Casualty Insurance. The Association shall maintain 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 Security Holders as their interests may appear and be disbursed pursuant to the Act. Such insurance shall be in an amount equal to not less than eighty percent (80%) of the replacement cost of the Property and shall insure against such risks and contain such provisions as the Board from time to time shall determine but, as a minimum, shall conform in all respects to the requirements of N.C. Gen. Stat. § 47C-3-113.

8.2. **Public Liability Insurance.** The Association shall maintain public liability insurance for the benefit of the Unit Owners, Occupants and holders of a vendor's interest in a contract for deed on a Unit, the Association, the Board, the manager, 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 Two Million Dollars (\$2,000,000.00) per occurrence for death, bodily injury and property damage. Said insurance 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.** 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 estimate 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 premiums on such bonds shall be a Common Expense.

8.4. **Other Insurance.** The Association may procure such other insurance, including workers' compensation insurance, as it may from time to time deem appropriate to protect the Association or the Unit Owners.

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

8.6. **Individual Policy for Unit Owners.** Each Unit Owner shall at its own expense and in addition to any coverage afforded by the Association, obtain insurance affording personal property, additional living expense, condominium assessment, personal liability, and any other coverage obtainable, to the extent and in the amount such Unit Owner deems necessary to protect his own interests; provided that any such insurance shall contain waivers pursuant to Section 7.3 of this Declaration and shall provide that it is without contribution as against the insurance purchased by the Association. If a casualty loss is sustained and there is a reduction in the amount of the proceeds that would otherwise be payable on the insurance purchased by the Association due to the proration of 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 assign the proceeds of his insurance, to the extent of such reduction, to the Association.

ARTICLE IX *The Association*

9.1. **Organization of Association.** A North Carolina non-profit corporation known and designated as Brawley Commerce Condominium Owners Association, Inc. (the "Association") has been organized to provide for the administration of the Condominium, and the Association shall administer the operation and maintenance of the Condominium and undertake and perform all acts and duties incident thereto in accordance with the terms of its Articles of Incorporation, the Declaration, the Bylaws, the Act, and other applicable law. A true copy of the Bylaws of the Association is attached hereto as Exhibit E. Every Owner shall be required to be and shall automatically be a member of the Association by virtue of his ownership interest in a Unit, and such membership is not severable from Unit Ownership in any respect.

9.2. **Powers: Lien for Assessment.** In the administration of the operation and management of the Condominium, the Association shall have and it is hereby granted the authority and power to enforce the provisions of this Declaration, to levy and collect assessments in the

manner provided in the Declaration, the Bylaws and the Act, and adopt, promulgate and enforce such rules and regulations governing the use of the Units and Common Elements as the Association may deem to be in the best interest of the Owners in accordance with the Bylaws. Any sum assessed by the Association remaining unpaid for more than Thirty (30) days or longer shall constitute a lien on the Unit with respect to which such sum was assessed in accordance with N.C.G.S. §47C-3-116, and shall be enforceable by the Association in accordance with N.C.G.S. §47C-3-116 and the Bylaws.

9.3. **Declarant Control Period.** During the Declarant Control Period, Declarant reserves the right to appoint and remove any Executive Board members as Declarant may determine.

9.4. **Books & Records.** The Association shall maintain: (a) current copies of the Declaration, Articles of Incorporation, and Bylaws, as they may be amended from time to time, (b) all rules and regulations as the Association may adopt from time to time; and (c) all financial records of the Association, as required by the Act. These items shall be available for inspection during normal business hours and upon reasonable advance notice, by any Owner, any Security Holder, and any insurer or guarantor of a loan secured by a Mortgage. In addition, within ninety (90) days following the Association's fiscal year end, the Association shall obtain an audited financial statement from a certified public accountant and shall make same available for review in accordance with this Section.

ARTICLE X ***Casualty Damage***

If all or any part of the Property shall be damaged or destroyed, the same shall be repaired or replaced, and proceeds of insurance shall be used and applied in accordance with the provisions of N.C. Gen. Stat. § 47C-3-113(h). In the event of damage to or destruction of the Building as a result of fire or other casualty, the Association shall arrange for the prompt restoration and replacement of the Building unless: (a) the Condominium is terminated in accordance with the provisions of Article XII below, or (b) repair or replacement would be illegal under any state or local health or safety statute or ordinance, or (c) the Owners decide not to rebuild by an eighty percent (80%) vote, including one hundred percent (100%) of Owners of Units not to be rebuilt and one hundred percent (100%) of Owners of Units to which are assigned Limited Common Elements not to be rebuilt. Unless one of the preceding three conditions occurs, the Association shall arrange for the prompt repair and restoration of the building, not including any decoration or covering for walls ceilings or floors, or furniture, furnishings, fixtures or equipment (unless the subject insurance policy covers a portion or all of such loss, in which event the Association shall repair or replace such damaged property), and the Association shall disburse the proceeds of all insurance policies to the contractors engaged in such repair and restoration in appropriate progress payments and in accordance with the other applicable provisions of this Declaration. Any payment for repair and restoration in excess of the insurance proceeds shall constitute a Common Expense. Any reconstruction or repair shall be in accordance with the Plans. If the Owners vote not to rebuild any Unit, that Unit's allocated Common Elements Interest shall be automatically reallocated upon the vote as if the Unit had been condemned under N.C.G.S. §47C-1-107(a).

ARTICLE XI ***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 same shall be repaired or restored, and the awards paid on account thereof shall be used and applied in accordance with N.C. Gen. Stat. § 47C-1-107.

ARTICLE XII ***Termination***

The Condominium may be terminated and the Property removed from the provisions of the North Carolina Condominium Act only by the affirmative vote of not less than eighty percent (80%)

of the Owners of Units, and not less than eighty percent (80%) of the Mortgagees, cast in person or by proxy at a meeting duly held in accordance with the provisions of the Bylaws, and as evidenced by execution of a termination agreement, or ratification thereof by the requisite number of Owners and Mortgagees. The termination shall comply with their requirements of N.C.G.S. §47C2-118, and must be recorded in the Office of the Register of Deeds in the county where the Property is located before it becomes effective. Following the recordation of the termination agreement, the interests of the Owners and Mortgagees in the Property shall be as provided in N.C.G.S. §47C2-118.

ARTICLE XIII *Binding Effect and Amendment*

All present and future Owners and Occupants of the Units shall be subject to and shall comply with the provisions of this Declaration, the Bylaws, and any rules and regulations as may be adopted by the Association in accordance with the Bylaws, as all of the foregoing may be amended and supplemented from time to time. The acceptance of a deed of conveyance or the entering into a lease or the entering into occupancy of any Unit shall constitute unconditional agreement to the provisions of this Declaration. Except as is otherwise specifically authorized herein, the Declaration may be amended only by the written joinder of not less than sixty-seven percent (67%) of the Unit Owners. Provided, however, any amendment which amends or alters the Common Elements Interest of any Unit, increases the number of Units, or changes the boundaries of a Unit or the use to which any Unit is restricted or modified, shall require the written consent of all Owners whose Units are affected thereby, together with the consent of their respective Mortgagees. No amendment to the Declaration shall be effective until executed on behalf of the Association by any officer designated for that purpose and recorded in the office of the Register of Deeds in the county where the Property is located. No amendment to this Declaration shall be adopted or passed which shall impair or prejudice the rights and priorities of any Mortgagee without the written consent of such Mortgagee. During the Declarant Control Period, no amendment to this Declaration shall be permitted without the joinder of Declarant. This Declaration may be amended only in strict compliance with the Act, including, without limitation, N.C. Gen. Stat. §47C-2-117, except that no amendment altering or impairing Special Declarant Rights may be made without the written consent of the Declarant.

ARTICLE XIV *Process Agent*

Carl Anderson Peggs, whose business address is 110 Charleston Drive, Suite 106, is designated to receive service of process on behalf of Declarant in any action which may be brought against or in relation to the Condominium Property or any part thereof, so long as Declarant shall own any portion thereof.

ARTICLE XV *Security Holder Protection*

15.1. **Security Holder Rights to Notice.** Any Security Holder (including any insurer or guarantor of a loan secured by a Mortgage) for a Unit that has notified the Association in writing of its name and address, shall have the right to receive from the Association written notice of the following:

- (a) Default by the applicable Unit Owner under any of the terms and provisions of the Declaration, Maps, Articles, Bylaws, and other rules and regulations governing the Condominium, which default remains uncured for a period of sixty (60) days.
- (b) Any loss or damage to or condemnation or taking of the Common Elements or any loss or damage to or condemnation or taking of a Unit encumbered by a Security Holder.
- (c) Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association.

(d) Any proposed action by the Declarant, the Association, the Board, or the Unit Owners, which under the terms of the Declaration requires the consent of all or any portion of the Mortgagees.

15.2. **Security Holder Response to Amendments or Other Requests for Security Holder Action or Consent.** The failure of any Security Holder to respond within Thirty (30) days in writing, by registered or certified mail, return receipt requested, to any written request by or notice from the Association requesting the consent or action of a Security Holder (including, but not limited to any request for approval by said Security Holder of any proposed amendment to the Declaration as required by Article XIII of this Declaration) shall conclusively constitute approval by the Security Holder of the proposed action or amendment regarding which such notice or request was sent.

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, provisions, paragraph, or clause of this Declaration, or 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, the 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," "B-1," "C," "D" and "E" attached hereto are hereby made a part hereof.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be duly executed and sealed this the 30 day of March, 2006.

TOP PROPERTIES, LLC, a North Carolina limited liability company

By:  (SEAL)
Member/Manager

~~BY: _____~~ ~~XXXXXXXXXX~~
~~MANAGER~~

Brawley Commerce Condominium Owners Association, Inc., a North Carolina non-profit corporation

By: 
President

Ashtin Properties, LLC, a North Carolina limited liability company

By: [Signature] (SEAL)
Member/Manager

~~XXX~~ _____ ~~XXXXXX~~
~~XXXXXXXXXXXXXXXX~~

Sierra Asset Management, LLC, a North Carolina limited liability company

By: [Signature] (SEAL)
Member/Manager

~~XXX~~ _____ ~~XXXXXX~~
~~XXXXXXXXXXXXXXXX~~

[Signature] (SEAL)
Steven Harwell

[Signature] (SEAL)
Tracy Harwell

A&T Real Estate, LLC, a North Carolina limited liability company

By: [Signature] (SEAL)
Member/Manager

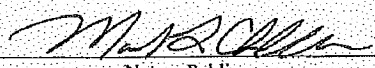
By: [Signature] (SEAL)
Member/Manager

STATE OF NORTH CAROLINA

COUNTY OF Iredell

I, Mark L. Childers, a Notary Public for said County and State, do hereby certify that Carl A. Peas, Jr., member/manager of TOP PROPERTIES, LLC, a North Carolina limited liability company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of the company.

Witness my hand and official stamp of seal, this 30th day of March, 2006.


Notary Public

My commission expires:
8-25-2008




~~XXXXXXXXXXXXXXXXXXXX~~

~~XXXXXXXXXXXXXXXXXXXX~~

~~I, _____, a Notary Public for said County and State, do hereby certify that _____, member/manager of TOP PROPERTIES, LLC, a North Carolina limited liability company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of the company.~~

~~Witness my hand and official stamp of seal, this _____ day of _____, 2006.~~

~~
Notary Public~~

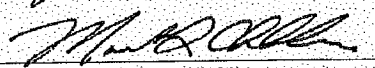
~~My commission expires:
_____~~

STATE OF NORTH CAROLINA

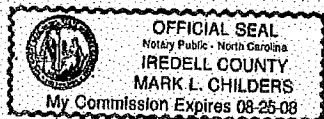
COUNTY OF Iredell

I, Mark L. Childers, a Notary Public for said County and State, do hereby certify that Derek Smith, member/manager of ASHTIN PROPERTIES, LLC, a North Carolina limited liability company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of the company.

Witness my hand and official stamp of seal, this 5th day of May, 2006.


Notary Public

My commission expires:
8-25-2008



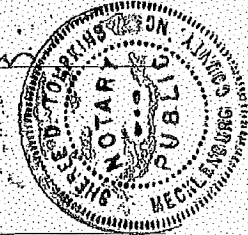
STATE OF NORTH CAROLINA

COUNTY OF Mecklenburg

I, Sherree D. Tompkins, a Notary Public for said County and State, do hereby certify that Martha D. Michael, member/manager of AST REAL ESTATE, LLC TDC NDA, a North Carolina limited liability company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of the company.

Witness my hand and official stamp of seal, this 30th day of March, 2006.

Sherree D. Tompkins
Notary Public



My commission expires:

12-24-2008

STATE OF NORTH CAROLINA

COUNTY OF Iredell

I, Mark L. Childers, a Notary Public for said County and State, do hereby certify that Sam Kaufman, member/manager of SIERRA ASSET MANAGEMENT, LLC, a North Carolina limited liability company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of the company.

Witness my hand and official stamp of seal, this 15 day of May, 2006.

Mark L. Childers
Notary Public

My commission expires:

8-25-2008



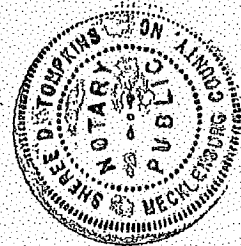
STATE OF NORTH CAROLINA

COUNTY OF Mecklenburg

I, Sherree D. Tompkins, a Notary Public for said County and State, do hereby certify that Terry Corriher, member/manager of AST REAL ESTATE, LLC TDC NDA, a North Carolina limited liability company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of the company.

Witness my hand and official stamp of seal, this 30th day of March, 2006.

Sherree D. Tompkins
Notary Public



My commission expires:

12-24-2008

STATE OF NORTH CAROLINA

COUNTY OF Mecklenburg

I, ~~St. Harwell~~ Sheree D. Tompkins, a Notary Public for said County and State, do hereby certify that STEVEN HARWELL personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official stamp of seal, this 4th day of April, 2006.

Sheree D. Tompkins
Notary Public

My commission expires:
12/24/2008



STATE OF NORTH CAROLINA

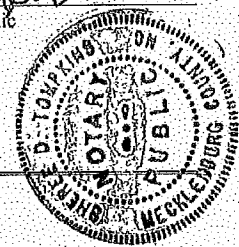
COUNTY OF Mecklenburg

I, Sheree D. Tompkins, a Notary Public for said County and State, do hereby certify that TRACY HARWELL personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official stamp of seal, this 4th day of April, 2006.

Sheree D. Tompkins
Notary Public

My commission expires:
12/24/2008



STATE OF NORTH CAROLINA

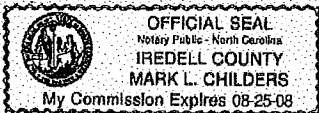
COUNTY OF Iredell

I, Mark L. Childers, a Notary Public for said County and State, do hereby certify that ~~Mark L. Childers~~ Carla A. Pepps, Jr., President of BRAWLEY COMMERCE CONDOMINIUM OWNERS ASSOCIATION, INC., a North Carolina non-profit corporation, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of the corporation.

Witness my hand and official stamp of seal, this 5th day of May, 2006.

Mark L. Childers
Notary Public

My commission expires:
8-25-2008



**AMENDED AND RESTATED DECLARATION OF CONDOMINIUM FOR
BRAWLEY COMMERCE PARK CONDOMINIUM**

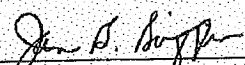
CONSENT OF MORTGAGEE

FIRST CHARTER BANK, being the Beneficiary under those certain Deeds of Trust from the below-named parties to Jan G. Griffin, Trustee, conveying all or portions of the real property described in Exhibit "A" and "A-1" attached to the Amended and Restated Declaration of Condominium for Brawley Commerce Park Condominium and recorded as follows in the Office of the Iredell County Register of Deeds:

<u>Book</u>	<u>Page</u>	<u>Obligors</u>
1488	1652	TOP Properties, LLC
1682	2281	TOP Properties, LLC
1683	2274	TOP Properties, LLC
1583	549	Ashtin Properties, LLC (amended at Book 1718, page 1114)
1572	112	Sierra Asset Management, LLC
1572	133	Sierra Asset Management, LLC
1630	803	A&T Real Estate, LLC

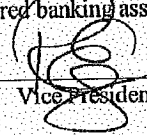
does hereby consent to the recordation of this Amended and Restated Declaration of Condominium and the imposition of the provisions hereof and the provisions of the North Carolina Condominium Act upon said real property described in Exhibits "A" and "A-1" and said Beneficiary does hereby consent and agree that from and after this date, the provisions of this Declaration, including all exhibits and amendments hereto, shall be superior to the lien of said Deed of Trust on said property described in Exhibit "A" and in Exhibit "A-1." The execution of this Consent of Mortgagee by the Beneficiary shall not be deemed or construed to have the effect of creating between said Beneficiary and Declarant the relationship of partners or of joint venturers, nor shall said Beneficiary be deemed to have accepted in any way nor shall anything contained hereunder be deemed to impose upon said Beneficiary any of the liabilities, duties or obligations of the Declarant under the foregoing Declaration. Said Beneficiary executes this Consent of Mortgagee solely for the purposes set forth herein. The said Trustee also joins in and executes this Consent as Trustee of said Deed of Trust for the said purposes hereinabove set forth.

IN WITNESS WHEREOF, the undersigned have caused this Consent to be duly executed and sealed as of the 14th day of April, 2006.



Jan G. Griffin, Trustee (SEAL)

FIRST CHARTER BANK, a North Carolina
chartered banking association

By: 

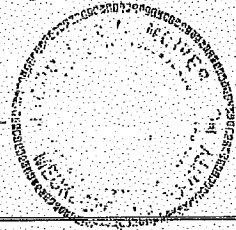
Vice President

STATE OF NORTH CAROLINA
COUNTY OF Mecklenburg

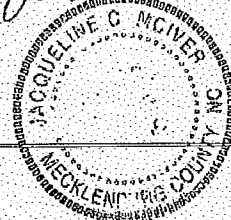
This 14th day of April, 2006, personally came before me JAN G. Griffin, Trustee,
who, being by me duly sworn, acknowledged the due execution of the foregoing instrument.

My Commission Expires:

06-29-10



Jacqueline C. McGiver
Notary Public

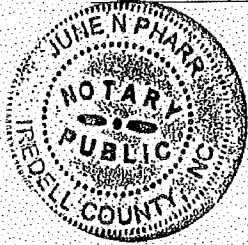


STATE OF NORTH CAROLINA
COUNTY OF Iredell

This the 12th day of April, 2006, personally came before me June N. Pharr
who, being by me duly sworn, says that he is the Vice President of FIRST CHARTER BANK, and that said
writing was signed and sealed by him in behalf of said Corporation by its authority duly given as the act and deed of said
Corporation.

My Commission Expires:

October 15, 2007



June N. Pharr
Notary Public

EXHIBIT "A" TO
DECLARATION OF CONDOMINIUM
FOR
BRAWLEY COMMERCE PARK CONDOMINIUM

The property herein committed consists of all that certain tract, parcel, piece, or plot of land, together with the building and all improvements thereon, situated, lying and being in Iredell County, North Carolina, known as all of Lot 2 of BRAWLEY COMMERCE PARK SUBDIVISION, as the same is platted, planned and recorded in Plat Book 40, at Page 42, in the Office of the Register of Deeds for Iredell County, North Carolina, and henceforth being designated as "BRAWLEY COMMERCE PARK CONDOMINIUM" as the same is shown and more particularly described on plat entitled "Revised Record Plat of 107 Brawley Commerce Park Condominium" prepared by Don Allen & Associates, P.A., and recorded in Condominium Book 2 at Page 55, in the Iredell County, North Carolina, Public Registry; RESERVING, however, unto Declarant herein, its successors and assigns: (a) a perpetual right-of-way and easement over all roads, driveways and parking areas on the above-described property, plus any additional areas needed to connect said roads, driveways and parking areas with the boundaries of said property to all or any portion of all adjacent and nearby property now owned or hereafter acquired by Declarant, the location of which may be chosen by Declarant, its successors or assigns, for use in common with the Unit Owners of all phases of Brawley Commerce Park Condominium and their successors and assigns, and others who might be rightfully using said driveways, roads and parking areas for access to all of said adjacent and nearby property; (b) easements for ingress and egress for pedestrian and vehicular purposes, for utility services, culverts and drains which now exist or are hereafter granted, created or established by Declarant, its successors and assigns, for the benefit of such persons as Declarant, its successors or assigns, may designate; (c) all rights reserved by Declarant by the terms of this Declaration; (d) the aforesaid rights and easements appurtenant to said property to run with the said property and all portions thereof.

The Declarant does reserve for itself, its successors and assigns the right to utilize all of the aforementioned rights of ways for the purpose of gaining access to and utilizing the Additional Real Estate for additional phases of the said Condominium.

EXHIBIT "A-1" TO
DECLARATION OF CONDOMINIUM
FOR
BRAWLEY COMMERCE PARK CONDOMINIUM

Additional Real Estate

As set forth in and subject to Article III of this Declaration, Declarant its successors and assigns shall have the right, but not the obligation, to add such additional property and units to the Condominium as it might desire on all or part of that certain tract or parcel of Declarant described as follows:

All of Lot 3 of BRAWLEY COMMERCE PARK SUBDIVISION, as the same is platted, planned and recorded in Plat Book 40, at Page 42, in the Office of the Register of Deeds for Iredell County, North Carolina.

EXHIBIT "B"
DECLARATION OF CONDOMINIUM
FOR
BRAWLEY COMMERCE PARK CONDOMINIUM

<u>Unit Number</u>	<u>Percentage of Undivided Interest In Common Elements</u>	<u>Percentage of Common Expenses</u>	<u>Votes in Association</u>
1A-D	28.0%	28.0%	One
1E-F	14.0%	14.0%	One
1G-H	14.0%	14.0%	One
2A-C	15.0%	15.0%	One
2D	7.0%	7.0%	One
2E-H	22.0%	22.0%	One

Note: % will be adjusted in the event that additional units are constructed on land described in Exhibit A-1.

EXHIBIT "C"

DECLARATION OF CONDOMINIUM

FOR

BRAWLEY COMMERCE PARK CONDOMINIUM

Liens, Defects and Encumbrances

1. Easements to Duke Power Company recorded in Book 285, page 139 and Book 944, page 263, in the Office of the Register of Deeds for Iredell County, North Carolina.
2. Flood rights, easements and reservations in favor of Duke Power Company recorded in Book 383, page 426, in the Office of the Register of Deeds for Iredell County, North Carolina.
3. Easements to the Town of Mooresville, recorded in Book 1266, page 2284, in the Office of the Register of Deeds for Iredell County, North Carolina.
4. Terms, conditions and restrictions contained in the Acknowledgment and Consent Agreement recorded in Book 973, page 647, in the Office of the Register of Deeds for Iredell County, North Carolina.
5. Title to that portion of the property within the bounds of right of way for U.S. Highway 21 and the right of way, including additional 15-foot future right of way, of NCSR 1100, Brawley School Road.
6. Building restriction lines, easements and any other facts shown on the plat recorded at Map Book 40, page 42, in the Office of the Register of Deeds for Iredell County, North Carolina.

EXHIBIT "D"

DECLARATION OF CONDOMINIUM

FOR

BRAWLEY COMMERCE PARK CONDOMINIUM.

Copy of Articles of Incorporation for
Brawley Commerce Condominium Owners' Association, Inc.

See Rider No. 1 Attached

EXHIBIT B



NORTH CAROLINA

Department of The Secretary of State

To all whom these presents shall come, Greetings:

I, **ELAINE F. MARSHALL**, Secretary of State of the State of North Carolina, do hereby certify the following and hereto attached to be a true copy of

ARTICLES OF INCORPORATION

OF

BRAWLEY COMMERCE CONDOMINIUM OWNERS' ASSOCIATION, INC.

the original of which was filed in this office on the 24th day of February, 2004.



IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at the City of Raleigh, this 24th day of February, 2004

Elaine F. Marshall

Secretary of State

Document Id: C20040550038

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SOSID: 713121
Date Filed: 2/24/2004 2:38:00 PM
Elaine F. Marshall
North Carolina Secretary of State
C200405500389

State of North Carolina
Department of the Secretary of State

ARTICLES OF INCORPORATION
NONPROFIT CORPORATION

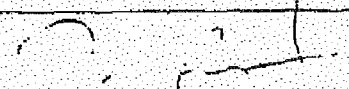
Pursuant to §55A-2-02 of the General Statutes of North Carolina, the undersigned corporation does hereby submit these Articles of Incorporation for the purpose of forming a nonprofit corporation.

1. The name of the corporation is: BRAWLEY COMMERCE CONDOMINIUM OWNERS' ASSOCIATION, INC.
2. (Check only if applicable.) The corporation is a charitable or religious corporation as defined in NCGS §55A-1-40(4).
3. The street address and county of the initial registered office of the corporation is:
Number and Street 110 CHARLESTON DRIVE, SUITE 106
City, State, Zip Code MOORESVILLE, N.C. 28117 County IREDELL
4. The mailing address *if different from the street address* of the initial registered office is:

5. The name of the initial registered agent is:
TODD JASON FARLOW
6. The name and address of each incorporator is as follows: TODD JASON FARLOW, ESQ.
P.O. BOX 4328
MOORESVILLE, N.C. 28117
7. (Check either a or b below.)
a. The corporation will have members.
b. The corporation will not have members.
8. Attached are provisions regarding the distribution of the corporation's assets upon its dissolution.
9. Any other provisions which the corporation elects to include are attached.
10. The street address and county of the principal office of the corporation is:
110 CHARLESTON DRIVE, SUITE 106, MOORESVILLE, N.C. 28117 County IREDELL
11. The mailing address *if different from the street address* of the principal office is:

12. These articles will be effective upon filing, unless a later time and/or date is specified: _____

This is the 10th day of February, 2004.



Signature of Incorporator

Todd Jason Farlow, Esq.

Type or print Incorporator's name and title, if any

NOTES:

1. Filing fee is \$60. This document and one exact or conformed copy of these articles must be filed with the Secretary of State.

DISTRIBUTION OF ASSETS UPON DISSOLUTION

Upon dissolution of the BRAWLEY COMMERCE CONDOMINIUM OWNER'S ASSOCIATION, Inc., all remaining assets of the non-profit corporation are to be distributed in the following priority:

- (1) All liabilities, debts, and obligations of the corporation shall be satisfied from remaining assets; however, in the event that remaining assets are insufficient to discharge said liabilities and obligations, that the corporation shall make provision to satisfy said debt;
 - (2) Should there be assets remaining once all liabilities are discharged, satisfied, and paid in full, reimbursement shall be made of any and all donations given conditional upon continued operation of the non-profit corporation; and
 - (3) Should there be assets remaining after the requirements of subsections (1) and (2) of this article are met, any remaining assets shall be transferred to either a successor corporation organized to provide for the upkeep and maintenance of Brawley Commerce Park, Lots 2 & 3, or returned to the individual members on a pro-rated basis based upon each member's voting interest.
-

EXHIBIT "E"

BYLAWS

FOR

BRAWLEY COMMERCE CONDOMINIUM OWNERS' ASSOCIATION, INC.

See Rider No. 2 Attached