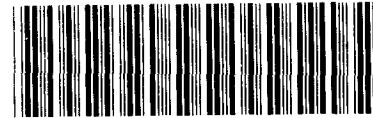


FOR REGISTRATION
Willie L. Covington
REGISTER OF DEEDS
Durham County, NC
2015 JAN 23 09:59:13 AM
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DECLARATION
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INSTRUMENT # 2015002046

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**DECLARATION CREATING UNIT OWNERSHIP
AND ESTABLISHING RESTRICTIONS, COVENANTS,
AND CONDITIONS FOR
GATEWAY TERRACE LAND CONDOMINIUM**
[Durham County Register of Deeds Condominium File No. 12-245(-)48]

Prepared by and return to: Nicole S. Loeffler of Manning Fulton & Skinner, 3605 Glenwood Ave., Suite 500, Raleigh, NC 27502

THIS DECLARATION is made on the date hereinafter set forth by MJM GATEWAY TERRACE RE, LLC, a North Carolina limited liability company (hereinafter referred to as the “**Declarant**”) and GATEWAY TERRACE PARTNERS, LLC, a North Carolina limited liability company (hereinafter referred to as “**GTP**”)

RECITALS

Declarant and GTP make the following recitals, all of which shall be incorporated into the terms of this Declaration:

- A. Declarant is the owner of fee simple title to:
 - (i) that certain approximately 5.30 acre (231,069 SF) tract of land which is more fully described as Lot 3 on that certain map entitled “Gateway Terrace Recombination Plat” (the “**Plat**”) recorded in Plat Book 191 at Page 9, in the Durham County Registry (“**Lot 3**”); and
 - (ii) that certain approximately .41 acre (17,802 SF) tract of land, lying adjacent to the boundary of Lot 3, which is more fully described as Lot 2 on the Plat (“**Lot 2**”).

B. GTP is the owner of fee simple title to that certain approximately 0.68 acre (29,736 SF) tract of land, lying adjacent to the boundary of Lot 3, which is more fully described as Lot 1 on the Plat (“**Lot 1**”).

C. Lot 1, Lot 2, and Lot 3 are commonly referred to as Gateway Terrace Shopping Center and are referred to herein as the “**Land.**”

D. Declarant and GTP desire to subject the Land to a condominium regime whereby the uses and improvements would be on separate land units in the condominium.

E. Declarant and GTP intend to subject the Land to a land condominium comprised of Five (5) units as follows:

- (i) Land Unit 1 – Building Site – There are currently no building improvements located upon Land Unit 1, and there is intended to be construction of new Land Unit Buildings and other improvements on Land Unit 1; and
- (ii) Land Unit 2 – Building Site – There are currently building improvements located upon Land Unit 2 which are intended to remain; provided nothing shall prohibit demolition of any of the current improvements and construction of new Land Unit Buildings and other improvements on Land Unit 2; and
- (iii) Land Unit 3 – Building Site – There are currently building improvements located upon Land Unit 3 which are intended to remain; provided nothing shall prohibit demolition of any of the current improvements and construction of new Land Unit Buildings and other improvements on Land Unit 3; and
- (iv) Land Unit 4 – Building Site – There are currently building improvements located upon Land Unit 4, which are intended to remain; provided nothing shall prohibit demolition of any of the current improvements and construction of new Land Unit Buildings and other improvements on Land Unit 4; and
- (v) Land Unit 5 – Building Site – There are currently building improvements under construction upon Land Unit 5, which are intended to be completed and which are intended to remain; provided nothing shall prohibit

demolition of any of the current improvements and construction of new Land Unit Buildings and other improvements on Land Unit 5.

- F. GTP intends to construct a hotel on a portion of Land Unit 1.
- G. Declarant has entered into the following leases (referred to herein as “**Existing Leases**”):
 - (i) A lease with Chipotle Mexican Grill of Colorado, LLC (“**Chipotle**”) dated September 20, 2012 (“**Chipotle Lease**”) for a portion of Land Unit 2.
 - (ii) A lease with Mattress Firm, Inc. (“**Mattress Firm**”) dated September 26, 2012 (“**Mattress Firm Lease**”) for a portion of Land Unit 2.
 - (iii) A lease with PDQ Durham Real Estate Holdings, LLC (“**PDQ**”) dated October 11, 2012 (“**PDQ Lease**”) for Land Unit 3.
 - (iv) A lease with Fox NC Acquisition, LLC (“**Jimmy John’s**”), dated June 25, 2013 (“**Jimmy John’s Lease**”) for a portion of Land Unit 2.
 - (v) A lease with Raleigh Freddy’s, LLC (“**Freddy’s**”) dated August 27, 2013 (“**Freddy’s Lease**”) for Land Unit 4.

ARTICLE 1
SUBMISSION; DEFINED TERMS

Section 1.1. Declarant; Property; Name.

- (a) The Declarant and GTP are the fee simple owners of the Land.
- (b) The Declarant and GTP desire to establish a condominium pursuant to the provisions of Chapter 47C of the General Statutes of North Carolina as the same now exists or may be hereafter amended (hereinafter called the “**Act**” or the “**Condominium Act**”), and it is the desire and intention of the Declarant and GTP to divide the Land into Land Units (as hereinafter defined), and to own, develop, sell and/or convey the same subject to the covenants, restrictions, uses, limitations, obligations, easements, equitable servitudes, charges, and liens hereinafter set forth.
- (c) The Declarant and GTP hereby submit their respective interests in the Land, including all benefits, easements, rights and appurtenances thereto and any improvements erected thereon and all articles of personal property intended for use in connection therewith (collectively, the “**Property**”) to the provisions of the Condominium Act, and hereby create with respect to the Property a condominium to be known as “**Gateway Terrace Land**”

Condominium” (the “**Condominium**”).

(d) The Property is shown on the Condominium Plat recorded in the Durham County Registry in the file number referenced at the top of the first page of the Declaration (“**Condominium Plat**”).

(e) 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 substantially similar developments under a different form of ownership. This statement is made pursuant to N.C. Gen. Stat. Section 47C-1-106 of the Act for the purpose of providing marketable title to the Land Unit in the Condominium.

Section 1.2. Defined Terms. Capitalized terms not otherwise defined herein or in the Condominium Plat shall have the meanings specified or used in the Act. The following terms have specific meanings as follows and are a part of this Declaration and the Bylaws:

(a) “**Act**” means the Chapter 47C, the North Carolina Condominium Act of the North Carolina General Statutes.

(b) “**Annual Assessment**” means the share of the anticipated Common Expenses of each Land Unit for each fiscal year of the Association as reflected in the budget for such year and provided for in the Bylaws, collected on a monthly basis. The fiscal year for the Association shall be from January 1 – December 31.

(c) “**Association**” means the Gateway Terrace Land Condominium Owners Association, Inc., an entity to be composed of all of the owners of Land Units in the Condominium. In the event that a Land Unit is developed into a Building Condominium, the Building Condominium Association of that Land Unit shall be a member of the Association.

(d) “**Authorized Entity**” means an entity controlled by the Declarant.

(e) “**Board of Directors**” or the “**Board**” means the executive and administrative body designated or elected as provided in the Bylaws to act for the Association in governing the Condominium.

(f) “**Building Condominium**” means any condominium regime (other than the Condominium) established with respect to one or more Land Units and/or Land Unit Buildings pursuant to the Act.

(g) **“Building Condominium Association”** means the association of unit owners of any Building Condominium.

(h) **“Building Condominium Board”** means the board of directors of a Building Condominium Association or its duly authorized representative.

(i) **“Building Condominium Common Elements”** “Building Condominium Common Elements” shall mean and refer to any portion of a Unit identified as common elements by any Building Condominium Documentation.

(j) **“Building Condominium Documentation”** “Building Condominium Documentation” shall mean and refer to any condominium declaration recorded in the Office of the Register of Deeds, Durham County, North Carolina, imposing pursuant to the Act and the terms of this Declaration a separate condominium regime on any Land Unit, thereby further dividing the Land Unit into Building Condominium Units and Building Condominium Common Elements.

(k) **“Building Condominium Units”** “Building Condominium Units” shall mean and refer to any units formed pursuant to Building Condominium Documentation.

(l) **“Bylaws”** mean the Bylaws of the Association as they now or hereafter exist, and as are attached hereto as **Exhibit B**.

(m) **“Common Elements”** means all of the Property, other than Land Units and the improvements existing or constructed on the Land Units, and includes both the Common Elements and the Limited Common Elements (if any), as described herein and as now or hereafter designated on the Condominium Plat.

(n) **“Common Expenses”** means expenditures made or liabilities incurred by or on behalf of the Association pursuant to this Declaration or the Bylaws, together with any allocation to any reserve fund which may exist, including, but not limited to liability insurance on the Common Elements and real estate taxes assessed against the Common Elements. All Common Expenses shall be allocated pursuant to the Percentage Interest of the Land Units.

(o) **“Common Expense Liability”** means the liability for Common Expenses allocated to a Land Unit in accordance with the Act and this Declaration.

(p) **“Common Profits”** means any income collected or accrued by or on behalf of the Association, other than income derived by assessment against a Land Unit or Land Units pursuant to the provisions of this Declaration and the Bylaws.

(q) **“Condominium”** means Gateway Terrace Land Condominium described in Section 1.1(c) above.

(r) **“Condominium Plat”** or **“Plat”** has the meaning set forth in Section 1.1(d) above, and any amendments thereof, made and recorded in accordance with the Act.

(s) **“Declarant”** means the Declarant named above, and its successors and assigns, provided such successors or assigns are specifically assigned any or all of the Declarant's rights hereunder by an instrument in writing.

(t) **“Declarant’s Lender”** means the holder of any Mortgage encumbering a Land Unit owned by Declarant.

(u) **“Declaration”** means this document, as the same may be amended from time to time.

(v) **“Land Unit”** or **“Unit”** means a condominium unit as described herein and on the Condominium Plat.

(w) **“Land Unit Building”** means any building(s) consisting of an enclosed structure or structures existing or erected within any Land Unit whether or not a part of or within the jurisdiction of a Building Condominium.

(x) **“Limited Common Elements”** means those parts of the Common Elements, if any, serving exclusively one Land Unit, as an appurtenance thereto, the enjoyment, benefit and use of which are reserved to the lawful occupants of such Land Unit and which are described on the Condominium Plat as Limited Common Elements.

(y) **“Limited Common Expenses”** means the expenses associated with the operation, repair, maintenance and replacement of any Limited Common Elements, if any, which may be assessed by the Board of Directors against the Land Unit or Land Units to which such Limited Common Elements are appurtenant and any other Common Expenses which may be assessed against particular Land Units as provided in this Declaration or the Bylaws.

(z) **“Member”** means a Unit Owner, which, by virtue of its ownership of a Land Unit is a Member of the Association, and the rights of which are further described in the Articles of the Association.

(aa) **“Mortgage”** means any mortgage or deed of trust encumbering a Land Unit, as the same may be amended, restated, replaced, supplemented, renewed, extended or otherwise modified from time to time.

(bb) **“Mortgagee”** means the holder of or beneficiary under a Mortgage and its successors and assigns, including Declarant’s Lender.

(cc) **“Percentage Interest”** means the individual ownership interest appurtenant to each Land Unit with respect to the (i) Common Elements and (ii) the Common Profits and Common Expenses of the Association, as set forth on **Exhibit A** hereto.

(dd) **“Property”** means the property described in Section 1.1(c) above and any additions thereto made in accordance with this Declaration and the Act.

(ee) **“Rules and Regulations” or “Rules”** mean such Rules and/or Regulations, if any, as are promulgated by the Association from time to time in accordance with the Act, this Declaration and the Bylaws with respect to various matters relating to the use of all or any portion of the Condominium, which either supplement, complement, or elaborate upon the provisions of this Declaration or the Bylaws.

(ff) **“Special Assessment”** means an individual Land Unit's share of any assessment made by the Association in addition to the Annual Assessment.

(gg) **“Unit Owner”** means, in addition to the definition provided in N.C. Gen. Stat. 47C-1-103(26):

- (i) the Declarant, for so long as the Declarant shall own at least one Land Unit;
- (ii) any person, corporation, partnership, association, trust or other legal entity, or any combination thereof who, or which owns an undivided fee interest in a Land Unit;
- (iii) with respect to any Land Unit that shall be subjected to a Building Condominium, the owner's association of Unit Owners of such Building Condominium.

ARTICLE 2
ALLOCATION OF PERCENTAGE INTERESTS AND COMMON EXPENSE
LIABILITIES; VOTING RIGHTS; LAND UNIT IDENTIFICATION AND
BOUNDARIES; LIMITED COMMON ELEMENTS

Section 2.1. Description of Common Elements. The Common Elements consist of (a) drive aisles and the sidewalks and landscaping adjacent thereto, as configured as of the date of recording of this Declaration and shown on the Condominium Plat and as it may be reconfigured by the Declarant and reflected on subsequent Plats that may be recorded in the Condominium File from time to time, including drive aisles and sidewalks (but not drive-through lanes) located on any one or more Land Units; (b) stormwater management facility, storm drainage facilities, water distribution and sanitary sewer systems serving the Property; (c) signage located on the Property other than the Land Units; and (d) all portions of the Property (including any improvements situated thereon) as are now or hereafter designated on the Condominium Plat other than the Land Units, including, without limitation, land and air space not included within any Land Unit. The entire land area of each Land Unit shall be part of that Unit, but shall be subject to the Common Elements identified in this Section 2.1 and subject to the easements created in Article 5.

Section 2.2. Percentage Interest of Land Units: Vote. In the aggregate the Land Units shall have appurtenant to them one hundred percent (100%) of the total Percentage Interests of all of the Land Units in the Condominium. Attached hereto as **Exhibit A** is a list of the Land Units in the Condominium setting forth their Identifying Unit Numbers and the Percentage Interest of each such Land Unit. The Percentage Interest of the Land Units represents (i) the share of Common Expenses and Profits appurtenant to each Land Unit, and (ii) the ownership of the Common Elements appurtenant to each Land Unit. Notwithstanding the allocated Percentage Interest to a Land Unit, each Land Unit shall have votes in the Association allocated pursuant to **Exhibit A**. The allocations on **Exhibit A** are calculated based on the approximate square footage area of the footprint of the building(s) located, or intended to be constructed, on each Land Unit as a percentage of the total approximate square footage area of the footprints of all of the buildings located, or anticipated to be constructed, of all buildings on the Land Units in the Condominium, as of the date that this Declaration is recorded. The allocations on **Exhibit A** shall not be adjusted regardless of whether buildings are actually constructed on the Land Units; provided that the foregoing is not intended to prohibit adjustments to Percentage Interest if expressly provided in the Act or this Declaration, including but not limited to Sections 4.5, 4.6, 4.7.a, and 4.7.b.vii.

Section 2.3. Land Unit Boundaries.

(a) **Boundaries on Plat.** The Condominium Plat shows the location and dimensions of the Land Units modified by the description of Common Elements contained in this Declaration, and the Condominium Plat may be amended from time to time by the Declarant in accordance with this Declaration to show Land Units and Common Elements added to the Condominium and to reflect changes in Land Unit boundaries or the locations of Common

Elements, to the extent such Common Elements are shown on the Condominium Plat. Provided, however, Declarant may not alter the boundaries of any Unit not owned by Declarant and Declarant may not alter the boundaries of Common Elements after Declarant ceases to own any of the Units if such alteration would result in failure of any Unit not owned by Declarant to comply with applicable laws or regulations, or otherwise unreasonably interferes with or materially alters utilities, access or drainage serving any Unit not owned by Declarant. The lower unit boundary of each Land Unit is a horizontal plane at the "lowest grade elevation" shown on the Condominium Plat. The upper unit boundary of each Land Unit is a horizontal plane at the "upper boundary elevation" of each Land Unit as shown on the Condominium Plat. The external side boundaries of each land unit is the vertical and perpendicular plane between the upper and lower boundaries as defined herein and as shown on the Condominium Plats. The portion of the Property located below the lower elevation of a Land Unit is a Limited Common Element allocated to that Land Unit. Airspace located above a Land Unit is a Limited Common Element that shall be allocated to that Land Unit.

(b) Construction of Buildings. The Owner of a Land Unit may demolish existing improvements and construct Land Unit Buildings upon its Land Unit in accordance with the provisions of this Declaration, with architectural approval of the Declarant or approval by an Authorized Entity, and consistent with City of Durham regulations. No failure to object by the Declarant or the Authorized Entity shall be deemed to have waived, or granted any variances from, any term, covenant, condition, easement or restriction contained in this Declaration. Notwithstanding the foregoing, no approval of the Declarant or by an Authorized Entity shall be required in the event that the Land Unit Building or other improvement is constructed to the same specifications existing: (i) on the date this Declaration is recorded, or (ii) immediately prior to the date of the casualty (if demolition was caused by a casualty). A Land Unit Building may be subjected to a Building Condominium. Any Land Unit Building or other improvements constructed upon or within any Land Unit shall become part of that Land Unit as and when constructed, and no part of any Land Unit Building or other improvements located within a Land Unit, even if denominated as a common element of a Building Condominium, shall be considered a Common Element of this Condominium.

Section 2.4. Limited Common Elements. The Limited Common Elements specified in Section 47C-2-102(2) and (4) of the Act are allocated to the Units those Limited Common Elements serve. The Owner of the Unit to which the Limited Common Element is appurtenant shall be responsible for the ordinary maintenance thereof and the Association shall be responsible for repair and replacement. Common Elements allocated to specific Units to the exclusion of other Units, as shown on the recorded Plans or as described herein shall be considered Limited Common Elements allocated to those Units. The following features shall be considered to be Limited Common Elements allocated to the Unit for which they serve and are illustrated on the Plans:

| | |
|------------------------------|--|
| Land Unit 1: | Dumpster identified as LCE #5 |
| Land Unit 2: | Dumpster identified as LCE #3 |
| Land Unit 3: | Dumpster identified as LCE #4 Storage Building identified as LCE #2 |
| Land Unit 4 and Land Unit 5: | Dumpster identified as LCE #1 |

Notwithstanding anything to the contrary contained herein, the Association shall have the right, at its option, and upon reasonable prior notice to the affected Unit Owner, to maintain any Limited Common Element if the Owner of the Unit does not do so and the Association shall bill the cost of the maintenance to the responsible Unit Owner.

ARTICLE 3

ASSESSMENTS; PROCEDURE; LIEN

Section 3.1. Annual Budget. Prior to each fiscal year and within sufficient time to satisfy the requirements of the Act, the Board shall adopt a budget for the Association (“**Budget**”) containing an estimate of the total amount considered necessary to pay the cost of maintenance, management, operation, repair and replacement of the Common Elements and those parts of the Units and other properties as to which it is the responsibility of the Association to maintain, repair and replace, which shall be determined by the Board and shall include but not be limited to: (a) drive aisles and the sidewalks adjacent thereto located on all Land Units; (b) exterior lighting on all Land Units (but not including exterior lighting attached to any Land Unit Building); (c) landscaping on all Land Units, including but not limited to irrigation improvements; (d) stormwater facilities (which shall be maintained pursuant to an annual maintenance plan), water distribution and sanitary sewer systems serving the Property; (e) insurance in such amounts as required by the Act; (f) all costs assessed against the Property as a common expense or other maintenance costs required to be paid by the Property pursuant to the terms of any other declaration or covenants that encumber the Property; and (g) the cost of wages, materials, insurance premiums, services, supplies and other expenses that may be declared to be Common Expenses by (i) the Act, (ii) this Declaration, (iii) the Bylaws, or (iv) a resolution of the Association and which will be required to be paid during the ensuing fiscal year for the administration, operation, maintenance and repair of the Condominium and for rendering to the Owners all related services. The budget of the Condominium in the discretion of the Board, and as necessary, may include, without limitation, amounts for: funding deficits for any prior year; a reserve for working capital; a reserve for maintenance and replacement; and a general operating reserve. The Budget shall constitute the basis for determining each Owner’s assessment for the Common Expenses of the Association.

Section 3.2. Obligation to Pay Common Expenses. The failure or delay of the Board of Directors or the Members to prepare or adopt a Budget for any fiscal year shall not constitute a waiver or release in any manner of an Owner's obligation to pay the Unit's allocable share of the Common Expenses whenever the same is determined and, in the absence of any new or adjusted Budget, the Owners shall continue to pay each periodic assessment installment at the rate established for the previous fiscal year until notice of the new or adjusted Budget has been delivered.

Section 3.3. Adoption of Annual Budget. Following adoption of the Budget, the Board shall comply with the provisions of the Act regarding preparation and delivery of a summary of the Budget, and shall set a date for a meeting of the members of the Association as required by the Act. There shall be no requirement that a quorum be present at the meeting. At the meeting, the budget shall be deemed approved unless all of the Unit Owners reject the budget.

Section 3.4. Special Assessments. The Board of Directors may also levy and collect Special Assessments as provided in the Bylaws.

Section 3.5. Surplus Funds. Surplus funds of the Association not being held as working capital or reserves for future needs shall be applied to defray Common Expenses.

Section 3.6. Payment of Assessments. The Declarant, for each of Unit 2, 3, 4, and 5, and GTP, for Unit 1, hereby covenants, and each Owner by acceptance of a deed to a Unit, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association the Annual Assessments and any Special Assessments established by the Association pursuant to the Articles of Incorporation of the Association and the Bylaws. Each such assessment, together with interest and costs and reasonable attorney's fees incurred in the collection of the assessment, shall be the personal obligation of the Owner of the Unit at the time when the assessment falls due. No Owner shall be exempted from liability for the assessment by reason of waiver of the use or enjoyment of any of the Common Elements or by abandoning the Unit.

Section 3.7. Liability for Payment of Assessments. No Owner shall be liable for the payment of charges or assessments against the Unit assessed subsequent to date of recordation of conveyance of such Unit to another person, in fee, by the Owner. Prior to or at the time of any such conveyance, all liens, unpaid charges and assessments shall be paid in full and discharged. The purchaser of a Unit shall be jointly and severally liable with the selling Owner for all unpaid charges and assessments against the selling Owner up to the time of such recordation, without prejudice to the purchaser's right to recover from the selling Owner amounts paid by the purchaser. Notwithstanding the foregoing, the purchaser of any Unit shall be entitled to receive from the Board a written statement setting forth the amount of the unpaid assessments against that Unit within ten (10) days following a written request to the Board or a managing agent

designated by the Board for such a statement, and such purchaser shall not be liable for, nor shall the Unit conveyed be subject to a lien for, any unpaid charges or assessments in excess of the amount set forth in the Board's statement.

Section 3.8. Lien on Units. The Annual Assessments and any Special Assessments established by the Association, together with the interest, and costs and reasonable attorney's fees incurred in the collection of the assessments, shall be a charge on the real estate and shall be a continuing lien upon the Unit against which each such assessment is made. The lien shall be perfected upon filing of a claim of lien in the Office of the Clerk of Superior Court of Durham County, North Carolina pursuant to the Act, including but not limited to N.C. Gen. Stat. Section 47C-3-116. A claim of lien filed pursuant to this Section 3.8 is prior to all liens and encumbrances on a Unit except (i) liens and encumbrances, specifically including but not limited to a Mortgage on the Unit, recorded before the filing of the claim of lien in the Office of the Clerk of Superior Court of Durham County, North Carolina, and (ii) liens for real estate taxes and other governmental assessments and charges against the Unit. Where the holder of a Mortgage or other purchaser of a Unit obtains title to the Unit as a result of foreclosure of a Mortgage, the purchaser and its heirs, successors and assigns shall not be liable for the assessments against the Unit which became due prior to the acquisition of title to the Unit by the purchaser. The unpaid assessments shall be deemed to be common expenses collectible from all the Unit Owners, including the purchaser, its heirs, successors and assigns. For purposes of this paragraph, the term "acquisition of title" means and refers to the recording of a deed conveying title or the time at which the rights of the parties are fixed following the foreclosure of a Mortgage, whichever occurs first.

ARTICLE 4

RESTRICTIONS ON USE OF LAND UNITS; RELOCATION OF LAND UNIT BOUNDARIES

Section 4.1. Permitted Uses. In order to provide for congenial relations of the Unit Owners of the Condominium and for the protection of the values of the Land Units, the use of the Condominium and subject to the other restrictions in this Declaration, and subject to any applicable zoning restrictions or other governmental laws, rules or regulations, the following are permitted uses in Gateway Terrace, which shall be in accordance with the intended uses stated in the other provisions of this Article 4 and the Bylaws:

- a. Retail sales or services (retail services to include, for illustrative purposes only and without limitation, clothing stores, shoe stores, dry cleaners, beauty parlors, florists and shoe repair shops);
- b. Office uses that are normally found in community-oriented retail shopping

centers (such as, but not limited to, offices of dentists, accountants, attorneys, and doctors; insurance agency and real estate brokerage offices; and offices of travel agencies, banks and other financial institutions);

c. Restaurants (including fast food restaurants);

d. Video stores;

e. Health clubs, exercise clubs or studios, and health spas;

f. Service stations and automobile supply, service and repair facilities (such as Goodyear, Western Auto, etc.);

g. Hotels, with ancillary uses consistent with typical services provided to hotel guests and/or services supporting the hotel use, including but not limited to: café, restaurant, retail shops, bar, spa, fitness room or other workout facilities, recreational facilities and health clubs, including but not limited to swimming pool, banquet halls, meeting and other public rooms, and other hotel support areas, including kitchens, storerooms and maintenance workshops; and

h. Any other use approved by Declarant in writing.

Section 4.2. Prohibited Uses. The following uses are prohibited in Gateway Terrace:

a. Any use which is a public or private nuisance, or any use which, in the determination of the Declarant, (i) creates vibrations or offensive odors, fumes, dust or vapors (with the exception of such odors, fumes, dust or vapors which are reasonably and normally expected and incidental to a use permitted by this Declaration), or (ii) creates any noise or sound which can be heard outside of any building and which is offensive due to intermittency, beat, frequency, shrillness or loudness (provided any usual paging system shall be allowed), or (iii) any use which produces an excessive quantity of dust, dirt or fly ash, or (iv) any use which produces fire, explosion or other damaging or dangerous hazard, including the storage, display or sale of explosives or fireworks;

b. Any manufacturing or industrial operation, any processing or rendering plant, or any lumber yard (except in connection with the operation of hardware stores or home improvement stores);

c. Any hazardous or illegal use;

d. Any mobile home park, trailer court, labor camp, junkyard, or stockyard (except that this provision shall not prohibit the temporary use of construction trailers during periods of construction, reconstruction, or maintenance);

e. Any dumping, disposing, incineration, or reduction of garbage, waste, hazardous waste or hazardous substances (exclusive of garbage compactors which are screened from public view and approved by Declarant as provided in this Declaration);

f. Any fire sale, bankruptcy sale (unless pursuant to a court order) or auction house operation (but this provision shall not restrict the absolute freedom of an Owner or occupant to determine its own selling prices, nor shall it preclude the conduct of periodic seasonal, promotional or clearance sales or legitimate "going out of business" sales);

g. Any adult entertainment facility, adult video or book store, or other establishment selling or exhibiting pornographic materials. As used herein, an "adult book store or establishment selling or exhibiting pornographic materials" shall include, without limitation, a store displaying for sale or exhibit books, magazines or other publications containing any combination of photographs, drawings, or sketches of a sexual nature which are not primarily scientific or educational (collectively, "Sex Magazines") or a store offering for exhibition, display, viewing, sale or rental video cassettes or other medium capable of projecting, transmitting or reproducing, independently or in conjunction with another device, machine or equipment, an image or series of images, the content of which is pornographic (provided the sale or rental of devices, machines and equipment capable of projecting, transmitting or reproducing images is not prohibited) or "adult only". As used herein, "adult entertainment facility" shall include but is not limited to nude or semi-nude entertainment facility, massage parlor, strip show, lingerie exhibition or shop (excluding a Victoria's Secret or similar high quality national retailer), a so-called "gentlemen's" club or facility, or any establishment for the sale of items or paraphernalia that are intended to be or commonly are utilized in connection with the use of illegal drugs, provided that this item does not prohibit the sale or rental of "adult" videos or books in connection with a full line national video or book store or the operation of a business providing bonafide massage therapy;

h. A telemarketing or similar operation;

- i. Any cemetery, crematorium, mausoleum, funeral parlor or mortuary or similar establishment;
- j. Any massage parlor or so-called "head shop";
- k. Any second hand or used goods store, flea market, amusement park, carnival, bingo parlor, shooting gallery, gun club, shooting range or off-track betting parlor, bingo or other gambling (on-site or via internet or other electronic access) establishment (provided that a retail or other establishment that is otherwise permitted under this Declaration may sell lottery tickets in accordance with applicable laws, rules and regulations);
- l. Any place of gathering for temporary or day labor.
- m. Any collection, dumping, or storage of garbage, junk, recyclable materials or refuse, other than that produced in connection with the businesses operated within or the operation of the Land Condominium and disposed of in enclosed receptacles intended for such purpose.

Section 4.3. Hotel Exclusive. Provided that a hotel opens and operates on the Property within four (4) years from the date of this Declaration, the Owner of Land Unit 1 has the exclusive right to operate a hotel on the Property until the earlier of (i) ninety (90) years from the date of this Declaration, or (ii) in the event that a hotel is not being operated on Land Unit 1 for a period of 365 consecutive days, unless the failure to so operate is due to a casualty or remodeling that closes the hotel, in which event the time period will be extended to two (2) consecutive years.

Section 4.4. Additional Exclusives. During the term of the respective lease identified on the list attached hereto as **Exhibit C**, neither the Property nor any portion thereof shall be used for any of the exclusive uses identified on **Exhibit C**, except for those portions of the Property in whose favor the exclusive uses run as set forth thereon. Each lease identified on **Exhibit C** may be renewed or extended, and the Declarant may extend such exclusives in favor of other parties beyond the term of the respective lease by recording an amendment to this Declaration.

Section 4.5. Combination of Land Units. Upon compliance with the requirements of the Act, all or part of two or more adjacent Land Units may be combined into a larger Land Unit, provided that either (i) both of the combined Land Units are under common ownership at the time of such combination; or (ii) both Land Units contain Land Unit Buildings that have been subjected to a single Building Condominium, whereupon the Percentage Interest and the interest

in any Common Elements appertaining to such combined Land Unit shall be recomputed in accordance with the procedures set forth in this Declaration and the Act.

Section 4.6. Subdivision of Land Units. Declarant contemplates the demolition of existing buildings on some of the Land Units and redevelopment of some of the Land Units which may require further subdivision and reconfiguration of the Land Units. Thus Declarant or an Authorized Entity shall have the right to subdivide a Land Unit (other than Land Unit 1) into two smaller Land Units, Common Elements and Limited Common Elements. In the event Declarant or an Authorized Entity subdivides or adds Land Units (other than pursuant to a Building Condominium), or demolishes and reconstructs a building on a Land Unit, the Percentage Interest shall be reallocated such that each new Land Unit has a Percentage Interest which represents the square footage area of the footprint(s) of the building(s) on such Land Unit in proportion to the total square footage area of the footprints of all buildings in the Condominium. Other than as expressly permitted herein, or as permitted pursuant to Section 4.8 below, a Land Unit shall not be subdivided into two or more smaller Land Units.

Section 4.7. Development Rights; Special Declarant Rights;

a. Declarant reserves the right, until December 31, 2032, to add real estate located adjacent to the Property to the Condominium (“**Additional Property**”); and on the Property and the Additional Property: (i) to create Common Elements or Units; (ii) to subdivide Units; (iii) to recombine Units; (iv) to convert Units owned by Declarant into Common Elements; or (v) to withdraw real estate from the Condominium; provided, however, (i) no real estate may be withdrawn from the Condominium and no portion of the Common Elements may be converted to a Unit after Declarant ceases to own any of the Units if such withdrawal or conversion would result in the failure of any unit to comply with applicable laws or regulations, or otherwise unreasonably interferes with or materially alters utilities, access or drainage serving any Unit not owned by Declarant, and (ii) the exercise of such right shall require the prior written consent of Declarant’s Lender.

b. The following Special Declarant Rights as to the Property and the Additional Property are reserved until December 31, 2032 in this Declaration:

- i. To complete any improvements shown on the Plat or required to be delivered pursuant to the Act;
- ii. To maintain, anywhere within the Property, sales offices, management offices and models in any Unit owned by Declarant or on the Common Elements and to remove any of the foregoing located on the Common Elements;

- iii. To maintain advertising signs on the Common Elements as permitted by the Act;
 - iv. To use easements through the Common Elements for the purposes of making improvements within the Property (such reservation to be construed as an addition to and not a limitation on the rights granted to the Declarant in Section 47C-2-116 of the Act);
 - v. To use, grant and reserve easements and rights of way through, under, over and across the Property for the installation, maintenance, inspection, repair and replacement of lines and appurtenances for public or private sewer, water, drainage, gas, electricity, telephone and other utilities; and
 - vi. Intentionally omitted.
 - vii. To exercise in its discretion the development rights to modify the existing buildings and related improvements on the Land Units (except Land Unit 1). It is specifically contemplated by Declarant that it may demolish certain of the constructed improvements on the Land Units and construct new improvements thereon; provided that the foregoing right does not apply to Land Unit 1. Upon completion of the construction of the improvements, or as necessary to construct the improvements, Declarant shall file an amendment to this Declaration in the Durham County Register of Deeds together with a revised plat of the affected Land Unit or Land Units in accordance with the Act, said amendment and revised plat may convert to Common Elements portions of a Land Unit other than those portions on which Land Unit Buildings are located (except for Land Unit 1). If applicable, the amendment shall also reallocate the Percentage Interest in the Common Elements and Common Expenses appurtenant to each Unit based on the acreage of the new Land Unit to the total acreage of the Land Unit from which it was split. The right to modify pursuant to this subsection shall be appurtenant to the specific Land Unit and may be exercised only by the Declarant or an Authorized Entity, subject to the provisions of this subsection (vii).
- c. If these Special Declarant Rights are not exercised by December 31, 2032 then they shall terminate.
- d. Until termination as provided in Section 4.7(c) above, the Special Declarant Rights are exercisable by Declarant or an Authorized Entity; provided that the exercise of such rights shall require the prior written consent of Declarant's Lender. The

Special Declarant Rights may not be altered or terminated without the express approval of Declarant or an Authorized Entity and prior written consent of Declarant's Lender.

Section 4.8. Rules. Reasonable Rules not in conflict with the provisions of this Declaration or the Bylaws, concerning the use and enjoyment of the Land Units and the Common Elements, may be promulgated from time to time by the Board of Directors in accordance with the Act and any other applicable law. The Board of Directors shall, promptly following adoption thereof, furnish copies of the Rules and any amendments thereof to each Unit Owner and to any Building Condominium Board which is a Unit Owner. During the period in which the Declarant owns any property within the Condominium, the Declarant shall have the right to veto any proposed Rule and such veto, if exercised, shall prevent the Rule from becoming effective. In the event that any proposed Rule conflicts with the terms of an Existing Lease, the proposed Rule shall be modified as reasonably necessary to prevent conflict.

Section 4.9. Real Estate Taxes and Assessments. All real estate taxes, governmental assessments and other public charges relating to any Land Unit (including any Land Unit Building(s) or other improvements constructed thereon which shall pursuant to this Declaration be part of such Land Unit) (collectively "Taxes") shall be the sole responsibility of and shall be paid prior to delinquency by the Unit Owner thereof; provided however, that if any Land Unit is part of a Building Condominium, responsibility for the payment of Taxes for the portion of the Land Unit that is part of a Building Condominium shall be required pursuant to the condominium instruments establishing such Building Condominium.

Section 4.10. Repair, Condition and Appearance of Land Units. Except as otherwise provided herein or in the Bylaws, the Unit Owners shall be responsible for maintaining their Land Units and Land Unit Buildings in good order, repair and in an attractive appearance.

Section 4.11. Insurance Proceeds. All insurance proceeds in respect of any improvements on a Land Unit which improvements are owned by the owner of that Land Unit shall be payable to the holder of the Mortgage on such Land Unit and shall be applied in accordance with the terms of such holder's Mortgage or, if there is no such Mortgage, to such Unit Owner.

Section 4.12. Conveyance and Mortgage on Land Units. Unit Owners shall be permitted to use a Land Unit as security for a deed of trust and, other than as noted within this Declaration, for all other purposes permitted by N.C. Gen. Stat. Chapter 47C.

Section 4.13. Parking. No Owner or any employee, agent or invitee of any Owner shall park, store or keep any vehicle on the Property except wholly within the parking space(s) and in particular shall not block any entrances, drive aisles, or fire lanes. Parking spaces may be allocated for use by specific Units upon approval by the Board and execution of a resolution of

the board documenting such allocation of specific parking spaces for use by specific Units. The Board shall approve Rules and Regulations governing parking on the Property, which shall identify the types of vehicles prohibited from being parked on the Property. No significant automobile repair or alteration shall be allowed in the parking areas on the Property. The Association shall have the right to tow any vehicle in violation of this Section or the Rules and Regulations at its owner's expense. In addition to having the right to tow any vehicle in violation of this Section or the Rules and Regulations, the Association shall have the right to levy fines not in excess of the maximum amount permitted under the Act. Fines imposed for violation of the parking restrictions shall be considered special assessments and shall be due and payable upon receipt of the parking violation. The Association shall have the right to enforce payment of such special assessment in the same manner as it may enforce the collection of any assessments under this Declaration and the Bylaws including charging of interest, payment of late fees and imposing of a lien against the Unit. Each Owner shall be responsible for any parking violation by Owner or anyone in Owner's family, or by any tenants, guests or invitees of the Owner. Notwithstanding any other term contained herein, no Rule or Regulation shall adversely affect the parking space requirements of the applicable local jurisdiction for any of the Land Units, no Rule or Regulation shall be in conflict with parking requirements set forth in Existing Leases, and in no event shall the Board allocate parking spaces to specific Units if such allocation would adversely affect the parking space requirements of the applicable local jurisdiction for any of the Land Units. In furtherance of the foregoing, it is expressly understood and agreed that, as of the date of this Declaration, Land Unit 1 requires at least 108 parking spaces to operate a hotel.

Section 4.14. Waiver of Rights Under Article 4 of the Act. Each Owner of a Land Unit, by acceptance of a deed therefor, hereby waives, to the extent permitted under applicable law, all rights of unit owners under Article 4 of the Act.

ARTICLE 5

EASEMENTS AND COVENANTS

Section 5.1. Easements.

(a) The easements created in this Declaration are in addition to and supplement the easements provided pursuant to the Act.

(b) If any portion of the Common Elements encroaches upon any Land Unit, or if any Land Unit Building encroaches upon any other Land Unit or upon any portion of the Common Elements as a result of the construction, reconstruction, repair, shifting, settlement or movement of the Land Unit Building(s) and/or Common Elements, an easement for the encroachment and for the maintenance of the same exists so long as the encroaching Land Unit and/or Common Elements shall stand, provided that such encroachment is not intentional.

(c) If any Land Unit Building or Common Element 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 constructed, reconstructed or repaired, any encroachment resulting from such reconstruction, construction or repair shall be permitted, and easements for such encroachment and the maintenance thereof shall exist so long as the encroaching improvements shall stand, provided that such encroachment is not intentional.

(d) An easement for mutual support shall exist in the Land Units, any Land Unit Buildings and the Common Elements.

(e) To the extent permitted by law and subject to reasonable Rules established by the Board from time to time, the Land Units and the Common Elements (but excluding the interior portions of any Land Unit Building) are subject to easements in favor of the Unit Owners and occupants of any Land Unit Building as follows, provided, however, that the following easements shall not abridge the rights of any Unit Owner to alter improvements located on such Unit Owner's Unit provided such alteration is otherwise in accordance with the terms of this Declaration:

(i) with respect to any portion of the Condominium (other than the Limited Common Elements or any other portion of the Condominium that is assigned for the exclusive use of a particular Land Unit) now or hereafter containing paved areas or other improvements designed or designated for pedestrian access, vehicular access or parking, easements for ingress and egress for pedestrians and vehicles (including temporary delivery trucks) and their guests, lessees and invitees (but excluding the interior portions of any Land Unit Building); and

(ii) with respect to any portion of the Condominium now or hereafter containing sidewalks, pathways or stairs, (but excluding the interior portions of any Land Unit Building), easements for pedestrian movement of the Unit Owners and occupants of any portion of any Land Unit or Land Unit Building within the Condominium and their guests, lessees, and invitees; and

(iii) each Unit Owner shall have a right over each of the Land Units for reasonable and necessary pedestrian and vehicular ingress and egress (a) to and from the Land Units, and (b) to and from public and private roadways and streets; and

(iv) with respect to Common Elements (excluding the Limited Common Elements), the right to use and enjoy the Common Elements for the purpose for which they are intended, provided that the foregoing shall not be construed as granting any Unit Owner or its occupant any rights granted to the Association pursuant to Section 5.1(j).

A Unit Owner may alter, redesign, relocate or replace paved areas and other improvements designed or designated for pedestrian access, vehicular access or parking on its Unit provided: (a) reasonable prior notice is provided to the other Unit Owners as to the scope and timing of the project; (b) construction of such areas do not unreasonably interfere with the use or enjoyment of any Unit by its Owner(s) and occupants; (c) suitable alternative access or parking is provided to the other Unit Owners during the construction of the alternative access; and (d) the improved areas provide the same or better access as the other Unit Owners enjoyed prior to the redesign, relocation or replacement of the improved area.

(f) The Land Units, Land Unit Buildings and Common Elements are subject to easements in favor of the Unit Owners, appropriate utility and service companies, and governmental agencies or authorities for such utility and service lines and equipment as may be reasonably necessary or desirable to serve any portion of the Property. The easements created in this Section 5.1(f) shall include, without limitation, rights of the Unit Owners, utility service providers, and governmental agencies or authorities to install, lay, maintain, repair, relocate and replace any and all utilities serving the Condominium (including all Land Unit Buildings situated therein), including, but not limited to, gas lines, pipes and conduits, water mains and pipes, sewer and drain lines, telephone wires and equipment, television and computer (e.g., internet) equipment and facilities (cable or otherwise), electric wires, conduits and equipment, over, under through, along and on the Common Elements and Land Units. Notwithstanding the foregoing provisions of this Section 5.1(f), such easements shall be located within the Property so as to avoid unreasonable interference with the use or occupancy of the Land Unit or Land Unit Building by any Unit Owner.

(g) The Board of Directors and the Declarant, subject to the right of a Unit Owner to reasonably consent to the location, shall have the right to create an easement, on, over and under the Common Elements or Land Units for the purpose of maintaining and correcting drainage of surface water and in order to maintain reasonable standards of health, safety and appearance; provided, however, that no such easement shall apply to any portion of any Land Unit on which a Land Unit Building has been constructed or interfere with or prohibit a Unit Owner from maintaining or constructing any Land Unit Building on such Owner's Land Unit that is otherwise permitted under this Declaration. The easement created by this Section 5.1(g) expressly includes the right to cut or remove any vegetation, to grade the soil, or to take any other action reasonably necessary to achieve this purpose, which does not materially interfere with the use and occupancy of the affected Land Unit or any Land Unit Building, following which the Board of Directors or the Declarant (whichever is applicable) shall restore the affected Land Unit as closely to its original condition as practicable.

(h) The Association (through its Board of Directors, if applicable), its agents and employees, shall have an irrevocable right and an easement to enter Land Units to make repairs to Land Units or any portion of the Common Elements or Land Units to the extent such repairs reasonably appear necessary due to lack of maintenance by the Unit Owner, and for public safety or to prevent damage to other portions of the Condominium. Except in cases involving manifest danger to public safety or property, the Board of Directors shall make a reasonable effort to give notice to the Unit Owner of any Land Unit to be entered for the purpose of such maintenance and repair. If a Land Unit or Land Unit Building is part of a Building Condominium, such notice shall be provided to the Building Condominium Board and the Building Condominium Board shall be provided with a reasonable opportunity to make such repairs within a reasonable period of time; provided however, that no such notice or opportunity to cure shall be required in cases involving manifest danger to public safety or property. If in the exercise of any of its rights pursuant to this Section 5.1(h) the Association causes any damage to any Land Unit, any of the Common Elements, and any Land Unit Building, the Association shall be responsible for the prompt repair of such damage. An entry by the Association through its Board of Directors, agents, and employees for the purposes set forth in this Section 5.1(h) shall not be deemed a trespass.

(i) In the event the Association fails to maintain and to make repairs to Common Elements located on any of the Land Units, any Land Unit Owner shall have the irrevocable right and an easement to enter a Land Unit or Land Units to maintain and to make repairs to Common Elements located on a Land Unit or Land Units. The Land Unit Owner shall be entitled to undertake such maintenance and repair work after providing the Association and the Land Unit Owner where the Common Elements to be maintained or repaired are located, ten days written notice of its intent to go on an identified Land Unit or Land Units and complete the identified maintenance and repair work, and to recover the cost of so doing from the Association and the owners of all of the Land Units, together with reasonable attorney's fees. All costs and expenses incurred by any Land Unit Owner pursuant to this subsection (i), including the cost of any suit or legal proceedings and reasonable attorney's fees incurred thereby (at all tribunal levels), shall be assessed against the Association and the owners of all of the other Land Units and shall constitute a lien against the other Land Units, such lien to be effective upon recordation of notice thereof in the Office of the Register of Deeds of Durham County, or in the Office of the Clerk of the General Court of Justice in Durham County, provided, however, that any such lien shall be junior and subordinate to any mortgage lien then existing or thereafter placed on the Property, or any lot constituting the Property. Provided, further, that the foreclosure or enforcement of any such lien will not affect or in any way invalidate any lease executed by the owner of any of the lots.

(j) The Association shall have an easement over the Land Units and Common Elements for inspection, operation, maintenance, repair, improvement and replacement of the

Common Elements and any improvements thereon, and for correction of emergency conditions or casualties to the Common Elements and any improvements thereon.

(k) Each Unit except Land Unit 1 shall be held, sold and conveyed subject to a perpetual non-exclusive easement in favor of the Declarant, in favor of the Association, and in favor of the Unit Owners and Occupants of any Land Unit Building, over and upon all portions of each Unit that are outside of, or beyond, the footprint of the building improvements initially constructed on that Unit pursuant to the terms of this Declaration (the "**Building Perimeter Easement Areas**") to be utilized as Common Elements of the Condominium in the same manner and fashion as all other Common Elements. Specifically, the Declarant and/or the Association, shall have the right to design, construct, complete and exercise control over the course of development of any and all landscaping and surface level improvements located within the Building Perimeter Easement Areas, and specifically, Declarant and/or the Association, may construct within the Building Perimeter Easement Areas sidewalks, parking areas, vehicular traffic areas, landscaping, lighting, signage, utilities and similar surface level improvements. All improvements constructed within the Building Perimeter Easement Areas shall be managed and maintained by the Association to the same extent as all other improvements located within the Common Elements. The rights of the Unit Owners and their occupants with respect to the Building Perimeter Easement Areas shall be the same as the rights of the Unit Owners and their occupants with respect to all other Common Elements. The Building Perimeter Easement hereby declared and reserved with respect to each Unit shall be appurtenant to and shall run with and benefit the Common Elements and shall run with and burden such Unit and be binding on all parties having any right, title or interest in the Unit or any part thereof, their heirs, successors and assigns. Notwithstanding any other term contained in this subsection (k), the right of the Declarant and/or Association to design and construct landscaping and other improvements within the Building Perimeter Easement Areas is subject to the prior written approval of the holder of a Mortgage on the subject Land Unit, which approval shall not be unreasonably withheld, conditioned or delayed.

(l) Three (3) monument or pole signs exist within the Common Elements, and are to be used to identify the various users located and operating businesses on the Condominium (the "**Master Signs**"). Each Land Unit Owner has a right to at least one panel sign on the Master Signs, said easement being permanent and non-exclusive. Additional panel signs may be allocated to individual Unit Owners upon approval by the Board and execution of a resolution of the board documenting such allocation of specific panel signs for use by specific Units. The size, location, style, color, graphics and other design details of the signs shall be at the reasonable discretion of the Board and in all events in compliance with then-existing master or common sign plan (if any) approved by the appropriate governmental entity. Each Unit Owner shall be solely responsible for the cost of its signage being placed on the Master Signs, and all costs

associated with the maintenance and replacement of such signs. The maintenance, repair and replacement cost of the Master Signs shall be a Common Expense.

Section 5.2. Covenants Run With Land. All easements, rights and restrictions described herein are easements appurtenant to and running with the Property and shall continue in full force and effect until the termination of this Declaration as it may be amended from time to time.

Section 5.3. Covenant Against Partition. The Common Elements, including the Limited Common Elements, if any, shall remain undivided and, except as otherwise provided herein and in the Act, shall remain appurtenant to the designated Land Unit(s). No Unit Owner or any other person shall bring any action for partition or division thereof except as may be provided for herein and in the Act.

ARTICLE 6

AMENDMENT OF DECLARATION

Section 6.1. Amendment Generally. This Declaration may be amended only in accordance with the procedures specified in the Act and by votes representing eighty percent (80%) of the votes appurtenant to all Land Units in the Condominium and the written consent of all of the then-existing holders of Mortgages encumbering the Land Units who have approved the amendment. Notwithstanding the above, each Unit Owner, acting through its Building Condominium Board, if any, hereby covenants and agrees to execute any amendment to this Declaration which is reasonably required and requested by the Declarant in order to effectuate the reasonable development of the Property provided that such amendment does not materially impact on the ownership, use or operation of the consenting Unit Owner's Land Unit. Notwithstanding the foregoing: so long as the hotel operated on Land Unit 1 is operated by a Hilton franchisee, the consent of the Owner of Land Unit 1 is required to amend any of the restrictions regarding uses of the Land Units, any of the exclusive rights of the Owner of Land Unit 1, or any other provisions that affect the rights or obligations of the Owner of Land Unit 1. Notwithstanding anything to the contrary contained herein: the consent of the Mortgagee of a Unit Owner shall be required: (i) to amend, supplement, terminate or modify the Declaration or Bylaws with regard to: (a) changing the boundaries of Unit(s) owned by such Unit Owner; (b) changing the ownership Percentage Interests or votes allocated to Unit(s) owned by such Unit Owner; or (c) permitting the Condominium to be terminated, withdrawn from a condominium regime, partitioned, subdivided, expanded or otherwise modified in a manner that affects the Percentage Interest or votes allocated to Unit(s) owned by such Unit Owner; and (ii) for the Declarant, the Owners or the Association to take any action under the Declaration, Bylaws or Rules that would have a material adverse effect on: (A) the operation, access, visibility, or value of such Unit; (B) the enforceability, validity, perfection or priority of the lien of the Mortgage

held by such Mortgagee; or (C) to increase the financial obligations, including without limitation, Common Expenses or Special Assessments, of such Unit Owner unless such increase is applied prorata to the other Unit Owners based on their respective Percentage Interests.

Notwithstanding any other term contained in this Declaration, in no event shall Common Elements be modified or altered if such modification or alteration would constitute a violation of an Existing Lease.

ARTICLE 7
BOARD OF DIRECTORS

Section 7.1. Members. The Board of Directors shall consist of five (5) members. Each Director shall represent one of the Land Units. As to any vote of the Association, the member representing each Land Unit shall determine how to cast the votes allocated to that Land Unit.

Section 7.2. Abating and Enjoining Violations by Unit Owners. The violation of any Rules, the breach of any provision contained in the Bylaws or the breach of any provision of this Declaration or any applicable provision of the Act by any Unit Owner or any tenant or guest of such Unit Owner, shall give any Unit Owner and/or the Board of Directors the right, in addition to any other rights to which it may be entitled, to enjoin, abate, or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such breach, and all costs so incurred, including actual attorney's fees, and all damages resulting therefrom, shall be assessed against the Unit owner committing the breach. Any breach or violation by the tenants, guests or invitees of a Unit Owner shall be deemed a violation or breach by such Unit Owner and enforceable against such party.

ARTICLE 8
AVERTING PUBLIC DEDICATION

All or any portion of the Land Units may be temporarily closed to such extent as the Board of Directors or the Owner of any Unit shall determine to be legally necessary and sufficient to prevent a dedication thereof or any accrual of any rights in any person other than the Unit Owners. Notwithstanding the foregoing, the Declarant, or any person to whom it may assign such rights, may utilize the easements created on all Units by Article 5 at any time.

ARTICLE 9
UNITS SUBJECT TO CONDOMINIUM DOCUMENTS;
EMINENT DOMAIN

Section 9.1. Units Subject to Condominium Documents. Each present and future owner, lessee, occupant, guest, and invitee of a Land Unit or Land Unit Building shall be subject to and shall comply with the provisions of the Act, this Declaration, the Condominium Plat, the Bylaws, and the Rules; provided that nothing contained herein shall impose upon any lessee, occupant, guest or invitee any obligation which the Act or one or more of such documents, or both, make applicable only to Unit Owners (including, without limitation, the obligation to pay assessments for Common Expenses). The acceptance of a deed to any Land Unit or Land Unit Building, or the entering into of a lease or occupancy of any Land Unit or Land Unit Building shall constitute an agreement that the provisions of the Act, this Declaration, the Condominium Plat, the Bylaws, and the Rules are accepted and ratified by such grantee or lessee. All of such provisions shall be covenants running with the Property and shall bind any person having at any time any interest or estate in such Land Unit or Land Unit Building, as though such provisions were recited and stipulated at length in each and every deed, conveyance, or lease thereof. In respect of any condemnation awards payable to a Unit Owner, such payment shall be paid to the holder of a Mortgage on such Land Unit (if any) for application in accordance with the terms of such holder's Mortgage and the other documents evidencing the loan secured by said Mortgage, or, if no such holder of a Mortgage exists, to the Unit Owner. Notwithstanding anything contained in this Section 9.1, nothing contained in this Declaration, the Condominium Plat, the Bylaws and the Rules shall modify any agreements entered into by the Declarant or a Unit Owner with a Mortgagee of a Land Unit or Land Unit Building.

Section 9.2. Enforcement.

(a) Enforcement of this Declaration, the Bylaws and the Rules may be sought or undertaken by any Unit Owner, the Association, the Board of Directors, any Building Condominium Association or any Building Condominium Board by any proceeding at law or in equity against any person or persons violating any of the same, either to restrain or enjoin any violation or to recover damages, or both, and against any Land Unit to enforce any lien created hereby or by the Bylaws; and the failure or forbearance by any of the foregoing parties to enforce any of the covenants, provisions or restrictions contained in this Declaration, the Bylaws or the Rules shall in no event be deemed a waiver of the right to do so thereafter.

(b) There shall be a conclusive presumption that any violation or breach, or any attempted violation or breach, of any of the provisions of this Declaration, the Bylaws or the Rules, as amended from time to time, cannot be adequately remedied by action at law or exclusively by recovery of damages.

(c) Any assessments for Common Expenses shall be made pursuant to the applicable provisions of this Declaration, the Bylaws and N.C. Gen. Stat. 47C-3-115 and

enforcement for collection thereof shall be pursuant to the provisions of the Bylaws and N.C. Gen. Stat. 47C-3-116.

Section 9.3. Eminent Domain. In the event of a taking in condemnation or by eminent domain of part or all of the Common Elements, unless otherwise required by the Act, the award made for such taking shall be payable to the Association for use in restoring, if possible, the affected portion of the Common Elements and distributing the excess to the Members, or to the holder of a Mortgage on such Member's Land Unit (if any) pursuant to Section 9.1, in accordance with their Percentage Interest. No Unit Owner shall be deemed to have waived whatever rights that it may have to pursue a separate claim against the condemning authority by reason of the payment of condemnation awards as provided in this Section 9.3. In the event of a taking in condemnation of any Land Unit, the award shall be made according to the provisions of the Act.

ARTICLE 10

CLAIMS

A Unit Owner (the "**Indemnitor**") shall defend, indemnify and save harmless, at its expense, the Declarant, Association and any other Unit Owner (individually and collectively the "**Indemnitee**") against and from all claims, demands, liabilities, penalties, damages, actions, suits, expenses and judgments, including attorneys' fees, which may be imposed upon or incurred by or asserted against any such Indemnitee: (i) arising out of the construction, use, operation and maintenance of the respective Land Unit or Land Unit Building, or exercise of easement rights appurtenant thereto, owned by such Indemnitor (as the case may be), unless such damage or injury shall have been caused by the negligence or willful act or omission in whole or in part of such Indemnitee or its tenants (if any) or the employees, contractors or agents of such Indemnitor; or (ii) by any architect, contractor, sub-contractor, engineer, attorney, real estate broker, supplier or any other employee or agent of the Indemnitor, except for specific work or services provided pursuant to a written contract therefor between the Indemnitee and such employee or agent of the Indemnitor. This indemnification shall not be applicable to claims for matters that occur prior to the date of recording of this Declaration. This indemnification shall also not be applicable to the extent that the claim, demand, liability, penalty, damage, action, suit, expense or judgment arises out of injury, death, or damage occurring in, upon or about the Common Elements as defined in Section 2.1 herein, and is covered by the liability insurance required to be maintained by the Association pursuant to the Bylaws.

No lawsuit shall be initiated by the Association against the Declarant or any entity identified in Section 4.8(e). If applicable law does not permit such protection from a lawsuit for the Declarant, any litigation by the Association against the Declarant or any entity identified in Section 4.8(e) shall require an affirmative vote of one hundred percent (100%) of the voting interests of the Association prior to the institution of such litigation.

ARTICLE 11
GENERAL PROVISIONS

Section 11.1. Headings. The headings used in this Declaration and the table of contents are inserted solely as a matter of convenience and shall not be relied upon or used in construing the effect or meaning of any of the provisions of this Declaration.

Section 11.2. Severability. The provisions of this Declaration shall be deemed independent and severable, and the invalidity or unenforceability of any provision or portion thereof shall not affect the validity or enforceability of any other provision or portion thereof unless such invalidity or unenforceability shall adversely materially alter the operation of the Condominium.

Section 11.3. Applicable Law. This Declaration shall be governed by and construed according to the laws of the State of North Carolina.

Section 11.4. Interpretation. The provisions of this Declaration shall be liberally construed in order to effect Declarant's desire to create a uniform plan for development and operation of the Condominium.

Section 11.5. Effective Date. This Declaration shall become effective when it and the Condominium Plat have been recorded.

Section 11.6. Notices. All notices, demands, bills, statements or other communications under this Declaration and the Bylaws shall be in writing and shall be deemed to have been duly given if delivered personally or five (5) days after sent by registered or certified mail, return receipt requested, postage prepaid (or otherwise as the Act may permit), (i) if to a Unit Owner at the single address which such Unit Owner shall designate in writing and file with the Secretary of the Association or, if no such address is designated, at the address of such Unit Owner's Land Unit; (ii) if to the Association or to the Board of Directors, at the principal office of the Association or at such other address as shall be designated by written notice to the Unit Owners in accordance with this Section; or (iii) if to a Building Condominium Association, or Building Condominium Board, the principal office of such Building Condominium Association, or at such other address as shall be designated by written notice to the Unit Owners in accordance with this

Section. If a Land Unit is owned by more than one person each such person who so designates a single address in writing to the Secretary shall be entitled to receive all notices hereunder. If any Land Unit is part of a Building Condominium, any notice required or permitted to be given to a Unit Owner hereunder shall be deemed sufficient if such notice is provided to the Building Condominium Association or homeowners association having jurisdiction over such Land Unit, at its principal office or at such other address as shall be designated by written notice to the Unit Owners in accordance with this Section.

Section 11.7. Building Condominium Requirements. The provisions hereof shall be applicable to any Building Condominium.

(a) The Building Condominium Documentation must be imposed on the entire Land Unit, subdividing the entire Land Unit into either Building Condominium Units or Building Condominium Common Elements;

(b) The Building Condominium Documentation shall expressly provide for the assignment and assumption of membership rights described in herein, and the collection and remittance of assessments described in herein;

(c) The Building Condominium Documentation shall expressly state that it is subject and subordinate to the provisions of this Declaration, the Plats and Plans and Rules and Regulations for the Land Condominium ("**Condominium Instruments**"), and that in the event of a conflict between the provisions of the Building Condominium Documentation and the Condominium Instruments, the Condominium Instruments shall control; provided, however, nothing herein shall be construed to prevent the enforcement of additional covenants, conditions, restrictions and easements therein contained that do not contravene the provisions of the Condominium Instruments. To the extent required by the Act, the Declarant shall join in, any Building Condominium Documentation to evidence their consent thereto.

(c) The Building Condominium Documentation shall be subject to the prior review and approval of the Association acting through the Board;

(d) The Building Condominium Documentation shall permit the Association, acting through the Board, to enforce the provisions of the Building Condominium Documentation, including, without limitation, the obligations relating to the collection of assessments, and it is expressly understood that the Association hereunder shall have all rights and remedies relating to the Building Condominium Documentation.

(e) Contemporaneously with the imposition of Building Condominium Documentation on a Land Unit, the Land Unit Owner shall be deemed to have irrevocably

assigned to the Building Condominium Association, and the Building Condominium Association shall be deemed to have irrevocably assumed, for so long as the Building Condominium Documentation remains in effect, the following rights of membership in the Association:

(i) The right to attend member meetings of the Association;

(ii) The right to cast any vote and the right to give or withhold any consent, both as a Member of the Association and as an Owner, provided for herein. Pursuant to the foregoing assignment, the Member meetings of the Association may be attended on behalf of the Owner(s) of the Unit subjected to the Building Condominium Documentation by up to three (3) executive board members, officers, or representatives of the Building Condominium Association. Other owners of the Building Condominium Units shall not attend Association meetings unless otherwise agreed by the Association. The Building Condominium Documentation shall stipulate how any votes to be cast or consents to be given by the Building Condominium Association will be determined and may provide that such voting rights and consents will be apportioned. Further, following the imposition of the Building Condominium, the Building Condominium Association shall be responsible for all obligations of the applicable Owner hereunder and shall be responsible for ensuring that the terms of this Declaration are upheld as to that Unit.

(f) Any Building Condominium Documentation shall provide that the Building Association formed pursuant thereto will collect and remit to the Association all assessments levied by the Association pursuant to this Declaration against the Land Unit comprising the Building Condominium. In addition, such Building Condominium Documentation shall specify the method of apportioning such Assessments among all Building Condominium Units subjected thereto and shall create a lien against each such Building Condominium Association Unit. Should any Building Condominium Documentation fail to so specify a method of apportionment, assessments shall be apportioned pro rata based upon square footage of each of the Building Condominium Units created pursuant to such Building Condominium Documentation. Any Building Condominium Documentation also shall provide for the maintenance of insurance by the Building Association formed pursuant to such declaration at a minimum commensurate with (but not in duplication of) the insurance requirements contained herein.

(g) The imposition of Building Condominium Documentation shall not in any way limit, abridge, allocate or otherwise affect the assessment and lien rights of the Association with respect to the Land Units provided in the Declaration and By Laws.

Section 11.8. Architectural Review and Construction Development.

(a) Except as otherwise provided in this Declaration or the Bylaws, each member of the Association hereby agrees to cooperate fully with each and every other member of the Association and with the Declarant and its assignees, in the construction of any Land Unit Buildings, and any other development of the Property (or in the case of the Declarant, any property situated adjacent, contiguous or in proximity thereto) provided that such construction or development is in accordance with the terms of this Declaration and does not materially interfere with the use or operation of the provided Unit Owner's Land Unit (including any Land Unit Building constructed therein). Without limiting the generality of the foregoing, to the extent any Unit Owner or the Declarant requires site plans, permits, consents, approvals, utility easements or other rights or information from other Unit Owners in order to fulfill any requirements imposed by any state or local governmental or quasigovernmental agencies or authorities in connection with the use or development of such Unit Owner's Land Unit (including the use or development of any Land Unit Building or related facilities), such other Unit Owners hereby agree to provide such consents, approvals, rights or information, provided however, that (i) all costs reasonably related to providing such rights or information shall be borne by the requesting Unit Owner or the Declarant (if the Declarant is the requesting party) and (ii) providing such rights or information shall not materially interfere with the use or operation of the providing Unit Owner's Land Unit (including any Land Unit Building constructed therein). Each Unit Owner hereby designates the Declarant as its attorney-in-fact with respect to any approvals or consents to be delivered pursuant to this Section 11.8 that the Declarant may require from such parties in order to obtain any approval, consent, permit or the like from any governmental or quasi-governmental agency or authority in order to develop the Condominium or any property owned by the Declarant adjacent, contiguous or in proximity thereto.

(b) Building Plan Approval Requirement. It is the intent of Declarant that the improvements located on each Land Unit blend harmoniously and attractively with the each other. Accordingly, no Owner shall construct any buildings or other improvements on a Land Unit (or make any additions, alterations or modifications to any improvements on any Land Unit) until the following items (collectively the "**Plans and Specifications**") have been approved in writing by the Association:

- (i) A site plan showing the location and dimensions of all buildings and the landscaping, paving (roadway, sidewalks and parking), signage and other improvements to be constructed or installed on the Land Unit;
- (ii) Plans showing the exterior elevations of all sides of the building improvements, landscaping, paving (roadway, sidewalks and parking), and signage;
- (iii) Specifications describing the principal building materials and colors to be

used on the exterior of the proposed buildings, exterior lighting, paving and landscaping placement and materials; and

All improvements shall comply with the then-existing architectural design guidelines (if any) developed by the Declarant and all signage shall be approved by Declarant and shall comply with the then-existing master or common sign plan (if any) approved by the appropriate governmental entity.

Any additional improvements thereafter constructed on a Land Unit shall be approved in writing by Declarant, prior to construction and shall, to a reasonable degree, use the principal exterior building materials specified in the Plans as the principal building materials, and shall be designed and landscaped so as to be architecturally harmonious with the initial building improvements constructed on the Land Unit. For both initial and additional improvements on a Land Unit, Declarant shall provide comments to the Land Unit Owner within thirty (30) days from submittal to Declarant of all items noted in subsections (i), (ii) and (iii), and failure by the Declarant to respond within the thirty (30) day period shall be deemed approval of the same as submitted (but not any revisions thereto). The Land Unit Owner shall submit any requested changes to Declarant within fifteen (15) days of Declarant's comments on the same, and Declarant shall provide the Land Unit Owner with additional comments within twenty (20) days from receipt of a complete package of the revised documents by Declarant, and such process may be repeated until the improvements are finally permitted or denied in writing by Declarant.

Notwithstanding the foregoing, no approval of the Declarant or by an Authorized Entity shall be required in the event that the Land Unit Building or other improvement is constructed to the same specifications existing: (i) on the date this Declaration is recorded, or (ii) immediately prior to the date of the casualty (if demolition was caused by a casualty).

Section 11.9. Termination of Condominium.

(a) Any provision of this Declaration or the Bylaws to the contrary notwithstanding, in the event that (i) a single entity shall acquire legal title to the Property whether by one or more conveyances, or (ii) a single entity shall acquire legal title to all Land Units included within the Condominium, that entity may terminate the Condominium and this Declaration, and the Bylaws and the Condominium Plat may be declared by that entity to be of no further force or effect. Notwithstanding the foregoing, the written consent of the holder of a Mortgage on each Land Unit (if any) shall be obtained prior to such termination. In the event that the Condominium is terminated in accordance with this Section and any real property formerly included within the Condominium has been subjected to one or more separate condominium regimes, ownership of such real property shall be in accordance with the condominium documents for the condominium regime or regimes that include such real property.

Section 11.10. Invalidity of Part. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect. If any covenant or restriction shall be void or voidable for violation of the rule against perpetuities, then such provision shall continue for ninety (90) years from the date of recordation of this Declaration.

Section 11.11 Running with Land. The covenants and restrictions of this Declaration shall run with and bind the land perpetually.

Section 11.12. Exhibits. All Exhibits attached to this Declaration are hereby made a part of this Declaration.

Section 11.13. Development Rights. Subject to the terms of Section 11.8.b., and subject to the prior written approval of the holder of any Mortgage on its Land Unit, each Unit Owner shall have the right to undertake any future development, improvement, alteration or change in use (collectively “development”) within its Land Unit(s) without the consent of any other Unit Owner, provided that (i) such development be in compliance with those standards listed on **Exhibit D** attached hereto, (ii) all applicable land use and zoning requirements applicable to any such development shall be fully satisfied utilizing the development rights, density, parking capacity or the like (collectively “**Development Rights**”) of the Land Unit upon which such development is located, provided that no one Unit Owner shall use more than a majority of the parking capacity within the Common Elements; and (iii) such development is for the intended use of such Land Unit as set forth in Section 4.1 hereof. If any proposed Development shall utilize, directly or indirectly, any Development Rights of any other Land Unit (“**Affected Land Unit**”), such development shall not be permitted without the prior written consent of the Unit Owner of such Affected Land Unit, which consent may be granted or withheld in the sole discretion of such Unit Owner.

Section 11.14. Estoppel Certificate. Further, the Declarant and the Association agrees to execute within fifteen (15) days of request therefor, and as often as requested, estoppel certificates setting forth the facts with respect to the compliance of a Unit Owner with the terms of this Declaration.

ARTICLE 12

RIGHTS OF MORTGAGEES

Section 12.1. Mortgagees. So long as any Mortgagee shall hold any Mortgage upon any Land Unit, or shall be the Owner of any Land Unit, such Mortgagee shall have the following rights and the Association shall be obligated to provide the following information to any

Mortgagee who has given written notice that it is the holder of a Mortgage on a Land Unit so long as such written notice shall have been sent to the Association at the Registered Office of the Association, identifying the Land Unit upon which any such Mortgagee holds any Mortgage, or identifying any Land Unit owned by it, and which notice shall designate the place to which notices are to be given by the Association to such Mortgagee.

A. Upon request to the Association, to be furnished with at least one copy of the annual financial statement and report of the Association, including a detailed statement of annual carrying charges or income collected and operating expenses.

B. To be given notice by the Association of the call of any meeting of the membership to be held for the purpose of considering any proposed Amendment to the Declaration, or the Articles of Incorporation and Bylaws of the Association, which notice shall state the nature of the amendment being proposed, and to be given permission to designate a representative to attend all such meetings.

C. To be given notice of default in the payment of assessments by any Unit Owner encumbered by a Mortgage held by the Mortgagee, such notice to be given in writing and to be sent to the principal office of such Mortgagee, or to the place which it or they may designate in writing to the Association.

D. To inspect the books and records of the Association and the Declaration, Bylaws and any Rules and Regulations during normal business hours, and to obtain copies thereof.

E. To be given notice by the Association of any substantial damage to any part of the Common Elements or the Land Unit which is security for the Mortgage of a particular Mortgagee.

F. To be given notice by the Association if any portion of the Common Elements or Land Unit which is security for the Mortgage of a particular Mortgagee, is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority.

Section 12.2 Subordination by Lender. First Community Bank ("Lender") is the owner and holder of a Promissory Note made by Gateway Terrace Partners, LLC and dated August 8, 2014 (the "Note"). Repayment of the Note is secured by a Construction Deed of Trust Securing Future Advances (the "Deed of Trust") dated August 8, 2014, executed and delivered to Milton H. Campbell and Mark R. Evans (collectively, the "Trustee"), for the benefit of Lender, and recorded in Book 7545, Page 510, Durham County Public Registry. The Deed of Trust constitutes a lien on a portion of the Property. Lender joins in the execution of this Declaration in order to subordinate the lien and operation of the Deed of Trust to this Declaration and the

easements and restrictions created hereby. In the event of a foreclosure of the Deed of Trust, or a transfer of any portion of Center subject to the Deed of Trust (the "Hotel Security Property") in lieu of foreclosure, Lender agrees that the Purchaser at any such foreclosure or the transferee under any such deed in lieu of foreclosure shall take title to the Hotel Security Property together with and subject to all of the terms and conditions of this Agreement.

[signature on following page]

IN WITNESS WHEREOF, the undersigned have caused this Declaration to be duly executed as of this 21 day of January, 2015.

MJM GATEWAY TERRACE RE, LLC

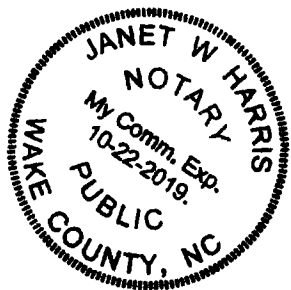
By: [Signature]
ANUJ N. MITTAL
Manager

STATE OF North Carolina

COUNTY OF WAKE

I certify that the following person personally appeared before me this day acknowledging to me that he voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: Anuj N. Mittal as Manager of MJM GATEWAY TERRACE RE, LLC.

WITNESS my hand and official seal, this the 21st day of January, 2015.



[Signature]
Notary Public
Janet W. Harris
(Printed or Typed Name of Notary Public)
My Commission Expires: 10-22-19

GATEWAY TERRACE PARTNERS, LLC

By: [Signature]
Print Name: Douglas L. Stafford
Title: Manager

STATE OF NORTH CAROLINA

COUNTY OF Wake

I certify that the following person personally appeared before me this day acknowledging to me that he voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: Douglas L. Stafford as Manager of GATEWAY TERRACE PARTNERS, LLC.

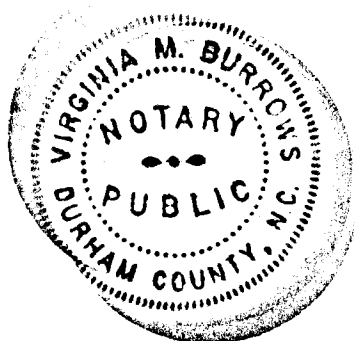
WITNESS my hand and official stamp or seal this 20th day of January, 2015.

[NOTARIAL SEAL]

Virginia M. Burrows
NOTARY PUBLIC

Print Name: Virginia M. Burrows

My Commission Expires: 9-9-2015



~~CONSENTED TO FOR PURPOSE OF SUBORDINATION BY:~~

First Community Bank

By: _____
Name: _____
Title: _____

STATE OF NORTH CAROLINA :
COUNTY OF _____ :

I certify that the following person personally appeared before me this day, acknowledging to me that he voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: _____.

Date: _____

Notary Public: _____
Printed/Typed Name: _____
My Commission Expires: _____

**EXHIBIT A
TO
THAT DECLARATION FOR
GATEWAY TERRACE LAND CONDOMINIUM
ALLOCATION OF PERCENTAGE INTEREST**

| Land Unit Number | Approximate Square Footage Area of Building Footprint Constructed, or Intended to be Constructed, on Land Unit | Votes Allocated | Share of Common Expense | Share of Common Ownership |
|------------------|--|-----------------|-------------------------|---------------------------|
| Land Unit 1 | 15,932 | 41.2% | 41.2% | 41.2% |
| Land Unit 2 | 11,566 | 29.9% | 29.9% | 29.9% |
| Land Unit 3 | 4,381 | 11.3% | 11.3% | 11.3% |
| Land Unit 4 | 3,793 | 9.8% | 9.8% | 9.8% |
| Land Unit 5 | 3,023 | 7.8% | 7.8% | 7.8% |
| Total | 38,695 | 100.00% | 100.00% | 100.00% |

**EXHIBIT B
TO
THAT DECLARATION FOR
GATEWAY TERRACE LAND CONDOMINIUM
BY LAWS OF THE ASSOCIATION
SEE FOLLOWING PAGES**

BYLAWS

OF

GATEWAY TERRACE LAND CONDOMINIUM OWNERS ASSOCIATION, INC.

ARTICLE I

PLAN OF UNIT OWNERSHIP

Section 1. Lands submitted to unit ownership. MJM GATEWAY TERRACE RE, LLC, a North Carolina limited liability company, hereafter known as the "Declarant", and GATEWAY TERRACE PARTNERS, LLC, a North Carolina limited liability company, are the owners of certain lands lying in Durham County, North Carolina, more particularly described in the Declaration Creating Unit Ownership and Establishing Restrictions, Covenants and Conditions for Gateway Terrace Land Condominium and have submitted said lands and the improvements thereon to unit ownership pursuant to the North Carolina Condominium Act by filing contemporaneously herewith the Declaration provided for in Chapter 47C of the North Carolina General Statutes.

Section 2. Name of Condominium. The lands and improvements submitted to unit ownership by said Declaration shall be known as Gateway Terrace Land Condominium (herein "Condominium").

Section 3. Applicability of Bylaws. All present and future owners, mortgagees, lessees, and occupants of Units within the Condominium, and their agents, servants, and employees, and any other persons who may make use of the facilities of the Condominium in any manner, are subject to the Declaration, these Bylaws and to the Rules and Regulations adopted pursuant hereto, and to any amendments thereto upon the same being duly adopted in accordance with the terms and provisions set forth herein.

The acceptance of a deed or conveyance to, or the entering into of a lease to, or the act of occupancy of, a Condominium Unit by any person shall conclusively establish the acceptance and ratification by such person of these Bylaws (and any Rules and Regulations adopted pursuant hereto), the Articles of Incorporation of the Association, and the Declaration as they may be amended from time to time, and shall constitute and evidence an agreement by such persons to comply with those governing documents.

Section 4. Definitions. All defined terms shall have the same definition as in the Declaration or Articles

ARTICLE III

OFFICES

Section 1. The principal office of the Association shall be located at 5720 Creedmoor Road, Suite 205, Raleigh, NC 27612.

Section 2. The registered office of the Association may, but need not be, identical with the principal office, but shall be located in North Carolina.

Section 3. The Association may have such other offices, either within or without the State of North Carolina, as the Board may from time to time determine or as the affairs of the Association may require.

ARTICLE IV

ASSOCIATION OF UNIT OWNERS

Section 1. Members. The qualification of members, the manner of their admission to membership and termination of such membership shall be as set forth in the Articles of Incorporation of the Association and the Declaration.

Section 2. Registration. It shall be the duty of each Unit Owner to register his name and the number of his Unit with the Secretary of the Association. If a Unit Owner does not so register, the Association shall be under no obligation to recognize his membership.

Section 3. Prohibition of Assignment. The interest of a member in the Association assets cannot be transferred or encumbered except as an appurtenance to his Unit.

Section 4. Annual Meetings. An annual meeting of the Association shall be held for the purpose of electing members of the Board of Directors and for the transaction of such other business as may be properly brought before the meeting. The annual meetings shall be held at 9:00 a.m. on the Second Thursday of June of each year, unless such day shall be a legal holiday, in which event the meeting shall be held at the same time on the day next following which is not a legal holiday.

Section 5. Substitute annual meetings. If an annual meeting is not held on the day designated in the Bylaws, a substitute annual meeting may be called in the same manner as a special meeting. A meeting so called shall be designated and treated for all purposes as the annual meeting.

Section 6. Special meetings. Special meetings of the Association may be called at any time by the President, a majority of the members of the Board of Directors or by the President upon the written request of the Owners of not less than twenty percent (20%) of the allocated votes as established by the Declaration.

Section 7. Place of meetings. All meetings of the Association shall be held at the Condominium, or at such other place in Durham County, North Carolina, as shall be designated in the notice of the meeting.

Section 8. Notice of meetings. Written or printed notice stating the place, day and hour of the meeting shall be delivered or mailed by first class mail, postage prepaid, not less than ten (10) nor more than fifty (50) days prior to the date of the meeting by the Secretary to each person entitled to vote at such meeting.

In the case of an annual meeting, substitute annual meeting, or special meeting, the notice of meeting shall state the time and place of the meeting as well as the items on the agenda to be considered, including, but not limited to, the general nature of any proposed amendment to the Declaration or Bylaws, any budget changes, or any proposal to remove an officer or director.

When a meeting is adjourned for thirty (30) days or more, notice of the reconvening of the adjourned meeting shall be given as in the case of an original meeting. When a meeting is adjourned for less than thirty (30) days in any one adjournment, it shall not be necessary to give notice of the reconvening of the adjourned meeting other than by an announcement at the meeting at which the adjournment is effective.

Section 9. Quorum. The presence in person or by proxy at the beginning of any meeting of members constituting fifty-one (51%) percent of the total votes entitled to be cast shall constitute a quorum. The Association shall not be entitled to cast votes allocated to Units it owns. Unless otherwise expressly provided herein or required by the North Carolina Condominium Act, as now written or hereafter amended, any action, consistent with the notice of such meeting, may be taken at any meeting of the Association at which a quorum is present upon the affirmative vote of the members having a majority of the total votes present at such meeting.

If a quorum is not present at the opening of any meeting, the meeting may be adjourned from time to time by vote of a majority of the voting members present, either in person or by proxy, and shall be reconvened at the date and time determined at the adjourned meeting, subject to the notice requirements set forth in Section 8 of this Article.

Section 10. Voting members; proxies. There shall be one person with respect to each Unit who shall be entitled to vote at any meeting of the Association, herein referred to as the "voting member". The voting member may be the Owner of a Unit, or an Owner designated by a majority of the several Owners of a Unit, or may be some other person designated by such Owner or Owners to act as proxy on his or their behalf and who need not be an Owner. The Association may not cast a vote for any Units owned by it. Designation of the voting member or of a proxy shall be made in writing to the Secretary and shall be revocable at any time prior to the meeting by actual notice to the Secretary by the Owner or a majority of the Owners, as the case may be. Once a meeting has been commenced a Unit Owner may not revoke a proxy given except by written notice of revocation delivered to the person presiding over the meeting. A proxy is void if not dated, and a proxy shall terminate at the time specified in the proxy or one year from date, whichever is earlier.

Section 11. Voting rights; multiple Owners. If only one of the multiple Owners of a Unit is present at a meeting of the Association, he is entitled to cast the vote allocated to the Unit. If more than one of the multiple Owners is present, the votes allocated to that Unit may be cast only in accordance with the agreement of a majority in interest of the multiple Owners. Majority agreement is conclusively presumed if any one of the multiple Owners casts the vote allocated to that Unit without protest being made promptly to the person presiding over the meeting by any of the other Owners of the Unit.

Section 12. Voting rights; cumulative voting. The vote cast by, or on behalf of, the Owner or Owners of a Unit shall be those votes in the Association as allocated in the Declaration. In all elections for members of the Board of Directors, the Owner or Owners of a Unit shall be entitled to vote the allocated votes of that Unit for each director or directors to be elected, and the candidate or candidates receiving the highest number of votes with respect to the offices to be filled shall be deemed elected. Cumulative voting shall not be permitted.

Section 13. Waiver of notice. Any Unit Owner, at any time, may waive notice of any meeting of the Association in writing, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Unit Owner at any meeting of the Association shall constitute a waiver of notice by him of the time and place thereof except where a Unit Owner 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 Association, no notice shall be required, and any business may be transacted at such meeting.

Section 14. 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 persons who would be entitled to vote upon such an action at a meeting and filed with the Secretary of the Association to be kept in the Association minute book.

Section 15. Order of Business. The order of business, as far as practical, at any member's meeting shall be:

1. calling of the roll and certifying of proxies;
2. proof of notice of meeting or waiver of notice;
3. reading and disposal of any unapproved minutes;
4. reports of officers;
5. reports of committees;
6. unfinished business;
7. new business;
8. adjournment.

ARTICLE V

BOARD OF DIRECTORS

Section 1. General powers. The business affairs of the Association shall be managed and directed by the Board of Directors of the Association or by such executive committees as the Board may establish pursuant to these Bylaws. If any of the authority of the Board of Directors is vested in any committee, one member of each such committee shall be a Board member.

Section 2. Initial Board. There shall be a Board of five (5) directors, each of which shall represent one of the Land Units.

Section 3. Election of directors. Except as otherwise provided in Section 4 of this Article, the directors shall be elected at the annual meeting of the Association, and those candidates who receive the highest number of votes shall be elected. After the termination of the Declarant control of the Board, each Land Unit Owner shall be entitled to vote for the director representing its Land Unit, notwithstanding any voting allocation granted to that Land Unit. This right of a Land Unit Owner to elect the director representing its own Land Unit shall not be amended without the approval of the Owner of the Land Unit impacted by such an amendment.

Section 4. Removal. Any elected director may be removed from office, with or without cause by the affirmative vote of eighty percent (80%) of the allocated votes of Unit Owners present and entitled to vote at a special meeting called for that purpose. If any directors are so removed, new directors may be elected at the same meeting.

Section 5. Vacancies. An elective vacancy occurring in the Board of Directors, including directorships not filled by the voting members, may be filled by a majority of the remaining directors, though less than a quorum, or by the sole remaining director.

Section 6. Compensation. The Board of Directors shall receive reimbursement for expenses, but shall receive no compensation for their services unless expressly allowed by the Association upon the affirmative vote of its members.

Section 7. Powers. The Board of Directors shall have the powers necessary for the administration of the affairs of the Association as specified by law, the Declaration or these Bylaws, and may do all such acts and things, except such acts as by law, by the Declaration, or by these Bylaws may not be delegated to the Board of Directors.

The Board of Directors shall not have the power to:

- (a) amend the Declaration;
- (b) terminate the Condominium;
- (c) elect members of the Board of Directors (except that the Board shall have the power to fill vacancies as hereinbefore set forth); or
- (d) determine the qualifications, powers and duties, or terms of office of the Board members.

Section 8. Duties. It shall be the duty of the Board of Directors to:

- (a) Administer, operate, maintain and repair the Common Elements and the surface paving and parking areas on all Land Units, lighting on all Land Units and landscaping on all Land Units.
- (b) Determine the Common Expenses arising from the costs of administration, operation, care, upkeep, maintenance, repair and construction of the Common Elements, surface paving and parking areas on all Land Units, lighting on all Land Units and landscaping on all Land Units, including, without limitation, reserves for repair, reconstruction or replacement.

(c) Fix and assess in the manner provided by law and in the Declaration, the proportionate part of the Common Expenses of each Unit Owner within the Condominium.

(d) Collect and enforce the collection of Common Expenses in the manner provided by law and in the Declaration, including, but not limited to legal proceedings for the enforcement of liens.

(e) Employ and dismiss personnel necessary to the maintenance and operation of the Common Elements.

(f) Adopt, amend, publish and enforce reasonable Rules and Regulations that it deems advisable and necessary for the proper administration, operation, maintenance, conservation, and beautification of the Condominium and for the health, comfort, safety, and general welfare of the Owners and occupants of the Units. Copies of the published Rules and Regulations and amendments thereto shall be given to all the Owners and occupants and the Association and Condominium shall be administered, operated and maintained in conformity with such rules and regulations.

(g) Designate depositories for Association funds and the officers, agents and/or employees having the authority to deposit and withdraw such funds; and, in its discretion, to require such officers, agents or employees to be bonded in such amounts as it deems necessary.

(h) Intentionally deleted.

(i) Procure and maintain adequate insurance of such nature and in such amounts as is provided in the Declaration, and such other insurance as the Board may deem necessary or appropriate, including, without limitation hazard insurance, liability insurance and officers and directors liability coverage.

(j) Appoint such committees as are provided for in these Bylaws and the Declaration.

(k) Exercise their powers in good faith and do and perform such other matters and things not expressly prohibited by law, the Declaration, or these Bylaws as are necessary and appropriate to the proper administration, operation and maintenance of the Association and the Condominium.

(l) Prepare an annual budget in which there shall be established the assessments of each Unit Owner for the Common Expenses.

(m) Pay all taxes, charges and assessments which are or may become liens against any part of the Condominium, other than Condominium Units and the appurtenances thereto, and assess the same against the members and their respective Condominium Units.

(n) Make, or contract for the making of, repairs, additions and improvements to or alterations of the Condominium and repairs to and restoration of the Condominium, in accordance with these Bylaws, after damage or destruction by fire or other casualty or as a result of condemnation or eminent domain proceedings.

(o) To enforce by legal means or proceedings the provisions of the Articles of Incorporation, the Bylaws, the Declaration of Condominium and the Rules and Regulations promulgated hereunder.

(p) To regulate the use of the parking areas and facilities including the designation of specific spaces for specific Units and including designation for the public in conformity with governmental requirements.

(q) To establish fines and penalties for late payment of assessments and for violations of the Declaration, Bylaws and the Rules and Regulations.

(r) To impose reasonable charges for services especially provided to one or more Unit Owners which charges or costs should not otherwise be a Common Expense.

(s) To institute, defend or intervene on behalf of the Association in litigation or administrative proceedings affecting the Condominium.

(t) To cause additional improvements to be made to the Condominium Common Elements.

(u) To incur liabilities and to encumber or sell the Common Elements as by law permitted.

(v) To grant easements, leases, licenses, and concessions through or over the Common Elements.

(w) To exercise all other duties to which similar organizations have the power to perform and as by law provided.

(x) To hire and terminate managing agents and to delegate to such agents such powers and duties as the Board shall determine, except such as are specifically required by the Declaration, the Articles, these Bylaws, or the Act, to be done by the Board or the members.

(y) To contract for the management of the Association and the Common Elements and to designate to such contractor all of the powers and duties of the Association.

Section 9. Persons who may serve. Every elected member of the Board shall be a Unit Owner, unless the Owner is a corporation, partnership, trust or other legal entity other than a natural person or persons, in which event any officer, director, agent or employee of such corporation, partner of such partnership, beneficiary or trustee of such trust, or manager of such other legal entity, shall be eligible to serve as a member of the Board, but members of the Board appointed by the Declarant need not be Owners.

Section 10. Liability of the Board. The members of the Board of Directors 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 Association shall indemnify and hold harmless each of the members of the Board against all contractual liability to others arising out of contracts made by the Board on behalf of the Association unless any such contracts shall have been made in bad faith or contrary to the provisions of the Declaration or these Bylaws. It is intended that the members of the Board of Directors shall have no personal liability with respect to any contract made by them on behalf of the Association, except to the extent of their liability as Unit Owners. It is also intended that the liability of any Unit Owner arising out of any contracts made by the Board of Directors or out of the aforesaid indemnity in favor of the members of the Board shall be limited to such proportions of the total liability thereunder as his interest in the Common Elements bears to the interest of all of the Unit Owners in the Common Elements. Every agreement made by the Board or by the manager on behalf of the Association shall provide that the members of the Board of Directors, or the manager, as the case may be, are acting only as agents for the Association, and shall have no personal liability thereunder (except as Unit Owners), and that each Unit Owner's liability thereunder shall be limited to such proportion to the total liability thereunder as his interest in the Common Elements of the Condominium bears to the interest in said Common Elements of all Unit Owners in the Condominium.

ARTICLE VI

MEETINGS OF DIRECTORS

Section 1. Organizational meeting. The initial Board of Directors shall meet prior to conveyance of the first Unit by the Declarant. No notice to the Directors shall be necessary in order to legally constitute such meeting, provided that a quorum shall be present.

Section 2. Regular meetings. 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 Association. The Board may provide by adoption of an appropriate resolution for the time and place for other regular meetings of the Board, but the Board shall meet at least once each calendar quarter.

Section 3. Special meetings. Special meetings of the Board may be called by or at the request of the President or by any two Directors. Such meetings may be held at any place within the city of the principal office.

Section 4. Notice of meetings. Regular meetings of the Board of Directors may be held without notice. The person or persons calling a special meeting of the Board shall give actual notice, oral or written, to all Directors of the time, place and purpose of such meeting at least two days prior thereto.

Attendance by a Director at a meeting shall constitute a waiver of notice of such meeting except where a Director attends the meeting for the express purpose of objecting to the transaction of any business because the meeting was not lawfully called.

Section 5. Waiver of notice. Any member of the Board of Directors may give written waiver of notice at any time of any meeting of the Board, and such waiver shall be deemed equivalent to the giving of such notice. If all of the members of the Board are present at any meeting thereof, no notice shall be required and any business may be transacted at such meeting.

Section 6. Quorum. A majority of the number of Directors fixed by these Bylaws shall be required for, and shall constitute a quorum for, the transaction of business at any meeting of the Board of Directors.

Section 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 of Directors.

A vote of a majority of the number of Directors fixed by the Bylaws shall be required to adopt a resolution constituting an executive committee.

Section 8. Organization. Each meeting of the Board of Directors shall be presided over by the President and in the absence of the President, by the Vice President, and in the absence of the Vice President, by any person selected to preside by vote of the majority of the Directors 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 presiding officer of the meeting shall act as Secretary of the meeting.

Section 9. Informal action of Directors. Any action taken by a majority of the Directors without a meeting shall constitute Board action if written consent to the action in question is signed by all the Directors and filed with the minutes of the proceedings of the Board, whether done before or after the action is taken.

Section 10. Minutes. The Board, and all committees to which the Board shall have delegated any of its authority, shall keep minutes of all the proceedings of the Board and the committees.

Section 11. Fidelity bonds. The Board of Directors shall require any director, officer, employee or agent of the Association handling or responsible for Association funds to be covered by an adequate fidelity bond. The premiums on such bond shall constitute a Common Expense.

ARTICLE VII

OFFICERS

Section 1. Designation. The principal officers of the Association shall be a president, a secretary, a treasurer and such vice presidents, assistant secretaries, assistant treasurers and other officers as the Board of Directors may from time to time elect. Any two or more offices may be held by the same person, except that the office of President and Secretary may not be held by the same person.

Section 2. Election and term. A director designated by the Declarant shall serve as President so long as the Declarant designates any Board members. All other officers of the Association shall be elected by the Board of Directors, and such elections may be held at the regular annual meetings of the Board; provided, however, that prior to the first annual meeting, the Declarant shall appoint the officers from among the initial Board.

Each officer shall hold office for a period of one (1) year or until his death, resignation, retirement, removal, disqualification or his successor is elected and qualified.

Section 3. Removal. Any officer or agent elected or appointed by the Board of Directors may be removed by the Board with or without cause, and any officer or agent appointed or designated by the Declarant may be removed by the Declarant with or without cause. Such removal, however, shall be without prejudice to the contract rights, if any, of the person so removed.

Section 4. Compensation. No officer shall receive any compensation, from the Association for acting as such, but the Board may reimburse any officer for any direct expenses incurred by him in the performance of his duties as such officer and such reimbursement shall be a Common Expense.

Section 5. President. The President shall be the principal executive officer of the Association and, subject to the control of the Board of Directors, shall supervise and control the management of the Property. The President shall, when present, preside at all meetings of the Board and of the Association, and, in general, shall perform all duties incident to the office of the President and such other duties as may be prescribed from time to time by the Board. All documents required to be executed on behalf of the Association shall require the signature of the President and be attested to by the Secretary of the Association in order to be effective against the Association or any Land Unit.

Section 6. Vice President. The Vice President, and if there be more than one, the Vice Presidents shall, in the absence or disability of the President, have the powers and perform the duties of said office. In addition, each Vice President shall perform such other duties and have such other powers as shall be prescribed by the President.

Section 7. Secretary. The Secretary shall keep accurate records of the acts and proceedings of all meetings of the Association and of the Board. He shall give, or cause to be given, all notices required by law and these Bylaws. He shall have general charge of the minute books and records of both the Association and of 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 to him from time to time by the President or by the Board of Directors.

Section 8. Treasurer. The Treasurer shall have custody of all Association funds and securities and shall receive, deposit, or disburse the same under the direction of the Board of Directors. He shall keep full and accurate records of the finances of the Association in books

specially provided for that purpose. He shall cause a true statement to be prepared as of the close of each fiscal year setting forth, in reasonable detail, the assets and liabilities of the Association, the changes in surplus for such fiscal year, and the result of the operations of the Association. The statement shall be filed and kept available for inspection by any Unit Owner for a period of three (3) years and the Treasurer shall mail or otherwise deliver a copy of the latest statement to each Unit Owner and member of the Board of Directors annually on or before thirty (30) days prior to the annual meeting of the Association, covering the preceding fiscal year. The Treasurer shall also prepare and file all reports and returns required by Federal, State or local laws, and shall generally perform all other duties as may be assigned to him from time to time by the President or the Board of Directors.

Section 9. Assistant Secretaries and Treasurers. The Assistant Secretaries and Assistant Treasurers, if any, shall, in the absence or disability of the Secretary or the 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 Treasurer, respectively, or by the President or Board of Directors.

ARTICLE VIII

OPERATION OF THE PROPERTY

Section 1. Determination of common expenses and fixing of common expense. The Board of Directors, from time to time, and at least annually, shall prepare a budget for the Association, determine the amount of the "Common Expenses" payable by the Unit Owners to meet the expenses of the Association, and shall allocate and assess the Common Expenses of the Condominium among the Unit Owners thereof as set forth in the Declaration. A part of the Common Expenses of the Condominium shall include, among other things, and without limitation, the administrative expenses of the Association, and Condominium maintenance, repair and replacement costs of the Common Elements, surface paving and parking areas on all Land Units, lighting on all Land Units and landscaping on all Land Units, as well as utilities costs, and the costs of all premiums for insurance obtained pursuant to the provisions of the Declaration and in the Board's discretion. The budget of the Condominium in the discretion of the Board, and as necessary, may include, without limitation, amounts for: funding deficits for any prior year; a reserve for working capital; a reserve for maintenance and replacement; and a general operating reserve.

Within thirty (30) days after adoption of a proposed budget for the Association, the Board of Directors shall provide a summary of the proposed budget to all Unit Owners and Mortgagees, and shall give notice for a date and time for a meeting of Unit Owners to consider ratification of the proposed budget. The meeting shall be held not less than fourteen (14) days nor more than

thirty (30) days after mailing of the summary and notice. There shall be no requirement that a quorum be present at the meeting. At the meeting, the budget shall be deemed approved unless all of the Unit Owners reject the budget. In the event of rejection of the proposed budget, the budget last ratified shall be in effect until a new budget is ratified under the procedure set forth above.

The Association, acting through the Board of Directors, may levy a special assessment during any calendar year for the purpose of defraying, in whole or in part, the cost of any reconstruction, repair or replacement of any capital improvement comprising or to comprise a portion of the Common Elements including fixtures and personal property; provided, however, that any such special assessment must be approved by the vote of Owners of Units to which at least eighty percent (80%) of the votes in the Association are allocated cast in person or by proxy at a meeting duly held in accordance with the provisions of these Bylaws. In the event that any Owner fails to maintain his Unit and the Association takes action to do so as set forth in Section 5.13 hereof, or any Owner defaults under his obligations under the Declaration or these Bylaws and the Association incurs any additional costs and expenses as a result of such default, the Association shall have the right to levy a special assessment against such Owner for the purposes of defraying, in whole or in part, such costs or expenses.

Section 2. Payment of Common Expenses. All Unit Owners shall be obligated to pay the Common Expenses assessed by the Board of Directors pursuant to the provisions of Section 1 of this Article at such time or times as the Board shall determine.

No Unit Owner shall be liable for the payment of any part of the Common Expenses assessed against his Unit subsequent to a consummated 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 (including limited Common Elements) as defined in the Declaration. A purchaser of a Unit shall be jointly and severally liable with the seller for the payment of the Common Expenses assessed against such Unit prior to the acquisition by the purchaser of such Unit, without prejudice to the purchaser's right to recover from the seller the amounts paid by the purchaser therefore. Provided, that a first lien mortgagee or other purchaser of a Unit at a foreclosure sale of such Unit shall not be liable for, and such Unit shall not be subject to, a lien for the payment of Common Expenses assessed prior to such foreclosure sale, and 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.

Section 3. Collection of assessments. After the first Unit is sold, the Board of Directors shall assess Common Expenses against the Unit Owners from time to time and at least annually and shall take prompt action to collect any Common Expenses due from any Unit Owner which remains unpaid for more than thirty (30) days from the due date of the payment

thereof. In the event of an increase in such Common Expenses, the Board of Directors shall advise each Unit Owner, in writing, of such increased assessment at least one month prior to the date of which the first increased payment is due.

Section 4. Default in payment of Common Expenses. In the event of default by any Unit Owner in paying to the Board of Directors the Common Expenses as determined by the Board, such Unit Owner shall be obligated to pay interest at the highest rate permitted by law, but not to exceed twelve percent (12%) per annum on such Common Expenses from the due date thereof, together with any penalty established by the Board for nonpayment and with all expenses, including reasonable attorneys' fees incurred by the Board in any proceeding brought to collect such unpaid Common Expenses. The Board shall have the right and duty to attempt to recover such Common Expenses, together with penalties and the interest thereon and the expenses of the proceeding, including reasonable attorneys' fees in any action to recover the same brought against such Unit Owner, or by foreclosure of the lien on such Unit.

Section 5. Subordination of the Lien to Mortgages and Ad Valorem Taxes. The lien of the assessments provided for herein shall be subordinate to the lien of any Mortgage and ad valorem taxes and public assessments levied on said Unit. Sale or transfer of any Unit shall not affect the assessment lien. However, the sale or transfer of any Unit pursuant to mortgage or tax foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer, but shall not abate the personal obligation of the prior owner. No sale or transfer shall relieve such Unit from liability for any assessments thereafter becoming due or from the lien thereof.

Section 6. Foreclosure of liens for unpaid Common Expenses. In any action brought by the Board to foreclose on a Unit because of unpaid Common Expenses, the Unit Owner shall be required to pay a reasonable rental for the use of his Unit, and the plaintiff in such foreclosure action shall be entitled to the appointment of a receiver to collect the same. The Board, acting on behalf of all Unit Owners, 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, convey, or otherwise deal with the same, subject, however, to applicable restrictions of record. A suit to recover a money judgment for unpaid Common Expenses may be maintainable without foreclosing or waiving the lien securing the same.

Section 7. Statement of Common Expenses. The Board of Directors shall promptly provide any Unit Owner and its Mortgagee (if any), its grantee or contract purchaser making written request therefor, a written statement of all unpaid Common Expenses due from such Unit Owner.

Section 8. Assessments Against Specific Owners. Notwithstanding any requirement of that assessments be levied against each Owner according to the Percentage Interest of each Owner, the Association, acting through its Board of Directors, shall assess:

- (A) any Common Expense associated with the maintenance, repair, or replacement of a Limited Common Element against the Unit or Units to which that Limited Common Element is assigned; and,
- (B) any Common Expense, or portion thereof, benefiting fewer than all of the Units exclusively against the Units benefited; and,
- (C) the cost of insurance against the Units in proportion to the risk if any Unit or Units can be reasonably determined to create a greater risk than any other; and
- (D) the cost of utilities, if not separately metered to each Unit, in proportion to usage if it can be reasonably determined that any Unit or Units use an unusually disproportionate share of any utility, and
- (E) the cost of any judgment against the Association against only the Units in the Condominium at the time the judgment was entered in proportion to their Common Expense Liabilities; and,
- (F) any Common Expense caused by the misconduct of any Unit Owner exclusively against that Unit Owner; and,
- (G) any fine or penalty or interest for any delinquent assessment installment exclusively against the Unit so charged.

Section 9. Abatement and restraint of violations by Unit Owners. The violation of any rule or regulation adopted by the Board, 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 summarily abate and remove, at the expense of the defaulting Unit Owner, any structure, thing, or condition that may exist therein contrary to the intent and meaning of the provisions hereof, and the Board shall not thereby be deemed guilty in any manner of trespass; or

(b) To enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such breach.

(c) To assess against the Unit Owner a fine, not to exceed the maximum amount permitted by law, the procedures for which are set forth in the Declaration.

Section 10. Maintenance and repair.

(a) Maintenance of Unit. All maintenance and repairs to any Unit, ordinary or extraordinary (other than maintenance of and repairs to any Common Elements contained therein not necessitated by the negligence, misuse, or neglect of the Owner of such Unit, his guests, lessees, employees, servants or invitees) shall be made by the Owner of such Unit. Each Unit Owner shall be responsible for all damages to any other Unit and to the Common Elements.

(b) Maintenance of Common Elements. All maintenance, repairs and replacements to the Common Elements, whether located inside or outside of the Units (unless necessitated by the negligence, misuse or neglect of a Unit Owner, his guests, lessees, employees, servants or invitees, in which case such expense shall be charged to such Unit Owner), shall be made by the Board and shall be charged to all Unit Owners as a Common Expense of the Condominium.

Section 11. Utility equipment. Each Unit Owner shall own and be responsible for the repair, maintenance and upkeep of all utility systems and equipment servicing his Unit as defined in the Declaration.

Section 12. Use of Units and Common Elements. (a) The use of the Units, Common Elements, Limited Common Elements, and other property and appurtenances within the Condominium shall be in accordance with the provisions regarding same as set forth in the Declaration.

Section 13. Right of access. The acceptance of any conveyance or lease of any Unit or the use or occupancy of such Unit shall conclusively establish the grant of a right and easement of access to his Unit by the Owner, lessee, or occupant to the Board, the Association or Condominium manager, if any, and/or any other person authorized by the Board or the manager, 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, maintenance, or repairs to the Common Elements in his Unit or elsewhere in the building in which his Unit is located, or to correct any condition which violates the provisions of any mortgage or policy of insurance covering another Unit; provided, that, except in an emergency, request for entry must be made in advance and such entry must be at a time reasonably convenient to the Unit Owner. In case of an emergency, such right of entry shall be immediate, whether or not the Unit Owner is present at the time.

Section 14. Entry by Board. In the event any Unit Owner permits any use of the premises or practice in violation of the provisions of Section 11 of this Article, and such Owner fails to cure said violation within thirty (30) days of the Board's request to do so, agents of the Board may enter upon the premises and cure said violation at the expense of such Unit Owner or Owners.

Section 15. Rules of conduct. Rules and Regulations concerning the use of the Units and the Common Elements may be promulgated and amended by the Board. Copies of such Rules and Regulations shall be furnished by the Board to each Unit Owner, and all amendments and new Rules and Regulations shall be furnished to Unit Owners prior to the time that amendment or new rule or regulation becomes effective.

Section 16. Utility charges. All charges for water, electricity, and other utilities used in connection with the maintenance and use of the Common Elements shall be a Common Expense of the Association.

ARTICLE IX

RECORDS AND AUDITS

The Board of Directors or the manager shall keep detailed records of actions of the Board and the manager, minutes of the meetings of the Board of Directors, minutes of meetings of the Association, and financial records and books of accounts of the Property, including a chronological listing of receipts and expenditures, which, among other things, shall contain the amount of each assessment of the Common Expenses against each Unit, the date when due, and amounts paid thereon, and the balance remaining unpaid, and including maintenance and repair expenses of the Common Elements and any other expenses incurred. The financial records and books of account shall be available for examination by any Unit Owner, its Mortgagee, or its duly authorized agent or attorney at convenient hours on working days by prior arrangement with the Board or the manager. An outside audit of all receipts and expenditures of the Association and Property shall be rendered by the Board to all Unit Owners on or before the 120th day following the close of each fiscal year, covering the preceding year. All books and records shall be kept in accordance with good and accepted accounting practices. A copy of the audit shall be furnished to all mortgagees of Units who have requested the same.

ARTICLE X

OPERATION PRIOR TO INITIAL MEETING OF BOARD

Prior to the first meeting of the initial Board of Directors, all functions of the Association and of the Board of Directors as herein set forth shall be performed and carried out by the Declarant through its officers and agents.

ARTICLE XI

RIGHTS OF MORTGAGEES

So long as any Mortgagee shall hold any Mortgage upon any Unit, or shall be the Owner of any Unit, such Mortgagee shall have the following rights and the Association shall be obligated to provide the following information to any Mortgagee who has given written notice that it is the holder of a Mortgage on a Unit so long as such written notice shall have been sent to the Association at the Registered Office of the Association, identifying the Unit upon which any such Mortgagee holds any Mortgage, or identifying any Unit owned by it, and which notice shall designate the place to which notices are to be given by the Association to such Mortgagee.

A. Upon request to the Association, to be furnished with at least one copy of the annual financial statement and report of the Association, including a detailed statement of annual carrying charges or income collected and operating expenses.

B. To be given notice by the Association of the call of any meeting of the membership to be held for the purpose of considering any proposed Amendment to the Declaration, or the Articles of Incorporation and Bylaws of the Association, which notice shall state the nature of the amendment being proposed, and to be given permission to designate a representative to attend all such meetings.

C. To be given notice of default in the payment of assessments by any Unit Owner encumbered by a Mortgage held by the Mortgagee, such notice to be given in writing and to be sent to the principal office of such Mortgagee, or to the place which it or they may designate in writing to the Association.

D. To inspect the books and records of the Association and the Declaration, Bylaws and any Rules and Regulations during normal business hours, and to obtain copies thereof.

E. To be given notice by the Association of any substantial damage to any part of the Common Elements or the Unit which is security for the Mortgage of a particular Mortgagee.

F. To be given notice by the Association if any portion of the Common Elements or Unit which is security for the Mortgage of a particular Mortgagee, is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority.

ARTICLE XII

AMENDMENT OF BYLAWS

These Bylaws may be amended by the affirmative vote of the voting members having at least eighty percent (80%) of the allocated votes, cast in person or by proxy at a meeting duly held in accordance with the provisions of the Bylaws, or by written agreement. Such amendment shall also be approved by the Mortgagee for each Unit with affirmative votes and shall be executed in the name of the Association and recorded in the Office of the Register of Deeds of the county in which the Condominium is located. No such amendment shall be effective until approved by the Mortgagee as provided in this Article and duly recorded as aforesaid.

ARTICLE XIII

PARLIAMENTARY AUTHORITY

Robert's Rules of Order, Newly Revised, shall govern the conduct of Association proceedings when not in conflict with the Declaration, these Bylaws, the Articles, the Condominium Act, or any statutes of the State of North Carolina applicable thereto. The chairman of the meeting shall have the authority to appoint a parliamentarian.

ARTICLE XIV

COMPLIANCE WITH THE ACT; CONFLICT; SEVERABILITY

These Bylaws are established in compliance with the Condominium Act, as amended. Should any of the terms, conditions, provisions, paragraphs, or clauses of these Bylaws conflict with any of the provisions of said Act, the provisions of said Act shall control unless the Act permits these Bylaws to override the Act, in which event these Bylaws shall control. In the case of any conflict between the provisions of these Bylaws and the Declaration, the Declaration shall control. If any term, provision, limitation, paragraph, or clause of these Bylaws, or the application thereof to any person or circumstance, is judicially held to be invalid, such determination shall not affect the enforceability, validity, or effect of the remainder of these Bylaws, or the application thereof to any other person or circumstance.

**EXHIBIT C
TO
THAT DECLARATION FOR
GATEWAY TERRACE LAND CONDOMINIUM**

LIST OF EXCLUSIVE USES

| Tenant | Date of Lease | Exclusive | Exclusive Runs in Favor of Portion of Property |
|--|--|---|---|
| Chipotle Mexican Grill of Colorado, LLC ("Chipotle") | September 20, 2012 ("Chipotle Lease") | The tenant under the Chipotle Lease shall have the exclusive right to sell burritos, fajitas, and tacos at the Land Condominium; provided that other tenants shall have the right to sell burritos, fajitas and tacos if (i) the sale of such items by such tenant is incidental to and not the primary business of such tenant, and (ii) such tenant's annual sale of burritos, fajitas and tacos from the Land Condominium, in the aggregate, does not equal or exceed ten percent (10%) of such tenant's annual gross revenues derived from its business operations at the Land Condominium. | Land Unit 2 |
| Mattress Firm, Inc. ("Mattress Firm") | September 26, 2012 ("Mattress Firm Lease") | <p>Provided that the tenant under the Mattress Firm Lease is open for business and operating as the following exclusive use, such tenant shall have the exclusive use for the sale of mattresses and/or waterbeds within the Land Condominium, and no space within the Land Condominium other than the Mattress Firm premises shall be leased, used or occupied by a tenant or occupant whose primary use shall be for the sale of mattresses and/or waterbeds.</p> <p>Notwithstanding any other term contained herein, the foregoing restriction shall not encumber the premises leased by Chipotle during the term of the Chipotle Lease.</p> | Land Unit 2 |
| PDQ Durham Real Estate Holdings, LLC ("PDQ") | October 11, 2012 ("PDQ Lease") | Except for the tenant of Land Unit 3, no other tenant or occupant shall operate any of the following in any portion of the Land Condominium: any restaurant which specializes in (i.e. derives more than twenty five percent | Land Unit 3 |

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|---|-------------------------------------|---|--------------------|
| | | <p>(25%) of its profits from the sale of) chicken or poultry offerings, including by way of example only and without limitation, Chick-Fil-A, Boston Market, Kenny Roger's, Chicken Out, Will May's Chicken, Zaxby's, El Pollo Loco, Koo-Koo Roo, Pollo Campero, Charo Chicken, Raising Cane's Chesters or Bojangles; provided however, notwithstanding anything herein to the contrary, the foregoing restriction shall not prohibit the operation of a Chipotle restaurant or a restaurant with a similar concept to that of Chipotle, which is expressly permitted.</p> <p>No animal raising operation shall operate in the Land Condominium, except that a pet shop or veterinary office may be located 150 feet or more from Land Unit 3.</p> <p>In the event that the PDQ restaurant closes and the tenant under the PDQ Lease proposes to open a new restaurant concept on Land Unit 3, with a new predominant or primary featured food type (such as, but not limited to, steaks {i.e. a steakhouse} or seafood) or ethnic cuisine (such as, but not limited to, Mexican, Asian, Japanese, or Chinese) consistent with a fast-food, fast casual, or quick-service restaurant, which may be inclusive of drive through service ("New Restaurant Concept"), and such New Restaurant Concept is not in conflict with any other exclusive use granted to another tenant in the Land Condominium, then no other tenant or occupant shall operate a restaurant within the Land Condominium that duplicates the New Restaurant Concept. This paragraph shall not apply to any tenant in the Land Condominium that is permitted to operate such use without consent or approval under any lease existing at the time the tenant under the PDQ Lease gives notice to the Owner of Land Unit 3 of such proposed new Restaurant Concept.</p> | |
| <p>Fox NC Acquisition, LLC ("Jimmy John's")</p> | <p>June 25, 2013 ("Jimmy John's</p> | <p>Except for the tenant under the Jimmy John's Lease, and so long as the tenant is open and operating as a Jimmy John's Gourmet Sandwiches restaurant, no tenant or occupant of</p> | <p>Land Unit 2</p> |

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|------------------------------------|------------------------------------|--|-------------|
| | Lease”) | the Land Condominium shall operate as a Subway, Jersey Mikes, Quizno’s, Firehouse, Which-Wich, or other very similar use whose sales of submarine style sandwiches exceeds twenty-five percent (25%) of such tenant’s gross sales. The foregoing restriction shall not apply to Freddy’s Frozen Custard and Steamburgers or to a restaurant, not specifically referenced above, containing more than three thousand square feet and specializing in hamburgers or hot dogs and shall not apply to prohibit a full service/table service restaurant over 4000 square feet. | |
| Raleigh Freddy’s, LLC (“Freddy’s”) | August 27, 2013 (“Freddy’s Lease”) | So long as the tenant under the Freddy’s Lease is not in default (beyond any applicable notice or cure period) and the tenant under the Freddy’s Lease is operating its business for the sale of hamburgers, hotdogs and frozen treats (“Exclusive Items”), no other premises in the Land Condominium shall be used by a person or entity whose business is (i) any store specializing in the sale of the Exclusive Items (i.e. generating more than 25% of its gross revenue from the sale of Exclusive Items), or (ii) any competitors of Freddy’s Frozen Custard & Steamburgers, including but not limited to McDonald’s, Burger King, Steak & Shake, Whataburger, Fuddruckers, Culvers, Wendy’s, Hardee’s, In-N-Out Burger, White Castle, Dairy Queen, Sonic, Krystal, Cold Stones, Sheridans and TCBY or any of their respective affiliated stores/restaurants, or any successors or assigns of the aforementioned. Notwithstanding the foregoing, (a) the Exclusive Items and exclusive rights do not include or apply to bakery items, coffee-based drinks, milkshakes or smoothies, and (b) Chipotle, PDQ, Penn Station, Jimmy Johns and a coffee shop such as a Starbucks, Caribou etc. will not be deemed to violate this provision. Notwithstanding any other term contained herein, the foregoing restriction shall not encumber the premises leased under the Existing Leases. | Land Unit 4 |

**EXHIBIT D
TO
THAT DECLARATION FOR
GATEWAY TERRACE LAND CONDOMINIUM
DEVELOPMENT STANDARDS**

The following restrictions shall apply to a Unit Owner's exercise of Development Rights:

1. A building or buildings containing no more than the square footage permitted by the then current zoning regulations and applicable parking regulations may be constructed on a Land Unit.

2. At all times, the Unit Owner undertaking the development work ("Developing Unit Owner") shall keep in force commercial general liability insurance with respect to its development with companies licensed to do business in North Carolina and rated A- or better in the then most current issue of Best's Insurance Report with combined single limit coverage of not less than Three Million Dollars (\$3,000,000.00) per occurrence. The Developing Unit Owner shall indemnify, save harmless and defend the other Unit Owner from and against any and all suits, claims, actions, damages, liability and expense (including reasonable attorneys' fees) in connection with the loss of life, personal injury and/or damage to property arising from or out of the ownership, operation or use by the Developing Unit Owner of the Common Elements, or occasioned, wholly or in part, by any act or omission of the Developing Unit Owner, its officers, contractors, agents or employees (acting within the scope of their office, contract, agency or employment).

3. Construction on the Land Unit shall be in compliance with all the following:

(i) The Developing Unit Owner shall provide notice of its intent to commence construction to the Declarant and other Unit Owners, at least thirty (30) days prior to the commencement for any construction, which notice shall include a copy of the plans of the proposed improvements, a construction schedule and contact information for the person responsible for the construction.

(ii) The Developing Unit Owner shall designate that portion of the Common Elements it plans to use as a staging area for or in connection with the construction, which size and location shall be approved by the Board.

(iii) The Developing Unit Owner shall erect a plywood wall or wire fence around the Land Unit and the designated staging Area and shall not allow any trash, dirt, sand, debris or construction materials to enter the Common Elements and shall each evening before 4:30 p.m.,

remove any such materials that may have inadvertently entered upon the Common Elements (excluding the staging area) and leave the Common Areas in a neat, clean and attractive condition prior to the completion of work each day.

(iv) No work which results in noise, dust or other event that might annoy, disturb or bother the customers of the other Land Units shall be permitted after 7:00 p.m. on any day that a business is operating at the other Land Units.

(v) All work shall otherwise be done in a manner to minimize any adverse impact on the other Land Unit and the operation of the business thereon, provided however, the Developing Unit Owner shall not be required to incur any commercially unreasonable expense to satisfy these restrictions.