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DECLARATION OF CONDOMINIUM
FOR
DAVIS PARK PARCEL E LAND CONDOMINIUM

Drawn By and Mail To:
Michael J. Ovsievsky, Esq.
Morningstar Law Group
630 Davis Drive, Suite 200
Morrisville, North Carolina 27560

DECLARATION OF CONDOMINIUM

FOR

DAVIS PARK PARCEL E LAND CONDOMINIUM

THIS DECLARATION OF CONDOMINIUM (this "Declaration") is made as of the 27th day of September, 2016, by **DAVIS-RODWELL TMC LLC**, a North Carolina limited liability company ("Declarant") and is executed for the purposes set forth herein by **DAVIS PARK PARCEL E LAND CONDOMINIUM OWNERS ASSOCIATION, INC.** (the ("Association").

RECITALS:

Declarant is the owner of that certain real property situated in Durham County, North Carolina, and more particularly described on Exhibit A, attached hereto and incorporated herein by this reference (the "Property"). Declarant hereby desires to submit the Property and any improvements constructed thereon to condominium ownership under the provisions of Chapter 47C of the General Statutes of North Carolina and this Declaration.

NOW, THEREFORE, Declarant hereby declares that the Property, as hereinafter defined, shall be held, sold, conveyed, encumbered, used, occupied, developed and improved subject to the following easements, restrictions, covenants, conditions, uses, limitations, and obligations, all of which are declared to be in furtherance of a plan for the development of the Property into a condominium under the provisions of Chapter 47C of the General Statutes, and which shall run with the land and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall all inure to the benefit of each owner of any interest therein.

ARTICLE I

DEFINITIONS

As used herein, the following terms and phrases shall have the meanings set forth below, or, if a term used in this Declaration is not defined below, it shall have the meaning set forth in the Act.

Act. The "Act" shall mean and refer to the North Carolina Condominium Act, Chapter 47C, North Carolina General Statutes.

Allocated Interests in the Common Elements and Common Expenses. The "Allocated Interests in the Common Elements and Common Expenses" shall mean and refer to each Unit's undivided interest in the Common Elements and Common Expenses as determined in accordance with Article III, Section 2 and as amended from time to time.

Articles. The “**Articles**” shall mean and refer to the Articles of Incorporation of the Association as they may from time to time be amended in accordance with the terms of the Condominium Instruments and the Act.

Association. The “**Association**” shall mean and refer to Davis Park Parcel E Land Condominium Owners Association, Inc., its successors and assigns.

Board. The “**Board**” shall mean and refer to the governing body designated or selected in accordance with the terms of this Declaration and the Articles and Bylaws of the Association to act on behalf of the Association in all matters not expressly reserved to the Members of the Association by the Condominium Instruments or the Act.

Bylaws. The “**Bylaws**” shall mean and refer to the Bylaws of the Association, as the same may from time to time be amended in accordance with the terms of the Condominium Instruments.

Common Area. The “**Common Area**” shall mean and refer to the areas labeled as “Common Area” on the Plat. The Common Area shall consist of the Common Elements excluding Limited Common Elements and the easements declared and reserved for the benefit of the Association in this Declaration.

Common Elements. The “**Common Elements**” shall mean and refer to (i) the Common Area, together with all easements, improvements or landscaping within, adjacent to, and reasonably associated therewith, and (ii) the Limited Common Elements, provided however that notwithstanding anything in the Condominium Instruments to the contrary, the costs and obligations associated with the Limited Common Elements shall be governed by Article III, Section 3, Article VII, Section 1(b), and Article VIII, Section 2 of this Declaration.

Common Expenses. The “**Common Expenses**” shall mean and include:

(a) All lawful expenditures or financial liabilities made or incurred by or on behalf of the Association generally, together with any assessments for the creation and maintenance of reserves; and

(b) All expenses declared Common Expenses by this Declaration or the Bylaws.

Condominium. The “**Condominium**” shall mean and refer to the Property and all easement rights appurtenant thereto, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the Unit Owners of those portions.

Condominium Instruments. The “**Condominium Instruments**” shall mean and refer to this Declaration, the Articles, the Bylaws, and the Rules and Regulations of the Association adopted pursuant to the terms of this Declaration, as the same may be from time to time amended or supplemented in accordance with their terms.

County. The “**County**” shall mean and refer to Durham County, North Carolina.

Declarant. The “**Declarant**” shall mean and refer to **DAVIS-RODWELL TMC, LLC**, a North Carolina limited liability company, as well as its successors and assigns pursuant to an express assignment or conveyance of any development rights or special declarant rights reserved herein, all of which, except as otherwise herein expressly provided, shall be assignable in whole or in part and may be apportioned on a per Unit basis; provided however, any such assignment or conveyance shall be set forth in a document which shall be recorded in the Registry.

Declarant Control Period. The “**Declarant Control Period**” shall mean and refer to that period during which the Declarant shall control the Association, which period shall commence on the date hereof and continue until the earlier of (i) the conveyance, including by ground lease, of all of the Units to Unit Owners other than Declarant; or, (ii) the date upon which Declarant voluntarily surrenders control of the Condominium to the Association

Declaration. The “**Declaration**” shall mean and refer to this Declaration of Condominium for Davis Park Parcel E Land Condominium, as it may be amended, supplemented or restated from time to time.

Effective Date. The “**Effective Date**” shall mean and refer to the date this Declaration is recorded in the Registry.

Improved Area. “**Improved Area**” shall mean the gross floor area of all floors or portions thereof which are actively heated or cooled by a heating, ventilating or air conditioning system, measured from exterior faces of exterior walls or the centerline of walls facing buildings. The floor areas of unconditioned spaces, such as unheated basements, garages, structured parking and attics shall not be included in gross floor area.

Improved Unit. “**Improved Unit**” shall mean and refer to each Unit on which there are erected building improvements that have attained Substantial Completion.

Initial Improvements. “**Initial Improvements**” shall mean and refer to the first set of improvements constructed upon a Unit which have attained Substantial Completion.

Limited Common Elements. “**Limited Common Elements**” shall mean and refer to those portions of the Common Elements allocated by this Declaration, or the terms of the Act, for the exclusive use and benefit of one or more, but fewer than all, of the Units to the exclusion of all other Units, including, without limitation, all utilities that either (A) are located on one Unit but serve another Unit, or (B) that serve more than one Unit but less than all of the Units. Limited Common Elements are not considered part of the Common Area.

Master Declaration. “**Master Declaration**” shall mean and refer to that certain Declaration of Master Protective Covenants For Davis Park West recorded in the Registry at Book 7846, Page 1, to which the Property is subject.

Member. “**Member**” shall mean and refer to every Person that holds membership in the Association.

Officer. "Officer" shall mean and refer to any person holding an office in the Association pursuant to the Bylaws, but shall not mean a member of the Board, unless such officer is also a member of the Board.

Person. "Person" shall mean and refer to a natural person, a corporation, a partnership, a limited liability company, a trustee or any other legal entity.

Plat. "Plat" shall mean and refer to the Plat of the Condominium recorded in Condominium Map Book 196, Page 206, Sheet(s) _____ in the Registry, as the same may be supplemented and amended from time to time pursuant to the terms of this Declaration or the Act. Since the Units are parcels of land only, and the Units are not intended to include any building improvements constructed or to be constructed, there are no Plans (as otherwise required by the Act) for the Condominium.

Property. The "Property" shall mean and refer to the parcel of real property, described on Exhibit A attached hereto, together with any appurtenant easements, and shall include all improvements now or hereafter constructed thereon.

Registry. The "Registry" shall mean and refer to the Register of Deeds of Durham County, North Carolina.

Rules and Regulations. "Rules and Regulations" shall mean and refer to all reasonable rules and regulations prescribed and promulgated by the Association, acting through its Board, governing the use, enjoyment, and maintenance of the Common Elements. Copies of the Rules and Regulations and any amendments or additions thereto shall be furnished by the Association to all Unit Owners prior to the effective date thereof. All such Rules and Regulations shall be binding upon the Unit Owners, their tenants, guests, invitees and agents until and unless such Rule or Regulation shall be specifically overruled, canceled, or modified by the Board of the Association or by the a written instrument approved by the Unit Owners to which are allocated at least two-thirds (2/3) of the undivided Allocated Interests in the Common Elements.

Special Declarant Rights. "Special Declarant Rights" shall mean and refer to the rights as defined in Section 47C-1-103(23) of the Act and those rights of the Declarant reserved herein, including, without limitation, those set forth in Article II of this Declaration.

Substantial Completion. "Substantial Completion" in regard to any building improvements located on any Unit shall be attained by the issuance of a certificate of occupancy (preliminary or final, whichever first occurs) on the base building (but not tenant improvements) by the appropriate local governing authority.

Unimproved Unit. "Unimproved Unit" shall mean and refer to each Unit on which no building improvements that have attained Substantial Completion are located. Once the Initial Improvements on a Unit have attained Substantial Completion, such Unit shall be deemed an Improved Unit, even if such Initial Improvements have subsequently been removed.

Unit. "Unit" shall mean and refer to each physical portion of the Condominium designated for separate ownership or occupancy; together with the Allocated Interests in the

Common Elements allocated to each; and together with any easement or use rights appurtenant thereto. The boundaries of each Unit are as shown on the Plat. Each of the Units as shown on the Plat is a land parcel consisting of only a horizontal plane as further described in Article III, Section 4. The Unit Owners shall have the right to construct improvements upon and within their Units.

“**Unit 1**” shall mean and refer to the horizontal surface plane within the boundaries shown on the Plat and identified thereon as “UNIT 1”. Notwithstanding anything to the contrary, any Underground Storage Tank (UST) and associated fuel storage and delivery system associated with Unit 1, wherever located, shall be an undivided and undividable part of Unit 1 and shall be the sole responsibility of the Unit 1 Owner.

“**Unit 2**” shall mean and refer to the horizontal surface plane within the boundaries shown on the Plat and identified thereon as “UNIT 2”.

Each Unit consists of the respective areas described above and shown on the Plat, and is not defined with reference to any building improvements now or hereafter located on the Units.

Unit Owner. “**Unit Owner**” shall mean and refer to the record owner, whether one or more Persons, of fee simple title to any Unit, or if the Unit is subject to a ground lease having a term of at least [15 years], the ground lessee thereof, together with an undivided interest in the Common Elements appertaining to such Unit as hereinafter set forth, including contract sellers but excluding (i) any other lessee of a Unit or (ii) those having such interest merely as security for the performance of an obligation. Notwithstanding the foregoing, in the event that a Unit is ever conveyed by Declarant in fee to another owner, and in the event that said subsequent owner submits the Unit to the encumbrance of a Sub-Parcel Condominium Declaration or takes title subject to an existing Sub-Parcel Condominium Declaration encumbering the Unit, then, the term “Unit Owner” shall for all purposes mean the Sub-Parcel Condominium Association established in accordance with said Sub-Parcel Condominium Declaration with respect to that Unit.

Unit Owners. The “**Unit Owners**” means all Persons that own a Unit or Units in the Condominium.

ARTICLE II

THE CONDOMINIUM

Section 1. **Submitting to Act.** Declarant hereby submits the Property to the provisions of the Act. The Property will be administered in accordance with the provisions of the Act and the Condominium Instruments.

Section 2. **Name.** The name of the Condominium shall be “Davis Park Parcel E Land Condominium.”

Section 3. **Property.** The real estate currently included in the Condominium is the Property which is located in the County and is described on Exhibit A attached hereto and incorporated herein by reference.

Section 4. **Number of Units.** Declarant hereby establishes within the Property two (2) Units, being Unit 1 and Unit 2 as shown on the Plat and herein described and defined, and hereby designates all such Units for separate ownership. During the Declarant Control Period, and so long as Declarant owns any Unit, no Unit may be subdivided or combined with any other Unit without the prior approval of Declarant, which may be granted or denied in Declarant's sole discretion.

Section 5. **Administration of the Condominium by the Association.** The Association has been organized to provide for the administration of the Condominium by the Declarant and the Unit Owners, and said corporation shall administer the operation and management of the Condominium and undertake and perform all acts and duties incident thereto in accordance with the terms of the Condominium Instruments. In the administration of the operation and management of the Condominium, the Association shall have and is hereby granted all of the powers and authorities granted to non-profit corporations under the law pursuant to which the Association is chartered, and all of the powers and privileges which may be granted the Association under any other applicable laws of the State of North Carolina, including the Act, and under the Condominium Instruments, which powers include, without limitation, the power and authority to enforce the provisions of this Declaration, to levy and to collect assessments in the manner hereinafter provided, to adopt, promulgate and enforce such rules and regulations governing the use of the Units and Common Elements as the Board of the Association may deem to be in the best interests of the Unit Owners and the Association.

Section 6. **Membership in Association.** Each Unit Owner shall be a Member of the Association. There shall be only one membership per Unit. If the Unit is owned by more than one (1) Person, all co-owners and all members of such Sub-Parcel Association shall share the privileges of such one membership, subject to reasonable Board regulations and the restrictions on voting set hereto in this Declaration and in the Bylaws and all such co-owners shall be jointly and severally obligated to perform the responsibilities of Unit Owners. All Members shall vote on matters affecting the Association as a whole. Except in those circumstances where the Act or this Declaration or the Bylaws requires the vote of the Association, the rights and powers of the Association shall be exercised by and through the Board. The initial members of the Board are those named by the Declarant, and their successors shall be named by the Declarant during the Declarant Control Period, and thereafter elected as provided in the Bylaws. If any Unit is subject to a Sub-Parcel Condominium Declaration, the Sub-Parcel Condominium Association shall be for all purposes the Member of the Association for the Unit. The membership rights of a Unit Owner which is not a natural person may be exercised by any authorized officer, director, partner or trustee, or by an individual designated from time to time by the Unit Owner in a written instrument provided to the Secretary of the Association

Section 7. **Voting.** With respect to matters on which the Members of the Association are entitled to cast a vote, the total number of votes shall be one hundred (100). The votes shall be allocated evenly between Unit Owners (50 to Unit 1 and 50 to Unit 2).

Section 8. Waiver of Rights under Article 4 of Act. Each Unit Owner, 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.

Section 9. Declarant Reservation of Rights. Declarant reserves the following Special Declarant Rights with respect to the Property:

(a) To demolish, design, construct, complete and exercise control, over the course of site clearing and/or development, of any and all improvements, including in particular but without limitation, any landscape, infrastructure or building improvements which Declarant may elect to construct on the Common Elements or on the Units.

(b) To orchestrate and exercise control over the use of the Common Elements for the staging of construction materials, ingress and egress of construction traffic, and the orderly development of the Property. Specifically included within the foregoing is the Declarant's right to temporarily designate certain portions of the Common Elements not located beneath a Unit for the exclusive use of a Unit Owner during construction, and the right of Declarant to direct the flow of construction traffic; provided, however, the exercise of such right by Declarant shall not unreasonably interfere with any Unit Owner's right of access to such Unit Owner's Unit or such Unit Owner's right to develop, occupy and make use of such Unit for any permitted purpose.

(c) With the consent of the Unit Owner(s), which shall not be unreasonably withheld, to convert Units to Common Elements or Common Elements to Units, and/or to convert Common Elements to Limited Common Elements, and/or to convert Common Elements previously declared to be Limited Common Elements to general Common Elements, in any of which events Declarant shall file an amendment to this Declaration in the Registry with the reallocation of the Allocated Interests in Common Areas based on the formula in Article III, Section 2 of this Declaration together with revised Plats showing such resulting Common Elements or Units, all in accordance with Section 47C-2-109 of the Act.

(d) To use the easements set forth in Article IX for any purposes set forth herein.

(e) To appoint or remove any officer of the Association, or any executive Board member.

The development rights reserved by Declarant described in subparagraphs (a) – (e) above may be exercised with respect to different portions of the Property at different times, and they may be assigned (all at once or some rights and not others) by Declarant to another Person, as provided in the Act. No assurances are made with respect to the order in which portions of the Property may be subjected to the exercise of such development rights. If a development right is exercised in a portion of the Property, such development right need not be exercised in any other portion of the Property. Notwithstanding the foregoing or anything in the Condominium Instruments to the contrary, the Special Declarant Rights reserved by Declarant hereunder must be exercised, if at all, by the earlier of (i) the end of the Declarant Control Period or (ii) thirty (30) years following the date of recording of this Declaration in the Registry.

Section 10. Condominium Subject to Matters of Record. The Units and the Common Elements shall be, and the same are hereby declared to be, subject to the restrictions,

easements, conditions and covenants prescribed and established herein governing the use thereof and setting forth the obligations and responsibilities incident to ownership of each Unit and its Allocated Interest in the Common Elements, and said Units and Common Elements are further declared to be subject to all other restrictions, easements, conditions and limitations now of record and recorded in the Registry affecting the land and improvements of the Condominium.

ARTICLE III

COMMON ELEMENTS; LIMITED COMMON ELEMENTS; UNIT BOUNDARIES

Section 1. Common Elements. The Common Elements shall consist exclusively of (i) those areas designated on the Plat as Common Area, together with all roadways, trails, easements, signage, improvements or landscaping within, adjacent to, and reasonably associated therewith, together with the airspace above, and (ii) the Limited Common Elements, provided however that notwithstanding anything in the Condominium Instruments to the contrary, the costs and obligations associated with the Limited Common Elements shall be governed by Article III, Section III, Article VII, Section 1(b), and Article VIII, Section 2 of this Declaration.

Section 2. Undivided Allocated Interest in Common Elements and Common Expenses. The Allocated Interests in the Common Elements and Common Expenses appurtenant to each Unit as of the Effective Date is as set out on Exhibit B attached hereto and made a part hereof. Said Allocation is based on the proportion of traffic and use of the Common Area by the Unit Owners, their respective employees, vendors and customers. Notwithstanding the foregoing or anything else contained in this Declaration to the contrary, (i) with respect to the "Area Restricted To Driveway Use" as shown on the Plat only, the Unit Owner's respective share of the costs of maintenance, repair and/or replacement to the same shall be ninety percent (90%) allocated to Unit 1 and ten percent (10%) allocated to Unit 2, and (ii) with respect to costs of damages to Common Area under the Master Declaration, to the extent that the same is assessed entirely to the Association pursuant to Section 8.05 of the Master Declaration because the underlying damage is caused by one of the Owners, the Association shall allocate such costs and assessment 100% to the responsible Owner.

Section 3. Limited Common Elements. In addition to all other Limited Common Elements identified herein, on the Plat or pursuant to the Act, there shall be appurtenant to each Unit the following specifically described Limited Common Elements:

The Limited Common Elements appurtenant to "**Unit 1**" shall include all areas and property located beneath Unit 1, including without limitation a right and easement for foundations and footings to be installed below its subsurface rights, and shall include a right and easement of attachment and support on, over and upon such areas and property, as well as a right and easement to construct, maintain, repair and replace foundations and footings within all areas and property located beneath Unit 1, said rights to be exclusive to Unit 1 except as provided in Sections 1, 2 and 3 of Article IX hereof.

The Limited Common Elements appurtenant to "**Unit 2**" shall include all areas and property located beneath Unit 2, including without limitation a right

and easement for foundations and footings to be installed below grade, and shall include a right and easement of attachment and support on, over and upon such areas and property, as well as a right and easement to construct, maintain, repair and replace foundations and footings within all areas and property located beneath Unit 2, said rights to be exclusive to Unit 2 except as provided in Sections 1, 2 and 3 of Article IX hereof.

Any projections from the building improvements constructed on a Unit that extend into the Common Elements, including, without limitation, any awnings, steps, ramps, stoops, canopies, covered walkways and covered drives designed and intended to serve one or more, but fewer than all, of the Units are Limited Common Elements allocated exclusively for the use of only the Unit or Units served by such improvement. The Unit Owner or Unit Owners to which any such Limited Common Elements are allocated shall be responsible for the repair, maintenance and replacement of such improvements. Should the Unit Owner(s) fail to provide such repair, maintenance and replacement, the Association may provide the same and assess the cost of such repair, maintenance and replacement against the Unit or Units to which that Limited Common Element is assigned.

Section 4. Unit Boundaries. The Plat shows the location and dimensions of the Units modified by the description of Common Elements contained in this Declaration. The Plat may be amended from time to time by Declarant during the Declarant Control Period, and pursuant to Special Declarant Rights as granted hereunder to show Units and Common Elements added to the Condominium, and to reflect changes in Unit boundaries or the locations of Common Elements, to the extent such Common Elements are shown on the Plat. The lower unit boundary of each Unit is a horizontal plane at the "lowest grade elevation" shown on the Plat. The upper unit boundary of each Unit is a horizontal plane at the "highest grade elevation" shown on the 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 Plat. The portion of the Property located below the lower elevation of a Unit is a Limited Common Element, and the airspace located above a Unit is a Limited Common Element.

Section 5. Construction of Buildings. A Unit Owner may demolish existing improvements (if applicable) and construct buildings and improvements upon its Unit in accordance with the provisions of this Declaration. No failure to object by the Declarant or the Board, as applicable, shall be deemed to have waived, or granted any variances from, any term, covenant, condition, easement or restriction contained in this Declaration. Any building or other improvement constructed upon a Unit shall become part of that Unit as and when constructed, and no part of any building or improvement constructed upon a Unit, and located within a Unit shall be considered a Common Element, even if so denominated within a Sub-Parcel Condominium Declaration.

ARTICLE IV

PROPERTY RIGHTS

Section 1. Ownership. Ownership of a Unit shall vest fee simple title to such Unit in the Unit Owner.

Section 2. Allocated Ownership Interest. Every Unit Owner shall own an undivided Allocated Interest(s) in all of the Common Elements, including the Limited Common Elements as provided in Article III, Section 2.

The Allocated Interests in Common Elements and the exclusive rights to use and enjoy the same are subject to the following:

(a) the Board shall have the right to adopt such Rules and Regulations under this Declaration as may be needed to regulate the use and enjoyment of the Common Elements;

(b) the Declarant shall have the right to exercise the Special Declarant Rights as set forth in Article II;

(c) each Unit Owner may transfer or encumber its Allocated Interest in the Common Elements, and its right to use and enjoyment of a Limited Common Element, where such a right exists, as appurtenant to its Unit, in connection with the financing of such Unit or any leasehold interest therein, without obtaining the approval of other Unit Owners or their mortgagees; and

(d) subject to and without limiting any other rights of the Association under this Declaration, the Association shall have the right to dedicate, transfer or encumber all or any part of the Common Elements subject to approval by the Unit Owners.

Section 3. Extent of Unit Owners' Easements. Every Unit Owner shall have a right and easement of enjoyment in and to the Common Elements that shall be appurtenant to and shall pass with the title to the Unit, including, without limitation, the right of ingress, egress and regress and the right to construct, maintain, repair, replace and use any utility facilities located in the, or deemed under this Declaration to be, Common Elements necessary or convenient to serve improvements located on any Unit (which utility improvements to the extent they serve fewer than all of the Units shall constitute Limited Common Elements appurtenant to the Unit(s) served by such improvements). The Unit Owners' easement in and to the Common Elements, however, is subject to the terms of the Condominium Instruments, specifically including the express terms of any easements, restrictions and other matters herein contained or otherwise of record affecting the Common Elements and the Common Area as to the date this Declaration is recorded.

Section 4. Delegation of Rights to Common Elements and Limited Common Elements. Any Unit Owner may delegate his, her or its right of enjoyment to the Common Elements to such Unit Owner's tenants, invitees and licensees and the invitees and customers of such tenants, invitees and licensees. The right to use and enjoy each Limited Common Element shall inure to the benefit of and be exercisable by a ground leasee of the Unit to which such Limited Common Element is allocated, and shall also inure to the benefit of and be exercisable by the "owners" of Sub-Parcel Condominium Units created by subjecting of the Unit to which such Limited Common Element is allocated to a Sub-Parcel Condominium Declaration, subject to any limitations on such use set forth in the Sub-Parcel Condominium Declaration for such Unit.

Section 5. Subsurface Restrictions. Resource extraction of any kind and through any method, including but not limited to through hydraulic fracturing and related extraction

technologies, shall be prohibited entirely on, above, and under the Property collectively and the Units individually. Further, neither the Declarant nor any Unit Owner may convey any mineral rights to a third party during the existence of the Condominium.

ARTICLE V

COMMON ELEMENT IMPROVEMENTS

Section 1. **Common Element Improvements.** Declarant, in its sole discretion, shall each have the right to construct or cause to be constructed additional improvements within the Common Area related to the use and development of the Property, including, without limitation, vehicular and pedestrian traffic areas, utilities, signage, and landscaping. So long as Declarant proceeds in good faith, the costs associated with the development and construction of such improvements and infrastructure shall be included in the Assessments.

ARTICLE VI

PROPERTY AND RESTRICTIONS

Section 1. **Master Declaration.** All Unit Owners, by taking title and/or interest in any Unit, hereby agree and acknowledge that such title and/or interest is subject to the terms of the Master Declaration, and all other encumbrances of records, including, without limitation, with respect to restrictions on uses, and such Unit Owners agree to be bound by and comply with the same.

ARTICLE VII

COVENANT FOR ASSESSMENTS

Section 1. **Assessments Generally.** The Declarant, for each Unit owned, and each Unit Owner by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, hereby covenant and agree to pay the Association the following:

(a) All (i) special assessments levied by Durham County against the Property (and not an individual Unit); or (ii) additional assessments and other charges levied or imposed by the Association pursuant to the terms of the Condominium Instruments or the Act, including without limitation, (1) the costs associated with the initial construction and development of the Common Elements (and Common Element Improvements), such as roadways, utilities, and storm water facilities, and (2) all "assessments" properly chargeable to the Property pursuant to the Master Declaration (subject to Article III, Section 2). Except as otherwise provided below, the liability of each Unit Owner for the assessments described in this subsection (a) shall be in accordance with each Unit Owner's respective Allocated Interests in the Common Elements.

(b) With respect to those assessments which pertain exclusively to the use, maintenance, repair, replacement, insurance and capital improvement of the Limited Common Elements, the liability of the Unit Owner to which a Limited Common Element is allocated shall

be one hundred percent (100%) on the grounds that the Unit Owner has the sole right to use and enjoy its allocated Limited Common Element, provided, that if more than one (1) Unit Owner uses any portion of the such Limited Common Elements, whether as of the Effective Date or in the future, the Units using same shall share the costs based on their respective Improved Area of the total Improvement Units using such Limited Common Elements.

(c) Should any assessment levied by the Association pertain to a portion of the Condominium other than the Limited Common Elements, the liability of each Owner for such assessment shall be in accordance with each Unit Owner's Allocated Interests in the Common Elements and Common Expenses, except that any Unit Owner which is assessed a special assessment for damage to the Common Element caused by such Owner shall pay one hundred percent (100%) of such special assessment, all in accordance with this Article VII.

Section 2. Special Assessments.

(a) In addition to other assessments authorized hereunder, the Association may levy expenses from time to time to cover unanticipated Common Expenses that exceed budgeted Common Expenses. Such Special Assessments may be levied against all Units in accordance with their Allocated Interests in the Common Area. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal years in which the unanticipated expenses are incurred or expected to be incurred.

Section 3. Specific Assessments. The Association shall have the power to levy Specific Assessments against a particular Unit as follows:

(b) to cover the costs, including overhead and administrative costs, of providing services to Units upon request of a Unit Owner (or, if a Unit is subject to a ground lease, then the ground lessee thereof) pursuant to any menu of special services which may be offered by the Association. Specific Assessments for special services may be levied in advance of the provision of the requested service; and

(c) subject to the express terms of this Declaration, to cover costs incurred in bringing the Unit into compliance with the Condominium Instruments, or costs incurred as a consequence of the conduct of the Unit Owner or their agents, contractors, employees, licensees, invitees, or guests; provided, the Board shall give the Unit Owner prior written notice and an opportunity for a hearing, in accordance with the Bylaws, before levying any Specific Assessment under this subsection.

Section 4. Authority to Assess Owners, Time of Payment. Declarant hereby establishes and the Association is hereby authorized to levy assessments as provided for in this Article and elsewhere in the Condominium Instruments. The annual assessments levied by the Association shall be used to obtain such insurance as the Association is required to maintain or in its reasonable discretion maintains (subject to the express provisions of Article X), to keep the Common Elements in a clean and good order, and to provide for the health, safety and welfare of the Unit Owners and occupants of the Units and the Common Elements. The obligation to pay assessments shall commence as to each Unit on the first day of the month following the month in

which the Board first determines a budget and levies assessments pursuant to this Article. Assessments levied on each Unit shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Unit.

Assessments shall be paid in such manner and on such dates as the Board may establish. The Board may require advance payment of assessments at closing of the transfer of title to a Unit and impose special requirements for Unit Owners with a history of delinquent payment. If the Board so elects, assessments may be paid in two or more installments. Unless the Board otherwise provides, the assessment shall be due and payable in advance in four (4) equal installments on the first day of each calendar quarter. If any Unit Owner is delinquent in paying any assessments or other charges levied on its Unit, the Board may require the outstanding balance on all assessments to be paid in full immediately.

Section 5. **Obligation for Assessments.**

Each Unit Owner is deemed to covenant and agree to pay all assessments authorized in this Declaration that are the responsibility of that Unit Owner. All assessments, together with interest (computed from its due date at a rate of the lesser of (i) 12% per annum, or (ii) the highest rate per annum permitted by North Carolina law), late charges as determined by Board resolution, costs, and reasonable attorneys' fees, shall be the personal obligation of each Owner and a lien upon such Owner's Unit until paid in full. Upon a transfer of title to a Unit, the grantee, other than a grantee pursuant to foreclosure or deed in lieu of foreclosure as provided in Section 6, shall be jointly and severally liable for any assessments and other charges due at the time of conveyance.

Failure of the Board to fix assessment amounts or rates or to deliver or mail to each Unit Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Unit Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay assessments on the same basis as during the last year for which an assessment was made, if any, until a new assessment is levied, at which time the Association may retroactively assess any shortfalls in collections.

No Unit Owner may exempt itself from liability for assessments by non-use of Common Elements, abandonment of its Unit, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Unit Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

Upon written request, the Association shall furnish to any Unit Owner liable for any type of assessment a certificate in writing signed by an Association officer setting forth whether such assessment has been paid. Such certificate shall be conclusive evidence of payment. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate.

For the avoidance of doubt, each Unit Owner, upon reasonable advance written notice to the Association shall have the right to review and audit the Association's books and records in

order to confirm the accuracy of any assessments charged against such Unit, and the Unit Owner and the Association shall cooperate, in good faith, to reconcile any inaccuracies promptly.

Section 6. Lien for Assessments. The Association shall have a lien against each Unit (including Declarant's) for assessments remaining unpaid for a period of thirty (30) days or longer to secure payment of delinquent assessments, as well as interest, late charges (subject to the limitations of North Carolina law), and costs of collection (including attorneys' fees). Such lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, assessments, and other levies which by law would be superior; and (b) the lien or charge for any first mortgage (meaning any mortgage recorded in the County with first priority over other mortgages) or leasehold mortgage recorded in the County made in good faith and for value. Such lien, when delinquent, may be enforced by suit, judgment, and judicial or nonjudicial foreclosure.

The Association may bid for the Unit at the foreclosure sale and acquire, hold, lease (subject to the restrictions set forth in this Declaration), mortgage, and convey the Unit. While a Unit is owned by the Association following foreclosure or deed in lieu of foreclosure: (a) no right to vote shall be exercised on its behalf, (b) no assessment shall be levied on it; and (c) each other Unit shall be charged, in addition to its usual assessment, its pro rata share of the assessment that would have been charged such Unit had it not be acquired by the Association. The Association may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same.

Sale or transfer of any Unit shall not affect the assessment lien or relieve such Unit from the lien for any subsequent assessments. However, the sale or transfer of any Unit pursuant to foreclosure of the first mortgage or a leasehold mortgage, or deed in lieu of foreclosure, shall extinguish the lien as to any installments of such assessments due prior to the mortgagee's foreclosure or deed in lieu of foreclosure. The subsequent Unit Owner to the foreclosed Unit (or Unit transferred by deed in lieu of foreclosure) shall not be personally liable for assessments on such Unit due prior to such acquisition of title. Such unpaid assessments shall be deemed to be assessments collectible from all Unit Owners subject to assessment under Section 1(a), including such acquirer, its successors and assigns.

ARTICLE VIII

MAINTENANCE

Section 1. Maintenance of Common Elements. The Association shall maintain, repair and replace the Common Elements (other than the Limited Common Elements as set forth in Section 2 below). The costs and expenses incurred by the Association in maintaining the Common Elements shall be Common Expenses.

Section 2. Limited Common Elements. Each Unit Owner shall be solely responsible for the maintenance, repair and replacement of the Limited Common Elements associated with its Unit. However, if the Unit Owner fails to do so, the Association may provide such service and all costs associated with such maintenance and repairs plus ten percent (10%) administrative fee shall be assessed against the Unit served by such Limited Common Element and subject to the lien rights as provided in Article VII; provided however, the Association shall

first give written notice to the Unit Owner of the specific item of repair or maintenance that the Association intends to perform and the Unit Owner shall have twenty (20) days from the date of such notice to commence and thereafter diligently pursue completion of such work.

Section 3. **Owner Responsibility.** If the need for maintenance, repair, or replacement of any improvement located on the Common Area is caused through the willful or negligent act of a Unit Owner, its tenants, invitees or licensees or the invitees or customers of such tenants, invitees or licensees, the costs of such maintenance, replacement, or repairs shall be assessed against such Unit Owner's Unit.

Section 4. **Access.** In order to enable the Association to accomplish the foregoing, there is hereby reserved to the Association the right to unobstructed access over and upon those portions of each Unit reasonably necessary for the maintenance, repair and replacement of the Common Elements, Limited Common Elements, and Common Areas, provided that the Association shall provide the applicable Unit Owner and any ground lessee of a Unit with reasonable prior notice of such access, and shall in good faith cooperate with the applicable Unit Owner to coordinate such access and work in order to minimize disruption to the use and enjoyment of the applicable Unit.

ARTICLE IX

EASEMENTS

Section 1. **Easements Reserved by Declarant.** Declarant shall have such easements through the Common Elements as may be reasonably necessary for the purpose of exercising Special Declarant Rights as provided herein or discharging Declarant's obligations under any Condominium Instrument, including without limitation, the right of Declarant to construct additional improvements within the Common Elements as expressed in Article II, Section 9(a) of this Declaration.

Section 2. **Easements Reserved in Favor of the Association.** The Association and its representatives shall have such easements through, on, over and upon the Common Elements and the Units as may be necessary for the purpose of discharging the Association's obligations under this Declaration.

Section 3. **Easement in Common Elements.** Each Unit Owner shall have a right and easement of enjoyment and access in and to the Common Elements as provided in Article III herein.

Section 4. **Easements for Development.** Prior to the construction of improvements on the Property, Declarant, and its contractors, agents, tenants, and designees, shall have a reasonable construction easement and easement of ingress and egress over and across all portions of the Property for all purposes in connection with the development of the Property. After improvements on the Property have been constructed, Declarant shall have a reasonable construction easement and easement of ingress and egress over and across all portions of the Property located outside of any building improvement located thereon for all purposes in connection with the operation, use, and development of the Property. Declarant also shall have

such easements through the Common Elements as may be reasonably necessary for the purpose of exercising Special Declarant Rights as provided herein or discharging Declarant's obligations under this Declaration. Declarant shall additionally have easements as necessary through all Units in order to discharge its obligations hereunder. Declarant shall have the right to assign its easement rights hereunder in its sole discretion. Furthermore, and subject to the remaining terms of this Article IX, including specifically Sections 9 and 12 below (and the other provisions of this Declaration), each Unit Owner (and any ground lessee of a Unit) shall have a reasonable construction easement (including, without limitation, the right to store and stage materials and equipment) and easement of ingress and egress over and across all portions of the Property for the construction, maintenance, repair and replacement of improvements on such Unit Owner's Unit and any Limited Common Element appurtenant to such Unit Owner's Unit if located on a different Unit.

Section 5. Easements for Ingress, Egress and Regress. Declarant hereby establishes, creates and reserves for itself, its successors and assigns, the Association, and all Unit Owners with respect to, and as a burden upon, the Property, a perpetual non-exclusive right, privilege, easement and reservation for the passage of pedestrians over, across and through all sidewalk and walkway areas which are located in the Property, and the passage of vehicular traffic over, across and through all driveways areas which are located in the Property but not for parking.

Section 6. Easements for Utilities. Declarant hereby establishes, creates and reserves for itself, its successors and assigns, the Association, and all Unit Owners with respect to, and as a burden upon, the Property, a perpetual non-exclusive right, privilege, easement and reservation to locate, and as necessary, to repair, replace and maintain such utilities necessary to furnish the Units with water, electricity, stormwater, sanitary sewerage, gas, telephone, television, communications, security systems, other utilities and services by means of pipes, wires, ducts, cables, conduits, all throughout and over the entirety of the Property (including, without limitation, the right of the Unit Owners to maintain Limited Common Elements, or portions thereof, located on other Units); provided however in no event shall any Unit Owner have the right to locate any such utility over another Unit or within the Common Area, or access any other Unit, without the prior consent of the applicable Unit Owner or the Association, as applicable, such approval not to be unreasonably withheld, conditioned or delayed.

Section 7. Temporary Closing. In order to establish that the ingress and egress easements, and any private access ways or road ways, located therein are and will continue to remain private property and to prevent a dedication thereof or the accrual of any rights to any person or to the public therein, except as herein specifically granted, or as may be reasonably necessary in connection with the performance of any construction, repair, relocation, replacement or maintenance of the improvements comprising such access ways or road ways, any utilities or any other improvements, located or to be located in or on the ingress and egress easement areas, the Association, for the Common Elements, and the Unit Owner of any Unit on which an ingress and egress easement is located, shall have the right to temporarily restrict access to the general public with respect to all or any portion of any such access way or road way, to the extent and for such limited periods as shall be necessary to prevent such dedication or accrual or to permit such construction, repair, relocation, replacement or maintenance; provided, however, that neither the Association nor any such Unit Owner shall exercise the rights granted

in this Section 7 in any manner which will unreasonably interfere with rights and privileges granted herein or in any manner which will deny pedestrian or vehicular access over any of the ingress and egress easements granted herein.

Section 8. Encroachment Easements. There shall be an appurtenant easement for encroachment, and for maintenance and use of any permitted encroachment, for the benefit of all Units, over the Common Elements adjacent to the Unit (or any adjacent Unit) in order to account for the unintentional placement, settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of this Declaration) to a distance of not more than five feet, as measured from any point on the common boundary along a line perpendicular to such boundary.

Section 9. Indemnity; Damage. Each Unit Owner hereby indemnifies, and agrees to defend and hold harmless the other Unit Owners and the Association from all claims, costs and expenses to the extent arising from the exercise of the rights granted in this Article IX by such Unit Owner, its agents, employees and/or contractors (including, without limitation, with respect to any liens or claims for the cost of any work performed by a Unit Owner within the Property), and furthermore to immediately (at such Unit Owner's sole cost and expense) repair and restore promptly any damage to any portions of the Property outside of such Unit Owner's Unit resulting from the exercise of any rights by such Unit Owner under this Article IX.

Section 10. Easement for Support. There shall be appurtenant support easements, for the benefit of each Unit, over and upon those portions of the Common Elements that in any way contribute to the support of structural improvements constructed upon a Unit or upon the Limited Common Elements allocated thereto.

Section 11. Easements Run with Land. All easements granted herein are appurtenant to and shall run with the land, and shall inure to the benefit of and be binding upon the Declarant, the Association, Unit Owners, occupants, and mortgage holders, and any other Person having an interest in the Condominium.

Section 12. Cooperation. All easements granted in this Declaration, and the use thereof, shall be deemed to be limited to the extent reasonably necessary to accomplish the purposes for which such easements are granted. The Declarant and each Unit Owner agree to cooperate with the reasonable requests of the others in furtherance of the spirit and intent of the matters addressed in this Declaration. To this end, the Declarant and the Unit Owners may enter into cooperative agreements with each other for the common provision of services and systems, so long as such agreement is consistent with the other terms and conditions contained in this Declaration.

Section 13. Special Dumpster Rights. In addition to the easements and other rights granted hereunder, the Owner of Unit 1 shall grant to the Owner of Unit 2 (its occupants and tenants) a right and license to discard office trash, in amounts reasonably associated with office use only, into any trash dumpster located on Unit 1, for which the Owner of Unit 2 shall pay a reasonable fee. The terms and conditions of such license arrangement shall be documented in a separate agreement, consistent with this Section 13 and otherwise reasonably acceptable to the Owners, and the Owners shall cooperate, in good faith, to execute the same at the request of the

Owner of Unit 2. In no event shall this Section 13 be construed to obligate the Owner of Unit 1 to install a dumpster on its Unit.

ARTICLE X

INSURANCE

Section 1. Casualty Insurance. The Association shall maintain or cause to be maintained casualty insurance upon the Common Area in accordance with N.C.G.S. § 47C-3-113. Each Owner shall maintain or cause to be maintained, to the extent available, casualty insurance upon any insurable improvements constructed upon such Owner's Unit or upon any Limited Common Element allocated to such Unit, in the name of and with the proceeds thereof payable to each Owner and/or such Owner's mortgagee(s). Such insurance shall be in an amount equal to not less than one hundred percent (100%) full insurable value of the improvements constructed upon such Unit on a replacement cost basis exclusive of land, excavations, foundations and other items normally excluded from property policies, and shall insure against such risks and contain such provisions as the Board shall from time to time shall determine.

Section 2. Liability Insurance. The Association shall maintain or cause to be maintained public liability insurance upon the Common Area in accordance with N.C.G.S. § 47C-3-113. Each Owner shall maintain or cause to be maintained public liability insurance for its own benefit, and for the benefit of the Association and the Board, and their respective officers, directors, agents and employees, insuring such benefited parties against liability arising out of or in connection with the use, ownership and/or maintenance of the Owner's Unit(s) and the Limited Common Elements allocated thereto, and insuring against liability otherwise arising on said Unit or Limited Common Elements, all in such amounts and with such coverage and endorsements as shall be determined by the Board; provided that the amount of public liability insurance shall be at least Two Million Dollars (\$2,000,000.00) per occurrence for death, bodily injury and property damage. Said insurance shall comply in all respects to the requirements of the Act, and shall contain a severability-of-interest endorsement precluding the insurer from denying liability because of negligent acts of any insured. Each liability insurance policy shall provide that it may not be cancelled or substantially modified without at least thirty (30) days' prior written notice to the Association and all insureds, including all Owners and mortgagees.

Section 3. Association. The Association shall be responsible for such directors and officer's liability coverage, workers' compensation insurance, casualty insurance, additional public liability insurance and such other insurance as the Board deems from time to time necessary to protect the Association and the Unit owners.

Section 4. Additional Insurance. The Association may procure such other insurance, including worker's compensation insurance, as it may from time to time deem appropriate to protect the Association or the Owners.

Section 5. Insurance Costs as Common Expense. The costs of any insurance purchased by or on behalf of the Association under this Article X shall be a Common Expense chargeable to the Unit Owners.

Section 6. **Additional Insurance of Owners.** Each Unit Owner shall maintain, or cause to be maintained, without cost or expense to the Association or the Unit Owner(s) of the other Units, such insurance coverage as the applicable Unit Owner shall determine, in its sole discretion.

ARTICLE XI

CASUALTY DAMAGE

Section 1. **Common Area.** If all or any part of the Common Elements shall be damaged or destroyed the same shall be repaired or replaced unless: (1) the Condominium is terminated, (2) repair or replacement would be illegal under any State of North Carolina or local health or safety statute or ordinance, or (3) the Unit Owners elect not to rebuild or replace by unanimous vote.

Section 2. **Unit Improvements and Limited Common Elements.** If all or any part of any improvements hereafter constructed upon any Unit and/or the Limited Common Elements allocated thereto shall be damaged or destroyed, the Unit Owners shall repair or replace such improvements and Limited Common Elements unless (1) the Condominium is terminated, (2) repair or replacement would be illegal under any State of North Carolina or local health or safety statute or ordinance or (3) the Unit Owner of such Unit elects not to rebuild such improvements located on such Unit (provided however that the foregoing shall not be deemed to limit or restrict any other Unit Owner from exercising its rights under Article IX, Section 6. Should a Unit Owner elect not to rebuild the improvements constructed on its Unit, such Unit shall not be converted into Common Elements, such Unit Owner shall maintain responsibility for the maintenance of such Unit as provided herein, and the Unit shall be deemed to be an Improved Unit notwithstanding the fact that the Initial Improvements have been removed.

If a Unit Owner is legally responsible for damages inflicted on any portion of the Common Area, the Association shall be entitled to either direct the Unit Owner to repair such damages or the Association may itself cause the repairs to be made and receive damages from the Unit Owner.

ARTICLE XII

TERMINATION

The Condominium may be terminated only in strict compliance with Section 47C-2-118 of the Act; provided, however, notwithstanding the foregoing, the Condominium may be terminated only by a unanimous vote of all Unit Owners, and all first mortgagees and all leasehold mortgagees.

ARTICLE XIII

AMENDMENT

Except in the cases of amendments that may be executed by the Declarant or the Association or certain Unit Owners under the Act, that may be executed by Declarant pursuant to

the exercise of the Special Declarant Rights reserved in Article II hereof, amendments that may be exercised by the Declarant or the Association pursuant to Article II, this Declaration may be amended only by the affirmative vote of all of the Owners of the Units. In addition, during the Declarant Control Period, and during the period that Declarant may exercise Special Declarant Rights, any amendment to this Declaration shall require the consent and joinder of the Declarant and no amendment during such time as the Declarant owns a Unit in the Condominium shall be effective unless the Declarant consents to such amendment. During the Declarant Control Period, no amendment altering or impairing any right reserved in favor of or conferred on Declarant pursuant to the terms of any Condominium Instrument shall be effective without the written consent of Declarant and any successor Declarant to which such right(s) have been assigned. Upon adoption any amendment to this Declaration of Condominium shall be transcribed and certified by the President and Secretary of the Association as having been duly adopted. An original of such amendment, so certified and executed on behalf of the Association and, if required, executed by Declarant(s), with the same formalities as a deed, shall be recorded in the Registry. Such amendment shall specifically refer to the recording data identifying the Declaration of Condominium and shall become effective upon recordation. Thereafter, a copy of the amendment in the form in which the same was placed of record by the officers of the Association shall be delivered to all Unit Owners, but delivery of a copy thereof shall not be a condition precedent to the effectiveness of the amendment. Declarant and the Association shall have the right to file amendments to this Declaration pursuant to Article II hereof, without the consent or joinder of any Unit Owners or their mortgagees. Declarant and the Association shall each have the right to file amendments pursuant to Article III, Section 2 hereof, without the consent or joinder of any Unit Owners or their mortgagees.

ARTICLE XIV

RIGHTS OF MORTGAGE HOLDERS INSURERS AND GUARANTORS

In addition to any other rights granted herein to certain holders, insurers and guarantors of first mortgages or leasehold mortgages on Units, any holder, insurer or guarantor of a mortgage or deed of trust on any Unit shall have the right to timely written notice of:

- (a) any condemnation or casualty loss that affects a material portion of the Common Elements of the Condominium, and any condemnation or casualty loss that affects a material portion of the Unit securing its mortgage of which the Association has notice;
- (b) any thirty (30) day delinquency in the payment of assessments or charges owed by the Unit Owner(s) of any Unit on which it holds the mortgage;
- (c) any notice of filing of lien, or if a lien is not filed, notice of any thirty (30) day delinquency as provided in subparagraph (b) above;
- (d) a lapse, cancellation, unavailability or material modification of any insurance policy maintained by the Association; and
- (e) any proposed action that requires the consent of a specified percentage of mortgage holders.

Provided, however, that the notification rights granted above shall be available only to those mortgage holders, insurers or guarantors who have submitted a written request to the Association requesting such notification. Said written request shall include the name and address of the party making such request, and shall identify the Unit on which it has (or insures or guarantees) the mortgage.

In addition, any mortgagee (and any insurer or guarantor of a loan secured by a mortgage) shall have the right to examine, during normal business hours and upon reasonable notice, the books and records of the Association including any of the Condominium Instruments and the financial statements of the Association, and to be furnished, upon written request, at least one copy of the most recent annual financial statement and report of the Association. If any mortgagee requests, and agrees to pay the cost of the audit, the financial statement shall be audited by an independent certified public accountant.

ARTICLE XV

REMEDIES IN EVENT OF DEFAULT

The Unit Owner(s) of each Unit shall be governed by and shall comply with the provisions of this Declaration, and the Articles and By-Laws of the Association, as any of the same are now constituted or as they may be amended from time to time. A default by any Unit Owner shall be addressed as follows:

(a) Failure to comply with any of the terms of this Declaration or other restrictions and regulations contained in the Articles or Bylaws, or which may be adopted pursuant thereto, shall be grounds for relief including without limitation an action to recover sums due for damages, injunctive relief, foreclosure of lien, or any combination thereof. Such relief may be sought by the Association or, if appropriate, by an aggrieved Unit Owner.

(b) Each Unit Owner shall be liable for the expense of any maintenance, repair or replacement at the Property rendered necessary by his act, neglect or carelessness, or by that of any tenant or other occupant of the Unit, their guests, employees, or agents. Nothing herein contained, however, shall be construed so as to modify any waiver by insurance companies of rights of subrogation.

(c) In any proceeding arising because of an alleged default by a Unit Owner, the Association, if successful, shall be entitled to recover the costs of the proceeding and such reasonable attorneys' fees as may be determined by the Court.

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

(e) All rights, remedies and privileges granted to the Association or the Unit Owners, pursuant to any terms, provisions, covenants or conditions of the Declaration or other above mentioned documents, shall be deemed to be cumulative, and the exercise of

any one or more shall not be deemed to constitute an election of remedies, nor shall it preclude the party thus exercising the same from exercising such other and additional rights, remedies or privileges as may be available to such party at law or in equity.

(f) Notwithstanding anything in this Article XVI to the contrary, a party in default of any provision of the Condominium Instruments shall be entitled to written notice and an opportunity to cure which is agreed to mean (i) in the case of a non-emergency, thirty (30) days, and (ii) in the case of an emergency, such lesser period of time as may shall be reasonable in light of the particular circumstances, before the Association or applicable aggrieved Unit Owner may pursue a remedy hereunder.

ARTICLE XVI

DISPUTE RESOLUTION

The Unit Owners agree to encourage the amicable resolution of disputes involving the Condominium without financial costs of litigation. Accordingly, the Declarant and Unit Owners covenant and agree that disputes described below shall be resolved using the procedures set forth herein.

- 1) Claims - Unless specifically exempted below, all disputes arising out of the interpretation, application or enforcement of the Declaration, as amended or supplemented, or By-Laws of the Condominium, shall be subject to the provisions set forth below.
- 2) Exceptions - Notwithstanding the above, the following shall not be subject to the provisions below:
 - a) Any action by the Association or a member thereof to enforce provisions of Article VII of the Declaration (Assessments).
 - b) Any action by the Association or a member thereof to obtain a temporary restraining order (or equivalent equitable relief) in order to maintain the status quo and preserve the Association's ability to enforce the Declaration and/or By-Laws.
 - c) Any action between Unit Owners the cause of action of which is independent of the Declaration, as amended or supplemented, or By-Laws.
 - d) Any action to which the applicable statute of limitations would expire within one hundred eighty (180) days of commencement of dispute resolution procedure described below.
- 3) Notice - Any Unit Owner having a dispute with the another Unit Owner ("claimant") shall notify the other Unit Owner ("respondent") in writing, stating plainly and concisely:
 - a) The nature of the dispute
 - b) The legal basis for the claim
 - c) Claimant's proposed remedy

- d) That claimant will meet with the other to discuss in good faith a resolution to the conflict.
- 4) Negotiation and Mediation – The parties shall make every reasonable effort to meet in person and confer for purposes of resolving the dispute by good faith negotiation. If the parties cannot resolve the dispute through direct negotiation within thirty (30) days of initial notice, claimant shall, within an additional thirty (30) days, submit the dispute for meditation to an independent agency providing dispute resolution services in North Carolina. Any settlement of the dispute through mediation shall be documented by the mediator. If no settlement is reached a) within a period of time determined by the mediator as providing enough opportunity to resolve the matter or b) no more than sixty (60) days from the initial consultation with the mediator by both parties, the mediator shall issue a notice of termination of the mediation process. The notice shall state that the parties are at an impasse and the date the mediation was terminated.
- 5) Final and Binding Arbitration – if the parties do not agree to a settlement of the dispute within fifteen (15) days of the termination of the mediation, the claimant shall, within an additional fifteen (15) days, submit the dispute to binding arbitration to be administered by the American Arbitration Association. This subsection is an agreement to arbitrate and is specifically enforceable under the applicable laws of North Carolina. The arbitration award shall be final and binding and judgment may be entered upon it in any court of competent jurisdiction.
- 6) Allocation of Costs – regardless of the outcome of the dispute, each party shall bear its own costs, including attorney fees, and each party shall share equally all charges rendered by any mediator and all filing fees and costs of conducting the arbitration.

ARTICLE XVI

GENERAL PROVISIONS

Section 1. Exercise of Power. All powers granted to the Association by this Declaration or the Bylaws shall be exercisable by the Board, except as expressly provided in this Declaration, the Bylaws, or the Act.

Section 2. 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.

Section 3. Running with Land. The covenants and restrictions of this Declaration shall run with and bind the Property perpetually.

Section 4. Estoppel. Within 15 days after written request by any Unit Owner (or the ground lessee of any Unit), the Association shall, without charge, execute and deliver to the requesting party (and any designee(s)) a certificate confirming (i) the current Assessments

chargeable against the applicable Unit, (ii) whether or not, to the Association's knowledge, there exists any default or fact or circumstance which it believes would constitute a default attributable to the Unit under the Condominium Instruments, and (iii) any other matters reasonably requested.

[Signature pages follow]

IN WITNESS WHEREOF, Declarant and the Association have executed this Declaration of Condominium as of the day and year first above written.

DAVIS-RODWELL TMC, LLC, a North Carolina limited liability company

By: *Craig M. Davis*
 Name: *Craig M. Davis*
 Title: *MANAGER*

STATE OF *Illinois*

ACKNOWLEDGEMENT

COUNTY OF *Cook*

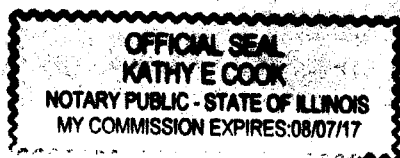
I, *Kathy E. Cook*, a Notary Public of the county and state aforesaid, certify that *Craig Davis*, whose identity has been proven by satisfactory evidence, said evidence being:

- ☐ I have personal knowledge of the identity of the principal(s)
- ☒ I have seen satisfactory evidence of the principal's identity, by a current state or federal identification with the principal's photograph in the form of a *IL Driver's License*
- ☐ A credible witness has sworn to the identity of the principal(s).

who is the *MANAGER* of Davis-Rodwell TMC, LLC, a North Carolina limited liability company, personally appeared before me this day and acknowledged that (s)he is the *MANAGER* of Davis-Rodwell TMC, LLC, and that as *notary* being duly authorized to do so, voluntarily executed the foregoing instrument on behalf of said company for the purposes stated therein.

WITNESS my hand and notarial seal this the *23rd* day of *September*, 2016.

[Affix Seal]



Notary Public *Kathy E. Cook*

Print Name: *Kathy E. Cook*

My Commission Expires: *8/7/2017*

IN WITNESS WHEREOF, Declarant and the Association have executed this Declaration of Condominium as of the day and year first above written.

Davis Park Parcel E Land Condominium Owners Association, Inc., a North Carolina non-profit corporation

By: *Craig M. Davis*

Name: CRAIG M. DAVIS

Title: MANAGER

STATE OF Illinois

COUNTY OF Cook

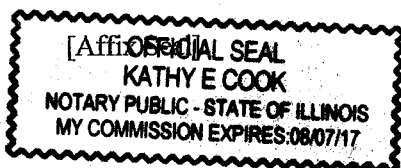
ACKNOWLEDGEMENT

I, Kathy E Cook, a Notary Public of the county and state aforesaid, certify that Craig H. Davis, whose identity has been proven by satisfactory evidence, said evidence being:

- ☐ I have personal knowledge of the identity of the principal(s)
- ☒ I have seen satisfactory evidence of the principal's identity, by a current state or federal identification with the principal's photograph in the form of a IL. Drivers license
- ☐ A credible witness has sworn to the identity of the principal(s).

DAVIS PARK PARCEL E Land Condominium Owners
who is the MANAGER of A Land Condominium Owners Association, a North Carolina non-profit corporation, personally appeared before me this day and acknowledged that (s)he is the manager of Davis Park Parcel E Land Condominium Owners Association, and that as notary being duly authorized to do so, voluntarily executed the foregoing instrument on behalf of said company for the purposes stated therein.

WITNESS my hand and notarial seal this the 23rd day of September, 2016.



Notary Public *Kathy E Cook*

Print Name: Kathy E. Cook

My Commission Expires: 8/7/2017

EXHIBIT A

THE PROPERTY

DURHAM COUNTY, NORTH CAROLINA

BEING ALL OF THAT CERTAIN PARCEL E, CONTAINING APPROXIMATELY 4.45 ACRES, AS FURTHER SHOWN AND DESCRIBED IN THAT CERTAIN EXEMPT/RECOMBINATION PLAT FOR DAVIS-RODWELL TMC LLC RECORDED IN PLAT BOOK 195, PAGE 208, DURHAM COUNTY REGISTRY, TO WHICH REFERENCE IS MADE FOR A MORE COMPLETE DESCRIPTION THEREOF

EXHIBIT B**PERCENTAGE UNDIVIDED ALLOCATED INTERESTS
IN THE COMMON ELEMENTS AND EXPENSES
(Subject to Article III, Section 2)**

<u>UNIT DESIGNATION</u>	<u>UNDIVIDED ALLOCATED INTEREST IN THE COMMON ELEMENTS AND EXPENSES</u>
UNIT 1	60%
UNIT 2	40%

LENDER CONSENT

Davis Park West I, LLC ("Bank"), as successor in interest to Bank of America, N.A. and Beneficiary under that certain Deed of Trust, Assignment of Leases, Security Agreement and Fixture Filing (as amended, the "Deed of Trust"), made by Davis-Rodwell TMC LLC, a North Carolina limited liability company, as Grantor, in favor of PRLAP, Inc., as Trustee, recorded December 1, 2004 in Book 4627, Page 225, official records of Durham County, North Carolina, hereby subordinates the Deed of Trust to the foregoing **DECLARATION OF CONDOMINIUM FOR DAVIS PARK PARCEL E LAND CONDOMINIUM** (the "Declaration"), consents to the execution and recording of the foregoing Declaration and agrees that any foreclosure or other enforcement of the Deed of Trust or conveyance in lieu thereof shall not terminate or otherwise affect the continued enforceability of the foregoing Declaration. The undersigned certifies that this Consent has been duly authorized, executed and delivered by the undersigned, and is the legal, valid and binding obligation of the undersigned.

Dated as of this 23rd day of September, 2016.

Davis Park West I, LLC

By: Craig M. Davis

Name: CRAG M. DAVIS

Title: MANAGER

STATE OF Illinois
COUNTY OF Cook

I, Kathy E. Cook, a Notary Public of the County and State aforesaid, certify that Craig M. Davis, whose identity has been proven by satisfactory evidence, said evidence being:

I have personal knowledge of the identity of the principal(s).

X

I have seen satisfactory evidence of the principal's identity, by a current state or federal identification with the principal's photograph in the form of a IL Drivers license.

A credible witness has sworn to the identity of the principal(s).

who is the Manager of Davis Park West LLC, personally appeared before me this day and acknowledged that (s)he is Manager of Davis Park West LLC and that as MANAGER being duly authorized to do so, voluntarily executed the foregoing instrument on behalf of said company for the purposes stated therein.

WITNESS my hand and notarial seal this the 23rd day of September, 2016.



Notary Public Kathy E. Cook

My Commission Expires: 08/07/2017

LENDER CONSENT

Brown Water Investments I LLC ("Bank"), as Beneficiary under that certain Deed of Trust (the "Deed of Trust"), made by Davis-Rodwell TMC LLC, a North Carolina limited liability company, as Grantor, in favor of Charles E. Nichols, Jr., as Trustee, recorded October 17, 2014 in Book 7586, Page 256, official records of Durham County, North Carolina, hereby subordinates the Deed of Trust to the foregoing **DECLARATION OF CONDOMINIUM FOR DAVIS PARK PARCEL E LAND CONDOMINIUM** (the "Declaration"), consents to the execution and recording of the foregoing Declaration and agrees that any foreclosure or other enforcement of the Deed of Trust or conveyance in lieu thereof shall not terminate or otherwise affect the continued enforceability of the foregoing Declaration. The undersigned certifies that this Consent has been duly authorized, executed and delivered by the undersigned, and is the legal, valid and binding obligation of the undersigned.

Dated as of this 26th day of September, 2016.

Brown Water Investments I LLC

By: J. David Bean
 Name: J. DAVID BEAN
 * Title: MANAGER.

STATE OF North Carolina
 COUNTY OF Wake

I, Charles E. Nichols, Jr., a Notary Public of the County and State aforesaid, certify that J. David Bean, whose identity has been proven by satisfactory evidence, said evidence being:

☒

I have personal knowledge of the identity of the principal(s).

☐

I have seen satisfactory evidence of the principal's identity, by a current state or federal identification with the principal's photograph in the form of a

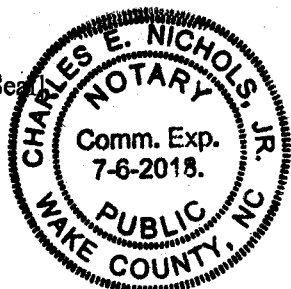
☐

A credible witness has sworn to the identity of the principal(s).

who is the Manager of Brown Water Investments I LLC, personally appeared before me this day and acknowledged that (s)he is Manager of Brown Water Investments I LLC and that as Manager being duly authorized to do so, voluntarily executed the foregoing instrument on behalf of said company for the purposes stated therein.

WITNESS my hand and notarial seal this the 26th day of September, 2016.

[Affix Seal]



Notary Public

My Commission Expires: 7/6/18