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**DECLARATION OF CONDOMINIUM  
FOR  
GALLERIES NODA CONDOMINIUM**

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**DRAWN BY AND MAIL TO:**

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EXHIBIT B	Schedule of Units and Common Elements Interest
EXHIBIT C	Bylaws of Galleries NoDa Condominium Owners Association, Inc.
EXHIBIT D	Schedule of Allocated Parking Spaces

**DECLARATION OF CONDOMINIUM  
FOR GALLERIES NODA CONDOMINIUM**

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**THIS DECLARATION OF CONDOMINIUM** (this “**Declaration**”) is made this 25<sup>th</sup> day of May, 2022, by **GALLERIES @ NODA, LLC**, a North Carolina limited liability company (“**Declarant**”), pursuant to the provisions of Chapter 47C of the North Carolina General Statutes, entitled the “**North Carolina Condominium Act.**”

**BACKGROUND STATEMENT**

Declarant is the owner of a parcel of real estate located at 3630 North Davidson Street, in the City of Charlotte, Mecklenburg County, North Carolina, containing approximately .71 acre, and more particularly described on **Exhibit A** attached hereto (the “**Land**”). Declarant has constructed on the Land one (1) building containing forty (40) condominium units (subject to the rights reserved herein to create additional units within space presently designated as the Flex Unit), consisting of thirty-nine (39) residential condominium units and one (1) condominium unit that may be used for either commercial or residential uses. Declarant also has constructed on the Land other common amenities, such as sidewalks, parking areas, driveways, landscaped areas, and other improvements. Declarant desires to submit the Land and the improvements located on the Land to the terms and provisions of the North Carolina Condominium Act.

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

**STATEMENT OF DECLARATION**

**NOW, THEREFORE**, Declarant hereby declares that all of the Property (as defined below) shall be held, transferred, sold, conveyed, occupied and used subject to the following covenants, conditions, easements, uses, limitations, obligations, and restrictions, all of which are declared and agreed to be in furtherance of a plan for the division of the Property into condominium units, and shall be deemed to run with the land and shall be a burden and benefit to Declarant, its successors and assigns, and any person or entity acquiring or owning an interest in the Property, and their grantees, successors, heirs, executors, administrators, devisees and assigns.

## ARTICLE I.

### DEFINITIONS

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

Section 1.1 Assessments. “**Assessments**” shall have the meaning assigned to it in Article X.

Section 1.2 Association. “**Association**” shall mean and refer to Galleries NoDa Condominium Owners Association, Inc., a corporation organized and existing under the North Carolina Nonprofit Corporation Act pursuant to and in accordance with this Declaration, the Bylaws, and the North Carolina Condominium Act.

Section 1.3 Building. “**Building**” shall mean and refer to the existing four (4) story building located upon the Land, which contains a total of forty (40) Units and Common Elements.

Section 1.4 Bylaws. “**Bylaws**” shall mean and refer to the bylaws of the Association, a copy of which is attached hereto as Exhibit C, and all amendments to such bylaws which may from time to time be adopted.

Section 1.5 Common Assessments. “**Common Assessments**” shall have the meaning assigned to it in Article X.

Section 1.6 Common Expenses. “**Common Expenses**” shall have the meaning assigned to it in Article X.

Section 1.7 Common Elements. “**Common Elements**” shall mean and refer to all portions of the Condominium other than the Units, as depicted on the Plans, and as more particularly described in Section 5.1 of this Declaration.

Section 1.8 Common Elements Interest. “**Common Elements Interest**” shall mean and refer to the undivided percentage interest in the Common Elements allocated to each Unit, as set forth on Exhibit B attached hereto. The Common Elements Interests shall be used to allocate each Unit’s share of Common Expenses, and the division of proceeds, if any, resulting from any casualty loss or eminent domain proceedings, but shall not be used to determine voting rights in the Association, which shall be allocated equally among all Units.

Section 1.9 Common Expenses. “**Common Expenses**” shall mean and refer to any and all expenditures made by or financial liabilities of the Association, together with any allocations to reserves, pursuant to and in accordance with this Declaration, the Bylaws, and N.C.G.S. §47C-1-103(5).

Section 1.10 Common Surplus. “**Common Surplus**” shall have the meaning assigned to it in Article X.

Section 1.11 Condominium. **“Condominium”** shall mean and refer to Galleries NoDa Condominium, as established by the submission of the Property to the terms of the North Carolina Condominium Act by this Declaration.

Section 1.12 Condominium Documents. **“Condominium Documents”** shall mean and refer to this Declaration, the Articles of Incorporation of the Association, the Bylaws, and the rules and regulations governing the use of the Property, as the foregoing may be amended and supplemented from time to time, and all attachments and exhibits thereto.

Section 1.13 Deck. **“Deck”** shall mean the open-air terrace along with such improvements as may be constructed thereon, located above the first floor, which shall be a portion of the Residential Limited Common Elements.

Section 1.14 Declarant. **“Declarant”** shall mean and refer to Galleries @ NoDa, LLC, a North Carolina limited liability company. Following recordation of a document transferring to another person or entity all or some of the Special Declarant Rights, pursuant to Section 6.3 of this Declaration, the term **“Declarant”** also shall mean and refer to that transferee.

Section 1.15 Declarant Control Period. **“Declarant Control Period”** shall mean and refer to the period commencing on the date hereof and continuing until the earlier of (i) one hundred twenty (120) days after conveyance of seventy-five percent (75%) of Units to Owners other than Declarant; (ii) two (2) years after Declarant ceases to offer Units for sale in the ordinary course of business; or (iii) the date upon which Declarant voluntarily surrenders control of the Condominium.

Section 1.16 Declaration. **“Declaration”** shall mean and refer to this Declaration of Condominium, as it may be amended in the future.

Section 1.17 Executive Board. **“Executive Board”** shall mean and refer to the governing body from time to time of the Association as constituted in accordance with the Articles of Incorporation of the Association, the Bylaws and the North Carolina Condominium Act.

Section 1.18 Flex Unit. **“Flex Unit”** shall mean and refer to Unit No. 1101 which may be used for residential uses, commercial uses or live/work uses, and which is more particularly described in Article IV below.

Section 1.19 Flex Unit Limited Common Elements. **“Flex Unit Limited Common Elements”** shall mean those Limited Common Elements located adjacent to, or which exclusively serve, the Flex Unit, as described in Article V.

Section 1.20 Individual Unit Assessment. **“Individual Unit Assessment”** shall mean (i) any cost incurred by the Association by reason of the Owner's failure to maintain its Unit, if the Association takes action to do so as authorized herein; (ii) any cost incurred by the Association as a result of Unit Owner's (or its tenants, agents, contractors, family members or invitees) negligence, willful misconduct, or default under its obligations under the Declaration, its rules and regulations, or other governing documents, including any cost for repair or maintenance and reasonable attorneys' fees or (iii) any Common Expense or portion thereof



which benefits fewer than all of the Units will be assessed exclusively against the Units benefited.

Section 1.21 Land. **“Land”** shall mean and refer to the real property, exclusive of any improvements located thereon or incorporated therein, which is more particularly described on Exhibit A attached hereto.

Section 1.22 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 N.C.G.S. §47C-2-102(2) or (4), for the exclusive use and benefit of one or more, but fewer than all, of the Units, to the exclusion of all other Units, as more fully described in Section 5.2 of this Declaration, and as depicted on the Plans.

Section 1.23 Mortgage. **“Mortgage”** shall mean and refer to a mortgage or deed of trust constituting a first lien on a Unit.

Section 1.24 Mortgagee. **“Mortgagee”** shall mean and refer to the owner and holder of a Mortgage that has notified the Association in writing of its name and address, and that it holds a Mortgage on a Unit. Such notice will be deemed to include a request that the Mortgagee be given the notices and other rights described in Article XVI.

Section 1.25 North Carolina Condominium Act. **“North Carolina Condominium Act”** shall mean and refer to Chapter 47C of the North Carolina General Statutes.

Section 1.26 Owner. **“Owner”** shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Unit but shall exclude those persons or entities having an interest in any Unit as merely security for the payment or performance of an obligation.

Section 1.27 Parking Facility. **“Parking Facility”** shall mean and refer to the paved surface parking areas located on the Land and the covered parking areas located on the ground level of the Building, as shown on the Plans.

Section 1.28 Parking Spaces. **“Parking Spaces”** shall mean and refer to the individual striped parking spaces within the Parking Facility, some of which are allocated as Limited Common Elements to certain Units in the manner provided in Section 5.8 of this Declaration. No Parking Spaces may be utilized by customers of the Flex Unit Owner, it being the intent that the Street Parking shall be available only to the licensees or invitees of the Flex Unit Owner.

Section 1.29 Plans. **“Plans”** shall mean and refer to the surveys, plans and specifications of the Buildings and Property, prepared by Studio Fusion, P.A., and recorded under the name of the Condominium in the Unit Ownership File in the Office of the Register of Deeds of Mecklenburg County, and any amendments or supplements to those Plans recorded under the name of the Condominium in the Unit Ownership File in the Office of the Register of Deeds of Mecklenburg County.

Section 1.30 Property. “**Property**” shall mean and refer to the Land, the Building and all other improvements and structures located on the Land; and all easements, rights and appurtenances belonging or appertaining to the Land.

Section 1.31 Residential Limited Common Elements. “**Residential Limited Common Elements**” shall mean those areas and facilities which are for the exclusive use of the Residential Units, as described in Article V.

Section 1.32 Residential Units. “**Residential Units**” shall mean all of the units located within the Buildings other than the Flex Unit, as more particularly described in **Article IV** below.

Section 1.33 Rules and Regulations. “**Rules and Regulations**” shall mean all rules and regulations adopted by the Executive Board in accordance with the terms of this Declaration and the Bylaws.

Section 1.34 Special Assessment. “**Special Assessment**” shall have the meaning assigned to it in Article X.

Section 1.35 Special Declarant Rights. “**Special Declarant Rights**” shall mean the rights reserved for the benefit of Declarant in the Condominium Documents, as more particularly described in Article VI of this Declaration.

Section 1.36 Street Parking. “**Street Parking**” shall mean and refer to those parking spaces along the street adjacent to the Condominium. Street Parking shall not constitute any portion of the Condominium; notwithstanding, the Street Parking shall not be used by Residential Unit Owners, their guests, tenants, invitees or licensees, it being the intent that while the Street Parking is public parking, that the Flex Unit Owner or its licensees or invitees shall have priority to it over Residential Unit Owners.

Section 1.37 Storage Units. “**Storage Units**” shall mean and refer to the individual storage units within the Building, which are allocated as Limited Common Elements to certain Units in the manner provided in Section 5.9 of this Declaration.

Section 1.38 Unit. “**Unit**” shall mean the Residential Units and the Flex Unit located within the Building, as more particularly described in Article IV of this Declaration.

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

## ARTICLE II.

### DESIGNATION OF CONDOMINIUM

The Land is located entirely in Mecklenburg County, North Carolina, contains approximately .71 acre, and is more particularly described on Exhibit A attached hereto and incorporated herein by reference. The Property is subjected to the terms of the North Carolina Condominium Act by this Declaration. The name of the Condominium is “Galleries NoDa Condominium”.

## ARTICLE III.

### DESCRIPTION OF BUILDING

The Building is a wood frame structure built upon a concrete podium, with a masonry and cement-siding exterior and contains a parking area on the ground floor. The Building is comprised of a first (i.e. ground) floor containing parking and structural components, along with the Flex Unit. The Building contains three stories of Residential Units. The Building also contains Limited Common Elements and Common Elements, and contains an aggregate of forty (40) Units, with thirty-nine (39) Residential Units and one (1) Flex Unit, subject to Declarant’s development right to subdivide the Flex Unit into smaller Units. The Building is more particularly described in the Plans, which show all its particulars. The Plans contain a certification by Edward D. Hickman, a North Carolina Licensed Architect, that the Plans contain all the information required by N.C.G.S. §47C-2-109.

Pursuant to the North Carolina Condominium Act, Declarant reserves the right to subdivide the Flex Unit into up to five (5) Units, in which case the Declarant shall amend the Declaration and the plat and Plans to reallocate the allocated interests of the Flex Unit among the Units created.

## ARTICLE IV.

### DESCRIPTION OF UNITS

Section 4.1 Location of Building. The location and dimensions of the Buildings are shown on the Plans.

Section 4.2 Units. The location of Units within the Building, their dimensions, and their floor and ceiling elevations, are shown on the Plans. The Building contains a total of forty (40) Units, consisting of one (1) Flex Unit located on the first (i.e. ground) floor, and thirty-nine (39) Residential Units on floors two through four. The identifying number for each Unit is set forth on Exhibit B and on the Plans.

Section 4.3 Unit Boundaries; Residential Units. The boundaries of each Residential Unit are as follows:

- (a) Upper Boundary. The horizontal plane of the top surface of the undecorated ceilings within the Unit. In certain Units if the ceilings within different portions of the Unit are at different elevations, and the ceilings are not horizontal, then the upper boundary of the Unit shall not be a single plane, but shall vary with the differing ceiling elevations within different portions of the Unit.
- (b) Lower Boundary. The horizontal plane of the top surface of the subflooring within each Unit.
- (c) Vertical Boundaries. The vertical planes which include the back surface of the wallboards of all walls bounding the Unit, extended to intersections with each other, and with the upper and lower boundaries.

Flex Unit. The boundaries of the Flex Unit are as follows:

- (a) Upper Boundary. The horizontal plane of the top surface of the undecorated ceilings within the Unit.
- (b) Lower Boundary. The horizontal plane of the top surface of the concrete slab.
- (c) Vertical Boundaries. The vertical planes which include the back surface of the walls, to where those walls attach to the studs, extended to intersections with each other, and with the upper and lower boundaries. To the extent there are voids between studs, those voids shall be part of the Flex Unit.

Section 4.4 Boundaries; Further Defined; Apertures. As provided in N.C.G.S. §47C-2-102(1), all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring and any other materials constituting any part of the finished surfaces of the perimeter walls, floors, and ceilings are part of the Unit. All interior walls (except load-bearing walls), partitions, fixtures, appliances, cabinets and other facilities or improvements lying completely within the boundaries of a Unit shall be a part of such Unit. As provided in N.C.G.S. §47C-2-102(2), if any chute, flue, duct, wire, pipe for water or sewer, conduit, bearing wall, bearing column, or any other fixture lies partially within and partially outside the designated boundaries of a Unit, any portion thereof serving only that Unit shall be a Limited Common Element allocated to that Unit, as provided in Section 5.2 below, and any portion thereof serving more than one Unit, or any portion of the Common Elements, shall be a Common Element.

Where there are apertures in any boundary of a Unit, including, but not limited to, windows, doors, bay windows or skylights, such boundaries shall be extended to include the exterior unfinished surfaces of such apertures, including all framework, window casing and weather stripping thereof; provided however, that the exteriors of doors if facing an interior hallway shall not be included in the boundaries of a Unit and shall therefore be Common Elements. Exterior surfaces made of glass or other transparent material, and all framings and casings therefor, shall be included in the boundaries of the Unit served.

Section 4.5 Alteration of Units. Subject to the provisions of the Declaration and the Bylaws, a Unit may be altered pursuant to provisions of Sections 47C-2-111 and 47C-2-112 of the North Carolina Condominium Act.

Notwithstanding, to preserve the fireproof characteristics of the interior walls within a Unit, no Owner may cause the walls to be removed or opened without prior approval of the Association's Board. For the same reason, no floors or ceilings may be modified or penetrated without prior Board approval (for example, no recessed lighting, theater systems, or audio systems may be installed without prior approval). No load-bearing walls, even if located within a Unit, may be modified without prior Board approval, to avoid compromising the structural integrity of the Building.

## ARTICLE V.

### COMMON ELEMENTS

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

- (a) The Land.
- (b) All improvements located on the Land outside of the Building, including without limitation driveways, pedestrian walkways, paved areas, parking areas, landscaped areas and exterior lighting facilities.
- (c) All portions of the Building located outside of the Units.
- (d) The foundations, roofs, columns, girders, beams, supports, exterior and interior load-bearing walls, floors within and between Units, and all other structural elements of the Building, including the vertical and horizontal structural elements supporting the balconies adjacent to Units.
- (e) Any public connections and meters for utility services that are not owned by the public utility or municipal agency providing such services.
- (f) All tangible personal property required for the operation and maintenance of the Condominium that may be owned by the Association.
- (g) To the extent not already covered herein, the Limited Common Elements described in Section 5.2 below.

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

- (a) Those portions of any chute, flue, duct, wire, pipe for water or sewer, conduit, bearing wall, bearing column, or any other fixture lying partially within and partially outside the designated boundaries of a Unit, but serving exclusively that Unit, which shall be Limited Common Elements allocated exclusively to that Unit.

(b) Any shutters, awnings, window boxes, porches, non-structural components of balconies and all exterior doors and windows or other fixtures designed to serve a single Unit, but located outside that Unit's boundaries, which shall be Limited Common Elements allocated exclusively to that Unit. The Association shall be responsible for the maintenance of the structural and mechanical elements of any such Limited Common Elements, with the costs of same being a part of the Common Expenses. Each Owner shall, however, be responsible for the maintenance of any other portions of such areas, for the general cleaning, plant care (should plants be authorized to be placed on such areas) and upkeep of the appearance of the area(s) and for the repair and replacement of any floor coverings placed or installed on any such area. Each Owner agrees that any additions, alterations or improvements thereto, for such Owner, its heirs, successors and assigns, to hold the Association and all other Owners harmless from and to indemnify them for any liability or damage to the Condominium or Units and expenses arising therefrom.

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

(d) Those areas indicated as Limited Common Elements on the Plans.

(e) The exclusive right to use one or more assigned Parking Spaces in the Parking Facility, which shall be allocated to each Unit in the manner set forth in Section 5.8.

(f) The Storage Units allocated to certain Units by Declarant as set forth in Section 5.9.

(g) Without limiting the generality of the foregoing, the Residential Limited Common Elements and the Flex Unit Limited Common Elements, as described below.

The cleanliness and orderliness of the Limited Common Elements shall be the responsibility of the individual Owner having the right to the use and enjoyment of such Limited Common Elements. Notwithstanding any other provisions of this Declaration, or any provision of the Bylaws or the North Carolina Condominium Act, the obligation for maintenance, repair, or replacement of any portions of the heating, ventilating, and air conditioning systems that are Limited Common Elements shall be the sole responsibility of the Owners of the Units to which such Limited Common Elements are allocated. References in this Declaration to "**Common Elements**" shall include Limited Common Elements unless the context clearly indicates otherwise. The allocation of use of Limited Common Elements to the Units as provided for in this Declaration shall not be altered without the unanimous consent of the Owners whose Units are affected.

Section 5.3 Residential Limited Common Elements. The Residential Limited Common Elements consist of the following areas and facilities, and Residential Unit Owners, as assessed through a Limited Common Expense assessed against the Residential Unit Owners,

shall be responsible for the maintenance, repair and replacement of the Residential Limited Common Elements. Those portions of the Building intended only for the use of the Residential Units, including the residential lobby, the hallways serving the Residential Units, the residential stairwells and elevator, the Deck, including without limitation the halls and corridors serving the Residential Units, trash chutes, or similar facilities serving only the Residential Units.

Section 5.4 Flex Unit Limited Common Elements. The areas to which direct and exclusive access is granted to the Flex Unit shall be Flex Unit Limited Common Elements. The Flex Unit Owner shall be responsible for the maintenance, repair and replacement of the Flex Unit Limited Common Elements.

Section 5.5 Undivided Interests of Owners in Common Elements. The percentage interest in the Common Elements allocated to each Unit shall be the Common Elements Interest for that Unit as set forth on Exhibit B attached hereto. The Common Elements Interest allocated to each Unit shall be calculated by dividing the square footage of a Unit by the total square footage of all Units, and by converting the result to a percentage. The Common Elements Interest allocated to each Unit shall not be changed except with the unanimous consent of all the Owners of all the Units and with the consent of all the Mortgagees, except as may be specifically authorized elsewhere in this Declaration.

Section 5.6 Maintenance of Common Elements. The Association shall be responsible for the maintenance and repair of all Common Elements, except for the Limited Common Elements that are required to be maintained and repaired by individual Unit Owners as provided in this Article V, and except for maintenance or repairs caused by the negligence or intentional misconduct of any Owner, his agents, invitees or family members, which shall be the responsibility of that Owner. In connection with these responsibilities, the Association shall periodically have the Common Elements inspected by professional construction, mechanical and environmental inspectors or consultants and shall provide reasonable periodic maintenance to the Common Elements.

Section 5.7 Maintenance Responsibilities of the Unit Owner. Each Unit Owner shall be responsible for the maintenance and repair of all portions of his or her Unit and their Limited Common Elements appurtenant thereto, except for all structural or mechanical elements of the balconies.

Section 5.8 Parking Rights. There are fifty-eight (58) total Parking Spaces located in the Parking Facility, which are shown and numbered on the Plans. Each Parking Space that is identified with a unit number on Exhibit D attached hereto shall be a Limited Common Element allocated to that Unit. The Declarant can allocate any unallocated Parking Spaces as a Limited Common Element to a Unit in the initial deed for the Unit conveying the Unit to the initial Unit Owner or in a subsequent deed or similar instrument of conveyance to any Unit Owner. Any Parking Spaces which remain unallocated when the Declarant no longer owns any Unit shall become Common Elements. As Declarant allocates each of the Storage Units shown on the Plans, it shall notify the Association in writing of that allocation.

In addition, two (2) Parking Spaces shown as handicap spaces on the Plans (the “**Handicap Spaces**”), will be available to all Owners and their invitees, on a first-come, first-

served basis for handicap parking, all subject to such reasonable rules and regulations as the Association may impose from time to time for the use of the Handicap Spaces.

A Parking Space that has been allocated as a Limited Common Element to a particular Unit may not be transferred by the Owner of that Unit except in connection with a conveyance of the Unit, or a conveyance to another Owner, and any such attempted transfer in violation of this provision shall be null and void. In addition, two Owners of Units may exchange the Parking Spaces allocated to their Units. Any Owner transferring a Parking Space to the Owner of another Unit in accordance with the provisions of this Section 5.8 shall immediately notify the Association in writing of the transfer, and a supplement to this Declaration confirming the transfer shall be prepared and recorded in the manner contemplated by Section 9.8(a) of this Declaration.

Use of the Parking Facility by all Owners shall be subject to any reasonable rules and regulations that may be imposed by the Association. In particular, access to the Parking Facility, or to particular areas within the Parking Facility, may be controlled by a gate and card access system, in order to discourage parking by persons who are not Owners, or who are not invitees of Owners, or to charge such persons for the right to use the Parking Facility. In addition, parking rights in the Parking Facility may be enforced by requiring Owners to display appropriate permits on their vehicles. Any amounts received by the Association from third parties for use of the Parking Facility shall be deducted from Common Expenses.

Section 5.9 Storage Units. There are twenty-six (26) individual Storage Units located in the Building, as shown on the Plans. The Storage Units labeled on the Plans shall be allocated as Limited Common Elements to specific Units by the Declarant. The Declarant can allocate the Storage Units as a Limited Common Element to a Unit in the initial deed for the Unit conveying the Unit to the initial Unit Owner or in a subsequent deed or similar instrument of conveyance to any Unit Owner. Any Storage Units which remain unallocated when the Declarant no longer owns any Unit shall become Common Elements.

As Declarant allocates each of the Storage Units shown on the Plans, it shall notify the Association in writing of that allocation. Once a Storage Unit has been allocated as a Limited Common Element to a particular Unit, that Storage Unit may not be transferred by the Owner of that Unit except in connection with a conveyance of the Unit, or a conveyance to another Owner, or a lease of the Storage Unit to another Owner, and any such attempted transfer in violation of this provision shall be null and void. In addition, two Owners of Units may exchange the Storage Units allocated to their Units. The use of Storage Units shall be restricted to Owners or occupants of the Building, and no non-Owner, non-occupant may possess any rights in or to use a Storage Unit, and any such transfer of rights shall be void. Any Owner transferring a Storage Unit to the Owner of another Unit in accordance with the provisions of this Section 5.9 shall immediately notify the Association in writing of the transfer, and a supplement to this Declaration confirming the transfer shall be prepared and recorded in the manner contemplated by Section 9.8(a) of this Declaration.

Section 5.10 Rules and Regulations. The Executive Board shall have the right to promulgate reasonable rules and regulations governing the use of the Common Elements.



## ARTICLE VI.

### SPECIAL DECLARANT RIGHTS

Section 6.1 Special Declarant Rights. Special Declarant Rights are those rights reserved for the benefit of Declarant in the Condominium Documents, and shall include without limitation the following rights, with respect to all of the Property:

- (a) The right to complete any improvements shown on the Plans.
- (b) The right to maintain sales offices, model units and signs advertising the Condominium until the last Unit owned by Declarant is sold.
- (c) The right to use easements through the Common Elements for the purpose of completing construction.
- (d) The right to appoint or remove officers of the Association or members of the Executive Board during the Declarant Control Period.
- (e) The right to allocate Storage Units and the Unallocated Parking Spaces as Limited Common Elements to specific Units in the initial deed of conveyance of a Unit by Declarant or in a subsequent deed or instrument of conveyance from Declarant to an Owner.
- (f) The right to exercise any other rights granted to or reserved by Declarant in the Condominium Documents.
- (g) The right to subdivide Units, combine Units, alter Units or convert Units to Common Elements.

Section 6.2 Easements to Facilitate the Exercise of Special Declarant Rights. Declarant hereby reserves for itself and its successors and assigns a non-exclusive easement upon, across, over, in, and under the Property as may be reasonably necessary for the purpose of discharging Declarant's obligations or exercising Special Declarant Rights, whether arising under the North Carolina Condominium Act or this Declaration, including, without limitation: (i) easements for ingress and egress and for installation, replacement, repair and maintenance of drainage ditches and facilities, all utilities, including but not limited to water, sewer, gas, telephone, and electrical, cable and other communications systems and indoor sprinkler systems; (ii) easements to store materials on the Common Elements and to make such other use of the Common Elements as may be reasonably necessary or incident to the construction and renovation of the Building and other improvements on the Property; and (iii) the location of these easements and rights-of-way may be made certain by Declarant and the Association by instruments recorded in the Mecklenburg County Public Registry. Declarant further reserves the right to establish from time to time, by dedication or otherwise, utility and other easements, reservations, exceptions and exclusions necessary or convenient for the development, use and operation of any other property of Declarant, as long as such action does not unreasonably hamper the enjoyment of the Condominium by the Owners.

Section 6.3 Transfer of Special Declarant Rights. Declarant may transfer any Special Declarant Rights created or reserved under the Condominium Documents to any person or entity, by an instrument evidencing the transfer duly recorded in the Office of the Register of Deeds for Mecklenburg County. The instrument shall not be effective unless it is executed by the transferor and the transferee. Upon the transfer of any Special Declarant Rights, the liability of the transferor and the transferee shall be as set forth in N.C.G.S. §47C-3-104.

Section 6.4 Special Declarant Rights Period. Declarant shall have a five (5) year period which commences on the recording of this Declaration in which to exercise those Special Declarant Rights set forth in this Article VI.

## ARTICLE VII.

### RESTRICTIONS ON USE

The following covenants, restrictions, conditions and limitations as to use and occupancy which shall run with the land shall be binding upon each Unit Owner, his or her family members residing in or occupying his or her Unit, guests, invitees, tenants, licensees, heirs, executors, administrators, successors and assigns.

#### Section 7.1 Use.

(a) Residential Units. Except as specifically set forth herein, all Residential Units shall be used only for single-family residential purposes. Except for the construction, sales and management activities of the Declarant, no business, trade, industry, occupation or profession of any kind, whether for profit or not for profit, may be conducted, maintained or permitted on any part of the Property (except within the Flex Unit) unless permitted by the Executive Board. The foregoing notwithstanding, it shall be expressly permissible for Owners to use a portion of their Residential Unit for a home office, provided that such use does not create regular customer or client traffic to and from such Unit and no sign, logo, symbol or nameplate identifying such business is displayed anywhere on Unit or Common Elements.

(b) Flex Unit. The Flex Unit shall be used only for residential purposes, live/work purposes and/or lawful, retail, office and commercial purposes reasonably compatible with the operation of a mixed-use condominium building and allowed by the zoning of the Property, but shall not be used for any of the following uses:

(i) Business or use which (A) creates strong, unusual or offensive odors, fumes, dust or vapors, (B) is a public or private nuisance, (C) emits noise or sounds which are objectionable due to intermittence, beat, frequency, shrillness or loudness, or (D) creates unusual fire, explosive or other hazards, (E) has flashing lights or signs, strobe lights, search lights or loudspeakers, or (F) has phonographs, radios or video screens within any exterior portion;

(ii) Movie theatre;

- (iii) Auditorium or other similar place of public entertainment or general assembly;
- (iv) Bowling alley;
- (v) Funeral parlor;
- (vi) Industrial, warehouse (other than the storage of inventory, fixtures and equipment as part of a permitted business) or manufacturing use;
- (vii) Carnival, discotheque or dance hall, massage parlor (excluding day spas, which are permitted);
- (viii) A pawn shop, a military surplus store, or for the sale of drug paraphernalia, vaping supplies or as a smoke shop;
- (ix) Massage parlor, “strip” or similar club or establishment providing adult entertainment, including adult dance clubs; provided, however, that day spas shall be permitted;
- (x) Gambling facility or operation (except for the sale of lottery tickets if such sale is legal in the State of North Carolina), including an off-track or sports betting parlor, the operation of table games (except video games permitted in arcades, bars or restaurants), slot machines, video poker/black-jack/keno machines or similar devices, or as a bingo hall;
- (xi) Service of motor vehicles, boats or mobile homes, or for the installation of auto parts;
- (xii) Rental, service or repair of lawn care equipment, carpet sweepers, power tools, televisions, VCRs, or electronic or computer equipment, except incident to the retail sale of such items;
- (xiii) “Hi-fi”, electronics, stereo, television or similar stores provided, however, that such stores may be permitted with soundproofing reasonably satisfactory to the Association in its sole reasonable discretion;
- (xiv) Veterinary facility, animal raising facility or pet shop; provided, however, pet grooming services, as long as pets are not boarded or kept onsite beyond regular business hours, shall be permitted; or
- (xv) Laundromat or dry cleaners (except as a “drop off” site for off-site cleaning).

Section 7.2 Nuisance. No obnoxious, offensive or unlawful activity, as defined by the Association, shall be conducted within any Unit, or on or about the Common Elements, nor shall anything be done thereon or therein which may be or which may become an annoyance or nuisance to the other Owners, or endanger the health and safety of any Owner. Nothing shall be

done or kept in any Unit or in the Common Elements that will result in the termination of, or an increase in the premium for, the policy of property insurance for the Property.

Section 7.3 Prohibitions on Use of Common Elements. The Common Elements (other than any storage areas, if any, designated by the Association) shall not be used for the storage of personal property of any kind. Stairs, elevators, entrances, lobbies, hallways and sidewalks shall not be obstructed in any way, or used for other than their intended purposes (except however, the Flex Unit may place a folding "A-frame" sidewalk sign outside the Flex Unit if permitted by applicable law, which sign must be removed outside of business hours). In general, no activity shall be carried on nor conditions maintained by any Owner either in his Unit or upon the Common Elements which despoils the appearance of the Property or interferes with the quiet enjoyment of other Owners with respect to their Units.

Section 7.4 Garbage. Trash, garbage and other waste shall be kept in sanitary containers within each Unit, and the Owner of each Unit shall be responsible for placing such garbage in the designated common trash receptacle on a regular basis.

Section 7.5 Parking. No Unit Owner or any tenant, visitor or guest invitee of any Owner, shall park, store or keep any vehicle on the Property except: (a) wholly within those portions of the Common Elements designated as parking areas by the Association and (b) within those parking areas they are allowed to park pursuant to Section 5.8 of this Declaration. The Executive Board shall have the right to promulgate reasonable rules and regulations for parking. No boat, boat trailer, motor home, travel trailer, camper or other recreational vehicle may be stored on the Property at any time. Owners shall be responsible for ensuring that any vehicle shall fit within that Owner's Parking Space(s), and that such vehicle does not block or impede other Owners or vehicles. No antique or unlicensed vehicles which are not regularly operated may be stored on the Property at any time. No significant automobile repair shall be allowed in the parking areas on the Property. The Association shall have the right to tow any vehicle in violation of this Section 7.5 at its owner's expense.

Section 7.6 Leases of Units. Any lease of a Unit or portion thereof shall be in writing and shall provide that the terms of the lease shall be subject in all respects to the Condominium Documents and that failure by the lessee to comply with all of the terms of such Condominium Documents shall constitute a default under the lease. A copy of lease and names and contact information for tenants shall be furnished to the Association by the Owner of the leased Unit within ten (10) days of lease commencement. No Unit may be leased for a period shorter than thirty (30) days without the express written consent of the Board of the Association, which consent may be withheld in the Board's sole discretion. No greater than forty percent (40%) of Residential Units may be leased at any time. Upon an Owner's demonstration of a hardship, and upon the unanimous approval of the Board, an Owner may lease its Unit for a period shorter than thirty (30) days despite the rental cap having been reached. The Board may adopt additional Rules and Regulations governing rentals, including Rules and Regulations governing any waitlist, requiring all tenants to maintain insurance to protect the Association, or such other terms or conditions as determined by the Board to be in the best interests of the Association.

Section 7.7 No Timeshares. No interest in any Unit may be subjected to a time share program, as that term is defined in N.C.G.S. §93A-41(10).

Section 7.8 Animals. No animals, livestock, or poultry of any kind shall be kept or maintained on the Property or in any Unit located thereon except that common household pets, limited to domestic dogs or domestic cats, may be kept or maintained in each Unit, provided they are not kept or maintained for commercial purposes, provided that no Owner may have more than two (2) such pets at any one time (excluding fish). No dangerous dog breeds considered to be dangerous by the Board, or based on the dog's behavior or history, may be kept by any Owner or occupant. No pet shall be permitted upon the Common Elements (including balconies) unless carried or leashed by a person that can control the pet. All pets shall be controlled so as not to create a nuisance or unreasonable disturbance (including loud or excessive barking) on the Property. Pets shall not be permitted to defecate in the Common Elements or urinate in any portion of the Common Elements except for areas where defecation or urination is authorized, and each Owner shall clean up immediately after his pet. All pets shall be registered or inoculated as required by law. Each Owner shall hold the Association harmless from any claim resulting from any action of his pet, and shall repair at his expense any damage to the Common Elements caused by his pet. If any Owner violates these rules more than twice in any twelve (12) month period, then in addition to any fines provided in the Bylaws or by law, the Association shall have the right to require the Owner to remove the pet permanently from the Property upon not less than ten (10) days' written notice.

Section 7.9 Utilities. Total electrical usage in any Unit shall not exceed the capacity of the circuits for that Unit as labeled on the circuit breaker boxes, and no electrical device causing overloading of the standard circuits may be used in any Unit without permission of the Executive Board. All clothes dryers shall have lint filters, and all washing machines and dryers shall be long-vent models, and all stove hoods shall have grease screens, and such filters and screens shall be used at all times and kept clean, and in good order and repair, by the Owner of the Unit in which they are located. The Units will be separately metered for electricity and gas. The water and sanitary sewer services shall be a Common Expenses, unless the Units are separately metered.

Carefully note: Within the Building, many of the Units require dryer exhaust lengths that exceed standard lengths. No dryer unit may be modified or replaced without prior written approval from the Board to confirm that the modification or replacement satisfies the required specifications.

Section 7.10 Floor Load. No Owner shall permit floor loads in excess of the stated design loads for the Building of 40 pounds per square foot (on balconies, the design load shall not exceed 100 pounds per square foot), nor shall any Owner permit concentrated loads of any sort (e.g., safes, display facilities, filing systems or other heavy equipment) unless and until the adequacy of the structure to support such floor loads is verified by a structural engineer to the satisfaction of the Association and under such reasonable conditions and circumstances as it may require.

Section 7.11 Window Treatments. No window treatments of any sort (including but not limited to curtains, draperies, blinds, or shutters) shall be installed or hung in any window of any Unit, except for window treatments which have been approved by the Association. Any such approved window treatment may be installed at the sole expense of each Owner. The window panes in any Unit shall not be removed, except temporarily for cleaning, without the prior

written approval of the Association, and any broken or damaged window pane shall be replaced promptly by and at the expense of the Owner of such Unit. Owners of the Flex Unit shall not be required to hang window treatments in windows, and the windows of Flex Unit may contain lettering and advertising signage in compliance with the provisions of Section 7.13 hereof.

Section 7.12 Architectural Control. No building, landscaping, fence, wall or other structure (other than a satellite dish or antenna, to the extent permitted by **Section 7.16**) shall be commenced, erected or maintained upon the Property, nor shall any exterior addition to or change or alteration to either the Unit or the Common Elements be made, until the plans and specification showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing as to the harmony of the external design and location in relation to surrounding structures and topography by the Executive Board. The Association must approve or disapprove any plans and specifications applicable to proposed modifications by any Flex Unit Owner within fifteen (15) business days following submission, and, if the Executive Board disapproves such plans and specifications, it must include with such disapproval specific reasons for disapproval and suggestions of alterations to the plans and specifications that would likely be approved by the Executive Board.

Section 7.13 Signs and Flags. No signs (including political signs) or other advertising devices shall be displayed on or about the exterior of any Unit, the interior window of any Unit or in the Common Elements, except for one or more exterior signs for the Flex Unit, erected in conformance with applicable sign ordinances and plans approved by the Association as provided in **Section 7.12**. The Flex Unit may place advertising signage and window lettering in windows and upon the exterior of the Flex Unit, and shall submit the plans for such signage to the Executive Board; provided, however, the Executive Board must approve or disapprove such signage within fifteen (15) business days and, if the Executive Board disapproves such signage, it must include with such disapproval specific reasons for disapproval and suggestions of alterations to the signage that will be approved by the Executive Board. Any signs permitted by the Executive Board for the Flex Unit shall be maintained solely by the Owner of such Unit and shall be maintained in a neat and clean condition and shall not be permitted to become worn, tattered, faded or otherwise in disrepair. Notwithstanding the foregoing, Declarant shall have the right to maintain upon the Property advertising signs, provided those signs comply with applicable governmental regulations. Further, no pole or other device for the display of decorative flags shall be erected or displayed on or about the exterior of any Unit, or in the Common Elements unless approved in advance by the Executive Board. In the event that the Executive Board approves installation of a pole or device for the display of decorative flags, any such flags displayed by an Owner shall be in good taste and shall not contain lewd or offensive displays or material.

Section 7.14 Maintenance. Each Owner shall keep his respective Unit and its individual appurtenant Limited Common Elements in a clean, neat and orderly condition and in a good state of maintenance and repair. If an Owner fails to comply with the standards or requirements of the Association relative thereto, the Association shall assess the defaulting Owner the cost thereof and shall undertake to effect said compliance.

Section 7.15 Rules and Regulations. In addition to the use restrictions set forth in this Declaration, reasonable Rules and Regulations governing the use of the Property and of Units

may be established and amended from time to time by the Executive Board; provided, however, that, notwithstanding any other provision herein to the contrary, any Rules and Regulations (or amendment thereto) that materially restrict a use then being conducted in the Flex Unit or which is not otherwise prohibited by the terms of this Declaration, shall not be enforceable against the Owner or tenant of the Flex Unit in a manner which materially restricts such use unless the Owner of such Unit consents to the Rules and Regulations in writing. Copies of such regulations and amendments thereto shall be posted prominently prior to their effective date, and shall be furnished by the Association to all Owners upon request.

Section 7.16 Satellite Dishes and Antennas. Unless required by law, no exterior satellite dish in excess of one meter in diameter may be placed on the exterior of any Unit or in the Common Elements without the prior written approval of the Association, which may be withheld in its sole discretion. The location of any exterior television antenna, or satellite dish less than one meter in diameter, shall be subject to the reasonable prior approval of the Association, taking into account the appropriate standards set forth in the regulations of the Federal Communications Commission, and to the extent reasonably practical, the Association may require that such antenna or satellite dish be screened from public view. Prior to installing the antenna or satellite dish, the Owner shall furnish to the Association a copy of his installation plans. The Association shall have the right to perform any portion of the installation work at the expense of the Owner, or to require that any portion of the work be performed by contractors designated by the Association. In particular, any roof penetration (to the extent that the Association authorizes such devices upon the roof) that is required to install any antenna or satellite dish shall be performed only by the roofing contractor designated by the Association. The Owner shall also be responsible for any damage caused by the removal of the antenna or satellite dish, including the sealing of conduits or other roof penetrations. The Association shall have the right to require that any part of the removal work, including the sealing of roof penetrations, be performed by the roofing contractor designated by the Association, at the Owner's expense. Any Owner installing an antenna or satellite dish under this Section 7.16 shall indemnify, defend and hold the Association harmless from and against any loss, damage, claim or other liability resulting from the installation, maintenance, repair, use and/or removal of the antenna or satellite dish, including any damage to the roof of the Building or other property damage caused by roof leaks.

Section 7.17 Balconies Adjacent to Units. Balconies shall be kept in a clean, neat and orderly condition at all times, and shall not be used for the overnight storage of garbage, or the drying of laundry. No floor covering of any sort (including but not limited to indoor/outdoor carpeting or tile) may be installed on any balcony, without the prior written consent of the Executive Board. No painting of a balcony area shall be allowed, without the prior written consent of the Executive Board. No hot tub or above-ground pool may be installed on any balcony. Towels or banners shall not be hung on the balcony railings, and any dead plants shall be removed promptly. No planters that hang over the edge of the balcony will be allowed on any balcony. The balconies shall not be used for the storage of bicycles or exercise equipment. No open flame grills shall be permitted on the balconies, other than fires in gas grills or other similar devices which are approved in advance by the Executive Board and comply with all applicable laws and the Rules and Regulations.

Section 7.18 Compliance with Covenants, Conditions and Restrictions. Every Unit Owner and other party described in the first paragraph of this **Article VII** shall comply strictly with the covenants, conditions and restrictions set forth in this Declaration, with the Bylaws and with the Rules and Regulations in relation to the use and operation of the Condominium Property. A violation committed by any persons residing in, occupying or visiting a Unit at the behest or with the implied or express permission of the Unit Owner or any other occupant of the Unit, or committed by any agent, employee, business invitee, or contractor of the Unit Owner or of any person occupying a Unit, shall be attributed to that Unit and the Owner thereof.

In addition to the above rights, the Executive Board may also enter upon a Unit or any portion of the Property perform maintenance or make repairs thereon which is the responsibility of a Unit Owner who has failed to perform such maintenance or make such repairs (i) after having given such Owner at least ten (10) days prior notice, or (ii) without giving notice in the event of an emergency.

Any fines imposed by the Executive Board, which is hereby empowered to levy reasonable fines against any Unit Owner for the failure of such Unit Owner to comply with any such covenants, conditions and/or restrictions, and any and all expenses incurred by the Association in enforcing any of the terms and provisions of the Condominium Documents, including reasonable attorneys' fees, may be assessed as an Individual Unit Assessment against the Unit Owner in question and his or her Unit.

Any action brought by the Association hereunder may be brought in its own name, in the name of its Executive Board or in the name of its managing agent. In any case, if the Executive Board determines the flagrant or repeated violation by a Unit Owner, he or she may be required by the Executive Board to give sufficient surety or sureties for his or her future compliance with the covenants, conditions and restrictions contained in this Declaration and with the Bylaws and Rules and Regulations.

## **ARTICLE VIII.**

### **THE ASSOCIATION**

Section 8.1 Organization of Association. A nonprofit North Carolina corporation known and designated as Galleries NoDa Condominium Owners Association, Inc. (the "**Association**") will be organized to provide for the administration of the Property, and the Association shall administer the operation and maintenance of the Property and undertake and perform all acts and duties incident thereto in accordance with the terms of its Articles of Incorporation, the Bylaws, and the North Carolina Condominium Act. A true copy of the Bylaws of the Association is attached hereto as Exhibit C. Every Owner shall be required to be and shall automatically be a member of the Association by virtue of its ownership interest in a Unit. Every Unit shall be allocated one (1) vote in the Association.

Section 8.2 Powers; Lien for Assessment. In the administration of the operation and management of the Property, the Association shall have and it is hereby granted the authority and power to enforce the provisions of this Declaration, to levy and collect assessments in the manner provided in Article X below, in its Bylaws or pursuant to law, and adopt, promulgate and



enforce such Rules and Regulations governing the use of the Units and Common Elements as the Association may deem to be in the best interest of the Owners. Any sum assessed by the Association remaining unpaid for a period of thirty (30) days or longer shall constitute a lien on the Unit with respect to which such sum was assessed upon the filing of a claim of lien in accordance with N.C.G.S. §47C-3-116, and shall be enforceable by the Association in accordance with N.C.G.S. §47C-3-116 and the Bylaws. Any lien established pursuant to this Section 8.2 shall be subordinate to the lien of any bona fide mortgage recorded prior to docketing of the lien and the lien established hereby shall not be affected by the transfer of the Unit other than a transfer as a result of the foreclosure of a first lien deed of trust pursuant to N.C.G.S. § 47C-3-116 (f) which extinguishes the lien for any assessments that were payable prior to the foreclosure sale, but will not relieve any subsequent Owner from paying further assessments.

Section 8.3 Declarant Control Period. During the Declarant Control Period, Declarant reserves the right to appoint and remove any Executive Board members; provided, however, that: (i) within sixty (60) days after the conveyance of twenty-five percent (25%) of the Units to Owners other than Declarant, at least one member of the Executive Board shall be elected by Owners other than Declarant; and (ii) within sixty (60) days after the conveyance of fifty percent (50%) of the Units to Owners other than Declarant, at least thirty-three percent (33%) of the members of the Executive Board shall be elected by Owners other than Declarant.

Section 8.4 Books and Records: The Association shall maintain current copies of: (a) the Condominium Documents, as they may be amended from time to time, (b) any rules and regulations adopted under Section 7.15 from time to time; and (c) those financial records of the Association required by N.C.G.S. §47C-3-118 or by other applicable law. These items shall be available for inspection, during normal business hours and upon reasonable advance notice, by any Owner, any Mortgagee, and any insurer or guarantor of a loan secured by a Mortgage.

## ARTICLE IX.

### EASEMENTS AND PROPERTY RIGHTS

Section 9.1 Access by the Association. The Association, or any person authorized by it, shall have the right of access to each Unit and to the Limited Common Elements to the extent necessary for performance by the Association of its obligations of maintenance, repair, or replacement of the Property. Owners shall with reasonable promptness afford the Association with access into that Owner's Unit, and Owners who fail to do so after reasonable requests from the Association shall be responsible for any locksmithing charges incurred by the Association.

Section 9.2 Encroachment Easements. If any portion of the Common Elements now encroaches upon any Unit, or if any Unit now encroaches upon any other Unit or upon any portion of the Common Elements, or if such encroachment shall occur hereafter as a result of the settling or shifting of Building, there shall exist a valid easement for the encroachment and for the maintenance of same for so long as such Building shall stand. If the Building, any Unit, or any portion of the Common Elements is partially or totally destroyed by fire or other casualty or as a result of condemnation or eminent domain proceedings, and subsequently is rebuilt, any encroachment of parts of the Common Elements upon any Unit, or of parts of any Unit upon the

Common Elements, due to such rebuilding shall be permitted, and valid easements for such encroachments and the maintenance thereof shall exist so long as the Building shall stand.

Section 9.3 Easements over Common Elements. Each Owner shall have an easement in common with the Owners of all other Units for ingress and egress through, and use and enjoyment of, all of the Common Elements (other than the Limited Common Elements), subject however to the Association's right to suspend access to the Common Elements for noncompliance with the Association's governing documents. The Common Elements (other than the Limited Common Elements) shall be subject to easements of use and enjoyment and ingress and egress by all persons lawfully using or entitled to the same, including without limitation officers, employees and agents of public utility companies in the performance of their duties. In addition, Declarant shall have an easement over the Common Elements (other than the Limited Common Elements) as may be reasonably necessary to complete the construction of the existing Building and the other improvements within the Property, or to make any repairs that may be required during any applicable warranty period.

Section 9.4 Utility Easements. Each Owner shall have an easement in common with the Owners of all other Units to use all pipes, wires, ducts, cables, conduits, public utility lines and all other utility distribution systems, whether or not Common Elements, located in any of the other Units, to the extent any such pipe, duct, cable, wire, conduit, public utility line or other utility distribution system serves any Unit or is necessary for service to any Unit.

Section 9.5 Easement to Facilitate Sales or Leasing of Units. Declarant, and its authorized agents, representatives and employees, shall have the right, exercisable in Declarant's sole discretion, to use as management offices and/or sales and/or rental offices and/or model units any and all unsold Units, and any Units leased by Declarant from other Owners who may agree to lease their Units to Declarant for such purposes. Such Units shall not be deemed a part of the Common Elements. Declarant shall have the absolute right for itself, its successors and its invitees and prospective purchasers, to use and enter, without being subject to any charge or fee therefore, any and all such Units and the Common Elements, for management, sales and/or rental purposes and/or for any other lawful purpose or purposes, including placing thereon "**for sale**" or "**for rent**" signs and other promotional materials.

Section 9.6 Grants of Easements by Declarant and the Association. Declarant and the Association, at any time, may grant easements for utility purposes for the benefit of the Property, including the right to install, lay, maintain, repair and replace water lines; pipes; ducts; sewer lines; and water lines; gas mains; telephone and television or cable television wires, cables and equipment; electrical conduits; and wires over, under, along and on any portion of the Common Elements (other than the Limited Common Elements); and each Owner hereby grants to Declarant or the Association, as applicable, an irrevocable power of attorney to execute, acknowledge and record for and in the name of each Owner such instruments as may be necessary to effectuate the foregoing.

Section 9.7 Emergency Access. In case of any emergency originating in or threatening any Unit or the Common Elements, regardless of whether the Owner is present at the time of such emergency, the Association, or any other person authorized by it, shall have the right to enter any Unit or its Limited Common Elements for the purpose of remedying or abating

the cause of such emergency and making any other necessary repairs not performed by the Owners, and such right of entry shall be immediate.

Section 9.8 Relocation of Boundaries; Subdivision; Partitioning.

(a) Relocation of Boundaries Between Adjoining Units. Following the recordation of this Declaration, the boundaries between adjoining Units may be relocated upon application to the Executive Board by the Owners of such adjoining Units (“**Adjoining Owners**”) and upon approval by the Executive Board of such application; provided, however, that no such relocation of boundaries shall be binding upon any Mortgagee holding a Mortgage on any Unit whose boundaries are relocated, unless approved by such Mortgagee as set forth in Article XVI. Any such application to the Executive Board must be in such form and contain such information as may be reasonably required by the Executive Board, and shall be accompanied by a plat detailing the proposed relocation of boundaries. Unless the Executive Board determines within thirty (30) days after submission to it of the application that the proposed relocation of boundaries is unreasonable, the application shall be deemed approved. Upon approval of the proposed relocation of boundaries, the Executive Board shall cause to be prepared and filed, at the Adjoining Owners’ expense, an amendment to this Declaration and a plat which identifies the Units involved, describes and depicts the altered boundaries, and gives the dimensions of the altered Units. Such amendment shall also contain operative words of conveyance and be signed by the Adjoining Owners and consented to by their Mortgagees, if any, and shall be indexed by the Register of Deeds in the names of the Adjoining Owners.

(b) Subdivision of Units. Pursuant to those Special Declarant Rights reserved herein, Declarant shall have the right to subdivide Units. Thereafter, no Owner may subdivide its Unit except in compliance with N.C.G.S. § 47C-2-113.

(c) Partitioning. Except for the transfer or exchange of Parking Spaces pursuant to Section 5.8 and Storage Units pursuant to Section 5.9, the interests in the Common Elements allocated to each Unit shall not be conveyed, devised, encumbered, partitioned or otherwise dealt with separately from said Unit, and the interests in the Common Elements allocated to each Unit shall be deemed conveyed, devised, encumbered or otherwise included with the Unit even though such interests are not expressly mentioned or described in the instrument conveying, devising, encumbering or otherwise dealing with such Unit. Any conveyance, mortgage or other instrument which purports to grant any right, interest or lien in, to or upon the Unit, shall be null, void and of no effect insofar as the same purports to affect any interest in a Unit’s allocated interests in the Common Elements unless the same purports to convey, devise, encumber or otherwise deal with the entire Unit. Any instrument conveying, devising, encumbering or otherwise dealing with any Unit, which describes said Unit by the identifying number assigned thereto on the Plans and herein without limitation or exception shall be deemed and construed to affect the entire Unit and its allocated interest in the Common Elements. Nothing herein contained shall be construed as limiting or preventing ownership of any Unit and its allocated interest in the Common Elements by more than one person or entity

as tenants in common, joint tenants, or as tenants by the entirety or any other form by law permitted.

Section 9.9 Conveyance or Encumbrance of Common Elements. While the Property remains subject to this Declaration and to the provisions of the North Carolina Condominium Act, no conveyances of or security interests or liens of any nature shall arise or be created against the Common Elements without the prior written consent of the Owners entitled to cast at least eighty percent (80%) of the votes of the Association, including at least eighty percent (80%) of the votes entitled to be cast by Owners other than Declarant, and at least eighty percent (80%) of all Mortgagees. Every agreement for the performance of labor or the furnishing of materials to the Common Elements, whether oral or in writing, must provide that it is subject to the provisions of this Declaration and that the right to file a mechanic's lien or other similar lien by reason of labor performed or material furnished is subordinated to this Declaration and to the lien of assessments for Common Expenses provided for in Section 8.2 of this Declaration. Nothing in this Section 9.9 shall be construed to limit the right of any Owner to convey or to encumber his allocated interest in the Common Elements as an appurtenance to and in connection with the conveyance or mortgaging of his Unit.

Section 9.10 Nature of Interest in Unit. Every Unit, together with its allocated interest in the Common Elements, shall for all purposes be and it is hereby declared to be and to constitute a separate parcel of real property. The Owner of each Unit shall be entitled to the exclusive fee simple ownership and possession of his Unit subject only to the covenants, conditions, restrictions, easements, uses, limitations, obligations, rules and regulations set forth in the Condominium Documents, or adopted by the Executive Board of the Association.

## ARTICLE X.

### ASSESSMENTS

Section 10.1 Taxes. Every Unit, together with its allocated interest in the Common Elements, shall be separately assessed and taxed by each assessing authority for all types of taxes authorized by law. Each Owner shall be liable solely for the amount taxed against his individual Unit, provided, however, the Units will not be separately assessed until the calendar year following the year of recording of this Declaration with respect to ad valorem property taxes, and any such taxes for the calendar year of the recording of this Declaration shall be paid by Declarant (subject to reimbursement from each Owner for its pro rata share at closing).

Section 10.2 Assessments for Common Expenses. Except as otherwise provided in this Declaration or in the Bylaws, each Owner shall contribute a percentage share of the Common Expenses equal to the Common Elements Interest allocated to such Owner's Unit, all in accordance with the definition of "**Common Expenses**" set forth in the Definitions above, the Bylaws, and the provisions of the North Carolina Condominium Act. Due dates for payment of such assessments shall be established by the Association and shall be collected at least monthly.

Assessments for all Units shall begin as of the date of the first conveyance of a Unit to an Owner other than Declarant, or at any time thereafter as determined by the Declarant; provided that until the Executive Board levies an assessment for Common Expenses, Declarant shall be

solely responsible for the Common Expenses in accordance with the terms of the North Carolina Condominium Act. With respect to Units owned by it, Declarant's obligations to pay assessments for Common Expenses may be satisfied in the form of cash payments to the Association or "in kind" contributions of services that would otherwise be included within Common Expenses, or a combination of these. The Bylaws also grant the Executive Board the right to impose a Special Assessment and Individual Unit Assessments against the Owners as more particularly described therein.

Section 10.3 Common Surplus. The term "**Common Surplus**" means and refers to all funds and other assets of the Association, including excess of receipts of the Association from assessments, rents, profits and revenues from whatever source, over the amount of Common Expenses. The Common Surplus shall be owned by the Owners in proportion to their respective Common Elements Interests, provided, however, that the Common Surplus shall be held by the Association in the manner and subject to the terms, provisions and conditions of this Declaration and such Common Surplus may be retained by the Association and credited against future Common Expenses. Except for distribution of any insurance proceeds, which shall be made in the manner provided in Section 11.6, or upon termination of the Condominium, any attribution or distribution of Common Surplus which may be made from time to time shall be made to (or credited to) the then Owners in proportion to their respective Common Elements Interests.

Section 10.4 Determination of Common Expenses and Fixing of the Common Charges. The Executive Board shall from time to time, and at least annually, prepare and adopt a proposed budget for the Condominium, determine the amount of the Common Expenses payable by the Owners to meet the proposed budget of the Condominium, and allocate and assess such proposed Common Expenses among the Owners in accordance with their respective Common Elements Interests, all in accordance with the procedure set forth in this Article, but subject to the limitations set forth in Article XVI of the Declaration. The Common Expenses shall include, among other things, the cost of all insurance premiums on all policies of insurance required to be or which have been obtained by the Executive Board pursuant to the provisions of the Declaration. The Common Expenses shall also include such amounts as the Executive Board deems necessary for the operation and maintenance of the Property, including without limitation, an amount for working capital of the Condominium; an amount for a general operating reserve; an amount for a reserve fund for losses due to insurance deductibles for which Owners are not responsible; an amount for a reserve fund for repair and replacement of the Common Elements; and such amounts as may be necessary to make up any deficit in the Common Expenses for any prior year. Within thirty (30) days after adoption of any proposed budget for the Condominium, the Executive Board shall provide a summary of the budget to all the Owners, and shall set a date for a meeting of the Owners to consider ratification of the budget no less than fourteen (14) nor more than thirty (30) days after mailing of the summary. Notwithstanding any other provisions of these Bylaws, there shall be no requirement that a quorum be present at such meeting. The proposed budget shall be deemed ratified unless at that Meeting a majority of all the Owners present and entitled to cast a vote reject the budget. In the event the proposed budget is rejected, the periodic budget last ratified shall be continued until such time as the Owners ratify a subsequent budget proposed by the Executive Board. Each Owner shall be required to pay an amount (its "**Common Assessment**") equal to its share of Common Expenses for all Units in the Condominium based on the Unit's Common Elements Interest.

The Association, acting through the Executive Board, may levy a special assessment ("**Special Assessment**") during any calendar year for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any capital improvement comprising or to comprise a portion of the Common Elements, including fixtures and personal property, or for such unbudgeted costs or expenses or shortfall as the Executive Board may determine; provided, however, that any such special assessment must be approved by the affirmative vote of at least fifty percent (50%) of the votes cast in person or by proxy at a meeting duly held in accordance with the provisions of the Bylaws. Special Assessments, if approved, shall be payable by each Owner of Units for which such assessment is applicable based on each Unit's Common Elements Interest.

In addition to the above assessments, the Association, acting through the Executive Board, may assess individual Unit Owners with Individual Unit Assessments for (i) any cost incurred by the Association by reason of the Owner's failure to maintain its Unit, if the Association takes action to do so as authorized herein; (ii) any cost incurred by the Association as a result of that Unit Owner's (or its tenants, agents, contractors, family members or invitees) negligence, willful misconduct, or default under its obligations under the Declaration, the Bylaws or the Rules and Regulations, including any cost for repair or maintenance and reasonable attorneys' fees or (iii) any Common Expense or portion thereof which benefits fewer than all of the Units, which may be assessed exclusively against the Units benefited.

The Declarant, as the agent of the Association, shall collect from each initial purchaser of a Unit at the time of closing an initial capital assessment equal to twice the estimated monthly assessment for Common Expenses, which capital assessment shall be in addition to, and not in lieu of, the Common Assessment. Such funds shall not be considered advance payments of assessments. The Declarant will deliver the funds so collected to the Association to provide the necessary working capital for the Association. Such funds may be used for certain prepaid items, initial equipment and supplies, organizational expenses and other start-up costs, and for such other purposes as the Executive Board may determine.

"**Assessments**" shall mean collectively the Common Assessment, Special Assessment, Individual Unit Assessment, and Initial Capital Assessment as defined above, along with such other fines or charges as may be owed by an Owner pursuant.

Section 10.5 Payment of Common Expenses. All Owners shall be obligated to pay the Assessments assessed by the Executive Board at such time or times as the Board shall determine.

No Owner shall be liable for the payment of any part of the Assessments assessed against his Unit subsequent to a sale, transfer or other conveyance by him (made in accordance with the provisions of the Declaration and applicable restrictions of record) of such Unit. A purchaser of a Unit shall be jointly and severally liable with the seller for the payment of Assessments assessed against such Unit prior to the acquisition by the purchaser of such Unit without prejudice to the purchaser's rights to recover from the seller the amounts paid by the purchaser therefor.

Section 10.6 Collection of Assessments. The Executive Board shall assess Common Assessments against the Units from time to time and at least monthly in accordance with the

allocations set forth in the Declaration. The Executive Board shall take prompt action to collect any Common Assessments which remain unpaid for more than thirty (30) days from the due date for payment thereof.

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

Section 10.7 Default in Payment of Assessments; Remedies. In the event of default by any Owner in paying to the Executive Board the Assessments as determined by the Board, such Owner shall be obligated to pay interest on such Assessments from the due date thereof at the rate of eighteen percent (18%) per annum, together with all expenses, including reasonable attorney's fees, any service, collection, consulting, or administration fees, incurred by the Executive Board to collect such unpaid Assessments. In addition, the Board shall have the authority to levy a late charge on any Assessment not paid by its due date, in the maximum amount permitted by law.

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

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

Section 10.8 Lien and Personal Obligations. All Assessments provided for in this Article, together with the interest and expenses, including reasonable attorneys' fees (if permitted by law), as provided for herein, shall be a charge on and a continuing lien upon the Unit against which the Assessment is made, which such lien shall be prior to all other liens excepting only (i) assessments, liens and charges for real estate taxes due and unpaid on the Unit and (ii) all sums unpaid on Mortgages and other liens and encumbrances duly recorded against the Unit prior to the docketing of such lien. Such lien shall become effective when a notice thereof has been filed in the office of the Clerk of Superior Court for Mecklenburg County, North Carolina, provided such notice of lien shall not be recorded until such sums assessed remain unpaid for a period of more than thirty (30) days after the same shall become due. Such notice of lien shall also secure all assessments against the Unit becoming due thereafter until the lien has been satisfied.

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

Section 10.9 Foreclosure of Liens for Unpaid Assignments. In any action brought by the Executive Board to foreclose on a Unit because of unpaid Assessments, the Owner shall be required to pay a reasonable rental for the use of his Unit and the plaintiff in such foreclosure action shall be entitled to the appointment of a receiver to collect the same.

## **ARTICLE XI.**

### **INSURANCE**

Section 11.1 Property Insurance. The Association shall obtain and maintain at all times a policy of property insurance on the Building, Units, Common Elements and Limited Common Elements (ISO special form or its equivalent) in an amount not less than one hundred percent (100%) of the replacement cost of the Building, Units, Common Elements and Limited Common Elements at the time such insurance is purchased and at the time of each renewal thereof (excluding the cost of foundations and footings, and the cost of any personal property supplied or installed by Owners), with a commercially reasonable deductible. The policy shall be issued by an insurance company properly licensed to do business in the State of North Carolina, with a general policyholder's rating of at least "A-" in the most recent edition of the *Best's Key Rating Guide*. The policy shall provide that each Owner is an insured person with respect to his Unit and his allocated interest in the Common Elements. The policy shall contain an inflation guard endorsement, if available, and a construction code endorsement, if available, as well as a special condominium endorsement providing as follows: for waiver of subrogation against any Owner, and any Owner's employees or agents; that it may not be canceled or substantially modified without at least thirty (30) days' prior written notice to the Association and all insureds, including all Owners and Mortgagees; that no act or omission by any Owner will preclude recovery upon such policy; and that if, at the time of a loss under the policy, there is other insurance in the name of an Owner covering the same risk covered by the policy, the Association's policy provides primary insurance. Each property insurance policy shall provide that adjustment of loss shall be made by the Association as insurance trustee. Each property insurance policy shall provide for the issuance of certificates or mortgagee endorsements to Mortgagees. Any deductible shall be charged to the Owner(s), if applicable, and in proportion to the insurance proceeds to which the Owner(s) would be entitled to receive, relative to the overall proceeds.

The insurance coverage required under this Section 11.1 shall be reviewed at least annually by the Executive Board, and if any such coverage becomes impossible or impractical to obtain, the Association shall obtain coverage which most closely approximates the required coverage with deductible provisions as determined by the Executive Board.



Section 11.2 Liability Insurance. The Association shall obtain and maintain a policy of commercial general liability insurance (current ISO form or its equivalent) in such limits as the Executive Board may, from time to time, determine, covering each member of the Executive Board, the managing agent, if any, and each Owner with respect to liability arising out of the use, ownership, maintenance, or repair of the Common Elements; provided, however, that in no event shall the limits of such policy ever be less than \$1,000,000.00 per occurrence. The liability insurance policy shall include endorsements covering cross liability claims of one insured against another, including the liability of the Owners as a group to a single Owner, and shall provide that it may not be canceled or substantially modified without at least thirty (30) days' prior written notice to the Association and to all insureds, including all Owners and Mortgagees. The Executive Board shall review such limits annually.

Section 11.3 Fidelity Coverage. The Association may obtain such fidelity coverage against dishonest acts on the part of all persons responsible for handling-funds belonging to or administered by the Association as it may deem necessary. Any such fidelity insurance policy must name the Association as the named insured and shall be written in an amount as may be determined by the Executive Board, but in no event less than one-half the annual budgeted amount of Common Expenses, or the amount required by any Mortgagee, whichever is greater.

Section 11.4 Other Insurance Policies. The Association shall be authorized to obtain such other insurance coverage, including worker's compensation or employee liability insurance, as the Association shall determine from time to time desirable or necessary.

Section 11.5 Premiums. Premiums upon insurance policies purchased by the Association, and any amounts paid as a result of a deductible, shall be paid by the Association and charged as a Common Expense.

Section 11.6 Distribution of Insurance Proceeds. All insurance policies procured by the Association shall provide that all losses shall be adjusted with and all proceeds shall be payable to the Association as insurance trustee. The sole duty of the Association as insurance trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes set forth herein and for the benefit of the Owners and their Mortgagees in the following shares:

(a) Proceeds on account of damage to the Common Elements shall be held in undivided shares for each Owner and his Mortgagee, if any, each Owner's share to be the same as such Owner's allocated Common Elements Interest.

(b) Proceeds on account of damage to Units shall be held in the following undivided shares:

(i) When the damage is to be restored, for the Owners of damaged Units in proportion to the cost of repairing the damage to each such Owner's Unit, which cost shall be determined by the Association.

(ii) When the damage is not to be restored, an undivided share for each Owner, such share being the same as each such Owner's allocated Common Elements Interest.

(c) In the event a mortgagee endorsement or certificate has been issued with respect to a Unit, the share of the Owner shall be held in trust for the Mortgagee and the Owner as their respective interests may appear.

(d) Proceeds of insurance policies received by the Association as insurance trustee shall be distributed to or for the benefit of the Owners in the following manner:

(i) If it is determined, as provided in Article XII below, that the damaged property with respect to which the proceeds are paid shall not be reconstructed or repaired,

(A) the proceeds attributable to the damaged Common Elements shall be used to restore the damaged area to a condition compatible with the rest of the Condominium;

(B) the insurance proceeds attributable to Units and Limited Common Elements which are not rebuilt shall be distributed to the owners of these Units and Units to which those Limited Common Elements were allocated or to their Mortgagees, in proportion to their respective Common Elements Interests; and

(C) the remainder of the proceeds shall be distributed to all Owners or Mortgagees, as their interests may appear, in proportion to their respective Common Elements Interests.

(ii) If the damage for which the proceeds were paid is to be repaired or reconstructed, the proceeds shall be paid to defray the costs thereof. Any proceeds remaining after payment of such repair costs shall be distributed to the beneficial Owners and their Mortgagees, if any, jointly.

Section 11.7 Insurance Obtained by Owners. Each Owner shall obtain and keep continuously in force additional fire and casualty and extended coverage insurance (such as HO-6 policies) upon such Owner's Unit, the improvements therein and Owner's personal property, as well as public liability insurance, and such other insurance coverage as he may desire. Each Owner shall obtain and maintain public liability insurance coverage in the amount of at least \$100,000.00 for bodily injury, including deaths of persons and property damage, arising out of a single occurrence. Each Owner shall file a copy of each such individual policy with the Association within thirty (30) days after purchase. Owners are encouraged to obtain insurance (such as 'loss assessment' coverage) to defray costs of deductibles or special assessments or similar charges.

## ARTICLE XII.

### DUTY TO REPAIR OR RECONSTRUCT

Section 12.1 Reconstruction and Repair. In the event of damage to or destruction of the Building as a result of fire or other casualty, the Association shall arrange for the prompt

restoration and replacement of the damaged or destroyed Building unless (1) the Condominium is terminated in accordance with the provisions of Article XV below, or (2) repair or replacement would be illegal under any state or local health or safety statute or ordinance, or (3) the Owners decide not to rebuild by an eighty percent (80%) vote, including one hundred percent (100%) of Owners of Units not to be rebuilt and one hundred percent (100%) of Owners of Units to which are assigned Limited Common Elements not to be rebuilt. Unless one of the preceding three conditions occurs, the Association shall arrange for the prompt repair and restoration of the damaged or destroyed Building, not including any decoration or covering for walls, ceilings, or floors, or furniture, furnishings, fixtures or equipment (unless the subject insurance policy covers a portion or all of such loss, in which event the Association shall repair or replace such damaged property), and the Association shall disburse the proceeds of all insurance policies to the contractors engaged in such repair and restoration in appropriate progress payments and in accordance with the provisions of Section 11.6(d)(ii) of this Declaration. Any payment for repair and restoration in excess of the insurance proceeds shall constitute a Common Expense. Any reconstruction or repair shall be in accordance with the Plans. If the Owners vote not to rebuild any Unit, that Unit's allocated Common Elements Interests shall be automatically reallocated upon the vote as if the Unit had been condemned under N.C.G.S. §47C-1-107(a).

Section 12.2 Obligations of Owners. Each Owner will, at his sole cost and expense, keep and maintain his Unit in good order and repair in accordance with the Plans, and will make no structural addition, alteration or improvement to his Unit without the prior written consent of the Association, except as specifically permitted by this Declaration or authorized under N.C.G.S. §47C-2-111. Upon the failure of an Owner to so maintain his Unit, the Association shall be authorized to maintain, repair or restore such Unit, and the cost thereof shall be charged to such Owner and constitute a lien on the Unit until paid.

### **ARTICLE XIII.**

#### **UNITS SUBJECT TO CONDOMINIUM DOCUMENTS**

All present and future Owners, tenants, and occupants of the Units shall be subject to and shall comply with the provisions of this Declaration, the Bylaws, and any rules and regulations as may be adopted, as all of the foregoing may be amended and supplemented from time to time. The acceptance of a deed of conveyance or the entering into of a lease or the entering into occupancy of any Unit shall constitute an agreement that the provisions of this Declaration, the Bylaws and any rules and regulations which may be adopted are accepted and ratified by such Owner, tenant or occupant, and an agreement that such provisions shall be deemed and taken to be covenants running with the Land and shall bind any person having at any time any interest or estate in such Unit as though such provisions were made a part of each and every deed of conveyance or lease.

## **ARTICLE XIV.**

### **AMENDMENT TO AND SUPPLEMENT OF DECLARATION**

Except in cases of amendment by the Declarant under N.C.G.S. § 47C-2-109(d) or 47C-2-110, or the association under N.C.G.S. § 47C-1-107, 47C-2-112(a) or certain Unit Owners under N.C.G.S. § 47C-2-108(b), 47C-2-112(a), 47C-2-113 (b) or 47C-2-118(b) and except as is otherwise specifically provided or authorized herein, this Declaration may be amended only by the vote of the Owners of Units to which at least sixty-seven percent (67%) of the votes in the Association have been allocated, and not less than fifty-one percent (51%) of the Mortgagees, cast in person or by proxy at a meeting duly held in accordance with the provisions of the Bylaws. Except to the extent expressly permitted by the North Carolina Condominium Act or other provisions of this Declaration, any amendment which amends or alters the Common Elements Interest of any Unit, increases the number of Units, changes the boundaries of any Unit, or modifies the terms of this Article XIV, shall require the written approval of all Owners, together with the consent of all their respective Mortgagees. Unless otherwise provided herein or in the North Carolina Condominium Act, no amendment to the Declaration shall be effective until executed on behalf of the Association by any officer designated for that purpose and recorded in the office of the Register of Deeds of Mecklenburg County, North Carolina. During the Declarant Control Period, no amendment to this Declaration shall be effective without the written consent of Declarant. Notwithstanding the foregoing, any amendment which would have the effect of prohibiting a use of the Flex Unit which would otherwise be permitted prior to such amendment, or which would materially and negatively impact such use, shall require the written consent of the Owner of the Flex Unit and its respective Mortgagee.

## **ARTICLE XV.**

### **TERMINATION**

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

The failure of any Mortgagee to respond within sixty (60) days to any written request of the Association, sent by registered or certified mail, return receipt requested, for consent to termination of the Condominium shall constitute an implied approval by that Mortgagee of the proposed termination.

## ARTICLE XVI.

### MORTGAGEE PROTECTION

Section 16.1 General Provisions. This Article XVI establishes certain standards and covenants for the benefit of Mortgagees. This Article XVI is supplemental to, and not in substitution for, any other provisions of the Condominium Documents, but in the event of any conflict between the provisions of the Condominium Documents and the provisions of this Article XVI, the provisions of this Article XVI shall control.

Section 16.2 Percentage of Mortgagees. Wherever in the Condominium Documents the approval or consent of a specified percentage of Mortgagees is required, it shall mean the approval or consent of Mortgagees holding Mortgages on Units which have allocated to them that specified percentage of votes in the Association, as compared to the total votes in the Association allocated to all Units then subject to Mortgages held by Mortgagees.

Section 16.3 Rights to Examine Books and Records. Any Mortgagee, and any insurer or guarantor of a loan secured by a Mortgage, shall have the right to examine, during normal business hours and upon reasonable notice, the books and records of the Association, including copies of the Condominium Documents, as amended, and the financial statements of the Association, and to be furnished, upon written request, at least one copy of the annual financial statement and report of the Association, such annual statement and report to be furnished within ninety (90) days following the end of each fiscal year. 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.

Section 16.4 Mortgagee's Rights to Notice. Any Mortgagee (including, for purposes of this Section 16.4, any insurer or guarantor of a loan secured by a Mortgage that has notified the Association in writing of its name and address, and that it insures or guarantees a Mortgage) shall have the right to receive from the Association prompt written notice of the following:

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

The failure of any Mortgagee to respond within sixty (60) days to any written request of the Association, sent by registered or certified mail, return receipt requested, for approval of an addition or amendment to the Condominium Documents wherever Mortgagee approval is required shall constitute an approval by that Mortgagee of the proposed addition or amendment.

Section 16.5 Consent and Notice Required. Notwithstanding any other provision of this Declaration or the Condominium Documents, no amendment of any material provision of the Condominium Documents described in this Section 16.5 shall be effective without notice to all Mortgagees, as required by Section 16.4, the vote of at least sixty-seven percent (67%) of the Owners (or any greater percentage required by the terms of the Condominium Documents), and the approval of at least fifty-one percent (51%) of the Mortgagees (or any greater percentage required by the terms of the Condominium Documents). A change to any of the following items will be considered material:

- (a) Voting rights.
- (b) Increases in assessments that raise the previously assessed amount by more than twenty-five percent (25%), or the priority of assessment liens.
- (c) Reductions in reserve requirements for maintenance, repair, and replacement of the Common Elements.
- (d) Responsibility for maintenance and repairs of the Units, the Limited Common Elements, or the Common Elements.
- (e) Reallocation of interests in the Common Elements or the Limited Common Elements, except that when Limited Common Elements are reallocated by agreement between Owners of Units, then only those Owners and only the Mortgagees holding Mortgages on those Units need approve such reallocations.
- (f) Redefinition of boundaries of Units, except that when the boundaries of only adjoining Units are involved, then only the Owners of those Units and the Mortgagees holding Mortgages on those Units must approve such action.
- (g) Convertibility of Units into Common Elements, or Common Elements into Units.
- (h) The expansion or contraction of Condominium, or the addition, annexation or withdrawal of property to or from the Condominium.
- (i) The requirements for insurance and fidelity bonds.
- (j) The imposition of any restrictions on the leasing of Units.
- (k) The imposition of any restrictions on an Owner's right to sell or transfer his Unit.

(l) The restoration or repair of the Property after casualty damage or partial condemnation in a manner other than that specified in the Condominium Documents.

(m) Any termination of the Condominium after occurrence of substantial destruction or condemnation.

(n) Any provision that expressly benefits the Mortgagees.

Section 16.6 Other Mortgagee Rights. Notwithstanding any other provision of this Declaration or the Bylaws, the Association may not change the period for collection of regularly budgeted Common Expenses to other than monthly without the consent of all Mortgagees. Any representative of a Mortgagee may attend and address any meeting that an Owner may attend.

Section 16.7 Enforcement. The provisions of this Article XVI are for the benefit of all Mortgagees and their successors, and may be enforced by any of them by any available means.

## ARTICLE XVII.

### CONDEMNATION

If all or any part of the Property is taken in condemnation or by eminent domain, the award for such taking shall be distributed in accordance with the procedure set forth in N.C.G.S. §47C-1-107. Provided, however that the proceeds of any award payable to the Association as a result of condemnation of all or a portion of the Common Elements shall first be used to restore the damaged area to a condition compatible with the rest of the Condominium or to raze the remaining damaged improvements and thereafter, any remaining proceeds shall be distributed as set forth above.

## ARTICLE XVIII.

### MISCELLANEOUS PROVISIONS

Section 18.1 Invalidity. The invalidity of any provision of this Declaration shall not be deemed to impair or affect in any manner the validity and enforceability of the remainder of this Declaration, and in such event, all the other provisions of this Declaration shall continue in full force and effect as if such invalid provision had never been included herein.

Section 18.2 Waiver. No provisions contained in the Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

Section 18.3 Captions. The captions herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Declaration or the intent of any provision hereof.

Section 18.4 Law Controlling. This Declaration and the Condominium Documents shall be construed and controlled by and under the laws of the State of North Carolina.

Section 18.5 Liberal Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan of condominium ownership as provided in the North Carolina Condominium Act. Throughout this Declaration wherever appropriate, the singular shall include the plural and the masculine gender the feminine or neuter as the context permits or requires.

Section 18.6 Percentage of Owners. Wherever in the Condominium Documents the approval or consent of a specified percentage of Owners is required, it shall mean the approval or consent of Owners of Units which have allocated to them that specified percentage of votes in the Association, as compared to the total votes in the Association allocated to all Units.

## **ARTICLE XIX.**

### **ENFORCEMENT**

Section 19.1 Actions by the Association. Subject to the provisions of Article XX hereof, the Association, or the Executive Board acting on its behalf, shall have the right, in addition to any other remedies provided for in the Condominium Documents, to bring a civil action against any Owner to enforce any obligation, covenant or restriction set forth in this Declaration or the other Condominium Documents.

Section 19.2 Actions by Owners. Subject to the provisions of Article XX hereof, any Owner may also bring a civil action against any other Owner, or against the Association, or against the Executive Board, or any one or more of them, to enforce any obligation, covenant or restriction set forth in this Declaration or the other Condominium Documents.

Section 19.3 Action Against Declarant. In no event shall the Association assert a claim against, or institute any legal proceedings against the Declarant, nor shall the Association file any complaint with any governmental agency or authority which has regulatory or judicial authority over the Condominium on account of any alleged act or omission of the Declarant, unless the asserting of such claim, the institution of such legal proceeding or the filing of such complaint, shall be approved in writing by the Owners of no less than seventy-five percent (75%) of the Owners of Units prior to the date any such claim is asserted, legal proceeding instituted or complaint filed, as the case may be. In the event that such claim is asserted, legal proceeding instituted or complaint filed without the approval of the Owners of the Units that is herein required, then the Declarant shall have the right to require that the claim, legal proceeding or complaint be dismissed. No amendment to this Section shall be effective unless such amendment is approved in writing by the Declarant.

## **ARTICLE XX.**

### **DISPUTE RESOLUTION AND LIMITATION ON LITIGATION**

Section 20.1 Agreement to Encourage Resolution of Disputes Without Litigation.

(a) Notwithstanding **Sections 19.1** and **19.2** above, Declarant, the Owners, the Executive Board, the Association and its officers, directors and committee members, and



any person not otherwise subject to this Declaration who agrees to submit to this Article, including without limitation, any other contractors, architects, consultants, or engineers retained by Declarant in connection with the design and construction of the Building (collectively, “**Bound Parties**”), agree that it is in the best interest of all concerned to encourage the amicable resolution of disputes involving the Condominium without the emotional and financial costs of litigation. Accordingly, each Bound Party agrees not to file a Claim described in subsection (b), unless and until it has first submitted such Claim to the alternative dispute resolution procedures set forth in **Section 20.2** in a good faith effort to resolve such Claim.

(b) As used in this Article, the term “**Claim**” shall refer to any claim, grievance, or dispute arising out of or relating to:

(i) the interpretation, application, or enforcement of the Condominium Documents;

(ii) the rights, obligations, and duties of any Bound Party under the Condominium Documents; or

(iii) the design or construction of improvements within the Condominium;

except that the following shall not be considered “Claims” unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in **Section 20.2**:

(iv) any suit by the Association against an Owner to collect assessments, to enforce the Association’s governing documents, or a suit to against any Owner to collect other sums due;

(v) any suit by the Association to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association’s ability to enforce the provisions relating to creation and maintenance of community standards);

(vi) any suit between Owners, which does not include Declarant or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Condominium Documents;

(vii) any suit in which any indispensable party is not a Bound Party; and

(viii) any suit as to which any applicable statute of limitations would expire within one hundred eighty (180) days of giving the Notice required by **Section 20.2(a)**, unless the party or parties against whom the Claim is made agree to toll the statute of limitations as to such Claim for such period as may reasonably be necessary to comply with this Article.

Section 20.2 Dispute Resolution Procedures.

(a) Notice. The Bound Party asserting a Claim (“**Claimant**”) against another Bound Party (“**Respondent**”) shall give written notice to each Respondent and to the Executive Board stating plainly and concisely:

(i) the nature of the Claim, including the Persons involved and the Respondent’s role in the Claim;

(ii) the legal basis of the Claim (*i.e.*, the specific authority out of which the Claim arises);

(iii) the Claimant’s proposed resolution or remedy; and

(iv) the Claimant’s desire to meet with the Respondent to discuss in good faith ways to resolve the Claim.

(b) Negotiation. The Claimant and Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Executive Board may appoint a representative to assist the parties in negotiating a resolution of the Claim.

(c) Arbitration. If the parties have not resolved the Claim through negotiation within thirty (30) days of the date of the notice described in **Section 20.2(a)** (or within such other period as the parties may agree upon), the Claimant shall have thirty (30) additional days to submit the Claim to binding arbitration pursuant to the Uniform Arbitration Act set forth in N.C.G.S. §1-567.1 et seq. as the same shall be amended from time to time.

(d) Waiver. If the Claimant does not submit the Claim to arbitration within such time, or does not appear for the arbitration hearing when scheduled, the Claimant shall be deemed to have waived the Claim, and the Respondent shall be relieved of any and all liability to the Claimant (but not third parties) on account of such Claim.

(e) Fees and Expenses. The fees and expenses of arbitration shall be paid as set forth in the award and the Association shall not make a claim against a Bound Party with regard to the matters listed in **Section 20.1(b)(i-iii)** above unless 75% of all Owners approve (in writing) the Association’s bringing such claim (and incurring the Common Expense to do so).

(f) Settlement. Any settlement of the Claim through negotiation or arbitration shall be documented in writing and signed by the parties. If any party thereafter fails to abide by the terms of such agreement, then any other party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in this Article. In such event, the party taking action to enforce the agreement or award shall, upon prevailing, be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties in

equal proportions) all costs incurred in enforcing such agreement or award, including, without limitation, attorneys' fees and court costs.

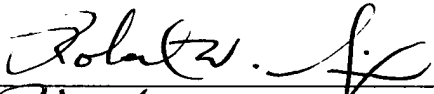
## **ARTICLE XXI.**

### **CONSENT OF LENDER**

Section 21.1 Consent of Lender. The Land and the Buildings are encumbered by the lien of a deed of trust executed by Declarant and recorded in the Mecklenburg County Public Registry. A consent and subordination agreement executed by the Lender and Trustee of the deed of trust consenting to the execution of recordation of this Declaration shall be recorded separately from this Declaration.

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

GALLERIES @ NODA, LLC,  
a North Carolina limited liability company

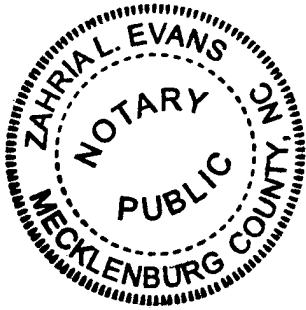
By:   
Robert W. Nixon, Manager


STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

I, Zahria L. Evans, a Notary Public in and for said County and State, do hereby certify that on this 25 day of May, 2022, Robert Wayne Nixon  personally known to me or  proven by satisfactory evidence (said evidence being NC DL 000002280686), personally appeared before me and, being by me duly sworn, said that he is a Manager of GALLERIES @ NODA, LLC, a North Carolina limited liability company, that the statements contained in the foregoing instrument are true, and he voluntarily acknowledged said instrument, for the purposes therein, to be the duly authorized act and deed of said company.

WITNESS my hand and notarial stamp or seal.



  
\_\_\_\_\_  
Notary Public  
Notary Typed Name: Zahria L. Evans  
My Commission Expires: 02/01/2027

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## EXHIBIT A

### Legal Description

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

BEGINNING at a new iron rebar on the westerly right of way line of Anderson Street, said point being the southeasterly corner of the within described tract and the northeasterly corner of the property of Philip M. Bray (now or formerly) as same is described in a deed recorded in the Mecklenburg Public Registry in Book 3054, at Page 471; thence with the northerly line of Bray's property (now or formerly) S 68-38-28 W. 182.46 feet to a new iron rebar marking the northwesterly corner of Bray (now or formerly) and also being located on the easterly line of the property of the Renaissance Townhomes; thence with said easterly line, N 21-21-32 W. 250.64 feet to a new iron rebar; thence in a southeasterly direction along the arc of a circular curve to the left having a radius of 440.00 feet, an arc distance of 20.08 feet to a point; thence S 67-26-25 E. 68.80 feet to a point; thence with the southerly right of way line of North Davidson Street in a southeasterly direction along the arc of a circular curve to the left having a radius of 333.95 feet an arc distance of 156.76 feet to a point on said right of way line; thence with the westerly right of way line of Anderson Street in a southeasterly direction along the arc of circular curve to the right having a radius of 20.00 feet an arc distance of 26.86 feet to a point on said right of way line; thence continuing with said right of way line S 09-30-02 East 59.08 feet to a point on said right of way line; thence continuing with said right of way line in a southerly direction along the arc of a circular curve to the left having a radius of 262.73 feet, an arc distance of 12.68 feet to the point of beginning containing 0.71 acres according to a physical survey prepared by Stephen B. Mullins, PLS on November 13, 2006.

**EXHIBIT B**

**SCHEDULE OF UNITS AND COMMON ELEMENTS INTEREST**

<b>Unit Number</b>	<b>Square Feet</b>	<b>Percentage Interest</b>
1101	2790	6.82%
2201	1481	3.62%
2202	1092	2.67%
2203	753	1.84%
2204	750	1.83%
2205	750	1.83%
2206	742	1.81%
2207	1452	3.55%
2208	767	1.87%
2209	1108	2.71%
2210	731	1.79%
2211	762	1.86%
2212	1104	2.70%
2213	967	2.36%
3301	1481	3.62%
3302	1092	2.67%
3303	1138	2.78%
3304	750	1.83%
3305	750	1.83%
3306	742	1.81%
3307	1452	3.55%
3308	767	1.87%
3309	1108	2.71%
3310	731	1.79%
3311	762	1.86%
3312	1104	2.70%
3313	967	2.36%
4401	1481	3.62%
4402	1092	2.67%
4403	1138	2.78%
4404	750	1.83%
4405	750	1.83%
4406	742	1.81%
4407	1452	3.55%
4408	767	1.87%
4409	1108	2.71%



4410	731	1.79%
4411	762	1.86%
4412	1104	2.70%
4413	967	2.36%
Totals	40,937	100.00%

**\*\*Note: Unit Numbers Subject to Final Municipal Approval**

**EXHIBIT C**  
**BYLAWS OF**  
**GALLERIES NODA CONDOMINIUM OWNERS ASSOCIATION, INC.**

**Section 1**

**Definitions**

The words, phrases and terms used in these Bylaws shall have the meanings as set forth in the Declaration of Condominium for Galleries NoDa Condominium, to be recorded in the Office of the Register of Deeds for Mecklenburg County, North Carolina, to which a copy of these Bylaws is attached as Exhibit C.

**Section 2**

**Administration of Condominium**

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

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

**Section 3**

**Offices - Seal - Fiscal Year**

Section 3.1 Principal Office and Registered Office: The initial principal office and registered office of the Association shall be located at 19 Franklin Avenue NW, Concord, Cabarrus County, North Carolina 28025.

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

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

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

## Section 4

### Membership

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

Membership in the Association shall inure automatically to Owners upon acquisition of the fee simple title (whether encumbered or not) to any one or more Units. The date of recordation in the Office of the Register of Deeds of Mecklenburg County of the conveyance of the Unit in question shall govern the date of ownership of each particular Unit. However, in the case of death, the transfer of ownership shall occur on date of death in the case of intestacy or date of probate of the will in the case of testacy. Until a decedent's will is probated, the Association may rely on the presumption that a deceased Owner died intestate.

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

Section 4.3 Annual Meetings: A meeting of the Association shall be held at least once each year. The first Annual Meeting of the Association shall be held on the date and hour designated by Declarant. Thereafter, the Annual Meeting of the Association shall be held at such times and places as the Executive Board may determine.

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

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

Section 4.6 Notices of Meetings: Written or printed notice stating the time and place of a membership meeting, including Annual Meetings, and the items on the agenda, including the general nature of any proposed amendment to the Declaration or these Bylaws, any budget changes, and any proposal to remove a director or officer, shall be delivered not less than ten (10) nor more than fifty (50) days before the date of any such membership meeting, either

personally or by mail, by or at the discretion of the President or the Secretary, to the address of each Unit. Notice shall be deemed given upon deposit in the mail depository of each Unit. If permitted by applicable law, any notice required hereunder may be transmitted to any Owner by electronic means, and there shall be a presumption that notice is valid if transmitted electronically.

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

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

Section 4.7 Quorum: Except as otherwise provided in these Bylaws, the presence in person or by proxy of Members entitled to cast twenty percent (20%) of the votes which may be cast for election of the Executive Board shall, constitute a quorum at all meetings of the Members. If a quorum is not present or represented at any meeting, the Members entitled to vote thereat shall have the power to adjourn the meeting from time to time, without notice other than the announcement at the meeting, until a quorum is present or is represented. The quorum at such subsequent meeting shall decrease by 50% until such time as a quorum is present. The Members at any meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum.

Section 4.8 Voting Rights: The total number of votes of the Association Membership shall be equal to the number of Units contained within the Condominium from time to time, and each Member shall be entitled to one (1) vote for each Unit owned by such Member. If fee simple title to a Unit is owned of record by more than one person or entity, all such persons or entities shall be Members of the Association, but the vote with respect to any such jointly owned Unit shall be cast as hereinafter provided. No cumulative voting shall be allowed.

If the fee simple title to any Unit is owned of record by two or more persons or entities (whether individually or in a fiduciary capacity), the vote cast with respect to any such jointly owned Unit shall be conclusively presumed to be the vote of all such persons, provided such vote is cast without protest being made promptly to the person presiding over the meeting by any of the other of such joint Owners.

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

Section 4.9 Proxies: Members may vote either in person or by agents duly authorized by written proxy executed by the subject Member or by his duly authorized attorney-in-fact. A proxy is not valid after the earlier of the term stated therein or the expiration of eleven (11) months from the date of its execution. Unless a proxy otherwise provides, any proxy holder may appoint in writing a substitute to act in his place. In order to be effective, all proxies must be filed with the Secretary or duly acting Secretary or such other person designated by the Executive Board either during or prior to the meeting in question. A member may not revoke a

proxy given pursuant to this Section 4.9 except by written notice of revocation delivered to the person presiding over a meeting of the Association.

All of the above provisions concerning voting by joint Owners shall apply to the vote cast for any one Unit by two or more proxy holders.

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

Section 4.11 Actions Without Meeting: Any action which may be taken at a meeting of the membership may be taken without a meeting if consent or ratification, in writing, setting forth the action so taken or to be taken shall be signed by all of the persons who would be entitled to vote upon such action at a meeting and such consent is filed with the Secretary of the Association and inserted in the minute book of the Association. In addition, notwithstanding the terms of the preceding sentence, any such action also may be taken by written ballot in accordance with the terms of the North Carolina Nonprofit Corporation Act.

## **Section 5**

### **Executive Board**

Section 5.1 General Powers: The business and affairs of the Association shall be managed by the Executive Board or by such committees as the Executive Board may establish pursuant to Section 6 of these Bylaws. Provided, however, the Executive Board may not act on behalf of the Association to amend the Declaration, to terminate the Condominium, to elect members of the Executive Board, or to determine the qualifications, powers and duties, or terms of office of Executive Board members. The Executive Board may, however, fill vacancies in its membership for the unexpired portion of any term.

Section 5.2 Number, Term and Qualification: The initial Executive Board shall consist of the three (3) individuals appointed by Declarant. During the Declarant Control Period, the Executive Board shall have three (3) members, and Declarant may appoint and remove members of the Executive Board; subject, however to the limitations contained in Section 8.3 of the Declaration. A Director appointed by Declarant need not be an Owner. A majority of Directors elected by Members shall be Owners or a spouse of an Owner. Not more than sixty (60) days after the expiration of the Declarant Control Period, the Members shall elect three (3) Board members, each to serve for a term of two (2) years. To create staggered terms, upon the happening of the first membership election where the Members are entitled to vote for at least two Directors, among those Directors elected, the Director receiving the least number of votes shall be elected to a one-year term, whereby the other Director(s) elected shall be elected for two-year terms. Once staggered terms are established, at subsequent elections, each Director shall be elected for a two-year term. The number of Executive Board members can be increased by a majority vote of the Association membership at a duly called meeting, but can never be less than three (3). Board members may succeed themselves in office.

Section 5.3 Election of Board Members: The election of all Board members shall be by ballot or by such other means authorized under the North Carolina Nonprofit Corporation Act. Persons receiving the highest number of votes (see Section 4.8) shall be elected. Cumulative voting is not permitted.

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

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

Section 5.6 Chairman: A member of the Executive Board shall be elected as Chairman of the Executive Board by the Board members at the first meeting of the Board. The Chairman shall preside at all meetings of the Executive Board and perform such other duties as may be directed by the Board. Prior to election of a Chairman and/or in the event that the Chairman is not present at any meeting of the Executive Board, the President shall preside.

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

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

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

Section 5.10 Meetings of the Executive Board:

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

B. Special Meetings: Special Meetings shall be held when called by the President of the Association, or by any board member, after not less than three (3) or more than thirty (30) days' notice to each Board member. Notice may be provided by any means permitted under the North Carolina Nonprofit Corporation Act, including notice by electronic transmission or text message.

C. Notices of Special Meetings: The notice provided for herein may be waived by written instrument signed by those Board members who do not receive said notice. Except to the extent otherwise required by law, the purpose of a Board members' special meeting need not be stated in the notice. Notices shall be deemed received upon the happening of any one of the following events: (1) one day following deposit of same in the United States mail with proper postage paid and addressed to the Board member at his last known address on file with the Association; (2) deposit of same in his Unit mail box; (3) delivery to the Board member; (4) upon transmission of an electronic transmission or text message to an email address or cellular phone number provided by such Director. Attendance by a Board member at a meeting shall constitute a waiver of notice of such meeting unless the subject Board member gives a written statement at the meeting to the person presiding objecting to the transaction of any business because the meeting is not lawfully called and gives such notice prior to the vote on any resolution.

D. Approved Meeting Place: All Board meetings shall be held in Mecklenburg County, North Carolina, unless otherwise stated in the meeting notice.

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

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

Section 5.12 Presumption of Assent: A Board member who is present at a meeting of the Board at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless his contrary vote is recorded or his dissent is otherwise entered in the minutes of the meeting or unless he shall file his written dissent to such action with the person acting as the Secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the Secretary of the Association immediately after the adjournment

of the meeting. Such right to dissent shall not apply to a Board member who voted in favor of such action.

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

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

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

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

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

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

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

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

H. Keeping a complete record of the minutes of all meetings of the Board and Membership (except however that meetings held in executive session shall be kept separate and apart from regular meeting minutes) in which minute book shall be inserted actions taken by the Board and/or Members by consent without meeting;

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

J. Enforcing, on behalf of the Association, the obligations and assessments provided in the Declaration, including, but not limited to, the institution of civil actions to enforce payment of the assessments as provided in the Declaration, the institution of actions to foreclose



liens for such assessments in accordance with the terms of N.C.G.S. §47C-3-116, the imposition of charges for late payment of assessments, and after notice and an opportunity to be heard, levying reasonable fines not to exceed One Hundred and No/100 Dollars (\$100.00) for initial violations, repeating violations, or until a violation is cured, or the highest amount permitted by law for violations of the Declaration, Bylaws and rules and regulations of the Association;

K. Enforcing by any legal means or proceeding the provisions of the Articles of Incorporation of the Association, these Bylaws, the Declaration or the rules and regulations hereinafter promulgated governing use of the Common Elements;

L. Enforcing, on behalf of the Association, any other rights or remedies of the Association;

M. Hiring attorneys and other professionals;

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

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

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

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

R. Signing all agreements, contracts, deeds and vouchers for payment of expenditures and other instruments in such manner as from time to time shall be determined by written resolution of the Board. In the absence of such determination by the Board, such documents shall be signed by either the Treasurer or the Assistant Treasurer of the Association, and countersigned by the President or Vice President, or with the approval of the Executive Board, by the Independent Manager;

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

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

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

## Section 6

### Committees

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

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

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

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

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

## **Section 7**

### **Officers**

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

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

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

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

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

Section 7.6 President: The President shall be the chief executive officer of the Association and shall preside at all meetings of the Members. In the absence of an elected Chairman, he shall also preside at all meetings of the Executive Board. He shall see that the orders and resolutions of the Executive Board are carried out; he shall sign on behalf of the Association all written instruments regarding the Common Elements and all promissory notes of the Association, if any; and he shall have all of the general powers and duties which are incident to the office of President of a corporation organized under Chapter 55A of the North Carolina General Statutes in the supervision and control of the management of the Association in accordance with these Bylaws.

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

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

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

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

Section 7.11 Compensation: Officers shall not be compensated on a regular basis for the usual and ordinary services rendered to the Association incident to the offices held by such officers. The Executive Board may, however, compensate any officer or officers for their actual expenses, to the extent authorized by law. Each officer, by assuming office, waives his right to institute suit against or make claim upon the Association for compensation based upon quantum meruit.

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

## **Section 8**

### **Operation of the Property**

Section 8.1 Abatement and Enjoyment of Violations by Owners: The violation of any rule or regulation adopted by the Executive Board or the breach of any Bylaw contained herein, or the breach of any provision of the Declaration, shall give the Executive Board the right, in addition to any other rights set forth in the Declaration, these Bylaws or at law or in equity: (a) to enter the Unit in which or as to which such violation or breach exists and to summarily abate and remove, at the expense of the defaulting Owner, any structure, thing or condition that may exist therein contrary to the intent and meaning of the provisions hereof, and the Board shall not thereby be deemed guilty in any manner of trespass; provided, however, that the Executive Board shall be obligated to institute judicial proceedings before any item of construction can be altered or demolished; (b) to enjoin, abate or remedy by appropriate legal proceedings, either at

law or in equity, the continuance of any such breach at the expense of the defaulting Owner; and/or (c) after notice and opportunity to be heard in manner provided in N.C.G.S. § 47C-3-107.1, to levy reasonable fines not to exceed One Hundred and No/100 Dollars (\$100.00) per violation, and, without further hearing, an additional One Hundred and No/100 Dollars (\$100.00) for each day more than five (5) days after the decision that such violation continues.

Section 8.2 Maintenance and Repair: (a) Except as is specifically provided in the Declaration, all maintenance and any repairs to any Unit and the Limited Common Elements allocated thereto, whether ordinary or extraordinary, shall be made by the Owner of such Unit. Each Owner shall be responsible for all damages to any and all other Units and/or to the Common Elements that his failure to do so may engender; and (b) except as is specifically provided in the Declaration, all maintenance, repairs and replacements to the Common Elements (unless necessitated by the negligence, misuse or neglect of an Owner, in which case such expense shall be charged to and paid by such Owner), shall be made by the Board; provided, however, there is excluded from the provisions contained in this section any repairs necessitated by casualty insured against by the Executive Board to the extent the Executive Board receives insurance proceeds for such repairs.

Section 8.3 Additions, Alterations or Improvements by Owners: No Owner shall make any structural addition, alteration, or improvement in or to his Unit or to any Limited Common Element, or any change in the exterior appearance thereof, except in accordance with N.C.G.S. §47C-2-111 and in accordance with the terms of the Declaration.

Section 8.4 Use of Common Elements: An Owner shall not interfere with the use of the Common Elements by the remaining Owners and their employees and invitees.

Section 8.5 Right of Access: An Owner shall grant a right of access to his Unit and the Limited Common Elements appurtenant thereto to the Independent Manager and/or any other person authorized by the Executive Board or the Independent Manager for the purpose of making inspections, or for the purpose of correcting any condition originating in his Unit and threatening another Unit or the Common Elements, or for the purpose of performing installations, alterations or repairs to the mechanical or electrical equipment or other Common Elements, or for the purpose of performing installations, alterations or repairs to the mechanical or electrical equipment or other Common Elements in or adjoining his Unit; provided, however, such requests for entry (except in the case of emergencies where no request shall be required) are made in advance and any such entry is at a time reasonably convenient to the Owner. In the case of an emergency, such right of entry shall be immediate whether the Owner is present at the time or not.

Section 8.6 Rules of Conduct: Rules and regulations concerning the use of the Units and the Common Elements may be promulgated and amended by the Board in the manner provided in the Declaration. Copies of such rules and regulations shall upon request be furnished by the Board to each Owner. Such rules and regulations shall become effective when adopted or at such other times as directed by the Board.

Section 8.7 Common Expenses for Utilities: Any utilities which may be provided to the Units or group of Units through a single or common meter or facility, and utilities furnished

to any portion of the Common Elements, shall be paid by the Board and assessed against the Units or the group of Units benefited as a Common Expense.

**Section 9**

**Amendments**

These Bylaws may be amended at any time upon the affirmative vote of at least sixty-seven percent (67%) of the votes in the Association, which instrument may be recorded in the Office of the Register of Deeds of Mecklenburg County, North Carolina (provided, however, that subsequent amendments to the Bylaws need not be recorded to be effective, but the Board, at its election, may record such amendments as a courtesy to Members). Provided, however, where a larger vote in the Association is required for the Association to take or refrain from taking a specific action, as set forth in the Condominium Documents, no amendment of these Bylaws shall be made unless and until the Owners holding such larger percentage of the vote in the Association execute said amending instrument. All persons or entities who own or hereafter acquire any interest in the Property shall be bound to abide by any amendment to these Bylaws, and it shall be such owner's obligation to ensure that there exist no amendments to the Bylaws which modify the terms herein. No amendment to these Bylaws shall be adopted or passed which shall impair or prejudice the rights of Declarant provided for in the Condominium Documents, without the consent of Declarant. Notwithstanding the foregoing, any amendment which would have the effect of prohibiting a use of a Flex Unit which would otherwise be permitted prior to such amendment, or which would materially and negatively impact such use, shall require the written consent of the Owner of the Flex Unit and its respective Mortgagee.

**Section 10**

**Miscellaneous**

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

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

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

Section 10.4 Nonprofit Corporation: No part of the Association's assets or net income shall inure to the benefit of any of the Members, the officers of the Association, or the members of the Executive Board, or any other private individual either during its existence or upon dissolution except as reasonable compensation paid or distributions made in carrying out its

declared nonprofit purposes as set forth in the Articles of Incorporation of the Association and these Bylaws.

**EXHIBIT D**

**SCHEDULE OF ALLOCATED PARKING SPACES**

<u>Unit</u>	<u>Allocated Parking Spaces</u>
1101	--
2201	3, 54
2202	To be allocated a space by Declarant subsequent to recordation of this Declaration as per Section 5.8 of the Declaration.
2203	22
2204	23
2205	24
2206	25
2207	To be allocated a space by Declarant subsequent to recordation of this Declaration as per Section 5.8 of the Declaration.
2208	26
2209	4, 19
2210	28
2211	16, 27
2212	5, 20
2213	21
3301	To be allocated a space by Declarant subsequent to recordation of this Declaration as per Section 5.8 of the Declaration.
3302	8, 39
3303	9, 40
3304	35
3305	34
3306	31
3307	7, 50
3308	32
3309	10, 38
3310	30
3311	33
3312	To be allocated a space by Declarant subsequent to recordation of this Declaration as per Section 5.8 of the Declaration.
3313	36
4401	12, 53
4402	14, 55
4403	15, 48
4404	46
4405	45
4406	44
4407	13, 52
4408	43



4409	56
4410	41
4411	42
4412	47
4413	57, 58

Unallocated spaces to be allocated by Declarant pursuant to Section 5.8 of the Declaration:

1, 2, 6, 11, 17, 29, 37, 49, 51,

4894-4057-2194, v. 1