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STATE OF NORTH CAROLINA  
  
 COUNTY OF BURKE

DECLARATION OF CONDOMINIUM  
 FOR  
 400 UNION SQUARE CONDOMINIUM

THIS DECLARATION OF CONDOMINIUM FOR 400 UNION SQUARE CONDOMINIUM (the "Declaration") is made and entered into this 20th day of SEPTEMBER 2005 by The Downtown Group II, LLC, a North Carolina limited liability company ("Declarant"). Declarant is the owner and developer of that certain real property located in the City of Morganton, Burke County, North Carolina and more particularly described on Exhibit A attached hereto and incorporated hereby by reference (the "Property"), which Property is being developed by Declarant as a condominium known as 400 UNION SQUARE CONDOMINIUM.

WHEREAS, Declarant desires to create a "Condominium" and to divide the Property and the Building into "Units" as defined under the North Carolina Condominium Act, and to sell and convey the Units, subject to the covenants and restrictions herein reserved for the benefit of Declarant, its successors and assigns; and

WHEREAS, Declarant deems it desirable in order to insure the efficient preservation, protection and enhancement of the values in 400 UNION SQUARE CONDOMINIUM and the residents' and owners' enjoyment of the specific rights, privileges and easements in the Units and the Common Elements that an organization be created to which will be delegated and assigned the powers of maintaining Common Elements, administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter imposed; and

NOW THEREFORE, Declarant does hereby submit the Property and the improvements located thereon, to condominium ownership under the provisions of Chapter 47C of the General Statutes of North Carolina as hereinafter provided.

1. DEFINITIONS. Any terms used herein which are defined in N.C.G.S. § 47C-1-103 shall have the meanings ascribed to them in said statute where the sense requires. In addition, the following terms shall have the following definitions throughout this Declaration:

1.1. "Act" shall mean the North Carolina Condominium Act as contained in Chapter 47C of the North Carolina General Statutes.

1.2. "Architectural Committee" shall mean and refer to the committee appointed by the Executive Board to oversee the development and enforcement of architectural control standards and restrictions with respect to the Property.

1.3. "Amenities" means the facilities, if any, constructed, erected or installed on the Common Elements.

1.4. "Association" shall mean 400 Union Square Condominium Association, Inc., its successors and assigns, the Bylaws and Articles of Incorporation thereof are attached as Exhibits B and C.

1.5. "Building" means any building on the Land as more particularly described in paragraph 3 below.

1.6. "Common Elements" shall mean all portions of the Condominium (including the Limited Common Elements) other than the Units.

1.7. "Common Expenses" means:

- A. All sums lawfully assessed by the Association against its Members;
- B. Expenses of administration, lighting, landscaping, maintenance, repair or replacement of the Common Elements;
- C. Expenses declared to be Common Expenses by the provisions of this Declaration or the ByLaws;
- D. Expenses agreed by the Members to be Common Expenses of the Association;
- E. Hazard, liability or such other insurance premiums as the Declaration or the ByLaws may require the Association to purchase;
- F. Ad valorem taxes and public assessment charges lawfully levied against Common Elements; and
- G. Accounting, legal and other professional services, including professional management, retained by the Association; and
- H. Unpaid assessments resulting from the purchase of a Unit at a foreclosure sale (such assessment shall be collectible from all members of the Association, including the purchaser at the foreclosure sale, his successors and assigns).

1.8. "Common Expense Liability" means the liability for Common Expenses allocated to each Unit as permitted by the Act, the Declaration or otherwise by law.

1.9. "Condominium" shall mean 400 Union Square Condominium and shall have the same meaning as set forth in N. C. General Statutes Section 47C-1-103(7).

1.10. "Declaration" means this Declaration of Covenants, Conditions and Restrictions.

1.11. "Director" means any person elected or appointed to the Executive Board.

1.12. "Executive Board" means those persons elected or appointed and acting collectively as the Directors of the Association.

1.13. "Limited Common Elements" shall mean those portions of the Common Elements allocated by this Declaration, the Plans or by operation of Section 47C-2-102(2) or (4) of the Act for the exclusive use of at least one but fewer than all of the Units including but not limited to, any balcony, porch or patio appurtenant to a Unit and any attic storage areas appurtenant to a Unit. That portion of the property upon which heating and air conditioning equipment serving a Unit is located shall constitute a Limited Common Element allocated specifically to the Unit served by such equipment.

1.14. "Unit" shall mean any physical portion of the Property within the Condominium designated for separate ownership or occupancy by a Unit Owner.

1.15. "Unit Owner" or "Owner" shall mean the record owner, whether one or more persons or entities, of a fee simple title to any Unit which is a part of the Condominium, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation. All Unit Owners shall be Members, as that term is defined herein, and the terms Unit Owner, Owner and Member may be used hereafter interchangeably where the sense requires.

1.16. "Member" shall mean and refer to every person or entity who holds membership in the Association.

1.17. "Person" means any individual, corporation, partnership, association, trustee, or other legal entity.

1.18. "Special Declarant Rights" shall have the same meaning as defined in the Act, and, without limiting the foregoing, shall include those rights reserved unto the Declarant under this Declaration, the Association's Articles of Incorporation, the Association's ByLaws, and the Development Rights set forth in Section 28, all of which must be exercised within five (5) years of the date of the recording of this Declaration.

2. ESTABLISHMENT OF CONDOMINIUM. Declarant does hereby submit the Property, more particularly described on Exhibit "A", attached hereto and incorporated herein by reference, and the improvements located thereon, to condominium ownership under the provisions of Chapter 47C of the General Statutes of North Carolina (Condominium Act), and hereby declares the same to be a condominium to be known and identified as 400 UNION SQUARE CONDOMINIUM which presently consists of nineteen (19) units and their supporting facilities and other appurtenant improvements. The

maximum number of units of the Condominium which the Declarant may create at any time is twenty six (26) units. As stated in Section 28 below, the Declarant reserves the right to annex additional real estate to the Condominium and the create an additional seven (7) units in a third building ("Building 2").

In addition, in order to facilitate the operation and administration of all phases of the condominium under the Common Plan, there shall be formed a non-profit corporation known as 400 UNION SQUARE CONDOMINIUM ASSOCIATION, INC. (herein the "Association"), which shall have the general authority and responsibility for the operation and administration of the Condominium. The authority and responsibility of 400 UNION SQUARE CONDOMINIUM ASSOCIATION, INC shall be as described in this Declaration, and its Articles of Incorporation and Bylaws.

3. GENERAL DESCRIPTION OF CONDOMINIUM. 400 Union Square Condominium presently consists of two (2) buildings ("Building 1A" and "Building 1B") containing a total of nineteen (19) Units. Filed simultaneously herewith and expressly made a part hereof as Unit Ownership File No. \_\_\_\_\_, Page \_\_\_\_\_ (herein "Unit Ownership File"), consisting of five ( 5 ) pages, is a survey of the land and graphic descriptions and plans of the improvements constituting the Condominium, identifying the Units and Common Elements, as said terms are herein defined, and their respective locations and approximate dimensions. Each Unit is identified by specific numerical designation on said Unit Ownership File, and no Unit bears the same designation as any other Unit. If and when this Declaration is amended to add additional phases, if any, additional surveys and description of improvements will be filed as a part of said amendment.

4. DESCRIPTION OF UNITS, LIMITED COMMON ELEMENTS.

A. Each Unit shall comprise the separate numerically identified Unit which are designated in said Unit Ownership File (and any subsequent addition). The boundaries of each Unit, both as to vertical and horizontal planes, as shown on the Plans, are the undecorated surfaces of the perimeter walls, exterior doors and exterior windows facing the interior of the Unit, the undecorated surfaces of the ceiling facing the interior of the Unit, and the topmost surfaces of the sub flooring, and include the decoration on all such interior and topmost surfaces, including, without limitation, all paneling, tiles, wallpaper, paint, finished flooring and any other materials constituting any part of the decorated surfaces thereof, and also includes all spaces, interior partitions and other fixtures and improvements within such partitions and other fixtures and improvements within such boundaries. Also included as a part of the Unit shall be those portions of the heating and air conditioning system for the Unit which are located within the perimeter walls of tile Unit and those portions of the heating and air conditioning system located in the Common Elements, wherever located. The decoration and painting of the exterior surface of doors and window frames shall be the responsibility of the Association, as herein defined.

Each Unit shall be conveyed and treated as an individual property capable of independent use and fee simple ownership, and the Unit Owner shall also own, as an appurtenance to the ownership of each said Unit, an undivided interest in the Common Elements. The undivided interest, stated as percentages, in the Common Elements which are appurtenant to each Unit shall be as set forth in

Exhibit D attached hereto and made a part hereof. The Allocated Interests in the Common Element have been determined by Declarant based upon a ratio formulated upon the approximate relation that the square footage of each Unit at the date on which the Unit is submitted to the provisions of the Condominium Act bears to the then aggregate square footage of all of the Units having an interest in the Common Elements. For the purpose of the allocations set forth herein, the square footage of each Unit and the aggregate square footage of all the Units have or will be determined by the Declarant and are binding upon all Unit Owners. The interest of each owner in the Common Elements, having been determined by the Declarant, is binding upon all Unit Owners. If the Declarant exercises its development rights to add units to the Condominium, the allocated interests shall be reallocated among all the then existing units based on the same formula as set forth above.

- B. The Limited Common Elements are as defined in Paragraph 1.13 above and N.C.G.S. §47C-2-102(2) and §47C-2-102(4) and include: (a) all portions of the hot water, heating and air conditioning systems for any Unit which are located within and outside the perimeter walls of any Unit individual heating and air conditioning units; and (b) the patio or terrace area appurtenant to Units on the first floor, and the balconies appurtenant Units on the second and third floors being allocated exclusively to each Unit and such areas as are more fully designated on the Unit Ownership File. References herein to Common Elements shall include Limited Common Elements, unless the context clearly indicates otherwise. Each Unit Owner is hereby granted an exclusive and irrevocable license to use and occupy the Limited Common Elements associated with and/or assigned to such Unit Owner's Unit.

5. **ALTERATION OF UNITS.** No Unit may be divided or subdivided into a smaller Unit or Units than as shown in the Unit Ownership File. However, subject to the provisions of the Bylaws, a Unit may be altered pursuant to the provisions of Sections 47C-2-111 and 47C-2-112 of the Condominium Act. The undivided interest in the Common Elements declared to be an appurtenance to each Unit shall not be conveyed, devised, encumbered or otherwise dealt with separately from said Unit, and the undivided interest in Common Elements appurtenant to each Unit shall not be deemed, conveyed, devised, encumbered or otherwise included with the Unit, even though such undivided interest is 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 a Unit, shall be null and void insofar as it purports to affect any interest in a Unit and its appurtenant undivided interest in Common Elements, unless it purports to convey, devise, or encumber the entire Unit. Any instrument conveying, devising, or encumbering any Unit which describes said Unit by the numerical designation assigned thereto in the Unit Ownership File shall be construed to affect the entire Unit and its appurtenant undivided interest in the Common Elements. No limitation is placed on the ownership of any Unit by any person as tenants in common, joint tenants, or as tenants by the entirety.

6. **THE CONDOMINIUM SUBJECT TO RESTRICTIONS.** The Units, Common Elements and Limited Common Areas are hereby declared to be subject to the restrictions, easements, conditions and covenants prescribed and established herein governing the use of said Units, Common Elements and Limited Common Areas and setting forth the obligations and responsibilities incident to ownership of

each Unit and its appurtenant undivided interest in the Common Elements, and said Units, Common Elements and Limited Common Areas are further declared to be subject to the restrictions, easements, conditions, and limitations now of record affecting the land and improvements of the Condominium, including but not limited to the Master Declarations of Covenants, Conditions and Restrictions for 400 Union Square.

The Association shall have the right to grant permits, licenses, and easements over the Common Elements for utilities, roads, and other purposes necessary or useful for the proper maintenance or operation of the Condominium.

7. PERPETUAL NON-EXCLUSIVE EASEMENT IN COMMON ELEMENTS. The Common Elements are hereby declared to be subject to a perpetual nonexclusive easement in favor of all of the Unit Owners for their use and the use of their immediate families, guests and invitees, for all proper purposes, (including the right of ingress and egress to his or her Unit) and for the furnishing of services and facilities for which they are intended and for the enjoyment of the Unit Owners. Notwithstanding the foregoing, the Association, hereinafter defined, shall have the exclusive right to establish the rules and regulations pursuant to which the Unit Owner, his family, guests and invitees, may be entitled to use the Common Elements.

8. EASEMENT FOR UNINTENTIONAL AND NON-NEGLIGENT ENCROACHMENTS. In the event that any Unit shall encroach upon any Common Elements or any other Unit for any reason not caused by the purposeful or negligent act of the Unit Owner, or agents of such Owners, then an easement appurtenant to such Unit for as long as such encroachment shall exist for the continuance of such encroachment upon the Common Elements or upon a Unit for as long as such encroachment shall naturally exist; and, in the event that any portion of the Common Elements shall encroach upon any Unit, then an easement shall exist for the continuance of such encroachment of the Common Elements upon any Unit for so long as such encroachment shall naturally exist. If any Unit or Common Elements shall be partially or totally destroyed as a result of fire or other casualty, or as a result of condemnation or eminent domain proceedings, and if, upon reconstruction of such Unit and/or Common Elements in accordance with Article 21 hereof, there exist encroachments of portions of the Common Elements upon any Unit, or of any Condominium upon any other Unit or upon any portion of the Common Elements, then such encroachments shall be permitted and a valid easement for the maintenance thereof shall exist so long as such encroachments shall naturally remain.

9. RESTRAINT UPON SEPARATION AND PARTITION OF COMMON ELEMENTS. Recognizing that the proper use of a Unit by an Owner or Owners is dependent upon the use and enjoyment of the Common Elements, in common with the Owners of all other Units, and that it is in the interest of all Owners that the ownership of the Common Elements be retained in common by the Owners, it is hereby declared that the proportional undivided interest in the Common Elements appurtenant to each Unit shall remain undivided and no Unit Owner shall bring or have any right to bring any action for partition or division.

10. ADMINISTRATION OF THE CONDOMINIUM BY THE ASSOCIATION. To efficiently and effectively provide for the administration of the Condominium by the Unit Owners the Association shall administer the operation and management of the Condominium and undertake and perform all acts and duties incident thereto in accordance with the terms of its Articles of Incorporation and Bylaws. A true copy of said Bylaws and Articles are annexed hereto and expressly made a part hereof as Exhibits "B" and "C" respectively. The Owner or Owners of each Unit shall automatically become

members of the Association upon acquiring an ownership interest in title to any Unit and its appurtenant undivided interest in Common Elements and such membership shall terminate automatically upon the Owner or Owners being divested of such ownership interest in the title to such Unit, regardless of how such ownership may be divested. No Person, firm or corporation holding any lien, mortgage or other encumbrance upon any Unit shall be entitled, by virtue of such lien, mortgage or other encumbrance, to membership in the Association or to any of the rights or privileges of such membership. In the administration of the operation and management of the Condominium, the Association is hereby granted the authority and power to enforce the provisions of this Declaration, to levy and to collect assessments in the manner hereinafter provided, and to adopt, promulgate and enforce such rules and regulations governing the use of the Units and Common Elements as its Executive Board may deem to be in its best interest.

11. RESTRICTIONS ON USE, OCCUPANCY, AND ALIENATION..

- A. Units located on the second floor of Buildings No.'s 1A and 1B and on the third floor of Building No. 2 are hereby restricted to single family residential use by its Owner, his immediate family, guests, invitees and lessees ("Residential Units"). With the exception of a Lender in possession of a Unit following a default in a first deed of trust, a foreclosure proceeding or any deed in lieu of foreclosure, no Unit Owner shall lease his Unit for transient or hotel purposes.
  
- B. Units located on the first floor of Building No.'s 1A and 1B and on the second floor of Building No. 2 ("Commercial Units") shall be used only for any of the following general business purposes as defined in the zoning regulations for the City of Morganton applicable to the Property; provided however that any change from the initial use which an Owner, tenant of an Owner, or other occupant makes of a Commercial Unit shall not be changed without the approval of the Association, which approval shall not unreasonably be withheld, and the approval of the City of Morganton.

Associations or  
Organizations; social

Dance studios & schools,  
including aerobics

Churches, synagogues  
& other associated  
activities

Day care centers, (6 or  
more attendees)

Governmental offices  
& facilities not requiring  
a specific location

Governmental facilities

requiring a specific location

Museums or art  
galleries

Philanthropic institutions

Post offices

Accounting, auditing or  
bookkeeping

Administrative or  
management services

Advertising agencies or representatives

Agencies & offices rendering  
specialized services not  
involving retail trade such as  
real estate, insurance,  
advertising, architecture,  
engineering, & accounting  
and not listed elsewhere

Banking, including loan  
offices & investment houses

Barber and beauty shops

Chiropractors' offices

Clothing alterations or  
repairs

Computer maintenance &  
repairs

Contractor's offices  
(no storage)

Employment agencies,  
personnel agencies

Finance or loan offices

Fraternal Organizations

Insurance agencies

Law offices

Locksmith shops,  
including repair

Motion picture  
productions

Office not classified  
elsewhere; where no  
retail business is  
conducted

Photocopying &  
duplicating services

Photography studio

Picture framing shop

Psychologists' offices

Real estate offices

Rehabilitation or  
counseling services

Research, development,  
or testing services

Shoe repair shops

Stock, security or  
commodity brokers

Tanning salons

Travel agencies

Utility company offices

Watch or jewelry  
repair shops

Antique shops

Apparel sales

Art studios & galleries

Arts & craft sales

Bars closing no later than 10:00 p.m.

Bicycles sales & repair

Book stores

Camera & photography,  
sales & service

Catalogue stores

Clothing shops

Computer sales

Dairy products stores

Department & variety  
stores

Drug stores &  
pharmacies

Electronic product sales

Fabric or piece goods  
stores

Floor covering, drapery  
or upholstery

Florist shop

Furniture sales

Garden centers or  
retail nurseries

Gift, novelty &  
souvenir shop

Grocery store

Hardware store

Hobby & toy stores

Home furnishings

Jewelry sales & repair

Leather goods sales

Lighting goods sales

Liquor stores

Music stores including  
instrument dealers &  
repairs

Newsstands

Office supply store

Optical goods sales

Paint, glass &  
wallpaper stores

Printing & publishing

Record & tape stores

Restaurants

Retail sales & service  
where not classified  
elsewhere, and where  
all retail sales & services  
are conducted within an  
enclosed building

Shoe sales and/or repair

Sporting goods stores

Video tape rental & sales

Woodworking shops,

retail

Specifically, and without limitation of the foregoing, under no circumstances shall any Unit be used for:

Adult oriented businesses.

- C. Units located on the first floor of Building No. 2 shall be used only for storage.
- D. There shall be no obstruction or alteration of the Common Elements.
- E. Nothing shall be done or kept in any Unit or in the Common Elements which will increase the rate of insurance on the Common Elements without prior written consent of the Executive Board. No Owner shall permit anything to be done or kept in his Unit or in the Common Elements which would result in the cancellation of insurance on any Unit or any part of the Common Elements, or which would be in violation of any law or for any immoral or improper purpose, No waste will be committed to the Common Elements.
- F. No sign of any kind shall be displayed to the public view from any Residential Unit except that a Unit Owner may place one "For Sale" sign or one "For Rent" sign no larger than two feet by three feet in a window of the Unit. No sign of any kind shall be displayed to the public view from any Commercial Unit except that a Unit Owner of any Commercial Unit or a tenant or occupant thereof may install or affix a sign or signs on the exterior of the Commercial Unit or display a sign or signs to the public view from such Commercial Unit identifying the name of the business conducted therein provided such signage is in compliance with all applicable zoning regulations and approved by the Executive Board. Provided, however, Declarant shall be exempt from this restriction.
- G. No noxious, offensive or illegal activity shall be carried on in any Unit, or in the Common Elements, nor shall anything be done therein which will create loud noises or offensive odors or which will be annoyance, nuisance to or interfere with the quiet enjoyment or comfort of any other Unit Owner or occupant.
- H. Nothing shall be altered or constructed in or removed from the Common Elements, including the Limited Common Elements, except upon the written consent of the Executive Board. The Building and all Common Elements shall at all times be maintained in a first class condition, and the external appearance of the Building shall not be altered without Declarant's prior written approval.
- I. No Residential Unit shall be rented by the Unit Owner for transient or hotel purposes, which shall be defined as rental for any period less than one (1) year. Other than the foregoing restrictions, the Unit Owners shall have the right to lease their respective Units, provided that said lease is made subject to the covenants and restrictions in this Declaration and Bylaws, and a failure by the Lessee to comply with the terms of these

Documents shall be made a default under the lease. A Unit Owner shall be liable for the defaults of his Lessee under this Declaration and Bylaws or any rules or regulations promulgated thereunder. All leases shall be in writing and the Unit Owner shall promptly provide the Condominium Association with a copy of any lease of this sort.

- J. The use and maintenance of all Common Elements by all Unit Owners, and all other parties authorized to use the same, shall be subject to such rules and regulations as may be prescribed and established by the Association.
- K. No immoral, improper, offensive or unlawful use shall be made of any Unit or of the Common Elements, and all laws, zoning ordinances and regulations of all governmental authorities having jurisdiction of the Condominium shall be observed. No Unit Owner shall permit anything to be done or kept in his Unit, or on the Common Elements, which will increase the rate of insurance on the Condominium or which will interfere with the rights of other occupants of the Condominium or annoy them by unreasonable noises; nor shall any Owner undertake any use which shall constitute a nuisance to any other Unit Owner or which interferes with the peaceful possession and proper use of any other Unit or the Common Elements .
- L. No animals, livestock, or poultry of any kind shall be raised, bred, or kept in any Unit or in the Common Elements except that a reasonable number of domesticated, household pets may be kept, provided they are not maintained for commercial purposes and such animal(s) does/do not constitute a danger, nuisance or disturbance to other Unit Owners. No pets may be permitted to run loose upon the Common Elements. The Executive Board may adopt such other and further rules concerning pets as it deems appropriate.
- M. No Unit may be divided or subdivided into a smaller Unit or Units than as shown in the nit Ownership File. However, subject to the provisions of the Bylaws, a Unit may be altered pursuant to the provisions of Sections 47C- 2-111 and 47C-2-112 of the Condominium Act.

12. **RIGHT OF ENTRY INTO UNITS IN EMERGENCIES AND FOR MAINTENANCE OF COMMON ELEMENTS.** In case of any emergency originating in or threatening any Unit, regardless of whether the Owner is present at the time of such emergency, the Board Directors of the Association, or any other person authorized by either, shall have the right to enter such Unit for the purpose of remedying or abating the cause of such emergency, and such right of entry shall be immediate.

Whenever it may be necessary to enter any Unit in order to perform any maintenance, alteration or repair to any portion of the Common Elements, the Unit Owner shall permit other Owners or their representatives, or an agent of the Association, to enter such Unit for such purpose, provided that the entry shall be made only at reasonable times and with reasonable advance notice.

13. **LIMITATION UPON RIGHT OF OWNERS TO ALTER AND MODIFY COMMON ELEMENTS.** No Owner shall cause any improvements or changes to be made on the exterior of the Condominium (including painting or other decoration, or the installation of electrical wiring, television or radio antennae or any other objects or machines which may protrude through the walls or roof of the

Condominium) or in any manner alter the appearance of the exterior portion of any building without the written consent of the Executive Board or the Architectural Committee being first obtained. No Unit Owner shall cause any object to be fixed to the Common Elements or to any Limited Common Elements or in any manner change the appearance of the Common Elements or Limited Common Elements without the written consent of the Association being first obtained. This Section shall not apply to activities of the Declarant.

14. **RIGHT OF ASSOCIATION TO ALTER AND IMPROVE COMMON ELEMENTS AND ASSESSMENT THEREFOR.** The Association shall have the right to make such alterations or improvements to the Common Elements which do not prejudice the rights of the Unit Owner in the use and enjoyment of his Unit, provided the making of such alterations and improvements are approved by the Architectural Committee of the Association and their costs shall be common expenses to be assessed and collected from all of the Unit Owners. However, where any alterations and improvements are exclusively or substantially for the benefit of the Owner or Owners of certain Unit or Units requesting them, then the cost of such alterations or improvements shall be assessed against and collected solely from the Owner or Owners of the Unit or Units exclusively or substantially benefited, the assessment to be levied in such proportion as may be determined by the Executive Board of the Association.

15. **MAINTENANCE AND REPAIR BY UNIT OWNERS.** Every Owner shall perform promptly all maintenance and repair work within his Unit which, if omitted, would affect the Condominium, either in its entirety or in a part belonging to other Owners, every Owner being expressly responsible for the damages and liability which his failure to do so may engender. The Unit Owner shall be liable and responsible for the maintenance, repair and replacement of all heating and air conditioning equipment regardless of where located, stoves, refrigerators, fans or other appliances or equipment, including any fixtures and/or their connections required to provide water, light, power, telephone, sewage and sanitary service to his Unit. Such Owner shall further be responsible and liable for the maintenance, repair and replacement of the interior surfaces of all walls, ceilings and floors within his Unit, including painting, decorating and furnishings, and all other accessories which such Owner may desire to place or maintain in his Unit. Whenever the maintenance, repair and replacement of any item for which the Unit Owner is obligated to maintain, replace or repair at his own expense is occasioned by any loss or damage which may be covered by any insurance maintained in force by the Association, the proceeds of the insurance received by the Association shall be used for the purpose of making such maintenance, repair or replacement except that the Owner of such Unit shall be, in said instance, required to pay such portion of the costs of such maintenance, repair and replacement as shall, by reason of the applicability of my deductibility provision of such insurance, exceed the amount of the insurance proceeds applicable to such maintenance, repair or replacement. The Unit Owner who has exclusive use of any Limited Common Area shall maintain such at his own expense. All doors, window frames, panes and screens are a part of the respective Units and shall be maintained by the respective Unit Owners.

16. **MAINTENANCE AND REPAIR OF COMMON ELEMENTS BY THE ASSOCIATION.** The Association, at its expense, shall be responsible for the maintenance, repair and replacement of all of the Common Elements, including those portions thereof which contribute to the support of the buildings, and all conduits, ducts, plumbing, wiring and other facilities located in the Common Elements for the furnishing of utility, heating and other services to the Units and said Common Elements, and should any incidental damage be caused to any Unit by virtue of any work which may be done or caused to be done by the Association in the maintenance, repair or replacement of any Common Elements, the Association shall, at its expense, repair such incidental damage. Whenever the maintenance, repair and replacement of any item for which the Association is obligated to maintain, replace or repair at its expense is occasioned

by any act of a Unit Owner, his immediate family, guests, or invitees, and such loss or damage may be covered by any insurance maintained in force by the Association, the proceeds of insurance received by the Association shall be used for the purpose of making such maintenance, repair or replacement, except that the Unit Owner who is responsible for the act causing the damage (whether done by himself or by his family, guests or invitees) shall be required to pay such portion of the cost of such maintenance, repair and replacement as shall, by reason of the applicability of any deductibility provision of such insurance, exceed the amount of the insurance proceeds applicable to such maintenance, repair or replacement. The decoration and painting of the exterior surface of doors and window frames shall be the responsibility of the Association, as herein defined.

17. **AUTHORITY TO PURCHASE INSURANCE.** Insurance policies upon the Common Elements (except title insurance) shall be purchased by the Association in the name of the Executive Board of the Association, as Trustees for the Unit Owners, for the benefit of the Unit Owners and their respective mortgagees, as their interests may appear, and shall provide for the issuance of certificate or mortgage endorsements to the holders of first mortgages on the Units or any of them and, if the companies writing such policies will agree, the policies shall provide that the insurer waives its rights of subrogation as to any claims against Unit Owners, the Association and their respective servants, agents and guests. Each Unit Owner may obtain insurance, at his own expense, affording coverage upon his Unit, his personal Elements and for his personal liability and as may be permitted or required by law, but all such insurance shall contain the same waiver of subrogation referred to above, if available.

18. **INSURANCE COVERAGE TO BE MAINTAINED: USE AND DISTRIBUTION OF INSURANCE PROCEEDS.**

A. The following insurance coverage shall be maintained in full force and effect by the Association covering the operation and management of the Units and Common Elements:

1. Casualty insurance covering the Units, the Common Elements, all improvements upon the land and all personal property subject to this Declaration and any additions added by amendment (except improvements and betterments installed by a Unit Owner and such personal property as may be owned by the Unit Owners) shall be procured in an amount at least equal to the current replacement cost thereof (exclusive of excavation, foundations, streets and parking facilities) as determined annually by the insurance company affording such coverage; and provided that such policies may be written on a co-insurance basis, if not less than one hundred (100%) percent. If co-insurance is purchased by the Association, an insurance policy with an agreed amount endorsement or its equivalent will be obtained. Such coverage shall afford protection against: (a) loss or damage by fire and other hazards covered by the standard extended coverage endorsement; (b) such other risks as from time to time customarily shall be covered with respect to buildings similar in construction, location and use, including, but not limited to, vandalism and malicious mischief.
2. Public liability and Common Elements damage insurance in such amounts and in such forms as shall be required by the Association, including legal liability, hired automobile, non-owned automobile and off-premises

employee coverages. Such public liability insurance shall be in amounts not less than \$1,000,000.00 for bodily injury, including deaths of persons, and Elements damage arising out of a single occurrence.

3. All liability insurance shall contain cross- liability endorsements to cover liabilities of the Unit Owners as a group to a Unit Owner.
  4. Fidelity Coverage protecting against dishonest acts by Association officers, directors, trustees, and employees and all others who are responsible for handling funds of the Association in the amount of three months' assessments, plus the Association's reserve funds. The Fidelity Insurance Coverage shall name the Association as an obligee thereunder and contain waivers by the issuers of the bonds of all defenses based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression.
  5. The Association may procure such other insurance as it may from time to time deem appropriate to protect the Association or the Unit Owners.
- B. Premiums upon insurance policies purchased by the Association shall be paid by said Association and charged as Common Expense.
- C. All insurance policies purchased by the Association shall be for the benefit of the Association and the Unit Owners and their mortgagees, as their respective interests may appear, and shall provide that all proceeds payable as a result of casualty losses shall be paid to the Association or insurance trustee. Such policies may name as an insured, on behalf of the Association, the Association's authorized representative including any trustee with whom such Association may enter into any Insurance Trust Agreement or any successor to such trustee (each of whom is referred to herein as the "Insurance Trustee"), who may be paid by the Association as a common expense and who shall have exclusive authority to negotiate losses and receive and disburse insurance proceeds under any policy providing such Elements or liability insurance upon such terms as the Executive Board of the Association shall determine consistent with North Carolina law and this Declaration.
- D. Each Unit Owner, at his or her expense, may, if he or she desires, keep in force comprehensive personal liability insurance covering liability for damages to person or Elements of others located within such Owner's Unit, or another Unit, or upon the Common Elements in such amounts as the Executive Board shall, from time to time, determine, but in no case less than \$100,000.00 for each occurrence. This provision may be waived by each individual Unit Owner, if he or she desires.

19. RECONSTRUCTION OR REPAIR OF CASUALTY DAMAGE; DAMAGE TO COMMON ELEMENTS; DAMAGE TO UNITS.

- A. If a Unit or any part of the Common Elements subject to this Declaration or any improvement thereupon shall be damaged or destroyed, the same shall be repaired or replaced, and proceeds of insurance shall be used and applied in accordance with the provisions of Section 3-113(h) and (i) of Chapter 47C of the North Carolina General Statutes.
- B. Each Unit Owner delegates to the Executive Board of the Association or Insurance Trustee his right to adjust with insurance companies all losses under policies purchased by the Association, except in any case where the damage is restricted to one Unit.

20. ASSOCIATION TO MAINTAIN REGISTER OF OWNERS AND MORTGAGEES. The Association shall maintain a Register setting forth the names of the Owners of all of the Units. In the event of the transfer of any Unit to a third party, the transferee shall notify the Association in writing of his interest in such Unit, together with the recording information necessary to identify the instrument by which the transferee has acquired his interest. The Unit Owner shall also notify the Association of the parties holding any mortgage on any Unit, the amount of such mortgage and the recording information necessary to identify the mortgage. The holder of any mortgage upon any Unit may notify the Association of the existence of any mortgage and the Association shall register in its records all pertinent information relating thereto.

21. ASSESSMENTS: LIABILITY, LIEN AND ENFORCEMENT. The Association is given the authority to administer the operation and management of the Condominium as being in the best interest of all Unit Owners. To properly administer the operation and management of the Condominium, the Association will incur for the mutual benefit of all of the Unit Owners, costs and expenses (herein "common expense"). To provide the funds necessary for such proper operation, management and capital improvement, the Association has been granted the right to make, levy and collect assessments against the Unit Owners and their Units. In furtherance thereof, the following provisions shall be operative and binding upon the all Unit Owners:

- A. All assessments levied against the Unit Owners and their Units shall be uniform, and unless specifically otherwise provided for herein, all assessments made by the Association shall be in such an amount that any assessment levied against a Unit Owner and his Condominium shall bear the same ratio to the total assessment made against all Unit Owners and their Units as the undivided interest in Common Elements appurtenant to each Unit bears to the total undivided interest in Common Elements appurtenant to all Units. Should the Association be the Unit Owner or Units, the assessment which would otherwise be due and payable to the Association by such Unit Owner, reduced by the amount of income which may be derived from the leasing of such Unit or Units by the Association, shall be apportioned and assessment therefore levied ratably among the all Unit Owners which are not owned by the Association, based upon their proportionate interests in Common Elements exclusive of the interests therein appurtenant to any Unit or Units owned by the Association.

- B. Assessments provided for herein shall be payable in monthly installments. Such assessments shall commence upon conveyance of the Unit.
- C. The Executive Board of the Association shall establish an Annual Budget in advance for each fiscal year (which shall correspond to the calendar year, except that in the initial year of operation of the Condominium, the fiscal year shall commence with the closing of the sale of the first Unit). Such budget shall project all expenses for the forthcoming year which may be required for the proper operation, management and maintenance of the Condominium, including a reasonable allowance for contingencies and reserves, such budget to take into account anticipated income which is to be applied in reduction of the amounts required to be collected as an assessment each year. In accordance with paragraph "D" hereof, the Executive Board shall keep items relating to operation and maintenance separate from items relating to capital improvements. Upon adoption of such Annual Budget by the Executive Board of the Association, copies shall be delivered within thirty (30) days to each Unit Owner; an Association meeting shall be called to consider the budget in accordance with Section 3-103(c) of Chapter 47C of the North Carolina General Statutes; and the assessment for said year shall be established based upon such budget, unless at such meeting the owners of at least 75% of the units reject such budget. The non-delivery of a copy of it to each Owner shall not affect the liability of any Owner for such assessment. Two-thirds of the Owners must approve an increase in the yearly assessment.
- D. The Executive Board of the Association, in establishing the Annual Budget for operation, management and maintenance of the Condominium, shall designate a sum to be collected and maintained as a reserve fund for replacement of and capital improvements to the Common Elements (herein "Capital Improvement Fund"), which shall be for the purpose of enabling the Association to replace structural elements and mechanical equipment constituting a part of the Common Elements and the replacement of personal property constituting a portion of the Common Elements held for the joint use and benefit of the Unit Owners. The amount to be allocated to the Capital Improvement Fund may be established by the Executive Board to collect and maintain a sum reasonably necessary to anticipate the need for replacement of Common Elements. The amount collected for the

Capital Improvement Fund shall be maintained in a separate account by the Association and shall be used only to make capital improvements to Common Elements. Any interest earned on the Capital Improvement Fund may be expended for current operation and maintenance.

The Declarant shall establish a working capital fund for the initial months of operation of each condominium phase in an amount equal to two months' estimated assessment for common area repair and maintenance times the number of units within the phase. The purpose of this fund is to insure that the Association board will have cash available to meet unforeseen expenditures or services deemed necessary or desirable for the Board. Each unit's share of this fund shall be collected from the purchaser and transferred to the Association at the time of closing of the sale of each unit and maintained in a segregated account for the use and benefit of the Association. Amounts paid into this fund shall not be considered as advance payment of regular assessments.

- E. All funds collected by the Association shall be treated as the separate Property of the Association, and such funds may be applied by the Association to the payment of any expense of operating and managing the Condominium, or to the proper undertaking of all acts and duties imposed upon it by this Declaration, the Articles of Incorporation and the Bylaws of the Association. Although all funds and common surplus, including other assets of the Association, and any increments thereto or profits derived therefrom or from the leasing or use of Common Elements, shall be held for the benefit of the members of the Association, no member of the Association shall have the right to assign, hypothecate, pledge or in any manner transfer his membership interest therein, except as an appurtenance to his Unit. When the Unit Owner shall cease to be a member of the Association, the Association shall not be required to account to such Owner for any share of the fund or assets of the Association, or which may have been paid to the Association by such Owner, as all funds which any Owner has paid to the Association shall constitute an asset of the Association which may be used in the operation and management of the Condominium.
- F. Any assessment levied pursuant to these covenants which is not paid on the date when due shall be delinquent and shall, together with such interest thereon and cost of collection thereof, as hereinafter provided, including reasonable attorney's fees, thereupon become a continuing lien which shall bind such lot in the hands of the then Unit Owner, his heirs, devisees, personal representative and assigns. The personal obligation of the then Unit Owner to pay such assessment, however, shall remain his personal obligation and shall not pass to his successors in title unless expressly assumed by them. Interest on delinquent assessments shall be charged at the lesser of one and one-half percent (1.5%) per month or the highest rate permitted by law.

Any assessment not paid within fifteen (15) days after the due date shall be subject to a late charge of Twenty Five and No/100 Dollars (\$25.00) and if not paid within thirty (30) days after the due date shall be subject to an additional late charge of Fifty and No/100 Dollars (\$50.00) or the highest amount permitted by law,

whichever is less; and the Association may bring an action at law against the Unit Owner personally obligated to pay the same, or to foreclose the lien against the Unit as provided in Section 47C-3-116 of the Act and interest, late payment charges, costs and reasonable attorney's fees related to such action or foreclosure shall be added to the amount of such assessment. No Unit Owner may waive or otherwise escape liability for the assessments provided for herein by not using or by abandoning his Unit.

- G. The Owner or Owners of each Unit shall be personally liable, jointly and severally, to the Association for the payment of all assessments, regular or special, which may be levied by the Association against such Unit while such party or parties are Owner or Unit Owner. In the event that any Unit Owner or Owners are in default in payment of any assessment or installment owed to the Association, such Unit Owner or Owners shall be personally liable, jointly and severally, for interest on such delinquent assessment or installment thereof as above provided, and for all costs of collecting such assessment or installment and interest thereon, including reasonable attorney's fees, whether suit be brought or not.
- H. No Unit Owner may exempt himself from liability for any assessment levied against him or his Unit by waiver of the use of enjoyment of any of the Common Elements, or by abandonment of the Unit or in any other way.
- I. Recognizing that proper operation and management of the condominium requires the continuing payment of costs and expenses therefore, and that such proper operation and maintenance results in benefit to all of the Unit Owners, and that the payment of such common expenses represented by the assessments levied and collected by Association is necessary in order to preserve and protect the investment of each unit Owner, the Association is hereby granted a lien upon each Unit and its appurtenant undivided interest in Common Elements, which lien shall secure the funds due for all assessments now or hereafter levied against the Owner of each such Unit, which lien shall also secure all costs and expenses, including a reasonable attorney's fee, which may be incurred by the Association in enforcing this lien upon said Unit. The lien granted to the Association may be foreclosed in the same manner that real estate deeds of trust and mortgages may be foreclosed in the State of North Carolina, and in any suit for the foreclosure of said lien, the Association shall be entitled to reasonable rental from the Unit Owner from the date on which the payment of any assessment or installment thereof became delinquent, and shall be entitled to the appointment of a Receiver for said Unit. The lien granted to the Association shall further secure such advances for taxes, payments on account of superior mortgages, liens or encumbrances which may be required to be advanced by the Association in order to preserve and protect its lien, including interest, at twelve percent (12%) on any such advances so made. All persons who shall acquire any interest in the ownership of any Unit, or who may be given or acquire a mortgage, lien or other encumbrance thereon, are hereby placed on notice of the lien rights granted to the Association and shall acquire such interest in Unit expressly subject to such lien rights,

- I. The lien herein granted to the Association shall be enforceable from the time of recording a claim of lien in the Public Records of Mecklenburg County, North Carolina, which claim shall state the description of the Unit encumbered thereby, the name of the record owner, the amount due and the date when due. The claim of lien shall be recordable any time after default and the lien shall continue in effect until all sums secured by said lien shall have been fully paid. Such claims of lien shall include only assessments which are due and payable when the claim of lien is recorded, plus interest, costs, attorney's fees, advances to pay taxes and prior encumbrances and interest thereon. It shall be signed and verified by an officer or agent of the Association. Upon full payment of all sums, secured by such claim of lien, it shall be satisfied of record.

The lien provided for herein shall be subordinated to the lien of any first mortgage or deed of trust. Any person, firm or corporation acquiring title to any Unit and its appurtenant undivided interest in Common Elements by any foreclosure, deed in lieu of foreclosure or judicial sale shall be liable and obligated only for assessments as shall accrue and become due and payable for said Unit and its appurtenant undivided interest in Common Elements subsequent to the date of acquisition of such title, and it shall not be liable for the payment of any assessments which were in default and delinquent at the time it acquired such title. In the event of the acquisition of title to a Unit by foreclosure, deed in lieu of foreclosure or judicial sale, any assessment which the party so acquiring title shall not be liable shall be absorbed and paid by all Unit Owner as a part of the common expense, although nothing herein contained shall release the party liable for such delinquent assessment from the payment thereof or the enforcement of collection of such payment by means other than foreclosure.

- K. Whenever any Unit may be leased, sold or mortgaged by the Owner thereof, the Association, upon written request of the Unit Owners, shall furnish to the proposed lessee, purchaser or mortgagee a statement verifying the status of payment of any assessment which shall be due and payable to the Association by such Unit. Such statement shall be executed by any officer of the Association and any lessee, purchaser or mortgagee may rely upon such statement in concluding the proposed lease, purchase or mortgage transaction and the Association shall be bound by such statement.

In the event that a Unit is to be leased, sold or mortgaged at the time when payment of any assessment against the Owner or said Unit and such Unit due to the Association shall be in default (whether or not a claim or lien has been recorded by the Association), then the rent, proceeds or such purchase or mortgage proceeds shall be applied by the lessee, purchaser or mortgagee first to the payment of any then delinquent assessment or installments thereof due to the Association before the payment or any rent, proceeds of purchase or mortgage proceeds to the Unit Owner who is responsible for payment of such delinquent assessment.

In any voluntary conveyance of a Unit, the purchaser thereof shall be jointly and severally liable with seller for all unpaid assessments against seller made prior to

the time of such voluntary conveyance, without prejudice to the rights of the purchaser to recover from seller the amounts paid by purchaser therefore .

Institution of a lawsuit to attempt to collect the payment of any delinquent assessment shall not be an election by the Association which shall prevent it from thereafter seeking, by foreclosure action, enforcement of the collection of any sums remaining owing to it, nor shall proceeding by foreclosure to attempt such collection be deemed to be an election precluding the institution of a suit at law to collect any sum then remaining owing to the Association.

22. **COMMON SURPLUS.** "Common Surplus," meaning all funds and other assets or the Association (including excess of receipts of the Association, including but not limited to assessments, rents, profits and revenues from whatever source over amount of the common expense), shall be owned by the All Unit Owner in the same proportion that the undivided interest in Common Elements appurtenant to each Owner's Unit bears to the total of all undivided interest in Common Elements appurtenant to all Units; provided, however, that said common surplus shall be held by the Association in the manner and subject to the terms, provisions and conditions of this Declaration, imposing certain limitations and restrictions upon the use and distribution thereof. Except for distribution of any insurance indemnity herein provided, 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 the then Unit Owners in accordance with their percentage interest in common surplus as declared herein.

23. **TERMINATION.** The Condominium shall be terminated only in strict compliance with Section 2-118 of Chapter 47C of the North Carolina General Statutes.

24. **AMENDMENT OF DECLARATION OF CONDOMINIUM:** This Declaration of Condominium may be amended in the following manner:

- A. The terms and provisions of this Declaration may be amended by the Declarant at any time within five (5) years of the date of recording of this Declaration, without the approval of the Association or any other party, as necessary to exercise the development rights reserved in Section 28 below or if the proposed amendment is required to obtain any approval of HUD, FHA, VA, FNMA or FHLMC.
- B. Subject to the requirements of Subparagraphs A, D and E that certain amendments require Mortgagee or Declarant approval, an amendment to this Declaration of Condominium may be proposed by the Executive Board of the Association acting upon a vote of a majority of the Directors, or by the members of the Association owning a majority of the Units, whether meeting as members or by instrument in writing signed by them. Upon any Amendment to this Declaration being proposed by the Executive Board or members, such proposed Amendment shall be transmitted to the President of the Association, or other officer of the Association in the absence of the President, who shall thereupon call a Special Meeting of the members of the Association for a date not sooner than twenty (20) days nor later than sixty (60) days from receipt by him of the proposed Amendment. It shall be the duty of the Secretary to give to each member written notice of such Special Meeting, stating the time and place, and reciting the proposed Amendment in

reasonably detailed form, which notice shall be mailed not less than ten (10) days nor more than thirty (30) days before the date set for such Special Meeting. If mailed, such notice shall be deemed to be properly given when deposited in the United States Mail addressed to the member at his Post Office address as it appears on the records of the Association, the postage thereon prepaid. Any member may, by written waiver of notice signed by such member, waive such notice, and such waiver, when filed in the records of the Association, whether before or after the holding of the meeting, shall be deemed equivalent to the giving of notice to such member. At the meeting, the Amendment proposed must be approved by an affirmative vote of sixty-seven (67%) percent of the members owning Units in the condominium in order for such Amendment to become effective. Thereupon such Amendment of this Declaration shall be transcribed and certified by the President and Secretary of the Association as having been duly adopted. The original or an executed copy of such Amendment so certified and executed with the same formalities as a deed, shall be recorded in the Mecklenburg Public Registry within twenty (20) days from the date on which the same became effective. At any meeting held to consider such Amendment, the written vote of any member of the Association shall be recognized if such member is not in attendance at such meeting or represented thereat by proxy, provided such written vote is delivered to the Secretary of the Association prior to such meeting or at such meeting.

C. Subject to Sections 4-A, 28 and 24-A, no alteration in the percentage of ownership in Common Elements appurtenant to each Unit, or alteration of the basis for sharing common expenses and other apportionment of assessments which may be levied by the Association in accordance with the provisions hereof, or alterations of basis of ownership of common Surplus, or alteration of voting rights in the Association, shall be made without the prior written consent of all of the All Unit Owners and all of the Lenders holding first mortgages or first deeds of trust on the Units.

D.

1. No alteration, amendment or modification of the rights and privileges granted and reserved hereunder in favor of first mortgage Lenders shall be made without prior written consent of all such Lenders holding mortgages on Units in the Condominium being first had and obtained.

2. With the exception of amendments made pursuant to Section 24-A hereof, or as a result of destruction, damage, or condemnation, or upon termination of the condominium as provided elsewhere herein, in addition to the approval of Unit owners described in Section 24-B above, the prior written approval of representing at least fifty-one percent (51%) of the votes of Units subject to first mortgages held by Eligible Mortgage Holders shall be required to make an amendment of a material nature to this Declaration or the bylaws of the Association. An "Eligible Mortgage Holder" for purposes of this section is limited to any holder of a first mortgage who has requested the Association to notify it of proposed action hereunder which requires the consent of a specified percentage of Eligible Mortgage Holders. A change of the provisions in this Declaration or the Bylaws directly relating to any of the following shall for this purpose be considered material:

- a. Voting rights;
- b. Assessments, assessment liens, or subordination of assessment liens;
- c. Reserves for maintenance, repair, and replacement of the Common Elements;
- d. Responsibility for maintenance and repairs;
- e. Reallocation of interests in the General or Limited Common Elements or rights to their use;
- f. Boundaries of any Unit;
- g. Convertibility of Units into Common Elements or of Common Elements into Units;
- h. Expansion or contraction of the project or the addition, annexation, or withdrawal of Elements to or from the project;
- i. Insurance or Fidelity Bonds;
- j. Leasing of Units;
- k. Imposition of any restrictions on a Unit Owner's right to sell or transfer his or her Unit;
- l. A decision by the Association, to establish self-management when professional management had been required previous by an Eligible Mortgagee;
- m. Any action to terminate the legal status of the Condominium after substantial damage or destruction or condemnation. Provided, however, that any action to terminate the legal status of the condominium for reasons other than substantial damage or destruction or condemnation shall require prior written approval from Eligible Mortgage Holders representing at least sixty-seven percent (67%) of the votes of unit estates that are subject to mortgages held by Eligible Mortgage Holders; or
- n. Any provisions that expressly benefit first mortgages or insurers or guarantors of first mortgages.

- E. No alteration, amendment or modification of the rights and privileges granted and reserved hereunder in favor of Declarant shall be made without the written consent of said party being first had and obtained.

25. **REMEDIES IN EVENT OF DEFAULT.** The Owner or Owners of each Unit shall be governed by and shall comply with the provision of this Declaration and the Articles of Incorporation and Bylaws of the Association, as they may be amended from time to time. A default by the Unit Owner shall entitle the Association or the Owner of other Units to the following relief:

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

- B. Each Unit Owner shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his act, neglect or carelessness, or by that of any member of his family, or his or their guests, employees, agents or lessees, but only to the extent that such expense is not met by the proceeds of insurance carried by the Association. Such liability shall include any increase in fire insurance rates occasioned by use, misuse, occupancy or abandonment of a Unit or its appurtenances. Nothing herein contained, however, shall be construed so as to modify any waiver by insurance companies of rights of subrogation.

- C. In any proceeding arising because of an alleged default by a Unit Owner, the Association shall be entitled to recover the costs of the proceeding and reasonable attorney's fees.

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

- E. All rights, remedies and privileges granted to the Association or a Unit Owner pursuant to any terms, provisions, covenants or conditions of this Declaration or other above-mentioned documents, shall be cumulative, and the exercise of anyone or more shall not constitute an election of remedies, nor shall it preclude the party thus exercising the same from exercising such other and additional rights, remedies or privileges as may be available to such party at law or in equity.

- F. The failure of Declarant to enforce any right, privilege, covenant or condition which may be granted to it by this Declaration or other above-mentioned documents shall constitute a waiver of the right of Declarant to thereafter enforce such right, provision, covenant or condition in the future.

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

26. RIGHTS RESERVED UNTO LENDERS AND INSURERS OR GUARANTORS. As long as any Lender shall hold any first mortgage upon any Unit or Units, or shall be the Unit Owner or Units, such Lender and each insurer or guarantor of such first mortgage shall have the following rights:

A. To timely written notice of a lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association.

B. To examine, upon request and at reasonable times and upon reasonable notice, the books and records of the Association; and to be furnished within a reasonable time at least one copy of the annual Audited Financial Statement and Report of the Association prepared by a Certified Public Accountant designated by the Association, such Financial Statement and Report to be furnished by April 1 of each calendar year.

C. To be given written notice by the Association of any proposed action which requires consent of a specified percentage of first mortgage holders.

D. To be given written notice of any 60 day delinquency in the payment of assessments or charges owed by the Unit Owner of the Unit on which such Lender holds its first mortgage or in the performance of any obligation under this Declaration or the Bylaws of said Unit Owner.

E. To be given written notice of any loss to or taking of: (1) the common elements of the Condominium if such loss or taking exceeds \$10,000.00 or (2) any material damage to the Unit securing its loan.

F. To receive written notice of any condemnation or eminent domain proceeding or proposed acquisition by a condemning authority .

Whenever any Lender, Insurer, or Guarantor desires the provisions of this Article to be applicable to it, it shall serve written notice of such fact upon the Association by Registered Mail or Certified Mail, addressed to the Association and sent to its address stated herein, identifying the Unit or Units upon which any such Lender holds, insures or guarantees any mortgage, or identifying any Units owned by it, together With sufficient facts to identify such mortgage and which notice shall designate a place to which notices are to be given by the Association to such Lender, Insurer or Guarantor.

27. CONDEMNATION. In the event of a taking by eminent domain, or by a conveyance in lieu thereof, of all or any part of the Elements subject to this Declaration or any improvement thereupon, the same shall be used and applied in accordance with Section 1-107 of Chapter 47C of the General Statutes of North Carolina.

28. **DEVELOPMENT RIGHTS.** The Declarant reserves the right to add to the Condominium a portion of that tract of real estate located in the City of Morganton, Burke County, North Carolina, bounded by East Union Street, Church Street, East Meeting Street, and White, said portion selected by the Declarant referred to herein as ("Phase Two"). The Declarant also reserves the right to create out of Phase Two a maximum of seven (7) additional units of the Condominium in one building ("Building 2"), together with additional common elements and limited common elements. The development rights described in this section must be exercised within five (5) years of the date of recording of this Declaration. No other buildings shall be built by Declarant on Phase Two. All improvements to Phase Two shall be substantially completed before Phase Two is added to the condominium.

29. **MISCELLANEOUS.**

A. In the event that any of the terms, provisions or covenants of this Declaration are held to be partially or wholly invalid or unenforceable, such holding shall not affect, alter, modify or impair in any manner any of the other terms, provisions or covenants hereof or the remaining portions of any terms, provisions or covenants held to be partially invalid or unenforceable.

B. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan of Condominium ownership. Throughout this Declaration wherever appropriate the singular shall include the plural and the masculine gender the feminine or neuter. The Article headings are for convenience of reference only and shall not be considered terms of this Declaration.

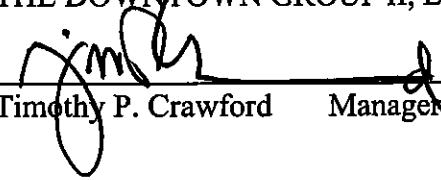
C. The restrictions and burdens imposed by the covenants of this Declaration shall constitute covenants running with the land, and shall constitute an equitable servitude upon each Unit and its appurtenant undivided interest in Common Elements. This Declaration shall be binding upon Declarant, its successors and assigns, and upon all parties who may subsequently become Unit Owners in the Condominium, and their respective heirs, legal representatives, successors and assigns.

D. Until such time as all units of the Condominium have been sold, the following named individual is designated as the person to receive service of process for the Association:

Timothy P. Crawford  
2030 S. Tryon Street, Suite 3F  
Charlotte, North Carolina 28203

IN WITNESS WHEREOF, Declarant has caused this Declaration to be executed this the day and year first above written

THE DOWNTOWN GROUP II, LLC

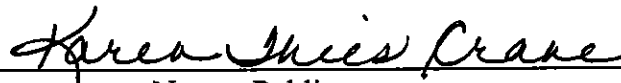
By:   
Timothy P. Crawford      Manager

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

I, Karen Thies Crane, a Notary Public certify that Timothy P Crawford personally came before me this day and acknowledged that he is manager of The Downtown Group II, LLC. a North Carolina limited liability company and that he, as Manager, being authorized to do so, executed the foregoing instrument on behalf of The Downtown Group II, LLC.

Witness my hand and seal, this 20<sup>th</sup> day of September, 2005.

  
Notary Public  
My Commission Expires: June 23, 2010

## EXHIBIT A

### Tract 1 (Building 1A)

Commencing at an existing iron rebar within the right of way of White Street and on the southerly right of way of East Union Street having N.C. Grid coordinates of N=737,982.93; E=1,203,303.89. Thence from said existing iron rebar S 82-49-51 E 30.21 feet to a corner of Building 1-A the POINT OF BEGINNING;

thence bearing N 42-39-30 E a distance of 12.80 feet ;  
thence bearing S 47-20-30 E a distance of 5.15 feet ;  
thence bearing N 42-39-30 E a distance of 8.00 feet ;  
thence bearing S 47-20-30 E a distance of 20.50 feet ;  
thence bearing N 42-39-30 E a distance of 24.35 feet ;  
thence bearing S 47-20-30 E a distance of 126.65 feet ;  
thence bearing S 42-39-30 W a distance of 50.15 feet ;  
thence bearing N 47-20-30 W a distance of 12.75 feet ;  
thence bearing N 42-39-30 E a distance of 4.00 feet ;  
thence bearing N 47-20-30 W a distance of 12.40 feet ;  
thence bearing S 42-39-30 W a distance of 4.10 feet ;  
thence bearing N 47-20-30 W a distance of 12.95 feet ;  
thence bearing N 42-39-30 E a distance of 4.10 feet ;  
thence bearing N 47-20-30 W a distance of 12.40 feet ;  
thence bearing S 42-39-30 W a distance of 4.10 feet ;  
thence bearing N 47-20-30 W a distance of 12.90 feet ;  
thence bearing N 42-39-30 E a distance of 4.10 feet ;  
thence bearing N 47-20-30 W a distance of 12.45 feet ;  
thence bearing S 42-39-30 W a distance of 4.00 feet ;  
thence bearing N 47-20-30 W a distance of 12.95 feet ;  
thence bearing N 42-39-30 E a distance of 4.00 feet ;  
thence bearing N 47-20-30 W a distance of 12.50 feet ;  
thence bearing S 42-39-30 W a distance of 4.10 feet ;  
thence bearing N 47-20-30 W a distance of 13.00 feet ;  
thence bearing N 42-39-30 E a distance of 4.10 feet ;  
thence bearing N 47-20-30 W a distance of 11.90 feet ;  
thence bearing S 42-39-30 W a distance of 4.00 feet ;  
thence bearing N 47-20-30 W a distance of 12.70 feet ;  
thence bearing N 42-39-30 E a distance of 4.00 feet ;  
thence bearing N 47-20-30 W a distance of 12.30 feet ;  
thence bearing N 42-39-30 E a distance of 1.00 feet ;  
thence bearing N 47-20-30 W a distance of 1.10 feet to the POINT AND PLACE OF BEGINNING and containing 6,675 square feet more or less.

**EXHIBIT A (CONT'D)**

**Tract 2 (Building 1B)**

Commencing at an existing iron rebar within the right of way of White Street and on the southerly right of way of East Union Street having N.C. Grid coordinates of N=737,982.93; E=1,203,303.89. Thence from said existing iron rebar N 19-19-59 E 51.88 feet to a corner of Building 1-B the POINT OF BEGINNING;

thence bearing N 42-35-34 E a distance of 1.00 feet ;  
thence bearing N 47-24-26 W a distance of 1.00 feet ;  
thence bearing N 42-35-34 E a distance of 12.50 feet ;  
thence bearing N 47-24-26 W a distance of 4.00 feet ;  
thence bearing N 42-35-34 E a distance of 12.70 feet ;  
thence bearing S 47-24-26 E a distance of 4.00 feet ;  
thence bearing N 42-35-34 E a distance of 11.90 feet ;  
thence bearing N 47-24-26 W a distance of 4.00 feet ;  
thence bearing N 42-35-34 E a distance of 12.75 feet ;  
thence bearing S 47-24-26 E a distance of 4.00 feet ;  
thence bearing N 42-35-34 E a distance of 12.55 feet ;  
thence bearing N 47-24-26 W a distance of 4.00 feet ;  
thence bearing N 42-35-34 E a distance of 12.70 feet ;  
thence bearing S 47-24-26 E a distance of 4.00 feet ;  
thence bearing N 42-35-34 E a distance of 12.55 feet ;  
thence bearing N 47-24-26 W a distance of 4.00 feet ;  
thence bearing N 42-35-34 E a distance of 12.75 feet ;  
thence bearing S 47-24-26 E a distance of 4.00 feet ;  
thence bearing N 42-35-34 E a distance of 12.50 feet ;  
thence bearing N 47-24-26 W a distance of 4.00 feet ;  
thence bearing N 42-35-34 E a distance of 12.80 feet ;  
thence bearing S 47-24-26 E a distance of 4.00 feet ;  
thence bearing N 42-35-34 E a distance of 12.50 feet ;  
thence bearing N 47-24-26 W a distance of 4.00 feet ;  
thence bearing N 42-35-34 E a distance of 12.80 feet ;  
thence bearing S 47-24-26 E a distance of 50.13 feet ;  
thence bearing S 42-35-34 W a distance of 126.00 feet ;  
thence bearing N 47-24-26 W a distance of 24.23 feet ;  
thence bearing S 42-35-34 W a distance of 20.80 feet ;  
thence bearing N 47-24-26 W a distance of 8.20 feet ;  
thence bearing S 42-35-34 W a distance of 5.20 feet ;  
thence bearing N 47-24-26 W a distance of 12.70 feet to the POINT AND PLACE OF BEGINNING containing 6,644 square feet more or less.

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**EXHIBIT A (CONT'D).**

**Tract 3 (Common Element)**

BEGINNING at a ½" rebar marking the northerly most corner of Lot 1 as shown in Plat Book 27 at Page 151-152; thence S. 47-24-26 E. 56.57 ft.; thence S. 42-25-25 W. 143.05 ft.; thence S. 47-34-35 E. 129.11 ft.; thence S. 42-39-30 W. 57.87 ft.; thence N. 47-20-30 W. 10.22 ft.; thence N. 42-39-30 E/ 50.15 ft.; thence N. 47-20-30 W. 126.65 ft.; thence S. 42-39-30 W. 24.35 ft.; thence N. 47-20-30 W. 10.00 ft.; thence N. 42-39-30 E. 30.14 ft.; thence N. 47-34-35 W. 13.33 ft.; thence N. 42-35-34 E. 9.13 ft.; thence S. 47-24-26 E. 24.23 ft.; thence N. 42-35-34 E. 126.00 ft.; thence N. 47-24-26 W. 50.13 ft.; thence N. 42-35-34 E. 9.33 ft. to the point and place of Beginning.

**EXHIBIT B**  
**BYLAWS**  
**OF**  
**400 UNION SQUARE CONDOMINIUM ASSOCIATION, INC**

**ARTICLE I**  
**GENERAL**

These ByLaws are adopted ancillary to the formation of 400 Union Square Condominium Association, Inc. (the “**Association**”), a North Carolina non-profit corporation formed to administer 400 Union Square Condominium, a Condominium formed pursuant to the North Carolina Condominium Act as adopted in Chapter 47C of the North Carolina General Statutes (the “**Act**”) and described in the Declaration of condominium for 400 Union Square Condominium (the “**Declaration**”) which is being executed contemporaneously herewith and filed for record in the office of the Register of Deeds for Burke County. The definitions set forth in Section 1 of the Declaration shall have the same meanings herein, and such definitions are hereby incorporated herein by reference.

**ARTICLE II**  
**OFFICES**

2.1. **Principal Office.** The principal office of the Association shall be located at 2030 S. Tryon Street, Suite 3F, Charlotte, N.C. 28203.

2.2. **Registered Office.** The registered office of the Association required by law to be maintained in the State of North Carolina may be, but need not be, identical with the principal office.

2.3. **Other Offices.** The Association may have offices at such other places, either within or without the State of North Carolina, as the Executive Board may designate or as the affairs of the Association may require from time to time.

**ARTICLE III**  
**MEMBERSHIP**

3.1. **Membership.** Every person or entity who is a record owner of a fee or undivided fee interest in any Unit which is subject to the Declaration, including contract sellers, shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Unit which is subject to the Declaration. Ownership of such Unit shall be the sole qualification for membership. As evidence of each Owner's membership, the Association may require each Owner to furnish a photocopy of the page(s) of his deed(s) which contains the name of the Member and the Unit(s) owned by such Member.

3.2. **Votes.** The Owner(s) of each Unit shall be entitled to one (1) vote for each Unit owned. When more than one Person holds an interest in any one Unit, all such Persons shall be Members. The vote of that Unit shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Unit. Fractional voting is prohibited.

#### **ARTICLE IV MEETINGS OF MEMBERS**

4.1. **Place of Meetings.** All meetings of Members shall be held at the principal office of the Association, or at such other place, within Mecklenburg County, North Carolina, as shall be designated on the notice of the meeting or agreed upon by a majority of the votes of the Members entitled to vote thereat.

4.2. **Annual Meetings.** A meeting of the Association shall be held at least once each year. The annual meeting of Members for the election of Directors and the transaction other business shall be held at such time and at such place as determined by the Executive Board.

4.3. **Substitute Annual Meeting.** If the 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 Section 4.4 of this Article IV. A meeting so called shall be designated and treated for all purposes as the annual meeting.

4.4. **Special Meeting.** Special meetings of the Association may be called by the President, a majority of the Executive Board or by Unit Owners having ten (10%) percent of the votes in the Association.

4.5. **Notice of Meetings.** Not less than ten (10) nor more than sixty (60) days in advance of any meeting, the Association's Secretary or any other officer of the Association shall cause to be hand-delivered or sent prepaid by United States mail to the mailing address of each Unit or to any other mailing address designated in writing by the Unit Owner. The notice of any meeting shall state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the Declaration or the ByLaws, any budget changes, and any proposal to remove a Director or officer.

4.6. **Voting Lists.** At least ten days before each meeting of Members the Secretary of the Association shall prepare an alphabetical list of the Members entitled to vote at such meeting or any adjournment thereof, with the address of and number of votes held by each, which list shall be kept on file at the registered office of the Association for a period of ten days prior to such meeting, and shall be subject to inspection by any Member at any time during the usual business hours. This list shall be produced and kept open at the time and place of the meeting and shall be subject to inspection by any Member during the whole time of the meeting.

4.7. **Quorum.** A quorum is present throughout any meeting of the Association if persons entitled to cast fifty (50%) percent of the votes which may be cast for election of the Executive Board are present in person or by proxy at the beginning of the meeting.

The Members present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum.

In the event business cannot be conducted at any meeting because a quorum is not present, that meeting may be adjourned to a later date by the affirmative vote of a majority of those present in person or by proxy. Notwithstanding anything herein or in the Declaration to the contrary, the quorum requirement at the next meeting shall be one-half of the quorum requirement applicable to the meeting adjourned for lack of a quorum. The foregoing provision shall continue to reduce the quorum by fifty (50%) percent from that required at the previous meeting, as previously reduced, until such time as a quorum is present and business can be conducted.

**4.8. Proxies.** Votes may be voted either in person or by one or more agents authorized by a written proxy executed by the Member or by his duly authorized attorney in fact. If a Unit is owned by more than one person, each owner of the Unit may vote or register protest to the casting of votes by the other owners of the Unit through a duly executed proxy. A Member may not revoke a proxy given pursuant to this section except by actual notice to the person presiding over a meeting of the Association. A proxy is void if it is not dated. A proxy terminates eleven (11) months after its date, unless it specifies a shorter term.

**4.9. Voting.** The vote of a majority of the votes on any matter present at a meeting of Members at which a quorum is present, regardless of class, shall be the act of the Members on that matter, unless the vote of a greater number is required by law or by the Articles of Incorporation, the Declaration or ByLaws of this Association. If only one of the multiple owners of a Unit is present at a meeting of the Association, the owner who is present is entitled to cast all votes allocated to that Unit. If more than one of the multiple owners are present, the votes allocated to that Unit may be cast only in accordance with the agreement of a majority in interest of the multiple owners, unless the Declaration or these ByLaws expressly provide otherwise. Majority agreement is conclusively presumed if any one of the multiple owners casts the votes allocated to that Unit without protest being made promptly to the person presiding over the meeting by any other owners of the Unit.

Notwithstanding the above:

1. The Owners of the first floor Units shall by majority vote have the right to appoint one member of the 400 Union Square Master Association, Inc. The Owners of the second floor Units shall by majority vote have the right to appoint one member of the 400 Union Square Master Association, Inc.
2. The Owners of the second floor Units shall by majority vote have the right to elect a majority of the Directors of the Executive Board. The Owners of the first floor Units shall by majority vote have the right to elect the remaining Directors of the Executive Board.

**4.10. Informal Action.** Any action which may be taken at a meeting of the Members may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the persons who would be entitled to vote upon such action at a meeting, and filed with the Secretary of the Association to be kept as part of the Association's records.

4.11. **Presiding Officer.** The President of the Association, or in the absence of the President, the Vice President shall preside at all meetings of the Members and the Secretary of the Association shall act as the Secretary thereof. In the absence of the Secretary, the President shall designate some other person to act as the Secretary of the meeting. In the absence of both the President and the Vice-President, the Members present at the meeting shall elect a Presiding Officer for such meeting.

4.12. **Order of Business.** The order of business at the annual meeting and at any special meeting of the Members shall be as follows:

- (a) The calling of the meeting to order;
- (b) The calling of the roll;
- (c) The announcement by the Presiding Officer of the purpose of the meeting and of the nature of the business which may be presented by it;
- (d) The reading and approval of the minutes of any former meeting of the Members, the Minutes of which have not been previously read and approved;
- (e) The presentation of and action, if required, upon reports of officers and committees;
- (f) Unfinished business;
- (g) New business, including the election of Directors for the forthcoming year if the meeting be an annual meeting; and
- (h) Adjournment.

## ARTICLE V EXECUTIVE BOARD

5.1. **Number, Term and Qualification.** The number of Directors constituting the Executive Board shall be not less than three (3) nor more than nine (9) as may be fixed by resolution duly adopted by the Members or by the Executive Board prior to the annual meeting of which such Directors are to be elected; and, in the absence of such a resolution, the number of Directors shall be the number elected at the preceding annual meeting. Any Directorships not filled by the Members shall be treated as vacancies to be filled by and in the discretion of the Executive Board.

Each Director shall hold office for a one year term, or until his death, resignation, removal, disqualification, or his successor shall have been elected and qualified. Directors need not be residents of the State of North Carolina or Members of the Association.

5.2. **Nomination.** Nomination for election to the Executive Board shall be made by the Executive Board. Nominating may also be made from the floor at the annual meeting. The Executive Board shall make as many nominations for election to the Executive Board as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Such nominations may be made from among Members or non-members.

5.3. **Election of Directors.** Except as provided in Section 5.8 of this Article V, the Directors shall be elected at the annual meeting of Members as provided in Section 4.9. If any Member so demands, the election of Directors shall be by ballot. Cumulative voting is not permitted.

5.4. **Removal.** Any Director may be removed at any time with or without cause by a vote of the Members holding a majority of the outstanding votes entitled to vote at an election of Directors. If any Directors are so removed, new Directors may be elected at the same meeting.

5.5. **Vacancies.** Any vacancy occurring in the Executive Board may be filled by the affirmative vote of a majority of the remaining Directors even though less than a quorum, or by the sole remaining Director. A Director elected to fill a vacancy shall be elected for the unexpired term of his predecessor in office. Any Directorship to be filled by reason of an increase in the authorized number of Directors shall be filled only by election at an annual meeting or at a special meeting of Members called for that purpose.

5.6. **Chairman of Board.** There may be a Chairman of the Executive Board elected by the Directors from their number at any 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.

5.7. **Compensation.** The Executive Board may not compensate Directors for their services as such, but may provide for the payment of any or all expenses incurred by Directors in attending regular and special meetings of the Board or in performing his duties.

5.8. **Declarant Control.** Notwithstanding any other language or provision to the contrary in these Bylaws, in the Articles of Incorporation or in the Declaration, Declarant shall have the right to appoint and remove any Directors of the Executive Board and any officer or officers of the Association until ninety (90) days after the occurrence of either of the following events, whichever occurs earlier: (i) the conveyance (to someone other than the Declarant) of 75% of the total number of Units allowed under the current zoning for the Property (ii) three(3) years after the first Unit is conveyed to an Owner; or (iii) the surrender by Declarant of the authority to appoint and remove directors and officers by written letter to the Association. The earliest to occur of (i), (ii) or (iii) shall hereinafter be referred to as the "Turnover Date". Upon the expiration of the period of Declarant's right to appoint and remove directors and officers of the Association pursuant to the provisions of this Section 5.8, such rights shall automatically pass to the Association Members and a special meeting of the Association shall be called for and held within ninety (90) days from the date of the expiration of Declarant's rights hereunder. At such meeting, the Association Members shall elect a new Board of Directors which shall undertake the responsibilities of running the Association and Declarant shall deliver the books, accounts and records, if any, which it has kept on behalf of the Association, as well as any agreements or contracts executed by or on behalf of the Master Association which may still be in effect or operation. Each Owner, by acceptance of a deed to or other conveyance of a Unit, vests in Declarant such authority to appoint and remove directors and officers of the Association as provided in this Section. Notwithstanding, any provision herein to the contrary, for the purpose of this Section 5.8, "Declarant" shall mean Downtown Group II, LLC until the Turnover Date.

## ARTICLE VI MEETING OF DIRECTORS

6.1. **Regular Meetings.** A regular meeting of the Executive Board shall be held immediately after, and at the same place as, the annual meeting of Members. In addition, the Executive Board may provide, by resolution, the time and place, either within or without the State of North Carolina, for the holding of additional regular meetings.

6.2. **Special Meetings.** Special meetings of the Executive Board may be called by or at the request of the President or any two Directors. Such a meeting may be held either within or without the State of North Carolina, as fixed by the person or persons calling the meeting.

6.3. **Notice of Meetings.** Regular meetings of the Executive Board may be held without notice. The person or persons calling a special meeting of the Executive Board shall, at least three (3) days before the meeting, give notice thereof by any usual means of communication. Such notice need not specify the purpose for which the meeting is called.

6.4. **Waiver of Notice.** Any Director may waive notice of any meeting. The attendance by a Director at a meeting shall constitute a waiver of notice of such meeting, except where a Director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

6.5. **Quorum.** A quorum is deemed present throughout any meeting of the Executive Board if persons entitled to cast fifty (50%) percent of the votes on the Executive Board are present at the beginning of the meeting.

The Directors present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough Directors to leave less than a quorum.

In the event business cannot be conducted at any meeting because a quorum is not present, that meeting may be adjourned to a later date by the affirmative vote of a majority of those present. Notwithstanding anything herein or in the Declaration to the contrary, the quorum requirement at the next meeting shall be one-half of the quorum requirement applicable to the meeting adjourned for lack of a quorum. The foregoing provision shall continue to reduce the quorum by fifty (50%) percent from that required at the previous meeting, as previously reduced, until such time as a quorum is present and business can be conducted.

6.6. **Manner of Acting.** Except as otherwise provided in these by-laws, the act of the majority of the Directors present at a meeting at which a quorum is present shall be the act of the Executive Board.

6.7. **Presumption of Assent.** A Director who is present at a meeting of the Executive 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 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 corporation immediately after the adjournment of the meeting. Such right to dissent shall not apply to a Director who voted in favor of such action.

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

6.9. **Committees of the Executive Board.** The Executive Board, by resolution adopted by a majority of the number of Directors fixed by these by-laws, shall designate three or more Directors to constitute an Architectural Committee as provided in the Declaration and may appoint other committees as it deems appropriate. The designation of any committee 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.

## ARTICLE VII POWERS/DUTIES OF EXECUTIVE BOARD

7.1. **Powers.** The Executive Board shall have power to:

- (a) adopt and-publish rules and regulations governing the use of the Common Elements, and the personal conduct of the Members and their guests thereon, and to establish penalties for the infraction thereof;
- (b) levy fines against and suspend privileges of or services provide by the Association to a Member in accordance with the Declaration and the Act;
- (c) exercise for the Association all powers, duties and authority vested in or delegated to this Association by the provisions of these ByLaws, the Articles of Incorporation, or the Declaration and not reserved to the membership by other provisions of these ByLaws, the Articles of Incorporation, or the Declaration;
- (d) declare the office of a member of the Executive Board to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Executive Board; and
- (e) employ a manager, an independent contractor, or such other employees as they deem necessary and to prescribe their duties. Until the Turnover Date, the Association shall not enter into any lease or contract (including management contracts) unless there is a right of termination of any such lease or contract, without cause, which is exercisable without penalty upon not more than ninety (90) days' notice to the other party.

7.2. **Duties.** It shall be the duty of the Executive Board to:

- (a) cause to be kept, maintained and made available for examination by any Unit Owner or such Unit Owner's authorized agents, a complete record of all its acts and corporate affairs, including, without limitation, all such financial and other records as may

be required by N.C.G.S. §47C-3-118(a), and to present a statement thereof to the Members at the annual meeting of the Members, or at any special meeting when such statement is requested in writing by one-fourth (1/4) of the Members who are entitled to vote;

- (b) supervise all officers, agents, and employees of this Association, and to see that their duties are properly performed;
- (c) as more fully provided in the Declaration to:
  - (1) fix the amount of the annual assessment against each Unit at least thirty (30) days in advance of each annual assessment period;
  - (2) send written notice of each assessment to every Owner subject thereto at least fifteen (15) days in advance of each annual assessment period; and
  - (3) foreclose the lien against any property for which assessments are not paid within thirty (30) days after due date or to bring an action at law against the owner personally obligated to pay the same in accordance with the Declaration and the Act.
- (d) issue, or to cause an appropriate officer to issue, upon demand by any person entitled to receive the same as set forth in the Declaration, a statement setting forth whether there are, and if so the amount of, unpaid assessments or other charges against any Unit. A reasonable charge may be made by the Board for the issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment;
- (e) procure and maintain adequate liability and hazard insurance on property owned by the Association and as otherwise provided for in the Declaration;
- (f) pay ad valorem taxes and public assessments levied against the Common Elements;
- (g) cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate;
- (h) cause the Common Elements and the improvements to the Common Elements to be maintained; and
- (i) direct and supervise the affairs of the Association and require the Association to fulfill all of its obligations and duties set forth in the Declaration.
- (j) Contract with a professional real estate management company for the management of the Condominium.

7.3. **Delegation of Powers/Duties.** The Executive Board may delegate any of its powers and/or duties as may be permitted under the Declaration, the Association's Articles of Incorporation or other provisions of these ByLaws.

## **ARTICLE VIII OFFICERS**

8.1. **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. Any two or more offices may be held by the same person, but no officer may act in more than one capacity where action of two or more officers is required.

8.2. **Election, Term and Qualification.** The officers shall be elected by the Executive Board and each officer shall hold office until his death, resignation, retirement, removal, disqualification or his successor shall have been elected and qualified. Only members of the Executive Board shall serve in the capacity of President and Vice-president. Other officers need not be Directors or Members of the Association.

8.3. **Compensation of Officers.** The Executive Board shall fix the compensation of officers; however, in no event shall Members of the Association be compensated for serving as an officer except to the extent necessary to reimburse said officer for expenses incurred in performing his duties on behalf of the Association.

8.4. **Removal.** Any officer or agent elected or appointed by the Executive Board may be removed by the Board whenever in its judgment the best interests of the Association will be served thereby; but such removal shall be without prejudice to the contract rights, if any, of the persons so removed.

8.5. **Bonds.** The Executive Board may by resolution require an officer, agent, or employee of the Association to give bond to the Association, with sufficient sureties, conditioned on the faithful performance of the duties of his respective office or position, and to comply with such other conditions as may from time to time be required by the Executive Board

8.6. **President.** The President shall be the principal executive officer of the Association and, subject to the control of the Executive Board, shall in general supervise and control all of the business and affairs of the Association. He shall, when present, preside at all meetings of the Members. He shall sign, with the Secretary, an Assistant Secretary, or any other proper officer, any deeds, deeds of trust, mortgages, bonds, contracts, or other instruments which the Executive Board has authorized to be executed, except in cases where the starting and execution thereof shall be expressly delegated by the Executive Board or by these By-Laws to some other officer or agent of the Association, or shall be required by law to be otherwise signed or executed; and in general he shall perform all duties incident to the office of President and such other duties as may be prescribed by the Executive Board from time to time.

8.7. **Vice-Presidents.** In the absence of the president or in the event of his death, inability or refusal to act, the Vice-Presidents in the order or their length of service as Vice-Presidents, unless otherwise determined by the Executive Board, shall perform the duties of the President, and when so acting shall have all the powers of and be subject to all the restrictions upon the President. Any Vice-President shall perform such other duties as from time to time may be assigned to him by the President or Executive Board.

8.8. **Secretary.** The Secretary shall: (a) keep the minutes of the meetings of Members, of the Executive Board and of all Committees in one or more books provided for that purpose; (b) see that all notices are duly given in accordance with the provisions of these By-Laws or as required by law; (c) be custodian of the Association records and of the seal of the Association and see that the seal of the Association is affixed to all documents file execution of which on behalf of the Association under its seal is duly authorized; (d) keep a register of the post office address of each Member which shall be furnished to the Secretary by such Member; (e) keep or cause to be kept a record of the Association's Members, giving the names and addresses of all Members and the number of votes held by said addresses of all Members and the number of votes held by each, and prepare or cause to be prepared voting lists prior to each meeting of Members as required by law; and (1) in general perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned to him by the President or by the Executive Board.

8.9. **Assistant Secretaries.** In the absence of the Secretary or in the event of his death, inability or refusal to act, the Assistant Secretaries in the order of their length of service as Assistant Secretary, unless otherwise determined by the Executive Board, shall perform the duties of the Secretary, and when so acting shall have all the powers of and be subject to all the restrictions upon the Secretary. They shall perform such other duties as may be assigned to them by the Secretary, by the President, or by the Executive Board.

8.10. **Treasurer.** The Treasurer shall: (a) have charge and custody of and be responsible for all funds and securities of the Association; receive and give receipts for moneys due and payable to the Association from any source whatsoever, and deposit all such moneys in the name of the Association in such depositories as shall be selected; (b) prepare, or cause to be prepared, a true statement of the Association's assets and liabilities as of the close of each fiscal year, all in reasonable detail, which statement shall be made and filed at the Association's registered office or principal place of business in the State of North Carolina within four months after the end of such fiscal year and there kept for a period of at least ten years; (c) cause, at the direction of the Executive Board, an independent annual audit be made of the books and records of the Association, (d) issue, at the direction of the Executive Board, certificates as to whether assessments on a specified Unit have been paid; and (e) in general perform all of the duties incident to the office of treasurer and such other duties as from time to time may be assigned to him by the President or by the Executive Board, or by these By-Laws.

8.11. **Amendments to the Declaration.** All duly adopted amendments to the Declaration may be prepared, executed, certified and recorded by, or at the direction of, the President or Vice President, and when any such amendment is to be attested as part of its execution, it may be attested by the Secretary or an Assistant Secretary.

**ARTICLE IX  
MEMBERSHIP REGISTER**

9.1. **Closing Membership Register.** For the purpose of determining members of the Association entitled to notice of or to vote at any meeting of Members or any adjournment thereof, or in order to make a determination of Members for any other proper purpose, the Executive Board may provide that the membership register shall be closed for a stated period but not to exceed, in any case, fifty (50) days. If the membership register shall be closed for the purposes of determining members entitled to notice of or to vote at a meeting of Members, such books shall be closed for at least ten (10) days immediately preceding such meeting.

9.2. **Advance Date For Closing.** In lieu of closing the membership register, the Executive Board may fix in advance a date as the record date for any such determination of Members, such record date in any case to be not more than fifty (50) days and, in case of a meeting of Members, not less than ten (10) days immediately preceding the date on which the particular action, requiring such determination of Members is to be taken.

9.3. **Notice as Closing Date.** If the membership register is not closed and no record date is fixed for the determination of Members entitled to notice of or to vote at a meeting of Members, the date on which notice of the meeting is mailed shall be the record date for such determination of Members.

9.4. **Adjournments.** When a determination of Members entitled to vote at any meeting of Members has been made as provided in this section, such determination shall apply to any adjournment thereof except where the determination has been made through the closing of the membership register and the stated period of closing has expired.

**ARTICLE X  
GENERAL PROVISIONS**

10.1. **Books & Records.** The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any Member, his agent or attorney, for any proper purpose. The Declaration, the Articles of Incorporation and the By-Laws of the Association and the Financial statements for the Association for the immediately preceding fiscal year shall be available for inspection by any Member and any first mortgage holders, their insurers or guarantors, at the principal office of the Association, where copies may be purchased at reasonable cost.

10.2. **Seal.** The seal of the Association shall consist of two concentric circles between which is the name of the Association and in the center of which is inscribed SEAL; and such seal, as impressed on the margin hereof, is hereby adopted as the Association's seal.

10.3. **Waiver of Notice.** Whenever any notice is required to be given to any Member or Director by law, by the Articles of Incorporation, Declaration or by these ByLaws, a waiver thereof in writing signed by the person or persons entitled to such notice whether before or after the time stated therein, shall be equivalent to the giving of such notice.

10.4. **Fiscal Year.** The fiscal year of the Association shall begin on the first day of January and end on the 31st day of December or every year, except that the first fiscal year shall begin on the date of incorporation.

**10.5. Amendments.**

**10.5.1. Amendment By Members.** These By-Laws may be amended, at a regular or special meeting of the Members, by a vote of a majority of a quorum of Members present in person or by proxy.

**10.5.2. Rights To Veto Amendments.** Notwithstanding any provision in this instrument to the contrary, as long as the Declarant controls the Association and if the Property has been approved by the Veterans Administration and the Federal Housing Administration for loans guaranteed by the Veterans Administration or the Federal Housing Administration (but not otherwise), any amendment of these By-Laws may be vetoed by the Federal Housing Administration or the Veterans Administration.

**10.6. Rules of Construction.** In the event of a conflict between the provisions of the Declaration and the Association's ByLaws, the Declaration shall prevail except to the extent it is inconsistent with the Act. To the extent any provisions of the Declaration, the Association's Articles of Incorporation or ByLaws violate the Act, such provisions shall be deemed amended and shall be construed to the extent necessary to comply with the Act.

Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2005, by the undersigned Directors.

400 UNION SQUARE CONDOMINIUM  
ASSOCIATION, INC.

\_\_\_\_\_  
Director

\_\_\_\_\_  
Director

\_\_\_\_\_  
Director

The undersigned hereby certifies that the foregoing constitute a true and accurate copy of the ByLaws of 400 Union Square Condominium Association, Inc.

This the \_\_\_\_\_ day of \_\_\_\_\_, 2005.

\_\_\_\_\_  
Secretary

EXHIBIT C

**ARTICLES OF INCORPORATION  
OF  
400 UNION SQUARE CONDOMINIUM ASSOCIATION, INC.**

The undersigned hereby submits these Articles of Incorporation for the purpose of forming a nonprofit corporation pursuant to the provisions of Chapter 55A of the General Statutes of North Carolina.

1. The name of the corporation is **400 UNION SQUARE CONDOMINIUM ASSOCIATION, INC.** (the "Corporation").
2. The period duration of the Corporation shall be perpetual.
3. The purpose for which the Corporation is organized are:
  - (a) To provide for the management, maintenance, preservation, administration and operation of **400 UNION SQUARE CONDOMINIUM**, a condominium organized pursuant to Chapter 47C of the General Statutes of North Carolina, the North Carolina Condominium Act, as set forth in that certain Declaration of Condominium to be recorded in the Office of the Register of Deeds for Burke County, North Carolina (the "Declaration").
  - (b) To promote the health, safety and welfare of the "Unit Owners" (as defined in the Declaration) and residents within the jurisdiction of this Corporation.
  - (c) To engage in any and all lawful activities incidental to the foregoing purposes, except as restricted herein.
4. In order to carry out the purposes for which this Corporation has been formed, the Corporation shall have all of the powers set forth in Chapter 55A of the General Statutes of North Carolina including, but not limited to, the power:
  - (a) To exercise all of the privileges and powers and to perform all of the duties and obligations of the Corporation as set forth in the Declaration and the Bylaws attached thereto;
  - (b) By any lawful means, to fix, levy, collect and enforce payment of all charges or assessments pursuant to the terms of the Declaration and Chapter 47C of the North Carolina General Statutes, the North Carolina Condominium Act; to pay all expenses in connection therewith and all other expenses incident to the conduct of the business of the Corporation, including all licenses, taxes or

governmental charges levied or imposed against the property of the Corporation;

- (c) To acquire (by give, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for public use or otherwise dispose of real or personal property in connection with the affairs of the Corporation;
- (d) To borrow money, and with the unanimous consent of the membership, to mortgage, pledge, grant a deed of trust or hypothecate any or all of the Common Elements (as defined in the Declaration) as security for money borrowed or debts incurred subject to the property rights of the members of the Corporation as provided in the Declaration and the Bylaws attached thereto;
- (e) To dedicate, sell or transfer all or any part of the Common Elements to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed upon by the members of the Corporation as provided in the Declaration and the Bylaws attached thereto.

5. This Corporation is nonprofit corporation, and no part of the net earnings (if any) of the Corporation shall inure to the pecuniary benefit if its members, officers, or directors, except as permitted by Chapter 55A of the North Carolina General Statutes.

6. Membership in the Corporation shall be limited to the owners (the "Owners") of condominium units (the "Units") in the 400 UNION SQUARE CONDOMINIUM and every Owner of a Unit shall automatically be a member of the Corporation. Members shall not include persons or entities who hold an interest merely as security for the payment or performance of an obligation. Membership in the Corporation shall be appurtenant to and may not be separated from Unit ownership.

Member(s) shall be entitled to cast one vote for each Unit owned by such Member(s). In the event fee simple title to a Unit is owned of record by more than one person or entity, all such persons or entities shall be Members of the Association, but the votes with respect to any such jointly owned Unit shall be cast as they among themselves determine, but in no event shall more than one vote be cast with respect to any Unit.

7. The address of the initial registered office and the principal office in the State of North Carolina is 2030 S. Tryon Street, Suite 3F, Charlotte, Mecklenburg County, North Carolina, 28203, and the name of the initial Registered Agent at such address is Timothy P. Crawford.

8. The affairs of the Corporation shall be managed by a Board of Directors (the Board"). The number of members of the Board may be changed by amendment of the Bylaws of the Corporation, provided that said Board shall not be less than three (3) in number. The Board

Members selected by Declarant (as defined in the Declaration) need not be members of the Corporation. The names and address of the persons who are to act as initial members of the Board until the first annual meeting of the members or until their successors are elected and qualified are:

<u>Name</u>	<u>Address</u>
Timothy P. Crawford	2030 S. Tryon Street, Suite 3F Charlotte, North Carolina
Dan Wendover	2030 S. Tryon Street, Suite 3F Charlotte, North Carolina
Curtis H. Kennington	2030 S. Tryon Street, Suite 3F Charlotte, North Carolina

At the first annual membership meeting, the members, pursuant to the terms of the Bylaws, shall elect three (3) members of the Board for a term of one (1) year; subject, however, to the right of Declarant to appoint such members until either: (a) ninety (90) days after the date by which seventy-five percent (75% of the Units have been conveyed to Unit purchasers other than Declarant; or (b) three (3) years after the date of the first conveyance to an Owner.


At the meeting of the Association in which the Unit Owners other than Declarant are entitled to elect a majority of the Directors, the members shall elect three (3) members of the Board for a term of one (1) year. At each annual membership meeting occurring thereafter, there shall be an election of members of the Board for those members whose terms of office have expired, and the new terms of office for those expiring shall be the same length of term applicable to the previously expiring terms. Members of the Board may succeed themselves in office.

9. Amendments of these Articles shall require the assent of the members entitled to at least sixty-seven percent (67%) of the entire vote of the membership.

10. The name and address of the incorporator is David L. Henderson, Helms, Henderson & Associates, P.A., Suite 340, 521 E. Morehead Street, Charlotte, North Carolina 28202.

11. Upon dissolution of the corporation the assets thereof shall, after all of its liabilities and obligations have been discharged or adequate provision made therefore, be distributed to any non-profit association or associations organized for purposes similar to those set forth in Paragraph 3 hereinabove, all as more particularly provided in the Bylaws of the corporation.

This 15th day of September, 2005.

  
David L. Henderson      Incorporator

**EXHIBIT D**

**400 UNION SQUARE CONDOMINIUM**

**ALLOCATED INTERESTS**

<u>Unit Identifying Numbers</u>	<u>Percentage Interest in Common Elements and Common Expenses</u>
101	5.033
102	5.033
103	5.033
104	5.033
105	7.432
106	7.432
107	5.033
108	5.033
109	5.033
110	5.033
201	4.445
202	4.445
203	4.445
204	4.445
205	4.445
206	4.445
207	4.445
208	6.911
209	6.844