

FOR REGISTRATION REGISTER OF DEEDS
ELIZABETH T COOPER
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Drawn by and mail to:
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STATE OF NORTH CAROLINA

DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS FOR
400 UNION SQUARE HOMES

COUNTY OF BURKE

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR 400 UNION SQUARE HOMES (the "Declaration") is made and entered into this 2nd day of AUGUST, 2006 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 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 Planned Community known as **400 UNION SQUARE HOMES**. Declarant desires to provide for the preservation and enhancement of the property values, amenities and opportunities in the Property (as defined herein) and for the maintenance of the Property and improvements thereon, and to this end desires to subject the Property to the easements, covenants, conditions, restrictions, charges and liens hereinafter set forth and/or described.

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

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WHEREAS, Declarant has caused to be created for the purposes aforesaid, a North Carolina non-profit corporation under the name and style of 400 Union Square Homeowners' Association, Inc.

NOW, THEREFORE, Declarant hereby subjects the Property to the easements, covenants, conditions, restrictions, charges and lien as hereinafter set forth and hereby declares that (subject to certain rights of amendment, as hereinafter described) all of the Property shall be held, sold and conveyed subject to such easements, covenants, conditions, restrictions, charges and liens, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property. Subject to the above described rights of Declarant, such easements, covenants, conditions, restrictions, charges and liens shall run with the Property, and be binding on all parties having or acquiring any right, title or interest in the Property, or any part thereof and shall inure to the benefit of each owner of the Property or any part thereof.

1. DEFINITIONS. Any terms used herein which are defined in N.C.G.S. § 47F-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 Planned Community Act as contained in Chapter 47F 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. "Association" shall mean 400 Union Square Homeowners' Association, Inc., its successors and assigns, the Bylaws and Articles of Incorporation thereof are attached as Exhibits B and C.

1.4. "Building" means a residential structure, constructed or erected on any part of the Property within the Planned Community.

1.5. "Common Expenses" means:

- (a) All sums lawfully assessed by the Association against its Members;
- (b) Expenses of maintenance, repair or replacement of the PPE's and any private alley shown on any recorded plat of the Property or recorded plat of any additional Additional Property.
- (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) Accounting, legal and other professional services, including professional management, retained by the Association; and
- (g) Unpaid assessments resulting from the purchase of a Lot 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).

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

1.7 Common Utility Facilities. All storm drainage facilities, catch basins, natural gas systems, water systems, sanitary sewer lines, fire protection installations, electrical power systems, cable television systems, telephone systems, lighting and the structures on which said systems are located which are situated on the Property and which serve more than one Lot.

1.8. "Declarant" shall mean and refer to The Downtown Group II, LLC, its successors and assigns.

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

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

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

1.12. "Lot" shall mean any physical portion of the Property within the Planned Community designated for separate ownership or occupancy by a Lot Owner.

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

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

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

1.16. "Planned Community" shall mean that Property development to be named 400 Union Square Homes to be developed on that certain Property described herein.

1.17 Private Property Elements ("PPE's"). To enhance the uniform, quality appearance of the Property, the following items, though privately owned and within the various Lots, shall be commonly maintained, repaired and replaced through assessments:

- (a) any walls/fences in and along portions of the rear yards and the side yards of each Lot; and
- (b) roofs of all Buildings, and the exterior of all Buildings; and
- (c) areas between the Building and the front, rear and side of the Lot and the areas between the any wall/fence and the outside boundary of the Lot .

The common maintenance, repair and replacement will be conducted to the standards approved by the Association. Any work due to the negligence, willful act or breach of this Declaration by any Lot Owner or his guests may be added to such Lot Owner's assessment.

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 and the Association's ByLaws.

2. MEMBERSHIP AND VOTING RIGHTS.

2.1. Ownership of a Lot shall be the sole qualification for membership in the Association. The Executive Board may make reasonable rules relating to the proof of ownership of a Lot. Membership shall be appurtenant to and may not be separated from any Lot.

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

3. COVENANT FOR MAINTENANCE ASSESSMENTS.

3.1. Lien of Assessments:

3.1.1 The Declarant, for each Lot, covenants, and each Lot Owner of any Lot by acceptance of a deed therefore (whether or not it shall be so expressed in such deed) is deemed to covenant and agrees to pay the Association Annual Assessments, Special Assessments, and Initial Assessment, all as described below, (together the "Assessments"). The Association shall also have the authority, through the Executive Board, to establish, fix and levy an individual assessment on any Lot to secure the liability of that Lot Owner to the Association arising from Lot Owner's breach of any of the provisions of this Declaration.

3.1.2 The Assessments shall be set on a calendar year basis (the "Annual Assessment Period") by the Executive Board and may be collected on a monthly or yearly basis as determined by the Executive Board. Annual Assessments and Special Assessments shall be charged to each Lot Owner. Assessments, including fees, charges, late charges, fines, interest and other charges imposed by this Declaration shall, upon the filing of a claim of lien in the office(s) of the Clerk(s) of Superior Court for the county or counties within which the Property is located, be a lien on the applicable Lot continuing until paid in full, as well as a personal

obligation of the Person who was the Lot Owner of the Lot at the time the Assessment became due. While any unpaid amounts shall remain a lien on the applicable Lot, the personal obligation shall not pass to that Lot Owner's successors in title unless expressly assumed by the successor(s).

3.2 Purpose of Assessments: The Assessments shall be used exclusively for the purposes of this Declaration as described in the Recitals, the payment of Common Expenses, the health, safety and welfare of the Lot Owners, and the improvement and maintenance of the PPE's. The Association shall maintain a reserve fund for periodic maintenance, repair, and replacement of improvements to the PPE's.

3.3 Annual Assessments:

3.3.1 The initial Annual Budget and the initial Annual Assessments for the balance of the 2006 calendar year have been set by Declarant. The Annual Assessments for each and every calendar year thereafter shall be set by the Executive Board in accordance with subsection 3.3.2 below.

3.3.2. On or before December 1st of each year preceding an Annual Assessment Period, the Association's Executive Board shall adopt the Budget (as defined below) for the upcoming Fiscal Year. The annual budget for the Association shall include all anticipated revenues (including revenues from Annual Assessments to be charged in the next Annual Assessment Period (the "Anticipated Annual Assessments") and anticipated costs for the Association for the upcoming Fiscal Year (together the "Budget"). Within thirty (30) days after adoption of any proposed Budget for the Property, the Executive Board shall provide to all of the Lot Owners a summary of the Budget and a notice of the meeting to consider ratification of the budget, including a statement that the Budget may be ratified without a quorum. The Executive Board shall set a date for a meeting of the Lot Owners to consider ratification of the Budget, such meeting to be held not less than ten (10) nor more than sixty (60) days after mailing of the summary and notice. A quorum need not be present at the meeting. The Budget shall be ratified unless at that meeting seventy-five (75%) percent of all Lot Owners reject the Budget. In the event the proposed Budget is rejected at that meeting, the Budget for the previous Annual Assessment Period shall be continued until a subsequent Budget proposed by the Executive Board is ratified by the Lot Owners. The Anticipated Annual Assessments for the approved Budget shall be the basis for calculating the Annual Assessment to be charged each Lot Owner for the upcoming Annual Assessment Period.

3.3.3. Declarant may loan the Association monies to the extent that Annual Assessments paid by the Lot Owners are inadequate. This advance shall be to the Association and on terms generally available to Declarant from its lending institution.

3.4. Special Assessments: In addition to the Annual Assessments, the Association may levy in any Annual Assessment Period a special assessment applicable to that Annual Assessment Period only (the "Special Assessment") for the purpose of defraying in whole or in part the cost of any expenditures (including capital improvements not otherwise included in the Budget. A Special Assessment shall require the assent of two-thirds (2/3) of the votes of the Members who are voting in person or by proxy at a meeting duly called for this purpose.

3.5. Fines and Suspension of Privileges or Services. In the event any Lot Owner should be in default for a period of thirty (30) days or longer with respect to the payment of any Assessment(s) due the Association under this Declaration, the Association may, after giving such Lot Owner notice and an opportunity to be heard, suspend privileges (including, but not limited to, such Lot Owner's rights to vote as a Member of the Association) or services (except rights of access to such Lot Owner's Lot) provided by the Association to such Lot Owner. In addition, in the event any Lot Owner should violate any of the terms and conditions of the Declaration or of the Association's ByLaws or any Rules and Regulations adopted by the Association, the Association may, after giving such Lot Owner notice and an opportunity to be heard, impose a reasonable fine upon such Lot Owner or suspend privileges or services (except rights of access to such Lot Owner's Lot). Prior to imposing a fine upon any Lot Owner or suspending any privileges or services provided to such Lot Owner by the Association, the Executive Board shall give the Lot Owner notice of the charged violation, notice of a hearing and an opportunity to be heard and to present evidence at such hearing. Such hearing shall be scheduled before an adjudicatory panel appointed by the Executive Board to hear such matters, or if the Executive Board fails to appoint such an adjudicatory panel, before the Executive Board itself. After rendering a decision, the adjudicatory panel or Executive Board, as the case may be, shall give the affected Lot Owner notice of its decision. If it is decided that a fine should be imposed, a fine not to exceed One Hundred Fifty Dollars (\$150.00) may be imposed for the violation and, without further hearing, for each day after notice of the decision is given to the Lot Owner that the violation continues to occur. Such fine(s) shall be Assessment(s) secured by liens under this Declaration. If it is decided that a suspension of privileges or services should be imposed, the suspension may be continued without further hearing until the violation or delinquency is cured.

3.6. Rate of Assessment. Annual Assessments and Special Assessments for the Lots on which are located attached single family Buildings shall be at a uniform rate. In the event the Declarant adds additional property to the Property upon which are located detached single family buildings, the Annual Assessments and Special Assessments for the Lots on which are located detached single family Buildings shall be no greater than one hundred fifty percent (150%) of the Annual Assessments and Special Assessments for the Lots on which are located attached single family Buildings. Provided, however, that the Association shall also have the authority, through the Executive Board, to establish, fix and levy a Special Assessment on any Lot to secure the liability of that Lot Owner to the Association arising from that Lot Owner's breach of any of the provisions of this Declaration.

3.7. Date of Commencement of Annual Assessment/Due Dates. The initial Annual Assessments shall commence on August 7, 2006. After the first Annual Assessment Period, written notice of the Annual Assessment shall be sent to every Lot Owner subject thereto at least fifteen (15) days in advance of each Annual Assessment Period. The due dates shall be established by the Executive Board. The Association shall, upon demand at any time, furnish a certificate in writing signed by an officer of the Association setting forth whether the Assessments on a specified Lot have been paid. A reasonable charge may be made by the Board for the issuance of these certificates. These certificates shall be conclusive evidence of payment of any Assessment as to third parties acting in reliance on the statement.

3.8. Non-Payment of Assessment; Remedies of the Association. 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 Lot Owner, his heirs, devisees, personal representative and assigns. The personal obligation of the then Lot 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 Lot Owner personally obligated to pay the same, or to foreclose the lien against the Lot as provided in Section 47F-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 Lot Owner may waive or otherwise escape liability for the assessments provided for herein by not using or by abandoning his Lot.

3.9 Subordination of the Lien. The lien of the Assessments shall be subordinated to the lien of the first mortgage on a Lot. Except in those instances described below, the sale or transfer of a Lot shall not release or otherwise affect the lien of delinquent Assessments. Provided the Association is given prior written notice of such, the sale or transfer of a Lot pursuant to the foreclosure of a first mortgage or deed of trust or pursuant to a deed in lieu given in satisfaction of a first mortgage or deed of trust shall extinguish the lien of the delinquent Assessments for that Lot. In no event, however, shall a sale or transfer relieve the Lot from liability for any Assessments subsequently becoming due or from the lien thereof

4. INSURANCE.

4.1. Authority to Purchase Insurance. Insurance policies upon the Buildings (except title insurance policies insuring Lot Owners and/or their Lenders) shall be purchased by the Association in the name of the Executive Board of the Association, as Trustees for the Lot Owners, for the benefit of the Lot Owners and their respective mortgagees as their interests may appear, and shall provide for the issuance of certificates or mortgage endorsements to the holders of first mortgages or deeds of trust on the Lots 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 Lot Owners, the Association and their respective servants, agents or guests.

4.2. Insurance Coverage to be maintained; Use and Distribution of Insurance Proceeds. The following insurance coverage shall be maintained in full force and effect by the Association covering the operation and management of the Lots and Buildings:

4.2.1. Commencing not later than the time of the first conveyance of a Lot to a person other than the Declarant, the Association shall maintain:

- (a) Casualty insurance covering all Buildings insuring all risks of direct physical loss commonly insured against including fire and extended coverage perils. The total amount of such insurance after application of

any deductibles shall not be less than current replacement cost of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations and other items normally excluded from property policies; and (b) Liability insurance in amount of \$1,000,000 covering all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the maintenance and repair of the PPE's.

4.2.2. The following provisions apply to insurance coverage to be maintained by the Association pursuant to Sections 6.2.1, above:

- (a) If any insurance described in Sections 6.2.1, above, is not available, the Association promptly shall cause notice of that fact to be hand-delivered or sent prepaid by United States mail to all Lot Owners.
- (b) Insurance policies carried pursuant to Sections 6.2.1 shall provide that:
 - (1) Each Lot Owner is an insured person under the policy to the extent of such Lot Owner's insurable interest;
 - (2) The insurer waives its right to subrogation under the policy against any Lot Owner or member of the Lot Owner's household;
 - (3) No act or omission by any Lot Owner, unless acting within the scope of the Owner's authority on behalf of the Association, will preclude recovery under the policy; and
 - (4) If, at the time of a loss under the policy, there is other insurance in the name of a Lot owner covering the same risk covered by the policy, the Association's policy provides primary insurance coverage.
- (c) Any loss shall be adjusted by the Association but the insurance proceeds for that loss are payable to any trustee designated by the Association for that purpose, or otherwise to the Association, and not to any mortgagee or beneficiary under a deed of trust. The insurance trustee or the Association shall hold any insurance proceeds in trust for Lot Owners and lienholders as their interests may appear. Property insurance proceeds shall be disbursed first for the repair or restoration of the damaged property, and Lot Owners and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored.

4.2.4. In the event a mortgagee endorsement has been issued as to a Lot, the share of the Lot Owner shall be held for the mortgagee and the Lot Owner as their interest may appear, but no mortgagee shall have the right to participate in the determination of reconstruction or repair.

4.2.5. Each Lot Owner at his expense, may obtain such additional insurance coverage on his Lot, personal property and personal liability and any additional insurance shall contain waiver of subrogation clause.

4.2.6. Immediately after the casualty causing damage to property, the Association shall obtain reliable and detailed estimates of the cost to place the damaged real property in condition as good as that before the casualty. Such costs may include professional fees and premiums for such bonds as the Executive Board of the Association deems appropriate.

4.2.7. Each Lot Owner delegates to the Executive Board of the Association his right to adjust with insurance companies all losses under policies purchased by the Association except as provided in Section 4.2.2(c)(i)

4.3. Repair/Reconstruction. In the event of damage to or destruction of a Building as a result of fire or other casualty, the same shall be repaired or reconstructed substantially in accordance with the original plans and specifications. The Executive Board shall arrange for the prompt repair and restoration of the Building but not including any furniture, furnishings, fixtures or equipment in the Building, unless the subject insurance policy covers a portion or all of such loss to the Building, in which event the Executive Board shall repair or replace such damaged property, and the Executive Board shall disburse the proceeds of all insurance policies to the contractors engaged in such repair and restoration in appropriate progress payments and in accordance with Section 4.2.3 above. Any cost for such repair and restoration in excess of the insurance proceeds remaining after repairs have been completed shall be treated as a common surplus and shall be applied to reserves.

4.4. Premiums. Premiums for contracts of insurance purchased by the Association shall be paid by the Association and shall be a Common Expense.

4.5. Prohibited Acts. No Lot Owner shall do or keep anything within the Property which shall cause an increase in the premiums for or the cancellation of any insurance maintained by the Association.

5. EASEMENTS.

5.1. Easements for Common Utility Facilities. Declarant hereby establishes easements in each Lot for the benefit of each other Lot, (except within the Building on each Lot) for the installation, use, operation, maintenance, repair, replacement, relocation and removal of Common Utility Facilities serving other Lots. Any Lot Owner whose Lot serves as a Servient Tenement for any such Common Utility Facilities shall have the right, upon not less than 60 days' notice to any Lot Owner's whose Lot is the Dominant Estate at any time and from time to time, to move and relocate such Common Utility Facilities on the following terms: (i) such relocation shall be made at the sole cost and expense of the Lot Owner of the Servient Tenement; (ii) such relocation shall not interfere with or diminish the utility services to the Lot Owner of the Dominant Estate (however, temporary interferences with and diminutions in utility services shall be permitted following prior notice); (iii) such relocation shall not reduce or unreasonably impair the usefulness or function of the facilities in question and shall be underground; (iv) the Lot Owner of the Servient Tenement shall have delivered to Declarant or to the Committee a plat showing the relocated portion of the Common Utility Facilities for approval; and (v) the portion

of the Common Utility Facilities relocated in compliance with this Section shall be bound by and subject to the easements granted in this Section, and such easements shall have the same title priority as existed on the date of recording this Declaration, and the easement herein conferred as to the old portion replaced by the relocation shall be deemed released.

5.2 Easements for Common Walls. Declarant hereby establishes an easement benefiting and burdening adjoining Lots where a single wall (whether interior or exterior, load-bearing or for privacy) is shared between them and is located along their common boundary ("Common Walls"). The benefit and burden of the easement shall only concern the adjoining Lots. The extent of the easement shall be the location of the wall as originally constructed, together with such access as is necessary for maintenance, repair and replacement. Neither Lot Owner will cause nor permit anything to be done which would impair the structure or soundness of the wall. The two Lot Owners shall cooperate in the maintenance and repair of the wall and shall divide equally between them and promptly pay all reasonable expenses for such work unless such expenses were incurred without prior notice to either party or unless such work is necessitated by the gross or willful negligence or intentional act of either party, in which case said party shall be solely responsible for the costs of such repairs occasioned by its acts. This easement shall apply to the original shared walls and to any repair or replacement thereof.

5.3 Easement for Association. The Association shall have access to such portions of the Property as are necessary for it and its agents and contractors to discharge its duties. It shall provide a Lot Owner with notice, reasonable in light of all circumstances, before entering any Lot.

5.4 Easement for Private Alleys. Declarant hereby establishes, subject to paragraph 5.3, an exclusive easement for ingress and egress in and to the portion of the Property shown on the recorded plat referenced in Exhibit A and any subsequent recorded plat and designated as a private alley ("Private Alleys") for the benefit of the owners of any Lot abutting a Private Alley.

5.5 Duration. The provisions of Sections 5.1 through 5.4 shall be perpetual and shall survive the expiration or termination of this Declaration, subject to the right reserved by the Declarant to dedicate reserved rights-of-way or Common Utility Facilities to public authorities or utilities.

6. ARCHITECTURAL CONTROL AND USE RESTRICTIONS.

6.1 Lots. Each Lot shall be used for single-family residential purposes only.

6.2. Architectural Control.

- (a) Approval of Plans & Specifications. No improvement, addition, or alteration shall be made to any Building or Lot, nor shall any Building or Lot be repaired or rebuilt after destruction by any hazard ("Improvements") until completed Plans & Specifications, showing the nature, kind, space, height, materials, and location of the Improvements shall have been submitted to and approved in writing by the Declarant or the Architectural Committee (as applicable). A failure to approve or disapprove completed Plans & Specifications within forty-five (45) days

after they have been submitted shall be deemed to be an approval of those Plans & Specifications. Neither the Association, the Association's Executive Board, the Declarant, the Architectural Committee nor any officer, employee, director or members thereof shall be liable for damages to any persons by reason of mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval, disapproval or failure to approve any Plans & Specifications. Every person who submits Plans & Specifications for approval agrees, by submission of such Plans & Specifications, that it will not bring any action or suit to recover any such damages. This section shall not be applicable to the Declarant.

- (b). Powers. The Declarant shall have the right to refuse to approve any plans and specifications for Improvements proposed to be constructed on a Lot (the "Plans & Specifications") which are not suitable or desirable, in its sole discretion, for aesthetic or any other reasons, provided such approval is not unreasonably withheld. In approving or disapproving Plans & Specifications, the Architectural Committee shall consider the purposes of the Declaration as discussed in the Recitals, including the suitability of the proposed Improvements and materials to be used in those Improvements, the Lot upon which it is proposed to be erected, and the effect of the Improvements on adjacent or neighboring Property. There is specifically reserved unto the Architectural Committee the right of entry and inspection upon any Lot for the purpose of determining whether there exists any construction of any Improvements which violates the terms of any approval by the Architectural Control Committee or the terms of this Declaration or of any other applicable covenants, conditions and restrictions. The Architectural Committee and the Executive Board is specifically empowered to enforce the provisions of this Declaration by any legal or equitable remedy. In the event it becomes necessary to resort to litigation to determine the propriety of any constructed Improvement, or to remove any unapproved Improvements, the prevailing party shall be entitled to recovery of all court costs and expenses (including reasonable attorney's fees).

6.3 Declarant Facilities. Notwithstanding any provision in this Article to the contrary, during the period of development and sale of the Lots and Buildings constructed thereon the Declarant, and any builder revocably permitted by Declarant, is permitted, subject to the laws of the applicable governmental authority, to maintain such facilities and conduct such sales activities as Declarant deems reasonably required, convenient, or incidental to the development and sale of the Lots and houses.

6.4. Animals. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on the Lots, except that a reasonable number of domesticated, household pets may be kept, provided they are not maintained for commercial purposes and such animal does not constitute a danger, nuisance or disturbance to other Lot owners.

6.5. Screening. All equipment, garbage cans, and other personal property shall be from view from the any street, parking area and adjoining Lots. All garbage, trash, or rubbish shall be regularly removed from the Lot and shall not be allowed to unreasonably accumulate.

6.6. Leasing. No Lot or any portion of the Improvements thereon shall be leased for transient or hotel purposes, except that a Lot Owner may lease not less than the entire residential structure on its Lot; provided that each lease must be in writing, must be for a period of not less than one (1) year, and must provide that it is subject to this Declaration and the ByLaws and that any failure by a tenant to comply with such shall be a default under the lease. The Lot Owner shall promptly provide the Association with copies of any and all leases entered into by the Lot Owner.

6.7. Utility Devices. Without the prior written approval and the authorization of the, the Executive Board or the Architectural Committee, no exterior television or radio antennae, satellite dishes or solar panels or other utility devices, of any sort shall be placed, allowed or permitted upon any portion of the exterior of the Buildings or Lots to be located within the Property except to the extent prohibition of the such devices is itself expressly prohibited by law. The Declarant and the Association, for the common benefit of the Lot Owners, reserves the right to install within the Property such utility devices necessary to provide cable TV or similar services.

6.8. Signs. No signs of any type shall be erected, placed or permitted to remain within in public view from any Building or Lot within the Property without the approval of the Executive Board, except that a Lot Owner may place one "For Sale" sign or one "For Rent" on the Lot. The foregoing covenants shall not, however, apply to the business activities, signs, and billboards or the construction and maintenance of buildings, if any, of Declarant, its agents and assigns (including builders), during the construction and sales period for the Lots and the Buildings constructed thereon. This right of the Declarant shall nevertheless be subject to applicable local ordinances and/or laws.

6.9. Governmental Regulations. Each Lot Owner shall comply with all laws, ordinances, governmental building codes, health regulations, zoning restrictions and the like applicable to its Lot. In the event of any conflict between any provision of such governmental code, regulation or restriction and any provision of this Declaration, the more restrictive provision shall apply.

6.10. Additional Restrictions. The Declarant (until the Turnover Date) and thereafter, the Association, the Executive Board, or the Architectural Committee shall have the power to formulate, amend, publish and enforce other reasonable rules and regulations concerning the architectural control and use of the Property within the Property.

6.11. Waiver. Notwithstanding anything above to the contrary, the Declarant (until the Turnover Date), the Executive Board, or the Architectural Committee shall have the right, in the exercise of their reasonable discretion, to waive one or more violations of the requirements of this Article. No waiver shall be effective unless in writing and nevertheless shall not operate as a waiver of any other requirement respecting the Lot in question or any other Lots subject to this Declaration. No waiver shall be effective if it shall cause the Lot or structures thereon to be in nonconformance with any applicable governmental ordinances.

6.12 Subdivision Prohibited: A Lot shall not be subdivided nor shall its boundary lines be changed, except by written consent of Declarant, which consent shall not be unreasonably withheld so long as the proposed development is compatible with the surrounding area. Two or more Lots may be combined into one Lot with approval of the Declarant or the committee.

6.13 Nuisances and Unlawful Uses. No noxious, offensive or illegal activity shall be carried on in any Building or Lot shall anything be done therein which would create loud noises or offensive odors or which would be an annoyance or nuisance to other Lot Owners.

6.13 Private Alleys. The Private Alleys shall only be used by the owners of the Lots abutting the Private Alleys for ingress and egress to their respective Lots. No parking is permitted in any of the Private Alleys.

7. GENERAL PROVISIONS.

7.1. Enforcement. The Association or any Lot Owner shall have the right to enforce, by a proceeding at law or in equity, the terms of the Declaration. Failure by the Association or by any Lot Owner to enforce any covenant or restriction herein shall in no event be deemed a waiver of the right to do so thereafter.

7.2. Severability Invalidation of any one or more of these covenants or restrictions by judgment or court order shall in no way affect any other provision which shall remain in full force and effect.

7.3. Amendment.

7.3.1. The Declaration shall run with the land for a term of thirty (30) years from the date of recording of the Declaration or the last Supplementary Declaration or amendment thereto, and shall inure to the benefit of the Declarant (until the Turnover Date), the Association or any Lot Owner or their respective legal representatives, heirs, successors, and assigns. This Declaration shall thereafter automatically be extended for successive periods of ten (10) years. Except as specifically otherwise provided in this document, the Declaration may be amended by an instrument signed by not less than the Lot Owners of sixty-seven percent (67.0%) of the Lots.

7.3.2. If an amendment is executed, each such amendment shall be delivered to the Executive Board which shall, within thirty (30) days:

- (a) Reasonably assure itself that the amendment has been executed by the Lot Owners of the required number of Lots (for this purpose, the Board may rely on its roster of Members, and shall not be required to cause the title to any Lot to be examined); and
- (b) Within the thirty (30) day period, the Executive Board shall cause the amendment to be recorded with the appropriate Register of Deeds' office. All amendments shall be effective from the date of recordation in the appropriate Register of Deeds' office; provided, however, that no such instrument shall be valid until it has been indexed in the name of the Association.

7.4. Disputes. In the event of any dispute arising concerning a provision of this Declaration, such dispute shall be settled by legal proceedings or the parties may, by mutual agreement, submit the dispute to a committee appointed by the Association for this purpose, and once submitted, the parties agree to be bound by the decision of that committee.

7.5. Voting. Voting by Members of the Association shall be in accordance with the applicable provisions set forth in this Declaration and the ByLaws.

7.6. Member Addresses. Each Member agrees to keep the Association informed of his address at any time and any notice sent or delivered to that address shall be sufficient. Each new Member agrees to provide the Association with evidence of his Lot Ownership for preparation of a membership roster and the roster as so completed shall be sufficient evidence as to the Lot Ownership of each Lot.

7.7. Gender and Grammar. All words and phrases in this Declaration shall be construed to include the singular or plural number, and the masculine, feminine, or neuter gender, as the context requires.

7.8. Lot Owner Responsibility. Notwithstanding anything in this Declaration to the contrary, a Lot Owner shall be responsible for any and all violations of these Declarations by his employees, agents, tenants, guests and invitee. When a party to this Declaration consists of more than one individual or entity, such party's liability hereunder shall be joint and several.

7.9. Construction. This Declaration shall be construed in accordance with the laws of North Carolina without giving effect to its conflict of laws principles. In case of any conflict between the Declaration and the Articles or the ByLaws, the Declaration shall control.

7.10. Exhibits. All Exhibits and Schedules, if any, attached to this Declaration are hereby incorporated by reference and made a part of this Declaration. The term "Declaration" as used herein shall be deemed to include all such Exhibits and Schedules.

7.11. Remedies. In the event of any default in and/or breach of any of the terms, conditions and provisions of this Declaration (either actual or threatened) the party or parties who are thereby aggrieved shall have the right to specific performance and/or injunction in addition to any and all other rights and remedies at law or in equity. The rights and remedies provided by this Declaration are distinct and cumulative and the use of any one right or remedy by any party shall not preclude or waive its right to use any or all other remedies. No delay or omission of a party to exercise any right or power arising from any default on the part of the other shall impair any such right or power, or shall be construed to be a waiver of any such default or an acquiescence therein. The rights and remedies provided herein are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

7.12 Termination. Any termination of the Planned Community shall be effected in accordance with N.C.G.S. § 47F-2-118 unless such termination shall have been caused by a taking of all of the Lots by eminent domain, in which case such termination will be effected in accordance with N.C.G.S. § 47F-1-107.

7.13 Attorneys Fees. Except as provided in N.C.G.S. § 47F-3-116, in any action brought to enforce provisions of this Declaration, the Association's Articles of Incorporation or ByLaws, or rules or regulations duly adopted by the Association, the prevailing party in such action shall be entitled to collect reasonable attorneys fees awarded by the court having jurisdiction over such action.

7.14 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.

7.15 Additional Property. Declarant shall have the right, at its election without the consent of any Lot Owner or Lot Owners, to bring within the coverage of this Declaration and the jurisdiction of the Association the additional property described on Exhibit A-1 ("Additional Property"). Such additions authorized hereby shall be made by filing of record in the Office of the Register of Deeds for Burke County, North Carolina, Supplementary Declarations of Covenants, Conditions and Restrictions with respect to the Additional Property. Each such Supplementary Declaration shall extend the scheme of this Declaration and the jurisdiction of the Association to the Additional Property and thereby subject the Additional Property to assessment for their just share of the Association's expenses. Nothing contained in this Section 7.15, however, shall be construed to obligate Declarant, or any other person or entity, to bring the Additional Property within the coverage of this Declaration.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Declarant has caused this instrument to be executed by its duly authorized Manager, this day first above written.

The Downtown Group II, LLC

BY: [Signature]
Timothy P. Crawford Manager

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

I, the undersigned, a Notary Public for said County and State, do hereby certify that the following person, personally known to me, personally appeared before me this day and acknowledged the voluntary due execution of the foregoing instrument in writing for the purposes therein expressed and in the capacity indicated: Timothy P. Crawford

name(s) of principal(s).

Dated: August 2, 2006

[Signature]
Name: Karen Thies Crane
Notary Public
My Commission Expires: June 23, 2010

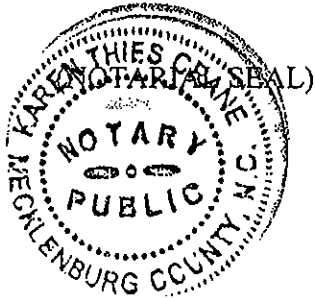


EXHIBIT "A"

400 UNION SQUARE HOMES

Being all of Lots 1 through 10 as shown on the map for 400 Union Square Townhomes recorded in Map Book 31 at Page 251 in the office of the Register of Deeds of Burke County, North Carolina.

EXHIBIT A-1

ADDITIONAL PROPERTY

All or any portion of the real property within the block bounded Church Street, East Meeting Street, White Street and East Union Street in the City of Morganton, Burke County, North Carolina.

EXHIBIT B
BYLAWS
OF
400 UNION SQUARE HOMEOWNERS' ASSOCIATION, INC.

ARTICLE I
GENERAL

These ByLaws are adopted ancillary to the formation of 400 Union Square Homeowners' Association, Inc. (the "**Association**"), a North Carolina non-profit corporation formed to administer 400 Union Square Homes, a Planned Community formed pursuant to the North Carolina Planned Community Act as adopted in Chapter 47F of the North Carolina General Statutes (the "**Act**") and described in the Declaration of Covenants, Conditions and Restrictions for 400 Union Square Homes (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 Lot 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 Lot which is subject to the Declaration. Ownership of such lot of 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 Lot(s) owned by such Member.

3.2. **Votes.** The Owner(s) of each Lot shall be entitled to one (1) vote for each Lot owned. When more than one Person holds an interest in any one Lot, all such Persons shall be Members. The vote of that Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot. 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 Lot 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 Lot or to any other mailing address designated in writing by the Lot 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 Lot is owned by more than one person, each owner of the Lot may vote or register protest to the casting of votes by the other owners of the Lot 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 Lot is present at a meeting of the Association, the owner who is present is entitled to cast all votes allocated to that Lot. If more than one of the multiple owners are present, the votes allocated to that Lot 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 Lot without protest being made promptly to the person presiding over the meeting by any other owners of the Lot.

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; and those persons who receive the highest number of votes shall be deemed to have been elected. 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 Members 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 Lots allowed under the current zoning for the Property (ii) ten (10) years after the first Lot is conveyed to an Owner for use as that Owner's residence; 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 Executive Board 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 Association which may still be in effect or operation. Each Owner, by acceptance of a deed to or other conveyance of a Lot, 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) levy fines against and suspend privileges of or services provide by the Association to a Member in accordance with the Declaration and the Act;
- (b) 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;
- (c) 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
- (d) employ a manager, an independent contractor, or such other employees as they deem necessary and to prescribe their duties.

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 Lot Owner or such Lot 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. § 47F-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 Lot 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 or in N.C.G.S. § 47F-3-118, a statement setting forth whether there are, and if so the amount of, unpaid assessments or other charges against any Lot. 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) cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate;
- (g) cause the PPE's to be maintained and repaired ; and

- (h) 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.

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 Lot 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 ByLaws 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. **Amendments 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 _____, 2006, by the undersigned Directors.

400 Union Square Homeowners' 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 Townhome Owners' Association, Inc.

This the _____ day of _____, 2006.

Secretary

EXHIBIT C

SOSID: 859276
Date Filed: 8/1/2006 3:30:00 PM
Elaine F. Marshall
North Carolina Secretary of State
C200621300297

ARTICLES OF INCORPORATION
OF
400 UNION SQUARE HOMEOWNERS' 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 HOMEOWNERS' 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 HOMES, a planned community organized pursuant to Chapter 47F of the General Statutes of North Carolina, as set forth in that certain Declaration of Covenants, Conditions and Restrictions for 400 Union Square Homes 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 "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 47F of the North Carolina General Statutes; 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;

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 lots (the "Lots") in the 400 UNION SQUARE HOMES and every Owner of a Lot shall automatically be a member of the Corporation. Members shall not include persons or entities holding 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 Lot ownership.

Member(s) shall be entitled to cast one vote for each Lot owned by such Member(s). In the event fee simple title to a Lot 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 Lot shall be cast as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

7. The address of the initial registered office and the principal office in the State of North Carolina is 2030 South Tryon Street, Suite F, 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 South Tryon Street, Suite F Charlotte, North Carolina 28203 |
| Dan Wendover | 2030 South Tryon Street, Suite F Charlotte, North Carolina 28203 |
| Joseph Nessler | 2030 South Tryon Street, Suite F Charlotte, North Carolina 28203 |

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) one hundred twenty (120) days after the date by which seventy-five percent (75% of the Units have been conveyed to Unit purchasers other than Declarant; or (b) ten (10) years after the date of the first conveyance to an Owner.

At the meeting of the Association in which the Lot 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 three (3) years. 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 East 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 28th day of July, 2006.



David L. Henderson
Incorporator



ELIZABETH T COOPER
REGISTER OF DEEDS, BURKE
JUDICIAL BUILDING
201 SOUTH GREEN STREET
MORGANTON, NC 28655

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