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FILED Joyce H. Pearson
Register of Deeds Orange COUNTY, NC
BY: *[Signature]*
Deputy

Prepared by and return to:
William D. Bernard
BROWN & BUNCH, PLLC
101 N. Columbia Street
Chapel Hill, NC 27514

PIN:

**DECLARATION OF CONDOMINIUM OF THE FLATS CONDOMINIUM PURSUANT TO
CHAPTER 47C OF THE GENERAL STATUTES OF NORTH CAROLINA**

THIS DECLARATION OF CONDOMINIUM OF THE FLATS CONDOMINIUM
("Declaration") is made this 1ST day of NOVEMBER, 2006, by TODD STREET LLC, a North
Carolina limited liability company, 1777 N. Fordham Boulevard, Suite 102, Chapel Hill, North Carolina
27514 ("Declarant"). 4778-78-3758.001 thru .032 or

WITNESSETH THAT:

WHEREAS, Declarant is the owner of those certain tracts or parcels of land lying and being in
Carrboro, Chapel Hill Township, Orange County, North Carolina, and more particularly described on the
attached EXHIBIT A; and

WHEREAS, Declarant desires and intends to divide the Property (as hereinafter defined) and the
buildings and other improvements constructed or to be constructed upon the Property into single family
residential condominium units and common elements in accordance with the provisions of the North
Carolina Condominium Act, and to sell and convey the same subject to the covenants, conditions and
restrictions set forth in the North Carolina Condominium Act and in this Declaration not inconsistent with
the North Carolina Condominium Act; and

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WHEREAS, Declarant desires and intends, by the filing of this Declaration, to submit the Property and the buildings and other improvements constructed or to be constructed thereon, together with all appurtenances thereto, to the provisions of the North Carolina Condominium Act; and

WHEREAS, it is the intent of the Declarant that the condominium shall be known and referred to as "The Flats Condominium".

NOW, THEREFORE, the Declarant does hereby publish and declare that all of the Property and all buildings and other improvements thereon shall be hereafter held, conveyed, hypothecated, encumbered, used, occupied and improved subject to all of the provisions of the North Carolina Condominium Act and this Declaration not inconsistent with the North Carolina Condominium Act. The provisions of this Declaration are declared and agreed to be in furtherance of a plan for the improvement of the Property and the buildings and other improvements thereon and the division thereof into single family residential condominium units and common elements. The provisions of this Declaration shall be deemed to run with the Property, including all Units (as hereinafter defined) and Common Elements (as hereinafter defined), and shall be a burden and a benefit to the Declarant, its successors and assigns, and all other persons who may hereafter purchase or otherwise acquire an interest in the Property, or any part thereof, including any Unit, and their respective grantees, successors, heirs, executors, administrators, devisees and assigns.

ARTICLE I

DEFINITIONS

Section 1.01 Definitions. As used in this Declaration, the following terms shall have the meanings ascribed to them:

(a) Act. "Act" shall mean the North Carolina Condominium Act, Chapter 47C of the General Statutes of North Carolina, and any amendment thereof.

(b) Articles of Incorporation. "Articles of Incorporation" shall mean the Articles of Incorporation of the Association and any amendment and/or modification thereof.

(c) Association. "Association" shall mean The Flats Condominium Association, Inc., a North Carolina nonprofit corporation, and its successors and assigns.

(d) Board of Directors. "Board of Directors" shall mean the duly appointed or elected Board of Directors of the Association.

(e) Building. "Building" shall mean any building now existing or hereafter constructed upon the Property that shall contain at least one (1) Unit.

(f) Bylaws. "Bylaws" shall mean the Bylaws of the Association and any amendment and/or modification thereof.

(g) Class I Limited Common Elements. "Class I Limited Common Elements" shall mean any Limited Common Elements allocated by this Declaration or by operation of the Act for the exclusive use of a single Unit.

(h) Class II Limited Common Elements. "Class II Limited Common Elements" shall mean any Limited Common Elements allocated by this Declaration or by operation of the Act for the exclusive use of all of the Units in a single Building.

(i) Class III Limited Common Elements. "Class III Limited Common Elements" shall mean any Limited Common Elements allocated by this Declaration or by operation of the Act for the exclusive use of one (1) or more but fewer than all of the Units, exclusive of the Class I Limited Common Elements and the Class II Limited Common Elements. Class III Limited Common Elements shall include any and all Limited Common Elements not expressly designated in this Declaration or by operation of the Act as Class I Limited Common Elements or Class II Limited Common Elements.

(j) Common Elements. "Common Elements" shall mean all of the Property and shall include, without limitation, the Improvements, the Buildings (exclusive of the Units) and the Limited Common Elements. The Common Elements shall not include the Units.

(k) Common Expenses. "Common Expenses" shall mean expenditures made by or financial liabilities of the Association together with allocations to reserves.

(l) Condominium. "Condominium" shall mean The Flats Condominium, the condominium created by this Declaration, and shall include, without limitation, all of the Improvements, Buildings, Units and Common Elements.

(m) Declarant. "Declarant" shall mean Todd Street LLC, a North Carolina limited liability company, and its successors and assigns.

(n) Improvement. "Improvement" shall mean any structure, street, driveway, entranceway, parking lot, sidewalk, retaining wall, culvert or other improvement now existing or hereafter constructed upon the Property, or any part thereof, exclusive of each Building.

(o) Limited Common Elements. "Limited Common Elements" shall mean any part of the Common Elements allocated by this Declaration or by operation of the Act for the exclusive use of one (1) or more but fewer than all of the Units, and shall include the Class I Limited Common Elements, the Class II Limited Common Elements and the Class III Limited Common Elements.

(p) Owner. "Owner" shall mean any person who acquires a legal or equitable interest in any Unit other than as security for an obligation and shall include the Declarant for so long as the Declarant shall hold or retain a legal or equitable interest in at least one (1) Unit.

(q) Period of Declarant Control. "Period of Declarant Control" shall mean the period of time commencing on the effective date of this Declaration and, if not sooner terminated by Declarant, continuing up to, through and including (a) the date as of which not less than thirty (30) Units have been conveyed of record by the Declarant to other persons, or (b) the date which is the three (3) year anniversary of the day on which this Declaration is recorded in the Office of the Register of Deeds of Orange County, North Carolina, whichever is later.

(r) Plat and Plans. "Plat and Plans" shall mean the plat(s), plans and specifications for the Condominium, including, without limitation, the Buildings, the Units, the Improvements and the Common Elements, as recorded in the Office of the Register of Deeds of Orange County, North Carolina, in Plat Book 100, Pages 195-200, or as may hereafter be recorded in the Office of the

Register of Deeds of Orange County, North Carolina, and shall include any amendment and/or modification thereof.

(s) Property. "Property" shall mean those certain tracts or parcels of land located in Carrboro, Chapel Hill Township, Orange County, North Carolina, and more particularly described on the attached EXHIBIT A.

(t) Rules and Regulations. "Rules and Regulations" shall mean such rules and regulations regarding the use and occupancy of the Units and the Common Elements as may be adopted by the Declarant or the Association from time to time in accordance with the provisions of this Declaration or the Bylaws.

(u) Unit. "Unit" shall mean a physical portion of each Building designated for separate ownership or occupancy, the boundaries of which are described in this Declaration and in the Plat and Plans.

Section 1.02 Rules of Construction.

(a) The Act. Unless otherwise expressly defined in this Declaration, or unless the context shall otherwise require, each term defined in the Act shall have the same meaning in this Declaration as is ascribed to it in the Act. In the event any provision of this Declaration shall conflict or be inconsistent with any provision of the Act, the provision of the Act shall be paramount and controlling.

(b) Gender. When and as used in this Declaration, words of the masculine gender shall be deemed and construed to include co-relative words of the feminine and neuter genders, words of the feminine gender shall be deemed and construed to include co-relative words of the masculine and neuter genders, and words of the neuter gender shall be deemed to include co-relative words of the masculine and feminine genders.

(c) Person. When and as used in this Declaration, unless the context shall otherwise require, the word "person" shall include the plural as well as the singular, and shall mean any natural person, corporation, limited liability company, partnership, association, unincorporated organization, joint

venture, joint-stock company, business or other trust, estate, government, governmental subdivision or agency or other legal or commercial entity.

(d) Captions. The captions and headings in this Declaration are for convenience only and in no way define, limit or describe the scope or intent of any article, section or provision of this Declaration.

(e) Reference. All references in this Declaration to articles, sections or paragraphs are references to articles, sections or paragraphs of this Declaration unless some other reference is expressly established.

ARTICLE II

NAME AND LOCATION OF THE CONDOMINIUM

The name of the Condominium shall be The Flats Condominium. The Condominium is located at 101 through 110 Todd Street, Carrboro, Orange County, North Carolina.

ARTICLE III

THE PROPERTY

The Condominium shall consist of the Property and all Buildings, Units, Improvements and Common Elements.

ARTICLE IV

THE BUILDINGS AND THE UNITS

Section 4.01 Location and Description of the Buildings. The Condominium shall contain a total of ten (10) Buildings which shall be numbered 101, 102, 103, 104, 105, 106, 107, 108, 109 and 110, respectively, as shown on the Plat and Plans. Buildings 104, 105, 106 and 108 shall each be a 2-floor, 2-Unit Building with each Unit having 2 floors. Buildings 101, 102, 103, 107, 109 and 110 shall each be a 2-floor, 4-Unit Building with 2 Units on each floor. Each Building shall be of wood frame and veneer construction.

The location of each Building and the particulars of each Building, including the layout, ceiling and floor elevations, the identifying number, boundaries and dimensions of each Unit therein and the

location of the Common Elements and Limited Common Elements, shall be as set forth herein and as shown on the Plat and Plans.

Section 4.02 Location, Identifying Numbers and Maximum Number of Units. The Condominium shall contain a maximum of thirty-two (32) Units located in ten (10) Buildings as provided in **Section 4.01**. As shown on the Plat and Plans, the two (2) Units in each of Buildings 104, 105, 106 and 108 shall be designated as Unit A and Unit B. As shown on the Plat and Plans, the two (2) Units located on the first (ground) floor in each of Buildings 101, 102, 103, 107, 109 and 110 shall be designated as Unit A, Unit B, and the two (2) Units located on the second floor in each of Buildings 101, 102, 103, 107, 109 and 110 shall be designated as Unit C and Unit D. The identifying number of each of the thirty-two (32) Units shall be as follows:

<u>Building</u>	<u>Unit Numbers</u>
101	101A, 101B, 101C, 101D
102	102A, 102B, 102C, 102D
103	103A, 103B, 103C, 103D
104	104A, 104B
105	105A, 105B
106	106A, 106B
107	107A, 107B, 107C, 107D
108	108A, 108B
109	109A, 109B, 109C, 109D
110	110A, 110B, 110C, 110D

Note: The Declarant has reserved the right to combine, recombine, subdivide and/or reconfigure any of the Units prior to the conveyance thereof to any person other than the Declarant.

The identifying number of each Unit and its location, dimensions, approximate area, number of rooms, Limited Common Elements, Class I Limited Common Elements, Class II Limited Common Elements, Common Elements to which it has immediate access and other data concerning its proper identification shall be as set forth herein and as shown on the Plat and Plans.

Each Unit shall be bounded, as to horizontal and vertical boundaries, by the interior surface of its perimeter walls, ceilings and floors as shown on the Plat and Plans and as provided in N.C.G.S. §47C-2-102; subject, however, to such encroachments as are contained in the Building in which such Unit is

located, whether the same now exist or may be caused by settlement or movement of the Building, or by permissible repairs, construction or alterations, as provided in N.C.G.S. §47C-2-114.

Section 4.03 Nature of Interest in each Unit. Each Unit, together with the undivided interest in the Common Elements appurtenant thereto, shall for all purposes be, and it is hereby declared to be, a separate parcel of real estate. Subject to the provisions of this Declaration (including any and all utility and other easements, if any, reserved or conveyed herein), the Bylaws, the Rules and Regulations and such acts and resolutions as may be adopted from time to time by the Board of Directors as provided in the Bylaws, the Owner of each Unit shall be entitled to (a) the exclusive ownership, use and possession of such Unit; (b) the exclusive use of each of the Class I Limited Common Elements allocated for the exclusive use of such Unit; (c) the exclusive use, together with the Owner(s) of each other Unit in the Building in which such Unit is located, of each of the Class II Limited Common Elements allocated for the exclusive use of the Units in such Building; (d) the exclusive use of each of the Class III Limited Common Elements, if any, allocated for the exclusive use of such Unit and any other Unit or Units, together with the Owner(s) of each such other Unit; and (e) the non-exclusive use, together with the Owner(s) of each other Unit in the Condominium, of all Common Elements not designated as Limited Common Elements.

ARTICLE V

THE COMMON ELEMENTS

Section 5.01 Declaration of Common Elements. The Common Elements shall consist of the following:

(a) All parts of each Building, with the exception of the individual Units, and shall include, without limitation,

(i) the foundation and all columns, girders, beams, supports and other structural members of such Building;

(ii) all exterior walls and interior walls of such Building with the exception of partition walls located wholly within a Unit;

(iii) the roof, porches, decks, stoops, outside steps and entrance(s) to and exit(s) from such Building;

(iv) all central and appurtenant installations for services such as power, light, telephone, cable, gas, hot and cold water, sewage, heat, ventilation and air conditioning and all other mechanical equipment pertaining thereto existing;

(v) all gas, water, sewer and other utility pipes;

(vi) all electrical, telephone, cable television and other utility lines; and

(vii) all shutters, awnings, window boxes, doorsteps, stoops, decks, porches, balconies, patios, exterior doors and windows, and each heat pump or other HVAC system (along with the ductwork, wires and conduit associated therewith) serving any one or more Units, all pipes, lines, cables and other installations for electrical, telephone, cable, gas, water and sewer serving any one or more Units, and any other fixture designed to serve any Unit but located outside such Unit's boundaries.

(b) Any and all other parts of the Property, with the exception of individual Units, including, without limitation, streets and roads (subject to the provisions of **Section 5.06**), parking areas, driveways, entrances, sidewalks, all gas, water, sewer, electrical, telephone, cable television and other utility pipes, wires, ducts, cables, conduits, lines, apparatus and/or installations existing in any Building or upon the Property intended for common use or necessary for or convenient to the existence, maintenance or safety of any Unit, Building or Improvement, and any other Improvement.

Section 5.02 Allocation of Undivided Interests in Common Elements and Shares of Common Expense Liability. The initial undivided interest in the Common Elements and the share of Common Expense liability allocated to each Unit shall be as set forth on the attached **EXHIBIT B**. The initial undivided interest in the Common Elements and/or the share of Common Expense liability allocated to each Unit as set forth on the attached **EXHIBIT B** shall not be altered except (a) by the Déclarant in connection with any combination, recombination, subordination or reconfiguration of any Unit or Units,

or any Unit or Units and Common Elements, by the Declarant prior to the initial conveyance thereof to a person other than the Declarant (subject to any limitation on the maximum number of Units set forth herein); or (b) by the relocation of boundaries between adjoining Units with the consent of the Owner of each affected Unit; or (c) by amendment of this Declaration as provided below provided, however, that a unanimous vote of the Owners in each affected Unit shall also be required. In the event of any such combination, recombination or reconfiguration of any Unit or Units, or any Unit or Units and Common Elements, or any such relocation of boundaries between adjoining Units as provided above, the undivided interest in the Common Elements and/or the share of Common Expense liability allocated to each Unit shall be reallocated to reflect such changes. Each Unit's undivided interest in the Common Elements shall be determined by dividing the total number of heated square feet in such Unit by the total number of heated square feet in all Units. Each Unit shall be allocated an equal share of the Common Expense liability.

Section 5.03 Limited Common Elements.

(a) Except as otherwise provided in paragraph (b) below, all parts of each Building, with the exception of the individual Units, and including, without limitation, each of the following, shall constitute Class II Limited Common Elements allocated for the exclusive use of the Units in such Building:

(i) the foundation and all columns, girders, beams, supports and other structural members of such Building;

(ii) all exterior walls and interior walls of such Building with the exception of partition walls located wholly within a Unit;

(iii) the roof, patios, porches, decks, stoops, outside steps and entrance(s) to and exit(s) from such Building;

(iv) all central and appurtenant installations for services such as power, light, telephone, cable, gas, hot and cold water, sewage, heat, ventilation and air conditioning and all other mechanical equipment pertaining thereto existing;

(v) all gas, water, sewer and other utility pipes;
(vi) all electrical, telephone, cable television and other utility
lines; and

(vii) all shutters, awnings, window boxes, exterior doors and
windows, and each heat pump or other HVAC system (along with the ductwork, wires
and conduit associated therewith) serving any one or more Units, all pipes, lines, cables
and other installations for electrical, telephone, cable, gas, water and sewer serving any
one or more Units, and any other fixture designed to serve any Unit but located outside
such Unit's boundaries.

(b) Each doorstep, stoop, deck, porch and patio serving as single Unit and designated
as Class I Limited Common Elements on the Plat and Plans, and each exterior door and window serving a
single Unit, and each heat pump or other HVAC system (along with the ductwork, wires and conduit
associated therewith) serving a single Unit, all pipes, lines, cables and other installations for electrical,
telephone, cable, gas, water and sewer serving a single Unit, and any other fixture designed to serve a
single Unit but located outside such Unit's boundaries, shall constitute Class I Limited Common
Elements allocated exclusively for the use of such Unit.

(c) Each Class I Limited Common Element shall be kept in good and operable
condition and state of repair and shall be maintained, serviced, repaired and/or replaced, when and as
reasonably necessary, by the Owner of the Unit to which such Class I Limited Common Element is
allocated at such Owner's sole cost and expense. In the event any Owner shall fail to maintain, service,
repair and/or replace any Class I Limited Common Element allocated to such Owner's Unit as provided
above, the Association may, in its discretion and upon not less than thirty (30) days prior written notice to
such Owner, effect any necessary maintenance, servicing, repairs and/or replacements of or to such Class
I Limited Common Element and charge the costs and expenses thereof to such Owner and such Owner's
Unit as a special assessment. Except to the extent otherwise expressly provided in this paragraph or
elsewhere in this Declaration, each Limited Common Element, regardless of its allocation as provided in

this Section, shall be maintained and repaired by the Association in the same manner as all other Common Elements, and the costs thereof shall be included as a component of Common Expenses.

Section 5.04 Partitioning. The Common Elements shall not be divided nor shall any person have any right to partition any portion thereof.

Section 5.05 Liens. For so long as the Property, or any part thereof, remains subject to the provisions of the Act or this Declaration, no lien of any nature shall arise or be created against the Common Elements, or any part thereof, except upon the prior written consent of Owners representing not less than eighty percent (80%) of the total number of votes allocated to all Units by this Declaration, including not less than eighty percent (80%) of the total number of votes allocated to all Units not owned by the Declarant. The foregoing provision shall not, however, apply to any lien that may arise or be created against the several Units and their respective Common Elements under the provisions of the Act. Every agreement for the performance of labor, or the furnishing of materials to the Common Elements, whether oral or in writing, must provide that it is subject to the provisions of this Declaration and that any right to file a mechanic's lien or other similar lien against the Common Elements, or any part thereof, by reason of labor performed or materials furnished is waived.

ARTICLE VI

EASEMENTS

Section 6.01 Use and Maintenance of Utilities. The Association and each Owner are hereby granted a perpetual, non-exclusive easement in common with one another to use and maintain any and all gas, water, sewer, electrical, telephone, cable television, internet and other utility pipes, wires, ducts, cables, conduits, lines, apparatus and/or installations located in, on or upon any part of the Common Elements which serve any Unit or any Common Elements. The Common Elements shall be subject to such easement in favor of the Declarant, the Association and each Owner to use and maintain any and all gas, water, sewer, electrical, telephone, cable television, internet and other utility pipes, wires, ducts, cables, conduits, lines, apparatus and/or installations located in, on or upon any part of the Common Elements that serve any Unit or any Common Elements.

Section 6.02 Access Easements. Subject to the provisions of **Section 5.06**, the Association and each Owner are each hereby granted a perpetual, non-exclusive easement in common with one another over the Common Elements designated as sidewalks and/or walkways on the Plat and Plans for the purpose of providing pedestrian ingress, egress and regress to and from Todd Street and each Building, each Unit and the Common Elements, and between each Building, each Unit and the Common Elements.

Section 6.03 Common Elements. Subject to the provisions of **Section 5.06** and **Section 5.07**, the Association shall have the right, the power and the authority, in its sole discretion, to grant non-exclusive rights of way, common driveway or access agreements and/or or easements for utility purposes over and across the Common Elements for the benefit of the Property or adjacent tracts, including the right to install, lay, maintain, repair and/or replace water lines, pipes, sewer lines, gas mains, telephone wires and equipment, electrical conduits and wires, common drives, shared buffers and landscaping under, upon or within any portion of the Common Elements. Each Owner hereby grants unto the Association an irrevocable power of attorney to execute, acknowledge and record, for and in the name of each such Owner, such instruments as may be necessary to effectuate the foregoing.

Section 6.04 Declarant's Easements. The Declarant shall have such non-exclusive easements over, across and through the Common Elements as may be reasonably necessary for the purpose of discharging Declarant's obligations or exercising any Special Declarant Rights whether arising under the Act or reserved pursuant to **ARTICLE X**.

Section 6.05 Easements Appurtenant to Units. Each of the easements described in **Sections 6.01** and **6.02** above shall be appurtenant to and run with title to each of the Units and shall inure to the benefit of each of the Units and the respective Owners thereof.

ARTICLE VII

RESTRICTIVE COVENANTS

Section 7.01 Permitted Uses. Subject to the provisions of this Section, each Unit shall be used and occupied for single family residential purposes only. Except to the extent otherwise expressly

provided in **ARTICLE X**, no Unit shall be physically subdivided or partitioned into two (2) or more units, apartments or other multi-family living spaces, nor shall any Unit be subjected to any interval ownership or time share plan, regime or scheme. Not more than two (2) persons per bedroom shall reside in any Unit (exclusive of temporary guests). No Unit shall be used for any business or commercial purpose except that the Owner of any Unit may use its Unit for a home-based business that (a) does not generate vehicular or pedestrian traffic within the Condominium, and (b) is otherwise in compliance with all applicable federal, state and municipal regulations, codes, ordinances, statutes and laws. Subject to the provisions of **Section 7.08**, each Owner may delegate to its tenant(s), in accordance with this Declaration and the Bylaws, such Owner's rights of possession, use and enjoyment of its Unit and the Common Elements appurtenant thereto for the purposes designated herein.

Section 7.02 Unightly Conditions. It shall be the responsibility of each Owner and the Association to prevent the development or maintenance of any unclean, unsightly or unkempt condition in, on or upon any Unit, Building or Common Elements.

Section 7.03 Noxious and Offensive Activities. No illegal, noxious or offensive activity shall be carried on by any person in, on or upon any Unit, Building or Common Elements, nor shall anything be done therein or thereon tending to cause embarrassment, discomfort, annoyance or nuisance to any Owner. No person shall keep or maintain in, on or upon any Unit, Building or Common Elements any plant, animal or device or thing of any sort that is illegal, noxious, dangerous, unsightly, unpleasant or otherwise of a nature that may diminish or destroy the enjoyment of any Unit or any of the Common Elements by any Owner.

Section 7.04 Commercial Signs. No commercial signs (including any "For Rent," "For Sale" or other similar sign) or property identification signs shall be erected or maintained on any Unit, Building or Common Elements; provided, however, that a "For Sale" sign may be erected or maintained on any Unit, Building or Common Elements by Declarant during the Period of Declarant Control or by any Owner with the written consent of the Association which shall have the power and authority to regulate

the size and placement of any "For Sale" sign erected by any person other than the Declarant as provided above.

Section 7.05 Garbage. Garbage and trash shall be disposed of only in areas specifically designated therefore.

Section 7.06 Structures. No structure of any kind, whether temporary or permanent, shall be placed upon any part of the Common Elements at any time unless with the prior written consent of the Association.

Section 7.07 Vehicles. No trailer, camper, boat, mobile home, van or other motor vehicle other than conventional passenger automobiles, pickup trucks, motorcycles and motor scooters shall be permitted to use any parking area located on the Common Elements. No motor vehicle of any kind shall be repaired, washed or detailed on any parking area located on the Common Elements. No Owner or family member, guest, tenant, licensee or invitee of any Owner shall park any trailer, camper, boat, mobile home, van or other motor vehicle other than a conventional passenger automobile, pickup truck, motorcycle or motor scooter on or along any part of Todd Street that adjoins the Property or any part thereof. The Association may, in its sole discretion, assign designated parking spaces to each Unit and reserve such space(s) for the exclusive use of each such Unit, and/or designate certain parking areas for trailers, campers, boats and/or other recreational vehicles; provided, however, that any parking spaces so assigned shall be equitably apportioned among all Units and shall be located in reasonable proximity to the Units to which they are assigned. The provisions of this Section shall not, however, be construed or interpreted to prohibit the reasonable and necessary use of any parking areas located on the Common Elements (other than designated reserved parking spaces) or on or along any part of Todd Street adjoining the Property, or any part thereof, by any van, truck or other delivery vehicle if the operation of such vehicle is reasonably necessary for any Owner to move in to or out of any Unit, or for any repair or maintenance of any Unit, Building, Improvement or other Common Elements.

Section 7.08 Rental of Units. No Unit shall be rented or leased to any person, nor shall any person other than an Owner of a Unit or such Owner's immediate family member be granted any right to

use or occupy such Unit, except pursuant to an written lease executed by such Owner and each tenant having a term of not less than ninety (90) consecutive calendar days, without the prior written consent of the Association. Prior to leasing any Unit to a tenant, the Owner of such Unit shall obtain a credit report, a criminal background check and references for such tenant and shall provide such credit report, criminal background check and references to the Association for review and approval. Within ten (10) days after its receipt of such information, the Association shall notify the Owner, in writing, whether the Association has approved the prospective tenant. Any failure of the Association to notify the Owner of the Association's approval or non-approval of the prospective tenant within such ten (10) day period shall constitute approval of such tenant by the Association. No Owner shall rent or lease its Unit to any person unless an until the Association shall have reviewed and approved the prospective tenant's credit report, criminal background check and references as provided above. Each Owner shall be responsible for the actions of such Owner's tenant. Each Owner shall provide copies of this Declaration, the Bylaws and the Rules and Regulations to the tenant of such Owner's Unit prior to or contemporaneously with such tenant's execution of the lease. Each lease required by this Section shall provide (a) that the tenant shall comply with all provisions of this Declaration and the Rules and Regulations, (b) that the tenant shall be subject to eviction by the Owner or by the Association in the event the tenant shall fail to comply with the provisions of this Declaration and/or the Rules and Regulations and such failure shall continue for a period of thirty (30) days after the Owner or the Association shall have delivered written notice of non-compliance to the tenant, and (c) that the tenant's notice address for the purpose of such notice shall be the address of the Unit leased to such tenant.. The Owner of any leased Unit shall notify the Association, in writing, of such lease prior to the commencement of the lease term and shall deliver to the Association a copy of the fully executed lease. The Association shall have the power and authority to enforce the provisions of this Section, including, without limitation, the specific power and authority to evict any tenant of any Unit as a consequence of the failure of the Unit's Owner to comply with the provisions of this Section or such tenant's failure to comply with the provisions of this Declaration and/or the Rules and Regulations.

Section 7.09. Alterations. The Owner of a Unit may make alterations to the interior of such Owner's Unit from time to time with the prior written consent of the Association, which consent shall not be unreasonably withheld; provided, however, that (a) that no such alterations or the installation and/or construction thereof shall violate any provision of this Declaration or any of the Rules and Regulations, (b) no such alterations shall unreasonably disturb any other Owner's quiet and peaceful enjoyment of its Unit or in any manner impair access to any Unit or Building, (c) no such alterations shall impact or result in any change or modification to any exterior part of the Building in which such Unit is located or to any Common Elements, (d) no such alterations shall in any manner adversely affect the structural integrity of the Building in which the Unit is located or the integrity or operation of any utility pipes, conduits, cables wires, equipment or systems in such Building, (e) no such alterations shall increase the cost of fire and/or other casualty insurance on the Building or result in the termination of any such insurance, (f) no such alterations shall result in the filing of any mechanic's or materialmen's lien against any part of the Property other than the Unit in which the alterations are being installed and/or constructed, (g) the Owner or its contactor shall obtain and maintain in place, at all times during installation and/or construction of the alterations, builder's risk and worker's compensation insurance providing reasonably sufficient coverage for the alterations being installed and/or constructed, (g) all alterations shall be installed and/or constructed and completed in a good and workmanlike manner in accordance with all applicable local, state and federal rules, regulations, ordinances, codes and laws, (h) all alterations shall be installed and/or constructed in accordance with any and all reasonable requirements, guidelines and procedures adopted by the Association (in the event such alterations shall include the installation of a natural or synthetic wood floor, the installation thereof shall comply with any and all rules and/or guidelines reasonably required by the Association pertaining to sound installation), (i) the Owner shall be responsible for any and all costs of such alterations, including permits, licenses, approvals and clean-up, and (j) the Owner shall indemnify and hold harmless the Association and each other Owner from and against any claim, loss, damage, penalty and/or liability, including reasonable attorneys' fees, incurred or suffered as a consequence of the installation, construction and/or maintenance of such alterations.

Section 7.10. Animals. The following restrictions and prohibitions shall be applicable to any pet or other animal (including, without limitation, any fish, reptile or bird) kept or brought onto the Condominium, or any part thereof (including any Unit, Building or other Common Area), by any Owner or other person:

(a) Not more than two (2) animals (exclusive of fish in an aquarium) shall be kept or maintained in any Unit at any time.

(b) No animal kept or maintained in any Unit shall exceed seventy-five (75) pounds.

(c) No animal (exclusive of fish in an aquarium) kept or maintained in any Unit shall be bred or kept for breeding purposes.

(d) No animal shall be kept or maintained by any Owner or other person in or on any Common Area; provided, however, that any animal kept or maintained in any Unit in accordance with the provisions of this Section may be exercised on any outdoor Common Area provided such animal is properly restrained and does not create a nuisance or danger to any person.

(e) All animal waste and litter deposited on any Common Area shall be immediately removed and properly disposed of by the owner or caretaker of such animal.

(f) No Owner or other person shall keep or maintain an animal in any Unit or otherwise bring any animal onto any part of the Condominium which creates a nuisance or danger to any Owner or other person.

(g) Each animal kept or maintained by any Owner or other person in any Unit shall be registered with the Association.

(h) Livestock, poultry, equines, wild or undomesticated animals and exotic animals shall not be kept or maintained in any Unit or otherwise brought onto the Condominium, or any part thereof, by any Owner or other person.

The Association shall have the power and authority to enforce the provisions of this Section, including, without limitation, the specific power and authority to require any Owner or other person to

remove any pet or other animal from the Condominium (including any Unit, Building or other Common Area).

Each Owner shall indemnify and hold harmless the Association and each other Owner from and against any claim, loss, damage, penalty and/or liability, including reasonable attorneys' fees, incurred or suffered as a consequence of any act of any pet or other animal kept or maintained in such Owner's Unit or otherwise brought onto the Condominium, or any part thereof (including any Unit, Building or other Common Area), by such Owner or such Owner's family member, tenant, guest or invitee.

Section 7.11 Insurance. Each Owner shall acquire and at all times keep and maintain in force, at each Owner's sole cost and expense, public liability and contents insurance with respect to such Owner's Unit, including each Class I Limited Common Element allocated to such Owner's Unit and any interior part of such Owner's Unit not covered by the Association's policy pursuant to **Section 9.02**, in such minimum amounts as shall be established by the Association. The Association shall be named as co-insured on each such insurance policy.

ARTICLE VIII

THE ASSOCIATION

Section 8.01 The Association. The administration and management of the Condominium shall be vested in the Association which shall be incorporated as a North Carolina nonprofit corporation in accordance with the Articles of Incorporation in the form attached as **EXHIBIT C** and the Bylaws in the form attached as **EXHIBIT D**. The name of the Association shall be Todd Street Condominium Association, Inc.

Section 8.02 Membership. The Association's membership shall consist of all Owners, including the Declarant for so long as the Declarant shall retain ownership of at least one (1) Unit. Each Owner shall, upon acquiring a legal or equitable interest in a Unit, automatically become a member of the Association and remain a member of the Association until such time as its ownership of such Unit shall terminate for any reason. Each Owner's membership in the Association is mandatory. Each Owner's membership in the Association shall automatically terminate immediately upon such Owner's transfer of

its interest in its Unit to another person. In the event the Owner of a Unit shall consist of more than one (1) person, each such person shall be a member of the Association. Membership in the Association shall be appurtenant to, and may not be separated from, ownership of a Unit. The Association's operation of the Condominium, including, without limitation, the maintenance, repair, replacement and operation of the Common Elements, and any additions and alterations thereto, the assessment and collection from Owners of Common Expenses and other fees, charges and expenses, and the filing of liens upon Units to secure unpaid common expenses and other fees, charges and expenses, shall be in accordance with the provisions of the Act, this Declaration, the Articles of Incorporation and the Bylaws.

Section 8.03 Allocation of Votes. Each Unit shall be allocated one (1) vote on any and all actions taken by the members of the Association. The Owner of each Unit shall have the right to cast the vote allocated to its Unit on each action taken by the members of the Association. In the event more than one (1) person shall be the Owner of any Unit, such persons shall not cast more than the one (1) vote allocated to their Unit on any action taken by the members of the Association and such vote shall not be split among the persons who own the Unit. Unless otherwise provided in this Declaration, each vote by the members of the Association on any action taken by the members of the Association shall be cumulative.

Section 8.04 Common Expenses, Special Assessments and Charges. The Association shall have the duty, power and authority to levy, assess or charge to or against the Units, and to collect from the Owners of the Units, Common Expenses and such special assessments and/or other charges as the Association may from time to time deem reasonable and necessary for the upkeep, maintenance, repair and/or replacement of the Common Elements.

(a) Imposition of Common Expenses and Lien. Each Unit's allocated share of Common Expenses shall be as set forth on **EXHIBIT B**. The Association shall assess and collect Common Expenses on such annual or other basis as shall be established by the Association. Common Expenses shall be paid in full not later than the date established by the Association; provided, however, that the Association may make provisions for payment of Common Expenses in monthly or other installments. Each Unit's

allocated share of Common Expenses (or installment thereof) shall, when due, become a lien against such Unit at the time the allocated share of Common Expenses is assessed by the Association. Upon demand, the Association shall furnish to any Owner, or to the mortgagee or trustee under a deed of trust of any Unit, a certificate stating the amount of such Unit's allocated share of Common Expenses (or installments thereof) due as of any given date. Each Unit is hereby made subject to a continuing lien to secure payment of each Unit's allocated share of Common Expenses (or installment thereof) when due.

(b) Establishment of Budget and Common Expenses. The Association shall establish a budget for each calendar year (unless the Association shall adopt some other fiscal year) which shall incorporate the expected annual costs and expenses to maintain, repair and insure the Common Elements, including, without limitation,

- (i) the costs and expenses associated with the repair, maintenance and upkeep of the entrances, streets, parking areas, sidewalks, trails and other Improvements;
- (ii) the cost of reserves for capital replacement and such other reserves as the Association in its sound business judgment shall establish;
- (iii) the costs and expenses of groundskeeping and landscaping services;
- (iv) the cost of insurance for such coverage as is required by **ARTICLE IX**;
- (v) the cost of utility service to the Common Elements;
- (vii) the cost of all real and personal property ad valorem taxes and all other taxes applicable to the Common Elements;
- (viii) the cost of expenses of protecting the Property from erosion;
- (ix) the cost of expenses associated with the removal of snow or debris;
- (x) the costs of expenses associated with the collection and disposal of garbage, ashes, rubbish and other refuse;
- (xi) the costs of management by any management firm hired by the Association in its sound business judgment; and

(xii) all other necessary and reasonable costs including payments on any borrowings by the Association which, in the sound business judgment of the Association, must be incurred in order to keep the Property (exclusive of the Units) in a neat, sanitary and efficient working order, and to provide for the health, safety and welfare of Owners.

Common Expenses shall be established by the Association in such amount as shall be necessary to fund the Association's annual budget.

(c) Special Assessments. In addition to the Common Expenses, the Association shall have the power to levy special assessments for purposes deemed necessary or appropriate by the Association. Such special assessments shall be used to fund extraordinary expenses or capital needs of the Property (exclusive of the Units), including the replacement of any Improvement. A special assessment may be imposed by the Association and shall be collected and paid as the Associations shall direct. Unless the Association shall otherwise expressly provide, each Unit's allocated share of any such special assessment shall be determined in the same manner as each Unit's allocated share of Common Expenses. A lien for any such special assessment shall encumber each Unit subject to such special assessment, which lien shall be enforceable as provided elsewhere herein for Common Expenses.

(d) Purposes. The revenues, funds and sums collected by the Association as Common Expenses, special assessments and other charges may be used to pay for any or all of the following:

- (i) the costs and expenses associated with the repair, maintenance, upkeep and/or replacement of the entrances, streets, parking areas, sidewalks and other Improvements;
- (ii) the cost of reserves for capital replacement and such other reserves as the Association in its sound business judgment shall establish;
- (iii) the costs and expenses of groundskeeping and landscaping services;
- (iv) the cost of insurance for such coverage as is required by **ARTICLE IX**;
- (v) the cost of utility service to the Common Elements;

- (vii) the cost of all real and personal property ad valorem taxes and all other taxes applicable to the Common Elements;
- (viii) the cost of expenses of protecting the Property from erosion;
- (ix) the cost of expenses associated with the removal of snow or debris;
- (x) the costs of expenses associated with the collection and disposal of garbage, ashes, rubbish and other refuse;
- (xi) the costs of management by any management firm hired by the Association in its sound business judgment;
- (xii) all other necessary and reasonable costs including payments on any borrowings by the Association which, in the sound business judgment of the Association, must be incurred in order to keep the Property (exclusive of the Units) in a neat, sanitary and efficient working order, and to provide for the health, safety and welfare of Owners; and
- (xiii) the replacement of any Improvement.

Section 8.05 Common Expenses, Special Assessments and Charges as Personal Obligation of Owner. Payment of the allocated share of any Common Expenses or special assessment or any other charge levied, assessed or charged by the Association to or against any Unit pursuant to any provision of this Declaration, together with any late charge, interest and collection cost, including reasonable attorneys' fees, shall be the personal obligation of the Owner of such Unit at the time such allocated share of Common Expenses or any special assessment or other charge becomes due and payable. If there is more than one Owner of a particular Unit, each Owner of such Unit shall be jointly and severally liable. Each Owner shall pay the allocated share of any Common Expenses or special assessment or any other charge levied, assessed or charged by the Association to or against its Unit pursuant to any provision of this Declaration and shall allow the Association to enforce any lien for non-payment in accordance with the provisions of this Article.

Section 8.06 Unpaid Common Expenses, Special Assessments and Charges. The allocated share of any Common Expenses or special assessment or other charge levied, assessed or charged by the Association to or against any Unit pursuant to any provision of this Declaration remaining unpaid for a period

of thirty (30) days after the due date shall bear interest from the due date until paid at a rate of eighteen percent (18%) per annum or such lower rate as may be set by the Association. A late charge not to exceed \$25.00 may also be imposed by the Association for each allocated share of any Common Expenses or special assessment, or other charge, not paid within thirty (30) days after the due date.

In addition, the allocated share of any Common Expenses or special assessment or other charge levied, assessed or charged by the Association to or against any Unit pursuant to any provision of this Declaration shall constitute a lien against such Unit, which lien shall be perfected when filed of record in the Office of the Clerk of Superior Court of Orange County, North Carolina in the manner provided in Article 8 of Chapter 44 of the General Statutes of North Carolina. Such lien shall also secure the payment of any interest, late charge and cost incurred by the Association or by the management firm, if any, including reasonable attorneys' fees, incident to the collection of such allocated share of Common Expenses or any special assessment or other charge as well as all sums advanced and paid by the Association for taxes and payments on account of superior mortgages, deeds of trust, liens or other encumbrances which may be required to be advanced by the Association in order to preserve and protect its lien.

Any such lien may be foreclosed as provided in Article 29A of Chapter 1 of the General Statutes of North Carolina, N.C.G.S. §1-339.1 et. seq., and the Association may take such action as it deems necessary to collect any allocated share of Common Expenses or any special assessment or other charge levied, assessed or charged by the Association to or against any Unit pursuant to any provision of this Declaration, either by personal action against the Owner of such Unit or by foreclosing its lien, or both, and may settle and compromise its claim or lien if deemed to be in the Association's best interest. The Association shall be entitled to bid at any sale held pursuant to a foreclosure of its lien and to apply as a cash credit against its bid all sums due as provided herein and secured by such lien.

In the event a mortgagee or other person obtains title to any Unit as a result of the foreclosure of any mortgage or deed of trust having priority over any Association lien for any unpaid allocated share of Common Expenses or any special assessment or other charge or as a result of any conveyance or other process in lieu of foreclosure, such mortgagee or other person shall not be liable for any allocated share of

Common Expenses or any special assessment or other charge levied, assessed or charged by the Association to or against such Unit which became due prior to the acquisition of title as a result of foreclosure or conveyance in lieu of foreclosure. Any such unpaid allocated share of Common Expenses or any special assessment or other charge shall be deemed a Common Expense for which all Owners, including the mortgagee or other person acquiring title by foreclosure of a mortgage or deed of trust having priority, or conveyance in lieu of foreclosure, shall be responsible on an allocated basis as provided herein.

Section 8.07 Special Provisions Applicable to Units Owned by Declarant. Notwithstanding any provision contained in this Article or elsewhere in this Declaration to the contrary, Declarant shall not be required to pay any annual assessment with respect to any Unit owned by Declarant; provided, however, that for so long as Declarant shall retain title to at least one (1) Unit, Declarant shall be responsible for the payment of any and all Common Expenses to the extent the total allocated share of such Common Expenses assessed by the Association to all Units not owned by Declarant is insufficient to pay all such Common Expenses in full.

ARTICLE IX

INSURANCE

Section 9.01 Ownership of Policies. All insurance policies insuring the Common Elements, including the Buildings and Improvements, shall be purchased by the Association for the benefit of the Association, the Owners and their respective mortgagees as their interests may appear. Reasonable provisions shall be made for the issuance of certificates of mortgagee endorsements to the mortgagee of any Unit. Each Owner may, at his option, obtain insurance coverage, at his own expense, on his personal property and such additional liability and/or other coverage as he may desire.

Section 9.02 Coverage. The Buildings, the Improvements and any and all personal property, if any, comprising any part of the Common Elements shall be insured by the Association in an amount equal to the maximum insurable replacement value thereof as determined annually by the Board of Directors with the assistance of the insurance company providing such coverage; provided, however, that

the amount of such coverage shall be not less than eighty percent (80%) of the replacement cost of the Buildings, the Improvements and all personal property comprising any part of the Common Elements. Such coverage shall provide protection against (a) loss or damage by fire and other hazards covered by a standard extended coverage endorsement, and (b) such other risks as from time to time shall be customarily covered with respect to buildings similar in construction, location and use.

Public liability insurance shall be secured by the Association in such amount and with such coverage as shall be deemed necessary by the Board of Directors, including, but not limited to, an endorsement to cover liability of the Owners as a group to any single Owner. There shall also be obtained by the Association such other insurance coverage as the Board of Directors shall, from time to time, determine to be desirable and necessary.

Section 9.03 Premiums. Premiums for insurance policies purchased by the Association shall be paid by the Association as a Common Expense.

Section 9.04 Proceeds. All insurance policies purchased by the Association shall be for the benefit of the Association, the Owners and the Owners' respective mortgagees, as their interests may appear, and shall provide that all proceeds thereof shall be payable to the Association as insurance trustee under this Declaration. The sole duty of the Association as insurance trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes stated herein or in the Bylaws and for the benefit of the Owners and their respective mortgagees in the following shares:

(a) Proceeds on account of damage to Common Elements shall be held as and in the nature of an undivided share for the Owner of each Unit, such share being the same as each Owner's undivided interest in the Common Elements as set forth herein.

(b) Proceeds on account of damage to any Building shall be held as follows:

- (i) When the Building is to be restored - for the Owner of each damaged Unit in such Building in proportion to the cost of repairing the damage suffered by each Unit, which cost shall be determined by the Board of Directors, such proceeds to be held in undivided shares.
- (ii) When the Building is not to be restored - an apportioned share for the Owner of each damaged Unit with such apportionment to be a ratio

identical to the ratio which the undivided interest in the Common Elements appurtenant to such Unit bears to the total undivided interests of all Units in such Building in the Common Elements.

(c) In the event a mortgage endorsement has been issued as to a Unit, the share of the Owner of such Unit shall be held in trust for the mortgagee and such Owner as their interests may appear.

Section 9.05 Distribution of Insurance Proceeds. Proceeds of insurance policies received by the Association as insurance trustee shall be distributed to or for the benefit of the beneficial owners in the following manner:

(a) All expenses of the insurance trustee shall be first paid or provision made therefor.

(b) If the damage for which the proceeds are paid is to be repaired or reconstructed, the remaining proceeds shall be paid to defray the cost thereof as provided in **Section 9.06**. Any proceeds remaining after defraying such cost shall be distributed to the beneficial owners.

(c) If it is determined as provided herein that the damage for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be distributed to the beneficial owners thereof.

Section 9.06 Damage and Destruction. Except as hereinafter provided, damage to or destruction of any Building shall be promptly repaired and restored by the Association using the proceeds of insurance on such Building for that purpose and the Owner of each Unit in such Building shall be liable for assessment of any deficiency; provided, however, if such Building (or if more than one, the entire group of Buildings) be more than two-thirds (2/3) destroyed by fire or other casualty and the Owners of the Units in such Building resolve, in the manner prescribed below, not to proceed with reconstruction or restoration, then, in that event, the Property shall either be (a) sold or otherwise transferred as provided in N.C.G.S. §47C-2-118, or (b) deemed to be owned by the Owners of all Units in the destroyed Building as tenants in common and subject to the provisions of N.C.G.S. §47C-2-118 as same may be amended. The determination of whether to sell the Property or to make the Property subject

to the provisions of N.C.G.S. §47C-2-118 shall be made by Owners in the manner prescribed below. Any resolution or determination of the Owners contemplated by this Section shall be made (i) by the affirmative vote of the Owners in the destroyed Building who represent not less than eighty percent (80%) of the Units in such Building, which votes shall be cast by such Owners present in person or by proxy at an annual or special meeting of the members of the Association duly held in accordance with the provisions of the Bylaws with respect to which notice of the purpose of the meeting shall have been given and at which meeting a quorum shall be present, or (ii) by written consent of Owners representing not less than eighty percent (80%) of the Units in such Building.

Any reconstruction or repair shall be, to the extent economically feasible, substantially in accordance with the Plat and Plans of the original Building.

ARTICLE X

RESERVATION OF SPECIAL DECLARANT RIGHTS

At all times during the Period of Declarant Control, Declarant reserves the following exclusive Special Declarant Rights:

1. The right to complete and/or refurbish any Building or other Improvement located or to be located on the Property as shown on the Plat and Plans as provided in N.C.G.S. §47C-2-109.
2. The right to exercise any development rights reserved in this Declaration as provided in N.C.G.S. §§47C-2-105(a)(8) and 47C-2-110, including, but not limited to, the right to combine, recombine, subdivide or reconfigure any Unit or Units, or any Unit or Units and Common Elements, and/or reallocate any Unit's undivided interest in the Common Elements and/or share of Common Expense liability, prior to the initial conveyance thereof to a person other than the Declarant.
3. The right to maintain sales offices, management offices, signs advertising the Condominium and models in Units or on Common Elements as provided in N.C.G.S. §47C-2-115, provided that not more than two (2) Units shall be used for any such purposes at any one time.

4. The right to use easements through the Common Elements for the purpose of making improvements within the Condominium as provided in N.C.G.S. §47C-2-116.
5. The right to unilaterally amend this Declaration, the Articles of Incorporation and the Bylaws for any lawful purpose not inconsistent with the Act.
6. The right to appoint or remove any officer of the Association or any member of the Board of Directors, subject to the limitations contained in this Declaration or in N.C.G.S. §47C-3-103(d) and (e).
7. The right to establish a budget for the Association and to set the amount of the Common Expenses and/or Special Assessment to be assessed by the Association against any Unit or Units.
8. The right to adopt Rules and Regulations.

ARTICLE XI

VIOLATIONS AND REMEDIES

In the event of any violation or breach of any provision of this Declaration, the Bylaws or the Rules and Regulations by any Owner, or by any tenant, guest, invitee, licensee or agent of any Owner, the Association and each other Owner shall have the right, individually or collectively, to proceed at law or in equity to compel compliance with the provisions of this Declaration, the Bylaws or the Rules and Regulations, as applicable, or to prevent the violation or breach thereof. In addition, in the event any person shall violate any provision of this Declaration, the Bylaws or the Rules and Regulations at any time prior to expiration of the Period of Declarant Control, Declarant shall have the right to (a) proceed at law or in equity to compel compliance with the provisions of this Declaration, the Bylaws or the Rules and Regulations, as applicable, or to prevent the violation or breach thereof, or (b) to summarily abate or remove any condition constituting a violation of this Declaration, the Bylaws or the Rules and Regulation at the expense of the offending Owner if such violation shall not have been cured by such Owner within thirty (30) days after the date Declarant or the Association shall have delivered to such Owner(s) written notice of such violation and demand for cure. No such entry and abatement or removal by Declarant shall

be deemed a trespass. The failure of the Declarant, the Association or any Owner to enforce any right, reservation or provision contained in this Declaration, however long continued, shall not be deemed a waiver of the right to enforce any such right, reservation or provision in the future as to the same breach or violation or as to any other breach or violation occurring prior thereto or subsequent thereto, and shall not bar or affect the subsequent enforcement thereof.

ARTICLE XII

MISCELLANEOUS

Section 12.01 Subordination. Nothing contained in this Declaration shall impair or defeat the lien of any mortgage or deed of trust made in good faith and for value, but title to such Unit or any interest therein, including the lien of any deed of trust or mortgage, shall be subject to this Declaration.

Section 12.02 Amendment of Declaration. Except as otherwise provided in paragraph 5.02(c) or by N.C.G.S. §47C-2-117(a), this Declaration may only be amended (a) by the affirmative vote of the members of the Association representing not less than seventy percent (70%) of the total number of votes allocated to all Units by this Declaration, which votes shall be cast by the members of the Association present in person or by proxy at an annual or special meeting of the members of the Association duly held in accordance with the provisions of the Bylaws with respect to which notice of the purpose of the meeting shall have been given and at which meeting a quorum shall be present, or (b) by written consent of the Owners representing not less than seventy percent (70%) of the total number of votes allocated to all Units by this Declaration. No such amendment shall be effective until it is recorded in the Office of the Register of Deeds of Orange County, North Carolina.

Section 12.03 Invalidity. The invalidity of any provision of this Declaration shall not be deemed to impair or affect in any manner the validity or enforceability or effect of the remainder of this Declaration, and in such event, all of the other provisions of this Declaration shall continue in full force and effect as if such invalid provisions never had been included herein.

Section 12.04 No Waiver of Provisions of this Declaration. No provision contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same irrespective of the number of violations or breaches which may occur.

Section 12.05 Law Controlling. This Declaration and the Bylaws attached hereto shall be construed and controlled by and under the laws of the State of North Carolina.

Section 12.06 Term. The term of this Declaration shall commence on the date this Declaration is recorded in the Office of the Register of Deeds of Orange County, North Carolina, and continue thereafter for a period of twenty (20) years, after which time the term of this Declaration shall be automatically extended for successive periods of ten (10) years each unless and until the Condominium is terminated as provided in N.C.G.S. §47C-2-118.

Section 12.07 Binding Effect. All of the provisions of this Declaration, the Bylaws and the Rules and Regulations shall (a) run with title to the Property, including each Unit and the Common Elements, and shall be binding upon and encumber the Property, including each Unit and the Common Elements, and (b) be binding upon the Association, each Owner, all tenants and occupants of each Unit and all guests, licensees and invitees of each Owner, tenant or occupant of each Unit, and all such persons shall be subject to and shall comply with all of the provisions of this Declaration, the Bylaws and the Rules and Regulations. Each person who shall accept a deed or other instrument conveying a legal or equitable interest in any Unit to him, or who shall enter into a lease or other agreement to lease, rent or occupy any Unit, shall thereby acknowledge, agree to and ratify each of the provisions of this Declaration, the Bylaws and the Rules and Regulations, and each such person shall be bound thereby as fully and to the same extent as though each such provision was made a part of such deed or other instrument of conveyance, lease or other agreement, whether written or oral.

Section 12.08 Exhibits. Each exhibit attached to this Declaration is hereby incorporated into this Declaration as fully and to the same extent as if set forth in this Declaration in its entirety.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed by its duly authorized Member/Managers effective as of the day and year first above written.

TODD STREET LLC,

a North Carolina limited liability company

By: [Signature] (SEAL)
Meyer Liberman, Member/Manager

By: [Signature] (SEAL)
Richard Gurlitz, Member/Manager

By: [Signature] (SEAL)
Nathan Harms, Member/Manager

By: [Signature] (SEAL)
James Miggs, Member/Manager

STATE OF NORTH CAROLINA
COUNTY OF Orange

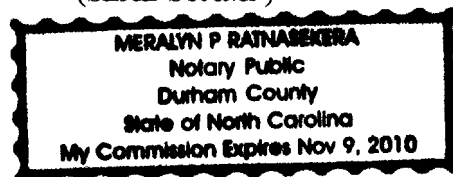
I, a Notary Public of the County and State aforesaid, certify that Meyer Liberman, a Member/Manager of **TODD STREET LLC**, a North Carolina limited liability company, personally appeared before me this day and acknowledged the voluntary execution of the foregoing instrument for and as the act of the limited liability company for the purposes therein stated. Witness my hand and official stamp or seal, this 30 day of October, 2006.

[Signature]
NOTARY PUBLIC

Meralyn P. Rathasekera
TYPED OR PRINTED NAME OF NOTARY PUBLIC

My commission expires: Nov 09th 2010

(SEAL-STAMP)



STATE OF NORTH CAROLINA
COUNTY OF Durham

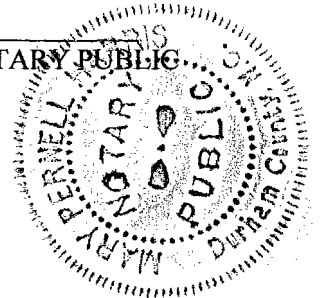
I, a Notary Public of the County and State aforesaid, certify that Richard Gurlitz, a Member/Manager of **TODD STREET LLC**, a North Carolina limited liability company, personally appeared before me this day and acknowledged the voluntary execution of the foregoing instrument for and as the act of the limited liability company for the purposes therein stated. Witness my hand and official stamp or seal, this 1 day of November, 2006.

Mary Bernell Harris
NOTARY PUBLIC

Mary Bernell Harris
TYPED OR PRINTED NAME OF NOTARY PUBLIC

My commission expires: 12-1-07

(SEAL-STAMP)



STATE OF NORTH CAROLINA
COUNTY OF Durham

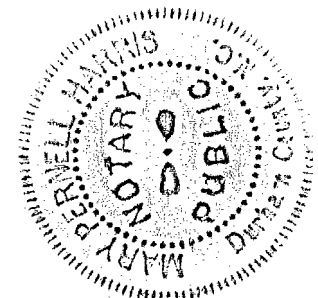
I, a Notary Public of the County and State aforesaid, certify that Nathan Harms, a Member/Manager of **TODD STREET LLC**, a North Carolina limited liability company, personally appeared before me this day and acknowledged the voluntary execution of the foregoing instrument for and as the act of the limited liability company for the purposes therein stated. Witness my hand and official stamp or seal, this 1 day of November 2006.

Mary Bernell Harris
NOTARY PUBLIC

Mary Bernell Harris
TYPED OR PRINTED NAME OF NOTARY PUBLIC

My commission expires: 12-1-07

(SEAL-STAMP)



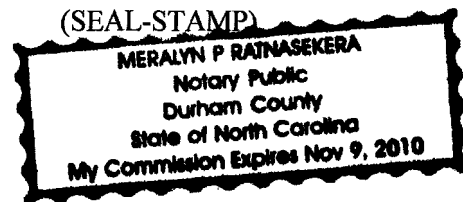
STATE OF NORTH CAROLINA
COUNTY OF Orange

I, a Notary Public of the County and State aforesaid, certify that James Miggs, a Member/Manager of **TODD STREET LLC**, a North Carolina limited liability company, personally appeared before me this day and acknowledged the execution of the foregoing instrument for and as the act of the limited liability company for the purposes therein stated. Witness my hand and official stamp or seal, this 30th day of October, 2006.

Meralyn P. Ratnasekera
NOTARY PUBLIC

Meralyn P. Ratnasekera
TYPED OR PRINTED NAME OF NOTARY PUBLIC

My commission expires: Nov 09th 2010



12416\05\M\009Declaration of Condominium (10.23.06 WDB CL Draft #9)

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

TRACT I:

BEGINNING at a Metal Disk - Department of Transportation Boundary Marker, located in the southwestern right-of-way line of North Greensboro Street, a public street with a variable right of way, at the point where Williams Street dead ends into North Greensboro Street, said point also being the Northeastern corner of that property now or formerly owned by Erich H. Sontag and Preferred Builders as described in Deed Book 405, page 446; Deed Book 415, page 325 and Deed Book 426, Page 482, Orange County Registry; runs thence along the southwestern right of way line of North Greensboro Street South 52° 07' 41" East 151.95 feet to a point; runs thence away from the right of way line of North Greensboro Street South 02° 16' 29" East 23.17 feet to a point; runs thence along the northern right of way line of Todd Street, a 46 foot public right-of-way, South 51° 19' 28" West 530.54 feet to a point; runs thence with the northeastern line of that property now or formerly owned by the Chapel Hill-Carrboro Board of Education as described in Deed Book 172, page 293, Orange County Registry, North 45° 22' 12" West 163.94 feet to a point; runs thence with the southern line of the aforementioned Sontag property North 50° 56' 00" East 528.06 feet to a point, said point being the point and place of BEGINNING, and consisting of 2.032 acres and shown as Tract 1 on that map entitled "Property of Holland Properties, L.L.C." by Holland Land Surveying dated January 24, 1995 and recorded in Plat Book 73, page 28, Orange County Registry.

PIN 9778-78-1734
MAP 7.95.A.7

TRACT II:

BEGINNING at a point located in the southwestern right-of-way line of North Greensboro Street, a public street with a variable right of way, said point being the Northwestern corner of that property now or formerly owned by the Town of Carrboro as described in Deed Book 1039, page 396, Orange County Registry; runs thence with the northern line of the Town of Carrboro property South 42° 36' 10" West 283.45 feet to a point; runs thence South 50° 22' 10" West 229.21 feet to a point; runs thence with the northern line of the property now or formerly owned by the Chapel Hill-Carrboro Board of Education as described in Deed Book 172, page 293, Orange County Registry, South 80° 33' 15" West 87.51 feet to a point; runs thence North 45° 22' 12" West 133.23 feet to a point in the southern right-of-way line of Todd Street, a 46 foot right-of-way; runs thence North 51° 19' 28" East 539.38 feet to a point; runs thence North 87° 43' 31" East 40.47 feet to a point; runs thence with the southwestern right-of-way line of North Greensboro Street South 54° 22' 40" East 108.28 feet to a point, said point being the point and place of BEGINNING, and consisting of 2.107 acres and shown as Tract 2 on that map entitled "Property of Holland Properties, L.L.C." by Holland Land Surveying dated January 24, 1995 and recorded in Plat Book 73, page 28, Orange County Registry.

PIN 9778-78-3622
MAP 7.95.A.7B

EXHIBIT B

**INITIAL UNDIVIDED INTEREST IN COMMON ELEMENTS AND
SHARE OF COMMON EXPENSE LIABILITY ALLOCATED TO EACH UNIT**

<u>Unit</u>	<u>Heated Square Feet</u>	<u>Undivided Interest in Common Elements</u>	<u>Allocated Share of Common Expense Liability</u>
101A	868	3.125%	3.125%
101B	1,042	3.125%	3.125%
101C	868	3.125%	3.125%
101D	1,042	3.125%	3.125%
102A	868	3.125%	3.125%
102B	1,042	3.125%	3.125%
102C	868	3.125%	3.125%
102D	1,042	3.125%	3.125%
103A	778	3.125%	3.125%
103B	778	3.125%	3.125%
103C	778	3.125%	3.125%
103D	778	3.125%	3.125%
104A	1,146	3.125%	3.125%
104B	1,146	3.125%	3.125%
105A	1,126	3.135%	3.125%
105B	1,125	3.125%	3.125%
106A	1,146	3.125%	3.125%
106B	1,146	3.125%	3.125%
107A	868	3.125%	3.125%
107B	1,042	3.125%	3.125%
107C	868	3.125%	3.125%
107D	1,042	3.125%	3.125%
108A	1,146	3.125%	3.125%
108B	1,146	3.125%	3.125%
109A	868	3.125%	3.125%
109B	1,042	3.125%	3.125%
109C	868	3.125%	3.125%
109D	1,042	3.125%	3.125%
110A	1,207	3.125%	3.125%
110B	1,207	3.125%	3.125%
110C	1,207	3.125%	3.125%
110D	1,207	3.125%	3.125%

EXHIBIT C

**ARTICLES OF INCORPORATION
OF
THE FLATS CONDOMINIUM ASSOCIATION, INC.,**

a North Carolina Nonprofit Corporation

The undersigned does hereby make and acknowledge these Articles of Incorporation for the purpose of forming a nonprofit corporation under and by virtue of the North Carolina Nonprofit Corporation Act, N.C.G.S. §55A-1-01 et seq.

**ARTICLE I
NAME**

The name of the corporation is The Flats Condominium Association, Inc.

**ARTICLE II
INITIAL REGISTERED OFFICE AND AGENT**

The street (and mailing) address and county of the initial registered office of the corporation are 1777 N. Fordham Boulevard, Suite 102, Chapel Hill, Orange County, North Carolina 27514. The name of the initial registered agent of the corporation at that address is Meyer Liberman.

**ARTICLE III
INCORPORATOR**

The name and address of the incorporator are William D. Bernard, BROWN & BUNCH, PLLC, 101 N. Columbia Street, Chapel Hill, North Carolina 27514.

**ARTICLE IV
MEMBERSHIP**

Any person or entity who holds record title to any condominium unit at The Flats Condominium, a residential condominium located at 101 – 110 Todd Street, Carrboro, Orange County, North Carolina, and created in accordance with, and subject to, the provisions of the Declaration of Condominium of The Flats Condominium recorded or to be recorded in the Office of the Register of Deeds of Orange County, North Carolina, as same may be amended, supplemented and/or modified from time to time (the "Declaration"), shall be and remain a member ("Member") of the corporation for so long as such person or entity shall hold record title to such condominium unit. No lienholder, judgment creditor, trustee or other person or entity holding legal or beneficial title to, or any other interest in, any condominium unit or common element in the condominium merely as security for an obligation shall be qualified for or entitled to membership in the corporation. Upon termination of the condominium, the members of the corporation shall consist of those persons and entities entitled to distributions of proceeds pursuant to N.C.G.S. Section 47C-2-118.

**ARTICLE V
DISTRIBUTION OF ASSETS ON DISSOLUTION**

Any assets of the corporation shall, upon dissolution of the corporation, be distributed in accordance with the applicable provisions of the North Carolina Nonprofit Corporation Act.

ARTICLE VI
PRINCIPAL OFFICE

The street (and mailing) address of the principal office of the corporation is 1177 N. Fordham Boulevard, Suite 102, Chapel Hill, North Carolina 27514. The principal office may, however, be located at such other places as may be designated from time to time by the corporation's Board of Directors.

ARTICLE VII
PURPOSES

The corporation does not contemplate pecuniary gain or profit to its members and is formed solely for the purposes for which a nonprofit corporation may be formed pursuant to the North Carolina Nonprofit Corporation Act. The specific purposes for which the corporation is formed are as follows:

(a) to have all of the powers granted to the corporation by the North Carolina Condominium Act and the Declaration not inconsistent therewith;

(b) to enforce any valid restriction, condition or covenant set forth in the Declaration and to perform the functions and duties and exercise the powers set forth in the North Carolina Condominium Act and the Declaration not inconsistent therewith;

(c) to receive, acquire, hold, retain, encumber, sell, transfer and/or convey legal or beneficial title to the Common Elements (as defined in the Declaration), or any part thereof, and any tangible or intangible personal property, as provided in the Declaration;

(d) to exercise all powers deemed by the Board of Directors of the corporation to be necessary to the corporation's objectives and purposes or which reasonably may be implied therefrom, including, but not limited to, the power to solicit, collect, receive, administer and disburse funds and file liens in such manner as, in the sole discretion of the Board of Directors of the corporation, will operate most effectively to further the mutual benefit of the Members of the corporation consistent with the provisions of the North Carolina Condominium Act and the Declaration; and

(e) to have and exercise any and all other powers, rights and privileges which a corporation organized pursuant to the North Carolina Nonprofit Corporation Act may by law now or hereafter have or exercise.

ARTICLE VIII
INITIAL DIRECTORS

The corporation's initial Board of Directors shall consist of four (4) directors. The names and addresses of the corporation's initial directors are as follows:

Richard A. Gurlitz
108 Crystal Spring Court
Chapel Hill, North Carolina 27516

Nathan Harms
10001 Sand Creek Court
Chapel Hill, North Carolina 27517

Meyer Liberman
1777 N. Fordham Boulevard, Suite 102
Chapel Hill, North Carolina 27514

James Miggs
8604 Union Grove Church Road
Chapel Hill, North Carolina 27516

ARTICLE IX
BYLAWS

The initial Bylaws of the corporation shall be adopted by the corporation's initial Board of Directors. The power to amend or repeal the initial Bylaws or to adopt new Bylaws shall be in the Members. The Bylaws may contain any provisions for the regulation and management of the corporation which are not inconsistent with the North Carolina Condominium Act, the North Carolina Nonprofit Corporation Act, the Declaration or these Articles of Incorporation.

ARTICLE X
AMENDMENT

These Articles of Incorporation may be amended (a) at any annual or special meeting of the Members duly held in accordance with the provisions of the Bylaws of the corporation with respect to which notice of such purpose has been given, and at which a quorum is present, by the affirmative vote of Members entitled and qualified to vote present at such meeting in person or by proxy who represent not less than a majority of the total number of votes allocated to the Units represented by the Members present in person or by proxy at such meeting, or (b) by written consent of Members entitled and qualified to vote who represent not less than a majority of the total number of votes allocated to all Units as provided in the Declaration. In the event there are no Members entitled and qualified to vote, these Articles of Incorporation may be amended as provided by the applicable provisions of the North Carolina Nonprofit Corporation Act.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this ____ day of _____, 2006.

_____(SEAL)
William D. Bernard, Incorporator

EXHIBIT D

BYLAWS

**INITIAL BYLAWS OF
THE FLATS CONDOMINIUM ASSOCIATION, INC.,**

a North Carolina Nonprofit Corporation

**ARTICLE I
NAME**

Section 1.01 Name. The name of the corporation is The Flats Condominium Association, Inc. (the "Association").

**ARTICLE II
OFFICES**

Section 2.01 Principal Office. The principal office of the Association shall be located at the address provided in the Articles of Incorporation or at such other place in the State of North Carolina as may be designated from time to time by the Board of Directors.

Section 2.02 Registered Office. The registered office of the Association required by law to be maintained in the State of North Carolina may be, but not need be, identical with the principal office.

Section 2.03 Other Offices. The Association may have offices at such other places, either within or without the State of North Carolina as the Board of Directors may from time to time determine or as the affairs of the Association may require.

**ARTICLE III
MEMBERSHIP**

Section 3.01 Membership. Any person or entity who holds record title to any condominium unit ("Unit") at The Flats Condominium (the "Condominium"), a residential condominium located at 101 – 110 Todd Street, Carrboro, Orange County, North Carolina, and created in accordance with, and subject to, the provisions of the Declaration of Condominium of The Flats Condominium recorded or to be recorded in the Office of the Register of Deeds of Orange County, North Carolina, as same may be amended, supplemented and/or modified from time to time (the "Declaration"), shall be and remain a member ("Member") of the Association for so long as such person or entity shall hold record title to such Unit. No lienholder, judgment creditor, trustee or other person or entity holding legal or beneficial title to, or any other interest in, any Unit or Common Element (as defined in the Declaration) merely as security for an obligation shall be qualified for or entitled to membership in the Association. Upon termination of the Condominium, the members of the Association shall consist of those persons or entities entitled to distributions of proceeds pursuant to N.C.G.S. Section 47C-2-118. All defined terms in the Declaration shall have the same meanings in these Bylaws unless otherwise defined herein.

ARTICLE IV

MEETINGS OF MEMBERS

Section 4.01 Annual Meeting. The annual meeting of the Members shall be held on such date as may be designated by the Board of Directors for the purpose of transacting any business authorized to be transacted by the Members.

Section 4.02 Substitute Annual Meeting. If the annual meeting of the Members is not held as provided in **Section 4.01**, any business, including the election of Directors, which might properly have been acted upon at the annual meeting may be acted upon at any subsequent meeting of the Members held pursuant to these Bylaws or pursuant to a court order requiring a substitute annual meeting.

Section 4.03 Special Meetings. Special meetings of the Members may be called at any time by the President, a majority of the Board of Directors, or upon written request of Members having not less than twenty percent (20%) of all the votes in the Association as provided in the Declaration.

Section 4.04 Notice of Meetings. Written notice of each meeting of the Members shall be given by, or at the direction of, the Secretary or other person authorized to call the meeting by mailing a copy of such notice, postage prepaid, not less than ten (10) days nor more than fifty (50) days in advance of any annual or special meeting to each Member entitled and qualified to vote thereat, addressed to each such Member's address last appearing on the books of the Association or supplied by such Member to the Association for the purpose of the notice. Such notice shall specify the place, day and hour of the meeting and, in the case of a special meeting, the purpose of the meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, addressed as provided above, with postage thereon prepaid.

Section 4.05 Qualification to Vote. Any Person who does not hold record title, individually or with others, to any Unit shall not be entitled or qualified to vote on any action taken by the Members unless such person is given the authority to vote for and on behalf of a Member by written proxy complying with the provisions of **Section 4.08**. No Member who is delinquent in the payment of any common expense, assessment, fee, cost, charge or other expense, or any part thereof, levied by the Board of Directors shall be entitled or qualified to vote on any action taken by the Members at any time during which any such common expense, assessment, fee, cost, charge or other expense, or any part thereof, is delinquent.

Section 4.06 Voting List. At least five (5) days before each meeting of the Members the Secretary shall prepare an alphabetical list of the Members entitled and qualified to vote at such meeting, which list shall be kept on file at the principal office of the Association for a period of five (5) days prior to such meeting, and shall be subject to inspection by any Member at any time during usual business hours. This list shall also be subject to inspection by any Member during the whole of the meeting. Any Member otherwise entitled and qualified to vote at any meeting shall be entitled to vote; provided, however, that the owner(s) of each Unit shall not cast more than the number of votes allocated to such Unit by the Declaration on any action taken by the Members, regardless of the number of record owners of such Unit.

Section 4.07 Quorum. The presence at any meeting in person or by proxy of Members entitled and qualified to vote who represent not less than twenty percent (20%) of the votes allocated to all Units as provided in the Declaration shall constitute a quorum for any action; provided, however, that no Unit may be represented by more than one (1) Member for the purpose of determining whether a quorum is present, regardless of the number of record owners of such Unit. If a quorum shall not be present or represented at any meeting, the Members entitled and qualified to vote thereat shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or be represented. The presence of a Member at the beginning of a meeting, in person or by proxy,

shall constitute the presence of that Member for the duration of such meeting for the purpose of determining whether a quorum is present for any action.

Section 4.08 Proxies. At all meetings of the Members, each Member may vote in person or by proxy; provided, however, that the record owner(s) of each Unit, whether one (1) or more, shall not be entitled to cast more than the number of votes allocated to such Unit as provided in the Declaration, regardless of the number of record owners of such Unit. All proxies shall be in writing and filed with the Secretary. Every proxy shall be revocable and shall automatically cease upon expiration or termination of the Member's membership in the Association or suspension of his eligibility to vote.

Section 4.09 Order. The order of business at annual meetings of the Members, and, as far as practical, at all other meetings of the Members, shall be:

- a. Calling of the roll and certifying of proxies.
- b. Proof of notice of meeting or waiver of notice.
- c. Reading and disposal of any unapproved minutes.
- d. Unfinished business.
- e. Committee reports.
- f. New business.
- g. Adjournment.

Section 4.10 Conduct of Meetings. The President shall preside over all meetings of the Members. The Secretary shall keep a minute book with all resolutions adopted by the Members, minutes of all meetings, and all written consents to actions taken without a meeting. Robert's Rules of Order (latest edition) shall govern the conduct of each meeting.

Section 4.11 Adjournments. Any meeting of the Members at which a quorum is present may be adjourned by a majority of the Members present at such meeting, in person or by proxy, to reconvene at a specific time and place. It shall not be necessary to give any notice of the reconvened meeting or of the business to be transacted if the time and place of the reconvened meeting are announced at the meeting which was adjourned. Any business may be transacted which could have been transacted at the meeting which was adjourned if a quorum is present at the reconvened meeting. The presence of a Member at the beginning of a meeting, in person or by proxy, shall constitute the presence of that Member for the duration of such meeting for the purpose of determining whether a quorum is present for any action.

Section 4.12 Action of Members Without a Meeting. Any action which may be taken at a meeting of the Members may be taken without a meeting if a written consent setting forth with reasonable detail the action authorized is signed by Members then entitled and qualified to vote who represent not less than the minimum number of Units necessary to approve such action at a special meeting of the Members. Facsimile signatures shall be permitted and shall have the same validity and effect as original signatures. The consent shall be filed in the minute book or other appropriate records of the Association by the Secretary. It shall then have the same effect as a vote of such Members at a special meeting called for the purpose of considering the action authorized.

Section 4.13 Vote Required for Action. The total number of votes that may be cast by the membership on any action which may be taken by the Members, whether at an annual or special meeting or by written consent without a meeting, shall not exceed the total number of votes allocated to all Units as provided in the Declaration. The record owner(s) of each Unit, whether one (1) or more, shall cast not more than the number of votes allocated to such Unit as provided in the Declaration on any action taken by the Members. Any votes cast or a written consent signed by a record owner of any Unit having more than one (1) record owner shall be deemed to be votes cast or a written consent signed by all record owners of such

Unit and shall be binding upon each of them as fully and to the same extent as if each of them had voted on such action or signed such written consent. Except as otherwise provided by law, the Articles of Incorporation, these Bylaws or the Declaration, and subject to the above-stated voting provisions, the act of Members entitled and qualified to vote who represent not less a majority of the total number of votes present in person or by proxy at any meeting of the Members at which a quorum is present, shall be the act of all of the Members.

ARTICLE V

BOARD OF DIRECTORS

Section 5.01 General Powers. The business and affairs of the Association shall be managed by the Board of Directors. The Board of Directors shall have all powers of the Association that are not required by law, the Articles of Incorporation, these Bylaws or the Declaration to be exercised by the Members. The powers of the Association include those set forth in Article 3 of the North Carolina Nonprofit Corporation Act, in Article 3 of the North Carolina Condominium Act and in the Declaration not inconsistent therewith.

Section 5.02 Number, Term and Qualifications. The number of Directors shall be not less than one (1) nor more than five (5). Except to the extent otherwise provided in the Declaration, each Director shall serve a term of two (2) years and, subject to removal, disqualification or resignation, until his successor has been elected and qualified. Any natural person shall be eligible for election or appointment as a Director.

Section 5.03 Nomination. Nominations for election of Directors by the Members shall be accepted by the Secretary, in writing, not more than thirty (30) days prior to the annual meeting of the Members. Nominations may also be made orally by any Member at the annual meeting of the Members. Nominations for election of Directors shall be made and accepted according to procedures adopted by the Board of Directors.

Section 5.04 Election. Directors shall be elected as provided in **Section 5.02**. Those persons who receive the highest number of Votes shall be deemed to be elected. If any Member so demands, the election of Directors by the Members shall be by written ballot.

Section 5.05 Removal. Any Director may be removed from office, with or without cause, by a vote of the Members at any annual or special meeting of the Members duly held in accordance with the provisions of these Bylaws with respect to which notice of such purpose has been given and at which a quorum is present by the affirmative vote of Members entitled and qualified to vote who represent not less than a majority of all Units present in person or by proxy.

Section 5.06 Vacancies. Any vacancy occurring on the Board of Directors may be filled by a majority of the Directors remaining in office though less than a quorum of the Board of Directors. Any Director so elected by the remaining Directors to fill the vacancy of a removed Director shall, subject to removal, disqualification or resignation, serve the remaining term of such removed Director and until his successor has been elected and qualified.

Section 5.07 Compensation. Directors shall not receive compensation for their services on the Board of Directors. A Director may serve the Association in another capacity and receive compensation, if disclosed to the Board of Directors in advance in writing.

Section 5.08 Committees. The Board of Directors may, by resolution adopted by a majority of the Directors, establish such committees and the terms, purposes and authorities thereof, as it may, in the exercise of its sole discretion, deem appropriate. Each such committee shall consist of at least one (1) Member, but need not consist of a Director unless so provided by the Board of Directors. Non-Members may serve on any

committee unless expressly prohibited by the Board of Directors. No committee may exercise the authority of the Board of Directors in the conduct of the business or affairs of the Association.

ARTICLE VI

MEETINGS OF THE BOARD OF DIRECTORS

Section 6.01 Place of Meetings. The Board of Directors may hold its meetings at any place as the Board of Directors by resolution may establish.

Section 6.02 Regular Meetings. A regular meeting of the Board of Directors shall be held at least once each year at such time(s) as the Board of Directors by resolution may provide.

Section 6.03 Special Meetings. Special meetings of the Board of Directors may be called by the President, the Secretary or any Director.

Section 6.04 Notice of Meetings. No notice shall be required for regularly scheduled meetings. Notice of each special meeting shall be given to each Director stating the time, place and purpose of the meeting. The notice shall be given by mail deposited at least five (5) days before the meeting or by telephone, telegram, cablegram, or personal delivery at least three (3) days before the meeting. Notice by telegram or cablegram shall be deemed delivered at the time the notice is filed with the transmitting agency. Notice by telephone or personal delivery shall be deemed effective only when actually communicated to the Director.

Section 6.05 Quorum. A quorum shall be deemed present throughout any meeting of the Board of Directors when a majority of all Directors then holding office are present in person or by proxy at the beginning of the meeting.

Section 6.06 Voting. Except as otherwise provided by law or these Bylaws, the act of a majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board of Directors. Each Director shall have one (1) equal vote on all matters considered and/or voted upon by the Board of Directors.

Section 6.07 Adjournments. Any meeting of the Board of Directors, whether or not a quorum is present, may be adjourned by a majority of the Directors present to reconvene at a specific time and place. It shall not be necessary to give notice of the reconvened meeting or of the business to be transacted, other than by announcement at the meeting which was adjourned. Any business may be transacted which could have been transacted at the meeting which was adjourned, if a quorum is present at the reconvened meeting.

Section 6.08 Action by Board of Directors Without a Meeting. Any action required or permitted to be taken at any meeting of the Board of Directors may be taken without a meeting if a written consent is signed by all Directors and is filed with the minutes of the Board of Directors. Facsimile signatures shall be permitted and shall have the same validity and effect as original signatures. The consent shall have the same force and effect as a unanimous vote of the Board of Directors.

Section 6.09 Conduct of Meetings. The President shall preside over all meetings of the Board of Directors. The Secretary shall keep a minute book with all resolutions adopted by the Board of Directors, minutes of all meetings, all written consents to actions taken without a meeting, all memoranda of emergency actions taken without a meeting, and proceedings occurring at all such meetings. Robert's Rules of Order (latest edition) shall govern the conduct of the meetings.

ARTICLE VII
POWERS AND DUTIES OF THE BOARD OF DIRECTORS

Section 7.01 Powers. The Board of Directors shall have power to:

- (a) suspend the voting rights of any Member during any period in which such Member shall be delinquent in the payment of any common expense, assessment, fee, cost, charge or other expense levied against any Unit owned by such Member;
- (b) file a lien on behalf of the Association against any Unit the payment of any common expense, assessment, fee, cost, charge or other expense levied against such Unit shall become delinquent, and/or commence appropriate legal action to enforce such lien and/or effect collection of any such delinquent common expense, assessment, fee, cost, charge or other expense;
- (c) declare the office of a Director to be vacant in the event such Director shall be absent from three (3) consecutive meetings of the Board of Directors;
- (d) elect and employ a President, who shall be the chief executive officer of the Association, and such other employees as they deem necessary, and to prescribe their duties;
- (e) elect such other Officers of the Association as it may deem necessary;
- (f) elect a successor Director to fill the vacancy of any Director removed by the Members or declared vacant by the Board of Directors;
- (g) establish such committees as it may deem appropriate; and
- (h) exercise for the Association any and all other powers, duties and authority vested in, conferred upon or delegated to the Association pursuant to the North Carolina Nonprofit Corporation Act, the North Carolina Condominium Act, the Articles of Incorporation, these Bylaws and/or the Declaration and not expressly reserved to the Members by the North Carolina Nonprofit Corporation Act, the North Carolina Condominium Act, the Articles of Incorporation, these Bylaws and/or the Declaration.

Section 7.02 Duties. It shall be the duty of the Board of Directors to:

- (a) cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the Members at the annual meeting of the Members, or at any special meeting which such statement is requested in writing any Member;
- (b) supervise all Officers, agents and employees of the Corporation, and to see that their duties are properly performed;
- (c) issue, or to cause an appropriate Officer to issue, upon demand by any Member, a certificate setting forth whether any common expense, assessment, fee, cost, charge or other expense required to be paid by any Member has been paid. Such certificate shall be conclusive evidence of such payment;
- (d) cause all Officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate;
- (e) cause any property of the Association to be properly maintained and insured;

(f) cause any and all necessary registrations, licenses and permits to be obtained and maintained by the Association;

(g) submit a proposed annual budget, including any proposed common expense, assessment, fee, cost, charge or other expense, to the Members for their consideration and approval at the annual meeting of the Members;

(h) submit a proposed special assessment and justification therefor to the Members for their consideration and approval when and as the Board of Directors may deem necessary;

(i) pay any license fees or governmental charges levied or imposed against any property of the Association; and

(j) perform such other duties as are imposed by the North Carolina Nonprofit Corporation Act, the North Carolina Condominium Act, the Articles of Incorporation and/or the Declaration.

ARTICLE VIII

OFFICERS

Section 8.01 Number. The Officers of the Association shall consist of a President, one or more Vice Presidents as designated by the Board of Directors, a Secretary, a Treasurer and one or more Assistant Secretaries and Treasurers as designated by the Board of Directors. The Association shall not be required to have at any time any Officers other than a President, Secretary and Treasurer. Any two (2) or more offices may be held by the same person, except the offices of President and Secretary. Any natural person shall be eligible for election or appointment as an Officer.

Section 8.02 Election and Term. All Officers shall be elected by the Board of Directors and shall serve at the pleasure of the Board of Directors.

Section 8.03 Compensation. Any compensation of Officers shall be fixed by the Board of Directors.

Section 8.04 Removal. Any Officer or agent elected by the Board of Directors may be removed by the Board of Directors, with or without cause, at any meeting with respect to which notice of such purpose has been given to the Directors.

Section 8.05 President. The President shall be a Director and the chief executive officer of the Association and shall have responsibility for the general supervision of the business of the Association. The President shall see that all orders and resolutions of the Board of Directors are carried into effect. The President shall perform such other duties as may from time to time be assigned or delegated to him/her by the Board of Directors. The President shall have all the general powers and duties which are incident to the office of the president of a corporation organized under the North Carolina Nonprofit Corporation Act.

Section 8.06 Vice Presidents. The Vice President shall be a Director and, in the absence or disability of the President, or at the direction of the President, shall have the duties and powers of the President. If the Association has more than one Vice President, the Board of Directors shall designate one of them to act for the President. Each Vice President shall have whatever additional duties and powers as may from time to time be assigned or delegated to him/her by the Board of Directors or which are incident to the office of the vice president of a corporation organized under the North Carolina Nonprofit Corporation Act.

Section 8.07 Secretary. The Secretary shall keep accurate and complete records of all meetings of Members and Directors, including minutes of the meetings, all resolutions adopted and all consents to actions without a meeting. The Secretary shall have authority to give all notices required by law or these Bylaws. The Secretary shall be custodian of the corporate books, records, contracts and other documents. The Secretary may affix the corporate seal to any lawfully executed documents requiring it and shall sign such instruments as may require his signature. The Secretary shall have whatever addition duties and powers as may from time to time be assigned or delegated to him/her by the Board of Directors or which are incident to the office of the secretary of a corporation organized under the North Carolina Nonprofit Corporation Act.

Section 8.08 Treasurer. The Treasurer shall have custody of all funds and securities belonging to the Association and shall receive, deposit or disburse them under the direction of the Board of Directors. The Treasurer shall keep full and true accounts of all receipts and disbursements and shall make reports to the Board of Directors and President upon request. The Treasurer shall perform all duties as may be assigned to him from time to time by the Board of Directors. The Treasurer shall prepare or cause to be prepared all required financial statements, tax returns and budgets. If the Corporation employs an accountant, attorney or other agent, the duties may be delegated to the agent. However, the Treasurer shall remain responsible for supervising the agent. The Treasurer shall have whatever addition duties and powers as may from time to time be assigned or delegated to him/her by the Board of Directors or which are incident to the office of the treasurer of a corporation organized under the North Carolina Nonprofit Corporation Act.

Section 8.09 Assistant Secretary and Assistant Treasurer. The Assistant Secretary and Assistant Treasurer shall, in the absence or disability of the Secretary or the Treasurer, respectively, have the duties and powers of those offices. They shall, in general, perform any other duties assigned to them by the Board of Directors. Specifically, the Assistant Secretary may affix the corporate seal to all necessary documents and attest the signature of any Officer.

Section 8.10 Bonds. The Board of Directors may require any or all of the Officers, agents or employees of the Association to give bonds to the Association, with sufficient surety, conditioned on the faithful performance of the duties of their respective offices or positions.

ARTICLE IX

PROHIBITION AGAINST SHARING IN CORPORATE EARNINGS

Section 9.01 Prohibition. No Director, Officer, Member, employee, agent, committee member, Person connected with the Association or other Person shall receive at any time any of the net earnings or pecuniary profit from the operations of, or any other distribution from, the Association; provided, however, that any such Person may receive payment of reasonable compensation for services rendered to or for the Association in effecting any of its purposes as shall be fixed by the Board of Directors, or a distribution of the assets of the Association upon the termination of the Condominium or the dissolution or winding up of the affairs of the Association, whether voluntary or involuntary, to the extent such distribution is mandated or permitted by the North Carolina Nonprofit Corporation Act and/or the North Carolina Condominium Act as same now exist or may hereafter be amended.

ARTICLE X

PROHIBITED ACTIVITIES

Section 10.01 Prohibition. Notwithstanding any other provision of these Bylaws to the contrary, no Director, Officer, Member, employee, agent, committee member or other representative of the Association shall take any action or carry on any activity by or on behalf of the Association not permitted to be taken or carried on by the Association pursuant to the North Carolina Nonprofit Corporation Act or the North Carolina Condominium Act as same now exist or may hereafter be amended.

ARTICLE XI **MISCELLANEOUS**

Section 11.01 Fiscal Year. The fiscal year of the Association shall begin on or the first (1st) day of January and end on the thirty-first (31st) day of December of each calendar year.

Section 11.02 Seal. The corporate seal of the Association shall be in circular form having within its circumstance the words: The Flats Condominium Association, Inc. Corporate Seal.

Section 11.03 Inspection of Books and Records. All accounts, books and records of the Association shall be open to inspection by the Members during normal business hours subject to such reasonable rules as the Board of Directors may establish.

Section 11.04 Indemnification. Each Director and Officer shall be indemnified by the Association against those expenses which are allowed by the laws of North Carolina and which are reasonably incurred in connection with any action, suit or proceeding, whether completed, pending or threatened, in which such person may be involved by reason of his being or having been a Director and/or Officer. Indemnification shall be made only in accordance with the laws of the State of North Carolina. The Association may purchase and maintain insurance on behalf of any such Directors and/or Officers against any liabilities asserted against them whether or not the Association would have the power to indemnify the Directors and/or Officers against the liability under the laws of the State of North Carolina. If any expense or other amounts are paid by way of indemnification, other than by court order, by action of the Members or by an insurance carrier, the Association shall provide notice of such payment to the Members in accordance with the laws of the State of North Carolina.

Section 11.05 Waiver of Notice. Whenever any notice is required to be given to any Member or Director, a waiver signed by the Member or Director entitled to such notice, whether before or after the meeting to which the waiver pertains, shall be deemed equivalent to proper notice. Attendance at a meeting, whether in person or by proxy, shall be a waiver of notice of the time and place unless specific objection to improper notice is made when the meeting is called to order. Attendance shall also be a waiver as to all business transacted unless specific objection is made before the objectionable business is put to vote.

Section 11.06 Amendment. These Bylaws may be amended (a) at any annual or special meeting of the Members duly held in accordance with the provisions of these Bylaws with respect to which notice of such purpose has been given, and at which a quorum is present, by the affirmative vote of Members entitled and qualified to vote present at such meeting in person or by proxy who represent not less than a majority of the total number of votes allocated to the Units represented by the Members present in person or by proxy at such meeting, or (b) by written consent of Members entitled and qualified to vote who represent not less than a majority of the total number of votes allocated to all Units as provided in the Declaration. In the event there are no Members entitled and qualified to vote, these Bylaws may be amended as provided by the applicable provisions of the North Carolina Nonprofit Corporation Act.

Section 11.07 Self-Dealing. Each Director, Officer and agent of the Association shall disclose in the written minutes of the Board of Directors any contract or agreement of any kind between the Corporation and any person or entity to which he is related by blood or marriage or in which he has an interest, whether direct or indirect.

Section 11.08 Conflicts. In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles of Incorporation shall control.

Section 11.09 Effective Date. The effective date of these Bylaws shall be the date of approval and adoption set forth below.

APPROVED AND ADOPTED BY THE UNDERSIGNED INITIAL DIRECTOR OF THE ASSOCIATION THIS __ DAY OF _____, 2006.

Richard A. Gurlitz, Initial Director

Nathan Harms, Initial Director

James Miggs, Initial Director

Meyer Liberman, Initial Director