

WAKE COUNTY, NC 109
LAURA M RIDDICK
REGISTER OF DEEDS
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**SECOND AMENDMENT AND RESTATEMENT OF
DECLARATION CREATING UNIT OWNERSHIP AND ESTABLISHING
RESTRICTIONS, COVENANTS AND CONDITIONS FOR
HERITAGE PROFESSIONAL PARK WEST CONDOMINIUM**

**(Wake County Register of Deeds Condominium File CM 2009, Page 512 A1 and
CM 2016, Page 251 - 252)**

Prepared by/return to: Nicholls & Crampton, P. A. (FTN), PO Box 18237, Raleigh, NC 27619

THIS SECOND AMENDMENT TO, AND RESTATEMENT OF, that certain Declaration Creating Unit Ownership and Establishing Restrictions, Covenants and Conditions for Heritage Professional Park West Condominium, recorded in Book 13627, Page 696, Wake County Registry (the "Declaration"), is made and entered into by H & C HOLDINGS, LLC, a North Carolina Limited Liability company (hereafter "Declarant") and SCHOFIELD HEALTH SERVICES LLC, a North Carolina Limited Liability company (hereafter "Schofield").

W I T N E S S E T H:

WHEREAS, Declarant has heretofore established that certain condominium known as Heritage Professional Park West Condominium (hereafter defined as "Condominium") pursuant to the Declaration.

WHEREAS, the Declaration may be amended by a written agreement signed by Unit Owners holding at least sixty-seven percent (67%) of the votes in Heritage Professional Park West Association, Inc., a North Carolina non-profit corporation (the "Association").

WHEREAS, Declarant and Schofield are now the owners of all Units comprising the Condominium and the holders of all votes in the Association.

WHEREAS, Declarant and Schofield desire to amend and restate the Declaration, in its entirety.

NOW, THEREFORE, in consideration of the premises, Declarant and Schofield do hereby amend the Declaration by restating it, so that it shall hereafter read, in its entirety, as hereinafter provided, beginning on the following page.

**DECLARATION OF CONDOMINIUM FOR
HERITAGE PROFESSIONAL PARK WEST CONDOMINIUM
PURSUANT TO CHAPTER 47C OF THE NORTH CAROLINA GENERAL STATUTES,
THE NORTH CAROLINA CONDOMINIUM ACT**

(Wake County Register of Deeds Condominium File CM 2009, Page 512 A1 and
CM 2016, Page ~~251~~ - ~~252~~)

H & C HOLDINGS, LLC, a North Carolina limited liability company, hereafter defined as “Declarant”, does hereby make, declare and establish this Declaration of Condominium as, and for, the plan of ownership of HERITAGE PROFESSIONAL PARK WEST CONDOMINIUM, being the property and improvements hereinafter described.

W I T N E S S E T H:

WHEREAS, Declarant is the owner of certain real property in Wake County, North Carolina, more particularly described and defined in Exhibit “A” attached hereto and made a part hereof (hereinafter called “Property”); and

WHEREAS, Declarant has constructed, and will construct, improvements upon the Property with the intention of dividing the improvements into Condominium Units as defined under the provisions of the North Carolina Condominium Act (Chapter 47C, North Carolina General Statutes), and to sell and convey said Units to purchasers subject to the covenants, conditions and restrictions herein reserved. The maximum number of units which Declarant reserves the right to create is twenty-five (25) Units.

NOW, THEREFORE, Declarant hereby declares that all of the Property described in Exhibit “A” attached hereto shall be held, sold, and conveyed subject to the following easements, restrictions, covenants, uses, limitations, and obligations in furtherance of a plan for the division of said Property into Condominium Units and which shall be deemed to run with the land and be binding on all parties having any right, title, or interest in the land or any part thereof, their heirs, successors and assigns.

1. ESTABLISHMENT OF CONDOMINIUM OWNERSHIP

1.01 Submission. Declarant does hereby submit the Property, and the improvements and appurtenances thereto, to the form of condominium ownership pursuant to the provisions of Chapter 47C of the General Statutes of North Carolina (North Carolina Condominium Act) as the same now exists or may be hereafter amended, and hereby declares that the Property shall be subject to the uses, restrictions, covenants, easements, limitations, obligations, and governing authority set forth in this Declaration of Condominium and as the same may be hereafter amended.

1.02 Name. The Property and improvements thereon shall be known as HERITAGE PROFESSIONAL PARK WEST CONDOMINIUM (hereinafter referred to as “Condominium”).

2. DESCRIPTION OF PROPERTY AND IMPROVEMENTS

2.01 Property. The legal description of the Property on which the buildings and improvements are located is set forth in Exhibit “A” to this Declaration.

2.02 Unit Designations. The unit or suite designation of each Condominium Unit, the location, floor plan and typical description are set forth in the Plans (as hereafter defined) for this Condominium filed in the Office of the Register of Deeds of Wake County, North Carolina, in CM 2009 – 512 A1, and amendments thereto.

2.03 Other Descriptions. Actual building locations, Limited Common Areas, utility lines, ground elevations, building elevations, and other land and construction information shall be found in the Condominium Unit Ownership File for this Condominium filed in the Office of the Register of Deeds of Wake County, North Carolina in CM 2009 – 512 A1, and CM 2016 - 251-252 and amendments thereto.

The liens, easements, defects, and encumbrances on the Property to which the rights of Unit Owners and Occupants are hereby made subject are set out on Exhibit “B” to this Declaration.

The Condominium is not subject to any code, real estate use law, ordinance, charter provision, or regulation (i) prohibiting the Condominium form of ownership, or (ii) imposing conditions or requirements upon a Condominium which are not imposed upon substantially similar developments under a different form of ownership. This statement is made pursuant to G.S. 47C-1-106 of the Act for the purpose of providing marketable title to the Units in the Condominium.

3. DEFINITIONS

The following shall be definitions applicable to this Declaration:

3.01 “Allocated Interests” means the undivided interests in the Common Elements, the Common Expense Liability and the votes in the Association allocated to each Unit as shown on Exhibit “C” attached hereto, as said Exhibit may be amended from time to time. The formula for calculating such interests is based on the relative floor area of each Unit as compared to the floor area of all Units in the Condominium. The effective date for assigning Allocated Interests shall be the date on which the amendment creating the Unit is recorded in the Office of the Register of Deeds, Wake County, North Carolina.

3.02 “Association” or “Unit Owners’ Association” means that non-profit corporation, the name of which shall be HERITAGE PROFESSIONAL PARK WEST ASSOCIATION, INC., which shall manage the Common Elements of the Condominium as specified in this Declaration, its Articles of Incorporation and its corporate Bylaws.

3.03 “Board of Directors” or “Board” means those persons elected or appointed and acting collectively as the directors of the Association, and on behalf of the Association, as prescribed in its Articles of Incorporation and Bylaws.

3.04 “Building” means a structure constructed or erected on the Property which contains one or more Condominium Units. A Building may be subdivided into two or more Units.

3.05 “Bylaws” means the Bylaws of the Association as they now or hereafter exist.

3.06 “Common Elements” shall mean and comprise all of the Condominium other the Condominium Units, and appurtenances thereto, but excluding any heating or air conditioning equipment serving only an individual Unit and excluding all outdoor light fixtures affixed to the exterior walls of an individual Unit.

3.07 “Common Expenses” means expenditures made by, or financial liabilities of, the Association, together with any allocations to reserves, including, but not limited to:

- (A) All sums lawfully assessed against the Unit Owners by the Association;
- (B) Expenses of administration, maintenance, repair, or replacement of the Common Elements, including Stormwater Control Measures, Private Roadways, and Parking Areas;
- (C) Expenses agreed upon as Common Expenses by the Association;

- (D) Expenses declared to be Common Expenses by the provisions of the North Carolina Condominium Act, by the Declaration or by the Bylaws;
- (E) Hazard, and such other insurance premiums as the Declaration and/or Bylaws may require the Association to purchase;
- (F) Taxes and public assessments levied against the Common Elements not otherwise assessed against the Units;
- (G) The cost of providing municipal water to the Units and Common Elements and any other utilities which are Common Expenses, as determined by the Association; and
- (H) The cost of installing and maintaining fire and/or burglar alarms systems, if these are provided for the benefit of all Units.

3.08 "Common Expense Liability" means the liability for Common Expenses allocated to each Unit.

3.09 "Common Profits" means the balance of all assessment income and other income, rents, profits, and revenues from the Common Elements remaining after the deduction of the Common Expenses or reserves therefor.

3.10 "Common Surplus" means all funds and other assets of the Association, including excess receipts of the Association from assessments, rents, profits and revenues from whatever source in excess of the Common Expenses.

3.11 "Condominium" shall mean all Condominium Units, the Common Elements and any Limited Common Elements, as said terms are herein defined, and all appurtenances, all comprising the Property described on Exhibit "A", attached hereto, and the improvements thereon.

3.12 "Condominium Unit" or "Unit" as the term is used herein shall mean and comprise each of the separate numerically identified Units which are designated on Exhibit "C" attached hereto, and which shall be the physical portion of the Condominium designed on that Exhibit for separate ownership or occupancy. Mechanical equipment and appurtenances located within any Unit and designed to serve only that Unit, such as appliances, heating and air conditioning units, cabinets, fixtures and the like shall be part of the Unit. Additionally, all out door light fixtures affixed to the exterior walls of a Unit shall be part of the Unit. A Condominium Unit or Unit may be an entire Building or it may be a portion of a Building which, along with any other Unit or Units, comprises a single Building. A Condominium Unit may be subdivided into two or more Condominium Units or Units, or two or more Condominium Units may be combined into one or fewer Units, as provided in this Declaration and the Act.

3.13 "Declarant" means H & C Holdings, LLC, and its successors and assigns to whom any of its rights hereunder are expressly transferred, in whole or in part, or who succeeds to any Special Declarant Right.

3.14 "Declarant Control Period" or "Period of Declarant Control" means the period commencing on the date hereof and continuing until the earlier of:

- (A) Two years after Declarant has ceased to offer Units for sale in the ordinary course of business; or

- (B) The date one hundred twenty (120) days after Declarant has conveyed seventy-five percent (75%) of the maximum number of Units to Unit Owners other than Declarant; or
- (C) Declarant's voluntary surrender of the Declarant Control Period.

3.15 "Declaration" means this instrument, as amended and duly recorded, by which the Property is submitted to the provisions of the North Carolina Condominium Act, and as it, from time to time, may be amended.

3.16 "Development Rights" means those rights, if any, reserved by Declarant herein to add real estate to the Condominium, to create Units, Common Elements or Limited Common Elements within the Condominium, to subdivide or combine Units, convert Units unto Common Elements, or other rights as may be provided in the North Carolina Condominium Act, all as reserved in Section 5 herein.

3.17 "Lessee" means any person entitled to present possession of a leased Unit, whether lessee, sublessee or assignee.

3.18 "Institutional Lender" or "Institutional Lenders", as the terms are used herein, shall refer to Federal National Mortgage Association, Government National Mortgage Association, Veteran's Administration, Federal Housing Authority, United States Department of Housing and Urban Development, banks, saving and loan associations, insurance companies, credit unions, or other recognized mortgage lenders.

3.19 "Limited Common Elements" are certain portions of the Common Elements allocated or reserved by the Declaration for the use of a particular Condominium Unit or Units to the exclusion of other Units. Limited Common Elements and the Condominium Units to which they are reserved are described as follows:

- (A) Any chute, flue, duct, wire, conduit, wall, bearing column or other fixture which lies partially within and partially outside the boundary of a Unit and which serves only that Unit are Limited Common Elements and allotted to the Unit they serve. Any of the foregoing which lies partially within and without a Unit and serves more than one Unit is a Common Element.
- (B) Any shutters, awnings, window boxes, doorsteps, stoops, decks, porches, balconies, patios, all exterior doors, exterior glass surfaces, windows, door frames, thresholds and fixtures designed to serve a single Unit, but located outside the Unit's boundaries, as defined herein, are Limited Common Elements allotted to the Unit which they serve.
- (C) Any pipe, wire, wiring, conduit, electrical circuit, panel or switch, plumbing, junction box, switch box, drain, water line or pipe, water heater or meter designed to serve a single Unit but located either wholly or partly outside of the Unit boundaries, as defined herein, or outside of the Building, are Limited Common Elements allotted to the Unit which they serve.
- (D) Any air handling ducts or drains, condenser ducts, drains or components, whether for heating or cooling, designed to serve a single Unit but located either wholly or partly outside of the Unit boundaries, as defined herein, or outside of the Building, are Limited Common Elements allotted to the Unit which they serve.
- (E) Any sign and related equipment (including, without limitation, electrical wires and equipment), designed to identify the Unit Owner, Lessee or business being

conducted in a single Unit (whether one or more businesses), and located either wholly or partially outside the Unit Boundary of that Unit, are Limited Common Elements allocated to that Unit. Provided, however, the foregoing does not include identifying street or Unit numbers that are located wholly or partially outside the Unit Boundary of a Unit and are part of a common scheme or plan for identification of all of the Units in the Condominium.

The cost of maintenance and repair of a Limited Common Element (except the painting of the exterior surfaces of the window frames, door frames, and door thresholds, and washing of the exterior of windows, which is the maintenance responsibility of the Association) shall be the responsibility of the Owner of the Unit or Units to which it is allocated, on an equal basis.

No Limited Common Element may be altered or reallocated without the unanimous consent of all Unit Owners whose Units are affected. Any Unit Owners who reallocate a Limited Common Element as among themselves shall first seek and obtain approval from the Board of Directors. Any reallocation of a Limited Common Element, upon approval by the Board, shall be evidenced by an amendment to this Declaration executed by the Unit Owners affected and evidencing executed approval by the Association which amendment shall be recorded before it shall become effective. The Unit Owners affected by the reallocation shall pay the cost and expense of preparation of the amendment and the recording thereof; however, the form and substance of the amendment shall be first approved by the Board of Directors.

Common Elements not designated or allocated as Limited Common Elements may not be so allocated to Unit Owners except upon written unanimous consent of all Unit Owners in the Condominium. Any such allocation shall be evidence by a recorded amendment as set forth above.

3.20 “Majority” or “Majority of Unit Owners” means the owners of more than fifty percent (50%) of the aggregate allocated interests in the Common Elements as established by this Declaration, in person or by proxy at a duly called meeting of the members of the Association.

3.21 “Mortgage” means a mortgage or deed of trust.

3.22 “Mortgagee” means a mortgagee or the owner and holder of a promissory note and deed of trust which describes a Unit or Units as the security property.

3.23 “North Carolina Condominium Act” or “Act” means the provisions of Chapter 47C of the North Carolina General Statutes as the same now exists or may hereafter be amended, or any new enactment in substitution or replacement thereof as the same by law may be applied to this Condominium.

3.24 “Person” means any individual, corporation, partnership, limited liability company, association, business trust, estate, trust, joint venture, government or any subdivision or agency thereof, or other legal or commercial entity.

3.25 “Plans” mean the plans of the Buildings and Property filed with this Declaration and located in the Condominium File in the Office of the Register of Deeds of Wake County, North Carolina, and any additions or amendments thereto, showing thereon graphically all particulars of the buildings and the Units.

3.26 “Property” means the real estate described on Exhibit “A” together with the buildings, structures and improvements thereon, or hereafter constructed thereon and all easements, rights, privileges and appurtenances belonging thereto, or in any way pertaining thereto which is herein submitted to the provisions of the North Carolina Condominium Act.

3.27 “Special Declarant Rights” means those rights, including Development Rights, permitted by the North Carolina Condominium Act and specified in Section 6 herein.

3.28 “Stormwater Agreement” means any agreement recorded in the Register of Deeds of Wake County, North Carolina among the Town of Wake Forest and/or the Declarant and the Association relating to Stormwater Control Measures for the Property or any part thereof, and includes all amendments and supplements to such agreements. A Stormwater Agreement with the Town of Wake Forest includes the Operations and Maintenance Manual presently on record.

3.29 “Stormwater Control Measures” or “Stormwater Control Facilities” as used herein and in the Stormwater Control Structure and Access Easement and Agreement, means one or more of the following devices and measures, together with associated private stormwater drainage easements (however defined on a plat or in a document) that serves the Property: conduits, inlets, channels, pipes, level spreaders, ditches, grassed swales, sand filters, wetponds, dry detention basins, wetlands, permanently protected undisturbed open space areas, bio-retention areas, retention or detention ponds, and other devices and measures necessary to collect, convey, store and control stormwater runoff and pollutants for the Property, and which are located outside public street rights- of-way and Town of Wake Forest drainage easements. Private stormwater drainage easements that serve the Property, or any part of it, however identified on a recorded plat or in a recorded document, are deemed dedicated to the Association for the benefit of the Property. All Stormwater Control Measures/Stormwater Control Facilities are Common Elements

3.30 “Stormwater Operations Maintenance Manual” is defined as that manual, however named, attached to and incorporated into the Stormwater Agreement as an exhibit for the Maintenance of Stormwater Control Measures and the payment of the costs thereof.

3.31 “Unit Boundary” means the perimeter boundary of a Unit, both as to vertical and horizontal planes, as shown on the Plans, defined as follows: the undecorated interior surfaces of the perimeter walls of the Unit, the undecorated interior surface of the exterior doors and windows of a Unit, the ceiling (or bottom of the rafters or steel ceiling joists) of a unit and the topmost surfaces of the concrete slab of a Unit, and include the decoration of all such interior and topmost surfaces, including, without limitation, all paneling, tiles, wallpaper, paint, finished flooring and any other materials constituting any part of the decorated surfaces thereof, and also includes all spaces, interior partitions and other fixtures and improvements within such boundaries. Also included as a part of a Unit and the Unit Boundary shall be the heating and air conditioning systems for the Unit whether located within the perimeter walls of the Unit or in the Common Elements.

3.32 “Unit Designation” means the identifying number, letter, or combination thereof designating a Condominium Unit (Suite) and set forth in this Declaration and the Plans.

3.33 “Unit Owners” or “Owners” means Declarant or any other person, or any combination thereof, who owns a Condominium Unit, but excludes any person having an interest in a Unit solely for security purposes.

4. OWNERSHIP OF CONDOMINIUM UNITS AND APPURTENANT ALLOCATED INTEREST IN COMMON ELEMENTS; MAXIMUM UNITS

4.01 Ownership Interest. Each Condominium Unit shall be held, conveyed and treated as an individual property capable of independent use and fee simple ownership and the Owner of each Unit shall also own, as an appurtenance to the ownership of each Condominium Unit, an undivided allocated interest in the Common Elements. The undivided allocated interest appurtenant to each Condominium Unit shall be as set out in Exhibit “C” attached hereto and made a part hereof. The Allocated Interest in the Common Elements that is appurtenant to each Condominium Unit is according to the area of each Unit as it relates to the combined area of all then existing Units.

4.02 Change in Allocated Interests. Except such reallocations as may be required by law, as may arise in the case of condemnation as set forth in Section 39 herein, as may result from a casualty loss as specified in Section 23 herein, or as may occur because of exercise of any Development Rights reserved by

Declarant or by a Unit Owner herein, if any, the Allocated Interests in the Common Elements allotted to each Unit shall not be changed except with the unanimous consent of all of the Owners of all of the Condominium Units and with the consent of all of the Institutional Lenders holding first mortgages or deeds of trust on the Condominium Units.

4.03 No Division of Common Elements. The Common Elements are not subject to partition, and any purported conveyance, encumbrance, judicial sale, or other voluntary or involuntary transfer of an undivided interest in the Common Elements by an Owner made without the Condominium Unit to which that interest is allocated is void.

4.04 Maximum Number of Units. The Condominium, upon creation, contained one (1) Unit. As additional Units are added, the Condominium will contain the number of Units listed in the most current Exhibit "C" hereof. Declarant reserves the right to create up to twenty-five (25) Units through the construction of new Units and/or the subdivision of existing Units.

5. DECLARANT DEVELOPMENT RIGHTS RESERVED

Declarant reserves the following Development Rights with respect to the real estate within the Condominium described on Exhibit "A" attached hereto: (i) to create Units, Common Elements, and Limited Common Elements, (ii) to subdivide or combine Units; (iii) to approve the subdivisions or combinations of Units not owned by Declarant; and (iv) to convert Units into Common Elements. Such Development Rights herein reserved must be exercised on or before the end of fifteen (15) years after the time of recordation of this Declaration.

If a Development Right is exercised in a portion of the real estate in Exhibit "A" subject to such development right, there is no obligation on Declarant to exercise such Development Rights in any portion of the remainder of the real estate described in Exhibit "A" subject to such right.

Upon the exercise of such Development Rights, and where appropriate, Declarant shall prepare and file an Amendment to this Declaration complying with this Declaration and the Act. The Common Elements then constituted shall be reallocated to the Units based on the formula set forth in Section 4.01 hereof. Such Amendment shall: (i) assign an identifying number or letter to each new Unit created; (ii) reallocate the allocated interests among the Units; (iii) describe all Common Elements and Limited Common Elements thereby created; and (iv) designate the Unit(s) to which each Limited Common Element is allocated.

6. SPECIAL DECLARANT RIGHTS RESERVED

The Declarant reserves the following Special Declarant Rights with respect to the Condominium:

- (A) The right to complete the Condominium in accordance with the Plans filed as a part of the Condominium File identified on page 1 hereof.
- (B) The right to exercise any Development Right herein reserved in Section 5.
- (C) The right of access, ingress and egress over the Common Elements for the purpose of discharging Declarant's obligations and reservation of rights hereunder.
- (D) The right to elect or name persons to the Board of Directors and to name and appoint officers of the Association and to otherwise control the activities of the Board and Association until the rights of Declarant terminate, all as specified in the Bylaws or this Declaration during Declarant Control Period.

7. RESTRICTION AGAINST FURTHER SUBDIVIDING OF CONDOMINIUM UNITS; RELOCATION OF UNIT BOUNDARIES; SEPARATE CONVEYANCE OF APPURTENANT COMMON ELEMENTS PROHIBITED

7.01 No Division of Condominiums. No Condominium Unit may be divided or subdivided into a smaller Unit or Units, nor shall any Condominium Unit or portion thereof be added to or incorporated into any other Condominium Unit, except as expressly set forth below in Section 7.04. The Allocated Interest in the Common Elements declared to be an appurtenance to each Condominium Unit shall not be conveyed, devised, encumbered or otherwise dealt with separately from said Condominium Unit, and the Allocated Interest in Common Elements appurtenant to each Condominium Unit shall be deemed, conveyed, devised, encumbered, or otherwise included with the Condominium Unit even though such undivided interest is not expressly mentioned or described in the instrument conveying, devising, encumbering, or otherwise dealing with such Condominium Unit.

7.02 Instruments of Conveyance. Any conveyance, mortgage or other instrument which purports to grant any title, right, interest or lien in, to or upon a Condominium Unit shall be null, void and of no effect insofar as the same purports to affect any interest in a Condominium Unit and its appurtenant Allocated Interest in Common Elements, unless the same purports to convey, devise, encumber or otherwise trade or deal with the entire Condominium Unit. Any instrument conveying, devising, encumbering, or otherwise dealing with any Condominium Unit, without limitation or exception, shall be deemed or construed to affect the entire Condominium Unit and its appurtenant Allocated Interest in the Common Elements.

7.03 Joint Ownership Not Prohibited. Nothing herein contained shall be construed as limiting or preventing ownership of any Condominium Unit and its appurtenant Allocated Interest in the Common Elements by more than one person as tenants in common, joint tenants, or as tenants by the entirety.

7.04 Relocation of Unit Boundaries. Notwithstanding anything herein to the contrary, the boundaries of Units may be relocated by Declarant, in its sole discretion (by subdivision or combination), during the Declarant Control Period, and by the affected Unit Owners upon application to, and approval by, the Board of Directors. Any such application must be in such form and contain such data as the Board may require detailing the relocation of the boundaries of the affected Units and the reallocation of their respective Allocated Interests. Such application shall be accompanied by a plat prepared by a North Carolina licensed engineer or architect showing the relocation. The Board, in its discretion, may determine the relocation to be unreasonable. If the Board shall approve the application, or if within thirty (30) days after filing the application with the Board, the Board has not denied the application, then the Board, at the expense of the Owners affected, shall have prepared an amendment to the Declaration and the same shall be filed of record in the Office of the Register of Deeds of Wake County, North Carolina, at which time the relocation shall be effective.

8. THE CONDOMINIUM SUBJECT TO RESTRICTIONS

The Condominium Units, Common Elements and Limited Common Elements shall be, and the same are hereby declared to be subject to the restrictions, easements, conditions and covenants prescribed and established herein governing the use of said Condominium Units, Common Elements and Limited Common Elements and setting forth the obligations and responsibilities incident to ownership of each Condominium Unit and its appurtenant Allocated Interest in the Common Elements, and said Condominium Units, Common Elements and Limited Common Elements are further declared to be subject to the restrictions, easements, conditions, and limitations now of record affecting the Property constituting the Condominium.

9. PERPETUAL NONEXCLUSIVE EASEMENT IN COMMON ELEMENTS

9.01 Common Elements. The Common Elements shall be, and the same are hereby declared to be, subject to a perpetual nonexclusive easement in favor of all of the Owners of Condominium Units in the

Condominium for their use and the use of their employees, patients, customers, guests, invitees and lessees, for all proper and normal purposes, including, but not limited to the right of access, ingress and egress to, and from all public streets and public walkways and over walkways and parking areas within the Common Elements, and for the furnishing of services and facilities for which the same are reasonably intended for the enjoyment of said Owners of Condominium Units. Each Unit Owner specifically shall have an easement to maintain all components of the heating and air conditioning serving his Unit in their present location and as shown on the Plans.

9.02 Rules and Regulations. Notwithstanding anything provided in this Section, the Association shall have the exclusive right to establish the rules and regulations pursuant to which the Owner of any Condominium Unit, its employees, patients, customers, invitees, guests and lessees may be entitled to use the Common Elements, including the right to make permanent and temporary assignments of parking spaces (except such parking spaces as may be declared Limited Common Elements), and to establish regulations concerning the use thereof.

9.03 Utilities. Each Unit Owner shall have an easement in common with the owners of all other Units to use all chutes, flues, pipes, wires, ducts, cables, conduits, and public utilities serving his Unit. Each Unit shall be subject to an easement in favor of the Owners of all other Units to use the chutes, flues, pipes, ducts, cables, wires, conduit, public utility lines, and other Common Elements serving such other Units and located in such Unit. The Board of Directors, or its agents, shall have a right of access to each Unit from time to time during reasonable hours as may be necessary to inspect the same, to remove violations therefrom, and to maintain, repair, or replace the Common Elements contained therein or accessible therefrom, and to make emergency repairs therein necessary to prevent damage to the Common Elements or to another Unit or Units. Each Unit Owner specifically shall have an easement to maintain all components of a heating and air conditioning system serving his Unit in their present location and as shown upon the Plans attached hereto, and to maintain, repair, and replace those portions of his Unit or Limited Common Elements within his sphere of responsibility.

9.04 Structural. Every portion of a Unit, such as bearing column, and bearing wall, which contributes to the structural support of the Building shall be burdened with an easement of structural support for the benefit of all other Units and for the Common Elements.

10. EASEMENT FOR UNINTENTIONAL AND NON-NEGLIGENT ENCROACHMENT

10.01 Present Encroachment. In the event that any Condominium Unit shall encroach upon any Common Element, or any other Condominium Unit or Units, for any reason not caused by the purposeful or negligent act of the Condominium Unit Owner, or agents of such Owner, then an easement appurtenant to such Condominium Unit shall exist for the continuance of such encroachment upon the Common Elements or upon a Condominium Unit for so long as such encroachment shall naturally exist; and, in the event that any portion of the Common Elements shall encroach upon any Condominium Unit then an easement appurtenant to such Common Elements for the continuance of such encroachment upon a Unit shall exist for so long as such encroachment shall naturally exist.

10.02 Encroachments on Reconstruction. If any Condominium Unit or Common Elements shall be partially or totally destroyed as a result of fire or other casualty, or as a result of condemnation or eminent domain proceedings, and, if upon reconstruction of such Unit or Common Elements, there exist encroachments of portions of the Common Elements upon any Condominium Unit, or of any Condominium Unit upon any other Condominium Unit or upon any portion of the Common Elements, then such encroachments shall be permitted and a valid easement for the maintenance thereof shall exist so long as such encroachments shall naturally remain.

11. RESTRAINT UPON SEPARATION AND PARTITION OF COMMON ELEMENTS

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

12. CONVEYANCE OR ENCUMBRANCE OF COMMON ELEMENTS BY ASSOCIATION

12.01 Conveyance or Encumbrance Permitted. Portions of the Common Elements may be conveyed or subjected to a security interest by the Association if persons entitled to cast all of the votes in the Association agree to that action; provided, that all the Owners of Units to which any Limited Common Element is allocated must agree in order to convey that Limited Common Element or subject it to a security interest. Distribution of the proceeds of the sale of a Limited Common Element shall be as provided by agreement between the Unit Owners to which it is allocated and the Association. Proceeds of the sale or financing of a Common Element (other than a Limited Common Element) shall be an asset of the Association.

12.02 Agreement Required. An agreement to convey Common Elements or subject them to a security interest must be evidenced by the execution of an agreement, or ratifications thereof, in the same manner as a deed, by all Unit Owners. The agreement must specify a date after which the agreement will be void unless recorded before that date. The agreement and all ratifications thereof must be recorded in the county in which the Condominium is situated, and is effective only upon recordation.

12.03 Contract Voidable. The Association, on behalf of the Unit Owners, may contract to convey Common Elements, or subject them to a security interest, but the contract is not enforceable against the Association until approval pursuant to Sections 12.01 and 12.02 above. Thereafter, the Association has all powers necessary and appropriate to effect the conveyance or encumbrance, including the power to execute deeds or other instruments.

12.04 Other Conveyances Void. Any purported conveyance, encumbrance, judicial sale or other voluntary transfer of Common Elements, unless made pursuant to this Section, is void.

12.05 No Limitation of Access of Support. A conveyance or encumbrance of Common Elements pursuant to this Section shall not deprive any Unit of its right to access and support.

13. ADMINISTRATION OF THE CONDOMINIUM

13.01 Association. To efficiently and effectively provide for the administration of the Condominium by the Owners of the Condominium Units the Association, a non-profit North Carolina corporation, has been organized and it shall administer the operation and management of the Condominium and undertake and perform all acts and duties incident thereto in accordance with the terms of its Articles of Incorporation and Bylaws.

13.02 Members. The Owner or Owners of each Condominium Unit shall automatically become members of the Association upon his, their or its acquisition of an ownership interest in title to a Condominium Unit and its appurtenant Allocated Interest in the Common Elements, and the membership of such Owners or Owner shall terminate automatically upon such Owner or Owners being divested of such ownership interest in the title of such Condominium Unit, regardless of the means by which such ownership may be divested. No person holding any lien, mortgage or other encumbrance upon any Condominium Unit

shall entitled, by virtue of such lien, mortgage or other encumbrance, to membership in said Association or to any of the rights or privileges of such membership.

13.03 Multiple Owners. If only one of the multiple Owners of a Condominium Unit is present (in person or by proxy) at a duly constituted meeting of the Association, that Owner is entitled to cast all the votes allocated to that Unit. If more than one of the multiple Owners is present, the votes allocated to that Unit may be cast only in accordance with the agreement of a majority in interest of the multiple Owners. Majority agreement is conclusively presumed if any one of the multiple Owners casts the votes allocated to that Unit without protest being made promptly to the person presiding over the meeting by any of the other Owners of that Unit.

When this Declaration or any other governing document requires or authorizes the Owners (members) of the Association to take any action by executing an agreement or ratification thereof for recordation, the agreement shall be valid only when all the Owners of each Unit, whose Owners are required to execute the agreement, have executed the agreement or a ratification thereof.

13.04 Association as Unit Owner. The Association shall not be entitled to cast any votes allocated to any Unit owned by the Association. When the Association owns a Unit, the votes allocated to the Unit owned by the Association shall not be counted or considered for the purposes of determining quorums at meetings of the Association and determining the requisite percentage of votes of the members of the Association that must be cast to adopt any action being voted upon.

13.05 Authority. In the administration of the operation and management of the Condominium, the Association shall have, and is hereby granted, the authority and power to enforce the provisions of this Declaration, to levy and to collect assessments in the manner hereinafter provided, and to adopt, amend, promulgate and enforce such rules and regulations governing the use of the Condominium Units and Common Elements as the Board of Directors of the Association may deem to be in the best interests of the Association and its members

13.06 Records Inspection. The Association shall make available at its office, or through its managing office, during normal business hours, and upon request, copies of the Declaration, Bylaws, and Rules and Regulations of the Association to Unit Owners and mortgage lenders or any Unit insurers and shall make available during such time books, records and financial statements for inspections by those persons. The Association may make a reasonable charge for such copies.

13.07 Enforcement. The Association and any Unit Owner shall have a right of action against any Unit Owner for failure to comply with any provision of the Declaration, Bylaws, Rules and Regulations or other related guideline for operation, maintenance and use of the Condominium. Any Unit Owner shall have a right of action against the Association for failure to comply with the Declaration, Bylaws, Rules and Regulations or other related guidelines for operation, maintenance and use of the Condominium.

These rights of action for enforcement are not in derogation of existing law, but rather, to the extent needed, are in addition thereto. Such right against the Association does not, however, grant additional rights of action against the officers and directors of the Association beyond that which is permitted by law.

14. OCCUPANCY AND USE RESTRICTIONS APPLICABLE TO CONDOMINIUM UNITS

Each Condominium Unit is hereby restricted to use by the Owner thereof, his employees, servants, guests, invitees and lessees, to those uses set forth in the Zoning Code of the Town of Wake Forest, North Carolina. Unit Owners may lease all, or less than all, of a Unit, but all leases and subleases must be in writing. Any lease agreement shall be required to provide that the terms of the lease shall be subject to the provisions of this Declaration and that any failure of a lessee or sublessee to comply with the terms of such documents shall be a condition of default under the lease. All leases and subleases must be filed with the

Association or such information from such leases or subleases as may be prescribed by the Board shall be filed with the Association. No portion of the Property may be used for any residential purpose.

15. USE OF COMMON ELEMENTS SUBJECT TO RULES OF ASSOCIATION

The use of the Common Elements, including the Limited Common Elements, by the Owner or Owners of all Condominium Units, and all other parties authorized to use the same shall be at all times subject to such reasonable rules and regulations as may be prescribed and established governing such use, or which hereafter may be prescribed and established by the Association.

16. THE CONDOMINIUM TO BE USED FOR LAWFUL PURPOSES; RESTRICTION AGAINST NUISANCE

No immoral, improper, offensive, or unlawful use shall be made of any Condominium Unit or of the Common Elements, or any part thereof, and all laws, zoning ordinances and regulations of all governmental authorities having jurisdiction of the Condominium shall be observed. No owner or any Condominium Unit shall permit or suffer anything to be done or kept in his Condominium Unit, or on the Common Elements, which will increase the rate of insurance on the Condominium, or cause the cancellation of a policy of insurance thereon, or which will obstruct or interfere with the rights of other occupants of the Condominium or annoy them by unreasonable odors, vibrations, sounds or noises; nor shall any Owner undertake any use or practice which shall create and constitute a nuisance to any other Owner of a Condominium Unit, or which interferes with the peaceful possession and proper use of any other Condominium Unit or the Common Elements.

17. RIGHT OF ENTRY INTO CONDOMINIUM UNITS

17.01 Emergencies. In case of any emergency originating in, or threatening, any Condominium Unit, regardless of whether the Owner is present at the time of such emergency, the Board of Directors of the Association, or any other person authorized by it, or the Managing Agent, shall have the right to enter such Condominium Unit for the purpose of remedying or abating the cause of such emergency, and such right of entry shall be immediate.

17.02 To Repair Common Elements. Whenever it may be necessary to enter any Condominium Unit for the purpose of performing any maintenance, alteration, replacement or repair to any portion of the Common Elements, the Owner of each Condominium Unit shall permit the Board of Directors of the Association, or the duly constituted and authorized Agent of the Association, to enter such Condominium Unit for such purpose, provided that the entry shall be made only at reasonable times and with reasonable advance notice, if the purpose shall not be considered an emergency.

18. RIGHT OF OWNERS TO ALTER AND MODIFY CONDOMINIUM UNITS; NO RIGHT TO ALTER COMMON ELEMENTS

8.01 Interior Alterations. A Unit Owner may make any improvements or alterations to his Unit that does not impair the structural integrity or mechanical systems or lessen the support of any portion of the Condominium, without permission of the Association.

18.02 Alterations by Owner of Adjoining Units. A Unit Owner may, after acquiring an adjoining Unit, remove or alter any intervening partition between the Units or create apertures through such partition, even if the partition is a Common Element, so long as such removal, alteration or aperture construction does not impair the structural integrity or mechanical systems or lessen the support of any portion of the Condominium. Removal or alteration of partitions or creation of apertures shall not be a change or alteration of boundaries of the Units affected. However, a Unit Owner must first obtain permission of the Association in the manner set forth herein.

18.03 Structural Alterations. No Owner of a Condominium Unit shall cause, or permit to be made, any alteration or removal of any part of the Condominium Unit or Common Elements which would impair the structural integrity or mechanical systems of the Condominiums without first having obtained permission of the Association in the manner set forth herein.

18.04 Exterior Changes. No Owner shall cause any improvements or changes to be made on the exterior of the Condominium (including painting or other decoration, or the installation of electrical wiring, television or radio antennae or any other objects, machines or air conditioning units which may protrude through the walls or roof of the Condominium) or in any manner alter the appearance of the exterior portion of any Building without first having obtained permission of the Association in the manner set forth herein. No shades, window treatments, awnings, window guards, ventilators, fans, or air conditioning devices shall be used in or about the Units except as shall have been approved by the Association in the manner set forth herein.

18.05 Common Elements Changes. No Unit Owner shall cause any object to be fixed to the Common Elements or to any Limited Common Element (including the location or construction of fences and the planting or growing of flowers, trees, shrubs, or any other vegetation) or in any manner change the appearance of the Common Elements or Limited Common Elements without the permission of the Association being first had and obtained.

18.06 Permission of Board. The permission required of the Association in this Section shall be by written consent of the Association upon approval by a majority of the Board of Directors. The Board is authorized to appoint a committee or agent for the purpose of reviewing the alternations, removals and aperture construction and to make recommendations to the Board.

18.07 Standards. The Board of Directors (or any committee or agent appointed for such purpose by the Board) in approving or disapproving any proposed change or alteration in the Condominium or any addition or change in the Common Elements shall consider such standards or criteria established by regulation, but if no regulation is issued, then shall consider that any such change or alteration shall not affect the structural or mechanical integrity of the Condominium, shall be harmonious with the appearance of the Condominium, and in congruity with the existing exterior appearance of the buildings and Common Elements, including style, color, material, quality, texture, design, arrangement, non-obstruction of air, light, walk or drive areas and similarity with existing plantings of proposed planting plans.

19. RIGHT OF ASSOCIATION TO ALTER AND IMPROVE COMMON ELEMENTS AND ASSESSMENTS THEREFORE

19.01 General. The Association shall have the right to make or cause to be made such alternation or improvements to the Common Elements which do not prejudice the rights of the Owner of any Condominium Unit in the use and enjoyment of his Condominium Unit, provided the making of such alterations and improvements are approved by the Board of Directors of the Association, and the cost of such alterations or improvements shall be common expenses to be assessed and collected from all of the Owners of Condominium Units.

19.02 Special Assessments. Where any alterations and improvements to the Common Elements are exclusively or substantially for the benefit of the Owner or Owners of a certain Condominium Unit or Units requesting the same, then the cost of such alterations or improvements shall be assessed against, and collected solely from, the Owner or Owners of the Condominium Unit exclusively or substantially benefited, the assessment to be levied in such proportion as may be determined by the Board of Directors of the Association.

20. MAINTENANCE AND REPAIR BY OWNERS OF CONDOMINIUM UNITS

20.01 General. Every Owner shall perform promptly all maintenance and repair work within his Condominium Unit, which, if omitted, would affect the Condominium either its entirety or in a part belonging to other Owners, every Owner being expressly responsible for the damages and liability which his failure to do so may engender. The Owner of each Condominium Unit shall be liable and responsible for the maintenance, repair and replacement, as the case may be, of all electrical, heating, air condition, plumbing and sewer system within the Condominium Unit including any fixtures and/or their connections required to provide heat, air conditioning, water, light, power, telephone, sewage and sanitary service to his Condominium Unit. Such Owner shall further be responsible and liable for the maintenance, repair and replacement of all appliances and equipment, if any, all walls, all ceilings, and floors within his Unit, including painting, decorating, carpeting and furnishings, and all other accessories which such Owner may desire to place or maintain in his Condominium Unit.

This description of the maintenance area shall in no way limit the definition of "Condominium Unit," and each Owner is expressly responsible for all maintenance within his defined Unit.

20.02 Insured Loss. Whenever the maintenance, repair and replacement of any item for which the Owner of a Condominium Unit is obligated to maintain, replace or repair at his own expense is occasioned by any loss or damage which may be covered by any insurance maintained in force by the Association, the proceeds of the insurance received by the Association shall be used for the purpose of making such maintenance, repair or replacement, except that the Owner of such Condominium Unit shall be, in said instance, required to pay such portion of the costs of such maintenance, repair and replacement as shall, by reason of the applicability of any deductible provision of such insurance, exceed the amount of the insurance proceeds applicable to such maintenance, use, repair or replacement. If not promptly paid, the Association may assess the Owner therefor and the same shall become a lien against the Unit of the Owner as provided herein.

20.03 Limited Common Elements. The Unit Owner who has exclusive use of any Limited Common Element shall maintain such at his own expense as provided for in Section 3.19; however, if more than one Unit Owner has use of a Limited Common Element then all such Owners who have such use shall jointly maintain it at their expense. Where joint users cannot agree on the maintenance, then the Board of Directors may direct such maintenance to be done and assess the Owners therefor.

20.04 Doors, Windows, etc. All exterior doors, door frames and thresholds, window frames, door and window glass, window treatments, storm windows and doors and screens and associated hardware, if any, are a part of the respective Condominium Units and shall be maintained by the respective Unit Owners (except as to the washing of the outside of exterior windows and the decoration and painting of the exterior surfaces of such window frames, doors, door frames and thresholds, which are the responsibility of the Association).

21. MAINTENANCE AND REPAIR OF COMMON ELEMENTS BY THE ASSOCIATION

21.01 General. The Association, at its expense, shall be responsible for the maintenance, repair and replacement of all of the Common Elements (except Limited Common Elements where done by the allotted Owners, and those items specifically detailed to Owners for maintenance herein), including, but not limited to, those portions thereof which contribute to the support of the Buildings, all conduit, ducts, plumbing, wiring, all water lines and sewer lines outside of public rights of way and governmental easements, and other facilities located in the Common Elements for the furnishing of utility and other services to the Condominium Units and said Common Elements, such exterior painting as may be needed as a result of normal wear and tear, and all walks, driveways, and parking areas, and roofs. Should any incidental damage be caused to any Condominium Unit by virtue of any work which may be done or caused to be

done by the Association in the maintenance, repair or replacement of any Common Elements, the Association shall, at its expense, repair such incidental damage.

21.02 Insured Loss Caused by Owner. Whenever the maintenance, repair and replacement of any item which the Association is obligated to maintain, replace or repair at its expense is occasioned by any act of a Condominium Unit Owner, his employees, servants, guests, invitees or lessees, and such loss or damage may be covered by any insurance maintained in force by the Association, the proceeds of the insurance received by the Association shall be used for the purpose of making such maintenance, repair or replacement, except that the Unit Owner who is responsible for the act causing the damage (whether done by himself or by his employees, servants, guests, invitees or lessees) shall be required to pay such portion of the cost of such maintenance, repair and replacement as shall, by reason of the applicability of any deductible provision of such insurance or otherwise, exceed the amount of the insurance proceeds applicable to such maintenance, repair or replacement. If not promptly paid, the Association may assess the Owner therefor and the same shall become a lien against the Unit of the Owner as provided herein.

21.03 Uninsured Loss Caused by Owner. Whenever the maintenance, repair and replacement of any item which the Association is obligated to maintain, replace or repair at its expense is occasioned by any act of a Condominium Unit Owner, his employees, servants, guests, invitees or lessees, and such loss or damage is not covered by any insurance maintained by the Association, then the Owner shall pay the cost thereof; and, if not promptly paid upon request, the Association may assess the Owner thereof and the same shall become a lien against his Unit as provided herein.

22. **INSURANCE, AUTHORITY TO PURCHASE**

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

23. **INSURANCE COVERAGE TO BE MAINTAINED; USE AND DISTRIBUTION OF INSURANCE PROCEEDS**

23.01 Insurance Required. The following insurance coverage, unless denoted to be optional, shall be maintained in full force and effect by the Association covering the operation and management of the Condominium, meaning the Condominium Units and Common Elements, to wit:

- (A) Casualty. Casualty insurance covering the Common Elements and Units, including the Buildings and all improvements upon the land and all personal property owned by the Association, shall be procured in an amount equal to the insurable replacement value thereof (exclusive of excavations, foundations, streets and parking facilities and other items normally excluded from such coverage) as determined annually by the insurance company affording such coverage; and provided that such policies may be written on a co-insurance basis of not less than ninety percent (90%). Such coverage shall afford protection against; (a) loss or damage by fire and other hazards covered by the standard extended coverage endorsement; (b) such other risks as from time to time customarily shall be covered with respect to Buildings similar in construction, location, and use, including, but not limited to, vandalism and malicious mischief. This insurance need not include

improvements and betterments installed by Unit Owners as their sole and separate property.

- (B) Public Liability and Property Damage. Public liability and property damage insurance in such amounts and in such forms as shall be required by the Association insuring against death, bodily injury and property damage arising out of the use, ownership or maintenance of the Common Elements. All liability insurance shall contain cross-liability endorsements to cover liabilities of the Condominium Unit Owners as a group to a Condominium Owner.
- (C) Board and Officers. Fidelity coverage on each officer and each of the members of the Board of Directors of the Association may be maintained by the Association in commercial blanket from covering each director and officer of the Association, any employee or agent of the Association and any other person handling or responsible for handling funds of the Association. Such bonds or policies shall contain an appropriate endorsement to cover persons who serve without compensation.

23.02 Premiums. Premiums upon insurance policies purchased by the Association shall be paid by the Association as a Common Expense to be assessed and collected from all of the Owners of Condominium Units.

23.03 Insurance Proceeds. All insurance policies purchased by the Association shall be for the benefit of the Association and the Condominium Unit Owners and their mortgagees, as their respective interests may appear, and shall provide that all proceeds payable as a result of casualty losses shall be paid to the Association. Any loss covered under Section 23.01 (A) and (B) shall be adjusted by the Association. Unit Owners and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus after repair or restoration, or if the Condominium is terminated.

23.04 Non-Availability. If for any reason the Association is unable to obtain the casualty insurance coverage required under Section 23.01 (A) or (B) above, written notice of such unavailability shall be hand-delivered or mailed to all Unit Owners.

23.05 Policy Requirements. The policies required in Section 23.01 (A) and (B) must provide that:

- (A) Each Unit Owner is an insured person under the policy with respect to liability arising out of his interest in the Common Elements or Membership in the Association;
- (B) The insurer waives its right to subrogation under the policy against any Unit Owner or members of his household;
- (C) No act or omission by any Unit Owner, unless acting within the scope of his authority on behalf of the Association, will preclude recovery under the policy;
- (D) If, at the time of a loss under the policy, there is other insurance in the name of a Unit Owner covering the same risk covered by the policy, the Association's policy provides primary insurance; and
- (E) The policy may not be canceled, nor may the insurer refuse to renew the policy until thirty (30) days after notice of such cancellation or non-renewal has been mailed to the Association, each Unit Owner and each mortgagee or beneficiary under a mortgage or deed of trust to whom certificates have been issued at their last known address.

23.06 Restoration. Any portion of the Condominium which is damaged or destroyed, and for which insurance proceeds have been paid to the Association shall be repaired, replaced or restored promptly by the Association, and the insurance proceeds held by it used to defray the cost thereof, unless:

- (A) The Condominium is terminated as by law provided; or
- (B) Repair, replacement or restoration would be illegal under any State or local health or safety statute, code or ordinance; or
- (C) The Unit Owners decide not to rebuild by vote of one-hundred percent (100%), including one-hundred (100%) of the votes of any Unit Owners of Units not to be rebuilt or Owners assigned to Limited Common Elements not to be rebuilt.

23.07 Excess Cost. The cost of repair, replacement or restoration in excess of the insurance proceeds and reserves is a Common Expense.

23.08 Proceeds Distribution on Unreconstructed Units or Elements. If any portion of the Condominium is not repaired or replaced: (1) the insurance proceeds attributable to the damaged Common Elements shall be used to restore the damaged area to a condition compatible with the remainder of the Condominium, and (2) the insurance proceeds attributable to Units and Limited Common Elements which are not rebuilt shall be distributed to the Owners of those Units and the Owners of the Units to which those Limited Common Elements were allocated or to lienholders, as their interests may appear, and (3) the remainder of the proceeds shall be distributed to all the Unit Owners or lienholders, as their interests may appear, in proportion to their Common Element interest.

23.09 Allocated Interest Reallocation on Nonreconstruction. If the Unit Owners vote not to rebuild any Unit, that Unit's Allocated Interest is automatically reallocated upon the vote not to reconstruct as if the Unit has been condemned. In such case the Association promptly shall prepare, execute, and record an amendment to the Declaration reflecting the reallocations.

23.10 Termination. Notwithstanding this Section 23, the provisions of Section 27 govern the distribution of insurance proceeds if the Condominium is terminated.

24. ASSOCIATION TO MAINTAIN REGISTER OF OWNERS AND MORTGAGEES

24.01 Owner Register. The Association shall, at all times, maintain a Register setting forth the names of the Owners of all of the Condominium Units. In the event of the sale or transfer of any Condominium Unit to a third party, the purchaser or transferee shall notify the Association in writing of his interest in such Condominium Unit, together with such recording information as shall be pertinent to identify the instrument by which such purchaser or transferee has acquired his interest in any Condominium Unit. Each Owner shall have a continuing duty to furnish the Association with his current mailing address and telephone number.

24.02 Mortgagee Register. Further, the Owner of each Condominium Unit shall notify the Association of the names of the parties holding any mortgage or mortgages and the recording information which shall be pertinent to identify the mortgage or mortgages. The holder of any mortgage or mortgages upon any Condominium Unit, if it so desires, may notify the Association of the existence of any mortgage or mortgages held by such party on any Condominium Unit and, upon receipt of such notice the Association shall register in its records all pertinent information relating thereto.

25. ASSESSMENTS; LIABILITY; LIEN AND ENFORCEMENT

25.01 Authority to Assess Owners. The Association is given the authority to administer the operation and management of the Condominium, it being recognized that the delegation of such duties to one

entity is in the best interest of the Owners of all Condominium Units. To properly administer the operation and management of the Condominium, the Association will incur, for the mutual benefit of all of the Owners of Condominium Units, costs and expenses, which are sometimes herein referred to as "Common Expenses." The terms "Common Expenses", "maintain," "maintenance," "maintaining," or any similar term used in this regard, is defined to include any one or more of the following, as the context requires: acquisition, purchase, construction, re-construction, installation, maintenance, inspection, examination, upkeep, cleaning, renewal, alteration, repair, replacement, repainting, remodeling, restoration, removal, improvement, administration, operation, use, planting, mowing, cutting, trimming, pruning, fertilizing, watering and preservation.)

Further, the land development ordinances of the Town of Wake Forest ("Wake Forest LDO") may now, or hereafter, require that stormwater runoff from the Property be controlled and nitrogen loading from stormwater runoff from the Property be reduced. To comply with the Wake Forest LDO, Stormwater Control Measures may be installed by the Declarant and Maintained by the Association as Common Elements in strict compliance with the Stormwater Operations and Maintenance Manual for the Property so that, at all times, the Stormwater Control Measures shall perform as designed and shall comply with the Stormwater Agreement, the Wake Forest LDO and applicable regulations, rules and directives of the Town of Wake Forest. The expenses for Maintenance of Stormwater Control Measures by the Association, as well as the cost of any bonding, letters of credit or other security required by the Town of Wake Forest in connection therewith to assure compliance, as well as any reasonable reserve funds, shall be Common Expenses.

25.02 Basis of Assessments. Unless specifically otherwise provided for in this Declaration, all assessments made by the Association shall be in such an amount that any assessment levied against a Unit Owner and his Condominium Unit shall bear the same ratio to the total assessment made against all Unit Owners and their Condominium Units as the Allocated Interest in the Common Elements appurtenant to each Condominium Unit bears to the total Allocated Interest in the Common Elements appurtenant to all Condominium Units. Should the Association be the Owner of a Condominium Unit or Units, the assessment which would otherwise be due and payable to the Association by the Owner of such Unit or Units, reduced by the amount of income which may be derived from the leasing of such Unit or Units by the Association, shall be apportioned and the assessment therefor levied ratably among the Owners of all Units which are not owned by the Association, based upon their proportionate Allocated Interest in Common Elements exclusive of the interests therein appurtenant to any Unit or Units owned by the Association.

25.03 Manner of Payment. Assessments provided for herein shall be payable in annual, quarterly or monthly installments, or in such other installments and at such times, as may be determined by the Board of Directors of the Association.

25.04 Assessment Commencement. Such assessments shall commence for each Unit on January 1, 2017; provided, when title of a Unit is conveyed to a Unit Owner by the Declarant, the Unit Owner shall contribute to the Association, as a non-refundable working capital assessment, an amount equal to three (3) months common expense assessment.

25.05 Annual Budget. The Board of Directors of the Association shall establish an Annual Budget in advance for each fiscal year (which shall correspond to the calendar year, except that in the initial year of operation of the Condominium, the fiscal year shall commence with the closing of the sale of the first Condominium Unit). Such budget shall project all expenses (including ad valorem taxes and public improvement assessments levied against the Common Elements) for the forthcoming year which may be required for the proper operation, management and maintenance of the Condominium, including a reasonable allowance for contingencies and reserves, such budget to take into account projected anticipated income which is to be applied in reduction of the amounts required to be collected as an assessment each year. The Board of Directors shall keep separate, in accordance with Section 25.08 hereof, items relating to operation and maintenance from items relating to capital improvements. Within thirty (30) days after adoption of any proposed budget for the Condominium, the Board of Directors shall provide a summary of the budget to all the Unit Owners, and shall set a date for a meeting of the Unit Owners to consider ratification of the budget

not less than fourteen (14) nor more than thirty (30) days after mailing of the summary. There shall be no requirement that a quorum be present at the meeting. The budget, upon a vote of those members present at such meeting, is ratified unless at that meeting a majority of the Unit Owners rejects the budget. In the event the proposed budget is rejected, the periodic budget last ratified shall be continued until such time as the Unit Owners ratify a subsequent budget proposed by the Board of Directors. The Assessment for said year shall be established based upon such Budget. Receipt of a copy of said Budget by each Owner shall not affect the liability of any Owner for such assessment.

25.06 Modification of Assessment. Should the Board of Directors at any time determine, in its sole discretion, that the assessments levied are, or may prove to be, insufficient to pay the costs of operation and management of the Condominium, or in the event of emergencies, the Board of Directors shall have the authority to levy such additional assessment or assessments it may deem to be necessary.

25.07 Capital Improvement Fund. The Board of Directors of the Association, in establishing the Annual Budget for operation, management and maintenance of the Condominium, may designate therein a sum in the minimum amount of ten percent (10%) of the annual assessment to be collected and maintained as a reserve fund for replacement of, and the making of capital improvements to the Common Elements which Capital Improvement and Replacement Fund (herein "Capital Improvement Fund") shall be for the purpose of enabling the Association to replace structural elements and mechanical equipment constituting a part of the Common Elements, as well as the replacement of personal property which may constitute a portion of the Common Elements or owned by the Association and held for the joint use and benefit of the Owners of Condominium Units. The amount to be allocated to the Capital Improvement Fund may be established by the Board of Directors so as to collect and maintain a sum reasonably necessary to anticipate the need for replacement of Common Elements and other property owned by the Association. The amount collected for the Capital improvement Fund shall be maintained in a separate account by the Association and such monies shall be used only to make capital improvements to Common Elements and other property owned by the Association. Any interest earned on monies in the Capital Improvement Fund may, in the discretion of the Board of Directors of the Association, be expended for current operation and maintenance. Each Unit Owner shall be deemed to own a portion of the Capital Improvement Fund equal to his Allocated Interest in the Common Elements; however, such balance shall not be subject to withdrawal by a Unit Owner.

25.08 Accountability. All monies collected by the Association shall be treated as the separate property of the Association, and such monies may be applied by the Association to the payment of any expense of operating and managing the Condominium, or the proper undertaking of all acts and duties imposed upon it by virtue of this Declaration, the Articles of Incorporation and the Bylaws of the Association. As monies for any assessment are paid to the Association by any Owner of a Condominium Unit, the same may be commingled with monies paid to the Association by the other Owners of Condominium Units. Although all funds and common surplus, including other assets of the Association, and any increments thereto or profits derived therefrom or from the leasing or use of Common Elements, shall be held for the benefit of the members of the Association, no member of the Association shall have the right to assign, hypothecate, pledge or in any manner transfer his membership interest therein, except as an appurtenance to his Condominium Unit. When the Owner of a Condominium Unit shall cease to be a member of the Association by reason of his divestment of ownership of such Condominium Unit, by whatever means, the Association shall not be required to account to such Owner for any share of the fund or assets of the Association, or which may have been paid to the Association by such Owner, as all monies which any Owner has paid to the Association shall be and constitute as asset of the Association which may be used in the operation and management of the Condominium.

25.09 Default Interest. The payment of any assessment or installment thereof shall be in default if such assessment or installment is not paid to be Association within thirty (30) days of the due date established by the Association for such payment. When in default, the delinquent assessment or delinquent installment thereof due to the Association shall bear interest at a rate established by the Association not to exceed twelve percent (12%) per annum from the date of default until such delinquent assessment or installment thereof, and all interest due thereon, has been paid in full to the Association.

25.10 Late Payment Penalty. In addition to the accrual of default interest the Association may impose a penalty for non-payment of any assessment by the due date. Such penalty shall be no greater than ten percent (10%) of the delinquent installment, past due more than fifteen (15) days. Such late payment penalty shall be charged only once for any delinquent payment.

25.11 Where Payable. All monies owing to Association shall be due and payable at the principal office of Association, or where otherwise directed by the Association.

25.12 Liability of Owners for Assessment and Other Charges. The Owner or Owners of each Condominium Unit shall be personally liable, jointly and severally, to the Association for the payment of all assessments, regular or special, which may be levied by the Association against such Condominium Unit while such party or parties are Owner or Owners of the Condominium Unit. In the event that any Unit Owner or Owners are in default in payment of any assessment or installment thereof owed to the Association, such Unit Owner or Owners shall be personally liable, jointly and severally, for interest and penalty on such delinquent assessment or installment thereof as above provided, and for all costs of collecting such assessment or installment thereof and interest thereon, including a reasonable attorneys fee, whether suit be brought or not.

25.13 No Exemption. No Owner of a Condominium Unit may exempt himself from liability for any assessment levied against him or his Condominium Unit by waiver of the use or enjoyment of any of the Common Elements or by abandonment of the Condominium Unit or in any other way.

25.14 Assessments Against Specific Owners. Notwithstanding the requirement of Section 25.05 that assessments be levied against each Owner according to the Allocated Interest of each Owner, the Association shall assess:

- (A) Any Common Expenses associated with the maintenance, repair, or replacement of a Limited Common Element against the Unit or Units to which that Limited Common Element is assigned; and
- (B) Any Common Expenses, or portion thereof, benefiting fewer than all of the Units exclusively against the Units benefited; and
- (C) The cost of insurance against the Units in proportion to the risk if any Unit or Units can be reasonably determined to create a greater risk than any other; and
- (D) The cost of utilities, if not separately metered to each Unit, in proportion to usage if it can be reasonably determined that any Unit or Units use an unusually disproportionate share of any utility; and
- (E) The cost of any judgment against the Association against only the Units in the Condominium at the time the judgment was entered in proportion to their Common Expense Liabilities; and
- (F) Any Common Expense caused by the misconduct of any Unit Owner exclusively against that Unit Owner; and
- (G) Any fine or penalty or interest for any delinquent assessment installment exclusively against the Unit so charged.

25.15 Reallocation. If the Common Expense liabilities are reallocated, the Common Expense assessments and any installment thereof not yet due shall be recalculated in accordance with the reallocated Common Expense Liabilities.

25.16 Assessment Lien Granted. Recognizing that proper operation and management of the Condominium requires the continuing payment of costs and expenses therefor, and that such proper operation and maintenance results in benefit to all of the Owners of Condominium Units, and that the payment of such Common Expenses represented by the assessments levied and collected by Association is necessary in order to preserve and protect the investment of each Unit Owner, the Association is hereby granted a lien upon each Condominium Unit and its appurtenant Allocated Interest in Common Elements, which lien shall secure, and does secure, the monies due for all assessments now or hereafter levied against Owner of each such Condominium Unit, which lien shall also secure fines, penalties and interest, if any, which may be due on the amount of any delinquent assessments owing to the Association, and which lien shall also secure all costs and expenses, including a reasonable attorneys fee, which may be incurred by the Association in enforcing this lien upon said Condominium Unit and its appurtenant Allocated Interest in Common Elements. The lien granted to the Association may be filed in the manner provided in Article 8 of Chapter 44 of the General Statutes and may be foreclosed in the same manner that real estate deeds of trust and mortgages may be foreclosed in the State of North Carolina, pursuant to Article 2A of Chapter 45 of the General Statutes. In any proceeding for the foreclosure of said lien, the Association shall be entitled to a reasonable rental from the Owner of any Condominium Unit from the date on which the payment of any assessment of installment thereon became delinquent, and shall be entitled to the appointment of a Receiver for said Condominium Unit. The lien granted to the Association shall further secure such advances for taxes, and payments on account of superior mortgages, liens or encumbrances which may be required to be advanced by the Association in order to preserve and protect its lien, and the Association shall further be entitled to interest at the highest rate allowed by law not to exceed twelve percent (12%) per annum on any such advances made for such purposes. All persons who shall acquire, by whatever means, any interest in the ownership of any Condominium Unit, or who may be given or acquire a mortgage, lien or other encumbrance thereon, are hereby placed on notice of the lien rights granted to the Association, and shall acquire such interest in any Condominium Unit expressly subject to such lien rights.

25.17 Enforcement of Lien. The lien herein granted unto the Association shall be enforceable pursuant to Article 2A of Chapter 45 of the General Statutes from and after the time of recording a Claim of Lien in the Office of the Clerk of Superior Court of Wake County, North Carolina, in the manner provided therefore by Article 8 of Chapter 44 of the North Carolina General Statutes, which claim shall state the description of the Condominium Unit encumbered thereby, the name of the record owner, the amount due and date when due. The claim of lien shall be recordable any time after thirty (30) days after the due date of the assessment or any installment thereof and the lien shall continue in effect until all sums secured by said lien as herein provided shall have been fully paid. Such claims of lien shall include all assessments which are due and payable when the claim of lien is recorded, plus interest, costs, attorney's fees, advances to pay taxes and prior encumbrances and interest thereon, all as above provided. Such claims of lien shall be signed by an officer or agent of the Association. Upon full payment of all sums secured by such claim of lien, the same shall be satisfied of record.

25.18 Lien Extinguished. Except by payment, satisfaction and cancellation, a lien is extinguished only if proceedings to enforce the lien are not instituted within three (3) years after docketing in the Office of Clerk of Superior Court, Wake County, North Carolina.

25.19 Other Remedies. This Section does not prohibit the Association from bringing an action to recover sums due it as an assessment independent of any lien filed or claimed, nor does it prohibit the Association from taking a deed in lieu of foreclosure. The Association, at its sole discretion, may notify the holder of any mortgage or deed of trust of any default by an Owner.

25.20 Judgments. Any judgment brought hereunder to enforce the lien or the collection of any assessment must include the costs and reasonable attorney's fees for the prevailing party.

25.21 Lien Subordinate to First Mortgage. The lien provided for herein shall be subordinate to the lien of any first mortgage or deed of trust recorded before docketing the lien and the lien for real estate or

other governmental taxes, but shall be superior to all other liens. Any person acquiring title to any Condominium Unit and its appurtenant Allocated Interest in Common Elements by virtue of any foreclosure, deed in lieu of foreclosure or judicial sale resulting from such prior lien mortgage or deed of trust shall be liable and obligated only for the assessments as shall accrue and become due and payable for said Condominium Unit and its appurtenant Allocated Interest in the Common Elements subsequent to the date of acquisition of such title, and it shall not be liable for the payment of any assessments which were in default and delinquent at the time it acquired such title. In the event of the acquisition of title to a Condominium Unit by foreclosure, deed in lieu of foreclosure or judicial sale, any assessment or assessments as to which the party so acquiring title shall not be liable shall be absorbed and paid by all Owners of all Condominium Units, including such purchaser, his successors and assigns, as a part of the Common Expense, although nothing herein contained shall be construed as releasing the party liable for such delinquent assessment from the payment thereof or the enforcement of collection of such payment by means other than foreclosure.

25.22 Statement of Assessments Due. Whenever any Condominium Unit may be leased, sold or mortgaged by the Owner thereof, the Association, upon written request of the Unit Owner, shall furnish to the proposed lessee, purchaser or mortgagee, a statement verifying the status of payment of any assessment which shall be due and payable to the Association by such Unit. Such statement shall be executed by any officer of the Association, and any lessee, purchaser or mortgagee may rely upon such statement in concluding the proposed lease, purchase or mortgage transaction, and the Association shall be bound by such statement. The Association may charge a reasonable fee to the Unit Owner for issuance of such statement.

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

25.24 Purchaser Liable For Delinquent Assessment. In any voluntary conveyance of a Condominium Unit, the Purchaser thereof shall be jointly and severally liable with Seller for all unpaid assessments against Seller made prior to the time of such voluntary conveyance, without prejudice to the rights of the Purchaser to recover from Seller the amounts paid by Purchaser thereof.

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

26. COMMON SURPLUS

Common Surplus shall be owned by the Owners of all Condominium Units in the same proportion that the Allocated Interest in the Common Elements appurtenant to each Owner's Condominium Unit bears to the total of all Allocated Interests in the Common Elements appurtenant to all Condominium Units; provided, however, that said Common Surplus shall be held by the Association in the manner and subject to the terms, provisions and conditions of this Declaration, imposing certain limitations and restrictions upon the use and distribution thereof. Except for distribution of any insurance as herein provided, or upon termination of the Condominium, any attribution or distribution of Common Surplus which may be made from time to time shall be made to the then Owners of Condominium Units in accordance with their Allocated Interest in Common Surplus as declared herein.

27. TERMINATION

The Condominium shall be terminated, if at all, in the following manner:

27.01 Consent. Except in the case where the whole of the Condominium is taken by Eminent Domain the termination of the Condominium may be effected only by agreement of all Condominium Unit Owners expressed in an instrument to that effect duly recorded specifying a date after which it shall be void unless recorded prior to such date; and, provided, that the holders of all liens affecting any of the Condominium Units consent thereunto, or agree, in either case by instrument duly recorded, that their liens be transferred to the Allocated Interest of the Condominium Unit Owner in the Property as provided in Section 27.02 below. The termination shall become effective when such agreement has been recorded in the public records of Wake County, North Carolina.

27.02 Contract for Sale at Termination; Ownership of Property. The Association, on behalf of the Unit Owners, may contract for the sale of Property in the Condominium, but the contract is not binding on the Unit Owners until approved by the Unit Owners in conformity with Section 27.01. If any Property in the Condominium is to be sold following termination, title to that Property, upon termination, vests in the Association, as trustee, for the holders of all interests in the Units. Thereafter, the Association has all powers necessary and appropriate to effect the sale. Until the sale has been concluded and the proceeds thereof distributed, the Association continues in existence with all powers it had before termination. Proceeds of the sale must be distributed to Unit Owners and lienholders as their interests may appear, in proportion to the respective interests of Unit Owners as provided in Section 27.07 below. Unless otherwise specified in the termination agreement, as long as the Association holds title to the Property, each Unit Owner and his successors in interest have an exclusive right to occupancy of the portion of the Property that formerly constituted his Unit. During the period of this occupancy each Unit Owner and his successors in interest remain liable for all assessments and other obligations imposed on Unit Owners by the Declaration.

27.03 No Sale at Termination; Ownership of Property. After termination of the Condominium where no sale has been agreed to, the Condominium Unit Owners shall own the Property as tenants in common in their respective interests as defined in Section 27.07 and the holders of mortgages and liens against the Condominium Unit or Units formerly owned by such Condominium Unit Owners shall have mortgages and liens upon the respective interest of the Condominium Unit Owners. All funds held by the Association and insurance proceeds, if any, shall be, and continue to be held, for the Unit Owners in the same proportion. While the tenancy in common ownership exists each Unit Owner and its successors in interest have an exclusive right to occupancy of his portion of the Property that formerly constituted his Unit.

The costs incurred by the Association in connection with the termination shall be a Common Expense.

27.04 Partition or Sale Following Termination. Following termination, the Property may be partitioned and sold, or sold in lieu of partition, upon the application of any former Condominium Unit Owner having an interest in the Property to the courts of Wake County, North Carolina.

27.05 Association Powers Continue. The members of the Board of Directors acting collectively as agent for all Condominium Unit Owners, shall continue to have such powers as in this Section are granted, notwithstanding the fact that the Association itself may be dissolved upon a termination.

27.06 Association as Trustee. Following termination of the Condominium, the proceeds of any sale of Property, together with the assets of the Association, are held by the Association as trustee for former Unit Owners and holders of liens on the former Units, as their interests may appear. Following termination, creditors of the Association holding liens on the Units, which were recorded before termination, may enforce those liens in the same manner as any lienholder. All other creditors of the Association are to be treated as if they had perfected liens on the Units immediately before termination.

27.07 Owners Respective Interest on Termination. The respective interests of Unit Owners referred to in Section 27.02, 27.03 and 27.06 are as follows:

- (A) Except as provided in paragraph (B), the respective interests of Unit Owners are the fair market value of their Units, Limited Common Elements, and Common Elements interests immediately before the termination, as determined by one or more independent appraisers selected by the Association. The decision of the independent appraisers shall be distributed to the Unit Owners and becomes final unless disapproved within 30 days after distribution by Unit Owners of Units to which twenty-five percent (25%) of the votes in the Association are allocated. The proportion of any Unit Owner's interest to that of all Unit Owners is determined by dividing the fair market value of that Unit Owner's Unit and Common Element interest by the total fair market values of all the Units and Common Elements.
- (B) If any Unit or any Limited Common Element is destroyed in the extent that an appraisal of the fair market value thereof prior to destruction cannot be made, the interests of all Unit Owners are their respective Common Element interests immediately before the termination.

27.08 Foreclosure of Lien on Whole Condominium Not a Termination. Except as provided in Section 27.09, foreclosure or enforcement of a lien or encumbrance against the entire Condominium does not of itself terminate the Condominium, and foreclosure or enforcement of a lien or encumbrance against a portion of the Condominium, other than withdrawable real estate, does not withdraw that portion from the Condominium. Foreclosure or enforcement of a lien or encumbrance against withdrawable real estate does not of itself withdraw that real estate from the Condominium, but the person taking title thereto has the right to require from the Association, upon request, an amendment excluding the real estate from the Condominium.

27.09 Foreclosure of Lien on Portion of Condominium. If a lien or encumbrance against a portion of the Condominium has priority over the Declaration, and the lien or encumbrance has not been released, the parties foreclosing the lien or encumbrance may, upon foreclosure, record an instrument excluding the real estate subject to that lien or encumbrance from the Condominium.

28. AMENDMENT OF DECLARATION OF CONDOMINIUM

This Declaration may be amended in the following manner:

28.01 General Procedure for Amendment. Except as provided otherwise in this Section 28, an Amendment or Amendments to this Declaration may be proposed by the Board of Directors of the Association acting upon a vote of all of the Directors, or by Unit Owners holding seventy-five (75%) of the Allocated Interests, whether meeting as members or by instrument in writing signed by them. Upon any Amendment or Amendments to this Declaration being proposed by the Board of Directors or members, such proposed Amendment or Amendments shall be transmitted to the President of the Association, or other officer of the Association in the absence of the President, who shall thereupon call a Special Meeting of the members of the Association. It shall be the duty of the Secretary to give or mail to each member written or printed notice of such Special Meeting stating the time and place thereof and reciting the proposed Amendment or Amendments in reasonably detailed form, which notice shall be given or mailed not less than ten (10) days nor more than thirty (30) days before the date set for such Special Meeting. If mailed, such notice shall be deemed to be properly given when deposited in the United States Mail addressed to the member at his address as it appears on the records of the Association, the postage thereon prepaid. Any member may, by written waiver of notice signed by such member, waive such notice, and such waiver, when filed in the records of the Association, whether before or after the holding of the meeting, shall be deemed equivalent to the giving of notice to such member. At the meeting, the Amendment or Amendments proposed must be approved by an affirmative vote of the voting members having sixty seven percent (67%)

of the Allocated Interest in the Common Elements, in order for such Amendment or Amendments to become effective. Thereupon such Amendment or Amendments of the Declaration shall be transcribed and certified by the President and Secretary of the Association as having been duly adopted. The original or an executed copy of such Amendment or Amendments, so certified and executed with the same formalities as a Deed, shall be recorded in the Public Records of Wake County, North Carolina within ten (10) days from the date on which the same became effective, such Amendment or Amendments to specifically refer to the recording data identifying the Declaration. Thereafter, a copy of said Amendment or Amendments in the form in which the same were placed of record by the Officers of the Association shall be delivered to the Owners of all Condominium Units, but delivery of a copy thereof shall not be a condition precedent to the effectiveness of such Amendment or Amendments.

28.02 Certain Amendments Requiring Unanimous Consent of Institutional Lenders. No amendment may create or increase Special Declarant Rights, increase the number of Units, change the Allocated Interests in the Common Elements appurtenant to each Condominium Unit, or the uses to which Units are restricted or alteration of the basis for sharing Common Expenses and other apportionment of assessments which may be levied by the Association in accordance with the provisions hereof, or alteration of basis of ownership of Common Surplus, without the prior written consent of all of the Owners of all Condominium Units and all of the Institutional Lenders holding first mortgages or first deeds of trust on the Condominium Units.

28.03 Amendments Permitted Other Than By Action Under Section 28.01 and Section 28.02. Notwithstanding the provisions of Section 28.01 and Section 28.02, amendments to the Declaration, including reallocation of the Allocated Interests, may be prepared, executed and filed without a vote of the member Unit Owners, or their consent, in the following cases:

- (A) Nominal Amendments. By Declarant, for and during the period of Declarant Control, and thereafter, the Board: (i) to conform to the requirements of any law or governmental agency having legal jurisdiction over the Condominium or to qualify the Condominium or any Units therein for mortgage or improvement loans made or insured by Federal National Mortgage Association, Veteran's Administration, United States Department of Housing and Urban Development, Government National Mortgage Association, Federal Housing Authority or any governmental agency or to comply with the requirements of law or regulations or any similar corporation or agency regarding purchase of mortgage interests in units by such entity; (ii) to correct any obvious error or inconsistency in drafting, typing or reproduction; and (iii) to qualify or maintain the Association for tax exempt status as a nonprofit corporation.
- (B) Declarant Development Rights. By Declarant upon exercising any Development Right or Special Declarant Right hereunder or by law provided, including, without limitation, the subdivision or combination of one or more Units.
- (C) Eminent Domain. By the Association if a portion of the Condominium is taken by proceedings in eminent domain as by law provided.
- (C) Unit Boundary Changes. By Declarant, the Association and affected Unit Owners upon relocation of Unit boundaries as by law provided.
- (D) Unit Partition. By Declarant, the Association and affected Unit Owners upon subdividing or partitioning a Unit, if herein permitted, as by law provided.
- (E) Limited Common Elements. By Declarant, the Association and affected Unit Owners upon reallocation of a Limited Common Element, as by law provided.

- (F) Termination of Condominium. By the Association upon termination of the Condominium, as by law provided.

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

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

28.06 Recordation. No amendment shall be effective until recorded in Wake County, North Carolina.

29. REMEDIES IN EVENT OF DEFAULT

The Owner or Owners of each Condominium Unit shall be governed by and shall comply with the provisions of this Declaration, and the Articles of Incorporation and Bylaws of the Association, and any rules or regulations issued pursuant thereto, as any of the same are now constituted or as they may be amended from time to time. A default by the Owner of any Condominium Unit shall entitle the Association or the Owner of other Condominium Units to the following relief:

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

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

29.03 Collection or Enforcement Costs and Expenses. In any proceeding arising because of an alleged default by a Unit Owner, the Association or an enforcing Unit Owner, if successful, shall be entitled to recover the costs of the proceeding and such reasonable attorneys' fees as may be determined by the Court.

29.04 No Waiver. The failure of the Association or any Unit Owner to enforce any right, provision, covenant or condition which may be granted by this Declaration or the other above-mentioned documents shall not constitute a waiver of the right of the Association or the Unit Owner to enforce such right, provision, covenant or condition in the future.

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

29.06 No Waiver by Declarant. The failure of Declarant to enforce any right, provision, privilege, covenant or condition which may be granted to him by this Declaration or other above-mentioned documents, shall not constitute a waiver of the right of said party to thereafter enforce such right, privilege covenant or condition in the future.

29.07 Fines and Penalties. Notwithstanding the foregoing, and in addition thereto, any Unit Owner may be fined by the Association for failure to comply with any terms of this Declaration, the Bylaws, Articles of Incorporation or published rules and regulations in an amount not to exceed One Hundred Dollars (\$100.00). If the Board should determine that it shall seek to impose fines hereunder, it shall appoint a panel of two Unit Owners, who, upon appointment, shall notify the Unit Owner in writing of the charge against him, provide an opportunity to be heard before the panel in not less than ten (10) days, nor more than thirty (30) days, prior notice, and give notice of the decision. Any fine given to any Unit Owner shall be assessed against the Owner and his Unit as a Common Expense and, if unpaid, shall be a lien on the Unit as provided herein.

30. RIGHTS RESERVED UNTO INSTITUTIONAL LENDERS

So long as any Institutional Lender or Institutional Lenders shall hold any mortgage upon any Condominium Unit or Units, or shall be the Owner of any Condominium Unit or Units, such Institutional Lender or Institutional Lenders shall have the following rights:

30.01 Records and Statements. To examine, at reasonable times and upon reasonable notice, the books and records of the Association and to be furnished at least one copy of the Annual Financial Statement and Report of the Association, prepared by the Association Treasurer or a Certified Public Accountant designated by the Association, such Financial Statement and Report to be furnished within one hundred twenty (120) days after the end of each fiscal year.

30.02 Notice of Certain Meetings. To be given notice by the Association of the call of any meeting of the membership to be held for the purpose of considering any proposed Amendment to this Declaration or the Articles of Incorporation and Bylaws of the Association, which Notice shall state the nature of the Amendment being proposed.

30.03 Notice of Owner's Default. To be given notice of default by any Owner owning a Condominium Unit encumbered by a mortgage held by the Institutional Lender or Institutional Lenders, such notice to be given in writing and to be sent to the principal office of such Institutional Lender or Institutional Lenders, or to the place which it or they may designate in writing.

30.04 Request for Notice. Whenever an institutional Lender or Institutional Lenders desire the provisions of this Article to be applicable to it, it shall serve or cause to be served written notice of such fact upon the Association by Registered Mail or Certified Mail addressed to the Association and sent to its address stated herein, identifying the Condominium Unit or Units upon which any such Institutional Lender or Institutional Lenders hold any mortgage or mortgages, or identifying any Condominium Units owned by them, or any of them, together with sufficient pertinent facts to identify any mortgage or mortgages which may be held by it or them, and which notice shall designate the place to which notices are to be given by the Association to such Institutional Lender or Institutional Lenders.

31. RIGHT OF DECLARANT TO REPRESENTATION ON BOARD OF DIRECTORS OF THE ASSOCIATION

During the Period of Declarant Control, Declarant shall be entitled to designate and select persons to serve on the Board of Directors of the Association. The manner in which such person or persons shall be designated, the number thereof and the composition of the Board of Directors during such period of Declarant Control shall be as provided in the Bylaws of the Association. Declarant shall have the right to remove any person or persons selected by it to act and serve on said Board of Directors and to replace such person or

persons with another person or other persons to act and serve in the place of any Director or Directors so removed for the remainder of the unexpired term of any Director or Directors so removed. Any director designated and selected by Declarant need not be an Owner in the Condominium. However, as provided in Section 25 hereof, and subject to the limitations set forth therein, Declarant shall be responsible for the payment of any assessments which may be levied by the Association against any Condominium Unit or Units owned by Declarant, and for complying with the remaining terms and provisions thereof in the same manner as any other Owner of a Condominium Unit or Units.

32. SEVERABILITY

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

33. CONSTRUCTION

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

34. DECLARATION OF CONDOMINIUM BINDING ON ASSIGNS, AND SUBSEQUENT OWNERS

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

35. PUBLIC EASEMENTS

35.01 Utilities. The Board of Directors may hereafter grant easements in the name of the Association for utility purposes for the benefit of the Condominium and for the benefit of any Unit, including the right to install, lay, maintain, repair and replace, waterlines, pipes, sewer lines, storm drainage facilities, telephone wires, cable television wires, and electrical conduits, wires over, under and along any portion of the Property, and the Owners of any Unit hereby grant to the Association an irrevocable power of attorney to execute, acknowledge and record for and in the name of each Unit Owner such instruments as may be necessary to effectuate the foregoing.

35.02 Public Service Access. An easement is hereby established over the Common Elements for the benefit of applicable governmental agencies, public utility companies and public service agencies as necessary for setting, removing and reading of meters, replacing and maintaining water, sewer and drainage facilities, electrical, telephone, gas and cable antenna lines, firefighting, garbage collection, postal delivery, emergency and rescue activities and law enforcement activities.

36. DISCLAIMER BY GOVERNMENTAL AUTHORITIES

Some governmental authorities or fire or police departments refuse to be responsible for failing to provide any emergency or regular fire, police or other public service to such developments or their occupants when such failure is due to the lack of access to such areas due to inadequate design or construction, blocking of access routes, or any other factor within the control of the Declarant, Association, or Unit Owners.

Accordingly, the Board of Directors is hereby empowered to make all efforts to assure that there is adequate access to all Units and shall not allow any blocking of access or defects in access to remain uncorrected.

37. PARTY WALLS

It is contemplated that some Owners of Condominium Units may erect party walls between Units which are under separate ownership, and it is therefore necessary to provide for the equitable sharing of the cost of construction and maintenance of such party wall as well as wall specifications. The Board of Directors shall have the authority to formulate, and from time to time to amend, rules and regulations governing all specifications of party walls, the sharing of costs between the Owners of adjacent Units and the arbitration of disputes relating to party walls.

The center of each party wall shall be the dividing line between adjacent Condominium Units which are under separate ownership. Such party wall shall be constructed of materials and design mutually agreeable to the adjacent Unit Owners, provided that these do not violate the rules and regulations adopted by the Board of Directors. If adjacent Unit Owners cannot mutually agree, the Board of Directors shall designate the materials and design of the party wall between Units owned by disagreeing Owners and such designation shall be binding on all parties. The cost of each such party wall shall be shared equally by those served by it and shall be paid promptly when the wall is constructed; provided, however, that the cost of utility installations within the party wall (such as plumbing and electrical) shall be born only by the Owner of the Unit served by such installations.

38. SIGNS

All signs and numbers on Condominium Units or Common Elements shall be in conformity in size and appearance as permitted by rules and regulations adopted by the Board of Directors, except for any signs with respect to which the Declarant has reserved as Special Declarant Rights. All signs shall comply with the laws, ordinances and regulations of all governmental entities having jurisdiction thereof.

39. CONDEMNATION

39.01 General. Whenever all or any part of the Condominium shall be taken by any authority having the power of condemnation or eminent domain, each Unit Owner shall be entitled to notice thereof and to participate in the proceedings incident thereto unless otherwise prohibited by law.

39.02 Common Elements. If the taking is confined to the Common Elements or the Common Elements on which improvements shall have been constructed, but shall not involve a Unit or a limited Common Element, then the award for the Common Element loss shall be payable to the Association.

39.03 Limited Common Elements. Any portion of an award in condemnation attributable to the taking of all or a portion of a Limited Common Element shall be paid to the Owner of the Unit to which the Limited Common Element was allocated or, if more than one, apportioned among the Owners of the Units to which the Limited Common Element taken was allocated.

39.04 Units.

- (A) If a Unit is acquired by eminent domain, or if part of a Unit is acquired by eminent domain leaving the Unit Owner with a remnant which may not practically or lawfully be used for any purpose permitted by the Declaration, the award must compensate the Unit Owner for his Unit and his interest in the Common Elements, whether or not any Common Elements are acquired. Unless the condemnor acquires the right to use the Unit's interest in Common Elements, that Unit's allocated interests are automatically reallocated to the remaining Units in proportion to the respective Allocated Interests of those Units before the taking exclusive of the Unit

taken, and the Association shall promptly prepare, execute, and record an amendment to the Declaration reflecting the reallocations. Any remnant of a Unit remaining after part of a Unit is taken under this subsection is thereafter a Common Element.

- (B) Except as provided in subsection (A), if part of a Unit is acquired by eminent domain, the award must compensate the Unit Owner for the reduction in value of the Unit and of its interest in the Common Elements, whether or not any Common Elements are acquired. Upon acquisition, unless the decree otherwise provides, (1) that Unit's Allocated Interest are reduced in proportion to the reduction in the size of the Unit, and (2) the portion of the Allocated Interests divested from the partially acquired Unit is automatically reallocated to that Unit and the remaining Units in proportion to the respective Allocated Interest of those Units before the taking, with the partially acquired Unit participating in the reallocation on the basis of its reduced Allocated Interest.

40. POWER OF ATTORNEY TO DEAL IN OWNED UNITS

Each Owner, by purchase of a Unit within the Property and acceptance of the Deed therefor, grants to the Board of Directors of the Association an irrevocable power of attorney, coupled with an interest, to acquire title to, including the purchase at a foreclosure or judicial sale, or to lease, any Unit in the name of the Association, or its designee, on behalf of all Unit Owners, and to convey, sell, lease, mortgage, or otherwise deal with any such Unit so acquired or to sublease any Unit so leased by the Association. Any Unit purchased by the Association shall be held by it, or its designee, on behalf of all Unit Owners in proportion to their respective Allocated Interests in the Common Elements. The lease covering any Unit leased by the Association, or its designee, shall be held on behalf of all Unit Owners, in relation to their Allocated Interests in the Common Elements.

41. WAIVER OF PUBLIC OFFERING STATEMENT REQUIREMENT

By acceptance of the conveyance of a Unit within this nonresidential Condominium, all persons or entities which shall acquire a Unit, or any interest therein shall be deemed to have waived any and all rights which such parties may otherwise have to examine, review, receive or obtain a public offering statement or other similar document pursuant to North Carolina General Statutes Chapter 47C-4-101 et. seq.

42. NOTICE

Unless specifically addressed elsewhere herein, whenever written notice to an Owner (including Declarant) is required or authorized hereunder, such notice may be given by the mailing of same, postage prepaid, to the address of such Owner appearing on the records of the Association. If notice is given in such manner, such notice shall be conclusively deemed to have been given by placing same in the United States mail properly addressed, with postage prepaid, whether received by the addressee or not. It shall be the duty of each Owner to keep the Association informed of such Owner's current mailing address and telephone number. If an Owner has not provided the Association with the Owner's current mailing address the Association may use the street address of such Owner's Unit for that Owner's mailing address. When a Unit is owned by more than one Owner, notice shall be given to each owner in the foregoing manner. Any notice required or authorized by this Declaration to be given to the Association may also be given in the foregoing manner either to the Association or to its managing agent.

IN WITNESS WHEREOF, Declarant and Schofield have each executed this instrument this 2nd day of November, 2016.
DECEMBER

H & C HOLDINGS, LLC,
a North Carolina limited liability company

By: [Signature]
Charles C. Sites,
Member-Manager

SCHOFIELD HEALTH SERVICES LLC,
a North Carolina limited liability company

By: [Signature]
Deborah M. Townsend,
Member-Manager

NORTH CAROLINA, WAKE COUNTY

I, a Notary Public of the County and State aforesaid, certify that the following person personally appeared before me this day and acknowledged to me that he voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: Charles C. Sites, Member-Manager of H & C Holdings, LLC.

Date: 12/2/16

[Signature]
F. TIMOTHY NICHOLLS, Notary Public

(Official Seal)

My commission expires: 12/20/2020



NORTH CAROLINA, WAKE COUNTY

I, a Notary Public of the County and State aforesaid, certify that the following person personally appeared before me this day and acknowledged to me that he voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: Deborah M. Townsend, Member-Manager of Schofield Health Services LLC.

Date: Nov 21, 2016

[Signature]
TRAVIS BARKLEY, Notary Public

(Official Seal)

My commission expires: FEB 15, 2017

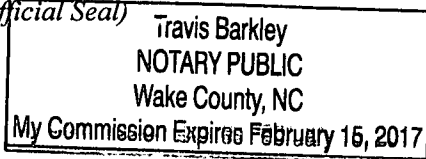


Exhibit "A"

**TO THAT DECLARATION FOR
HERITAGE PROFESSIONAL PARK WEST CONDOMINIUM**

DESCRIPTION OF THE PROPERTY

All of that tract or parcel of land lying and being in Wake County, North Carolina, and more particularly described as follows:

BEING all of Lot 1, Phase 1, Heritage Business Park, containing 5.272 acres, as shown on that plat recorded in Book of Maps 2001, Page 172, and Book of Maps 2001, Page 173, respectively, Wake County Registry.

Exhibit "B"

**TO THAT DECLARATION OF
HERITAGE PROFESSIONAL PARK WEST CONDOMINIUM**

1. Taxes, dues and assessments for the year 2016 and subsequent years, not yet due and payable.
2. Easements, setback lines, and any other facts shown on the plat recorded in Condominium File CM 2009, Page 512 A1, Wake County Registry.
3. General services and utility easements, restrictions, rights of way and easements, rights of parties in possession, and all matters of public record affecting the Property, or any part thereof.

Exhibit "C"

**TO THAT DECLARATION OF
HERITAGE PROFESSIONAL PARK WEST CONDOMINIUM**

(As of January 1, 2017)

Address	Unit Number - Suite	Square Footage of Unit	Percentage Share of Common Elements	Percentage Share of Common Expense	Percentage Vote In Association Matters
3113 Rogers Road Wake Forest, NC	100 - 100	8,342	33.74	33.74	33.74
3117 Rogers Road Wake Forest, NC	200 - 100	8193	33.13	33.13	33.13
3117 Rogers Road Wake Forest, NC	200 - 200	8193	33.13	33.13	33.13
Totals		24,728 Square Feet	100.00% *	100.00% *	100.00% *

*NOTE: The percentage interest allocated to a Unit has been calculated based on the relative floor area of the Unit as compared to the floor area of all Units in the Condominium. Nothing contained in this Agreement shall prohibit certain Common Expenses from being apportioned to particular Units as provided in Section 3.19 of this Declaration.



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Please retain yellow trailer page

It is part of the recorded document and must be submitted with the original for re-recording

**Laura M. Riddick
Register of Deeds
Wake County Justice Center
300 South Salisbury Street, Suite 1700
Raleigh, NC 27601**

New Time Stamp

\$25 Non-Standard Fee

Additional Document Fee

Additional Reference Fee

This Customer Group

_____ # of Excessive Entities

_____ # of Time Stamps Needed

This Document

36 # of Pages *CL*