

WAKE COUNTY, NC 353  
 LAURA M RIDDICK  
 REGISTER OF DEEDS  
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Prepared By And Return To: PENDERGRASS LAW FIRM, PLLC - ROD Box 164

STATE OF NORTH CAROLINA  
 COUNTY OF WAKE

DECLARATION OF CONDOMINIUM FOR  
 MILLBROOK WEST OFFICE CONDOMINIUM

THIS Declaration of Condominium is made this 12<sup>th</sup> day of August, 2004 by MARLOWE & MOYE, LLC, a North Carolina limited liability company (Declarant).

WITNESSETH:

WHEREAS, Declarant is the owner of certain real Property located at 203, 205 and 207 Millbrook Road, Raleigh, Wake County, North Carolina, more particularly described on Exhibit "A" attached hereto (the "Land"), upon which is currently situated two (2) buildings and certain other improvements; and

WHEREAS, Declarant desires to submit the Land and the improvements presently and hereafter to be located thereon (collectively, the "Property") to the terms and provisions of the North Carolina Condominium Act and by so doing intends to protect the value and the desirability of the Property, further a plan for the condominium ownership of the Property, create a harmonious and attractive development, and promote a mutually beneficial development and operation of condominium units on the Property.

NOW, THEREFORE, Declarant hereby declares that all of the Property shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which shall run with the real Property and be binding on all parties having any right, title or interest in the described properties or any part hereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

ARTICLE I  
 DEFINITIONS

Section 1.1: "Additional Land" means and refers to that certain real Property more particularly described in that certain Deed recorded in Book 8664, Page 1202 of the Wake County Registry.

Section 1.2: "Association" means MILLBROOK WEST OFFICE CONDOMINIUM OWNERS ASSOCIATION, INC, a North Carolina non-profit corporation, its successors and assigns formed on October 7, 2003 by filing Articles of Incorporated (the "Articles") with the North Carolina Secretary of State, a true copy of such Articles being attached hereto as Exhibit "B".

Section 1.3: "Buildings" means and refers to the buildings located upon the Land and the Additional Land, which contains, will or may contain a maximum of fifty (50) Units and the Common Elements. The first building having a current address of 205 West Millbrook Road, Raleigh, North Carolina is a two (2) story building with brick exterior walls, with glass windows and consisting of not more than six (6) Units on the first floor and not more than six (6) Units on the second floor but presently consisting of two (2) Units on the first floor and four (4) Units on the second floor numbered as follows: First Floor – Suite 205-100 and Suite 205- 105; Second Floor – Suite 205- 200, Suite 205- 205, Suite 205- 210, Suite and 205- 215 all as shown on the Plat(s) and Plan(s). The second building having a current address of 207 West Millbrook Road, Raleigh, North Carolina is a two (2) story building with brick exterior walls, with glass windows and consisting of not more than six (6) Units on the first floor and not more than six (6) Units on

the second floor but presently consisting of four (4) Units on the first floor and four (4) Units on the second floor numbered as follows: First Floor – Suite 207- 100 and Suite 207- 105, Suite 207- 110 and Suite 207- 115; Second Floor – Suite 207- 200, Suite 207- 205, Suite 207-210, Suite and 207- 215 all as shown on the Plat(s) and Plan(s). The Buildings are more particularly described and shown on the Plat(s) and Plan(s) which show all particulars of the Building(s). The third building which will be located at 203 West Millbrook Road, Raleigh, North Carolina, (hereinafter referred to as the “Additional Building”) is not presently built but is to be built and is shown on the Plat, as a future building, that must be built. Such Additional Building is subject to the provisions of Article II of this Declaration. The Plat(s) and Plan(s) contain all of the certifications and information required by N. C. G. S. § 47C-2-109, and the Plat(s) and Plan(s) have been filed under the name of the Condominium in the Unit Ownership File in the Wake County Public Registry.

Section 1.4: “Bylaws” means the bylaws of the Association, a copy of which are attached hereto as Exhibit “C”.

Section 1.5: “Certificate of Completion” means that certain Certificate of Completion for Millbrook West Office Condominium executed by Erich J. Wilkinson, Licensed Architect with Winstead Wilkinson Architects, PLLC, the original of which is attached hereto and marked as Exhibit “D”.

Section 1.6: “Common Elements” means all portions of the Condominium (including the Limited Common Elements) other than the Units, including, without limitation, (i) the Land, (ii) all improvements located upon the Land outside of the Building, including a monument sign, entrance features, landscaped areas, outdoor lighting, underground utility lines, (including but not limited to water lines and sewer lines located outside public street rights-of-way and outside City of Raleigh utility easements), walkways, sidewalks, curbs and gutters, retaining walls, dumpster pad, gutters, down spouts, storm drains, drain pipes and ditches, irrigation systems, parking areas, driveways electrical conduit, electrical systems including but not limited to the “Hot Box” located to the rear of the Property, (iii) all portions of the Building located outside of the Units, including but not limited to wood or metal studs, exterior walls and the canopies surrounding the entrances to the Building (whether such entrances serve the entire Building or a single Unit), window glass and entrance and exist doors to the Building and each Unit, stairways, stairwells, elevators, sump pump and holding tank serving the elevators, elevator shafts, elevator mechanical rooms, hallways, interior foyers and entry areas, bathroom facilities, if any, located outside a Unit but in the interior hallways, core mechanical rooms, electrical rooms, building directory signage, and (iv) the foundation slab, or crawl space as applicable, roof and structural components of the Building and any area(s) denominated as Common Elements on the Plat(s) and Plan(s).

Section 1.7: “Common Expenses” means and refers to any and all expenditures made by or financial liabilities of the Association, together with any allocations to reserves, pursuant to and in accordance with this Declaration, the Bylaws and the North Carolina Condominium Act and ad valorem taxes, public assessments, or governmental liens levied against the Common Elements.

Section 1.8: “Condominium” means the real estate described on Exhibit “A” attached hereto and the Building(s) and other improvements located thereon, portions of which are designated for separate ownership and the remainder of which are designated for common ownership solely by the Owners of those portions.

Section 1.9: “Condominium Documents” means this Declaration, the Articles and Bylaws of the Association, the Plat(s) and Plan(s) any rules and regulations governing the use of the Property and all attachments and exhibits, modifications, or amendments thereto, respectively.

Section 1.10: “Consent of Mortgagee” means the consent of Central Carolina Bank, a Division of National Bank of Commerce to the recording of this Declaration, the original of such Consent of Mortgagee being attached hereto as Exhibit “E” and further referenced in ARTICLE XVI, Section 16.7 of this Declaration.

Section 1.11: "Declarant" means MARLOWE & MOYE, LLC, a North Carolina limited liability company, its successors and assigns.

Section 1.12: "Declaration" means this Declaration of Condominium as it may be modified or amended from time to time in the future.

Section 1.13: "Executive Board" means the body designated in this Declaration to act on behalf of the Association.

Section 1.14: "Land" means and refers to that certain real Property more particularly described on Exhibit "A" attached hereto and incorporated herein by reference.

Section 1.15: "Limited Common Elements" means a portion of the Common Elements allocated by the Declaration or the Plats and Plans for the exclusive use of one or more but fewer than all of the Units, if any.

Section 1.16: "Member" means every person or entity who holds membership in the Association.

Section 1.17: "Mortgage" means and refers to a mortgage or deed of trust constituting a lien on a Unit.

Section 1.18: "Mortgagee" means and refers to the owner and holder of a Mortgage.

Section 1.19: "Owner" means the record Owner, whether one or more persons or entities, of a fee simple title to any Unit which is a part of the Property, together with an undivided interest in the Common Elements as hereinafter set forth, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 1.20: "Period of Declarant Control" means the period commencing on the date hereof and continuing until the earlier of (i) the date Declarant has sold the last Unit to an unaffiliated third party; or (ii) the date upon which Declarant voluntarily surrenders control of the Condominium to the Association.

Section 1.21: "Permitted Exceptions to Title" means the following such permitted exceptions as are set forth on Exhibit "F" attached hereto.

Section 1.22: "Plat(s) and Plan(s)" means the plat(s) and plan(s) for the Condominium recorded in Condominium File 2004 Page(s) 351 A1 through B3 in the office of the Wake County Register of Deeds which may have additional recordings to be incorporated at a future date. The Plat(s) and Plan(s) are hereby incorporated herein by reference as if the same were attached hereto.

Section 1.23: "Property" shall mean and refer to the Land, the Building(s) and all other improvements and structures located on the Land, all easements, rights and appurtenances belonging or appertaining to the Land, and all articles of personal property intended for common use in connection therewith.

Section 1.24: "Suite" as used herein or in the Plat(s) and Plan(s) or in any other of the Condominium Documents shall have the same meaning as and may be used interchangeably with "Unit" as that term is hereinafter defined.

Section 1.25: "Unit" means a physical portion of the Condominium designated for separate ownership or occupancy. The location and dimensions of the Building and of each Unit within the Building are shown on the Plat(s) and Plan(s). The horizontal boundaries of each Unit shall consist of the face of the unfinished wood or metal studs around the perimeter of each Unit to which sheet rock has been or will be attached. The lower boundary of each Unit shall be the horizontal plane of the top surface of the finished concrete flooring of such Unit and the upper boundary shall be the horizontal plane 8 feet 8 inches above the lower boundary of such Unit for

all second (2<sup>nd</sup>) floor Units and 8 feet 8 inches for all first (1<sup>st</sup>) Floor Units. The boundaries of each Unit are more particularly shown or described on the Plat(s) and Plan(s). All lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring and any other materials constituting any part of the finished flooring, and any other materials constituting any part of the perimeter wood or metal studs, floors or ceilings of each Unit, thereon shall constitute a part of each Unit. Furthermore, all interior walls, partitions, sheet rock ceilings, fixtures, appliances, cabinets and other facilities or improvements lying completely within the boundaries of a Unit shall be a part of such Unit.

Notwithstanding the foregoing definitions, all definitions set forth in N. C. G. S. § 47C-1-103 are hereby incorporated by reference and the terms defined therein shall have the meanings set forth therein when used in this Declaration or in other Condominium Documents, unless the applicable term same expressly defined otherwise in this Declaration or such other Condominium Documents or unless the context otherwise plainly requires a different meaning.

## ARTICLE II - SUBMISSION OF PROPERTY TO CONDOMINIUM ACT AND DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

Section 2.1: Declarant hereby submits the Property to the provisions of the North Carolina Condominium Act contained in N. C. G. S. Chapter 47C (the "Condominium Act"). The Property will be administered in accordance with the provisions of the Condominium Act, the Declaration, the Bylaws and the other Condominium Documents, as applicable.

Section 2.2: The name of the Condominium shall be Millbrook West Office Condominium."

Section 2.3: The Property is located in Wake County, North Carolina.

Section 2.4: Declarant hereby establishes within the Property the not more than fifty (50) Units a portion of which are shown on the Plat(s) and Plan(s) and does hereby designate all such Units for separate ownership. Reference is hereby made to the Plat(s) and Plan(s) for a separate description of the boundaries of each Unit, identified by Suite or Unit Number as shown thereon.

Section 2.5: Each owner shall be a member of the Association. An Owner shall be entitled to that number of votes in the Association equal to that percentage of the total votes in the Association which such Owner's percentage interest of ownership of the Common Elements bears to the whole of the common area.

Section 2.6: There are no Limited Common Elements with the exception of the Limited Common Elements created under Article V herein.

Section 2.7: Declarant reserves the following Special Declarant Rights for the entire Property, which shall be exercisable during the Period of Declarant Control:

(1) To complete any and all improvements indicated on the Plat(s) and Plan(s) including but not limited to any up fit of any Unit to the specifications of any third-party purchaser of such Unit ;

(2) To construct and maintain any sales office, management office or model in any of the Units or on any of the Common Elements shown on the Plat(s) and Plan(s);

(3) To alter the size of any Unit, combine or merge two or more Units, and subdivide or otherwise reconfigure any Unit into two or more Units, provided that the total number of Units shall not exceed fifty (50) Units.

If the Declarant exercises the right to subdivide any Unit, or at such time as the third (3rd) building is constructed, then Declarant shall prepare, execute and record an amendment to this Declaration and to the Plat(s) and Plan(s) so as to assign an identifying number to each new

Unit created and reallocate the percentage undivided interest in the Common Elements previously allocated to the affected Unit(s) among the newly created Units in a reasonable manner prescribed by the Declarant. Such amendments shall be effective upon filing in the Wake County Public Registry and shall not require the consent or approval of any Owners other than the Declarant.

(4) To construct a third (3rd) building on the Land in the area designated on the Plat as Future Building (Must Be Built), or on the Additional Land or on some combination of the Land and the Additional Land. Declarant reserves the absolute right to increase the size of such Additional Building in the event the Declarant should acquire the Additional Land provided such Additional Land is acquired on or before December 31, 2014. Nothing herein contained shall obligate the Declarant to build a larger building, whether or not such Additional Land is acquired, however an Additional Building MUST BE BUILT.

In the event such Additional Land is acquired, the Declarant shall cause such Additional Land to be annexed into and made a part of the Condominium by the preparation, execution and recording of an Amendment to the Declaration (the "Amendment"), which Amendment shall subject such Additional Land to the Declaration and any then existing amendments thereto, and such Additional Land shall be governed in all respects by the Declaration as if such Additional Land had been a part of the Declaration as and when the same was originally recorded. Such Amendment as may be executed to annex the Additional Land shall be effective upon filing in the Wake County Registry and shall not require the consent or approval of any Owner(s) other than the Declarant.

Upon construction of the Additional Building whether on the Land shown on the Plat, the Additional Land or some combination thereof and without regard to the size of the Additional Building, the percentage undivided interest of each of the then existing Unit Owner(s) shall be reduced prorata.

Accordingly as the Declaration is amended as permitted herein to include the Additional Building and the additional Units contained therein, each Unit Owners' undivided interest in the Common Elements shall be deemed changed and reduced and the amount of such reduction shall revert to the Declarant so that the appropriate undivided interest in the Common Elements may be conveyed to those who become Unit Owners in any such Additional Building constructed.

(5) To appoint and remove any Executive Board members.

### ARTICLE III PROPERTY RIGHTS

Section 3.1: Ownership of a Unit shall vest fee simple title to such Unit in the Owner.

Section 3.2: Every Owner shall own an undivided interest in the Common elements and, except to the extent that use of the Limited Common Elements has been allocated exclusively to certain Unit(s), shall have a right and easement of enjoyment in the common Elements and an unrestricted right of ingress and egress across the Common Elements to such Owner's Unit, which shall be appurtenant to and shall pass with the title to every Unit. The undivided interest of every Unit Owner in the Common Elements shall be in the percentage set forth in Exhibit "G" attached hereto. The undivided interest in the Common Elements and the right and easement of enjoyment in such Common Elements are subject to the following:

(a) The Association shall have the right to adopt such rules and regulations as may be needed to regulate the use and enjoyment of the Common Elements;

(b) The Special Declarant Rights as set forth in Section 2.7 of Article II of this Declaration;

(c) The Association shall have the right to dedicate or transfer, or encumber all or any part of the Common Elements subject to approval by the Owners as provided in the Condominium Act;

Section 3.3: Any Owner may delegate his right of enjoyment to the Common elements to permitted tenants, employees, licensees, clients, invitees and customers of an Owner or tenant in possession of a Unit.

#### ARTICLE IV COVENANT FOR MAINTENANCE ASSESSMENTS

Section 4.1: The Declarant, for each Unit owned within the Property, and each Owner by acceptance of a deed therefor, whether or to it shall be so expressed in such deed, hereby covenants and agrees to pay the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. Except as otherwise set forth herein, the liability of each Owner for the common expenses of the Association shall be in accordance with the respective percentages of ownership interests in the Common Elements owned by the respective Owners as provided in Exhibit "G" attached hereto. Any assessment levied against a Unit remaining unpaid for a period of thirty (30) days or longer shall constitute a lien on that Unit when filed of record in the office of the Clerk of Superior Court of Wake County and shall accrue interest at a rate set by the Association not to exceed 18% per annum. The Association may bring an action at law against the Owner, or foreclose the lien against the applicable Unit. Fees (including attorney fees), charges, late charges, fines, and interest are also enforceable as assessments.

Each assessment, together with interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the Owner of the applicable Unit at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 4.2: The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage and ad valorem taxes. Sale or transfer of any Unit shall not affect the assessment lien. The sale or transfer of any Unit pursuant to a mortgage or tax foreclosure or any proceeding in lieu thereof, however, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Unit from liability for any assessments thereafter becoming due or from the lien thereof.

Section 4.3: The annual assessments levied by the Association shall be used exclusively to promote the health, safety and welfare of the Owners and Unit occupants and promote the beneficial development and operation of the Units and in particular for the acquisition, improvement and maintenance of the Condominium services and facilities devoted to this purpose, and for the use and enjoyment of the Common Elements, however, the annual assessments shall not be used to maintain, repair or replace any Limited Common Elements. The annual assessments shall be used to pay for outside lighting of the Building and the Land, exterior cleaning and landscaping of the Land, pick-up and removal of trash from the dumpster(s) located on the Land, water and sewer services provided to the Units, insurance premiums for the coverages set forth in Article X herein, reserves for the future repair, maintenance and replacement of Common Elements and for such other items and services necessary to carry out the aforementioned purposes.

The Association may also levy a special assessment payable in a manner as specified by the Association for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Elements, including fixtures and personal Property related thereto, provided that any such assessment shall have the assent of the Owners of a majority of the Units.

Section 4.4: Until January 1 of the year immediately following the conveyance of the first Unit to an Owner, the maximum annual assessment shall be \$1.02 per square foot, prorated

for the remainder of said year and adjusted according to the percentage interest in the Common Elements allocated to the applicable Unit.

(a) From and after January 1 of the year immediately following the conveyance of the first Unit to an Owner, the maximum annual assessment may be increased effective January 1 of each year without a vote of the membership by up to ten percent (10%) of the previous year's maximum annual assessment.

(b) From and after January 1 of the year immediately following the conveyance of the first Unit to an Owner, the maximum annual assessment for succeeding years may be increased above the increase permitted in Section 4.4(a), provided that any such assessment shall receive the affirmative vote of two-thirds (2/3rds) in interest of the votes of the Owners who are voting in person or by proxy, at a meeting duly called for his purpose. Written notice setting forth the purpose of such meeting shall be sent to all Owners not less than thirty (30) days nor more than sixty(60) days in advance of the meeting. No quorum shall be required.

(c) The Executive Board or the Declarant may fix the annual assessment at an amount not in excess of the maximum.

Section 4.5: Both annual assessments provided for herein shall commence at a date established by the Association. Once such annual assessments are established, written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Executive Board. While the assessments are made on an annual basis, they may be billed and collected monthly, quarterly, semi-annually or annually as determined by the Executive Board.

Section 4.6: The Executive Board or the Delcarant during the period of Declarant Control may assess a capital contribution of \$.25 per square foot as a means of funding the general operations of the Association, which Capital Contribution shall be collected at the closing of the sale of a Unit to a third-party purchaser and paid over to the Association.

## ARTICLE V COMMON ELEMENTS

### Section 5.1:

(a) The Common Elements include all portions of the Condominium (including the Limited Common Elements) other than the Units, including, without limitation, (i) the Land, (ii) all improvements located upon the Land outside of the Building, including a monument sign, entrance features, landscaped areas, outdoor lighting, underground utility lines, (including but not limited to water lines and sewer lines located outside public street rights-of-way and outside City of Raleigh utility easements), walkways, sidewalks, curbs and gutters, retaining walls, dumpster pad, gutters, down spouts, storm drains, drain pipes and ditches, irrigation systems, parking areas, driveways, electrical conduit, electrical systems including but not limited to the "Hot Box" located to the rear of the Property, (iii) all portions of the Building located outside of the Units, including but not limited to wood or metal studs, exterior walls and the canopies surrounding the entrances to the Building (whether such entrances serve the entire Building or a single Unit), window glass and entrance and exit doors to the Building and each Unit, stairways, stairwells, elevators, sump pump and holding tank serving the elevators, elevator shafts, elevator mechanical rooms, hallways, interior foyers and entry areas, bathroom facilities, if any, located outside a Unit but in the interior hallways, core mechanical rooms, electrical rooms, building directory signage, and (iv) the foundation slab, or crawl space as applicable, roof and structural components of the Building and any area(s) denominated as Common Elements on the Plat(s) and Plan(s).

(b) The Limited Common elements shall include those portions of any pipe, chute, flue, duct, wire, conduit, or any other fixtures lying partially within and partially outside the designated boundaries of a Unit which serve only that Unit, and any portion thereof serving more than one Unit or any portion of the Common Elements pursuant to N. C. G. S. § 47C-2-102(2).

Furthermore, any entrance canopies, store front glass systems and all exterior doors and windows or other fixtures designated to serve a single Unit but located outside the Unit's boundaries are Limited Common Elements allocated exclusively to that Unit, pursuant to N. C. G. S. § 47C-2-102(4). The panels in the monument sign installed near the common boundary of the Land and the rights of way of Millbrook Road shall also be a Limited Common Elements serving those Owners whose business or that of their tenant, is advertised on said sign. Notwithstanding the foregoing or anything herein to the contrary, any portions of the heating, ventilating and air-conditioning systems, including, fans, compressors, return air grills and thermostats, any utility lines providing water, sewer, telephone, gas, cable television or other services (other than the portions of any such utility trunk or main lines located underground or within the concrete slab upon which the Building is located and the central control box or panel to which such service lines are connected) whether located inside or outside the designated boundaries of a Unit (including within the wood or metal studs and the plenum area inside the Building), but which serve a single Unit, shall not be designated as Common Elements or Limited Common Elements but shall instead be the personal Property of the Owner of the Unit or Units that they serve.

Section 5.2: The walls connecting adjacent Units are "party walls" and are situated on or about the boundary line separating such Unit. To the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for Property damage due to negligence or willful acts or omissions shall apply thereto. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use determined by the Executive Board. Notwithstanding any other provisions of this Article, an Owner who by his negligent or willful act causes a party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5.3: The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the Unit and shall pass to such Owner's successors in title.

Section 5.4: If any Owner desires to sell his Unit, such Owner may, in order to assure a prospective Purchaser that no adjoining Owner has a claim for such contribution may request a certification that no right of contribution exists, whereupon it shall be the duty of the adjoining Owner to make such certification immediately upon request and without charge; provided, however, that where the adjoining Owner claims a right of contribution, the certification shall contain a recital of the amount claimed.

Section 5.5: In the event of any dispute arising concerning a party wall, or under the provisions of this Article, such dispute shall be settled by binding arbitration in Wake County, North Carolina in accordance with the then applicable rules of the American Arbitration Association.

## ARTICLE VI MAINTENANCE

Section 6.1: The Association shall provide exterior maintenance of a general nature for the Building and Land and shall maintain the Common Elements, subject to assessment hereunder, including the paint, repair, replacement and care, as needed of the following: roofs, exterior building surfaces, trees, shrubs, walks, parking lots, lighting, irrigation, retaining walls, foyers, entry ways, hallways, elevators, elevator shafts, dumpsters, including dumpster moving and relocation and other exterior improvements and interior improvements related thereto. To the extent such maintenance involves maintenance of Limited Common Elements the Owner of such Unit shall be solely responsible for such maintenance costs.

Section 6.2: In the event that the need for maintenance, repair, or replacement is caused through the willful or negligent act of an Owner, his tenants or their respective employees, customers or agents, the cost of such maintenance, replacement, or repairs shall be added to and become a part of the assessment to which such Unit is subject.



Section 6.3: The maintenance of all personal Property fixtures and utility lines serving a Unit but not included in the Common Elements or Limited Common Elements, including, but not limited to, the HVAC systems and utility lines providing telephone, gas, cable television, water, sewer and any other services to a Unit shall be the sole responsibility of the Owner of such Unit served and such Owner shall maintain such personal Property at all times to prevent any damage or destruction to any other Units or to the Common Elements and shall be responsible to cause the immediate repair of any such damage or destruction arising from or caused by such personal property.

Section 6.4: Exterior lighting shall be run on photocells and shall operate continuously.

## ARTICLE VII ARCHITECTURAL CONTROL

No building, fence, wall or other structure or improvement shall be commenced, erected or maintained upon the Condominium, nor shall any exterior addition or change therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing by the Declarant during the Period of Declarant Control and by the Executive Board thereafter. The foregoing restriction specifically applies to any changes to the interior or exterior appearance of each Unit, any signs, lettering, advertising or other information permanently or temporarily posted on, attached to or affixed to the exterior of a Unit or the exterior monument sign or upon any window treatments for the front of each Unit.

The exterior color of all or any part of the Building cannot be changed unless the color scheme of the entire Condominium is similarly changed. Any such change requires the approval of three-fourths of the Owners at a duly called meeting at which a quorum is present.

## ARTICLE VIII USE RESTRICTIONS

Section 8.1: No Unit may be used for residential purposes.

Section 8.2: The use of Units by Owners and their tenants or other occupants of a Unit shall be limited to professional services, other commercial services, general offices, or such other uses permitted by the applicable zoning classification affecting a Unit.

Section 8.3: No noxious or offensive activity shall be conducted upon any Unit nor shall anything be done thereon which may be or may become an annoyance or nuisance.

Section 8.4: No outside radio or television antennas, including satellite dishes or receivers, shall be erected on any Unit without the consent and approval of the Declarant during any Period of Declarant Control or the Executive Board thereafter.

Section 8.5: No signs or other attachments to the exterior of a Unit, the exterior of the Building or upon the Common Elements shall be permitted without the prior written approval of the Declarant during the Period of Declarant Control and by the Executive Board thereafter.

Section 8.6: All windows coverings and window treatments (i.e., curtains, blinds, draperies, shades, etc.) shall be uniform in nature and appearance as required by rules and regulations established by the Executive Board.

Section 8.7: No vehicles of any kind may be stored, parked or kept on the Property except wholly within those portions of the Common Elements designated as parking areas by the Association. All parking spaces on the Property shall be provided for the use of Owners and their tenants and their respective employees, agents, invitees, clients and customers

Section 8.8: The Common Elements shall not be used for storage of supplies, personal Property or trash or refuse of any kind except that common trash receptacles may be placed at various locations of the Common Elements at the discretion of the Executive Board. Sidewalks, landscaped areas, foyers, hallways, entrance ways, stairways, driveways and parking areas, shall not be obstructed in any way, or used for other than their intended purposes. The cleanliness and orderliness of the Limited Common Elements shall be the responsibility of the Owner having the right to the use and enjoyment of such Limited Common Elements.

Section 8.9: The Executive Board may create reasonable rules and regulations governing the use of the Units or Common Elements from time to time.

Section 8.10: Any lease of a Unit or portion thereof shall be in writing on such form promulgated or approved by the Executive Board, which approval shall not be unreasonably withheld, and shall provide that the terms of the applicable lease shall be subject in all respects to the Condominium Documents and that any failure by the tenant to comply with all of the terms of such Condominium Documents shall constitute a default under the applicable lease.

Section 8.11: Nothing shall be done or kept in any Unit or on the Common Elements which will impair the structural integrity or mechanical systems or lessen the support of any portion of the Condominium or which will increase the rate of insurance on the Common Elements or any Unit.

Section 8.12: Each Owner shall be responsible for maintaining his or her Unit and all personal Property serving such Unit, including, without limitation, the HVAC system, telephone, gas, cable television and other utility service lines serving such Unit which are not specifically designated as Common Elements herein. Each Owner shall further be responsible for the cost of maintaining the Limited Common Elements appurtenant to such Unit. Each Owner shall furthermore keep his or her Unit in a clean, neat and orderly condition and in a good state of maintenance and repair. If any Owner fails to comply with the standards or requirements of the Association relative thereto, the Association may undertake to affect such compliance and assess the defaulting Owner with the cost thereof. Each Owner shall be responsible for repairing any damage caused to other Units or any portion of the Common Elements resulting from the acts of such Owner or its tenants, or their respective agents, employees, contractors, licensees or customers.

Section 8.13: Each Owner shall pay promptly all persons furnishing labor or materials with respect to any work performed on behalf of such Owner or its contractor on or about the Common Elements and shall not permit any lien to be filed against the Common Elements by reason of any work, labor, services or materials performed or furnished, or alleged to have been performed or furnished, to such Owner or to anyone possessing such Owner's Unit through or under such Owner, and if such a lien is filed, such Owner shall forthwith cause the same to be discharged or record or bonded to the satisfaction of Declarant during the Period of Declarant's Control and the Executive Board thereafter.

Section 8.14: No Owner shall place or allow to be placed or maintained on the exterior of any Unit any sign, advertising matter or any other thing of any kind, including decorations, letters or advertising materials on the front of any Unit, or any interior sign visible from outside of a Unit unless the same is permitted by the Executive Board or otherwise permitted by the rules and regulations established for all Owners.

Section 8.15: All Owners, their tenants and their respective employees shall park their cars in the Common Elements only in such areas designated for such purposes by the Executive Board. If any Owner, its tenants or their respective employees shall fail to park their cars in the designated parking areas, then the executive Board shall have the right to charge the applicable Owner a parking charge on a per diem basis for such violation which shall be immediately due and payable, and if not paid within thirty (30) days of such Owner's receipt of notice of assessment thereof, shall be a lien on the applicable Owner's Unit which may be foreclosed upon in the same manner as liens for unpaid assessments set forth in Section 4.1 hereof.

Section 8.16: No Owner, nor such Owner's tenants or their respective agents, employees, contractors or customers, shall deposit, dispose of, introduce, store or discharge any hazardous substances, materials, elements or compounds on any Unit or upon the Common Elements in violation of any local, state or federal law, rule or regulation regarding environmental, hazardous, toxic, dangerous, restricted or otherwise regulated wastes, substances or materials now or hereafter in effect.

## ARTICLE IX EASEMENTS

Section 9.1: Declarant reserves during the Period of Declarant Control, and the Executive Board reserves at any time, the right to grant easements for the benefit of the Property, including the right to install, lay, maintain, repair and replace water lines, pipes, ducts, sewer lines, gas mains, telephone and television or cable television wires, cables and equipment, electrical conduits, and wires over, under, along and on any portion of the Common Elements; and each Owner hereby grants to Declarant or the Executive Board, as applicable, an irrevocable power of attorney to execute, acknowledge and record for and in the name of each Owner such instruments as may be necessary to effectuate the foregoing. Declarant specifically reserves for itself and grants to each Owner an easement and right to run conduits, utility lines and other cables, wires and equipment in the plenum area between the top horizontal plane of each Unit and the roof of the Building in order to provide utilities and other services to Owners and their tenants; provided, however, the ownership and responsibility for the future maintenance and replacement of such conduits, lines, cables, wires or other equipment shall be the sole responsibility of the Owner of the Unit served thereby. Declarant further hereby reserves for itself and grants to each Owner an easement and right to attach an HVAC system to the roof of the Building and to run necessary ventilation lines, duct work and other equipment or apparatus within the Common Elements or Limited Common Elements to such Owner's Unit; provided that the ownership and responsibility for maintenance and replacement of all components of such HVAC system shall be that of the Owner of the Unit served by such system. Easements for installation and maintenance of utilities and drainage facilities, if any, are also reserved as shown on the Plat. Within these easements no structure, planting or other material shall be placed or permitted to remain which may interfere with the installation and maintenance of utilities, or which may obstruct or change the flow of drainage channels in the easements.

Section 9.2: All Units and Common Elements shall be subject to easements for the encroachment of improvements from adjacent Units which existed upon creation of the Condominium to the extent that such improvements actually encroach, including, but not limited to, such items as overhanging eaves, stoops, misaligned common wall foundation footings and walls, provided such encroachment does not interfere with the reasonable use of the Common Elements or Units so encroached upon. If the Building, any Unit or any portion of the Common Elements is partially or totally destroyed by fire or other casualty or as a result of condemnation or eminent domain proceedings and is thereafter rebuilt, encroachment of parts of the Common Elements upon any Unit or upon any portion of the Common Elements due to such rebuilding shall be permitted, and valid easements for such encroachments and the maintenance thereof shall exist so long as the Building shall stand.

Section 9.3: Declarant shall have a reasonable construction easement across the Common Elements and Limited Common Elements for the purpose of constructing improvements on or within the Units. Declarant shall also have such easements through the Common Elements and Limited Common Elements as may be reasonably necessary for the purpose of discharging a Declarant's obligations or exercising Special Declarant Rights as provided herein.

Section 9.4: The Association and the Declarant, during the Period of Declarant Control, shall have a right of entry upon the Units and the Common Elements any Limited Common Elements to effect emergency repairs, and a reasonable right of entry upon the Units, the Common Elements and Limited Common Elements to effect other repairs, improvements, replacements or maintenance, as necessary, whether such repairs, improvements, replacements or maintenance is made for the benefit of the Unit entered or another Unit.

Section 9.5: All easements granted herein are appurtenant to and shall run with the Land, and each Unit and shall inure to the benefit of and be binding upon the Declarant, the Association, the Owners, tenants, occupants, and mortgage holders, and any other person or entity having an interest in the Condominium.

## ARTICLE X INSURANCE

Section 10.1: Property Insurance. The Executive Board shall obtain and maintain at all times insurance on the Property in an amount not less than one hundred percent (100%) of the replacement cost of the Property at the time such insurance is purchased and at the time of each renewal thereof (exclusive of the cost of the Land, excavation, foundation slab, streets and other paved areas), with a commercially reasonable deductible not in excess of \$10,000.00. Such insurance shall not cover any personal Property or improvements either located within a Unit or owned by the Owner of such Unit but located outside the boundaries thereof. The policies evidencing such coverage shall insure against all risks of direct physical loss including fire and extended coverage perils, shall provide that each Unit Owner is an insured person with respect to such Owner's Unit and such Owner's allocated interest in the Common Elements; shall contain clauses providing for waiver of subrogation against any Owner, and any Owner's tenants, employees or agents; shall provide that such policies may not be canceled or substantially modified without at least thirty (30) days prior written notice to the Association and all the insureds, including all Mortgagees, shall provide that no act or omission by any Owner, unless acting within the scope of his authority on behalf of the Association, will preclude recovery upon such policy; and shall provide that 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. All such policies shall provide that adjustment of loss shall be made by the Executive Board as insurance trustee. Each insurance policy shall provide for the issuance of certificates or mortgagee endorsements to Mortgagees.

Section 10.2: Public Liability Insurance. The Executive Board shall be required to obtain a policy of comprehensive general liability insurance in such limits as the Executive Board may, from time to time, determine, covering each member of the Executive Board, the managing agent, if any, and each Owner with respect to liability arising out of the use, ownership, maintenance, or repair of the Common Elements; provided, however, that in no event shall the limits of such policy ever be less than \$1,000,000 per occurrence. Such insurance shall include endorsements covering cross liability claims of one insured against another, including the liability of the Owners as a group to a single Owner, and shall provide that such policies may not be canceled or substantially modified without at least ten (10) days prior written notice to the Association and to all insured. The Executive Board shall review such limits annually.

Section 10.3: Fidelity Coverage. The Executive Board may obtain such detailed coverage against dishonest acts on the part of all persons responsible for handling funds belonging to or administered by the Association as it may deem necessary. Any such fidelity insurance policy must name the Association as the named insured and shall be written in an amount as may be determined by the Executive Board, but in no event less than one-half the annual budgeted amount of Common Expenses, or the amount required by any Mortgagee, whichever is greater.

Section 10.4: Other Insurance Policies. The Executive Board shall be authorized to obtain such other insurance coverage, including workman's compensation, as the Executive Board shall determine from time to time desirable or necessary.

Section 10.5: Premiums. Premiums for insurance policies purchased by the Executive Board, and any amounts paid as a result of a deductible, shall be paid by the Executive Board and charged as a Common Expense.

Section 10.6: Distribution of Insurance Proceeds. All insurance policies procured by the Executive Board shall provide that all losses shall be adjusted with and all proceeds shall be

payable to the Executive Board as insurance trustee. The sole duty of the Executive Board as insurance trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes set forth herein and for the benefit of the Owners and their Mortgagees in the following shares:

- (a) Proceeds on account of damage to the Common Elements shall be held in undivided shares for each Owner and his Mortgagee, if any, each Owner's share to be the same as such Owner's allocated interest in the Common Elements.
- (b) Proceeds on account of damage to Units shall be held in the following undivided shares:
  - (1) When the damage is to be restored, for the Owners of damaged Units in proportion to the cost of repairing the damage to each such Owner's Unit, which cost shall be determined by the Executive Board;
  - (2) When the damage is not to be restored, an undivided share for each Owner, such share being the same as each such Owner's Unit's allocated interest in the Common Elements.
- (c) In the event a mortgagee endorsement or certificate has been issued with respect to a Unit, the share of the Owner shall be held in trust for the Mortgagee and Owner as their respective interests may appear.
- (d) Proceeds of insurance policies received by the Executive Board as insurance trustee shall be distributed to or for the benefit of the Owners in the following manner:
  - (1) If it is determined, as provided in Article XI below, that the damaged Property with respect to which the proceeds are paid shall not be reconstructed or repaired:
    - (A) the process attributable to the damaged Common Elements shall be used to restore the damaged area to a condition compatible with the rest of the Condominium;
    - (B) the insurance proceeds attributable to Units and Limited Common Elements which are not rebuilt shall be distributed to the Owners of those Units and Units to which those Limited Common Elements were allocated or to their Mortgagees, as their interests may appear; and
    - (C) the remainder of the proceeds shall be distributed to all the Unit Owners or Mortgagees, as their interests may appear, in proportion to their Common Elements interests.
  - (2) If the damage for which the proceeds were paid is to be repaired or reconstructed, the proceeds shall be paid to defray the costs thereof. Any proceeds remaining after payment of such repair costs shall be distributed to the beneficial Owners and their Mortgagees, if any, jointly.

Section 10.7: Insurance Obtained by Owners. Each Owner shall obtain and keep continuously in force additional fire and casualty and extended coverage insurance upon any improvements and personal Property owned by such Owner (including the HVAC system and all utility lines and equipment located outside the boundaries of such Owner's Unit and any Limited Common Elements serving such Unit), public liability insurance, and such other insurance coverage as he may desire. Each Owner shall obtain and maintain public liability insurance coverage in the amount of at least \$500,000 for bodily injury, including deaths of persons and

Property damage, arising out of a single occurrence. Each Owner shall file a copy of each such individual policy with the Association within thirty (30) days after purchase of a Unit.

## ARTICLE XI DUTY TO REPAIR OR RECONSTRUCT

Section 11.1: Reconstruction and Repair. In the event of damage to or destruction of the Building as a result of fire or other casualty, the Executive Board shall arrange for the prompt restoration and replacement of the Buildings unless (1) the Condominium is terminated in accordance with the provisions of Article XIII below, or (2) repair or replacement would be illegal under any Federal, state or local health or safety statute or ordinance, or (3) the Unit Owners decide not to rebuild by a vote of the Owners of at least eighty percent (80%) of the Units, including one hundred percent (100%) of Owners of Units not to be rebuilt and one hundred percent of Owners of Units to which are assigned Limited Common Elements not to be rebuilt. Unless one of the preceding three conditions occurs, the Executive Board shall arrange for the prompt repair and restoration of the Building, not including any improvements or personal Property owned by an Owner inside his Unit or serving his Unit but located outside such Unit's boundaries, and further not including any decoration or covering for walls, ceilings, or floors, or furniture, furnishings, fixtures or equipment (unless the subject insurance policy covers a portion or all of such loss in which event the Executive Board shall repair or replace such damaged Property), and the Executive Board shall disburse the proceeds of all insurance policies to the contractors engaged in such repair and restoration and make appropriate progress payments in accordance with the provisions of Section 10.6(d)(2) of this Declaration. Any payment for repair and restoration in excess of the insurance proceeds shall constitute a Common Expense. Any reconstruction or repair shall be in accordance with the Plat(s) and Plan(s). If the Unit Owners opt not to rebuild any Unit, that Unit's allocated interests are automatically reallocated upon such vote as if the Unit had been condemned under N. C. G. S. § 47C-1-107(a).

Section 11.2: Obligations of Owners. Each Owner will, at his sole cost and expense, keep and maintain his Unit in good order and repair in accordance with the Plat(s) and Plan(s), and will make no structural addition, alteration or improvement to his Unit without the prior written consent of the Declarant or Executive Board, as applicable, except as authorized under N. C. G. S. § 47C-2-111. Upon the failure of an Owner to so maintain his Unit, the Declarant or the Executive Board, as applicable, shall be authorized to maintain, repair or restore such Unit until paid. If after the occurrence of damage to or destruction of the building pursuant to Section 11.1 above, the Building is repaired and restored, then each Owner shall thereafter promptly repair and restore their Units to the condition in which such Unit existed prior to such damage or destruction, unless otherwise approved by the Executive Board.

## ARTICLE XII UNITS SUBJECT TO CONDOMINIUM DOCUMENTS

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

## ARTICLE XIII

## TERMINATION

The Condominium may be terminated and the Property removed from the provisions of the North Carolina Condominium Act by the unanimous agreement of all of the Unit Owners, as evidenced by execution of a termination agreement, or ratification thereof, by such Owners, provided that all the Mortgagees of the Units consent thereto or agree, in either case by instruments duly recorded, that their liens be transferred to the percentage of undivided interest of the Owners who shall own the Property as tenants in common following such termination, which shall be the percentage of undivided interest of such Owner in the Common Elements.

## ARTICLE XIV RIGHTS RESERVED TO MORTGAGEES

Section 14.1: Rights of Mortgagees to Examine Books and Records. Any Mortgagee, and any insurer or guarantor of a loan secured by a Mortgage, shall have the right to examine, during normal business hours and upon reasonable notice, the books and records of the Association, including copies of the Condominium Documents, as amended, and the financial statements of the Association, and to be furnished, upon written request, at least one copy of the annual financial statement and report of the Association, such annual statement and report to be furnished within ninety (90) days following the end of each fiscal year. If any Mortgagee requests, and agrees to pay the cost of the audit, the financial statement shall be audited by an independent certified public accountant.

Section 14.2: Mortgagee's Rights to Notice. If any Mortgagee, or any guarantor or insurer of a loan secured by a Mortgage, has served written notice of its desire to receive notices under this Section 14.2 upon the Association by certified mail, return receipt requested, addressed to the Association and sent to its address stated herein, identifying the Mortgage that it holds, guarantees, or insures, which notice designates the place to which notices are to be given by the Association to such party, then such party shall have the right to receive, from the Association, prompt written notice of the following:

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

The failure of any Mortgagee to respond within thirty (30) days to any written request of the Association, sent by registered or certified mail, return receipt requested, for approval of an addition or amendment to the Condominium Documents wherever Mortgagee approval is required shall constitute an implied approval by that Mortgagee of the proposed addition or amendment.

Section 14.3: Other Mortgagee Rights. Notwithstanding any other provision of this Declaration or the Bylaws, the Association may not change the period for collection of regularly budgeted Common Expenses to other than monthly without the consent of all Mortgagees that have served written notice to the Association as provided in Section 14.2 above. Any representative of a Mortgagee may attend and address any meeting that an Owner may attend.

Section 14.4: Enforcement. The provisions of this Article XIV are for the benefit of all Mortgagees and their successors, and may be enforced by any of them by any available means.

## ARTICLE XV CONDEMNATION

In the event all or any part of the Property shall be taken in condemnation or by eminent domain, the award for such taking shall be distributed in accordance with the procedures set forth in N. C. G. S. 47C-1-107.

## ARTICLE XVI GENERAL PROVISIONS

Section 16.1: All powers granted in this Declaration, the Articles or the Bylaws to the Association shall be exercisable by the Executive Board, except as otherwise expressly provided in the Declaration, the Bylaws, or N. C. G. S. Chapter 47C.

Section 16.2: The Association may adopt and enforce reasonable rules and regulations not in conflict with the Declaration and supplements thereto, as more fully provided in the Bylaws.

Section 16.3: The Association shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration, the Articles or the Bylaws of the Association. Failure by the Association to enforce any covenant or restrictions therein shall in no event be deemed a waiver of the right to do so thereafter.

Upon notice to the Association of a violation hereunder and a failure of the Association to take action upon said violation within ninety (90) days, any Owner, or other holder of an interest in the Condominium may undertake the enforcement of the provisions of the Declaration at his own expense.

Section 16.4: Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 16.5: The covenants and restrictions of this Declaration shall run with and bind the Land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended by an instrument signed by not less than the Owners of at least sixty percent (60%) of the total percentage undivided interests in the Common Elements; provided, however, during the Period of Declarant Control, no such amendment shall be effective without the written approval and consent of the Declarant. Any such amendment to this Declaration must be recorded.

Section 16.6: The fiscal year of the Association shall begin on the first day of January and end the 31st day of December of each year, except that the first fiscal year shall begin on the date of incorporation.

Section 16.7: The Land and the Building(s) are currently encumbered by the Lien of a Deed of Trust (MultiPurpose) dated September 24, 2003, recorded in Book 010460, Page 00646, Wake County Registry executed and delivered by Declarant to Southland Associates, Inc., as Trustee, for the benefit of Central Carolina Bank, a Division of National Bank of Commerce. A Consent of Mortgagee executed by said Trustee and said Bank consenting to the execution and recordation of this Declaration is attached hereto as Exhibit "E" and made a part of this Declaration.

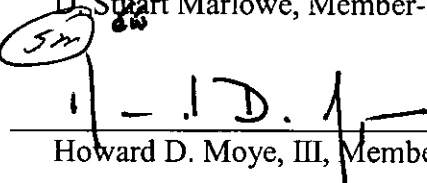


Section 16.8: In accordance with Raleigh City Code Section 10-374(b), in no case shall the City of Raleigh be responsible to the Condominium, any Unit in the Condominium, any Owner of a Unit or the occupant(s) of any Unit for failing to provide any emergency or regular fire, police or other public service when such failure is due to the lack of access to such areas due to inadequate design or construction, blocking of access routes, inadequate maintenance, or any other factor within the control of the Declarant, the Association, an Owner of a Unit or the occupant(s) of any Unit. In no case shall the City of Raleigh or the State of North Carolina be responsible for maintaining any private street. Such responsibility shall rest with the Association, the Owners or the occupant(s) of the Unit in that such private streets will not be constructed to the minimum standards sufficient to allow their inclusion for public maintenance.

IN WITNESS WHEREOF, the Declarant, MARLOWE & MOYE, LLC, a North Carolina limited liability company, has hereunto caused this instrument to be signed and sealed in its company name by its Member-Managers, all by authority of its Member duly given, this instrument being executed and delivered on the day and year first written above.

MARLOWE & MOYE, LLC  
a Limited Liability Company

By:  (SEAL)  
D. Stuart Marlowe, Member-Manager

By:  (SEAL)  
Howard D. Moye, III, Member-Manager

[ACKNOWLEDGMENTS FOLLOW ON NEXT PAGE]

STATE OF NORTH CAROLINA  
COUNTY OF Johnston

I, Patricia C. Benson, a Notary Public of the County and State aforesaid, certify that D. STEWART MARLOWE, Member-Manager of MARLOWE & MOYE, LLC personally appeared before me this day and acknowledged the execution of the foregoing instrument. Witness my hand and official stamp or seal, this the 12<sup>th</sup> day of August, 2004.



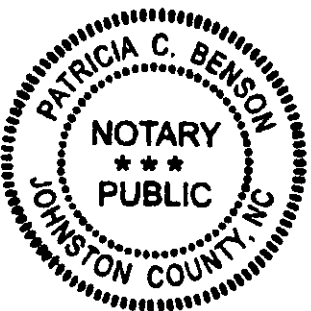
Patricia C. Benson  
NOTARY PUBLIC

STATE OF NORTH CAROLINA  
COUNTY OF Johnston

I, Patricia C. Benson, a Notary Public of the County and State aforesaid, certify that HOWARD D. MOYE, III, Member-Manager of MARLOWE & MOYE, LLC personally appeared before me this day and acknowledged the execution of the foregoing instrument. Witness my hand and official stamp or seal, this the 12<sup>th</sup> day of August, 2004.

[NOTARIAL SEAL]

My Commission Expires: 8-1-2009



Patricia C. Benson  
NOTARY PUBLIC

**EXHIBIT "A"**

**BEING all of New Lot 1 as shown on that Recombination Plat of Marlowe & Moye, LLC dated November 4, 2002 and recorded in Book of Maps 2002, Page 02055 of the Wake County Registry, as revised and shown on plat recorded in Book of Maps 2003, Page 1625 of the Wake County Registry.**

EXHIBIT "B"



# **NORTH CAROLINA**

## **Department of The Secretary of State**

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To all whom these presents shall come, Greetings:

I, **ELAINE F. MARSHALL**, Secretary of State of the State of North Carolina, do hereby certify the following and hereto attached to be a true copy of

### **ARTICLES OF INCORPORATION**

**OF**

**MILLBROOK WEST OFFICE CONDOMINIUM OWNERS ASSOCIATION, INC.**

the original of which is now on file and a matter of record in this office.



IN WITNESS WHEREOF, I have hereunto  
set my hand and affixed my official seal at the  
City of Raleigh, this 7th day of October, 2003

*Elaine F. Marshall*  
Secretary of State

**ARTICLES OF INCORPORATION  
OF  
MILLBROOK WEST OFFICE CONDOMINIUM  
OWNERS ASSOCIATION, INC.  
A NON-PROFIT CORPORATION**

The undersigned, being a natural person of full age, does hereby make and acknowledge these Articles of Incorporation for the purpose of forming a non-profit corporation under and by virtue of Chapter 55A of the General Statutes of North Carolina and the laws of the State of North Carolina.

**ARTICLE I  
NAME**

The name of the corporation is MILLBROOK WEST OFFICE CONDOMINIUM OWNERS ASSOCIATION, INC.

**ARTICLE II  
DURATION**

The period of duration of the corporation is perpetual.

**ARTICLE III  
PURPOSES AND POWERS**

The purposes and powers for which the corporation is organized are as follows:

- (1) To operate and manage a condominium known as MILLBROOK WEST OFFICE CONDOMINIUM organized pursuant to Chapter 47C of the North Carolina General Statutes and located in Raleigh, Wake County, North Carolina;
- (2) To undertake the performance of, and carry out the acts and duties incident to the administration of the operation and management of the Association in accordance with the terms, provisions, conditions and authorization contained in both these Articles and in the Declaration of Condominium for MILLBROOK WEST OFFICE CONDOMINIUM (the "Declaration") which shall be recorded in the Wake County Public Registry at such time as the real Property described on Exhibit "A" attached hereto and the improvements thereon are submitted to the Declaration;
- (3) To make, establish and enforce reasonable rules and regulations governing the use of the common elements, land, and other real and personal property which may be owned by the Association itself;
- (4) To make, levy and collect assessments against Condominium unit owners; to provide the funds to pay for common expenses of the Association as provided in the Declaration and to use and expend the proceeds of assessments in the exercise of the powers and duties of the Association; to use said assessments to promote the acquisition, improvement and maintenance of the common

elements, services and facilities devoted to this purpose and related to the use and enjoyment of the common elements, including, but not limited to, the cost of repair, replacement and additions thereto, the cost of labor, equipment, materials, management and supervision thereof, the maintenance of insurance in accordance with the Bylaws of the Association (the "Bylaws"), including the employment of accountants, attorneys and other professional services providers to represent the Association when necessary for such other needs as may arise;

(5) To maintain, repair, replace and operate the properties for which the Association is responsible;

(6) To enforce by any legal means, the provisions of the Declaration, the Bylaws and the rules and regulations for the use of the Association Property;

(7) To delegate to such manager or managers all powers and duties of the Association except those powers and duties which are specifically required to have approval of the Association's Executive Board or the membership of the Association; and

(8) To have all of the common law and statutory powers of a non-profit corporation and also those powers as set out in the Declaration and all powers reasonably necessary to implement the purposes of the Association.

#### **ARTICLE IV MEMBERSHIP**

A. The Association shall have members which shall be limited solely to the owners of units in MILLBROOK WEST OFFICE CONDOMINIUM. Membership shall be automatically established by acquisition of fee title to a Condominium unit whether by conveyance, devise, descent, or judicial decree. A new owner designated in such deed or other instrument shall thereupon become a member of the Association, and the membership of the prior owner as to a designated Condominium unit shall be terminated. Each new owner shall deliver to the Association a true copy of such deed or instrument of acquisition of title.

B. Neither one's membership in the Corporation nor a member's share in the funds and assets of the Association may be assigned, hypothecated or transferred in any manner except as an appurtenance to MILLBROOK WEST OFFICE CONDOMINIUM.

#### **ARTICLE V EXECUTIVE BOARD**

A. The number of members of the Executive Board and the method of election of same shall be fixed by the Bylaws; however, the number of Board members shall not be less than three. The first election by the members of the Association for members of the Executive Board shall not be held until after the Declarant (i.e. MARLOWE & MOYE, LLC its successors or assigns) has

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relinquished control of the Association as set out in the Declaration. Thereafter, the election of members to the Executive Board shall take place at the annual meeting of the membership as provided in the Bylaws. After the Declarant has relinquished control, there shall be a special meeting of the membership for the purpose of electing a new Executive Board to serve until the next annual meeting and until new members of the Executive Board are elected and qualified.

B. To the fullest extent permitted by the North Carolina Non-Profit Corporation Act as it exists or may hereafter be amended, no person who is serving or who has served as a member of the Executive Board shall be personally liable for monetary damages for breach of any duty as a director. No amendment or repeal of this Article, nor the adoption of any other amendment to these Articles of Incorporation inconsistent with this Article, shall eliminate or reduce the protection granted herein with respect to any matter that occurred prior to such amendment, repeal or adoption.

#### **ARTICLE VI INITIAL EXECUTIVE BOARD**

The number of members constituting the initial Executive Board shall be three and the names and addresses of the persons who are to serve as the first Executive Board are as follows:

NAME	ADDRESS
Howard D. Moye, III	314 W. Millbrook Road Suite 013 Raleigh, NC 27609
Stewart Marlowe	314 W. Millbrook Road Suite 013 Raleigh, NC 27609
Jill Marlowe	314 W. Millbrook Road Suite 013 Raleigh, NC 27609

#### **ARTICLE VII TAX STATUS**

The Corporation shall have all the powers granted non-profit corporations under the laws of the State of North Carolina. Notwithstanding any other provision of these Articles, this Corporation hereby elects tax-exempt status under Section 528 of the Internal Revenue Code of 1986. This Corporation shall not carry on any activities prohibited by a Corporation electing tax-exempt status under Section 528, or any corresponding sections or provisions of any future United States Internal Revenue law. It is further provided that no distributions of income of the Corporation are to be made to members, directors or officers of the corporation; provided, however, that members of the Corporation may receive a rebate of any excess dues and assessments previously paid.

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**ARTICLE VIII  
DISTRIBUTION OF ASSETS UPON DISSOLUTION**

Upon dissolution of the corporation, the assets thereof shall, after all liabilities and obligations of the corporation have been paid, or adequate provision made therefor, be dedicated to an appropriate public agency to be used for purposes similar to those for which the corporation was created or, in the event that such dedication is refused acceptance, distributed to any association or associations organized for purposes similar to those set for in Article III above, all in accordance with any further provisions of the Bylaws of the corporation.

**ARTICLE IX  
REGISTERED OFFICE AND AGENT**

The address of the initial registered office of the corporation in the State of North Carolina is 314 W. Millbrook Road, Suite 013, Raleigh, Wake County, North Carolina 27609 and the name of the initial registered agent at such address is Howard D. Moye, III.

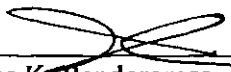
**ARTICLE X  
PRINCIPAL OFFICE**

The address of the principal office of the Association is 314 W. Millbrook Road, Suite 013, Raleigh, Wake County, North Carolina 27609 and the mailing address of the principal office of the Association is P. O. Box 20667, Raleigh, Wake County, North Carolina 27619.

**ARTICLE XI  
INCORPORATOR**

The name and address of the incorporator is James K. Pendergrass, Jr., 4101 Lake Boone Trail, Suite 202, Raleigh, Wake County, North Carolina 27607.

IN WITNESS WHEREOF, the incorporator has hereunto set his hand and seal this 7<sup>th</sup> day of October, 2003.

  
\_\_\_\_\_  
James K. Pendergrass, Jr.  
Incorporator



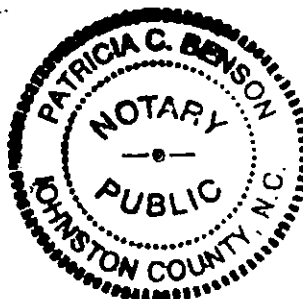
NORTH CAROLINA  
WAKE COUNTY

I, Patricia C. Benson, the undersigned Notary Public, do hereby certify that James K. Pendergrass, Jr., personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and notarial seal this the 7<sup>th</sup> day of October, 2003.

Patricia C. Benson  
Notary Public

My commission expires: 8-1-2004



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**EXHIBIT "A"**

**BEING all of New Lot 1 as shown on that Recombination Plat of  
Marlowe & Moye, LLC dated November 4, 2002 and recorded in Book of  
Maps 2002, Page 02055 of the Wake County Registry.**

**EXHIBIT "C"**  
**BYLAWS**  
**OF**  
**MILLBROOK WEST OFFICE CONDOMINIUM OWNERS**  
**ASSOCIATION, INC.**

These are the Bylaws of MILLBROOK WEST OFFICE CONDOMINIUM OWNERS ASSOCIATION, INC., a North Carolina non-profit corporation (the "Association"). The Association's Articles of Incorporation (the "Articles") have been filed in the Offices of the North Carolina Secretary of State. All words, phrases and terms used in these Bylaws where are not defined herein shall have the meanings given such words, phrases and terms as set forth in the Declaration of Condominium for MILLBROOK WEST OFFICE CONDOMINIUM recorded in the Wake County Public Registry (the "Declaration") or in the North Carolina Condominium Act set forth in Chapter 47C of the North Carolina General Statutes (the "Condominium Act").

**ARTICLE I**  
**MEMBERSHIP**

Section 1.1: Qualification. Membership in the Association shall be limited solely to Owners of Units in MILLBROOK WEST OFFICE CONDOMINIUM and every Owner of a Condominium Unit shall automatically be a Member of the Association. Membership in the Association shall be appurtenant to and may not be separated from Unit Ownership. Membership shall be automatically established by acquisition of fee title to a Condominium Unit whether by conveyance, devise, dissent, or judicial decree.

Section 1.2: Annual Meetings. The first annual meeting of the Owners shall be held within one (1) year from the date of incorporation of the Association, and each subsequent regular annual meeting of the Owners shall be held on the same day and the same month of each year thereafter or such other day as the Owners shall determine, provided, however in no event shall the Association fail to have at least one (1) meeting regularly scheduled meeting each year.

Section 1.3: Special Meetings. Special meetings of the Owners may be called at any time by the President or the Executive Board, or upon written request of twenty percent (20%) of the Owners, pursuant to N. C. G. S. 47C-3-108.

Section 1.4: Notice of Meetings. Written notice of each meeting shall be given by, or at the direction of, the Secretary or person(s) authorized to call the meeting, by hand delivering or mailing a copy of such notice, postage prepaid, at least ten (10) days and not more than fifty (50) days before such meeting to each Owner as provided in N. C. G. S. 47C-3-108.

Section 1.5: Budget Meetings. Within thirty (30) days after adoption of any proposed budget for the Condominium, the Executive Board shall provide a summary of the budget to all the

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Unit Owners. The budget shall be considered at a meeting of the Unit Owners as set forth in N. C. G. S. 47C-3-103(c).

Section 1.6: Quorum. The presence at the meeting of Owners or proxies entitled to cast ten percent (10%) of the votes shall constitute a quorum for any action except as otherwise provided by law.

Section 1.7: Voting Rights. Every Unit Owner shall be entitled to that number of votes for each Unit owned, which vote shall be equal to the undivided percentage interest such Owner owns in the Common Elements. If fee simple title to a Unit is owned by more than one (1) person or entity, all such persons or entities shall be members of the Association, but the vote with respect to any such jointly owned Unit shall be cast as hereinafter provided. If the fee simple title to any Unit is owned of record by two (2) or more persons or entities (whether individually or in a fiduciary capacity), the vote with respect to any such jointly owned Unit may be cast by any one (1) of the joint Owners in person or by proxy, except that the holder or holders of a life estate in a Unit shall have the sole right to cast the vote allocated to that Unit without protest being made promptly to the person presiding over the applicable meeting by any of the other of such joint Owners or joint life estate holders. In no event may a vote with respect to any Unit be divided among joint Owners of the Unit or cast in any manner other than as a whole, it being the express intention of this Section 1.7 that there be no "splitting" of votes that may be cast by any Member or Members.

Section 1.8: Proxies. Pursuant to N. C. G. S. 47C-3-110, votes allocated to a Unit may be cast pursuant to a dated written proxy signed by a Unit Owner. A Unit Owner may not revoke a proxy except by written notice delivered to the person presiding over a meeting of the Association. A proxy terminates one (1) year after its date, unless it specifies a shorter term.

Section 1.9: Required Votes. Except as may be otherwise required in the Declaration, these Bylaws or by applicable law, all questions voted upon by the Association shall be decided by the vote of those Owners owning a majority of the undivided percentage interests in the Common Elements.

Section 1.10: Actions Without Meeting. Any action that may be taken at a meeting of the Owners may be taken without a meeting if such action is authorized in a writing setting forth the action taken which is signed by all Owners entitled to vote upon such action at a meeting and such consent is filed with the Secretary of the Association and inserted in the minute book of the Association.

## **ARTICLE II**

### **OFFICERS AND EXECUTIVE BOARD; SELECTION; TERM OF OFFICE**

Section 2.1: Number, Term of Office and Election. The affairs of the Association shall be managed by an Executive Board of no less than three (3) Members, who shall be entitled to act on behalf of the Association. Subject to the initial Period of Declarant Control as set forth in Article

I of the Declaration, nomination for election of the Executive Board shall be made from the floor at the annual meeting. Election shall be by secret written ballot and by a majority of the Unit Owners when a quorum is present. Cumulative voting is not permitted. At the first annual meeting following the Period of Declarant Control, three (3) Executive Board Members shall be elected to serve until the following annual meeting. Each Executive Board Member shall serve for a term of one (1) year or until his or her death, resignation, retirement, removal, disqualification or until his or her successor is elected and qualified.

Section 2.2: Removal. Any Executive Board Member, except those appointed by the Declarant, may be removed in accordance with N. C. G. S. 47C-3-103(b). In the event of death, resignation or removal of a director, his successor shall be selected by a majority of the Members voting at a meeting when a quorum is present.

Section 2.3: Compensation. No Executive Board Member shall receive compensation for any service he may render to the Association. However, with the prior approval of the Executive Board, any Board Member may be reimbursed for actual expenses incurred in the performance of his duties.

Section 2.4: Action Without Meeting. The Executive Board shall have the right to take any action in the absence of a meeting which they could take at a duly held meeting by obtaining the written consent of all the Executive Board Members to the action. Any action so approved shall be filed in the corporate books and records and shall have the same effect as though taken at a meeting of the Executive Board.

### **ARTICLE III MEETINGS OF EXECUTIVE BOARD**

Section 3.1: Meetings. Meetings of the Executive Board shall be held semiannually without notice, at such place and hour as may be fixed from time to time by resolution of the board. Special Meetings of the Executive Board may be called by any Member of the Executive Board, after not less than five (5) days notice to each Executive Board Member.

Section 3.2: Quorum. A majority of the Executive Board Members shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the Executive Board Members present at a duly held meeting shall be regarded as the act of the board.

### **ARTICLE IV POWERS, DUTIES AND AUTHORITY OF THE EXECUTIVE BOARD**

Section 4.1: Powers and Authority of Executive Board. Subject to the provisions contained

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herein and applicable law, the Executive Board shall have the power and authority to exercise all the rights of the Association, including, but not limited to:

(a) Adopt rules and regulations governing the use of the Common Elements, the personal conduct of the Owners and their tenants, family members or guests, and establish penalties for the infraction thereof;

(b) Suspend the voting rights of use of the Limited Common Elements allocated to an Owner during any period in which such Owner shall be in default in the payment of any assessment levied by the Association. Such rights may also be suspended after notice and hearing, for a period not to exceed sixty (60) days for infraction of published rules and regulations;

(c) Declare the office of an Executive Board member to be vacant in the event such Member shall be absent from three (3) consecutive regular meetings of the Executive Board;

(d) Employ a manager, an independent contractor, or other employees as they deem necessary, and prescribe their duties; provided always, any contract for professional management must contain a clause requiring not more than ninety (90) days termination notice;

(e) Procure, maintain and pay premiums on an insurance master policy(s) and equitably assess the Owners of the same for their pro rata portion of such expense;

(f) Impose and receive any payments, fees, or charges for the use, rental, or operation of the Common Elements other than for service provided to Unit Owners;

(g) Exercise any other powers necessary and proper for the governance and operation of the Association; and

(h) Have and to exercise any and all powers, rights and privileges which a corporation organized under the Non-Profit Corporation Act of the State of North Carolina by law may now or hereafter have or exercise.

Section 4.2: Duties of Executive Board. It shall be the duty of the Executive Board to:

(a) Cause the Common Elements to be maintained, repaired, and replaced as necessary, and to assess the Unit Owners to recover the cost of the upkeep of the Common Elements;

(b) Serve as the architectural control committee after the Period of Declarant Control as provided in Article VII of the Declaration;

(c) Keep a complete record of all its act and corporate affairs and present a statement thereof to the Owners at the annual meeting, or at any special meeting when such statement is requested in writing by twenty percent (20%) of the Owners;

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(d) Supervise all officers, agents and employees of the Association, and see that their duties are properly performed;

(e) Fix the amount of the annual assessment at least thirty (30) days in advance of each annual assessment period pursuant to the provisions set forth in the Declaration and N. C. G. S. 47C-3-103(c);

(f) Send written notice of each assessment to every Owner at least thirty (30) days in advance of each annual assessment period;

(g) Foreclose the lien against any Property for which assessments are not paid within thirty (30) days after the applicable due date or to bring an action at law against the Owner personally obligated to pay the same;

(h) Issue, or have issued, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made for the issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment;

(i) Procure and maintain, at all times, adequate hazard insurance on the Property owned by the Association and all Property for which the Association has the duty to maintain, and sufficient liability insurance to adequately protect the Association as provided in N. C. G. S. 47C-3-113; and

(j) Cause all officers or employees, including officers and employees of professional management, having fiscal responsibilities to be bonded, as it may deem appropriate.

## **ARTICLE V OFFICERS AND THEIR DUTIES**

Section 5.1: Officers. The Officers of this Association shall be a President, Vice President, Secretary and Treasurer. The Officers shall be appointed by the Executive Board from among the Executive Board Members.

Section 5.2: Powers and Duties of Officers.

(a) The President shall preside at all meetings of the Executive Board; see that orders and resolutions of the Executive Board are carried out; sign all Leases, Mortgages, Deeds and other written instruments.

(b) The Vice President shall act in the place of the President in the event of his absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him by the Executive Board;

(c) The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Executive Board and of the Owners; keep the corporate seal of the Association and affix it on all papers requiring said seal; serve notice of meetings of the Executive Board and of the Owners; keep appropriate current records showing the Owners together with their addresses; prepare, execute, certify, and record amendments to the Declaration on behalf of the Association; and perform such other duties as required by the Executive Board;

(d) The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and disburse such funds as directed by the Executive Board; sign all Checks and Promissory Notes (such Checks and Promissory Notes to be co-signed by the President) of the Association; keep proper books of account; cause an annual audit of the Association books to be made by a public accountant at the completion of each fiscal year; and prepare an annual budget and a statement of income and expenditures to be presented to the Membership at its annual meeting, and deliver a copy to each Owner. Nothing herein shall preclude the Treasurer from delegating his/her duties to a property manager provided such property owner is properly bonded and approved in advance by the Executive Board.

Section 5.3: Term. Each officer of the Association shall be elected annually by the Executive Board and each shall hold office for one (1) year or until his or her death, resignation, retirement, removal, disqualification or until his or her successor is elected and qualified.

Section 5.4: Special Appointments. The Executive Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority and perform such duties as the Executive Board may, from time to time, determine.

Section 5.5: Resignation and Removal. Any officer may be removed from office with or without cause by the Executive Board. Any officer may resign at any time giving written notice to the Executive Board, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 5.6: Vacancies. A vacancy in any office may be filled by appointment by the Executive Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he or she replaces.

Section 5.7: Multiple Offices. The offices of Secretary and Treasurer may be held by the same person. No person shall simultaneously hold more than one (1) of any of the other offices except in the case of special offices created pursuant to Section 5.4 of this Article.

Section 5.8: Compensation. No officer shall receive any compensation from the Association for acting as such.



## **ARTICLE VI BOOKS AND RECORDS**

The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any Owner or any Mortgagee. The Articles of Incorporation and the Declaration and Bylaws of the Association shall be available for inspection by any Owner at the principal office of the Association, where copies may be purchased at reasonable cost.

## **ARTICLE VII CORPORATE SEAL**

The Association shall have a seal in circular form having within its circumference the words: "MILLBROOK WEST OFFICE CONDOMINIUM OWNERS ASSOCIATION, INC."

## **ARTICLE VIII INDEMNIFICATION OF DIRECTORS AND OFFICERS**

The Association shall indemnify such persons, for such expenses and liabilities, in such manner, under such circumstances, and to such extent, as permitted by Sections 55A-17.1, 55A-17.2, and 55A-17.3 of the North Carolina General Statutes, as now enacted or hereafter amended.

## **ARTICLE IX FISCAL MANAGEMENT**

Section 9.1: Depository. The initial insured depository for the funds the Association shall be RBC Centura Bank and the Executive Board may change such depository from time to time to another insured depository. Withdrawal of funds from such depository shall be initially by check signed by the Declarant during the Period of Declarant Control, and thereafter only by checks signed by any two (2) officers of the Association or any other persons authorized by the Executive Board.

Section 9.2: Fidelity Bonds. Fidelity Bonds shall be maintained by the Association, in an amount determined by the Executive Board, 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.

Section 9.3: Payment Vouchers. Payment vouchers shall be approved by the Executive Board, provided that the Executive Board may delegate such authority to any officer or managing agent of the Association.

Section 9.4: Financial Records. Subject to applicable Federal and State privacy laws, the attorney-client privilege and the provisions of N. C. G. S. Chapter 55A, the financial records of the

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Association shall be made reasonably available for examination to the Owners upon written request to the Association.

Section 9.5: Fiscal Year. The fiscal year of the Association shall be from January 1 of each year through December 31 of the immediately following calendar year; however, the first fiscal year shall commence on the date the first Unit is conveyed.

## **ARTICLE X ASSESSMENTS**

Section 10.1: Obligation of Members to Pay Assessments; Amount of Levy. Until the Association levies a Common Expense assessment, Declarant shall pay all accrued expenses of the Condominium. Thereafter, each Owner shall be personally and severally liable for the Common Expenses that are levied against his or her Unit while an Owner. Each Unit shall be assessed in accordance with that Unit's percentage of Common Expenses as allocated by the Declaration, as amended.

Section 10.2: Allocation of Common Surplus. Any common surplus, including funds in reserve accounts, may be allocated to each Unit upon a two-thirds (2/3) vote of the Owners voting at a meeting when a quorum is present, in accordance with its percentage of Common Expenses. If allocated, the surplus shall be owned by the Owner of that Unit and may be paid to the Owner or credited against that Unit's share of Common Expenses subsequently assessed.

Section 10.3: Preparation of Budget and Levying of Assessment. For each fiscal year, beginning with the fiscal year January 1, 2003, the Executive Board shall prepare and adopt a proposed budget, including estimates of the amount necessary to pay the Common Expenses, together with amounts considered necessary by the Executive Board for reserves. Within thirty (30) days after adoption of each annual budget, the Executive Board shall provide each Owner with a copy of such budget, and shall give each Owner notice of the assessment made against the Owner's Unit based upon such budget and of the interest to be charged on delinquent payments. The budget shall be ratified unless a majority in interest of all Owners rejects the budget at a duly held meeting of Owners, in which event the last ratified budget proposed by the Executive Board. The assessment shall be deemed levied upon the adoption of the budget by the Executive Board, subject to the disapproval of the budget by the Owners.

Section 10.4: Lien for Assessments. Any assessment which remains unpaid shall constitute a lien on that Unit when filed of record in the Office of the Clerk of Superior Court for Wake County, North Carolina. Such lien may be foreclosed as provided in Section 47C-3-116 of the North Carolina General Statutes. Such lien shall be prior to all other liens and encumbrances on the Unit except (i) liens and encumbrances (specifically including, but not limited to, a mortgage or deed of trust on the Unit) recorded in the Wake County real estate records before the filing of the lien for assessments in the Office of the Clerk of Superior Court, and (ii) liens for real estate taxes and other governmental assessments or charges against the Unit.

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Section 10.5: Payment of Assessments. Assessments shall be payable when notice thereof is given, but shall not be delinquent if paid at the time and in the amounts specified by the Executive Board in the notice of assessment. Except for special assessments, one-twelfth (1/12) of the annual assessment shall be paid on or before the first day of each month. Payments shall be made to the Association, or as the Executive Board may otherwise direct from time to time.

Section 10.6: Funds and Reserves. All sums collected by the Association from assessments shall be accounted for as follows:

(a) Reserve Fund for Repairs and Replacements. To this fund shall be credited all sums collected for the purpose of effecting repairs and replacements of structural elements and mechanical equipment, and other Common Elements, of the Condominium.

(b) Working Capital and Operating Reserve Fund. To this fund shall be credited all sums collected to provide a reserve for liquidity. The fund may be used to meet deficiencies from time to time as a result of delinquent payments of assessments and other contingencies.

(c) General Maintenance Fund. To this fund shall be credited collections of assessments for all Common Expenses for the current year as well as common profits and surplus from the previous year, and not to be credited to either of the above reserve funds.

The above funds shall be established by the Executive Board and shall be funded by regular installments rather than by extraordinary special assessments. The reserve funds described above shall be maintained in such amounts as deemed necessary or desirable by the Executive Board and required by applicable law. To the extent maintained, funds shall be held in such accounts and with such insured depositories as the Executive Board, in its discretion, selects.

Section 10.7: Special Assessments. In addition to the assessments levied pursuant to Section 10.3 herein, the Executive Board, in its discretion, but subject to the requirements of Article IV of the Declaration, may levy special assessments at such other and additional times as in its judgment are required for the discharge of the Association's responsibilities.

Section 10.8: Common Expenses Benefitting Less Than All Sites. Any Common Expense associated with the maintenance, repair, or replacement of a Limited Common Element shall be assessed against the Unit, in equal shares to the Units, to which such Limited Common Element was allocated at the time the expense was incurred. In addition, the Association may assess any item of Common Expenses benefitting less than all of the Units against the Units benefitted in the proportion that their Common Expense liabilities bear to each other.

Section 10.9: Failure to Prepare Budget and Levy Annual Assessment; Deficiencies in Procedure. The failure or delay of the Executive Board in preparing any budget shall not constitute a waiver or release of the Owners' obligation to pay assessments whenever the same shall be determined and levied by due action. Until a new assessment is levied pursuant to Section 10.3, each Owner shall continue to pay the existing assessment in the same amount and at the same periodic

times as levied. Non-material deficiencies or inadequacies in the procedure followed by the Executive Board in levying an assessment shall not in any way affect its validity or the obligation of Owners to pay such assessment.

Section 10.10: Assessment Roll; Certificate. All assessments shall be set forth upon a roll of the Units, which shall be available in the office of the Association for inspection at all reasonable times by Owners, Mortgagees and their duly authorized representatives. Such roll shall include, for each Unit, the name and address of the Owners, all assessments levied, and the amount of all assessments unpaid. The Association, upon written request, shall furnish to any such party a recordable statement setting forth the amount of unpaid assessments currently levied against his or her Unit. The statement shall be furnished within seven (7) business days after receipt of the request and shall be binding upon the Association and all Owners. A reasonable fee may be charged by the Executive Board for such statement.

Section 10.11: Late Charges/Delinquent Assessments. Assessments paid before they become delinquent shall not bear interest, but all delinquent sums shall be subject to a late fee to be set by the Executive Board and levied by the Association provided such late fees shall be in accordance with and not in excess of those allowed by N. C. G. S. Chapter 47 and other applicable law. All payments upon account shall be applied first to the payment of late fees and then to assessment, in installments thereof, longest delinquent. All such late fees shall constitute a lien with the same priority as the assessment on which such late fee is charged.

Section 10.12: Common Expenses. Common Expenses shall mean and include all sums declared Common Expenses by the North Carolina Condominium Act, or by any specific provision of these Bylaws or the Declaration, and shall include, without limitation, the following: real estate taxes and other governmental assessments or charges against the Condominium; premiums for any and all insurance maintained by the Association, including any deductible or coinsurance amount not covered by insurance; utility charges not collected from Owners; legal and accounting fees; costs and expenses incurred in connection with any litigation or administrative proceeding affecting the Association; deficits remaining from any prior assessment period; the cost, including fees and interest, incurred in connection with any borrowing done by the Association; the cost of all fidelity bonds; costs imposed upon the Association as a result of the performance, enforcement or amendment of, any agreement or easement to which the Association is a party or to which the Common Elements or Property, or any part of either thereof, is or may be subject; amounts determined necessary for reserve funds; and indemnity payments made by the Association pursuant to Article VIII hereof.

## **ARTICLE XI**

### **COMPLIANCE, ENFORCEMENT, FINES AND PENALTIES**

Section 11.1: Defaults and Remedies. A default in or failure to comply with any of the terms, conditions, obligations, and provisions of the North Carolina Condominium Act, the Declaration, these Bylaws, the Articles, or the rules and regulations established by the Executive Board, as the same may be amended from time to time, by any person or entity subject thereto, shall

give to any person or entity adversely affected by such default or failure, a claim for appropriate relief.

Section 11.2 : Notice of Default and Failure to Cure. In the event of any default or failure to act by an Owner, the Executive Board shall serve upon or mail to the defaulting Owner, and to each Mortgagee of the Owner's Unit when required under the Declaration, a written notice specifying the nature of the default, the cure thereof, and the time within which the cure shall be effected. Within the time limit specified in the notice, the defaulting Owner may cure the default specified, or serve upon or mail a written notice to the Executive Board requesting a hearing. If a hearing is so requested, the Executive Board shall thereafter serve upon or mail to the defaulting Owner, and to each such Mortgagee which was entitled to notice of the default as above provided, a notice specifying the time and place for such hearing. At the hearing, the Executive Board shall take such evidence and hear such testimony as it deems necessary or desirable. The Executive Board shall not exercise any remedies to obtain relief from the default until the hearing is over and the Executive Board has made its determination and served upon or mailed the same to the defaulting Owner and each such Mortgagee. The hearing may be continued from time to time as determined by the Executive Board. Upon taking such evidence and hearing such testimony, the Executive Board at the hearing or at such later time shall determine, in writing, and at its sole option, to waive the default in whole or in part to extend the time within which the default may be cured, to proceed immediately to levy a fine or penalty, or to exercise any one or more of the remedies available to the Executive Board due to such default. The Executive Board shall serve upon or mail to the defaulting Owner, and to each such Mortgagee which was entitled to notice of the default as above provided, a copy of its decision. If the defaulting Owner (i) does not cure the default or request a hearing within the time limit specified in the original notice of default given pursuant to this Section, or (ii) so request a hearing, but fails to cure the default (to the extent not waived by the Executive Board) within the extended time, if any, granted by the Executive Board after hearing, then the Executive Board shall serve upon or mail to the defaulting Owner, and to each Mortgagee which was entitled to notice of the default as above provided, a written notice of such Owner's failure to effect a cure, and the Executive Board may then proceed to take such action as it deems necessary to obtain relief.

Section 11.3: Remedy of Abatement in Addition to Other Remedies. In the event an Owner fails to effect the cure specified by the Executive Board within the time period set out in (i) or (ii) of Section 11.2 whichever is applicable, and where the default is a structure, thing, or condition existing in or on the Property, the Executive Board, or its duly authorized representative, shall have the right to enter upon any portion of the Property and summarily to abate and remove, at the defaulting Owner's expense (and levy assessment therefore), the structure, thing or condition constituting the default. The Executive Board, the Association, and their agents, employees, and representatives shall not thereby be deemed guilty of any manner of trespass.

Section 11.4: Non-Waiver of Covenants. The failure of the Association or of any Owner to enforce any term, provision, right, covenant, or condition that maybe granted by the Declaration, these Bylaws, the Articles, the rules and regulations established by the Executive Board or applicable law as the same may from time to time be amended, shall not constitute a waiver or abrogation of

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the right of enforcement in the future, irrespective of the number of violations or breaches that may have occurred.

Section 11.5: Liens for Assessments. Liens for assessments shall be enforced pursuant to Article X and not pursuant to this Article XI.

## **ARTICLE XII AMENDMENT**

An amendment to these Bylaws shall be made and approved by a vote of the Owners owning at least two-thirds (2/3) of the undivided percentage interests in the Common Elements at a duly held meeting.

MILLBROOK WEST OFFICE CONDOMINIUM  
OWNERS ASSOCIATION, INC.

By: 1/ - .1 D. 1/1 —  (SEAL)  
Howard D. Moye, III, President

**EXHIBIT "D"**  
**CERTIFICATE OF COMPLETION**  
**FOR MILLBROOK WEST**  
**OFFICE CONDOMINIUM**

The undersigned, being an Architect licensed under the provisions of Chapter 83A of the North Carolina General Statutes, hereby certifies that all structural components and mechanical systems of all buildings containing or compromising any Units created by the Declaration of Condominium for MILLBROOK WEST OFFICE CONDOMINIUM, to which this Certificate of Completion is attached and made a part, are substantially completed in accordance with the plans.

This Certificate of Completion is issued in accordance with and in satisfaction of the requirements of N. C. G. S. 47C-2-101.

This the 6<sup>th</sup> day of August, 2004.



By: \_\_\_\_\_

Erich J. Wilkinson  
Licensed Architect  
License No. 5745

STATE OF NORTH CAROLINA  
COUNTY OF Wake

I, Brenda P. Mitchell, a Notary Public of the County and State aforesaid, certify that Erich J. Wilkinson, a Licensed Architect personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal, this the 6 day of Aug, 2004.

Brenda P. Mitchell  
Notary Public

[SEAL]

My Commission Expires: 4-25-05

**EXHIBIT "E"****LENDER SUBORDINATION****MILLBROOK OFFICE CONDOMINIUM  
(CONSENT OF MORTGAGEE)**

CENTRAL CAROLINA BANK, a Division of National Bank of Commerce, being the Beneficiary under that certain Deed of Trust recorded in Book 010460, Page 00646, in the Wake County Registry, from Marlowe & Moye, LLC to SOUTHLAND ASSOCIATES, INC., Trustee conveying the Property or portions thereof encumbered by the Declaration of Condominium to which this Consent of Mortgagee is attached, does hereby consent to the recordation of the Declaration of Condominium [and the Plat(s) and Plan(s) described therein] and the imposing of the provisions of such Declaration of Condominium, inclusive of such Plat(s) and Plan(s), on the real property encumbered by said Deed of Trust more particularly described therein. Accordingly Beneficiary does hereby consent and agree that from and after the date hereinafter set forth, the provisions of such Declaration of Condominium, including all exhibits, attachments, supplements and amendments thereto together with the Plat(s) and Plan(s) referenced therein, shall be superior to the lien and operation of said Deed of Trust on said property. The execution of this Consent of Mortgagee by the Beneficiary and Trustee shall not be deemed or construed to have the effect of creating between said Trustee or Beneficiary and Marlowe & Moye, LLC, the relationship of partnership or of joint venture, nor shall said Trustee or Beneficiary be deemed to have accepted in any way nor shall the execution of this Consent of Mortgagee be deemed to impose upon said Trustee or Beneficiary any of the liabilities, duties or obligations of Marlowe & Moye, LLC, arising under such Declaration of Condominium. Said Beneficiary and Trustee execute this Consent of Mortgagee solely for the purposes set forth herein.

IN WITNESS WHEREOF, the undersigned have caused this Consent of Mortgagee to be duly executed and sealed, as of the 6th day of August, 2004.

TRUSTEE:

SOUTHLAND ASSOCIATES, INC.

By: Via President

BENEFICIARY:

CENTRAL CAROLINA BANK, a Division of  
of National Bank of CommerceBy: UIC President

[ACKNOWLEDGMENTS FOLLOW ON NEXT PAGE]



STATE OF NORTH CAROLINA  
COUNTY OF Wake

I, Judiam Walbrun a Notary Public of the County and State aforesaid,  
certify that Mr. Roudy Falco personally came before me this day and  
acknowledged that (s)he is ✓ President of Southland Associates, Inc., a North  
Carolina corporation, and that by authority duly given and as the act of the corporation, the  
foregoing instrument was signed by its ✓ President.

Witness my hand and official stamp or seal, this 6 day of Aug, 2004.

Judiam Walbrun  
Notary Public

My Commission Expires: May 6, 2007

STATE OF NORTH CAROLINA  
COUNTY OF Wake

I, Judiam Walbrun a Notary Public of the County and State aforesaid,  
certify that Sydney Bellingsley personally came before me this day and  
acknowledged that (s)he is ✓ President of Central Carolina Bank, a Division  
of National Bank of Commerce, a banking institution, and that by authority duly given and as the  
act of the corporation, the foregoing instrument was signed by its ✓ President.

Witness my hand and official stamp or seal, this 6 day of Aug, 2004.

Judiam Walbrun  
Notary Public

My Commission Expires: May 6, 2007

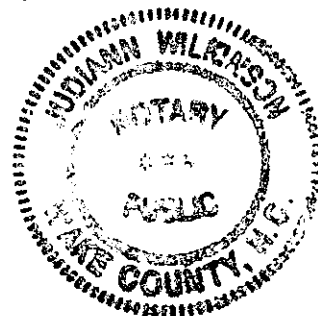


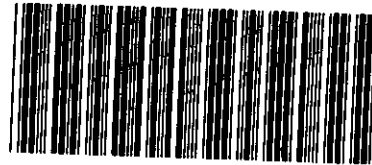
EXHIBIT "F"  
Permitted Exceptions

1. Deed of Trust from Marlowe & Moye, LLC to Southland Associates, Inc., Trustee for Central Carolina Bank, a Division of National Bank of Commerce, dated September 24, 2003, and recorded on September 25, 2003, at 1:12 p.m. in Book 10460, Page 646, Wake County Registry securing the principal sum of \$1,640,493.00.
2. Building Restriction lines, Easements, Rights-of-Way and/or any other facts shown on map recorded in Book of Maps 2003, Page 1625, Wake County Registry.
3. Taxes for 2004 and subsequent years.
4. Public Utility Easements and Rights-of-Way to public roads and streets.
5. 25 foot Cross Access Easement, 20 foot Sanitary Sewer Easement, 25 foot Access Easement, 30 foot Slope Easement and 12.5 foot Additional Right-of-Way to Millbrook Road.
6. Assignment of Leases, Rents and Profits from Marlowe & Moye, LLC to Central Carolina Bank dated September 24, 2003, recorded September 25, 2003 in Book 010460, Page 00654 of the Wake County Registry.
7. Deed of Easement dated July 30, 2003 recorded October 31, 2003 in Book 010525, Page 01008 of the Wake County Registry from Marlowe & Moye, LLC to Marvin G. Cardon and Marti A. Hampton.
8. Easement from Marlowe & Moye, LLC to Progress Energy Carolina's, Inc., dated October 22, 2003, recorded November 12, 2003 in Book 010540, Page 02112 of the Wake County Registry.

EXHIBIT “G”

205 West Millbrook Road

<u>Unit/Suite No.</u>	<u>Square Footage</u>	<u>Percentage Ownership Interest in Common Elements</u>	
205 - 100	1268 sq ft	5.6%	
205- 105	3857 sq ft	17.0%	
First Floor Core	<u>318 sq ft</u>		
Total First Floor	5443 sq ft		22.6%
205-200	1399 sq ft	6.2%	
205-205	1397 sq ft	6.1%	
205-210	1431 sq ft	6.3%	
205-215	1358 sq ft	6.0%	
Second Floor Core	<u>320 sq ft</u>		
Total Second Floor	5905 sq ft		24.6%
207 West Millbrook Road			
207-100	1540 sq ft	6.7%	
207-105	998 sq ft	4.4%	
207-110	1399 sq ft	6.1%	
207-115	1860 sq ft	8.1%	
First Floor Core	<u>326 sq ft</u>		
Total First Floor	6123 sq ft		25.3%
207-200	1656 sq ft	7.20%	
207-205	1327 sq ft	5.8%	
207-210	1329 sq ft	5.8%	
207-215	1999 sq ft	8.7%	
Second Floor Core	<u></u>		
Total Second Floor	6311 sq ft		27.50%
Grand Total	23,782 sq ft		100%



BOOK:010967 PAGE:01757 - 01800

Yellow probate sheet is a vital part of your recorded document.  
Please retain with original document and submit for rerecording.



**Wake County Register of Deeds**  
**Laura M. Riddick**  
**Register of Deeds**

**North Carolina – Wake County**

The foregoing certificate\_\_\_ of

*Patricia C. Benson*

\_\_\_\_ Notary(ies) Public is (are) certified to be correct. This instrument and this certificate are duly registered at the date and time and in the book and page shown on the first page hereof.

Laura M. Riddick, Register of Deeds

By:

*Frederick C. Baymon*

Assistant/Deputy Register of Deeds

**This Customer Group**

\_\_\_\_ # of Time Stamps Needed

**This Document**

*44* New Time Stamp  
# of Pages