



FOR REGISTRATION REGISTER OF DEEDS
 REBECCA P. SMITH
 NEW HANOVER COUNTY, NC
 2006 AUG 14 09:49:49 AM
 BK:5064 PG:2067-2097 FEE:\$101.00

INSTRUMENT # 2006045829

DECLARATION OF FOREST HILLS URBAN LOFTS CONDOMINIUM

This Declaration is made on _____, 2006, by Forest Hills Lofts, LLC, a North Carolina limited liability company, hereinafter referred to as "Declarant." Declarant hereby states and declares as follows:

A. Declarant is the owner of that tract of real estate located in New Hanover County, North Carolina, described as being _____ of record at Plat Book 16 Page 135, New Hanover County Registry. The tract of real estate and all rights and privileges appurtenant thereto are hereinafter collectively referred to as "the Property."

B. Declarant desires and intends to convert the Property into a condominium pursuant to N.C.G.S. Chapter 47C.

C. Declarant also desires and intends to subject the Property to certain covenants, conditions and restrictions to be binding upon all owners of any interest in the condominium and their lessees, guests, mortgagees, heirs, executors, administrators, successors and assigns.

THEREFORE, pursuant to N.C.G.S. §47C-2-101, Declarant hereby executes this Declaration to create Forest Hills Urban Lofts Condominium, and declares that henceforth the condominium and all units thereof shall be held and owned subject to the following terms, provisions, covenants, conditions and restrictions, which shall be binding upon all owners of any unit of the condominium and their lessees, guests, mortgagees, heirs, executors, administrators, successors and assigns:

1. Definitions. The definitions set forth in N.C.G.S. §47C-1-103 shall apply to this Declaration and are incorporated herein, except that the terms listed below shall have the specific meanings stated:

(a) "Association" shall mean Forest Hills Urban Lofts Condominium Association, Inc., a North Carolina nonprofit corporation, its successors and assigns.

(b) "Declarant" shall mean Forest Hills Lofts, LLC, its successors and

RETURNED TO *Jeff Stout*
 704-239-8817

assigns.

(c) "Declaration" shall mean this Declaration of Forest Hills Urban Lofts Condominium.

2. Name. The name of the condominium created by this Declaration is "Forest Hills Urban Lofts."

3. Maximum Number of Units. The maximum number of units of Forest Hills Urban Lofts Condominium that the Declarant may create at any time in Phase I is twenty (20). The number of presently existing units is ten (10). As stated in section 7 below, the Declarant reserves the right to annex additional real estate to the condominium, and to create an additional ten (10) units.

4. Description of Units. The presently existing ten (10) (one commercial unit and 9 residential units) units are contained in the Phase I building. The Phase II building will consist of ten (10) garage units on the first floor and twelve (12) residential units on floors 2 through 4. The units within the Phase I building are more fully described and depicted by those plans entitled, "Forest Hills Urban Lofts Phase I," of record at Book 16 Pages 135, New Hanover County Registry, which plans are incorporated herein and are hereinafter referred to as "the Plans." The identifying number for each unit is as shown on the Plans.

5. Boundaries of Units. The horizontal boundaries of each unit are the interior surfaces of its perimetric walls. The vertical boundaries of each unit are the interior surfaces of its ceilings and floors. In determining whether materials or items are common elements, limited common elements or parts of a unit, the terms and provisions of N.C.G.S. §47C-2-102 shall apply, and are incorporated herein.

6. Limited Common Elements. In determining whether materials or items are limited common elements and how they should be allocated, the terms and provisions of N.C.G.S. §47C-2-102 shall apply, and are incorporated herein. In addition, any part of a heating, ventilation and air conditioning system exclusively serving a unit that is located outside of the boundaries of the unit is a limited common element to be allocated exclusively to that unit.

7. Development Rights and Development Plan. The Declarant reserves the right to add Phase II to Forest Hills Urban Lofts Condominium on the same tract of real estate located in New Hanover County, North Carolina, described in Exhibit A attached hereto, recorded in Plat Book 16 Page 135, New Hanover County Registry ("Phase Two"). The Declarant also reserves the right to create out of Phase Two a maximum of fifteen (15) additional units of the condominium, together with additional common elements and limited common elements. The development rights described in this section must be exercised within five (5) years of the date of recording of this Declaration. The Declarant plans to construct one (1) additional building on Phase Two, that shall be virtually identical in style, composition and construction to the Phase I building as shown by the Plans, together with additional parking area and roadway to support the additional units. No other buildings shall be built by Declarant on Phase Two. All improvements to Phase Two shall be substantially completed before Phase Two is added to the

condominium. Notwithstanding any other provision herein, no property may be added to the condominium without the prior written consent of any federal agency that holds, insures or guarantees any mortgage on any existing unit in the condominium.

8. **Special Declarant Rights.** The Declarant reserves the following special declarant rights, which shall apply to all of the Property and which must be exercised within five (5) years of the date of recording of this Declaration:

- (a) to complete all improvements shown on the Plans;
- (b) to maintain a single, one-room sales office and/or management office within the Condominium;
- (c) to maintain signs advertising the condominium on the common elements;
- (d) to use easements through the common elements for the purpose of making improvements to the Property and to the real estate described in section 7 above;
- (e) to amend this Declaration as necessary to exercise the development rights reserved pursuant to Section 7 above or if required by any federal agency (see subsection 17(c) below); and
- (f) to appoint or remove any officer or member of the executive board of the Association, subject to the limitations stated in N.C.G.S. §47C-3-103(d) and (e), which are incorporated herein.

9. **Reservation of Easements.** Pursuant to N.C.G.S. §47C-2-116, the Declarant hereby reserves unto itself, its successors and assigns, such easements over all of the common elements of the condominium as may be reasonably necessary to exercise the development rights specified in section 7 above and the Special Declarant Rights specified in section 8 above.

10. **Allocated Interests.** The undivided interests in the common elements, the common expense liability and votes in the Association (collectively, "the allocated interests") are to be allocated among all units equally on a per unit basis. The allocation of interests and obligations among the presently existing units is and shall be based on the square footage per unit. If the Declarant exercises its development right to add units to the condominium, the allocated interests shall be reallocated among all then existing units equally on a per unit prorata basis.

11. **Forest Hills Urban Lofts Condominium Association.** Every unit owner shall be a member of the Association. Ownership of a fee interest in a unit shall be the sole qualification for membership, and membership shall be appurtenant to and shall not be separated from such ownership. The basic purposes and duties of the Association shall be to manage the condominium pursuant to the terms and provisions of Article 3 of Chapter 47C of the North Carolina General Statutes, this Declaration, any Bylaws promulgated by the Association and any Rules and Regulations promulgated by the Association or its executive board; and to promote and to protect the enjoyment and beneficial use and ownership of the units. The Association shall have all of the powers stated in N.C.G.S. §47C-3-102, the terms and provisions of which are incorporated herein. The Association shall also have the power to enforce in its own name

the terms and provisions of this Declaration, any bylaws promulgated by the Association and any Rules and Regulations promulgated by the Association. In addition, the Association shall have the power to:

- (a) Adopt and amend bylaws and rules and regulations;
- (b) Adopt and amend budgets for revenues, expenditures, and reserves and collect assessments for common expenses from unit owners;
- (c) Hire and terminate managing agents and other employees, agents, and independent contractors;
- (d) Institute, defend, or intervene in its own name in litigation or administrative proceedings on matters affecting the condominium;
- (e) Make contracts and incur liabilities;
- (f) Regulate the use, maintenance, repair, replacement, and modification of common elements;
- (g) Cause additional improvements to be made as a part of the common elements;
- (h) Acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property, provided that common elements may be conveyed or subjected to a security interest only pursuant to G.S. 47C-3-112;
- (i) Grant easements, leases, licenses, and concessions through or over the common elements;
- (j) Impose and receive any payments, fees, or charges for the use, rental, or operation of the common elements and for services provided to unit owners;
- (k) Impose charges for late payment of assessments and, after notice and an opportunity to be heard, levy reasonable fines not to exceed one hundred fifty dollars (\$150.00) for violations of the declaration, bylaws, and rules and regulations of the Association;
- (l) Impose reasonable charges for the preparation and recordation of amendments to the declaration, resale certificates or statements of unpaid assessments;
- (m) Provide for the indemnification of and maintain liability insurance for its officers, executive board, directors, employees and agents;
- (n) Exercise all other powers that may be exercised in North Carolina by a nonprofit corporation; and
- (o) Exercise any other powers necessary and proper for the governance and operation of the Association.

12. Restrictions on Use. All units shall be subject to the following restrictions on use:

- (a) The commercial unit shall be restricted to those commercial uses permitted by the City of Wilmington development ordinance and the applicable zoning classification.

(b) Each residential unit shall be used for residential purposes only. No commercial activities shall be conducted in or from any unit, except home occupations that do not involve physical access or visitation to the unit by any member of the general public and that do not involve any increased use whatsoever by any person of any of the common elements of the condominium or any general services provided to the condominium (such as trash removal).

(b) The maximum number of occupants of any one unit shall be that number which is the product of the number of bedrooms in a unit, as originally designed, times two, regardless of the age of any of the occupants.

(c) Noxious, offensive or loud activities shall not be conducted within any unit. Each unit owner shall refrain from any use of his or her unit that could reasonably cause embarrassment, discomfort, annoyance or nuisance to any other unit owner or occupant.

(d) All governmental codes, regulations and ordinances applicable to a unit shall be observed.

(e) No unit may be subdivided.

(f) Usual domesticated pets, excepting wild or exotic animals, may be kept within a unit; provided that such animal does not create or cause such levels of noise as to be considered a nuisance to a reasonable person. When outside of a unit, such pets must be maintained on a leash or similarly tethered and shall not be allowed to roam.

(g) No unit shall be used for hotel or other transient residential purposes. Every lease relating to any unit must be in writing, must be for a term of at least ninety (90) days and must provide that the tenant is obligated to observe all applicable terms and provisions of this Declaration, the bylaws of the Association and any rules and regulations promulgated by the Association or its executive board.

(h) All window coverings or dressings within a unit shall appear white or off-white from the exterior.

(i) No sign shall be exhibited on or from any unit.

13. Maintenance and Assessments. The Association shall maintain all of the common elements of the condominium, including the limited common elements, and assess all of the units for the costs thereof, pursuant to N.C.G.S. §§47C-3-107 and 113, the terms and provisions of which are incorporated herein. The Association shall have the power to assess the units as set forth in those statutes, and as follows:

(a) Regular Assessments. The Association shall establish an adequate reserve fund for the periodic maintenance, repair and replacement of the common elements. The Association shall charge each unit on a quarterly or monthly basis (as determined by its executive board) a Regular Assessment as its share of the common expenses and its contribution

to the reserve fund. Such assessment shall be based on a prorate portion of the total expenses budgeted that each unit in square footage represents to the total square footage of all units.

(b) Special Assessments. In addition to the Regular Assessments authorized in subsection (a) above, the Association may charge each unit, in any fiscal year of the Association, a Special Assessment applicable to that fiscal year only for the purpose of defraying, in whole or in part, the cost of any construction of a capital improvement upon and to any part of the common elements, including fixtures and personal property related thereto; provided that any such Special Assessment must be approved by the affirmative vote of at least two-thirds (2/3) of all units existing at the time of the vote, cast in person or by proxy at a meeting duly held in accordance with the bylaws of the Association. If authorized by the Association, Special Assessments may be paid by unit owners in monthly or quarterly installments, as determined by the executive board of the Association, and shall be based on the same formula as above.

(c) Rates of Regular and Special Assessments. Regular and Special Assessments shall be assessed against all units on a prorata basis based on the ratio of square footage of each unit to the total square footage of all units.

(d) Commencement of Regular and Special Assessments. Each unit shall be and become subject to Regular and Special assessments from and after the date of recording of this Declaration.

(e) Initial Assessments. In order to provide initial operating funds for the Association, each unit shall be assessed an Initial Assessment at the time of first occupancy of the unit. The Initial Assessment shall be due and payable at closing on sale of the unit to the first unit owner who intends to occupy the unit or lease the unit for occupancy. The amount of the Initial Assessment shall be an amount equal to three (3) months' Regular Assessment for each unit. The Initial Assessment due from each unit pursuant to this subsection shall be in addition to all other assessments created hereunder, and shall not be credited against any other assessment.

(f) Maintenance of Limited Common Elements. Any common expense associated with the maintenance, repair or replacement of a limited common element must be assessed only against the unit to which that limited common element is allocated.

(g) Assessments for Fines. The Association may assess individual units for any fines owed to the Association by the owner(s) of the unit for violations of this Declaration or any Bylaws or Rules and Regulations promulgated by the Association. Any such fine shall not exceed One Hundred Fifty Dollars (\$150.00) per occurrence.

(h) Certificates of Assessments. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association stating whether all assessments against a specified unit have been paid. A properly executed certificate of the Association as to the status of assessments against a unit shall be binding upon the Association as of the date of its issuance.

(i) **Payment and Collection of Assessments.** Each of the applicable assessments described above, together with interest thereon and the costs of collection thereof, including reasonable attorney's fees, and together with late fees, if any, shall be a lien upon each unit and the personal obligation of all of the owners of such unit. Assessments shall be paid in such manner and on such dates as the executive board of the Association may establish, which may include discounts for early payment, reasonable late fees for late payment and special requirements for unit owners with a history of late payment. No unit owner may exempt himself from liability for assessments by non-use of common elements, abandonment of his unit, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each unit owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action taken by the Association. Any assessment against any unit which remains unpaid for a period of thirty (30) days after delivery of a request for payment thereof shall be past due, and interest shall accrue on any unpaid amount from the date that it became past due at the rate of twelve percent (12.00%) per annum. The Association shall have the power to take whatever action is necessary, at law or in equity, to collect any past due assessment, together with interest, late fees and costs of collection, including reasonable attorney's fees. When an assessment becomes past due, the lien created hereunder may be filed by the Association against the delinquent unit owner in the office of the Clerk of Superior Court of Orange County. The lien may be foreclosed by the Association in like manner as a mortgage on real estate under power of sale pursuant to Article 2A of Chapter 45 of the North Carolina General Statutes.

(j) **Subordination of Lien to First Mortgages.** The lien created by subsection (h) above shall be subordinate to the lien of any first mortgage. Sale or transfer of any unit shall not affect the lien of any assessment, except that the sale or transfer of any unit pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of any assessment against the unit that first became due prior to such sale or transfer.

14. **Insurance.** The Association shall purchase, maintain in force and administer insurance coverage as provided by N.C.G.S. §47C-3-113, the terms and provisions of which are incorporated herein. In addition, the Association shall meet the following requirements regarding insurance:

(a) **Property Insurance.** All common elements of the condominium (including all limited common elements), except land, excavations, foundations and other items normally excluded by property insurance policies, shall be insured by the Association in an amount equal to at least one hundred percent (100%) of their insurable replacement value as determined annually by the Association, with the assistance of the insurance company underwriting the coverage. Such coverage shall provide protection against loss or damage by fire and other hazards or risks covered by a standard extended coverage endorsement.

(b) **Liability Insurance.** The Association shall acquire and maintain in full force and effect a policy of insurance which insures the Association against any liability arising

out of the use, ownership, maintenance and control of the common elements, any commercial space leased or owned by the Association and any public rights-of-way within the Property, with limits of liability therefor of not less than One Million Dollars (\$1,000,000.00) per occurrence, which policy shall include an endorsement to cover liability of the Association to a single unit owner.

(c) Other Insurance. There shall also be obtained such other insurance coverage as the Association shall from time to time determine to be desirable and necessary or as may be required by the Federal Housing Administration, Veterans Administration or Federal National Mortgage Association.

(d) Waiver of Subrogation. All policies of insurance required to be carried hereunder shall contain waivers of subrogation.

(e) Fidelity Insurance or Bond. All persons responsible for or authorized to expend funds or otherwise deal in the assets of the Association shall first be bonded by a fidelity insurer to indemnify the Association for any loss or default in the performance of their duties in an amount not less than the estimated maximum of funds, including reserve funds, in the custody of the Association or its agent at any given time during the term of the bond (however, in no event shall the amount of the bond be less than a sum equal to three (3) months' aggregate assessments against all units plus reserve funds).

(f) Qualifications of Insurance Carriers. The Association shall obtain the insurance coverages specified herein only from carriers licensed and admitted to transact business in North Carolina and which have received an A- or better rating by the latest edition of A.M. Best's Insurance Rating Service.

(g) Proceeds. All contracts of property insurance purchased by the Association shall be for the benefit of all of the unit owners and their mortgagees, as their interests may appear, and shall provide that all proceeds thereof shall be payable to the Association or its authorized representative as insurance trustee under this Declaration. Each unit owner and his mortgagee, if any, shall be beneficiaries of each insurance policy in the percentage of the unit owner's undivided interest in the condominium. The sole duty of the Association or its authorized representative as insurance trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes stated herein. Subject to the provisions of N.C.G.S. §47C-3-113, proceeds of insurance received by the insurance trustee shall be distributed to or for the benefit of the beneficiaries in the following manner:

- (i) Proceeds shall first be paid to cover the cost of reconstruction and repair of any damage covered;
- (ii) Proceeds shall then be paid to the trustee to reimburse it for costs reasonably incurred in discharging its duties as trustee; and
- (iii) Any remaining proceeds shall then be distributed to

the beneficiary or beneficiaries of the trust, as their interests may appear.

15. Availability of Documents and Records of the Association. The Association shall make reasonably available for examination true copies of this Declaration and of all bylaws, rules and regulations, books, records and current financial statements of the Association, to the following: (a) unit owners and their agents and mortgagees, and (b) contract purchasers of units and their agents and prospective mortgagees. Upon written request from any governmental agency holding, insuring or guaranteeing any mortgage against any unit of the condominium, the Association shall provide a copy of an audited financial statement of the Association for the immediately preceding fiscal year to the requesting agency within a reasonable period of time.

16. Notices to Lenders. Upon written request from any entity holding, insuring or guaranteeing a mortgage against any unit of the condominium, the Association shall provide the requesting entity with timely written notice of:

- (a) any proposed amendment to this Declaration;
- (b) any proposed termination of the condominium;
- (c) any condemnation of or loss, destruction or damage to the condominium which affects a material portion of the condominium or any unit against which there is a mortgage held, insured or guaranteed by the requesting entity;
- (d) any delinquency of sixty (60) days or more in payment of any assessments due from the owner(s) of any unit against which there is a mortgage held, insured or guaranteed by the requesting entity; and
- (e) any lapse, cancellation or material modification of any insurance coverage held by the Association.

17. General Provisions.

(a) Parties Bound. All persons and entities acquiring any interest in any of the units, including but not limited to lessees, shall be bound by the provisions of this Declaration. All guests and invitees of such persons and entities, and any other occupants of any of the units, shall likewise be bound.

(b) Duration. The provisions of this Declaration shall run with and bind the Property perpetually , unless rescinded pursuant to subsection (c) below.

(c) Amendment or Rescission. Except as provided herein, this Declaration may be amended or rescinded only by a written instrument executed by the Association and authorized by the affirmative vote of at least two-thirds (2/3) of all units existing at that time,

cast in person or by proxy at a meeting duly held in accordance with the bylaws of the Association; provided that the terms and provisions of this Declaration may be amended by the Declarant at any time within five (5) years of the date of recording of this Declaration, without the approval of the Association or any other party, as necessary to exercise the development rights reserved in Section 7 above or if the proposed amendment is required to obtain any approval of HUD, FHA, VA, FNMA or FHLMC. Any amendment or rescission must be recorded at the Orange County Registry to be effective.

(d) Enforcement. The Declarant, any unit owner and/or the Association shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, and obligations imposed by this Declaration. The Declarant, the Association or any unit owner may bring any action necessary to enjoin any violation or breach of the provisions of this Declaration, and/or to recover damages therefor. The Declarant, the Association and/or any unit owner shall be entitled to recover reasonable attorney's fees incurred in bringing and prosecuting such action from the breaching or violating unit owner(s).

(e) Failure to Enforce Not a Waiver. The failure to enforce any right, reservation, covenant or restriction contained in this Declaration, however long continued, shall not be deemed a waiver of the right to do so thereafter.

(f) Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall not affect any of the other provisions of this Declaration, which shall remain in full force and effect.

(g) Captions. The captions herein are inserted only as a matter of convenience and for reference, and shall not be construed to define, limit or describe the scope of any provision of this Declaration.

(h) Law Controlling. This Declaration shall be construed and governed pursuant to the laws of North Carolina.

(i) References to Statutes. All references herein to any statutory provision shall be construed to include and apply to any subsequent amendments to or replacements of such provision.

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IN WITNESS WHEREOF, the Declarant has caused this instrument to be executed by its authorized officers and its corporate seal to be affixed hereto on the date shown above.

Forest Hills Lofts, LLC, a North Carolina
Limited liability company

By: Cathy Stoot [Signature]
Manager

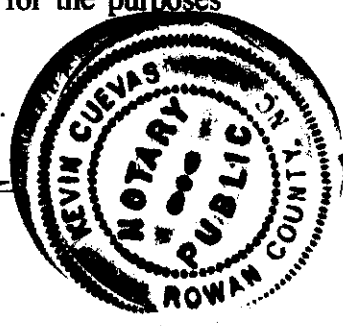
STATE OF NORTH CAROLINA

COUNTY OF Rowan

I, Kevin Cuevas, a Notary Public of the County and State aforesaid, certify that Kyle M. Davis (Gay Head), either being personally known to me or proven by satisfactory evidence, who is the Manager of **Forest Hills Lofts, LLC**, a North Carolina limited liability company, personally appeared before me this day and acknowledged that he is Manager of **Forest Hills Lofts, LLC** and that as Manager being duly authorized to do so, voluntarily executed the foregoing instrument on behalf of said company for the purposes stated therein.

WITNESS my hand and notarial seal, this 11th day of August, 2006.

[Signature]
Notary Public



My Commission Expires:

1-17-2007

(Affix Notarial Seal)

EXHIBIT A
LEGAL DESCRIPTION

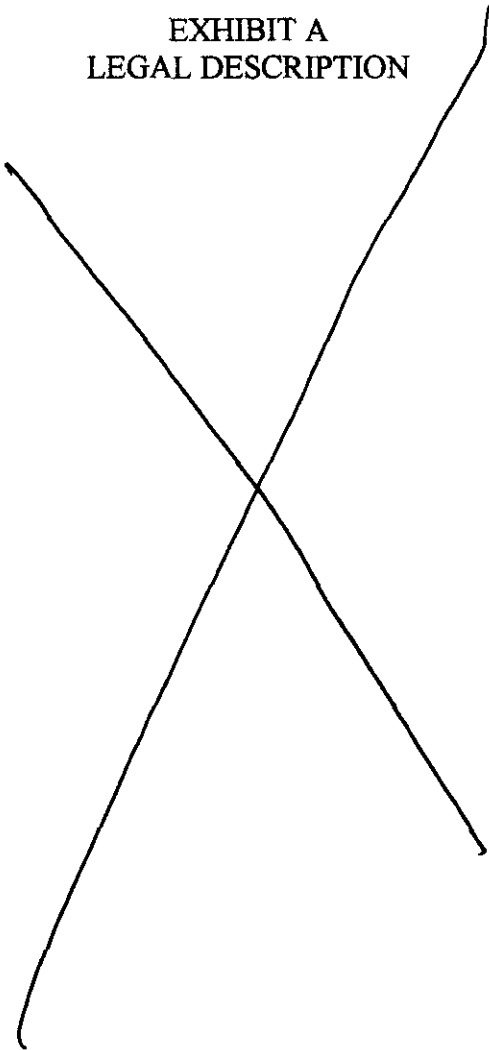


EXHIBIT B
UNIT DESCRIPTIONS

UNIT NUMBER	SQUARE FOOTAGE	PERCENTAGE OWNERSHIP
Unit 1 (commercial) W/parking	900	9.1%
Unit 2 (residential) Other use	634 409	10.6%
Unit 2A (residential) Other use	400 165	5.8%
Unit 3 (residential) Other use	845 409	12.7%
Unit 4 (residential) Other use	609 262	8.9%
Unit 5 (residential) Other use	624 262	9.0%
Unit 6 (residential) Other use	900 409	13.3%
Unit 7 (residential) Other use	845 409	12.7%
Unit 8 (residential) Other use	615 262	8.9%
Unit 9 (residential) Other use	624 262	9.0%

NOTE: 144 square foot trellis areas on rooftop will be allocated to Percentage Ownership for units purchasing such area, and will change the total Percentage Ownership accordingly.

EXHIBIT C
PERMITTED ENCUMBRANCES

1. Declaration of Condominium as recorded in Book 16 Page 135 of the New Hanover County Registry, and as shown on the Plan for Forest Hills Urban Lofts as recorded in Book 5064 Page 2067 of the New Hanover County Registry.
2. All easements reserved in favor of Declarant as set forth in the above.
3. First liens granted by Declarant for construction of the condominium.

EXHIBIT D
BYLAWS
FOREST HILLS URBAN LOFTS CONDOMINIUM ASSOCIATION, INC.

