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RECORDED AND VERIFIED
MARY SUE DOTS
REGISTER OF DEEDS
NEW HANOVER COUNTY

STATE OF NORTH CAROLINA
COUNTY OF NEW HANOVER
**DECLARATION OF EASEMENTS,
COVENANTS, CONDITIONS AND
RESTRICTIONS FOR LUMINA STATION II**

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THIS DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS FOR LUMINA STATION II (this "Declaration") is made as of the 20th day of June, 2000, by Lumina Station II, LLC, a North Carolina limited liability company ("Declarant"), and is consented to by Southland Associates, Inc. (the "Trustee"), a North Carolina corporation, as Trustee under that certain Deed of Trust (the "Deed of Trust"), as recorded in Book 2545 at Page 0217 of the New Hanover County Public Registry, and by Central Carolina Bank & Trust Company, a North Carolina banking association (the "Beneficiary"), as Beneficiary and owner and holder of the Deed of Trust.

WITNESSETH:

Declarant is the owner of fee simple title to the "Property" (as defined below). Declarant has developed the Property by constructing the "Buildings" (as defined below), driveways, curb cuts, landscaping, the "Water Feature" (as defined below), parking areas, and other improvements.

Declarant intends, contemporaneously herewith, to subject the "Air Parcel" (which Air Parcel is generally comprised of all portions of the Buildings above the first floor thereof) and the "Ground Parcel" (which Ground Parcel is the remainder of the Property not encompassed within the Air Parcel) to the provisions of Chapter 47C of the General Statutes of North Carolina by executing and recording a condominium declaration to thereby convert the Air Parcel into the "Air Parcel Condominium" (as defined below) and a condominium declaration to thereby convert the Ground Parcel into the "Ground Parcel Condominium" (as defined below).

Declarant has determined that it is desirable to create certain easements benefiting and burdening the Ground Parcel and the Air Parcel; to impose certain restrictions on the Property; and to provide for the maintenance of certain facilities benefiting both the Air Parcel and the Ground Parcel.

Declarant, for the use and benefit of itself, its successors and assigns, does hereby declare, encumber, place and impose upon the Property the following conditions, covenants, reservations, easements and restrictions to ensure the proper use, appropriate development and improvement of such Property; to enhance the value, desirability and attractiveness of the Property; and to provide for a method for the maintenance and continued improvement of certain common facilities within the Property.

THEREFORE, in consideration of the premises and of the mutual benefits and duties herein contained, Declarant hereby declares that the Property shall be held, developed, improved, leased, sold, transferred, conveyed and occupied subject to the following covenants, reservations, easements, conditions and restrictions, all of which are for the purpose of protecting the value

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and desirability of, and which shall run with title to, the Property and shall be binding on all parties having a right, title or interest therein, along with their heirs, successors and assigns, and which shall inure to the benefit of each owner thereof.

ARTICLE I

Definitions

Section 1. Definitions.

(a) "Air Parcel" shall mean and refer to those two tracts or parcels of air space within the Property above and below certain horizontal elevation planes, and within the vertical boundaries formed by the walls of each Building, all as more particularly described on Exhibit "A" attached hereto and incorporated herein by reference.

(b) "Air Parcel Condominium" shall mean and refer to Lumina Station II Office Condominium to be created by the subjecting of the Air Parcel to a condominium declaration.

(c) "Air Parcel Easements" means those covenants, conditions, restrictions, easements and other provisions contained in this Declaration appurtenant to and benefiting the Air Parcel.

(d) "Air Parcel Owner" shall mean and refer to the record owners from time to time of the Air Parcel or its individual Units, whether one or more persons or entities.

(e) "Buildings" shall mean and refer to the two (2) buildings each containing approximately 44,133 square feet on the Property (as defined below), as shown on the Site Plan (as defined below) attached as Exhibit "D" hereto.

(f) "Common Facilities" shall mean and refer to all portions of the Property not located within the Buildings, including, without limitation, the entrances, the parking areas, the Water Feature, and all other Common Facilities designated as such, now or in the future, by Declarant (e.g., the Common Facilities established in Article III below) for the common use and enjoyment of all the Owners.

(g) "Condominium Associations" shall mean and refer to the Air Parcel Condominium Association and the Ground Parcel Condominium Association, collectively, both of which shall be North Carolina non-profit corporations.

(h) "Declarant" shall mean and refer to Lumina Station II, LLC, a North Carolina limited liability company, and any party to whom the rights of Declarant are assigned pursuant to Article IX, Section 6 below.

- (i) "Ground Parcel" shall mean and refer to the entire Property, less and except the Air Parcel, all as more particularly described in Exhibit "B" attached hereto and incorporated herein by reference.
- (j) "Ground Parcel Condominium" shall mean and refer to the Lumina Station II Retail Condominium to be created by the subjecting of the Ground Parcel to a condominium declaration.
- (k) "Ground Parcel Owner" shall mean and refer to the record owners from time to time of the Ground Parcel (as defined above) or its individual Units, whether one or more persons or entities.
- (l) "Lumina Station II" shall mean and refer to the development comprised of the Property (as defined below).
- (m) "Mortgage" shall mean a mortgage, deed of trust, deed to secure debt or other security instrument affecting any Unit or Common Facility and which has been recorded among the land records of the county or jurisdiction in which the Unit is located.
- (n) "Mortgagee" shall mean and refer to the mortgagee, beneficiary, trustee or other holder of a Mortgage.
- (o) "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any part of the Property; but such term shall not include a Mortgagee, tenant or lessee of a Unit except as provided in Article IV, Section 2.
- (p) "Plans and Specifications" shall mean and refer to those drawings, plans and specifications for construction of the Buildings to be recorded with the Declaration of Condominium for Lumina Station II, Retail Condominium and the Declaration of Condominium for Lumina Station II, Office Condominium to be filed in the New Hanover County Registry,, along with such supplements and modifications thereto, the contents of which are incorporated herein by reference as if they were fully set forth herein.
- (q) "Property" shall mean and refer to that parcel of the real property described on Exhibit "C" attached hereto, along with any additional real property hereafter annexed to the Property and subjected to this Declaration as provided in Article II below.
- (r) "Prorata Share" shall mean and refer to that percentage of the assessments allocated to the Ground Parcel and the Air Parcel. The Prorata Shares have been determined by the relative square footage of improvements encompassed within the Air Parcel and the Ground Parcel, with the Prorata Share for the Air Parcel being two-thirds (2/3) and the Prorata Share of the Ground Parcel being one-third (1/3).

(s) "Site Plan" shall mean and refer to the Site Plan attached hereto as Exhibit "D" and incorporated herein by reference, as such plan shall be modified and amended in accordance with the terms of this Declaration.

(t) "Structure" shall mean and refer to any thing or device the placement of which upon or within the Property might affect the physical appearance thereof, including, by way of illustration and not limitation, improvements, buildings, sheds, covered areas, vehicular and pedestrian bridges, driveways, the Water Feature, parking areas, trees, shrubbery, paving, curbing, landscaping, fences or walls or any sign or sign board. "Structure" shall also mean any excavation or fill, the volume of which exceeds ten (10) cubic yards; or any excavation, fill, ditch, diversion dam or other thing or device which affects or alters the natural flow of surface waters upon or across the Ground Parcel.

(u) "Unit" shall mean and refer to each condominium Unit created by the subjecting of the Air Parcel and the Ground Parcel to the provisions of Chapter 47C of the General Statutes of North Carolina.

(v) "Water Feature" shall mean and refer to the pond and creek located in the approximate location and configuration shown on the Site Plan, the dam located on the Property that impounds and creates the pond, and all facilities related thereto.

ARTICLE II

Property

Section 1. Description. The Property initially made subject to this Declaration is described in Exhibit C attached hereto and incorporated herein by reference.

Section 2. Additions to Property. Any additional real estate may be subjected to this Declaration by Declarant upon the filing of record of supplements to this Declaration ("Supplemental Declarations") describing same, and thereupon the operation and effect of this Declaration shall be extended to such additional property and such additional property shall thereafter be and become part of the Property. The Supplemental Declarations may contain such complementary additions and modifications of this Declaration pertaining to such additional property as may be necessary or convenient, in the sole judgment of Declarant, to reflect or accommodate the different character, if any, of the added property. Notwithstanding any term or provision herein to the contrary, Supplemental Declarations limited in scope and purpose as provided in this Section 2 may be executed and filed of record by Declarant without any requirement that other Owners approve or execute such Supplemental Declarations.

ARTICLE III

Common Facilities; Easements

Section 1. Title. The Common Facilities shall be such portions of the Property, and such easement rights in favor of Declarant or the Owners, as are maintained for the use and benefit of all of the Owners, and designated as Common Facilities by Declarant herein or hereafter from time to time by recording an appropriate map or Supplemental Declaration in the land records of the county or jurisdiction in which the Property is located. Provided, however, after a Unit is conveyed to an Owner by Declarant, no additional portion of such Unit may be designated thereafter as Common Facilities unless such Owner consents in writing, such consent not to be unreasonably withheld or delayed. The Common Facilities are comprised of:

- (a) all areas and facilities within the Property located outside of the Buildings, including, without limitation, driveways, parking areas, landscaping, entrances, entrance features, walls and fences, permanent signage, bridges, medians, streets, drainage facilities, lakes, ponds, retention ponds, the Water Feature, streams and dams and greenways;
- (b) The exterior surfaces of the Buildings, including the roofs;
- (c) The structural components of the Buildings, and all non-structural components of the Buildings that serve both the Ground Parcel and the Air Parcel; and
- (d) Those portions of "Utility Lines" (as defined below) that serve both the Ground Parcel and the Air Parcel.

Declarant shall maintain the Common Facilities from the assessments collected from the Owners provided for herein. Notwithstanding any term or provision herein to the contrary, Supplemental Declarations limited in scope and purpose as provided in this Section 1 may be executed and filed of record by Declarant without any requirement that other Owners approve or execute such Supplemental Declarations.

Section 2. Declarant's and Owners' Rights. Every Owner shall have a nonexclusive, perpetual right and easement of enjoyment in and to the Common Facilities which shall be appurtenant to each Unit, provided such use shall be subject to the terms and provisions of this Declaration, and the rules and regulations adopted from time to time by Declarant. Declarant shall have a nonexclusive right and easement of enjoyment in and to the Common Facilities for the purposes of performing its obligations with respect to the Common Facilities as provided for herein. Declarant specifically reserves the right to maintain the Common Facilities and make all decisions regarding the appearance and aesthetic quality of the Common Facilities, and in no event shall any Owner have the right to make alterations or improvements to the exterior of the Buildings or to any other Common Facilities.

Section 3. Easements. Declarant does hereby establish, declare, and grant, for the benefit of each and every portion of the Property, as an appurtenance thereto, and to and for the benefit of Declarant, the Condominium Associations and the Owners, the following easements:

(a) **Ingress; Egress.** Perpetual, non-exclusive rights, privileges and easements for the passage of vehicles and for the passage and accommodation of pedestrians, over, across and through all roadways, driveways, curb cuts, aisles, walkways and sidewalks located within or to be located within the Property, specifically including the right and easement of ingress and egress over, across, and through the entrances into the Property from adjoining property, as shown on the Site Plan.

Declarant reserves the right to grant additional easements for ingress and egress over, across and through the driveways and entrances for the benefit of any additional real estate subjected to this Declaration pursuant to Article II, Section 2 herein; or for the benefit of any parcel or parcels of real property adjoining the property, whether or not such parcel or parcels are subjected to this Declaration; or for the benefit of the adjacent property known as Lumina Station. Such easements may be used by any entity with an ownership interest in such other property, its lessees, invitees and licensees and the invitees and customers of such lessees, invitees and licensees; provided, however, if the Declarant opts to exercise this right, Declarant shall first develop a cost sharing agreement with the owners of such property, which shall require such owners to contribute to the maintenance of such driveways and entrances. If requested to do so by Declarant, the Condominium Associations shall join in the granting of such easements, and any such joinder of the Condominium Associations in such easements shall bind the Owners as if all Owners had joined in the grant of such easements.

Each Owner shall use reasonable efforts to assure that construction traffic to and from its Unit shall not interfere with the use, occupancy and enjoyment of the remainder of the Property (or any part thereof) and shall repair damage caused by its construction and construction traffic.

Declarant shall have the right, but not the obligation, to erect stop signs and to establish reasonable rules and regulations with respect to decks and/or patios, the Water Feature, the roadways, curb cuts, aisles, parking, walkways and sidewalks and bridges located on the Property, including, without limitation, speed limits.

(b) **Parking.** Perpetual, non-exclusive rights, privileges and easements to Owners, their lessees, invitees and licensees and the invitees and customers of such lessees, invitees and licensees for vehicular parking within the surface vehicular parking spaces located on the Ground Parcel; provided, however, Declarant shall, in the rules and regulations, establish, and change from time to time, rules regarding towing and parking violations and the designation of certain parking areas for use by Owners, their employees, tenants, licensees and business visitors. Declarant reserves the right to issue parking decals, register the license plate numbers of Owners, their employees, tenants, licensees and business visitors, and levy fines for the violation of any rules and regulations regarding parking. A sufficient number of parking spaces shall be maintained

upon the Property to comply with all governmental requirements with respect to parking on the Property. Declarant reserves the right, in its sole discretion, to increase the number of surface vehicular parking spaces on the Property and to designate such additional spaces for use by Owners, their employees, tenants, licensees and business visitors.

(c) Utilities and Mechanical Equipment. Reciprocal non-exclusive easements over the entire Property for the furnishing of water, electricity, storm and sanitary sewerage, gas, telephone, television, communications, security systems, other utilities and services and heating, air-conditioning and ventilation by means of pipes, wires, ducts, cables, conduits, equipment panels, mechanical equipment, heating, air conditioning and ventilation equipment and machinery, fire stairwell and other apparatus and facilities (collectively referred to as "Utility Lines") and as may hereafter be consented to in writing from time to time by the Declarant. Unless such utilities and mechanical facilities are separate and distinct for each Unit and serve only that Unit, such utility and mechanical facilities shall be constructed, maintained, repaired and replaced by Declarant and the cost of such construction, maintenance, repair and replacement shall be apportioned based on Prorata Shares between Ground Parcel Owner and Air Parcel Owner and shall be paid by each Owner as part of the annual assessment. This easement shall be appurtenant to each Unit for the benefit of the Owners thereof. At the point at which the Utility Lines extend into the Air Parcel and are for the exclusive benefit of the Air Parcel Owners, and become separate and distinct from the Ground Parcel, the Owners of the benefited Units shall be solely responsible for the maintenance, repair and replacement of such Utility Lines. The Owner of each Unit shall be responsible for all connection charges, meter fees and charges, user fees, tap-on fees, impact fees, and similar fees and charges imposed as a result of the connection of any Utility Line to its Unit.

Declarant reserves the right to grant additional easements for utilities over the entire Property for the benefit of any additional real estate subjected to this Declaration pursuant to Article II, Section 2 herein; or for the benefit of any parcel or parcels of real property adjoining the property, whether or not such parcel or parcels are subjected to this Declaration; or for the benefit of the adjacent property known as Lumina Station. Such easements may be used by any entity with an ownership interest in such other property, its lessees, invitees and licensees and the invitees and customers of such lessees, invitees and licensees; provided, however, if the Declarant opts to exercise this right, Declarant shall first develop a cost sharing agreement with the owners of such property, which shall require such owners to contribute to the maintenance of such Utility Lines. If requested to do so by Declarant, the Condominium Associations shall join in the granting of such easements, and any such joinder of the Condominium Associations in such easements shall bind the Owners as if all Owners had joined in the grant of such easements.

(d) Encroachments. Reciprocal non-exclusive easements over the entire Property for minor encroachments which will not substantially interfere with the property encroached upon created by the construction, reconstruction, renovation, settling, shifting or other causes of movement and for overhangs. This easement shall be appurtenant to each Unit for the benefit of Owner thereof.

(e) Emergency Access. Reciprocal non-exclusive easements over the Property by each of the respective Owners for emergency ingress, egress and access, said easement being appurtenant to each Unit for the benefit of the Owner thereof.

(f) Easements Benefiting the Air Parcel. To and for the benefit of Air Parcel Owners from time to time, the easements hereinafter set forth in this Section (f).

(1) Support. A perpetual exclusive support easement for the use, maintenance, repair and replacement of, and for attachment of the Air Parcel to, (i) all columns, piers, footings, caissons, girders, beams, foundations, slabs and other supports, supporting structures and appurtenances thereto located or to be located on the Ground Parcel in connection with the support of the Air Parcel and the Buildings and any other structures, buildings or improvements constructed or to be constructed in the Air Parcel and (ii) all columns, piers, footings, caissons, girders, beams, foundations, slabs and other supports, supporting structures and appurtenances thereto located or to be located on the Ground Parcel as are necessary or appropriate in connection with the maintenance and operation of the Air Parcel and the easements benefiting it. The easement provided for in this Subsection 1 is and shall be limited to the support of the Air Parcel, and in no event shall Declarant or any successor Ground Parcel Owner have any obligation to provide support for any structure other than the Air Parcel as it was originally planned and constructed. All Air Parcel Owners and their successors and assigns shall not add additional stories or levels to the Air Parcel without the consent of Declarant and the Condominium Associations. Declarant hereby reserves the right to add additional stories or levels to the Air Parcel, in its sole discretion. No consent of the Condominium Associations will be necessary for Declarant to exercise this right.

(2) Access. A perpetual non-exclusive access easement for reasonable vehicular and pedestrian access, ingress and egress to and from the Air Parcel over and across all driveways and walkways, and steps, and a perpetual exclusive access easement, subject to the repair easement described in Section (g) below, for reasonable pedestrian access, ingress and egress to and from the Air Parcel over and across all stairways, fire stairwells, elevators, elevator shafts and passages located or to be located on the Ground Parcel, subject to reasonable non-discriminatory rules and regulations promulgated from time to time by Declarant.

(3) Repairs. A permanent non-exclusive access, construction, repair and replacement easement for all purposes necessary, appropriate or incidental to the Air Parcel Owners' use or enjoyment of the easements reserved pursuant to this Section (f).

(4) Utilities and Services. A perpetual exclusive easement to use those chases, conduits, shafts, and other openings through the Ground Parcel to the first floor of the Air Parcel, for the benefit and use of the Air Parcel, for the

installation, operation, repair, replacement and maintenance of utilities facilities and elevators, including the right of ingress and egress across the Ground Parcel as reasonably necessary to install, operate, repair, replace and maintain such facilities.

(g) Maintenance/Repair Easement. There is reserved for the benefit of Declarant a perpetual easement to maintain, repair and restore (i) the supporting structural components located on the Ground Parcel in connection with support of the Air Parcel, (ii) any non-structural components of the Buildings that serve both the Ground Parcel and the Air Parcel and (iii) the exterior of the Buildings, including, but not limited to repairing the roof, painting the exterior and repairing damage to the exterior. The cost of such maintenance, repair and restoration shall be apportioned based on Prorata Shares between Ground Parcel Owner and Air Parcel Owner and shall be paid by each Owner as part of the annual assessment.

(h) Easements for Benefit of Other Lands. Declarant may hereafter grant and accept, and Declarant hereby reserves unto itself, its successors and assigns (as Declarant), easements and other rights for the benefit of the Property and also for the benefit of other, adjacent land now or hereafter to be developed by Declarant, adjacent to, contiguous to or in the vicinity of the Property, for the purpose of providing such benefits as shared facilities and amenities (including utilities facilities), reasonable access or pedestrian and vehicular traffic, open areas, green spaces, park lands and other suitable shared uses in, along and over any portion of the Common Facilities; provided, however, the rights herein reserved by Declarant in, along or over the Common Facilities for the benefit of adjacent or other property shall not be available to the owner(s) of such adjacent or other land unless Declarant first develops a cost sharing agreement with the owners of such other lands, which shall require such owners to contribute to the operation, maintenance and repair of such shared facilities or amenities; provided, further, the obligations to be incurred in connection with the Common Facilities by such owner(s) of adjacent or other lands shall not accrue or be incurred or due until the date such parties are entitled to actual usage of the Common Facilities. If requested to do so by Declarant, the Condominium Associations shall join in the granting of such easements, and any such joinder of the Condominium Associations in such easements shall bind the Owners as if all Owners had joined in the grant of such easements. In addition, the owners of such adjacent or other lands may grant easements over such adjacent or other lands for the benefit of the Property, including easements for access, ingress and egress from the Property over, through and across such adjacent or other lands. If such owners grant such easements for the benefit of the Property, Declarant reserves the right to enter into a cost sharing agreement with such owners, which may require Owners to contribute to the operation, maintenance and repair of such shared facilities or amenities located on the adjacent or other lands, which costs shall be assessed as part of the annual assessments in Article V herein.

Section 4. Rights of Third Parties. The easements hereby established are private easements, and nothing herein shall be construed to create easements in favor of the general public. However, easements created under this Declaration in favor of an Owner and appurtenant

to such Owner's Unit may be exercised, used, and enjoyed by such Owners' agents, employees, contractors, tenants, invitees, licensees, and business visitors; provided, however, that such rights shall be subject to the terms of this Declaration and to any rules and regulations adopted by Declarant from time to time.

ARTICLE IV

Approvals, Consents, and Voting Rights

Section 1. Approvals, Consents, and Voting Rights. Except as otherwise particularly provided for herein, in each provision of this Declaration that refers to the approval or consent of or voting among Unit Owners, approvals and consents shall be granted and votes will be cast in accordance with this Article IV. Two parties shall have the right to grant consent or approval or to vote on matters addressed in this Declaration, and the two parties shall be collectively referred to as "Voting Parties":

(a) Voting Party A. Voting Party A shall be the Air Parcel Condominium Association or its successor. The Air Parcel Condominium Association as a whole may cast forty-five votes out of one hundred total votes on any issue for which this Declaration gives approval, consent or voting rights to the Unit Owners.

(b) Voting Party B. Voting Party B shall be the Ground Parcel Condominium Association or its successor. The Ground Parcel Condominium Association as a whole may cast fifty-five votes out of one hundred total votes on any issue for which this Declaration gives approval, consent or voting rights to the Unit Owners.

Section 2. General Provisions. For purposes of the granting of approvals or consents and voting rights under this Declaration, "Owner" shall not include any owner or holder of a reversionary interest in all or any portion of the Property or Units therein under a lease with a lease term, including options to extend, in excess of thirty (30) years; rather, in such case, the term "Owner" shall be deemed to refer to the lessee under any such lease. In any case where any Unit within the Property has more than one Owner, any one such Owner may exercise the vote(s) applicable to such Unit, and such exercise shall be conclusive and binding with respect to all other persons having any interest in the Unit in question. In no event shall the vote or votes with respect to any jointly-owned Unit be cast separately. Any action taken in accordance with the provisions of this Declaration shall be binding upon all Owners and Mortgagees of the Property or Units therein, and their respective heirs, successors and assigns. Every purchaser, grantee or assignee of any interest in the Property or Units therein subject to this Declaration, by acceptance of a deed or other conveyance therefor, thereby agrees that the provisions of this Declaration shall run with and bind title to the Property and Units therein as provided hereby.

Assessments

Section 1. Creation of Lien and Personal Obligation of Assessments. Each Owner of a Unit or of any interest in the Property shall, by acceptance of a conveyance therefor, whether or not it shall be so expressed in any instrument of conveyance, be deemed to (i) covenant and agree to all the terms and provisions of this Declaration and (ii) promise to pay to Declarant, by way of paying its respective Association, both annual and special assessments and charges, such as are established and to be collected from time to time as hereinafter provided. The annual and special assessments and charges, together with such interest thereon and costs of collection therefor as are hereinafter provided, shall be a charge and continuing lien upon the Unit against which such assessment is made as of the effective date of each assessment, and against the corresponding Condominium Association and the Units located in such Condominium, if such Association has not paid the entire amount of an assessment, as provided below. Each such assessment, together with such interest thereon and costs of collection therefor as are hereinafter provided, shall also be the personal obligation of the person or entity who was Owner of such Unit at the time when the assessment became due. In the case of co-ownership of a Unit, all of such co-Owners shall be jointly and severally liable for the entire amount of the assessment.

Notwithstanding the foregoing, it is intended that collection of assessments, and enforcement of remedies for non-payment of assessments, with respect to Units, be administered by the Condominium Associations. It is contemplated that all assessments levied hereunder shall be billed by Declarant to the Condominium Associations, with the Prorata Share for Ground Parcel assessments being billed to the Ground Parcel Condominium Association, and the Prorata Share for Air Parcel assessments being billed to the Air Parcel Condominium Association except for those special assessments requiring a different allocation which will be billed as hereinafter provided. Thereafter, each Condominium Association shall allocate its bill for its Prorata Share among the Owners who are members of such Association, with such allocations to be "common expenses" for that Condominium (as defined in N.C. Gen. Stat. § 47C-1-103[5]). Declarant shall have the right and authority to collect any unpaid assessments either by suit against the corresponding Condominium Association which is responsible for the billing and collection of such assessment, or by enforcement of the lien against the Units in such Condominium as provided for above. Declarant may also bring suit directly against the nonpaying Owner and enforce the lien against such Owner's Unit, at Declarant's sole discretion.

Section 2. Purpose of Annual Assessments. The annual assessments levied by Declarant shall be used for the improvement, maintenance, operation, repair, replacement and additions of and to the Common Facilities, including, but not limited to, the payment of insurance as described in Article VII, the payment of ad valorem taxes on the Common Facilities, the payment of utility charges related thereto (including water for any irrigation systems), the costs of maintaining, operating and improving streets, roads, drives and rights-of-way, the costs of maintaining, repairing and restoring the exterior of the Buildings as described in Article III, Section 3(g), the costs of maintaining, repairing and restoring the supporting structures and appurtenances thereto located or to be located on the Ground Parcel in

connection with the easements benefiting the Air Parcel, the payment of capital expenditures related to the Common Facilities, such as replacing or rebuilding any Common Facility, the payment of license, permit and inspection fees, costs of street signs and markers, the costs of maintaining the Water Feature, including, but not limited to, the costs to purchase and maintain equipment necessary to clean and maintain the Water Feature, such as filters, pumps, cleaning materials and labor costs, the costs of collecting and disposing of garbage, rubbish and the like, the costs of constructing, maintaining, repairing and replacing utility facilities as described in Article III, Section 3(c), the costs of employing security service, a property manager and maintenance personnel, any cost sharing contributions in relation to the operation, maintenance and repair of any shared facilities or amenities located on adjacent or other lands pursuant to Article III, Section 3(h) herein, the costs to prepare the Buildings, any other Structures located upon the Property and the Common Facilities for any storms or hurricanes, including, but not limited to, the costs of materials for clean-up and restoration after the storm or hurricane, and the costs of labor, supplies, equipment, materials, management and supervision thereof. The Common Facilities may include such facilities and amenities as streets, drives and other rights-of-way, flower beds, planted islands, nature, jogging and other trails or walks, medians, permanent signage, bridges, ponds, dams, entrances, greenways, drainage areas, water amenities, fountains, sculptures, transportation stops and/or shelters, directional and informational signage, tree nurseries and maintenance areas and, at the option of Declarant, easement rights in certain portions of the Property as are described in Article III above. Notwithstanding anything to the contrary herein, Declarant shall be not be obligated to build all or any portion of the facilities and amenities listed above or otherwise in this Declaration as possible Common Facilities. In addition, Declarant may use annual assessments for the purpose of doing any other things necessary or desirable, in the reasonable discretion of Declarant, to keep the Common Facilities and amenities in a clean and good order and to provide for the health, welfare and safety of the Owners and occupants of the Property and the Common Facilities. By its acceptance of any deed or other instrument of conveyance of any Unit, each Owner acknowledges that the precise type of amenities, improvements and Structures to be Common Facilities has not been (and may not be) specifically defined and determined as of the date hereof. Notwithstanding the lack of specificity relating to the identity of the Common Facilities, each Owner acknowledges that he or it is a knowledgeable business person or entity familiar with developments such as the one established under this Declaration and hereby agrees to accept and pay annual and special assessments levied by Declarant pursuant to this Declaration. Further, each Owner agrees to accept as Common Facilities hereunder such Common Facilities as may be designated and/or conveyed by Declarant in accordance with the terms of this Declaration.

Section 3. Budget and Annual Assessment Amount. Declarant shall determine a budget for each fiscal year, in its reasonable discretion, based upon actual and estimated costs and expenses for the applicable fiscal year, such budget to be delivered to the Condominium Associations not less than ten (10) days and not more than sixty (60) days before the beginning of the fiscal year. Declarant shall use this budget to determine the annual assessment applicable to the Property, which shall be apportioned based on Prorata Shares.

Section 4. Special Assessments. In addition to the annual assessments hereinabove authorized, Declarant may levy special assessments as follows:

(1) Subject to the requisite approval of the Voting Parties, as provided herein, special assessments may be levied for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of Common Facilities, including the necessary fixtures and personal property related thereto. The Ground Parcel Condominium Association shall be billed for the Ground Parcel's Prorata Share of the special assessments made under this paragraph (1) and the Air Parcel Condominium Association shall be billed for the Air Parcel's Prorata Share of the special assessments made under this paragraph (1). Declarant may levy special assessments under this paragraph (1) only upon approval of the Voting Parties to which are allocated more than two-thirds (2/3) of the votes under Article IV, Section 1.

(2) Special assessments may be levied for the costs and expenses, including overhead and administrative costs, of seasonal decorations or similar items and advertising and/or promotional events for the benefit of the Common Facilities. This special assessment shall be billed to the Condominium Associations according to the following percentages: (i) Ground Parcel Condominium Association eighty percent (80%) and (ii) Air Parcel Condominium Association twenty percent (20%).

(3) Special assessments may be levied for the costs and expenses, including overhead and administrative costs, of advertising and/or promotional events which are primarily for the benefit of the Ground Parcel. This special assessment shall be billed to the Ground Parcel Condominium Association.

Special assessments made pursuant to paragraphs (2) and (3) above are not subject to approval by the Voting Parties and the decision of the Declarant as to the amounts, allocation and billing of these special assessments are final and binding.

Section 5. Commencement. Assessments shall commence on the date fixed by Declarant. Assessments on Units that first become subject to assessments during a calendar year shall be prorated on a calendar year basis for the remainder of such calendar year.

Section 6. Due Date and Limitation of Assessment Frequency. Annual assessments shall be levied by Declarant annually in advance and shall be billed no less frequently than monthly and shall be payable in advance at the beginning of each month. Unless otherwise provided herein, all assessments shall be due and payable in full within thirty (30) days after billed by Declarant.

Section 7. Records of Assessments. Declarant shall cause to be maintained in the office of Declarant a record of all Units and assessments applicable thereto which shall be open to inspection by any Owner. Written notice of each assessment shall be mailed to the Condominium Associations.

Declarant shall, at least annually, furnish to the Condominium Associations an accounting for all expenditures by Declarant made from the assessments and all other amounts collected from the Owners. Such accounting shall be certified as accurate by an authorized representative of Declarant. Such accountings need not be audited.

Declarant shall, upon demand and payment of a reasonable charge, furnish to any Owner a certificate in writing signed by an authorized representative of Declarant stating whether the assessments against the Owner's Unit have been paid and, if not, the amount due and owing. Such certificates shall be conclusive as evidence for third parties as to the status of assessments against such Unit.

Section 8. Effect of Non-Payment of Assessment. If any assessment or other charge due hereunder is not paid on the date when due, then such assessment or other charge due hereunder shall be delinquent and shall accrue interest thereon at sixteen percent (16%), unless a lesser rate is required under applicable law, in which event the lesser rate shall be applicable. If such assessment or any other charge due hereunder is not paid within thirty (30) days after the due date, then Declarant may, at its option, bring an action at law: (1) against the Association responsible for paying such assessment, in which case any money judgment that Declarant obtains against such Association shall constitute a lien against all of the Units in such Condominium, in accordance with N.C. Gen. Stat. §47C-3-117(a); and/or (2) against the Owner personally, in which case Declarant may foreclose its lien upon such Owner's Unit. There shall be added to the amount of any assessment or other charge due hereunder all reasonable attorneys' fees and costs incurred by Declarant in such action, and in the event a judgment is obtained, such judgment shall include interest on the assessment or other charge due hereunder as indicated above.

ARTICLE VI

Uses

Section 1. Permitted Uses. The Air Parcel is to be used solely for general purpose offices, medical and other professional offices and directly related uses. The Ground Parcel is to be used solely for general purpose retail and/or office, medical and other professional offices and directly related uses. Units in both the Air Parcel and the Ground Parcel may be used to maintain sales offices, management offices or model Units.

Declarant may establish additional uses for Units within the Property, and additional restrictions for Units within the Property, by provisions in the deeds to such Units, by supplement to this Declaration or by the condominium declarations creating the Air Parcel and Ground Parcel Condominiums, prior to the conveyance of the affected Units; provided, however, that any such additional uses must be approved in writing by the Voting Parties to which are allocated more than fifty percent (50%) of the votes under Article IV, Section 1, but such consent shall not be unreasonably withheld or delayed by any Owner.

Section 2. Temporary Structures. No building or other Structure of a temporary nature shall be allowed on the Ground Parcel at any time except that of Declarant's contractors and subcontractors during the period of construction or repair to Structures.

Section 3. Repair and Maintenance. Except for Common Facilities that are maintained by Declarant hereunder, the Owner of each Unit shall continually repair, keep and

maintain such Owner's Unit in a safe, clean, neat and sanitary condition, subject to Declarant's right to maintain, repair and restore the supporting structural components located on the Ground Parcel, any non-structural component that serves both the Ground Parcel and the Air Parcel, and the exterior of the Buildings as provided in Article III, Section 3(g) herein, and shall comply in all respects with all governmental zoning, health, environmental, fire, and police requirements, and shall operate, repair, replace and maintain all Utility Lines within the boundaries of such Owner's Unit. In the event any Owner fails to observe required maintenance standards with respect to such Owner's Unit, Declarant shall provide written notice thereof to the Owner, and the Owner shall have a period of thirty (30) days after receipt of such written notice within which to commence in a reasonable and expeditious fashion the correction of such maintenance deficiencies. If said deficiencies are not corrected within a reasonable period of time, Declarant reserves the right to enter upon the Unit, correct the deficiencies and charge or assess the Owner of the Unit for the costs thereof. The Owner shall pay said charges within ten (10) days after the date of Declarant's statement to the Owner for the costs of correcting said deficiencies; provided, however, if such charges are not paid within such ten (10) day period, the Declarant shall be deemed to have contracted with the Owner for such work and materials, and shall be entitled to file a mechanic's lien against the Owner's Unit for the Owner's share of the cost of such work and materials with all rights incident thereto, all in accordance with Chapter 44A of the General Statutes of North Carolina.

Section 4. Dirt, Dust and Waste Discharge. No use of the Property or Units therein will be permitted which emits dust, sweepings, dirt or cinders into the atmosphere or discharges liquid, solid wastes or other harmful matter into any stream, river, pond, lake or other body of water which, in the opinion of Declarant, may adversely affect the health, safety, comfort of, or the intended property use by, persons within the area.

Section 5. Grading Rights. Declarant may at any time make such cuts and fills upon any part of the Property and do such grading and earth moving as, in its judgment, may be necessary to improve or maintain the streets within or adjacent to the Property, to maintain or alter the Water Feature and to drain surface waters therefrom; and Declarant may assign such rights to any appropriate municipal or other governmental authority.

Section 6. Prohibited Uses. The following shall not be permitted on the Property: labor camps; commercial storage of building or construction materials (except temporarily in connection with the repair, maintenance or construction of Structures by Owners of Units or Common Facilities as is permitted herein, or for the preparation, clean-up and restoration after any hurricane or storm); smelting of iron, tin, zinc or other ores; refining of petroleum or of petroleum products; community fairs, flea markets, open air stalls or carnivals (except as approved by the Voting Parties to which are allocated more than fifty percent (50%) of the votes under Article IV, Section 1); rodeos; horse shows; shooting or athletic events; fortune telling; sales lots for prefabricated structures; tire recapping plants; farm and heavy construction equipment and implement sales, leasing, service, storage, and similar activities; truck terminals; lumber, planing or sawing mills; pulpwood yards; storage yards; taxidermy; cemeteries (public and private); commercial poultry, livestock, and swine production; cattle feeder lots or fur-bearing animal rearing or breeding farms; animal kennels; abattoirs; junk yards; baling, storage or processing of scrap metal, glass, paper or rags, or storage or processing of wrecked or junked