

Note to Register of Deeds: Please index this document in the Grantor Index in the names of both (i) Three and One Partnership, a North Carolina general partnership, and (ii) Three and One, a North Carolina General Partnership.

**DECLARATION OF
EASEMENTS AND RESTRICTIONS FOR
MATTHEWS BUSINESS PARK**

THIS DECLARATION OF EASEMENTS AND RESTRICTIONS (this “**Declaration**”), dated March 15, 2006, is made by **THREE AND ONE PARTNERSHIP**, a North Carolina general partnership, successor in interest to **THREE AND ONE**, a North Carolina General Partnership (“**Declarant**”).

RECITALS

A. Declarant is the resulting entity from the merger of Three and One, a North Carolina General Partnership (a/k/a Three and One Partnership), and The Family, a North Carolina General Partnership (a/k/a The Family Partnership). Articles of Merger effecting the merger have been filed with the Office of the North Carolina Secretary of State and a Certification of Merger is being filed of record in Mecklenburg County, North Carolina simultaneously with this Declaration.

B. Declarant is the owner of multiple parcels of real property containing an aggregate of approximately 12.82 acres located on the south side of Matthews-Mint Hill Road, in the Town of Matthews, Mecklenburg County, North Carolina (collectively, the “**Property**”). The Property is more particularly described on Exhibit A attached hereto and made a part hereof. The existing buildings and related improvements on the Property are shown on the site plan attached hereto as Exhibit B and made a part hereof (the “**Site Plan**”).

C. Declarant intends to convey the individual Parcels (as defined below) within the Property to its partners for office, industrial, warehouse, retail and related commercial uses.

D. Declarant desires that the various Parcels comprising the Property be operated and managed in conjunction with one another as an integrated mixed-use commercial development in accordance with the Site Plan, this Declaration, and applicable zoning regulations. In addition, Declarant desires to create non-exclusive reciprocal easements over certain portions of the Property that are designed for the common use of all owners, to impose certain use restrictions and

maintenance standards on each Parcel, and to provide a mechanism for the sharing of the cost of maintaining certain common improvements within the Property.

E. Declarant also has deemed it desirable to create a nonprofit, incorporated association which will be delegated and assigned powers of maintaining and administering the common improvements within the Property, of administering and enforcing the covenants and restrictions created in this Declaration, of levying, collecting and disbursing the assessments and charges created in this Declaration, and of taking any steps or performing any acts deemed necessary or appropriate to preserve the values of the Property and to promote the welfare of the owners of Parcels within the Property.

F. In order to accomplish the foregoing, Declarant is executing and recording this Declaration.

NOW, THEREFORE, Declarant, by this Declaration, hereby declares that the Property is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements, charges and liens set forth in this Declaration, all of which shall run with the Property and be binding on any Person (as defined below) owning any right, title or interest in any Parcel, and its heirs, successors and assigns, and all of which shall inure to the benefit of each Owner (as defined below) of any Parcel, and its heirs, successors, designees and assigns.

ARTICLE I

DEFINITIONS

Section 1. **“Association”** shall mean Matthews Business Park Owners Association, Inc., a North Carolina non-profit corporation, and its successors and assigns.

Section 2. **“Board”** shall mean the Board of Directors of the Association.

Section 3. **“Bylaws”** shall mean the bylaws of the Association, a copy of which is attached hereto as Exhibit C, as they may be amended from time to time

Section 4. **“Common Area Costs”** shall mean the costs of operating, maintaining and insuring the Common Areas, as more particularly described in Article V, Section 2, pursuant to and in accordance with this Declaration, the Bylaws, and N.C.G.S. §47F-1-103(5).

Section 5. **“Common Areas”** shall mean all facilities and Improvements located on the Property (including those within adjacent road rights-of-way) that are designed, constructed and intended for the general use, in common, of the Occupants of the Property, including, but not limited to, internal private roadways, sidewalks, walkways, parking areas, entrances and exits, traffic control devices, retaining walls, fences, streetscape improvements, the Project Signs, plants (including trees, shrubs, flowers, ground cover and grass) and landscaped areas, benches, shelters, signs, banners, flags, lighting facilities (including light poles, fixtures, bulbs, tubes, ballasts, wiring and all equipment related thereto), common private utility lines (including sewer, water, electric, gas and telecommunication lines), common storm drainage facilities, and sprinkler and irrigation systems. The term **“Common Areas”** also shall include all the real property and Improvements

located within the Roadway Easement Areas. The determination of whether a particular facility or improvement (outside of the Roadway Easement Areas and the Drainage Easement Areas) constitutes a Common Area shall be made from time to time by the Association.

Section 6. **“Condominium”** shall mean and refer to the Matthews Business Park Condominium, established by the submission of Lot #4 (and the Improvements located on Lot #4) to the terms of the North Carolina Condominium Act (Chapter 47C of the North Carolina General Statutes) by the Declaration of Condominium for Matthews Business Park Condominium (the **“Condominium Declaration”**), which declaration is being recorded in the Office of the Register of Deeds for Mecklenburg County simultaneously with this Declaration.

Section 7. **“Condominium Association”** shall mean and refer to Matthews Business Park Condominium Owners Association, Inc., a corporation organized and existing under the North Carolina Nonprofit Corporation Act pursuant to and in accordance with the Condominium Declaration.

Section 8. **“Declarant”** shall mean Three and One Partnership, a general partnership organized and existing under the laws of the State of North Carolina.

Section 9. Intentionally deleted.

Section 10. **“Drainage Easement Areas”** shall mean those portions of the Property within which underground storm drainage lines and related facilities running from various Parcels into the public storm drainage system are located.

Section 11. **“Project Signs”** shall mean the two (2) free-standing pylon and/or monument signs, and associated improvements such as utility connections, lighting fixtures and landscaping, located on the Property within the “Sign Easement Areas” shown on the Site Plan.

Section 12. **“Improvements”** shall mean all buildings, outbuildings, underground utility and irrigation installations, slope alterations, roads, driveways, parking areas, sidewalks, boardwalks, fences, screening walls and barriers, retaining walls, stairs, decks, windbreaks, plants, trees, shrubs, poles, signs, loading areas and all other structures or landscaping improvements of every type and kind located on the Property.

Section 13. **“Lot #4”** shall mean that tract or parcel of land located in the Town of Matthews, Mecklenburg County, North Carolina, shown as Lot #4 on the Plat, as defined below.

Section 14. **“Management Firm”** shall mean the property management firm engaged by the Association in accordance with Article V, Section 3.

Section 15. **“Member”** shall mean any Person that is a member of the Association.

Section 16. **“Mortgage”** shall mean and refer to a mortgage or deed of trust constituting a first lien on a Parcel.

Section 17. **“Mortgagee”** shall mean and refer to an owner or holder of a Mortgage that has notified the Association in writing of its name and address, and that it holds a Mortgage on a Parcel.

Section 18. **“North Carolina Planned Community Act”** shall mean and refer to Chapter 47F of the North Carolina General Statutes, as it may be amended from time to time.

Section 19. **“Occupant”** shall mean and refer to any person or persons in possession of a Parcel, including Owners, lessees and sublessees from Owners, and their employees, guests, invitees and contractors.

Section 20. **“Owner”** shall mean any record owner of fee simple title to any Parcel, excluding any Mortgagee (in which event the grantor shall remain the Owner) and excluding the Association. Notwithstanding the foregoing:

(a) If a Parcel is owned by more than one person or entity as tenants in common, those parties shall designate one person or entity to act as **“Owner”** of that Parcel for purposes of this Declaration; absent such a designation, the owner of the largest undivided interest shall be deemed the **“Owner”** of that Parcel.

(b) The Condominium Declaration prohibits subdivision of the Units, but permits a Unit to be subjected to a secondary condominium regime. If any Unit is submitted to a secondary condominium regime, the secondary condominium owners association shall act as **“Owner”** of the Parcel of which that Unit is a part for purposes of this Declaration.

(c) In a deed of conveyance executed in connection with a sale/leaseback transaction, the grantor/lessee may specify that it remains an **“Owner”** for purposes of this Declaration, and that designation shall be binding upon all other Owners so long as such grantor/lessee, or its successor or assignee, retains a leasehold interest in its Parcel.

Section 21. **“Parcel”** shall mean any portion of the Property which has been properly subdivided for any purpose, including conveyancing or ground leasing, or for real property tax purposes. The Condominium Declaration has created ten (10) condominium units on Lot #4. The land on which each Unit, and its appurtenant Limited Common Elements (as such terms are defined in the Condominium Declaration) shall constitute a Parcel, except that Units 656-A, 656-B, 656-C, and 656-D, which share certain Limited Common Elements, are located on the same Parcel, as reflected on Exhibit D. As of the date of recording of this Declaration, the Parcels are as shown on the Site Plan and Exhibit D, but the term **“Parcel”** shall, in the future, also refer to any smaller Parcels into which the Parcels shown on the Site Plan may be legally subdivided, or any Parcels into which one or more Parcels may be recombined. Under the terms of the Condominium Declaration, the owner of each Unit in the Condominium has the right to subdivide the land on which its Unit and associated Limited Common Elements are located, and to withdraw the subdivided parcel from the Condominium (except that Units 656-A, 656-B, 656-C, and 656-D may only be withdrawn together in a single Parcel), in which case the resulting subdivided parcel shall continue to be deemed a Parcel under this Declaration.

Section 22. **“Person”** shall mean any natural person, corporation, partnership, limited liability company, trust or other legal or commercial entity, or any combination thereof.

Section 23. **“Plat”** shall mean that plat entitled “A Subdivision Map of 3 and 1 Properties, Property of Three and One,” prepared by Carolina Surveyors, Inc., dated October 25, 2005, last revised November 23, 2005 and recorded in Map Book 45 at Page 277 in the Mecklenburg County Public Registry.

Section 24. **“Project Documents”** shall mean and refer to this Declaration, the Articles of Incorporation of the Association, the Bylaws, and the rules and regulations governing the use of the Property, as the foregoing may be amended and supplemented from time to time, and all attachments and exhibits thereto.

Section 25. **“Property”** shall mean all of the real property described on Exhibit A and shown on Site Plan, which is owned by Declarant.

Section 26. **“Roadway Easement Areas”** shall mean those paved roadways, entrances and exits, medians, sidewalks and related improvements, including but not limited to the Project Signs, located on the Property and more particularly shown on the Site Plan or the Plat (including without limitation any public rights-of-way of Matthews-Mint Hill Road adjacent to the Property which have been dedicated by Declarant or by others for public use, and the twenty-four foot (24’) access easement shown on the Plat), which areas shall be subject to the easements created by Article III of this Declaration.

Section 27. **“Site Plan”** shall mean the site plan of the Property attached hereto as Exhibit B.

Section 28. **“Supplemental Declaration”** shall mean an amendment or supplement to this Declaration that subjects additional property to this Declaration and/or imposes, expressly or by reference, additional easements, restrictions and obligations on the real property described therein.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION

Section 1. Property. The Property shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements, charges and liens created by this Declaration. This Declaration shall not encumber any other real property owned by Declarant, or by affiliates of Declarant, outside the boundaries of the Property.

Section 2. Binding Effect. The terms and conditions of this Declaration: (a) shall run with title to each Parcel, (b) shall be binding on any Person owning any right, title or interest in any Parcel, and its heirs, successors and assigns, and (c) shall inure to the benefit of each Owner of any Parcel, and its heirs, successors, designees and assigns.

Section 3. Supplemental Declarations. Upon the vote not less than fifty-one percent (51%) of the Owners and the Mortgagees, cast in person or by proxy at a meeting duly held in accordance with the provisions of the Bylaws, the Association shall be authorized to subject additional property to the provisions of this Declaration, so long as the property being annexed is contiguous to the Property. Such annexation shall be accomplished by filing in the Office of the Register of Deeds for Mecklenburg County a Supplemental Declaration describing the property being annexed, and shall be effective upon recording. The Supplemental Declaration shall contain an amendment to Exhibit A and Exhibit B attached to this Declaration, reflecting the new legal description of the Property and the addition of the new Parcel to the Site Plan, as well as an amendment to Exhibit D reallocating the percentage shares of Common Area Expenses and voting rights among all Parcels in accordance with the formulas set forth in Article IV, Sections 2 and 6 of this Declaration. The Supplemental Declaration may contain such complementary additions, deletions, and other modifications of the covenants, conditions and restrictions contained in this Declaration as may be necessary, in the judgment of the Association, to reflect the different character of the additional property, so long as such modifications are not inconsistent with the overall scheme of the Declaration, and provided that such modifications shall not apply to the remaining Parcels or to the Owner or Mortgagee of any such Parcel. The Supplemental Declaration shall not require the consent of any party other than the Association.

ARTICLE III

EASEMENTS AND COMMON AREAS

Section 1. Drainage and Roadway Easements. Subject to the terms of this Declaration, each Owner shall have the following easements, which shall be appurtenant to and run with title to its Parcel:

(a) A perpetual non-exclusive easement over the Drainage Easement Areas to drain surface water from its Parcel into the underground storm water pipes and related drainage facilities within the Drainage Easement Areas, and through such facilities to the public storm water facilities located in the right-of-way of Matthews-Mint Hill Road.

(b) A perpetual non-exclusive easement over the Roadway Easement Areas to use all of the roadways, sidewalks, and related Improvements within the Roadway Easement Areas for the purpose of providing pedestrian and vehicular access to and from each Parcel to and from Matthews-Mint Hill Road.

(c) Subject to the terms of Article V, Section 3, a perpetual non-exclusive easement to maintain, repair and replace all of the drainage facilities and other Improvements located within the Drainage Easement Areas, and all roadways, sidewalks and related Improvements within the Roadway Easement Areas, together with a perpetual non-exclusive right of access to the Drainage Easement Areas and the Roadway Easement Areas as may be reasonably necessary to exercise the easement rights set forth above.

Section 2. Other Cross Easements. Subject to the terms of this Declaration, each Owner shall have:

(a) A perpetual non-exclusive easement to use all of the roadways, entrances and exits, drive aisles, sidewalks and similar Improvements designed for common use located within the Property, but outside of the Roadway Easement Areas, for pedestrian and vehicular ingress and egress, and other purposes for which those common Improvements are designed, without payment of any fee therefor, subject to the right of each Owner to relocate the Common Areas on its Parcel from time to time in accordance with the provisions of Article VIII, Section 2.

(b) No cross-parking rights are granted by this Declaration. Notwithstanding the foregoing, because the boundaries of each Parcel are not clearly delineated within the Common Areas, the Declarant acknowledges that a certain amount of unintentional cross-parking may occur between the Parcels. The Association shall be responsible for enforcement of parking rights within the Common Areas, and shall have the sole and exclusive right to tow motor vehicles from the Common Areas; provided, however, that an individual Owner may have towed from its Parcel any motor vehicle parked on any portion of its Parcel that is not striped with parking spaces, such as roadways, entrances and exits, fire lanes and parking aisles.

No barriers, fences or other obstructions shall be erected within the Property so as to interfere with the free flow of pedestrian and vehicular traffic between those portions of the Property from time to time devoted to vehicular roadways, pedestrian sidewalks or paved parking areas; provided, however, that the foregoing provisions (and the provisions of Article III, Section 1(b) above) shall not prohibit the reasonable designation and relocation of traffic and pedestrian lanes. In addition, each Owner may block traffic on its Parcel for the time necessary to prevent the creation of prescriptive easement rights, or as may be reasonably required for the purpose of repairing or replacing the roadways, sidewalks and parking areas on its Parcel. If possible, however, such action shall be taken on a day or at a time when the building Improvements on the Property would not otherwise be open for business.

Nothing in this Article III, Section 2 shall be deemed to grant to the owner of any property outside of the Property any rights to use the parking areas located on the Property for the parking of motor vehicles, nor shall it be deemed to grant any Person the right to park motor vehicles on any portion of the Property not striped with parking spaces, such as roadways, entrances and exits, fire lanes and parking aisles.

Section 3. Utility and Other Easements. Subject to the terms of this Declaration, each Owner shall have a perpetual non-exclusive easement to install, use, maintain and replace all storm sewer, sanitary sewer, domestic water, fire protection water, natural gas, electric, telephone and other utility lines and facilities located or to be located within the Property, including those facilities (if any) shown and identified on the Site Plan or the Plat, to serve or benefit the Improvements on its Parcel, subject to the following limitations:

(a) All utility installations shall be underground, except as indicated on the Site Plan or the Plat and except for equipment like junction boxes, meters, transformers and backflow preventers.

(b) The initial location of any utility lines and facilities shall be subject to the prior written approval of the Owner of the Parcel under or across which the utility lines and facilities are to be installed, and in no event shall any utility line be installed under any building Improvements constructed within the Property.

(c) Each Owner shall have the right to pave and landscape the surface within its Parcel over any underground utility lines, and to grant additional easements to third parties within the areas in which those utility lines are located, so long as such actions do not unreasonably interfere with the use and enjoyment of the easement rights created hereby.

(d) To the extent that responsibility for such maintenance is not assumed by the appropriate public utility, (1) the maintenance of any utility line or facility located within the Property that serves only a single Parcel shall be the responsibility of the Owner of the Parcel served by that utility line or facility, regardless of the location of that line or facility; and (2) the maintenance of any utility line or facility located on the Property that serves multiple Parcels shall be the responsibility of the Association.

(e) Any Owner going onto the Parcel of another Owner to install or maintain utility lines or facilities shall perform such work in a manner to minimize any disruption of business on the Parcel on which the utility lines or facilities are located, and shall promptly repair at its expense any damage (including damage to paved or landscaped areas) caused by such installation or maintenance, so as to restore such Parcel to its original condition.

(f) Each Owner shall have the right to relocate the utility lines and facilities located on its Parcel at its expense if necessary for the development of Improvements on its Parcel, so long as the approval of the appropriate municipal utility department or public utility, if applicable, is obtained and arrangements are made for continued utility service to all other Owners benefited by the utility being relocated.

Notwithstanding the foregoing, each Owner (the “**Dominant Owner**”) who installs, uses, maintains or replaces any utility lines or facilities under or across the Parcel of another Owner (the “**Servient Owner**”) shall indemnify and hold the Servient Owner harmless from and against any and all claims, damages, losses, costs and expenses that may be caused or occasioned by the Dominant Owner, its tenants, contractors, agents or employees, in connection with its installation or maintenance work under this Article III, Section 3, and the Dominant Owner shall promptly discharge or bond (within thirty (30) days after receipt of notice of filing) any and all liens filed against the Servient Owner’s Parcel or any portion thereof as a result of or relating to any installation or maintenance undertaken by or on behalf of the Dominant Owner. In addition each Dominant Owner shall indemnify and hold the Servient Owner and its successor in title harmless from and against all claims, damages, losses, costs and expenses that may arise as a direct result of any toxic or hazardous substance that the Dominant Owner causes by its action or the actions of its tenants, contractors, agents or employees.

Section 4. Project Signs Easement. The Association shall have a perpetual exclusive easement over the area on which the Project Signs are located, for the purpose of maintaining,

operating, illuminating, repairing or replacing the Project Signs, including a perpetual non-exclusive right of access as may be reasonably necessary for it to exercise the foregoing easement rights, so long as it repairs any damage resulting from its entry. The Association shall exercise their easement rights under this Article III, Section 4 in a manner that minimizes interference with the operations of any permitted use on the Parcel on which the Project Signs are located, and in particular shall limit its access rights, to the extent practical, over the paved areas on such Parcel. If the Town of Matthews or another appropriate governmental agency requests that any Project Sign be relocated, as a result of a road widening or otherwise, the Association may relocate the sign easement area with the prior written consent of the Owner of the Parcel on which the sign easement area is located, not to be unreasonably withheld. In that event, the Association and such Owner may execute and record an amendment to this Declaration, substituting a revised Site Plan showing the new location of the sign easement area, without the joinder of any other party.

Section 5. Easement for Minor Encroachments. It is the intent of Declarant that all building Improvements on the Property be located wholly within the boundaries of each Parcel. Notwithstanding the foregoing, if any Improvements existing on the date of this Declaration encroach onto another Parcel by not more than three (3) feet, the Owner of the encroaching Improvements shall have an easement over the other Parcel to maintain the encroachment.

Section 6. Easement for Maintenance. The Association, or any person authorized by it (including but not limited to the Management Firm) shall have the right of access over the Common Areas to the extent necessary for performance of its obligations of maintenance, repair, or replacement of the same, as provided in Article V, Section 3.

Section 7. Delegation of Use. The easements granted to every Owner in this Article III may be delegated by each Owner, in connection with its development and use of its Parcel, to its tenants, employees, contract purchasers, agents, contractors and invitees.

Section 8. Easements and Property Rights Appurtenant to Parcel. All easements and other property rights of Owners created in this Article III shall be appurtenant to each Parcel and shall run and pass with the title to such Parcel.

Section 9. Terms and Conditions of Easements. All easements and other property rights of Owners created in this Article III shall be deemed appurtenant to each benefited Parcel and shall inure to the benefit of each benefited Owner, subject to the right of any burdened Owner to grant and reserve easements and rights-of-way through, under, over and across the Roadway Easement Areas or the Drainage Easement Areas for the installation, maintenance and inspection of utility facilities.

ARTICLE IV

THE ASSOCIATION

Section 1. Automatic Membership. All Owners shall automatically be Members of the Association, and shall enjoy the privileges and be bound by the obligations contained in the Project Documents, including the obligation to pay assessments to the Association. Ownership of any fee or undivided interest in any Parcel shall be the sole qualification for membership in the

Association, and upon the acquisition by any Person of such interest in any Parcel, such Person shall be deemed to have consented to become a member of the Association. Membership shall be appurtenant to and may not be separated from the ownership of any Parcel. The Board may make reasonable rules regarding proof of ownership.

Section 2. Voting Rights. The total number of votes of the Association Membership shall be one hundred (100). The voting rights allocable to each Parcel as of the date of this Declaration are based upon the respective acreages of each Parcel, and are set forth in Exhibit D attached hereto and made a part hereof.

If fee simple title to a Parcel is owned of record by more than one person or entity, all such persons or entities shall be Members of the Association, but the vote with respect to any such jointly owned Parcel shall be cast by the Person designated as the Owner of that Parcel under Article I, Section 20. If more than one of the joint Owners vote, the unanimous action of all joint Owners voting shall be necessary to effectively cast the votes allocated to the particular Parcel. Such unanimous action shall be conclusively presumed if any one of such multiple Owners casts the votes allocated to that Unit without protest being made promptly to the person presiding over the meeting by any of the other of such joint Owners. In no event may the vote which may cast 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 intention of this Section 2 that there be no "splitting" of votes that may be cast by any Member or Members.

Section 3. Directors Appointed by Declarant. The initial Board shall consist of four (4) persons appointed by Declarant. Until these persons are replaced by elected Board members at the first annual meeting of Members, they shall constitute the Board of the Association and exercise all powers and duties granted to the Board in the Bylaws. The initial directors are specifically authorized to fix the annual assessments for periods through December 31, 2006 and to enter into a Management Agreement for the Association, subject to the limitations set forth in Article V, Section 3 below.

Section 4. Creation of the Lien and Personal Obligation of Assessments. Declarant, for each Parcel owned within the Property, hereby covenants, and each Owner of any Parcel, by acceptance of a deed therefor, is deemed to covenant and agree to pay annual assessments or charges to the Association, such assessments to be established and collected as provided in this Article IV. Each such assessment, together with interest, costs and reasonable attorneys' fees, shall be a continuing lien upon the Parcel against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal financial obligation of the person who was the Owner of such Parcel at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to its successors in title (other than as a lien on the Parcel) unless expressly assumed by them.

Section 5. Purpose of Assessments. The assessments levied by the Association shall be used for the payment of the Common Area Costs, as more particularly set forth in Article V, Section 2.

Section 6. Calculation of Assessments. The Common Area Costs incurred by the Association shall be assessed against each Parcel based upon the respective acreages of each

Parcel, with each Parcel's proportionate share equal to a fraction, the numerator of which is the acreage of that Parcel, and the denominator of which is the aggregate acreage of all Parcels within the Property. Because Units 656-A, 656-B, 656-C, and 656-D of the Condominium are located on the same Parcel, as shown on the Site Plan, the proportionate share allocated to each such Unit is equal to one quarter $\frac{1}{4}$ of the acreage of that Parcel. The share of Common Area Costs allocable to each Parcel as of the date of this Declaration is set forth in Exhibit D attached hereto and made a part hereof.

Section 7. Payment of Assessments. The Owner of each Parcel shall pay assessments to the Association for its applicable share of the Common Area Costs incurred by the Association in each calendar year, in accordance with the provisions of this Article IV, Section 7. The obligations of the Owners of all Parcels to pay assessments shall commence on the date of this Declaration.

The obligation of each Owner to pay assessments under this Article IV, Section 7 shall not be affected by the destruction or demolition of the building Improvements on its Parcel. NO OWNER MAY WAIVE OR OTHERWISE ESCAPE LIABILITY FOR THE ASSESSMENTS PROVIDED FOR HEREIN BY NON-USE OF THE COMMON AREAS OR ABANDONMENT OF ITS PARCEL.

On or before January 1 of each year, the Association shall prepare a budget of the estimated Common Area Costs for the ensuing calendar year, and shall furnish a copy of that budget to each Owner, together with a calculation of the applicable assessments for the ensuing calendar year. This estimated annual charge shall be paid to the Association in four (4) equal quarterly installments, in advance on or before the first day of each calendar quarter. Following the end of each calendar year, the Association will furnish to each Owner a statement showing in reasonable detail the actual amount of Common Area Costs incurred in the preceding calendar year, and the actual assessments payable by each Owner. If the estimated quarterly payments made by an Owner in that calendar year are less than its actual share of Common Area Costs, such Owner shall pay the deficit to the Association within thirty (30) days after the annual statement. If the estimated quarterly payments made by an Owner in that calendar year are greater than its actual share of Common Area Costs, any surplus will, at the election of the Association, either be refunded to that Owner, or credited by the Association against the quarterly estimated payments thereafter coming due.

Section 8. Effect of Nonpayment of Assessments: Remedies of the Association. If any annual assessment, or quarterly installment thereof, is not paid within thirty (30) days after its due date, the Board may, at its option, declare the entire unpaid assessment, both annual and special, immediately due and payable, and such unpaid assessment shall bear interest from and after the due date at the rate of eighteen percent (18%) per annum, not to exceed, however, the maximum rate permitted by law. In addition, interest, reasonable attorneys' fees and costs of such action or foreclosure shall be added to the amount of such assessment. Any sum assessed by the Association remaining unpaid for a period of thirty (30) days or longer shall constitute a lien on the Parcel with respect to which such sum was assessed upon filing in accordance with N.C.G.S. §47F-3-116, and shall be enforceable by the Association in accordance with N.C.G.S. §47F-3-116 and Section 8 of the Bylaws.

During any period in which an Owner is in default in the payment of any installment of an annual, special or other assessment levied by the Association, the voting rights of the Owner in the Association and the right to the use of the Common Elements or any other services or facilities which is provided by the Association (except the right of access to the Owner's Parcel and the right of access to utility service for such Parcel) may be suspended by the Association until such assessment is paid. In the event of violation by an Owner of any rules or regulations duly established by the Association, such Owner's voting and use rights may be suspended by the Board in accordance with the procedures specified in N.C.G.S. §47F-3-107.1 and the Bylaws.

Section 9. Subordination of the Lien to Mortgages. The lien of the assessments provided for in this Article IV shall be subordinate to the lien of any Mortgage on any Parcel, and shall be subordinate to any tax lien or special assessment on a Parcel made by lawful governmental authority. Sale or transfer of any Parcel shall not affect the assessment lien. However, the sale or transfer of any Parcel by foreclosure of any Mortgage, or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. Such unpaid assessments shall be deemed to be expenses of the Association assessable against and collectible from all Owners, including the Owner of the Parcel acquired as a result of foreclosure of the Mortgage, its heirs, successors and assigns. No sale or transfer shall relieve such Parcel from liability for any assessments thereafter becoming due or from the lien thereof.

Section 10. No Obligation of Declarant to Provide Funds. Declarant shall have absolutely no obligation to make payments to or for the Association for any purpose except for its obligation to make periodic payment of assessments levied on any Parcel that Declarant may from time to time own and that is subject to assessment.

Section 11. Reserve Funds. From and after the recording of this Declaration, the Association may establish and maintain a reserve fund or funds for replacement and maintenance of the Common Areas. In that event, the Association shall allocate revenues from assessments to such reserve fund or funds in such amounts and in such manner as may be established from time to time by the Board. The reserve fund or funds shall be segregated from operating funds of the Association and may be in the form of a cash deposit, or invested in certificates of deposit or similar obligations issued by a bank or savings and loan association or the obligations of, or fully guaranteed as to principal by, the United States of America. The reserve fund or funds shall be used for the purpose of repairing, replacing and maintaining any facilities owned by the Association, and for such other purposes as may be determined by the Board.

Section 12. Association to Maintain Books and Records. The Association shall maintain at all times current copies of all Project Documents, all rules and regulations concerning the Property, as well as its own books, records and financial statements, and same shall be available for inspection by any Owner and any Mortgagee during normal business hours upon at least three (3) business days' prior written notice to the Association.

Section 13. Voluntary Conveyance; Estoppels. Except as provided in Article IV, Section 9 above, the lien for assessments of the Association created in this Article IV shall not be affected by any conveyance of a Parcel, and shall remain a continuing charge on that Parcel and a continuing lien which may be foreclosed as provided in Article IV, Section 8 above. Any grantee in a voluntary conveyance shall be entitled to a statement from the Board, setting forth the amount

of the unpaid assessments against the grantor due the Association and such grantee shall not be liable for, nor shall the Parcel conveyed be subject to a lien for, any unpaid assessments made by the Association against the grantor in excess of the amount set forth in that statement.

ARTICLE V

MAINTENANCE OF COMMON AREAS

Section 1. Maintenance of Common Areas. The maintenance of the Common Areas shall be the responsibility of the Association in the manner provided in this Article V. In particular, the Association shall be responsible for maintaining all Improvements located within the Roadway Easement Areas to the standards set forth in Article VI, Section 1. To the extent assignable, Declarant shall assign to the Association all warranties received by it with respect to any Common Areas.

Section 2. Definition of Common Area Costs. As used in this Declaration, the term “**Common Area Costs**” shall mean all of those costs associated with the maintenance and operation of the Common Areas, including, but not limited to, the following:

(a) The cost and expense of maintaining, repairing and replacing all Improvements located within the Roadway Easement Areas, and the landscaping and related improvements on the Property.

(b) The cost and expense of any other maintenance, repair or replacement of the Common Areas undertaken by the Association, net of any reimbursements that the Association may receive from the Owner(s) of such Common Areas and any income received by the Association (including without limitation fees for identification panels placed on the Project Signs) related to the Common Areas, including without limitation the following:

(i) Removing promptly, to the extent reasonably practicable, snow, ice, surface water and debris from paved areas.

(ii) Keeping all directional signs, pavement signs and striping of paved areas distinct and legible.

(iii) Periodically mowing, leaf blowing and fertilizing all grassed areas on the Property, including areas in the adjoining public rights-of-way between the property line and the back of the curb line.

(iv) Caring for, fertilizing, pruning and replanting all landscaped and planted areas within the Property, including areas in the adjoining public rights-of-way between the property line and the back of the curb line.

(v) Maintaining all utility lines or facilities serving multiple Parcels, to the extent not maintained by the applicable public utility.

- (c) The cost of all utility services (such as electricity and water) used in connection with the operation of the Common Areas.
- (d) The cost of lighting, operating, maintaining, repairing and replacing all identification signs on the Property, including but not limited to the Project Signs.
- (e) The payment of ad valorem real property taxes on the Project Signs, to the extent separately assessed for tax purposes.
- (f) The payment of insurance premiums for the insurance policies maintained by the Association in accordance with the Project Documents.
- (g) The establishment of reserves in accordance with Article IV, Section 11.
- (h) The cost of attorneys and accountants employed to represent the Association when appropriate.
- (i) If the Association engages a Management Firm, a reasonable management fee to the Management Firm.
- (j) If the Association engages a Management Firm, all other expenses reimbursable to the Management Firm under the terms of the management agreement, including but not limited to travel expenses and an hourly charge for personnel of the Management Firm for services exclusively dedicated to the Property, such as property inspections or preparation of financial statements.

Section 3. Management Firm. The Association may, from time to time, engage a qualified property management firm, properly licensed in the State of North Carolina (the “**Management Firm**”), to oversee and coordinate the operation, maintenance, repair and replacement of the Common Areas, and to act on behalf of the Association in the performance of its duties and obligations under this Declaration, including but not limited to the preparation of budgets, the collection of assessments, the maintenance of insurance policies, the payment of taxes and the enforcement of the covenants set forth in this Declaration. The Management Firm as so designated shall contract for and supervise such work, and shall pay the taxes assessed against the Project Signs. Any management and other agreements entered into by the Association shall provide that such agreements may be cancelled, with or without cause, upon no more than ninety (90) days’ notice and without penalty at any time. The Management Firm shall at all times be answerable to the Association and subject to its direction.

ARTICLE VI

MAINTENANCE STANDARDS

Section 1. Maintenance. Each Owner shall maintain or cause to be maintained its Parcel in a safe, clean and attractive condition, and shall maintain and repair at its expense all Improvements on its Parcel (other than the Common Areas, which shall be the responsibility of the Association) in order to keep the same in good condition and repair in compliance with then

current zoning laws, building codes and other governmental regulations and in a condition substantially similar to that existing upon the initial completion of the Improvements. Such maintenance obligation shall include, without limitation, the following:

- (a) Keeping and maintaining the exterior of all buildings and Improvements other than Common Areas in a good, safe, clean and slightly condition (as reasonably determined by the Association).
- (b) Maintaining all utility lines or facilities serving such Owner's Parcel exclusively, to the extent not maintained by the applicable public utility.
- (c) Keeping its Parcel clean, orderly, sanitary and free from objectionable odors and from termites, insects, vermin and other pests.

If any Owner, or a ground lessee acting on its behalf (a "**Defaulting Owner**"), fails to maintain its Parcel or the Improvements thereon, or if the need for maintenance, repair, or replacement of any portion of the Common Areas is caused through the willful or negligent act of an Owner, its agents, employees, guests, lessees, invitees, or designees and is not covered or paid for by a policy of insurance maintained by the Association, the Association shall have the right to maintain such area, or to perform such repairs or replacements, upon fifteen (15) days prior written notice to the Defaulting Owner, and the Defaulting Owner shall pay all costs and expenses of such maintenance, repair or replacement to the Association within ten (10) days after receipt of a detailed invoice for such costs and expenses. The Association shall have the remedies specified in Article IV, Section 8 for non-payment of any such amount.

ARTICLE VII

PERMITTED USES

Section 1. Permitted Uses. The Property shall be used only for commercial purposes compatible with the operation of a first-class mixed use commercial development, and not in violation of the following restrictions:

- (a) No portion of the Property shall be used for residential purposes, including without limitation, apartments, single-family homes, a mobile home park or a trailer court.
- (b) No portion of the Property shall be used as a surplus or second-hand store, a flea market, a tattoo parlor or body-piercing establishment, a massage parlor, or for the sale or display of pornographic materials or illicit drug paraphernalia.
- (c) No portion of the Property shall be used as laundry or dry cleaning establishment, or for the operation of a cleaning or maid-service operation.
- (d) No portion of the Property shall be used as a junkyard, or for the dumping, disposing, incineration or reduction of garbage, exclusive of dumpsters or compactors ancillary to a permitted retail or commercial use.

(e) No portion of the Property shall be used for the sale, leasing, display or repair of mobile homes, motor vehicles, boats, trailers or RVs.

(f) No portion of the Property shall be used for the operation of a carnival, billiard parlor, off-track betting facility, other gambling facility, bar, tavern, discotheque or dance hall, or movie theater.

(g) No portion of the Property shall be used for the sale of alcoholic beverages.

(h) No portion of the Property shall be used for the operation of a skating rink, bowling alley, video parlor, bingo parlor or other place of recreation and amusement not customarily found in a first-class retail development.

(i) No portion of the Property shall be used for the operation of a funeral home, mortuary or a crematorium.

(j) No portion of the Property shall be used as an animal hospital, veterinary office, kennel, animal pound, or pet grooming facility.

(k) No portion of the Property shall be used as a child care facility, school, or church holding any services, meetings or classes on the premises.

Notwithstanding the prohibitions contained in subparagraphs (a) through (j) above, the Association may approve in advance on an individual basis certain activities which would otherwise be prohibited by these specific prohibitions but which are secondary to an Owner's primary use of its Parcel, are incidental or negligible in nature and do not significantly deviate from the permitted uses of the Property as determined by the Association. Such incidental uses must be approved in writing by the Association. Additionally, and without limiting the foregoing, (A) no advertising shall be conducted with respect to such incidental uses, (B) the incidental uses shall not result in any increased burden upon the parking areas located within the Property, (C) such incidental uses shall not otherwise violate any of the other covenants, conditions or restrictions contained in the Declaration or any rules or regulations established by the Association with respect to the Property, (D) the Association may establish such reasonable conditions and additional restrictions with respect to such incidental uses as it deems necessary, and (E) the Association may at any time withdraw its approval, or establish additional conditions or restrictions with respect to such incidental uses as it deems necessary to protect the interests of the other Owners.

Section 2. Restricted Actions by Owners. No Owner shall permit anything to be done or kept on the Property which would be in violation of any law, or which would constitute a nuisance to any other Occupant of the Property. Each Owner shall comply with all laws, regulations, ordinances (including without limitation, applicable environmental laws, building codes and zoning ordinances) and other governmental rules and restrictions applicable to its Parcel.

ARTICLE VIII

BUILDING AND DEVELOPMENT RESTRICTIONS

Section 1. Building Plan and Approval Requirement. It is the intent of Declarant that the improvements located on each Parcel blend harmoniously and attractively with the improvements located on the remainder of the Property. Accordingly, from and after the date of this Declaration, no improvements (including free-standing signs) shall be constructed on any part of the Property, and no landscaping shall be placed on any portion of the Property, until plans and specifications for those improvements and/or landscaping (which plans, in the case of building improvements or signs, shall show exterior elevations, building or sign materials and colors of those materials) have been approved in writing in advance by the Association. This requirement for prior written approval of plans shall apply with equal force to exterior renovations to or replacements of building improvements or signs located on any part of the Property. The Association will not unreasonably withhold approval to any proposed building plans that are architecturally and aesthetically compatible with the other improvements within the Property, and any plans submitted to it will be deemed approved unless the Association notifies the Owner in writing, within fourteen (14) days after receipt, of the specific reasons for its disapproval.

Section 2. Site Improvement Restrictions. Site Improvements (as distinguished from building Improvements) constructed on any Parcel shall comply with the following requirements and restrictions:

- (a) All curbs and gutters shall be poured in place standard-sized concrete type curbs.
- (b) All utility lines and equipment shall be entirely underground, except as indicated on the Site Plan or the Plat and except for equipment like junction boxes, meters, transformers and backflow preventers.
- (c) No on-site septic system or sanitary sewer treatment facility will be permitted on any Parcel.
- (d) Pavement markings, directional signs, and other traffic indicators upon each Parcel shall be in accordance with the "Manual on Uniform Traffic Control Devices," and shall provide for a reasonable traffic flow scheme consistent with that shown on the Site Plan and the Plat.
- (e) All buffer strips and other undeveloped land areas shall be landscaped with trees, shrubs, or suitable ground cover (which includes grass) in a uniform manner.

Section 3. General Building Standards. No building located on the Property shall have a metal exterior. No structure of a temporary nature shall be allowed on any Parcel at any time, except that of an Owner's contractors and subcontractors during the period of construction of Improvements. All buildings constructed upon the Property shall conform to the minimum standards specified by the applicable governmental building codes in effect at the time of such construction, as well as to all other rules, regulations, requirements, ordinances and laws of any local, state or federal governmental unit(s) or authorities having jurisdiction thereof.

Section 4. Screening and Related Requirements. All storage tanks, trash containers and maintenance facilities located on any Parcel shall either be housed in closed buildings or otherwise screened from public view in a manner architecturally compatible with the buildings located on that Parcel; provided, however, that the Association from time to time may designate certain unscreened portions of the Common Areas for storage of trash containers. No storage tanks, trash containers and maintenance facilities shall be located in front of the buildings. All loading docks and associated areas shall have adequate space on each Parcel so that loading and unloading of trucks and service vehicles will not be carried out within the Roadway Easement Areas.

Section 5. Construction Standards. Each Owner, throughout any period of construction on its Parcel, shall:

(a) Store all construction materials within a temporary staging and/or storage area located wholly within its Parcel, at a location that will not unreasonably interfere with access between any other Parcel and the Roadway Easement Areas.

(b) Install and maintain effective erosion control measures that meet or exceed code requirements, in order to prevent the runoff of sediment, dirt and debris from its Parcel.

(c) Cause trucks, construction equipment or machinery to park only within the boundaries of its Parcel, and cause construction vehicles and traffic to follow the routes that may be designated by Declarant or the Association for construction traffic.

(d) Not permit mud, dirt, construction materials, trash or debris to accumulate or remain outside of the building site on its Parcel; or permit construction to proceed in a manner that interferes with the visibility of, access to or the operation of any other permitted use being conducted on the Property.

Section 6. Sign Standards. All signs on the Property shall be subject to the prior approval of Association, and shall comply with the relevant sign control ordinances of the Town of Matthews and/or Mecklenburg County, North Carolina.

The Association, in its sole discretion, may make space available on the Project Signs for installation of identification panels by Owners and Occupants, and may charge a reasonable fee for such use of the Project Signs. The Association shall make reasonable efforts to allocate the available space for identification panels equitably among the Parcels; provided, however that its determination of such allocation (as the same may change from time to time) shall be final and binding upon the Owners. The location, design, size, and installation of any permitted identification panels shall be subject to the prior written approval of the Association. The Owner or Occupant using an identification panel shall install and maintain the identification panel in first-class condition and repair. If any repairs required to be made to an identification panel are not completed within ten (10) days after written notice from the Association or the Management Firm, then the Association, without limiting any other right or remedy it may have therefor, may at its option make such repairs; and the Owner or Occupant shall reimburse the Association for the cost

of such repairs (including a fifteen percent (15%) administration fee) within ten (10) days after written demand.

ARTICLE IX

INSURANCE, CONDEMNATION AND REBUILDING

Section 1. Property Insurance and Rebuilding. Each Owner shall obtain and maintain in force a policy of property insurance (ISO Special Form or its equivalent), covering all Improvements on its Parcel in an amount equal to at least ninety percent (90%) of the replacement cost thereof, less the cost of any non-destructible items such as paving, foundations and footings. The Association shall obtain and maintain in force such a policy covering the insurable Improvements included within the Common Areas, including the Project Signs, and the premiums for this policy shall be included in Common Area Costs. The policies of insurance required above may be maintained under a blanket policy of insurance covering multiple Parcels, provided that: (a) in all other respects, each such policy shall comply with the requirements set forth above, and (b) the protection afforded the insuring parties under the blanket policy shall be no less than that which would have been afforded under separate policies relating only to the individual Parcels or the insurable Improvements included within the Common Areas, as the case may be.

If any Improvements on any Parcel are destroyed or damaged by fire or other casualty, the Owner of that Parcel shall elect to rebuild or not to rebuild the damaged Improvements. If the Owner elects not to rebuild, it shall promptly demolish the damaged Improvements, remove or clean up all rubbish and debris, grade and landscape or pave the area, and thereafter shall maintain its Parcel as a seeded or landscaped area, keeping the grass mowed to a height of six (6) inches or less, promptly removing all trash and debris, and generally maintaining its Parcel in a safe, neat and clean condition at all times. If the Owner elects to rebuild, it shall proceed with due diligence to repair or restore the Improvements to as good a condition as existed before such damage or destruction, and shall comply in all respects with the provisions of Article VIII.

Section 2. Release of Claims; Waiver of Subrogation. Each Owner releases each other Owner from any and all liability for any loss or damage to property, or for lost rents or profits, caused by fire or other casualty, even if the fire or other casualty was caused by the fault or negligence of the Owner being released, or by any other party for whom that Owner may be responsible. Each Owner shall cause the policy of casualty insurance required by Section 1 above to contain a waiver by the insurer of any rights of subrogation that it may acquire by virtue of the payment of a claim under the policy.

Section 3. Condemnation. In the event of a taking by condemnation or otherwise by governmental authority which damages any part of Improvements, the Owner of the damaged portion of the Improvements shall immediately use the condemnation proceeds and other funds, to the extent needed, to repair and restore the Improvements to an integrated and architecturally complete building or structure, if the remaining portion of the Improvements is capable of being so repaired and restored in the discretion of the Owner of those Improvements. If the remaining portion of the Improvements is not capable of being repaired and restored, then the Owner of that Parcel shall promptly demolish the damaged Improvements, remove or clean up all rubbish and

debris from the Parcel, grade and landscape or pave the area, and thereafter maintain its Parcel as a seeded or landscaped area, keeping the grass mowed to a height of six (6) inches or less, promptly removing all trash and debris, and generally maintaining its Parcel in a safe, neat and clean condition at all times.

In the event of a taking by condemnation or otherwise of any Parcel, the entire award or purchase price shall belong to the Owner of that Parcel. Notwithstanding the foregoing, any Owner may file a separate claim with the condemning authority over and above the value of the Parcel being taken in fee simple to the extent of any damage suffered by that Owner as a result of the loss of easement or other rights; provided, however, that such claim does not reduce the claim payable to the Owner of fee simple title to the Parcel being taken.

Section 4. Liability Insurance. Each Owner at all times shall obtain and maintain in full force a policy of commercial general liability insurance (current ISO Form or its equivalent) with a combined single limit of at least \$2,000,000.00 covering its Parcel, which minimum limit may be increased from time to time in the reasonable discretion of the Board. The liability insurance policies required above 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 it may not be canceled or substantially modified without at least thirty (30) days' prior written notice to the Association and to all insureds, including all Owners and Mortgagees. During any period of construction of Improvements on any Parcel, the Owner of that Parcel shall maintain builder's risk, workers' compensation and such other insurance policies as are required by sound construction practices. The Association shall obtain and maintain in full force a policy of commercial general liability insurance (current ISO Form or its equivalent) with a combined single limit in the amount set forth above, and naming all Owners and the Condominium Association as additional insureds. The premiums for the Association policy shall be included in Common Area Costs.

Section 5. Indemnity. Each Owner shall indemnify, defend and hold harmless each other Owner against all loss, liability, expense and damage, including reasonable attorneys' fees and other litigation costs, arising from death, bodily injury or property damage that occurs on the Parcel of the indemnifying Owner; provided, however, that this indemnification shall not extend to any claims caused in whole or in part by any act or omission of the Owner being indemnified.

Section 6. Blanket Policies and Certificates. Any policy of insurance required to be carried by any Owner under this Article IX shall be carried with a reputable insurance company licensed to do business in the State of North Carolina on an admitted basis, and may be provided as part of a so-called blanket policy of insurance covering other locations, as long as the coverage limits set forth in this Article IX are satisfied as to its Parcel. Each Owner shall deliver to the Association, within thirty (30) days after written request therefor, a certificate of insurance evidencing that the policies of insurance required to be maintained by it under this Article IX are in full force and effect.

ARTICLE X

GENERAL PROVISIONS

Section 1. Enforcement. Any Owner, Declarant, the Association and (if applicable) the Management Firm shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, easements, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by any such party to enforce any covenant or restriction contained in this Declaration shall not be deemed a waiver of the right to do so thereafter.

Section 2. Exculpation. Notwithstanding any provision to the contrary contained in this Declaration, it is specifically understood and agreed that there shall be absolutely no personal liability on the part of any Owner, its shareholders, officers, directors, members, managers, or partners, with respect to the performance or non-performance of any of its obligations under this Declaration. Each Owner shall look solely to the Parcel owned by any defaulting Owner, the Improvements located thereon and any insurance or condemnation proceeds related thereto, for the satisfaction of any remedy of the non-defaulting Owner resulting from the breach of any of the obligations or covenants of this Declaration by the defaulting Owner; provided, however, that this provision shall be not deemed to affect the right of any Owner to seek injunctive relief or to bring suit for specific performance, or to affect the personal liability of Owners for assessments pursuant to Article IV, Section 3. If any Owner conveys its fee simple interest in its Parcel, that Owner shall be relieved from all obligations under this Declaration accruing after the date of the conveyance.

Section 3. Force Majeure. If any Owner is delayed in the performance of any obligation under this Declaration as a result of an act of God, labor dispute, shortage of materials or supplies or other event beyond its reasonable control (it being agreed that the financial inability of any Owner to perform any obligation shall never be deemed an event beyond its reasonable control), the time for performance of that obligation shall be extended for the reasonable period of that delay.

Section 4. Estoppel Certificates. The Association shall, within fifteen (15) days after the written request of any Owner, certify by a written instrument, duly executed and acknowledged, to any purchaser or proposed purchaser, or mortgagee or proposed mortgagee, or any other party specified in the request: (a) whether this Declaration has been supplemented or amended, and if so, the nature of the supplement or amendment; (b) whether there exists any default under this Declaration, and if so, a description of that default; (c) whether there exists any offset, defense or counterclaim on the part of the certifying party as to the performance of its obligations under this Declaration, and if so, a description of the nature and amount of any such offset, defense or counterclaim; and (d) such other matters as may reasonably be requested.

Section 5. No Partnership. The provisions of this Declaration are not intended to create, and shall not be interpreted to create, a joint venture, a partnership or any similar relationship between the Owners.

Section 6. Severability. Invalidation of any covenant or restriction contained in this Declaration by judgment or court order shall not affect any other provisions of this Declaration all of which shall remain in full force and effect.

Section 7. Duration. The covenants and restrictions contained in this Declaration shall run with and bind the Property for a period of fifty (50) years from the date this Declaration is recorded, after which time the term shall be automatically extended for five (5) successive periods of ten (10) years each for a total including the initial term of one hundred (100) years, unless at least seventy-five percent (75%) of the Owners elect not to extend the term of this Declaration. Notwithstanding the foregoing, the perpetual easements created in Article III of this Declaration shall not be affected by the expiration or termination of this Declaration.

Section 8. Amendment. Except as expressly provided in Article III, Section 4, this Declaration may be amended, modified or terminated only by an instrument signed by at least seventy-five percent (75%) of the Owners, and by Declarant, so long it owns any portion of the Property, and properly recorded in the Office of the Register of Deeds for Mecklenburg County.

Section 9. Governing Law. This Declaration has been entered into under, and shall be construed in accordance with, the laws of the State of North Carolina.

Section 10. Private Agreement. This Declaration shall not be construed to grant any rights to the public in general.

Section 11. Successor to Declarant. If the approval of Declarant, or any designation by Declarant, is required under the terms of this Declaration and Declarant no longer owns any interest in any Parcel, the right of approval or designation shall be exercised by the Association.

Section 12. Reasonable Consent/Approval. Whenever the consent or approval of a Person is required by the terms of this Declaration, such consent or approval shall not be unreasonably withheld, delayed or conditioned.

Section 13. Consent of Owners. Wherever in this Declaration the approval or consent of a specified percentage of Owners is required, it shall mean the approval or consent of Owners who own Parcels which have allocated to them that specified percentage of votes in the Association.

[Signatures on following page.]

IN WITNESS WHEREOF, Declarant has executed this Declaration as of the day and year first above written.

THREE AND ONE PARTNERSHIP
a North Carolina General Partnership

By: _____(SEAL)
Frank M. Williams, Partner

By: _____(SEAL)
J. Andrew Williams, Partner

By: _____(SEAL)
Robert L. Williams, Partner

By: _____(SEAL)
Jane Walters Williams, Partner

By: _____(SEAL)
Barbara Faulkner Williams, Partner

By: _____(SEAL)
Nancy Perry Williams, Partner

By: _____(SEAL)
Catherine Golden Williams Peacock, Partner

By: _____(SEAL)
Susan Williams Galpin, Partner

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

I, _____, a Notary Public of _____ County and State of North Carolina, do hereby certify that ROBERT L. WILLIAMS, J. ANDREW WILLIAMS, FRANK M. WILLIAMS, JANE WALTERS WILLIAMS, BARBARA FAULKNER WILLIAMS, NANCY PERRY WILLIAMS, CATHERINE GOLDEN WILLIAMS PEACOCK, SUSAN WILLIAMS GALPIN (each, a “Signatory”), personally came before me this day and acknowledged that they are the general partners of **THREE AND ONE PARTNERSHIP**, a North Carolina general partnership, and that each Signatory, as partner, being authorized to do so, executed the foregoing instrument on behalf of the partnership. I certify that:

Robert L. Williams personally appeared before me this day, and

(check one of the following)

_____ (I have personal knowledge of the identity of the Signatory); **or**

_____ (I have seen satisfactory evidence of the Signatory’s identity, by a current state or federal identification with the Signatory’s photograph in the form of:

(check one of the following)

___ a driver's license *or*

___ in the form of _____); **or**

_____ (a credible witness has sworn to the identity of the Signatory).

J. Andrew Williams personally appeared before me this day, and

(check one of the following)

_____ (I have personal knowledge of the identity of the Signatory); **or**

_____ (I have seen satisfactory evidence of the Signatory’s identity, by a current state or federal identification with the Signatory’s photograph in the form of:

(check one of the following)

___ a driver's license *or*

___ in the form of _____); **or**

_____ (a credible witness has sworn to the identity of the Signatory).

Frank M. Williams personally appeared before me this day, and

(check one of the following)

_____ (I have personal knowledge of the identity of the Signatory); **or**

_____ (I have seen satisfactory evidence of the Signatory’s identity, by a current state or federal identification with the Signatory’s photograph in the form of:

(check one of the following)

___ a driver's license *or*

___ in the form of _____); **or**

_____ (a credible witness has sworn to the identity of the Signatory).

Jane Walters Williams personally appeared before me this day, and

(check one of the following)

_____ (I have personal knowledge of the identity of the Signatory); **or**

_____ (I have seen satisfactory evidence of the Signatory's identity, by a current state or federal identification with the Signatory's photograph in the form of:

(check one of the following)

___ a driver's license *or*

___ in the form of _____); **or**

_____ (a credible witness has sworn to the identity of the Signatory).

Barbara Faulkner Williams personally appeared before me this day, and

(check one of the following)

_____ (I have personal knowledge of the identity of the Signatory); **or**

_____ (I have seen satisfactory evidence of the Signatory's identity, by a current state or federal identification with the Signatory's photograph in the form of:

(check one of the following)

___ a driver's license *or*

___ in the form of _____); **or**

_____ (a credible witness has sworn to the identity of the Signatory).

Nancy Perry Williams personally appeared before me this day, and

(check one of the following)

_____ (I have personal knowledge of the identity of the Signatory); **or**

_____ (I have seen satisfactory evidence of the Signatory's identity, by a current state or federal identification with the Signatory's photograph in the form of:

(check one of the following)

___ a driver's license *or*

___ in the form of _____); **or**

_____ (a credible witness has sworn to the identity of the Signatory).

Catherine Golden Williams Peacock personally appeared before me this day, and

(check one of the following)

_____ (I have personal knowledge of the identity of the Signatory); **or**

_____ (I have seen satisfactory evidence of the Signatory's identity, by a current state or federal identification with the Signatory's photograph in the form of:

(check one of the following)

___ a driver's license *or*

___ in the form of _____); **or**

_____ (a credible witness has sworn to the identity of the Signatory).

Susan Williams Galpin personally appeared before me this day, and

(check one of the following)

_____ (I have personal knowledge of the identity of the Signatory); **or**

_____ (I have seen satisfactory evidence of the Signatory's identity, by a current state or federal identification with the Signatory's photograph in the form of:

(check one of the following)

___ a driver's license *or*

___ in the form of _____); **or**

_____ (a credible witness has sworn to the identity of the Signatory).

Each Signatory acknowledged to me that he or she voluntarily signed the foregoing instrument for the purpose stated and in the capacity indicated.

Witness my hand and official stamp or seal this _____ day of _____, 2006.

Notary Public

Print Name: _____

[Note: Notary Public must sign exactly as on notary seal]

My Commission Expires: _____

☞ [NOTARY SEAL] (**MUST BE FULLY LEGIBLE**)

EXHIBIT A

LEGAL DESCRIPTION

Being all those tracts or parcels of land located in the Town of Matthews, Mecklenburg County, North Carolina, shown as Lot #1, Lot #2, Lot #3 and Lot #4 on that plat entitled "A Subdivision Map of 3 and 1 Properties, Property of Three and One," prepared by Carolina Surveyors, Inc., dated October 25, 2005, last revised November 23, 2005 and recorded in Map Book 45 at Page 277 in the Mecklenburg County Public Registry.

EXHIBIT B

SITE PLAN

[to be attached]

EXHIBIT C

BYLAWS OF MATTHEWS BUSINESS PARK OWNERS ASSOCIATION, INC.

Section 1

Definitions

The words, phrases and terms used in these Bylaws shall have the meanings as set forth in the Declaration of Easements and Restrictions for Matthews Business Park (the “**Declaration**”), recorded in the Office of the Register of Deeds for Mecklenburg County, North Carolina, to which a copy of these Bylaws is attached as Exhibit C.

Section 2

Administration of Property

Section 2.1 Authority and Responsibility: Except as otherwise specifically provided in the Project Documents, the Association shall be responsible for administering, operating and managing the Common Areas, and shall have, without limitation, all of the powers specified in N.C.G.S. §47F-3-102.

Section 2.2 Official Action: Unless specifically required in the Project Documents, all actions taken or to be taken by the Association shall be valid when such are approved by the Board as hereinafter set forth or, except to the extent that the North Carolina Nonprofit Corporation Act requires action by the Board, when taken by the committee, person or entity to whom such authority has been duly delegated by the Board as set forth in the Project Documents or these Bylaws. The Association, its Board, officers and members shall at all times act in conformity with the North Carolina Nonprofit Corporation Act, the North Carolina Planned Community Act, and the Project Documents, all of which shall govern the affairs of the Association.

Section 3

Offices - Seal - Fiscal Year

Section 3.1 Principal Office and Registered Office: The initial principal office and registered office of the Association shall be located at 608-B Matthews-Mint Hill Road, Matthews, NC 28105.

Section 3.2 Other Offices: The Association may have other offices at such other places within the State of North Carolina as the Board may from time to time determine.

Section 3.3 Seal: The seal of the Association shall contain the name of the Association, the word “Seal”, year of incorporation and such other words and figures as desired by the Board.

Section 3.4 Fiscal Year: The fiscal year of the Association shall be the calendar year.

Section 4

Membership

Section 4.1 Qualification: Membership in the Association shall be limited to the Owners, and every Owner of any fee or undivided interest in any Parcel shall automatically be a Member of the Association. Membership in the Association shall be appurtenant to and may not be separated from Parcel ownership.

Membership in the Association shall inure automatically to Owners upon acquisition of the fee simple title (whether encumbered or not) to any one or more Parcels. The date of recordation in the Office of the Register of Deeds of Mecklenburg County of the conveyance of the Parcel in question shall govern the date of ownership of each particular Parcel. However, in the case of death, the transfer of ownership shall occur on date of death in the case of intestacy or date of probate of the will in the case of testacy. Until a decedent's will is probated, the Association may rely on the presumption that a deceased Owner died intestate.

Section 4.2 Place of Meetings: All meetings of the Members shall be held at a place in Mecklenburg County, North Carolina designated by the Board.

Section 4.3 Annual Meetings: A meeting of the Members of the Association shall be held at least once each year and shall be designated as the annual meeting. The first annual meeting of the Members shall be held on the date and hour designated by Declarant. Thereafter, the annual meeting of the Members shall be held on the second Monday in February of each year at 8:00 p.m., Eastern Standard Time. If the second Monday in February shall be a legal holiday, the annual meeting shall be held at the same hour on the first day following which is not a legal holiday. At such meetings, the Board shall be elected in accordance with Section 5.3 of these Bylaws, and the Members shall transact such other business as may properly come before them.

Section 4.4 Substitute Annual Meetings: If an annual meeting is not held on the day designated by these Bylaws, a substitute annual meeting may be called in accordance with the provisions of Sections 4.5 and 4.6. A meeting so called shall be designated and treated for all purposes as the annual meeting.

Section 4.5 Special Meetings: Special meetings of the Members may be called at any time by the President or by not less than fifty-one percent (51%) of the Board members and shall be called within 30 days after Members holding at least 10% of the voting rights sign, date and deliver to the Association's Secretary a written demand for a special meeting describing the purpose of the meeting. Business to be acted upon at all special meetings shall be confined to the subjects stated in the notice of such meeting.

Section 4.6 Notices of Meetings: Notice stating the time and place of a Member meeting, including annual meetings, and the items on the agenda, including the general nature of any proposed amendment to the Declaration or these Bylaws, any budget changes, and any proposal to remove a director or officer, shall be delivered not less than ten (10) days, or if notice

is mailed by other than first class, registered or certified mail, not less than 30 days, nor more than 60 days before the date of any such Member meeting, either personally or by mail, by or at the discretion of the President or the Secretary, to the address of each Parcel. Notice shall be deemed given upon deposit in the mail depository of each Parcel.

Notice given to any one tenant in common, tenant by entirety or other joint Owner of a Parcel shall be deemed notice to all joint Owners of the subject Parcel.

The notice of meeting shall specifically state the purpose or purposes for which the meeting is called.

Section 4.7 Quorum: Except as otherwise provided in these Bylaws, the presence in person or by proxy of Members entitled to cast eighty percent (80%) of the votes which may be cast for election of the Board shall, constitute a quorum at all meetings of the Members. Unless otherwise required by law, if a quorum is not present or represented at any meeting, the Members entitled to vote thereat shall have the power to adjourn the meeting to a different date, time or place, without notice other than the announcement at the meeting, until a quorum is present or is represented. Once a Member is represented for any purpose at a meeting, the Member is deemed present for quorum purposes for the remainder of the meeting and for any adjournment of that meeting unless a new record date is or must be set forth at that adjourned meeting.

Section 4.8 Voting Rights: Each Member shall be entitled to the voting rights set forth in the Declaration. If fee simple title to a Parcel is owned of record by more than one person or entity, all such persons or entities shall be Members of the Association, but the vote with respect to any such jointly owned Parcel shall be cast by the party designated as the Owner of that Parcel under Article I, Section 20 of the Declaration. In no event may the vote cast with respect to any Parcel be divided among joint Owners of the Parcel or cast in any manner other than as a whole, it being the intention of this Section 4.8 that there be no "splitting" of votes that may be cast by any Member or Members.

Section 4.9 Proxies: Members may vote either in person or by agents duly authorized by proxy appointed by the subject Member or by its duly authorized attorney-in-fact. An appointment is valid for 11 months unless a different period is expressly provided in the appointment form. Unless a proxy otherwise provides, any proxy holder may appoint in writing a substitute to act in its place. In order to be effective, all proxies must be filed with the Secretary or other officer or agent authorized to tabulate votes either during or prior to the meeting in question. A member may not revoke a proxy given pursuant to this Section 4.9 except by written notice of revocation delivered to the Secretary or other officer or agent authorized to tabulate votes or by attendance at any meeting and voting in person by the member appointing the proxy.

Section 4.10 Majority-Vote: The casting of a majority of the votes represented at a meeting at which a quorum is present, in person or by proxy, shall constitute valid action by the Members except where a different percentage vote is stipulated by these Bylaws, the Declaration or the Articles of Incorporation of the Association or applicable law.

Section 4.11 Actions Without Meeting: Any action which may be taken at a meeting of the Members may be taken without a meeting if consent or ratification, in writing, setting forth the

action so taken or to be taken shall be signed by all of the persons who would be 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.

Section 5

Board

Section 5.1 General Powers: The business and affairs of the Association shall be managed by the Board or by such committees as the Board may establish pursuant to Section 6 of these Bylaws; provided, however, the Board may not act on behalf of the Association to amend the Declaration, to elect members of the Board, to determine the qualifications, powers and duties, or terms of office of Board members, or to take any action required to be taken by the Members pursuant to the Project Documents or applicable law. The Board may, however, fill vacancies in its membership for the unexpired portion of any term.

Section 5.2 Number, Term and Qualification: The number of directors constituting the Board of Directors shall be at least three and not more than five as may be fixed or changed from time to time, within the minimum and maximum, by the Board of Directors. The initial Board shall consist of the four (4) individuals appointed by Declarant whose names are set forth in the Articles of Incorporation of the Association. Board members may succeed themselves in office. The Board of Directors, before each annual meeting of Members, shall determine the number constituting the Board of Directors for the ensuing year.

Section 5.3 Election of Board Members: The election of all Board members shall be by ballot. Persons receiving the highest number of votes (see Section 4.8) shall be elected. Cumulative voting is not permitted.

Section 5.4 Removal: Any Board member, other than a member appointed by Declarant, may be removed from the Board, with or without cause, by a vote of at least sixty-seven percent (67%) of the votes entitled to be cast by all Members present and entitled to vote at any meeting of the Members at which a quorum is present; provided, the notice of the meeting must state that the question of such removal will be acted upon at the subject meeting. If any Board members are so removed, their successors as Board members may be elected by the membership at the same meeting to fill the unexpired terms of the Board members so removed.

Section 5.5 Vacancies: A vacancy occurring in the Board may only be filled by a majority of the remaining Board members, though less than a quorum, or by the sole remaining Board member; but a vacancy created by an increase in the authorized number of Board members shall be filled only by election at an Annual or substitute Annual Meeting or at a Special Meeting of Members called for that purpose or by unanimous consent of the Members without meeting. The Members may elect a Board member at any time to fill any vacancy not filled by the Board members. As indicated in Section 5.4, the Membership shall have the first right to fill any vacancy created by the Membership's removal of a Board member.

Section 5.6 Chairman: A member of the Board shall be elected as Chairman of the Board by the Board members at the first meeting of the Board after its election. The Chairman

shall preside at all meetings of the Board and perform such other duties as may be directed by the Board. Prior to election of a Chairman and/or in the event that the Chairman is not present at any meeting of the Board, the President shall preside.

Section 5.7 Compensation: No member of the Board shall receive any compensation from the Association for acting as such. Provided, however, each Board member shall be reimbursed for reasonable out-of-pocket expenses incurred and paid by him on behalf of the Association, and nothing herein shall prohibit the Board from compensating a Board member for unusual and extraordinary services rendered on the basis of quantum meruit. Further provided, each Board member, by assuming office, waives his right to institute suit against or make claim upon the Association for compensation based upon quantum meruit.

Section 5.8 Loans to Board Members and Officers: No loans shall be made by the Association to its Board members or officers. The Board members who vote for or assent to the making of a loan to a Board member or officer of the Association, and any officer or officers participating in the making of such loan, shall be jointly and severally liable to the Association for the amount of such loan until the repayment thereof.

Section 5.9 Indemnification: Any person who at any time serves or has served as a director of the Association, or in such capacity at the request of the Association, for any other corporation, partnership, joint venture, trust or other enterprise, shall have a right to be indemnified by the Association, to the fullest extent permitted by law against (a) reasonable expenses, including attorneys' fees, actually and necessarily incurred by him in connection with any threatened, pending or completed action, suit or proceedings, whether civil, criminal, administrative or investigative, and whether or not brought by or on behalf of the Association, seeking to hold him liable by reason of the fact that he is or was acting in such capacity, and (b) reasonable payments made by him in satisfaction of any judgment, money decree, fine, penalty or settlement for which he may have become liable in any such action, suit or proceeding.

The Board shall take all such action as may be necessary and appropriate to authorize the Association to pay the indemnification required by this bylaw, including without limitation, to the extent needed, making a good faith evaluation of the manner in which the claimant for indemnity acted and of the reasonable amount of indemnity due him.

Any person who at any time after the adoption of this bylaw serves or has served in any of the aforesaid capacities for or on behalf of the Association shall be deemed to be doing or to have done so in reliance upon, and as consideration for, the right of indemnification provided herein. Such right shall inure to the benefit of the legal representatives of any such person and shall not be exclusive of any other rights to which such person may be entitled apart from the provision of this bylaw.

In addition to the foregoing, the Board shall have the right and power to purchase and maintain insurance on behalf of any person who is or was a director of the Association, or is or was serving at the request of the Association as director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the Association would have the power to indemnify him against such liability.

Section 5.10 Meetings of the Board:

A. Regular Meetings: Regular meetings of the Board shall be held, without notice, at such hour and address as may be fixed from time to time by resolution of the Board. Should any such meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

B. Special Meetings: Special meetings of the Board shall be held when called by the President of the Association, or by any Board member, after not less than three (3) or more than thirty (30) days' written notice to each Board member.

C. Notices of Special Meetings: The notice provided for herein may be waived by written instrument signed by those Board members who do not receive said notice. Except to the extent otherwise required by law, the purpose of a Board members' special meeting need not be stated in the notice. Notices shall be deemed received upon the happening of any one of the following events: (1) one day following deposit of same in the United States mail with proper postage paid and addressed to the Board member at its last known address on file with the Association; or (2) delivery to the Board member. Attendance by a Board member at a meeting shall constitute a waiver of notice of such meeting unless the subject Board member gives a written statement at the meeting to the person presiding objecting to the transaction of any business because the meeting is not lawfully called and gives such notice prior to the vote on any resolution.

D. Approved Meeting Place: All Board meetings shall be held in Mecklenburg County, North Carolina, or such other location as may be determined by a majority of the Board members.

E. Quorum: A majority of the Board members then holding office shall constitute a quorum for the transaction of business and every act or decision done or made by a majority of the Board members present at a duly held meeting at which a quorum is present shall be regarded as the act or decision of the Board.

Section 5.11 Presumption of Assent: A Board member who is present at a meeting of the Board at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless its contrary vote is recorded or its dissent is otherwise entered in the minutes of the meeting or unless he shall file its written dissent to such action with the person acting as the Secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the Secretary of the Association immediately after the adjournment of the meeting. Such right to dissent shall not apply to a Board member who voted in favor of such action.

Section 5.12 Powers and Duties: The Board shall have the authority to exercise all powers and duties of the Association necessary for the administration of the affairs of the Project except such powers and duties as by law or by the Project Documents may not be delegated by the Owners to the Board. The powers and duties to be exercised by the Board shall include, but shall not be limited to, the following:

A. Operation, care, upkeep and maintenance of the Common Areas;

B. Determination of the funds required for operation, administration, maintenance and other affairs of the Project and collection of the Common Area Costs from the Owners, as provided in the Project Documents;

C. Employment and dismissal of personnel (including without limitation the Management Firm) necessary for the efficient operation, maintenance, repair, and replacement of the Common Areas;

D. Adoption of rules and regulations covering the details of the operation, maintenance, repair, replacement, use and modification of the Common Areas;

E. Opening of bank accounts on behalf of the Association and designating the signatories required therefor;

F. Obtaining insurance as required or permitted under the terms of the applicable provisions of the Declaration;

G. Keeping detailed, accurate records of the receipts and expenditures of the Association; obtaining annual audits of the financial records of the Association from the Association's public accountant; furnishing the annual reports; and furnishing current budgets. All books and records shall be kept in accordance with good and accepted accounting practices and the same shall be available for examination by all Owners or their duly authorized agents or attorneys, at convenient hours on working days;

H. Keeping a complete record of the minutes of all meetings of the Board and Membership in which minute book shall be inserted actions taken by the Board and/or Members by consent without meeting;

I. Supervising all officers, agents and employees of the Association and insuring that their duties are properly performed;

J. Enforcing, on behalf of the Association, the obligations and assessments provided in the Declaration, including, but not limited to, the institution of civil actions to enforce payment of the assessments as provided in the Declaration, the institution of actions to foreclose liens for such assessments, the imposition of changes for late payment of assessments, and after notice and an opportunity to be heard, in accordance with the procedures specified in N.C.G.S. §47F-3-107A, suspending privileges of Owners or levying reasonable fines for violations of the Declaration, Bylaws and rules and regulations of the Association, such fines not to exceed the greater of \$150.00 per day, or such higher maximum amount as may be specified in N.C.G.S. §47F-3-107A;

K. Making of repairs, additions, and improvements to or alterations or restoration of the Common Areas in accordance with the other provisions of these Bylaws and the Declaration, after damage or destruction by fire or other casualty, or as a result of a condemnation or eminent domain proceeding;

L. Enforcing by any legal means or proceeding the provisions of the Articles of Incorporation of the Association, these Bylaws, the Declaration or the rules and regulations hereinafter promulgated governing use of the Common Elements;

M. Enforcing, on behalf of the Association, any other rights or remedies of the Association, including, but not limited to, the institution of civil actions; provided, however, that no civil action may be brought by the Association that seeks more than \$25,000.00 in damages without the written consent of at least sixty-seven (67%) of the Members.

N. Paying all taxes and assessments against the Project Signs and other Common Areas, to the extent separately assessed for tax purposes;

O. Hiring attorneys and other professionals;

P. Maintaining and repairing any Parcel, if such maintenance or repair is required by the Declaration and if the Owner of such Parcel has failed or refused to perform such maintenance or repair within a reasonable time after written notice of the necessity of said maintenance or repair has been delivered or mailed by the Board to such Owner, provided that the Board shall levy a special assessment against such Owner for the costs of said maintenance or repair;

Q. Entering any Parcel when necessary in connection with any maintenance or construction for which the Board is responsible; provided, such entry shall be made during reasonable hours with as little inconvenience to the Owner as practicable, and any damage caused thereby shall be repaired by the Board and such expenses shall be treated as a Common Expense; and entering any Parcel for the purpose of correcting or abating any condition or situation deemed by the Board to be an emergency;

R. Signing all agreements, contracts, deeds and vouchers for payment of expenditures and other instruments in such manner as from time to time shall be determined by written resolution of the Board. In the absence of such determination by the Board, such documents shall be signed by either the President or any Vice President of the Association, and countersigned by any Board member;

S. Furnishing certificates setting forth the amounts of unpaid assessments that have been levied upon a Parcel to the Owner or Mortgagee of such Parcel, or a proposed purchaser or Mortgagee of such Parcel, and imposing and collecting reasonable charges therefor; and

T. Exercising any other powers and duties reserved to the Association exercisable by the Board in the Declaration, the Articles of Incorporation or these Bylaws.

Section 5.13 Management Firm: Subject to Article V, Section 3 of the Declaration, the Board may employ or enter into a management contract with any individual, firm or entity it deems appropriate and in the best interest of the Association concerning the routine management of the Project. The Board shall have authority to fix the reasonable compensation for the Management Firm. The Management Firm shall at all times be answerable to the Board and subject to its direction.

Section 6

Committees

Section 6.1 Creation: The Board, by resolutions adopted by a majority of the number of Board members then holding office, may create such committees as they deem necessary and appropriate in aiding the Board to carry out its duties and responsibilities with respect to the management of the Project. Each committee so created shall have such authorities and responsibilities as the Board members deem appropriate and as set forth in the resolutions creating such committee. The Board shall elect the members of each such committee. Provided, each committee shall have in its membership at least two (2) members of the Board.

Section 6.2 Vacancy: Any vacancy occurring on a committee shall be filled by a majority of the number of Board members then holding office at a regular or special meeting of the Board.

Section 6.3 Removal: Any member of a committee may be removed at any time with or without cause by a majority of the number of Board members then holding office.

Section 6.4 Minutes: Each committee shall keep regular minutes of its proceedings and report the same to the Board when required.

Section 6.5 Responsibility of Board Members: The designation of committees and the delegation thereto of authority shall not operate to relieve the Board or any member thereof of any responsibility or liability imposed upon it or him by law.

If action taken by a committee is not thereafter formally considered by the Board, a Board member may dissent from such action by filing its written objection with the Secretary with reasonable promptness after learning of such action.

Section 7

Officers

Section 7.1 Enumeration of Officers: The officers of the Association shall consist of a President, a Secretary, a Treasurer and such Vice Presidents, Assistant Secretaries, Assistant Treasurers and other officers as the Board may from time to time elect. Except for the President, no officer need be a member of the Board.

Section 7.2 Election and Term: The officers of the Association shall be elected annually by the Board. Such elections shall be held at the first meeting of the board next following the annual or substitute annual meeting of the Members. Each officer shall hold office until its death, resignation, removal or until his successor is elected and qualified.

Section 7.3 Removal: Any officer elected or appointed by the Board may be removed by the Board whenever in its judgment the best interest of the Association will be served thereby.

Section 7.4 Vacancy: A vacancy in any office may be filled by the election by the Board of a successor to such office. Such election may be held at any meeting of the Board. The officer elected to such vacancy shall serve for the remaining term of the officer he replaces.

Section 7.5 Multiple Offices: The person holding the office of President shall not also hold the office of Secretary or Treasurer at the same time. Any other offices may be simultaneously held by one person. Any officer may also be a member of the Board.

Section 7.6 President: The President shall be the chief executive officer of the Association and shall preside at all meetings of the Members. In the absence of an elected Chairman, he shall also preside at all meetings of the Board. He shall see that the orders and resolutions of the Board are carried out; he shall sign all written instruments regarding the Common Areas and execute on behalf of the Association all promissory notes of the Association, if any; and he shall have all of the general powers and duties which are incident to the office of President of a corporation organized under Chapter 55A of the North Carolina General Statutes in the supervision and control of the management of the Association in accordance with these Bylaws.

Section 7.7 Vice Presidents: The Vice Presidents in the order of their election, unless otherwise determined by the Board shall, in the absence or disability of the President, perform the duties and exercise the powers of that office. In addition, they shall perform such other duties and have such other powers as the Board shall prescribe.

Section 7.8 Secretary: The Secretary shall keep the minutes of all meetings of Members and of the Board; he shall have charge of such books and papers as the Board may direct; and he shall, in general, perform all duties incident to the Office of Secretary of a corporation organized under Chapter 55A of the General Statutes of North Carolina.

Section 7.9 Treasurer: The Treasurer shall have the responsibility for the Association's funds and securities and shall be responsible for keeping full and accurate financial records and books of account showing all receipts and disbursements, and for the preparation of all required financial statements. He shall prepare a proposed annual budget (to be approved by the Board) and the other reports to be furnished to the Members as required in the Declaration. He shall perform all duties incident to the office of Treasurer of a corporation organized under Chapter 55A of the General Statutes of North Carolina.

Section 7.10 Assistant Secretaries and Treasurers: The Assistant Secretaries and Treasurers shall, in the absence or disability of the Secretary or the Treasurer, respectively, perform the duties and exercise the powers of those offices, and they shall, in general, perform such other duties as shall be assigned to them by the Secretary or the Treasurer, respectively, or by the President or the Board.

Section 7.11 Compensation: Officers shall not be compensated on a regular basis for the usual and ordinary services rendered to the Association incident to the offices held by such officers. The Board may, however, compensate any officer or officers who render unusual and extraordinary services to the Association beyond that called for to be rendered by such person or

persons on a regular basis. Each officer, by assuming office, waives its right to institute suit against or make claim upon the Association for compensation based upon quantum meruit.

Section 7.12 Indemnification: Any person who at any time serves or has served as an officer of the Association, or in such capacity at the request of the Association, for any other corporation, partnership, joint venture, trust or other enterprise, shall have a right to be indemnified by the Association, to the fullest extent permitted by law against (a) reasonable expenses, including attorneys' fees, actually and necessarily incurred by him in connection with any threatened, pending or completed action, suit or proceedings, whether civil, criminal, administrative or investigative, and whether or not brought by or on behalf of the Association, seeking to hold him liable by reason of the fact that he is or was acting in such capacity, and (b) reasonable payments made by him in satisfaction of any judgment, money decree, fine, penalty or settlement for which he may have become liable in any such action, suit or proceeding.

The Board shall take all such action as may be necessary and appropriate to authorize the Association to pay the indemnification required by this bylaw, including without limitation, to the extent needed, making a good faith evaluation of the manner in which the claimant for indemnity acted and of the reasonable amount of indemnity due him.

Any person who at any time after the adoption of this bylaw serves or has served in any of the aforesaid capacities for or on behalf of the Association shall be deemed to be doing or to have done so in reliance upon, and as consideration for, the right of indemnification provided herein. Such right shall inure to the benefit of the legal representatives of any such person and shall not be exclusive of any other rights to which such person may be entitled apart from the provision of this bylaw.

In addition to the foregoing, the Board shall have the right and power to purchase and maintain insurance on behalf of any person who is or was an officer of the Association, or is or was serving at the request of the Association as director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the Association would have the power to indemnify him against such liability.

Section 8

Operation of the Property

Section 8.1 Determination of Common Area Costs and Establishment of Assessments: The Board shall from time to time, and at least annually, on or before January 1 of each calendar year, prepare and adopt a proposed budget for the Project, determine the amount of the Common Area Costs payable by the Owners to meet the proposed budget of the Property, and allocate and assess such proposed Common Area Costs among the Owners in manner provided in Article IV, Section 6 of the Declaration.

Section 8.2 Collection of Assessments: The Board shall assess the Owners from time to time and at least quarterly in accordance with the allocations set forth in the Declaration. The

Board shall take prompt action to collect any assessments which remain unpaid for more than thirty (30) days from the due date for payment thereof.

The Board shall notify the holder of the Mortgage on any Parcel for which any assessments pursuant to these Bylaws remain unpaid for more than thirty (30) days from the due date for payment thereof and in any other case where the Owner of such Parcel is in default with respect to the performance of any other obligation hereunder for a period in excess of thirty (30) days.

Section 8.3 Default in Payment of Common Expenses; Remedies: In the event of default by any Owner in paying to the Board the assessments against its Parcel as determined by the Board, such Owner shall be obligated to pay interest on such unpaid assessment from the due date thereof at the rate of eighteen percent (18%) per annum, together with all expenses, including reasonable attorney's fees (if permitted by law), incurred by the Board in any proceeding brought to collect such unpaid assessment. In addition, the Board shall have the authority to levy a late charge on any assessment not paid within fifteen (15) days after its due date, in the amount of four percent (4%) of the overdue assessment.

The Board shall have the right and duty to attempt to recover such unpaid assessment, together with interest thereon, and the expenses of the proceedings, including reasonable attorneys' fees (if permitted by law), in an action to recover a money judgment for the same brought against such Owner, or by foreclosure of the lien on such Parcel in the manner specified in N.C.G.S. §47F-3-116 and in Article IV, Section 8 of the Declaration.

In the event of the failure of an Owner to pay any assessment imposed hereunder, or any installment thereof, for more than sixty (60) days after such assessment or installment thereof shall become due, in addition to the other remedies available under the Project Documents or the North Carolina Planned Community Act, the Board shall have the right to declare all other assessments, and installments thereof, with respect to such Owner's Parcel that are to fall due during the then current fiscal year of the Association to be immediately due and payable.

Section 8.4 Foreclosure of Liens for Unpaid Common Expenses: In any action brought by the Board to foreclose on a Parcel because of unpaid Common Expenses, the Owner shall be required to pay a reasonable rental for the use of its Parcel and the plaintiff in such foreclosure action shall be entitled to the appointment of a receiver to collect the same.

Section 8.5 Abatement and Enjoyment of Violations by Owners: The violation of any rule or regulation adopted by the Board or the breach of any Bylaw contained herein, or the breach of any provision of the Declaration, shall give the Board the right, in addition to any other rights set forth in the Declaration, these Bylaws, the North Carolina Planned Community Act, or at law or in equity: (a) to enter the Parcel in which or as to which such violation or breach exists and to summarily abate and remove, at the expense of the defaulting Owner, any structure, thing or condition that may exist therein contrary to the intent and meaning of the provisions hereof, and the Board shall not thereby be deemed guilty in any manner of trespass; provided, however, that the Board shall be obligated to institute judicial proceedings before any item of construction can be altered or demolished; or (b) to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such breach at the expense of the defaulting Owner.

Section 8.6 Rules of Conduct: Rules and regulations concerning the use of the Common Areas shall be promulgated and amended by the Board in the manner provided in the Declaration. Copies of such rules and regulations shall be furnished by the Board to each Owner prior to the time when the same shall become effective.

Section 9

Amendments

These Bylaws may be amended at any time by an instrument in writing signed and acknowledged by the Members holding at least seventy-five percent (75%) of the votes in the Association, which instrument shall be effective only upon recordation in the Office of the Register of Deeds of Mecklenburg County, North Carolina. Provided, however, where a larger vote in the Association is required for the Association to take or refrain from taking a specific action, as set forth in the Project Documents, no amendment of these Bylaws shall be made unless and until the Owners holding such larger percentage of the vote in the Association execute said amending instrument. All persons or entities who own or hereafter acquire any interest in the Property shall be bound to abide by any amendment to these Bylaws which is duly passed, signed, acknowledged and recorded as provided herein. No amendment to these Bylaws shall be adopted or passed which shall impair or prejudice the rights and priorities of any Mortgagee without the consent of such Mortgagee. No amendment to these Bylaws shall be adopted or passed which shall impair or prejudice the rights of Declarant provided for in the Project Documents, without the consent of Declarant.

Section 10

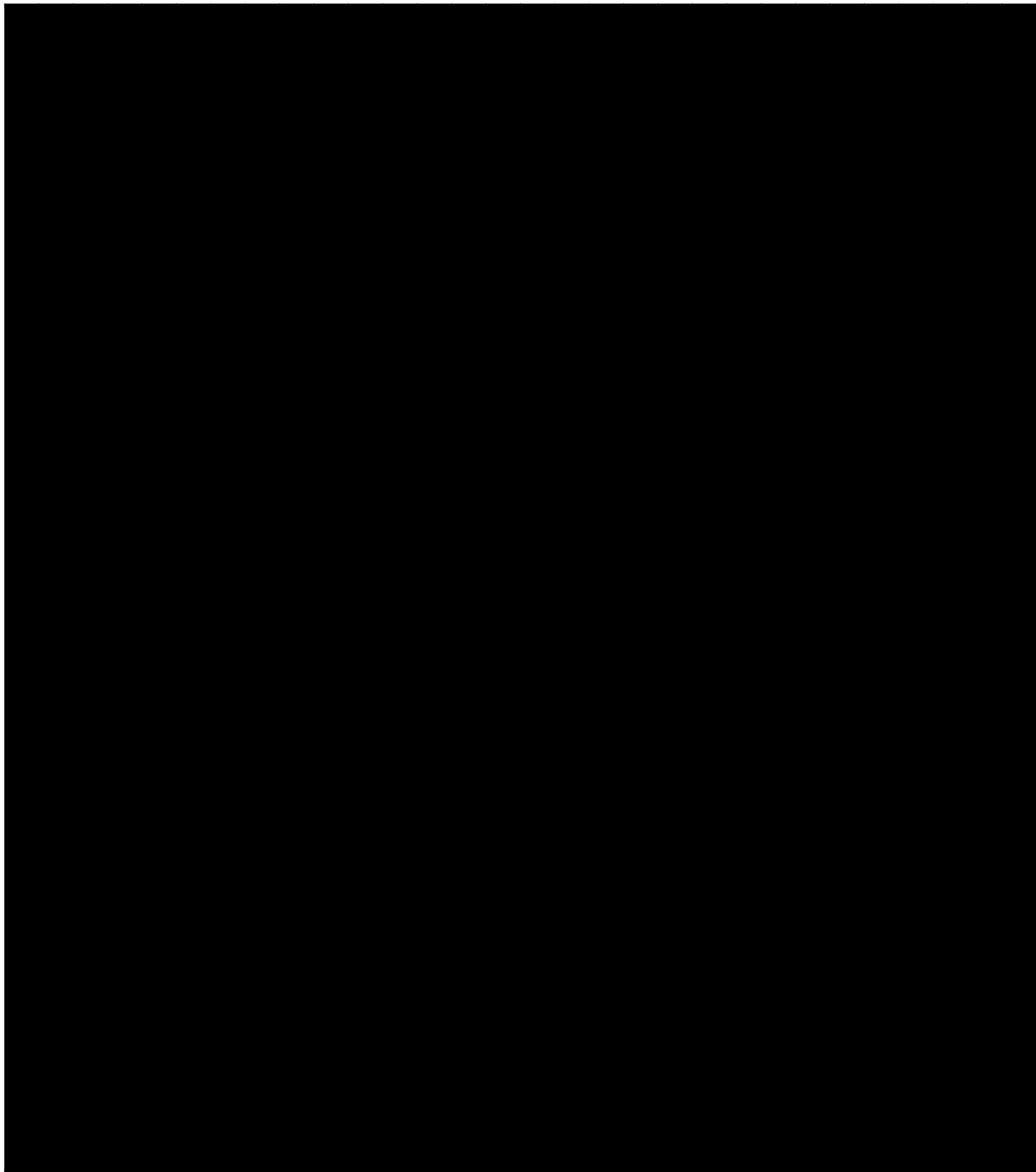
Miscellaneous

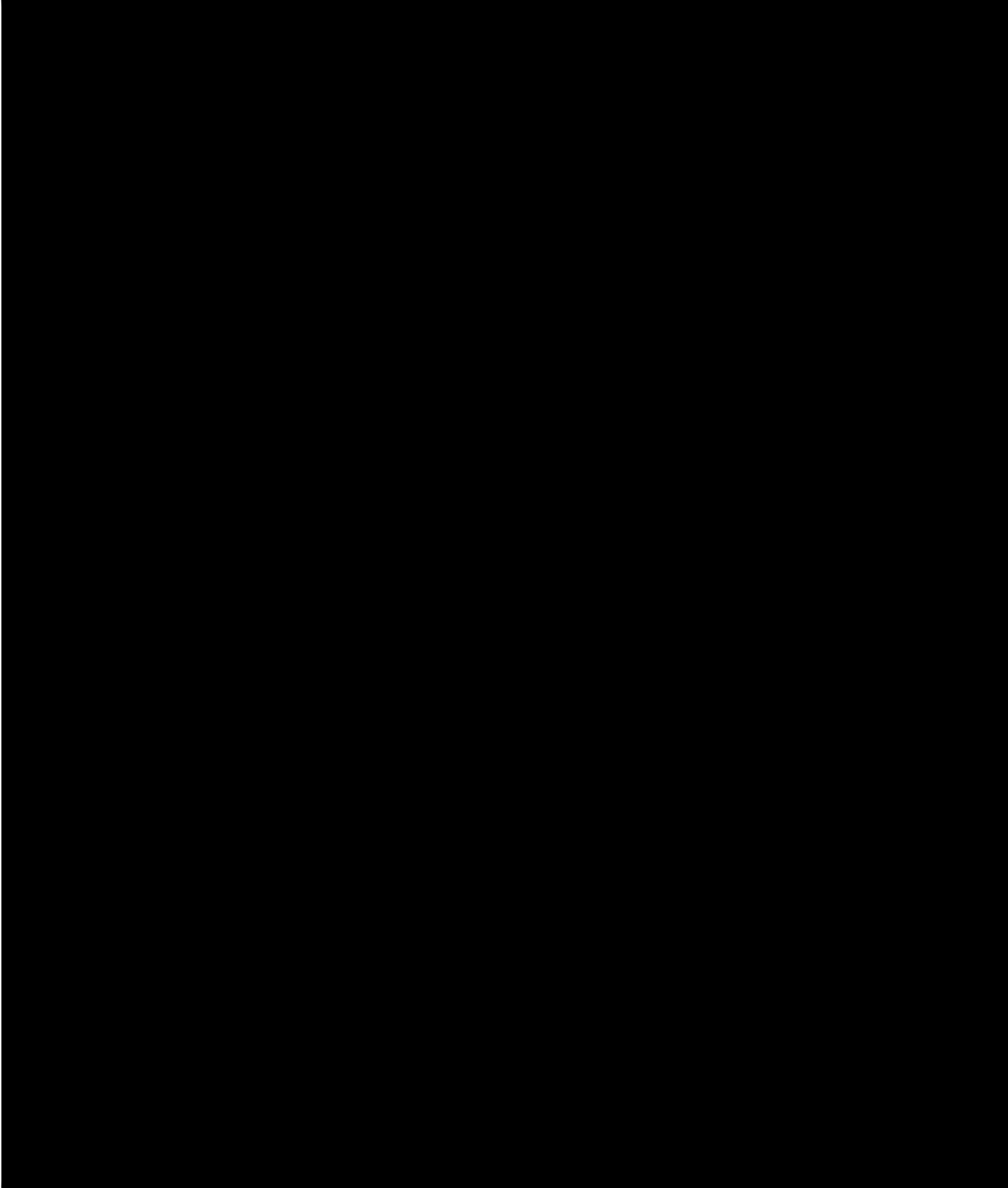
Section 10.1 Severability: Invalidation of any covenant, condition, restriction or other provisions of the Declaration or these Bylaws shall not affect the validity of the remaining portions thereof which shall remain in full force and effect.

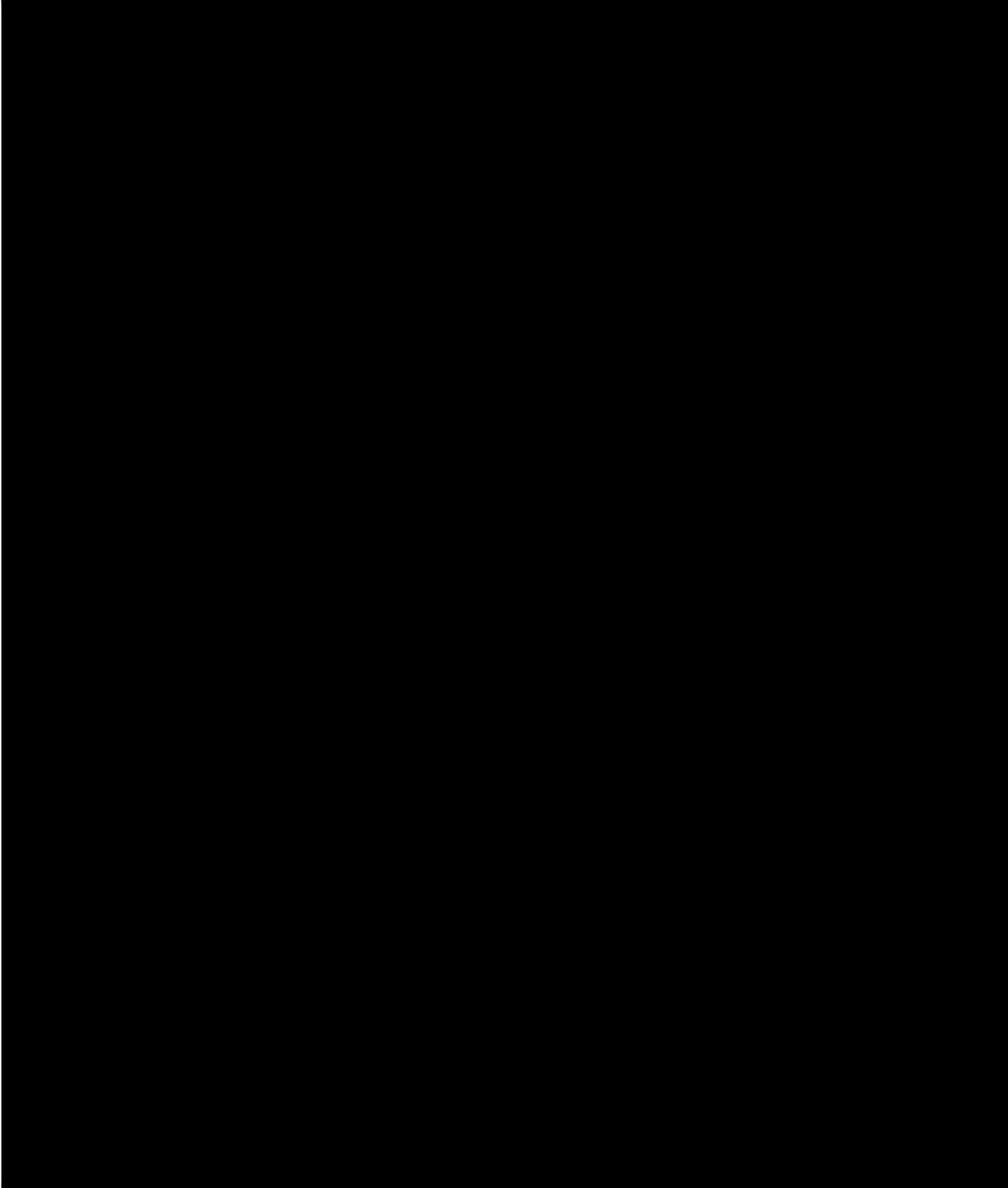
Section 10.2 Successors Bound: The rights, privileges, duties and responsibilities set forth in the Project Documents, as amended from time to time, shall run with the ownership of the Property and shall be binding upon all persons who own or hereafter acquire any interest in the Property.

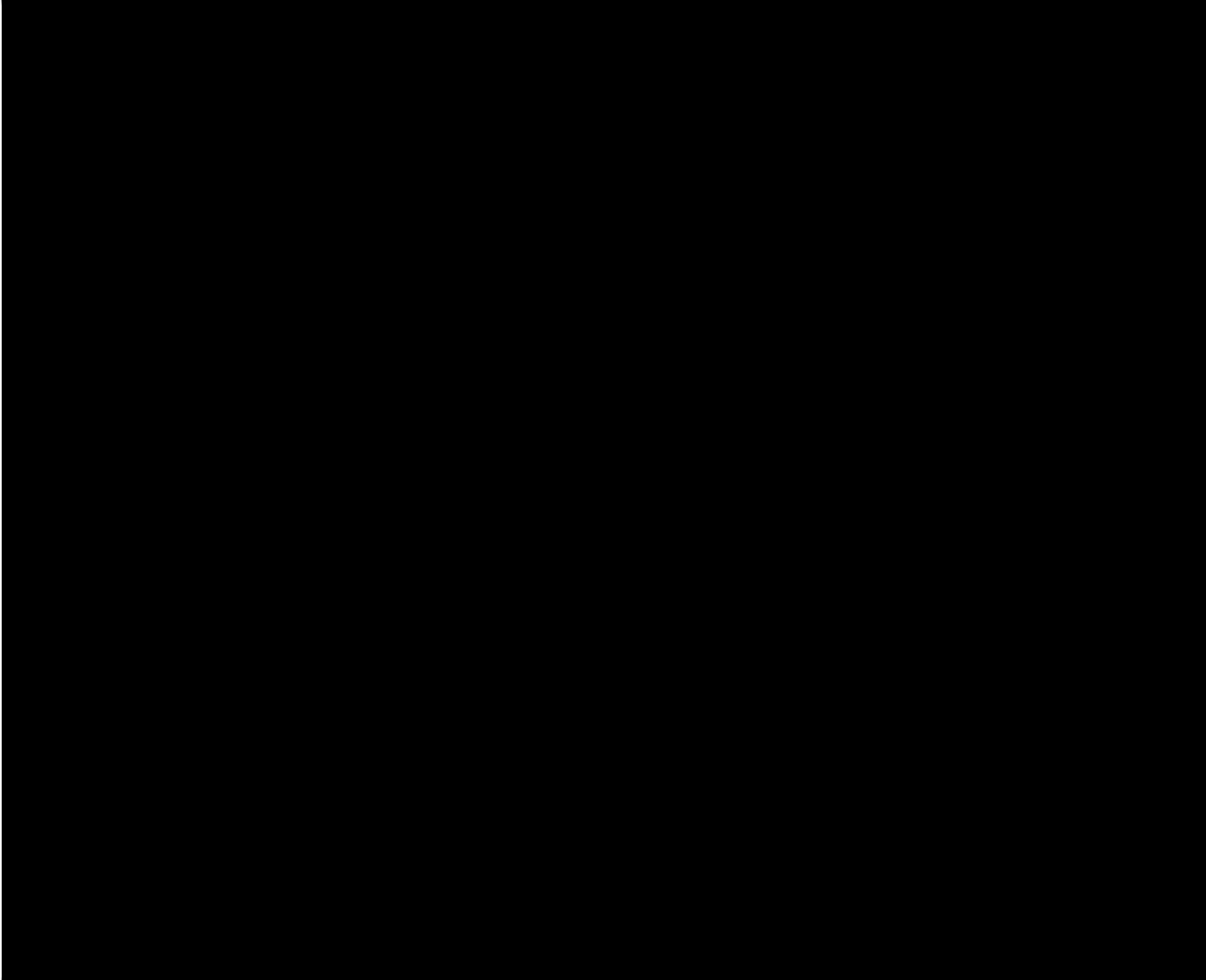
Section 10.3 Gender, Singular, Plural: Whenever the context so permits, the use of the singular or plural shall be interchangeable in meaning and the use of any gender shall be deemed to include all genders.

Section 10.4 Distributions: Distributions may be made to the Members upon approval by the Board to the extent permitted by applicable law.







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- * Because Units 656-A, 656-B, 656-C, and 656-D are all located on the “Phase III” Parcel, the acreage for each Unit is equal to one quarter $\frac{1}{4}$ of the acreage of the Parcel, and the Share of Common Area Expenses and Number of Votes for each Unit is calculated accordingly.
 - ** A portion of Lot #4 consisting of a two foot (2’) strip of land (0.013 acres) running along the northwestern boundary of the Property to Matthews-Mint Hill Road, as shown on the Plat, is not included in the calculation of Common Area Expenses and voting rights.

