

FOR REGISTRATION  
J. David Granberry  
REGISTER OF DEEDS  
Mecklenburg County, NC  
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TAYLORD



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STATE OF NORTH CAROLINA

DECLARATION OF CONDOMINIUM FOR  
PROSPERITY CROSSING COMMONS CONDOMINIUM

COUNTY OF MECKLENBURG

THIS DECLARATION OF CONDOMINIUM is made on the date hereinafter set forth by SOUTHERN HOLDINGS IV, LLC, a North Carolina limited liability company ("Declarant").

WITNESSETH:

WHEREAS, Declarant is the owner of certain real property located on Prosperity Crossing Drive in Charlotte, Mecklenburg County, North Carolina, more particularly described on Exhibit A attached hereto (the "Land") upon which is situated one (1) building located on the Land containing two (2) condominium units and certain other improvements; and

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

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

ARTICLE I  
DEFINITIONS

UNIT FILE NO. 7005 PAGE 7

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*Drawn by Return to Kirk Palmer + Shippen P.O. Box 65*

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Section 1.1: “Association” means Prosperity Crossing Commons Condominium Owners Association, Inc., a North Carolina non-profit corporation, its successors and assigns.

Section 1.2: “Building” or “Buildings” means and refers to the one building located upon the Land which contains the two (2) Units (but which may be increased to a maximum of twelve (12) Units by the subdivision of one of the original Units) and the Common Elements and by the creation of additional Units after construction of additional Building(s) pursuant to the exercise of Declarant’s Special Declarant Rights set forth in Section 2.8. The first constructed Building is a one-story building with brick, stone and EFIS exterior walls and a rubber membrane roof. The Buildings are more particularly described and shown on the Plat which shows all particulars of the Buildings. The Plat contains a certification by James E. Craddock, a North Carolina Registered Land Surveyor, and Jonathon Krueger, a North Carolina Licensed Architect, that the Plat contains all the information required by N.C.G.S. Section 47C-2-109, and the Plat has been filed under the name of the Condominium in the Unit Ownership File in the Mecklenburg County Public Registry.

Section 1.3: “Bylaws” means the bylaws of the Association, a copy of which are attached hereto as **Exhibit C**.

Section 1.4: “Common Elements” means all portions of the Condominium (including the Limited Common Elements) other than the Units, including, without limitation, (i) the Land, (ii) all improvements located upon the Land outside of the Buildings, including entrance features, landscaped areas, outdoor lighting, underground utility lines, walkways, parking areas, storm water systems, garbage enclosures, bike parking, a mailbox kiosk and driveways, (iii) all portions of the Buildings located outside of the Units, including metal studs creating the boundaries of each Unit, the windows and entrance doors to each Unit, and (iv) the foundation, roof and structural elements of the Buildings.

Section 1.5: “Common Expenses” means and refers to any and all expenditures made by or financial liabilities of the Association, together with any allocations to reserves, pursuant to and in accordance with this Declaration, the Bylaws and the Condominium Act.

Section 1.6: “Condominium” means the real estate described on **Exhibit A** attached hereto and the Building and other improvements located thereon, portions of which are designated for

separate ownership and the remainder of which are designated for common ownership solely by the Owners of those portions.

Section 1.7: "Condominium Documents" means this Declaration, the Articles of Incorporation and Bylaws of the Association, any rules and regulations governing the use of the Property and all attachments and exhibits thereto, respectively.

Section 1.8: "Declarant" means Southern Holdings IV, LLC, a North Carolina limited liability company, its successors and assigns.

Section 1.9: "Declaration" means this Declaration of Condominium as it may be amended from time to time in the future.

Section 1.10: "Executive Board" means the body designated in this Declaration to act on behalf of the Association.

Section 1.11: "Existing Building" means the 1935 Benfield Road Building which has been completed and shown on the Condominium Plat.

Section 1.12: "Land" means and refers to that certain real property more particularly described on **Exhibit A** attached hereto and incorporated herein by reference.

Section 1.13: "Limited Common Elements" means a portion of the Common Elements allocated by the Declarant for the exclusive use of one or more but fewer than all of the Units.

Section 1.14: "Member" means every person or entity who holds membership in the Association.

Section 1.15: "Mortgage" means and refers to a mortgage or deed of trust constituting a lien on a Unit.

Section 1.16: "Mortgagee" means and refers to the owner and holder of a Mortgage.

Section 1.17: "Owner" means the record Owner, whether one or more persons or entities, of a fee simple title to any Unit which is a part of the Property, together with an undivided interest in the Common Elements as hereinafter set forth, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 1.18: "Period of Declarant Control" means the period commencing on the date hereof and continuing until the earlier of (i) the date Declarant has sold all of the Units to unaffiliated third party purchasers; or (ii) the date upon which Declarant voluntarily surrenders control of the Condominium to the Association.

Section 1.19: "Plat" means the plat and plans for the Condominium recorded in Unit Ownership File No. 10051 in the Mecklenburg County Register of Deeds. The Plat is hereby incorporated herein by reference as if the same were attached hereto.

Section 1.20: "Property" shall mean and refer to the Land, the Buildings and all other improvements and structures located on the Land, all easements, rights and appurtenances belonging or appertaining to the Land, and all articles of personal property intended for common use in connection therewith.

Section 1.21: "Unit" means a physical portion of the Condominium designated for separate ownership or occupancy. The location and dimensions of the Building and of each Unit within the Building are shown on the Plat. The horizontal boundaries of each Unit shall consist of the face of the unfinished metal studs around the perimeter of each Unit to which sheetrock will be attached. The lower boundary of each Unit shall be the horizontal plane of the top surface of the finished concrete flooring of such Unit and the upper boundary shall be the bottom exposed surface of the roof deck system which has a slope but is on average twelve (12) feet above the top surface of the finished concrete flooring of each Unit. The boundaries of each Unit are more particularly shown or described on the Plat. All lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring and any other materials constituting any part of the finished flooring, and any other materials constituting any part of the perimeter metal studs, floors or ceilings of each Unit, thereon shall constitute a part of each Unit. Furthermore, all interior walls, partitions, ceiling panels, fixtures, appliances, cabinets and other facilities or improvements lying completely within the boundaries of a Unit shall be a part of such Unit.

There are a total of two (2) Units in the Existing Building. Pursuant to Section 2.8 of this Declaration, Declarant reserves a Special Declarant Right to create up to an additional ten (10) Units and associated Limited Common Elements on the Property so that the maximum number of Units which Declarant may create thereon, including the existing Units shall be twelve (12). Any new Units created by Declarant's exercise of its Special Declarant Rights shall be identified on the revised Plat recorded simultaneously with the recordation of a Supplemental Declaration.

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

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

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

Section 2.2: The name of the Condominium shall be "Prosperity Crossing Commons Condominium."

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

Section 2.4: Declarant reserves the right to create a maximum of twelve (12) Units.

Section 2.5: Declarant hereby establishes within the Property the two (2) Units shown on the Plat and does hereby designate all such Units for separate ownership. Reference is hereby made to the Plat for a separate description of the boundaries of each Unit, identified by number as shown thereon.

Section 2.6: Each Owner shall be a member of the Association. An Owner shall be entitled to one (1) vote in the Association for each 1,000 square feet within such Owner's Unit with such further condition to said voting rights as set forth in Section 1.7 of the Bylaws. By way of example only, an Owner owning a Unit containing 2,500 square feet will be entitled to two (2) votes.

Section 2.7: There are no Limited Common Elements with the exception of the Limited Common Elements created under Article V herein or as may be shown on any amended Plat and referenced in any Supplemental Declaration recorded in connection with the Declarant's exercise of its Special Declarant Rights to add additional Units and additional Limited Common Elements pursuant to Section 2.8 below.

Section 2.8: Declarant reserves the following Special Declarant Rights for the entire Property, which shall be exercisable during the Period of Declarant Control:

- (a) To complete any and all improvements indicated on the Plat;
- (b) To construct and maintain any sales office, management office or model in any of the Units or on any of the Common Elements shown on the Plat;
- (c) To alter the size of any Unit, combine or merge two or more Units, and subdivide any Unit into two or more Units (provided that the total number of Units shall not exceed twelve (12) Units);
- (d) To appoint and remove any Executive Board Members;

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- (e) To grant easements over, along and through the Common Elements to third parties for utility purposes;
- (f) To reserve easements through the Common Elements for the purpose of completing construction or exercising Special Declarant Rights;
- (g) To exercise any Special Declarant Rights;
- (h) To create up to a maximum of twelve (12) Units, including the existing Units, and to create additional Limited Common Elements allocated to such newly created Units, within the locations identified as “Common Elements Subject to Special Declarant Rights to Add Units or to Remove From Condominium Regime” on the Plat, without the consent or approval of the Association or any other Owner or Mortgagee, by executing and recording a Supplemental Declaration in the manner set forth below. Any new Buildings, and Units within such Buildings, constructed by Declarant within the areas identified on the Plat as “Common Elements Subject to Special Declarant Rights to Add Units or to Remove From Condominium Regime” shall be substantially similar in terms of architectural appearance and quality of construction to one or more of the existing Buildings. Declarant reserves the right to substitute materials of similar durability, quality and strength, so long as the foregoing standard is complied with. Any newly created Units within newly constructed Buildings need not be of the same type and design of the existing Units so long as the construction and appearance of each Building satisfies the requirement set forth above. Declarant shall have the right to allocate Limited Common Elements to the newly created Units in the manner similar to the allocation of Limited Common Elements to the existing Units under Article V of this Declaration. Any other Common Elements constructed by Declarant within the areas identified on the Plat as “Common Elements Subject to Special Declarant Rights to Add Units or to Remove From Condominium Regime” such as landscaped areas, shall be consistent with the Common Elements in the initial phase of the Condominium.

In order to exercise any Special Declarant Right on the Property to add additional Units and additional Common Elements as reserved by Declarant hereunder, Declarant shall execute and record an amendment to this Declaration in accordance with N.C.G.S. Section 47C-2-110 (a “Supplemental Declaration”). Any Supplemental Declaration executed and recorded by Declarant to exercise the Special Declarant Right of creating additional Units and additional Limited Common Elements shall contain an amendment or supplement to the Plat identifying the new Units and new Limited Common Elements so created, as well as an amendment to **Exhibit B** attached to this Declaration, assigning an identifying number to each Unit

and re-allocating the Table of Undivided Interest in Common Elements among all Units in accordance with the formula set forth in Section 3.2 of this Declaration.

- (i) To remove from the condominium regime that portion of the Property identified as “Common Elements Subject to Special Declarant Rights to Add Units or to Remove From Condominium Regime” on the Plat.
- (j) To exercise any other rights granted to or reserved by the Declarant in this Declaration or in the Condominium Documents or otherwise provided by law.

If the Declarant exercises the right to subdivide any Unit, then Declarant shall prepare, execute and record an amendment to this Declaration and to the Plat which shall assign an identifying number to each new Unit created and reallocate the percentage undivided interest in the Common Elements previously allocated to the subdivided Unit among the newly created Units in a reasonable manner prescribed by the Declarant. Such amendments shall be effective upon filing in the Mecklenburg County Public Registry and shall not require the consent or approval of any Owners other than the Declarant.

### ARTICLE III PROPERTY RIGHTS

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

Section 3.2: Every Owner shall own an undivided interest in the Common Elements and, except to the extent that use of the Limited Common Elements has been allocated exclusively to certain Unit(s), shall have a right and easement of enjoyment in the Common Elements and an unrestricted right of ingress and egress across the Common Elements to such Owner’s Unit, which shall be appurtenant to and shall pass with the title to every Unit. If Declarant exercises its Special Declarant Right to create additional Units and additional Limited Common Elements as provided herein, then a Supplemental Declaration shall be executed and recorded containing a new allocation of undivided interest of each Unit Owner in the Common Elements which shall be substituted for **Exhibit B** attached hereto. The undivided interest of every Unit Owner in the Common Elements shall be in the percentage set forth in **Exhibit B** attached hereto as may be hereafter amended. The undivided interest in the Common Elements allocated to each Unit shall be calculated by dividing the square footage of a Unit by the total square footage of all Units and by multiplying the quotient thereof by 100. If Declarant exercises its Special Declarant Right to create additional Units and Limited Common Elements, Declarant shall have the right to adjust the undivided interest in the Common Elements of each Owner in accordance with foregoing formula. The undivided interest in

the Common Elements and the right and easement of enjoyment in such Common Elements are subject to the following:

- (a) The Association shall have the right to adopt such rules and regulations as may be needed to regulate the use and enjoyment of the Common Elements;
- (b) The Special Declarant Rights as set forth in Section 2.8 herein;
- (c) The Association shall have the right to dedicate or transfer, or encumber all or any part of the Common Elements subject to approval by the Owners as provided in the Condominium Act; and
- (d) Certain provisions of this Declaration may further restrict the rights to use Common Elements as provided herein.

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

#### ARTICLE IV COVENANT FOR MAINTENANCE ASSESSMENTS

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

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



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

Section 4.3: The annual assessments levied by the Association shall be used exclusively to promote the health, safety and welfare of the Owners and Unit occupants and promote the beneficial development and operation of the Units and in particular for the acquisition, improvement and maintenance of the Condominium services and facilities devoted to this purpose, and for the use and enjoyment of the Common Elements, however, the annual assessments shall not be used to maintain, repair or replace any Limited Common Elements. The annual assessments shall be used to pay for outside lighting of the Building and the Land, irrigation charges, snow and ice removal charges, exterior cleaning and landscaping of the Land, pick-up and removal of trash from the dumpster located on the Land, water and sewer services provided to the Units, insurance premiums for the coverages set forth in Article X herein, reserves for the future repair, maintenance and replacement of Common Elements, any common area maintenance charges affecting the Property under that certain Declaration of Easements, Covenants, Conditions and Restrictions for Prosperity Crossing recorded in Book 21877 at Page 606 in the Mecklenburg County Public Registry (the "Prosperity Crossing Land Declaration"), including, but not limited to, stormwater detention maintenance charges, and such other charges for services or amenities which provide benefit to the Property and for such other items and services necessary to carry out the aforementioned purposes.

The Association may also levy a special assessment payable in a manner as specified by the Association for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Elements, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of the Owners of greater than fifty percent (50%) of the percentage interests in the Common Elements.

Each Owner shall further be required to make a working capital contribution to the Association upon the initial transfer of each Unit by the Declarant to each Owner in an amount equal to the product of (i) the number of square feet attributed to the applicable Unit as shown on Exhibit A attached hereto, multiplied by (ii) Two and 85/100 Dollars (\$2.85).

Section 4.4: Until January 1 of the year immediately following the conveyance of the first Unit to an Owner, the maximum annual assessment shall be \$2.85 per square foot for all of the Units, prorated for the remainder of said year and adjusted according to the percentage interests in the Common Elements allocated to the applicable Unit.

- (a) From and after January 1 of the year immediately following the conveyance of the first Unit to an Owner, the maximum annual assessment may be increased effective January 1 of each year without a vote of the membership by up to ten percent (10%) of the previous year's maximum annual assessment.
- (b) From and after January 1 of the year immediately following the conveyance of the first Unit to an Owner, the maximum annual assessment for succeeding years may be increased above the increase permitted in Section 4.4(a), provided that any such assessment shall receive the affirmative vote of Owners owning greater than two-thirds (2/3rds) of the total percentage interests in the Common Elements. Such votes may be cast in person or by proxy, at a meeting duly called for this purpose. Written notice setting forth the purpose of such meeting shall be sent to all Owners not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. No quorum shall be required.
- (c) The Executive Board may fix the annual assessment at an amount not in excess of the maximum.
- (d) Notwithstanding the foregoing to the contrary, assessments for capital repairs or replacements shall not be subject to the vote and approval of the Owners so long as such capital repairs or replacements are performed on existing Buildings or existing Common Elements.

Section 4.5: Both annual and special assessments must be assessed against all the Units in accordance with the allocation of percentage interests in the Common Elements.

Section 4.6: The annual assessments provided for herein shall commence at a date established by the Association. Once such annual assessments are established, written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Executive Board.

## ARTICLE V COMMON ELEMENTS

### Section 5.1:

- (a) The Common Elements include all portions of the Condominium that are not part of the Units, including, without limitation, the Land, all improvements located upon the Land outside of the Building (including landscaped areas, underground utilities serving the Building, surface parking areas and driveways, entrance features, lighting features, mail kiosks, bike parking areas, storm water system, garbage enclosures

and other development features), all portions of the Building located outside of the Units and the foundation, roof and structural elements of the Building.

- (b) The Limited Common Elements shall include those portions of any pipe, chute, flue, duct, wire, conduit, or any other fixtures lying partially within and partially outside the designated boundaries of a Unit which serve only that Unit, and any portion thereof serving more than one Unit or any portion of the Common Elements is a portion of the Common Elements pursuant to N.C.G.S. Section 47C-2-102(2). Furthermore, all exterior doors and windows or other fixtures designated to serve a single Unit but located outside the Unit's boundaries are Limited Common Elements allocated exclusively to that Unit, pursuant to N.C.G.S. Section 47C-2-102(4). Notwithstanding the foregoing or anything herein to the contrary, all exterior signage attached to the Building and any portions of the heating, ventilating and air-conditioning systems, including, fans, compressors, return air grills and thermostats, any utility lines providing water, sewer, telephone, gas, cable television or other services (other than the portions of any such utility trunk or main lines located underground or within the Building and the central control box or panel to which such service lines are connected) whether located inside or outside the designated boundaries of a Unit (including within the metal studs and the plenum area inside the Building), but which serve a single Unit, shall not be designated as Common Elements or Limited Common Elements but shall instead be the personal property of the Owner of the Unit or Units that they serve.

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

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

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

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

## ARTICLE VI EXTERIOR MAINTENANCE

Section 6.1: The Association shall provide exterior maintenance of a general nature for the Building and shall maintain the Common Elements, subject to assessment hereunder, including the paint, repair, replacement and care, as needed of the following: roofs, exterior building surfaces, trees, shrubs, walks, parking lot, lighting and other exterior improvements. To the extent such exterior maintenance involves maintenance of Limited Common Elements (such as windows and doors), the Owner of the Unit served by such Limited Common Elements shall be solely responsible for such maintenance costs.

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

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

## ARTICLE VII ARCHITECTURAL CONTROL

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

to or affixed to the exterior of a Unit or the exterior monument sign or upon any exterior wall of the Building and any window treatments for each Unit.

The exterior color of a Unit and the window glass of a Unit cannot be changed unless the color scheme of the entire Condominium is similarly changed. Any such change requires the approval of the Owners owning at least sixty-six and two-thirds percent (66 2/3%) of the total percentage interests in the Common Elements at a duly called meeting at which a quorum is present.

## ARTICLE VIII USE RESTRICTIONS

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

Section 8.2: The use of Units by Owners and their tenants or other occupants of a Unit shall be limited to such uses permitted by the applicable zoning classification affecting a Unit. It is intended for the Existing Building to be used for professional services, other commercial services, general offices and medical or dental offices. It is intended that the second Building, if constructed, will be used for retail purposes. The use of Units by Owners must further be in compliance with all applicable recorded restrictions affecting the Property including, but without limitation, the Prosperity Commons Land Declaration.

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

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

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

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

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

Section 8.8: The Common Elements shall not be used for storage of supplies, personal property or trash or refuse of any kind except that common trash receptacles may be placed at various

locations on the Common Elements at the discretion of the Executive Board. Sidewalks, landscaped areas, driveways and parking areas shall not be obstructed in any way, or used for other than their intended purposes. The cleanliness and orderliness of the Limited Common Elements shall be the responsibility of the Owner having the right to the use and enjoyment of such Limited Common Elements.

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

Section 8.10: Any lease of a Unit or portion thereof shall be in writing on such form promulgated or approved by the Executive Board and shall provide that the terms of the applicable lease shall be subject in all respects to the Condominium Documents and that any failure by the tenant to comply with all of the terms of such Condominium Documents shall constitute a default under the applicable lease. No Unit may be leased for a period of less than thirty (30) days.

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

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

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

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

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

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

Section 8.17: Owners shall have the right to combine or merge two or more Units and subdivide any Unit into two or more Units, provided that (i) all subdivisions of Units have received the prior approval of the Declarant, during the Period of Declarant Control, and by the Executive Board thereafter, (ii) each of such newly created Units after a subdivision has direct, separate and independent access to one of the exterior doors to a Building as originally constructed by Declarant, and (iii) in no event shall a subdivision of a Unit cause the total number of Units to exceed twelve (12) Units.

Section 8.18: For so long as Dr. Chris Harris or his successors operate an orthodontic dental practice from Unit 100 of the 1935 Benfield Road Building, no other Unit shall be used for the purpose of practicing orthodontics as their primary business.

## ARTICLE IX EASEMENTS

Section 9.1: Declarant reserves during the Period of Declarant Control, and the Executive Board reserves at any time, the right to grant easements for utility purposes for the benefit of the Property, including the right to install, lay, maintain, repair and replace water lines, pipes, ducts, sewer lines, gas mains, telephone and television or cable television wires, cables and equipment,

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electrical conduits, and wires over, under, along and on any portion of the Common Elements; and each Owner hereby grants to Declarant or the Executive Board, as applicable, an irrevocable power of attorney to execute, acknowledge and record for and in the name of each Owner such instruments as may be necessary to effectuate the foregoing. Declarant specifically reserves for itself and grants to each Owner an easement and right to run conduits, utility lines and other cables, wires and equipment in the metal studs and in the plenum area between the top horizontal plane of each Unit and the roof of the Building in order to provide utilities and other services to Owners and their tenants; provided, however, the ownership and responsibility for the future maintenance and replacement of such conduits, lines, cables, wires or other equipment shall be the sole responsibility of the Owner of the Unit served thereby. Declarant further hereby reserves for itself and grants to each Owner an easement and right to run necessary ventilation lines, duct work and other equipment or apparatus within the Common Elements to such Owner's Unit relating to such Owner's HVAC system; provided that the ownership and responsibility for maintenance and replacement of all components of such HVAC system shall be that of the Owner of the Unit served by such system. Easements for installation and maintenance of utilities and drainage facilities, if any, are also reserved as shown on the Plat. Within these easements no structure, planting or other material shall be placed or permitted to remain which may interfere with the installation and maintenance of utilities, or which may obstruct or change the flow of drainage channels in the easements. Declarant further hereby reserves for itself and for the benefit of the Association the right to enter those Units with doors to any downspout cleanouts and to access such cleanouts for repairs and maintenance purposes.

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

Section 9.3: Declarant shall have a reasonable construction easement across the Common Elements for the purpose of constructing improvements on or within the Units. Declarant shall also have such easements through the Common Elements as may be reasonably necessary for the purpose of discharging a Declarant's obligations or exercising Special Declarant Rights as provided herein. During the period which Declarant may exercise its Special Declarant Right to add additional Units and additional Limited Common Elements, Declarant shall have an easement over the Common Elements as may be reasonably necessary to exercise said rights, including, but not limited to, the construction of new Buildings and other improvements as provided in N.C.G.S. §47C-2-116.

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

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

Section 9.6: All Owners are hereby granted an easement and right to use the plenum area directly above the Owner's Unit provided that such use does not interfere with the use of, or damage, any utility lines, conduits or other components of the Building within such plenum area.

Section 9.7: All Owners are granted an easement to attach an identification sign to the exterior of the Building in such location specifically designated for such purpose by Declarant, during the Period of Declarant Control, and by the Executive Board thereafter. Such signage shall be pre-approved as set forth herein, shall be in compliance with all applicable sign ordinances and further in compliance with any rules and regulations adopted by the Association.

Section 9.8: The Property is subject to certain access, utility, storm water detention and signage easements created under the Prosperity Crossing Land Declaration.

#### ARTICLE X INSURANCE

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

his authority on behalf of the Association, will preclude recovery upon such policy; and shall provide that if, at the time of a loss under the policy, there is other insurance in the name of a Unit Owner covering the same risk covered by the policy, the Association's policy provides primary insurance. All such policies shall provide that adjustment of loss shall be made by the Executive Board as insurance trustee. Each insurance policy shall provide for the issuance of certificates or mortgagee endorsements to Mortgagees.

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

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

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

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

Section 10.6: Distribution of Insurance Proceeds. All insurance policies procured by the Executive Board shall provide that all losses shall be adjusted with and all proceeds shall be payable to the Executive Board as insurance trustee. The sole duty of the Executive Board as insurance trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes set forth herein and for the benefit of the Owners and their Mortgagees in the following shares:

- (a) Proceeds on account of damage to the Common Elements shall be held in undivided shares for each Owner and his Mortgagee, if any, each Owner's share to be the same as such Owner's allocated interest in the Common Elements.

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

Section 10.7: Insurance Obtained by Owners. Each Owner shall obtain and keep continuously in force additional fire and casualty and extended coverage insurance upon any improvements and personal property owned by such Owner (including the HVAC system and all utility lines and equipment located outside the boundaries of such Owner's Unit but which serve such Owner's Unit and any Limited Common Elements serving such Unit), public liability insurance, and such other insurance coverage as he may desire. Each Owner shall obtain and maintain public liability insurance coverage in the amount of at least \$100,000 for bodily injury, including deaths of persons and property damage, arising out of a single occurrence. Each Owner shall file a copy of each such individual policy with the Association within thirty (30) days after purchase of a Unit.

## ARTICLE XI DUTY TO REPAIR OR RECONSTRUCT

Section 11.1 Reconstruction and Repair. In the event of damage to or destruction of the Building as a result of fire or other casualty, the Executive Board shall arrange for the prompt restoration and replacement of the Building unless (1) the Condominium is terminated in accordance with the provisions of Article XIII below, or (2) repair or replacement would be illegal under any state or local health or safety statute or ordinance, or (3) the Unit Owners decide not to rebuild by a vote of the Owners of greater than ninety percent (90%) of the total percentage interests in the Common Elements and one hundred percent (100%) of Owners of Units not to be rebuilt and one hundred percent (100%) of Owners of Units to which are assigned Limited Common Elements not to be rebuilt. Unless one of the preceding three conditions occurs, the Executive Board shall arrange for the prompt repair and restoration of the Building, not including any improvements or personal property owned by an Owner inside his Unit or serving his Unit but located outside such Unit's boundaries, and further not including any decoration or covering for walls, ceilings, or floors, or furniture, furnishings, fixtures or equipment (unless the subject insurance policy covers a portion or all of such loss, in which event the Executive Board shall repair or replace such damaged property), and the Executive Board shall disburse the proceeds of all insurance policies to the contractors engaged in such repair and restoration in appropriate progress payments and in accordance with the provisions of Section 10.6(d)(2) of this Declaration. Any payment for repair and restoration in excess of the insurance proceeds shall constitute a Common Expense. Any reconstruction or repair shall be in accordance with the Plat. If the Unit Owners vote not to rebuild any Unit, that Unit's allocated interests are automatically reallocated upon such vote as if the Unit had been condemned under N.C.G.S. Section 47C-1-107(a).

Section 11.2 Obligations of Owners. Each Owner will, at his sole cost and expense, keep and maintain his Unit in good order and repair in accordance with the Plat, and will make no structural addition, alteration or improvement to his Unit without the prior written consent of the Executive Board, except as authorized under N.C.G.S. Section 47C-2-111. Upon the failure of an Owner to so maintain his Unit, the Executive Board shall be authorized to maintain, repair or restore such Unit, and the cost thereof shall be charged to such Owner and constitute a lien on the Unit until paid. If after the occurrence of damage to or destruction of the Building pursuant to Section 11.1

above, the Building is repaired and restored, then each Owner shall thereafter promptly repair and restore their Units to the condition in which such Unit existed prior to such damage or destruction, unless otherwise approved by the Executive Board.

## ARTICLE XII UNITS SUBJECT TO CONDOMINIUM DOCUMENTS

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

## ARTICLE XIII TERMINATION

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

## ARTICLE XIV RIGHTS RESERVED TO MORTGAGEES

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

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

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

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

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

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

ARTICLE XV  
CONDEMNATION

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

ARTICLE XVI  
RIGHT OF FIRST REFUSAL

Section 16.1: Except for sales and conveyances of Units by the Declarant, no Unit may be sold by any Owner except in compliance with the provisions of this Article XVI.

Section 16.2: Except as provided otherwise below, if any Owner desires to sell such Owner's Unit, then such Owner (a "Selling Owner") shall first provide written notice to all other Unit Owner's of such desire and the sales price and other terms by which such Selling Owner desires to sell such Unit. Each other Owner shall have a period of fifteen (15) days after its receipt of such written notice from the Selling Owner to notify the Selling Owner of such other Owner's desire to purchase the Unit on the same terms and conditions as set forth in the prior written notice. If more than one other Owner desires to purchase such Unit from the Selling Owner, then the applicable Owner offering the highest purchase price (subject to compliance with all of the Selling Owner's other sales terms) shall be permitted to purchase the Selling Owner's Unit, with the sale of such Unit to occur within forty-five (45) days after such other Owner's exercise of its right to purchase the Selling Owner's Unit. If no other Owners desire to purchase the Selling Owner's Unit or fail to provide written notice of such intent to the Selling Owner within thirty (30) days after receipt of written notice from the Selling Owner of its desire to sell its applicable Unit, then the Selling Owner shall be free to offer its Unit for sale to any third party and consummate the sale of such Unit; provided, that, the terms of such sale are not for a sales price less than the sales price originally offered to the other Owners and further provided that the other sales terms are no less favorable to the ultimate purchaser than those offered by the Selling Owner to the other Owners. If the sales price or other substantive terms of such third party sale are less than those originally set forth in the written notice from the Selling Owner to the other Owners, then the Selling Owner shall be required to again provide written notice to the other Owners of its intent to sell the applicable Unit based on such new price and terms, and the other Owners shall have the right to notify the Selling Owner in writing within thirty (30) days after their receipt of the new notice of their intent to purchase the Unit in accordance with the terms set forth above. At the closing of a sale of a Unit by a Selling Owner to another Owner, payment for the applicable Unit shall be by cash, wire transfer of funds or other immediately available funds, the Selling Owner shall at such closing, execute and deliver a general warranty deed to the Unit, together with a duly executed Lien Waiver Affidavit and such other documents or instruments as may be reasonably necessary or requested by the purchaser of such Unit or such purchaser's title insurance company. Notwithstanding the foregoing, in no event shall an Owner be required to comply with this Section 16.2 if such sale is by an Owner to (i) an affiliate of

such Owner (for purposes hereof, an Affiliate" shall mean and refer to an entity which is under common control as such Owner or an entity which is directly controlled by or directly controls such Owner), or (ii) in connection with the simultaneous sale by such Owner of the business then being conducted in the applicable Unit, with the intent of such purchaser to continue such business usage therein.

Section 16.3: After any sale, transfer or conveyance of a Unit pursuant to this Article XVI, the future sale, transfer and conveyance of such Unit shall continue to be governed by the provisions of this Article XVI.

## ARTICLE XVII GENERAL PROVISIONS

Section 17.1: All powers granted in the Declaration or the Bylaws to the Association shall be exercisable by the Executive Board, except as otherwise expressly provided in the Declaration, the Bylaws, or N.C.G.S. Section 47C.

Section 17.2: The Association may adopt and enforce reasonable rules and regulations not in conflict with the Declaration and supplementary thereto, as more fully provided in the Bylaws.

Section 17.3: The Association shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration, the Bylaws and Articles of Incorporation of the Association. Failure by the Association to enforce any covenant or restrictions therein shall in no event be deemed a waiver of the right to do so thereafter.

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

Section 17.4: Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 17.5: The covenants and restrictions of this Declaration shall run with and bind the Land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. Except as otherwise provided in Section 2.8 hereof in connection with the Declarant's subdivision of a Unit and the corresponding amendment of this Declaration and the Plat, this Declaration may be amended by an instrument signed by not less than the Owners of at least sixty percent (60%) of the total percentage undivided interests in the Common Elements; provided, however, during the Period of Declarant Control, no such amendment shall be effective without the written approval and consent of the Declarant. Any such amendment to this Declaration must be recorded.



Section 17.6: The fiscal year of the Association shall begin on the first day of January and end the 31st day of December of each year, except that the first fiscal year shall begin on the date of incorporation.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

IN WITNESS WHEREOF, Declarant has executed and sealed this Declaration as of the 18th day of December, 2015.

SOUTHERN HOLDINGS IV, LLC,  
a North Carolina limited liability company (SEAL)

By: [Signature] (SEAL)  
Name: Joel A. Gilland

STATE OF NORTH CAROLINA

COUNTY OF Mecklenburg

I certify that the following person personally appeared before me this day, acknowledging to me that he/she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: Joel A. Gilland

Date: December 18, 2015

[Signature]  
Official Signature of Notary

Christina J. Tully  
Notary's printed or typed name, Notary Public  
My commission expires: 10/14/17

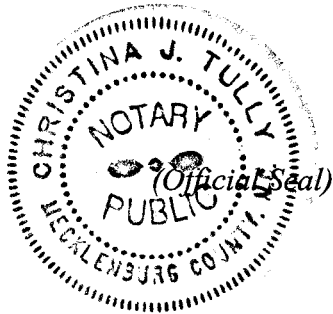


EXHIBIT A

Legal Description of Land

Exhibit A

BEING ALL of Parcel C-2 and Parcel C-3 as shown on that certain plat entitled "MINOR SUBDIVISION OF: PROSPERITY CROSSING-PARCEL C-MAP 1" as recorded in Map Book 47, Page 399 of the Mecklenburg County Public Registry.

## EXHIBIT B

## Table of Undivided Interest in Common Elements

The percentage undivided interest of each Unit in the Common Elements shall be equivalent to a fraction, the numerator of which shall be the square footage within an area comprised by the centerline of the metal stud walls immediately surrounding the perimeter of applicable Unit, and the denominator of which shall be the total square footage within an area comprised of the centerlines of the metal stud walls forming the outside perimeter walls for each of the Buildings.

Unit Number	Unit Square Footage	Percentage Undivided Interest in Common Elements
100	3,901 sq. ft.	37.10%
101	6,614 sq. ft.	62.90%
	10,515 sq. ft.	100.00%

If the Declarant exercises the reserved Special Declarant Right to create additional Units or to subdivide any of the above-referenced Units, or any Owner otherwise exercises its right provided in the Declaration to subdivide any of the above-referenced Units, the percentage undivided interest in the Common Elements previously allocated to such subdivided Unit or relating to such newly created Unit shall be reallocated among the newly-created Units in the above-referenced manner prescribed by the Declarant and set forth in an amendment to the Declaration as provided in Section 2.8 hereof.

## EXHIBIT C

BYLAWS OF PROSPERITY CROSSING COMMONS CONDOMINIUM OWNERS  
ASSOCIATION, INC.

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

ARTICLE I  
MEMBERSHIP

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

Section 1.2: Annual Meetings. The first annual meeting of the Owners shall be held within one year from the date of incorporation of the Association, and each subsequent regular annual meeting of the Owners shall be held on the same day and the same month of each year thereafter.

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

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

Section 1.5: Budget Meetings. Within 30 days after adoption of any proposed budget for the Condominium, the Executive Board shall provide a summary of the budget to all the Unit Owners. The budget shall be considered at a meeting of the Unit Owners as set forth in N.C.G.S. §47C-3-103(c).

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

Section 1.7: Voting Rights. Every Unit Owner shall be entitled to one vote for each 1,000 square feet within its Unit. If fee simple title to a Unit 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 Unit shall be cast as hereinafter provided. If the fee simple title to any Unit is owned of record by two or more persons or entities (whether individually or in a fiduciary capacity), the vote with respect to any such jointly owned Unit may be cast by any one of the joint Owners in person or by proxy, except that the holder or holders of a life estate in a Unit shall have the sole right to cast the votes allocated to the Unit. If more than one of the joint Owners vote or more than one life estate holder in a Unit votes, the unanimous action of all joint Owners or joint life estate holders voting shall be necessary to effectively cast the vote allocated to the particular Unit. Such unanimous action shall be conclusively presumed if any one of such multiple Owners or life estate holders casts the vote allocated to that Unit without protest being made promptly to the person presiding over the applicable meeting by any of the other of such joint Owners or joint life estate holders. In no event may a vote with respect to any Unit be divided among joint Owners of the Unit or cast in any manner other than as a whole, it being the express intention of this Section 1.7 that there be no "splitting" of votes that may be cast by any Member or Members.

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

Section 1.9: Required Votes. Except as may be otherwise required in the Declaration, these Bylaws or by applicable law, all questions voted upon by the Association shall be decided by a majority of the votes cast on the question.

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

## ARTICLE II OFFICERS AND EXECUTIVE BOARD; SELECTION; TERM OF OFFICE

Section 2.1: Number, Term of Office and Election. The affairs of the Association shall be managed by an Executive Board of no less than three (3) Members, who shall be entitled to act on

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

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

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

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

### ARTICLE III MEETINGS OF EXECUTIVE BOARD

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

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

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

Section 4.1: Powers and Authority of Executive Board. Subject to the provisions contained herein and applicable law, the Executive Board shall have the power and authority to exercise all the rights of the Association, including, but not limited to:

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

## ARTICLE V OFFICERS AND THEIR DUTIES

Section 5.1: Officers. The officers of this Association shall be a president, vice-president, secretary and treasurer. The officers shall be appointed by the Executive Board from among the Executive Board members.

Section 5.2: Powers and Duties of Officers.

(a) The president shall preside at all meetings of the Executive Board; see that orders and resolutions of the Executive Board are carried out; sign all leases, mortgages, deeds and other written instruments and shall co-sign all checks and promissory notes.

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

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

(d) The treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and disburse such funds as directed by the Executive Board; sign all checks and promissory notes (such checks and promissory notes to be co-signed by the president) of the Association; keep proper books of account; cause an annual audit of the Association books to be made by a public accountant at the completion of each fiscal year; and prepare an annual budget and a statement of income and expenditures to be presented to the Membership at its annual meeting, and deliver a copy to each Owner.

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

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

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

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

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

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

ARTICLE VI  
BOOKS AND RECORDS

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

ARTICLE VII  
CORPORATE SEAL

The Association shall have a seal in circular form having within its circumference the words: "PROSPERITY CROSSING COMMONS CONDOMINIUM OWNERS ASSOCIATION, INC." and the words: "CORPORATE SEAL" in the center thereof.

ARTICLE VIII  
INDEMNIFICATION OF DIRECTORS AND OFFICERS

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

ARTICLE IX  
FISCAL MANAGEMENT

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

Section 9.2: Fidelity Bonds. Fidelity bonds shall be maintained by the Association, in an amount determined by the Executive Board, covering each Director and officer of the Association, any employee or agent of the Association, and any other person handling or responsible for handling funds of the Association.

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

Section 9.4: Financial Records: The financial records of the Association shall be made reasonably available for examination upon written request to the Association.

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

ARTICLE X  
ASSESSMENTS

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

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

Section 10.3: Preparation of Budget and Levying of Assessment. For each fiscal year, beginning with the fiscal year beginning on January 1, 2007, the Executive Board shall prepare and adopt a proposed budget, including estimates of the amount necessary to pay the Common Expenses, together with amounts considered necessary by the Executive Board for reserves. Within thirty (30) days after adoption of each annual budget, the Executive Board shall provide each Owner with a copy of such budget, and shall give each Owner notice of the assessment made against that Owner's Unit based upon such budget and of the interest to be charged on delinquent payments. The budget shall be ratified unless a majority of all Owners rejects the budget at a duly held meeting of Owners, in which event the last ratified budget shall continue in effect until such time as the Owners ratify a subsequent budget proposed by the Executive Board. The assessment shall be deemed levied upon the adoption of the budget by the Executive Board, subject to the disapproval of the budget by the Owners.

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

Section 10.5 Payment of Assessments. Assessments shall be payable when notice thereof is given, but shall not be delinquent if paid at the times and in the amounts specified by the Executive Board in the notice of assessment. Except for special assessments, 1/12th of the annual assessment

shall be paid on or before the first day of each month. Payments shall be made to the Association, or as the Executive Board may otherwise direct from time to time.

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

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

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

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

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

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

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

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

Executive Board in levying an assessment shall not in any way affect its validity or the obligation of Owners to pay such assessment.

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

Section 10.11 Interest on Delinquent Assessments. Assessments paid before they become delinquent shall not bear interest, but all delinquent sums shall bear interest at the rate set forth in the notice levying the assessment, not exceeding any applicable maximum legal rate of interest, from the date delinquent until paid. If no interest rate is set forth in such notice, such interest rate shall be the maximum allowed by the Declaration. All payments upon account shall be applied first to interest and then to the assessment, or installment thereof, longest delinquent. All such interest shall constitute a lien with the same priority as the assessment on which such interest accrues.

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

## ARTICLE XI COMPLIANCE, ENFORCEMENT, FINES AND PENALTIES

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



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

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

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

**Section 11.4 Non-Waiver of Covenants.** The failure of the Association or of any Owner to enforce any term, provision, right, covenant, or condition that may be granted by the Declaration, these Bylaws, the Articles, the rules and regulations established by the Executive Board or applicable

law as the same may from time to time be amended, shall not constitute a waiver or abrogation of the right of enforcement in the future, irrespective of the number of violations or breaches that may have occurred.

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

ARTICLE XII  
AMENDMENT

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