

FOR REGISTRATION
J. David Granberry
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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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