


FOR REGISTRATION JUDITH A. GIBSON
REGISTER OF DEEDS
MECKLENBURG COUNTY, NC
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**STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG**

**DECLARATION OF CONDOMINIUM
FOR WILMORE WALK CONDOMINIUM**

This Declaration of Condominium (this "Declaration") is made this 21st day of July, 2005, by **Wilmore Partners, LLC**, a North Carolina limited liability company ("Declarant"), pursuant to the provisions of Chapter 47C of the North Carolina General Statutes, entitled the "North Carolina Condominium Act."

BACKGROUND STATEMENT

Declarant is the owner of the following real property located in the City of Charlotte, Mecklenburg County, North Carolina (collectively, the "Property"):

- A. A parcel of land containing approximately 1.3774 acres, located on the northeastern side of West Worthington Avenue in the Wilmore neighborhood of Charlotte, North Carolina, and more particularly described as Parcel 1 on Exhibit A attached hereto and incorporated herein by reference ("Parcel 1").
- B. A parcel of land containing approximately 1.4603 acres, located on the southwestern side of West Worthington Avenue in the Wilmore neighborhood of Charlotte, North Carolina, and more particularly described as Parcel 2 Exhibit A ("Parcel 2," and together with Parcel 1, the "Land").
- C. Eleven (11), two (2) story buildings (the "Buildings") located on the Land which, as more specifically set forth herein, will contain forty-six (46) residential condominium units and certain common amenities, such as exterior walkways, and landscaped areas and parking areas.

Declarant desires to submit the Property to the terms and provisions of the North Carolina Condominium Act. In addition, Declarant has deemed it desirable to create a nonprofit, incorporated owners association which will be delegated and assigned powers of maintaining and administering the common areas and facilities on the Property, of administering and enforcing the covenants and restrictions created in this Declaration, and of levying, collecting and disbursing the assessments and charges created in this Declaration, and of taking any steps or

CHARLOTTE 374539v4

Drawn by and Return to:
Wm. Ruffin Pearce, Jr.
Womble Carlyle Sandridge & Rice, PLLC (Box 93)

performing any acts deemed necessary or appropriate to preserve the values of condominium units within the Property and to promote the recreation, health, safety and welfare of the unit owners. In order to accomplish the foregoing, Declarant is entering into this Declaration.

STATEMENT OF DECLARATION

NOW, THEREFORE, Declarant hereby declares that all of the Property shall be held, transferred, sold, conveyed, occupied and used subject to the following covenants, conditions, easements, uses, limitations, obligations, and restrictions, all of which are declared and agreed to be in furtherance of a plan for the division of the Property into condominium units, and shall be deemed to run with the land and shall be a burden and benefit to Declarant, its successors and assigns, and any person or entity acquiring or owning an interest in the Property, and their grantees, successors, heirs, executors, administrators, devisees and assigns.

ARTICLE I. DEFINITIONS

Unless it is plainly evident from the context that a different meaning is intended, the following terms, words, and phrases shall have the following meanings when used in this Declaration:

1.1 Association. "Association" shall mean and refer to Wilmore Walk Condominium Owners Association, Inc., a corporation organized and existing under the North Carolina Non-Profit Corporation Act pursuant to and in accordance with this Declaration, the Bylaws, and the North Carolina Condominium Act.

1.2 Buildings. "Buildings" shall mean and refer to the eleven (11, two (2) story buildings to be constructed upon the Land, which contain a total of forty-six (46) residential Units and certain Common Elements.

1.3 Bylaws. "Bylaws" shall mean and refer to the bylaws of the Association, a copy of which is attached hereto as Exhibit C, and all amendments to such bylaws which may from time to time be adopted.

1.4 Common Elements. "Common Elements" shall mean and refer to all portions of the Condominium other than the Units, as depicted on the Plans, and as more particularly described in **Section 5.1** of this Declaration.

1.5 Common Elements Interest. "Common Elements Interest" shall mean and refer to the undivided percentage interest in the Common Elements allocated to each Unit, as set forth on Exhibit B attached hereto. In the event Declarant elects to exercise its Development Rights under **Article XXII** of this Declaration to remove Lot 2 from the Condominium, this Declaration shall be revised by an Amendment to Declaration as set forth under **Article XXII** to provide a new allocation of common elements interests among the remaining Units which shall substitute and replace Exhibit B attached hereto. The Common Elements Interests shall be used to allocate the division of proceeds, if any, resulting from any casualty loss or eminent domain proceedings,

but shall not be used to determine voting rights in the Association, or each Unit's share of Common Expenses, each of which shall be allocated equally among all Units.

1.6 Common Expenses. "Common Expenses" shall mean and refer 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 N.C.G.S. §47C-1-103(5). In addition to expenses relating to the operation, instance, maintenance, repair and replacement of the Common Elements.

1.7 Condominium. "Condominium" shall mean and refer to the Wilmore Walk Condominium, as established by the submission of the Property to the terms of the North Carolina Condominium Act by this Declaration.

1.8 Condominium Documents. "Condominium Documents" shall mean and refer to this Declaration, the Articles of Incorporation of the Association, the Bylaws and the rules and regulations governing the use of the Property, as the foregoing may be amended and supplemented from time to time, and all attachments and exhibits thereto.

1.9 Declarant. "Declarant" shall mean and refer to Wilmore Partners, LLC, a North Carolina limited liability company. Following any foreclosure by the Construction Lender under its Deed of Trust (as those terms are defined in Article XXI), the Construction Lender shall hold the rights of Declarant under this Declaration solely for the purpose of transferring such rights to another person, and the Construction Lender shall not be subject to any liability or obligation as a "Declarant" under this Declaration for the period it owns such rights, unless and until the Construction Lender elects to succeed to the rights and obligations of Declarant hereunder and files of record an instrument expressly stating such exercise. Upon any such transfer or election by the Construction Lender, the term "Declarant" shall mean and refer to the Construction Lender's transferee or the Construction Lender, as appropriate. In addition, following recordation of a document transferring to another person or entity all or some of the Special Declarant Rights, pursuant to Section 6.2 of this Declaration, the term "Declarant" also shall mean and refer to that transferee.

1.10 Declarant Control Period. "Declarant Control Period" shall mean and refer to the period commencing on the date hereof and continuing until the earlier of (i) three (3) years after the date of the first conveyance of a Unit to an Owner other than Declarant; (ii) one hundred twenty (120) days after conveyance of seventy-five percent (75%) of the Units to Owners other than Declarant; (iii) two (2) years after Declarant ceases to offer Units for sale in the ordinary course of business; (iv) two (2) years after any development right to add new Units was last exercised; or (v) the date upon which Declarant voluntarily surrenders control of the Condominium.

1.11 Declaration. "Declaration" shall mean and refer to this Declaration of Condominium, as it may be amended in the future.

1.12 Executive Board. "Executive Board" shall mean and refer to the governing body from time to time of the Association as constituted in accordance with the Articles of Incorporation of the Association, the Bylaws and the North Carolina Condominium Act.

1.13 Land. "Land" is defined in Paragraph B of the Background Statement.

1.14 Limited Common Elements. "Limited Common Elements" shall mean and refer to those portions of the Common Elements allocated by this Declaration, or the terms of N.C.G.S. §47C-2-102(2) or (4), for the exclusive use and benefit of one or more, but fewer than all, of the Units, to the exclusion of all other Units, as more fully described in **Section 5.2** of this Declaration, and as depicted on the Plans.

1.15 Mortgage. "Mortgage" shall mean and refer to a mortgage or deed of trust constituting a first lien on a Unit.

1.16 Mortgagee. "Mortgagee" shall mean and refer to the owner and holder of a Mortgage that has notified the Association in writing, delivered to the Association's Principal Office as set forth in the Bylaws, of its name and address, and that it holds a Mortgage on a Unit. Such notice will be deemed to include a request that the Mortgagee be given the notices and other rights described in **Article XVI**. Bank of America, N.A. in its capacity as construction lender to Declarant pursuant to **Article XXI** hereof shall be deemed a "Mortgagee."

1.17 North Carolina Condominium Act. "North Carolina Condominium Act" shall mean and refer to Chapter 47C of the North Carolina General Statutes.

1.18 Owner. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Unit but shall exclude those persons or entities having an interest in any Unit as merely security for the payment or performance of an obligation.

1.19 Parking Lots. "Parking Lots" shall mean those certain parking lots located on the Land containing seventy-two (72) Parking Spaces, subject to reduction in the event that Declarant exercises its development rights pursuant to **Article XXII** hereof.

1.20 Parking Spaces. "Parking Spaces" shall mean the seventy-two (72) parking spaces located within the Parking Lots.

1.21 Plans. "Plans" shall mean and refer to the surveys, plans and specifications of the Building and the Property, prepared by Andrew G. Zoutewelle, a North Carolina Registered Land Surveyor, and by David Furman/Architecture, P.A., and recorded under the name of the Condominium in the Unit Ownership File in the Office of the Register of Deeds of Mecklenburg County.

1.22 Private Courtyard. "Private Courtyard" or "Private Courtyards" shall mean or refer to the private courtyards allocated as limited elements to each Unit as set forth in **Section 5.2** hereof.

1.23 Property. "Property" shall mean and refer to the real property owned by Declarant that is subjected to this Declaration, more particularly described in Paragraphs A through C of the Background Statement.

1.24 Special Declarant Rights. "Special Declarant Rights" shall mean and refer to the rights reserved for the benefit of Declarant in the Condominium Documents, as more particularly described in **Article VI** of this Declaration.

1.25 Unit. "Unit" shall mean and refer to a portion of the Property, as more particularly described in **Article IV** of this Declaration, that is the subject of individual ownership by an Owner, and which is restricted to residential use.

In addition, the definitions set forth in N.C.G.S. §47C-1-103 are incorporated in this Declaration by reference, and the terms defined therein shall have the meanings set forth therein when used in this Declaration or the Condominium Documents, unless those terms are expressly defined otherwise in this Declaration or unless it is plainly evident from the context that a different meaning is intended.

ARTICLE II. DESIGNATION OF CONDOMINIUM

The Land on which the Building and other improvements are located is located entirely in Mecklenburg County, North Carolina, contains approximately 2.8377 acres, and is more particularly described on Exhibit A attached hereto and incorporated herein by reference. The Land and the remainder of the Property are subjected to the terms of the North Carolina Condominium Act by this Declaration. The name of the Condominium is Wilmore Walk Condominium.

ARTICLE III. DESCRIPTION OF BUILDINGS

3.1 The Building consists of eleven (11), two (2) story woodframe buildings, with masonry and "Hardi" siding exterior. The Buildings contain a total of forty-six (46) Units and are more particularly described in the Plans, which show all particulars of the Buildings. The Plans contain a certification by David F. Furman, a North Carolina Licensed Architect, that the Plans contain all the information required by N.C.G.S. §47C-2-109.

3.2 Reduction of Buildings. As provided in **Article XXII**, Declarant reserves Development Rights to remove Lot 2 and the Buildings and Units to be constructed thereon, from the Condominium. If Declarant exercises these Development Rights and does not construct the Buildings or Units on Lot 2, the Amendment to Declaration required by **Section 22.2** of this Declaration shall contain a revised set of Plans reflecting such removal and contain certifications required by N.C. Gen. Stat. § 47C-2-109.

ARTICLE IV. DESCRIPTION OF UNITS

4.1 Units. The location of Units within the Buildings, their dimensions, and their floor and ceiling elevations, are shown on the Plans. There shall be a maximum of forty-six (46)

Units in the Condominium The identifying number for each Unit is set forth on **Exhibit B** and on the Plans. Pursuant to **Article XXII** of this Declaration, Declarant reserves a Development Right to remove all or a portion of Lot 2 and not construct the twenty-four (24) Units that would otherwise be located thereon. If Declarant exercises these Development Rights, the Amendment to Declaration required by **Section 22.2** of this Declaration shall contain a new **Exhibit B** and a revised set of Plans reflecting the removal of Lot 2 and the applicable Units.

4.2 Unit Boundaries.

(a) The boundaries of each Unit are as follows:

(i) Upper Boundary: The horizontal plane of the top surface of the wallboard in the ceilings within each Unit. As depicted on the Plans, there is a vaulted ceiling in certain Units, and in such portions, the upper boundary of the Unit shall not be a single horizontal plane, but shall vary with the different planes of the finished wallboard forming the vaulted ceiling. In addition, in certain Units, as depicted on the Plans, the ceilings within different portions of the Unit may be at different elevations; in such cases, the upper boundary of the Unit shall not be a single plane, but shall vary with the differing finished ceiling elevations within different portions of the Unit.

(ii) Lower Boundary: The horizontal plane of the top surface of the subflooring within each Unit. In certain Units, as depicted on the Plans, the floors within different portions of the Unit may be at different elevations; in such cases the lower boundary of a Unit shall not be a single plane, but shall vary with the differing finished floor elevations within different portions of the Unit.

(iii) Vertical Boundaries: The vertical planes which include the back surface of the wallboard of all walls bounding the Unit, extended to intersections with each other, and with the upper and lower boundaries.

(b) As provided in N.C.G.S. §47C-2-102(1), all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring and any other *materials constituting any part of the finished surfaces of the perimeter walls, floors, and ceilings* are part of the Unit. As provided in N.C.G.S. §47C-2-102(2), if any chute, flue, duct, wire, pipe for water or sewer, conduit, bearing wall, bearing column, or any other fixture lies partially within and partially outside the designated boundaries of a Unit, any portion thereof serving only that Unit shall be a Limited Common Element allocated to that Unit, as provided in **Section 5.2** below, and any portion thereof serving more than one Unit, or any portion of the Common Elements, shall be a Common Element.

ARTICLE V.
COMMON ELEMENTS

5.1 Common Elements. The Common Elements include all portions of the Condominium that are not part of the Units, including without limitation:

- (a) The Land and the easement rights and other property rights appurtenant to the Land that are included within the Property and subjected to this Declaration.
- (b) All improvements located on the Land outside of the Building, including without limitation exterior walkways, the Parking Lots and landscaped areas.
- (c) The foundations, roofs, columns, girders, beams, supports, exterior and interior load-bearing walls, floors within and between Units, and all other structural elements of the Building.
- (d) Any public connections and meters for utility services that are not owned by the public utility or municipal agency providing such services.
- (e) All tangible personal property required for the operation and maintenance of the Condominium that may be owned by the Association.
- (f) *The Limited Common Elements described in Section 5.2 below.*

5.2 Limited Common Elements. The Limited Common Elements shall be composed of the following:

- (a) Those portions of any chute, flue, duct, wire, pipe for water or sewer, conduit, bearing wall, bearing column, or any other fixture lying partially within and partially outside the designated boundaries of a Unit, but serving exclusively that Unit, which shall be Limited Common Elements allocated exclusively to that Unit.
- (b) Any shutters, awnings, window boxes, balconies, porches, and all exterior doors and windows or other fixtures designed to serve a single Unit, but located outside that Unit's boundaries, which shall be Limited Common Elements allocated exclusively to that Unit.
- (c) Any portions of the heating, ventilating, and air conditioning systems, including a heat pump for each Unit (located on the roof of the Building), and all fans, compressors, return air grills and thermostats, whether located inside or located outside the designated boundaries of a Unit, which shall be Limited Common Elements allocated exclusively to the Unit or Units that they serve.
- (d) Those areas indicated as Limited Common Elements on the Plans, including but not limited to a Private Courtyard for each Unit and a Porch for Units with an "A" or "B-Porch" floor plan.

5.3 Undivided Interests of Owners in Common Elements. The percentage interest in the Common Elements allocated to each Unit shall be the Common Elements Interest for that Unit as set forth on Exhibit B attached hereto. The Common Elements Interest allocated to each Unit shall not be changed except with the unanimous consent of all the Owners of all the Units and with the consent of all the Mortgagees, except as may be specifically authorized elsewhere in this Declaration. In particular, if Declarant exercises its Development Rights to remove all or a portion of Lot 2 Units and Limited Common Elements associated therewith from the Condominium, Declarant shall have the right to adjust the Common Elements Interest for each Unit in accordance with the following formula: The Common Elements Interest allocated to each Unit will be based on the square footage of that Unit as measured between the interior faces of interior walls (the "Interior Square Footage"), as shown on the Plans, and shall be calculated by dividing the Interior Square Footage of that Unit by the total Interior Square Footage of all Units, and by multiplying the quotient so calculated by one hundred (100). If Declarant exercises this Development Right, the Amendment to Declaration required by Section 22.2 of this Declaration shall contain a new allocation of Common Elements Interest calculated in accordance with the foregoing formula which shall be substituted for Exhibit B attached to this Declaration.

5.4 Maintenance of Common Elements.

(a) The Association shall be responsible for the maintenance and repair of all Common Elements, except for: (a) routine maintenance of the Limited Common Elements (excluding the Parking Spaces), which shall be the responsibility of the Owner of the Unit to which they are allocated, (b) any maintenance or repairs caused by the negligence or intentional misconduct of any Owner, his agents, invitees or family members, which shall be the responsibility of that Owner.

(b) The cleanliness and orderliness of the Limited Common Elements (excluding the Parking Spaces), shall be the responsibility of the individual Owner having the right to the use and enjoyment of such Limited Common Elements. Notwithstanding any other provisions of this Declaration, or any provision of the Bylaws or the North Carolina Condominium Act, the obligation for maintenance, repair, or replacement of any portions of the heating, ventilating, and air conditioning systems that are Limited Common Elements, shall be the sole responsibility of the Owner of the Unit to which such Limited Common Elements is allocated. References in this Declaration to "Common Elements" shall include Limited Common Elements unless the context clearly indicates otherwise. The allocation of use of Limited Common Elements to the Units as provided for in this Declaration shall not be altered without the unanimous consent of the Owners whose Units are affected.

5.5 Parking Spaces. There shall be at least seventy-two (72) Parking Spaces located within the Parking Lots. The use of all Parking Spaces shall be on a first-come, first-served basis and shall be subject to any current or future rules and regulations promulgated by the Declarant (under Section 6.1 hereof) or the Association. The Association shall be responsible for the repair and maintenance of all Parking Spaces and the Parking Lots. In the event the Declarant exercises its Development Rights to remove all or a portion of Lot 2 from the Condominium, the

amendment to this Declaration required by N.C. Gen. Stat. § 47C-2-110 shall reflect that the number of Parking Spaces shall be reduced to no less than thirty-two (32).

ARTICLE VI.
SPECIAL DECLARANT RIGHTS

6.1 Special Declarant Rights. "Special Declarant Rights" are those rights reserved for the benefit of Declarant in the Condominium Documents, and shall include without limitation the following rights:

- (a) The right to complete any improvements shown on the Plans.
- (b) The right to use easements through the Common Elements for the purpose of completing construction.
- (c) Subject to **Section 8.3**, the right to appoint or remove officers of the Association or members of the Executive Board during the Declarant Control Period.
- (d) The right to exercise any other rights granted to or reserved by Declarant in the Condominium Documents, expressly including, without limitation, the Development Rights set forth in **Article XXII** hereof.
- (e) The right to promulgate rules and regulations for the Parking Spaces.
- (f) The right to maintain one sales office, one management office, and one model Unit in the Condominium. The offices, model Unit and signs will be of sizes and styles determined by Declarant, and may be relocated by Declarant from time to time. At all times, the offices, model Unit and signs will remain the property of Declarant and may be removed from the Property by Declarant at any time during or promptly after the expiration of the Special Declarant Rights Period.

(g) Easements to Facilitate the Exercise of Special Declarant Rights. Declarant hereby reserves for itself and its successors and assigns a non-exclusive easement upon, across, over, in, and under the Property as may be reasonably necessary for the purpose of discharging Declarant's obligations or exercising Special Declarant Rights, whether arising under the Act or this Declaration, including, without limitation: (i) easements for ingress and egress and for installation, replacement, repair and maintenance of drainage ditches and facilities, all utilities, including but not limited to water, sewer, gas, telephone, and electrical, cable and other communications systems and any indoor sprinkler systems; (ii) easements to store materials on the Common Elements and to make such other use of the Common Elements as may be reasonably necessary or incident to the construction of Building and other improvements on the Property; and (iii) the location of these easements and rights-of-way may be made certain by Declarant and the Association by instruments recorded in Mecklenburg County, North Carolina.

6.2 Supplemental Provisions Regarding Declarant's Rights. Declarant reserves the right to unilaterally amend and/or supplement this Declaration in connection with the exercise of

any Special Declarant Rights to the extent permitted by the Act, and Declarant also reserves the additional rights retained for the benefit of Declarant in this Article and in other provisions of this Declaration.

6.3 Transfer of Special Declarant Rights. Declarant may transfer any Special Declarant Rights created or reserved under the Condominium Documents to any person or entity, by an instrument evidencing the transfer duly recorded in the Office of the Register of Deeds for Mecklenburg County. The instrument shall not be effective unless it is executed by the transferor and the transferee. Upon the transfer of any Special Declarant Rights, the liability of the transferor and the transferee shall be as set forth in N.C.G.S. §47C-3-104.

ARTICLE VII. **RESTRICTIONS ON USE**

7.1 Use. The Residential Units shall be used for residential purposes only; provided, however, that Units may also be used for home office purposes by the residents of such Units. Notwithstanding the foregoing, Declarant may maintain any Unit owned by Declarant as a sales office or model Unit. The Commercial Unit shall be limited to those commercial uses permitted by the current zoning ordinance applicable to the Condominium (UR-2).

7.2 Nuisance. No obnoxious, offensive or unlawful activity shall be conducted within any Unit, or on or about the Common Elements, nor shall anything be done thereon or therein which may be or which may become an annoyance or nuisance to the other Owners, or endanger the health and safety of any Owner. Nothing shall be done or kept in any Unit or in the Common Elements that will result in the termination of, or an increase in the premium for, the policy of property insurance for the Property.

7.3 Prohibitions on Use of Common Elements. The Common Elements (other than storage areas, if any, designated by the Association) shall not be used for the storage of personal property of any kind. Stairs, entrances, landscaped areas, walkways, Parking Spaces, and the Private Drive shall not be obstructed in any way, or used for other than their intended purposes. In general, no activity shall be carried on nor conditions maintained by any Owner either in his Unit or upon the Common Elements which despoils the appearance of the Property.

7.4 Garbage. Trash, garbage and other waste shall be kept in sanitary containers within each Unit, or deposited in the roll-out receptacles to be provided with each Unit. No trash or garbage shall be kept or stored on the Balconies.

7.5 Parking. No Owner or any employee, agent, or invitee of any Owner, shall park, store or keep any vehicle on the Land except in the Parking Lots. Unit Owners and their guests, agents, employees, tenants, customers, licensees, invitees may occupy the Parking Spaces on a first-come, first-served basis subject to the terms of this Declaration and such rules and regulations as may be established by the Executive Board. No boat, trailer, motorhome, travel trailer, camper or any other recreational vehicle may be stored overnight in the Parking Lots. No automobile repairs shall be allowed in the Parking Lots. The Executive Board shall have the right to tow any vehicle in violation of this Section 7.5 at the applicable Unit Owner's expense.

The Association shall have the right to tow any vehicle in violation of this **Section 7.5** at its owner's expense.

7.6 Leases of Units. Any lease of a Unit or portion thereof shall be in writing and shall provide that the terms of the lease shall be subject in all respects to the Condominium Documents and that any failure by the lessee to comply with all of the terms of such *Condominium Documents* shall constitute a default under the lease. No Unit may be leased for a period shorter than thirty (30) days.

7.7 No Timeshares. No interest in any Unit may be subjected to a time share program, as that term is defined in N.C.G.S. §93A-41(10).

7.8 Animals. No animals, livestock, or poultry of any kind shall be kept or maintained on the Property or in any Unit, except that small common household pets and licensed assistance animals may be kept or maintained in each Unit, provided they are not kept or maintained for commercial purposes. No pet shall be permitted upon the Common Elements unless carried or leashed by a person that can control the pet. All pets shall be controlled so as not to create a nuisance or unreasonable disturbance (including loud and excessive barking) on the Property. Pets shall not be permitted to defecate in the Common Elements, and each Owner shall clean up immediately after his pet if an accident occurs. All pets shall be registered and inoculated as required by law. Each Owner shall hold the Association harmless from any claim resulting from any action of his pet, and shall repair at his expense any damage to the Common Elements caused by his pet. If any Owner violates these rules more than twice in any twelve (12) month period, then in addition to any fines provided in the Bylaws, the Association shall have the right to require the Owner to remove the pet permanently from the Property upon not less than ten (10) days' written notice.

7.9 Utilities. Total electrical usage in any Unit shall not exceed the capacity of the circuits for that Unit as labeled on the circuit breaker boxes, and no electrical device causing overloading of the standard circuits may be used in any Unit without permission of the Association. All clothes dryers will have lint filters, and all stove hoods will have grease screens, and such screens and filters shall be used at all times and kept clean, and in good order and repair, by the Owner of the Unit in which they are located.

7.10 Floor Load. There shall be no floor load in any Unit in excess of forty (40) pounds per square feet, unless an engineering determination of the floor load capacity in the area of heavy use is approved by the Association.

7.11 Windows. No curtains or draperies shall be installed or hung in any window of any Unit unless they have a white lining or backing on the side exposed to the window. No storm windows shall be installed in any Unit.

7.12 Architectural Control. No building, landscaping, fence, wall, sign or other structure (other than a satellite dish or antenna permitted by **Section 7.16** or as otherwise shown on the Plans) shall be commenced, erected or maintained upon the Property, nor shall any exterior addition to or change or alteration to either the Unit or the Common Elements 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 as to harmony of external design and location in relation to surrounding structures and topography by the Association.

7.13 Signs. No signs or other advertising devices shall be displayed on or about the exterior of any Unit, or in the Common Elements, except for: (a) one name plate or sign not exceeding twenty-four (24) square inches in area on the main door to each Unit; and (b) a temporary professionally printed "For Sale" sign not to exceed three (3) square feet in one (1) window of a Unit, erected in conformance with applicable sign ordinances and plans approved by the Association as provided in **Section 7.12** hereof. Notwithstanding the foregoing, Declarant shall have the right to maintain upon the Property advertising signs, provided those signs comply with applicable governmental regulations.

7.14 Maintenance. Except as otherwise specifically set forth herein, the Owner of each Unit is responsible for maintaining his Unit as well as the Limited Common Elements appurtenant thereto. Each Owner shall keep his respective Unit and its appurtenant Limited Common Elements in a clean, neat and orderly condition and in a good state of maintenance and repair. If an Owner fails to comply with the standards or requirements of the Association relative thereto, the Association shall assess the defaulting Owner the cost thereof and shall undertake to effect said compliance.

7.15 Rules and Regulations. In addition to the use restrictions set forth in this Declaration, reasonable rules and regulations governing the Use of the Property may be made and amended from time to time by the Association. Copies of such regulations and amendments thereto shall be posted prominently prior to their effective date, and shall be furnished by the Association to all Owners upon request.

7.16 Satellite Dishes and Antennas. No exterior satellite dish in excess of one meter in diameter may be placed on the exterior of any Unit or in the Common Elements without the prior written approval of the Executive Board, which may be withheld in its sole discretion. The location of any exterior television antenna, or satellite dish less than one meter in diameter, shall be subject to the reasonable prior approval of the Executive Board, taking into account the appropriate standards set forth in the regulations of the Federal Communications Commission, and to the extent reasonably practical, the Executive Board may require that such antenna or satellite dish be screened from public view. Prior to installing the antenna or satellite dish, the Owner shall furnish to the Executive Board a copy of his installation plans. The Association shall have the right to perform any portion of the installation work at the expense of the Owner, or to require that any portion of the work be performed by contractors designated by the Executive Board. In particular, any roof penetration that is required to install any antenna or satellite dish shall be performed only by the roofing contractor designated by the Executive Board. The Owner shall also be responsible for any damage caused by the removal of the antenna or satellite dish, including the sealing of conduits or other roof penetrations. Again, the Association shall have the right to require that any part of the removal work, including the sealing of roof penetrations, be performed by the roofing contractor designated by the Executive Board, at the Owner's expense. Any Owner installing an antenna or satellite dish under this **Section 7.16** shall indemnify, defend and hold the Association harmless from and against any loss, damage, claim or other liability resulting from the installation, maintenance, repair, use

and/or removal of the antenna or satellite dish, including any damage to the roof of the Building or other property damage caused by roof leaks.

7.17 Private Courtyards and Porches. The Private Courtyards and Porches shall be kept in a clean, neat, and orderly condition at all times and shall not be used for the drying of laundry. In particular, towels or banners shall not be hung on the Porch railings or Private Courtyard fences or gates, and any dead plants on Porches shall be removed promptly. Further, Porches shall not be used for the overnight storage of garbage. No indoor-outdoor carpeting, hot tub, or other pool shall be installed on any Porch. No charcoal or propane grills may be used or stored on any Porch at anytime.

ARTICLE VIII. **THE ASSOCIATION**

8.1 Organization of Association. A nonprofit North Carolina corporation known and designated as Wilmore Walk Condominium Owners Association, Inc. (the "Association") has been organized to provide for the administration of the Property, and the Association shall administer the operation and maintenance of the Property and undertake and perform all acts and duties incident thereto in accordance with the terms of its Articles of Incorporation, the Bylaws, and the North Carolina Condominium Act. A true copy of the Bylaws of the Association is attached hereto as Exhibit C. Every Owner shall be required to be and shall automatically be a member of the Association by virtue of his ownership interest in a Unit.

8.2 Powers: Lien for Assessment. In the administration of the operation and management of the Property, the Association shall have and it is hereby granted the authority and power to enforce the provisions of this Declaration, to levy and collect assessments in the manner provided in Article X below and in Section 8 of the Bylaws, and adopt, promulgate and enforce such rules and regulations governing the use of the Units and Common Elements as the Association may deem to be in the best interest of the Owners in accordance with the Bylaws. Any sum assessed by the Association remaining unpaid for a period of thirty (30) days or longer shall constitute a lien on the Unit with respect to which such sum was assessed upon filing in accordance with N.C.G.S. §47C-3-116, and shall be enforceable by the Association in accordance with N.C.G.S. §47C-3-116 and Section 8 of the Bylaws.

8.3 Declarant Control Period. During the Declarant Control Period, Declarant reserves the right to appoint and remove any Executive Board members; provided, however, (i) that not later than sixty (60) days after conveyance of twenty-five percent (25%) of the Units to Owners other than Declarant, at least one member and not less than twenty-five percent (25%) of the members of the Executive Board shall be elected by Owners other than Declarant; and (ii) that not later than sixty (60) days after conveyance of fifty percent (50%) of the Units to Owners other than Declarant, not less than thirty-three percent (33%) of the members of the Executive Board shall be elected by Owners other than Declarant.

8.4 Books and Records. The Association shall maintain current copies of: (a) the Condominium Documents, as they may be amended from time to time, (b) any rules and regulations adopted under Section 7.15 from time to time; and (c) all financial records of the

Association, as required by N.C.G.S. §47C-3-118. These items shall be available for inspection, during normal business hours and upon reasonable advance notice, by any Owner, any Mortgagee, and any insurer or guarantor of a loan secured by a Mortgage. In addition, within ninety (90) days following the Association's fiscal year end, the Association shall obtain an audited financial statement from a certified public accountant.

ARTICLE IX. **EASEMENTS AND PROPERTY RIGHTS**

9.1 Access by the Association. The Association, or any person authorized by it, shall have the right of access to each Unit and to the Limited Common Elements to the extent necessary for performance by the Association of its obligations of maintenance, repair, or replacement of the Property.

9.2 Encroachment Easements. If any portion of the Common Elements now encroaches upon any Unit, or if any Unit now encroaches upon any other Unit or upon any portion of the Common Elements, or if such encroachment shall occur hereafter as a result of the settling or shifting of the Building, there shall exist a valid easement for the encroachment and for the maintenance of same for so long as the Building shall stand. 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 subsequently is rebuilt, any encroachment of parts of the Common Elements upon any Unit, or of parts of any Unit upon 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.

9.3 Easements over Common Elements. Declarant, during the Declarant Control Period, and the Association, at any time, may 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; and water lines; gas mains; telephone and television or cable television wires, cables and equipment; electrical conduits; and wires over, under, along and on any portion of the Common Elements (other than the Limited Common Elements); and each Owner hereby grants to Declarant or the Association, 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. During the Declarant Control Period, Declarant shall have an easement over the Common Elements (other than the Limited Common Elements) as may be reasonably necessary to complete the construction of the Building and the other improvements *within the Property*.

9.4 Emergency Access. In case of any emergency originating in or threatening any Unit or the Common Elements, regardless of whether the Owner is present at the time of such emergency, the Association, or any other person authorized by it, shall have the right to enter any Unit or its Limited Common Elements for the purpose of remedying or abating the cause of such emergency and making any other necessary repairs not performed by the Owners, and such right of entry shall be immediate.

9.5 Relocation of Boundaries; Subdivision; Partitioning.

(a) Relocation of Boundaries Between Adjoining Units. The boundaries between adjoining Units and, if applicable and requested, the corresponding Common Elements Interests, may be relocated upon application to the Association by the Owners of such adjoining Units ("Adjoining Owners") and upon approval by the Association of such application; provided, however, that no such relocation of boundaries and interests, if applicable, shall be binding upon any Mortgagee holding a Mortgage on any Unit whose boundaries are relocated, unless consented to in writing by such Mortgagee. Any such application to the Association must be in such form and contain such information as may be reasonably required by the Association, and shall be accompanied by, a plat detailing the proposed relocation of boundaries and, if applicable, a description of the reallocation of the Common Elements Interest. Unless the Association determines within thirty (30) days after submission to it of the application that the proposed relocation of boundaries and interests, if applicable, is unreasonable, the application shall be deemed approved. Upon approval of the proposed relocation of boundaries, the Association shall cause to be prepared and filed, at the Adjoining Owners' expense, an amendment to this Declaration and a plat which identifies the Units involved, describes and depicts the altered boundaries, describes the reallocation of the Common Elements Interests, if applicable, and gives the dimensions of the altered Units. Such amendment shall also contain operative words of conveyance and be signed by the Adjoining Owners and consented to by their Mortgagees, if any, and shall be indexed by the Register of Deeds in the names of the Adjoining Owners.

(b) Subdivision of Units. No Unit may be subdivided.

(c) Partitioning. The interests in the Common Elements allocated to each Unit shall not be conveyed, devised, encumbered, partitioned or otherwise dealt with separately from said Unit, and the interests in the Common Elements allocated to each Unit shall be deemed conveyed, devised, encumbered or otherwise included with the Unit even though such interests are not expressly mentioned or described in the instrument conveying, devising, encumbering or otherwise dealing with such Unit. Any conveyance, mortgage or other instrument which purports to grant any right, interest or lien in, to or upon the Unit, shall be null, void and of no effect insofar as the same purports to affect any interest in a Unit's allocated interests in the Common Elements unless the same purports to convey, devise, encumber or otherwise deal with the entire Unit. Any instrument conveying, devising, encumbering or otherwise dealing with any Unit, which describes said Unit by the identifying number assigned thereto on the Plans and herein without limitation or exception shall be deemed and construed to affect the entire Unit and its allocated interest in the Common Elements. Nothing herein contained shall be construed as limiting or preventing ownership of any Unit and its allocated interest in the Common Elements by more than one person or entity as tenants in common, joint tenants, or as tenants by the entirety or any other form by law permitted.

9.6 Conveyance or Encumbrance of Common Elements. While the Property remains subject to this Declaration and to the provisions of the North Carolina Condominium Act, no conveyances of or security interests or liens of any nature shall arise or be created against the

Common Elements without the consent by vote of (a) at least eighty percent (80%) of the votes in the Association, including at least eighty percent (80%) of all votes held by Owners other than Declarant, and (b) at least eighty percent (80%) of all Mortgagee Votes (as defined in **Section 16.2** hereof). Every agreement for the performance of labor or the furnishing of materials to the Common Elements, whether oral or in writing, must provide that it is subject to the provisions of this Declaration and that the right to file a mechanic's lien or other similar lien by reason of labor performed or material furnished is subordinated to this Declaration and to the lien of assessments for Common Expenses provided for in **Section 8.2** of this Declaration. Nothing in this **Section 9.6** shall be construed to limit the right of any Owner to convey or to encumber his allocated interest in the Common Elements as an appurtenance to and in connection with the conveyance or mortgaging of his Unit.

9.7 Nature of Interest in Unit. Every Unit, together with its allocated interest in the Common Elements, shall for all purposes be and it is hereby declared to be and constitute a separate parcel of real property. The Owner of each Unit shall be entitled to the exclusive fee simple ownership and possession of his Unit subject only to the covenants, conditions, restrictions, easements, uses, limitations, obligations, rules and regulations set forth in the Condominium Documents, or adopted by the Association.

9.8 Leasing of Units. So long as the Property remains subject to this Declaration and to the provisions of the North Carolina Condominium Act, no Owner of any Unit shall lease such Unit to any party without the prior written consent of the Association (or the Declarant during the Declarant Control Period), which consent shall not be unreasonably withheld. It shall be reasonable for the Association or the Declarant to withhold such consent if leasing such Unit may cause the Condominium, in the sole discretion of the Association or Declarant, to fail to comply with the requirements of 24 C.F.R. Part 234, sections (e)(2) and/or (e)(3), or fail to comply with the requirements of FHA/VA, HUD or other mortgagee providing financing for the Condominium.

ARTICLE X. ASSESSMENTS

10.1 Taxes. Every Unit, together with its allocated interest in the Common Elements, shall be separately assessed and taxed by each assessing authority for all types of taxes authorized by law. Each Owner shall be liable solely for the amount taxed against his individual Unit, provided, however, the Units may not initially be separately assessed with respect to Mecklenburg County ad valorem property taxes, and any such taxes for any calendar year in which the Units are not separately assessed shall be paid by Declarant (subject to reimbursement from each Owner for its pro rata share at closing).

10.2 Common Expenses. Except as otherwise provided in this Declaration or in the Bylaws, the Owners of the Units shall contribute, as a group, one hundred percent (100%) of all Common Expenses incurred by the Association, all in accordance with the definition of "Common Expenses" set forth in **Section 1.6** above, the Bylaws, and the provisions of the North Carolina Condominium Act. The share of the Common Expenses allocable to the Units shall be divided among the Units in forty-six (46) equal percentage shares (2.174% per Unit), as

modified, if ever, pursuant to **Sections 5.3 and 22.3** hereof. Assessments for all Units shall begin as of the date of the first conveyance of a Unit to a party other than Declarant. Due dates for payment of such Common Expenses shall be established by the Association and shall be collected at least monthly. The Bylaws grant the Association the right to impose additional monthly assessments for Units that require extra utility and maintenance services. Assessments for all Units shall begin as of the date of the first conveyance of a Unit to a party other than Declarant.

10.3 Common Surplus. The term "Common Surplus" means and refers to all funds and other assets of the Association, including excess of receipts of the Association from assessments, rents, profits and revenues from whatever source, over the amount of Common Expenses. The Common Surplus shall be owned by the Owners in the same proportion as their respective shares of Common Expenses, as provided in **Section 10.2** above; provided, however, that the Common Surplus shall be held by the Association in the manner and subject to the terms, provisions and conditions of this Declaration imposing certain limitations and restrictions upon the use and distribution thereof. Except for distribution of any insurance proceeds, which shall be made in the manner provided in **Section 11.6**, or upon termination of the Condominium, any attribution or distribution of Common Surplus which may be made from time to time shall be made to the then Owners in proportion to their respective shares of Common Expenses determined in accordance with **Section 10.2** above.

ARTICLE XI. INSURANCE

11.1 Property Insurance. The Association shall obtain and maintain at all times a policy of property insurance on the Building (ISO special form or its equivalent) in an amount not less than one hundred percent (100%) of the replacement cost of the Building at the time such insurance is purchased and at the time of each renewal thereof (excluding the cost of foundations and footings, and the cost of any personal property supplied or installed by Owners), with a commercially reasonable deductible not in excess of \$10,000.00. The policy shall be issued by an insurance company properly licensed to do business in the State of North Carolina, with a general policyholder's rating of at least "A-" in the most recent edition of the Best's Key Rating Guide. The policy shall provide that each Owner is an insured person with respect to his Unit and his allocated interest in the Common Elements. The policy shall contain an inflation guard endorsement, if available, and a construction code endorsement, if available, as well as a special condominium endorsement providing as follows: for waiver of subrogation against any Owner, and any Owner's employees or agents; that it may not be canceled or substantially modified without at least thirty (30) days' prior written notice to the Association and all insureds, including all Owners and Mortgagees; that no act or omission by any Owner will preclude recovery upon such policy; and that if, at the time of a loss under the policy, there is other insurance in the name of an Owner covering the same risk covered by the policy, the Association's policy provides primary insurance. Each property insurance policy shall provide that adjustment of loss shall be made by the Association as insurance trustee. Each property insurance policy shall provide for the issuance of certificates or mortgagee endorsements to Mortgagees.

11.2 Liability Insurance. The Association shall obtain and maintain a policy of commercial general liability insurance (current ISO form or its equivalent) 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 \$3,000,000.00 per occurrence. The liability insurance policy shall include endorsements covering cross liability claims of one insured against another, including the liability of the Owners as a group to a single Owner, and shall provide that it may not be canceled or substantially modified without it least thirty (30) days' prior written notice to the Association and to all insureds, including all Owners and Mortgagees. The Executive Board shall review such limits annually.

11.3 Fidelity Coverage. The Association 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.

11.4 Other Insurance Policies. The Association shall be authorized to obtain such other insurance coverage, including worker's compensation or employee liability insurance, as the Association shall determine from time to time desirable or necessary.

11.5 Premiums. Premiums upon insurance policies purchased by the Association, and any amounts paid as a result of a deductible, shall be paid by the Association and charged as a Common Expense. Notwithstanding the preceding sentence, if a casualty occurs wholly within the boundary of one Unit and does not affect any other Unit or Common Elements, the Owner of such Unit shall be wholly responsible for any deductible amount in such policy of insurance relating to such claim.

11.6 Distribution of Insurance Proceeds. All insurance policies procured by the Association shall provide that all losses shall be adjusted with and all proceeds shall be payable to the Association as insurance trustee. The sole duty of the Association 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 Common Elements Interest.

(b) Proceeds on account of damage to Units shall be held in the following undivided shares:

(i) 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 Association.

(ii) When the damage is not to be restored, an undivided share for each Owner, such share being the same as each such Owner's allocated Common Elements Interest.

(c) In the event that 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 Association as insurance trustee shall be distributed to or for the benefit of the Owners in the following manner:

(i) If it is determined, as provided in **Article XII** 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, in proportion to their respective Common Elements Interests; and
- C. the remainder of the proceeds shall be distributed to all Owners or Mortgagees, as their interests may appear, in proportion to their respective Common Elements Interests.

(ii) 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.

11.7 Insurance Obtained by Owners. Each Owner shall obtain and keep continuously in force additional fire and casualty and extended coverage insurance upon his personal property, 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 \$100,000.00 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.

ARTICLE XII.
DUTY TO REPAIR OR RECONSTRUCT

12.1 Reconstruction and Repair. In the event of damage to or destruction of the Building as a result of fire or other casualty, the Association shall arrange for the prompt restoration and replacement of the Building unless: (a) the Condominium is terminated in accordance with the provisions of **Article XV** below, or (b) repair or replacement would be illegal under any state or local health or safety statute or ordinance, or (c) the Owners decide not to rebuild by a vote of eighty percent (80%) of the votes in the Association, including one hundred percent (100%) of the votes held by 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 Association shall arrange for the prompt repair and restoration of the Building, 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 Association shall repair or replace such damaged property), and the Association 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 11.6(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 Plans. If the Owners vote not to rebuild any Unit, that Unit's allocated Common Elements Interests shall be automatically reallocated upon the vote as if the Unit had been condemned under N.C.G.S. §47C-1-107(a).

12.2 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 Plans, and will make no structural addition, alteration or improvement to his Unit without the prior written consent of the Association, except as specifically permitted by this Declaration or authorized under N.C.G.S. §47C-2-111. Upon the failure of an Owner to so maintain his Unit, the Association 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.

ARTICLE XIII.
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 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 XIV.
AMENDMENT TO AND SUPPLEMENT OF DECLARATION

Except as is otherwise specifically authorized herein, this Declaration may be amended only by the vote not less than sixty-seven percent (67%) of the total number of votes in the Association, and not less than fifty-one percent (51%) of the Mortgagee Votes, cast in person or by proxy at a meeting duly held in accordance with the provisions of the Bylaws. Except to the extent expressly permitted by the other provisions of this Declaration, any amendment which amends or alters the Common Elements Interest of any Unit, increases the number of Units, changes the boundaries of any Unit, changes the use to which any Unit is restricted, or modifies the terms of this **Article XIV**, shall require the written approval of all Owners, together with the consent of all their respective Mortgagees. No amendment to the Declaration shall be effective until executed on behalf of the Association by any officer designated for that purpose and recorded in the office of the Register of Deeds of Mecklenburg County, North Carolina. No amendment to this Declaration shall be adopted or passed which shall impair or prejudice the rights and priorities of any Mortgagee without the written consent of such Mortgagee. During the Declarant Control Period, no amendment to this Declaration shall be effective without the written consent of Declarant.

ARTICLE XV.
TERMINATION

The Condominium may be terminated and the Property removed from the provisions of the North Carolina Condominium Act only by the vote of (a) not less than eighty percent (80%) of the Votes in the Association, and (b) not less than eighty percent (80%) of the Mortgagee Votes, cast in person or by proxy at a meeting duly held in accordance with the provisions of the Bylaws, and as evidenced by execution of a termination agreement, or ratification thereof, by the requisite number of Owners and Mortgagees. The termination shall comply with the requirements of N.C.G.S. §47C-2-118, and must be recorded in the Office of the Register of Deeds for Mecklenburg County before it becomes effective. Following the recordation of the termination agreement, the interests of the Owners and Mortgagees in the Property shall be as provided in N.C.G.S. §47C-2-118.

ARTICLE XVI.
MORTGAGEE PROTECTION

16.1 General Provisions. This **Article XVI** establishes certain standards and covenants for the benefit of Mortgagees. This **Article XVI** is supplemental to, and not in substitution for, any other provisions of the Condominium Documents, but in the event of any conflict between the provisions of the Condominium Documents and the provisions of this **Article XVI**, the provisions of this **Article XVI** shall control.

16.2 Percentage of Mortgagees. Wherever in the Condominium Documents the approval or consent of a specified percentage of Mortgagees (e.g., "51% of Mortgagees") is required (the "Specified Percentage"), such Specified Percentage shall not be based on the specific number of Mortgagees, but rather shall be based on the votes allocated to the Units on

which Mortgagees hold Mortgages (the "Mortgagee Votes"). The actual percentage of Mortgagees for determining whether a Specified Percentage has been met shall, therefore, be equal to the product of (a) 100, and (b) a fraction, the numerator of which is the sum of all Mortgagee Votes consenting or approving to the subject action, and denominator of which is the sum of all Mortgagee Votes.

16.3 Rights 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. The financial statement and report shall be audited by an independent certified public accountant.

16.4 Mortgagee's Rights to Notice.

(a) Any Mortgagee (including, for purposes of this Section 16.4, any insurer or guarantor of a loan secured by a Mortgage that has notified the Association in writing of its name and address, and that it insures or guarantees a Mortgage) shall have the right to receive from the Association prompt written notice of the following:

(i) 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 Mortgagee, which default remains uncured for a period of sixty (60) days.

(ii) 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.

(iii) Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association.

(iv) 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.

(b) 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.

16.5 Consent and Notice Required. Notwithstanding any other provision of this Declaration or the Condominium Documents, no amendment of any material provision of the Condominium Documents described in this Section 16.5 shall be effective without notice to all Mortgagees, as required by Section 16.4, the vote of at least sixty-seven percent (67%) of the

votes in the Association (or any greater percentage required by the terms of the Condominium Documents), and not less than fifty-one percent (51%) of the Mortgagee Votes (or any greater percentage required by the terms of the Condominium Documents). A change to any of the following items will be considered material:

- (a) Voting rights.
- (b) Increases in assessments that raise the previously assessed amount by more than twenty-five percent (25%), assessment liens, or the priority of assessment liens.
- (c) Reductions in reserves for maintenance, repair, and replacement of the Common Elements.
- (d) Responsibility for maintenance and repairs of the Units, the Limited Common Elements, or the Common Elements.
- (e) Except for the Development Rights of Declarant reserved under Article XXII hereof, reallocation of interests in the Common Elements or the Limited Common Elements, except that when Common Elements Interests or Limited Common Elements interests are reallocated by agreement between Owners of Units, then only those Owners and only the Mortgagees holding Mortgages on those Units need approve such reallocations and the resulting amendment to the Declaration.
- (f) Redefinition of boundaries of Units, except that when the boundaries of only adjoining Units are involved, then only the Owners of those Units and the Mortgagees holding Mortgages on those Units must approve such action and the resulting amendment to the Declaration.
- (g) Convertibility of Units into Common Elements, or Common Elements into Units.
- (h) Except for the Development Rights of Declarant reserved under Article XXII hereof, the expansion or contraction of Condominium, or the addition, annexation or withdrawal of property to or from the Condominium.
- (i) The requirements for insurance and fidelity bonds.
- (j) The imposition of any restrictions on the leasing of Units.
- (k) The imposition of any restrictions on an Owner's right to sell or transfer his Unit.
- (l) The restoration or repair of the Property after casualty damage or partial condemnation in a manner other than that specified in the Condominium Documents.
- (m) Any termination of the Condominium after occurrence of substantial destruction or condemnation.

(n) Any provision that expressly benefits the Mortgagees.

16.6 Other Mortgagee Rights. Notwithstanding any other provision of this Declaration or the Bylaws, the Association may not change the period for collection of regularly budgeted Common Expenses to other than monthly without the consent of all Mortgagees. Any representative of a Mortgagee may attend and address any meeting that an Owner may attend.

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

ARTICLE XVII. **CONDEMNATION**

If all or any part of the Property is 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 XVIII. **MISCELLANEOUS PROVISIONS**

18.1 Invalidity. The invalidity of any provision of this Declaration shall not be deemed to impair or affect in any manner the validity and enforceability of the remainder of this Declaration, and in such event, all the other provisions of this Declaration shall continue in full force and effect as if such invalid provision had never been included herein.

18.2 Waiver. No provisions contained in the Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

18.3 Captions. *The captions herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Declaration or the intent of any provision hereof.*

18.4 Law Controlling. This Declaration and the Condominium Documents shall be construed and controlled by and under the laws of the State of North Carolina.

18.5 Liberal Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan of condominium ownership as provided in the North Carolina Condominium Act. Throughout this Declaration wherever appropriate, the singular shall include the plural and the masculine gender the feminine or neuter as the context permits or requires.

ARTICLE XIX.
ENFORCEMENT; ARBITRATION

19.1 Actions by the Association. Subject to the provisions of **Article XX** hereof, the Association, or the Executive Board acting on its behalf, shall have the right, in addition to any other remedies provided for in the Condominium Documents, to bring a civil action against any Owner to enforce any obligation, covenant or restriction set forth in this Declaration or the other Condominium Documents.

19.2 Actions by Owners. Subject to the provisions of **Article XX** hereof, any Owner may bring an action against any other Owner, or against the Association, or against the Executive Board, or any one or more of them, to enforce any obligation, covenant or restriction set forth in this Declaration or the other Condominium Documents.

ARTICLE XX.
DISPUTE RESOLUTION AND LIMITATION ON LITIGATION

20.1 *Agreement to Encourage Resolution of Disputes Without Litigation.*

(a) Declarant, the Owners, the Association and its officers, directors and committee members, and any Person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "Bound Parties"), agree that it is in the best interest of all concerned to encourage the amicable resolution of disputes involving the Condominium without the emotional and financial costs of litigation. Accordingly, each Bound Party agrees not to file a Claim described in subsection (b), unless and until it has first submitted such Claim to the alternative dispute resolution procedures set forth in **Section 20.2** in a good faith effort to resolve such Claim.

(b) As used in this Article, the term "Claim" shall refer to any claim, grievance, or dispute arising out of or relating to:

(i) the interpretation, application, or enforcement of the Condominium Documents;

(ii) the rights, obligations, and duties of any Bound Party under the Condominium Documents; or

(iii) the design or construction of improvements within the Community, other than matters of aesthetic judgment under **Article IV**, which shall not be subject to review;

(c) except that the following shall not be considered "Claims" unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in **Section 20.2**:

(i) any suit by the Association to collect assessments or other amounts due from any Owner;

(ii) any suit by the Association to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions relating to creation and maintenance of community standards);

(iii) any suit between Owners, which does not include Declarant or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Condominium Documents;

(iv) any suit in which any indispensable party is not a Bound Party; and

(v) any suit as to which any applicable statute of limitations would expire within one hundred eighty (180) days of giving the Notice required by **Section 20.2(a)**, unless the party or parties against whom the Claim is made agree to toll the statute of limitations as to such Claim for such period as may reasonably be necessary to comply with this Article.

20.2 Dispute Resolution Procedures.

(a) Notice. The Bound Party asserting a Claim ("Claimant") against another Bound Party ("Respondent") shall give written notice to each Respondent and to the Board stating plainly and concisely:

(i) the nature of the Claim, including the Persons involved and the Respondent's role in the Claim;

(ii) the legal basis of the Claim (*i.e.*, the specific authority out of which the Claim arises);

(iii) the Claimant's proposed resolution or remedy; and

(iv) the Claimant's desire to meet with the Respondent to discuss in good faith ways to resolve the Claim.

(b) Negotiation. The Claimant and Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the parties in negotiating a resolution of the Claim.

(c) Arbitration.

(i) If the parties have not resolved the Claim through negotiation within thirty (30) days of the date of respondents receipt of the notice described in **Section 20.2(a)** (or within such other period as the parties may agree upon), the Claimant shall have thirty (30) additional days to submit the Claim to binding arbitration pursuant to the Uniform Arbitration Act set forth in N.C.G.S. §1-567.1 *et seq.* as the same shall be amended from time to time.

(ii) If the Claimant does not submit the Claim to arbitration within such time, or does not appear for the arbitration hearing when scheduled, the Claimant shall be deemed to have waived the Claim, and the Respondent shall be relieved of any and all liability to the Claimant (but not third parties) on account of such Claim.

(iii) The fees and expenses of arbitration shall be paid as set forth in the award and shall be a Common Expense unless otherwise set forth in the award.

(d) Settlement. Any settlement of the Claim through negotiation or arbitration shall be documented in writing and signed by the parties. If any party thereafter fails to abide by the terms of such agreement, then any other party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in this Article. In such event, the party taking action to enforce the agreement or award shall, upon prevailing, be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties in equal proportions) all costs incurred in enforcing such agreement or award, including, without limitation, attorneys' fees and court costs.

ARTICLE XXI. CONSENT OF MORTGAGEE

21.1 The Land and the Building are encumbered by the lien of a Deed of Trust and Security Agreement dated October 21, 2003 and recorded in Book 16374 at Page 937 in the Mecklenburg County, North Carolina Public Registry (the "Deed of Trust"), executed and delivered by Declarant to **PRLAP, Inc.**, as Trustee for Bank of America, N.A. (the "Lender"). A Consent of Mortgagee executed by the Lender and **PRLAP, Inc.** as Trustee, consenting to the execution and recordation of this Declaration, is attached to and made a part of this Declaration.

21.2 The Land and the Building are encumbered by the lien of a Deed of Trust and Security Agreement recorded on October 31, 2003 and recorded in Book 16374 at Page 949 in the Mecklenburg County, North Carolina Public Registry (the "Deed of Trust"), executed and delivered by Declarant to David L. Henderson, as Trustee for the City of Charlotte (the "Lender"). A Consent of Mortgagee executed by the Lender and David L. Henderson as Trustee, consenting to the execution and recordation of this Declaration, is attached to and made a part of this Declaration.

ARTICLE XXII. DEVELOPMENT RIGHTS

22.1 Removal of Lot 2. Declarant reserves an option until the eighth (8th) anniversary of the date of recording of this Declaration to remove Lot 2 from the Land subject to the terms of this Declaration. Lot 2 may be removed by the Declarant either by removing all of Lot 2 at one time or by removing portions of Lot 2 separately at different times, so long as all such removals occur during the eight (8) year period referenced above. No assurances are given by the

Declarant as to whether any or all of Lot 2 will be removed from the Land and in what order, if added, portions of the Additional Property will be added to the Land.

22.2 Amendment to Declaration. In order to exercise any Development Right reserved under this **Article XXII**, Declarant shall execute and record an amendment to this Declaration in accordance with N.C. Gen. Stat. § 47C-2-110 (an "Amendment to Declaration"). Any Amendment to Declaration executed and recorded by Declarant to exercise the Development Right of removing Lot 2 and the Units, Buildings, and Common Element associated therewith, shall contain an amendment or supplement to the Plans reflecting (as applicable) such removal, as well as in an amendment to Exhibit B attached to this Declaration, reallocating the Common Elements Interests among all Units in accordance with the formula set forth in **Section 5.3** of this Declaration.

**ARTICLE XXIII.
EXHIBITS**

The following exhibits are attached to and are an integral part of this Declaration:

- (a) Exhibit A -- Description of Land
- (b) Exhibit B -- Schedule of Units and Percentage Interests
- (c) Exhibit C -- Bylaws of Association

SIGNATURE PAGE

To Declaration for Wilmore Walk Condominium

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

Wilmore Partners, LLC,
a North Carolina limited liability company

By: Boulevard Centro, LLC, Manager

By: [Signature]
David F. Furman, Manager

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

I, Abby D. Morgan a Notary Public of the County and State aforesaid, certify that David F. Furman, manager of Boulevard Centro, LLC, the Manager of Wilmore Partners, LLC, personally appeared before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and notarial stamp and seal this 9th day of June, 2005.

(Official Seal)

[Signature]
Notary Public

My Commission Expires: 12/17/05



EXHIBIT A
To Declaration of Condominium
for Wilmore Walk Condominium

DESCRIPTION OF PROPERTY

BEING all those tracts or parcels of land located in the Mecklenburg County, North Carolina and more particularly described as follows:

TRACT 1:

All of lots 26 through 33 in Block 44 Wilmore as shown on map recorded in Map Book 3, Page 267, Mecklenburg County Public Registry and being more particularly described as follows:

Beginning at an Iron Pin set on the southerly margin of West Worthington Avenue (60' public right of way as shown in Map Book 332, Page 96), the northwesterly corner of Lot 34, Block 44 Wilmore, the property of Charles Allen Gordon and Patricia Moore (Deed Book 7246, Page 615), thence with the line of Lot 34 South 30-43-08 West 98.30 feet to an Iron Pin set on the northerly margin of a 10' alley as shown on Map Book 3, Page 267; thence, along the northerly margin of the alley the following seven courses:

1. North 77-08-29 West 52.51 feet to a point;
2. North 77-00-10 West 52.40 feet to a point;
3. North 76-58-30 West 52.59 feet to a point;
4. North 77-17-09 West 52.45 feet to a point;
5. North 77-12-07 West 165.18 feet to an Iron Pin set (said Iron Pin being North 59-54-53 East 10.11 feet from a found Iron Pipe, the northeasterly corner of Lot 21, Block 44);
6. North 13-03-52 West 61.98 feet to an Iron Pin set;
7. North 30-36-53 East 167.84 feet to a PK Nail set on the southerly margin of West Worthington Avenue, the northwesterly corner of property herein described; thence,

with the southerly margin of West Worthington Avenue the following five (5) courses:

1. South 59-20-36 East 200.21 feet to a point;
2. South 59-30-51 East 49.98 feet to a point;
3. South 59-23-53 East 50.03 feet to a point;
4. South 59-20-39 East 50.02 feet to a point;
5. South 59-30-56 East 49.99 feet to the Point of Beginning, containing 63,610 square feet (1.4603 acres), more or less as shown on that survey titled Wilmore Walk Condominium, dated June 16, 2005 prepared by Andrew G. Zoutewelle, L-3098.

TRACT 2:

All of lots 17 through 24, Block 16 Wilmore, Section 1 as shown on map recorded in Map Book 332, Page 96, Mecklenburg County Public Registry and being more particularly described as follows:

Beginning at an Iron Pin set on the northerly margin of West Worthington Avenue (60' public right of way as shown in Map Book 332, Page 96), said Iron Pin having NC Grid Coordinates = Northing 163,995.28 Meters, Easting 439, 863.00 Meters, Combined Grid Factor = 0.99984373, said pin also being North 13-58-03 West 83.99 feet from an Iron Pin set, the northeasterly corner of Tract 1 previously described, said pin also being North 58-59-37 West 100.13 feet from an Iron Pipe found at the intersection of the westerly margin of Wickford Place (50' public right of way) and the northerly margin of West Worthington Avenue, the southeasterly corner of James B. West and Martha M. West (Deed Book 2435, Page 196); thence from this Point of Beginning along the northerly margin of West Worthington Avenue the following 2 courses:

1. North 59-24-05 West 150.20 feet to a point;
2. North 59-24-51 West 250.00 feet to an Iron Pin found, the southeasterly corner of TPM Properties Limited Partnership (Deed Book 7214, Page 377);

thence, with the line of TPM Properties and W. H. Evans and Jeanette S. Evans (Deed Book 1624, Page 110) North 30-35-30 East 150.00 feet to an Iron Pin set on the southerly margin of a 10' alley as shown in Map Book 332, Page 96; thence with the southerly margin of said alley South 59-24-30 East 250.00 feet to a concrete monument set, said monument having NC Grid Coordinates Northing 164,111.19 Meters, Easting 439, 757.04 Meters, Combined Grid Factor 0.99984373; thence, South 59-20-01 East 150.20 feet to a concrete monument set, said monument having NC Grid Coordinates Northing 164,034.58 Meters, Easting 439, 886.23 Meters, Combined Grid Factor 0.99984373, said point also being North 59-20-01 West 100.27 feet from an Iron Pin found on the westerly margin of Wickford Place, the northeasterly corner of West; thence, South 30-35-30 West 149.80 feet to the point of beginning, containing 60,000 square feet (1.3774 acres), more or less as shown on that survey titled Wilmore Walk Condominium, dated June 16, 2005 prepared by Andrew G. Zoutewelle, L-3098.

EXHIBIT B
To Declaration of Condominium
for Wilmore Walk Condominium

SCHEDULE OF UNITS AND
COMMON ELEMENTS INTEREST

The following is a schedule of the number and types of units available at the Condominium, the heated square footage of each type of unit, and the undivided percentage interest in the common elements allocated to each unit:

<u>Unit Number</u>	<u>Unit Type</u>	<u>Heated Square Footage</u>	<u>Common Elements Interest</u>
1	B-porch	1,064	4.16%
2	C	1,161	4.54%
3	A	959	3.75%
4	B	1,064	4.16%
5	C	1,161	4.54%
6	A	959	3.75%
7	A	959	3.75%
8	C	1,161	4.54%
9	B-Bay	1,090	4.26%
10	A	959	3.75%
11	C	1,161	4.54%
12	B	1,064	4.16%
13	A	959	3.75%
14	C	1,161	4.54%
15	B-Porch	1,064	4.16%
16	B-Bay	1,090	4.26%
17	C	1,161	4.54%
18	A	959	3.75%
19	B	1,064	4.16%
20	A	959	3.75%
21	C	1,161	4.54%
22	B-Bay	1,090	4.26%
23	B-Bay	1,090	4.26%

<u>Unit Number</u>	<u>Unit Type</u>	<u>Heated Square Footage</u>	<u>Common Elements Interest</u>
24	C	1,161	4.54%
25	A	959	3.75%
26	B	1,064	4.16%
27	A	959	3.75%
28	C	1,161	4.54%
29	B-Bay	1,090	4.26%
30	A	959	3.75%
31	C	1,161	4.54%
32	B-Bay	1,090	4.26%
33	B-Bay	1,090	4.26%
34	C	1,161	4.54%
35	A	959	3.75%
36	B	1,064	4.16%
37	A	959	3.75%
38	C	1,161	4.54%
39	B	1,064	4.16%
40	A	959	3.75%
41	C	1,161	4.54%
42	B-Porch	1,064	4.16%
43	B-Porch	1,064	4.16%
44	C	1,161	4.54%
45	A	959	3.75%
46	B	1,064	4.16%
TOTALS		25,584	100.00%