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INSTRUMENT # 2005001408

**AMENDED AND RESTATED DECLARATION  
 OF  
 CAROLINA POINTE I CONDOMINIUM**

**THIS AMENDED AND RESTATED DECLARATION OF CAROLINA POINTE I CONDOMINIUM** (this "Declaration") is made effective this 21 day of December, 2004, by **CAROLINA POINTE I OWNERS' ASSOCIATION, INC.**, a nonprofit corporation organized under Chapter 55A of the General Statutes of North Carolina.

**RECITALS**

A. C.A.I. Group III, LLC, a North Carolina limited liability company ("Declarant") has previously executed and recorded a Declaration of Carolina Pointe I Condominium dated September 7, 2004 and recorded in Deed Book 4533 at Page 483 in the Office of the Register of Deeds of Durham County, North Carolina (the "Registry"), as amended by that certain Declaration of Amendment to and Consent to the Declaration of Carolina Pointe I Condominium dated September 15, 2004 and recorded in Deed Book 4554 at Page 636 in the Registry (as so amended, the "Original Declaration"), covering certain property located at the southeast corner of Farrington Road and N.C. Highway 54 in the City of Chapel Hill, Durham County, North Carolina, and more particularly described in Exhibit A attached hereto and incorporated herein by reference (the "Property").

B. This Declaration is being recorded in order to amend and restate the Original Declaration in its entirety.

C. Section 12.4 of the Original Declaration requires the unanimous consent of unit owners in order to amend the Original Declaration to change the uses to which a unit is restricted. Section 23.4 of the Original Declaration requires the consent of at least sixty-seven percent (67%) of all Eligible Mortgagees in order to amend any material provision of the Original Declaration.

This document replaces and supercedes in its entirety the Amended and Restated Declaration of Carolina Pointe I Condominium recorded in Deed Book 4663 at Page 266 in the Office of the Register of Deeds of Durham County, North Carolina.

By:   
 Stark Law Group, PLLC

Prepared by and Return to:  
 Stark Law Group PLLC  
 Attn: Thomas H. Stark, Esq.  
 5295 Farrington Road, Suite 200  
 Durham, NC 27517

D. In accordance with Sections 12.4 and 23.4 of the Original Declaration, the undersigned Unit Owners, being the owners of one hundred percent (100%) of the Units, and the undersigned Eligible Mortgagees, being one hundred percent (100%) of the Eligible Mortgagees, join in the execution of this Declaration to evidence their written consent to the amendment and restatement of the Original Declaration as set forth below.

**NOW, THEREFORE**, in consideration of the premises and for the purposes set forth herein, and pursuant to the authority set forth in Article 12 of the Original Declaration, the Association hereby amends and restates the Original Declaration in its entirety as follows:

**ARTICLE 1**  
**Submission of Property; Definitions**

1.1 **SUBMISSION OF PROPERTY**. Declarant hereby submits the Property, including all improvements, easements, rights and appurtenances thereunto belonging to the provisions of Chapter 47C of the General Statutes of North Carolina, known as the North Carolina Condominium Act (“Condominium Act”), and hereby creates with respect to said real estate, a condominium to be known as “CAROLINA POINTE I CONDOMINIUM” (“Condominium”).

1.2 **DEFINITIONS**. As used in the Condominium Documents, the following words and phrases shall have the following meanings:

a) **“Allocated Interests”** means the undivided interest in the Common Elements and Common Expense liability and votes in the Association, allocated to Units in the Condominium. The Allocated Interests are described in Article 6 of this Declaration and shown on Exhibit B.

b) **“Association”** means the CAROLINA POINTE I OWNERS’ ASSOCIATION, INC., a nonprofit corporation organized under Chapter 55A of the General Statutes of North Carolina. It is the Association of the Unit Owners pursuant to Section 47C-3-101 of the Condominium Act.

c) **“Bylaws”** means the Bylaws of the Association, as they may be amended from time to time.

d) **“Common Elements”** means all portions of the Condominium other than the Units, including but not limited to that certain Stormwater Facility more particularly described in subsection (z) of this Section 1.2.

e) **“Common Expenses”** means the expenses or financial liabilities for the operation of the Condominium. These include the following:

i. expenses of administration, maintenance, repair or replacement of the Common Elements, including utility charges attributable to Common Elements, the stormwater facility bond required by the City of Durham, which must be reimbursed to the Declarant as provided in Article 24 ;

- ii. expenses declared to be Common Expenses by the Condominium Documents or by the Condominium Act;
  - iii. expenses agreed upon as Common Expenses by the Association;
- and
- iv. such reasonable reserves as may be established by the Association, whether held in trust or by the Association, for repair, replacement or addition to the Common Elements or any other real or personal property acquired or held by the Association; if any portion of such reserves are not expended for repairs or replacements by the end of the calendar year in which the reserves are contributed, the Association shall determine whether to retain such funds as a reserve or to return such excess to the contributors.
- f) **“Condominium”** means the real property described in Exhibit A subject to the Declaration.
- g) **“Condominium Documents”** means this Declaration, the Plats and Plans recorded and filed pursuant to the provisions of the Condominium Act, the Bylaws, and the Rules and Regulations as they may be amended from time to time. Any exhibit, schedule, or certification accompanying a Condominium Document is a part of that Condominium Document.
- h) **“Declarant”** means C.A.I. GROUP III, LLC, or its successor(s), as defined in Section 47C-1-103(9) of the Condominium Act.
- i) **“Declarant Control Period”** means the period prior to the earlier of: (1) one hundred twenty (120) days after conveyance of seventy-five percent (75%) of the Units (including Units which may be created pursuant to special Declarant rights) to Unit Owners other than the Declarant; (2) two years after the Declarant has ceased to offer Units for sale in the ordinary course of business; or (3) two years after any development right to add new Units was last exercised, per the provisions of N.C.G.S. Sec. 47C-3-103(d).
- j) **“Development Rights”** means the rights reserved by the Declarant under Article 6 of this Declaration to create Units, Common Elements, and Limited Common Elements within the Condominium.
- k) **“Director”** means a member of the Executive Board.
- l) **“Eligible Mortgagee”** means the owner and holder of a First Mortgage that has notified the Association in writing of its name and address, and that it holds a First Mortgage on a Unit. Such notice will be deemed to include a request that the Eligible Mortgagee be given the notices and other rights described in Article 23.
- m) **“Executive Board”** means the board of directors of the Association.

- n) **“First Mortgage”** means a mortgage or deed of trust constituting a first lien on a Unit.
- o) **“Improvements”** means any construction, structure, fixture or facilities existing or to be constructed on the land included in the Condominium, including but not limited to, buildings, trees and shrubbery planted by the Declarant or the Association, paving, utility lines, pipes, and light poles.
- p) **“Limited Common Elements”** means the portion of the Common Elements allocated for the exclusive use of one or more but fewer than all of the Units by the Declaration or by operation of Section 47C-2-102(2) and (4) of the Condominium Act. The Limited Common Elements in the Condominium are described in Article 3 of this Declaration.
- q) **“Majority or Majority of Unit Owners”** means the owners of a minimum of Fifty-One Percent (51%) of the votes in the Association.
- r) **“Manager”** means a person, firm, corporation, limited liability company, or other business employed or engaged to perform management services for the Condominium and the Association.
- s) **“Notice and Hearing”** means the right of a Unit Owner to receive notice of an action proposed to be taken by the Association and the right to be heard thereon. The procedures for Notice and Hearing are set forth in Section 21.1 of Article 21 of this Declaration.
- t) **“Person”** means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, government subdivision or agency, or other legal or commercial entity.
- u) **“Plats and Plans”** means the surveys, plans and specifications of the building and Property recorded under the name of the Condominium in Condominium Book 7, Pages 211, 214 and 217, and Book <sup>114</sup>     , Pages <sup>165</sup>      in the Registry, as the same may be amended from time to time. <sub>31,  
34,  
37</sub>
- v) **“Property”** means the land, all improvements, easements, rights and appurtenances, which have been submitted to the provisions of the Condominium Act by this Declaration.
- w) **“Rules and Regulations”** means Rules and Regulations for the use of Units and Common Elements and for the conduct of persons within the Condominium, adopted by the Executive Board pursuant to this Declaration.
- x) **“Security Interest”** means an interest in real estate or personal property, created by contract or conveyance which secures payment or performance of an obligation. The term includes a lien created by a mortgage, deed of trust, contract for deed, land sales contract, lease intended as security, assignment of lease or rents intended

as security, pledge of an ownership interest in an Association, and any other consensual lien or title retention contract intended as security for an obligation.

y) **“Special Declarant Rights”** means the rights reserved for the benefit of a Declarant to:

- i. complete improvements indicated on the Plats and Plans;
- ii. exercise any Development Rights;
- iii. maintain sales offices, management offices, signs advertising the Condominium, and models until the last Unit owned by Declarant is sold;
- iv. use easements through the Common Elements for the purpose of making improvements within the Condominium; and
- v. appoint or remove any officer of the Association or any Executive Board member during the Declarant Control Period.

z) **“Stormwater Facility”** means that certain stormwater facility that was created by Declarant to satisfy the City of Durham’s ordinances and regulations for such facilities, as more particularly described in Article 24 of this Declaration. A copy of the Stormwater Facility Operation and Maintenance Permit Agreement is attached hereto as Exhibit D.

aa) **“Trustee”** means the entity which may be designated by the Executive Board as the Trustee for the receipt, administration, and disbursement of funds derived from insured losses, condemnation awards, special assessments for uninsured losses, and other like sources as defined in the Bylaws. If no Trustee has been designated, the Trustee will be the Executive Board from time to time constituted, acting by majority vote, as executed by the president and attested by the secretary.

bb) **“Unit”** means a physical portion of the Condominium designated for separate ownership or occupancy, the boundaries of which are described in Section 2.2 of this Declaration.

cc) **“Unit Owner”** means the Declarant or other Person who owns a Unit. Unit Owner does not include a Person having an interest in a Unit solely as security for an obligation.

## **ARTICLE 2**

### **Maximum Number of Units; Boundaries**

2.1 **DESCRIPTION OF BUILDING AND UNITS; MAXIMUM NUMBER OF UNITS.** The Condominium consists of one (1) two-story office building located on the Property. The building contains six (6) Units as of the date of this Declaration. Declarant reserves the right to subdivide the Units owned by Declarant as provided elsewhere in the Declaration; provided that the Condominium will not contain more than twenty (20) Units.

2.2 **UNIT BOUNDARIES.** The boundaries of each Unit created by this Declaration are the interior, unfinished surfaces of the walls, floors and ceilings. Therefore all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wall paper, paint finished flooring and any other materials constituting any part of the finished surfaces thereof are a part of the Unit; and all other portions of such walls, floors, and ceilings are a part of the Common Elements.

a) **Inclusions:** Each Unit will include the spaces, interior partitions, and other fixtures and improvements lying within the boundaries as described above, except any Limited Common Elements described below in Article III.

b) **Non-Contiguous Portions:** Certain Units may include special portions, pieces or equipment such as heating and air conditioning apparatus, meter boxes, utility connection structures and storage portions situated in buildings or structures that are detached or semidetached from the buildings containing the principal occupied portion of the Units. Such special equipment and storage portions are a part of the Unit notwithstanding their non-contiguity with such occupied portions.

c) **Inconsistency with Plats and Plans:** If this definition is inconsistent with the Plats and Plans, then this definition will control.

### **ARTICLE 3**

#### **Common Elements and Limited Common Elements**

3.1 The Common Elements in the Condominium are all areas of the Condominium not shown as Units in the Plats and Plans. The Common Elements include but are not limited to the following:

a) All portions of the Condominium that are not a part of the Units;

b) The Common Elements include, but are not limited to, the hallways, stairways, landings, elevator and bathrooms that are not located inside a Unit and HVAC systems that serve the common areas.

c) That Stormwater Facility more particularly described in Subsection 1.2(z), Article 25 and a copy of which is attached as Exhibit D;

d) That easement and the obligations established in that Joint Driveway Easement and Maintenance Declaration filed on June 27, 2003 in Book 3972 at pages 160 – 162 in the Durham County Registry as Instrument # 2003039306, a copy of which is attached hereto as Exhibit E.

3.2 The following portions of the Common Elements are Limited Common Elements assigned to the Units as stated:

a) If any chute, flue, duct, wire, 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 is a Limited Common Element allocated

exclusively to that Unit and any portion thereof serving more than one Unit but less than all Units is allocated to those Units served.

b) Any shutters, window boxes, doorsteps, stoops, decks, porches, balconies, patios and all exterior doors and windows or other fixtures designed to serve a single Unit but located outside the Unit's boundaries are Limited Common Elements allocated exclusively to that Unit.

c) If any doorway, hallway, stairway, landing, elevator or bathroom is built by a Unit Owner within his Unit to serve that Unit, then those items will be a part of the Unit and if those items are built to serve more than one Unit then those items will be Limited Common Elements allocated to such Units served.

d) Any utility area, the use of which is limited to a Unit or Units and which does not serve the common areas.

e) Mailboxes, nameplates, and exterior lighting affixed to the building will be Limited Common Elements allocated to the Unit served.

f) HVAC systems shall be Limited Common Elements if it serves less than all the Units and if it does not serve the common areas. If the HVAC is a Limited Common Element and serves more than one Unit, the cost, maintenance and utility charges shall be borne by the respective Unit Owners in proportion to the floor areas of the Units served.

g) The five (5) parking spaces that are shown on Exhibit F as "Unit 106 Parking Spaces" shall be a Limited Common Element allocated to Unit 106.

3.3 Except for the Unit 106 Parking Spaces, no parking spaces shall be allocated for the exclusive use of any Unit or Unit Owner. All parking spaces other than the Unit 106 Parking Spaces will be available for the exclusive use of the Unit Owners and their employees, customers, and invitees, on a first-come, first-served basis. In addition, ten (10) parking spaces shall be designated as "Visitor" parking spaces in the locations shown on Exhibit F.

#### **ARTICLE 4**

#### **Maintenance, Repair And Replacement**

4.1 **UNITS.** Each Unit Owner shall maintain, repair and replace, at such Unit Owner's own expense, all portions of such Unit Owner's Unit, except the portions thereof to be maintained, repaired or replaced by the Association.

4.2 **COMMON ELEMENTS.** The Association will maintain, repair and replace all of the Common Elements, except the Limited Common Elements to be maintained by individual Unit Owners as set forth in Section 4.3 below. The costs of maintaining, repairing and replacing Common Elements, other than Limited Common Elements, shall be borne by the Association.

4.3 **LIMITED COMMON ELEMENTS.** The Unit Owner or Owners to whom a Limited Common Element is assigned shall maintain, repair and replace the Limited Common

Elements assigned to such Unit Owner or Owners, except for the Unit 106 Parking Spaces and the balconies, (which shall be maintained by the Association). The cost of such maintenance, repairs and replacements shall be borne in proportion to the floor areas of the Units served by the Unit Owner or Owners to whom such Limited Common Element is assigned. In the event a Limited Common Element becomes deteriorated or unsightly or is inconsistent with conditions of installation it may be removed or repaired by the Association at the expense of the Unit Owner or Owners to whom it is assigned.

4.4 **ACCESS.** Any Person authorized by the Executive Board shall have the right of access to all portions of the Property for the purpose of correcting any condition threatening a Unit or the Common Elements, and for the purpose of performing installations, alterations or repairs, to be performed by the Association pursuant to this Declaration, and for the purpose of reading, repairing, replacing utility meters and related pipes, valves, wires and equipment, provided that such requests for entry are made in advance and that any such entry is at a time reasonably convenient to the affected Unit Owner. In case of an emergency, no such request or notice is required and such right of entry shall be immediate, whether or not the Unit Owner is present at the time.

4.5 **REPAIRS RESULTING FROM NEGLIGENCE.** To the extent such damage would not be covered by the insurance required to be carried by the Association pursuant to Article 18, and is not covered by any policy of insurance actually carried by the Association, each Unit Owner will reimburse the Association for any damages to any other Unit or to the Common Elements caused intentionally, negligently or by such Unit Owner's failure to properly maintain, repair or make replacements to such Unit Owner's Unit. The Association will be responsible for damage to Units caused intentionally, negligently or by its failure to maintain, repair or make replacements to the Common Elements. If such damage is caused by misconduct, it will be assessed following Notice and Hearing.

## **ARTICLE 5**

### **Development Rights and Other Special Declarant Rights**

5.1 **RESERVATION OF DEVELOPMENT RIGHTS.** The Declarant reserves the following Development Rights:

- a) the right to create Units (not to exceed the maximum number of Units permitted by Section 2.1), Common Elements and Limited Common Elements within the Condominium;
  - b) the right to subdivide Units owned by Declarant (subject to the maximum number of Units permitted by Section 2.1);
  - c) the right to combine Units owned by Declarant;
  - d) the right to convert Units owned by Declarant into Common Elements;
- and
- e) The right to construct underground utility lines, pipes, wires, ducts, conduits and other facilities across the land anywhere in the Condominium for the



purpose of furnishing utility and other services to buildings and improvements located on the Property. The Declarant also reserves the right to grant easements to public utility companies and to convey improvements within those easements anywhere in the Condominium for the above-mentioned purposes. If the Declarant grants any such easements, Exhibit A will be amended to include reference to the recorded easement.

5.2 LIMITATIONS ON DEVELOPMENT RIGHTS. The Development Rights reserved in Section 5.1 are limited as follows:

- a) The Development Rights must be exercised not later than the later of:
  - i. thirty days after the date upon which the Declarant no longer owns a Unit; or
  - ii. three (3) years after recording this Declaration.
- b) All Units and Common Elements created pursuant to the Development Rights will be restricted as provided in Section 7.1 of this Declaration.
- c) Declarant shall not unreasonably interfere with the operation of other Unit Owners' businesses in the exercise of its Development Rights.

5.3 SPECIAL DECLARANT RIGHTS. The Declarant reserves those Special Declarant rights described in Section 47C-1-103(23) and, in addition, those rights described below:

- a) To complete improvements shown on the Plats and/or Plans;
- b) To exercise a Development Right reserved in the Declaration;
- c) To conduct general sales activities, in a manner as will not unreasonably disturb the rights of Unit Owners;
- d) To maintain, anywhere within the Units owned by Declarant, sales offices, signs advertising the condominium, management offices and models;
- e) To use easements through the Common Elements for the purposes of making improvements within the Condominium (such reservation to be construed as an addition to and not a limitation on the rights granted to the Declarant in Section 47C-2-116);
- f) To perform repairs and construction work in the Units and Common Elements, and to store materials in Units owned by Declarant, and the further right to control all such work and repairs in the Units and Common Elements, and the right of access thereto, until its completion. All work may be performed by the Declarant without the consent or approval of the Board of Directors. The Declarant has such an easement

through the Common Elements for the purpose of discharging the Declarant's obligations, for exercising Special Declarant rights and Development Rights, whether arising under the Condominium Act or reserved in this Declaration. Such easement includes the right to convey utility and drainage easements to public utilities, municipalities or the State of North Carolina to fulfill the plan of development;

g) To use, grant and reserve easements and rights of way through, under, over and across the Condominium for the installation, removal, maintenance, inspection, repair and replacement of all improvements to the Condominium, including but not limited to lines and appurtenances for public or private sewer, water, drainage, gas, electricity, telephone, fire sprinkler system and any other utilities such as, but not limited to, a master television antenna system, cable television system, or security system. If damage is caused by the Declarant in the exercise of the easement rights granted by this Section, Declarant shall promptly repair such damage to the condition existing prior thereto;

h) To appoint or remove any officer of the Association or any member of the Board of Directors during the period of Declarant control, subject to any limitations in Section 47C-3-103(e) of the Act; and

i) To retain and remove all unattached personal property and equipment used in the sales, management, construction, maintenance, marketing and advertising of the premises.

5.4 LIMITATIONS ON SPECIAL DECLARANT RIGHTS. Declarant shall not unreasonably interfere with the operation of other Unit Owners' businesses in the exercise of its Special Declarant Rights. Unless sooner terminated by an amendment to the Declaration executed by the Declarant, any Special Declarant Rights may be exercised by the Declarant until the later of the following:

- a) thirty days after the date upon which the Declarant no longer owns a Unit;
- or
- b) three (3) years after recording this Declaration.

5.5 INTERFERENCE WITH SPECIAL DECLARANT RIGHTS. Neither the Association nor the Unit Owner may take any action or adopt any rule that will interfere with or diminish any Special Declarant Right without the prior written consent of the Declarant.

5.6 DECLARANT CONTROL OF THE ASSOCIATION.

a) Declarant Control. There shall be a period of Declarant control of the Association during which the Declarant, or persons designated by the Declarant, may appoint and remove the officers and members of the Board of Directors, other than Board members elected by the Unit Owners pursuant to G.S. 47C-3-103(e). The period of Declarant control shall terminate on the earliest of the dates and events specified in Section 47C-3-103(d) of the Act.

b) Declarant may voluntarily surrender the right to appoint and remove officers and members of the Executive Board before the termination of the Declarant Control Period, but in that event the Declarant may require, for the duration of the Declarant Control Period, that specified actions of the Association or Executive Board, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before they become effective.

c) Not later than the termination of the Declarant Control Period, the Unit Owners shall elect an Executive Board of at least three (3) members, at least a majority of whom shall be Unit Owners or employees or agents of Unit Owners. The Executive Board shall elect the officers. The Executive Board members and officers shall take office upon election.

d) The Unit Owners, by a Sixty-Seven percent (67%) vote of all persons present and entitled to vote at a meeting of the Unit Owners at which a quorum is present, may remove a member of the Executive Board with or without cause, provided that a member appointed by the Declarant may not be removed by the Unit Owners during the Declarant Control Period.

## **ARTICLE 6**

### **Allocated Interests**

6.1 **ALLOCATION OF INTERESTS.** The table showing Unit numbers and their Allocated Interests is attached as Exhibit B. These interests have been allocated in accordance with the formulas set out in this Article 6. These formulas are to be used in reallocating interests if Units are added to the Condominium or if Units within the Condominium are combined or subdivided.

6.2 **FORMULAS FOR THE ALLOCATION OF INTERESTS.** The interests allocated to each Unit have been calculated on the following formulas:

a) **Undivided Interest in the Common Elements:** The percentage of the undivided interest in the Common Elements allocated to each Unit is based on the relative floor area of each Unit as compared to the floor area of all of the Units in the Condominium, in each case measured in accordance with the Unit boundaries set forth in Section 2.2 above.

b) **Liability for the Common Expenses:** The percentage of liability for Common Expenses allocated to each Unit is based on the relative floor area of each Unit as compared to the floor area of all of the Units in the Condominium, in each case measured in accordance with the Unit boundaries set forth in Section 2.2 above. Nothing contained in this Subsection shall prohibit certain Common Expenses from being apportioned to particular Units under Article 15 of this Declaration.

c) **Votes:** The vote in the Association allocated to each Unit is based on a prorata percentage of the number of square feet of the Units as compared to the total square footage of all of the Units of the Condominium, in each case measured in accordance with the Unit boundaries set forth in Section 2.2 above

6.3 ASSIGNMENT OF ALLOCATED INTERESTS UPON CREATION OF UNITS PURSUANT TO EXERCISE OF DEVELOPMENT RIGHTS. The effective date for assigning Allocated Interests to Units created pursuant to Declarant's Development Rights in Section 5.1 of this Declaration shall be the date on which the amendment creating the Units is recorded in the Office of the Register of Deeds of Durham County, North Carolina.

## ARTICLE 7

### Restrictions On Use, Alienation and Occupancy

7.1 USE AND OCCUPANCY RESTRICTIONS. Subject to the Special Declarant Rights reserved under Article 5, the following use restrictions apply to all Units and to the Common Elements:

- a) Each Unit is restricted to professional and/or office uses and such other uses as are incidental to the maintenance of professional and/or office use, including medical office and biomedical research, subject to applicable zoning regulations .
- b) The use of Units and Common Elements is subject to the Bylaws and the Rules and Regulations of the Association.
- c) No Unit may be used for residential purposes or overnight lodging.
- d) No Unit shall be used for the manufacture, processing, or fabrication of goods or materials, or for the warehousing, distribution or storage of goods and materials, other than storage for later use, sale, consumption, or assembly on the premises of such goods to the extent otherwise permitted above.
- e) No Unit shall be used as an animal hospital, veterinary office, kennel, or animal pound.
- f) No Unit shall be used as a flea market or other operation selling used merchandise, a pawn shop, or a military surplus store.
- g) No Unit shall be used as an adult establishment, such as a massage parlor or health spa, or for the sale or display of pornographic materials or drug paraphernalia.
- h) No Unit shall be used for the operation of a retail branch of a bank or other financial institution.
- i) No Unit shall be used as a child care home or facility, orphanage, school, funeral home, laundry, fitness center or dry cleaning establishment, or photographic processing store or photographic processing laboratory; provided, however, the foregoing shall not be construed to prohibit or limit the use of x-ray equipment or the development of x-rays.

7.2 RESTRICTIONS ON ALIENATION. All leases and rental agreements shall be in writing and subject to the requirements of the Condominium Documents and the Association. All leases of a Unit shall be deemed to include a provision that the tenant will recognize and

attorn to the Association as landlord, solely for the purpose of having the power to enforce a violation of the provisions of the Condominium Documents against the tenant, provided the Association gives the landlord notice of its intent to so enforce, and a reasonable opportunity to cure the violation directly, prior to the commencement of an enforcement action.

**7.3 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 Unit Owners, or endanger the health and safety of any Unit Owner. Nothing shall be done or kept in any Unit or in the Common Elements that will result in the termination of the policy of property insurance for the Property. Notwithstanding the foregoing, a Unit Owner may, ancillary to and in the normal course of an otherwise permitted use of the Unit, use or permit to be used hazardous or toxic materials, waste and/or substances that are commonly used in connection with business or medical office or retail uses if such use is conducted in a reasonably prudent manner and in a manner which is: (i) consistent with standards recognize by the health care industry; (ii) in compliance with all applicable laws, ordinances and regulations of any governmental authority; and (iii) not harmful to any mechanical or structural component of the Condominium, including, without limitation the plumbing, water and sewer, electrical and heating and ventilation systems.

**7.4 PROHIBITIONS ON USE OF COMMON ELEMENTS.** The Common Elements (other than common storage areas, if any, designated by the Association) shall not used for the storage of personal property of any kind. Stairs, entrances, lobbies, hallways, sidewalks, driveways, and parking areas 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 Unit Owner either in his Unit or upon the Common Elements which despoils the appearance of the Property.

**7.5 GARBAGE.** Trash, garbage and other waste shall be kept in sanitary containers within each Unit, and each Unit Owner shall be responsible for placing such garbage in the designated common trash receptacles on a regular basis. No trash or garbage shall be kept or stored on the balconies. The Association shall be responsible for the maintenance of the common trash facilities and all trash removal, and the expenses incurred by the Association in doing so shall be Common Expenses.

**7.6 PARKING.** No Unit Owner or any employee, agent, or invitee of any Unit Owner, shall park, store or keep any vehicle on the Property except wholly within those portions of the Common Elements designated as parking areas by the Association, and in particular shall not block the entrance drive to the Condominium. The parking rights of Unit Owners and their guests are subject to any rules or regulations that may be promulgated by the Association. No boat, boat trailer, motor home, travel trailer, camper or other recreational vehicle may be stored in the parking lot at any time. The Association shall have the right to tow any vehicle in violation of this Section 7.6 at its owner's expense.

**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, maintained or permitted on the Property or in any Unit.

7.9 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.

7.10 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.

7.11 SIGNS. No signs or other advertising devices shall be displayed on or about the exterior of any Unit, or in the Common Elements, except as expressly permitted in this Declaration or as approved in writing by the Association pursuant to Section 10.1 below. Notwithstanding the foregoing, each Unit Owner shall have the right to display "For Sale" or "For Lease" signs within the window of its Unit, provided that any such signs must comply with applicable governmental regulations.

7.12 SATELLITE DISHES AND ANTENNAS. Each Unit Owner shall have the right to place a satellite dish not in excess of one meter in diameter on the roof of the building. 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 Association. 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 Association, taking into account the appropriate standards set forth in the regulations of the Federal Communications Commission, and to the extent reasonably practical, the Association may require that such antenna or satellite dish be screened from public view. Prior to installing the antenna or satellite dish, the Unit Owner shall furnish to the Association a copy of the installation plans. The Association shall have the right to perform any portion of the installation work at the expense of the Unit Owner, or to require that any portion of the work be performed by contractors designated by the Association. 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 Association. The Unit 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 Association, at the Unit Owner's expense. Any Unit Owner installing an antenna or satellite dish under this Section 7.13 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.

7.13 BALCONIES. The balcony areas shall be kept in a clean, neat, and orderly condition at all times, and shall not be used for the overnight storage of garbage or any other items visible from the exterior of the building. No floor covering of any sort, including but not limited to indoor/outdoor carpeting, may be installed on any balcony.

**ARTICLE 8**  
**EASEMENTS AND LICENSES**

8.1 All easements or licenses to which the Condominium is presently subject are recited in Exhibit A to this Declaration. In addition, the Condominium may be subject to other easements or licenses granted by the Declarant pursuant to its powers under Article 5 of this Declaration.

**ARTICLE 9**  
**Allocation and Reallocation of Limited Common Elements**

9.1 The interests in the Common Elements and Limited Common Elements allocated to each Unit shall not be conveyed, devised, encumbered, partitioned or otherwise dealt with separately from said Unit, except as part of a relocation of boundaries of Units pursuant to Article 11 of this Declaration. The interests in the Common Elements and Limited 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 amendment relocating Unit boundaries shall require the approval of all holders of Security Interests on the affected Units, which approval shall be endorsed thereon. The parties executing the amendment shall provide an executed copy thereof to the Association which, if the amendment complies with the provisions of this Declaration and the Condominium Act, shall record said amendment. The amendment shall contain words of conveyance and must be recorded and indexed in the names of the parties and the Condominium. The parties executing the amendment shall be responsible for the preparation of the amendment and shall reimburse the Association for its reasonable attorneys' fees in connection with the review of the amendment and for the recording costs.

**ARTICLE 10**  
**Additions, Alterations And Improvements**

10.1 **ADDITIONS, ALTERATIONS AND IMPROVEMENTS BY UNIT OWNERS.**

a) No Unit Owner will make any structural addition, structural alteration, or structural improvement in or to the Condominium without the prior written consent thereto of the Executive Board in accordance with Subsection 10.1(c).

b) Subject to Subsection 10.1(a), a Unit Owner:

i. may make any other improvements or alterations to the interior of such Unit Owner's Unit that do not impair the structural integrity or mechanical systems or lessen the support of any portion of the Condominium, except to the extent such Improvement or alteration changes the exterior appearance of the Unit;

ii. may not change the appearance of the Common Elements, or the exterior appearance of a Unit or any other portion of the Condominium without permission of the Association; and

iii. after acquiring an adjoining Unit or an adjoining part of an adjoining Unit, may remove or alter any intervening partition or create apertures therein, even if the partition in whole or in part is a Common Element, if those acts do not impair the structural integrity or mechanical systems or lessen the support of any portion of the Condominium. Removal of partitions or creation of apertures under this Subsection is not an alteration of boundaries.

c) A Unit Owner may submit a written request to the Executive Board for approval to do anything that such Unit Owner is forbidden to do under Subsection 10.1(a) or 10.1(b)(ii). The Executive Board shall answer any written request for such approval, after Notice and Hearing, within sixty (60) days after the request thereof. Failure to do so within such time shall not constitute a consent by the Executive Board to the proposed action. The Executive Board shall review requests in accordance with the provisions of its Rules and Regulations.

d) All additions, alterations and improvements to the Units and Common Elements shall not, except pursuant to prior approval by the Executive Board, cause any increase in the premium of any insurance policies carried by the Association or by the Unit Owners other than those affected by such change.

e) During the Declarant Control Period, the Declarant specifically reserves the right of approval over any improvements or alterations that alter the exterior appearance of the Condominium including, without limitation, interior window treatments, which shall conform to standards regarding size, color and orientation to be determined in the discretion of the Declarant. Furthermore, the Declarant specifically reserves the right of approval over all nameplates and signage attached to the exterior of the Condominium during the Declarant Control Period. However, all nameplates and exterior signage shall comply with all applicable governmental standards and regulations. Upon the expiration of the Declarant Control Period, the approval rights set forth in this Section 10.1(e) shall transfer automatically to the Association.

f) Each Unit Owner shall have the right, at such Unit Owner's expense, to install an identification panel on the monument sign located on the Property, subject to the prior written approval of the Association as to design, style and installation.

**10.2 ADDITIONS, ALTERATIONS AND IMPROVEMENTS BY EXECUTIVE BOARD.** Subject to the limitations of Sections 15.4 and 15.5 of this Declaration, the Executive Board may make any additions, alterations or improvements to the Common Elements which, in its judgment, it deems necessary.

## **ARTICLE 11**

### **Relocation Of Boundaries Between Adjoining Units**

**11.1 APPLICATION AND AMENDMENT.** Subject to approval of any structural changes and required permits pursuant to Article 11, the boundaries between adjoining Units may be relocated by an amendment to the Declaration upon application to the Association by the Unit Owners affected by the relocation. The application shall state the proposed reallocation of



their Units and Allocated Interests. Unless the Executive Board determines, within thirty (30) days after receipt of the application, that the reallocations are unreasonable, the Association shall consent to the reallocation and prepare an amendment that identifies the Units involved, states the reallocations and indicates the Association's consent. The amendment must be executed by those Unit Owners and contain words of conveyance between them, and the approval of all holders of Security Interests in the affected Units shall be endorsed thereon. On recordation, the amendment shall be indexed in the name of the grantor and the grantee, and in the grantee's index in the name of the Association.

11.2 RECORDING AMENDMENTS. The Association shall prepare and record plats or plans necessary, to show the altered boundaries between adjoining Units, and their dimensions and identifying numbers. The applicants will pay for the costs of preparation of the amendment and its recording, and the reasonable consultant fees of the Association if it is deemed necessary to employ a consultant by the Executive Board.

## **ARTICLE 12**

### **Amendments To Declaration**

12.1 GENERAL. Except in cases of amendments that may be executed by the Declarant in the exercise of its Development Rights or by the Association under Article 9 of this Declaration and Section 47C-2-117 of the Condominium Act, or by certain Unit Owners under Article 9 and Section 11.1 of this Declaration, and except as limited by Section 12.4 of this Declaration, this Declaration, including the Plats and Plans, may be amended only by vote or agreement of Unit Owners of Units to which at least Sixty-seven Percent (67%) of the votes in the Association are allocated.

12.2 LIMITATION OF ACTIONS. An action to challenge the validity of an amendment adopted by the Association pursuant to this Article may not be brought more than one year after the amendment is recorded.

12.3 RECORDING REQUIRED. Each amendment to the Declaration must be recorded in every county in which a portion of the Condominium is located and the amendment is effective only upon recording. An amendment, except an amendment pursuant to Article 11 of this Declaration, must be indexed in the grantee's index in the name of the Condominium and the Association and in the grantor's index in the name of the parties executing the amendment.

12.4 UNANIMOUS CONSENT REQUIRED. Except to the extent expressly permitted or required by other provisions of the Condominium Act, an amendment may not create or increase Special Declarant Rights, increase the number of Units, change the boundaries of a Unit, the Allocated Interests of a Unit, or the uses to which a Unit is restricted, in the absence of the unanimous consent of the Unit Owners.

12.5 EXECUTION OF AMENDMENTS. An amendment to the Declaration required by the Condominium Act to be recorded by the Association, which has been adopted in accordance with this Declaration and the Condominium Act, must be prepared, executed, recorded and certified on behalf of the Association by an officer of the Association designated for that purpose, or in the absence of designation, by the president of the Association.

12.6 SPECIAL DECLARANT RIGHTS. Provisions in this Declaration creating Special Declarant Rights may not be amended without the consent of the Declarant.

12.7 CONSENT OF HOLDERS OF SECURITY INTERESTS. Amendments are subject to the consent requirements of Article 24 of this Declaration.

12.8 AMENDMENTS TO CREATE UNITS. To exercise any Development Rights reserved under Section 5.1 of this Declaration, the Declarant shall prepare, execute and record an amendment to the Declaration. The Declarant shall also record either new Plats and Plans necessary to conform to the requirements of Section 47C-2-109 (a), (b) and (c) of the Condominium Act or new certifications of the Plats and Plans previously recorded if those Plats and Plans otherwise conform to the requirements of those Sections.

The amendment to the Declaration shall assign an identifying number to each new Unit created and reallocate the Allocated Interests among all Units. The amendment shall describe any Common Elements and any Limited Common Elements created thereby and designate the Unit to which each Limited Common Element is allocated to the extent required by Section 47C-2-108 of the Condominium Act.

### **ARTICLE 13** **Amendments To Bylaws**

13.1 The Bylaws may be amended only by a Sixty-seven percent (67%) majority of the members of the Executive Board at any meeting duly called for such purpose.

### **ARTICLE 14** **Termination**

14.1 Termination of the Condominium may be accomplished only in accordance with Section 47C-2-118 of the Condominium Act.

### **ARTICLE 15** **Assessment And Collection of Common Expenses**

15.1 APPORTIONMENT OF COMMON EXPENSES.

a) Except as provided in Section 15.2, all Common Expenses shall be assessed against all Units in accordance with their percentage interest in the Common Expenses as shown on Exhibit B to this Declaration.

b) Water shall be a Common Expense for all Units that are not separately metered for water. Should the Executive Board or Declarant determine that a particular Unit is a high-volume user of water, the Board or Declarant may require that Unit to be separately metered for water. Any Unit separately metered for water shall not be liable for assessment of a Common Expense for water.

15.2 COMMON EXPENSES ATTRIBUTABLE TO FEWER THAN ALL UNITS.

a) Any Common Expense associated with the maintenance, repair or replacement of a Limited Common Element shall be assessed against the Unit or Units to which the Limited Common Element is assigned; if any such Limited Common Element is assigned to more than one Unit, the Common Expenses attributable to the Limited Common Element shall be assessed in proportion to the floor areas of the Units to which it is assigned.

b) Any Common Expense for services provided by the Association to an individual Unit at the request of the Unit Owner shall be assessed against the Unit which benefits from service. Such services requested by a Unit Owner and such assessments do not include those services the Association is required to provide to a Unit Owner under this Declaration for which common expense assessments are levied.

c) Any insurance premium increase attributable to a particular Unit by virtue of activities in or construction of the Unit shall be assessed against that Unit.

d) An assessment to pay a judgment against the Association may be made only against the Units in the Condominium at the time the judgment was entered, in proportion to their Common Expense liabilities.

e) If Common Expense is caused by the misconduct of a Unit Owner, the Association may assess that expense exclusively against the Unit; provided, however, in such instances, if insurance covers such cost, the insurance proceeds will be used to repair the damage, but the Unit Owner will be responsible for any deductibles and any increase in insurance premiums resulting from the Unit Owner's misconduct.

f) Fees, charges, late charges, fines, collection costs, and interest charged against a Unit Owner pursuant to the Condominium Documents and the Condominium Act are enforceable as Common Expense assessments.

g) Any charge for a utility service, including water, provided solely to a particular Unit or Units shall be assessed against that Unit or Units.

### 15.3 LIEN.

a) The Association has a lien on a Unit for an assessment levied against the Unit which remains unpaid for a period of thirty (30) days or longer from the time it is filed of record in the Office of the Clerk Of Superior Court of Durham County, North Carolina. Fees, charges, late charges, fines and interest charged pursuant to the Condominium Act and the Condominium Documents are enforceable as assessments under this Section. If an assessment is payable in installments, the full amount of the assessment becomes immediately due and payable when the first installment thereof remains unpaid in such manner, and the full amount of the assessment shall constitute a lien from the time of such filing.

b) A lien under this Section is prior to all other liens and encumbrances on a Unit except:

i. liens and encumbrances (including, but not limited to, a mortgage or deed of trust on the Unit) recorded before the docketing of the lien in the Office of the Clerk of Superior Court; and

ii. liens for real estate taxes and other governmental assessments or charges against the Unit. This Subsection does not affect the priority of mechanics' or materialman's liens.

c) A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three (3) years after the docketing thereof in the Office of the Clerk of Superior Court.

d) This Section does not prohibit an action to recover sums for which Subsection 15.3(a) of this Section creates a lien or prohibit the Association from taking a deed in Lieu of foreclosure.

e) A judgment, decree or order in any action brought under this Section shall include costs and reasonable attorneys' fees for the prevailing party.

f) The Association's lien may be foreclosed as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the General Statutes of North Carolina.

g) If a holder of a first mortgage or first deed of trust of record, or other purchaser of a Unit, obtains title to the Unit as a result of foreclosure of a first mortgage or first deed of trust, such purchasers, and their heirs, successors and assigns, shall not be liable for the assessments against such Unit which became due prior to acquisition of title to such Unit by such purchaser. Such unpaid assessments shall be deemed to be Common Expenses collectible from all the Unit Owners including such purchasers, and their, successors and assigns.

h) Any payments received by the Association in the discharge of a Unit Owner's obligation may be applied to the oldest balance due.

**15.4 BUDGET ADOPTION AND RATIFICATION.** Within thirty (30) days after adoption of a proposed budget for the Condominium, the Executive Board shall provide a summary of the budget to each Unit Owner, and shall set a date for a meeting of the Unit Owners to consider ratification of the budget not less than fourteen (14) nor more than thirty (30) days after mailing of the summary. Unless, at that meeting, a Majority of all Unit Owners reject the budget, the budget is ratified, whether or not a quorum is present. If the proposed budget is rejected the periodic budget last ratified by the Unit Owners continues until the Unit Owners ratify a budget proposed by the Executive Board.

**15.5 RATIFICATION OF NON-BUDGETED COMMON EXPENSE ASSESSMENTS.** If the Executive Board votes to levy a Common Expense assessment not included in the current budget, other than one enumerated in Section 15.2 of this Declaration, in an amount greater than fifteen (15) percent of the current annual operating budget, the Executive

Board shall submit such Common Expense to the Unit Owners for ratification in the same manner as a budget under Section 15.4.

**15.6 CERTIFICATE OF PAYMENT OF COMMON EXPENSE ASSESSMENTS.**

The Association, upon written request, shall furnish to a Unit Owner a statement setting out the amount of unpaid assessments against the Unit. The statement must be furnished within ten (10) business days after receipt of the request and is binding on the Association, the Executive Board and each Unit Owner.

**15.7 MONTHLY PAYMENT OF COMMON EXPENSES.** All Common Expenses assessed under Sections 15.1 and 15.2 shall be due and payable monthly or quarterly, as determined by the Executive Board.

**15.8 ACCELERATION OF COMMON EXPENSE ASSESSMENTS.** In the event of default for a period of thirty (30) days by any Unit Owner in the payment of any Common Expense assessment levied against such Unit Owner's Unit, the Executive Board shall have the right, after Notice and hearing, to declare all unpaid assessments for the pertinent fiscal year to be immediately due and payable.

**15.9 COMMENCEMENT OF COMMON EXPENSE ASSESSMENTS.** Common Expense assessments shall begin on the first day of the month on which conveyance of the first Unit to a Unit Owner occurs or on such earlier date as the Executive Board determines.

**15.10 INTENTIONALLY DELETED.**

**15.11 NO WAIVER OF LIABILITY FOR COMMON EXPENSES.** No Unit Owner may obtain exemption from liability for payment of the Common Expenses by waiver of the use of enjoyment of, the Common Elements or by abandonment of the Unit against which the assessments are made.

**15.12 PERSONAL LIABILITY OF UNIT OWNERS.** The owner of a Unit at the time a Common Expense assessment or portion thereof is due and payable is personally liable for the assessment. Personal liability for the assessment shall not pass to a successor in title to the Unit unless such successor in title agrees to assume the obligation.

**ARTICLE 16**  
**RIGHT TO ASSIGN FUTURE INCOME**

16.1 The Association may assign its future income, including its right to receive Common Expense assessments, only by the affirmative vote of Unit Owners of Units to which at least Sixty-Seven Percent (67%) of the votes in the Association are allocated, at a meeting called for that purpose.

**ARTICLE 17**  
**Persons And Units Subject To The Condominium Document**

17.1 **COMPLIANCE WITH CONDOMINIUM DOCUMENTS.** All Unit Owners, tenants, mortgagees and occupants of Units shall comply with the Condominium Documents.

The acceptance of a deed or the exercise of any incident of ownership or the entering into of a lease or the entering into occupancy of a Unit constitutes agreement that the provisions of the Condominium Documents are accepted and ratified by such Unit Owner, tenant, mortgagee or occupant, and all such provisions recorded in the Office of the Register of Deeds of Durham County, North Carolina are covenants running with the land and shall bind any persons having, at any time any interest or estate in such Unit.

17.2 ADOPTION OF RULES AND REGULATIONS. The Executive Board may adopt Rules and Regulations regarding the use and occupancy of Units affecting the Common Elements, Limited Common Elements and the activities of occupants, subject to Notice and Consent.

## **ARTICLE 18**

### **Insurance**

18.1 COVERAGE. The Association shall obtain and maintain at all times the insurance coverage set forth in this Article.

#### 18.2 PROPERTY INSURANCE.

a) Property insurance covering:

i. the Common Elements, all structural portions of the Condominium and all HVAC, electrical and plumbing facilities, including all portions of the Condominium extending outward from the unfinished interior surface of the sheetrock outward to the outside surface of the floor covering to the foundation, but excluding improvements and betterments installed by Unit Owners and further excluding land, excavations, portions of foundations below the under surfaces of the lowest floors, underground pilings, pipes, flues and drains and other items normally excluded from property policies, and

ii. all personal property owned by the Association.

b) Amount. An amount (after application of any deductions) equal to one hundred percent (100%) of replacement cost at the time the insurance is purchased and at each renewal date, with a commercially reasonable deductible not in excess of Twenty Five Thousand and No/100 Dollars (\$25,000.00). The Executive Board is authorized to obtain appraisals periodically for the purpose of establishing said replacement cost, and the cost of such appraisals shall be a Common Expense.

c) Risks Insured Against. The insurance shall be ISO special form property insurance or its equivalent, 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 contain an inflation guard endorsement, if available, and a construction code or "law and ordinance" endorsement, if available.

d) Other Provisions. Insurance policies required by this Section shall provide that:

- i. the insurer waives the right to subrogation against any Unit Owner and any Unit Owner's employees and agents;
- ii. an act or omission by a Unit Owner, unless acting within the scope of the Unit Owner's authority on behalf of the Association, will not void the policy or be a condition to recovery under the policy;
- iii. if, at the time of a loss under the policy, there is other insurance in the name of a Unit Owner covering the same risk covered by the policy, the policy of the Association provides primary insurance;
- iv. loss must be adjusted with the Association;
- v. insurance proceeds shall be paid to an insurance trustee designated in the policy for that purpose, and in the absence of such designation to the Association, in either case to be held in trust for each Unit Owner and such Unit Owners mortgagee;
- vi. the insurer may not cancel or refuse to renew the policy until thirty (30) days after notice of the proposed cancellation or non-renewal has been mailed to the Association, each Unit Owner, and each holder of a Security Interest to whom a certificate or memorandum of insurance has been issued, at their respective last known addresses; and
- vii. the name of the insured shall be substantially as follows:  
"CAROLINA POINTE I OWNERS' ASSOCIATION, INC. for the use and benefit of the individual owners," and each Unit Owner shall be an insured person with respect to his Unit and his allocated interest in the Common Elements

18.3 LIABILITY INSURANCE. A policy of commercial general liability insurance (current ISO form or its equivalent), including medical payment insurance, in an amount determined by the Executive Board but in no event less than Two Million Dollars and No Cents (\$ 2,000,000.00) covering each member of the Executive Board, the Manager, if any, and each Unit Owner with respect to liability arising out of or in connection with the use, ownership, maintenance or repair of the Common Elements, and the activities of the Association. The liability insurance 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, and shall include endorsements covering cross liability claims of one insured against another, including the liability of the Unit Owners as a group to a single Unit Owner.

a) Other Provisions. Insurance policies carried pursuant to this Section shall provide that:

- i. each Unit Owner is an insured person under the policy;

ii. an act or omission by a Unit Owner, unless acting within the scope of the Unit Owner's authority on behalf of the Association will not void the policy or be a condition to recovery under the policy;

iii. if, at the time of a loss under the policy, there is other insurance in the name of a Unit Owner covering the same risk covered by the policy, the policy of the Association provides primary insurance; and

iv. the insurer issuing the policy may not cancel or refuse to renew it until thirty (30) days after notice of the proposed cancellation or non-renewal has been mailed to the Association, each Unit Owner and each holder of a Security Interest to whom a certificate or memorandum of insurance has been issued at their last known addresses.

18.4 FIDELITY BONDS. A blanket fidelity bond may be provided for anyone who either handles or is responsible for funds held or administered by the Association, whether or not they receive compensation for their services.

18.5 UNIT OWNER POLICIES. Each Unit Owner shall obtain insurance coverage, at such Unit Owner's own expense, upon such Unit Owner's personal property and, in addition, shall obtain comprehensive personal liability insurance covering liability for damage to persons or property of others located within such Unit Owner's Unit, in another Unit, or upon the Common Elements, resulting from the negligence of the insured Unit Owner, in such amounts as shall from time to time be determined by the Executive Board, but in no event less than \$100,000.00 in respect to damages to property and \$1,000,000.00 in respect to personal injury for each occurrence. Provided, no Unit Owner shall acquire or maintain insurance coverage so as to decrease the amount which the Association may realize under any insurance policy, or to cause any insurance coverage in favor of the Association to be brought into contribution with insurance coverage obtained by a Unit Owner. All policies of property insurance obtained by Unit Owners individually shall contain waivers of subrogation against any other Unit Owner, and any Unit Owner's employees or agents.

18.6 WORKERS' COMPENSATION INSURANCE. To the extent that the State of North Carolina requires worker's compensation insurance, the Executive Board shall obtain and maintain workers' compensation insurance adequate to meet the requirements of the laws of the State of North Carolina.

18.7 DIRECTORS' AND OFFICERS' LIABILITY INSURANCE. The Executive Board shall obtain and maintain directors' and officers' liability insurance, if available, covering all of the Directors and officers of the Association in such limits as the Executive Board may, from time to time, determine.

18.8 OTHER INSURANCE. The Association may carry other insurance which the Executive Board considers appropriate to protect the Association or the Unit Owners.

18.9 PREMIUMS. Insurance premiums (excluding premiums for Unit Owner policies) shall be a Common Expense.



**ARTICLE 19**  
**Damage To Or Destruction Of Property**

19.1 **DUTY TO RESTORE.** Any portion of the Condominium for which insurance is required under Section 18.2 hereof which is damaged or destroyed must be repaired or replaced promptly by the Association unless:

- a) the Condominium is terminated;
- b) repair or replacement would be illegal under a state statute or municipal ordinance governing health or safety; or
- c) Eighty percent (80%) of the Unit Owners, including each Owner of a Unit or assigned Limited Common Element that will not be rebuilt, vote not to rebuild.

19.2 **COST.** The cost of repair or replacement in excess of insurance proceeds and reserves is a Common Expense.

19.3 **PLANS.** The Property must be repaired and restored in accordance with either the original plans and specifications or other plans and specifications which have been approved by the Executive Board and a Majority of Unit Owners

19.4 **REPLACEMENT OF LESS THAN ENTIRE PROPERTY.**

- a) The insurance proceeds attributable to the damaged Common Elements and other portions of the Condominium shall be used to restore the damaged area to a condition compatible with the remainder of the Condominium.
- b) Except to the extent that other persons will be distributees:
  - i. the insurance proceeds attributable to a Unit and Limited Common Elements that is not rebuilt must be distributed to the Owner of the Unit and the Owner of the Unit to which the Limited Common Elements were allocated, or to lienholders, as their interests may appear; and
  - ii. the remainder of the proceeds must be distributed to each Unit Owner or lienholder, as their interests may appear, in proportion to the Common Element interests of all the Units.
- c) If the Unit Owners vote not to rebuild a Unit, the allocated interests of the Unit are reallocated upon the vote as if the Unit had been condemned under Section 47C-1-107(a) of the Condominium Act; and the Association promptly shall prepare, execute and record an amendment to the Declaration reflecting the real locations.

19.5 **INSURANCE PROCEEDS.** The Trustee, or if there is no Trustee, then the Executive Board of the Association, acting by the President, shall hold any insurance proceeds in trust for the Association, Unit Owners and lienholders as their interests may appear. Subject to the provisions of Subsection 19.1(a) through Subsection 19.1(c), the proceeds shall be disbursed

first for the repair or restoration of the damaged property, and the Association, Unit Owners and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored, or the Condominium is terminated.

19.6 CERTIFICATES BY THE EXECUTIVE BOARD. The Trustee, if any, may rely on the following certifications in writing made by the Executive Board:

- a) whether or not damaged or destroyed property is to be repaired or restored; and
- b) the amount or amounts to be paid for repairs or restoration and the names and addresses of the parties to whom such amounts are to be paid.

## **ARTICLE 20**

### **Right To Notice And Hearing**

20.1 RIGHT TO NOTICE AND HEARING. Whenever the Condominium Documents require that an action be taken after "Notice and Hearing", the following procedures shall be observed: the party proposing to take the action (e.g., the Executive Board, a committee, an officer, the manager, etc.) shall give written notice of the proposed action to the Association and to all Unit Owners or occupants of Units whose interest may be affected by the proposed action, including a general statement of the proposed action. The Association shall determine the date, time and place of the hearing and notify the parties to the Notice and Hearing. At the hearing, the affected parties shall have the right, personally or by representative, to give testimony orally, in writing or both, subject to reasonable rules of procedure established by the Association to insure a prompt and orderly resolution of the issues. Such evidence shall be considered in making the decision but shall not bind the Association. The Association shall notify the parties to the Notice and Hearing of its decision in the manner in which notice of the meeting was given.

## **ARTICLE 21**

### **Executive Board**

21.1 MINUTES OF EXECUTIVE BOARD MEETINGS. The Executive Board shall permit any Unit Owner to inspect the minutes of Executive Board meetings during normal business hours. The minutes shall be available for inspection within fifteen (15) days after any such meeting.

21.2 POWERS AND DUTIES. The Executive Board may act, in all instances, on behalf of the Association, except as provided in this Declaration, the Bylaws or the Condominium Act. The Executive Board shall have, subject to the limitations contained in this Declaration and the Condominium Act, the powers and duties necessary for the administration of the affairs of the Association and of the Condominium which shall include, but not be limited to, the following:

- a) Adopt and amend Bylaws, Rules and Regulations.
- b) Adopt and amend budgets for revenues, expenditures and reserves.

- c) Collect assessments for Common Expenses from Unit Owners.
- d) Hire and discharge managing agents.
- e) Hire and discharge employees and agents, other than managing agents, and independent contractors.
- f) Institute, defend or intervene in litigation or administrative proceedings or seek injunctive relief for violation of the Declaration, Bylaws or Rules and Regulations in the Association's name on behalf of the Association or two or more Unit Owners on matters affecting the Condominium.
- g) Make contracts and incur liabilities.
- h) Regulate the use, maintenance, repair, replacement and modification of the Common Elements.
- i) Cause additional improvements to be made as a part of the Common Elements.
- j) Acquire, hold, encumber and convey in the Association's name any right, title or interest to real property or personal property, but Common Elements may be conveyed or subjected to a Security Interest only, pursuant to Section 47C-3-112 of the Condominium Act.
- k) Grant easements for any period of time including permanent easements, and leases, licenses and concessions for no more than one year, through or over the Common Elements.
- l) Impose and receive a payment, fee or charge for the use, rental or operation of the Common Elements other than Limited Common Elements described in Section 47C-2-102(2) and (4) of the Condominium Act, and for services provided to Unit Owners.
- m) Impose a reasonable charge for late payment of assessments and, after Notice and Hearing, levy reasonable fines for violations of this Declaration, Bylaws, and the Rules and Regulations of the Association.
- n) Impose a reasonable charge for the preparation and recordation of amendments to this Declaration, and resale certificates required by Section 47C-4-109 of the Condominium Act or a statement of unpaid assessments.
- o) Provide for the indemnification of the Association's officer's and the Executive Board and maintain directors' and officers' liability insurance.
- p) Assign the Association's right to future income, including the right to receive Common Expense assessments.

- q) Exercise any other powers conferred by this Declaration or the Bylaws.
- r) Exercise any other power that may be exercised in this State by legal entities of the same type as the Association.
- s) Exercise any other power necessary and proper for the governance and operation of the Association.
- t) By resolution, establish committees of Directors, permanent and standing, to perform any of the above functions under specifically delegated administrative standards, as designated in the resolution establishing the committee. All committees must maintain and publish notice of their actions to Unit Owners and the Executive Board. However, actions taken by a committee may be appealed to the Executive Board by any Unit Owner within forty-five (45) days of publication of such notice, and such committee action must be ratified, modified or rejected by the Executive Board at its next regular meeting.

21.3 **EXECUTIVE BOARD LIMITATIONS.** The Executive Board may not act on behalf of the Association to amend this Declaration, to terminate the Condominium or to elect members of the Executive Board or determine the qualifications, powers and duties, or terms of office of Executive Board members, but the Executive Board may fill vacancies in its membership for the unexpired portion of any term.

## **ARTICLE 22** **Condemnation**

22.1 If part or all of the Condominium is taken by any power having the authority of eminent domain, all compensation and damages for and on account of the taking shall be payable in accordance with Section 47C-1-107 of the Condominium Act.

## **ARTICLE 23** **Mortgagee Protection**

23.1 **INTRODUCTION.** This Article establishes certain standards and covenants which are for the benefit of Eligible Mortgagees. This Article is supplemental to, and not in substitution for, any other provisions of the Condominium Documents, but in the case of conflict, this Article shall control.

23.2 **PERCENTAGE OF ELIGIBLE MORTGAGEES.** Wherever in this Declaration the approval or consent of a specified percentage of Eligible Mortgagees is required, it shall mean the approval or consent of Eligible Mortgagees holding First Mortgages in Units which in the aggregate have allocated to them such specified percentage of votes in the Association when compared to the total allocated to all Units then subject to First Mortgages held by Eligible Mortgagees.

23.3 **NOTICE OF ACTIONS.** The Association shall give prompt written notice to each Eligible Mortgagee of:

a) Any condemnation loss or any casualty loss which affects a material portion of the Condominium or any Unit in which there is a First Mortgage held, insured, or guaranteed by such Eligible Mortgagee, as applicable.

b) Any delinquency in the payment of Common Expense assessments owed by an owner whose Unit is subject to a First Mortgage held, insured, or guaranteed, by such Eligible Mortgagee, which remains uncured for a period of sixty (60) days.

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

d) Any proposed action which would require the consent of a specified percentage of Eligible Mortgagees as specified in Section 23.4 of this Article.

e) Any judgment rendered against the Association.

#### 23.4 CONSENT REQUIRED.

a) Changes in the Condominium Documents. Notwithstanding any lower requirement permitted by this Declaration or the Condominium Act, no amendment of any material provision of the Condominium Documents by the Association or Unit Owners described in this Section 23.4(a) may be effective without the vote of at least Sixty-Seven percent (67%) of the Unit Owners (or any greater Unit Owner vote required in this Declaration or the Condominium Act) and until approved in writing by at least Sixty-Seven percent (67%) of the Eligible Mortgagees (or any greater Eligible Mortgagee approval required by this Declaration) . The foregoing approval requirements do not apply to amendments effected by the exercise of any Development Right. "Material" includes, but is not limited to, any provision affecting:

- i. assessments, assessment liens or subordination of assessments liens;
- ii. voting rights;
- iii. reserves for maintenance, repair and replacement of Common Elements;
- iv. responsibility for maintenance and repairs;
- v. reallocation of interests in the Common Elements or Limited Common Elements except that when Limited Common Elements are reallocated by agreement between Unit Owners, only those Unit Owners and only the Eligible Mortgagees holding First Mortgages in such Units must approve such action;
- vi. rights to use Common Elements and Limited Common Elements;

vii. boundaries of Units except that when boundaries of only adjoining Units are involved, or a Unit is being subdivided, then only those Unit Owners and the Eligible Mortgagees holding First Mortgages in such Unit or Units must prove such action;

viii. convertibility of Units into Common Elements or Common Elements into Units;

ix. expansion or contraction of the Condominium, or the addition, annexation or withdrawal of property to or from the Condominium;

x. insurance or fidelity bonds;

xi. leasing of units;

xii. imposition of restrictions on a Unit Owner's right to sell or transfer his or her Unit;

xiii. establishment of self-management when professional management had been required previously by an Eligible Mortgagee;

xiv. restoration or repair of the project after a hazard damage or partial condemnation in a manner other than that specified in the Condominium Documents;

xv. termination of the Condominium after occurrence of substantial destruction or condemnation; and

xvi. the benefits of Eligible Mortgagees.

b) ACTIONS. Notwithstanding any lower requirement permitted by the Declaration or the Condominium Act, the Association may not take any of the following actions other than rights reserved to the Declarant as Special Declarant Rights without the approval of at least Sixty-seven percent (67%) of the Eligible Mortgagees:

i. convey or encumber the Common Elements or any portion thereof (as to which an eighty percent (80%) Eligible Mortgagee approval is required). (The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Elements by the Condominium will not be deemed a transfer within the meaning of this clause);

ii. the establishment of self-management when professional management had been required previously by any Eligible Mortgagee;

iii. the restoration or repair of the Property (after a hazard damage or partial condemnation) in a manner other than that specified in the Condominium Documents;

iv. the termination of the Condominium for reasons other than substantial destruction or condemnation, as to which a sixty-seven percent (67%) Eligible Mortgagee approval is required;

v. the alteration of any partition or creation of any aperture between adjoining Units (when Unit boundaries are not otherwise being affected), in which case only the Unit Owners affected and Eligible Mortgagees of those Units need approve the action;

vi. the merger of this Condominium with any other condominium;

vii. the granting of any easements, leases, licenses and concessions through or over the Common Elements (excluding, however, any utility easements serving or to serve the Condominium and excluding any leases, licenses or concessions for no more than one year;

viii. the assignment of the future income of the Association, including its rights to receive Common Expense assessments; and

ix. any action taken not to repair or replace the Property.

c) The Association may not change the period for collection of regularly budgeted Common Expense assessments to other than monthly without the consent of all Eligible Mortgagees.

d) The failure of an Eligible Mortgagee to respond within thirty (30) days to any written request of the Association for approval of a non-material addition or amendment to the Condominium Documents shall constitute an implied approval of the addition or amendment.

23.5 DEVELOPMENT RIGHTS. No Development Rights may be exercised or voluntarily abandoned or terminated by the Declarant unless all persons holding Security Interests in the Development Rights consent to the exercise, abandonment, or termination.

23.6 INSPECTION OF BOOKS. The Association shall permit any Eligible Mortgagee to inspect the books and records of the Association during normal business hours.

23.7 FINANCIAL STATEMENTS. The Association shall provide any Eligible Mortgagee which submits a written request, with a copy of an annual financial statement within ninety (90) days following the end of each fiscal year of the Association. Such financial statement shall be audited by an independent certified public accountant if any Eligible Mortgagee requests it and pays the cost of such audit.

23.8 ENFORCEMENT. The provisions of this Article are for the benefit of Eligible Mortgagees and their successors, and may be enforced by any of them by any available means, at law, or in equity.

23.9 ATTENDANCE AT MEETINGS. Any representative of an Eligible Mortgagee may attend and address any meeting which a Unit Owner may attend.

23.10 APPOINTMENT OF TRUSTEE. In the event of damage or destruction under Article 19 of this Declaration or condemnation of all or a portion of the Condominium, any Eligible Mortgagee may require that such proceeds be payable to a Trustee established pursuant to Section 1.2(aa) of Article 1 of this Declaration. Proceeds will thereafter be distributed pursuant to Article 19 or pursuant to a condemnation award. Unless otherwise required, the members of the Executive Board acting by majority vote through the president may act as Trustee.

## **ARTICLE 24** **Stormwater Facility**

24.1 The Association shall be bound by and shall comply with the terms and conditions of that certain Stormwater Facility Operation and Maintenance Permit Agreement, City Version 2-1195, (hereinafter the "Stormwater Facility Agreement") between C.A.I. Group III, LLC (Permittee) and the City of Durham, NC, filed on May 31, 2002, in book 3461 at pages 94 -103 as Instrument # 2002025462, attached to this Declaration as Exhibit "D". Exhibit "D" is attached hereto and incorporated herein by reference the same as if set forth in full

24.2 The developer of the condominium was required by the stormwater ordinances of the City of Durham, North Carolina to enter into the Stormwater Facility Agreement, to service the real property on which the Condominium and two other buildings are located. As part of the Stormwater Facility Agreement, the developer had to post a bond in the original amount of Twenty Five Thousand Seven Hundred Eighty Five Dollars (\$25,785.00), which accrues interest.

24.3 The Condominium address is 5915 Farrington Road, Chapel Hill, NC 27517 and the other two buildings that are subject to the Stormwater Facility Agreement are located at 5821 and 5925 Farrington Road, Chapel Hill, NC 27517 (the three (3) buildings are sometimes hereinafter referred to collectively as the "Benefitted Buildings"). The developers have provided that the owners of each of these three buildings that benefit from the Stormwater Facility Agreement will bear their pro-rata share of the costs of the Facility based on the relative land area of each lot on which the Benefitted Buildings are located. Thus, the owners of each building are responsible for bearing their pro-rata share, on an acreage basis, of any operations costs of the Stormwater Facility and the initial purchaser of each Unit must reimburse the Declarant for its pro-rata share of the bond that was required by the Stormwater Agreement, in the original amount of Twenty-five thousand, seven hundred and eight five dollars (\$25,785.00) plus all accrued interest. The said bond is held by Central Carolina Bank in the form of a certificate of deposit.

24.4 The determination of the share of contribution by the Benefitted Buildings is based upon the acreage that each building occupies and not on the basis of the square footage of the buildings themselves. The Property affected by this Declaration is 1.394 acres, which is thirty one and five tenths percent (31.5%) of the total land area of the lots on which the three Benefitted Buildings are located. Thus, the Association shall bear 31.5% of any operations costs of the Stormwater Facility and each initial purchaser of a Unit will reimburse the Declarant at closing



for an amount equal to the product of (a) that Unit's percentage share of the condominium, multiplied by (b) 31.5%, multiplied by (c) the value of the said bond, plus interest accrued, as of the closing date for that Unit. Such sum will be due and payable to reimburse the Declarant for the Unit Owner's share of the said bond. In exchange for reimbursement of the said bond amount, the Association will become the owner of the bond to the extent of the funds reimbursed to the Declarant.

24.5 Upon formation, the Association, in addition to all other requirements, shall comply with the provisions of the Stormwater Facility Agreement stated under paragraph 3.c.i – 3.c.viii, which pertain to the transfer of the Storm Water Facility.

## **ARTICLE 25**

### **Management And Contract Rights Of The Association**

25.1 **MANAGEMENT AND CONTRACT RIGHTS**: Declarant may enter into a contract with a Management Company for the purposes of providing all elements of the operation, care, supervision, maintenance and management of the Properties. However, no such contract shall be binding upon the Association except through express adoption or ratification of the terms and conditions of such contract. Any contract or lease entered into by Declarant or by the Association while Declarant is in control thereof shall contain a provision allowing the Association to terminate such contract without justification or penalty after the transfer of management by Declarant to the Association.

## **ARTICLE 26**

### **Miscellaneous**

26.1 **CAPTIONS**. The captions contained in the Condominium Documents are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of the Condominium Documents nor the intent of any provision thereof.

26.2 **GENDER**. The use of the masculine gender refers to the feminine and neuter genders and the use of the singular includes the plural, and vice versa, whenever the context of the Condominium Documents so require.

26.3 **WAIVER**. No provision contained in the Condominium Documents is abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

26.4 **INVALIDITY**. The invalidity of any provision of the Condominium Documents does not impair or affect in any manner the validity, enforceability, or effect of the remainder, and in such event, all of the other provisions of the Condominium Documents shall continue in full force and effect.

26.5 **CONFLICT**. The Condominium Documents are intended to comply with the requirements of the Condominium Act. In the event of any conflict between the Condominium Documents and the provisions of the Condominium Act, the provisions of the Condominium Act shall control. In the event of any conflict between this Declaration and any other Condominium Document, this Declaration shall control.

26.6 DEVELOPMENT LOAN. Portions of the land and the Buildings are currently encumbered by a development loan evidenced by that certain Deed of Trust Securing Future Advances dated February 12, 2003, executed and delivered by Declarant, as borrower, to CB Services Corp., Trustee for RBC Centura Bank, and recorded in Book 3770 at Page 301 in the Registry. A Consent and Subordination Agreement executed by the trustee and the beneficiary under such Deed of Trust and consenting to the execution and recordation of this Declaration is being recorded in the Registry in connection with the recording of this Declaration.

26.7 Incorporation by Reference. All Exhibits attached hereto and the contents thereof are incorporated by reference. These include but are not limited to the following:

- a) Exhibit A, Description of Land and Recorded Easements and Licenses Appurtenant Thereto;
- b) Exhibit B, Table of Interests;
- c) Exhibit C, Description of Real Estate Subject to Development Rights;
- d) Exhibit D, Storm Water Facility Operation and Maintenance Permit Agreement, City Version 2-1195.
- e) Exhibit E, Joint Driveway Easement and Maintenance Declaration.
- f) Exhibit F, Unit 106 and Visitor Parking Spaces

**[SIGNATURE AND NOTARY ACKNOWLEDGEMENT FOLLOW]**

IN WITNESS WHEREOF, the Association, Unit Owners and Eligible Mortgagees have executed this Declaration as of the day and year first above written.

**ASSOCIATION:**

**CAROLINA POINTE I OWNERS' ASSOCIATION, INC.**, a North Carolina nonprofit corporation

By: *[Signature]*  
Name: Christopher R. Howlett  
Title: President

STATE OF NORTH CAROLINA

COUNTY OF DURHAM

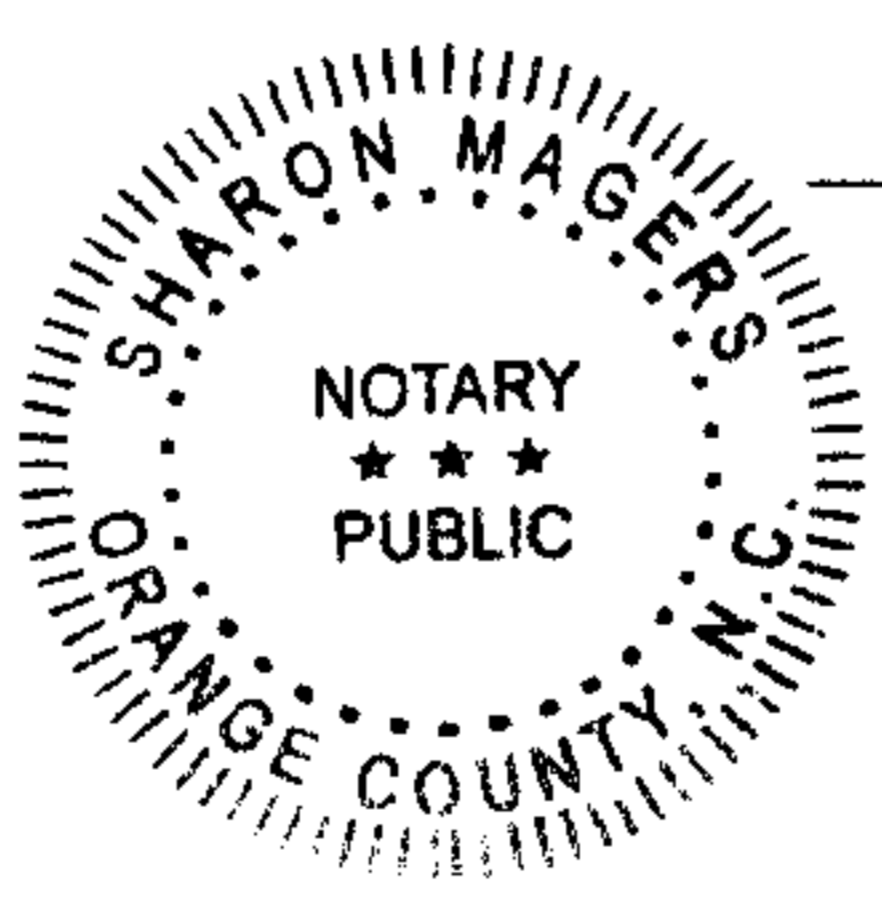
I, Sharon Magers, a Notary Public of the County and State aforesaid, certify that Christopher R. Howlett personally came before me this day and acknowledged that he is President of **CAROLINA POINTE I OWNERS' ASSOCIATION, INC.**, a North Carolina nonprofit corporation, and that he, as President, being authorized to do so, executed the foregoing on behalf of the corporation. And the said President acknowledged the said writing to be the act and deed of said corporation.

Witness my hand and official stamp or seal, this the 21<sup>st</sup> day of December, 2004.

Sharon Magers  
Notary Public

My commission expires:  
Aug 15 2007

[NOTARIAL SEAL]



**DECLARANT:**

**C.A.I. GROUP III, LLC**, a North Carolina limited liability company

By: *Christopher R. Hewlett*  
Name: Christopher R. Hewlett  
Title: Manager  
Unit #s: \_\_\_\_\_

STATE OF NORTH CAROLINA

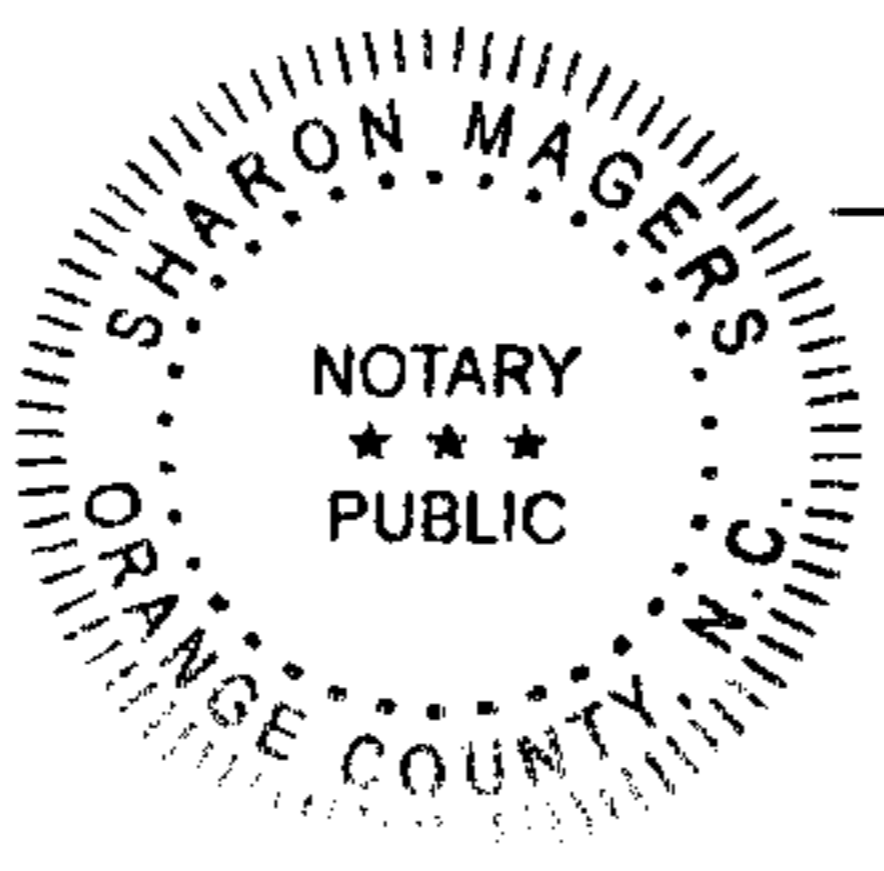
COUNTY OF DURHAM

I, *Sharon Magers*, a Notary Public for said County and State, do hereby certify that *Christopher R. Hewlett*, manager of **C.A.I. GROUP III, LLC**, a North Carolina limited liability company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of the company.

Witness my hand and official stamp or seal, this the 21<sup>st</sup> day of December, 2004.

*Sharon Magers*  
Notary Public

My commission expires:  
Aug 15, 2007  
[NOTARIAL SEAL]



**Trustee, Southland Associates, Inc.**

By: J. F. Campbell  
Name: Eddie P. Campbell  
Unit #: 101

STATE OF NORTH CAROLINA

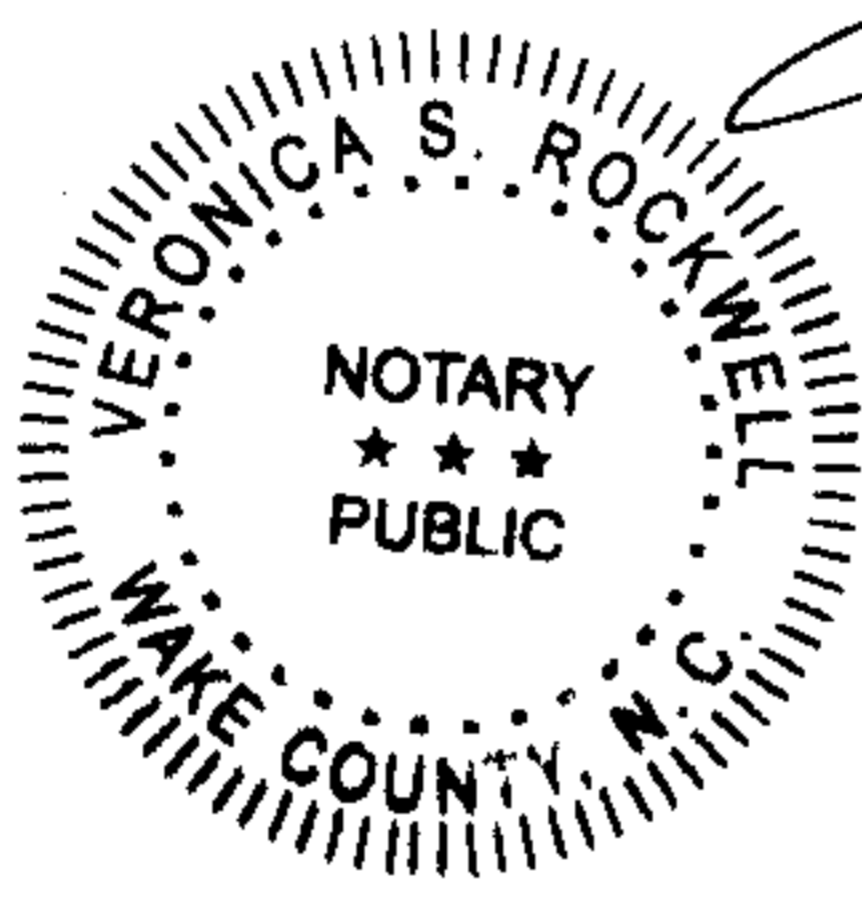
COUNTY OF DURHAM

I, Veronica Rockwell, a Notary Public in and for said County and State, do hereby certify that Eddie P. Campbell\* personally appeared before me this day and acknowledged the due execution of the foregoing instrument. \* Trustee for Southland Associates, Inc.

WITNESS my hand and notarial seal this 5<sup>th</sup> day of January, 2005  
Veronica J. Rockwell  
Notary Public

My commission expires:  
4/11/2009

[NOTARIAL SEAL]



**Mortgagee, Central Carolina Bank, a division of National Bank of Commerce**

Central Carolina Bank,  
a division of National bank of Commerce

By: [Signature]  
Name: Eddie F. Campbell  
Title: Senior V.P.  
Unit #: 101

STATE OF NORTH CAROLINA

COUNTY OF DURHAM

I, Veronica S. Rockwell, a Notary Public of the County and State aforesaid, certify that Eddie F. Campbell personally came before me this day and acknowledged that he is Vice President of Central Carolina Bank a N.C. corporation, and that he, as Vice President, being authorized to do so, executed the foregoing on behalf of the corporation. And the said Vice President acknowledged the said writing to be the act and deed of said corporation.

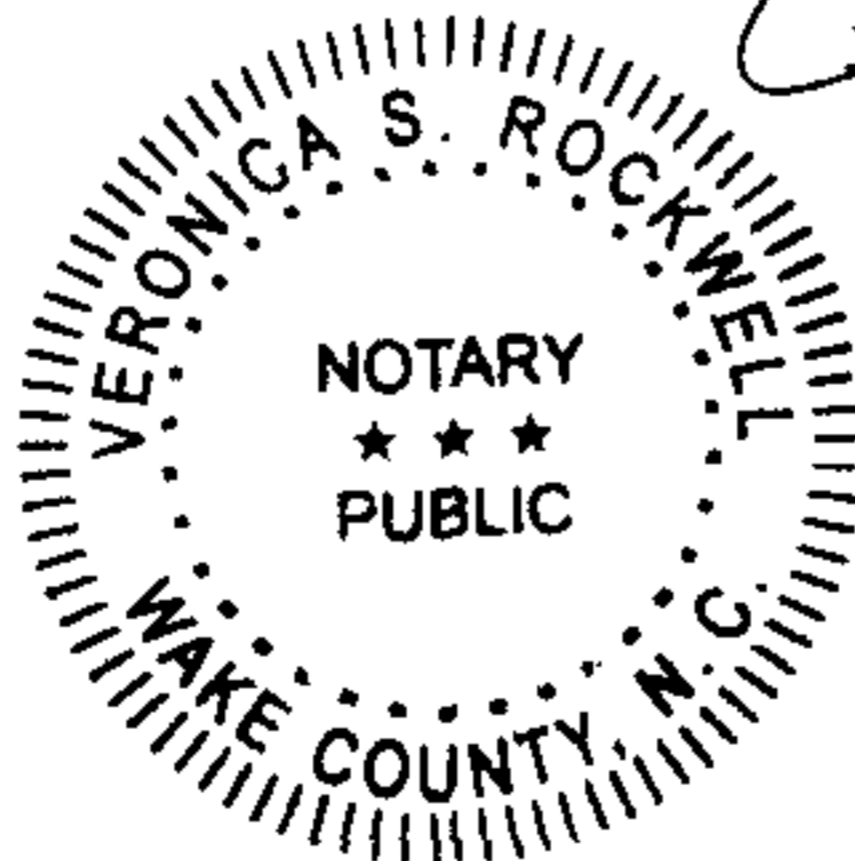
Witness my hand and official stamp or seal, this the 5<sup>th</sup> day of January, 2004 <sup>2005</sup>.

[Signature]  
Notary Public

My commission expires:

4/11/2009

[NOTARIAL SEAL]



**Unit Owner:**

TBR Properties, LLC,  
A North Carolina limited liability company,

By: Theresa B. Robinson  
Name: Theresa B. Robinson  
Title: Manager  
Unit #: 101

STATE OF NORTH CAROLINA

COUNTY OF DURHAM

I, Veronica S. Rockwell, a Notary Public for said County and State, do hereby certify that Theresa B. Robinson, manager of TBR Properties, a limited liability company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of the company.

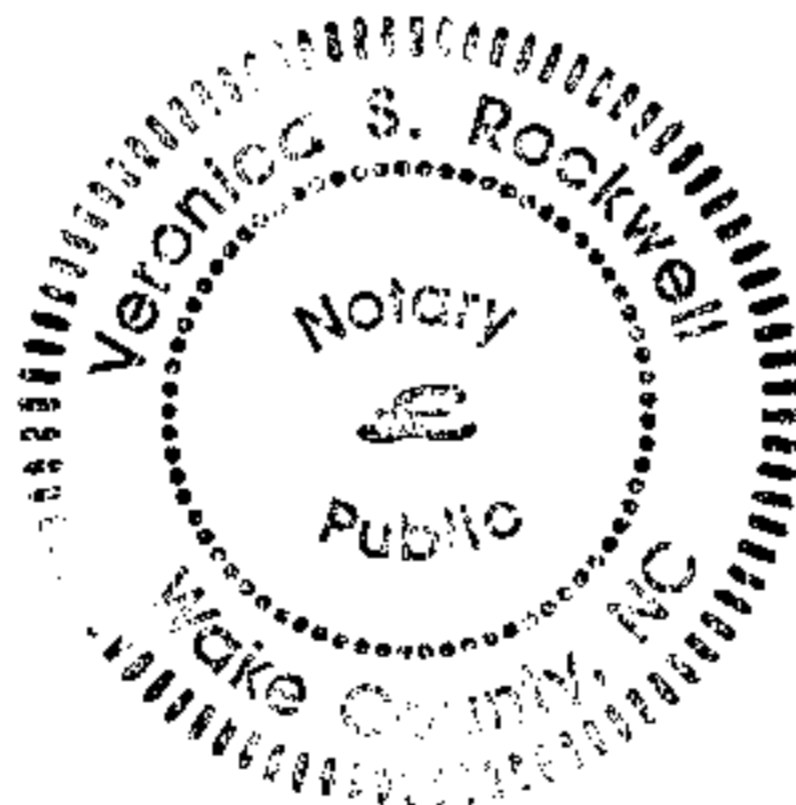
Witness my hand and official stamp or seal, this the 3<sup>rd</sup> day of January, ~~2004~~ <sup>2005</sup>.

Veronica S. Rockwell  
Notary Public

My commission expires:

4/11/2009

[NOTARIAL SEAL]



Trustee, A. Lewis Bass, III

By: [Signature]  
Name: A. Lewis Bass, III  
Unit #: 106

STATE OF NORTH CAROLINA

COUNTY OF DURHAM

I, Jackie B. Dabbs, a Notary Public in and for said County and State, do hereby certify that A. Lewis Bass, III <sup>Trustee</sup> personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and notarial seal this 4 day of January, 2005

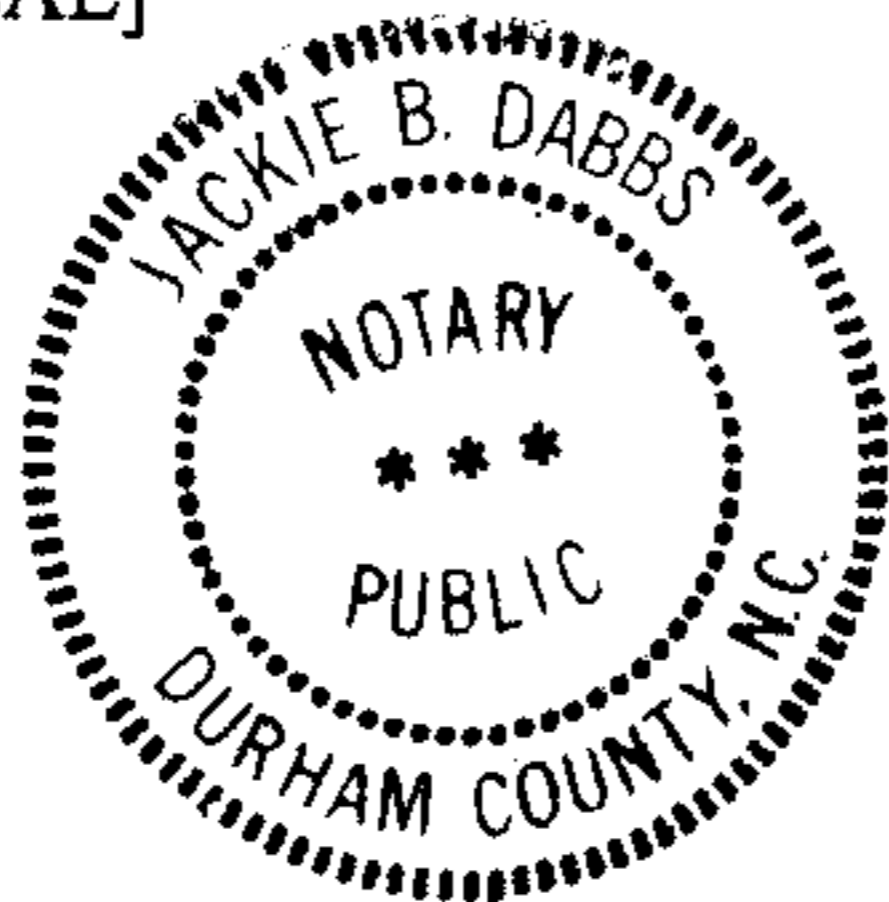
Jackie B. Dabbs

Notary Public

My commission expires:

01/04/08

[NOTARIAL SEAL]





Mortgagee, Cardinal State Bank

Cardinal State Bank,  
a North Carolina Corporation

By: W. Harold Parker, Jr.  
Name: W. Harold Parker, Jr.  
Title: EVP/CEO  
Unit #: 106

STATE OF NORTH CAROLINA

COUNTY OF DURHAM

I, Jackie B. Dabbs, a Notary Public of the County and State aforesaid, certify that W. Harold Parker Jr personally came before me this day and acknowledged that he is EVP/CEO President of Cardinal State Bank, a NC corporation, and that he, as EVP/CEO President, being authorized to do so, executed the foregoing on behalf of the corporation. And the said EVP/CEO President acknowledged the said writing to be the act and deed of said corporation.

Witness my hand and official stamp or seal, this the 4 day of January, 2005

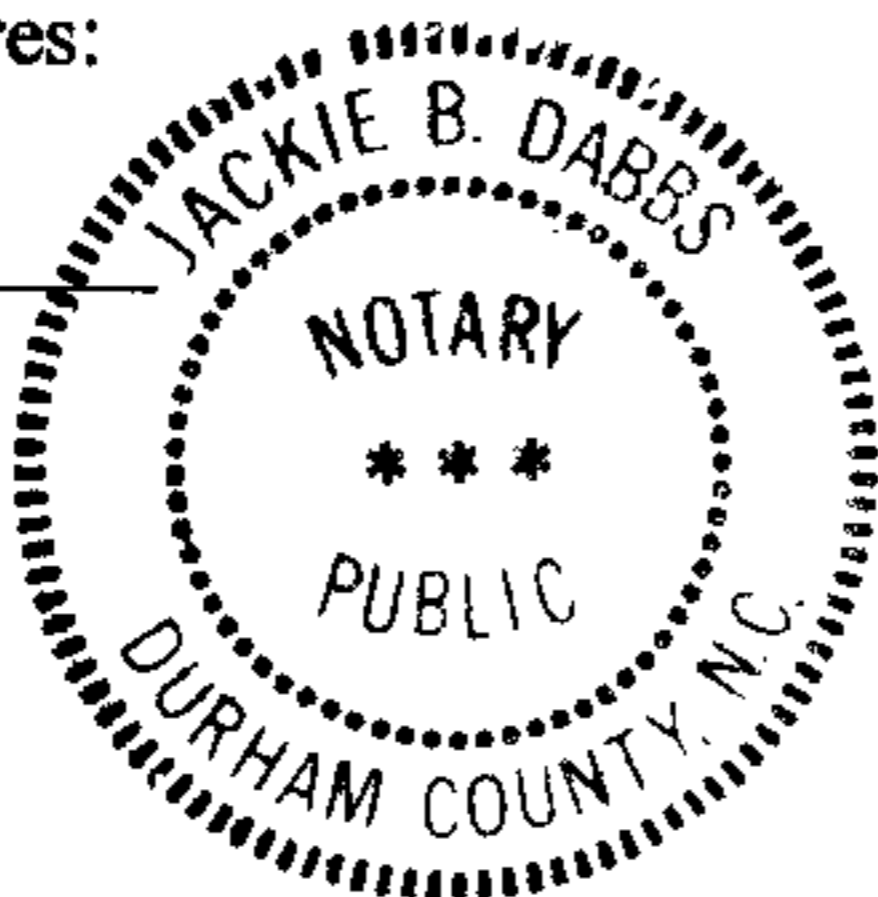
Jackie B. Dabbs

Notary Public

My commission expires:

01/04/08

[NOTARIAL SEAL]



**Unit Owner:**

Kingfish Leasing, LLC,  
A North Carolina limited liability company,

By: Jackie B. Dabbs, MA  
Name: PETER B. BRESSLER, M.D.  
Title: PRES. MANAGER  
Unit #: 106

STATE OF NORTH CAROLINA

COUNTY OF DURHAM

I, Jackie B. Dabbs, a Notary Public for said County and State, do hereby certify that Peter B. Bressler, manager of Kingfish Leasing LLC, a limited liability company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of the company.

Witness my hand and official stamp or seal, this the 5 day of January, 2005

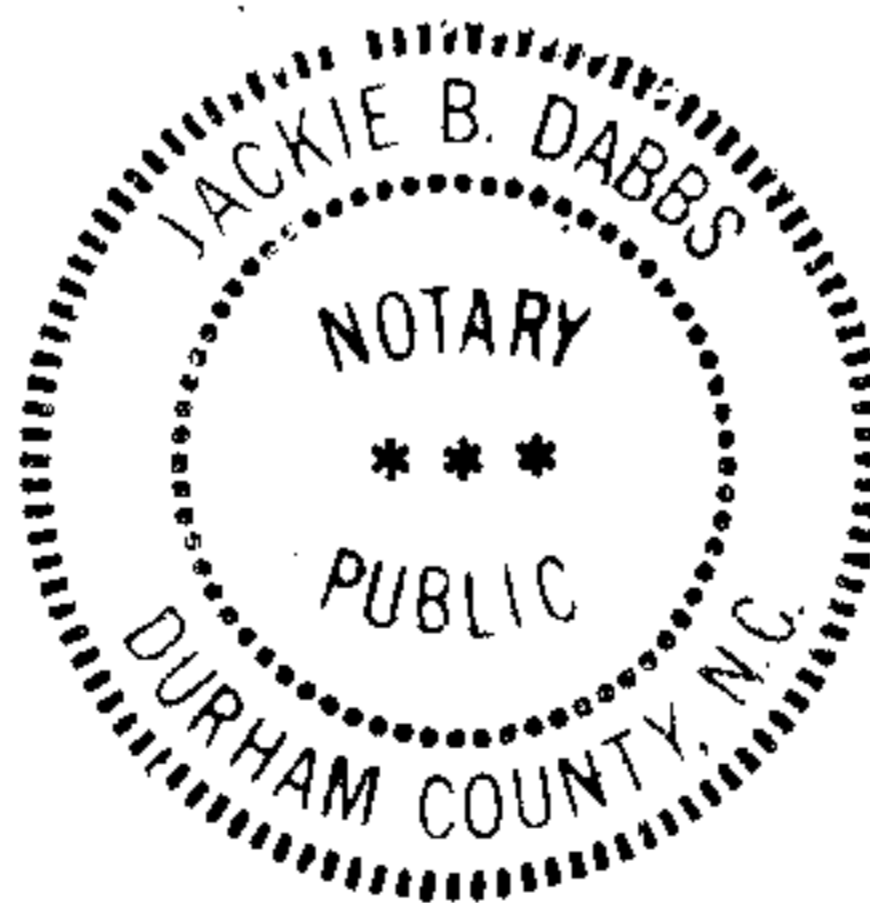
Jackie B. Dabbs

Notary Public

My commission expires:

01/04/08

[NOTARIAL SEAL]



**EXHIBIT A**

**To  
Declaration of Condominium  
Of  
Carolina Pointe I Condominium**

**DESCRIPTION OF LAND AND RECORDED EASEMENTS AND  
LICENSES APPURTENANT THERETO**

**DESCRIPTION OF LAND:**

Being all of Lot 2A as shown on the plan and survey entitled FINAL PLAT FOR CAROLINA POINTE, dated December 12, 2001, by Triangle Surveyors, Inc., and recorded in Plat Book 154, at Page 155, Durham County Registry, to which plat reference is hereby made for a more particular description of same.

**RECORDED EASEMENTS AND DOCUMENTATION APPURTENANT TO THE  
LAND:**

1. All easements shown on the Plats and Plans defined in the foregoing Declaration.
2. Declaration of Easements establishing an easement for a private sanitary sewer line to service property, and to establish cross-easements for ingress, egress, regress and parking, recorded in Book 1510, Page 958, Durham County Registry.
3. Joint Driveway Easement and Maintenance Declaration recorded in Book 3972 at pages 160-163, Durham County Registry.
4. The lien of all taxes for the year 2004 and thereafter which are not yet due and payable.
5. Stormwater Facility Operation and Maintenance Permit Agreement City Version 2-1195 (see Exhibit "D" attached hereto).

**EXHIBIT B**  
**To**  
**Declaration of Condominium**  
**Of**  
**Carolina Pointe I Condominium**

**TABLE OF INTERESTS**

Unit No.	Square Feet of Condo Space	Percentage Share Of Common Elements	Percentage Share of Common Expenses	Number of Votes in the Affairs of the Association
<b><u>First Floor</u></b>				
101	2,659.9	12.2%	12.2%	12
103	3,503.3	16.1%	16.1%	16
104	2,986.4	13.7%	13.7%	14
106	2,355.1	10.8%	10.8%	11
<b><u>Second Floor</u></b>				
201	5,111.6	23.4%	23.4%	23
202	5,193.2	23.8%	23.8%	24
<b>Totals:</b>	<b>21,809.5</b>	<b>100.00 %</b>	<b>100.00 %</b>	<b>100.00</b>

**EXHIBIT C**

**To  
Declaration of Condominium  
Of  
Carolina Pointe I Condominium**

**DESCRIPTION OF REAL ESTATE SUBJECT TO DEVELOPMENT RIGHTS**

NONE.

**EXHIBIT D**

**To  
Declaration of Condominium  
Of  
Carolina Pointe I Condominium**

**STORM WATER FACILITY OPERATION AND MAINTENANCE PERMIT  
AGREEMENT CITY VERSION 2-1195**

A copy of the Storm Water Facility Operation and Maintenance Permit Agreement, City Version 2-1195, date May 24, 2002 and filed at Book 3461, pages 94 – 103, as Instrument # 2002025462, is attached hereto as Exhibit D.

Book 3461/94

Prepared by City of Durham Department of Public Works  
Return to Department of Public Works - Storm Water Services Division

STATE OF NORTH CAROLINA  
COUNTY OF DURHAM

STORMWATER FACILITY OPERATION  
AND MAINTENANCE PERMIT AGREEMENT  
CITY VERSION 2-1195

THIS AGREEMENT, made and entered into this 27<sup>th</sup> day of May, 2002 by and between C.A.I. GROUP III, LLC ("Permittee") and the City of Durham, a North Carolina municipal corporation ("City").

1. Background

a. The City has adopted, and from time to time will adopt, stormwater management ordinances and regulations applicable to certain real property owned by the Permittee. That property is described as follows and is referred to as "the Site", as shown in Plat Book 154, Page 155. Within the Site is certain real property that may be subject to liens pursuant to this agreement. This property is described as follows and is referred to as "the Property": as shown in Plat Book 154, Page 155. Within the Site is a Facility, which is a Sand Filter, designed for the one-year storm, which is located on the north side of the site (east of Farrington Road) commonly known as Carolina Pointe I (NE of Farrington Road and Cleora Drive).

b. Those ordinances and regulations require that when the Site is developed, the owner must operate and maintain a Facility on it. The ordinances further require that, before an occupancy permit may be issued for any structure constructed within a site proposed for development, the owner must enter into an agreement with the City to provide for the operation and maintenance of the Facility. This agreement is intended to comply with that requirement.

c. Definitions. In this agreement: "Director of Public Works" means the employee of the City who is designated by the City as the Director of Public Works or as the Director of Public Works Designee. "City Manager" means the City Manager of the City or any Assistant City Manager of the City. "Facility" means a privately owned on-site engineered stormwater control facility that satisfies the requirements of the City's ordinances and regulations for such facilities. "Permit Agreement" means a stormwater facility operation and maintenance permit agreement executed between a Permittee and the City. "Person" includes natural persons, business trusts, joint ventures, governments, governmental subdivisions, governmental agencies, firms, corporations, associations, partnerships, and other legal commercial entities. "Plans" are plans for a Facility that have been both approved by the Director of Public Works and placed on file in the office of the Director of Public Works. "Transfer" includes sell, convey, assign, alienate, mortgage, and/or make subject to a lien; however, neither a release of a lien (in whole or in part) by a lienholder nor an assignment (in whole or in part) of a lien from a lienholder is a "Transfer". In this agreement, these definitions apply to a defined term only when the initial letter of the term is capitalized.

FOR REGISTRATION REGISTER OF DEEDS  
WILLIE L. COVINGTON  
DURHAM COUNTY, NC  
2002 MAY 31 01:19:54 PM  
BK:8451 PG:94-103 FEE:\$38.00  
INSTRUMENT # 2002025462

2. Fees; Title Opinion; Construction Inspections and Maintenance.

The Permittee shall cause the following to be done:

a. At the time of delivering this agreement executed by the Permittee to the City, pay the stormwater permit fee in the amount determined by the Director of Public Works:

b. Provide to the City an opinion of title of the Site by an attorney licensed to practice law in North Carolina. Upon request of the Director of Public Works, the Permittee shall promptly provide to the City such an attorney's opinion updated to the time of recording this agreement or a memorandum thereof. The opinions shall indicate no liens or encumbrances that the Director of Public Works deems to interfere with the City's having adequate security in accordance with Section 6.

c. Construct the Facility in accordance with the Plans before applying for a certificate of compliance for any structure on the Site, it being agreed that the Site is not eligible for a certificate of compliance until the Facility has been so constructed;

d. Inspect the Facility, perform routine maintenance on the Facility, and make all necessary repairs to the Facility, all as directed by the Director of Public Works. This shall include the following categories:

i. Grass and Vegetative Cover.

A. Design, install, and maintain landscaping around the Facility so that it will not reduce the capacity or hinder the operation and maintenance of the Facility.

B. Maintain the vegetative cover of the Facility to prevent erosion.

C. Except as provided in 2 (d) (1) (D) below, mow the area as needed to prevent the grass and other plants (other than maintained shrubs and trees) from exceeding a height of fifteen (15) inches.

D. Keep open channels free of undesirable growth and maintained to the design cross-section and area as shown on the Plans, and keep the height of the vegetation on the slopes and bottom from exceeding eight (8) inches.

E. Replace landscape materials that fail to live and prosper, as required by the Director of Public Works.

ii. Embankments, Slopes, and Dams. Inspect and repair embankments, slopes, and dams for damage from erosion, sloughing, animal burrows, and woody vegetation.



- iii. Removal and Disposal of Trash, Debris, and Sediment.
- A. Keep the Facility's outlet structure cleared of all blockages.
  - B. Clean the channels and pipes as necessary to provide for the free conveyance of stormwater as designed.
  - C. Remove debris and sediment as needed to maintain the primary outlet capacity and Facility storage volume when the depth of the Facility has been reduced by more than one (1) foot from the design depth, or when the Facility's storage volume has been reduced by twenty percent (20%) from the design volume.
  - D. Remove all sediment from sediment forebays, traps, and basins.
- iv. Insects, Odors, and Algae.
- A. Maintain the Facility in a manner to control odors and algae to the extent that the Director of Public Works determines to be necessary.
  - B. Apply, when and as directed by the Director of Public Works, a larvicide approved by the Durham County Health Department for insect control, and take other measures to control insects as directed by the Director of Public Works.
- v. Fencing. Nothing in this agreement is intended to prevent the Permittee from placing fencing and other security measures on the Property, provided that the Permittee shall first submit information on the proposed construction to the Director of Public Works and obtain her consent. The Director of Public Works shall grant permission if she finds that the fencing and other measures will not interfere with the Facility. Nothing in this agreement is intended to affect the Permittee's obligation, if any, to exercise care with respect to persons who may enter the Site.
- e. Cause the Facility to be inspected, by a registered professional engineer, a registered land surveyor, or a registered landscape architect, on a schedule to be established by the Director of Public Works. The Permittee shall submit the number of copies specified by the Director of Public Works of the inspection reports to the Director of Public Works promptly following each inspection.
- f. If the Director of Public Works reasonably determines that the project that the Permittee has intended for the Site has been abandoned, she shall so notify the Permittee, who shall promptly clean up and repair the Site as directed by the Director of Public Works.

3. **Transfer of the Property.** If the Permittee proposes to Transfer any interest in the Property, the Permittee shall first:

a. Wait until the Director of Public Works has approved the Facility as having been completed in accordance with the Plans before completing the Transfer;

b. Notify the intended Transferee that it is required to execute a Permit Agreement, in a form approved by the Director of Public Works, and request the intended Transferee to execute such an agreement; and

c. If the intended Transferee is an owners' association, unit owner's association, or homeowners' association, arrange for the intended Transferee to provide the Director of Public Works a copy of the association's declaration, with a letter stating the book and page in which the declaration was recorded in the office of Register of Deeds of the counties in which the Property is located. The declaration shall provide:

- i. That the Facility is a part of the common elements and shall be subject to the Permit Agreement;
- ii. That the Permittee's obligations under the Permit Agreement shall receive the highest priority for expenditures by the association except for City and County assessments, ad valorem property taxes, and insurance, and any other expenditures which are required by law to have a higher priority.
- iii. That a separate fund shall be maintained by the association for the reconstruction and repair of the Facility, separate from the fund(s) for routine maintenance of the Facility;
- iv. That the reconstruction and repair fund shall contain at all times the dollar amount reasonably determined from time to time by the Director of Public Works to be adequate to pay for the probable reconstruction and repair cost for a three-year period; that fund shall be listed as a separate line in the association's budget and it shall be kept in an account insured by the FDIC or by another entity acceptable to the Director of Public Works. The funds in that account shall not be commingled with any other funds;
- v. That special assessments shall be charged to each member of the association, to pay for the Permittee's obligations under the Permit Agreement;
- vi. That there shall be no limit on the frequency or dollar amount of such assessments;
- vii. That, to the extent permitted by law, the association shall not enter into voluntary dissolution unless the Facility is Transferred to a Person who has executed a Permit Agreement; and

- viii. That, to the extent permitted by law, the Permittee shall not Transfer, or permit the Transfer of, any interest in the Property until a Permit Agreement has been executed by the intended Transferee.

If the Permittee Transfers, or permits the Transfer of, an interest without complying with this Section 3, that failure to comply shall not invalidate the Transfer, but nothing herein shall be construed to relieve the Transferee of the obligation to comply with this agreement. If the Permittee Transfers, or permits the Transfer of, an interest without complying with this Section 3, the City may in its discretion require the surety referred to in Section 4 to pay the City some or all of the Face Amount (defined in Section 4).

4. Bond. In order to secure the Permittee's obligations under this agreement, the Permittee shall immediately deliver to the City one or more bonds or other instruments in a form, and written by a surety, which are satisfactory to the City, in the amount of Twenty-five thousand, seven hundred and eighty-five dollars (\$25,785.00) ("the Face Amount"), which is twenty (20) times the average annual maintenance cost estimated by the Director of Public Works. The bond or other instrument shall remain in effect permanently unless the City of Durham (by its City Manager) and the Permittee execute an agreement, under the official seal of the City of Durham, stating "The Permittee's obligation under Section 4 of the Stormwater Facility Operation and Maintenance Permit Agreement made on [date] between the City of Durham and [name of Permittee] to provide a bond or other instrument has been changed as follows [stating the new requirement or that it has been eliminated]." If the Director of Public Works notifies the Permittee that a surety is unacceptable to the Director of Public Works, the Permittee shall, within thirty (30) days substitute an acceptable surety or pay the City the Face Amount.

5. Right of Entry on Site. The Permittee hereby grants to the City the right of ingress, egress, and regress over and across the Site for the purpose of inspecting the Facility and for the purpose of correcting, repairing, replacing, and maintaining the Facility and exercising the other rights of the City that are provided for by this agreement.

6. Remedies for Violations; Lien on Property; Future Obligations Secured.

a. If the Permittee fails to perform its obligations under this agreement, the City may send notice to the Permittee to demand that it so perform. If the Permittee fails to comply with such demand within thirty (30) days from the date of mailing thereof, the City may enter the Site and perform some or all of the work that the Permittee was required to do in carrying out its obligations under this agreement, and the City may do any of such work as the Director of Public Works deems appropriate to place the Facility in proper working condition. The Permittee shall pay the City for the cost incurred by the City to do that work, including reasonable amounts,

calculated under procedures established by the Director of Public Works, for the City's overhead and use of City employees, equipment, and property. Interest shall accrue on those monetary obligations of the Permittee at the rate of one and one-half percent (1 - ½%) per month. Without limiting other remedies available to the City, including recourse to the bond or other instrument referred to in Section 4, it is agreed that those monetary obligations shall be a lien on the Property and may be collected as unpaid taxes in accordance with N.C.G.S. 160A-193.

b. This agreement may be enforced by injunctive relief in addition to other remedies available to the City. The remedies provided by this Section 6 are cumulative, and are in addition to any other remedies available to the City. By way of example, and not of limitation: whether or not the provisions of Section 3 are complied with, the City shall have all of the rights and remedies not prohibited by this agreement, provided that the City may not obtain double recovery.

c. The Permittee shall pay an attorney's fee of fifteen percent (15%) of the outstanding balance if the balance is collected by or through an attorney at law. The liability of a surety or other Person guaranteeing the Permittee's obligations under this agreement shall include said attorney's fees.

#### 7. Release of Lien by Certificate.

a. **Duty to Furnish a Certificate --** On the request of any of the Persons prescribed in subdivision (a) (i) below, and upon the condition prescribed by subdivision (a) (ii) below, the Director of Public Works shall furnish a written certificate stating the amount of any monetary liabilities owed by the Permittee to the City pursuant to this agreement (together with any interest and costs accrued thereon) that are a lien on the Property.

i. **Who May Make Request --** Any of the following Persons shall be entitled to request the certificate:

- A. An owner of the Property;
- B. An occupant of the Property;
- C. A Person having a lien on the Property;
- D. A Person having a legal interest or estate in the Property;
- E. A Person having a contract to purchase or lease the Property or a Person having contracted to make a loan secured by the Property;
- F. The authorized agent or attorney of any Person described in subdivisions (a) (i) (A) through (E) above.

ii. **Duty of Person Making Request --** The Director of Public Works shall not be required to furnish a certificate unless the Person making the request specifies the name of the Permittee, specifies the Book and Page in the office of Register of Deeds where this agreement or a memorandum thereof is recorded, and provides a copy of the first page of this agreement.

b. **Reliance on the Certificate** -- When a certificate has been issued as provided in Section 7(a) above, all monetary liabilities owed pursuant to this agreement that have accrued against the Property for the period covered by the certificate shall cease to be a lien against the Property, except to the extent of monetary liabilities stated to be due in the certificate, as to all Persons obtaining such a certificate and their successors in interest who rely on the certificate:

- i. By paying the amount of monetary liabilities stated therein to be a lien on the Property;
- ii. By purchasing or leasing the Property; or
- iii. By lending money secured by the Property.

c. Without limiting the effect of this Section 7, it is agreed that no oral statement made by any City employee as to the amount of monetary liabilities that are a lien on the Property pursuant to this agreement shall bind the City.

8. **Warranty.** The Permittee covenants with the City, that Permittee is seized of the Property in fee simple, has the right to convey the same in fee simple, that title is free and clear of all encumbrances, and that Permittee will warrant and defend the title against the lawful claims of all persons whomsoever except for the exceptions stated in the attorney's opinion of title provided in accordance with Section 2 (b) above.

9. **Notice.** When a notice is required or permitted by this agreement, it shall be given in writing to the City delivered to the Director of Public Works, 101 City Hall Plaza, Durham, NC 27701, or upon the Permittee, at C.A.I. GROUP III, LLC, 312 Cloister Court, Chapel Hill, NC 27514, Attention: Chris Howlett (919) 490-8040. If mailed, the notice shall be by certified mail, return receipt requested. These addresses may be changed by sending a notice of the new address attached to a copy of this agreement.

10. **No Waiver of Breach.** If the City waives any breach of any obligation or covenant in this agreement, that waiver shall not constitute a waiver of any other or future breach of the same or any other obligation or covenant. The City's failure to exercise any right under this agreement shall not constitute a waiver of that right.

11. **Binding Effect.** This agreement and all the covenants in it shall run with the Site and shall bind all owners of any interest in the Site. By way of example and not limitation, all owners of any interest in the Property shall be jointly and severally liable to fulfill the Permittee's obligations under this agreement as if each of them were the Permittee. Unless the context otherwise requires, the term "Permittee" in this agreement includes all such owners.

12. Benefit of this Agreement.

a. The approval by the City or any employee of the City of any Plans or of any work referred to in this agreement shall not create any liability in the City or its officers, officials, or employees for the Plans or the work; but nothing herein is intended to release any other Person for any liability for those Plans or work.

b. The performance by the City or any employee of the City of any work referred to in this agreement shall not create any liability in the City or its officers, officials, or employees for the work; but nothing herein is intended to release any other Person for any liability for that work.

c. Except to the extent otherwise explicitly provided in this agreement, this agreement is not intended to be for the benefit of any Person other than the parties hereto and their heirs, successors, and assigns.

13. Interpretation of this Agreement. Unless the context requires otherwise, the singular includes the plural, the plural includes the singular, and the neuter includes the masculine and feminine. The captions and titles are for convenience only, and are not to be used to interpret the Agreement. The words include and including mean, respectively, include but not limited to, and including but not limited to.

14. Nondiscrimination Policy. The City of Durham opposes discrimination on the basis of race and sex and urges all of its contractors to provide a fair opportunity for minorities and women to participate in their work force and as subcontractors and vendors under City contracts.

15. Severability. Invalidation of any term or provision in this agreement by a court of competent jurisdiction shall not invalidate the remaining terms and provisions.

IN WITNESS WHEREOF, the parties hereto have respectively set their hands and seals, or if corporate, have executed this under seal by their proper officers, the date first above written.

C.A.I. GROUP III, LLC

Manager: [Signature]  
Printed Name: LOUIS P. GONZALEZ

STATE OF NORTH CAROLINA

COUNTY OF DURHAM

I, Joyce Tilley Hill, a notary public for said County and State, certify that: Louis P. Gonzalez personally appeared before me this day, (1) stated that he or she is a manager of, C.A.I. GROUP III, LLC, a limited liability company organized and existing under the laws of North Carolina, (2) acknowledged that the foregoing instrument carries on in the usual way the business of the LLC and (3) acknowledged execution of the foregoing contract/deed under seal with the City of Durham on behalf of said company.

This the 22<sup>ND</sup> day of April, 2002

Joyce Tilley Hill  
Notary Public

My commission expires: 9/30/2003

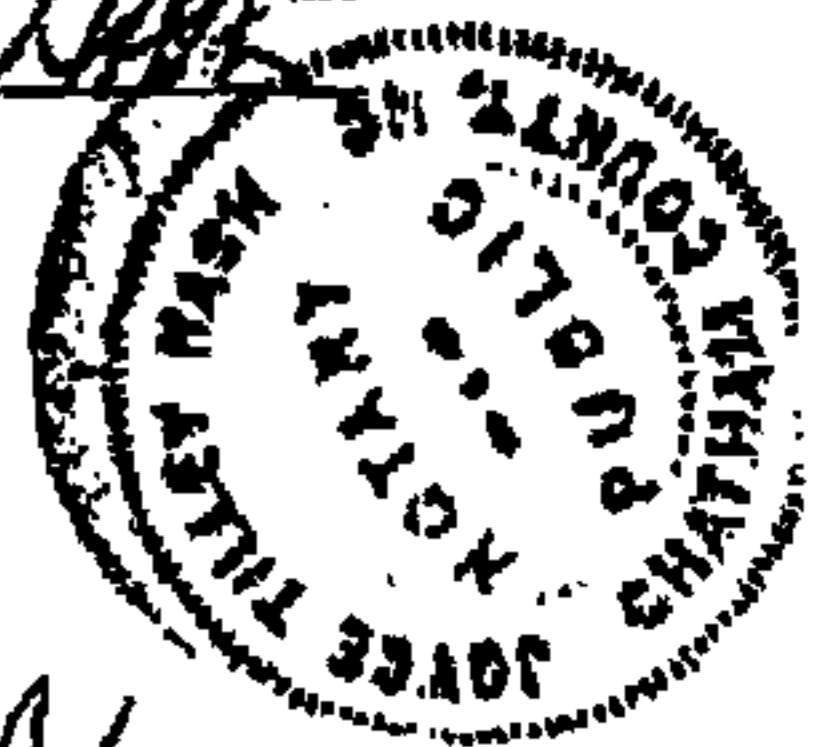
ATTEST:

By: Linda E. Pratcher  
Deputy City Clerk  
[Affix Municipal Seal]



CITY OF DURHAM

[Signature]  
City Manager



STATE OF NORTH CAROLINA

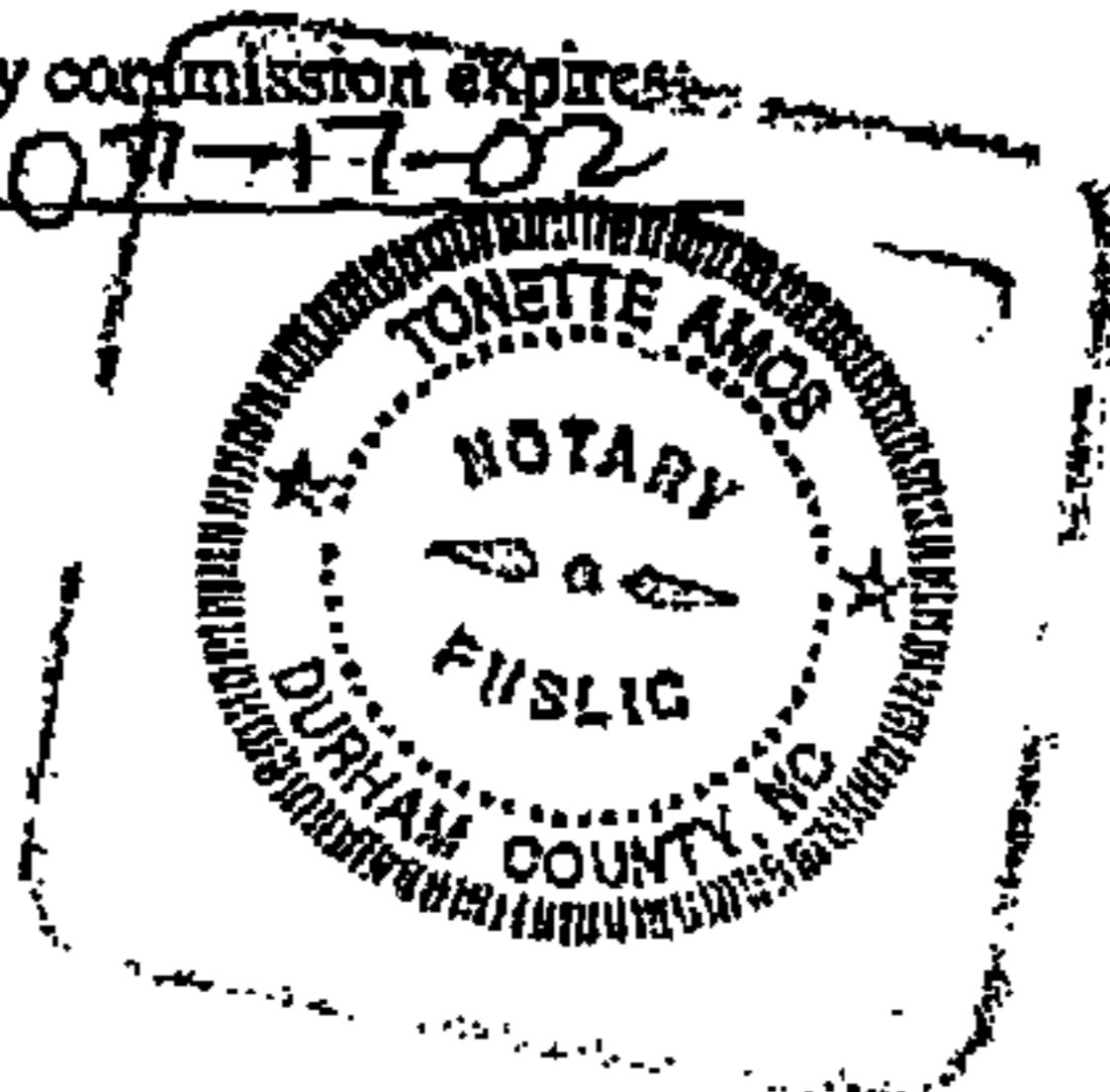
COUNTY OF DURHAM

I, Tonette Amos, a notary public in and for the County of Durham, North Carolina certify that Linda E. Pratcher personally appeared before me this day and acknowledged that he/she is City Clerk of the CITY OF DURHAM, a municipal corporation, and that by authority duly given and as the act of the City, the foregoing contract was signed in its name by its — City Manager, sealed with its corporate seal, and attested by himself/herself as its said City Clerk or Deputy City Clerk.

Witness my hand and notarial seal, the 24 day of May, 2002

My commission expires: 07-17-02

Tonette Amos  
Notary Public



This instrument has been produced in the manner required by the Local Government Budget and Fiscal Control Act.

-9- [Signature]  
FINANCE OFFICER

5/2/02  
DATE



WILLIE L. COVINGTON  
 REGISTER OF DEEDS, DURHAM COUNTY  
 DURHAM COUNTY COURTHOUSE  
 200 E. MAIN STREET  
 DURHAM, NC 27701

Filed For Registration: 05/31/2002 01:19:54 PM  
 Book: RE 3461 Page: 94-103  
 Document No.: 2002025462  
 AGMT 10 PGS \$38.00

Recorder: CYNTHIA Y FRAZIER

State of North Carolina, County of Durham

The foregoing certificates of JOYCE TILLEY NASH, TONETTE AMOS Notaries are certified to be correct. This 31  
 ST of May 2002

WILLIE L. COVINGTON, REGISTER OF DEEDS

By: Cynthia Y Frazier  
 Deputy/Assistant Register of Deeds



2002025462



**EXHIBIT E**

**To  
Declaration of Condominium  
Of  
Carolina Pointe I Condominium**

**JOINT DRIVEWAY EASEMENT AND MAINTENANCE DECLARATION**

A copy of the Joint Driveway Easement and Maintenance Declaration filed on June 27, 2003 in Book 3972 at pages 160 – 162 in the Durham County Registry as Instrument # 2003039306.

A copy of this Declaration is attached hereto.

FOR REGISTRATION REGISTER OF DEEDS  
WILLIE L. COVINGTON  
DURHAM COUNTY, NC  
2003 JUN 27 12:52:49 PM  
BK: 3972 PG: 160-163 FEE: \$20.00  
INSTRUMENT # 2003039306

Prepared by and return to: Anne Page Watson, Attny; 3500 Westgate Drive, Suite 604, Durham, NC 27707

### **JOINT DRIVEWAY EASEMENT AND MAINTENANCE DECLARATION**

**THIS JOINT DRIVEWAY EASEMENT AND MAINTENANCE DECLARATION** (hereinafter referred to as the "Declaration") is made this the 27 day of June, 2003, by CAI GROUP III, LLC, a North Carolina Limited Liability Company (hereinafter referred to as "Declarant");

#### **RECITALS**

- A) Declarant is the owner of three (3) tracts of certain real property located in the City of Durham, Durham County, State of North Carolina, and being more particularly described in Plat Book 154, at Page 155, Durham County Registry, as Lots 1A, 2A and 3A, as per the survey thereof by Triangle Surveyors, RLS, entitled, "Carolina Pointe," and dated October 15, 2001 (hereinafter referred to as the {"Property"}), to which plat and survey reference is hereby made for a more particular description of same.
- B) Declarant, by and through this Declaration, desires to grant the persons and parties named herein below, unless otherwise provided, the right of ingress and egress to and from the Property.
- C) Declarant has constructed and intends to further construct certain free-standing office buildings on the property described herein.
- D) Declarant desires to grant to declarant, its employees, agents, business invitees, tenants, licensees and customers, and its successors and assigns an easement appurtenant for ingress and egress purposes only, over and upon the portion of the Property designated on Plat Book 154, at Page 155 as the ingress and egress easement.
- E) Declarant desires that the owners of the certain Property maintain the joint driveway.

**NOW, THEREFORE**, the Declarant, being the duly authorized owner of the Property, hereby declares as follows:

- 1) **Grant of Easement**: Declarant hereby grants to the owner and tenants of Lot 1A, Lot 2A, and Lot 3A of the Property an easement appurtenant for the purposes of ingress and egress to and from the Property along and with a joint driveway. The exact location of the easement is described with more particularity on Plat Map 154, at Page 155, Durham County Registry.
- 3) **Maintenance of Driveway Area**: The parties hereto agree to maintain the joint driveway, and each owner shall be obligated to pay for one-third of the costs associated with maintaining the joint driveway. In the event that the joint driveway is subjected to unusual wear and tear, any owner so desiring repair and maintenance of such condition shall cause a written notice of such need to each owner. The receivers of said notice of repair shall respond to the notice in writing within sixty (60) days. Unless set forth in the response to the notice of repairs, any objections by the receiving party shall be waived and said parties shall be obligated for their portion of the costs associated with repairing the unusual wear and tear of the joint driveway.
- 4) **No Obstructions**: Declarant hereby agrees that no improvement shall be constructed, erected or otherwise maintained on the Property so as to block off the free flow of pedestrian and vehicular traffic to and from the joint driveway located on the Property described herein above, except temporarily for the purposes of maintenance and repair, as long as the right granted by this document is in full force and effect.
- 5) **Headings**: The headings set forth herein are for convenience and reference only and in no way define and limit the scope and content of this Agreement or in any way effect the provisions contained therein.
- 6) **No Waiver**: The failure of any party to this Agreement in any one or more instances to insist upon compliance with any provision or covenant contained herein or to exercise any right or privilege herein shall not constitute or be construed as a waiver of such or any similar provision or covenant, including the right to cure a breach or default, but the same shall continue and remain in full force and affect, as if no such forbearance has occurred.
- 7) **Remedies**: It is hereby declared that irreparable harm will result to the parties and to the beneficiaries of this Agreement by reason of any breach or default of the provisions or covenants contained herein and, therefore, each party or other beneficiary shall be entitled to relief by way of injunction, specific performance, and/or appropriate legal action.
- 8) **Applicable Law**: This Agreement shall be governed by North Carolina law without regard to the principles of conflict of laws.

IN WITNESS WHEREOF, the Declarant has hereto set its hand and seal on the day and year first aforesaid.

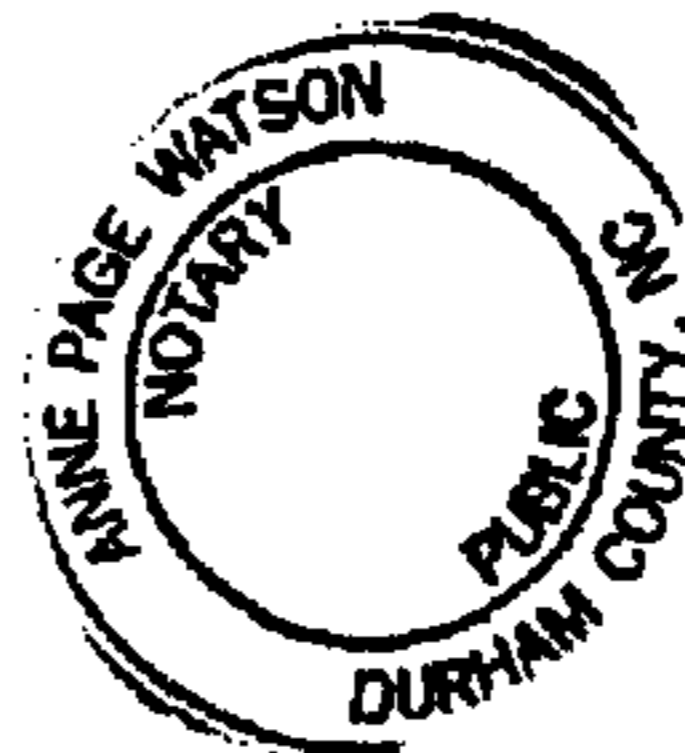
By: [Signature] MGR  
CAI Group III, LLC, Declarant

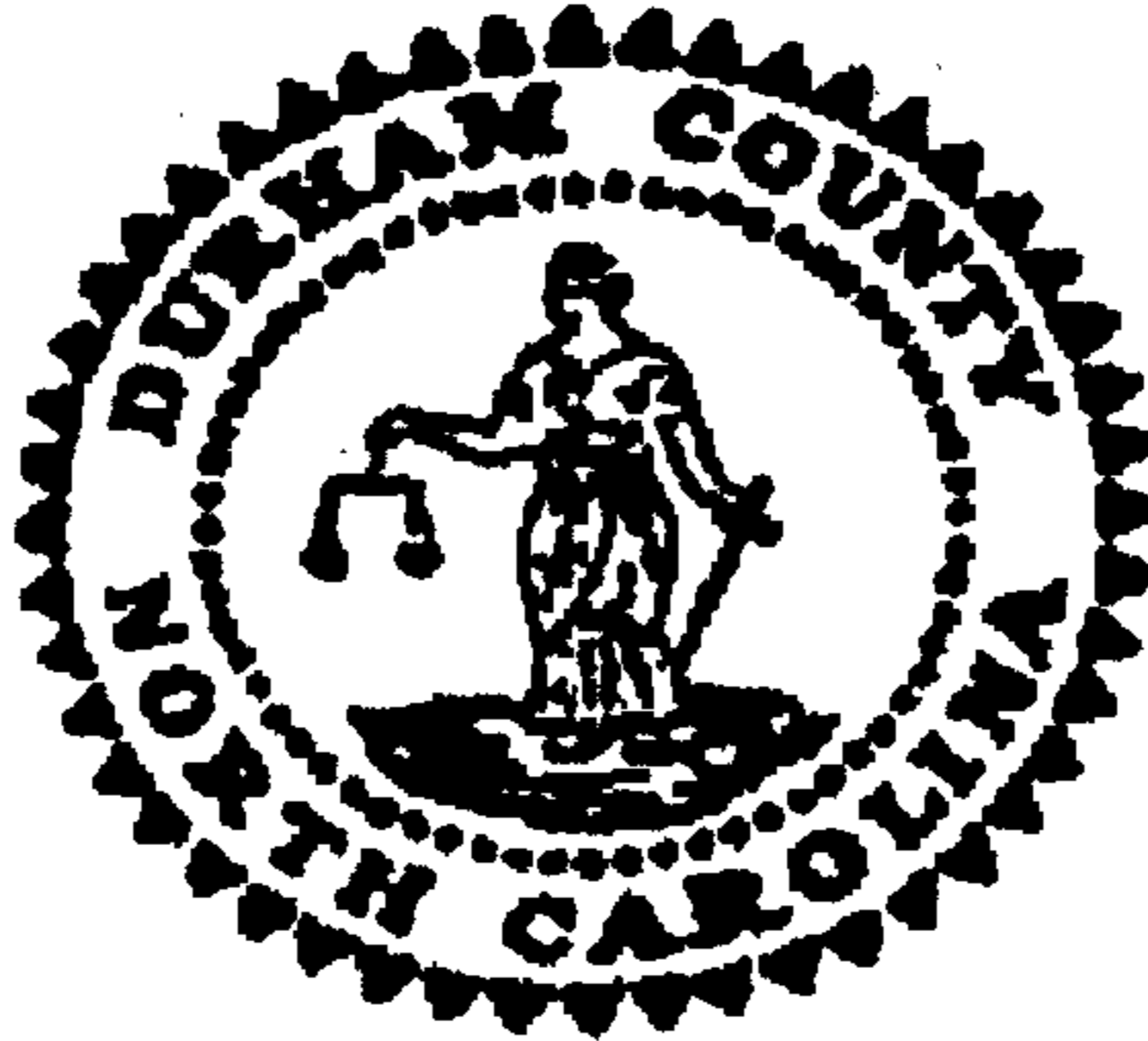
STATE OF NORTH CAROLINA  
COUNTY OF DURHAM

I, Notary Public, certify that Louis P. Gonzalez personally came before me this day and acknowledged that he is the Manager of CAI Group, III, LLC, a limited liability company, and that he/she, as Manager, being authorized to do so, executed the foregoing on behalf of the corporation. Witness my hand and official seal, this the 27 day of ~~December, 2002~~ June, 2003

[Signature]  
Notary Public

My Commission Expires: 10-20-03





WILLIE L. COVINGTON  
REGISTER OF DEEDS , DURHAM COUNTY  
DURHAM COUNTY COURTHOUSE  
200 E. MAIN STREET  
DURHAM, NC 27701

\*\*\*\*\*  
Filed For Registration: 06/27/2003 12:52:49 PM

Book: RE 3972 Page: 160-163

Document No.: 2003039306

DECL 4 PGS \$20.00

Recorder: GAIL BAKER

\*\*\*\*\*  
State of North Carolina, County of Durham

The foregoing certificate of ANNE PAGE WATSON Notary is certified to be correct. This 27TH of June 2003

WILLIE L. COVINGTON , REGISTER OF DEEDS

By: \_\_\_\_\_

*Gail Baker*  
Deputy/Assistant Register of Deeds  
\*\*\*\*\*



2003039306

**EXHIBIT F**

**To  
Declaration of Condominium  
Of  
Carolina Pointe I Condominium**

**UNIT 106 AND VISITOR PARKING SPACES**

**The only parking allocated pursuant to this declaration is shown on the attached map.**

# LEGEND

**P** = UNIT 106 DESIGNATED PARKING

**[REDACTED]** = SITES TO BE LABELED "VISITOR" PARKING

• PARKING REQUIRED : 39,256/250 X 1 SPACE=157 SPACES

• TOTAL ON SITE PARKING PROVIDED:

- 114 REGULAR SPACES
- 37 COMPACT SPACES
- 4 HANDICAP SPACES (1 VAN ACCESSIBLE)
- 155 TOTAL SPACES

NOTE: THERE ARE 200 SPACES TOTAL, INCLUDING THE SITE TO THE SOUTH, WHICH REQUIRE 8 HANDICAP SPACES. SIX TOTAL ARE PROVIDED.

• DEVELOPER REQUEST A REDUCTION IN REQUIRED PARKING OF TWO (2) SPACES.

• BICYCLE SPACES REQUIRED: 8  
BICYCLE SPACES PROVIDED: 9

• ANY DEDICATION OF RIGHT-OF-WAY NOTED ON THE DEVELOPMENT PLAN, OR OTHERWISE REQUIRED FOR OFF-SITE IMPROVEMENTS, MUST BE DEDICATED PRIOR TO THE ISSUANCE OF ANY BUILDING PERMIT. A COPY OF THE RECORDED PLAT MUST BE SUBMITTED WITH THE FIRST BUILDING PERMIT APPLICATION.

REQUIREMENTS OF SECTION 8.1.15.

ALL CONSTRUCTION SHALL CONFORM TO LATEST CITY OF DURHAM STANDARDS. STATE WATER AND/OR SEWER PERMITS ARE REQUIRED. THE CITY OF DURHAM ENGINEERING DEPARTMENT SHALL REVIEW AND APPROVE THE CONSTRUCTION DRAWINGS PRIOR TO SUBMITTING THEM TO THE STATE FOR APPROVAL.

• NCDOT DRIVEWAY PERMIT REQUIRED PRIOR TO CONSTRUCTION. CONTACT NCDOT AT 560-6854.

• SQUARE FOOTAGE OF PARKING=47873 SF ±

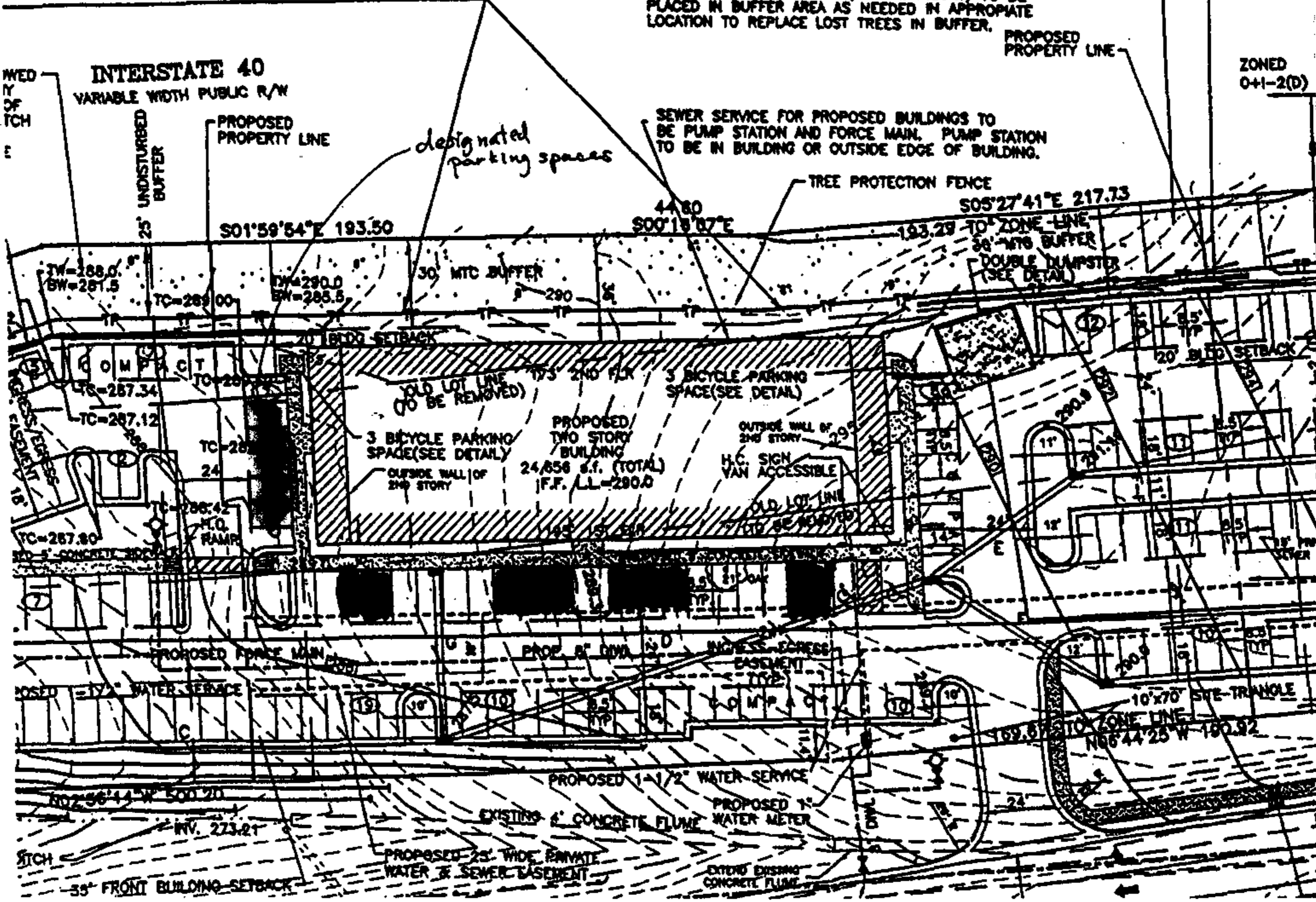
• NO LOADING DOCKS WILL BE PERMITTED WITHOUT SCREENING.

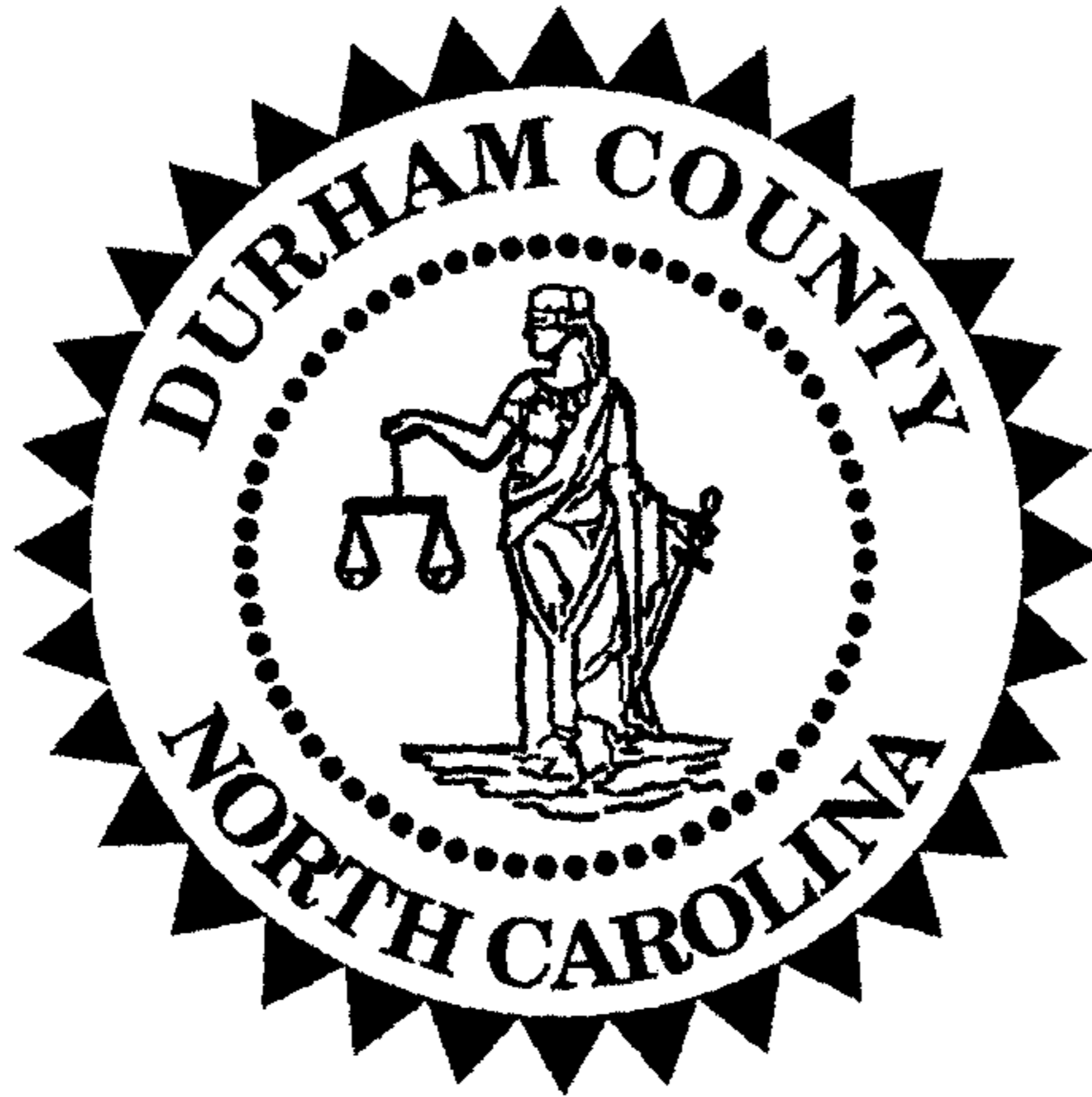
• DIMENSIONS SHOWN FOR PARKING ARE FROM FACE OF CURB TO FACE OF CURB UNLESS OTHERWISE SHOWN.

• THE CLEORA DRIVE RIGHT-OF-WAY ON THIS SITE WAS WITHDRAWN FROM DEDICATION ON DECEMBER 20, 2000 PER DEED BOOK 2968 PAGE 309-311.

NO GRADING TO BE ALLOWED IN 25' BUFFER AREA. ANY GRADING ON EAST SIDE OF RETAINING WALL WILL MATCH EXISTING GRADES AT OR BEFORE 25' BUFFER LINE

NOTE:  
30 ADDITIONAL RIVER BIRCH TREES (10'-12' HEIGHT) AND 50 LEYLAND CYPRESS (5' MIN. HEIGHT) TO BE PLACED IN BUFFER AREA AS NEEDED IN APPROPRIATE LOCATION TO REPLACE LOST TREES IN BUFFER.



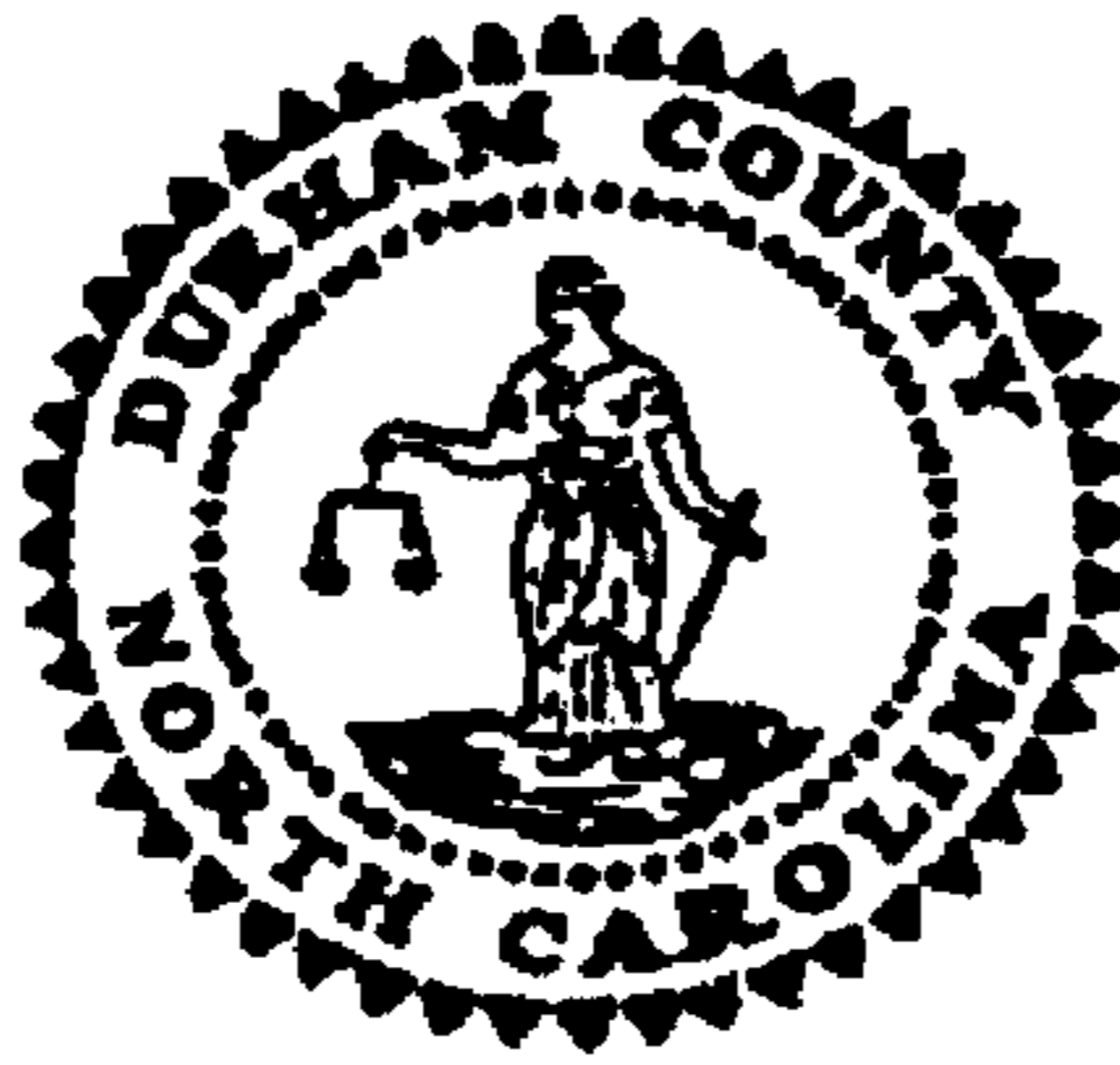


**Office of Register of Deeds**

**PAGE(S) ASSIGNED IN ERROR**

**BOOK4667 PAGE686**





WILLIE L. COVINGTON  
REGISTER OF DEEDS, DURHAM COUNTY  
DURHAM COUNTY COURTHOUSE  
200 E. MAIN STREET  
DURHAM, NC 27701

**PLEASE RETAIN YELLOW TRAILER PAGE**

It is part of recorded document, and must be submitted with original for re-recording  
and/or cancellation.

\*\*\*\*\*

Filed For Registration: 01/10/2005 04:13:25 PM  
Book: RE 4667 Page: 623-687  
Document No.: 2005001408  
DECL 65 PGS \$203.00  
Recorder: SHARON M CEARNEL

\*\*\*\*\*

State of North Carolina, County of Durham

The foregoing certificate of SHARON MAGERS , VERONICA S. ROCKWELL , JACKIE B. DABBS Notaries are  
certified to be correct. This 10TH of January 2005

WILLIE L. COVINGTON , REGISTER OF DEEDS

By: Sharon M Cearnel  
Deputy ~~Register~~ Register of Deeds

\*\*\*\*\*



2005001408