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WILLIE L. COVINGTON
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Prepared by and mail to: Anne Page Watson
3500 Westgate Dr. Ste. 604, Durham, N.C. 27707

DECLARATION OF CAROLINA POINTE II CONDOMINIUM

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DECLARATION OF CAROLINA POINTE II CONDOMINIUM

ARTICLE I

SUBMISSION: DEFINITIONS

SECTION 1.1. SUBMISSION OF PROPERTY. C.A.I. GROUP IV, LLC, ("Declarant") owner in fee simple of the real estate described in Exhibit A, located within Durham County, North Carolina, hereby submits such real estate, 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 II CONDOMINIUM" and "CAROLINA POINTE II OWNERS' ASSOCIATION, INC." ("Condominium")

SECTION 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 7 of this Declaration and shown on Exhibit B.

b. "Association" means the CAROLINA POINTE II 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 1.2.y of this Article I.

e. "Common Expenses" means the expenses or financial liabilities for the operation of the Condominium. These include:

(i) expenses of administration, maintenance, repair or replacement of the Common Elements, including utility charges attributable to Common Elements and the stormwater facility bond required by the City of Durham;

(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.

f. "Condominium" means the real property described in Exhibit A subject to the Declaration of the CAROLINA POINTE II, a Condominium.

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 IV, INC., or its successor as defined in Section 47C-1-103(9) of the Condominium Act.

i. "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 and to add real estate to the Condominium.

j. "Declarant Control Period" means the period prior to the earlier of thirty (30) days after conveyance of seventy-five percent (75%) of the Units which may be created to Unit Owners other than the Declarant or three (3) years after the recording of the initial Declaration, subject to the provisions of N.C.G.S. Sec. 47C-3-103.

k. "Director" means a member of the Executive Board.

l. "Executive Board" means the board of directors of the Association.

m. "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.

n. "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.

o. "Majority or Majority of Unit Owners" means the owners of a minimum of Sixty-seven percent (67%) of the votes in the Association.

p. "Manager" means a person, firm or corporation employed or engaged to perform management services for the Condominium and the Association.

q. "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.

r. "Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, government subdivision or agency, or other legal or commercial entity.

s. "Plats and Plans" means the Plats and Plans recorded simultaneously with this Declaration in Condo Book 5, Page 296, 298, 300, Durham County Registry, and constituting a part hereof, as the same may be amended from time to time.

t. "Property" means the land, all improvements, easements, rights and appurtenances, which have been submitted to the provisions of the Condominium Act by this Declaration.

u. "Public Offering Statement" means the current document prepared pursuant to Section 47C-4-103 of the Condominium Act as it may be amended from time to time, and provided to purchasers prior to the time of execution of a purchase agreement.

v. "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.

w. "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.

x. "Special Declarant Rights" means the rights reserved for the benefit of a Declarant to:

(i) complete improvements indicated on the Plats and Plans filed with the Declaration;

(ii) exercise any Development Rights;

(iii) maintain sales offices, management offices, signs

advertising the Condominium, and models;

(iv) use easements through the Common Elements for the purpose of making improvements within the Condominium or within real estate that may be added to the Condominium; or

(v) appoint or remove any officer of the Association or any Executive Board member during the Declarant Control Period.

y. "Stormwater Facility" means that certain privately-owned on-site engineered stormwater control facility that satisfies the requirements of the City of Durham's ordinances and regulations for such facilities, as more particularly described in Article 25 of this Declaration.

z. "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.

a.a. "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.

b.b. "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. The Declarant is the initial owner of any Unit created by this Declaration.

ARTICLE 2

MAXIMUM NUMBER OF UNITS; BOUNDARIES

SECTION 2.1. MAXIMUM NUMBER OF UNITS. The Condominium upon creation contains (15) Units. As additional Units are added, added, it will contain the number of Units listed in the most current Exhibit B.

SECTION 2.2. BOUNDARIES. Boundaries of each Unit created by this Declaration are shown on the Plats and Plans as numbered Units with their identifying number and are described as follows:

- a. **Upper Boundary:** The horizontal or sloping plane or planes of the unfinished lower surfaces of the ceiling bearing structure surfaces, beams and rafters, extended to an intersection with the vertical perimeter boundaries.
- b. **Lower Boundary:** The horizontal plane or planes of the undecorated or unfinished upper surfaces of the floors extended to an intersection with the vertical perimeter boundaries and open, horizontal, unfinished surfaces of trim, sills and structural components.
- c. **Vertical Perimeter Boundary:** The planes defined by measuring from the outside of the outside walls to the centerline of the common corridor, if any, and from the outside of the outside walls to the centerline of a demising partition.
- d. **Inclusions:** Each Unit will include the spaces and improvements lying within the boundaries described in Subsections 2.2.a, b and c above, and will also include the spaces and improvements within such spaces containing any space heating, water heating and air conditioning apparatus, smoke detector systems and all electrical switches, wiring (to its connection with the individual meter serving a Unit), pipes (to the connectors with the main service line), ducts, conduits, smoke detector systems, telephone, and electrical receptacles and light fixtures and boxes or meters serving that Unit exclusively, the surface of the

foregoing being the boundaries of such Unit, whether or not such spaces are contiguous. All doors, windows, lath, wallboard, plasterboard, plaster, paneling, tile, wallpaper, paint and other materials constituting any part of the finished surfaces thereof, shall be a part of the Unit.

e. Exclusions: Except when specifically included by other provisions of Section 2.2, the following are excluded from each Unit: The spaces and improvements lying outside of the boundaries described in Subsections 2.2 a, b, and c above; and all chutes, pipes, flues, ducts, wires, conduits, skylights and other facilities running through or within any interior wall or partition for the purpose of furnishing utility and similar services to other Units and Common Elements or both.

f. 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.

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

ARTICLE 3

LIMITED COMMON ELEMENTS

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

a. If a chase, chute, flue, pipe, duct, wire, conduit, bearing wall, bearing column, or other fixture lies partially within and partially outside the

designated boundaries of a Unit, the portion serving only the Unit is a Limited Common Element, allocated solely to the Unit, the use of which is limited to that Unit, and any portion thereof serving more than one Unit or a portion of the Common Elements is a part of the Common Elements.

b. Any exterior door or window or other fixture designed to serve a single Unit that is located outside of the boundaries of the Unit, is a Limited Common Element allocated exclusively to the Unit and its use is limited to that Unit.

c. Elevators, stairways, landings, hallways, and entrance ways, the use of which is limited to certain Units as shown on the Plats and Plans.

d. Utility areas, the use of which is limited to the Unit or Units as shown on the Plats and Plans.

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 allocated to the units served. If the HVAC serves more than one unit, the cost, maintenance and utility charges shall be borne by the respective Unit Owners in the proportionate interest as between the Unit Owners who are serviced by the HVAC system, calculated pursuant to Section 7.2 herein.

g. Attic space directly above a Unit shall be a Limited Common Element with respect to such Unit.

ARTICLE 4

MAINTENANCE, REPAIR AND REPLACEMENT

SECTION 4.1. COMMON ELEMENT. The Association will maintain, repair and replace all of the Common Elements, except the portions of the Limited Common Elements which are required by this Declaration to be maintained, repaired or replaced by the Unit Owners.

SECTION 4.2. UNITS. Each Unit Owner shall maintain, repair and replace, at 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.

SECTION 4.3. LIMITED COMMON ELEMENTS. Any Common Expenses associated with the maintenance, repair or replacement of heat exchanger, heat outlet, enclosures and mechanical attachments will be assessed against the Unit or Units to which the Limited Common Element is assigned.

Common Expenses associated with the maintenance, repair or replacement of components and elements attached to or a part of elevators, stairways, landings, hallways, and entrance ways, exterior doors and windows will be assessed against the Unit or Units to which the Limited Common Element is assigned. No additional component or element may be attached without consent of the Executive Board upon approval by the covenants control committee, if any. In the event such additional component or element becomes deteriorated or unsightly or is inconsistent with conditions of installation it may be removed or repaired at the Unit Owner's expense as a Common Expense assessment under this Section, after Notice and Hearing. If any such Limited Common Element is assigned to more than one Unit, the Common Expenses attributable to the Limited Common Element will be assessed equally among the Units to which it is assigned.

Common Expenses associated with the cleaning, maintenance repair or replacement of all other Limited Common Elements will be assessed against all Units in accordance with their Allocated Interests in the Common Expenses.

SECTION 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 of the Common Elements, and for the purpose of performing installations, alterations or repairs, 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.

SECTION 4.5. REPAIRS RESULTING FROM NEGLIGENCE. 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 expense is caused by misconduct, it will be assessed following Notice and Hearing.

ARTICLE 5

SUBSEQUENTLY ALLOCATED LIMITED COMMON ELEMENTS

Those portions of the Common Elements now or hereafter improved as parking spaces, may be subsequently allocated as Limited Common Elements in accordance with Subsection 6.1.c and Article 10 of this Declaration, or may be assigned by Rules and Regulations of the Executive Board, or may be limited by Rules and Regulations to visitors only.

ARTICLE 6

DEVELOPMENT RIGHTS AND OTHER SPECIAL DECLARANT RIGHTS

SECTION 6.1. RESERVATION OF DEVELOPMENT RIGHTS. The Declarant reserves the following Development Rights:

- a. The right by amendment, to add any or all portions of the real estate described in Exhibit C attached hereto ("Additional Land") to the Condominium.
- b. The right by amendment, to add and create Units, Common Elements, and Limited Common Elements within the Condominium, including the Additional Land.
- c. The right by amendment, to allocate as Limited Common Elements parking spaces per net usable square feet per unit as shown on the Plats and

Plans and assign them to particular Units. No assurance is given that such spaces will be allocated however.

d. 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 to be constructed on the Additional Land. 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.

e. The right to withdraw unimproved real estate from the Condominium.

SECTION 6.2 LIMITATIONS ON DEVELOPMENT RIGHTS. The Development Rights reserved in Section 6.1 are limited as follows:

a. The Development Rights may be exercised at any time but not more than twenty-five (25) years after the recording of the initial Declaration.

b. Not more than twenty five (25) additional units may be created under the Development Rights.

c. All Units and Common Elements created pursuant to the Development Rights will be restricted to medical/dental/professional/office uses and such other uses as are incidental to the maintenance of medical/dental/professional/offices, and as permitted by applicable zoning codes.

SECTION 6.3. PHASING OR DEVELOPMENT RIGHTS. No assurances are made by the Declarant regarding the addition or creation of additional Units, Common Elements, or Limited Common Elements within the Condominium. No assurances are made by the Declarant regarding the Additional Land as to the portions of the Additional Land in which the Declarant will exercise its Development Rights or the order in which such portions, or all of the Additional Land, will be added. The exercise of Development Rights as to some portions will not obligate the Declarant to exercise them

as to other portions.

SECTION 6.4. SPECIAL DECLARANT RIGHTS. The Declarant reserves the following Special Declarant Rights, to the maximum extent permitted by law, which may be exercised, where applicable, anywhere within the Condominium:

- a. To complete improvements indicated on the Plats and Plans filed with the Declaration.
- b. To exercise a Development Right reserved in the Declaration.
- c. To maintain sales offices, management offices, signs advertising the Condominium, and models.
- d. To use easements through the Common Elements for the purpose of making improvements within the Condominium.
- e. To appoint or remove an officer of the Association or an Executive Board member, other than a Board member elected by the Unit Owners pursuant to G.S. 47C-3-103(3) during the Declarant Control Period subject to the provisions of Section 6.9 of this Declaration and N.C.G.S. Sec. 47C-3-103.

SECTION 6.5. MODELS, SALES OFFICES AND MANAGEMENT OFFICES. As long as the Declarant is a Unit Owner, the Declarant and its duly authorized agents, representatives and employees may maintain any Unit owned by the Declarant or any portion of the Common Elements as a model unit or sales office or management office.

SECTION 6.6. CONSTRUCTION; DECLARANT'S EASEMENTS. The Declarant reserves the right to perform repairs and construction work, and to store materials in secure areas, in Units and Common Elements, and the further right to control all such work and repairs, and the right of access thereto, until its completion. All work may be performed by the Declarant without the consent or approval of the Executive Board. The Declarant has such an easement through the Common Elements as may be reasonably necessary for the purpose of discharging the Declarant's

obligations for exercising special Declarant rights, whether arising under the Condominium Act or reserved in the Declaration. Such easement includes the right to convey utility and drainage easements to public utilities, municipalities, the State of North Carolina, riparian owners or upland owners to fulfill the plan of development.

SECTION 6.7. SIGNS AND MARKETING. The Declarant reserves the right to post signs and displays in the Common Elements to promote sales of Units, and to conduct general sales activities, in a manner as will not unreasonably disturb the rights of Unit Owners.

SECTION 6.8. DECLARANT'S PERSONAL PROPERTY. The Declarant reserves the right to retain all personal property and equipment used in the sales, management, construction and maintenance of the premises that has not been represented as Property of the Association. The Declarant reserves the right to remove from the Property, any and all of the goods and improvements used in development, marketing and construction, whether or not they have become fixtures.

SECTION 6.9. DECLARANT CONTROL OF THE ASSOCIATION.

a. Subject to subsection 6.9.b, and N.C.G.S. Sec. 47C-3-103, during the Declarant Control Period, Declarant or persons designated by the Declarant may appoint and remove the officers and members of the Executive Board, other than Board members elected by the Unit Owners pursuant to G.S. 47C-3-103(3). 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.

b. 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.

c. Notwithstanding any provision of this Declaration or the Bylaws to the contrary, following notice under Section 47C-3-108 of the Condominium Act, 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.

SECTION 6.10. LIMITATIONS ON SPECIAL DECLARANT RIGHTS. Unless sooner terminated by an amendment to the Declaration executed by the Declarant, any Special Declarant Right may be exercised by the Declarant until the earlier of the following:

a. thirty days after the date upon which the Developer no longer owns a Unit; or

b. three (3) years after recording this Declaration.

SECTION 6.11. 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.

ARTICLE 7

ALLOCATED INTERESTS

SECTION 7.1. 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 7. These formulas are to be used in reallocating interests if Units are added to the Condominium or if Units within the Condominium are subdivided.

SECTION 7.2. 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.
- 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. Nothing contained in this Subsection shall prohibit certain Common Expenses from being apportioned to particular Units under Article 16 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.

SECTION 7.3. 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 Section 6.1 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 8

RESTRICTIONS ON USE, ALIENATION AND OCCUPANCY

SECTION 8.1. USE AND OCCUPANCY RESTRICTIONS. Subject to the Special Declarant Rights reserved under Article 6, the following use restrictions apply to all Units and to the Common Elements:

- a. Each Unit is restricted to professional/office uses and such other uses as are incidental to the maintenance of professional/offices, and as applicable zoning regulations allow.

b. The use of Units and Common Elements is subject to the Bylaws and the Rules and Regulations of the Association.

SECTION 8.2. 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 a 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.

ARTICLE 9

EASEMENTS AND LICENSES

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 6 of this Declaration.

ARTICLE 10

ALLOCATION AND REALLOCATION OF LIMITED COMMON ELEMENTS

A Common Element not previously allocated as a Limited Common Element may be so allocated only pursuant to provisions of Article 5 of the Declaration. The allocations will be made by amendments to the Declaration, specifying to which Unit or Units the Limited Common Element is allocated.

The Declarant has reserved the right, under Subsection 6.1.c of this Declaration, to allocate as Limited Common Elements parking spaces per usable square feet or per unit. If any such parking spaces are so allocated, they shall be assigned to particular Units by amendment to this Declaration. Any parking spaces which are not allocated as Limited Common Elements at the termination of the Development Rights period may be

so allocated by the Association by amendment to this Declaration. All amendments shall specify to which Unit or Units the Limited Common Element is allocated.

No Limited Common Element depicted on the Plats and Plans may be reallocated by an amendment to this Declaration pursuant to this Article 10 except as part of a relocation of boundaries of Units pursuant to Article 12 of this Declaration. Such amendment shall require the approval of all holders of Security Interests in 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 11

ADDITIONS, ALTERATIONS AND IMPROVEMENTS

SECTION 11.1. 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 11.1.c.

b. Subject to Subsection 11.1.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;

(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 11.1.a or 11.1.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 Owners of any Units other than those affected by such change.

e. 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. However, all nameplates and exterior signage shall comply with all applicable governmental standards and regulations.

f. Unit Owners may erect a "monument sign" at a location which is

visible from Fearrington Road at their own expense. Each Unit Owner shall use the same style lettering on this monument sign. The Unit Owners of the adjacent Condominium Building may also have their names on this sign, but shall first be required to reimburse the Unit Owners who constructed the monument sign a prorata amount of the costs. If the City of Durham allows it, each Condominium project may have its own monument sign at places visible from Fearrington Road. Maintenance for such signs shall be provided for in the Cross Easement between the two condominium projects. Decisions regarding this monument sign(s) shall be made by a 2/3 majority vote, whether the 2/3 is comprised of the Unit Ownership of Carolina Pointe II, or whether the adjacent condominium project is included in the decision making process regarding the monument sign if only one sign is allowed.

SECTION 11.2. ADDITIONS, ALTERATIONS AND IMPROVEMENTS BY EXECUTIVE BOARD. Subject to the limitations of Sections 16.4 and 16.5 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 12

RELOCATION OF BOUNDARIES BETWEEN ADJOINING UNITS

SECTION 12.1. 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 Owners of the Units affected by the relocation. If the Owners of the adjoining units have specified a reallocation between their Units of their Allocated Interests, the application shall state the proposed reallocations. 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.

SECTION 12.2. 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 13

AMENDMENTS TO DECLARATION

SECTION 13.1. 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 10 of this Declaration and Section 47C-1-117 of the Condominium Act, or by certain Unit Owners under Article 10 and Section 12.1 of this Declaration, and except as limited by Section 13.4 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.

SECTION 13.2. 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.

SECTION 13.3. 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 12 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.

SECTION 13.4. 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.

SECTION 13.5. 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.

SECTION 13.6. SPECIAL DECLARANT RIGHTS. Provisions in this Declaration creating Special Declarant Rights may not be amended without the consent of the Declarant.

SECTION 13.7. CONSENT OF HOLDERS OF SECURITY INTERESTS. Amendments are subject to the consent requirements of Article 24 of this Declaration.

SECTION 13.8. AMENDMENTS TO CREATE UNITS OR ADD REAL ESTATE. To exercise any Development Rights reserved under Section 6.1 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 14

AMENDMENTS TO BYLAWS

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 15

TERMINATION

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

ARTICLE 16

ASSESSMENT AND COLLECTION OF COMMON EXPENSES

SECTION 16.1. APPORTIONMENT OF COMMON EXPENSES.

a. Except as provided in Section 16.2, 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.

SECTION 16.2. 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 equally among 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.

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.

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.

SECTION 16.3. 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 materialmen'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 16.3.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.

SECTION 16.4. 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 simple 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.

SECTION 16.5 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 16.2 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 16.4.

SECTION 16.6. 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.

SECTION 16.7. MONTHLY PAYMENT OF COMMON EXPENSES. All Common Expenses assessed under Sections 16.1 and 16.2 shall be due and payable monthly or quarterly, as determined by the Executive Board.

SECTION 16.8. 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.

SECTION 16.9. 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.

SECTION 16.10 EXEMPTION FROM PAYMENT OF COMMON EXPENSES. Declarant shall not be liable for payment of any annual Common Expense Assessments nor for any non-budgeted Common Expense Assessments on any Unit not yet conveyed nor occupied.

SECTION 16.11. NO WAIVER OF LIABILITY FOR COMMON EXPENSES. Except as set forth in Section 16.10 hereinabove, 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.

SECTION 16.12. 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 17

RIGHT TO ASSIGN FUTURE INCOME

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 18

PERSONS AND UNITS SUBJECT TO THE CONDOMINIUM DOCUMENT

SECTION 18.1. 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.

SECTION 18.2. 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 19

INSURANCE

SECTION 19.1. COVERAGE. To the extent reasonably available, the Executive Board shall obtain and maintain insurance coverage as set forth in this Article. If such insurance is not reasonably available, and the Executive Board determines that any insurance described herein will not be maintained, the Executive Board shall cause notice of that fact to be hand-delivered or sent prepaid by United States mail to all Unit Owners at their last known addresses.

SECTION 19.2. 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 eighty percent (80%) of replacement cost at the time the insurance is purchased and at each renewal date. 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 afford protection against "all risks" of direct physical loss commonly insured against.

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

(i) the insurer waives the right to subrogation under the policy against a Unit Owner;

(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 II OWNERS' ASSOCIATION, INC. for the use and benefit of the individual owners."

SECTION 19.3. LIABILITY INSURANCE. Liability insurance, 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 all occurrences commonly insured against for death, bodily and property damage arising

out of or in connection with the use, ownership or maintenance of the Common Elements, and the activities of the Association.

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

(i) each Unit Owner is an insured person under the policy with respect to liability arising out of interest of the Unit Owner in the Common Elements or membership in the Association;

(ii) the insurer waives the right to subrogation under the policy against a Unit Owner;

(iii) 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;

(iv) 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,

(v) 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.

SECTION 19.4. 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.

SECTION 19.5. 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. or 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 obtained by Unit Owners individually shall contain waivers of subrogation.

SECTION 19.6. 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.

SECTION 19.7. 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.

SECTION 19.8. OTHER INSURANCE. The Association may carry other insurance which the Executive Board considers appropriate to protect the Association or the Unit Owners.

SECTION 19.9. PREMIUMS. Insurance premiums (excluding premiums for Unit Owner policies) shall be a Common Expense.

ARTICLE 20

DAMAGE TO OR DESTRUCTION OF PROPERTY

SECTION 20.1. DUTY TO RESTORE. Any portion of the Condominium for which insurance is required under Section 19.2 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. Sixty-Seven percent (67%) of the Unit Owners, including each Owner of a Unit or assigned Limited Common Element that will not be rebuilt, vote not to rebuild.

SECTION 20.2. COST. The cost of repair or replacement in excess of insurance proceeds and reserves is a Common Expense.

SECTION 20.3. 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.

SECTION 20.4. 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-I-107(a) of the Condominium Act; and the Association promptly shall prepare, execute and record an amendment to the Declaration reflecting the real locations.

SECTION 20.5. 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 20.1.a through Subsection 20.1.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.

SECTION 20.6. 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 21

RIGHT TO NOTICE AND HEARING

SECTION 21.1. 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 all Unit Owners or occupants of Units whose interest would be significantly affected by the proposed action. The notice shall include a general statement of the proposed action and the date, time and place of the hearing. At the hearing, the affected person shall have the right, personally or by representative, to give testimony orally, in writing or both (as specified in the notice), subject to reasonable rules of procedure established by the party conducting the meeting to insure a prompt and orderly resolution of the issues. Such evidence shall be considered in making the decision but shall not bind the decision makers. The affected person shall be notified of the decision in the manner in which notice of the meeting was given.

SECTION 21.2. APPEALS. Any person having a right to Notice and Hearing shall have the right to appeal to the Executive Board from a decision of persons other than the Executive Board by filing a written notice of appeal with the Executive Board within ten (10) days after being notified of the decision. The Executive Board shall conduct a hearing within thirty (30) days, giving the same notice and observing the same procedures as were required for the original meeting.

ARTICLE 22

EXECUTIVE BOARD

SECTION 22.1. 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.

SECTION 22.2. 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.

SECTION 22.3. 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 23

CONDEMNATION

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 24

MORTGAGEE PROTECTION

SECTION 24.1. 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.

SECTION 24.2. 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.

SECTION 24.3. 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 24.4 of this Article.
- e. Any judgment rendered against the Association.

SECTION 24.4. 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 24.4.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 owners of Units 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.

SECTION 24.5. 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.

SECTION 24.6. INSPECTION OF BOOKS. The Association shall permit any Eligible Mortgagee to inspect the books and records of the Association during normal business hours.

SECTION 24.7. 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.

SECTION 24.8. 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.

SECTION 24.9. ATTENDANCE AT MEETINGS. Any representative of an Eligible Mortgagee may attend and address any meeting which a Unit Owner may attend.

SECTION 24.10. APPOINTMENT OF TRUSTEE. In the event of damage or destruction under Article 20 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.z of Article 1 of this Declaration. Proceeds will thereafter be distributed pursuant to Article 20 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 25

STORMWATER FACILITY

The Association shall be bound by the terms and conditions of that certain Stormwater Facility Operation and Maintenance Permit Agreement City Version 2-1195, and in particular shall comply with the terms and provisions set forth in Exhibit "D" attached hereto and incorporated herein by reference the same as if set forth in full.

ARTICLE 26

MANAGEMENT AND CONTRACT RIGHTS OF THE ASSOCIATION

SECTION 26.1 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 27

MISCELLANEOUS

SECTION 27.1 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.

SECTION 27.2. 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.

SECTION 27.3. 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.

SECTION 27.4. INVALIDITY. The invalidity of any provision of the Condominium Documents does not impair or affect in any manner the validity,

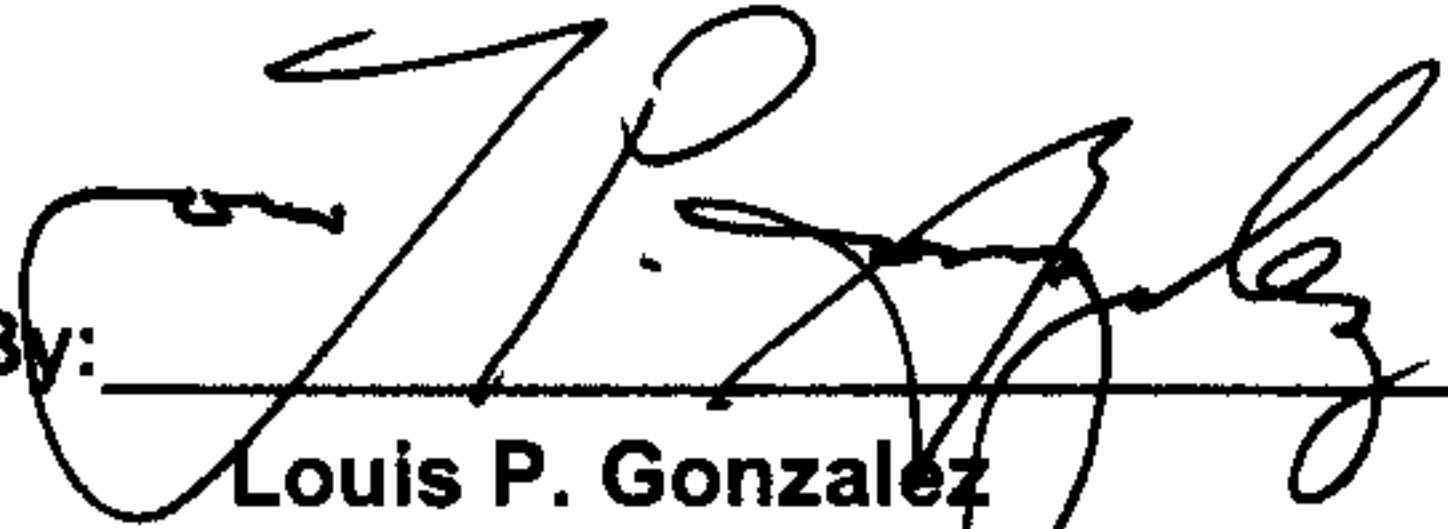
enforceability, or effect of the remainder, and in such event, all of the other provisions of the Condominium Documents shall continue in full force and effect.

SECTION 27.5. 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.


IN WITNESS WHEREOF, Declarant has caused this Declaration to be executed under seal this 29th day of January, 2003.

DECLARANT:

C.A.I. GROUP IV, LLC

By:  (SEAL)
Louis P. Gonzalez
Member-Manager

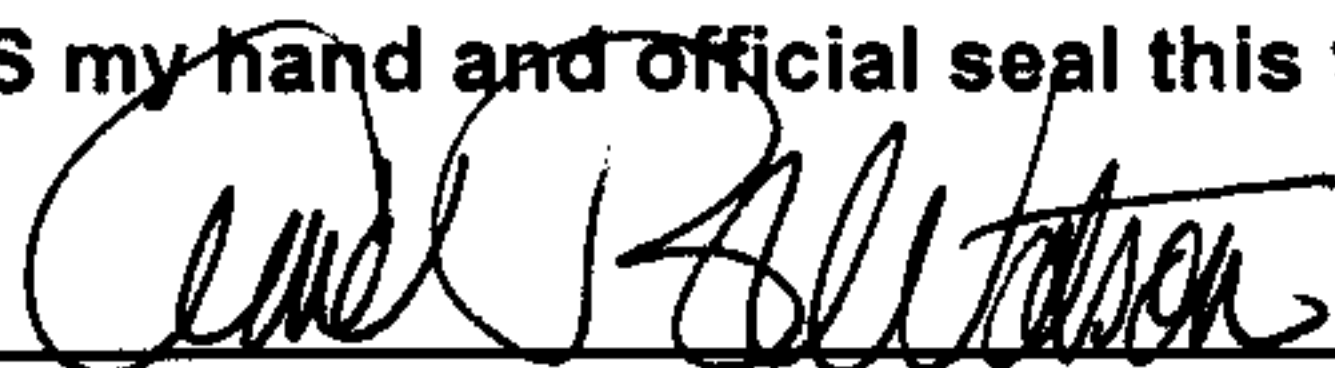
By:  (SEAL)
Christopher R. Howlett
Member-Manager

By:  (SEAL)
Richard B. Williams
Member-Manager

**NORTH CAROLINA
COUNTY OF DURHAM**

I, ANNE PAGE WATSON, a Notary Public for said County and State, do hereby certify that Louis P. Gonzalez, Christopher R. Howlett and Richard B. Williams, being the Member-Managers of C.A.I. GROUP IV, LLC, a North Carolina Limited Liability Company, each 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 seal this the 29th day of January, 2003.


Notary Public

My Commission Expires: 10-28-2003

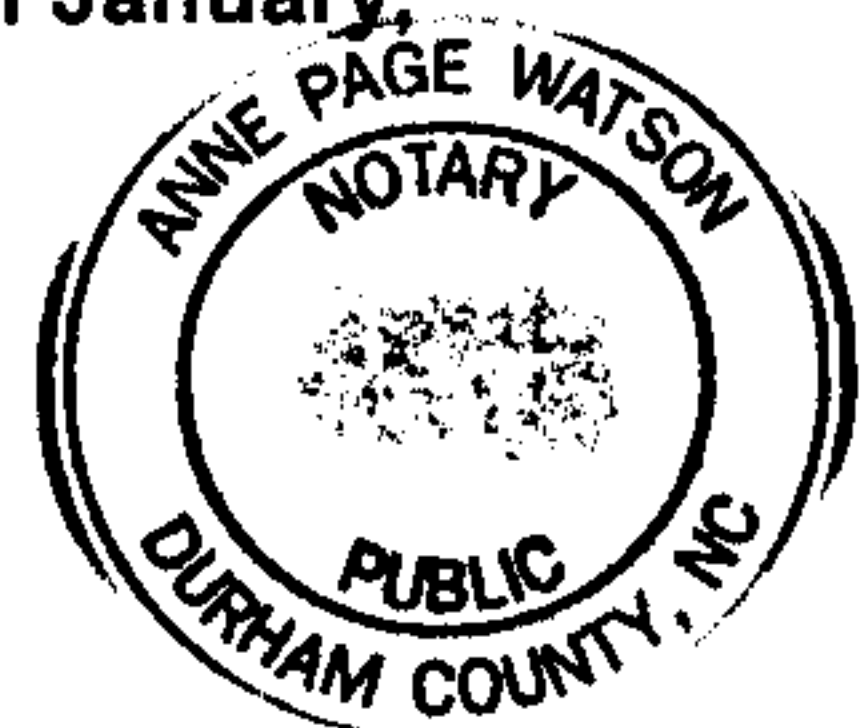


EXHIBIT A

DESCRIPTION OF LAND AND RECORDED EASEMENTS AND LICENSES APPURTENANT THERETO

DESCRIPTION OF LAND:

BEING ALL OF Lot 1, FINAL PLAT OF SUBDIVISION FOR CAI GROUP IV, LLC FEARRINGTON ROAD PROPERTY, CAROLINA POINTE II, as per the plat and survey thereof which is now recorded in the Office of the Register of Deeds of Durham County in Plat Book 157 at Page 75, to which plat reference is hereby made for a more particular description of same.

RECORDED EASEMENTS AND DOCUMENTATION APPURTENANT TO THE LAND:

All easements shown on the Plats and Plans defined in the foregoing Declarations.

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.

The lien of all taxes for the year 2003 and thereafter which are not yet due and payable.

Stormwater Facility Operation and Maintenance Permit Agreement City Version 2-1195 (see Exhibit "D" attached hereto).

EXHIBIT B

TABLE OF INTERESTS

Unit No.	Sq. Feet	Percentage Share Common Elements	Percentage Share of Common Expenses	Number of Votes in the Affairs of the Association
101	4906.5	27 %	27 %	27
102	4151	23 %	23 %	23
201	9153	50 %	50 %	50

EXHIBIT C

DESCRIPTION OF REAL ESTATE SUBJECT TO DEVELOPMENT RIGHTS
("ADDITIONAL LAND")

NONE.

Exhibit D

*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 6TH day of November, 2001, by and between **C.A.I. IV, 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 138, Page 25**. 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 138, Page 25**. Within the Site is a Facility which is a **Sand Filter designed for the one year storm which is located on the south-east side of the site commonly known as Carolina Pointe II**.

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
2001 DEC 19 10:55:15 AM
BK 3301 PG 731-740 FEE \$24.00
INSTRUMENT # 2001058339

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 **Eight thousand four hundred and twenty-two dollars (\$8,422.00)** ("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. IV, LLC, 312 Cloister Court, Chapel Hill, NC 27514, Attention: Lou Gonzalez (919) 490-5500**. 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. Invalidity 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. IV, LLC

Manager

Printed Name:

LOUIS P. GONZALEZ

STATE OF NORTH CAROLINA

COUNTY OF DURHAM

I, Taylor K. Shannon, 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. IV, 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 6TH day of NOVEMBER, 2001

Taylor K. Shannon
Notary Public

My commission expires:

Nov. 12, 2003

ATTEST:

By:

City Clerk

[Affix Municipal Seal]

CITY OF DURHAM

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 D. Ann Gray 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 10TH day of Dec., 2001.

My commission expires:

07-17-02

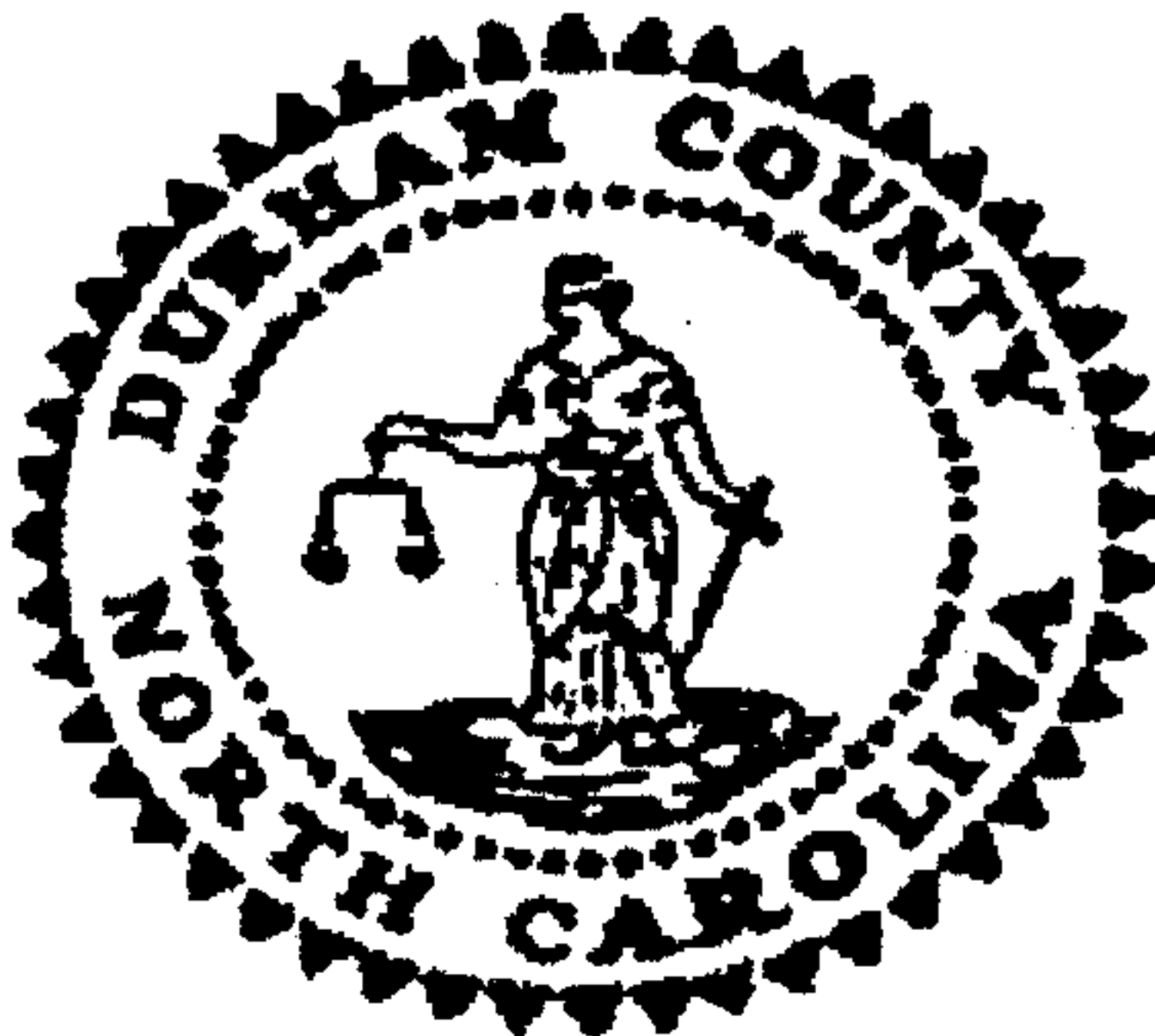
Tonette Amos
Notary Public

-9-

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

Barbara S. Hill
FISCAL OFFICER

12/5/01
DATE



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

Filed For Registration: 12/19/2001 10:55:15 AM
Book: RE 3301 Page: 731-740
Document No.: 2001058339
AGMT 10 PGS \$24.00

Recorder: CYNTHIA Y FRAZIER

State of North Carolina, County of Durham

The foregoing certificate of TONETTE AMOS, TAYLOR K SHANNON Notaries are certified to be correct. This
19TH of December 2001

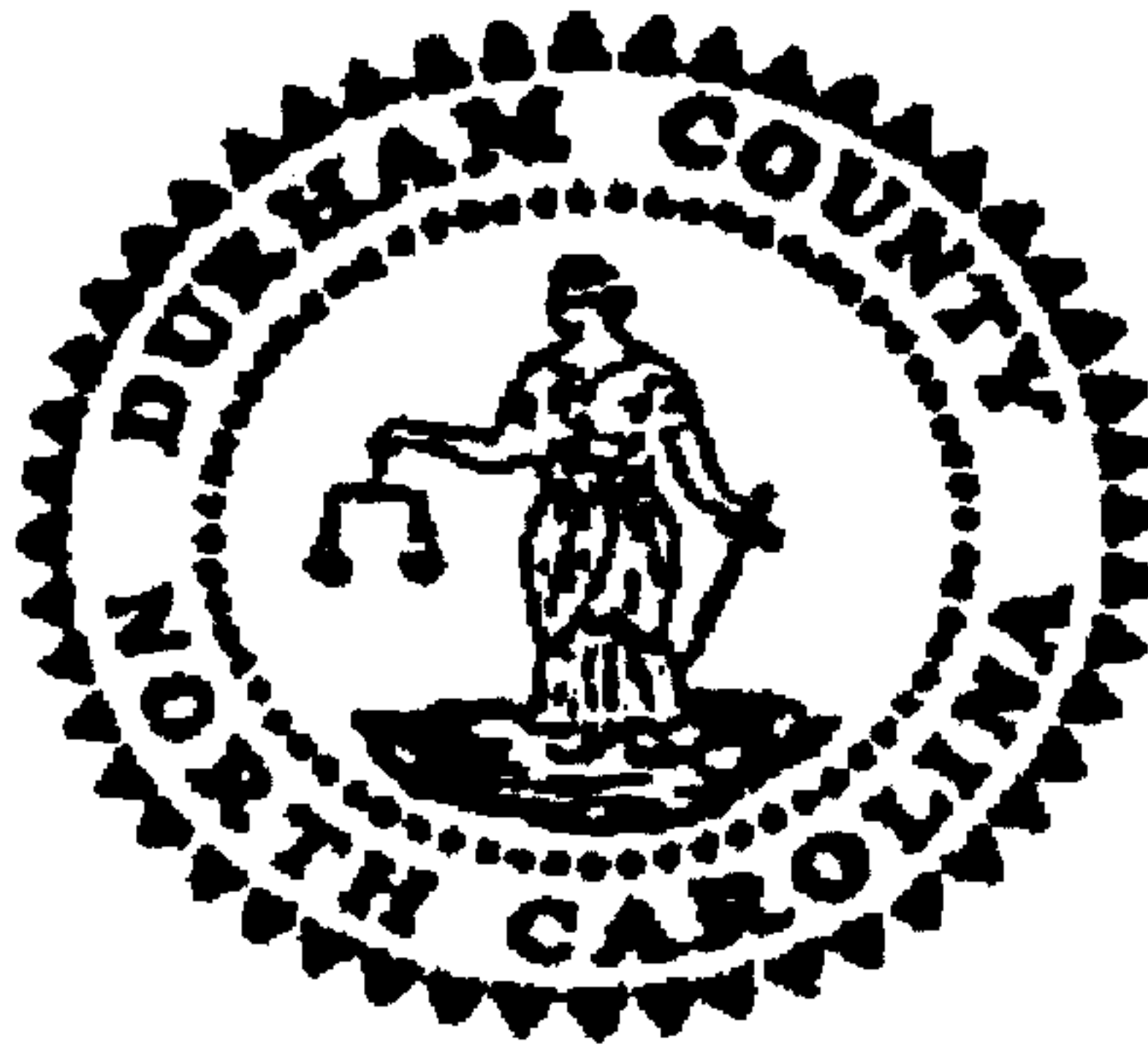
WILLIE L. COVINGTON, REGISTER OF DEEDS

By: Sharon A. Davis

Deputy/Assistant Register of Deeds



2001058339



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

Filed For Registration: 02/06/2003 09:28:46 AM
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DECL 64 PGS \$200.00

Recorder: SHARON DAVIS

State of North Carolina, County of Durham

The foregoing certificate of ANNE PAGE WATSON Notary is certified to be correct. This 6TH of February 2003

WILLIE L. COVINGTON, REGISTER OF DEEDS

By: Sharon Davis

Deputy Assistant Register of Deeds



2003008423