


REGISTER OF DEEDS  
Sharon A. Davis  
Durham County, NC  
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DECLARATION  
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Prepared by Kennon Craver, PLLC (WAA), PO Box 51579, Durham, NC 27717-1579

Return to Intown Neighborhood Place LLC  
Attn: Christine Westfall  
414 W Markham Ave.  
Durham, NC 27701

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**THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF THE FLAG OF THE UNITED STATES OF AMERICA AND THE FLAG OF THE STATE OF NORTH CAROLINA.**

**THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF POLITICAL SIGNS**

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**STATE OF NORTH CAROLINA**  
**COUNTY OF DURHAM**

**DECLARATION**  
**OF**  
**BULL CITY COMMONS CONDOMINIUM**

THIS DECLARATION OF CONDOMINIUM is made this 3rd day of December, 2021, by INTOWN NEIGHBORHOOD PLACE LLC, a North Carolina limited liability company (the "Declarant"). Declarant hereby states and declares as follows:

WITNESSETH:

WHEREAS, Declarant is the Owner of certain real property located in the City of Durham, Durham County, North Carolina, more particularly described on Exhibit A attached hereto, upon which is one building intended to contain residential condominium units and certain other improvements; and

WHEREAS, Declarant desires to submit the real property and the improvements located thereon (collectively, the "Property") to the terms and provisions of the North Carolina Condominium Act and by so doing intends to protect the value and the desirability of the Property, further a plan for condominium ownership of the Property, create a harmonious and attractive residential development, and promote and safeguard the health, comfort, safety, convenience and welfare of the owners of the condominium units;

NOW, THEREFORE, Declarant hereby declares that all of the Property shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which shall run with the Property and be binding on all parties having any right, title or interest in the described properties or

any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

**ARTICLE I**  
**DEFINITIONS**

The capitalized terms used in this Declaration and in the Exhibits hereto shall have the meanings stated in the North Carolina Condominium Act and as follows, unless the context otherwise requires:

Act or North Carolina Condominium Act means the North Carolina Condominium Act as currently set forth in N.C.G.S. Chapter 47C, Articles 1 through 4, as amended.

Articles or Articles of Incorporation means the articles of incorporation filed with the office of the North Carolina Secretary of State which establishes Bull City Commons Condominium Association as a North Carolina not-for-profit corporation.

Association means the Unit Owners' association as defined by the Act, and also means the Bull City Commons Condominium Association, the not-for-profit corporation by which the Unit Owners' association shall operate the Condominium.

Board means all Unit Owners, who shall be authorized to operate the Association as provided by the Act, this Declaration and the Bylaws and which group shall also be called the Plenary, the decision making body of the Association.

Bylaws means the bylaws of the Association which, with this Declaration and the Articles of Incorporation of the Association, describe the powers and functions of the Association, and which from time to time may be amended by the Association.

Building means the structure containing Units which comprises a part of the Property.

Common Elements means all portions of the Condominium other than the Units.

Common Expenses means the expenses for which the Unit Owners are liable to the Association consisting of expenditures made by, or financial liabilities of, the Association including, but not limited to, expenses of administration, maintenance, insurance, operations, repair or replacement of the Common Elements, allocations to general operating reserves and any authorized additions thereto, any amount for general working capital and general operating reserves, amounts for a reserve fund for replacements, and to make up any deficit in assessments for Common Expenses for any prior year and any expense or liability covered by the levy of a special assessment.

Common Expense Share means the proportionate share of liability for Common Expenses allocated to each Unit, and the proportionate share of Association revenues, if any, allocated to each Unit.

Community Member means any person living at the Condominium, including, without limitation, any Owner, Tenant or Housemate.

Consent means the form of decision making for the Owners and Board described in the Bylaws.

Co-owner means a person, firm, corporation, partnership, association, trust or other legal entity, or any combination thereof, which owns a Unit. The term "Owner" or "Co-owner" shall have the same connotation as the term "Unit Owner" as used in the Act.

Condominium means the real estate described in Exhibit A, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the Owners of those portions.

Condominium Documents means this Declaration, and the Articles of Incorporation, Bylaws and the Policies for the Association.

Declaration means this Declaration of Condominium, as it may be amended from time to time, which shall be recorded in the Durham County Registry together with the Plat, thereby establishing Bull City Commons Condominium by subjecting the Property to the Act.

Declarant means Intown Neighborhood Place LLC, a North Carolina limited liability company, and its successors and assigns.

Housemate means any non-Owner (whether or not such non-Owner pays rent) that resides in a Unit while the Owner of such Unit also resides in the Unit.

Lender means any holder, insurer or guarantor of a first lien mortgage upon a Unit. Each Owner shall provide the Association written notice of the identity of a Lender having a security interest in his or her unit, together with contact information for such Lender.

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 N.C.G.S. § 47C-2-102(2) and (4) of the North Carolina Condominium Act.

Owner or Unit Owner has the same definition as Co-owner as set forth in this Article 1.

Period of Declarant Control means the period during which the Declarant shall control the Association, which period shall commence on the date this Declaration is recorded and continue until the earlier of (i) 120 days after conveyance of seventy-five percent (75%) of the Units to Unit Owners other than Declarant; (ii) two years after Declarant has ceased to offer Units for sale in the ordinary course of business; or, (iii) the date upon which Declarant voluntarily surrenders control of the Condominium to the Association.

Pet means a domesticated animal kept for pleasure, rather than utility.

Plat means the survey of the Property and the plans for the Condominium, said Plat consisting of Sheets 1 through 7, inclusive, and being recorded in the Durham County Registry in Condominium Book 13, Pages 301 through 307, inclusive. The Plat is hereby incorporated herein by reference and is made an integral part of this Declaration.

Policies are rules and regulations adopted by the Association from time to time as provided in the Declaration and Bylaws for the purpose of governing the use and enjoyment of the Condominium.

Property means and includes the underlying land, the Buildings, all other improvements and structures thereon, as described in Exhibit A attached hereto and incorporated herein by reference, and all easements, rights and appurtenances belonging thereto.

Service Animal means a working animal trained to assist people with daily living activities.

Special Declarant Rights means all of Declarant's reserved rights as defined in the Act and in this Declaration.

Tenant means any person that resides in a Unit who has entered into a formal rental agreement with the Unit Owner.

Unit or Condominium Unit means the physical portion of the Condominium which is designated for separate ownership, the boundaries of which are described in Section 3.2 hereof and which are shown on the Plat.

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

## **ARTICLE II**

### **SUBMISSION OF PROPERTY TO CONDOMINIUM ACT**

2.1 Submission of Property. Declarant hereby submits the Property to the provisions of the Act. The Property will be administered in accordance with the provisions of the Act and the Condominium Documents.

2.2 Condominium Name. The name of the Condominium shall be "Bull City Commons Condominium".

2.3 Plat and Plans. The Property is located at 610 Trent Drive, Durham, Durham County, North Carolina, 27705. Attached hereto as Exhibit A is a legal description of the Property, which Property is more particularly shown on the Plat. The architectural plans filed as part of the Plat show and describe the Units and certain Limited Common Elements.

2.4 Number of Units. Declarant hereby establishes within the Property twenty-three (23) Units and does hereby designate all such Units for separate ownership. The maximum number of Units permitted in the Condominium is twenty-three (23). Subdivision of Units is prohibited. Unit boundaries are described in below Section 3.2 and on the Plat. Identifying Unit numbers and Unit locations are also shown on the Plat.

2.5 Association Membership. Each Owner shall be a member of the Association. Owners shall be entitled to participate in decisions of the Association.

2.6 Limited Common Elements Generally. Other than those portions of Common Elements allocated by operation of N.C.G.S. § 47C-2-102(2) or (4) and those created and allocated by operation of Section 4.2 below, there are no additional Limited Common Elements.

2.7 Special Declarant Rights. Declarant reserves all Special Declarant Rights for the entire Property including the following:

- (a) To complete any and all improvements indicated on the Plat;
- (b) To construct and maintain any sales office, management office, or model or guest rooms in any of the Units or on any of the Common Elements shown on the Plat;
- (c) During the Period of Declarant Control, to appoint and remove any officers or Board members; provided, however, that: (i) not later than sixty (60) days after the conveyance of twenty-five

(25%) of the Units to Owners other than Declarant, at least one (1) member and not less than twenty-five (25%) of the Members of the Board shall be elected by Owners other than Declarant; and (ii) not later than sixty (60) days after conveyance of fifty percent (50%) of the Units to Owners other than Declarant, not less than thirty-three (33%) of the members of the Board shall be elected by Owners other than Declarant;

(d) To use those easements through any Common Elements which are reasonably necessary for the purpose of making any improvement indicated on the Plat, or otherwise necessary for the exercise of these Special Declarant Rights or otherwise discharging its obligations or rights hereunder;

(e) To place "For Sale" or "For Rent" signs advertising Units on any part of the Common Elements or within any Units owned by the Declarant; and

(f) To assign, collaterally or otherwise, in whole or in part, to its successors in title, any of Declarant's Units hereunder, or to its agent, or to an independent third party, or to the Association, any of the rights reserved in this Declaration, including these Special Declarant Rights. All references to Declarant and Declarant's rights hereunder shall be deemed to include any specific assignee of Declarant.

Except for those Special Declarant Rights that terminate earlier by operation of law or under the Condominium Documents, these Special Declarant Rights shall expire one (1) year after Declarant's conveyance in fee of the last Unit owned by Declarant

### ARTICLE III

#### **DESCRIPTION OF UNITS; USE; REPAIRS; RESTRICTIONS** **DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

3.1 General Description of Units. All of the Units are more particularly shown on the Plat, which is incorporated herein in the same manner as if expressly set forth in this Section 3.1. The Plat provides the relative locations of all the Units, the Unit numbers, the square footage area of each Unit, and depicts the Unit boundaries that are further described in Section 3.2 below, which together with this Declaration shall constitute a complete description of the Units within the Condominium.

3.2 Unit Boundaries. The vertical and horizontal perimetric boundaries of each Unit shall consist of the unfinished perimeter walls, the subfloors (whether wood or concrete), and the bottom surfaces of the ceiling joists, as applicable, and all as more particularly shown and described on the Plat. More specifically, the horizontal plane of the bottom surface of the ceiling joists within a Unit shall be the upper boundary thereof and the horizontal plane of the top surface of the subfloor (whether wood or concrete) of each Unit shall be the lower boundary thereof. All lath, furrowing, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring and any other materials constituting any part of the finished surfaces thereof shall be a part of the Unit. All other portions of such walls, floors, or ceilings not included within the Units are a part of the Common Elements. Interior walls, partitions, fixtures, appliances, cabinets and other facilities and other improvements lying completely within the boundaries of a Unit, if any, shall be part of such Unit.

#### 3.3 Unit Owners' Responsibilities for Maintenance and Repair

(a) Each Owner shall be responsible for the maintenance and repair of her Unit. All Unit Owners shall be responsible for routine cleaning of the interior surfaces of the exterior windows and doors, which are Limited Common Elements allocated exclusively to the Unit served. Repair and replacement of exterior windows and entry doors serving Units shall be the responsibility of the Association and the cost of such repair or replacement shall be borne by the Owner of the Unit served by such windows or doors. In the event any window or exterior door is broken, the Unit Owner shall be responsible for securing her

Unit until such time as the window or door can be repaired or replaced.

(b) Each Owner shall be responsible for any damage to her Unit or to any other Unit or any of the Common Elements caused by any action or inaction of that Owner, his lessee, invitee, or agent (i.e., actions other than what is customarily considered normal wear and tear), damage attributable to keeping Pets, smoking tobacco products (which is prohibited), overflowing plumbing fixtures caused by negligence, and similar kinds of activity, which directly or indirectly causes damage to any other Unit or to any of the Common Elements. Unit Owners may change their entry door locks from time to time so long as any new lock installed is coordinated with the Association and is keyed to the building master key system.

(c) In the event that the Association determines that any Unit Owner has failed or refused to discharge properly his obligations with respect to the maintenance, cleaning, repair, or replacement of items for which he is responsible under the Declaration, then, in that event, the Association, except in the event of an emergency situation, shall give such Unit Owner written notice of the Association's intent to provide such necessary maintenance, cleaning, repair, or replacement at such Unit Owner's sole cost and expense, and setting forth with reasonable particularity the maintenance, cleaning, repair, or replacement deemed necessary. Except in the event of emergency situations, such Unit Owner shall have fifteen (15) days in which to complete said maintenance, cleaning, repair, or replacement in a good and workmanlike manner, or in the event such maintenance, cleaning, repair, or replacement is not capable of completion within said fifteen (15) day period, to commence said maintenance, cleaning, repair, or replacement in a good and workmanlike manner within fifteen (15) days and diligently pursue completion. In the event of emergency situations or the failure of any Unit Owner to comply with the provisions hereof after such notice, the Association may provide any such maintenance, cleaning, repair, or replacement at such Unit Owner's sole cost and expense, and said cost shall be added to and become a part of the assessment to which such Unit Owner and his Unit are subject and shall become a lien against such Unit as provided herein.

3.4 Uses of Units; Use Restrictions. It is the intent of the Declarant that the Property be developed and maintained as an attractive, safe, well-maintained residential development. To that end, the following covenants, conditions and restrictions are hereby placed on the Property.

(a) Restrictions to Run with Land. The Declarant hereby declares and affirms that the covenants, conditions and restrictions described herein shall be deemed restrictive covenants running with the land and are imposed as a limitation and burden upon each Unit Owner and upon the Declarant, upon all future Unit Owners, upon Owner's lessees, invitees, permittees, licensees, guests or any other person or entity having any right, title or interest in the Property.

(b) Residential nature of Units. The Units shall be used only for residential, noncommercial purposes; provided, however, this prohibition shall not be interpreted to prevent a Community Member from "working from home" so long as such working from home does not result in customer or client visits or shipping and receiving more intensive than is usual and customary for a residential condominium unit.

(c) No day care or group home. Except to the extent such uses are required by law to be permitted, no Unit may be used for day care or group home purposes.

(d) Odors and noise. No unusual, disturbing or objectionable odor or noise shall be permitted to emanate from any Unit.

(e) No sweeping or debris into Common Elements. No Unit Owner shall sweep or throw any debris, dirt or other substance into any Common Element or from any window or balcony, patio or terrace or permit any other person to engage in such activities.

(f) Comply with city, county, state and federal laws. The Owners shall each comply with all laws, statutes, codes, rules, orders, decrees, ordinance, regulations and requirements, now or hereafter enacted or promulgated by the United States of America, State of North Carolina, the County of Durham, or the City of Durham, and any other entity or agency now or hereafter having jurisdiction over the Property or any portion thereof; and make all payments of taxes and other charges, the nonpayment of which entitles the unpaid party to assert a lien on an Owner's property, or if noncompliance or nonpayment by one Owner with respect to his Unit or any part thereof would subject the other Owner to civil or criminal liability, or would jeopardize the full force or effect of any certificate of occupancy issued for a Unit or for the Building itself or would jeopardize such other Owner's right to occupy or use beneficially his respective Unit or any part thereof, or would result in the imposition of a lien against any other property of an Owner.

(g) Owner responsibility for use of Units and consequences. Each Owner (hereinafter for the purposes of this Section 3.4(g), "Indemnifying Owner") covenants and agrees, at its sole cost and expense, to indemnify and hold harmless any other Owner, its partners, agents, directors, officers, employees and members (collectively referred to for the purposes of this Section 3.4(g) as the "Indemnitee") from and against any and all claims against Indemnitee for losses, liabilities, damages, judgments, costs and expenses and any actions or proceedings arising therefrom, by or on behalf of any person, firm, corporation or governmental authority, other than the Indemnitee, arising from the Indemnifying Owner's or its permittees' use, possession, or management of the Indemnifying Owner's Unit or activities therein or arising out of the Indemnifying Owner's or its permittees' use, exercise or enjoyment of an easement and from and against all costs, reasonable attorney's fees, expenses and liabilities incurred with respect to any such claim, action or proceeding brought against the Indemnitee by reason of any such claim, Indemnifying Owner, upon notice from Indemnitee, covenants to resist or defend such action or proceeding with attorneys reasonably satisfactory to Indemnitee. (Any counsel for the insurance company providing insurance against such claim, action or proceeding shall be presumed reasonably satisfactory to Indemnitee.)

(h) No negative impact on the Building or Community Members. No Unit Owner shall do, suffer, or permit to be done, anything in his Unit which would impair the soundness or safety of the Condominium, or which would be noxious or offensive or an interference (including noise) with the peaceful possession and proper use of other Units, or which would require any alteration of or addition to any of the Common Elements (except as required by law), or which would otherwise be in violation of law, or which would cause the insurance rates for the insurance carried by the Association, or by any other Unit Owner on his Unit or personal property kept on the Property, to increase above the commercially reasonable rates available for similar purposes.

(i) Emergency access to Units. In case of any emergency originating in or threatening any Unit, or any portion of the Common Elements, regardless of whether the Owner, any tenant, or their invitees, if any, are present at the time of such emergency, the Board and all managerial personnel shall have the right to authorize access to such Unit and any Common Element or Limited Common Element for the purpose of remedying or abating the cause of such emergency, and such right of entry shall be immediate. To facilitate entry in the event of any such emergency, the Owner of each Unit, if required by the Association, shall deposit a key to such Unit or Limited Common Element under the control of the Association.

(j) Hazardous Substances. No Owner shall (either with or without negligence) cause or permit the escape, disposal or release of any biologically active or other hazardous substances, or materials (including flammables) or allow the storage or use of such substances or materials anywhere on the Property in any manner not sanctioned by law for the temporary storage and use of such substances or materials. Each Owner shall maintain its Unit so as to comply with all now existing or hereafter enacted or issued statutes, laws, rules, ordinances, orders, permits and regulations of all state, federal, local and other governmental and regulatory authorities, agencies and bodies applicable to the Property pertaining to environmental matters or regulating, prohibiting or otherwise having to do with asbestos, lead and all other toxic,

radioactive, or hazardous wastes or material including, but not limited to, the Federal Clean Air Act, the Federal Water Pollution Control Act, and the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as from time to time amended.

(k) TV antenna, dish, etc. Except as permitted by applicable law, including regulations of the Federal Communications Commission, no television antenna, dish, radio receiver or sender or other similar device shall be attached to or installed in the exterior portion of any Unit or to the Common Elements without the express prior written permission of the Association, and no such device shall be attached to or installed on or in any Limited Common Element without the prior written consent of the Unit Owner(s) of Units to which such affected Limited Common Elements are allocated.

(l) Garbage and Recycling. All garbage and items to be recycled shall be placed only in the designated receptacles for pickup by the City of Durham, its agent, or other private contractor.

(m) Changes mandated by law. Declarant or Association may make changes in any Unit or in the Common Elements at any time to meet mandatory requirements of applicable law.

(n) Hanging of pictures and shelves. No Owner shall in any way puncture, tear, cut or otherwise damage the gypsum board which is hung on the perimeter walls and certain ceilings of the Units in violation of the applicable building codes; provided, however, this restriction shall be construed to permit the normal hanging of pictures or shelves.

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

(p) No tobacco smoking. There shall be no use or smoking of tobacco products in any part of the Condominium, including individual units and Common Elements. This expressly prohibits the smoking of tobacco products by any method, including cigarettes, cigars, pipes, and all other smoking devices.

(q) No personal storage in Common Areas. Unit Owners shall not store anything within or on the Common Elements without the prior approval of the Association; provided, however, that a Unit Owner may store or place things on Limited Common Elements allocated exclusively to his Unit subject to the other provisions of this Declaration. The Association may institute Policies regarding the storage of things within or on the Common Elements.

(r) Grilling only per fire codes. Grilling using charcoal grills, gas grills, other grill type or any open flame device shall be subject to the applicable fire codes.

(s) Expectations of Community Members. The Condominium is inhabited by the Community Members and it is expected that such Community Members will take an active role in the life of the community which includes keeping informed of Association decisions, serving on committees and assuming other tasks as necessary.

(t) Renting of Units and Rooms. All Units shall be purchased with the intent to be Owner occupied; however, certain occasions may warrant the renting of Units or Rooms. Any Owner wishing to rent her Unit or a room within her Unit must first obtain prior written consent from the Board.

(u) Pets and Service Animals. Pets and Service Animals are welcome in the Condominium subject to the Condominium Documents. Animals that are not Pets or Service Animals are prohibited on the Property. All Community Members shall be bound by the Animal Control Ordinance of the City of Durham, and also be bound by the pet control guidelines established by the Association, which may be stricter than



the Animal Control Ordinance of the City of Durham.

(v) Firearms. Firearms will not be allowed anywhere in the Condominium. Exceptions to this policy are antique firearms that are not functional.

(w) Noise. The residents of the Bull City Commons Condominium seek to maintain peace and quiet in the Condominium. The City of Durham Noise Ordinance shall bind all Community Members, their guests and invitees. Community Members, guests and invitees shall also be bound by any noise guidelines established by the Association Board, which may be stricter than the City of Durham Noise Ordinance.

(x) Special Rules for Signs, Banners, and Flags.

(i) No signs, banners, or flags of any type shall be posted, hung or erected by any Owner or any other person on any part of the Common Elements or displayed from within a Unit except as permitted by this Section 3.4(x) or by the prior approval of the Association, provided, however, if applicable law prohibits such restrictions, then the posting of signs, banners and flags shall be governed by such law.

(ii) "For Sale," "For Rent" or other similar signs not exceeding two square feet in size for the purpose of marketing the Unit are permitted to be hung in a window for not more than sixty (60) days in any twelve (12) month period.

(iii) The display of any flag or banner that is visible from outside the Condominium is subject to the applicable laws.

(iv) The display of any flag of the United States of America or of North Carolina is permitted in any Unit so long as the flag is no larger than four feet by six feet. Political signs are permitted to be displayed in any Unit, but no more than forty-five (45) days prior to, nor seven (7) days after, the election. Except as may be permitted by the local ordinances of the City of Durham or the County of Durham, there shall be only one political sign per Unit displayed, and such sign shall not exceed two feet by two feet.

### 3.5 Assessments for Common Expenses.

(a) Periodic Assessments for Common Expenses. The Association shall have the power to levy, and all Unit Owners shall be obligated to pay, periodic assessments imposed by the Association to meet all Association Common Expenses. Payment of the periodic assessments shall be in equal monthly installments on or before the first day of each month, or in such other reasonable manner as the Board shall designate so long as the assessments are levied at least annually. Within thirty (30) days after the adoption of any proposed budget, the Board shall provide a summary of the budget to all Unit Owners and shall set a date for a meeting of the Unit Owners to consider ratification of the budget not less than ten (10) or more than sixty (60) days after mailing of the summary. There shall be no requirement that a quorum be present at the meeting for the purpose of ratifying the budget. The budget shall be ratified at that meeting unless the Unit Owners constituting seventy five percent (75%) of the total votes in the Association reject the budget. If the proposed budget is rejected, the periodic budget last ratified shall be continued until such time as the Unit Owners ratify a budget proposed by the Board.

(b) Assessments to Remain in Effect Until New Assessments Made. The omission by the Board before the expiration of any year, to fix the assessments hereunder for that or the next year, shall not be deemed a waiver or modification in any respect of the provisions of this Declaration and Bylaws or a release of any Unit Owner from the obligation to pay the assessments, or an installment thereof for that or any

subsequent year, but the assessment fixed for the preceding year shall continue until a new assessment is fixed. No Unit Owner may exempt himself from liability for his contribution towards the Common Expenses by waiver of the use or enjoyment of any of the Common Elements or by abandonment of his or her or its Unit.

(c) Special Assessments. All Unit Owners shall be obligated to pay special assessments imposed by the Association to meet the costs of, among other things, capital improvements, repair or replacement of the Common Elements, allocations to reserves and other extraordinary expenses.

(d) Records. The Board shall keep detailed records of the receipts and expenditures according to the Bylaws, and the Association's financial records shall be available to the Owners as prescribed in the Bylaws. Upon written request from any Lender, the Association shall prepare and furnish within a reasonable time an audited financial statement of the Association for the immediate preceding fiscal year.

(e) Default in Payment of Assessments. The Board shall take prompt action to collect any periodic and special assessments, or portions thereof, due from any Unit Owner which remains unpaid for more than thirty (30) days from the due date for payment thereof. In the event of default by any Unit Owner in paying any assessments as determined by the Board, such Unit Owner shall be obligated to pay a late charge of the greater of \$20.00 or 10% of the payment. The Board shall have the right and duty to attempt to recover such assessments and late charges in an action to recover the same brought against such Unit Owner, or by foreclosure of the lien on such Unit granted by N.C.G.S. § 47C-3-116, provided that the Association acts in accordance with N.C.G.S. § 47C-3-116. With regard to the subordinate nature of such liens as it relates to mortgages recorded prior to the recording of any evidence of such lien, the provisions of N.C.G.S. § 47C-3-116(d), as amended, shall be controlling.

(f) Statement of Assessments or Other Charges. The Board shall, within ten (10) days of a request and for a reasonable fee not to exceed Ten Dollars (\$10.00), provide any purchaser, Unit Owner, lender or prospective lender so requesting the same in writing, with a written statement of all unpaid assessments or other charges due from the Owner of that Unit and the purchaser's liability therefor shall be limited to the amount as set forth in the statement.

(g) Utilities. The Association will maintain the accounts for the Building in its name and utility charges will constitute a portion of the Association budget payable by the Owners in the periodic assessments as a Common Expense. Owners shall be directly responsible for any utilities such as telephone, internet, or cable that are provided by the utility company on a Unit by Unit basis.

(h) Limitation on Budget Increase. The affirmative vote of 67% of the total votes in the Association shall be required for any increase to the Association budget in excess of 5% over the prior year's budget.

(i) Initial Working Capital Assessment. Upon closing of the sale of every Unit from the Declarant to the initial purchaser, such initial Unit purchaser shall pay at closing to the Association the amount of two (2) months' regular assessments, not as a prepayment, but as working capital for the Association (10% of which shall be used to establish the reserve funding, or such greater amount as may be required by agencies guaranteeing residential mortgages). This payment is in addition to the normal proration of the regular assessment at closing for the billing period that is required at closing if the Declarant has begun assessing the Units.

### 3.6 Alterations.

(a) An Owner may make improvements or alterations within his Unit that do not in any way

change the Common Elements or otherwise impair the structural integrity of the Buildings or the mechanical, plumbing or electrical systems. Declarant may make changes in any Unit or in the Common Elements at any time to meet mandatory requirements of applicable law.

- (b) Removal of the physical partitions between adjoining Units is prohibited.
- (c) Subdivision of Units is prohibited.
- (d) Prior to the commencement of any material alterations the Unit Owner shall:
  - (i) Notify the association in writing of the intent to commence work and provide for waivers of all mechanics' and materialmens' lien rights which may arise as a result of the alteration if requested by the Association;
  - (ii) Secure all proper governmental permits, including, but not limited to building permits, necessary for the completion of the work;
  - (iii) Purchase insurance insuring against all losses commonly insured against arising out of the work, name Declarant and the Association as additional insureds and provide certificates of insurance with respect to such insurance;
  - (iv) Indemnify and hold the Declarant, the Association and all other Unit Owners harmless from the effect of the work including, but not limited to, any damage resulting from any disturbance to, or compromise of, the structural support of the Building;
  - (v) Minimize the disturbance to other Unit Owners during the work; and
  - (vi) Reimburse the Declarant and the Association for any expenses incurred by the Association, including but not limited to legal, architectural, other consulting fees, and repair or damage to Common Elements.

(e) Any improvements made by a Unit Owner to a Limited Common Element allocated exclusively his specific Unit shall only be done with the prior written consent of the Association, including approval of plans for the work, except that Unit Owners shall not be required to first obtain the consent of the Association for the maintenance, repair or replacement of the heating, ventilation and air conditioning equipment serving their Units. All improvements are the sole responsibility of the Unit Owner and the costs of such will be borne entirely by the Unit Owner. The responsibility and cost to maintain, replace, repair, and insure such improvements are the sole responsibility of the Unit Owner. If any such improvements cause damage to the Unit, any other Unit or any of the Common Elements, the cost to repair such damage will be borne by the Unit Owner of the Unit to which the Limited Common Elements are allocated.

(f) Changes to Common Elements are restricted. No Unit Owner shall modify or alter any Common Elements (including Limited Common Elements) without the prior written consent of the Association, including the Association's written approval of such Unit Owner's plans for the proposed work, and such work shall be subject to the construction rules in Section 3.6(d). The plans for the Unit Owner's work shall explain the impact of the proposed work on other Units and the Building's systems, and the plans shall be made to minimize such impact.

Declarant hereby reserves the right to enforce the provisions of this subsection at law or equity.

#### ARTICLE IV

## COMMON ELEMENTS

4.1 Common Elements. The real estate that comprises the Common Elements as of the recording of this Declaration is all of the Property except the Units. Subject to the other provisions of this Declaration, the Association shall be responsible for the maintenance, replacement and repair of the Common Elements and the cost for such maintenance, repair or replacement shall be borne by all the Unit Owners.

4.2 Limited Common Elements. The Limited Common Elements are identified and allocated as follows:

(a) The Limited Common Elements specified in section N.C.G.S. § 47C-2-102(2) (being any chute, flue, duct, wire, conduit, bearing wall, bearing column, or any other fixture which lies partially within and partially outside the designated boundaries of a Unit, or any portion thereof serving only that Unit, including satellite dishes and mailboxes) are allocated to the Units served by those Limited Common Elements.

(b) The Limited Common Elements specified in section N.C.G.S. § 47C-2-102(4) (being any shutter, awning, window box, doorstep, stoop, deck, porch, balcony, patio and all exterior doors, windows or other fixtures designated to serve a single Unit but located outside the Unit's boundaries) are allocated to the Units served by those Limited Common Elements.

(c) All portions of heating, ventilation and air conditioning ("HVAC") systems lying outside the boundaries of Units but serving only one Unit are Limited Common Elements allocated to the Unit served by those systems. To the extent any portion of an HVAC system serving only one Unit is not a fixture and thus not part of the real estate, such portion shall be personal property of the Unit Owner served by such HVAC system.

(d) Except Unit 203 and Unit 303 which are sold without access to a parking space, each Unit will have access to one exclusive parking space. The Association is responsible for allocating the parking spaces according to the Policies and has the power to reallocate parking among the Units to address the needs of the Community Members so long as each Unit continues to have access to one exclusive parking space (excepting Unit 203 and Unit 303).

Subject to the other provisions of this Declaration, the Association shall be responsible for the maintenance, replacement and repair of the Limited Common Elements and the cost for such maintenance, repair or replacement shall be borne by the Unit Owner so benefited by the Limited Common Element, as more specifically set forth in the Bylaws. Maintenance to the Limited Common Element parking spaces shall be charged equally to Unit Owners except where the maintenance is necessary because of an Owner's negligence, in which case the cost shall be assessed under Section 3.3(b) hereof. In the event that a Unit Owner has installed improvements to a Limited Common Element allocated exclusively to his Unit, and such improvements must be altered by the Association to maintain, repair or replace the Limited Common Element, the cost of such alterations shall be borne by the Unit Owner of the Unit to which such Limited Common Elements are allocated. Unit Owners shall be directly responsible for arranging for the maintenance, repair or replacement of the portions of HVAC systems serving their Unit exclusively and for payment of the same. The Association shall be responsible for maintaining, replacing and repairing portions of the HVAC systems serving more than one Unit.

4.3 Parking. The Association shall be responsible for promulgating policies governing the use of parking spaces in the Condominium.

4.4 Conveyance or Encumbrance of Common Elements. Portions of the Common Elements may be conveyed or subjected to a security interest by the Association if the Owners entitled to cast at least eighty percent (80%) of the votes in the Association, including eighty percent (80%) of the votes allocated to Units not owned by Declarant, agree to that action; provided, that all the Units Owners to which any Limited Common Element is allocated must agree in order to convey such Limited Common Element or subject it to a security interest. The procedure for conveying or encumbering a portion of the Common Elements and distributing the proceeds, if any, shall be that set forth in N.C.G.S. § 47C-3-112.

## **ARTICLE V**

### **AMENDMENT AND TERMINATION OF CONDOMINIUM**

#### 5.1 Amendment of Declaration.

(a) Except in cases of amendments by the Declarant, the Association, or certain Unit Owners pursuant to the exceptions provided in N.C.G.S. § 47C-2-117(a), the Declaration may be amended only by an affirmative vote of Members representing sixty seven percent (67%) of the Units in the Association. Provided, however, where the act or approval of a greater percentage of the vote of Unit Owners is expressly required by this Declaration, the Act, or the Association's Articles of Incorporation or Bylaws, this Declaration may not be amended to decrease such greater percentage of votes without the consent of Unit Owners holding that greater percentage of votes. Any amendment purporting to vitiate, reduce, or impair any right of Declarant shall be void and of no effect unless executed by Declarant.

(b) Every amendment shall be prepared, executed, recorded and certified by the Association and shall be effective only when recorded in the Durham County Registry.

(c) Subject to the exceptions of N.C.G.S. § 47C-2-117(a), no amendment which changes the boundaries on any Unit or which alters the Allocation of Common Elements and Common Expenses for a Unit shall be valid unless the same has been signed or consented to by the Owner(s) so affected.

(d) Notwithstanding the foregoing, this Declaration may be amended by the Declarant or Association without the consent of any Owner in order to comply with any provisions of law or to correct manifest errors herein; and any such amendment, upon execution and certification by the Declarant or Association and recording by the Durham County Registry, shall be effective upon recording. In addition, for so long as Declarant has the right to appoint the majority of the members of the Board of the Association and to the extent permitted by law, this Declaration and the other Condominium Documents may be amended by the Declarant without the consent of any Owner in order to comply with the rules, regulations and policy statements promulgated and issued by the U.S. Department of Housing and Urban Development, the Veterans' Administration, the Federal Housing Administration, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation or the Government National Mortgage Association.

(e) No amendment shall reduce or impair any rights reserved by the Declarant without the consent and joinder of Declarant.

(f) Notwithstanding anything herein to the contrary, certain types of amendments to this Declaration must be approved by certain mortgagees of Unit Owners as set forth in Article XIII hereof.

5.2 Termination. Subject to Article XIII hereof, the dedication of the Property to the Condominium herein shall not be revoked, or the Property removed from the Act except that the Condominium may be terminated and the Property removed from the provisions of the Act by the affirmative vote of the Unit Owners representing at least eighty percent (80%) of the total votes allocated

agree to terminate the Condominium, as evidenced by execution of a termination agreement, or ratification thereof, by such Owners, provided that all the mortgagees of the Units (including those mortgagees of Unit Owners who did not consent) are provided with thirty (30) days prior written notice of such termination. Except as otherwise provided for herein, termination of the Condominium shall be in accordance with the Act.

5.3 Statutory Compliance. No amendment or termination that is contrary to, or inconsistent with, any requirements or provisions of the Act shall be valid.

**ARTICLE VI**  
**DECISIONS IN ASSOCIATION; ALLOCATION OF INTEREST IN COMMON ELEMENTS**  
**AND COMMON EXPENSE LIABILITIES**

6.1 Votes and Interest in Common Elements. All Unit Owners may participate in decisions of the Association. All Units are allocated an equal voting interest and an equal interest in the Common Elements appurtenant to each Unit. The voting interest and interest in the Common Elements allocated to each Unit is stated on Exhibit B attached hereto and incorporated herein by reference.

Notwithstanding the goals for Consent decision making in the Articles, the Bylaws, or this Declaration, where the North Carolina Condominium Act or the North Carolina Nonprofit Corporation Act requires decision making by vote of the Board or the Members, then such vote shall be held in accordance with law and in accordance with the required percentage of votes cast as set forth in the Condominium Documents, or if not so set forth, then as set forth in the relevant statutes.

6.2 Common Expense Share. The Common Expense Share allocated to each Unit shall be calculated based on two weighted factors, the square footage of the Unit and the number of people residing in the Unit. The Common Expense Share allocated to each Unit as of the recording has been determined in Declarant's reasonable discretion and is set forth on Exhibit B. The Common Expense Shares allocated to the Units will change in the future as the number of residents in the Condominium changes, and as the Board recalculates the Common Expense Share of each Unit as described below. Therefore, the Common Expense liability of each Unit will change over time.

The method of calculation of the Common Expense Share allocated to each Unit is described as follows:

Two thirds of the Common Expense Share for each Unit is based on the square footage of the Unit relative to the total square footage of all the Units. The remaining one third of the Common Expense Share for each Unit is based on the number of residents in a Unit relative to the total number of residents in the Condominium.

The Common Expense Share allocated to each Unit shall be the sum of the Unit's Square Footage Share (as defined below) plus the Occupant Share (as defined below).

Square Footage Share shall mean the product of two-thirds (2/3) multiplied by the quotient of the Unit's total square footage over the total number of square footage of all the Units.

Example of Square Footage Share:  $2/3 \times \frac{\text{Square Footage of Unit}}{\text{Total Square Footage of all Units}}$

Occupant Share shall mean the product of one-third (1/3) multiplied by the quotient of the number of people

that reside in the Unit (which is the numerator) over the total number of people who reside in the Condominium (which is the denominator).

Example of Occupant Share:  $1/3 \times \frac{\text{Number of People Residing in Unit}}{\text{Total Number of People Residing in Condominium}}$

Beginning at a time reasonably determined by the Board, but not more than one year after Declarant has conveyed all the Units, and then every subsequent calendar year between June 1 and June 15 and again between December 15 and December 31, in order to determine the number of residents in each Unit and the total number of residents in the Condominium, the Board shall conduct a census of the number of people residing in each Unit. Based on this census, the Board shall recalculate the Common Expense Share allocated to each Unit, and such recalculated Common Expense Share shall be effective on January 1<sup>st</sup> and July 15<sup>th</sup> each year. The board shall notify all Owners in writing (or electronically using the Owner's most current email address on file) of the recalculated Common Expense Share.

Units owned by the Declarant shall be deemed to have one (1) resident.

The square footage of each Unit shall be as stated on the Plat.

Notwithstanding the foregoing method of calculating the Common Expense Share for each Unit, costs incurred by the Association for services provided by vendors that calculate their charges on a per Unit basis shall be billed by the Association to the Unit Owners on that same per Unit basis as part of the Common Expenses.

## **ARTICLE VII** **ADMINISTRATION AND BYLAWS**

7.1 Association; Bylaws. Declarant has caused to be incorporated under the laws of the State of North Carolina a nonprofit corporation known as Bull City Commons Condominium Association. Each Unit Owner shall have the right to participate in the decisions of the Association as set forth in Article VI hereof. The administration of the Condominium, and consequently of the Association, shall be in accordance with the provisions of the Bylaws.

7.2 Automatic Membership in Association. Each Unit Owner shall automatically become and be a member of the Association upon being conveyed a fee interest in a Unit. Should a Unit Owner be a corporation, limited liability company, partnership, trust, unincorporated association or other entity, said corporation, limited liability company, partnership, trust, unincorporated entity or other entity must designate, in a certificate signed by an officer, manager, partner or other authorized representative of such entity, the name of the individual authorized, to be known as the "Designated Member", to vote on behalf of such entity, which certificate shall be filed with the Secretary of the Association. All such certificates shall be valid until revoked, superseded by a subsequent certificate, or until there has been a change in ownership of the Unit concerned. If such certificate is not filed with the Secretary of the Association, the Association shall be entitled to recognize and rely upon the authority of any individual who states that he or she represents such entity with respect to matters involving such entity's membership in the Association, including the right to vote, unless the lack of authority of such individual is manifest.

## **ARTICLE VIII** **GENERAL CONDITIONS; MISCELLANEOUS MATTERS**

8.1 Common Elements Not Partitioned. Unless otherwise herein provided, the Common Elements and Limited Common Elements shall remain undivided and no Unit Owner shall bring any action

for partition and/or division of same.

8.2 Common Elements Not Severable from Units. The undivided interest in the Common Elements and Limited Common Elements shall not be separated from the Unit to which it appertains and shall be deemed conveyed or encumbered with the Unit even though such interest is not expressly mentioned or described in the conveyance or other instrument.

8.3 Provisions and Covenants Applicable to Units. Each Unit Owner shall comply with the provisions of this Declaration, all exhibits hereto, and authorized amendments hereto. The failure to comply with such provisions, decisions, or resolutions shall be grounds for an action to recover sums due for damages or for injunctive relief. The Units shall also be conveyed subject to the recorded Plat for the Property and amendments thereto. The acceptance of a deed of conveyance or the entering into of a lease for any portion of the Property or the entering into occupancy of any Unit shall constitute an agreement that the provisions of this Declaration, the Bylaws and any Policies which may be adopted by the Association are accepted and ratified by such Owner, tenant or occupant, and an agreement that such provisions shall be deemed and taken to be covenants running with the Property and shall bind any person having at any time any interest or estate in such Unit as though such provisions were made a part of each and every deed of conveyance or lease.

8.4 Nonuse Not Exemption of Liability for Common Expenses. No Unit Owner may exempt himself from liability for his contribution toward the Common Expenses by waiver of the use or enjoyment of any of the Common Elements or by the abandonment of his Unit.

8.5 All Users of Property Subject to Declaration. All present or future Unit Owners and any other person that might use the facilities of the Property in any manner, including those who may rent a Unit from the Declarant, are subject to the provisions of the Condominium Documents and any authorized amendments thereto, and the mere acquisition or rental of any of the Units or rooms shall signify that the provisions of the Condominium Documents and any authorized amendment thereto are accepted and ratified.

8.6 Assessments Subordinate to Mortgagee Taking Title. Where a mortgagee or other purchaser of a Unit obtains title by reason of foreclosure or deed in lieu of foreclosure of a deed of trust encumbering a Unit, such acquirer of title, his or its heirs, successors, assigns or grantees, shall not be liable for assessments by the Association which became due prior to the acquisition of title by such acquirer, it being understood however, that this section shall not be construed to prevent the Association from filing and claiming liens for such unpaid assessments and enforcing the same as provided by law, and provided that such assessments shall be subordinate to such deed of trust. Any sale or transfer of a Unit pursuant to a foreclosure shall not relieve the purchaser or transferee of a Unit from liability for, nor the Unit so sold or transferred from, any Common Expenses thereafter becoming due.

8.7 Condemnation. In the event of an action for eminent domain or a condemnation of all or a portion of the Property which is subject to this Condominium, the award for such taking shall be distributed in accordance with the procedure set forth in N.C.G.S. § 47C-1-107.

8.8 Non-waiver. No provision contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

8.9 Gender and Number. The use of the feminine gender in this Declaration shall be deemed to refer to all genders, and the use of the singular shall be deemed to refer to the plural, and vice versa, whenever the context so requires.



8.10 Applicable Law; Interpretation. This Declaration is set forth to comply with the requirements of the Act as presently constituted or as hereafter amended. In case any of the provisions stated above conflict with the provisions of the Act, the provisions of the Act shall control. In all cases, the provisions of this Declaration shall be given that reasonable interpretation or construction which will best effect consummation of the general plan of land use restrictions and affirmative obligations of the Property, which will carry out the intent of the Declarant as expressed herein, and which will preserve the Property as a site for an attractive, well-maintained, residential community.

Should any provision of this Declaration or any section, paragraph sentence, clause, phrase or term in this Declaration be declared to be void, invalid, illegal, or unenforceable for any reason by the adjudication of the highest court or other tribunal which considers such matters and has jurisdiction over the parties hereto and the subject matter hereof, such judgment shall in no way affect the other provisions hereof which are hereby declared to be severable.

Contrary to the restrictive common law rule of construction, this Declaration shall by this covenant be interpreted broadly to touch and concern the Property with recognition of modern economic, land use planning and real estate finance and development principles, theories and practices. It is the Declarant's intent, and all Owners who take subject to this Declaration to covenant and agree and are thereby estopped to deny, that any reserved right or function of the Declarant and/or Association, and any other covenant, condition, restriction or obligation within this Declaration is intended to promote the use and enjoyment of the Property, is intended to foster the creation, preservation or enhancement of economic or intangible value associated with the Property, and does touch and concern, benefit and burden and run with the Property.

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

8.12 Exhibits. All the exhibits to this Declaration shall be an integral part of this instrument and are hereby incorporated by reference.

## **ARTICLE IX**

### **INSURANCE; RECONSTRUCTION AND REPAIR**

9.1 Insurance. The Association shall be required to obtain and maintain insurance policies that include the minimum coverages of (i) one hundred percent (100%) replacement coverage on the Building, including the Units, less a commercially reasonable deductible amount, (ii) liability insurance coverage of at least \$1,000,000 per occurrence and \$2,000,000 per accident, and (iii) fidelity bond or fidelity crimes insurance coverage covering the Board members, officers and employees of the Association in a reasonable amount. The Association shall be required to insure all the Units at one hundred percent (100%) replacement coverage; however, the Association shall not be responsible for insuring improvements and betterments made to those Units by the Unit Owners. Additional provisions governing insurance obtained by the Association are contained in the Bylaws. The Association's policy insurance will not cover improvements made by Unit Owners to Limited Common Elements.

With respect to any claim against the Association's policy made by an Owner relating to a problem within a Unit, to the maximum extent permitted by law, the claimant Owner shall be responsible for paying half the applicable deductible. This provision is intended to minimize frivolous claims by Owners that could result in higher insurance premiums.

9.2 Insurance Obtained by Owners. Each Owner shall obtain and keep continuously in force

an HO-6 insurance policy, which includes fire and casualty and extended coverage insurance upon his Unit and his personal property, and public liability insurance, and any such other insurance coverage as he may desire. Each Owner shall obtain and maintain public liability insurance coverage in the amount of at least \$500,000 for bodily injury, including death, of persons and property damage, arising out of a single occurrence, and all Owner's insurance policies shall waive any right of the insurer to contribution or proration because of the Association's casualty and public liability policy.

At the request of the Association or Declarant, each Owner shall certify at the closing of the purchase of a Unit that such an individual policy has been obtained.

9.3 Reconstruction. In the event of casualty loss or damage to the Property the provisions of N.C.G.S. § 47C-3-113(h) shall govern all matters pertaining to reconstruction and repair.

## **ARTICLE X** **EASEMENTS**

10.1 Reserved Easements. The Declarant expressly reserves such easements through the Common Elements as described in N.C.G.S. § 47C-2-116. The Association shall have the right at any time to grant easements for utility purposes for the benefit of the Property, including the right to install, lay, maintain, repair and replace water lines, pipes, ducts, sewer lines, gas mains, telephone and television or cable television wires, cables and equipment, electrical conduits, and wires over, under, along and on any portion of the Common Elements. Easements for installation and maintenance of utilities and drainage facilities, if any, are also reserved as shown on the Plat. Within these easements no structure, planting or other material shall be placed or permitted to remain which may interfere with the installation and maintenance of utilities, or which may obstruct or change the flow of drainage channels in the easements.

10.2 Easement for Encroachment. If any portion of the Common Elements now encroaches upon any Unit or if any Unit now encroaches upon any other Unit or upon any portion of the Common Elements, or if any such encroachments shall occur hereafter as a result of (a) settling of the Building; (b) alteration or repair to the Common Elements made by or with consent of the Association; (c) repair or restoration of the Building or any Unit made necessary because of damage by fire or other casualty; or (d) condemnation or eminent domain proceedings, a valid easement shall exist for such encroachment and for the maintenance of the same so long as the Building stand.

10.3 Other Condominium Easements. Each Unit Owner shall have a nonexclusive easement in common with all Unit Owners to use the Common Elements, including all pipes, wires, ducts, flues, cables, conduits, public, utility lines and other Common Elements, if any, located in any of the other Units and serving his Unit. To the extent that there are Common Elements within Units, each Unit shall be subject to a nonexclusive easement in favor of all other Unit Owners to use the pipes, wires, ducts, flues, cables, conduits, public utility lines and other Common Elements serving such other Units and located in such Unit. The Association shall have the right of access to each Unit to inspect the same to remove violations therefrom and to maintain, repair or replace Common Elements contained therein or elsewhere on the Property, and each Owner shall be afforded access through other Units and Limited Common Elements allocated thereto as is reasonably necessary for the Owner to conduct maintenance, repair and replacement of his Unit.

10.4 Construction Easement. Declarant shall also have such easements through the Common Elements as may be reasonably necessary for the purpose of discharging the Declarant's obligations or exercising Special Declarant Rights as provided herein.

10.5 Emergency. The Association, or its agent, shall have a right of entry upon the Common

Elements, Units and any Limited Common Elements to make emergency repairs or to carry out its duties to address emergencies, and a reasonable right of entry upon the Units to effect other repairs, improvements, replacement or maintenance made for the benefit of the Unit entered or another Unit.

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

#### **ARTICLE XI LENDER CONSENT**

11.1 Consent of Lender. The Land and the Buildings are currently encumbered by the lien of that deed of trust dated August 14, 2020 as executed and delivered by Declarant to Hugh M. Queener as Trustee, for the benefit of Pinnacle Bank and recorded in Book 9036, Page 913, Durham County Registry. A Consent of Lender executed by said Trustee and said lender consenting to the execution and recordation of this Declaration is attached hereto as Exhibit C and made a part of this Declaration.

#### **ARTICLE XII GENERAL ASSOCIATION MATTERS**

12.1 Powers of Board. All powers granted in the Declaration or the Bylaws to the Association shall be exercisable by the Board, except as otherwise expressly provided in the Declaration, the Bylaws, or the Act.

12.2 Policies. The Association may adopt and enforce reasonable Policies not in conflict with the Declaration and supplementary thereto, as more fully provided in the Bylaws.

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

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

#### **ARTICLE XIII RIGHTS OF FIRST LIEN HOLDERS**

This Article XIII shall govern notwithstanding any other provision of the Condominium Documents, and to the extent that there is a conflict between any other provision of the Condominium Documents and this Article XIII, this Article XIII shall control.

13.1 Notices of Action. A Lender will be entitled, and the Board shall cause to be delivered, at least sixty (60) days prior written notice of the following:

(a) any condemnation loss or any casualty loss which affects a material portion of the Condominium or which affects any Unit on which there is a mortgage;

(b) any delinquency in the payment of assessments or charges owed by a Unit Owner

subject to a mortgage, where such delinquency has continued for a period of sixty (60) days;

(c) Any lapse, cancellation or material modification of any insurance policy maintained by the Association pursuant to Article IX hereof; or

(d) Any proposed action by the Association, the Board or the Owners which under the terms of the Condominium Documents requires the consent of a specified percentage of Lenders.

13.2 Approval Rights of Lenders. The approval of Lenders shall be required as follows in the instances described below:

(a) Termination of Condominium. Any action to terminate the Condominium after substantial destruction or a substantial taking in condemnation of the Condominium or for other reasons requires the approval by Lenders that represent at least fifty-one percent (51%) of the votes of unit estates that are subject to mortgages.

(b) Amendment of Condominium Documents. Any amendment of a material adverse nature to Lenders requires the approval of at least fifty-one percent (51%) of the votes of unit estates that are subject to mortgages. By way of example, amendments to provisions in the Condominium Documents relating to the following may be of a material adverse nature to Lenders:

- (i) Voting;
- (ii) Assessments, assessment liens or subordination of such liens;
- (iii) Reserves for maintenance, repair and replacement of the Common Elements;
- (iv) Insurance or fidelity bonds;
- (v) Rights to the use of Common Elements;
- (vi) Responsibility for maintenance and repair of the Common Elements;
- (vii) Expansion or contraction of the Condominium or the addition, annexation or withdrawal of property to or from the Condominium;
- (viii) Boundaries of any Unit;
- (ix) The interests in the Common Elements or Limited Common Elements;
- (x) Convertibility of Units into Common Elements or of Common Elements into Units;
- (xi) Leasing of Units;
- (xii) Imposition of any right of first refusal or similar restriction on the right of a Unit Owner to sell, transfer, or otherwise convey his or her Unit in the Condominium;
- (xiii) Establishment of self-management by the Association where professional

management has been required by HUD, VA, FHA, Fannie Mae, FHLMC, or Ginnie Mae; or

- (xiv) Any amendment to a provision in the Condominium Documents which is for the express benefit of Lenders.

13.3 Notices to Lenders. All notices and requests for approval sent by the Association to a Lender pursuant to this Article XIII shall be sent by certified or registered United States mail, postage prepaid, return receipt requested. If a Lender fails to approve or disapprove a request for approval presented to it pursuant to this Article XIII within sixty (60) days following its receipt thereof, the Lender shall be deemed to have approved the request.

*[signature and acknowledgment page follow]*

IN WITNESS WHEREOF, Declarant has caused this Declaration to be executed as of the day and year first above written.

DECLARANT:

Intown Neighborhood Place LLC

By: Nancy Christine Westfall  
Name: Nancy Christine Westfall  
Title: Owners Representative & Managing Member

STATE OF NORTH CAROLINA  
COUNTY OF DURHAM

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she signed the foregoing document: Declaration of Bull City Commons Condominium

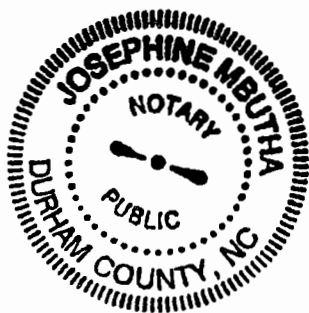
Date: 12-02-2021

Josephine Mbutha  
Notary Public

Print Name: JOSEPHINE MBUTHA

[Official Seal]

My commission expires: 09-19-2026



**EXHIBIT A  
TO  
DECLARATION  
OF  
BULL CITY COMMONS CONDOMINIUM**

**Legal Description of Property**

Lying and being on the south side of Trent Drive in the City of Durham, Durham County, North Carolina and being more particularly described as follows:

BEING all of Lot 9 Revised as shown on the plat entitled "Bull City Commons Condominium" by Stanley Robert Sacks, PLS of Sacks Surveying & Mapping, P.C. recorded in Condominium Book 13, Page 301-307, Durham County Registry.

**EXHIBIT B  
TO  
DECLARATION  
OF  
BULL CITY COMMONS CONDOMINIUM**

**Allocation of Voting, Interest in Common Elements, and Common Expense Shares**

The following table sets forth votes interest and the interest in the Common Elements allocated to each Unit, and the Common Expense Share allocated to each Unit effective as of the recording of this Declaration. The Common Expense Share allocated to each Unit will be recalculated over time based on the census taken by the Board to determine the number of people residing in each Unit as required by the Declaration.

Units Numbers	Voting Interest and Interest in Common Elements	Common Expense Share
201	1/23	.0520
202	1/23	.0255
203	1/23	.0255
204	1/23	.0412
205	1/23	.0310
206	1/23	.0596
301	1/23	.0521
302	1/23	.0255
303	1/23	.0256
304	1/23	.0414
305	1/23	.0310
306	1/23	.0489
307	1/23	.0468
401	1/23	.0520
402	1/23	.0519
403	1/23	.0310
404	1/23	.0490
405	1/23	.0469
501	1/23	.0625
502	1/23	.0414
503	1/23	.0311
504	1/23	.0703
505	1/23	.0577
Totals	1	1

*The above Common Expense Share is as determined by Declarant in accordance with Section 6.2 and is subject to change based on the number of occupants in the Units, all as set forth in Section 6.2. Any purchaser of a Unit must confirm with the Board the then current Common Interest Shares.*



**EXHIBIT C  
TO  
DECLARATION**

**Consent of Lender**

**CONSENT OF LENDER**

THIS CONSENT OF LENDER is made this 2<sup>ND</sup> day of DECEMBER, 2021 by Pinnacle Bank ("Lender").

**WITNESSETH:**

WHEREAS, Lender is the beneficiary of that deed of trust recorded in Book 9036, Page 932, Durham County Registry securing the amount stated therein (the "Deed of Trust"), which encumbers certain real property located in the City of Durham, North Carolina, described in Exhibit A (the "Property") of the Declaration of Bull City Commons Condominium (the "Declaration");

NOW, KNOW ALL MEN BY THESE PRESENTS, that Lender joins in the foregoing Declaration of Bull City Commons Condominium and the provisions of the North Carolina Condominium Act for the sole purpose of consenting to the creation by the Declarant of the Condominium on the property upon which it has a lien. The Lender makes no representations or warranties as to the validity of the documents creating the Condominium nor the development and physical construction of the Condominium itself. The Lender agrees that the lien of its Deed of Trust on the property being submitted to the Condominium shall hereafter be upon the Units, the interests in Common Elements, and other rights appertaining to those units, and that any subsequent foreclosure of the Lender's lien shall not extinguish this Declaration but shall merely vest in Lender the rights and duties set forth herein, provided, however, that should Lender acquire title to the property secured by the Deed of Trust, any liability Lender shall have for the duties set forth in the Declaration shall be non-recourse except to the extent of its interest in such property; that all present and future owners of any of the property described in the Declaration shall be entitled to the full rights and easements to the extent the same are granted herein; that the submission of the property to the North Carolina Condominium Act will not trigger the "due-on-sale" clause in the Deed of Trust, should such clause exist; and, that upon full satisfaction of the loan secured by the Deed of Trust, the rights of Lender set forth in this Declaration shall terminate.

*[Signature follows this page.]*

IN WITNESS WHEREOF, Lender has caused this instrument to be executed and effective as of the day and year first above written.

LENDER:

Pinnacle Bank

By: Eddie Blount  
Name: EDDIE Blount  
Title: SENIOR VICE PRESIDENT

STATE OF NORTH CAROLINA  
COUNTY OF DURHAM

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she signed the foregoing document: EDDIE BLOUNT

*(name of person signing in blank)*

Date: 12.02.2021

Josephine Mbutha  
Notary Public

[Official Seal]

Print Name: JOSEPHINE MBUTHA

My commission expires: 09.19.2026

