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BY:

Deputy *Linda (Peters)*

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SEE BOOK 3773 PAGE 89

Prepared by and return to William A. Anderson, III, P.O. Box 51579, Durham NC 27717-1579.

STATE OF NORTH CAROLINA

DECLARATION

OF

COUNTY OF ORANGE

ROSEMARY VILLAGE CONDOMINIUM

THIS DECLARATION OF CONDOMINIUM is made this 9th day of February, 2006, by Rosemary Village, LLC, a North Carolina limited liability company (hereinafter referred to as "Declarant"). Declarant hereby states and declares as follows:

WITNESSETH:

WHEREAS, Declarant is the Owner of certain real property located in the Town of Chapel Hill, Orange County, North Carolina, more particularly described on Exhibit A attached hereto, upon which is situated buildings intended to contain residential condominium units, commercial condominium units and certain other improvements; and

WHEREAS, Declarant desires to submit the Land and the improvements located thereon (collectively, the "Property") to the terms and provisions of the North Carolina Condominium Act and by so doing intends to protect the value and the desirability of the Property, further a plan for condominium ownership of the Property, create a harmonious and attractive mixed use 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 real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

ARTICLE I **DEFINITIONS**

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:

1.1 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.

1.2 Articles or Articles of Incorporation means the articles of incorporation filed with the office of the North Carolina Secretary of State which establishes the Rosemary Village Owners Association as a North Carolina not-for-profit corporation.

1.3 Assessment means a Unit Owner's pro rata share of the common expenses which from time to time are assessed against a Unit Owner by the Association.

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

1.5 Board or Executive Board means the group of persons selected, authorized and directed to operate the Association as provided by the Act, this Declaration and the Bylaws.

1.6 Bylaws means the bylaws of the Association which, with this Declaration and the Articles of the Association, describe the powers and functions of the Association, and which from time to time may be amended by the Association. Rules of conduct of the Association shall be attached to the Bylaws as an appendix.

1.7 Building means a structure containing one or more Units which comprises a part of the Property.

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

1.9 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, charges for water and sewer service, 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.

1.10 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.

1.11 Commercial Tenant means a lessee or sublessee of a Commercial Unit or any portion of a Commercial Unit.

1.12 Commercial Unit means any non-residential Unit created by the recording of this Declaration that is intended for, and restricted to, commercial use.

1.13 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.

1.14 Declarant means Rosemary Village, LLC, a North Carolina limited liability company, with its principal place of business located in Chapel Hill, North Carolina, and its successors and assigns.

1.15 Declaration means this Declaration of Condominium, as it may be amended from time to time, which shall be recorded in the Orange County Registry together with the Plat, thereby establishing Rosemary Village Condominium by subjecting the Property to the Act.

1.16 Double Residential Unit means any Unit created by the recording of Declaration that is intended for, and restricted to, residential use and which is substantially larger than the other Residential Units, typically having three (3) or four (4) bedrooms rather than one (1) or two (2) bedrooms typical of the other Residential Units.

1.17 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.

1.18 Owner or Unit Owner has the same definition as Co-owner as set forth in Paragraph 1.10 of this Article 1.

1.19 Plat means the survey of the Property and the plans for the Condominium, said Plat consisting of Sheets 1 through 9, inclusive, and being recorded in the Orange County Registry in Plat Book 99, Pages 80 through 88, inclusive. The Plat is hereby incorporated herein by reference as if the same were attached hereto.

1.20 Period of Declarant Control means the period during which the Declarant shall control the Association, which period shall commence on the date hereof 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.

1.21 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.

1.22 Residential Unit means any Unit created by this Declaration that is intended for, and restricted to, residential use, including the Double Residential Units as defined above in section 1.16.

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

1.24 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.

Notwithstanding the foregoing definitions, all 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, the Declaration, the Bylaws, and the other Condominium documents as applicable.

2.2 Condominium Name. The name of the Condominium shall be "Rosemary Village Condominium".

2.3 Plat and Plans. The Property is located in Chapel Hill, Orange County, North Carolina. Attached hereto as Exhibit A is a legal description of the Property, which Property is more particularly shown on a Plat thereof, and which Plat is recorded in the Office of the Register of Deeds for Orange County, North Carolina. The improvements on the Property have been constructed in accordance with the plans. Said plans are filed as part of the Plat. Included on the Plat is a Certificate by the architectural firm that drafted the plans that the Units constructed on the Property were constructed substantially in compliance with said plans and comply with the statutory requirements of the Act.

2.4 Number of Units. Declarant hereby establishes within the Property a maximum of forty-five (45) total Units and does hereby designate all such Units for separate ownership. Seven (7) of the Units shall be Commercial Units. The maximum number of Residential Units shall be thirty-eight (38), two (2) of which are initially planned as Double Residential Units.

Declarant hereby expressly reserves the right to create more than two Double Residential Units, which creation would reduce the total number of Residential Units, thereby reducing the total number of Units. In the event that the total number of Units is reduced below the forty-five (45) Units initially planned as set forth herein, Declarant will amend this Declaration to reallocate the Fractional Shares shown on Exhibit D attached hereto and incorporated herein by reference. Unit boundaries are described in section 3.2 below and on the Plat. Identifying Unit numbers are also shown on the Plat.

2.5 Association Membership. Each Owner shall be a member of the Association. An Owner shall be entitled to a vote in the Association for each Unit owned in accordance with the statutory fractions set forth in Exhibit D attached hereto, with further conditions as to said voting rights as set forth in the Bylaws.

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), in the Act, 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 as defined above in section 1.23 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) To alter the size of any Unit, and subdivide Residential Units, provided that the maximum number of Residential Units does not exceed thirty-eight (38).
- (d) During the Period of Declarant Control, to appoint and remove any officers or Executive Board members; provided, however, that: (i) not later than sixty (60) days after the conveyance of 25% of the Units to Owners other than Declarant, at least one (1) member and not less than 25% of the Members of the Executive Board shall be elected by Owners other than Declarant; and (ii) not later than sixty (60) days after conveyance of 50% of the Units to Owners other than Declarant, not less than 33% of the members of the Executive Board shall be elected by Owners other than Declarant.
- (e) 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.

- (f) 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.
- (g) The absolute right and privilege of leasing any or all of the Units owned by it on a short or long term basis for the uses permitted by this Declaration, and Declarant's lessees, invitees, guests, etc., shall be entitled to all of the privileges and rights, and be subject to the requirements prescribed hereunder, of a Unit Owner with respect to the use of the Property excluding voting rights which shall remain with the Declarant.
- (h) 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.

These Special Declarant Rights shall expire at the earlier of: 1) ten years from the recording of this Declaration; or 2) one year after the last Unit is conveyed in fee to someone other than Declarant.

ARTICLE III
DESCRIPTION OF UNITS; USE; REPAIRS; RESTRICTIONS
DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS

3.1 General Description of Units and Use. 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 Unit numbers and square footage of area in each Unit, and depicts the Unit boundaries that are further described in section 3.2 below, which together shall constitute a complete description of the Units within the Condominium.

The Units are in four (4) separate Buildings as follows:

- (a) Building 1 contains the seven (7) Commercial Units on the ground floor. Building 1 will contain fourteen (14) Residential Units, two (2) of which are Double Residential Units. The Residential Units in Building 1 are multi-story Units, each occupying a portion of three stories, i.e. the second, third and fourth floors.
- (b) Buildings 2 and 4 each contain eight (8) Residential Units multi-story Units, each Unit having four stories, i.e. a ground floor single car garage, and second, third and fourth floors.

(c) Building 3 contains eight (8) Residential Units. The ground floor of Building 3 is an open garage area containing parking spaces that are assigned by the Association as set forth in section 4.3 below. The second floor of Building C contains four (4) single-story Residential Units the third floor of Building 3 contains four (4) single-story Residential Units.

The quantity of Residential Units in each Building as provided in this section 3.1 is subject to the Special Declarant Right reserved above in section 2.7 to alter the size of any Unit or subdivide Units provided that the maximum number of Residential Units does not exceed thirty-eight (38). Reference is hereby made to section 4.2 below for a description of the Limited Common Elements appurtenant to certain Units.

3.2 Unit Boundaries.

- (a) The vertical and horizontal perimetric boundaries of each Unit shall consist of the unfinished perimeter walls, floors and ceilings as more particularly shown and described on the Plat. More specifically, the horizontal plane of the top surface of the wallboard in the ceilings of the top floor level within a Unit shall be the upper boundary thereof and the horizontal plane of the top surface of the subfloor 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. The uppermost boundary of the Commercial Units shall be the bottom surface of the corrugated steel decking since there is no finished ceiling in the Commercial Unit at the time of the recording of this Declaration. All other portions of such walls, floors, or ceilings are a part of the Common Elements. All interior walls, partitions, fixtures, appliances, cabinets and other facilities and other improvements lying completely within the boundaries of a Unit shall be part of such Unit.
- (b) If a Unit contains more than one floor, connected by interior stairwells, the interior stairwells and the space between the upper and lower floors of that Unit shall be a part of that Unit. This portion of the Unit may be subject to the easement right of the other Unit Owners as set forth in section 10.3. In the event that the units have varying foundation plans, e.g., slabs on grade, crawl spaces, deep foundations or pilings, the lower boundary of the Unit shall be the top surface of the subflooring of the lowest floor in the Unit. Where an enclosed garage is made part of the Unit, then the lowest horizontal Unit boundary shall be the top surface of the garage floor. In Building 1, where Residential Units have their lowest levels on the second floor of the Building, the portion of the entry stairs inside the exterior entry door shall be part of those Residential Units.

3.3 Responsibilities for Maintenance and Repair

- (a) Each Owner shall be responsible for the maintenance and repair of his Unit.
- (b) Each Owner shall be responsible for any damage to his Unit or to any other Unit or any of the Common Elements caused by a careless, accidental or negligent action or inaction within said Owner's Unit (i.e., actions other than what is customarily considered normal wear and tear), damage attributable to keeping pets, smoking, and similar kinds of activity, which directly or indirectly causes damage to any other Unit or to any of the Common Elements.
- (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 a first class mixed-use development. To that end, the following covenants, conditions and restrictions are hereby placed on the Property.

- (a) Restrictions Applicable to All Units.
 - i. 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, County of Orange, Town of Chapel Hill 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 to such other Owner 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.

- ii. Each Owner (hereinafter for the purposes of this section 3.4(a)(ii), "Indemnifying Owner") covenants and agrees, at its sole cost and expense, to indemnify and hold harmless the other Owner, its partners, agents, directors, officers, employees and members (collectively referred to for the purposes of this section 3.4(a)(ii) 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.)
- iii. 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 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 to maintain compliance with any applicable law or regulation, 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.

- iv. 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 Association's Board and all managerial personnel shall have the right to authorize access to such Unit 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 under the control of the Association.
- v. 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 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.
- vi. 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 written permission of the Association.
- vii. All garbage and items to be recycled shall be placed only in the designated receptacles for pickup by the Town of Chapel Hill, its agent, or other private contractor.
- viii. Declarant may effect changes in any Unit or in the Common Elements at any time to meet mandatory requirements of applicable law.
- ix. Any lease of any Unit shall expressly provide that occupancy thereunder must be in a manner consistent with the Bylaws and shall likewise provide that the terms and conditions of the Declaration and all exhibits thereto shall be complied with by the lessee. Any lease entered into by a Unit Owner pursuant to the provisions of this paragraph shall be deemed to contain the

requirements set forth herein whether or not they are actually contained therein and the lessor and the lessee of any such lease shall be bound by these provisions.

- x. All retrofit or replacement HVAC units located in or on the Common Elements must use replacement equipment that is equal to or smaller than the equipment being replaced in terms of size and must produce a decibel level of sound equal to or less than the equipment being replaced. For Commercial Units, the HVAC footprint shall not exceed 36 inches by 36 inches and shall not produce sound in excess of 72 decibels. All Commercial Units may only use Common Elements for HVAC equipment that is allocated to each Unit per Architectural Drawing A1.1 (on file with Declarant).

- (b) Restrictions Applicable to Commercial Units. The Commercial Units shall be used only for commercial, nonresidential purposes. The Commercial Owner and the Commercial Tenants shall neither use any Unit for any of the following uses nor enter into any agreements or leases with any party which uses, or intends to use, any Unit for any of the following uses, and no such use shall be permitted:

- i. Bowling alley;
- ii. Funeral parlor;
- iii. Industrial or manufacturing use;
- iv. Adult bookstore or adult movie store;
- v. Massage parlor, "strip" or similar club or establishment;
- vi. So-called "head shop";
- vii. Dry cleaners (except as a "drop off" site for off-site cleaning);
- viii. Photography stores which develop film on-site (unless the store is required by the terms of its lease to properly store and dispose of processing chemicals and other, photographic waste materials in accordance with all applicable federal, state and local laws, rules and regulations);
- ix. Pet store, kennel, veterinary practice, or similar use that involves the housing of animals;
- x. Day care.

The following restrictions shall apply to the Commercial Units:

- xi. Any and all activity that require a gas fuel source for heating food, cooking or preparing food which requires an exhaust system in the food preparation is prohibited. No exhaust may exit the Commercial Units that has food or smoke odors. No grease laden exhaust shall be exhausted from any Unit.
- xii. Any and all food processing, food preparation or other activity producing grease-laden waste effluent discharge where grease, fats

and oils enter automatic dishwasher pre-rinse stations, sinks or other appurtenances is prohibited.

- xiii. Any other commercial activities that OWASA or Town of Chapel Hill deems necessitating a grease interceptor or grease trap are also prohibited.

(c) Restrictions Applicable to Residential Units.

- i. The Residential Units shall be used only for residential, noncommercial purposes.
- ii. No signs of any nature, including "for rent" or "for sale" and other similar signs, shall be erected or maintained on any Residential Unit by anyone, including but not limited to the Owner, a Realtor, a contractor or subcontractor, except as may be required by legal proceedings, without permission of the Association.
- iii. A maximum of two (2) domestic pets per Residential Unit is allowed subject to the provisions of this Declaration. No single pet shall be larger than fifty (50) pounds. Non-domestic pets shall not be allowed in any Residential Unit. Pets shall not be kept or maintained for commercial purposes or for breeding. Any pet causing or creating a nuisance or unreasonable disturbance or noise may be permanently removed from the Property upon ten (10) days written notice from the Association. All pets shall be kept on a leash except when in a Residential Unit and the Residential Unit Owner shall be responsible for removing all feces left on the Property by any pets residing with such Residential Unit Owner.
- iv. Except to the extent such uses are required by law to be permitted, no Residential Unit may be used for day care or group home purposes.
- v. No unusual, disturbing or objectionable odor or noise shall be permitted to emanate from any Residential Unit.
- vi. No Residential Unit Owner shall sweep or throw any debris, dirt or other substance from any window or balcony, patio or terrace or permit any occupant or guest to engage in such activities.
- vii. No Residential Unit Owner shall park or store any boat, camper, trailer, or similar vehicle anywhere on the Property. No trucks shall be permitted except for standard 1-ton or less pickup trucks or smaller sized trucks.
- viii. All window treatments visible from the outside of the Buildings shall be blinds with white, horizontal slats that are two (2) inches in width.

- (d) 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 any other person or entity having any right, title or interest in the Property.

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. No less than thirty (30) days prior to the annual meeting of the members of the Association, the Board shall furnish all Unit Owners with a copy of the budget for the next fiscal year and shall likewise advise them of the amount of the periodic assessments payable by each of them, respectively, as determined by the Board. Assessments for Double Residential Units may be higher than assessments for other Units.
- (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. Such special assessments must be approved by the Board but shall not be payable if seventy-five percent (75%) of the Unit Owners vote against such assessment at a special meeting held within forty-five (45) days of delivery of notice of the special assessment to Unit Owners. If a vote against the proposed special assessment is not sustained, the special assessment shall be due and payable ten (10) days after expiration of the forty-five (45) day period in which the Unit Owners may consider action to veto a special assessment.

- (d) Records. The Board shall keep detailed records of the receipts and expenditures affecting the Common Elements and any other expenses incurred. Records and vouchers authorizing the payments involved shall be available for examination by any Unit Owner during reasonable business hours.
- (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 one and one-half percent (1 ½%) of the delinquent amount per month on such unpaid assessments from the due date thereof, together with all expenses, including attorney's fees, incurred by the Board in any proceeding brought to collect such unpaid assessments. The Board shall have the right and duty to attempt to recover such assessments, together with interest thereon, and the expenses of the proceeding, including attorney's fees, 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. 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. § 47-3-116(b), as amended, shall be controlling.
- (f) Statement of Assessments or Other Charges. The Board shall, for a reasonable fee not to exceed Ten (\$10.00) Dollars, promptly provide any purchaser, Unit Owner, encumbrancer or prospective encumbrancer of an Unit 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.

3.6 Alteration in the Units. This section 3.6 is subject to the Special Declarant Rights reserved in section 2.7 above.

- (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 or mechanical systems or lessen the support of any portion of any Building.
- (b) No Owner may change the appearance of the Common Elements, the exterior appearance of a Unit, or anything which results in changes visible from outside the Unit, e.g., paint color, awnings, exterior lining of window coverings (other than white); provided, however, that Commercial Owners or Commercial Tenants may place signs on the ground floor facade of the

east and south sides (the street sides) of Building A so long as: 1) the signs advertise the businesses situated in the Commercial Units; and 2) the signs are in compliance with all local sign ordinances.

- (c) No Residential Unit may be subdivided into more than one Unit.
- (d) No Commercial Unit may be subdivided into more than one Unit; provided however, it is the intent of the Declarant to create commercial space that is flexible to allow for changing market conditions. To that end, Commercial Unit Owners shall be allowed to remove or rebuild the interior partition walls dividing the Commercial Units. Such an alteration does not constitute a relocation of boundaries between Units and the Units will continue to be considered separate and distinct for purposes of this Declaration. Prior to the commencement of any work, any Commercial Unit Owner seeking to remove or rebuild an interior partition wall dividing Commercial Units pursuant to this section 3.6(d) shall request permission from the Association in writing to remove or rebuild such a wall. Upon receipt of such request, the Association shall have fifteen (15) calendar days to respond by approving said request, denying said request, which denial shall be reasonably and directly related to the health and safety of the Unit Owners, or asking for further information, under which condition the Association shall have no more than seven (7) additional calendar days after the additional information is delivered to the Association to render a decision either approving the request or denying the request, which denial shall be reasonably and directly related to the health and safety of the Unit Owners. If the Association fails to respond to said request within fifteen (15) calendar days, or within seven (7) calendar days of being provided said additional information, then the request to remove or rebuild the wall shall be deemed granted and the work may commence subject to all other provisions of this section 3.6(d). The Commercial Unit Owner responsible for the work shall:
 - (i) 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;
- (vi) Reimburse the Declarant and the Association for any expenses incurred by the Association, including but not limited to legal and other consulting fees; and
- (vii) Upon completion of the removal or rebuilding of the wall pursuant to the provisions of this section 3.7(d), the Commercial Unit Owner responsible for the work shall deliver to the Association a copy of the "As Built" plans and specifications certified to by an architect licensed to practice in North Carolina.

ARTICLE IV **COMMON ELEMENTS**

4.1 Common Elements. The real estate which comprises the Common Elements as of the recording of this Declaration is all of the Property except the Units. In addition to all of the rights reserved to Declarant hereunder, Declarant specifically reserves the right to improve, upgrade, expand, modify and enlarge the Common Elements, including the addition of certain easement rights in favor of Declarant.

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

- (a) The Limited Common Elements specified in section 47C-2-102(2) of the Act (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) are allocated to the Units served by those Limited Common Elements.
- (b) The Limited Common Elements specified in section 47C-2-102(4) of the Act (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) The rooftop terraces directly above the Residential Units in Buildings 1, 2, 3 and 4 shall be Limited Common Elements. Each rooftop terrace shall be appurtenant only to such Residential Unit having direct access onto such

rooftop terrace. The Residential Unit Owner having the benefit of the rooftop terrace shall be responsible for keeping said area clean of debris and in conformance with the exterior appearance provisions of this Declaration.

- (d) The common stairway and elevator from the parking area on the ground level Building 3 to the second and third floors of Building 3, including the common halls on the second and third floors of Building 3, that serve the Residential Units in Building 3 shall be Limited Common Elements appurtenant only to all the Residential Units in Building 3.
- (e) In Building 1, where Residential Units have their lowest levels on the second floor of the Building, the portion of the entry stairs and stoop outside the exterior entry door shall be a Limited Common Element appurtenant only to the Residential Unit served.

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 Owners as set forth in the Bylaws.

4.3 Parking. The Association shall have the power to allocate parking spaces that are part of the Common Elements subject to the following:

(a) Each Residential Unit in Buildings 1 and 3 shall be allocated (1) vehicular parking space, except that any Double Residential Unit shall be allocated two (2) vehicular parking spaces.

(c) Each Commercial Unit shall be designated two (2) vehicular parking spaces in the parking lot located at 109 Merritt Mill Road, which lot shall only be used by Commercial Owners, Commercial Tenants, and their invitees.

Subject to the provisions of this section 4.3, the Association shall have the right to designate the use of any excess parking spaces, including without limitation, reserving the excess parking spaces for Association use, reserving the excess parking spaces for special use, or leasing the excess parking spaces to persons and upon terms and conditions as the Association deems appropriate. The Association may require reasonable identification of vehicles as those belonging to the entitled party, and the Association may mark the pavement in the vehicular parking spaces to denote the entitled party. The Association shall have the power to enforce its parking space designations pursuant to the terms of this Declaration, the Articles and Bylaws.

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 must 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; 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 vote or agreement of the Owners to which at least 67% of the votes in the Association are allocated. Votes may be cast in person or by proxy at a meeting held in accordance with the provisions of the Association's Bylaws.
- (b) Every amendment shall be prepared, executed, recorded and certified by the Association and shall be effective only when recorded in the Orange County Registry.
- (c) Subject to the Special Declarant Rights reserved in section 2.7 above and 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 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 Orange County Registry, shall be effective upon recording.

5.2 Termination. 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 agreement of eighty percent (80%) of the Unit Owners to whom at least eighty percent (80%) of the votes in the Association are allocated, 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
ALLOCATION OF COMMON ELEMENTS AND COMMON LIABILITIES;
VOTES IN ASSOCIATION

The allocated interest of the title and interest appurtenant to each Unit and the Unit Owner's title and interest in the Common Elements of the Property and the proportionate share in the revenues, if any, and common monthly expenses as well as the proportionate representation for voting purposes in meetings of the Association (collectively referred to herein as the "Fractional Share") shall be the fraction having a numerator of one (1) and a denominator that is the total number of Units, except that the Fractional Share for each Double Residential Unit shall be the fraction having a numerator of one and one-half (1.5) and a denominator of the total number of units. The Fractional Shares for all Units are set forth on Exhibit D and may be expressed using a common denominator that will provide a whole number numerator. Declarant reserves the right to amend the Declaration without the approval of the Unit Owners to reallocate the Fractional Shares as a result of its exercise of Special Declarant Rights.

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 not-for-profit corporation known as Rosemary Village Condominium Owners Association. Each Unit Owner shall have voting rights in said Association in the same proportion as his Fractional Share in the Common Elements. The administration of the Condominium, and consequently of the Association, shall be in accordance with the provisions of the Bylaws which are incorporated herein, made a part hereof, and are attached hereto as Exhibit C.

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. In the event that a Unit is owned by more than one person, the person entitled to cast the vote for the Unit shall be designated by a certificate signed by all the record Owners of said Unit and filed with the Secretary of the Association and shall exercise such share of his vote in all matters as shown upon Exhibit D. Further, should such 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 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.

ARTICLE VIII
GENERAL CONDITIONS; MISCELLANEOUS MATTERS

8.1 Common Elements Not Partitioned. Except as 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 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 rules of conduct 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 Land and shall bind any person having at any time any interest or estate in such Unit as though such provisions were made a part of each and every deed of conveyance or lease.

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 lease a Unit from the Declarant, are subject to the provisions of this Declaration and any authorized amendments thereto, and the mere acquisition or rental of any of the Units shall signify that the provisions of this Declaration 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 the above 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.

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 masculine gender in this Declaration shall be deemed to refer to the feminine and neuter gender, 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 affect 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, mixed use 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 the 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 exhibits to this Declaration shall be an integral part of this instrument.

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) 100% replacement coverage on the buildings, less a commercially reasonable deductible amount, (ii) liability insurance coverage of at least \$1,000,000 per occurrence and \$2,000,000.00 per accident, and (iii) fidelity bond coverage covering the Executive Board members, officers and employees of the Association in a reasonable amount. Additionally the Association shall be required to insure all the Units at 100% replacement coverage; however, the Association shall not be responsible for insuring improvements and betterments made to those Units.

9.2 Insurance Obtained by Owners. Each Owner shall obtain and keep continuously in force additional fire and casualty and extended coverage insurance upon his Unit, his personal property, including his automobile, public liability insurance, and such other insurance coverage as he may desire. Each Residential Owner shall obtain and maintain public liability insurance coverage in the amount of at least \$100,000 for bodily injury, including death, of persons and property damage, arising out of a single occurrence, and each Commercial Owner shall obtain and maintain public liability insurance coverage in the amount of at least \$250,000 for bodily injury, including death, of persons and property damage, arising out of a single occurrence. All such insurance policies shall include, however, provisions waiving (i) any right of the insurer to subrogation claims against the Association and against Unit Owners and their household members, employees and invitees, as well as their tenants and such tenant's employees and invitees; and (ii) any right of the insurer to contribution or pro-rata because of the Association's casualty and public liability policy.

At the request of the Association, 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 reserves at any time, the right to grant easements for utility purposes for the benefit of the Property, including the right to install, lay, maintain, repair and replace water lines, pipes, ducts, sewer lines, gas mains, telephone and television or cable television wires, cables and equipment, 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 or 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 or; (c) as a result of repair or restoration of a Building or any Unit made necessary because of damage by fire or other casualty; or (d) as a result of 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 or Buildings 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.

10.4 Construction Easement. Declarant shall have a reasonable construction easement across the Common Elements for the purpose of constructing improvements on or within the Units. Declarant shall also have such easements through the Common Elements as may be reasonably necessary for the purpose of discharging the Declarant's obligations or exercising Special Declarant Rights as provided herein.

10.5 Emergency Repair. The Association shall have a right of entry upon the Units and any Limited Common Elements to effect emergency repairs, 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

The Land and the Buildings are currently encumbered by the lien of a Deed of Trust and Security Agreement dated October 27, 2004, as amended, executed and delivered by Declarant to BB&T Collateral Service Corporation, as Trustee, for the benefit of Branch Banking and Trust Company and recorded in Book 3595, Page 119, Orange County Registry, and by that UCC-1 financing statement perfecting the security interest of Branch Banking and Trust Company in the collateral therein described and recorded in Book 3595, Page 128, Orange County Registry. A Consent of Lender executed by said Trustee and said Bank consenting to the execution and

recording of this Declaration is attached hereto as Exhibit E and made a part of this Declaration.

ARTICLE XII
GENERAL ASSOCIATION MATTERS

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

12.2 Rules of Conduct. The Association may adopt and enforce reasonable rules of conduct not in conflict with the Declaration and supplementary thereto, as more fully provided in the Bylaws. A copy of the rules of conduct that exist as of the filing of this Declaration are attached to the Bylaws as an appendix.

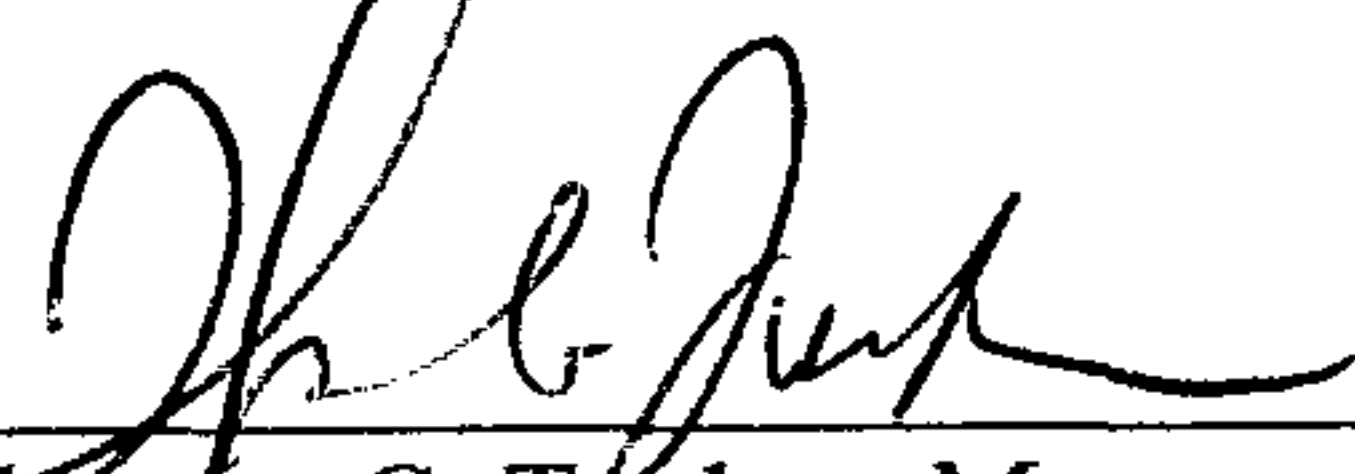
12.3 Enforcement by Association. The Association shall have the right to enforce, by any proceedings at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration, the Bylaws and Articles of Incorporation of the Association, which Articles are attached hereto as Exhibit B. 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.

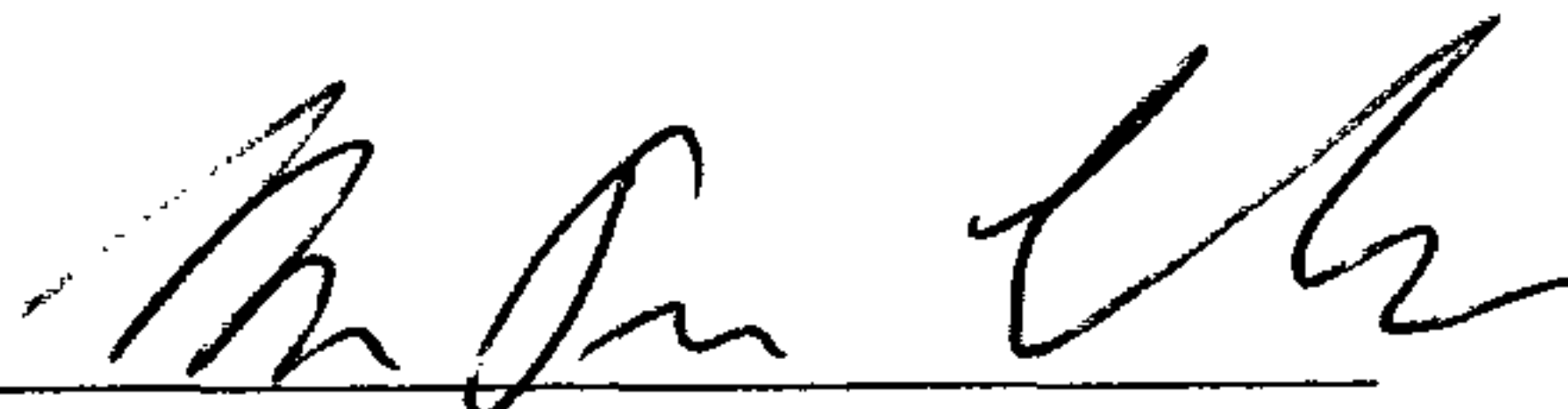
[SIGNATURE PAGE FOLLOWS]

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

ROSEMARY VILLAGE, LLC, a North Carolina
limited liability company

By:  (Seal)
Thomas C. Tucker, Manager

By: BUILD EX, INC, a North Carolina corporation,
Manager

By: 
President

STATE OF NC
COUNTY OF Orange

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated:

Thomas Tucker and Brian Ehrenfeld
[insert name(s) of person(s) in blank].

Date: 2-9-06

[Signature]
Notary Public

[Official Seal] **Guy P. Scronce**
NOTARY PUBLIC
Orange County, North Carolina
My Commission Expires 11/20/10

Print Name: Guy P. Scronce

My commission expires: 11-20-10

STATE OF _____
COUNTY OF _____

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated:

[insert name(s) of person(s) in blank].

Date: _____

Notary Public

Print Name: _____

[Official Seal]

My commission expires: _____

**EXHIBIT A TO DECLARATION
OF
ROSEMARY VILLAGE CONDOMINIUM**

Legal Description of Property

Rosemary Village Condominium is comprised of two noncontiguous parcels of real estate, both lying in the Town of Chapel Hill, Orange County, North Carolina and are more particularly described as follows:

TRACT 1 (northwestern corner Rosemary Street and Mitchell Lane)

BEGINNING at an iron pipe in the northwestern corner of the intersection of Mitchell Lane and Rosemary Street and running thence along and with the northern right of way boundary of Rosemary Street South 65° 18' 31" West 159.20 feet to an iron pipe; thence leaving said northern right of way of Rosemary Street and running North 11° 00' 56" West 189.35 feet to an iron pipe; thence running South 65° 19' 52" West 49.87 feet to an iron pipe; thence South 65° 06' 11" West 49.95 feet to an iron pipe; thence North 10° 40' 49" West 50.20 feet to an iron pipe; thence North 64° 43' 24" East 124.94 feet to an iron pipe; thence South 26° 20' 24" East 49.97 feet to an iron pipe; thence North 65° 15' 52" East 11.04 feet to an iron pipe; thence North 64° 54' 27" East 49.85 feet to an iron pipe; thence North 65° 19' 59" East 94.53 feet to an iron pipe in the western right of way boundary of Mitchell Lane; thence running along said western right of way boundary of Mitchell Lane South 01° 17' 36" East 200.66 feet to an iron pipe, the place and point of BEGINNING and being all of that .90 acre parcel, more or less, as shown on the final plat of Rosemary Village Condominium prepared by R.S. Jones & Associates, Inc., dated December 6, 2005, and recorded in Plat Book 99, Page 80, Orange County Registry, as sheet 1 of 9 of the Plat as defined in the Declaration of Rosemary Village Condominium.

TRACT 2 (Merritt Mill Road satellite parking lot)

Commencing at an iron pipe in the northern right of way boundary of Rosemary Street, said iron pipe set in the southwestern corner of the above described Tract 1 and in the eastern property line of that property now or formerly belonging to William and Ruth Burnette (see Deed Book 1347, Page 390, Orange County Registry) and running South 25° 54' 18" West 946.30 feet to an iron pipe in the northeastern corner of this Tract 2, a common corner with those parcels now or formerly owned by IBPOE of W # 276 to the north, Pride of Orange Lodge No. 276 to the northeast (for both, see Deed Book 1021, Page 526, Orange County Registry), and Robert and Diane Blitchington (see Deed Book 2231, Page 227, Orange County Registry), and said iron pipe being the place and point of BEGINNING; thence South 24° 51' 12" East 49.30 feet to an iron rod; thence South 65° 04' 44" West 50.00 feet to an iron pipe; thence South 25° 00' 41" East 17.54 feet to an iron pipe; thence South 65° 04' 26" West 93.60 feet to an iron pipe in the eastern right of way boundary of Merritt Mill Road; thence along said eastern right of way boundary of Merritt Mill Road North 20° 43' 43" West to an iron rod; thence leaving said eastern right of way of Merritt Mill Road and running North 65° 03' 51" East 137.70 feet to the place and point of BEGINNING and being all of that .18 acre parcel, more or less, as shown on the final plat of Rosemary Village Condominium prepared by R.S. Jones & Associates, Inc., dated December 6, 2005, and recorded in Plat Book 99, Page 80, Orange County Registry, as sheet 1 of 9 of the Plat as defined in the Declaration of Rosemary Village Condominium.

**EXHIBIT B TO DECLARATION
OF
ROSEMARY VILLAGE CONDOMINIUM**

Articles of Incorporation for Association

[A copy of the Articles of Incorporation for Rosemary Village Condominium Owners Association as filed with the North Carolina Secretary of State follows this page.]

ARTICLES OF INCORPORATION
OF
ROSEMARY VILLAGE
CONDOMINIUM OWNERS ASSOCIATION
A Nonprofit Corporation

PREAMBLE:

Rosemary Village, LLC, hereinafter referred to as Declarant, owns or will own certain property in Orange County, North Carolina. Declarant intends to record a Declaration of Condominium for Rosemary Village Condominium (the "Declaration") which will encumber the property. This Association is being formed to administer the Declaration and to perform, among other things, the duties and exercise the powers pursuant to the Declaration, as and when the Declaration is recorded in the Office of the Orange County Register of Deeds, North Carolina. All of the definitions contained in the Declaration shall apply to these Articles, and to the Bylaws of the Association. Until such time as the Declaration is so recorded, the incorporator shall be the sole member of the Association.

The undersigned hereby submits these Articles of Incorporation for the purpose of forming a nonprofit corporation under the laws of the State of North Carolina.

ARTICLE I

The name of the corporation is Rosemary Village Condominium Owners Association (hereinafter called the "Association").

ARTICLE II

The street and mailing address of the initial registered office of the Association in the State of North Carolina is: David Swanson, Esq., 714 Ninth Street, Durham, Durham County, North Carolina 27705. The Association's initial registered agent at such address is: David Swanson, Esq.

ARTICLE III

The name and address of the incorporator are as follows:

James R. Easthom
Kennon, Craver, Belo, Craig & McKee, PLLC
3100 Tower Boulevard, Suite 1200
Durham, NC 27707

ARTICLE IV

The Association will have members, the designations, qualifications, rights and obligations of whom are set forth in or authorized by the bylaws of the Association (the "Bylaws"). The members of the Association shall be limited solely to the owners of units in Rosemary Village Condominium (the "Condominium"). Membership shall be automatically established by acquisition of fee title to a Condominium unit whether by conveyance, devise, descent, judicial decree, foreclosure or deed in lieu of foreclosure. A new owner designated in such deed or other instrument shall thereupon become a member of the Association, and the membership of the prior owner as to a designated Condominium unit shall be terminated. Each new owner shall deliver to the Association a true copy of such deed or instrument of acquisition of title.

Neither one's membership in the Association nor a member's share in the funds and assets of the Association may be assigned, hypothecated or transferred in any manner except as an appurtenance to the Condominium unit.

ARTICLE V

The purposes and powers for which the Association is organized are as follows:

- a. To operate and manage a condominium known as Rosemary Village Condominium organized pursuant to Chapter 47C of the North Carolina General Statutes and located in Chapel Hill, Orange County, North Carolina.
- b. To undertake the performance of, and carry out the acts and duties incident to the administration of the operation and management of the Association in accordance with the terms, provisions, conditions and authorizations contained in both these Articles and in the Declaration of Condominium for Rosemary Village Condominium (the "Declaration") which shall be recorded in the Office of the Orange County Register of Deeds thereby submitting the real property and the improvements thereon to the Declaration;
- c. To make, establish and enforce reasonable rules and regulations governing the use of the common elements, land, and other real and personal property which may be owned by the Association itself;
- d. To make, levy and collect assessments against Condominium unit owners; to provide the funds to pay for common expenses of the Association as provided in the

Declaration and to use and expend the proceeds of assessments in the exercise of the powers and duties of the Association; to use said assessments to promote the acquisition, improvement and maintenance of the common elements, services and facilities devoted to this purpose and related to the use and enjoyment of the common elements, including, but not limited to, the cost of repair, replacement and additions thereto, the cost of labor, equipment, materials, management, supervision thereof, the maintenance of insurance in accordance with the Bylaws, including the employment of attorneys to represent the Association when necessary for such other needs as may arise.

- e. To maintain, repair, replace, and operate the properties for which the Association is responsible;
- f. To enforce by any legal means, the provisions of the Declaration, the Bylaws and the rules and regulations for the use of the Association property;
- g. To delegate to such manager or managers powers and duties of the Association except those powers and duties which are specifically required to have approval of the Association's Board of Directors or the membership of the Association.
- h. To have all of the common law and statutory powers of a non-profit corporation and also those powers as set out in the Declaration and all powers reasonably necessary to implement the purposes of the Association.

ARTICLE VI

Upon dissolution of the Association, the assets thereof, both real and personal, shall, after all liabilities and obligations of the Association have been paid, or adequate provision made therefor, in the manner set forth in the Declaration, be dedicated to a public body, or conveyed to a nonprofit corporation or organization with purposes similar to those set forth hereinabove. In the event that such dedication is refused acceptance, such assets shall be granted, conveyed and assigned to any nonprofit corporation, association, trust or other organization, to be devoted to purposes as nearly as practicable to those to which they were required to be devoted by the Association.

No part of the net earnings or assets of the Association shall inure to the benefit of or be distributed, upon dissolution or otherwise, to any Member of the Association, director, officers or other private person. The Association may enter into contracts with the Declarant or with any other person (including any Member, officer, or director), and may pay compensation in reasonable amounts for services rendered.

Notwithstanding anything herein contained to the contrary, these Articles of Incorporation, their enforcement and interpretation shall be subject to the Town of Chapel Hill ordinances and regulations and the General Statutes of the State of North Carolina.

ARTICLE VII

The street and mailing address and county of the principal office of the Association is: 81401 Alexander, Chapel Hill, Orange County, North Carolina 27517.

ARTICLE VIII

The Association shall have a board of directors (hereinafter the "Board of Directors") whose number and manner of election shall be fixed by the Bylaws; provided, however, the number of members of the Board of Directors shall not be less than three (3). All corporate powers of the Association shall be exercised by or under the authority of, and the affairs of the Association managed under the direction of its Board of Directors. Not later than sixty (60) days after conveyance of twenty-five percent (25%) of the units in the Condominium (including units which may later be created pursuant to special Declarant rights) to unit owners other than Declarant, at least one member and not less than twenty-five percent (25%) of the members of the Board of Directors shall be elected by unit owners other than the Declarant. Not later than sixty (60) days after conveyance of fifty percent (50%) of the units (including units which may be created pursuant to special Declarant rights) to unit owners other than Declarant, not less than thirty-three percent (33%) of the members of the Board of Directors shall be elected by unit owners other than the Declarant. Not later than the termination of the Period of Declarant Control (as defined in the Declaration), the unit owners shall elect a Board of Directors of at least three (3) members, a majority of whom must be unit owners. Thereafter, the election of members of the Board of Directors shall take place at the annual meeting of the members as provided in the Bylaws.

ARTICLE IX

The Association shall have all the powers granted non-profit corporations under the laws of the State of North Carolina. Notwithstanding any other provision of these Articles, the Association may elect tax status under Section 528 of the Internal Revenue Code of 1986. The Association shall not carry on any activities prohibited by a corporation electing tax status under Section 528, or any corresponding sections or provisions of the Internal Revenue Code. It is further provided that no distributions of income of the Association are to be made to members, directors or officers of the Association; provided, however, that members of the Association may receive a rebate of any excess dues and assessments previously paid.

ARTICLE X

No director of the Association shall be personally liable for monetary damages for breach of any duty as a director arising out of an action whether by or in the right of the Association or otherwise, except with respect to (i) acts or omissions that the director at the time of such breach

knew or believed were clearly in conflict with the best interests of the Association; (ii) any liability under G.S. 55A-8-32 or G.S. 55A-8-33; (iii) any transaction from which the director derived an improper personal benefit; or, (iv) acts or omissions occurring prior to the date on which this provision became effective. As used herein, the term "improper personal benefit" does not include a director's reasonable compensation or other incidental benefit for or on account of his service as a director, officer, employee, independent contractor, attorney, or consultant of the Association. No amendment or repeal of this Article, nor the adoption of any other amendment to these Articles of Incorporation inconsistent with this Article, shall eliminate or reduce the protection granted herein with respect to any matter that occurred prior to such amendment, repeal, or adoption. The provisions of this Article shall not be deemed to limit or preclude indemnification of a director by the Association.

ARTICLE XI

The number of Directors constituting the initial Board of Directors shall be two (2); the names and addresses of the persons who are to serve as the initial directors are as follows:

<u>Name</u>	<u>Address</u>
Thomas C. Tucker	1728 Fordham Blvd. Chapel Hill , NC 27516
Chris Ehrenfeld	81401 Alexander Chapel Hill, NC 27517

ARTICLE XII

To the extent provided by law, the Association may participate in mergers and consolidations with other condominium associations organized for the same or similar purpose, provided, however, that any such merger or consolidation shall require approval by the affirmative vote of at least that percentage of votes held by members which is necessary to terminate the Condominium. Such vote shall take place at a meeting of the members duly called for such purpose. Notwithstanding the foregoing, Declarant shall have the right, but not the obligation, until such time as Declarant no longer elects a majority of the Board of Directors of the Association, to merge or consolidate this Association with any other property owners association.

ARTICLE XIII

Amendment to these Articles of Incorporation shall be made upon the affirmative vote of members to whom at least sixty-seven percent (67%) of the votes in the Association are allocated. Any such vote shall take place at a meeting of the members duly called for that particular purpose. Furthermore no amendment shall make any changes which would in any way affect any of the rights,

privilege powers or options herein provided in favor of, or reserved to, Declarant, unless Declarant joins in the creation of the Amendment. In addition to the foregoing, so long as Declarant has the right to appoint the majority of the members of the Board of Directors of the Association, Declarant shall be entitled to unilaterally amend these Articles of Incorporation and the Bylaws.

ARTICLE XIV

If not defined herein, capitalized terms shall have the meaning as set forth in the Declaration.

These articles will be effective upon filing.

This is the 27th day of May, 2003.

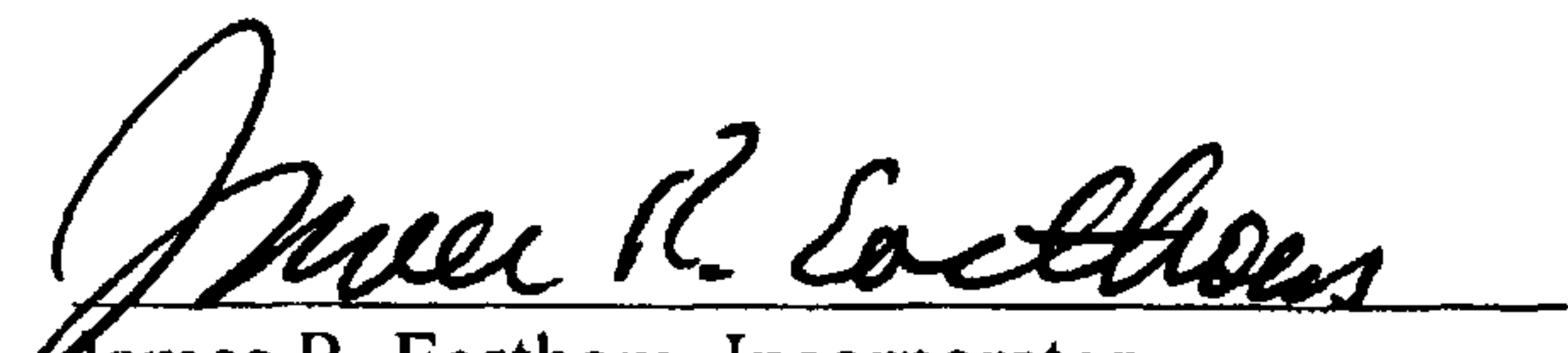

James R. Easthom, Incorporator

**EXHIBIT C TO DECLARATION
OF
ROSEMARY VILLAGE CONDOMINIUM**

Bylaws for Association

[A copy of the Bylaws for Rosemary Village Condominium Owners Association as currently exists follows this page.]

BYLAWS

ROSEMARY VILLAGE CONDOMINIUM OWNERS ASSOCIATION

ARTICLE I PLAN OF UNIT OWNERSHIP

Section 1. *CONDOMINIUM.* The Property (the term "Property" as used herein means and includes the land, the buildings, all improvements and structures thereon) located in Chapel Hill, Orange County, North Carolina, known as the ROSEMARY VILLAGE CONDOMINIUM as has been, by Declaration, submitted to the provisions of the North Carolina Condominium Act (the "Act"), which said Property shall henceforth be known as ROSEMARY VILLAGE CONDOMINIUM (hereinafter referred to as "Condominium").

Section 2. *ASSOCIATION.* In conjunction with the creation of the above described Condominium, there also has been incorporated under the laws of the State of North Carolina an Association known as the Rosemary Village Condominium Owners Association (hereinafter referred to as "Association") which shall, pursuant to the provision of the aforementioned Declaration, constitute the incorporated condominium owners' association.

Section 3. *PERSONAL APPLICATION.* All Owners, Co-owners (as defined in the Declaration), and their respective household members, tenants, and invitees and the employees and invitees of such tenants, and any other person who might use the facilities of the Property in any manner, are subject to the regulations set forth in these Bylaws and in the Declaration establishing said Condominium as they may be amended from time to time. The mere acquisition or use of any of the condominium units (hereinafter usually referred to as "Units") as defined in the Declaration or the mere act of occupancy of any of said Units will signify that these Bylaws, the provisions of the Declaration, and any authorized recorded amendments to the foregoing Declaration are accepted and ratified, and will be complied with.

ARTICLE II VOTING, MAJORITY OF UNIT OWNERS QUORUM, PROXIES

Section 1. *ELIGIBILITY.* Any person who acquires title to a Unit in the Condominium shall be a member of the Association. There shall be one membership for each Unit owned. Transfer of Unit ownership, either voluntarily or by operation of law, shall terminate membership in the Association, and said membership is to become vested in the transferee. If Unit ownership is vested in more than one person, then all of the persons so owning such Unit shall agree upon the designation of one of the Co-owners of such Unit to act as a member of the Association. If Unit ownership is vested in 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 an individual officer, manager, partner or employee of the same to act as a member of the Association on behalf of such entity. Such designation shall be delivered to the Secretary of the Association.

Section 2. *VOTING.* Voting shall be on a fractional basis and the fraction of a vote to which the Unit Owner is entitled is the fractional share assigned to the Unit or Units in the Declaration.

Section 3. *MAJORITY OF UNIT OWNERS.* As used in these Bylaws, the term "Majority of Unit Owners" shall mean those Unit Owners holding more than fifty (50%) percent of the total votes in the Association, in accordance with the fractional shares assigned in the Declaration, and any authorized amendments thereto.

Section 4. *QUORUM.* Except as otherwise provided in these Bylaws, the presence in person or by proxy or by ballot (when authorized as provided in Section 6 of this Article II) of a Majority of Unit Owners shall constitute a quorum.

Section 5. *PROXIES.* Votes may be cast in person or by proxy or, when authorized by the Executive Board, by ballot. Proxies must be filed with the Secretary before the appointed time of each meeting.

Section 6. *BALLOTS.* Voting by ballot is permissible when authorized by the Executive Board. When the Executive Board has authorized voting by ballot, there shall be sent to every member with the notice of the meeting, a statement describing the matters to be introduced for vote of the members and a ballot on which each member may vote for or against approval of such matter. Each ballot which is presented at such meeting shall be counted in calculating the quorum requirements set out in Section 4 of this Article II. Provided, however, such ballots shall not be counted in determining whether a quorum is present to vote upon matters not appearing on the ballot. All ballots must contain the time by which a ballot must be received by the Association in order to be counted.

Section 7. *MAJORITY VOTE.* The vote of a majority of a quorum of the Unit Owners present at a meeting, or by proxy, or by ballot when authorized, shall be the act of and binding upon all Unit Owners, except where in the Declaration or in these Bylaws, or by law, a higher percentage vote is required.

ARTICLE III **MEMBERS; MEETINGS**

Section 1. *ASSOCIATION RESPONSIBILITIES.* The Unit Owners will constitute the members of the Association who will have, among other duties, the responsibility of electing the Executive Board. Except as otherwise provided, decisions and resolutions of the Association shall require approval as provided in Section 7 of Article II.

Section 2. *PLACE OF MEETINGS.* Meetings of the Association shall be at such place, convenient to the Unit Owners, as may be designated by the Association.

Section 3. *ANNUAL MEETINGS.* There shall be one regular meeting of the Association, which shall be held annually. The annual meeting of the Association shall be held at the call of the President once a year during the month of January or at such other time as a Majority of the Unit Owners may agree upon. At such meeting, there shall be elected an Executive Board in accordance with the requirements of Section 3 of Article IV of these Bylaws.

Section 4. *SPECIAL MEETINGS.* It shall be the duty of the Secretary to call a special meeting of the Unit Owners as directed by resolution of the Executive Board, at the request by a majority of its members, or upon a petition signed by Unit Owners representing twenty (20%) percent of the total votes in the Association and having been presented to the Secretary. A notice of any special meeting shall state the time and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice.

Section 5. *NOTICE OF MEETINGS.* It shall be the duty of the Secretary to mail a notice of each annual or special meeting, stating the purpose thereof as well as the time and place where it is to be held, to each Unit Owner of record. In the case where notice is made by hand delivery or first class, registered or certified mail, such notice shall be delivered at least ten (10), but not more than fifty (50) days prior to such meeting, and in the case where notice is sent by regular mail or any other means permitted by law then such notice shall be delivered at least thirty (30), but not more than fifty (50) days prior to such meeting.

Section 6. *ADJOURNED MEETING.* If any meeting of the Association cannot be organized because a quorum has not attended, the Unit Owners who are present, either in person or by proxy, may adjourn the meeting to a time not less than twenty-four (24) hours nor more than thirty (30) calendar days from the time the original meeting was called. Upon the reconvening of said meeting a quorum shall be constituted if Unit Owners holding at least thirty (30%) percent of the total votes in the Association are present in person or by proxy or by ballot at said reconvened meeting.

Section 7. *ORDER OF BUSINESS.* The order of business at all annual meetings of the Association shall be as follows:

- (a) Call to Order.
- (b) Proof of Notice of Meeting or Waiver of Notice.
- (c) Reading of Minutes of Preceding Meeting.
- (d) Reports of Officers.
- (e) Reports of Committees.
- (f) Election of Executive Board Members.
- (g) Budget Review.
- (h) Unfinished Business.
- (i) New Business.

The order of business at a special meeting of the Association shall include items (a) through (d) above, and thereafter, the agenda shall consist of the items specified in the notice of meeting.

ARTICLE IV **EXECUTIVE BOARD**

Section 1. *NUMBER AND QUALIFICATIONS.* The affairs of the Association shall be governed by an Executive Board (hereinafter referred to as the "Board") comprised of no less than three (3) persons and no more than nine (9) persons as determined by the Declarant during the Period of Declarant Control as defined in the Declaration; provided, however, the number of initial members of the Board shall be as set forth in the Articles of Incorporation of the Association. During the Period of Declarant Control, the Declarant shall be entitled to appoint and remove officers and Executive Board members as set forth in Section 2.7 of the Declaration. After the termination of the Period of Declarant Control, the number of members of the Board shall be determined by the Unit Owners but in any event shall not be less than three (3) nor more than nine (9) persons, a majority of whom shall be Unit Owners.

Section 2. *GENERAL POWERS AND DUTIES.* The Board shall have the powers and duties necessary for the administration of the affairs of the Association and, subject to applicable law, the Act, these Bylaws and the Declaration, may do all such acts and things not directed to be executed and done by the Unit Owners, the Declarant or another person. Without limiting the generality of the foregoing, the Board shall have the following powers and shall cause the Association to perform the following duties:

- (a) Maintain compliance with all of the terms and conditions of the Declaration and any amendments thereto and enforcement of same;
- (b) To care for, upkeep and maintain the Property;
- (c) Collection, at the time of the closing of the sale of each Unit (including resales), at least three (3) months' estimated common expense assessments for the purpose of establishing a working capital fund for the Association;
- (d) Preparation of the annual budget. The budget shall be distributed by the Board to all members of the Association along with notice of the Association's annual meeting. Notwithstanding the responsibilities and authority of the Board, the budget may be modified by the Association at the annual meeting or a special meeting of the Association by a three-fourths (3/4) vote of the total eligible votes of Unit Owners cast in person, by proxy or by ballot when authorized;
- (e) As a part of the annual budget described in (d) above, there shall be established and maintained on behalf of the Association an adequate reserve fund for periodic maintenance, repair and replacement of improvements to the

Common Elements (as defined in the Declaration). Any interest earned on said reserve fund shall remain a part of said reserve fund and shall not be used for general operating expenses. For purposes of this Section, "adequate reserve fund" shall mean not less than two (2%) percent of the total operating Common Expenses (as defined in the Declaration);

(f) Contracting for the employment, dismissal and control of the personnel necessary for the maintenance and operating of the Common Elements;

(g) Performing repairs caused by any natural disaster or man-made damage from funds held in the reserve account and any special assessment, or causing the same to be done;

(h) Obtaining of insurance for the Property, pursuant to the provisions hereof and the provisions of the Declaration, or causing the same to be done as set forth in ARTICLE VII hereof;

(i) Grant or relocate easements which are not inconsistent with the owners' full use and enjoyment of the Common Elements;

(j) Make rules and regulations, and allocations, not inconsistent with these Bylaws, the Declaration or law, with respect to the use of parking spaces within the Property;

(k) Making of repairs, additions and improvements to or alterations of, the Property in accordance with the other provisions of these Bylaws;

(l) To make available, for inspection, upon request during normal working hours or under other reasonable circumstances, to Unit Owners, the holders, insurers or guarantors of any first mortgage on any Unit, current copies of the Declaration, Bylaws, other Rules and Regulations pertaining to the Association, and financial statements of the Association;

(m) To establish such advisory committees as the Board may deem appropriate to assist in carrying out the duties above described;

(n) To further improve the Property, both real and personal, and to purchase real estate and personal property including items of furniture, furnishings, fixtures and equipment for the foregoing;

(o) If it appears that through a drafter's error in the Declaration that the Common Elements, or Common Expenses have been stated or distributed improperly, to approve an amendment to the Declaration correcting that error. No

Owners, except those directly affected, must join in the execution of the amendment;

(p) To pay taxes or assessments against the Common Elements or Property as required;

(q) To pay costs of utility services rendered to the Property, as required; and

(r) To engage a management company to act as agent for the Association to perform any or all of the foregoing duties and exercise any of the foregoing powers as directed by, and under the supervision of, the Board.

Section 3. *FIRST EXECUTIVE BOARD / PERIOD OF DECLARANT CONTROL.*

The first Executive Board shall be as designated in the Articles of Incorporation of the Association and subsequently by the Declarant. These appointments will be temporary and will continue only in accordance with the requirements of the Act relating to the Period of Declarant Control. As stated in the Act, the Period of Declarant Control terminates no later than the earlier of: (i) one hundred and twenty (120) days after conveyance of 75% of the Units; (ii) two years after Declarant has ceased to offer Units for the sale in the ordinary course of business; or (iii) two years after any development right to add new Units, if any, was last exercised. It is noted that Declarant may voluntarily surrender the right to appoint and remove officers and members of the Board before termination of this Period, but in that event, Declarant may require, for the duration of the Period of Declarant Control, that specified actions of the Association or Board, as described in recorded instruments executed by the Declarant, be approved by the Declarant before they become effective.

Further, not later than sixty (60) days after conveyance of 25% of the Units to Unit Owners other than Declarant, at least one member and not less than 25% of the members of the Board shall be elected by Unit Owners other than Declarant. Not later than sixty (60) days after conveyance of 50% of the Units to Unit Owners other than Declarant, not less than 33% of the members of the Board shall be elected by Unit Owners other than Declarant.

Not later than the termination of the Period of Declarant Control, the unit owners shall elect the Board of at least three (3), but not more than nine (9), members, at least a majority of whom must be Unit Owners.

At the first annual meeting of the Association after termination of the Period of Declarant Control, the initial term of office for up to three (3) members of the Board shall be fixed at three (3) years, the term of office of up to three (3) members of the Board shall be fixed at two (2) years, and the term of office of up to three (3) members of the Board shall be fixed at one (1) year. At the expiration of the initial term of office of each member of the Board, his or her successor shall be elected to serve a term of three (3) years. The members of the Board shall hold office until their successors have been elected and qualified and hold their first meeting.

Any and all of said Board Members shall be subject to replacement, in the event of resignation or death, in the manner set forth in Section 4 of this Article.

Section 4. *VACANCIES.* Vacancies in the Board caused by reason other than the removal of a member of the Board by a vote of the Association shall be filled by vote of the majority of the remaining members of the Board (or, during the Period of Declarant Control, by appointment of Declarant), even though they constitute less than a quorum; and each person so elected shall be a member of the Board until a successor is elected and qualified at the next meeting of the Association.

Section 5. *REMOVAL OF MEMBERS OF THE BOARD.* Once the Period of Declarant Control has terminated, at any annual or special meeting of the Association duly called, any one or more of the members of the Board may be removed with or without cause by a Majority of Unit Owners and a successor may then and thereby be elected to fill the vacancy thus created. Any member of the Board whose removal has been proposed to the Association shall be given an opportunity to be heard at the meeting. No Board member who was a Unit Owner or representative of a Unit Owner at the beginning of his or her tenure shall continue to serve on the Board if during the term of office, he or she or his or her principal or employer shall cease to be a Unit Owner (except as provided above regarding Declarant's appointees).

Section 6. *ORGANIZATIONAL MEETING.* The first meeting of a newly elected Board shall be held within ten (10) days of election at such place as shall be fixed by the Board, and no notice shall be necessary to the newly elected Board members in order to legally constitute such a meeting, providing a majority of the Board shall be present.

Section 7. *REGULAR MEETINGS.* Regular meetings of the Board may be held at such time and place as shall be determined, from time to time, by a majority of the Board, but at least one (1) such meeting shall be held each fiscal year. Notice of regular meetings of the Board shall be given by the Secretary or other person designated by the Board, to each Board member, personally or by mail, telephone, or telegraph, at least ten (10) days prior to the day named for such meeting.

Section 8. *SPECIAL MEETINGS.* Special meetings of the Board may be called by the President on three (3) days notice to each Board Member, given personally or by mail, telephone or telegraph, which notice shall state the time, place (as hereinabove provided), and the purpose of the meeting. Special meetings of the Board shall be called by the President or Secretary in like manner and on like notice on the written request of at least two (2) Board members.

Section 9. *WAIVER OF NOTICE.* Before or at any meeting of the Board, any member of the Board may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Board member at any meeting of the Board shall be a waiver of notice by him or her of the time, place and purpose thereof unless the member at the beginning of the meeting (or promptly upon his or her arrival) objects

to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to action taken at the meeting.

Section 10. *BOARD QUORUM.* At all meetings of the Board, a majority of the Board members then in office immediately before a meeting begins shall constitute a quorum for the transaction of business, and acts of the majority of the members present at a meeting at which a quorum is present shall be the acts of the Board. If, at any meeting of the Board, there is less than a quorum present, the majority of the Board members present may adjourn the meeting from time to time. At any such adjourned meeting which is reactivated with a quorum, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

Section 11. *FIDELITY BONDS.* The Board shall require that any and all Board members, officers and employees of the Association handling or responsible for Association funds shall furnish adequate fidelity bonds. The premiums on such bonds shall be paid by the Association.

Section 12. *COMPENSATION.* No member of the Board shall receive any compensation from the Association for acting as such.

Section 13. *LIABILITY OF THE BOARD OF DIRECTORS.* It is intended that the members of the Board shall have no personal liability with respect to any contract made by them on behalf of the Association. It is understood and permissible for the original Board, who are members of or employed by Declarant, to contract with Declarant and affiliated entities without fear of being charged with self-dealing.

Section 14. *INDEMNIFICATION*

(a) Definitions for Purposes of This Section.

(1) Covered Person. A covered person shall include any person who at anytime serves or has served as a member of the Board or officer of the Association, or in such capacity at the request of the Association for any trust, employee benefit plan, or other enterprise.

(2) Action. An action shall include any threatened, pending, or completed civil, criminal, administrative, investigative suit or proceeding, any appeal therefrom, and any inquiry or investigation that could lead to such a suit or proceeding to which a person is made a party because such person is or was a covered person.

(3) Improper personal benefit. Improper personal benefit does not include a Board member's or officer's reasonable compensation or other incidental benefit for or on account of service as a director, officer,

employee, independent contractor, attorney, or consultant of the Association.

(b) General. Except as provided in subparagraph (e) of this Section 14, the Association shall indemnify a covered person if he is made, or is threatened to be made, a party to an action whether or not the action is brought by or on behalf of the Association (i.e., a derivative action), or otherwise (i.e., a direct action).

(c) Covered Expenses. A covered person shall be indemnified against (1) reasonable expenses, including without limitation, all attorney's fees actually and necessarily incurred by him in connection with any such action, (2) all reasonable payments made by him in satisfaction of any judgment, money decree, fine (including any excise tax assessed with respect to an employee benefit plan), penalty, or settlement for which he may have become liable in such action, and (3) all reasonable expenses incurred in enforcing the indemnification rights provided herein.

(d) Advanced Payment of Expenses. Covered expenses may be paid by the Association in advance of final disposition of the action if authorized pursuant to subparagraph (f) below. Any advance payment shall be made only upon receipt of an undertaking by the covered person to repay such amount unless it shall ultimately be determined that the covered person is entitled to be indemnified by the Association against such expense.

(e) Standard of Care. Unless otherwise required by law, the Association shall not indemnify a covered person unless such covered person:

(1) Conducted himself or herself in good faith; and

(2) Reasonably believed, a) in the case of conduct taken his or her official capacity with the Association, that his or her conduct was in the Association's best interests; and b) in all other cases, that his or her conduct was at least not opposed to the best interests of the Association; c) in the case of a criminal proceeding, had no reasonable cause to believe his conduct was unlawful; provided, however, the Association shall not indemnify a covered person for d) Liability under North Carolina General Statute 55A-8-32 or North Carolina General Statute 55A-8-33; e) any transaction in which the covered person derived an improper personal benefit; f) acts or omissions that the covered person knew or believed were clearly in conflict with the best interests of the Association; or g) any action in which the covered person is adjudged liable to the Association.

(f) Determination and Evaluation of Indemnification. The determination to indemnify a covered person, and the amount and terms of the indemnification shall be made:

(1) By the Board by majority vote of a quorum consisting of Board members not at the time parties to the action.

(2) If a quorum cannot be obtained under subsection (1) by majority vote of a committee duly designated by the Board (in which designation Board members who are parties may participate), consisting solely of two or more Board members not at the time parties to the action.

(3) By special legal counsel:

a) Selected by the Board or its committee in the manner prescribed in subsections (1) and (2) of this subsection; or

b) If a quorum of the Board cannot be obtained under subsection (1) of this subsection and a committee cannot be designated under subsection (2) of this subsection, selected by a majority vote of the full Board (in which selection Board members who are parties may participate).

Authorization of indemnification and evaluation as to reasonableness of expenses shall be made in the same manner as the determination that indemnification is permissible, except if the determination is made by special legal counsel, authorization of indemnification and evaluation as to reasonableness of expenses shall be made by those entitled under subsection (3) of this section to select counsel.

(g) Reliance. A covered person shall be deemed to be serving the Association in reliance upon, and as consideration for the rights provided for herein. Any repeal or modification of these indemnification provisions shall not affect any rights or obligations existing at the time of such repeal or modification.

(h) Non-exclusivity. The rights provided for herein shall not be exclusive of any other rights to which the covered person may be entitled, including, without limitation, statutory rights to indemnification and benefits under policies of insurance.

ARTICLE V OFFICERS

Section 1. *DESIGNATION.* The principal officers of the Association shall be a President, a Vice President, a Secretary and a Treasurer all of whom shall be elected by the Board. The Board may appoint an Assistant Treasurer and Assistant Secretary, and such other officers as, in their judgment, may be necessary. Officers appointed by the Declarant need not be Board members or members of the Association but officers elected by the Board members after the Period of Declarant Control must be members of the Association and Board members.

Section 2. *ELECTION OF OFFICERS.* Until the Period of Declarant Control has terminated, Declarant may appoint officers. Thereafter, the officers of the Association shall be elected annually by the Board at the organizational meeting of each new Board and shall hold office at the pleasure of the Board.

Section 3. *REMOVAL OF OFFICERS.* Until the Period of Declarant Control has terminated, Declarant may remove officers. Thereafter, upon an affirmative vote of a majority of the members of the Board, any officer may be removed either with or without cause, and his or her successor elected at any regular meeting of the Board, or at any special meeting of the Board called for such purpose.

Section 4. *PRESIDENT.* The President shall be the chief executive officer of the Association. He or she shall preside at all meetings of the Association and of the Board. He or she shall have all of the general powers and duties which are usually vested in the office of President of a Condominium or incorporated Association, including but not limited to the power to appoint committees from among the Co-owners from time to time as he may, in his discretion, feel appropriate to assist in the conduct of the affairs of the Association.

Section 5. *VICE PRESIDENT.* The Vice President shall take the place of the President and perform his duties when the President shall be absent or unable to act. If neither the President nor the Vice President is able to act, the Board shall appoint some other member of the Board to do so on an interim basis. The Vice President shall also perform such other duties as shall from time to time be imposed upon him by the Board.

Section 6. *SECRETARY.* The Secretary shall keep the minutes of all meetings of the Board and the minutes of all meetings of the Association; he or she shall have charge of all books, records and papers of the Association.

Section 7. *TREASURER.* The Treasurer shall have responsibility for Association funds and securities and shall be responsible for keeping full and accurate accounts of all receipts and disbursements in books belonging to the Association. He or she shall be responsible for the deposit of all monies and other valuable effects in the name, and to the credit, of the Association in such depositories as may from time to time be designated by the Board. He or she shall, in general, perform all the duties customary and incident to the office of the Treasurer.

ARTICLE VI
OBLIGATIONS OF THE UNIT OWNERS

Section 1. *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. No less than thirty (30) days prior to the annual meeting of the members of the Association, the Board shall furnish all Unit Owners with a copy of the budget for the next fiscal year and shall likewise advise them of the amount of the periodic assessments payable by each of them, respectively, as determined by the Board. *Assessments for Double Residential Units (as defined in the Declaration) may be higher than assessments for other Units.*

In addition to the periodic payments for assessments as described above, at the time of closing of the sale of each Unit (both original sale from Declarant and resales), a three (3) months' estimated Common Expense assessment shall be assessed to the buyer as a working capital assessment.

Section 2. *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 the 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.

Section 3. *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. Such special assessments must be approved by the Board but shall not be payable if seventy-five percent (75)% of the Unit Owners vote against such assessment at a special meeting held within forty-five (45) days of delivery of notice of the special assessment to Unit Owners. If a vote against the proposed special assessment is not sustained, the special assessment shall be due and payable ten (10) days after expiration of the forty-five (45) day period in which the Unit Owners may consider action to veto a special assessment.

Section 4. *RECORDS.* The Board shall keep detailed records of the receipts and expenditures affecting the Common Elements and any other expenses incurred. Records and vouchers authorizing the payments involved shall be available for examination by any Unit Owner during reasonable business hours.

Section 5. *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 one and one-half (1 ½%) percent of the delinquent amount per month on such unpaid assessments from the due date thereof, together with all expenses, including attorney's fees, incurred by the Board in any proceeding brought to collect such unpaid assessments. The Board shall have the right and duty to attempt to recover such assessments, together with interest thereon, and the expenses of the proceeding, including attorney's fees, 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. 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. § 47-3-116(b), as amended, shall be controlling.

Section 6. *STATEMENT OF ASSESSMENTS OR OTHER CHARGES.* The Board shall, for a reasonable fee not to exceed Ten (\$10.00) Dollars, promptly provide any purchaser, Unit Owner, encumbrancer or prospective encumbrancer of an Unit 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.

Section 7. *MAINTENANCE AND REPAIR.*

- (a) Each Unit Owner must perform work within his own Unit, which, if omitted, would affect the Property in its entirety or in a part belonging to another Unit Owner, being expressly responsible for the damages and liabilities that his or her or its failure to do so may engender.
- (b) All the repairs of the Units and of those items described in Section 3.3 of the Declaration shall be made by and at the expense of the Unit Owner.
- (c) All maintenance, repair and replacement to the Common Elements, unless otherwise provided in Section 3.3 of the Declaration, shall be made by the Association and shall be charged to all the Unit Owners as a Common Expense.

Section 8. *WATER AND SEWER CHARGES.* Water shall be supplied and sewer services shall be supplied to all Units and the Common Elements by the municipal utility provider. However, all Units will have shared water meters. The Commercial Units (as defined in the Declaration) will share one meter; the Residential Units of Building A will share one (1) meter; the Residential Units of Building B will share one (1) meter; the Residential Units of Building C will share one (1) meter; and, the Residential Units of Building D will share one (1) meter. The cost of such of services shall be paid by the Association and then billed as an

assessment based on an equitable determination by the Board as to the amount of water used by the Units sharing meters; provided, however, that all Residential Units shall pay the same assessment for water use. Commercial Units may or may not pay the same assessment amount as Residential Units, and one Commercial Unit may pay a different assessment amount than another pays. It is in the sole discretion of the Board as to whether Assessments for water and sewer charges may be made prospectively based on estimates or retrospectively based on actual billings.

Section 9. *ELECTRICITY/GAS.* Electricity and gas shall be supplied to each Unit separately and each Unit Owner shall be billed separately by the utility for the charges thereof.

Section 10. *USE OF COMMON ELEMENTS.* A Unit Owner, or tenants or invitees thereof, shall not place or cause to be placed in the passages, parking areas, roads, or other common areas any furniture, packages or obstructions of any kind. Such areas shall be held in common for the enjoyment of the Unit Owners or designated tenant and shall be used for no other purpose than for normal transit through or use of them and for normal vehicular parking.

Section 11. *RIGHT OF ENTRY.*

(a) A Unit Owner or designated tenant shall grant the right of entry to any person authorized by the Board in case of any emergency originating in or threatening his/her or its Unit, whether the Unit Owner is present at the time or not.

(b) A Unit Owner or designated tenant shall permit the Association, or its representatives, when so required, to enter his/her or its Unit for the purpose of performing installations, alterations, or repairs to the mechanical or electrical services, provided that such requests for entry are made in advance and that such entry is at a time convenient to the Unit Owner or designated tenant. In case of emergency, the right of entry shall be immediate.

Section 12. *RULES OF CONDUCT.* In order to assure the peaceful and orderly use and enjoyment of the Units and Common Elements of the Association, the Board may from time to time adopt, modify, and revoke in whole or in part such reasonable rules and regulations, to be called Rules of Conduct, governing the conduct of persons on said Property of the Association as it may deem necessary. Such Rules of Conduct, upon adoption, and every amendment, modification, and revocation thereof, shall be delivered promptly to each Unit Owner by posting same with postage prepaid addressed to the Unit Owner at the last registered address of the Unit Owner and shall be binding upon all Unit Owners and the occupants of Units in the Condominium. The initial Rules of Conduct for the Condominium are as adopted by the Declarant and are attached hereto as Appendix I to these Bylaws. Subsequent Amendments shall be kept by the Association and shall not require recording.

Section 13. *ABATEMENT AND ENJOINMENT OF VIOLATIONS BY UNIT OWNERS.* The violation of any Rules of Conduct adopted by the Board or the breach of any Bylaws contained herein, or the breach of any provisions of the Declaration, shall give the Association the right, in addition to any other rights set forth in these Bylaws: (a) to enter the Unit in which or as to which, such violation or breach exists and to summarily abate and remove, at the expense of the defaulting Unit Owner, any structure, thing or condition, that may exist therein contrary to the intent and meaning of the provisions hereof, and the representatives of the Association entering such Unit shall not thereby be deemed guilty in any manner of trespass; or (b) to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such breach and to recover the cost of such enforcement, including attorneys fees, and until such expense is recovered it shall be a lien upon said Unit which lien shall be inferior to the lien of all prior mortgages.

Section 14. *LITIGATION.* No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote of seventy-five percent (75%) of the votes eligible to be cast by the members. This Section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of the Declaration (including, without limitation, the foreclosure of liens) or these Bylaws; (b) the imposition and collection of assessments as provided herein; (c) proceedings involving challenges to ad valorem taxation; or (d) defense of claims in proceedings initiated against the Association and counterclaims brought by the Association in proceedings instituted against it. In the event any claim is made against Declarant or any litigation is instituted against Declarant, then the Association shall impose a special assessment against all members, other than the Declarant, for the costs of the claim or litigation, including, without limitation, attorneys' fees incurred, and funds from periodic assessments shall not be used for any such claim or litigation.

ARTICLE VII INSURANCE

The Association shall be required to obtain and maintain, as set forth below, in forms and amounts as hereinafter described, the following insurance, without prejudice to the right of a Unit Owner to obtain additional individual insurance at his or her or its own expense:

Section 1. *HAZARD INSURANCE.* The Board shall cause the Property to be insured, as it may be constituted from time to time, against loss or damage due to all risks of direct physical loss commonly insured against, including fire and extended coverage perils, in an amount not less than the maximum insurable replacement value of the Property as determined by the Board upon recommendation made by the Condominium's insurer, it being understood that the Board, at its discretion, may have an appraisal made of the Property for this purpose, or in the amount reasonably obtainable as it relates to certain perils. The Board shall have the authority also to insure against other hazards and risks as it may deem desirable for protection of the Property. All hazard insurance shall cover the entire Property, exclusive only of the improvements and betterments installed by the Unit Owners and contents and furnishings of the individual Units.

(a) All hazard insurance policies obtained by the Board, shall designate the Association as the named insured as Insurance Trustee for the benefit of all the Owners and their mortgagees collectively, as their respective interests may appear. In the event of loss or damage, all insurance proceeds shall be paid to the Association as Insurance Trustee, it being understood and acknowledged that the distribution of such proceeds shall be controlled by the Act.

(b) All hazard insurance policies obtained by the Board shall provide for the issuance of Certificates of Insurance to each Unit Owner. Each Certificate shall evidence the issuance of the Master Policy and shall indicate the amount of insurance covering the building within which the respective Unit is located. If a Unit is mortgaged, a Certificate of Insurance shall be issued to the mortgagee bearing a standard mortgagee endorsement, if requested.

(c) If obtainable, all hazard insurance policies upon the Property shall include provisions providing that (i) each Unit Owner is an insured person under the policy with respect to liability arising out of his or her or its interest in the Common Elements or membership in the Association; (ii) the insurer waives any rights to subrogation under the policy against any Unit Owner, members of his or her household or such Unit Owners employees; (iii) no act or omission by any Unit Owner, unless acting within the scope of his or her or its authority on behalf of the Association, will preclude recovery under the policy and (iv) if, at the time of loss under the policy, there is other insurance in the name of a Unit Owner covering the same risk covered by the policy, the Association's policy provides primary insurance.

(d) Each mortgagee of which the Board has notice as herein provided shall be entitled to receive upon request a statement of the replacement value as determined in Paragraph 1 above. If any such mortgagee disagrees with the values assigned to the Property by such determination and presents an appraisal prepared at such mortgagee's expense showing higher values which has been performed by a qualified appraiser, then the Board shall either adopt the higher value or shall cause a reappraisal to be made by a qualified appraiser approved by the Board and by the appraisers who conducted the prior appraisals and the findings of the third appraiser shall be conclusive to determine such value for insurance purposes.

(e) Each hazard insurance policy shall contain a loss payee provision designating the interest of the various mortgagees as to the various Units within the Condominium which are covered by the Master Policy. Such policies shall also provide that they shall not be canceled without giving thirty (30) days prior written notice to all such mortgagees as to whom the insurer has been given written notice.

Section 2. *PUBLIC LIABILITY INSURANCE, AND UMBRELLA LIABILITY INSURANCE.* The Board shall cause to be obtained comprehensive public liability insurance, directors' and officers' liability insurance, and umbrella liability insurance with limits and provisions as it deems desirable and as may be obtainable. All such policies shall contain severability of interest clauses or endorsements extending coverage to liabilities of the Association to a Unit Owner and to liabilities of one Unit Owner to another Unit Owner.

Section 3. *PREMIUMS.* All premiums upon insurance policies purchased by the Association shall be assessed as Common Expenses to be paid by the Unit Owners through periodic assessment as herein provided.

Section 4. *ADJUSTMENT.* Each Unit Owner shall be deemed to have delegated to the Board his right to adjust with insurance companies all losses under policies purchased by the Association, subject to the rights of mortgagees of such Unit Owners.

Section 5. *INSURANCE BY UNIT OWNERS.* Each Unit Owner shall be responsible for obtaining, at his sole expense, insurance as provided in Section 9.2 of the Declaration.

Section 6. *SUBSTITUTION OF INSURANCE TRUSTEE.* The Association, in its discretion, may decline to serve as Insurance Trustee and may appoint in its place any financial institution which is qualified and willing to act as Trustee and which also has offices in Orange County, North Carolina. Any substitute Insurance Trustee appointed by the Association shall succeed to all of the powers and responsibilities vested in the Association as Insurance Trustee under the terms of these Bylaws.

ARTICLE VIII **RECONSTRUCTION AND REPAIR**

In the event of casualty loss or damage to the Property, the Board shall be responsible for applying the proceeds of all casualty insurance to the repair or reconstruction of the Property in accordance with the provisions of N.C.G.S. § 47C-3-113(h), as amended. The Property shall be repaired in the following manner:

1. Any reconstruction or repair must follow substantially the original plans and specifications of the Property unless the Unit Owners holding seventy-five percent (75%) or more of the total interest in Common Elements and their mortgagees, if any, vote to adopt different plans and specifications.

2. The Board shall promptly obtain estimates of the cost required to restore the damaged property to its condition before the casualty occurred. Such soft costs may include such professional fees and premiums for bids as the Board deems necessary.

3. If the insurance proceeds paid to the Board are insufficient to cover the cost of reconstruction, the deficiency shall be paid as a special assessment by the Unit Owners whose units are being reconstructed or repaired in proportion to the damage done to their respective Units.

4. The insurance proceeds received by the Board and the mortgagees, and any special assessments collected to cover a deficiency in insurance shall constitute a construction fund from which the Board shall disburse payment of the costs of reconstruction and repair. The first disbursements from the construction fund shall be insurance proceeds, and if there is a balance in the fund after payment of all costs of reconstruction and repair, it shall be distributed to the Unit Owners who paid special assessments in proportion to their payments. Any balance remaining after such distribution shall be retained by the Association.

ARTICLE IX **INSURANCE TRUST**

In the event of casualty loss to the Property, all insurance proceeds indemnifying the loss or damage shall be paid to the Association as Insurance Trustee. The Association, acting as Insurance Trustee, shall receive and hold all insurance proceeds in trust for the purposes stated in this ARTICLE IX, and for the benefit of the Association, the Unit Owners, and their respective mortgagees in the following share:

1. Insurance proceeds paid on account of loss or damage to the Common Elements only shall be held in the same proportion as the undivided interests in the Common Elements which are appurtenant to each of the Units.

2. Insurance proceeds paid on account of loss or damage to less than all of the Units, when the damage is to be restored, shall be held for the benefit of Unit Owners of the damaged Units and their respective mortgagees in proportion to the costs of repairing each damaged Unit.

3. Insurance proceeds paid when the entire Property is not to be restored shall be held for the benefit of all Unit Owners, and their respective mortgagees, the share of each being equal to the undivided share or interest in Common Elements appurtenant to the applicable Unit.

4. In the event a Certificate of Insurance has been issued to a Unit Owner bearing a mortgagee endorsement, the share of the Unit Owner shall be held in trust for the mortgagee and the Unit Owner as their interests may appear; provided, however, that no mortgagee shall have any right to determine or participate in the determination as to whether any damaged property shall be reconstructed or repaired, and no mortgagee shall have any right to apply or have applied to the reduction of a mortgage debt any insurance proceeds except for insurance proceeds required by the loan documents to be paid jointly to the Unit Owners and their respective mortgagees pursuant to the provisions of this Declaration.

ARTICLE X
MORTGAGES (DEEDS OF TRUST)

Section 1. *NOTICE TO BOARD.* A Unit Owner who mortgages his Unit shall notify the Board of the name and address of his Mortgagee.

Section 2. *STATEMENTS TO MORTGAGEE.* Upon written request to the Association from any mortgagee of which it has notice as herein provided, the Board shall supply such mortgagee with a reasonably current financial statement of the Association within a reasonable time of such request.

ARTICLE XI
AMENDMENTS

Section 1. *REQUIREMENTS FOR AMENDMENTS.* These Bylaws may be amended only with the consent of Units Owners to which at least sixty-seven (67%) percent of the votes in the Association are allocated. Provided, however, where a greater percentage of the vote of Unit Owners is expressly required in the Declaration, by the Act or these Bylaws to take action by the Unit Owners, these Bylaws may not be amended to decrease such greater percentage of votes without the consent of Unit Owners holding that greater percentage of votes.

Notwithstanding the foregoing, so long as the Declarant remains the Owner of more than one Unit in this Condominium, these Bylaws shall not be amended so as to adversely affect the Declarant without the Declarant's consent.

ARTICLE XII
MISCELLANEOUS MATTERS

Section 1. *GENDER; NUMBER.* The use of the masculine gender in these Bylaws includes the feminine gender, and when the context requires, the use of the singular includes the plural.

Section 2. *DEFINITIONS.* The definitions contained in the Declaration also apply to these Bylaws.

Section 3. *EXECUTION OF DOCUMENTS.* The President or Vice President and Secretary or Assistant Secretary are responsible for preparing, executing, filing and recording amendments to the Declaration and Bylaws, and shall be authorized to execute any other document which the Association may from time to time be required to execute.

Section 4. *NOTICES.* All notices required by these Bylaws shall be hand delivered or sent by mail to the Association at the address of the President; to Unit Owners at the address of the Unit or at such other address as may have been designated by such Unit Owner from time

to time in writing to the Association. All notices from or to the Association shall be deemed to have been given when mailed or delivered, except notice of changes of address which shall be deemed to have been given when received.

Section 5. *CAPTIONS.* The captions contained in these Bylaws are inserted as a matter of convenience and for reference, and in no way define, limit, or describe the scope of these Bylaws or the intent of any provision of the Bylaws.

Section 6. *INVALIDITY.* The invalidity of any part of these Bylaws shall not impair or affect in any manner the validity, enforceability or effect of the balance of these Bylaws.

Section 7. *CONFLICT.* These Bylaws are set forth to comply with the requirements of the North Carolina Condominium Act ("Act"), as amended. In the event of any conflict between these Bylaws and the provisions of such Act or the Declaration, the provisions of such Act or the Declaration, as the case may be, shall control.

Section 8. *WAIVER.* No restriction, condition, obligation, or covenant contained in these Bylaws shall be deemed to have been abrogated or waived by reason of failure to enforce the same, irrespective of the violations or breaches thereof which may occur.

**APPENDIX I
TO BYLAWS
OF
ROSEMARY VILLAGE CONDOMINIUM**

RULES OF CONDUCT

1. Residents shall exercise extreme care to avoid unnecessary noise or the use of musical instruments, radios, televisions and amplifiers that may disturb other residents.
2. No Residential Unit Owner shall:
 - (a) Post any advertisements or posters of any kind in or on the Property except as authorized by the Association;
 - (b) Hang garments, towels, rugs, or similar objects from the windows or balconies or from any of the facades of the Property; or
 - (c) Clean dust mops, rugs or similar objects from the windows or balconies by beating on the exterior part of the Property.
3. No Unit Owner shall:
 - (a) Throw trash or garbage outside the disposal installation provided for such purpose in the service areas;
 - (b) Act so as to interfere unreasonably with the peace and enjoyment of the residents of the other Units in the Property;
 - (c) Maintain any pets, which cause distress to Unit Owners through barking, biting, scratching, soiling, or damaging of property;
 - (d) Operate, park, or store on the Property any recreational vehicles, motor homes, motorcycles, mopeds, trucks, trailers, commercial vans or boats without permission of the Executive Board; and
 - (e) Install wiring for electrical or telephone installations, television or radio antenna, air conditioning fixtures, or similar objects outside of his/her or its Unit or which

protrudes through the walls or the roof of the Unit except as authorized by the Executive Director.

3. It shall be the responsibility of each Unit Owner to prevent any unclean, unsightly or unkempt condition in or around his/her or its Unit or elsewhere on the Property's grounds, which shall tend to substantially decrease the beauty of the neighborhood as a whole or the specific area.

4. No structure of a temporary character shall be placed upon the Property at any time; provided, however, that this prohibition shall not apply to shelters or temporary structures used by the contractor or developer during the construction of the Property, it being clearly understood that these latter temporary shelters may not, at any time, be used as residences or permitted to remain on the Property after completion of construction. The design and color of structures temporarily placed on the Property by a contractor shall be subject to reasonable aesthetic control by the Declarant.

5. No tent, barn, tree house or other similar outbuilding or structure shall be placed on the Property at any time, either temporarily or permanently; provided, however, that the Declarant reserves the right to grant approval in writing for temporary construction facilities to be placed on the Property.

6. No noxious or offensive activity shall be carried on, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance or nuisance to the other Owners. There shall not be maintained any plants or animals, or device or thing of any sort whose normal activities or existence is in any way noxious, dangerous, unsightly, unpleasant or of a nature as may diminish or destroy the enjoyment of other property by the other Owners.

**EXHIBIT D TO DECLARATION
OF
ROSEMARY VILLAGE CONDOMINIUM**

Fractional Shares of Units

Unit Number	Building Number	Type of Unit	Fractional Share
1	1	Residential	2/92
2	1	Residential	2/92
3	1	Residential	2/92
4	1	Residential	2/92
5	1	Residential	2/92
6	1	Residential	2/92
7	1	Residential	2/92
8	1	Residential	2/92
9	1	Double Residential	3/92
10	1	Double Residential	3/92
11	1	Residential	2/92
12	1	Residential	2/92
13	1	Residential	2/92
14	1	Residential	2/92

R1	1	Commercial	2/92
R2	1	Commercial	2/92
R3	1	Commercial	2/92
R4	1	Commercial	2/92
R5	1	Commercial	2/92
R6	1	Commercial	2/92
R7	1	Commercial	2/92
15	2	Residential	2/92
16	2	Residential	2/92
17	2	Residential	2/92
18	2	Residential	2/92
19	2	Residential	2/92
20	2	Residential	2/92
21	2	Residential	2/92
22	2	Residential	2/92
23	3	Residential	2/92
24	3	Residential	2/92
25	3	Residential	2/92

26	3	Residential	2/92
27	3	Residential	2/92
28	3	Residential	2/92
29	3	Residential	2/92
30	3	Residential	2/92
31	4	Residential	2/92
32	4	Residential	2/92
33	4	Residential	2/92
34	4	Residential	2/92
35	4	Residential	2/92
36	4	Residential	2/92
37	4	Residential	2/92
38	4	Residential	2/92
Total	Total	45 Units	92/92

The designation of "R" is used in the Commercial Unit number in order to be consistent with the designation used on the Plat.

Declarant has the right to amend the Declaration to reallocate the above Fractional Shares using the formula set forth in Article VI of the Declaration if and when Declarant exercises its Special Declarant Right to increase the number of Double Residential Units.

**EXHIBIT E TO DECLARATION OF CONDOMINIUM
FOR
ROSEMARY VILLAGE CONDOMINIUM**

Consent of Lender

[A copy of the Consent of Lender follows this page.]

STATE OF NORTH CAROLINA)
)
COUNTY OF ORANGE)

CONSENT OF LENDER

THIS CONSENT OF LENDER is made this 7 day of February, 2006 by Branch Banking and Trust Company("Lender) and BB&T Collateral Service Corporation ("Trustee").

WITNESSETH:

WHEREAS, Lender is the beneficiary of a development and construction loan deed of trust ("Deed of Trust") which encumbers certain real property located in Chapel Hill, North Carolina, the property encumbered by the Deed of Trust being the property described in Exhibit A (the "Property") of the Declaration of Condominium for Rosemary Village Condominium (the "Declaration"); and

WHEREAS, the Deed of Trust initially secures up to the amount stated therein, is dated October 27, 2004, and is recorded in Book 3595 at Page 119, Orange County Registry; and

NOW, KNOW ALL MEN BY THESE PRESENTS, that Lender joins in the foregoing Declaration of Condominium for Rosemary Village 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 and the Trustee (or such successor trustees as permitted by the Deeds of Trust) set forth in this Declaration shall terminate.

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

LENDER:

Branch Banking and Trust Company

By: M.A. Brady
Name: Margaret A. Brady
Title: Vice President

TRUSTEE:

BB&T Collateral Service Corporation

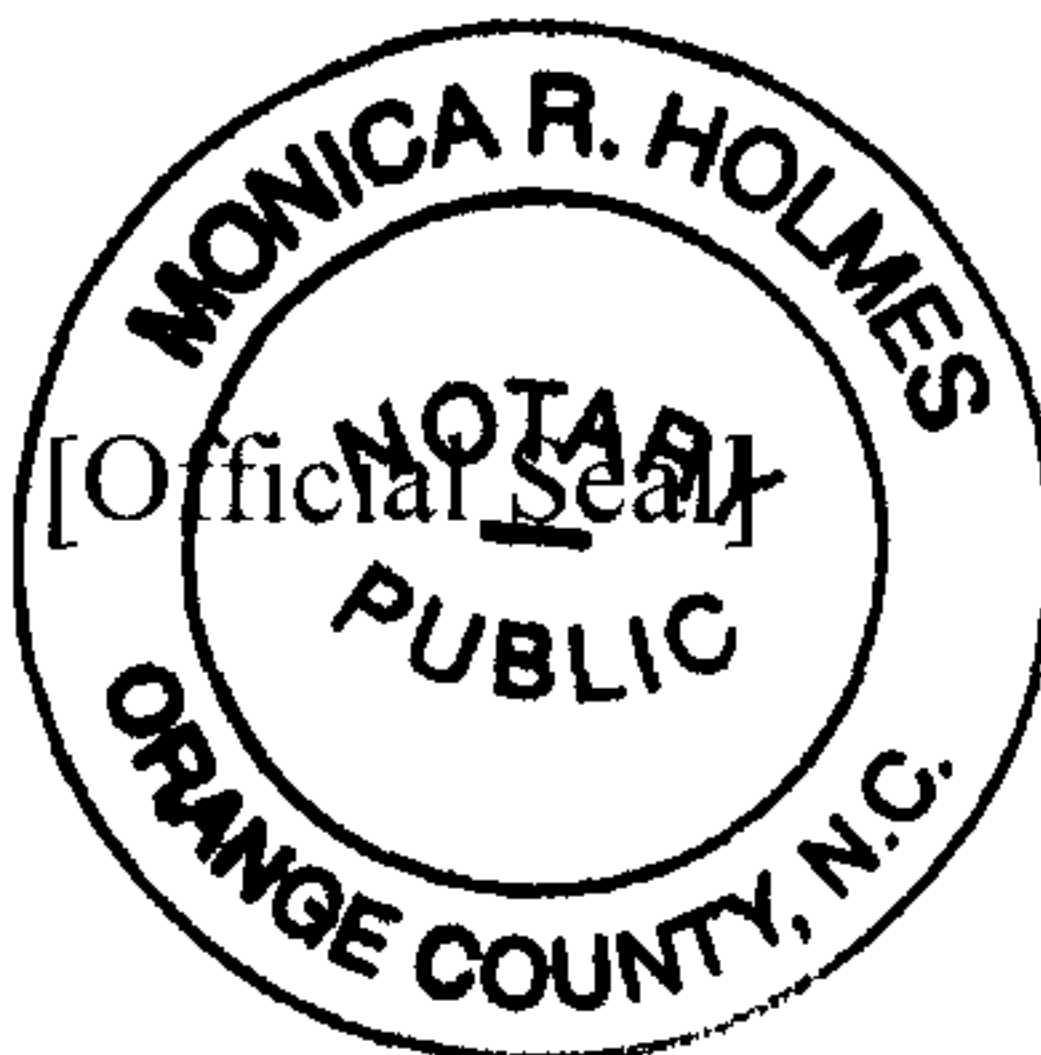
By: M.A. Brady
Name: Margaret A. Brady
Title: Vice President

STATE OF North Carolina
COUNTY OF orange

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated:

Margaret Brady
[insert name(s) of person(s) in blank].

Date: 2-7-06



Monica R Holmes
Notary Public

Print Name: Monica R Holmes

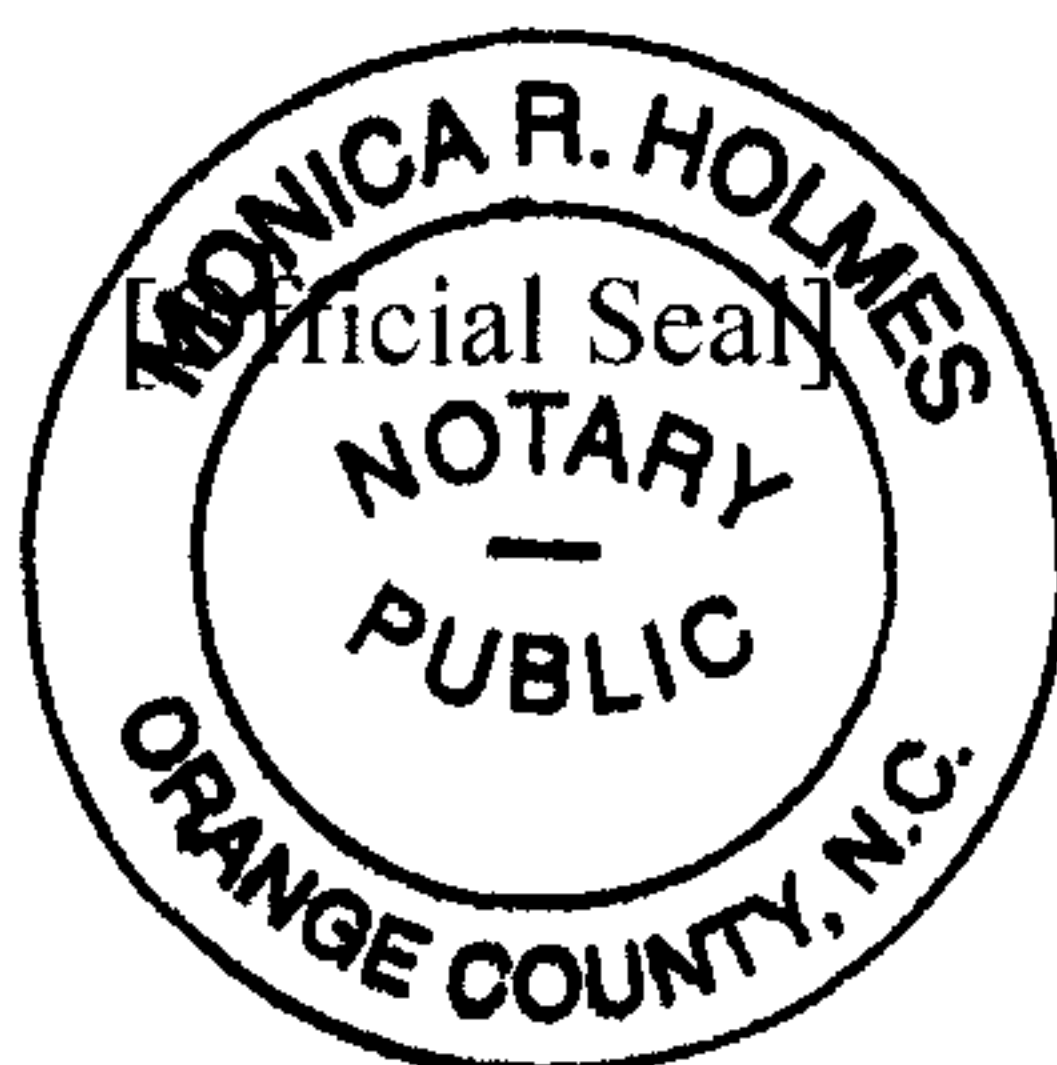
My commission expires: May 30, 2010

STATE OF North Carolina
COUNTY OF orange

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated:

Margaret Brady
[insert name(s) of person(s) in blank].

Date: 2-7-06



Monica R Holmes
Notary Public

Print Name: Monica R Holmes

My commission expires: May 30, 2010