

Prepared by and Mail to:
Wyrick Robbins Yates & Ponton LLP (CVA)
4101 Lake Boone Trail, Suite 300
Raleigh, NC 27607

INDEXING NOTES:

(1) This amendment amends the Declaration recorded in Book 10480, Pages 2225 through 2254, Wake County Registry.

(2) This amendment should be indexed in the names of:

- a. THE DURHAM DRIVE PROFESSIONAL CENTER PROPERTY OWNERS ASSOCIATION, INC., the Association for purposes of the Declaration,
- b. DAVID J. AND MARILYN B. MARTIN IRREVOCABLE TRUST, the Declarant for purposes of the Declaration, and
- c. GIDEON CREEK PROPERTIES, LLC, the party that signed this amendment.

STATE OF NORTH CAROLINA

COUNTY OF WAKE

**FIRST AMENDMENT TO
DECLARATION OF PROTECTIVE
COVENANTS, CONDITIONS, AND
RESTRICTIONS FOR DURHAM
DRIVE PROFESSIONAL CENTER**

THIS FIRST AMENDMENT TO DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS, AND RESTRICTIONS FOR DURHAM DRIVE PROFESSIONAL CENTER (the "First Amendment") is made this **22ND** day of May 2019, by GIDEON CREEK PROPERTIES, LLC, a North Carolina limited liability company ("Gideon Creek Properties") and the **DAVID J. AND MARILYN B. MARTIN IRREVOCABLE TRUST**, dated November 24, 2010, successor by merger to the **DAVID J. MARTIN IRREVOCABLE TRUST**, dated December 30, 1988 (the "Declarant").

WITNESSETH:

WHEREAS, the Declarant established that certain Declaration of Protective Covenants, Conditions, and Restrictions for Durham Drive Professional Center as recorded in Book 10480, Pages 2225 through 2254, Wake County Registry (the "Declaration"); and

submitted electronically by "Wyrick Robbins Yates & Ponton LLP" in compliance with North Carolina statutes governing recordable documents and the terms of the submitter agreement with the Wake County Register of Deeds.

WHEREAS, pursuant to Article IX, Section 3 of the Declaration, the Declaration may be amended by an instrument signed by the Owners with at least fifty-one percent (51%) of the Total Votes, and prior written approval of the Declarant, so long as it owns any portion of the Property, as defined in the Declaration;

WHEREAS, Gideon Creek Properties owns fifty-four percent (54%) of the Total Votes and Declarant owns a portion of the Property; and

WHEREAS, Gideon Creek Properties desires to amend the Declaration to permit the sale of alcoholic beverages on the Property, and the Declarant desires to consent to such amendment.

NOW, THEREFORE, pursuant to the powers granted to Gideon Creek Properties under the Declaration, Gideon Creek Properties hereby declares that the Declaration is amended as follows:

1. The recitals set out above are true, accurate, and are incorporated herein by reference. The capitalized terms which are not defined herein shall have the same meaning as otherwise set out in the Declaration.

2. Article VII, Section 2 (Prohibited Uses) is hereby amended by deleting the following words and punctuation therefrom:

“businesses which sell alcoholic beverages; any bar or”

3. Except as hereinabove amended, all other provisions of the Declaration shall remain in full force and effect.

4. The Declarant hereby consents to this First Amendment and confirms the facts contained herein.

5. In accordance with Article IX, Section 5 of the Declaration, this First Amendment shall be delivered to the Board of Directors of the Association, for its review and completion of the attached certification, to be followed by the recording of this First Amendment in the Wake County Registry.

[THE FOLLOWING PAGES ARE THE SIGNATURE PAGES]

IN WITNESS WHEREOF, the undersigned has executed this First Amendment on the date first above set forth.

GIDEON CREEK PROPERTIES:

GIDEON CREEK PROPERTIES, LLC,
a North Carolina limited liability company

By: *[Signature]*
Name: PETE JERNIGAN, P.E.
Title: MANAGING MEMBER

STATE OF NORTH CAROLINA

COUNTY OF Wake

I Jesse Bencivenga, a notary public in and for said county and state, certify that the following person personally appeared before me this day, acknowledging to me that he signed the foregoing document: PETE JERNIGAN, as Manager of GIDEON CREEK PROPERTIES, LLC, a North Carolina limited liability company. managing member

Date: May 15th, 2019



[Signature]
Official Signature of Notary Public


Jesse Bencivenga
Insert name of Notary, printed or typed

My Commission Expires: 12/17/20


[SIGNATURES CONTINUE]

DECLARANT:

**DAVID J. AND MARILYN B. MARTIN
IRREVOCABLE TRUST**, dated
November 24, 2010, successor by merger to the
David J. Martin Irrevocable Trust, dated December
30, 1988

By:  TRUSTEE
David J. Martin, Jr., Trustee

By: , Trustee
Donna Martin Evenson, Trustee

By: , Trustee
Dale Martin Dascombe, Trustee

By: 
Dotty Martin Reintgen, Trustee TRUSTEE

By: 
Diane Martin Stephenson, Trustee TRUSTEE

By: 
Debbie Martin Salek, Trustee TRUSTEE

STATE OF NORTH CAROLINA

COUNTY OF Wake

I Lydia S Cammann, a notary public in and for said county and state, certify that the following person personally appeared before me this day, acknowledging to me that he signed the foregoing document: DAVID J. MARTIN, JR., as Trustee of the DAVID J. AND MARILYN B. MARTIN IRREVOCABLE TRUST, dated November 24, 2010.

Date: May 22nd, 2019



Lydia S Cammann
Official Signature of Notary Public

Lydia S Cammann
Lydia S. Cammann
Insert name of Notary, printed or typed

My Commission Expires: 1-14-2024

STATE OF NORTH CAROLINA

COUNTY OF Wake

I Lydia S Cammann, a notary public in and for said county and state, certify that the following person personally appeared before me this day, acknowledging to me that she signed the foregoing document: DONNA MARTIN EVENSON, as Trustee of the DAVID J. AND MARILYN B. MARTIN IRREVOCABLE TRUST, dated November 24, 2010.

Date: May 22nd, 2019



Lydia S Cammann
Official Signature of Notary Public

Lydia S Cammann
Insert name of Notary, printed or typed

My Commission Expires: 1-14-2024

STATE OF NORTH CAROLINA

COUNTY OF Wake

I Lydia S Cammann, a notary public in and for said county and state, certify that the following person personally appeared before me this day, acknowledging to me that he signed the foregoing document: DALE MARTIN DASCOMBE, as Trustee of the DAVID J. AND MARILYN B. MARTIN IRREVOCABLE TRUST, dated November 24, 2010.

Date: May 22nd, 2019



Lydia S Cammann
Official Signature of Notary Public

Lydia S Cammann

Insert name of Notary, printed or typed

My Commission Expires: 1-14-2024

STATE OF NORTH CAROLINA

COUNTY OF Wake

I Lydia S Cammann, a notary public in and for said county and state, certify that the following person personally appeared before me this day, acknowledging to me that she signed the foregoing document: DOTTY MARTIN REINTGEN, as Trustee of the DAVID J. AND MARILYN B. MARTIN IRREVOCABLE TRUST, dated November 24, 2010.

Date: May 22nd, 2019



Lydia S Cammann
Official Signature of Notary Public

Lydia S Cammann

Insert name of Notary, printed or typed

My Commission Expires: 1-14-2024

STATE OF NORTH CAROLINA

COUNTY OF Wake

I Lydia S Cammann, a notary public in and for said county and state, certify that the following person personally appeared before me this day, acknowledging to me that she signed the foregoing document: DIANE MARTIN STEPHENSON, as Trustee of the DAVID J. AND MARILYN B. MARTIN IRREVOCABLE TRUST, dated November 24, 2010.

Date: May 22nd, 2019



Lydia S Cammann
Official Signature of Notary Public
Lydia S Cammann

Insert name of Notary, printed or typed

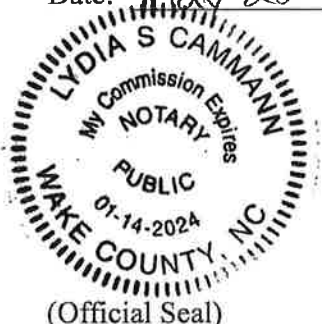
My Commission Expires: 1-14-2024

STATE OF NORTH CAROLINA

COUNTY OF Wake

I Lydia S Cammann, a notary public in and for said county and state, certify that the following person personally appeared before me this day, acknowledging to me that she signed the foregoing document: DEBBIE MARTIN SALEK, as Trustee of the DAVID J. AND MARILYN B. MARTIN IRREVOCABLE TRUST, dated November 24, 2010.

Date: May 22nd, 2019



Lydia S Cammann
Official Signature of Notary Public
Lydia S Cammann

Insert name of Notary, printed or typed

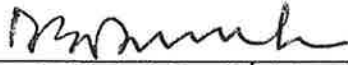
My Commission Expires: 1-14-2024

**CERTIFICATION OF VALIDITY OF AMENDMENT TO
DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS, AND
RESTRICTIONS FOR DURHAM DRIVE PROFESSIONAL CENTER**

By authority of its Board of Directors, The Durham Drive Professional Center Property Owners Association, Inc., which is the Association under the above-recited Declaration, hereby certifies that the foregoing instrument has been duly executed by the owners of at least fifty-one percent (51%) of the lots of Durham Drive Professional Center and previously approved by the Declarant, which owns a portion of the lots of Durham Drive Professional Center, and is, therefore, a valid amendment to the existing covenants, conditions and restrictions of Durham Drive Professional Center. Following execution of this certification, the Association shall cause the foregoing instrument and this certification to be recorded in the Wake County Registry.

This 22 day of May, 2019.

**THE DURHAM DRIVE PROFESSIONAL
CENTER PROPERTY OWNERS
ASSOCIATION, INC.,**
a North Carolina non-profit corporation

By: 
Name: ROBERT B. DASCAMIZE
Title: President


STATE OF NORTH CAROLINA

COUNTY OF Wake

I Lydia S Cammann, a notary public in and for said county and state, certify that the following person personally appeared before me this day, acknowledging to me that he signed the foregoing document: Robert B. Dascamize, as President of The Durham Drive Professional Center Property Owners Association, Inc., a North Carolina non-profit corporation.

Date: May 22nd, 2019.




Official Signature of Notary Public
Lydia S Cammann

Insert name of Notary, printed or typed
My Commission Expires 1-14-2024

WAKE COUNTY, NC 609
LAURA M RIDDICK
REGISTER OF DEEDS
PRESENTED & RECORDED ON
10/03/2003 AT 14:17:57

BOOK:010480 PAGE:02225 - 02254

COPY

Prepared by and hold after recording for: Kilpatrick Stockton, LLP (JAB)

STATE OF NORTH CAROLINA

COUNTY OF WAKE

**DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS,
AND RESTRICTIONS FOR DURHAM DRIVE PROFESSIONAL CENTER**

THIS DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS, AND RESTRICTIONS ("Declaration") made this 30 day of SEPTEMBER, 2003, by DAVID J. MARTIN IRREVOCABLE TRUST, hereinafter referred to as "Declarant" or as "Martin."

RECITALS:

WHEREAS, Declarant is the fee simple owner of all of the real property described on Exhibit A attached hereto and by this reference incorporated herein (the "Property").

WHEREAS, Declarant wishes to develop the Property as a high quality, aesthetically pleasing, harmoniously designed and well maintained project, which project will be known as "Durham Drive Professional Center" and will include areas for professional offices and common areas for the enjoyment of those using the project. The purpose of this instrument is to establish a means by which Declarant can ensure the appropriate development and the proper use of the Property. The declaration of these covenants, conditions, and restrictions is being made by Declarant.

WHEREAS, Declarant, in order to further the objectives set forth herein, has deemed it desirable to create an organization to which will be delegated and assigned the power of maintaining, repairing, replacing, operating and administering certain landscaping, lighting, entrances, private drainage easements and stormwater control measures contained therein, and other common areas, facilities and improvements located within or adjacent to Durham Drive Professional Center or appurtenant to the Property, and administering and enforcing the covenants and restrictions and collecting and disbursing the Assessments and charges hereinafter created; and

WHEREAS, Declarant has incorporated or will incorporate under North Carolina law Durham Drive Professional Center Property Owners Association, Inc., as a not-for-profit membership corporation for the purpose of exercising and performing the aforesaid functions.

NOW THEREFORE, to further the purposes expressed in the Recitals, which are incorporated herein by this reference, Declarant, by this Declaration, does hereby declare that all of the real property described on Exhibit A is and shall be held, leased, transferred, sold, mortgaged, conveyed and occupied subject to the covenants, conditions, restrictions, easements, charges and liens set forth in this Declaration which shall run with the real property and be binding on all parties owning any right, title or interest in said real property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to Durham Drive Professional Center Property Owners Association, Inc., a North Carolina not-for-profit corporation, its successors and assigns.

Section 2. "Association Landscape and Easement Areas" shall be (a) those areas, if any, designated "Landscape and Easement Areas" on maps of portions of the Property, presently or hereinafter recorded, if any; (b) medians located within the right-of-way of any public street within the Property, if any.

Section 3. "Common Area" shall mean and refer to Lot 5 as shown on Exhibit A.

Section 4. "Declarant" shall mean and refer to David J. Martin Irrevocable Trust. Upon any transfer by Declarant of any or all of its declarant rights and obligations hereunder, Declarant shall be relieved of any and all future obligations and liabilities with respect to the rights and obligations so transferred.

Section 5. "Institutional Lender" shall mean any insurance company, bank, savings and loan association, trust, real estate investment trust, pension fund or other organization or entity which regularly makes loans secured by real estate.

Section 6. "Lot" shall mean and refer to any plot of land, with delineated boundary lines (other than property located within public streets, which are reserved or established for the use of all owners) (a) appearing on any recorded subdivision map of the Property, (b) subdivided out of the Property by Declarant and conveyed to another person or entity by deed recorded in the Wake County Public Registry, (c) conveyed as a Tract by Declarant to another person or entity by deed recorded in the Wake County Public Registry and any subsequent subdivisions thereof, or (d) all portions of the Property owned by Declarant. In

the event of a subdivision of any Lot, each such parcel shall also be considered a "Lot," and further provided that parcels may be subdivided into additional parcels for the purpose of granting different lending institutions deeds of trust on portions of such areas to secure loans and upon foreclosure, diverse ownership shall not constitute a violation hereof and each such parcel shall after such foreclosure be deemed a "Lot."

Section 7. "Member" shall have the meaning as set out in Article III, Section 1 of this Declaration.

Section 8. "Owner" shall mean any record owner (including the Declarant), whether one or more persons or entities, of fee simple title to any of the tracts more particularly described in Exhibit A attached hereto (said tracts being hereinafter referred to individually as a "Tract" or collectively as the "Tracts") or to a Lot derived from a subdivision of one or more of such tracts which is part of the Property, but excluding those having such interests merely as security for the performance of an obligation.

Section 9. "Private Drainage Easements" shall be private drainage easements designated on maps of portions of the Property now or hereafter recorded.

Section 10. "Property" shall mean and refer to the real property described in Exhibit A, except Lot 6, and any additions to the Property made pursuant to Article II.

Section 11. "Utility Easements" shall be utility easements in areas within ten feet (10') of the front, side and rear boundary lines of each Lot or such areas designated as "Utility Easements" on maps of portions of the Property, now or hereafter recorded; provided, however, if the nature of development on a Lot, is such that the City of Raleigh Zoning Ordinance either does not impose a side yard requirement between buildings or other improvements constructed on said Lot and any adjacent Lot, or requires a landscape transitional protective, then with respect to such Lot, utility easements shall be in areas within ten feet (10') from the front and rear boundary lines of such Lot.

ARTICLE II

PROPERTY

Section 1. Additions to Property. If Declarant is the owner from time to time of any property adjacent to the Property ("Additional Property") which it desires to add to the scheme of this Declaration, it may do so by filing of record a "**Supplemental Declaration**" (herein so called) which shall extend the scheme of this Declaration to such Additional Property; provided, however, that such right is exercised before SEPT. 29, 2023, that such Supplemental Declaration, as applied to the Additional Property covered thereby, may include such specific controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens as may be set forth in such Supplemental Declaration. If a

person or entity other than Declarant desires to add contiguous property to the scheme of this Declaration, such property may only be so added if all Owners of Lots, and the Declarant so long as it owns any portion of the Property, give written consent thereto and if such consent is given, such property shall be considered Additional Property.

Section 2. Contents of Supplemental Declaration. Supplemental Declarations may set forth the controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens to which the Additional Property covered thereby shall be subject. Such controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens may contain additions, deletions and modifications from those contained in this Declaration, as the parties subjecting such Additional Property to the scheme of this Declaration may desire; provided if such party is other than Declarant, as a condition to such party's right to so impose such additions, deletions or modifications, such party must obtain the prior written consent thereto of all Owners of Lots or Declarant, so long as Declarant owns any portion of the property. In no event shall such Supplemental Declaration revoke, modify or add to the controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens established by this Declaration or a previously filed Supplemental Declaration as it applies or they apply to the original Property or to previously added portions of Additional Property.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

Section 1. Members. Every Owner of a Lot which is subject to Assessment (as such term is defined in Article V, Section 1 hereof) shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to Assessment. Notwithstanding the foregoing provisions, Declarant, so long as it owns any portion of the property, shall be deemed a Member, regardless of whether it is obligated to pay Assessments as set forth in Article V, Section 1 hereof.

Section 2. Voting. The voting rights of the membership shall be appurtenant to the ownership of the Lots, as authorized and described in Article III, Section 1 of the Association's by-laws.

Section 3. Amendment. Notwithstanding any provisions to the contrary contained herein or in the Bylaws of the Association, so long as Declarant owns any portion of the Property, this Declaration and the Bylaws of the Association may not be amended without Declarant's written consent.

Section 4. Board of Directors. The Association shall be governed by a Board of Directors (the "Board of Directors") in accordance with the Bylaws. Notwithstanding any provisions to the contrary contained in this Declaration or in the Bylaws, the Declarant shall have the right to appoint or remove by written notice to the Board of Directors any member

or members of the Board of Directors or any officer or officers of the Association until such time as the first of the following events occurs:

- (a) Declarant no longer owns any portion of the Property; or
- (b) Declarant surrenders the authority to appoint and remove members of the Board of Directors and officers of the Association by an express amendment to this Declaration executed and recorded by the Declarant;

Section 5. Default by Member. During any period in which a Member shall be in default in the payment of an Annual, Special or other Assessment levied by the Association, such Member's rights to vote may be suspended by the Board of Directors until such Assessment is paid.

ARTICLE IV

EASEMENTS

Section 1. Owner's Easements of Enjoyment. Every Owner, through ownership of a Lot, shall have, subject to rules and regulations established by the Board of Directors of the Association, a non-exclusive right and easement of use and enjoyment in and to the Association Landscape and Easement Areas, Private Drainage Easements, Common Area, and Utility Easements which shall be appurtenant to and pass with the title to every portion of the Property.

Section 2. Association Easements. The Declarant, the Association, its Members and their respective successors and assigns, shall have and hereby reserves a non-exclusive right and easement over those portions of the Property defines as Association Landscape and Easement Areas in Article I. This easement shall be for the purpose of installing, maintaining, inspecting, and replacing landscape material located within Association Landscape and Easement Areas, if any.

Section 3. Utility Easements. Declarant reserves for itself and the Association, its Members, and their respective successors and assigns, an easement over those portions of the Property defined as Utility Easements in Article I, Section 11 hereof for the purpose of installing, constructing, inspecting, maintaining, repairing, replacing and using utility lines.

Section 4. Private Drainage Easements. Declarant reserves for itself and the Association, its Members, their respective successors and assigns, an easement over those portions of the Property defined as Private Drainage Easements in Article I hereof, for the purpose of conveying, detaining, storing and transporting stormwater runoff to and from stormwater control measures and facilities, including pipes, swales, and wet detention basins, situated within any Private Drainage Easement.

Section 5. Common Area. Declarant reserves for itself and the Association, its Members, their respective successors and assigns an easement over those portions of the Property defined as Common Area in Article I hereof, for the purpose of maintaining the Common Area.

Section 6. Use by Tenants. The right and easement of enjoyment granted to every Owner in Section 1 of this Article may be delegated by the Owner to his tenants and their agents, sub-tenants, contractors and invitees.

ARTICLE V

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation to Pay Assessments. The Declarant, for each Lot owned within the Property, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, are deemed to covenant and agree to pay to the Association: (1) Annual Assessments or charges for the creation and continuation of a maintenance fund in the amount hereinafter set forth; and (2) Special Assessments, each such Assessment to be established and collected as hereinafter provided (Annual Assessments and Special Assessments are hereinafter separately and collectively referred to as "Assessment" or "Assessments"). Any such Assessment or charge, together with interest, costs and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such Assessment is made. In the case of co-ownership of a Lot, all of the co-owners shall be jointly and severally liable for the entire amount of the Assessment.

Section 2. Purposes of Assessments. Except as hereinafter provided, the Assessments levied by the Association shall be used to pay the ongoing cost of and shall be used exclusively for obligations expressly undertaken by the Association to provide for the installation, maintenance, repair, replacement, cleaning and operation of the Private Drainage Easements, the Association Landscape and Easement Areas and Utility Easements, the provision of other services intended to promote the health, safety and welfare of the Members, the cost of labor, equipment, materials, management and supervision for and security services in protection of the same, the payment of taxes on portions of any Common Areas owned by the Association in fee simple and the costs of enforcing this Declaration. These costs will include, but will not be limited to, legal expenses, administrative costs, accounting costs, insurance premiums, the payment of utility bills relating thereto (including water and electric power for the irrigation and lighting systems), and management fees. In addition to the above, Assessments levied shall be used to maintain and support the Stormwater Facility, described in detail in Article VII, Section 11 of this Declaration, including payment to the City of Raleigh of installment replacement contributions as set forth in the Stormwater Replacement Protection Easement and Access Maintenance Agreement and Installment Replacement Contribution.

Section 3. Annual Assessment. The Annual Assessment for each Member for each calendar year shall be the product of (a) the actual acreage of land contained within said Member's Lot (excluding public and private road rights-of-way) times (b) the Annual Assessment per acre as established by the Association based on projected expenditures for the calendar year for which such computation is made, with fractions of acres and fractions of calendar years to be computed and prorated equitably, at the same uniform rate for each calendar year. The Annual Assessment shall not commence until the calendar year 2003. The Annual Assessment shall not apply to Lot 6, as shown on Exhibit A.

Beginning in 2003 and each year thereafter, the Association, acting through its Board of Directors, shall estimate the costs of performing its responsibilities hereunder, or so many of such responsibilities as it shall have expressly undertaken, for the next succeeding year and advise each Member by notice in writing of the amount of its Assessment determined as above provided for such next succeeding calendar year. These Annual Assessments may include a contingency reserve for replacement and repair. If, for any given calendar year, excess funds remain after payment of all expenditures for such calendar year, then such excess funds may be applied in payment of expenditures in succeeding calendar years or to the contingency reserve in the discretion of the Association.

Section 4. Special Assessments. In addition to the Annual Assessments hereinabove authorized, the Association may levy Special Assessments only for the purpose of defraying, in whole or in part, or for the purpose of setting aside for future expenditure, the cost of any unexpected items, capital items, or the cost of any reserves required in excess of the amounts that may be included in the Annual Assessment; provided, however, that any such Special Assessment shall have the approval of seventy-five percent (75%) of the Owners of the Lots present and voting in person or by proxy at an annual or special meeting of the membership at which a quorum is present with such seventy-five percent (75%) being measured by the number of votes eligible to be cast by the aforesaid Members. Special Assessments shall be due and payable on the date(s) which are fixed by the resolution authorizing such Assessment. The Association may also, without any consent of the Owners, levy a special assessment against any Owner who fails to maintain its Lot in accordance with the standards set forth in Article VI herein.

Section 5. Notice and Quorum for Any Action Authorized Under Section 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 4 hereof shall be sent to all members not less than fifteen (15) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence in person or of proxies of Members entitled to cast fifty percent (50%) of the Total Votes shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6. Due Date. Unless otherwise provided herein, Annual Assessments shall be due and payable in advance, quarterly, semi-annually or yearly as determined by the

Board of Directors, in its sole discretion, thirty (30) days after being billed to any Member by the Association based on the Association's estimate as set forth above; provided, however, the Board of Directors may require the payment of the same at different intervals. Late billing of any Assessment shall not affect a Member's obligation to pay the same.

Section 7. Records of Assessments. The Association shall cause to be maintained in the office of the Association a record of all designated portions of the Property subject to Assessment and Assessments applicable thereto which shall be open to inspection by any Member upon reasonable notice.

The Association shall upon request and prior payment of a reasonable charge therefor furnish to any Owner a certificate in writing signed by an officer of the Association setting forth whether the Assessments have been paid, and if not, the amount due and owing. Such certificates shall be conclusive as evidence for third parties as to the status of Assessments against such Lot.

Section 8. Effect of Nonpayment of Assessments; Remedies of the Association. Any Assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of eighteen percent (18%) per annum or the maximum interest rate permitted to be legally charged under the laws of the State of North Carolina at the time of such delinquency, whichever is less. In addition to such interest charge, any delinquent Member shall also pay a late charge of the greater of (1) 5% of the delinquent amount; or (2) Two Hundred Fifty and No/100 Dollars (\$250.00) or such other amount as may have been theretofore established by the Board of Directors of the Association to defray the costs of late payment. This Declaration shall grant the Declarant or the Association the right to secure payment of Assessments and any additional interest and late payment charges by filing a claim of lien against the Lot owned by any Member who is in arrears on the Assessments. The granted lien rights shall be foreclosed in like manner as a mortgage on real estate pursuant to power of sale under Article 2A of Chapter 45 of the General Statutes from and after the time of recording a claim of lien in the Office of the Clerk of Superior Court of the County where the Property is situated, which claim shall state the description of the Property encumbered thereby, the name and address of the Declarant, Association, and the record owners of the encumbered Property at the time the claim of lien is filed, and the amount of the lien claim. The claim of lien shall be recordable any time after default, and the lien shall continue in effect until all sums secured by the lien as herein provided shall have been fully paid. The Association, its agent or representative, may bring an action at law against any Member personally and/or foreclose the lien against the Lot, and interest, late payment fees, costs and reasonable attorneys' fees of such action or foreclosure shall be added to the amount of such Assessment. No Member may waive or otherwise escape liability for the Assessments provided for herein by abandonment or non-use of his or its portion of the Property.

This Declaration shall grant the Declarant the right to impose assessments to pay any monies owed by the Declarant or the Association to the City of Raleigh or any amounts owed Declarant relating to funds expended to maintain the Facility; payment of such assessment

being secured by a lien against all of the Property upon the filing of a claim of lien by the Declarant, Association, or by the City of Raleigh, as the assignee of the Declarant's or Association's lien rights. The granted lien rights shall be foreclosed in like manner as a mortgage on real estate pursuant to power of sale under Article 2A of Chapter 45 of the General Statutes from and after the time of recording a claim of lien in the Office of the Clerk of Superior Court of the County where the Property is situated, which claim shall state the description of the Property encumbered thereby, the name and address of the Declarant, Association, and the record owners of the encumbered Property at the time the claim of lien is filed, and the amount of the lien claim. The claim of lien shall be recordable any time after default, and the lien shall continue in effect until all sums secured by the lien as herein provided shall have been fully paid. Such claims of lien shall include all sums that are due and payable when the claim of lien is recorded, plus interest at the rate set forth in the Stormwater Escrow Protection Easement recorded in the Wake County Public Registry, but not to exceed eighteen percent (18%) per year, collection costs, and reasonable attorneys' fees. City of Raleigh lien claims shall be signed by the City Manager. Upon full payment of all sums secured by such claims of lien, the same shall be satisfied of record.

Section 9. Subordination of the Lien to Mortgages. The liens provided for herein shall be subordinate to the lien of any first mortgage or first deed of trust on a Lot or any portion of the Property and to other first mortgages or deeds of trust if the mortgage or beneficiary in such deed of trust is an Institutional Lender. Sale or transfer of a Lot or any portion of the Property shall not affect any Assessment lien, but the sale or transfer of a Lot or any portion of the Property which is subject to a first mortgage or deed of trust to which the lien of the Assessment is subordinate, pursuant to a foreclosure thereof or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such Assessments as to any installment thereof which became due prior to such sale or transfer. The amount of any extinguished Assessment lien shall then become a common expense owed in equal parts by the remaining Members. No such sale or transfer shall relieve such Lot or portion of the Property from liability for any Assessment thereafter becoming due or from the lien thereof, but the liens provided for herein shall continue to be subordinate to the lien of those mortgages and deeds of trust identified in the first sentence of this Section 9.

Section 10. Exempt Property. All property dedicated to, and accepted by, a local public authority for operation and maintenance or on which a greenway easement has been granted shall be exempt from any provision of this Declaration.

Section 11. Annual Accounting. The Association shall keep books and accounting records in accordance with generally accepted accounting principles and shall furnish each Member with an annual report each year prepared by and certified to be true and correct by an officer of the Association or, at the election of the Association, an independent Certified Public Accountant selected by the Association's Board of Directors.

Section 12. Dealings Between Association and Any Member. In the event that services, materials or work are provided to the Association by any Member, including the Declarant, then all such services, materials or work shall be furnished at a price which is not

more than would be charged by non-members for performing such work or services or providing such materials.

ARTICLE VI

MAINTENANCE BY OWNER AND EXTERIOR APPEARANCE

Section 1. Maintenance and Repair. Each Owner shall maintain, repair and, when necessary, renew or rebuild at its expense all improvements (both interior and exterior) and landscaping on its Lot which shall reasonably be deemed necessary by the Association in order to keep the same in good condition, repair and appearance and in a condition substantially similar to that existing upon the initial completion of the improvements in accordance with the Plans (as hereinafter defined). Upon an Owner's failure to do so, the Association shall have all rights and remedies as by law provided to enforce this covenant and, in addition, with respect to an Owner's failure to keep the exterior of a Lot in good condition, repair and appearance, the Association may, at its option, after approval by a majority vote of the Board of Directors and after giving the Owner not less than ten (10) days' written notice sent to its last known address, or to the address of the Lot, have the grass, weeds, shrubs and vegetation cut when and as often as the same is necessary in the judgment of the Board of Directors, and have dead trees, shrubs and plants removed from such Lot, and replaced, and may have any portion of the Lot resodded or landscaped, and all expenses of the Association incurred as a result of action taken by the Association pursuant to this Section shall be immediately due and owing from the Owner of the Lot, and the Association shall be deemed to have contracted with the Owner for such work and materials, and shall be entitled to file a mechanic's lien against the Owner's Property for the cost of such work and materials with all rights incident thereto, all in accordance with Chapter 44A of the North Carolina General Statutes and Article V, Section 8 hereof.

Upon an Owner's failure to maintain and renew or rebuild the exterior of any structure, including, without limitation, the roof, in good condition repair and appearance, the Association, in addition to all other rights and remedies it might have at law to enforce this covenant, may, at its option, after approval by a majority vote of the Board of Directors and after giving the Owner not less than thirty (30) days' written notice sent to its last known address, or to the address of the Lot, make repairs or renew or rebuild and improve the appearance in a reasonable and workmanlike manner. The cost of any of the work performed by the Association upon the Owner's failure to do so shall be immediately due and owing from the Owner of the Lot and the Association shall be deemed to have contracted with the Owner for such work and materials, and shall be entitled to file a mechanic's lien against the Owner's Property for the cost of such work and materials with all rights incident thereto, all in accordance with Chapter 44A of the North Carolina General Statutes and Article V, Section 8 hereof.

The liens provided for in the immediately preceding paragraphs of this Section shall be subordinate to the lien of any first mortgage or first deed of trust on a Lot and to other mortgages or deeds of trust if the mortgagee or beneficiary in such deed of trust is an

Institutional Lender. Sale or transfer of any Lot shall not affect any Assessment lien, but the sale or transfer of any Lot which is subject to a mortgage or deed of trust to which the lien of the Assessment is subordinate, pursuant to a foreclosure thereof or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such Assessments as to any installment thereof which became due prior to such sale or transfer. The amount of any extinguished Assessment lien shall then become a common expense owed in equal parts by the remaining Members. No such sale or transfer shall relieve such Lot from liability for any Assessment thereafter becoming due or from the lien thereof, but the liens provided for herein shall continue to be subordinate to the lien of those mortgages and deeds of trust identified in the first sentence of this paragraph.

Section 2. Setbacks. All construction or improvement made to any Lot in the Property shall comply with the setback requirements of the City of Raleigh.

Section 3. Utilities. All on-site utility services on any Lot or within Utility Easement areas shall be located underground, except for transformers, vaults, meters, control boxes or other items not generally designed to be placed underground.

The Declarant reserves the right to enter into a contract with Progress Energy for the installation of street lighting. Monthly payments to Progress Energy shall be made by each member of the Association.

Section 4. Parking. All parking lots shall be paved and divided for spaces in a uniform manner.

ARTICLE VII USES AND CONSTRUCTION OF IMPROVEMENTS

Section 1. Permitted Uses. A Lot may be used for any use allowed by the City of Raleigh Zoning Ordinance. Any Lot may also include within its boundaries Association Landscape and Easement Areas and Utility and Sidewalk Easements and its use may be further restricted by the Declarant upon its sale to an Owner. The Declarant, the Association, and any Lot Owner shall have the full right and authority to enforce restrictions applicable to the Lots.

Each numbered lot, described in Exhibit A, shall constitute a building site for commercial purposes. The layout of the Lots as shown in Exhibit A shall remain as recorded. The Architectural Committee (hereinafter described) shall have the authority to approve proposals to alter the size and shape of a building site, provided that no building site or groups of building sites may be further subdivided. More than one lot may be used as a single building site, provided the location of any structure permitted thereon is approved in writing by the Architectural Committee. All buildings and other structures shall be constructed in a manner in which at least 75% of the exterior consist of a masonry material.

Section 2. Prohibited Uses. No Lot or any portion of the Property may be occupied or used, directly or indirectly, for the following uses: labor camps; commercial storage of building or construction materials (except temporarily in connection with construction of structures by Owners of Lots as is permitted herein); dry cleaners; smelting of iron, tin, zinc or other ores; refining of petroleum or of petroleum products; flea markets; open air stalls; rodeos; circus, carnival or amusement facility; skating rink or bowling alley; any type of gameroom operations; businesses which sell alcoholic beverages; any bar or nightclub; tattoo parlors; sales lots for prefabricated structures; tire recapping plants; farm and heavy construction equipment and implement sales, leasing, service, storage, and similar activities; truck terminals; lumber, planing or sawing mills; pulpwood yards; storage yards; taxidermy; cemeteries (public and private); commercial poultry, livestock, and swine production; cattle feeder lots or fur-bearing animal rearing or breeding farms; abattoirs; junk yards; baling, storage or processing of scrap metal, glass, paper or rags, or storage or processing of wrecked or junked motor vehicles; quarries; race tracks; raceways or dragstrips; truck stops; sanitary landfills or garbage disposal areas; trailer or mobile home parks; any type of outdoor storage; or funeral home, massage parlor, hair salon, cinema or bookstore selling or exhibiting material of a pornographic or adult nature; facility for the sale of illegal drug paraphernalia. No Lot or other portion of the Property shall be used for any business the operation of which would result in the generation, storage or disposal of any flammable explosives, radioactive materials; infectious substances, other than those generated by a medical practice in the course of business, or raw materials which include hazardous constituents or any other substances or materials which are included under or regulated by Environmental Laws (as hereinafter defined) (collectively, "Hazardous Substances"), including, but not limited to, (i) any asbestos or insulation or other material composed of or containing asbestos, or (ii) any hazardous, toxic or dangerous substance, material or waste defined as such in (or for the purposes of) the Comprehensive Environmental Response Compensation and Liability Act, as amended, 42 U.S.C. § 9601 *et seq.*, the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*, the Clean Air Act, 42 U.S.C. § 7401 *et seq.*, the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, the Toxic Substances Control Act, 15 U.S.C. § 2601 *et seq.*, the Safe Drinking Water Act, 15 U.S.C. § 2601 *et seq.*, the Occupational Safety and Health Act, 29 U.S.C. § 651 *et seq.*, the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 *et seq.*, any so-called state or local "Superfund" or "Superlien" laws, or any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning any hazardous substance ("Environmental Laws").

Section 3. Compliance with Environmental Laws. Each Owner shall comply with all applicable Environmental Laws. Each Owner shall keep or cause the Property to be kept free from Hazardous Substances (except those substances used by any Owner in the ordinary course of his respective business and except in compliance with all Environmental Laws and where such could not reasonably be expected to give rise to liability under Environmental Laws) and in compliance with all Environmental Laws. Owners shall not install or use any underground storage tanks ("USTs"), shall expressly prohibit the use, generation, handling, storage, production, processing and disposal of Hazardous Substances on the Property in quantities or conditions that would violate or give rise to any obligation to take remedial or

other action under any applicable Environmental Laws. Without limiting the generality of the foregoing, during the term of this Declaration, no Owner shall install or permit to be installed in the Property any asbestos or asbestos-containing materials. An Owner shall remedy or cause to be remedied in a timely manner (and in any event within the time period permitted by applicable Environmental Laws) any violation of Environmental Laws by such Owner or any condition that could give rise to liability under Environmental Laws resulting from the acts or omissions of such Owner, its officers, directors, members, agents invitees concerning (i) the Property or (ii) other affected property. In the event any Owner fails to perform any of such Owner's obligations set out in this Section 3, the Association may, but shall not be obligated to, cause the Property to be freed from any Hazardous Substances or otherwise brought into conformance with Environmental Laws, and the Association shall be deemed to have contracted with the Owner for such work and materials, and shall be entitled to file a mechanic's lien against the Owner's Property for the Owner's share of the cost of such work and materials, together with interest thereon, with all rights incident thereto, all in accordance with Chapter 44A of the North Carolina General Statutes and with Article V, Section 8 herein. Owners hereby grant to the Association and its agents and employees access to the Property and a license to remove any items deemed by the Association to be Hazardous Substances and to do all things the Association shall deem necessary to bring the Property into conformance with Environmental Laws.

Section 4. Approval of Development. Before commencing the construction, redecorating, painting, re-roofing, reconstruction, relocation or alteration of any exterior portions of buildings, additions, enclosures, fences, loading docks, entranceways, exterior lighting, exitways, curb cuts, parking facilities, signs, landscaping, planting, storage yards or any other structures or permanent or temporary improvements on any Lot, the Owner of such Lot shall first submit to the Architectural Design Committee in duplicate, the preliminary plans showing the following items and such other items as the Architectural Design Committee may reasonably request, which other items may be in addition to or deleted from the following, as appropriate, taking into account the scope of the project or construction to be reviewed by the Architectural Design Committee (all of the following, excluding any plans for interior construction, and such additions to or deletions therefrom being herein called the "Plans"): site plan showing the location of all improvements, including but not limited to, proposed driveways providing access to public streets and the parking layout; demolition and storm drainage plan; storm water retention plan; utility plan; erosion control plan; landscape plan; irrigation plan; floor plan; building elevations; structured parking facilities plan and elevations; schedule of colors, finishes, and materials for exterior surfaces of all structures; perspective drawing or rendering showing at least the side of the structure containing the primary entrance; exterior signage program; and site lighting program.

The Architectural Design Committee shall establish and may amend, from time to time for any construction to be undertaken on Lots, uniform and standard requirements (the "Design Guidelines") with respect to such construction including, without limitation, building exterior surface materials; landscape plans, including types of plants, shrubbery and street trees and the required spacing thereof, decorative fencing; and street and parking area lighting. The Design Guidelines as established by the Architectural Design Committee shall

be available upon the request of an Owner for its use in preparing Plans for submission to the Architectural Design Committee. The Architectural Design Committee may require as a condition for approval of an Owner's Plans the integration of the Design Guidelines within the improvements to be constructed on any Lot, and may also require a plan review fee be paid to the Association, as described in Article V of the Association's by-laws.

Approval shall not be required of plans for interior construction or for mechanical, plumbing or electrical systems located completely inside any improvements. In the event the Architectural Design Committee shall fail to approve or disapprove in writing the completed Plans within thirty (30) days after they have been received by the Architectural Design Committee, such approval will not be required and this covenant shall be deemed to have been complied with. The Architectural Design Committee may disapprove the Plans in the event a submission is incomplete. The Plans shall be delivered to the Architectural Design Committee in person or by certified mail at the address to be designated from time to time by Declarant or the Association. The Architectural Design Committee is authorized to request the submission of samples of proposed construction materials.

Approval shall be based, among other things, on adequacy of site dimensions; conformity and harmony of external design with neighboring structures; effect of location and use of improvements on neighboring sites, operations, improvements and uses; relation to topography, grade and finished ground elevation of the site being improved to that of neighboring sites; proper orientation of main elevations with respect to nearby streets; and conformity of the plans and specifications to the purpose and general plan and intent of the Design Guidelines and this Declaration. The Architectural Design Committee shall not arbitrarily or unreasonably withhold or delay its approval of the completed Plans; provided, however, the Architectural Design Committee shall be entitled to base its approval, with respect to the nature of the different uses to be operated in Durham Drive Professional Center on a proposed Plan's conformity to the Design Guidelines and conformity and harmony of external design with neighboring structures; provided, further, the Design Guidelines shall specifically delineate uniform and standard requirements for each of the uses to be operated in Durham Drive Professional Center and shall delineate the unity of external design criteria required by and between similar and dissimilar uses (By way of example, the Design Guidelines shall specify the standards for office use design and the unity of design criteria by and between office use and office use).

Once the Architectural Design Committee has approved the Plans, the construction of improvements must be promptly commenced and diligently pursued to completion. If such construction is not commenced within twelve (12) months following the date of approval of the Plans by the Architectural Design Committee, such approval shall be deemed rescinded and before construction of improvements may thereafter be commenced on the Lot, the Plans therefor must again be approved by the Architectural Design Committee pursuant to this Article VII and an additional plan review fee paid if same is required.

If the Architectural Design Committee approves an Owner's Plans, the actual construction in accordance with the Plans shall be the responsibility of the Owner. In the

event an Owner shall desire to change the Plans (excluding de minimis changes to the Plans, which changes shall be defined as changes, other than those to signs or exterior lighting, costing not in excess of \$20,000 per change and not in excess of \$50,000 in the aggregate.), such change shall likewise be subject to approval by the Architectural Design Committee in accordance with the procedure hereinabove set forth and it shall be Owner's responsibility to request inspection and approval by the Architectural Design Committee of said change in Plans within a time frame adequate for and consistent with the nature and impact of said change. Upon the substantial completion of new improvements, and prior to occupancy thereof or upon completion of work involving previously approved and completed improvements, the Owner shall notify the Architectural Design Committee in writing, which shall have fifteen (15) days from receipt of such written notice in which to have the improvements inspected to insure that the improvements or changes and alterations thereto were completed in accordance with the Plans approved by the Architectural Design Committee prior to construction. In the event that the Architectural Design Committee shall fail to approve or disapprove in writing the completed improvements within fifteen (15) days after receipt of notice from the Owner that the improvements are completed, such approval shall not be required and the Owner will be deemed to have complied with these covenants. In the event an Owner has made changes from the Plans approved by the Architectural Design Committee and such changes were not previously approved by the Architectural Design Committee, Owner shall within fifteen (15) days from receipt of written notice from the Architectural Design Committee commence and thereafter diligently proceed with all works necessary to insure that the improvements comply fully with the approved plans and shall not use or occupy the improvements until such works are completed to the reasonable satisfaction of the Architectural Design Committee.

Notwithstanding any provisions contained herein or in any other document or instrument to the contrary, if an Owner fails to obtain the approvals required herein, to proceed diligently to complete the improvements in accordance with the approved Plans or otherwise fails to comply with the provisions of this Article VII, then and in that event, if such Owner fails to commence and thereafter diligently pursue compliance with the provisions set forth herein within fifteen (15) days after receipt of notification of non-compliance by Declarant, the Association, or any Lot Owner, the obligations set forth herein may be enforced by the Declarant or the Association by pursuit of all available remedies at law and in equity, including injunctive relief. Further, Declarant or the Association shall have the right to enter upon the Lot or Lots on which the improvements are located and conform the improvements to the requirements set forth herein. The cost of such correction, together with all interest and reasonable attorney fees incurred in connection therewith, shall be due and owing the Declarant, so long as it owns any portion of the Property, or the Association, as the case may be, enforceable at law and in equity and shall also be a charge on the land of such Owner within the Property and a continuing lien thereon until paid.

All buildings and improvements constructed or erected upon the Property shall conform to the minimum standards specified by the applicable governmental building codes in effect at the time of such construction as well as to all other rules, regulations, requirements, ordinances and laws of any local, state or federal governmental unit(s) or

authority(ies) having jurisdiction. No permission or approval granted by the Architectural Design Committee pursuant to this Declaration shall constitute or be construed as an approval by it of the fitness for its purpose, engineering or structural stability, quality of materials, or design of any building, structure or other improvement and no liability shall accrue to the Architectural Design Committee in the event that any such construction shall subsequently prove to be defective or in any way inadequate, nor shall any approval be considered evidence that the same comply with other restrictions applicable to the Lot. No structure of a temporary nature shall be allowed on any Lot at any time except that of an Owner's contractors and subcontractors during the period of construction of improvements, except with the approval of the Architectural Design Committee.

In addition to the approval of Plans and other matters herein set forth, the Architectural Design Committee shall have the right, in its absolute discretion, to waive minor violations and allow minor variances where the same resulted unintentionally or without gross carelessness on the part of any owner and are not materially harmful to the Property.

If requested by an Owner, upon approval of its Plans as set forth above, the Architectural Design Committee shall issue a letter stating that the Plans have been approved, and if the improvements are constructed in accordance with such Plans, a final letter of compliance will be issued as set forth in the next sentence. Upon final approval of any construction by the Architectural Design Committee, it shall, upon written request of the Owner completing such construction, issue a letter of compliance signed by the Association stating that the construction was completed in accordance with requirements of this Declaration.

Section 5. Establishment and Composition of Architectural Design Committee. The Architectural Design Committee shall consist of not less than three (3) persons appointed by Declarant, so long as the Declarant owns any portion of the Property. The Declarant shall be empowered to appoint their successors should a vacancy occur, and their names shall be maintained at Declarant's offices. At its option by written notice, the Declarant may delegate to the Association the authority and duty to appoint the Architectural Design Committee and the authority to appoint the Architectural Design Committee shall automatically be vested in the Association. Upon Declarant's delegation of the duty and authority to appoint the members of the Architectural Design Committee, or upon the expiration of Declarant's right to perform the functions of such Committee, the Association's Board of Directors shall appoint not less than three (3) nor more than five (5) individuals to such Committee. One of the individuals so appointed shall be the Chairman of the Architectural Design Committee, and he/she or a majority of the members may call a meeting of the Committee by giving two days prior written notice to each member. A quorum shall be a majority of the members of the Committee and all decisions shall be made by majority vote. A member of the Architectural Design Committee need not be a Member and can also be a member of the Board of Directors of the Association. In no event shall any member of the Architectural Design Committee be liable for damages or in any other respect to any Owner for wrongfully

refusing to approve any submission by such owner as hereinabove required. Such Owner's sole remedy shall be a suit to compel approval by the Architectural Design Committee.

Section 6. Outside Storage and Appurtenances. No articles, goods, materials, incinerators, storage tanks, refuse containers or equipment shall be kept in the open or exposed to public view or view from any neighboring Property. Water towers, storage tanks, transformers, pump houses, processing equipment, stand fans, cooling towers, communication towers, vents, stacks, skylights, mechanical equipment, mechanical rooms and any other structures or equipment (whether freestanding or roofmounted) shall be architecturally compatible or effectively shielded from public view by an architecturally approved method organized in an aesthetically pleasing and architectural manner to provide a "roofscape" which shall be approved in writing by the Architectural Design Committee before construction or erection of said structures or equipment. Outside storage which is not a use ancillary to the improvements constructed on any Lot is not permitted.

No outbuildings shall be erected or located on any building site except temporary structures for the term of construction.

Section 7. Preservation of Landscaping Within Setback Areas. No building or other structure above ground shall be constructed or erected in the building setback areas on any Lot established in maps of the Property, presently existing or hereinafter recorded in the Wake County Public Registry. Association Landscape and Easement Areas shall be used solely for landscaping purposes and it shall be the responsibility of each Owner at its sole expense to install landscaping within this area and plant the same with lawn, trees, flowers and shrubbery according to the Plans approved in writing by the Architectural Design Committee. Upon approval of the Architectural Design Committee, driveways, signs and other similar improvements may be located within said landscaped areas. Each Owner shall install and maintain an underground sprinkler or underground watering system within the Association Landscape and Easement Areas on its Lot; provided, however, the Owner shall not be required to plant or maintain the said landscaping or construct or maintain the underground watering system prior to the time the improvements are constructed on its Lot.

Section 8. Signage. The size, shape, design, color, location and material of all signs shall be shown on the Plans submitted to the Architectural Design Committee for approval.

Section 9. Exterior Lighting. All pole light fixtures shall be approved by the Architectural Committee.

Section 10. Mailboxes. A mailbox for each Lot shall be provided by Declarant or its successors during initial construction.

Section 11. Storm Water Management. The Stormwater Facility ("Facility") shall be located on Lot 5 and considered a Common Area for all Members of the Association; the Facility shall serve the stormwater detention needs of Lots 1-4 and Lot 7. These Lots shall share in the common enjoyment of the Facility and shall pay assessments for the

maintenance of the Facility. Terms of contribution for the maintenance of the Facility are states in the Declaration of Drainage Easement and Contribution Agreement and in the Stormwater Replacement Protection Easement and Access Maintenance Agreement and Installment Replacement Contribution, both recorded in the Wake County Public Registry contemporaneously with this Declaration. Maintenance of the Facility shall be undertaken in accordance with the Stormwater Operations and Maintenance Manual and Budget attached to these recorded documents.

Section 12. Governmental Laws, Regulations, Permits and Approvals. Each Owner, its successors and assigns, shall fully comply with (i) all federal, state and local health and safety laws, codes and ordinances, and all rules and regulations promulgated thereunder and (ii) the terms and conditions of all federal, state and local permits, licenses, certifications and approvals now or hereafter granted or obtained, with respect to all property owned by such Owner within the Property and all actions of Owner, its agents, representatives, contractors and employees within the Property. Each Owner shall defend, indemnify and hold Declarant, the Association, and each other Owner harmless from and against all claims, demands, liabilities, causes of action and damages arising out of or occurring as a result of such Owner's violation of the provisions of this Section 12.

Section 13. Diligent Construction. All construction, landscaping or other work which has been commenced on any Lot located within the Property must be completed, or Certificate of Occupancy issued, within one year of commencing construction on the Lot. The Owner of each Lot shall at all times keep all adjacent public and private areas free from dirt, mud, garbage, trash or other debris which is occasioned by construction of improvements.

Section 14. Access to Durham Drive. Lots 1 and 7 shall have no direct access to Durham Drive.

Section 15. Impervious Surface Limitations. The maximum area of impervious surface, as defined in the Raleigh City Code Part 10 Chapter 9, shall not exceed seventy percent of the actual acreage of land contained on Lots 1-4, respectively, without the installation of on-site detention facilities. The area of impervious surface, as defined in Raleigh City Code Part 10, Chapter 9, for Lot 7 shall not exceed 20,175 square feet.

ARTICLE VIII

MAINTENANCE AND REPLACEMENT OF ASSOCIATION LANDSCAPE AND EASEMENT AREAS

Until such time as the owner of a Lot receives written notice that the Association will undertake the maintenance, reconstruction, replacement, and replenishment of all landscaping, vegetation, materials, improvements and other items and structures located within the Association Landscape and Easement Areas shall be at the Owner's cost and expense. The Association shall have the right but not the obligation to maintain, reconstruct,

replace, and replenish all vegetation and landscape material located within all Association Landscape and Easement Areas and pay the cost thereof. In addition, the Association, its agents and contractors shall have the full right and authority to go upon such property at any time and from time to time for the purpose of performing the Association's obligations hereunder in such manner as the Association reasonably deems in the best interest of the Property, should it elect in a written notice delivered to any owner to undertake any or all of said obligations. Declarant or the Association may elect to make a new installation in the Utility Easements and Association Landscape and Easement Areas by presenting written notice to the Owner of the Lot upon which the installation is to be performed, and such installation shall be made with minimum practicable interference to the Lot where the installation is performed. The Association shall be permitted from time to time and at any time to relinquish any maintenance obligations it has expressly undertaken by delivering written notice thereof to the Owner owning the Lot affected by such relinquishment of obligations, and such Owner from and after its receipt of said written notice shall again be responsible for such maintenance. All maintenance, reconstruction, replacement, and replenishment of vegetation and landscape material located within all Utility Easements and Association Landscape and Easement Areas, if performed by Declarant or the Association, shall be performed with minimum practicable interference to the Lot where the work is being conducted and, except in the cases of such Owner's negligence, recklessness or willful misconduct, in which case the Owner shall be responsible for the cost of maintenance and repairs necessitated by Owner's conduct, the Declarant or the Association, as the case may be, shall fully repair all damage to such Owner's Lot following any installation, maintenance or repair. With regard to any Lot conveyed by Declarant or any Owner to the Association in fee simple to be held as Common Area, such Lot shall be designated as either Association Landscape and Easement Areas, Private Drainage Easement, Utility Easements on the recorded subdivision map. The Association shall have the obligation to maintain, reconstruct, replace, repair, replenish and operate stormwater control measures situated within Private Drainage Easements and on Lot 5.

ARTICLE IX

GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, shall have the right (but not the obligation) to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce, whether in whole or in part, any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no manner affect any other provisions which shall remain in full force and effect.

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land for a term of fifty (50) years from the date this Declaration is recorded after which time they shall be automatically extended for three (3) successive periods of ten (10) years each, unless Owners with at least seventy-five (75%) percent of the Total Votes elect not to continue the same in existence. This Declaration may be amended by an instrument signed by the Owners with at least fifty-one percent (51%) of the Total Votes, and prior written approval of the Declarant, so long as it owns any portion of the Property. Any Amendment must be properly recorded. For purposes of this Section 3, changes in the Annual Assessment or the imposition of a Special Assessment shall not be deemed an "Amendment." No Amendment affecting the Private Drainage Easements and the maintenance of stormwater control measures situated therein and the payment assessments and annual contribution to the City of Raleigh shall be made without the prior written consent of the Raleigh City Attorney or his or her Deputy.

Section 4. Amendment of Declaration Without Approval of Owners. So long as Declarant owns any portion of the property, Declarant, without the consent or approval of any other owner, shall have the right to amend this Declaration to conform to the requirements of any law or governmental agency having legal jurisdiction over the Property or to qualify the Property or any Lots and improvements thereon for mortgage or improvement loans made or insured by a governmental agency or to comply with the requirements of law or regulations of any corporation or agency belonging to, sponsored by, or under the substantial control of, the United States government or the State of North Carolina, regarding purchase or sale of such Lots and improvements, or mortgage interests therein, as well as any other law or regulation relating to the control of Property including, without limitation, ecological controls, construction standards, aesthetics, and matters affecting the public health, safety and general welfare. A letter from an official of any such corporation or agency, requesting or suggesting an amendment necessary to comply with the requirements of such corporation or agency shall be sufficient evidence of the approval of such corporation or agency, provided that the changes made substantially conform to such request or suggestion.

Section 5. Procedure for Certification and Recordation of Amendment. Any instrument amending these covenants, conditions, and restrictions (other than an amendment by the Board of the Association to correct an error or inconsistency in drafting typing, or reproduction) shall be delivered, following execution by the owners, to the Board of Directors of this Association. Thereupon, the Board of Directors of the Association shall, within thirty (30) days after delivery, do the following:

(A) Reasonably assure itself that the amendment has been executed by the Owners of the required number of Lots as provided in Section 3 of this Article. (For this purpose, the Board may rely on its roster of Members and shall not be required to cause any title to any Lot to be examined); and

(B) Attach to the amendment a certification as to its validity, which certification shall be executed by the Association in the same manner that deeds are executed. the following form of certification is suggested:

CERTIFICATION OF VALIDITY OF AMENDMENT TO PROTECTION
COVENANTS CONDITIONS AND RESTRICTIONS OF
DURHAM DRIVE PROFESSIONAL CENTER

By authority of its Board of Directors, Durham Drive Professional Center Property Owner Association, Inc. hereby certifies that the foregoing instrument has been duly executed by the owners of _____ percent of the lots of Durham Drive Professional Center and is, therefore, a valid amendment to the existing covenants, conditions and restrictions of Durham Drive Professional Center .

This ____ day of _____, 200_.

DURHAM DRIVE PROFESSIONAL CENTER PROPERTY OWNERS ASSOCIATION,
INC.

By: _____

Printed Name: _____

Title: President

Immediately, and within the thirty (30) day period aforesaid, cause the amendment to be recorded in the Wake County Public Registry.

All amendments shall be effective from the date of recordation in the Wake County Public Registry; provided, however, that no such instrument shall be valid until it has been indexed in the name of this Association. When any instrument purporting to amend the covenants, conditions and restrictions has been certified by the Board of Directors of the Association, recorded and indexed as provided by this Section, it shall be conclusively presumed that such instrument constitutes a valid amendment as to the owners of all Lots in this development.

Section 6. Protective Covenants for Lots. Nothing herein shall affect Declarant's right to establish from time to time appropriate additional protective covenants governing the use of Lots and the size and location of buildings thereof.

Section 7. Dissolution or Insolvency of the Association. In the event that the Association becomes insolvent, is dissolved or, for any reason whatsoever, loses the ownership of any of the Private Drainage Easements or Common Areas, the Owners of Lots having an interest in such Common Areas and Private Drainage Easements shall, so long as shared stormwater control measures are required by the City of Raleigh, form a non-profit corporation

as provided in the Articles and Bylaws of the Association and assign to it the duty and authority to assess on a per lot basis all Lots using such Common Area and Private Drainage Easement, whereupon such corporation shall maintain such Common Area and Private Drainage Easement in the same manner that the Association is empowered to do by this instrument with the same right of lien for assessments provided for herein.

Section 8. Fines. In addition to any other rights and remedies available for the enforcement of the provisions of this Declaration (including, without limitation, the powers of the Architectural Design Committee), the Declarant or the Association may, after delivery of notice meeting the requirements set out herein to the Owner of the Lot on which the violation is occurring, impose a fine against such Owner for each day the violation continues. The fine shall not exceed Two Hundred and No/100 Dollars (\$200.00) per day. Such fine shall constitute a lien against such Lot in the same manner as an Assessment under Article V. The notice to the Lot Owner shall state the Owner's name, the Lot number or address of the property subject to the violation, the specific violation which is occurring, a reasonable time period for correction of such violation before the imposition of a fine (which shall be determined based upon the nature of the violation, but shall be no less than three (3) days), the amount of the fine and the fact that it will be imposed daily until the violation is cured. Delivery of notice shall be sufficient if either mailed by registered or certified mail, return receipt requested or posted in a prominent location on the Lot.

Section 9. Rights Assignable. Any and all rights, powers, easements and reservations of Declarant herein contained may be assigned to any person(s), corporation(s), Declarant(s) or other legal entity(ies) which will assume the duties of Declarant pertaining to the particular rights, powers, easements and reservations assigned, and upon any such person(s), corporation(s), Declarant(s) or other legal entity(ies) evidencing his or its consent in writing to accept such assignment and assume such duties, he or it shall, to the extent of such assignment, have the same rights and powers and be subject to the same obligations and duties as are given to and assumed by Declarant herein. The term "Declarant," as used herein, includes all such assignees and their heirs, successors and assigns (including, but not limited to, the Association). Any assignment or appointment made under this Section 9 shall be in recordable form and shall be recorded in the appropriate land record offices for the jurisdiction in which the Property is located.

Section 10. Liability Insurance. The Association shall procure and maintain liability insurance for the Common Area in an amount of not less than one million dollars of coverage. Premiums for such insurance shall be a common expense assessed against the Lot Owners.

Section 11. Warning Statement. The stormwater control measures and Facilities situated within the Private Drainage Easements and on Lot 5 are required to comply with the Raleigh City Code and failure to maintain such stormwater control measures and Facilities is a violation of the City Code potentially subjecting each Lot Owner to significant daily penalties and other enforcement actions.

[THE REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the undersigned, trustees of the David J. Martin Irrevocable Trust have caused this instrument to be executed as of the day and year first above written.

DAVID J. MARTIN IRREVOCABLE TRUST

By: David J. Martin, Jr. TRUSTEE
DAVID J. MARTIN, JR., TRUSTEE

By: Donna Martin Evenson, Trustee

DONNA MARTIN EVENSON, TRUSTEE

By: Dale Martin Dascombe, Trustee

DALE MARTIN DASCOMBE, TRUSTEE

STATE OF NORTH CAROLINA

COUNTY OF WAKE

I, ROBERT B. DASCOMBE, a Notary Public of said State and County, do hereby certify that David J. Martin, Jr. personally came before me this day and acknowledged that he is a trustee of the David J Martin Irrevocable Trust, and that by authority duly given and as the act of the company, the foregoing instrument was signed in its name by him.

WITNESS my hand and official seal, this 30 day of SEPTEMBER, 2003.

Robert B. Dascombe
Notary Public
[OFFICIAL SEAL]
ROBERT B. DASCOMBE
NOTARY
PUBLIC
WAKE COUNTY, N.C.

My commission expires: 09-18-06

STATE OF NORTH CAROLINA

COUNTY OF WAKE

I, ROBERT B. DASCOMBE, a Notary Public of said State and County, do hereby certify that Donna Martin Evenson personally came before me this day and acknowledged that she is a trustee of the David J Martin Irrevocable Trust, and that by authority duly given and as the act of the company, the foregoing instrument was signed in its name by her.

WITNESS my hand and official seal, this 30 day of SEPTEMBER, 2003.

Robert B. Dascombe
Notary Public

[OFFICIAL SEAL]
ROBERT B. DASCOMBE
NOTARY
PUBLIC
WAKE COUNTY, N.C.

My commission expires: 09-18-06

STATE OF NORTH CAROLINA

COUNTY OF WAKE

I, ROBERT B. DASCOMBE, a Notary Public of said State and County, do hereby certify that Dale Martin Dascombe personally came before me this day and acknowledged that she is a trustee of the David J Martin Irrevocable Trust, and that by authority duly given and as the act of the company, the foregoing instrument was signed in its name by her.

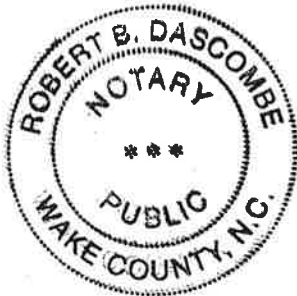
WITNESS my hand and official seal, this 30 day of SEPTEMBER, 2003.



Notary Public

[OFFICIAL SEAL]

My commission expires: 09-18-06



CONSENT OF MORTGAGEE
DURHAM DRIVE PROFESSIONAL CENTER

~~SOUTHLAND ASSOC. INC.~~

~~CENTRAL CAROLINA BANK~~

hereby: (a) consents to the recordation of this Declaration as to the real property described in Exhibit A (the "Property"); and (b) subordinates the lien and operation of the Deeds of Trust to this Declaration and the provisions contained herein. In the event of a foreclosure of the Deed of Trust, or a transfer of any portion of the Property in lieu of foreclosure, Beneficiary and Trustee agree that the purchaser at any such foreclosure or the transferee under any such deed in lieu of foreclosure shall take title to the Property together with and subject to all of the terms and conditions of this Declaration. The execution of this Consent of Mortgagee by the Beneficiary shall not be deemed or construed to have the effect of creating between the Beneficiary and Declarant the relationship of partnership or of joint venture, nor shall it be deemed to impose upon the Beneficiary any of the liabilities, duties or obligations of the Declarant under this Declaration. Beneficiary executes this Consent of Mortgagee solely for the purposes set forth above. The Trustee also joins in and executes this Consent as Trustee for the purposes set forth above.

TRUSTEE:

Southland Associates, Inc.

By: Thomas W. Quinn

Printed Name: THOMAS W. QUINN

Title: VICE PRESIDENT

BENEFICIARY

Central Carolina Bank

By: Andy Rawls

Printed Name: Andy Rawls

Title: Vice President

STATE OF NORTH CAROLINA

COUNTY OF WAKE Chatham

I, Kimberly C. Brunfield, Notary Public for said County and State, do hereby certify that Thomas W. Quinn personally appeared before me this day and acknowledged that he/she is Vice Pres. of Southland Associates, Inc. Trustee, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by him/her.

WITNESS my hand and official seal, this the 3rd day of October, 2003.

Kimberly C. Brunfield
Notary Public

[Official Stamp or Seal]

My commission expires: My Commission Expires August 13, 2006

STATE OF NORTH CAROLINA

COUNTY OF WAKE Chatham

I, Kimberly C. Brunfield, Notary Public for said County and State, do hereby certify that Andy Rauls personally appeared before me this day and acknowledged that he/she is Vice President of Central Carolina Bank and that by authority duly given and as the act of the company the foregoing instrument was signed in its name by him/her.

WITNESS my hand and official seal, this the 3rd day of October, 2003.

Kimberly C. Brunfield
Notary Public

[Official Stamp or Seal]

My commission expires: My Commission Expires August 13, 2006

Exhibit A

Being that certain property more particularly described as
“Lots 1, 2, 3, 4, 5 and 7” containing approximately 7.36 acres as shown on
the plat recorded in Book of Maps 2003, Page 1706 Wake County Registry



BOOK:010480 PAGE:02225 - 02254

Yellow probate sheet is a vital part of your recorded document.
Please retain with original document and submit for rerecording.



Wake County Register of Deeds
Laura M. Riddick
Register of Deeds

North Carolina - Wake County

The foregoing certificate s of Robert B Pascomb
Kimberly C Brunfield

Notary(ies) Public is (are) certified to be correct. This instrument and this certificate are duly registered at the date and time and in the book and page shown on the first page hereof.

Laura M. Riddick, Register of Deeds

By James Morgan
Assistant/Deputy Register of Deeds

This Customer Group _____ # of Time Stamps Needed

This Document _____ New Time Stamp
30 # of Pages



BOOK:010480 PAGE:02225 - 02254

Yellow probate sheet is a vital part of your recorded document.
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Wake County Register of Deeds
Laura M. Riddick
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The foregoing certificate s of Robert B Pascomb
Kimberly L Brunfield

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Laura M. Riddick, Register of Deeds

By Grand Morgan
Assistant/Deputy Register of Deeds

This Customer Group
of Time Stamps Needed

This Document
New Time Stamp
30 # of Pages