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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE CALDWELLS ON NINTH

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
is made as of the 9th day of December, 1999, by **EIGHTH STREET, LLC** ("Declarant"), a
North Carolina limited liability company with offices in Charlotte, North Carolina.

BACKGROUND STATEMENT

A. Declarant is the owner of two parcels of land containing approximately 1.63 acres of land, located on each side of East Ninth Street (between Caldwell and Davidson Streets), in the City of Charlotte, County of Mecklenburg, State of North Carolina (the "Property"). The Property is more particularly described on Exhibit A attached hereto. A subdivision plat of the Property (the "Plat") is recorded in Map Book 32 at Page 653 in the Mecklenburg County Public Registry. Declarant intends to construct on the Property a residential townhouse development consisting of six (6) buildings (the "Buildings") containing thirty-two (32) attached single-family townhouse units (the "Units"), together with certain common areas and facilities. This development (the "Project") shall be known as The Caldwells on Ninth.

B. Declarant desires to provide for the preservation of the values and amenities within the Project and for the maintenance of the common areas and facilities in the Project, and therefore desires to subject the Property to the covenants, restrictions, easements, charges and liens described in this Declaration, all for the benefit of the Property and each owner of any part of the Property.

C. Declarant has deemed it desirable to create a nonprofit corporation which will be delegated and assigned powers of maintaining and administering the common areas and facilities of the Project, of administering and enforcing the covenants and restrictions created in this Declaration, of levying, collecting and disbursing the assessments and charges created in this Declaration, and of taking any steps or performing any acts deemed necessary or appropriate to preserve the values of the Units and to promote the recreation, health, safety and welfare of the owners of the Units within the Project.

STATEMENT OF DECLARATION

NOW, THEREFORE, Declarant hereby declares that all of the Property shall be held, transferred, sold, conveyed, occupied and used subject to the following easements, restrictions, covenants and conditions, which shall run with the Property and be binding on, and inure to the benefit of, all parties having any right, title or interest in the Property or any part thereof, and the heirs, successors and assigns of all of the foregoing parties.

ARTICLE I.

DEFINITIONS

The following words, when used in this Declaration or any supplement or amendment hereto, shall have the following meanings (unless the context shall prohibit):

Section 1.1. “Agency” shall mean and refer to any one of the following entities (or their successors) that holds or insures a Mortgage: the Veterans Administration, the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Federal Housing Administration, and the Government National Mortgage Association.

Section 1.2. “Association” shall mean and refer to The Caldwells on Ninth Owners Association, Inc., a North Carolina non-profit corporation, and its successors and assigns.

Section 1.3. “Board” shall mean and refer to the Board of Directors of the Association.

Section 1.4. “Bylaws” shall mean the bylaws of the Association, as they may be amended from time to time. A copy of the initial Bylaws is attached hereto as Exhibit B.

Section 1.5. “Common Area” shall mean and refer to all real and personal property owned by the Association, and the easements granted to the Association, for the common use and enjoyment of the Owners. The Common Area to be owned in fee simple by the Association at the time of the conveyance of the first Lot by Declarant to an Owner is all of the Property outside of the boundaries of individually platted Lots, as designated on the Plat.

Section 1.6. “Declarant” shall mean and refer to Eighth Street, LLC, a North Carolina limited liability company.

Section 1.7. “Declaration” shall mean and refer to this Declaration of Covenants, Conditions and Restrictions, as it may be amended from time to time.

Section 1.8. “Lot” shall mean and refer to any numbered plot of land, with the exception of the Common Area, appearing on any recorded subdivision map of the Property.

Section 1.9. "Member" shall mean and refer to every individual, corporation, partnership, limited liability company, association, trustee or other legal entity that is a member of the Association.

Section 1.10. "Mortgage" shall mean and refer to a mortgage or deed of trust constituting a first lien on a Unit.

Section 1.11. "Mortgagee" shall mean and refer to an Institutional Lender holding a Mortgage that has notified the Association in writing of its name and address, and that it holds a Mortgage on a Unit. Such notice shall be deemed to include a request that the Mortgage be given the notice and other rights described in Article XIII.

Section 1.12. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Lot (as defined herein), but excluding those parties who have such interest merely as security for the performance of an obligation.

Section 1.13. "Plat" shall mean and refer to the subdivision map of the Property, which is recorded in Map Book 32 at Page 653 in the Mecklenburg County Public Registry.

Section 1.14. "Project" shall mean and refer to the residential townhouse project located on the Property, which initially shall be known as The Caldwells on Ninth.

Section 1.15. "Project Documents" shall mean and refer to this Declaration, the Articles of Incorporation of the Association, the Bylaws, and the rules and regulations governing the use of the Property, as the foregoing may be amended and supplemented from time to time, and all attachments and exhibits thereto.

Section 1.16. "Property" shall mean and refer to parcel of real property described on Exhibit A attached hereto, together with all improvements and structures located thereon, and all easements, rights and appurtenances to such real property.

Section 1.17. "Unit" shall mean and refer to an attached residential townhouse constructed upon a Lot.

ARTICLE II.

[INTENTIONALLY DELETED]

ARTICLE III.

COMMON AREA

Section 3.1. Owners' Easements of Enjoyment. Every Owner shall have a perpetual right and easement of enjoyment in and to the Common Area, which shall be appurtenant to and shall pass with the title to every Lot, subject to the terms of this Section 3.1. The foregoing easement rights include, without limitation, a non-exclusive easement over all streets, driveways, walkways and parking areas within the Common Area, for the purpose of vehicular and pedestrian access, ingress and egress to each Lot over the Common Area. The access easements described in the preceding sentence shall survive the expiration or earlier termination of this Declaration, and shall continue as a burden running with the Common Area unless and until such reasonable access, ingress and egress is provided by the dedication of a public street or by the conveyance in fee or by the grant of a perpetual easement in one or more strips of land adequate for that purpose.

All easements over the Common Area created by this Section 3.1 shall be deemed appurtenant to each Lot, shall inure to the benefit of each Owner and his tenants, family members, guests, invitees and agents, and are granted subject to the following conditions and reservations:

- (a) The right of the Association, in accordance with the provisions of Section 3.5 and the Project Documents, to mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred;
- (b) The right of the Association, as provided in the Project Documents, to suspend the voting rights of any Member and the enjoyment rights of any Member in the Common Area, except the right of pedestrian or vehicular access to the Member's Lot and the right of access to utility services for such Lot, for any period during which any assessment remains unpaid, or as a result of any infraction of its published rules and regulations;
- (c) The right of the Association, in accordance with the provisions of Section 3.5 and the Project Documents, to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members;
- (d) The right of Declarant, prior to the conveyance of the Common Area to the Association, and of the Association, to grant and reserve easements and rights-of-way through, under, over and across the Common Area, for the installation, maintenance and inspection of utility facilities, as provided in Section 9.3;
- (e) The other easements reserved by Declarant over the Common Area described in Section 9.7; and

(f) The right of the Association to establish reasonable rules and regulations for the use of any of the facilities situated upon the Common Area by Members or their tenants, family members, guests, invitees and agents, as provided in Article X.

Section 3.2. Title to Common Area Declarant covenants for itself, its successors and assigns, that it shall convey fee simple title to the Common Area within the Property to the Association upon conveying the first Lot to an Owner other than Declarant. Each such conveyance shall be free and clear of all liens and encumbrances, except the rights, restrictions, and easements set forth in this Declaration, including the reserved easements referenced in Section 9.7, other public and private access, utility and drainage easements, easements to governmental authorities, and ad valorem taxes for the year in which such conveyance occurs (which taxes shall be prorated as of the date of conveyance and paid when due by the Association).

Section 3.3. Delegation of Use Any Owner may delegate, in accordance with the Project Documents, his rights of enjoyment to the Common Area to members of his family, tenants or contract purchasers who reside on the Property, or to such other persons as may be permitted by the Association.

Section 3.4. Maintenance of Common Area The Association shall be responsible for the maintenance and repair of the Common Area and all improvements located thereon, except for any maintenance or repairs caused by the negligence or intentional misconduct of any Owner, his agents, invitees or family members, which shall be the responsibility of that Owner.

Section 3.5. Conveyance of Common Area While the Property remains subject to this Declaration, no conveyances of (including dedications) or security interests or liens of any nature shall arise or be created against the Common Area without the prior written consent of at least three-fourths (3/4) of all Owners and at least three-fourths (3/4) of all Mortgagees.

ARTICLE IV

THE ASSOCIATION

Section 4.1. Automatic Membership All Owners shall automatically be members of the Association, and shall enjoy the privileges and be bound by the obligations contained in the Project Documents, including the obligation to pay assessments. Ownership of any fee or undivided interest in any Lot shall be the sole qualification for membership in the Association. Membership shall be appurtenant to and may not be separated from the ownership of any Lot. The Board may make reasonable rules regarding proof of ownership.

Section 4.2. Voting Rights There shall be a single class of Lots and Members with respect to voting rights in the Association. If a Lot is owned by more than one person or entity as tenants in common or tenants by the entirety, then each such person or entity shall be deemed an Owner and a Member of the Association, but shall designate one person or entity to exercise the

voting rights appurtenant to that Lot. In no event shall more than one (1) vote in the Association be cast with respect to each Lot.

Section 4.3. Directors Appointed by Declarant. The initial Board shall consist of no fewer than three (3) persons appointed by Declarant. These persons may or may not be employees of Declarant, and need not own or occupy a Lot. Until these persons are replaced by elected Board members at the first annual meeting of Members, they shall constitute the Board of the Association and exercise all powers and duties granted to the Board in the Bylaws. The initial directors are specifically authorized to fix the annual assessments for periods through December 31, 2001, and to enter into a Management Agreement for the Association, subject to the limitations set forth in Section 4.18.

Section 4.4. Creation of the Lien and Personal Obligation of Assessments. Declarant, for each Lot owned within the Property, hereby covenants, and each Owner of any Lot, by acceptance of a deed therefor, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges of the Association, and (2) special assessments of the Association as provided in Section 4.7, such assessments to be established and collected as hereinafter provided. Each annual and special assessment, together with interest, costs and reasonable attorneys' fees, shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal financial obligation of the person who was the Owner of such Lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title (other than as a lien on the Lot) unless expressly assumed by them.

Section 4.5. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the Owners and other residents of the Property and in particular for: the improvement, maintenance and operation of the Common Area; services and facilities devoted to this purpose and related to the use and enjoyment of the Common Area, including but not limited to maintenance, landscaping and security services; payment of taxes and governmental assessments on the Common Area; payment of insurance premiums for the insurance policies maintained by the Association in accordance with the Project Documents; payment of water and sewer fees for water supplied and sewer services provided to the individual Units through any metering device serving the Project; the cost of maintaining any central sprinkler system serving the individual Units; payment of management fees to a property manager in accordance with Section 4.18; the provision of a reserve fund for replacement; the employment of attorneys and accountants to represent the Association when appropriate; the cost of utilities and fuel used in operating facilities in the Common Area; the maintenance and upkeep of all private streets and roadways in the Property; the exterior maintenance of Lots and Units, to the extent provided in Article VII; and the cost of maintaining and replacing plant material required by screening requirements under any applicable zoning, subdivision, or land planning ordinance, regulation, or code (including plant materials located on adjacent property under a license from the owner thereof).

Section 4.6. Maximum Annual Assessment. Until December 31, 2001, the maximum monthly assessment for each Lot (the "Assessment Cap") shall be One Hundred Twenty-Five and 00/100 Dollars, except as otherwise provided below.

(a) From and after December 31, 2001, the Assessment Cap may be increased by the Board, without a vote of the membership, so long as the amount of the increase does not exceed the percentage increase, if any, in the Consumer Price Index (published by the United States Department of Labor) U.S. City Average for all Cities between December 31, 2001, and the date of the adjustment.

(b) From and after December 31, 2001, the Assessment Cap may be increased above the increase allowed in Section 4.6(a) by a vote of three-fourths (3/4) of the Members of the Association who are voting in person or by proxy, at a meeting duly called for this purpose.

(c) The Board shall fix the annual assessment for each assessment year at an amount not in excess of the Assessment Cap for that year.

Section 4.7. Special Assessments. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part: (a) the cost of any construction, reconstruction, repair or replacement of capital improvements upon the Common Area, including but not limited to fixtures and personal property related thereto; (b) the cost of paying special governmental assessments; or (c) any other cost or expense, payment of which through special assessment is approved by three-fourths (3/4) of the votes of the Members of the Association who are voting in person or by proxy at a meeting duly called for this purpose. There shall be no limit on the amount of any such special assessments.

Section 4.8. Uniform Rate of Assessment. Both annual and special assessments levied by the Association must be fixed at a uniform rate for each Lot, but such rates may be based on the occupiable or heated area within each Unit (in the case of utility charges), the replacement value or assessed value of each Unit (in the case of insurance premiums), or some other reasonable criteria.

Section 4.9. Date of Commencement of Assessments: Due Dates. The annual assessments levied by the Association shall be payable in equal monthly installments commencing as to each Lot upon substantial completion of the Unit constructed thereon, as evidenced by the issuance of a certificate of occupancy (or equivalent) for that Unit. The Board shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board and, unless otherwise determined by the Board, assessments shall be collected in monthly installments due and payable, in advance, on the first day of each calendar month.

Section 4.10. Effect of Nonpayment of Assessments: Remedies of the Association. If any annual or special assessment, or monthly installment thereof, is not paid within thirty (30) days after its due date, the Board may, at its option, declare the entire unpaid assessment immediately due and payable, and such unpaid assessments shall bear interest from and after the due date at the rate of eighteen percent (18%) per annum, not to exceed, however, the maximum rate permitted by law. In that event, the Association may file a notice of lien in the Office of the Register of Deeds for Mecklenburg County, thereby creating a lien on that Lot, and the Association may bring an action at law against the Owner personally obligated to pay the assessment or foreclose the lien against his Lot to collect said assessment. In addition, interest, reasonable attorneys' fees not to exceed fifteen percent (15%) of the amounts due, and costs of such action or foreclosure shall be added to the amount of such assessment. Each Owner, by his acceptance of a deed to a Lot, expressly grants to and vests in the Association or its agents the right and power to bring such action or foreclosure. Any such foreclosure shall be accomplished in an action brought in the name of the Association in the manner that a foreclosure of a mortgage or deed of trust would be brought, or as otherwise expressly provided by law, and each Owner grants to the Association a power of sale in connection with any such charge or lien. The lien provided for in this Section 4.10 shall be in favor of the Association and shall be for the benefit of all other Owners. The Association, acting on behalf of the Owners, shall have the power to bid on any Lot and to acquire and hold, lease, mortgage and convey the same. NO OWNER MAY WAIVE OR OTHERWISE ESCAPE LIABILITY FOR THE ASSESSMENTS PROVIDED FOR HEREIN BY NON-USE OF THE COMMON AREA OR ABANDONMENT OF HIS LOT.

During any period in which an Owner is in default in the payment of any installment of an annual, special or other assessment levied by the Association, the voting rights of the Owner in the Association and the right to the use of the Common Area or any other services or facilities which is provided by the Association (except the right of access to the Owner's Lot and the right of access to utility service for such Lot) may be suspended by the Association until such assessment is paid. In the event of violation by an Owner of any rules or regulations duly established by the Association, such Owner's voting and use rights may be suspended by the Board after a hearing for a period not to exceed sixty (60) days. Such hearing shall only be held by the Board after giving such Owner ten (10) days' prior written notice specifying each alleged violation and setting the time, place and date of the hearing; determination of the violation and the time of suspension shall be made by a majority vote of the Board.

Section 4.11. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any Mortgage on any Lot, and shall be subordinate to any tax lien or special assessment on a Lot made by lawful governmental authority. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot by foreclosure of any Mortgage, or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. Such unpaid assessments shall be deemed to be expenses of the Association assessable against and collectible from all Owners, including the Owner of the Lot acquired as a result of foreclosure of the Mortgage, his heirs, successors and assigns. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 4.12. Exempt Property. The following parts of the Property shall be exempt from assessment liens of the Association: (a) the Common Area, and (b) any part of the Property dedicated to and accepted by a local public authority (the recording of this Declaration shall in no way be deemed a dedication of, or offer to dedicate, any part of the Property to any public authority).

Section 4.13. No Obligation to Provide Funds. Declarant shall have absolutely no obligation to make payments to or for the Association for any purpose except for its obligation to make periodic payment of assessments levied on Lots which Declarant may from time to time own. Declarant may, at its discretion, lend funds to the Association from time to time as required, which loans shall be repayable with interest at a rate no higher than the prime rate of interest listed in the "Money Rates" table of The Wall Street Journal, and with a maturity date no more than one (1) year from the date of advancement of funds.

Section 4.14. Reserve Funds. From and after the recording of this Declaration, the Association may establish and maintain a reserve fund or funds for replacement and maintenance of the improvements located on the Common Area or the Property. In that event, the Association shall allocate revenues from assessments to such reserve fund or funds in such amounts and in such manner as may be established from time to time by the Board. The reserve fund or funds shall be segregated from operating funds of the Association and may be in the form of a cash deposit, or invested in certificates of deposit or similar obligations issued by a bank or savings and loan association or the obligations of, or fully guaranteed as to principal by, the United States of America. The reserve fund or funds shall be used for the purpose of repairing, replacing and maintaining any facilities owned by the Association, and for such other purposes as may be determined by the Board.

Section 4.15. Association to Maintain Books and Records. The Association shall maintain at all times current copies of all Project Documents, all rules and regulations concerning the Property, as well as its own books, records and financial statements, and same shall be available for inspection by Owners or Mortgagees during normal business hours upon at least three (3) business days' prior written notice to the Association.

Section 4.16. Voluntary Conveyance; Estoppels. Except as provided in Section 4.11, the lien for assessments of the Association created in this Article IV shall not be affected by any conveyance of a Lot, and shall remain a continuing charge on that Lot and a continuing lien which may be foreclosed as provided in Section 4.10. Any grantee in a voluntary conveyance shall be entitled to a statement from the Board, setting forth the amount of the unpaid assessments against the grantor due the Association and such grantee shall not be liable for, nor shall the Lot conveyed be subject to a lien for, any unpaid assessments made by the Association against the grantor in excess of the amount set forth in that statement.

Section 4.17. Management and Other Agreements. The Association shall have the right to enter into management and other agreements for the Property with any individual, firm or entity that the Association deems appropriate and in the best interest of the Project. A copy of all

such agreements shall be made available to each Owner and Mortgagee upon request. Any management and other agreements entered into by the Association shall provide that such agreements may be cancelled, with or without cause, upon no more than ninety (90) days' notice and without penalty at any time. The property manager shall at all times be answerable to the Association and subject to its direction. If the Board considers it prudent and in the best interest of the Association to do so, the Association may join with other associations of homeowners in the immediate vicinity of the Property for the execution of joint property management and services contracts and for other cooperative undertakings.

Section 4.18. Budget Ratification. Within thirty (30) days after adoption of any proposed budget for the Project, the Board shall provide to all Owners a summary of the budget and a notice of the meeting to consider ratification of the budget, including a statement that the budget may be ratified without a quorum. The Board shall set a date for a meeting of the Owners to consider ratification of the budget, such meeting to be held not less than thirty (30) nor more than sixty (60) days after mailing or personal delivery of the summary and notice. There shall be no requirement that a majority of Owners be present at the meeting. The budget is ratified unless at a meeting a majority of the Owners rejects the budget. In the event the proposed budget is rejected, the periodic budget last ratified by the Owners shall be continued until such time as the Owners ratify a subsequent budget proposed by the Board.

ARTICLE V.

[Intentionally Deleted]

ARTICLE VI.

INSURANCE AND RECONSTRUCTION

Section 6.1. Association Insurance. The Association shall procure and maintain, or cause to be maintained, insurance in accordance with the following provisions:

(a) **Property Insurance.** The Association shall obtain and maintain at all times a policy or policies of property insurance (ISO special form or its equivalent) covering all buildings and improvements located on the Property, including all Units and all improvements located in the Common Area, in an amount not less than one hundred percent (100%) of the replacement cost of such improvements at the time such insurance is purchased and at the time of each renewal thereof, exclusive of the costs of excavation, paving, foundations and footings, with a commercially reasonable deductible not in excess of \$10,000.00. Each policy shall show the Association as the named insured, but shall provide that each Owner is an insured person with respect to his Unit, and that the Association is an insured person with respect to the Common Area; shall contain clauses providing for waiver of subrogation against any Owner, any member of Owner's

household, and any Owner's employees or agents; shall provide that it may not be canceled or substantially modified without at least thirty (30) days' prior written notice to the Association and all insureds, including all Owners and all Mortgagees; shall provide that no act or omission by any Owner will preclude recovery upon such policy; and shall provide that if, at the time of a loss under the policy, there is other insurance in the name of an Owner covering the same risk covered by the policy, the Association's policy provides primary insurance. Each policy shall contain an inflation guard endorsement and a construction code endorsement, if available. Each policy shall provide that adjustment of loss shall be made by the Association as insurance trustee, and shall provide for the issuance of certificates or mortgagee endorsements to all Mortgagees.

(b) Liability Insurance. The Association shall obtain and maintain a policy of commercial general liability insurance in such limits as the Association may, from time to time, determine, covering each member of the Board, the property manager, if any, and each Owner with respect to liability arising out of the use, ownership, maintenance, or repair of the Common Area; provided, however, that in no event shall the limits of such policy ever be less than \$1,000,000.00 per occurrence. The liability insurance policy shall include endorsements covering cross liability claims of one insured against another, including the liability of the Owners as a group to a single Owner, and shall provide that it may not be cancelled or substantially modified without at least thirty (30) days' prior written notice to the Association and to all insureds, including all Owners and all Mortgagees. The Association shall review such limits annually.

(c) Fidelity Insurance. The Association shall procure and maintain, or cause to be maintained, a policy or policies of insurance coverage to protect against dishonest acts on the part of officers, directors, volunteers, managers and employees of the Association and any other persons who handle or are responsible for the handling of funds of the Association. Any such fidelity insurance policy must name the Association as the named insured and shall be written in an amount as may be determined by the Association, but in no event less than one-half the annual budgeted amount of annual assessments.

(d) Other Insurance. The Board, or its duly authorized agent, shall have the authority to and shall obtain and maintain in effect such other insurance coverages as may be required by any Agency (as same may be amended or modified from time to time), and such other insurance coverages as the Board shall determine from time to time to be desirable, specifically including, without limitation, directors and officers liability insurance, performance bonds, payment on labor and material bonds and maintenance bonds. In addition, the Association shall maintain flood insurance on any Unit located within a "special flood hazard area," as designated on a Flood Insurance Rate Map published by the Federal Emergency Management Association, or if otherwise required by any Agency.

Section 6.2. Premiums. Premiums upon insurance policies purchased by the Association, and any amounts paid as a result of a deductible, shall be paid by the Association and charged as a expense of the Association for all purposes. All such premiums shall be paid by the Association at least thirty (30) days prior to the expiration date of such policies.

Section 6.3. General Standards. All insurance policies maintained by the Association under this Article VI shall be written with a company or companies licensed to do business in the State of North Carolina and holding a rating of A or better in *Best's Insurance Guide*, provided that such insurance is available from a company with at least such a rating and that, in the event not so available, such insurance is obtained from a company with the highest rating available in *Best's Insurance Guide*. Upon request, duplicate originals of all such policies shall be furnished to all Owners and Mortgagees, provided that in lieu of such duplicate original policies the Association may deliver certificates to the Owners and the Mortgagees attesting the fact that such policies and such insurance are in force and effect. The Association also shall furnish to all Owners and Mortgagees evidence that premiums for the required insurance have been paid on an annual basis.

Section 6.4. Owners' Insurance. Each Owner may, at his option, obtain and keep in force additional fire and casualty and extended coverage insurance upon his personal property, public liability insurance, and such other insurance coverage as he may desire.

Section 6.5. Distribution of Insurance Proceeds. All policies of property insurance procured by the Association shall provide that all losses shall be adjusted with, and all proceeds shall be payable to, the Association as insurance trustee. The Association shall have exclusive authority to negotiate any and all losses under such insurance policies, and the Association is hereby irrevocably appointed as agent and attorney-in-fact for each Owner to adjust all claims arising under such policies and to execute and deliver releases upon the payment of claims. The sole duty of the Association as insurance trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes set forth herein and for the benefit of the Owners and their Mortgagees in the following shares:

- (a) Proceeds on account of damage to any improvements in the Common Area shall be held by the Association and applied in the manner provided in Section 6.6.
- (b) Proceeds on account of damage to Units shall be held in undivided shares for the Owners of damaged Units in proportion to the cost of repairing the damage to each such Owner's Unit, which cost shall be determined by the Association.
- (c) In the event a mortgagee endorsement or certificate has been issued with respect to a Unit, the share of that Owner shall be held in trust for the Owner and its Mortgagee, as their respective interests may appear.

(d) Proceeds of insurance policies received by the Association as insurance trustee shall be distributed to or for the benefit of the Owners in the manner provided in Section 6.6.

Section 6.6. Responsibility for Reconstruction or Repair. If any portion of the Property is damaged by perils covered by the property insurance maintained by the Association in accordance with Section 6.1(a), the Association shall cause such damaged portion to be promptly reconstructed or repaired with the proceeds of insurance available for that purpose, if any, and any such reconstruction or repair shall be substantially in accordance with the plans and specifications for the original development of the Property. Notwithstanding the foregoing, the Association shall not be required to reconstruct or restore the damaged portions of the Property, if (i) the Declaration is terminated in accordance with Article XII hereof, (ii) repair or replacement would be illegal under any State or local health or safety statute or ordinance, or (iii) the Members decide not to rebuild upon the affirmative vote of eighty percent (80%) of the votes of the Members. A meeting shall be called within ninety (90) days after the occurrence of a casualty rendering more than one-half (1/2) of the Lots uninhabitable, or, if by such date the property insurance loss has not been finally adjusted, then within thirty (30) days after such final adjustment. Upon any such election, the insurance proceeds attributable to such damage shall be promptly distributed to the Owners whose Units were damaged, or to their Mortgagees in accordance with the terms of the Mortgage covering that Lot, in proportion to the reasonable cost of repairing damage to such Units; provided, however, that no Owner shall receive any portion of his share of such proceeds until all liens and encumbrances on his Lot have been paid, released or discharged and any debris resulting from such damage or destruction has been removed from the Property.

If: (a) the proceeds of insurance are not sufficient to repair damage or destruction of any part of the Property by fire or other casualty, or (b) the damage or destruction is caused by any casualty not insured against, or (c) insurance proceeds are not available for repair or reconstruction by reason of the application of deductible clauses of applicable policies, then the repair or reconstruction of any damaged improvements within the Common Area shall be accomplished promptly by the Association and the extent of such repairs shall be an expense of the Association; and the repair or reconstruction of any improvements contained within any Lot shall be accomplished promptly by the Owner of the affected Lot at his expense. If the Owner of the affected Lot fails to promptly accomplish such repair or reconstruction, the Association may perform such repairs or reconstruction on his behalf. The expense of such performance may be assessed against that Lot, and if not paid shall be a lien on the Lot having all of the priorities provided for in this Declaration.

Section 6.7. Procedure for Reconstruction or Repair. In the event of a casualty causing damage to any portion of the Property, the following provisions shall govern and apply:

(a) Immediately after a casualty which causes damage to any portion of the Property, the Association shall obtain, or cause the affected Owners to obtain, reliable and detailed estimates of the cost to place the damaged property in

condition as good as that before the casualty. Such costs may include professional fees and premiums for such bonds as the Board deems necessary.

(b) If the proceeds of the casualty insurance are not sufficient to defray the estimated costs of reconstruction and repair by the Association (including the professional fees and premiums, if any), one or more special assessments shall be made against all Owners of the affected Lots (with respect to any deficiency in insurance proceeds for damage or destruction to Units or other improvements on Lots) or all Owners (with respect to any deficiency in insurance proceeds for damage or destruction to the Common Area or the improvements thereon) in sufficient amounts to provide funds for the payment of such costs, and the proceeds of such special assessments shall be deposited with the Association; provided, however, that the Association may borrow funds to pay for such costs with the assent of three-fourths (3/4) of the members of the Association voting at a meeting duly called for such purpose.

(c) The proceeds of the property insurance referred to in Section 6.1(a) and the sums deposited with the Association from collections of special assessments proceeds of authorized loans, as provided in Section 6.7(b), shall constitute a construction fund which shall be held by the Association and applied to the payment of the cost of reconstruction and repair of the Property from time to time as the work progresses, but not more frequently than once in any calendar month. The Association shall make such payments upon a certificate dated not more than fifteen (15) days prior to such request, signed by an architect in charge of the work who shall be selected by the Association, certifying that the sum then requested is justly due to contractors, subcontractors, materialmen, architects, or other persons who have rendered services or furnished materials in connection with the work, giving a brief description of the services and materials, and certifying that the sum requested does not exceed the value of the services and materials described in the certificate. It shall be presumed that the first monies disbursed in payment of such costs of reconstruction and repair shall be from insurance proceeds; and if there is a balance in any construction fund after payment of all costs of the reconstruction and repair for which the fund is established, such balance shall be disbursed to the Association which may use such excess funds for any purpose not in violation of this Declaration in the sole discretion of the Board.

ARTICLE VII.

MAINTENANCE OF PROPERTY

Section 7.1. Maintenance by Association. The Association shall be responsible for the operation, maintenance and repair of the Common Area, as provided in Section 3.4. In addition, the Association shall be responsible for the following items of exterior maintenance: lawn care in the front yard area of each Lot; maintenance and repair of all walkways and paved areas; maintenance and replacement of plant material required by screening requirements under any applicable zoning, subdivision, or land planning ordinance, regulation, or code; periodic repainting of exterior building surfaces on each Unit; and repair and replacement (if necessary) of the following structural elements of each Unit: exterior walls and building surfaces, roofs, front stoops, gutters, and downspouts. The Association shall also be responsible for the maintenance of any central sprinkler system serving individual Units; utility systems serving the Property not otherwise maintained by the appropriate local governmental authority or utility company. Notwithstanding the foregoing, the Association shall not be responsible for any maintenance or repairs caused by the negligence or intentional misconduct of any Owner, his agents, invitees or family members, which shall be the responsibility of that Owner.

Section 7.2. Maintenance by Owners. Except for the maintenance required of the Association under Section 7.1, each Owner of a Lot shall keep the Lot owned by him, and all improvements thereon, in a clean and sanitary condition and in good order and repair. All fixtures and equipment installed within a Lot, commencing at a point where the utility lines, pipes, wires, conduits or systems enter the exterior walls of the Unit, shall be maintained and kept in repair by the Owner thereof. If an Owner of any Lot fails to maintain that Lot and the improvements thereon in accordance with this Article VII in a manner reasonably satisfactory to the Board, in its sole discretion, the Board shall give written notice to such Owner and, if the necessary maintenance is not completed within twenty (20) days, the Association shall have the right, through its agents, contractors, and employees, to enter upon the Lot of the defaulting Owner and to repair, maintain and restore the Lot and the exterior of the building and any other improvements erected thereon in a reasonable and good and workmanlike manner. The cost of such repair, maintenance or restoration shall immediately be deemed a special assessment levied by the Association against such Owner and such Owner's Lot, shall become the personal obligation of such Owner and shall become a lien against such Lot enforceable in accordance with Section 4.10. In the event of an emergency (as so deemed by the Board in its reasonable discretion), the Association shall have the right, with or without prior notice to the Owner, to enter any Lot and Unit to make emergency repairs necessary for the proper maintenance and operation of the Project.

ARTICLE VIII.

ARCHITECTURAL CONTROL

Section 8.1. Building Restrictions. No building or structure other than one (1) single-family Unit shall be constructed on any Lot. No structures of a temporary character, such as a trailer, tent, shack, barn, shed or other outbuilding shall be constructed or used on any portion of the Property at any time. No heat pump, propane tank, solar device, hot tub pump or other similarly exposed mechanical equipment other than those originally installed by Declarant shall be placed on any Lot.

No building, fence, wall or other structure shall be constructed, erected or maintained on, or removed from, the Property until plans and specifications for such work have been approved by the Board as provided below. The plans and specifications shall be prepared and signed by a licensed architect or engineer, and shall show the nature, kind, shape, height, materials and location of the proposed improvements or alterations. The Board shall review and approve the plans as to harmony of external design, color and location in relation to surrounding structures and topography. The Association shall have the right to charge a reasonable fee, not to exceed \$100.00, for reviewing each such application. If the Board or its designated committee fails to approve, approve as noted or as qualified, or disapprove such plans and specifications submitted to it in accordance herewith within sixty (60) days, the approval required in this Section 8.1 shall be deemed granted and no further approvals or consent shall be required before the commencement of construction on such improvements; provided, however, that the plans and specifications required to be submitted shall not be deemed to have been received if they contain erroneous data, misstatements, or in any way fail to present accurate information upon which Board or its designated committees can base a decision.

Section 8.2. Alterations. No Owner shall make structural alterations or exterior modifications to the improvements on his Lot or to any of the Common Area, including but not limited to a change in exterior paint colors, the erection of awnings, the installation of storm doors, storm windows, or window screens (except those originally installed by Declarant), or the decoration of porches or balconies facing the street, without the written approval of the Board. The Board shall not approve any alterations, decorations or modifications which, as determined by the Board in its reasonable judgment, would jeopardize or impair the soundness, safety or appearance of the Property. Further, without the prior written approval of the Board, no Owner shall install or use any window treatment (blinds, draperies or the like) visible from the exterior of his Unit unless the portion thereof visible from the exterior is white, off-white or such other neutral colors as may from time to time be approved by the Board.

Section 8.3. Antennas. No exterior satellite dish in excess of one (1) meter in diameter may be placed on the exterior of any Unit or in the Common Area without the prior written approval of the Board. The location of any exterior television antennas and satellite dishes less than one (1) meter in diameter shall be subject to the reasonable prior approval of the Board, taking into account the appropriate standards set forth in the regulations of the Federal

Communications Commission, and to the extent reasonably practical, the Board may require that such antennas or dishes be screened from public view.

Section 8.4. Inspection. The Board or its designated committee shall have the right, at its election, to enter upon any Lot during construction, erection, or installation of improvements or alterations to inspect the work being undertaken in order to determine that such work is being performed in conformity with the approved plans and specifications and in a good and workmanlike manner, utilizing approved methods and good quality materials.

Section 8.5. Excavation. No Owner of a Lot shall excavate or extract earth from any Lot for any reason other than repair or maintenance reasons. No elevation changes in any Lot shall be allowed which materially affect the surface grade of surrounding Lots or diminish the lateral support of any adjoining or surrounding Lot.

ARTICLE IX.

EASEMENTS

Section 9.1. Construction, Settling and Overhangs. Each Lot and the Common Area shall be and is subject to an easement for encroachments created by construction, settling and overhangs, as originally designed or constructed, so long as such encroachments exist. Every portion of a Lot and each Unit constructed thereon and contributing to the support of an abutting Unit shall be burdened with an easement of support for the benefit of such abutting Unit. If adjoining Units are partially or totally destroyed, and then rebuilt, the Owners of the Lots so affected agree that minor encroachments from the adjacent Lots or Common Area resulting from construction shall be permitted and that a valid easement for such encroachments shall exist.

Section 9.2. Access by the Association. The Association, or any person authorized by it, shall have the right of access to each Unit to the extent necessary for performance by the Association of its obligations of maintenance, repair, or replacement of such Unit or the Common Area.

Section 9.3. Blanket Easements for Utilities. Declarant, prior to the conveyance of the Common Area to the Association, and the Association, at any time thereafter, may 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; sprinkler 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 Area. Further, the Association may grant such permits, licenses and easements over the Common Area for utilities, roads and other purposes reasonably necessary or useful in the discretion of the Board for the purpose of maintenance and operation of the Project. Notwithstanding the foregoing, no sewer lines, electrical lines, water lines or other utilities may be installed or relocated on the Property except as initially approved by Declarant or thereafter approved by Declarant or the Board.

Section 9.4. Underground Electrical Services. Underground single phase electrical service shall be available to all Lots and, where appropriate, to improvements to be constructed on the Common Area. Metering equipment shall be located on the exterior surface of the walls of any improvement at a point to be designated by the providing utility company. The providing utility company shall have a ten (10) foot easement along and centered on the underground electric power service conductors installed from the utility company's easement to the designated point of service of the Lots. For so long as such underground service is maintained, the electric service to each Lot and the Common Area shall be uniform and exclusively of the type known as single-phase, 120/240 volt, 60-cycle alternating current. Easements for underground service may be crossed by driveways, walkways, patios and parking areas, provided Declarant makes prior arrangements with the utility company furnishing electric service. Such easements for underground services shall be kept clear of all other improvements, including buildings, or other pavings, other than crossing driveways, walkways, patios, or parking areas.

Section 9.5. Easement for Construction Purposes. Declarant shall have full rights of ingress and egress to and through, over and about the Property during such period of time as Declarant is engaged in any construction or improvement work on or within the Property. Declarant further have an easement for the purpose of the storage of materials, vehicles, tools, and equipment which are being utilized in such construction. No Owner, or his guests or invitees, shall in any way interfere or hamper Declarant, its employees, successors or assigns in connection with such construction.

Section 9.6. Emergency Access. In case of any emergency originating in or threatening any Unit, regardless of whether the Owner is present at the time of such emergency, the Association, or any other person authorized by it, shall have the right to enter any Unit for the purpose of remedying or abating the cause of such emergency and making any other necessary repairs not performed by the Owners, and such right of entry shall be immediate. In addition, all police, fire protection, ambulance and all similar persons shall have the right to enter upon the streets, driveways and other parts of the Common Area in the performance of their duties.

Section 9.7. Reserved Easements for Declarant. Each deed from Declarant to the Association conveying all or any part of the Common Area shall be subject to a non-exclusive reserved easement, in favor of Declarant and any other owner of all or any part of the Property, for the purpose of pedestrian and vehicular access to and from N. Davidson and N. Caldwell Streets, for the use of the utility facilities (such as sewer, water and sprinkler mains and metering facilities) installed by Declarant in connection with its initial development of the Property, and for the installation, operation, repair and replacement of additional utility facilities. All such non-exclusive access and utility easements reserved by Declarant shall be subject to the terms and conditions set forth in Section 3.1.

ARTICLE X.

USE RESTRICTIONS

Section 10.1. Residential Use Only. Each Owner shall use his Unit for residential purposes only, and shall not permit his Unit to be used in any unlawful manner. However, to the extent permitted by law, any Owner may use his Unit as a home office, provided that such home office use (a) is ancillary to the residential use, (b) does not generate any additional pedestrian or vehicular traffic to or from his Unit or the Common Area, and (c) does not cause any disturbance of other residents or occupants of the Property. In addition, Declarant shall have the right to use any portion of the Property as a sales office, construction office, storage area, model unit, or similar facility in connection with its development of the Property.

Section 10.2. Care and Maintenance. Each Owner shall (a) keep the interior of his Unit including, but not limited to, all appliances and utility systems, and the exterior of the Lot in a safe, neat and clean condition at all times; (b) permit no unsafe or unsanitary conditions in his Unit or on his Lot; (c) comply with any and all obligations imposed upon owners by applicable building and housing codes; and (d) not deliberately or negligently destroy, deface, damage or remove any part of any Unit or the Common Areas, or knowingly permit any person to do so. If an Owner fails to comply with the standards or requirements of the Association relative to maintenance after written notice to do so, the Association shall have the right to undertake the necessary maintenance or repairs at the expense of the defaulting Owner, as provided in Section 7.2.

Section 10.3. Offensive Activity. No noxious or offensive trade or activity shall be conducted upon any Lot, or in the Common Area, nor shall anything be done thereon which may be or may become an annoyance or nuisance to any other Owner, or which may endanger the health or safety of any other Owner of the Property.

Section 10.4. Noise and Disorderly Conduct. No Owner shall engage in any disorderly conduct on the Property, or cause or allow any disturbance, including, but not limited to, shouting, singing, or playing any musical instruments, radio, stereo, or television, in a manner that unreasonably disturbs any other Owner of the Property.

Section 10.5. Fire Hazards. No Owner shall make any alterations to his Unit or bring or keep anything therein which will increase the risk of fire, conflict with fire laws or the regulations of the Charlotte Fire Department, or increase the premiums of any insurance policy on the buildings on the Property maintained by the Association.

Section 10.6. Rubbish. All trash, garbage and other waste shall be kept in sanitary containers within each Unit, and the Owner of each Lot shall be responsible for placing such garbage in a roll-out container, and rolling the container out to the designated trash pick-up area on a regular basis. All trash containers or other equipment for storage or disposal of such waste shall be kept in a clean and sanitary condition and shall be located in appropriate areas concealed from public view.

Section 10.7. Utilities. Total electrical usage in any Unit shall not exceed the capacity of the circuits for that Unit as labeled on the circuit breaker boxes, and no electrical device causing overloading of the standard circuits may be used in any Unit without permission of the Association. All clothes dryers will have lint filters, and all stove hoods will have grease screens, and such screens and filters shall be used at all times and kept clean, and in good order and repair, by the owner of the Unit in which they are located.

Section 10.8. Animals. No livestock, poultry or other animals shall be kept or maintained in any Residence or on any Lot, except for common household pets, such as cats and dogs. No pets may be kept or bred for any commercial purposes, and no savage or dangerous pets may be kept on the Property. All pets shall be controlled so as not to create a nuisance or unreasonable disturbance (including loud and excessive barking) on the Property. All pets must be housed inside a Unit, and no pet shall be permitted upon the Common Area unless carried or leashed by a person that can control the pet. Pets shall not be permitted to defecate in the Common Area, or urinate on the shrubbery, and each Owner shall clean up immediately after his pet if an accident occurs. All pets shall be registered or inoculated as required by law. Each owner shall hold the Association harmless from any claim resulting from any action of his pet, and shall repair at his expense any damage to the Common Area caused by his pet. If any owner violates these rules more than twice in any twelve (12) month period, then in addition to any fines provided in the Bylaws, the Association shall have the right to require the owner to remove the pet permanently from the Property upon not less than ten (10) days' written notice.

Section 10.9. Decks. Any deck on a Unit shall be kept in a clean, neat, and orderly condition at all times, and shall not be used for the overnight storage of garbage, or for the drying of laundry. In particular, towels or banners shall not be hung on the deck or balcony railings, and any dead plants shall be removed promptly. No indoor-outdoor carpeting, hot tub, or other pool shall be installed on any deck. Any furniture on the deck shall be appropriate outdoor furniture and shall be maintained in a neat, tidy, and good condition. Barbecue grills may be stored on the deck, but all other personal property (such as bicycles, lawn care equipment and recreational equipment) shall be stored in a manner so as not to be visible from the Common Areas or other Lots. If permitted by applicable building codes and zoning ordinances, an Owner may use or store a cooking grill on the rear deck, but such Owner shall be responsible for complying with all applicable laws, ordinances, and regulations in connection with such storage and use.

Section 10.10. Signs. No signs of any kind (except one sign per Lot of not more than four square feet containing the words "for rent" or "for sale" and located in the window of the affected Unit) shall be displayed to the public view on any Lot or on the Common Area. The provisions of this Section 10.10 shall not prevent the placement of permanent signs identifying the Project, nor shall it prevent Declarant or its agents from placing signs to advertise the Property during the construction and sale period, including signs on the Common Area and on any unsold Lot or Unit.

Section 10.11. Fences. No fence, wall, patio enclosure, hedge, garden or mass planting shall be erected, maintained or permitted upon the Property, other than those expressly approved

by the Association in accordance with Section 8.1, or those installed by Declarant prior to the initial conveyance of each Lot.

Section 10.12. Clotheslines. No clothesline of any type shall be placed, used or allowed to remain on any Lot.

Section 10.13. Leases. Any lease of a Unit or portion thereof shall be in writing and shall provide that the lease of the Unit shall be subject in all respects to the Declaration, and that any failure by the tenant to comply with all of the terms of the Declaration shall constitute a default under the lease. No Unit may be leased for a period shorter than thirty (30) days.

Section 10.14. Use of Common Area in General. No Owner shall obstruct the entrances, streets, sidewalks, driveways, parking areas and other facilities in the Common Area in any way, or use them for other than their intended purposes. The Common Area shall not be used for the storage of supplies, personal property or trash or refuse of any kind except in Common Area trash receptacles placed at the discretion of the Board. There shall be no bicycles, tricycles, wagons, toys or other miscellaneous personal property parked or left in the Common Area at any time. In general, no activity shall be carried on nor conditions maintained by any Owner either in his Unit or upon the Common Areas which despoils the appearance of the Property.

Section 10.15. Vehicles. No boats, motor homes, trailers, campers, mobile homes, trucks (except pickup trucks used for personal transportation), commercial trucks of any size, recreational vehicles in excess of twelve (12) feet in length or motorized vans used for commercial purposes (as distinguished from vans used solely as passenger vehicles), wrecked vehicles, inoperable vehicles or any vehicle not regularly operated in day to day use shall be parked on the Property at any time. No significant automobile repair shall be allowed on the Property. The Association shall have the right to tow any vehicle in violation of this paragraph at its owner's expense.

Section 10.16. Parking. All vehicles must be parked only in the driveways or garages on each Lot, or in other parking spaces designated by the Association, and must not obstruct or interfere with the ingress or egress of others. In particular, no vehicle shall block the private access drive or the driveway of any other owner. All parking in the Common Areas shall be on a first-come, first served basis, and subject to any rules or regulations that may be promulgated by the Association. The paved driveway on each Lot may be used only by the owner of that Lot, and his agents and invitees. The Association shall have the right to tow any vehicle in violation of this paragraph at its owner's expense.

Section 10.17. Loitering. There shall be no loitering or parties in the Common Area except in the places designated for such activity. There shall be no foul or abusive language, or alcohol consumption, in the Common Area.

Section 10.18. Supervision of Children. Each Owner will provide supervision, by an adult or competent person over 16 years of age, of any child under 6 years of age at all times

when they are in the Common Area. Children and persons of any age shall not appropriate any part of the Common Area for their personal use or play area.

Section 10.19. Rules and Regulations. In addition to the restrictions set forth in this Article X, reasonable rules and regulations governing the use of the Property may be made and amended from time to time by the Board. Copies of all such regulations and amendments thereto shall be posted prominently prior to their effective date, and shall be furnished by the Association to all Members upon request.

Section 10.20. Enforcement. The Association or its agent shall have the right to enforce the provisions of this Article X by assessing fines against any defaulting Owner in accordance with the procedures set forth in the Bylaws, and any such fine shall be deemed a special assessment levied by the Association against such Owner and such Owner's Lot, shall become the personal obligation of such Owner and shall become a lien against such Lot enforceable in accordance with Section 4.11.

ARTICLE XI.

AMENDMENT OF DECLARATION

Section 11.1. General. Except as is otherwise specifically authorized herein, this Declaration may be amended only by the vote no fewer than seventy-five percent (75%) of the Owners of Units, and no fewer than fifty-one percent (51%) of the Mortgagees, cast in person or by proxy at a meeting duly held in accordance with the provisions of the Bylaws. No amendment to the Declaration shall be effective until executed on behalf of the Association by any officer designated for that purpose and recorded in the Office of the Register of Deeds of Mecklenburg County, North Carolina. No amendment to this Declaration shall be adopted or passed which shall impair or prejudice the rights and priorities of any Mortgagee without the written consent of such Mortgagee.

Section 11.2. Amendment of Declaration Without Approval of Owners. So long as it owns any portion of the Property, the Declarant, without the consent or approval of any other Owner, shall have the right (to the extent permitted by law) 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 an Agency, or to comply with the requirements of law or regulations of any Agency regarding the purchase or sale of such Lots and improvements or mortgage interests therein. A letter from an official of any such Agency, including, without limitation, the Veterans Administration, the Department of Housing and Urban Development, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association or the Federal National Mortgage Association, requesting or suggesting an amendment necessary to comply with the requirements of such Agency shall be sufficient evidence of the approval of such Agency, provided that the changes made substantially conform to such request or suggestion. Such amendment shall become effective upon the date of its recordation in the Office of the Register of Deeds of Mecklenburg County, North Carolina.

ARTICLE XII.

TERMINATION

This Declaration may be terminated only by the vote of no fewer than eighty percent (80%) of the Owners of Units and no fewer than eighty percent (80%) of the Mortgagees, cast in person or by proxy in a meeting duly held in accordance with provisions of the Bylaws, and as evidenced by the execution of a written termination agreement by the requisite number of Owners and Mortgagees. The termination agreement must be recorded in the Office of the Register of Deeds of Mecklenburg County, North Carolina before it becomes effective.

ARTICLE XIII.

MORTGAGEE PROTECTION

Section 13.1. General. This Article XIII establishes certain standards and covenants for the benefit of Mortgagees. This Article XIII is supplemental to, and not in substitution for, any other provisions of the Project Documents, but in the event of any conflict between the provisions of the Project Documents and the provisions of this Article XIII, the provisions of this Article XIII shall control.

Section 13.2. Percentage of Mortgagees. Wherever in the Project Documents the approval or consent of a specified percentage of Mortgagees is required, it shall mean the approval or consent of Mortgagees holding Mortgages on Units which have allocated to them that specified percentage of votes in the Association, as compared to the total votes in the Association allocated to all Units then subject to Mortgages held by Mortgagees.

Section 13.3. Rights to Examine Books and Records. Any Mortgagee, and any insurer or guarantor of a loan secured by a Mortgage, shall have the right to examine, during normal business hours and upon reasonable notice, the books and records of the Association, including copies of the Project Documents, as amended, and the financial statements of the Association, and to be furnished, upon written request, at least one copy of the annual financial statement and report of the Association, such annual statement and report to be furnished within ninety (90) days following the end of each fiscal year. If any Mortgagee requests, and agrees to pay the cost of the audit, the financial statement shall be audited by an independent certified public accountant.

Section 13.4. Mortgage's Rights to Notice. Any Mortgagee (including, for purposes of this Section 13.4, any insurer or guarantor of a loan secured by a Mortgage that has notified the Association in writing of its name and address, and that it insured or guarantees a Mortgage) shall have the right to receive from the Association prompt written notice of the following:

- (a) Default under any of the terms and provisions of the Project Documents by any Owner owning a Unit encumbered by a Mortgage held, insured,

or guaranteed by such Mortgagee, which default remains uncured for a period of sixty (60) days.

(b) Any loss or damage to or condemnation or taking of the Common Area, or any loss or damage to or condemnation or taking of a Unit encumbered by a Mortgage held, insured or guaranteed by such Mortgagee.

(c) Any lapse, cancellation, or material modification of any insurance policy.

(d) Any proposed action by the Association, the Board, or the Owners, which under the terms of the Project Documents requires the consent of all or any portion of the Mortgagees.

The failure of any Mortgagee to respond within thirty (30) days to any written request of the Association, sent by registered or certified mail, return receipt requested, for approval of an addition or amendment to the Project Documents wherever mortgagee approval is required shall constitute an implied approval by that Mortgagee of the proposed addition or amendment.

Section 13.5. Consent and Notice Required. Notwithstanding any other provision of this Declaration or the Project Documents, no amendment of any material provision of the Project Documents described in this Section 13.5 shall be effective without notice to all Mortgagees, as required by Section 13.4, the vote of at least seventy-five percent (75%) of the Owners (or any greater percentage required by the terms of the Project Documents), and the approval of at least fifty-one percent (51%) of the Mortgagees (or any greater percentage required by the terms of the Project Documents). A change to any of the following items will be considered material:

(a) Voting rights.

(b) Increases in assessments that raise the previously assessed amount by more than twenty-five percent (25%), assessment liens, or the priority of assessment liens.

(c) Responsibility for maintenance and repairs of the Units, or the Common Area.

(d) The expansion or contraction of the Project, or the addition, annexation or withdrawal of property to or from the Project.

(e) The requirements for insurance and fidelity bonds.

(f) The imposition of any restrictions on the leasing of Units.

(g) The imposition of any restrictions on an Owner's right to sell or transfer his Unit.

(h) The restoration or repair of the Property after casualty damage or partial condemnation in a manner other than that specified in the Project Documents.

(i) Any termination of this Declaration after the occurrence of substantial destruction or condemnation of the Project.

(j) Any provision that expressly benefits the Mortgagees.

Section 13.6. Other Mortgagee Rights. Notwithstanding any other provision of this Declaration or the Bylaws, the Association may not change the period for collection of regularly budgeted assessments to other than monthly without the consent of all Mortgagees. Any representative of a Mortgagee may attend and address any meeting that an Owner may attend.

Section 13.7. Enforcement. The provisions of this Article XIII are for the benefit of all Mortgagees and their successors, and may be enforced by any of them by any available means.

ARTICLE XIV.

MISCELLANEOUS PROVISIONS

Section 14.1. Covenants Running with the Land. Each Owner, by the acceptance of a deed of conveyance for a Lot, accepts title to that Lot and Unit subject to all restrictions, conditions, covenants, reservations, liens and charges, and the jurisdiction, rights and powers created or reserved by this Declaration. All rights, benefits and privileges of every character hereby granted, created, reserved, or declared, and all impositions and obligations hereby imposed, shall be deemed to be covenants running with the land, and shall bind any person having at any time any interest or estate in said land, and shall inure to the benefit of such person in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance.

Section 14.2. Construction and Enforcement. The provisions of this Declaration shall be liberally construed to effectuate the purpose of creating, preserving and maintaining the development and operation of a residential townhouse community of the highest quality. Any Owner, the Association, Declarant or any Mortgagee may enforce these covenants and restrictions by any proceedings at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain or enjoin violation or to recover damages, or both. The Association may bring any proceeding at law or in equity to enforce any lien in their favor created hereby.

There shall be, and there is hereby, created and declared to be a conclusive presumption that any violation or breach or any attempted violation or breach of any of the within covenants or restrictions cannot be adequately remedied by action at law or exclusively by recovery of

damages. Any defaulting party shall be liable for the costs of enforcement of such covenants and restrictions, including without limitation attorneys' fees and court costs.

Section 14.3. Waiver. No covenants, restrictions, conditions, obligations, or provisions 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.

Section 14.4. Severability. The invalidity of any covenant, restriction, condition, limitation or any other provision of this Declaration, or of any part of the same, shall not impair or affect in any manner the validity or enforceability of the rest of the Declaration.

Section 14.5. Time Limits. If any of the privileges, covenants, restrictions or rights created by this Declaration shall be unlawful or void for violation of (a) the rule against perpetuities or some analogous statutory provision, (b) the rule restricting restraints on alienation, or (c) any other statutory or common law rules imposing time limits, then such provision shall continue only until twenty-one (21) years after the death of the last surviving child of the current shareholders of Robinson, Bradshaw & Hinson, P.A.

Section 14.6. No Liability. Neither Declarant, nor any subsidiary of Declarant, nor any employee, agent, successor or assign of Declarant or any such subsidiary, shall be liable for any claim or damage whatsoever arising out of any actions performed pursuant to or in accordance with any authority granted or delegated to them by this Declaration.

Section 14.7. Headings. The heading to each Article and Section of this Declaration is inserted only as a matter of convenience for reference and in no way limits or describes the scope or intent of such Article or Section, or this Declaration in general.

IN WITNESS WHEREOF, Declarant has executed this Declaration under seal as of the day and year first above written.

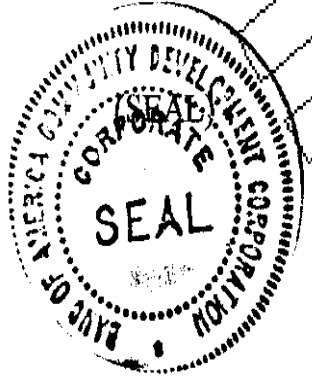
DECLARANT:

EIGHTH STREET, LLC

By: Banc of America Community Development Corporation, its Manager

By: [Signature]
Vice President

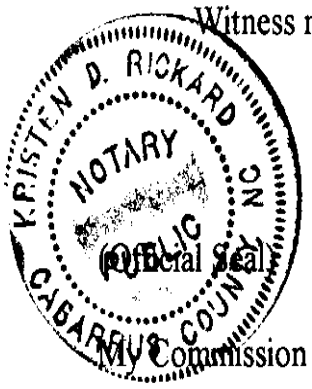
Attest: [Signature]
Assistant Secretary



STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

I, Kristen D Rickard a Notary Public for said County and State, do hereby certify that Bernard Felder personally came before me this day and acknowledged that (s)he is Vice President of Banc of America Community Development Corporation, a North Carolina corporation, the authorized manager of EIGHTH STREET LLC, a North Carolina limited liability company, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its Vice President, sealed with its corporate seal and attested by Rebekah Rouse as its Assistant Secretary.

Witness my hand and official stamp or seal, this 10 day of December, 1999.



[Signature]
Notary Public

My Commission Expires: 7-6-2003

EXHIBIT A

Tract A

The Caldwell's on Ninth Townhomes – Block E Portion (Northeast of Ninth Street)

BEING all of that certain parcel of land in the First Ward area of the City of Charlotte, Mecklenburg County, North Carolina, containing approximately 0.804 acre, and being more particularly described as follows:

COMMENCING at GPS control monument No. 101, a found iron rod located between the curb and the sidewalk near the easterly right of way line of North Caldwell Street, approximately one-half the distance between East Ninth and East Eleventh Streets, said point having NAD 83 State Plane Coordinates (in U.S. Survey Feet) of 543,040.248 (north) and 1,452,787.010 (east):

THENCE, N 57°38'33" E, 27.71 feet (horizontal ground distance) to a found iron rod in the southeasterly right of way line of North Caldwell Street (a variable width public right of way);

THENCE, along said right of way, N 50°16'25" E, 36.15 feet to a found iron rod, the most westerly corner of that United House of Prayer for All People tract as described in Deed Book 4431, Page 986, Mecklenburg County Registry,

THENCE, departing said right of way and along said tract's southwesterly line, S 39°36'13" E, 7.14 feet to a set #5 rebar with plastic cap inscribed "The Survey Company-Property Corner";

THENCE, along the proposed, new easterly right of way line of North Caldwell Street, S 50°15'10" W, 329.31 feet to a set #5 rebar with plastic cap inscribed "The Survey Company – Property Corner," THE POINT OF BEGINNING,

THENCE, FROM THE POINT OF BEGINNING, continuing along said proposed right of way, S 50°15'10" W, 89.19 feet to a calculated point of curvature,

THENCE, continuing along said proposed right of way with a curve to the left having a radius of 20.00 feet, through a central angle of 39°30'54", for an arc distance of 13.79 feet, with a chord of 13.52 feet, bearing S 30°29'43" W, to a calculated point of intersection with the existing northerly right of way line of East Ninth Street;

THENCE, continuing along said proposed right of way with a curve to the left having a radius of 20.00 feet, through a central angle of 50°45'14", for an arc distance of 17.72 feet, with a chord of 17.14 feet, bearing S 14°38'21" E, to a calculated point of tangency;

THENCE, continuing along said proposed right of way, S 40°00'58" E, 115.20 feet to a calculated point of curvature;

THENCE, continuing along said proposed right of way with a curve to the left having a radius of 979.50 feet, through a central angle of $2^{\circ}42'02''$, for an arc distance of 46.17 feet, with a chord of 46.16 feet, bearing $S 41^{\circ}21'59'' E$, to a calculated point of tangency;

THENCE, continuing along said proposed right of way, $S 42^{\circ}43'00'' E$, 108.79 feet to a calculated point of curvature;

THENCE, continuing along said proposed right of way with a curve to the left having a radius of 10.00 feet, through a central angle of $37^{\circ}30'38''$, for an arc distance of 6.55 feet, with a chord of 6.43 feet, bearing $S 61^{\circ}28'19'' E$, to a calculated point of tangency;

THENCE, continuing along said proposed right of way, $S 80^{\circ}13'38'' E$, crossing the existing northerly right of way line at 18.42 feet, for a total distance of 51.13 feet to a calculated point of curvature;

THENCE, continuing along said proposed right of way with a curve to the left having a radius of 10.00 feet, through a central angle of $49^{\circ}28'26''$, for an arc distance of 8.63 feet, with a chord of 8.37 feet, bearing $N 75^{\circ}02'09'' E$, to a calculated point of tangency in the westerly right of way line of North Davidson Street (variable width public right of way) as shown on Map Book 19, Page 233, Mecklenburg County Registry,

THENCE, along said right of way, $N 50^{\circ}17'56'' E$, 61.41 feet to a set #5 rebar with plastic cap inscribed "The Survey Company-Property Corner";

THENCE, departing said right of way and along a new line, the following courses:

- 1) $N 40^{\circ}19'51'' W$, 132.08 feet to a calculated point;
- 2) $S 49^{\circ}45'20'' W$, 7.27 feet to a calculated point;
- 3) $N 40^{\circ}18'45'' W$, 67.90 feet to a calculated point;
- 4) $N 49^{\circ}45'20'' E$, 7.87 feet to a calculated point;
- 5) $N 40^{\circ}20'44'' W$, 138.53 feet to THE POINT OF BEGINNING

CONTAINING 35,026.5 square feet or 0.804 acre more or less, as shown on a survey titled "Final Plat of First Ward Place Phase 2 Apartments and Caldwell's on Ninth Townhomes", prepared by The Survey Company, Inc., dated July 27, 1999, last revised August 11, 1999, and signed by Michael C. Sawhill, PLS 3223, to which survey reference is hereby made. Being a portion of the property shown on Map Book 19, Page 359, and described in Book 8937, Page 392, each in the Mecklenburg County Registry, plus a portion of the right of way of East Ninth Street as shown on Map Book 12, Page 201, Mecklenburg County Registry.

Tract 2

The Caldwells on Ninth Townhomes – Block D Portion (Southwest of Ninth Street)

BEING all of that certain parcel of land in the First Ward area of the City of Charlotte, Mecklenburg County, North Carolina, containing approximately 0.821 acre, and being more particularly described as follows:

COMMENCING at GPS control monument No. 103, a found PK nail in the sidewalk at the southwesterly corner of East Ninth Street and North Davidson Street, said point having NAD 83 State Plane Coordinates (in U.S. Survey Feet) of 542,501.364 (north) and 1,452,690.148 (east);

THENCE, S 63°03'14" W, 15.40 feet (horizontal ground distance) to a found iron rod in the northwesterly right of way line of North Davidson Street (a variable width public right of way as shown on Map Book 19, Page 233, Mecklenburg County Registry);

THENCE, along said right of way, S 49°59'30" W, 160.01 feet to a found iron rod, an angle point in said right of way and THE POINT OF BEGINNING;

THENCE, FROM THE POINT OF BEGINNING, departing said existing right of way, N 43°04'43" W, 266.28 to a set #5 rebar with plastic cap inscribed "The Survey Company-Property Corner;"

THENCE, N 42°52'55" W, 73.54 feet to a set #5 rebar with plastic cap inscribed "The Survey Company-Property Corner" in the new, proposed southeasterly right of way line of North Caldwell Street (variable width public right of way as shown on Map Book 12, Page 201, Mecklenburg County Registry);

THENCE, along said proposed right of way the following courses:

- 1) N 50°18'10" E, 93.73 feet to a calculated point of curvature;
- 2) with a curve to the right having a radius of 20.00 feet, through a central angle of 94°25'29" for an arc distance of 32.96 feet, with a chord of 29.36 feet bearing S 82°29'06" E to a calculated point of reverse curvature;
- 3) with a curve to the left having a radius of 1,027.00 feet, through a central angle of 11°02'30" for an arc distance of 197.92 feet, with a chord of 197.61 feet bearing S 40°47'36" E to a calculated point of tangency;
- 4) S 46°18'51" E, 87.45 feet to a calculated point of curvature;
- 5) with a curve to the right having a radius of 10.00 feet, through a central angle of 46°38'56" for an arc distance of 8.14 feet, with a chord of 7.92 feet bearing S

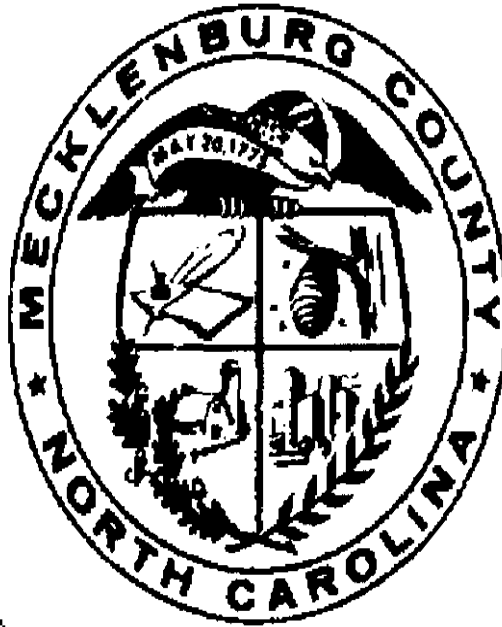
22°59'23" E to a calculated point of tangency in the existing northwesterly right of way line of North Davidson Street;

6) S 00°20'05" W, 28.31 feet to a calculated point of curvature;

7) With a curve to the right having a radius of 10.00 feet, through a central angle of 49°39'25" for an arc distance of 8.67 feet, with a chord of 8.40 feet bearing S 25°09'48" W to a calculated point of curvature;

THENCE, along said existing right of way, S 49°59'30" W, 79.65 feet to THE POINT OF BEGINNING.

CONTAINING 35,763 square feet or 0.821 acre, more or less, as shown on that survey titled "Final Plat of First Ward Place Phase 2 Apartments and Caldwells on Ninth Townhomes," prepared by The Survey Company, Inc., dated July 27, 1999, last revised August 16, 1999, and signed by Michael C. Sawhill, PLS 3223, to which survey reference is hereby made. Being a portion of the property described as Tract 2 in the deed from the City of Charlotte recorded in Book 8937, Page 392, Mecklenburg County Registry.



JUDITH A. GIBSON
REGISTER OF DEEDS, MECKLENBURG COUNTY
COUNTY & COURTS OFFICE BUILDING
720 EAST FOURTH STREET
CHARLOTTE NC 28202

Filed For Registration: 02/01/2000 12:39 PM
Book: RE 11064 Page: 210-241
Document No.: 2000013399
RESTR 32 PGS \$68.00
Recorder: SERENA ROSS

State of North Carolina, County of Mecklenburg

The foregoing certificate of KRISTEN D. RICKARD Notary is certified to be correct. This 1 ST of February 2000

JUDITH A. GIBSON, REGISTER OF DEEDS By: Serena M. Ross
Deputy/Assistant Register of Deeds



2000013399

DUPLICATE